

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause ) DOCKET NO. 910289-TP  
proceedings against EDGEWATER ) ORDER NO. PSC-92-0280-AS-TP  
BEACH RESORT for operating as a ) ISSUED: 04/30/92  
telephone company in violation )  
of Rules 25-4.004 and 25-24.470, )  
F.A.C. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman  
SUSAN F. CLARK  
J. TERRY DEASON  
BETTY EASLEY  
LUIS J. LAUREDO

ORDER ACCEPTING SETTLEMENT  
OFFER AND CLOSING DOCKET

BY THE COMMISSION:

By Order No. 24878, issued August 5, 1991, we directed Edgewater Communications (EC) to show cause why it should not be fined for certain alleged violations set forth in that Order. On August 26, 1991, EC filed its Response to our Order, along with its Petition for Formal Hearing on the matter. The matter was then set for hearing and the process of preparing for hearing began. Subsequently, EC submitted a settlement offer in this matter. The settlement offer is set forth as Attachment A to this Order.

We have reviewed EC's proposed settlement and find it to be a reasonable and appropriate resolution of this docket. We believe accepting this offer is in the public interest because the issues in this docket have implications that go beyond EC itself. We believe our resources will be most wisely utilized in a generic proceeding to promulgate rules addressing the provision of telephone service to transient end users. Accordingly, we shall accept EC's settlement offer and shall close this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement offer submitted by Edgewater Communications and set forth as Attachment A to this Order is hereby approved and shall be incorporated into this Order. It is further

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ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 30th  
day of April, 1992.

  
\_\_\_\_\_  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

ABG

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The

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notice of appeal must be in the form specified in Rule 9.900 (a),  
Florida Rules of Appellate Procedure.

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ATTACHMENT A  
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TELEPHONE 769-1414  
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February 13, 1992

\*ALSO ADMITTED IN MISSISSIPPI  
BOARD CERTIFIED CIVIL TRIAL LAWYER  
\*\*ALSO ADMITTED IN LOUISIANA

Angela Green, Esq.  
Florida Public Service Commission  
Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0863

Re: Edgewater Communications  
Docket No: 910289-TP

Dear Angela:

Following your suggestion to Commissioner Easley that the Motion Hearing be continued until February 14, 1992, you and Mr. Yates suggested that Edgewater Communications make a proposal to resolve the issues currently before the Public Service Commission on the above-referenced docket. This letter is in response to that request.

As I am sure you are aware, Edgewater Communications feels very strongly that the service it has provided at Edgewater Beach Resort is not subject to regulation by the Public Service Commission due to the transient exemption as recited in PSC Order No. 17111. With that in mind, and based upon Staff's recommendation that there remain only three areas which need to be resolved by Edgewater Communications and the PSC, the following is offered by Edgewater Communications in an attempt to avoid the costs (both in time and money) of the scheduled Administrative Hearing in this matter.

1. **INSIDE WIRE.** While this has been a confusing point in our prior discussions, we believe that Edgewater Communications has complied with governing law, so no change is required.

We understand that "inside wire" is that wire existing from the demarcation point to the telephone set and that the demarcation point is the point of connection between the regulated telecommunications company and the customer's wire and equipment. For permanent residents and any other person taking service directly from Southern Bell, the demarcation point is at the wall jack inside the residential unit. Southern Bell leases pairs of lines from Edgewater Communications to serve those customers. While

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this may be a technical distinction, it is not a material one. Although ownership of this wire remains with Edgewater Communications, Southern Bell, as lessee, has the degree of control it needs to service its customers. It is our understanding that Bell's leasing of lines to serve their customers has previously been found acceptable by the Staff and by the Commission.

For those persons using the Edgewater Communications' system, Edgewater Communications leases the trunk lines from Southern Bell, and therefore, Edgewater Communications is the customer of Southern Bell. The demarcation point is where Southern Bell's trunk lines connect to the terminal strip in Edgewater Communications' equipment room on the ground floor.

2. REFUNDS. Edgewater Communications believes that the amounts charged were both fair and reasonable under the law and the facts that have existed at Edgewater Beach Resort. However, in the spirit of cooperation and in an effort to reach resolution of this matter, Edgewater Communications is prepared to offer the following refunds for services to those permanent residents at Edgewater Beach Resort who were initially served by Edgewater Communications and now receive telecommunications service from Southern Bell Telephone Company:

(a) A sum not to exceed \$6,900.00 relating to telephone closing costs. The cost for a telephone set and the programming and other charges necessary to originate service to an individual unit were collected at the closing of the purchase of that unit at the rate of \$150.00 prior to July 1, 1987 and at the rate of \$200.00 thereafter. Edgewater Communications is prepared to refund to those residents who qualify, either \$98.00 or \$48.00, which is the difference between \$102.00 and the amount collected at the time of closing. The \$102.00 represents the cost of the telephone set (\$65.00) and the translation fee, a programming fee charged by Southern Bell to Edgewater Communications to initiate service to a unit (\$37.00). That amount of refund would be \$98.00 for those individuals who paid \$200.00 at closing and \$48.00 for those individuals who paid \$150.00.

(b) A sum not to exceed \$20,500.00 relating to monthly service charges. A refund of \$4.50 per month from the \$20.00 monthly service charge for each month that the permanent resident used the Edgewater Communications' system. This sum represents the cost for the "call forwarding" and "call waiting" features which were a part of the telecommunication system provided by Edgewater Communications.

There are approximately fifty units which are presently occupied by permanent residents at Edgewater Beach Resort.

Edgewater Communications and its predecessor have complied

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with all rules, statutes, and orders relating to internal communications. Although Edgewater Communications believes that no refunds are required, it is willing to make the refunds on the bases set forth above as a gesture to resolve this docket.

3. CONTINUED SERVICE AT EDGEWATER BEACH RESORT. Edgewater Communications believes that there is no reasonable distinction to be made between unit owners who allow their units to be rented either through Edgewater Beach Management, Inc., from any other rental management company or through their own initiative. Therefore there is no justification for a "developer rental program limitation". The definition of "transient" is clearly spelled out in PSC Order No. 17111: "We find transient, for purposes of this Order, to mean one temporarily occupying the premises, with occupancy not to exceed nine months." This classification of units is based upon usage, not identity of the resident (second home owner or renter) or upon the identity of the leasing entity (original developer, owner's association, independent real estate broker or unit owner). The group of second home owners who affirmatively indicate in writing annually that their unit will not be used by them as a permanent residence and will not be occupied by a single tenant for a period of nine months or more should be permitted to remain on the telecommunications system operated by Edgewater Communications. A "Use Agreement" would be executed annually by those unit owners who meet the qualifications as a second home owner. This document would be retained in the records of Edgewater Communications and would be available for inspection by the PSC.

It is my understanding that while we are attempting to resolve the issues cited above, the PSC is preparing a generic docket to fully address the issues involving service to premises used for transient purposes and intends to initiate a rule making proceeding for the purpose of implementing the "Transient exemption" portion of Order No. 17111. The interpretation and application of that Order appears not to have been uniform in condominiums in Florida. It is therefore required that any settlement reached between Edgewater Communications and the Public Service Commission: (1) contain a statement that there is no finding that Edgewater Communications has violated any statute, rule or order and (2) recite that the decisions, definitions and conditions which result from the rule making proceeding will not be applied retroactively to Edgewater Communications for the purpose of determining whether Edgewater Communications has ever violated either the transient exemption or any other provision governing communication service. ab

This letter is in response to your request for a proposal of a manner in which this case might be settled. It is for the purposes of settlement discussions only and if not accepted in full by the Staff and by the Commission, it shall be null and void

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ab initio. Neither this letter or any provision herein may be considered or introduced as evidence in this docket or in any other proceeding.

Commission Staff has proposed certain additional terms and conditions be included in the settlement with Edgewater Communications. These were set out in the Staff's letter dated February 13, 1992. By telephone conference call between Commission Staff and counsel for Edgewater Communications on February 13, 1992, certain revisions to the Staff's additional terms and conditions were discussed and agreed upon.

First, the parties agree that any reference to Edgewater Communications (EC) or to any other affiliated entity named or referred to in the Order to Show Cause No. 24878, shall be construed collectively so as to refer to each or all of such entities, as the context may require.

Second, upon signing of the stipulation, the Case Assignment and Scheduling Record in this case shall be considered by the parties to be held in abeyance, subject to approval by the Prehearing Officer, and that unless otherwise notified by the Prehearing Officer, Edgewater Communications is relieved from filing its prefiled testimony, responses to discovery, and any other documents, including its own discovery, in this docket.

Third, the following terms and conditions, as modified from Staff's letter dated February 13, 1992 are included as a part of this stipulation:

1. EC is not required to admit any of the allegations in Order No. 24878 issued August 5, 1991, or in the Staff Recommendation dated June 20, 1991.

2. The show cause proceeding initiated against EC will be withdrawn in its entirety, the docket will be closed, and no fines or penalties will be imposed. This action will constitute the closure of those issues specifically addressed by Order No. 24878; however, EC is not precluded from raising any issue in the generic proceeding described in paragraph 5 below.

3. Acceptance of EC's settlement offer does not constitute endorsement of or agreement with the version of facts recited by EC in its offer.

4. There is no finding that EC has violated any statute, rule or order.

5. The Commission is opening a generic proceeding to promulgate rules addressing the provision of telephone service to "transient" end users. EC will be subject to those rules only

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prospectively (and not retroactively) on the same basis as any other affected entity. EC reserves all rights to intervene or not to intervene in such generic proceeding, and if it intervenes, it is not estopped and reserves all rights to participate fully as a party and to seek appellate review of any order entered therein.

6. Pending promulgation of the above-mentioned rules, EC agrees that it will continue not to provide telephone service to any unaffiliated businesses.

7. Pending promulgation of the above-mentioned rules, EC agrees that it will continue not to provide telephone service to any owner who permanently resides in his unit.

8. Pending promulgation of the above-mentioned rules, EC agrees that it will continue not to collect "telephone costs" at closing.

9. EC agrees that it will continue to allow Southern Bell Telephone & Telegraph Company (Southern Bell) to provide telephone service to any customer who desires such service, including appropriate arrangements for facilities needed by Southern Bell to provide such service. EC will not impose any type of telecommunications charge upon any end user who purchases service from Southern Bell.

10. EC recognizes that only the Commission itself, and not the staff, has the authority to approve this settlement agreement.

11. EC and the Commission have authority to enforce the terms of this settlement agreement.

12. Within 90 days after the date of the Commission's order accepting this settlement agreement, EC shall provide the Commission with a report detailing the names, addresses, amount of refund, manner of payment and time of payment for the refunds outlined above.

13. This stipulation shall be incorporated in and made a part of the final order issued by the Public Service Commission in this docket.

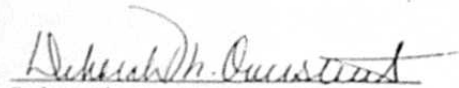


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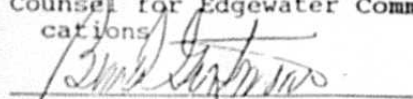
ATTACHMENT A  
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In order to acknowledge the terms of this settlement agreement, the Commission Staff, its counsel and counsel for Edgewater Communications have jointly executed this document with the understanding that it shall be presented to the Florida Public Service Commission for its acceptance.



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Burke & Blue, P.A.  
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nications



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ACKNOWLEDGEMENT BY STAFF OF  
PUBLIC SERVICE COMMISSION

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Staff Counsel

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