

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show) DOCKET NO. 911214-TP
cause proceedings against) ORDER NO. PSC-93-0009-FOF-TP
TELECO COMMUNICATIONS COMPANY) ISSUED: 01/04/93
for violation of Rule 25-4.004,)
Florida Administrative Code)
_____)

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

PROPOSED AGENCY ACTION
ORDER FINDING THAT TELECO COMMUNICATIONS COMPANY
IS OPERATING AS A LOCAL EXCHANGE COMPANY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

CASE BACKGROUND

In 1988, the operations of Teleco Communications Company (Teleco) came to the attention of our staff, through an inquiry by a member of the board of the Regency Towers Owners Association (RTOA). Regency Towers is a 340-unit condominium built by Major Development Company (MDC). The 340 units are all privately owned. Of those, 145 units are in the RTOA rental program, and 57 units are owner-occupied. Advisors Realty, a subsidiary of MDC, was both manager for the condominium and manager of the condominium rental program from 1975 to 1979, and later from 1982 to 1988. In October 1988, RTOA took over management of the Regency Towers condominium, as well as management of the condominium's rental program.

In May 1986, Paultronics, Inc. purchased the inside wire, which included 360 pairs of station wire, at the Regency Towers

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Condominiums from Southern Bell Telephone and Telegraph Company (Southern Bell) for \$11,566.00. The check for the purchase was written by Teleco Communications Company. Paultronics subsequently assigned its rights to Teleco. Teleco and the RTOA apparently entered into an oral agreement whereby RTOA would lease the wire from Teleco. The terms were \$1,042 per month for 84 months. That amount included maintenance of the wire as well as the actual cost. At the end of the 84 months, RTOA would own the wire. In October or November of 1988 RTOA ceased making payments to Teleco. At present Teleco "owns" 360 two-pair cables which includes all wire that runs to the units and wire in the office and common areas, the backboard wire in both mechanical rooms and the wire that runs to the guard house. Southern Bell owns the 600 pair cable from the Phase 1 mechanical room to the Phase 2 mechanical room.

In May 1991, Teleco initiated a proceeding in the Circuit Court in Panama City against RTOA for nonpayment of the terms of the contract. On July 29, 1991, RTOA filed a motion for referral to this Commission of those matters over which the Commission has jurisdiction. That motion was granted on December 10, 1991. The Circuit Court retained jurisdiction over the issues related to the contract dispute between Teleco and RTOA. This docket was opened on December 21, 1991, as a result of the court's action. A jury trial was scheduled for August 31, 1992. On August 6, 1992, Teleco filed a motion for continuance, which the court granted. To date, the Commission has not been notified of the new trial date.

We understand that the contract matter is properly under the jurisdiction of the circuit court. However, we believe that this Commission must determine whether Teleco can own or control the 360 pairs of station wire or riser cables under our statutes and rules.

DISCUSSION OF ISSUES

Section 364.33, Florida Statutes, provides that a person may not operate or acquire ownership of a telecommunications facility without approval by the Commission. Section 364.02 states that a telecommunications facility includes any apparatus used and operated to provide two-way telecommunications for hire.

Rule 25-4.004, Florida Administrative Code, provides that:

no person shall begin the construction or operation of any telephone line, plant or system or an extension thereof or acquire ownership or control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition.

Teleco has been leasing the 360 pairs of station wire or riser cables to the RTOA. An oral agreement between the two parties apparently provided that Teleco would be paid \$1042 per month for a period of 84 months, at the end of which time RTOA would own the wire. We find that Teleco leasing the wire to RTOA for payment constitutes operating a telecommunications facility. Teleco does not have a certificate of public convenience and necessity. Thus, Teleco is in violation of the aforementioned statutes and rule.

We would also point out that this particular proceeding does not involve those aspects of resorts and condominiums that have been before this Commission in the past several years. This docket was not opened to address Customer Premises Equipment, demarcation points, or the transient exception. Those subjects are properly at issue in various rulemaking dockets currently, or soon to be, before the Commission. This docket is concerned solely with the issue of Teleco's operating a telecommunications facility by asserting ownership or control of the wire located between the housing units and the local exchange company.

This particular fact pattern is coming before this Commission for the first time. There are potentially numerous entities involved in this type of activity throughout Florida. Therefore, it is not the Commission's intention to single out Teleco. However, it is clear that while the local exchange company (LEC) or the owners may control station wire or riser cables, a third party such as Teleco may not. To allow Teleco to continue to charge Regency Towers, allows Teleco to continue operating as an uncertificated telecommunications company. As an uncertificated entity, Teleco is not entitled to collect revenues due solely for activities that can only be properly performed by a phone company. We also note that Teleco cannot be certificated, as it would unnecessarily duplicate the services already available from the LEC.

Accordingly, we find that Teleco's activities constitute operation as a telecommunications company. As such, Teleco shall relinquish all claims to the station wire. Teleco shall also cease all attempts to collect payment for the inside wire. If Teleco immediately relinquishes all claims to the wire, then no further action will be taken against Teleco. Teleco should appropriately transfer, within 90 days after the order in this docket becomes final, all of its interest in the station wire. The wire shall be transferred as follows: (1) to Southern Bell for those customers who permanently reside in their units, or for those rental units not in the RTOA rental program; and, (2) to the RTOA, for those units in RTOA's rental program. If Teleco complies with the above conditions, then the Commission will not initiate further proceedings against Teleco for operating as a phone company.

In addition, if Teleco complies with the above conditions, this Commission will not require Teleco to refund revenues collected from the period of May 1986 to October 1988. Southern Bell sold the wire to Paultronics, who in turn assigned its rights to Teleco. The management at Regency Towers paid \$1042 per month for 28 months, or approximately \$29,000. As noted above, this amount included both the cost of the wire and maintenance. Since Regency Towers has received the benefit of the wire and the maintenance of it for several years, a refund should not be required.

However, if Teleco fails to comply with the above conditions and continues to operate as a telecommunications company, then this Commission will consider all avenues available, including fining Teleco in an amount up to and including the maximum fine allowed by Section 364.285.

This Order is issued as a Proposed Agency Action (PAA). If Teleco requests a hearing, the parties should be aware that a fine would be one possible outcome. This Commission wishes to clarify that our decision against imposition of a fine at this time should be considered a trade-off, and is in the spirit of setting the rights of the respective parties, given the time that has passed and the expense that would be incurred through litigation.

Based on the foregoing, it is

ORDER NO. PSC-93-0009-FOF-TP
DOCKET NO. 911214-TP
PAGE 5

ORDERED by the Florida Public Service Commission that Teleco Communications Company's operations at the Regency Towers Condominium constitute operating as a local exchange company in violation of Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code. It is further

ORDERED that Teleco Communications Company shall relinquish all claims to the station wire at the Regency Towers Condominium, as set forth in the body of this Order. It is further

ORDERED that if Teleco Communications Company accepts and complies with the conditions set forth herein, then this docket shall be closed. Otherwise, this docket shall remain open pending the outcome of this proceeding.

By ORDER of the Florida Public Service Commission this 4th day of January, 1993.



STEVE TRIPPLE, Director
Division of Records and Reporting

(S E A L)
PAK

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.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on January 25, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater 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 of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.