

FLORIDA PUBLIC SERVICE COMMISSION

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M E M O R A N D U M

February 24, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [LEWIS] *ML*
DIVISION OF LEGAL SERVICES [HATCH] *TH*

RE : DOCKET NO. 940139-TL, INVESTIGATION OF CENTRAL TELEPHONE COMPANY OF FLORIDA'S PROVISION OF CENTREX SERVICE TO ROYAL OAKS APARTMENTS IN VIOLATION OF SECTION 364.339(1)(b), FLORIDA STATUTES, ORDER NO. 17111, RULE 25-24.560, FLORIDA ADMINISTRATIVE CODE AND GENERAL CUSTOMER SERVICES TARIFF 23.8.3.

AGENDA: MARCH 8, 1994 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\940139.RCM

CASE BACKGROUND

Royal Oaks Apartments (Royal Oaks) is a 41 unit apartment complex located at 540 Bryan Street, in Tallahassee. The residents are primarily college students who receive telephone service through a centrex service system provided to Royal Oaks by Central Telephone Company of Florida (Centel). This telephone service arrangement came into question when the Commission staff received a complaint from a Royal Oaks resident that she could not purchase telephone service directly from Centel, could not choose her own long distance carrier, and could not reach an operator or make a collect call.

Staff has corresponded with Central Telephone Company regarding the service arrangements at Royal Oaks. There is disagreement between staff and the utility regarding both the interpretation of the tariff and the type of service arrangement that is being offered at Royal Oaks and approximately 10 other apartment buildings in the Centel service area. The service arrangement and the concerns of both staff and Centel are described in the following recommendation.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS REPORTING

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Central Telephone Company to discontinue the provision of centrex service for residential resale to Royal Oaks Apartments and other establishments in violation of Section 364.339(1)(b), F.S., Order No. 17111, Rule 25-24.560, F.A.C., and General Customer Service Tariff 23.8.3?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Section 364.339, Florida Statutes states in pertinent part:

364.339 Shared tenant service; regulation by commission; limitation as to designated carriers.

(1) The commission shall have exclusive jurisdiction to authorize the provision of any shared tenant service which:

(a) Duplicates or competes with local service provided by an existing local exchange telecommunications company; and

(b) Is furnished through a common switching or billing arrangement to commercial tenants within a single building by an entity other than an existing local exchange telecommunications company.

Central Telephone Company began providing Centrex service to Royal Oaks Apartments in the summer of 1993. The service is used to provide telephone service to tenants in 41 apartment units. Central Telephone Company bills Royal Oaks Apartments for the service and the apartment management in turn bills each resident. This appears to be a clear violation of Section 364.339(1)(b) which allows such arrangements for commercial tenants only.

The Commission investigated the "Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service" in Docket No. 860455-TL. In that docket, Order No. 17111 states:

Other parties to this docket such as dormitory residents are also transient. The difficulty becomes one of definition, how long may one reside in a particular place and remain a "transient"? We believe nine months to be an appropriate time period. Persons residing in places for nine months or less are considered transient and may continue to share local exchange telephone service. Our decision will allow temporary residents to continue to receive telephone service at current rates.

Order 17111 also makes it very clear that the shared tenant service arrangements are intended only for residents of dormitories run by colleges and universities, not just any residential apartment building, even if that building houses a large student population. Order 17111 also states:

We believe that dormitory service provided by colleges and universities [emphasis supplied] to students is in the public interest and should continue under the present rate structure.

Clearly, it was not the Commission's intent to allow any apartment complex serving students to resell local exchange telecommunications service.

Centel's General Customer Service Tariff 23.8.3 states:

Where residents of apartment houses or Co-ops do not meet the criteria of "transient end-users", sharing arrangements are not permitted. Residents desiring telephone service must subscribe to service provided by the Company.

Staff believes that the residents of Royal Oaks are not eligible to receive shared tenant service because they are residents of an apartment building (not a school operated student dormitory as permitted by Order 17111) and do not meet the criteria of "transient end-users" that the language in Order 17111 intended to encompass.

In Centel's responses to staff's letters suggesting that it discontinue providing centrex service to the residents of Royal Oaks, Centel took the position that it was not relying on the 'dormitory service' exemption but the 'transient' exemption. As stated above, Order No. 17111 defined persons residing in places for nine months or less as transient. And, as Centel has pointed out, its General Exchange Services Tariff 23.7.1 states: "For purposes of this tariff, a transient end-user is considered to be one temporarily occupying the premises, with occupancy not to exceed nine months."

However, it is staff's opinion that the residents of Royal Oaks Apartments do not meet the definition of transient end-users. It was only after staff began its investigation into the service arrangement that Centel instructed the apartment management to obtain 9 month leases from its residents in order to meet the definition of a transient end-user stated in the tariff. Prior to that, the residents were on 11 and 1/2 month term leases. Staff believes that physical residency, not lease terms, is a more accurate indicator of the tenant's status as transient or non transient.

Also, Section 509.013(9), Florida Statutes gives definitions of various public lodging facilities and states:

"transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttal presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient [emphasis supplied]. There is a rebuttal presumption that, when the dwelling unit is not the sole residence of the guest, the occupancy is transient.

Additionally, Section 509.242, Florida Statutes classifies a public lodging establishment as a nontransient apartment if it is an "...apartment building in which 75 percent or more of the units are available for rent to nontransient tenants. As of January 25, 1994, the Department of Business Regulation classified the Royal Oaks Apartments located at 540 Bryan Street as a "nontransient apartment complex", according to the information staff received after telephoning the Division of Hotels and Restaurants.

Shared tenant service is defined in Rule 25-24.560, F.A.C. as:

...the provision of service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to commercial tenants within a single building [emphasis supplied] by an entity other than an existing local exchange company.

Staff believes that Royal Oaks is providing shared tenant service. However, since it does not serve commercial tenants as required in Rule 25-24.560, it is providing telecommunications service to the public in violation of Section 364.33, Florida Statutes which prohibits the provision of telecommunications services to the public without prior commission approval and Section 364.335(3), Florida Statutes, which prohibits the provision of service which competes with or duplicates local exchange service.

Representatives of Centel have asked staff to consider Royal Oaks' investment in equipment and the inconvenience that existing customers may experience if the Commission decides that Royal Oaks may no longer provide centrex service to its residents. Centel would like existing customers on this arrangement at Royal Oaks and approximately 10 other similar properties to be "grandfathered" into this service arrangement if the Commission decides not to allow it in the future.

Staff notes that the Commission cannot "grandfather" this service arrangement as there is no rule or requirement under which

to do so. Staff is also concerned about inconvenience to customers but staff also notes that this matter came to our attention due to the complaint of a customer (resident) who could not reach her carrier of choice or the local operator, and was told she could not receive telephone service directly from Centel. Staff does not believe that tenants will be greatly inconvenienced if Centel is ordered to discontinue providing centrex service as the tenants can order service directly from Central Telephone Company.

For these reasons, staff believes that Central Telephone Company should be ordered to discontinue provision of centrex service for residential resale to Royal Oaks and any other comparable locations. In addition, because Centel never should have provided centrex service for resale to Royal Oaks or other similar establishments, Centel should not bill these establishments for any contract termination charges when the service is discontinued. Also, residents of the affected apartments should be given at least fifteen days notice prior to discontinuing centrex service so that they may make other arrangements for telephone service. Centel should obtain a list of residents from the apartment management and notify each in writing that centrex service will be discontinued within 15 days and that they may obtain service directly from Centel.

ISSUE 2: Should Central Telephone Company be ordered to revise General Customer Services Tariff 23.7.1 to remove the definition of a transient end-user as one whose occupancy does not exceed nine months?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Centel's General Customer Services Tariff 23.7 PROVISION OF SERVICE TO TRANSIENT END USERS states:

23.7.1 For purposes of this tariff, a transient end-user is considered to be one temporarily occupying the premises, with occupancy not to exceed nine months.

For the reasons stated in the staff analysis of Issue 1, Centel should not be permitted to provide centrex service to Royal Oaks Apartments for resale to its residents regardless of whether the residents are on a nine-month lease. Centel believes that the residents of Royal Oaks are transients as defined in Tariff 23.7.1 simply because they are on a nine-month lease. Staff disagrees and believes this tariff should be revised within 30 days of the date the Commission's order is issued. The revision should include language which clarifies that sharing arrangements are not permitted for residents of apartments classified as "nontransient" by the Florida Division of Hotels and Restaurants in accordance with Section 509.242(1)(d), Florida Statutes.

ISSUE 3: Should Royal Oaks be ordered to show cause why it should not be fined for providing telecommunications service to the public without prior commission approval in violation of Section 364.33, Florida Statutes?

RECOMMENDATION: No.

STAFF ANALYSIS: Section 364.33, Florida Statutes states in pertinent part:

A person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior approval.

It is staff's understanding that Central Telephone Company approached Royal Oaks about offering the service to the residents of its apartments, sold Royal Oaks a centrex system, and billed Royal Oaks, knowing Royal Oaks was rebilling the service to non-commercial tenants of its apartments. While it is obvious that Royal Oaks did provide telecommunications service to the public without prior commission approval, it is staff's opinion that Royal Oaks did so without knowing it was violating Florida Statutes and that Royal Oaks would not have offered this type of service to its residents had it not been approached by Centel. The General Manager of the Royal Oaks partnership stated in a letter to staff that "Everything that happened within the phone systems at Royal Oaks was done under the direction of Centel." Staff does not believe that initiating show cause proceedings against Royal Oaks will accomplish anything that will not be accomplished if Centel is ordered to discontinue providing centrex service to Royal Oaks.

ISSUE 4: Should the Commission order Royal Oaks to refund to each resident any excess amount staff determines it collected for telephone service that exceeds the amount each resident would have paid if the resident had obtained service directly from Centel?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Staff is in the process of determining if the rates Royal Oaks charged its residents were in excess of the rates the residents would have been charged if they had obtained service directly from Centel at the basic residential rate. If, after investigation, staff determines that Royal Oaks collected more from residents than the residents would have paid to Centel for basic residential service, then Royal Oaks shall be ordered to refund any excess amount collected directly to each resident.

Staff considered recommending Royal Oaks refund the entire amount it collected for telephone service to each resident. However, the residents did receive telephone service and would otherwise have paid Centel for such service had Royal Oaks not provided it. Staff also considered recommending that Royal Oaks refund the entire amount it collected from its residents for telephone service to Centel, since Centel would have otherwise served the residents directly. However, in staff's view, Centel has already been compensated by being paid by Royal Oaks for the centrex service. Therefore, staff believes it is more appropriate to order Royal Oaks to refund any amount it collected from its residents that are in excess of the amount staff can determine the residents would have paid to Centel for basic residential service during the same time period.

Centel has advised staff that there are approximately ten other apartments with the same kind of service arrangement as Royal Oaks. Staff is in the process of determining exactly how many apartments are billing residents for centrex service and the identity of each of these apartments. If staff determines that any of the apartments billed their residents more than the residents would have paid for basic residential telephone service from Centel, staff will bring separate recommendations back to the commission for each of the apartments. Any refunds staff determines are necessary will be handled as separate dockets since the length of time and the amounts each apartment billed its residents may be different.

ISSUE 5: Should this docket be closed?

RECOMMENDATION: Yes, if no protest to the order is timely filed, this docket may be closed without further commission review.

STAFF ANALYSIS: If staff's recommendations are approved, a proposed agency action order should be issued requiring Central Telephone Company to: discontinue the provision of centrex service for residential resale to Royal Oaks Apartments and other establishments, in violation of Section 364.339(1)(b), F.S., Order No. 17111, Rule 25-24.560, F.A.C. and General Customer Services Tariff 23.8.3; notify residents that centrex service will be discontinued within 15 days; and revise its tariff 23.7.1 to remove the definition of transient end-user as described in Issue 2 within 30 days from the date of the order. The order should also require Royal Oaks to refund to each resident any excess amount staff determines it collected for telephone service that exceeds the amount each resident would have paid if the resident had obtained service directly from Centel. If no protest to the order is timely filed, this docket may be closed without further Commission review. If staff's recommendations are not approved, absent other direction from the Commission, this docket should be closed.