

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building
101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

April 21, 1994

TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS [LEWIS] *ll*
DIVISION OF LEGAL SERVICES [HATCHE] *H*

RE : DOCKET NO. 940139-EL, 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: 5/3/94 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\CMU\ [REDACTED]

CASE BACKGROUND

Royal Oaks Apartments (Royal Oaks) is an 83 unit apartment complex with units located on both sides of Bryan Street in Tallahassee. Forty-one units are located at 540 Bryan Street and forty-two units are located at 541 Bryan Street. 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 at least seven 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.

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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:

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 83 apartment units. Central Telephone Company bills Royal Oaks Apartments for the service and Roycom, a billing company for Royal Oaks, then bills each resident. This appears to be a clear violation of Section 364.339(1)(b) which allows such arrangements for commercial tenants only.

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 [emphasis supplied].

Additionally, 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. In addition, Section 364.335(3), Florida Statutes, which prohibits the provision of service which competes with or duplicates local exchange service, is also being violated.

The Commission investigated the "Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service" in Docket No. 860455-TL. Centel's belief that it is allowed to provide centrex service to Royal Oaks for resale to its residents appears to arise out of its interpretation of Order No. 17111 in that docket. Centel appears to believe that Royal Oaks may resell telephone service to its residents because its residents are "transient" as described on page 17 of Order 17111. The order states in pertinent part:

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 [emphasis supplied]. Our decision will allow temporary residents to continue to receive telephone service at current rates.

Centel used this same definition in its General Exchange Services Tariff 23.7, Provision of Shared Service to Transient End Users, at 23.7.1 which 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 its 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. Staff also does not believe that the Commission intended to permit any apartment complex serving students or any apartment complex using 9 month leases to resell telephone service.

Staff asked Royal Oaks to provide a copy of the contract it

requires residents to sign in order to obtain telephone service. Staff notes that the contract (Attachment A) is not for a 9 month period but is for a twelve month period of service, which would appear in conflict with Centel's reasoning that the residents are transient because they are on a 9 month lease.

In researching this matter, staff found that Section 509.013(11), 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 rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient [emphasis supplied]. There is a rebuttable presumption that, when the dwelling unit occupied 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.

Order 17111 makes it clear that shared tenant service arrangements are allowed for certain types of service and describes each under subheadings throughout the order. The types of special service arrangements that the Commission decided should be allowed to provide service in Order 17111 are: airports; hospitals; clubs and yacht basins; time share facilities; nursing homes, ACLFs, continuing care facilities, and retirement homes; and dormitory service provided by colleges and universities (emphasis supplied). Staff does not believe it was the Commission's intent to allow all apartment complexes serving students to resell local exchange telecommunications service.

In its discussions with staff, Centel has stated that it believes that Royal Oaks falls under the category of "All Other Sharing Arrangements" described on Page 20 and 21 of Order 17111. The order states in pertinent part:

Although the record reflects a great deal of diversity in the types of shared service arrangements included in this proceeding, most have, as a common attribute, transient customers. For sake of expediency in our discussion, we will consider reservation service, sub-lease residences, exhibitors, composite data services, apartment houses, Co-ops, and apartment hotels

under the collective title "All Other Sharing Arrangements."

We believe the proper perspective in addressing all of these sharing arrangements is to determine whether the extension of subscriber service is duplicative or competitive to service the end-user would normally obtain directly from the LEC. In a majority of these cases, the end-user is transient, as we have defined this term, and under these transient conditions, we find it would not be practical or economically feasible to order direct service from the LEC.

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 another reason the residents of Royal Oaks are not eligible to receive shared tenant service is 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.

Since Order 17111 was issued on January 15, 1987, the Commission has addressed similar though not identical sharing situations in previous dockets. To provide some history, these are briefly outlined in items one through three below.

- (1) 871185-TI, SANDESTIN BEACH RESORT was fined \$4,000 for illegally providing local and long distance service and ordered to remove employees and units not in the rental program from its service. Sandestin was ordered to pay \$2,000 and the remainder of the fine was suspended pending a 6 month Commission compliance review. The docket was closed after 6 months when Sandestin was found to be substantially in compliance.
- (2) 880899-TP, After staff recommended that BARRIER DUNES DEVELOPMENT be show caused for violation of Rule 25-4.004, F.A.C., Certificate of Public Convenience and Necessity Required, Barrier Dunes agreed to refund with interest any difference between local and/or long distance rates it charged and those that would have been charged by St. Joe and/or AT&T.
- (3) 910289-TP, After staff recommended that EDGEWATER BEACH RESORT be show caused for operating as a telephone company in violation of Rule 25-4.004 and 25-4.470, F.A.C., a settlement

agreement was reached in which Edgewater agreed to refund the difference between the amount it collected from each resident for telephone service at closing and what the resident would have paid directly to Southern Bell; and the amount it collected each month for call forwarding and call waiting features which were part of the system.

It is apparent from the above that the Commission has had to frequently make determinations about how and under what conditions sharing arrangements should be allowed. After learning of the sharing arrangements at Royal Oaks, staff attempted to resolve the matter directly with Centel. However, there was disagreement about whether specific orders, rules and Florida Statutes applied in this case and if so, how they should be interpreted.

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 is unsure whether or not the Commission can "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 the tenants will be greatly inconvenienced if Centel is ordered to discontinue providing centrex service as the tenants can order basic residential service directly from Central Telephone Company as the residents of other apartment buildings throughout the Centel service area do.

For the reasons stated above, 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.

ISSUE 2: If issue 1 is approved, should Centel be ordered not to bill the contract termination charges that would normally be billed when centrex service is cancelled by the customer?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Because Centel never should have provided centrex service for resale to Royal Oaks, Centel should not bill the establishment for any contract termination charges when the service is discontinued.

ISSUE 3: If issue 1 is approved, should Royal Oaks be allowed to continue serving only those current residents desiring to remain on the plan until August 7, 1994?

RECOMMENDATION: Yes. Current residents of Royal Oaks should be allowed to retain the centrex service until August 7, 1994, if they wish. Royal Oaks should not be allowed to provide service to any new residents.

STAFF ANALYSIS: Staff believes it would be reasonable to allow Royal Oaks to continue serving those residents already on the plan for a short time period. Since it appears that the majority of the residents are college students, staff suggests that service be allowed to continue until August 7, 1994. This is two days after the last day of classes for the summer term at Florida State University and is also the date the service obligation would end for those residents who signed the "Application of (sic) Phone Service" form used by Roycom Communications, Inc., the billing service for the telephone service being sold to the residents by Royal Oaks (Attachment A).

ISSUE 4: If issues 1 and 3 are approved, should Royal Oaks be required to notify all residents of their option to either remain on centrex service until August 7, 1994, or obtain service directly from Centel at any time before August 7, 1994?

RECOMMENDATION: Yes, within 15 days of the Commission's Order.

STAFF ANALYSIS: Royal Oaks should notify all residents of their option to either remain on centrex service until August 7, 1994, or obtain service directly from Centel at any time before August 7, 1994. Royal Oaks management believes its staff adequately notified residents when they signed leases that the centrex telephone service was optional. However, due to at least one customer complaint, staff believes some residents may not be aware that they may obtain service directly from Centel. Therefore, staff believes that requiring this notice will ensure that any resident who does not wish to remain on centrex service until August 7, 1994, is notified of his choice. Royal Oaks should provide the notice to its residents no later than 15 days from the date the Commission's Order is issued.

ISSUE 5: 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 Sections 364.33, and 364.335(3), Florida Statutes?

RECOMMENDATION: No.

STAFF ANALYSIS: Section 364.33, Florida Statutes provides, in 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.

Section 364.335(3), Florida Statutes provides, in part:

The commission may not grant a certificate for a proposed telecommunications company, or for the extension of an existing telecommunications company, which will be in competition with or duplicate the local exchange services provided by any other telecommunications company unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telecommunications company to remove the basis for competition or duplication of services.

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 6: Should the Commission order Royal Oaks to refund the difference with interest between the amount 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 has determined that 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. Staff believes Royal Oaks should be ordered to refund the excess amount collected directly to each resident. Charges for basic residential service (Res-1) for rate group 6 in the Sprint Centel service area are shown below.

Res-1	\$ 9.65
Subscriber Line Chg	3.50
911	.50
Hearing impaired	<u>.10</u>
Total	\$13.75

Royal Oaks management has advised staff that it bills all residents who have agreed to purchase the service as shown below.

1-2 bedroom units	\$19 per month
3-4 bedroom units	\$24 per month

Royal Oaks should calculate the difference between the basic residential rate and the amount billed by Royal Oaks for each resident for the entire time period the service was billed. This amount should be refunded to each customer with interest. The interest shall be calculated pursuant to Rule 25-4.114(4), Florida Administrative Code.

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 the amount it collected from its residents in excess of the amount residents would have paid to Centel for basic residential service during the same time period.

Centel has advised staff that there are four other apartments with the same kind of service arrangement as Royal Oaks (Page 3 of Attachment B). In addition, staff recently learned that Worner Management Group also manages two more apartment complexes in Tallahassee that use centrex service, Royal Pavillion and Royal Village (Attachment C). This makes a total of 7 apartment complexes in Tallahassee that are known to be reselling telephone service. Staff is in the process of determining exactly how much each apartment is billing its residents for the service and how much each apartment has been billed by Centel. 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 7: 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 the six other establishments identified in Attachments B and C (Issue 1). The order should also state that no contract termination charges will be billed to Royal Oaks (Issue 2) and that the residents may remain on the service until August 7, 1994, and that affected residents shall be given at least 15 days notice prior to discontinuance of centrex service (Issue 3). Furthermore, the order should require Royal Oaks to refund with interest to each resident any excess amount over the cost of Centel basic (Res-1) service (Issue 5). 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.

ROYCOM *****
COMMUNICATIONS, INC.
P.O. BOX 20212, TALLAHASSEE, FLORIDA
904-435 3100

APPLICATION OF PHONE SERVICE

NAME: _____

APARTMENT # _____

INSTALLATION FEE	<u>\$40.00</u>
FIRST AND LAST MONTH'S	<u>\$48.00</u>
TOTAL FOR PHONE PER APT.	<u>\$88.00</u>

REMEMBER TO WRITE SEPERATE CHECKS TO ROYCOM COMMUNICATIONS FOR PHONE SERVICE. WE NEED TO HAVE ALL MONIES BACK TO US BEFORE JUNE 1, 1993.

YOUR PHONE NUMBER WILL BE ASSIGNED TO YOUR APT WHEN YOU RETURN.

TENANT AGREES TO PAY PHONE SERVICES FOR THE TIME PERIOD BEGINNING AUGUST 15, 1993 THROUGH AUGUST 7, 1994. MONTHLY LOCAL PHONE SERVICE CHARGES ARE \$24.00 PLUS TAX.

SIGNATURE OF TENANT _____

SIGNATURE OF MANAGER _____



Box 163000
Mail Code 5306
Altamonte Springs, Florida 32716-3000
Telephone: 407-899-6403
Fax: 407-896-7000

P. J. Merkle
Manager - Regulatory

March 3, 1994

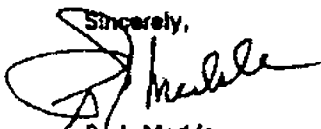
Ms. Kathryn Dyal Lewis
Economist, Bureau of Service Evaluation
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32398-0872

Re: Docket No. 940139-TL, Proposed Agency Action Requiring Central Telephone Company of Florida to Discontinue the Provision of Centrex Service to Royal Oaks Apartments

Dear Ms. Lewis:

Enclosed please find Central Telephone Company-Florida's response to your February 21, 1994, data request.

If you have any questions regarding the response, please do not hesitate to call me at (407) 888-6403.

Sincerely,

P. J. Merkle

DLB/ab

Enclosure

Florida Public Service Commission Data Request
Docket No. 940139-TL, Proposed Agency Action
Requiring Central Telephone Company of Florida to
discontinue the Provision of Centrex Service to
Royal Oaks Apartments

Central Telephone Company of Florida provides the following in response to the above Data Request.

(1) When did Centel begin providing Centrex service to Royal Oaks Apartments at 540 Bryan Street, Tallahassee, Florida?

RESPONSE: July 20, 1993

(2) Is Centel still providing Centrex service to Royal Oaks Apartments?

RESPONSE: Yes. The contract is effective until 07-19-98.

(3) Provide the amount billed to Royal Oaks each month since service was initiated. Include the number of lines in service each month, the amount of subscriber line charges each month and how these charges were calculated.

RESPONSE:

August 1993	167 Centrex lines @ \$19.50 each 35 Subscriber Line Charges @ \$6.00 each
September 1993	212 Centrex lines @ \$19.50 each 2 Centrex lines @ \$21.50 each 40 Subscriber Line Charges @ \$6.00 each
October 1993	216 Centrex lines @ \$19.50 each 2 Centrex lines @ \$21.50 each 40 Subscriber Line Charges @ \$6.00 each
November 1993	216 Centrex lines @ \$19.50 each 2 Centrex lines @ \$21.50 each 38 Subscriber Line Charges @ \$6.00 each
December 1993	216 Centrex lines @ \$19.50 each 2 Centrex lines @ \$21.50 each 38 Subscriber Line Charges @ \$6.00 each
January 1994	218 Centrex lines @ \$19.50 each 2 Centrex lines @ \$21.50 each 40 Subscriber Line Charges @ \$6.00 each

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The Subscriber Line Charge is calculated based on trunk equivalency as shown in the trunk equivalency table in the General Customer Services Tariff, Section 12.1.3.c. Trunk equivalency is based on the virtual trunking to the public switching network.

- (4) Provide the names and addresses of any other residential apartment buildings (not including university-owned dormitories) which are being provided with Centrax service in the Central Telephone Company of Florida service area.

RESPONSE:

Eagleview Apartments
770 Appleyard Drive
Tallahassee, Florida 32304

University Commons
1001 Ocala Rd
Tallahassee, Florida 32304

Southgate Campus Centre
675 W. Jefferson Street
Tallahassee, Florida 32304

Regents Club
824 W. Carolina
Tallahassee, Florida 32304

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Attachment C

Royal Oaks

Directory Listing : Royal Management

Billing Name: Warner Management

Account Breakdown:

TELEPHONE #	ADDRESS	# CENTREX LINES
425-3100	2643 W. Tennessee St. - office for R.O.A.	5
425-3176	540 Bryan St. Royal Oaks	36
425-3211	541 Bryan St. Royal Oaks	37
425-3242	1700 West Call Royal Pavilion	25
425-3265	1702 West Call Royal Pavilion	34
425-3360	1835 West Call Royal Village	85
Total Centrex Lines as of 3/24/94		222

53

54