

MEMORANDUM

JUNE 7, 1994

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12:10 pm  
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TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (HATCH) *HE*

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), F.S., Order No. 17111, Rule 25-24.560, F.A.C., and General Customer Services Tariff 23.8.3.

0690 For

6/27/94

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Attached is an ORDER REQUIRING CENTEL TO DISCONTINUE CENTREX SERVICE TO ROYAL OAKS APARTMENTS to be issued in the above-referenced docket. (Number of pages in Order -9)

TWH/clp  
Attachment  
cc: Division of Communications  
I:940139.twh

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation of CENTRAL ) DOCKET NO. 940139-TL  
TELEPHONE COMPANY OF FLORIDA'S ) ORDER NO. PSC-94-0696-FOF-TL  
provision of Centrex Service to ) ISSUED: June 8, 1994  
Royal Oaks Apartments 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. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
SUSAN F. CLARK  
JULIA L. JOHNSON  
DIANE K. KIESLING  
LUIS J. LAUREDO

ORDER REQUIRING CENTEL TO DISCONTINUE CENTREX SERVICE  
TO ROYAL OAKS APARTMENTS

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 substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. 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 we 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.

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RECORDS SECTION

This case engenders a disagreement regarding both the interpretation of certain tariff provisions 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. Our decision is discussed in detail below.

## II. CENTEL'S PROVISION OF CENTREX SERVICE TO ROYAL OAKS

Centel appears to have begun providing Centrex service to Royal Oaks Apartments during the summer of 1993. The service is used to provide telephone service to tenants in 83 apartment units. Centel bills Royal Oaks Apartments for the service and Roycom, a billing company for Royal Oaks, then bills each resident. This activity raises the specter of a violation of Section 364.339(1)(b), Florida Statutes, which limits such arrangements for commercial tenants only. Section 364.339(1) provides in pertinent part:

(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, Florida Administrative Code, 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.

Based on the information before us it appears that Royal Oaks is providing shared tenant service. However, since Royal Oaks does not serve commercial tenants as required by Rule 25-24.560, the provision of such telecommunications service violates Section 364.33, Florida Statutes. Section 364.33 prohibits the provision of telecommunications services to the public without prior commission approval. In addition, the service provided by Royal Oaks also appears to run afoul of Section 364.335(3), Florida

Statutes, which prohibits the provision of service which competes with or duplicates local exchange service.

In defense, Centel argues that it is allowed to provide centrex service to Royal Oaks for resale to its residents by virtue of the transient provisions of Order No. 17111, issued January 15, 1987 in Docket No. 860455-TL. Centel argues 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. Our decision will allow temporary residents to continue to receive telephone service at current rates. [emphasis supplied]

The Order further states on Page 20 and 21:

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 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." Centel relies on the nine-month provision to justify the provision of Centrex to Royal Oaks for resale to residents.

With respect to Centel's transient arguments, the provision of Centrex for resale to residents is inconsistent with our intent in allowing certain limited forms of the sharing of phone service in Order No. 17111. The language cited by Centel and as embodied in its tariff is taken from a broader context that limits the availability of sharing or resale opportunities to those situations where obtaining telephone service from the serving local exchange company is neither feasible nor practicable. As we said in Order No. 17111:

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.

Against this standard, the residents of Royal Oaks Apartments do not meet the definition of transient end-users.

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. It was not our intent to allow all apartment complexes serving students to resell local exchange telecommunications service.

We note that after our investigation into the service arrangement began, it appears 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. Moreover it also appears that Royal Oaks' contract for telephone service with its residents is not for a 9 month period but is for a twelve month period of service. In judging whether transient status should apply we believe that physical residency, not lease terms, is a more accurate indicator of the tenant's status as transient or non-transient. Simply providing a lease term of nine months or less can not confer transient status for purposes of our regulations precluding duplication or competition with basic local exchange service.

In the course of our review of the issue of transiency we also examined Section 509.013(11), Florida Statutes. This Section 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. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient. [emphasis supplied]

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." While Sections 509.242 and 509 013(11) are not dispositive of the issue before us they lend further support to the notion that the residents are not transients for purposes of avoiding our regulatory structure for the provision of local exchange service.

Upon consideration of the foregoing we find that the provision of Centrex Service to Royal Oaks Apartments for resale to residents is inconsistent with our decisions regarding the provision of shared services and the provision of Shared Tenant Services. We also find that the provision of residential telephone service by Royal Oaks to its tenants violates Sections 364.33 and 364.335(3). Accordingly, Centel shall cease the provision of Centrex Service for residential resale to Royal Oaks. To the extent that Centel is

providing Centrex to other apartment complexes for residential resale, Centel shall discontinue such service consistent with our decision regarding Royal Oaks.

Centel also asks that, if we determine that Royal Oaks may no longer provide centrex service to its residents, we consider Royal Oaks' investment in equipment and the inconvenience that existing customers may experience as result of discontinuance of service and "Grandfather" this arrangement for existing customers at Royal Oaks and approximately 10 other similar properties.

Initially we note that we can not "grandfather" a violation of existing rules or statutes. However, we are concerned about the possible inconvenience to the residents from disruption of service. In the long run, we do 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. However, in the short run, it is 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, we find that service should 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. This date is also the date the service obligation would end for those residents who signed the "Application for Phone Service" form used by Roycom Communications, Inc., the billing service for the telephone service being sold to the residents by Royal Oaks.

Within 15 days of the date this Order becomes final, Royal Oaks shall notify all residents of the option to either remain on centrex service until August 7, 1994, or obtain service directly from Centel at any time before August 7, 1994. We note that Royal Oaks states that it adequately notified residents when they signed leases that the centrex telephone service was optional. However, due to at least one customer complaint, it appears that some residents may not be aware that they may obtain service directly from Centel. Requiring this notice will ensure that any resident who does not wish to remain on centrex service until August 7, 1994, is provided the choice.

As directed above, Centel will be disconnecting the Centrex Service provided to Royal Oaks. Because Centel never should have provided centrex service for resale to Royal Oaks, Centel shall not bill for any contract termination charges when the service is discontinued.

In view of the arguments of Centel, the circumstances of this case and the seeming confusion engendered by the language of Order 17111, we decline to pursue any action to assess a penalty at this time against either Centel or Royal Oaks. It appears 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, we find 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 the Commission that "Everything that happened within the phone systems at Royal Oaks was done under the direction of Centel."

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the provision of Centrex Service by Central Telephone Company of Florida to Royal Oaks Apartments violates Sections 364.33 and 364.335, Florida Statutes, as set forth in the body of this Order. It is further

ORDERED that Centel shall discontinue the provision of Centrex Service to Royal Oaks Apartments as set forth in the body of this Order. It is further

ORDERED that Centel shall discontinue the provision of Centrex Service to other entities that is being provided under the same circumstances as Royal Oaks Apartments as set forth in the body of this Order. It is further

ORDERED that Centel shall not impose contract termination charges on Royal Oaks due to the discontinuance of Centrex Service. It is further

ORDERED that Royal Oaks may continue serving those residents already being provided service until August 7, 1994 as set forth in the body of this Order. It is further


ORDERED that Royal Oaks shall, within 15 days of the date this Order becomes final, notify all residents of the option to either remain on Centrex Service until August 7, 1994, or obtain service directly from Centel at any time before August 7, 1994. It is further



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ORDERED that unless a person whose interests are substantially affected files a petition for a formal proceeding in accordance with the requirements set forth below in the Notice of Further Proceedings or Judicial Review, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 8th day of June, 1994.

  
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BLANCA S. BAYÓ, Director  
Division of Records and Reporting

( S E A L )

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Commissioner Luis J. Lauredo dissented from the Commission's decision to require Centel to cease providing Centrex to Royal Oaks, to preclude termination charges for Centrex and to allow existing residents to continue service until August 7, 1994.

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,

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Tallahassee, Florida 32399-0870, by the close of business on June 29, 1994.

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.