

POHL & SHORT, P.A.

ATTORNEYS AT LAW

ORIGINAL

DWIGHT I. (IKE) COOL
GARY A. FORSTER
E. GIVENS GOODSPEED
MARK A. GRIMES
ROGER A. KELLY
DAVID J. KOHS
FRANK L. POHL
JAMES E. SHEPHERD, V
HOUSTON E. SHORT
JOHN R. SIMPSON, JR.
NORMA STANLEY
MIRIAM G. SUAREZ

MAILING ADDRESS:
POST OFFICE BOX 3208
WINTER PARK, FLORIDA 32790

COURIER ADDRESS:
280 WEST CANTON AVENUE, SUITE 410
WINTER PARK, FLORIDA 32789

TELEPHONE (407)647-7645
FAX (407)647-2314

February 9, 1998

Ms. Blanca S. Bayo
Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Parc Corniche Condominium Association, Inc.,
Wellington Property Management, Inc., and
Emerson Communications
Docket No. : 971659-TP
Our File No. : 1631-6

Dear Ms. Bayo:

Pursuant to a telephone conversation with Ms. Williams of your office, enclosed please find an original plus fifteen (15) copies of our Memorandum of Law in Support of the Complaint. Please file the same.

If you have any questions or comments, please do not hesitate to contact the undersigned.

Very truly yours,
E. Givens Goodspeed
E. Givens Goodspeed

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DOCKET NO.: 971659-TP

IN RE: PARC CORNICHE
CONDOMINIUM ASSOCIATION, INC.,
WELLINGTON PROPERTY MANAGEMENT, INC.,
AND EMERSON COMMUNICATIONS
CORPORATION

**MEMORANDUM OF LAW IN SUPPORT OF THE COMPLAINT FILED BY
PETITIONER, PARC CORNICHE CONDOMINIUM ASSOCIATION, INC.**

Petitioner, PARC CORNICHE CONDOMINIUM ASSOCIATION, INC., ("PARC CORNICHE"), hereby files a Memorandum of Law in support of its position in this matter:

1. Parc Corniche Condominium was created on October 30, 1989. Telephone lines in the condominium were installed by EMERSON COMMUNICATIONS CORPORATION, ("EMERSON"), in 1989, pursuant to a contract with Orlando Business Telephone Systems, Inc.
2. WELLINGTON PROPERTY MANAGEMENT, INC., ("WELLINGTON"), is the management company for Parc Corniche Condominium and also owns certain units at the condominium. WELLINGTON uses the telephone lines subject to a license agreement that it has entered into with EMERSON. EMERSON and WELLINGTON are closely related by inner-locking ownership.
3. Although the telephone lines are located in conduit running within the walls of the condominiums, EMERSON contends that the telephone lines are not owned by the individual unit owners and are not common elements under the terms of the Declaration of Condominium.
4. EMERSON has billed individual unit owners since 1989 for the use of these telephone lines. EMERSON and WELLINGTON sued PARC CORNICHE when the

Association voted to change the Declaration of Condominium to make the telephone lines common elements.

5. Neither EMERSON nor WELLINGTON have ever been approved by the Florida Public Service Commission, ("PSC"), as a "telecommunications company," as that term is defined in Florida Statute §364.02(12). A Certificate of Necessity has never been obtained for Parc Corniche Condominium as required by Florida Statute §364.33 and Fla. Admin. Code R. #25-4.004.

6. EMERSON and WELLINGTON have responded to the Petition and do not object to the jurisdiction of the Florida Public Service Commission inasmuch as the Petition concerns the telephone lines. EMERSON and WELLINGTON's only affirmative defense to the Petition with regard to the telephone lines is that any violation of Chapter 364, Florida Statute, was not willful and that no penalty should be imposed.

7. This case is nearly on all fours with Teleco Communications Company v. Clark, 695 So.2d 304 (Fla. 1997). In that action, Teleco sued a condominium owners association, in Circuit Court, for non-performance under the terms of a lease agreement for the telephone system at the condominium, Regency Towers. Teleco had leased telephone wires to RTOA for the sum of \$1,072 per month for 84 months. Teleco argued that it was not a telecommunications company and had not applied for and had not been issued a Certificate of Necessity from the Florida Public Service Commission. Teleco was owned by family members of the owners of a real estate development partnership which built Regency Towers. The condominium owners association, RTOA, filed a Motion for Referral to the PSC of those matters for which the PSC had jurisdiction, which was granted.

8. In its "Final Order Disposing of Show Cause Proceeding" dated October 21, 1994, the PSC stated as follows:

The fact that Teleco owns the wire and is charging RTOA for its use makes Teleco a telecommunications company within the terms of Section 364.02. Although Teleco does not bill individual endusers directly for phone services and cannot discontinue service for non payment in the same manner as a LEC (local exchange company), it has retained the ability to effectively discontinue phone service by repossessing the wire for nonpayment of the \$1,072 monthly bill. The ability of an uncertificated entity to control another's access to the regulated telecommunications network creates a situation which is prohibited by Section 364.33, Florida Statutes and Rule 25-4.004, Florida Administrative Code. Accordingly, we find that Teleco's operations constitute the provision of telecommunication service in violation of Section 364.33, Florida Statutes and Rule 25-4.004. (Page 10).

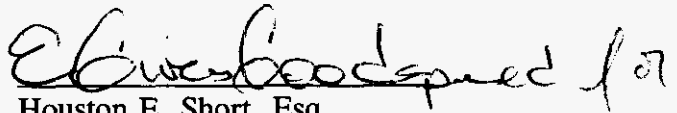
9. Because it had determined that Teleco could not own or operate the wire in Regency Towers as a matter of law, the PSC ordered Teleco to transfer title to the wire to either Southern Bell for those units not part of RTOA's rental program, or to RTOA for those units within its rental program. (Final Order Disposing of Show Cause Proceeding, at Page 11).

10. On appeal, the Florida Supreme Court affirmed the PSC's Order requiring the transfer of the ownership of the wire, on the basis of Florida Statute §364.01(3)(a), now §364.01(4)(a). The Court stated that "leaving the ownership of the wire with Teleco, which was found to be unauthorized to own or operate the wire, would jeopardize, or at least leave uncertain, the continuous availability of telecommunications service to the residents of Regency Towers pending the outcome of the Circuit Court action." 695 So.2d at 309. However, the Court found that the PSC did not have the authority to resolve private contract issues between Teleco and RTOA and that these contractual issues should be decided by the Circuit Court, which expressly retained jurisdiction for that purpose. Id.

11. The instant action is nearly identical to Teleco. Despite the wording of the Declaration of Condominium, EMERSON and WELLINGTON must be considered as "telecommunication companies," in that they provide telephone service to Parc Corniche Condominium. However, a Certificate of Necessity has never been issued to either EMERSON or WELLINGTON and, therefore, the telephone service at Parc Corniche Condominium is totally unregulated.

12. Consequently, it is clear that EMERSON and WELLINGTON should be divested of ownership of the telephone wire and that the PSC should order that the title to the wire be transferred immediately to PARC CORNICHE.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by U.S. Mail to: **Michael E. Marder, Esq.**, Greenspoon & Marder, 100 W. Cypress Crk Road, Suite 700, Ft. Lauderdale, FL 33309-2140, this 9th day of February, 1998.



Houston E. Short, Esq.

Florida Bar No.: 717592

Pohl & Short, P.A.

Post Office Box 3208

Winter Park, Florida 32790

Telephone: (407) 647-7645

Fax: (407) 647-2314

Attorneys for Defendant, Parc Corniche
Condominium Association, Inc.