

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Orange County Circuit Court referral of issues in Case No. CI 96-1812 (Wellington Property Management, Inc. and Emerson Communications Corporation vs. Parc Corniche Condominium Association, Inc. and Orange County, Florida) to the Florida Public Service Commission for review and determination of what issues, if any, the Commission has jurisdiction over.

DOCKET NO. 971659-TP

In re: Application for certificate to provide alternative local exchange telecommunications service by Emerson Communications Corporation.

DOCKET NO. 980732-TX
ORDER NO. PSC-00-0695-PAA-TP
ISSUED: April 13, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER DETERMINING STATUS AS A TELECOMMUNICATIONS COMPANY AND
OWNERSHIP OF TELEPHONE FACILITIES

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the portion of this Order discussed herein relating to ownership of telephone facilities 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.

DOCUMENT NUMBER-DATE
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FPSC-RECORDS/REPORTING

By Order No. PSC-98-0699-FOF-TP, issued May 20, 1998, we ruled on a request from the Orange County Circuit Court to determine our jurisdiction over issues raised by Wellington Property Management, Inc. (Wellington) and Emerson Communications Corporation, Inc. (Emerson) in a circuit complaint against Parc Corniche Condominium Association, Inc. (Parc Corniche).

In its abatement order, the Circuit Court asked us to address the following issues:

- 1) Whether Wellington and Emerson are "telecommunications companies" within the meaning of Section 364.02(7), Florida Statutes.
- 2) Whether Wellington and Emerson obtained a Certificate of Necessity as required by Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code.
- 3) Whether Wellington and Emerson have authority to own the television and telephone lines.

In Order No. PSC-98-0699-FOF-TP, we answered the questions as follows:

- 1) Wellington and Emerson may be telecommunications companies under Florida law. We do not have enough information, however, to make a final determination at this time. Emerson and Wellington have agreed to cooperate in the PSC application process to determine the need for certification. An application package was sent to counsel for Emerson and Wellington on April 2, 1998.
- 2) Neither Wellington nor Emerson have certificates from the Commission.
- 3) Wellington and Emerson would have been precluded from owning telecommunications lines under Telco Communications Company v. Clark, 695 So. 2d 304 (Fla. 1997), and Chapter 364, Florida Statutes, as written prior to the 1995 amendments and as applied in the Telco decision. The rewrite of the statutes opened telecommunications services in Florida to

competition and permitted the entry into the market of entities previously precluded. Thus, depending on the services, equipment, and lines provided by Wellington and Emerson, they may be permitted to own the lines up to the demarcation point and to provide telecommunications services. However, this issue will not be addressed by the PSC until their application is received and processed. We intend to exercise jurisdiction over the telephone lines in the Parc Corniche condominium, but we do not have jurisdiction to rule on any issue related to cable television lines.

We retained jurisdiction over this matter to conduct further investigation to determine if Wellington or Emerson should obtain a certificate of necessity. Docket No. 980732-TX was opened to consider an application for certificate to provide alternative local exchange telecommunications service by Emerson. In addition to the Court Action, Parc Corniche filed a separate complaint in Docket No. 971659-TP relating to ownership of the lines which we declined to rule on until there was a more complete record of the ownership of the telephone lines, equipment, and service in the condominium.

I. Certification Not Required

Our staff held several meetings and phone conversations with the parties involved in these dockets. The following information was obtained. On July 19, 1996, Wellington and Emerson leased the Parc Corniche rental office, including the computer and telephone equipment servicing the condominium, to Labree Management, Inc. (Labree), which became the new management company for Parc Corniche. The Parc Corniche condominium is not a single building; it is a multiple building condominium complex. Managing the Parc Corniche property as a hotel, Labree operates the rental office, registers guests into the condominium units, provides telephone PBX switchboard service to guests, and separately bills the guests for the telephone charges accrued during their stay. It appears that based upon the services Labree provides, Labree should be classified as call aggregator pursuant to Rule 25-24.610(1)(a), Florida Administrative Code. Labree receives one telephone bill from the local exchange company. Labree is not certificated to provide telecommunications services in Florida.

We conclude based on these meetings and the information provided, that Emerson incurred the cost to install the telephone lines in the Parc Corniche condominium in 1989. It leases those lines to Labree Management which operates as a call aggregator. Wellington is the former management company for Parc Corniche, and is a sister company to Emerson. Emerson does not appear to be providing telecommunication service to an end user.

Based on this information, we find that neither Emerson, Wellington, nor Labree is operating as a telecommunications company required to have a certificate at this time. Further, we grant Emerson's request to withdraw its application and refund its application fee based upon our conclusions.

II. Ownership of Facilities (Proposed Agency Action)

On January 31, 1996, Parc Corniche Condominium Association declared ownership of the lines, or the facilities over which telecommunications service is provided, inside the buildings in the condominium complex. This action was challenged in circuit court. The Circuit Court proceeding was abated for this Commission's determination of ownership. We believe that ownership in the lines remain with Emerson Communications Company. We reach this conclusion based upon the change in the law since the initial Telco decision upon which Parc Corniche relies and on the facts as we understand them.

As discussed in Order No. PSC-98-0699-FOF-TP, the rewrite of the statutes opened the entry into the telecommunications market for entities previously precluded. Thus, depending on the services, equipment, and lines provided by Wellington and Emerson, they may be permitted to own the lines up to the demarcation point and to provide telecommunications services to transient end users.

We previously noted that Emerson incurred the cost of installation of the lines and leased those lines in the condominium complex to Labree. Therefore, we find that Emerson owns those facilities. Nothing in the current applicable law precludes Emerson from owning the facilities. Further, Parc Corniche has provided no evidence establishing ownership in the lines other than through the application of the Telco decision to this situation and its own declaration.

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In conclusion, we find that Emerson owns the telecommunications facilities at the Parc Corniche Condominium site. This conclusion shall be communicated to the Circuit Court after the Order becomes final. This decision herein fully resolves the complaint filed by Parc Corniche requesting us to determine the ownership of the telephone and cable television lines at the Parc Corniche Condominium. We note that we previously ruled that we had no jurisdiction over cable television lines in Order No. PSC-98-0699-FOF-TP.

It is therefore,

ORDERED by the Florida Public Service Commission that neither Emerson Communications Corporation nor Wellington Property Management Inc. is operating as telecommunications company within the meaning of Section 364.02, Florida Statutes. It is further

ORDERED that Emerson Communications Corporation's request to withdraw its application shall be granted with a refund of its application fee. It is further

ORDERED that Emerson Communications Corporation owns the telephone lines, although Labree Management Company, Inc. has control over access. It is further

ORDERED that the provisions of this Order relating to ownership of the telephone facilities, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, Docket No. 971659-TP shall be closed. It is further

ORDERED that Docket No. 980732-TX shall be closed.

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By ORDER of the Florida Public Service Commission this 13th
day of April, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

DWC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

As identified in the body of this order, our action determining ownership of the telephone facilities is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 4, 2000. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order

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shall become effective and final upon the issuance of a Consummating Order.

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.

Any party adversely affected by the Commission's final action in this matter may request: (1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or 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 after the issuance 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.