



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

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RECORDS AND REPORTING

DATE: OCTOBER 26, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

FROM: DIVISION OF LEGAL SERVICES (CALDWELL) *WC c.s.f.*
DIVISION OF COMPETITIVE SERVICES (C. LEWIS) *C. Lewis* *PL*

RE: DOCKET NO. 001353-TI - INITIATION OF SHOW CAUSE PROCEEDINGS AGAINST LABREE MANAGEMENT, INC. FOR APPARENT VIOLATION OF RULE 25-24.640(1)(f), F.A.C., SERVICE REQUIREMENTS FOR CALL AGGREGATORS.

AGENDA: 11/07/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\CMP\WP\001353.RCM

CASE BACKGROUND

- 4/13/00 - The Commission issued Order PSC-00-0695-PAA-TP, in Docket No. 971659-TP, which provides that Labree Management Inc. should be classified as a call aggregator pursuant to Rule 25-24.610 (1)(a), Florida Administrative Code, Terms and Definitions; Rules Incorporated.
- 5/2/00 - A Commission staff engineer conducted a call aggregator inspection of Unit 1303 at the Parc Corniche Resort. (Attachment A, pages 6-19)
- 5/9/00 - The Commission issued Consummating Order PSC-00-0921-CO-TP, which effected and finalized Order PSC-00-0695-PAA-TP and closed Docket No. 971659-TP.
- 5/15/00 - Staff mailed correspondence to Labree Management Inc. notifying it of the results of staff's May 2, 2000, call

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

aggregator inspection of Unit 1303 and inquiring about other matters regarding the Parc Corniche Resort. A response was due from the company no later than June 12, 2000.

- 6/19/00 - After receiving no response to its May 15, 2000, correspondence from Labree Management Inc., staff sent a certified letter reminding it that a response was required and a new response date of July 5, 2000, was established.
- 7/7/00 - Staff received correspondence from Labree Management Inc.'s Counsel acknowledging that Labree Management Inc. is providing call aggregator services to the transient public.
- 9/7/00 - A Commission staff engineer conducted a follow-up call aggregator inspection of Unit 1106 at the Parc Corniche Resort, Hotel License Number 5800093C-08. (Attachment B, pages 20-21)
- 9/12/00 - Staff opened this docket to initiate show cause proceedings against Labree Management Inc. for apparent violation of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission order Labree Management, Inc. to show cause why it should not be fined \$3,000 for apparent violations of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators?

RECOMMENDATION: Yes. The Commission should order Labree Management, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$3,000 for apparent violations of Rule 25-24.640 (1) (f), Florida Administrative Code, Service Requirements for Call Aggregators. The company's response should contain specific allegations of fact and law. If Labree Management, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should

be deemed waived and the fine should be deemed assessed. If the fine is paid, the Commission should remit it to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes. **(C. Lewis)**

STAFF ANALYSIS: Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators states:

(1) Every call aggregator shall:

(f) Place a written notice in plain view, in the immediate vicinity of each telephone served by the call aggregator, which meets the requirements of Section 364.3376(5), Florida Statutes (1995), and also clearly states at least the following information:

1. Name of the company providing operator services as it appears on the certificate issued by the Commission;

2. Instructions on how to reach the operator of the provider of local exchange telecommunications services;

3. Instructions on how to reach emergency services;

4. Instructions on how to place local and long distance calls;

5. A toll-free number for refunds;

6. The amount of any surcharge for local calls, long distance calls, directory assistance, or any other surcharges to be billed and collected by the call aggregator;

7. If a surcharge applies whether or not the call is completed;

8. If rate information for a local or long distance call is posted, the rate information shall be clearly separated and identified from the surcharge.

9. The toll-free telephone number of the Florida Public Service Commission's Division of Consumer Affairs.

As provided in Commission Order PSC-00-0695-PAA-TP, Labree Management, Inc has been classified as a call aggregator and provides call aggregator services to units at the Parc Corniche Resort. On May 2, 2000, a Commission staff engineer conducted a call aggregator inspection of Unit 1303 at the Parc Corniche Resort. In correspondence dated May 15, 2000, staff notified Labree Management, Inc. that it must comply with the Commission's call aggregator rules when providing telephone service to transient persons. Copies of the call aggregator rules and the inspection report were provided to Labree Management, Inc. as an attachment to

staff's May 15 correspondence.

On September 7, 2000, the same staff engineer conducted a follow-up inspection of the Parc Corniche Resort, which is managed by Labree Management, Inc. under Hotel License Number 5800093C-08. The engineer inspected Unit 1106 and found that Labree Management Inc. had still not implemented the requirement to post information specified in parts 1,2,5,7,8 and 9 of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators. Because Labree Management, Inc. was provided a copy of the Commission's call aggregator rules in staff's May 15 correspondence, staff believes that the failure of Labree Management, Inc. to meet the requirements of Rule 25-24.640(1)(f), Florida Administrative Code, is a willful violation of a lawful rule of the Commission.

Pursuant to Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each offense, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364. Utilities are charged with knowledge of the Commission's rules and statutes. Additionally, "[i]t is a common maxim, familiar to all minds, that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Staff believes that Labree Management, Inc.'s failure to implement the requirements of Rule 25-24.640(1)(f), Florida Administrative Code, Service Requirements for Call Aggregators, has been "willful" in the sense intended by Section 364.285, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL titled In re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 for GTE Florida, Inc., having found that the company had not intended to violate the rule, the Commission nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "In our view, willful implies intent to do an act, and this is distinct from intent to violate a rule." Thus, any intentional act, such as Labree Management, Inc.'s conduct at issue here, would meet the standard for a "willful violation."

Therefore, staff recommends that the Commission should order Labree Management, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be fined \$3,000 for apparent violations of Rule 25-24.640 (1) (f), Florida Administrative Code, Service Requirements for Call Aggregators.

The company's response should contain specific allegations of fact and law. If Labree Management, Inc. fails to respond to the show cause order or request a hearing pursuant to Section 120.57, Florida Statutes, within the 21-day response period and the fine is not paid within ten business days after the 21-day response period, the facts should be deemed admitted, the right to a hearing should be deemed waived and the fine should be deemed assessed. If the fine is paid, the Commission should remit it to the State of Florida General Revenue Fund pursuant to Section 364.285, Florida Statutes.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No, if the Commission approves staff's recommendation, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within ten business days after the expiration of the show cause response period, then the fine should be imposed for the violations cited and forwarded to the Comptroller's Office for collection. This docket can then be closed. **(Caldwell)**

STAFF ANALYSIS: If the Commission approves staff's recommendation, the company will have 21 days to respond in writing to the Commission's show cause order explaining why it should not be fined in the amount proposed. If the company timely responds to the show cause order, this docket should remain open pending resolution of the show cause proceeding. If the company fails to respond to the show cause order, and the fines and fees, including statutory penalties and interest, are not received within ten business days after the expiration of the show cause response period, then the fine should be imposed for the violations cited and forwarded to the Comptroller's Office for collection. This docket can then be closed.

STATE OF FLORIDA

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



DIVISION OF
TELECOMMUNICATIONS
WALTER D'HAESELEER
DIRECTOR
(850) 413-6600

Public Service Commission

May 15, 2000

Mr. William Hitson, CEO
Labree, Inc.
5901 Peachtree Dunwoody Road
Atlanta, GA 30328

Re: Parc Corniche Condominiums - Mr. Alex Amper Complaint

Dear Mr. Hitson:

As you have been previously notified, our staff engineer visited Mr. Amper's residents (Unit 1303) on May 2, 2000, and found that access to long distance service was blocked. In Order Number PSC-00-0695-PAA-TP, it was determined that LaBree, Inc. is not required at this time to be certificated based upon the facts that it operates as a call aggregator. However, this decision only applies if LaBree does not provide telephone service to permanent residents.

During the evaluation, the engineer was told by Ms. Sigrun Gudmondsson that LaBree did not have any control over unit 1303; however, in order for the telephone service to work, Ms. Gudmondsson turned to the console of the PBX and apparently activated or modified the telephone service to unit 1303.

If in fact LaBree does not control unit 1303, why is the service being provided through the system controlled by LaBree? If LaBree does not control unit 1303, why is unit 1303 being denied service by the carrier-of-last-resort? Furthermore, why is the manager telling our evaluator that Mr. Amper has the right to telephone service and can contact Emerson Communications when Emerson Communications has leased the equipment and facilities to LaBree?

It appears to me that there is serious misrepresentation and possible deception in this matter. In an effort to evaluate the situation with all parties involved, we attempted to set up a meeting on May 18, 2000, at a time convenient to you. However, you notified my staff today that you cannot meet on that day because you were not sufficiently noticed. The purpose of the meeting was to try and work with you to resolve the apparent violations of the call aggregator rules and determine why Mr. Amper is being denied telephone service from the company of his choice.

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

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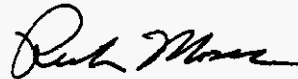
Mr. William Hitson, CEO
Page 2
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It is my opinion that as a call aggregator, you cannot provide telephone service to a permanent resident. Furthermore, any telephone service you provide to transient persons must comply with the call aggregator rules. I have enclosed a copy of the rules for your convenience.

In regard to Mr. Amper having access to the company of his choice, I would like information concerning the ownership and responsibility of the conduit in which the existing cable is installed. Does LaBree own the conduit? If not, who does? Is there room in the existing conduit for additional cable pairs? If the conduit is full, is there space available for additional conduit to be installed? Are there any units controlled by LaBree that have service provided by Sprint? If so, please list them in your response. Are there units controlled by LaBree that have service provided by any other telephone company? If so, please name the units and company providing service. Please also list the units over which LaBree does not have control. Finally, please provide a copy of the contract between LaBree and Emerson leasing the facilities to laBree. This contract may be filed under claim of confidentiality if you desire.

If you have questions, please contact me at 850/413-6582 otherwise, I look forward to your response in writing by June 12, 2000.

Sincerely,



Rick Moses
Chief, Bureau of Service Evaluation

c: Alex Amper
Diana Caldwell, Esq.
Attachments

PART XIII

RULES GOVERNING OPERATOR SERVICES PROVIDERS

25-24.600	Application and Scope
25-24.610	Terms and Definitions; Rule Incorporated
25-24.620	Service Requirements
25-24.630	Rate and Billing Requirements

25-24.600 Application and Scope.

(1) This part applies to any company, other than a local exchange company, that provides operator service to an end user as operator service is defined in Florida Statute 364.02 (1991), and includes companies that bill and collect for other entities on telecommunications company bills.

(2) In addition to the rules contained in this part, operator services providers shall also comply with the rules contained in Part X of Chapter 25-24, F.A.C.

(3) Any operator services provider may petition for exemption from applicable portions of Chapter 364, Florida Statutes, or for application of different requirements than those prescribed for telephone companies in Chapter 364, Florida Statutes, under the authority of Section 364.337, Florida Statutes, (1991).

Specific Authority: 350.127(2), F. S.

Law Implemented: 364.01, 364.3376, F.S.

History: New 9/6/93.

25-24.610 Terms and Definitions; Rule Incorporated.

(1) For purposes of this Part, the following definitions apply:

(a) "Call aggregator" is any person or entity other than a certificated telecommunications company that, in the ordinary course of its operations, provides telecommunications service to end users other than its subscribers. "Call aggregator" includes but is not limited to the following:

1. hotel as defined in Section 509.242 (1)(a), F.S. (1991).
2. motel as defined in Section 509.242 (1)(b), F.S. (1991).
3. resort condominium as defined in Section 509.242 (1)(c), F.S., (1991).
4. transient apartment as defined in Section 509.242 (1)(e), F.S., (1991).
5. rooming house as defined in Section 509.242 (1)(f), F.S., (1991).
6. resort dwelling as defined in Section 509.242 (1)(g), F.S., (1991).
7. schools required to comply with any portion of Chapter 228, F.S., (1991), or Chapter 229.808, F.S., (1991).
8. nursing home as defined in Section 400.062, F.S., (1991).
9. adult congregate living facility ("ACLF") as defined in Section 400.407, F.S., (1991).

10. hospital as defined in Section 395.003, F.S., (1991).

11. Any entity not included above that provides telecommunications service to end users other than its subscribers.

(b) "Conversation time" is the time during which two-way communication is possible.

(c) "End-user" means a person who initiates or is billed for a telephone call.

(2) In addition to the above, the following rule is incorporated herein by reference.

Section	Title	Portions not Applicable
25-4.003	Definitions	None
Specific Authority:	340.127(2), F.S.	
Law Implemented:	364.01, 364.3376, F.S.	
History:	New 9/6/93.	

25-24.620 Service Requirements.

(1) An operator services provider shall clearly state the name of the company upon answer and again after accepting billing information before the call is connected.

(2) In its tariffs for and contracts with Florida call aggregators, billing and collection agents and other operator service providers, an operator service provider shall require the other party to:

(a) allow end-users to access, at no charge, all locally available long distance carriers via all locally available methods of access, including 10XXX and 950-XXX and any operator service provider's 1-800 access code; except that Feature Group A access lines are exempt from this requirement;

(b) allow end users to access the universal telephone number "911", where operable, at no charge to the end-user, and where not operable, to allow end-users to access the local exchange company toll operator at no charge, except that 911 access shall not be required at confinement facilities or hospitals;

(c) route all end-user dialed 1 + , 0 + , and 0- intraLATA local and toll calls to the local exchange company unless the end-user dials the appropriate access code for his carrier of choice, i.e., 950, 800, 10XXX;

(d) route all end-user dialed 0- calls to the local exchange company operator at no charge to the end user when no additional digits are dialed after five seconds; and

(e) place a written notice in plain view, in the immediate vicinity of each telephone served by the company, which clearly states at least the following information:

1. name of the operator services provider as it appears on the certificate issued by the Commission;
2. instructions on how to obtain rate information;
3. instructions on how to reach the LEC operator;
4. instructions on how to reach emergency services;
5. instructions on how to place intraLATA and interLATA calls;
6. instructions on how to access other operator service providers;
7. a toll-free number for customer service;
8. the amount of any surcharge for local calls to be billed and collected by the call aggregator; and
9. the amount of any surcharge for long distance calls to be billed and collected by the call aggregator

(3) Each operator services provider shall provide an opportunity for each caller to be identified by name to the called party before any collect calls may be completed.

Specific Authority: 350.127(2), F.S.

Law Implemented: 364.01, 364.3376, F.S.

History: New 9/6/93, Amended 1/16/96.

25-24.630 Rate and Billing Requirements.

(1) An operator services provider shall:

(a) charge and bill end-users no more than the Commission-approved rate for intrastate calls;

(b) have current rate information readily available and provide this information orally to end-users upon request prior to connection;

(c) require that its certificated name or the name of its certificated billing agent appear on any telecommunications company's bill for regulated charges;

(d) require all calls are to be individually identified on each bill from a telecommunications company to an end-user bill, including the date and start time of the call, call duration, origin and destination (by city or exchange name and telephone number), and type of call; and

(e) provide a toll-free number for customer inquiries on the bill and maintain procedures adequate to allow the company to promptly receive and respond to such inquiries; and

(f) charge only for conversation time as rounded according to company tariffs.

(2) An operator services provider shall not:

(a) bill or charge for uncompleted calls in areas where answer supervision is available or knowingly bill or charge for uncompleted calls in areas where answer supervision is not available;

(b) bill for any collect call that has not been affirmatively accepted by a person receiving the call regardless of whether the call was processed by a live or automated operator;

(c) bill for calls in increments greater than one minute;

(d) bill or collect a surcharge levied by any entity, either directly or through its billing agent, except Commission-approved charges for pay telephone providers.

Specific Authority: 350.127(2), F.S.

Law Implemented: 364.01, 364.3376, F.S.

History: New 9/6/93.

SAT UNSAT

Rule 25-24.640

CHECK LIST FOR CALL AGGREGATOR INSPECTIONS

INSPECTION DATE: 5-2-00 HOTEL LICENSE NUMBER: 58 00093C-08

HOTEL NAME: PARC CARNICHE EXPIRATION DATE: 4/1/2000

ROOM NUMBER: # 1303, 1308-NOT, 5103 - 7 digits

OWNER/MGR: Sigrun Gudmundsson PHONE NUMBER: (407) 239-7100

PHYSICAL ADDRESS: 6300 Parc Carniche Drive

CITY: Orlando ZIP: 32821

MAILING ADDRESS: same as above

CITY: _____ ZIP: _____

EVERY CALL AGGREGATOR SHALL	Yes	No	Item
Make access available at no charge greater than the amount for calls placed using presubscribed provider.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(a)
Allow end users to access 9-1-1 at no charge. Dial 9-1-1 (should go to 911 or LEC operator if 911 not available in area).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(b)
Route 0+ local and 0- calls to the local provider unless user dials an access code for carrier of choice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(c)
Route all end user dialed calls to carrier of choice with appropriate access code (see reverse side of form)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(d)
Route all 0- calls to the local provider if no digits dialed within 5 seconds. Name of Provider _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(e)
Post name of the operator service provider.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 1
Post instructions on how to reach the operator of the local exchange service provider.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 2
Post instructions on how to reach emergency services (911, or other if 911 not operable in the area).	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 3
Post instructions on how to place local and long distance calls.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 4
Post a toll free number for refunds.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 5
Post the amount of any surcharge for local, directory assistance, and long distance calls to be billed and collected by the call aggregator.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 6
Post if a surcharge applies whether the call is completed or not.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 7
If rate information for a local or long distance call is posted, information should be clearly separated and identified from the surcharge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 8
Post the toll free number for the FPSC Division of Consumer Affairs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 9

Make the following tests (If any are No, put No on front side-Item (1)(d))		Yes	No
9+	Dial 1-800-225-5285 did an AT&T operator answer?		X
9+	Dial 1-800-265-8329, did an MCI operator answer?		X
9+	Dial 1-800-577-5066, did a Sprint operator answer?		X
Comments/Notes: Tried 9+ 10102880, 10102220 + 1010330 also, Reached a Fast Busy tone Mgr claims that they are not responsible for 1303. That Mr. Amper has the right for phone service if he wants by contacting Emerson (Provides telephone service for Condominium) Mr. Amper claims Sprint is not allowed access to Demark (which is located inside the main registration Bldg)			

Reached Fast Busy

Communicat

Q:\FORMS\WPIC\LIST.WPD
 Revised March 1, 2000

Hotel manager claims that they are not responsible
 for:

1202	3109	4214
1209	3205	5103
1212	4103	2205
(PBX) - 1303 - Mr. Amper	4104	1211
1308	4108	
2208	4110	
2305	4201	

Initially when I arrived at the Hotel, I explained I was from the commission. When they asked me what room I wanted to inspect (1303), The Front Desk Mgr turned something on the system for 1303.

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.

ORDER NO. PSC-00-0695-PAA-TP
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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

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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 the 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.

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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: /s/ Kay Flynn
Kay Flynn, Chief
Bureau of Records

This is a facsimile copy. A signed
copy of the order may be obtained by
calling 1-850-413-6770.

(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.

DOCKET NO. 00135 1
 DATE: OCTOBER 26, 2000

ATTACHMENT B

SAT UNSAT

- Rule 25-24.640

CHECK LIST FOR CALL AGGREGATOR INSPECTIONS

INSPECTION DATE: 9-7-00 HOTEL LICENSE NUMBER: 58 00093C-08
 HOTEL NAME: PARC CORNICHE EXPIRATION DATE: 9/1/2001
 ROOM NUMBER: # 1106
 OWNER/MGR: Kylie Alexandrovich PHONE NUMBER: (407) 239-7100 Ext 100
 PHYSICAL ADDRESS: 6300 Parc Corniche Dr
 CITY: Orlando ZIP: 32821
 MAILING ADDRESS: same as above
 CITY: _____ ZIP: _____

EVERY CALL AGGREGATOR SHALL	Yes	No	Item
Make access available at no charge greater than the amount for calls placed using presubscribed provider.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(a)
Allow end users to access 9-1-1 at no charge. Dial 9-1-1 (should go to 911 or LEC operator if 911 not available in area).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(b)
Route 0+ local and 0- calls to the local provider unless user dials an access code for carrier of choice <u>BellSouth</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(c)
Route all end user dialed calls to carrier of choice with appropriate access code (see reverse side of form)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(d)
Route all 0- calls to the local provider if no digits dialed within 5 seconds. Name of Provider <u>Local phone company Oper</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(e)
Post name of the operator service provider.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 1
Post instructions on how to reach the operator of the local exchange service provider. <u>ATO</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 2
Post instructions on how to reach emergency services (911, or other if 911 not operable in the area).	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(f) 3
Post instructions on how to place local and long distance calls.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(f) 4
Post a toll free number for refunds.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 5
Post the amount of any surcharge for local, directory assistance, and long distance calls to be billed and collected by the call aggregator.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	(1)(f) 6
Post if a surcharge applies whether the call is completed or not.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 7
If rate information for a local or long distance call is posted, information should be clearly separated and identified from the surcharge	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 8
Post the toll free number for the FPSC Division of Consumer Affairs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	(1)(f) 9

Make the following tests (if any are No, put No on front side-Item (1)(d))	Yes	No
Dial 1-800-225-5288 did an AT&T operator answer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dial 1-800-265-5328, did an MCI operator answer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dial 1-800-877-8000, did a Sprint operator answer?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments/Notes:		
No posting information on long distance carrier, local operator, refund number and Florida PSC number		
Dial tone from OBT - Orlando Business Telephone		
LABrec manages the hotel		

Q:\FORMS\WP\CHKLIST.WPD
Revised March 1, 2000

COMPETITIVE SERVICES
DIVISION OF
2000 SEP 11 AM 10:21