

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause ) DOCKET NO. 911214-TP  
proceedings against TELECO ) ORDER NO. PSC-96-0007-FOF-TP  
COMMUNICATIONS COMPANY for ) ISSUED: January 2, 1996  
violation of Rule 25-4.004, )  
F.A.C., Certificate of Public )  
Convenience and Necessity )  
Required. )  
\_\_\_\_\_ )

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman  
JULIA L. JOHNSON

ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND

In May 1991, Teleco Communications Company (Teleco) sued the Regency Towers Owners Association (RTOA) in the Circuit Court in Panama City, Florida, for nonperformance of contract terms related to a lease agreement for telephone wire at the Regency Towers condominium complex. At issue in that case was RTOA's refusal to continue to pay Teleco for the use of the inside wire used to provide telephone service at Regency Towers. On July 29, 1991, RTOA filed a motion for referral to this Commission of those matters over which the Commission has jurisdiction. That motion was granted on December 10, 1991; however, the Circuit Court retained jurisdiction over the issues related to the contract dispute between Teleco and RTOA. This docket was opened on December 21, 1991, as a result of the court's action.

On January 4, 1993, the Commission issued Proposed Agency Action Order No. PSC-93-0009-FOF-TP wherein Teleco was found to be operating as a local exchange company in violation of Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code. On January 25, 1993, Teleco filed a protest to the PAA order and requested a formal hearing.

RTOA was granted intervention by Order No. PSC-93-1141-PCO-TP, issued August 5, 1993.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

A Prehearing Conference was held August 23, 1993, and Prehearing Order No. PSC-93-1246-PHO-TP was issued on August 27, 1993. The parties agreed that the issues could be addressed in an informal proceeding governed by Section 120.57(2), Florida Statutes. The parties also stipulated to an enumerated list of facts. There were two issues to be addressed in the proceeding:

- 1) Do Teleco's operations at the Regency Towers Condominium constitute operating as a telecommunications company in violation of Section 354.33 and Rule 25-4.004?
- 2) If so, what is the appropriate action that should be taken?

The hearing was held on September 1, 1993, at which each party presented oral argument. Both parties filed Posthearing Briefs on the issues. This Commission considered the arguments and evidence presented at the hearing and the final arguments set forth in the posthearing briefs.

By Order No. PSC-94-1304-FOF-TP, issued October 21, 1994, this Commission determined that the activities of Teleco Communications Company at Regency Towers Condominium constituted the provision of telecommunications service within the terms of Section 364.02, Florida Statutes, and that the provision of such service was in violation of the provisions of Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code. Notwithstanding a finding of a statutory violation, we declined to impose any monetary penalty due to the facts of this particular case. Because of the statutory and rule violations, we found that Teleco had no authority to own the facilities in question for the provision of telecommunications service to RTOA through the use of the inside wire. As a result, we rejected any claim by Teleco for continued payment for the inside wire. The Commission further directed that the wire should be transferred as follows: 1) to those customers who permanently reside in their units or for those units not in the RTOA rental program; and, (2) to the RTOA for those units in RTOA's rental program.

On November 4, 1994 Teleco Communications filed a Motion for Reconsideration of Order No. 94-1304 and in the same document requested that oral argument be allowed on the motion for reconsideration. On November 15, 1994, RTOA responded in opposition to Teleco's request for reconsideration as well as Teleco's request for oral argument. On December 29, 1994, Teleco filed a Notice of Supplemental Authority and Request for Judicial Notice. In conjunction with its it Notice of Supplemental

Authority and on the same day, Teleco filed an Amended Request for Oral Argument. On January 9, 1995, RTOA responded in opposition to Teleco's Notice of Supplemental Authority and its amended request for oral argument.

On December 1, 1995, Teleco filed a Request for Official Recognition. The request asks that we take official recognition of an order of the Commission, Order No. PSC-95-1114-FOF-TP in Docket No. 941039-TL.

## II. TELECO'S REQUEST FOR OFFICIAL RECOGNITION

Teleco requests that we take official recognition of Order No. PSC-95-1114-FOF-TP, In re: 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 Customers Services Tariff 23.8.3 (Royal Oaks). In support of its request, Teleco states that the order is relevant to the deliberations in this case because "it deals with the retroactive application of the new telecommunications law which became effective July 1, 1995."

Initially, we would note that a request for official recognition usually is made for purposes of placing matters into the evidentiary record of a proceeding for consideration by the Commission in making a determination. Our decision in this case is based on the record and that record has been long closed. Teleco's request for official recognition appears to be an attempt to supplement the record in some fashion. In this circumstance, official recognition is inappropriate. Accordingly, we find it appropriate to deny Teleco's request for official recognition.

## III. TELECO'S REQUEST FOR ORAL ARGUMENT

Teleco's initial request for oral argument was made within the same document that contained Teleco's motion for reconsideration, filed November 4, 1994. Teleco's amended request for oral argument was filed December 29, 1994.

Rule 25-22.058, Florida Administrative Code, provides that a request for oral argument shall be filed as a separate pleading from a motion for reconsideration and requires that the request "shall state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues before it."

Teleco's initial request for oral argument was included in its Motion for Reconsideration and consisted in its entirety of the following:

Teleco Communications Company would request that the Public Service Commission grant oral arguments on its Motion for Reconsideration.

RTOA responded in opposition to Teleco's request arguing that Teleco's request failed to comply with Rule 25-22.058 by not being in a separate pleading and by failing to state with particularity why oral argument would aid the Commission.

Teleco filed an amended request for oral argument on December 29, 1994, some 55 days after its motion for reconsideration was filed. The amended request was filed simultaneously with a Notice of Supplementary Authority. In support of its amended request, Teleco argues: 1) counsel filing the Motion for Reconsideration was not counsel for Teleco in the Commission's proceeding, 2) the failure to file the request for oral argument in a separate pleading was inadvertent, and 3) Teleco should not be prejudiced by counsel's failure to formally comply with the rules of the Commission.

RTOA responded in opposition to the amended request for oral argument citing its earlier arguments regarding the initial request.

Teleco's initial request for oral argument fails utterly to comply with any of the requirements of Rule 25-22.058. It does not even contain a bald assertion that oral argument will in fact aid the Commission. RTOA is correct in its assessment of the initial request. With respect to Teleco's amended request, Teleco's counsel argues only that he did not previously represent Teleco in the Commission proceeding and that Teleco should not be prejudiced because of counsel's inadvertent failure to formally comply with the Commission's rules. Teleco's amended request also fails to comply with Rule 25-22.058. Teleco fails to make any statement, let alone with particularity, why oral argument will aid the Commission in its deliberations. Even accounting for counsel's unfamiliarity with Commission practice, the failure of the second request comes despite the benefit of RTOA's response to the initial request. In light of Teleco's failure to comply with the requirements of Rule 25-22.058, we find that both Teleco's initial request for oral argument and its amended request for oral argument be denied. See U.S. Sprint Communications v. Nichols, 534 So.2d 698, 700 (Fla. 1988).

#### IV. TELECO'S MOTION FOR RECONSIDERATION

The standard for review of a motion for reconsideration is whether the motion brings to the attention of the Commission some matter of fact or law that the Commission failed to consider or overlooked in reaching its decision. A motion for reconsideration may not be used to reargue a case simply because one disagrees with the result. Diamond Cab Co. of Miami v. King, 146 So.2d 889, 891 (Fla. 1962); Pingree v. Quaintance, 394 So.2d 161 (Fla. 1st DCA 1981).

Teleco advances two principal arguments in its motion for reconsideration. The first relates to the Commission's alleged invocation of equitable jurisdiction in reaching its conclusion in this case. In support, Teleco argues that the primary emphasis of the Order is the economic effect of the "agreement" between Teleco and RTOA, that the Order grants equitable relief from the agreement, that the Commission does not have any equitable powers and that the economic effect of the agreement is properly pending in the Circuit Court in Bay County. Teleco's second argument is that, because the Commission deregulated the installation and maintenance of inside wire "in 1987, Docket 930485-TL<sup>1</sup>," the Commission is without jurisdiction to determine the issues in the Show Cause proceeding.

In response, RTOA argues generally Teleco has merely restated facts and reargued old positions rather than bringing to the Commission's attention an error or oversight. With respect to Teleco's first argument, RTOA argues that Teleco is incorrect in its assertion that equitable principals were improperly relied upon in reaching the result. RTOA argues, citing Florida Public Service Commission v. Bryson, 569 So.2d 1253, 1255 (Fla. 1990), that it is clear that the Commission can "interpret the statutes that empower it, including jurisdictional statutes, and to make rules and orders accordingly." RTOA further argues that the Commission correctly determined that Teleco operated illegally as a telecommunications company and that Teleco was without legal authority to enter into a contract to lease the inside wire. Finally, RTOA states that the Commission has not invaded the jurisdiction of the Circuit Court,

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<sup>1</sup>Installation and maintenance of inside wire, except complex inside wire, were deregulated by the Commission in 1982 pursuant to Rule 25-4.0345, Florida Administrative Code. Docket No. 930485-TL was initiated in 1993 to address whether installation and maintenance of inside wire should continue to be deregulated or whether it should be regulated in some fashion. The Commission determined that the installation and maintenance of inside wire should continue to be deregulated.

but rather simply decided matters within its exclusive jurisdiction. In response to Teleco's second argument, RTOA argues that the deregulation of inside wire installation and maintenance is irrelevant. RTOA argues that "the installation and maintenance of inside wire has nothing to do with the Commission's correct determination that Teleco's ownership of the wire met the statutory criteria of section 364.02(7), and that such ownership violated sections 364.33 and 364.335.

Initially it should be noted that Teleco does not in anyway suggest any flaw in the Commission's interpretation and analysis set forth in Order No. 94-1304 regarding the statutory and rule provisions that lead to the conclusion that Teleco's activities constituted the unlawful provision of telecommunications service. The facts clearly indicate that the violations began in June of 1986 when RTOA commenced payments to Teleco. Once the Commission determined that Teleco's activities were in violation of Section 364.33<sup>2</sup> and Rule 25-4.004, the next issue to be resolved was what to do in view of the unlawful activities of Teleco.

Teleco argues that in reaching its resolution, the Commission has improperly relied on equitable principals while the Commission has no equitable powers. Teleco is correct that the Commission, as a creature of statute, has no general equitable authority as do the courts. However, Teleco misconstrues a fair and reasonable result that is well within the Commission's statutory authority with the improper exercise of equitable jurisdiction.

Section 364.33, Florida Statutes, provides:

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, or acquire ownership or control thereof,

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<sup>2</sup>Section 364.33, Florida Statutes was amended to its current form by Section 31, Chapter 90-244, Laws of Florida. Prior to October 1, 1990, this section read in pertinent part as follows:

No person shall hereafter begin the construction or operation of any telephone line, plant, or system, or any extension thereof, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without first obtaining from the commission a certificate that the present or future public convenience and necessity require or will require such construction, operation, or acquisition.

in whatever manner, including the acquisition, transfer or assignment of majority organizational control or controlling stock ownership, without prior approval.

Rule 25-4.004, Florida Administrative Code, provides that:

Except as provided in Chapter 364, Florida Statutes, no person shall begin the construction or operation of any telephone line, plant or system or an extension thereof or acquire ownership of control thereof, either directly or indirectly, without first obtaining from the Florida Public Service Commission a certificate that the present or future public convenience and necessity require or will require such construction, operation or acquisition.

Based on these provisions and the stipulated facts in this case we concluded that Teleco was in violation of Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code.

We have a wide range of discretion in imposing penalties and fashioning remedies to address unlawful or other inappropriate conduct. Section 364.14, Florida Statutes, provides, in part that if the Commission finds that the rates, charges or rentals demanded or collected by any telecommunications company for services, or the practices of any telecommunications company affecting such rates, charges, rentals or service are unjust, unreasonable, or otherwise in violation of law, the Commission shall determine the just and reasonable rates, charges, rentals or practices to be thereafter observed and fix the same by order. In addition, pursuant to Section 364.285, Florida Statutes, we may impose monetary penalties of up to \$25,000 per day for violations of statutes, rules or orders of the Commission.<sup>3</sup>

As set forth in Order No. 95-1304, Teleco's leasing of insidewire to RTOA for the provision of telephone service at the Regency Towers Condominium constitutes operating as a local exchange company in violation of Section 364.33, Florida Statutes, and Rule 25-4.004, Florida Administrative Code. Teleco could not, as a matter of law, acquire the embedded inside wire at Regency Towers without the Commission's permission. When inside wire was deregulated at the state and federal levels, the existing embedded inside wire was transferred to the relevant premises owner and the

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<sup>3</sup>Section 364.285, Florida Statutes was amended to its current form by Section 28, Chapter 90-244, Laws of Florida. Prior to October 1, 1990, this section provided for a penalty up to \$5000 for each offense with each day the offense continued to be considered a separate offense.

associated investment still on the LEC's books was recovered through an amortization schedule. This is what should have happened in this case. Teleco's purchase of the embedded inside wire at Regency Towers from Southern Bell should not have occurred.

Teleco glosses over the bulk and substance of the order, focuses on the fair and reasonable result and backs into the argument that because the end result is "equitable," an improper exercise of general equitable jurisdiction was invoked in reaching the final decision. Based on the facts and circumstances in this case, neither party approached the case with more than a tenuous claim to the moral high ground. The remedy we fashioned takes into account the actions and relative positions of RTOA and Teleco. The result is fair, just and reasonable.

It is interesting that Teleco objects to the Commission's result because it is equitable. If one follows Teleco's desire for a result that is more purely legalistic to its logical conclusion, the Commission would require that a monetary penalty be imposed of up to \$5,000 dollars per day from June 1986 until October 1, 1990 and up to \$25,000 per day since October 1, 1990 and that Teleco refund to RTOA all the money improperly collected. Such a result was determined unreasonable and a more fair result was accorded Teleco based on the facts of this case, as noted in Order No. 95-1304. Our decision to require the transfer of the embedded inside wire to RTOA, to decline to fine Teleco as well as to decline to order a refund of the amounts previously paid by RTOA are well within the Commission's authority pursuant to Sections 364.285 and 364.14, Florida Statutes.

Teleco's second argument must also be rejected. Teleco argues that the deregulation of the installation and maintenance of inside wire deprives the Commission of jurisdiction over this case. The installation and maintenance of inside wire, deregulated or otherwise, is a "red herring" and is not relevant in this case. None of the stipulated facts in this case involve the installation of the inside wire at Regency Towers. The inside wire in question was already in place and used to provide service when Teleco purchased the inside wire from Southern Bell. Teleco purchased embedded inside wire and did not "install" any of the wire in question. The stipulated facts in this case do not indicate that Teleco performed any inside wire maintenance functions in this case. Even assuming arguendo that Teleco performed some maintenance function in this case, such activity is not relevant to whether Teleco's other actions in this case constitute the unlawful provision of telecommunications service.

Finally, and most importantly, Teleco confuses the level of regulatory oversight accorded the installation and maintenance of inside wire with the our authority to establish an appropriate regulatory framework for the installation and maintenance of inside wire. The Commission's statutory authority to "act" defines the scope of our jurisdiction. There is no question that the we have the jurisdiction to establish the appropriate level of regulatory oversight for inside wire. This authority was the basis upon which the Commission initially deregulated installation and maintenance of inside wire and the authority upon which the Commission conducted its review of the appropriate level of inside wire in Docket No. 930485-TL. The exercise of jurisdiction to reduce the level of regulatory oversight or to "deregulate" a service does not deprive the Commission of its jurisdiction -- its authority to act -- if the service is called into question in some fashion.

Teleco filed a Notice of Supplemental Authority and Request For Judicial Notice on December 29, 1994 (the Notice). In its Notice, Teleco recites the FCC's definition of complex inside wire:

[A]ll cable and wire and its associated components (e.g., connecting blocks, terminal boxes, conduit) located on the customer's side of the demarcation point when this wiring is inside a building (or between a customer's buildings) located on the same or contiguous property not separated by a public thoroughfare, which connect station components to each other or to the common equipment of a PBX or key system.

Teleco further states that the background section of staff's recommendation in that case acknowledges that:

[C]omplex inside wire installation is most often associated with the sale and installation of business key telephone and PBX systems which may include a long term negotiated maintenance contract arrangement. Maintenance expenditure may be: financed over the leased term of the system; identified as a reoccurring monthly charge; or included in the up-front price of the system.

Teleco goes on to state that:

The wire leased by Teleco to Regency Towers consists of 360 pair complex wire used in connection with a PBX system. Neither Teleco Communications Company nor Regency Towers obtained title to inside wiring which would consist of the wiring inside the condominium units located in the Regency Towers. As acknowledged by staff,

the installation and maintenance of this complex inside wiring is most often associated with a long term arrangement including financing over a lease term, precisely the mechanism used by Teleco Communications Company and the Regency Towers.

Teleco concludes by stating that the Commission's decision in Docket No. 930485-TL supports the proposition that the Commission does not have any jurisdiction over the inside wire at issue in this case.

RTOA responded to Teleco's Notice arguing that Teleco, while quoting a staff recommendation, improperly seeks judicial notice of an order of the Commission that had not been issued at the time the Notice was filed. RTOA states that Teleco has simply used the Notice as an opportunity to submit further arguments in support of Teleco's positions. RTOA concludes, arguing that nothing in the Commission's decision in Docket No. 930485-TL would or should change the decision of the Commission in the instant docket nor has anything happened that would change the nature of the operations of Teleco.

Setting aside any questions regarding Teleco's request for judicial notice of the background statement of a staff recommendation from a member of the Commission's staff, Teleco's Notice suffers from several flaws. First, Teleco correctly points out that "complex inside wire installation is most often associated with the sale and installation of business key telephone and PBX systems and may include long term negotiated maintenance contract arrangement." However, as discussed above, there is nothing in the facts of this case that supports any notion that the lease payments to Teleco were either for the installation or the maintenance of the inside wire at Regency Towers or in conjunction with the purchase of a PBX. The wire was already installed when Teleco purchased the wire from Southern Bell. Further, even Teleco does not contend, nor do the facts support, that the payments were solely for a maintenance contract. Second, Teleco continues to misconstrue the Commission's regulatory treatment of the installation and maintenance of inside wire as a lack of jurisdiction. As discussed above the Commission has jurisdiction in this case.

As discussed above Teleco fails to raise any matter that the Commission overlooked or misapprehended in reaching its decision in Order No. PSC-94-1304-FOF-TL. Therefore, we find that Teleco's Motion for Reconsideration Order No. PSC-94-1304-FOF-TL shall be denied.

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Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Teleco Communications Company's request for official recognition is denied as set forth in the body of this Order. It is further

ORDERED that Teleco's request for oral argument is denied as set forth in the body of this Order. It is further

ORDERED that Teleco's Motion for Reconsideration of Order No. Order No. PSC-94-1304-FOF-TP is denied as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

By ORDER of the Florida Public Service Commission, this 2nd day of January, 1996.

BLANCA S. BAYÓ, Director  
Division of Records and Reporting

by: Kay Deegan  
Chief, Bureau of Records

( S E A L )

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NOTICE OF 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.

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Any party adversely affected by the Commission's final action in this matter may request 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.