

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of SOUTHERN BELL )  
TELEPHONE AND TELEGRAPH COMPANY'S )  
capital recovery position )

DOCKET NO. 890256-TL  
ORDER NO. 23818  
ISSUED: 11-30-90

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman  
THOMAS M. BEARD  
BETTY EASLEY  
GERALD L. GUNTER

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER  
DENYING REQUEST FOR ORAL ARGUMENT

AND

ORDER SETTING ORAL ARGUMENT ON OUR OWN MOTION

BY THE COMMISSION:

On July 16, 1990, the Florida Cable Television Association, (FCTA) filed a request for oral argument on its motion for reconsideration of Order No. 23132, the final order in the Southern Bell depreciation proceeding. In support of its request the FCTA simply stated that "oral argument will facilitate the Commission's consideration of the complex issues involved in this very significant case." Southern Bell responded, arguing that the request was devoid of any rationale or justification and failed to state with particularity why oral argument would aid the Commission as required by Rule 25-22.059, Florida Administrative Code. Southern Bell further argued that the FCTA had presented the depreciation issues to the Commission six-times previously. By Order No. 23314, the Prehearing Officer denied the FCTA's request on the grounds that the request did not state with particularity how or why oral argument would aid the Commission.

On August 17, 1990, the FCTA filed its "Motion for Reconsideration of Order No. 23314 By the Full Commission." In support of its motion for reconsideration, FCTA argues that Southern Bell's depreciation case presents novel, significant, complex and highly controverted questions regarding the Commission's policy choices, evidentiary standards and the impact of those decisions on affected parties. FCTA contends that its motion for reconsideration of the depreciation order reveals serious flaws and errors, both of policy formulation and of fact.

DOCUMENT NUMBER-DATE

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PSC-RECORDS/REPORTING

ORDER NO. 23818  
DOCKET NO. 890256-TL  
PAGE 2

FCTA further argues that its request for oral argument should be reviewed in conjunction with its motion for reconsideration of the depreciation order. Finally, FCTA contends "that with respect to the disputed policy considerations, and challenge to the adequacy of the record to support the depreciation order; and the alternative approach to capital recovery described in its motion, FCTA's motion raises points which clearly warrant the additional analytical development which oral argument would facilitate." FCTA further contends that both the fact that the Commission made policy pronouncements to which FCTA can only now respond, and the fact that FCTA has asked the Commission in the alternative to consider a form of recovery not previously addressed, warrant oral argument. Finally, FCTA claims that the "particularity" requirement should be viewed as less of a condition precedent than as an aid in helping assess whether oral argument would be of benefit.

On August 27, 1990, Southern Bell responded to FCTA's motion for review by the full Commission. Principally, Southern Bell argues that FCTA has not shown an error of fact or law; therefore, its motion should be denied. Southern Bell further argues that FCTA simply reiterates arguments that have now been presented to the Commission seven times. Southern Bell adds that the sheer volume of the record demonstrates the adequacy of the record and establishes the Commission's awareness of the complexity of the issues. As a result, the Company contends that oral argument will aid nothing to the process. With respect to FCTA's allegation that its [FCTA's] motion for reconsideration of the depreciation Order itself raises an "alternative approach to capital recovery...not previously addressed," Southern Bell states that FCTA is incorrect and, further, that even if FCTA is correct, the Commission may not consider it because it is not a part of the record.

Rule 25-22.060, Florida Administrative Code, governing motions for reconsideration, provides that oral argument "shall be granted solely at the discretion of the Commission." In addition, Rule 25-22.058, Florida Administrative Code, provides that a request for oral argument shall "state with particularity why oral argument would aid the Commission in comprehending and evaluating the issues raised by exceptions or responses." (emphasis added)

To satisfy the standard for reconsideration, a motion must concisely state the grounds supporting the relief requested, see Rule 25-22.060(2), Florida Administrative Code. The allegations

ORDER NO. 23818  
DOCKET NO. 890256-TL  
PAGE 3

Rule 25-22.060(2), Florida Administrative Code. The allegations must bring to the Commission's attention some matter of law or fact which it failed to consider or overlooked in its prior decision, Diamond Cab Co. and Miami, v. King, 146 So. 2d. 889 (Fla. 1962), Pingree v. Quaintenance, 394 So. 2d. 161 (Fla. 1st DCA 1981). The motion may not be used as an opportunity to re-argue matters previously considered, Diamond Cab, supra.

The issue here is whether the Prehearing Officer overlooked or failed to consider some matter of fact or law in ruling on FCTA's request for oral argument. It is clear from viewing the request for oral argument against Rule 25-22.058 that he did not. FCTA's motion for reconsideration of the oral argument order fails to raise any matter overlooked or misapprehended by the Prehearing Officer in making his ruling. FCTA's extensive argument in its motion for reconsideration of the Prehearing Officer order cannot rehabilitate a deficient motion for oral argument. Accordingly, we find that the FCTA's motion for reconsideration of Order No. 23314 should be denied and that the Prehearing Officer's ruling should be affirmed.

The issues involved in Southern Bell's depreciation represcription proceeding are both contentious and complex. These issues also underscore that we must contend with certain fundamental changes in the telecommunications industry. In the interests of the fullest examination of the unique nature of this case, we believe that oral argument may prove helpful. Notwithstanding our ruling above, we, on our own motion, will hear oral argument on the motions for reconsideration filed in this case.

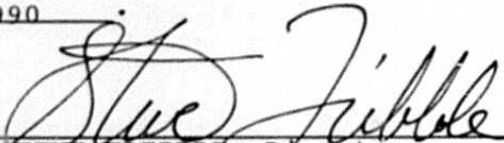
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Reconsideration of Order No. 23314 filed by the Florida Cable Television Association is denied as set forth in the body of this Order. It is further

ORDERED that upon the Commission's own motion, oral argument on the motions for reconsideration of Order No. 23123 will be heard as set forth in the body of this Order.

ORDER NO. 23818  
DOCKET NO. 890256-TL  
PAGE 4

By ORDER of the Florida Public Service Commission, this 30th  
day of NOVEMBER, 1990.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

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Commissioner Thomas M. Beard dissented from the Commission's decision to hear oral argument on its own motion.

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.

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 sewer 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

ORDER NO. 23818  
DOCKET NO. 890256-TL  
PAGE 5

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.