

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate) DOCKET NO. 920310-TL
increase by CENTRAL TELEPHONE) ORDER NO. PSC-92-0707-PCO-TL
COMPANY OF FLORIDA.) ISSUED: 07/24/92
_____)

ORDER GRANTING IN PART AND DENYING IN PART
OFFICE OF PUBLIC COUNSEL'S MOTIONS TO COMPEL

On April 9, 1992, the Office of Public Counsel (OPC) served Central Telephone Company of Florida (Centel or the Company) with its First Request for Production of Documents (OPC's 1st POD). On May 14, 1992, Centel responded with a Motion for Protective Order arguing that the Company had not yet filed a petition for a rate case and consequently, that OPC's discovery was not relevant to any controversy currently pending before the Commission. This objection was addressed in Order No. PSC-92-0534-PCO-TL. Also on May 14, 1992, Centel served OPC with its responses to OPC's 1st POD. Centel noted that the Motion for Protective Order resulted in an automatic stay but filed these general and specific responses "...in an abundance of caution..." The Company reserved the right to file further objections should the Motion for Protective Order be denied.

The Company objected to the timing of the discovery requests and reasserted the argument set forth in its Motion for Protective Order. As stated above, this objection was addressed in Order No. PSC-92-0534-PCO-TL. On June 26, 1992, Centel filed a Motion for Clarification or, Alternatively for Reconsideration of Order PSC-92-0534-PCO-TL. This Order disposes of that motion.

The Company also objected to the instruction requiring the production of all documents in any way different from the original, including copies edited, notated or date stamped differently from the original. The Company argues that such a requirement is unduly burdensome. I am persuaded, however, by OPC's arguments regarding the value of information reflected in changes made to the documents. OPC's instructions relieve the Company of any undue burden by limiting the request to documents in possession of persons who might reasonably be in possession of such documents. Accordingly, I find it appropriate to grant OPC's motion to compel with regard to this objection.

Centel has objected to identifying all responsive documents no longer in existence. While a need may exist to identify specific documents or copies of documents no longer in existence, that need has not clearly manifested itself at this stage of the discovery process. Centel has committed to identifying documents covered by

DOCUMENT NUMBER-DATE

08163 JUL 24 1992

FOCO-DECEDES/DEBDDT

PSC and FCC required retention schedules. Until a problem is apparent this will be satisfactory for now. OPC cannot reasonably expect Centel to comply with such a general request for unidentified non-existent documents.

Centel further objected to the broad definition of the word "documents" used by OPC. Admittedly OPC includes virtually every means of storing information available to a technologically sophisticated company, but if a thorough search of the information in Centel's possession is to be conducted, then such a definition is appropriate. It would certainly be unreasonable to permit the Company to deny the production of a particular "document" merely because the "document" only existed in some electronic form. Accordingly, I find OPC's definition of "document" appropriate.

Centel next objected to the definitions of "you" and "your" as being overbroad and vague. While the definitions are excessively precise, I cannot agree that it is overbroad or vague. Indeed, it seems quite specific in defining which person or persons should produce the pertinent documents. At a minimum, the parent company (Central Telephone Co.) and Centel Corporation should be included. Also, any agents (of those entities) possessing responsive information (including consultants and attorneys) should be included unless subject to a valid privilege. Certainly only a reasonable search should be expected of the Company.

Centel also indicated that many of the documents requested by OPC might be privileged. While some of the documents may be privileged, such a determination is more properly asserted as the documents are identified. The question of privilege is not ripe for such a determination.

Centel objected to each and every request included to the extent each request related to organizational changes in non-regulated operations. Centel argued that such information is not relevant to any issue in this docket. This assertion is not correct. To the extent that any cost associated with a non-regulated operation is allocated to the Florida regulated operation and may be borne by the ratepayers, that information is relevant to the rate case.

Centel also objected to OPC's instruction that "each" responsive document be produced. Centel argued that OPC's use of the word "each" destroyed the concept of particularity required by the Florida Rules of Civil Procedure and rendered the requests

overbroad. Here again, I find it necessary to interpret the Rules of Civil Procedure in a manner consistent with our statutory mandate. I would also note that Rule 1.350(b) requires that:

The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. (Emphasis added).

I find that in the limited circumstances of this rate case, OPC's instruction is reasonable and appropriate. Again I must emphasize that there is an expectation of reasonableness in the document search process that the prehearing officer cannot dictate or be involved in at every turn.

Centel objects to producing the documents at the place designated by OPC. At this time, I believe the parties can reach a mutually agreeable accommodation on this matter.

Centel objected to Request No. 1 on the grounds that variance information for Central Telephone Company (the parent corporation) is not relevant to any matter pending in this docket. Centel argues that Central Telephone Company's variance information is influenced by the performance of other affiliates in other states. This argument does not address the relevancy of the information but rather the weight the information might be given. Accordingly, I find it necessary to grant OPC's motion.

Similarly, Centel argues that production of variance explanation information is not relevant. Again, Centel's argument addresses the weight of the information and not its relevancy. Accordingly, as clarified, I find that OPC's motion should be granted.

Centel objected to Request No. 8 on the grounds that the Request addressed "...any of the audits conducted by the FCC." The Company states: "As it is currently worded, Request No. 8 would call for documents relating to any audit conducted by the FCC of any company regulated by the FCC." Any reasonable reading of Request No. 8 would certainly provide guidance to Centel as to which documents to produce. In any event I would limit the required production to those FCC audits of Centel and Centel affiliates that relate to costs allocated or charged to the Florida

jurisdiction. Accordingly, I find it appropriate to grant OPC's motion.

The Company also objected to Request No. 15, asserting it was vague, overbroad and burdensome. The Company further objects to the relevancy of the information. Centel objects to information regarding corporate restructuring even though it is contemplating a merger during its projected test year. In light of this highly unusual circumstance, this information is relevant. Accordingly, OPC's motion should be approved. Any confidentiality concerns can be adequately addressed through our procedures.

The Company also objected to Request No. 16 on the grounds that the Request referred to "new services" but did not define the term "new service." In light of Centel's petition, I find that "new services" should be interpreted as services expected to be instituted during the projected test year. Based on this assumption, I find it appropriate to grant OPC's motion.

Centel objects to Request No. 18 on similar grounds. At this time I find it appropriate to refrain from making a decision to allow the parties to reach a mutually satisfactory accommodation, in light of my ruling on Request No. 16.

The Company objected to Request No. 19 on similar grounds to Requests Nos. 16 and 18. As in the case of Request No. 18, I find it appropriate to allow the parties to negotiate a mutually agreeable accommodation.

Finally, Centel objected to Requests Nos. 23 - 27 based on relevancy. In its Memorandum in Opposition to OPC's First Motion to Compel, Centel seems to assert that through its petition, MFRs, and direct testimony that it is solely in control of defining the issues in this docket. This is not a correct assertion; rather, defining issues in a rate case is a synergistic process involving all the parties and consideration of the due process of those parties. Accordingly, I find it appropriate to grant OPC's motion.

On May 14, 1992, OPC served Centel with its First Set of Interrogatories and its Second Request for the Production of Documents. On May 15, 1992, OPC served Centel with its Second Set of Interrogatories and its Third Request for the Production of Documents. These discovery requests shall be referred to as the 2nd line of discovery. On June 17, Centel filed a Third Motion for a Protective Order regarding the 2nd line of Discovery and a

Objections to the same line of discovery. On June 26, 1992, OPC filed a Second Motion to Compel (OPC's 2nd Motion to Compel) and its Opposition to Centel's Third Motion for Protective Order. With regard to the Motion for Protective Order, I find it appropriate to deny Centel's motion consistent with my ruling in Order No. PSC-92-0534-PCO-TL.

Centel renewed its general objections to OPC's 2nd line of discovery. I find that the general objections raised by Centel with regard to the 2nd line of discovery should be treated consistent with my ruling above.

With regard to Centel's specific responses to the Second and Third Sets of Interrogatories, I find that OPC's Motion to Compel should be granted in part, denied in part as set forth below.

With regard to Request No. 43, I find it appropriate to deny OPC's petition. OPC has failed to persuasively argue that the request is calculated to lead to the discovery of admissible evidence.

I find the Company's argument relative to Request No. 53 persuasive and therefore deny the Motion to Compel on this point.

Requests Nos. 55 and 56 address advertising sponsored by industry groups to which Centel pays dues and general information regarding dues paid to industry groups. Centel argues that neither is reasonably calculated to lead to the discovery of admissible evidence. I disagree and find it appropriate to grant OPC's motion as related to these requests.

Centel objected to Requests Nos. 63 and 78 and OPC withdrew the requests, thus mooting the question.

Centel objected to the timing of OPC's Request No. 94, but agreed to provide the documents at the same time they were provided to staff. Until the documents are provided to staff they do not fit the OPC's request. Accordingly, I find it appropriate to deny OPC's request.

Requests Nos. 96-99, 103 and 104 relate to inside wire maintenance. Centel argued that these documents were not relevant to any issue in this docket and were not calculated to lead to the discovery of admissible evidence. Again, Centel appears to assume that it can unilaterally define the issues in this docket. It is

readily apparent that these documents are related to an issue OPC wishes to address in this docket and consequently, I find it appropriate to grant OPC's Motion to Compel a response to these requests.

Centel also objected to several of OPC's interrogatories. Specifically, Centel objected to Interrogatories No. 19, 81, and 105, and Nos. 95 and 161-176. Centel argued that Interrogatories Nos. 19, 81, and 105 were related to corporate aircraft, golf tournaments and lobbying expenses and were not relevant. Centel also argued that Interrogatories Nos. 95 and 161-176 were related to inside wire maintenance and thus were not relevant to any issue in this proceeding. I find that Centel shall answer Interrogatories Nos. 19 (g), (h) and (i), and 85. The first part of 105 should be answered only if the answer to the second and third parts show that the Company is allocating or charging lobbying costs to the above-the-line Florida operations. The remainder of these interrogatories I find to be irrelevant. Additionally, consistent with my rulings above, I find it appropriate to grant OPC's Motion to Compel a response to Interrogatories Nos. 95, 161-176

Finally, without ascribing blame to either side, I must express my extreme disappointment that this case is in the posture that I find it in at this early stage. It is painfully obvious to me that the bulk of the disputes that have been brought before me should have been settled long before now. Reasonable people should be able to civilly discuss the scope of discovery and reach accommodation without calling upon the Commission for resolution of disputes amenable to commonsense solutions. I do not expect that Commission resources will be so unnecessarily called upon in the future.

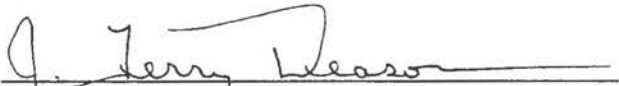
Based on the foregoing, it is

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that Central Telephone Company of Florida shall respond to the Office of Public Counsel's First, Second and Third Requests for the Production of Documents, and Office of Public Counsel's First and Second Set of Interrogatories in a manner consistent with the findings set forth in the body of this Order. It is further

ORDERED that the responses to these Interrogatories and Requests for Production of Documents not immediately available shall be provided no later than July 31, 1992.

ORDER NO. PSC-92-0707-PC0-TL
DOCKET NO. 920310-TL
PAGE 7

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 24th day of July, 1992.


J. TERRY DEASON, Commissioner
and Prehearing Officer

(S E A L)

JKA

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 this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described

ORDER NO. PSC-92-0707-PCO-TL
DOCKET NO. 920310-TL
PAGE 8

above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.