

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Dade County Circuit) DOCKET NO. 951270-TI
Court referral of certain issues) ORDER NO. PSC-96-1055-PCO-TI
in Case No. 94-14234-CA-22 (S.H.) ISSUED: August 16, 1996
Dohan & Company, P.A. vs.)
Transcall America, Inc. d/b/a)
ATC Long Distance) that are)
within the Commission's)
jurisdiction.)
_____)

ORDER ON MOTION FOR SPECIFIC INSTRUCTIONS

On May 15, 1996, Transcall America, Inc., d/b/a ATC Long Distance and LDDS WorldCom, Inc., (Defendants) filed a Motion for Protective Order pursuant to Rules 25-22.034 and 25-22.037, Florida Administrative Code, and Rule 1.280(c), Florida Rules of Civil Procedure. Defendants requested entry of a Protective Order governing the taking of the deposition of a former employee, Dan Merritt. The Motion was denied in Order No. PSC-96-0714-PCO-TI, issued May 28, 1996. However, the Order directed Mr. Merritt to refrain from answering any question until counsel of Transcall and LDDS had a reasonable opportunity to raise any objection.

On July 3, 1996, the Defendants filed a Motion for Specific Instructions regarding the deposition of Dan Merritt. Specifically, Transcall requests entry of an order directing opposing counsel not to inquire into matters protected by the attorney-client and work product privileges; requiring the witness not to disclose any privileged matters when instructed not to answer on the basis of privilege; and granting any other relief deemed appropriate to the protection of the privileges.

S.H. Dohan & Co. (Plaintiff) filed its response to the Defendants' Motion on July 19, 1996, stating that the material for which the Defendants seek protection have been obtained by other sources and are, therefore, not protected. The Plaintiff further states that granting Defendants' Motion will ensure the retaking of Mr. Merritt's deposition and require further briefing. The Plaintiff concludes that the measures imposed by the Commission's prior order addressing the subject are sufficient to ensure that this will not occur.

DOCUMENT NUMBER-DATE

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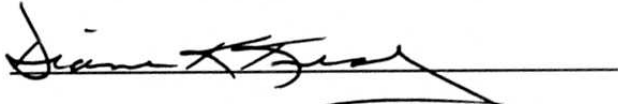
Upon consideration, the Defendant's Motion for Specific Instructions is granted. Until the deposition is actually taken, it is not possible to know whether actual privileged or confidential information is being requested. Any attempt to subvert the protections of law and Order No. PSC-96-0714-PCO-TI shall not be tolerated in this proceeding. The parties are hereby, once again, instructed that unless waived by the Defendants, privileged information shall not be revealed.

It is, therefore,

ORDERED by Commissioner Diane K. Kiesling, as Prehearing Officer, that S.H. Dohan & Co.'s Motion for Specific Instructions is granted. It is further

ORDERED that Mr. Dan Merritt shall refrain from answering any question until counsel for Transcall and LDDS have a reasonable opportunity to assert any objection, including objections relating to attorney-client and work product privileges.

By ORDER of Commissioner Diane K. Kiesling, as Prehearing Officer, this 16th day of August, 1996.


Diane K. Kiesling, Commissioner
and Prehearing Officer

(S E A L)

MMB

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.

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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 25-22.0376, 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 above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.