

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by SOUTHERN BELL) DOCKET NO. 881114-TL
 TELEPHONE AND TELEGRAPH COMPANY for) ORDER NO. 20735
 waiver of Rule 25-4.0345(4), F.A.C.,) ISSUED: 2-14-89
 to enable the company to offer of CPE)
 without structural separation.)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, CHAIRMAN
 THOMAS M. BEARD
 BETTY EASLEY
 JOHN T. HERNDON

ORDER APPROVING WITHDRAWAL OF PETITION
 AND CLOSING DOCKET

BY THE COMMISSION:

On August 23, 1988, Southern Bell Telephone and Telegraph Company (Southern Bell) filed its Petition for Waiver of Rule 25-4.0345(4), Florida Administrative Code, to enable the company to offer new customer premises equipment (CPE) without structural separation. Rule 25-4.0345(4), Florida Administrative Code, currently requires that new CPE provided by a telephone company be provided only through a separate subsidiary. However, Subsection (c) of the Rule provides that the Commission may, "upon a sufficient showing" by a telephone company, modify or waive the requirements of Rule 25-4.0345(4), Florida Administrative Code. In its petition, Southern Bell stated that it was filing its petition "in an abundance of caution in view of the fact that the Federal Communications Commission's (FCC's) BOC CPE ORDER¹ is being challenged and may be reversed. Illinois Bell Telephone v. FCC, Case No. 88-1154 (Appeal pending, D.C. Circuit)." The appeal referred to was taken by the Public Utilities Commission of the State of California (CPUC). This appeal went to the FCC's authority to preempt state structural separation requirements for the provision of CPE. On October 4, 1986, the CPUC moved to voluntarily dismiss its appeal. On October 20, 1988, the United States Court of Appeals for the District of Columbia entered an order granting the motion to dismiss the appeal. As a result, the FCC's authority to preempt any state requirement that CPE be offered only through a structurally separated subsidiary has been de facto upheld.

On November 3, 1988, Southern Bell filed its Notice of Withdrawal of Petition and Voluntary Dismissal of Docket No. 881114-TL Without Prejudice and Memorandum in Support of Notice

¹Furnishing of Customer Premises Equipment by the Bell Operating Companies and the Independent Telephone Companies, CC Docket No. 86-79, Report and Order, 2 FCC Rcd 143 (released Jan. 12, 1987), modified on reconsideration, Memorandum Opinion and Order on Reconsideration, 3 FCC Rcd 22 (1988), (released December 17, 1987) (Reconsideration Order).

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of Voluntary Dismissal Without Prejudice. Having found that the CPUC's voluntary dismissal of its appeal mooted the issue of whether the FCC had the authority to preempt state requirements that CPE be offered only through a structurally separated subsidiary, we hereby grant Southern Bell's request to withdraw its petition.

Concurrently, with its petition Southern Bell filed a copy of the BellSouth Revised Cost Allocation Manual (CAM) dated August, 1988. The BOC CPE ORDER required BellSouth to file a cost allocation manual demonstrating compliance with the cost allocation and accounting rules set forth in the JOINT COST ORDER¹. The FCC has conditionally approved the BellSouth Cost Allocation Manual and the revised August edition is the most recent BellSouth CAM. Southern Bell's petition indicated that it proposes to use the BellSouth Cost Allocation Manual in its nonstructural provision of CPE.

On November 18, 1988, Public Counsel filed its Petition to Investigate Southern Bell's Cost Allocation Procedures. We have not determined the appropriateness of initiating the investigation requested by Public Counsel. However, by our actions herein we are not unconditionally approving Southern Bell's use of BellSouth's Cost Allocation Procedures in its nonstructural provision of CPE. Our action herein merely recognizes Southern Bell's authority to provide CPE on a nonstructural basis without initially obtaining waiver of Rule 25-4.0345, Florida Administrative Code. Additionally, Docket No. 890190-TL has been opened for the purpose of considering the petition filed by Public Counsel.

Therefore, based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Southern Bell Telephone and Telegraph's Notice of Withdrawal of Petition and Voluntary Dismissal of Docket No. 881114-TL Without Prejudice is hereby approved, as set forth in the body of the Order. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission
this 14th day of FEBRUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DWS

by: Kay Flynn
Chief, Bureau of Records

¹Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order, 2 FCC Rcd 1298 (released Feb. 6, 1987), modified on reconsideration, CC Docket No. 86-111, 2 FCC Rcd 6283 (released Oct. 16, 1987).