

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of Florida to Investigate Southern Bell's Cost Allocation Procedures.) DOCKET NO. 890190-TL
) ORDER NO. 22460
) ISSUED: 1-24-90

ORDER ON DISCOVERYI. The Pleadings

On November 18, 1988, the Office of Public Counsel (OPC) filed Citizens First Set of Requests for Production of Documents to Southern Bell Telephone and Telegraph Company (Southern Bell), BellSouth Services, Inc., Bellcore, Southern Bell Advanced Systems, Inc. and BellSouth Advanced Systems, Inc., and First Set of Interrogatories to Southern Bell. On January 10, 1989, OPC filed a Motion to Compel Southern Bell to Provide Interrogatory Responses under oath in the same docket. On January 18, 1989, Southern Bell filed its response and objections to Public Counsel's First Set of Requests for Production of Documents and, in the alternative, Motion for Protective Order. OPC filed a Motion to Compel and Request for In Camera Inspection of Documents on January 25, 1989. Southern Bell responded on February 6, 1989. Southern Bell sought a Preliminary Protective Order on March 14, 1989. Southern Bell filed a Request for Oral Argument and Supplemental Response and Objections to Public Counsel's First Set of Requests for Production of Documents and, in the alternative, Motion for Permanent Protective Order on April 4, 1989. OPC filed a Motion to Compel and Response to Southern Bell's Motion for a Permanent Protective Order on April 17, 1989. Southern Bell responded to this Motion on May 1, 1989. After Public Counsel review of more documents, Southern Bell filed a Motion for Preliminary Protective Order on July 12, 1989, which was followed by a Southern Bell Motion for Permanent Protective Order on August 2, 1989 and a Supplement thereto on August 9, 1989. OPC filed its opposition to Southern Bell's Motion for Permanent Protective Order on August 14, 1989.

II. Scope of This Order

Each of the pleadings listed above relate to the November 18, 1988, OPC First Set of Requests for Production of Documents and First Set of Interrogatories. The pleadings raise a number

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of issues concerning confidentiality of specific documents as well as general objections. By separate order, I have ruled upon the confidentiality of the various documents, the relevancy objections relating to data from other states, deregulated operations, interstate operations, and various procedural matters. By this Order, I will issue my ruling regarding the propriety of discovery upon parties other than Southern Bell.

III. Discussion

In its responses and objections to OPC's discovery request of November 18, 1988, Southern Bell has objected to what it has characterized as "Public Counsel's attempt to treat BellSouth Services, Inc. (BSSI), BellSouth Communications Research, Inc. (BellCore), and BellSouth Advanced Systems, Inc. (BSASI) as named parties to this proceeding by describing these companies as parties" in the discovery request. In its Motion to Compel, OPC has responded that BSSI is a jointly owned subsidiary of Southern Bell and South Central Bell Telephone and Telegraph Company (South Central Bell) which provides a host of services to Southern Bell on a daily basis. As such, OPC asserts, Southern Bell and BSSI act as one for the purpose of providing regulated services. Thus, OPC concludes, it is appropriate to include both Southern Bell and BSSI as respondents in the request for production of documents, under the standard enunciated in Medivision of East Broward, Inc. v. HRS, 488 So.2d 886 (Fla. 1st DCA 1986). In response, Southern Bell maintains that OPC cannot unilaterally make BSSI a party by requesting it to produce documents, regardless of whether or not they act as one. Requests for production, the argument continues, may only be directed to parties, pursuant to Rule 1.350 of the Florida Rules of Civil Procedure. Finally, Southern Bell has characterized this objection as being primarily a technical one because to the extent BSSI is acting on behalf of Southern Bell, Southern Bell states it has produced those documents in the possession, custody or control of BSSI which are responsive to OPC's request. Further, Southern Bell states that to the extent documents in the possession, custody or control of BSSI are also in the possession, custody or control of Southern Bell, Southern Bell will produce the responsive, relevant documents, even though OPC's request is procedurally improper.

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Rule 25-22.034, Florida Administrative Code, provides that parties may obtain discovery in accordance with Rules 1.280 through 1.400 of the Florida Rules of Civil Procedure. In reviewing the scope of permissible discovery under the Florida Rules of Civil Procedure, I find the standard to be a very liberal one. Generally, parties may obtain discovery of any relevant matter that is not privileged, so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Fla. R. Civ. P. 1.280(b)(1).

In ruling upon this aspect of OPC's Motion to Compel, I believe it is critically important to keep in mind the exact nature of this proceeding. This docket concerns the methodology by which costs are allocated between regulated and unregulated lines of business, as well as between intrastate and interstate jurisdictions. I have previously stated my belief that data concerning other states and data concerning unregulated operations are both highly relevant in this proceeding. For similar reasons, the relationship between Southern Bell and its various affiliates is also at issue and therefore highly relevant to this proceeding. There can be no dispute that services flow back and forth between Southern Bell and its numerous affiliates. If this were not so, there would be no need for a cost allocation methodology or a cost allocation manual. Given that the manual determines the flow of those allocations, it is inconceivable to me how a proper investigation can go forward without the benefit of information from and regarding Southern Bell's affiliates. By characterizing its objection as primarily a technical one, I believe Southern Bell has implicitly recognized this to be the case. Further, I do not believe it is necessary to reach the question of whether Medivision applies on these facts; that is because I believe the scope of discovery itself is broad enough to allow OPC to obtain the requested documents, in light of the nature of this docket. Further, in Medivision, the primary objection to the requested discovery was the fact that the requested documents were not within the possession or control of the party upon whom discovery was sought. By Southern Bell's own admission, that is not the case here. See Motion dated April 4, 1989, and Response dated May 1, 1989. Finally, even though I believe that Medivision does not apply on these facts, as an alternative ground for this holding, I note that Southern Bell has conceded that it "acts as one" with BSSI, at Page 7 of its June 12, 1989, Response to Public Counsel's Motion to Compel of May 30, 1989 (which motion shall be ruled

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upon by separate order). Thus, with or without the Medivision standard, Southern Bell must respond to OPC's discovery requests.

For the reasons discussed above, I find OPC's discovery request of November 18, 1988, to be proper as it relates to Southern Bell's affiliates and therefore, I hereby deny Southern Bell's Motions for a Permanent Protective Order and grant OPC's Motions to Compel, relative to this issue.

Based upon the foregoing, it is

ORDERED by Commissioner John T. Herndon, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's Motions for Protective Order dated January 18, 1989, April 4, 1989, and August 2, 1989, are hereby denied to the extent outlined in the body of this Order, for the reasons set forth herein. It is further

ORDERED that the Office of Public Counsel's Motions to Compel dated January 25, 1989, and April 17, 1989, are hereby granted to the extent outlined in the body of this Order, for the reasons set forth herein.

By ORDER of Commissioner John T. Herndon, and Prehearing Officer, this 24th day of JANUARY, 1990.

John T. Herndon
JOHN T. HERNDON, Commissioner
and Prehearing Officer

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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 sewer 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.