

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by CITIZENS OF FLORIDA)	DOCKET NO. 890486-TL
to compel compliance with Rule 25-14.003,)	
F.A.C., by UNITED TELEPHONE COMPANY OF)	ORDER NO. 23051
FLORIDA regarding calculation of a method)	
for refunding 1988 tax savings)	ISSUED: 6-8-90
)	

The following Commissioners participated in the disposition of this matter:

BETTY EASLEY
GERALD L. GUNTER

ORDER ON RECONSIDERATION

BY THE COMMISSION:

The Office of the Public Counsel (OPC) has served four Requests for Production of Documents on United Telephone Company of Florida (United). OPC filed Motions to Compel United to produce the documents sought in the first two Requests, and United responded that discovery was inappropriate while OPC's Motion for Judgment on the Pleadings was pending.

With respect to the third Request, United objected and moved for a protective order, contending that certain documents being sought were not relevant to the issues under consideration in this docket. OPC moved to compel United to produce the documents sought by this request and renewed its motions to compel production of those sought in the first two Requests.

After the fourth Request was filed, United objected to discovery and moved for a protective order, asserting that, while certain documents are relevant to issues in this proceeding, the balance are not. The company further argued that if the contested documents are deemed relevant, then nine of them should be accorded confidential treatment. OPC moved to strike United's objection and motion, claiming that this pleading was late and that a motion for judgment on the pleadings does not bar discovery. In also responding to this pleading, OPC maintained that the documents being sought are relevant to the issues here and moved to compel United to produce them.

DOCUMENT NUMBER-DATE

05056 JUN-8 1990

FPSC-RECORDS/REPORTING

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By Order No. 22412, issued January 11, 1990 (the Order), the Prehearing Officer granted OPC's motions to compel and directed United to produce the documents being sought by the four Requests. On January 23, 1990, United filed a Motion for Reconsideration of the Order (hereafter, "the Pleading"). On January 26, 1990, OPC filed a Motion to Strike the Pleading. On January 31, 1990, United filed its Response to OPC's Motion to Strike. As part of that pleading, United moved to enlarge the time for filing a motion for reconsideration.

United argues that it erred in assuming that the Order was served by mail and that, as a result, five days were added to the 10-day filing deadline for its motion for reconsideration. Having now learned that service was accomplished when an employee received a copy of the Order by hand, United acknowledges that the Pleading was filed one day late. However, in its Motion to Enlarge Time, the company claims that its neglect was excusable and asks that the time for filing be enlarged so that the pleading will be timely filed.

Upon review, we grant OPC's Motion to Strike because, having missed the filing deadline, United cannot rehabilitate its pleading into a motion for reconsideration. However, we will consider the substantive allegations raised in the Pleading because this error has not delayed the Commission in its deliberations and there appears to be no injury to the public from this infraction. Moreover, there is no evidence that the company was dilatory in an effort either to thwart the Commission's procedures or to gain an advantage over another party.

United objects to those portions of the Order compelling it to produce documents responsive to Items Nos. 4 and 5 of OPC's second Request seeking the consolidated tax returns, consolidated financial statements and supporting material of its parent, United Telecommunications, Inc. (the Parent). The Pleading disputes the Order's conclusion that the consolidated tax returns would furnish discoverable evidence of allocations of costs and expenses to United. The company charges that no income tax expense is allocated to United from other affiliates; rather, the regulated company computes its own income tax expense on a separate company basis and not as a member of a consolidated group. Thus, United claims that OPC

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can obtain verification of its income tax expense solely in the company's tax return and offers to furnish all documentation necessary to determine this calculation. The company also alleges that the consolidated return and supporting materials contain confidential and proprietary information about affiliates engaged in competitive operations that would be harmful if disclosed.

United offers to furnish the Parent's financial statements, which it says are published quarterly, are readily available and have been provided to OPC on many occasions. However, United objects to producing the workpapers supporting these statements, on the basis that discovery of these documents is redundant and cumulative and will not lead to new discoverable evidence. United alleges that OPC can learn about allocations from documents related to the regulated company which are being or have been produced in this docket or in Docket No. 891239-TL. Finally, United charges that discovery of these workpapers would disclose confidential business information, including some from non-regulated entities.

Upon consideration, we find that the documents being sought under these two contested requests are relevant to the overall question of whether United properly accounted for 1988 revenues and expenses, some of which was allocated to and from affiliated corporations. In addition to the information about inter-company allocations contained in documents of the regulated company, the contested documents of the Parent may lead to the discovery of admissible evidence by providing additional detail and verification of the allocation methodologies employed and the amounts allocated. The consolidated financial statement workpapers show the total amounts to be allocated between affiliates and the methods used for allocating. The consolidated tax returns and supporting material contain information about the allocation for tax purposes of expenses other than income tax expense which is discoverable evidence.

For these reasons, we believe that the documents sought by OPC are relevant to the subject matter of this proceeding to determine the appropriate disposition of United's tax savings. Further, we believe that these documents may lead to the discovery of admissible evidence. In our opinion, the Prehearing Officer correctly decided that the contested

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documents are relevant to the matters under consideration in this proceeding. Therefore, we affirm Order No. 22412.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Office of the Public Counsel's Motion to Strike United Telephone Company of Florida's Motion for Reconsideration of Order No. 22412 is granted. It is further

ORDERED that Order No. 22412, issued January 11, 1990, is affirmed.

By ORDER of the Florida Public Service Commission, this 8th day of JUNE, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

DLC

by: Kay Flynn
Chief, Bureau of Records

NOTICE OF 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 the Commission's final action in this matter may request 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 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.