

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Citizens of State) DOCKET NO. 890190-TL
of Florida to investigate SOUTHERN)
BELL TELEPHONE AND TELEGRAPH COMPANY's) ORDER NO. 23633
cost allocation procedures)
ISSUED: 10-18-90

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER NO. 22495

On February 7, 1990, the Prehearing Officer issued Order No. 22495 which addressed various discovery issues between the Office of Public Counsel (OPC) and Southern Bell Telephone and Telegraph Company (Southern Bell). On February 19, 1990, Southern Bell filed its Motion for Reconsideration of Order No. 22495 to the Prehearing Officer and Motion for Extension of Time (Motion). On March 2, 1990, OPC filed its Opposition to Southern Bell's Motion for Reconsideration.

THE PLEADINGS

In its February 19, 1990, Motion, Southern Bell argues that by addressing related issues in groups, rather than individually, the Prehearing Officer has confused the scope of discovery. Southern Bell urges the Prehearing Officer to reconsider his Order and address each Southern Bell objection individually. By way of example, Southern Bell objects to Interrogatory No. 7 of OPC's February 9, 1989, Interrogatories. Southern Bell argues that answering this question would require it to produce information regarding the number of employees, assets, expenses, and revenues for such groups as BellSouth Australia, Ltd. and BellSouth Shanghai Centre, Ltd., which Southern Bell argues have nothing to do with Southern Bell nor with the provision of telephone service in Florida.

OPC responded to the Motion by incorporating by reference its previously filed responses and arguments and then addressing the affiliated corporations issue raised by Southern Bell. OPC points out that the specific numbers which Southern Bell objects to providing in response to Interrogatory No. 7 of OPC's February 9, 1989, Interrogatories are used in the cost allocation process to allocate expenses incurred by BellSouth Corporation to the various affiliates of BellSouth, including Southern Bell. Southern Bell, in turn, OPC asserts, passes through much of these costs to its monopoly ratepayers.

Southern Bell's Motion next questions the tenor of Order No. 22495. Southern Bell is concerned that a response stating that

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neither Southern Bell nor its subsidiaries have the requested information would be insufficient under this Order.

OPC responds to this claim by arguing that Southern Bell should have this information in order to properly ascertain whether costs allocated to it by its parent corporation are calculated properly. Additionally, OPC argues that if Southern Bell does not have such information, the information should be readily available from BellSouth Corporation. OPC finds it odd that Southern Bell claims not to have the information, when the information itself is a foundation upon which costs are allocated to Southern Bell and passed through to its monopoly ratepayers.

Southern Bell next argues that the Prehearing Officer exceeded the precedent of Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services, 488 So.2d 886 (Fla. 1st DCA 1986) by subjecting Southern Bell's affiliated companies to discovery merely because they do business with one another.

OPC argues in return that the tie between Southern Bell and BellSouth Corporation is much stronger than the ties between the corporations which were the subject of the Medivision decision. OPC contends that Southern Bell's failure to possess the information in dispute above is an illustration of the way in which Southern Bell is "acting as one" with its parent corporation. Since the information is not in Southern Bell's possession, OPC argues that it is reasonable to conclude that Southern Bell merely accepts the charges BellSouth allocates to it and then passes these costs to its regulated ratepayers. Thus, Southern Bell "acts as one" with BellSouth Corporation for the purpose of charging operational costs of BellSouth Corporation to the monopoly ratepayers of Southern Bell.

Southern Bell then argues that the Bell "family" of corporations is not so intertwined as to necessitate a review of the activities of each family member in order for the Commission to test the accuracy of the cost allocation manual. Thus, Southern Bell contends that it is not necessary to know the number of employees in each of the other Southern Bell states in order to determine, in the abstract, whether the use of an allocation based on employees is fair.

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OPC responds to this argument by stating that the number of employees of affiliated corporations is used in the cost allocation process.

Southern Bell next argues that its objection to OPC's Interrogatory No. 6 filed April 18, 1989 (concerning the calculation of a "float charge" for Southern Bell Advanced Systems, Inc. for 1987 and 1988), was not adequately resolved by the Prehearing Officer's use of "generic classifications" in Order No. 22495. Southern Bell reiterates its argument that: the information sought by OPC is not readily available since the "float charge" was not journalized to a unique account; and, identifying the "float charge" would be cumbersome.

OPC's response to this contention is that the information sought in its April 18, 1989, Interrogatories is relevant to this proceeding, which concerns cost allocations, and is properly sought under the Medivision standard.

Southern Bell states finally that OPC has requested a great deal of information and that Southern Bell is filing numerous motions for protective orders. Thus, Southern Bell contends that it is impossible to produce the requested information within the 10 days provided by Order No. 22495 and that an extension of time of 15 days is therefore appropriate.

OPC did not respond to this final issue.

DISCUSSION

I will address the specific issues and examples of problems alleged by Southern Bell to have been created by the form of Order No. 22495. First, to the extent that Southern Bell requests across-the-board examination of every discovery dispute resolved by the Order and not specifically enumerated by Southern Bell's instant motion as ambiguous, or otherwise problematic, Southern Bell's Motion is unreasonable on its face.

The data requested by OPC in its February 9, 1989, Interrogatory Number 7 is used in the cost allocation process between BellSouth Corporation and its various affiliates, including Southern Bell. Such expenses are then passed on to Southern Bell's monopoly ratepayers. Accordingly, it is appropriate for that

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information to be produced in this docket which has been commenced to examine Southern Bell's cost allocation methodology.

Southern Bell, I believe, correctly characterizes the tenor of Order No. 22495. If the information sought by OPC was necessary to compute Southern Bell's cost allocation to Florida monopoly ratepayers, a statement by Southern Bell that neither Southern Bell nor its subsidiary has the information would be inadequate and Southern Bell would be required to produce the information relied upon, whatever its source.

The ties between Southern Bell and its affiliated companies are such that they "act as one." This is illustrated by expense allocations which flow from BellSouth Corporation through Southern Bell, which are ultimately charged to the Florida monopoly ratepayers. This unity of action brings the corporation within the precedent established in Medivision.

The number of employees of each member of Southern Bell's corporate "family" is used to determine the costs allocated to Southern Bell and charged to Florida monopoly ratepayers. The cost allocations in this docket are not being examined "in the abstract" only; this case also concerns the cost allocation methods as applied.

Data used in the calculation of a "float charge" is relevant to this proceeding which concerns Southern Bell's cost allocation methodology; it must be produced.

An extension of time for Southern Bell to produce the documents is now inappropriate since Southern Bell has had a de facto extension of considerably longer duration than the 15 days which it seeks.

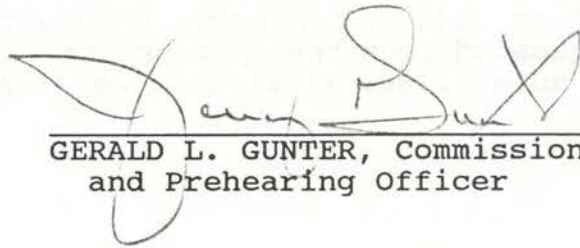
Based on the foregoing, it is

ORDERED by Commissioner Gerald L. Gunter, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's Motion for Reconsideration of Order No. 22495 is hereby denied for the reasons set forth herein. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall produce the information it was directed to produce in Order No. 22495 within five days of the issuance date of this Order.

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By ORDER of Commissioner Gerald L. Gunter, as Prehearing Officer, this 18th day of OCTOBER, 1990.



GERALD L. GUNTER, Commissioner
and Prehearing Officer

(S E A L)

CWM/ABG

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

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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.

Director, Division of Records and Reporting

NOTICE OF APPEAL PROCEDURE OF JUDICIAL REVIEW

The Florida Public Service Commission is required by section 350.04(4), Florida Statutes, to notify parties of any administrative ruling or order of the Commission which is subject to judicial review under sections 120.82 or 120.83, Florida Statutes, as well as the procedure and time limits that apply. This notice is being provided to you as a party to the proceeding in order that you may be notified of the time and manner in which to request judicial review of the ruling or order.

Any party adversely affected by this order, which is subject to judicial review, may request a rehearing or reconsideration in accordance with the provisions of Rule 25-22.060(1), Florida Administrative Code, or Rule 25-22.060(2), Florida Administrative Code, if issued by a presiding officer. A rehearing or reconsideration must be requested within 15 days of the date of the ruling or order. If issued by the Commission, or a judicial officer, the Florida Supreme Court, in the case of an election, or the Florida District Court of Appeal, in the case of a writ or other remedy, a petition for reconsideration