

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of SOUTHERN BELL TELEPHONE) DOCKET NO. 890256-TL
AND TELEGRAPH COMPANY's capital recovery) ORDER NO. 24262
position) ISSUED: 3-20-91
)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
BETTY EASLEY
MICHAEL McK. WILSON

ORDER DISPOSING OF MOTIONS FOR RECONSIDERATION

BY THE COMMISSION:

I. BACKGROUND

By Order No. 23132, the Commission authorized new depreciation rates and amortization schedules for Southern Bell Telephone and Telegraph Company (Southern Bell). On July 16, 1990, the Florida Cable Television Association (FCTA) and the Office of Public Counsel (OPC) filed petitions for reconsideration of Order No. 23132. We heard oral argument on the motions on November 4, 1990.

To satisfy the standard for reconsideration, a motion must bring to the Commission's attention some matter of law or fact which it failed to consider or overlooked in its prior decision. Diamond Cab Co. and Miami, v. King 146 So.2d 889 (Fla. 1962), Pingree v. Quaintenance, 394 So.2d 161 (Fla. 1st DCA 1981). The motion may not be used as an opportunity to reargue matters previously considered merely because the losing party disagrees with the judgement or order. Diamond Cab, supra.

II. MOTIONS FOR RECONSIDERATION

A. FCTA

In its motion for reconsideration, FCTA asserts that the Commission's analysis underlying Order No. 23132 contains serious flaws and errors, both of policy formulation and of fact finding. It contends that the Commission misconstrued its role, misapprehended the principal issue of who should pay for the synchronous fiber network, and misapprehended the evidence of record. FCTA further alleges that the Order conflicts with the standards of prior Commission orders. At oral argument, it argued three points. First, the retirement dates used to determine the

DOCUMENT NUMBER-DATE

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-PSC-RECORDS/REPORTING

ORDER NO. 24262
DOCKET NO. 890256-TL
PAGE 2

approved remaining lives are unsupported by the record; second, a stronger mechanism for monitoring the future cost effectiveness of investments should be adopted; and third, the Commission should take advantage of the recovery schedule mechanism provided in its rules to provide recovery.

B. OPC

OPC submits that the depreciation rates approved in Order 23132 force present customers to pay for the premature replacement of copper cable with fiber optic facilities, and that Southern Bell failed to economically justify its retirement of electronic analog switches and should not be allowed to amortize the investment in those switches retiring in the 1989-1992 period. OPC further submits that if the Commission continues to accept Southern Bell's projections for an all fiber network, the Commission should adopt a BISDN (Broadband Integrated Services Digital Network) adjustment so present ratepayers do not cross subsidize unregulated ventures.

C. Southern Bell's Response

In response to FCTA and OPC, Southern Bell argues that neither party raises any issue that the Commission failed to consider or overlooked in reaching its decision, and, therefore, these petitions should be denied. Southern Bell further argues that both OPC and FCTA support their motions with documents which are not part of the record in this proceeding.

D. Conclusion

With respect to FCTA's arguments, we find that it has failed to present any matter that we failed to consider or misapprehended. Accordingly, FCTA's motion for reconsideration is denied. The retirement dates for the analog switching, digital switching, circuit and metallic cable accounts established by Order No. 23132 are within the range set forth by the parties in the record as was discussed in the Order. As to monitoring future investments, we noted in the Order, that FCTA offered no specific accounting requirements and we rejected its proposal for Commission review of construction plans prior to implementation. FCTA has simply repeated its prior proposal. With respect to FCTA's arguments premised on Rule 25-4.0176, Florida Administrative Code, we are cognizant of the recovery schedule mechanisms provided in the Rule. For the reasons discussed in Order No. 23132, we opted for

ORDER NO. 24262
DOCKET NO. 890256-TL
PAGE 3

recovery schedules different than those advocated by FCTA but within the parameters of the Rule.

The arguments presented by OPC simply reiterate what was argued at the hearing. OPC's contention that the Commission ignored evidence in the record appears premised simply on the fact that the lives approved by the Commission are not those fostered by OPC's witness. The remaining lives proposed by OPC were considered and rejected in reaching our decision in Order No. 23132. The BISDN approach was considered and rejected for reasons discussed in Order 23132. In addition, OPC refers in its motion to a depreciation study filed by GTE Florida, Inc. This study is not part of the record in this case. The GTEFL study cannot support an argument for reconsideration of the order.

The issue here is whether the Commission overlooked or failed to consider some matter of fact or law in its decision and order regarding depreciation rates for Southern Bell. Upon reviewing the record Order No. 23132, and the arguments of the parties, we find that neither FCTA nor OPC has revealed any matter that we failed to consider or overlooked. Accordingly, their respective motions for reconsideration of Order No. 23132 are denied.

III. REPORTING REQUIREMENTS

The new subaccounts for interoffice, feeder and distribution cable which were reached by Order No. 23132 will provide us with necessary accounting information to aid in monitoring Southern Bell's modernization of its network. However, we also find that additional operational data is needed for a more complete picture. Since much of the controversy over remaining lives of the cable involved the distribution cable and "fiber to the home," Southern Bell shall provide the following:

1. Number and percentage of residential customers served by fiber as of December 31 of the prior year and its projections of the number and percentage of residential customers to be served by fiber as of December 31 for each of the following three years. A residential customer should be considered served by fiber when the fiber is to the curb or to the home depending upon the given architecture.

ORDER NO. 24262
DOCKET NO. 890256-TL
PAGE 4

2. Dollar amount of fiber distribution cable added during the prior calendar year to serve new vs. existing customers and projected dollar amount of distribution fiber cable to be added in each of the following three years.
3. Number of sheath miles and fiber miles of fiber placed in the prior calendar year and the cumulative number of sheath miles and fiber miles of fiber as of December 31 of the prior year.

Sheath mile is defined as the total length of cable involved in a particular application.

Fiber mile is defined as the total length of cable involved in a particular application multiplied by the number of fibers within the cable. For example, 1 sheath mile of cable that has 10 fibers inside is equal to 10 fiber miles of cable.

4. A list and short description including dollar amounts of the 15 largest work orders for fiber projects closed during the prior calendar year and the 10 largest work orders for fiber projects open as of December 31 of the prior year.

This data will allow the Commission to monitor Southern Bell's investment and penetration into the distribution market. This information shall be filed annually at the same time Southern Bell files its Annual Report.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Florida Cable Television Association's and the Office of Public Counsel's Motions for Reconsideration of Order No. 22132 are denied as set forth in the body of this Order. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall file a monitoring report as set forth in the body of this Order. It is further

ORDERED that this docket be closed.

ORDER NO. 24262
DOCKET NO. 890256-TL
PAGE 5

By ORDER of the Florida Public Service Commission, this 20th
day of MARCH, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by: Kay Hegan
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.

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.