

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of Florida to Compel Compliance with Commission Rule 25-14.003 by United Telephone Company of Florida)	DOCKET NO. 890486-71.
)	ORDER NO. 24266
)	ISSUED: 3/20/91

ORDER QUASHING SUBPEONA DUCES TECUM AND PARTIALLY GRANTING MOTION FOR PROTECTIVE ORDER

On March 14, 1991, the Office of Public Counsel (OPC) served on United Telephone Company of Florida a Notice of Deposition and a Subpeona Duces Tecum directed to Robert L. McCullers. On March 19, 1991, United Telephone Company of Florida (United) filed its Motion to Quash Subpeona Duces Tecum, Objection to Subpeona and Motion for a Protective Order. United states that OPC's Subpeona Duces Tecum should be quashed because it is unreasonable and oppressive to require Mr. McCullers to identify, assemble and produce what amounts to almost all of United's business expense records on three business days' notice. The Company also requests a protective order requiring the deposition to be taken at its Apopka office because the great majority of the documents sought are located there.

The OPC's Response to United's motions states that all of the allegations in the Company's motions are unverified and unsworn which, therefore, cannot be taken as evidence. Therefore, OPC states, the Commission is "without authority to act" and should dismiss the subject motions and deny all relief requested.

The hearing in this matter is currently set for Wednesday, March 27, 1991. OPC's Notice of Deposition and Subpeona Duces Tecum was served March 14, 1991, for a deposition and an extensive production of documents to be held 7 days before the hearing. In view of the fact that it has known of the date for this hearing for several months, OPC's discovery request for records covering such a broad scope to be produced one week prior to hearing is inappropriate.

However, a deposition to be taken at the business location of a witness in such a proceeding, such as is proposed in OPC's Notice of Deposition of Mr. McCullers, is not wholly inappropriate. Therefore, we hereby deny United's request for a protective order regarding the deposition of Mr. McCullers. However, we do find it appropriate to quash OPC's Subpeona Duces Tecum. We find OPC's statement that this Commission is "without authority to act" without an evidentiary hearing in a matter that is purely

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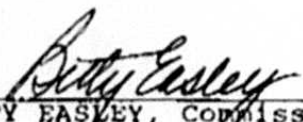
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procedural to be without any basis in either the Rules of Civil Procedure or of the Commission.

Based on the foregoing, it is

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that United Telephone Company of Florida's Motion to Quash Subpoena Duces Tecum and Motion for Protective Order is hereby granted in part and denied in part as set forth in the body of this Order.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 20th day of March, 1991.


BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

SFS

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

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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.