

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-TL
)	ORDER NO. 24315
)	ISSUED: 4/2/91

ORDER DENYING MOTION FOR PROTECTIVE ORDER
AND
DIRECTING THE PRODUCTION OF DOCUMENTS

On March 14, 1991, the Office of Public Counsel (OPC) served on United Telephone Company of Florida a Notice of Deposition and a Subpoena Duces Tecum directed to Robert L. McCullers. On March 19, 1991, United Telephone Company of Florida (United) filed its Motion to Quash Subpoena Duces Tecum, Objection to Subpoena and Motion for a Protective Order. By Order No. 24266, issued March 20, 1991, United's Motion to Quash the Subpoena was denied and its Motion for Protective Order was granted in part and denied in part. The Order denied the production of documents due to the voluminous nature of the request and the short time before the hearing. However, the Order did permit the deposition of Mr. McCullers. On March 22, 1991, OPC renoticed Mr. McCullers for deposition on March 25, 1991. On March 25, 1991, United filed another motion for protective order and a contingent motion for reconsideration of Order No. 24266 seeking to preclude the deposition of Mr. McCullers. Mr. McCullers was not produced for deposition. Subsequent to receipt of United's motion for protective order, OPC, on March 25, had Mr. McCullers served with a subpoena to appear at the Hearing to be held March 27, 1991. On March 26, United filed a Motion to Quash the Subpoena.

Both OPC and United presented further argument regarding the deposition of Mr. McCullers to the Commission at the beginning of the hearing. Essentially, OPC argues the deposition of Mr. McCullers, as United's chief lobbyist, is necessary to discover the full extent of the expenses incurred by United for the costs identified in Issue 9 in this proceeding. In response, United argues that Mr. McCullers is not qualified to testify upon any matter at issue in this proceeding and that OPC's continued attempts to depose Mr. McCullers constitutes harassment. The motions were held in abeyance during the hearing to determine if the information OPC sought could be elicited from United's witness in the hearing, Mr. McRae.

At the conclusion of the hearing it appeared that United's witness was not fully capable of responding to OPC's questions and

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that the information sought is relevant to the proceeding. Therefore, upon consideration, United's motion for protective order is denied. OPC shall be allowed to depose Mr. McCullers.

In response to questions by the Prehearing Officer, Counsel for OPC further clarified that the scope of his request was limited to the expenses described in Issue 9 that were incurred by Mr. McCullers in his role as lobbyist for United. Counsel for OPC was directed to submit a narrowed request for any documents that it desired for use at deposition by 5:00 p.m. on March 28, 1991. That request was received timely and consists of the following:

All Accounts Payable vouchers including the support documentation relating to expenses incurred by Mr. McCullers during 1988 and 1989. This is to include expenses incurred on a corporate American Express card, a Diner's Club card or any other company supplied credit card (to the extent they relate to expenditures incurred by Mr. McCullers), the support for any reimbursements made to Mr. McCullers as well as support for any expenses incurred by Mr. McCullers which may have been billed through the corporate travel agency or some other vendor.

All 1988 and 1989 calendars kept by and/or for Robert McCullers.

Upon consideration of Rule 1.280(b)(1), Florida Rules of Civil Procedure, and the above reasons given for this discovery request, United shall produce the documents requested to the extent that they pertain solely to the expenses incurred by Mr. McCullers during 1988 and 1989 for those activities specifically set forth in Issue 9. Discovery shall be limited to expenses that are included in above-the-line accounts. The 1988 and 1989 calendars shall be in the possession of Mr. McCullers at the deposition to be used as necessary for corroboration of expenses shown in documents cited above, and need not be produce those documents as directed below. To the extent that OPC still has possession of the documents produced for it by United during United's recent rate case related to 1989 expenses within the scope set forth above, United need not produce them again. United shall produce the documents described above within 30 days of the date of this Order. Counsel for United and OPC are directed to set a mutually agreeable time, date and place for the conduct of the deposition. The deposition shall be taken not later than May 10, 1991.

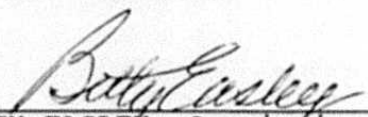
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Based on the foregoing, it is

ORDERED by Commissioner Betty Easley, as Prehearing Officer, that United Telephone Company of Florida's Motion for Protective Order and Contingent Motion for Reconsideration filed March 25, 1991 and its Motion to Quash Subpoena filed March 27, 1991, are hereby denied as set forth in the body of this Order. It is further

ORDERED that United shall produce Mr. McCullers for deposition and the documents described herein as set forth in the body of this Order.

By ORDER of Commissioner Betty Easley, as Prehearing Officer, this 2nd day of APRIL, 1991.



BETTY EASLEY, Commissioner
and Prehearing Officer

(S E A L)

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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

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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.