

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of FLORIDA PAY)	DOCKET NO. 910590-TL
TELEPHONE ASSOCIATION, INC. against)	
SOUTHERN BELL TELEPHONE AND TELEGRAPH)	ORDER NO. 25150
COMPANY for expedited relief to cease)	
payment of commissions on monopoly)	ISSUED: 10/01/91
revenues)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 MICHAEL MCK. WILSON

ORDER DENYING MOTION TO DISMISS

BY THE COMMISSION:

On May 10, 1991, the Florida Pay Telephone Association, Inc. (FPTA) filed a Complaint Against Southern Bell Telephone and Telegraph Company (Southern Bell) for Expedited Relief to Cease Payment of Commissions on Monopoly Telephone Revenues (Complaint). On June 7, 1991, Southern Bell filed a Motion to Dismiss FPTA's Complaint (Motion to Dismiss). On June 19, 1991, FPTA filed its Memorandum in Opposition to Southern Bell's Motion to Dismiss (Memorandum).

Procedurally, the only issue before us at this time is Southern Bell's Motion to Dismiss FPTA's Complaint. As grounds for its Motion, Southern Bell asserts that FPTA's Complaint fails to state a cause of action upon which relief can be granted by this Commission. Rule 25-22.037(2)(a), Florida Administrative Code, provides that service of a motion to dismiss tolls the time for filing an answer to a complaint. Therefore, until a ruling is entered on Southern Bell's Motion to Dismiss, an answer to FPTA's Complaint is not required.

Southern Bell's Motion to Dismiss goes to great lengths to discuss the financial viability of nonLEC pay telephone service providers, the need for Southern Bell to pay commission payments to its location providers, and the legal basis for its monopoly on 0- and 0+ local and intraLATA toll calls. But, accepting each of

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Southern Bell's arguments as true does not undermine the legal sufficiency of FPTA's Complaint. To prevail on the Motion to Dismiss, Southern Bell must definitively demonstrate that the facts alleged by FPTA, viewed in the light most favorable to FPTA, fail to set forth any claim cognizable by this Commission. Southern Bell has not made such a showing.

FPTA's Complaint is grounded upon a claim of anticompetitive conduct on the part of Southern Bell. Such a claim is specifically contemplated by Section 364.338, Florida Statutes. None of the allegations in Southern Bell's Motion to Dismiss meet the substance of this claim. FPTA's Complaint has been initiated under a portion of Chapter 364 that only became effective October 1, 1990; thus, Southern Bell's argument that these matters have been litigated in Docket No. 860723-TP is without merit.

For the reasons set forth above, we shall deny Southern Bell's Motion to Dismiss. Accordingly, we hereby direct Southern Bell to file its answer to FPTA's Complaint within ten days of the date of this Order, in accordance with Rule 25-22.037(2)(a). In addition, due to our concerns regarding the legality of pay telephone commission payments and their public policy implications, we hereby direct our staff to open a separate docket to consider those questions.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion to Dismiss filed by Southern Bell Telephone and Telegraph Company on June 7, 1991, is hereby denied for the reasons set forth herein. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall file its answer to the Florida Pay Telephone Association, Inc.'s Complaint of May 10, 1991, within ten (10) days of the issuance date of this Order. It is further

ORDERED that a separate docket shall be opened to consider pay telephone commission payments generally. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission, this 1st
day of OCTOBER, 1991.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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by Kay Hizon
Chief, Bureau of Records

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 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.