

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions of SOUTHERN BELL)	DOCKET NO. 880069-TL
TELEPHONE AND TELEGRAPH COMPANY for)	
rate stabilization and implementation)	ORDER NO. 25183
orders and other relief)	
_____)	ISSUED: 10/09/91

ORDER GRANTING MOTION FOR PROTECTIVE ORDER

On September 17, 1991, the Attorney General of the State of Florida (Attorney General), served a Notice of Deposition on Southern Bell Telephone and Telegraph Company (Southern Bell) seeking to depose Anthony M. Lombardo on September 25, 1991. Mr. Lombardo is Assistant Vice President - Regulatory Relations for Southern Bell and is an officer of the corporation. At the request of Southern Bell, the deposition was rescheduled to October 4, 1991.

On October 3, 1991, counsel representing Mr. Lombardo in his personal capacity (Mr. Lombardo) contacted the Attorney General seeking an additional delay for the deposition. No agreement was reached. On October 4, 1991, prior to the time Mr. Lombardo was scheduled to appear, Mr. Lombardo filed a Motion of Witness Anthony M. Lombardo for Protective Order and to Reschedule Deposition requesting that the deposition be rescheduled to a later date, at least until October 16, 1991. Also on October 4, 1991, the Attorney General filed the Attorney General's Objection to Motion for Protective Order, Motion for Order to Compel Attendance at Deposition, and Motion for Order Granting Reasonable Fees and Expenses. Argument was heard on the respective motions on October 7, 1991.

In support of his motion for protective order, Mr. Lombardo states that, as a result of an invitation before a grand jury, personal counsel was retained on October 3, 1991. Mr. Lombardo argues that it is unnecessary and unduly oppressive to appear on October 4, because it does not afford him an opportunity to fully confer with counsel and prepare for the deposition which may address information that overlaps with the grand jury. Mr. Lombardo, also states that the deposition may be unnecessary if the Commission adopts the Commission Staff's recommendation regarding disposition of excess revenues in this Docket that is currently scheduled for the Commission's October 15, 1991, Agenda Conference. Mr. Lombardo adds that, without more knowledge of the nature of the grand jury proceeding, delay is appropriate to determine if Attorney General is using the Commission's proceeding as a way of assisting the grand jury investigating. Essentially, Mr. Lombardo argues that the Attorney General's needs for discovery, when

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balanced against Mr. Lombardo's need for preparation for the grand jury, weigh in favor of a delay of the deposition.

Southern Bell supports the delay until after October 16, 1991, on the basis that Southern Bell's Notice of Withdrawal of the Company's "special needs proposal" coupled with the Staff's recommendation on the disposition of excess revenues would render a deposition of Mr. Lombardo premature. The Company also adds that the volume of documents already provided to the Attorney General can adequately prepare the Attorney General for the pending Agenda Conference.

The Attorney General argues, in support of its motion, that Mr. Lombardo and Southern Bell have had more than adequate opportunity to prepare for the deposition. He further argues that it is not essential that Mr. Lombardo's newly retained personal counsel personally prepare since Southern Bell's counsel has sufficient knowledge of the substantive areas of inquiry and personal counsel is capable of protecting Mr. Lombardo from abusive questions. Moreover, the Attorney General claims that it is entitled to take the deposition of Mr. Lombardo absent a showing that the requested information is privileged or that discovery is an attempt to harass or annoy the deponent. The Attorney General argues that no such showing has been made. The Attorney General further argues that further delay of the deposition will deprive it of sufficient opportunity to discover Southern Bell's activities in relation to not only the special needs projects but also perhaps input to the Staff with regard to the alternatives that have been presented in Staff's recommendation. The Attorney General adds that it will be irreparably prejudiced in its presentation at the Agenda Conference if its discovery is not conducted until after the Agenda Conference.

The Office of Public Counsel (Public Counsel) supports the Attorney General's motion arguing that Mr. Lombardo has made no showing of any connection between the invitation to appear before a grand jury and the subject of the Commission's proceeding. Public Counsel further argues that Staff's recommendation is not a limit on discovery nor does Southern Bell's withdrawal of its proposal limit discovery. All matters within the scope of the proceeding are before the Commission.

Upon consideration of the pleadings and the arguments of the parties, I find it appropriate to grant the request to delay the

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taking of Mr. Lombardo's deposition until October 16, 1991. In balancing the Attorney General's discovery rights against the potential consequences of the grand jury proceeding, it appears that the better course is to grant a short delay in discovery. I would also note the potential for any harm or prejudice is tempered by the fact that a significant portion and perhaps all of the Commission's decision at the Agenda Conference will be issued as a Proposed Agency Action which carries a full panoply of further discovery opportunities. Notwithstanding the delay for the deposition, Southern Bell is directed to use best efforts to provide any other information to the Attorney General related to its areas of inquiry with respect to Mr. Lombardo that the Attorney requires to prepare its position for the Agenda Conference.

Counsel for Mr. Lombardo is directed to notify the Attorney General on October 16, 1991, of its position on the taking of Mr. Lombardo's deposition. The Attorney General is requested to notify the Prehearing Officer's office of the results of its communications with counsel for Mr. Lombardo.

The Attorney General's request for attorney's fees is denied. Section 120.57(1)(b)(5), Florida Statutes, provides that attorney's fees and expenses may be imposed on a party for pleadings "interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation." I find that the requisite showing to determine an improper purpose has not been shown here.

Based on the foregoing, it is

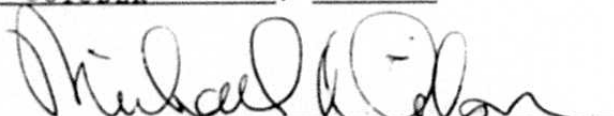
ORDERED by Commissioner Michael McK. Wilson, as Prehearing Officer, that the Motion of Witness Anthony M. Lombardo for Protective Order and to Reschedule Deposition is granted as set forth in the body of this Order. It is further

ORDERED that the Motion for Order to Compel Attendance at Deposition and the Motion for Order Granting Reasonable Fees and Expenses is denied as set forth in the body of this Order. It is further

ORDERED that Counsel for Mr. Lombardo shall notify the Attorney General on October 16, 1991, of its position on the taking of Mr. Lombardo's deposition.

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By ORDER of Commissioner Michael McK. Wilson, as Prehearing Officer, this 9th day of OCTOBER, 1991.


MICHAEL McK. WILSON, 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 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

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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.