

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. 25245
orders and other relief)	
_____)	ISSUED: 10/23/91

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL McK. WILSON

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR FULL COMMISSION RECONSIDERATION
OF PREHEARING OFFICER ORDER

BY THE COMMISSION:

By Order No. 25183, issued October 9, 1991, Commissioner Michael McK. Wilson, the Prehearing Officer in this proceeding, granted a motion for protective order filed by private counsel for Mr. Anthony Lombardo, seeking a delay in the taking of Mr. Lombardo's deposition. Mr. Lombardo's motion was grounded on the need for Mr. Lombardo's newly retained counsel to have adequate time to prepare for the deposition. The delay was granted until October 16, 1991. At that time, counsel for Mr. Lombardo was directed to discuss whether there was any further objection to proceeding with the deposition.

On October 11, 1991, the Attorney General of the State of Florida and the Office of Public Counsel filed Motion for Full Commission Reconsideration of Prehearing Officer Order seeking review of Order No. 25183. The Attorney General and Public Counsel ask that the Full Commission order that Mr. Lombardo appear for deposition at the earliest possible time and that consideration of the disposition of Southern Bell's excess revenues be deferred until after the Attorney General and Public Counsel have completed their discovery.

The Attorney General's argument is summarized as follows: Mr. Lombardo is an officer of Southern Bell and has possession of discoverable information; the Attorney General timely sought discovery; the Attorney General and Public Counsel are entitled to discovery absent a showing that the information sought is privileged or for the purpose of causing annoyance, embarrassment,

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oppression, or undue burden or expense; and no required showing has been made. As a result, the Attorney General argues that the Prehearing Officer erred in granting the protective order. The Attorney General and Public Counsel further argue that deferring consideration of the disposition issue for a short time until the deposition is taken may prove beneficial to the customers' case.

Based on our review of Order No. 25183, we find no error. The Prehearing Officer has wide discretion in balancing the interests of parties in the furtherance of the orderly administration of justice. The Prehearing Officer in this case balanced the need for Mr. Lombardo's private counsel to prepare for deposition against the right of the Attorney General and Public Counsel to conduct discovery in a pending proceeding. Further, the delay in discovery was only for a short time.

Order No. 25183 did not deny discovery, it simply delayed the taking of Mr. Lombardo's deposition from October 4, 1991, until October 16, 1991, in order for Mr. Lombardo to confer with new counsel. Mr. Lombardo's counsel was directed to inform the Attorney General of Mr. Lombardo's position regarding the taking of Mr. Lombardo's deposition on October 16. Since a delay is all that was sought, we find that any further objection of Mr. Lombardo to the taking of the deposition should be decided by the Prehearing Officer in the Commission's normal course of procedural events. Accordingly, the Attorney General's and Public Counsel's request that we set a time for Mr. Lombardo's deposition is hereby denied.


We respect to the Attorney General's and Public Counsel's request for deferral of consideration of the disposition of excess revenues, at the October 15, 1991, Agenda Conference, we determined to refund the nonrecurring portion of the excess revenues in question. This decision is consistent with the position advocated by the Attorney General and Public Counsel for the disposition of these revenues. The disposition of the remainder of excess revenues was deferred by us on our own motion for consideration at a later Agenda Conference to allow our Staff to provide us with certain information needed for a more informed decision. Our decisions, at the Agenda Conference, as discussed above, moots the Attorney General's and the Public Counsel's request for deferral of consideration of disposition of excess revenues.

Based on the foregoing, it is

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ORDERED by the Florida Public Service Commission that the Attorney General of the State of Florida's and the Office of Public Counsel's Motion for Full Commission Reconsideration of Prehearing Officer Order is hereby granted in part and denied in part as set forth in the body of this Order.

By ORDER of the Florida Public Service Commission, this 23rd day of OCTOBER, 1991.


STEVE TRIBBLE, Director
Division of Records and Reporting

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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

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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.