

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 910980-TL
increase by UNITED TELEPHONE) ORDER NO. PSC-92-0134-FOF-TL
COMPANY OF FLORIDA.) ISSUED: 3/31/92
_____)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
SUSAN F. CLARK
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER DENYING MOTION TO DISMISS AND
MOTION TO RESCHEDULE HEARING

BY THE COMMISSION:

United Telephone Company of Florida (United or the Company) filed its MFRs in this rate case on November 15, 1991. On November 20, 1991, the Office of Public Counsel (OPC) filed a Motion to Dismiss United's rate case filing on the basis that United did not comply with the provisions of Rule 25-4.141, Florida Administrative Code. OPC states that this Rule requires that United file in its MFRs, specifically, the historical actual data related to the period July 1, 1990, to June 30, 1991. OPC asserts that the Rule clarifies that the Company must file the most currently available actual historical data for a period equal to the test period requested for the rate case.

OPC correctly states that four months of the 1991 calendar year data filed by United is projected and not actual historical data. Additionally, OPC asserts that United's data does not comply with the Rule because it is calendar year 1991 data and not a split year, July 1, 1990, through June 30, 1991, that would exactly correlate to the test period data. As a result of United's failure to submit the required data, OPC contends that it has been irrevocably prejudiced because it cannot tie this data to the Company's books and records.

On November 27, 1991, United filed its Response to OPC's Motion to Dismiss. In its Response, the Company asserts that it has complied with the provisions of Rule 25-4.141, Florida Administrative Code. A literal reading of this Rule would require that United file data for the period July 1, 1991, through June 30, 1992, as the time period immediately preceding the test year. The

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Company argues that such a reading of the Rule would provide the Commission with ten months projected and two months actual data. In addition, such data would provide the Commission with two periods of split year projected data to review in this case.

The Company contends that another literal interpretation of the Rule might require the filing of the twelve months actual historical data available upon filing, which in this case would have been the data for September 1, 1990, through August 31, 1991. This data would reflect a split historic year that would not have been tied to the split test period or to a calendar year.

We believe that United has, in fact, complied with the intent of Rule 25-4.141, Florida Administrative Code, which is to provide the Commission with the historical period data that will most fully substantiate the projected data filed for the test period. In this instance, a extraordinary number of rate changes became effective in January 1991 as a result of the Company's last rate case in Docket No. 891239-TL. Also, the calendar year 1991 is capable of being tied to tax returns and the Company's outside audit report. The data filed is for a period equal to the test period in that it is for twelve months.

We find, therefore, that the Company has, in fact, filed its most currently available historical data for a period equal to the test period. The Company has subsequently filed additional historical data corresponding to the last 4 months of 1991. Accordingly, we deny OPC's Motion to Dismiss United's Petition for a Rate Increase.

On November 26, 1991, OPC filed an Objection to CASR and Motion to Reschedule requesting that the Commission reschedule the hearing in this docket at least 30 days, and preferably 45 days, later than it is currently scheduled. OPC contends that the current schedule setting the hearing in this matter to begin April 15, 1992, will put a tremendous burden on intervenors to hastily prepare their case.

United filed a Response to Objection to CASR and Motion to Reschedule on December 4, 1991, stating that it would be happy to accommodate OPC and that the only date it was sure was unchangeable was the July 15, 1992, date upon which the eight months file and suspend period ends.

The schedule of this proceeding and the CASR were completed based on the state of the Commission's calendar at the time of

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filing, with the standard consideration given to the time requirements for the filing of testimony, the hearing itself, the filing of briefs, and the preparation and filing of the staff's recommendation. If anything, our calendar is more limited now. At last check, the next available dates for a hearing such as this would be the last week of January 1993. It would be impractical to move the hearing to that far off a date, as the data in the currently filed MFRs would be so stale at that point as to be useless. Additionally, the parties have expended a substantial amount of time and expense preparing their cases. Accordingly, we hereby deny Public Counsel's Motion to Reschedule the hearing in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Public Counsel's Motion to Dismiss United Telephone Company of Florida's rate case is hereby denied. It is further

ORDERED that Public Counsel's Motion to Reschedule the hearing in this docket is denied. It is further

ORDERED that this docket remain open.

By ORDER of the Florida Public Service Commission, this 31st day of March, 1992.



STEVE TRIBBLE, Director
Division of Records and Reporting

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Commissioner Laredo dissented from the Commission's decision to deny the motions filed by the Office of Public Counsel.

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 wastewater 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.