

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for a rate) DOCKET NO. 910980-TL
increase by UNITED TELEPHONE) ORDER NO. PSC-92-0357-PCO-TL
COMPANY OF FLORIDA.) ISSUED: 05/14/92

ORDER ON THE FLORIDA CABLE TELEVISION ASSOCIATION'S
MOTION FOR RECONSIDERATION OF ORDER NO. PSC-92-0112-PCO-TL

On December 23, 1991, United Telephone Company of Florida (United) served its First Set of Interrogatories and Request for Production of Documents (PODs) on the Florida Cable Television Association (FCTA). The FCTA served its responses on January 22, 1992. In its response, the FCTA objected to responding to Interrogatories Nos. 4 through 7, and 10 through 14. Additionally, FCTA objected to responding to Production of Documents Nos. 1, 3 through 5, and 7. United filed a Motion to Compel Discovery on February 5, 1992, asking the Prehearing Officer to require the FCTA to respond to United's discovery requests. FCTA filed a response to United's motion on February 25, 1992. Oral argument by the parties on the Motion to Compel was heard on March 20, 1992.

By Order No. PSC-92-0112-PCO-TL, issued March 27, 1992 (the Order), the Prehearing Officer granted in part and denied in part United's Motion to Compel. Specifically, United's motion was granted with respect to the information sought in Interrogatories 11 through 14, and PODs 3, 4 and 5. That information pertains to the services provided by the members of the FCTA that may be in competition with planned or future video services provided by United. The Prehearing Officer found that such information is relevant to the allegations of competitive standing and the scope of the FCTA's participation in the proceeding. The Order required FCTA to respond to the interrogatories by April 3, 1992.

However, United's Motion to Compel was also denied in part. The Prehearing Officer denied United's Motion as pertaining to Interrogatory No. 4 because United already possessed the requisite information within its customer billing records. Additionally, the Prehearing Officer found that the request in Interrogatory No. 10, seeking the rates of the services provided by FCTA's members, was not relevant to the subject matter of this proceeding. At the April 6, 1992 Prehearing Conference United waived its request to compel responses to Interrogatories Nos. 5 through 7 and Production of Documents Nos. 1 and 7.

On April 3, 1992, the FCTA filed a Motion for Reconsideration of Order No. PSC-92-0112-PCO-TL. The FCTA asserts that it has

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complied in good faith with the requirements of the Order. Additionally, FCTA reaffirms its statutory right to intervene in this docket both as ratepayers and as potential competitors of United. Further, FCTA contends that the Prehearing Officer's Order compelling discovery violates the Rules of Civil Procedure by unduly expanding the issues in this proceeding.

On April 8, 1992, United filed its Response to Motion for Reconsideration. In its response, United asserts that it has not challenged the FCTA's standing in this proceeding. United claims it sought discovery to determine whether the allegations the FCTA made in its Petition to Intervene had any validity. The FCTA alleged that its members were potential competitors of United with respect to planned or future video services. The discovery sought to have the FCTA and its members state what services they provide that would justify the allegation. United maintains that since this is presumably the interest that FCTA will seek to protect, United's own witnesses are entitled to have that information before being cross examined by the FCTA. Moreover, United claims that the FCTA has taken full advantage of its status as a party by filing testimony, taking discovery and specifying issues while disclaiming any obligation to respond to discovery.

On April 10, 1992, FCTA filed a letter clarifying that, pursuant to Rule 25-22.038(2), Florida Administrative Code, it seeks reconsideration of the Order by the Prehearing Officer, rather than the full Commission. The matter was brought before the full Commission at the commencement of the hearing. The Chairman then referred it to the Prehearing Officer for disposition.

United served the original discovery request on FCTA in December. The hearing in this docket commenced on April 15, 1992, without this matter being resolved. Although the FCTA intervened in the docket and submitted a prehearing statement, it filed no testimony. At the beginning of the hearing United allowed that, at this point in the process, even if the discovery was received it would be useless. Additionally, the FCTA did not cross examine witnesses, thus the underlying basis for the discovery request never materialized. Given that the hearing in this docket has concluded, the discovery issue is now moot. Therefore, FCTA's Motion for Reconsideration and United's Response to the Motion for Reconsideration need not be addressed.

However, I believe it is appropriate to note that, because of statutory requirements, rate cases must proceed under an expedited

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time schedule which requires a great degree of cooperation among the parties. If a party avails itself of the right to participate in a proceeding before this Commission, then it must not circumvent that process through unnecessary time delays or objections that render the discovery process useless.

Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that because the hearing in this docket has concluded, the pending discovery dispute between United Telephone Company of Florida and the Florida Cable Television Association is now moot.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 14th day of May, 1992.


SUSAN F. CLARK, 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.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) 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 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.