

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Comprehensive review of) DOCKET NO. 920260-TL
the revenue requirements and) ORDER NO. PSC-93-0071-PCO-TL
rate stabilization plan of) ISSUED: 01/15/93
SOUTHERN BELL TELEPHONE AND)
TELEGRAPH COMPANY)
_____)

ORDER GRANTING IN PART THE OFFICE OF PUBLIC COUNSEL'S
FIRST, SECOND, THIRD, AND FOURTH MOTIONS TO COMPEL

I. THE PLEADINGS

On May 8, 1992, the Office of Public Counsel (OPC) filed its First Motion to Compel and Request for In Camera Inspection of Documents. On May 15, 1992, BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed its Opposition to Public Counsel's First Motion to Compel and Request for In Camera Inspection of Documents. On July 2, 1992, OPC filed its Supplement to First Motion to Compel and Request for In Camera Inspection of Documents. On June 15, 1992, Southern Bell filed its Opposition to Public Counsel's Supplement to First Motion to Compel and Request for In Camera Inspection of Documents. This series of pleadings relates back to OPC's First Request for Production of Documents.

On May 13, 1992, OPC filed its Second Motion to Compel. On May 20, 1992, Southern Bell filed its Opposition to Public Counsel's Second Motion to Compel. This series of pleadings relates back to OPC's Second Request for Production of Documents.

On June 5, 1992, OPC filed its Third Motion to Compel. On June 17, 1992, Southern Bell filed its Opposition to Public Counsel's Third Motion to Compel. This series of pleadings relates back to OPC's Third, Fourth, and Fifth Requests for Production of Documents.

On July 13, 1992, OPC filed its Fourth Motion to Compel. On July 20, 1992, Southern Bell filed its Opposition to Public Counsel's Fourth Motion to Compel. This series of pleadings relates back to OPC's Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Requests for Production of Documents and Fifth Set of Interrogatories.

II. DISCUSSION

Throughout the course of these proceedings, OPC has served upon Southern Bell numerous discovery requests as set forth above. In its responses to these requests, Southern Bell has asserted

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several broad and general objections covering each of the responses included in that particular set of discovery. Additionally, the Company has raised specific objections to some of the discovery requests.

Southern Bell has in each of its responses to discovery requests, objected to OPC's definitions of the terms "you" and "your" as an improper attempt to obtain documents in the possession, custody, or control of entities that are not parties to this docket. In particular, Southern Bell argues that OPC cannot unilaterally treat the Company's parent, BellSouth Corporation (BellSouth Corp.), as a party to this proceeding by wording the definitional section of the document request in such a way that requires BellSouth Corp. to respond to every request posed by OPC. Further, Southern Bell asserts that OPC has failed to carry its burden to show that Southern Bell and BellSouth Corp. have "acted as one" in this docket, consistent with the standard enunciated in Medivision of East Broward County, Inc. v. Department of Health and Rehabilitative Services, 488 So.2d 886 (Fla. 1st DCA 1986).

In response, OPC states that discovery is not limited to documents solely in a party's possession; the documents can also be within the party's control while in another entity's possession. In addition, OPC vigorously asserts that Southern Bell and BellSouth Corp. in fact "act as one" in the provision of regulated services because Southern Bell receives numerous services from BellSouth Corp. on a daily basis. Charges from BellSouth Corp. to Southern Bell for these services are ultimately paid for by the ratepayers of Southern Bell.

Southern Bell responds that it has conducted a thorough search and has provided to OPC all BellSouth Corp. documents in its own possession which are responsive to the discovery requests. However, Southern Bell states that its parent company, BellSouth Corp., was not asked to search for any documents it had which might have been responsive to these discovery requests.

Southern Bell's belief that BellSouth Corp. is not subject to discovery is unfounded. Section 364.183, Florida Statutes, provides in pertinent part:

- (1) The commission shall have reasonable access to all company records, and to the records of the telecommunications company's affiliated companies, including its parent company, regarding transactions or cost allocations among the telecommunications company and such affiliated companies, and

such records necessary to ensure that a telecommunications company's ratepayers do not subsidize the company's unregulated activities. . . .

Although this statutory provision is not controlling, its application to the instant facts is both instructive and compelling. Essentially, Southern Bell argues that OPC cannot obtain through discovery documents that this Commission and its staff can readily obtain by means of a mere informal data request. Such a result clearly cannot be countenanced. The intent of this statutory provision is to provide this Commission access to the very documents which OPC now seeks. Accordingly, Southern Bell is hereby directed to ensure that BellSouth Corp. conducts a full and reasonable search for any documents responsive to OPC's discovery requests and to provide such documents to OPC.

In addition, Southern Bell objected generally to producing documents relating to operations in other states, as well as documents relating to unregulated services, inasmuch as these documents are irrelevant to this proceeding, according to Southern Bell. The Company argues that the issues in this docket relate solely to Southern Bell's regulated earnings in Florida. Further, the Company states that we previously held such data to be irrelevant in Docket No. 880069-TL. What the Company fails to mention, however, is that we previously held such data to be both relevant and discoverable in Docket No. 890190-TL. See, e.g., Orders Nos. 22460 and 22461, issued January 24, 1990. Allocations between states, between interstate and intrastate jurisdictions, and between regulated and unregulated services have a direct, material impact on the rates for intrastate services. Accordingly, this objection is without merit, and the Company shall produce any documents withheld solely due to this objection.

OPC's next general issue is that many of the documents responsive to its discovery requests and previously produced by Southern Bell contained information which was redacted prior to its production and delivery to OPC. Southern Bell responds that it has only omitted data which it considers irrelevant, such as information related to other states or unregulated activities. As stated above, this information is relevant to this proceeding. Accordingly, any documents responsive to discovery requests which contain redactions shall be produced in an unredacted version to OPC. Additionally, any documents which were either redacted in their entirety, or not produced at all because they would have been redacted in their entirety, shall be produced to the extent that they exist.

Southern Bell's discovery responses also object generally to OPC's definition of the terms "document" and "documents," claiming the definitions employed by OPC are overly broad. However, it became apparent at the hearing that the Company's concern was not with the definition of "document" or "documents" per se. Rather, their concern was that should an item that met the definition be found at a later time, Southern Bell would be accused of failing to comply with a discovery request. It is fundamental to the discovery process that in answering discovery, a diligent, good faith effort be made to produce all documents falling within the scope of the request. If an item which falls within the scope of the discovery request is found subsequent to the time a representation is made that all items have been produced, the issue is whether the initial search was conducted in good faith and with due diligence. The Company represented at the hearing that it had made a good faith effort to produce all documents meeting the definition provided; accordingly, this issue becomes moot.

Finally, Southern Bell has raised specific objections to certain discovery requests insofar as the responses relate to either inside wire or allegedly privileged matters. These specific objections will be addressed by separate order.

Based on the foregoing, it is

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company shall produce the documents discussed in the body of this Order for the reasons set forth herein no later than 20 days from the date of this Order.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 15th day of January, 1993.


SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

ABG/PLT

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.