

MEMORANDUM

June 29, 1994

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[JUN 29 1994]

12:06 pm
FPSC-RECORDS/REPORTING

TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (CANZANO) *[Signature]*
RE: DOCKET NO. 921074-TP - EXPANDED INTERCONNECTION PHASE II
AND LOCAL TRANSPORT RESTRUCTURE.

0310-PCO

Attached is an **ORDER GRANTING MOTION TO COMPEL** to be issued in the above-referenced docket. (Number of pages in Order - 4)

DLC/js
Attachment
cc: Division of Communications
I:921074MC.DC

MUST GO TODAY

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Expanded Interconnection) DOCKET NO. 921074-TP
Phase II and Local Transport) DOCKET NO. 930955-TL
Restructure) DOCKET NO. 940014-TL
_____) DOCKET NO. 940020-TL
DOCKET NO. 931196-TL
DOCKET NO. 940190-TL

ORDER NO. PSC-94-0810-PCO-TP
ISSUED: June 29, 1994

ORDER GRANTING MOTION TO COMPEL

On May 26, 1994, the Citizens of the Florida, through the Office of Public Counsel (OPC), filed its First Motion to Compel Against United Telephone Company of Florida (United). In its Motion, OPC moves the Commission to order United to produce all documents responsive to requests 4, 5, and 13 of OPC's First Set of Requests for Production of Documents to United dated March 17, 1994. On June 2, 1994, United filed its Opposition to Citizen's First Motion to Compel.

The types of documents that OPC seeks in its request for production Items 4, 5, and 13 include those related to 1) the anticipated effect of competition on revenues, expenses or market share for regulated services; 2) impact on revenues and/or expenses resulting from the implementation of flexible pricing plans United is considering in response to competition in the provision of local exchange telephone services; and 3) type of flexible pricing plans United is considering as a response to the introduction of competition into the provision of local exchange telephone services or markets. To each of these requests, United responded on April 26, 1994, that it "objects to this request on the grounds that the requested documents are not relevant to any issue in this proceeding."

OPC contends that on May 23, 1994, United filed testimony about the matters addressed in OPC's requests for production of documents. OPC cites the prefiled direct testimony of F. Ben Poag, on page 12, lines 10-19, in which Mr. Poag states:

My recommendation is that the Commission approve expanded interconnection, but in order to mitigate the potential long-term impact on the rates of the Companies' other services, the Commission should give the Companies as much flexibility as possible to respond to competition. To the extent the Companies can compete effectively, their other customers will benefit from the contribution received from the retained services and customers.

DOCUMENT NUMBER-DATE

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In addition, OPC asserts that United, in various points on pages 6-12 of Mr. Poag's prefiled direct testimony, expounds about universal service, residual ratemaking, and the potential effect of competition on United's revenues.

In its responsive motion in opposition, United argues that there is "no issue in this proceeding which is focused on the introduction of local exchange telephone service competition." Rather, United states, the focus is on the "terms and conditions for expanding interconnection of special and switched access services provided by entities other than the incumbent local exchange companies." United asserts that this proceeding does not address the introduction of competition into the provision of local telephone services or markets and that there is no statutory basis for introducing such competition.

United responds that Mr. Poag's testimony addresses local exchange pricing flexibility to respond to competition resulting from expanded and switched access and private line interconnection, rather than local exchange competition. United states that the witness notes in his testimony the proposal to include switched access within expanded interconnection requirements will place United's switched access revenues substantially at risk. United asserts that the purpose of Mr. Poag's testimony is to note that as

competition erodes the subsidies from these services that traditionally have supported residential local exchange rates, and unless United is granted additional access pricing flexibility, United's ability to maintain below-cost residential local exchange rates will be severely challenged.

The standard for determining whether to grant OPC's Motion to Compel is whether the information sought is relevant to the subject matter of the pending action or reasonably calculated to lead to the discovery of admissible evidence. The request need not show that the discovery material itself will be admissible at hearing.

I do not believe that the Commission's inquiry into the subject matter is as limited as United suggests. The impact of our decisions on the industry, the individual companies and, of course, customers is always a relevant inquiry. The transition to competition is one of a continuum. I cannot find as a matter of law that the discovery sought does not fall on that continuum.

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Therefore, upon review, I find that OPC has stated adequate grounds for relief and grant OPC's Motion to Compel. United shall provide OPC with the discovery materials in response to Items 4, 5, and 13 of OPC's First Set of Requests for Production of Documents on or before Monday, July 11, 1994.

Based on the foregoing, it is

ORDERED by Chairman J. Terry Deason, as Prehearing Officer, that the Citizens of the Florida's First Motion to Compel Against United Telephone Company of Florida is hereby granted. It is further

ORDERED that United Telephone Company of Florida shall provide the Citizens of Florida with the discovery materials it has requested, on or before Monday, July 11, 1994.

By ORDER of Chairman J. Terry Deason, as Prehearing Officer, this 29th day of June, 1994.


J. TERRY DEASON, Chairman and
Prehearing Officer

(S E A L)

DLC

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 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.