

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Citizens of ) DOCKET NO. 890190-TL  
the State of Florida to investi- )  
gate SOUTHERN BELL TELEPHONE AND ) ORDER NO. PSC-92-0135-FOF-TL  
TELEGRAPH COMPANY'S cost alloca- )  
tion procedures. ) ISSUED: 3/31/92  
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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 RECONSIDERATION AND  
AFFIRMING ORDER NO. 25297

BY THE COMMISSION:

On November 15, 1991, Southern Bell Telephone and Telegraph Company (Southern Bell or the Company) filed a Motion for Reconsideration to the Full Commission of Order No. 25297 and Request for Oral Argument (collectively, Motion). On November 19, 1991, The Office of Public Counsel (OPC) filed its Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument. Order No. 25297 sets forth the Prehearing Officer's confidentiality determinations regarding Document No. 2902-91. The underlying material was requested by the Commission's audit staff on March 1, 1991. The Company's Motion addresses the Prehearing Officer's denial of confidential treatment of material associated with an F.C.C. mandated external audit which was performed by the accounting firm of Coopers and Lybrand.

A brief recounting of the events which have lead to this juncture follows:

1. On March 22, 1991, Southern Bell filed its Request for Confidential Classification of Document No. 2902-91, which is material requested by the Commission's audit staff on March 1, 1991.

2. On April 3, 1991, OPC filed its Opposition to the Company's March 22, 1991, Request.

DOCUMENT NUMBER-DATE

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3. On April 25, 1991, the Prehearing Officer entered Order No. 24429 Denying Southern Bell's Request for Confidential Classification.

4. On May 6, 1991, Southern Bell filed its Motion for Reconsideration of the Prehearing Officer's Order No. 24429 to the Full Commission and Request for Oral Argument.

5. On May 14, 1991, the Prehearing Officer issued Order No. 24529 which granted Oral Argument on Reconsideration to the Full Commission.

6. On May 17, 1991, OPC filed its Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument.

7. On May 22, 1991, Southern Bell filed a Supplement to its March 22, 1991, Request for Confidential Classification.

8. On May 28, 1991, OPC filed its Motion to Strike Southern Bell's May 22, 1991, Supplement to its March 22, 1991, Request for Confidential Classification.

9. On May 29, 1991, the Full Commission convened to hear Oral Argument on Reconsideration of Order No. 24429. At that time, in addressing preliminary matters, it was determined that Southern Bell's May 6, 1991, Request for Oral Argument and Reconsideration should have been brought before the Full Commission at an Agenda Conference rather than to the Prehearing Officer.

10. On May 30, 1991, the Prehearing Officer issued Order No. 24601 Withdrawing Order No. 24529, which granted Oral Argument, as improvidently issued.

11. On June 4, 1991, Southern Bell filed its Response to OPC's May 28, 1991, Motion to Strike and also filed its Request to file Supplemental Pleading. OPC did not respond to Southern Bell's June 4, 1991, Request to file Supplemental Pleading.

12. At the September 24, 1991, Agenda Conference the Commission voted on outstanding motions regarding Document No. 2902-91 and set aside Order No. 24429 (See Number 3, above). These determinations were set forth in Order No. 25210, issued on October 11, 1991.

13. On November 5, 1991, the Prehearing Officer issued Order No. 25297, which granted in part and denied in part the Company's Supplemented Request for confidential treatment of the material at issue.

14. On November 15, 1991, Southern Bell filed its instant Motion for Reconsideration to the Full Commission of Order No. 25297 and Request for Oral Argument.

15. On November 19, 1991, OPC filed its Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument.

In its November 15, 1991, Motion, Southern Bell asks for oral argument because the issue of confidentiality for the Coopers and Lybrand external audit and related workpapers is of great importance to the Company. Southern Bell wishes to be afforded an opportunity to fully explain its arguments and to answer the Commissioners' questions.

In its November 19, 1991, Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument, OPC opposes reconsideration but does not address the oral argument issue separately.

Upon review, we find that the pleadings filed by the parties are adequate to make a reasoned determination regarding the reconsideration of Order No. 25297. Thus, we deny Southern Bell's request for oral argument on reconsideration.

In support of its November 15, 1991, Motion, Southern Bell argues that:

1) External audits and audit work papers should be treated as confidential for the same reasons that internal audits are treated as confidential and that the external auditor must feel free to develop workpapers without fear that, through disclosure, the workpapers can result in competitive harm to the client.

2) Section 90.5055, Florida Statutes, provides for an accountant-client privilege which "if the Company were litigating issues in state court" would allow the Company to claim that the material is confidential. (emphasis supplied)

3) Order No. 25297 overlooks the fact that the external audit workpapers belong to the external auditor. Should the Commission and Southern Bell not be able to assure the confidential treatment of the material, the external auditor will not allow access to the material. In support of this argument, Southern Bell incorporates an affidavit by a partner of the Coopers and Lybrand accounting firm and relies on Section 473.318, Florida Statutes.

4) It is significant that the F.C.C. has treated the Coopers and Lybrand audits and audit workpapers as confidential even though, admittedly, the F.C.C. and the Commission are bound by different rules and statutes.

5) Order No. 25297 states that information derived from internal audits is entitled to confidential treatment. There is no factual basis for the Prehearing Officer's conclusions finding some, but not all, of the external audit materials were derived from internal audit materials and the Order errs in reaching such conclusions.

In its November 19, 1991, Opposition to Southern Bell's Motion for Reconsideration and Request for Oral Argument, OPC argues that:

1) Southern Bell has simply reargued the same matters presented to the Prehearing Officer for consideration. OPC cites Diamond Cab Company of Miami v. King, 146 So.2d 889 (Fla. 1962), for the proposition that, in order to satisfy the standard for reconsideration, a motion must bring to the Commission's attention some matter of law or fact which it failed to consider or overlooked in its prior decision.

2) Should the Commission decide to entertain the same arguments by Southern Bell, OPC readopts its previous arguments concerning the distinction under the Florida Statutes regarding internal and external audits for the purposes of the public records law.

Upon review, and consistent with our determination which is set forth in Order No. 25483, issued in Docket No. 910163, on December 17, 1991, we find that the Company is not entitled to a de novo review of the Prehearing Officer's Order and that the appropriate standard for review is that which is set forth in Diamond Cab as urged by OPC.

We find that Southern Bell has simply reargued its previous positions and reconsideration is denied for failure to meet the requirements set forth in Diamond Cab. The Company has not brought to our attention any matter of law or fact which the Prehearing Officer failed to consider or overlooked in his prior decision. In its Motion, the Company does assert that "Order No. 25297 overlooks the fact that the ownership of the external audit workpapers is by Coopers and Lybrand, Southern Bell's external auditor." However, the ownership argument is acknowledged on page 3 of Order No. 25297, and rejected as set forth on page 4 of that Order.

One point which needs to be clarified is the granting of confidential treatment to certain specific information within the Coopers and Lybrand external audit which the Prehearing Officer determined to have been derived from internal audit material. In its Motion, the Company argues that the Prehearing Officer erred in granting confidential treatment only to the portions of the external audit material which he believed were derived from internal audit materials. We find that the mere fact that the Prehearing Officer granted some, but not all, of what Southern Bell requested is not, in and of itself, error.

In its Supplemented Request, the Company contended that internal audit material cannot be separated from the Coopers and Lybrand external audit material. The Company did not attempt to identify each discrete portion of the external audit which was derived from an internal audit. Thus, the derived-from-an-internal-audit aspect of the Company's external audit argument was set forth on an "all or none" basis. The Prehearing Officer could have held the external audit material to be so informed by its derivation from protected internal audit material that the entire external audit should be held to be confidential. However, the Company's argument was not persuasive on this point, and was implicitly rejected in the Prehearing Officer's Order.

The Prehearing Officer did grant confidential treatment to specific material within the external audit which he independently found to be readily identifiable as being derived from internal audit material. The decision to grant confidential treatment to some of the material does not imply any necessity that confidential treatment be granted to all of it.

Pursuant to Order No. 25483, a de novo review was not appropriate for the Full Commission to reconsider the Prehearing Officer's Order. However, we find that had the matter been

considered de novo, the results would be the same based upon the reasons set forth in the Prehearing Officer's Order. Thus, we both affirm Order No. 25297, and deny Southern Bell's November 15, 1991, Motion for Reconsideration.

In its November 15, 1991, Motion, the Company alerts the Commission of the possibility that its external auditors may refuse to produce audit workpapers in the future unless the Commission can assure their confidentiality. This would impact both the Commission's as well as the Company's access to such workpapers. See Motion at 4-5, incorporating the November 14, 1991, Affidavit of William T. Bishop Jr., a partner of the accounting firm of Coopers and Lybrand. Stated differently, should the Commission persist in its statutory interpretation that external audit materials (specifically external audit workpapers) which pertain to regulated monopoly aspects of Southern Bell are not, per se, entitled to confidential treatment under Section 364.183(3), Florida Statutes, such material may no longer be made available to this Commission.

Upon review, we believe that such an eventuality is not likely. Should the issue arise, it will be addressed at that time.

Therefore, based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that each and every finding set forth herein is approved in every respect. It is further

ORDERED that Southern Bell's Request for Oral Argument is hereby denied. It is further

ORDERED that Southern Bell's Motion for Reconsideration of Order No. 25297 is hereby denied. It is further

ORDERED that Order No. 25297 is hereby affirmed. It is further

ORDERED that this Docket shall remain open.

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

  
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STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

CWM

Commissioner Clark dissented from the Commission's decision to deny Southern Bell's Request for Oral Argument and Motion for Reconsideration of Order No. 25297. The dissent was based on a desire for more information rather than a disagreement with the Prehearing Officer's conclusions.

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 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

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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.