

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request by Southeastern Services, Inc. for termination of rural LEC exemption of Northeast Florida Telephone Company, Inc., pursuant to 47 U.S.C. §251 (f) (1) (B) of the Telecommunications Act of 1996.

DOCKET NO. 000601-TP
ORDER NO. PSC-00-2016-PCO-TP
ISSUED: June 8, 2000

ORDER DENYING SOUTHEASTERN SERVICES, INC.'S
OBJECTION AND MOTION FOR PROTECTIVE ORDER

Background

On May 17, 2000, Southeastern Services, Inc. (Southeastern) filed its Request for an Interconnection Agreement, and stated that it was seeking removal of Northeast Telephone Company Inc.'s (Northeast) rural LEC exemption under 47 U.S.C. §251(f)(1)(B) of the Telecommunications Act of 1996 (the Act). On May 23, 2000, Northeast filed Notices of Taking Depositions of Mark Woods and Kenneth Kirkland, who are officers with Southeastern. The notices were filed pursuant to Rule 1.310(b)(6), Florida Rules of Civil Procedure. On May 24, 2000, Southeastern filed an Objection and Motion for Protective Order requesting that this Commission deny the proposed depositions or limit the inquiry of the depositions. On May 25, 2000, Northeast filed a Response to Southeastern's Objection and Motion for Protective Order.

Arguments

In its Objection and Motion for Protective Order, Southeastern states that Northeast's request for the depositions of Mark Woods and Kenneth Kirkland is for an "improper purpose to annoy and be oppressive." In addition, Southeastern states that Northeast's request for documents relating to the depositions is so broad that it would be virtually impossible to respond. Moreover, Southeastern fears that Northeast's request for depositions is an attempt to reach market studies, business plans, and similar materials that are proprietary and confidential and of absolutely no relevance. Finally, Southeastern states that even if this Commission allows the taking of depositions, they should be limited to interconnection elements required from Northeast.

DOCUMENT NUMBER-DATE

07014 JUN-88

FPSC-RECORDS/REPORTING

In its response, Northeast states that pursuant to 47 U.S.C. §251 (f)(1)(A) of the Act, it is entitled to inquire into all facets of Southeastern's request for interconnection for the purpose of determining whether Southeastern's request is a bona fide request. It states further that until a "bona fide" request has been made, Southeastern is not entitled to even request the elimination of Northeast's rural exemption. Northeast alleges that the standard for its inquiry is set forth in the Act: namely whether the requested interconnection, resale or network element is "unduly economically burdensome," technically feasible," or "consistent with Section 254" relating to Universal Service. Accordingly, Northeast believes that it has a right to inquire of Southeastern's planned interconnection uses.

Conclusion

Taking depositions of individuals having information pertinent to a proceeding is a well established form of discovery. In order to reach the merits of this proceeding it is necessary that Northeast be given an opportunity to depose individuals who may have relevant information. Note that the information that Northeast has requested is considered by Southeastern as proprietary and confidential in nature. Section 364.183, Florida Statutes, and Chapter 25-22.006, Florida Administrative Code, set forth the procedure for protecting information that is considered to be proprietary and confidential in nature. Moreover, the parties may enter into protective agreements that would address Southeastern's concern or, Southeastern could make a request for confidential classification or a claim of confidential treatment.

In addition, Southeastern alleges that even if the depositions are granted, the inquiry should be limited to solely the interconnection elements required from Northeast. The general test for the permissible scope of discovery is whether the information sought is not privileged and is relevant to the subject matter of the proceeding. Rule 1.280(b), Florida Rules of Civil Procedure. It appears premature for Southeastern to make a claim that the information sought by Northeast is privileged, before depositions are taken. However, Northeast has shown that its inquiries are relevant to Southeastern's request for an interconnection agreement.

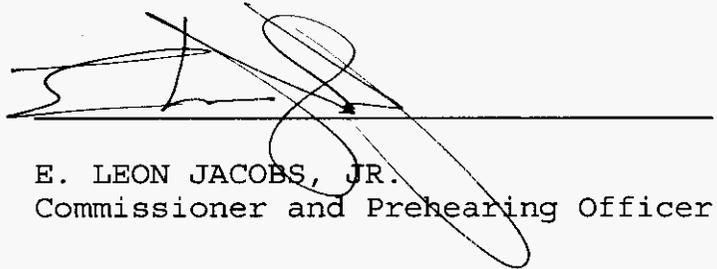
Accordingly, upon review of the pleadings filed by parties, I find that it is appropriate to deny Southeastern's Objection and Motion for Protective Order.

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Based on the foregoing, it is, therefore,

ORDERED by E. Leon Jacobs, as Prehearing Officer, that the Objection and Motion for Protective Order filed by Southeastern, Services, Inc. is hereby denied.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 8th Day of June, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

FRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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

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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.