

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Citizens of) DOCKET NO. 890190-TL
 Florida to Investigate Southern Bell's)
 Cost Allocation Procedures.) ORDER NO. 22495
)
) ISSUED: 2-7-90

ORDER ON DISCOVERYI. The Pleadings

The parties' propensity to produce pleadings apparently has no bounds in this docket. Most of the pleadings listed in this section of this Order have been implicitly ruled upon in previous orders. See Order No. 22460, issued January 24, 1990, and Order No. 22461, issued January 24, 1990. To be absolutely certain that all parties understand the status of the common arguments in the various pleadings, this Order will attempt to dispose of these matters. Pleadings are segregated below by the discovery request to which they relate. In the chart below, "OPC" denotes the Office of Public Counsel (Public Counsel) and "SBT" denotes Southern Bell Telephone and Telegraph Company (Southern Bell).

02/09/89	OPC Interrogatories and Request for Production of Documents
02/15/89	SBT Motion to Strike or, in the Alternative, to Hold Such Discovery in Abeyance
02/21/89	OPC Response to SBT Motion
03/13/89	SBT Response and Objections to OPC Request for Production of Documents and Motion for Protective Order
03/16/89	SBT Interrogatory Responses
03/22/89	OPC Motion to Compel and Request for <u>In Camera</u> Inspection of Documents
03/22/89	OPC Request for Oral Argument
04/03/89	SBT Response to OPC Motion to Compel and Request for <u>In Camera</u> Inspection of Documents
04/03/89	SBT Response to OPC Request for Oral Argument
06/23/89	OPC Motion to Compel Responses to Interrogatories
07/05/89	SBT Response to OPC Motion to Compel Responses to Interrogatories

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ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 2

02/15/89 OPC Interrogatories and Request for Production of Documents
02/20/89 SBT Motion to Strike or, in the Alternative, to Hold Such Discovery in Abeyance
02/23/89 OPC Response to SBT Motion
03/17/89 SBT Response and Objections to OPC Request for Production of Documents and Motion for Protective Order
03/22/89 OPC Motion to Compel and Request for In Camera Inspection of Documents
03/22/89 OPC Request for Oral Argument
03/22/89 SBT Interrogatory Responses
04/03/89 SBT Response to OPC Motion to Compel and Request for In Camera Inspection

04/06/89 OPC Request for Production of Documents
05/08/89 SBT Response and Objections to OPC Request for Production of Documents
05/30/89 OPC Motion to Compel
06/12/89 SBT Response to OPC Motion to Compel

04/18/89 OPC Interrogatories and Request for Production of Documents
05/18/89 SBT Response and Objections to OPC Request for Production of Documents
05/23/89 SBT Interrogatory Responses
05/30/89 OPC Motion to Compel (Documents)
05/30/89 OPC Motion to Compel (Interrogatories)
06/12/89 SBT Response to OPC Motion to Compel (Documents)
06/12/89 SBT Response to OPC Motion to Compel (Interrogatories)

04/19/89 OPC Request for Production of Documents to the BellSouth Corporations
05/19/89 SBT Response and Objections to OPC Request for Production of Documents
05/30/89 OPC Motion to Compel
06/12/89 SBT Response to OPC Motion to Compel

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 3

07/05/89 OPC Request for Production of Documents to SBT and
BellSouth Services, Inc.
08/04/89 SBT Response and Objections to OPC Request for
Production of Documents and Motion for Protective
Order

12/05/89 OPC Request for Production of Documents to SBT and
BellSouth Corporation
01/09/90 SBT Response and Objection to OPC Request for
Production of Documents
01/12/90 OPC Motion to Compel
01/24/90 SBT Response to OPC Motion to Compel

II. Scope of this Order

Each of the pleadings set forth above relate to a particular discovery request initiated by Public Counsel. The pleadings are grouped together according to the discovery request to which they relate. Within these groupings, the pleadings are arranged in chronological order.

By this Order, I will issue my rulings on all matters relative to these seven (7) discovery requests initiated by Public Counsel. These are either interrogatories and/or requests for production of documents, served by Public Counsel on the following dates: February 9, 1989; February 15, 1989; April 6, 1989; April 18, 1989; April 19, 1989; July 5, 1989; and December 5, 1989.

III. Procedural Matters

Southern Bell's Motions to Strike, dated February 15, 1989, and February 20, 1989, are dismissed as moot. By Order No. 20948, issued March 27, 1989, the Commission granted Public Counsel's Petition to Investigate Southern Bell's Cost Allocation Procedures, thus negating the need to entertain Southern Bell's argument that discovery should not commence until Public Counsel's Petition is ruled upon by the Commission.

The Requests for Oral Argument filed on March 22, 1989, by Public Counsel are denied. I do not believe that oral argument would aid in my understanding of the issues in these motions.

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 4

Both Public Counsel and Southern Bell have filed detailed pleadings setting forth their positions and their arguments in support of those positions.

The two Requests for In Camera Inspection of Documents filed by Public Counsel on March 22, 1989, are dismissed as moot. No such inspection is needed, in light of my rulings on Public Counsel's other motions, as follows.

IV. Discussion

By Order No. 22460, issued January 24, 1990, I found Public Counsel's discovery request of November 18, 1988, to be proper as it related to Southern Bell's affiliates. Based upon this finding, I granted Public Counsel's Motion to Compel, as to this issue. However, that Motion to Compel ran only to BellSouth Services, Inc. (BSSI), although the November 18, 1988, discovery request originally sought information regarding BellSouth Communications Research, Inc. (BellCore) and BellSouth Advanced Systems, Inc. (BSASI), in addition to BSSI.

In a large number of the motions cited in Section I above, the issue of discovery relative to Southern Bell's affiliates is again raised. I find Order No. 22460 to be controlling as to BSSI. Additionally, I believe that similar reasoning applies in the case of the other Southern Bell affiliates. Southern Bell, while a separate corporate entity, does not function independently in the provision of regulated telecommunications services in Florida. Rather, Southern Bell is but one member of a much larger corporate "family." BellSouth Corporation (BellSouth) owns Southern Bell, which along with South Central Bell Telephone Company (South Central Bell), owns BSSI. BSSI, in turn, owns BellSouth's share of BellCore. In addition, Southern Bell owns Southern Bell Advanced Systems, Inc. (SBASI), while South Central Bell owns South Central Bell Advanced Systems, Inc. (SCBASI). BSAS¹ manages and directs both SBASI and SCBASI.

Each of these corporate entities, in conjunction with even more corporate "relatives," provide each other with a host of goods and services. The provision of these various goods and services amongst the numerous corporate "relatives," as well as their relationships with each other, have become so interwoven and complex that a detailed cost allocation manual has become necessary. That very manual is the central focus of this

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 5

proceeding. Limiting discovery to only one of these entities simply makes no sense, given the factual setting underlying this docket. Further, as I stated in Order No. 22460, I do not believe it is possible to conduct an adequate investigation without information from and regarding these various affiliates. Therefore, I am denying each and every Objection and Motion for Protective Order filed by Southern Bell, listed in Section I, as it relates to Public Counsel's request for discovery relative to Southern Bell's various affiliates.

Another argument that appears throughout these various sets of pleadings relates to the scope of this proceeding. Southern Bell contends that the Commission limited this proceeding to an examination of the cost allocation methodology itself. See, e.g., Southern Bell's Response to Public Counsel's Motion to Compel, filed July 5, 1989, at page 2-3. In support of this contention, Southern Bell has cited the following language from Order No. 20948:

. . . while audits can assure us that cost allocation procedures are being followed, audits will not disclose the adequacy of the procedures themselves in preventing cross-subsidization.

From this language, Southern Bell then makes the leap in logic that neither the details of its operations nor the actual implementation of the cost allocation procedures are relevant to this proceeding. Southern Bell utilizes this line of reasoning to object to discovery requests directed toward specific dollar amounts and other types of information that would clearly be relevant in an audit. I reject this argument on its face. Such a crabbed reading as that suggested by Southern Bell would render this investigation meaningless. While I do believe that the cost allocation procedures themselves are the central focus in this proceeding, an examination of these procedures cannot occur in a vacuum. An adequate evaluation of the methodology is impossible without sufficient review of its actual implementation. These two concepts cannot be mechanically separated in this docket. A review of both the "abstract" and the "actual" is necessary for a proper review of Southern Bell's cost allocation procedures. Therefore, I am denying each and every Objection and Motion for Protective Order filed by Southern Bell, listed in Section I, that is based upon this line of reasoning.

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 6

Finally, Southern Bell has argued that data concerning interstate operations, other states' information, and unregulated lines of business are all irrelevant to this proceeding. These arguments were disposed of in Order No. 22461, issued January 24, 1990, where I ruled that these categories of information were all highly relevant to this docket.

Because I have denied all of the Objections filed by Southern Bell, it is now appropriate for Southern Bell to produce all of the documents previously withheld from Public Counsel and to respond to all interrogatories that have not been answered. Southern Bell shall have ten (10) days from the date of this Order in which to provide such information.

Based on the foregoing, it is

ORDERED by John T. Herndon, as Prehearing Officer, that Southern Bell Telephone and Telegraph Company's Motions to Strike or, in the Alternative, to Hold Such Discovery in Abeyance, filed February 15, 1989, and February 20, 1989, are dismissed as moot. It is further

ORDERED that the two Requests for Oral Argument filed on March 22, 1989, by the Office of Public Counsel are denied for the reasons set forth herein. It is further

ORDERED that the Objections filed by Southern Bell Telephone and Telegraph Company on March 13, 1989, March 17, 1989, May 8, 1989, May 18, 1989, May 19, 1989, August 4, 1989, and January 9, 1990, are denied for the reasons set forth in the body of this Order. It is further

ORDERED that the Motions for Protective Order filed by Southern Bell Telephone and Telegraph Company on March 13, 1989, March 17, 1989, and August 4, 1989, are denied for the reasons set forth herein. It is further

ORDERED that the Motions to Compel filed by the Office of Public Counsel on March 22, 1989, (two motions); May 30, 1989, (four motions); June 23, 1989; and January 12, 1990, are hereby granted to the extent outlined in the body of this Order. It is further

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 7

ORDERED that the Requests for In Camera Inspection filed on March 22, 1989, by the Office of Public Counsel are dismissed as moot. It is further

ORDERED that Southern Bell Telephone and Telegraph Company shall supply the materials discussed in the body of this Order within ten (10) days of the date of this Order.

By ORDER of Commissioner John T. Herndon, and Prehearing Officer, this 7th day of FEBRUARY, 1990.

John T. Herndon
JOHN T. HERNDON, 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.

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

ORDER NO. 22495
DOCKET NO. 890190-TL
PAGE 8

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 sewer 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.