

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Florida Pay) DOCKET NO. 910590-TL
Telephone Association, Inc.)
against Southern Bell Telephone) ORDER NO. PSC-92-0873-FOF-TL
and Telegraph Company for) ISSUED: 08/25/92
expedited relief to cease)
payment of commissions on)
monopoly revenues.)

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
J. TERRY DEASON
BETTY EASLEY
LUIS J. LAUREDO

ORDER CONSOLIDATING DOCKET NO. 910590-TL
INTO DOCKET NO. 920255-TL

BY THE COMMISSION:

On May 10, 1991, the Florida Pay Telephone Association, Inc. (FPTA) filed a Complaint Against Southern Bell Telephone and Telegraph Company (Southern Bell) for Expedited Relief to Cease Payment of Commissions on Monopoly Revenues (Complaint). On June 7, 1991, Southern Bell filed a Motion to Dismiss FPTA's Complaint (Southern Bell's Motion to Dismiss). On June 19, 1991, FPTA filed its Memorandum in Opposition to Southern Bell's Motion to Dismiss. By Order No. 25150, issued October 1, 1991, we denied Southern Bell's Motion to Dismiss and directed Southern Bell to file its answer to FPTA's Complaint within ten days.

On October 11, 1991, Southern Bell filed its Answer, Affirmative Defense, and Counterclaim to FPTA's Complaint. On November 12, 1991, FPTA filed a Motion to Dismiss Southern Bell's Counterclaim (FPTA's Motion to Dismiss). On November 20, 1991, Southern Bell filed its Memorandum in Opposition to FPTA's Motion to Dismiss. By Order No. 25743, issued February 17, 1992, we granted FPTA's Motion to Dismiss and dismissed Southern Bell's Counterclaim, without leave to amend.

On November 12, 1991, FPTA filed a Request for Expedited Conference with Prehearing Officer for the purpose of establishing an expedited timetable for the docket, including resolution of its Motion to Dismiss Southern Bell's Counterclaim, as well as the setting of a final hearing date.

DOCUMENT NUMBER-DATE

09639 AUG 25 1992

Fpsc-RECORDS/REPORTING

On February 11, 1992, FPTA filed a Motion for Expedited Disposition of Its Complaint following our favorable ruling on its Motion to Dismiss Southern Bell's Counterclaim. In this Motion, FPTA renews its request for an expedited conference before the Prehearing Officer and alleges that there are no disputed issues of material fact that require a Section 120.57(1), Florida Statutes, formal hearing.

On February 18, 1992, Southern Bell filed its Response to FPTA's Motion for Expedited Disposition of Its Complaint. Southern Bell cited two main reasons for its opposition to FPTA's Motion: (1) Docket No. 911053-TL should be resolved before FPTA's Complaint is addressed; and (2) Southern Bell believes there are disputed issues of material fact to be resolved in this matter.

Our staff has attempted to bring the parties together to create a mutually acceptable list of issues that remain to be resolved in this proceeding. To this end, our staff scheduled and conducted an Issue Identification Workshop on March 23, 1992. At the workshop, both FPTA and staff proposed two issues, neither of which the proponents believed involve disputed issues of material fact. Southern Bell, however, proposed six additional issues, five of which it asserted involve disputed issues of material fact that require resolution through a formal hearing.

Although the Issue Identification Workshop did not result in an agreement between the parties, considerable progress was made in narrowing and sharpening the focus in this matter. As a follow-up to the workshop, our staff requested that the parties each file a memorandum in support of its own position by April 10, 1992. Each of the parties then made such a filing.

This docket was next brought before us at our May 5, 1992, Agenda Conference. At that time, on our own motion, we set the matter for oral argument.

We heard oral argument in this docket on June 16, 1992. The main thread of the argument was whether any (or all) of the statutes cited by FPTA provide a cause of action and, if so, whether a hearing is necessary to resolve FPTA's Complaint. FPTA argued that it is entitled to judgment on the pleadings as a matter of law, while Southern Bell essentially argued that FPTA's Complaint should be dismissed.

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After a review of all the facts and circumstances surrounding this docket, as well as consideration of a number of other potential courses of action, we find it appropriate that this docket be consolidated into Docket No. 920255-TL. Docket No. 920255-TL was initiated to determine whether local exchange company (LEC) pay telephone service (PATS) is effectively competitive and whether LEC PATS should be regulated differently than it is currently regulated. As a part of that determination, we will be examining the use of monopoly revenues in the pay telephone market on an industry-wide basis. See Order No. PSC-92-0428-PCO-TL.

We believe that the issues raised by FPTA in the instant docket involve important questions of statutory interpretation, with potential implications ranging far beyond the limited parties and situations presented in the Complaint. In addition, we will avoid duplication of effort and use our resources most wisely by consolidating the dockets. Finally, we believe the issue is most appropriately decided in the broader context presented by Docket No. 920255-TL. We note that this action will render FPTA's Request for Expedited Conference with Prehearing Officer, FPTA's Motion for Expedited Disposition of Its Complaint, and Southern Bell's Response to FPTA's Motion for Expedited Disposition of Its Complaint moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Docket No. 910590-TL shall be consolidated into Docket No. 920255-TL for the reasons set forth herein. It is further

ORDERED that certain pleadings are hereby rendered moot as set forth herein. It is further

ORDERED that this docket shall remain open.

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By ORDER of the Florida Public Service Commission this 25th
day of August, 1992.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

ABG

by: Kay Ferguson
Chief, Bureau of Records

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 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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.