

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Proposed tariff filing by	)	DOCKET NO. 891194-TL
SOUTHERN BELL TELEPHONE AND TELEGRAPH	)	
COMPANY clarifying when a non-published	)	ORDER NO. 23995
number can be disclosed and introducing	)	
Caller ID to TouchStar Service	)	ISSUED: 1-16-91
	)	

ORDER GRANTING MOTION FOR  
ADDITIONAL LIMITED HEARING

On June 19, 1990, and June 21, 1990, the Office of Public Counsel (OPC) served its First and Second Requests for Production of Documents (Production Requests) to Southern Bell Telephone and Telegraph Company (Southern Bell), BellSouth Service, Inc. (BSSI), and BellSouth Corporation (BellSouth Corp.). Southern Bell filed its Responses and Objections on July 24, 1990, and July 26, 1990. OPC then filed a Motion to Compel and Request for In Camera Inspection on August 7, 1990. Southern Bell filed its Response to OPC's Motion to Compel on August 14, 1990.

Among other things, the Motion to Compel asked that Southern Bell be ordered to produce all documents withheld based upon a claim of irrelevancy. Additionally, the Motion asked that BellSouth Corp. be ordered to produce responsive documents. Southern Bell's Response to the Motion to Compel urged that it be denied, citing both factual and legal errors on the part of OPC. On September 25, 1990, Southern Bell filed a Supplement to its July 24, 1990, Response and Objections, along with a Motion for Temporary Protective Order.

OPC's Motion to Compel was heard during the Prehearing Conference held on November 15, 1990, where it was granted in part and ruling was deferred in part. OPC and Southern Bell informed the Prehearing Officer of their intent to informally resolve the issues surrounding the alleged privileged documents, so ruling on that portion of the Motion was deferred. The Prehearing Officer ordered Southern Bell to furnish to OPC and file with the Commission, by November 21, 1990, a list of the documents responsive to OPC's discovery request which Southern Bell had either withheld or redacted portions of, subject to its stated objections. Along with this listing, Southern Bell was to identify, with specificity, any and all claims of confidentiality and/or irrelevancy. The Prehearing Officer deferred ruling on the request for in camera inspection. These decisions are reflected in the Prehearing Order, Order No. 23791, issued November 21, 1990. Subsequently, on November 21, 1990, Southern Bell filed its list, identifying twenty-two documents that were redacted and two that

DOCUMENT NUMBER-DATE

00513 JAN 16 1991

PSC-RECORDS/REPORTING

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were withheld in their entirety, pursuant to the relevancy objection. Along with the list, Southern Bell also produced the documents that had been previously redacted or withheld, except for one document believed to be proprietary to AT&T Communications of the Southern States, Inc. (ATT-C).

The hearing in this matter was scheduled for November 28 and 29, 1990. OPC again raised the Motion to Compel at the start of the hearing on November 28, 1990. OPC requested that we delay the hearing until OPC received a complete ruling on the Motion and had received the requested documents from Southern Bell and BellSouth Corp. We declined to take such action. We did, however, convene a motion hearing during the midday break on November 28, 1990.

At the November 28th motion hearing, the Prehearing Officer entered rulings encompassing two separate subjects. First, as to the one ATT-C document not included in the November 21st production of documents, the Prehearing Officer entered a Temporary Protective Order through the close of business that day and ordered Southern Bell to produce the document to OPC immediately. The second subject addressed by the Prehearing Officer was BellSouth Corp documents responsive to OPC's Production Requests. OPC's Motion to Compel was granted as to BellSouth Corp., with the exception of those documents described in requests number 5 (iv) and 5 (v) of the June 19, 1990, Production Request. Transcript at Page 31, Lines 14-18. The Prehearing Officer ordered Southern Bell to file a list of responsive BellSouth Corp. documents by November 30, 1990, and to produce the documents themselves no later than December 14, 1990. Additionally, the Prehearing Officer directed that any objections by BellSouth Corp. itself were to be raised within the above-described timeframe.

On November 30, 1990, Southern Bell filed the required list and identified 180 documents in the possession of BellSouth Corp. responsive to the Production Requests. Southern Bell subsequently provided the documents to OPC the following week.

On December 20, 1990, OPC filed a Motion for Additional Limited Hearing and for other relief. As grounds for this motion, OPC asserts that the newly produced documents "contain a host of new information concerning issues in this docket" including:

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- (a) A document discussing the possibility of charging \$.50, \$.75, or \$1.00 per call for Call Trace service.
- (b) Documents considering plans to provide the calling party's telephone number to subscribers of Call Trace service--a service which may have important implications for law enforcement if the Commission should approve per call blocking, since Call Trace will produce the calling party's telephone number even if the calling party utilizes per call blocking.
- (c) Documents considering plans to provide name and address information to subscribers throughout the BellSouth region. Combined with Caller ID, this service would allow subscribers to obtain the name and address of calling parties.
- (d) A document discussing the possibility of providing "block unidentified calls"--a service allowing a Caller ID customer to block the receipt of calls when the calling party blocks the transmission of their number.

OPC has requested that we hold an additional limited hearing to consider the evidence raised in the 180 documents. As grounds for this request, OPC cites the due process provisions of the Florida Administrative Procedures Act, as well as the due process guarantees contained in the Florida and United States Constitutions. OPC has also asked that we reschedule the filing of briefs and the agenda conference until a reasonable time after the conclusion of the additional limited hearing.

On December 26, 1990, the Department of General Services (DGS) filed its Joinder in the Motion for Additional Hearing and for Other Relief. DGS asserts that new information contained in the documents recently produced by Southern Bell could adversely affect its substantial interests.

On January 2, 1991, Southern Bell filed its Response to OPC's Motion and to DGS' Joinder. Southern Bell asserts that additional hearings in this docket are neither appropriate, necessary, nor

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required. Southern Bell further asserts that it has fully complied with the Florida Rules of Civil Procedure and the Prehearing Officer's orders throughout this proceeding and that any objections to producing documents were both timely and made in good faith. Southern Bell responds to the four categories of documents cited by OPC's Motion as follows:

- (a) The issue regarding rate structure for Call Tracing was thoroughly considered during the hearing. Internal discussion and debate are of no significance once policy is decided. Further, OPC submitted its own evidence with respect to this issue. Additional evidence is not needed.
- (b) Southern Bell's witness discussed this proposition at the hearing and stated Southern Bell does not intend to disclose the number. This was not an issue in this docket. Future services will require separate Commission approval.
- (c) This proposition was discussed by Southern Bell's witness who stated there were no current plans to offer this service. This was not an issue in this docket. Future services will require separate Commission approval.
- (d) Commission staff received discovery on this subject. Southern Bell's witness also discussed the service during her testimony. The Commission has received complete and adequate information on this matter.

Finally, Southern Bell asserts that OPC had sufficient opportunity to depose and cross-examine all of the witnesses listed in its Motion prior to the hearing. Southern Bell urges that we deny OPC's Motion and DGS' Joinder.

Upon consideration, we find it appropriate to grant OPC's Motion and schedule an additional limited hearing in this matter. Fundamental principles of due process compel this conclusion. See Transcript of motion hearing at Page 38, Line 8 through Page 39, Line 19, for our discussion regarding the possibility of holding an additional limited hearing.

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The following schedule shall govern the remaining events in this docket:

January 25, 1991 - OPC's List Due (see below)  
February 1, 1991 - Prehearing Conference  
March 11, 1991 - Limited Hearing  
March 25, 1991 - Supplemental Briefs Due  
April 5, 1991 - Staff Recommendation Due  
April 18, 1991 - Special Agenda

OPC shall prepare a list which identifies the issue to which each document relates, for each document OPC plans to utilize at the upcoming hearing. OPC shall also specify how the document relates to the particular issue. OPC shall file this list with the Commission by January 25, 1991, and shall simultaneously serve a copy on each party. Each party desiring to respond to OPC's list shall prepare a written response which shall be filed with this Commission and served on all the parties no later than immediately prior to the start of the prehearing conference.

The additional hearing shall be limited solely to cross-examination on the documents produced in response to the Prehearing Officer's November 28th ruling. To the extent possible, OPC and Southern Bell are strongly encouraged to work cooperatively to facilitate the upcoming hearing by reaching agreement on the witnesses to be called and by consolidating them to the degree possible. OPC is also strongly encouraged to conduct depositions before the hearing in order to limit the amount of questioning that will be needed at the hearing. Because of limited governmental resources, Southern Bell is requested to agree to allow its witnesses to be deposed here in Tallahassee whenever possible.

It is hoped that by good faith efforts in the above endeavors, the number of documents to be utilized in the hearing will be narrowed to the fullest extent possible. All parties to this proceeding are hereby directed that any controversy regarding the above-described procedures shall be immediately brought to the attention of staff counsel.

DGS did not timely assert a demand for discovery in this matter. Therefore, DGS has no standing to join in OPC's Motion. Accordingly, DGS' Joinder shall be denied.

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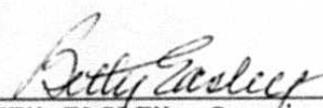
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Motion for Additional Limited Hearing and for Other Relief filed by the Office of Public Counsel on December 20, 1990, is hereby granted to the extent outlined herein. It is further

ORDERED that the Joinder in the Motion for Additional Hearing and for Other Relief filed by the Department of General Services on December 26, 1990, is hereby denied for the reasons set forth herein. It is further

ORDERED that this docket shall remain open.

By ORDER of Commissioner Betty Easley, as Prehearing Officer,  
this 16th day of JANUARY, 1991.

  
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BETTY EASLEY, 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.

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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 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.