

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for arbitration concerning complaint of American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. against BellSouth Telecommunications, Inc. regarding reciprocal compensation for traffic terminated to internet service providers.

DOCKET NO. 981008-TP
ORDER NO. PSC-00-1572-FOF-TP
ISSUED: August 31, 2000

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.

FINAL ORDER DISMISSING COMPLAINT

BY THE COMMISSION:

On August 6, 1998, American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. and ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (e.spire) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth). By its Petition, e.spire requested enforcement of its interconnection agreement with BellSouth regarding reciprocal compensation for traffic terminated to Internet Service Providers. On August 31, 1998, BellSouth filed its Answer and Response to e.spire's Petition. An administrative hearing was conducted regarding this dispute on January 20, 1999.

On April 5, 1999, we issued Order No. PSC-99-0658-FOF-TP resolving e.spire's complaint. Therein, we determined: the evidence did not indicate that the parties intended to exclude ISP traffic from the definition of "local traffic" in their Interconnection Agreement; the two million minute differential required by the Agreement was met in March, 1998; the "most favored nations" (MFN) portions of the agreement would be enforced in

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resolving the dispute over the applicable reciprocal compensation rate for local traffic; and attorney's fees were due to e.spire pursuant to Section XXV(A) of the Agreement. Order at pages 7, 13, 15, and 16, respectively. A portion of this Commission's Order was issued as Proposed Agency Action. In the Proposed Agency Action portion, we also required the parties to determine the number of minutes originated by e.spire and terminated on BellSouth's system using actual, available information, or using a proposed methodology if actual information was no longer available. Order at page 17.

On April 21, 1999, BellSouth timely filed a Motion for Reconsideration by the Full Commission of the Commission's Order. On April 26, 1999, BellSouth timely filed a Petition on the PAA portions of Order No. PSC-99-0658-FOF-TP. Subsequently, on May 24, 1999, the parties filed a Joint Motion to Modify Portions of Order No. PSC-99-0658-FOF-TP. By Order No. PSC-99-1453-FOF-TP, issued July 26, 1999, BellSouth's Motion for Reconsideration was denied and the Joint Motion to Modify Portions of the final Order was granted.

On August 20, 1999, BellSouth filed a Motion for Stay of Order No. PSC-99-0658-FOF-TP Pending Appeal. e.spire timely responded to the motion on September 1, 1999. e.spire withdrew portions of its response the following day. The request for stay was denied by Order No. PSC-00-0245-FOF-TP, issued February 7, 2000.

On July 5, 2000, BellSouth filed a Motion for Withdrawal of Petition on Proposed Agency Action. e.spire did not file a response. In its Motion, BellSouth explains that it sought review of our post-hearing order in this proceeding before the U.S. District Court. During those proceedings, however, the parties reached a settlement of their underlying dispute. Due to the settlement, the District Court issued an Order of Dismissal on April 19, 2000, and a Judgment was issued on May 22, 2000. In view of these events, BellSouth asks to withdraw its protest of the Proposed Agency Action portion of Order No. PSC-99-0658-FOF-TP.

Upon consideration, the Motion to Withdraw BellSouth's protest of Order No. PSC-99-0658-FOF-TP is granted, and the PAA portions of that Order are rendered final and effective as of the date of our vote on this matter, August 15, 2000. Furthermore, this Docket may now be closed, because with the withdrawal of BellSouth's protest and the settlement of the matter before the U.S. District Court, there are no further issues for this Commission to address.

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It is therefore

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc's Motion for Withdrawal of Petition on Proposed Agency Action is hereby granted. It is further

ORDERED that the Proposed Agency Action portions of Order No. PSC-99-0658-FOF-TP are hereby reinstated as final agency action, with an effective date of August 15, 2000. It is further

ORDERED that this Docket shall be closed.

By ORDER of the Florida Public Service Commission this 31st day of August, 2000.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

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Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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 and/or wastewater 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 Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.