

MEMORANDUM

February 19, 1999

19 11:43

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (MCKINNEY/COX) *AK gem*

RE: DOCKET NO. 981642-TP - In re: Petition by Intermedia Communications, Inc. for arbitration with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.
DOCKET NO. 981745-TP - In re: Petition by American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. for arbitration of unresolved issues in an interconnection agreement with BellSouth Telecommunications, Inc.

0349-PCO

Attached is an:

ORDER MODIFYING PROCEDURAL SCHEDULE
AND DISCOVERY REQUIREMENTS

to be issued in the above-referenced docket. (Number of pages in order - 5)

JCM/WPC/slh
Attachment
cc: Division of Communications
I:981642mo.wpc

MUST GO TODAY

*6-marked -
RAR
2/19/99*

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Intermedia Communications, Inc. for arbitration with BellSouth Telecommunications, Inc. pursuant to the Telecommunications Act of 1996.

DOCKET NO. 981642-TP

In re: Petition by American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. for arbitration of unresolved issues in an interconnection agreement with BellSouth Telecommunications, Inc.

DOCKET NO. 981745-TP
ORDER NO. PSC-99-0349-PCO-TP
ISSUED: February 19, 1999

ORDER MODIFYING PROCEDURAL SCHEDULE
AND DISCOVERY REQUIREMENTS

On January 14, 1999, an Order on Consolidating Dockets for Hearing and Establishing Procedure, Order No. PSC-99-0090-PCO-TP, (Procedural Order) was issued to establish the procedural schedule for Docket Nos. 981642-TP and 981745-TP. On January 15, 1999, American Communications Services, Inc. of Jacksonville, Inc., d/b/a e.spireSM Communications, Inc. (e.spire) filed a Motion to Shorten Time for responses to discovery requests to twenty days. Also on that date, e.spire filed a Motion to Exceed Limits on Discovery to increase the interrogatory and production of documents limits prescribed by the procedural order. The motion did not specify limits for the increases. On January 26, 1999, Intermedia Communications, Inc. (Intermedia) filed Motions to Shorten Response Time for Response to Discovery and to Exceed Discovery Limitations. Intermedia specifically requested an increase of the interrogatory limit to 150 and the production of documents limit to 125, based on the number of issues and their complexity.

DOCUMENT NUMBER-DATE

02203 FEB 19 99

FPSC-REG: PDS/REPORTING

On January 21, 1999, BellSouth Telecommunications, Inc. (BellSouth) filed its response to e.spire's Motion to Shorten Time for Response and to Exceed Limits on Discovery. BellSouth contends that the motions should only be granted if two conditions are met. First, the time for responding and the limits to discovery should be uniform among the parties. Second, the parties should be required to seek leave of the Commission to serve any additional written discovery beyond their first set of interrogatories and requests for production. BellSouth notes that e.spire's first set of interrogatories to BellSouth doubled the limit of 100 established by the Procedural Order.

On January 19, 1999, BellSouth, Intermedia and e.spire filed a Joint Motion to Amend the Procedural Schedule. The parties jointly moved that the Commission establish the following revised due dates:

Testimony - Direct (BellSouth)	February 4, 1999
Testimony - Rebuttal (All)	February 25, 1999
Prehearing Statements	February 25, 1999
Notice of Prehearing and Hearing	March 3, 1999

After the filing of that motion, the parties notified staff that, due to ongoing settlement negotiations, the filings dates may need to be further revised. Accordingly, on February 4, 1999, BellSouth, Intermedia, and e.spire filed a Second Joint Motion to Amend the Procedural Schedule, conditioned on BellSouth's serving its response to e.spire's First Request for Production of Documents to BellSouth Telecommunications, Inc. on February 4, 1999. In that motion, the parties jointly moved that the Commission establish the following revised due dates:

Testimony - Direct (BellSouth)	February 9, 1999
Testimony - Rebuttal (All)	March 1, 1999
Prehearing Statements	March 1, 1999
Notice of Prehearing and Hearing	March 3, 1999

The parties indicated that this joint motion will supersede the January 19, 1999, joint motion.

Finally, at a Commission staff issue identification workshop on February 8, 1999, the parties agreed to allow BellSouth until February 12, 1999, to file its direct testimony, as well as to afford e.spire and Intermedia the opportunity to revise their direct testimony by that same date. Underlying this proposed

extension of time is the understanding that the parties will revise their testimony to make it consistent with the issues proposed for the proceeding and to allow additional time for settlement negotiations. Also, the parties agreed to a February 26, 1999, filing date for their prehearing statements.

Upon review, it is hereby ordered that the following revisions to the Procedural Order in this docket are appropriate. The deadlines proposed in the Second Joint Motion in conjunction with the agreement reached by the parties at the February 12, 1999, staff workshop appear reasonable. No party objected to these revised filing dates. Therefore, BellSouth's direct testimony and the other parties' revised direct testimony shall be due on February 12, 1999. All rebuttal testimony shall be due on March 1, 1999. Also, the parties shall file prehearing statements on February 26, 1999, as agreed upon, in order to allow sufficient time for the review and processing of these statements. Finally, there is no need to revise the Notice of Prehearing and Hearing as requested in the Second Joint Motion. The Commission will provide all parties with adequate notice pursuant to Chapter 120, Florida Statutes.

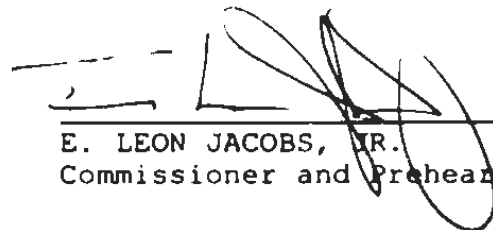
With regard to the e.spire and Intermedia motions on discovery, some revisions to the requirements of the Procedural Order appear reasonable given the complexity and number of issues in this proceeding. Interrogatory requests shall be increased from 100 to a limit of 250, and production of document requests shall be increased from 75 to a limit of 100. Finally, it appears appropriate to shorten the discovery response time from 30 to 15 days. As BellSouth requested, the parties must request leave of the Commission to serve any discovery requests above these limits. e.spire and Intermedia requested a 20-day response period. The parties, however, have had difficulty agreeing on the issues for this proceeding, and the hearing begins on March 18, 1999. Therefore, a 15-day response period is reasonable and appropriate for all discovery requests filed after the issuance of this Order.

Based upon the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 19th day of February, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

WPC

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 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

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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.