

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-99-0379-CFO-TP
ISSUED: February 22, 1999

ORDER GRANTING REQUEST FOR CONFIDENTIAL
TREATMENT OF DOCUMENT NO. 12711-98

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 requests 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 regarding this matter was held on January 20, 1999.

On January 19, 1999, e.spire filed a Motion for Confidential Treatment of Document No. 12711-98, exhibit KAC-2, prefiled by e.spire's witness Kevin Cummings and proffered at hearing by e.spire's witness Talmage. Specifically, e.spire asks that the invoices at pages 1, 2, 36, 37, 68, 69, 102, 137, and 138 be granted confidential treatment. e.spire asserts that these invoices contain minutes of use, the total due, and the rate that is due. e.spire also asks that the daily peg count and usage data on pages 3 to 31, 38 to 65, 70 to 99, 104 to 134, and 139 to 167 be given confidential status. e.spire asserts that this information reflects message counts and daily usage for the indicated months. In addition, e.spire seeks confidential treatment of the summary of daily terminating and originating local messages and minutes on pages 32 and 33. e.spire indicates that this information is contained in the columns on these pages and in the summary box.

DOCUMENT NUMBER-DATE

02296 FEB 22 99

FPSC-RECORDS/REPORTING

e.spire asserts that the information on these pages should be granted confidential treatment, because it is sensitive usage data that indicates e.spire's business plans. e.spire claims that this information is highly valuable to e.spire and its competitors. The company asserts that if this information is publicly released, e.spire's competitors would be able to analyze the data to determine the success of a business plan, and to develop means of using e.spire's efforts to the competitor's advantage. e.spire adds that it treats this information as confidential data.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into one of the statutory examples set out in Section 364.183, Florida Statutes, or to demonstrate that the information is proprietary confidential information, the disclosure of which will cause the Company or its ratepayers harm.

Section 364.183(3), Florida Statutes, states, in pertinent part, that proprietary confidential business information is information that

. . . is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Based on the definition of proprietary confidential business information in Section 364.183(3), Florida Statutes, it appears that the information for which e.spire seeks confidential classification is proprietary information that, if disclosed, would cause harm to the company or its ratepayers because it would impair e.spire's ability to compete. It shall, therefore, be granted confidential treatment in accordance under Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

ORDER NO. PSC-99-0379-CFO-TP
DOCKET NO. 981008-TP
PAGE 3

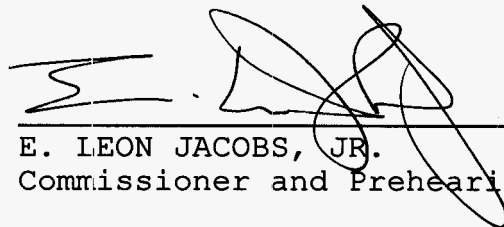
It is therefore,

ORDERED by Commissioner E. Leon Jacobs, as Prehearing Officer, that e.spire Communications, Inc.'s request for confidential treatment of Document No. 12711-98 is granted. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the documents specified herein shall expire eighteen (18) months from the date of issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 364.183, Florida Statutes. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 22nd day of February, 1999.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

BK

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 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 wastewater 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.