



Public Service Commission

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RECORDS AND REPORTING

DATE: August 3, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF LEGAL SERVICES (B. KEATING) *AK msd*
DIVISION OF COMPETITIVE SERVICES (SIMMONS, ILERI) *xi*
SAS

RE: DOCKET NO. 981008-TP - 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 BELL SOUTH TELECOMMUNICATIONS, INC. REGARDING RECIPROCAL COMPENSATION FOR TRAFFIC TERMINATED TO INTERNET SERVICE PROVIDERS.

AGENDA: 08/15/00 - REGULAR AGENDA - MOTION FOR WITHDRAWAL OF PETITION ON PROPOSED AGENCY ACTION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\981008CL.RCM

CASE BACKGROUND

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 6, 1999, the Commission issued Order No. PSC-99-0658-FOF-TP resolving e.spire's complaint. Therein, the Commission

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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 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 the Commission's Order was issued as Proposed Agency Action. In the Proposed Agency Action portion, the Commission 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. This is staff's recommendation on BellSouth's motion.

DISCUSSION OF ISSUES

ISSUE 1: Should BellSouth's Motion for Withdrawal of Petition on Proposed Agency Action be granted?

RECOMMENDATION: Yes. Staff recommends that the Motion be granted, that the PAA portions of Order No. PSC-99-0658-FOF-TP be rendered final as of the date of the Commission's decision on this recommendation, and that this Docket be closed.

STAFF ANALYSIS: In its Motion, BellSouth explains that it sought review of the Commission's 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.

Staff recommends that the Motion to Withdraw BellSouth's protest of Order No. PSC-99-0658-FOF-TP be granted, and that the PAA portions of that Order be rendered final and effective as of the date of the Commission's vote on this recommendation. Furthermore, staff believes that 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 the Commission to address.