

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Initiation of show cause proceedings against ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 991319-TX

In re: Initiation of show cause proceedings against ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 991756-TI

In re: Initiation of show cause proceedings against American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. for apparent violation of Rule 25-4.043, F.A.C., Response to Commission Staff Inquiries.

DOCKET NO. 991757-TX
ORDER NO. PSC-00-0457-AS-TP
ISSUED: March 3, 2000

The following Commissioners participated in the disposition of this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.

ORDER ACCEPTING SETTLEMENT

BY THE COMMISSION:

I. Background

On November 11, 1997, ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (ACSI/ALEC) was granted certificate no. 5474 to provide alternative local exchange services in Florida.

DOCUMENT NUMBER-DATE

02842 MAR-38

FPSC-RECORDS/REPORTING

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Between November 13, 1998, to April 14, 1999, ACSI/ALEC failed to respond to four staff inquiries regarding consumer complaints, of which one had been closed by the Division of Consumer Affairs as no response provided. Our staff opened Docket No. 991319-TX September 3, 1999, to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

On March 10, 1998, ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc., (ACSI/IXC) was granted certificate no. 5339 to provide interexchange telecommunications services in Florida. Between January 29, 1999, and April 26, 1999, ACSI/IXC failed to respond to four staff inquiries regarding consumer complaints, of which two had been closed by the Division of Consumer Affairs as no response provided. Our staff opened Docket No. 991756-TI on November 24, 1999, to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code.

On October 15, 1996, American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc., (American/ALEC) was granted certificate no. 4722 to provide alternative local exchange services in Florida. Between October 2, 1998 and April 22, 1999, American/ALEC failed to respond to five staff inquiries regarding consumer complaints, of which one had been closed by the Division of Consumer Affairs as no response provided. Our staff opened Docket No. 991757-TX on November 24, 1999, to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code.

In correspondence dated August 30, 1999, the Division of Consumer Affairs provided the Division of Telecommunications a list of consumer complaint cases for which the companies had failed to respond to staff's inquiries. Our staff determined that the consumer complaints were associated with three certificated entities and subsequently opened three dockets to investigate whether each entity should be required to show cause why it should not be fined or have its certificate canceled, pursuant to Section 364.285, Florida Statutes. Prior to staff's filing of recommendations, e.spire Communications, Inc. initiated negotiations with staff and submitted an offer to settle all three cases.

II. e.spire's Settlement Proposal

On October 18, 1999, our staff met with e.spire representatives to review the consumer complaints, address concerns about the causes of e.spire's failure to respond to the complaints, and discuss a settlement arrangement. On January 14, 2000, e.spire submitted a settlement proposal (Attachment A, pages 6-7) to resolve these show cause dockets.

In its settlement offer, e.spire agreed to ensure that Consumer Affairs files were updated with the current point of contact in its Regulatory Department. e.spire arranged to receive the Commission's monthly complaint status report as a check of filings. e.spire established a single point of contact in its Customer Care Department to assist the Regulatory Department with Commission inquiries. e.spire designed a procedure setting forth written instructions for handling Commission complaints. e.spire ensured that its personnel were aware of the requirement for maintaining current information with the Commission and for timely responding to inquiries. Finally, e.spire, without admitting to any intentional or willful violations of Commission rules, will make a voluntary contribution in the amount of \$6,500.00 to the General Revenue Fund within 30 days from the date of this Order.

During the period September 3, 1999, through November 5, 1999, e.spire provided satisfactory responses for all open consumer complaints and all complaint cases related to these show cause actions have been closed.

III. Conclusion

Based on e.spire's initiatives to ensure that Commission inquiries are timely handled, we believe the terms of the settlement agreement, as summarized in this recommendation, are fair and reasonable. e.spire shall remit a voluntary contribution to the General Revenue Fund pursuant to Section 364.285, Florida Statutes, in the amount of \$6,500.00. The contribution shall be received by us within 30 days from the date of this Order and shall identify the dockets numbers and the names of the companies. The contribution shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. If the company fails to pay in accordance with the terms of this Order, the companies' certificates should be canceled administratively. Finally, this

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docket shall be closed upon receipt of the \$6,500 contribution or cancellation of the certificates.

It is therefore


ORDERED by the Florida Public Service Commission that the terms of the settlement agreement proposed by e.spire Communications, Inc. are accepted. It is further

ORDERED that e.spire Communications, Inc. shall remit a voluntary contribution to the General Revenue Fund pursuant to Section 364.285, Florida Statutes, in the amount of \$6,500.00. The contribution shall be received by us within 30 days from the date of this Order and shall identify the docket numbers and the names of the companies. The contribution shall be forwarded to the Office of the Comptroller for deposit in the State General Revenue Fund pursuant to Section 364.285(1), Florida Statutes. It is further

ORDERED that if e.spire Communications, Inc. fails to pay in accordance with the terms of this Order, ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc.'s alternative local exchange certificate and interexchange telecommunications certificate and American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc.'s alternative local exchange certificate shall be canceled administratively. It is further

ORDERED that this docket shall be closed upon receipt of the \$6,500 contribution or cancellation of the certificates.

By ORDER of the Florida Public Service Commission this 3rd day of March, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

DWC

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 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.

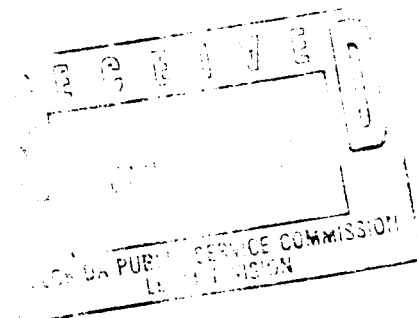
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January 14, 2000



BY HAND DELIVERY

Diana Caldwell, Esq.
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2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: FPSC Docket Nos. 991319-TX, 991756-TI, and 991757-TX

Dear Diana:

The purpose of this correspondence is to memorialize our recent conversations and reduce to writing a proposal for resolution of the captioned dockets. We believe this to be a fair and appropriate proposal and urge acceptance by the Staff and favorable consideration by the PSC.

Docket No. 991319-TX was opened upon the request of Staff to investigate whether e.spire had failed to timely respond to Staff inquiries with respect to consumer complaints. Shortly after the docket was opened e.spire contacted Staff to request copies of the inquiries at issue so that we could review our files. Staff provided copies of consumer inquiry forms, and each of these was reviewed and copies of their responses were provided to Staff. Subsequently, a representative from e.spire met with Staff and reviewed the allegations and potential resolution of the show cause. During that meeting it was explained that there had been unusual turnover with e.spire's regulatory staff during this period of time which contributed to delays and this was compounded by the fact that several points of contact were being used by the PSC for complaint referrals. After this meeting, e.spire met with a representative in Consumer Affairs. During this meeting and subsequent thereto, e.spire took the following actions to improve its handling of Commission inquiries:

- Insured that Consumer Affairs files were updated with the current point of contact in e.spire's Regulatory Department.
- Arranged to receive the Commission's monthly complaint status report as a check on filings.
- Established a single point of contact in the Customer Care Department to assist the Regulatory Department with Commission inquiries.

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- Designed a procedure setting forth written instructions for handling Commission complaints.
- Insured that personnel were aware of the requirement for maintaining current information with the Commission and for timely responding to inquiries.

With these changes in place e.spire believes that the situation has been addressed and appropriate actions have been taken.

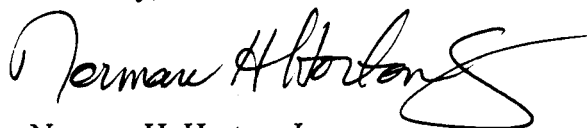
Since that initial meeting, the Commission has opened two additional dockets addressing the same allegations. These dockets do not address new or additional apparent violations but rather take the original allegations and address them in three separate dockets due to the fact e.spire has three certificates. We have expressed our disagreement with that action but for purposes of this proposal we would not challenge that action. We do reserve the right to address that issue at a later date if it ever becomes necessary in another proceeding.

We believe that the actions implemented to date are responsive to the allegations and are appropriate corrective actions by e.spire. In addition to these changes which have been implemented, in order to resolve these dockets, e.spire would make a voluntary contribution of \$6,500.00 to the General Revenue Fund of the State of Florida within 30 days from the date of an order approving this proposal becomes final. These changes and the contribution would be in settlement of all 3 dockets and resolve all alleged violations as of the date of acceptance of the proposal by the Commission.

With this proposal, e.spire is not admitting to any intentional or willful violation of PSC rules or regulations, but rather is proposing a settlement which is fair to all parties. This proposal represents compromises by both e.spire and the Staff and to that extent neither party is abandoning or waiving any argument or position which has or would be taken in a formal proceeding. Should the Commission not accept this proposal as offered, e.spire would reserve the right to withdraw it.

In conclusion, we thank the Staff for their assistance and attention to this docket. We believe that the proposal set out herein is a fair, reasonable resolution of the proposed show cause and we would urge that Staff favorably recommend the adoption of this proposal and the docket be closed. Should you have questions, please do not hesitate to call me.

Sincerely,



Norman H. Horton, Jr.