

MEMORANDUM

January 14, 1999

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RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (McKINNEY) *JEM MCB*

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.

99-0090-PCO

Attached is an **Order Consolidating Dockets for Hearing and Establishing Procedure**, to be issued in the above-referenced dockets. (Number of pages in order - 10)

JCM/sln

Attachment

cc: Division of Communications (Stavanja et al.) *ka*

I:981642co.jcm

see 1, ka

MUST GO TODAY

S/O

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
ORDER NO. PSC-99-0090-PCO-TP
ISSUED: January 14, 1999

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 ON CONSOLIDATING DOCKETS FOR HEARING
AND ESTABLISHING PROCEDURE

On December 28, 1998, Intermedia Communications Inc. (Intermedia) and American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. (e.spire) requested to consolidate the arbitration proceedings involving BellSouth Telecommunications, Inc. (BellSouth) filed by Intermedia and e.spire, pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act). Intermedia and e.spire assert that while each proceeding may involve some limited issues that are unique to one docket or the other, the proceedings in the two dockets (981642-TP and 981745-TP) will involve many common questions of law, fact, and policy. BellSouth agrees to consolidating both dockets. The cases are set for an administrative hearing on March 18, 22, 23, and 24, 1999.

Section 252(g) of the Act provides:

(G) CONSOLIDATION OF STATE PROCEEDINGS.-
Where not inconsistent with the requirements of this Act, a State commission may, to the extent practical, consolidate proceedings under sections 214(e), 251(f), 253, and this section in order to reduce administrative burdens on telecommunications carriers, other

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parties to the proceedings and the State
commission in carrying out its
responsibilities under this Act.

The Act is clear that the State Commission may consolidate requests for arbitration to reduce administrative burdens on the parties and the State Commission itself. Under the Act, the Commission has a limited time to arbitrate the unresolved issues between companies. The dates by which the Commission must decide the unresolved issues for arbitration requests involving BellSouth are less than two weeks apart for Intermedia and e.spire. Since the Commission's calendar during the statutory windows is extremely full, it is difficult to schedule separate hearings for each arbitrated request.

Since Intermedia and e.spire allege that many of the unresolved issues should be those in common to both companies, it appears at this time that consolidation of the proceedings would reduce the administrative burdens on the Commission and the parties. Because the Commission must decide the unresolved issues in a relatively short time, it appears that it is best from the Commission's perspective to consolidate these proceedings and hold one hearing rather than two.

Accordingly, the following guidelines are established to govern these proceedings:

1. The parties shall identify two categories of issues: those that are common to the Intermedia/BellSouth petition and the e.spire/BellSouth petition; and those that are unique to each petition separately.

2. All parties shall participate fully in the litigation of the issues that are common to both petitions. The Commission's decision on the common issues shall be binding on all parties.

3. Only the parties directly involved will participate in the litigation of the issues that are unique to only one of the petitions. For example, BellSouth and Intermedia may participate with respect to the Intermedia petition, and BellSouth and e.spire may participate with respect to the e.spire petition. The non-affected petitioner shall not present testimony, conduct cross-examination, or file a brief with respect to the issues that affect only the other petitioner. The Commission's decision on the unique

issues shall be binding only on the parties who litigated the issue.

As we proceed, I may find it appropriate to meet with the parties to determine whether further procedural conditions are necessary to preserve the purposes of arbitration and address any issues of undue prejudice.

Upon consideration, I approve the stipulated request to consolidate. Accordingly, the consolidated cases will be governed by the following procedures:

Discovery

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this docket is set for March 18, 22, 23, 24, 1999. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by March 11, 1999. All interrogatories, requests for admissions, and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 100, and requests for production of documents, including all subparts, shall be limited to 75.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the

information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

Prefiled Testimony and Exhibits

Each party shall pre-file, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely pre-file exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of

business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;
- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon; and
- (i) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held in this docket at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand

Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a

set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

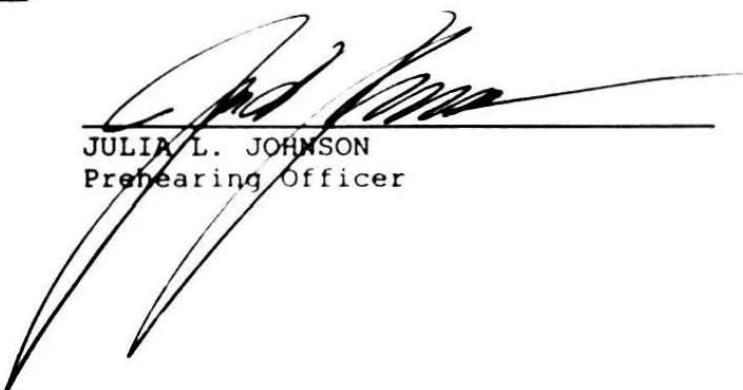
Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner Julia Johnson, as Prehearing Officer, that the stipulated request to consolidate by Intermedia Communications, Inc. And American Communications Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. has been granted under the conditions discussed in the body of this Order. It is further

ORDERED by Commissioner Julia Johnson, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Julia L. Johnson, as Prehearing Officer, this 14th day of January, 1999.



JULIA L. JOHNSON
Prehearing Officer

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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.

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 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.