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-99-1453-FOF-TP ISSUED: July 26, 1999

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON
E. LEON JACOBS, JR.

ORDER DENYING MOTION FOR RECONSIDERATION, GRANTING JOINT REQUEST TO MODIFY FINAL ORDER, AND GRANTING EXTENSION OF TIME

BY THE COMMISSION:

I. 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 asked us to enforce 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. We conducted an administrative hearing regarding this dispute on January 20, 1999.

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On April 5, 1999, we issued Order No. PSC-99-0658-FOF-TP resolving e.spire's complaint. Therein, we determined that the evidence did not indicate that the parties intended to exclude ISP traffic from the definition of "local traffic" in their Interconnection Agreement; that the two million minute differential required by the Agreement was met in March, 1998; that 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 that attorney's fees were due to e.spire pursuant to Section XXV(A) of the Agreement. A portion of our Order was issued as Proposed Agency Action. In the Proposed Agency Action (PAA) portion, we 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 is no longer available.

On April 21, 1999, BellSouth timely filed a Motion for Reconsideration by the Full Commission of our Order. On April 26, 1999, BellSouth timely filed a Petition on the PAA portions of Order No. PSC-99-0658-FOF-TP. On May 3, 1999, e.spire filed a Motion for Extension of Time to file its response. On May 12, 1999, e.spire filed separate responses to BellSouth's Motion for Reconsideration and Petition on Proposed Agency Action. That same day, BellSouth filed a Notice of Withdrawal of Section III of its Motion for Reconsideration. Subsequently, on May 24, 1999, the parties filed a Joint Motion to Modify Portions of Order No. PSC-99-0658-FOF-TP. The Joint Motion addresses only a small portion of the Order and does not moot any of the parties' previous post-hearing motions.

In this Order, we address BellSouth's Motion for Reconsideration by the Full Commission, e.spire's request for extension of time, and the Joint Motion to Modify Portions of Order No. PSC-99-0658-FOF-TP. The protest of the PAA portions of the Order will be addressed separately at a later date.

II. e.spire's Motion for Extension of Time to Respond

As explained in the previous section, on May 3, 1999, e.spire filed a Motion for Extension of Time to respond to BellSouth's April 21, 1999, Motion for Reconsideration. e.spire stated that BellSouth's Motion had provoked discussion between the parties and that the parties needed some time for further discussion. e.spire asked for an extension to file its response on May 9, 1999.

e.spire asserted that the extension would not adversely affect the case. By letter dated May 10, 1999, e.spire supplemented its request for additional time to respond to BellSouth's Motion. e.spire stated that, as a result of the parties' discussions, they had agreed on certain amendments to their agreement, which would affect portions of BellSouth's Motion and e.spire's response. Thus, e.spire asked that the time for filing its response be extended to May 12, 1999. e.spire filed its response on May 12, 1999.

BellSouth did not respond to e.spire's Motion for Extension of Time.

We note that current case law indicates that it is not appropriate to grant an extension of time for filing a motion for reconsideration. This prohibition does not, however, apply to filing a response to a motion for reconsideration. See City of Hollywood v. Public Employees Relations Commission, 432 So. 2d 79 (Fla. 4th DCA 1983). It appears that the extension of time has not adversely affected the schedule of this case and is not unduly burdensome on BellSouth or our staff. Therefore, we hereby grant e.spire's Motion.

III. BellSouth's Motion for Reconsideration

In reviewing BellSouth's Motion for Reconsideration of our Order, we have considered whether the motion identifies a point of fact or law that we overlooked or failed to consider in rendering our Order. See Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315 (Fla. 1974); Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that we have already considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, we emphasize that we will not grant a motion for reconsideration "based upon an arbitrary feeling that a mistake may have been made. Instead, we shall base our decision upon "specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

A. Inclusion of traffic to ISPs in definition of "local traffic"

Again, we note that BellSouth withdrew Section III of its Motion on May 12, 1999. Therefore, we do not address that portion of BellSouth's Motion.

1. BellSouth

BellSouth argues that the terms of its agreement with e.spire are clear and unambiguous, and as such, should be construed in accordance with its plain meaning.[1] BellSouth emphasizes that the apparent intent of the parties cannot change the actual, plain terms of the agreement.[2]

BellSouth explains that the precise terms of the agreement define local traffic as:

> Telephone calls that originate in one exchange and terminate in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3. Of BellSouth's General Subscriber Service Tariff.

Motion at p. 4.

BellSouth adds that the agreement also includes the following language:

> There will be no cash compensation exchanged by the parties during the term of this Agreement unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis.

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[1]Citing Lyng v. Bugbee Distributing Co., 182 So. 801 (Fla. 1938) and Sheen v. Lyon, 485 So. 2d 422, 424(Fla. 1986).

[2]Citing Acceleration Nat'l Serv. Corp. V. Brickell Fin. Servs. Motor Club, Inc., 541 So. 2d 738, 739 (Fla. 3rd DCA 1989).

BellSouth argues that ISP traffic does not terminate at the ISP's premise, and, therefore, it does not fit the definition of local traffic set forth in the parties' agreement. BellSouth asserts that the FCC's Declaratory Ruling, issued February 26, 1999, supports this position[3]. BellSouth further asserts that if the traffic does not terminate at the ISP, as confirmed in the FCC's February 26, 1999, Order, then it could not have terminated at the ISP prior to that Order or subsequent to that Order.

BellSouth maintains that we erred by considering the intent of the parties in construing the agreement, when the actual terms of the agreement clearly exclude ISP traffic from the definition of local traffic. BellSouth further asserts that in improperly considering the parties' intent, we also overlooked the applicable law in determining that intent. BellSouth claims that the FCC has always looked at the end-to-end nature of a call in determining the jurisdiction of that call and has consistently described calls to ISPs as only passing through the ISP's local point of presence, instead of actually terminating at the ISP.[4] BellSouth argues that the FCC has found no reason to consider ISPs anything but a link from an end-user to a host computer. Motion at p. 6.

In addition, BellSouth asserts that in recent FCC orders addressing Internet traffic, the FCC has again confirmed its position that Internet traffic is interstate and does not terminate at the ISP.[5] BellSouth argues that these rulings confirm the FCC's

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[3]FCC Order 99-38, released February 26, 1999, in CC Dockets 96-98 and 99-68.

[4]Citing Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation, 7 FCC Rec. 1619 (1992), aff'd Georgia Public Service Commission v. FCC, 5 F.3d 1499 (11th Circ. 1993)(the "Memory Call Order"); and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, released December 24, 1996, note 291.

[5]Citing GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order, CC Docket 98-79, released October 30, 1998. (the GTE ADSL Tariff Order); and In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for

prior rulings in existence at the time the parties entered into the agreement. Further, BellSouth notes that Section XXVII of the Agreement states that the Agreement would be construed in accordance with federal law. Thus, traffic to ISPs should not be construed as local traffic, because under federal law at the time the parties' entered into the agreement, traffic to ISPs does not terminate at the ISP.

2. e.spire

e.spire argues that BellSouth has failed to identify any point of fact or law overlooked by us or any mistake that we made in rendering our decision in Order No. PSC-99-0658-FOF-TP. e.spire asserts that BellSouth is simply rearguing its case. e.spire argues that BellSouth has presented no new arguments, other than that the two-million minute threshold must be met on a month-to-month basis. Therefore, e.spire states that BellSouth's Motion should be denied. e.spire further asserts that only the panel assigned to the case should dispose of BellSouth's motion, in accordance with Section 350.01(5), Florida Statutes.

e.spire argues that we considered the evidence and the law in rendering our decision that ISP traffic should be treated as local traffic under the parties' agreement. e.spire disagrees with BellSouth's argument that the specific terms of the agreement exclude ISP traffic from the definition of local traffic. e.spire argues that the agreement does not even specifically address ISP traffic.

e.spire further argues that BellSouth relies on recent FCC decisions to determine the parties' intent in mid-1996. e.spire maintains that these recent FCC decisions were not available to the parties at the time they were engaged in negotiations; thus, these decisions cannot be used as evidence of the parties' intent at the time. e.spire adds that we specifically considered and rejected BellSouth's arguments relying on these recent FCC orders at pages 6 and 7 of our Order.

e.spire notes that several other states have concluded recently that ISP traffic should be treated as local traffic. We emphasize, however, that these cases are not a part of this record.

ISP-Bound Traffic, Declaratory Ruling and Notice of Proposed Rulemaking, CC Docket No. 96098, released February 26, 1999.

e.spire further contends that the FCC specifically refrained from addressing the issue of reciprocal compensation for traffic to ISPs in FCC Order 98-292, which is relied upon by BellSouth. e.spire adds that in FCC Order 99-38, the FCC indicated it would not interfere with state commission findings on the issue as applied to existing agreements. e.spire emphasizes that in Order 99-38, the FCC outlined factors that state commissions could use in determining the parties' intent regarding the treatment of ISP traffic. In that Order, the FCC specifically found:

> . . . [I]t may be appropriate for state commissions to consider such factors as whether incumbent LECs serving ESPs (including ISPs) have done so out of intrastate or interstate tariffs: whether revenues associated with those services were counted as intrastate or interstate revenues; whether there is evidence that incumbent LECs of CLECs made any effort to meter this traffic or otherwise segregate it from local traffic, particularly for the purpose of billing one another for reciprocal compensation; whether, in jurisdictions where incumbent LECs bill their end users by message units, incumbent LECs have included calls to ISPs in local telephone charges: and whether, if ISP traffic is not treated as local and subject to reciprocal compensation, incumbent LECs and CLECs would be compensated for this traffic.

Paragraph 24 of FCC Order 99-38, released in CC Docket 96-98 and CC Docket 99-68, on February 26, 1999.

e.spire argues that we applied the factors identified by the FCC in Order 99-38 and determined that the parties intended to include ISP-bound traffic in the definition of local traffic. e.spire adds that BellSouth has charged calls to ISP providers in accordance with its local service tariff, treated these calls as local for separations, and routed these calls over local trunks.

For all these reasons, e.spire argues that we should not reconsider our decision that the parties intended to include traffic to ISPs in the definition of local traffic.

B. Did e.spire meet the two-million minute threshold on monthly basis

1. BellSouth

BellSouth also argues that there is insufficient record evidence to support our finding that e.spire met the two-million minute differential threshold on a monthly basis. BellSouth argues that we first erred by including traffic to ISPs in our calculation of the differential, for the reasons set forth above.

BellSouth also argues that if ISP traffic was properly included, there was no evidence showing that e.spire met the differential for any months other than March and April, 1998. BellSouth asserts that if e.spire was able to show that it did meet the threshold in March and April, it should have been able to demonstrate that it met the threshold in other months. BellSouth emphasizes that e.spire presented no evidence other than for those two months.

BellSouth further contends that Section VI(B) of the agreement clearly indicates that the two-million minute threshold must be met on a monthly basis. After the threshold is met, the parties were required to negotiate a traffic exchange agreement on a going-forward basis. The agreement was to cover when and what type of traffic would be included.

BellSouth maintains that two requirements had to be met before reciprocal compensation was due. First, the two-million minute threshold had to be met on a monthly basis, and then the parties were required to negotiate a traffic exchange agreement. BellSouth argues that there is no evidence that either occurred.

For these reasons, BellSouth asks us to reconsider our decision on the inclusion of traffic to ISPs in the definition of local traffic and that e.spire met the two-million minute threshold on a monthly basis.

2. e.spire

e.spire argues that BellSouth has raised for the first time in its Motion the argument that e.spire was required to meet the two-million minute threshold on a month-to-month basis. e.spire notes that we have stated on previous occasions that a motion for reconsideration is not the appropriate place to raise new

arguments.[6] e.spire argues that BellSouth should have presented this argument earlier in the proceeding, but did not. e.spire maintains that there is no testimony or argument in BellSouth's brief demonstrating that this was BellSouth's interpretation of the requirement. e.spire further contends that BellSouth witness Hendrix's testimony at the hearing seemed to indicate the even Mr. Hendrix considered the two-million minute threshold to be a one-time requirement.

e.spire also emphasizes that BellSouth failed to record the usage for purposes of measuring this requirement in accordance with the agreement. e.spire stresses that BellSouth would never have had to pay e.spire reciprocal compensation at all if e.spire had not been capable of measuring the traffic.

e.spire argues that two-million minute threshold in the agreement is clearly a one-time threshold, and that e.spire was not required to demonstrate that it met this threshold each month or on any other basis. e.spire does not believe that BellSouth has demonstrated otherwise. Therefore, e.spire asks that we also reject BellSouth's Motion for Reconsideration of the determination that e.spire met the two-million minute threshold set forth in the agreement and that reciprocal compensation should be paid on a going-forward basis from the time that the threshold was met.

C. Determination

Upon consideration, we find that BellSouth has not identified any facts that we overlooked, or any point of law upon which we made a mistake in rendering our decision in Order No. PSC-99-0658-FOF-TP. Furthermore, we agree with e.spire that it is appropriate for BellSouth's Motion to be addressed only by the panel assigned to this case, instead of the full Commission as requested by BellSouth.

<u>1. BellSouth's Motion shall be considered by the Panel assigned</u>

BellSouth requested reconsideration of Order No. PSC-99-0658-FOF-TP, pursuant to Rule 25-22.060, Florida Administrative Code.

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[6]Citing Order No. PSC-97-0552-FOF-WS, issued in Docket No. 920119-WS, on May 14, 1997; and Order No. PSC-97-0518-FOF-TP, issued in Docket No. 930330-TP, on May 6, 1997.

Rule 25-22.060, Florida Administrative Code, sets forth the specific requirements applicable to a motion for reconsideration. That rule does not, however, require the full Commission to address a motion for reconsideration of a decision made by a panel. Such a requirement would lessen the validity of panel decisions and would conflict with Section 350.01(5), Florida Statutes, which states, in pertinent part, that "A petition for reconsideration shall be voted upon by those commissioners participating in the final disposition of the proceeding." Therefore, only the panel assigned to this case has considered BellSouth's Motion for Reconsideration.

2. Inclusion of traffic to ISPs in definition of "local traffic"

In reaching our decision on this point, we considered the language in the agreement, the state of the law at the time the parties entered into the agreement, the parties actions subsequent to entering into the agreement, and BellSouth's own treatment of this type of traffic, as set forth in Order PSC-99-0658-FOF-TP at pages 7-11. Based on the evidence presented, we determined that the parties did not intend to exclude traffic to ISPs from the definition of "local traffic" contained in the agreement. Order at p. 11.

As we noted at page 6 of Order No. PSC-99-0658-FOF-TP, we did not revisit the issue of the current state of the law regarding the jurisdictional nature ISP traffic, although both parties presented extensive arguments on the subject. Instead, we considered the parties' arguments regarding the jurisdictional nature of this traffic only to the extent that it evidenced the parties' intent at the time they entered into the agreement.

Again, BellSouth argues that the language in the agreement excludes traffic to ISPs because the definition of local traffic refers to traffic that terminates in the same exchange that it originates. BellSouth contends that traffic to ISPs does not terminate at the ISP's premise. We have, however, already fully considered and rejected this argument. See Order at pages 4, 7-11. BellSouth is simply rearguing points it previously raised at hearing. While BellSouth may disagree with our decision on this point, it has not demonstrated that we erred in our decision.

Furthermore, at the time the parties' entered into the agreement, there was no definitive pronouncement by the FCC, this Commission, or the courts that traffic to ISPs was entirely interstate, and, therefore, not subject to reciprocal compensation. To date, there is still no such determination by the FCC. BellSouth argues that FCC Order 99-38 demonstrates that the FCC believes that traffic to ISPs is interstate traffic and that FCC Order 99-38 should apply retroactively to the period in which the parties were negotiating this agreement. BellSouth believes that if this traffic is interstate now, it should not be treated as anything else for purposes of this complaint proceeding.

We note that BellSouth did submit FCC Order 99-38 in an improper, extra-record filing as additional support for its position, and we acknowledged the FCC's Order at page 11 of our Order, but only for purposes of recognizing its inapplicability in this case. The FCC Order had no impact on our post-hearing decision, as we clearly stated at page 11 of our Order.

Nevertheless, as noted above, BellSouth now argues that statements by the FCC in FCC Order 99-38 should be considered by us in determining the intent of the parties at the time they entered into the agreement. Therefore, we have briefly addressed BellSouth's arguments regarding FCC Order 99-38. In so doing, we emphasize that FCC Order 99-38 was not a part of the record of this proceeding, and, therefore, we have not used the FCC's Order as a basis for our decision on BellSouth's Motion for Reconsideration.

First, we disagree with BellSouth's assertion that FCC Order 99-38 indicates that the FCC has always believed that traffic to ISPs should be treated as jurisdictionally interstate traffic. In FCC Order 99-38, the FCC actually stated that ". . . ISP-bound traffic is jurisdictionally mixed. . . ." FCC Order 99-38 at ¶ 19. In the Order, the FCC further stated that:

> We find no reason to interfere with state commission findings as to whether reciprocal compensations of interconnection agreements apply to ISP-bound traffic, pending adoption of a rule establishing an appropriate interstate compensation mechanism.

FCC Order 99-38 at ¶ 21. The FCC also indicated that:

> Where parties have agreed to include this traffic within their section 251 and 252 interconnection agreements, they are bound by those agreements, as interpreted and enforced by the state commissions.

FCC Order at ¶ 22. Of particular note are the following statements by the FCC:

> The Commission's (FCC) treatment of ESP traffic dates from 1983 when the Commission first adopted a different access regime for ESPs. Since then, the Commission has maintained the ESP exemption, pursuant to which it treats ESPs as end users under the access charge regime and permits them to purchase their links to the PSTN through intrastate local business tariffs rather than through interstate access tariffs. As such, the Commission discharged its interstate regulatory obligations through the application of local business tariffs. Thus, although recognizing that it was interstate access, the Commission has treated ISP-bound traffic as though it were local. In addition, incumbent LECs have characterized expenses and revenues associated with ISP-bound traffic as intrastate for separations purposes.

FCC Order at ¶ 23. In view of its treatment of ISP-bound traffic, the FCC explained that state commissions should consider all relevant facts in construing the parties' agreements. The FCC indicated that factors for consideration may include the negotiation of the agreements ". . . in the context of this Commission's longstanding policy of treating this traffic as local, and the conduct of the parties pursuant to those agreements." FCC Order at ¶ 24. The FCC added that:

> Thus, the mere fact that ISP-bound traffic is largely interstate does not necessarily remove it from the section 251/252 negotiation and arbitration process. However, any such arbitration must be consistent with governing

> federal law. While to date the Commission has not adopted a specific rule governing the matter, we note that our policy of treating ISP-bound traffic as local for purposes of interstate access charges would, if applied in the separate context of reciprocal compensation, suggest that such compensation is due for that traffic.

FCC Order 99-38 at ¶ 25.

Nevertheless, we emphasize again that we have not based our decision on FCC Order 99-38. We simply included this analysis in view of BellSouth's extensive arguments relying on the FCC's Order.

Upon consideration, we find that BellSouth has failed to identify any fact that we overlooked, or any point of law upon which we erred in rendering our decision on this point.

3. BellSouth has failed to demonstrate that we erred in our determination regarding the two-million minute threshold

On this point, BellSouth argues that we should not have included ISP traffic in our calculation of the two million minute differential. We have already considered and rejected this argument at pages 11-13 of Order PSC-99-0658-FOF-TP. It is improper for BellSouth to reargue this point in a motion for reconsideration. Again, while BellSouth may not like our decision on this point, it has not demonstrated that we erred in our decision.

BellSouth also argues that the agreement requires that the two-million minute threshold was not a one-time threshold. Instead, BellSouth contends that the two-million minute threshold must be met for each month. BellSouth adds that when the two-million minute threshold was met, the parties were then required to negotiate an agreement covering when and what type of traffic would be subject to reciprocal compensation. BellSouth argues that e.spire only presented evidence that the threshold was met for March and April, 1998, not for any other months. BellSouth adds that there is no evidence that negotiations took place.

We have also already considered and rejected BellSouth's argument regarding the agreement's negotiation requirement at pages 14 and 15 of Order No. PSC-99-0658-FOF-TP. BellSouth has not identified any error in our decision on this point.

As for the rest of BellSouth's argument, we agree with e.spire that BellSouth has raised the argument that the threshold had to be met on a month-to-month basis for the first time in its motion. Thus, BellSouth has not identified anything that we overlooked or failed to consider in rendering our decision. See Order No. PSC-97-0552-FOF-WS, issued in Docket No. 920119-WS, on May 14, 1997; and Order No. PSC-97-0518-FOF-TP, issued in Docket No. 930330-TP, on May 6, 1997.

Although we need not address this new argument raised by BellSouth, we believe that BellSouth's argument is flawed. The agreement specifically states:

> For purposes of this Agreement, the Parties agree that there will be no cash compensation exchanged by the parties during the term of this Agreement unless the difference in minutes of use for terminating local traffic exceeds 2 million minutes per state on a monthly basis. In such an event, the Parties will thereafter negotiate the specifics of a traffic exchange agreement which will apply on a going-forward basis.

Agreement, Section VI(B).

Under BellSouth's interpretation of the agreement, negotiation of a traffic exchange agreement on a "going-forward basis" would be an impossibility, because the agreement would not be negotiated until after each monthly determination had been made regarding the differential. Furthermore, any traffic exchange agreement resulting from monthly negotiations of the parties could not possibly apply on a going-forward basis if a separate determination had to be made each month as to whether the threshold had been met. The plain language of the agreement, however, clearly contemplates compensation under this agreement if the two million threshold is exceeded. Therefore, the most logical interpretation of the plain language of Section VI (B) of the agreement is that the threshold had to be met in a particular month, considering the total amount of traffic exchanged between the companies during that month, as

opposed to the amount of traffic exchanged during a particular day, week, or year.

Upon consideration, we find that BellSouth has failed to identify any fact that we overlooked, or any point of law upon which we erred in rendering our decision on this point.

IV. Joint Motion to Modify Portions of Order No. PSC-99-0658-FOF-TP

The parties have asked that Order No. PSC-99-0658-FOF-TP be modified so that it is consistent with the parties' April 19, 1999, settlement. The parties' settlement resolves certain issues in the e.spire/BellSouth arbitration proceeding in Docket No. 981745-TP. The parties explain that in their settlement, they have agreed to a reciprocal compensation rate that is inconsistent with the $.009 set forth in Order No. PSC-99-0658-FOF-TP. Therefore, the parties ask that we modify our Order to reflect that the parties have agreed to a reciprocal compensation rate other than $.009, applicable after August 31, 1998, for the remaining period of the agreement. The parties state that they will file the confidential settlement agreement if requested.

Upon consideration, we find that this request is reasonable and will afford appropriate notice that the parties have agreed to a rate other than that which is indicated in Order No. PSC-99-0658-FOF-TP. The parties shall be required to file the confidential April 19, 1999, settlement agreement in this Docket within 10 days of the issuance of this Order.

Based on the foregoing, it is therefore

ORDERED by the Florida Public Service Commission that the Motion for Extension of Time filed by 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. is granted. It is further

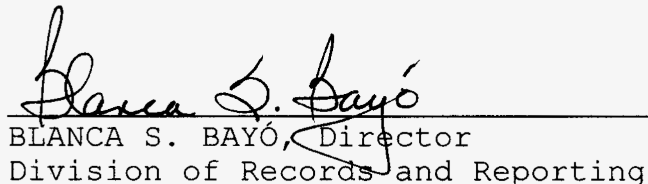
ORDERED that BellSouth Telecommunications, Inc.'s Motion for Reconsideration of Order No. PSC-99-0658-FOF-TP is denied. It is further

ORDERED that the parties' Joint Motion to Modify Portions of Order No. PSC-99-0658-FOF-TP is granted. It is further

ORDERED that the parties shall file their April 19, 1999, settlement agreement in this Docket within 10 days of the issuance of this Order. It is further

ORDERED that this Docket shall remain open to address BellSouth Telecommunications, Inc.'s Petition on Proposed Agency Action regarding the Proposed Agency Action portion of Order No. PSC-99-0658-FOF-TP.

By ORDER of the Florida Public Service Commission this 26th day of July, 1999.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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.

Any party adversely affected by the Commission's final action in this matter may request 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