



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

RECEIVED-PPSC  
FEB 2 11:31 AM  
REPORTING

**DATE:** FEBRUARY 3, 2000

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF LEGAL SERVICES (CALDWELL) *DWC*  
DIVISION OF CONSUMER AFFAIRS (STOKES) *BSB*  
DIVISION OF TELECOMMUNICATIONS (KENNEDY) *REK*

**RE:** DOCKET NO. 991319-TX - 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 - 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. 991757-TX - 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.

**AGENDA:** 02/15/00 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\LEG\WP\991319.RCM

DOCUMENT NUMBER-DATE  
01453 FEB-28  
FPSC-RECORDS/REPORTING

**CASE BACKGROUND**

**ACSI Local Switched Services, Inc. (Company Code TX139) - Docket No. 991319-TX**

- 11/11/97 - The Commission granted ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. certificate no. 5474 to provide alternative local exchange services in Florida.
- 11/13/98 to 4/14/99 - The company 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.
- 9/3/99 - Staff opened this docket to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.
- 10/14/99 - The company filed a Regulatory Assessment Fee Return, reporting \$4,624,222.00 in gross intrastate revenues for 1998.

**ACSI Local Switched Services, Inc. (Company Code TJ058) - Docket No. 991756-TI**

- 3/10/98 - The Commission granted ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc., certificate no. 5339 to provide interexchange telecommunications services in Florida.
- 1/29/99 to 4/26/99 - The company 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.
- 10/14/99 - The company filed a Regulatory Assessment Fee Return, reporting \$0 intrastate revenues for 1998.
- 11/24/99 - Staff opened this docket to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

**American Communication Services of Jacksonville, Inc. (Company Code TX040) - Docket No. 991757-TX**

- 10/15/96 - The Commission granted American Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc., certificate no. 4722 to provide alternative local exchange services in Florida.
- 10/2/98 to 4/22/99 - The company 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.
- 10/14/99 - The company filed a Regulatory Assessment Fee Return, reporting \$0 in intrastate revenues for 1998.
- 11/24/99 - Staff opened this docket to initiate show cause proceedings against the company for apparent violation of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries.

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. 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. (Attachment A, pages 6-7)

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission accept the settlement offer proposed by e.spire Communications, Inc. (e.spire) on behalf of ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (Company Code TX139), ACSI Local Switched Services, Inc. d/b/a e.spire Communications, Inc. (Company Code TJ058), and American

Communication Services of Jacksonville, Inc. d/b/a e.spire Communications, Inc. (Company Code TX040) to resolve the show cause proceedings for apparent violations of Rule 25-4.043, Florida Administrative Code, Response to Commission Staff Inquiries?

**RECOMMENDATION:** Yes. Staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285, Florida Statutes, in the amount of \$6,500.00. The contribution should be received by the Commission within 30 days from the date of the Commission Order and should identify the docket numbers and the names of the companies. The Commission should forward the contribution 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 the Commission Order, the companies' certificates should be canceled administratively. **(KENNEDY)**

**STAFF ANALYSIS:** On October 18, 1999, 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 proposed the following:

- e.spire ensured 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.

- 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 the Commission's Order.

During the period September 3, 1999, through November 5, 1999, e.spire provided staff satisfactory responses for all open consumer complaints and at the time of the filing of this recommendation, staff has closed all complaint cases related to these show cause actions.

Based on e.spire's initiatives to ensure that Commission inquires are timely handled, staff believes the terms of the settlement agreement as summarized in this recommendation are fair and reasonable, and we support the voluntary contribution to the General Revenue Fund pursuant to Section 364.285, Florida Statutes, in the amount of \$6,500.00. The contribution should be received by the Commission within 30 days from the date of the Commission Order and should identify the docket numbers and the names of the companies. The Commission should forward the contribution 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 the Commission Order, the companies' certificates should be canceled administratively.

**ISSUE 2:** Should this docket be closed?

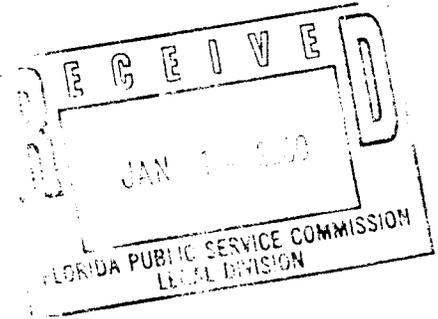
**RECOMMENDATION:** Yes, if the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$6,500 contribution or cancellation of the certificates. **(Caldwell)**

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, this docket should be closed upon receipt of the \$6,500 contribution or cancellation of the certificates.

LAW OFFICES  
**MESSER, CAPARELLO & SELF**  
A PROFESSIONAL ASSOCIATION

215 SOUTH MONROE STREET, SUITE 701  
POST OFFICE BOX 1876  
TALLAHASSEE, FLORIDA 32302-1876  
TELEPHONE: (850) 222-0720  
TELECOPIERS: (850) 224-4359; (850) 425-1942  
INTERNET: www.lawfla.com

January 14, 2000



**BY HAND DELIVERY**

Diana Caldwell, Esq.  
Division of Legal Services  
Room 370, Gunter Building  
Florida Public Service Commission  
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.

Diana Caldwell, Esq.  
January 14, 2000  
Page 2

- 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.

NHH/amb