

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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DATE: APRIL 6, 2000

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

FROM: DIVISION OF LEGAL SERVICES (CLEMONS) *PK*
DIVISION OF COMMUNICATIONS (FAVORS) *CF*

RE: DOCKET NO. 990036-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 BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING ENFORCEMENT OF INTERCONNECTION AGREEMENT.

AGENDA: APRIL 18, 2000 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\990036.RCM

CASE BACKGROUND

On January 8, 1999, e.spire Communications, Inc., on behalf of its operating subsidiaries, American Communications 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) concerning disputes arising under the parties' interconnection agreement. On January 28, 1999, BellSouth filed a Motion to Dismiss e.spire's Complaint. On February 5, 1999, e.spire filed a Motion for Extension of Time to file its response to the Motion to Dismiss, and on February 19, 1999 it filed its Response.

Staff scheduled an issue identification meeting for February 22, 1999; however, this meeting, as well as the hearing schedule,

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was canceled, based upon the parties' request and their indication that they were seeking to reach an agreement to resolve their dispute. The matter was held in abeyance pending the settlement negotiations of the parties.

After receiving no word from the parties regarding the status of their negotiation efforts, staff scheduled an informal conference for September 13, 1999. At the conference, the parties agreed that they would advise staff by September 27, 1999, whether they had successfully resolved their dispute, or whether the case would need to proceed to hearing. On September 27, 1999, staff contacted both parties and was informed that no settlement had been reached. Accordingly, in an effort to move the case toward resolution, staff scheduled BellSouth's still pending Motion to Dismiss e.spire's Complaint for consideration by the assigned Commission panel at an upcoming Agenda Conference.

On September 28, 1999, e.spire filed a Motion for Continuance. By Order No. PSC-99-2128-PCO-TP, issued October 27, 1999, a continuance of the case was granted through December 31, 1999. Staff established a new hearing schedule to commence at the expiration of the continuance. The matter is currently scheduled for hearing on September 7, 2000.

In light of the expiration of the continuance, staff again scheduled an informal conference for March 8, 2000, to determine the status of the parties' settlement negotiations. On February 4, 2000, however, e.spire filed a Notice of Withdrawal of its complaint. In its Notice, e.spire did not provide a reason for the withdrawal, but only requested that the withdrawal be acknowledged without prejudice and the docket closed. BellSouth did not respond to the Notice. Accordingly, staff is requesting that the hearing scheduled for September 7, 2000, be canceled by the Chairman's office.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission acknowledge e.spire's Notice of Withdrawal of its Complaint against Bellsouth Telecommunications, Inc. for Enforcement of its Interconnection Agreement?

RECOMMENDATION: Yes. Staff recommends that the Commission acknowledge e.spire's Notice of Withdrawal of its Complaint against Bellsouth Telecommunications, Inc. for Enforcement of its

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Interconnection Agreement. The Commission's acknowledgment of the Notice of Withdrawal would render moot BellSouth's pending Motion to Dismiss. (CLEMONS)

STAFF ANALYSIS: On February 4, 2000, e.spire filed its Notice of Withdrawal of its Complaint. As previously discussed, e.spire did not provide a reason for the withdrawal in its Notice, but only requested that the withdrawal be acknowledged without prejudice and the docket closed. BellSouth did not respond to the Notice. Staff notes that the Commission's acknowledgment of the Notice would render moot BellSouth's still pending Motion to Dismiss.

Based upon the foregoing, staff recommends that the Commission acknowledge e.spire's Notice of Withdrawal of its Complaint.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendation on Issue 1 to acknowledge e.spire's Notice of Withdrawal of its Complaint, no further action by the Commission is necessary. Therefore, this docket may be closed. (CLEMONS).

STAFF ANALYSIS: If the Commission approves staff's recommendation on Issue 1 to acknowledge e.spire's Notice of Withdrawal of its Complaint, then no further action will remain for the Commission to take. Therefore, this docket may be closed.