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ORIGINAL

May 30, 2000

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RECORDS AND REPORTING

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: FL Docket 00475-TP - Complaint Against Thrifty Call, Inc.
Regarding Practices in Reporting PIU for Compensation
For Jurisdictional Access Services**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Response and Opposition to Thrifty Call's Motion to Dismiss or Stay, which we asked that you file in the above matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

Lisa S. Foshee
(Handwritten signature)

Lisa S. Foshee

- APP _____
- CAF _____
- CMP Sinemas _____
- COM _____
- CTR _____
- ECR _____
- LEG vaccaro _____
- OPC _____
- PAI _____
- RGO Vandiver _____
- SEC 1 _____
- SER _____
- OTH _____

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

RECEIVED & FILED

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

06605 MAY 30 8

FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint by BellSouth Telecommunications,)
Inc. Against Thrifty Call, Inc. Regarding Practices in)
Reporting of Percent Interstate Usage for Compensation)
For Jurisdictional Access Services)
_____)

Docket No. 00475-TP
Filed: May 30, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE AND
OPPOSITION TO THRIFTY CALL'S MOTION TO DISMISS OR STAY**

BellSouth Telecommunications, Inc. ("BellSouth") hereby responds and objects to Thrifty Call, Inc.'s ("Thrifty Call") Motion to Dismiss Or, In The Alternative, To Stay. Thrifty Call fails to present any grounds upon which the Commission should dismiss the Complaint, and consequently, BellSouth requests that the Commission deny the Motion and proceed with a scheduling order in this case.

DISCUSSION

The crux of Thrifty Call's Motion is that BellSouth's Complaint is improper because BellSouth somehow "failed to comply" with its intrastate access tariff by not conducting an audit of Thrifty Call's call data. (Motion, at 2). Thrifty Call's argument, however, is based on a mischaracterization of BellSouth's tariff. Section E2.3.14B(1) of BellSouth's tariff provides in relevant part as follows:

When an IC or End User provides a projected interstate usage set forth in A. preceding, or when a billing dispute arises or a regulatory commission questions the projected interstate percentage for *BellSouth SWA*, the Company may, by written request, require the IC or End User to provide the data the IC or End User used to determine the projected interstate percentage. This written request will be considered the initiation of the audit.

Moreover, Section E2.3.14B(2) of the tariff provides in part that "for *BellSouth SWA* service, verification audits may be conducted no more frequently than once per year...."

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The language of the tariff is clear that the audit is discretionary on the part of BellSouth. Contrary to Thrifty Call's representation, the audit is not mandatory, nor is it in any way exclusive of other rights and remedies of BellSouth, including Commission action. The verification procedures, including the audit, were set forth in the tariff for BellSouth's protection. It strains credulity to take the position that by creating a discretionary audit procedure, BellSouth somehow waived its right to pursue a claim for past and future claims under the tariff with the Commission. Not surprisingly, Thrifty Call does not, and indeed cannot, point to any language in the tariff that requires BellSouth to conduct an audit in lieu of filing a complaint with the Commission.

In an attempt to bolster its argument, Thrifty Call claims that because it now contends that it was willing to undergo an audit, that fact somehow constitutes a waiver of BellSouth's right to pursue its complaint. This simply is not the case. The tariff provides that BellSouth, at its option, may conduct an audit. Once BellSouth initiates an audit, the tariff provides that Thrifty Call must make certain information available. *See* Section E2.3.14B(1). The fact that Thrifty Call may or may not have agreed to produce such information (a point on which the parties' disagree) has no bearing on whether BellSouth has the right to pursue this complaint proceeding before the Commission.

Thrifty Call next contends that "without an audit there is no basis for BellSouth to make the outrageous demands and other false assertions in its Complaint." (Motion, at 2). First, Thrifty Call's contention has no bearing on BellSouth's right to file a complaint. In fact, the entire purpose of a hearing is to allow the Commission to assess the factual allegations underlying BellSouth's complaint; the fact that Thrifty Call may

disagree with the factual assertions contained therein is not grounds for the Commission to dismiss the complaint. Thrifty Call's legal analysis on this point is flawed.

Moreover, the point that Thrifty Call attempts to gloss over is that BellSouth no longer needs an audit because BellSouth conducted the test calls outlined in its Complaint as the means to substantiate its claim prior to filing the Complaint. The test call data is as good as, if not better than, an audit. Thus, the time for an audit has passed and BellSouth accordingly withdrew its audit request on April 7, 2000. Thrifty Call's contention that "we do not know if there is a controversy to be resolved by way of a complaint," (Motion, at 2), simply ignores the test data described in the Complaint. Thrifty Call's complaints also beg the question of why, when confronted with evidence of its misreporting, Thrifty Call began a dramatic reduction of traffic flow in North Carolina. This circumstantial evidence alone gives BellSouth more than adequate grounds to proceed with its complaint.

Finally, as explained in BellSouth's April 7, 2000 letter to Thrifty Call, Thrifty Call's so-called "acquiescence" to the audit, upon which Thrifty Call relies so heavily in its Motion, was unacceptable to BellSouth because Thrifty Call wanted to limit it to adjusting the PIU on a ongoing basis. Simply auditing the traffic on a going-forward basis would have provided BellSouth no relief for Thrifty Call's past tariff violations. As BellSouth explained to Thrifty Call, a mere request for an audit does not provide the party being audited with immunity from prior intentional misreporting of access traffic. Thrifty Call's unreasonable position on the audit bolsters BellSouth's position that BellSouth's only meaningful opportunity for relief from Thrifty Call was at the Commission.

As a final point, Thrifty Call alleges that the Complaint is “misleading” because BellSouth asserts that it will continue to be harmed unless the Commission acts. This contention is hardly grounds for a dismissal. Moreover, the fact that Thrifty Call is not currently passing traffic does not mean that Thrifty Call can’t start passing traffic again tomorrow, and misrepresenting the PIU on such traffic. To BellSouth’s knowledge, Thrifty Call still has its certificate with the Commission and is still authorized to do business in Florida. So long as this is the case, the potential harm to BellSouth from misrepresented traffic exists.

CONCLUSION

BellSouth respectfully requests that the Commission deny Thrifty Call’s Motion. First, BellSouth is in full compliance with its tariff. The audit provision in the tariff is discretionary, not mandatory, and in no way limits BellSouth’s right to pursue relief for tariff violations at the Commission. Second, BellSouth did not need an audit to substantiate its Complaint. The test calls it performed, all of which are described in the Complaint, constitute a more than adequate factual predicate for the Complaint. Finally, despite its claims that it remains “willing” to conduct an audit, Thrifty Call’s proposed audit procedures were limited to a going forward audit which would provide BellSouth no compensation for past tariff violations. Such a proposed audit hardly constitutes an adequate or meaningful substitute to Commission intervention. For these reasons, BellSouth requests that the Motion be denied.

This 30th day of May, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE
New Docket - Complaint Thrifty Call, Inc.

I HEREBY CERTIFY that a true and correct copy of BellSouth

Telecommunications, Inc.'s Complaint against Thrifty Call Inc., was served via U. S.

Mail this 30th day of May, 2000 to the following:

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