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January 12, 2000

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Ms. Blanca Bayo, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 991751-TP

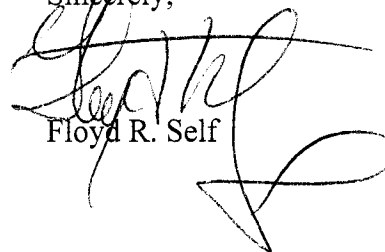
Dear Ms. Bayo:

Enclosed for filing on behalf of Thrifty Call, Inc. are an original and fifteen copies of a complete Exhibit "A" to be attached to Thrifty Call's Motion to Dismiss, or, in the Alternative, to Stay filed in the above captioned docket on January 11, 2000. Please substitute the Exhibit "A" attached to the Motion with this copy.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Floyd R. Self

FRS/amb
Enclosure

cc: Danny E. Adams, Esq.
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FPSC-RECORDS/REPORTING

ORIGINAL

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re Petition by)
)
THRIFTY CALL, INC.)
)
For Issuance of a Declaratory Ruling)
Reaffirming Exclusive Federal Jurisdiction To)
Determine Percentage Interstate Usage for)
Exchange Access Services)

To: The Commission

PETITION FOR DECLARATORY RULING

THRIFTY CALL, INC.

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Dated: January 11, 2000

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SUMMARY

Thrifty Call seeks this Declaratory Ruling because it faces unlawful demands from Sprint Local Telephone Companies for retroactive – and unilaterally imposed – revisions to its PIU reports, in direct contravention of FCC rulings and Sprint Local’s own interstate access tariff. Sprint Local has attempted to escape FCC policies by bringing its claim before State PUCs, despite the fact that PIU decisions are inherently federal matters. Grant of this Petition is necessary to prevent Sprint Local from forcing Thrifty Call to defend lengthy and costly proceedings before State PUCs that have no jurisdiction to hear PIU matters. Moreover, the FCC should grant this Petition in order to protect its own exclusive jurisdiction over PIU decisions.

Sprint Local’s contention that this is purely a matter of intrastate access charges is wholly disingenuous. Thrifty Call does not challenge the State PUCs’ authority to set intrastate access rates; however, states cannot revise a PIU contrary to FCC policies and Sprint Local’s FCC tariffs. The jurisdictional separations process, which includes PIU measurement, is inherently federal. Access charges are applied only *after* the PIU characterizes access minutes as either interstate or intrastate. By definition, then, State PUCs cannot hear backbilling claims for access charges without also first implicitly revising the PIU contrary to FCC policies.

In 1989, following a Federal-State Joint Board recommendation, the FCC adopted the “entry-exit surrogate” (“EES”) method of jurisdictional separation of access calls. The EES method was implemented through a system based on carrier reporting and, where called for, subsequent verification audits. This system was required for access charge billing, as well as jurisdictional separations, because to do otherwise would risk over or under recovery of LEC access costs. Thus, the Commission expressly stated that “where both [federal and state] jurisdictions employ a minute of use billing approach, the measurement surrogate *must* be the

same to assure that 100%. and only 100%. of the minutes are billed.”

The LECs were instructed to implement this scheme in their interstate access tariffs. Sprint Local’s Tariff F.C.C. No. 1 cites to the FCC’s *1989 EES Order* for PIU determinations. It does not provide for retroactive revision of PIU reports, nor for backbilling based on any backward looking revision. In fact, the tariff’s only reference to the topic expressly prohibits backbilling. This position is consistent with FCC policy, which has always severely restricted any LEC attempt to introduce retroactivity or backbilling into their access tariffs.

In September 1999, Sprint Local invoked its FCC tariff and asked Thrifty Call for information to support its PIU reports. Thrifty Call provided supporting information. Sprint Local then claimed this information was inadequate and demanded that Thrifty Call supply confidential customer information and, additionally, insisted on revising the PIU (1) retroactively, with corresponding backbilling, and (2) unilaterally on a going-forward basis pending the audit. Thrifty Call objected, pointing out that neither FCC rulings nor the Sprint Local tariff permit such actions. Sprint Local responded by terminating access services to Thrifty Call in Florida and North Carolina and filing formal complaints with the Florida PSC and North Carolina Utility Commission, where it hopes to get FCC policies on PIU overruled.

Thrifty Call asks the FCC here to correct Sprint Local’s erroneous view of the law so that Thrifty Call is not forced to endure lengthy and costly state PUC hearings which seek relief beyond the jurisdiction of the state agencies to give. Further, the FCC should grant the Petition because, if it does not prevent Sprint Local’s attempt to undermine exclusive federal authority over PIU matters, the “uniform, nationwide” separations and access charge billing scheme envisioned by the Joint Board and the FCC’s *1989 EES Order* will be nullified and replaced with precisely the atomized approach which it intended to prevent.

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To: The Commission

PETITION FOR DECLARATORY RULING

Thrifty Call, Inc. (“Thrifty Call”), by its attorneys, hereby seeks a Declaratory Ruling reaffirming exclusive federal jurisdiction to determine interexchange carriers’ (“IXC”) percentage of interstate usage (“PIU”) for exchange access services. This ruling should make clear that the FCC-mandated methodology must be followed and that any action in setting PIU must be consistent with that methodology and with the carriers’ federal tariffs implementing the FCC regulations.

INTRODUCTION

Thrifty Call is a certificated IXC offering both interstate and intrastate services to carrier customers in several states. In the Southeast, Thrifty Call provides wholesale services in Georgia, Florida and North Carolina. Some of the services sold by Thrifty Call terminate calls to Sprint Local Telephone Companies (“Sprint Local”) in those states.

The Declaratory Ruling sought by this Petition is necessary because Sprint Local is currently attempting to employ the processes of state public utility commissions (“State PUCs”) to dictate to Thrifty Call a PIU that is contrary to both the FCC’s prescribed methods of

PIU measurement and Sprint Local's FCC tariff. By taking its PIU claim to the State PUCs and asking those agencies to rule that state policies and tariffs contrary to the FCC's rulings govern PIU determinations, Sprint Local is attempting to obtain an adjudication of an important federal principle in a state forum that Sprint Local perceives to be more favorable to its position but which does not have the jurisdiction to resolve the issues relating to the underlying principle of federal communications law. In short, Sprint is attempting to remove its access charge relations with other carriers from the purview of the FCC, whose policies it rejects, and put them before the State PUCs where it hopes to obtain a different result. If the FCC does not reaffirm its exclusive jurisdiction over PIU determinations to prevent this effort to undermine its authority to set national PIU policy, the result will be inconsistent decisions in numerous forums and a breakdown of the uniform national scheme that the Commission and a Federal-State Joint Board have heretofore established.

I. BACKGROUND

A. The EES Method of Measurement

The "entry-exit surrogate" ("EES") approach to measuring PIU was adopted by the FCC on an interim basis in *MCI Telecommunications Corp.*, FCC 85-145 (April 16, 1985) ("*1985 EES Order*"). The *1985 EES Order* also established a Federal-State Joint Board to consider and make recommendations regarding the issue of interstate and intrastate usage of FGA and FGB access services. In 1989, the Commission adopted the Joint Board's recommendations which, among other things, recommended continuation of the EES approach. *See Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Services*, 4 FCC Rcd 8448 (1989) ("*1989 EES Order*").

The Federal-State Joint Board decision adopted by the FCC recommended

reliance on the “unadjusted EES method” as the “best available technique for jurisdictional determination of FGA and FGB traffic for cost separations purposes because it is relatively easy to implement and administer . . .”¹ The *1989 EES Order* went on to describe the Joint Board’s finding that the EES approach should not include adjustments proposed by some to address “false” intrastate traffic because there are so many variations based on “geography, population and network characteristics” that no greater accuracy would result from such adjustments.² In order to deal with anomalous situations, however, the Joint Board “recommended that any carrier proposing a modification to the EES approach . . . be required to obtain prior approval of the proposed substitute from the relevant state commission(s), as well as [the FCC].”³ Any such request would be required to include a detailed and specific showing as described in the *1989 EES Order*.

Importantly, the Joint Board further concluded that “the EES method should be used for access charge billing purposes” as well. To do otherwise, the Joint Board concluded, could potentially cause problems of “federal and state jurisdictions [billing] for the same minutes of use.” To address this important issue, the Joint Board concluded that

to the extent that states and LECs use a per minute of use rate structure for intrastate access charge billing purposes, [the states and LECs] should use the EES method, or an authorized substitute method.⁴

The Joint Board also addressed verification procedures. In order to ensure that the LECs did not impose “unreasonably burdensome or inconsistent verification procedures,” the

¹ *1989 EES Order* at 8449.

² *Id.*

³ *Id.*

⁴ *Id.*

decision recommended limiting guidelines for inclusion in LEC tariffs. These limitations included restrictions on the frequency and nature of verification audits.

In adopting the Joint Board recommendations, the FCC noted the need for “a permanent uniform solution” to the PIU problem because “in the absence of a uniform measurement method . . . a LEC could conceivably recover in both the interstate and intrastate jurisdiction for the same investment and expense . . .”⁵ Importantly, the FCC adopted the Joint Board recommendations for both jurisdictional separations purposes *and* for interstate access charge billing purposes.⁶

Finally, the Commission agreed with the Joint Board about the need for uniformity between federal and state policies because, “if this were not the case, a mismatch in costs and revenues could result.”⁷

To avoid these potential adverse consequences, we direct the LECs to use the EES measurement method in their interstate access tariffs. We also agree with the Joint Board that the states and the LECs should use an intrastate billing approach that avoids the problems that could potentially occur if each jurisdiction billed for the same minutes of use. Clearly, where both jurisdictions employ a minute of use billing approach, the measurement surrogates **must** be the same to assure that 100%, and only 100% of the minutes are billed.⁸

Thus, the Commission’s *1989 EES Order* asserted federal jurisdiction over the PIU measurement methods to ensure a uniform national policy for LECs to use in their access charge billing. The LECs were ordered to implement these policies through tariff revisions scheduled to become effective on January 1, 1990.

⁵ *Id.*

⁶ *Id.* at 8450.

⁷ *Id.*

⁸ *Id.* (emphasis added).

To date, the Commission has not altered its adoption of the EES approach to measuring PIU. In fact, in 1993, the Commission endorsed the continuation of the EES approach. “[In the *1989 EES Order*], we adopted the EES as a surrogate for measuring the PIU for feature group A and B. The EES has worked as a surrogate. . .” *Amendments of Part 69 of the Commission’s Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, 8 FCC Rcd 3114 ¶ 22 (1993). Thus, the EES approach articulated by the Commission in 1989 remains in effect today.

B. The Present Controversy between Thrifty Call and Sprint Local

Thrifty Call purchases interstate access services from Sprint Local pursuant to its federal access tariff filed with the Commission and allowed to become effective pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203.⁹ Under the tariff, carriers are required to report their PIUs for FGA and FGB switched access service and for other services where the jurisdictional nature of the traffic is not automatically identified. *See* Sprint Local Tariff F.C.C. No. 1 Section 2.3.11(A)(1)(b). The calculation of PIU is an important factor in determining a carrier’s liability for access services provided by Sprint Local in certain states (*e.g.*, Florida and North Carolina) because the rates for interstate access regulated by the FCC are much lower than the rates imposed by Sprint Local’s North Carolina and Florida intrastate access tariffs.

Sprint Local’s Tariff F.C.C. No. 1 interstate access provisions include the following language in Section 2.3.11(A)(1)(b) for calculating PIU:

Pursuant to Federal Communications Commission order F.C.C. 85-145 adopted April 16, 1985, interstate usage is to be developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called station number) is situated is an intrastate

⁹ The relevant sections of Sprint Local’s interstate access tariff are appended hereto as *Attachment A*.

communications and every call for which the point of entry is in a state other than that where the called station (as designated by the called station number) is situated is an interstate communication.

Pursuant to this interstate access tariff, Thrifty Call is required to provide Sprint Local with periodic jurisdictional PIU reports using the EES method to serve as the basis for prospective billing. *See* Sprint Local Tariff F.C.C. No. 1 Section 2.3.11(A)(7)(a). However, the tariff does *not* authorize retroactive adjustments in PIU, nor has the FCC ever permitted them. In fact, both Section 2.3.11(A)(6) and Section 2.3.11(A)(7)(a) prohibit Sprint Local from using revised PIU reports as a basis to backbill carriers. Section 2.3.11(A)(6) states in relevant part: “The revised report will serve as the basis for future billing and will be effective on the next bill date. *No prorating or backbilling will be done based on the report.*” (emphasis added). Thus, the only mention of retroactive PIU revision or backbilling in the Sprint Local interstate access tariff is an explicit prohibition on the practice.

The Sprint Local interstate access tariff also provides audits to verify PIU reports. *See* Sprint Local Tariff F.C.C. No. 1 Section 2.3.11(B). That portion of the tariff, however, does *not* provide for retroactive revision of the PIU, nor for backbilling based on any such retroactive revision. In fact, the FCC has permitted only very limited backbilling of this sort. Moreover, the Sprint Local tariff does not provide for a broad-ranging audit inquiry including submission of carrier contracts and other customer data, nor does it include a unilaterally imposed PIU during the pendency of an audit.

Thrifty Call calculates its PIU according to the EES methodology prescribed by the FCC and reports it to Sprint Local. However, Thrifty Call received a series of letters from

Sprint Local dated August 16, 1999,¹⁰ September 24, 1999,¹¹ and October 8, 1999,¹² invoking Sprint Local's interstate access tariff and demanding that Thrifty Call provide certain information for an on-site audit. The purported purpose of the audit was to verify the reported PIU for traffic being terminated to Sprint Local.¹³ Thrifty Call responded by providing certain call detail records to Sprint Local.¹⁴ At the same time, however, Sprint Local also demanded agreement to both retroactive PIU revision (with backbilling) and, during the pendency of the audit, interim reliance on a PIU set unilaterally by Sprint Local. Sprint Local subsequently began rendering invoices to Thrifty Call based on Sprint Local's unilaterally revised PIU. Sprint Local further demanded that the Thrifty Call PIU audit include disclosure by Thrifty Call of large amounts of highly confidential business information that is entirely irrelevant to the audit, including the names of all Thrifty Call's carrier customers, copies of its contracts with those customers, and copies of all correspondence with those customers.¹⁵ Thrifty Call refused to

¹⁰ See Letter from Jane B. Wrenn, National Account Manager of Sprint, to Dena Bishop, CABS Manager of Thrifty Call, dated August 16, 1999, appended hereto as *Attachment B* ("August 16, 1999 Letter").

¹¹ See Letter from Joseph P. Cowin, Senior Attorney of Sprint, to Jerry James, EVP of Governmental Affairs and Business Development of Thrifty Call, dated September 24, 1999, appended hereto as *Attachment C* ("September 24, 1999 Letter").

¹² See Letter from Jane B. Wrenn, National Account Manager of Sprint, to Jerry James, EVP of Governmental Affairs and Business Development of Thrifty Call, dated October 8, 1999, appended hereto as *Attachment D* ("October 8, 1999 Letter").

¹³ See August 16, 1999 Letter.

¹⁴ See Letter from Jerry James, EVP of Governmental Affairs and Business Development of Thrifty Call, to Jane B. Wrenn, National Account Manager of Sprint, dated September 15, 1999, appended hereto as *Attachment E*.

¹⁵ See *Attachment C and Attachment D* appended hereto.

cooperate further in the audit until Sprint Local withdrew its extortionate and unlawful conditions.¹⁶

Sprint Local then dropped its reliance on its federal access tariff and, on November 22, 1999, filed a Complaint and Notice of Carrier Disconnection with the Florida Public Service Commission (1) attempting to retroactively revise the PIU and (2) based on this unlawful retroactive revision, to backbill Thrifty Call for alleged shortfalls in intrastate access services charges. On December 1, 1999, Sprint Local filed a similar Complaint and Petition for Injunctive Relief with the North Carolina Utilities Commission.¹⁷ To compound its unlawful demands further, Sprint Local terminated service to Thrifty Call for failure to accede to the many unlawful audit conditions.¹⁸

II. THE FCC SHOULD ISSUE A DECLARATORY RULING REAFFIRMING THAT DETERMINATIONS CONCERNING PIU ARE WITHIN ITS EXCLUSIVE JURISDICTION

It is important for the Commission to reaffirm its jurisdiction and make clear that federal regulation prevails with respect to the calculation of PIUs. What is at stake is not simply the proper implementation of one statutory provision, but rather the entire scheme of federal regulation of rates and charges for interstate common carrier communications services. Interstate carriers' PIU reports are at the center of the calculation of such charges. If the Commission changes its policy and concedes to the states the authority to adjudicate claims of the type Sprint Local has made against Thrifty Call, it will in effect be ceding authority to

¹⁶ See Letters from Danny E. Adams, Counsel for Thrifty Call, to Joseph P. Cowin, Senior Attorney for Sprint, dated October 11, 1999 and November 18, 1999, appended hereto as *Attachment F*.

¹⁷ On December 3, 1999, the North Carolina Commission denied Sprint Local's Petition for Injunctive Relief and served the complaint on Thrifty Call.

¹⁸ See Letter from Joseph P. Cowin, Senior Attorney of Sprint, to Danny E. Adams, Counsel for Thrifty Call, dated November 22, 1999, appended hereto as *Attachment G*.

determine whether calls are interstate or intrastate in nature, and thus empowering the states to establish the scope of the FCC's regulatory authority over common carrier services. The uniform, nationwide rules adopted by the FCC, in conjunction with the Federal-State Joint Board, will be nullified in the absence of FCC action.

A. The Commission Has Already Asserted Federal Primacy Over PIU Measurement

The central issue presented by this dispute – the appropriate methodology for calculating an interstate carrier's PIU – lies at the core of the FCC's jurisdiction over the relations between local and interexchange common carriers. Although Sprint Local contends to the State PUCs that its claim is for charges associated with intrastate access services, the substantive dispute does not involve the rates charged by Sprint Local for intrastate access. Thrifty Call does not challenge those rates (despite the fact Sprint Local charges vastly more for terminating an intrastate call than for performing the exact same function for interstate calls). Rather, the central question – the issue on which resolution of the entire dispute turns – is whether Thrifty Call properly calculated its percentage of interstate usage (which is the basis for calculating both interstate and intrastate access charges) under the EES approach dictated by the FCC's EES Orders and whether the federal policy (and Sprint Local's FCC tariff provisions) barring retroactive PIU revisions and backbilling can be overruled by bringing actions before State PUCs.

In fact, the FCC has already taken preemptive action in its *1989 EES Order*. After adopting a tentative *1985 EES Order*, the Commission referred the PIU issue to a Federal-State Joint Board. This led to the adoption of the *1989 EES Order*. The fact that the FCC consulted with a Joint Board and then acted accordingly is itself a demonstration that federal rules concerning PIU are meant to prevail. The words of the *1989 EES Order* confirm this view.

We also agree with the Joint Board that the states and the LECs should use an intrastate billing approach that avoids the problems that could potentially occur if each jurisdiction billed for the same minutes of use. Clearly, where both jurisdictions employ a minute of use billing approach, the measurement surrogates **must** be the same to assure that 100%, and only 100% of the minutes are billed.¹⁹

The LECs, including Sprint Local, were ordered to revise their access tariffs accordingly.²⁰

B. FCC Policy Does Not Contemplate Retroactive Revision of PIU Reports

The Commission's long-standing policy on PIU measurement has relied on carrier reporting in the first instance. Other proposed approaches were rejected.²¹ Verification of these carrier reports has always been permitted by means of audit. However, the Commission has never approved a LEC tariff which allowed retroactive revision of the PIU for more than a very short period as a result of such an audit.

For example, in 1992, BellSouth attempted to revise its interstate access tariff to permit retroactive PIU revision and backbilling. BellSouth Tr. 73, filed November 25, 1992. The FCC Staff refused to permit this tariff change to take effect as filed; instead, by Special Permission granted on February 19, 1993, a much more limited version of the retroactive PIU and backbilling tariff provision was permitted.²² This revision provides that, following an audit, a PIU may be revised backwards (and bills adjusted accordingly) only to the beginning of the calendar quarter prior to the one in which the audit is completed. Even this provision is absent from the Sprint Local interstate access tariff. Thus, through the tariff review mechanism, the

¹⁹ 1989 EES Order at 8450 (emphasis added).

²⁰ *Id.*

²¹ See 1985 EES Order at ¶¶ 26-28.

²² BellSouth Application No. 23 (February 25, 1993); BellSouth Telephone Companies Revisions to Tariff F.C.C. No. 4, 5 F.C.C. Rcd 716 (1990); BellSouth Telephone Revisions to Tariff F.C.C. No. 1, 8 F.C.C. Rcd 1403 (1993).

FCC has long imposed very severe limitations on a LEC's ability to revise the PIU retroactively following an audit. (It has never permitted a LEC to impose a PIU unilaterally as Sprint's invoices to Thrifty Call seek to do.)

The obvious corollary to a limitation on retroactive PIU revisions is an identical, corresponding limitation on backbilling. If the PIU for a prior period cannot be revised retroactively, then there is no basis for revising the billing for that period retroactively. Billing for access services is inseparable from the jurisdictional characterization of the minutes being sold.

The need for uniform federal regulation of these matters is crucial, as the *1989 EES Order* recognized. Only one regulatory authority can establish the criteria for determining whether a call is interstate or intrastate; shared authority over that determination would create the risk of conflicting decisions, resulting in some calls being deemed both interstate and intrastate for billing purposes. Moreover, it is impossible to separate the calculation of PIU for intrastate access purposes from the calculation of PIU for interstate access purposes. If the PIU is revised, by definition the minutes assigned to *both* the interstate and intrastate jurisdictions change correspondingly. Thus, even if a decision by a state public service commission or a state or federal court concerning PIU purported to affect only charges for intrastate access services, as Sprint Local would contend, it necessarily affects charges for interstate access services as well. It is therefore imperative that the FCC, not State PUCs and myriad federal and state courts, establish and enforce the criteria for determining whether a call is interstate or intrastate. That is why the Federal-State Joint Board was convened and the *1989 EES Order* was enacted.

Uniform federal regulation is also necessary to establish whether a discrepancy between PIU reports and audit results should be rectified retroactively or prospectively and the

default assumptions that should be applied when equipment is not available to determine the jurisdiction of each individual call on an automated basis. In each of these situations, whatever rule that is applied necessarily affects the carrier's interstate PIU; it is impossible to apply it in determining the intrastate PIU alone.

The dispute between Thrifty Call and Sprint Local provides an example of this dilemma. The Sprint Local interstate access tariff endorses the EES method of PIU measurement, as it must under FCC requirements. It contains no provision for retroactive PIU revisions following an audit, nor for corresponding backbilling based on such revision. Under long-standing law and FCC precedent, the silence of the Sprint Local tariff on retroactive revision of PIUs and backbilling in connection therewith requires that the tariff be construed in favor of the customer, *i.e.*, Thrifty Call. It is a "well settled rule" that when interpreting tariff language, the FCC must construe any ambiguities or omissions against the carrier who issued the tariff, and in favor of the customer.²³ If Sprint Local had intended its tariff to allow retroactive PIU revisions and backbilling, it could have drafted the tariff accordingly (using the dubious assumption that the Commission Staff would have permitted such a tariff). It is indisputable, however, that the current Sprint Local interstate access tariff lacks any such provisions.

Sprint Local seeks to thwart this FCC policy and avoid application of its own interstate tariff, however, by ignoring federal policies and tariffs and invoking the processes of State PUCs. Even after initially relying on its FCC tariff in its demands to Thrifty Call, Sprint

²³ *The Associated Press*, 72 F.C.C. 2d 760, 764-65 (1979), quoting *Commodity News Services, Inc.*, 29 F.C.C. 1208, 1213, *aff'd* 29 F.C.C. 1205 (1960). *See also United States v. ICC*, 198 F.2d 958, 966 (D.C. Cir.), *cert. denied*, 344 U.S. 893 (1952).

Local sought a ruling in the states – after Thrifty Call had pointed out that Sprint Local’s claims are inconsistent with federal law and policy. However, any claim that its attempted backbilling is merely a State PUC matter under intrastate access tariffs is entirely illogical and nonsensical. The minutes of terminating access purchased by Thrifty Call from Sprint Local are allocated between the federal and state access tariffs by the PIU process. The PIU for July 1999, for example, determined the allocation of access minutes between the jurisdictions for that month. Before any backbilling for that month can be calculated, the PIU for that month must first be revised. Because federal law and policy does not permit a change to that July 1999 PIU at this time, there is no basis for a State PUC to consider revised access billing for that month. Moreover, it is obvious that no such backbilling can be considered by a State PUC apart from a retroactively revised PIU because the PIU and the number of minutes billed cannot be separated. To approve backbilling is to approve revision of the PIU.

It is this very kind of forum shopping which the FCC sought to prevent in adopting the *1989 EES Order*. As the FCC said then, “in the absence of a uniform measurement method . . . , a LEC could conceivably recover in both the interstate and intrastate jurisdiction for the same investment and expenses . . . ”²⁴ The FCC must grant this Petition for Declaratory Ruling to ensure that the uniform national policy of the Joint Board and the Commission remains intact.²⁵

C. Impact of Louisiana PSC v. FCC

Reaffirmation of exclusive FCC authority to impose a nationwide uniform policy on PIU calculation is entirely consistent with the limitations on the Commission’s power to

²⁴ *1989 EES Order* at 8449.

²⁵ To the extent the FCC has any question about the nature or scope of its prior assertion of exclusive federal jurisdiction over PIU matters, the Commission should utilize this Petition to

preempt state regulation stated by the Supreme Court in *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986) ("*Louisiana PSC*"). In that decision, the Supreme Court noted that the Communications Act establishes a dual regulatory scheme, granting the Commission authority to regulate interstate and foreign communications while expressly reserving to the states jurisdiction over intrastate communications services. The Court held that Section 2(b) of the Act, 47 U.S.C. §152(b), constitutes a congressional denial of power to the FCC to require State PUCs to follow FCC-prescribed depreciation practices for intrastate ratemaking purposes.²⁶ *Id.* at 373. The Court noted that the Act itself establishes a "jurisdictional separations" process to determine what portion of an asset commonly used to provide both interstate and intrastate service should be allocated to each service. Thus, it is entirely feasible to apply different rates and methods of depreciation to commonly used plant once the correct allocation between interstate and intrastate use of an asset is made.

In reaching its decision in *Louisiana PSC*, the Supreme Court expressly recognized that the states' authority over intrastate telephone service is limited to the extent that the states' exercise of that authority would negate the exercise by the FCC of its authority over interstate communications. Thus, the FCC may preempt state regulation over intrastate communications to the degree necessary to prevent such regulation from negating the FCC's exercise of its authority over interstate communications services.²⁷ This is clearly such a case. As noted above, if a state were to establish a methodology for determining PIU for intrastate

clarify, expand or explain its view of permissible State PUC involvement in setting PIU.

²⁶ *Louisiana PSC*, 476 U.S. at 373.

²⁷ *Id.* at 375-76 n.4. See also *State of California v. FCC*, 905 F.2d 1217, 1243 (9th Cir. 1990); *National Association of Regulatory Utility Commissioners v. FCC*, 880 F.2d 422, 425, 429 (D.C. Cir. 1989).

access purposes, and that methodology resulted in a lower PIU than the FCC-prescribed methodology, that adjustment would necessarily affect interstate access charges as well as intrastate access charges. State regulation of PIU would thus negate the exercise by the FCC of its lawful authority under Section 2 and Title II of the Act to regulate interstate communications.²⁸

The Declaratory Ruling requested by Thrifty Call is fully consistent with the *Louisiana PSC* decision, in which the Court held that federal preemption of depreciation of dual jurisdiction property for intrastate ratemaking purposes was improper because it is possible to apply different rates and methods of depreciation to commonly used plant once the use of such plant is allocated between the interstate and intrastate jurisdictions. The jurisdictional allocation in that case still had to be made under FCC-supervised procedures. Likewise, in this case, calls must be jurisdictionally classified under standards set by the FCC. State authorities may set the rate for intrastate access, just as they may set depreciation rates for intrastate assets; but they may not jurisdictionally categorize either assets or calls. Only one regulatory authority can establish and enforce the demarcation line between the interstate and intrastate spheres, and that is the FCC. It is not feasible for both the FCC and its state counterparts to regulate how the percentage of interstate (and thus intrastate) usage is calculated. Accordingly, the Supreme Court's decision in *Louisiana PSC* indicates that preemption regarding a PIU calculation is a proper exercise of the Commission's discretion.

D. Preemption Subsequent to Louisiana PSC

The relief requested here is also consistent with the Ninth Circuit's decision in *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990). In that decision, the Court of Appeals held

²⁸ See *Louisiana PSC*, 476 U.S. at 375-76 n.4.

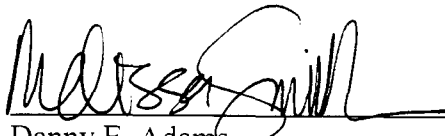
that the record before it did not justify the broad scope of the Commission's preemption of state regulation of enhanced services – not that preemption of state regulation was impermissible. On remand, the Commission reinstated its preemption of state regulations, but carefully crafted its preemption order to cover only those aspects of state regulation that would interfere with the federal scheme. In a subsequent Ninth Circuit case, the Court of Appeals upheld an FCC regulation curbing state limitations on per-line blocking of Caller ID that were contrary to the FCC's goal of the promotion of nationwide interstate Caller ID. *See California v. FCC*, 75 F.3d 1350 (9th Cir. 1996), *cert. denied*, 517 U.S. 1216 (1996). That is all Thrifty Call requests here – that the basic allocation of minutes between the interstate and intrastate jurisdictions and the resolution of any disputes which requires a determination of that allocation be deemed exclusively federal matters. Once the allocation to the intrastate jurisdiction has been determined under federal rules, the rate and method of payment for intrastate service would remain the province of state regulatory authorities.

The passage of the Telecommunications Act of 1996 (“1996 Act”) did not change the analysis here. The principles of *Louisiana PSC* remain intact for those cases involving issues not specifically addressed under the 1996 Act. With respect to the provisions of the 1996 Act, the Supreme Court in *Iowa Utilities Board* concluded that the FCC has authority to implement its provisions. *See AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999) (“*Iowa Utilities Board*”). For example, the Court examined whether the FCC's pricing rules violated Section 252(c)(2), 47 U.S.C. § 252(c)(2), which assigns the establishment of rates to the State PUCs. The Court found no conflict because the states remain able to apply the FCC's methodology to specific circumstances to establish rates. Similarly, Thrifty Call requests that the FCC reaffirm its exclusive jurisdiction to determine the PIU methodology prior to its application at the state level.

CONCLUSION

For the foregoing reasons, Thrifty Call, Inc. respectfully requests that the Commission issue a Declaratory Ruling reaffirming exclusive federal jurisdiction to determine interexchange carriers' PIUs for exchange access services and declaring that matters of retroactive PIU revision are governed solely by FCC rules and implementing federal tariffs.

Respectfully submitted,



Danny E. Adams
Melissa M. Smith
Counsel for Thrifty Call, Inc.
KELLEY DRYE & WARREN LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, DC 20036
(202) 955-9600

Its Attorneys

Dated: January 11, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2000, a true and correct copy of the foregoing "*Petition for Declaratory Ruling*" was served by overnight courier and hand delivery to the following:

Joseph P. Cowin, Esq.
Senior Attorney
Sprint
Legal & External Affairs
5454 West 110th Street
Mailstop KSOPKJ0505
Overland Park, KS 66211

Lawrence Strickling, Esq.
Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554



Andrea P. Essex

ATTACHMENT

A

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements

(A) Jurisdictional Reports

- (1) (a) When a customer orders Feature Group A, Feature Group B, 500 Access Service and/or Toll Free Code (TFC) Access Service, the customer shall state in its order the projected interstate percentage for interstate usage for each Feature Group A, Feature Group B, 500 Access Service and/or TFC Access Service ordered. If the customer discontinues some but not all of the Feature Group A, Feature Group B, 500 Access Service and/or TFC Access Services in a group, it shall provide an updated projected interstate percentage for the remaining services in the group. Additionally, upon employing the 700 access code over Feature Group D, the customer must provide a projected interstate percentage for the 700 calls. If the customer fails to provide a 700 projected interstate percentage, a default percentage of 100% interstate will be assumed. (C)
- (b) Pursuant to Federal Communications Commission order F.C.C. 85-145 adopted April 16, 1985, interstate usage is to be developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called station number) is situated is an intrastate communication and every call for which the point of entry is in a state other than that where the called station (as designated by the called station number) is situated is an interstate communication. (C)

ISSUE DATE:
May 17, 1996

Issued Under Transmittal No. 12
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
July 1, 1996

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(A) Jurisdictional Reports (Cont'd)

(1) (Cont'd)

(c) The projected interstate percentages will be used by the Telephone Company to apportion the usage between interstate and intrastate until a revised report is received as set forth in (7) following.

(d) A projected interstate percentage of use is not required for the International DDD Blocking Miscellaneous Service described in 13.3.7(C) following. International Blocking is offered only as an interstate service, and charges will not be prorated between the intrastate and interstate jurisdictions.

(2) For single connection arrangements, the interstate Feature Group A, Feature Group B, and/or TFC Access Service information reported as set forth in (1) preceding will be used to determine the charges. The number of access minutes (either the measured minutes or the assumed minutes) for a connection will be multiplied by the projected interstate percentage to develop the interstate access minutes. The number of access minutes for the connection minus the developed interstate access minutes for the connection will be the developed intrastate access minutes. (C)

ISSUE DATE:
January 30, 1996

Issued Under Transmittal No. 3
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
March 1, 1996

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)

- (3) For multiline hunt group or trunk group arrangements, the interstate Feature Group A, Feature Group B, and/or TFC Access Service information reported as set forth in (1) preceding will be used to determine the charges. The number of access minutes (either the measured minutes or the assumed minutes) for a service will be multiplied by the projected interstate percentage to develop the interstate access minutes. The number of access minutes for the service minus the developed interstate access minutes for the service will be the developed intrastate access minutes. (C)
- (4) When a customer orders Feature Group C, Feature Group D, TFC or 900 Access Services, the projected interstate percentage will be determined as set forth in (a) through (c) following: (C)
- (a) For originating Feature Group C and originating Feature Group D used in the provision of MTS/MTS-like service, the Telephone Company will determine the projected interstate percentage of use from the call detail.

ISSUE DATE:
January 30, 1996Issued Under Transmittal No. 3
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205EFFECTIVE DATE:
March 1, 1996

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)

(4) (Cont'd)

(c) (Cont'd)

When originating call details are insufficient to determine the jurisdiction for the call, the prior month's projected interstate percentage shall be used by the Telephone Company as the projected interstate percentage for originating and terminating access minutes. The projected intrastate percentage of use will be obtained by subtracting the projected interstate percentage for originating and terminating access minutes from 100 (i.e., $100 - \text{interstate percentage} = \text{intrastate percentage}$).

- (5) When a customer orders Directory Assistance Service, the customer shall state in its order the projected interstate percentage for terminating use for each Directory Access Service group ordered. (A method the customer may wish to adopt could be to use its terminating traffic from its premise to the involved Directory Assistance Location and calculate the projected interstate percentage as set forth in (4) preceding.) The Telephone Company will designate the number obtained by subtracting the projected interstate percentage furnished by the customer from 100 ($100 - \text{customer provided interstate percentage} = \text{intrastate percentage}$) as the projected intrastate percentage of use.

(C)

ISSUE DATE:
August 20, 1999Issued Under Transmittal No. 88
Vice President-Regulatory Affairs
2330 Shawnee Mission Parkway
Westwood, Kansas 66205EFFECTIVE DATE:
September 4, 1999

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(A) Jurisdictional Reports (Cont'd)

- (6) Except where Telephone Company measured access minutes are used as set forth in (4) preceding, the customer reported number of interstate services or interstate percentage of use as set forth in (1), (4) or (5) preceding will be used until the customer reports a different projected interstate percentage for an in service end office. When the customer adds or discontinues BHMCs, lines or trunks to an existing end office, the customer shall furnish an updated projected interstate percentage that applies to the end office. The revised report will serve as the basis for future billing and will be effective on the next bill date. No prorating or back billing will be done based on the report.

ISSUE DATE:
December 18, 1995

Issued Under Transmittal No. 1
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
December 25, 1995

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(A) Jurisdictional Reports (Cont'd)

APPLICABLE TO ALL STATES - EXCLUDING TEXAS

- (7) (a) Effective on the first of January, April, July and October of each year, the customer shall provide a revised jurisdictional report showing the interstate and intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for interstate use. The customer shall forward the revised report to the Telephone Company, to be received no later than 15 days after the first of each such month, (i.e., January, April, July and October). The revised report will serve as the basis for the next three months billing (i.e., beginning the first of February, May, August and November) and will be effective on the customer's bill date for that service. No prorating or back billing will be done based on the report.

If the customer does not supply the revised reports, the Telephone Company will assume the percentages to be the same as those provided in the last quarterly report. For those cases in which a quarterly report has never been received from the customer, the Telephone Company will assume the percentages to be the same as those provided in the order for service as set forth in (1), (4) and (5) preceding.

(C)

ISSUE DATE:
April 16, 1999

Issued Under Transmittal No. 79
Vice President-Regulatory Affairs
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
May 1, 1999

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(A) Jurisdictional Reports (Cont'd)

APPLICABLE TO THE STATE OF TEXAS ONLY

- (7) (b) The customer shall provide to the Telephone Company, by April 15 of each year, a written report which provides the methodology utilized by the customer to develop the PIU factors provided in the quarterly update report as set forth in 2.3.11(A)(7)(c) following.

If the customer fails to provide the annual report by April 15 of each year, the customer will be notified by certified mail that if the annual report is not received within 30 calendar days of the receipt of the notice, the Telephone Company will designate a PIU factor of 50% for each service arranged for interstate use. This factor will be applied to the next billing cycle following the 30 day notice period, and will be utilized until the customer provides an annual report. Once the customer provides the annual report, the Telephone Company will update the customer's PIU factors within 15 business days utilizing the most current PIU factor reported by the customer.

APPLICABLE TO THE STATE OF TEXAS ONLY

- (c) Effective on the first of January, April, July and October of each year the customer shall provide a revised jurisdictional report showing the interstate

(C)
|
(C)

ISSUE DATE:
February 17, 1998

Issued Under Transmittal No. 49
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
March 4, 1998

ACCESS SERVICE

2. General Regulations (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Jurisdictional Report Requirements (Cont'd)

(A) Jurisdictional Reports (Cont'd)

(7) (d) (Cont'd)

company billing arrangement as set forth in 2.4.8(B) following for subtending offices of an access tandem, a copy of the revised report will be provided by the customer to each Secondary Exchange Carrier.

(8) When a customer orders Common Channel Signaling/ Signaling System 7 (CCS/SS7) Interconnection Service, the customer shall provide to the Telephone Company in its order for the service, a CCS/SS7 Interconnection Service Percent Interstate Usage (PIU) Report.

Customers who provide the CCS/SS7 Interconnection Service PIU Report shall supply the Telephone Company with an interstate percentage, of 0 through 100, per Signaling Transfer Point (STP) Port Termination. This STP Port Termination PIU will be an average PIU based upon the jurisdiction (interstate versus intrastate) of those originating end user calls that require use of the specified STP Port Termination for signaling purposes.

ISSUE DATE:
December 18, 1995

Issued Under Transmittal No. 1
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
December 25, 1995

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)

(8) (Cont'd)

The PIU provided by the customer for the STP Port Termination will be used by the Telephone Company to determine the jurisdiction (interstate versus intrastate) of the customer's STP Access Mileage charges.

The CCS/SS7 Interconnection Service PIU must be provided to the Telephone Company upon ordering service, and thereafter, on a quarterly basis. Provisions for updating the interstate and intrastate jurisdictional report as specified in Section 2.3.11(A)(7) preceding will also apply for updating the CCS/SS7 Interconnection Service PIU Report. The Telephone Company will utilize the quarterly CCS/SS7 Interconnection Service PIU Report for the STP Port Termination to update the STP Access Mileage PIU effective on the bill date for the service.

Verification provisions as specified in Section 2.3.11(B) following will also apply to the CCS/SS7 Interconnection Service PIU Report.

ISSUE DATE:
December 18, 1995

Issued Under Transmittal No. 1
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
December 25, 1995

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)

- (9) When a customer orders Line Information Data Base (LIDB) Access Service, the customer shall in its order provide to the Telephone Company a LIDB Access Service Percent Interstate Usage (PIU) Report.

Customers who provide the LIDB Access Service PIU Report shall supply the Telephone Company with an interstate percentage per originating point code (OPC) ordered. The LIDB Access Service PIU will be an average PIU based upon the jurisdiction (interstate versus intrastate) of those originating end user calls for which the Telephone Company LIDB is being queried.

The LIDB Access Service PIU Report must be provided to the Telephone Company upon ordering service, and thereafter, on a quarterly basis. Provisions for updating the interstate and intrastate jurisdictional report are as specified in Section 2.3.11(A)(7), and will also apply for the LIDB Access Service PIU Report.

Verification provisions as specified in Section 2.3.11(B) will also apply for LIDB Access Service PIU Report.

(10) Entrance Facility and Direct-Trunked Transport

Entrance Facility and Direct-Trunked Transport will be made available on December 30, 1993 in conformance with the restructure of Local Transport. In order to provide these new services on December 30, 1993, customers of Switched Access services must provide new PIU factors that reflect all Switched Access services using these restructured facilities.

ISSUE DATE:
December 18, 1995

Issued Under Transmittal No. 1
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
December 25, 1995

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)(10) Entrance Facility and Direct-Trunked Transport (Cont'd)

- (a) When an Entrance Facility is provided for both interstate and intrastate Switched Access, the customer must provide a Switched Access Entrance Facility PIU factor on a serving wire center or study area level. The Entrance Facility PIU must account for all Switched Access originating and terminating usage carried over the Entrance Facility.
- (b) When Direct-Trunked Transport is provided for both interstate and intrastate Switched Access, the customer must provide a Switched Access Direct-Trunked Transport PIU factor on a study area level. The Direct-Trunked Transport PIU must account for all Switched Access originating and terminating usage carried over the Direct-Trunked Transport facilities.
- (c) If the customer does not provide a Switched Access PIU factor for an Entrance Facility or Direct-Trunked Transport as set forth in (a) and (b) above, the Telephone Company will develop a PIU for the Entrance Facility and Direct-Trunked Transport using the most current representative period.

ISSUE DATE:
December 18, 1995

Issued Under Transmittal No. 1
Vice President-Revenues
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
December 25, 1995

ACCESS SERVICE

2. General Regulations (Cont'd)2.3 Obligations of the Customer (Cont'd)2.3.11 Jurisdictional Report Requirements (Cont'd)(A) Jurisdictional Reports (Cont'd)(10) Entrance Facility and Direct-Trunked Transport (Cont'd)

The Entrance Facility and Direct-Trunked Transport PIU Report must be provided to the Telephone Company upon ordering service, and thereafter, on a quarterly basis.

Provisions for updating the interstate and intrastate jurisdictional report as specified in Section 2.3.11(A)(7) preceding will also apply for the Entrance Facility and Direct-Trunked Transport PIU Report.

The verification provisions specified in Section 2.3.11(B) following will also apply for the Entrance Facility and Direct-Trunked Transport PIU Report. (C)

(B) Jurisdictional Report Verification

The customer shall retain, for a minimum of one year, accurate call detail records from which the percentage of interstate and intrastate usage can be derived. Such records shall be made available for inspection and audit within 30 days of the Telephone Company's request for verification. The Telephone Company shall limit audits to one per year, except where additional audits may be required to verify allocation changes which represent a substantial shift from the customer's most recent reported figures, and such change is not the result of seasonal shifts or other identifiable reasons. The customer may request that verification audits be conducted by and independent auditor. In such cases the associated auditing expenses will be paid by the customer.

ISSUE DATE:
October 15, 1999

Issued Under Transmittal No. 92
Vice President-Regulatory Affairs
2330 Shawnee Mission Parkway
Westwood, Kansas 66205

EFFECTIVE DATE:
October 30, 1999

ATTACHMENT

B



Redacted Public Version

122 East Saint James
Street
Tarboro, North Carolina 27886
Writer's Telephone Number:
252-823-9761
FAX: 252-641-9096

August 16, 1999

Dena Bishop, CABS Manager
Thrifty Call
401 Carlson Circle
San Marcos, Texas 78666

Dear Ms. Bishop:

Sprint's Local Telecommunications Division (LTD) receives Thrifty Call's quarterly reports on Percent Interstate Usage (PIU) factors, and updates reported PIUs to Thrifty Call's billing accounts.

Sprint LTD would like to conduct a review of Thrifty Call's FGD Terminating PIUs provided from July 1998 through July 1999. This review includes analysis of the methodology and all input data (including call detail records) used to derive the factors reported by Thrifty Call. Please provide the following information by September 15, 1999:

- Interstate minutes by state and quarter for Florida, North Carolina and Texas
- Total minutes by state and quarter for Florida, North Carolina and Texas
- Time period represented in Thrifty Call's data for each reporting quarter
- Methodology used to calculate the FGD terminating factor

Sprint LTD's 'Jurisdictional Report Requirements' are outlined in our Tariff F.C.C. NO. 1, reference section 2.3.11. Should discrepancies be found during Sprint's review of Thrifty Call's PIU reporting process, access billing adjustments may be applied to affected access accounts. Any planned adjustment will be communicated prior to the bill date on which it appears,

Thanks in advance for your cooperation and support in this review process. If you have questions or concerns with this request, please feel free to contact me.

Cordially,

Jane B. Wrenn
National Account Manager

Cc: Gary Gibbs, Director of Provisioning and Planning, Thrifty Call
Ross Marsh, Director Carrier Accounts Management, Sprint

ATTACHMENT

C

September 24, 1999

**VIA FACSIMILE (512) 392-6276 and
FEDERAL EXPRESS**

Mr. Jerry James
EVP Regulatory and Business Development
Thrifty Call, Inc.
401 Carlson Circle
San Marcos, Texas 78666

Dear Mr. James:

Recently, Sprint has become increasingly concerned over irregularities in the reporting by Thrifty Call of purportedly interstate terminating toll traffic. In July 1998, Thrifty Call's terminating access traffic to Sprint increased substantially in Florida and North Carolina, and to a lesser degree in Texas. During this same period, other carrier's terminating access traffic decreased by corresponding amounts. We have considerable documentation to suggest that for the period from July 1998 to date Thrifty Call has been and continues to terminate as interstate terminating toll traffic large volumes of intrastate terminating toll traffic for other IXCs.

As a consequence, it is apparent that Thrifty Call has been inaccurately reporting its terminating Percent Interstate Usage (PIU) factor. This in turn results in a significant overstatement of terminated interstate access minutes and a corresponding understatement of terminating intrastate access minutes. Our data, which we find to be reliable and accurate, clearly indicates that the magnitude of the inaccuracies in Thrifty Call's reporting is unacceptable. The resulting direct damages to Sprint are in excess of [REDACTED] as of the end of August 1999. This figure is attributable to the states of Florida, North Carolina and Texas, however, we have not concluded the investigation and other states may be involved as well. Our calculation of the damage amount is enclosed (Attachment 1).

By letter dated August 16, 1999, Sprint served Thrifty Call with an audit demand and request for information. Thrifty Call has provided its response. Our review of the

Mr. Jerry James
September 24, 1999
Page 2

information provided by Thrifty Call indicates this response is grossly insufficient. The data provided by Thrifty Call is in a non-industry standard format and fails to provide the call detail necessary to determine the jurisdiction of the calls.

In order to protect Sprint from further damage we find it necessary to undertake the following actions:

1. Sprint demands that Thrifty Call immediately cease such improper reporting.
2. Sprint hereby notifies Thrifty Call of its demand to initiate an onsite audit as soon as possible to commence no later than October 13, 1999. A representative from Sprint, Jane Wrenn, will contact Thrifty Call to coordinate the commencement of the audit.
3. By separate correspondence Sprint will provide to Thrifty Call a complete list of the necessary documentation required for the onsite audit. It is imperative that this information be provided to Sprint on or before the commencement date of the audit to make the onsite audit as productive and effective as possible.
4. By this correspondence we are also requesting the names of all interexchange carriers for which Thrifty Call is terminating traffic to Sprint as well as copies of any communications and agreements that Thrifty Call has with these carriers. This information should be provided as soon as possible and under no circumstances later than the start date of the onsite audit. Should you require a nondisclosure agreement to provide this information please provide the form of such an agreement to me immediately.
5. **Sprint's October access bill to Thrifty Call will include the arrears resulting from the grossly erroneous PIU reports for the period of July 1998 through August 1999 in the amounts of [REDACTED] for Florida, and [REDACTED] for North Carolina and [REDACTED] for Texas. These amounts do not include interest owed, which will be billed at later date.**
6. Sprint has calculated the PIU factors for the access traffic Thrifty Call is terminating to Sprint to be [REDACTED] for Florida, [REDACTED] for North Carolina and [REDACTED] for Texas as compared to Thrifty Call's reported [REDACTED] factors for all three states. Sprint will assess access charges to Thrifty Call based upon these newly

Mr. Jerry James
September 24, 1999
Page 3

calculated PIUs in these states on a going forward basis commencing October 1, 1999. Our support for these PIUs is set forth on Attachment 2.

Non-compliance with the audit process or non-payment of the amounts Sprint has calculated to be due to Sprint from Thrifty Call will result in further actions to ensure that Thrifty Call does not accumulate additional debt and Sprint is not damaged further. Should details be determined in the audit process which require recalculation of the amount owed from Thrifty Call to Sprint (Attachment 1) or modification of the PIUs imposed (Attachment 2) the necessary adjustments will be determined at the conclusion of the audit. Sprint will then make all necessary adjustments in the first available billing cycle thereafter to refund any over collection of funds to Thrifty Call or to bill Thrifty Call for any additional monies owed to Sprint.

This does not suggest that we anticipate that there will be an over collection from Thrifty Call. To the contrary, we anticipate there will be additional monies owed to Sprint. We would not undertake the extraordinary actions set forth in this letter if we were not confident of our position.

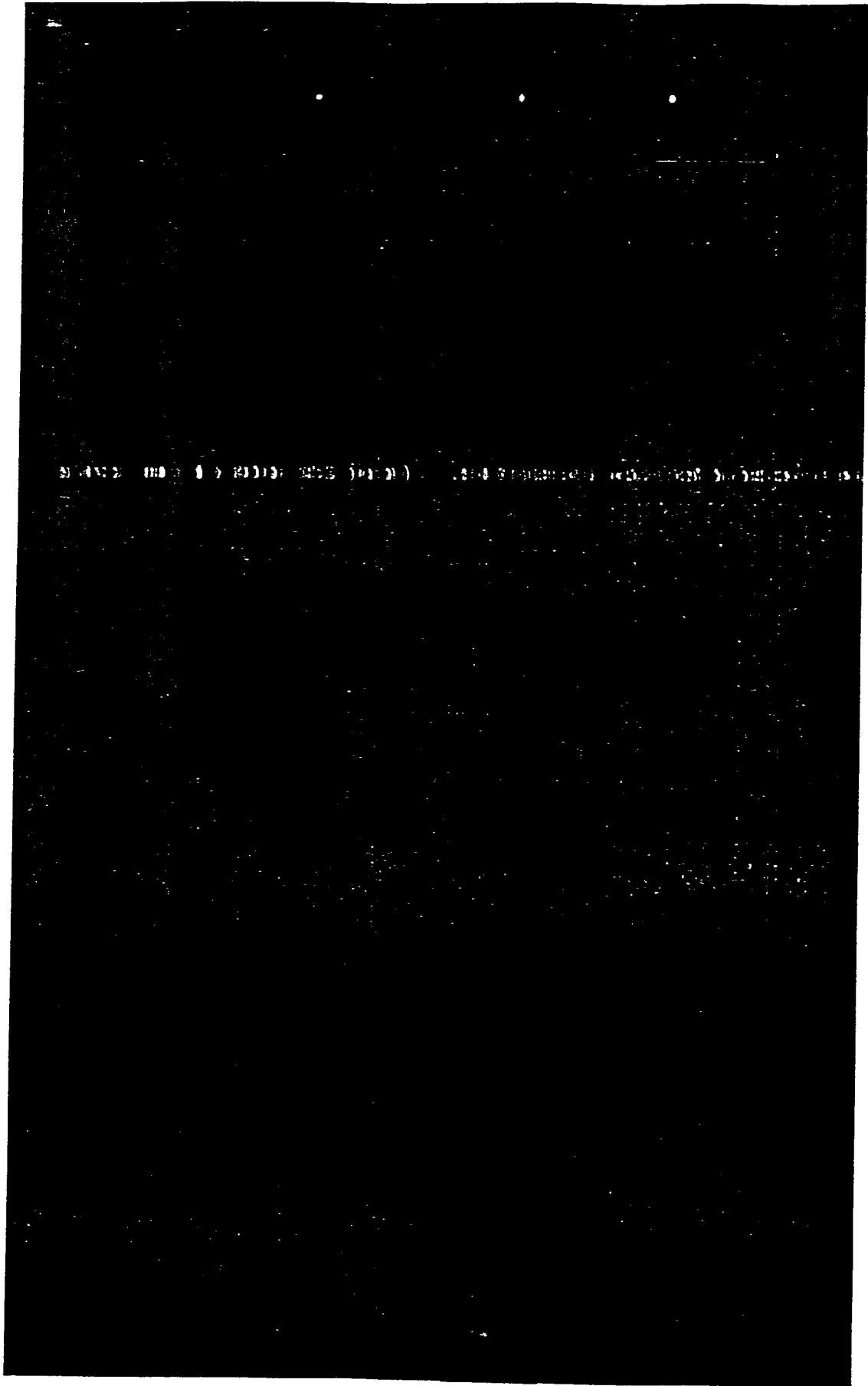
If Thrifty Call is in possession of information to refute the conclusions set forth above, it would be in our mutual best interest for Thrifty Call to immediately provide Sprint such information so that this matter might be amicably resolved. If you wish to discuss this matter you or your counsel may contact me at your convenience.

Very truly yours,

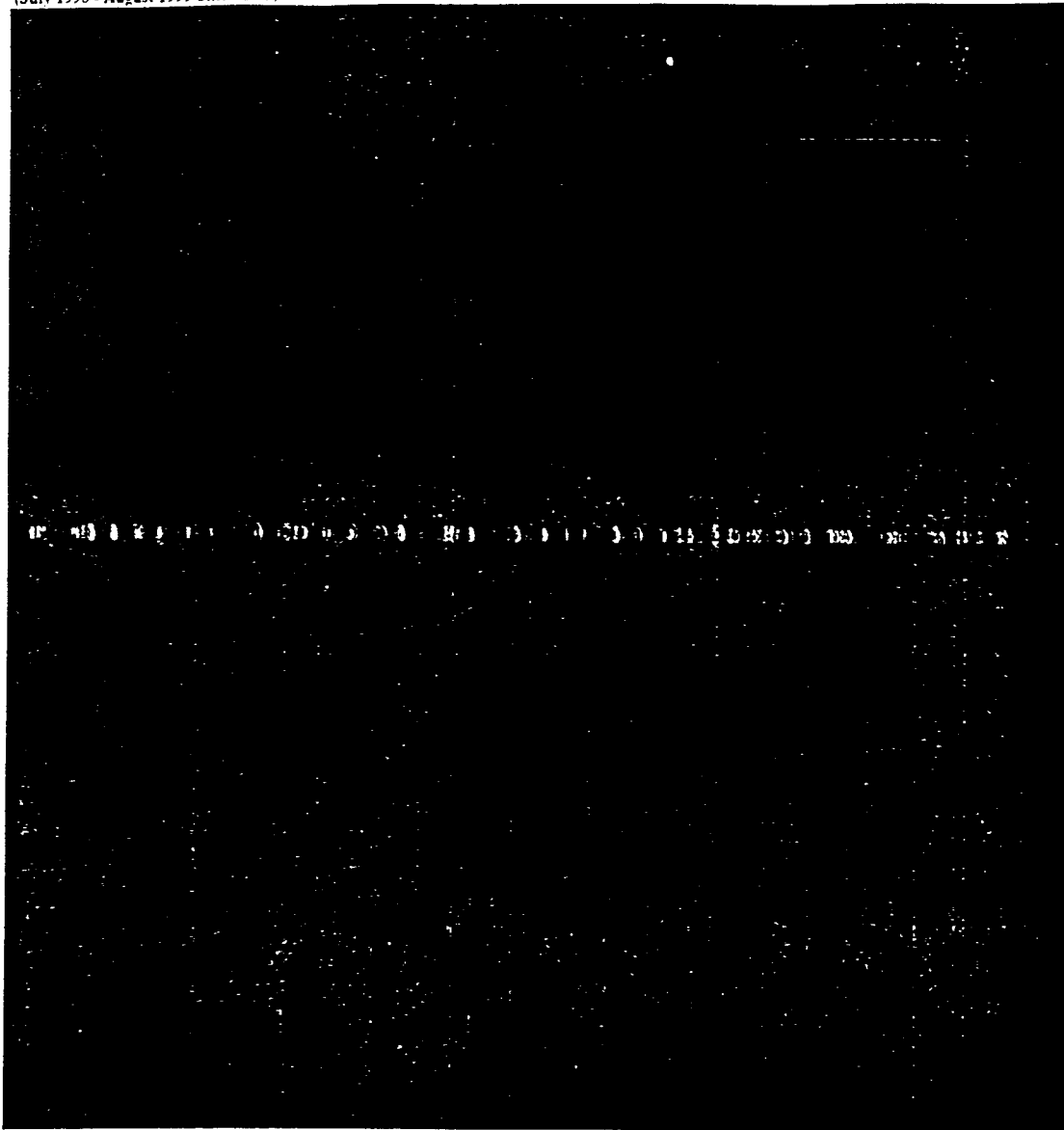
Joseph P. Cowin

c: **Randy Osler**
Bill Cheek

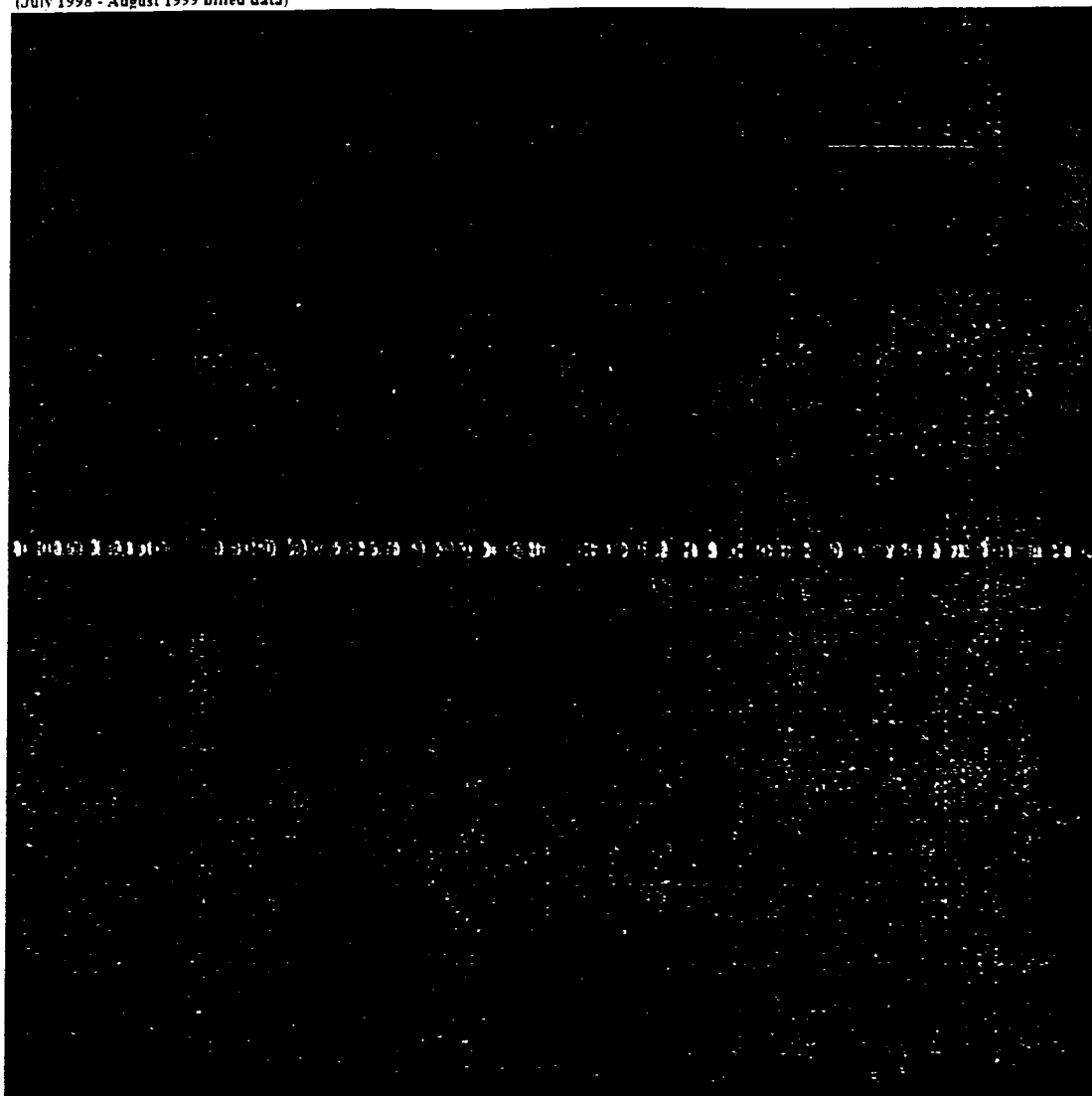
Attachments

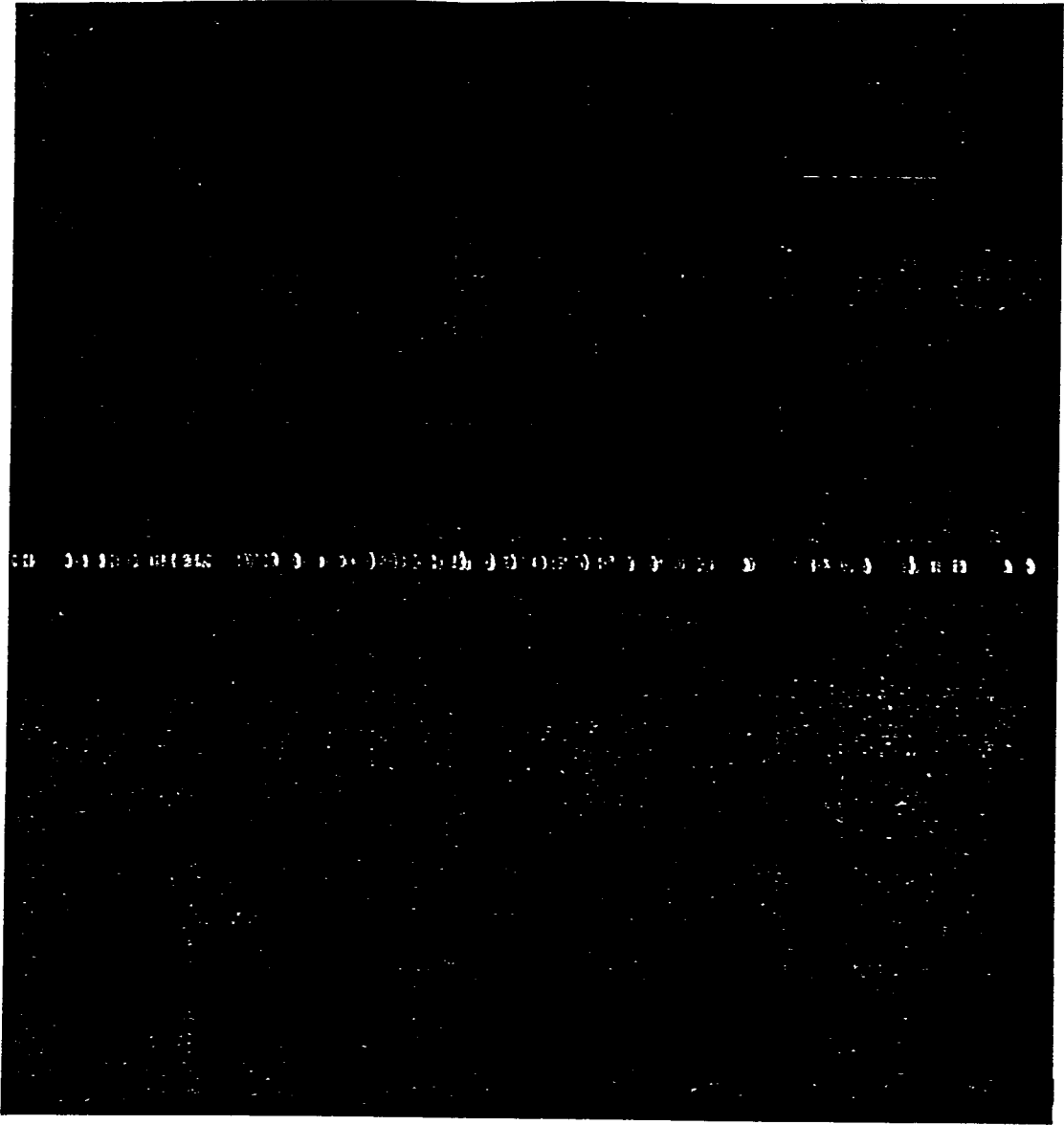


Thrifty Call PIU Revenue Impact Summary - North Carolina
(July 1998 - August 1999 billed data)



Thrifty Call PFU Revenue Impact Summary - Texas (Centel and United)
(July 1998 - August 1999 billed data)





ATTACHMENT

D



Redacted Public Version

Local Telecommunications Division
4220 Shawnee Mission Parkway
Fairway, Kansas 66205
Voice 252-823-9761

October 8, 1999

Mr. Jerry James
EVP Regulatory and Business Development
Thrifty Call, Inc.
401 Carlson Circle
San Marcos, TX 78666

Dear Mr. James:

As stated in Mr. Cowin's letter dated September 24, 1999 and our meeting at COMPTTEL last week, the information provided with your September 15, 1999 letter was insufficient to determine the PIU factors that are to be applied to traffic terminated to Sprint. Our next step is to proceed with an on-site audit as indicated in our previous communications and supported by our tariffs.

We have hired an independent firm, SM&F, Inc., which has considerable experience in the industry and specific expertise in the area of traffic, network and billing systems and the development of PIUs. We estimate it will take three weeks on-site at Thrifty Call to review and analyze the pertinent information required to derive the jurisdiction of the terminating traffic and the ratio between interstate and intrastate.

The SM&F audit team will be supplemented by Sprint subject matter experts, as they are required. The cooperation of your staff is critical to the efficient gathering of the appropriate data that contributes to an effective evaluation of the termination traffic and its jurisdiction. We have scheduled our team to be on-site at Thrifty Call beginning Monday, October 18, 1999.

Please refer to Attachment A which depicts the information we expect to be available to us upon our arrival on October 18, 1999. This list may be supplemented with additional requests as the audit unfolds.

Jerry, it is our sincere desire to conduct this audit with minimal disruption to your operations. As you know, we are resolved to determine the true jurisdiction of this traffic. The dedication of resources from Thrifty Call will contribute to a smooth and possibly expedited audit.

Page 2
Mr. Jerry James
October 8, 1999

While on vacation the week of October 11, please respond to Gregg Brown at 913-624-1634. Gregg is a member of Carrier Markets Management in Kansas City and will be coordinating the audit. Any written correspondence should be sent to his attention at:

4220 Shawnee Mission Parkway, Suite 301B
Mailstop: KSFRWB0301
Fairway, KS 66205

Fax: 913-624-1325

Please respond to Gregg no later than Wednesday, October 13, 1999.

Again, Jerry, if there is anything I can personally do to resolve this issue, please do not hesitate to call.

Sincerely,

/s/

Jane Wrenn

Attachment

pc. Randy Osler
Bill Cheek
Joe Cowin
Gregg Brown

ATTACHMENT A

Audit of the PIU factors developed by Thrifty Call.
Information to be Available Onsite October 18, 1999

For (Florida, North Carolina and Texas) the period July 1, 1998 through June 30, 1999 please provide:

1. Names of all carriers (interexchange and otherwise) for which Thrifty Call is terminating traffic to Sprint
2. The volume of traffic per each carrier (interexchange and otherwise) terminated to Sprint for each month of the time period
3. Copies of any communications and agreements that Thrifty Call has with carriers (interexchange and otherwise) that involve traffic terminating to Sprint
4. Copies of any operational document that describes the terms and conditions of terminating traffic from other carriers, (interexchange and otherwise) to Sprint
5. Copies of internal and external audit reports of Thrifty Call's PIC factor development systems and processes
6. Thrifty Call Traffic Dispersion Report for July 1, 1998 through June 30, 1999
7. Copies of written internal controls for the Thrifty Call Traffic Dispersion Report
8. Copies of written internal controls for traffic call processing systems
9. System documentation depicting the flow of records from the time a record is handed off to Thrifty Call from a carrier (interexchange and otherwise) until it reaches the Traffic Dispersion Report
10. Network and system documentation depicting the flow of traffic and the recording of records from the time a call is handed off to Thrifty Call from a carrier (interexchange and otherwise) until it reaches Sprint
11. Source of the call detail records for the Traffic Dispersion Report
12. A list of significant modifications to the Traffic Dispersion Report
13. List major changes in network or traffic fluctuations that occurred
14. Printout and file layout of the records transmitted to Thrifty Call from MCI prior to processing
15. The types of trunks between carriers (interexchange and otherwise) and Thrifty Call for purposes of terminating traffic to Sprint
16. Copy of Thrifty Call's FCC and state toll tariffs for Florida and North Carolina
17. Information depicting where calls terminated to Sprint are switched
18. Type of switch where Sprint calls are switched, including whether (the switches are SS7 equipped).
19. All records terminating to Sprint from July 1, 1998 through June 30, 1999 in industry standard EMI CAT 11 (access record) format

ATTACHMENT

E

Thrifty Call. COPY

September 15, 1999

Ms. Jane B. Wrenn
National Account Manager
Sprint
122 E. St. James Street
Tarboro, NC 27886

Dear Ms. Wren:

As per your request in your letter dated August 16, 1999, enclosed please find the following information:

1. Copy of Thrifty Call's methodology
2. File layout of call records
3. Four (4) CDs with all call records by quarter of the data used to calculate our PIU for Texas, Florida and North Carolina for Sprint service areas

Items 2 and 3 above have been sent to the attention of Susan Goodman in Kansas City as per your request. Our quarterly reports, which have been sent and received by Sprint in a timely manner, during the period of time for which you have requested data and the information provided is as reflected in the following chart:

<i>CDR Timeframe</i>	<i>Quarterly Report Date</i>	<i>PIU Period</i>
7/1/98 – 9/30/98	10/15/98	4 th qtr. 1998
10/1/98 – 12/31/98	1/15/99	1 st qtr. 1999
1/1/99 - 3/31/99	4/15/99	2 nd qtr. 1999
4/1/99 – 6/30/99	7/15/99	3 rd qtr. 1999

Thrifty Call, Inc. 401 Carlson Circle, San Marcos, TX 78666

(512) 392-6284 Fax (512) 392-6276

Ms. Jane Wrenn
September 15, 1999
Page 2

It is our understanding you are requesting this data under Sprint's Tariff FCC No. 1 as per reference Section 2.3.11. Thrifty Call, Inc. is voluntarily responding to your request and in so doing, the Company does not waive any of our rights regarding these matters. Thrifty Call expects Sprint to promptly review the data provided and advise Thrifty Call of its results.

Please direct any requests for further information to Dena Bishop or myself at (512) 392-6284. Please acknowledge in writing your receipt of the enclosed materials.

Sincerely,



Jerry James
Executive Vice President of
Governmental Affairs and Business Development

JJ/mwd

Cc: Susan Goodman, Sprint
Dena Bishop, Thrifty Call

ATTACHMENT

F

Redacted Public Version

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

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BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

October 11, 1999

DANNYE ADAMS

DIRECT LINE (202) 955-9874
E-MAIL: dadamsekelleydrye.com

By FEDERAL EXPRESS

Joseph P. Cowin, Esq.
Senior Attorney
Sprint Legal and External Affairs
5454 West 110th Street
Overland, Kansas 66211

Re: Demand letter to Thrifty Call dated September 24, 1999

Dear Mr. Cowin:

This letter is in response to your letter of September 24, 1999, and the letter of Ms. Jane Wrenn dated October 8, 1999, both to Mr. Jerry James, Executive Vice President of Thrifty Call, Inc. As explained more fully below, your letter is based on several erroneous statements of fact and law, including wrong interpretations of Sprint's own interstate access tariff. Based on these errors, you propose a series of extreme, and in some cases unlawful, measures. Thrifty Call has no intention of acceding to these demands and will not cooperate in any PIU audit until these misconceptions are remedied.

First, Thrifty Call's PIU reports are accurate. As you are undoubtedly aware, since 1985 the FCC has prescribed the "entry-exit surrogate" method of jurisdictional classification of telecommunications traffic covered by PIU reports. This requirement is recognized by Sprint at Section 2.3.11 (A)(1)(b) of its Tariff F.C.C. No. 1. The FCC's EES methodology prescribes that (as stated in Sprint's FCC tariff), "every call for which the point of entry is in a state other than that where the called station (as designated by the called station number) is situated is an interstate communication." ¹

All of the Thrifty Call terminating minutes which you challenge as intrastate in Florida and North Carolina meet the FCC's definition (repeated in the Sprint tariff) of interstate

¹ Sprint Tariff F.C.C. No. 1, Section 2.3.11(A)(1)(b).

KELLEY DRYE & WARREN LLP

Joseph P. Cowin, Esq.
October 11, 1999
Page Two

calls. That is, these minutes entered the Thrifty Call network in a state *other than* the state in which they were terminated. Under FCC rules and the Sprint tariff, then, these minutes are interstate and were properly reported. The traffic carried in Texas, on the other hand, was given to Thrifty Call by other carriers and the call records which support the interstate PIU reports have already been supplied to Sprint.

Second, the only departure from the EES methodology permitted by the FCC rules or the Sprint tariff is following an audit. Your letter states that "Thrifty Call has been inaccurately reporting" its PIU, based on Sprint's data. Not surprisingly, Sprint finds its own data to be more "reliable and accurate" than Thrifty Call's reports. Despite the absence of any discussion of the EES methodology, the basis of Sprint's allegedly more reliable data, or the points of entry and exit on the Thrifty Call network, your letter states an intent to impose Sprint's unilaterally determined PIU on Thrifty Call and to backbill Thrifty Call [REDACTED]. This is an unacceptable position. The minutes in question were interstate and Sprint's attempt to recharacterize them in complete disregard for the FCC's prescribed methodology will not be accepted by Thrifty Call; nor is this approach consistent with FCC policy or the Sprint tariff.

Third, no backbilling is permitted even where audits conclude that PIU reports are inaccurate. Your letter takes the further erroneous position that the law permits Sprint to backbill any difference that an audit finds between a carrier's PIU reports and Sprint's own "data." Even where the prescribed procedure is followed and an audit of PIU reports is conducted, any adjustment based on the audit is forward-looking only. No backbilling is permitted. In fact, Sprint's Tariff F.C.C. No. 1 states twice that "no prorating or back billing will be done based on [any revised] report." In contrast, its only reference to departures from carrier reports as the basis for PIU is in its reference to audits, which does not include any reference to backbilling. This fact is not the result of magnanimity on the part of Sprint's tariff writers, it is because FCC policy precludes any such backbilling. Your statement that Sprint intends to backbill Thrifty Call for over [REDACTED] thus is in direct contravention of both the Sprint tariff and FCC policies and rules.

Fourth, Sprint has no basis for demanding that Thrifty Call provide it with proprietary customer information. Your September 24 letter requests "the names of all interexchange carriers for which Thrifty Call is terminating traffic to Sprint as well as copies of any communications and agreements that Thrifty Call has with these carriers." The October 8 letter from Jane Wrenn seeks even more information about Thrifty Call's client relationships. Thrifty Call's response to these demands is, in a word: *no*. Sprint has no basis for such an extreme demand and Thrifty Call has no intention of supplying Sprint - or any other competitor - with copies of confidential communications and contracts with its customers - with or without a confidentiality agreement.

In summary, Thrifty Call offers the following responses to the six numbered statements in your September 24 letter.

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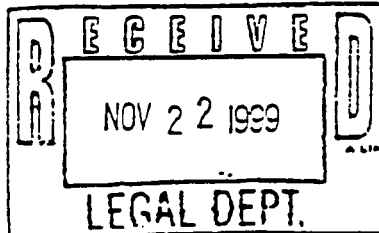
Joseph P. Cowin, Esq.
October 11, 1999
Page Three

1. Thrifty Call's PIU reports comply with the FCC's prescribed EES methodology.
2. Thrifty Call has no intention of permitting a Sprint audit in the face of Sprint's threats of unlawful backbilling and unilateral PIU revisions. When these unlawful demands have been rescinded, the terms and timing of a third party audit can be discussed. Please inform Ms. Jane Wrenn and Mr. Gregg Brown that the audit they propose to initiate on October 18, 1999 is postponed indefinitely.
3. No information will be provided at this time.
4. No information will be provided in connection with Thrifty Call's customer communications or contracts, now or in the future.
5. Sprint's proposed backbilling is prohibited by FCC policy and is inconsistent with Sprint's own FCC tariff. Thrifty Call will not pay any backbilled amounts.
6. The FCC's prescribed methodology for PIU measurement is the EES approach based on carrier reporting. Thrifty Call will continue to pay on that basis and will not honor Sprint's unlawful attempt to impose its own "PIU."

I hope this letter gives a clear understanding of Thrifty Call's position on Sprint's unlawful and extreme demands. Please direct all future inquiries and correspondence on this matter to me.

Sincerely,

Danny E. Adams
Counsel to Thrifty Call, Inc.



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MUMBAI, INDIA

TOKYO, JAPAN

November 18, 1999

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

E-MAIL: dedams@kelleydrye.com

BY FEDERAL EXPRESS

Joseph P. Cowin, Esq.
 Senior Attorney
 Sprint Legal and External Affairs
 5454 West 110th Street
 Overland, Kansas 66211

Re: Demand Letter to Thrifty Call dated September 24, 1999

Dear Mr. Cowin:

On October 11, 1999, I wrote to you in response to your letter to Thrifty Call, Inc. dated September 24, 1999. My letter pointed out that calculations of percentage of interstate usage ("PIU") for the jurisdictional characterization of telephone traffic are governed by the FCC-mandated "entry-exit surrogate" ("EES") method and that interexchange carrier reporting is the FCC chosen vehicle for setting PIU in the first instance. Sprint may not lawfully impose its own PIU nor backbill following a PIU audit. Thrifty Call's position remains as described in my October 11 letter. To date, Sprint has offered no legal analysis to challenge any of the points made in that letter.

It has now been brought to my attention that Sprint's Local Telecommunications Division has billed Thrifty Call for services in Texas, Florida and North Carolina using a PIU chosen unilaterally by Sprint, without regard to Thrifty Call's PIU reports, the procedures required by Sprint's tariff, or the regulations and policies of the FCC. These invoices are dated October 16, 1999.

This attempt by Sprint to dictate a PIU is patently illegal. Thrifty Call has no obligation to pay Sprint bills which are calculated in this unlawful manner. As a consequence, Thrifty Call will pay Sprint on the proper basis - relying on the EES methodology and the PIU

REDACTED PUBLIC VERSION

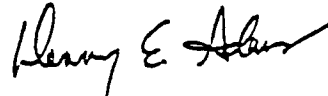
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Joseph P. Cowin, Esq.
November 18, 1999
Page Two

contained in Thrifty Call's reports; it will not pay the amount calculated by Sprint using its own PIU. Sprint should revise its October 16 invoices (and all future ones) accordingly.

Please direct any correspondence or other communications on this matter to me.

Sincerely,



Danny E. Adams
Counsel to Thrifty Call, Inc.

DEA:ae

ATTACHMENT

G



Joseph P. Cowin
Senior Attorney

Legal & External Affairs, LTD
5454 West 110th Street
Overland Park, KS 66211
Voice 913 345 7773
Fax 913 345 6497
joseph.cowin@mail.sprint.com

November 22, 1999

**VIA FACSIMILE (202) 955-9792 and
FEDERAL EXPRESS OVERNIGHT MAIL**

Danny E. Adams
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

Re: Discontinuance of Access Services

Dear Mr. Adams:

Since First Quarter of 1998, Thrifty Call, Inc. ("Thrifty Call") has consistently reported to Sprint-Florida, Inc. ("Sprint") a percent interstate usage ("PIU") of 91 - 98% (primarily 98%) for traffic terminating to Sprint over Feature Group D trunks. Pursuant to Section E2.3.11.C.1 of Sprint's Florida Access Service Tariff (the "Tariff"), Sprint is entitled to require Thrifty Call to provide call detail records in connection with the initiation of an audit to substantiate the reported PIU if a dispute arises. Section E2.3.11.C.3 of the Tariff provides that failure to provide requested data within 30 days of a written request or audit notice is a violation of Sprint's Tariffs and subjects Thrifty Call to the actions specified in Section E2.1.8 of the Tariff, including disconnection of service.

By letters dated August 16, 1999, September 24, 1999, and October 8, 1999, Sprint has demanded information from Thrifty Call, including call detail records, to pursue an on-site audit of Thrifty Call with respect to the above stated PIU dispute. Thrifty Call's response to Sprint's initial request for call detail records did not include the originating calling party number ("CPN") in 99% of the records provided. Obviously, the CPN is indispensable in evaluating the PIU, the proportion of interstate calls versus intrastate calls. Without the CPN, the data provided by Thrifty Call is useless to validate the claimed PIU factors. In effect, Thrifty Call provided no response to Sprint's initial request for call detail records.

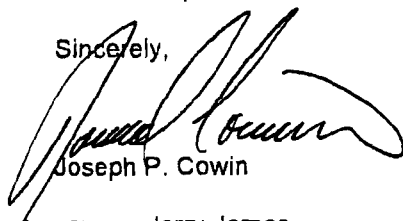
More than 30 days have now elapsed since Sprint delivered the letters referenced above. Thrifty Call has failed and refused to provide the requested data. Specifically, by letter dated October 11, 1999, Thrifty Call has notified Sprint that it will not comply with the audit request. Thrifty Call's letter of October 11, refusing to comply with Sprint's audit request, is a serious and material violation of Section E2.3.11.C of the Tariff.

Danny Adams
November 22, 1999
Page 2

In addition to the Tariff violations listed above, other information available to Sprint clearly demonstrates that Thrifty Call's PIU is grossly inaccurate. Such inaccurate reporting of the PIU also constitutes a violation of the Tariff.

PLEASE TAKE NOTICE THAT, pursuant to Sprint's Tariff Section E2.1.8.B, Sprint will discontinue all terminating access services provided to Thrifty Call, effective 30 days after Thrifty Call's receipt of this letter.

Sincerely,



Joseph P. Cowin

cc: Jerry James
Bill Cheek