

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for cancellation  
of Interexchange  
Telecommunications Certificate  
No. 3990 by Thrifty Call, Inc.,  
effective 7/10/00.

DOCKET NO. 000890-TI  
ORDER NO. PSC-00-1939-PCO-TI  
ISSUED: October 20, 2000

ORDER DENYING MOTION TO INTERVENE  
AND REQUEST FOR ORAL ARGUMENT

On July 20, 2000, Thrifty Call, Inc. (Thrifty) filed a request for cancellation of Interexchange Telecommunications (IXC) Certificate Number 3990. On August 16, 2000, our staff filed a recommendation for the Commission's consideration at the August 29, 2000 Agenda Conference to approve Thrifty's request for IXC cancellation. On August 24, 2000, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion to Intervene, Response to Request for Cancellation of IXC Certificate Number 3990 and Request for Oral Argument. On August 29, 2000, at the request of our staff, we deferred Thrifty's request for IXC cancellation from the Agenda Conference. On September 5, 2000, Thrifty filed a Response to BellSouth's Motion to Intervene and Response to Request for cancellation of IXC Certificate Number 3990 and Request for Oral Argument.

I. MOTION TO INTERVENE

In its motion, BellSouth asserts that the cancellation of Thrifty's Certificate Number 3990 would be followed by a Motion to Dismiss BellSouth's complaint in Docket No. 000475-TP, and that the basis for said motion would be that Thrifty is no longer a certificated carrier. Hence, this Commission would no longer have jurisdiction over Thrifty. Also, BellSouth contends that Thrifty's request for cancellation of its IXC certificate is not consistent with Commission rules. BellSouth states that Rule 25-24.474, Florida Administrative Code, regarding the cancellation of a certificate, would require the requesting carrier to provide a statement on the treatment of "final bills." BellSouth asserts that Thrifty makes no mention of the amounts owed to BellSouth in its statement for treatment of bills.

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In its Response, Thrifty asserts that it has been established by this Commission that one carrier has no right to intervene in a docket involving another carrier's certificate. See Order Nos. PSC-94-0114-FOF-TI, PSC-98-0702-FOF-TP. Thrifty states that the Agrico test is the standard for establishing standing to a proceeding. In Agrico Chemical Company v. Department Environmental Regulation, 406 So. 2d 478, the court held that before a party can be considered to have a substantial interest in the outcome of a proceeding the party must show, 1) that the party will suffer injury in fact which is of sufficient immediacy and 2) that the party's substantial interest is of the type which the proceeding is designed to protect. Thrifty asserts that BellSouth has no immediate injury in fact and that BellSouth's ultimate claim is that it may be entitled to relief under its complaint in Docket No. 000475-TP. Also, Thrifty states that BellSouth has failed to show that Thrifty's request for cancellation of its IXC certificate proceeding is the type of proceeding that is designed to protect BellSouth's interests.

## II. REQUEST FOR ORAL ARGUMENT

Rule 25-22.058, Florida Administrative Code, requires a movant to show with particularity why Oral Argument would aid the Commission in comprehending and evaluating the issues before it. This rule also requires that the request for argument be contained on a separate document and accompany the pleading upon which argument is requested. BellSouth has failed to comply with the latter two provisions of the rule. Although BellSouth maintains that oral argument is necessary, the matters addressed in BellSouth's Motion for Intervention are ably presented. Therefore, it does not appear to us that oral argument would assist us in evaluating the Motion for Intervention, and the Request for Oral Argument is denied.

## III. CONCLUSION

Pursuant to Rule 25-22.039, Florida Administrative Code, persons seeking to intervene in a Commission proceeding must demonstrate that they are entitled to participate because they have a substantial interest that may be adversely affected by the outcome of the proceeding. This rule also requires that allegations be sufficient to show that the intervenor is entitled to participate in the proceeding as a matter of constitutional or

statutory right or pursuant to a Commission rule, or that substantial interests of the intervenor are subject to determination or will be affected through the proceeding. When a intervenor's standing in an action is contested, the burden is upon the intervenor to demonstrate that the petitioner has standing.

Upon consideration, we find that the allegations by BellSouth do not meet the requirements of standing under the Agrico test. BellSouth has failed to show that it will suffer an injury in fact which is of sufficient immediacy to warrant a Section 120.57 hearing. Also, a request for cancellation of an IXC certificate is not a proceeding under which BellSouth could be granted the relief requested in Docket No. 000475-TP. We note that a cancellation of Thrifty's IXC certificate will not bar this Commission from exercising its jurisdiction over BellSouth's pending complaint in Docket No. 000475-TP.<sup>1</sup> Based on the foregoing, BellSouth's Motion to Intervene and Request for Oral Argument are denied.

Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr. as Prehearing Officer that the Motion to Intervene and Oppose Application for request cancellation of Interexchange Certificate Number 3990 filed by BellSouth Telecommunications, Inc. is hereby denied. It is further

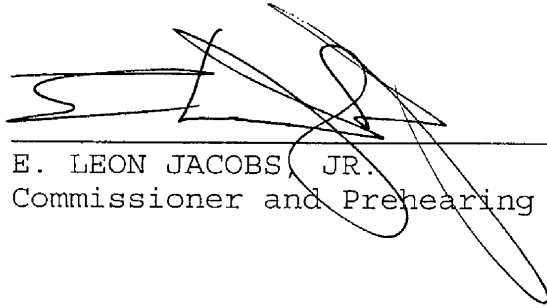
ORDERED that the Request for Oral Argument filed by BellSouth Telecommunications, Inc. is hereby denied.

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<sup>1</sup> In Charlotte County, Florida vs. General Development Utilities, Inc., 653 So. 2d 1081, the court held that the PSC had the authority to exercise its jurisdiction over the complaint. In the circumstances of this case, the PSC had jurisdictional authority to resolve the question of the alleged overcharges occurring before the transfer of the utility's North Port facility and the cancellation of its North Port certificate.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 20th Day of October, 2000.



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E. LEON JACOBS, JR.  
Commissioner and Prehearing Officer

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for

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reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.