

ORIGINAL

Matilda Sanders

From: Barclay, Lynn [Lynn.Barclay@BellSouth.com]
Sent: Monday, November 14, 2005 2:04 PM
To: Filings@psc.state.fl.us
Cc: Fatool, Vicki; Linda Hobbs; Nancy Sims; Holland, Robyn P; Bixler, Micheale; Slaughter, Brenda ; Tyler, John
Subject: 000475-TP BellSouth's Motion to Inspect and Examine Confidential Material
Attachments: 0004750-TP BellSouth's Motion to Inspect and Examine Confidential. Material.pdf

- A. Lynn Barclay
 Legal Secretary to John T. Tyler
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (404) 335-0788
lynn.barclay@bellsouth.com
- B. Docket No. 041269-TL: In re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law
- C. BellSouth Telecommunications, Inc.
 on behalf of John T. Tyler
- D. 6 pages total

E. BellSouth Telecommunications, Inc.'s Motion to Inspect and Examine Confidential Material.

<<0004750-TP BellSouth's Motion to Inspect and Examine Confidential. Material.pdf>>

Lynn Barclay

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OTH 11/14/2005 *Kim P. Lockard*

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John T. Tyler
Senior Regulatory Counsel

BellSouth Telecommunications, Inc.
150 South Monroe Street
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(404) 335-0757

November 14, 2005

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

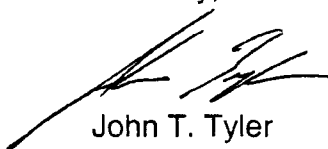
**Re: FL Docket 000475-TP - Complaint Against Thrifty Call, Inc.
Regarding Practices in Reporting PIU for Compensation
For Jurisdictional Access Services**

Dear Mrs. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion to Inspect and Examine Confidential Material, which we ask that you file in the above-referenced matter.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



John T. Tyler

cc: All Parties of Record
Jerry D. Hendrix
R. Douglas Lackey
Nancy B. White

609864

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CERTIFICATE OF SERVICE
Docket No. 000475-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U. S. Mail this 14TH day of November, 2005 to the following:

Felicia Banks
Staff Counsel
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Tallahassee, Florida 32399-0850
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Thrifty Call, Inc.
c/o Lovelady Management Services
400 W Hopkins, Suite 103
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Phone: 512 754-6406
Fax: 512 754-1515
harold@corridor.net



John T. Tyler

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
) DOCKET NO. 000475-TP
Complaint by BellSouth Telecommunications, Inc.)
against Thrifty Call, Inc. regarding practices) Filed: November 14, 2005
in the reporting of percent interstate usage for)
compensation for jurisdictional access services)

MOTION TO INSPECT AND EXAMINE CONFIDENTIAL MATERIAL

In accordance with Section 25-22.006(5)(c)2. of the Florida Administrative Code,¹ BellSouth Telecommunications, Inc. ("BellSouth") requests that the Florida Public Service Commission ("Commission") make available to BellSouth, for inspection and examination, material claimed to be confidential filed with the Commission in this Docket by Thrifty Call, Inc. ("Thrifty Call"). In support of this request, BellSouth states the following:

1. On April 21, 2000, BellSouth filed a Complaint against Thrifty Call to recover unpaid interstate access charges that resulted when Thrifty call reported erroneous and unlawful Percent Interstate Usage (PIU) factors to BellSouth.

2. On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative to Bifurcate the Proceedings. In support of the Motion to Stay, Thrifty Call requested that the proceeding be stayed until the Federal Communications Commission (FCC) resolved Thrifty Call's Petition for Declaratory Ruling wherein, it requested, *inter alia*, that the FCC affirm that the use of the entry/exit surrogate (EES) method by Thrifty Call was appropriate.

¹ Section 25-22.006(5)(c)2 provides: "Any person may file a petition to inspect and examine any material which has been claimed confidential pursuant to Section 364.183(1), Florida Statutes. A copy of the petition must be served on the affected telecommunications company or person which shall have 10 days to file a response as to why the material should remain exempt. The petitioner shall have 7 days to file a reply to the filed response. The Commission may set the matter for hearing or issue a ruling on the pleadings."

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3. The Commission granted the Motion to Stay in Order No. PSC-01-2309-PCO-TP, issued November 21, 2001, because it found that “[t]he answer to this question goes directly to the matter before the Commission.” Order No. PSC-01-2309-PCO-TP at 6. The Commission held that it was “appropriate and in the interest of judicial economy to stay the proceeding until the FCC issued a ruling on question number four of the Petition for Declaratory Ruling submitted by Thrifty Call.” *Id.* at 7.

4. On November 10, 2004, the FCC issued its Declaratory Ruling, DA 04-3576,² wherein it rejected Thrifty Call’s arguments. Specifically, the FCC stated:

Although we agree with Thrifty Call that the EES methodology was the correct methodology to use in determining the jurisdiction of its traffic under BellSouth’s federal tariff, we disagree with Thrifty Call’s application of the method. . . Under Thrifty Call’s interpretation, each call would be broken into two separate calls: one from the originating customer in North Carolina or Florida to Thrifty Call’s switch in Georgia, and then a second call from Thrifty Call’s Georgia switch to the called party in North Carolina or Florida. Thrifty Call’s interpretation of these terms is incorrect and inconsistent with both Commission and court proceeding holding that the points where the call originates and terminates are more significant than the intermediate facilities used to complete such communications. Thus, a call is intrastate if it originates and terminates in the same state. Courts have also found that interstate communications extends from the inception of a call to its completion regardless of any intermediate points of switching or exchanges between carriers. The fact that the calls at issue were routed through a switch in Georgia is immaterial to the jurisdiction of a call. Thrifty Call should have reported all calls where both the calling party and the called party were located in the same state as intrastate calls and should have reported all calls where the calling part was located in one state and the called party was located in another state as interstate calls.

Id. at ¶ 15.

5. In its Declaratory Ruling the FCC found that Thrifty Call’s over-reporting of its interstate PIU based on its applications of the EES methodology was incorrect.

² *In the Matter of Thrifty Call, Inc. Petition for Declaratory Ruling concerning BellSouth Telecommunications, Inc.* Tariff F.C.C. No. 1.

6. In light of the FCC's decision, On July 20, 2005, BellSouth filed a Motion to Lift Stay and Establish Procedural Schedule.

7. On November 2, 2005, the Commission entered its Order Granting BellSouth's Motion to Lift Stay and Establish Procedural Schedule.

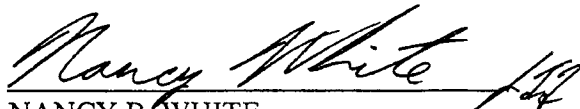
8. During the course of this Docket, Thrifty Call filed with the Commission material purported to be confidential, and therefore exempt from disclosure.

9. Upon information and belief such material includes, *inter alia*, call detail records dispositive of the disputed issues in this Docket. Accordingly, to facilitate resolution of this litigation, it is essential that BellSouth review all material, filed with the Commission, claimed to be confidential by Thrifty Call.

10. In an Order issued November 2, 2005, the Commission granted the Motion for Leave to Withdraw as Counsel for Thrifty Call, filed by Floyd R. Self, Esquire and the law firm of Messer, Caparello & Self, P.A. To date, BellSouth is unaware of any counsel of record for Thrifty Call and is therefore unable to confer and ascertain whether the party has any objection to this motion as mandated by Section 28-106.204(3) of the Florida Administrative Code.³

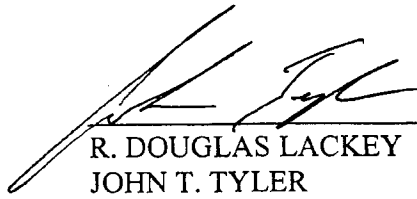
WHEREFORE, BellSouth respectfully requests that the Commission allow BellSouth to inspect and examine all material filed in this Docket claimed to be confidential by Thrifty Call.

Respectfully submitted this 14th day of November, 2005.



NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558

³ Section 28-106.204(3) provides: "Motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion."



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