

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc. and Frontier Communications of the South, LLC, ("Joint Petitioner") objecting to and requesting suspension of Proposed Transit Traffic Service Tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050119-TP

In re: Petition and complaint for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc., by AT&T Communications of the Southern States, LLC.

Docket No. 050125-TP

Dated: February 20, 2006

**PREHEARING STATEMENT OF METROPCS CALIFORNIA/FLORIDA, INC.**

Pursuant to Order No. PSC-05-1206-PCO-TP, MetroPCS California/Florida, Inc. ("MetroPCS") files its Prehearing Statement.

**A. APPEARANCES:**

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**On behalf of MetroPCS California/Florida, Inc.**

**B. WITNESSES:**

**Rebuttal**

<b>Witness</b>	<b>Proffered by</b>	<b>Issues</b>
Dena J. Bishop	MetroPCS	11A

**C. EXHIBITS:**

<b>Exhibits (Rebuttal)</b>	<b>Witness</b>	<b>Description</b>
Exhibit No. ____ (DJB-1)	Bishop	Qwest Interconnection Agreement

MetroPCS reserves the right to introduce additional exhibits during cross-examination and redirect and to rely upon exhibits introduced by other parties.

**D. STATEMENT OF BASIC POSITION:**

All telecommunications carriers are required by 47 U.S.C. § 251(a) “to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers,” and all incumbent local exchange carriers (“ILECs”) are required by 47 U.S.C. § 251(c)(2) “to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the [ILEC’s] network ... that is at least equal in quality to that provided by the [ILEC] to itself or to any subsidiary, affiliate, or any other party to which the [ILEC] provides interconnection.” Under 47 U.S.C. § 252(d)(1), the rates an ILEC may charge for interconnection and network elements are based on the “cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element” and “may include a reasonable profit.” 47 U.S.C. § 252(d)(2) further provides that the charges for transport and termination of traffic shall allow for the recovery of a carrier’s costs to transport and terminate a call and that the costs shall be determined on the “basis of a reasonable approximation of the additional costs of terminating such calls.” The Federal Communications Commission (“FCC”) also found that the standards to be used to determine the rates under Section 252(d)(1) and 252(d)(2) were to be the same and established that rates were to be based upon the total elemental long run incremental cost (TELRIC) of the local exchange carrier to provide such network element or transport and termination. *See* 47 C.F.R. § 51.705. Finally, the FCC found that a local exchange carrier (LEC) “may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC’s network.” 47 C.F.R. § 51.703(b). These rules have withstood appeal and are the law of the land.

Together, these provisions (1) require the Small LECs to permit other carriers to interconnect with their networks indirectly through mutual interconnections with a transit service provider and (2) require BellSouth to perform the transiting function at TELRIC rates. Under the Telecommunications Act and FCC regulations, the originating carrier is solely responsible for the cost of delivering its traffic to the terminating carrier’s network and the originating carrier *may not* assess charges on the terminating carrier for traffic that originates on the originating carrier’s network. *See* 47 C.F.R. § 51.703(b).

The Telecommunications Act has a clear preference for interconnection arrangements between carriers to be resolved via voluntary negotiation. For example, 47 U.S.C. § 252(b)(1) requires that the parties voluntarily negotiate for at least 135 days in good faith before they may file an arbitration petition with the state commission. If the parties are able

to voluntarily negotiate an agreement, the state commission is required to review and approve the agreement to ensure that the agreement does not discriminate against telecommunications carriers not a party to the agreement and does not contravene public policy. 47 U.S.C. § 252(e)(2)(A). Only if the carriers are unable to voluntarily negotiate an interconnection arrangement within the voluntary negotiation period is the state public utilities commission to become involved through a state commission arbitration. As a result, ILECs are required to interconnect pursuant to state commission-approved interconnection agreements and are not permitted to require other carriers to interconnect pursuant to the terms of an ILEC-filed tariff. Of course, state commission generic proceedings are appropriate when setting TELRIC rates for network elements, interconnection, transport, and termination as the rates will have an industrywide impact, the ILEC's costs do not vary substantially based on the interconnecting carrier, and rate setting requires substantial resources of the state commission. In addition, the enumeration of certain principles relating to interconnection, network elements, transport and termination of traffic, such as that the originating carrier is not permitted to charge the terminating carrier for traffic originating on the originating carrier's network, is also appropriate for generic proceedings. However, specific issues relating to interconnection between parties, such as how interconnection should be accomplished, the mechanisms for interconnection, and the like are better left to voluntary negotiation and arbitration on a case-by-case basis.

**E. STATEMENT OF ISSUES AND POSITIONS:**

**Issue 1:** Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?

**MetroPCS:**

No. Pursuant to 47 U.S.C. §§ 251 and 252, the interconnection of telecommunications carriers' networks is a matter for voluntary negotiation and, in some cases, arbitration, if necessary. The rights and obligations of interconnecting carriers, including providers of transit services, should be governed by the terms of their interconnection agreements and not by unilaterally filed tariffs.

**Issue 2:** If an originating carrier utilizes the services of BellSouth as a tandem provider to switch and transport traffic to a third party not affiliated with BellSouth, what are the responsibilities of the originating carrier?

**MetroPCS:**

An originating carrier that utilizes BellSouth as a tandem provider to transit traffic to a third party that is not affiliated with BellSouth is obligated:

- 1) to deliver its traffic to BellSouth in an industry standard format that will allow BellSouth and the terminating carrier to identify the originating carrier and the minutes of traffic originated by such carrier that are transited by BellSouth to the terminating carrier;

2) upon request, to negotiate (and, if necessary, arbitrate) an interconnection agreement with BellSouth that includes terms and conditions regarding the transit service that BellSouth provides to the originating carrier;

3) upon request, to negotiate (and, if necessary and to the extent that the negotiation is governed by 47 U.S.C. § 252(b), arbitrate) an interconnection agreement with the terminating carrier regarding the mutual exchange of traffic between the two parties' respective networks; and

4) assume all costs associated with the transport and termination of its traffic (including charges for transit) and not charge the terminating (or transiting) carrier any costs for such traffic.

**Issue 3:** Which carrier should be responsible for providing compensation to BellSouth for the provision of the transit transport and switching services?

**MetroPCS:**

Pursuant to federal law, an originating carrier is responsible for all costs, including transit costs, associated with delivering traffic originated on its network to the terminating carrier's network. An originating carrier is precluded by 47 C.F.R. § 51.703(b) from charging a terminating carrier (or a transiting carrier) for traffic originating on its network.

**Issue 4:** What is BellSouth's network arrangement for transit traffic and how is it typically routed from an originating party to a terminating third party?

**MetroPCS:**

MetroPCS takes no position concerning this issue at this time.

**Issue 5:** Should the FPSC establish the terms and conditions that govern the relationship between an originating carrier and the terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

**MetroPCS:**

No, except that the FPSC should make clear that it is the originating carrier's obligation to pay for all costs associated with traffic originating on its network and that no charges should be assessed by BellSouth (as the transiting carrier) or the originating carrier on the terminating carrier for such traffic. Under applicable provisions of the Telecommunications Act of 1996 and the FCC's implementing regulations, interconnecting carriers such as CMRS, CLECs, BellSouth, and the Small LECs must negotiate and, if necessary, arbitrate interconnection agreements through the defined arbitration process. State commission generic proceedings are appropriate when setting TELRIC rates for network elements,

interconnection, transport, and termination as the rates will have an industrywide impact, the ILEC's costs do not vary substantially based on the interconnecting carrier, and rate setting requires substantial resources of the state commission. In addition, the enumeration of certain principles relating to interconnection, network elements, transport and termination of traffic, such as that the originating carrier is not permitted to charge the terminating carrier for traffic originating on the originating carrier's network, is also appropriate for generic proceedings. However, specific issues relating to interconnection between parties, such as how interconnection should be accomplished, the mechanisms for interconnection, and the like are better left to voluntary negotiation and arbitration on a case-by-case basis.

**Issue 6:** Should the FPSC determine whether and at what traffic threshold level an originating carrier should be required to forego use of BellSouth's transit service and obtain direct interconnection with a terminating carrier? If so, at what traffic level should an originating carrier be required to obtain direct interconnection with a terminating carrier?

**MetroPCS:**

No. Because of the wide variety of factors that are relevant to a decision whether to establish direct interconnection between two carriers' networks, the decision to interconnect directly or indirectly should be made by the carriers themselves as a result of voluntary negotiations and, if appropriate, case-by-case arbitration, subject to the statutory obligation of ILECs to permit direct interconnection upon request.

**Issue 7:** How should transit traffic be delivered to the Small LECs' networks?

**MetroPCS:**

Transit traffic should be delivered to the Small LECs' networks over the Common Traffic Trunk Groups established between BellSouth and the Small LECs for the exchange of local, EAS, transit and switched access traffic.

**Issue 8:** Should the FPSC establish the terms and conditions that govern the relationship between BellSouth and a terminating carrier, where BellSouth is providing transit service and the originating carrier is not interconnected with, and has no interconnection agreement with, the terminating carrier? If so, what are the appropriate terms and conditions that should be established?

**MetroPCS:**

No, except that the FPSC should make clear that it is the originating carrier's obligation to pay for all costs associated with traffic originating on its network and that no charges should be assessed by BellSouth (as the transiting carrier) or the originating carrier on the terminating carrier for such traffic. 47 U.S.C. § 251(a) imposes a duty upon all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. The relationship between BellSouth, as a

transit provider, and a terminating carrier should be pursuant to an interconnection agreement.

**Issue 9:** Should the FPSC establish the terms and conditions of transit traffic between the transit service provider and the Small LECs that originate and terminate transit traffic? If so, what are the terms and conditions?

**MetroPCS:**

No, for the same reasons stated in MetroPCS's position on Issue 5.

**Issue 10:** What effect does transit service have on ISP bound traffic?

**MetroPCS:**

MetroPCS takes no position on this issue at this time.

**Issue 11:** How should charges for BellSouth's transit service be determined?  
(a) What is the appropriate rate for transit service?  
(b) What type of traffic do the rates identified in (a) apply?

**MetroPCS:**

(a) The appropriate charge for transit traffic is the sum of the Commission-approved, TELRIC rate elements for the functions that BellSouth actually performs when transiting traffic.

(b) Unless otherwise agreed between BellSouth and an originating carrier, the charges determined as described under Issue 11(a) should apply to all traffic transited by BellSouth.

**Issue 12:** Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket ("parties") paid BellSouth for transit service provided on or after February 11, 2005? If not, what amounts if any are owed to BellSouth for transit service provided since February 11, 2005?

**MetroPCS:**

MetroPCS has no information regarding whether other parties to this docket have paid BellSouth for transit services. However, MetroPCS has at all relevant times paid BellSouth for transit service pursuant to its interconnection agreement. Except for invoices that may not yet have been paid because payment is not yet due and any amounts that may have been disputed pursuant to the dispute provisions of the parties' interconnection agreement, MetroPCS does not owe BellSouth any amount for transit service provided before or after February 11, 2005.

**Issue 13:** Have parties paid BellSouth for transit service provided before February 11, 2005? If not, should the parties pay BellSouth for transit service provided before February 11,

2005, and if so, what amounts, if any, are owed to BellSouth for transit service provided before February 11, 2005?

**MetroPCS:**

MetroPCS has no information regarding whether other parties to this docket have paid BellSouth for transit services. However, MetroPCS has at all relevant times paid BellSouth for transit service pursuant to its interconnection agreement. Except for invoices that may not yet have been paid because payment is not yet due and any amounts that may have been disputed pursuant to the dispute provisions of the parties' interconnection agreement, MetroPCS does not owe BellSouth any amount for transit service provided before or after February 11, 2005.

**Issue 14:** What action, if any, should the FPSC undertake at this time to allow the Small LECs to recover the costs incurred or associated with BellSouth's provision of transit service?

**MetroPCS:**

The FPSC must establish two rules. First, the Small LECs should not be permitted to recover the costs incurred or associated with BellSouth's provision of transit service for traffic originating on the Small LECs' networks from any terminating carrier. Further, the FPSC should not permit the Small LECs to recover costs associated with transit traffic by charging their subscribers differently for calls to customers of other carriers whose numbers are associated with the Small LECs' subscribers' local calling areas (including EAS routes) because such charges would violate the Small LECs' dialing parity obligations pursuant to 47 U.S.C. § 251(b)(3) and the FCC's implementing regulations.

**Issue 15:** Should BellSouth issue an invoice for transit services and if so, in what detail and to whom?

**MetroPCS:**

Yes, BellSouth should issue an invoice for transit service to each carrier that delivers transit traffic to BellSouth. Such invoices should be provided in an industry standard format that, at a minimum, includes the number of minutes transited, the elements provided in transiting such minutes (*i.e.*, the number of tandem switching minutes billed and, separately identified, the number of transport minutes billed) and adequate information to allow the party billed for the transit service to identify the Common Language Location Identification code ("CLLI") of the end office of the terminating end user customer.

**Issue 16:** Should BellSouth provide to the terminating carrier sufficiently detailed call records to accurately bill the originating carrier for call termination? If so, what information should be provided by BellSouth?

**MetroPCS:**

Yes. MetroPCS believes that the information described in BellSouth's response to Item No. 4 of the Small LECs' First Interrogatories is adequate and appropriate.

**Issue 17:** How should billing disputes concerning transit service be addressed?

**MetroPCS:**

Billing disputes concerning transit service should be resolved pursuant to the dispute resolution provisions in the parties' interconnection agreements.

**F. STIPULATED ISSUES:**

MetroPCS is not aware of any issues that have been stipulated at this time.

**G. PENDING MOTIONS:**

MetroPCS has no pending motions.

**H. PENDING CONFIDENTIALITY REQUESTS:**

Request for Confidential Classification of Rebuttal Testimony of Dena J. Bishop, filed February 16, 2006.

**I. REQUIREMENTS THAT CANNOT BE COMPLIED WITH:**

None.

**J. DECISIONS PREEMPTING THE COMMISSION'S ABILITY TO RESOLVE THIS MATTER:**

None

**K. OBJECTIONS TO WITNESS QUALIFICATIONS:**

None at this time.



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement was served via electronic mail and first class United States mail this 20<sup>th</sup> day of February, 2006, to the following:

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