

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc. against Thrifty Call, Inc. regarding practices in the reporting of percent interstate usage for compensation for jurisdictional access services.	DOCKET NO. 000475-TP ORDER NO. PSC-05-1100-PCO-TP ISSUED: November 2, 2005
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ORDER GRANTING MOTION TO LIFT STAY AND ESTABLISH PROCEDURAL SCHEDULE

On July 20, 2005, BellSouth Telecommunications, Inc. (BellSouth) filed a Motion to Lift Stay and Establish Procedural Schedule (Motion).

In its Motion, BellSouth states that on April 21, 2000, BellSouth filed a complaint against Thrifty Call, Inc. (Thrifty Call) to recover unpaid intrastate access charges that resulted when Thrifty Call reported erroneous and unlawful Percent Interstate Usage (PIU) factors to BellSouth. BellSouth explains that on August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative to Bifurcate the Proceedings. BellSouth says that in support of the Motion to Stay, Thrifty Call requested that the instant proceeding be stayed until the Federal Communications Commission (FCC) resolves 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 is appropriate.

Consequently, BellSouth states 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. BellSouth states the Commission held that it was "appropriate and in the interest of judicial economy to stay this proceeding until the FCC issues a ruling on question number four of the Petition for Declaratory Ruling submitted by Thrifty Call." *Id.* at 7.

BellSouth contends that on November 10, 2004, the FCC issued its Declaratory Ruling, DA 04-3576<sup>1</sup>, wherein it rejected Thrifty Call's arguments. Specifically, BellSouth says the FCC stated:

Although we agree with Thrifty Call that the EES 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

<sup>1</sup> *In the Matter of Thrifty Call, Inc. Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1.*

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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 party was located in one state and the called party was located in another state as interstate calls.

*Id.* at ¶ 15.

BellSouth summarizes that the FCC found that Thrifty Call's over-reporting of its interstate PIU based on its application of EES methodology was incorrect. In light of the FCC's decision, BellSouth concludes that there is no longer any need to stay the proceeding as the FCC has issued its decision on Thrifty Call's Petition for Declaratory Ruling. Accordingly, BellSouth requests that the Commission lift the stay and establish a procedural order.

Having fully considered the rationale put forth, and noting that the Motion to Lift the Stay and Establish a Procedural Schedule is unopposed, the Motion is granted. As such, the stay is lifted in this proceeding and a separate order to establish procedure will be issued.

Based on the foregoing, it is

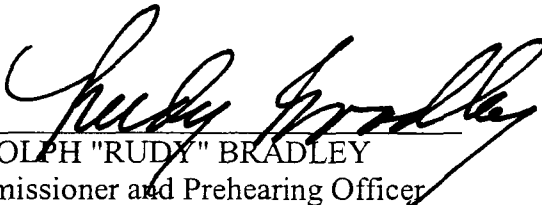
ORDERED by Commissioner Rudolph "Rudy" Bradley, as hearing officer, that the Motion to Lift Stay and Establish Procedural Schedule, filed by BellSouth Telecommunications, Inc., is granted.

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By ORDER of Commissioner Rudolph "Rudy" Bradley, as Prehearing Officer, this  
2nd day of November, \_\_\_\_\_.

  
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RUDOLPH "RUDY" BRADLEY  
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; or (2) 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 reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.