

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-06-0097-PCO-TP  
ISSUED: February 10, 2006

PROTECTIVE ORDER GOVERNING HANDLING OF CONFIDENTIAL  
INFORMATION AND ORDER GRANTING MOTIONS TO INSPECT  
MATERIAL AND RULE ON PLEADINGS

Case Background

On April 21, 2000, this docket was opened to address the complaint filed by BellSouth Telecommunications, Inc. (BellSouth) against Thrifty Call, Inc. (Thrifty Call) regarding practices in the reporting of Percent Interstate Usage (PIU) for compensation of access services.

On August 13, 2001, Thrifty Call filed a Petition for Declaratory Ruling with the Federal Communications Commission (FCC) requesting it to clarify several factors regarding PIU charges and procedures for handling PIU calls, which were similar to the issues pending before this Commission. On August 20, 2001, Thrifty Call filed a Motion to Stay, or in alternative, to Bifurcate Proceedings requesting that the Commission stay the proceeding until the FCC makes a ruling on its Petition for Declaratory Ruling.

By Order No. PSC-01-2309-PCO-TP, issued November 21, 2001, Thrifty Call's Motion to Stay or, in the alternative, to Bifurcate the Proceedings was granted.

On January 25, 2002, Thrifty Call filed a Claim for Confidential Classification of the information contained in Document 00984-02. This information includes call identification data, such as originating and terminating phone numbers, Commission staff audit work papers and report pages. In its claim, Thrifty Call asserts that all of the information provided in response to the Commission staff's audit contains confidential and proprietary business information that should be exempt from public disclosure according to Section 364.183(1), Florida Statutes and Rule 25-22.006(5), Florida Administrative Code.

On November 12, 2004, the FCC issued its Declaratory Ruling on Thrifty Call's Petition for Declaratory Ruling. By Order No. PSC-05-1100-PCO-TP, issued November 2, 2005, BellSouth's Motion to Lift Stay was granted and the procedural schedule was resumed in this case.

This Order addresses BellSouth's Motion to Inspect and Examine Material (Motion to Inspect) and Motion to Rule on the Pleadings filed on November 14 and December 9, 2005, respectively.

DOCUMENT NUMBER-DATE

01182 FEB 10 06

FPSC-COMMISSION CLERK

In its Motion to Inspect, BellSouth requests that the information claimed to be confidential by Thrifty Call be made available for its inspection and examination. BellSouth believes that the information is dispositive of the disputed issues in this case. Further, BellSouth asserts that the FCC, in its declaratory ruling, determined that Thrifty Call's PIU based on its EES methodology was incorrect. Thus, BellSouth believes that it is essential that it review all of the information claimed to be confidential by Thrifty Call.

During the course of the last few months, BellSouth has attempted to enter in to a protective agreement with Thrifty Call regarding its call detail records but has failed to do so. BellSouth notes that currently Thrifty Call does not have a counsel of record for this proceeding and is therefore unable to confer and ascertain whether Thrifty Call has any objection to its Motion to Inspect pursuant to Rule 28-106.204(3), Florida Administrative Code.

### Decision

Florida law presumes that documents submitted to governmental agencies are public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the principle that government should operate in the "sunshine."

Pursuant to Rule 25-22.006(5)(c), Florida Administrative Code, 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. In this case, Thrifty Call filed a claim for confidential protection for information it submitted to Commission staff during the course of staff's audit regarding its PIU charges. In response, BellSouth filed its Motion to Inspect. Thrifty Call did not file a response, nor a request for confidential classification. Pursuant to 25-22.006(2)(b), Florida Administrative Code, if a timely request for confidential classification is not filed, confidentiality is waived and the material becomes subject to inspection and examination pursuant to Section 119.07, Florida Statutes.

According to public records law, the commission must keep confidential any utility records shown to contain proprietary business information. This includes but is not limited to trade secrets, the results of internal audits, company security measures and other information which is statutorily protected. Pursuant to Section 364.24(2), Florida Statutes:

an officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise provided by law.

Under this provision, Thrifty Call has a statutory obligation to protect customer account records. The same would be true for BellSouth and its customers. Based on the description of the

information Thrifty Call has claimed as confidential, the call detail records would be afforded protection.

However, if BellSouth is not granted access to this information, it will be difficult to go forward with this case. In an ordinary situation, a company would have the opportunity to defend its claim for confidentiality. But this is not the case for Thrifty Call as it is an absentee litigant. In viewing BellSouth's Motion to Inspect the confidential material, consideration must be given to the due process rights of the parties and customers under law. Because the call detail records are an integral part of this proceeding and it is important that BellSouth has some ability to access and use this information for purposes of this proceeding, I find that BellSouth's Motion to Inspect and Examine Confidential Information is granted with the guidelines set forth below. Consequently, BellSouth's Motion to Rule on the Pleadings is also granted.

Nevertheless, in the abundance of caution, I find the call detail records information shall be afforded the confidential protection pursuant Section 364.183, Florida Statutes, because the information appears to meet the definition of proprietary information. In addition, the customer call detail records are protected under Section 364.24, Florida Statutes. Therefore, I find that parties and Commission staff shall have access to this information under the following guidelines:

1. The use of the call detail records contained in Document No. 00984-02 shall be limited to this docket and dissemination shall be limited to counsel of record, consultants working directly with counsel, persons identified to testify at the technical hearing, if necessary, and those persons otherwise authorized to review confidential information pursuant to protective agreements between the parties, and Commission staff;
2. The call detail information shall be used for purposes of the proceedings in this case. Use of the call detail information for any other purpose shall be prohibited and shall be considered a sanctionable offense;
3. The provisions of this Order will continue to govern the information at issue until a final decision is rendered in this case.

The outlined procedures comply with Rule 25-22.006(6), Florida Administrative Code, regarding protection of proprietary information in Commission proceedings. But I emphasize that this decision should be narrowly construed and is based on the unique facts and circumstances of this case.

Based on the foregoing, it is

ORDERED by Matthew M. Carter II, as Prehearing Officer that BellSouth Telecommunications, Inc.'s Motion to Inspect and Examine Confidential Material and Motion for Ruling on the Pleadings are granted. It is further

ORDERED that the provisions of this Order shall govern the handling of the confidential information in this proceeding unless otherwise modified by the Prehearing Officer or the Commission. It is further

ORDERED that pursuant to Section 364.183, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order, in the absence of a renewed request for confidentiality pursuant to Section 364.183, Florida Statutes. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Matthew M. Carter II, as Prehearing Officer, this 10<sup>th</sup> day of February, 2006.



Matthew M. Carter II  
Prehearing Officer

(SEAL)

FRB

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

ORDER NO. PSC-06-0097-PCO-TP

DOCKET NO. 000475-TP

PAGE 5

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.