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**ORIGINAL**

May 16, 2000

RECEIVED FPSC  
00 MAY 16 PM 4:43  
RECORDS AND REPORTING

**BY HAND DELIVERY**

Ms. Blanca Bayó, Director  
Division of Records and Reporting  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket 000475-TP

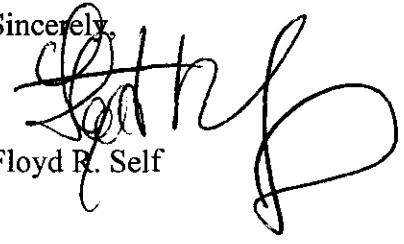
Dear Ms. Bayó:

Enclosed for filing on behalf of Thrifty Call, Inc. are an original and fifteen copies of Thrifty Call's Motion to Dismiss or, In the Alternative to Stay in the above referenced docket.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

Sincerely,



Floyd R. Self

- AFK \_\_\_\_\_
- APY \_\_\_\_\_
- AMB \_\_\_\_\_
- AMB \_\_\_\_\_
- STR \_\_\_\_\_
- EAG \_\_\_\_\_
- LEG \_\_\_\_\_
- MAS \_\_\_\_\_
- OPC \_\_\_\_\_
- RRR \_\_\_\_\_
- REG \_\_\_\_\_
- WAW \_\_\_\_\_
- QTN \_\_\_\_\_

FRS/amb  
Enclosure  
cc: Danny Adams, Esq.  
Parties of Record

RECEIVED & FILED  
*Mur*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
**06044 MAY 16 8**  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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  
Filed: May 16, 2000

**THRIFTY CALL, INC.'S MOTION TO DISMISS**  
**OR, IN THE ALTERNATIVE, TO STAY**

Thrifty Call, Inc. ("Thrifty Call"), pursuant to Rule 28-106.204(2), Florida Administrative Code, hereby moves that the Florida Public Service Commission ("FPSC") dismiss the Complaint and Notice of Carrier Disconnection ("Complaint") of BellSouth Telecommunications, Inc. ("BellSouth") in this docket, or in the alternative, to stay these proceedings pending the completion of an audit of Thrifty Call's PIU pursuant to BellSouth's Florida access tariff. In support of this Motion, Thrifty Call states:

1. On April 21, 2000, BellSouth filed its Complaint with this Commission alleging that Thrifty Call was misreporting its Percent Interstate Usage ("PIU") factors to BellSouth in violation of BellSouth's Intrastate Access Tariff and rules and regulations of the Commission. BellSouth alleged that it has "been unable to conduct an expedient and meaningful audit" and requested the Commission to "take all appropriate action under the circumstances to protect BellSouth from further financial harm."

2. On April 24, 2000, the FPSC issued its Notice to Thrifty Call that the Complaint had been filed.

DOCUMENT NUMBER-DATE  
06044 MAY 16 8  
FPSC-RECORDS/REPORTING

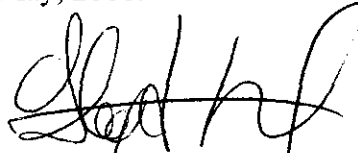
3. Thrifty Call objects to the filing of this Complaint as improper because BellSouth has failed to comply with its own intrastate access tariff that expressly addresses this situation. (See Attachment "A" hereto.) Section E2.3.14B of BellSouth's Access Tariff specifically provides for audits to be conducted in disputes such as this, and specifies the procedures to be followed in such cases. As is demonstrated by the correspondence attached hereto, Thrifty Call has never disputed BellSouth's right to conduct an audit and has repeatedly expressed its willingness to cooperate with an audit. (See the correspondence in Attachment "B" hereto.) As is required by the tariff, Thrifty Call has recommended a proposed auditor to BellSouth (Ernst and Young, BellSouth's own outside accounting firm) pursuant to the procedures stated in BellSouth's Florida tariff. In response, BellSouth refused to take any action to approve the auditor or to otherwise permit the audit to begin. Instead, BellSouth demanded payments from Thrifty Call without an audit and entirely outside the tariff's procedures. Subsequently, BellSouth in its April 7, 2000 letter withdrew its request for an audit entirely and, without any further notice to Thrifty Call, filed this Complaint. That BellSouth has been "unable" to conduct an audit is no fault of Thrifty Call, and without an audit there is no basis for BellSouth to make the outrageous demands and other false assertions contained in its Complaint. Moreover, for BellSouth to unilaterally assert "deliberate and calculated" misreporting of traffic based on no more than a relatively few test calls does not absolve BellSouth of its obligation to have an audit, which is the only procedure provided for in its tariff. Until there is an audit, we do not know if there is a controversy to be resolved by way of a complaint. Accordingly, the Complaint should be dismissed.

4. Not only is the Complaint improper, but it is misleading and grossly misstates the facts. For example, BellSouth asserts that it has been and will continue to be harmed and that its losses “will continue to grow” unless the Commission acts. The fact is that Thrifty Call is not sending traffic to BellSouth and has not since January. Indeed, Thrifty Call even disconnected all of its own feature group facilities with BellSouth by April 7, 2000 – – work that was carried out by BellSouth. Obviously, these are facts well known to BellSouth. The use of the Complaint as notice of discontinuance thus is inappropriate and irrelevant because, without a physical interconnection, there is no possibility for Thrifty Call to send traffic to BellSouth. Quite simply, there is no continuing or growing harm and BellSouth knows it.

5. BellSouth, not Thrifty Call, published the tariff controlling verification of jurisdictional reports. The law is well settled that a carrier may act solely pursuant to its tariffs, and that any ambiguity in that tariff should be construed against the carrier. Pan American World Airways, Inc. v. Florida Public Service Commission, 427 So.2d 716 (Fla. 1983); Louisville & Nashville Railroad v. Speed-Parker, Inc., 137 So. 724 (Fla. 1931). BellSouth is required by law to comply with the terms of its own tariff and should be required to demonstrate such compliance before undertaking the extreme step of filing any action against Thrifty Call. Until the tariff procedures are fulfilled, a complaint proceeding is merely a waste of Commission resources. However, if the Commission believes that it is appropriate to not dismiss this Complaint, which it should, then Thrifty Call alternatively requests that the Complaint be stayed until such time as an audit pursuant to BellSouth’s Florida Intrastate Tariff has been conducted.

WHEREFORE, Thrifty Call, Inc. respectfully requests that the Complaint filed by BellSouth be dismissed. Alternatively, the Commission should issue an order compelling BellSouth to comply with its PIU tariff, stay this Complaint until BellSouth has complied with the terms and conditions of its tariff and an audit has been conducted.

Respectfully submitted this 16<sup>th</sup> day of May, 2000.



---

FLOYD R. SELF, ESQ.  
MESSER, CAPARELLO & SELF, P. A.  
Post Office Box 1876  
Tallahassee, FL 32302-1876  
(850) 222-0720

and

Danny E. Adams  
Kelley Drye & Warren, L.L.P.  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, DC 20036  
(202) 955-9600

Attorneys for Thrifty Call, Inc.

FLORIDA

ISSUED: February 14, 1997

EFFECTIVE: March 1, 1997

BY: Joseph P. Lacher, President -FL  
Miami, Florida

## E2. GENERAL REGULATIONS

(T)

### E2.3 Obligations of the IC (Cont'd)

#### E2.3.14 Jurisdictional Report Requirements<sup>1</sup> (Cont'd)

##### A. Jurisdictional Reports (Cont'd)

10. When mixed interstate and intrastate Dedicated Access Service is provided, the jurisdiction will be determined as follows. (Cont'd)

- If the IC or End User's estimate of the interstate traffic on the service involved constitutes more than 10 percent of the total traffic on that service, the service will be provided in accordance with the applicable rules and regulations of the BellSouth Telecommunications, Inc. Tariff FCC No. 1.

The IC or End User shall keep records from which the percentage of interstate and intrastate use was estimated and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The IC or End User shall supply the data within 30 days of the Company request.

##### B. Jurisdictional Report Verification

1. When an IC or End User provides a projected interstate usage percent as set forth in A. preceding, or when a billing dispute arises or a regulatory commission questions the projected interstate percentage for *BellSouth SWA*, the Company may, by written request, require the IC or End User to provide the data the IC or End User used to determine the projected interstate percentage. This written request will be considered the initiation of the audit. The IC or End User shall supply the data to an independent auditor within thirty days of the Company request. The IC or End User shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained as set forth in C. following and upon request of the Company make the records available for inspection at an agreed upon location during normal business hours as reasonably necessary for purposes of verification of the percentages. The Company will audit data from one quarter unless a longer period is requested by the IC or End User and agreed to by the Company. Changes to the reported PIU will not be made for the test period. If the IC or End User does not provide the requested data to the Company or independent auditor within (30) days of the notice of audit, the IC or End User will be in violation of this Tariff and subject to E2.1.8 preceding.

Where attempts to obtain the appropriate data from the IC or End User beyond the 30 day time limit have failed, the Company may provide such documentation to the FPSC as an indication of the IC or End User being in violation of this Tariff.

2. For *BellSouth SWA* service, verification audits may be conducted no more frequently than once per year except in extreme circumstances. The Company and IC or End User will attempt to limit the audit to a reasonable time to effectively complete the audit. The Company and IC or End User shall respond promptly to requests generated during the audit to ensure timely completion of the audit.

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

ISSUED: February 14, 1997  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

EFFECTIVE: March 1, 1997

## E2. GENERAL REGULATIONS

### E2.3 Obligations of the IC (Cont'd)

#### E2.3.14 Jurisdictional Report Requirements<sup>1</sup> (Cont'd)

##### B. Jurisdictional Report Verification (Cont'd)

3. Audits may be conducted by an independent auditor under contract to the Company; (b) a mutually agreed upon independent auditor; or (c) an independent auditor selected and paid for by the IC or End user. If the IC or End User selects option (c), where it pays for its own independent audit, the selected auditor must certify that the audit was performed following FCC procedures for measuring interstate and intrastate traffic as established by Commission orders, and provide to the Company a report with supporting documentation to verify such procedures. In the event that the IC's auditor is agreed upon to perform the audit, the auditor shall produce an attestation audit report upon completion of the audit.

When an auditor cannot be agreed upon within 30 days by one of the three options above, the Joint LEC Audit Committee's auditor shall perform the audit.

4. If a billing dispute arises or a regulatory commission questions the projected interstate percentage for Dedicated Access Service, the Company will ask the IC or End User to provide the data the IC or End User uses to determine the projected interstate percentage. The IC or End User shall supply the data to an independent auditor within thirty days of the Company request. The IC or End User shall keep records from which the percentage was determined and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages.

Where an independent auditor cannot be agreed upon within 30 days the IC or End User shall supply the data to the Joint LEC Audit Committee's auditor. If the IC or End User does not comply within the 30 day time frame, the FPSC shall be notified and provided with all documentation substantiating requests made by the Company.

##### C. Maintenance of IC Records

1. The IC, Reseller, End User and AOS provider shall retain for a minimum of six (6) months call detail records, that substantiate the percentage data provided to the Company as set forth in A. preceding for *BellSouth SWA* service. Such records shall consist of one of a. and b. (if applicable), following:
  - a. All call detail records, such as workpapers and/or backup documentation including paper, magnetic tapes or any other form of records for billed IC or End User traffic, call information including call terminating address (i.e., called number), the call duration, all originating and terminating trunk groups or access lines over which the call is routed, and the point at which the call enters the IC or End User's network; and
  - b. If the IC has a mechanized system in place that calculated the PIU, then a description of that system and the methodology used to calculate the PIU must be furnished and any other pertinent information (such as but not limited to flowcharts, source code, etc.) relating to such system must also be made available.

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
FLORIDA

## ACCESS SERVICES TARIFF

First Revised Page 17  
Cancels Original Page 17

ISSUED: February 14, 1997  
BY: Joseph P. Lacher, President -FL  
Miami, Florida

EFFECTIVE: March 1, 1997

## E2. GENERAL REGULATIONS (T)

## E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements<sup>1</sup> (Cont'd)

## E. Contested Audits (Cont'd)

2. Contested audits may be resolved by a neutral arbitrator mutually agreed upon by the Company and the IC or End User. Arbitration is an option provided in addition to the IC or End User's existing right to file a complaint or legal action in a court of law or at the Commission for resolution of the dispute. The arbitration hearing will be conducted in a state or location within the Company operating territory where the IC or End User maintains a principle or significant presence as mutually agreed upon by both parties, or a state and location within the Company operating territory that is mutually agreed upon by both parties. The arbitration proceeding shall be governed by the law (both statutory and case) of the state in which the arbitration hearing is held, including, but not limited to, the Uniform Arbitration Act, as adopted in that state. The arbitration shall determine the IC or End User's PIU based on A. preceding.
3. Prior to the arbitration hearing, each party shall notify the arbitrator of the PIU percentage which that party believes to be correct. The arbitrator, in deciding, may adopt the PIU percentage of either party or may adopt a PIU percentage different from those proposed by the parties. If the arbitrator adopts a PIU percentage proposed by one of the parties, the other party (whose PIU percentage was not adopted) shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage higher than either of the PIU percentages proposed by the parties, then the party proposing the lower PIU percentage shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage lower than either of the PIU percentages proposed by the parties, then the party proposing the higher PIU percentage shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage which falls between the two percentages adopted by the parties, then the parties shall each pay one-half of the arbitration costs.
4. *Absent written notification, within the time frame noted above, the IC or End User must comply with the provisions set forth in D. preceding. If the IC or End User fails to comply with these provisions, the Company may refuse additional applications for service and/or refuse to complete any and all pending orders for service or may discontinue the provision of the services to the IC or End User as specified in E2.1.8 preceding.*
5. The FPSC shall be notified and given all documentation that substantiates the IC or End User non-payment.

## E2.3.15 Determination of Intrastate Charges for Mixed Interstate and Intrastate BellSouth SWA Service (T)

- A. When mixed interstate and intrastate *BellSouth SWA* service is provided, all charges (i.e., nonrecurring, monthly and/or usage) including optional feature and Basic Service Element (BSE) charges, will be prorated between interstate and intrastate. The percentage provided in the reports as set forth in E2.3.14.A preceding will serve as the basis for prorating the charges. The intrastate percentage will change as revised jurisdictional reports are submitted. The percentage of a *BellSouth SWA* service to be charged as intrastate is applied in the following manner: (T)

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA). (T)



**J. Henry Walker**  
General Attorney

**BellSouth Telecommunications, Inc.**  
Legal Department - Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375-0001  
Telephone: 404-335-0738  
Facsimile: 404-658-9022

January 18, 2000

**BY FEDERAL EXPRESS AND TELECOPY**

Mr. Danny E. Adams  
Kelley, Dwyer & Warren  
1200 19<sup>th</sup> St., N.W.  
Suite 500  
Washington, D.C. 20036

Dear Mr. Adams:

BellSouth Telecommunications ("BellSouth") has discovered recently certain irregularities pertaining to Thrifty Call, Inc.'s ("Thrifty Call") transport and reporting of access traffic to BellSouth. It appears that traffic being reported to BellSouth as interstate by Thrifty Call is instead intrastate traffic for which additional access charges are owed. Thrifty Call's actions constitute a violation of applicable tariffs governing the relationship between BellSouth and Thrifty Call. BellSouth requests that Thrifty Call immediately start properly reporting all traffic transported to BellSouth.

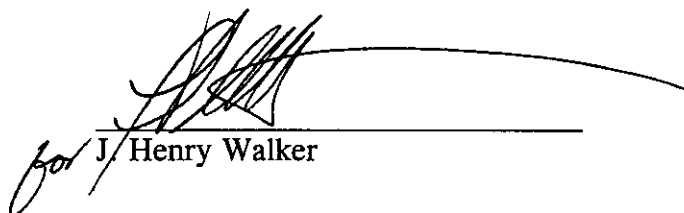
Pursuant to BellSouth Telecommunications Tariff - Florida E2.3.14B, BellSouth hereby requests that Thrifty Call provide data to BellSouth used to determine its projected interstate percentage. This written request will be considered the initiation of an audit per the applicable provisions of the tariff.

We propose this audit begin on February 7, 2000, and request that you preserve all information, data and reports until such audit is completed, including any communications or agreements with interexchange carriers for which you are completing traffic in the manner discussed above.

Further, BellSouth requests that Thrifty Call pay BellSouth all monies owed for this misreporting of traffic. The amount owed to BellSouth for misreporting between March 1999 and November 1999 in Florida is \$2,078,713. This amount should be paid immediately.

If you would like to discuss this matter, you may contact me at your convenience.

Sincerely,

  
\_\_\_\_\_  
J. Henry Walker

#192039v1

ATTACHMENT "B"

**KELLEY DRYE & WARREN LLP**

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February 10, 2000

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

E-MAIL: [dadams@kelleydrye.com](mailto:dadams@kelleydrye.com)

J. Henry Walker, Esq.  
General Attorney  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375-0001

Re: Correspondence with Thrifty Call Concerning Percentage Interstate Usage Matters

Dear Mr. Walker:

I am in receipt of your letters dated January 18, January 31, and February 1, 2000, concerning alleged inaccuracies in certain percentage interstate usage ("PIU") reports submitted by Thrifty Call for the states of Florida, North Carolina and Georgia, respectively. In each of your letters, you reference the BellSouth access tariff for the relevant state and indicate that, pursuant to such tariff, BellSouth believes that Thrifty Call owes additional payments to BellSouth. Further, in addition to the requests for immediate payment, you request an audit of Thrifty Call's PIU reports pursuant to the state tariffs.

Thrifty Call wishes to cooperate with the BellSouth audit request. Certain matters must be clarified at the outset of the audit process, however. First, Thrifty Call believes that PIU matters are inherently interstate in nature because they are derived from the jurisdictional separations process administered by the Federal Communications Commission ("FCC"). Indeed, the governing methodology for measurement of PIU was established by the FCC in 1989, following the recommendation of a Federal-State Joint Board. See *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Services*, 4 FCC Rcd 8448 (1989). Thus, Thrifty Call believes the governing tariff for PIU audit purposes should be the interstate tariff on file with the FCC, not the individual BellSouth state tariffs.

KELLEY DRYE & WARREN LLP

J. Henry Walker, Esq.  
February 10, 2000  
Page Two

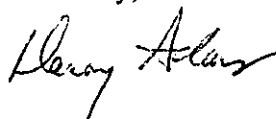
Second, Thrifty Call believes it has reported its traffic according to FCC prescribed procedures for PIU measurement. While the Company thus is willing to proceed with BellSouth's audit request, it is not willing to make the payments you request in advance of the completion of the audit. Indeed, the purpose of the audit is to determine whether any such payments are owed. BellSouth's request for immediate payment, then, is implicitly an attempt to bypass the audit process and impose requirements outside its tariff. We believe such demands are inconsistent with FCC-established policies and BellSouth's implementing interstate tariff (as well as its intrastate tariffs). Thus, Thrifty Call will not pay any backbilled amounts until the audit is completed and a determination can be made as to whether any such amounts are owed.

Finally, BellSouth's tariff provides that audits may be conducted by an independent auditor, not BellSouth, and that if an independent auditor is used, the data is to be provided to the auditor within 30 days of the request. Thrifty Call chooses to have the audit conducted by Ernst and Young; the Company is in the process of finalizing its arrangements with Ernst and Young for this purpose. Thrifty Call understands that, because it chooses the auditor, it must pay the costs of the audit. Thrifty Call thus will provide fourth quarter 1999 data to Ernst & Young within the time required by BellSouth's tariff.

With these items clarified, Thrifty Call will proceed with the audit as described. Upon completion of the audit, the auditor's report will be provided to BellSouth and to Thrifty Call in the manner contemplated by BellSouth's FCC tariff. We look forward to working with you to complete the audit process.

If you have any questions or concerns about these procedures, please contact me promptly.

Sincerely,



Danny E. Adams  
Counsel to Thrifty Call, Inc.

DEA:ac

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

1200 19<sup>TH</sup> STREET, N.W.

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(202) 955-9792

March 22, 2000

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

E-MAIL: dadams@kelleydrye.com

**BY FEDERAL EXPRESS**

J. Henry Walker, Esq.  
General Attorney  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375-0001

**Re: Thrifty Call Dispute**

Dear Henry:

As we have discussed, Thrifty Call remains eager to resolve the disputed PIU reports for Florida, Georgia, and North Carolina by voluntary means that will be mutually acceptable to both Thrifty Call and BellSouth, and that will be as fair and expeditious as possible. Accordingly, we are puzzled by BellSouth's reluctance to follow the PIU audit procedures set forth in the Florida, Georgia, and North Carolina tariffs, and would like clarification of BellSouth's position in that regard.

It is our understanding that, pursuant to Section E2.3.14(B) of BellSouth's Access Services Tariffs for Florida, Georgia, and North Carolina, in the event of a dispute regarding the accuracy of a PIU report, BellSouth shall send written notice to the carrier involved and initiate an audit; BellSouth did this, by letters to me dated January 18, 2000, January 31, 2000, and February 1, 2000. Each letter cited Section E2.3.14(B) and the audit procedures contained therein. By letter dated February 10, 2000, Thrifty Call agreed to BellSouth's audit demand, requested that Ernst and Young be retained as the independent auditor (at Thrifty Call's expense), and agreed to provide Ernst and Young with the required data within the time period specified by the tariff. As you know, the initiation of the audit has been delayed pending agreement by BellSouth to waive a conflict of interest regarding Ernst and Young's prior work for BellSouth. Thrifty Call remains, however, ready and willing to provide the necessary data to Ernst and Young, or, alternatively, to choose a different independent auditor that would not raise conflict issues if BellSouth chooses not to accept Ernst and Young. It is Thrifty Call's

KELLEY DRYE & WARREN LLP

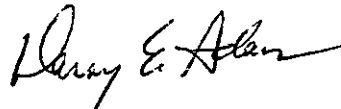
J. Henry Walker, Esq.  
March 22, 2000  
Page 2

understanding that, pursuant to Section E2.3.14(D), once the audit is completed, the resulting PIU will be applied to the usage for the quarter the audit is completed, the usage for the quarter prior to completion of the audit, and, where applicable, to the usage for the next two quarters following the audit's completion.

However, rather than releasing Ernst and Young to begin the audit, or authorizing Thrifty Call to select a different independent auditor, BellSouth now wishes to ignore the audit procedures set forth in the tariff and is instead considering a complaint proceeding before the Florida Public Service Commission ("FPSC"). It is our understanding that BellSouth has taken this position because it believes that compliance with the audit procedures would be too time-consuming. It is unclear to Thrifty Call, however, how a complaint proceeding would achieve a more expedient resolution of this dispute than would continued adherence to the audit procedures proscribed by the BellSouth tariff. Moreover, it appears to us that in response to any complaint filed by BellSouth concerning this matter the FPSC too would look to the applicable Access Services Tariffs, and would take the view that an audit is the appropriate procedure. Indeed, we note that even if the FPSC were to permit a complaint proceeding to proceed in lieu of the audit process required by BellSouth's tariff, an audit would be necessary in order to form the basis for any damages calculation. In short, BellSouth's refusal to adhere to the PIU audit procedures appears to me to be both inconsistent with the Access Services tariff, *and* destined to result in an unwarranted delay in the resolution of this dispute.

Thrifty Call understands and shares BellSouth's desire to resolve this dispute as quickly as possible. We fail to understand, however, how the current approach you have advocated will lead to that result. In view of our mutual interests in that regard, I look forward to your timely clarification of BellSouth's position.

Sincerely,



Danny Adams  
Counsel to Thrifty Call, Inc.

**J. Henry Walker**  
General Attorney

**BellSouth Telecommunications, Inc.**  
Legal Department - Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375-0001  
Telephone: 404-335-0738  
Facsimile: 404-658-9022

April 7, 2000

**Via Telecopy (202) 955-9792 and Regular Mail**

Danny Adams, Esq.  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036

Re: Thrifty Call's Misreporting of Access Traffic

Dear Danny:

I am in receipt of your letter of March 22, 2000 regarding the dispute over Thrifty Call's misreporting of traffic. Although BellSouth would also like to resolve this matter without formal proceedings, the parties seem to be far apart in their positions regarding the appropriate remedies for Thrifty Call's action.

As you know, BellSouth has evidence that Thrifty Call misreported to BellSouth millions of minutes of intrastate traffic as interstate traffic. BellSouth believes this misreporting was done in a deliberate and calculated manner to improperly evade paying BellSouth the higher intrastate access charge.

Thrifty Call's proposal to conduct an audit for the sole purpose of adjusting the PIU on an ongoing basis is unacceptable. First, based on its representations, Thrifty Call has stopped carrying the intrastate traffic previously being reported as interstate. A time consuming and expensive PIU audit of current records would make little sense. Second, BellSouth does not agree with Thrifty Call's apparent position that BellSouth's request for an audit limits BellSouth to prospective relief. A mere request for an audit does not provide the party being audited with immunity from prior intentional misreporting of access traffic. Until some understanding of the purpose of the audit is agreed upon, BellSouth does not believe the audit can reasonably go forward.

Danny Adams, Esq.

April 7, 2000

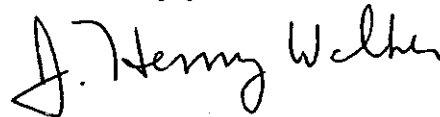
Page 2

BellSouth's initial request for an audit was for the purpose of determining the volume of traffic which was misreported. BellSouth now believes it has information that shows the volume of traffic misreported by Thrifty Call. To the extent, Thrifty Call continues to contend BellSouth's request for an audit limits its remedies to a mere adjustment of the PIU factor on an ongoing basis, the audit request is withdrawn.

BellSouth believes that none of the state Public Service Commissions with jurisdiction over this issue will sanction Thrifty Call's intentional conduct by merely requiring an adjustment of the PIU on an ongoing basis. Given the disagreement over the proper remedies, it is proper for BellSouth to proceed before the appropriate authority to achieve a resolution of this matter.

BellSouth, of course, remains willing to discuss a fair and expeditious resolution of this matter at your convenience.

Sincerely yours,

A handwritten signature in cursive script that reads "J. Henry Walker". The signature is written in dark ink and is positioned above the printed name.

J. Henry Walker

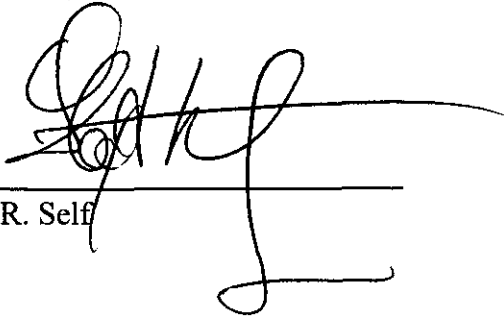
JHW:mvc

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of Thrifty Call's Notice of Appearance have been served upon the following parties by Hand Delivery (\*) and/or U. S. Mail this 16th day of May, 2000.

Beth Keating, Esq.\*  
Division of Legal Services, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Lisa S. Foshee, Esq.  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

  
\_\_\_\_\_  
Floyd R. Self