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September 5, 2000

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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: FPSC Docket No. 000890-TI

Dear Ms. Bayó:

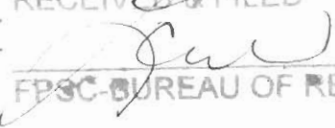
Enclosed for filing on behalf of Thrifty Call, Inc. are an original and fifteen copies of Thrifty Call's Response to BellSouth's Motion to Intervene and Response to Request for Cancellation of IXC Certificate in the above referenced docket.

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

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM \_\_\_\_\_ FRS/amb
- CTR \_\_\_\_\_ Enclosure
- ECR \_\_\_\_\_ cc: Danny Adams, Esq.
- LEG 1 \_\_\_\_\_ Parties of Record
- OPC \_\_\_\_\_
- PAL \_\_\_\_\_
- RG0 Hawkins \_\_\_\_\_
- SEC \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

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DOCUMENT NUMBER-DATE  
10948 SEP-58  
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Cancellation of Interexchange	)	
Telecommunications Certificate No. 3990 by	)	Docket No. 000890-TI
Thrifty Call, Inc., effective 7/10/00	)	Filed: September 5, 2000
	)	

**THRIFTY CALL'S RESPONSE TO  
 BELLSOUTH'S MOTION TO INTERVENE AND RESPONSE TO  
REQUEST FOR CANCELLATION OF IXC CERTIFICATE**

Thrifty Call, Inc., pursuant to Rules 28-106.103 and 28-106.204, Florida Administrative Code, hereby responds to the Motion to Intervene and Response to Request For Cancellation of Interexchange Certificate ("Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth"), and requests that the Florida Public Service Commission ("Commission") deny the requested intervention and reject the relief requested by BellSouth.

**A. Background**

1. On July 10, 2000, Thrifty Call filed a letter with this Commission requesting that its interexchange carrier ("IXC") certificate be cancelled as the company was no longer doing business in Florida. This letter indicates that Thrifty Call withdrew its end user tariff effective October 1, 1999, and provided the necessary customer notifications and intercept messages. Not stated in this letter is the fact that Thrifty Call ceased its wholesale service to other carriers in early 2000, and that Thrifty Call ceased to route any traffic to BellSouth beginning on or about January 18, 2000.<sup>1</sup>

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<sup>1</sup>The April 2000 date identified at the August 15, 2000, Agenda Conference was incorrect.

2. The cancellation of Thrifty Call's certificate was reviewed by the Commission Staff. After this review, the Staff found it compliant with the applicable rules such that the Staff recommended to the Commission approval of the cancellation for consideration at the August 29, 2000, Agenda Conference. Five days before the Agenda Conference, BellSouth filed its Motion. In view of the lack of counsel at the time BellSouth served its Motion, and considering that Mr. Lovelady, who initiated this docket, has been out of the country, counsel has agreed that a response to BellSouth's Motion may be filed on September 5, 2000.

3. BellSouth's entire basis for its Motion is the fact that it has filed a complaint against Thrifty Call, docketed by this Commission as Docket No. 000475-TP, and that the request for cancellation is not consistent with the Commission's rules. Neither of these arguments confer any standing on BellSouth to intervene, let alone, oppose Thrifty Call's certificate cancellation. Moreover, BellSouth is incorrect in its contention that Thrifty Call did not comply with Commission rules in filing its cancellation request.

**B. BellSouth Has No Legal Standing To Intervene**

4. First, it has been established by this Commission, on the basis of well settled Florida law, that one carrier has no right to intervene in a docket involving another carrier's certificate. In Order No. PSC-94-0114-FOF-TI, issued January 31, 1994 ("Atlas Order"), this Commission denied the petition of Best Telephone Company which had filed a protest to a Proposed Agency Action ("PAA") Order granting a certificate to Atlas Communications Consultants. More recently, in Order No. PSC-98-0702-FOF-TP, issued May 20, 1998, this Commission denied the PAA protests of GTE Corporation and GTE Communications Corporation as well as the PAA protest of the

Communications Workers of America to the proposed transfer of certificates associated with the merger of MCI and WorldCom.

5. The legal basis for the denial of these interventions and protests derive from standing rules set forth in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2nd DCA 1981), pet. for reh. denied, 415 So.2d 1359, 1361 (Fla. 1982). In this case, the court found that to prove standing, the petitioner must demonstrate that it will suffer an injury in fact, which is of sufficient immediacy to entitle it to a section 120.57 hearing, and that the substantial injury is of a type or nature that the proceeding is designed to protect. Agrico, 406 So.2d at 482. BellSouth fails both prongs of the Agrico test.

**1. BellSouth has no immediate injury in fact.**

6. First, BellSouth has no injury in fact. BellSouth's ultimate claim is that it *may* be entitled to relief under its complaint in Docket No. 000475-TP, and that it fears the granting of the requested certificate cancellation *may* deprive it of its ability to obtain any such potential recovery in a section 120.57, *assuming* that proceeding determines that BellSouth is not required under its tariff to have an audit as a prerequisite to any backbilling of disputed PIU amounts, and *assuming* that such backbilling may exceed the limitation of one prior quarter stated in BellSouth's tariff, and *further assuming* that there is a factual determination of a PIU variance and the amounts due. This string of assumptions about future events does not rise to the immediacy required by the court in Agrico.

7. The fact that BellSouth's ultimate objective is purely some hoped for financial recovery in another docket is also legally insufficient under Agrico to confer standing. See also, ASI, Inc. v. Florida Public Service Commission, 334 So.2d 594 (Fla. 1976). As this Commission

found in the MCI-WorldCom Order when it applied the Agrico test, speculation about future economic harm is too remote to establish standing. Again, the immediacy demanded by Agrico is not present.

8. As an alternative attempt to show immediate injury, BellSouth claims that the Thrifty Call letter requesting cancellation of the IXC certificate fails to meet the Commission's rule on the treatment of "final bills." BellSouth has attempted to support this claim by citing to this Commission only part of the relevant regulatory authority. Read in its entirety, Rule 25-24.474(2)(c) states that a carrier seeking to cancel its certificate shall provide: "A statement on treatment of customer deposits and final bills." As is clear from the words and context, the final bills are to Thrifty Call's *customers*, not the bills rendered to Thrifty Call by its *vendors*. If BellSouth's misconstruction of this rule is correct, this Commission will be required to hear every vendor's claim concerning unpaid bills for paper clips, wire, laundry services, tools, truck repairs, rent, and any of the thousands of other items used by a carrier. There are other forums for such claims, and a certificate cancellation is not the forum.

**2. A cancellation proceeding is not the place to address BellSouth's alleged injury.**

9. BellSouth has also failed to make the required Agrico showing that a certificate cancellation proceeding is the type of proceeding designed to protect BellSouth's interests. Indeed, the whole basis for BellSouth's intervention here is the fact *that there is already another docket open that is addressing BellSouth's issues*. BellSouth has filed a complaint which is pending before the Commission in Docket No. 000475-TP. A certificate cancellation docket is not the proper place for

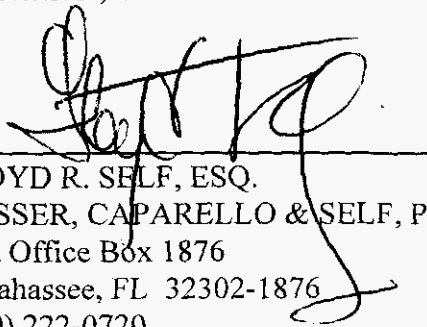
BellSouth to be raising its concerns. There is simply no need, or any legal basis, for litigating BellSouth's complaint in two dockets.

**3. Agrico applies equally to certificate grants, transfers and cancellations.**

10. The fact that the Commission's application of Agrico in the Atlas order and the MCI-WorldCom merger did not involve cancellations does not undercut Agrico's applicability here. Since the authority for certification, revocation, suspension, transfer, and amendments of certificates derive from the same basic statutory directives, then the standards for participation in those proceedings should be the same. See sections 364.33 and 364.335, Florida Statutes. On the basis of Agrico, this Commission has spoken in the Atlas certification and MCI-WorldCom merger orders and determined that carriers have no basis for intervening or protesting in either the granting of a certificate or the transfer of control of a certificate. Indeed, as this Commission emphasized in the Atlas Order, the intervening/protesting carrier did not have a substantial interest in Atlas' ability to hold a certificate. The result should be no different for a certificate cancellation, especially on the basis of the speculative and remote grounds that BellSouth advances here.

WHEREFORE, Thrifty Call respectfully requests that this Commission deny BellSouth's attempted intervention and proceed to the next available Agenda Conference for the purpose of issuing the PAA order granting the withdrawal of the certificate that was originally scheduled for the August 29, 2000, Agenda Conference.

Respectfully submitted this 5th day of September, 2000.

A handwritten signature in black ink, appearing to read 'F. R. Self', is written over a horizontal line. The signature is stylized and cursive.

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

Attorneys for Thrifty Call, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that true and correct copies of Thrifty Call's Response to BellSouth's Motion to Intervene and Response to Request for Cancellation of IXC Certificate have been served upon the following parties in Docket 000890-TI by Hand Delivery (\*) and/or U.S. Mail this 5th day of September, 2000.

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

Michael P. Goggin, Esq.  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301

  
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Floyd R. Self