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September 4, 2001

Mrs. Blanca S. Bayó
Director, Division of Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: FL Docket 000475-TP - Complaint Against Thrifty Call, Inc.
Regarding Practices in Reporting PIU for Compensation
For Jurisdictional Access Services**

Dear Mrs. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Opposition to Thrifty Call's Motion to Stay or, in the Alternative, to Bifurcate the Proceedings, which we ask that you file in the above-referenced matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

T. Michael Twomey
T. Michael Twomey (KAS)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

10995 SEP-4 01

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 000475-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U. S. Mail this 4th day of September, 2001 to the following:

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T. Michael Twomey
T. Michael Twomey (KA)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Complaint by BellSouth)	
Telecommunications, Inc. Against)	Docket No. 000475-TP
Thrifty Call, Inc. Regarding Practices)	
In Reporting of Percent Interstate Usage)	Filed: September 4, 2001
For Compensation For Jurisdictional)	
Access Services)	

**BELLSOUTH'S OPPOSITION TO THRIFTY CALL'S MOTION TO STAY OR,
IN THE ALTERNATIVE, TO BIFURCATE THE PROCEEDINGS**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Opposition to the Motion to Stay or, In the Alternative, to Bifurcate the Proceeding filed by Thrifty Call, Inc. ("Thrifty Call"). The Commission should deny Thrifty Call's motion in its entirety. The relief Thrifty Call has requested from the Federal Communications Commission ("FCC") should not delay this proceeding. Moreover, there is no legitimate reason for bifurcating this case.

ARGUMENT

BellSouth filed this action against Thrifty Call in April, 2000 to collect intrastate switched access charges that Thrifty Call failed to pay. Thrifty Call's underpayment of switched access charges resulted from its failure to report accurately the percent of its traffic that was intrastate rather than interstate. That is, in an effort to pay less money to BellSouth, Thrifty Call claimed that it had more interstate traffic (for which the switched access charges were lower for the period covered by the complaint) than it actually had. In response to BellSouth's complaint, Thrifty Call moved to dismiss this action arguing, among other things, that BellSouth had not properly applied the terms of its tariff. The

Commission denied the motion to dismiss and ordered that this matter move forward. See Order No. PSC-00-1568-PCO-TP (Aug. 31, 2000).

The instant motion is merely another delay tactic designed to slow the progress of this docket and to postpone the day that Thrifty Call will pay for the intrastate access services it ordered and received. The Petition for Declaratory Ruling Thrifty Call filed with the FCC is simply an attempt to have the FCC second guess the North Carolina Utilities Commission, which soundly rejected Thrifty Call's arguments and excuses for failing to pay the intrastate switched access charges it owed. This Commission should not delay this proceeding while Thrifty Call seeks to overturn the NCUC order.

I. The Commission Should Not Stay This Proceeding.

The fundamental error that permeates Thrifty Call's motion is the contention that the issues in this case are governed by BellSouth's federal tariffs rather than BellSouth's intrastate tariffs that were approved by this Commission. This proceeding involves BellSouth's attempt to remedy the underpayment of intrastate access charges that are governed by BellSouth's Florida tariffs. The FCC recently addressed this specific question in the context of a PIU dispute arising in Florida. See In the Matter of LDDS Communications, Inc. v. United Telephone of Florida, 15 FCC Rcd 4950, 2000 WL 253661 (F.C.C.) (rel. March 8, 2000).

In LDDS, after completing an audit, United (the local exchange carrier) concluded that LDDS had mis-reported its PIU factor by reporting more interstate usage than it should have. As a result, United adjusted the PIU factor and back-billed LDDS for the resulting difference in access charges. LDDS paid the amount in dispute, but thereafter filed a complaint proceeding with the FCC in which it sought to obtain a refund

of the disputed amount. LDDS contended that United's actions violated United's FCC tariff that was silent on the issue of back-billing. In response, United argued that the back-billing was for underpayment of intrastate access charges that were governed by United's intrastate tariff which expressly permitted back-billing.

The FCC dismissed LDDS' complaint, concluding that the fundamental issue raised in the PIU dispute was whether LDDS had properly paid intrastate access charges:

LDDS argues that the back-billing of which it complains constituted a single, unified transaction to which the Commission's jurisdiction necessarily attaches in the light of the involvement of United's federal tariff. In an apparent effort to avoid the fact that the retroactive billing involved calculations under both the Florida and the federal tariffs, LDDS contends that it is actually the retroactive adjustment of the PIU figure of which it complains. Thus LDDS contends that, given the reciprocal relationship between interstate and intrastate minutes of use, "any change to the intrastate PIU automatically affects change to the interstate PIU." It contends that, regardless of the terms of the intrastate tariff on the question, the interstate tariff prohibits back-billing. To effectuate this prohibition fully, LDDS then asserts it must be extended to prohibit the retroactive adjustments to intrastate minutes of use that United accomplished in this case.

The difficulty with LDDS's argument is that it conflates what were actually separate (albeit related) transactions, which were independently subject to the restrictions in two separate tariffs. The relationship between interstate and intrastate minutes of use does not subject to federal law, and the terms of the interstate tariff, all changes in a carrier's minutes of intrastate use. Rather, the traffic measurements process identifies the jurisdiction to which an IXC's traffic is assigned. Once that assignment has been accomplished, it is the appropriate tariff, as construed and applied by the proper regulatory authority, that governs the process for charging for minutes of use. In light of this regulatory structure, LDDS's complaint is properly viewed as challenging the two separate calculations – performed under two different tariffs – that resulted in United's retroactive adjustment of the access charge liability.

The first transaction is the reduction of the carriers' interstate access-charge liability. To the extent that LDDS challenges this transaction, it challenges an access-charge calculation made under a tariff filed with the FCC and over which the Commission certainly has jurisdiction. On the other hand, the second transaction is plainly outside of the Commission's

jurisdiction. In calculating the new intrastate access charges, United applied the terms of its intrastate tariff to the revised figure for intrastate minutes of use. Under the Act's dual-track system, this transaction falls squarely within the jurisdiction of the Florida PSC; as such, it is beyond the jurisdiction of the Commission.

Id. at ¶¶ 10-12 (emphasis added).

From a jurisdictional perspective, BellSouth's dispute with Thrifty Call is indistinguishable from the LDDS-United dispute. The FCC's analysis of the jurisdictional issues in the latter case applies with equal force to this case. Plainly, this dispute is governed by BellSouth's Florida intrastate tariff – not its federal tariff. Therefore, there is no legitimate reason for the progress of this case to be delayed.

II. The Commission Should Not Bifurcate This Proceeding.

Thrifty Call argues that the proceeding should be bifurcated because the Commission is faced with both legal and factual issues. This true – and unremarkable – observation offers no basis for altering the established procedure. Nearly every case decided by this Commission raises both legal and factual issues. What Thrifty Call actually seeks is delay. Thrifty Call is attempting to game the administrative process by having the Commission and BellSouth address issues in the case a few at a time, the cumulative effect of which will add significant delay to the final resolution of this case. If Thrifty Call believes the Commission has no jurisdiction over this matter, Thrifty Call may file a motion to dismiss. But there is no reason to modify the procedural schedule. This case should proceed in the same general manner as other cases pending before the Commission. After a hearing on the merits to consider facts at issue, the parties will submit post hearing briefs addressing the application of legal principles to the facts proven (or stipulated) at the hearing. The most efficient way to proceed with a resolution

of this case is to maintain the present schedule. Thrifty Call's request to bifurcate this proceeding should be denied.

CONCLUSION

Thrifty Call presents no legitimate arguments to support a modification of the Commission's existing procedural schedule. The Commission should deny the motion and proceed toward a final decision in this case.

Respectfully submitted this 4th day of September, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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