

ORIGINAL

Matilda Sanders

From: Slaughter, Brenda [Brenda.Slaughter@BellSouth.COM]
Sent: Wednesday, July 20, 2005 3:28 PM
To: Filings@psc.state.fl.us
Cc: Meza, James; Fatool, Vicki; Holland, Robyn P; Linda Hobbs; Nancy Sims; Bixler, Micheale
Subject: Docket 000475-TP
Importance: High
Attachments: 000475-TP Motion to Lift Stay.pdf

A. Brenda Slaughter
 Legal Secretary to James Meza III
 BellSouth Telecommunications, Inc.
 150 South Monroe Street
 Suite 400
 Tallahassee, Florida 32301
 (404) 335-0714
brenda.slaughter@bellsouth.com

B. Docket No.: 000475-TP – Complaint Against Thrifty Call, Inc. Regarding Practices in Reporting PIU for Compensation For Jurisdictional Access Services

C. BellSouth Telecommunications, Inc.
 on behalf of James Meza III

D. 6 pages total (including letter, certificate of service, and pleading)

E. BellSouth Telecommunications, Inc.'s Motion to Lift Stay and to Establish Procedural Schedule

CMP _____
 COM _____
 CTR _____
 ECR _____
 GCL _____
 OPC _____
 MMS _____
 RCA _____
 SCR _____
 SEC 1
 OTH kim.f.

Brenda Slaughter (sent on behalf of James Meza III)
 BellSouth Telecommunications, Inc.
 Suite 4300 - Legal Department
 675 W. Peachtree Street
 Atlanta, GA 30375-0001
 Phone: (404) 335-0714

<<000475-TP Motion to Lift Stay.pdf>>

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DOCUMENT NUMBER-DATE

06946 JUL 20 05

ORIGINAL

Legal Department

James Meza III
Senior Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0769

July 20, 2005

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

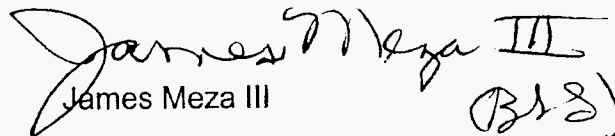
Re: **FL Docket 000475-TP - Complaint Against Thrifty Call, Inc.
Regarding Practices in Reporting PIU for Compensation
For Jurisdictional Access Services**

Dear Mrs. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Motion to Lift Stay and to Establish Procedural Schedule, which we ask that you file in the above-referenced matter.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III (BSS)

cc: All Parties of Record
Jerry D. Hendrix
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

06946 JUL 20 05

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

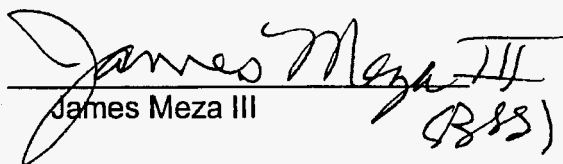
U. S. Mail this 20th day of July, 2005 to the following:

Tim Vaccaro
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Thrifty Call, Inc.
Gary L. Mann, President
401 Carlson Circle
San Marcos, Texas 78666
Tel. No. (512) 392-6276
Fax. No. (512) 392-6276

Floyd R. Self
Messer, Caparello & Self, P.A.
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
fself@lawfla.com

Danny E. Adams
Kelley Drye & Warren, L.L.P.
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel. No. (202) 955-9600


James Meza III
(BSS)

BEFORE THE FLORIDA 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. 0000475-TP

Filed: July 20, 2005

MOTION TO LIFT STAY AND TO ESTABLISH PROCEDURAL SCHEDULE

BellSouth Telecommunications, Inc. ("BellSouth") requests that the Florida Public Service Commission ("Commission") lift the stay currently suspending the above-captioned litigation and establish a procedural schedule for the resolution of the litigation. In support of this request, BellSouth states the following:

1. 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.

2. On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative to Bifurcate the Proceedings. In support of the Motion to Stay, Thrifty Call requested that the instant proceeding be stayed until the Federal Communications Commission ("FCC") resolved its Petition for Declaratory Ruling, wherein it requested, *inter alia*, that the FCC declare that the entry/exit surrogate ("EES") method sanctioned Thrifty Call's reported PIU factor to BellSouth. The Commission granted the Motion to Stay in Order No. PSC-01-2309-PCO-TP, issued on November 21, 2001, because it found that "[t]he answer to this question goes directly to the crux of the matter before this Commission." Order No. PSC-01-2309-PCO-TP at 6. Consequently, 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 7.¹

3. The FCC issued its Declaratory Ruling on November 10, 2004 (DA 04-3576), wherein it rejected Thrifty Call’s arguments. See Declaratory Ruling at ¶¶ 1, 15, attached hereto as Exhibit A. The FCC’s description of Thrifty Call’s arguments (as well as the admissions of Thrifty Call) in the Declaratory Ruling is instructional:

In its petition for declaratory ruling, Thrifty Call argues that BellSouth’s federal tariff requires the use of EES methodology in jurisdictionally separating Feature Group D services. Thrifty Call further argues that, pursuant to EES methodology, the jurisdictional nature of a call is determined by where the call enters Thrifty Call’s network, not by the call’s origination and destination points. . . . Thrifty Call contends that it routed nearly all of its wholesale traffic bound for BellSouth customers in North Carolina and Florida through its switch in Atlanta, Georgia. Thrifty Call states that, in applying the EES methodology, it classified these calls as interstate because the calls entered its network at its switch in Georgia, a different state than the state in which the called party was situated.

Declaratory Ruling at ¶¶ 12 (footnotes omitted).

4. In rejecting this argument, the FCC stated the following:

Although we agree with Thrifty Call that the EES methodology was the correct 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 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***

¹ Question number four raised in Thrifty Call’s Petition for Declaratory Ruling related to the EES methodology question. See Order No. PSC-01-2309-PCO-TP at 2.

court precedent 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 (emphasis added) (footnotes omitted).


5. Accordingly, there can be no question that the FCC has found that Thrifty Call's over-reporting of its interstate PIU based on an erroneous application of the EES methodology was incorrect and that Thrifty Call should have reported calls that originated and terminated in Florida to BellSouth as intrastate.

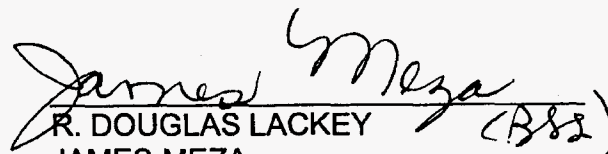
6. In light of the FCC's decision, there is no longer any need to stay the proceeding as the FCC has spoken by rejecting Thrifty Call's arguments. Accordingly, BellSouth requests that the Commission lift the stay currently affecting the instant proceeding.

7. Additionally, BellSouth requests that the Commission establish a procedural schedule providing for additional limited discovery (if necessary), the filing of supplemental testimony, timeframes for filings motions for summary dispositions, and a hearing date. This matter has been pending since 2000, and it is now time to proceed with its resolution.

WHEREFORE, BellSouth requests that the Commission lift the stay and establish a procedural schedule.

Respectfully submitted this 20th day of July, 2005


NANCY B. WHITE
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558


R. DOUGLAS LACKEY
JAMES MEZA
BellSouth Center - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0769

ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC.