

State of Florida



Public Service Commission

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DATE: October 6, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Rojas) *GR* *BLK* *WV*
Division of Competitive Markets & Enforcement (King, Vickery) *WV*

RE: Docket No. 050570-TP - Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom and Frontier Communications of the South, LLC, for generic investigation of third-party transit traffic arising from Transit Service Tariff filed by BellSouth Telecommunications, Inc.

Docket No. 050119-TP - Petition of TDS Telecom d/b/a TDS Telecom/Quincy Telephone, ALLTEL Florida, Inc., Northeast Florida Telephone Company d/b/a NEFCOM, GTC, Inc. d/b/a GT Com, Smart City Telecommunications, LLC d/b/a Smart City Telecom, ITS Telecommunications Systems, Inc. and Frontier Communications of the South, LLC, concerning BellSouth Telecommunications, Inc.'s Transit Service Tariff

Docket No. 050125-TP - Petition and Complaint of AT&T Communication of the Southern States, LLC for suspension and cancellation of Transit Traffic Service Tariff No. FL2004-284 filed by BellSouth Telecommunications, Inc.

AGENDA: 10/18/05 – Regular Agenda – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\2005\050570.RCM.DOC

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Case Background

On February 11, 2005, TDS Telecom d/b/a TDS Telecom/Quincy Telephone; ALLTEL Florida Inc.; Northeast Florida Telephone Company d/b/a NEFCOM; GTC, Inc., d/b/a GT Com; Smart City Telecom; ITS Telecommunications Systems Inc.; and Frontier Communications of the South, LLC (Joint Petitioners) filed a joint petition that objects to and requests suspension and cancellation of BellSouth Telecommunication Inc.'s (BellSouth) General Subscriber Services Tariff A16.1, Transit Traffic Service. Docket No. 050119-TP was established in response to the petition filed by the Joint Petitioners. On February 17, 2005, AT&T Communications of the Southern States, LLC, (AT&T) also filed a petition and complaint for suspension and cancellation of Transit Traffic Tariff No. FL 2004-284 filed by BellSouth. Docket No. 050125-TP was subsequently established in response to AT&T's petition.

BellSouth filed an answer to the Joint Petitioners in Docket No. 050119-TP, on March 3, 2005, and on March 4, 2005, filed an answer and motion in Docket No. 050125-TP to consolidate Docket No. 050119-TP with Docket No. 050125-TP. By Order No. PSC-05-0623-PAA-TP the Commission consolidated the two dockets, but denied the requests for suspension of the Transit Traffic Tariff.¹ However, the Commission deemed it appropriate that revenues from the tariff be held by BellSouth subject to refund pending the outcome of the proceedings.

Due to the numerous issues that arose from the parties' issue identification conference, this matter might be more properly addressed by a generic proceeding. On August 26, 2005, the Joint Petitioners filed a petition for a generic investigation into third-party transit traffic. On September 19, 2005, BellSouth filed its Answer to the petition.

Transit traffic is traffic that originates on the network of one carrier, transits over BellSouth's network, then terminates on the network of a third carrier. BellSouth has filed a new tariff, General Subscriber Services Tariff § A.16.1, Transit Traffic Service, which sets forth certain rates, terms and conditions that apply when carriers receive transit service from BellSouth but have not entered into an agreement with BellSouth setting forth rates, terms and conditions for the provision of transit services. BellSouth's transit tariff does not apply to a party with whom BellSouth has an existing contractual relationship because the tariff, by its terms, applies as a default, only in the absence of an existing contractual agreement. These dockets involve a dispute over the appropriate rates, terms and conditions applicable to transit traffic

The Commission is vested with jurisdiction over this matter pursuant to provisions of Section (4), and 364.051(5), Florida Statutes.

¹ Transit Traffic Tariff No. FL 2004-284 is also known as BellSouth's General Subscriber Tariff A16.1, Transit Traffic Tariff.

Discussion of Issues

Issue 1: Should the Commission grant the petition for generic investigation into third-party transit traffic?

Recommendation: Yes. The Commission should grant the petition for generic investigation into third-party transit traffic, and hold Docket Nos. 050119-TP and 050125-TP in abeyance pending resolution of the generic investigation. **(Rojas)**

Staff Analysis:

Position of the Parties

Joint Petitioners

The Joint Petitioners argue that they are “originating Telecommunications Service Providers of Transit Traffic” as defined by the tariff. The Joint Petitioners state that they are not parties to separate written agreements with BellSouth specifically addressing the rates, terms and conditions for BellSouth’s provision of Transit Traffic Service. The Joint Petitioners further claim that they have historically engaged in a consistent course of conduct with BellSouth whereby Transit Traffic Service, as defined by the BellSouth Tariff, has been provided by BellSouth without charge to the Joint Petitioners.

Furthermore, the Joint Petitioners contend that the Commission’s resolution of the disputed issues of fact, law and policy arising from Joint Petitioners’ challenge to BellSouth’s Transit Tariff will directly impact all third-party providers such as Competitive Local Exchange Companies and Commercial Mobile Radio Service Providers that are subject to the Transit Traffic Tariff, and could have prejudicial impact on other local exchange telecommunications companies. Therefore, Joint Petitioners argue that the Commission should initiate a generic docket to ensure that all issues raised by BellSouth’s Transit Traffic Tariff are identified and addressed, and that the Commission’s decision with respect to BellSouth’s Transit Traffic Service is based on a complete record that includes the input and positions of any and all substantially affected telecommunications companies and third-party providers.

BellSouth

BellSouth argues that when it provides transit service, it operates as a conduit between other carriers that may not have direct interconnection agreements in place. BellSouth states that in most instances, it has established contractual arrangements that address the terms and conditions for the provision of transit service, as well as the compensation that is owed to BellSouth – generally from the originating carrier – for transiting such traffic. BellSouth claims that its Transit Traffic Tariff does not apply to carriers who have negotiated such contracts. BellSouth further states that the petitioners, despite having no arrangement in place with BellSouth for the provision of transit service, send transit traffic to BellSouth for termination to other carriers with whom the petitioners have no direct interconnection. In the absence of an

existing contractual agreement, BellSouth intends for the Transit Traffic Tariff to apply as a default.

BellSouth argues that it is neither the originating nor terminating carrier of transit traffic, and BellSouth has no duty under Section 251(c)(2) of the Act to provide the service at TELRIC rates. BellSouth states that it provides rates, terms and conditions for the provision of transit service to many carriers pursuant to agreement and is entitled to compensation for providing this service.

BellSouth denies that its transit tariff and its transit tariff rate violate Florida law. Additionally, BellSouth asserts the further affirmative defenses that (1) the Joint Petitioners have failed to state a claim for which relief can be granted and (2) to the extent that the Joint Petitioners have not paid BellSouth for services provided, BellSouth claims unjust enrichment. The Joint Petitioners have received transit services from BellSouth and have accepted such services under circumstances that would make it inequitable for them to retain such services without payment. If the Commission grants any relief to the Joint Petitioners, BellSouth claims it is entitled to compensation in the amount the Joint Petitioners have been unjustly enriched.

In addition to the arguments presented above, BellSouth asserts that the initiation of a generic docket would cause untimely delay in resolution of Docket Nos. 050119-TP and 050125-TP and restrict BellSouth's right to utilize compensation derived from transiting traffic on behalf of third parties.

Analysis and Conclusion

Staff believes that the Commission's resolution of the disputed issues of fact, law and policy arising from Joint Petitioners' challenge to BellSouth's Transit Tariff would likely impact all third-party providers that are subject to the Transit Tariff, and could also have prejudicial impact on other local exchange telecommunications companies. Therefore, staff recommends that the Commission initiate a generic docket to ensure that all issues raised by BellSouth's Transit Tariff are identified and addressed, and that the Commission's decision with respect to BellSouth's Transit Service is based on a complete record which includes the input and positions of any and all substantially affected telecommunications companies and third-party providers. Additionally, staff notes that it has received an informal complaint regarding transit traffic issues between Sprint and Verizon.

Furthermore, Docket Nos. 050119-TP and 050125-TP include specific issues relating to the BellSouth Tariff; these issues would be more appropriately addressed after the Commission's determination of the appropriateness of a generic investigation and the broad policy implications that could arise from the findings in that investigation.

Therefore, staff recommends that the Commission should grant the petition for generic investigation into third-party transit traffic, and hold Docket Nos. 050119-TP and 050125-TP in abeyance pending resolution of the generic investigation.

Issue 2: Should the Commission, on its own motion, expand the petition for generic investigation into third-party transit traffic to include Sprint and Verizon?

Recommendation: Yes. The Commission should expand the petition for generic investigation into third-party transit traffic to include Sprint and Verizon. **(Rojas)**

Staff Analysis: As stated above, staff believes that the Commission's resolution of the disputed issues of fact, law and policy arising from Joint Petitioners' challenge to BellSouth's Transit Traffic Tariff would likely impact all third-party providers that are subject to the Transit Traffic Tariff, and could also have precedential impact on other local exchange telecommunications companies. Staff notes that it is aware of similar transit traffic issues that have arisen with regard to Verizon and Sprint.²

Staff is aware that the initiation of a generic docket could cause delay in resolution of Docket Nos. 050119-TP and 050125-TP and restrict BellSouth's right to utilize compensation derived from transiting traffic on behalf of third parties. However, staff believes that this restriction would not unduly burden BellSouth in that the Joint Petitioners allege that they have historically engaged in a consistent course of conduct with BellSouth whereby Transit Traffic Service, as defined by the Proposed Tariff, has been provided by BellSouth without charge.

Therefore, staff recommends that the Commission initiate a generic docket to ensure that all of the broad policy issues raised by BellSouth's Transit Traffic Tariff are identified and addressed, and that the Commission's decision with respect to transit service in general, is based on a complete record which includes the input and positions of any and all substantially affected telecommunications companies and third-party providers. Furthermore, because resolution of these issues could have a broad policy impact, and because staff is aware of informal issues that have arisen with regard to transit traffic for both Sprint and Verizon, staff recommends that the generic proceeding be expanded to include Sprint and Verizon as well.

² Neither Sprint nor Verizon has filed a transit traffic tariff in Florida.

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Issue 3: Should these dockets be closed?

Recommendation: No, if staff's recommendations are approved, these dockets should remain open pending the resolution of this petition. **(Rojas)**

Staff Analysis: Staff believes that these dockets should remain open, pending the resolution of this petition. However, if staff's recommendations are denied, Docket No. 050570-TP should be closed.