

ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
LORENA A. HOLLEY
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE
MAGGIE M. SCHULTZ
GOVERNMENTAL CONSULTANTS
PARSONS B. HEATH
MARGARET A. MENDUNI

March 14, 2006

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-TPSC
MAR 14 PM 4:37
COMMISSION CLERK

Re: Docket Nos. 050119-TP and 050125-TP

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket on behalf of Quincy Telephone Company, d/b/a TDS Telecom, 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 ("Small LECs") are the original and fifteen copies of the Small LECs' Amendments to Prehearing Statement.

Please acknowledge receipt of these documents by stamping the extra copy of this letter filed and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,

[Handwritten signature of Kenneth A. Hoffman]

Kenneth A. Hoffman

- CMP
COM 5
CTR
ECR
GCL KAH/rl
OPC Enclosures
RCA
SCR
SGA
SEC 1
OTH

NFTC\transtitraffic\bayo.mar14 06 ltr

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

02219 MAR 14 06

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Joint 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 Tele- )  
communications Systems, Inc. and Frontier )  
Communications of the South, LLC, )  
("Joint Petitioner") objecting to and )  
requesting suspension of Proposed Transit )  
Traffic Service Tariff filed by BellSouth )  
Telecommunications, Inc. )  
\_\_\_\_\_ )

Docket Nos. 050119-TP and 050125-TP

Filed: March 14, 2006

**SMALL LOCAL EXCHANGE COMPANIES'**  
**AMENDMENTS TO PREHEARING STATEMENT**

Quincy Telephone Company d/b/a TDS Telecom, 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 (hereinafter referred to collectively as the "Small LECs"), by and through their undersigned counsel, hereby file the following Amendments to the Small LECs' Prehearing Statement filed in the above captioned dockets on February 20, 2006. The Amendments to the Small LECs' Prehearing Statement are set forth in legislative format.

**D, E and F. The Small LECs' Position on the**  
**Factual, Legal and Policy Issues**

**Issue 1:** **Is BellSouth's Transit Service Tariff an appropriate mechanism to address transit service provided by BellSouth?**

**Small LECs:** No. Under the *T-Mobile Declaratory Ruling and Report and Order* issued by the Federal Communications Commission ("FCC") on February 24, 2005, the FCC has concluded that LEC tariffs are not the appropriate on-going mechanism for the establishment of terms and conditions for the exchange of non-access traffic. In addition, the FCC concluded that compensation arrangements for the exchange of local traffic should be developed through negotiated agreements and, if necessary, arbitrated agreements. Furthermore, with respect to ISP-bound traffic, the FCC determined that such traffic is

DOCUMENT NUMBER-DATE

02219 MAR 14 06

FPSC-COMMISSION CLERK

interstate in nature. Therefore, to the extent a tariff arrangement might be deemed appropriate, and under the T-Mobile Declaratory Ruling and Report and Order it is not, then any such transit tariff must be filed with and approved by the FCC. Further, a unilateral tariff, and, in particular, such as BellSouth's Transit Tariff, fails to address or adequately address all of the terms, conditions, rights and responsibilities that will need to must be negotiated or potentially arbitrated with regard to the interconnection and exchange of transit traffic.

\* \* \*

**Issue 10: What effect does transit service have on ISP-bound traffic?**

Small LECs: The Small LECs maintain the Commission is without authority to approve rates, terms and conditions pursuant to tariff for ISP-bound traffic that the FCC has determined to be an interstate service. Nonetheless, should the Commission move forward with the approval of a tariffed arrangement for transit service, and the Small LECs maintain that the Commission cannot and should not take such action, then it is the Small LECs' position that the CLECs and CMRS providers should be responsible for any transit charges for calls approved by the Commission for to ISPs that are customers of CLECs and CMRS providers. The fact that the CLEC or CMRS provider's customer is an ISP, rather than a more traditional residential or business customer, does not change the fact that any transit charge approved by the Commission has been caused by the CLEC or CMRS provider due to the CLEC or CMRS provider's election of a tandem arrangement for interconnection as opposed to direct interconnection with the Small LEC. As such, there should be no compensation effect on the Small LECs. With respect to the level of the any transit charge rate for ISP-bound traffic, given the FCC's limit of \$0.007 per minute of use on intercarrier compensation for ISP-bound traffic (to no more than \$0.007 per minute of use) and the fact that to date BellSouth and the CLECs have been providing dial-up ISP-bound traffic service to ISPs without any charges to the Small LECs to date, there is no basis for BellSouth to extract compensation for ISP-bound calls from any carrier and certainly not from Small LECs.

**Issue 12: Consistent with Order Nos. PSC-05-0517-PAA-TP and PSC-05-0623-CO-TP, have the parties to this docket (parties) paid BellSouth for transit service provided on or after February 11, 2005? If not, what**

**amounts if any are owed to BellSouth for transit service provided since February 11, 2005?**

Small LECs: Yes. BellSouth has billed Smart City Telecommunications, LLC d/b/a Smart City Telecom and Frontier Communications of the South, LLC and ~~the~~ these Small LECs have paid for transit service billed by BellSouth on or after February 11, 2005. These charges are being held by BellSouth subject to refund pending the outcome of this proceeding.

**K. Decisions**

~~The Small LECs are not aware of any decision or pending decision of the FCC or any court that has or may preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this proceeding.~~ The Commission's authority to resolve Issues 1 and 10 in this proceeding is impacted by the decision of the Federal Communications Commission in the April, 2001 *Order on Remand and Report and Order* in In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68 (the "*ISP Remand Order*"). In the *ISP Remand Order*, the FCC found that ISP-Bound traffic "is indisputably interstate in nature" and "that the link LECs provide to connect subscribers with ESPs is an interstate access service. (footnote omitted)." *ISP Remand Order*, at par. 55, 58. Given the FCC's preemptive decision that ISP-bound traffic is interstate in nature and that the transport and termination links to an ISP are an interstate access service, it is clear that the Florida Public Service Commission lacks the legal authority to approve BellSouth's Transit Tariff as such applies to ISP-bound calls. In light of the Commission's lack of authority to approve the proposed Transit Tariff as it applies to ISP-bound calls and because BellSouth lacks the ability to carve out ISP-bound calls from non-ISP-bound calls, the Commission should reject BellSouth's proposed Transit Tariff in its entirety.

Respectfully submitted,



---

Kenneth A. Hoffman, Esq.  
Martin P. McDonnell, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
P.O. Box 551  
Tallahassee, FL 32302  
850-681-6788 (Telephone)  
860-681-6515 (Telecopier)

-- and --

Benjamin H. Dickens, Jr., Esq.  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, Northwest  
Washington, DC 20037  
(202) 828-5510 (Telephone)  
(202) 828-5568 (Telecopier)

Attorneys for Small LECs

**CERTIFICATE OF SERVICE**

I HEREBY certify that a copy of the foregoing was furnished to the following this 14<sup>th</sup> day of March, 2006, by Electronic Mail to the following:

Nancy B. White, Esq.  
c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301

Stephen B. Rowell, Esq.  
ALLTEL  
One Allied Drive, B5F11  
Little Rock, AR 72202

Meredith E. Mays, Esq.  
BellSouth Center - Suite 4300  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375

Mr. James White  
ALLTEL Florida, Inc.  
6867 Southpoint Drive, N.  
Suite 103  
Jacksonville, FL 32216-8005

Felicia Banks, Esq.  
Michael Barrett, Esq.  
Laura King, Esq.  
Office of the General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Tracy Hatch, Esq.  
AT&T Communications of the Southern  
States, LLC  
101 North Monroe Street, Suite 700  
Tallahassee, Florida 32301-1549

J. Jeffry Wahlen, Esq.  
Ausley Law Firm  
127 Calhoun Street  
Tallahassee, Florida 32301

Vicki Gordon Kaufman, Esq.  
Moyle Flanigan Katz Raymond & Sheehan,  
P.A.  
118 North Gadsden Street  
Tallahassee, FL 32301

Mr. Robert M. Post, Jr.  
ITS Telecommunications Systems, Inc.  
16001 SW Market Street  
Indiantown, FL 32956-0277

Susan J. Berlin  
NuVox Communications, Inc.  
Two North Main Street  
Greenville, SC 29601

William R. Atkinson  
Sprint Nextel  
3065 Cumberland Circle, SE  
Mailstop GAATLD0602  
Atlanta, GA 30339

Ronald W. Gavilett, Esq.  
Neutral Tandem  
One South Wacker, Suite 200  
Chicago, IL 60606

Floyd R. Self, Esq.  
Messer, Caparello & Self, P.A.  
215 South Monroe Street, Suite 700  
P. O. Box 1876  
Tallahassee, FL 32302

Charles V. Gerkin, Jr.  
Friend, Hudak & Harris, LLP  
Three Ravinia Drive, Suite 1450  
Atlanta, GA 30346

Michele K. Thomas, Esq.  
T-Mobile  
60 Wells Avenue  
Newton, MA 02459

Charles F. Palmer, Esq.  
Troutman Sanders LLP  
600 Peachtree Street, N.E.  
Suite 5200  
Atlanta, GA 30308-2216

Elaine Critides  
Verizon Wireless  
1300 I Street, N.W.  
Suite 400  
Washington, DC 20005

Michael A. Gross, Esq.  
Florida Cable Telecommunications, Assn.  
246 E. 6<sup>th</sup> Avenue, Suite 100  
Tallahassee, FL 32303

By:   
\_\_\_\_\_  
Kenneth A. Hoffman, Esq.  
nftc\transit.traffic\amendmentstoprehearingstatement