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CONTAINS INFORMATION THAT MAY NOT BE PUBLICLY DISCLOSED
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. 000475-TP

Filed: June 5, 2007

MS 8-21-07
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**AT&T FLORIDA'S
MOTION FOR SUMMARY FINAL ORDER**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 28-106.204(4), Florida Administrative Code, respectfully submits this Motion for Summary Final Order against Thrifty Call, Inc. ("Thrifty Call") for Thrifty Call's improper reporting of interstate usage to AT&T Florida. In accordance with AT&T Florida's Intrastate Access Tariff¹, Thrifty Call had a duty to properly and accurately report to AT&T Florida Thrifty Call's percentage of interstate usage ("PIU"). Thrifty Call failed to comply with this obligation, which resulted in Thrifty Call underreporting the amount of intrastate terminating access minutes terminated to AT&T Florida. Consequently, Thrifty Call has underpaid AT&T Florida intrastate access charges in the amount of \$2,443,940.00 in principal and \$9,824,295.00 in late payment penalties as of May 23, 2007.² Therefore, AT&T Florida respectfully requests that the Commission grant this request for Summary Final Order and order Thrifty Call to pay all amounts due and owing to AT&T, in accordance with the Intrastate Access Tariff, as a result of Thrifty Call's underreporting of its PIU to AT&T Florida.

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¹ See BellSouth Telecommunications, Inc. Access Services Tariff, Issued August 20, 2003 (Intrastate Tariff) at § Section E2.3.14 Jurisdictional Report Requirements.

² In accordance with the Intrastate Tariff, late payment penalties continue to accrue at a rate of 1.77% per month. See Intrastate Access Tariff at § E8.2.3A(2).

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MS 04542 JUN-56

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Summary Final Order Standard

Under Rule 28-106.204(4), Florida Administrative Code, “[a]ny party may move for summary final order whenever there is no genuine issue of material fact.” The purpose of summary judgment or of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. *See* Order No. PSC-01-1427-FOF-TP at 13. When a party establishes that there is no material fact on any issue disputed, then the burden shifts to the opponent to demonstrate the falsity of the showing. *Id.* “If the opponent does not do so, summary judgment is proper and should be affirmed.” *Id.* There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law. *Id.* at 14-15. AT&T Florida satisfies both requirements in this proceeding.

Undisputed Material Facts **DECLASSIFIED**

On April 21, 2000, AT&T Florida filed a Complaint against Thrifty Call pursuant to its Intrastate Access Tariff, wherein AT&T Florida sought to recover unpaid intrastate access charges that resulted when Thrifty Call reported incorrect PIU factors to AT&T Florida. Complaint at ¶ 1. On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative to Bifurcate the Proceedings, based upon the fact that it had filed a Petition for Declaratory Ruling with the Federal Communications Commission (“FCC”) regarding an issue substantively identical to that at issue in this Docket. Specifically, Thrifty Call petitioned the FCC to declare that the use of the entry/exit surrogate (“EES”) method by Thrifty Call to calculate the PIU factor it provided to AT&T Florida was appropriate and authorized.

On November 21, 2001, the Commission granted the Motion to Stay in Order No. PSC-01-2309-PCO-TP, because it found that “[t]he answer to this question goes directly to the matter

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before the Commission.” Order No. PSC-01-2309-PCO-TP at 6. The Commission held that it was “appropriate and in the interest of judicial economy to stay the proceeding until the FCC issued a ruling on question number four of the Petition for Declaratory Ruling submitted by Thrifty Call.” *Id.* at 7.

Notably, although the Commission granted the Motion to Stay, in so doing, it also stated that most of the issues were matters of state tariff and law, but that due to the state tariff’s requirement that intrastate and interstate usage total 100%, “the FCC’s determination of [the EES methodology] issue could be persuasive in [the Commission’s] application of the intrastate tariff.” Order No. PSC-01-2309-PCO-TP at 7.

On November 10, 2004, the FCC issued its Declaratory Ruling, DA 04-3576³ rejecting Thrifty Call’s EES arguments. In doing so, the FCC articulated Thrifty Call’s argument as follows:

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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).

³ *In the Matter of Thrifty Call, Inc. Petition for Declaratory Ruling concerning BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, CCB/CPD File No. 01-17, DA 04-3576, Adopted November 10, 2004.*

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The FCC soundly rejected Thrifty Call's argument and held as follows:

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 court proceeding 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 communication 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 part was located in one state and the called party was located in another state as interstate calls.**

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Id. at ¶ 15 (emphasis added) (footnotes omitted).

Not only did the FCC find that Thrifty Call's over-reporting of its interstate PIU based on its applications of the EES methodology was incorrect, in a docket substantively identical to this Docket, the North Carolina Utilities Commission ("NCUC") also found that from 1996 to 2000, Thrifty Call misreported terminating percentage interstate usage to AT&T North Carolina (at the time d/b/a BellSouth Telecommunications, Inc. "AT&T North Carolina"), and found that Thrifty Call should pay AT&T North Carolina, \$1,898,685.00--representing the amount AT&T North

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Carolina calculated as the correct amount of intrastate switched access charges Thrifty Call should have paid for that period of time.⁴

Like the matter before this Commission, the matter in North Carolina involved Thrifty Call's miscalculation and erroneous reporting of PIU factors. In the North Carolina matter, AT&T North Carolina argued that Thrifty Call misreported 98% of its terminating traffic as interstate when in fact 90% was intrastate. North Carolina Order at 4. Thrifty Call argued that the calls that entered its switch in Atlanta and were routed through North Carolina were interstate calls, regardless of where they originated or terminated. *Id.* at 5. AT&T North Carolina disagreed and argued that Thrifty Call was inappropriately applying the FCC's entry-exit surrogate methodology. *Id.* at 4. AT&T North Carolina asserted that the appropriate standard to be applied is found in the BellSouth Telecommunications, Inc. Access Services Tariff ("NC Intrastate Tariff") §E.2.3.14 (A)(2)(a). *Id.* at 4, 5. That section of the NC IntraState Tariff states:

The intrastate usage is to be developed as though every call that originates within the same state as that in which the called station (as designated by the called station number) is situated is an intrastate communication and every call for which the point of origination is in a state other than that where the called station (as designated by the called station) is situated is an interstate communication.

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The North Carolina Public Utilities Commission agreed with AT&T North Carolina, and found that AT&T North Carolina's claim was "well supported," and ordered Thrifty Call to pay \$1,898,685.00 for "the payment of sums that should have been paid but were not because of [Thrifty Call's] inappropriate classification... ." *Id.* at 7.

⁴ See *In the Matter of BellSouth Telecommunications, Inc. v. Thrifty Call, Inc.*, NCUC Docket No. P-447, Sub 5, Order dated April 11, 2001 ("North Carolina Order" attached hereto as "Exhibit A").

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On July 20, 2005, AT&T Florida filed a Motion to Lift Stay and Establish Procedural Schedule in this Docket. On November 2, 2005, the Commission entered its Order Granting BellSouth's Motion to Lift Stay and Establish Procedural Schedule.

During the course of this Docket, Thrifty Call filed with the Commission material purported to be confidential, and therefore exempt from disclosure. That information included the results of an audit conducted by the Commission's audit staff, and contained call detail records dispositive of the disputed issues in this Docket. Accordingly, to facilitate resolution of this litigation, on December 9, 2005, AT&T Florida filed with the Commission a Motion For Ruling On The Pleadings, and sought leave of the Commission to review all material claimed by Thrifty Call to be confidential.

In an Order issued February 10, 2006, the Commission granted AT&T Florida's Motion and allowed AT&T Florida to review all of the material claimed by Thrifty Call to be confidential. Thereafter, AT&T manager Marc W. Potteiger reviewed the documents and found, consistent with AT&T Florida's allegations, that Thrifty Call underreported intrastate traffic to AT&T Florida.⁵ Potteiger Affidavit at ¶¶ 7, 8. As a direct result of this underreporting, Thrifty Call underpaid AT&T Florida the principal sum of \$2,443,940.00 plus accrued late payment penalties of \$9,824,295.00 for a total of \$12,268,235.00, due and owing, as of May 23, 2007, to AT&T Florida. Late payment penalties continue to accrue at a rate of 1.77% per month. Potteiger Affidavit at ¶ 9.

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To the best of AT&T's knowledge, Thrifty Call is no longer represented by counsel in this Docket. In an Order issued November 2, 2005, the Commission granted the Motion for Leave to Withdraw as Counsel for Thrifty Call, filed by Floyd R. Self, Esquire and the law firm

⁵ The affidavit of Marc W. Potteiger is attached hereto as "Exhibit B."

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of Messer, Caparello & Self, P.A. To date, AT&T Florida is unaware of any counsel of record for Thrifty Call in this Docket.

There Is No Genuine Issue As To Any Material Fact

Both the FCC and the NCUC found that Thrifty Call utilized an incorrect methodology and over-reported its interstate PIU. Carrier self-reporting of the PIU factor is outlined in AT&T Florida's Access Services Tariff, Section E2.3.14, which defines how carriers should properly calculate and report PIU factors. Section E8.2.3A(2) of the Tariff provides for late payment penalties when carriers fail to make proper timely payments of amounts due and owing to AT&T Florida.

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Thrifty Call's over-reporting of interstate PIU resulted in an underpayment to AT&T Florida. The Commission staff audit revealed Thrifty Call's erroneous reporting of interstate PIU in Florida. Thrifty Call should have reported calls that originated and terminated in Florida to AT&T Florida as intrastate, but did not always do so. AT&T Florida was underpaid as a direct result of Thrifty Call's underreporting of intrastate usage. AT&T Florida reviewed and verified Staff's audit findings and calculated the amount due and owing to AT&T Florida for Thrifty Call's erroneous reporting. AT&T Florida is entitled to be compensated for Thrifty Call's intentional and unlawful underpayment. The relevant pleadings and affidavit show that there is no genuine issue as to any material fact, and this matter can be resolved based on the undisputed facts. Therefore, in accordance with Rule 28-106.204(4), Florida Administrative Code, AT&T Florida respectfully submits that it is entitled to a Summary Final Order.

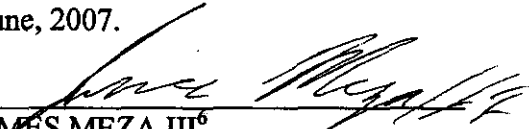
Conclusion

WHEREFORE, AT&T Florida respectfully requests that the Commission grant this Motion and enter an order (1) finding that Thrifty Call underreported the amount of its intrastate


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traffic in Florida and thereby underpaid AT&T Florida intrastate access charges in the amount of \$2,443,940.00 plus late payment penalties (as of May 23, 2007) of \$9,824,295.00; and (2) requiring Thrifty Call to pay AT&T Florida all amounts due and owing, including all late payment penalties that accrue after the date of this filing.

Respectfully submitted this 5th day of June, 2007.



JAMES MEZA III⁶
MANUEL GURDIAN
c/o Nancy Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
james.meza@bellsouth.com
nancy.sims@bellsouth.com
(305) 347-5558
(850) 222-8640



E. EDENFIELD JR.
JOHN T. TYLER
AT&T Midtown Center - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375
(404) 335-0757
ATTORNEYS FOR AT&T FLORIDA

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⁶ The undersigned is licensed in Louisiana only, is certified by the Florida Bar as Authorized House Counsel (No. 464260) per Rule 17 of the Rules Regulating the Florida Bar, and has been granted qualified representative status by the Commission in Order No. PSC-07-0211-FOF-OT.

NORTH CAROLINA UTILITIES COMMISSION

NOTICE TO PARTIES

Docket No. P-447, Sub 5 Exceptions Due on or Before 4-26-01

Parties to the above proceeding may file exceptions to the report and Recommended Order hereto attached on or before the day above shown as provided in G.S. 62-78. Exceptions, if any, must be filed (original and thirty (30) copies) with the North Carolina Utilities Commission, Raleigh, North Carolina, and a copy thereof mailed or delivered to each party of record, or to the attorney for such party, as shown by appearances noted. Each exception must be numbered and clearly and specifically stated in one paragraph without argument. The grounds for each exception must be stated in one or more paragraphs, immediately following the statement of the exception, and may include any argument, explanation, or citations the party filing same desires to make. In the event exceptions are filed, as herein provided, a time will be fixed for oral argument before the Commission upon the exceptions so filed, and due notice given to all parties of the time so fixed; provided, oral argument will be deemed waived unless written request is made therefor at the time exceptions are filed. If exceptions are not filed, as herein provided, the attached report and recommended decision will become effective and final on 4-27-01 unless the Commission, upon its own initiative, with notice to parties of record modifies or changes said Order or decision or postpones the effective date thereof.

The report and Recommended Order attached shall be construed as tentative only until the same becomes final in the manner hereinabove set out.

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EXHIBIT A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-447, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	
BellSouth Telecommunications, Inc.,)	
)	
Complainant,)	
)	RECOMMENDED ORDER
v.)	RULING ON COMPLAINT
)	
Thrifty Call, Inc.,)	
)	
Respondent.)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on December 5, 2000, at 9:00 a.m.

BEFORE: Commissioner Sam J. Ervin, IV
Commissioner William R. Pittman
Commissioner J. Richard Conder

APPEARANCES:

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

Andrew D. Shore, BellSouth Telecommunications, Inc., 1521 BellSouth Plaza, Post Office Box 30188, Charlotte, North Carolina 28230

Michael Twomey, BellSouth Telecommunications, Inc., Legal Department, Suite 1870, 365 Canal Street, New Orleans, Louisiana 70130-1102

FOR THRIFTY CALL, INC.:

Marcus W. Trathen, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602

Danny E. Adams, Kelley Drye and Warren, L.L.P., 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036

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BY THE COMMISSION: BellSouth Telecommunications, Inc., (BellSouth) initiated this proceeding on May 11, 2000, by filing a Complaint against Thrifty Call, Inc., (Thrifty Call). BellSouth alleged that Thrifty Call had misreported PIU factors to BellSouth under its tariffs, by intentionally overstating its percent interstate usage. On May 15, the Commission ordered that BellSouth's Complaint be served upon Thrifty Call.

On June 5, 2000, Thrifty Call responded to BellSouth's Complaint by filing a Motion to Dismiss or, in the Alternative, to Stay. Based on the language of BellSouth's own tariff, Thrifty Call argued that the Commission should dismiss or at least stay BellSouth's Complaint, given that BellSouth had requested relief that it was beyond the powers of the Commission to grant. On June 7, 2000, the Commission ordered that Thrifty Call's response be served upon BellSouth.

On June 21, 2000, BellSouth filed a reply in opposition to Thrifty Call's Motion to Dismiss or Stay.

On June 23, 2000, the Commission issued an Order Denying Motion and Setting Hearing, which denied Thrifty Call's request for dismissal or a stay, set this matter for hearing at 9:30 a.m. September 19, 2000, and established a schedule for the submission of prefiled testimony.

On July 12, 2000, BellSouth served its first set of data requests upon Thrifty Call, consisting of both interrogatories and requests for production of documents.

On August 1, 2000, Thrifty Call filed a Motion for Reconsideration of the Commission's Order Denying Motion and Setting Hearing, reiterating its arguments that the language of the tariff in question compelled the conclusion that the Complaint should be dismissed and further pointing out that the relief requested by BellSouth was either moot or beyond the Commission's jurisdiction to grant.

On the same date, BellSouth filed a Motion for Entry of Procedural Order, in which BellSouth requested that the Commission establish a discovery schedule and postpone the hearing in order to provide adequate time for the completion of discovery.

On August 8, 2000, BellSouth filed a Response to Motion for Reconsideration and Request for Stay of Discovery and asked that the Commission deny Thrifty Call's Motion.

On August 11, 2000, the Commission issued an Order Denying Motion for Reconsideration and Granting Motion for Procedural Order that denied Thrifty Call's Motion for Reconsideration. The Order also established procedures for the conduct of discovery, rescheduled the hearing in this matter for 1:30 p.m. on December 4, 2000, and established a new schedule for the submission of prefiled testimony.

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On August 18, 2000, Thrifty Call filed objections to BellSouth's data requests. On September 6, 2000, the Commission issued an order overruling all objections, save for one.

On September 13, 2000, Thrifty Call filed a Motion for Temporary Stay with the Commission seeking an order temporarily staying Thrifty Call's obligation to respond to BellSouth's data requests pending application for Writ of Certiorari to the North Carolina Court of Appeals.

On September 14, 2000, Thrifty Call filed a Petition for Writ of Certiorari and Petition for Writ of Supersedeas with the Court of Appeals, seeking interlocutory review of the Commission's failure to dismiss BellSouth's Complaint. On September 14, the Court of Appeals issued an order temporarily staying the proceedings before the Commission. On September 29, 2000, BellSouth filed a Response in Opposition to Thrifty Call's Petition for Writ of Certiorari and Petition for Writ of Supersedeas. On October 4, 2000, the Court of Appeals issued an order denying Thrifty Call's Petition for Writ of Certiorari and Petition for Writ of Supersedeas.

After the exchange of discovery, on October 20, 2000, BellSouth filed the testimony and exhibits of Mike Harper, and the testimony of Jerry Hendrix.

On November 3, 2000, Thrifty Call filed the testimony and exhibits of Harold Lovelady.

On November 8, 2000, BellSouth requested that the Commission reschedule the hearing in this matter for 9:00 a.m. on December 5, 2000.

On November 13, 2000, BellSouth filed the rebuttal testimony of Mike Harper.

On that same date, the Commission issued an Order rescheduling the hearing in this matter for 9:00 a.m. on December 5, 2000.

At the evidentiary hearing, which began as scheduled on December 5, 2000, BellSouth offered the testimony of Mike Harper and Jerry Hendrix. Thrifty Call offered the testimony of Harold Lovelady.

FINDING OF FACT

1. Thrifty Call misreported Terminating Percent Interstate Usage to BellSouth in the period from 1996 to 2000 and should pay BellSouth \$1,898,685.00 representing the amount in intrastate switched access charges Thrifty Call should have paid for that period.

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2. BellSouth was not required to conduct an audit of Thrifty Call prior to filing a complaint for relief.
3. Additional arguments raised by Thrifty Call are without merit.

**EVIDENCE AND CONCLUSIONS FOR
FINDING OF FACT NO. 1**

This case involves the calculation and reporting of Terminating Percent Interstate Usage (TPIU) factors with respect to certain Feature Group D (FGD) traffic. BellSouth contends that Thrifty Call has misreported 98% of its terminating traffic as interstate when in fact 90% was intrastate. The practical importance of this relates to the payment of access charges. Since access charges for interstate traffic tend to be lower than those for intrastate traffic, a higher TPIU means the payment of less access charges. BellSouth seeks payment from Thrifty Call in the amount of \$1,898,685, representing the amount of intrastate switched access charges it maintains that Thrifty Call should have paid in the period 1996 to 2000.

Thrifty Call is an interexchange carrier (IXC) whose network operated in relevant part as follows: Thrifty Call would receive traffic originating in North Carolina from another IXC, usually MCI WorldCom. That traffic would be '''''''' to Thrifty Call's switch in Atlanta, Georgia. Thrifty Call would route the traffic over its own network back to North Carolina for delivery to BellSouth and, ultimately, to end-users. Thus, it is apparent and, indeed, uncontested that the traffic both originated and terminated in North Carolina. Thrifty Call witness Lovelady admitted that at least 90 % of the calls originated and terminated in North Carolina. The call detail records reluctantly provided by Thrifty Call confirm this. How, then, could such traffic be converted from intrastate to interstate traffic?

The answer that Thrifty Call returns is that it was appropriately relying on the FCC's entry-exit surrogate (EES) methodology. BellSouth replies that this methodology was not meant to apply to FGD traffic. Rather, the appropriate standard is to be found in BellSouth's intrastate tariff, which clearly supports BellSouth's view.

The two tariffs are in pertinent part set out as follows:

1. BellSouth Telecommunications, Inc. Tariff FCC No. 1 (FCC Tariff) ¶ 2.3.10(AX1)(a)

Pursuant to Federal Communications Commission Order FCC 85-145 adopted April 16, 1985, interstate usage is to be developed as though every call that enters a customer network at a point within the same state as that in which the called station (as designated by the called

station number) is situated is an intrastate communication and every call for which the point of entry is in a state other than that where the called station (as designated by the called number) is situated is an interstate communication. (emphasis added)¹

2. BellSouth Telecommunications, Inc. Access Services Tariff (Intrastate Tariff)
§E.2.3.14 (A)(2)(a)

The intrastate usage is to be developed as though every call that originates within the same state as that in which the called station (as designated by the called station number) is situated is an intrastate communication and every call for which the point of origination is in a state other than that where the called station (as designated by the called station) is situated is an interstate communication.

A comparison of the language of the two tariffs yields substantial similarities and a few differences. Both indicate that if the two relevant points are within the state, then the call is intrastate. If the relevant points are in different states, the call is interstate. The principal difference is that the FCC tariff uses the phrase "enters a customer's network" while the intrastate tariff uses the word "originates."

This is the nub of Thrifty Call's argument. Thrifty Call argues that the calls enter its network in Atlanta and go to North Carolina. They are, therefore, ipso facto interstate calls, regardless of where they originate or terminate.

This argument, though ingenious, is also specious. The FCC Tariff language states "enters a customer network" (emphasis added), not necessarily Thrifty Call's network. The call that Thrifty Call is carrying in fact originates and terminates in North Carolina. The record is uncontroverted that, with respect to the minutes of use at issue, Thrifty Call is acting as a subcontractor for another IXC. For the purposes of properly construing this language, "enters a customer network" refers to the IXC whose customer originates the call.² There is one call, not two.

¹According to Thrifty Call, this tariff applies to FGD traffic as well as to Feature Group A (FGA) and Feature Group B (FGB) traffic. (See, FCC Tariff ¶ 2.3.10(A)(1)(b); however, the original FCC Order 85-145 addressed FGA and FGB only).

²It should be recalled that the language ultimately derived from an FCC Order issued in 1985--close to telecommunications prehistory from our present perspective. The somewhat odd and "antique" use of the phrase derives from the fact that the originating IXC is a "customer" to the ILEC's access services. The preferred modern usage is "originating."

This conclusion is buttressed by further considerations. First, if Thrifty Call's interpretation were correct, it would mean open season for the "laundering" of minutes of use. An originating carrier with large amounts of intrastate traffic might be irresistibly tempted to convert such intrastate traffic into interstate traffic through the simple expedient of handing off such traffic to another IXC with a switch in a different state. Such IXCs might be irresistibly tempted to enter into financial arrangements based on the avoidance of the payment of intrastate access charges otherwise due. It is undoubtedly better to remove this temptation than to abet it.

Second, if Thrifty Call were correct, then it should have applied the same methodology in Georgia. Logically, most Georgia calls should have been intrastate. At hearing, however, Thrifty Call admitted in Georgia that it used the originating and terminating points of the calls to determine whether the call was intrastate or interstate. Thrifty Call was apparently selective in its adherence to the EES methodology.

In summary, it does not matter which tariff is used to arrive at the TPIU. The conclusion is the same. The traffic at issue is intrastate if it originates and terminates in North Carolina or if it "enters a customer network" in North Carolina and terminates in North Carolina. It does not matter whether more than one IXC is involved or where in the country the call is switched between the beginning point and the end point. It is not necessary to establish that Thrifty Call has evil intent or that it "intentionally" misreported the minutes of use to require that Thrifty Call pay what it ought to have paid to begin with. It is sufficient that the minutes of use were misreported.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

One of the long-running sub-themes of this proceeding is Thrifty Call's insistence that BellSouth was obliged by Tariff Section E2.3.14 (B)(1) to perform an audit of Thrifty Call prior to filing a complaint. Thrifty Call also wanted to limit the audit to adjusting the PIU on a going-forward basis. Thrifty Call has continued in its past-hearing filings to argue this issue.

The Commission has twice ruled against Thrifty Call on this issue--first, in its June 23, 2000, Order Serving Motion and Setting Hearing and, second, in its August 11, 2000, Order Denying Motion for Reconsideration and Granting Motion for Procedural Order--noting that the tariff provision was permissive, not mandatory. The Commission sees no reason to change its view on the matter now and reaffirms it based on the reasoning set out previously.

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**EVIDENCE AND CONCLUSIONS FOR
FINDING OF FACT NO. 3**

Additional arguments raised by Thrifty Call are also without merit.

Thrifty Call has questioned the Commission's authority to award backbilling in this proceeding because BellSouth has allegedly not supported its calculation of the \$1,898,685 in "unbilled access charges" and is in any case limited by its tariffs, any deviation from which would constitute an award of damages.

On the contrary, the Commission believes that the \$1,898,685 is well supported. See, e.g., Harper Direct, Tr. at 20-21. The Commission's authority to require the payment of sums that should have been paid but were not because of inappropriate classification is well-established and does not constitute an award of damages. Thrifty Call's argument that BellSouth's recovery is limited by its tariff is simply a variation of its argument rejected in Finding of Fact No. 2.

Thrifty Call has also suggested that BellSouth is barred by the doctrine of laches from the relief it requests. The Commission does not believe that BellSouth engaged in an unreasonable delay injurious or prejudicial to Thrifty Call in bringing its complaint.

IT IS, THEREFORE, ORDERED that Thrifty Call shall pay BellSouth the amount of \$1,898,685, representing the amount of intrastate access charges Thrifty Call should have paid.

ISSUED BY ORDER OF THE COMMISSION.

This the 11th day of April, 2001.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

pb040401.01

Commissioner William R. Pittman resigned from the Commission on January 24, 2001, and did not participate in this decision.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Complaint Against Thrifty Call, Inc.)
Regarding Practices in Reporting) Docket No. 000475-TP
PIU for Compensation For)
Jurisdictional Access Services) June 4, 2007

AFFIDAVIT OF MARC W. POTTEIGER

Marc W. Potteiger, being duly sworn, deposes and says the following:

1. I am a resident of the State of Georgia. I am over the age of 18 and am competent to make this Affidavit.

2. I am currently Manager – Life Cycle Interconnection Operations for BellSouth Telecommunications, Inc., d/b/a AT&T Southeast. I have firsthand knowledge of the matters described herein regarding a dispute involving BellSouth Telecommunications, Inc., d/b/a AT&T Florida (“AT&T Florida) and I have the authority to make this Affidavit. I am familiar with AT&T Florida’s revenue assurance practices and the manner in which traffic is exchanged between carriers, and the methods of measuring and reporting such traffic.

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3. AT&T Florida is a corporate entity in the business of providing telecommunications services, including local exchange, network access, intraLATA (within a Local Access Transport Areas), CMRS, long distance services and Internet services. Thrifty Call, Inc. (“Thrifty Call”) is now defunct, but was a long-distance, or interexchange, carrier that operated in Florida within AT&T Florida’s service region.¹

¹ Upon information and belief, Grande Telecommunications, Inc. (“Grande”) is the successor entity to Thrifty Call, and is certificated and providing telecommunications services in Florida. As the successor to Thrifty Call, Grande assumed certain liabilities of Thrifty Call.

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Thrifty Call purchased access to AT&T Florida's local exchange network under what was at the time BellSouth's Tariff FCC No. 1 ("FCC Tariff") and what was at the time BellSouth's Intrastate Access Tariff, in order to carry long distance calls to and from customers of AT&T Florida within its service region. The applicable billing rate to Thrifty Call for the access services provided by AT&T Florida depended upon whether the long distance call was placed in one state and received in another state (interstate) or whether the call was between Florida callers (intrastate). Interstate access rates, which are lower than Florida's intrastate rates, are established by the FCC Tariff. Intrastate access rates are established by the Florida Public Service Commission (the "Commission").

4. To determine the appropriate billing rates for the calls, AT&T Florida utilized the jurisdictional factor provided by Thrifty Call. Thrifty Call self-reported the PIU factors that were represented as depicting the actual jurisdiction of the traffic sent to AT&T Florida.

5. Thrifty Call routed all of the long distance calls in its network destined for Florida through its physical switching facilities in Atlanta, Georgia, including long distance calls that originated and terminated in Florida.

6. Thrifty Call reported that 98 percent of its calls in Florida were interstate access calls, even though almost all of the calls originated and terminated in Florida. Based upon Thrifty Call's misrepresentations about the actual amount of interstate usage, these calls were incorrectly billed to Thrifty Call under the less expensive FCC Interstate Tariff rate.

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7. I reviewed and analyzed the findings of the audit conducted by the Commission. The audit studied traffic routed over AT&T Florida's network by Thrifty Call, to ascertain whether or not the classification of the traffic for billing purposes was consistent with the specific type of traffic actually transmitted. In reviewing the audit, I found, as did the FPSC's audit team, that the actual traffic routed over AT&T Florida's interconnection facilities was different than what was indicated by Thrifty Call for billing purposes.

8. Specifically, although Thrifty Call reported that during the period of July, 1999 through December, 1999, 98% of the traffic it sent over AT&T Florida's interconnection facilities was interstate traffic, the audit indicates that during that period 80.49% of the traffic was actually intrastate and only 19.51% of the traffic was actually interstate in nature. My review and analysis of the documentation resulted in conclusions consistent with these audit findings.

9. As a direct result of Thrifty Call's underreporting of intrastate traffic AT&T Florida has been financially harmed. As a direct result of Thrifty Call's underreporting of intrastate calls, AT&T Florida was underpaid in the principle sum of \$2,443,940.00.² Additionally, in accordance with AT&T Florida's Intrastate Access Tariff, as of May 23, 2007, Thrifty Call owes AT&T Florida late payment penalties of \$9,824,295.00.³

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² This amount is calculated by multiplying the minutes of actual intra-state usage times the Florida intrastate access rate in effect during the relevant period, and subtracting the amount Thrifty Call paid BellSouth during that same period of time.

³ Late payment penalties are provided for in §E8.2.3A(2) of the BellSouth Telecommunications, Inc. Intrastate Access Services Tariff, Issued August 20, 2003. Pursuant to that Tariff, late payment penalties continue to accrue at a rate of 1.77% per month.

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FURTHER AFFIANT SAYETH NOT.

Marc W. Potteiger
Marc W. Potteiger

Sworn and subscribed before me

This the 4th day of June, 2007

Justin B. Norton
Notary Public

Notary Public, Pike County, Georgia
My Commission Expires April 1, 2008

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