

REDACTED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

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

CMP penalties as of May 23, 2007.² Therefore, AT&T Florida respectfully requests that the
COM Commission grant this request for Summary Final Order and order Thrifty Call to pay all
CTR _____
ECR amounts due and owing to AT&T, in accordance with the Intrastate Access Tariff, as a result of
GCL Thrifty Call's underreporting of its PIU to AT&T Florida.

OPC _____
RCA _____
SCR _____
SGA _____

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

¹ In accordance with the Intrastate Tariff, late payment penalties continue to accrue at a rate of 1.77% per month.
² See Intrastate Tariff, at § E8.2.3A(2).

DOCUMENT NUMBER-DATE

05093 JUN 26 08

FPSC-COMMISSION CLERK

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

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

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:

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.*

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.**

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

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.

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").

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

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

11. In an Order issued February 10, 2006, the Commission granted AT&T Florida's Motion
12. and allowed AT&T Florida to review all of the material claimed by Thrifty Call to be
13. confidential. [REDACTED]

14. [REDACTED]

15. [REDACTED].⁵ Potteiger Affidavit at ¶¶ 7, 8. As a direct result of this underreporting, Thrifty
16. Call underpaid AT&T Florida the principal sum of \$2,443,940.00 plus accrued late payment
17. penalties of \$9,824,295.00 for a total of \$12,268,235.00, due and owing, as of May 23, 2007, to
18. AT&T Florida. Late payment penalties continue to accrue at a rate of 1.77% per month.
19. Potteiger Affidavit at ¶ 9.

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

⁵ A "Confidential" version of the affidavit of Marc W. Potteiger is attached hereto as "Exhibit B."

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

3 **There Is No Genuine Issue As To Any Material Fact**

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

10 Thrifty Call's over-reporting of interstate PIU resulted in an underpayment to AT&T
11 Florida. [REDACTED]

12 [REDACTED] Thrifty Call should have reported calls that originated and terminated in Florida
13 to AT&T Florida as intrastate, but did not always do so. AT&T Florida was underpaid as a
14 direct result of Thrifty Call's underreporting of intrastate usage. [REDACTED]

15 [REDACTED]

16 [REDACTED] AT&T Florida is entitled to be compensated for Thrifty
17 Call's intentional and unlawful underpayment. The relevant pleadings and affidavit show that
18 there is no genuine issue as to any material fact, and this matter can be resolved based on the
19 undisputed facts. Therefore, in accordance with Rule 28-106.204(4), Florida Administrative
20 Code, AT&T Florida respectfully submits that it is entitled to a Summary Final Order.

21 **Conclusion**

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

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.

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

634721v.2

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.

**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.

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.

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.

7. [REDACTED]

8. [REDACTED]

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

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.

FURTHER AFFIANT SAYETH NOT.

Marc W. Potteiger
Marc W. Potteiger

Sworn and subscribed before me

This the 4th day of June, 2007

Kristin B. Norton
Notary Public

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

679217