



Manuel A. Gurdian
Attorney
Legal Department

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
F: (305) 577-4491
manuel.gurdian@att.com

RECEIVED-FPSC
08 FEB - 7 PM 4: 27
COMMISSION
CLERK

February 7, 2008

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

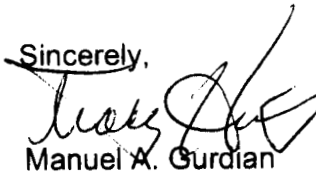
**Re: FL Docket 000475-TP - Complaint Against Thrifty Call, Inc.
Regarding Practices in Reporting PIU for Compensation
For Jurisdictional Access Services**

Dear Ms. Cole:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Direct Testimony of Marc W. Potteiger, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC _____
- OTH _____

cc: All Parties of Record
Jerry D. Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.
Lisa S. Foshee

DOCUMENT NUMBER-DATE

00974 FEB-7 8

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 000475-TP

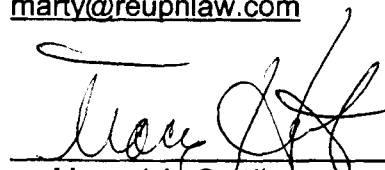
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, First Class U. S. Mail and (*) Federal Express this 7th day of February, 2008 to the following:

Charlene Poblete
Rick Mann
Staff Counsels
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
cpoblete@psc.state.fl.us
rmann@psc.state.fl.us

Laura King
Nancy Pruitt
Sally Simmons
Division of Competitive Markets
& Enforcement
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
lking@psc.state.fl.us
npruitt@psc.state.fl.us
sasimmon@psc.state.fl.us

Denise Vandiver
Division of Regulatory Compliance
& Customer Assistance
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
dvandive@psc.state.fl.us

Kenneth A. Hoffman, Esq.
Martin P. McDonnell, Esq. (+)(*)
Rutledge, Ecenia, Purnell
& Hoffman, P.A.
215 South Monroe Street, Ste. 420
P. O. Box 551
Tallahassee, FL 32302
Phone: 850-681-6788
Fax: 850-681-6515
ken@reuphlaw.com
marty@reuphlaw.com


Manuel A. Gurdian

(+) Signed Protective Agreement

1 BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T FLORIDA

2 DIRECT TESTIMONY OF MARC W. POTTEIGER

3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

4 DOCKET NO. 000475-TP

5 FEBRUARY 7, 2008

6

7 Q. PLEASE STATE YOUR NAME, COMPANY NAME AND ADDRESS.

8

9 A. My name is Marc W. Potteiger. I am employed by BellSouth
10 Telecommunications, Inc. d/b/a AT&T Southeast. My business address is 675
11 West Peachtree Street, Atlanta, Georgia 30375.

12

13 Q. PLEASE PROVIDE A BRIEF SUMMARY OF YOUR BACKGROUND AND
14 EXPERIENCE.

15

16 A. I have a Bachelors degree in Accounting from Drexel University and a Master of
17 Business Administration from Temple University. I have over twenty years of
18 work experience in the telecommunications industry. I was employed by Sprint
19 from 1987 through 2004, holding positions in Regulatory, Accounting and
20 Wholesale Product and Revenue Assurance. I am currently Manager – Life Cycle
21 Interconnection Operations for BellSouth Telecommunications, Inc., d/b/a AT&T
22 Southeast. I have been employed by BellSouth since 2004 performing various
23 Revenue Assurance and Product Management job duties.

24

25

1 I have firsthand knowledge of the matters described herein regarding a dispute
2 involving BellSouth Telecommunications, Inc., d/b/a AT&T Florida ("AT&T
3 Florida"). I am also familiar with AT&T Florida's revenue assurance practices
4 and the manner in which traffic is exchanged between carriers, and the methods of
5 measuring and reporting such traffic.

6

7 Q. HAS ANY WITNESS PREVIOUSLY FILED TESTIMONY ON BEHALF OF
8 AT&T FLORIDA IN THIS PROCEEDING?

9

10 A. Yes. The Direct Testimony of Mike Harper was filed on behalf of AT&T Florida
11 on November 21, 2001; however, my Direct Testimony replaces Mike Harper's
12 Direct Testimony previously filed.

13

14 Q. HAVE YOU ATTACHED ANY EXHIBITS TO YOUR TESTIMONY?

15

16 A. Yes, I have attached the following exhibits to my testimony: Exhibit MP-1,
17 Exhibit MP-2, Exhibit MP-3, Exhibit MP-4, Exhibit MP-5, and Exhibit MP-6.

18

19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

20

21 A. The purpose of my testimony is to show how Thrifty Call, Inc. ("Thrifty Call")
22 misreported its Terminating Percent Interstate Usage ("TPIU") factor to AT&T
23 Florida in violation of AT&T Florida's Florida Intrastate Access Tariff and the
24 rules and regulations established by the Florida Public Service Commission
25 ("Commission"). The misreported factors caused AT&T Florida financial harm

1 by allowing Thrifty Call to avoid payment of the proper, tariffed terminating
2 switched access rates, totaling over \$2,383,220 over the twenty-six month period
3 of misreporting. See Exhibit MP-1 attached hereto. Additionally, in accordance
4 with AT&T Florida's Intrastate Access Tariff, as of December 31, 2007, Thrifty
5 Call owes AT&T Florida late payment penalties of \$11,673,169.¹ See Exhibit
6 MP-1.

7
8 AT&T Florida is confident that the testimony provided herein will assist in the
9 timely disposition of this proceeding and that the Commission will agree that
10 Thrifty Call engaged in a flagrant scheme to defraud AT&T Florida of its rightful
11 revenues and that Thrifty Call should be required to pay AT&T Florida the above
12 amounts, as detailed in my Direct Testimony.

13
14 Q. WHY IS THE DAMAGES AMOUNT ABOVE DIFFERENT THAN THE
15 AMOUNT SUBMITTED IN YOUR JUNE 4, 2007 AFFIDAVIT?

16
17 A. There were two modifications made to the calculation of damages. The late
18 payment charges were modified to reflect the additional interest accrued and there
19 was a correction as to the number of intrastate minutes billed to Thrifty Call.

20
21 Q. WHAT TYPES OF SERVICES DO AT&T FLORIDA AND THRIFTY CALL
22 PROVIDE?

23

¹ Late payment penalties are provided for in § E2.4.1(B)(3) of the AT&T Florida Intrastate Access Services Tariff. Pursuant to the Tariff, late payment penalties continue to accrue at a rate of .000590 per day.

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

6
7 Q. SPECIFICALLY, WHAT TYPES OF SERVICES DID THRIFTY CALL
8 PURCHASE FROM AT&T FLORIDA?

9
10 A. Thrifty Call purchased access to AT&T Florida's local exchange network under
11 AT&T Florida's Tariff FCC No. 1 ("FCC Tariff") and AT&T Florida's Intrastate
12 Access Tariff, in order to carry long distance calls to and from customers of
13 AT&T Florida within its service region. The applicable billing rate to Thrifty
14 Call for the access services provided by AT&T Florida depended upon whether
15 the long distance call was placed in one state and received in another state
16 (interstate) or whether the call was between Florida callers (intrastate). Interstate
17 access rates, which are lower than Florida's intrastate rates, are established by the
18 FCC Tariff. Intrastate access rates are established by the Florida Commission.

19
20 Q. IS THRIFTY CALL OPERATING IN FLORIDA TODAY?

21
22 A. To AT&T Florida's knowledge, Thrifty Call is not routing traffic in Florida.
23 Concurrent with the onset of AT&T Florida's investigation into Thrifty Call's
24 apparent traffic routing scheme and the filing of AT&T's Complaints in Florida
25 and North Carolina in early 2000, Thrifty Call ceased terminating traffic to AT&T

1 Florida within a period of two months.² Since February 2000, Thrifty Call has not
2 terminated traffic to AT&T Florida in Florida.

3

4 **ISSUE 1: What are the terms and conditions of the tariff associated with correcting**
5 **and backbilling misreported PIU?**

6

7 Q. WHAT TARIFF IS AT ISSUE IN THIS PROCEEDING?

8

9 A. AT&T Florida's Intrastate Access Tariff, which is attached hereto as Exhibit MP-
10 2.

11

12 Q. WHAT ARE THE TERMS AND CONDITIONS OF THE TARIFF
13 ASSOCIATED WITH CORRECTING AND BACKBILLING MISREPORTED
14 PIU?

15

16 A. There is no time limitation contained in the tariff as to how far back AT&T
17 Florida may go to collect from Thrifty Call unbilled revenues represented by the
18 misreported TPIU factors. AT&T Florida is required to bill and collect the
19 charges contained in its tariff from Thrifty Call for the misreported PIU.

20

21 The language of the tariff does not preclude the Commission from awarding
22 AT&T Florida backbilled intrastate access charge payments and AT&T Florida is

² See Exhibit MP-4 to my Direct Testimony graphically illustrating the minutes-of-use terminating to BellSouth from Thrifty Call, by month, for the period in question.

1 seeking a Commission order that would require Thrifty Call to compensate AT&T
2 Florida for unbilled revenues represented by the misreported TPIU factors.

3
4 Q. ARE THERE ANY MANDATORY PROCEDURES EXPRESSLY PROVIDED
5 IN AT&T FLORIDA'S INTRASTATE ACCESS TARIFF THAT WOULD
6 REQUIRE AT&T FLORIDA TO SEEK AN AUDIT PRIOR TO BRINGING AN
7 ENFORCEMENT ACTION BEFORE THE COMMISSION?

8
9 A. No.

10
11 Q. HAS THE COMMISSION CONDUCTED AN AUDIT OF THRIFTY CALL
12 WITH REGARD TO THE TRAFFIC IT ROUTED OVER AT&T FLORIDA'S
13 NETWORK?

14
15 A. Yes, the Commission Staff conducted an audit of Thrifty Call. *See* Staff's audit
16 report attached hereto as Exhibit MP-3. I reviewed and analyzed the findings of
17 the audit conducted by the Commission. The audit studied traffic routed over
18 AT&T Florida's network by Thrifty Call, to ascertain whether or not the
19 classification of the traffic for billing purposes was consistent with the specific
20 type of traffic actually transmitted. In reviewing the audit, I found, as did the
21 FPSC's audit team, that the actual traffic routed over AT&T Florida's
22 interconnection facilities was different than what was indicated by Thrifty Call for
23 billing purposes.

24
25 **ISSUE 2: Has AT&T complied with its tariff provisions?**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Q. HAS AT&T FLORIDA COMPLIED WITH THE PROVISIONS IN ITS INTRASTATE ACCESS TARIFF IN BRINGING A COMPLAINT PROCEEDING AGAINST THRIFTY CALL FOR MISREPORTING THE TPIU FACTOR?

A. Yes.

ISSUE 3: Has Thrifty Call misreported its PIU to AT&T?

Q. HAS THRIFTY CALL MISREPORTED IT'S PIU TO AT&T?

A. Yes. As indicated above, 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.

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

1 was actually interstate in nature. My review and analysis of the documentation
2 resulted in conclusions consistent with these audit findings.

3

4 Q. WHY IS IT IMPORTANT TO DETERMINE THE JURISDICTION OF
5 CALLS?

6

7 A. AT&T Florida's tariffed access rates in Florida are higher than interstate tariffed
8 access rates. If calls are misreported as interstate, then a lower rate is applied,
9 lowering the access charge billing to the carrier and depriving AT&T Florida of
10 its rightful revenues. Moreover, revenues are not properly classified for
11 jurisdictional purposes when such misreporting by carriers takes place.
12 As an example, during the time that Thrifty Call was terminating traffic to
13 BellSouth in Florida, the composite interstate terminating rate was approximately
14 \$0.01 per minute, while the composite intrastate terminating rate was
15 approximately \$0.03 per minute. This price differential provided carriers such as
16 Thrifty Call, and Thrifty Call's wholesale carriers, with sufficient motivation to
17 engage in misrepresentation of the jurisdiction of traffic.

18

19 Q. WOULD YOU PLEASE EXPLAIN THE TPIU FACTOR AND HOW IT IS
20 USED TO BILL SWITCHED ACCESS CHARGES?

21

22 A. Yes. AT&T Florida's Carrier Access Billing System ("CABS") is the mechanism
23 used to bill switched access charges to other carriers such as Thrifty Call. For
24 each CABS billing cycle during the month, the total minutes of use from a
25 specific carrier that terminate to AT&T Florida's customers are multiplied by the

1 TPIU factor reported to AT&T Florida by the carrier. The minutes of use
2 resulting from that calculation are billed at the current interstate terminating
3 switched access rate. Any remaining minutes are then billed at the current
4 intrastate terminating switched access rate. Therefore, the TPIU factor has a
5 direct bearing on the level of switched access billing for a particular carrier.
6

7 Q. WHY HAS AT&T FLORIDA TRADITIONALLY RELIED ON TPIU
8 FACTORS PROVIDED BY OTHER CARRIERS?

9
10 A. Very simply, until July 2000, AT&T Florida did not have the ability to determine
11 the jurisdiction of calls from other carriers that terminate on its network. As a
12 result, AT&T Florida's Access Tariffs allowed a carrier to tell AT&T Florida
13 what percentage of the total minutes of use it sends to AT&T Florida are interstate
14 in jurisdiction—a process generally known as “self-reporting”.

15
16 Q. MUST AT&T FLORIDA CONTINUE TO RELY ON CARRIER-REPORTED
17 TPIU FACTORS?

18
19 A. No. AT&T Florida now has the ability to calculate TPIU factors using the
20 Agilent Business Intelligence Module (“BIM”). This system captures Signaling
21 System 7 (“SS7”) call detail records in sufficient quantity and quality to allow
22 AT&T Florida to calculate TPIU factors. Tariff language that allows AT&T
23 Florida to use the TPIU factors from BIM in place of carrier self-reported factors
24 was approved in Florida, as well as in the other former BellSouth states and the
25 FCC in May of 2000. However, given that Thrifty Call had largely suspended

1 operations before May, 2000, the BIM equipment could not be used in the
2 analysis of Thrifty Call traffic.

3

4 Q. WHAT SPECIFIC INDICATIONS CAUSED AT&T FLORIDA TO BEGIN ITS
5 INVESTIGATION INTO TPIU FACTORS IN FLORIDA?

6

7 A. AT&T Florida had been concerned for some time about trends in minutes-of-use
8 terminating to AT&T Florida from other carriers. Specifically, terminating
9 minutes-of-use were declining as a percentage of originating minutes-of-use.
10 Historically, the relationship between originating and terminating minutes-of-use
11 was relatively static. In addition, the overall number of minutes-of-use has been
12 declining. Some of the changes in the trends can be explained by other events in
13 the industry. A shift from switched access services to special access services and
14 the strong growth of one-rate-call-anywhere cellular service plans are recognized
15 as possible contributors to the shift in minutes. However, it was also discovered
16 that a significant portion of the shift in minutes was due to misclassified traffic
17 received from carriers. For example, traffic handed to AT&T Southeast as local
18 traffic in one state was found to be, in fact, interstate toll traffic. And, in states
19 such as North Carolina and Florida where there was a wide difference between
20 interstate terminating access and intrastate terminating access rates, certain
21 carriers have been found to misrepresent intrastate traffic as interstate traffic in
22 order to pay a lower rate.

23

24 AT&T Florida recognizes that there is a significant financial incentive to
25 misreport the jurisdiction of traffic. If a carrier has a significant number of

1 minutes terminating to AT&T Florida, a subtle shift in the TPIU factor can reduce
2 a carrier's access payments by a significant amount. Equally important is the
3 motivation to leave a TPIU factor at its current level even after discovering that
4 the factor is in error.

5
6 As a result of the high levels of AT&T Florida revenue at risk AT&T Florida
7 embarked on an intense, concentrated effort to find and correct misclassified
8 traffic. Thrifty Call emerged as one of the carriers that systematically was
9 misclassifying traffic in the nine-state former BellSouth region.

10
11 Q. WHAT CAUSED AT&T FLORIDA TO LOOK SPECIFICALLY AT THRIFTY
12 CALL AND WHAT STEPS DID AT&T FLORIDA UNDERTAKE TO
13 INVESTIGATE THE TRAFFIC IT WAS SENDING TO AT&T FLORIDA?

14
15 A. First, Thrifty Call's minutes-of-use terminating to AT&T Florida in Florida
16 experienced a dramatic increase in early 1999, from a minimum level of
17 terminating traffic in February 1999 to nearly 22 million minutes-of-use per
18 month by June 1999. *See* MP-Exhibit 4 attached hereto. Particularly concerning
19 was that the increase was being billed primarily at interstate terminating access
20 rates due to Thrifty Call's reported TPIU factor of 98%. Thrifty Call's reported
21 TPIU factor had been approximately 98% since early 1996 and it was unlikely
22 that such a sudden increase in minutes would not exhibit a different interstate
23 percentage. Yet, Thrifty Call did not materially revise its TPIU factor at any of its
24 quarterly updates.

25

1 In addition, AT&T Southeast had uncovered similar cases of misreported traffic
2 in other states involving Thrifty Call and its Competitive Local Exchange Carrier
3 ("CLEC") subsidiary, Golden Harbor. In Georgia, Golden Harbor was found to
4 be terminating traffic to AT&T Georgia as local when, in fact, the traffic was
5 largely interstate. In North Carolina, Thrifty call was suspected of terminating
6 intrastate traffic to AT&T North Carolina but classifying it as interstate. The
7 North Carolina case was heard before the NCUC in December 2000. The
8 Commission found that Thrifty Call was indeed misclassifying intrastate traffic as
9 interstate as demonstrated by Thrifty Call's own switch records and ordered
10 Thrifty Call to pay BellSouth the correct access charges owed. See Order Ruling
11 on Complaint, Docket No. P-447, SUB 5, April 11, 2001, attached hereto as MP-
12 5. In all such cases, Thrifty Call and Golden Harbor realized a competitive
13 advantage over other similarly situated carriers by paying less than the correct
14 terminating access rates.

15
16 Q. WHAT SPECIFIC ANALYSIS WAS PERFORMED IN ORDER TO
17 ASCERTAIN THE CORRECT JURISDICTION OF TRAFFIC FROM
18 THRIFTY CALL AND OTHER INTEREXCHANGE CARRIERS IN
19 FLORIDA?

20
21 A. AT&T Florida has a test call system in place called the Mechanized AMA Test
22 and Validation ("MATV") system. This system allows AT&T Florida to initiate
23 test calls remotely from any of AT&T Florida's switching locations in the region
24 to any other point in the region.

25

1 In Florida, AT&T Florida initiated test calls within the state, e.g., intrastate calls.
2 Of the calls initiated, 171 calls involved Carrier ID Code (“CIC”) 0923, which is
3 Thrifty Call. In the majority of the cases involving Thrifty Call, the calling party
4 number, or ANI, had been stripped from the calling record. The absence of the
5 calling party number is significant because that data is normally present in the call
6 record unless some action is taken to remove or change the number. The calling
7 party number is a primary source of information used to ascertain the jurisdiction
8 of a call. Of those records that could be attributed to Thrifty Call and contained
9 ANI, the test calls indicated that the calls were completed within Florida, or
10 intrastate calls. Due to the high number of calls without the calling party number,
11 the tests were not conclusive with respect to a specific percentage of interstate
12 versus intrastate calls. However, the findings did support further investigation of
13 Thrifty Call.

14
15 Q. ARE THERE FINDINGS FROM OTHER JURISDICTIONS AND
16 REGULATORY BODIES WITH RESPECT TO THE TRAFFIC ROUTING
17 SCHEME PRECIPITATED BY THRIFTY CALL THAT IS THE BASIS FOR
18 AT&T FLORIDA’S COMPLAINT IN FLORIDA?

19
20 A. Yes. Following the Order of the NCUC in favor of AT&T North Carolina³,
21 including the requirement that Thrifty Call pay AT&T damages in the amount of
22 \$1,898,685, Thrifty Call filed a Notice of Appeal with the NCUC on August 29,
23 2001, giving notice of Thrifty Call’s Appeal to the North Carolina Court of
24 Appeals. The North Carolina Court of Appeals, in *State ex. Rel. Utils. Comm’n v.*

³ See NCUC Recommended Order Ruling on Complaint, issued April 11, 2001 attached to my Direct Testimony as Exhibit MP-5.

1 *Thrifty Call*, 154 N.C. 58, 571 S.E. 2d 622 (2002), subsequently rejected Thrifty
2 Call's appeal and upheld the April 11, 2001 Order of the NCUC.⁴

3
4 Q. ARE THERE FINDINGS FROM OTHER JURISDICTIONS WITH RESPECT
5 TO OTHER TRAFFIC ROUTING SCHEMES PRECIPITATED BY THRIFTY
6 CALL?

7
8 A. Yes. A jury in Indiana found that Thrifty Call conspired with other businesses
9 and individuals to defraud Indiana Bell Telephone Company, at the time d/b/a
10 Ameritech Indiana, (now d/b/a AT&T Indiana) by concealing the true nature of
11 traffic and thereby paying lower MOU rates to AT&T Indiana than would have
12 correctly been charged had the conspirators correctly identified the traffic. The
13 jury found actual damages in the amount of \$3,128,824.06, and also awarded
14 \$3,000,000 in punitive damages under the Crime Victim statue. The court
15 awarded AT&T Indiana judgment in the total amount of \$7,255,200.66 on AT&T
16 Indiana's Crime Victim claim and its request for prejudgment interest on the
17 compensatory damages. Subsequently, Thrifty Call filed motions for judgment as
18 a matter of law and for a new trial. The court denied Thrifty Call's motions and
19 upheld the jury's verdict.⁵

20
21 Q. FOLLOWING THE DENIAL OF THRIFTY CALL'S PETITION BY THE
22 NORTH CAROLINA COURT OF APPEALS, DID THRIFTY CALL PAY
23 AT&T THE AMOUNT OWED AS ORDERED BY THE NCUC?

⁴ See *North Carolina Appellate Decision*, 571 S.E. 2d at 627-28.

⁵ See *Indiana Bell Telephone Co., Inc. v. Thrifty Call, Inc.*, 2005 WL 1528239 (S.D. Ind. 2005)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

A. No. After its unsuccessful appeal, Thrifty Call filed a Petition for Declaratory Ruling with the FCC, seeking clarification of the meaning and application of certain provisions of AT&T's interstate access tariff. Specifically, Thrifty Call sought validation from the FCC that its method of establishing the jurisdiction of traffic was correct; that AT&T is required by tariff to conduct an audit of Thrifty Call prior to correcting Thrifty Call's traffic allocation factors and, finally, that backbilling of switched access charges is limited to one quarter of a year by AT&T's audit language in its intrastate tariffs and that the NCUC exceeded its authority in ordering backbilling of the entire amount sought by AT&T North Carolina.

On November 12, 2004, the FCC released its ruling in this matter, finding that, "...Thrifty Call incorrectly interpreted BellSouth's federal tariff provisions regarding the reporting of Thrifty Call's percentage of interstate usage (PIU). Furthermore, BellSouth's federal tariff does not require BellSouth to conduct an audit prior to correcting an IXC's misreported PIU. Finally, backbilling of intrastate access charges is governed by BellSouth's state tariffs and is properly addressed by the state commissions."⁶ See Exhibit MP-6 attached hereto.

Q. WHAT OBLIGATIONS DO CARRIERS HAVE WITH RESPECT TO THEIR REPORTING OF TPIU FACTORS TO AT&T FLORIDA?

⁶ See FCC Declaratory Ruling, CCB/CPD File No. 01-17, released November 12, 2004, at page 1. The complete Declaratory Ruling is attached hereto as Exhibit MP-6.

1 A. Carrier self-reporting of the TPIU factor is described in AT&T Florida's Florida
2 Access Services Tariff, Section E2.3.14. The tariff is very specific about how the
3 carriers should calculate the TPIU factor and how often the factor should be
4 reported to AT&T Florida.

5
6 In Section E2.3.14 (A)1(a), the tariff defines calls that originate and terminate
7 within the same state as intrastate calls and defines those that originate in a
8 different state than where the called station is located as interstate calls. In
9 paragraph (b) of this section, the tariff provides a specific formula to be used to
10 calculate the TPIU factor.

11
12 Section E2.3.14, (A), 3 specifies that carriers will update their reported TPIU
13 factors quarterly and explains the time intervals for providing updated factors.

14
15 Q. DID THRIFTY CALL FOLLOW THE ACCESS TARIFF PROVISIONS WITH
16 RESPECT TO UPDATING THEIR TPIU FACTORS?

17
18 A. No. The TPIU reported by Thrifty Call for its terminating traffic in Florida has
19 been represented to AT&T Florida as 98% for most of the time since January 19,
20 1996. And, although Thrifty Call submitted TPIU factors at nearly every
21 quarterly update point, the factor was not materially changed and remains
22 reported at 98% today, even though Thrifty Call ceased operations in Florida.
23 Additionally, while Thrifty Call elected to report its TPIU factor by LATA, the
24 TPIU factors for each LATA are 98% as well.

25

1 Yet, AT&T Florida test data indicates that the majority of traffic terminating to
2 AT&T Florida in Florida was intrastate traffic, not interstate. Further, in the
3 North Carolina case, Thrifty Call's own call detail records demonstrated that
4 essentially all of its traffic was intrastate in jurisdiction and not interstate as
5 Thrifty Call claimed. AT&T Florida test results were further validated thru the
6 Commission Staff audit results as previously discussed.

7
8 Q. HAVE YOU BEEN ABLE TO DETERMINE WHAT METHODOLOGY WAS
9 USED BY THRIFTY CALL TO ARRIVE AT THEIR REPORTED 98% TPIU
10 FACTOR.

11
12 A. In the FCC Docket 04-3576, Thrifty Call indicated that it calculated its PIU based
13 on its interpretation of the FCC's entry/exit surrogate (EES) methodology. The
14 FCC determined, in FCC Docket 04-3576, that Thrifty Call's application of the
15 EES methodology was "flatly inconsistent with the [FCC]'s purposes in adopting
16 it."⁷

17
18 Q. DOES THRIFTY CALL HAVE AN OBLIGATION TO KNOW THE
19 JURISDICTION OF CALLS IT SENDS TO AT&T FLORIDA FOR
20 TERMINATION?

21
22 A. Yes. The TPIU factors that Thrifty Call reported to AT&T Florida are Thrifty
23 Call's representation that the TPIU factor mirrors as closely as possible the actual
24 jurisdiction of the calls. The TPIU factors reported by Thrifty Call are used as the

⁷ See FCC Declaratory Ruling, CCB/CPD File No. 01-17, pages 2 and 8 attached hereto as Exhibit MP-6.

1 basis for determining the correct jurisdictional access rate. If Thrifty Call did not
2 know, or wasn't sure of, the jurisdiction of the traffic it received from any other
3 carrier, it had an obligation to determine that information from the carrier.
4

5 Q. DO THRIFTY CALL'S WHOLESALE CUSTOMERS HAVE AN
6 OBLIGATION TO INFORM THRIFTY CALL OF THE ACTUAL
7 JURISDICTION OF THE TRAFFIC THAT IT HAS ARRANGED TO PAY
8 THRIFTY CALL TO TERMINATE?

9
10 A. Prudent business practices would suggest that both carriers should have a
11 common understanding of the nature of the traffic in order to ensure that whatever
12 financial arrangements are in effect to terminate the traffic are consistent with
13 payment of the correct switched access rate.
14

15 AT&T Florida recognizes the possibility that certain carriers may approach an
16 interim carrier, such as Thrifty Call, with a proposal to terminate traffic with a
17 higher switched access rate, such as intrastate access, as traffic with a lower
18 access rate, such as interstate access. That is why it is critical that the specific
19 carrier terminating traffic to AT&T Florida be responsible for the correct
20 reporting of the actual jurisdiction of that traffic. Otherwise, neither carrier would
21 accept responsibility nor claim to know the originating point of the traffic,
22 particularly in cases where the originating information, such as ANI, has been
23 deleted.
24

1 **ISSUE 4 : If Thrifty Call has misreported its PIU to AT&T, what amount, if any**
2 **does Thrifty Call owe AT&T and when should this amount be paid?**

3
4 Q. HOW DID AT&T FLORIDA DETERMINE THE APPROPRIATE BILLING
5 RATES FOR CALLS ROUTED BY THRIFTY CALL OVER AT&T
6 FLORIDA'S NETWORK?

7
8 A. AT&T has used composite switched access rates to determine the amount owed
9 by Thrifty Call. This composite rate represents a conservative estimate of the
10 revenues on a per minute of use basis that AT&T billed to wholesale carriers
11 during the claim period. The composite rate assumes that Thrifty Call utilized
12 direct trunking to AT&T Florida's end offices, as it is the least expensive, i.e.
13 more conservative, method of trunk provisioning.

14
15 Q. HOW MUCH IN ACCESS CHARGES DOES THRIFTY CALL OWE AT&T
16 FLORIDA AS A RESULT OF MISREPORTING THE TPIU FACTOR?

17
18 A. The total amount owed for the billing period from April, 1999 through February,
19 2002 is \$2,383,220. *See Exhibit MP-1.* Additionally, in accordance with AT&T
20 Florida's Intrastate Access Tariff, as of December 31, 2007, Thrifty Call owes
21 AT&T Florida late payment penalties of \$11,673,169.⁸ *See Exhibit MP-1.*

22
23 Q. HOW DID AT&T FLORIDA ARRIVE AT THIS AMOUNT?

24

⁸ Late payment penalties are provided for in §E2.4.1(B)(3) of the AT&T Florida Intrastate Access Services Tariff. Pursuant to the Tariff, late payment penalties continue to accrue at a rate of .000590 per day.

1 A. AT&T Florida first utilized historical records from its Carrier Access Billing
2 System ("CABS") to determine total minutes-of-use, by month, terminating to
3 BellSouth from Thrifty Call. Based upon the findings of the Commission staff,
4 the correct quantity of interstate minutes that should have billed was determined
5 based upon a PIU of 19.51%. This is in sharp contrast to Thrifty Call's reported
6 TPIU of 98% interstate minutes. The correct quantity of intrastate minutes was
7 netted against actual billed minutes to determine the minute impact. The minute
8 impact quantity was priced at the difference between the composite intrastate and
9 interstate rates.

10

11 Q. WHAT DO YOU BELIEVE THIS COMMISSION SHOULD DO?

12

13 A. I believe that once the Commission has reviewed the record in this case, it will
14 conclude that Thrifty Call misrepresented traffic it sent to AT&T Florida through
15 a TPIU factor that had little or no relationship to the actual jurisdiction of the
16 traffic. Thrifty Call first reported, and then allowed its inflated TPIU factor to
17 remain in effect, purely for financial gain. I recommend that the Commission
18 order Thrifty Call to pay the correct intrastate access charges owed to AT&T
19 Florida.

20

21 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

22 A. Yes it does.

Exhibit MP-1 is Confidential

DOCUMENT NUMBER-DATE

00974 FEB-78

FPSC-COMMISSION CLERK

ACCESS SERVICES TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: April 26, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.10 Reserved for Future Use

E2.3.11 Claims and Demands for Damages

- A. With respect to claims of patent infringement made by third persons, the IC shall defend, indemnify, protect and save harmless the Company from and against all claims arising out of the combining with, or use in connection with, the services provided under this Tariff, any circuit, apparatus, system or method provided by the IC or end users.
- B. The IC shall defend, indemnify and save harmless the Company from and against any suits, claims, losses or demands, including punitive damages, attorney fees and court costs by third persons arising out of the construction, installation, operation, maintenance, or removal of the IC's circuits, facilities, or equipment connected to the Company's services provided under this Tariff including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the IC's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the IC to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the services provided under this Tariff; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortious conduct of the IC, its officers, agents or employees.

E2.3.12 Reserved for Future Use

E2.3.13 Coordination with Respect to Network Contingencies

The IC shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

E2.3.14 Jurisdictional Report Requirements¹

A. Jurisdictional Reports

1. *Percent Interstate Usage (PIU)*

- a. When the Company receives sufficient call detail to permit it to determine the jurisdiction of originating and terminating access minutes of use, the Company will bill according to these actual minutes of use and will not use customer reported Percent Interstate Usage (PIU) factors. The Company developed percent interstate usage for access minutes will be determined at a statewide level.

The intrastate percentage will be developed on a monthly basis by end office when the access minutes are measured by dividing the measured intrastate originating or terminating access minutes (*the access minutes where the calling number is in one state and the called number is in another state*) by the total originating or terminating access minutes.

The Company will bill according to actual measured minutes of use for all services listed in b. and 5. following, with the exception of those listed:

- BellSouth SWA Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- BellSouth SWA Billing Name and Address
- BellSouth Inward Operator Service
- Channelization Equipment
- DNALs² associated with BellSouth SWA LSBSA

Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

Note 2: Where BellSouth SWA LSBSA is provisioned with a DNAL, the DNAL rates should be apportioned between interstate and intrastate using the same PIU factor as applied to the associated BellSouth SWA LSBSA.

Material previously appearing on this page now appears on page(s) 10 of this section.
Material appearing on this page previously appeared on page(s) 10 and 12 of this section.

DOCUMENT NUMBER DATE

00974 FEB-7 98

FPSC-COMMISSION CLERK

BELLSOUTH
 TELECOMMUNICATIONS, INC.
 FLORIDA

ACCESS SERVICES TARIFF

First Revised Page 9
 Cancels Original Page 9

ISSUED: February 14, 1997
 BY: Joseph P. Lacher, President -FL
 Miami, Florida

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

(T)

E2.3 Obligations of the IC (Cont'd)

E2.3.10 Reserved for Future Use

E2.3.11 Claims and Demands for Damages

- A. With respect to claims of patent infringement made by third persons, the IC shall defend, indemnify, protect and save harmless the Company from and against all claims arising out of the combining with, or use in connection with, the services provided under this Tariff, any circuit, apparatus, system or method provided by the IC or end users.
- B. The IC shall defend, indemnify and save harmless the Company from and against any suits, claims, losses or demands, including punitive damages, attorney fees and court costs by third persons arising out of the construction, installation, operation, maintenance, or removal of the IC's circuits, facilities, or equipment connected to the Company's services provided under this Tariff including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the IC's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the IC to obtain or maintain in effect any necessary certificates, permits, licenses, or other authority to acquire or operate the services provided under this Tariff; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortious conduct of the IC, its officers, agents or employees.

E2.3.12 Reserved for Future Use

E2.3.13 Coordination with Respect to Network Contingencies

The IC shall, in cooperation with the Company, coordinate in planning the actions to be taken to maintain maximum network capability following natural or man-made disasters which affect telecommunications services.

E2.3.14 Jurisdictional Report Requirements¹

A. Jurisdictional Reports

- 1. When an IC initially orders *BellSouth SWA* service, as defined in Section E6. following, the IC shall state in its order the Percent Interstate Usage (PIU) on a statewide, LATA or billing account number level (at the option of the IC) on a local exchange company specific basis, separately for each of the following:
 - *BellSouth SWA* FGA
 - *BellSouth SWA* FGB
 - *BellSouth SWA* FGD
 - *BellSouth SWA* 500 Service

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

(T)

(T)

(T)

(T)

(T)

(T)

ACCESS SERVICES TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: April 29, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: May 29, 2002

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

1. Percent Interstate Usage (PIU) (Cont'd)

a. (Cont'd)

Where the Company receives insufficient call detail to identify the calling station to determine the jurisdiction, the Company will charge the applicable rates for terminating BellSouth SWA as set forth in this Tariff. There may be a percentage of usage where it is not possible to know, and therefore to send to BellSouth, the needed originating information. Accordingly, BellSouth will charge the terminating BellSouth SWA rate for only those minutes lacking originating information from all SWA customers, currently 19.22 percent (%) (the "floor"). For example, if 30 percent (%) of a customer's minutes sent to BellSouth do not contain sufficient originating information to allow BellSouth to determine the originating location, then BellSouth would apply the provisions of this tariff to those minutes exceeding the "floor", or 10.78 percent (%) in this example.

BellSouth will recalculate the overall SWA customer average "floor" quarterly. In addition, subsequent reviews or audits of specific customer usage may result in a new "floor" for that customer.

In the event that BellSouth applies the intrastate terminating access rate to calls without sufficient originating information as provided in this tariff, BellSouth's access customers will have the opportunity to request backup documentation of BellSouth's basis for such application, and further request that BellSouth change the application of the intrastate access rate upon a showing of why the intrastate rate should not be applied.

For the purpose of this tariff, where the customer is a third-party provider of CCS7 services to its customers ("Third Party Customers"), the customer will develop its projected PIU factor based upon a weighted average of the PIUs of its Third Party Customers' end-user traffic in accordance with the procedures described below. A Third Party Customer may elect to have the Company determine the weighted PIU and in so doing the CCS7 provider shall name and identify their third party customers. In the event a Third Party Customer does not provide a projected PIU or does not elect to have the Company determine the PIU, a 50 percent PIU will be utilized for that Third Party Customer until such time as the Company obtains sufficient data to develop the PIU as specified in b. following.

The IC will provide in its initial order the projected Percent Interstate Usage (PIU) at a statewide level on a local exchange company specific basis. When the IC and/or End User computes the PIU, it will subtract the developed percentage from 100 and the difference is the percent intrastate usage. The sum of the interstate and intrastate percentage will equal 100 percent. A PIU of less than 100 percent is not allowed where the service is not available as an intrastate access service. The projected PIU may include up to two decimals.

The intrastate usage is to be developed as though every call that originates from a calling location within the same state as that in which the called station is situated is an intrastate communication and every call for which the originating location is in a state other than that where the called station is situated is an interstate communication. The manner in which the call is routed through the telecommunications network does not affect the jurisdiction of a call, i.e., a call between two points within the same state is an intrastate communication even if the call is routed through another state.

The Company will designate the number obtained by subtracting the intrastate percentage furnished by the IC from 100 (100 - customer percentage = interstate percentage) as the projected interstate percentage of use.

b. When an IC initially orders service(s), as defined in the following, the IC will state in its order the Percent Interstate Usage (PIU) separately for each, as set forth in a. preceding.

- BellSouth SWA FGA
- BellSouth SWA FGB
- BellSouth SWA FGD
- BellSouth SW 500 Service
- 700 Service
- BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening Service
- BellSouth SWA 900 Service

Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. of this Tariff (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSB5A).

(C)

ACCESS SERVICE TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: August 12, 1991

BY: Joseph P. Lacher, President - FL
Miami, Florida

EFFECTIVE: September 1, 1991

E2. GENERAL REGULATIONS

E2.4 Payment Arrangements and Credit Allowances (Cont'd)

E2.4.1 Payment of Rates, Charges and Deposits (Cont'd)

B. (Cont'd)

3. All bills dated as set forth in 2. preceding for services provided to the IC and/or End User by the Company are due on the payment due date. The payment due date is the date which is 31 days after the bill day or by the next bill date (i.e., same date in the following month as the bill date) whichever is the shortest interval, except as provided herein, and are payable in immediately available funds. If such payment due date would cause payment to be due on a Saturday, Sunday or Holiday (i.e., New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and a day when Washington's Birthday, Memorial Day or Columbus Day is legally observed), payment for such bills will be due from the IC and/or End User as follows:

If such payment due date falls on a Sunday or on a Holiday which is observed on a Monday, the payment due date shall be the first non-Holiday day following such Sunday or Holiday. If such payment due date falls on a Saturday or on a Holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-Holiday day preceding such Saturday or Holiday.

Further, if any portion of the payment is received by the Company after the payment due date as set forth preceding, or if any portion of the payment is received by the Company in funds which are not immediately available to the Company, then a late payment penalty may be due to the Company. The late payment penalty shall be the portion of the payment not received by the payment due date times a late factor. The late factor shall be the lesser of:

- a. The highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company, or (C)
 - b. 0.000590 per day, compounded daily for the number of days from the payment due date to and including the date that the IC and/or End User actually makes the payment to the Company. (C)
4. In the event of a billing dispute, the IC or End User must submit a documented claim for the disputed amount. If the dispute is submitted on or before the payment due date or within 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the IC or End User upon resolution of the dispute shall be calculated from the date of the overpayment to the resolution date. If the dispute is submitted more than 90 days after the payment due date and the disputed amount is paid prior to resolution of the dispute, any interest credits due the IC or End User upon resolution of the dispute shall be calculated from the dispute date or the date the payment is made, whichever occurs later, to the resolution date. The Company will resolve the dispute and assess interest credits or late payment penalties to the IC or End User as follows:
- If the dispute is resolved in favor of the Company and the IC or End User has paid the disputed amount on or before the payment due date, no credits or late payment penalties will apply to the disputed amount.
 - If the dispute is resolved in favor of the Company and the IC or End User has withheld the disputed amount, any payments withheld pending settlement of the dispute shall be subject to the late payment penalty.

ACCESS SERVICES TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: January 18, 2002
BY: Joseph P. Lacher, President -FL
Miami, Florida

Seventh Revised Page 11
Cancels Sixth Revised Page 11

EFFECTIVE: February 17, 2002

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

1. Percent Interstate Usage (Cont'd)

b. (Cont'd)

- BellSouth CCS7 Access Arrangement
- Switched Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- BellSouth SWA Dedicated Interoffice Channel
- Channelization Equipment
- DNALs associated with BellSouth SWA LSBSA²
- BellSouth Billing Name and Address
- BellSouth Inward Operator Service

(N)

When an End User initially orders BellSouth SWA FGB service, where facilities permit, the End User will state in the order, the PIU for each state.

The Percent Interstate Usage (PIU) factors associated with BellSouth SWA FGA, BellSouth SWA FGB, BellSouth SWA FGD and BellSouth SWA 500, 700, BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening and BellSouth SWA 900 service will also apply to all associated elements and services, e.g. Carrier Common Line, Local Switching, BellSouth SWA Common Interoffice Channel, Interconnection, Access Tandem Switching, Common Trunk Port Service and minute of use based multiplexer rate elements, where applicable.

The PIU category, BellSouth SWA Local Channel, includes Dedicated End Office Trunk Port Service and Dedicated Tandem Trunk Port Service charges and other flat rated charges not specifically covered by other PIU categories.

The customer will provide a single factor as the projected Percent Interstate Usage (PIU) to apportion the usage between interstate and intrastate. This factor will be applied to the following categories:

- BellSouth SWA Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- Channelization Equipment

The PIU factor provided for each of the foregoing facilities categories (Switched Local Channel, BellSouth SWA Dedicated Interoffice Channel and Channelization Equipment) will reflect the combination of all traffic types which traverse such facility category.

When Dedicated Access service is provided on a BellSouth SWA facility, e.g., Dedicated Access DS1 (a.k.a. BellSouth SPA DS1) on a BellSouth SWA DS3, the facility will be apportioned between BellSouth SWA and Dedicated Access. The jurisdiction of the Dedicated Access service shall reflect the composite of the jurisdiction of the lower capacity services, if any, of which it is comprised.

The IC and/or End User shall compute the PIU using the following formula (rounded to a whole percentage).

$$\frac{\text{Total Interstate Originating Minutes} + \text{Total Interstate Terminating Minutes}}{\text{Total Originating Minutes} + \text{Total Terminating Minutes}}$$

Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. of this Tariff (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

Note 2: Where BellSouth SWA LSBSA is provisioned with a DNAL, the DNAL rates should be apportioned between interstate and intrastate using the same PIU factor as applied to the associated BellSouth SWA LSBSA.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: September 5, 2001
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

Sixth Revised Page 11
Cancel Fifth Revised Page 11

EFFECTIVE: October 5, 2001

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

1. Percent Interstate Usage (Cont'd)

b. (Cont'd)

- (DELETED)

- Switched Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- BellSouth SWA Dedicated Interoffice Channel
- Channelization Equipment
- DNALs associated with BellSouth SWA LSBSA²
- BellSouth Billing Name and Address
- BellSouth Inward Operator Service

(D)

When an End User initially orders BellSouth SWA FGB service, where facilities permit, the End User will state in the order, the PIU for each state.

The Percent Interstate Usage (PIU) factors associated with BellSouth SWA FGA, BellSouth SWA FGB, BellSouth SWA FGD and BellSouth SWA 500, 700, BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening and BellSouth SWA 900 service will also apply to all associated elements and services, e.g. Carrier Common Line, Local Switching, BellSouth SWA Common Interoffice Channel, Interconnection, Access Tandem Switching, Common Trunk Port Service and minute of use based multiplexer rate elements, where applicable.

The PIU category, BellSouth SWA Local Channel, includes Dedicated End Office Trunk Port Service and Dedicated Tandem Trunk Port Service charges and other flat rated charges not specifically covered by other PIU categories.

The customer will provide a single factor as the projected Percent Interstate Usage (PIU) to apportion the usage between interstate and intrastate. This factor will be applied to the following categories:

- BellSouth SWA Local Channel
- BellSouth SWA Dedicated Interoffice Channel
- Channelization Equipment

The PIU factor provided for each of the foregoing facilities categories (Switched Local Channel, BellSouth SWA Dedicated Interoffice Channel and Channelization Equipment) will reflect the combination of all traffic types which traverse such facility category.

When Dedicated Access service is provided on a BellSouth SWA facility, e.g., Dedicated Access DS1 (a.k.a. BellSouth SPA DS1) on a BellSouth SWA DS3, the facility will be apportioned between BellSouth SWA and Dedicated Access. The jurisdiction of the Dedicated Access service shall reflect the composite of the jurisdiction of the lower capacity services, if any, of which it is comprised.

The IC and/or End User shall compute the PIU using the following formula (rounded to a whole percentage).

$$\frac{\text{Total Interstate Originating Minutes} + \text{Total Interstate Terminating Minutes}}{\text{Total Originating Minutes} + \text{Total Terminating Minutes}}$$

Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. of this Tariff (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

Note 2: Where BellSouth SWA LSBSA is provisioned with a DNAL, the DNAL rates should be apportioned between interstate and intrastate using the same PIU factor as applied to the associated BellSouth SWA LSBSA.

OFFICIAL APPROVED VERSION, RELEASED BY BSTHQ

ACCESS SERVICES TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: April 26, 2000

BY: Joseph P. Lacher, President -FL
Miami, Florida

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements (Cont'd)

A. Jurisdictional Reports (Cont'd)

2. (DELETED)

(D)

3. (DELETED)

(D)

4. (DELETED)

(M)(D)

ACCESS SERVICES TARIFF

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements' (Cont'd)

A. Jurisdictional Reports (Cont'd)

2. All single *BellSouth SWA FGA* and *BellSouth SWA FGB* service usage and charges will be apportioned by the Company between interstate and intrastate. The projected interstate percentage reported as set forth in 1. preceding will be used to make the apportionment. (T)
3. For multiline hunt group or trunk group arrangements where either the interstate or the intrastate charges are based on measured usage, the intrastate *BellSouth SWA FGA* and/or *BellSouth SWA FGB* service(s) information reported will be used to determine the charges as follows: (T)
 - a. For all groups, the number of access minutes (either the measured minutes or the assumed minutes) for a group will be multiplied by the projected interstate percentage to develop the interstate access minutes. The number of access minutes for the group minus the projected interstate access minutes for the group will be the developed intrastate access minutes.
4. When an IC initially orders *BellSouth SWA FGD* service, the IC shall state in its order the PIU. When an IC orders *BellSouth SWA FGD* service(s), *BellSouth SWA 500* service, *BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening* service or *BellSouth SWA 900* service, the Company, where the jurisdiction can be determined from the call detail, will determine the intrastate percentage as follows. For originating access minutes, the intrastate percentage will be developed on a monthly basis by end office when the *BellSouth SWA FGC* or *BellSouth SWA FGD* service, *BellSouth SWA 500* service, *BellSouth SWA 8XX Toll Free Dialing Ten Digit Screening* service or *BellSouth SWA 900* service access minutes are measured by dividing the measured intrastate originating access minutes by the total originating access minutes when the call detail is adequate to determine the appropriate jurisdiction. As indicated in 1. preceding, the IC, at its option, may supply the PIU on a statewide, LATA or billing account number level for terminating *FGD BellSouth SWA* service. The intrastate PIU supplied shall be on a local exchange company specific basis. ICs choosing not to supply an intrastate PIU for terminating *BellSouth SWA FGD* service may continue to allow the Company to develop the intrastate percentage for the terminating access minutes based upon the percentage for originating access minutes. After January 1, 1996, all ICs must supply the intrastate PIU for terminating *FGD BellSouth SWA* service following the criteria set forth in this Tariff. When originating call details are insufficient to determine the jurisdiction for the call, the IC shall supply the intrastate percentage or authorize the Company to use the Company developed percentage. This percentage shall be used by the Company as the intrastate percentage for such call detail. The Company will designate the number obtained by subtracting the intrastate percentage for originating and terminating access minutes calculated by the Company from 100 (100 - Company calculated projected intrastate percentage = interstate percentage) as the projected interstate percentage of use. (T)

When an IC employs the use of the 700 Service Access Code over *BellSouth SWA FGC* or *BellSouth SWA FGD*, the IC must provide the Company with the projected percentage of interstate use for the 700 calls made. The remaining percentage will be assumed intrastate percentage. (T)

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA FGA* and *BellSouth SWA LSBSA*).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ACCESS SERVICES TARIFF

Second Revised Page 13
Cancels First Revised Page 13

ISSUED: April 26, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: May 10, 2000

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

5. For BellSouth Directory Assistance Access service, *the Company developed PIU for BellSouth SWA FGD terminating will apply.* (C)
6. **(DELETED)** (D)
7. **(DELETED)** (D)
8. Effective July 1, 2000, the customer's and/or end user's projected Percent Interstate Usage (PIU) will be provided at a statewide level on a local exchange company specific basis. (N)
Effective on the first of January, April, July and October of each year the IC *will* update the interstate and intrastate jurisdictional report. End Users must update the jurisdictional report on a quarterly basis for the Feature Group B services provided from this Tariff. The IC *will* forward to the Company, to be received no later than 30 days after the first of each such month, a revised report or letter for all services showing the intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for intrastate use. The revised report or letter will serve as the basis for the next three months' billing and will be effective on the bill date for that service. If the IC or End User does not supply an updated quarterly report or letter, the Company will assume the percentages to be the same PIU provided in the last quarterly report or letter accepted by the Company. For those cases in which quarterly reports have never been received from the IC or End User, the Company will assume the PIU factors to be the most recent audit results or to be the same as those provided in the order for services if no audit has been performed. If an audit has been completed and an updated quarterly report or letter has not been submitted subsequent to the audit, the Company will assume the PIU factors to be the most recent audited results. (C)
9. **(DELETED)** (D)
10. When mixed interstate and intrastate Dedicated Access Service is provided, the jurisdiction will be determined as follows.
- If the IC or End User's estimate of the interstate traffic on the service involved constitutes 10 percent or less of the total traffic on that service, the service will be provided in accordance with the applicable rules and regulations of this Tariff.
Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

First Revised Page 13
Cancels Original Page 13

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

5. For *BellSouth* Directory Assistance Access service and *BellSouth* Inward Operator Services Access Service, the IC shall in its order, provide the intrastate percentage for terminating use for each *BellSouth* Directory Assistance Access service group and *BellSouth* Inward Operator Services group. (A method the IC may wish to adopt could be to use its terminating traffic from its premises to the involved *BellSouth* Directory Assistance Access Location or *BellSouth* Inward Operator Services Location and calculate the intrastate percentage as set forth in 4. preceding.) The Company will designate the number obtained by subtracting the intrastate percentage furnished by the IC from 100 (100 - IC percentage = interstate percentage) as the projected interstate percentage of use. (T)
6. For *BellSouth* Billing Name and Address for ANI service, the IC shall state in its initial order the projected PIU factor. PIU information shall also be furnished quarterly to the Company thereafter. The *BellSouth Billing Name and Address* for ANI PIU factor shall be reported as required in 7. following. (T)
7. For On-Line Transfer Service, the IC shall state in its initial order the projected PIU factor. PIU information shall also be furnished quarterly to the Company thereafter. The On-Line Transfer PIU factor shall be reported as required in 8. following.
8. Effective on the first of January, April, July and October of each year the IC shall update the interstate and intrastate jurisdictional report. End Users must update the jurisdictional report on a quarterly basis as previously described, for the Feature Group B services provided from this Tariff. The IC shall forward to the Company, to be received no later than 30 days after the first of each such month, a revised report or letter for all services showing the intrastate percentage of use for the past three months ending the last day of December, March, June and September, respectively, for each service arranged for intrastate use. The revised report or letter will serve as the basis for the next three months' billing and will be effective on the bill date for that service. If the IC or End User does not supply an updated quarterly report or letter, the Company will assume the percentages to be the same PIU provided in the last quarterly report or letter accepted by the Company. For those cases in which quarterly reports have never been received from the IC or End User, the Company will assume the PIU factors to be the most recent audit results or to be the same as those provided in the order for services if no audit has been performed. If an audit has been completed and an updated quarterly report or letter has not been submitted subsequent to the audit, the Company will assume the PIU factors to be the most recent audited results.
9. The jurisdictional report will serve as the basis for all future billing and will be effective on the next bill date.
10. When mixed interstate and intrastate Dedicated Access Service is provided, the jurisdiction will be determined as follows.
- If the IC or End User's estimate of the interstate traffic on the service involved constitutes 10 percent or less of the total traffic on that service, the service will be provided in accordance with the applicable rules and regulations of this Tariff. (T)

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (T)
(e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: July 17, 2000
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

E2. GENERAL REGULATIONS

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements' (Cont'd)

A. Jurisdictional Reports (Cont'd)

4. When mixed interstate and intrastate Dedicated Access Service is provided, the jurisdiction will be determined as follows. (T)
(Cont'd)

- If the IC or End User's estimate of the interstate traffic on the service involved constitutes more than 10 percent of the total traffic on that service, the service will be provided in accordance with the applicable rules and regulations of the BellSouth Telecommunications, Inc. Tariff FCC No. 1.

The IC or End User shall keep records from which the percentage of interstate and intrastate use was estimated and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The IC or End User shall supply the data within 30 days of the Company request.

B. Jurisdictional Report Verification

1. When an IC or End User provides a projected interstate usage percent as set forth in A. preceding, or when a billing dispute arises or a regulatory commission questions the projected interstate percentage for BellSouth SWA, the Company may, by written request, require the IC or End User to provide the data the IC or End User used to determine the projected interstate percentage. This written request will be considered the initiation of the audit. The IC or End User shall supply the data to an independent auditor within thirty days of the Company request. The IC or End User shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained as set forth in C. following and upon request of the Company make the records available for inspection at an agreed upon location during normal business hours as reasonably necessary for purposes of verification of the percentages. The Company will audit data from one quarter unless a longer period is requested by the IC or End User and agreed to by the Company. Changes to the reported PIU will not be made for the test period. If the IC or End User does not provide the requested data to the Company or independent auditor within (30) days of the notice of audit, the IC or End User will be in violation of this Tariff and subject to E2.1.8 preceding.

Where attempts to obtain the appropriate data from the IC or End User beyond the 30 day time limit have failed, the Company may provide such documentation to the FPSC as an indication of the IC or End User being in violation of this Tariff.
2. For BellSouth SWA service, verification audits may be conducted no more frequently than once per year except in extreme circumstances. The Company and IC or End User will attempt to limit the audit to a reasonable time to effectively complete the audit. The Company and IC or End User shall respond promptly to requests generated during the audit to ensure timely completion of the audit.

Note 1: Except where indicated herein, references to BellSouth SWA FGs will also include the applicable BellSouth SWA Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term BellSouth SWA FGA represents both BellSouth SWA FGA and BellSouth SWA LSBSA).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 14, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

(T)

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

A. Jurisdictional Reports (Cont'd)

10. When mixed interstate and intrastate Dedicated Access Service is provided, the jurisdiction will be determined as follows. (Cont'd)

- If the IC or End User's estimate of the interstate traffic on the service involved constitutes more than 10 percent of the total traffic on that service, the service will be provided in accordance with the applicable rules and regulations of the BellSouth Telecommunications, Inc. Tariff FCC No. 1.

The IC or End User shall keep records from which the percentage of interstate and intrastate use was estimated and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages. The IC or End User shall supply the data within 30 days of the Company request.

B. Jurisdictional Report Verification

1. When an IC or End User provides a projected interstate usage percent as set forth in A. preceding, or when a billing dispute arises or a regulatory commission questions the projected interstate percentage for *BellSouth SWA*, the Company may, by written request, require the IC or End User to provide the data the IC or End User used to determine the projected interstate percentage. This written request will be considered the initiation of the audit. The IC or End User shall supply the data to an independent auditor within thirty days of the Company request. The IC or End User shall keep records of call detail from which the percentage of interstate and intrastate use can be ascertained as set forth in C. following and upon request of the Company make the records available for inspection at an agreed upon location during normal business hours as reasonably necessary for purposes of verification of the percentages. The Company will audit data from one quarter unless a longer period is requested by the IC or End User and agreed to by the Company. Changes to the reported PIU will not be made for the test period. If the IC or End User does not provide the requested data to the Company or independent auditor within (30) days of the notice of audit, the IC or End User will be in violation of this Tariff and subject to E2.1.8 preceding.

(T)

Where attempts to obtain the appropriate data from the IC or End User beyond the 30 day time limit have failed, the Company may provide such documentation to the FPSC as an indication of the IC or End User being in violation of this Tariff.

2. For *BellSouth SWA* service, verification audits may be conducted no more frequently than once per year except in extreme circumstances. The Company and IC or End User will attempt to limit the audit to a reasonable time to effectively complete the audit. The Company and IC or End User shall respond promptly to requests generated during the audit to ensure timely completion of the audit.

(T)

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

(T)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ACCESS SERVICES TARIFF

First Revised Page 15
Cancels Original Page 15

ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

(T)

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

B. Jurisdictional Report Verification (Cont'd)

3. Audits may be conducted by an independent auditor under contract to the Company; (b) a mutually agreed upon independent auditor; or (c) an independent auditor selected and paid for by the IC or End user. If the IC or End User selects option (c), where it pays for its own independent audit, the selected auditor must certify that the audit was performed following FCC procedures for measuring interstate and intrastate traffic as established by Commission orders, and provide to the Company a report with supporting documentation to verify such procedures. In the event that the IC's auditor is agreed upon to perform the audit, the auditor shall produce an attestation audit report upon completion of the audit.

When an auditor cannot be agreed upon within 30 days by one of the three options above, the Joint LEC Audit Committee's auditor shall perform the audit.

4. If a billing dispute arises or a regulatory commission questions the projected interstate percentage for Dedicated Access Service, the Company will ask the IC or End User to provide the data the IC or End User uses to determine the projected interstate percentage. The IC or End User shall supply the data to an independent auditor within thirty days of the Company request. The IC or End User shall keep records from which the percentage was determined and upon request of the Company make the records available for inspection as reasonably necessary for purposes of verification of the percentages.

Where an independent auditor cannot be agreed upon within 30 days the IC or End User shall supply the data to the Joint LEC Audit Committee's auditor. If the IC or End User does not comply within the 30 day time frame, the FPSC shall be notified and provided with all documentation substantiating requests made by the Company.

C. Maintenance of IC Records

1. The IC, Reseller, End User and AOS provider shall retain for a minimum of six (6) months call detail records, that substantiate the percentage data provided to the Company as set forth in A. preceding for *BellSouth SWA* service. Such records shall consist of one of a. and b. (if applicable), following:
- a. All call detail records, such as workpapers and/or backup documentation including paper, magnetic tapes or any other form of records for billed IC or End User traffic, call information including call terminating address (i.e., called number), the call duration, all originating and terminating trunk groups or access lines over which the call is routed, and the point at which the call enters the IC or End User's network; and
- b. If the IC has a mechanized system in place that calculated the PIU, then a description of that system and the methodology used to calculate the PIU must be furnished and any other pertinent information (such as but not limited to flowcharts, source code, etc.) relating to such system must also be made available.

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

ISSUED: February 14, 1997

BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

First Revised Page 16
Cancels Original Page 16

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

(T)

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

C. Maintenance of IC Records (Cont'd)

2. Correspondence between the Company and the IC or End User shall be limited to Certified U.S. Mail for the following: Audit Results, Choice of Auditor and Choice of Test Period. Response times by the parties shall be limited to the following: Audit Results-30 days, Choice of Auditor-30 days and Choice of Test Period-10 business days. In the absence of a response within these time frames, concurrence will be assumed on the contents of such correspondence, where applicable.

D. Audit Results for *BellSouth SWA*

(T)

1. Audit results will be furnished to the IC or End User via Certified U.S. Mail (return receipt requested.) The Company will adjust the IC or End User's PIU based upon the audit results. The PIU resulting from the audit shall be applied to the usage for the quarter the audit was completed, the usage for the quarter prior to completion of the audit, and to the usage for the two (2) quarters following the completion of the audit. After that time, the IC or End User may report a revised PIU pursuant to A. preceding. If the revised PIU submitted by the IC or End User represents a deviation of five percentage points or more from the audited PIU, and that deviation is not due to identifiable reasons, the provisions in B. preceding will be applied.
2. Both credit and debit adjustments will be made to the IC or End User's interstate and intrastate access charges for the specified period to accurately reflect the usage for the IC or End User's account consistent with E2.4.1 following.
3. If, as a result of an audit conducted by an independent auditor under contract to the Company, an IC or End User is found to have over stated the PIU by twenty percentage points or more, the Company shall require reimbursement from the IC or End User for the cost of the audit. The mutually agreed upon auditor will be paid for by the IC or End User. Such bill(s) shall be due and paid in immediately available funds thirty days from receipt and shall carry a late payment penalty as set forth in E2.4.1 following. If, after the 30 days, payment is not received from the IC or End User, all documentation that demonstrates attempts to collect the cost of the audit shall be turned over to the FPSC.

E. Contested Audits

1. When a PIU audit is conducted by an independent auditor selected by the Company, the audit results will be furnished to the IC or End User by Certified U.S. Mail (return receipt requested). The IC or End User may contest the audit results based on substantive cause by providing written notification, by Certified U.S. Mail (return receipt requested), to the Company within thirty (30) calendar days from the date the audit report is furnished to the IC or End User by Certified U.S. Mail. When a PIU audit is conducted by an independent auditor selected by the IC or End User, the audit results will be furnished to the Company by Certified U.S. Mail (return receipt requested). The Company may contest the audit results by providing written notification, by Certified U.S. Mail (return receipt requested), to the IC or End User within thirty (30) calendar days from the date the audit report is furnished to the Company by Certified U.S. Mail.

(T)

Note 1: Except where indicated herein, references to *BellSouth SWA* Feature Groups will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA
ISSUED: February 14, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

ACCESS SERVICES TARIFF

First Revised Page 17
Cancels Original Page 17

EFFECTIVE: March 1, 1997

E2. GENERAL REGULATIONS

(T)

E2.3 Obligations of the IC (Cont'd)

E2.3.14 Jurisdictional Report Requirements¹ (Cont'd)

E. Contested Audits (Cont'd)

2. Contested audits may be resolved by a neutral arbitrator mutually agreed upon by the Company and the IC or End User. Arbitration is an option provided in addition to the IC or End User's existing right to file a complaint or legal action in a court of law or at the Commission for resolution of the dispute. The arbitration hearing will be conducted in a state or location within the Company operating territory where the IC or End User maintains a principle or significant presence as mutually agreed upon by both parties, or a state and location within the Company operating territory that is mutually agreed upon by both parties. The arbitration proceeding shall be governed by the law (both statutory and case) of the state in which the arbitration hearing is held, including, but not limited to, the Uniform Arbitration Act, as adopted in that state. The arbitration shall determine the IC or End User's PIU based on A. preceding.
3. Prior to the arbitration hearing, each party shall notify the arbitrator of the PIU percentage which that party believes to be correct. The arbitrator, in deciding, may adopt the PIU percentage of either party or may adopt a PIU percentage different from those proposed by the parties. If the arbitrator adopts a PIU percentage proposed by one of the parties, the other party (whose PIU percentage was not adopted) shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage higher than either of the PIU percentages proposed by the parties, then the party proposing the lower PIU percentage shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage lower than either of the PIU percentages proposed by the parties, then the party proposing the higher PIU percentage shall pay all costs of the arbitration. If the arbitrator adopts a PIU percentage which falls between the two percentages adopted by the parties, then the parties shall each pay one-half of the arbitration costs.
4. Absent written notification, within the time frame noted above, the IC or End User must comply with the provisions set forth in D. preceding. If the IC or End User fails to comply with these provisions, the Company may refuse additional applications for service and/or refuse to complete any and all pending orders for service or may discontinue the provision of the services to the IC or End User as specified in E2.1.8 preceding.
5. The FPSC shall be notified and given all documentation that substantiates the IC or End User non-payment.

(T)

E2.3.15 Determination of Intrastate Charges for Mixed Interstate and Intrastate BellSouth SWA Service

(T)

- A. When mixed interstate and intrastate *BellSouth SWA* service is provided, all charges (i.e., nonrecurring, monthly and/or usage) including optional feature and Basic Service Element (BSE) charges, will be prorated between interstate and intrastate. The percentage provided in the reports as set forth in E2.3.14.A preceding will serve as the basis for prorating the charges. The intrastate percentage will change as revised jurisdictional reports are submitted. The percentage of a *BellSouth SWA* service to be charged as intrastate is applied in the following manner:

(T)

Note 1: Except where indicated herein, references to *BellSouth SWA FGs* will also include the applicable *BellSouth SWA* Basic Serving Arrangement as detailed in the matrix in E6.1.3.A. (e.g., the term *BellSouth SWA* FGA represents both *BellSouth SWA* FGA and *BellSouth SWA* LSBSA).



FLORIDA PUBLIC SERVICE COMMISSION

DIVISION OF REGULATORY COMPLIANCE AND CONSUMER ASSISTANCE

BUREAU OF AUDITING

Tallahassee District Office

THRIFTY CALL, INC.

ACTUAL PERCENTAGE INTERSTATE USAGE AUDIT

TWELVE MONTH PERIOD ENDED MARCH 31, 2000

DOCKET NO. 000475-TP

AUDIT CONTROL NO. 01-292-1-1

Michael Buckley

Michael Buckley, Audit Staff

Scott Wagers

Scott Wagers, Computer Audit Analyst

Gennarro Jackson II

Gennarro Jackson II, Audit Staff

Lynn M. Deamer

Lynn M. Deamer, Audit Supervisor

TABLE OF CONTENTS

I.	AUDITOR'S REPORT	PAGE
	PURPOSE	1
	DISCLAIM PUBLIC USE.....	1
	SUMMARY OF SIGNIFICANT PROCEDURES	2
II.	DISCLOSURES	
	1. INSUFFICIENT DATA	3
	2. PERCENTAGE INTERSTATE USAGE	4
III.	EXHIBIT	
	1. PERCENTAGE INTERSTATE USAGE	5

**DIVISION OF REGULATORY COMPLIANCE AND CONSUMER ASSISTANCE
AUDITOR'S REPORT**

June 24, 2004

TO: FLORIDA PUBLIC SERVICE COMMISSION AND OTHER INTERESTED PARTIES

We have applied the procedures described later in this report to audit the percentage interstate usage, (PIU), for the 12-month period ending March 31, 2000. The schedule for "Percent of Grand Total for July through December 1999" has been included as an exhibit in this report. There is confidential information associated with this audit.

This is an internal accounting report prepared after performing a limited scope audit. Accordingly, this report should not be relied upon for any purpose except to assist the Commission staff in the performance of their duties. Substantial additional work would have to be performed to satisfy generally accepted auditing standards and produce audited financial statements for public use.

SUMMARY OF SIGNIFICANT PROCEDURES

Our audit was performed by examining, on a test basis, certain transactions and account balances which we believe are sufficient to base our opinion. Our examination did not entail a complete review of all financial transactions of the company. Our more important audit procedures are summarized below. The following definitions apply when used in this report:

Scanned - The documents or accounts were read quickly looking for obvious errors.

Verify - The item was tested for accuracy, and substantiating documentation was examined.

Read prior filed complaints that involved the companies included in this docket.

Obtained case background information from the Commission online file system.

Scanned Company provided documents and related Commission orders.

Obtained CD-ROMs containing all call detail records pertaining to BellSouth for April 1999 through March 2000.

Separated the record counts into a group that had enough information to identify Interstate and Intrastate calls.

Computed daily average of record count and call duration for July through December 1999.

Calculated average minutes per call for July through December 1999.

Determined Percentage Interstate Usage for each month from July through December 1999.

Totaled July through December 1999 call durations for Interstate and Intrastate and arrived at a grand total for Percentage Interstate Usage.

II. Disclosures

Disclosure No. 1

Subject: Insufficient Data

Statement of Fact: Thrifty Call claims to have provided all the detail they possess on 2 CD-ROMs that it sent to the Florida Public Service Commission on February 12, 2002. However, for the period July 1999 through December 1999, 37.99% of the calls on these CDs, did not have enough information to determine if the call should be Intrastate or Interstate.

Disclosure No. 2

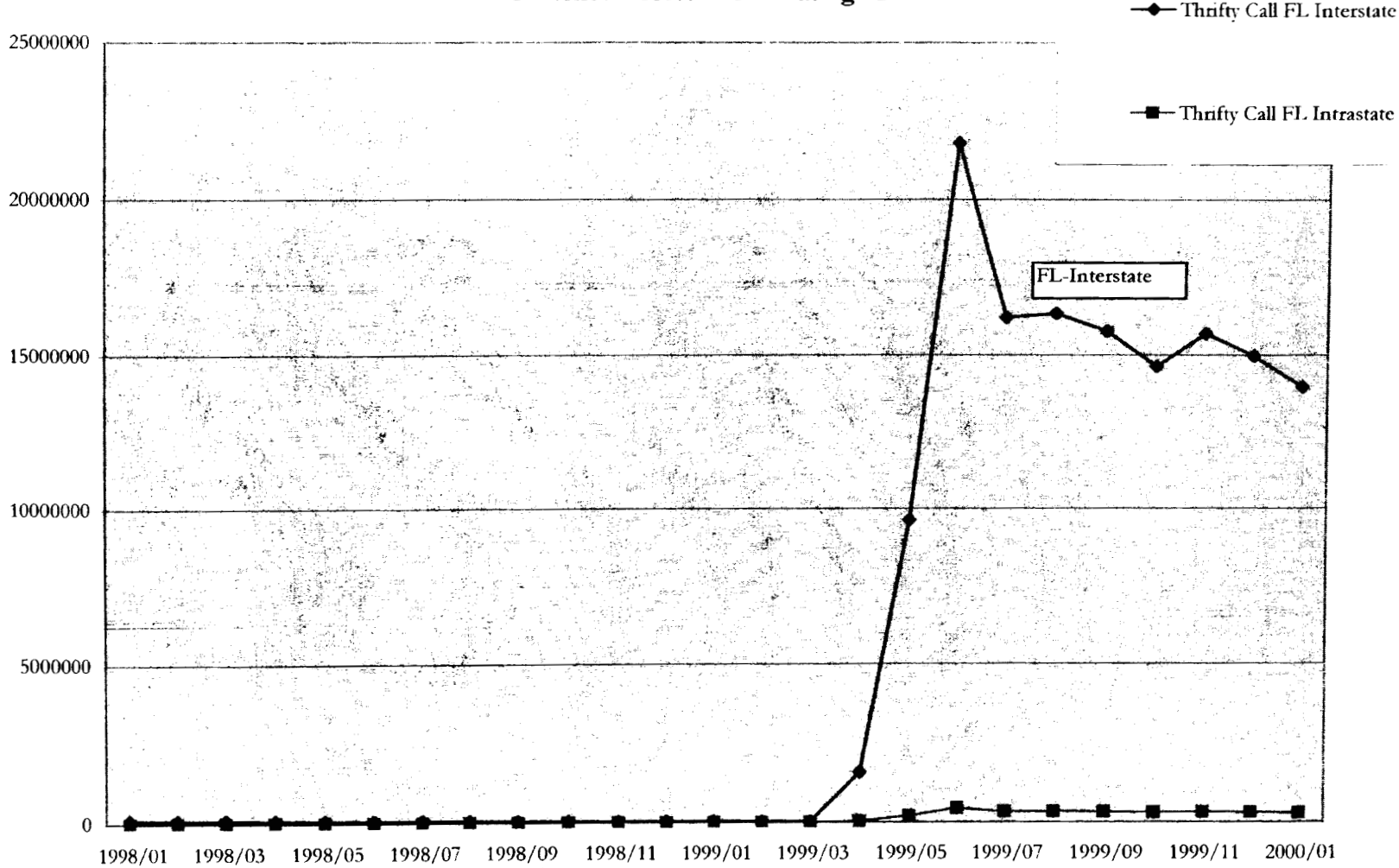
Subject: Percentage Interstate Usage

Statement of Fact: For the period July 1999 through December 1999, 20,617,156 of 33,250,191 calls had enough information to determine if the calls should be classified Interstate or Intrastate. There were 69,094,823.739 total minutes in the readable records. Interstate minutes were 13,482,400.687 and Intrastate minutes were 55,612,423.032. This results in a Grand Total Percentage Interstate Usage (PIU) of 19.51%. See Exhibit for calculations.

III. EXHIBIT**Thrifty Call, Inc.****Docket: 000475-TP****ACN: 01-292-1-1****Determination of actual PIU****Percent of Grand Total for July through December 1999**

	July to December <u>Total</u>	Percent to Total <u>July to December</u>
Number of Calls with Insufficient Data to Determine Usage	12,633,035	37.99%
Number of Calls with Sufficient Data to Determine Usage	20,617,156	62.01%
Total	<u>33,250,191</u>	<u>100.00%</u>
Interstate Calls	3,103,110	15.05%
Intrastate Calls	17,514,046	84.95%
Total	<u>20,617,156</u>	<u>100.00%</u>
Interstate Call Duration	13,482,400.687	19.51%
Intrastate Call Duration	55,612,423.032	80.49%
Total	<u>69,094,823.739</u>	<u>100.00%</u>

**THRIFTY CALL Florida
Switched Access--Terminating MOU**



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

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.

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.

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.

**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.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Docket No. 000475-TP
FCC Order
MP-6
Page 1 of 14

In the Matter of)	
)	
Thrifty Call, Inc.)	
Petition for Declaratory Ruling Concerning)	CCB/CPD File No. 01-17
BellSouth Telecommunications, Inc.)	
Tariff F.C.C. No. 1)	

DECLARATORY RULING

Adopted: November 10, 2004

Released: November 12, 2004

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we address the petition for declaratory ruling filed by Thrifty Call, Inc. (Thrifty Call), seeking clarification of the meaning and application of certain provisions of BellSouth's interstate access tariff (federal tariff).¹ We find that Thrifty Call incorrectly interpreted BellSouth's federal tariff provisions regarding the reporting of Thrifty Call's percentage of interstate usage (PIU). Furthermore, BellSouth's federal tariff does not require BellSouth to conduct an audit prior to correcting an IXC's misreported PIU. Finally, backbilling of intrastate access charges is governed by BellSouth's state tariffs and is properly addressed by the state commissions.

II. BACKGROUND

2. During the time period at issue, Thrifty Call provided long distance service in a number of states, including North Carolina and Florida.² Thrifty Call acted as a reseller of long distance service.³ Thrifty Call entered into arrangements with other interexchange carriers (IXCs) to terminate calls originated by those IXCs' customers in North Carolina and Florida.⁴ The other IXCs handed off the calls

¹ *Thrifty Call Files Petition for Declaratory Ruling, Pleading Cycle Established*, CCB-CPD File No. 01-17, Public Notice, 16 FCC Rcd 17617 (Com. Car. Bur. 2001). The following parties filed comments in response to the petition: BellSouth Corporation (BellSouth); SBC Communications, Inc. (SBC); Sprint Corporation (Sprint); and VarTec Telecom, Inc. (VarTec). The following parties filed replies: BellSouth; Thrifty Call; Competitive Telecommunications Association (CompTel); and VarTec. We note that, due to problems with the United States mail and a change in Commission procedures for processing material filed with the Office of the Secretary, CompTel's reply was filed on November 9, 2001, one day after the November 8 deadline. See *Thrifty Call Petition for Declaratory Ruling Concerning BellSouth Communications, Inc. Tariff F.C.C. No. 1*, CCB/CPD File No. 01-17, Order, 16 FCC Rcd 19315 (Comp. Pric. Div. 2001) (extending comment cycle due to problems with the United States mail and delays with processing material filed with the Office of the Secretary). We find that considering CompTel's reply comments in this proceeding provides interested parties and the Commission a more substantive and complete record on the issues.

² Thrifty Call no longer conducts business in BellSouth territory. Prior to filing its petition, it ceased doing business as a long distance reseller and sold all its assets. Thrifty Call Petition at 2.

³ Thrifty Call Petition at 2.

⁴ Thrifty Call Petition at 2.

destined for North Carolina and Florida to Thrifty Call at its switch in Atlanta, Georgia.⁵ To terminate the calls in North Carolina and Florida, Thrifty Call obtained access to BellSouth's local exchange network by purchasing Feature Group D terminating access services from BellSouth's federal and state access tariffs.⁶ BellSouth asserts that, prior to 2000, it did not have the ability to collect call data that would have identified the jurisdiction of the traffic that it terminated for Thrifty Call.⁷ Therefore, the terminating access charges BellSouth assessed on Thrifty Call were based on percentage of interstate use (PIU) factors provided by Thrifty Call.⁸ Thrifty Call calculated its PIU based on its interpretation of the Commission's entry/exit surrogate (EES) methodology and reported the PIU to BellSouth on a quarterly basis.⁹ In January 2000, BellSouth notified Thrifty Call that it disputed Thrifty Call's reported PIU for the period from March 1999 to November 1999.¹⁰ After the parties were unable to agree upon a procedure to review and verify Thrifty Call's PIU reports, BellSouth filed complaints against Thrifty Call with the North Carolina Utilities Commission (North Carolina commission) and the Florida Public Service Commission (Florida commission), contending that Thrifty Call underreported intrastate minutes of use and, therefore, underpaid intrastate access charges.¹¹

3. The North Carolina commission ruled in favor of BellSouth and ordered Thrifty Call to pay BellSouth \$1,898,685 for unbilled intrastate access charges during the relevant period.¹² In ruling on

⁵ Thrifty Call Petition at 2.

⁶ Thrifty Call Petition at 2. Feature Group D services are trunk-side connections provided by incumbent local exchange carriers (LECs) to IXCs that allow end users to use 1+ dialing for long distance calls. Without the use of Feature Group D, the user must first dial a 7- or 10-digit number, a calling card number and PIN number, and then the desired telephone number. Harry Newton, *Newton's Telecom Dictionary*, 318 (19th ed. 2003).

⁷ BellSouth Opposition at 3.

⁸ BellSouth Opposition at 3.

⁹ Thrifty Call Petition at 2. Under the EES method of jurisdictional separation, calls that enter an IXC network in the same state as that in which the called party is located are deemed to be intrastate, and calls that terminate in a different state than their IXC point of entry are considered interstate. *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, CC Docket No. 85-124, Memorandum Opinion and Order, 4 FCC Rcd 8448, 8450 n.5 (1989) (*1989 Jurisdictional Usage Order*).

¹⁰ Thrifty Call Petition, Exhibit 2 (Letter from J. Henry Walker, BellSouth Telecommunications, to Danny E. Adams, Counsel to Thrifty Call at 1 (Jan. 31, 2000) (BellSouth January 31, 2000 Letter)). BellSouth asserts that, prior to March 1999 Thrifty Call sent fewer than 500,000 minutes of terminating interstate and intrastate traffic to BellSouth. At that time Thrifty Call reported a PIU of 98 percent (percentage of traffic terminated for Thrifty Call as interstate traffic). In March 1999, however, BellSouth alleges that Thrifty Call's terminating interstate minutes increased dramatically to nearly four million minutes per month, while its terminating intrastate minutes remained unchanged. Despite this dramatic increase, Thrifty Call did not revise its PIU of 98 percent. BellSouth explains that Thrifty Call's failure to revise the reported PIU led BellSouth to examine more closely the nature of the traffic it terminated for Thrifty Call. In the course of this examination, BellSouth concluded that Thrifty Call was improperly reporting intrastate traffic as interstate traffic, thereby reporting an incorrectly high PIU. BellSouth Opposition at 4-6; BellSouth January 31, 2000 Letter at 1. Because interstate access charges generally are lower than intrastate access charges, a higher PIU reduces the amount of access charges paid by the customer.

¹¹ Thrifty Call Petition at 3.

¹² *BellSouth Telecommunications, Inc. v. Thrifty Call, Inc.*, Docket No. P-447, Sub 5, Recommended Order Ruling on Complaint (N.C. Util. Comm'n, April 11, 2001) (*North Carolina Commission Recommended Order*), Final Order Denying Exceptions and Affirming Recommended Order (N.C. Util. Comm'n, June 14, 2001); Order Denying Motion for Reconsideration or to Hold in Abeyance (N.C. Util. Comm'n, Aug. 27, 2001); *North Carolina ex rel.*

(continued....)

BellSouth's complaint against Thrifty Call on the issue of misreported PIU, the North Carolina commission determined that "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."¹³ The North Carolina commission also found that the audit provisions contained in BellSouth's North Carolina state tariff were permissive, not mandatory.¹⁴ The North Carolina Court of Appeals upheld the North Carolina commission's decision.¹⁵ The Florida commission has not acted on the complaint filed by BellSouth.

4. In the instant petition for declaratory ruling, Thrifty Call requests that the Commission resolve the following issues: (1) whether BellSouth's federal tariff requires the LEC to conduct an audit to resolve all PIU disputes; (2) whether the EES method should be used to calculate Thrifty Call's PIU in the event of an audit; and (3) in the event that an audit reveals discrepancies between the reported PIU and the audited PIU, whether BellSouth is limited by its tariff to one prior quarter of PIU revisions and associated backbilling.

III. DISCUSSION

A. Jurisdiction

5. As a threshold matter, we must determine our jurisdiction to address the issues raised in Thrifty Call's petition. In its opposition to Thrifty Call's petition, BellSouth asserts that this proceeding involves a dispute over intrastate access charges pursuant to BellSouth's state tariffs, and this Commission's jurisdiction does not extend to intrastate tariffs and intrastate percentage of use disputes.¹⁶ Similarly, SBC argues that in *LDDS Communications*, the Enforcement Bureau stated that it lacked jurisdiction to address a claim involving liability for intrastate access service, even if the claim arises out of a PIU dispute.¹⁷

6. Thrifty Call argues that the Commission has jurisdiction to address its petition, which raises issues related to the rights and liabilities between carriers within the context of the PIU verification process contained in BellSouth's federal tariff.¹⁸ Thrifty Call asserts that this issue was not specifically addressed in the *LDDS Communications* decision.¹⁹ VarTec acknowledges that it may be appropriate to apply a state tariff's method of allocating minutes of use and access revenue when the federal tariff is silent (as in the *LDDS Communications* case), but argues that a LEC must comply with any allocation

(...continued from previous page)

Utilities Comm'n v. Thrifty Call, 571 S.E.2d 622 (N.C. Ct. App. 2002) (*North Carolina Appellate Decision*) (upholding decision of the North Carolina commission).

¹³ *North Carolina Commission Recommended Order* at 6.

¹⁴ *North Carolina Commission Recommended Order* at 6.

¹⁵ *North Carolina Appellate Decision*, 571 S.E. 2d at 627-28.

¹⁶ BellSouth Opposition at 9-10 (citing *LDDS Communication, Inc v. United Telephone of Florida*, File No. E-94-71, Memorandum Opinion and Order, 15 FCC Rcd 4950 (Enf. Bur. 2000) (*LDDS Communications*)).

¹⁷ SBC Opposition at 2.

¹⁸ Thrifty Call Reply at 15.

¹⁹ Thrifty Call Reply at 14. Thrifty Call argues that the *LDDS Communication* order failed to address the issue of PIU revision and instead focused on the state commission's right to regulate access rates after the PIU is set. Thrifty Call Reply at 15; see also *LDDS Communications*, 15 FCC Rcd at 4954-55, paras. 10-13.

method set forth in its federal tariff.²⁰ Thus, the Commission's orders and BellSouth's Tariff FCC No. 1 govern the allocation and billing of access charges between the federal and state jurisdictions, according to VarTec.²¹

7. The regulatory scheme set forth in the Communications Act of 1934, as amended (the Act), and the Commission's regulations requires identification of communications that use access service as either interstate or intrastate.²² Once assigned to the appropriate category, charges for the communications are separately regulated under the dual regulatory regime prescribed by the Act.²³ Thus, interstate and intrastate traffic are regulated under two separate but parallel regimes by different agencies -- this Commission for interstate communications and the appropriate state commission for intrastate communications.

8. Subject to limited exceptions, LECs provide interstate switched access services pursuant to interstate tariffs filed with this Commission and provide their corresponding intrastate services through tariffs filed at the state level. Therefore, it is necessary to identify the jurisdictional nature of traffic to determine under which tariff the services are being provided.²⁴ It also is necessary to identify the jurisdiction of the traffic to ensure that the costs of the facilities used to carry this traffic are properly allocated between the interstate and intrastate jurisdictions. In the absence of a uniform measurement method for cost separations purposes, a LEC conceivably could recover its costs for the same investment and expenses in both the interstate and intrastate jurisdictions.²⁵ Such a result would violate the separations principle that the costs associated with a service allocated to both the federal and state jurisdictions equal 100 percent, but no more than 100 percent, of the total costs being allocated.²⁶

9. With many access services, such as those that provide automatic number identification (ANI) capability, jurisdiction is readily determined. For other access arrangements, however, such as Feature Group A and Feature Group B services, LECs typically lack the technical ability to identify and measure jurisdictional usage.²⁷ The Commission has concluded that, where both state and federal jurisdictions use a per-minute-of-use rate structure and rely on jurisdictional allocation of usage for

²⁰ VarTec Reply at 2.

²¹ VarTec Reply at 7-12.

²² See, e.g., *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 148-49 (1930) ("The separation of the intrastate and interstate property, revenues, and expenses" of LECs "is essential to the appropriate recognition of the competent governmental authority in each field of regulation."); 47 U.S.C. § 203(a); 47 C.F.R. §§ 69.2(b), 69.3(a) (in combination requiring filing of interstate access tariffs at the Commission).

²³ See, e.g., 47 U.S.C. §§ 151 (creating the Commission "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio") and 152(b) (excluding from Commission jurisdiction matters relating to "intrastate communication service by wire or radio").

²⁴ *Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, CC Docket No. 85-124, Recommended Decision and Order, 4 FCC Rcd 1966, para. 4 (Fed.-State Jt. Bd. 1989) (*Joint Board Order*).

²⁵ *Joint Board Order*, 4 FCC Rcd at 1973, para. 55.

²⁶ See, e.g., *Hawaiian Telephone Co. v. Public Utility Comm'n*, 827 F.2d 1264, 1274-76 (9th Cir. 1987), cert. denied, 487 U.S. 1218 (1988) (*Hawaiian Telephone*); *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n*, 740 F.2d 566, 567 (7th Cir. 1984); *Washington Utilities & Transportation Comm'n v. FCC*, 513 F.2d 1142, 1146-47 (9th Cir.), cert. denied, 423 U.S. 836 (1975).

²⁷ *1989 Jurisdictional Usage Order*, 4 FCC Rcd at 8448, para. 3.

billing, the interstate and intrastate minutes of use on these facilities must be identified in some compatible way to permit LECs to assess their customers the proper access charges.²⁸

10. Where jurisdictional usage is not readily ascertainable, a LEC must rely on an IXC to compile PIU reports based on the IXC's call detail records. Pursuant to the EES methodology, these call detail records identify every call that enters "an [IXC] network at a point within the same state as that in which the station designated by dialing is situated [as] an intrastate communication and every call for which the point of entry is in a state other than that where the called station is situated [as] an interstate communication."²⁹ These data are then reported in the IXC's PIU reports, which enable the LEC to charge the tariffed rates for interstate and intrastate access services. Because the combined PIU and the percentage of intrastate usage must equal 100 percent of the IXC's traffic, any change in the intrastate usage percentage automatically changes the PIU.³⁰

11. We conclude that it is within the Commission's jurisdiction to interpret BellSouth's federal interstate switched access tariff and to address the merits of this case within the parameters of federal law and Commission precedent.³¹ Exercise of this jurisdiction is not inconsistent with the Enforcement Bureau's decision in *LDDS Communications*. In that proceeding, an IXC filed a complaint with the Commission based on a LEC's adjustment to its PIU and related backbilling of intrastate access charges under the LEC's state tariff.³² The Enforcement Bureau found that the focus of the complaint was the IXC's liability for intrastate access charges, which was governed by the state tariff and was therefore under the state commission's jurisdiction.³³ As the Enforcement Bureau stated, had the issue arisen under the LEC's federal tariff, "this Commission unquestionably would have the authority to decide it."³⁴ Here, Thrifty Call is not seeking to adjudicate a complaint premised on an intrastate access charge billing dispute. Rather, Thrifty Call requests that the Commission issue a declaratory ruling on issues raised under BellSouth's federal tariff. Therefore, the Commission has jurisdiction to act on Thrifty Call's petition.

B. PIU Methodology

12. In its petition for declaratory ruling, Thrifty Call argues that BellSouth's federal tariff requires the use of the EES methodology in jurisdictionally separating Feature Group D services.³⁵ Thrifty Call further argues that, pursuant to the 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

²⁸ 1989 *Jurisdictional Usage Order*, 4 FCC Rcd at 8450, para. 14.

²⁹ *MCI Telecommunications Corp., Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, Memorandum Opinion and Order, 57 Rad. Reg. 2d (P&F) 1573, 1582, para. 25 (1985 *EES Order*), *recon. denied*, Memorandum Opinion and Order on Reconsideration, 59 Rad. Reg. 2d (P&F) 631 (1985) (1985 *EES Reconsideration Order*).

³⁰ For example, if an IXC initially reported a PIU of 50 percent and a 50 percent intrastate usage amount, a decrease in the intrastate usage to 40 percent would increase the PIU to 60 percent.

³¹ See, e.g., 47 U.S.C. §§ 151, 201, 203.

³² *LDDS Communications*, 15 FCC Rcd at 4950, para. 1.

³³ *LDDS Communications*, 15 FCC Rcd at 4955, para. 13.

³⁴ *LDDS Communications*, 15 FCC Rcd at 4955, para. 13.

³⁵ Thrifty Call Petition at 15.

points.³⁶ In support of its arguments, Thrifty Call cites section 2.3.10(A)(1)(a) of BellSouth's federal tariff in effect at the time of the dispute, which states:

Pursuant to Federal Communications Commission Order FCC 85-145 adopted April 16, 1985 [the *1985 EES Order*], 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.³⁷

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.³⁸ 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.³⁹ Thrifty Call requests that the Commission clarify that the term "customer" as used in BellSouth's interstate tariff means the IXC customer purchasing the access services under the tariff, and that the point of entry into Thrifty Call's network is the only point of entry relevant to the development of the PIU.⁴⁰

13. Opponents of Thrifty Call's petition generally argue that Thrifty Call is engaging in an arbitrage scheme to take advantage of lower interstate access charges.⁴¹ Opponents assert that policy and precedent unequivocally require that traffic originating and terminating within the same state be deemed intrastate traffic.⁴² BellSouth, moreover, argues that the EES methodology applies only to determine the jurisdictional nature of Feature Group A and Feature Group B services, and is inapplicable to the Feature Group D services purchased by Thrifty Call from BellSouth.⁴³ Sprint further argues that the EES methodology was meant to apply only when call identifying information is not available and is not intended to allow multiple IXCs to convert intrastate traffic into interstate traffic.⁴⁴

³⁶ Thrifty Call Petition at 16-19.

³⁷ BellSouth Tariff FCC No. 1 § 2.3.10(A)(1)(a). Unless otherwise noted, all references to BellSouth's federal and state tariffs refer to the federal and state tariffs in effect at the time of the dispute, i.e., prior to 2000.

³⁸ Thrifty Call Petition at 15.

³⁹ Thrifty Call Petition at 15.

⁴⁰ Thrifty Call Petition at 19-20.

⁴¹ BellSouth Reply at 9-10; SBC Opposition at 6; Sprint Comments at 1.

⁴² BellSouth Opposition at 21-22 (citing *Bell Atlantic Telephone Companies v. FCC*, 206 F.3d 1, 4 (D.C. Cir. 2000) (*Bell Atlantic*) and *Long Distance/USA, Inc. v. Bell Telephone Company of Pennsylvania*, File Nos. E-89-03 *et seq.*, Memorandum Opinion and Order, 10 FCC Rcd 1234, 1237-38, para. 13 (1995)); SBC Opposition at 5 (citing *Bell Atlantic*, 206 F.3d at 4); Sprint Comments at 4 (citing *Teleconnect v. Bell Telephone Company of Pennsylvania et al.*, File Nos. E-88-83 through E-88-103, Memorandum Opinion and Order, 6 FCC Rcd 5202 (Com. Car. Bur. 1991), *review and recon. denied*, 10 FCC Rcd 1626 (1995) (*Teleconnect Reconsideration Denial Order*), *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 116 F.3d 593 (D.C. Cir. 1997) (noting that the Commission has consistently refused to consider intermediate switching points when determining the jurisdiction of a call)).

⁴³ BellSouth Opposition at 17-18.

⁴⁴ Sprint Comments at 5-7.

14. As a threshold matter, we are not persuaded by BellSouth's suggestion that the Commission never intended that the EES methodology apply to Feature Group D calls.⁴⁵ BellSouth does not cite to any Commission precedent precluding the use of the EES methodology for Feature Group D services in instances where call identifying information is not available. Although the majority of Feature Group D traffic provides some means of identifying the jurisdictional nature of the traffic, the Commission has not explicitly prohibited the use of the EES methodology to determine jurisdiction in the few cases where the incumbent LEC does not have the technical ability to receive jurisdictional information that is transmitted with Feature Group D traffic.⁴⁶

15. 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. Thrifty Call construed the terms "customer network" and "point of entry" in section 2.3.10(A)(1)(a) of BellSouth's federal tariff as applying to Thrifty Call's network.⁴⁷ 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 precedent holding that the points where the call originates and terminates are more significant than the intermediate facilities used to complete such communications.⁴⁸ Thus, a call is intrastate if it originates and terminates in the same state.⁴⁹ 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.⁵⁰ The fact that the calls at issue were routed through a switch in Georgia is immaterial

⁴⁵ BellSouth Opposition at 18.

⁴⁶ In this particular case, at the time of the dispute BellSouth did not have the capability to receive the ANI and calling party number (CPN) information that was transmitted with the Feature Group D traffic. BellSouth Opposition at 3. In 2000, BellSouth acquired the ability to calculate PIU factors for carriers through identification of a number of call fields that indicate the originating location of the call. BellSouth Opposition at 3 n.4.

⁴⁷ Thrifty Call Petition at 16.

⁴⁸ See, e.g., *United States v. AT&T*, 57 F. Supp. 451, 454 (S.D.N.Y. 1944); *New York Telephone Co. Exchange System Access Line Terminal Charge for FX and CCSA Service*, N.Y. P.S.C. Tariff No. 800 – Telephone, Memorandum Opinion and Order, 76 FCC 2d 349, 352, para. 9 (1980); *Teleconnect Reconsideration Denial Order*, 10 FCC Rcd at 1629, para. 12. In support of its argument that the point where the call first enters its network is the origination point, Thrifty Call cites a description of the EES methodology in a 1991 Commission decision. Thrifty Call Petition at 18 (citing *Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture*, CC Docket Nos. 89-79 and 87-313, Report and Order and Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524, 4535-36, para. 66 (1991) ("Under the EES, access customers designate the jurisdictional status of a call based on the relationship between the point where a call first enters their network (e.g., their POP) and the terminating number")). In that 1991 decision, however, the Commission was not addressing the situation where interexchange services are provided jointly by multiple IXCs for the same call.

⁴⁹ *Bell Atlantic*, 206 F.3d at 5. Although the Commission has applied this type of end-to-end analysis to traditional telecommunications services, such as those provided by Thrifty Call, it has acknowledged that an approach based on the geographic end points of a call may be a poor fit as applied to services that involve the Internet. See, e.g., *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3316-17, 3320-21, paras. 16, 21 (2004) (noting that the idea of end points has little relevance for the use of a server via the Internet).

⁵⁰ *Bell Atlantic*, 206 F.3d at 4 (quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Inter-Carrier Compensation for ISP-Bound Traffic*, Declaratory Ruling in CC (continued....)

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.⁵¹

16. This construction of the relevant BellSouth tariff terms is consistent with the Commission's EES methodology. Under the EES methodology, calls that enter an IXC network in the same state as that in which the called station is located are deemed to be intrastate and calls that terminate in a different state than their IXC point of entry are considered interstate.⁵² In adopting the EES methodology, the Commission was attempting to devise a way for carriers more accurately to report their interstate and intrastate usage.⁵³ The Commission also was concerned about false allocations of traffic.⁵⁴ Thrifty Call entered into a contractual relationship with other IXCs whereby calls that entered the third-party IXC network in North Carolina were passed through a switch owned by Thrifty Call in Georgia and then terminated in North Carolina by Thrifty Call.⁵⁵ Thrifty Call then treated each call as two separate interstate calls -- one call terminating in Georgia and the other call originating in Georgia -- because the calls entered Thrifty Call's network at its switch in Georgia.⁵⁶ Instead, using the EES methodology, this type of call constitutes one intrastate call rather than two interstate calls. Thrifty Call incorrectly used as the point of entry the state in which the call entered *Thrifty Call's* network, rather than, as intended under the EES methodology, the state in which the call left the originating LEC's network and entered the IXC network. Thrifty Call's application of the EES methodology is flatly inconsistent with the Commission's purposes in adopting it.

C. Audits

17. BellSouth's federal tariff provides that "when a billing dispute arises ... [BellSouth] may, by written request, require the [IXC] to provide the data the [IXC] used to determine the projected interstate percentage."⁵⁷ BellSouth's federal tariff further provides that "[t]his written request will be considered the initiation of the audit."⁵⁸ On January 31, 2000, BellSouth notified Thrifty Call that it disputed the PIU reported by Thrifty Call and that it would invoke the jurisdictional verification

(...continued from previous page)

Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68, 14 FCC Rcd 3689, 3695-96, para. 10 (1999)).

⁵¹ It is noteworthy that Thrifty Call did not apply a consistent methodology to determine the jurisdiction of its calls. Thrifty Call admitted that in Georgia it used the originating and terminating points of the calls to determine their jurisdiction, rather than treating 100 percent of the calls as intrastate due to the use of Thrifty Call's Georgia-based switch in routing the calls. *North Carolina Commission Recommended Order* at 6.

⁵² *1985 EES Order*, 57 Rad. Reg. 2d (P&F) at 1581-83, paras. 25-32.

⁵³ *1985 EES Order*, 57 Rad. Reg. 2d (P&F) at 1580-82, paras. 20-25.

⁵⁴ *1985 EES Order*, 57 Rad. Reg. 2d (P&F) at 1583, paras. 29-30.

⁵⁵ Thrifty Call Petition at 2.

⁵⁶ Thrifty Call Petition at 15.

⁵⁷ BellSouth FCC Tariff No. 1 § 2.3.10(B)(1). *See also* BellSouth North Carolina Access Services Tariff § E2.3.14(B)(1) (containing identical language).

⁵⁸ BellSouth FCC Tariff No. 1 § 2.3.10(B)(1). *See also* BellSouth North Carolina Access Services Tariff § E2.3.14(B)(1) (containing identical language).

procedures of its applicable state access tariffs.⁵⁹ At that time, BellSouth also requested an immediate payment of \$1,801,331 for misreported traffic between March 1999 and November 1999.⁶⁰

18. BellSouth and Thrifty Call could not reach an agreement regarding the terms of the audit.⁶¹ In particular, BellSouth and Thrifty Call could not agree as to who would conduct the audit.⁶² The audit terms of BellSouth's federal and state tariffs provide that audits may be conducted by: (a) an independent auditor under contract to the telephone company; (b) a mutually agreed upon independent auditor; or (c) an independent auditor selected and paid for by the customer.⁶³ BellSouth's tariffs do not, however, provide a method for choosing an auditor if the parties cannot agree. In addition, BellSouth and Thrifty Call disagreed as to whether Thrifty Call should make the payment of \$1,801,331 requested by BellSouth in advance of the audit to cover the alleged misreporting of the traffic.⁶⁴ BellSouth and Thrifty Call also disagreed as to whether the audit results should be applied to one prior quarter of PIU reports, or for the entire time period covered by the audit.⁶⁵ While BellSouth and Thrifty Call were discussing the scope and terms of the audit, BellSouth initiated test calls over the Thrifty Call network to determine how calls that BellSouth knew to be intrastate affected Thrifty Call's PIU.⁶⁶ As a result of its test calls and the inability of the parties to agree on the terms and scope of the audit, BellSouth withdrew its audit request and filed complaints with the North Carolina commission and the Florida commission contending that Thrifty Call misreported its PIU.⁶⁷

19. In the instant petition for declaratory ruling, Thrifty Call asks the Commission to interpret the audit provisions in BellSouth's federal tariff to preclude BellSouth from attempting to collect underpaid access charges until an audit is completed.⁶⁸ First, Thrifty Call and VarTec argue that the audit provision is mandatory and that the term "may" should be read as "shall" in this context because that is

⁵⁹ Thrifty Call Petition at 3 and Exhibit 2; BellSouth Opposition at 5.

⁶⁰ Thrifty Call Petition at 3; BellSouth Opposition at 5; BellSouth January 31, 2000 Letter at 1.

⁶¹ Thrifty Call Petition, Exhibit 2 (Letter from J. Henry Walker, BellSouth Telecommunications, to Danny E. Adams, Counsel to Thrifty Call at 1) (Apr. 7, 2000) (BellSouth April 7, 2000 Letter)).

⁶² Thrifty Call Petition, Exhibit 2 (Letter from Danny E. Adams, Counsel to Thrifty Call, to J. Henry Walker, BellSouth Telecommunications at 2 (Feb. 10, 2000) (Thrifty Call February 10, 2000 Letter) (requesting that the accounting firm Ernst & Young conduct the audit); Letter from Danny E. Adams, Counsel to Thrifty Call, to J. Henry Walker, BellSouth Telecommunications at 2 (Mar. 22, 2000) (Thrifty Call March 22, 2000 Letter) (noting the delay of the audit pending agreement by BellSouth to waive a conflict of interest regarding Ernst & Young's prior work)).

⁶³ See BellSouth FCC Tariff No. 1 § 2.3.10 (B)(3); BellSouth North Carolina Access Services Tariff § E2.3.14(B)(3). The audit provisions contained in the federal and North Carolina state tariffs are virtually identical. The only apparent differences are that the federal tariff uses the term "customer" to refer to end users and IXCs and the state tariff uses the term IC to refer to IXCs, and the federal tariff uses the term "Telephone Company" to refer to BellSouth and the state tariff uses the term "Company" to refer to BellSouth. See BellSouth FCC Tariff No. 1 § 2.3.10 (B), (D) and (E) and BellSouth North Carolina Access Services Tariff § E2.3.14(B), (D) and (E).

⁶⁴ BellSouth January 31, 2000 Letter at 1; Thrifty Call February 10, 2000 Letter at 2.

⁶⁵ BellSouth April 7, 2000 Letter at 1-2.

⁶⁶ BellSouth Opposition at 5.

⁶⁷ BellSouth Opposition at 6; Thrifty Call Petition at 3.

⁶⁸ Thrifty Call Petition at 7-13.

BellSouth's consistent practice within the tariff.⁶⁹ In support of its position, Thrifty Call notes that section 2.3.10(B)(2) of BellSouth's federal tariff provides that "verification audits may be conducted no more frequently than once per year."⁷⁰ Thrifty Call asserts that the word "may" in this section must be construed as "shall" because a previous Common Carrier Bureau decision concluded that audits could not be conducted more frequently than once a year.⁷¹ In response, BellSouth notes that both the courts and the Commission have consistently interpreted "may" as permissive, optional, or discretionary.⁷²

20. Our review of BellSouth's federal tariff does not support Thrifty Call's assertion that BellSouth must complete an audit before it can attempt to collect underpaid access charges.⁷³ The actual language of section 2.3.10(B)(2) states that "verification audits may be conducted"; it does not require BellSouth to conduct a verification audit.⁷⁴ Thus, BellSouth may choose not to conduct yearly verification audits. Moreover, a review of this section of BellSouth's tariff also reveals that BellSouth has used "shall" where it intends to create a mandatory obligation.⁷⁵ For example, BellSouth FCC Tariff No. 1 § 2.3.10(B)(1) provides that "[t]he customer *shall* supply the [requested PIU] data to an independent auditor or the Telephone Company within 30 days of the Telephone Company request."⁷⁶ BellSouth has used "shall" in this section where it intends to create a mandatory obligation; we therefore construe "may" in the same section as permissive, not mandatory.⁷⁷

21. Thrifty Call also asserts that a reading of the entire tariff compels the conclusion that the

⁶⁹ Thrifty Call Petition at 9-10; VarTec Reply at 13-15. Thrifty Call also notes that, in section 69.3 of its rules, the Commission used "may" when it meant to impose a mandatory obligation. Thrifty Call Petition at 12-13 (citing 47 C.F.R. § 69.3(e)(7) and *Southwestern Bell Telephone Co. FCC Tariff No. 73*, CC Docket No. 97-158, Order Concluding Investigation and Denying Application for Review, 12 FCC Rcd 19311, 19321, paras. 17-18 (1997) (rejecting SWBT's argument that section 69.3(e)(7)'s statement that a carrier "may file a tariff that is not an association tariff" creates a permissive, not a mandatory, obligation for a LEC to file a tariff)).

⁷⁰ Thrifty Call Petition at 11 (citing BellSouth FCC Tariff No. 1 § 2.3.10(B)(2)).

⁷¹ Thrifty Call Petition at 11 (citing *BellSouth Tel. Cos., Revisions to Tariff FCC No. 4*, Order, 5 FCC Rcd 716 (Com. Car. Bur. 1990)).

⁷² BellSouth Opposition at 13 (citing *Shea v. Shea*, 597 P.2d 418 (Okla. 1975) ("may" usually is employed to imply permissive or discretionary conduct); *Implementation of the Telecommunications Act of 1996: Amendment of Rules Governing Procedures To Be Followed When Formal Complaints Are Filed Against Common Carriers*, CC Docket 96-238, Notice of Proposed Rulemaking, 11 FCC Rcd 20823, 20855 (1996) (a defendant may, but is not required to, file permissive counterclaims)).

⁷³ The parties agree that in this case BellSouth did initiate the audit process, but it did not complete the audit because the parties disagreed over how the audit would be conducted. Thrifty Call Petition at 3, 13; BellSouth Opposition at 5-6.

⁷⁴ BellSouth FCC Tariff No. 1 § 2.3.10(B)(2). See also Thrifty Call Petition at 11 (acknowledging that BellSouth may initiate an audit less frequently than once per year (or never at all)).

⁷⁵ BellSouth FCC Tariff No. 1 § 2.3.10(B)(1) ("The customer shall keep records of call detail" and "The customer shall supply the data to an independent auditor").

⁷⁶ BellSouth FCC Tariff No. 1 § 2.3.10(B)(1) (emphasis added).

⁷⁷ See *Bennett v. Panama Canal Co.*, 475 F.2d 1280, 1282 (D.C. Cir. 1973) (finding that a permissive interpretation is proven because, when Congress intended a mandatory directive it used "shall" in the same statute). See also *Merchants Bank v. Federal Reserve Bank*, 262 U.S. 649, 662 (1923) (finding that, ordinarily, "may" is a permissive and not a mandatory term).

audit mechanism in the tariff is the sole method by which BellSouth may dispute a customer's reported PIU.⁷⁸ Thrifty Call argues that the six-month record retention provision in BellSouth's federal tariff is tied to the audit procedures, and, because the record retention provision is mandatory, the audit provisions must also be construed as mandatory.⁷⁹ Thrifty Call is correct that the six-month record retention requirement is mandatory under BellSouth's federal tariff, but it is a mandatory obligation on the *customer*, not on BellSouth.⁸⁰ We do not see how the imposition of a record-keeping obligation on an IXC taking service under the tariff could in any way be construed to limit the remedies available to BellSouth if it determines – through those records or through other information – that an IXC is not complying with the tariff.

22. For similar reasons we reject CompTel's argument that the filed tariff doctrine compels BellSouth to abide by the jurisdictional report verification procedures, including the audit provisions, contained in its tariffs before it may seek to recover underpaid access charges.⁸¹ Under the filed tariff doctrine, a tariff filed with and approved by a regulating agency forms the "exclusive source" of the terms and conditions governing the provision of service of a common carrier to its customers.⁸² Although BellSouth's federal tariff explicitly states that BellSouth "may" conduct audits,⁸³ we find that this language creates a permissive remedy and does not preclude BellSouth from pursuing other legal remedies and dispute resolution options, including a collection action based on information not obtained through an audit.⁸⁴

23. Finally, Thrifty Call asserts that, in creating the PIU process, the Commission adopted the recommendation of the Federal-State Joint Board on Separations (Joint Board) and instructed LECs to include PIU audits as a part of the dispute resolution mechanism in their access tariffs.⁸⁵ VarTec argues that, regardless of the language of the tariff, the Commission intended the audit portion of the dispute resolution procedure to be mandatory.⁸⁶ We disagree. The Joint Board recommended, and the Commission approved, "general verification guidelines, including the audit process, in lieu of uniform, nationwide procedures."⁸⁷ In making its recommendation, the Joint Board specifically found that its experience in implementing the *1985 EES Order* and the record in the proceeding did not indicate that uniform, nationwide verification procedures were necessary.⁸⁸ Therefore, contrary to Thrifty Call and

⁷⁸ Thrifty Call Petition at 11.

⁷⁹ Thrifty Call Petition at 11-12 (citing BellSouth FCC Tariff No. 1 § 2.3.10 (C)).

⁸⁰ Section 2.3.10(C)(1) of BellSouth's federal tariff states that "[t]he customer shall retain for a minimum of six (6) months call detail records . . ." BellSouth FCC Tariff No. 1 § 2.3.10(C)(1).

⁸¹ CompTel Reply at 5.

⁸² *American Tel. & Telegraph Co. v. Central Office Tel., Inc.*, 524 U.S. 214, 222-27 (1998).

⁸³ BellSouth FCC Tariff No. 1 § 2.3.10(B)(1).

⁸⁴ See *Advantel, LLC v. AT&T Corp.*, 105 F. Supp. 2d 507, 511 (E.D. Va. 2000) (finding that a tariff is an offer to contract, therefore a carrier may bring an action to enforce a tariff to collect amounts due under it before the courts).

⁸⁵ Thrifty Call Petition at 4-6. See also VarTec Comments at 5 (audit process is the only PIU dispute resolution procedure provided for by the Commission).

⁸⁶ VarTec Comments at 7.

⁸⁷ *1989 Jurisdictional Usage Order*, 4 FCC Rcd at 8450, para. 15; *Joint Board Order*, 4 FCC Rcd at 1966, para. 2.

⁸⁸ *Joint Board Order*, 4 FCC Rcd at 1975, para. 74.

VarTec's claims, the Commission did not require LECs to initiate audits before attempting to resolve PIU disputes. We find that the audit provisions contained in BellSouth's federal tariff are permissive.⁸⁹ Accordingly, given the permissive language of BellSouth's tariff regarding audits and the fact that the parties could not reach agreement on the terms, conditions, and scope of the audit, it was not unreasonable for BellSouth to seek an alternative resolution of the issues.

D. Backbilling

24. Section 2.3.10(D)(1) of BellSouth's federal tariff states:

The Telephone Company will adjust the customer's PIU based upon the audit results. The PIU resulting from the audit shall be applied to the usage for the quarter the audit is completed, the usage for the quarter prior to the completion of the audit, and the usage for the two (2) quarters following the completion of the audit.⁹⁰

In a separate subsection, section 2.3.10(C)(1) of BellSouth's federal tariff mandates that "[t]he customer shall retain for a minimum of six (6) months call detail records that substantiate the interstate percent provided to the Telephone Company . . ."⁹¹ Thrifty Call argues that, under section 2.3.10(D)(1) of its federal tariff, BellSouth is limited to one prior quarter of PIU revisions and backbilling.⁹² Thrifty Call further argues that, because section 2.3.10(C)(1) of BellSouth's tariff requires IXCs to retain call detail records for only six months, it would be next to impossible for carriers to controvert BellSouth's recalculations of earlier periods.⁹³ Similarly, VarTec asserts that the six-month record retention period provision in BellSouth's tariff is meaningless if BellSouth is free to seek retroactive adjustment of the PIU for services provided prior to that six-month period, because the IXC would then need the call detail records from those past periods to defend itself.⁹⁴ VarTec notes that the Commission generally sets the duration of record retention periods so that records will be available during the period in which a dispute may arise.⁹⁵ Finally, Thrifty Call contends that section 415(a) of the Communications Act limits BellSouth to backbilling for a period no longer than two years.⁹⁶

25. In response, BellSouth asserts that, in situations where it chooses not to conduct an audit, or the PIU is not revised based on audit results, BellSouth is not limited to seeking retroactive payment for

⁸⁹ Our conclusion is consistent with the North Carolina commission's and court's findings that the audit provisions in BellSouth's North Carolina state tariff are permissive. *North Carolina Commission Recommended Order* at 6; *North Carolina Appellate Decision*, 571 S.E.2d at 626-27.

⁹⁰ BellSouth FCC Tariff No.1 § 2.3.10(D)(1).

⁹¹ BellSouth FCC Tariff No.1 § 2.3.10(C)(1).

⁹² Thrifty Call Petition at 14. *See also* CompTel Reply at 5-6 (arguing that the filed tariff doctrine compels BellSouth to abide by the limitations on backbilling contained in BellSouth's federal tariff).

⁹³ Thrifty Call Reply at 6-7.

⁹⁴ VarTec Comments at 8.

⁹⁵ VarTec Comments at 9 (citing *Policy and Rules Concerning the Interstate Interexchange Market*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 (1996)).

⁹⁶ Thrifty Call Reply at 7 (citing 47 U.S.C. § 415). Section 415(a) requires that "[a]ll actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun, within two years from the time the cause of action accrues, and not after." 47 U.S.C. § 415(a).

only one prior quarter.⁹⁷ BellSouth argues that in a case such as this one, which includes allegations of fraudulent and intentional misrepresentation of PIU, it would be unreasonable and unfair to limit the relief sought.⁹⁸ SBC argues that there is no basis to conclude that a tariff backbilling limitation operates as a *de facto* statute of limitations on damages.⁹⁹ Finally, BellSouth asserts that it would be discriminatory to BellSouth's other IXC customers to limit BellSouth to one prior quarter of payment for undercharges in this case.¹⁰⁰ BellSouth explains that, because it is legally obligated to bill and collect charges contained in its tariffs, it was required to collect full payment from Thrifty Call for the underreported PIU, just as it collected full payment from its other IXC customers.¹⁰¹

26. In ruling on BellSouth's state complaint against Thrifty Call, the North Carolina commission found that BellSouth provided sufficient evidence to support its claim for \$1,898,685 in backbilled intrastate access charges.¹⁰² The North Carolina commission rejected Thrifty Call's argument that BellSouth's recovery was limited by its tariff, finding this to be simply a variation of Thrifty Call's argument regarding the mandatory nature of the audit provisions in BellSouth's intrastate tariff, which it also rejected.¹⁰³ The North Carolina Court of Appeals agreed and found that the backbilling provisions of BellSouth's tariff apply only when an audit has been undertaken by BellSouth.¹⁰⁴ The court further found that the language of the tariff did not preclude the North Carolina commission from awarding BellSouth backbilled intrastate access charge payments because a bar on backbilling would deny BellSouth relief from the misreporting of access traffic.¹⁰⁵

27. In this case, the backbilling amount sought by BellSouth from Thrifty Call is based on an underpayment of intrastate access charges due to Thrifty Call's erroneous PIU calculation. Therefore, it was within the North Carolina commission's jurisdiction to determine whether BellSouth provided sufficient evidence to prove its claimed backbilling amount. The North Carolina commission found that

⁹⁷ BellSouth Opposition at 15-16. *See also* SBC Opposition at 4 (backbilling provisions do not provide the exclusive remedy for PIU misreporting).

⁹⁸ BellSouth Opposition at 15-16. *See also* SBC Opposition at 3-4 (asserting that there are fundamental differences between a tariff backbilling provision that is designed to protect customers that are assessed retroactive charges and a claim for damages arising out of unlawful and fraudulent behavior).

⁹⁹ SBC Opposition at 4.

¹⁰⁰ BellSouth Reply at 7.

¹⁰¹ BellSouth Reply at 7-8 (citing section 202 of the Act, prohibiting carriers from engaging in preferential treatment or unreasonable discrimination, and section 203 of the Act, mandating that carriers collect lawful, tariffed charges). 47 U.S.C. §§ 202 and 203.

¹⁰² *North Carolina Commission Recommended Order* at 7. Although the North Carolina commission's order states that this amount is for backbilled intrastate access charges for the period from 1996 to 2000, *North Carolina Commission Recommended Order* at 3, the North Carolina court decision states that the awarded amount of \$1,898,685 represents the difference between the application of the interstate access charge rate and the intrastate access charge rate for the period between January 1998 and April 2000. *North Carolina Appellate Decision*, 571 S.E.2d at 630.

¹⁰³ *North Carolina Commission Recommended Order* at 7. BellSouth's North Carolina state tariff contains language that is virtually identical to the back-billing audit provisions in section 2.3.10(D)(1) of BellSouth's federal tariff. BellSouth North Carolina Access Services Tariff §E2.3.14(D)(1); BellSouth FCC Tariff No. 1 § 2.3.10(D)(1).

¹⁰⁴ *North Carolina Appellate Decision*, 571 S.E.2d at 630.

¹⁰⁵ *North Carolina Appellate Decision*, 571 S.E.2d at 630.

BellSouth met this burden and the state court affirmed the decision. Accordingly, we deny Thrifty Call's petition with respect to this issue.¹⁰⁶

IV. ORDERING CLAUSES

28. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, and the authority delegated in section 0.91 of the Commission's rules, 47 C.F.R. § 0.91, that the Petition for Declaratory Ruling filed by Thrifty Call, Inc., is denied to the extent discussed herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief
Wireline Competition Bureau

¹⁰⁶ Thrifty Call argues that section 415(a) of the Act limits the damages sought by BellSouth to a period of, at most, two years. Thrifty Call Reply at 7 (citing 47 U.S.C. § 415). This section applies only to interstate access charges. If there are limits on the damages for intrastate access charges, such as those assessed by the North Carolina commission against Thrifty Call, they would be contained in state statutes.