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May 5, 2008

**Via Hand Delivery**

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

RECEIVED-FPSC  
08 MAY -5 PM 3:52  
COMMISSION  
CLERK

Re: Docket No. 000475-TP  
Complaint by Bellsouth Telecommunications, Inc., against Thrifty Call, Inc.  
regarding practices in the reporting of percent interstate usage for compensation  
for jurisdictional access services

Dear Ms. Cole:

Enclosed for filing on behalf of Thrifty Call, Inc. ("Thrifty Call"), please find an original and fifteen copies of Thrifty Call, Inc.'s Prehearing Statement.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for assistance with this filing.

Sincerely,



Martin P. McDonnell

- CMP
- COM
- CTR
- ECF
- GOL *R*
- OPC
- RCA *1* /vp
- SCR
- SGA
- SEC
- OTH

Enclosures

DOCUMENT NUMBER-DATE

03690 MAY-5 g

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: )  
 ) Docket No. 000475-TP  
Complaint by BellSouth Telecommunications, Inc. )  
against Thrifty Call, Inc. regarding practices in the ) Filed: May 5, 2008  
reporting of percent interstate usage for compensa- )  
tion for jurisdictional access services )  
\_\_\_\_\_ )

**PREHEARING STATEMENT OF  
THRIFTY CALL, INC.**

Pursuant to Order No. PSC-07-1027-PCO-TP issued December 28, 2007, Thrifty Call, Inc. (herein after referred to as "Thrifty Call" ) hereby files its Prehearing Statement.

- | 1. | <u>WITNESSES</u>    | <u>ISSUES</u> |
|----|---------------------|---------------|
|    | A. Timothy J. Gates | 1,4           |
|    | B. Harold Lovelady  | 1,2,3,4       |
- 
- | 2. | <u>EXHIBITS</u>  |
|----|--|
|    | TJG-1 Qualifications of Timothy J. Gates                                   |
|    | TJG-2-5 Pertinent calculations regarding alleged underpayments             |
|    | HL-1 Audit letter dated January 18, 2000 from J. Henry Walker              |
|    | HL-2 Letter dated February 10, 2000 from Danny E. Adams to J. Henry Walker |
|    | HL-3 Letter dated March 22, 2000 from Danny Adams to J. Henry Walker       |
- 
- | 3. | <u>BASIC POSITION</u> |
|----|-----------------------|
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AT&T's complaint alleging that Thrifty Call misreported its PIU during the period of 1999 and 2000 mischaracterizes Thrifty Call's business policies and practices, which were prudent, sound, and appropriate. At that time, Thrifty Call utilized the entry exit surrogate ("EES") method of jurisdictionalizing its traffic, which had been approved by the FCC as early as 1986. Thrifty Call recognizes that years later, in 2004, the FCC's Wireline Competition Bureau issued an order regarding the Bureau's interpretation of Bellsouth's tariff and the EES methodology, however Thrifty Call disagrees with the FCC Wireline Competition Bureau's conclusions.

Additionally, AT&T failed to follow the requirements of its own tariff regarding audit procedures and late charges and penalties. If the Commission finds that Thrifty Call is indebted to AT&T as a result of Commission Staff's audit, any damages should be limited to the principal amounts as calculated by witness Timothy J. Gates, and AT&T should not be allowed to inappropriately apply any late payments or penalties in violation of its tariff.

4. STATEMENT OF QUESTIONS OF FACT, LAW AND POLICY

Issue 1. What are the terms and conditions of the tariff associated with correcting and backbilling misreported PIU?

Thrifty Call: Section E.2.3.14(D)1 of AT&T's tariff provides that when a dispute arises between AT&T and the carrier customer (Thrifty Call) pertaining to the PIU, AT&T may require the customer "to provide the data the IC or end user used to determine the projected intrastate percentage." Section E.2.3.14(D)1 clearly limits the applicability of audit results to a period of four calendar quarters:

“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 two (2) quarters following the completion of the audit.”

Section E.2.3.14(D)1 requires customers to maintain relevant data for the most recent six month period. Therefore, in April 2000, when the instant Complaint was filed, Thrifty Call was required to maintain data only for the third and fourth quarter of 1999. It would be inconsistent therefore for the Commission to rule that Thrifty Call is indebted to AT&T for any period prior to the third quarter of 1999, especially in light of the fact that there are no records supporting any claim. To the extent the results of the audit were to have been used to update AT&T’s invoices to Thrifty Call, the tariff dictates that the invoices for the third and fourth quarters of 1999 would have been potentially impacted. (See AT&T’s Intrastate Access Services Tariff section E.2.3.14(D)1.)

Finally, AT&T’s tariff does not allow any claim for late payment interest or penalties. The pertinent tariff provision relied on by AT&T clearly addresses end user uncollectible amounts after the end user has been properly invoiced. AT&T has never invoiced the amounts it now claims for late payment penalties, and thus AT&T failed to comply with its own tariff. (See AT&T’s Intrastate Access Services Tariff at section E.2.4.1.)

Issue 2. Has AT&T complied with its tariff provisions?

Thrifty Call: No. AT&T has not complied with its tariff provisions regarding the audit procedures wherein a dispute arises regarding the reporting of PIU. Specifically,

AT&T initiated the audit by letter and abruptly abandoned its own tariff provisions and filed the instant Complaint.

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

Thrifty Call: Thrifty Call has not misreported its PIU to AT&T. During the 1999-2000 time period, Thrifty Call utilized the EES method of jurisdictionalizing its traffic that was terminated to AT&T. Thrifty Call recognizes the ruling of the FCC's Wireline Competition Bureau regarding this issue and disputes it.

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

Thrifty Call: Thrifty Call did not misreport its PIU to AT&T. If the Commission finds otherwise, AT&T should only be allowed to recover actual damages as illustrated in TJG-1. Tariff section E2.3.14(D)(1) expressly and unambiguously limits any PIU revision resulting from an audit to the quarter when the audit is completed, to the immediate prior quarter, and then to the next two quarters going forward. Therefore, even if the Commission recognizes AT&T's request for relief, by the terms of AT&T's own tariff, recovery is limited to the quarter prior to which the audit was initiated and any claims going forward from the audit. Finally, AT&T's tariffs in effect at the time of this dispute, when read *in pari materia*, completely preclude the award of any late payment penalties on the purported principal amounts due. Pursuant to Tariff section E2.4.1.(B) (2), if AT&T believed it was entitled to impose additional usage charges, it was required to render timely invoices for those charges. Late charges can only accrue after an invoice is rendered. Finally, section E2.4.1.(B) (3), (the tariff provision that AT&T claims calls for a late payment penalty in this case,) unequivocally limits the imposition of a late

payment penalty to the failure to pay a bill on time. In short, there is no basis to apply penalties to amounts that have never been billed.

5. STIPULATED ISSUES

None.

6. A STATEMENT OF ALL PENDING MOTIONS OR OTHER MATTERS THE PARTIES SEEKS ACTION UPON

None.

7. A STATEMENT IDENTIFYING THE PARTIES PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

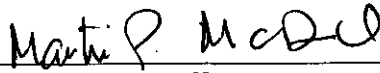
8. ANY OBJECTIONS TO A WITNESS' QUALIFICATIONS AS AN EXPERT

None.

9. A STATEMENT AS TO ANY REQUIREMENT SET FORTH IN THE PROCEDURAL ORDER THAT CANNOT BE COMPLIED WITH, AND THE REASONS THEREFORE

None.

RESPECTFULLY SUBMITTED this 5 day of May, 2008.

  
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Counsel for Thrifty Call, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 5 day of May, 2008:

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MARTIN P. MCDONNELL, ESQ.

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