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May 14, 2008

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COMMISSION CLERK

Via Hand Delivery

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

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 Response in Opposition to AT&T Florida's Motion to Compel.

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

Martin P. McDonnell

- TMA
- TDB
- TFR
- TSP
- TOL
- TPC
- TCA
- TCB
- TCSA
- SEC
- OTH

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Enclosures

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re:)
)
Complaint by BellSouth Telecommunications, Inc.) Docket No. 000475-TP
against Thrifty Call, Inc. regarding practices in the) Filed: May 14, 2008
reporting of percent interstate usage for compensa-)
tion for jurisdictional access services)

**THRIFTY CALL, INC.'S RESPONSE IN OPPOSITION TO AT&T FLORIDA'S
MOTION TO COMPEL**

Thrifty Call, Inc. ("Thrifty Call"), hereby files this Response In Opposition to AT&T Florida's Motion to Compel (the "Motion To Compel") filed May 7, 2008. The Motion to Compel requests that the Commission order Thrifty Call to respond to AT&T Florida's Fifth Request for Production of Documents Nos. 32-44.

ARGUMENT

First and foremost, AT&T Florida's May 7, 2008 Motion to Compel is not timely. Thrifty Call has timely filed all objections and responses to AT&T Florida's voluminous discovery requests in this docket yet AT&T Florida waited over two weeks to move to compel these responses, thereby failing to complete its discovery within the discovery cutoff date. AT&T Florida has served Thrifty Call with over 150 requests for interrogatories and requests for production of documents, and many, if not most of those requests had subparts.

On February 18, 2008, Thrifty Call served its objections to AT&T Florida's Second Set of Interrogatories and Objections to Second Request for Production of Documents. On February 20, 2008, Thrifty Call received AT&T Florida's Third Set of Interrogatories (nos. 51-71) and Third Request for Production of Documents (nos. 23 and 24). On February 21, 2008, Thrifty Call served its responses to AT&T's Second Set of Requests for Production of Documents (nos.

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16-22) and Second Set of Interrogatories (nos. 31-50). On March 3, 2008, Thrifty Call served its objections to AT&T Florida's Third Set of Interrogatories (nos. 51-71) and Third Request for Production of Documents (nos. 23, 24). On March 14, 2008, Thrifty Call served its responses to AT&T's Third Set of Interrogatories and Third Request for Production of Documents. On March 11, 2008, Thrifty Call was served with AT&T Florida's Fourth Set of Interrogatories (nos. 72-97) and Fourth Request for Production of Documents (nos. 25-31), on March 21, 2008, Thrifty Call timely served its objections to AT&T Florida's Fourth Set of Interrogatories and Fourth Request for Production of Documents. On March 26, 2008, Thrifty Call timely served its responses to AT&T's Fourth Set of Interrogatories and Fourth Request for Production of Documents. Thrifty Call filed its objections to AT&T Florida's Fifth Request for Production of Documents Nos. 32-44, on April 18, 2008.

If AT&T Florida is truly "in need of the information requested on the above referenced discovery to properly prepare its case" as stated in its Motion to Compel, it would have, and should have, filed its Motion to Compel in a timely manner. By Order No. PSC-07-1027-PCO-TP issued December 28, 2007, the Commission cut off discovery in the instant docket on April 1, 2008. In Order No. PSC-08-0188-PCO-TP issued March 25, the Commission amended the discovery cut off date to May 5, 2008. That date has now passed. The matter is scheduled for prehearing in six days and for hearing in 27 days. This Complaint was filed in April 2008, and AT&T Florida has had every opportunity to timely request the documents it now seeks in its untimely Motion to Compel. Florida courts recognize that when a party has not been diligent in seeking discovery, the court is free to deny motions to compel. See *Southern California Funding, Inc. v. Hutto*, 438 So.2d, 426 (1st DCA 1983).

Secondly, the requests are unduly burdensome. The law is clear that discovery under the Florida Rules of Civil Procedure, although wide-ranging, has certain limits. It cannot be utilized to explore all the minute details of a controversy or delve into immaterial or inconsequential matters. Nor can such discovery be so unduly burdensome upon a party as to be oppressive. *Cabrera v. Evans*, 322 So. 2d 559 (Fla. 3d DCA 1975); *Riddle Airlines, Inc. v. Mann*, 123 So. 2d 685 (Fla. 3d DCA 1960). AT&T Florida is aware, and has been aware, that Thrifty Call is no longer an active business, and has not been an active business since the year 2000. There are no active officers of the organization and therefore Thrifty Call has no easy access to any business records (to the extent they still exist). Because Thrifty Call is no longer an active business there would be considerable time and expense necessary to travel to where the records may be, and to search for and compile the voluminous materials sought. Harold Lovelady, the only former corporate officer even remotely involved in this dispute, resides in Costa Rica. AT&T Florida is aware of that fact. Any documents requested in AT&T Florida's Request for Production of Documents Nos. 32-44, to the extent any of them exist, are in a warehouse in Texas. AT&T Florida is aware of that fact. Nonetheless, this is AT&T Florida's fifth consecutive request for production of documents to Thrifty Call. To require Harold Lovelady to interrupt his normal current business in order to travel to Texas and attempt to identify and obtain the information requested would involve great time and expense. That all this should be done to assist AT&T Florida to obtain materials requested in an untimely motion to compel is so unduly burdensome to Thrifty Call as to be oppressive. See e.g. *Travelers Indemnity Company v. Salido*, 354 So. 2d 963 (Fla. 3d DCA 1978).

Because Thrifty Call is no longer an active corporation nor has a records custodian, it should not be forced to undertake the financial burden required to respond to these requests, even

though some or all of such expense may ultimately be assessed and recovered as costs. *Schering Corporation v. Thornton*, 280 So. 2d 493 (Fla. 4th DCA 1973).

Finally, if Thrifty Call is required to produce the documents requested, the time necessary to do so would, in all likelihood, force a delay of the hearing scheduled June 10, 2008. The Motion to Compel should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

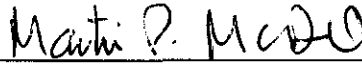
I HEREBY CERTIFY that a copy of the foregoing was furnished by U.S. Mail to the following this 14 day of May, 2008:

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MARTIN P. MCDONNELL, ESQ.

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