

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** June 19, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Mann)  
Division of Competitive Markets & Enforcement (Pruitt)

**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.

**AGENDA:** 07/01/08 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Argenziano, Skop, Edgar

**PREHEARING OFFICER:** Edgar

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\000475.RCM.DOC

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### Case Background

On April 21, 2000, BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) filed a complaint against Thrifty Call, Inc. (Thrifty Call). AT&T Florida alleged that Thrifty Call intentionally and unlawfully reported erroneous Percent Interstate Usage (PIU) factors to AT&T in violation of AT&T Florida's Intrastate Access Tariff and the rules and regulations established by the Commission. AT&T Florida alleged that erroneous PIUs have resulted in the under reporting of intrastate access terminating minutes to AT&T Florida, causing AT&T Florida financial harm.

On August 20, 2001, Thrifty Call filed a Motion to Stay or in the Alternative, to Bifurcate the Proceedings (Motion to Stay). On August 28, 2001, Order No. PSC-01-1749-PCO-TP, Order

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Establishing Procedure, was issued. On September 4, 2001, AT&T Florida filed its Opposition to Thrifty Call's Motion to Stay or in the Alternative, to Bifurcate the Proceedings. On November 21, 2001, Order No. PSC-01-2309-PCO-TP was issued, granting Thrifty Call's Motion to Stay.

On July 20, 2005, AT&T Florida filed a Motion to Lift Stay and Establish Procedural Schedule. On November 2, 2005, Order No. PSC-05-1100-PCO-TP, Order Granting AT&T Florida's Motion to Lift Stay and Establish Procedural Schedule, was issued. That same day Order No. PSC-05-1101-PCO-TP, Order Granting Motion to Withdraw as Counsel for Thrifty Call was issued. Thrifty Call was thus without counsel in this docket from November 2, 2005, to June 18, 2007.

On June 5, 2007, AT&T Florida filed a Motion for Summary Final Order. On July 2, 2007, Thrifty Call filed its Response in Opposition to AT&T Florida's Motion for Summary Final Order and Motion for Continuance. On July 17, 2007, AT&T Florida filed a letter in response to Thrifty Call's Motion for Continuance. On December 28, 2007, Order No. PSC-07-1027-PCO-TP, Order Modifying Procedure, was issued. On March 11, 2008, AT&T Florida filed a Notice of Withdrawal of its Motion for Summary Final Order.

On May 19, 2008 a Prehearing Conference was held. The hearing was scheduled to convene on June 10, 2008; however, on June 9, 2008, the parties filed a Joint Motion for Continuance. The parties requested a continuance of the hearing for a two-week period because they were engaged in settlement negotiations.

On June 17, 2008, the parties filed their Joint Notice of Settlement. The Joint Notice of Settlement stated that all claims and issues had been settled, stipulated to dismissal of this matter with prejudice, and requested the docket be closed.

**Discussion of Issues**

**Issue 1:** Should the Commission accept the parties' Joint Notice of Settlement, which stipulates the voluntary dismissal of this case, in its entirety, with prejudice?

**Recommendation:** Yes, the Commission should accept the parties' Joint Notice of Settlement, which stipulates the voluntary dismissal of this case, in its entirety, with prejudice. (Mann)

**Staff Analysis:** The Commission has repeatedly recognized that the right of a petitioner to take a voluntary dismissal is absolute.<sup>1</sup> Once a voluntary dismissal is taken, the trial court loses all jurisdiction over the matter, and cannot reinstate the action for any reason.<sup>2</sup> Thus, AT&T Florida can dismiss its complaint as a matter of right.

Accordingly, staff recommends that the Commission accept the parties' Joint Notice of Settlement, which stipulates the voluntary dismissal of this case, in its entirety, with prejudice.

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<sup>1</sup> Fears v. Lunsford, 314 So. 2d 578, 579 (Fla. 1975)

<sup>2</sup> Randle-Eastern Ambulance Service, Inc. v. Vasta, Elena a. etc., 360 So. 2d 68, 69 (Fla. 1978)

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**Issue 2**: Should this docket be closed?

**Recommendation**: Yes, the docket should be closed. (Mann)

**Staff Analysis**: The parties have filed a joint notice of settlement and requested the docket be closed. Since there are no pending issues that need to be addressed by the Commission, staff recommends that the request be granted and the docket be closed.