

ORIGINAL

RECEIVED-FPSC

Legal Department

MICHAEL P. GOGGIN
General Attorney

00 AUG 24 PM 4:42

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5561

RECORDS AND
REPORTING

August 24, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

**Re: Docket No. 000890-TI - Request for Cancellation of
Interexchange Telecommunications Certificate No. 3990 by
Thrifty Call, Inc., effective 7/10/00**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion to Intervene, Response to Request for Cancellation of Interexchange Certificate and Request for Oral Argument, which we asked that you file in the above matter.

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,

Michael P. Goggin

Michael P. Goggin
(22)

- APP _____
- CAF _____
- CMP _____
- COM 5 _____
- CTR _____
- ECR _____
- LEG I _____
- OPC _____
- PAI _____
- RGO [Signature] _____
- SEC 1 _____
- SER _____
- OTH [Signature] _____

cc: All Parties of Record
Marshall M. Criser III
Douglas Lackey
Nancy B. White

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

Done 8/30/00

DOCUMENT NUMBER-DATE

10478 AUG 24 8

FPSC-RECORDS/REPORTING

CERTIFICATE OF SERVICE
Docket No. 000890-TI Thrifty Call, Inc.

I HEREBY CERTIFY that a true and correct copy was served via (*) Hand-Delivery and Facsimile and Federal Express this 24th day of August, 2000 to the following:

Tim Vaccaro (*)
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Thrifty Call, Inc.
Gary L. Mann, President
401 Carlson Circle
San Marcos, Texas 78666
Tel. No. (512) 392-6276
Fax. No. (512) 392-6276

Floyd R. Self (*)
Messer, Capareello & Self, P.A.
215 South Monroe Street
Suite 701
P.O. Box 1876
Tallahassee, FL 32302-1876
Tel. No. (850) 222-0720
fself@lawfla.com

Danny E. Adams
Kelley Drye & Warren, L.L.P.
1200 19th Street, N.W.
Suite 500
Washington, D.C. 20036
Tel. No. (202) 955-9600
Fax. No. (202) 955-9792

Thrifty Call
Harold E. Lovelady, President
125 Monroe Street
Suite 101
San Marcos, Texas 78666
Tel. No. (512) 754-6406
Fax. No. (512) 754-6379


Michael P. Goggin
(2)

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request of Thrifty Call, Inc.) Docket No. 000890-TI
For Cancellation of Interexchange)
Telecommunications Certificate)
_____) Filed: August 24, 2000

**BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION TO INTERVENE,
RESPONSE TO REQUEST FOR CANCELLATION OF INTEREXCHANGE
CERTIFICATE AND REQUEST FOR ORAL ARGUMENT**

BellSouth Telecommunications, Inc. ("BellSouth") hereby requests that it be permitted to intervene in this docket in order to respond to Thrifty Call, Inc.'s ("Thrifty Call's") request for cancellation of its interexchange certificate. In addition, BellSouth requests oral argument on its motion to intervene and Thrifty Call's request for cancellation, which currently is scheduled to be considered by the Commission as a consent item at its August 29, 2000 agenda conference.

1. On April 21, 2000, BellSouth filed a complaint with this Commission against Thrifty Call seeking the recovery of approximately \$2.5 million owed to BellSouth by Thrifty Call for the provision of intrastate access service. See, Complaint of BellSouth Telecommunications, Inc., Docket No. 000475-TP (Filed April 21, 2000)("Complaint")(attached as Exhibit 1). BellSouth filed the Complaint after it learned that Thrifty Call had intentionally and unlawfully reported inaccurate Percent Interstate Usage ("PIU") factors to understate its intrastate access usage.

2. Thrifty Call subsequently filed a motion to dismiss BellSouth's Complaint, which was considered and denied at the Commission's August 15 agenda conference. At that agenda conference, Thrifty Call's counsel suggested

DOCUMENT NUMBER-DATE

10478 AUG 24 8

EPSC-RECORDS/REPORTING

that the Complaint should be dismissed, in part, because Thrifty Call no longer offers interexchange service in Florida and has requested that the Commission cancel its certificate.¹ Indeed, counsel for Thrifty Call suggested that the Complaint be dismissed in part because he believed that by the time this matter was resolved, due to the passage of time, BellSouth would not be able to recover anything from Thrifty Call.² BellSouth also understands that Thrifty Call is in the process of selling its assets.

3. BellSouth requests the right to intervene in this matter to oppose Thrifty Call's request to cancel its certificate. BellSouth is owed approximately \$2.5 million by Thrifty Call as a result of Thrifty Call's intentional misreporting of its PIU. BellSouth believes that the cancellation of Thrifty Call's certificate would be followed by another motion to dismiss BellSouth's Complaint, this time arguing that the Complaint should be dismissed because Thrifty Call is no longer a certificated carrier, the Commission no longer has jurisdiction over it. Thrifty Call should not be permitted, as a certificated carrier, to use millions of dollars in telecommunications services, avoid payment by intentionally underreporting its usage, and avoid liability for its intentional actions by closing down its operation, turning in its certificate and moving on.

¹ It should be noted that there may be a discrepancy in Thrifty Call's representations to the Commission regarding just when Thrifty Call stopped selling its services in Florida. In its July 10 letter requesting cancellation of its certificate, Thrifty Call states that it withdrew its tariff effective October 1, 1999, but at the August 15 agenda, it stated that it did not stop providing service in Florida until April 10, 2000. Compare Letter of Harold Lovelady to Walter D'Haeseleer dated July 10, 2000 ("Request"), with Transcript of August 15, 2000 Agenda Conference ("Tr.") at 8, 16 (attached as Exhibits 2 and 3, respectively).

² Tr. at 8-9.

4. BellSouth contends that Thrifty Call's request for cancellation is not consistent with the Commission's rules. The Commission's rules regarding the cancellation of a certificate require the requesting carrier to provide a statement on the treatment of "final bills." Rule 25-24.474, Fla. Admin. Code. In its request for cancellation, Thrifty Call obliquely refers to the bills to its customers, but makes no mention of the amounts owed to BellSouth or the pending Complaint. See Request. Under the circumstances, BellSouth believes that Thrifty Call's request for cancellation should not be granted unless and until Thrifty Call either pays the amounts it owes for the services it has received from BellSouth, or deposits with the Commission an amount sufficient to cover the amount claimed in the Complaint and agrees that Thrifty Call (or the individuals or entities that acquire its assets or are its successors in interest) will remain subject to the jurisdiction of the Commission until a final, nonappealable order is issued in the Complaint proceeding and that they will comply with any such order.

5. BellSouth's motion to intervene should be granted because its ability to receive millions of dollars in payment for services it provided to Thrifty Call would be jeopardized if Thrifty Call's request for the cancellation of its certificate were granted. Accordingly, BellSouth's substantial interests would be affected by the outcome in this docket.

For all of the reasons stated above, BellSouth respectfully requests that the Commission order:

That BellSouth may intervene in this docket;


That Thrifty Call's request for cancellation of its certificate be removed from the consent portion of the August 29, agenda;

That BellSouth's request for oral argument be granted; and


That Thrifty Call's request for cancellation of its certificate be denied unless Thrifty Call first pays BellSouth the amount claimed in the Complaint for Thrifty Call's intrastate access usage, or deposits that amount with the Commission pending the resolution of the Complaint and agrees that Thrifty Call (or any entity or individual that may acquire its assets or become a successor in interest) will remain a party to the Complaint proceeding, will not challenge the jurisdiction of the Commission and will comply with any final nonappealable order of the Commission in that proceeding.

Respectfully submitted this 24th day of August, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.



NANCY B. WHITE (22)
MICHAEL P. GOGGIN
c/o Nancy H. Sims
150 So. Monroe Street, Suite 400
Tallahassee, FL 32301
(305) 347-5558



R. DOUGLAS LACKEY (22)
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0747

LISA S. FOSHEE
General Attorney

BellSouth Telecommunications, Inc.
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(404) 335-0754

April 21, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: New Docket - Complaint Thrifty Call, Inc.

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth Telecommunications, Inc.'s Complaint, which we asked that you file in the above matter.

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,



Lisa S. Foshee (ps)

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey
Nancy B. White

RECEIVED & FILED

Mar
PSC BUREAU OF RECORDS

Exhibit 1

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

Complaint of BellSouth Telecommunications, Inc.)
Regarding the Practices of Thrifty Call, Inc, in) Docket No. _____
The Reporting of Percent Interstate Usage for)
Compensation for Jurisdictional Access Services) Filed: April 21, 2000

COMPLAINT

BellSouth Telecommunications, Inc. ("BellSouth"), through its undersigned counsel, hereby files this Complaint against Thrifty Call, Inc. ("Thrifty Call"), pursuant to Rules 28-106.201 and 25-22.036(4)(b), Florida Administrative Code and Chapters 364 and 350, Florida Statutes (1999).

In support hereof BellSouth states as follows:

1. BellSouth submits that Thrifty Call is intentionally and unlawfully reporting erroneous Percent Interstate Usage ("PIU") factors to BellSouth in violation of BellSouth's Intrastate Access Tariff and the rules and regulations established by the Florida Public Service Commission. See Section E2.3.14 Jurisdictional Report Requirements. The intentional and unlawful PIUs provided by Thrifty Call result in the underreporting of intrastate terminating access minutes terminated to BellSouth. As a result, BellSouth has been damaged in an amount of approximately two and one-half million dollars (and continues to be damaged) through the loss of intrastate access revenues associated with the services provided to Thrifty Call.

2. BellSouth requests that the Commission take all appropriate action under the circumstances to protect BellSouth from further financial harm. Specifically, BellSouth requests that the Commission (1) find that Thrifty Call has intentionally and unlawfully reported PIUs and thereby has caused BellSouth financial harm; (2) order

Thrifty Call to refrain from further intentional and unlawful reporting on a going-forward basis; and (3) order Thrifty Call to produce an accounting of past PIU reporting and minutes of use sufficient to enable BellSouth to calculate its damages. BellSouth further states that this Complaint shall serve as notice to the Commission that BellSouth intends to discontinue service to Thrifty Call pursuant to BellSouth's Intrastate tariff. Finally, BellSouth requests such other relief as may be necessary and appropriate under the circumstances, including the imposition of appropriate fines on Thrifty Call.

3. BellSouth is an incumbent local exchange carrier certified to provide local exchange services in the state of Florida. BellSouth is a Georgia corporation with its principal place of business at 675 West Peachtree Street, N.E., Atlanta, Georgia, 30375. Among other services, BellSouth provides terminating access to interexchange carriers (IXCs) certificated by the Commission.

4. Thrifty Call is an IXC certificated by the Commission to provide interexchange service in the State of Florida. Thrifty Call subscribes to BellSouth's intrastate terminating access tariff. Its business address, according to Commission records, is 401 Carlson Circle, San Marcos, Texas, 78666.

5. BellSouth and Thrifty Call use the PIU reporting method to determine the jurisdictional nature of the traffic being exchanged by the parties and the resulting appropriate billing rates for such traffic. The PIU factor provided by Thrifty Call to BellSouth is 98% which means that according to Thrifty Call, 98% of terminating access minutes sent by Thrifty Call to BellSouth are interstate minutes. BellSouth uses the PIU to bill Thrifty Call either for interstate terminating access minutes or intrastate terminating access minutes depending on the PIU. In Florida, the intrastate access rate is

higher than the interstate access rate; thus, it costs Thrifty Call less in switched access charges to terminate interstate minutes than it does to terminate intrastate minutes.

6. From January, 1998, through March, 1999, Thrifty Call sent a negligible amount of interstate and intrastate terminating traffic to BellSouth (less than 5 million minutes). In March, 1999, however, while the terminating intrastate minutes remained relatively constant, the terminating interstate minutes increased abruptly to over 20,000,000 minutes per month. This dramatic change in traffic patterns, including the increase in interstate minutes with no corresponding increase in intrastate minutes, caused BellSouth to look more closely at the nature of the traffic being terminated for Thrifty Call.

7. To investigate the migration in traffic, BellSouth initiated test calls over the Thrifty Call network. BellSouth placed in excess of 131 test calls. The objective of the test call was to determine how calls that BellSouth knew to be intrastate calls affected Thrifty Call's PIU. BellSouth conducted its test calls as follows: First, BellSouth generated test calls with specific characteristics from the Mechanized AMA Test and Validation ("MATV") test lines. These lines are provisioned to appear as normal telephone lines in all BellSouth switches and use the same translations as other lines with the same class of service. BellSouth used such test lines to insure that the test results could be compared to expected results.

The MATV system initiates the test calls and tracks the completion of all calls. Once calls are completed, the MATV system receives an extract of all Automatic Message Accounting ("AMA") recordings that are generated by the network for calls associated with MATV test lines. This extract is provided by the billing system.

Once BellSouth obtains the extract, it is compared by MATV with the expected results and reports are generated for review by MATV and/or staff personnel. These reports can provide originating AMA, terminating AMA, and expected result data. From this data BellSouth determined how the call traversed out of the network on both the originating and terminating ends of the call.

8. As a result of this test, and to attempt to better establish a PIU for this IXC, BellSouth instituted a trap of the SS7 signaling information for calls between Thrifty Call and the BellSouth Golden Glades Access Tandem in Miami. The trap of the signaling information for 4,109 calls revealed that the calling party number was not delivered on any call. The relevance of this fact is that without this information it is impossible to determine the jurisdiction of the terminating traffic. Between the MATV test and the trap of the SS7 data, BellSouth demonstrated that Thrifty Call was transporting a majority of intra-state traffic, despite providing BellSouth of a PIU of 98%.

9. By letters dated January 18, 2000, January 31, 2000 and February 1, 2000, to Thrifty Call, BellSouth requested information to pursue an on-site audit of Thrifty Call to determine the PIU of traffic being terminated to BellSouth. In response, by letter dated February 10, 2000, Thrifty Call purported to agree to an audit, but on unreasonable terms. At the present time, BellSouth has been unable to conduct an expedient and meaningful audit of relevant information.

10. As outlined above, BellSouth has compelling documentation demonstrating that Thrifty Call is reporting terminating PIUs that are grossly overstated as a result of reporting as jurisdictionally interstate the intrastate traffic terminated by Thrifty Call to BellSouth. BellSouth requests that the Commission find that Thrifty Call

is intentionally and unlawfully reporting traffic, and that BellSouth has been financially damaged by such intentional and unlawful reporting.

11. In order to protect BellSouth from further financial damage, BellSouth requests that the Commission order that Thrifty Call cease from further intentional and unlawful reporting of traffic and accept this Complaint as notice that BellSouth intends to terminate service to Thrifty Call pursuant to BellSouth's tariff.

12. In addition to the direct financial harm to BellSouth, the actions of Thrifty Call allow Thrifty Call to gain an unfair advantage in the competitive long distance marketplace. To the extent that Thrifty Call is paying BellSouth the interstate rate level for terminating intrastate calls, Thrifty Call effectively is receiving an unlawful discount for services for which similarly situated (terminating access) customers pay the higher intrastate rates. BellSouth is involuntarily providing the discount by relying in good faith on Thrifty Call's incorrect PIU factor reports.

13. The Commission has the authority to conduct a limited proceeding regarding any matter within its jurisdiction. See Section 364.058, Florida Statutes. This would include matters of unlawful reporting of PIU factors and underpayment of revenues due under applicable tariffs subject to the Commission's jurisdiction. The Commission is authorized to review any contract for the joint provision of intrastate service if that joint provision of service is detrimental to the public interest and authorized to adjudicate disputes thereunder. See Section 364.07(2), Florida Statutes. The Commission also is authorized to assess a penalty of \$25,000 per day for willful violations of Commission orders, rules or Chapter 364. Finally, the Commission has the authority to seek injunctive relief in court if necessary to compel compliance with the

provisions of Chapter 364 or Commission Rules. Together, these provisions of Chapter 364 provide ample authority to adjudicate this matter and order all appropriate relief.

14. A review of the evidence in support of this Complaint will demonstrate that Thrifty Call has intentionally distorted the PIU factors in order to avoid paying BellSouth the full amount of the tariffed intrastate access charges. Thrifty Call has benefited at the expense of BellSouth.

15. BellSouth has requested information from Thrifty Call to try to resolve this matter. Such information has not been forthcoming. The resulting direct damages to BellSouth (in the form of lost revenues) are significant and will continue to grow until such time as Thrifty Call is prevented from engaging in such further intentional and unlawful reporting and factor changes are implemented.

WHEREFORE, for the above stated reasons, BellSouth respectfully requests the Commission to do the following:

1. Find that Thrifty Call has intentionally and unlawfully reported traffic as interstate rather than intrastate and that BellSouth has been financially harmed as a direct result of such intentional and unlawful reporting;
2. Order Thrifty Call immediately to comply with BellSouth's request for an accounting of past PIU reporting and minutes of use sufficient to enable BellSouth to calculate its damages;
3. Order or seek all such other relief as may be necessary under the circumstances, including the imposition of appropriate fines on Thrifty Call and injunctive relief in the appropriate Circuit Court,

and such further relief as BellSouth may request pending the receipt and evaluation of the information requested from Thrifty Call.

Respectfully submitted, this 21st day of April, 2000.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White

NANCY B. WHITE (pm)
MICHAEL GOGGIN
150 West Flagler Street, Suite 1910
Miami, Florida 33130

(305) 347-5558

R. Douglas Lackey

R. DOUGLAS LACKEY (pm)
LISA S. FOSHEE
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

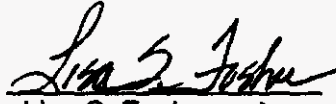
200103-LSF/gbt

**CERTIFICATE OF SERVICE
New Docket - Complaint Thrifty Call, Inc.**

I HEREBY CERTIFY that a true and correct copy of BellSouth
Telecommunications, Inc.'s Complaint against Thrifty Call Inc., was served via U. S.
Mail this 21st day of April, 2000 to the following:

Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Thrifty Call, Inc.
Gary L. Mann, President
401 Carlson Circle
San Marcos, Texas 78666
Tel. No. (512) 392-6276
Fax. No. (512) 392-6276



Lisa S. Foshee (ps)

Thrifty Call.

JUL 11 PM 3:47

DIVISION OF
REGULATORY OVERSIGHT

July 10, 2000

2000 JUL 11 PM 3:31

DIVISION OF
COMPETITIVE SERVICES

Mr. Walter D'Haeseleer, Director
Division of Telecommunications
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-00870

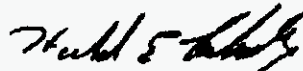
Re: Thrifty Call, Inc.'s ("Thrifty Call") Florida Public Service Commission
Certificate to Provide Interexchange Telecommunications Service;
Certificate No. 3990 dated 4/6/95; Docket No. 950060-TI (the
"Certificate")

Dear Mr. D'Haeseleer:

Thrifty Call requests cancellation of the above-referenced Certificate effective as of July 10, 2000, because it is no longer doing business in Florida. The Regulatory Assessment fees assessed for the year 2000 will be remitted when due. Thrifty Call ceased providing services in Florida and withdrew its tariff effective October 1, 1999. Personal notice was provided to calling card customers at least 30 days prior to service termination. Casual call customers were notified via a call intercept message initiated when a long distance call was dialed using Thrifty Call's access code. Since the services provided by Thrifty Call were not presubscribed, no deposits were collected. Billing was handled by BellSouth through a billing and collection agreement.

Please confirm receipt of this notice by file-stamping the enclosed acknowledgement copy and returning it to me in the enclosed self-addressed, stamped envelope.

Sincerely,



Harold E. Lovelady
President

Enclosure

25 Moore Street, Suite 101, San Marcos, Texas 78666, Phone (512) 754-6406, Fax (512) 754-6379

Exhibit 2

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 reporting of
percent interstate usage for compensation for
jurisdictional access services.

CERTIFIED ORIGINAL

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 6**

DATE: Tuesday, August 15, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOTYPE REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850) 878-2221

RECEIVED
AUG 23 2000

DIRECTOR - REG. RELATIONS
TALLAHASSEE, FL

Exhibit 3

PARTICIPANTS:

MICHAEL GOGGIN, BellSouth Telecommunications.
FLOYD SELF, Messer, Caparello & Self, on behalf
of Thrifty Call, Inc.
SALLY SIMMONS, Commission Staff.
TIM VACCARO, Commission Staff.

STAFF RECOMMENDATION

Issue 1: Should the Commission grant BellSouth Telecommunications, Inc.'s Motion for Leave to File Supplemental Authority?

Recommendation: Yes. The Commission should grant BellSouth Telecommunications, Inc.'s Motion for Leave to File Supplemental Authority.

Issue 2: Should the Commission grant Thrifty Call, Inc.'s Motion to Dismiss or, in the Alternative, to Stay?

Recommendation: No. The Commission should deny Thrifty Call, Inc.'s Motion to Dismiss or, in the Alternative, to Stay.

Issue 3: Should this docket be closed?

Recommendation: No. If the Commission approves Staff's recommendation in Issue 2, this docket should remain open pending resolution of BellSouth's complaint.

1 CHAIRMAN DEASON: We're going to come back
2 to Item 6.

3 MR. VACCARO: Commissioners, Item Number 6
4 is Staff's recommendation to grant BellSouth's
5 Motion for Leave to File Supplemental Authority
6 and to deny Thrifty Call's Motion to Dismiss or,
7 in the alternative, to stay BellSouth's
8 complaint.

9 The parties are here to address the
10 Commission.

11 CHAIRMAN DEASON: Who should go first on
12 this item?

13 MR. SELF: I guess I should, since it's my
14 motion.

15 CHAIRMAN DEASON: Very well. Mr. Self?

16 MR. SELF: Thank you, Mr. Chairman. I'm
17 Floyd Self with the Messer law firm, on behalf
18 of Thrifty Call.

19 With respect to Item 1 of the -- or Issue
20 1 of the Staff's recommendation, I believe that
21 the North Carolina decision is irrelevant to the
22 issues before you today. You must decide our
23 Motion to Dismiss on the basis of Florida law
24 and BellSouth's Florida tariff. So I simply
25 point that out. I don't know that the North

1 Carolina decision is relevant to your
2 decision-making.

3 The real reason we're here is what's Issue
4 2 in the Staff's recommendation. And in terms
5 of addressing our Motion to Dismiss, there's two
6 basic questions that you need to answer. The
7 first question, first and foremost, is, when
8 there is a PIU dispute, must there be an audit.

9 Now, BellSouth goes to great lengths in its
10 response to point out that its tariff uses the
11 word "may," that it may have an audit. And I
12 agree, the sentence quoted by BellSouth does
13 indeed say they may have an audit. But when you
14 read the entire relevant tariff sections, it
15 becomes clear that the sentence that BellSouth
16 quotes from simply provides BellSouth with the
17 option, the option of requesting an audit if it
18 simply wants to audit.

19 If you read the rest of the tariff, you
20 will find that Section E2.3.14(b)(4)
21 specifically states that when there is a
22 dispute, or if the Public Service Commission
23 questions the IXC's PIU, then BellSouth will ask
24 the IXC to provide the relevant PIU data, and
25 that the data shall be provided to, quote, an

1 independent auditor.

2 As you read further in the tariff, you find
3 that this audit becomes a precondition to
4 further actions with respect to the IXC's PIU.
5 Specifically, Section E2.3.14(d) (a) provides
6 first that the audit is the only basis for
7 BellSouth to adjust the IXC's PIU. In other
8 words, BellSouth cannot unilaterally adjust the
9 carrier's PIU. Second, the audit is required,
10 required, before BellSouth can backbill for a
11 new PIU.

12 In short, BellSouth's PIU tariff provisions
13 constitute a comprehensive scheme for reporting
14 and verifying PIU traffic. The problem here is
15 that BellSouth failed to comply with its own
16 tariff. While BellSouth did advise Thrifty Call
17 that it wanted an audit, BellSouth failed to
18 follow through on this request.

19 As our Motion to Dismiss demonstrates, to
20 expedite the audit process, Thrifty Call
21 requested that Ernst & Young, BellSouth's own
22 auditors, conduct the audit at Thrifty Call's
23 cost. However, as time progressed, BellSouth
24 eventually took the position that because
25 Thrifty Call intentionally misreported its PIU,

1 that BellSouth was not required to conduct an
2 audit. In advising Thrifty Call of its new
3 position, BellSouth then formally withdrew its
4 request for an audit and two weeks later filed
5 the complaint that's now before you.

6 The claim that Thrifty Call intentionally
7 misreported its PIU is particularly disturbing.
8 There is no intentional misreporting exception
9 within the PIU tariff. Indeed, there is no
10 tariff provision that authorizes BellSouth to
11 unilaterally change a PIU and backbill the
12 entire alleged difference when the IXC disputes
13 both the intentional misreporting claim and the
14 new BellSouth-calculated PIU.

15 Now, the law is very clear. BellSouth must
16 adhere to its published tariff. In a dispute
17 like this, the mechanism created by the tariff
18 to resolve the dispute is the audit. In fact,
19 the tariff goes even further so as to provide
20 detailed procedures for resolving disputes over
21 even the audit itself, in case one carrier or
22 the other is unhappy with the results of the
23 audit. On this basis alone, BellSouth's
24 complaint should be dismissed, because it failed
25 to follow through on the audit, and its written

1 withdrawal of the audit request should be held
2 against BellSouth, not Thrifty Call.

3 Now, I know that the Staff recommendation
4 correctly points out that if an auditor cannot
5 be agreed upon, then the IXC is obligated to
6 submit the data to the Joint LEC Audit
7 Committee. This is very clear in the tariff.
8 However, Thrifty Call was never advised by
9 BellSouth that it rejected Thrifty Call's
10 selection of and agreement to pay for E&Y,
11 BellSouth's own auditor. Indeed, the only
12 dispute was BellSouth's improper demands that
13 Thrifty Call immediately pay BellSouth the
14 amount BellSouth had unilaterally determined to
15 be due, and BellSouth's requirement that the
16 data be submitted directly to BellSouth as
17 opposed to the independent auditor.

18 Then, notwithstanding Thrifty Call's waiver
19 of a conflict in using E&Y, BellSouth spent
20 several weeks allegedly seeking to resolve the
21 conflict of interest with E&Y, while Thrifty
22 Call waited for word from BellSouth as to where
23 to send the data. Thus, in our opinion, there
24 never was a disagreement with respect to the
25 appointment of an auditor that would trigger the

1 requirement to submit the data to the Joint LEC
2 Audit Committee.

3 Further, BellSouth never advised Thrifty
4 Call regarding the resolution of the E&Y
5 situation. Rather, BellSouth's final
6 communication to Thrifty Call was that because
7 by then BellSouth had determined that there was
8 an intentional misreporting, BellSouth was
9 formally withdrawing its audit request.

10 As I said at the beginning, there are two
11 issues you must resolve today, the first being
12 whether there is a PIU dispute, whether you must
13 indeed have an audit. Quite simply, there is a
14 requirement for an audit when there is a dispute
15 such as we currently have. And so therefore, I
16 believe that the appropriate course would be to
17 have the audit. That's what the tariff says.

18 The second question, which is kind of
19 unique in Thrifty Call's situation, is whether
20 at this point an audit is going to serve any
21 purpose or not. I believe it was approximately
22 April 10th of this year, Thrifty Call stopped
23 sending any traffic to BellSouth. Prior to that
24 point, Thrifty Call was transitioning traffic
25 away from BellSouth as Thrifty Call began

1 winding down its operations. By letter dated
2 July 10, 2000, Thrifty Call advised this
3 Commission that it was no longer doing business
4 in Florida, and it requested that its
5 certificate be canceled.

6 If the audit started today, which is in the
7 third quarter of this year, and assuming it
8 found an incorrect PIU, the tariff states that
9 the resulting PIU from the audit shall be
10 applied to the current quarter, the prior
11 quarter, and the two following quarters. Well,
12 quite frankly, other than the first ten days of
13 April, which would be the second quarter of this
14 year, BellSouth basically gets a zero audit
15 recovery.

16 Now, the law is well settled that in
17 Florida tariffs are to be strictly construed
18 against the carrier that published the tariff.
19 Here, BellSouth failed to comply with its tariff
20 by requesting an audit, delaying waiver of the
21 conflict, then changing positions by declaring
22 intentional misreporting and withdrawing its
23 audit request. Thrifty Call did everything it
24 could, beginning with the use of BellSouth's own
25 auditor, to move the audit process along before

1 it concluded its business and effectively went
2 out of business.

3 Under these facts and BellSouth's tariff,
4 you have no choice but to grant the Motion to
5 Dismiss. While in the alternative we ask for a
6 stay to complete the audit, whether you dismiss
7 -- whether you dismiss the complaint or whether
8 you grant the stay, in either case, BellSouth
9 starts a new audit process that, if it results
10 in a different PIU, really will have no
11 application, since Thrifty Call has gone out of
12 business, and since the farthest back that the
13 audit today could reach would be to the
14 beginning of the second quarter of this year,
15 and there was only ten days of traffic at that
16 time.

17 Accordingly, we ask that you grant the
18 Motion to Dismiss. And I'm available to answer
19 any questions if you have them.

20 CHAIRMAN DEASON: Thank you. BellSouth?

21 MR. GOGGIN: This is Michael Goggin on
22 behalf of BellSouth.

23 This is a very interesting means of
24 supporting a motion to dismiss. The standard of
25 review for a motion to dismiss is that the

1 Commission should take all facts alleged in the
2 complaint to be true, and then determine
3 whether, if all those allegations were true, the
4 complaint states a cause of action for purposes
5 of conducting a proceeding.

6 What Thrifty Call would have the Commission
7 do instead is to regard its assertions of fact
8 as true and then dismiss the complaint, as
9 Mr. Self just put it, under these facts and
10 under BellSouth's tariff. That is precisely not
11 the standard that would apply to a motion to
12 dismiss.

13 Taking his points in order, first, Thrifty
14 Call asserts that under BellSouth's tariff,
15 there must be an audit, disregarding the plain
16 language of the tariff that says BellSouth may
17 request an audit. The remedy of conducting an
18 audit is one that is put in place for the
19 protection of BellSouth, and the word "may"
20 clearly shows that the audit is optional. It is
21 a remedy. It is not the only remedy.

22 In reliance -- or in an attempt to prove
23 that the audit is the only remedy, Thrifty Call
24 cites other portions of the tariff that relate
25 specifically to how an audit, if it is

1 conducted, shall be conducted, for example,
2 stating that the audit is the only basis for
3 adjusting the PIU and is the only basis for
4 backbilling. Those provisions are taken from
5 the portion of the tariff that describes how an
6 audit shall be conducted if an audit is
7 conducted. They do not necessarily prove that
8 an audit is the only remedy that BellSouth may
9 seek.

10 The other claims that Thrifty Call makes
11 are that it disputes BellSouth's assertion that
12 it intentionally misstated the PIU, and it
13 disputes BellSouth's assertion of backbilling
14 the difference. Clearly, these are factual
15 issues that are in dispute. They do not
16 demonstrate that grounds exist to dismiss the
17 claim. In fact, they demonstrate that the issue
18 has been joined and that this Commission should
19 hear it.

20 Similarly, Thrifty Call claims that
21 BellSouth never advised it of its rejection of
22 Ernst & Young and never advised it that it had
23 withdrawn its request for an audit. These too
24 are factual assertions. These are things that
25 should be hashed out in a hearing based on the

1 evidence before the Commission. They are not
2 facts to be taken as true simply because Thrifty
3 Call has asserted them.

4 Mr. Self also asked whether an audit would
5 serve any purpose. He asserts that Thrifty Call
6 will no longer send traffic to BellSouth, and
7 indeed intends to go out of business in Florida,
8 and that due to delay that has been occasioned
9 primarily by Thrifty Call's refusal to provide
10 the information and its motions and other
11 procedural maneuverings, that an audit, if it
12 were conducted today, would not result in any
13 recovery for BellSouth because the improprieties
14 that existed were so far in the past that
15 BellSouth would have no chance to recover. This
16 is one of the reasons why BellSouth withdrew its
17 audit request and brought this complaint. It
18 realized that pursuing an audit would probably
19 take too long, based on how things were going
20 between the parties.

21 In short, BellSouth supports the Staff's
22 recommendation. This Motion to Dismiss should not be
23 granted. The Motion to Stay should not be granted.
24 In fact, one of the ironies of this is, as Staff points
25 out, although Thrifty Call relies chiefly on its

1 argument that the tariff requires an audit, as Staff
2 points out, Thrifty Call failed to follow the
3 procedures that that optional audit would have required
4 them to follow, namely, whether an independent auditor
5 could be agreed upon or not, they were obliged, 30 days
6 after having received the request for an audit, to
7 submit information to the Commission. They failed to
8 do so. They claim that they failed to receive
9 BellSouth's notice of its withdrawal of the audit, so
10 clearly, they could have had no reason for not having
11 done so.

12 So even if the Commission were to decide
13 that an audit were the only remedy, this matter
14 still should not be dismissed for the reasons
15 that Staff has mentioned in its recommendation.

16 For all of these reasons, BellSouth
17 believes that the Motion to Dismiss and the
18 Motion to Stay should be denied.

19 CHAIRMAN DEASON: Questions?

20 COMMISSIONER JABER: What's the most
21 BellSouth hopes to achieve at the hearing by
22 going forward with the hearing?

23 MR. GOGGIN: We expect to show that Thrifty
24 Call purposely misstated its percentage of
25 interstate usage for purposes of underpaying

1 BellSouth.

2 COMMISSIONER JABER: What do you think the
3 underpayment amounts to? Financially, what is
4 the most BellSouth hopes to achieve?

5 MR. GOGGIN: I'm sorry. I do not have that
6 figure with me today.

7 COMMISSIONER JABER: Take your best guess
8 at weighing that amount with the cost of going
9 to hearing. Which do you think would be more?

10 MR. GOGGIN: That's difficult to estimate
11 at this point.

12 COMMISSIONER JABER: Has Staff recommended
13 mediation or tried to mediate this case at all?

14 MS. SIMMONS: I guess Staff believes that
15 there may be an opportunity -- if the Commission
16 doesn't dismiss this complaint, we believe
17 there's an opportunity for the parties to
18 possibly brief some of the issues. We've
19 thought about that. Some of the questions that
20 Mr. Self raises, I do think there are some
21 threshold questions that perhaps need to be
22 addressed prior to proceeding with any sort of
23 technical hearing. I hadn't really thought
24 about mediation.

25 The couple of issues we identified were, is

1 an audit the only remedy available to resolving
2 what is the correct PIU, which is a question
3 Mr. Self raised, and if an audit is completed,
4 can the audit results be applied to a different
5 time frame than specified in the tariff. That
6 was an issue Mr. Self raised. So we hadn't
7 thought about mediation, but I do think there
8 are a couple of threshold issues that would need
9 to be addressed, assuming the Commission doesn't
10 dismiss the complaint.

11 COMMISSIONER JABER: When did your client
12 stop doing business again? Give me that date.

13 MR. SELF: It's my understanding it was
14 April 10th. And that --

15 CHAIRMAN DEASON: You indicated April 10th
16 was the date that there was no longer any
17 traffic --

18 MR. SELF: Going to BellSouth.

19 CHAIRMAN DEASON: Going to BellSouth. But
20 you also mentioned July the 10th as the date
21 that you ceased doing business in Florida?

22 MR. SELF: That was the date of the letter
23 requesting that the company's certificate be
24 canceled.

25 COMMISSIONER JABER: Okay. When is the

1 hearing scheduled?

2 MS. SIMMONS: A hearing date has not been
3 set.

4 COMMISSIONER JABER: You don't have a
5 shadow date or anything like that?

6 MR. VACCARO: Not at this point, no.

7 COMMISSIONER JABER: Commissioners, here's
8 what I would like to do. If you're responsive
9 to this, fine. Otherwise, I can move Staff. But
10 I think we should automatically be trying to
11 resolve these kinds of cases through mediation,
12 especially in light of the fact that Thrifty
13 Call is out of business, and I think that
14 BellSouth and Thrifty Call both recognize that
15 the costs associated with going to hearing
16 cannot be less -- cannot be less than what
17 you're talking about. I think I'm saying that
18 correctly. In other words, what you have to
19 gain probably is minimal if you go to hearing as
20 opposed to trying to resolve this through
21 mediation.

22 But the point is, there is no statutory
23 time frame. You have nothing to lose by
24 attempting mediation. And I think it's within
25 our discretion to request that mediation be

1 scheduled, because under the Uniform Rules we
2 can do that.

3 MS. SIMMONS: Commissioner Jaber, I guess
4 the only response I might have -- we could try
5 that. I have a little bit of concern, because I
6 do think there are some kind of threshold legal
7 issues. So I guess I'm uncertain how well
8 mediation would work. We could try it.

9 COMMISSIONER JABER: Well, see, that's the
10 beauty of mediation. And I feel like I'm saying
11 this over and over again. You never have to
12 reach those questions. You just resolve the
13 dispute by allowing the parties to come up with
14 their own solution.

15 But schedule -- the alternative is, we have
16 a shadow date for hearing, and if mediation
17 doesn't work, we've got a hearing scheduled.

18 CHAIRMAN DEASON: Let me say, I tend to
19 agree that there are situations where mediation
20 makes sense, but I think it's incumbent upon the
21 parties to make that judgment. I don't think we
22 sitting here today can say mediation is the
23 answer to this problem. I think we have the
24 responsibility -- if we agree that this matter
25 should not be dismissed, we need to go ahead and

1 make arrangements to process it. Now, we may
2 can build some time into our scheduling or
3 whatever if the parties are so inclined to
4 mediate. I mean, I would hate to -- by the way
5 to schedule it to foreclose that.

6 But I think we just need to proceed ahead.
7 I think the message has been sent, and if the
8 parties think it's in their best interests
9 economically or for whatever other reason to
10 mediate, hopefully they will avail themselves of
11 that opportunity.

12 MR. GOGGIN: Commissioners, for BellSouth's

13 --

14 COMMISSIONER JACOBS: Before you --
15 Commissioner Jaber, what I take -- your motion
16 is to grant the stay to allow the time?

17 COMMISSIONER JABER: No. Actually, I think
18 Chairman Deason has an excellent point. My
19 point is, Staff is recommending that you go
20 forward with the hearing. I have no problem
21 scheduling the matter for a hearing, but
22 encouraging mediation. I agree. I agree. It's
23 not that I want to force mediation on parties,
24 but it's an option that perhaps we need to start
25 reminding parties that they have.

1 and seconded. All in favor say "aye."

2 COMMISSIONER JACOBS: Aye.

3 CHAIRMAN DEASON: Aye.

4 COMMISSIONER JABER: Aye.

5 CHAIRMAN DEASON: Show then Item 6 is
6 approved.


7 (Conclusion of consideration of Item 6.)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2 CERTIFICATE OF REPORTER3
4 STATE OF FLORIDA)5 COUNTY OF LEON)
6

7 I, MARY ALLEN NEEL, do hereby certify that the
8 foregoing proceedings were taken before me at the time
9 and place therein designated; that my shorthand notes
10 were thereafter transcribed under my supervision; and
11 that the foregoing pages numbered 1 through 21 are a
12 true and correct transcription of my stenographic
13 notes.

14 I FURTHER CERTIFY that I am not a relative,
15 employee, attorney or counsel of any of the parties,
16 or relative or employee of such attorney or counsel,
17 or financially interested in the action.

18 DATED THIS 18th day of August, 2000.
19
20
21

22 
23 MARY ALLEN NEEL, RPR
24 100 Salem Court
25 Tallahassee, Florida 32301
(850) 878-2221