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February 7, 2008

Via Hand Delivery

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

RECEIVED-FPSC
08 FEB - 7 PM 4: 33
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:

1. An original and 15 copies of Thrifty Call's Direct Testimony of Harold Lovelady (with Exhibits HL-1 - HL-3),
2. An original and 15 copies of the redacted Direct Testimony of Timothy Gates (with Exhibit TJG-1), and
3. An envelope marked CONFIDENTIAL containing Mr. Gates' entire Direct Testimony, including the portions that Thrifty Call claims are confidential.

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

CMP
COM 5
CTR 1
ECR
GCL 2
OPC
RCA 1
SCR /vp
SGA
SEC
OTH

Enclosures
FAUSERS\Marty\Thrifty Call\covertestimonycoleltr.wpd

DOCUMENT NUMBER-DATE
00979 FEB-7 08
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)
reporting of percent interstate usage for compensa-)
tion for jurisdictional access services)
_____)

Direct Testimony
Of
Harold Lovelady
On Behalf of Thrifty Call, Inc.

February 7, 2008

DOCUMENT NUMBER - DATE

00979 FEB-7 8

FPSC-COMMISSION CLERK

1 A. Yes. I have testified in proceedings before the Alabama Public Service
2 Commission and the North Carolina Utilities Commission on behalf of Thrifty
3 Call.

4

5 **Q. DO YOU HAVE ANY PERSONAL KNOWLEDGE REGARDING THE**
6 **ISSUES IN THIS PROCEEDING?**

7

8 A. Yes I do. As the President of Thrifty Call, I dealt personally with the PIU issue
9 with BellSouth (now AT&T) and other ILECs in Florida and other states.

10

11 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

12

13 A. The purpose of my testimony is to explain how Thrifty Call operated as an entity
14 and how Thrifty Call reported its terminating percent interstate usage (“TPIU”) to
15 ILECs.

16

17 **Q. PLEASE EXPLAIN HOW THRIFTY CALL ARRIVED AT ITS TPIU**
18 **FACTOR WHICH IT PROVIDED TO AT&T AND OTHER ILECS.**

19

20 A. Thrifty Call, Inc. operated as a business between 1994 and 2000. Thrifty Call was
21 a long distance carrier that would pick up calls from various CLEC carriers and
22 terminate those calls to ILEC networks. During the period of time Thrifty Call
23 was in business, there were no foolproof ways to accurately identify the

1 originating location of any particular telephone call. Because Thrifty Call was not
2 the originating carrier of traffic, Thrifty Call could only rely on the originating
3 carrier to determine the actual originating state for any telephone call. Therefore,
4 Thrifty Call utilized the FCC approved entry-exit surrogate (“EES”) method to
5 determine what percentage of its transited traffic was interstate or intrastate.
6 Utilization of the EES method to measure TPIU was recognized by the industry
7 and utilized by many long distance carriers in addition to Thrifty Call. We
8 believed that we used the EES method correctly and that the results were
9 appropriate for the TPIU.

10
11 **ISSUE 1: WHAT ARE TERMS AND CONDITIONS OF THE TARIFF**
12 **ASSOCIATED WITH CORRECTING AND BACKBILLING MISREPORTED**
13 **PIU?**

14
15 **Q. WHAT TARIFF IS AT ISSUE IN THIS PROCEEDING?**

16
17 A. AT&T’s intrastate access tariff. However, it is important to note that in order to
18 calculate the percentage of intrastate traffic, you must also be able to calculate the
19 percentage of interstate traffic, which is calculated pursuant to AT&T’s FCC
20 tariff.

21
22 **ISSUE 2: HAS AT&T COMPLIED WITH ITS TARIFF PROVISIONS?**

1 **Q. DOES AT&T'S INTRASTATE ACCESS TARIFF PROVIDE A**
2 **METHODOLOGY TO BE FOLLOWED IF THERE IS A DISPUTE**
3 **REGARDING A CUSTOMER'S TPIU REPORTING?**

4
5 A. Yes. Section E2.3 of AT&T's intrastate tariff addresses the responsibilities and
6 obligations of AT&T and its customers. Specifically section E2.3.14 addresses
7 the determination of proper jurisdiction when mixed interstate and intrastate
8 dedicated access service is provided. Section E2.3.14 (B) requires the IC or end-
9 user to provide the data to AT&T used to determine the projected interstate
10 percentage for the purposes of conducting an audit. Finally, section E2.3.14(D)
11 mandates that once the audit is completed, the resulting PIU will be applied to the
12 usage for the quarter the audit is completed, the usage for the quarter prior to the
13 completion of the audit, and, where applicable, to the usage for the next two
14 quarters following the audit's completion.

15
16 **Q. DID AT&T EVER ASK THRIFTY CALL TO PROVIDE DATA TO**
17 **BELLSOUTH TO BE USED TO DETERMINE ITS PROJECTED**
18 **INTERSTATE PERCENTAGE PURSUANT TO AT&T'S TARIFF?**

19
20 A. Yes. By letter dated January 18, 2000, pursuant to the tariff, AT&T expressly
21 requested that Thrifty Call provide the data that Thrifty Call used to determine its
22 projected interstate percentage. Further, AT&T specifically stated that that
23 written request was to be considered the initiation of an audit per the applicable

1 provisions of its tariff. That letter was addressed to Mr. Danny E. Adams, outside
2 counsel for Thrifty Call and signed by J. Henry Walker of AT&T. A copy of that
3 letter is attached hereto as Exhibit HL-1.

4

5 **Q. DID THRIFTY CALL COMPLY WITH AT&T'S REQUEST?**

6

7 A. Yes. In a letter from Danny E. Adams to Mr. Walker dated February 10, 2000,
8 Thrifty Call stated that it would have the audit conducted by Ernst & Young, a
9 recognized leader in the field, and that Thrifty Call would provide the pertinent
10 data to Ernst & Young within the time required by AT&T's tariff. Thrifty Call
11 further agreed in that letter that once the audit was complete, the report would be
12 provided to both AT&T and to Thrifty Call in the manner contemplated by
13 AT&T's FCC tariff. A copy of that letter is attached hereto as Exhibit HL-2.

14

15 **Q. HOW DID AT&T RESPOND TO THRIFTY CALL'S LETTER?**

16

17 A. AT&T unilaterally halted the audit procedure and filed a Complaint with the
18 Florida Public Service Commission, contrary to the procedure stated in its own
19 tariff.

20 **Q. DID THRIFTY CALL HAVE ANY FURTHER CORRESPONDENCE**
21 **WITH AT&T REGARDING THE AUDIT REQUIRED BY THE TARIFF?**

22

1 A. Yes. By letter dated March 22, 2000, Thrifty Call advised AT&T that it remained
2 eager to resolve the disputed PIU reports by voluntary means and was willing to
3 choose a different independent auditor if AT&T chose not to accept Ernst &
4 Young. A copy of the letter is attached hereto as Exhibit HL-3.

5

6 **Q. WHAT DID AT&T DO IN RESPONSE?**

7

8 A. AT&T refused to cooperate with Thrifty Call, canceled the audit procedure and
9 continued with its Complaint before the Florida Commission. AT&T's actions
10 were contrary to the letter and the spirit of the audit provisions of the tariff.

11

12 **ISSUE 3: HAS THRIFTY CALL MISREPORTED ITS PIU TO AT&T?**

13

14 **Q. DID THRIFTY CALL ATTEMPT TO HAVE THE FCC DECIDE ITS**
15 **METHODOLOGY FOR DETERMINING THE PIU?**

16

17 A. Yes. Thrifty Call filed a Petition for Declaratory Ruling from the FCC seeking
18 clarification of the meaning and application of certain provisions of Bellsouth's
19 tariffs.¹

20

21 **Q. DID THE FCC RULE?**

22

¹ *In the Matter of Thrifty Call, Inc., Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc., Tariff F.C.C. No. 1, CCB/CPD File No. 01-17, filed August 7, 2001.*

1 A. Not yet. However, on November 10, 2004, the FCC's Wireline Competition
2 Bureau ("Bureau") issued a Declaratory Ruling. That ruling recognized that with
3 many access services, LECs typically lack the technical ability to identify and
4 measure jurisdictional usage because the services do not provide automatic
5 number identification ("ANI") capability. Further, the Wireline Competition
6 Bureau agreed with Thrifty Call that the EES methodology was the correct
7 methodology to use in determining the jurisdiction of its traffic under AT&T's
8 federal tariff. However, the Bureau disagreed with Thrifty Call's construction of
9 the terms "customer network" and "point of entry" in AT&T's federal tariff.²

10

11 **Q. DID THRIFTY CALL APPEAL THAT RULING?**

12

13 A. No. The Bureau's Declaratory Ruling was adopted November 10, 2004 and
14 released November 12, 2004. By that time, Thrifty Call was no longer in
15 business. However, the Competitive Telecommunications Association
16 ("CompTel") and the Association of Communications Enterprises ("ASCENT")
17 alliance applied to the full Federal Communications Commission for a review of
18 the Declaratory Ruling issued by the Bureau. CompTel at the time was the
19 premier industry association representing competitive telecommunications
20 providers and their suppliers.

21

22 **Q. HAS THAT APPLICATION FOR REVIEW BEEN GRANTED?**

² *In the Matter of Thrifty Call, Inc. Petition for Declaratory Ruling Concerning BellSouth Telecommunications, Inc. Tariff No. 1*, CCB/CPD File No. 01-17, DA 04-3576, Adopted November 10, 2004.

1

2 A. Not yet, but the application has not been denied either. In fact, it has not yet been
3 ruled upon by the Commission.

4

5 **ISSUE 4: IF THRIFTY CALL MISREPORTED ITS PIU TO AT&T, WHAT**
6 **AMOUNT, IF ANY, DOES THRIFTY CALL OWE AT&T AND WHEN SHOULD**
7 **THIS AMOUNT BE PAID?**

8

9 **Q. SHOULD THE COMMISSION BASE ITS DECISION ON THE RESULTS**
10 **OF THE COMMISSION STAFF'S AUDIT?**

11

12 A. No. The Commission Staff's audit should not be relied on by the Commission in
13 rendering its decision. First, the prehearing officer in Order No. PSC-01-2309-
14 PCO-TP in the instant docket acknowledged the Commission Staff may conduct
15 an audit in this proceeding. The prehearing officer cautioned that Staff's
16 discretion as to the time period it seeks to review under its own audit is not
17 limited by the tariff and that the proper recovery period, based on the tariff, will
18 be determined by the Commission.³ Additionally, Commission Staff stated in the
19 audit report that the report should not be relied upon for any other purpose other
20 than to assist the Commission staff in performing their duties.⁴ Finally, Staff

³ Order Granting Motion to Stay, PSC Docket No. 000475-TP, issued November 21, 2001, at page 7.

⁴ *Thrifty Call, Inc. Actual Percentage Interstate Usage Audit*, Audit Control No. 01-292-1-1, Florida Public Service Commission, Division of Regulatory Compliance and Consumer Assistance, Bureau of Auditing, Auditor's Report, June 24, 2004, page 1.

1 stated that substantial additional work would need to be done to satisfy any
2 generally accepted auditing standards.⁵

3

4 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

5

6 **A. Yes.**

7

8

9

10

11

12

13

14 F:\USERS\Marty\Thrifty Call\feb 06 08 loveladydirect.doc

⁵*Id.*

J. Henry Walker
General Attorney

BellSouth Telecommunications, Inc.
Legal Department - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375-0001
Telephone: 404-335-0738
Facsimile: 404-658-9022

January 18, 2000

Docket No. 000475-TP
BellSouth January 18, 2000 Letter
Exhibit HL-1, Page 1 of 1

BY FEDERAL EXPRESS AND TELECOPY

Mr. Danny E. Adams
Kelley, Dwyer & Warren
1200 19th St., N.W.
Suite 500
Washington, D.C. 20036

Dear Mr. Adams:

BellSouth Telecommunications ("BellSouth") has discovered recently certain irregularities pertaining to Thrifty Call, Inc.'s ("Thrifty Call") transport and reporting of access traffic to BellSouth. It appears that traffic being reported to BellSouth as interstate by Thrifty Call is instead intrastate traffic for which additional access charges are owed. Thrifty Call's actions constitute a violation of applicable tariffs governing the relationship between BellSouth and Thrifty Call. BellSouth requests that Thrifty Call immediately start properly reporting all traffic transported to BellSouth.

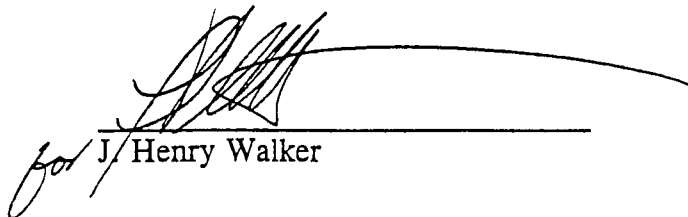
Pursuant to BellSouth Telecommunications Tariff - Florida E2.3.14B, BellSouth hereby requests that Thrifty Call provide data to BellSouth used to determine its projected interstate percentage. This written request will be considered the initiation of an audit per the applicable provisions of the tariff.

We propose this audit begin on February 7, 2000, and request that you preserve all information, data and reports until such audit is completed, including any communications or agreements with interexchange carriers for which you are completing traffic in the manner discussed above.

Further, BellSouth requests that Thrifty Call pay BellSouth all monies owed for this misreporting of traffic. The amount owed to BellSouth for misreporting between March 1999 and November 1999 in Florida is \$2,078,713. This amount should be paid immediately.

If you would like to discuss this matter, you may contact me at your convenience.

Sincerely,


for J. Henry Walker

#192039v1

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FPC - COMMISSION CLERK

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AFFILIATE OFFICES

BANGKOK, THAILAND

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MUMBAI, INDIA

TOKYO, JAPAN

February 10, 2000

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

E-MAIL: dadams@kelleydrye.com

J. Henry Walker, Esq.
General Attorney
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375-0001

Re: Correspondence with Thrifty Call Concerning Percentage Interstate
Usage Matters

Dear Mr. Walker:

I am in receipt of your letters dated January 18, January 31, and February 1, 2000, concerning alleged inaccuracies in certain percentage interstate usage ("PIU") reports submitted by Thrifty Call for the states of Florida, North Carolina and Georgia, respectively. In each of your letters, you reference the BellSouth access tariff for the relevant state and indicate that, pursuant to such tariff, BellSouth believes that Thrifty Call owes additional payments to BellSouth. Further, in addition to the requests for immediate payment, you request an audit of Thrifty Call's PIU reports pursuant to the state tariffs.

Thrifty Call wishes to cooperate with the BellSouth audit request. Certain matters must be clarified at the outset of the audit process, however. First, Thrifty Call believes that PIU matters are inherently interstate in nature because they are derived from the jurisdictional separations process administered by the Federal Communications Commission ("FCC"). Indeed, the governing methodology for measurement of PIU was established by the FCC in 1989, following the recommendation of a Federal-State Joint Board. *See Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Services*, 4 FCC Rcd 8448 (1989). Thus, Thrifty Call believes the governing tariff for PIU audit purposes should be the interstate tariff on file with the FCC, not the individual BellSouth state tariffs.

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FPSC - COMMISSION CLERK

J. Henry Walker, Esq.
February 10, 2000
Page Two

Docket No. 000475-TP
Thrifty Call February 10, 2000 Letter
Exhibit HL-2, Page 2 of 2

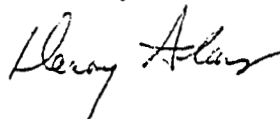
Second, Thrifty Call believes it has reported its traffic according to FCC prescribed procedures for PIU measurement. While the Company thus is willing to proceed with BellSouth's audit request, it is not willing to make the payments you request in advance of the completion of the audit. Indeed, the purpose of the audit is to determine whether any such payments are owed. BellSouth's request for immediate payment, then, is implicitly an attempt to bypass the audit process and impose requirements outside its tariff. We believe such demands are inconsistent with FCC-established policies and BellSouth's implementing interstate tariff (as well as its intrastate tariffs). Thus, Thrifty Call will not pay any backbilled amounts until the audit is completed and a determination can be made as to whether any such amounts are owed.

Finally, BellSouth's tariff provides that audits may be conducted by an independent auditor, not BellSouth, and that if an independent auditor is used, the data is to be provided to the auditor within 30 days of the request. Thrifty Call chooses to have the audit conducted by Ernst and Young; the Company is in the process of finalizing its arrangements with Ernst and Young for this purpose. Thrifty Call understands that, because it chooses the auditor, it must pay the costs of the audit. Thrifty Call thus will provide fourth quarter 1999 data to Ernst & Young within the time required by BellSouth's tariff.

With these items clarified, Thrifty Call will proceed with the audit as described. Upon completion of the audit, the auditor's report will be provided to BellSouth and to Thrifty Call in the manner contemplated by BellSouth's FCC tariff. We look forward to working with you to complete the audit process.

If you have any questions or concerns about these procedures, please contact me promptly.

Sincerely,



Danny E. Adams
Counsel to Thrifty Call, Inc.

DEA:ae

DOCUMENT NO. DATE
00979-08 02/07/08
FPSC - COMMISSION CLERK

KELLEY DRYE &

A LIMITED LIABILITY

1200 19TH ST

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(202) 955-9600

Docket No. 000475-TP
Thrifty Call March 22, 2000 Letter
Exhibit HL-3, Page 1 of 2

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March 22, 2000

DANNY E. ADAMS

DIRECT LINE (202) 955-9874

E-MAIL: dadams@kelleydrye.com

BY FEDERAL EXPRESS

J. Henry Walker, Esq.
General Attorney
BellSouth Telecommunications, Inc.
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375-0001

Re: Thrifty Call Dispute

Dear Henry:

As we have discussed, Thrifty Call remains eager to resolve the disputed PIU reports for Florida, Georgia, and North Carolina by voluntary means that will be mutually acceptable to both Thrifty Call and BellSouth, and that will be as fair and expeditious as possible. Accordingly, we are puzzled by BellSouth's reluctance to follow the PIU audit procedures set forth in the Florida, Georgia, and North Carolina tariffs, and would like clarification of BellSouth's position in that regard.

It is our understanding that, pursuant to Section E2.3.14(B) of BellSouth's Access Services Tariffs for Florida, Georgia, and North Carolina, in the event of a dispute regarding the accuracy of a PIU report, BellSouth shall send written notice to the carrier involved and initiate an audit; BellSouth did this, by letters to me dated January 18, 2000, January 31, 2000, and February 1, 2000. Each letter cited Section E2.3.14(B) and the audit procedures contained therein. By letter dated February 10, 2000, Thrifty Call agreed to BellSouth's audit demand, requested that Ernst and Young be retained as the independent auditor (at Thrifty Call's expense), and agreed to provide Ernst and Young with the required data within the time period specified by the tariff. As you know, the initiation of the audit has been delayed pending agreement by BellSouth to waive a conflict of interest regarding Ernst and Young's prior work for BellSouth. Thrifty Call remains, however, ready and willing to provide the necessary data to Ernst and Young, or, alternatively, to choose a different independent auditor that would not raise conflict issues if BellSouth chooses not to accept Ernst and Young. It is Thrifty Call's

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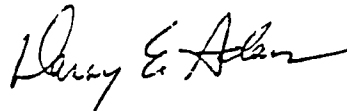
J. Henry Walker, Esq.
March 22, 2000
Page 2

understanding that, pursuant to Section E2.3.14(D), once the audit is completed, the resulting PIU will be applied to the usage for the quarter the audit is completed, the usage for the quarter prior to completion of the audit, and, where applicable, to the usage for the next two quarters following the audit's completion.

However, rather than releasing Ernst and Young to begin the audit, or authorizing Thrifty Call to select a different independent auditor, BellSouth now wishes to ignore the audit procedures set forth in the tariff and is instead considering a complaint proceeding before the Florida Public Service Commission ("FPSC"). It is our understanding that BellSouth has taken this position because it believes that compliance with the audit procedures would be too time-consuming. It is unclear to Thrifty Call, however, how a complaint proceeding would achieve a more expedient resolution of this dispute than would continued adherence to the audit procedures proscribed by the BellSouth tariff. Moreover, it appears to us that in response to any complaint filed by BellSouth concerning this matter the FPSC too would look to the applicable Access Services Tariffs, and would take the view that an audit is the appropriate procedure. Indeed, we note that even if the FPSC were to permit a complaint proceeding to proceed in lieu of the audit process required by BellSouth's tariff, an audit would be necessary in order to form the basis for any damages calculation. In short, BellSouth's refusal to adhere to the PIU audit procedures appears to me to be both inconsistent with the Access Services tariff, *and* destined to result in an unwarranted delay in the resolution of this dispute.

Thrifty Call understands and shares BellSouth's desire to resolve this dispute as quickly as possible. We fail to understand, however, how the current approach you have advocated will lead to that result. In view of our mutual interests in that regard, I look forward to your timely clarification of BellSouth's position.

Sincerely,



Danny Adams
Counsel to Thrifty Call, Inc.

DOCUMENT NO. DATE
00977-08 02/07/08
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