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July 10, 2000

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BY HAND DELIVERY

Ms. Blanca Bayó, Director
Division of Records and Reporting
Room 110, Easley Building
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: FPSC Docket 000475-TP

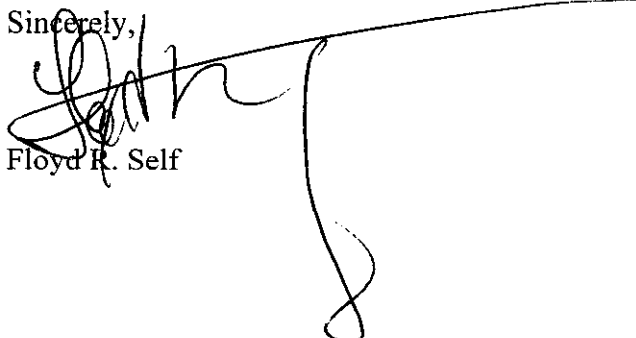
Dear Ms. Bayó:

Enclosed for filing on behalf of Thrifty Call, Inc. are an original and fifteen copies of Thrifty Call, Inc.'s Response and Opposition to BellSouth's Motion for Leave to File Supplemental Authority in the above-referenced docket.

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

Thank you for your assistance with this filing.

Sincerely,


Floyd R. Self

FRS/amb
APP _____
CAF _____
cc: Danny Adams, Esq.
CMP Simmons Parties of Record
SEM _____
CTR _____
ECR _____
LEG 1 _____
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SEC 1 _____
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FPSC-RECORDS/REPORTING

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc.)	
against Thrifty Call, Inc. Regarding practices)	Docket No. 000475-TP
in the reporting of percent interstate usage for)	Filed: July 10, 2000
compensation for jurisdictional access services.)	
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THRIFTY CALL, INC.'S RESPONSE AND OPPOSITION TO BELLSOUTH'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

Thrifty Call, Inc. ("Thrifty Call"), pursuant to Rules 28-106.103 and 28-106.204(1), Florida Administrative Code, hereby responds and objects to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion For Leave To File Supplemental Authority ("Motion"). For the reasons discussed below, the Florida Public Service Commission ("Commission") should deny BellSouth's Motion, and in support thereof Thrifty Call states:

1. On June 26, 2000 BellSouth filed its Motion. BellSouth's Motion contains no point of law that constitutes legal authority as the North Carolina Utilities Commission ("NCUC") decision is based upon law and tariffs that are inapplicable and irrelevant to the issues before this Commission.

2. This Commission has no rules or procedures providing for the filing of supplemental authorities. See Order No. PSC-99-1463-FOF-SU (July 27, 1999); Order No. PSC-97-0283-FOF-WS (March 12, 1997); Order No. PSC 96-1527 FOF-WS (December 16, 1996). However, the Commission has noted that, in accord with Rule 9.225, Fla.R.App.P., it has the authority to consider supplemental authority¹. *Id.* This Commission has stated that "a notice of supplemental authority

¹Rule 9.225 states: "Notices of supplemental authority may be filed with the court before a decision has been rendered to call attention to decisions, rules, statutes, or other authorities that are significant to the issues raised and that have been discovered after the last brief served in the cause. The notice may identify briefly the points argued on appeal to which the supplemental

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drawing our attention to authority newly discovered and devoid of argument would be properly received.” Order No. PSC-97-0283-FOF-WS (March 12, 1997) (citing *In Re: Petition for Limited Proceeding to Implement Conservation Plan in Seminole County by Sablando Utilities Corporation* Order No. PSC-94-0987-FOF-WS (August 15, 1994)). Similarly, in Order No. PSC-96-1527-FOF-WS (December, 16, 1996), the Commission noted that it may be proper for it to consider supplemental authority if a party alleges that some point of law has been overlooked during the course of the proceedings.

3. Inherent in the notion of supplemental authority is the idea that the referenced document contains a statement of governing law. North Carolina laws and tariffs, however, are neither binding authority on this Commission nor are they relevant to the issues in dispute between BellSouth and Thrifty Call. A North Carolina Utilities Commission Order interpreting North Carolina laws or tariffs simply is not dispositive, let alone relevant, to this Commission’s investigation of Florida law and BellSouth’s Florida tariff, and should not be considered appropriate material to submit as supplemental authority.

4. We do not know the underlying North Carolina law that led to this decision, but we do know that it is well settled under Florida law that a carrier must act solely pursuant to its tariffs and any ambiguity in the tariff should be construed against the carrier. *Pan American World Airways, Inc. v. Florida Public Service Commission*, 427 So.2d 716 (Fla. 1983); *Louisville & Nashville Railroad v. Speed-Parker, Inc.*, 137 So. 724 (Fla. 1931); *Louisville & N.R. Co. v. St. Regis Paper Co.*, 102 F. Supp 713 (N.D. Fla. 1952), *aff’d*, 201 F. 2d 371 (5th Cir 1953). Under Florida law a tariff is not merely a contract, “It is the law.” *Carter v. American Telephone & Telegraph Co.*, 365

authorities are pertinent, but shall not contain argument. Copies of the supplemental authorities shall be attached to the notice.”

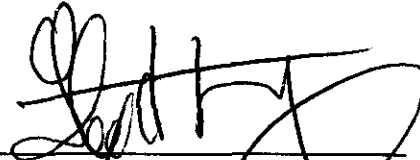
F. 2d 486, 496 (5th Cir. 1966). Accordingly, the courts have treated administrative tariffs in the same manner as they would treat a legislative statute. *Pan American World Airways, Inc.*, 427 So. 2d at 719. BellSouth, not Thrifty Call, published the tariff controlling verification of jurisdictional reports and BellSouth is required by law to comply with it. Therefore, under Florida law, BellSouth is required to follow the appropriate procedures set forth in its tariff, which include performing an audit to discover Thrifty Call's actual PIU, prior to any further action before this Commission. This underlying law apparently is different in North Carolina.

5. The fact that BellSouth would attempt to use this North Carolina decision to avoid an audit that is required by its Florida tariff when there is a disputed PIU and before the PIU can be changed is quite disturbing. As this Commission is well aware, shortly after its filing complaint against Thrifty Call, BellSouth filed a similar complaint against Intermedia Communications, Inc., again without performing the required audit for resolving disputed PIU. BellSouth cannot pick and chose which tariff provisions it will comply with and which it will ignore. BellSouth's actions with respect to PIU audits represent an abuse of its power as the incumbent local exchange carrier, and its actions are wasting the time and resources of this Commission especially when it asks the Commission to consider inapplicable and irrelevant North Carolina decisions.

6. BellSouth is only fanning the flames of litigation with this new Motion. BellSouth should be barred from proceeding any further in the administrative process prior to abiding by its tariff and conducting an audit, after which the present dispute may become moot. The North Carolina Utilities Commission Order does not constitute legal authority nor does it contribute to the instant Florida PIU dispute. It is submitted as purely argument and, therefore, does not meet this Commission's test for receiving supplemental authority. *See e.g.* Order No. PSC-97-0283-FOF-WS (March 12, 1997).

WHEREFORE, Thrifty Call, Inc. respectfully requests that the Motion for Leave to File Supplemental Authority, filed by BellSouth Communications, Inc., be dismissed.

Respectfully submitted this 10th day of July, 2000.



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and

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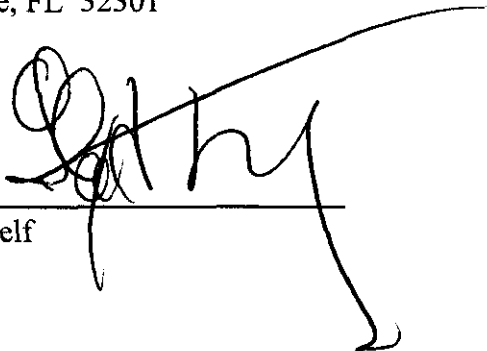
Attorneys for Thrifty Call, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true and correct copies of Thrifty Call's Response and Opposition to BellSouth's Motion for Leave to File Supplemental Authority in Docket No. 000475-TP have been served upon the following parties by Hand Delivery (*) and/or U. S. Mail this 10th day of July, 2000.

Tim Vaccaro, Esq.*
Division of Legal Services, Room 370
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Lisa S. Foshee, Esq.
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301

A handwritten signature in black ink, appearing to read 'F. Self', is written over a horizontal line. The signature is stylized and includes a long, sweeping underline that extends to the right.

Floyd R. Self