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Sent: Wednesday, June 01, 2005 5:46 PM
To: Filings@psc.state.fl.us
Cc: Kiddoo, Jean; Bobeck, Joshua; David Hope; Rudy Bradley; Dale Buys; Ray Kennedy
Subject: Docket No. 050257; Miami-Dade County's Motion to Dismiss
Attachments: Motion to Dismiss.pdf; Motion Exhibit 1.pdf; Motion Exhibits 2-5.pdf

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B. Docket No. 050257; Complaint by BellSouth Telecommunications, Inc., Regarding the Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statues and Commission Rules

C. Miami-Dade County

D. 29 pages (including cover letter, Motion to Dismiss and certificate of service)
33 pages (Motion to Dismiss Exhibit 1)
44 pages (Motion to Dismiss Exhibits 2-5)

E. Miami-Dade County's Motion to Dismiss
Miami-Dade County's Motion to Dismiss Exhibit 1
Miami-Dade County's Motion to Dismiss Exhibits 2-5

<<Motion to Dismiss.pdf>> <<Motion Exhibit 1.pdf>> <<Motion Exhibits 2-5.pdf>>

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VIA EMAIL

June 1, 2005

Ms. Blanca S. Bayo
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 050257; Complaint by BellSouth Telecommunications, Inc., Regarding the Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission rules

Dear Ms. Bayo:

Attached is Miami-Dade County's Motion to Dismiss, which we ask that you file in the above-captioned docket. If you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,

s/ Danielle C. Burt

Jean L. Kiddoo
Joshua M. Bobeck
Danielle C. Burt

cc: David Stephen Hope
Service List

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc., Regarding The Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules	)	Docket No. 050257

MIAMI-DADE COUNTY'S MOTION TO DISMISS

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Dated: June 1, 2005

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc., Regarding The Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules	)	Docket No. 050257

MIAMI-DADE COUNTY'S MOTION TO DISMISS

Miami-Dade County (the "County"), by its undersigned counsel, hereby requests that the Florida Public Service Commission (the "Commission") summarily dismiss the complaint filed by BellSouth Telecommunications, Inc. ("BellSouth") in the above-captioned proceeding on April 13, 2005 (the "Complaint"). The Complaint is based on an interpretation of the Commission's 1987 decision adopting rules for the sharing of local telephone services that is wholly inconsistent with the terms of that decision and the rational stated by the Commission in its adoption. As an active participant in that 1987 proceeding, BellSouth (then known as Southern Bell Telephone & Telegraph Company ("Southern Bell")) should know and understand completely, what the Commission meant when it created an "airport exemption" from the shared tenant services ("STS") rules for shared services provided by airport managers in furtherance of their duty to provide for "the safe and efficient transportation of passengers and freight through the airport campus." BellSouth's attempt to redefine the scope of that exemption eighteen (18) years later should promptly be dismissed without further waste of Commission and County resources.

In 1987, after protracted proceedings in which detailed testimony was received and opposing positions considered, the Commission adopted rules governing the provision of shared local exchange services. *See In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, Order No. 17111 (Jan. 15, 1987) (the "STS Order"), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987). In addition to considering rules for commercial STS providers and other types of sharing arrangements, the Commission heard considerable testimony regarding shared airport systems that the Greater Orlando Aviation Authority ("GOAA") and the County had, prior to that decision, established to accommodate the special and unique circumstances of airports. GOAA and the County's systems, unlike commercial STS operations, are operated by governmental authorities for the convenience of the traveling public and have unique – and critical – communications needs such as the "ability of airport tenants to quickly communicate with one another for security reasons."[1] Based on that testimony, and over the strenuous objections of BellSouth and other incumbent local exchange telephone companies ("ILECs"), the Commission determined to exempt airports from the commercial STS rules and to permit airports such as Orlando International Airport ("Orlando") and Miami International Airport ("MIA") to continue to share local exchange service for their airport purposes (*i.e.*, services related to the "safe and efficient transportation of passengers and freight through the airport campus")[2] without the requirement of certification or the other restrictions applicable to commercial STS providers such as prohibitions on inter-tenant calling, and single building and local trunk sharing limitations.

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1 STS Order at 18.

2 *Id.* (the "Airport Exemption").

The Complaint filed by BellSouth in the above-captioned proceeding is nothing more than a second attempt by BellSouth to relitigate the Commission's 1987 STS Airport Exemption, which has remained in effect, unchanged, since the Commission first adopted it over eighteen (18) years ago. In support of this ruse, BellSouth focuses on the Commission's discussion at the hearing of certain future plans and other hypothetical types of possible airport expansions discussed on cross examination by GOAA's witness, Hugh J. MacBeth ("MacBeth"), and the Commission's resulting caution that some types of possible future expansions (*i.e.*, hotels, shopping malls and industrial parks)[3] would go beyond the limits of the exemption.[4] Yet today, just as at the time of the Commission's 1987 STS Order, the only telecommunications services of any tenant at MIA routed through the County switch not covered by the airport exemption established by the Commission are the services provided at the hotel, which BellSouth concedes are NOT provided on a shared basis but instead, consistent with the Commission's STS Order provided on a fully partitioned basis. Indeed, the only thing that has materially changed since 1987 is that the management of airports, and in particular the paramount need and importance for airports to do everything possible to assure security, has increased exponentially in complexity since September 11, 2001. As a result, the Commission's justifiable concern in 1987 to permit airports to provide for the safe and efficient transportation of passengers and freight through an airport campus is even more appropriate today.

Airport management presents many challenges with scarce and costly resources. It is contrary to the public interest for an airport such as MIA to be engaged in defending a frivolous Complaint that: (i) questions a system that fully complies with the Commission's rules and the

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[3] *Id.*

STS Order, and has operated since before the Commission's 1987 STS Order;[5] (ii) ignores the fact that the Commission has already issued an order (albeit one that BellSouth did not like) as to the appropriateness of such arrangements;[6] and (iii) seeks to relitigate the same evidence the Commission has covered exhaustively.[7] Such an effort is equally wasteful of the Commission's

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[4] For example, GOAA was planning a new hotel on the airport campus at the time the Commission first decided these matters.

[5] On March 16, 1982, the Miami-Dade County Board of County Commissioners (the "Board") passed and adopted Resolution No. R-361-82, for the installation, and purchase or lease of a shared telecommunications system for the Miami-Dade Aviation Department ("MDAD") at Miami International Airport ("MIA") in which telephone service using a shared PBX switches and shared local trunks would be provided to the airport administration and airport tenants, including airlines and freight carriers, aviation and airport operations vendors and retail concessions located in the MIA terminal. Southern Bell was an unsuccessful bidder for the contract. Pursuant to Resolution No. R-361-82, on September 9, 1982, the County leased the system in lieu of purchasing the equipment from Centel Communications Company ("Centel") and entered into a (i) Master Equipment Lease whereby the County leased two (2) separate telecommunication systems (two (2) PBX switches, one of which has been partitioned to provide service to the MIA Airport Hotel) with associated telephone handsets, cables, software, and equipment, and (ii) Service Agreement whereby Centel used the telecommunications equipment and certain MIA facilities to manage the shared airport telephone service on behalf of MDAD. The County purchased the MIA Airport Hotel system on October 7, 1987. *See* Ex. 4, Aff. of Pedro J. Garcia, ¶ 3.

[6] STS Order at 18. ("Airports are unique facilities, generally construed as being operated for the convenience of the traveling public. One unique communication need is the ability of airport tenants to quickly communicate with one another for security reasons. It is for this reason that we will permit intercommunication between and among tenants behind the PBX without accessing the LEC central office.") and ("To the extent that sharing of local trucks is limited to this purpose, there is no competition with not duplication of local exchange service by the LEC.... Because of the unique nature of the airport, we consider it to be a single building. As an alternative to becoming certified as an STS provider, the airport could partition the trunks serving these other entities. With these caveats, airports may continue to provide service under existing conditions.").

[7] Even more troubling, this latest Complaint is part of a campaign to divert the County's resources at Miami International Airport and its critical jobs of operating and making the airport as safe and efficient as possible. Since 2002, BellSouth has pursued similar claims in state court. BellSouth filed a complaint against the County on November 12, 2002, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Case No. 02-28688 CA 03. The complaint has been amended twice, with the last one filed on May 27, 2004. BellSouth alleged in its complaint that the County is operating a telephone utility, based on the County's acquisition of (cont'd)

resources. Both the Commission and the County's energy and efforts could much more meaningfully, economically, and efficiently be spent on myriad public health, safety and welfare issues for which they are responsible to the citizens of Florida and Miami-Dade County.

I. BACKGROUND

A. The Commission's STS Proceedings

In 1985, prior to the opening of local services to competition and in response to a 1984 petition by Southern Bell, the Commission concluded that the Florida Statues only permitted the sharing or resale of local telephone service where existing LEC facilities were inadequate to meet the reasonable needs of the public. Accordingly, the Commission adopted a rule which prohibited the provision of shared tenant services unless and until a provider demonstrated that its proposed services did not duplicate or compete with LEC services – a rule that, in addition to prohibiting commercial STS operations in the State of Florida, arguably would have prohibited the County and GOAA from continuing to configure their airport telecommunications systems in a way that enabled the airport management to accommodate the specialized and dynamic changing needs of the airports, and also permitted the airline, freight carrier, aviation and airport operations support, security, and terminal concession tenants, on their respective airport

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telecommunications facilities and operations at Miami International Airport, purportedly in violation of the Miami-Dade County Home Rule Charter. Further, BellSouth alleges that the County has violated Florida Statutes by not obtaining a certificate of convenience and necessity from the Commission, to provide shared tenant services. The County's Answer and Affirmative Defenses demonstrated that (i) it legally and validly exercised its sovereign home rule power under the Florida Constitution in the provision of shared tenant services at Miami International Airport, and (ii) its services were exempt from the Commission's certification requirements. The County also asserted that its operations were not tantamount to a telephone utility because the services are not indiscriminately available to the public. In addition, the County asserted that BellSouth lacked standing to bring its complaint.

campuses to share a common PBX switch and thereby intercommunicate among each other for the safety and security of the airport.[8] Rule 25-4.041, F.A.C. (effective Dec. 22, 1985).

In response to that decision, a number of commercial STS providers and other operators of sharing arrangements, including airports, sought legislative relief. In 1986, the Florida Legislature enacted Chapter 86-270, codified as Section 36.339, Fla. Stat., to permit the Commission to authorize STS, to the extent it determined that such services are in the public interest. As a result of that amendment, the Commission instituted a second STS proceeding to make such a public interest determination.

Because the Commission's earlier broad prohibition of the sharing of local service would, if applied to airports, have required both the County and GOAA to jettison the communications systems then in use at Miami International Airport and Orlando, and would have similarly affected other types of non-commercial shared systems, that second STS proceeding considered not only the sharing of local service in a commercial STS context, but also such services provided in the context of other sharing arrangements at facilities such as: (i) resorts and time shares; (ii) colleges and universities; (iii) hospitals; and (iv) nursing homes, retirement, and other health care facilities. GOAA intervened and actively participated in that proceeding to argue that airports should be permitted to continue to configure their telecommunications systems in the manner best suited to the specialized needs of an airport, and free from restrictions and limitations imposed on commercial STS operations. The County also participated in the proceeding. Both BellSouth and Verizon (then known as GTE) argued strenuously that the

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[8] At that time, the Commission "grandfathered" existing STS providers for an eleven (11) month period to come into compliance by partitioning their PBX switches on both the trunk and line sides, so that there was no sharing of local trunks and no intercommunication between tenants without use of the LEC network.

sharing of local telephone service should not be permitted, including the sharing of services that was in place and operating at Orlando and Miami International Airport.

B. The Commission's STS Rules

In its STS Order,[9] the Commission found that limited local sharing is in the public interest under certain conditions. For example, the Commission circumscribed the scope of commercial STS arrangements to:

- a single building (one structure under one roof);[10]
- a maximum of 250 PBX trunks; and
- purchasing message rated PBX trunks.

The STS Order also prohibited commercial STS operators from permitting communications between unaffiliated tenants without accessing the LEC central office. Moreover, the Commission required all such STS providers to obtain a certificate of public convenience and necessity to provide service on a building-by-building basis.[11] The Commission also required that STS providers must permit direct LEC access to any tenant seeking such service, offer unrestricted access to all locally available interexchange carriers, and provide access to LEC operators and, where available, to 911 centers for emergency services. In addition, the Commission specifically noted that STS providers would be subject to the Commission's regulatory assessment fees and the Florida gross receipts tax, and extended its then-existing "bypass" prohibition to STS arrangements.

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[9] *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Order No. 17111, Docket No. 860455-TL (issued Jan. 15, 1987) ("STS Order"), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987).

[10] If more than one building is served by a single PBX, the trunks serving each building were required to be partitioned, and each building would be required to receive separate Commission certification as a separate STS arrangement.

C. The Airport Exemption

As noted above, GOAA argued strenuously throughout the proceeding that the limitations placed on STS arrangements and the regulation of STS providers would be inappropriate in the unique context of an airport. The Commission was persuaded by those arguments and found that:

> [a]irports are unique facilities, generally construed as being operated for the convenience of the traveling public. One unique communication need is the ability of airport tenants to quickly communicate with one another for security reasons. It is for this reason that we will permit intercommunications between and among tenants behind the PBX without accessing the LEC central office.

STS Order at 18.

Accordingly, after an extensive review of the type of sharing arrangements in effect at Orlando and Miami International Airports, the Commission found that, due to their unique circumstances, airports should not be subject to the rules applicable to commercial STS providers so long as their sharing of local telephone service is "*related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus.*"[12] (the "Airport Exemption"). The STS Order cautioned, however, that extension of an airport's shared telephone services beyond that in effect at that time to "facilities such as hotels, shopping malls and industrial parks" would require either that the local trunks to such entities be separate from the shared airport system or that the airport obtain a certificate of public convenience and necessity as an STS provider. *Id.* The Commission also provided that with this caveat as to the

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[11] The Commission also initially required STS providers to file a separate tariff of their rates and charges for each STS building served, but that requirement has been removed.

[12] *Id.* at 18 (emphasis added).

extension of the shared service to "hotels, shopping malls and industrial parks," which would require a certificate, "airports may continue to provide service under existing conditions." *Id.*

In January 1991, the Commission codified the Airport Exemption in Section 25-24.580 of the Florida Administrative Code (the "Code").[13] That section of the Code provides that:

> Airports shall be exempt from other STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. The airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. However, if the airport partitions its trunks, it shall be exempt from the other STS rules for service provided only to the airport facility.

The parameters within which an airport may share local telephone service without becoming subject to the STS rules have not changed since the Airport Exemption was adopted in 1987. Therefore, so long as the County's sharing of local telephone service is related to the purpose of an airport (*i.e.*, "the safe and efficient transportation of passengers and freight"), it will not be required to obtain a certification of authority from the Commission or to comply with the Commission's regulations applicable to telephone companies or STS providers, such as the filing of tariffs of its rates and charges or the filing of annual reports at the Commission, given

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[13] Adoption of Rules 25-24.550 through 25-24.587, F.A.C., Docket No. 891297-TS, Order No. 23979 (Jan. 19. 1991). Subsequently, in 1995, the Florida Legislature substantially amended Florida Statutes to allow competition in the provision of local exchange services, and among other changes amended Section 364.339 of Florida Statutes to remove certain restrictions placed on STS providers. Importantly, STS providers were no longer statutorily limited to providing service to tenants in a single building. The Commission also subsequently revised its STS rules to conform to the 1995 Florida Legislature's directive. *See* Proposed Repeal of Rules 25-4.0041, F.A.C., Provision of Shared Service For Hire and 25-24.557, F.A.C., Types of Shared Tenant Service Companies and Proposed Amendment of Rules 25-24.555, F.A.C., and 25-24.560 through 25-24.585, F.A.C., Relating to Shared Tenant Services, Docket No. 951522 (1995) ("Proposed Repeal of Rules"), *adopted in part*, Final Order Establishing Rates, Terms and Conditions for Shared Tenant Services Pursuant to Chapter 95-403, Laws of Florida, Docket Nos. 951511-Tl and 951522-TS (1997). In that rulemaking proceeding, the Commission (cont'd)

"there is no competition with no duplication of local exchange service by the LEC." STS Order at 18. ***The County's shared airport system at Miami International Airport fully complies with those requirements and BellSouth's Complaint should be summarily dismissed.***

ARGUMENT

As an initial matter, BellSouth lacks standing to bring this claim to the Commission. Whether or not the County provides STS as a certificated provider, Florida law and the Commission's rules allow BellSouth to offer service to tenants of the airport and compete to serve their telecommunications needs. BellSouth's Complaint does not allege that the County denies BellSouth direct access to MIA tenants pursuant to Section 364.339(5), Fla. Stat. and the STS Order. Thus, BellSouth cannot satisfy the requirement under Commission rules, which require BellSouth to demonstrate that its substantial interests are affected.

The substance of BellSouth's Complaint is also fatally flawed and incorrect. BellSouth contends that the County requires an STS certificate from the Commission in order to provide its shared telephone services to airport tenants and to the partitioned MIA Airport Hotel. This contradicts both the letter and legislative history of the Commission's Rules. Although the Commission did not *per se* define "hotels, shopping malls, and industrial parks", the Commission neither intended nor required airports to obtain certification from the Commission in order to serve any commercial tenant within the airport terminal facility. Indeed, there was substantial testimony at the hearings about the security reasons for permitting airport tenants, including not only airlines, freight carriers, and aviation and airport operations support services, but also concessions in the airport terminal (*e.g.*, restaurants, newsstands, bars, and even the

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specifically stated that the Airport Exemption would remain unchanged. Proposed Repeal of Rules at 4. (emphasis supplied).

shoeshine stand) to obtain service through the shared airport system and therefore to continue to intercommunicate "behind" the PBX switch – *i.e.* without accessing the LEC central office.

To the extent the County provides shared services to tenants of the airport, such service is entirely consistent with the Commission's rules and orders that specifically exempt airports from the Commission's STS certification requirement. Put simply, it was clear to the Commission in 1987, that the shared operations at Orlando and Miami International Airport included sharing of service by terminal shops, restaurants, bars, newsstands, shoeshine stands and other terminal concessions in order to intercommunicate behind a PBX, and the Commission permitted airports "to continue to provide service under these conditions."[14] In addition, the County fully complies with the Commission's requirement regarding sharing of local trunks with hotels – the MIA Airport Hotel at Miami International Airport is not part of the shared airport system, but instead is served on a partitioned basis consistent with the STS Order and the Commission's Rules.

II. BELLSOUTH LACKS STANDING UNDER THE COMMISSION'S RULES

In Florida, a party has the burden to prove standing by demonstrating that it has a substantial interest in the outcome of a proceeding. *Joint Application of MCI Worldcom, Inc. and Sprint Corporation for Acknowledgement or Approval of Merger*, Docket No. 991799-TP, Order No. 00-0421 (2000) ("MCI WorldCom Order"); *see also*, Rule 25-22.036(2)(b), F.A.C. The party must demonstrate that (1) it will suffer injury that is substantial and immediate, not merely speculative or conjectural, and (2) the injury is of a type that the proceeding is designed to protect. MCI WorldCom Order at *10 (rejecting intervener's claims of potential injury as speculative); *Request for approval of transfer of control of MCI Communications Corporation to TC Investments Corp.*, Docket No. 971604-TP, Order No. 98-0702 (1998) (rejecting GTE and

CWA claims for standing because neither demonstrated that it will suffer an injury in fact). *See also Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997); *Agrico Chem. Co. v. Dep't of Envtl. Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981).

BellSouth has failed to demonstrate that it will suffer any injury, either immediate or speculative. It merely states in its Complaint, without factual support, that it has "an interest in competitive providers complying with applicable PSC requirements." Complaint ¶ 4. This interest is not an actual injury to BellSouth. Moreover, it is apparent that BellSouth has not been injured, because the County fully and freely allows BellSouth to provide service to MIA tenants directly, which BellSouth has done and continues to do when a tenant requests service directly from BellSouth. In addition, even though local service competition now exists and other suppliers (*i.e.*, competitive local exchange companies and alternative access vendors) are available, the County purchases the trunks used to serve the shared airport system and the separate, partitioned trunks used to serve the hotel, from BellSouth, so BellSouth receives revenue for all telephone service provided through the airport switches to the public switched telephone network.[15] In fact, the Miami-Dade Aviation Department ("MDAD") which manages and operates MIA for the County, pays BellSouth over $630,000 annually for local service, trunks, and other equipment, services, and access necessary for MDAD to provide shared

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[14] *Id.*

[15] Since the time of the STS Order, the Commission has opened the local market to competition, so unlike the environment in 1987 when Southern Bell was the only local service provider in Miami-Dade County and therefore had some basis to claim that it was affected by the MIA's sharing arrangement, there is no assurance that, in the absence of the airport sharing arrangement, BellSouth would serve any or all of those tenants directly.

services.[16] Accordingly, without any injury, BellSouth does not have standing to bring this Complaint and its Complaint should be summarily dismissed.

III. UNDER COMMISSION RULES, MIAMI INTERNATIONAL AIRPORT IS EXEMPT FROM CERTIFICATION AND OTHER STS REQUIREMENTS

Even if the Commission determines not to dismiss the Complaint for lack of standing, BellSouth's claim that Commission rules require airports to apply for and obtain from the Commission a certificate to provide the type of shared services in effect at Miami International Airport is wrong. Complaint ¶¶ 13-14. Contrary to BellSouth's claims, the Commission's rules adopted in 1987, exempted MIA from the Commission's STS certification requirement, and the sharing, operation and configuration at MIA– and the Commission's rules – remain unchanged to this day.[17]

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[16] The County pays BellSouth approximately $13,000,000 annually for local service and aggregated broadband transport services.

[17] The only change in the Miami International Airport system is that the shared airport system was initially implemented using a leased PBX and was managed on a contract basis by Centel, and the switch was subsequently purchased on February 5, 2002 by the County and is managed by NextiraOne, LLC ("NextiraOne") on behalf of MDAD, through a management agreement. NextiraOne was the successor or assignee of Centel's rights and obligations under the previous contracts. The scope, nature, and type of MIA tenants serviced by the airport system has not changed.

BellSouth seems to claim that use of a leased switch somehow meant that the County was not providing shared tenant service until after 1994, is wholly at odds with the argument that it made in the STS proceeding that the sharing of trunks by both GOAA and the County was in violation of the STS laws. Indeed, given that MIA has always consisted of multiple buildings and intercommunication behind the PBX, Wiltel Communications System ("Wiltel"), the former MIA system manager, could not have had a commercial STS operation at the airport prior to 1994 when such operations, unlike exempt shared airport systems, were limited to single buildings and prohibited intercommunication among tenants without access to the local exchange network. Indeed, neither Wiltel nor its successor companies ever had an STS certificate to serve MIA (and as the managers on behalf of MDAD, which operated a shared airport system fully compliant with the Commission's rules, did not need such a certificate).

Section 364.339 of Florida Statutes provides the Commission exclusive jurisdiction to authorize the provision of STS, and generally requires STS providers to obtain Commission certification, but also exempts service to government entities. §§ 364.339(1), (2), and, (3)(a), Fla. Stat. Moreover, Section 363.339(3)(a) of Florida Statutes gives the Commission authority to exempt entities from any certification requirements. *See also* § 25-24.555 F.A.C. Pursuant to this authority, while generally requiring STS providers to obtain an STS certificate from the Commission and limiting the scope of their services, ***the STS rules specifically exempted airports from such certification requirements and other limitations.*** Section 25-24.580 of the Code, the 1991 codification of the Commission's STS Order provides:

> Airports shall be exempt from other STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. The airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. However, if the airport partitions its trunks, it shall be exempt from the other STS rules for service provided only to the airport facility.

(emphasis added.)

BellSouth claims that the County was required to obtain a certificate of public convenience and necessity: (i) prior to providing shared airport services to "restaurants, retail shops or other commercial entities" located in the MIA terminals to serve the traveling public; (ii) for the hotel to receive non-shared, partitioned service; and (iii) before the County commenced operation of the shared airport system.[18] Complaint ¶¶ 12-13. Contrary to

[18] In addition, BellSouth makes an oblique reference to the Commission's rules that appears to challenge whether the Commission in fact exempted shared airport systems from certification requirements, and if it did, whether such exemption was legal. Complaint ¶ 15. BellSouth apparently believes that the word "other" in the first line of § 580 indicates that MIA is exempt from "other" rules but not exempt from the certification requirement. *See e.g.* Complaint at Ex. A, pp. 17-18 (Tr. pp. 62-66).

(cont'd)

BellSouth's effort to parse and narrow the scope of the Commission's decision, the STS Order clearly provides that when an airport operates shared airport telecommunications for the purpose of "the safe and efficient transportation of passengers and freight through the airport campus", the airport is exempt from certification because "there is no competition with nor duplication of local exchange service by the LEC." Specifically, the STS Order provides that:

> While we recognize the unique needs of airports such as GOAA, the sharing of local exchange service must be related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus. To the extent that sharing of local trunks is limited to this purpose, there is no competition with nor duplication of local exchange service by the LEC. There was some discussion at the hearing of extending local sharing to facilities such as hotels, shopping malls and industrial parks. To the extent an airport engages in this type of local sharing, it must be certificated as an STS provider. Because of the unique nature of the airport, we consider it to be a single building. As an alternative to becoming certificated as an STS provider, the airport could partition the trunks serving these other entities. With these

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There is no question that the Commission exempted shared airport systems from the certification obligation as well as other STS requirements. § 25-24.580, F.A.C. If it had not done so, then clearly the Commission would have required both GOAA and the County to obtain certificates for their existing shared airport systems immediately upon adoption of the STS Order rather than permitting them to "continue to provide service under existing conditions." Moreover, the plain wording and meaning of the Commission's STS Order and the rules debunk BellSouth's interpretation. For example, Section 580 operates as an exemption to the Commission's STS rules applicable to commercial STS providers. The text of the Commission's exemption clearly requires that an airport needs a certificate only "before it provides shared local services to facilities such as hotels, shopping malls and industrial parks." § 24.25.580, F.A.C. If the default rule is that airports need Commission certification to provide shared airport services to any tenant as Bellsouth asserts, there would be no need for the rule to state that "[t]he airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks." Thus the only reasonable, and possible interpretation of § 580 is that it generally exempts airports from STS certification requirements and only applies such a requirement in limited instances where an airport's system goes beyond services "related to the safe and efficient transportation of passengers and freight through the airport campus." STS Order at 18 ("To the extent that sharing of local trunks is limited to this purpose, *there is no competition with no duplication of local exchange service by the LEC.*") (emphasis added).

> caveats, airports may continue to provide service under existing conditions.

STS Order at 18. Thus the general rule, as outlined in the text of the STS Order and in Rule 25-24.580, F.A.C., is that certification is not required for an airport providing shared service to airport tenants for the purpose of "the safe and efficient transportation of passengers and freight through the airport campus."

This interpretation is consistent with the record of the Commission's deliberations adopting the STS Order. In describing the Commission's decision regarding shared service in airports, Chairman Nichols explained that the Commission's exemption would allow usage "incidental' to the airport's purpose "but doesn't make [the airports] have to go through whole certification process because they've got a newsstand and a coffeeshop."[19]

The STS Order also reflects that the Commission intended to allow airports such as Orlando or MIA that intervened in the STS proceedings to continue operating as they had in the past — without any certificate from the Commission. The STS Order provides that "airports may continue to provide service under existing conditions." **STS Order at 18.** Thus, the Commission should dismiss Bellsouth's Complaint that the County is required to obtain an STS certificate to serve tenants in the Miami International Airport.

A. The STS Airport Exemption Includes Concessions In The Airport Terminal and Is Not Limited to Aviation Industry Tenants

BellSouth's argument rests on three (3) mistaken premises: (1) that the provision of shared services to "restaurants, retail shops or other commercial entities" is not "related to the safe and efficient transportation of passengers and freight through the airport campus"; (2) even

though the hotel is not part of the shared system, the County is required to obtain a certificate for it to obtain service; and (3) the County was required to secure a certificate before commencing operation of the airport system. Complaint ¶¶ 13, 15. In support of these arguments, BellSouth relies upon the examples of "Hotels, Shopping Malls and Industrial Parks" used by the Commission in the STS Order to illustrate what types of commercial services by an airport authority would not be permitted to be shared without the authority obtaining a certificate as an STS provider.

1. The Retail Concessions in the Miami International Airport Terminal that are Part of the Shared Airport System are "Related to the Safe and Efficient Transportation of Passengers and Freight Through the Airport Campus"

In order to make the first erroneous argument, BellSouth makes the dubious claim that because shopping malls may contain restaurants and retail stores, such establishments in an airport terminal must transmogrify the airport into a "shopping mall", instead of being related to the "safe and efficient transportation of passengers and freight through the airport campus", and that the Commission meant to require that inclusion of any type of entity that ***could be*** located in a commercial retail shopping mall in an airport sharing arrangement would require that the airport obtain an STS certificate. Bellsouth's expansive reading of the rule is untenable. The Commission could easily have applied the rule to retail shops and restaurants but did not. It used the term "shopping mall." The term shopping mall, in ordinary usage, is understood to be a building or series of buildings that house a litany of stores, shops and restaurants to serve the general public who come to shop. ***The MIA terminal building does not provide shops for***

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[19] *In re: Shared Local Exchange Telephone Service*, Docket No. 860455-TL, Special Agenda Tr. at Vol. II, p. 201, ll. 1-5 (Jan. 8, 1987) ("Special Agenda Transcript") (emphasis added).

people to walk off the street and shop. As the STS Order noted, the airport provides concessions in its terminals for the convenience and comfort of travelers passing through the airport. STS Order at 18. The plain language of the rule must prevail and BellSouth's claim that the term shopping mall actually means individual shops in an airport like MIA should be rejected.

That the text of the rule actually means only what it says, and not what BellSouth wishes that it said, is evident from the transcript of the Commission's deliberations. As noted above, at the Special Agenda session to consider adoption of the STS Order, Chairman Nichols explained that the Commission's exemption would allow usage "incidental' to the airport's purpose "but doesn't make [the airports] have to go through whole certification process because they've got a newsstand and a coffeeshop."[20] In addition, at that same session, Commissioner Herndon proposed a fourth general category of entities (in addition to "hotels, shopping malls and industrial parks") that an airport would be required to obtain a certificate for the provision of STS. *Id.* This addition would have required a certificate to provide STS to any "other commercial activities that are unrelated to the mission of an airport." ***Id.*** The other Commissioners, including Commissioner Gunter, the sponsor of the exemption adopted in the text of the STS Order, disputed the additional language, arguing that it "might exclude restaurants", which was clearly not an intended result. *Id.* at 271, l. 10. Commissioner Herndon then clarified that the intention of the language was to distinguish terminal restaurants and shops from a "shopping mall" or the "Sebring Raceway that's down there on the airport" *Id.* at 272, ll. 6-10.

As Commissioner Herndon explained:

> The mission of the airport is to provide an environment where travelers – leaving aside the freight for a moment – where travelers can move in an efficient, safe manner; they have the necessary kind of amenities to make their travel productive. **If their clothes are ruined they can replace them. They can get food, buy a trinket for relatives. I think those are a part of the mission of the airport.**

Id. at 280, ll. 13-22 (emphasis added). Obviously, the Commission clearly considered commercial tenants providing retail service to travelers as "*related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus*" and **NOT** as a "shopping mall." As stated by Commissioner Gunter:

> COMMISSIONER GUNTER: Let me tell you what my interpretation is. My interpretation is that the airport, if you just picture a chain link fence around nothing but the airport and you didn't have any warehouses, you didn't have an industrial park and you didn't have a hotel sticking up in there – everything in there that can be construed in a reasonably common-sense approach as being necessary for the operation of the airport.
>
> CHAIRMAN NICHOLS: And that would include –
>
> COMMISSIONER GUNTER: And that would include the traveling public and those aviation services that are available at the airport.
>
> COMMISSIONER MARKS: Let me ask a question then. Does the bar that's on the concourse in the Tallahassee municipal airport as you go past the metal detector on the right, the little cubby hole looking bar, does that include that [--] that would be a part of that services?
>
> COMMISSIONER GUNTER: I would think yes.
>
> COMMISSIONER WILSON: Nobody drives out to the Tallahassee airport to go to that bar.
>
> COMMISSIONER MARKS: Well, that would include that and that would be a part of the airport services in [sic] exempt.
>
> CHAIRMAN NICHOLS: The newsstand would be included.[21]

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[20] Special Agenda Tr. Vol. II at p. 271, ll. 2-7.

[21] Note that this response appears to follow from the subsequent question and therefore appears to be out of order in the transcript.

COMMISSIONER GUNTER: How about a newsstand? Even an old railroad terminal. I used to ride the railroad and they had a magazine rack in the railroad terminal in Jacksonville.

COMMISSIONER MARKS: Let me ask another question now. Does this, what you're doing, exclude hotels?

CHAIRMAN NICHOLS: Yes.

COMMISSIONER MARKS: All and any hotel?

CHAIRMAN NICHOLS: We specifically excluded hotels, industrial parks and shopping centers.

One of the five sitting Commissioners (Commissioner Marks), opposed the exemption of airports from certification and other STS requirements where they serve retail tenants in the terminals, but the exemption nevertheless carried after discussion in a 4 to 1 vote. Thus, provision of STS to such tenants is clearly and indisputably exempt from the Commission's certification requirement for STS providers.

2. The Hotel at Miami International is Served on a Fully Partitioned Basis and is Not Part of the Shared Airport System

BellSouth concedes the MIA Airport Hotel at Miami International Airport is not part of the shared airport telecommunications system, and the trunks that serve the hotel are partitioned to serve only the hotel. Complaint ¶ 12. BellSouth's concession exposes the fallacy of BellSouth's second argument. Because there is no sharing of service with the MIA hotel,[22] the fundamental concern of the STS Order – the prevention of duplication or competition with local exchange service by the local exchange carrier and the reduction in the number of trunks that would in the absence of sharing be provided by the LEC on an unshared bases – is completely

[22] *See* Ex. 4, Aff. of Pedro J. Garcia, ¶ 3.

absent. There is no ability to intercommunicate between guest rooms and other airport tenants "behind" the switch without accessing the LEC central office, and the trunks used to serve the hotel are not shared with any other airport tenant. Complaint at Ex. A, pp. 13 (Tr. pp. 46, 49). There is no duplication or competition with the LEC as the trunks used to serve the hotel guests are AT&T trunks. *See* Ex. 4, Aff. of Pedro J. Garcia, ¶ 3. It is precisely this structure that the Commission expressly outlined in the STS Order as an "alternative to becoming certificated as an STS provider." STS Order at 18.

3. The County can Operate the Airport System Without a Certificate of Necessity.

Last, BellSouth incorrectly alleges "the County was required to secure a certificate ... prior to its beginning to operate...." Complaint ¶ 13. Entities whose operations and systems preceded the STS Order were exempt from certification. "[A]irports may continue to provide service under existing conditions." STS Order at 18. The plain language of the STS Order shows the ability of airports like MIA to continue providing shared services to its tenants without a certificate, and the Commission's dictates on the provision of STS have remained static since the 1987 STS Order.

B. Providing STS To Tenants In The Airport Is Necessary "For The Safe And Efficient Transportation Of Passengers Ad Freight Though The Airport.

The County's interpretation of the rule is consistent with the Commission's stated policy objective in formulating the rule — allowing airports to share local service so as to manage its airport "for the safe and efficient transportation of passengers and freight though the airport." *See* STS Order at 18.

Further, in the STS proceedings, there was much discussion at the Commission hearings concerning the need for an airport to share service with tenants such as shoeshine stands, hot dog

vendors, and other concessions that serve the public using the airport. Mr. MacBeth, the GOAA witness who provided comprehensive testimony and was extensively cross-examined during the proceedings, demonstrated that shared telecommunications service to all tenants in the airport facility is an indispensable aspect of airport safety and security.[23] Recognizing this, the STS Order permits airports to share services with such tenants, given the fact that it permitted airports to continue to provide service under existing conditions.

BellSouth's claim that any services provided to entities such as concession stands and restaurants within the MIA terminal is outside of the exemption, and certification would be required before the County could provide STS service is incorrect. The County provides STS service necessary to ensure the safe and efficient transportation of passengers and freight through the MIA facilities. The Commission in 1987 recognized the unique communication needs of an airport and now, more than ever, due to the need for increased and tightened airport security after the tragic events of September 11, 2001, these needs have expanded exponentially. The safety and security of the traveling public is now a focus of national security policy. The County must always maintain MIA in the most efficient manner possible to meet unforeseen emergency conditions, and in fact, must rely on the crucial communications links in its airports to respond to a terrorist attack or other crisis.

The STS service that the County provides to airport tenants is an indispensable component of "the safe and efficient transportation of passengers and freight through the airport

[23] *See* Testimony and Rebuttal Testimony of Hugh J. Macbeth, Docket No. 860455-TL (July 15, 1986 and Aug. 14, 1986, respectively) (Attached as Exs. 1 and 2). Commissioner Gunter acknowledged that a bar at the Tallahassee airport is necessary to the operation of the airport's shared telecommunications service. Special Agenda Tr. Vol. II at p. 273, ll. 15-21.

campus."[24] As part of its mission to ensure the safety of the traveling public, Miami International Airport has its own fire and rescue, police, and emergency personnel and systems. *See* Ex. 5, Aff. of Mark Forare, ¶ 2. These systems are seamlessly interconnected with MIA's shared system. *Id.* at ¶¶ 3-4. Any tenant using the STS service can dial a four (4) digit number, and access the MIA emergency system. *See* Ex. 4, Aff. of Pedro J. Garcia, ¶ 4. All of the telephones on the shared system throughout the terminal and MIA facilities, can access emergency services through the use of a four (4) digit number. *Id.* at ¶¶ 4-5. In addition, the MIA operations center, fire department, and police department can receive "caller ID" information from each telephone on the shared airport system that enables them to know the originating entity and telephone extension which reduces response time. *Id.* at ¶ 6. *See also*, Ex. 5, Aff. of Mark Forare, ¶ 2. Thus if someone picks up a telephone on the shared system but doesn't know the airport location, the MIA emergency system and emergency personnel know the originating entity, and can dispatch the appropriate emergency or security personnel to that entity's location. *Id.* In addition, since these calls are transmitted "behind the PBX," they are not subject to cable cuts and switch overloads that might occur in the public switched network environment.[25] **It is this type of functionality, described in GOAA's testimony,**[26] that the Commission relied on in its 1987 STS Order, that falls squarely within the ambit of ensuring "the safe and efficient transportation of passengers and freight through the airport campus,"[27] and which the Commission specifically found to be of paramount importance in the "unique"

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[24] STS Order at 18.

[25] For example, just a week ago, Verizon recently suffered severe cable cuts in Florida that impacted service. *See* Ex. 3.

[26] *See, e.g.,* Exs. 1 and 2, at 7-8, 14-18.

[27] *See* STS Order at 18.

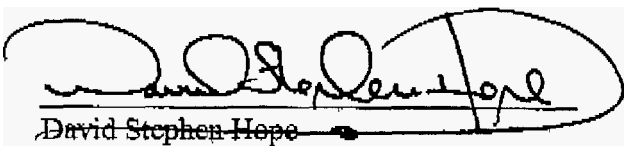
circumstances of an airport. Any airport terminal tenant who is not part of the shared system does not have the ability to intercommunicate with police, fire and the operations center on a four (4) digit basis, and BellSouth's contention that all commercial tenants in the terminals could not be served without partitioning or certification by the airport would eviscerate the entire purpose of the Airport Exemption and the Commission's conclusion to permit "airports [to] continue to provide service under existing conditions."

IV. CONCLUSION

For the aforementioned reasons, BellSouth's Complaint should be dismissed.

Respectfully submitted,

Robert A. Ginsburg
Miami-Dade County Attorney



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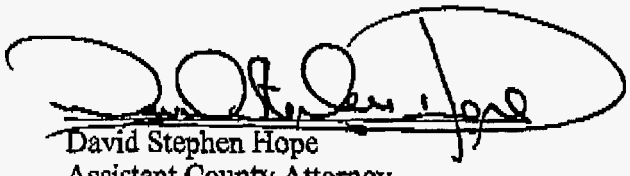
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this *1st* day of June, 2005, to; ***Nancy B White, Esq.*** and ***Sharon R. Liebman, Esq.***, c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301; and ***R. Douglas Lackey, Esq.***, BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375.



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