

ORIGINAL

Marguerite Lockard

From: Fatool, Vicki [Vicki.Fatool@BellSouth.COM]
Sent: Tuesday, February 14, 2006 4:22 PM
To: Filings@psc.state.fl.us
Subject: 060049-TL BellSouth's Answer to Broward County's Petition for Declaratory Statement
Importance: High
Attachments: 060049-T.pdf; Exhibits.pdf

A. Vicki Fatool
 Legal Secretary to Nancy B. White & Manuel A. Gurdian
 BellSouth Telecommunications, Inc.
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 Tallahassee, Florida 32301
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 vicki.fatool@bellsouth.com

B. Docket No. 060049-TL

Petition of the Board of County Commissioners of Broward County, Florida for
 Declaratory Statement

C. BellSouth Telecommunications, Inc.
 on behalf of Manuel A. Gurdian

D. 46 pages total (includes letter, certificate of service, pleading and exhibits)

E. BellSouth Telecommunications, Inc.'s Answer to Broward County's Petition for
 Declaratory Statement

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<<060049-T.pdf>> <<Exhibits.pdf>>

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ORIGINAL

Legal Department

MANUEL A. GURDIAN

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

February 14, 2006

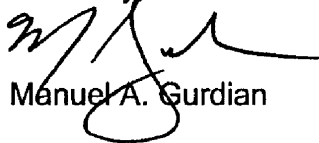
Mrs. Blanca S. Bayó
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: **Docket No. 060049-TL: Petition of the Board of County Commissioners of
Broward County, Florida for Declaratory Statement**

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Answer to Broward County's
Petition for Declaratory Statement, which we ask that you file in the captioned docket.

Sincerely,



Manuel A. Gurdian

Enclosures

cc: All Parties of Record
Jerry Hendrix
R. Douglas Lackey
Nancy B. White

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE
DOCKET NO. 060049-TL**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via


(*) Federal Express, First Class U.S. Mail and Electronic Mail this 14th day of February,

2006 to the following:

Christiana Moore
Samatha Cibula
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Assistant County Attorney
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Manuel A. Gurdian

FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of the Board of County) Docket No. 060049-TL
Commissioners of Broward County,)
Florida for Declaratory Statement)
_____) Filed: February 14, 2006

ANSWER OF BELLSOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") responds to the Petition for Declaratory Statement ("Petition") filed by Broward County, Florida ("the County") seeking a declaration regarding the applicability of BellSouth's tariff provisions to the rent and relocation obligations associated with a BellSouth equipment hut, known as the "Maxihut," located at the Fort Lauderdale-Hollywood International Airport ("Airport"), and states as follows:

1. BellSouth admits the allegations in paragraph 1 of the Petition, on information and belief.
2. The allegations in paragraph 2 of the Petition require no response from BellSouth. BellSouth affirmatively states that communications regarding BellSouth's Answer to this Petition should be directed to:

Nancy B. White
Manuel A. Gurdian
Sharon R. Liebman
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558
nancy.white@bellsouth.com
manuel.gurdian@bellsouth.com
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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

3. BellSouth admits that the County owns and operates the Airport, upon information and belief. BellSouth admits that some of the Airport's tenants receive service from BellSouth at multiple locations at the Airport. BellSouth is without knowledge as to whether the County has entered into numerous leases with the various entities listed in paragraph 3 or whether said entities conduct business on the grounds of the Airport and therefore BellSouth denies same. BellSouth is without knowledge as to whether there are 178 separate and direct tenants conducting business on the grounds of the Airport, and therefore BellSouth denies same. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 3 of the Petition.

4. BellSouth admits that it and its predecessor, Southern Bell Telephone and Telegraph Company ("Southern Bell") provided and continue to provide telephone service to the County at the Airport. BellSouth is without knowledge as to whether it provided service to "178 business units and units of government" identified in paragraph 3 and therefore BellSouth denies same. BellSouth admits that it provides service to certain Airport tenants. BellSouth admits that billing for service is made by BellSouth directly to certain Airport tenants and payment is made by certain Airport tenants directly to BellSouth. BellSouth admits that the County is a customer of BellSouth and that the County receives service from BellSouth. BellSouth is without knowledge as to whether there are "179 BellSouth customers at the Airport receiving telephone service under its own service agreements" and therefore BellSouth denies same. BellSouth is without knowledge as to whether the County is a shared tenant

services provider at the Airport and therefore denies same. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 4 of the Petition.

5. BellSouth denies that the County is in need of a declaration from the Commission. BellSouth affirmatively asserts that Part A2.3.9 and Part A5.2.2.F.1.e of BellSouth's General Subscriber Service Tariff ("GSST") are clear on their face and control the situation as posed by the County. BellSouth affirmatively asserts that Part A2.3.9 of the GSST provides that the subscriber is responsible, at his expense, for the provision of all suitable space and floor arrangements on his premises for communications facilities provided by the company in connection with services furnished to the subscriber by the company. BellSouth further affirmatively asserts that Part A5.2.2.F.1.e of the GSST provides that "[w]hen the Company is requested to move, change, rearrange or remove existing plant..., the person/company at whose request such move or change is made will be required to bear the costs incurred." Except as specifically admitted, BellSouth denies the allegations contained in paragraph 5 of the Petition.

6. BellSouth admits that on or about July 21, 1983, Southern Bell entered into a lease agreement with the County for 0.06 acres at the Airport and that the lease agreement attached to the Petition as Exhibit 1 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 6 of the Petition.

7. BellSouth admits that the letter dated July 15, 1983 from Southern Bell to the County attached to the Petition as Exhibit 2 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 7 of the Petition.

8. BellSouth admits that the lease agreement attached to the Petition as Exhibit 1 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 8 of the Petition.

9. BellSouth admits that the lease agreement attached to the Petition as Exhibit 1 speaks for itself. BellSouth admits that on or about January 18, 1993 it exercised a ten year option for the subject premises and that Exhibit 3 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 9 of the Petition.

10. BellSouth admits that in 2003 the parties engaged in discussions as to BellSouth's continued use of the property. BellSouth admits that on or about June 18, 2003, it forwarded a letter to the County which is attached as Exhibit 4 to the Petition and that Exhibit 4 speaks for itself. BellSouth admits that on or about August 19, 2003, the parties entered into the first amendment to the lease agreement and that a copy of Amendment No. 1 attached to the Petition as Exhibit 5 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 10 of the Petition.

11. BellSouth admits that on or about August 23, 2005, the parties entered into a second amendment to the lease agreement and that a copy of Amendment No. 2 attached to the Petition as Exhibit 6 speaks for itself. Except

as specifically admitted, BellSouth denies the allegations contained in paragraph 11 of the Petition.

12. BellSouth admits that the parties entered into a third amendment to the lease agreement and that a copy of Amendment No. 3 attached thereto as Exhibit 7 speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 12 of the Petition.

13. BellSouth admits that the hut constructed by BellSouth on the Airport property houses switching equipment and is generally referred to as a "Maxihut." BellSouth admits that its network wiring enters the Airport and some of the network wiring is routed into the Maxihut. BellSouth admits that the equipment inside the Maxihut is distributed network switching and multiplexing equipment which multiplexes digital signals into individual circuits. BellSouth admits that individual circuits (copper wire or fiber optic cable) exit the Maxihut and are routed throughout the Airport to each BellSouth customer demarcation point. BellSouth affirmatively asserts that (a) the circuits are routed on cable that BellSouth has placed within space on Airport property that the County has provided to BellSouth rent free and which cable runs to buildings at the Airport where subscribers are located and (b) the County has provided to BellSouth various "interim" equipment space locations (before customer demarcation points) on Airport property, also rent free, where BellSouth places network equipment that, like the equipment in the Maxihut, is necessary to route and provide service, before the service ultimately reaches customer demarcation points.

14. BellSouth admits that its customer demarcation points are not inside the Maxihut.¹ BellSouth admits that the demarcation point is the point at which the BellSouth network officially terminates and the customer's wiring responsibilities begin. BellSouth admits that Rule 25-4.0345(3) speaks for itself. BellSouth admits that it is solely responsible for the maintenance and upkeep of all of the wiring that enters the Maxihut, all of the wiring that exits the Maxihut, and all of the equipment inside the Maxihut. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 14 of the Petition.

15. BellSouth admits that Part A2.3.9 of the GSST speaks for itself. BellSouth admits that Part A2.3.9 of the GSST has been cited as the basis for the position that BellSouth is not required to pay rent for the Maxihut space. BellSouth affirmatively asserts that Richard Melson, General Counsel for the Commission, took this position in a December 9, 2003 letter, which is attached hereto as Exhibit 1. Mr. Melson's December 9, 2003 letter responded to a November 13, 2003 letter from Barbara M. Hill, Assistant County Attorney for Broward County, to the Commission, which is attached hereto as Exhibit 2, inquiring about the issues that are the subject of the County's Petition. Mr. Melson's December 9, 2003 letter concludes that, in the absence of a lease extension or new lease, BellSouth would have no legal obligation to pay rent after the lease agreement terminated, as Part A.2.3.9 of the GSST obliges a subscriber, such as the County as sponsor of the Airport, to provide suitable space required to provide services to the subscriber. Mr. Melson's letter states

¹ As stated in paragraph 39, *infra*, BellSouth denies the allegations in Paragraph 39 of the County's Petition that BellSouth has advanced an argument that the Maxihut is or contains the "demarcation point" for telephone service to Airport customers.

that: "BellSouth is not legally obligated to pay rent for "suitable space and floor arrangements" required in connection with BellSouth's provision of services to the Airport (or its tenants)." BellSouth affirmatively asserts that the equipment in the Maxihut serves only subscribers at the Airport. BellSouth further affirmatively asserts that the County has provided to BellSouth various telephone closets and other equipment space on Airport property rent free and that such closets and other equipment space (like the Maxihut space) house BellSouth network equipment that serves the County as well as other subscribers at the Airport. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 15 of the Petition.

16. BellSouth admits that the definition of "Subscriber" in Part A1 of the GSST speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 16 of the Petition.

17. BellSouth admits that the definition of "Customer Premises" in Part A1 of the GSST speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 17 of the Petition.

18. BellSouth admits that the definition of "Demarcation Point" in Part A1 of the GSST speaks for itself. It is admitted that Rule 25-4.0345(1), F.A.C. speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 18 of the Petition.

19. BellSouth admits that the definition of demarcation point in Section A1 of the GSST speaks for itself. BellSouth admits that the demarcation point is the point at which the BellSouth network officially terminates and the customer's

wiring responsibilities begin. BellSouth admits that the demarcation point for most of BellSouth's customers at the Airport, including Broward County, is a cross connect panel in a utility closet inside the customer's location or otherwise relatively close to the customer's telephone equipment. BellSouth affirmatively asserts that Section A2.3.9 of the GSST requires the subscriber to provide suitable space and floor arrangements on its premises for communications facilities provided by BellSouth. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 19 of the Petition.

20. BellSouth admits that Section A2.3.9 of the GSST requires the subscriber to provide suitable space and floor arrangements on its premises for communications facilities provided by BellSouth. BellSouth admits that the County provides to BellSouth telephone closets on Airport property rent free and that the County agrees that relocation of the closets would be at the expense of the subscriber but denies that these closets, alone, fulfill the obligation to provide "suitable space and floor arrangements" and affirmatively states that the closets (and other equipment space on Airport property provided by the County to BellSouth rent free), like the Maxihut space, house BellSouth network equipment that serves the County as well as other subscribers at the Airport. BellSouth admits that a number of the subscribers at the Airport provide telephone closets inside the subscriber's location. BellSouth admits that telephone closets inside the subscriber's location are recognized as a type of space that is necessary for the placement of a telephone panel capable of receiving the incoming circuit. BellSouth affirmatively asserts that (a) while the telephone closets inside the

subscriber's location would, in most cases, be the location for the demarcation point for BellSouth's services, such closets are only one equipment space location that BellSouth requires for communications facilities to provide services to the subscriber, so they are not the only type of space necessary for BellSouth's communications facilities provided in connection with a subscriber's service and (b) the telephone closets throughout the Airport, provided by the County to BellSouth rent free and relocation of which the County acknowledges in paragraph 20 of its Petition would be at the subscriber's expense, like the Maxihut space, house network equipment that serves the County as well as other subscribers at the Airport and do not necessarily house demarcation points for BellSouth services, as would the telephone closets inside the subscriber's location. Thus, BellSouth affirmatively asserts that the County incorrectly seeks to distinguish, for purposes of the issues that are the subject of its Petition, the Maxihut space from the telephone closets throughout the Airport (provided by the County to BellSouth rent free and relocation of which the County acknowledges in paragraph 20 of its Petition would be at the subscriber's expense) that, like the Maxihut space, house network equipment that serves the County as well as other subscribers at the Airport. BellSouth admits that the referenced telephone closets are provided rent free to BellSouth and that relocation of them would be at the subscriber's expense. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 20 of the Petition.

21. BellSouth affirmatively asserts that the Maxihut does not far exceed "suitable space and floor arrangements on the premises for communication

facilities provided by the Company in connection with services furnished to the subscriber.” BellSouth admits that it uses the Maxihut to provide service to individual subscribers, including the County and other subscribers at the Airport. BellSouth admits that the County is a subscriber at the Airport. BellSouth admits that a number of the Airport’s tenants are subscribers to BellSouth’s services at the Airport. BellSouth admits that the tenants at the Airport receive telephone service from BellSouth. BellSouth is without knowledge as to whether the lessees at the Airport receive telephone service from the County and therefore BellSouth denies same. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 21 of the Petition.

22. BellSouth admits that the definitions of “subscriber” and “customer premises” contained in the GSST speak for themselves. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 22 of the Petition.

23. BellSouth admits that it provides telephone service to the County and County tenants at the Airport. BellSouth admits that the definition for shared tenant services contained in the GSST speaks for itself. BellSouth admits that the County’s tenants at the Airport receive local telephone service from BellSouth. BellSouth is without knowledge as to whether the County is a shared tenant services provider at the Airport and therefore denies same. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 23 of the Petition.

24. BellSouth admits that if a subscriber fails to make "suitable space and floor arrangements" for the demarcation point, the subscriber is not entitled to receive telephone service, but affirmatively asserts that the obligation to provide suitable space and floor arrangements applies to space for any communications facilities provided by BellSouth in connection with services furnished by BellSouth, not just to space for the demarcation point. BellSouth denies that because the Maxihut serves multiple unaffiliated customers, it is BellSouth's duty to make the necessary arrangements for the placement of such network equipment at its expense. BellSouth affirmatively asserts that the County is one such customer served by the network equipment in the Maxihut and that the County provides telephone closets and other equipment space on Airport property to BellSouth rent free, that, like the Maxihut space, house BellSouth network equipment (and not necessarily demarcation points) that serve the County as well as other subscribers at the Airport. BellSouth affirmatively asserts that it is the County's obligation to make space available for the placement of BellSouth's equipment pursuant to the provisions of Part A2.3.9 of the GSST. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 24 of the Petition.

25. BellSouth admits that on or about October 17, 2005, BellSouth provided Beth Keating, of the Commission's General Counsel's Office, a letter setting forth its position on the issues raised in this Petition. BellSouth's letter to Beth Keating is attached hereto as Exhibit 3. BellSouth affirmatively asserts that its letter to Ms. Keating was sent in response to a letter sent from Floyd Self to

Mr. Richard Melson on or about September 7, 2005, which is attached hereto as Exhibit 4. The goal of Mr. Self's letter was to seek a change in the conclusions Mr. Melson reached in his December 9, 2003 letter (see Exhibit 1 attached hereto). BellSouth further affirmatively asserts that by a November 16, 2005 letter, a copy of which is attached hereto as Exhibit 5, Mr. Melson replied to Mr. Self's September 7, 2005 letter. BellSouth admits that it relies on Part A5.2.2.F.1.e of the GSST as a basis for the position that the County is obligated to pay for the relocation of the Maxihut at the Airport at the County's request and that said tariff speaks for itself. BellSouth affirmatively asserts that Mr. Melson took this position in a December 9, 2003 letter, which is attached hereto as Exhibit 1. Mr. Melson's December 9, 2003 letter opines that Part A5.2.2.F.1.e of the GSST supports the conclusion that where the County (as a sponsor of the Airport) requests relocation, the County must bear that cost of that relocation. While Mr. Melson's November 16, 2005 letter suggests that a party file a petition with the Commission for a formal Commission response on the issues that are the subject of the County's Petition, Mr. Melson states, as he did in his December 9, 2003 letter (see Exhibit 1), that he leans toward the conclusion that the Maxihut space must be provided rent free and that the County must bear the cost of relocation of the Maxihut at the County's request. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 25 of the Petition.

26. BellSouth affirmatively asserts that Part A5.2.2.F.1.e of the GSST is applicable to the situation in this case. BellSouth admits that Part A5.2.2 of the

GSST speaks for itself. BellSouth affirmatively asserts that the County, a customer served by the equipment in the Maxihut, has requested a change in the location of the Maxihut, constituting a request for change or rearrangement of existing plant under Part A5.2.2.F.1.e of the GSST. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 26 of the Petition.

27. BellSouth admits that the parties entered into a lease agreement for a specific term. BellSouth admits that the lease agreement speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 27 of the Petition.

28. BellSouth admits that it has refused to pay to move the Maxihut and its associated network cables and equipment. BellSouth is without knowledge as to the remainder of the allegations contained in paragraph 28 and therefore denies same.

29. BellSouth admits that the lease agreement between the parties speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 29 of the Petition.

30. BellSouth denies the allegations contained in paragraph 30 of the Petition.

31. BellSouth is without knowledge as to the allegations contained in paragraph 31 and therefore denies same. BellSouth affirmatively asserts that the County is providing telephone closets and other equipment space on Airport property to BellSouth rent free.

32. BellSouth admits that the Airport Improvement Act (49 U.S.C. §47107, et. seq.) and the FAA's Notice of Policies and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 et. seq. (Feb. 16, 1999) speak for themselves. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 32 of the Petition. BellSouth affirmatively asserts that the County is providing telephone closets and other equipment space on Airport property to BellSouth rent free.

33. BellSouth denies the allegations contained in paragraph 33 of the Petition.

34. BellSouth admits that Section 120.565(1), Florida Statutes speaks for itself. BellSouth admits that *BellSouth Telecommunications, Inc. v. Jacobs*, 834 So.2d 855, 859 (Fla. 2002) speaks for itself. BellSouth admits that Section 364.01(2), Florida Statutes speaks for itself. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 34 of the Petition.

35. BellSouth denies the allegations contained in paragraph 35 of the Petition.

36. BellSouth admits that the provisions of its tariffs have been approved by the Commission and have the full force and effect of law. BellSouth admits that the Parts A1, A2.3.9, A5.2.2, A5.2.2.A.1, and A5.2.2.F.1.e of the GSST speak for themselves.

37. BellSouth denies the allegations contained in paragraph 37 of the Petition.

38. BellSouth admits that Amendment No. 1 to the original lease speaks for itself. BellSouth affirmatively asserts that it has not argued that its Maxihut facility is a customer demarcation point. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 38 of the Petition.

39. BellSouth denies that it has advanced the argument that the switching facility is a "demarcation point" for its telephone service to the County or the Airport's tenants. BellSouth affirmatively asserts that Part A2.3.9 of the GSST requires the subscriber to provide suitable space and floor arrangements on its premises for communications facilities provided by BellSouth. BellSouth affirmatively asserts that Part A2.3.9 refers to space arrangements for BellSouth's communications facilities in connection with services furnished to the subscriber; it does not refer to, and is not limited to, space for BellSouth's demarcation point for such services. Except as specifically admitted, BellSouth denies the allegations contained in paragraph 39 of the Petition.

40. BellSouth denies the allegations contained in paragraph 40 of the Petition.

41. BellSouth denies the allegations contained in paragraph 41 of the Petition and affirmatively states that the County is not entitled to any relief whatsoever.


BellSouth denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof.

WHEREFORE, BellSouth respectfully requests that the Commission enter an Order:

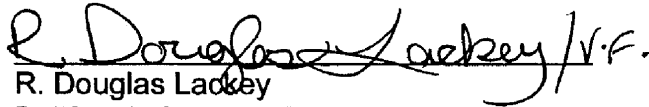
1. Declaring that (a) the County is responsible for any relocation costs incurred by BellSouth to relocate the Maxihut and its associated network cables and equipment at the County's request and (b) BellSouth is not required to pay rent for the use of the Maxihut space on Airport property;
2. Denying all of the relief sought in the County's Petition; and
3. Granting such further relief as the Commission deems fair and equitable.

Respectfully submitted this 14th day of February, 2006.

BELLSOUTH TELECOMMUNICATIONS, INC.



Nancy B. White
Manuel A. Gurdian
Sharon R. Liebman
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, Florida 32301
(305) 347-5558



R. Douglas Ladkey
BellSouth Center - Suite 4300
675 West Peachtree Street, N.E.
Atlanta, Georgia 30375
(404) 335-0747

621260

Exhibit 1

STATE OF FLORIDA

COMMISSIONERS:
LILA A. JABER, CHAIRMAN
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



GENERAL COUNSEL
RICHARD D. MELSON
(850) 413-6248

Public Service Commission

December 9, 2003

Ms. Barbara M. Hill
Office of the County Attorney
Fort Lauderdale-Hollywood International Airport
320 Terminal Drive
Fort Lauderdale, Fl 33315

Re: BellSouth Telecommunications - Location of Maxi-Hut and Associated Facilities at Fort Lauderdale-Hollywood International Airport ("Airport")

Dear Ms. Hill:

This responds to your letter dated November 13, 2003 ("Letter") to Harold McLean. Please note that Mr. McLean has retired as the General Counsel of the Florida Public Service Commission (the "Commission") and I am his successor.

In your Letter, you requested our opinion on the following two issues: (i) should BellSouth be required to make rental payments for Airport property or does BellSouth's General Subscriber Service Tariff (hereinafter "BellSouth Tariff") prohibit payment from BellSouth; and (ii) is the County responsible for the cost of relocating a facility/equipment that is more than twenty years old.

The comments set forth below address those points in your letter that relate to telecommunications law and the BellSouth Tariff. Please note that I do not address Federal Aviation law and policy. The views expressed herein are based on the facts and exhibits provided in your Letter, and are subject to change with new or different facts from those stated in your Letter. Finally, the comments made herein are solely my own and do not reflect the views of any or all members of the Commission.

Based on the facts and exhibits provided in your Letter, resolution of issue one would appear to be governed in the first instance by the lease between BellSouth and the County that is in effect until August 31, 2005. After August 31, 2005, and absent a new contractual agreement, BellSouth would no longer be obligated to pay the Airport rent under the lease. In such case, section A2.3.9 of the BellSouth Tariff will govern. Based on the facts you provided, the lease in effect between the parties does not address issue two. As such, the issue is resolved by reference to section A5.2.2.F.1.e of the Tariff.

To Ms. Barbara M. Hill
Page 2
December 9, 2003

Issue One - Rental Payments

As discussed above, BellSouth and the County have entered into a lease agreement that is in effect until August 31, 2005. Pursuant to that lease, BellSouth has certain obligations with regard to paying rent for airport property it uses to provide telecommunications for the Airport. BellSouth does not appear to dispute these obligations.

In the absence of such contractual obligations (including the expiration of any existing contractual obligations), the current tariff filed by BellSouth would govern the parties' rights and obligations. Assuming that the current BellSouth Tariff is still in effect upon the expiration of the above-referenced lease, and assuming that the Airport and its tenants are the only "subscribers" within the meaning of that Tariff, then BellSouth, upon the expiration of the lease, would not be required to pay rent or costs associated with the space occupied by the telecommunications facility used to serve the Airport. Section A2.3.9 of the Tariff reads, "The subscriber is responsible for the provision and maintenance, at his expense, of all suitable space and floor arrangements required on his premises for communications facilities provided by the Company in connection with services furnished to the subscriber by the Company." Thus, subscribers are required to provide the telecommunications company with necessary equipment space at no cost to the telecommunications company. Absent a contractual obligation to the contrary, BellSouth is not legally obligated to pay rent for the "suitable space and floor arrangements" required in connection with BellSouth's provision of services to the Airport (or its tenants).¹

Issue Two - Relocation Costs

Based on the facts provided in your Letter and as discussed above, the lease does not address which party bears the cost in the event the maxi-hut facility, or the telecommunications equipment housed in such facility, is relocated. However, section A5.2.2.F.1.e of BellSouth's Tariff does address relocation costs in general.

Under section A5.2.2.F.1.e of the BellSouth Tariff, "When the Company is requested to move, change, rearrange or remove existing plant, for which no specific charge is quoted in this Tariff, the person/company at whose request such move or change is made will be required to bear the costs incurred." In the case at hand, the County (as a sponsor of the Airport) is requesting the

¹If BellSouth were utilizing space in connection with services provided to those other than subscribers (ie., to those other than the Airport or its tenants), the Airport would arguably not be responsible for the costs of all such space. Per the Tariff, the Airport is only required to provide suitable space for BellSouth's provision of services to it (and its tenants). I am not aware of any facts, however, to suggest that BellSouth is using the airport space for provision of services to entities not located at the airport.

To Ms. Barbara M. Hill

Page 3

December 9, 2003

relocation of the maxi-hut. Since the County (again, as a sponsor of the Airport) is requesting the relocation, the County must bear the cost of that relocation.

Conclusion

In conclusion, I am of the opinion that BellSouth's obligation to pay for rent for location of the maxi-hut is governed in the first instance by the lease until August 31, 2005. In the absence of a lease extension or new lease (or other contract), BellSouth would have no legal obligation to pay rent after August 31, 2005. The BellSouth Tariff obliges a subscriber, such as the County as sponsor of the Airport, to provide suitable space required for BellSouth to provide services to the subscriber (but no more space than that). Further, BellSouth is not required to pay relocation costs associated with the maxi-hut. This cost, under the Tariff, must be borne by the subscriber.

Sincerely,



Richard D. Melson
General Counsel

JLS:js

cc: Sharon Leibman

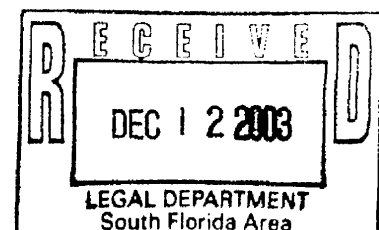


Exhibit 2

Edward A. Dion
County Attorney



OFFICE OF THE COUNTY ATTORNEY
Please reply to:
Fort Lauderdale-Hollywood International Airport
320 Terminal Drive
Fort Lauderdale, Florida 33315

954-359-6100 • FAX 954-359-1292

November 13, 2003

Our File: 03-71.00

Harold McLean, General Counsel
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Bellsouth Telecommunications – Location of Maxi-Hut and Associated
Facilities at Fort Lauderdale-Hollywood International Airport (“Airport”)**

Dear Mr. McLean:

The above Airport is owned and operated by the Board of County Commissioners of Broward County through its Aviation Department. Recently, a dispute arose between the County and Bellsouth with regard to which entity should be responsible for the relocation of one of Bellsouth's facilities (a "maxi-hut") located on the Airport, and whether Bellsouth should pay rent to the County for the use of one-half acre of Airport property for the relocated maxi-hut.

Background

For the past twenty years, Bellsouth occupied property (approximately one-half acre) on the west side of the Airport for the site of a "maxi-hut" to serve Bellsouth's customers (a picture of the maxi-hut is attached as **Exhibit "A"**). The lease between the County and Bellsouth was executed in 1983, and provided for a ten year term with one ten year renewal option (which was exercised by the parties, so the lease, in effect, was for a twenty year period). The lease provided for rental payments by Bellsouth to the County for the use of the property at fair market value.

Because the County is in the process of beginning an expansion program on the west side of the Airport (where the maxi-hut is located) for the construction of aviation related facilities, the County informed Bellsouth that Bellsouth would have to relocate the maxi-hut to another location in the near future.

In addition to the maxi-hut, Bellsouth leases two rooms from the County in Terminal 3, for its exclusive use, for the location of its main equipment for which Bellsouth makes rental payments. Bellsouth does not pay for use of the "telephone closets" in other terminal areas that are shared with other utilities

Issues

With the initial lease expiring on August 31, 2003, the County requested Bellsouth enter into a new lease, which would include (i) relocation of the maxi-hut at Bellsouth's expense, and (ii) the continuation of the payment of rent at fair market value; however, Bellsouth and the County failed to reach an agreement on these, as well as other issues. For that reason, the County and Bellsouth entered into an amendment to the existing twenty year lease extending the period for an additional two years (expiring August 31, 2005) to allow the County and Bellsouth time to resolve the following:

1. Should Bellsouth be required to make rental payments for Airport property or does the tariff prohibit such payment (see A2.3.9, General Subscriber Service Tariff, attached as **Exhibit "B,"** together with letter from local Bellsouth attorney, Sharon Leibman). It is Ms. Leibman's position the tariff prohibits the payment of rent by Bellsouth for the location of this type of facility.
2. Should the County be responsible for the cost of relocating a facility/equipment that is more than twenty years old?

Please note the existing 1983 lease between Bellsouth and the County does not require that the County provide another site to Bellsouth for its facilities upon the expiration or termination of the lease.

County's Position

As the "sponsor" of the Airport, the County is required to comply with stringent federal regulations regarding the use of airport property. Federal law mandates airports receiving federal funding/grants must be "self-sustaining" and the use of airport property must be at "fair market value," as follows:

"Self-sustaining" has been interpreted by the Federal Aviation Administration ("FAA") to mean fair market rental for non-aeronautical leases (which is what the lease for the location of Bellsouth facilities would constitute). Sanctions are imposed for non-compliance by airport. For instance, FAA grant assurances require airports seeking federal grants to, by contract, give assurances to the FAA that they will comply with federal law. (See 49 USC §47111(e)). Failure to comply can result in the FAA requiring that the Airport repay the grants, or the FAA can withhold future federal grants.

Harold McLean, General Counsel
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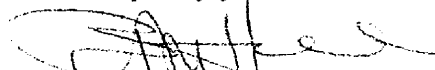
In addition to the foregoing, the FAA promulgated a "Policy Statement" establishing what is required of airports to ensure compliance with the regulations. The Federal Office of Inspector General audits compliance with the FAA's policies on revenue diversion and compliance with grant assurances. The federal policy statement (see Section VII, C) and FAA grant assurances (see Paragraph 24) are attached as **Exhibit "C."** Also attached please find FAA lease requirements and the checklist that must be completed for non-aeronautical leases (**Exhibit "D"**). Finally, a copy of a recent OIG Audit, attacking leases at below fair market value, among other things, is attached (**Exhibit "E"**).

Therefore, it is the County's position that, in order to ensure that the Airport remains in compliance with FAA regulations, the property requested for Bellsouth's exclusive use should be leased at fair market value in the same manner as other Airport tenants.

In addition to the foregoing, since the maxi-hut has been located on Airport property since 1983, Bellsouth has more than recouped the cost of the facility (Federal Aviation standards for the "life" of a project is twenty years). It is also my understanding that Bellsouth plans to replace the existing maxi-hut with more "up-to-date" equipment (**Exhibit "F"**). As stated above, because the existing lease does not require the County to relocate Bellsouth's facilities upon expiration of the lease, it is the County's position that, although the County is willing to provide a new site to Bellsouth under a new lease agreement, the County does not have an obligation to pay for Bellsouth's relocation.

Please review the foregoing and let me know if you concur with the above analysis so that we can finalize lease negotiations with Bellsouth for the relocation of the maxi-hut. If you would like to discuss any of the above, please call me at (954)359-6113.

Very truly yours,



Barbara M. Hill
Assistant County Attorney

Enclosures
BMH\wp

cc: Tom Jargiello, Acting Director of Aviation
Christine C. Lee, Assistant County Attorney
Gene Vardaman, Director of Broward County Telecommunications Division
Jack Lee, Director of Business Division
Julie Howlett, Director of Information Systems
Frances Schuster, Airport Properties Manager
Sharon Leibman, Esq., Bellsouth

Wpletter/bellsouth-PSC.J02

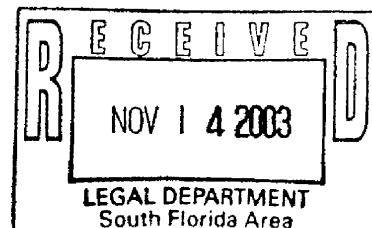


Exhibit 3

BellSouth Telecommunications, Inc.
Museum Tower Building
150 West Flagler Street
1910
Miami, FL 33130

sharon.liebman@bellsouth.com

Sharon R. Liebman
Attorney

305 347 5570
Fax 305 375 0209

October 17, 2005

VIA FACSIMILE AND U.S. MAIL
850-413-6213

Beth Keating
Attorney Supervisor
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: BellSouth Maxi-Hut at Ft. Lauderdale-Hollywood International Airport

Dear Ms. Keating:

BellSouth understands that Mr. Melson referred to you Floyd Self's letter to Rick Melson dated September 7, 2005, sent on behalf of Broward County ("County"). Accordingly, we are sending this letter to you to address certain points in Mr. Self's letter.

I. Background

By letter dated November 13, 2003 from Ms. Hill, Assistant County Attorney, to Mr. Melson, the County initiated communications with the Commission seeking an interpretation of whether BellSouth would be responsible (a) to pay for equipment space at the Ft. Lauderdale/Hollywood International Airport or (b) for costs to relocate equipment at the County's request. Mr. Melson's December 9, 2003 letter ("December 2003 Letter") responded that BellSouth should not be responsible to pay for space for equipment to serve Airport customers and should not be responsible for relocation costs. While the County appeared to accept these conclusions at that time, the County is now seeking a different response.

We mention this only for clarification, since Mr. Self's letter indicates that BellSouth is using the December 2003 Letter to support its position that rent should no longer be imposed and that the County must pay relocation costs. While the letter does support these positions, it is the County that sought and is now seeking an interpretation from your office. Of course, BellSouth is interested in the response, so we are writing to explain why the position outlined by Mr. Self in his letter is inaccurate. *Mr. Self's letter simply does not provide any new information that justifies or necessitates a change in the December 2003 Letter.*

II. Mr. Self's Analysis and Request for a Revised Opinion

The December 2003 Letter referenced Part A2.3.9 of BellSouth General Subscriber Service Tariff ("GSST") as a basis for the conclusion that no rent should be due from BellSouth for equipment space to serve Airport customers, and Part A5.2.2.F.1.e. of the GSST as a basis for the conclusion that the County is obligated to pay for any County-requested relocation of the Maxi-Hut.

Mr. Self asserts that the conclusions in the December 2003 Letter are inaccurate, since the GSST provisions do not apply, as the County is not a "subscriber" for purposes of application of the GSST provisions. The remainder of his letter seeks to support this assertion. As discussed below, this assertion is inaccurate and inapplicable and some of the points in Mr. Self's letter are wholly unrelated to the assertion and to the underlying issue. Further, while Mr. Self suggests that no FPSC rules or GSST provisions apply to this situation, he does request that your office issue a new opinion holding that BellSouth must pay rent and bear relocation costs.

III. Mr. Self's Letter Provides No New Information that Justifies or Necessitates a Change in the December 2003 Letter

Telecommunications regulatory law principles certainly apply to the conditions under which BellSouth is required to or does provide telecommunications service. It is on this basis, and the bases discussed below, that the GSST provisions are relevant here. This and several comments about Mr. Self's strained analysis are explained below.

First, the equipment in the Maxi-Hut *serves the County as a subscriber* as well as many other subscribers at the Airport.¹ This fact, alone, completely undercuts Mr. Self's suggestion that the GSST provisions do not apply to the Maxi-Hut space because the County is not a "subscriber" for purposes of application of the provisions.

On page 6 of his letter, Mr. Self refers to telephone closets and other locations on Airport property where BellSouth maintains equipment and acknowledges that the County provides them rent free to BellSouth and the relocation of them could be at the County's expense. But, he suggests that these locations are governed by different rules than the Maxi-Hut site, since the demarcation point for services to the County (for its employees) are in these locations, and since the equipment in the Maxi-Hut is BellSouth's network equipment, suggesting that the equipment in the such other locations is not network equipment.

The Maxi-Hut space, similar to various telephone closets or other locations on Airport property where BellSouth equipment is located, houses *network* equipment that serves *the County as a subscriber* as well as other Airport subscribers. Mr. Self does not explain his position that the location (or absence thereof) of the demarcation point in the space where the equipment is located alters the analysis, and we believe that the issue has no relevance here. In addition, the premise for his position is incorrect, as, in most cases, the demarcation point for

¹ BellSouth has advised the County that the equipment in the Maxi-Hut serves only subscribers at the Airport.

BellSouth service would not be located in such closets, but, rather at the customer's business location.

Second, the GSST provides that the *subscriber* is responsible, *at his expense*, for the provision of all suitable space and floor arrangements required on his premises for communications facilities provided by the company in connection with services furnished to the subscriber by the company. Here, as noted above, one such subscriber served from the equipment in the Maxi-Hut *is* the County. The County suggests that, since this GSST provision refers to the "subscriber," the tariff provision has no application to the County. Again, the County *is* such a subscriber.²

Third, Part A5.2.2.F.1.e. of the GSST does not even use the term "subscriber." It provides as follows: "When the Company is requested to move, change, rearrange or remove existing plant . . . , the person/company at whose request such move or change is made will be required to bear the costs incurred." Thus, this tariff provision refers to any "person/company" requesting relocation. So, the suggestion that the GSST provisions do not apply since the County is not a "subscriber" simply cannot apply to this tariff provision. Here, that person/company is the County. The tariff provisions govern the conditions under which BellSouth provides service, such that, BellSouth may require payment of those relocation costs if asked to relocate the equipment that will provide the continued service.

Mr. Self has not provided any new information that justifies or necessitates a change in the conclusions in the December 2003 Letter. The GSST provisions referenced in the December 2003 Letter express the conditions applicable to and for BellSouth service, such that they apply to continued service for the County and other Airport subscribers. Service on conditions inconsistent with the GSST provisions cannot be expected, regardless of the termination or renewal of the 1983 lease agreement.

² As explained to the County previously, if BellSouth were unable to serve customers from a central "hut" or equipment space on Airport property, BellSouth's only other option for service would be to consider placing equipment off Airport property, which would require customers to place conduit to such equipment so BellSouth could place cable to reach the customers. This serving arrangement simply would not likely be feasible and would be cost prohibitive. PSC Rules provide, for example, that a telecommunications company shall provide outside plant facilities for basic local telecommunications service *subject to* its ability to secure and provide suitable facilities and rights for construction and maintenance of such facilities. PSC Rule 25-4.066. Providing service from such a central location requires provision of equipment space consistent with Rule and tariff provisions (which is routinely done by building owners and other property owners in environments where there will be many tenants or other subscribers). Thus, BellSouth disputes Mr. Self's statement that, if BellSouth must vacate the Maxi-Hut site, BellSouth will necessarily continue to have the obligation to serve Airport subscribers. Any obligation is conditional on satisfaction of applicable Rule and tariff provisions. Also, per GSST provisions, the County routinely provides to BellSouth conduit on Airport property in which to place BellSouth's cable to serve the County and other Airport customers; provision of that equipment space (as well as other closets and other locations on Airport property referenced on page 6 of Mr. Self's letter) at no cost is analogous to the provision of the Maxi-Hut space to BellSouth for equipment to serve the County and other Airport customers. See Part A5.2.5.E.2, GSST.

Thank you for your time and consideration. If you have any questions, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Liebman". The signature is fluid and cursive, with the first letter 'S' being particularly large and stylized.

Sharon Liebman

cc: Floyd R. Self
Christine Lee
Nancy White
Nancy Sims

Exhibit 4

LAW OFFICES
Messer, Caparello & Self
A Professional Association

Post Office Box 1876
Tallahassee, Florida 32302-1876
Internet: www.lawfla.com

September 7, 2005

BY HAND DELIVERY

Richard D. Melson
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Mr. Melson:

I am writing to you on behalf of the Board of County Commissioners of Broward County, Florida ("County"), and the County's Aviation Department for the Fort Lauderdale-Hollywood International Airport ("Airport"). As you will recall, on November 13, 2003, Barbara Hill, Assistant County Attorney for Broward County, wrote to the Commission regarding a dispute between BellSouth Telecommunications, Inc. (BellSouth") and the County's Aviation Department in connection with a Maxihut and associated facilities at the Airport. You responded to Ms. Hill by a letter dated December 9, 2003. The purpose of my letter is to follow up on your letter to Ms. Hill as BellSouth is using your response to the County as a basis for claiming that it no longer needs to pay the County for rent for the Maxihut and that the County should bear the cost of relocating the Maxihut that must be moved due to an Airport expansion project. From my review of the documentation provided to you in 2003, I believe that you did not have all of the relevant information regarding the situation at the Airport. I would respectfully request that you reevaluate the opinion you previously provided in view of the additional information reflected in this letter and that you provide an updated letter to the County revising or clarifying your opinion.

The general historical background to this situation is as follows. In 1983, BellSouth (then Southern Bell) entered into an agreement with the County to lease approximately .06 acre of vacant land at the Fort Lauderdale-Hollywood International Airport for a 10 year period with the option for a 10 year renewal period. The leased site was to be used to place "a very small switching equipment building called a SLC-96." See the attached July 15, 1983, Letter from Mr. E. B. Beard, Southern Bell District Manager - Real Estate, to Mr. Jack Lee, Airport Property Manager. The SLC-96 equipment would be located inside a small structure to be erected on the property, which Mr. Beard identified as an "Electronic Equipment Enclosure (EEE) - Maxihut." The lease provided that the premises would be used "for the

purposes of providing a facility to house multiplex equipment to be used in the Lessee's subscriber carrier system and for no other purposes.”

The lease was ultimately approved by the County, and pursuant to this lease BellSouth was required, among other things, to pay rent to the County. In 1993, BellSouth (still then Southern Bell) exercised its rights to renew its leasehold for the next 10 year renewal period. On the basis of this renewal, BellSouth remained obligated for and continued to pay rent for the right to occupy the Airport Maxihut property.

In 2003, when the second 10-year leasehold was about to expire, the County and BellSouth executed Amendment No. 1 To The Lease Agreement whereby the leasehold was extended through August 2005 and where BellSouth continued to pay rent for its right to have the Maxihut on the Airport property. This short term extension was negotiated in part because the Airport was in the process in the undertaking various improvements (including those required by the FAA) to the Airport property, which would require the relocation of the Maxihut. At some point in this process, BellSouth and the County agreed to disagree regarding who was obligated to pay for the relocation and further agreed to disagree regarding BellSouth's assertion that it no longer was obligated to pay rent for the Airport property. The lease amendment was executed in August 2003. There has now been a further extension on the lease to November 2005, but BellSouth is not paying rent for this recent extension.

The tariff section cited by BellSouth as a basis for its ability to place equipment on the Airport property rent free is as follows:

A2.3.9 Floor Space, Electric Power and Operating at the Subscriber's Premises

A. The subscriber is responsible for the provision and maintenance, at his expense, of all suitable space and floor arrangements required on his premises for communication facilities provided by the Company in connection with services furnished to the subscriber by the Company. Suitable power outlets and commercial power required for the operation of such facilities shall be provided by, and at the expense of, the subscriber.

B. All operating required for the use of communications facilities provided by the Company at the subscriber's premises will be performed at the expense of the subscriber, and

must conform with the operating practices and procedures of the Company to maintain a proper standard of service.

The tariff section relied upon by BellSouth for the proposition that the County is obligated to pay for any relocation of the Maxihut is as follows:

A5.2.2.F.1. e. Rearrangement and/or Removal Charges

When the Company is requested to move, change, rearrange or remove existing plant, for which no specific charge is quoted in this Tariff, the person/company at whose request such move or change is made will be required to bear the costs incurred.

Where by statute, ordinance or other legal requirement, existing aerial facilities are required to be relocated underground, the Company will charge the net cost attributable to such relocation to the local exchange subscribers located within the political subdivision or area affected by such statute, or ordinance or other legal requirement.

This nonrecurring charge, developed by dividing the total rearrangement and/or removed cost by the total number of subscribers affected by the ordinance, would be billed as a one time charge via the customer's bill. All customers would have the option of paying the full cost upfront or spreading the cost over a specified agreed-to time period via monthly payments.

To follow up on the BellSouth assertions regarding its tariff, Ms. Hill sent her November 13, 2003, letter to Harold McLean, the then General Counsel of the FPSC. Ms. Hill posed two questions in her letter:

1. Should BellSouth be required to make rental payments for Airport property or does the tariff prohibit such payment It is Ms. Liebman's [BellSouth counsel] position the tariff prohibits the payment of rent by BellSouth for the location of this type of facility.

2. Should the County be responsible for the cost of relocating a facility/equipment that is more than twenty years old?

In your response of December 9, 2003, you stated that after the lease expired that no further rent payments would be due absent an agreement of the parties. You indicated that based upon the information presented to you that section A2.3.9 of the BellSouth tariff would apply. As for the second question, it was your conclusion that the subscriber was required to pay the relocation costs of the Maxihut.

The tariff sections relied upon by BellSouth and reflected in your December 2003 opinion are clear on their face. However, your letter did not address whether the tariff sections did in fact apply to the County – in other words, was the County a “subscriber” within the meaning of these two tariff sections. The BellSouth tariff defines a subscriber in Section A1 as follows:

SUBSCRIBER

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency furnished communication service by the Company under the provisions and regulations of its tariff.

From my review of your letter, I do not believe you directly explored this threshold question or the facts surrounding whether the County is a “subscriber” for purposes of the application of these tariff sections. A review of the following information should demonstrate to you that the County is not a subscriber for purposes of the two tariff sections relied upon by BellSouth.

As previously disclosed, the equipment BellSouth originally advised the County it wanted to install on the Airport property in the Maxihut was identified by Mr. Beard of BellSouth as a “SLC-96,” or a Subscriber Line Carrier 96. As you know, the Maxihut is just the protective building that houses the equipment. The equipment inside the Maxihut, the SLC-96, is a form of distributed network switching equipment that enables BellSouth to run a few actual telephone lines, whether copper wires or fiber optic cable, to the distributed point. At the distributed point, the digital signal is demultiplexed back into individual circuits, and from that point the telephone company will usually run the copper wire pairs to the demarcation points for each individual telephone subscriber.

The demarcation point is the "point of a demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus, or wiring at a subscriber's premises." *Newton's Telecom Dictionary*, at page 213. In other words, on one side of the demarcation point is the telephone company's network for which the telephone company is responsible. On the other side of the demarcation point is the telephone subscriber's wiring and equipment for which the subscriber is responsible. The duties and responsibilities of the subscriber and BellSouth are identified both in the Commission's rules as well as BellSouth's own tariff. See Rule 25-4.0345(1)(b), Florida Administrative Code; BellSouth General Subscriber Tariff Section A1, page 8. In a business context, the demarcation point usually is cross connect panel in a utility close inside the business's premises or otherwise relatively close to the customer's telephone equipment (which in the business context is usually a PBX or key system).

There is no dispute that the equipment in the Maxihut is BellSouth network equipment. Coming into the Maxihut is BellSouth network wiring, coming out of the Maxihut is BellSouth network wiring. BellSouth is solely responsible for the maintenance and upkeep of all of the wiring that enters and exits the Maxihut as well as all of the equipment inside the Maxihut. From a customer standpoint, there is no customer equipment or demarcation point equipment located inside or otherwise associated with the Maxihut. Everything associated with the Maxihut is part of the BellSouth owned and operated network.

Another fact regarding the Maxihut is that there is no one "subscriber" ultimately served by the Maxihut. The Maxihut does serve only customers on the Airport property, but there are many separate, distinct, and unaffiliated businesses at the Airport that receive telephone service through the Maxihut from BellSouth and not from the County. In other words, the various Airport tenants -- the airlines, restaurants, shops, and other businesses operating at or on the Airport property -- contract directly with BellSouth (or some other local exchange company) for their local telephone service. Each Airport tenant receives its BellSouth service at their own individual demarcation point or points located throughout the terminal building or other Airport buildings.

It must also be said that the County and the Airport are not a shared tenant services provider nor does the County or Airport operate pursuant to the STS exemption. While Rule 25-24.580, F.A.C., specifically exempts airports from all of the STS rules except for the requirement for a certificate unless the airport partitions its switch, the records of the FPSC do not reflect that a certificate has been issued to the County as an STS provider pursuant to Section 364.339, Florida Statutes. Assistant County Attorney Christine Lee has related to me that the County does not have an STS certificate and that the County does not directly or indirectly provide telephone service to itself or any of the Airport tenants. As previously stated, the tenants at the Airport receive local telephone service from BellSouth through their own individual service arrangements and demarcation points with BellSouth.

With respect to the local telephone service at the Airport received by County or Airport employees, such service is provisioned to the County in the same manner as any other BellSouth customer. Any County employees or offices at the Airport receive BellSouth telephone service directly from BellSouth through a demarcation point at one or more locations throughout the Airport property. The County or Airport does not provide telephone service to itself or to anyone else.

The facts and law demonstrate that while the County is a subscriber of BellSouth's, the service the County receives from BellSouth is received through the demarcation point or points located elsewhere on the Airport property and not at the Maxihut. The two tariff sections relied upon by BellSouth do apply with respect to the telephone closets or other locations on the airport property where each BellSouth demarcation point is located through which the County receives telephone service for its employees at the Airport. Those telephone closets are indeed provided rent free to BellSouth and any relocation of them could be at the County's expense. Similarly, the telephone service each of the Airport tenants receives is through a demarcation point for each such Airport tenant, none of which are located in the Maxihut.

The Maxihut is a legally different situation. This is part of the BellSouth network that houses network telephone equipment. BellSouth has no legal right to require a property owner, public or private, to place BellSouth network equipment on its property without the consent of the property owner. This is exactly why BellSouth approached the County in 1983 seeking a lease in order to construct the Maxihut. Just like any other property owner, BellSouth was required to obtain the owner's permission to occupy any of the Airport property. This is basic real property law and not telecommunications regulatory law. The issue is no different than if BellSouth wanted to place distributed switch equipment in a downtown office building, Port Everglades, or even the County Courthouse – if BellSouth wants to serve unrelated tenants at each of those locations, it cannot do so without the property owner's permission.

The only way this network equipment can be on the Airport property is with the County/Airport's permission. BellSouth has no independent right to be there without such permission. As in any such situation where an entity wants to occupy the property of another, such occupancy is by agreement of the parties, which in this case was represented by the 1983 lease. The County could choose to allow BellSouth to occupy this property rent free or at any price the parties agree to. But without the agreement of both parties, the occupancy cannot lawfully occur. If this is not true, then BellSouth would be able to demand and occupy any property it chooses for the placement of its network equipment, which is contrary to every principle of real property law.

If a subscriber fails to make space available for the demarcation point, then the subscriber won't have telephone service. The only entity affected by such a decision would be that individual subscriber. If the County was the subscriber of the Maxihut facility, only it would suffer by refusing to allow the placement of the Maxihut. However, that is not the situation with the Maxihut. Because the Maxihut clearly serves multiple, unaffiliated customers, just like all of the BellSouth network equipment, it is BellSouth's duty to make the necessary arrangements for the placement of such network equipment at its expense. It is not the County's duty to make space available rent free for the placement of network equipment absent the County's permission.

The situation with the relocation of the Maxihut is no different – again, the principles of real property law control not the tariff. While the lease between the parties does not specify who would bear the cost of any necessary relocation, the fact that the lease is about to expire certainly resolves the issue in the County's favor. As a landlord, in order for BellSouth to be able to continue to utilize Airport property for its network equipment, the parties must enter into a new agreement. If they fail to enter into a new lease agreement, then at the conclusion of the lease BellSouth is required to remove its equipment or abandon it to the County's ownership as leasehold improvements. The bottom line is that if BellSouth wants to continue to place its network equipment on the Airport, BellSouth has no choice but negotiate a new arrangement, with such an arrangement including the relocation of the Maxihut. If a satisfactory arrangement is not concluded, then at the end of the current leasehold BellSouth must vacate the property and relocate the Maxihut to property off site from the Airport or otherwise abandon it. Whatever the fate of the Maxihut – relocated at BellSouth's expense elsewhere on the Airport property or off the Airport property, BellSouth will continue to have the obligation to serve its many unaffiliated subscribers at the Airport, and that is BellSouth's duty not the County's.

As network telecommunications equipment, absent some other legal authority, the County has no legal obligation to accept or otherwise have such equipment on its property absent its permission. The legal principle is no different whether the issue is an ice cream shop in one of the terminals or a BellSouth network switch. From our investigation, there are no Florida Public Service Commission rules or statutes that would apply to this situation, either the rent question or the relocation question. Likewise, there are no tariff requirements of BellSouth that would apply in either situation that would allow this equipment to be placed rent free or to impose any relocation costs on the County at the conclusion of the leasehold. Again, the County is not the subscriber for purposes of the two tariff sections relied upon by BellSouth.

Richard D. Melson, Esq.
September 7, 2005
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The fundamental principles of real property law govern this situation. Thus, if BellSouth wants to occupy any part of the Airport property for the placement of its network equipment, it needs a lease or other contractual agreement for such occupancy just like any other Airport tenant. With respect to the relocation, if the parties cannot negotiate a successor lease, then the Maxihut must be removed at BellSouth's expense or abandoned to the County. As a practical matter, given the absence of any language in the lease, the question of which party bears the costs of the relocation will certainly be a part of any going forward lease to the extent BellSouth wishes to continue to have its network equipment on the Airport property.

On the basis of the information presented herein, I would respectfully request that you revise and update your letter for the County to reflect this additional information. I believe you should conclude that the resolution of this dispute does not lie with the tariff but rather with the principles of real property law. Accordingly, you should find that the BellSouth tariff provisions do not apply to the Maxihut and that BellSouth is, therefore, required to pay rent and to bear the costs of any such relocation.

If you have any questions regarding this matter or wish to otherwise discuss this situation, please let me know.

Sincerely,



Floyd R. Self

Counsel for Board of County Commissioners of
Broward County, Florida

Attachment

cc: Barbara Hill, Assistant County Attorney, Broward County
Christine Lee, Assistant County Attorney, Broward County
Sharon R. Liebman, BellSouth Telecommunications, Inc.
Nancy White, BellSouth Telecommunications, Inc.



Southern Bell

6451 North Federal Highway
Room 820
Fort Lauderdale, Florida 33308
Phone (305) 492-2432

E. B. Beard
District Manager
Real Estate

July 15, 1983
WPC: AT2/07#60

Mr. Jack Lee
Airport Properties Manager
Aviation Division
290 S.W. 41st Court
Fort Lauderdale, Florida 33315

Dear Mr. Lee:

Attached for your review and approval by Broward County are four (4) original lease documents of our proposed SLC-96 site at the Fort Lauderdale-Hollywood International Airport.

On this .06 acre vacant land site we propose to place a very small telephone switching equipment building called a SLC-96. This structure, as shown in the attached brochure, is unmanned, requires no outside storage or overnight parking of vehicles, and is noiseless. The specific function of this switching facility will be to handle the telephone growth needs of the airport and its immediate area.

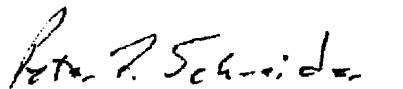
The Bell System, with assets of over \$150 billion, is totally self insured. We are basically bigger and stronger financially than any insurance company. Our attorneys have therefore modified the insurance paragraphs of the subject lease.

Other very minor changes have been made in the lease. When you consider the type and function of the SLC-96 structure and its critical service needs of providing telephone service to the airport, we believe all of these minor changes make good sense.

We would appreciate having one fully executed original lease returned to this office. If you have any questions, please contact Mr. P. R. Little, telephone number 492-3734, of my staff. If there are some legal questions on the necessity of the minor word changes in the lease the county's attorney may want to talk directly with our attorney, Mr. Randy Cadenhead, telephone number 492-2222.

Thank you for your cooperation and all of your staff has been most helpful in this project. We look forward to receiving the executed lease.

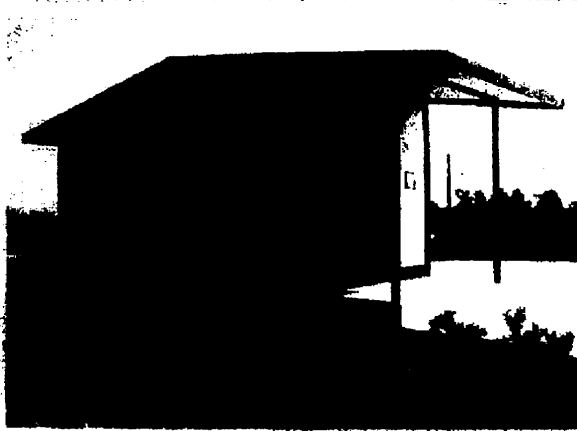
Sincerely


District Manager - Real Estate

PSL/cjb

Attachment

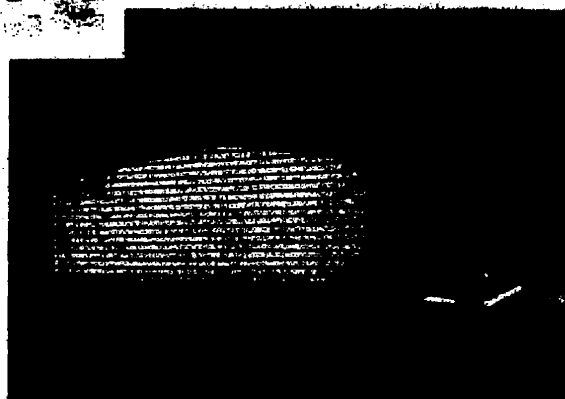
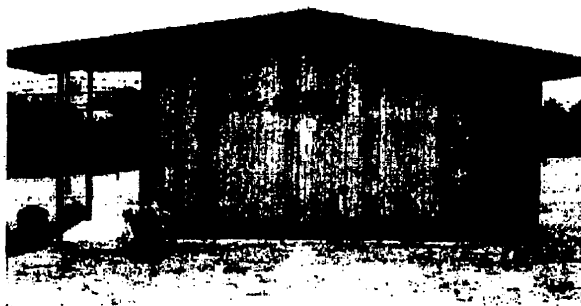
ELECTRONIC EQUIPMENT ENCLOSURE (EEE) — THE MAXIHUT



The maxihut is designed for large installations of **SLC-96** systems.

- Heavy-duty construction provides vandalism protection.
- Enclosure is available with a pitched roof.
- Enclosure is a factory-assembled unit.
- Construction is weatherproof and fire resistant.
- Various facades can be applied to complement local settings.
- The enclosure does not require on-site personnel, and maintenance activity is minimal.
- Enclosure is protected by "silent" security systems—alarms do not sound at the enclosure site, but at the local central office.

...a **SLC™-96** System Remote Terminal Enclosure



ELECTRONIC EQUIPMENT ENCLOSURE (EEE) — THE MAXIHUT

- Size:** The rectangular enclosure measures 10 feet wide by 20 feet long and has an interior height of 8 feet 3 inches.
- Capacity:** The maxihut can accommodate 40 SLC-96 systems.
- Security:** The maxihut door is well secured. "Silent" alarms (alarms sound only at the central office, not at the enclosure site) provide protection against unauthorized entry.
- Primary Power:** The power source is commercial 117 Vac, 60 Hz.
- Back-up Power:** Each SLC-96 system has a string of 48 Vdc batteries that can provide operation for a minimum of eight hours during commercial power failure.
- Climate Control:** An electronic controller regulates the maxihut interior temperature and humidity. The controller operates two air conditioners, one fan, and one heater.



Western Electric

Exhibit 5

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

STATE OF FLORIDA



GENERAL COUNSEL
RICHARD D. MELSON
(850) 413-6248

Public Service Commission

November 16, 2005

Floyd R. Self, Esquire
Messer, Caparello & Self, P.A.
P.O. Box 1876
Tallahassee, Florida 32302-1876

Re: Response to September 7, 2005, Letter Regarding BellSouth Maxihut

Dear Mr. Self:

In December, 2003, at the request of the Fort Lauderdale-Hollywood International Airport (Airport), I provided my office's informal opinion regarding the application of certain BellSouth tariff provisions to the potential relocation of a Maxihut that is located on Airport property pursuant to a lease between BellSouth and the Airport. Based on the information provided at that time, my letter addressed the application of the tariff to (i) the payment by BellSouth of rent for a potential new site for the Maxihut, (ii) responsibility for payment of the costs of relocation when the relocation is requested by the Airport.

On September 7, 2005, you wrote to provide additional factual information and your legal analysis of the tariff and real property issues and to ask that my office reconsider its prior informal opinion. On October 17, 2005, I received a response from BellSouth providing an alternative legal analysis. Having reviewed the additional factual information and legal analysis in both letters, and having discussed the issues with the legal and technical staffs, the proper application of the tariff is not as clear-cut as indicated in my December, 2003 letter.

As I understand the facts, the equipment located in the Maxihut serves both the Airport (as a subscriber) and other businesses (tenants) located on property owned by the Airport. I am not aware of any case in which the Commission has addressed how Section A2.3.0 applies to a subscriber's obligation to provide space for the location of equipment that serves both the subscriber and tenants of the subscriber. I lean toward the conclusion that the subscriber is obligated to provide such space at no charge, but I cannot predict how the Commission would resolve the matter if it were presented for a formal ruling.

Similarly, I am not aware of any case in which the Commission has addressed how the tariff provision regarding rearrangements and relocations at the request of a customer applies to a situation where the relocation arises in conjunction with the termination of a lease for the property on which the equipment is located. Whether this constitutes a move "at the Airport's request" likely depends on whether the Airport has the obligation under A2.3.0 to provide space for the location of the specific equipment at issue. I lean toward the conclusion that if there is an obligation for the Airport to provide

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Floyd R. Self, Esquire
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rent-free space, then an Airport-initiated requirement to move from one space to another would be the responsibility of the Airport. On the other hand, if there is no obligation to provide rent-free space, then a move necessitated by the expiration of the existing lease would appear to be BellSouth's financial responsibility.

Because these matters of first impression for the Commission, and because of the ambiguity in the proper application of the tariff language, my office must decline to provide a further informal opinion, except to say that we now have a better understanding of the facts and the parties should not rely on the December, 2003 letter as a statement of our current position.

If either party desires a formal Commission determination regarding the application of the tariff language, I suggest filing an appropriate petition for consideration by the Commission. The Commission staff also stands ready to provide a mediator if the parties agree that mediation would be helpful.

Very truly yours,



Richard D. Melson

RDM/BK/mee

cc: Sharon Liebman ✓
Beth Keating
Beth Salak

