

# 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  
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### 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).<sup>1</sup>

### 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

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<sup>1</sup>If BellSouth were utilizing space in connection with services provided to those other than subscribers (i.e., 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.

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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.

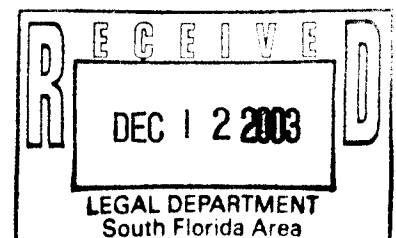
Sincerely,



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

Broward County Board of County Commissioners

### 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. Liebman'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  
Page 3  
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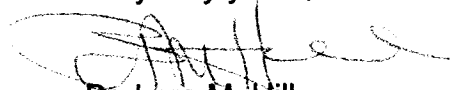
In addition to the foregoing, the FAA promulgated a "Policy Statement" establishing what is required of airports to ensure compliance with the regulations. The Federal Office of Inspector General audits compliance with the FAA's policies on revenue diversion and compliance with grant assurances. The 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,

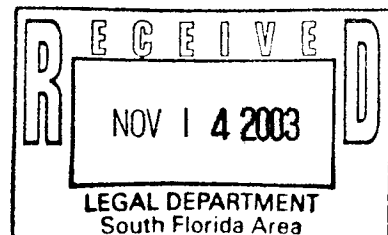


Barbara M. Hill  
Assistant County Attorney

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.102





# 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.<sup>1</sup> 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

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<sup>1</sup> 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.<sup>2</sup>

*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.

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<sup>2</sup> 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 of each word being capitalized and prominent.

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](http://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.

Richard D. Melson, Esq.  
September 7, 2005  
Page 6

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.

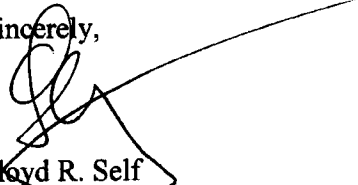
Richard D. Melson, Esq.  
September 7, 2005  
Page 8

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: AT2/07460

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.

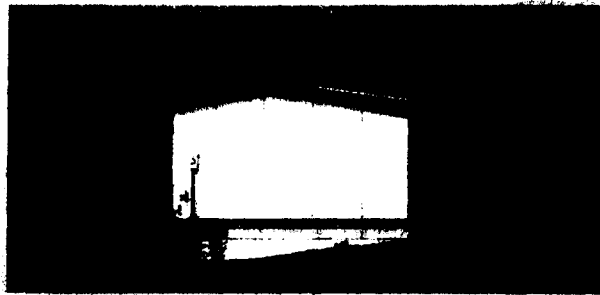
Sincerely

  
District Manager - Real Estate

PSL/cjb

Attachment

# ELECTRONIC EQUIPMENT ENCLOSURE (EEE)—THE MAXIHUT

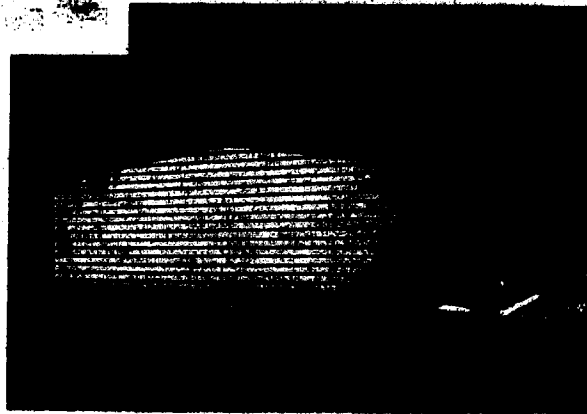
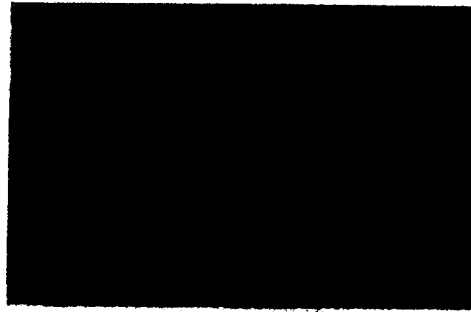
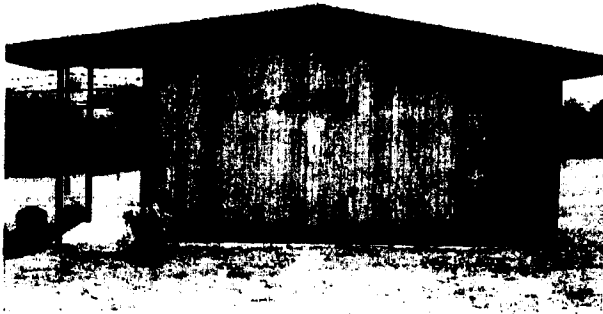


The maxihut is designed for large installations of **SLC-96** systems.

- 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*

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- 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.

# Exhibit 5

STATE OF FLORIDA

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



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

Floyd R. Self, Esquire  
Page 2  
November 16, 2005

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

