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**Cc:** Nancy Sims; manuel.gurdian@bellsouth.com  
**Subject:** Saturn Telecommunication Services Inc.'s Emergency Petition Against BellSouth To Require BellSouth To Honor Commitments  
**Attachments:** STS Emergency Petition To Require Bellsouth to Honor Commitments.doc

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June 5, 2006

**Via Electronic Filing**

Ms. Blanca Bayo, Director  
Director, Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: EMERGENCY PETITION OF SATURN TELECOMMUNICATION SERVICES, INC.  
AGAINST BELLSOUTH TELECOMMUNICATIONS, INC. TO REQUIRE  
BELLSOUTH TO HONOR COMMITMENTS AND TO PREVENT  
ANTICOMPETITIVE AND MONOPOLISTIC BEHAVIOR

Dear Ms. Bayo:

Enclosed please find for Saturn Telecommunication Services, Inc. d/b/a STS Telecom ("STS") "Emergency Petition of Saturn Telecommunication Services, Inc. against BellSouth Telecommunications, Inc. to Require BellSouth to Honor Commitments and To Prevent Anticompetitive and Monopolistic Behavior".

Thank you for your assistance with this filing.

Very truly yours,

/s/ *Alan C. Gold*

ALAN C. GOLD, PA

Enclosure:

cc: STS Telecom  
James Meza, III, Esquire  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Dispute To Require BellSouth to Honor  
Commitments And to Prevent  
Anticompetitive and Monopolistic  
Behavior between Saturn  
Telecommunication Services, Inc. d/b/a  
STS Telecom and BellSouth  
Telecommunications, Inc.

DOCKET NO.:  
Filed: June 5, 2006

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**EMERGENCY PETITION OF SATURN TELECOMMUNICATION SERVICES, INC.  
AGAINST BELL SOUTH TELECOMMUNICATIONS, INC. TO REQUIRE  
BELL SOUTH TO HONOR COMMITMENTS AND TO PREVENT  
ANTICOMPETITIVE AND MONOPOLISTIC BEHAVIOR**

Petitioner Saturn Telecommunication Services, Inc. d/b/a STS Telecom (“STS”), by and through the undersigned Counsel and pursuant to §364.01(4)(a)(b)(c)(d)(g) and (i) Florida Statutes, and Rules 25-22.036(2), 28-106.201 and 28.106.202 of the Florida Administrative Code, hereby files this Complaint against Respondent BellSouth Telecommunications, Inc. (“BellSouth”), (1) seeking an emergency order compelling BellSouth to honor its commitments regarding the establishment of STS’s network, (2) preventing BellSouth from continuing with its anticompetitive and monopolistic behavior, and (3) preventing BellSouth from violating the Florida Unfair Trade Practices Act and (4) requesting that a stay be issued prohibiting BellSouth from discontinuing any telecommunication services that BellSouth provides to STS or that STS provides to its customers in the State of Florida pending resolution of this matter, and in support thereof states as follows:

**PARTIES**

1. STS is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”) certified by the Florida Public Service Commission (the “Commission”) to provide telecommunications services in Florida. STS is also a “telecommunications carrier” and “local exchange carrier” under the Telecommunications Act of 1996 as amended (the “Act”). STS’s full name and address is:

STS Telecommunication Services, Inc.  
12399 SW 53 Street  
Suite 102  
Cooper City, FL 33330

All documents filed, served or issued in this docket should be served on the following:

Alan C. Gold, P.A.  
1501 Sunset Drive  
Second Floor  
Coral Gables, FL 33143  
(305) 667-0475, ext. 1 (Telephone)  
(305) 663-0799 (Facsimile)

2. BellSouth is an incumbent local exchange carrier (“ILEC”) certified by the Commission to provide local exchange services in Florida. BellSouth is an ILEC as defined in §251(h) of the Act, and is a “local exchange telecommunications company” as defined by §364.02(6), Florida Statutes. BellSouth is also an interexchange carrier certified by the Commission to provide long distance service based upon its compliance with section 271 of the Act. BellSouth’s address for receiving communications from the Commission is:

James Meza, III, Esquire  
c/o Nancy H. Sims  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301-1556  
(404) 335-0750 (office)  
(404) 614-4054 (fax)

### **JURISDICTION**

3. The Commission has jurisdiction with respect to the claims asserted in this Petition under Chapter 120 and 364, Florida Statutes, and Chapters 25-22 and 28-106, Florida Administrative code.
4. The Commission also has jurisdiction under the Federal Act under 47 U.S.C. §251(d)(3) (conferring authority to State commissions to enforce any regulation,

order or policy that is consistent with the requirements of Section 251) with respect to matters raised in this Motion.

### **INTRODUCTION**

5. STS files this emergency Petition because BellSouth has taken action that constitutes anticompetitive and monopolistic behavior, a violation of Florida's Unfair and Deceptive Trade Practices Act and a breach of the FCC's Triennial Review Order ("TRO") with respect to commingling requirements, and the FCC's Triennial Review Remand Order ("TRRO") with respect to the transitioning of a CLEC's (STS) embedded base. Specifically, STS alleges that it had entered agreements with BellSouth to build its own network in order to comply with the rules and regulations of the Federal Communications Commission and the Florida Public Service Commission. BellSouth recommended the network to STS to comply with the changes of law in the TRRO. Additionally, STS complied with BellSouth's requirements that it sign a "T-MBR Agreement" at "commercial rates" as a precondition to building the network. STS would never have agreed to such onerous rates as those contained in the T-MBR Agreement if STS knew that BellSouth would neither timely transfer STS's embedded customer base to its network nor add new customers or lines to the network, because the network allowed STS to provide the services to its customers at lower rates and remain profitable. These ridiculously high "market based rates" were never intended to apply to the embedded base and new customers or lines that should have been on STS's network by January 1, 2006. The T-MBR rates were only to be used in very limited circumstances in which it was not feasible to place the customer or service on the network. These T-MBR rates would not have been applied if BellSouth honored its commitments regarding the network. The network was designed and engineered by BellSouth. Based upon (a) written and oral promises by BellSouth regarding the viability of the network, (b) the cost of

transitioning STS's embedded UNE-P base to the network by the "Bulk Migration Process," (c) the cost of maintaining and servicing the network, and (d) BellSouth's assurances that the network would be complete, operational and STS's embedded base transferred from the old UNE-P arrangements with BellSouth to STS's network no later than the transition date of March 10, 2006, as mandated by the FCC's TRRO, STS spent and/or incurred hundreds of thousands of dollars for the construction and installation of the network and implementation of its business plan. Based upon BellSouth's recommendations and to comply with the TRO and TRRO, STS spent substantial monies and entered into substantial commitments. STS reasonably relied upon BellSouth's review of STS's projections, which showed, based upon the rates (both UNE and Special Access) charged by BellSouth, that STS's investment would be profitable for the company. In spite of its representations and in violation of its commitments, BellSouth refused or was unable to transition STS's embedded base of customers in a timely manner to the network that BellSouth had designed and implemented. As a direct and proximate result of BellSouth's false and fraudulent misrepresentations, and refusal and/or inability to honor its commitments, STS's network is not functional for the intended purpose of converting the embedded base of UNE-P customers. Further, the network is not a viable network for providing services to the consumer and small business market as represented by BellSouth. STS is continuing to incur exorbitant and unnecessary bills and charges from BellSouth that it would not have incurred had BellSouth honored its commitments and representations to STS.

6. In order for STS to retain its existing customers and to service its customers' telecommunications needs, this Commission must require BellSouth to cease and desist from its anticompetitive and monopolistic behavior. It must require that BellSouth cease and desist from violating the Florida Unfair and Deceptive Trade

Practices Act. The Commission should also require that BellSouth transfer STS's existing embedded base and new customers to the network it designed and engineered pursuant to the rates and charges it had previously agreed upon. To the extent that BellSouth cannot transition the embedded base to STS's network and/or add new customers to the network, BellSouth should absorb and be required to pay all fees and costs associated with the implementation of the network, require BellSouth to cease billing and refrain from collecting the excessive amounts that STS would not have incurred if BellSouth had honored its commitments and representations. Additionally, STS requests that this Honorable Commission allow it to deduct or set off from monies BellSouth claims it is owed, the substantial damages STS suffered and is continuing to suffer as a result of BellSouth's misrepresentations, anticompetitive and monopolistic behavior.

#### **FACTUAL BACKGROUND**

7. In approximately January 2005, due to recent court decisions and the expected release of the FCC's TRRO, STS realized that in order to remain a viable CLEC in the State of Florida and continue to service and meet the needs of its existing customer base, it would need to change its manner of operation and become a facilities-based carrier. STS was willing to commit the substantial financial resources required to construct such a facility, provided that the same could be done in a profitable and successful manner.
8. Commencing in January 2005, STS inquired of BellSouth regarding its products, prices, and the feasibility of working with BellSouth to develop a facility to which STS's UNE-P base of customers could be migrated in a profitable manner in compliance with the section 227 of the TRRO and the decisions of this Commission.
9. In February 2005, BellSouth approached STS with a proposal which BellSouth claimed would allow STS to meet its objectives stated above in paragraph 8.

10. BellSouth proposed to construct a fiber SONET ring (optical circuit 48, referred to as OC-48), with multiple nodes in which STS would collocate equipment and extend from the node spokes to reach other Serving Wire Centers (commonly referred to as SWCs) to which STS could reach all of its UNE-P customers (“embedded base”). BellSouth represented that this system would incorporate the directives of commingling as required within the FCC’s TRO and the regulations that were anticipated to be in the FCC’s TRRO for the transitioning of a CLEC’s embedded base of UNE-P customers during the mandated transitioning period.
11. Throughout February 2005, STS and BellSouth had numerous telephone calls and exchanged e-mails discussing, in detail, BellSouth’s proposal for the migration of STS’s embedded UNE-P base to a facilities environment in which BellSouth would remain the underlying network provider.
12. Based upon the representations and promises of BellSouth, and in order to meet the mandate of the FCC’s TRO and TRRO, STS, at a substantial expense, agreed to allow BellSouth to design and construct the network.
13. Throughout these conversations and e-mails, STS voiced numerous concerns and questioned BellSouth on countless occasions as to whether BellSouth could perform the conversion process of STS’s embedded base of UNE-P customers to this commingled network, and what the resulting net line cost could be.
14. On every occasion, BellSouth assured and represented to STS that BellSouth could convert STS’s embedded base through the “Bulk Migration” process provided that such a process was in the parties’ current Interconnect Agreement.
15. BellSouth verified that the Bulk Migration process was contained in the Interconnect Agreement.



16. BellSouth further represented and assured STS that the network could be built, operational, and the embedded base of UNE-P customers transitioned to STS's network no later than March 2006.
17. Furthermore, BellSouth represented that in order for the network to be fully operational and to commingle the services once the TRRO became effective, BellSouth and STS would have to enter into an agreement to commingle the services.
18. From February through May 2005, STS and BellSouth continued to discuss this proposed network. BellSouth continually assured STS that the "Bulk Migration" process would work and that STS's embedded base of UNE-P customers would be timely converted to STS's network of commingled UNE, UNE Combinations and ACCESS network combination (commingled Enhanced Extended Links") ("EELS Services").
19. Throughout these discussions, STS requested and received assurances from BellSouth regarding the net cost on a per line basis for this network in order to ensure that it was economically feasible and practical to invest the substantial monies required to build and install the network, and to ensure that the end product would be profitable. Further, STS received assurances that BellSouth would be able to comply with the FCC TRO's commingling requirements with regards to the network that BellSouth proposed. (See TRO sections 579, 581 and 584.)
20. In addition to the substantial investment of monies required of STS to build the network, STS also had to expand its operations to hire more employees, retain new agents and acquire additional space for its operations and facilities.
21. BellSouth continually assured STS regarding the cost of building the network, converting the existing base and maintaining the network. Based upon BellSouth's representations, the investment in allowing BellSouth to design and construct the

- network would result in profits based the FCC's definition of a "reasonably operationally efficient CLEC."
22. Multiple times, STS inquired of BellSouth whether it had commingling procedures in place and the ability to use Bulk Migration ("Batch Hot Cut Procedures") to convert the embedded base to STS's network, and the cost of the same. On numerous occasions, STS asked BellSouth regarding the collocation equipment required at the node.
  23. Commencing in the first days of 2005, and continuing throughout the year, BellSouth advised STS that it had the ability and procedures in place to use Bulk Migration in the conversion process for STS's embedded base.
  24. Until STS representatives attended a December 2005 training class for Bulk Migration given by BellSouth, there was no indication, whatsoever, that the Bulk Migration Process would not be available for STS. Even though BellSouth did not state at the seminar that the Bulk Migration Process was not in place, the lack of information and adequate training led to such an inference.
  25. Moreover, in November and December 2005, STS provided a spreadsheet to BellSouth identifying the UNE-P base of customers to be converted. STS interpreted this to mean that it was to be used in the Bulk Migration Process as provided in the TRRO Addendum executed by BellSouth and STS.
  26. BellSouth represented to STS the equipment that was needed for the network and the type of loops that could be used. Commencing in February 2005 and continuing throughout the remainder of the year, BellSouth advised STS on numerous occasions that UNE-L ("Unbundled Voice Grade Loops") could be used such as Unbundled Network Element ("UNE") of Unbundled Copper Loops Non-Designed or Unbundled Voice Grade Loops SL, the cost of which were provided for in the parties' TRRO Addendum.

27. In reasonable reliance upon the information and proposals provided to STS by BellSouth, which were checked and rechecked with BellSouth on numerous occasions, and in conjunction with the rates in STS's Interconnect Agreement and subsequent TRRO Addendum, STS prepared a cost analysis of the network in order to determine the average per line cost. STS prepared this analysis in order to make absolutely certain that the substantial investment in this network designed by BellSouth would be profitable and that the information supplied to it by BellSouth regarding the rates and types of loops was accurate. The analysis evidenced that the investment would be profitable.
28. In order to confirm its analysis and ensure that the network could be built and operated as proposed by BellSouth, STS sent the spreadsheet of costs and all elements discussed to BellSouth for its comments and necessary changes. BellSouth reviewed the spreadsheet, made several small alterations and returned the revised spreadsheet to STS. The spreadsheet revised by BellSouth verified the cost of the network and transition of the embedded base, verified that the UNE of Unbundled Copper Loops Non-Designed in combination with ACCESS (Enhanced Extended Links EELS Commingled) could be used for the conversion of the embedded base, and evidenced that, based upon these costs, this network would be profitable to build and operate.
29. Further, in the beginning of February 2006, when it became evident that such a Bulk Migration process might not be available, BellSouth reaffirmed that Unbundled Cooper Loops Non-Designed and Unbundled Voice Grade Loops SL 1 could be used in the commingled network that was designed and built by BellSouth.
30. BellSouth and STS met in May 2005 to resolve any concerns regarding BellSouth's proposed network. During that meeting, BellSouth again assured STS of the type of equipment to be used at the nodes collocation point. BellSouth explained that this was "a conversion of an embedded base, and not new service." BellSouth also verified

- that it could use the Bulk Migration Process provided in the Parties' Interconnect Agreement.
31. During the May 2005 meeting, BellSouth further explained that a new agreement needed to be entered between STS and BellSouth to allow for commingling and alternate services for UNE-P in the event STS could not be ready to migrate its embedded base by the end of the transition period. BellSouth required that the following Agreements be signed: (1) Special Access Agreement For OC 48 Fiber Ring; (2) TRRO Addendum allowing "commingling of services," and (3) T-MBR Agreement allowing for "commercial rates" terms and conditions.
  32. STS was reluctant to sign a T-MBR Agreement because these "market based rates" were exorbitant and would not permit the company to operate profitably or even be competitive.
  33. In spite of its reservations, STS entered the T-MBR Agreement based upon assurances by BellSouth that the network would be up and running and the embedded base transitioned to the network by March 10, 2006. Since BellSouth represented that not only the embedded base, but also new customers and lines could be serviced by the network, STS relied upon these representations and did not overly concern itself over these high market based rates, as only a small amount of customers who could not be placed on the network would be subject to these rates.
  34. During every meeting, BellSouth assured STS that the network could be built as promised based on the figures given, and the network could be built and operated profitably by a reasonably efficient CLEC. This network was not only proposed by BellSouth, but also engineered, designed and built by BellSouth.
  35. Immediately after the May 2005 meeting, STS sent BellSouth a spreadsheet outlining the proposed network, the element and cost breakdown, and inquired whether BellSouth agreed it would work.

36. BellSouth responded telephonically and via e-mail, stating the proposed network fulfilled the obligations of the TRO and the TRRO and that UVG Loops could be commingled with ACCESS.
37. Throughout this entire process, STS relied upon the expertise and representations of BellSouth regarding the structure and/or engineering of the network, the loops, and other elements that would be needed to transition the embedded base and successfully operate the network.
38. Throughout this process, BellSouth continually assured STS that the network would be operational and the embedded based converted to the network no later than March 10, 2006 in order to meet the mandate of the TRRO.
39. Based upon BellSouth's representations above-mentioned, STS and BellSouth entered into a long term agreement for the OC 48 rings and executed the agreements BellSouth required as a condition for the operation the network, which agreements include, but are not limited to, the TRRO Addendum executed in July 2005 and the MBR Transitional Agreement executed in June 2005.
40. STS executed these Agreements based upon BellSouth's above-mentioned representations in order to be compliant with the TRO and TRRO and to have its embedded base of UNE-P customers migrated to the network by the end of the transition period of March 10, 2006.
41. At all times, STS complied with each request made by BellSouth. STS invested substantial monies to build its network, which was constructed exactly pursuant to the design proposed and engineered by BellSouth. The network was operational by November 2005. Throughout this period, STS continually asked BellSouth for specific information on the procedures for migrating its embedded base.
42. Throughout the months of December 2005 and January 2006, STS pressed BellSouth for the procedures to Bulk Migrate its UNE-P base of customers.

43. In February 2006, for the first time, BellSouth conceded that it had no Bulk Migration Process in place for the migration of STS's embedded base of UNE-P customers to the commingled network, and the migration would have to be handled manually.
44. Additionally, in February 2006, BellSouth stated for the first time that the only UNE that it would allow STS to use is UVL-SL2.
45. Prior to February 2006, BellSouth had never mentioned the UVL-SL2. February 2006 was approximately eight months after a multi-million dollar OC-48 contract was signed with BellSouth and after hundreds of thousands of dollars had been spent to install the network.
46. Prior to February 2006, BellSouth advised STS that the UCL-ND could be used for every STS customer. In fact, the entire network was based upon the utilization of UCL-ND in combination with transport.
47. The installation costs of the SL-2s were substantially higher than the UCL-ND installation costs, which created an economic barrier for the migration of the company's embedded base of business. Moreover, the monthly recurring rates for the SL-2s were substantially greater than the recurring rates for the UCL-NDs. Such non-recurring rates for migrating an embedded base and the recurring rates made it impossible for any reasonably efficient CLEC to operate profitably in competition with BellSouth using this type of UNE or UNE combination.
48. BellSouth knew or should have known since the commencement of negotiations in January 2005 that there was no Bulk Migration in place to convert the embedded base through the commingling rules of the TRRO. BellSouth did not publish rules for the commingling of the UNE combinations until well after STS had committed with BellSouth to build the network. It is apparent that BellSouth was crafting these rules for commingling which prohibited the type of design proposed for STS's network at the same time that the network was designed.

49. In violation of the FCC's TRO and TRRO, BellSouth, through its commingling rules, was defeating the very network that it had induced STS to purchase. From the inception, BellSouth knew that the network it proposed and designed would never work in conjunction with its arbitrary commingling rules. This left STS in an untenable position, and unable to meet the deadlines required by the TRRO. Due to the fact that the embedded base was not moved to the network, and new customers could not be added to the network, STS was trapped with the outrageous market rate bills, which rendered it unable to operate profitably. Further, STS was out the substantial monies it had spent to develop the network. Not only had STS spent money building the network, it built new facilities and hired new employees to operate the network. STS entered into other agreements based upon a business plan which was premised on the network designed by BellSouth being operational and running.
50. Furthermore, at no time throughout the entire process until February 2006 did BellSouth advise STS that the design it had engineered and the cost it had projected were not feasible. Rather, BellSouth continued to allow STS to spend substantial time, money and effort to develop its network based upon the false promises by BellSouth. It is clear that, from the inception, BellSouth intended the network it designed for STS to fail, because simultaneously with designing the network for STS, BellSouth was developing its "User Guide" for multiband commingling of services, which defeated such a network design.
51. BellSouth's failure to disclose these facts to STS and withholding the information until the last minute after STS had built the network is outrageous and without any possible justification. BellSouth's behavior can only be interpreted as anticompetitive, attempting by false representations to unfairly drive a competitor out of business, and monopolistic.

52. STS and BellSouth have attempted to resolve the situation, however, there has been no fair resolution that would allow STS to comply with the TRRO and receive a fair return on its investment.
53. Based upon BellSouth's misrepresentations, STS has committed and invested hundreds of thousands of dollars to construct and implement this network design proposed and approved by BellSouth in order to migrate the embedded base of UNE-P customers to facilities services as required by the FCC in the TRRO. Additionally, STS continues to pay increased costs due to the fact that BellSouth, despite promises to do so, has been unable to convert STS's embedded base of customers to STS's network. These damages are continuing to mount.
54. BellSouth's misrepresentations as above-stated in this Complaint were either intentional or done with reckless disregard for the truthfulness of the representation, and made with the intended or expected result that the higher cost would drive STS out of business, since the increased cost made the continued operation of STS's business unprofitable.
55. BellSouth's actions as described in this complaint are reprehensible, a violation of numerous federal and state laws, and contrary to the public interest. BellSouth's actions not only affect STS, but also are harmful to the public at large.
56. Furthermore, commencing in approximately February 2006, BellSouth began improperly billing STS for hundreds of thousands of dollars.
57. Additionally, during the months of February, March and April 2006, BellSouth billed STS hundreds of thousands of dollars for services previously billed for and then not billed for, or never billed for, or for rates that were imposed on from other agreements to affiliated company. These billings were not based upon the parties' Interconnect Agreement, but rather on the Agreements STS entered into with BellSouth, referred to as the TRRO Addendum and the T-MBR agreement, which STS signed in reliance



upon BellSouth's design, requirements and implementation of STS's network pursuant to the projected cost.

58. Additionally, in January 2006, BellSouth sent STS a bill based on back billing for market-based rates. This bill should not be due, since the damages suffered by STS as a result of BellSouth's misrepresentations and failure to comply with the FCC's TRO (commingling requirements) and TRRO (conversion of the embedded base) greatly exceed the monies owed. Moreover, had the embedded base been successfully transitioned as represented by BellSouth, STS would have generated sufficient profits to enable it to meet its obligations to BellSouth.
59. In the TRRO, the FCC required a period of time in which the ILECs would transition the CLEC's UNEs to alternatives. See Sections 142, 226, and 227 and section 51.319 of the TRRO. BellSouth refused or failed to transfer STS's embedded base of customers to STS's network by the transition deadline of March 10, 2006.
60. In the TRRO section 233, the Federal Communications Commission stated:
- “We expect that incumbent LECs and competitive carriers would implement the Commission's findings as directed by section 252 of the Act. Thus, carriers must implement changes to their Interconnect Agreement consistent with our conclusions in this Order. We note that the failure of an incumbent LEC or competitive LEC to negotiate in good faith under section 251 (c)(1) of the Act and/or implementing rules may subject that party to enforcement action. Thus, the encumbered LEC and competitive LEC must negotiation in good faith regarding any rates, terms and conditions necessary to implement our rule changes. We expect that parties to this negotiation process will not unreasonably delay implementation of the conclusions adopted in this Order.”
61. BellSouth's conduct is in bad faith and violates the directives above-stated in the TRRO.
62. Moreover, the FCC in its TRO sections 579, 581 and 584 permitted or required the commingling such as contained in the network proposed and designed by BellSouth. BellSouth's refusal to construct and price the network according to its design is a violation of the TRO.

63. In Section 581 of the TRO, the FCC stated:

“We agree...that the commingling restriction puts competitive LECs at an unreasonable competitive disadvantage by forcing them to either operate two functionally equivalent networks – one network dedicated to local services and one dedicated to long distance and other services – or to choose between using UNEs and using more expensive special access services to serve their customers. Thus, we find that a restriction on commingling would constitute an ‘unjust and unreasonable practice’ under 201 of the Act, as well as an ‘undue and unreasonable prejudice or advantage’ under section 202 of the Act. Furthermore, we agree that restricting commingling would be inconsistent with the nondiscrimination requirement in section 251 (c) (3).”

64. Due to BellSouth’s above-mentioned conduct, STS has been substantially damaged.

65. Additionally, BellSouth’s practices constitute a violation of Florida Statute §501.204, which states: “Unfair methods of competition unconscionable acts or practices and unfair deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

66. By its actions, BellSouth is estopped from charging STS any monies greater than what STS would have paid had the network been constructed and implemented according to BellSouth’s design and representations.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, for the foregoing reasons, STS respectfully requests that the Commission enter its order:

- (1) Finding that BellSouth’s actions have been anticompetitive, monopolistic and in violation of Florida Statute §501.204, and ordering the appropriate relief, taking into consideration all of the agreements that STS was required to enter into with BellSouth to build the network, and adjust the rates between the parties to reflect the profits that would have been earned by STS had BellSouth been truthful in its representations.
- (2) Requiring BellSouth to transition STS’s embedded base to the network at the rates and upon the terms promised, add new customers to the network at the rates and

upon the terms promised, and maintain the embedded base and new customers at the rates and terms promised.

- (3) Requiring that STS be allowed a setoff against all monies that BellSouth claims it is owed by STS, with the setoff comprising all additional monies STS has expended and the damages it has suffered by BellSouth's failure to convert the base as promised.
- (4) Enjoining BellSouth during the pendency of this Order from discontinuing or interrupting service to any of STS's customers.
- (5) Requiring BellSouth to continue to provide new services at just and reasonable rates adjusted for the fact that such services should have been provided by the Company's facilities through the represented network of commingled services.
- (6) For costs and for such further relief as the Commission deems just and appropriate.

Respectfully submitted,

ALAN C. GOLD, P.A.  
1501 Sunset Drive  
Second Floor  
Coral Gables, FL 33143  
(305) 667-0475 (office)  
(305) 663-0799 (telefax)

/s/ Alan C. Gold

---

BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been mailed via Federal Express overnight on this 5th day of June 2006 to:

James Meza, III, Esq.  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, FL 32301-1556

Adam Teitzman, Esq.  
Office of Genral Counsel, Room 370  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

/s/ Alan C. Gold

---

BY: ALAN C. GOLD, ESQUIRE  
Florida Bar Number: 304875