

Matilda Sanders

From: Woods, Vickie [Vickie.Woods2@bellsouth.com]
Sent: Thursday, January 11, 2007 3:43 PM
To: Filings@psc.state.fl.us
Subject: 050257-TP BellSouth's Response to Miami-Dade County's Objections to BellSouth's Exhibits on the Joint Final Exhibit List
Importance: High
Attachments: 050257-T.pdf

ORIGINAL

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CMP _____
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 ECR _____
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 RCA _____
 SCR _____
 SGA _____
 SEC 1
 OTH Kimp

B. Docket No. 050257-TP

Complaint by BellSouth Telecommunications, Inc., Regarding the Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules

C. BellSouth Telecommunications, Inc.
on behalf of James Meza III

D. 14 pages total (includes letter, certificate of service and pleading)

E. BellSouth Telecommunications, Inc.'s Response to Miami-Dade County's Objections to BellSouth's Exhibits on the Joint Final Exhibit List
 .pdf

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JAMES MEZA III
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Licensed in LA only
Authorized House Counsel - FL

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ORIGINAL

January 11, 2007

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

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

Dear Ms. Bayó:

Enclosed is BellSouth Telecommunications, Inc.'s Response to Miami-Dade County's Objections to BellSouth's Exhibits on the Joint Final Exhibit List, which we ask that you file in the captioned docket.

Copies of the Response were served to the parties shown on the attached Certificate of Service.

Sincerely,


James Meza III

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.

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CERTIFICATE OF SERVICE
Docket No. 050257-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U. S. Mail this 11th day of January , 2007 to the
following:

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James Meza III

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO MIAMI-DADE COUNTY'S OBJECTIONS TO BELLSOUTH'S EXHIBITS ON THE JOINT FINAL EXHIBIT LIST

1. BellSouth Telecommunications, Inc. ("BellSouth"), by and through its undersigned counsel, hereby submits the following response to Miami-Dade County's (the "County") objections to certain of BellSouth's exhibits as identified on the Joint Final Exhibit List submitted to the Commission on January 4, 2007.

2. BellSouth alleges that the County acquired ownership and began operating as a Shared Tenant Service ("STS") provider in February 2002 when the County acquired the telecommunications facility and existing STS customers from NextiraOne LLC. BellSouth contends that the County's subsequent provision of STS services to tenants at the Miami International Airport (the "Airport"), including to facilities such as hotels, shopping malls and industrial parks, was not done "due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility." The purpose of this proceeding is thus to determine: (1) whether the County is operating as a Telecommunications Company by providing STS to tenants at the Airport; (2) whether the County's operation and provision of STS at the Airport is exempt from the STS rules pursuant to Florida Statutes and/or the Airport Exemption

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Rule codified at 25-24.580, F.A.C.; and (3) if no exemption applies, whether the County must obtain a Certificate of Public Convenience and Necessity as an STS provider.

3. As explained below, BellSouth agrees to withdraw several of the documents to which the County objected because they are duplicative of other documents to which no objection was raised. However, several of the documents which the County seeks to exclude from consideration are not duplicative, and they are directly relevant to the issues before the Commission. Moreover, these documents are of the type that reasonable people would rely upon to evaluate the issues before the Commission. The County's attempt to exclude these documents thus appears to be calculated to preclude the consideration of evidence, not because the evidence is irrelevant, immaterial or unduly repetitious, but because it is damaging to the County's position.

4. Pursuant to the Commission's scheduling order dated April 21, 2006, the parties submitted their Joint Final Exhibit List, including the parties' objections thereto, on January 4, 2007.

5. The County objected to the following exhibits: 5, 48, 50, 70, 78, 81, 82, 99, 103, 104, 114, 131, 168 and 205.

6. BellSouth's responses to the County's objections are due on January 11, 2007. Accordingly, BellSouth submits the following responses to the County's objections.

7. With respect to Exhibits 5, 48, 50, 70 and 78, BellSouth agrees to withdraw these exhibits because they are duplicative, as copies of these same documents are included within other exhibits to which the County did not object and

which have otherwise been admitted as part of the record without objection. However, by withdrawing the above enumerated exhibits, BellSouth does not concede that these documents are irrelevant and adopts its general response to the County's relevance objections as set forth below.

8. With respect to Exhibit 81, BellSouth also agrees to withdraw that exhibit in an effort to streamline the issues before the Commission, although BellSouth does not stipulate that the document is irrelevant or immaterial.

9. With respect to Exhibits 82, 99, 103, 104, 114, 131, 168 and 205, the County's objections are based solely on relevance, hearsay and/or lack of foundation. As set forth below, BellSouth responds generally that such objections are inapposite.

10. With respect to the County's relevance objections directed to Exhibits 82, 103, 104, 114, 131, 168 and 205, the Commission has acknowledged that administrative proceedings are not subject to the same strict evidentiary standards used in trial courts. See In Re Sprint-Florida, Inc., Docket No. 030296-TP, Order No. PSC-03-1014-PCO-TP (P.S.C. Order September 9, 2003). Rather, Section 120.569(2)(g), Florida Statutes, states that in administrative hearings to determine the substantial interests of the parties:

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Florida.

Applying this standard, the Commission has employed a longstanding practice of including evidence for consideration in its decision-making, rather than excluding it. Id. at 11; In Re: Review of Florida Power Corporation's Earnings, Including Effects of

Proposed Acquisition of Florida Power Corporation by Carolina Power & Light, Docket No. 000824-EI, Order No. PSC-03-0850-PCO-EI (P.S.C. Order July 22, 2003). As noted by the Commission, "the concern that improperly allowed evidence will prejudice a trial jury does not necessarily apply to administrative matters heard before us in light of our technical expertise in those matters. We have the judgment to weigh the evidence presented, and accord it the weight that it is due, if any." Id.

Moreover, as a substantive matter, as demonstrated below, the County's relevance objections are unfounded. The documents sought to be excluded are directly relevant to the issues to be decided by the Commission in this proceeding, and the County has not claimed that it would suffer any prejudice by the inclusion of any of these documents in the record. The County's effort to exclude the documents thus appears calculated to prevent the Commission from considering evidence that directly contravenes the County's position. Rather than excluding any of the documents, the Commission should employ its longstanding practice of allowing the documents into the record and giving them the weight deemed appropriate by the Commission.

11. The County's hearsay objections to Exhibits 82 and 99 should also be summarily overruled because Florida's Administrative Procedure Act expressly permits the submission of hearsay evidence. See §120.57(1)(c), Fla. Stat. (2005). The Commission has interpreted this provision and the related Rule 25-22.047(3), Florida Administrative Code, to find that that hearsay evidence is admissible if it is relevant, "and of the sort that reasonably prudent persons are accustomed to relying on in the course of their affairs." See In Re Cherry Payment Systems, Inc. d/b/a Cherry Communications, Docket No. 921250-TI, Order No. PSC-93-1374-FOF-TI (P.S.C. Order

September 20, 1993). The only limitation on hearsay evidence is that bare hearsay evidence cannot be the only basis for a finding of fact unless the hearsay would otherwise be admissible over objection in a civil action; hearsay evidence may supplement or support other evidence. Id.; §120.57(1)(c), Fla. Stat. As explained below, both Exhibits 82 and 99 are relevant and of the sort that reasonably prudent persons are accustomed to relying on in the course of their affairs. Moreover, both documents supplement and explain other evidence which supports a finding that the County is in violation of Florida Statutes and Commission Rules governing the provision of STS. Finally, even if these documents were the only evidence in support of BellSouth's position, which they are not, they are admissible under the business records exception under section 90.803(6), Florida Rules of Evidence, as explained in more detail below. Thus, both exhibits should be admitted into the record of this proceeding.

12. The County's lack of foundation objection to Exhibits 82 and 99 is also improper. Applying the Commission's standard for determining admissibility, as set forth above, the only foundation necessary for admission of evidence is whether it is relevant and of the sort that reasonably prudent persons are accustomed to relying on in the course of their affairs. As these exhibits plainly meet this standard, they possess sufficient foundation to be admitted as part of the record in this proceeding.

13. In addition to the above general responses, BellSouth submits the following specific responses with respect to each of the subject exhibits.

14. Exhibit 82: This document is an email sent by the County's agent, NextiraOne LLC, which demonstrates that the County was engaged in marketing its telecommunications services purely for the County's competitive business purposes and

not "due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility." The document is thus relevant and material to demonstrating that the County's provision of STS to airport tenants is not within the Airport Exemption Rule. As the document is relevant, the County's relevance and hearsay objections to this document should also be overruled. Moreover, NexitraOne's records custodian authenticated the e-mail as a business record pursuant to the business records exception under section 90.803(6), Florida Rules of Evidence, thereby making the document admissible over objection in a civil action and otherwise fully establishing the foundation for the admission of the documents in this proceeding.

15. Exhibit 99: This is a County customer list which identifies certain airport tenants as customers of the County's STS. The document is thus relevant to providing the Commission with supporting evidence as to the County's STS operation. The evidence will assist the Commission's evaluation of whether the County's provision of STS is beyond the parameters of the Airport Exemption Rule. The document was produced by the County in the course of discovery in a related civil action pending in Miami-Dade County Circuit Court, and is thus the type of information that reasonably prudent persons would rely upon in the course of their affairs. The document is also a business record which provides relevant information regarding the scope of the provision of STS at the Airport. Pursuant to the Commission's longstanding application of the admissibility standards in administrative proceedings, this document is therefore plainly admissible. The lack of a date does not demonstrate a lack of foundation precluding admissibility as the date of the document does not eviscerate the relevance

of the information contained in the document. Thus, the County's objections to the relevance, hearsay and foundation of the document should be overruled.

16. Exhibit 103: This exhibit is a cover letter from WilTel¹, and a copy of a shared tenant service "Airport Rental Agreement" from 1996, between WilTel and an airport tenant. Contrary to the County's objection, this document is neither irrelevant nor repetitive of Exhibit 102. Exhibit 102 is a copy of a different Airport Rental Agreement with a different airport tenant. Moreover, Exhibit 102 does not include a cover letter as is included in Exhibit 103.

The cover letter and attached Airport Rental Agreement are relevant to explaining the history of STS services provided at the Airport. BellSouth has submitted a number of different examples of Airport Rental Agreements covering the span of time that STS has been provided at the Airport to show the change in telecommunication providers that have provided STS over time. This historical overview of STS provided at the Airport will demonstrate that, contrary to the County's position in this proceeding, prior to 2002, the County was neither a Telecommunications Company nor the STS provider at the Airport. This is relevant to debunking the County's assertion in paragraph 12 of its Answer and Affirmative Defenses that "it operates the airport telecommunications system at MIA pursuant to Rule 25-24.580, F.A.C. and that it has operated said system since circa 1988 . . ." Indeed, the County's relevance objection to this document appears to be calculated to avoid the damaging impact the document, in conjunction with the other examples of such documents, will have in rebutting the

¹ WilTel was one of the predecessor companies to NextiraOne LLC which provided STS to airport tenants prior to the County's acquisition of the system in 2002.

County's position that it is, and has always been, properly providing STS at the Airport under the Airport Exemption Rule.

17. Exhibit 104: This exhibit is a shared tenant service "Airport Rental Agreement" from 1997, between Williams Telecommunications Systems, Inc.² and Carrie Concessions³. Contrary to the County's objection, this document is not repetitive of Exhibit 102. Exhibit 102 is a copy of a different Airport Rental Agreement with WiTel and a different airport tenant. The Airport Rental Agreement in Exhibit 104 is relevant to explaining the history of STS services provided at Miami International Airport. This historical overview of STS provided at the Airport will demonstrate that, contrary to the County's position in this proceeding, prior to 2002, the County was neither a Telecommunications Company nor the STS provider at the Airport. This is relevant to debunking the County's assertion in paragraph 12 of its Answer and Affirmative Defenses that "it operates the airport telecommunications system at MIA pursuant to Rule 25-24.580, F.A.C. and that it has operated said system since circa 1988" Again, the County's relevance objection to this document appears to be calculated to avoid the damaging impact the document, in conjunction with the other examples of such documents, will have in rebutting the County's position that it is, and has always been, properly providing STS at the Airport under the Airport Exemption Rule.

18. Exhibit 114: This exhibit is a "Schedule E" from 1999 produced by NextiraOne LLC. This document provides a one month snapshot of the Airport tenants to which NextiraOne LLC provided STS prior to the County's acquisition of the system in

² Williams Telecommunications Systems, Inc. was another of the predecessor companies to NextiraOne LLC which provided STS to airport tenants prior to the County's acquisition of the system in 2002.

³ Carrie Concessions operated an ice cream shop in the Airport during the relevant time.

2002. The document includes billing statements for STS provided to the Airport tenants by NextiraOne. Contrary to the County's objection, these documents are relevant to establishing that prior to 2002, it was NextiraOne, or its predecessors, that billed and received payment for all STS provided to Airport tenants. This demonstrates that prior to the County's acquisition of NextiraOne LLC's STS system and its customers in 2002, the County was neither a Telecommunications Company nor the STS provider at the Airport and thus not subject to the Airport Exemption Rule. Similar to Exhibits 103 and 104, this is relevant to debunking the County's assertion in paragraph 12 of its Answer and Affirmative Defenses that "it operates the airport telecommunications system at MIA pursuant to Rule 25-24.580, F.A.C. and that it has operated said system since circa 1988 . . ." The County's objection to this document appears, simply, to be calculated to avoid the damaging impact the document will have in rebutting the County's position that it is and has always been properly providing STS at the Airport under the Airport Exemption Rule.

19. Exhibit 131: As explained by the County in its objection, these documents are billing invoices from the County to Airport tenants that received STS from the County after the County acquired NextiraOne LLC's telecommunications facility and customers in 2002. These documents are relevant to demonstrating the changes that occurred whereby the County became, for the first time, a Telecommunications Company and STS provider in 2002. Similar to Exhibits 103, 104, and 114, this is relevant to debunking the County's assertion in paragraph 12 of its Answer and Affirmative Defenses that "it operates the airport telecommunications system at MIA pursuant to Rule 25-24.580, F.A.C. and that it has operated said system since circa

1988 . . .” Once again, the County's relevance objection to this document appears to be calculated to avoid the damaging impact the document will have in rebutting the County's position that it is and has always been properly providing STS at the Airport under the Airport Exemption Rule.

20. Exhibit 168: This document is a summary of the relevant Miami Dade County Commission resolution by which the County was authorized to purchase NextiraOne LLC's telecommunications facility at the Airport and to assume the STS customer contracts then existing between NextiraOne LLC and Airport tenants. Contrary to the County's assertion, this document is not repetitive of Exhibit 13 which is a copy of the actual Miami-Dade County Commission resolution and contract documents. The summary is relevant as it provides a concise statement prepared by the County which explains the intent and effect of the resolution as well as history and background information leading to the adoption of the resolution. The resolution itself does not contain the identical summary and explanation, such that the summary will assist the Commission's understanding of the resolution and thus the nature and scope of the County's STS operation at the Airport which is relevant to the issue of whether the County is operating as a Telecommunications Company and whether or not it is operating outside the parameters of the Airport Exemption Rule.

21. Exhibit 205: This document is the application submitted to the Commission by the Hillsborough County Aviation Authority for a Certificate to provide Shared Tenant Services. The document is relevant to demonstrate that other airport authorities have sought Certificates to provide STS. This demonstrates the proper procedure that the County should have followed to provide STS at the Airport and that

the County was not authorized to unilaterally make the determination that it was entitled operate and provides STS pursuant to the Airport Exemption.

22. In conclusion and based on the foregoing, BellSouth respectfully requests that the Commission overrule the County's objections to Exhibits 82, 99, 103, 104, 114, 131, 168 and 205, and that the Commission accept these documents into the record of this proceeding.

Respectfully submitted:

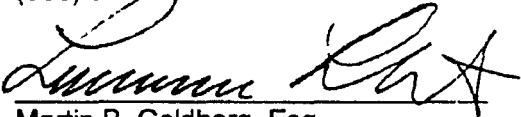
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CERTIFICATE OF SERVICE

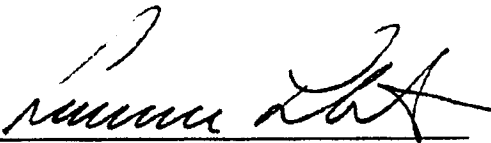
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via e-mail and U.S. Mail this 11th day of January, 2007, to:

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