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From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Monday, April 19, 2010 4:25 PM
To: Filings@psc.state.fl.us
Subject: Docket No. 100144-TP AT&T Florida's Motion to Dismiss STS' Petition for Arbitration and Alternatively for Mediation
Importance: High
Attachments: Untitled.pdf

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- B. Docket No. 100144-TP: Petition of Saturn Telecommunications Services, Inc. d/b/a STS Telecom for Arbitration Pursuant to Section 252(b) of the

Telecommunication Communications Act of 1934 as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement

with BellSouth Telecommunications, Inc. d/b/a AT&T Florida
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian
- D. 36 pages total (includes letter, pleading, certificate of service and Exhibits A thru F)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss STS' Petition for Arbitration and Alternatively for Mediation

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April 19, 2010

Ms. Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 100144-TP: Petition of Saturn Telecommunications Services, Inc. d/b/a STS Telecom for Arbitration Pursuant to Section 252(b) of the Telecommunication Communications Act of 1934 as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Motion to Dismiss STS' Petition for Arbitration and Alternatively for Mediation, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

cc: All parties of record
Jerry Hendrix
Gregory R. Follensbee
E. Earl Edenfield, Jr.

**CERTIFICATE OF SERVICE
Docket No. 100144-TP**

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

Electronic Mail and First Class U.S. Mail this 19th day of April, 2010 to the following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:) Docket No. 100144-TP
The Petition of Saturn Telecommunications Services, Inc.)
d/b/a STS Telecom for Arbitration Pursuant to Section)
252(b) of the Telecommunications Communications Act)
of 1934 as amended, and Section 364.162, Florida)
Statutes, to Establish an Interconnection Agreement with)
BellSouth Telecommunications, Inc. d/b/a AT&T Florida)
_____) Filed: April 19, 2010

**AT&T FLORIDA’S MOTION TO DISMISS STS’S PETITION FOR
ARBITRATION AND ALTERNATIVELY FOR MEDIATION**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”) hereby files, pursuant to the Telecommunications Act of 1996 (“the Act”), this Motion to Dismiss the Petition for Arbitration and Alternatively for Mediation (“Petition”) filed by Saturn Telecommunication Services, Inc. (“STS”), and says:

I. INTRODUCTION

In its Petition, STS requests that the Commission “arbitrate STS’ request for an Interconnection Agreement to include the commingling of section 271 elements of the switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops. Alternatively, if for any reason this Commission declines to so arbitrate, STS requests that the Commission participate in the negotiation of such an interconnection agreement and mediate any differences.” STS’ Petition relies upon Section 252 of the Act for its requested relief.¹

The Petition is patently improper in four respects, each of which, standing alone, require a dismissal of the Petition by the Florida Public Service Commission (“Commission”). First, STS cannot request to arbitrate an amendment or a new

¹ In its opening paragraph, STS cites to Sections “364.16, 364.161 and 364.162, Florida Statutes”; however, other than this initial citation there is no discussion whatsoever in the body of Petition and thus, any reliance on these provisions fails to state a claim.

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agreement because it has an effective interconnection agreement with AT&T Florida. Second, STS' dispute with AT&T Florida is covered by the Parties' Interconnection Agreement and not arbitrable under federal law. Third, even if STS could arbitrate a new agreement or amendment pursuant to federal law its October 16, 2009 correspondence does not qualify as a Section 252 "request for interconnection, services, or network elements pursuant to section 251" of the Act. Fourth, the Petition was not properly filed within the "135th to the 160th day" window allowed by the Act.

II. MOTION TO DISMISS

A. Standard for Motion to Dismiss

A motion to dismiss questions whether the complaint alleges sufficient facts to state a cause of action as a matter of law. *See Varnes v. Dawkins*, 624 So.2d 349, 350 (Fla. 1st DCA 1993). In disposing of a motion to dismiss, the Commission must assume all of the allegations of the complaint to be true. *See In re: Complaint and petition of John Charles Heekin against Florida Power & Light Co.*, Order No. PSC-99-10544-FOF-EI, Docket No. 981923-EI, (Issued May 24, 1999) (citing to *Varnes*, 624 So.2d at 350). To sustain a motion to dismiss, the moving party must demonstrate that, accepting all allegations in the petition as facially correct, the petition still fails to state a cause of action for which relief can be granted. *In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) citing *In re: Application for Amendment of Certificates Nos. 359-W and 290-S to Add Territory in*

Broward County by South Broward Utility, Inc. 95 FPSC 5:339 (1995); *Varnes*, 624 So.2d at 350.

B. STS' Petition Fails to State Claim for Which Relief Can Be Granted

On March 25, 2010, STS filed its Petition, in which it requests that the Commission "arbitrate STS' request for an Interconnection Agreement to include the commingling of section 271 elements of the switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops" or, if the Commission declines to arbitrate, that "the Commission participate in the negotiation of such an interconnection agreement and mediate any differences." The Petition is patently improper in four respects: (1) STS cannot request to arbitrate an amendment or a new agreement because it has a signed interconnection agreement with AT&T Florida; (2) STS' dispute with AT&T Florida is covered by the parties' Interconnection Agreement and not arbitrable under federal law; (3) even if STS could arbitrate a new agreement or amendment pursuant to federal law its October 16, 2009 "request" does not qualify as a Section 252 "request for interconnection, services, or network elements pursuant to section 251" of the Act; and (4) the Petition was not properly filed within the "135th to the 160th day" window allowed by the Act.

1. STS' Petition is Improper As The Parties Already Have an Interconnection Agreement

STS' request is improper as the parties have an existing interconnection agreement. *See In re: Request for approval of interconnection, unbundling, resale, and collocation agreement between BellSouth Telecommunications, Inc. and Saturn Telecommunication Services, Inc. d/b/a STS*, Docket No. 060798-TP. On December 13, 2006, AT&T Florida filed a request for approval of an Interconnection, Unbundling, and

Resale and Collocation Agreement between AT&T Florida and STS (“Interconnection Agreement”) under the Act. The agreement covers a five (5) year period² and governs the relationship between AT&T Florida and STS regarding resale, unbundling, collocation and interconnection pursuant to the Act. On January 25, 2007, AT&T Florida filed an Amendment to the Interconnection Agreement, in which the Effective Date of the Interconnection Agreement was changed so that it became effective on November 17, 2006. *See* Amendment to the Agreement between STS and AT&T Florida filed with the Commission on January 25, 2007 in Docket No. 060798-TP. Pursuant to operation of law the Interconnection Agreement went into effect. *See* March 15, 2007 Staff Memorandum filed in Docket No. 060798-TP. Until this Interconnection Agreement expires, Section 252(b), the provision governing arbitration of interconnection agreements, does not apply.

As noted above, the Interconnection Agreement has a five-year term. Section 2.1 of the General Terms and Conditions (“GTC”). This five-year term began on November 17, 2006 and expires on November 16, 2011. In its Petition, STS is apparently asking the Commission to arbitrate an amendment to the Interconnection Agreement or a new Interconnection Agreement that contains the language that STS seeks.³ However, there is

² Section 2.2 of the General Terms and Conditions provides in relevant part that the “Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of the initial term of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement).” To the extent, STS claims that its October 16, 2009 letter qualifies under Section 2.2 as a request to commence negotiations, the letter was sent more than two years before the Interconnection Agreement is set to expire and thus, this provision of the Interconnection Agreement is not applicable.

³ To the extent that STS is requesting the inclusion of Section 271 elements in a Section 252 interconnection agreement, the Commission has already determined that it does not have “authority to require BellSouth to include in §252 interconnection agreements §271 elements” and “that the inclusion of § 271 elements in a §252 agreement would be contrary to both the plain language of §§251 and 252 and the regulatory regime set forth by the FCC in the TRO and the TRRO.” *In re: Petition to establish generic docket to consider amendment to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.*, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP at 53 (Issued March

no authority under the Act for STS to seek arbitration from this Commission when it has an approved interconnection agreement. An interconnection agreement is “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,”(*Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003)), and once a carrier enters “into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement.” *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev’d in part on other grounds sub nom; Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). *See also, Mich. Bell Tel. Co. v. MCImetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”).

Moreover, in *In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or, in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (March 31, 1998), the Commission addressed a Competitive Local Exchange Carrier’s (“CLEC”) improper request for arbitration for a new interconnection agreement while the parties had an existing agreement. The Commission stated that the Act does not authorize the Commission to conduct an arbitration on matters covered by an agreement

2, 2006). STS is bound by this finding. *Id.* at 26 (“Commission Order No. PSC-05-0639-PCO-TP, which established the scope of this proceeding, made it clear that all Florida CLECs in BellSouth’s territory will be bound by the findings in this proceeding. Accordingly, we find that all Florida CLECs having ICAs with BellSouth will be bound by the decisions in this proceeding effective upon issuance of the final order.”).

and to alter terms within an approved negotiated agreement. Specifically, the Commission found “nothing in the Act authorizing a state commission to conduct an arbitration on matters covered by an agreement that has been approved pursuant to Section 252(e). The Act does not authorize a state commission to alter terms within an approved negotiated agreement or to nullify an approved negotiated agreement.” The Commission in granting the ILEC’s motion to dismiss the CLECs’ petition for arbitration held that the CLEC was “currently bound by a Commission-approved agreement addressing resale, unbundling, and interconnection. Nothing in the Act provides for a request for arbitration while the matters at issue are governed by an approved agreement.”

Therefore, whether STS is requesting the arbitration of a new interconnection agreement or arbitration of an amendment to an existing agreement is immaterial as there is “nothing in the Act authorizing a state commission to conduct an arbitration on matters covered by an agreement that has been approved pursuant to Section 252(e)” and STS’ Petition should be dismissed as a matter of law.

2. STS’ Dispute is Covered by the Parties’ Interconnection Agreement and the Petition Should be Dismissed

The dispute with STS is not a matter for arbitration but is covered by the parties’ Interconnection Agreement.

Per the Commission’s decision in *In re: Petition to establish generic docket to consider amendment to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.*, Docket No. 041269-TP, Order No. PSC-06-0299-FOF-TP (Issued April 17, 2006), the parties’ Interconnection Agreement in Attachment

2, Exhibit 1, FL COL Language at p. 10-11 (attached hereto as Exhibit "A") contains the following provisions:

13 Commingling of Services

- 13.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that STS has obtained at wholesale from BellSouth, or the combining of a Network Element or Combination with one (1) or more such wholesale Telecommunications Services or facilities. STS must comply with all rates, terms or conditions applicable to such wholesale Telecommunications Services or facilities.
- 13.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a Combination on the grounds that one (1) or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for mobile wireless services and/or interexchange services.
- 13.3 Unless otherwise agreed to by the Parties, the Network Element portion of a commingled circuit will be billed at the rates set forth in Exhibit A and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates or rates set forth in that separate agreement between the Parties.
- 13.4 When multiplexing equipment is attached to a commingled arrangement, the multiplexing equipment will be billed from the same agreement or the tariff as the higher bandwidth circuit. Central Office Channel Interfaces (COCI) will be billed from the same agreement or tariff as the lower bandwidth circuit.
- 13.5 Notwithstanding any other provision of this Agreement, BellSouth shall not be obligated to commingle or combine Network Elements or Combinations with any service, network element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

The parties' Interconnection Agreement contains change of law and dispute resolution clauses that direct the resolution of disputes where there is a change of law,

such as the court decisions in *NuVox Communs., Inc. v. Edgar*, 511 F.Supp. 2d 1198 (N.D. Fla. 2007) and *Nuvox Communications, Inc. v. BellSouth Telecommunications, Inc.*, 530 F.3d 1330 (11th Cir. 2008). Specifically, the interconnection agreement provides as follows:

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of STS or BellSouth to perform any material terms of this Agreement, STS or BellSouth may, on thirty (30) days written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

Section 12.3 of the GTC (attached hereto as Exhibit "B").

Section 8 of the GTC (attached hereto as Exhibit "C") provides in relevant part as follows

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement, or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute.

The only section in the parties' Interconnection Agreement that is affected by the courts' decisions in *NuVox Communs., Inc. v. Edgar*, 511 F.Supp. 2d 1198 (N.D. Fla. 2007)("the Court finds that the FPSC misinterpreted the TRO to prohibit commingling of 251 elements with 271 checklist elements.") and *Nuvox Communications, Inc. v. BellSouth Telecommunications, Inc.*, 530 F.3d 1330 (11th Cir. 2008)(the Circuit Court affirmed the District Court's decision that "the FCC's commingling requirements mandated that BellSouth combine facilities provided under *section 271* with those that must be provided under *section 251*.")) is Section 13.5 of Exhibit 1 to Attachment 2.

Once Section 13.5 is removed from the parties' Interconnection Agreement, STS can commingle Section 251 and 271 elements.⁴ Thus, it is clear that STS should have invoked the change of law provisions contained in the parties' Interconnection Agreement and, to the extent it believed it appropriate, subsequently filed a complaint against AT&T Florida pursuant to the dispute resolution section of the Interconnection Agreement rather than filing the instant Petition.

3. STS' October 16, 2009 Request Is Not a "Request for Interconnection, Services, or Network Elements Pursuant to Section 251" of the Act

At paragraph 13, STS alleges that "on October 16, 2009, STS Telecom through the undersigned counsel advised AT&T in writing that it wanted to amend the ICA to 'include the commingling of section 271 elements of the switch port with section 251(c)(3) DS0, UCL-ND and SL-1 voice grade loops'. Said October 16 correspondence constituted a request for negotiation of a voluntary agreement for negotiation of a voluntary agreement for 'interconnection, services or network elements pursuant to section 251 of this title ("Title 47").'" However, after even a cursory review of the October 16, 2009 correspondence, which is attached hereto as Exhibit "E", one can quickly determine that this correspondence was not a "request for interconnection, services, or network elements pursuant to section 251."⁵ Specifically, the body of the October 16, 2009 letter provides as follows:

It has now been over a week since STS made a formal request to amend their ICAs for Florida and Georgia, to include the commingling of section

⁴ AT&T Florida has proposed an amendment to STS that would remove Section 13.5 from the parties' interconnection agreement. *See* Exhibit "D" attached hereto. However, to date, STS has not accepted AT&T Florida's proposal.

⁵ One can only surmise that that STS did not attach a copy of its October 16, 2009 correspondence to the Petition because the Commission would quickly ascertain that this correspondence was not a "request for interconnection, services, or network elements pursuant to section 251."

271 elements of the switch port with section 251 (c)(3) UVL DS 0, UCL-ND, and SL 1 voice grade loops. STS has neither received an acknowledgement of its requests, nor a date to begin negotiations.

In the event that AT&T continues to ignore STS' request, STS will pursue its remedies as provided by 47 U.S.C. § 51.301, through the Florida and Georgia Commissions. We will also investigate the advisability of amending or supplementing the pending Formal Complaint before the FCC on what we perceive to be retaliatory and discriminatory practices by AT&T.

If you wish to discuss this situation please feel free to call me at (305) 667-0475.

It is clear that STS's October 16th correspondence is not a "request for interconnection, services, or network elements pursuant to section 251."

Therefore, to the extent that STS could arbitrate a new agreement or an amendment to an existing agreement (which as indicated above STS cannot do pursuant to the Act), STS' October 16, 2009 correspondence does not qualify as a "request for interconnection, services, or network elements pursuant to section 251" and STS' petition must be dismissed. *See In re: Petition for arbitration of amendment to interconnection agreements with certain competitive local exchange carriers and commercial mobile radio service providers in Florida by Verizon Florida Inc.*, Docket No. 040156-TP, Order No. PSC-04-0671-FOF-TP (Issued July 12, 2004)(Commission granted motion to dismiss finding that petitioner in action failed to state a cause of action upon which relief could be granted by failing to comply with Section 252 at a sufficient level to sustain the action requested in the petition for arbitration).

- 4. Petition was not properly filed within the "135th to the 160th day" window allowed by the Act**

STS' Petition was untimely filed pursuant to the provisions of Section 252(b) of the Act, which require that a petition for arbitration be filed "[d]uring the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section". *See In re: Complaint and/or petition for arbitration against Sprint Florida, Incorporated by Wireless One Network, L.P. d/b/a Cellular One of Southwest Florida pursuant to Section 252 of the Telecommunications Act of 1996 and request for expedited hearing pursuant to section 364.058, F.S., Docket No. 970788-TP, Order No. PSC-97-1043-PCO-TP (Issued September 4, 1997) ("Under Section 252(b), a party may only petition us to arbitrate unresolved issues during the period from the 135th day to the 160th day following a request for negotiation under the Act.")*.

At paragraph 12 of its Petition, STS alleges that "[o]n or about October 7, 2009, STS Telecom advised AT&T that it wished to amend its Interconnection Agreement ("ICA") with AT&T to provide for the commingling of AT&T's wholesale local switching elements with section 251(c)(3) loops of the following types; UVLs, UCL-ND, SL-1s and SL-2s." At paragraph 13, STS further alleges that "on October 16, 2009, STS Telecom through the undersigned counsel advised AT&T in writing that it wanted to amend the ICA to 'include the commingling of section 271 elements of the switch port with section 251(c)(3) DS0, UCL-ND and SL-1 voice grade loops'. Said October 16 correspondence constituted a request for negotiation of a voluntary agreement for negotiation of a voluntary agreement for 'interconnection, services or network elements pursuant to section 251 of this title ("Title 47").'" However, to the extent STS made a "request for interconnection, services, or network elements pursuant to section 251",

(which AT&T Florida does not believe that it properly did or that it is permitted to under Section 252 of the Act), said request was made in STS' October 7, 2009 correspondence not its October 16, 2009 correspondence. A copy of STS' October 7, 2009 and October 16, 2009 correspondence, respectively, are attached hereto as Exhibit "F" and "E". STS' October 16, 2009 letter is clearly only a follow-up to the October 7, 2009 letter and is not a "request for interconnection, services, or network elements pursuant to section 251."

Specifically, the October 16, 2009 letter states as follows:

It has now been over a week since STS made a formal request to amend their ICAs for Florida and Georgia, to include the commingling of section 271 elements of the switch port with section 251 (c)(3) UVL DS 0, UCL-ND, and SL 1 voice grade loops. STS has neither received an acknowledgement of its requests, nor a date to begin negotiations.

To the extent STS made a "request for interconnection, services, or network elements pursuant to section 251", (which AT&T Florida does not concede that it did or that it is permitted to under Section 252 of the Act), said request was made in STS' October 7, 2009 correspondence when STS stated the following:

Since it is apparent that STS and AT&T can not agree as to the terms of the LWC agreement, STS requests that AT&T provide STS as quickly as can be reasonable achieved, an amendment to STS' ICA for the "commingling" of AT&T's wholesale local switching element, commingled with section 251(c)(3) local loops of the following types; UVLs, UCL-ND, SL-1 and SL-2."

As can be seen from the above excerpts, STS' allegations that its "October 16 correspondence constituted a request for negotiation of a voluntary agreement for negotiation of a voluntary agreement for 'interconnection, services or network elements pursuant to section 251 of this title ("Title 47")'" is a misstatement and, at worst, an outright misrepresentation. The reason for STS' misstatement (or misrepresentation as the case may be) is that if the October 7, 2009 date is used to

calculate the 135th to 160th day window for the filing of arbitration petitions provided in Section 252(b)(1) of the Act, STS' Petition filed with the Commission on March 25, 2010, was untimely as the Petition was filed 169 days after October 7, 2009. However, if the October 16, 2009 date is used rather than October 7, 2009, STS' Petition filed on March 25, 2010 was filed on the 160th day. The Commission should not condone STS' nefarious actions and should dismiss STS' Petition for its failure to comply with Section 252 of the Act.

5. The Commission Cannot Require Mediation Between the Parties in These Circumstances

If the Commission declines to arbitrate, STS's Petition includes a request that "the Commission participate in the negotiation of such an interconnection agreement and mediate any differences." However, this request cannot stand. There is nothing in the Act authorizing a state commission to conduct a mediation on matters covered by an agreement that has been approved by the Commission pursuant to Section 252(e). *See In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or, in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (March 31, 1998)(holding that a CLEC was "currently bound by a Commission-approved agreement addressing resale, unbundling, and interconnection. Nothing in the Act provides for a request for arbitration while the matters at issue are governed by an approved agreement.").

While the Commission has previously encouraged parties to "voluntarily avail themselves of . . . mediation" it has explicitly recognized that "mediation . . . is available

on a strictly voluntary basis.” Order No. PSC-03-0773-PCO-EQ, p. 5; *see also* Section 120.573, Florida Statutes and Rule 28-106.111. Because mediation can occur only when both parties consent, this Commission cannot enter an order at STS’ sole request that requires AT&T Florida to submit to such a process.

III. CONCLUSION

STS has an existing interconnection agreement with AT&T Florida. It cannot seek arbitration or mediation for the reasons discussed herein and STS’ Petition should be dismissed as a matter of law.

WHEREFORE, based upon the foregoing, AT&T Florida respectfully requests that the Commission issue an Order dismissing the Petition for Arbitration and Alternatively for Mediation and granting such further relief as the Commission deems just and proper.

Respectfully submitted this 19th day of April, 2010.



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ATTORNEYS FOR BELL SOUTH
TELECOMMUNICATIONS, INC. d/b/a
AT&T FLORIDA

Exhibit A

- 11 STS may purchase and use Network Elements and Other Services from BellSouth in accordance with 47 C.F.R §51.309. Performance Measurements associated with this Attachment 2 are contained in Attachment 9. The quality of the Network Elements provided pursuant to §251, as well as the quality of the access to said Network Elements that BellSouth provides to STS, shall be, to the extent technically feasible, at least equal to that which BellSouth provides to itself, and its affiliates.
- 12 The Parties shall comply with the requirements as set forth in the technical references within this Attachment 2. BellSouth shall comply with the requirements set forth in the technical reference TR73400, as well as any performance or other requirements identified in this Agreement, to the extent that they are consistent with the greater of BellSouth's actual performance or applicable industry standards. If one (1) or more of the requirements set forth in this Agreement are in conflict, the technical reference TR73600 requirements shall apply. If the parties cannot reach agreement, the dispute resolution process set forth in the General Terms and Conditions of this Agreement shall apply.
- 13 Commingling of Services
- 13.1 Commingling means the connecting, attaching, or otherwise linking of a Network Element, or a Combination, to one or more Telecommunications Services or facilities that STS has obtained at wholesale from BellSouth, or the combining of a Network Element or Combination with one (1) or more such wholesale Telecommunications Services or facilities. STS must comply with all rates, terms or conditions applicable to such wholesale Telecommunications Services or facilities.
- 13.2 Subject to the limitations set forth elsewhere in this Attachment, BellSouth shall not deny access to a Network Element or a Combination on the grounds that one(I) or more of the elements: 1) is connected to, attached to, linked to, or combined with such a facility or service obtained from BellSouth; or 2) shares part of BellSouth's network with access services or inputs for mobile wireless services and/or interexchange services.
- 13.3 Unless otherwise agreed to by the Parties, the Network Element portion of a commingled circuit will be billed at the rates set forth in Exhibit A and the remainder of the circuit or service will be billed in accordance with BellSouth's tariffed rates or rates set forth in that separate agreement between the Parties.
- 13.4 When multiplexing equipment is attached to a commingled arrangement, the multiplexing equipment will be billed from the same agreement or the tariff as the higher bandwidth circuit. Central Office Channel Interfaces (COCI) will be billed from the same agreement or tariff as the lower bandwidth circuit.
- 13.5 Notwithstanding any other provision of this Agreement, BellSouth shall not be obligated to commingle or combine Network Elements or Combinations with any

service, network element or other offering that it is obligated to make available only pursuant to Section 271 of the Act.

14 Conversion of Wholesale Services to Network Elements or Network Elements to Wholesale Services

14.1 Upon request, BellSouth shall convert a wholesale service, or group of wholesale services, to the equivalent Network Element or Combination that is available to STS pursuant to Section 251 of the Act and under this Agreement, or convert a Network Element or Combination that is available to STS pursuant to Section 251 of the Act and under this Agreement to an equivalent wholesale service or group of wholesale services offered by BellSouth (collectively "Conversion"). BellSouth shall charge the applicable nonrecurring switch-as-is rates for Conversions to specific Network Elements or Combinations found in Exhibit A. BellSouth shall also charge the same nonrecurring switch-as-is rates when converting from Network Elements or Combinations. Any rate change resulting from the Conversion will be effective as of the next billing cycle following BellSouth's receipt of a complete and accurate Conversion request from STS. A Conversion shall be considered termination for purposes of any volume and/or term commitments and/or grandfathered status between STS and BellSouth. Any change from a wholesale service/group of wholesale services to a Network Element/Combination, or from a Network Element/Combination to a wholesale service/group of wholesale services that requires a physical rearrangement will not be considered to be a Conversion for purposes of this Agreement. BellSouth will not require physical rearrangements if the Conversion can be completed through record changes only. Orders for Conversions will be handled in accordance with the guidelines set forth in the Ordering Guidelines and Processes and CLEC Information Packages as referenced in Section 15.3 below.

14.2 Any outstanding conversions shall be effective on or after the effective date of this agreement.

14.3 Ordering Guidelines and Processes

14.3.1 For information regarding Ordering Guidelines and Processes for various Network Elements, Combinations and Other Services, STS should refer to the "Guides" section of the BellSouth Interconnection Web site.

14.3.2 Additional information may also be found in the individual CLEC Information Packages located at the "CLEC UNE Products" on BellSouth's Interconnection Web site.

14.3.3 The provisioning of Network Elements, Combinations and Other Services to STS's Collocation Space will require cross-connections within the central office to connect the Network Element, Combinations or Other Services to the demarcation point associated with STS's Collocation Space. These cross-connects are separate components that are not considered a part of the Network

Exhibit B

performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 Adoption of Agreements

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to STS any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

12 Modification of Agreement

12.1 If STS changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of STS to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, STS shall provide BellSouth with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), BellSouth's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

12.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of STS or BellSouth to perform any material terms of this Agreement, STS or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

13 Legal Rights

Exhibit C

requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.

7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.

7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

8 **Resolution of Disputes**

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9 **Taxes**

9.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding any taxes levied on income.

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party

9.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

Exhibit D

From: ALLEN-FLOOD, LYNN E (ATTOPS)
Sent: Thursday, April 15, 2010 7:13 PM
To: 'Keith Kramer'
Cc: TURBES, MICHAEL M (Legal); agold@acgoldlaw.com
Subject: AT&T and STS - ICA FL Commingling Amendment
Importance: High



04152010



STS FL - ICA

ResponseLetterToSTSLetter-Commingling

Keith, please see the attached correspondence and associated attachment, an amendment. If STS is agreeable to the amendment, please print and execute two original signature sheets and send both originals to:

AT&T Contract Processing
4 AT&T Plaza
311 South Akard, 9th Floor
Dallas, TX 75202

AT&T will return one fully executed original signature sheet to STS for its records.

Thanks
Lynn Allen-Flood
AT&T
Lead Interconnection Agreements Manager
404-927-1376
Fax: 404-529-7839



Lynn Allen-Flood
Lead Interconnection Agreements Manager
675 West Peachtree Street NE, Room 34S91
Atlanta, GA 30375

T: 404.927.1376
F: 404-529-7839
Email: Lynn.Allen-Flood@att.com

Sent Via Certified and Electronic Mail

April 15, 2010

Keith Kramer
Executive Vice President-Legal and Regulatory
Saturn Telecommunication Services Inc. dba STS
12399 SW 53rd Street, Suite 102
Cooper City, FL 33330

Alan Gold, P.A.
Attorney Representing STS
1501 Sunset Drive
Second Floor
Coral Gables, FL 33143

Dear Keith and Alan,

Please be advised that AT&T Florida believes that STS's Petition for Arbitration is improper and it will respond accordingly in the Florida Public Service Commission ("Commission") proceeding at the appropriate time. However, in attempt to resolve STS's request to amend its interconnection agreement to allow commingling, below is AT&T Florida's response.

First, AT&T Florida believes that STS, to the extent it wished to commingle Section 251 and Section 271 elements, should have requested an amendment pursuant to the following provision in the STS/AT&T FL Interconnection Agreement, effective 11/17/06 :

In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of STS or BellSouth to perform any material terms of this Agreement, STS or BellSouth may, on thirty (30) days written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.
From Section 12.3 of the GTC.

Second, the Commission has already determined in a generic docket the language that AT&T Florida is required to include in its interconnection agreements with CLECs regarding commingling. *See In re: Petition to establish generic docket to consider amendment to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.*, Docket No. 041269-TP, Order No. PSC-06-0299-FOF-TP at Appendix A (Issued April 17, 2006). This commingling language is contained within the parties' interconnection agreement.

Third, the only section in the parties' Interconnection Agreement that is affected by *NuVox Communs., Inc. v. Edgar*, 511 F.Supp. 2d 1198 (N.D. Fla. 2007) ("the Court finds that the FPSC misinterpreted the TRO to prohibit commingling of 251 elements with 271 checklist elements.") and *Nuvox Communications, Inc. v. BellSouth Telecommunications, Inc.*, 530 F.3d 1330 (11th Cir. 2008) (the Circuit Court affirmed the District Court's decision that "the FCC's commingling requirements mandated that BellSouth combine facilities provided under section 271 with those that must be provided under section 251.") is Section 13.5 of Exhibit 1 to Attachment 2.

Fourth, attached is AT&T's proposed amendment to the interconnection agreement to implement the above federal decisions and consistent with the Commission's decision in the generic docket referenced above. This amendment proposes deleting the following language located in Attachment 2 - Network Elements.

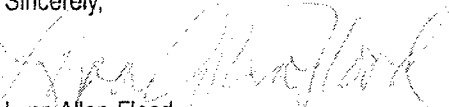
LANGUAGE TO BE DELETED:

"13.5 Notwithstanding any other provision of this Agreement, BellSouth shall not be obligated to commingle or combine Network Elements or Combinations with any service, network element or other offering that it is obligated to make available only pursuant to Section 271 of the Act."

Fifth, to the extent that STS is requesting the inclusion of Section 271 elements in a Section 252 interconnection agreement, the Florida Public Service Commission has already determined that it does not have "authority to require BellSouth to include in §252 interconnection agreements §271 elements" and it found "that the inclusion of § 271 elements in a §252 agreement would be contrary to both the plain language of §§251 and 252 and the regulatory regime set forth by the FCC in the TRQ and the TRRO." *In re: Petition to establish generic docket to consider amendment to interconnection agreements resulting from changes in law, by BellSouth Telecommunications, Inc.*, Docket No. 041269-TP, Order No. PSC-06-0172-FOF-TP at 53 (Issued March 2, 2006). STS is bound by this finding. *Id.* at 26 ("Commission Order No. PSC-05-0639-PCO-TP, which established the scope of this proceeding, made it clear that all Florida CLECs in BellSouth's territory will be bound by the findings in this proceeding. Accordingly, we find that all Florida CLECs having ICAs with BellSouth will be bound by the decisions in this proceeding effective upon issuance of the final order."). The federal court decisions referenced above did not affect the Commission's prior rulings on the inclusion of Section 271 elements in a Section 252 agreement.

AT&T is available to discuss the attached amendment if STS wishes to do so.

Sincerely,



Lynn Allen-Flood
Lead Interconnection Agreements Manager, Wholesale

CC: Michael Turbes

**AMENDMENT
TO THE
INTERCONNECTION AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T FLORIDA
AND
SATURN TELECOMMUNICATION SERVICES INC. dba STS**

Pursuant to this Amendment, BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") and Saturn Telecommunication Services Inc. dba STS ("STS"), hereinafter referred to collectively as the "Parties", agree to amend that certain Interconnection Agreement between the Parties dated November 17, 2006 ("Agreement") to be effective on the date of last signature executing the Amendment.

WHEREAS, AT&T and STS entered into the Agreement on November 17, 2006; and

WHEREAS, AT&T and STS agree to modify the commingling provisions in the Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Delete Section 1.11.5 in Section 11, Commingling of Services, located in Attachment 2, Access to Network Elements and Other Services, and replace with the following:

1.11.5 Intentionally Left Blank

2. Delete Section 13.5 in Section 13, Commingling of Services, located in Exhibit 1, FL COL Language, in Attachment 2, Access to Network Elements and Other Services, and replace with the following:

13.5 Intentionally Left Blank

3. All of the other provisions of the Interconnection Agreement, dated November 17, 2006, shall remain in full force and effect.
4. Either or both of the Parties is authorized to submit this Amendment to the Public Service Commission for approval subject to Section 252(e) of the Federal Telecommunications Act of 1996.
5. Conflict between this Amendment and the Agreement. This Amendment shall be deemed to revise the terms and provisions of the Agreement only to the extent necessary to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, *provided, however*, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 5
6. Counterparts. This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.

7. Captions. The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
8. Scope of Amendment. This Amendment shall amend, modify and revise the Agreement only to the extent set forth expressly in Sections 1 and 2 of this Amendment. Nothing in this Amendment shall be deemed to amend or extend the term of the Agreement, or to affect the right of a Party to exercise any right of termination it may have under the Agreement. Nothing in this Amendment shall affect the general application and effectiveness of the Agreement's "change of law," "intervening law", "successor rates" and/or any similarly purposed provisions. The rights and obligations set forth in this Amendment apply in addition to any other rights and obligations that may be created by such intervening law, change in law or other substantively similar provision.
9. Modification. This Amendment may require that certain sections of the Agreement shall be replaced and/or modified by the provisions set forth in this Amendment. The Parties agree that such replacement and/or modification shall be accomplished without the necessity of physically removing and replacing or modifying such language throughout the Agreement.
10. Effective Date. This Amendment shall be shall be deemed effective on the date of the last signature executing this Amendment ("Effective Date").
11. Reservation of Rights. In entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.

Saturn Telecommunication Services Inc. dba
STS

BellSouth Telecommunications, Inc. d/b/a
AT&T Florida by AT&T Operations, Inc., its
authorized agent

By: _____

By: _____

Name: _____

Name: Eddie A. Reed, Jr. _____

Title: _____

Title: Director – Interconnection Agreements _____

Date: _____

Date: _____

Resale OCN

ULEC OCN

CLEC OCN

FLORIDA

407A

645A, 631B

645A

ACNA -

SJS

Exhibit E

Law Offices of Alan C. Gold, P.A.

Attorneys:

Alan C. Gold
agold@acgoldlaw.com
James L. Parado, JD, LLM
jparado@acgoldlaw.com
Charles S. Coffey
ccoffey@acgoldlaw.com

1501 Sunset Drive
Second Floor
Coral Gables, Florida 33143
Telephone: (305) 667-0475
Facsimile: (305) 663-0799

Paralegal:

Nancy M. Samry
nmsamry@aol.com

Date: October 16, 2009

RE: AT&T's position on the Parties LWC

Sent via: electronic mail, Federal Express

Lynn Allen-Flood
Lead Interconnection Agreements
Manager, Wholesale
675 West Peachtree Street NE, Room 34S91
Atlanta, GA 30375

Dear Ms. Allen-Flood:

It has been over a week since STS made a formal request to amend their ICAs for Florida and Georgia, to include the commingling of section 271 elements of the switch port with section 251 (c) (3) DS 0, UCL-ND and SL 1 voice grade loops. STS has neither received an acknowledgement of its requests, nor a date to begin negotiations.

In the event that AT&T continues to ignore STS' request, STS will pursue its remedies as provided by 47 U.S.C. § 51.301, through the Florida and Georgia Commissions. We will also investigate the advisability of amending or supplementing the pending Formal Complaint before the FCC on what we perceive to be retaliatory and discriminatory practices by AT&T.

If you wish to discuss this situation please feel free to call me at (305) 667-0475.

Very truly yours,


ALAN C. GOLD

Exhibit F



Keith Kramer
Executive Vice President
Legal and Regulatory
STS Telecom
12399 SW 53rd Street, Suite 102
Cooper City, FL 33330

Date: October 7, 2009

RE: AT&T's position on the Parties LWC

Sent via: electronic mail, Federal Express

Lynn Allen-Flood
Lead Interconnection Agreements
Manager, Wholesale
675 West Peachtree Street NE, Room 34S91
Atlanta, GA 30375

Dear Ms. Allen-Flood,

After careful consideration of AT&T's proposal, STS must reject the proposal because it is overreaching and unlawful. I will explain some of the reasons for rejection below;

1. First the request for an escrow account for billing disputes is a discriminatory practice. During our negotiations you admitted that AT&T does not require escrow for all other customers [CLECS], but only "certain" customers of AT&T LWC [Local Wholesale Complete] agreements. This runs contrary to section 202 of the telecom Act,¹ especially given the excellent payment history of STS and the

¹ Section 202 (a) of the telecom Act of 1934 as amended in 1996: It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class or persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage. Clearly AT&T allows for certain CLECS not to have "escrow" accounts in the event that AT&T can not bill such CLECS correctly.

historical horrendous billing errors of AT&T. Moreover this requirement is seen as retaliatory punishment for the recent actions pursued by STS in the United States District Court, the Federal Communications Commission and the Florida Public Service Commission.

2. Further it is apparent that AT&T disagrees with STS' position that section 271 of the Act governs the agreement, claiming that it is exempt from the requirements of the Act since it is a voluntary service offering. STS intends to bring AT&T's stated interpretation of its section 271 obligations before the FCC in the ongoing proceeding. Clearly, AT&T's position runs counter the intention of section 271 and the elements that are required to be provided by this section of the Act.² Congress mandated that such elements as set forth in the LWC agreement as a platform be provided by Bell Operating Companies (BOCS) to *competitive* local exchange companies once the BOCS took advantage of section 271. Although AT&T disingenuously alleges such platform is not required, it is apparent that such elements must be made available by a Bell Operating Company. AT&T's position is contrary to the plain and clear requirements of the Act;³ these elements must be made available by a BOC pursuant to section 271.

Since it is apparent that STS and AT&T can not agree as to the terms of the LWC agreement, STS requests that AT&T provide STS as quickly as can be reasonably achieved, an amendment to STS' ICA for the "commingling" of AT&T's wholesale local switching element, commingled with section 251(c)(3) local loops of the following types; UVLs, UCL-ND, SL-1 and SL-2. If this request needs to be made to a different person or department, or in a different format than this letter, please immediately advise.

It has come to the attention of STS that AT&T has provided such an arrangement for other CLECs and hereby requests the same.⁴ AT&T has provided such commingled arrangement pursuant to the FCC's *Triennial Review Order*⁵ and our current ICA in both Florida and Georgia does not provide for such an arrangement.

STS will make itself available for negotiations of the requested amendment at your earliest convenience.

² Section 271 of the Act of 96 (B) COMPETITIVE CHECKLIST,-- Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following: (ii)

Nondiscriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252(d)(1). (vi) Local switching unbundled from transport, local loop transmission, or other services.

³ The Telecommunications Act of 1934 as amended in 1996, § 271 (B)

⁴ STS has been made aware that AT&T provides the commingling of the local switching element unbundled, combined with section 251(c)(3) loops for Southeast Telephone of Kentucky. Further in *NuVox Communications Inc. v BellSouth*, 530 F3. 1330 (11th Cir 2008) the Circuit Court of Appeals determined that section 271 elements can be commingled with section 251 elements.

⁵ Paragraph 581 of the FCC's *Triennial Review Order*, "We conclude that the Act does not prohibit the commingling of the UNEs and wholesale services and that section 251 (c)(3) of the Act grants authority for the Commission to adopt rules to permit the commingling of UNEs and combinations of UNEs with wholesale services, including interstate access services.

Sincerely,

Keith Kramer
Executive Vice President

CC: Alan Gold
Counsel for STS Telecom