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COMMISSION
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January 20, 2005

Clerk's Office
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Interconnection Agreement between Saturn Telecommunication Services, Inc.
d/b/a STS Telecom and BellSouth Telecommunications, Inc.
040533-TP

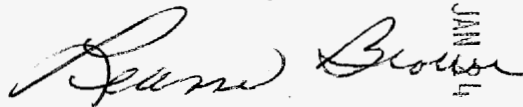
Dear Matilda:

Enclosed please find an original and 8 copies of STS Telecommunications Services, Inc.'s Reply to Bellsouth Telecommunications, Inc.'s Response in Opposition and Motion to Dismiss Amended Petition for Mediation and/or Arbitration to be filed before The Florida Public Service Commission. The extra copy is to be stamped and sent back to us in the self addressed stamped envelope.

- CMP _____
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Thank you again for all you help in regard to this matter.

Sincerely,



Leanne Brown

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)
Saturn Telecommunication Services, Inc.) 040533-TP
d/b/a STS Telecom and BellSouth) Filed: January 20, 2005
Telecommunications, Inc.)

**STS TELECOMMUNICATIONS SERVICES, INC.'S REPLY TO BELLSOUTH
TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION AND
MOTION TO DISMISS AMENDED PETITION FOR MEDIATION AND/OR
ARBITRATION**

Petitioner, Saturn Telecommunications Services, Inc. ("STS"), by and through the undersigned hereby files this Reply to BellSouth Telecommunications, Inc.'s Response In Opposition and Motion to Dismiss Amended Petition For Mediation and/or Arbitration, and states as follows:

1. On or about December 20, 2004, BellSouth filed a Motion to Dismiss Amended Petition For Mediation and/or Arbitration.
2. BellSouth's Motion to Dismiss should be denied, and STS's Amended Petition should be allowed to proceed for the following reasons.

A. STS's Amended Petition States a Cause of Action

As its first argument, BellSouth argues that STS fails to state a cause of action for which relief can be granted. (See paragraph II.A., page 2 of BellSouth's Motion.) The points that BellSouth bases its argument are irrelevant. STS is petitioning the Commission pursuant to BellSouth's violation of 47 U.S.C. § 252, i.e. failure to negotiate a new interconnect agreement in good faith. STS is not petitioning the Commission claiming that it disagrees as to the interpretation of the existing interconnect agreement. STS is seeking to have the Commission mediate and/or arbitrate pursuant to the Telecommunications Act of 1996, and not pursuant to the terms of the existing

interconnect agreement. There is no dispute as to interpretation of the terms contained in the existing agreement, but rather there is a dispute regarding re-negotiation of new terms in good faith, which is governed by the Telecommunications Act of 1996. Thus, BellSouth's argument that STS has no claim because it is not disputing the interpretation of the interconnect agreement is nonsense. Just because the interconnect agreement provides that the Commission may facilitate any disagreements regarding interpretation, does not preclude the Commission from facilitating any disagreements regarding negotiations of new terms. In any event, that STS is attempting to renegotiate its agreement can be construed to mean that STS disputes the terms. Therefore, BellSouth's argument that STS fails to state a claim for which relief can be granted should be rejected, and BellSouth's Motion to Dismiss should be denied.

B. BellSouth Has Not Negotiated With STS in Good Faith

As its second argument, BellSouth claims that it has negotiated in good faith with STS. (See paragraph II.B., pages 2-4 of BellSouth's Motion.) This argument cannot lie because whether or not BellSouth has negotiated in good faith with STS is exactly the factual dispute that must be decided by the Commission. STS is making factual arguments that it negotiated in good faith, which are contrary to what STS is claims. Factual disputes should be heard and addressed by the Commission on the merits, and not be dismissed on a Motion to Dismiss. A petition should only be dismissed based on legal issues, and whether or not BellSouth has been negotiating in good faith is not a legal issue. *See Belcher Center LLC v. Belcher Center, Inc.*, 883 So.2d 338 (Fla. 2nd DCA 2004) (On a motion to dismiss for failure to state a cause of action, the trial court is confined to the four corners of the complaint, and the material allegations of the

complaint must be taken as true.); *Wilson v. County of Orange*, 881 So.2d 625 (Fla. 5th DCA 2004)(Examination of a complaint for purposes of dismissal must be limited to the four corners of the complaint, and the allegations in the complaint must be taken as true and in the light most favorable to the pleader.)

BellSouth further tries to make an argument that STS cannot “bootstrap BellSouth’s § 251 obligations into the commercial agreement context.” (See paragraph II.B., page 3 of BellSouth’s Motion.) This argument is also nonsensical. STS is petitioning for mediation and or arbitration pursuant to § 252. Section 252(a)(1) states the following:

“Upon receiving a request for interconnection, services, or network elements pursuant to section 251 of this title, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections 9b) and (c) of section 251 of this title. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any interconnection agreement negotiated before February 8,, 1996, shall be submitted to the State commission under subsection (e) of this section.”

It is apparent from § 252(a)(1), that STS does not need to “bootstrap” BellSouth’s § 251 obligations into the commercial agreement context, as § 252 already provides that § 252 is applicable to those obligations. BellSouth is of the opinion that since it wants to title the new agreement a “commercial agreement” as opposed to an “interconnect agreement”, the Florida Public Service Commission has no jurisdiction and its approval is not required. William Shakespeare wrote, “What’s in a name? That which we call a rose by any other word would smell as sweet.” BellSouth cannot change the title of an agreement and deprive the Public Service Commission of jurisdiction. The contemplated agreement between STS and BellSouth involves local service in Florida, intrastate long

distance service, and interconnection services, or network elements pursuant to § 252 of the Telecommunications Act. The PSC has jurisdiction regardless of what name is given to an agreement. This jurisdiction is necessary not only to protect small Florida companies such as STS from the bullying tactics of industry giants such as BellSouth, but also the citizens of the State of Florida who are entitled to have the benefits of a competitive market and not be subject to the abuses of a monopoly.

The question that must be asked is why is BellSouth doing everything within its power to keep these agreements secret from the Florida Public Service Commission.¹ What is BellSouth trying to hide? The PSC should accept jurisdiction. At a minimum, it should accept jurisdiction and examine the purported agreement to determine whether the commercial agreement comes within their authority. Therefore, BellSouth's arguments that STS has negotiated in good faith, and the Commission does not govern that BellSouth's §251 obligations, should be rejected, and BellSouth's Motion to Dismiss should be denied.

The facts will show that BellSouth has not been negotiating in good faith. For example, in an October 1, 2004 letter from BellSouth to STS, BellSouth presents STS with a proposed amendment, requesting STS to sign the same if it agreed without any negotiations. (See October 1, 2004, attached as Exhibit "A"). BellSouth then attempts to deceive STS that it is negotiating in good faith by stating that if STS does not agree with the Amendment, it may send BellSouth its concerns for review, and also states that BellSouth is "ready to negotiate in good faith." While this language appears conciliatory, it is immediately followed by a statement that BellSouth intends to pursue all legal,

¹ It is our understanding that in approximately 1999 the PSC took jurisdiction over an agreement that was labeled as "commercial."

equitable and/or regulatory rights to ensure that the Interconnection Agreement is modified. BellSouth further states that it reserves the right to modify any Amendment. It is completely incredulous for BellSouth to state that it is “ready to negotiate in good faith,” and then state it will use all remedies available to make sure the Interconnection Agreement is modified, and reserve the right to modify the Amendment. It is also interesting that BellSouth was not willing to negotiate in good faith until after STS filed its original Petition. Prior to the filing of this Petition, BellSouth would never agree to a meeting face-to-face to negotiate in good faith. Even when BellSouth appeared for negotiations via telephone, BellSouth’s representatives called in at least 15 minutes late, and then cut the negotiations short. BellSouth did everything possible to thwart negotiations. With respect to the discussions, BellSouth’s idea of meaningful negotiations was for STS to take-it-or-leave-it. This is not negotiation in good faith.

C. The Commission Has the Authority to Require BellSouth to Negotiate in Good Faith and to Oversee Said Negotiations Through Mediation and Arbitration.

Unless the Commission intervenes to facilitate mediation and/or arbitration, there will be no check to prevent BellSouth from engaging in a massive win back campaign by not allowing CLECs to have viable commercial agreements. The Telecommunications Act of 1996 was promulgated in order to prevent this anti-competitive behavior by giving the state commissions authority to oversee competition, and to deny the Commission authority will be to the detriment of Florida consumers. Thus, agreeing with BellSouth’s argument that the Commission has no authority to mediate and/or arbitrate negotiations of commercially acceptable agreements and/or interconnect agreements is equivalent to stating that the Commission has no power or purpose whatsoever. To state that the

Commission has no power to mediation and/or arbitrate is clearly contrary to § 252. The fact that the FCC allotted a twelve-month transition period for the implementation of permanent rules is a clear indication, that they were concerned with anti-competitive behavior.

Secondly, when a non-regulated product of BellSouth is combined with a regulated element, the Florida Public Service Commission still has authority of the combined products, for example the OSS services that BellSouth allows the CLECs to use to provision UNE-P (a.k.a. "LENS"). This service is non-regulated, but when combined with the provisioning of UNE-Ps it now comes under the authority of the Commission, specifically to the performance measurements.

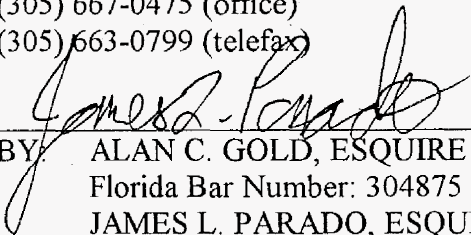
Third, even though the switching of part of the Commercial Agreement is no longer required and no longer part of § 251 or § 252, the other elements of the Commercial Agreement are elements that are covered by § 251 and § 252 and do come under Florida Public Service Commission authority and part of the Interconnect Agreement.

Therefore, BellSouth's arguments that the Commission has no authority to mediate and/or arbitrate the negotiations of commercially acceptable interconnect agreements should be rejected, and BellSouth's Motion to Dismiss should be denied.

WHEREFORE, STS respectfully requests that the Honorable Commission deny BellSouth's Motion to Dismiss Amended Petition For Mediation And/Or Arbitration.

Respectfully submitted,

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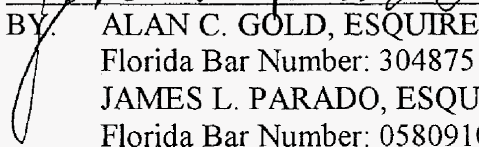
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed on this 20th day of January 2004, to:

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