

ORIGINAL

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

1320 South Dixie Highway
Suite 870
Coral Gables, FL 33146
(305) 667-0475
(305) 663-0799 - Fascimile

Alan C. Gold
Direct Dial: 305-667-0475, ext. 1
e-mail: agold@kcl.net

James L. Parado
Direct Dial: 305-667-0475, ext. 25
e-mail: jlp@kcl.net

January 24, 2005

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

RECEIVED-PPSC
05 JAN 26 AM 10:06
COMMISSION
CLERK

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

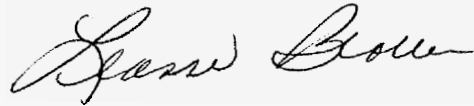
Dear Matilda:

Enclosed please find an original and 8 copies of STS Telecommunications Services, Inc.'s **Amended** 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 _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____/lb
- RCA _____
- SCR _____ Encl.
- SEC 1
- OTH None

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

Sincerely,



Leanne Brown

RECEIVED & FILED



FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

00923 JAN 26 05

FPSC-COMMISSION CLERK

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 24, 2005
Telecommunications, Inc.)

**STS TELECOMMUNICATIONS SERVICES, INC.'S AMENDED 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 Amended 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 existing interconnect agreement provides that the Commission may facilitate any disagreements regarding interpretation, does not preclude the Commission from facilitating any disagreements regarding negotiations terms of a new interconnection agreement. BellSouth and STS are attempting to negotiate a brand new agreement, not to amend, supplement, or terminate the existing agreement. The proposals sent by BellSouth to STS are for terms of a brand new agreement. 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. BellSouth is attempting to make factual arguments that it negotiated in good faith, which are contrary to what STS is claiming. Factual disputes should be heard and addressed by the Commission on the merits, and not be decided on a Motion to Dismiss in which no evidence is before the Commission. 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 exchange service in Florida, intrastate long distance service, and interconnection services, or certain 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 for local telephone services and not be subject to the abuses of a monopoly.

The questions that must be asked are: “Why is BellSouth doing everything within its power to keep these agreements secret from the Florida Public Service Commission?”¹ and “What is BellSouth trying to hide?” The PSC should accept jurisdiction and proceed to decide STS’ claim on the merits. At a minimum, it should accept jurisdiction and examine the purported agreement to determine whether the “commercial agreement” has any § 252 and/or § 251 obligations for BellSouth that comes within their authority. Therefore, BellSouth’s arguments that they have negotiated in good faith, and the Commission does not govern commercial agreements to which BellSouth does not have any §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

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

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, 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 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 refused to 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 within minutes cut the negotiations short stating it had run out of the time it unilaterally allocated to STS. These time constraints on the telephone negotiations were not revealed to STS prior to the teleconference. Moreover, at no point in the limited negotiations with STS did BellSouth have anybody present with authority to make decisions, even though STS had its executive vice president and two attorneys present during negotiations. When it was brought to BellSouth's attention that with the agreement in its current format, BellSouth could put STS "out of business", the representatives of BellSouth replied, "that is a chance that STS would have to take". **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 mechanism of checks and balances to prevent BellSouth from engaging in a massive win back campaign by not allowing CLECs to have viable agreements, regardless of what title is placed upon the agreement. The Telecommunications Act of 1996 was promulgated in order to prevent this anti-competitive behavior by giving the commissions or each state the authority to oversee competition, and to deny the Florida Public Service Commission this 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 mediate and/or arbitrate is clearly contrary to § 252. The fact that the FCC allotted a twelve-month transition period for the implementation of specific 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 current interconnect agreement of STS has numerous non-regulated services that combined with regulated services still come under the

Commission's authority. When these non-regulated services are combined with regulated services and the resulting services falls outside of certain performance metrics (SQM/SEEM), the Florida Public Service Commission facilitates certain remedies to the CLECs.

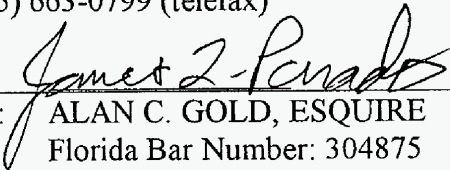
Third, even though the switching of part of the Commercial Agreement is no longer required and no longer part of § 251 or § 252, SEVERAL OTHER ELEMENTS of the Commercial Agreement are elements that are covered by § 251 and § 252 and do come under Florida Public Service Commission authority and part of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

ALAN C. GOLD, P.A.
Gables One Tower
1320 South Dixie Highway
Suite 870
Coral Gables, FL 33146
(305) 667-0475 (office)
(305) 663-0799 (telefax)


BY: ALAN C. GOLD, ESQUIRE
Florida Bar Number: 304875
JAMES L. PARADO, ESQUIRE
Florida Bar Number: 0580910

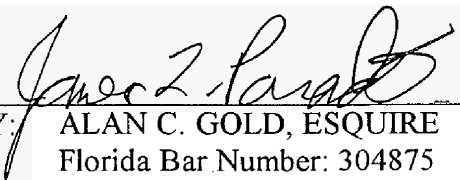
CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been mailed on this 24th day of January 2004, to:

NANCY B. WHITE
C/O Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

R. DOUGLAS LACKEY
MERIDITH E. MAYS
Suite 4300, BellSouth Center
675 West Peachtree Street, N.E.
Atlanta, GA 30375
Lynn.Barclay@bellsouth.com

Jason Rojas
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6179
jrojas@psc.state.fl.us


BY: ALAN C. GOLD, ESQUIRE
Florida Bar Number: 304875
JAMES L. PARADO, ESQUIRE
Florida Bar Number: 0580910