

ORIGINAL

Legal Department

**MEREDITH E. MAYS**  
Senior Regulatory Counsel  
BellSouth Telecommunications, Inc.  
150 South Monroe Street  
Room 400  
Tallahassee, Florida 32301  
(404) 335-0750

February 14, 2005

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

RECEIVED FT 00  
CS FEB 14 PM 4:28  
COMMISSION  
CLERK

**Re: Docket No. 040732-TP**

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of BellSouth Telecommunications, Inc.'s Motion for Summary Final Order, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,

*Meredith E Mays/RM*  
Meredith E. Mays

CMP \_\_\_\_\_  
COM S  
CTR \_\_\_\_\_ Enclosures  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_ cc: All Parties of Record  
OPC \_\_\_\_\_ Marshall M. Criser III  
MMS \_\_\_\_\_ 572124 R. Douglas Lackey  
RCA \_\_\_\_\_ Nancy B. White  
SCR \_\_\_\_\_  
SEC 1  
OTH Kim

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
01530 FEB 14 05  
FPSC-COMMISSION CLERK

*ok  
02/14/05  
RMF*

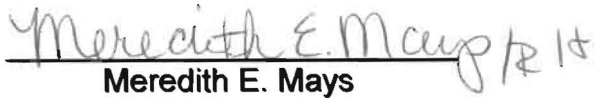
**CERTIFICATE OF SERVICE  
DOCKET NO. 040732-TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and Federal Express this 14<sup>th</sup> day of February, 2005 to the following:

Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Alan C. Gold, P.A.  
Alan Gold, Esq.  
Gables One Tower  
1320 South Dixie Highway  
Suite 870  
Coral Gables, FL 33146  
Tel. No. (305) 667-0475X1  
Fax. No. (305) 663-0799  
agold@kcl.net

STS  
12233 S.W. 55th Street  
#811  
Cooper City, Florida 33330-3303  
Tel. No. (954) 434-7388  
Fax. No. (954) 680-2506  
jkutchik@ststelecom.com

  
Meredith E. Mays

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Interconnection Agreement between )  
Saturn Telecommunication Services, Inc. )  
d/b/a STS Telecom and )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

Docket No.: 040732-TP

Dated: February 14, 2005

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**MOTION FOR SUMMARY FINAL ORDER**

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for a summary final order in its favor. This docket involves a billing complaint filed by Saturn Telecommunications Services, Inc. d/b/a STS Telecom, LLC. ("STS"). STS contends that BellSouth has overbilled it for switching; however, the switching rates it complains of were agreed to by the parties and are contained in the parties' applicable interconnection agreement. Because STS has no right to avoid its contractual obligations, BellSouth respectfully requests that this Commission enter an order granting its counterclaim and requiring STS to promptly pay for the switching services it received. As set forth in detail below, there is no genuine issue of material fact as to any issues, and BellSouth is entitled to a summary final order in its favor as a matter of law.

**STATEMENT OF UNDISPUTED FACTS**

1. STS and BellSouth began a contractual relationship after STS adopted in its entirety an interconnection agreement between IDS Telcom, LLC and BellSouth. As a result of STS' adoption, the entire interconnection agreement between BellSouth and STS includes the three page adoption papers as well as the underlying interconnection agreement between

DOCUMENT NUMBER-DATE

01530 FEB 14 08

FPSC-COMMISSION CLERK

BellSouth and IDS (referred to in its entirety as “Agreement”).<sup>1</sup> The parties’ Agreement became effective on May 30, 2003 and will expire on February 4, 2006.<sup>2</sup>

2. On June 5, 2003, BellSouth filed a request with this Commission for approval of STS’ adoption in Docket No. 030487-TP. On September 5, 2003, this Commission filed its memorandum noting the adoption met Florida requirements and complied with 47 U.S.C. § 252(i). This Commission had previously approved the interconnection agreement between IDS and BellSouth pursuant to 47 U.S.C. § 252(e)(4) in Docket No. 030158-TP. No party filed any objection to any of the terms of either the BellSouth-STS Agreement or the BellSouth-IDS interconnection agreement.<sup>3</sup>

3. Section 1.7.1 of Attachment 2 of the Agreement provides that “[t]he prices that [STS] shall pay to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment.” (emphasis supplied).<sup>4</sup>

4. Section 4.2.2 of Attachment 2 of the Agreement provides that: “Notwithstanding BellSouth’s general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for [STS] when [STS] serves an end-user with four (4) or more voice-grade (DS-0) equivalents or lines served by BellSouth in one of the following MSAs: . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . . .”<sup>5</sup>

5. Also, Section 4.2.3 of Attachment 2 of the Agreement provides that: “In the event that [STS] orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within Density Zone 1 in an MSA listed above, BellSouth shall charge [STS] the market

---

<sup>1</sup> The parties have also executed four amendments to the Agreement.

<sup>2</sup> Affidavit of Kristen E. Rowe (“Rowe Affid.”) ¶ 4, Exhibit 1.

<sup>3</sup> Rowe Affid. ¶ 5.

<sup>4</sup> *Id.* ¶ 6.

<sup>5</sup> *Id.* ¶ 7.



based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities.”<sup>6</sup>

6. Section 5.5.4 of Attachment 2 of the Agreement provides that “BellSouth is not required to provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.”<sup>7</sup>

7. Section 5.5.5 of Attachment 2 of the Agreement states “BellSouth shall not be required to provide local circuit switching as an unbundled network element in density Zone 1, as defined in 47 CFR 69.123 as of January 1, 1999 of the . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . . MSAs to [STS] if [STS’s] customer has 4 or more DS0 equivalent lines.”<sup>8</sup>

8. Section 5.5.6 of Attachment 2 of the Agreement provides “BellSouth shall provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide local circuit switching as an unbundled network elements and shall do so at the market rates in Exhibit B.”<sup>9</sup>

9. The rate sheet attached to Attachment 2 of the Agreement establishes non-recurring and recurring “Unbundled Port Loop Combinations – Market Rates” for a variety of switching services.<sup>10</sup>

10. Also, the Florida rate sheet included with Attachment 2 of the Agreement includes the following sentence, which sentence is cut off due to its formatting: “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined in FL

---

<sup>6</sup> *Id.* ¶ 8.

<sup>7</sup> *Id.* ¶ 9.

<sup>8</sup> *Id.* ¶ 10.

<sup>9</sup> *Id.* ¶ 11.

and NC. In the interim where BellSouth cannot bill Market”.<sup>11</sup> Although STS adopted the underlying BellSouth-IDS interconnection agreement for the state of Florida only, the printed rate sheets from other states include this sentence in its entirety in the hard copy printout. This sentence, in its entirety, includes the italicized language below: “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market Rates, *BellSouth shall bill the rates in the Cost-Based section preceding in lieu of the Market Rates and reserves the right to true-up the billing difference.*” (emphasis supplied).<sup>12</sup>

11. BellSouth’s provision of certain switching services at market rates stems from the FCC’s *UNE Remand Order*.<sup>13</sup> Specifically, prior federal rules did not require BellSouth to provide unbundled switching at cost-based rates to customers with four or more lines in certain density zone 1 central offices in the Fort Lauderdale, Miami, and Orlando Metropolitan Statistical Areas (“MSAs”).<sup>14</sup> These rules were invalidated and remanded to the FCC in *United States Telecom. Ass’n. v. FCC*.<sup>15</sup> Consistent with these rules, BellSouth included language in the Agreement with STS to comply with the switching exemption set forth in the *UNE Remand Order*.<sup>16</sup>

12. Prior to STS’ adoption of the Agreement, BellSouth had already entered into interconnection agreements in Florida, which agreements, like the Agreement between the

---

<sup>10</sup> *Id.* ¶ 12.

<sup>11</sup> *Id.* ¶ 13.

<sup>12</sup> *Id.* ¶ 14.

<sup>13</sup> 15 FCC Rcd 3696, ¶ 293 (1999); *also* Rowe Affid. ¶ 15.

<sup>14</sup> 65 FR 2551, Jan. 18, 2000; 65 FR 19334, Apr. 11, 2000; 47 C.F.R. § 51.319(c)(2), *prior to* October 2, 2003.

<sup>15</sup> 290 F.3d 415 (D.C. Cir. 2002) (“*USTA I*”), *cert. denied*, 538 U.S. 940 (2003).

<sup>16</sup> Rowe Affid. ¶ 15.

parties, contain market based switching rates applicable to CLECs' end user customers with four or more DS0 lines in the density zone 1 central offices located within the Fort Lauderdale, Miami, and Orlando MSAs. These agreements uniformly provide that BellSouth will initially bill carriers at cost-based rates, subject to a later true-up. On August 30, 2002, BellSouth posted Carrier Notification Letter SN91083301 to its interconnection website explaining the different rates in its interconnection agreements. This letter also explained BellSouth's implementation of billing reconciliation efforts; specifically, where UNE-P market rates should apply CLECs would be billed accordingly beginning with October 2002 billing records.<sup>17</sup>

13. BellSouth continued to advise the CLEC community of its billing reconciliation efforts to charge market based switching rates, where appropriate, by posting letters on its interconnection website. Carrier notification letters were posted on April 9, 2003, May 23, 2003, and November 6, 2003. Carrier Notification letter SN91083885, posted November 6, 2003, specifically explained that BellSouth would true-up under-billed UNE-P market rates every six months, in December and June.

14. Consistent with its carrier notification letters, BellSouth has reconciled STS' billing by charging it the difference between the cost-based rates billed monthly and the applicable market rates from the parties' Agreement every six months. BellSouth has charged STS the following amounts, which represent consolidated billing for three separate billing account numbers:

---

<sup>17</sup> *Id.* ¶ 17-18.

May 2003:	\$858.86
December 2003:	\$148,587.54
June 2004:	\$206,840.54
December 2004:	\$359,864.05
<u>Total:</u>	<u>\$715,292.13</u> <sup>18</sup>

15. The \$715,292.13 that BellSouth has billed STS is the true-up amount that represents the difference between the cost-based switching rates previously charged to STS and the market based switching rates that STS agreed to pay pursuant to the Agreement. STS has disputed and has refused to pay these charges. STS's most recently submitted Billing Adjustment Request forms did not dispute that the Agreement contains market based switching rates that it agreed to pay. Instead, STS claims it "seeks a more equitable rate structure" and that it is disputing market based switching until it "can negotiate a fair and equitable 'Market Based' rate structure."<sup>19</sup>

### LAW AND ANALYSIS

#### **A. Summary Judgment Standard.**

Under Rule 28-106.204(4), Florida Administrative Code, "[a]ny party may move for summary final order whenever there is no genuine issue of material fact." A summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.<sup>20</sup> The purpose of a summary final order is to avoid the expense and delay

<sup>18</sup> Affidavit of Cynthia A. Clark ("Clark Affid.") ¶¶ 5, 11, Exhibit 2.

<sup>19</sup> Clark Affid. ¶ 13.

<sup>20</sup> See Order No. PSC-03-0528-FOF-TP, p. 8.

of trial when no dispute exists as to the material facts.<sup>21</sup> When a party establishes that there is no material fact relating to any disputed issue the burden shifts to the opponent to demonstrate the falsity of the showing.<sup>22</sup> “If the opponent does not do so, summary judgment is proper and should be affirmed.”<sup>23</sup> There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law.<sup>24</sup> In this docket, BellSouth satisfies both requirements and is entitled to a judgment in its favor.

**B. This Commission Must Interpret and Enforce the Terms of the Parties’ Agreement, Which Terms Require STS to Pay the Market Based Switching Rates it Has Been Billed.**

There is no dispute as to any fact, let alone a material fact, regarding the terms of the Agreement. The Agreement has market based nonrecurring and recurring switching rates that STS agreed to pay BellSouth. Florida law clearly provides that “the construction of all written instruments is a question of law to be determined by the court where the language used is clear, plain, certain, undisputed, unambiguous, unequivocal and not subject to conflicting inferences.”<sup>25</sup> To interpret contracts, the guiding principle is to determine and enforce the parties’ intent.<sup>26</sup> The best evidence of the parties’ intent is the plain language of the contract, which the Commission should consider while taking care not to give the contract any meaning

---

<sup>21</sup> See Order No. PSC-01-1427-FOF-TP, p. 13; and Order No. PSC-03-1469-FOF-TL.

<sup>22</sup> Order No. PSC-01-1427-FOF-TP, p. 13.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Royal Am. Realty Inc. v. Bank of Palm Beach*, 215 So.2d 336, 337 (Fla. 4<sup>th</sup> DCA 1968) (citations omitted); also *Okeelanta Corp. v. Bygrave*, 660 So. 2d 743, 747 (Fla. 4<sup>th</sup> DCA 1995) (citations omitted); and *Feldman v. Kritch*, 824 So. 2d 274, 277 (Fla. 4<sup>th</sup> DCA 2002); *Jacobs v. Petrino*, 351 So. 2d 1036, 1039 (Fla. 4<sup>th</sup> DCA 1976) (the words found in a contract are to have a meaning attributed to them, and are the best possible evidence of the intent and meaning of the contracting parties) (citations omitted).

<sup>26</sup> *St. Augustine Pools, Inc. v. James M. Barker, Inc.*, 687 So. 2d 957, 957 (Fla. 5<sup>th</sup> DCA 1997); also *Royal Oaks Landing Homeowners Ass’n. v. Pelletier*, 620 So. 2d 786 (Fla. 4<sup>th</sup> DCA 1993).

beyond that expressed.<sup>27</sup> When the language is clear and unambiguous, it must be construed to mean "just what the language therein implies and nothing more."<sup>28</sup> Consequently, "no word or part of an agreement is to be treated as a redundancy or surplusage if any meaning, reasonable and consistent with other parts can be given to it."<sup>29</sup>

The relevant contractual language between the parties authorizes nonrecurring and recurring rates that BellSouth "shall charge" for switching services provided to STS's end user customers with four or more DS0 lines served from Zone 1 central offices located in the Ft. Lauderdale, Miami, and Orlando MSAs. The rates that apply are the market rates in the Agreement. No contractual language negates STS's contractual obligation to pay for such services, yet the Complaint alleges "overbilling" without a single citation to the Agreement. STS's unsupported assertion cannot circumvent its contractual duties, and consistent with the clear and unambiguous contractual language STS expected to pay BellSouth for switching services it has received at the agreed upon rates. This Commission must enforce the express terms of the Agreement and find as a matter of law that its terms, conditions, and prices – include the market based switching rates – apply.

**C. STS Cannot Refuse to Pay BellSouth for Switching Services.**

STS raises a host of groundless objections to the application of the contractually agreed upon market based switching rates in its complaint, none of which have merit. STS's description of its billing dispute is equally meritless. Each point is addressed in turn below.

---

<sup>27</sup> *Royal Oaks Landing Homeowners Ass'n.*, 620 So.2d at 788; and *Walgreen Co. v. Habitat Dev. Corp.*, 655 So. 2d 164, 165 (Fla. 3d DCA 1995)(citations omitted).

<sup>28</sup> *Id.*

<sup>29</sup> *Royal Am. Realty Inc.*, 215 So.2d at 337.

*First*, the main thrust of STS' objection is that such rates "are higher than what BellSouth provides to their end-users" and therefore constitute a barrier to entry.<sup>30</sup> STS ignores completely that it *elected to adopt the rates, terms and conditions of the Agreement*. BellSouth's contractual relationship with STS is governed by the terms of that Agreement. BellSouth's retail rates have no bearing whatsoever on the rates that STS agreed to pay; moreover, BellSouth's tariffed retail rates are available as a matter of public record – STS could have reviewed these rates prior to adopting the Agreement, and, had STS found the market based rates objectionable, it could have elected not to adopt the Agreement.<sup>31</sup>

Regardless of STS's unhappiness with its perceived disparity between retail rates and the rates in the parties' Agreement, BellSouth did not create this situation. Florida law limits BellSouth's ability to raise retail rates in many instances, and BellSouth has sought to rebalance certain retail rates in Docket No. 030869-TL; although, to date, it has been unable to do so. STS cannot use a retail rate structure as an excuse to avoid contractual obligations that it agreed to, particularly when retail rates have been and remain public information that any CLEC can obtain and review prior to entering into contracts and prior to electing to serve a given market. Allowing STS to avoid paying its bills will not remedy this alleged rate disparity; it would only encourage other carriers to enter into agreements with no intention of living up to their end of the bargain.

---

<sup>30</sup> Complaint, ¶¶ 16, 24-25, 27.

<sup>31</sup> Moreover, the FCC recently released its *Triennial Review Remand Order* ("TRRO") in CC Docket Nos. 01-338 and 04-313 (rel. Feb. 4, 2005). On remand, in responding to the D.C. Circuit's questions regarding how the Commission's impairment analysis should take account of state universal service cross-subsidies, the FCC elected to exercise its "at a minimum authority" to eliminate unbundled access to mass market local circuit switching without separately addressing the interaction between such unbundling and any cross-subsidies in state retail rates. *TRRO*, n. 39, 592. See also *United States Telecom Ass'n. v. FCC*, 359 F.3d 554, 573 (D.C. Cir. 2004) ("*USTA II*"), *cert. denied*, 125 S. Ct. 313 (2004).

*Second*, STS implies that the market based rates were not agreed to by the parties.<sup>32</sup> STS's suggestion is without merit – STS adopted an existing interconnection agreement, which contains the rates it now apparently contests. Why would STS have adopted an Agreement if that contract contained objectionable rates, terms or conditions? No carrier must adopt an interconnection agreement; instead, federal law allows carriers to negotiate applicable terms, and, in the absence of reaching a negotiated agreement, allows for arbitration. STS did not seek to arbitrate any of the terms in the Agreement, and as such, cannot complain or undo its choice now.

*Third*, STS objects to the manner in which BellSouth bills market-based switching.<sup>33</sup> STS's displeasure with BellSouth's billing does not allow it to refuse to pay its bills altogether. Many businesses bill for services annually or semiannually; for example, insurance companies bill premiums yearly or twice a year just as schools and universities bill tuition semiannually or before each semester or quarter. That STS would prefer monthly billing does not mean that it can refuse to pay its bills – at a minimum, if it continues to refuse to pay its bills, this Commission should permit BellSouth to discontinue providing services to STS. Moreover, by entering into an Agreement that explicitly provided BellSouth with contractual “true-up” rights, STS has no legitimate basis to complain.

*Fourth*, STS apparently believes it remains “impaired” in the Miami and Ft. Lauderdale MSAs.<sup>34</sup> STS's belief is flatly contradicted by controlling legal decisions; indeed the FCC has

---

<sup>32</sup> Complaint, ¶¶ 13, 19. In STS's view, BellSouth has apparently simply “propose[d]” or “established” market rates for “administrative ease.” The only “administrative” objective served by the parties' Agreement was to avoid the need for multiple contracts by including in the Agreement rates for services that BellSouth is not required to provide to STS pursuant to Section 251 of the Act, a practice that BellSouth has discontinued. Moreover, STS's argument defies logic – are rates contained in contracts optional – to be paid or not paid at whim? If contract rates are optional, then the contractual foundation underlying modern commerce is at risk. STS's arguments are baseless to the point of frivolity, and cannot be countenanced by the Commission.



recently found that incumbent LECs have no obligation to provide CLECs with unbundled access to local circuit switching nationwide.<sup>35</sup> Moreover, it bears repeating that STS's belief does not allow it to disregard its contractual obligations.

*Fifth*, STS claims that the market-based rates contained in the Agreement should be equivalent to switching rates BellSouth has allegedly proposed for commercial agreements.<sup>36</sup> Yet again, STS's claim provides no legal basis to set aside agreed upon contractual language and contractual rates. STS adopted an Agreement, with applicable rates, and cannot ignore its duties now.

*Sixth*, STS's purported reasons for disputing the market based rates as set forth in its January 2005 Billing Adjustment Request Form are likewise devoid of any legal basis to ignore contract terms. STS never disputes that it entered into a contract containing the rates it has been billed or claims there was any calculation error in the rates it was charged – instead, STS is trying to avoid its obligations altogether.

STS cannot justify its blatant disregard for its contractual obligations. This Commission should put an end to STS's shenanigans, and require it to promptly pay for the switching services it has received, at the agreed upon contractual rates. If STS refuses to pay BellSouth, then this Commission must make clear that BellSouth can stop providing services to STS based on this invalid and farcical “dispute.”

### CONCLUSION

BellSouth requests that the Commission grant its Motion for Summary Final Order and order STS to promptly submit payment for the outstanding and unpaid market based switching

---

<sup>33</sup> Complaint, ¶¶ 17-18.

<sup>34</sup> Complaint, ¶ 19.

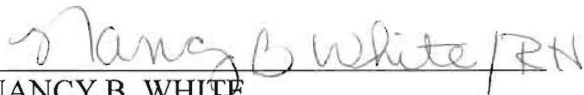
<sup>35</sup> *USTA II*, 359 F.3d 554; *also TRRO*.

<sup>36</sup> Complaint, ¶ 20.

charges that it has been billed. BellSouth also requests that the Commission require STS to submit payment or face the discontinuance of service.

Respectfully submitted, this 14<sup>th</sup> day of February 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

  
NANCY B. WHITE

c/o Nancy H. Sims  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301  
(305) 347-5558

  
R. DOUGLAS LACKEY  
MEREDITH E. MAYS  
Suite 4300, BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, GA 30375  
(404) 335-0750

# **EXHIBIT 1**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Interconnection Agreement between )  
Saturn Telecommunication Services, Inc. ) Docket No.: 040732-TP  
d/b/a STS Telecom and )  
BellSouth Telecommunications, Inc. )  
\_\_\_\_\_ )

**AFFIDAVIT OF KRISTEN E. ROWE**

I, Kristen E. Rowe, being of lawful age, and duly sworn upon my oath, do hereby depose and state:

1. My name is Kristen E. Rowe. I am employed by BellSouth Director – CLEC Negotiations in the Interconnection Services group. My business address is 675 West Peachtree Street, Atlanta Georgia 30375.
2. I graduated from Indiana University in 1992, with a Bachelor of Arts degree in Economics and French. In 2003, I received a Master of Business Administration from Kennesaw State University. My career in the telecommunications business began with Ameritech in 1994. I initially worked in sales and subsequently moved into a position performing market management functions. I left Ameritech in 1998, and began employment with BellSouth. From 1998 until 2003, I held positions in Interconnection Services Market Management and Sales Operations. In 2004, I moved into my current position, where I am responsible for the contracts between BellSouth and Competing Local Exchange Carriers (“CLECs”), including managing the BellSouth personnel that negotiate interconnection agreements.
3. I am submitting this Affidavit in support of BellSouth’s Motion for Summary Final Order in this docket. The purpose of my Affidavit is to: (1) discuss the

contractual relationship between BellSouth and STS; and (2) outline the relevant language in the parties' interconnection agreement; and (3) explain how granting BellSouth's counterclaim is appropriate.

**Contractual Relationship Between BellSouth and STS**

4. STS and BellSouth began a contractual relationship after STS adopted in its entirety an interconnection agreement between IDS Telcom, LLC and BellSouth. As a result of STS' adoption, the entire interconnection agreement between BellSouth and STS includes the three page adoption papers (Exhibit KER-1) as well as the underlying interconnection agreement between BellSouth and IDS (referred to in its entirety as "Agreement") (Exhibit KER-2).<sup>1</sup> The parties' Agreement became effective on May 30, 2003 and will expire on February 4, 2006.
5. On June 5, 2003, BellSouth filed a request with this Commission for approval of STS' adoption in Docket No. 030487-TP. On September 5, 2003, this Commission filed its memorandum in that docket noting the adoption met Florida requirements and complied with 47 U.S.C. § 252(i). This Commission had previously approved the interconnection agreement between IDS and BellSouth pursuant to 47 U.S.C. § 252(e)(4) in Docket No. 030158-TP. The Commission's memoranda relating to both STS's adoption and the BellSouth-IDS agreement are available as a matter of public record at <http://www.floridapsc.com>. No party

---

<sup>1</sup> Due to its length, I am including a CD containing the entire BellSouth-IDS interconnection agreement as Exhibit KER-2. I am also including excerpts of key provisions of the Agreement as Exhibit KER-3.

filed any objection to any rates, terms, and conditions contained in either the BellSouth-STS Agreement or the BellSouth-IDS interconnection agreement.

**Relevant Provisions of the Agreement**

6. Section 1.7.1 of Attachment 2 of the Agreement provides that “[t]he prices that [STS] *shall pay* to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment.” (Exhibit KER-3) (emphasis supplied).
7. Section 4.2.2 of Attachment 2 of the Agreement provides that: “Notwithstanding BellSouth’s general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for [STS] when [STS] serves an end-user with four (4) or more voice-grade (DS-0) equivalents or lines served by BellSouth in one of the following MSAs: . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . .” (Exhibit KER-3).
8. Section 4.2.3 of Attachment 2 of the Agreement provides that: “In the event that [STS] orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within Density Zone 1 in an MSA listed above, BellSouth shall charge [STS] the market based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities.” (Exhibit KER-3).
9. Section 5.5.4 of Attachment 2 of the Agreement provides that “BellSouth is not required to provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.” (Exhibit KER-3).
10. Section 5.5.5 of Attachment 2 of the Agreement states “BellSouth shall not be required to provide local circuit switching as an unbundled network element in

density Zone 1, as defined in 47 CFR 69.123 as of January 1, 1999 of the . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . . MSAs to [STS] if [STS's] customer has 4 or more DS0 equivalent lines.” (Exhibit KER-3).

11. Section 5.5.6 of Attachment 2 of the Agreement provides “BellSouth shall provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide local circuit switching as an unbundled network elements and shall do so at the market rates in Exhibit B.” (Exhibit KER-3).
12. The rate sheet included as Exhibit B to Attachment 2 of the Agreement establishes non-recurring and recurring “Unbundled Port Loop Combinations – Market Rates” for a variety of switching services. (Exhibit KER-2).
13. The rate sheet attached to Attachment 2 of the Agreement includes the following sentence: “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market”. (Exhibit KER-3). This sentence is cut off in the printed version of the rate sheet due to its formatting.
14. Although STS adopted the underlying BellSouth-IDS interconnection agreement for the state of Florida only, the printed rate sheets from other states include this sentence in its entirety in the hard copy printout. This sentence, in its entirety, includes the italicized language below: “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined

in FL and NC. In the interim where BellSouth cannot bill *Market Rates*, *BellSouth shall bill the rates in the Cost-Based section preceding in lieu of the Market Rates and reserves the right to true-up the billing difference.*” (emphasis supplied) (Exhibit KER-3) (Agreement, pp. 255 and 343).

15. BellSouth has been providing certain switching services at market rates since the FCC’s *UNE Remand Order*<sup>2</sup> became effective. The federal rules resulting from the *UNE Remand Order* did not require BellSouth to provide unbundled switching at cost-based rates to customers with four or more lines in certain density zone 1 central offices, and the language in the Agreement reflects BellSouth’s intention to provide switching in such offices at market-based rates, not cost-based rates. These include density zone 1 central offices in the Fort Lauderdale, Miami, and Orlando Metropolitan Statistical Areas (“MSAs”).<sup>3</sup> BellSouth incorporated language in the Agreement with STS, and with other CLECs, to comply with the FCC’s switching exemption as set forth in the *UNE Remand Order*. By adopting an Agreement with the language and rates detailed in this Affidavit, BellSouth understood that STS intended to enter into an Agreement with market based switching and actually agreed to the market-based switching rates applicable in certain areas of Florida.
16. Section 20.3 of the Agreement with STS allows BellSouth to provide STS with information of general applicability to CLECs via Internet postings. (Exhibit KER-3).

---

<sup>2</sup> 15 FCC Rcd 3696, ¶ 293 (1999).

<sup>3</sup> 65 FR 2551, Jan. 18, 2000; 65 FR 19334, Apr. 11, 2000; 47 C.F.R. § 51.319(c)(2), *prior to* October 2, 2003.



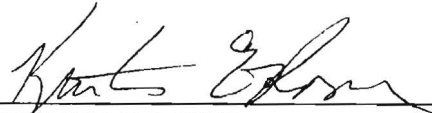
17. On August 30, 2002, BellSouth posted Carrier Notification Letter SN91083301 to its interconnection website <http://www.interconnection.bellsouth.com> explaining the different rates in its interconnection agreements. (Exhibit KER-4). This letter also explained BellSouth's implementation of billing reconciliation efforts; specifically, where market rates apply CLECs would be billed consistent with those rates beginning with October 2002 billing.
18. BellSouth continued to advise the CLEC community of its billing true-up efforts to charge market based switching rates where appropriate. BellSouth posted carrier notification letters on May 23, 2003, and November 6, 2003 detailing such efforts. Carrier Notification letter SN91083665, posted November 6, 2003, specifically explained that BellSouth would true-up under-billed UNE-P market rates every six months, in December and June. (Exhibit KER-5). These carrier notification letters remain publicly available on BellSouth's interconnection website.

**This Commission Should Grant BellSouth's Counterclaim**

19. BellSouth intended to enter into a contract with STS whereby BellSouth would provide services at the applicable contract rates, including the market switching rates specified in the Agreement. BellSouth has a right to expect payment from STS at the agreed upon rates. The plain language of the Agreement requires STS to pay BellSouth market rates for switching and BellSouth has a contractual right to full payment. The amount that is due and owing to BellSouth is addressed in the Affidavit of Cynthia A. Clark.


20. This Commission should order STS to promptly pay BellSouth the amount due as set forth in the Affidavit of Cynthia A. Clark. Also, this Commission should affirmatively find that STS's billing dispute is invalid so that, if STS fails to pay BellSouth, BellSouth can discontinue service for nonpayment of market based switching bills pursuant to Section 1.7.2 of Attachment 7 of the Agreement.
21. This concludes my Affidavit.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
KRISTEN E. ROWE

SWORN TO AND SUBSCRIBED BEFORE ME

This 10<sup>th</sup> day of February 2005.

  
NOTARY PUBLIC

My Commission Expires:

Lynn J. Barclay  
Notary Public, DeKalb County, Georgia  
My Commission Expires August 10, 2006

# **EXHIBIT 2**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Interconnection Agreement between                    )  
Saturn Telecommunication Services, Inc.                    )     Docket No.: 040732-TP  
d/b/a STS Telecom and    )  
BellSouth Telecommunications, Inc.                         )  
\_\_\_\_\_ )

**AFFIDAVIT OF CYNTHIA A. CLARK**

I, Cynthia A. Clark, being of lawful age, and duly sworn upon my oath, do hereby depose and state:

1. My name is Cynthia A. Clark. I am employed by BellSouth as a Senior Staff Manager in BellSouth's Accounts Receivable Management Organization. My business address is 2300 Northlake Centre, Tucker, Georgia 30084.
2. I received a Bachelor of Arts degree in Accounting from Auburn University in Auburn, Alabama in 1978. I began employment at BellSouth in June 1998, and have held various positions in BellSouth's Billing and Collections for wholesale services.
3. I currently have responsibility for supervising the dispute escalation staff. The group handles accounts receivable management, including collections and billing disputes, for all of the Company's interconnection business.
4. I am submitting this Affidavit in support of BellSouth's Motion for Summary Final Order in this docket. The purpose of my Affidavit is to: (1) quantify BellSouth's view of STS's disputes related to amounts it has been billed for market based switching; and (2) address the nature of STS's disputes relating to these amounts.

**Disputed and Unpaid Market Based Switching Billing**

5. BellSouth has billed STS the following market based switching amounts:

May 2003:	\$858.86
December 2003:	\$148,587.54
June 2004:	\$206,840.54
December 2004:	\$359,864.05
<u>Total:</u>	<u>\$715,292.13</u>

6. Attached as Exhibit CAC-1 is a CD that shows the market based switching billing detailed above. This documentation includes information from BellSouth's billing systems. BellSouth is requesting that the Commission treat this CD as confidential since it includes customer specific billing data.
7. BellSouth's records show that STS disputed some of the market based switching charges – the December 2003 and December 2004 billing -- by using the BellSouth Adjustment Request Form (RF 1461). The interconnection agreement between BellSouth and STS at Attachment 7, subsection 2.1 requires billing disputes to be submitted using an RF 1461.
8. STS disputed the December 2003 market based switching charges twice. BellSouth denied STS's initial disputes in March 2004; STS resubmitted identical disputes in May 2004, which BellSouth also denied.
9. BellSouth has no record of receiving an RF 1461 for May 2003 market based switching. Likewise, BellSouth has no record of receiving an RF 1461 for June 2004 market based switching charges. BellSouth became aware of STS's objection to the June 2004 market based switching charges in July 2004, after

STS filed its Complaint in this docket. BellSouth became aware of STS's dispute concerning December 2003 market based switching charges when reviewing the billing data attached on Exhibit CAC-1.

10. BellSouth makes available to CLECs data to support the amounts billed for switching provided at market rates. BellSouth has provided such data to STS. This data is also included on the CD attached as Exhibit CAC-1.
11. BellSouth has filed a counterclaim against STS in which it has requested that STS pay all outstanding and unpaid amounts relating to market based switching. Based on my review of BellSouth's billing records and dispute records, this amount is \$715,292.13.

**STS's Rationale for Disputing Market Based Switching**

12. Attached as Exhibit CAC-2 are copies of the most recent RF 1461 forms that STS submitted to BellSouth disputing the market based switching it was billed in December 2004.
13. STS has provided more than a page of explanatory text for its billing dispute. (CAC-2). With respect to the market based billing rates, STS has not disputed that the parties' Agreement contains such rates. STS has not alleged a calculation error. Instead, STS states that it "seeks a more equitable rate structure" and that it is disputing the billing until it "can negotiate a fair and equitable 'Market Based' rate structure." (CAC-2).
14. BellSouth considers STS's billing disputes to be invalid because the parties have agreed to market based switching rates in their applicable interconnection agreement. The relevant terms and conditions of the parties' interconnection

agreement are addressed in the Affidavit of Kristen E. Rowe.

15. This concludes my Affidavit.



I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Cynthia A. Clark  
CYNTHIA A. CLARK

SWORN TO AND SUBSCRIBED BEFORE ME

This 10<sup>th</sup> day of February 2005.

Lynn J. Barclay  
NOTARY PUBLIC

My Commission Expires:

Lynn J. Barclay  
Notary Public, DeKalb County, Georgia  
My Commission Expires August 13, 2008