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**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

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COMMISSION  
CLERK

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

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

March 10, 2005

Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 040732-TP

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

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.

Very truly yours,



Leanne Brown  
For Alan C. Gold

CMP \_\_\_\_\_

COM \_\_\_\_\_

CTR \_\_\_\_\_

ECR ~~\_\_\_\_\_~~ Enclosure

GCL \_\_\_\_\_

OPC \_\_\_\_\_ cc: Mr. R. Douglas Lackey  
Ms. Meredith Mays  
MMS \_\_\_\_\_ Ms. Nancy B. White  
RCA \_\_\_\_\_ Florida Public Service Commission

SCR \_\_\_\_\_

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between )  
Saturn Telecommunication Services, Inc. ) 04-0732 TP  
d/b/a STS Telecom and BellSouth )  
Telecommunications, Inc. ) Dated: March 10, 2005  
\_\_\_\_\_ )

**STS TELECOMMUNICATIONS, INC.'S MOTION FOR SUMMARY FINAL  
ORDER ON BELL SOUTH TELECOMMUNICATIONS, INC.'S  
COUNTERCLAIM**

Saturn Telecommunications, Inc. ("STS"), pursuant to Rule 28-106.204(4), Florida Administrative Code, moves for a summary final order in its favor on BellSouth's Counterclaim. This docket involves a billing complaint filed by STS against BellSouth Telecommunications, Inc. ("BellSouth"), and BellSouth's Counterclaim for Breach of Contract on BellSouth's Interconnection Agreement. In its Counterclaim, BellSouth contends that its switching (back-billing or truing-up) was proper; however the back-billing for the rates in this docket is a procedure which was never agreed to by the parties. In fact, the Interconnection Agreement only permits back-billing or truing-up in limited expressly specified circumstances. The Interconnection Agreement does not permit a true-up in these circumstances presently before the Commission; i.e., retail sales to customers with four or more lines. Because BellSouth has no right to avoid its contractual obligations and enforce terms not contained in the Agreement, STS respectfully requests that this Commission enter an order granting its Motion for Summary Final Order against BellSouth on its Counterclaim. As set forth in detail below, there is no genuine issue of material fact as to any issues, and STS is entitled to a summary final order in its favor as a matter of law.

## STATEMENT OF UNDISPUTED FACTS

1. STS is a competitive local exchange carrier (“CLEC”), certified by the Florida Public Service Commission in January 2003 to provide telecommunications services. In order to commence business, STS reviewed several interconnection agreements and determined that the Interconnection Agreement between BellSouth and IDS Telecom, LLC was in STS’s best interest.

2. The Interconnection Agreement with BellSouth and STS provided in Section 29.1 of the “General Terms and Conditions” the following: “This section applies to network interconnection and/or unbundled network element and other service rates that are *expressly subject to true-up* under this Agreement.” (*Emphasis added*) Thus, Section 29.1 of the relevant Agreement only gave BellSouth the ability to correct or rebill (true-up) those charges which the agreement expressly allowed to be rebilled.

3 STS only accepted the Florida rates found in Attachment 2 of the Interconnection Agreement which stated “BellSouth is currently developing the billing capability to mechanically bill the recurring and non-recurring market rates in this Section except for non-recurring charges for not currently combined in Florida and North Carolina. In the interim, BellSouth cannot bill market.” There is absolutely no provision in the Interconnection Agreement allowing BellSouth to true-up or subsequently adjust these market rates.

4. In fact, BellSouth admitted that it did not include a provision in the Interconnection Agreement allowing it to true-up its billing to STS.<sup>1</sup> BellSouth admitted

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<sup>1</sup> See BellSouth Telecommunications, Inc.’s Motion For Summary Final Order filed in this case on February 14, 2005, pages 4-5, paragraph 10.

that the Interconnect Agreement between STS and BellSouth did not contain language that BellSouth includes in interconnection agreements with other companies.<sup>2</sup>

5. BellSouth billed STS on a monthly basis and STS paid those amounts in full. There was nothing in the bills indicating the charges for retail customers with four or more lines was subject to change, and as stated previously, there was nothing in the Interconnection Agreement subjecting this aspect of the bill to subsequent change by BellSouth. STS billed its customers and took action based upon its belief on the accuracy of the BellSouth billings and the plain language of the Interconnection Agreement. Some of the action taken by STS in reliance on the billing and actions of BellSouth are set forth in the Affidavit of Keith Kramer, which was previously filed before this Commission by STS in opposition to BellSouth's Motion for Summary Final Order. (A copy of Keith Kramer's affidavit is attached as Exhibit "A"). It was only much later that BellSouth attempted to true-up its rates going back as far as 6 months in adjusting billing upwards for "market rates". Not only did BellSouth inaccurately re-bill and true-up the rates, it had no authority under the Agreement to re-bill and true-up the rates.

### ARGUMENT

A summary final order **can** be granted if there are **no** genuine issues of material fact. This standard is a very high standard with the facts viewed in the light most favorable to BellSouth, as the non-moving party, and all inferences from those facts made in favor of BellSouth. Even after considering all facts in favor of BellSouth, it should be clear that this Motion for Summary Final Order against BellSouth's Counterclaim meets the stringent requirement for a summary judgment and must be granted.

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<sup>2</sup> See *id.*

## **THE INTERCONNECTION AGREEMENT DOES NOT PERMIT REBILLING**

The Interconnection Agreement is a document prepared in its entirety by BellSouth. The rights and obligations BellSouth and STS are as expressly set forth by BellSouth under the Interconnection Agreement. In Section 29 of the Interconnection Agreement entitled "Rate True-Up", BellSouth provides that certain specified rates can be later adjusted up or down, and in Section 29.1 limits those adjustable rates to those "expressly subject to true-up under this Agreement." Thus, BellSouth had the ability to expressly designate which rates are subject to true-up under the Interconnection Agreement. BellSouth chose not to subject the rates billed for retail customers with four or more lines to true-up. STS accepted the agreement drafted by BellSouth which did not allow the rates for retail customers with four or more lines to be retroactively re-billed. If BellSouth wanted to bill STS for services to these customers at market rates, it was required to do so in the initial billing. It cannot retroactively rebill or true-up the rates. Whether it is an error or intentional, the Interconnection Agreement was drafted by BellSouth, and should be interpreted according to its plain language.

In *Walgreen Company v. Habitat Development Corp*, 655 So.2d 164 at 165 (Fla. 3<sup>rd</sup> DCA 1995), the Court stated; "When a contract is clear and unambiguous, the court is not at liberty to give the contract 'any meaning beyond that expressed'....Further, when the language is clear and unambiguous, it must be construed to mean 'just what the language therein implies and nothing more.'" (citations omitted). See Also: *Winn-Dixie Stores v. 99 Cent Stuff-Trail Plaza LLC*, 811 So.2d 719 at 722 (Fla. 3<sup>rd</sup> DCA 2002)( "Parties are bound by the clear words of their agreements ...") Pursuant to the clear and

unambiguous language of BellSouth's Interconnection Agreement, **the rates** for these services are not subject to true-ups as no such language exists in the Agreement.

Additionally, the manner in which BellSouth is attempting to true-up is in violation of the express terms of the Agreement. Section 29.2 of the Interconnection Agreement provides, "The designated true-up rates shall be trued-up, either up or down, based on final prices determined either by further agreement between the parties, or by a final order (including any appeals) of the Commission." BellSouth has not followed this procedure, as there has been no further agreement of the parties, and no final order of the Commission allowing true-up has been issued.

The Commission should pay particular attention that BellSouth is asserting in its own Motion For Summary Final Order that it should be allowed to modify the Interconnect Agreement by inserting language that should have been in the Agreement were it not for its own formatting error, yet in its own Counterclaim is asserting that the Interconnect Agreement should be strictly construed against STS and STS has breached its contractual obligations. BellSouth should not be allowed to insert language into the STS-BellSouth Interconnect Agreement that was never agreed to by STS. In short, BellSouth cannot "have its cake and eat it too."

### **CONCLUSION**

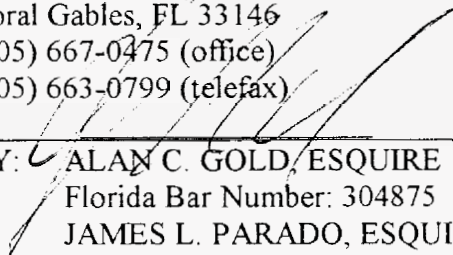
STS has demonstrated that there are no substantial matters of fact in dispute and that as a matter of law, STS is entitled to a summary final order in its favor. BellSouth cannot insert and enforce language into the Interconnect Agreement that does not currently exist. STS has demonstrated that there are no substantial matters of fact in dispute and that as a matter of law, STS is entitled to a summary final order.

Therefore, STS requests that this Commission grant its Motion for Summary Final Order on BellSouth's Counterclaim.

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)

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

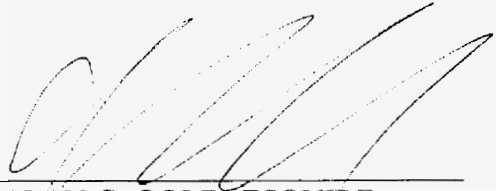
**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been served via Electronic Mail and Federal Express on this 10th day of March 2005, to:

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

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](mailto:Lynn.Barclay@bellsouth.com)



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



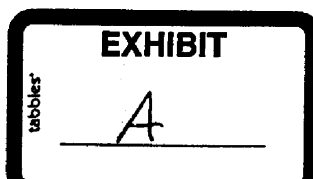
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between )  
Saturn Telecommunication Services, Inc. ) 040732-TP  
d/b/a STS Telecom and BellSouth )  
Telecommunications, Inc. )  
\_\_\_\_\_ )

**AFFIDAVIT OF KEITH KRAMER**

I, Keith Kramer, being of lawful age, and duly sworn upon my oath, do hereby depose and state:

1. My name is Keith Kramer. I am the Executive Vice President of Saturn Telecommunications Services, Inc. (hereinafter referred to as "STS Telecom" or "the Company"). My business address is 12233 SW 55<sup>th</sup> Street, Cooper City, Florida 33330.
2. As Executive Vice President my duties are legal and regulatory, business planning, network planning, and sales. Prior to STS Telecom I served as Senior Vice president of IDS Telcom, in charge of legal and regulatory.
3. I am submitting this Affidavit in support of the billing dispute and in response to BellSouth's Motion for Summary Final order in this docket.
4. The Interconnection Agreement that STS Telecom adopted from IDS Telcom is in excess of 970 pages. Where BellSouth specifically identifies every portion and cost of every item, they have including a tool kit
5. Neither when I was an Employee of IDS nor as Executive Vice President of STS would we agree to BellSouth arbitrarily choosing any specific amount of time to incorrectly bill STS and then demand payment upon receipt of the back bill



- 6 STS Telecom at the time of the Interconnect Agreement was concerned only with the State of Florida and the products and services available to the Company at the time we adopted the IDS agreement.
- 7 When I was employed at IDS Telcom prior to being employed by STS Telecom, BellSouth did not bill IDS for Market Based Rates, nor was there any period during my employ at IDS did BellSouth state that they were going to start billing for those rates.
8. STS Telecom receives monthly billing for all other services that we receive from BellSouth. Nowhere in the Agreement does it state that BellSouth reserves the right to change the billing cycles to whatever it deems appropriate. At the adoption of the IDS Interconnect Agreement, it was never disclosed that BellSouth made such an agreement to IDS, or any one else for that matter.
9. When STS Telecom adopted the IDS agreement, it was understood between the parties that Market Based rates were fair and reasonable. It was also understood that if STS desired to negotiate the Market Based Rates, that to do so would require an arbitration process with the FPSC, but since BellSouth was not required to provide such services, if STS requested arbitration for the Market Based Rates with the Commission, BellSouth would either not execute the Interconnect Agreement, or would not provide for the port/loop combinations in the Tier 1 markets until such time as the arbitration process had been completed. Since there were at the time no other wholesale providers of port/loop combinations in the Tier 1 markets in Florida, seeking arbitration would have

been a serious barrier to entry based on the rules for which BellSouth provided local service at that time.

10. BellSouth both on retail rates provided to their end-users and in the Interconnect Agreement has thousands of rates to which they are able to bill monthly. BellSouth continues to create multiple rates for both retail, special access, interconnect agreements, and commercial agreements to which they are able to create the bill for on a monthly basis before entering into agreements to provide for such service. Yet for the Market Based Rates, not only did BellSouth not bill for the services for several years to CLECs, after STS Telecom entered into the agreement BellSouth decided to start billing for such services in a way that was not representative of the actual Market Based Rates, but for cost based rates with an arbitrary true-up to those rates. Then BellSouth arbitrarily decided to bill CLECs in a true-up form every six months, based on monthly differences between Cost Based Rates, and Market Based Rates. Common sense leads one to believe that the data is available on a monthly basis as with all of the other services that BellSouth bills the Company, yet BellSouth opted for a six month true up without mutual agreement, either in the actual Interconnect Agreement, or any subsequent agreements.
11. Subsequent to STS adopting the IDS Interconnect Agreement, BellSouth reduced a number of their retail rates, such as business line installations, to significantly less than what is provided for in the Market Based Rates of the Interconnect Agreement.

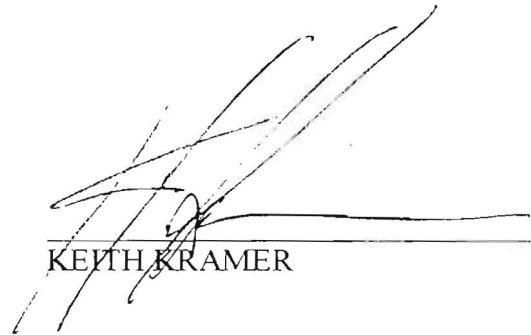
12. BellSouth also after the notification of the (un agreed to) Market Based Rates six-month billing true up, started winning back customers that STS had in the Tier 1 markets of Miami and Ft. Lauderdale, through their “Rewards Program” consumer agreement, at rates significantly less than the Market Based Rates in the Interconnection Agreement.
13. In the State of Florida the Company has the ability to provide the customer protection from slamming, and unwanted service changes through a “Local Service Freeze” (LSF) put on the account. STS has numerous customers who have entered into agreements with the customer to provide service with such LSFs attached. BellSouth honors the LSF on our customers against unwanted services that are provided by other CLECs, but refuses such an honor when BellSouth itself wins back a customer.
14. STS has found that when we provide service to a customer in a Tier 1 MSA of Miami and Ft. Lauderdale through BellSouth, that BellSouth will subsequently contact the customer with a program that has rates at or below the Market Based Rates, and sign the customer to an agreement, in most cases some sort of a Rewards Program Agreement.
15. STS has found on several occasions that even though the Company would have an agreement with the end-user prior to their change back to BellSouth, that the customer would be intimidated by BellSouth on their agreement, not understand the terms, and when the customer discovered what the true terms of the agreement with BellSouth, would seek remedies from the Company’s contract, so that they would not have to enter into a fight with BellSouth.

16. BellSouth does not provide for any credits of Market based rates to STS, including the conversion charges for any customer to which the Company secured the services of a customer on such an agreement, that BellSouth has subsequently won back, based on rates below what BellSouth had originally offered the customer prior to STS making them a customer.
17. BellSouth has provided for back billing of Tier 1 customers of STS in Miami and Ft. Lauderdale for six-month intervals. When the Company audits such bills based on the rates provided for in the Interconnection Agreement (regardless of the Company's belief of the fairness of such rates), the Company has found them to be grossly inaccurate, to BellSouth's favor.
18. The Company finds that when BellSouth provides win-back to our customers at rates less than what we receive from BellSouth, then the Company receives a bill for such overpriced services over and above the monthly bill at six-month intervals. Then such true up is grossly over billed, and a demand is made for an immediate payment (where two years ago such demands were not made). This puts the Company at an extreme financial hardship that is difficult if not impossible to anticipate, since the Company has no prior knowledge of which customer that BellSouth will win back at rates less than what BellSouth provides to STS.
19. STS believes that in order for Market Based Rates to be fair and reasonable that they should represent a) a competitive market where there is more than one provider of such service; and b) that the provider of such service protects the interest of the company that the service is provided to, specifically as to the

customers of the Company, and do what is necessary to protect those customers from predatory companies that seek to provide unfair competition

20. STS finds difficulty in the fact that BellSouth charges unfair pricing in the Market Based Rates, provides a true up every six months that was never agreed to, and provides the necessary information to their win-back group to provide retail pricing to win back STS Telecom's customers at rates less than what is in the Interconnect Agreement. STS Telecom believes that these behaviors present an UNREASONABLE AND UNFAIR, competitive advantage in the Interconnect Agreement that STS never agreed to, and believes that the laws provide relief with the FPSC.
21. STS believes that even though the FCC allowed for the fact that BellSouth is not required to provide for cost based rates for UNE-P in the Tier 1 zones, it did not contemplate that the Bell Operating Companies such as BellSouth would use their monopolistic strength as a means of luring CLECs into an agreement to which BellSouth would know that they could put such an economic hardship by making up rules as they go along as to put CLECs into economic hardship. STS believes that no reasonably and economically well run CLEC could anticipate, agree, or profit under this type of nondisclosure on the part of BellSouth.
22. STS never agreed to a six-month true up in the Interconnect Agreement
23. This concludes my Affidavit.

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

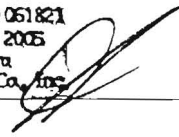


KEITH KRAMER

SWORN TO AND SUBSCRIBED BEFORE ME  
This 21<sup>st</sup> day of February 2005.



Andrew T. Silber  
Commission # DD 061821  
Expires Nov. 5, 2005  
Bonded Thru  
Atlantic Bonding Co., Inc.



NOTARY PUBLIC

My Commission Expires: Nov, 5<sup>th</sup> 2005