

Nancy B. White
General Counsel - Florida

BellSouth Telecommunications, Inc
150 South Monroe Street
Room 400
Tallahassee, Florida 32301
(305) 347-5558

April 13, 2005

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

050257-72

**Re: Complaint by BellSouth Telecommunications, Inc., Regarding the
Operation of a Telecommunications Company by Miami-Dade County
in Violation of Florida Statutes and Commission Rules**

Dear Ms. Bayó:

Enclosed is an original and fifteen copies of BellSouth
Telecommunications, Inc.'s Complaint Regarding the Operation of a
Telecommunications Company by Miami-Dade County in Violation of Florida
Statutes and Commission Rules, which we ask that you file in the captioned *new*
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,


Nancy B. White

cc: All Parties of Record
Marshall M. Criser III
R. Douglas Lackey

DOCUMENT NUMBER-DATE

03617 APR 13 05

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Complaint by BellSouth Telecommunications, Inc.,
Regarding the Operation of a Telecommunications Company
by Miami-Dade County in Violation of Florida Statutes
and Commission Rules


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

(*) Federal Express and First Class U.S. Mail this 13th day of April, 2005 to the

following:

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

David Stephen Hope, Esq. (*)
Assistant County Attorney
Miami-Dade County Attorney's Office
Miami International Airport
Terminal Building
Concourse A, 4th Floor
Miami, FL 33122
Tel. No. (305) 876-7040
Fax No. (305) 876-7294
dhope@miami-airport.com


Nancy B. White

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Tele-) Docket No.: _____
Communications, Inc., Regarding)
The Operation of a Telecommunications)
Company by Miami-Dade County in)
Violation of Florida Statutes and)
Commission Rules) Filed: April 13, 2005
_____)

**BELLSOUTH TELECOMMUNICATIONS, INC.’S COMPLAINT
REGARDING THE OPERATION OF A TELECOMMUNICATIONS
COMPANY BY MIAMI-DADE COUNTY
IN VIOLATION OF FLORIDA STATUTES AND COMMISSION RULES**

BELLSOUTH TELECOMMUNICATIONS, INC. (“BELLSOUTH”), through its undersigned counsel, hereby files this Complaint against Miami-Dade County pursuant to Rules 25-22.036(2) and 25-22.036(3)(b) of the Florida Administrative Code (“F.A.C.”) and Chapters 350 and 364, Florida Statutes. In support of its Complaint, BellSouth avers the following:

1. BellSouth is a local exchange company doing business in the State of Florida whose regulated operations are subject to the jurisdiction of this Commission (referred to as the “PSC” or the “Commission” below) pursuant to Chapter 364, Florida Statutes.

2. BellSouth’s principal place of business in Florida is 150 W. Flagler Street, Suite 1910, Miami, Florida 33130. Pleadings and process may be served upon:

Nancy B. White
c/o Nancy H. Sims
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

3. Miami-Dade County, through Miami-Dade County Aviation Department (“MDAD”), manages Miami International Airport (“MIA”) and other County owned and operated airports (collectively, the “Airports”). The County’s address is:

David Stephen Hope, Esq.
Assistant County Attorney
Miami-Dade County's Attorney's Office
Miami International Airport
Terminal Building
Concourse A, 4th Floor
Miami, FL 33122

4. BellSouth is subject to the regulation of this Commission. The substantial interests of BellSouth will be affected by the Commission's determination as to the matter set forth in this Complaint. The County, as a shared tenant service provider, by definition, competes against BellSouth, as well as other telecommunications companies. BellSouth has an interest in competitive providers complying with applicable PSC requirements in the interest of fair competition. The Commission is required to exercise its exclusive jurisdiction to ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior. Section 364.01(4)(g), Fla. Stat. The contravention of Commission requirements and applicable statutes by one telecommunications company, to the detriment of others, implicates the Commission's authority and exclusive jurisdiction to protect competition as mandated by Section 364.01, Fla. Stat.

A. The Statutory and Regulatory Provisions At Issue

5. Section 364.33, Fla. Stat. provides that a person may not begin the construction or operation of any telecommunications facility, or any extension thereof for the purpose of providing telecommunications services to the public, or acquire ownership or control thereof, in whatever manner, including the acquisition, transfer, or assignment of majority organizational control or controlling stock ownership, without prior Commission approval.

6. A "Person" subject to this statutory requirement includes any firm, association, *county*, municipality, corporation, business, trust, or partnership owning, leasing, or operating

any facility used in the furnishing of public telecommunications service within Florida. Section 364.32(1), Fla. Stat. (emphasis added).

7. Section 364.339(1), Fla. Stat. more specifically provides that the Commission shall have exclusive jurisdiction to authorize the provision of any shared tenant service which duplicates or competes with local service provided by an existing local exchange telecommunications company; and, effective January 1, 1996, is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company. This, in effect, is the definition of a provider of shared tenant services (“STS”).

8. Section 364.339(2), Fla. Stat. provides that no person shall provide shared tenant service without first obtaining from the Commission a certificate of public convenience and necessity to provide such service. See also Rule 25-24.565, F.A.C.

9. Section 364.339(3), Fla. Stat. provides that:

(a) shared tenant services provided to government entities pursuant to Section 364.339 are exempt from paragraph (1)(b), and the Commission may exempt such entities from any certification requirements imposed by Chapter 364.

(b) as provided in subsection (4), the Commission may authorize such service notwithstanding the provisions of Section 364.335, Fla. Stat. The Commission may prescribe the type, extent, and conditions under which such service may be provided and may exempt such service, except appropriate certification, from Commission regulation.

10. Rule 25-24.585, F.A.C., sets forth and incorporates regulations applicable to shared tenant service providers, including, but not limited to, payment of regulatory assessment fees in accordance with Rule 25-4.0161, F.A.C.

11. Rule 25-24.580, F.A.C. (the “Airport Exemption Rule”), provides that airports shall be exempt from the other shared tenant service rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility, but further provides that an airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. The Airport Exemption Rule then specifies that if the airport partitions its trunks, it shall be exempt from the other shared tenant services rules for service provided only to the airport facility.

B. MDAD’s Violations of the Statutes and Rules Governing STS Providers

12. During discovery in a pending lawsuit between BellSouth and the County, the County confirmed that, through MDAD, it is operating as a shared tenant service provider at MIA¹. The County also confirmed that it did not and has not secured a certificate of public convenience and necessity from the Commission.² The County’s customers are its tenants at

¹ The lawsuit, BellSouth Telecommunications, Inc. v. Miami-Dade County, Case No. 02-288688 CA 03, is pending in the Circuit Court of the 11th Judicial Circuit In and For Miami-Dade County, Florida. In that case, BellSouth alleged that the County is operating a telephone utility in violation of the Miami-Dade County Charter, Florida Constitution and Florida Statutes. Section 1.01(A)(14)(b) of the County Charter provides that the County shall not operate a telephone utility to serve any territory in the county which is being supplied with a similar service except by a majority vote of the electors following the County Commission’s passage of an ordinance to that effect by 2/3 vote of the members of the Commission present. In or about February 2002, the County acquired telecommunications facilities and operation thereof at MIA and the other Airports from NextiraOne LLC, including the provision of shared tenant services at MIA. The Board of County Commissioners approved the agreement with NextiraOne. By doing so, BellSouth contends that the County began operating a telephone utility without complying with the above-referenced Charter provision, since no ordinance of the type required by the Charter or vote of County electors was held to approve the transaction. BellSouth also alleged that the County exceeded its authority under the Florida Constitution and applicable statutes by its unilateral self-authorization to operate a telecommunications company and to provide shared tenant services without first obtaining the approval of the PSC or otherwise being subject to the exclusive jurisdiction of the PSC.

² The deposition testimony of County representatives confirms that the County provides shared tenant services to airport tenants. While securing a PSC certificate is not necessary to prove the County is violating its Charter, this testimony confirms that the County is violating PSC regulations, to the detriment of BellSouth and other competing telecommunications companies, making this Complaint necessary. The testimony includes the December 15, 2004 deposition of Pedro J. Garcia, Chief of

MIA, including a hotel, restaurants and retail stores, such as those found in shopping malls.³ The County has only partitioned its trunks with respect to the services provided to the hotel.⁴ It has not partitioned its trunks with respect to its provision of services to restaurants, retail shops or other commercial entities.⁵ Moreover, even with respect to the partitioned trunk for the hotel, the County has not obtained a certificate for the provision of shared tenant services to the hotel.

13. Accordingly, the County was required to secure a certificate prior to providing shared tenant services to these tenants, and prior to its beginning to operate a telecommunications company as defined in §364.02, Fla. Stat.

14. By failing to apply for, let alone obtain, a certificate, the County, through MDAD, is in violation of §364.33, §364.335, and §364.339(2), Fla. Stat. and §25-24.565 and 25-24.567, F.A.C. The County is also in violation of the other PSC regulations applicable to shared tenant service providers. See §25-24.585, F.A.C.

15. To the extent that the County argues that the Airport Exemption Rule provides for an exemption to certification requirements, the exemption (if and to the extent it is consistent with Section 364.339, Fla. Stat. and any other applicable statutes), does not apply in this case. The County is providing “shared local services to facilities such as hotels, shopping malls and industrial parks,” for which a certificate is expressly required, even under the clear terms of the Airport Exemption Rule.

16. In prior Commission proceedings, in which attorneys representing the County directly participated, the Commission specifically considered the issue of certification of airports

Telecommunications for MDAD, a copy of which is attached as Exhibit A (hereinafter referenced as the “County Depo.”). See County Depo at pp. 17, 21, 26-28.

³ County Depo at 50-55.

⁴ County Depo. at p. 49.

providing shared tenant services. There, the Commission concluded, in conformity with the plain language of the Airport Exemption Rule, that certification was necessary if service is provided to facilities such as hotels, shopping malls and industrial parks. See, e.g. Docket No. 860455-TL, PSC Order 17111.⁶ The County was thus well aware of the Commission's position in this regard.

17. Moreover, in or about October 2001, MDAD, through its Chief of Telecommunications, Pedro Garcia, was again directly advised by a representative of the Commission that a certificate would be necessary for the County's anticipated STS operations at

⁵ County Depo at p. 114.

⁶ See also Docket No. 931033-TL, PSC Order 94-0123, dispute between Dade County Aviation Department ("DCAD"), predecessor to MDAD, and BellSouth related to serving arrangements at airports in Miami-Dade County. In this Order, the Commission re-iterates that an airport must obtain a certificate as a shared tenant service provider before providing services to facilities such as hotels, shopping malls and industrial parks. Although the underlying dispute related to serving arrangements for BellSouth at the airports, and not which entity was, in fact, providing shared tenant services, the Order went on to say that DCAD, as a result of the nature of its involvement in the provision of telecommunications services, is providing shared tenant services under the Airport Exemption. Interestingly, this statement was inaccurate at the time, as (1) the shared tenant service provider at the airports in 1994 was WilTel Communications System, formerly Centel Communications Company, which was then under contract with Miami-Dade County to provide shared tenant services at the airports and (2) because the County was not a shared tenant service provider at the time, it could not be operating under the Airport Exemption Rule. It does not appear that the Commission reviewed the governing County/WilTel contracts when considering the dispute resulting in PSC Order 94-0123. Moreover, given that the dispute in that proceeding was not about which entity was providing shared tenant services, there would be no reason for the Commission to have reviewed these contracts. However, the statement in PSC Order 94-0123 is now partially accurate (although not as to operations under the Airport Exemption Rule), because, as of on or about February 1, 2002, the County has been providing shared tenant services to the airports, as discussed in footnote 1. This conclusion is clearly supported by the County/WilTel contract that was executed in 1990 and in effect through 2002. The contract provides that (a) WilTel will "use its best efforts to establish, market and sell SATS to tenants and users at the airport and at the hotel . . . consistent with the authority granted from time-to-time by the Public Service Commission of Florida or whatever governmental entity has jurisdiction over SATS . . ." (Contract at p. 2) and (b) that "[b]ecause the parties contemplate that the County *may provide the SATS for the Airport and Hotel Systems at some point in the future*, [contractual and other documents used by WilTel in providing SATS] shall provide at a minimum that the contracts with customers are fully assignable to County by Centel [WilTel]." (Contract at p. 7) (emphasis added). A copy of the 1990 SATS Agreement is attached hereto as Exhibit "B." The attached signed copy of the 1990 SATS Agreement is not dated (a dated copy was not provided to BellSouth). But, the first and second WHEREAS clauses and footnote 1 in Resolution No. R-31-02 of the County Commission, dated January 29, 2002, attached as Exhibit "C", show that the SATS Agreement was executed in 1990, that the party to the SATS Agreement in 1994 was WilTel, successor to Centel, and that the SATS Agreement was in effect until February 2002. Resolution No. R-31-02 was the vehicle for County approval of the County's agreement with NextiraOne LLC, described in footnote 1 above.

the Airports, upon the County acquiring the operation from NextiraOne, because of its provision of services to retail shops, concessions, a hotel and other such facilities akin to hotels, shopping malls, and industrial parks.⁷

18. Pedro Garcia's notes of his conversation with the PSC on October 26, 2001 explicitly state, "If MIA is going to provide service not related to public transportation (Hotels, shops, etc.) we need to file an application. In any event, trunks will have to be partitioned."⁸

19. Despite this clear statement to the County of the need for a certificate, and Pedro Garcia's acknowledgment thereof, the County rejected the PSC's interpretation and analysis, and unilaterally decided that it did not need a certificate to operate as a shared tenant service provider and did not need to apply to the PSC to obtain a certificate.⁹ Thus, while claiming to have considered the PSC's stated position that the County needed a certificate, the County elected not to follow the PSC's stated instructions.¹⁰ The County thereafter commenced operating as a telecommunications company by offering and providing shared tenant services to facilities such as hotels, shopping malls and industrial parks at MIA, without a certificate and without otherwise comply with other regulations applicable to shared tenant service providers.

20. After beginning these operations, the PSC, through Rick Moses, again contacted the County via an e-mail to Maurice Jenkins, Manager of Information Systems and Telecommunications, MDAD, in or about early March 2003. In that e-mail, Mr. Moses expressly stated that, "Therefore, any services provided to entities such as concession stands, restaurants or hotels would be outside of the exemption and certification would be required

⁷ See County Depo at pp.106-111.

⁸ Id. at pp. 102 - 111

⁹ Id. at 106-113.

¹⁰ See County Depo. at pp. 106-111

before telephone service can be provided.”¹¹ The list of customers provided by MDAD to Mr. Moses in response to this e-mail clearly includes “entities such as concession stands, restaurants, and hotels” and other “facilities such as hotels, shopping malls and industrial parks.”¹²

21. Nevertheless, the County, through MDAD, continued and continues to this day to operate as a shared tenant service provider offering services to facilities such as hotels, shopping malls, and industrial parks without ever having submitted an application for a certificate to the PSC and without ever having complied with other regulatory obligations of a shared tenant service provider.

22. Attempting to explain its conduct, including its rejection of the PSC's specific directive on this issue as noted in paragraph 17 above, the County has taken the disingenuous position in the pending litigation that the PSC's lack of action against the County, to date, is tacit acceptance of MDAD's conduct. Additionally, the County alleges that the PSC's prior order, described in footnote 6 above, supports the County's ability to proceed without a certificate. BellSouth strongly disagrees with MDAD's specious theory that any prior PSC action or inaction is tantamount to the PSC's granting the County permission to violate the clear and unambiguous terms of the Florida Statutes and regulations governing the County's provision of shared tenant services and operation as a telecommunications company through MDAD in Miami-Dade County, Florida.

23. Given the County's blatant disregard for (1) the clear and explicit terms of the statutes and regulations at issue and (2) the clear position of the PSC with respect to obtaining a certificate and complying with the PSC's exclusive jurisdiction over the provision of shared

¹¹ See County Depo. at pp. 122-123.

¹² See County Depo. at pp. 125 – 127.

tenant services, the County's conduct is clearly a willful violation of the stated regulations and statutory provisions.

24. In addition, other airports have applied for and secured shared tenant service provider certificates from this Commission. See Commission Certificate 4680, granted to Hillsborough County Aviation Authority.

25. This Commission has jurisdiction to enforce its rules and the provisions of Chapter 364 pursuant to Section 350.127 and Section 364.285, Fla. Stat. Moreover, Section 364.337(5), Fla. Stat. grants the Commission authority to ensure the fair treatment of all telecommunications providers in the telecommunications marketplace. In addition, Section 364.285(1), Fla. Stat. grants the Commission the authority to impose penalties for willful violations of Commission rules and orders, and for violation of any provision of Chapter 364.

26. BellSouth's request meets the standards of Rule 25-22.036(2)(b), F.A.C., as explained above.

WHEREFORE, Complainant, BellSouth Telecommunications, Inc., prays that there be judgment against the County after due proceedings as follows:

(1) Hold that the County, through MDAD, is a telecommunications company and, more specifically, a provider of shared tenant services, subject to the exclusive jurisdiction of this Commission;

(2) Order the County to apply for and secure a certificate of public convenience and necessity from the Commission in connection with providing shared tenant services to its tenants/customers;

(3) Order the County to pay all sums due and owing in regulatory assessment fees for all years since it commenced providing shared tenant services on or about February 1, 2002;

(4) Order the County to comply with all other applicable statutes and regulations governing shared tenant service providers, including all such regulations set forth in §25-24.585, F.A.C.;

(5) Order MDAD to pay penalties and interest for violation of Commission rules and orders and Chapter 364, Fla. Stat.; and

(6) For all other relief deemed appropriate under the law.

Respectfully submitted this 13th day of April, 2005.

BELLSOUTH TELECOMMUNICATIONS, INC.

Nancy B. White /RN

Nancy B. White
Sharon R. Liebman
c/o Nancy H. Sims
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
Tel. No. (305) 347-5570

R. Douglas Lackey /RN

R. Douglas Lackey
675 West Peachtree Street, N.E.
Suit 4300
Atlanta, Georgia 30375
(404) 335-0747

568348v2

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 02-288688 CA 03

BELLSOUTH TELECOMMUNICATIONS,
INC., a foreign corporation,

Plaintiff,

vs.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,
Defendant.

THE VIDEOTAPED DEPOSITION

OF

PEDRO J. GARCIA

100 SE Second Street
Suite 1200
Miami, FL 33131

Wednesday, December 15, 2004

10:05 a.m.- 1:15 p.m.

KRESSE & ASSOCIATES, INC.
(305) 371-7692

EXHIBIT

tabber

A

1 **APPEARANCES**

2

3 For the Plaintiffs:

4 **MARTIN B. GOLDBERG, ESQ.**
 Lash & Goldberg LLP
 100 SE Second Street
 Suite 1200
 6 Miami, FL 33131

7 **SHARON R. LIEBMAN, ESQ.**
 BellSouth Telecommunications, Inc.
 8 150 West Flagler Street
 Suite 1910
 9 Miami, FL 33130

10

11 For the Defendant:

12 **DAVID STEPHEN HOPE, ESQ.**
 Office of Miami-Dade County Attorney
 Miami International Airport
 Terminal Building
 13 Concourse A, 4th Floor
 Miami, FL 33122

14

15 **ALSO PRESENT:**

16 **DENISE SOSA, Legal Assistant**
 17 **CARLOS LOPEZ, Videographer**

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1 **THE VIDEOGRAPHER:** Stand by. We're

2 on the video.

3 **THE REPORTER:** Would counsel

4 announce their appearances for the record?

5 **MR. GOLDBERG:** For the plaintiff,

6 BellSouth Telecommunications, Martin

7 Goldberg, law firm of Lash & Goldberg,

8 present for the plaintiff.

9 Also for the plaintiff present is

10 Sharon Liebman, in-house counsel for

11 BellSouth. And also present in the room

12 for the deposition is our paralegal from

13 Lash & Goldberg, Denise Sosa.

14 **MR. HOPE:** David Stephen Hope,

15 Assistant County Attorney, on behalf of

16 defendant Miami-Dade County.

17 (Witness sworn)

18 **THE WITNESS:** I do.

19 **THEREUPON:**

20 **PEDRO J. GARCIA,**

21 a witness named in the notice heretofore filed,

22 having been first duly sworn, deposes and says as

23 follows:

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1 **INDEX**

2

3 Witness Direct Cross

4 **PEDRO J. GARCIA**

5 By Mr. Goldberg 4

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11 **EXHIBIT INDEX**

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1 **DIRECT EXAMINATION**

2 **BY MR. GOLDBERG:**

3 **Q** Good morning, Mr. Garcia, how are you?

4 **A** Good morning, well, thank you.

5 **Q** Good. We are here for another

6 deposition in the case of BellSouth

7 Telecommunications versus Miami-Dade County.

8 **For the record, you've been deposed in**

9 **other contexts before in this case, correct?**

10 **A** Correct.

11 **Q** So you're familiar with the process of

12 being deposed, that's fair to say, correct?

13 **A** Yes, Sir.

14 **Q** Just as a shortcut, just want to remind

15 you that you're under oath this morning. I will

16 be asking you questions. If at any time I ask

17 you a question that you don't understand, please

18 do not answer the question; rather, I'd like you

19 to tell me that you don't understand the question

20 or it's confusing so that I can have an

21 opportunity to rephrase the question so that you

22 do understand it.

23 **Is that okay with you?**

24 **A** Yes, it is.

25 **Q** With that groundwork then, any time

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1 that you do answer a question we will all assume
2 in this room, as well as anybody who watches the
3 videotape that's being prepared today or reads
4 the transcript that's being prepared today, we
5 will all assume that you understood the question
6 and answered it truthfully and completely and in
7 a non-misleading manner, because you are under
8 oath.

9 Is that okay with you?

10 A Yes, it is.

11 Q Okay, if at any time you need to take a
12 break for any reason or to consult with Mr. Hope,
13 who is your attorney, the County's attorney here
14 today, please let me know and we'll accommodate you.

15 A Okay.

16 Q I want to show what has been marked as
17 Plaintiff's Exhibit Cert, C-e-r-t, -1. All the
18 exhibits will be Cert, standing for
19 certification, starting with 1 through and
20 including whatever number we get up to.

21 This is the Notice of Taking Videotape
22 Deposition --

23 MR. HOPE: Thank you.

24 BY MR. GOLDBERG:

25 Q -- that has been issued for this

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1 A My name is Pedro J. Garcia,
2 G-a-r-c-i-a.

3 Q How are you presently employed?

4 A I'm employed by the Miami-Dade Aviation
5 Department, which is the department of Miami-Dade
6 County, and I am the Chief of Telecommunications
7 for the Miami-Dade Aviation Department.

8 Q How long have you been in that position?

9 A Approximately a little over four years.

10 Q How long have you been working at the
11 County in total?

12 A About 15 years.

13 Q Can you describe generally your duties
14 in your current position that you've occupied for
15 the last four years?

16 A My position is responsible for the --
17 providing the voice -- I mean telephone services,
18 the data network, public address system, the
19 flight information displays at the airport, the
20 wireless services, beepers, cell phones.

21 And generally that's -- the dynamic
22 signs outside the roadway at the airport. That's
23 it.

24 Q Prior to your current position, since
25 you've been with the County 15 years, what was

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1 particular deposition proceeding.

2 Have you seen this document before?

3 A Yes, I have.

4 Q Are you here pursuant to this Notice of
5 Taking Videotaped Deposition which calls for the
6 corporate representative of Miami-Dade County
7 designated pursuant to Rule 1.310 with the most
8 knowledge concerning all facts related to
9 Miami-Dade County's decision, including knowledge
10 of all persons who participated in making the
11 decision, not to submit an application for
12 certification, including but not limited to a
13 Certificate of Public Convenience and Necessity,
14 and/or to provide Shared Tenant Services to the
15 Public Service Commission pursuant to a number of
16 Florida statutes?

17 Are you here as the County's corporate
18 representative pursuant to this designation I
19 just read?

20 A Yes, Sir.

21 Q And I may have forgot because I'm so
22 familiar with you since you've been deposed
23 today -- or before, can you just identify
24 yourself by name and spell your last name, and
25 then we'll do a little bit of background?

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1 the previous position you occupied?

2 A I was a position of -- I forgot what
3 the title is, but it's equivalent to what I have
4 now, it was like Chief of Telecommunications.

5 Basically I was heading a group of
6 engineers responsible for the installation of
7 telephone systems in all the county buildings.

8 Q How long did you occupy that position?

9 A Oh, 11 years.

10 Q In your current position who is your
11 direct superior or boss?

12 A It's Maurice Jenkins. He's the Manager
13 of Information Systems/Telecommunications.

14 Q Who does Mr. Jenkins report to?

15 A He reports to Bobbie Phillips, she's
16 the Assistant Director for Administrative
17 Services.

18 Q Who does Miss Phillips report to?

19 A Miss Phillips reports to -- to be
20 honest with you, I'm not sure if she reports
21 directly to the director of the airport or to
22 some deputy director, because they've been hiring
23 some folks recently and I'm not sure how that
24 reporting is going.

25 Q If there is a deputy director,

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1 Miss Phillips would report to that deputy
2 director, is that fair to say?

3 A If it's in line with her
4 responsibility, yes.

5 I think that's what they're striving to
6 do, I'm not sure exactly what -- the new deputy
7 director started last week, I'm not sure if she
8 reports to him or not.

9 But that would be the. . .

10 Q And then is it fair to say that that
11 deputy director, if he or she is in the chain of
12 command here, reports to the director of the
13 airport?

14 A Yes.

15 Q Who is currently the director of the
16 airport?

17 A It's an interim director because the
18 director resigned or -- about a month ago, and
19 the name of the interim director is Carlos
20 Bonzon, B as in boy, -o-n-z-o-n.

21 Q Notwithstanding this hierarchy, going
22 back to the Notice of Deposition, the County has
23 designated you to be the corporate representative
24 with the most knowledge of the issue raised in
25 the notice, that being what I'll summarily refer

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1 Q Okay, well let me ask it another way:
2 Other than whatever personal knowledge you have
3 with respect to this issue, what have you done to
4 prepare for answering the questions at this
5 deposition today?

6 A Like I said before, we had a meeting
7 with my boss, Mr. Jenkins, and we talked about,
8 to the best of our recollection, what took place
9 regarding this certification issue about three or
10 four years ago, and it was decided that I knew as
11 much as anybody else about this -- what took
12 place then.

13 Q All right, let's talk about that
14 meeting first, then I'll go back to any
15 additional preparation.

16 First, when did that meeting take place
17 between you, Mr. Jenkins and Mr. Hope?

18 A Monday.

19 Q Would that be Monday, December 13th?

20 A 13th, right.

21 Q And today, just for the record, is
22 December 15th, on Wednesday?

23 A Correct.

24 Q Where did the meeting take place?

25 A In Mr. Hope's office, in the conference

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1 to as certification?

2 A Yes.

3 Q How was that designation accomplished?
4 Or in other words, how were you designated to
5 appear today pursuant to this Notice of Taking
6 Deposition?

7 A Well, we had a discussion, and between
8 my boss, Mr. Jenkins, and Mr. Hope, and basically
9 the recollection of the events that -- regarding
10 the certification that we -- basically what went
11 on regarding the certification about three years
12 ago, four years ago, it was deemed that I knew as
13 much as anybody else about this event that took
14 place.

15 And that was -- it was decided for me
16 to come here.

17 Q You understand, since you are appearing
18 as a corporate representative, that you have an
19 obligation as a corporate representative to
20 appear with the most knowledge that the County -
21 or the County can infuse you or provide you with
22 the requisite knowledge to answer the questions
23 at this deposition today?

24 Do you understand that?

25 A Not exactly.

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1 room.

2 Q Just for the record, Mr. Hope is the
3 attorney here today, he's an Assistant County
4 Attorney, correct?

5 A Yes, Sir.

6 Q How long did the meeting take place?

7 A Maybe 20 minutes, half-hour.

8 THE REPORTER: Keep your voice up,
9 please THE WITNESS: 20 minutes,
10 half-hour. I'm sorry.

11 BY MR. GOLDBERG:

12 Q Did you review any documents during
13 that meeting? And I just want a yes or no answer.

14 A No.

15 MR. GOLDBERG: Mr. Hope, are you
16 taking the position that that meeting was
17 a privileged meeting?

18 MR. HOPE: Yes.

19 BY MR. GOLDBERG:

20 Q Outside of that 20-minute meeting that
21 you had with Mr. Hope and Mr. Jenkins, what other
22 preparation have you undertaken to answer the
23 questions here at this deposition?

24 A None whatsoever.

25 Q Can I ask why you haven't undertaken

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1 any additional preparation to respond to
 2 questions posed during this deposition pursuant
 3 to the notice marked as Cert-1?
 4 A There was really, in my opinion there
 5 was nothing to prepare, because there was really
 6 not that much that went on regarding this issue.
 7 Q Have you reviewed any of your prior
 8 testimony given in this case prior to today?
 9 A I should have, but I have not. I
 10 haven't had the time.
 11 Q Let me show you what's been marked as
 12 Plaintiff's Exhibit Cert-2. This is the County's
 13 Answer and Affirmative Defenses to the Second
 14 Amended Complaint filed in this case, is that
 15 correct?
 16 A I have no idea. This is legalese to
 17 me, I don't know what a second amended complaint
 18 is, so. . .
 19 MR. GOLDBERG: Well, let me do it
 20 this way: Can I ask for a stipulation
 21 from Mr. Hope that this is the County's
 22 Answer and Affirmative Defenses to the
 23 Second Amended Complaint that the County
 24 filed in this case?
 25 MR. HOPE: So stipulated.

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1 MR. GOLDBERG: Thank you.
 2 BY MR. GOLDBERG:
 3 Q And just for your frame of reference,
 4 if you look at the first page of the document,
 5 does it not say Miami-Dade County's Answer and
 6 Affirmative Defenses to Second Amended Complaint?
 7 A Yes, it does.
 8 Q Okay, so that's English and not
 9 legalese, correct?
 10 A That's the first three lines here, but
 11 I don't know what the Affirmative Defenses to
 12 Second Amended Complaint, I have no what that is.
 13 Q Okay, let me direct your attention to
 14 paragraph 12 of this answer that's been filed by
 15 the County on page 2, and does it say at
 16 paragraph 12 that the County admits providing
 17 shared airport tenant services to airport tenants
 18 at Miami International Airport?
 19 MR. HOPE: Before he answers that, I
 20 think he probably should see the Second
 21 Amended Complaint so he can see the
 22 paragraph 18, so he understands
 23 completely what the answer refers to.
 24 MR. GOLDBERG: Okay, do you have the
 25 Second Amended Complaint here?

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1 MR. HOPE: Sure, I do. Are you
 2 going to enter it?
 3 MR. GOLDBERG: That would be great.
 4 MR. HOPE: I have a marked-up
 5 version, so this one can't come in.
 6 MR. GOLDBERG: Okay, well, you want
 7 to go grab the Second Amended Complaint?
 8 That's fine.
 9 Why don't we go off the record right
 10 now while we get the Second Amended
 11 Complaint?
 12 THE VIDEOGRAPHER: Going off the record.
 13 MR. HOPE: Sure.
 14 (Recess)
 15 MR. GOLDBERG: Go back on the
 16 record. Since the counsel --
 17 THE VIDEOGRAPHER: Sorry, let me
 18 queue it up. Back on the record.
 19 BY MR. GOLDBERG:
 20 Q Prior to the break your counsel asked
 21 that you be shown a copy of the Second Amended
 22 Complaint in this case, particularly
 23 paragraph 18, so what I've done is we have
 24 retrieved the Second Amended Complaint, I've
 25 marked it as Cert-3.

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1 I can direct you to paragraph 18, why
 2 don't you review that? And then I'm going to
 3 come back to my question. Let me know when
 4 you've reviewed it.
 5 A Okay.
 6 Q And while you're reviewing the Second
 7 Amended Complaint why don't you also review
 8 paragraph 34? That would relate to an additional
 9 question I'll ask in a few seconds.
 10 A Okay.
 11 Q Going back to, again directing you to
 12 Exhibit Cert-2, the County's answer in this case
 13 that's been filed, at paragraph 12 does not the
 14 County admit to providing shared airport tenant
 15 services to airport tenants at Miami
 16 International Airport?
 17 A Yes.
 18 Q And let me direct your attention to the
 19 answer again at paragraph 18 of the County's
 20 answer, does not the County admit at paragraph 18
 21 that it has not submitted an application to the
 22 Florida Public Service Commission to obtain the
 23 certificate of public convenience and necessity?
 24 A Yes.
 25 Q If you could, Mr. Garcia, I'd like you

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1 to outline for the Court in this case, or any
 2 other third party or entity that views this
 3 videotape or reads this deposition, each and
 4 every reason why the County has not applied for a
 5 certificate of public convenience and necessity
 6 from the Florida Public Service Commission.
 7 A To the best of my recollection, what
 8 took place three or four years ago was that the
 9 question came up about the whole certificate
 10 issue, and I remember myself reading the Florida
 11 statutes regarding the airport section to shared
 12 tenant services, we talked to the -- our
 13 counterparts at the Orlando airport --
 14 International Airport in Florida, and basically
 15 based on -- I also looked through the application
 16 that -- to apply for the certificate, just to see
 17 what kind of questions were needed to be answered
 18 to apply to that certificate, and basically based
 19 on those two inputs, basically the documents that
 20 we read from the PSC and the information we
 21 obtained from Orlando airport, it was deemed that
 22 there was really no need for the airport to apply
 23 for the certificate, because of the exception
 24 that is granted by the PSC according to those two
 25 inputs.

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1 Q Now in your answer you I believe told
 2 me a little bit about the process or, you know,
 3 the circumstances involved in making this
 4 decision, and I will get to that later.
 5 My question was, I'd like you to list
 6 for me, first, second, third, what the reasons
 7 were why the County decided not to file an
 8 application for certificate of public convenience
 9 and necessity from the Public Service Commission.
 10 A Okay, the Florida -- the pertinent
 11 Florida statutes that refer to this area, which I
 12 don't have the number in my head right now, I
 13 recall specific it stated that the airports are
 14 exempt from getting certificates for this service
 15 as long as the service is used for the safe and
 16 efficient and protection of the airport, the
 17 passengers and cargo operating the airport.
 18 Also, secondly, the information that we
 19 received from the Orlando staff was that they had
 20 been involved in some case regarding this
 21 certificate with the PSC, and also in their
 22 opinion they never obtained the certificate, even
 23 though they're providing the same services or
 24 similar services that are offered at the airport
 25 to tenants, and they felt that they -- there was

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1 no need for any airport to obtain that
 2 certificate.
 3 Those are basically the two reasons.
 4 Q Other than -- well, strike that.
 5 So the first reason, if I understand
 6 you, is that the County determined that the
 7 airport exemption rule applied, and therefore
 8 relieved the County of any obligation to apply
 9 for a certificate of public convenience and
 10 necessity, is that correct?
 11 A Yes.
 12 MR. HOPE: Objection to form.
 13 BY MR. GOLDBERG:
 14 Q And the second reason you've given is
 15 that Orlando airport -- was based on your
 16 conversations with the Orlando airport?
 17 A Right.
 18 Q Are there any other reasons, factual or
 19 otherwise, that were considered in making the
 20 County's decision not to apply for a certificate
 21 from the PSC?
 22 A Not to my knowledge.
 23 Q Well, you understand as a -- appearing
 24 as a corporate representative that it was your
 25 obligation to obtain all the facts and knowledge

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1 with respect to that decision that was made,
 2 correct?
 3 A Correct.
 4 Q Okay, so -- and you also understand as
 5 the corporate representative what you say here
 6 today binds the County as a party in this case,
 7 correct?
 8 A Correct.
 9 Q So when you say not to your knowledge,
 10 are we all correct to assume that that's not to
 11 the County's knowledge?
 12 MR. HOPE: Objection to form.
 13 THE WITNESS: It's to my knowledge.
 14 BY MR. GOLDBERG:
 15 Q When was this decision made not to
 16 apply for a certificate from the PSC?
 17 A I can't recall a specific date. Like I
 18 said, we were -- there was some investigation
 19 done regarding these two issues that I mentioned
 20 before, the Orlando and the reviewing of the PSC
 21 documents, and at some point the issue just died.
 22 It was no, not really -- there was no
 23 meetings, there was no formal decision, there was
 24 no letter, there was no memo, it was just not --
 25 we went on to other things and didn't pursue the

1 matter.

2 Q Again let me go back to my question,
3 when approximately --

4 A Three or four years ago.

5 Q Who was involved in any manner, shape
6 or form in making this decision and/or
7 considering the two reasons that you've given?

8 A If it was -- it was -- my boss was
9 obviously involved in this, Mr. Jenkins, and it
10 was basically at the time I didn't even -- I
11 don't think I even met with Mr. Hope at the time
12 of this.

13 It was just basically, it was an
14 informal thing between me and my boss. I don't
15 know whether he actually spoke to anyone else.

16 And I basically -- it was a process
17 that it was by omission, I guess, we didn't
18 pursue the matter any further.

19 Q So if you had to list out for me the
20 people who were involved in making the decision,
21 who would they be, please?

22 A Just me and Mr. Maurice Jenkins.

23 Q Nobody else?

24 A No.

25 Q Was that discussion reviewed with

1 location. I don't know exactly the date.

2 Q At page 20 of that deposition you were
3 asked the following question and you gave the
4 following answer:

5 "Question: Were you personally
6 involved in any discussions concerning
7 whether or not there was a certification
8 requirement from the PSC?

9 "Answer: Yes, we had conversations,
10 Maurice Jenkins and counsel and other
11 people."

12 Now after reading that to you does that
13 refresh your recollection as to whether or not
14 Mr. Hope or any other counsel were involved in
15 the -- making this decision?

16 A It's possible, maybe my mind was better
17 at the time, it was closer to the event, it's
18 possible that he could have been involved in the
19 conversation.

20 I'm not saying that he wasn't. I just
21 didn't recall at this time that he was. But
22 maybe he was.

23 Q You would agree with me that your
24 memory of these events was more likely better on
25 May 21st, 2003, when you gave the deposition I

1 anybody else at the County?

2 A Like I said, it was not a decision that
3 somebody told me: Let's not do it. It was just
4 by omission. It was not -- I was not told to do
5 it, so it just died.

6 I went on to other things.

7 Q Is it your testimony under oath today
8 that Mr. Hope, the Assistant County Attorney, was
9 not involved in that decision?

10 A It is my -- what I'm saying is that I
11 don't recall having direct conversations with
12 Mr. Hope at the time on this issue.

13 I don't really know if he was involved
14 in any manner. I don't recall having
15 conversations with him on this issue.

16 Q Let me see if I can refresh your
17 recollection on that point. Do you recall being
18 deposed in this case on approximately May 21st of
19 2003?

20 A Not really, but I'll take your word for it.

21 Q Are you saying you don't recall
22 appearing for a deposition that was taken by an
23 attorney for BellSouth named Mitchell Bloomberg
24 down in Coconut Grove in May of 2003?

25 A I recall being deposed at that

1 just read from, than today in late 2004?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. GOLDBERG:

5 Q In refreshing your recollection, your
6 answer on page 20 at lines 15 or 16 I just read
7 to you referenced not only Maurice Jenkins,
8 counsel, but, quote unquote, other people.

9 Does that refresh your recollection as
10 to anybody else that may have been involved in
11 the making of this decision not to apply for a
12 certificate from the PSC?

13 A It refreshes my recollection that I
14 probably said other people.

15 The reason I said other people is
16 because I didn't remember whether -- who were
17 those people or if there were any other people.
18 It was just a general statement that it's
19 possible, but I didn't recall.

20 Q Now back at the time this decision was
21 being contemplated, did that -- isn't it correct
22 that that coincided with the County's decision,
23 resolution and transaction to purchase all of the
24 assets of Nextira and take over the STS services
25 provided at the airport?

1 MR. HOPE: Objection to form.

2 THE WITNESS: Well, that agreement
3 was signed effective 20 -- February 2002,
4 I believe, so if the deposition as you
5 mentioned was 2003, it was after the 2002
6 agreement.

7 BY MR. GOLDBERG:

8 Q No, my question is would you agree that
9 the timing of your -- the County's decision
10 whether to apply or not to apply to the PSC as
11 you've testified to today coincided with the time
12 period at which the County purchased the Nextira
13 assets?

14 A It's within a few months of that event,
15 yes.

16 Q Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q Well, then let me ask you in a more

1 decision not to file?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Right.

4 BY MR. GOLDBERG:

5 Q Are you aware of any documents, notes,
6 or memoranda that were generated as a result of
7 this decision-making process regarding whether to
8 apply to the PSC for a certificate?

9 A Do you mean does it exist today?

10 Like I said, this was not a formal
11 process, there was no memos, formal memos written
12 from anybody saying do not do this, or asking
13 whether we should do this.

14 It was mostly an information-gathering
15 situation that, you know, I had -- I have the PSC
16 documents in my files, and then we talked to the
17 Orlando folks, and it was over the telephone
18 conversation.

19 We went there to Orlando to visit and
20 see what they were doing there, for that and
21 other reasons, and spend the day there meeting
22 with them and looking around the airport and see
23 how they were doing, not only -- you know,
24 different installations that they had.

25 And the result of all of that was the

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

1 decision that we didn't need to apply for the
2 certificate.

3 MR. GOLDBERG: Can you read back my
4 last question, please?

5 Thank you.

6 (Record read by reporter)

7 BY MR. GOLDBERG:

8 Q Did you have an opportunity to listen
9 to that question again?

10 A Yes.

11 Q Okay, I think it calls for a yes or no
12 answer, of course you can explain, but could you
13 begin with a yes or no answer as to whether there
14 were any document as I phrased in the question?

15 THE WITNESS: Can you read the
16 question again?

17 (Record read by reporter)

18 THE WITNESS: No, there's no -- as
19 far as I remember there was no documents
20 regarding the decision not to apply for
21 the certificate.

22 BY MR. GOLDBERG:

23 Q There is no -- is there any analyses --
24 strike that.

25 So am I to assume that there is no

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1 analyses or written discussion prepared regarding
 2 the two reasons that you've given that went into
 3 making the decision?
 4 MR. HOPE: Objection to form.
 5 THE WITNESS: All I recall is having
 6 the PSC documents, which I've had for
 7 years, and I put some yellow markings on
 8 it and -- to the pertinent paragraphs,
 9 and I don't recall any formal documents
 10 regarding the decision or -- there could
 11 be, I just don't recall. It's been a
 12 while since I had that file. It was. . .
 13 BY MR. GOLDBERG:
 14 Q You said that this didn't involve a
 15 formal process, did I hear you correctly?
 16 A Yes.
 17 Q Does the County consider its legal
 18 obligations with respect to the Florida Public
 19 Service Commission as serious and important
 20 issues?
 21 MR. HOPE: Objection to form.
 22 THE WITNESS: Yes.
 23 I just remembered, there could be
 24 the application form itself, I might
 25 still have that in my files. That's the

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1 one document that I remember reviewing.
 2 BY MR. GOLDBERG:
 3 Q You'd agree with me that whether or not
 4 the County complies with Florida statutes as it
 5 relates to the PSC or the Florida Public Service
 6 Commission's rules and regulations is a pretty
 7 important and serious issue, correct?
 8 A Yes.
 9 Q And you'd agree that the County would
 10 seemingly want to endeavor to ensure to the best
 11 of its ability to analyze and make every effort
 12 to comply with any obligations that may exist?
 13 MR. HOPE: Objection to form.
 14 BY MR. GOLDBERG:
 15 Q Do you agree with that?
 16 A Yes.
 17 Q So then can you explain to me why the
 18 decision as to whether or not to apply to the PSC
 19 for a certificate was -- did not involve a formal
 20 process and was simply a couple of people getting
 21 together and looking at some documents in a very
 22 short period of time and, as you've testified,
 23 just sort of being dropped and never followed up
 24 on?
 25 MR. HOPE: Objection to form.

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1 THE WITNESS: Can I explain why that
 2 happened? No.
 3 BY MR. GOLDBERG:
 4 Q Do you think, looking back, that it was
 5 an appropriate manner in which to make the decision
 6 MR. HOPE: Objection to form.
 7 THE WITNESS: The decision was made
 8 by the parties that had the most
 9 knowledge on the subject matter, based on
 10 information received and documents and
 11 discussing with Orlando, like I said, and
 12 I think it was a good decision based on
 13 fact. And that's all I can say.
 14 I don't, you know, I don't know how
 15 much of a process that would have been
 16 appropriate, but we felt that we -- that
 17 the decision was made with the right
 18 facts and in the best interests of the County.
 19 BY MR. GOLDBERG:
 20 Q You said it was made by the proper
 21 parties. When you use the word parties, does
 22 that mean -- was that referring to you and
 23 Mr. Jenkins and counsel, as you recall that may
 24 or may not have been involved?
 25 A Yes, that was what I was referring to.

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1 Q Do you have any -- and one of the
 2 reasons you've given -- the first reason you gave
 3 was an interpretation I guess of the airport
 4 exemption rule or a Florida statute/law, is that
 5 correct?
 6 A Yes.
 7 Q Okay, let me first ask you, do you have
 8 any legal training or experience, formal legal
 9 training or experience?
 10 A No.
 11 Q Does Mr. Jenkins have any formal legal
 12 training or experience?
 13 A Not to my knowledge.
 14 Q Have you ever appeared before the
 15 Florida Public Service Commission in any capacity
 16 in your career?
 17 A No.
 18 Q To your knowledge has Mr. Jenkins ever
 19 appeared before the Florida Public Service
 20 Commission in any capacity in his career?
 21 A Not to my knowledge.
 22 Q Have you ever written any documents
 23 which interpret the Florida telecommunications
 24 statutes or rulings and regulations in your
 25 career?

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1 **A** In my previous job I was -- part of my
 2 responsibilities was to be the liaison with the
 3 issues related to the Public Service Commission
 4 regarding provisioning of local service,
 5 interaction with Bell Companies and local service
 6 providers, and I've always been involved in this,
 7 it was part of my responsibilities, it was
 8 actually in my -- writing in my responsibilities:
 9 to be that person dealing with the regulatory
 10 matters.
 11 **Q** And what years did you occupy that
 12 position?
 13 **A** Eleven years, from the -- 15 years ago,
 14 I guess -- where are we at, 2003? So it's, do
 15 the math --
 16 **THE REPORTER:** So what?
 17 **THE WITNESS:** It's from I guess
 18 with, '88, somewhere in there.
 19 **BY MR. GOLDBERG:**
 20 **Q** Have you ever dealt previously with
 21 what you referred to as the airport exemption
 22 rule, prior to --
 23 **A** I've seen it, but I never dealt with
 24 it.
 25 **I mean I had the document in my**

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1 possession before I ever started working at the
 2 airport, but -- I remember reading it, but not
 3 involved in the sense that it was an issue that I
 4 was involved in, no.
 5 **Q** Prior to this decision being made,
 6 other than reading the airport exemption rule,
 7 can you tell me what other experience you've had
 8 in working with that rule or analyzing that rule
 9 or applying that rule?
 10 **A** None.
 11 **Q** Prior to this decision being made in
 12 2002 by the County can you tell me whether
 13 Mr. Jenkins had any prior experience with the
 14 airport exemption rule or worked with that rule
 15 or applied it in any manner, shape or form?
 16 **A** I cannot answer that. I don't know.
 17 **Q** Are you aware of any experience he had
 18 with that rule?
 19 **MR. HOPE:** Objection to form.
 20 **THE WITNESS:** I don't -- I'm not
 21 aware of it, but I don't know.
 22 **BY MR. GOLDBERG:**
 23 **Q** Other than reading the text of the
 24 airport exemption rule, were you aware then of
 25 any other legal or factual authority that

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1 supported your interpretation of the airport
 2 exemption rule?
 3 **A** Well, Orlando Airport provided
 4 information, because I believe they were involved
 5 in a legal process with the Public Service
 6 Commission, and we had discussions and they
 7 provided opinions regarding our situation based
 8 on their own experiences.
 9 **Q** Other than the Orlando Airport
 10 discussion, which we'll talk about later, is
 11 there any other legal, factual or other authority
 12 that supported your interpretation of the airport
 13 exemption rule, leading you not to file an
 14 application for a certificate?
 15 **A** No.
 16 **Q** Since the time of making that decision
 17 have you been made aware or are you knowledgeable
 18 about any legal, factual or other authority that
 19 supports the County's decision not to file an
 20 application for a certificate with the PSC?
 21 **A** Not any -- no, I'm not aware of any new
 22 information since that time. I have not reviewed
 23 that subject matter.
 24 **Q** Prior to the decision being made as to
 25 whether or not the County should file an

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1 application for a certificate, did the County
 2 receive any legal opinion to support your
 3 position or decision not to file?
 4 **A** You mean from outside, other than the
 5 counsel present?
 6 **Q** Any legal opinions.
 7 **A** I really can't say whether the County
 8 received any legal opinion from counsel, because
 9 he might have said something when I wasn't
 10 present.
 11 But we didn't receive any opinions from
 12 anybody outside, other than the -- our counsel.
 13 **Q** Since the time the decision was made
 14 not to file an application in 2002, has the
 15 County received any legal opinion that you're
 16 aware of that supports that decision?
 17 **A** Not to my knowledge.
 18 **Q** Has the County received any legal
 19 opinion that goes contrary to that decision?
 20 **A** Not to my knowledge.
 21 **Q** Prior to the time the County's decision
 22 was made not to file an application with the PSC
 23 in 2002, did the County make any attempts to
 24 contact the Public Service Commission to review
 25 whether or not the PSC believed that the County

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1 needed to file a certificate?
 2 A Not to my knowledge.
 3 Q Since the time the decision was made by
 4 the County in 2002 not to file an application for
 5 a certificate with the PSC, has the County in any
 6 manner, shape or form made an effort to contact
 7 the PSC to revisit or review that prior decision?
 8 A I believe there has been one contact
 9 made by my boss, perhaps, to some member of the
 10 PSC. Maybe they exchanged some e-mails, one
 11 e-mail. It wasn't a formal -- there was a
 12 contact, it wasn't a formal thing.
 13 But I never saw the, I never saw the
 14 documentation or the e-mails.
 15 Q Going back to two questions ago, just
 16 to make sure the record is clear, did you --
 17 strike that -- were you involved in any
 18 communications with the PSC regarding whether to
 19 file an application for a certificate, either
 20 before the decision was made not to file or after
 21 the decision was made not to file?
 22 A No.
 23 Q Has the County filed any application
 24 with the Florida Public Service Commission for
 25 the provision of any telephone service at the

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1 Miami International Airport or any other airports
 2 here in Miami-Dade County?
 3 A Not to my knowledge.
 4 Q When you testified about the decision
 5 made to file or not to file a certificate, are
 6 you stating that it was the County's decision and
 7 the County's decision alone not to file a
 8 certificate?
 9 MR. HOPE: Objection to form.
 10 BY MR. GOLDBERG:
 11 Q Did you understand my question? I'll
 12 withdraw it and I will ask it again.
 13 When we have been speaking about the
 14 County's decision not to file a certificate with
 15 the PSC, I want to make sure the record is clear
 16 that that decision was made by the County and not
 17 by, or affected by any other third party such as
 18 Nextira or any other entity?
 19 A Oh, no, it was definitely only the
 20 County making that decision.
 21 Q And at that time in 2002 would you
 22 agree with me that it was the County's
 23 responsibility to make that decision as to
 24 whether or not to file or not file?
 25 A Yes.

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1 MR. HOPE: Objection to form.
 2 BY MR. GOLDBERG:
 3 Q Let's talk about the two reasons that
 4 you've given. Let's take them one by one. The
 5 first reason you gave was that you believe that
 6 the Miami International Airport -- strike that --
 7 that the County is relieved of an obligation to
 8 file a certificate with the PSC because of what
 9 you've called the airport exemption rule, is that
 10 correct?
 11 A Correct.
 12 Q What is it about the airport exemption
 13 rule that led you to believe that the County need
 14 not file a certificate?
 15 A Well, it's the words that are stated in
 16 the PSC document that the airports are exempt
 17 from getting a certificate as long as the
 18 services are provided for the safe and efficient
 19 processing of passengers at the airport.
 20 Q So is it your view that -- strike that.
 21 Is there any other aspect of the
 22 airport exemption rule that you believe supports
 23 the County's decision not to have to file an
 24 application with the PSC?
 25 A Well, it's the content of the document.

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1 I don't have the document in front of me, but
 2 there's a couple of places where there -- that is
 3 stated, and based on the document's content it
 4 was, it was deemed that that wasn't necessary
 5 Q Let me show you what I've marked as
 6 Cert-4, which is a copy of what's been referred
 7 to in this deposition as the airport exemption
 8 rule, Rule 25-24.580.
 9 Let me know when you've had an
 10 opportunity to review that.
 11 A Yes, I have.
 12 Q Now in your answers under oath at this
 13 deposition you have summarized, I will use the
 14 word, the first sentence of the airport exemption
 15 rule which says, and I'll read it: "Airports
 16 shall be exempt from other STS rules due to the
 17 necessity to ensure the safe and efficient
 18 transportation of passengers and freight through
 19 the airport facility."
 20 A Right.
 21 Q Correct? Is that the sentence that you
 22 relied on in making the decision not to apply for
 23 a certificate?
 24 A That was one sentence. We basically
 25 relied on this whole paragraph that you just

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1 showed me here.
 2 Q Well, what else in the paragraph are
 3 you relying -- were you relying on that supported
 4 your decision not to apply?
 5 A It was deemed that the airport
 6 basically is complying with this whole paragraph.
 7 Q Tell me how.
 8 A Well, we have -- we serve a hotel;
 9 however, we are partitioning the trunks. We are
 10 not providing --
 11 THE REPORTER: Serving a hotel?
 12 THE WITNESS: We are serving -- we
 13 are providing services to a hotel, to the
 14 airport hotel, but we are partitioning
 15 the trunks, and we're not serving
 16 shopping malls and industrial parks.
 17 And so therefore, according to what
 18 this paragraph says, we have the right to
 19 provide STS services without a certificate.
 20
 21 BY MR. GOLDBERG:
 22 Q Any other reasons from the airport
 23 exemption rule that you believe support your
 24 decision?
 25 A Not from this -- well, as far as this

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1 paragraph is concerned, we meet all those
 2 requirements.
 3 Q Let me focus in on the second sentence
 4 of the airport exemption rule. It says: "The
 5 airport shall obtain a certificate as a shared
 6 tenant service provider before it provides shared
 7 local services to facilities such as hotels,
 8 shopping malls and industrial parks."
 9 Did I read that correctly?
 10 A Yes.
 11 Q Now the airport provides shared tenant
 12 services to a hotel, correct?
 13 A Correct.
 14 Q And is it your testimony that, because
 15 you don't provide telephone service to a shopping
 16 mall or an industrial park, that there is no need
 17 to file a certificate?
 18 MR. HOPE: Objection to form.
 19 THE WITNESS: Right.
 20
 21 BY MR. GOLDBERG:
 22 Q Can you explain to me how you've taken
 23 into account the wording of this sentence in
 24 reaching the conclusion that you just reached,
 25 where it says that before -- "The airport shall

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1 obtain a certificate as a shared tenant service
 2 provider before it provides shared local services
 3 to facilities such as hotels, shopping malls and
 4 industrial parks?
 5 A Well --
 6 Q And I emphasize, just for the record,
 7 the words "such as." Don't you read that to be
 8 non-limiting and meaning that the hotels,
 9 shopping malls and industrial parks are just
 10 simple examples of commercial entities?
 11 MR. HOPE: Objection to form.
 12 THE WITNESS: Well, but then you're
 13 missing the last paragraph which says, if
 14 the airport partitions its trunks, it
 15 shall be exempt from the other STS rules
 16 for service provided only to the airport
 17 facility.
 18 So because we partitioned the trunks
 19 providing services to the hotel, that
 20 qualifies for providing the service
 21 without the certificate.
 22 BY MR. GOLDBERG:
 23 Q And we will discuss that and the third
 24 sentence in due course, we'll get there, I
 25 promise you. Let's go back to my question which

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1 you didn't answer.
 2 You would agree with me, would you not,
 3 that the language of the rule that says
 4 facilities such as hotels, shopping malls and
 5 industrial parks is non-limiting, meaning that
 6 hotels, shopping malls and industrial parks are
 7 just examples of, quote unquote, these facilities?
 8 MR. HOPE: Objection to form.
 9 THE WITNESS: No, I don't agree with
 10 you, because the "however" right after
 11 that statement qualifies that statement
 12 that you just read, so you cannot take it
 13 on its own merit because the next
 14 sentence qualifies that statement.
 15 BY MR. GOLDBERG:
 16 Q So when you made the decision --
 17 A Excuse me. Go ahead.
 18 Q Just so I understand you, is it your
 19 testimony that when the County made the decision
 20 not to apply for a certificate to the PSC, that
 21 it read this sentence as only pertaining to
 22 hotels, shopping malls and industrial parks, and
 23 no other type of facility or commercial entity
 24 like that?
 25 MR. HOPE: Objection to form.

1 THE WITNESS: We read the statement
 2 that if we -- since we did not provide
 3 service to shopping malls and industrial
 4 parks, but we did provide to a hotel with
 5 partition trunks, we met the requirements
 6 of this paragraph.
 7 BY MR. GOLDBERG:
 8 Q So in your decision -- strike that.
 9 In the discussion that you had with
 10 Mr. Jenkins leading to this decision, you only
 11 considered hotels, shopping malls and industrial
 12 parks, and gave no thought or weight to whether
 13 or not the County was providing telephone service
 14 to any other, quote unquote, facility, is that
 15 correct?
 16 MR. HOPE: Objection to form.
 17 THE WITNESS: We gave consideration
 18 to the three items that are mentioned in
 19 this paragraph.
 20
 21 BY MR. GOLDBERG:
 22 Q And no others, is that correct?
 23 A Correct.
 24 Q Now sitting today in 2004 with me
 25 reading this airport exemption rule to you and

1 highlighting that the text says facilities such
 2 as, quote unquote, would you agree with me that
 3 your construction and reading of this language
 4 back in 2002 was incorrect?
 5 MR. HOPE: Objection to form.
 6 THE WITNESS: No, I don't agree with you.
 7 BY MR. GOLDBERG:
 8 Q So as you sit here today and it's been
 9 read to you and you've looked at it, is it your
 10 testimony that the airport exemption rule only
 11 relates to a hotel, to a shopping mall and to an
 12 industrial park, but to no other similar, quote
 13 unquote, facility?
 14 MR. HOPE: Objection to form.
 15 THE WITNESS: Our interpretation was
 16 to consider the three, the three
 17 facilities mentioned here, and those are
 18 the ones that we considered.
 19 BY MR. GOLDBERG:
 20 Q And my question that I asked which was
 21 not answered and I will ask again is, as you sit
 22 here today in December 2004, after having read
 23 the airport exemption rule at this deposition,
 24 and having discussed it, is it still your view
 25 that the airport exemption rule is limited to

1 three entities and three entities alone: a hotel,
 2 a shopping mall, an industrial park, and no other
 3 similar type, quote unquote, facility?
 4 MR. HOPE: Objection to form.
 5 THE WITNESS: I have the same
 6 interpretation that I had in 2002.
 7 BY MR. GOLDBERG:
 8 Q Please explain to me then how you
 9 interpret the words "such as" in that sentence.
 10 A Well, facilities that are hotels,
 11 shopping malls and industrial parks, and since
 12 they're not -- any other facilities that might be
 13 implied here are not stated here, how can you
 14 consider something that you don't know what it is?
 15 So they were not considered.
 16 Q Going to the next sentence: "However,
 17 if the airport partitions its trunks, it shall be
 18 exempt from other STS rules for service provided
 19 only to the airport facility."
 20 Now you said -- was that sentence
 21 considered in 2002 in making your and
 22 Mr. Jenkins' decision not to file for a
 23 certificate with the PSC?
 24 MR. HOPE: Objection to form.
 25 THE WITNESS: Yes, it was considered.

1 BY MR. GOLDBERG:
 2 Q Tell me how it was considered and how
 3 it supported your decision not to file for a
 4 certificate.
 5 A Well, we had -- we were servicing the
 6 hotel, we had partitioned the trunks, and we were
 7 not providing services to industrial parks or
 8 shopping malls, so that didn't apply.
 9 So we were meeting the rule of
 10 partitioning trunks to the hotels.
 11 Q By the way, let me go back to the prior
 12 sentence for a second, I apologize, we'll come
 13 back to the last sentence.
 14 The words "shopping malls," how did you
 15 interpret that in 2002? What did that mean to you?
 16 A It was to me, or to us, it was a mall
 17 located -- freestanding mall where people from
 18 the outside come shopping, like many malls that
 19 we have in all cities.
 20 Q Did you interpret that word, shopping
 21 mall, to include a shopping mall on the airport
 22 property or off the airport property or both?
 23 A Both.
 24 Q How do you provide telephone service to
 25 a shopping mall?

<p style="text-align: right;">Page 50</p> <p>1 MR. HOPE: Objection to form. 2 THE WITNESS: How? You run the 3 lines to the shopping mall and connect 4 them to your PBX that you have to provide 5 service to the airport -- 6 THE REPORTER: Provide service to 7 the airport, what? 8 THE WITNESS: That you run lines to 9 the shopping mall to provide services 10 from the PBX that the airport owns. 11 BY MR. GOLDBERG: 12 Q When you run a line to the shopping 13 mall, per your testimony today, where does that 14 line go? 15 A Well, if you're providing phone 16 services, it goes from the PBX to the actual 17 phone that the, let's say the stores or whoever 18 is in the mall uses. 19 Q So when you're referring to a shopping 20 mall and you read that word in the airport 21 exemption rule, is it not correct that you're -- 22 would view that as providing telephone service to 23 the stores that make up the mall? 24 MR. HOPE: Objection to form. 25 THE WITNESS: To the stores that</p>	<p style="text-align: right;">Page 52</p> <p>1 that sell clothes? 2 A Yes. 3 Q Now this is an airport exemption rule, 4 you'd agree that the rule we're discussing 5 pertains just to airports, correct? 6 A Yes. 7 Q So you'd agree that it contemplates 8 stores such as restaurants, clothing stores or 9 bars that are in an airport, correct? 10 MR. HOPE: Objection to form. 11 THE WITNESS: I don't understand the 12 question. 13 I think the definition of shopping 14 mall is a definition where they have a 15 lot of stores where people go from the 16 outside, from all over the place, just to 17 shop there. 18 I don't quite understand your question. 19 BY MR. GOLDBERG: 20 Q Sir, let me rephrase it. I apologize 21 if you didn't understand. 22 Wouldn't you agree with me that the 23 shopping-mall language contained in the airport 24 exemption rule applies to stores such as 25 restaurants, bars or clothing stores that are</p>
<p style="text-align: right;">Page 51</p> <p>1 are -- make up the shopping mall, yes. 2 BY MR. GOLDBERG: 3 Q Okay, because you'd agree with me it's 4 hard to provide telephone service to this entity, 5 this, quote unquote, mall? 6 A Correct, I agree, the mall is not an 7 entity, it's the stores that provide inside the 8 mall. 9 Q What kind of stores would you generally 10 find in a shopping mall? 11 MR. HOPE: Objection. 12 THE WITNESS: Basically a mall is 13 all kinds of stores, from clothing to 14 kitchen, linens and things, basically 15 that sells all kinds of items that people 16 from all over the place come just to shop 17 there. 18 BY MR. GOLDBERG: 19 Q Do you have -- would you agree with me 20 that those stores would include restaurants? 21 A Yes, malls have restaurants, yes. 22 Q And would you agree with me that malls 23 sometimes have bars? 24 A They have bars. 25 Q And that malls sometimes have stores</p>	<p style="text-align: right;">Page 53</p> <p>1 present in an airport? 2 A No, they're present in a shopping mall. 3 Q So is it your testimony here today that 4 an airport cannot have a shopping, a shopping 5 mall or a mall of shops inside the airport 6 premises? 7 A I'm saying -- 8 Q Is that your testimony? 9 A My testimony is that MIA does not have 10 a shopping mall inside the airport. 11 Q Does it have shops inside the airport? 12 A Yes, it does. 13 Q Does it have restaurants inside the 14 airport? 15 A Yes, it does. 16 Q Does it have clothing stores inside the 17 airport? 18 A Yes, it does. 19 Q Does it have bars inside the airport? 20 A Yes, it does. 21 Q But it's your testimony that those 22 shops don't make up a shopping mall inside the 23 airport? 24 A The inter -- correct, the 25 interpretation was that a shopping mall is where</p>

1 people from outside just go there shopping.
 2 The people that go at the airport, they
 3 go -- most of the things that are sold are for
 4 the convenience of passengers traveling through
 5 the airport, and the people that go shop there
 6 are because they're involved in traveling, not --
 7 they don't come from the outside to shop there.
 8 Q And is it, along those lines, are you
 9 interpreting shopping malls and did you interpret
 10 the words shopping malls back in 2002 as being
 11 something like the Dadeland Mall in South Miami
 12 or Aventura Mall in North Miami or the Sawgrass
 13 Mills Mall in Sawgrass?
 14 A Any other mall where people go
 15 shopping, yes, those and any other kind of mall
 16 where people go just there to shop.
 17 Q Can you give me any examples of an
 18 airport at any place in this country which
 19 provides telephone service to a mall as you've
 20 defined it, such as, you know, Dadeland or
 21 Sawgrass or Aventura?
 22 A No, I can't.
 23 Q Back in 2002 when the decision was
 24 made, you'd agree with me that the airport was
 25 providing telephone service to certain

1 restaurants or shops or bars inside the airport,
 2 correct?
 3 A Yes.
 4 Q But back in 2002 your interpretation of
 5 shopping malls did not include any of those
 6 shops, restaurants or bars, et cetera, is that
 7 correct?
 8 A We felt that we didn't have a shopping
 9 mall at the airport, so that did not apply to MIA.
 10 Q Was there any authority that you had in
 11 2002 other than you and Mr. Jenkins' review of
 12 this language that supported that interpretation
 13 of the words shopping mall?
 14 MR. HOPE: Objection to form.
 15 THE WITNESS: Well, like I said, it
 16 was me, Mr. Jenkins and possibly Mr. Hope
 17 that provided an opinion, and other than
 18 that I don't recall anybody else offering
 19 an opinion on this.
 20
 21 BY MR. GOLDBERG:
 22 Q Not just offering an opinion, were you
 23 aware of any other authority, factual, legal or
 24 otherwise, that supported the interpretation of
 25 shopping malls that you just testified to at this

1 deposition?
 2 A Well, I believe the Orlando folks felt
 3 the same way that we did.
 4 Q Talk about Orlando in a second, but is
 5 it your testimony that they had malls and shops
 6 inside the airport as well that they were
 7 providing service to?
 8 MR. HOPE: Objection to form.
 9 THE WITNESS: No, they were
 10 providing services to shops, not to
 11 malls, that are located at the airport.
 12 BY MR. GOLDBERG:
 13 Q When you read the term industrial parks
 14 back in 2002 during this decision-making process,
 15 what was your interpretation of what industrial
 16 parks meant?
 17 A Industrial park, the way I would
 18 interpret it is it's a conglomeration of
 19 warehouses, office buildings with different
 20 companies residing in there renting space and --
 21 or owning space, and conducting all kinds of
 22 different businesses.
 23 In other words mostly not condominiums
 24 or people living there, but just basically a
 25 place to conduct businesses of different types.

1 Q Could I ask you to read back his last
 2 answer, please?
 3 Thank you.
 4 (Record read by reporter)
 5 BY MR. GOLDBERG:
 6 Q Back in 2002 when the decision not to
 7 file a certificate was made with the PSC, were
 8 there industrial parks, given your
 9 interpretation, at or on the premises of the
 10 Miami International Airport?
 11 A No.
 12 Q Were there any offices or office -- any
 13 commercial offices at the Miami International
 14 Airport?
 15 MR. HOPE: Objection to form.
 16 THE WITNESS: There were offices,
 17 commercial offices dedicated to, related
 18 to the airport business and the
 19 conduction of moving passengers and cargo
 20 at the airport.
 21 BY MR. GOLDBERG:
 22 Q Were there any warehouses at the Miami
 23 International Airport?
 24 A There are warehouses, again dedicated
 25 to the aviation industry, passengers and cargo.

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1 Q Did the County at that time the
 2 decision was made provide telephone service to
 3 any of these offices, or warehouses, or what
 4 you've termed or interpreted as an industrial
 5 park?
 6 A The decision that was made was related
 7 to providing services to any companies providing
 8 activities related to the moving of passengers or
 9 cargo at the airport.
 10 And to my knowledge there was no
 11 businesses residing at the airport facility that
 12 did not have something to do with the moving of
 13 passengers or cargo at the airport.
 14 Q Why do you relate the provision of
 15 service to an industrial park to your comments
 16 about the safe and efficient transportation of
 17 passengers through the airport facility?
 18 A The, the definition an industrial park
 19 is the conglomeration of businesses, warehouses,
 20 factories, what have you, that do not have a
 21 common goal, they have different activities for
 22 different purposes.
 23 At the airport the businesses that
 24 reside there are all oriented towards the moving
 25 of passengers or cargo through the airport, and

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1 that is a big difference.
 2 Q Where in the sentence where it says:
 3 "The airport shall obtain a certificate as a
 4 shared tenant service provider before it provides
 5 shared local services to facilities such as
 6 hotels, shopping malls and industrial parks,"
 7 where does it state or relate anything having to
 8 do with the safe and efficient transportation of
 9 passengers through the airport?
 10 MR. HOPE: Objection to form.
 11 THE WITNESS: It was taken from the
 12 first sentence in that paragraph.
 13 BY MR. GOLDBERG:
 14 Q Does the second sentence -- is the
 15 second sentence conditioned on the first sentence?
 16 Or wouldn't you agree with me that the
 17 second sentence is an exception to the first
 18 sentence?
 19 MR. HOPE: Objection to form.
 20 THE WITNESS: No, I -- we
 21 interpreted that first sentence to be
 22 all-encompassing, as long as you are
 23 dealing with the safe and, safe and
 24 efficient transportation of passengers
 25 and freight through the airport

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1 facilities, that that would entitle the
 2 airport to be exempt from the certificate.
 3 BY MR. GOLDBERG:
 4 Q If that were the case, what would be
 5 the need for the second sentence or the third
 6 sentence at all?
 7 A I can't answer that.
 8 Q Wouldn't you agree that the second and
 9 third sentence are inconsistent with the view
 10 that you just gave?
 11 MR. HOPE: Objection to form.
 12 THE WITNESS: Not necessarily. Some
 13 airports could have in their grounds
 14 outside the airport a shopping mall that
 15 they want to provide services to.
 16 BY MR. GOLDBERG:
 17 Q Going back to the third sentence,
 18 however -- it says: "However, if the airport
 19 partitions its trunk, it shall be exempt from
 20 other STS rules for service provided only to the
 21 airport facility."
 22 How was that sentence taken into
 23 consideration in making your decision to not file
 24 a certificate with the PSC in 2002?
 25 A As I explained before, we were

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1 providing services to a hotel, and we had the
 2 trunks partitioned; therefore, we don't have
 3 to -- we're exempt from the STS rules as far as
 4 getting a certificate.
 5 That's the way it was interpreted.
 6 Q Is it your interpretation that the
 7 third sentence relieves the County, just relating
 8 to the hotel for a second, relieves the County
 9 from applying for a certificate if it partitions
 10 its trunks to the hotel?
 11 A Yes.
 12 Q The second sentence says the airport
 13 shall obtain a certificate, the third sentence
 14 says if it partitions its trunks it shall be
 15 exempt from other, quote unquote, STS rules for
 16 service.
 17 Does it say in there it's exempt from
 18 obtaining a certificate?
 19 A It doesn't say, it doesn't mention the
 20 certificate here. However, the document is a lot
 21 more than this paragraph.
 22 Q Well, what do you mean, the document is
 23 a lot more than this paragraph?
 24 A The whole document is a lot more than
 25 just this paragraph.

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1 Q What document are you referring to?
 2 A The Florida statutes, wherever this
 3 paragraph was taken from, contains a lot more
 4 than just this paragraph.
 5 So the overall opinion by reading the
 6 document was that, like I said, since we don't
 7 provide services to shopping malls and industrial
 8 parks, but only to a hotel as mentioned here, and
 9 we do partition the trunks in the hotel, that we
 10 were not required to have a certificate, since
 11 the document expressly says that airports are
 12 exempt from getting a certificate.
 13 Q All right, the document that's in front
 14 of you, Cert-4, the airport exemption rule, I
 15 just want to make sure the record is clear, are
 16 you saying this isn't the entire airport
 17 exemption rule that you've testified about?
 18 A No, I'm saying that the document to my
 19 recollection, it's -- there's a lot more in that
 20 document, the PSC document, than just this
 21 paragraph.
 22 It might have another title, but it
 23 goes obviously --
 24 Q Would you agree -- I'm sorry, go ahead.
 25 A It has to be more, because the word

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1 certificate, I don't believe it's mentioned here.
 2 Is the word certificate in this
 3 paragraph?
 4 Q No, it isn't, that's my --
 5 A There has to be some more to it than
 6 that.
 7 Q Is there anywhere in this paragraph,
 8 this airport exemption rule, which says that an
 9 airport is exempt from filing a certificate?
 10 A If you put it in those words, those
 11 words are not in this paragraph.
 12 Q Okay, quite to the contrary, you'd
 13 agree with me that it says the airport shall
 14 obtain the certificate, there's an affirmative
 15 obligation, correct?
 16 A No, it doesn't say that, because it
 17 qualifies that statement in the next sentence.
 18 Q In the last sentence?
 19 A In the "however," and beyond.
 20 Q Where in the text of the last sentence
 21 does it say that, however, if an airport
 22 partitions its trunk it shall be exempt from the
 23 obligation to get a certificate or apply for a
 24 certificate?
 25 A The word certificate is not there. But

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1 it says it's exempt from the other STS rules for
 2 service.
 3 Q And how do you interpret other STS
 4 rules? What does other leave out, in other words?
 5 A It was interpreted --
 6 MR. HOPE: Objection to form.
 7 THE WITNESS: It was interpreted to
 8 be the need to get a certificate.
 9 BY MR. GOLDBERG:
 10 Q Let me mark for you -- we'll continue
 11 on with the issue of applying for a
 12 certificate -- I'm going to show you what's been
 13 marked as Plaintiff's Cert-5, which is a copy
 14 of --
 15 MR. HOPE: Thank you.
 16 BY MR. GOLDBERG:
 17 Q -- Rule 25.24.567 of the Florida
 18 Administrative Code, of Title 25 of the Public
 19 Service Commission, and it's entitled Application
 20 For Certificate.
 21 Did I read that correct?
 22 A Mm-hmm. Yes.
 23 Q Why don't you take a minute to look at
 24 that document, please?
 25 Have you had an opportunity to review

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1 that?
 2 A Yes, Sir.
 3 Q Okay. Now this rule deals specifically
 4 with the application for a certificate, what
 5 we've just been speaking about, you'd agree with
 6 me on that, correct?
 7 A Yes.
 8 Q Okay, let me refer you to paragraph 1
 9 where it says: "An applicant desiring to provide
 10 shared tenant service shall" -- I want to
 11 emphasize the word shall -- "submit an
 12 application on Commission Form PSC/CNP 57. This
 13 is incorporated into this rule by reference."
 14 Did I read that correctly?
 15 A Yes, you did.
 16 Q Would you agree with me that the
 17 Florida Public Service Commission requires that
 18 any applicant who desires to provide shared
 19 tenant service shall submit an application?
 20 A Yes and no. It says so here, but
 21 however again this paragraph is qualified in the
 22 next section which you read before, the airport
 23 exemption.
 24 So the paragraph cannot be taken in its
 25 own context without reading the whole document.

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1 Q So is it your testimony today that the
 2 airport exemption rule 25.24.580 is an exception
 3 to this rule dealing with application for a
 4 certificate?
 5 A The other -- the airport exemption
 6 refers to the other STS rules, and this was
 7 interpreted to be one of them.
 8 Q But as we've talked about in the
 9 airport exemption rule, after it says it shall be
 10 exempt from other STS rules, the next, very next
 11 sentence in the airport exemption rule says the
 12 airport shall obtain a certificate as a shared
 13 tenant service provider, so how do you reconcile
 14 that fact with your interpretation?
 15 A I think we already went through this at
 16 length and I explained why that is: because we
 17 don't provide services to shopping malls and
 18 industrial parks, and we do provide to a hotel
 19 and we partition the trunks, and it says so, that
 20 if you partition the trunks, you are exempt from
 21 the other STS rules.
 22 Q Did you consider the rule relating to
 23 application for a certificate in 2002 when the
 24 County made its decision not to file an
 25 application with the PSC?

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1 MR. HOPE: Objection to form.
 2 THE WITNESS: We were aware that the
 3 document stated that for other than
 4 airports, people -- anybody desiring to
 5 provide shared tenant services other than
 6 airports would have to apply for a
 7 certificate.
 8 BY MR. GOLDBERG:
 9 Q And you'd agree with me that this rule
 10 that I just read, where it uses the word shall,
 11 shall is something that means that it's
 12 mandatory, that it's required, and that there's
 13 no discretion involved?
 14 MR. HOPE: Objection to form.
 15 THE WITNESS: Shall means that, what
 16 you described, yes.
 17 BY MR. GOLDBERG:
 18 Q Can you explain to me why the County,
 19 in making its decision not to file, concluded
 20 that it was the County who could decide whether
 21 or not -- strike that.
 22 When the County decided not to file did
 23 the County decide on its own that the airport
 24 exemption rule applied to it?
 25 MR. HOPE: Objection to form.

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1 THE WITNESS: We decided on our own
 2 with the help of this document and the
 3 Orlando airport experience, yes.
 4 BY MR. GOLDBERG:
 5 Q What authority or support can you
 6 provide me, or facts that support the County's
 7 decision that it could make such a determination
 8 on its own?
 9 MR. HOPE: Objection to form.
 10 MR. GOLDBERG: Strike it, I'll
 11 withdraw the question.
 12 BY MR. GOLDBERG:
 13 Q What facts can you give me that support
 14 the County's view in 2002 that it could
 15 self-determine whether or not the airport
 16 exemption rule applied?
 17 Do you have any?
 18 A The County, or the parties involved in
 19 this case, we make decisions all the time of the
 20 business and legal nature relating to the airport
 21 business.
 22 And this was just another decision that
 23 was made in the course of conducting our
 24 businesses there. That's what we get paid to do.
 25 Q Was there any support for your position

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1 that the County could self-determine whether or
 2 not the airport exemption rule applied instead of
 3 having the PSC make that determination?
 4 A Support meaning third-party opinion
 5 whether we should do it instead of the PSC. Is
 6 this your question?
 7 Q Are you aware of any facts --
 8 A What does support mean?
 9 Q -- that supports your decision,
 10 supports your view?
 11 A The fact of this document itself and
 12 the --
 13 THE REPORTER: The what?
 14 THE WITNESS: This document that we
 15 have in front of us and other pages that
 16 are not here, and also the opinion of the
 17 Orlando Airport based on the process that
 18 they went through with the Public Service
 19 Commission.
 20 BY MR. GOLDBERG:
 21 Q That's what you're relying on to
 22 support your view that it was the County who
 23 could determine whether or not the airport
 24 exemption rule applied instead of making an

1 application for a certificate and having the PSC
2 determine whether or not the airport exemption
3 rule applied?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The decision was made
6 to make the decision, instead of applying
7 for a certificate.

8 BY MR. GOLDBERG:

9 Q I understand the decision was made not
10 to apply for a certificate. My question is what
11 led the County to conclude that it could make the
12 decision as to whether or not the airport
13 exemption rule applied, instead of having the PSC
14 make that decision?

15 A I can't answer that. We just made the
16 decision not to apply.

17 Q To your knowledge has the PSC ever
18 ruled that the Miami International Airport --
19 strike that -- that the County falls within the
20 airport exemption rule?

21 A No.

22 Q Other than the airport exemption rule,
23 Cert-4, the exhibit I showed you, are there any
24 other Florida laws or statute or rules that you
25 or Mr. Jenkins and Mr. Hope reviewed in making

1 BY MR. GOLDBERG:

2 Q The second reason you gave was
3 circumstances relating to the Orlando
4 International Airport.

5 A Right.

6 Q Can you detail for me and explain how
7 it is that Orlando's airport was brought to your
8 attention in the context of whether or not to
9 make an application to the PSC or not?

10 A Well, Orlando is a an important airport
11 in Florida so we, we had other issues that we
12 wanted to see how Orlando was functioning in
13 general about other telecommunications and
14 information-technology issues, so we contacted
15 them as a matter of peer information.

16 And one of the things that we asked
17 them is about this issue of the providing
18 services, and they had been involved in a, what
19 they described as a lengthy process with the
20 Public Service Commission on this issue, and
21 basically they provided the -- their opinion
22 that, since they're very similar to us in what
23 they provide over there, that we don't need a
24 certificate to do the same thing.

25 Q Who had the contact with the initial --

1 the decision not to file an application?

2 MR. HOPE: Objection to form.

3 THE WITNESS: We read this whole
4 document, like I said, this is just two
5 pages of this bigger document, and that
6 was the only document that we read.

7 BY MR. GOLDBERG:

8 Q What document are you referring to?

9 A I'm referring to the document where
10 these rules are contained, the Florida
11 Administrative Code, whatever -- the Title 25.

12 Q Did you read all of Title 25? Is that
13 the document?

14 A Chapter 25-24, yes, I think, I believe
15 I read the whole thing.

16 Q Are there any other provisions that you
17 recall of Chapters 24 or 25 that supported your
18 decision not to file an application for a
19 certificate?

20 MR. HOPE: I think you mean 25-24.

21 THE WITNESS: 25-24, yes.

22 MR. GOLDBERG: Yes.

23 THE WITNESS: I can't recall exactly
24 what it is, if it's anything else. I
25 don't, I don't have the document memorized.

1 with the Orlando International Airport from the
2 County's side, Miami-Dade County's side?

3 A I believe my boss made the first
4 contact, and to his counterpart, and then I was
5 in touch with my counterpart.

6 And I was the one that actually ended
7 up going up there and meeting with my
8 counterpart, a Mr. Robinson.

9 Q Who was Mr. Jenkins' counterpart at the
10 Orlando International Airport?

11 A It would be Mr. Robinson's boss, but I
12 don't recall his name.

13 Q Who obtained the information you speak
14 about from the Orlando Airport regarding the PSC
15 and the issue as to whether or not to apply for a
16 certificate? Was that you or was that
17 Mr. Jenkins?

18 A When I came back from Orlando I brought
19 a lot of documents that -- from that process that
20 they went through, and I forwarded them to
21 Mr. Hope for review, and I never read them
22 myself.

23 And I just relied on their, basically
24 their verbal opinion when I was there meeting
25 with them on this issue.

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1 Q So the answer to my question is it's
2 you and not Mr. Jenkins?

3 A That's right.

4 Q Okay, so let's focus on you then.
5 Before going up to Orlando's airport did you have
6 any discussions by telephone with your
7 counterpart, Mr. Robinson?

8 A Yes, I believe we talked on a couple of
9 occasions.

10 Q What other issues other than, you know,
11 the certificate issue were you inquiring about?

12 A Oh, many issues, like the way they,
13 they have -- the contract they have for the
14 maintenance of the telephone equipment over
15 there, which I believe is, BellSouth is
16 providing. This is what's similar to what
17 Nextira is going to do for us.

18 We also looked at the flight display
19 monitors they had, the clocks they had. We were
20 in the process of deciding what clocks to use at
21 the terminal.

22 We had their -- had meetings regarding
23 the work order system, the way they process the
24 orders for telecommunications with their staff.

25 Basically their 911 response location

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1 through, that we had a similar situation at MIA
2 and that we really didn't need to get a
3 certificate.

4 Q Did he advise you as to whether or not
5 the PSC had ruled on that issue involving his
6 airport?

7 A Yes.

8 Q And what was your understanding of the
9 ruling?

10 A The same understanding that I have now:
11 based on that -- since they went through the
12 process, he felt that they didn't need a
13 certificate.

14 And he told me that, based on what we
15 do at MIA, we didn't need a certificate.

16 Q And we're talking about Al Robinson, is
17 that his first name?

18 A Yes.

19 Q And was he the manager of telecom at
20 the Orlando Airport?

21 A He's my counterpart.

22 Q And is it your testimony today that he
23 told you that the PSC, the Public Service
24 Commission of the State of Florida, had ruled
25 that the Orlando International Airport did not

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1 over there, they respond to 911 calls directly at
2 the airport PSAP, which is primary -- I forgot
3 what it stands for, PSAP, that's where you get
4 the calls from the 911.

5 And all kinds of issues regarding to
6 operational issues at the airport.

7 Q Did you discuss, before going up to the
8 airport to meet with Mr. Robinson, the
9 certification issue by telephone with him?

10 A I'm sure we did, yes.

11 Q Did you have discussions when you were
12 there about the PSC certification issue?

13 A Yes.

14 Q Can you detail for me what Mr. Robinson
15 said to you on that issue, whether it be by
16 telephone or when you were there in person?

17 A Mr. Robinson was very adamant to his
18 position that airports do not need, like Miami
19 and Orlando, do not need a certificate because of
20 the way we -- they provide the services and who
21 do you provide it to.

22 And he basically told me that they have
23 been involved in a long process with the PSC, and
24 really didn't go into any specific details, it
25 was just a general opinion, based on what he went

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1 need a certificate?

2 A That's to my recollection what he said.

3 Q Did he state that the PSC had ruled,
4 with respect to Orlando International Airport,
5 that that airport need not file an application
6 for a certificate?

7 A I believe that's what I said or that's
8 what he said, yes.

9 Q Just so the record is clear, I'm asking
10 about two separate points. Did he represent to
11 you that the Public Service Commission had ruled
12 that the Orlando International Airport, number
13 one, did not need to file an application for a
14 certificate; and/or number two, that the Orlando
15 International Airport need not be granted a
16 certificate?

17 MR. HOPE: Objection to form.

18 THE WITNESS: I don't understand the
19 second version, but --

20 BY MR. GOLDBERG:

21 Q How about the first: Did he represent
22 to you that the PSC had ruled that the Orlando
23 International Airport need not apply for a
24 certificate?
25

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1 A That was my understanding, yes.
 2 Q Second, did he represent to you that
 3 the PSC in the State of Florida had ruled that
 4 the Orlando International Airport was exempt from
 5 any certification requirements pursuant to the
 6 airport exemption rule that you previously
 7 testified about?
 8 A I believe those two things are pretty
 9 much the same thing, so the answer would be yes
 10 for both.
 11 Q Do you know whether or not the Orlando
 12 International Airport ever applied for a
 13 certificate?
 14 A No, I don't know that.
 15 Q I think it was your testimony earlier
 16 that it's your understanding that, based on your
 17 conversation with Mr. Robinson, that they also
 18 made the decision on their own not to apply for a
 19 certificate? Is that correct?
 20 A I don't know who was involved in their
 21 decision. The decision was made not to do it,
 22 but I don't know who was involved in that.
 23 Q When you were having this discussion or
 24 Mr. Robinson was making these representations to
 25 you, did you ask to see any supporting

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1 little after. It was all part of the same time
 2 period, more or less.
 3 But we did have input from Orlando as
 4 to what they did or didn't do as far as not
 5 applying or not needing a certificate, so that
 6 was part of our, probably, our decision, so that
 7 information had to be there.
 8 Q Did Orlando, at the time that you made
 9 your visit there, have shops such as
 10 restaurants -- strike that.
 11 Were they providing telephone service
 12 to hotels?
 13 A I believe they have a hotel there, yes,
 14 yes.
 15 Q Were they providing service to any
 16 restaurants or shops that sold clothes or bars at
 17 the airport?
 18 A Yes.
 19 Q Were they providing telephone service
 20 to any industrial parks as you've interpreted
 21 that phrase?
 22 A I don't know -- no, not industrial
 23 parks, in the sense they were providing services
 24 to, again, to tenants of the airport.
 25 Q Did you seek out the opinions or facts

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1 documentation with respect to the Florida Public
 2 Service Commission's order or rule?
 3 A I did --
 4 Q Ruling, I mean.
 5 A I requested copies of the documents,
 6 and actually I brought back a -- files pertaining
 7 to that which I forwarded to Mr. Hope.
 8 I never read them.
 9 Q Did you ever read a Florida Public
 10 Service Commission order or ruling on the issues
 11 we just discussed?
 12 A No, I did not.
 13 Q Your testimony, you just accepted what
 14 Mr. Robinson had to say without looking at any of
 15 the documentation he provided you?
 16 MR. HOPE: Objection, form.
 17 THE WITNESS: Correct.
 18 BY MR. GOLDBERG:
 19 Q And with respect to the timing of
 20 receiving this documentation, providing it to
 21 Mr. Hope, was this done before or after the
 22 decision was made by the Miami-Dade County not to
 23 file for a certification with the PSC?
 24 A It was around that time. I can't say
 25 exactly whether it was a little before or a

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1 from any other airport in the State of Florida on
 2 this issue other than Orlando?
 3 A I made a contact with the Tampa
 4 airport, the lady that runs the telecom over
 5 there, by phone. It was just a quick phone call.
 6 And I believe she told me that she had
 7 applied for a certificate, but they were not
 8 providing any services to anybody, so she was
 9 really not using the certificate for anything.
 10 Q Did she explain to you why they had
 11 applied if they weren't providing service?
 12 A She couldn't tell me why.
 13 Q Could it be what you just read: that an
 14 applicant who desires to provide service
 15 according to the PSC shall apply for a
 16 certificate?
 17 A I don't know --
 18 MR. HOPE: Objection to form.
 19 THE WITNESS: -- what she had in mind.
 20
 21 BY MR. GOLDBERG:
 22 Q Other than the representations you've
 23 testified to at this deposition, and other than
 24 the documents that you didn't read that you
 25 passed on to Mr. Hope, are there any other

1 representations, pieces of information, or any
 2 other facts that Miami-Dade County took into
 3 account from Orlando's airport in making its
 4 decision not to file for a certificate?
 5 A No.
 6 Q Did you ever have -- strike that.
 7 I'm just asking a yes or no question
 8 here, did you ever have a conversation with
 9 Mr. Hope with respect to the documents that you
 10 provided to him from the Orlando airport after
 11 you provided those documents to him
 12 A You want a yes or no answer?
 13 Q Yes.
 14 A Yes.
 15 Q And is that the -- strike that.
 16 Who was present during that discussion?
 17 A It was a phone call, it wasn't really a
 18 discussion. It was a question.
 19 Q A question --
 20 A There was nobody present, it was just
 21 me and him on the phone.
 22 MR. GOLDBERG: Is it your
 23 contention, Mr. Hope, that that
 24 conversation is privileged?
 25 MR. HOPE: Correct.

1 haven't taken a break, can we go off the
 2 record and take a small lunch break and
 3 talk about scheduling? Or do you want to
 4 do that on the record?
 5 MR. HOPE: Well, no, we can go off
 6 the record, I just wanted to --
 7 THE VIDEOGRAPHER: Going off the record.
 8 (Recess)
 9 THE VIDEOGRAPHER: Stand by.
 10 We're back on the record, video
 11 number 2.
 12 BY MR. GOLDBERG:
 13 Q Mr. Garcia, are you prepared to
 14 continue with your deposition this morning?
 15 A Yes, Sir.
 16 Q Okay, I have placed in front of you
 17 what we'll refer to as Plaintiff's Exhibit
 18 Cert-6.
 19 Just so I can explain, this is a
 20 composite exhibit. A composite exhibit means
 21 it's made up of a number of different documents
 22 written or created at different times, although
 23 they pertain to the same overall subject matter
 24 that we've been discussing, so I don't want to
 25 mislead you that this is one entire document,

1 BY MR. GOLDBERG:
 2 Q You have a pretty certain recollection
 3 of that conversation with Mr. Hope, Mr. Garcia?
 4 A Yes.
 5 Q Why is it then now, today, during this
 6 deposition, you have a certain recollection of
 7 Mr. Hope's involvement, but earlier on
 8 affirmatively said he was not involved?
 9 A You haven't asked me what the
 10 conversation was.
 11 Q I'm sorry?
 12 A You have not asked me what the
 13 conversation was.
 14 Q What the conversation was?
 15 A Right.
 16 Q Oh, I asked -- I thought I did, but let
 17 me make it clear, did the conversation involve
 18 the documents that you provided him from the
 19 Orlando Airport?
 20 A Yes.
 21 MR. HOPE: Let me instruct the
 22 deponent not to answer any questions that
 23 deals with the nature of the conversation.
 24 THE WITNESS: Okay.
 25 MR. GOLDBERG: It's 12:00, we

1 it's just a composite of different exhibits, and
 2 I'll walk you through it.
 3 Is that understood by you?
 4 A Yep.
 5 Q And also, the documents are documents
 6 that the County has produced to BellSouth in
 7 discovery in this action.
 8 And if I could just get a stipulation
 9 by Mr. Hope that that's the case? David, if you
 10 look at the Bates-stamp numbers, I think that
 11 that will --
 12 MR. HOPE: So stipulated.
 13 MR. GOLDBERG: Thank you.
 14 BY MR. GOLDBERG:
 15 Q Let me -- I mean I may, as I go
 16 through, although some of the numbers are off,
 17 but let me ask you to direct your attention to
 18 the first page of the exhibit.
 19 Have you seen these handwritten notes
 20 before?
 21 A It's my handwriting.
 22 Q Okay, and can you tell me just so --
 23 for the record purposes, is this a set of notes
 24 that you wrote with a date up top of
 25 December 10th, 2001?

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1 A Yes.
 2 Q And does it denote Al Robinson, Orlando
 3 Airport, and his telephone number at the top?
 4 A Yes.
 5 Q Can you tell me how it came to be that
 6 these notes were created?
 7 A I can't recall. It could be something
 8 related to the trip that we took over there, it
 9 could have been a conversation we had on the
 10 phone.
 11 I really can't recall the circumstances.
 12 Q It says -- well, it has a phone number,
 13 does that refresh your recollection as to
 14 possibly these are notes arising from a telephone
 15 conversation you had with him?
 16 A It could be, yeah, it looks like it was
 17 a conversation that I had with him over the phone
 18 and I was just taking notes.
 19 Q To the left up at the top it says Mgr
 20 Telecom, does that stand for manager, telecom?
 21 A Yes.
 22 Q Was that Mr. Robinson's position?
 23 A Yes.
 24 Q And then can you read for me what it
 25 says down below, the next line down starting with

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1 STS?
 2 A I was just trying to figure that out.
 3 Q Does it say STS --
 4 A Rent a Car --
 5 Q -- Rent a Car --
 6 A -- and shop concessions --
 7 THE REPORTER: One at a time, please.
 8 MR. GOLDBERG: I'm sorry, you're right.
 9 THE WITNESS: Rent a Car, shop
 10 concessions, and POP customers --
 11 THE REPORTER: POP customers?
 12 THE WITNESS: P-O-P, and then PCS,
 13 airport is one building.
 14 I guess that was the interpretation
 15 that the PSC considered the airport to be
 16 one building. It doesn't matter whether
 17 it was one building or three buildings,
 18 as long as it's in the airport ground
 19 it's considered as one building.
 20
 21 BY MR. GOLDBERG:
 22 Q Okay, and then the next line down?
 23 A 25.4, public law, I'm not sure what
 24 that -- it could be referring to one of these
 25 State of Florida chapters or whatever.

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1 Q Having read these notes so far does it
 2 refresh your recollection as to any conversation
 3 you had with Mr. Robinson on or about
 4 December 10th, 2001?
 5 A Not really.
 6 Q So just so we're clear, at this time as
 7 you sit here today you do not recall -- do you
 8 recall having a telephone call with Mr. Robinson
 9 on December 10th, 2001?
 10 A Well, obviously I had a conversation
 11 with him because this paper is here and I wrote
 12 it, and I have to assume it was 12/10.
 13 Do I recall? No.
 14 Q Can you use these notes to refresh your
 15 memory in order to place in context for us what
 16 you said to him or what he said to you on the
 17 telephone?
 18 A I can probably answer what is written
 19 here. I don't -- probably won't recall too much
 20 more of what was said or wasn't said, because if
 21 it was important I would have written it here.
 22 Q You have the words in the middle of the
 23 page MTCE agreement, do you know --
 24 A It's maintenance agreement.
 25 Q And on the left-hand side is that care

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1 or car?
 2 A Looks like core, but I don't know
 3 what -- why it wrote that.
 4 Q Core?
 5 A I'm not sure what that -- why I wrote
 6 that there. I don't recall.
 7 Q If you could read -- could you keep
 8 reading down your notes?
 9 A Three telecommunications analysts and
 10 one telecommunications cabling person.
 11 I think it was -- this was referring to
 12 the staff, because they did have a contract with
 13 BellSouth to maintain the equipment that they had
 14 over there to provide services, and I think this
 15 is the staff that BellSouth had on the premises
 16 to do what they do there, which is that -- then
 17 it says BellSouth, times and materials for
 18 projects, this is how they charge the Orlando
 19 Airport to do what they do.
 20 And also they perform their own MAC,
 21 which is moves, adds and changes, that's the way
 22 it's described when moving a telephone from one
 23 place to another or to add additional lines as
 24 required.
 25 Q The next lines down, looks like another

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1 set of numbers, what does that refer to?
 2 A 407, I imagine that's the air code of
 3 Orlando; 825 is the internex (phonetic), or the
 4 first three numbers of the airport switch, I
 5 think that's what it should be, if -- it's a
 6 prefix, that they own that, 825.
 7 In other words the whole complement of
 8 the four numbers that follow that, the whole 825
 9 is Orlando airport.
 10 And I don't know the 8500, what it
 11 means, but the 6000 is like the number of
 12 stations or telephones they have at the airport
 13 there.
 14 Q What's the words next to 825, the
 15 right-hand side?
 16 A I'm sorry, what's that?
 17 Q What are the words here, next to --
 18 A That's the prefix, they own. In other
 19 words they own the whole complement of numbers
 20 after that.
 21 Q Having looked at the entirety of this
 22 first page of notes, does it refresh your memory
 23 as to any issues you discussed with Mr. Robinson?
 24 A Again, this was -- I was trying to --
 25 this was all me finding out what they had over

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1 there, what kind of operation they were
 2 conducting over there at the airport.
 3 Q The second page in this exhibit, is
 4 this also your handwriting?
 5 A Yes.
 6 Q Is this a continuation of the notes
 7 from the same event or conversation?
 8 A I don't think so, because I'm talking
 9 about an Nextira STS. Nextira was providing STS
 10 services prior to us buying their equipment.
 11 This was I guess the services that they were --
 12 the type of STS services, could be, that Nextira
 13 was providing.
 14 Q Okay, what's the next item down?
 15 A Develop turn-over requirements --
 16 Q You got to keep your voice up, read out
 17 lot, that would help.
 18 A I'm sorry, it says develop turn-over
 19 requirements, general items, manual delivery,
 20 training, overlap.
 21 I guess these are notes relating to, I
 22 would imagine, the things that were needed to
 23 take over the operation of Nextira.
 24 This was -- the first part was the
 25 services that they were providing STS, using our

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1 equipment, and then the develop, the turn-over
 2 requirements. . .
 3 Q If you could read -- keep reading down?
 4 A It says on-site equipment, 20 trucks or
 5 vehicles, office equipment, 12 months plus,
 6 ARINC, that's A-R-I-N-C, and SITA, S-I-T-A, those
 7 are two companies that provide CUTE service,
 8 C-U-T-E, that's a service that -- what -- the
 9 airlines, the airlines equipment to produce
 10 tickets and keep their reservations and bag tags
 11 and boarding passes and so forth, which Nextira
 12 was providing and we are now owning the equipment
 13 and providing that.
 14 And then the last says STS, do we need
 15 to apply? Call the PSC.
 16 I was just making notes to myself to --
 17 about that issue.
 18 Q And this whole -- these whole notes
 19 were written related to the turnover of the STS
 20 services from Nextira to the County, correct?
 21 A Yes, it was all part of the deal that
 22 we were buying their equipment.
 23 Q So does the last notation on here where
 24 it says STS, do we need to apply, call PSC, first
 25 my question is does this document sort of cement

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1 your testimony and support your testimony that
 2 the question of whether to apply for a
 3 certificate or not to apply for a certificate
 4 arose because of the transaction with Nextira in
 5 20 -- in early 2002?
 6 A Well, Nextira was providing the
 7 services, they did not have a certificate, so I
 8 would -- just had a question in my mind whether
 9 we should have one or not.
 10 Q And it says call the PSC. Whose idea
 11 was that?
 12 A Just a note to myself that I was, as I
 13 was writing these things down, that was just
 14 notes to myself.
 15 Q Why would you write call the PSC?
 16 A Well, that was the -- if I have the
 17 question do we need to apply, calling the PSC
 18 could be one of the ways to find out.
 19 Q Don't you think it might be one of the
 20 best ways to find out?
 21 MR. HOPE: Objection to form.
 22 THE WITNESS: It's a way to find out.
 23 BY MR. GOLDBERG:
 24 Q Who would you give more weight to, what
 25 the PSC says if you call them on this issue, or

1 for example the Orlando International Airport?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Well, the Orlando
4 airport actually had a ruling from the
5 PSC that they didn't need a certificate,
6 so that was to me as good as gold.

7 BY MR. GOLDBERG:

8 Q All right, let me ask you to turn the
9 page. This is a fax cover sheet from you and
10 Mr. Hope to Myra Bustamante.

11 Who is Myra Bustamante?

12 A She was the assistant director of like
13 commercial operations at the airport.

14 Q And this is your signature, Pedro, at
15 the bottom, correct?

16 A Yes.

17 Q Could you explain to me what it was
18 that you were transmitting to her?

19 A I have no idea. Could have been
20 anything.

21 Q Well, was it the next page? It says:
22 Fax contains two pages. If I could ask you to
23 turn the page, was this an e-mail that you were
24 transmitting to her?

25 A It's possible. Leonard Stout was the

1 Denver contact, James Winston, who is he?

2 A He's probably a -- well, Assistant

3 Deputy Manager of Aviation and

4 Telecommunications, the title is right here.

5 Q At the Denver International Airport?

6 A Right.

7 Q Okay, and then the Tampa contact is
8 Sharon Weaver?

9 A Director of Administration. And I
10 spoke to Sharon Weaver, that's what I mentioned
11 prior, that I had talked to her, and she had
12 gotten a certificate, but they were not providing
13 any STS services, and she couldn't tell me why
14 she had the certificate.

15 And Denver was deemed that, since it
16 wasn't in Florida, whatever they had to say
17 didn't have any relevance to us.

18 Q Fair enough.

19 And the last one is the Hillsborough
20 County Aviation Authority, did you or anybody
21 from the County contact them on this issue of
22 certification?

23 A I didn't. We didn't feel the airport
24 was important enough to contact. It was probably
25 a small airport.

1 consultant -- Leonard Stout, S-t-o-u-t, the
2 e-mail was from this gentleman, and to David
3 Hope, myself, and Susan Pascal, which is
4 P-a-s-c-a-l, she's a person in our contracts
5 division at the airport.

6 Q Just for the record, we're looking at a
7 document that's an e-mail from Mr. Stout, to
8 David Hope, Pedro Garcia, and Susan Pascual, dated
9 December 7th, 2001, correct?

10 A Correct.

11 Q What is operations -- the subject is
12 Operation Next Steps. What is Operation Next
13 Steps?

14 A I don't know why he wrote that, but
15 it's basically, I guess this was part of the
16 discovery process of the whole thing of taking
17 over the Nextira operation, and he was providing
18 information in case we wanted to contact these
19 folks and find out more about something.

20 Q Well, wouldn't it have been with
21 respect to the certification issue, as the first
22 entity right here has contact information with
23 the Florida PSC?

24 A Possibly, yes.

25 Q Okay, and then the next contact is a

1 Q Why is the Hillsborough County
2 Aviation -- why did you determine it wasn't
3 important enough?

4 A I don't know, I'm just guessing, but I
5 don't remember talking to them.

6 I don't if I couldn't get a hold of
7 that person or -- that was just a general number,
8 it wasn't a person, so maybe I decided it
9 wasn't -- or maybe I called and I couldn't get
10 anybody, I don't know, I don't remember.

11 Q Okay, but suffice to say nothing about
12 Hillsborough County Aviation Authority was --
13 entered into the decision-making process?

14 A No.

15 Q And this e-mail was copied to both
16 Bobbie Phillips and Maurice Jenkins?

17 A Yes.

18 Q Let's go to the next page, which is
19 also a page of notes. Is this your handwriting?

20 A Yes.

21 Q And just for reference, for the record,
22 it starts on the top saying Orlando APT, or
23 airport. Is this just background information at
24 the top as to who Mr. Robinson is?

25 A That's just how to get in touch with

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1 him, his title and phone number and e-mail address
 2 Q And what's below?
 3 A Sid is a consultant that we were using
 4 to help us with the drafting of the contract
 5 agreement with Nextiraone, and those numbers
 6 probably mean the millions of dollars that they
 7 wanted for the purchase of the equipment.
 8 They asking for 7.5, we wanted to offer
 9 6.5. I imagine that's what it was, because it
 10 was in that neighborhood.
 11 Q Let's go to the next document, this is
 12 an application form from the Florida Public
 13 Service Commission, correct?
 14 A Yes.
 15 Q And the next number of pages make up
 16 the application, and is it -- have you seen this
 17 document before?
 18 A Yes.
 19 Q Is the handwriting on this document
 20 yours?
 21 A No, not all of it.
 22 I gave it to Maria Perez, who is the
 23 supervisor that worked for me, and I told her to
 24 basically go through this and get any preliminary
 25 information that she could so I didn't have to do

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1 because we didn't have one before.
 2 Q I'll ask you to turn to page 5 of that
 3 application where it says Contact Points, or
 4 actually question 16 asks: Who will serve as the
 5 liaison to the Commission?
 6 The application, it's listed as
 7 Mr. Jenkins, and then down below it has your name
 8 put in, Maria Perez's name crossed out.
 9 Is any of that writing on that page yours?
 10 A Only my name and the Chief of
 11 Telecommunications, because I felt that I should
 12 be there, not her name.
 13 Q Did you go over and review the answers
 14 that were -- strike that.
 15 I assume, by the fact that you changed
 16 some of the answers, you reviewed the balance of
 17 the answers on this application and they were
 18 fine with you as --
 19 A Yes, I did, yes.
 20 Q I'll ask you to keep -- to go on to
 21 page 9 of this application where it says
 22 applicant acknowledges --
 23 A I'd love to if I had it.
 24 MR. HOPE: There is no page 9.
 25 MR. GOLDBERG: You don't have a page 9?

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1 all the work.
 2 And then that was -- then I made some
 3 additions and some corrections to what she wrote.
 4 Q So the County started the process of
 5 filling out an application for the PSC?
 6 MR. HOPE: Objection to form.
 7 THE WITNESS: Well, I started
 8 looking at the process. I mean it
 9 wasn't -- if you want to say I'm the
 10 County, but I basically was just -- I
 11 started informally to look at the
 12 information that was here and what will
 13 it take us.
 14 As you can see it wasn't completely
 15 filled up, it was just very coarse
 16 evaluation of the application and what we
 17 could provide or not in the application.
 18 BY MR. GOLDBERG:
 19 Q And Question number 1, where it says
 20 this is an application for, and you have to check
 21 one, be it an original certificate or any others,
 22 do you know whether that is your X mark at
 23 original certificate?
 24 A It was either mine or Maria Perez. But
 25 it would have been an original certificate,

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1 THE WITNESS: I have 8 and 10 --
 2 here, it's after 11, I got it.
 3 MR. GOLDBERG: It's after 11, isn't
 4 that how we number things?
 5 THE WITNESS: Okay.
 6 MR. GOLDBERG: I can say we received
 7 it that way from the County but I won't.
 8 THE WITNESS: You can say it.
 9 MR. GOLDBERG: Because I don't know
 10 that, it would just be a joke -- right,
 11 David?
 12 MR. HOPE: Absolutely.
 13 BY MR. GOLDBERG:
 14 Q Okay, do you know why the Applicant
 15 Acknowledgement Statement at page 9 was not
 16 filled out?
 17 A No. Like I said, there's a lot of
 18 other things in the application that are not
 19 totally filled up because it was just a very
 20 preliminary assessment of the application itself,
 21 and --
 22 Q Did you review page 9 at the time,
 23 before making a decision whether or not to file
 24 with the PSC for a certificate?
 25 A No, this was, this was before making

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1 any decision. This was just part of the -- what
 2 we were doing, the discovery process, so to speak.
 3 Q So you knew at the time that there were
 4 various fees or taxes associated with --
 5 A Yes, right, mm-hmm.
 6 Q -- becoming certificated?
 7 A Right.
 8 Q Let me ask you to go to the next page
 9 in the composite exhibit, this is also a page of
 10 handwritten notes.
 11 Is this your handwriting?
 12 A Yes.
 13 Q And just for the record it's -- up at
 14 the top it's dated 10/26/01, and the first line
 15 of the handwriting notes is PSC on STS, is that
 16 correct?
 17 A PSC on STS, right.
 18 Q Can you tell me how it came about that
 19 you created this page of notes?
 20 A Obviously I must have talked to one of
 21 these gentlemen there and he provided this
 22 information over the phone.
 23 Q As you sit here today do you recall the
 24 telephone conversation?
 25 A I don't recall it, but since I wrote it

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1 honest with you.
 2 Q Next to Rick Moses it states: He was
 3 at MIA 5-6 years ago looking at this issue.
 4 A Right, that's what he told me.
 5 Q Do you recall anything else about what
 6 he had to say on that issue?
 7 A No. If it was relevant it would have
 8 been -- it would be written here.
 9 Q Okay, can you read the next three lines
 10 of your notes?
 11 A Yes, if MIA is going to provide service
 12 not related to public transportation, hotels,
 13 shops, et cetera, we need to file an application.
 14 Q And the next line?
 15 A In any event, trunks will have to be
 16 partitioned.
 17 Q So you wrote down here, after talking
 18 to the PSC, if MIA is going to provide service
 19 not related to public transportation, hotels,
 20 shops, et cetera, we need to file an application.
 21 Was there any ambiguity at the time
 22 about that statement or direction from the PSC?
 23 MR. HOPE: Objection to form.
 24 THE WITNESS: No.
 25 BY MR. GOLDBERG:

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1 I must have made it, the phone call.
 2 Q As you sit here today, after having
 3 reviewed these notes, do you recall what you said
 4 to the -- does it refresh your recollection as to
 5 what you said to the PSC or the PSC said to you?
 6 A Not other than what it says here.
 7 Q Is it safe to assume that when you
 8 wrote these notes you wrote these notes
 9 accurately and that they accurately depict what
 10 was said on the phone?
 11 A Yes.
 12 Q So would you agree that this document
 13 is an accurate recordation of the telephone call
 14 that you had with the PSC on October 26, 2001?
 15 A Yes.
 16 Q And the title is PSC on STS, so was
 17 that the subject you were calling the PSC with
 18 respect to the County's position of the shared
 19 tenant services?
 20 A Yes.
 21 Q Do you remember who Jackie Gilcrest,
 22 Tom Williams or Rick Moses were, or are?
 23 A No, Jackie was probably the boss of the
 24 other two gentlemen that are there, and I don't
 25 even know which one of those I talked to, to be

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1 Q Having had that direction from the PSC
 2 as a result of the phone call, can you explain
 3 why that direction was disregarded and the County
 4 did not file an application for a certificate?
 5 MR. HOPE: Objection to form.
 6 THE WITNESS: I find this opinion
 7 very consistent with the documents that
 8 we were talking about before.
 9 BY MR. GOLDBERG:
 10 Q Please explain.
 11 A Well, we're not providing any services
 12 not related to public transportation, which is
 13 the business of the airport, so therefore we
 14 don't need to file an application.
 15 And the trunks, we provided service for
 16 the hotel, and the trunks are partitioned. This
 17 is exactly what the paragraph that we discussed
 18 prior says, in our interpretation.
 19 Q It says if MIA is going to provide
 20 service not related to public transportation, and
 21 then you wrote, in parentheses, hotels, shops, et
 22 cetera, wouldn't one conclude and didn't you
 23 conclude that the PSC was saying that hotels,
 24 shops, et cetera, are not related to public
 25 transportation?

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1 MR. HOPE: Objection to form.
 2 THE WITNESS: Our interpretation
 3 were to shops and hotels and things,
 4 again, that not related to the public
 5 transportation.
 6 There are some cases that those
 7 shops and hotels could be outside the
 8 airport property.
 9 BY MR. GOLDBERG:
 10 Q Do you have any notes that reflect any
 11 discussion about whether these hotels, shops are
 12 outside the airport property or inside the
 13 airport property?
 14 A No, I don't.
 15 Q So don't these notes clearly reflect
 16 that the PSC said that if you're going to provide
 17 service not related to public transportation,
 18 such as hotels, shops, et cetera, you need to
 19 file an application?
 20 MR. HOPE: Objection to form.
 21 THE WITNESS: That's what it says
 22 here. But again, this is not the whole
 23 document, this is just one piece of
 24 information that was compiled along with
 25 the other documents or the chapter 24,

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1 25, that we discussed before.
 2 BY MR. GOLDBERG:
 3 Q Wouldn't you agree with me that this
 4 directive from the PSC is directly contrary to
 5 your -- the bases for your decision not to file
 6 an application?
 7 MR. HOPE: Objection to form.
 8 THE WITNESS: If you just read these
 9 three lines, yes, it seems to say that,
 10 if you provide services to hotels, shops,
 11 et cetera, but again, that is not the
 12 ruling of the PSC, that was just my
 13 notes, and not necessarily taken into
 14 consideration the airport exemptions and
 15 all the other things that are spelled out
 16 in the paragraph.
 17 BY MR. GOLDBERG:
 18 Q Well, let's just talk about -- well, I
 19 understand, let's talk about this phone call and
 20 this directive from the PSC.
 21 You would agree with me that this is
 22 contrary to what you relied on at the end, not to
 23 file an application with PSC?
 24 MR. HOPE: Objection to form.
 25 MR. GOLDBERG: Just these notes.

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1 THE WITNESS: Well, it says here if
 2 the MIA is going to provide service not
 3 related to public transportation, hotels,
 4 shops, et cetera, we need to file an
 5 application.
 6 It could imply that the hotels and
 7 the shops are not related to public
 8 transportation; however, we interpreted
 9 that the hotel and the shops in the
 10 airport to be related to public
 11 transportation.
 12 BY MR. GOLDBERG:
 13 Q Okay, but your interpretation that
 14 they're related to public transportation, if
 15 that's what you interpreted, is directly contrary
 16 to what the representative from the PSC told you
 17 on the phone, correct?
 18 MR. HOPE: Objection to the form.
 19 THE WITNESS: It's different than
 20 what it says here.
 21 BY MR. GOLDBERG:
 22 Q Which means it's different from what
 23 the PSC representative told you on the phone,
 24 correct?
 25 MR. HOPE: Objection to form.

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1 THE WITNESS: It's different from
 2 what I wrote in here that he said.
 3 BY MR. GOLDBERG:
 4 Q So then you'd agree with me that your
 5 decision not to file an application -- the
 6 County's decision not to file an application
 7 disregarded what this PSC representative said on
 8 the phone on October 26, 2001?
 9 MR. HOPE: Objection to form.
 10 THE WITNESS: No, this is two and a
 11 half lines out of many paragraphs that
 12 address this issue and the actual chapter
 13 of the Florida statutes, so --
 14 BY MR. GOLDBERG:
 15 Q Let me restate my question. I don't
 16 mean to be argumentative, but you're not
 17 answering my question.
 18 The County's decision not to file an
 19 application disregarded what the PSC
 20 representative said on the phone to you on
 21 October 26, 2001 as referenced by your notes?
 22 A No, we didn't disregard it.
 23 MR. HOPE: Objection to form.
 24 THE WITNESS: We considered it as
 25 part of the decision-making, along with

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1 other information pertinent to the issue.
 2 BY MR. GOLDBERG:
 3 Q So let me rephrase the question. I
 4 understand your point. What you're saying is the
 5 County's decision not to file an application
 6 considered what the PSC representative said on
 7 the phone on October 26th, 2001, but did not
 8 agree with what the representative said?
 9 MR. HOPE: Objection to form.
 10 THE WITNESS: Well, we didn't take
 11 this literally the way I wrote it here,
 12 because there are exceptions to -- and
 13 interpretations that are more than
 14 what -- these two and a half lines in here.
 15 So it was taken that maybe I didn't
 16 write the whole thing -- this was the
 17 beginning of the discovery process. I
 18 don't think I even knew at the time that
 19 we had hotel trunk partitions and things
 20 like that, so that's why this was taken
 21 for what it is: just a phone conversation
 22 and part of the discovery process.
 23 BY MR. GOLDBERG:
 24 Q Suffice to say you did not follow the
 25 PSC representative's directions as stated on that

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1 phone call?
 2 MR. HOPE: Objection to form.
 3 BY MR. GOLDBERG:
 4 Q Because if you had you would have
 5 needed to file an application, correct?
 6 MR. HOPE: Objection to form.
 7 BY MR. GOLDBERG:
 8 Q At the end of the day, I'm saying, you
 9 did not follow what you wrote that the PSC
 10 representative stated on October 26, 2001?
 11 MR. HOPE: Objection to form.
 12 THE WITNESS: I did not follow what
 13 these two and a half lines says, right.
 14 BY MR. GOLDBERG:
 15 Q Did you give considerable weight or
 16 ascribe some importance to what a PSC
 17 representative said on this issue?
 18 A Of course, we took everything here and
 19 investigated further almost every word that it
 20 says here.
 21 This was not an official ruling the way
 22 we took it, it was just a casual conversation
 23 with this fellow. It wasn't taken to be an
 24 official ruling from the PSC, which every word
 25 means what it says.

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1 And, you know, and I would -- and I was
 2 just taking notes as we spoke on the phone, so. . .
 3 Q Well, subsequent to this phone call,
 4 and according to your testimony here today, you
 5 took into account other factors such as Orlando
 6 Airport and your view of the airport exemption
 7 rule, did you ever make an effort to call back up
 8 the PSC and speak to the PSC representative,
 9 similar to what you did on October 26, 2001, and
 10 ask them for some clarification given your
 11 contrary view?
 12 MR. HOPE: Objection to form.
 13 THE WITNESS: No, I don't recall
 14 doing that.
 15 BY MR. GOLDBERG:
 16 Q Why not?
 17 A Just didn't do it.
 18 Q Since there was an objection to form,
 19 let me ask it this way: Subsequent to
 20 October 26, 2001 did you ever follow up with the
 21 PSC to review any other information or -- any
 22 other information that was being taken into
 23 account in making a decision whether to apply or
 24 not to apply for a certificate?
 25 A Did I ever file something with them?

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1 No.
 2 Q Subsequent to October 26, 2001 did you
 3 ever follow up --
 4 A Oh, follow up?
 5 Q -- with the PSC?
 6 A Oh, I don't recall, no.
 7 Q -- with the PSC to discuss with them
 8 any other information that came to your attention
 9 with respect to whether or not you should file or
 10 not file a certificate?
 11 A I don't recall, but I didn't recall
 12 this conversation until you showed it to me, but
 13 it's possible, but I don't recall following up.
 14 Q And then the last line of your note
 15 says, on this issue: In any event, trunks will
 16 have to be partitioned.
 17 Doesn't that say to you that what the
 18 PSC representative said was, separate and apart
 19 from whether or not you're providing service
 20 related or not related to public transportation
 21 and you need to file an application, in any
 22 event, separate and apart, the trunks will have
 23 to be partitioned?
 24 Was that your understanding?
 25 MR. HOPE: Objection to form.

<p style="text-align: right;">Page 114</p> <p>1 THE WITNESS: My understanding was 2 that trunks will have to be partitioned. 3 Like I said, this was just capsules 4 of statements, and at the time I didn't 5 even know we had already partitioned the 6 hotel trunks. 7 BY MR. GOLDBERG: 8 Q But at the time in 2002, with respect 9 to partitioning, were any other trunks 10 partitioned by the County separate and apart from 11 the hotel? 12 A No, they're not partitioned, and 13 they're not partitioned now. 14 Q A number of months ago, maybe two 15 months ago you gave a deposition stating that 16 currently the County was in the process of 17 examining whether or not to partition the trunks 18 at the airport. Has that -- has a decision been 19 made on that issue? 20 A It's not whether to partition or not. 21 What is being looked at is the cost, time and so 22 forth of what it would take to partition the 23 trunks. 24 Q How is that different from the question 25 I asked?</p>	<p style="text-align: right;">Page 116</p> <p>1 MR. HOPE: Okay. 2 BY MR. GOLDBERG: 3 Q Can you read the bottom half of your 4 notes? 5 A It takes two months, once they receive 6 the application, 12 days before the next 7 commission meeting, and then a fax number for 8 Myra Bustamante. 9 Q Do you recall taking -- strike that. 10 Let me ask you to turn the page to the 11 next document, F.P.S.C. Alphabetical Listing. 12 Have you seen this document before? 13 A I'm sure I have. 14 Q How did the County obtain this document 15 A I don't recall. I don't know. 16 Q Do you know what this document lists? 17 A I would imagine it means entities that 18 have been given shared tenant service 19 certificates. 20 Q And do you see in the middle of the 21 page that it has Hillsborough County Aviation 22 Authority? 23 A Yes, I do. 24 Q That's another airport in Florida, 25 correct?</p>
<p style="text-align: right;">Page 115</p> <p>1 A Because we didn't ask anybody to make a 2 decision, we just asked Nextira to tell us what 3 would it take to partition the trunks. 4 Q Have you received a response from 5 Nextira as we sit here today? 6 A No. 7 MR. HOPE: Before you go on to 8 continue with the document, will you 9 stipulate that this document and the 10 questions that have gone back and forth 11 serve to amend Mr. Garcia's initial 12 answer in terms of the steps and what he 13 looked at in the analysis as to whether 14 or not the County should seek 15 certification? 16 He had initially only identified two 17 things, this is a third things -- 18 MR. GOLDBERG: No, and I don't want 19 a speaking objection to help his 20 testimony. 21 MR. HOPE: Well, it's not an 22 objection, I'm asking you whether or not 23 you're going to stipulate. 24 MR. GOLDBERG: No, no, I'm not. The 25 answer is no.</p>	<p style="text-align: right;">Page 117</p> <p>1 A Yes. 2 Q Why was that not considered in your 3 decision as to whether to apply or not to apply? 4 A I don't think I saw that as related to 5 the previous e-mail. I don't think I made the 6 connection between this thing and the e-mail that 7 listed the Hillsborough Airport before. 8 I don't recall that connection being 9 made or . . . 10 Q But you're not aware of any efforts to 11 investigate why Hillsborough County Aviation 12 Authority had a certificate? 13 A No. 14 I also don't see Tampa Airport here, 15 and they told me they had a certificate. 16 MR. HOPE: Hillsborough County 17 includes Tampa. 18 THE WITNESS: Oh, that's what it is? 19 Then it must be that, same thing. 20 BY MR. GOLDBERG: 21 Q Can we go to the next document? Are 22 these your notes? 23 A Yes. 24 Q Can you tell me -- this is -- what's 25 the date up top?</p>

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1 A 10/20, I don't know, I can't read,
 2 10/26?
 3 Q And could you read the notes for me?
 4 A Says 10/26/01, STS meeting, in the
 5 corner it says Maurice, and that's my boss,
 6 Maurice Jenkins, and David Hope.
 7 **Finance will bill for services. Check,**
 8 **something, I don't know, I can't read.**
 9 **BCC, that's the Board of County**
 10 **Commissioners, approval required, (liability).**
 11 Orlando, Tampa.
 12 STS business plan, should we do it?
 13 STS certificate in the name of
 14 Miami-Dade County.
 15 Q What does the BCC, Board of County
 16 Commissioners' approval required, and in
 17 parentheses liability mean? Why was that written?
 18 A I think this was probably issues that
 19 were brought up that required further
 20 investigation.
 21 We were -- it was just a note to
 22 investigate whether the Board of County
 23 Commissioners needed to approve the airport
 24 providing STS services.
 25 Q Why is Orlando and Tampa mentioned here?

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1 A Just as a memory jogger, to contact
 2 them and see what they were doing there.
 3 Q And would you agree now that, you know,
 4 per your testimony, Orlando per Mr. Robinson did
 5 not apply for a certificate, but Tampa or
 6 Hillsborough does have a certificate?
 7 A Orlando did not apply because the PSC
 8 told them **that they didn't need to apply.**
 9 **And Tampa applied and didn't have STS**
 10 **services, and she couldn't tell me why she**
 11 **applied.**
 12 Q **When you say STS business plan next,**
 13 **what does that refer to?**
 14 A **Well, it's a question related to was**
 15 **it -- is it profitable or does it make sense**
 16 **businesswise for the airport to do this or not.**
 17 Q **To do what or not?**
 18 A **To provide STS services.**
 19 Q **And when you say from a business sense,**
 20 **what's that mean?**
 21 A **Well, are we going to lose our shirt**
 22 **doing this, or at least are we going to break**
 23 **even, or is it good for the airport? Can we**
 24 **afford to do this?**
 25 Q **Can -- in other words can the airport**

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1 **make money from doing it?**
 2 A **No, I want to make sure we were not**
 3 **going to lose any money doing it.**
 4 Q **And what was the end result on that**
 5 **question?**
 6 A **Well, obviously the result was to go**
 7 **ahead and do it, since we were hiring a lot of**
 8 **people to do the -- maintaining our**
 9 **telecommunications infrastructure, so it was hard**
 10 **to separate the cost of one from the other, but**
 11 **it was decided to go ahead and do it.**
 12 Q **And it says, lastly, STS certificate in**
 13 **the name of Miami-Dade County. What led you to**
 14 **write that?**
 15 A **Well, at the time we were still trying**
 16 **to discover whether we should get a certificate**
 17 **or not, and if we were to get a certificate, it**
 18 **had to be in the name of Miami-Dade County, not**
 19 **of, let's say, versus in the name of the airport**
 20 **or some other name.**
 21 Q **And let me ask you to look at the last**
 22 **document, almost the last document, this is**
 23 **another application to the Public Service**
 24 **Commission, is that correct?**
 25 A **Yes.**

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1 Q **And do you recognize this document?**
 2 A **It looks like a typed version of the**
 3 **previous one that we went through was**
 4 **handwritten.**
 5 Q **So the County went as far as to prepare**
 6 **a typed version of the application, correct?**
 7 **MR. HOPE: Objection to form.**
 8 **MR. GOLDBERG: Correct?**
 9 **THE WITNESS: Yeah, we typed the**
 10 **handwritten form, yes.**
 11 **BY MR. GOLDBERG:**
 12 Q **Then the last document in this**
 13 **composite exhibit is Florida Public Service**
 14 **Commission detailed information for Hillsborough**
 15 **County Aviation Authority print off of, it**
 16 **appears to be the PSC's website, is that**
 17 **accurate?**
 18 A **Yeah, looks that way, yes.**
 19 Q **Is that your handwriting in the notes**
 20 **below, on the bottom half of the page?**
 21 A **Right, I talked to -- I called the**
 22 **lady, the Sharon Weaver, and this is what she**
 23 **told me basically on this phone.**
 24 Q **Can you read that to me, your notes?**
 25 A **Yes, have license since 1995, not using**

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1 it, have 700 phones in the airport authority,
 2 have 2 switches, NEC and Verizon, have two
 3 technicians to do MAC -- M-A-C -- have contract
 4 agreement.
 5 Q Did you come to understand why they --
 6 why she said they are not using the certificate?
 7 A What that means is they're not
 8 providing services to anybody other than their
 9 port authority staff.
 10 Q Show you what's been marked -- what
 11 I'll mark as Cert-7.
 MR. HOPE: Thank you.
 13 BY MR. GOLDBERG:
 14 Q This is an e-mail from Rick Moses at
 15 the PSC to Maurice Jenkins entitled Certification
 16 Issues.
 17 Have you seen this document before?
 18 A I don't recall seeing it.
 19 Q It says: "I have been informed that
 20 the Miami Airport may be providing telephone
 21 service beyond its current authority. Pursuant
 22 to Rule 25-24.580, Florida Administrative Code,
 23 an airport is exempt from the certification
 24 requirements of this commission as long as it is
 25 only providing telephone service necessary to

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1 ensure the safe and efficient transportation of
 2 passengers and freight through the airport
 3 facility. Therefore, any services provided to
 4 entities such as concession stands, restaurants
 5 or hotels would be outside of the exemption, and
 6 certification would be required before telephone
 7 service can be provided. Please respond with a
 8 list of entities served by the Miami Airport by
 9 March 10th, 2003."
 10 Let me focus you on the second
 11 paragraph there where it says: "Therefore, any
 12 services provided to entities such as concession
 13 stands, restaurants or hotels would be outside of
 14 the exemption and certification would be required
 15 before telephone service can be provided."
 16 Is that statement -- strike that.
 17 Is not that statement contrary to the
 18 position you took or the County took when it
 19 decided not to apply for a certificate?
 20 A Yes.
 21 Q Is not that statement contrary to your
 22 interpretation of the airport exemption rule
 23 which you've testified to in this deposition
 24 today?
 25 A Yes.

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1 Q Is not that statement consistent with
 2 what the PSC representative told you on the phone
 3 as documented by your notes on October 26, 2001?
 4 MR. HOPE: Objection to form.
 5 THE WITNESS: Not necessarily.
 6 BY MR. GOLDBERG:
 7 Q Explain why you say not necessarily.
 8 A The other statement was not -- this
 9 seems to be very specific. The other one again
 10 was my handwritten notes of a conversation and it
 11 just doesn't have -- this one seems to be more
 12 specific to the point than what the -- my
 13 conversation was.
 14 Q Did you ever have a conversation with
 15 Mr. Jenkins regarding the PSC's position as
 16 articulated in this e-mail from Rick Moses?
 17 A I don't recall having a conversation.
 18 Q Did you ever discuss Mr. Moses' e-mail
 19 and the position he took, that the County would
 20 require -- strike that.
 21 Did you ever discuss this -- the PSC's
 22 position as articulated in this e-mail with
 23 anybody at the County?
 24 A I don't remember, I don't remember
 25 seeing this e-mail before.

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1 Q The e-mail concludes by saying:
 2 "Please respond with a list of entities served by
 3 the Miami Airport by March 10th.
 4 Let me show you what I'll mark as
 5 Cert-8.
 6 MR. HOPE: Thank you.
 7 BY MR. GOLDBERG:
 8 Q Is this an e-mail from you to Rick
 9 Moses dated March 17, 2003?
 10 A Yes.
 11 Q And you copied Maurice Jenkins, Maria
 12 Perez and Anthony Brown?
 13 A Yes.
 14 Q It's entitled MIA, STS List?
 15 A Yes.
 16 Q And did you type to Mr. Moses the
 17 following message: "Mr. Moses, attached is the
 18 list that you requested"?
 19 A Yes.
 20 Q And does this exhibit contain as a
 21 second page the customer list for the County as
 22 of February 2003 that you transmitted to
 23 Mr. Moses?
 24 A Yes.
 25 Q How did it come to be that you

1 responded to Mr. Moses on behalf of Mr. Jenkins
2 as a result of Mr. Moses' prior e-mail marked
3 Cert-7?

4 A It was probably that Mr. Jenkins, my
5 boss, asked me to forward to Mr. Moses this
6 information, and I requested this information
7 from probably Maria Perez, that worked for me,
8 and she provided to me, and I forwarded it to
9 Mr. Moses.

10 Q Did this interaction with the PSC cause
11 any concern on your behalf or Mr. Jenkins' behalf
12 that perhaps you were not complying with the law?

13 A I just took it as somebody wanted
14 information from us.

15 I don't recall how much I knew about
16 this exchange between Mr. Moses and Mr. Jenkins.

17 Q Is it an everyday occurrence that the
18 Florida Public Service Commission asks for your
19 customer list?

20 MR. HOPE: Objection to form.

21 THE WITNESS: No.

22 BY MR. GOLDBERG:

23 Q Are you suggesting that this was a
24 non-event to you?

25 MR. HOPE: Objection to form.

1 A I'm not a member of that, I'm not
2 familiar with it.

3 Q Okay, I understand your testimony
4 you're not a member of it, have you ever heard of
5 that organization before?

6 A Maybe. I don't recall.

7 Q Do you know of anybody who is a member?

8 A Not firsthand.

9 Q Does the Miami International Airport
10 have an airport manager?

11 A We have many managers. Every division
12 is headed by a manager.

13 Q Are you aware of any discussion the
14 County has had with Nextira with respect to
15 whether or not Nextira had a PSC certificate?

16 A We asked them and they told us that
17 they didn't have done.

18 Q Who did you ask at Nextira, and when?

19 A I asked Pedro de Camillo, the last name
20 is d-e, C-a-m-i-l-l-o, he is the manager, site
21 manager of all the Nextira staff residing at the
22 airport that worked for us, and he told me that
23 they didn't have one.

24 And I don't recall when I asked him,
25 but it was probably at the time that all this

1 THE WITNESS: No, I'm not suggesting that.

2 BY MR. GOLDBERG:

3 Q When you were asked to send this list
4 to the PSC did you ask Mr. Jenkins why?

5 A He's my boss, I don't question his
6 motives, what he wants to do.

7 Q Didn't you and he, just a year to a
8 year and a half earlier, make the decision not to
9 apply for certification with the PSC?

10 A Yes.

11 Q So wouldn't that be a relevant subject
12 area for you and he to discuss, not, you know,
13 just take a directive as you're phrasing it here
14 today?

15 MR. HOPE: Objection to form.

16 THE WITNESS: Not necessarily. In
17 this case he asked me to do something and
18 I did it.

19 You know, we have a very busy
20 schedule at the airport, I don't have
21 time to question everything that he wants
22 to do.

23 BY MR. GOLDBERG:

24 Q Are you familiar with an entity called
25 the Florida Airport Managers Association?

1 2001 stuff was going on, at the end of 2001.

2 And I asked him why, and I think he
3 just shrugged his shoulders, no, we just didn't
4 have one.

5 Actually, that was another input, now
6 that I recall, why we felt that we didn't need
7 one: because Nextira was providing the services
8 and they didn't have one, and nobody has made any
9 issue out of it, so . . .

10 MR. GOLDBERG: At this time I don't
11 have any further questions.

12 MR. HOPE: I don't have any.

13 MR. GOLDBERG: Do you have any cross?

14 MR. HOPE: No.

15 We'll read.

16 MR. GOLDBERG: Thank you,
17 Mr. Garcia, for appearing for the
18 deposition today.

19 THE WITNESS: You're welcome.

20 THE VIDEOGRAPHER: Going off the record.

21 THE REPORTER: Do you want this?

22 MR. GOLDBERG: Yes.

23 MR. HOPE: Yes.

24 (Thereupon, at 1:15 p.m., the deposition was
25 concluded)

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PEDRO J. GARCIA

4

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6

7 Sworn to and subscribed before me
this ____ day of _____, 2005.

8

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10 _____
Notary Public in and for
The State of Florida at Large.

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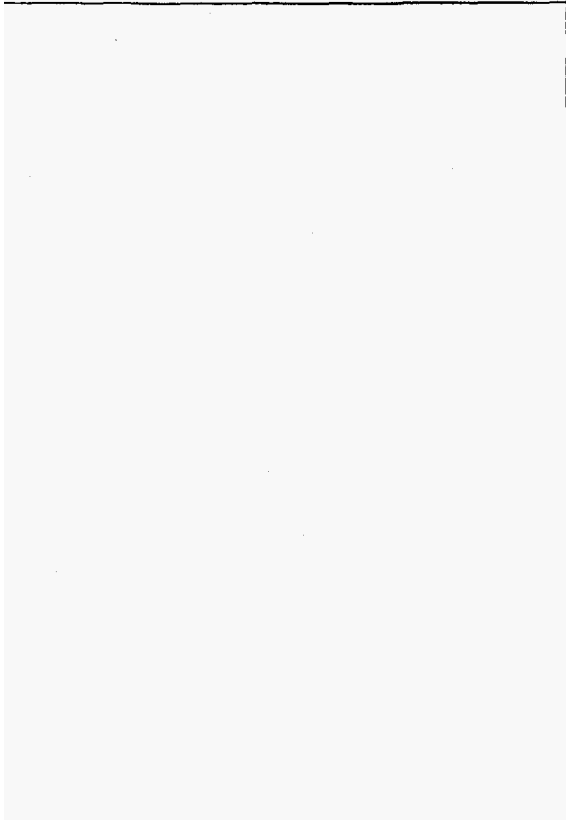
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CERTIFICATE OF NOTARY

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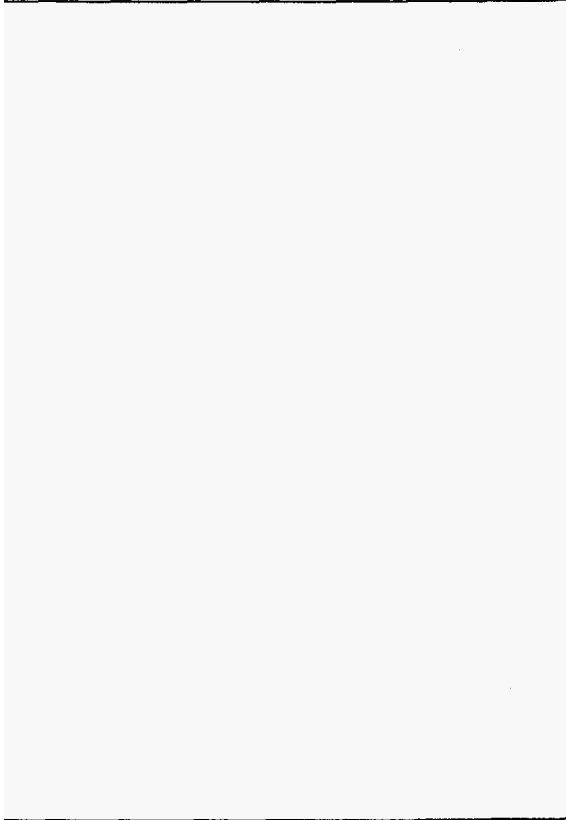
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STATE OF FLORIDA:
SS:
COUNTY OF MIAMI-DADE:

I, CLAUDIA REAM-PINEDO, a Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the deposition of PEDRO J. GARCIA, a witness called by the plaintiff in the above-styled cause; that the witness was first duly sworn by me; that the reading and signing of the deposition were not waived by the witness; that the foregoing pages, numbered from 1 to 131 inclusive, constitute a true record.

I further certify that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

WITNESS my Hand and Official Seal this 27th day of December, 2004.



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SHARED AIRPORT
TENANT SERVICE AGREEMENT

THIS SERVICE AGREEMENT, entered into as of this _____ day of _____, by and between METROPOLITAN DADE COUNTY, a political subdivision of the State of Florida, and CENTEL COMMUNICATIONS COMPANY, ("Centel") a Delaware corporation doing business in Fort Lauderdale, Florida,

WHEREAS, pursuant to County's Resolution No. R-361-82, County and Centel entered into two separate agreements involving telecommunications equipment for the Airport and Hotel Systems; and

WHEREAS, County and Centel have negotiated new terms and conditions applicable to County's lease of the Telecommunications Equipment for the Airport System and the maintenance thereof by Centel, and have incorporated such terms into a separate Equipment Lease and Maintenance Agreement (hereafter the "Equipment Lease Agreement"); and

WHEREAS, County and Centel desire in this agreement to provide for the parties' rights and obligations relevant to Shared Airport Tenant Service (SATS) to be provided to tenants and users of the Airport,

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

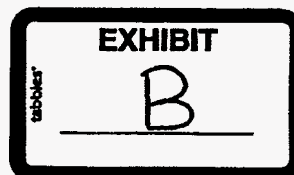
1. Introductions.

This agreement covers only the parties' rights and obligations relating to SATS provided at the Airport. The parties' agreements relating to lease of the telecommunications equipment for the Airport System and its maintenance, as well as Centel's maintenance of the County's Hotel System, are covered by the Equipment Lease Agreement.

2. Definitions.

a. The definitions provided in the Lease Agreement between the parties are hereby incorporated herein by reference, unless specifically modified herein.

b. Calling Services shall mean the mechanical process of placing, timing, and pricing each long distance or otherwise chargeable telephone call placed with a carrier or other suitable means and for which Centel Charges a resale fee to the equipment user.



c. Department means the Dade County Aviation Department, and shall be interchangeable with "County" as used herein.

d. Equipment Charges shall mean all charges including flat rate local service, related to the rental, sale, or provided equipment served from the Airport System to Airport tenants or users, other than DCAD.

e. Gross Revenues shall mean all moneys paid or payable to, or considerations of determinable value received by Centel from Equipment Charges made to tenants and users of SATS provided at the Airport, for transactions had or services rendered in connection with such equipment regardless of when or where the order therefor is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash or credit basis, or in consideration of any other thing of value. Provided, however, that any taxes imposed by law which are separately stated to and paid by a customer and directly payable by Centel to a taxing authority, refunds provided customers in connection with equipment, and all moneys collected from the County for equipment charges under the Lease Agreement with County shall be excluded therefrom.

f. Gross Profits shall mean all gross revenues for calling services less the costs to Centel for all leased lines, circuits, trunks, and network usage charges paid to carriers (including, but not limited to, Common Carriers, Other Common Carriers, and Specific Common Carriers) associated with calls placed, any other non-overhead or non-administrative expenses incurred by Centel to the extent required to provide services called for herein, any taxes imposed by law which are separately stated to and paid by a customer and directly payable by Centel to a taxing authority, and refunds, regardless of when or where the request for such refund is received, or the goods delivered, or services rendered, whether paid or unpaid, whether on a cash or credit basis, or in consideration of any other thing of value.

g. Equipment Lease Agreement shall mean that separate agreement between the parties providing for County's lease from Centel of telecommunications equipment for the airport system and Centel's obligation to maintain and repair such equipment.

h. Termination shall mean the expiration of the Lease Agreement at the end of the Term or any renewal term, or the County's cancellation of the lease for cause as provided for in the Equipment Lease Agreement.

3. Scope of Agreement

a. Centel agrees to use its best efforts to establish, market, and sell SATS to tenants and users at the airport and at the hotel (except for the department itself and those department accounts specifically identified by the Department), consistent with the authority granted from time-to-time by the Public

Service Commission of Florida or whatever governmental entity has jurisdiction over SATS, and all other applicable laws.

b. County agrees to allow Centel the use of the telecommunications equipment of the Airport System for such shared tenant services and agrees that Centel may use the telephone equipment room identified in the Equipment Lease Agreement for such purpose without obligation to compensate County therefor, provided, however, that such use is consistent with and limited by the other provisions of this agreement.

c. Centel shall maintain and repair the equipment so that the shared tenant service is operating in accordance with the standards provided herein or in the Equipment Lease Agreement, whichever standards apply, and County shall pay Centel the costs thereof in accordance with the provisions of such individual agreements as provided in such Equipment Lease Agreement. County shall not be obligated to pay Centel for maintenance costs related to any equipment leased by County from Centel.

d. Centel shall pay County, as compensation for the above, a minimum monthly payment plus a percentage of Centel's gross profits in accordance with the provisions of Section 7 below.

4. Shared Airport Tenant Service

Centel also acknowledges that, because the Florida PSC only recently approved the SATS concept at airports, and because such approval was based in large part upon the showing that airports in Florida needed a reliable internal telephone system that would allow emergency and security problems to be handled in a prompt and most efficient manner without having to access off-campus local telephone company equipment, the Centel-provided SATS at Miami International Airport will require the most efficient, effective and reliable telephone service possible. Centel therefore agrees to use its best efforts to make certain that the equipment being used in the Airport and the service being provided to those customers agreeing to make use of SATS users are of the highest quality and with the least downtime record as may be possible.

5. Term

This agreement shall commence as of February 7, 1988, and shall continue for an initial period of four (4) years until the end of the business day on February 6, 1992. Thereafter, County shall renew this agreement for five (5) consecutive two (2) year terms, upon the terms and conditions contained herein, unless County give Centel notice of termination as provided below.

County shall not have the right to terminate the agreement within the initial 4-year term, except for cause as provided in this Agreement; thereafter, during the 10-year period, County may

- b. Respond to major failure Within 2 hours
 (7 days per week)

Shall exceed 99.9% with a Mean time between failure of 5040 hours

- c. Routine additions, deletions and relocation:

(conduit, power, and other required facilities existing at the time of the order)

1 to 5 phones	24 hours from receipt of order
6 to 10 phones	7 days from date of order
11 to 50 phones	10 days from date order
over 50 phones	Individual case basis

- d. Priority Moves, Changes and Additions:

Priority moves, changes, and additions are work orders designated priority by DCAD.)

Priority Orders will supersede all other orders and will be worked on and completed as soon as possible by Centel. The due date for Routine Orders will be adjusted for delays caused by Priority Orders.

7. Centel Payments to County

a. Minimum Monthly Payment: Centel shall credit to County, and County shall automatically be entitled to take as a credit commencing February 7, 1989, and thereafter on the first day of each and every monthly billing, as a deduction from DCAD's monthly rental payments under the Lease Agreement, a minimum monthly credit in the amount of ONE THOUSAND DOLLARS (\$1,000.00).

b. Percentage Fees: In addition to the monthly minimum payment set forth in Section 7 (a) above, to the extent that such percentage fees exceed the monthly minimum payments, Centel shall credit to the County monthly the following amounts:

(1) Ten percent (10%) of the Gross Revenues derived by Centel from Equipment charges; plus

(2) Thirty-five percent (35%) of the first \$10,000 of Gross Profits derived by Centel from the sale of Calling Services; forty-five percent (45%) of the second \$10,000; and fifty percent (50%) of all additional Gross Profits in excess of

such \$20,000.00 derived from the sale of Calling Services at Miami International Airport.

c. Payment: Said percentage fees shall be paid to the County as follows:

(1) For rental of equipment by customers, which is billed by Centel for the month in advance: on or before the 20th day of the month following the month for which equipment rental was billed.

(2) For moves, changes, additions and deletions of rented equipment and calling services which are billed after the end of the month in which the activity occurred: within 50 days following the end of said month.

d. In the event that Centel bids or enters into similar agreement(s) with any of the top fifty (50) Commercial Service Airports in the United States, as defined by the Federal Aviation Administration, and said agreement(s) or bid(s) provides for percentage fees higher than those provided in Section (b) above, this Agreement shall be automatically amended to provide for payment to County at such higher fees as of the effective date of such higher bid or agreement.

e. In the event Centel fails to credit the minimum monthly payments, fees or charges as required to be paid under the provisions of this Agreement within (30) days after the same shall become due, interest at one and one-half percent (1½%) per month shall accrue against the delinquent credit(s) from date due until the same are credited. Implementation of this provision shall not preclude the County from terminating this Agreement for Centel's default in the payment of monthly minimum payments, fees or charges, pursuant to the procedures set forth herein or from enforcing any other provisions contained herein, or pursuing other remedies provided by law.

8. Centel Records

a. Centel shall make available, upon request of the County, during the term of this Agreement, all books of account and records customarily used in this type of operation, as may from time to time be required by the County, in accordance with generally accepted accounting practices and standards, and for such period of time thereafter as provided herein, unless otherwise approved by the County. The County shall be permitted to audit and examine all such records and books of account relating to the operation of Centel hereunder, provided that Centel shall not be required to maintain such records for more than three (3) years after the end of each twelve month period. In the event it becomes necessary for County to cause an audit of books and records in a location outside the limits of South Florida, (Dade, Broward or Palm Beach Counties) all expenses of the County for travel outside South Florida, accordance with

Administrative Order No. 601, shall be reimbursed by Centel upon billing by County.

b. Centel shall within sixty (60) days following each anniversary of the commencement date for the payment of the Gross Revenues and Gross Profits as provided herein, submit to the County a certified report, prepared and attested to by an independent Certified Public Accountant, approved by the Department, as to the correct Gross Revenues and Gross Profits per month for the operation of Centel under this Agreement. Said report shall be prepared in conformance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain twelve (12) full calendar months of operation. **The last such report shall include the last day of operation.**

c. Centel shall also submit by the 20th day of every month a statement of the monthly Gross Revenues and monthly Gross Profits, in total and by customers. The statement shall be signed by Centel certifying as to the accuracy of such Gross Revenues and Gross Profits in the form prescribed by the Department.

9. Centel Contract and Other Documents Used in SATS.

a. Centel and the Department shall jointly determine what contractual and other documents will be used by Centel in providing SATS, and that such documents shall not be placed in use until specifically approved by the Department, which approval shall not be unreasonably withheld.

b. Because the parties contemplate that County may provide the SATS for the Airport and Hotel Systems at some point in the future, such documents shall provide at a minimum that the contracts with customers are fully assignable to County by Centel.

10. Insurance and Indemnification.

a. Centel shall from time to time provide insurance, with County named as an additional insured, in the amounts and with the coverage customarily specified by County for Airport Tenants.

b. The termination for any reason of the Equipment Lease Agreement shall not affect Centel's obligation under this agreement to maintain insurance required hereunder.

c. Centel shall indemnify and save the County harmless from any and all claims, liability, losses and causes of actions which may arise out of or result from this Agreement, or operation of the business of Centel under this Agreement, or the acts or omissions of Centel, its employees, agents or subcontractors,

except to the extent any such claim, liability, loss or cause of action is occasioned by the negligence of County.

11. Cancellation of Agreement.

a. The County shall have the right to cancel this Agreement upon the effective date of County's assumption of operating control of SATS following County's exercise of its option to purchase all of the SATS equipment as provided in the Lease agreement.

b. Failure of Centel to promptly make all credits or payments required to be paid herein shall constitute a default, and the County may at its option cancel this Agreement after thirty (30) days notice in writing, unless the default be cured within the notice period. Provided, however, that Centel shall not be deemed to be in default of its obligations under this Agreement for failure to provide such credit pending the outcome of any legal proceeding instituted in a court of competent jurisdiction to determine the validity of any such credits or payments.

c. The County shall have the right after thirty (30) calendar days written notice sent by registered or certified mail to Centel to terminate this Agreement upon the occurrence of any one or more of the following, unless the same shall have been corrected within such period:

(1) A material breach by Centel of any of the terms, covenants, or conditions of this Agreement, excluding the covenants to make payments herein contained.

(2) Conducting any business or performing any acts not specifically authorized herein.

d. The County shall have the right to terminate this Agreement within thirty (30) days after the happening of any one or more of the following:

(1) A final judicial determination that litigation instituted by Centel against the County was groundless and frivolous.

(2) In the event of total destruction of Terminal Building Area.

(3) Institution by or against Centel of any Federal or State bankruptcy or like proceeding, unless termination is prohibited by Federal or State Law.

12. Termination by Centel and Suspension of Payments.

Centel shall have the right upon thirty (30) calendar days written notice to the County to terminate this Agreement at any time after the occurrence of one or more of the following events:

a. Issuance by any court of competent jurisdiction of any injunction substantially restricting the use of the Airport for airport purposes, and the remaining in force of said injunction for a period of more than ninety (90) calendar days.

b. A breach by the County of any of the material terms, covenants or conditions contained in this Agreement and failure of the County to remedy such breach within a period of thirty (30) calendar days after receipt of written notice sent by registered or certified mail from Centel of the existence of such breach.

c. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, or the operation, control or use of the airport facilities or any substantial part, or parts thereof, in such manner as substantially to restrict the operations of Centel for a period of ninety (90) days.

d. Purchase by County of all of the equipment under Article 6 of the Equipment Lease Agreement.

13. Nondiscrimination.

a. Centel shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to hire, tenure, terms conditions, or privileges of employment, or any matter directly or indirectly related to employment because of age, sex or physical handicaps (except where based on a bona fide occupational qualification), or because of race, color, religion, national origin or ancestry.

b. Centel, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with this Agreement that (1) no person on the grounds of race, color, or national origin shall be excluded from participation, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities, (2) that in the construction of any improvements on, over, or under such facilities and furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.

c. In the event of a breach of any of the above nondiscrimination covenants the County shall have the right to terminate this Agreement and to reenter and repossess the facilities thereon, and hold the same as if said Agreement had

never been make or issued. Any termination pursuant to section shall not be effective until the procedures specified in Part 152 of Title 14, Code of Federal Regulations, or established by the County are completed including any appeal rights.

d. As to the provisions of 14 CFR Part 152, (1) Centel acknowledges that such provisions are applicable to the activities of Centel under the terms of the Agreement, unless exempted by said regulations, and hereby agrees to comply with all requirements of the Department, the Federal Aviation Administration and the U.S. Department of Transportation, and (2) these requirements may include, but not be limited to affirmative action efforts, the keeping of certain records relating to equal employment opportunity, and good faith compliance efforts, and the submission of various reports, including, if directed by the Department, and to the extent consistent with Federal and State Law, the contracting of specified percentages of goods and services contracts to Minority Business Enterprises. Failure to comply with these requirements shall be grounds for default and termination of this Agreement. Any termination pursuant to this section shall not be effective until the procedures specified in said Federal regulations or as established by the County are completed, including any appeals.

14. Rules and Regulations.

a. Centel notwithstanding anything to the contrary herein, shall comply with ordinances of the County including the Rules and Regulations of the Department, Chapter 25, Code of Metropolitan Dade County, Florida, operational directives issued thereunder, and all additional laws, ordinances, regulations and rules of the Federal, State and County Governments, which may be applicable to Centel's operation under the Agreement.

b. Centel shall obtain, pay for, and maintain current all permits and licenses as required for its operation.

15. Payment of Taxes.

Centel shall pay all taxes lawfully assessed against its operations at the Airport, provided, however, that Centel shall not be deemed to be in default of its obligations under this Agreement for failure to pay such taxes pending the outcome of any legal proceedings instituted in a court of competent jurisdiction to determine the validity of such taxes.

16. Alterations.

Centel shall not alter or modify the facilities provided herein without first obtaining written approval from the Department. If so approved by County, Centel may be authorized to make repairs, alterations and/or additions to the facilities at the airport. Compensation for such repairs, alterations

and/or additions shall be as mutually agreed upon by both parties.

17. Inspection by County.

Centel shall maintain the facilities in good repair and in a neat and orderly condition. The county may make periodic inspections to determination if such are being maintained in said manner and also to determine whether Centel is operating in compliance with the terms and provisions of this Agreement.

18. Signs.

No signs, posters, or advertising devices may be installed, erected or displayed by Centel without prior written approval by the Department.

19. Rights of County in Airport facilities.

The County shall have the absolute right, without limitation, to make any repairs, alterations and additions to the facilities at the Airport, except that alterations or additions to the interior and exterior of the facilities provided under this Agreement shall be made only in the event of need and without substantial inconvenience to Centel. The County shall, in the exercise of such right, be free from any and all liability to Centel for partial loss of business or damages occasioned during the making of such repairs, alterations and additions, except those occasioned by the negligence of the County, its employees, or agents.

20. Federal Government Agreements and Powers.

a. This Agreement shall be subordinate to the provisions of any existing or future agreements between the County and the United States of America relative to the operation and maintenance of the Airport, the execution of which has been or may be required as a condition precedent of the Airport.

b. All provision of the Agreement shall be subordinate to the rights of the United States of America to lease or otherwise assume control over the Airport, or any part thereof, during time of war or national emergency for military or naval use and any provisions of the Agreement inconsistent with the provisions of such lease to the United States of America shall be suspended, except the right of Centel to cancel this Agreement pursuant to Section 12 (c) hereof.

21. Personnel.

a. Centel shall ensure that all its personnel present a neat, clean and professional appearance at all times.

b. Centel shall require all personnel to wear visibly on their person, at all times while on duty, a distinctive name tag, identifying the individual by name, title, if appropriate, and as an employee of Centel. Such personnel must be able to satisfy the Department's security requirements.

22. Security.

a. Centel fully understands that the Police security protection provided by the County for the Airport facilities is limited to that provided to any other business situated in Dade County by the Metro-Dade Police Department.

b. Centel fully understands that the safety, police, fire or security protection measures deemed necessary for additional protection of the facilities shall be the sole responsibility of Centel.

c. Centel acknowledges and accepts full responsibility for the security and protection of all contents, inventory, and equipment within the facilities and for the prevention of unauthorized access to its facilities or contents thereof.

d. Centel agrees to furnish all personnel in its employ, who are authorized access to the airfield operations area and other restricted areas as determined by the County, with identification badges as required to comply with the security program established by the Department and to furnish the Department with the names and additional pertinent data of such persons so authorized. Centel shall be fully responsible for such identification badges.

23. Notices.

Any notices required herein shall be sent by Registered or Certified mail to the parties as follows:

To the County:
Director
Dade County Aviation Department
Post Office Box 592075
Miami, FL 33159

County Attorney's Office
Post Office Box 592075
Miami, FL 33159

Superintendent of Telecommunications
Post Office Box 592075
Miami, FL 33159

To Centel:
Centel Communications Company Vice President
Centel Communications Systems-Southeast
3725 West Grace Street
Tampa, FL 33067

and

With a Copy to:
Vice president/General Manager
Centel Communications Systems
601 Jefferson - Suite 1000
Houston, Texas 77002

or to such other address as either party may designate in writing.

24. Termination.

a. Centel shall vacate the facilities and remove all its personal property and trade fixtures from the facilities at the termination of this Agreement, unless otherwise authorized in writing by the Department, whether by lapse of time or otherwise, as provided in Section C below.

b. Centel within thirty (30) calendar days following the termination of this Agreement, shall remove all of its personal property and any trade fixtures forthwith. Failure on the part of Centel to remove its property within thirty (30) days from the date of termination shall constitute a gratuitous transfer of title hereof to the County for whatever use and disposition is deemed to be in the best interest of the County. If County does not permit Centel to remove its personal property or trade fixtures or make them available for removal by Centel, then in addition to all other remedies at law or equity available to Centel, all obligations of County under this Agreement shall remain in force and effect until system is returned to Centel.

c. Any personal property of Centel, or of others, placed in the facilities shall be at the sole risk of Centel or the owners thereof, and County shall not be liable for any loss of damage thereto, irrespective of the cause of such loss or damage.

25. The Service Agreement of September 9, 1982, between the parties is hereby cancelled in its entirety and superseded by the terms of this Shared Airport Tenant Service Agreement.

26. Assignment and Subletting.

This Agreement shall not be assigned, transferred, pledged or otherwise encumbered by Centel, except to another corporation which controls, is controlled by, or is in under common control with Centel, provided that Centel shall not be relieved of its

liabilities or responsibilities hereunder without the prior written consent of the Department.

27. Limitation for Liability.

Except for claims for physical injury to persons, Centel and its suppliers or subcontractors will not be liable for any special, incidental, or consequential damages or for loss, damage or expense directly or indirectly arising from County's use of or inability to use the Equipment either separately or in combination with other equipment or software, or for commercial loss of any kind (including loss of business or profits) based upon breach of warranty, breach of contract, negligence, strict tort or any other legal theory whether or not Centel or its suppliers or its subcontractors have been advised of the possibility of such damage or loss. Some states do not allow limits on warranties or on remedies for breach in certain transactions.

IN WITNESS WHEREOF, the parties hereto have caused this service agreement to be executed by their appropriate officials as of the date first above written.

BOARD OF COUNTY COMMISSIONERS OF
DADE COUNTY, FLORIDA

By: [Signature]

ATTEST: Clerk

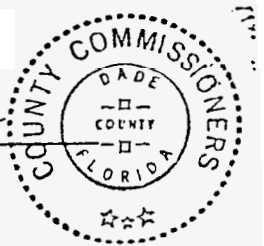
By: [Signature]
Deputy Clerk

CENTEL COMMUNICATIONS COMPANY

By: [Signature]

Title: Vice President

Attest: [Signature]
Secretary



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
[Signature]
Assistant County Attorney

05/26/2004

17:21

BLS # 353474650

NO. 937 020:

Approved [Signature] Mayor
Veto _____
Override _____

Agenda Item No. 6(A)(1)(D)
1-29-02

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-31-02

RESOLUTION RELATING TO TELECOMMUNICATIONS, DATA NETWORK, AND SHARED AIRPORT TENANT SERVICES AT MIAMI-DADE COUNTY AIRPORT SYSTEM FACILITIES; AUTHORIZING PURCHASE OF LEASED EQUIPMENT; AUTHORIZING APPROVAL AND EXECUTION OF NON-EXCLUSIVE MANAGEMENT AGREEMENT WITH NEXTIRAONE, LLC FOR INTERIM TWO-YEAR PERIOD; AND WAIVING COMPETITIVE BID PROCEDURES AND PROVISIONS

WHEREAS, Miami-Dade County, Florida (the "County") and Centel Communications Company ("Centel") entered into an Equipment Lease and Maintenance Agreement, as of July 24, 1990, and retroactive to February 7, 1988 (the "ELM Agreement") which ELM Agreement terminates on February 6, 2002; and

WHEREAS, the County and Centel also entered into a Shared Airport Tenant Service Agreement (the "SATS Agreement") which SATS Agreement terminates on February 6, 2002; and

WHEREAS, NextiraOne, LLC ("Nextira") is the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC)¹ under both the ELM Agreement and the SATS Agreement; and

WHEREAS, it is in the best interest of the County to acquire title to all telecommunications, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets as detailed on Schedule A of the ELM Agreement and Schedule E of the SATS Agreement, as of February 6, 2002 (the "Assets"); and



¹ In 1991, Centel Communications Company ("Centel") was acquired by WilTel Communications System ("WilTel"), and in 1997, Williams Communications Solutions, LLC was created from the merger of WilTel and Nortel Communications Systems.

WHEREAS, an interim manager is necessary to operate, maintain, and manage the Assets, until a telecommunications and data network request for proposal ("RFP") is circulated and a new manager is selected; and

WHEREAS, Nextira, as the owner and operator of the Assets, has the personnel, technical and product knowledge, expertise, and market recognition to manage the Assets,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board:

Section 1. Authorizes the payment of \$6,450,000 to Nextira, for the purchase of the Assets, to be used and operated by or for the Miami-Dade County Aviation Department.

Section 2. Authorizes the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement (the "Agreement") with Nextira for an interim two (2) year period, and delegates to the County Manager the authority to negotiate all terms and conditions necessary to consummate the Agreement. The Agreement shall contain a random audit provision to be conducted by the Office of the Inspector General, pursuant to § 2-1076(c)(6), Code of Miami-Dade County Florida (the "Code"). The Agreement shall also contain a provision for the County to retain the services of an independent private sector Inspector General ("PSIG"), pursuant to Administrative Order No. 3-20.

Section 3. Waives competitive bid provisions of Administrative Order Nos. 3-4 and 3-16 related to the procurement of professional services

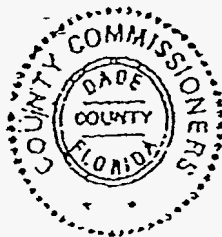
Section 4. Waives competitive bid provisions of Section 4.03(D) of the Home Rule Charter and the requirements of Administrative Order No. 3-2 in connection with the purchase by the County for (i) wiring, (ii) cabling, (iii) fiber optic cables and equipment, (iv) telecommunications

equipment, (v) telephone and data network equipment, (vi) software, and (vii) material and supplies, necessary to maintain, support, operate, and expand the telecommunications, data network, and shared airport tenant services at the County airport system facilities. Such waiver is by a two-thirds (2/3) vote of the Board members present.

The foregoing resolution was offered by Commissioner **Dorrian D. Rolle**, who moved its adoption. The motion was seconded by Commissioner **Katy Sorenson** and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara Carey-Shuler	aye	Betty T. Ferguson	absent
Gwen Margolis	absent	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Dorrian D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
	Javier D. Souto		aye

The Chairperson thereupon declared the resolution duly passed and adopted this 29th day of January, 2002. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

dsh

David Stephen Hope