

State of Florida



Public Service Commission

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DATE: May 19, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Fordham) *C.F.F.* *AK*
Division of Competitive Markets & Enforcement (King) *W* *W*

RE: Docket No. 040732-TP – Complaint against BellSouth Telecommunications, Inc. seeking resolution of monetary dispute regarding alleged overbilling under interconnection agreement, and requesting stay to prohibit any discontinuance of service pending resolution of matter, by Saturn Telecommunications Services, Inc. d/b/a STS Telecom, LLC.

AGENDA: 05/31/05 – Motion for Summary Final Order/Decision Prior to Hearing - Parties May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\040732.RCM.DOC

Case Background

On July 12, 2004, Saturn Telecommunications Services, Inc. d/b/a STS Telecom, LLC. (STS) filed a complaint against BellSouth Telecommunications, Inc. (BellSouth) for overbilling and to stay any discontinuance of service. It appears that the crux of STS' complaint is alleged overbillings totaling \$355,136.54.¹ STS claims that it timely objected to the over billings and that on July 2, 2004, BellSouth advised STS that it was rejecting the objections. In addition, STS believes that the manner in which BellSouth bills STS and other CLECs for the market based rates creates additional burdens on STS.

¹ STS states that it was over billed a total of \$148,587.54 on or about December 13, 2003 and a total of \$206,549.00 on or about June 13, 2004.

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On July 29, 2004, BellSouth filed its Answer and Counterclaim. BellSouth argues that STS's complaint is a blatant attempt to circumvent agreed upon rates, terms, and conditions contained within the parties' Interconnection Agreement (IA or Agreement)². BellSouth requested that the Commission enter an order denying the relief sought by STS and order STS to immediately pay the amount owed in full, plus interest and late fees.

On August 19, 2004, STS provided its response to BellSouth's Affirmative Defenses and Counterclaim, denying them, but providing no detail or argument. That response was not filed with the FPSC Clerk, but, rather, mailed directly to the Office of the General Counsel. STS was advised that all pleadings should be filed with Commission Clerk.

On February 14, 2005, BellSouth filed its Motion for Summary Final Order on the Complaint. On February 22, 2005, STS filed its Motion for a 10-day extension of time to file its response to the BellSouth Motion, and on March 4, 2005, STS filed its Response in Opposition to BellSouth's Motion for Summary Final Order. Also, on March 11, 2005, STS filed its Motion for Summary Final Order on BellSouth's Counterclaim.

On March 17, 2005, BellSouth filed its Motion to Strike STS's Response, and Opposition to STS's Motion for Summary Final Order. On March 24, 2005, a FedEx package from STS was delivered to the FPSC's General Counsel's Office, addressed to Douglas Lackey, an attorney serving in the Atlanta offices of BellSouth. However, the package contained the address of the office of the General Counsel of the FPSC. The package contained STS's Response to BellSouth's Motion to Strike and Response in Opposition to BellSouth's Motion for Summary Final Order. Once again, this STS pleading should have been filed with the Division of the Commission Clerk, but was not. Also, though there was a certificate of service showing copies to Commission staff and BellSouth, staff did not receive its copy and BellSouth advised that it did not receive its copy.

On May 16, 2005, STS filed an Emergency Motion requesting leave to file a Supplemental Response to BellSouth's Motion for Summary Final Order.

This recommendation addresses the pending pleadings in this Docket. The Issues will be addressed in the order staff believes will most efficiently resolve the pending pleadings in this case.

² STS adopted in its entirety the IDS Telecom, LLC Interconnection Agreement dated February 5, 2003; the adoption was deemed approved by the Commission on September 5, 2003, in Docket No. 030487-TP. The agreement expires on February 4, 2006.

Discussion of Issues

Issue 1: Should the Commission grant BellSouth's Motion to Strike STS's Response to BellSouth's Motion for Summary Final Order?

Recommendation: Yes. The Commission should grant BellSouth's Motion to Strike STS's Response to BellSouth's Motion for Summary Final Order. If the Commission approves staff's recommendation, staff believes this renders STS's Emergency Motion to File Supplemental Response moot. **(Fordham)**

Analysis:

At the outset, staff notes that, based on staff's recommendation in Issue 1, STS's response and supplemental response are not addressed in this analysis. However, should the Commission reject staff's recommendation in Issue 1, STS's responses are attached to this recommendation as Attachments A and B. Staff will be prepared to address the arguments set forth therein at the Agenda Conference as necessary.

BellSouth's Motion:

BellSouth first notes that:

. . . in the last year, STS has initiated three separate proceedings against BellSouth – this docket, Docket No. 040533-TP, and Docket No. 040927-TP. STS voluntarily dismissed the latter two dockets, but this case remains open. BellSouth states that up to this point it has restrained itself, in this and prior dockets, from objecting to reasonable modifications to filing dates and procedural matters. At this juncture, however, BellSouth advises that STS's latest filings and its failure to comply with procedure simply cannot be tolerated and BellSouth is compelled to file this Motion to Strike. Specifically, after obtaining an extension of time to file a response in opposition to BellSouth's Motion for Summary Final Order, STS filed a late, incomplete, and defective response.

BellSouth notes that STS's Response included arguments that BellSouth had previously objected to; by letter dated February 24, 2005, BellSouth had provided STS with notice that the inclusion of these arguments would trigger a motion to strike. Accordingly, BellSouth argues STS's failure to follow procedure combined with its disregard of BellSouth's objections to its invalid arguments demonstrate unequivocally that its Response should be stricken in its entirety and BellSouth's Motion should be granted.

BellSouth emphasizes that although it was served by mail with a copy of STS's Response to its Affirmative Defenses and Counterclaim, no such response was properly filed with this Commission. Notably, STS's Response to BellSouth's Affirmative Defenses and Counterclaim included a notation "Filed: July 29, 2004," the certificate of service notes that it was served by mail on August 19, 2004, and the actual response itself was never filed with the Division of Commission Clerk and Administrative Services.

Pursuant to Commission Rule 25-22.028, BellSouth states that when a party files a document with this Commission such filing “shall be accomplished by submitting the original document and the appropriate number of copies, as provided by rule, to the *Division of the Commission Clerk and Administrative Services*.” Thus, in order for a party to comply with the Commission’s filing requirements, BellSouth claims a party must mail, hand deliver or send via courier an original and copies to Ms. Blanca S. Bayó, Commission Clerk and Administrative Services.³ According to BellSouth, failure to submit a document to the Commission Clerk means that a document has not been filed with this Commission.

BellSouth urges that STS’s Response to BellSouth’s Affirmative Defense and Counterclaim was never properly submitted by STS to the Division of the Commission Clerk and Administrative Services. Indeed, by memo dated January 6, 2005, Mr. Lee Fordham with the Office of the General Counsel submitted a copy of STS’s Response to Ms. Bayó, noting that the Response “was not properly filed with the office of the PSC Clerk.” As a matter of law, claims BellSouth, STS has not responded to BellSouth’s Affirmative Defenses and Counterclaim, which are therefore deemed admitted. *See Fla. R. Civ. Proc. 1.110 (3) and 1.500(a)*.

On February 14, 2005, BellSouth filed its Motion for Summary Final Order in this docket. BellSouth notes that it served the foregoing motion via electronic mail and federal express. Pursuant to Florida Administrative Code 28-106.103 and 28-106.204(4), any response in opposition to BellSouth’s motion was due on February 21, 2005. STS’s Motion for Extension of Time to file its response was due on February 21, 2005. BellSouth states that, to its knowledge, STS did not file its Motion for Extension of Time on February 21, 2005. STS’s cover letter to its Motion for Extension of Time is dated January 24, 2005, referencing an incorrect docket number -- Docket No. 040533-TP. STS’s certificate of service is dated February 21, 2005. Commission records show a filing date of February 22, 2005, which means that STS filed its Motion for Extension of Time one day late.⁴ BellSouth notes that STS included with that motion, a “preliminary” response in opposition to BellSouth’s Motion for Summary Final Order, which included the affidavits of Keith Kramer and Jonathan Krutchik. STS specifically stated that its preliminary response was filed in an abundance of caution and was “only intended to be utilized in the event the Commission denies STS’s Motion For an Extension of Time.”

On February 24, 2005, this Commission issued Order No. PSC-05-0224-PCO-TP (“Extension Order”) granting STS’s request for a ten day extension of time to file its response in opposition to BellSouth’s Motion for Summary Final Order. BellSouth notes that in light of the issuance of the Extension Order, STS’s “preliminary” response, including the affidavits of Keith Kramer and Jonathan Krutchik was not “intended to be utilized.” Moreover, claims BellSouth,

³ The Commission also began to accept filings submitted electronically as of April 1, 2004, so long as the appropriate guidelines are followed.

⁴ While Commission Rule 25-22.028 governs filings and does not expressly include the timing of filings; Florida Administrative Code, 28-106.104, outlines the common practice and procedure, which is to construe “filing” as “received by the office of the agency clerk *during normal business hours*.” Likewise, documents “received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.” *See* 28-106.104, Florida Administrative Code, (1) and (3).

based on the original due date of February 21, 2005, the Extension Order, by its terms, meant that STS's response in opposition to BellSouth's Motion for Summary Final Order was due to be filed with the Commission on March 3, 2005.

On March 3, 2005, BellSouth states it received, via electronic mail, STS's response in opposition to BellSouth's Motion for Summary Final Order. The email included an unsigned pleading only, without any supporting affidavits or other documentation.⁵ Based on the Commission's records, BellSouth notes that STS failed to file any response in opposition to BellSouth's Motion for Summary Final Order on March 3, 2005.⁶

On March 4, 2005, BellSouth relates, it received, via federal express, one large box and a smaller box of billing records. These records were bound in 19 separate volumes, titled "BellSouth MBR Invoices."⁷ No affidavits or other explanatory documents were included with these records. Also, according to BellSouth, on March 4, 2005, STS filed with the Commission its Response in Opposition to BellSouth's Motion for Summary Final Order, together with the Affidavit of Jonathan Krutchik. STS's March 4, 2005 filing was untimely and did not satisfy the terms of the Extension Order. Because STS's Response in Opposition to BellSouth's Motion for Summary Final Order was not timely filed with the Division of the Commission Clerk, BellSouth urges that it should be stricken in its entirety.

BellSouth reports that on March 7, 2005, it received, via federal express, another large box of billing records.⁸ These records were bound in 12 volumes, titled "BellSouth MBR STS Dispute Report." The Affidavit of Jonathan Krutchik was included with these billing records. BellSouth states it also received, on March 7, 2005, a signed copy of STS's Response in Opposition to BellSouth's Motion for Summary Final Order, with Exhibit A (consisting of a February 24, 2005 letter from BellSouth's counsel to STS's counsel), and a second copy of the Affidavit of Jonathan Krutchik.

Accordingly, BellSouth urges that the Commission strike the entirety of STS's untimely response to BellSouth's Motion for Summary Final Order for failure to comply with the terms of the Extension Order. While BellSouth acknowledges that it received a partial response from STS on March 3, 2005, the partial response BellSouth received lacked supporting documentation and thus could not be utilized. In addition, claims BellSouth, once it received what it presumes to be the entirety of STS's response, it remained incomplete. In relevant part, STS's response refers to an affidavit of Mr. Keith Kramer. BellSouth reiterates that it received no such affidavit on March 3, 2005 or March 7, 2005. According to BellSouth, the Kramer affidavit STS had previously filed with its February 22, 2005 Motion for Extension of Time was effectively withdrawn when this Commission entered its Extension Order because STS expressly stated its intent was to submit that affidavit only if an extension order was not granted. Consequently,

⁵ See Exh. 1, STS's March 3, 2005 email.

⁶ With regard to the reliance on Commission records, staff understands this to be a reference to the Commission's Case Management System (CMS).

⁷ See composite Exh. 2, copies of Federal Express packing slips showing deliveries on March 4, 2005 and March 7, 2005, respectively.

⁸ See Exh. 2.

STS's failure to provide a complete response to BellSouth's Motion at any time provides additional grounds for striking STS's deficient response in its entirety.

Finally, urges BellSouth, just over one month ago, this Commission admonished STS to heed Florida's procedural requirements. In relevant part, the Commission reprimanded STS for late filings in Docket No. 040533-TP, Order No. PSC-05-0139-PCO-TP, stating "[w]hile I acknowledge that our staff counsel received STS's Reply via e-mail on January 20, 2005, e-mail service upon staff counsel does not constitute filing with this Commission. Thus . . . STS's Reply is untimely. *For the remainder of this case, any similar demonstrations by STS of inability to comply with proper procedural requirements and inattention to the timeliness of filings will not be looked upon favorably.*" (emphasis supplied). Accordingly, BellSouth argues, considering that STS has had an express warning to take this Commission's procedural requirements seriously, its incomplete and late filings in this proceeding are simply inexcusable and BellSouth's Motion to Strike STS's Response *in toto* should be granted.

STS's Response:

STS first disputes BellSouth's contention that STS's Response to BellSouth's Affirmative Defenses and Counterclaim was not filed properly with the Commission. In any event, STS argues, even if the Response was not properly filed, failure to respond should be treated as a general denial. STS then argues that if BellSouth insists on enforcing a deadline for STS to file its Response, then BellSouth should also be subject to the same treatment, i.e., BellSouth is estopped from filing a Motion to Strike, since it failed to timely file the Motion to Strike within 7 days of discovering STS's alleged failure to file timely.

STS claims it should be clear that BellSouth is seeking to avoid a judgment on the merits because it realizes its substantive arguments are contrary to law. STS further urges that BellSouth waived any objections to STS's alleged untimely filing when BellSouth filed a Motion For Summary Final Order on February 14, 2005. STS argues that Florida law requires responsive pleadings should not be stricken without leave to amend. Also, litigants should be allowed to amend pleadings freely in order that causes of action may be tried on their merits and in the interest of justice; any doubts should be resolved in favor of allowing amendments. Van Valkenburg v. Chris Craft Industries, Inc., 252 So.2d 280 (Fla. 4th DCA 1971). Further, striking of a party's pleadings resulting in dismissal or default is the most severe sanction. It should be used sparingly and reserved for those instances where conduct is flagrant, willful, or persistent. Barnes v. Horan 841 So.2d 472 (Fla. 3rd DCA 2003).

STS argues it filed its Answer and Affirmative Defenses, Responses In Opposition to BellSouth's Summary Final Order (sic), and STS's Motion For Summary Final Order, in good faith. According to STS, BellSouth is in no way prejudiced, as all of STS's filings have been served on BellSouth and are all before the Commission. With respect to the Affidavit of Keith Kramer, the same was served on BellSouth and the Commission with STS's preliminary Response on March 3, 2005. With all of the Responses and supporting documentation being served on BellSouth and the Commission, STS claims there is no valid reason as to why the Commission cannot make its rulings on all motions before it on the merits. STS claims BellSouth is unfairly attempting to deny STS's right to have judgments before the Commission

on the merits of the case because BellSouth realizes that its Counterclaim and Motion For Summary Final Order are without merit.

Staff Analysis:

Staff agrees with BellSouth that STS's Response in Opposition to BellSouth's Motion for Summary Final Order should be stricken and not considered in the disposition of BellSouth's Motion for Summary Final Order. The striking of a pleading based on procedural defects is a harsh penalty. However, in the present instance, it is warranted because STS has demonstrated a continuing and flagrant disregard of the rules and procedures necessary to properly plead its case before this Commission. Therefore, STS's conduct in not timely or properly filing virtually everything meets the criteria for striking set forth in Barnes v. Horan ". . . where conduct is flagrant, willful, or persistent." Staff notes below some of the filings in this Docket which highlight examples of STS's apparent inability to comply:

- August 19, 2004 Response to BellSouth's Affirmative Defenses and Counterclaim. This Document has never been properly filed with the FPSC Clerk, but, rather provided only to GCL, in spite of previous instruction from staff on proper filing. On January 6, 2005, staff placed a copy in the Docket file.
- February 22, 2005 STS's Motion for Extension of Time to File Response. This Motion was filed outside of the 10-day response period. The cover letter for that filing contained an incorrect docket number and required research by the FPSC clerk, who subsequently identified the present Docket and corrected the number.
- March 4, 2005 STS filed its Response, outside of the 10-day extension which had previously been granted.
- February 28, 2005 STS filed its Notice of Intent to Request Specified Confidential Classification, but did not state the Document Number to be protected, leaving staff to speculate as to the document number. STS never followed up with an appropriate request. Staff called STS on April 1, 2005 and reminded them the request must be filed.
- March 4, 2005 GCL staff received 2 large and 1 small box containing numerous volumes of raw billing data. There were no pleadings or explanations regarding the data and, as of the filing of this recommendation, staff is unaware of the purpose of that data.
- March 21, 2005 STS filed its Request for Specified Confidentiality of DN 02273-05. However, the document for which protection was sought had been filed as a public record 13 days earlier on March 4, and was not amenable to retroactive protection.
- March 24, 2005 A FedEx package from STS was received in GCL, addressed to Douglas Lackey, who is an attorney for BellSouth in Atlanta, but containing the

mailing address of the FPSC General Counsel. On March 28, staff called STS and determined that they had once again erred and the package was intended as a filing in the present Docket. As an accommodation to STS, staff filed the pleading with the office of the clerk on behalf of STS. However, as a result of the STS errors the response was again not timely filed.

April 25, 2005 STS filed a Request for Specified Confidentiality, but again failed to specify the Document Number of the document for which protection is sought, leaving staff to speculate based on a general description given by STS.

Over the months spanned by these problematic pleadings staff had a number of telephonic communications with STS wherein proper procedures were explained to counsel for STS.⁹ Despite the verbal instruction from staff, the same departures from proper procedure persisted. Staff believes that these examples alone are sufficient to justify disallowing any further pleadings that are not in strict compliance. However, STS's conduct in this Docket is made all the more egregious by the fact that it has occurred immediately after being admonished by this Commission in a separate docket for similar conduct. STS was told in Order No. PSC-05-0139-PCO-TP, filed February 4, 2005 in Docket No. 040533-TP, that:

For the remainder of this case, any similar demonstrations by STS of inability to comply with proper procedural requirements and inattention to the timeliness of filings will not be looked upon favorably.

Yet, even following that admonition, STS continued in the present Docket to demonstrate an "inability to comply with proper procedural requirements" for practice before this Commission.

Based on the above, staff recommends that this Commission grant BellSouth's Motion to Strike STS's Response in Opposition to Motion for Summary Final Order for failure to comply with Order No. PSC-05-0224-PCO-TP. STS's Response in Opposition to BellSouth's Motion for Summary Final Order should not be considered in the disposition of BellSouth's Motion for Summary Final Order, nor should STS's Supplemental Response. If the Commission approves this recommendation, staff believes the May 16, 2005, Emergency Motion filed by STS is rendered moot.

⁹ Staff notes that STS is represented by Counsel, who is a Florida Bar member.

Issue 2: Should the Commission grant BellSouth's Motion for Summary Final Order?

Recommendation: Yes. The Commission should grant BellSouth's Motion for Summary Final Order. If the Motion is granted, BellSouth should be allowed to disconnect STS for non-payment if STS fails to render the amount due within 30 days following issuance of the Commission's Order from this recommendation, unless some other payment plan is agreed upon by the parties. If the Commission grants BellSouth's Motion, staff recommends that STS's Motion for Summary Final Order on BellSouth's Counterclaim is rendered moot. **(Fordham)**

Analysis:

BellSouth's Motion:

BellSouth urges that STS has no right to avoid its contractual obligations, and respectfully requests that this Commission enter an order granting its counterclaim and requiring STS to promptly pay for the switching services it received. BellSouth claims there is no genuine issue of material fact as to any issues, and it is entitled to a summary final order in its favor as a matter of law. STS's Response is not addressed in this analysis for the reasons set forth in Issue 1. However, should the Commission deny staff in Issue 1, STS's Response is attached as Attachment A to this Recommendation, and staff will be prepared to address STS's arguments.

BellSouth alleges that the following facts are undisputed:

1. STS adopted in its entirety an interconnection agreement between IDS Telecom, LLC and BellSouth, which was originally approved in Docket No. 030158-TP. The parties' Agreement became effective on May 30, 2003, and will expire on February 4, 2006.¹⁰

2. The adoption went into effect by operation of law as set forth in Commission staff's memorandum to Docket No. 030487-TP, filed on September 5, 2003. No party filed any objection to any of the terms of either the BellSouth-STs Agreement or the BellSouth-IDS interconnection agreement.¹¹

3. The provisions of the parties' interconnection agreement, as set forth below, govern this dispute:

Section 1.7.1 of Attachment 2 –

[t]he prices that [STS] *shall pay* to BellSouth for Network Elements and Other Services are set forth in Exhibit B to this Attachment.” (emphasis supplied).¹²

¹⁰ Affidavit of Kristen E. Rowe (“Rowe Affid.”) ¶ 4, Exhibit 1.

¹¹ Rowe Affid. ¶ 5.

¹² Id. ¶ 6.

Section 4.2.2 of Attachment 2 of the Agreement –

Notwithstanding BellSouth's general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for [STS] when [STS] serves an end-user with four (4) or more voice-grade (DS-0) equivalent lines or lines served by BellSouth in one of the following MSAs: . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . .¹³

Section 4.2.3 of Attachment 2 –

In the event that [STS] orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within Density Zone 1 in an MSA listed above, BellSouth shall charge [STS] the market based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities.¹⁴

Section 5.5.4 of Attachment 2 –

BellSouth is not required to provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide circuit switching as an unbundled network element.¹⁵

Section 5.5.5 of Attachment 2 -

BellSouth shall not be required to provide local circuit switching as an unbundled network element in density Zone 1, as defined in 47 CFR 69.123 as of January 1, 1999 of the . . . Miami, FL; Orlando, FL; Ft. Lauderdale, FL . . . MSAs to [STS] if [STS's] customer has 4 or more DS0 equivalent lines.¹⁶

Section 5.5.6 of Attachment 2 –

BellSouth shall provide combinations of port and loop network elements on an unbundled basis where, pursuant to FCC rules, BellSouth is not required to provide local circuit switching as an unbundled network elements and shall do so at the market rates in Exhibit B.¹⁷

¹³ *Id.* ¶ 7.
¹⁴ *Id.* ¶ 8.
¹⁵ *Id.* ¶ 9.
¹⁶ *Id.* ¶ 10.
¹⁷ *Id.* ¶ 11.

BellSouth also believes that the rate sheet accompanying Attachment 2 clearly establishes non-recurring and recurring “Unbundled Port Loop Combinations – Market Rates” for a variety of switching services,¹⁸ while the Florida rate sheet also includes the following sentence (apparently cut off in the formatting or printing process), “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market [sic – words missing in original].”¹⁹ Although STS adopted the underlying BellSouth-IDS interconnection agreement for the state of Florida only, the printed rate sheets from other states include this sentence in its entirety in the hard copy printout. This sentence, in its entirety, includes the italicized language below: “BellSouth currently is developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this section except for nonrecurring charges for not currently combined in FL and NC. In the interim where BellSouth cannot bill Market Rates, BellSouth shall bill the rates in the Cost-Based section preceding in lieu of the Market Rates and reserves the right to true-up the billing difference.” (emphasis supplied).²⁰

BellSouth contends that it is provisioning certain switching services at market rates in accordance with the FCC’s *UNE Remand Order*.²¹ Specifically, BellSouth maintains that prior federal rules did not require BellSouth to provide unbundled switching at cost-based rates to customers with four or more lines in certain density zone 1 central offices in the Fort Lauderdale, Miami, and Orlando Metropolitan Statistical Areas (“MSAs”).²² These rules were invalidated and remanded to the FCC in *United States Telecom. Ass’n. v. FCC*.²³ Consistent with the resulting rules, BellSouth asserts it included language in the Agreement with STS to comply with the switching exemption.²⁴

Prior to STS’s adoption of the Agreement, BellSouth explains that it had already entered into interconnection agreements in Florida, which agreements, like the Agreement between the parties, contain market based switching rates applicable to CLECs for end user customers with four or more DS0 lines in the density zone 1 central offices located within the Fort Lauderdale, Miami, and Orlando MSAs. These agreements uniformly provide that BellSouth will initially bill carriers at cost-based rates, subject to a later true-up. On August 30, 2002, BellSouth posted Carrier Notification Letter SN91083301 to its interconnection website explaining the different rates in its interconnection agreements. This letter also explained BellSouth’s implementation of billing reconciliation efforts; specifically, where UNE-P market rates should apply, CLECs would be billed accordingly beginning with October 2002 billing records.²⁵

BellSouth maintains that it continued to advise the CLEC community of its billing reconciliation efforts to charge market-based switching rates, where appropriate, by posting

¹⁸ *Id.* ¶ 12.

¹⁹ *Id.* ¶ 13.

²⁰ *Id.* ¶ 14.

²¹ 15 FCC Rcd 3696, ¶ 293 (1999); also Rowe Affid. ¶ 15.

²² 65 FR 2551, Jan. 18, 2000; 65 FR 19334, Apr. 11, 2000; 47 C.F.R. § 51.319(c)(2), prior to October 2, 2003.

²³ 290 F.3d 415 (D.C. Cir. 2002) (“USTA I”), cert. denied, 538 U.S. 940 (2003).

²⁴ Rowe Affid. ¶ 15.

²⁵ *Id.* ¶ 17-18.

letters on its interconnection website. Carrier notification letters were posted on April 9, 2003, May 23, 2003, and November 6, 2003. Carrier Notification letter SN91083885, posted November 6, 2003, specifically explained that BellSouth would true-up under-billed UNE-P market rates every six months, in December and June.

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

May 2003:	\$858.86
December 2003:	\$148,587.54
June 2004:	\$206,840.54
December 2004:	<u>\$359,864.05</u>
Total:	<u>\$715,292.13</u> ²⁶

The total amount billed represents the true-up amount that represents the difference between the cost-based switching rates previously charged to STS and the market-based switching rates that STS agreed to pay pursuant to the Agreement, according to BellSouth. BellSouth emphasizes that STS has disputed and has refused to pay these charges. STS's most recently submitted Billing Adjustment Request forms did not dispute that the Agreement contains market based switching rates that it agreed to pay. Instead, STS claims it "seeks a more equitable rate structure" and that it is disputing market-based switching until it "can negotiate a fair and equitable 'Market Based' rate structure."²⁷

BellSouth argues that STS cannot refuse to pay for the switching services in question. Though STS raises a host of objections to the application of the market based switching rates from the parties' Agreement, BellSouth claims none have merit. BellSouth also claims STS's description of its billing dispute is equally meritless.

While the main thrust of STS's objection is that such rates "are higher than what BellSouth provides to their end-users" and therefore constitute a barrier to entry,²⁸ BellSouth urges that STS ignores completely that it *elected to adopt the rates, terms and conditions of the Agreement*. BellSouth maintains its contractual relationship with STS is governed by the terms of that Agreement. BellSouth's retail rates have no bearing whatsoever on the rates that STS agreed to pay; moreover, BellSouth's tariffed retail rates are available as a matter of public record – STS could have reviewed these rates prior to adopting the Agreement, and, had STS found the market based rates objectionable, it could have elected not to adopt the Agreement.²⁹

²⁶ Affidavit of Cynthia A. Clark ("Clark Affid.") ¶¶ 5, 11, Exhibit 2.

²⁷ Clark Affid. ¶ 13.

²⁸ Complaint, ¶¶ 16, 24-25, 27.

²⁹ Moreover, the FCC recently released its Triennial Review Remand Order ("TRRO") in CC Docket Nos. 01-338 and 04-313 (rel. Feb. 4, 2005). On remand, in responding to the D.C. Circuit's questions regarding how the Commission's impairment analysis should take account of state universal service cross-subsidies, the FCC elected to exercise its "at a minimum authority" to eliminate unbundled access to mass market local circuit switching without separately addressing the interaction between such unbundling and any cross-subsidies in state retail rates. TRRO,

Although STS implies that the market based rates were not agreed to by the parties,³⁰ BellSouth argues that STS adopted an existing interconnection agreement, which contains the rates it now apparently contests. BellSouth notes STS did not seek to arbitrate any of the terms in the Agreement, and as such, cannot complain or undo its choice now.

STS also objects to the manner in which BellSouth bills market-based switching,³¹ but BellSouth argues STS's displeasure with BellSouth's billing simply does not allow it to refuse to pay its bills altogether. That STS would prefer monthly billing does not mean that it can refuse to pay its bills – at a minimum, if it continues to refuse to pay its bills, BellSouth claims this Commission should permit BellSouth to discontinue providing services to STS. Moreover, by entering into an Agreement that explicitly provided BellSouth with contractual “true-up” rights, STS has no legitimate basis to complain.

While STS apparently believes it remains “impaired” in the Miami and Ft. Lauderdale MSAs,³² BellSouth argues STS's belief is flatly contradicted by controlling legal decisions; indeed, the FCC has recently found that incumbent LECs have no obligation to provide CLECs with unbundled access to local circuit switching nationwide, according to BellSouth³³

BellSouth also disputes STS's further assertion that the market-based rates contained in the Agreement should be equivalent to switching rates BellSouth has allegedly proposed for commercial agreements,³⁴ contending that STS's claim provides no legal basis to set aside contractual language and contractual rates. STS adopted an Agreement, with applicable rates, and cannot ignore its duties now.

According to BellSouth, STS's purported reasons for disputing the market based rates as set forth in its January 2005 Billing Adjustment Request Form fail for similar reasons as those set forth above—there is no legal basis to ignore contract terms. STS never disputes that it entered into a contract containing the rates it has been billed or claims there was any calculation error in the rates it was charged – instead, STS is trying to avoid its obligations altogether, according to BellSouth.

Finally, BellSouth notes that in STS's own Motion for Summary Final Order on BellSouth's counterclaim, STS asks that the Commission grant STS's request for Summary Final Order, claiming that there are no disputed facts. However, in STS's March 4, 2005, response to BellSouth's Motion, STS claimed that “there *are* substantial matters of fact in dispute”

n. 39, 592. See also United States Telecom Ass'n. v. FCC, 359 F.3d 554, 573 (D.C. Cir. 2004) (“USTA II”), cert. denied, 125 S. Ct. 313 (2004).

³⁰ Complaint, ¶¶ 13, 19. In STS's view, BellSouth has apparently simply “propose[d]” or “established” market rates for “administrative ease.” The only “administrative” objective served by the parties' Agreement was to avoid the need for multiple contracts by including in the Agreement rates for services that BellSouth is not required to provide to STS pursuant to Section 251 of the Act, a practice that BellSouth has discontinued.

³¹ Complaint, ¶¶ 17-18.

³² Complaint, ¶ 19.

³³ USTA II, 359 F.3d 554; also TRRO.

³⁴ Complaint, ¶ 20.

(STS's Response, p. 13)(emphasis added).³⁵ Thus, BellSouth argues that STS's positions are flatly contradictory as to the propriety of a summary decision in this matter. Notwithstanding STS's contradictory arguments, BellSouth argues that this matter should be resolved as a matter of law; thus, a summary final order is appropriate.

For these reasons, BellSouth asks that this Commission grant its Motion for Summary Final Order and order STS to promptly submit payment for the outstanding and unpaid market based switching charges that it has been billed. BellSouth also requests that the Commission require STS to submit payment or face the discontinuance of service.

Standard of Review:

Under Rule 28-106.204(4), Florida Administrative Code, "[a]ny party may move for summary final order whenever there is no genuine issue of material fact." A summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order.³⁶ The purpose of a summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts.³⁷ When a party establishes that there is no material fact relating to any disputed issue, the burden shifts to the opponent to demonstrate the falsity of the showing.³⁸ "If the opponent does not do so, summary judgment is proper and should be affirmed."³⁹ There are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law.⁴⁰ In this docket, BellSouth argues that it satisfies both requirements and is entitled to a judgment in its favor.

Staff Analysis:

Staff believes that in this instance, the parties' Interconnection Agreement squarely addresses the matter in dispute, and thus, should be viewed as governing the resolution of this dispute. As such, staff believes it is appropriate for the Commission to apply and enforce the terms of the parties' Agreement, which clearly require STS to pay the market-based switching rates it has been billed.

There is no dispute as to any fact, let alone a material fact, regarding the terms of the agreement. The Agreement provides market-based nonrecurring and recurring switching rates. Florida law clearly provides that "the construction of all written instruments is a question of law to be determined by the court where the language used is clear, plain, certain, undisputed,

³⁵ While BellSouth disagrees that this matter involves factual disputes, STS apparently believed at one time that factual issues existed.

³⁶ See Order No. PSC-03-0528-FOF-TP, p. 8.

³⁷ See Order No. PSC-01-1427-FOF-TP, p. 13; and Order No. PSC-03-1469-FOF-TL.

³⁸ Order No. PSC-01-1427-FOF-TP, p. 13.

³⁹ Id.

⁴⁰ Id.

unambiguous, unequivocal and not subject to conflicting inferences.”⁴¹ To interpret contracts, the guiding principle is to determine and enforce the parties’ intent.⁴² The best evidence of the parties’ intent is the plain language of the contract, which the Commission should consider while taking care not to give the contract any meaning beyond that expressed.⁴³ When the language is clear and unambiguous, it must be construed to mean “just what the language therein implies and nothing more.”⁴⁴ Consequently, “no word or part of an agreement is to be treated as a redundancy or surplusage if any meaning, reasonable and consistent with other parts can be given to it.”⁴⁵

The relevant contractual language between the parties authorizes nonrecurring and recurring rates that BellSouth “shall charge” for switching services provided to STS’s end user customers with four or more DS0 lines served from Zone 1 central offices located in the Ft. Lauderdale, Miami, and Orlando MSAs. The rates that apply are the market rates in the Agreement. (See pertinent contract provisions – Attachment A) No contractual language negates STS’s contractual obligation to pay for such services, yet the Complaint alleges “overbilling” without a single citation to the Agreement. STS’s unsupported assertions do not circumvent its contractual obligations. Accordingly, staff recommends that, based on the express terms of the Agreement, the Commission find as a matter of law that the parties’ contractual terms, conditions, and prices – including the market based switching rates – apply. Therefore, staff recommends that BellSouth’s Motion for Summary Final Order be granted. If the Motion is granted, BellSouth should be allowed to disconnect STS for non-payment should STS fail to render the amount due within 30 days following issuance of the Commission’s Order from this recommendation, unless some other payment plan is agreed upon by the parties.

⁴¹ Royal Am. Realty Inc. v. Bank of Palm Beach, 215 So.2d 336, 337 (Fla. 4th DCA 1968) (citations omitted); also Okeelanta Corp. v. Bygrave, 660 So. 2d 743, 747 (Fla. 4th DCA 1995) (citations omitted); and Feldman v. Kritch, 824 So. 2d 274, 277 (Fla. 4th DCA 2002); Jacobs v. Petrino, 351 So. 2d 1036, 1039 (Fla. 4th DCA 1976) (the words found in a contract are to have a meaning attributed to them, and are the best possible evidence of the intent and meaning of the contracting parties) (citations omitted).

⁴² St. Augustine Pools, Inc. v. James M. Barker, Inc., 687 So. 2d 957, 957 (Fla. 5th DCA 1997); also Royal Oaks Landing Homeowners Ass’n. v. Pelletier, 620 So. 2d 786 (Fla. 4th DCA 1993).

⁴³ Royal Oaks Landing Homeowners Ass’n., 620 So.2d at 788; and Walgreen Co. v. Habitat Dev. Corp., 655 So. 2d 164, 165 (Fla. 3d DCA 1995)(citations omitted).

⁴⁴ Id.

⁴⁵ Royal Am. Realty Inc., 215 So.2d at 337.

Docket No. 040732-TP
Date: May 19, 2005

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed. **(Fordham)**

STAFF ANALYSIS: If the Commission approves staff's recommendations in Issues 1 and 2, this Docket should be closed. All other pending pleadings in this Docket would be rendered moot, and any documents filed under claim of confidentiality or request for confidentiality should be returned to the filing party.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)
Saturn Telecommunication Services, Inc.) 04-0732 TP
d/b/a STS Telecom and BellSouth) Filed March 3, 2005
Telecommunications, Inc.)

04-0732 TP
FILED
MAY 19 2005
TALLAHASSEE, FLORIDA

STS TELECOM'S RESPONSE IN OPPOSITION TO BELLSOUTH TELECOMMUNICATIONS, INC. MOTION FOR SUMMARY FINAL ORDER

Comes now the Petitioner, SATURN TELECOMMUNICATION SERVICES, INC. d/b/a STS Telecom ("STS"), by and through its undersigned counsel, and files their Response in Opposition to BellSouth Telecommunication Inc.'s (BellSouth") Motion For Summary Final Order as follows:

BellSouth's Motion For Summary Judgment should be denied because there are disputed matters of fact and issues of law. This case should be permitted to proceed on the merits on the basis of any or all of the following factual disputes:

1. Even if one assumes that BellSouth is entitled to bill at the market base rates as set forth in the Interconnect Agreement, BellSouth improperly billed for those rates and the amount owing to BellSouth is disputed.
2. BellSouth billed STS on a monthly basis for all services it was providing and STS paid those monthly billing amounts in full. The bills upon which BellSouth is now attempting to collect for retail customers with four or more lines are amounts which BellSouth did not previously bill in its regular monthly billings. Instead BellSouth is retroactively and subsequently changing amounts that were billed in the past from the billed cost basis to a much higher market rate and expecting STS to pay the enormous difference. *The Interconnection Agreement does not*

provide for this rebilling. Additionally, equitable principals of waiver and estoppel preclude BellSouth from rebilling the same.

3. The charges by BellSouth in its market based rates to CLECs, including STS, is, in many instances, far greater than the retail rate BellSouth charges to its retail customer. The market base rates in the Interconnection Agreement are unfair, unreasonable and discriminatory. As such, it constitutes a barrier to entry and an attempt to drive STS and similar CLECs out of business.

STATEMENT OF FACTS

4. STS is a competitive local exchange carrier ("CLEC"), certified by the Florida Public Service Commission to provide local telephone service in January 2003. In order to commence business, STS reviewed several interconnection agreements and determined that the Interconnection Agreement between BellSouth and IDS Telcom, LLC, was in STS's best interest. Had STS negotiated a new interconnection agreement with BellSouth or resorted to arbitration before the Florida Public Service Commission, the time delay and cost would have been prohibitive and precluded the entry of STS into the marketplace as a competitive local exchange carrier.
5. On the date that the Interconnection Agreement was adopted, STS had not previously been involved in providing local telecommunication services in Florida and was not aware of the great disparity in rates for retail customers that have four or more lines, between what BellSouth provided in the Interconnection Agreement and represented as wholesale market rates, and the retail rates it offered the general public.

6. The Interconnection Agreement with BellSouth and STS provided in Section 29.1 of the "General Terms and Conditions" the following: "This section applies to network interconnection and/or unbundled network element and other service rates that are *expressly subject to true-up* under this Agreement." (*emphasis added*) BellSouth could have chosen to subject all rates in the Interconnection Agreement to true-up, but failed to do so. BellSouth chose to subject only certain rates to true-up, which are those rates made "expressly subject to true-up" Thus, Section 29.1 of the relevant agreement only gave BellSouth the ability to correct or rebill (true-up) those charges which the agreement expressly allowed to be rebilled.
7. STS only accepted the Florida rates found in Attachment 2 of the Interconnection Agreement which stated "BellSouth is currently developing the billing capability to mechanically bill the recurring and non-recurring Market Rates in this Section except for nonrecurring charges for not currently combined in FL and NC. In the interim, where BellSouth cannot bill market." There is absolutely no provision in the Interconnection Agreement allowing BellSouth to true-up or subsequently adjust these market rates.
8. BellSouth billed STS on a monthly basis and STS paid those amounts in full. There was nothing in the bills indicating the charges for retail customers with 4 or more lines were subject to change or true-up; and as stated previously, there was nothing in the Interconnection Agreement subjecting this aspect of the bill to subsequent change by BellSouth. STS billed its customers and took action based upon its belief on the accuracy of the BellSouth billings and the plain language of

the Interconnection Agreement. Some of the actions taken by STS in reliance on the billing and actions of BellSouth are set forth in the Affidavit of Keith Kramer. It was only much later that BellSouth attempted to true-up its rates by going back as far as 6 months in adjusting billing upwards for "market rates". Not only did BellSouth inaccurately bill the rates, it had no authority under the Agreement to rebill and true-up the rates. Moreover, the rates are not based upon market, but in many instances, are far greater than the rates BellSouth charges to the retail customer. The market rates are unfair, unreasonable and constitute a barrier to entry. Moreover, BellSouth's market base rates are discriminatory and improper.

ARGUMENT

STS agrees with the standards of summary judgment stated in BellSouth's Memorandum; namely, that summary final order **cannot** be given if there are genuine issues of material fact. This standard is a very high standard with the facts viewed in the light most favorable to STS, as the non-moving party, and all inferences from those facts made in favor of STS. It is clear that BellSouth's Motion For Summary Final Order does not meet the stringent requirement for a summary judgment and BellSouth's Motion must be denied.

MATERIAL FACTS ARE IN DISPUTE AS TO AMOUNT OF BILL

Even if one assumes for the sake of argument that BellSouth is entitled to bill the market based rates according to the Interconnection Agreement, STS disputes the amounts billed by BellSouth. (See Affidavit of Jonathan Krutchik). The dispute regarding the amount of bills is sufficient to defeat BellSouth's Motion For Summary Final Order.

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

THE INTERCONNECTION AGREEMENT DOES NOT PERMIT REBILLING

The Interconnection Agreement is a document prepared in its entirety by BellSouth. Although STS asserts that the Interconnection Agreement, in clear and unequivocal language, sets forth the circumstance in which true-ups are permissible, and did not include the ability to true-up the billings in controversy herein. Never-the-less, if the Interconnection Agreement is found to be ambiguous, any ambiguities must be construed against BellSouth, the drafter. See, *Ware Else v. Ofstein*, 856 So.2d 1079 (Fla. 5th DCA 2003); *Maines v. Davis*, 491 So.2d 1233, (Fla. 1st DCA 1986); *Inguez v. American Hotel Register Company*, 820 So.2d 953 (Fla. 3rd DCA 2002.)

The respective rights and obligations of BellSouth and STS are as expressly set forth by BellSouth under the Interconnection Agreement which it drafted. In Section 29 of the Interconnection Agreement entitled "Rate True-Up" BellSouth provides that certain specified rates can be later adjusted up or down, and in Section 29.1, BellSouth limits those adjustable rates to those "expressly subject to true-up under this Agreement." Thus, BellSouth had the ability to expressly designate which rates are subject to true-up under the Interconnection Agreement. BellSouth chose not to subject the rates in issue to

true-up. STS accepted the agreement drafted by BellSouth which did not allow the rates for retail customers with four or more lines to be changed retroactively. If BellSouth wanted to bill STS for services to these customers at market rates, it was required to do so in the regular billing. It cannot retroactively rebill or true-up the rates. Whether it is an error or intentional, the Interconnection Agreement was drafted by BellSouth, and should be interpreted according to its plain language. In *Walgreen Company v. Habitat Development Corp*, 655 So2d 164 AT 165 (Fla. 3rd DCA 1995), the Court stated; "When a contract is clear and unambiguous, the court is not at liberty to give the contract 'any meaning beyond that expressed'Further, when the language is clear and unambiguous, it must be construed to mean 'just what the language therein implies and nothing more.' (citations omitted). See Also: *Winn-Dixie Stores v. 99 Cent Stuff-Trail Plaza LLC.*, 811 So2d 719 at 722 (Fla. 3rdDCA 2002) ; "Parties are bound by the clear words of their agreements ...". Pursuant to the clear and unambiguous language of BellSouth's Interconnection Agreement, the rates for these services are not subject to true-ups.

BellSouth claims that section 17 of the Interconnection Agreement somehow gives it the right to true-up these rates. (See letter from BellSouth to STS' attorneys attached hereto as Exhibit "A") . This is a desperate attempt by BellSouth to find some justification in the Interconnection Agreement for their outrageous and unconscionable billing practices. Section 17 of the agreement is a boilerplate "waiver" provision, which basically states that BellSouth does not waive any rights it has under the Interconnection Agreement, by not taking immediate action. BellSouth does not have a right to true-up under the agreement for the rates in issue. It is axiomatic that one cannot waive a right one never had.

BellSouth's arguments in support of its motion are contradictory. BellSouth claims that STS should not be able to object to the market rates as unfair and unreasonable, because STS signed the agreement containing these rates. BellSouth urges this Commission to enforce the agreement against STS as written. Then, in the same breath, BellSouth urges this Commission to ignore the clear and unambiguous language of the agreement, and enforce, not what the contract says, but rather what BellSouth intended the contract to say. This Commission should ignore the conflicting positions advanced by BellSouth. The Interconnection Agreement does not allow BellSouth to True-up the rates for retail customers with 4 or more lines. BellSouth's Motion For Summary Final Order should Be denied.

Moreover, even if these rates were subject to true-up, equitable principles of waiver and estoppel requires that these rates not be subject to true-up. STS has taken actions based upon the regular billing by BellSouth and would be harmed if BellSouth could change its position. It has long been recognized in the law that the parties to an agreement may, by their actions, indicate an abandonment of one of the contractual terms. See *Gustafson v. Jenson*, 515 So.2d 1298 (Fla. 3rd DCA 1987), *Painter v. Painter*, 823 So.2d 268 (Fla. 2nd DCA 2002). In the affidavit of Keith Kramer attached hereto, Mr. Kramer sets forth the actions of BellSouth which indicate that BellSouth abandoned the right to true-up for these services. Moreover, the affidavit of Mr. Kramer proves that BellSouth by its actions waived or is estopped from being able to true-up the rates charged to STS for retail customers with four or more lines to a higher market rate. The issues of abandonment, waiver and estoppel are issues which are not appropriate for summary disposition. See, *Scheibe v. Bank of America*, 822 So.2d 575 (Fla 5th DCA

2002) and *Woodruff v. Government Employees Insurance Company*, 669 So.2d 1114 at 1115 (Fla. 1st DCA 1996). BellSouth billed for rates and were paid for those rates. BellSouth cannot rebill for these services at higher rates.

THE RATES ARE BARRIER TO ENTRY

After entering the market and receiving the true-up bill on market based rates from BellSouth, STS discovered that in many instances these market based rates which were supposed to be wholesale rates promulgated to certified local exchange carriers were in many instances substantially higher than BellSouth would sell to its retail customers. It would be impossible to effectively compete with BellSouth when it charges wholesale rates at a substantially higher price than retail rates. This is in violation of 47 U.S.C. § 251, which requires BellSouth to provide access to their network at a fair price for that access. The argument that STS could have discovered the same, if it was more experienced in the market or had spent hundreds of thousands of dollars in analyzing the rates has no bearing on the issues before this Commission. The statutes require BellSouth to provide access at fair rates. The fact that it might have been discovered earlier does not eliminate the duty of BellSouth to provide fair rates. Furthermore, rates such as the inflated market based rates creates an "economic barrier" to entry in violation of Section 251 of the Act. The Florida Public Service Commission should not enforce unfair rates.

Moreover, if the Commission considers the equities of the situation, the equities lie with STS. At the time the Interconnection Agreement was adopted by STS, BellSouth had not billed CLECS for market rates for retail customers having four or more lines. STS did not know when, if ever, those rates would be billed. STS bills its

customers on a monthly basis. BellSouth waited long periods of time and then billed for 6 months in arrears. This is designed to hurt the CLECS and their relationship with their customers. In fact, many customers were lured back to BellSouth by BellSouth's programs designed to win customers back at rates much lower than these supposedly wholesale "market rates". It is not practical to bill these customers or even rebill existing customers retroactively for six months. Thus, the actions of BellSouth and its delayed billing caused hardship to STS. If BellSouth has the right to charge market rates for retail customers with four or more lines, it must do so in a prudent and responsible manner for existing bills and not retroactively charge substantial amounts for periods which are long past.¹

BellSouth's practice of back billing of these charges is an unreasonable billing practice. In *The Peoples Network Inc. v. American Telephone and Telegraph co.*, Docket No. E-92-99 (FCC April 1997), the FCC ruled that the back billing of charges over a several month period of time may be deemed an unreasonable billing practice in violation of 47 U.S.C. 201(b). The back billings in this case presently before the Commission occurred over a six month period of time, and constitutes an unreasonable billing practice.

THE COMMISSION IS AUTHORIZED TO ADJUST RATES

This proceeding concerns the charges that BellSouth is making to STS for local circuit switching services for end users with four or more DSO equivalent lines within Density Zone 1 in Miami, Fort Lauderdale and Orlando. STS is petitioning for an order

¹ Despite diligent search, STS was unable to verify the accuracy of the citation. However, the same was cited before this Commission in the case of *BellSouth v. IDS Telcom, LLC*, Docket No. 031125-TP, Direct Testimony of Angel Leiro, page 9 (filed July 22, 2004).

from the Commission finding the charges for those services to be unlawfully high and replace them with just and reasonable rates. BellSouth is seeking summary judgment on the sole ground that the charges in question are contained in the Interconnection Agreement voluntarily negotiated between the parties and that STS has no alternative to paying the contract rates.²

BellSouth's Motion should be denied and this case should be permitted to proceed on the merits. Genuine issues of material fact remain between the parties on the following matters:

1. The Interconnection Agreement between the parties that BellSouth relies upon is a contract of adhesion, which STS was forced to accept without modification in order to enter the market as a competitive local exchange carrier. It was unable to obtain the necessary facilities from any third party, and it could not afford the expense or delay in attempting to negotiate a different agreement with BellSouth or asking the Commission to arbitrate the charges.³
2. Although the charges at issue are denominated as "market based rates", they were arbitrarily determined and were not based upon any charges prevalent in the relevant markets. In fact, the only rates for comparable services that can be found in those markets are the rates that BellSouth charges its retail customers, and the interconnection agreement rates are in

² BellSouth has also filed a Counterclaim seeking to recover certain amounts that it has backbilled STS relating to the same services. STS is seeking summary judgment on the counterclaim in a separate document.

³ Kramer affidavit, ¶ 9.

many instances higher than the rates BellSouth charges its retail customers for the same services.

3. Since entering into the Interconnection Agreement, BellSouth has undertaken an aggressive policy of reducing its retail rates for business line installations to significantly less than the rates contained in the Interconnection Agreement and has also instituted a "Rewards Program" that enables retail customers to obtain these services at lower rates from BellSouth than STS is able to charge if it must pay BellSouth the market base charges contained in the Interconnection Agreement. Thus, BellSouth has used its Inconnection Agreements to eliminate competition in these important markets.⁴

4. As a result, the charges in question in the Interconnection Agreement are unjust, unreasonable, discriminatory and constitute a barrier to entry into the telecommunications market, in violation of Florida and Federal law.

BellSouth's argument that STS has no choice other than to pay the rates contained in the Interconnection Agreement has no merit if the Commission is empowered to change those rates if it finds them to be unreasonable and a barrier to entry. If the Commission finds it is empowered to adjust these rates in an appropriate case, it must deny the Motion for Summary Judgment and set the matter for hearing on the merits.

The Florida Public Service Commission has ample authority to make such an adjustment under a number of the statutes that determine its powers and duties.

⁴ Kramer Affidavit, ¶ 11.

The Commission is directed in Section 364.01 of Florida Statutes to exercise its jurisdiction for the following purposes among others:

- to encourage competition to ensure the widest possible range of consumer choice in the provision of all telecommunication services (364.01(4)).
- to promote competition by encouraging new entrants into telecommunications markets. (364.01(4)(d)).
- to ensure that all providers of telecommunications services are treated fairly and to prevent anticompetitive behavior (364.01(4)(g)).

In addition, Section 364.03 specifically requires that “all...charges...of telecommunication companies for...equipment and facilities...shall be fair, just and reasonable.”

Further, Section 364.07 requires all telecommunication companies to file all contracts with other telecommunication companies relating to joint provision of intrastate telecommunications facilities. In that provision, the Commission is specifically empowered to adjudicate all disputes among the telecommunication companies regarding such contracts. The instant proceeding is just such a dispute between STS and BellSouth.

Section 364.07 was reinforced in 1995 by Section 364.162, relating specifically to prices for interconnection and the resale of services and facilities. That section restates the authority of the Commission to arbitrate “any dispute regarding interpretation of interconnection or resale prices and terms and conditions.” It is just such an arbitration that STS is seeking in this case.

Another relevant statutory provision is Section 364.16, which directs each competitive local exchange telecommunications company to provide access to, and interconnection with its services to any other provider of local exchange telecommunication services requesting such access (such as STS) “at nondiscriminatory

prices, terms and conditions.” Subsection (b) of that section specifically allows “any party with a substantial interest”, which clearly would include STS, to petition the commission for an investigation of any suspected violation of the above interconnection duties. This proceeding can also be considered as a 364.16(b) petition.

STS finally notes that Section 364.27 directs the Commission to investigate any acts relating to interstate rates and charges to determine whether any act that takes place in Florida is “excessive or discriminatory” or violates the Communications Act of 1934 and to petition the Federal Communications Commission for relief. STS asserts that the charges and practices complained of in this proceeding are also in violation of 47 U.S.C. §251 and impliedly asks that Florida Commission institute an appropriate proceeding before the FCC with respect thereto.

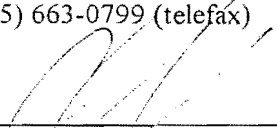
BellSouth’s Motion for Summary Judgment has no merit. It is based on the erroneous premise that a telecommunications carrier that has signed an interconnection agreement with it cannot petition this Commission for relief even if that agreement was entered into because the carrier was forced to sign it if it wished to enter the telecommunications business and that agreement contains charges that are unjust, unreasonable and discriminatory and has been utilized by BellSouth to create a barrier to the entry of competitive carriers and to retain its entrenched monopoly. BellSouth’s position is contrary to law and sound public policy and the motion based upon it should be denied.

CONCLUSION

STS has demonstrated that there are substantial matters of fact in dispute and that BellSouth is not entitled to a summary final order.

Respectfully submitted,

ALAN C. GOLD, P.A.
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(305) 667-0475 (office)
(305) 663-0799 (telefax)


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


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Electronic Mail and Federal Express on this 3 day of March 2005, to:

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

NANCY B. WHITE
C/O Nancy H. Sims
150 South Monroe Street
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R. DOUGLAS LACKEY
MERIDITH E. MAYS
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BY: ALAN C. GOLD, ESQUIRE
Florida Bar Number: 304875
JAMES L. PARADO, ESQUIRE
Florida Bar Number: 0580910

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

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Meredith E. Mays
Regulatory Counsel

404 335 0750
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February 24, 2005

Via Electronic and U.S. Mail

Alan Gold, Esq.
James L. Parado, Esq.
Alan C. Gold, P.A.
Gables One Tower
1320 South Dixie Highway
Suite 870
Coral Gables, FL 33146

Re: Docket No. 040732-TP (Saturn Complaint)

Dear Alan and James:

On Monday, February 21, 2005, STS filed its Motion for Extension of Time. That filing included a "preliminary" response in opposition to BellSouth's Motion for Summary Final Order.

The purpose of this letter is to raise a concern with two arguments STS raised in its "preliminary" response. In relevant part, you have taken "preliminary" positions that conflict with the parties' interconnection agreement. In the event STS maintains these preliminary positions in its "final" response, then BellSouth reserves its rights to raise its concerns with these arguments with the Commission; including, but not limited to, filing a motion to strike.

First, your "preliminary" response suggests that any ambiguities in the agreement must be construed against BellSouth. BellSouth disputes that any such ambiguities exist; nonetheless *STS has agreed otherwise at Section 21 of the Agreement*. Second, you contend that BellSouth has somehow waived its rights to true-up market based billing. BellSouth disputes this also; notwithstanding this dispute *STS has also agreed otherwise at Section 17 of the Agreement*.



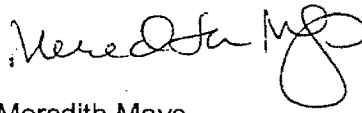
Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

Alan Gold, Esq.
James L. Parado, Esq.
February 24, 2005
Page 2

As indicated earlier, if STS maintains these arguments in its "final" response to the Commission, then BellSouth will respond accordingly. If this is unclear or you would like to discuss this in more detail, let me know.

Regards,

A handwritten signature in cursive script, appearing to read "Meredith Mays". The signature is written in dark ink and is positioned above the printed name.

Meredith Mays

573886

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)	
Saturn Telecommunication Services, Inc.)	04-0732-TP
d/b/a STS Telecom and BellSouth)	Filed:
Telecommunications, Inc.)	

**AFFIDAVIT IN OPPOSITION TO BELLSOUTH'S MOTION FOR SUMMARY
FINAL ORDER**

STATE OF FLORIDA }
 }ss
COUNTY OF BROWARD }

BEFORE ME the undersigned authority personally appeared, JONATHAN KRUTCHIK who, after being first duly sworn, deposes and says:

1. The following information is true and correct and based upon my personal knowledge.
2. I was a co-founder of Saturn Telecommunication Services, Inc. d/b/a STS Telecom ("STS") and has served as its President since its inception.
3. Part of my duties as President includes the responsibility for overseeing all computers and billing functions of STS.
4. I was instrumental in developing and customizing STS's billing system.
5. I reviewed the documents from BellSouth regarding the disputed market based rates and I am familiar with the Interconnect

Agreement and issue and what the amount of appropriate billing should be.

6. Even if BellSouth had the right to bill for the market based rates set forth in the Interconnect Agreement, the bills presently submitted by BellSouth and the amount which BellSouth claims STS owes it are erroneous and incorrect.
7. The bills that BellSouth claims are due and owing from STS are substantially less than the amount that BellSouth claims.
8. Documentation supporting the fact that BellSouth has overbilled is being forwarded simultaneously with this Affidavit.

FURTHER AFFIANT SAYETH NAUGHT.



JON KRUTCHIK

BEFORE ME the undersigned authority of this ____ day of February 2005 personally appeared, JON KRUTCHIK, who is personally known to me and who after being first duly sworn deposes and says, that he had read the foregoing Affidavit, that the information contained therein, is true and correct and based upon his personal knowledge.



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

NOTARY PUBLIC

Print Name: ANDREW T. SILBER

Commission No.: DD 061821

Expiration: NOV 5, 2005

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

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

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

1320 South Dixie Highway
Suite 870
Coral Gables, Florida 33146
Telephone: (305) 667-0475, ext. 1
Facsimile: (305) 663-0799

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

RECEIVED FPSC
MAY 16 AM 11:07
COMMISSION
CLERK

MAY 13, 2005

MS. BAYO
CLERK
FLORIDA PUBLIC SERVICE COMMISSION
2540 SUMARD OAK BLVD.
TALLAHASSEE, FL 32399

Ms. Bayo

In this package you will find an original of the STS TELECOM Emergency Motion to File Supplemental Response to Bellsouth Telecom and Summary Final Order.

Thank you,

Lulie
Alan C. Gold *for*

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH KMP

ST. CLERK ST. MAY 16 2005
RECEIVED FPSC

DOCUMENT NUMBER-DATE

04712 MAY 16 05

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)
Saturn Telecommunication Services, Inc.) 04-0732 TP
d/b/a STS Telecom and BellSouth)
Telecommunications, Inc.) Dated: May 13, 2005

**STS TELECOMMUNICATIONS, INC.'S EMERGENCY MOTION TO FILE
SUPPLEMENTAL RESPONSE TO BELL SOUTH TELECOMMUNICATIONS,
INC.'S MOTION FOR SUMMARY FINAL ORDER**

Saturn Telecommunications, Inc. ("STS"), by and through the undersigned Counsel hereby files this Emergency Motion to File Supplemental Response to BellSouth Telecommunications, Inc.'s Motion For Summary Final Order, and in support thereof states as follows:

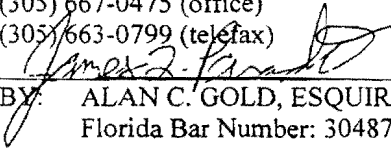
- 1 The Florida Public Service Commission has scheduled the filing date for its Staff Recommendation on May 19, 2005, with the Case Conference scheduled for May 31, 2005.
- 2 The Staff Recommendation presumably will address all outstanding motions, including the Motions for Summary Final Order filed by BellSouth, and by STS.
- 3 Recent investigation has uncovered information that may be important and useful for the Commission's recommendations.
4. Since the Motions for Summary Final Orders and Responses thereto were filed by the Parties, BellSouth has taken additional action in violation of the TRRO.
- 5 STS desires to file a Supplemental Memorandum for the Commission's consideration, as it would be unjust for the Commission to consider the

Motions and responses without having been informed of BellSouth's recent violations. (See attached Supplemental Response)

6. The purpose of this emergency filing is not for the purpose of harassment or delay, but rather the Supplemental Response is being filed such that the Commission may be completely informed of all of the facts and circumstances, including the most recent actions, in order to make fair recommendations and rulings.

Respectfully submitted,

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


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

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

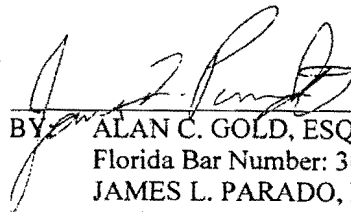
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Federal Express on this 13th day of May 2005, to:

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

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

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


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

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Interconnection Agreement between)
Saturn Telecommunication Services, Inc.) 040732-TP
d/b/a STS Telecom and BellSouth) Filed: May 13, 2005
Telecommunications, Inc.)

**SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO BELLSOUTH
TELECOMMUNICATION, INC.'S MOTION FOR SUMMARY FINAL ORDER**

The Petitioner, SATURN TELECOMMUNICATION SERVICES, INC. d/b/a STS Telecom ("STS"), by and through the undersigned counsel, files its Supplemental Memorandum In Opposition to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion For Summary Final Order, and states as follows:

1. STS is making the following arguments as a supplement and in addition to all of the arguments it has previously made, including but not limited to, the argument that BellSouth does not have the contractual right to true up or rebill. All such previous arguments are incorporated herein by reference as if the same were set forth fully herein.
2. BellSouth has recently taken action, which is completely inconsistent with the position it has taken in its Motion For Summary Final Order and its opposition to STS' Motion For Summary Final Order.
3. The FCC in its February 4, 2005 Triennial Review Order ("TRRO") determined that ILECs, such as BellSouth are not obligated to provide UNE arrangements for local switching to CLECs, such as STS, except during a transition period when the UNE-P switching must continued to be supplied to the CLEC's embedded customer base. Despite this ruling, BellSouth has chosen to improperly and unlawfully use the TRRO as an

opportunity to eliminate competition by refusing to supply the non- UNE services required under the Interconnect Agreement.

4. BellSouth recently refused orders from STS to add additional lines for existing customers as well as add new customers even though the customers were not UNE-P but rather subject to market based rates under the Interconnect Agreement. BellSouth disingenuously claims the TRRO permits such action.. It is clear that BellSouth's actions constitute a violation of the TRRO as well as a violation of the parties' Interconnect Agreement.
5. There are only two (2) possible alternatives under the Interconnect Agreement and TRRO:
 - (i) If STS's customers are truly market based rate customers, the prohibition in the TRRO regarding the addition of new UNE-P customers does not apply, and BellSouth must continue accepting orders for service for new customers as well as change orders for existing market based rate customers.
 - (ii) If these customers are, in fact, UNE customers under the Act, then BellSouth is not entitled to charge market based rates but must charge TELRIC rates. In this scenario BellSouth's attempt to charge market based rates is improper and its claim must be dismissed.
6. BellSouth cannot have it both ways. BellSouth cannot consistently with the TRRO and the Interconnect Agreement, charge market based rates for the switching and then refuse to add new customers, and make changes for

existing customers on the pretense that switching is UNE and prohibited by the TRRO. Since BellSouth is treating these market based rate customers as UNEs, the rates charged should be TELRIC, or TELRIC plus a dollar during the transition period. Therefore BellSouth's Motion for Final Summary Order should be denied and STS's Motion for Summary Final Order should be granted.

ARGUMENT

The FCC on February 4, 2005 issued its Triennial Review Remand Order ("TRRO"). The FCC determined that on a nationwide basis, that ILECs are not obligated to provide unbundled local circuit switching pursuant to Section 251(c) (3) of the Federal Act. The FCC adopted a transition plan that calls for CLECs to move to alternate service arrangements within twelve (12) months of the effective date of the TRRO. The FCC determined that the price for Section 251(c) (3) unbundled switching during the transition period would be higher of (i) the CLECs UNE-P rate as of June 15, 2004 plus one dollar (\$1.00) or (ii) the rate established by a state commission between June 16, 2004 and the effect date of the TRRO plus one dollar (\$1.00).

8. With respect to new UNE-P orders after the effective date of the TRRO, the FCC stated: "The transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251(c)(3) except as otherwise specified in this Order." (TRRO § 227.)

9. On May 5, 2005, this Commission, in Dockets numbered 041269, 050171 and 050171; Order number PSC-05-0492-FOF-TP prohibited carriers from obtaining "new local switching as an unbundled network element". This Commission's ruling did not affect BellSouth's obligation to provide service subject to market based rates under the Interconnect Agreement.
10. The TRRO also adopted the following:

"...a transition plan that requires competitive LECs to submit orders to convert their UNE-P customers to alternate arrangements within twelve months of the effective date of [the] order. This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers using unbundled access to local circuit switching. During the twelve-month transition period, which does not supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis, competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates those UNE-P customers to the competitive LECs' switches or to alternative access arrangements negotiated by the carriers." (See TRRO, § 199)(citations omitted)(emphasis added)

It is clear that the FCC in the TRRO prohibited the addition of new customers using UNE-P arrangements. These were the customers that were being charged TELRIC rates. The TRRO does not affect the non-UNE services that the ILEC is required to provide under the applicable Interconnect Agreement

11. The instant docket does not concern customers with UNE-P arrangements, but rather customers that were being charged at market based rates. Consequently the existing customers as well as new customers for whom market based rates apply are unaffected by the TRRO. However, if BellSouth's position is correct; namely that it does not have to add new

customers due the TRRO, then the only rates that BellSouth should be able to charge these customers is TELRIC, or TELRIC plus a dollar during the transition period. This requires that BellSouth's Motion for Summary Final Order should be denied and STS's Motion for Summary Order should be granted.

12. The TRRO states: "During the twelve-month transition period, which **does not supercede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis**, competitive LECs will continue to have access to UNE-P priced at TELRIC plus one dollar until the incumbent LEC successfully migrates those UNE-P customers to the competitive LECs' switches or to alternative access arrangements negotiated by the carriers." (Section 199) (*emphasis added*). The market based rate section of the Interconnect Agreement constitutes "alternative arrangements that carriers have voluntarily negotiated on a commercial basis". It is clear that the TRRO does not affect those contractual arrangements.
13. In the third Report and Order in the Local Competition Docket (CC Docket no. 96-98) ("319 Remand") the FCC determined that there was no impairment for customers with four (4) or more lines in the top 50 metropolitan statistical areas ("MSAs") and that there is no requirement for the ILECs to provide UNE services to CLECs for customers with four (4) or more lines in the top 50 MSAs. It is those customers to whom the market based rates applies. At no time ⁴³ was BellSouth required to provide

UNE-P arrangements to those customers and at no time did BellSouth provide such UNE-P arrangements for those customers.

14. A review of the Interconnect Agreement supports the above position.

Section 4.2.2 of the Interconnect Agreement provides:

Notwithstanding BellSouth's general duty to unbundle local circuit switching, BellSouth shall not be required to unbundle local circuit switching for IDS Telcom when IDS Telcom serves an end-user with four (4) or more voice-grade (DS-0) equivalents or lines served by BellSouth in one of the following MSAs: Atlanta, GA; Miami, FL; Orlando, FL; Ft. Lauderdale, FL; Charlotte-Gastonia-Rock Hill, NC; Greensboro-Winston Salem-High Point, NC; Nashville, TN; and New Orleans, LA, and BellSouth has provided non-discriminatory cost based access to the Enhanced Extended Link (EEL) throughout Density Zone 1 as determined by NECA Tariff No. 4 as in effect on January 1, 1999.

15. Further Section 4.2.3 of the Interconnect Agreement provides:

In the event that IDS Telcom orders local circuit switching for an end user with four (4) or more DS0 equivalent lines within Density Zone 1 in an MSA listed above, BellSouth shall charge IDS Telcom the market based rates in Exhibit B for use of the local circuit switching functionality for the affected facilities. If a market rate is not set forth in Exhibit B, such rate shall be negotiated by the Parties.

It is clear that there was no UNE-P switching for the customers and billings in issue in the instant docket.

16. In this Docket BellSouth is seeking to recover from STS monies it claims due for customers that it was not required to provide UNE-P switching at TELRIC rates, but rather for customers it contractually agreed to supply services at the much higher market based rates. This contractual arrangement remained unaffected by the TRRO. Since BellSouth

determined that under the TRRO it has the right to treat these market based customers as UNE customers, and no longer has to add lines for existing customers or add new customers, Bellsouth does not have the right to collect market based rates. The customers are either UNEs or are not UNEs. BellSouth has made its choice. It is not entitled to collect market based rates.

17. BellSouth's abuse of the TRRO is not limited to STS. It is a matter of great public importance. There are numerous carriers which service customers in Florida with four or more lines in MSAs that BellSouth was not required to supply UNE-P switching, but supplied switching under Interconnect Agreements that provides for service at market based rates. BellSouth has either overcharged these carriers by charging market based rates instead of TELRIC or severely damaged the carriers by refusing to add lines for the existing market based rate customers and add new market based rate customers. (See Documents attached as "Composite Exhibit A")
18. BellSouth abused the TRRO in order to eliminate competition and reestablish a monopoly. BellSouth refused to properly service STSs' non-UNE customers at market based rate in violation of the Interconnect Agreements. BellSouth then attempted to solicit STS's customers by offering rates that are less than TELRIC and other incentives. (See Documents attached as Composite Exhibit B")
19. Moreover, BellSouth has misinterpreted the TRRO in order to coerce carriers into signing commercial agreements that are contrary to public

policy and unconscionable in that Bellsouth attempts to exempt the agreement from the oversight and regulation of the Florida PSC, and allow BellSouth to escape from the protections of the Service Quality Measurement Plan ("SQM") and Self-Effectuating Enforcement Mechanism ("SEEM") remedy payments. The SQM/SEEM are designed to monitor performance levels of operations support systems provided by the ILEC to the CLEC and provide remedy payments for failure to provide adequate levels of performance. This was necessary for the development of effective competition and to prevent unfair competition. Elimination of such remedy payments only benefits BellSouth and is a disservice to the citizens of Florida. In fact, the actions of BellSouth complained of in this Memorandum subject BellSouth to such remedy payments.

CONCLUSION

In the instant docket, BellSouth is attempting to charge STS market based rates for certain business customers with four (4) or more lines in certain large MSAs. BellSouth initially claimed it has a right to do so, due to the finding in the FCC's 319 Remand that there was no impairment for such markets and no obligations to provide unbundled switching. Then after the TRRO was entered, BellSouth reversed its position and stated that the CLECs had no right to add new customers on market based rates. To accomplish this, BellSouth argues that the TRRO prohibits the addition of customers; however the TRRO only addresses using UNE-P arrangements BellSouth position is

clearly contradictory. BellSouth cannot maintain both positions. If these market based rate customers were in effect UNE-P customers, then BellSouth should have charged TELRIC rates the entire time and not market based rates. In such an event, BellSouth's Petition in the instant docket should be dismissed and STS should be awarded final summary judgment in its favor. On the other hand, if these market based rate customers are not UNE-P customers, then, under the Interconnect Agreement, BellSouth must continue to accept new adds and changes.

Respectfully submitted,

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

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

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

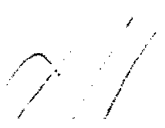
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via Federal Express on this 13th day of May 2005, to:

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

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

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


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

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

COMPOSITE EXHIBIT A

Affidavit

On May 6th at 10:19AM, I spoke with Carla at the BellSouth LCSC. The purpose of my call was to check the status of electronic PON (NEWTSTZONE2BUS), she expressed that she was unable to give me the status of the PON. I then expressed to her why was the PON processed due to the fact that they were not supposed to process any New Install lines under Company Code 654A? She began to ask if we (STS) had signed a Commercial Agreement and I stated that we did not. She then stated that she would have this order referred to a Manager for review. She also stated that there might be a glitch in the system due to the fact that if you are not "Under Contract" then the order should have been clarified. I then began to ask her to define the term "Under Contract". She defined under contract as those carriers whom have signed a Commercial Agreement with Bellsouth thus prohibiting them from processing new orders (ADDS) under there existing UNEP (Interconnect Agreement). I then advised her to have this order referred to her manager so we could get a clear understanding of this matter.

I, Damon Peele, solemnly swear that the above information is true and accurate to the best of my knowledge on May 6th 2005

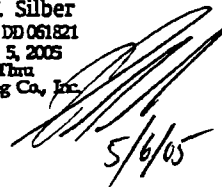
Signed,



Damon L. Peele



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



5/6/05

Affidavit

On May 6th at 10:19am, I was a witness to a conference call between Damon Peele and Carla from Bellsouth's LCSC department. The call was placed to verify the status of electronic PON: NEWTESTZONE2BUS. When Damon asked Carla for the status of the PON he was told that she was not allowed to give that information. Damon then proceeded to ask her why, was the order pending for completion when it should have been clarified? Carla asked if we were "Under Contract"? She was asked to verify what it meant to be "Under Contract". She said "Under Contract" means having a Commercial Agreement. At that point, Damon told her that STS did not sign a Commercial Agreement. Carla then said that the system should not have let the order go through. There must be a glitch in the system. When asked to verify the policy, Carla stated that it is Bellsouth's policy to reject orders for new UNE-P installations that are not under the Commercial Agreement. Carla asked if we would like her to bring it to the Manager's attention for review. Damon said to please do so, so that we can get a clear understanding of the procedure.

I, Rosa Arias, solemnly swear that the above information is true and accurate to the best of my knowledge on this 6th day of May 2005.

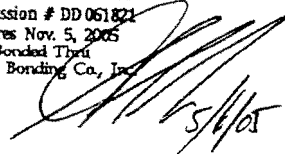
Signed.



Rosa Arias



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



Affidavit

On May 6, 2005 at 10:19 am, I witness (sat in on a conversation between Mr. Damon Peele STS Telecom & Carla-Bellsouth LCSC Rep.). Also in the room was Ms. Rosa Arais.

The conversations I witness were as such:

Thank you for calling Bellsouth LCSC my name is Carla how may I help you. Mr. Peele identified himself as Damon and wanted to check the status of an electronic PON. Carla advised Damon that she was unable to give PON statuses. Damon advised Carla that he had questions on a PON that had a FOC. Carla requested the Company Code, Damon advised her 645A, Carla requested a call back number, Damon advised her 954-252-1020, Carla requested the PON number. Damon advised her (NEWTESTZONE2BUS), Damon went on to ask Carla why was this order worked? And in fact it should have not been worked. Carla stated did he want to cancel the PON. Damon restated his question of why was the PON worked because Bellsouth was NOT supposed to process any New Install lines UNE-P lines in zone 2 under company code 645A. Carla explained that the system worked the order. . Carla then stated that it might be the 1st indication of a Glitch with the system. Carla also went on to ask if STS is under contract. Damon asked Carla to explain. She stated that under contract means, carriers that had signed the Commercial Agreement it would "PROHIBIT" the carrier from processes a New add under their existing UNEP Interconnection Agreement. . Damon asked if there was a Notification about the Zone 2 and the new.... Carla cut-in and stated that they had NOT received any information the in Center (LCSC) regarding this information. Damon requested the order be referred to a manger for understanding. Carla stated she would have the order referred to a manger and the manager would give him a callback. Damon thanked Carla and ended the call.

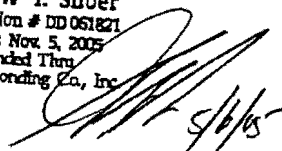
I, Ronald Eugene Curry, solemnly swear that the above information is true and accurate to the best of my knowledge on May 6, 2005

Signed,


Ronald E. Curry



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


5/6/05

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

Message

Page 1 of 2

Alan Gold

From: Keith Kramer [kkramer@ststelecom.com]
Sent: Wednesday, May 11, 2005 2:40 PM
To: 'Alan Gold'; 'James Parado'
Subject: FW: Action Required RE: Test case

Please review this e-mail which clearly indicates that they will reject new adds, this needs to be indicated that this is BellSouth's official position consistent with the CN.

From: Wright, Vicki [mailto:Vicki.Wright@BellSouth.com]
Sent: Tuesday, May 10, 2005 11:33 AM
To: Keith Kramer
Cc: Wright, Vicki
Subject: RE: Action Required RE: Test case

Glad I could help. Have a good day!!

-----Original Message-----

From: Keith Kramer [mailto:kkramer@ststelecom.com]
Sent: Tuesday, May 10, 2005 9:35 AM
To: Wright, Vicki
Subject: RE: Action Required RE: Test case

Thanks for the follow through

From: Wright, Vicki [mailto:Vicki.Wright@BellSouth.com]
Sent: Tuesday, May 10, 2005 8:12 AM
To: Keith Kramer; Damon L. Peele; Andrew Silber; Ron Curry; Jackson, Debra C; Foster, Ann
Cc: Morrison, Jerry; Todtschinder, Kyle R; Wright, Vicki
Subject: Action Required RE: Test case
Importance: High

Deb-

Per the e-mail below from Keith Kramer with STS Telecom and also a conversation I had with him last week, we need to ensure that the records reflect the following:

Saturn Telecommunication Services, Inc. d/b/a STS does not have a Commercial Agreement. Therefore, orders reflecting company code 645A should be rejected if submitted for new adds.

STS Telecom, LLC executed a Commercial Agreement effective 1/1/2005 for purposes of UNE-P; i.e. new adds. The appropriate company code for this CLEC is 135D.

Keith, thank you for bringing this to our attention and Damon, thank you for providing the necessary data Ann, thank you for your research as well.

Please let me know if there are any questions

Thanks,

Vicki Wright
Interconnection Services
BellSouth Telecommunications, Inc

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

Message

Page 2 of 2

34S91, 675 West Peachtree Street
Atlanta, Georgia 30375
404.927.7514
404.529.7839 Fax

If you have received this message in error or do not wish to receive future commercial electronic mail messages from BellSouth Interconnection Services visit <http://contactmanage.bellsouth.com/interconnection/optout/index.asp> or write to us at:
Attn: BellSouth Interconnection Services Marketing Communications
Rm 34H71
675 West Peachtree
Atlanta, GA 30375

-----Original Message-----

From: Keith Kramer [mailto:kkramer@ststelecom.com]
Sent: Friday, May 06, 2005 11:03 AM
To: 'Damon L. Peele'; 'Andrew Silber'; 'Ron Curry'
Cc: Wright, Vicki
Subject: Test case

Damon, I talked to Vicki Wright our former negotiator, and told her that we were able to process new adds lines to the embedded base, and that we did a test case of a new account under the STS Inc. OCN and we got a FOC, then of the subsequent call. Please forward her all of the information, the PON # the FOC date and anything else that you believe that she needs to follow this up at her end. Please get this to her asap.

Keith G. Kramer
Executive Vice President
STS Telecom
Cooper City, 33330
Desk: 954-252-1003
Direct Fax: 786-363-0103

"The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential, proprietary, and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from all computers." 118



BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91085061**

Date: March 7, 2005
To: Competitive Local Exchange Carriers (CLEC)
Subject: CLECs – (Interconnection/Contractual and Product/Service) – Triennial Review Remand Order (TRRO) - Unbundling Rules

On February 4, 2005, the Federal Communications Commission (FCC) released its permanent unbundling rules in the Triennial Review Remand Order (TRRO).

On February 11, 2005, BellSouth released Carrier Notification letter SN91085039, in which BellSouth set forth its understanding of the TRRO, particularly as it affected BellSouth's obligations to provide a number of former Unbundled Network Elements ("UNEs") after March 11, 2005. Specifically, BellSouth acknowledged that there would be a transition period for the embedded base of these former UNEs, but concluded that the FCC had intended to stop all "new adds" of these former UNEs effective March 11, 2005.

BellSouth posted this Carrier Notification letter on February 11, 2005, in order to provide the CLECs with as much lead time as possible in order to allow the CLECs to take whatever steps were necessary to adjust to the new situation created by the TRRO. Unfortunately, the step chosen by a number of CLECs in response to the clear language of the FCC dealing with "new adds" has been to ask various state commissions to order BellSouth to continue to accept such "new adds." Indeed, this approach has, to date, been successful in at least one jurisdiction, Georgia.

Furthermore, notwithstanding the fact that BellSouth's Carrier Notification SN91085039 was posted on February 11, 2005, various CLECs continue, as recently as March 3, 2005, to file requests with state commissions that have not addressed this question. These requests remain pending before state commissions and it is not clear, because of the delay in filing of these requests by the CLECs, that all state commissions will have a full and adequate opportunity to consider the important issue of whether the FCC actually meant what it said in its order when it indicated that there would be no "new adds." Indeed, at the present time there are at least two commissions in BellSouth's region that have scheduled consideration of the CLECs' requests at a date beyond March 11, 2005, the effective date of the TRRO, and the date that BellSouth had established to prevent unlawful "new adds."

Because of these events, BellSouth herewith revises the implementation date contained in Carrier Notification SN91085039 in the following respects. BellSouth will continue to receive, and will not reject, CLEC orders for "new adds" as they relate to the former UNEs as identified by the FCC for a short period of time. BellSouth will continue to accept CLEC orders for these "new adds" until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005. By doing this, BellSouth intends to allow those commissions who have not had the opportunity to fully and carefully consider the requests of the CLECs and the responses of BellSouth, to do so in a measured way, rather than via various "emergency" proceedings created by the dilatory tactics of a number of CLECs.

By extending the time during which BellSouth will accept these orders, BellSouth does not abandon its legal position that the clear words of the FCC mean exactly what they say. BellSouth will continue to pursue that position before the state commissions, and to the extent that a commission has ruled adversely to BellSouth's position, in the courts. Specifically, BellSouth will be asking the appropriate courts to stay any such adverse order we receive.

In addition, BellSouth hereby puts the CLECs on notice that it intends to pursue the various CLECs who place orders for "new adds" after March 10, 2005 to the greatest extent of the law, in an effort to recover the revenue that BellSouth loses as a result of the placement of these unlawful orders. Should any state commission be inclined to ignore the plain language of the FCC's TRRO, and to order BellSouth to continue accepting "new adds" until the issue is fully resolved, BellSouth will ask that commission to require CLECs to compensate BellSouth, in the event BellSouth ultimately prevails in its legal claim, for any former UNE added after March 10, 2005, in an amount equal to the difference in the rate paid by the CLEC and the appropriate rate BellSouth should have collected (either commercial or resale, depending on which service option the CLEC ultimately elects).

As noted in Carrier Notification SN91085039, CLECs will continue to have several options involving switching, loops and transport available to serve their new customers. To this end, with regard to the combinations of switching and loops that constituted UNE-Platform (UNE-P), BellSouth is offering CLECs these options:

- Short Term (3-6 month) Commercial Agreement to provide a bridge between the effective date of the Order and the negotiation of a longer term commercial agreement,
- Long Term Commercial Agreement (3 years, effective January 1, 2005, with transitional discounts available under those agreements executed by March 10, 2005)

In addition, most CLECs, if not all, already have the option of ordering these former UNEs, and particularly the combination of loops and switching, as resale, pursuant to existing interconnection agreements. With regard to the former high capacity loops and transport UNEs, BellSouth has two options for CLECs to consider. Specifically, CLECs may either elect to order resale of BellSouth's Private Line Services or alternatively, may request Special Access service.

Finally, as stated in Carrier Notification letter SN91085032 concerning the availability of a long term commercial agreement, through March 10, 2005, BellSouth will continue to offer its current DS0 Wholesale Local Voice Platform Services Commercial Agreement ("DS0 Agreement") with transitional discounts off of BellSouth's market rate for mass market platform services. Beginning March 11, 2005, BellSouth will offer a DS0 Agreement, but the existing transitional discounts will not be available.

To obtain more information about this notification, please contact your BellSouth contract negotiator.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A



BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN 91085064

Date: March 9, 2005
To: Competitive Local Exchange Carriers (CLEC)
Subject: CLECs – (Product/Service) – Commercial Agreement for BellSouth DS0 Wholesale Local Voice Platform Services

In **Carrier Notification Letter SN91085032**, BellSouth announced that while it intends to continue to make available for CLECs commercial agreements for DS0 switching and platform services, the transitional discounts off of BellSouth's market rate for mass market platform services, as contained in BellSouth's current commercial agreement offer, will no longer be available after March 10, 2005.

This is to announce that beginning March 11, 2005, BellSouth will offer a new commercial agreement, although discounts off the market rate for mass market DS0 platform services will be less than those previously available. This new commercial agreement term is through December 31, 2007.

BellSouth encourages CLECs to contact their contract negotiator to find out more about BellSouth's commercial agreement offers.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services



BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Notification
SN91085039**

Date: March 10, 2005

To: Competitive Local Exchange Carriers (CLEC)

Subject: CLECs – (Product/Service) – REVISED - Triennial Review Remand Order (TRRO) -
Unbundling Rules (Originally posted February 11, 2005 and Revised February 25, 2005)
**BellSouth has revised the implementation date contained in this letter. Please refer
to Carrier Notification letter SN91085061, posted March 7, 2005, for additional
details.**

On February 4, 2005, the Federal Communications Commission (FCC) released its permanent unbundling rules in the Triennial Review Remand Order (TRRO).

The TRRO has identified a number of former unbundled network elements ("UNEs") that will no longer be available as of March 11, 2005, except as provided in the TRRO. These former UNEs include all switching¹, as well as certain high capacity loops in specified central offices², and dedicated transport between a number of central offices having certain characteristics,³ as well as dark fiber⁴ and entrance facilities⁵.

The FCC, recognizing that it removed significant unbundling obligations formerly placed on incumbent local exchange carriers (ILEC), adopted transition plans to move the embedded base of these former UNEs to alternative serving arrangements.⁶ The FCC provided that the transition period for each of these former UNEs (loops, transport and switching), would commence on March 11, 2005.⁷ The FCC made provisions to include these transition plans in existing interconnection agreements through the appropriate change of law provisions. It also provided that rates for these former UNEs during the transition period would be trued up back to the effective date of the TRRO to reflect the increases in the prices of those former UNEs that were approved by the FCC in the TRRO.

The FCC took a different direction with regard to the issue of "new adds" involving these former UNEs. With regard to each of the former UNEs the FCC identified, the FCC provided that no "new adds" would be allowed as of March 11, 2005, the effective date of the TRRO. For instance, with regard to switching, the FCC said, "This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new customers using unbundled access to local circuit switching."⁸ The FCC also said "This transition period shall apply only to the embedded customer

¹ TRRO, ¶199

² TRRO, ¶¶174 (DS3 loops), 178 (DS1 loops)

³ TRRO, ¶¶126 (DS1 transport), 129 (DS3 transport).

⁴ TRRO, ¶¶133 (dark fiber transport), 182 (dark fiber loops)

⁵ TRRO, ¶141

⁶ TRRO, ¶¶142 (transport), 195 (loops), 226 (switching)

⁷ TRRO, ¶¶143 (transport), 196 (loops) 227 (switching)

⁸ TRRO, ¶199

base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to section 251 (c)(3) except as otherwise specified in this Order" (footnote omitted)⁹

The FCC clearly intended the provisions of the TRRO related to "new adds" to be self-effectuating. First, the FCC specifically stated that "Given the need for prompt action, the requirements set forth herein shall take effect on March 11, 2005..."¹⁰ Further, the FCC specifically stated that its order would not "...supersede any alternative arrangements that carriers voluntarily have negotiated on a commercial basis..."¹¹ but made no such finding regarding existing interconnection agreements. Consequently, in order to have any meaning, the TRRO's provisions regarding "new adds" must be effective March 11, 2005, without the necessity of formal amendment to any existing interconnection agreements. Therefore, while BellSouth will not breach its interconnection agreements, nor act unilaterally to modify its agreements, the FCC's actions clearly constitute a generic self-effectuating change for all interconnection agreements with regard to "new adds" for these former UNEs.

Thus, pursuant to the express terms of the TRRO, effective March 11, 2005, for "new adds," BellSouth is no longer required to provide unbundled local switching at Total Element Long Run Incremental Cost ("TELRIC") rates or unbundled network platform ("UNE-P") and as of that date, BellSouth will no longer accept orders that treat those items as UNEs.

Further, effective March 11, 2005, BellSouth is no longer required to provide high capacity UNE loops, including copper loops capable of providing High-bit Rate Digital Subscriber Line (HDSL) services in certain central offices or to provide UNE transport between certain central offices. As of that date, BellSouth will no longer accept orders that treat these items as UNEs, except where such orders are certified pursuant to paragraph 234 of the TRRO. In addition, as of March 11, 2005 BellSouth is no longer required to provide new UNE dark fiber loops or UNE entrance facilities under any circumstances and we will not accept orders for these former UNEs.

Prior to the effective date of the TRRO, BellSouth will provide comprehensive information to CLECs regarding those central offices where UNE DS1 and DS3 loops are no longer available, and the routes between central offices where UNE DS1, DS3 and dark fiber transport are no longer available.

CLECs will continue to have several options involving switching, loops and transport available to serve their new customers. To this end, with regard to the combinations of switching and loops that constituted UNE-P, BellSouth is offering CLECs these options:

- Short Term (6 month) Commercial Agreement to provide a bridge between the effective date of the Order and the negotiation of a longer term commercial agreement.
- Long Term Commercial Agreement (3 years, effective January 1, 2005, with transitional discounts available under those agreements executed by March 10, 2005)

In addition, most CLECs, if not all, already have the option of ordering these former UNEs and particularly the combination of loops and switching, as resale, pursuant to existing interconnection agreements.

To be clear, in the event one of the above options is not selected and a CLEC submits a request for new UNE-P on March 11, 2005 or after, the order will be returned to the CLEC for clarification and resubmission under one of the available options set forth above. CLECs that have already signed a Commercial Agreement may continue to request new service pursuant to their Commercial Agreement

⁹ TRRO, ¶ 227

¹⁰ TRRO ¶ 235

¹¹ TRRO ¶ 199. Also see ¶ 198

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

With regard to the former high capacity loop and transport UNEs, including dark fiber and entrance facilities, that BellSouth is no longer obligated to offer, BellSouth has two options for CLECs to consider. Specifically, CLECs may either elect to order resale of BellSouth's Private Line Services or alternatively, may request Special Access service in lieu of the former TELRIC-priced UNEs. Any orders submitted for new unbundled high capacity loops and unbundled dedicated interoffice transport in those non-impaired areas after March 11, 2005, without the required certifications, will be returned to the CLEC for clarification and resubmission under one of the above options.

To obtain more information about this notification, please contact your BellSouth contract negotiator

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services



BellSouth Interconnection Services
675 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91085089

Date: April 15, 2005
To: Competitive Local Exchange Carriers (CLEC)
Subject: CLECs – (Product/Service) – Triennial Review Remand Order (TRRO) - Unbundling Rules

On March 7, 2005, BellSouth released Carrier Notification **SN91085061** advising CLECs that, as a result of the events described therein, it would continue to receive CLEC orders for "new adds" of former Unbundled Network Elements (UNE) as identified by the Federal Communications Commission (FCC) in the Triennial Review Remand Order (TRRO) beyond the beyond the March 11, 2005 effective date of the TRRO, as set forth in Carrier Notification **SN91085039**. Specifically, BellSouth stated that it would "continue to accept CLEC orders for these 'new adds' until the earlier of (1) an order from an appropriate body, either a commission or a court, allowing BellSouth to reject these orders; or (2) April 17, 2005."

Consistent with Carrier Notification **SN91085061** and orders issued by commissions and courts, this is to advise CLECs that, effective April 17, 2005, BellSouth will no longer accept new service requests from CLECs for mass market unbundled local switching and Unbundled Network Element-Platform (UNE-P) in the states of Florida, Georgia, Mississippi, and North Carolina. However, in North Carolina, consistent with the NCUC order, BellSouth will continue to accept new service requests from CLECs for mass market unbundled local switching and UNE-P for embedded base customers at the customer's existing locations that are currently served by UNE-P. Such service requests must be submitted manually, but will be charged at the mechanized rate.

BellSouth will continue to offer the following options to CLECs who wish to serve their customers with the combinations of switching and loops that constituted UNE-P:

- Short Term (6 month) Commercial Agreement to permit the CLEC to place new orders for switching and port/loop combinations.
- Long Term Commercial Agreement (through December 31, 2007)

To obtain more information about this notification, please contact your BellSouth contract negotiator

Sincerely,

ORIGINALSIGNED BY JERRY HENDRIX

Jerry Hendrix – Assistant Vice President
BellSouth Interconnection Services

- 61 -

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

COMPOSITE EXHIBIT B

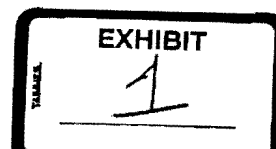
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

AFFIDAVIT OF KEITH KRAMER

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

1. My name is Keith Kramer. I am the Executive Vice President of Saturn Telecommunications Services, Inc. (hereinafter referred to as "STS Telecom" or "the Company"). My business address is 12233 SW 55th Street, Cooper City, Florida 33330.
2. As Executive Vice President my duties are legal and regulatory, business planning, network planning, and sales. Prior to STS Telecom I served as Senior Vice president of IDS Telcom, in charge of legal and regulatory.
3. I am submitting this Affidavit in support of the billing dispute and in support of the Supplemental Memorandum in Opposition to BellSouth Telecommunications, Inc.'s Motion For Summary Final Order in this docket.
4. BellSouth has been soliciting STS customers and offering STS customers prices and other incentives that are less than TELRIC. (A copy of the documents substantiating this is attached hereto as Exhibit 1)
5. BellSouth is refusing to add new customers and/or new lines for existing customers which customers are not UNE-P customers, but rather market based rate customers in violation of the Interconnect Agreement



- 6 This refusal to service STS's new and existing STS customers has caused STS substantial damages.
7. I have had conversations with BellSouth negotiators who advised me that BellSouth makes no distinction between UNE-P customers and market based rate customers and will process no new adds. (Copy of e-mail is attached as Exhibit 2)
8. BellSouth has advised me that the only way we can add new customers or new lines for existing customers is to agree to a commercial agreement which will contain the following provisions: (a) STS must transfer the entire embedded base to the commercial agreement at prices substantially higher than TELRIC plus one dollar, (b) the commercial agreement proposed by BellSouth does not allow STS to transfer customers to its switch facilities, (c) the Florida PSC has no jurisdiction and any attempt to invoke the jurisdiction of the Florida PSC will render the entire agreement void, and (d) eliminate SQM/SEEM remedy payments.
9. This concludes my Affidavit.

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

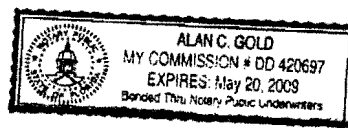

KEITH KRAMER

SWORN TO AND SUBSCRIBED BEFORE ME

This 17 day of May 2005.


NOTARY PUBLIC

My Commission Expires:



- 64 -

05/09/2005 09:43 9545660305

VAN BUREN

PAGE 04



F A X C O V E R

ATTN: DAVE LEDBETTER

From : JOSEPH PEMBROOK

Phone : 954-565-6066

Pages : 5-INCLUDING COVER

Fax : 954-566-0305

Date : 5/04/05

Re : BellSouth Savings, Discounts, & Promotions Firm : VAN BUREN COUNT fruit

For Review & Please Comment

Urgent - Limited Time Offer

HELLO, DAVE

As per our conversation here is the Quote showing the monthly savings! The most important reason for choosing BellSouth is the reliability and quality of service we provide your company. Peace of mind is just as valuable as Spending Less!

Also keep in mind that you will also receive:

- \$ 75.00 for the first line that you bring back to BellSouth.
- \$ 50.00 for each additional line that bring back to BellSouth
- Free listing of Your Company in the BellSouth Yellow Pages.
- Variety of DSL products to choose from (such as: Fast Access DSL 1.5Mbps x 256 Kbps or 3Mbps x 384Kbps or(768Mbps x 512Kbps BURSTABLE TO T-1.)

Handwritten: 13415

***** **BONUS** ***** **BONUS** ***** **BONUS** *****

Limited time offer: For every line you bring back to BellSouth, You can receive a FREE (\$100.00 Rebate) T-Mobile BLACKBERRY 710(it Cell Phone. Activation is FREE also, so act now while this promotion is valid and supplies last !!!!

If you have any questions please feel free to give me a call

Thank you,

JOSEPH PEMBROOK

Executive Account Manager Cc: Reacquisition Manager "Ric Brehmer"

Phone # 1-888-205-8841

Ext. No. # 318

Fax # 1-888-205-8843



Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

05/09/2005 09:43 9545660305

VAN BUREN

PAGE 05

VAN BUREN COUNTY FRUIT EXCHANGE

Description **Quantity** **Installation** **Monthly**

Complete Choice (FL)
Exchange: FORT LAUDERDALE (Rate Group 12)
Package Type: Business Flat Rate Service

8-Line Package	1	\$0.00	\$124.00
8-Line Package - 36 Month: 25% Rewards	1	\$0.00	(\$81.00)
Call Waiting	1	\$0.00	\$0.00
Call Forwarding Variable - Line	1	\$0.00	\$0.00
Remote Access Call Forwarding Variable	1	\$0.00	\$0.00
Three-Way Calling with Transfer	1	\$0.00	\$0.00
Star 98 Access	1	\$0.00	\$0.00
Call Return	1	\$0.00	\$0.00
Repea: Dialing	1	\$0.00	\$0.00
Call Selector	1	\$0.00	\$0.00
Call Block	1	\$0.00	\$0.00
Call Tracing	1	\$0.00	\$0.00
Enhanced Caller ID with Call Management (with CFDA)	1	\$0.00	\$0.00
RingMaster I (One Additional Number)	1	\$0.00	\$0.00
RingMaster II (First Additional Number)	1	\$0.00	\$0.00
RingMaster II (Second Additional Number)	1	\$0.00	\$0.00
Message Waiting Indication, Audible	1	\$0.00	\$0.00
Line Connection Charge	1	\$56.24	\$0.00
Line Connection Charge (Addtl. Instance)	1	\$84.35	\$0.00
End User Common Line (EUCL)	1	\$0.00	\$54.08
Telecommunications Relay Service	1	\$0.00	\$1.20
Federal Universal Service Charge	1	\$0.00	\$7.44

V-Mail

-15.50

3-year Term

NPA/NXX: 954/565
Serving CO: FTLDFLCRDS0 (954/565) - BellSouth Telecomm, Inc. - FL
*Hunting Service is included for 7 lines.
*Rates quoted for this product are based on Tariff Sections A3.45 (GSST), 4.7 (FCC 1), A4 (GSST).

TOTAL MONTHLY PRICE ON NEXT PAGE \$300.87

Custom Entry (FL)

*The Custom Entry portion of this quote has been manually entered and is subject to verification

WAIVE INSTALL FEES	1	(\$140.59)	\$0.00
SIMPLE SAVINGS 20%	1	\$0.00	(\$64.50)
ROLL OVER IS FREE	1	\$0.00	\$0.00
FASDT ACCESS BUSINESS DSL 3.Mx384	1	\$0.00	\$59.95
BELLSOUTH LONG DISTANCE .01 CENTS PER MIN FOR THE FIRST 90 DAYS AFTER 90 DAYS BELLSOUTH LONG DIS	1	\$0.00	\$0.00
WILL BE .05 CENTS PER MIN	1	\$0.00	\$0.00

.39 .49

Prepared By: JOSEPH PEMBROOK (800) 204-8041	BELLSOUTH
Quote Number: BBS05050603146	
This Quote is valid 30 days from last revision date: 05/05/2005 Federal, State and Local tax not included.	
The information contained in this proposal is proprietary to BellSouth and is offered solely for the purpose of evaluation. It may not be disclosed to third parties without prior written permission from BellSouth. This quote is subject to the availability of the services set forth above.	
Created by QuoteExpert: _____	Page: _____
	Printer: 05/05/2005

V-Mail
Free / Intra (ATA)
(AD-7) 40.75 (2)

\$216

Docket No. 040535-TL
Date: May 19, 2005

ATTACHMENT A

05/09/2005 09:43 9545660305

VAN BUREN

PAGE 01

VAN BUREN COUNTY FRUIT EXCHANGE



Description	Quantity	Installation	Monthly
PLUS EVERY DOLLAR YOU SPEND WITH BELLSOUTH	1	\$0.00	\$0.00
YOU WILL RECEIVE A POINT THAT IS REDEEMABLE	1	\$0.00	\$0.00
FOR A BILL CREDIT (OR) CHOOSE FROM OUR CATALOG	1	\$0.00	\$0.00

Total Installation \$0.00

Total Monthly \$200.87



Custom Entry (FL)

CKL # 1 VAN BUREN COUNTY FRUIT EXCHANGE

. FL

*Attn Shannon Smith
954-680-2506*

Prepared By JOSEPH PEMBROOK (800) 205-884

Quote Number B6S05050506346

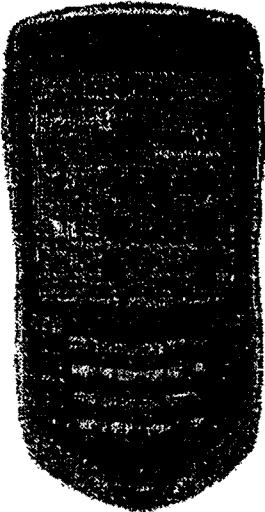
This Quote is valid 30 days from last revision date, 05/05/2005. Federal, State and Local tax not included.

The information contained in this proposal is proprietary to BellSouth and is offered solely for the purpose of evaluation. It may not be disclosed to third parties without your written permission from BellSouth. This quote is subject to the availability of the services set forth above.

- 68 -

Bellsouth

Free BlackBerry 7100F



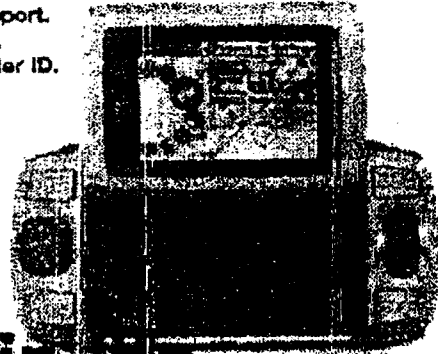
With new voice & data activation
and \$100.00 mail in rebate
\$449.00 value.

- Unlimited Email.
- Unlimited Web Browsing.
- Bluetooth enabled.
- Built-in Speakerphone.
- Access to AIM, Yahoo Messenger, ICQ.
- Largest Data Coverage in the nation.
- Roaming in over 180 countries worldwide.

Free Sidekick III

With new voice & data activation
and \$100.00 mail in rebate \$449.00 value.

- 6 MB e-mail account included.
- Instant messaging.
- Real web browsing.
- World Phone (Tri-band).
- Integrated camera with flash.
- Speakerphone.
- Vcard support.
- Organizer.
- Photo caller ID.



**Who said nothing in life
is FREE?**