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June 16, 2005

Ms. Blanca Bayo, Director
Director, Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No.: 050297-TP
**In re: Dispute Regarding Embedded Base Between Saturn Telecommunications
Services, Inc. d/b/a STS Telecom and BellSouth Telecommunications, Inc.**

Dear Ms. Bayo:

Enclosed is Saturn Telecommunication Services, Inc. d/b/a STS Telecom's Response to BellSouth Telecommunications, Inc.'s Response In Opposition and Motion To Dismiss.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me in the envelope provided.

Copies have been served to the parties shown on the attached Certificate of Service.

Thank you for your assistance with this filing.

Very truly yours,

ALAN C. GOLD, PA

Enclosure: 

cc:

STS Telecom
All Parties of Record

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Dispute Regarding Embedded Base)
Between Saturn Telecommunication Services, Inc.) **Docket No.: 050297-TP**
d/b/a STS Telecom and)
BellSouth Telecommunications, Inc.) **Filed: June 16th, 2005**

SATURN TELECOMMUNICATION SERVICES, INC.'S RESPONSE TO
BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION
AND MOTION TO DISMISS

Saturn Telecommunication Services, Inc. d/b/a STS Telecom (“STS”) files its Response to BellSouth Telecommunications, Inc.’s (“BellSouth”) Motion To Dismiss STS’s “Emergency Petition of Saturn Telecommunication Services, Inc. Against BellSouth Telecommunications, Inc. to Require BellSouth to Allow Additional Lines and Locations to STS’s Embedded Base, and for Expedited Relief”, as follows:

BellSouth’s Motion attempts to mislead this Honorable Commission by obfuscating the issues. BellSouth’s Motion to Dismiss should be denied and the docket allowed to proceed to a determination on its merits. BellSouth blatantly ignores the various types of services it agreed to provide to STS under the parties’ Interconnect Agreement, and argues that the *TRRO* issued by the FCC on February 4, 2005 prohibits all new adds regardless of whether the services were for existing customers, or for non-UNE customers. BellSouth then utilizes its misinterpretation of the *TRRO* to attempt to destroy STS’s embedded customer base and improperly and unfairly eliminate competition.

STS is not attempting to add new customers using UNE arrangements. The FCC prohibited such arrangements in the *TRRO*. STS acknowledges this ruling and accepts the same. The FCC established a transition period to enable the various competitive local

exchange carriers ("CLECs"), such as STS, to maintain its existing customer base in order to provide for a transition to its own facilities or make alternate arrangements. This transition period continues through March 2006.

The purpose of the instant Petition is to protect STS's embedded customer base. Nothing More! STS's embedded base consists of established customers who have an agreement with STS to provide telecommunication services. While part of STS's embedded base consists of customers for whom BellSouth is providing services on UNE arrangements, a substantial portion of the embedded base consists of customers who are market based rate customers and not UNE customers. BellSouth did not have an obligation to provide services to these customers under Section 251 of the Federal Act. Nevertheless, in the Interconnect Agreement, BellSouth voluntarily chose to contractually obligate itself to provide such services at market based rates.

BellSouth is refusing to comply with orders for additional lines or change of service for STS's embedded UNE customer base, which is contrary to the *TRRO*. BellSouth is also refusing to add new lines or locations for STS's existing customers being charged market based rates, which is contrary to the Interconnect Agreement. Further, BellSouth is refusing to add new market based rate customers, which is contrary to the Interconnect Agreement. BellSouth's excuse that the *TRRO* permits it to take such actions, is disingenuous and should be summarily rejected. BellSouth's actions are tantamount to improperly eliminating competition and unfairly attempting to recreate a monopoly.

The FCC issued the *TRRO* on February 4, 2005. In its ruling, the FCC determined, on a nationwide basis, that ILECs are not obligated to provide unbundled local switching pursuant to Section 251(c)(3) of the Federal Act. The FCC recognized

that the switch from UNEs to the CLECs' own facilities or other arrangements would not occur overnight. Therefore, the FCC adopted a transition plan that calls for CLECs to move to alternative service arrangements within twelve (12) months of the effective date of the *TRRO*. This allows the CLECs time to structure their facilities or make other arrangements, as well as allows BellSouth sufficient time to develop the procedures and/or techniques to switch the CLECs UNE-P arrangements to the CLECs own facilities or enter into alternative arrangements. (*TRRO* Section 227).

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* Section 227.) (emphasis added)

The *TRRO* also adopts 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*, Section 199)(citations omitted)(emphasis added)

Clearly, during the transition period, the ILEC must continue to provide UNE-P service to the CLEC "embedded customer base".

The FCC clearly prohibited the addition of new customers using UNE-P arrangements. STS has not contested this point. The FCC implemented transition rules in order to allow the CLECs to keep and service their existing customer base. The existing UNE customer base is not stagnant. To properly service these existing customers, STS needs to add additional lines, change locations and meet other customer's requirements. These are not new customers, but existing customers. If BellSouth's interpretation is correct, and a CLEC is not able to meet the needs of its existing customers, the entire transition period becomes meaningless.

Contrary to the allegations of BellSouth, this Commission has not addressed the issue of whether BellSouth must accept orders for additional lines or change of locations in the transition period for the embedded UNE base. This Commission has also not addressed the issue of whether BellSouth must continue to honor its Interconnect Agreement regarding the services it provides for non-UNE arrangements.

This Honorable Commission in the generic docket, Order Number PSC-050492-FOF-TP issued May 5, 2005 on several issues, including "whether the *TRRO*'s prohibition on 'new adds' is self effectuating". This Commission did not previously consider the issues currently raised by STS in the instant Petition. For BellSouth to suggest otherwise is just completely false.

The North Carolina Utilities Commission in Docket No. P-55, SUB 1550 held the following:

"...the Commission believes that the bright line that the FCC was drawing was between those *inside* the embedded customer base and those *outside* of it. After all, the *TRRO* focuses on the "embedded customer base," not on existing access lines. The commission does not believe that it was the FCC's intent to impede or otherwise disrupt the ability of [CLECs] to adequately serve their existing base of customers in the near term. The

Commission notes that the [CLECs] now serve thousands of customers, many of them business customers, with these de-listed UNE arrangements. Given the vital importance of fast telecommunications access in a highly dynamic economy, these customers would be baffled and impatient if they were to discover that adding a new line or even simply a new feature in the near term was impossible with their current provider. They may very well lose confidence in that provider. This is not good for competition, which is the overarching purpose of the Telecommunications Act.

Thus, we believe that, through a planned orderly, and nondisruptive transition process under state commission supervision, the FCC intended that the [CLECs] should retain the ability to adequately serve their customers during the transition period....

(See In the Matter of Complaints Against BellSouth Telecommunications, Inc. Regarding Implementation of the Triennial Review Remand Order, State of North Carolina Utilities Commission, Raleigh, Order Concerning New Adds, Page 12, Docket No. P-55, SUB 1550)

The Georgia Public Service Commission has also issued an order against BellSouth. (See In Re: Generic Proceeding to Examine Issues Related to BellSouth's Obligations to Provide Unbundled Network Elements, Order on MCI's Motion For Emergency Relief Concerning UNE-P Orders, Before the Georgia Public Service Commission, Docket No. 19341-U). The decision of the Georgia PSC was reviewed by the United States District Court for the North District of Georgia, Atlanta Division, in the case of *BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, LLC., et. al., case number 1:05-CV-0674CC*. The United States District Court in Georgia did not address the issues presented in the instant case. That District Court ruled consistent with the Florida PSC, that the FCC's *TRRO* was self-effectuating and did not

depend upon the change of law provisions. As stated above, that is not an issue in the instant docket. The District Court sitting in Georgia, in its opinion stated;

“The FCC also created strict transition periods for the “embedded base” of customers that were currently being served using these facilities. Under the FCC transition plan, competitive LECs may use facilities that have already been provided to **serve their existing customers** for only twelve (12) more months and at higher rates than they were paying previously”. (emphasis added).

Thus, the United States District Court recognized that the FCC allowed CLECs to continue to service their existing customers through UNE arrangements with the ILEC, during the transition period. The change of locations and addition of lines for existing customers are no more than servicing existing customers.

The South Carolina Commission in a generic docket, docket number 204-316-C on April 13, 2005, stated:

“the transition of the embedded base of existing customers, including those existing customers who seek moves, changes and additions of newly delisted UNEs for such customer base at new and existing physical locations, shall occur with alacrity under the supervision of this Commission, prior to the FCC’s absolute deadline of March 10, 2006 for provision of any such UNEs at *TRRO* transition plan rates.”

This Commission should find the rulings by the North Carolina Utilities Commission, South Carolina Public Service Commission, and Georgia Public Service Commission persuasive.

BellSouth cites two additional opinions of United States District Courts which considered and addressed PSC rulings on new adds. Neither Court ruled on the issues presently before this Commission; the District Courts only ruled that the *TRRO*'s prohibition on new adds was self-effectuating.

In *BellSouth Telecommunications, Inc. v. Mississippi Public Service Commission, et. al. Southern District of Mississippi, Jackson Division, Civil Action Number 3:05CV173LN*, the United States District Court stated regarding the *TRRO*:

“It specifically recognized that immediate implementation of its new rules posed a potential for disruption in service, and therefore established a 12-month transition period, with accompanying transition pricing, for migration of competitive LECs’ “embedded customer base” from UNE-P to alternate arrangements for service.” The FCC determined that this 12-month transition period would provide “adequate time for both competitive LECs and incumbent LECs to perform the task necessary to an orderly transition”...

The Court further stated:

“The *TRRO* makes clear in unequivocal terms that the transition period applies only to the embedded customer base,” and “does not permit competitive LECs to add new customers using unbundled access to local switching”.

Thus, contrary to BellSouth’s assertions, this case supports STS’s position.

Likewise, *BellSouth Telecommunications Services, Inc. v. Synergy Communications, Company, United States District Court, Eastern District of Kentucky, Frankfort, Civ Action Number 3:05-CV-16-JMH*, does not support BellSouth. The Court discussed the *TRRO* stating, “The order discussed a transition plan for “embedded” or “existing customers”. This District Court was also not concerned with the issues raised in this docket.

In *MCI Metro Access Transmission Services, LLC. v. Michigan Bell Telephone Company, d/b/a SBC Michigan, Civil Action Number 05-70885*, the District Court entered its Order prohibiting Michigan Bell Telephone Company, “from rejecting orders placed by MCI to establish service for new MCI customers in Michigan using the services set forth in Appendix XXIII (the “UNE” Appendix) including but not limited to

“new UNE-P” as set forth in Section 16.5 of the UNE Appendix, under the terms and conditions set forth in the parties Interconnection Agreement;”. This case clearly does not support BellSouth’s position. The cases cited by BellSouth only concern whether the prohibition on new adds is self-effectuating. The rulings suggest that only the addition of new UNE customers is prohibited. There is nothing in these cases to even remotely suggest that, during the transition period, BellSouth has the right to reject orders for additional lines or change of locations for the existing UNE customer base.

It is clear that the FCC in the *TRRO* provided for the protection of existing customers during the transition period. STS needs this period to make arrangements to switch their embedded base to their own facilities and/or make other arrangements. STS desires to retain existing customers in order to switch the same. It is axiomatic that to keep customers, you must service them. BellSouth is doing everything in its power to confuse the issues and destroy STS’s embedded customer base. This Commission’s function is to promote competition and it should not tolerate BellSouth’s abuses.

Even if this Commission adopts the position of BellSouth, with regard to the addition of new lines and locations for the embedded base, BellSouth’s motion to Dismiss should still be denied. As stated earlier, STS’s embedded customer base consists of both UNE customers and non-UNE customers. The non-UNE customers are those customers, that are being charged at market based rates pursuant to the Interconnect Agreement. BellSouth’s refusal to add new market based rate customers or change services or add lines for existing market based rates customers is a violation of the Interconnect Agreement and is unaffected by the *TRRO*.

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 rates 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.

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 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.

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.

Further Section 4.2.3 of the Interconnect Agreement provides:

In the event that IDS Telecom 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 Telecom 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 BellSouth's refusal to service these market based rate customers using the *TRRO*, as justification, is simply incorrect. There is no excuse whatsoever for this flagrant breach of the Interconnect Agreement, which by itself, requires denial of BellSouth's Motion To Dismiss.

The question must be asked; "Why is BellSouth attempting to escape from its obligations under the Interconnect Agreement to provide services at market based rates?" In contrast to the UNE arrangements, these market based rate services were not required by Section 251 of the Federal Act. Even though, after the 319 remand, BellSouth was not required to provide these services, BellSouth voluntarily chose to contractually obligate itself to perform these services, and charged a substantial rate. The *TRRO* does not permit BellSouth to avoid these contractual obligations; yet, BellSouth is refusing to honor these commitments.

BellSouth claims that commercial agreements are available which would provide the same or similar services to STS. These commercial agreements are designed to be outside the authority of the Florida Public Service Commission and avoid the oversight and regulation of the Florida Public Service Commission. These commercial agreements 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 operation 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 these remedy payments only benefits BellSouth and is a disservice to the citizens of Florida. The commercial agreements are not a substitute for the existing Interconnect Agreement. This Commission should refuse to allow BellSouth to escape from its obligations of the Interconnect Agreement, which remain unaffected by the *TTRO*.

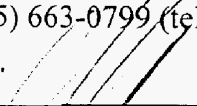
CONCLUSION

STS is not attempting to add new UNE customers. STS is attempting to protect its embedded customer base, which consists of both UNE and non-UNE customers. BellSouth's lumping of all customers into one group in order to deny services is contrary to the language and spirit of the *TRRO*. STS must be allowed to add lines and change of locations for its existing UNE customer base during the transition period. BellSouth must also be compelled to honor its obligations under the Interconnect Agreement for market based rate customers. Therefore, BellSouth must allow new lines and changes of locations for market based rate customers as well as accept new orders for market based rate customers pursuant to the Interconnect Agreement.

STS respectfully requests that this Honorable Commission enter its Order denying BellSouth's Motion To Dismiss and permit this case to proceed to a determination on its merits, on an expedited basis.

Respectfully submitted,

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BY: 
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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed via Federal Express overnight on this 16th day of June 2005, to:

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