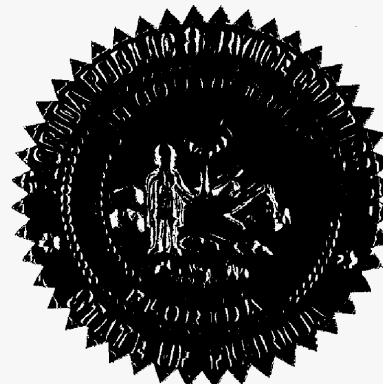


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 040732-TP

In the Matter of:

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.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE
A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: AGENDA CONFERENCE
ITEM NO. 6

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER LISA POLAK EDGAR

DATE: Tuesday, June 21, 2005

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

06063 JUN 21 05

FPSC-COMMISSIONER CI FRK

1 APPEARANCES:

2 NANCY WHITE, ESQUIRE, representing BellSouth
3 Telecommunications, Inc.

4 ALAN GOLD, ESQUIRE, representing STS Telecom.

5 LEE FORDHAM, ESQUIRE, representing the Florida Public
6 Service Commission Staff.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

CHAIRMAN BAEZ: Commissioners, we are now on Item 6.

Mr. Fordham.

MR. FORDHAM: Good morning, Commissioners. I am not certain I am live here, but maybe so. I'm Lee Fordham, staff counsel.

Item 6 is Docket Number 040732, wherein STS filed a two-part complaint against BellSouth. Part A was challenging the market-based rate procedures contained in the interconnection agreement. Part B was a request that BellSouth be prohibited from disconnecting them pending resolution of the complaint.

Subsequently, BellSouth filed a motion for summary final order to which STS filed a response. BellSouth then filed a challenge to that response and a motion to strike based on it being filed untimely. The agreement in question was an IDS agreement, which was adopted by STS in its entirety without challenge or negotiation. And the parties are here today to address the Commission, and staff is available for questions.

CHAIRMAN BAEZ: Commissioners, Issue 1 is a motion to strike.

Ms. White, it's your motion.

MS. WHITE: Nancy White for BellSouth. We believe that staff has made a thorough and reasonable recommendation, and we support it on all issues, and I will save some time for

1 rebuttal, if needed. Thank you.

2 CHAIRMAN BAEZ: Sir.

3 MR. GOLD: Good afternoon or good morning. My name
4 is Alan Gold, and it's my privilege to represent Saturn
5 Telecommunications Services, Inc. It goes by the name of STS.
6 STS is a regional CLEC. It services south Florida. It is a
7 facilities-based carrier providing local, long distance and
8 VOIP services.

9 It is important to note that the dispute that we are
10 here on concerns market-based rates which are billed every six
11 months, truing up the regular monthly bills. STS is current in
12 all of its accounts, which are numerous with BellSouth, is
13 current in its monthly obligations to BellSouth and others.
14 They strongly believe that these market-based rates are
15 improper. Furthermore, even if BellSouth has the right to
16 raise these market-based rates, there is serious disputes
17 regarding the validity of the bill, and affidavits have been
18 submitted.

19 You have asked me to first address the staff's
20 recommendation regarding striking of the pleadings. Staff
21 states that STS, or more properly myself as counsel,
22 deliberately and flagrantly disregarded the rules of this
23 Commission and justify the extreme harsh penalty of striking
24 the pleadings.

25 The pleadings that are being attempted to be stricken

1 were filed one day late. BellSouth received those pleadings by
2 either fax or e-mail on the day that they were due. The
3 pleadings should not have been filed late. I have apologized
4 to staff, and I apologize to this Commission for the late
5 filing. I assure you that any late filing was not deliberate.

6 None of you have seen me and my firm appear prior
7 before the Public Service Commission, which is absolutely no
8 excuse for not following your rules. Our representation of STS
9 in this and related documents was the first and only time that
10 we have appeared before the Public Service Commission or any
11 administrative body in the state of Florida. We tried as best
12 as possible to meet with a rather difficult procedure and also
13 very difficult substantive issues in the telecommunications
14 areas.

15 Under the rules of Florida and federal procedure, as
16 well as income tax, when it is put in the mail, it is deemed
17 received. We did not see that in the administrative code. We
18 recognize that it is different before the Public Service
19 Commission. And the pleading was late. Again, that is not an
20 excuse. It was not flagrant. It was not deliberate. It does
21 not raise to the standard that requires a harsh penalty of
22 striking a pleading.

23 And if I may point out to this Commission that when
24 we filed a motion for an extension of time, which apparently
25 was also late, because I did not realize the time to file rule

1 which was granted, as a precaution and in deference to the
2 Commission and to be especially safe, we filed a preliminary
3 response and affidavits, which apparently is not being
4 considered, as well. If this Commission decides to strike and
5 follow staff's recommendations in striking the pleadings, there
6 is still the issue of the preliminary affidavits and responses
7 that were filed.

8 Staff has pointed out that this late date was not the
9 only error that was made, and they are correct. Earlier
10 complaints were filed with the appropriate amount of copies and
11 were filed with the Public Service Commission. They were filed
12 in the Office of Mr. Fordham instead of in the Clerk's Office.
13 That is the same building, it is the same address. When that
14 was called to our attention, that has not happened again. When
15 it was called to our attention, the due dates, we have done
16 other filings, that has not happened again and will never
17 happen again.

18 STS has done nothing wrong besides hiring an attorney
19 not experienced in procedures before this court. Florida law
20 favors decisions on the merits. A mistake of one day was made.
21 Neither BellSouth nor this Commission could point to any
22 prejudice by anyone. We filed a preliminary one timely and it
23 should be considered.

24 There has been errors, and those errors are my fault.
25 If this Commission deems it fit and somebody should be

1 penalized or sanctioned, it is me who should be sanctioned. It
2 should not be STS. They have done absolutely nothing wrong.

3 And if you take a look at the cases that were cited
4 by staff, this, I contend, doesn't come close to the cases and
5 the egregiousness that is required to justify a striking of the
6 pleadings. And, again, on this point, and the only time I have
7 been late in 25 years of practice, I do sincerely apologize to
8 the staff, to BellSouth and to this Commission.

9 Staff has also made recommendations on denying the
10 summary judgment. I don't know if that is an area which you
11 want me to go into or only address the first point, which I
12 have concluded addressing. I do have comments regarding their
13 further recommendations.

14 CHAIRMAN BAEZ: Mr. Gold, we are going to try and
15 dispense with the motion to strike first, and then go to that.
16 So if you are finished --

17 MR. GOLD: Yes, sir.

18 CHAIRMAN BAEZ: Okay. Thank you, sir.

19 Ms. White, any response?

20 MS. WHITE: I have no response. I would stand by the
21 staff recommendation.

22 CHAIRMAN BAEZ: Thank you.

23 Commissioners, any questions?

24 COMMISSIONER DEASON: I have a question for staff.

25 CHAIRMAN BAEZ: Go ahead, Commissioner.

1 COMMISSIONER DEASON: If we approve your
2 recommendation on Issue 1, is STS still permitted to address
3 the Commission today on Issue 2?

4 MR. FORDHAM: Commissioner, their response would not
5 be considered if Issue 1 is approved, it would not be
6 considered in the disposition of Issue 2.

7 COMMISSIONER DEASON: My question is would they be
8 barred or would they be permitted to orally address the
9 Commission today on Issue 2?

10 MR. FORDHAM: Commissioner, I suggest that it is at
11 the discretion of the Commission to allow them or not to allow
12 them to address the Commission today.

13 CHAIRMAN BAEZ: Commissioners, any other questions?

14 COMMISSIONER DEASON: Mr. Chairman, I would move
15 staff's recommendation on Issue 1, with the understanding that
16 STS be allowed to address the Commission today orally on
17 Issue 2.

18 CHAIRMAN BAEZ: We have a motion. Is there a second?

19 COMMISSIONER EDGAR: Second.

20 CHAIRMAN BAEZ: Motion and a second. All those in
21 favor say aye.

22 (Unanimous affirmative vote.)

23 CHAIRMAN BAEZ: Very well.

24 Issue 2. Ms. White, it's your motion once again.

25 MS. WHITE: Once again I stand on the staff

1 recommendation, and I would like to save a couple of minutes
2 for rebuttal, if necessary.

3 CHAIRMAN BAEZ: Very well.

4 Mr. Gold.

5 MR. GOLD: Thank you. We are here on a motion for
6 summary judgment on a billing dispute. I'm not going to again
7 point out the law on what a motion for summary judgment and the
8 high burden it is. It was done very, very apply right before
9 me. STS has alleged numerous points of law which I will
10 address in a second. There is one other point which STS has
11 made which is critical to the issue of summary judgment.

12 This is a billing dispute. Regardless of whether
13 BellSouth has the right to charge the market-based rates, it
14 must do so appropriately. We have contested and STS has filed
15 affidavits, even before our motion was done, contesting the
16 appropriateness of the billings. STS contends, and has filed
17 affidavits, and have denied the pleadings saying that there is
18 a billing dispute. This is not a trial. In a motion for
19 summary judgment BellSouth's affidavit does not get the
20 deference that it is correct.

21 Setting aside all legal arguments, there is still a
22 dispute about the amount of the billing. Given a dispute
23 regarding the figures owed on the billing, summary judgment is
24 inappropriate. Now, legal defenses, and there have been
25 several defenses which we have, which we have raised. And part

1 of it is based upon the interconnection agreement which was
2 written by BellSouth. These bills are six months in arrears.
3 They are truing up prior billing errors. In the
4 interconnection agreement, BellSouth had a provision which
5 provided that only certain provisions of the interconnect
6 agreement are subject to true-up. The market-based rates were
7 not subject to these adjustments.

8 BellSouth claims that this was an error. It claims
9 that it was an obvious mistake, and it corrected these in other
10 agreements. Well, the truth is that BellSouth did not correct
11 this in ours. It was the agreement that BellSouth wrote. It
12 was the agreement that STS adopted. To go back six months and
13 rebill substantial amounts is contrary to the agreement. It is
14 also unfair and not equitable to expect, after that period of
15 time, that they could come back without contractual support for
16 it and simply bill six months and expect that it be paid
17 immediately.

18 We have also raised the issue in an emergency
19 petition which we have filed that BellSouth has taken the
20 position recently that it does not service, have new adds,
21 allow new customers on these market-based rates. When STS
22 attempts to add a new customer for market-based rates,
23 BellSouth refuses and claims that the TRRO prohibits the same.
24 BellSouth are treating these customers as UNE customers. If
25 that is the case, BellSouth should not be permitted to have

1 their cake and eat it, too. If they are allowed to cut off the
2 customers right now and treat them as UNE, they cannot go back
3 and charge STS on a market-based rate which was not -- which
4 was much higher and was not affected by the TRRO. We are not
5 talking about the lesser -- the lesser rates. And because of
6 BellSouth's current position, they are precluded from or
7 estopped from raising the UNE issues.

8 We have also raised affirmative defenses that the
9 market-based rates are not true rates, that they are unfair,
10 they are anticompetitive. They are also billing retail
11 customers far more than they are charging its wholesale on
12 market-based rates, and those are factual issues which need to
13 be decided at a point of trial.

14 We have asked for and brought up defenses of waiver
15 and estoppel, which the case law says are particularly
16 inappropriate for summary judgment. We have also contested
17 that the remedy sought by BellSouth is unfair and unjust. If
18 they waited six months to bill, to require that STS pay any
19 disputed amounts within 30 days or their phone service be shut
20 off, is not practical, it's not fair, especially given the
21 situation in which STS is undisputedly current with all of its
22 other numerous obligations to BellSouth.

23 And, again, this is a motion for summary disposition.
24 STS is entitled to the benefit of all reasonable doubts. And
25 there are reasonable doubts even going to the very amount of

1 the bill which BellSouth has proven only by affidavit, not by
2 testimony. Thank you.

3 CHAIRMAN BAEZ: Ms. White, any rebuttal?

4 MS. WHITE: Yes, sir. Just a minute. Saturn, STS,
5 adopted an existing interconnection agreement. They chose to
6 adopt an existing interconnection agreement. They chose to
7 adopt it without changes. They had a choice. They could have
8 sought arbitration for a new agreement. They did not do that.
9 The interconnection agreement that STS has entered into states
10 that STS will pay the rates in the contract or risk
11 disconnection of their service. The rates are subject to
12 true-up under the contract. Under the contract they owe us
13 approximately \$715,000-some-odd.

14 The argument about new adds, I mean, that is the
15 subject of a different docket. This Commission has already
16 decided that BellSouth does not have to provide new adds, and
17 it really has no place here and is irrelevant.

18 We believe that we are owed this money. We believe
19 that the contract is very clear, that STS has to pay the rates
20 set forth under the contract that they signed. And we believe
21 that the contract should be enforced, and they should either be
22 required to pay or be disconnected. Thank you.

23 CHAIRMAN BAEZ: Commissioners, questions?

24 COMMISSIONER BRADLEY: Yes, I have a question.

25 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

1 COMMISSIONER BRADLEY: When the agreement was adopted
2 by STS, was it adopted at a market-based rate or was it adopted
3 at a tariffed rate?

4 MR. KRAMER: My name is Keith Kramer (phonetic),
5 Commissioner.

6 CHAIRMAN BAEZ: BellSouth.

7 MS. WHITE: It was adopted with the market-based rate
8 language in there.

9 COMMISSIONER BRADLEY: Okay. Now.

10 MR. KRAMER: We adopted a contract from IDS, which
11 was a previous employer of mine. The interconnection agreement
12 has two parts to it. One is for unbundled access to circuit
13 switching, which is UNE-P. The other part of it was based on
14 the third report and order, which based the fact that on four
15 or more lines in the top 50 MSAs there was no longer an
16 impairment to provide UNE-Ps. And as such, the BellSouths, the
17 RBOCs or ILECs were not required to provide unbundled switching
18 in any form.

19 BellSouth had elected to offer switching as a
20 market-based product outside the scope of unbundled network
21 access circuit switching. It was a separate agreement embedded
22 in the interconnect agreement. The rates that came out of --
23 for those particular items in the market-based rate came from a
24 previous agreement that I had negotiated with BellSouth in
25 1999, which was called the unbundled network elements

1 professional service fee, to which I negotiated over a six-week
2 period certain rates that were based on markets as a commercial
3 agreement.

4 That particular agreement we signed after six weeks
5 worth of negotiations, based on the fact that if any
6 governmental regulatory body had insisted to take authority
7 over that document, the document would be considered null and
8 void. Two weeks after we signed it, the Florida Public Service
9 Commission sent Mr. Hendrix a notice that they sought authority
10 over that particular document, which was a commercial
11 agreement, and as such, I got a letter from Mr. Hendrix saying
12 that the contract was null and void.

13 When I was with IDS and negotiated the interconnect
14 agreement, we inserted those rates which were at the time in
15 1999 into the market-based rates as a separate agreement so
16 that it would come under the authority of the Florida Public
17 Service Commission, mostly because BellSouth wanted to expedite
18 their 271 relief.

19 When I adopted the IDS agreement for STS, several
20 years had gone by, and we had realized that, number one, you
21 could not arbitrate market-based rates because it fell out of
22 the Commission's control because it was based on the Third
23 Report and Order. That was a negotiated amount. We did not
24 know at the time that BellSouth had significantly reduced the
25 rates to the end users in the nine markets in the BellSouth

1 states. Specifically where we were at, which was Fort
2 Lauderdale and Miami, almost 50 percent less than was in the
3 market-based rates.

4 It is not something that you can come to the
5 Commission and arbitrate. Even if I tried, I wouldn't be able
6 to provide services on, and you would have to rule that you had
7 no authority over it because it fell outside 251 and 252.

8 But I do have an agreement for market-based rates.
9 It is an alternate agreement. The TRRO, the order of the FCC
10 says that it affects unbundled access to circuit switching.
11 Any prior alternate arrangements, commercial arrangements, for
12 such switching are still viable. Well, this is by far a viable
13 arrangement. This is not an unbundled access product. And
14 BellSouth refuses to allow me to put adds on market-based
15 products. They refuse to do changes. They refuse to do moves.
16 So I have stopped.

17 I have an agreement that tells me that I pay above
18 UNE pricing. I may not agree with that pricing, but Bell wants
19 me to pay a bill which is categorically wrong. We ordered it.
20 It is not even close. They charge me six months after the
21 fact, which was never in the agreement. Every bill I get from
22 Bell is based on 30 days. Every time Bell comes up with a
23 whole new program, it is based on 30 days. For the first two
24 years that they had market-based rates out in these agreements,
25 they never billed the first customer. And then as soon as they

1 get 271 relief, they start back billing customers six months.

2 There's a lot of going on here.

3 And now the only thing I can tell my customer when
4 they want to add a line is that I can't do it for you; you have
5 to go back to BellSouth. BellSouth says, well, you can put it
6 on resale. That is categorically not true. You cannot put
7 resale on lines that have HUNT, because it will not support
8 different classes of service. I have tried everything with
9 BellSouth to correct the situation so that my line count will
10 not (inaudible).

11 I do not believe that the FCC in their triennial
12 review order insisted that Bell or thought that BellSouth or
13 any RBOC would use this as an opportunity to win back
14 customers. What they wanted to do is preserve the integrity of
15 the order, which is the RBOCs no longer had to provide for
16 switching, and the CLECs are not allowed to add any new
17 customers, and I agree with that. I will go along with that.

18 But when it comes to market-based rates, I'm not
19 paying unbundled network access switching, I'm paying
20 significantly more. It specifically said so in my interconnect
21 agreement, and BellSouth refuses to honor that. At the same
22 time they send me a bill which is grossly inaccurate, comes to
23 this Commission and tells me that I have to pay it. And this
24 is a bill that is six months too late. Now we are doing our
25 best to try and negotiate with Bell to come to some resolution,

1 but I think this is where it stands right now.

2 COMMISSIONER BRADLEY: Follow-up?

3 CHAIRMAN BAEZ: Commissioner Bradley.

4 COMMISSIONER BRADLEY: Okay. I think I heard you say
5 that the agreement that you adopted is, in fact, an agreement
6 that allows for BellSouth to charge you market-based rates. Is
7 the dispute here about how to make a determination as to what
8 the market-based rate is? Is that what the dispute is?

9 MR. GOLD: There are several disputes. That is
10 certainly one of the disputes, that the market-based rates --

11 COMMISSIONER BRADLEY: And my other question, and I
12 need BellSouth to respond to it, also. If that is the case,
13 then what is in place in order to resolve the dispute as to
14 what market-based rate means?

15 MS. WHITE: Well, BellSouth has set the marked-based
16 rate, and I believe that is attached to the contract.

17 COMMISSIONER BRADLEY: Okay. So the contract allows
18 you to set the market-based rates?

19 MS. WHITE: Yes.

20 COMMISSIONER BRADLEY: Okay.

21 MS. WHITE: I mean, that is the whole point of
22 market-based rates.

23 MR. GOLD: Commissioner, may I reply, please? The
24 contract also provides that in Section 29.1, that there are
25 certain services that are, quote, expressly subject to true-up

1 under this agreement. BellSouth chose to say we can adjust
2 certain rates. In this case the market-based rates which they
3 are attempting to readjust were not made subject to true-up.
4 BellSouth acknowledges this and says it was an error. It was a
5 typographical error. Things were omitted that should have
6 subjected the market-base rates to true-up. But the agreement
7 that STS signed did not provide for true-up for market-based
8 rates. So one of our other contentions is while BellSouth --

9 COMMISSIONER BRADLEY: Wait a minute. You said the
10 agreement did not provide for market-based rates.

11 MR. GOLD: Did not provide for true-up for
12 market-based rates, did not provide for a procedure to adjust
13 the market-based rates. While BellSouth could have billed
14 market-based rates initially, so STS could have passed them on
15 to the customer, there was no mechanism to allow them to wait
16 years or months or whatever time to rebill these rates. And
17 BellSouth -- and they pointed out in their motion, had this
18 correction language in other agreements and with carriers such
19 as STS, other carriers, they made amendments, nobody has ever
20 made an amendment or tried to reform this.

21 So what BellSouth is doing in this instance is
22 seeking a remedy that it is not contractually obligated to do.
23 And if BellSouth is entitled to seek such an extra contractual
24 remedy, then I would think this Commission in using equitable
25 relief could be lenient in how this is to be paid back, because

1 the interconnect agreement is silent. And, also, I don't think
2 it can be missed what STS is very seriously contesting. Even
3 assuming that BellSouth has the right to charge these rates,
4 even assuming that they have a right to true-up, BellSouth did
5 not calculate its bills correctly. There is a dispute that
6 BellSouth is suing for money that it is not entitled to, even
7 assuming that they can charge the rates in the contract and
8 back bill for years.

9 COMMISSIONER BRADLEY: And does STS agree that
10 BellSouth has the -- under the terms of the contract has the
11 authority to set market-based rates?

12 MR. GOLD: No, sir. They were -- there were rates
13 attached to a contract. This is a contractual of adhesion, and
14 we believe that this Commission has the authority when rates
15 are unfair, discriminatory, anticompetitive, has the authority
16 to set a fair market rate. When a retail customer can get the
17 same service for less than a wholesale customer, how can that
18 promote competition? How can that not be discriminatory? And
19 that is one of the defenses that we have raised.

20 Market-based rates, as I understand it, has nothing
21 to do with the market. It is Bell saying, here, we are putting
22 it in a contract, and if you want to do business, you better --
23 you better accept the rates. And we're talking about not a
24 little contract that you could read of 10, 20, or even 50
25 pages; we are talking about of a contract of close to 1,000

1 pages. Then you are looking at a situation when they don't
2 bill for months and years, and trying for a company to
3 calculate what it is doing is just not right. It is not fair.

4 If BellSouth was billing on a monthly basis, you
5 would have an idea, not when they back bill. So it is not only
6 the rates that we are complaining about, it's the practices how
7 Bell has used to implement these rates. And the inability of a
8 CLEC such as STS to pass part of these rates or some of this on
9 to a customer. It is just not fair and equitable business
10 practices. And that is why one reason that we are harping on
11 some technical defects that BellSouth made in the contract.

12 It is their contract. If they want to hold us to the
13 language of it, they should also be held to the pure language
14 of the contract which does not permit them to back bill or
15 true-up these market-based rates. And as I said, we are here
16 on a summary disposition, and there are certainly disputed
17 issues of fact.

18 CHAIRMAN BAEZ: Ms. White, you were going
19 to respond --

20 MS. WHITE: Chomping at the bit?

21 CHAIRMAN BAEZ: -- to something?

22 MS. WHITE: Please.

23 CHAIRMAN BAEZ: I've got to be careful using that.

24 MS. WHITE: First of all, the contract says for
25 unbundled switching, local circuit switching, BellSouth shall

1 bill at market rates. It doesn't say regulated rates; it says
2 a market rate. Those are two extremely different things. If
3 STS wants a regulated rate, they don't get one because it is
4 not a regulated service. So market rates apply. That's in the
5 contract.

6 It says in the contract that BellSouth will true-up
7 when it will bill the rates and the cost-based section
8 proceeding in lieu of the market rates and reserve the right to
9 true-up the billing difference when we could bill the market
10 rates. We told all the CLECs that we would -- we told them
11 four times that we would true-up underbilled market rates every
12 six months in December and June. We told them that in 2003 on
13 three different occasions. That is what we have been doing.
14 So it is not back billing for years and years and years.

15 CHAIRMAN BAEZ: Ms. White, let me stop you right
16 there. The true-up -- let me start first by asking are there
17 billing dispute procedures or terms in the interconnection
18 agreement?

19 MS. WHITE: In the interconnection agreement, yes,
20 sir.

21 CHAIRMAN BAEZ: Are the true-up, are those amounts
22 that you bill as part of a true-up over six months, I think I
23 heard you say, are those subject to those same billing
24 disputes?

25 MS. WHITE: It is my understanding that that is

1 correct, yes, sir.

2 CHAIRMAN BAEZ: To your knowledge, is there anything
3 that STS -- has STS availed itself, and I think I heard Mr.
4 Gold imply that at the very least, but have they availed
5 themselves of the billing dispute procedures for the back
6 billed amount?

7 MS. WHITE: Yes, sir. To my knowledge, that is
8 correct.

9 MR. GOLD: It is my understanding that all bills
10 before this Commission we have.

11 CHAIRMAN BAEZ: And if so, am I to understand that
12 that dispute is ongoing?

13 MS. WHITE: No. That dispute has -- we have -- the
14 dispute has reached the stage where we are ready to disconnect
15 service. And that is where we were when STS filed the
16 complaint.

17 CHAIRMAN BAEZ: Okay. All right.

18 Commissioners, any other questions?

19 COMMISSIONER DEASON: I have a question.

20 CHAIRMAN BAEZ: Commissioner Deason.

21 COMMISSIONER DEASON: This is for staff. Staff, you
22 agree that the contract does call for market-based rates for
23 the services in question in this dispute, correct?

24 MR. FORDHAM: Commissioner, it not only provides for
25 market-based rates but specifies what those rates are.

1 COMMISSIONER DEASON: Okay. And explain to me the
2 provision for the six-month true-up. That is in the contract,
3 I take it?

4 MR. FORDHAM: The true-up provision is in the
5 contract. Now, the agreement, like most agreements, does not
6 give detailed mechanics for a lot of the procedures, but there
7 is a provision for the true-ups in the agreement.

8 COMMISSIONER DEASON: The concern that was expressed
9 by STS that the market rates are unfair and anticompetitive, is
10 that an issue in front of us?

11 MR. FORDHAM: It really is not a legitimate issue
12 before the Commission, because the Commission does not set
13 market-based rates. And STS entered the agreement knowing what
14 those rates were, so they were not entering the agreement
15 blindly or under coercion. They knew what those rates were,
16 and BellSouth is the only one to set those rates. And it is
17 STS's option to take that agreement or reject it and arbitrate
18 a new agreement. They chose to take that agreement as it
19 existed at the time.

20 COMMISSIONER DEASON: Is STS being treated any
21 differently than any of the other CLECs that are subject to
22 this contract language?

23 MR. FORDHAM: Not from our perspective, Commissioner.
24 Staff does not see that they are being treated any differently.

25 CHAIRMAN BAEZ: Commissioners, any other questions or

1 a motion?

2 COMMISSIONER DEASON: I move staff's recommendation.

3 CHAIRMAN BAEZ: Second. A motion and a second. All
4 those in favor say aye.

5 (Unanimous affirmative vote.)

6 CHAIRMAN BAEZ: Thank you all.

7 - - - -

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Office of Hearing
6 Reporter Services, FPSC Division of Commission Clerk and
7 Administrative Services, do hereby certify that the foregoing
8 proceeding was heard at the time and place herein stated.

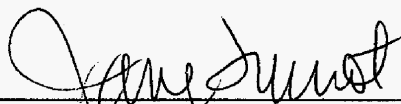
9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,
15 attorney or counsel of any of the parties, nor am I a relative
16 or employee of any of the parties' attorney or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 27th day of June, 2005.

20

21



22

23 JANE FAUROT, RPR
24 Official FPSC Hearings Reporter
25 FPSC Division of Commission Clerk and
Administrative Services
(850) 413-6732

26

27

28

29

30

31

32

33