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Sent: Monday, July 11, 2005 4:30 PM
To: Filings@psc.state.fl.us
Cc: Kiddoo, Jean; Bobeck, Joshua; David Hope; Rudy Bradley; Dale Buys; Ray Kennedy
Subject: Docket No. 050257; Miami-Dade County's Reply to BellSouth's Opposition to Motion to Dismiss
Attachments: Miami-Dade Reply to BellSouth Opposition.pdf

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- B. Docket No. 050257; Complaint by BellSouth Telecommunications, Inc., Regarding the Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules
- C. Miami-Dade County
- D. 8 pages (including cover letter, Reply to BellSouth's Opposition, and certificate of service)
- E. Miami-Dade County's Reply to BellSouth's Opposition to Motion to Dismiss

<<Miami-Dade Reply to BellSouth Opposition.pdf>>

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VIA EMAIL

July 11, 2005

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

**Re: Docket No. 050257; Complaint by BellSouth Telecommunications, Inc.,
Regarding the Operation of a Telecommunications Company by Miami-Dade
County in Violation of Florida Statutes and Commission rules**

Dear Ms. Bayo:

Attached is Miami-Dade County's Reply to BellSouth's Opposition to Motion to Dismiss, which we ask that you file in the above-captioned docket. If you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,

s/ Danielle C. Burt

Jean L. Kiddoo
Joshua M. Bobeck
Danielle C. Burt

cc: David Stephen Hope
Service List

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth)
Telecommunications, Inc., Regarding)
The Operation of a Telecommunications)
Company by Miami-Dade County in)
Violation of Florida Statutes and)
Commission Rules)

Docket No. 050257

**MIAMI-DADE COUNTY'S REPLY TO BELLSOUTH'S OPPOSITION TO
MOTION TO DISMISS**

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Counsel for Miami-Dade County

Dated: July 11, 2005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth)
Telecommunications, Inc., Regarding)
The Operation of a Telecommunications)
Company by Miami-Dade County in)
Violation of Florida Statutes and)
Commission Rules)

Docket No. 050257

**MIAMI-DADE COUNTY'S REPLY TO BELL SOUTH'S OPPOSITION TO
MOTION TO DISMISS**

Miami-Dade County (the "County"), by its undersigned counsel, respectfully submits this Reply to BellSouth Telecommunications, Inc.'s ("BellSouth") Opposition to the Motion to Dismiss. For the reasons discussed below, the Florida Public Service Commission (the "Commission") should grant the County's Motion to Dismiss.¹

I. NO DISPUTED ISSUES OF MATERIAL FACT EXIST

The County provides shared tenant services ("STS") at the Miami International Airport ("MIA") in a manner consistent with the Commission's rules and orders, which specifically exempt airports from the Commission's STS certification requirement.² As thoroughly explained in the County's Motion to Dismiss, BellSouth's Complaint is nothing more than an attempt to relitigate the Commission's STS Airport Exemption, which has remained in effect and undisturbed since first adopted in 1987. There are no disputed genuine issues of material fact in

¹ In addition, the County respectfully seeks leave to file this reply in the event such leave is required.

² See e.g., Fla. Admin. Code § 25-24.580 (the "Airport Exemption"); *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, Order No. 17111 (Jan. 15, 1987) (the "STS Order"), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987).

this proceeding; there is no disagreement between the parties as to the specific entities which are participating in the MIA shared airport system (the “Airport System”) or the nature of that arrangement. Indeed, the County has admitted the facts that BellSouth requested it admit or deny as true, in its Requests for Admissions dated June 8, 2005.³ Furthermore, BellSouth has conceded that the County is not providing STS at the MIA Hotel and that the trunks that serve the hotel are fully partitioned to serve only the hotel. Complaint ¶ 12. As a result, the only issue before the Commission is whether that arrangement is configured in a manner consistent with the Airport Exemption – an issue that the Commission can plainly resolve as a matter of law.

BellSouth’s opposition simply sets forth the incorrect proposition that, if any of the types of establishments sharing the Airport System could be found anywhere other than at MIA, then sharing service with them in the MIA Terminal Building must not be necessary for the safe and efficient transportation of passengers and freight through the airport campus. The County does not dispute that MIA’s tenants include certain types of shops that may be found in a shopping mall. However, that fact does not render MIA a “shopping mall” under the Commission’s order. As the County showed in its Motion, the Commission’s decision in 1987 specifically contemplated that when a retail establishment is located in an airport terminal, the sharing of service to it may in fact be necessary to the safety and efficiency of the airport. Moreover, the common usage of the term “shopping mall” connotes a building or series of buildings where the general public comes to shop. BellSouth cannot dispute that the general public does not come to MIA to shop; and in fact, the County does not permit the general public access to all the shops

³ The County filed its response to BellSouth’s First Request for Admissions on July 11, 2005.

throughout the MIA Terminal Building like a “shopping mall” does or would.⁴ Instead, the County provides the various establishments and concessions for the convenience and comfort of (i) travelers passing through the MIA, (ii) airline flight and support personnel, and (iii) federal, state, and County employees and contractors working at MIA.

The Commission, therefore, should not allow BellSouth to create a lengthy proceeding to debate facts that are not susceptible to dispute. Indeed, BellSouth has already had three (3) years to conduct discovery in the concurrent state court litigation,⁵ and there can be no conceivable reason to waste the Commission and the County’s limited resources in yet further unnecessary and costly “fact-finding.” The facts are clear, and as showed in the County’s Motion, plainly demonstrate that the County complies with the Airport Exemption codified in Section 25-24.580 of the Florida Administrative Code. Accordingly, the Commission should dismiss the Complaint because no genuine material facts are disputed and those facts demonstrate that the County continues to provide STS to its tenants in compliance with the Airport Exemption.

II. ANOTHER LENGTHY PROCEEDING IS NOT NECESSARY TO AFFIRM THE AIRPORT EXEMPTION

The Commission adopted the Airport Exemption due to airports’ unique circumstances.⁶ These unique circumstances have not changed, although as even BellSouth admits,⁷ security

⁴ Like other airports, access to the terminals or concourses, and any shops or other concessions in those terminals or concourses is limited to *only* ticketed passengers with boarding passes that pass through the airport’s security measures.

⁵ BellSouth filed a complaint against the County on November 12, 2002, in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No. 02-28688 CA 03.

⁶ STS Order at 18.

⁷ BellSouth Opposition at p. 17.

needs and obligations of airports have increased. In light of these increased safety obligations, the Airport Exemption is more appropriate than ever.

As BellSouth is well aware, the Airport Exemption allows an airport to provide STS to ensure safe and efficient transportation of passengers and freight through the airport.⁸ Yet BellSouth suggests that the County's provision of STS is not about ensuring safety and efficiency in the transportation of passengers and freight through the airport.⁹ However, as previously explained in the Motion to Dismiss, MIA has its own fire and rescue, police, and emergency personnel and systems,¹⁰ and the provision of STS by the County is an indispensable component of these services. In fact, these MIA personnel would be unable to coordinate their public safety duties efficiently if concessionaires in the terminals did not have access to the shared tenant system.¹¹ Therefore, to suggest that the County and MIA are not providing STS in order to ensure the safety of the traveling public is absurd. Safety is of the utmost importance.

Moreover, the Commission should not have to devote any further time, effort and resources in this proceeding to affirm the Airport Exemption. Obviously, safety and efficiency was a paramount issue when the Commission adopted the Airport Exemption because the rule expressly addresses the "safe and efficient transportation of passengers and freight."¹² Safety continues to be a significant issue for airports. Consequently, the Commission does not need to

⁸ STS Order at 18.

⁹ BellSouth Opposition at p. 13.

¹⁰ Mot. to Dismiss at p. 24. *See also* Aff. of Mark Forare ¶ 2.

¹¹ Mot. to Dismiss at p. 24. *See also* Aff. of Mark Forare ¶ 3-4.

¹² Fla. Admin. Code § 25-24.580.

embark on a lengthy proceeding to affirm the Airport Exemption, and to determine, once again, that the County has provided STS at MIA in a manner consistent with that exemption.

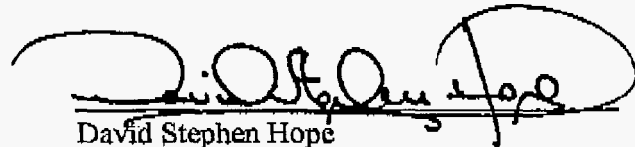
III. CONCLUSION

For the aforementioned reasons, BellSouth's Complaint should be dismissed and its Opposition to the Motion Dismiss should be denied.

Dated: July 11, 2005

Respectfully submitted,

Robert A. Ginsburg
Miami-Dade County Attorney



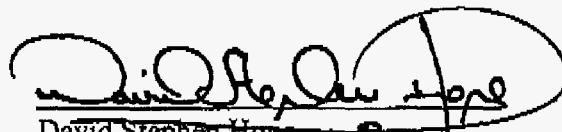
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Counsel for Miami-Dade County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this *11th* day of July, 2005, to: *Nancy B White, Esq.* and *Sharon R. Liebman, Esq.*, c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301; and *R. Douglas Lackey, Esq.*, BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375.


David Stephen Hope
Assistant County Attorney