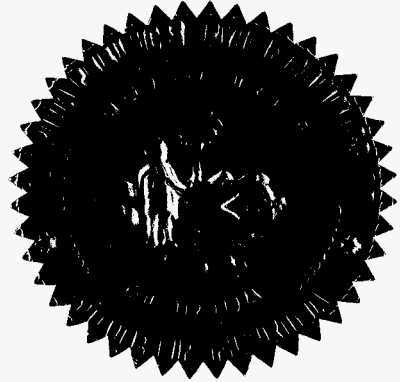


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 050257-TL

In the Matter of:

COMPLAINT OF BELLSOUTH
TELECOMMUNICATIONS, INC. AGAINST
MIAMI-DADE COUNTY FOR ALLEGED
OPERATION OF A TELECOMMUNICATIONS
COMPANY IN VIOLATION OF FLORIDA
STATUTES AND COMMISSION RULES.



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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, August 2, 2005

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Hearings Reporter
(850) 413-6734

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1 APPEARANCES:

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

4 DAVID HOPE, ESQUIRE, representing Miami-Dade County.

5 ADAM TEITZMAN, ESQUIRE, representing the Florida
6 Public Service Commission Staff.

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P R O C E E D I N G S

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3 CHAIRMAN BAEZ: Very well. Oh, we're back on 6 then.
4 My apologies.

5 Mr. Teitzman, you want to tee this up for us, please.

6 MR. TEITZMAN: Yes, Chairman. Adam Teitzman on
7 behalf of Commission staff.

8 Commissioners, Item 6 addresses Miami-Dade County's
9 motion to dismiss in Docket 050257-TL. It's the complaint of
10 BellSouth Telecommunications against Miami-Dade County for
11 alleged operation of a telecommunications company in violation
12 of Florida Statutes and Commission rules. Staff recommends the
13 Commission should deny the county's motion to dismiss because
14 BellSouth has stated a cause of action for which relief may be
15 granted, and the motion to dismiss was not timely filed. The
16 parties are here this morning and would like to address the
17 Commission.

18 CHAIRMAN BAEZ: And who do we have from the County?

19 MR. HOPE: Assistant County Attorney on behalf of
20 Miami-Dade County. With me is our Manager of Information
21 Systems and Telecommunications, Maurice Jenkins, and our, and
22 our Chief of Telecommunications, Pedro Garcia.

23 CHAIRMAN BAEZ: Sir, I didn't get your name.

24 MR. HOPE: David Stephen Hope, Assistant County
25 Attorney.

1 CHAIRMAN BAEZ: David Stephen --

2 MR. HOPE: Hope, H-O-P-E.

3 CHAIRMAN BAEZ: I'm sorry. Thank you.

4 Mr. Hope, it is your motion.

5 MR. HOPE: Thank you. Commissioners, this is my
6 first time in front of the PSC, so if indeed I need to reserve
7 time for rebuttal, let me know if there's such a thing. If
8 not -- I've already spoken with the PSC counsel, Adam Teitzman.
9 He has allowed me or given me the ability to bring some
10 documents here to present to the Commission, so I have those
11 here. So if you tell me the best form for handing those out,
12 then we will do that. I can either give them all out as a
13 package for you to refer to later on or however the Commission
14 desires.

15 CHAIRMAN BAEZ: If you've got them ready to
16 distribute, you can go ahead and do that now.

17 MR. HOPE: Yes.

18 CHAIRMAN BAEZ: I will, I will tell you up-front,
19 Mr. Hope, I almost shudder to say it, but we're rather informal
20 on the motion practice here. All we ask is that you get to the
21 point, and if you do have to rebut, you'll be given ample
22 opportunity.

23 MR. HOPE: Not a problem. I can make my whole
24 presentation now. The documents will be there for you to
25 review at a later point in time. So our manager, Maurice, can

1 hand them all out.

2 CHAIRMAN BAEZ: And if you can make sure and provide
3 Ms. White with a copy, if she hasn't been provided with one
4 already.

5 MR. HOPE: Yes. Actually she has every single
6 document that we are providing, but I can give additional
7 copies to her.

8 CHAIRMAN BAEZ: Well, if you're providing them in a
9 package, it's probably more convenient if we're going to refer
10 to them as part, as part of the discussion if she can have
11 something in front of her. And, Mr. Teitzman, were you
12 provided with a copy as well?

13 MR. TEITZMAN: I will need a copy, Chairman.

14 CHAIRMAN BAEZ: Okay. If you can provide Mr.
15 Teitzman, staff counsel, with a copy.

16 MR. HOPE: May I proceed as they're giving out the
17 documents?

18 CHAIRMAN BAEZ: Go ahead, Mr. Hope.

19 MR. HOPE: Thank you. Mr. Chair, Commissioners, the
20 county's motion to dismiss should be granted. There are no
21 disputed facts and no issues of disputed facts. In fact, if
22 you look at staff's recommendation, staff recommends proceeding
23 under Section 120.57(2) of Florida Statutes, which outlines
24 administrative proceedings where the proceedings do not involve
25 disputed issues of material fact. But staff cites as our

1 motion being untimely and BellSouth cites as our motion being
2 untimely pursuant to 28-106.204, Florida Administrative Code,
3 which deals with matters that have disputed issues of fact, and
4 that's incongruent. Staff recommends, as the County has said,
5 that there are no disputed genuine issues of material fact
6 here. The proper section under the Florida Administrative Code
7 to deal with it is 28-106.303. That section does not have any
8 time limit for when an entity can submit a motion to dismiss.
9 Therefore, the county's motion is timely. We would ask that
10 the Commission accept the county's motion to dismiss and rule
11 as a matter of law that there is no issue here and this matter
12 should go away.

13 Why? The county's system and service has been in
14 existence since 1982. It started in 1982 with the lease and
15 then purchase of the eventual service that BellSouth is
16 speaking of today, and the shared tenant service provision has
17 been in existence for 18 years approximately. Now in 1982, and
18 that's one of the resolutions that you have in front of you,
19 R-361-82, the County authorized the purchase or lease of
20 two telecommunications systems: One for the airport and one
21 for the hotel at the airport. BellSouth, then Southern Bell at
22 the time, was an unsuccessful bidder in that event. At that
23 time in the early '80s no one bought these switches because of
24 the inherent cost for bringing onboard a switch like that.
25 Either people leased their switches, leased with the option to

1 buy their switches like the County, or financed their switches,
2 which was a leasing over a period of time and then purchasing
3 it like Greater Orlando Aviation Authority. Orlando financed
4 their switches from BellSouth over a period of eight years and
5 purchased theirs. The County leased its systems with the
6 option to buy, even though initially staff had recommended
7 purchasing them, and then purchased the airport-specific
8 switching in '87, and then purchased the rest of the system,
9 which was the airport system, in 2002. But over that entire
10 time from the inception of the switches in '82 until now the
11 same entity that sold the switches to the County, initially
12 leased them to the County, eventually sold the systems to the
13 County, has been the same, the same entity that has managed
14 those assets either on behalf of the County or now solely as
15 the county's management agent.

16 Now in 1987 the Commission came out with the rule
17 that has allowed airports in Florida to operate in the way that
18 it now currently operates and allows for the provision of
19 shared tenant services and intercommunication behind the switch
20 of multiple buildings. And that was pivotal in terms of the
21 Commission identifying the unique nature of airports and why it
22 is so important for the safety and safe and efficient movement
23 of passengers and cargo for there to be intercommunication and
24 shared tenant services behind the switch different from shared
25 tenant services of any other entity. And because of that, the

1 Commission also instituted in 25-204.580 of the PSC rules the
2 airport exemption, which exempts airports who provide shared
3 tenant services for the safe and efficient transportation of
4 passengers and cargo from the PSC rules; hence, certification
5 and other PSC rules. And also caveated that if, indeed, the
6 shared system was going to provide services to a hotel, the
7 trunks to that hotel needed to be partitioned, and if it
8 provided services to industrial parks or shopping malls, it
9 needed to be partitioned.

10 Now what BellSouth is arguing is that the concessions
11 at Miami International Airport, because there might be stores
12 that might exist in a shopping mall, then that's akin to
13 providing service to a shopping mall, and it's not. Even more
14 so, what's interesting is BellSouth's argument -- its sole
15 argument is the county's purchase of the rest of the assets in
16 2002 constitutes a new provision of shared tenant services and,
17 hence, the necessity to now get a PSC certificate of necessity.
18 That is false. That is why the county's motion to dismiss
19 should be granted. That is why there is no issue here.

20 As identified in PSC Order 94-0123-FOF-TL, which was
21 a demark (phonetic) issue in front of the PSC in 1994, as also
22 identified in internal BellSouth memoranda, the County has been
23 a shared tenant service provider under the airport exemption
24 since circa 1993, 1994. Specifically let me read for you a
25 couple of things that outline that.

1 January 16th, 1995, an internal BellSouth memorandum
2 starts off, "Southern Bell is in an ongoing dispute with DCAD,"
3 we were then the Dade County Aviation Department at Miami
4 International Airport, "concerning the provision of local
5 service. DCAD is providing shared tenant services under an
6 exemption in the Florida Public Service Commission's rules and
7 regulations."

8 Also, there is a March 28th, 1994, letter from
9 J. Phillip Carver, who was the general attorney for BellSouth
10 at the time, dealing with Assistant County Attorney Timothy
11 Abbott about the same issue that was the basis for the order
12 that I referred to in 1994. Here on the second page Mr. Carver
13 says, "As you're well aware, Southern Bell has consistently
14 taken the position that it is the responsibility of DCAD as a
15 provider of shared tenant type services to provide to Southern
16 Bell at no charge support structures that are adequate to allow
17 us to place our cable to have direct access to the customers."
18 It goes on to say, "Southern Bell does not pay for its on
19 conduit because it is the obligation of DCAD as an STS-type
20 carrier to provide to Southern Bell at no cost support
21 structures to allow us access to our customers."

22 Commissioners, this admission which follows
23 specifically from the STS order that was issued in 1987 which
24 authorized the provision of these shared type services by
25 airports and also exempted the airports who had existing

1 systems like Greater Orlando and Miami-Dade to provide these
2 types of services, this admission points out that already in
3 the '90s it was recognized that Miami-Dade was a shared tenant
4 service provider. Hence, the acquisition of the rest of the
5 property, the infrastructure, and that's all that's happened
6 here, does not now transmogrify the County into a new STS
7 provider.

8 In closing, Commissioners, let me just highlight a
9 couple of things. There's been no violation of Chapter 364,
10 Florida Statutes. There is no construction or operation of
11 telecom facilities, there is no acquisition of ownership
12 control or organizational control of a telecom entity. All of
13 these things are what's necessary for BellSouth to have
14 standing here and to say we are a new provider and, hence, need
15 certification. And that's outside of the airport exemption.

16 But even more so, Commissioners, the entity which
17 first leased the telecommunications systems to the County
18 continues to manage those systems on the county's behalf, and
19 there has never been a distinction upon whether or not an
20 airport leased the systems or owned the systems or how it went
21 from the process of leasing to ownership. It was the provision
22 of services. The County, through its aviation department, has
23 provided shared tenant services since approximately 1988 when
24 it first -- and that was first notified by staff, and that was
25 because of the Commission's ruling which allowed the

1 interconnection to multiple buildings, to the airport campus
2 behind the switch by this Commission.

3 And in that hearing, let me just read certain things
4 that the Commission said. "To the extent that sharing of local
5 trunks is limited to this purpose, and that purpose being the
6 safe and efficient transportation of passengers and cargo
7 through the airport campus, there is no competition nor
8 duplication of local exchange service by the LEC." So,
9 therefore, the argument of BellSouth that we're competing with
10 them, the Commission has already said this type of provision of
11 service by airports behind the switch is not competition. And
12 also because of the unique nature of the airport, we consider
13 it to be a single building. And if, indeed, it wants to serve
14 other entities like hotels, shopping malls, industrial parks,
15 then it needs to partition the trunks. The County has
16 partitioned its trunk to the airport. Its concessions are
17 necessary for the safe and efficient movement of transportation
18 and cargo. The concessions here are for the benefit of
19 federal, state and county employees at MIA, passengers, airline
20 flight crews and aviation support entities which support the
21 operation of MIA. And the reason that the concessions are part
22 of the shared system, even though they can directly access with
23 the LEC as pursuant to the STS order and what this Commission
24 has dictated, is because when there is something that happens
25 like on July 11th of 2005, January 21st of 2005, January 12th

1 of 2005, December 14th of 2004, September 25th of 2004 and
2 August 16th of 2004, those concessions and those concourses
3 have to be evacuated as those dates at Miami International
4 Airport.

5 Commissioners, please do not fall for the ruse that
6 this is a new operation and, therefore, BellSouth can now use
7 this as a way to try and erode the airport exemption and the
8 ability for airports like Miami International and Greater
9 Orlando to provide shared tenant services and intercommunicate
10 for the safe and efficient movement of passengers and cargo.

11 CHAIRMAN BAEZ: Ms. White.

12 MS. WHITE: Thank you. Nancy White for BellSouth
13 Telecommunications.

14 I'd like to remind everybody where we are again in
15 this, what we're doing here today. We're arguing a motion to
16 dismiss. The County has filed a motion to dismiss BellSouth's
17 complaint. The legal standard for reviewing a motion to
18 dismiss is that the moving party must demonstrate that,
19 accepting all of the allegations in the petition as facially
20 and factually correct, the petition fails to state a cause of
21 action for which relief can be granted. You must look at the
22 four corners of BellSouth's complaint. You cannot look beyond
23 that. You cannot look to affidavits attached to a motion to
24 dismiss, you cannot look at testimony attached to a motion to
25 dismiss, you cannot look at memos or affidavits attached to a

1 motion to dismiss.

2 The County relies on evidence that it's attached to
3 its motion, not an argument about whether BellSouth's complaint
4 fails to state a cause of action for which relief can be
5 granted.

6 In addition, the complaint, the motion to dismiss is
7 substantively defective. If you take BellSouth's complaint,
8 the allegations in BellSouth's complaint as factually correct,
9 then the County is operating as a shared tenant service
10 provider without a certificate in violation of the law. The
11 County is well aware of the necessity of a certificate. The
12 County is providing telecommunication services in competition
13 with BellSouth. The County is using the provision of these
14 telecommunication services to generate revenues and profits,
15 not for the safe and efficient transport of passengers and
16 freight. Taking these facts as correct, BellSouth has alleged
17 a valid cause of action and the complaint cannot be dismissed.

18 Essentially Miami-Dade County's motion is a motion
19 for summary judgment, not a motion to dismiss. It is
20 well-settled that a motion to dismiss is not a substitute for a
21 motion for summary judgment. BellSouth in its response to the
22 county's motion has more than amply showed that there are
23 issues of material fact. There's a high standard for a motion
24 for summary judgment, and every possible inference must be
25 drawn in favor of the party against whom the summary judgment

1 is sought.

2 BellSouth is not seeking to make the Miami-Dade
3 airport less safe. BellSouth is seeking justice, it's seeking
4 for the rules to be applied to everyone the same way and in the
5 right manner. Thank you.

6 CHAIRMAN BAEZ: Commissioners, questions?

7 COMMISSIONER DEASON: I have a question for Ms.
8 White.

9 CHAIRMAN BAEZ: Commissioner Deason.

10 COMMISSIONER DEASON: Ms. White, what has changed?
11 This airport has been operating under an arrangement apparently
12 for a lengthy period of time and has even gotten an order from
13 the Commission and has been referred to as the airport
14 exemption. What has changed?

15 MS. WHITE: Well, first of all, we disagree with the
16 county's contention that they've been operating as a shared
17 tenant service provider since the '90s. Essentially they
18 bought out -- there were external third-party shared tenant
19 service providers like WilTel and Nex -- I'm going to get the
20 name wrong -- but Nextera, and they bought their facilities
21 from them in 2002. So they haven't been operating as a shared
22 tenant service provider for all this time, the Miami-Dade
23 airport.

24 Second, the -- you know, back when the rules were --

25 COMMISSIONER DEASON: Back up for just a second.

1 You're saying that the airport has acquired facilities recently
2 that they did not have either ownership or control over; is
3 that correct?

4 MS. WHITE: That's correct.

5 COMMISSIONER DEASON: Okay. And those new facilities
6 that they have acquired either ownership or operation of now
7 puts them into a different category of an entity that has to be
8 certificated?

9 MS. WHITE: That's one part of our argument. Yes.

10 COMMISSIONER DEASON: Okay. And why does that change
11 the inherent nature of the airport that they have to be, become
12 certificated?

13 MS. WHITE: Because the airport that you're looking
14 at today is not the same airport that you're looking at when
15 these rules were put into place. I mean, when these rules were
16 put into place, there may have been a coffee shop and a
17 newsstand. Now they are malls. The concession stands are --
18 there are shopping areas. They're not just a coffee shop here
19 and a, and a newsstand there. There are hotels, there are
20 restaurants, there are stores. We believe that --

21 COMMISSIONER DEASON: Well, why doesn't that meet the
22 exemption? Just because there's more --

23 MS. WHITE: Because the exemption says --

24 COMMISSIONER DEASON: Just for a second. Those
25 entities existed back into that time frame but now there may be

1 more of them, but why does that change the inherent nature of
2 those entities?

3 MS. WHITE: But all of those entities did not exist
4 beforehand.

5 COMMISSIONER DEASON: Well, what's the difference
6 between a coffee shop in an airport that met the exemption and
7 a restaurant or a hotel? I mean, just because there's more
8 lines, all of the sudden it becomes attractive to BellSouth to
9 obtain the business?

10 MS. WHITE: Well, but the rule states -- no, that is
11 not it at all. The rule states that the exemption does not
12 apply -- the rule states that the exemption only applies in
13 order for the, for the County or for the airport to provide for
14 the safe and efficient transportation of passengers and
15 freight. We do not believe that everything that's going on
16 there is for the safe and efficient transportation of
17 passengers and freight. Their goal is not that. Their goal is
18 to make revenues, is to make profits. That's not what was
19 contemplated by the shared tenant service provider goals.

20 Second, the rule itself states that the airport has
21 to obtain a certificate before it provides shared local
22 services to facilities such as hotels, shopping malls and
23 industrial parks. We believe that essentially what they're
24 running is a shopping mall.

25 CHAIRMAN BAEZ: Commissioner Deason, do you have more

1 questions?

2 I'm sorry. There's something that you said there
3 that, that struck a chord with me. What -- and I guess it
4 really goes back to what Commissioner Deason was asking. He
5 asked you what has changed? Is there, is there, is there a
6 dispute as to whether these facilities, these concession-type
7 establishments existed before the exemption was created, or is
8 it just that there's more of them now?

9 MS. WHITE: Well --

10 CHAIRMAN BAEZ: I guess I'm trying to -- you said
11 something, you know, that the airport is not the same as when
12 the rules were created. And while I'm intimately familiar with
13 the place that you're talking about, I would agree with you on
14 one level, but I'm trying to find -- how, how are you saying
15 it's different: Because it's bigger or because the nature of
16 the establishments have changed? What is it? What's your
17 basis?

18 MS. WHITE: Well, I think it's -- those are all part
19 of it. Essentially what the exemption -- the exemption was
20 established to enable the airport to run more smoothly, to make
21 sure that passengers and freight get through. That's why the
22 exemption was, was put in place. What the airport is using it
23 for is a means of making money, not as moving passengers.

24 CHAIRMAN BAEZ: Did -- when the exemption was created
25 and the services were, were begun or the provision of services

1 was begun, what nature did that have -- the service was
2 provided in what nature that somehow all of the sudden is
3 different? Were there, were there fees being paid for that
4 service back then or -- I mean, I guess I'm trying to -- you're
5 saying that they're using it to make money, and that may be the
6 case, but were they not using it to make money before? I mean,
7 is that a change? Is that a circumstance that's changed?

8 MS. WHITE: Well, I think that is a change in the
9 circumstance. I think the nature of the, the services, I think
10 the type of services, I think the nature of the customers and
11 the type of the customers, I mean, I believe there -- I mean,
12 it's more than just the coffee shop and the newsstand that was
13 there 20 years ago. And it's not that it's more in terms of
14 are there more concessions. Yes, there are more concessions.
15 But there's a hotel, there's a -- there are airport facilities
16 that are, are facilities that are not on the airport property
17 itself that are being served. I mean, those are all things
18 that I think say this is time to take a second look at it. I
19 mean -- and I have to go back. I mean, we're, we're arguing
20 the facts of the case, which I think are worth a hearing, and
21 that's not the purpose of a motion to dismiss.

22 CHAIRMAN BAEZ: Let me, let me ask you about that.
23 Is, is -- do you have a disagreement under which, under the
24 section of 120 that staff has identified, the (2), that it
25 should be a legal, essentially a brief only?

1 MS. WHITE: I have not. I am not opposed to that. I
2 want to talk to staff about it and see if that would work, but
3 instead of a hearing have it be on a briefing. I assume that's
4 what staff meant by that statement.

5 CHAIRMAN BAEZ: It's a brief only on the legal issue?

6 MR. TEITZMAN: That is correct, Chairman.

7 MS. WHITE: A brief only with oral argument. We
8 might be able to live with that. I did not talk to my clients
9 about that in-depth because I really wanted to talk to staff
10 first and see what, what they had in mind.

11 CHAIRMAN BAEZ: Mr. Teitzman, on that note, is it --
12 there seems to be some -- staff seems to be focusing on some
13 missing piece of the puzzle that they wish to address. I mean,
14 is that -- am I interpreting staff's opinion correctly?

15 MR. TEITZMAN: Well, Chairman, I would like to
16 clarify. I think what Mr. Hope stated was a slight
17 overstatement of staff's position in its recommendation. We
18 said there may not, may not be significant issues that are
19 still disputed. We would still need to -- like that's what we
20 mentioned, discuss it with the parties, find out exactly where
21 there is agreement, can there be some stipulated facts. We
22 have not conducted those conversations at this time. However,
23 if there are no disputed facts, then staff believes it may be
24 appropriate to have the parties brief the issue and, if they'd
25 like, schedule an oral argument.

1 CHAIRMAN BAEZ: But that wouldn't be a determination
2 that you're recommending we make today?

3 MR. TEITZMAN: At this time I do not believe staff is
4 prepared to recommend that.

5 CHAIRMAN BAEZ: What kind of procedure -- okay.
6 Commissioners, do you have other questions?

7 COMMISSIONER DEASON: Yeah. I --

8 CHAIRMAN BAEZ: Commissioner Deason, I'm sorry I
9 interrupted.

10 COMMISSIONER DEASON: No. No. That's fine.

11 I guess I'm just trying to get an understanding, a
12 better understanding of exactly what is at dispute and maybe a
13 possible remedy.

14 Ms. White, I take it it's your position that the
15 airport is operating in violation of, of our requirements and
16 Chapter 364; is that correct?

17 MS. WHITE: Yes, sir.

18 COMMISSIONER DEASON: And exactly how in your view
19 are they violating that? They don't have a certificate to
20 operate; correct?

21 MS. WHITE: Yes, sir. That's the main --

22 COMMISSIONER DEASON: And do they have the ability to
23 obtain a certificate?

24 MS. WHITE: Sure.

25 COMMISSIONER DEASON: An STS certificate --

1 MS. WHITE: Sure.

2 COMMISSIONER DEASON: -- or a certificate as a phone
3 company?

4 MS. WHITE: Well, an STS certificate.

5 COMMISSIONER DEASON: Okay.

6 MS. WHITE: I mean, essentially our allegation is
7 that they're operating as an STS provider without the
8 appropriate certificate.

9 COMMISSIONER DEASON: Mr. Hope, can the County
10 just -- can this go away if you just get an STS certificate?

11 MR. HOPE: The short answer, Commissioner, is it
12 could go away. But the reason that this Commission created an
13 airport exemption was for entities like Miami International
14 Airport, like Orlando International Airport, was to be able to
15 be exempt from those rules and regulations because, as it was
16 discussed in testimony after testimony back in 1983, '84 and
17 '85, which led up to this Commission's decision which created
18 the airport exemption, the public is already served, the local
19 exchange carrier is already served through existing rates and
20 charges and tariffs. And, therefore, given the unique nature
21 of airports and their business, that they should be exempt from
22 STS rules such as certification as long as they follow certain
23 procedures. And that is what Miami International has done all
24 along.

25 COMMISSIONER DEASON: I understand that's your

1 position and I respect that position. But I guess my question
2 goes beyond that.

3 To make this go away, would it be easier for you just
4 to get a certificate or would you rather go to -- I mean,
5 what's the most efficient way to get this resolved? And I
6 assume you're saying that you think the most efficient way is
7 to defend your position that you're exempt as opposed to just
8 getting a certificate.

9 MR. HOPE: Absolutely, Commissioner, because you have
10 to remember that airports are self-sufficient. The only way
11 that the airport generates revenues is through bond
12 obligations, which means obligating the airport and, hence,
13 eventually the citizens of Miami-Dade County to a greater
14 impact over a period of time to pay back for building various
15 facilities and also generation of fee revenue. If we get a
16 certificate, and this is why the airport exemption was created,
17 then that's another cost in terms of tariffs, charges, other
18 costs that come with that certification that private entities,
19 like BellSouth, they're fine with because they don't have the
20 same constraints that a governmental entity has. That's why
21 the airport exemption was created. So although on paper it
22 might seem as if it's easy and this could all go away if we got
23 a certificate, there's a reason why airports were carved out.
24 We are a unique animal. And because of the inherent costs of
25 running an airport, whether it's the data systems that are

1 needed, the communication systems that are needed, the security
2 systems that are needed, all of those things, the general
3 overall maintenance on a day-to-day basis because of those
4 costs with an airport, also adding in rates, charges and
5 tariffs, is basically making it harder for an airport to
6 survive.

7 And, Commissioner, let me just specifically read
8 something from the airport section from the PSC Order in 1987,
9 and this is just quick. And it starts off, "Some airports in
10 Florida such as the Greater Orlando facility share trunks
11 coming from the LEC central office. Airports are unique
12 facilities generally construed as being operated for the
13 convenience of the travelling public." That convenience to
14 operate and make things convenient for the travelling public,
15 which includes Miami International having a hotel since 1959,
16 that hasn't changed, and having concessions there which hasn't
17 changed, whether it's newsstands, drug stores or the like,
18 there is all a cost there. And that is why this Commission
19 exempted airports as long as they're providing service to those
20 entities for the safe and efficient movement of transportation,
21 Commissioner. And that's what we have been doing all along and
22 we have continued to do, and nothing has changed. And as
23 BellSouth has just said, and it corroborates the county's
24 position all along, they said it's time to take a second look.
25 It's not time to take a second look. This Commission stepped

1 out in 1986 with its order in '87 and said, airports who follow
2 these procedures are exempt, and there's no competition here.
3 And nothing has changed, the field has not changed. We've been
4 operating the same way.

5 CHAIRMAN BAEZ: Commissioners, other questions?

6 COMMISSIONER DEASON: I guess I have a question for
7 staff.

8 CHAIRMAN BAEZ: Go ahead.

9 COMMISSIONER DEASON: Staff, you believe that the --
10 obviously it's your recommendation that the motion to dismiss
11 be denied because it doesn't meet the requirements, the very
12 high threshold requirements of a motion to dismiss; correct?

13 MR. TEITZMAN: That's correct, Commissioner.

14 COMMISSIONER DEASON: But you're also, you're not
15 sure if there are issues, material issues of fact which will
16 have to actually go to an evidentiary hearing; correct?

17 MR. TEITZMAN: That is correct as well.

18 COMMISSIONER DEASON: So if we deny the motion to
19 dismiss, how, how are we going to determine that? Is it just
20 with discussion of the parties or -- if we denied the motion to
21 dismiss, what is the next step?

22 MR. TEITZMAN: The next step would most likely be to
23 conduct a status call with the parties, a conference call with
24 the parties to discuss how to proceed, and to allow staff to
25 make a determination whether or not there are facts, disputed

1 facts between the parties. There's a concurrent proceeding in
2 Miami-Dade County before the circuit court and, as a result, in
3 the parties' filings, initial filings they provided a lot of
4 documentation, depositions. And through, through reading
5 through that is where we kind of came to the determination that
6 there may not be at this time anymore disputed facts. However,
7 as we've discussed, we would still like to discuss that further
8 with the parties.

9 COMMISSIONER DEASON: Okay. Let's put aside the
10 question of whether there are or are not general issues of
11 fact. What is the legal question here?

12 MR. TEITZMAN: The ultimate legal question that
13 BellSouth --

14 COMMISSIONER DEASON: Yes.

15 MR. TEITZMAN: Despite what Ms. White said about
16 taking a second look, staff doesn't believe that this is
17 actually a request to relitigate the airport exemption.
18 Rather, staff views this as a question of whether or not Miami
19 International Airport's provision of STS services exceeds the
20 exemption in the rule. Whether or not they are required at
21 this point to obtain a certificate, not questioning whether or
22 not the validity of the airport exemption itself, whether or
23 not BellSouth, I'm sorry, Miami-Dade International is still
24 within the exemption.

25 COMMISSIONER DEASON: So the question is --

1 CHAIRMAN BAEZ: For certain services. I mean,
2 there's -- clearly there seems to be some agreement that
3 certain functions are still within the exemption.

4 MR. TEITZMAN: Correct.

5 CHAIRMAN BAEZ: But as you say, some, there are some
6 circumstances that have exceeded the exemption.

7 MR. TEITZMAN: May have exceeded.

8 CHAIRMAN BAEZ: May have exceeded the exemption.

9 MR. TEITZMAN: Correct.

10 COMMISSIONER DEASON: So the ultimate question is, if
11 we get to that point, is whether the airport continues to meet
12 the requirements of the exemption.

13 MR. TEITZMAN: Correct, Commissioner.

14 COMMISSIONER BRADLEY: Mr. Chairman, let me ask a
15 question.

16 CHAIRMAN BAEZ: Go ahead, Commissioner Bradley.

17 COMMISSIONER BRADLEY: I want to ask this question of
18 BellSouth and of the County. Is this an issue that if we
19 allowed you all a little time this morning, that you all could
20 satisfactorily, satisfactorily resolve this morning vis-a-vis a
21 recommendation to this Commission?

22 MS. WHITE: Unfortunately, Commissioner Bradley, I
23 don't believe that's the case. This has been a very
24 contentious issue between BellSouth and the County. And as
25 Mr. Teitzman said, there is an ongoing concurrent court case on

1 another part of the issue, not necessarily the STS, but whether
2 the County violated their Home Rule Charter by providing
3 telecommunication services to begin with. So I'm just -- I
4 just don't believe it would be possible.

5 CHAIRMAN BAEZ: Ms. White, do you agree with, and I
6 think Mr. Hope answered the question, although he mounted it
7 with other unfavorable factors, but do you agree that it would
8 be just, it would be as simple a solution as to just apply for
9 an STS certificate?

10 MS. WHITE: I think that might resolve the Commission
11 case. I don't believe it would resolve the court case.

12 CHAIRMAN BAEZ: Right.

13 MS. WHITE: Because if --

14 CHAIRMAN BAEZ: And would the certification, would
15 the certification address your claim that what they're running
16 is a shopping mall? Would it resolve that problem?

17 MS. WHITE: Well, if they have certification, then
18 they're not trying to use the exemption, and the exemption, you
19 don't have to -- you don't argue about the exemption.

20 CHAIRMAN BAEZ: I'm sorry. Say again.

21 MS. WHITE: The exemption is irrelevant. The rule
22 says that airports don't have to get a certificate --

23 CHAIRMAN BAEZ: STS certification. Right.

24 MS. WHITE: -- if they're doing --

25 CHAIRMAN BAEZ: Airport stuff.

1 MS. WHITE: -- airport stuff essentially. Yes.

2 CHAIRMAN BAEZ: That's an arcane --

3 MS. WHITE: And so if they get a shared tenant
4 service provider certificate, then under that certificate
5 they're able to provide shared tenant services, you know,
6 within the requirements of the statute. The exemption -- there
7 would be no airport -- it wouldn't be the, you know,
8 necessarily just airport.

9 CHAIRMAN BAEZ: Okay. Then help me understand, if
10 those, if those solutions are true, then help me understand
11 what your client's interest in the, in this part of it, at
12 least the regulatory part of it is.

13 MS. WHITE: Well, I mean, the bottom line --

14 CHAIRMAN BAEZ: Outside of an interest that we all
15 have as Floridians that everybody abide by regulations and --

16 MS. WHITE: Well, I mean, we're a competitor. If
17 they don't have to abide by certain rules that everybody else
18 has to abide by --

19 CHAIRMAN BAEZ: But how are you, how are you,
20 strictly speaking, how are you a competitor? And I'm not
21 arguing that you are or you're not, but explain to me how you
22 are a competitor if the company, if the airport, all they need
23 to do is apply for certification and then continue providing
24 the services as they happen.

25 MS. WHITE: Because then I guess it's possible that

1 one of the --

2 CHAIRMAN BAEZ: One of the, one of the clients may --

3 MS. WHITE: Tenants.

4 CHAIRMAN BAEZ: Okay.

5 COMMISSIONER BRADLEY: Mr. Chairman, are you
6 finished?

7 CHAIRMAN BAEZ: Commissioner Bradley. Yes.

8 COMMISSIONER BRADLEY: Oh, okay. Let me ask this
9 question because I think that what is before us may be the
10 substance of an issue that was before the Legislature, and that
11 is the local government or local governments having the, well,
12 entering the telecommunications market as providers, as a
13 provider. And it's -- you know, we initially started out with
14 just the narrow issue of dismissal, but, you know, we've gotten
15 into, in my opinion, a discussion about some of the merits of
16 this case. And I'm going to ask this question. Under the
17 shared tenant, the STS certificate scenario, what are some
18 typical components of an airport that would, that would share
19 these services with the County, I mean, under the STS
20 certificate? Would it be the tower, would it be, would it be
21 control of the runways?

22 MS. WHITE: I have to say I'm not sure because the
23 tower might be FAA. I'm, I'm not up on -- but I think the
24 tower might be FAA, so I don't think it's counted

25 COMMISSIONER BRADLEY: What you're saying though is

1 that the certificate initially was designed to, to deal with
2 safety and the moving of passengers.

3 MS. WHITE: Right. The exemption was put forth, and
4 the reason for the exemption was so that there could be safe
5 and efficient transportation of passengers and cargo. And what
6 we're saying is they've, what staff essentially says is the
7 issue is they've exceeded that exemption and they're doing more
8 than what is needed for the safe and efficient transportation,
9 carriage of passengers and cargo.

10 COMMISSIONER BRADLEY: Right. And, staff, I guess
11 what you're saying is that by them selling services, sharing
12 services with hotels, then that doesn't fall under the category
13 of safe and, safety and dealing with the issue of moving
14 passengers; is that correct?

15 MR. TEITZMAN: Staff has not reached a position on
16 that ultimate issue.

17 COMMISSIONER BRADLEY: Okay. Mr. Chairman, I
18 don't --

19 CHAIRMAN BAEZ: I'm with you.

20 COMMISSIONER DEASON: Mr. Chairman --

21 CHAIRMAN BAEZ: Go ahead, Commissioner Deason.

22 COMMISSIONER DEASON: I'll just kind of open it up
23 for some discussion here and maybe --

24 CHAIRMAN BAEZ: Sure.

25 COMMISSIONER DEASON: I don't think we're at a point

1 where we can grant the motion to dismiss, okay, because it
2 seems to me that it is unclear at this point as to whether
3 there are or are not issues of fact. Staff just said that,
4 they're not really sure.

5 The ultimate question as to whether -- whatever the
6 facts are, and they may be able to be agreed upon as to exactly
7 what the operations are at the airport and the nature of those
8 operations and how those operations perhaps have changed over
9 time, those are facts that perhaps could be stipulated. But
10 then the ultimate question is given that set of facts, does
11 that, does that degree of operation by the airport exceed the
12 exemption? I don't know the answer to that question. And this
13 may be something that we're going to have to wrestle with. So
14 I just can't, I can't dismiss it at this point.

15 It may ultimately -- perhaps -- is there a way that
16 we can just not grant the motion to dismiss at this point and
17 let the County, as they see fit, to, to refile or to
18 reinstate, whatever the right term is, such a motion? Can we
19 just defer ruling on the motion to dismiss at this point until
20 we have a better understanding as to what the facts are?

21 MR. TEITZMAN: Certainly, Commissioner. The County
22 could withdraw without prejudice and then -- well, they could
23 file a motion for summary final judgment, a motion to dismiss.
24 There is a discussion in the recommendation that it would need
25 to be filed 20 days after the filing of the petition.

1 One of the things that staff did note was that it was
2 filed after that time period. However, they would not be
3 prohibited from filing a motion for summary final judgment at
4 any time during this proceeding.

5 COMMISSIONER DEASON: And if we do not grant the
6 motion to dismiss -- and I don't know, there may be a sentiment
7 that we grant it and I'd be willing to hear that. I'm not
8 necessarily opposed to that. I just -- based upon the
9 discussion I've heard, I don't think that we're at that point
10 yet to grant the motion to dismiss.

11 If this continues in one form or another, just as a
12 suggestion, it may be helpful for the staff and the County to
13 have a discussion as to exactly what is involved in getting an
14 STS certificate. I don't think it's that burdensome and
15 onerous and I don't think it's that costly. But I understand
16 that perhaps the County maybe for other reasons has, has a real
17 strong desire to maintain the exemption, and I'm not trying to
18 persuade you or dissuade you from that position. I respect
19 that. But in the, in efforts to fully understanding
20 everything, it may be to your benefit to understand exactly
21 what is required of an STS certificate. It may not become that
22 unattractive if you have a better understanding of it. So I
23 would just suggest that, that that perhaps effort be done at
24 some point.

25 CHAIRMAN BAEZ: Thank you, Commissioner.

1 Commissioner Bradley.

2 COMMISSIONER BRADLEY: I concur. I don't see how,
3 just based upon the discussion we've had this morning, how we
4 can dismiss this case. And I'll tell what my concern is.
5 You know, I've stated for years that I'm not going to be an
6 activist Commissioner and that I'm going to adhere to the
7 Florida Statutes. And I just don't want to, by my actions, put
8 this Commission in a position to in any shape or form appear to
9 be circumventing Florida Statutes. And the more I listen to
10 what's being discussed here this morning, the more confused
11 I've become as it relates to what really is going on here. And
12 I'm just concerned that, you know, this may be a backdoor
13 attempt, and it may not be, but to circumvent what the Florida
14 Legislature I think was very clear about this past legislative
15 session, and that is that local government should not, local
16 governments have the authority to do -- provisioning certain
17 types of telecommunications services, but not to in any shape
18 or form -- the market of providing telecommunications services
19 without going through the proper channels. And, you know, I
20 just -- I don't know what the intent of the County is, but, you
21 know, I think that we need some additional information as it
22 relates to this particular matter so that we can make a
23 decision that's in line with all of the nuances that I just
24 mentioned.

25 If Commissioner Deason has -- and we started out with

1 just a narrow, just -- we started out just to deal with the
2 issue of either dismissing or not dismissing this complaint,
3 and we've had a rather lengthy discussion as it relates to
4 that. But if you put on the table --

5 COMMISSIONER DEASON: Well, let me -- I'm going to
6 suggest that, that perhaps we give the County the option of
7 withdrawing their motion without prejudice at this point, and I
8 think that's an option available to them. If they see fit to
9 leave the motion in front of us, well, then we'll have to
10 dispose of it and it would be my motion that we deny it. So I
11 guess the ball is kind of in the County's court.

12 CHAIRMAN BAEZ: Commissioners, let me, let me just
13 say one thing before we, before we place the choice between
14 Mr. Hope and his client.

15 You know, Commissioner Bradley, you're right;
16 sometimes you start off with a, with a fine legal point and you
17 can't help but get into the merits of it. And I think you
18 heard a lot of, a lot of contentions and, and things that are
19 disputed issues of fact.

20 So, Commissioner Deason, I'm with you on the fact --
21 on a level of discomfort in dismissing, in dismissing the, or
22 granting the motion to dismiss. But -- and how we proceed on
23 it, I don't know. I think a lot of good suggestions have been
24 made, and certainly some, some possible resolutions on the part
25 of the County have, may have been identified or made clear to

1 all of us here.

2 The problem with getting, getting into the merits,
3 it's all stuck together and it's very hard to stay away from
4 it. And, Ms. White, I just have to say this, okay, and I don't
5 know how all this -- but right now based on what I've heard, I
6 can tell you one thing, I've been to the Miami airport -- I've
7 been to several airports, as I'm sure you have, probably more
8 than I have. I have never once, never once woken up in the
9 morning and said, hey, I need a pair of pants. Let me go shop
10 at the airport.

11 All right. Now whether the, whether the facts sway
12 me another way, on the face of it it becomes very, very
13 difficult to get down to the point of arguing where we draw the
14 line as to what are, what are airport operations and what are
15 not. I think the standard was established relatively vaguely.
16 I will admit that that necessity standard gets a little murky
17 and I know that's what we're going to wind up arguing with.
18 And perhaps if it's an issue that we need to revisit -- that we
19 need to visit, not revisit, but visit and draw a finer line as
20 to what falls within, Mr. Hope, your client's eligible
21 operations or proper operations as an airport and otherwise,
22 then that's what I'm prepared to do. We can get into a
23 discussion over it.

24 But there, there are things -- you know, I hate to
25 think that the standard wasn't created in such a way and that

1 the definitions inside or the terms of the exemption were
2 created a certain way so that we could possibly avoid and
3 establish some physical relationship to the exemption rather
4 than some conceptual relationship where we could avoid arguing
5 over what is an airport operation and what isn't. That's just
6 my opinion today. After hearing all of the facts, I'm, you
7 know, I'm open to drawing those kinds of distinctions. So I'm
8 in agreement with you, Commissioner Deason, that this is
9 probably -- there are too many questions still out there, at
10 least in my mind, to dismiss it.

11 At this point, we can -- Mr. Hope, there's been a
12 suggestion that you could withdraw without prejudice your
13 motion to dismiss. There has also been the intimation that
14 probably the proper filing to bring before the Commission at
15 some point in the future is a motion for summary final order.
16 It's your choice now. I think you've heard the Commissioners
17 state their discomfort with the motion in its current form, so
18 it's your choice, sir.

19 MR. HOPE: I understand. Mr. Chair, if I may, let me
20 just clarify a certain number of points and I will directly
21 answer what you said.

22 Commissioner Bradley, this is no backdoor way of
23 getting around anything that the Florida Legislature or Florida
24 Statutes allow.

25 The operations at Miami International Airport, just

1 like the operations at Orlando, are pursuant to the PSC rules
2 and Chapter 364, Florida Statutes. And although, as I'm
3 hearing the Commission say, maybe the environment of airports
4 has now changed over time, the purpose of an airport, which is
5 why the airport exemption was established, has not changed.
6 What's been left out of all of this -- all we've heard is,
7 well -- and this is from BellSouth. This has nothing to do
8 with staff because staff just goes on the pleadings that have
9 been provided to staff. But BellSouth says, well, Miami might
10 be exceeding. Why? Well, the numbers have changed, so this
11 might be something that's different. But looking specifically
12 at the airport exemption, and it says, "Airports shall be
13 exempt from other STS rules due to the necessity to ensure the
14 safe and efficient transportation of passengers and freight
15 through the airport facility. However, if the airport
16 partitions its trunks, it shall be exempt from other STS rules
17 for service provided only to the airport facility if it's
18 provided to hotels, shopping mall and industrial parks."
19 There's one hotel that's been there. Those trunks are
20 partitioned. That's not in dispute. They have been
21 partitioned. So we comply.

22 The problem here is what's going on? Is it the
23 number of concessions? Why? There's nothing in the airport
24 exemption that ever said that the County can't try and defray
25 its costs and make a profit. The County has always tried to

1 minimize expenses. So what we have in front is a situation
2 where BellSouth is never going to agree with a set of facts.
3 They're going to argue until they're blue in the face that
4 Miami International Airport's terminal building is like a
5 shopping mall. The exemption doesn't deal with that. We are
6 not providing service to a shopping mall. Concessions -- and
7 they still cannot deal with this, as to why they can or cannot,
8 need to or need not be part of the shared system for security
9 reasons, they have no answer to that, none whatsoever.

10 As far as our motion to dismiss, the County would
11 prefer, because there is really no benefit in terms of
12 voluntarily withdrawing it without prejudice because we can't
13 file it again, the County would prefer, all respect to the
14 Commission, for the Commission to rule on that, and then we
15 will take staff's recommendation and we will file a notice for
16 final summary hearing.

17 But I want the Commission to understand clearly that
18 BellSouth does not want to agree with us here. The County
19 pays -- the aviation department pays to BellSouth approximately
20 \$53,000 a month for the provision of local service in other
21 facilities. Any concession or any tenant at Miami
22 International Airport, pursuant to the STS order, can contract
23 directly with BellSouth or any other provider. That's what
24 Florida Statutes require; that's what we do. We have complied
25 for over 18 years with what the law is. We haven't tried to

1 skirt the law. We haven't tried to exceed our authority. We
2 are doing what is required. And that is why we so vehemently
3 oppose having to file for a certificate when it's not required.

4 The Commission looked long and hard at this issue.
5 All of this was discussed. Why is there the necessity of a
6 shoeshine stand to be part of the shared system? Why is there
7 a necessity for other sorts of concessionaires to be part of
8 the shared system? All of this was discussed ad nauseam back
9 in the mid '80s, and the Commission took a stand that it is
10 important, airports are unique, and you don't want to get into
11 the situation that you carve out an entity, have to have them
12 go through a central office and something happens, and by the
13 time they communicate to that central office and get back to
14 the airport, it's already a done deal and there's been a
15 problem. And that's why we're exempt and that's why Miami
16 International, Orlando and any other airport in Florida holds
17 on so hard to this airport exemption.

18 So, Commissioners, with all due respect, we'd rather
19 you rule on a motion to dismiss. I'm understanding what, what
20 the ruling is going to be, but clearly understand there really
21 are no factual disputes here. What's going on at Miami has
22 been going on. We've been operating under the exemption, as
23 admitted to by BellSouth, for years and we are properly
24 operating. We will file a notice -- a motion for final summary
25 hearing, and hopefully we can proceed and we will not get

1 bogged down here the way we have been bogged down in circuit
2 court by BellSouth, who has unlimited resources, and we do not.
3 Thank you, Commissioner.

4 COMMISSIONER BRADLEY: Well --

5 CHAIRMAN BAEZ: Commissioner Bradley.

6 COMMISSIONER BRADLEY: You know, the plot thickens
7 because -- I hope you appreciate the predicament that we're in
8 this morning because, as, as you so ably explained your side of
9 it and as BellSouth so ably explained its side of it, it
10 creates even more confusion because we've gotten into the
11 merits and had a discussion, but we haven't had the opportunity
12 really to let the process play out fully.

13 And what's before us is the matter of dismissal.
14 And, and we've allowed for the two parties to basically argue
15 their case before us this morning without us really being privy
16 to what the true facts are. And I wouldn't want to
17 disadvantage you and I wouldn't want to disadvantage BellSouth
18 without this Commission having the facts before it so that we
19 can make a decision that's, that's, that's, that's fair and
20 good for both parties.

21 MR. HOPE: Commissioner, can I make a suggestion
22 then?

23 COMMISSIONER BRADLEY: Yes, sir.

24 MR. HOPE: Would the Commission be inclined -- and
25 obviously this is going to be more favorable to the County, but

1 I think it is fair. There are a series of documents that I
2 handed out, and I handed them out for a reason: To show that
3 what Miami-Dade County has been doing all along is legal and
4 pursuant to the law, it shows a history. And as Commissioner
5 Deason had asked early on, what has changed? Those documents
6 show nothing has changed.

7 So at a minimum, what gives BellSouth the standing in
8 2005 to raise an issue for an operation that has been exactly
9 the same since 1988? Nothing.

10 So what I would respectfully request is that the
11 Commission defer ruling on the motion to dismiss, look at the
12 documents that I have provided, because that might answer the
13 questions that you have. And then if you want to, based on
14 that, say that they're still insufficient and deny the motion
15 to dismiss, that's fine, and then we'll turn around and file
16 what we need to file. But, honestly, those documents show that
17 nothing has changed. There has been no reacquisition. Centel
18 was acquired by WilTel, which became NexteraOne. It's been the
19 same manager. We leased, bought a piece, bought the rest.
20 Everything that we've done, we've partitioned the trunks to the
21 hotel pursuant to the exemption, everything that we've done is
22 within the letter of Florida PSC rules and Florida Statutes.
23 So my suggestion would be defer ruling, look at the documents.
24 If they're still insufficient, if there are still questions,
25 deny our motion to dismiss then.

1 CHAIRMAN BAEZ: Ms. White.

2 MS. WHITE: I have to object to that. First of all,
3 we're here on a motion to dismiss, which, again, you're
4 supposed to look at the four corners of the complaint. These
5 are documents that were not attached to anything. They've been
6 brought in today. I have not had a chance -- BellSouth has not
7 had a chance to, to rebut them in any formal manner, and I
8 object to the Commission looking at the documents and making a
9 decision based on them. If they want for the Commission to do
10 that, they should file a motion for summary judgment and attach
11 them to that.

12 I also want to object to the County's representation
13 that they've been complying with the law, when the staff has
14 told them on at least two occasions, the Commission staff has
15 told them on two occasions in 2002, 2003 that they needed to
16 get a certificate. That's it.

17 CHAIRMAN BAEZ: Commissioner Deason, if you'll --

18 COMMISSIONER DEASON: Chairman, I move staff's
19 recommendation.

20 CHAIRMAN BAEZ: Very well.

21 COMMISSIONER BRADLEY: Second.

22 CHAIRMAN BAEZ: Motion and a second. All those in
23 favor, say aye.

24 (Unanimous affirmative vote.)

25 CHAIRMAN BAEZ: Thank you.

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MS. WHITE: Thank you.

MR. HOPE: Thank you, Commissioners.

(Agenda Item 6 concluded.)

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COUNTY OF LEON)

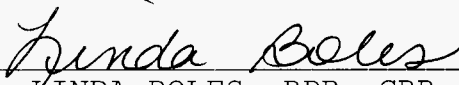
CERTIFICATE OF REPORTER

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 8TH DAY OF AUGUST, 2005.



LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
(850) 413-6734