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KATRINA J. TEW

STATE OF FLORIDA



ORIGINAL
OFFICE OF THE GENERAL COUNSEL
RICHARD D. MELSON
GENERAL COUNSEL
(850) 413-6199

Public Service Commission

January 24, 2006

Mr. Scott Boyd
Joint Administrative Procedures Committee
Room 120 Holland Building
Tallahassee, FL 32399-1300

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COMMISSION
CLERK

Re: Docket No. 060049-TL

Dear Mr. Boyd:

The Commission has received a Petition for Declaratory Statement from Board of County Commissioners of Broward County, Florida on January 20, 2006. A copy of the petition is enclosed. A notice will be published in the Florida Administrative Weekly on February 3, 2006.

Sincerely,

Christiana T. Moore
Associate General Counsel

- CMP _____
- COM _____ 060069 Decl Letter.ctm.doc
- CTR _____ cc: Division of the Commission Clerk
and Administrative Services
- ECR _____
- ECL _____ Enclosure
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of the Board of County)
Commissioners of Broward County,)
Florida for Declaratory Statement)
_____)

Docket No.
Filed: January 20, 2006

PETITION FOR DECLARATORY STATEMENT

Broward County, Florida ("Broward County"), by and through its Board of County Commissioners, pursuant to Section 120.565, Florida Statutes, and Rule 28-105.002, Florida Administrative Code, hereby files this Petition for a Declaratory Statement from the Florida Public Service Commission. This Petition seeks a declaration regarding the applicability of BellSouth Telecommunications, Inc. ("BellSouth") tariff provisions to the rent and relocation obligations associated with a BellSouth switching equipment building, known as a "Maxihut," ~~located at the Fort Lauderdale-Hollywood International Airport ("Airport") on property leased~~ by BellSouth from Broward County's Aviation Department. In support of its Petition, Broward County states as follows:

1. Petitioner's name and address are:

Broward County, Florida
Aviation Department
Fort Lauderdale - Hollywood International Airport
320 Terminal Drive
Fort Lauderdale, Florida 33315

2. All notices, Orders or documents regarding this Petition should be directed to:

Christine C. Lee, Esq.
Assistant County Attorney
Office of the County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
(954) 359-6164 (phone)
(954) 359-1292 (facsimile)

Floyd Self, Esq.
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301
(850) 425-5213 (phone)
(850) 224-4359 (facsimile)
fself@lawfla.com (e-mail)

3. Broward County owns and operates the Fort Lauderdale-Hollywood International Airport. Broward County has entered into numerous leases with commercial air carriers, aircraft support service providers, aircraft catering companies, terminal vendors, rental car and ground transportation providers, other vendors and suppliers, and units of government (including but not limited to the Federal Aviation Administration, U.S. Postal Service, U.S. Public Health Service, U.S. Department of Homeland Security, and the Broward County Sheriff's Department) each of which conduct business on the grounds of the Airport. At the most recent count, there are 178 separate and direct tenants conducting business at the Airport. Some of those customers receive service from BellSouth at multiple locations.¹

4. BellSouth, and its predecessor Southern Bell Telephone and Telegraph Company ("Southern Bell"), provides telephone service to Broward County and, on information and belief, to each of the 178 businesses and units of government ("customers") identified in paragraph 3. The service is provided by BellSouth directly to the customers under service agreements with those individual customers. Billing for service is made by BellSouth directly to the customers, and payment is made by the customers directly to BellSouth. Although Broward County is a customer of BellSouth, it is but one of a total of 179 BellSouth customers at the Airport receiving telephone service under its own service agreements. Service to BellSouth customers doing business at the Airport is not provided by Broward County as a shared tenant services provider.²

¹ The Airport includes four separate commercial terminals. Each terminal contains a full panoply of restaurants, gift shops, newsstands, and other passenger support services. Those businesses are routinely located in each of the four terminal buildings. In addition, air cargo facilities, hangars and other general aviation facilities are located at the Airport. Each location at which a business operates requires and receives telephone service from BellSouth. Therefore, the number of locations at which service is provided far exceeds the number of tenants.

² There may be one or more tenants that receive local telephone service from a carrier other than BellSouth, but it is Broward County's understanding that most if not all Airport tenants receive service from BellSouth. But no matter which telecommunications company serves each respective tenant, the Airport absolutely does not provide any telecommunications service to any tenant or itself.

5. As discussed in greater detail herein, Broward County is in need of a declaration from the Commission regarding the following questions:

a. whether BellSouth is entitled, by virtue of any provision of its Tariff, or by any statute, rule, or order of the Commission, to use Broward County property for a switching equipment building without Broward County's permission or, if such permission is granted, without BellSouth paying compensation to Broward County for the use of such property; and

b. whether Broward County is required, by virtue of any provision of the Bellsouth Tariff, or by any statute, rule, or order of the Commission, to pay BellSouth for vacating the leased premises upon the expiration, in accordance with the terms of its Lease Agreement with Broward County, or upon otherwise relocating the switching equipment structure as may be required by the Lease Agreement.

The Property Lease

6. On or about July 21, 1983, Southern Bell entered into a Lease Agreement with Broward County for 0.06 acres of property on the Airport grounds on which Southern Bell was to construct an "equipment building." A copy of the Lease Agreement is attached hereto as **Exhibit 1**. The purpose of the lease as agreed upon by Southern Bell, was "for the use and benefit of the public without unjust discrimination" (Exhibit 1, page 2, section 1(b)), and "for the purposes of providing a facility to house multiplex equipment to be used in [Southern Bell's] subscriber carrier system and for no other purposes." Exhibit 1, page 6, section 6(a).

7. In a contemporaneous letter from Southern Bell to Broward County, dated July 15, 1983, Southern Bell represented to Broward County that it was leasing the property "to place a very small telephone switching equipment building called a SLC-96," and that the building was to be a "switching facility . . . to handle the telephone growth needs of the airport and its

immediate area.” A copy of the letter is attached hereto as **Exhibit 2**.

8. In recognition of the primacy of the use of the property for Airport purposes, the parties to the Lease Agreement agreed that Broward County “reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of [Southern Bell], and without interference or hindrance.” Exhibit 1, page 2, section 1(c). The Lease Agreement further provides that Southern Bell “covenants and agrees to yield and deliver peaceably to [Broward County] possession of the premises on the date of cessation of the letting, whether such cessation be by termination, expiration or otherwise, promptly and in good condition as at the commencement of the letting, reasonable wear and tear excepted.” Exhibit 1, page 20, section 21.

9. The term of the ground lease was for 10 years, with a renewal option for an additional 10 years. Exhibit 1, page 5, section 3. On January 18, 1993, the ten year option was exercised by BellSouth by means of a letter, which stated that “[t]he property is being used to house a small telephone switching equipment building, called a Subscriber Loop Carrier SLC Hut. . . .” A copy of the letter is attached as **Exhibit 3**.

10. Upon expiration of the lease and renewal period in 2003, the parties engaged in a period of discussion as to the continued use of the property by BellSouth in light of an assessment of the needs of the Airport for additional operational space. On June 18, 2003, several months into the period of negotiation, and by which time Broward County had determined that the space needs of the Airport would require relocation of the switching equipment building, BellSouth first advised the County of its position that it was entitled to occupy Broward County's property without permission from Broward County or compensation to Broward County. A copy of the letter is attached as **Exhibit 4**. On August 19, 2003 the

parties agreed to a shorter term amendment to the lease of two years. BellSouth continued to pay rent during the two year lease extension. A copy of Amendment No. 1 is attached hereto as **Exhibit 5**.

11. On August 23, 2005, the parties entered into a second amendment to the lease to extend the term to November 30, 2005. The obligation of BellSouth to pay rent was suspended pending Broward County's "current investigation into the propriety of charging rent for the leased premises. . . ." A copy of Amendment No. 2 is attached hereto as **Exhibit 6**.

12. Finally, in order to allow for the completion of the investigation as to the obligation of BellSouth to pay rent for the leased premises, BellSouth and Broward County entered into a third amendment to the lease, extending the term to May 31, 2006, and retaining the rent suspension provision from the second amendment. A copy of Amendment No. 3 is attached hereto as **Exhibit 7**.

The "Maxihut"

13. As it pertains to this case, the switching equipment building constructed by BellSouth on the leased premises is generally referred to as a "Maxihut." BellSouth's network wiring enters the Airport property and is routed into the Maxihut. As BellSouth has described it, the equipment inside the Maxihut is distributed network switching and multiplexing equipment which essentially multiplexes digital signals into individual circuits. The individual circuits (copper wire pairs or fiber optic cable) exit the Maxihut and are routed throughout the Airport property to each BellSouth customer's demarcation point.

14. The customer demarcation points are not in or associated with the Maxihut, but are located at each customer's individual point-of-presence, i.e., the network interface device or cross connect block located in each customer's telephone or equipment closet. The demarcation

point is the specific point at which the BellSouth network officially terminates and the customer's wiring responsibilities begin. In that regard, the Commission's rules provide that: "network facilities up to and including the demarcation point are part of the telephone network, provided and maintained by the telecommunications company under tariff." Rule 25-4.0345(3), Florida Administrative Code; *see generally*, Rule 25-4.0345. Thus, *BellSouth is solely responsible for the maintenance and upkeep of all of the wiring that enters the Maxihut, all of the wiring that exits the Maxihut, and all of the equipment inside the Maxihut.*

BellSouth Tariff Provisions

15. BellSouth has asserted that the provisions of its tariff serve to supersede the provisions of the Lease Agreement requiring both payment of rent and surrender of the premises upon expiration of the Agreement. The section of the BellSouth General Subscriber Services Tariff ("Tariff") that has been cited as the basis for BellSouth to place its Maxihut switching equipment building on the Airport property, either without having to pay rent to the property owner or requiring the property owner to pay the costs of relocation, is Section A2.3.9, which provides:

A2.3.9 Floor Space, Electric Power and Operating at the Subscriber's Premises

A. The subscriber is responsible for the provision and maintenance, at his expense, of all suitable space and floor arrangements required on his premises for communication facilities provided by the Company in connection with services furnished to the subscriber by the Company. Suitable power outlets and commercial power required for the operation of such facilities shall be provided by, and at the expense of, the subscriber.

B. All operating equipment required for the use of communications facilities provided by the Company at the subscriber's premises will be performed at the expense of the subscriber, and must conform with the operating practices and procedures of the

Company to maintain a proper standard of service.

16. Section A1 of the Tariff defines a "Subscriber" as:

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency furnished communication service by the Company under the provisions and regulations of its tariff.

The term "subscriber" is synonymous with the otherwise undefined term "customer" as used throughout the Tariff.

17. Section A1. of the Tariff defines the term "Customer Premises" as:

the discrete real property owned, leased or controlled by a customer for the customer's own business or residential purposes.

18. Section A.1. of the Tariff defines the term "Demarcation Point" as follows:

Demarcation Point is the point of physical interconnection (connecting block, terminal strip, jack, protector or remote isolation device) between the telephone network and the customer's premises wiring. This point is part of the telephone network, provided and maintained by the Company under tariff. The location of this point is:

a. Single Line/Single Customer Building - Either at the point of physical entry to the building or a junction point as close as practicable to the point of entry.

b. Single Line/Multi Customer Building - Within the customer's premises at a point easily accessed by the customer.

c. Multi Line Systems - At a point within the same room and within 25 feet of the FCC registered terminal equipment.

The tariff definition of "demarcation point" is consistent with that found at Rule 25-4.0345(1), F.A.C.

19. Pursuant to the tariff definition, the demarcation point is that point at which

BellSouth's responsibility for the telephone network ends, and the subscribers' responsibility begins. The demarcation point is in almost all instances that pertain to BellSouth's customers at the Airport, including Broward County, a cross connect panel in a utility closet inside the customer's premises or otherwise relatively close to the customer's telephone equipment. It is not in the Maxihut. Therefore, there is nothing in the Tariff that establishes the Maxihut as a subscriber demarcation point, and nothing that requires one of the 179 individual and separate customers to provide space for the BellSouth switching facility at that customer's sole expense.

Suitable Space and Floor Arrangements

20. Section A2.3.9 of the Tariff requires the subscriber/customer to provide suitable space and floor arrangements on its premises for communication facilities provided by the BellSouth. Broward County provides "suitable space and floor arrangements" on its premises for the telecommunications facilities necessary for BellSouth to provide basic telephone service to Broward County by providing BellSouth with access to standard point-of-presence telephone "closets." The numerous other independent BellSouth customers that lease property at the Airport also provide telephone "closets" at each of their individual customer premises. Telephone "closets" are universally recognized as the type of space that is necessary for the placement of a telephone panel capable of receiving the incoming circuit, and providing a convenient point at which responsibility and control for that incoming circuit can be transferred to the customer. Those telephone "closets" are, in accordance with the Tariff, provided rent free to BellSouth and any relocation of them would be at the subscriber's expense.

21. The Maxihut far exceeds anything necessary as "suitable space and floor arrangements required on his premises for communication facilities provided by the Company in connection with services furnished to the subscriber" as that phrase is used in the Tariff.

BellSouth uses the Maxihut as the switching station for numerous customers that lease property at the Airport, not for service to individual subscribers. While Broward County is a subscriber to BellSouth services at the Airport, it is but one of 179 subscribers, most of which have multiple locations and one or more demarcation points for their service. Each of the Airport lessees receive telephone service from BellSouth through separate subscriber agreements with BellSouth. The lessees receive no telephone service from Broward County. BellSouth service to Broward County is provisioned in the same manner as it is to all of the other BellSouth customers at the Airport.

22. Although the other BellSouth customers are lessees of Airport property, they are separate subscribers for purposes of the tariff. In that regard, the Tariff definition of "subscriber" is "[a]ny person, firm, partnership, corporation, municipality, cooperative organization or governmental agency **furnished communication service by the Company** under the provisions and regulations of its tariff." (e.s.) Likewise, "customer premises" specifically includes "the discrete real property owned, **leased** or **controlled by a customer for the customer's own business . . . purposes.**" (e.s.)

23. This is not a situation in which Broward County is the sole BellSouth customer, providing telephone service to its lessees as part of a leasehold arrangement, as with "Shared Tenant Services." The Tariff defines "Shared Tenant Services" as "[t]he sharing or resale of a common group of local exchange service access lines through a common switching or billing arrangement to commercial tenants in a single building." The tenants at the Airport receive local telephone service from BellSouth through their own individual service arrangements and demarcation points with BellSouth. Thus, Broward County is not a Shared Tenant Services provider.

24. If a subscriber fails to make "suitable space and floor arrangements" for the demarcation point, the subscriber is not entitled to receive telephone service. The only entity affected by such a decision is the individual subscriber. Because the Maxihut clearly serves multiple, unaffiliated customers, it is BellSouth's duty to make the necessary arrangements for the placement of such network equipment at its expense. It is not Broward County's duty or obligation to make space available for the placement of BellSouth's network equipment. If Broward County had such an obligation, then there is no limit on BellSouth's ability to place multiple Maxihut/DLC or other such network equipment on the Airport property, or even an entire central office, without permission or compensation. If the Commission were to sanction such a construction of the Tariff, then BellSouth could place its network equipment on **any** telephone subscriber's property without regard to that subscriber's property rights.

Removal Charges

25. On October 17, 2005, BellSouth provided the Commission's General Counsel's Office with a general analysis of its position on the Maxihut issue. The Tariff subsection relied upon by BellSouth for the proposition that the County is obligated to pay for any relocation of the Maxihut, subsection A5.2.2.F.1.e., is as follows:

Rearrangement and/or Removal Charges

When the Company is requested to move, change, rearrange or remove existing plant, for which no specific charge is quoted in this Tariff, the person/company at whose request such move or change is made will be required to bear the costs incurred.

Where by statute, ordinance or other legal requirement, existing aerial facilities are required to be relocated underground, the Company will charge the net cost attributable to such relocation to the local exchange subscribers located within the political subdivision or area affected by such statute, or ordinance or other legal requirement.

This nonrecurring charge, developed by dividing the total rearrangement and/or removed cost by the total number of subscribers affected by the ordinance, would be billed as a one time charge via the customer's bill. All customers would have the option of paying the full cost upfront or spreading the cost over a specified agreed-to time period via monthly payments.

26. The provision cited above is entirely inapplicable to the situation in this case. BellSouth, in citing subsection A5.2.2.F.1.e., neglected to advise the Commission of the scope of Section A5.2.2. The applicability of Section A5.2.2 is limited by the General provision section, which provides that:

A5.2.2 Liabilities, Charges and Payments for Special

Construction

A. General

1. The various charges and payments that apply **when the Company provides special construction of facilities in accordance with a customer's specific request** are described as follows. The customer must provide the Company with written approval of all liabilities and charges prior to the start of construction. If more than one condition requiring special construction is involved, charges for each condition apply. (emphasis supplied)

It is absolutely clear that the construction of the Maxihut was not special construction undertaken at Broward County's request. Rather, it was construction undertaken at *BellSouth's request*, and was construction undertaken not for Broward County, but "for the use and benefit of the public." Exhibit 1, page 2, section 1(b). Therefore, Section A5.2.2., and its subsections, including Section A5.2.2.F.1.e., are inapplicable to any consideration of the legal status of the Maxihut.

27. There is nothing in Florida law, the rules of the Commission, or the Tariff that abrogates the provisions of a lease freely negotiated and voluntarily entered between two parties. In this case, BellSouth entered into a Lease Agreement with Broward County for a specific term.

The Lease Agreement provides that BellSouth is to “yield and deliver peaceably to [Broward County] possession of the premises” upon expiration of the term of the Lease. Exhibit 1, page 20, section 21. The Tariff does not serve to impair that contractual relationship between BellSouth and Broward County, such that BellSouth would be entitled to hold over without payment, or extract payment from Broward County for surrendering the leased property.

Moving Charges

28. As a part of the ongoing process to improve and modernize the Airport’s facilities as required by the rules and regulations of the Federal Aviation Administration (“FAA”), the Airport is in the process of undertaking various improvements. The Maxihut will have to be moved from its present location at some point in order to fully implement the Airport improvements in compliance with FAA requirements. In prior discussions with BellSouth regarding the Airport improvement plan, BellSouth has refused to pay to move the Maxihut and its associated network cables and equipment.

29. As indicated previously, the signatory parties to the Lease Agreement, in recognition of the primacy of the leased property for aviation related purposes, agreed that Broward County “reserves the right to further develop or improve the landing area of the Airport as it sees fit, regardless of the desires or view of [Southern Bell], and **without interference or hindrance.**” (e.s.) Exhibit 1, page 2, section 1(c). Moreover, the parties agreed that the lease for the Maxihut space “shall be subordinate to the provisions of any existing or future agreement between [Broward County] and the UNITED STATES relative to the operation or maintenance of the Airport” Exhibit 1, page 3, section 1(e).

30. The Tariff cannot be construed to impair the contract between BellSouth and Broward County, and cannot authorize BellSouth to interfere and hinder the development or

improvement of the Airport property by holding over without payment, or by extracting payment from Broward County for compliance with the terms it agreed to in its Lease regarding the relocation of the Maxihut.

Rental Charges

31. As set forth herein, Broward County only consented to allow BellSouth to use Broward County's property upon the payment of reasonable rent, as would be required of any business requesting use of Airport property. The payment of rent is a requirement not only of the valid contract between BellSouth and Broward County, but is a requirement of the United States Department of Transportation, Federal Aviation Administration.

32. If the Commission concludes that Broward County is required to provide a no-rent lease to BellSouth, that action would place Broward County in violation of Federal Aviation Administration published policies and procedures regarding the use of airport property. The federal Airport Improvement Act (49 U.S.C. §47107, et. seq.) prohibits the diversion of airport revenues to non-airport uses, and requires that airports be as self-sustaining as possible. Pursuant to that Act, the FAA published its Notice of Policies and Procedures Concerning the Use of Airport Revenue, 64 Fed. Reg. 7696 et seq. (Feb. 16, 1999). Section VI of the policy provides that:

Prohibited uses of airport revenue include but are not limited to:

8. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than fair market rental/market value, except to the extent permitted by Section VII.D of this policy [related to public recreational and community uses]. [and]

9. Use of the land by the sponsor for aeronautical purposes rent-free or for nominal rental rates, except to the extent permitted by Section VII.E of this policy [related to non-profit aviation organizations].

64 Fed. Reg. 7720

33. Broward County asserts that the rules of the Commission, and tariffs approved by the Commission, could not have been intended to not only impair private contracts freely entered between parties, but to require the direct violation of federal policies regarding the administration of airport property.

Declaratory Statement

34. A petition seeking a declaratory statement is appropriate when there is a need for “resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.” Section 120.565(1), Florida Statutes. A tariff, upon acceptance by the Commission, has the force and effect of law. *BellSouth Telecommunications, Inc. v. Jacobs*, 834 So.2d 855, 859 (Fla. 2002). The Commission has exclusive jurisdiction over the regulation of telecommunications companies. Section 364.01(2), Fla. Stat. Thus, it is appropriate for the Commission to enter a declaratory statement as to the applicability of the Tariff provisions to the particular circumstances described herein.

35. Given the significant legal and financial impacts to Broward County that will arise if Broward County is either compelled to give its property rent-free to BellSouth, or to pay BellSouth for the removal or relocation of its switching facility, Broward County is in need of a declaratory statement to resolve questions or doubts as to how the BellSouth Tariff may apply to Broward County's particular circumstances.

36. The provisions of the BellSouth Tariff, which have been approved by the Commission and which have the full force and effect of law, on which the declaratory judgment is sought include the following:

- a. Section A1 - Definitions, including those for “Customer Premises,” “Demarcation Point,” and “Subscriber.”

- b. Section A2.3.9 - Floor Space, Electric Power and Operating at the Subscriber's Premises
- c. Section A5.2.2 - Liabilities, Charges and Payments for Special Construction
- d. Section A5.2.2.A.1. - Liabilities, Charges and Payments for Special Construction
- e. Section A5.2.2.F.1.e. - Rearrangement and/or Removal Charges

37. Broward County is substantially affected by a construction of the BellSouth General Subscriber Services Tariff that would require Broward County to provide Airport property to BellSouth for its switching equipment building at no cost, or require Broward County to pay to relocate the switching equipment building when required to implement Airport improvements or to enforce the expiration and surrender provisions of the BellSouth lease. Such a construction of the BellSouth Tariff would allow BellSouth to expropriate Broward County property for its own use in direct contravention of a valid and enforceable contract, freely negotiated and entered by BellSouth and Broward County, would expose Broward County to unexpected and unnecessary financial expenditures of public funds, and would violate federal airport regulations. Such a construction of the Tariff approved by the Commission would result in the impairment of the private contract entered between BellSouth and Broward County, a result neither contemplated nor required by the Tariff.

38. BellSouth's argument that its Maxihut switching facility is a customer demarcation point is completely belied by the definitions and language of the Tariff itself. In addition, BellSouth's argument to the Commission is completely contrary to the specific agreements made with Broward County at the time it sought the first amendment and extension

of the term (Exhibit 4). That amendment was entered on August 19, 2003, well **after** the 1996 effective date of the relevant BellSouth Tariff provisions, acknowledged and adopted all of the terms of the original Lease Agreement, accepted that BellSouth would have to pay rent for the privilege of using Broward County's property for its switching facility, and specifically provided that:

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein and [BellSouth and Broward County] agree that there are no commitments, agreements, or understandings concerning the subject matter of this document that are not contained in this document. Accordingly, [BellSouth and Broward County] agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

Exhibit 4, page 3, ¶7.

39. Up to the expiration of the Lease Agreement in 2003, BellSouth recognized that the Lease Agreement for the Maxihut was not controlled or affected by the Tariff, and that rental payments for the use of the property were appropriate. It was only when Broward County sought to enforce the terms of the Lease Agreement regarding the surrender of the premises at the expiration of the lease that BellSouth advanced the argument that the switching facility was actually a “demarcation point” for its telephone service to Airport customers. As set forth herein, BellSouth's Tariff requires only that a customer provide a convenient demarcation point at the site where service to the customer is delivered. It does not require a customer to support and subsidize BellSouth's network switching facilities.

40. In **addition** to the lack of support for BellSouth's position in the Tariff, the Commission should not place itself in the position of supporting or condoning BellSouth's naked attempt to unilaterally abrogate its freely negotiated and agreed upon contractual arrangements

for its network switching facilities. Such support could, at worst, constitute a governmentally sanctioned taking of Broward County's property and, at best, constitute a governmental impairment of Broward County's contractual Lease Agreement with BellSouth.

41. For the reasons set forth herein, Broward County, Florida requests that the Commission issue a Declaratory Statement:

a. that BellSouth is not entitled, by virtue of any provision of its Tariff, or by any statute, rule, or order of the Commission, to use Broward County property for its switching equipment building (the "Maxihut" or any other such equipment structure) without Broward County's permission and, if such permission is granted, without paying compensation for such use;

b. that BellSouth is not entitled, by virtue of any provision of its Tariff, or by any statute, rule, or order of the Commission, to extract payment or relocation costs from Broward County for vacating its leased premises in accordance with the terms of its valid Lease Agreement with Broward County or to otherwise relocate the switching equipment building as may be required by the Lease Agreement.

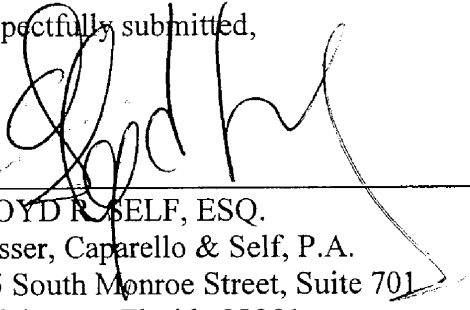
c. that nothing in the Tariff serves to abrogate the terms and conditions of the Lease Agreement entered between BellSouth and Broward County, including amendments thereto, that require the payment of rent to Broward County for the use of its property for the term and amount called for in the Lease Agreement, and that Bellsouth is therefore required to pay rent for its leasehold; and

d. that nothing in the Tariff serves to abrogate the terms and conditions of the Lease Agreement entered between BellSouth and Broward County, including amendments thereto, that govern the termination of the Lease Agreement and the surrender of the premises

upon termination in the manner called for in the Lease Agreement.

WHEREFORE, Broward County, Florida respectfully requests that this Commission grant the declaratory statement requested herein so as to prevent the impairment of its contractual Lease Agreement with BellSouth.

Respectfully submitted,



FLOYD R. SELF, ESQ.
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32301
Telephone - (850) 222-0720
E-mail - fself@lawfla.com

Counsel for Broward County, Florida