

ORIGINAL

Matilda Sanders

From: Griffin, Kecia (CAO) [KGRIFFIN@miamidade.gov]
Sent: Thursday, July 20, 2006 4:24 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Lee, Cynji (Airport); Danielle C. Burt; Hope, David (Airport); Dorian S. Denburg; Douglas E. Starcher; E. Earl Edenfield, Jr.; Griffin, Kecia (Airport); Griffin, Kecia (CAO); James Meza; Jean L. Kiddoo; Martin B. Goldberg; Sharon Liebman; Hernandez, Diana (Airport)
Subject: MDC Response in Opposition to Motion for Extension of the Discovery Period
Attachments: Miami Dade County's Response in Opposition to Motion for Extension of the Discovery Period.pdf

July 20, 2006

Mrs. Blanca S. Bayó
 Director, Division of the Commission Clerk
 and Administrative Services
 Florida Public Service Commission
 2540 Shumard Oak Boulevard

**Re: Complaint by BellSouth Telecommunication, Inc., Regarding the
 Operation of a Telecommunication Company by Miami-Dade County
 in Violation of Florida Statutes and Commission Rules**

(Docket No. 050257)

Dear Mrs. Bayó:

Enclosed is an original Miami-Dade County's Response in Opposition to Motion for Extension of the Discovery Period.

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

cc: All Parties of Record
 David Stephen Hope

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH _____

7/20/2006

DOCUMENT NUMBER-DATE
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 FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050257

**MIAMI-DADE COUNTY'S RESPONSE IN OPPOSITION TO
MOTION FOR EXTENSION OF THE DISCOVERY PERIOD**

Miami-Dade County (the "County"), by and through its undersigned counsel, files its Response In Opposition to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion for Extension of the Discovery Period. BellSouth's motion is nothing more than a tactic to delay this proceeding, and impede compliance with Florida Public Service Commission ("PSC") Order No. PSC-06-0326-PCO-TL (the "Order"). In support of its Response in Opposition, the County states:

1. The County filed its Motion to Dismiss, with included the Affidavit of Mark Forare, on June 1, 2005. *BellSouth has possessed this affidavit, and known its subject matter and contents for over one (1) year.* BellSouth had amply opportunity to depose Mark Forare ("Forare") either: (i) in the matter of *BellSouth Telecommunications, Inc. v. Miami-Dade County, Fla.*, Case No. 02-28688 CA 03 (Fla. 11th Cir. Ct. filed Nov. 12, 2002) (the "State Court Action"), where discovery has been on-going for over three and one-half (3½) years; or (ii) upon commencement of the discovery period pursuant to the Order (on or after June 5, 2006), which discovery period runs for forty-five (45) days. *Order ¶ (2)(g).*

2. In lieu of attempting to depose Forare or another County employee with the requisite knowledge timely, BellSouth sat on its hands.

DOCUMENT NUMBER-DATE

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OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA

FPSC-COMMISSION CLERK

3. BellSouth served its First Request for Production to the County on June 7, 2006. Pursuant to the Order, the County filed timely objections on June 13, 2006, and responses on June 27, 2006. See Order ¶¶ (2)(a), (2)(c).

4. BellSouth then waited over two (2) weeks after the County filed its responses and produced the responsive documents to inquire about a deposition of Forare on Thursday, July 13, 2006. See *BellSouth's Mot. for Extension of the Discovery Period* ¶ 6. The County timely responded on Monday, July 17, 2006. *Id.* at Ex. H.

5. BellSouth also requests more time for discovery if the PSC gives BellSouth access to the County's confidential customer list. *Id.* ¶ 10. What BellSouth fails to make known is its diametric argument to the County on this issue. As stated in BellSouth's July 3, 2006 correspondence, attached as Exhibit A to this Response in Opposition:

[O]ne central question to be addressed by the PSC, in this proceeding is the applicability of the airport exemption rule to the current offering of telecommunications services by the County at the Miami International Airport and other county-owned airports. The text of the airport exemption rule and its history make clearly relevant the type, nature and function of the entities to which the County is offering and providing telecommunications services. In light of the foregoing, by claiming trade secret privilege to withhold the current customer list, *the County is intentionally attempting to undermine the Commission's right to fully and competently evaluate the nature and scope of the County's telecommunications systems.*

Ex. A at 1-2 (emphasis added). In its response dated July 11, 2006, attached as Exhibit B to this Response in Opposition, the County stated *inter alia* that:

[t]he PSC has the information to "fully and competently evaluate the nature and scope of the County's telecommunications systems." *What continues to be perplexing is why BellSouth needs the County's current list of customers, given BellSouth already knows*

the types of customers to which the County provides shared tenant services.

Ex. B. (emphasis added).

6. Here, the County specifically raised these current tactics of BellSouth to drag, delay, and extend the discovery period in this matter to PSC Staff prior to the issuance of the Order, where the County would be forced to deal with and deplete its resources on concurrent and incessant PSC and State Court Action discovery requests. That is why the Order calls for a discovery period of only forty-five (45) days, given the extensive discovery conducted in the State Court Action. BellSouth's subterfuge cannot be allowed. The discovery period should terminate on July 20, 2006 pursuant to the Order.

FOR THE FOREGOING REASONS, BellSouth's Motion for Extension of the Discovery Period should be denied.

Respectfully submitted,

MURRAY A. GREENBERG
Miami-Dade County Attorney
Miami-Dade Aviation Division
P.O. Box 592075 AMF
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(305) 876-7040 / FAX (305) 876-7294

By: 

David Stephen Hope
Assistant County Attorney
Florida Bar No. 87718

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 20th day

of July 2006, to:

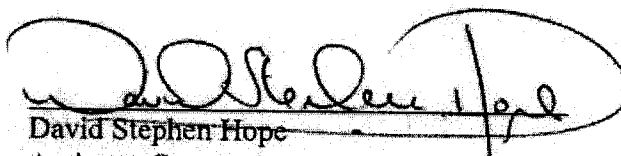
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SENDER'S E-MAIL: MGOLDBERG@lashgoldberg.com
REPLY TO MIAMI OFFICE

Via Telefax & U.S. Mail

July 3, 2006

David Stephen Hope, Esq.
County Attorney's Office
P.O. Box 592075
Miami, FL 33159-2075

**Re: In re: Complaint of BellSouth Telecommunications, Inc.
Against Miami-Dade County for Alleged Operation of a
Telecommunications Company in Violation of Florida
Statutes and Commission Rules.
Docket No: 050257-TL**

Dear David:

This letter responds to your most recent pleading entitled, Miami-Dade County's Responses to BellSouth Telecommunications, Inc.'s First Request for Production dated June 27, 2006. Therein, in response to BellSouth's request for a copy of the County's current customer list, the County objected to such production and claimed, "the County's current list of customers constitutes a trade secret." See Response No. 3 (emphasis in original).

In order to avoid a dispute on this issue, and in an attempt to resolve the matter without the intervention of the Public Service Commission staff and the Hearing Officer, I write to raise the following points concerning your objection and ask that the County respectfully reconsider its position.

First, as you know, the County has previously provided the names of its customers to the Public Service Commission upon its request. At those times, the County did not raise or claim a privilege to prevent such cooperation and disclosure.

Second, in the State Action the County previously attempted to withhold the names of its customers and filed a Motion for Protective Order asserting the trade secret privilege. BellSouth contested the applicability of the privilege and, after a hearing on this issue, the Court ruled that the privilege did not apply as a matter of law. On January 31, 2006, the Court denied the County's Motion for Protective Order and ordered the County to disclose the names of its customers to BellSouth.

Third, one central question to be addressed by the PSC in this proceeding is the applicability of the airport exemption rule to the current offering of telecommunications services

EXHIBIT

A

David Stephen Hope, Esq.
July 3, 2006
Page 2

by the County at the Miami International Airport and other county-owned airports. The text of the airport exemption rule and its history make clearly relevant the type, nature and function of the entities to which the County is offering and providing telecommunications services. In light of the foregoing, by claiming trade secret privilege to withhold the current customer list, the County is intentionally attempting to undermine the Commission's right to fully and competently evaluate the nature and scope of the County's telecommunications systems.

Finally, since you previously argued to the State Court that the disclosure of your customer names to BellSouth would place the County at a competitive disadvantage for business at the airports, please know that BellSouth is amenable to entering into a confidentiality agreement that would limit the use of such information to this proceeding. BellSouth would agree to keep the information in an "attorney-eyes only" capacity so as to not provide any such information to the business portion of the company. Of course, we are willing to provide you with this protection as our only goal is to obtain this information for the Public Service Commission's use and evaluation concerning the issues raised in this proceeding.

Given the foregoing, we respectfully request that the County reconsider its position. Such reconsideration would save the Commission Staff and the Hearing Officer considerable time and effort. Please let us know your position by Wednesday, July 12, 2006, and we look forward to your anticipated cooperation with us and the Commission. Of course, in all other respects BST reserves all of its rights concerning this matter, including the right to bring this issue before the Hearing Officer as a discovery dispute pursuant to the Scheduling Order. Thank you.

Very truly yours,

LASH & GOLDBERG LLP



Martin B. Goldberg

cc: James Meza, Esq.
Dorian Denburg, Esq.
Sharon Liebman, Esq.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Tele-)	
Communications, Inc., Regarding)	
The Operation of a Telecommunications)	DOCKET NO. 050257-TL
Company by Miami-Dade County in)	
Violation of Florida Statutes and)	
Commission Rules)	

BELLSOUTH TELECOMMUNICATIONS, INC.'S NOTICE OF FILING CONCERNING COUNTY'S ASSERTION OF FLORIDA'S TRADE SECRET PRIVILEGE

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its Notice Concerning Miami-Dade County's Assertion of the Florida Trade Secret Privilege within its Response to BST's First Request for Production of Documents.

1. On June 27, 2006, Miami-Dade County ("County") filed its Responses to BellSouth's First Request for Production of Documents. Therein, the County asserted Florida's Trade Secret Privilege pursuant to Section 812.081, Fla. Stat. (2002), in support of its contention that the County need not disclose a list of its current customers for telecommunications services.

2. BellSouth disagrees and contests the applicability of the trade secret privilege and has written the County in an attempt to resolve the matter without the intervention of the Hearing Officer or Commission Staff. A copy of BellSouth's correspondence in this regard is attached hereto as Exhibit A.

3. Accordingly, BellSouth will attempt in good faith to resolve the matter with the County. Should these efforts fail, BellSouth reserves all of its rights to bring this discovery dispute before the Hearing Officer for resolution as contemplated by the Scheduling Order in this matter.

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DOCKET NO. 050257-TL

Respectfully submitted:

BELLSOUTH TELECOMMUNICATIONS, INC.

Martin B. Goldberg for

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DOCKET NO. 050257-TL

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed
this 3 day of July 2006, to:

Adam Teltzman, Esq.
Staff Counsel
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COUNTY ATTORNEY
METROPOLITAN DADE COUNTY, FLORIDA

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July 11, 2006

VIA FACSIMILE and MAIL

Martin B. Goldberg, Esq.
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NationsBank Tower, Suite 1200
100 Southeast 2nd Street
Miami, Florida 33131-2158

Re: Response to June 27, 2006 letter

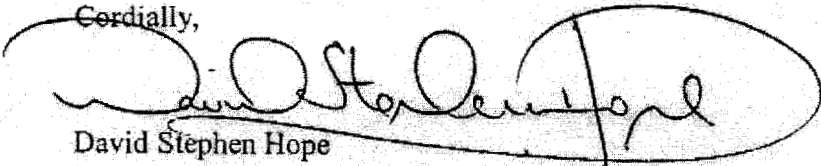
Dear Marty:

Miami-Dade County (the "County") is in receipt of your correspondence dated July 3, 2006, and responds as follows:

The County has consistently asserted its trade secret privilege during the matter of *BellSouth Telecommunications, Inc. v. Miami-Dade County, Fla.*, Case No. 02-28688 CA 03 (Fla. 11th Cir. Ct. filed Nov. 12, 2002). Respectfully, the Court did not rule "that the privilege did not apply as a matter of law", only that the County could not now move to protect a customer list which had already been disclosed to the Public Service Commission ("PSC") without the requisite safeguards for confidentiality, and hence was already in the possession of BellSouth Telecommunications, Inc. ("BellSouth").

The County has protected and produced its current customer list consistent with Florida law. See *Miami-Dade County's Responses to Staff's First Request for Production* ¶¶ 1, 5. The PSC has the information to "fully and competently evaluate the nature and scope of the County's telecommunications systems." What continues to be perplexing is why BellSouth needs the County's current list of customers, given BellSouth already knows the types of customers to which the County provides shared tenant services. In addition, your "attorney-eyes only" production offer is of no protection to the County given the legal involvement of various facets of BellSouth in this matter.

Cordially,


David Stephen Hope
Assistant County Attorney

cc: Jean L. Kiddoo

EXHIBIT

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