

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

**ORIGINAL**

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

DOCKET NO. 050257-TL

**DEPOSITION OF MAURICE JENKINS  
DATED OCTOBER 8, 2004**

**FINAL EXHIBIT NO. 19**

**8 of 29**

DOCUMENT NUMBER-DATE

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
IN AND FOR MIAMI-DADE COUNTY, FLORIDA  
GENERAL JURISDICTION DIVISION

CASE NO. 02-28688 CA 03

BELLSOUTH TELECOMMUNICATIONS,  
INC., a foreign corporation,

Plaintiff,

vs.

MIAMI-DADE COUNTY, a  
political subdivision of the  
State of Florida,

Defendant.

COPY

DEPOSITION  
OF  
MAURICE JENKINS

Suite 1200  
100 Southeast 1st Street  
Miami, Florida

Friday, October 8, 2004  
10:20 a.m.- 11:35 a.m.

KRESSE & ASSOCIATES, INC.  
(305) 371-7692

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APPEARANCES

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For the Plaintiff:

MARTIN B. GOLDBERG, ESQ.  
Lash & Goldberg, LLP  
Suite 1200  
100 Southeast 2nd Street  
Miami, Florida 33131  
305-347-4040

and

DORIAN DENBURG, ESQ.  
BellSouth Corporation  
Suite 1700  
1155 Peachtree Street  
Atlanta, Georgia 30309  
404-249-2608

For the Defendant:

DAVID STEPHEN HOPE, ESQ.  
Miami Dade County Attorney's Office  
PO Box 592075  
Miami Florida 33159-2075  
305-876-7040

(Exhibits CR-1, Second Amended Complaint; CR-2, Answer  
and Affirmative Defenses; and CR-4, Notice of Taking  
Deposition were pre-marked.)

1 THEREUPON:

2 MAURICE JENKINS,  
3 a witness named in the notice heretofore filed, having  
4 been first duly sworn, deposes and says as follows:

5 DIRECT EXAMINATION

6 BY MR. GOLDBERG:

7 Q. You've been sworn, Mr. Jenkins, and just for  
8 purposes of the record, can I just ask you to state your  
9 full name and spell your last name for the court  
10 reporter, please.

11 A. Maurice Jenkins, J-e-n-k-i-n-s.

12 Q. Also for clarity of the record, just to make  
13 sure everybody who reads the transcript knows who we are,  
14 I'm Martin Goldberg, Law Firm of Lash & Goldberg,  
15 representing the plaintiff, BellSouth Telecommunications,  
16 Inc., and we're here in the case against Miami-Dade  
17 County.

18 Also present is David Hope, Assistant County  
19 Attorney on behalf of the County.

20 And Mr. Jenkins, I assume you are appearing  
21 today as the corporate representative pursuant to the  
22 notice of taking deposition that was issued for today's  
23 date; is that correct?

24 A. Yes, sir.

25 Q. Let me show you, just to start, what I've

1 marked as Plaintiff's Exhibit CR-4 and ask you, is that  
2 the notice of taking deposition that you are appearing  
3 pursuant to as the County's corporate representative?

4 A. Yes, sir.

5 Q. Now, you've been deposed before in your career,  
6 correct?

7 A. Yes, sir.

8 Q. In fact, I took your deposition in another  
9 context earlier in this litigation, correct?

10 A. Yes, sir.

11 Q. So I know that you know the rules of  
12 engagement, so to speak, and how depositions operate. So  
13 let me just go right to a succinct question for you and  
14 that is to again remind you that if any question I ask  
15 you appears to you to be, you know, confusing or  
16 ambiguous or you do not understand the question, please  
17 tell me that so that I can rephrase the question and that  
18 you'll have a complete understanding of the question  
19 before you answer it. Is that okay with you?

20 A. Yes, sir.

21 Q. So given that instruction, can we agree that if  
22 you do answer a question in this deposition, we all in  
23 the room, and the Court or a jury, should they review the  
24 transcript, can assume that you understood the question  
25 before you answered it? Is that fair?

1 A. Yes, sir.

2 Q. I showed you what's been marked as CR-4. That  
3 is the notice of taking deposition. And I'll summarize,  
4 but it is directed to the corporate representative of  
5 Miami-Dade County with the most knowledge concerning two  
6 areas. One, the identification of all persons who have  
7 knowledge regarding any of the issues in this lawsuit.  
8 And two, for each person that's identified, the  
9 particular subject matter about which the person has  
10 knowledge. Do you agree that that's what the notice  
11 calls for today in summary?

12 A. Yes, sir.

13 Q. Can you tell me how it is that you came to be  
14 designated as the corporate representative for the County  
15 for purposes of this deposition this morning pursuant to  
16 Exhibit CR-4?

17 A. In reading the notice of taking deposition, I  
18 reviewed the document, and the person that you are asking  
19 for to be able to provide said information, I deemed that  
20 I was most suited to do so.

21 Q. When did you first review this document, as you  
22 say, and designate yourself as the corporate  
23 representative?

24 A. I don't know exactly when I looked at it. It  
25 may have been last week. And I finalized that I was

1 going to do that Monday.

2 Q. Monday being of this week?

3 A. Yes, sir, I'm sorry. Monday, October the 3rd,

4 I believe. Whatever that date was.

5 Q. Five days ago, I guess is what you're saying.

6 We're here on Friday October 8, correct?

7 A. Yes, sir.

8 Q. Who gave you a copy of the notice of taking

9 deposition so that you would then, as you say, review it

10 and designate yourself?

11 A. My county attorney.

12 Q. Mr. Hope, sitting next to you?

13 A. Yes, sir.

14 Q. Before designating yourself as the corporate

15 representative did you consult with anybody else at the

16 County with respect to who should appear pursuant to this

17 notice?

18 A. Yes, sir.

19 Q. Who did you consult with?

20 A. I spoke with my chief of telecommunications.

21 Q. Who is that?

22 A. Pedro Garcia.

23 Q. Anybody else?

24 A. No, sir.

25 Q. When you spoke to Mr. Garcia, was that by phone

1 or in person?

2 A. In person.

3 Q. Who was present other than you and Mr. Garcia?

4 A. Myself, Mr. Garcia and my attorney.

5 Q. Again, Mr. Hope?

6 A. Yes, sir.

7 MR. GOLDBERG: Mr. Hope, let me just look  
8 for some guidance from you. Will you claim that  
9 that conversation is privileged or not  
10 privileged?

11 MR. HOPE: Privileged.

12 BY MR. GOLDBERG:

13 Q. Approximately how long did that meeting last?

14 A. Maybe a half hour or so, 45 minutes tops.

15 Q. Did you make any notes in that meeting to  
16 prepare for this deposition today?

17 A. No, sir.

18 Q. Have you made any notes or prepared any  
19 documents in preparation for this deposition today?

20 A. No, sir, I have not.

21 Q. So coming here to respond to questions pursuant  
22 to this notice of taking deposition, is it fair to say  
23 that you've brought yourself and your memory and  
24 knowledge and nothing else?

25 A. Yes, sir.



1 Q. And your memory or knowledge as to this issue  
2 has only been supported by one meeting with Mr. Garcia  
3 for about one half hour, 45 minutes; is that fair to say?

4 MR. HOPE: Objection to the form.

5 BY MR. GOLDBERG:

6 Q. You can still answer.

7 A. No.

8 Q. No?

9 A. No, not fair to say.

10 Q. Why is it not fair to say?

11 A. In reading the documentation for what you're  
12 asking for and having been involved with said subject  
13 matter, I believe I could provide said information.

14 Q. Let me show you what I've marked as Exhibit  
15 CR-1, and I'll give a copy to Mr. Hope for the record.  
16 And let me represent to you as you read it that it is a  
17 copy of the second amended complaint filed in this case  
18 by the plaintiff, BellSouth Telecommunications. Do you  
19 agree with that?

20 A. Yes, sir.

21 Q. I have a series of questions within the scope  
22 of this deposition that I'm going to ask you to refer to  
23 this document for, so why don't I start by asking you to  
24 turn to page 3 of the document. Particularly I want to  
25 direct your attention to the top of page 3, paragraph 8.

1 Do you see that?

2 A. Yes, sir.

3 Q. Would you agree with me that that paragraph  
4 outlines a portion of the county charter that essentially  
5 says, "The County shall not operate a telephone utility  
6 to serve any territory in the county which is being  
7 supplied with a similar service except by a majority vote  
8 of its qualified selectors?" Would you agree with that?

9 MR. HOPE: Objection to form.

10 THE WITNESS: Yes.

11 BY MR. GOLDBERG:

12 Q. And you understand a large, major issue in this  
13 lawsuit is this charter's application to the operation of  
14 the telecommunication facility at not only the Miami-Dade  
15 County Airport, but any other county-owned airport? Do  
16 you understand that that's an issue in this case?

17 MR. HOPE: Objection to form.

18 THE WITNESS: Yes.

19 BY MR. GOLDBERG:

20 Q. Could you identify for me the persons at the  
21 County who have knowledge regarding the charter's  
22 application to the operations of the telecommunications  
23 facility at the Miami-Dade County Airport and other  
24 county-owned airports.

25 A. I'm sorry, could you repeat that question?

1 Q. I'm going to ask the court reporter to read it  
2 back. That's easier for me.

3 (Thereupon the requested portion of the  
4 record was re-read by the court reporter.)

5 MR. HOPE: Objection to form.

6 THE WITNESS: You have Pedro Garcia, Ann Lee  
7 from the aviation department.

8 BY MR. GOLDBERG:

9 Q. Ann?

10 A. Lee.

11 Q. L-e-e?

12 A. L-e-e, right. She is with our standards and  
13 compliance unit. And there's another gentleman from  
14 the -- a previous assistant director that we had that was  
15 with the police department. I believe he has since  
16 retired and I've forgotten his name.

17 Q. Any other persons? And then I'll follow up  
18 once you're done.

19 A. No, that should take care of it.

20 Q. Let's just go back then and talk about the  
21 three individuals you identified. Pedro Garcia -- and I  
22 know we've gone over this before, but if you'll just  
23 indulge me just because this is a new transcript.

24 A. Okay.

25 Q. What is Mr. Garcia's position at the airport?

1           A.    He is my chief of telecommunications.

2           Q.    And again, he is the person -- actually, the  
3           only person you met with in preparation for this  
4           deposition this morning, correct?

5           A.    Yes, sir.

6           Q.    Now, for Mr. Garcia, what particular subject  
7           matter does he have knowledge about concerning the  
8           charter's application to the operations of the  
9           telecommunications facility?

10          A.    He is familiar with our shared tenant services,  
11          our telecommunications infrastructure and the work that  
12          our telecommunications unit provides to our airport  
13          users. He was also at one point in time employed by  
14          BellSouth, as well as employed by the main county IT  
15          department within their telecom unit.

16          Q.    Are you aware whether he has any particular  
17          knowledge about the charter, the county charter and  
18          particularly the portion I read to you earlier in this  
19          deposition at paragraph 8 of the second amended  
20          complaint?

21          A.    That I'm not sure.

22          Q.    So am I correct in saying -- you say you're not  
23          sure, but also -- you don't know what knowledge he has?

24          A.    Correct, I don't know what knowledge he has.

25          Q.    Let me go to Ann Lee. You mentioned that she's

1 in the standards and compliance unit. What is her title?

2 A. She is the manager of standards and compliance.

3 Q. Does she report to you?

4 A. No, she does not. She reports to the director.

5 Q. Can you explain briefly what the standards and  
6 compliance unit is responsible for at the airport?

7 A. That unit is responsible for establishing OD's,  
8 what we deem to be operational directives policy in  
9 regards to functions and operations at MIA and the  
10 airports as per county standards as written in the county  
11 operational directives that the County issues. They're  
12 responsible for writing new ones, developing them, making  
13 sure those operational directives are met and update them  
14 accordingly.

15 She was also instrumental as we worked on  
16 putting the new package together that we negotiated when  
17 the shared tenant services buyout of Nextira came into  
18 play.

19 Q. With respect to Ms. Lee, do you know the  
20 particular -- anything about the particular knowledge she  
21 has concerning the charter's application to the operation  
22 of the telecommunications facility at MIA?

23 A. The exact particular knowledge, no, sir, I do  
24 not.

25 Q. But my question again was identify persons with

1 knowledge of the charterer's application to the  
2 telecommunications facility at MIA. Is there something  
3 about the charter combined with your telecommunications  
4 business out there that led you to designate her in  
5 response to my question?

6 A. Looking at the question and knowing that she  
7 was with audit management and she has been with the  
8 County, I looked at that, she and Mr. Garcia would have  
9 knowledge regarding the charter that applies to this  
10 lawsuit or to your question.

11 Q. Do you know how long approximately, not holding  
12 you to a particular month, Ms. Lee has been at the  
13 airport?

14 A. Exactly sure, no, I do not.

15 Q. But she was there, according to your testimony,  
16 at least back in January, in or about January of 2002  
17 when the County purchased the assets of Nextira; is that  
18 fair to say?

19 A. Yes, sir.

20 Q. Now, the last person you attempted --

21 A. I'm sorry. Tom Arnold was his name.

22 Q. The last person?

23 A. Yes. Took a while. Tom Arnold.

24 Q. That saves my time trying to refresh your  
25 recollection. Tell me who Tom Arnold is and what his

1 position was at the airport, because you've previously  
2 testified he has left.

3 A. Correct. He was with the police department.  
4 He came over to the aviation department. He was an  
5 assistant director. He worked within the standards  
6 operations area. And one of his responsibilities was  
7 looking at or evaluating the Nextira contract, its  
8 operations, a lot of its activities and very key and  
9 instrumental in recommending that we go forward with a  
10 new contract and buyout of Nextira.

11 Q. In doing so, were you aware that he has any  
12 knowledge of or had knowledge at the time of the portion  
13 of the county charter that is at paragraph 8 on page 3 of  
14 the complaint?

15 A. No, sir, it would be an assumption.

16 Q. So you don't know?

17 A. No, I do not.

18 Q. Directing your attention to page 3,  
19 paragraph 11, this paragraph says, in summary, that the  
20 County is operating a telecommunications company and is  
21 thus subject to regulation by the FPSC, which is the  
22 Florida Public Service Commission with respect to the  
23 County's offering two-way telecommunication services to  
24 the public for hire.

25 What individuals at the County have knowledge

1 regarding the County's relationship with, in this  
2 context, the FPSC?

3 A. With the Florida Public Service Commission, it  
4 would be Pedro Garcia. We deal with William Texidor.  
5 And that's within the aviation department.

6 Now, the County has an IT and a  
7 telecommunications unit. I would assume that they have  
8 some involvement with the PSC as well, given that they  
9 deal with radios and two-way communication devices.

10 Q. Let's start with the aviation department.  
11 Obviously, we've gone over Mr. Garcia. Who is William  
12 Texidor and how do you spell his last name?

13 A. Last name is T-e-x-i-d-o-r. He is one of our  
14 supervisors within what we call our technical shop. They  
15 manage radio infrastructure as well as some level of  
16 telecommunications and other technical components as it  
17 applies to technology and telecommunication.

18 Q. And why do you list him as having knowledge of  
19 regulation by the FPSC?

20 A. A majority of his work that he does, especially  
21 dealing with two-way communications, such as 800 MHz  
22 radio, 400 MHz, the IVHS Sunpass-type, requires licensing  
23 and interaction with the Public Service Commission to  
24 ensure that we are in compliance similar to that to our  
25 radio station that we also have.



1 Q. Other than Mr. Garcia and Mr. Texidor, are  
2 there any other persons within the aviation department  
3 that have knowledge regarding the airport's relationship  
4 with the Florida Public Service Commission?

5 A. No, sir, not that I'm aware of.

6 Q. Now, you briefly mentioned that there may be  
7 others in the County. What did you mean by that?

8 A. The County has an IT department that's called  
9 ETSD, the Enterprise Technology Services Department, and  
10 that department provides a lot of information technology  
11 and telecommunications services to other county  
12 departments and county facilities. And that's their core  
13 crux, that's what they do.

14 Q. Where is that department located?

15 A. Miller -- Galloway which is Southwest  
16 87th Avenue and Miller, which is Southwest 56th Street,  
17 they're right there on the corner.

18 Q. Do they have a particular routine communication  
19 with Florida Public Service Commission that you know  
20 about?

21 A. None that -- not that I would know about. But  
22 they would have to, given cell sites, two-way radios,  
23 other telecommunications services that they provide or  
24 they perform for the county facilities, they would have  
25 to.

1 Q. Do you know who heads up that unit? Or, I  
2 should say, the department, since you labeled it a  
3 department.

4 A. Right. The department. A gentleman by the  
5 name of Ruben Lopez.

6 Q. Does Mr. Lopez have any knowledge of the  
7 telecommunications operation facility at Miami  
8 International Airport?

9 A. I'm not sure. It would depend on debriefing by  
10 staff or discussions, but I'm not sure.

11 Q. Let me direct your attention to page 4 of the  
12 complaint. Specifically paragraph 14. One of the issues  
13 in this lawsuit as is stated in paragraph 14, BellSouth  
14 contends that by operating a, quote, unquote,  
15 telecommunications company, the County is therefore  
16 operating a, quote, unquote, telephone utility. In the  
17 County's answer in this case the County has denied that  
18 contention by BellSouth.

19 With that background, I wanted to ask you what  
20 persons have knowledge as to the County's denial of  
21 BellSouth's contention in paragraph 14?

22 A. Well, you have Pedro Garcia. That would be it.  
23 The balance I would have to leave to legal  
24 representatives.

25 Pardon the uninitiated, but what is "a fortiori

1 operating a telephone utility," what is that?

2 Q. For purposes of this deposition we'll just  
3 leave it as legalese, which is why I substituted the word  
4 "therefore." So that will take care of that.

5 A. Thank you.

6 Q. No problem, but thanks for asking.

7 A. Does that count in scrabble if I use it?

8 Q. It may.

9 MR. GOLDBERG: Dorian, does that count in  
10 Scrabble?

11 MS. DENBURG: You bet.

12 BY MR. GOLDBERG:

13 Q. So other than Pedro Garcia, there are no other  
14 persons with knowledge as to that issue?

15 MR. HOPE: Objection to the form.

16 THE WITNESS: No, sir.

17 MR. GOLDBERG: What's the objection to form,  
18 please, so I can -- if you have an objection to  
19 my form, I'll want you to just to tell me what it  
20 is so perhaps I can rephrase the question.

21 MR. HOPE: Oh, sure. That you stated --  
22 basically you led him in terms of the answer.  
23 Instead of asking him are there any other people  
24 with knowledge, you inserted what the answer was,  
25 which is a leading question.

1 BY MR. GOLDBERG:

2 Q. You previously identified Pedro Garcia as  
3 having knowledge as to the issue outlined at  
4 paragraph 14. Are there any other persons with  
5 knowledge? Yes or no, and then you can explain if you  
6 need to.

7 A. No.

8 Q. Let me direct your attention now to page 7 of  
9 the complaint, and particularly I'm going to refer to  
10 paragraphs 25 through and including 27. Let me know when  
11 you've had an opportunity to get there.

12 A. Okay.

13 Q. Correct me if I'm wrong, but paragraphs  
14 25 through 27 relate to and discuss the County's purchase  
15 in or about January of 2002 of the assets of Nextira; is  
16 that correct?

17 A. Yes, sir.

18 Q. And, among other things, at that time period  
19 the County acquired title to Nextira's telecommunication  
20 facilities; is that correct?

21 A. Yes, sir.

22 Q. What individuals at the County have knowledge  
23 with respect to the County's purchase or entry into the  
24 non-exclusive telecommunications data network and shared  
25 airport services management agreement with Nextira,

1 again, in January, 2002?

2 A. Pedro Garcia, Ann Lee, the department's  
3 contract section. And the manager of that section is  
4 Delmar Whittington -- I'm sorry, was Delmar Whittington.  
5 It's probably going to be Marie Clark.

6 Q. What is that name?

7 A. Marie Clark. That's it.

8 Q. So other than Mr. Garcia, Ms. Lee and the  
9 department's -- this department that you mentioned with  
10 either Mr. Whittington or Ms. Clark, are there any other  
11 persons with knowledge?

12 A. No, sir.

13 Q. Now, just for purposes of the record, I want to  
14 make sure we have an accurate transcript here, I would  
15 like you to include yourself -- or are you including, let  
16 me ask, are you including yourself in responding to these  
17 questions?

18 A. Yes, sir, I am.

19 Q. So we can assume if you have not specifically  
20 stated your name and that you have knowledge as to these  
21 issues, you have purposely not included yourself; is that  
22 fair?

23 MR. HOPE: Objection to form.

24 THE WITNESS: If you're asking me should my  
25 name be included in the majority of the

1 individuals you're asking about for the last four  
2 questions or so, yes, my name should be included.

3 BY MR. GOLDBERG:

4 Q. They should?

5 A. Yes.

6 Q. So let's just go back. Your name should be  
7 included with respect to the charter's application to the  
8 telecommunications facilities at Miami-Dade County? Yes  
9 or no, I'll ask each one.

10 A. Yes, sir.

11 Q. And should your name be included as a person  
12 with knowledge with respect to the second area I asked  
13 you about, which is the County's relationship with the  
14 Florida Public Service Commission?

15 A. Yes, sir.

16 Q. While we're on that issue, what is the basis of  
17 your knowledge with respect to the County's relationship  
18 with the Florida Public Service Commission?

19 A. Conversation with the Florida Public Service  
20 Commission. Just conversations I've had.

21 Q. With respect to the third issue I asked you  
22 about arising at paragraph 14 of the complaint, the  
23 County's denial that by operating as a telecommunications  
24 company it is a telephone utility, do you have knowledge  
25 of that denial?

1 A. I'm sorry, what page was that again?

2 Q. Page 4, paragraph 14. Take your time.

3 A. I need that question read back to me to make  
4 sure that --

5 Q. I'll rephrase it for you. The third issue I  
6 raised, I asked you to identify persons who had knowledge  
7 regarding what is at paragraph 14, and that is the  
8 County's denial of BellSouth's contention in this  
9 paragraph that by operating a telecommunications company  
10 the County is operating a telephone utility.

11 Do you have knowledge of the reasons why the  
12 County denied that statement?

13 A. No, sir, I do not.

14 Q. And then the fourth issue that we're currently  
15 on is the January 2002 entry by the County into the  
16 agreement with Nextira, and do you want to add your name  
17 to the list?

18 A. Yes, sir, I do.

19 Q. What is the basis for Ann Lee's knowledge  
20 regarding this agreement and the transactions that  
21 occurred in or about January 2002?

22 A. Ann worked with us, she worked with us, with  
23 the department in writing the agreement, negotiating the  
24 agreement and getting it established.

25 Q. Can you tell me what the basis of Delmar

1 Whittington's knowledge is?

2 A. Well, his division is responsible for  
3 developing or writing the contract documents that went  
4 out to bid for this project.

5 Q. What's the name of that department again?

6 A. Contracts, it's the contracts division within  
7 the aviation department.

8 Q. Does he supervise that department?

9 A. Can you -- you can cross his name out. Just  
10 leave Marie Clark. He passed away two days ago.

11 Q. Mr. Whittington passed away?

12 A. Yes. Marie Clark is fine.

13 Q. Marie Clark is --

14 A. She's acting and she's been doing the majority  
15 of the workload.

16 Q. Let me ask you with respect to Ms. Clark, do  
17 you know if she was personally involved in drafting the  
18 contracts or in the entry by the County into the  
19 agreement with Nextira in January 2002?

20 A. She had some involvement, yes.

21 Q. If I could direct your attention to page 8 of  
22 the complaint, specifically paragraph 28. Paragraph 28  
23 says, "During 2001, the year prior to the County's  
24 acquisition and operation of the telephone utility at the  
25 airports, the gross revenues for the provision of



1 telecommunications services to airport tenants totaled  
2 approximately \$2,670,024."

3 Did I read that correctly?

4 A. Yes, sir.

5 Q. What persons at the County have knowledge with  
6 respect to the revenues generated by the provision of the  
7 telecommunications services at the airport?

8 A. It would be Maria Perez, who is a supervisor in  
9 the telecommunications unit, and Nextira, who provided  
10 the billing or did the billing to the tenants for these  
11 services.

12 Q. What position does Maria Perez hold?

13 A. She's a supervisor.

14 Q. Supervisor of the telecommunications unit?

15 A. Right. She reports to Pedro Garcia.

16 Q. Is it part of her job responsibilities to deal  
17 with the finances of the telecommunications services that  
18 are offered?

19 A. Not directly the finances, but in coordinating  
20 or facilitating work that's done or what was done by  
21 Nextira normally went through her. She had to review the  
22 work requests, sign the Ipons or work orders for the work  
23 to be done, made sure the work was done, utilizing staff,  
24 signed off that the work was complete. And then from  
25 there Nextira billed.

1 Q. So essentially she is the person where all work  
2 that needs to be done for your customers goes through; is  
3 that fair to say?

4 MR. HOPE: Objection to the form.

5 THE WITNESS: Yes, sir.

6 BY MR. GOLDBERG:

7 Q. How about from a pure financial perspective?  
8 Is there an accountant at the County, a controller, a  
9 finance officer who tracks the revenues and expenses  
10 generated by the operation of the telecommunications  
11 services at the airport?

12 A. I'm not sure. I mean, we have a finance  
13 department that collects funds and collects revenues and  
14 pays bills. We do have a finance department responsible  
15 for billing, collections. But the way the contract was  
16 structured at the time with Nextira, they billed the  
17 tenants or billed their customers for whatever services  
18 they provided and they billed and they collected.

19 Q. Do you have anybody in the finance department  
20 who does or has knowledge of financial statements or  
21 summaries of the revenues or expenses attributable to the  
22 telecommunications facility at the airport?

23 A. Within the finance department I would have to  
24 defer to the manager of finance.

25 Q. Who is that?

1 A. That would be Zeke Orji.

2 Q. Could you spell that, please.

3 A. Abbreviated Zeke, Z-e-k-e. It's Ezekiel, but  
4 let's go with Zeke. And Orji, O-r-j-i.

5 Q. Are there any other persons with knowledge  
6 regarding the revenues generated by the  
7 telecommunications services at the airport other than the  
8 people you previously mentioned?

9 A. No, sir.

10 Q. And we are not including you in that list?

11 A. Right. Yes, sir.

12 Q. I direct your attention to page 9,  
13 paragraph 34, please. Paragraph 34 reads, "Thus, the  
14 County never submitted an application to the FPSC to  
15 obtain a certificate of public convenience and  
16 necessity."

17 MR. GOLDBERG: Let me also represent to you,  
18 Mr. Hope, and correct me if I'm wrong, that the  
19 County has admitted this statement in this case,  
20 that the County has never submitted an  
21 application to the FPSC to obtain a certificate  
22 of public convenience and necessity.

23 BY MR. GOLDBERG:

24 Q. With that background, my question is, within  
25 the scope of this deposition this morning, which persons

1 at the County have knowledge as to the County's decision  
2 not to submit an application to the FPSC to obtain a  
3 certificate of public convenience and necessity?

4 A. You would have Maurice Jenkins, Pedro Garcia.  
5 That would be it.

6 Q. Let me specifically ask you, are there any  
7 other individuals involved in the County's decision not  
8 to file for a certificate that are in the law department  
9 or that are lawyers?

10 MR. HOPE: Objection to the form.

11 THE WITNESS: Please restate.

12 (Thereupon the requested portion of the  
13 record was re-read by the court reporter.)

14 THE WITNESS: No, sir.

15 BY MR. GOLDBERG:

16 Q. So does David Hope, the individual sitting next  
17 to you, have knowledge regarding the County's decision  
18 not to submit an application to the FPSC to obtain a  
19 certificate of public convenience and necessity?

20 MR. HOPE: Objection to the form.

21 THE WITNESS: I don't know.

22 BY MR. GOLDBERG:

23 Q. So am I correct in concluding, based on your  
24 testimony today as the corporate representative, that the  
25 only two people with knowledge of the County's decision

1 not to submit an application to the FPSC to obtain a  
2 certificate of public convenience and necessity are  
3 yourself and Mr. Garcia?

4 MR. HOPE: Objection to the form.

5 THE WITNESS: Yes, sir.

6 MR. GOLDBERG: Can I ask you to state what  
7 the basis is for the objection to form?

8 MR. HOPE: It was leading again.

9 MR. GOLDBERG: It was leading?

10 MR. HOPE: Yes.

11 MR. GOLDBERG: Okay.

12 BY MR. GOLDBERG:

13 Q. With respect to that last question,  
14 Mr. Jenkins, did I suggest the answer to you or did you  
15 answer on your own and that was your own response?

16 MR. HOPE: Objection to the form.

17 THE WITNESS: I answered the question as it  
18 was posed.

19 BY MR. GOLDBERG:

20 Q. Did you understand the question?

21 A. Yes, sir, I answered it. Yes.

22 Q. On that same page, page 9, let me direct your  
23 attention to paragraph 35 and that paragraph, in summary,  
24 states that the commercial tenants to which the County  
25 currently offers and provides two-way telecommunications

1 services for hire at the airport include at least one  
2 hotel, several restaurants, retail shops and other  
3 commercial entities. And then the complaint states that  
4 a list of the County's customers at a certain date is  
5 attached to the complaint.

6 With that background and because that's an  
7 issue in the case, let me ask you within the scope of  
8 this deposition, what persons at the County have  
9 knowledge regarding the County's customers at the airport  
10 for telecommunications services?

11 A. It would be myself, Maurice Jenkins, Pedro  
12 Garcia, NextiraOne, who is our management arm for our  
13 telecommunications infrastructure.

14 Q. Is there anybody else?

15 A. No, sir.

16 Q. Is there anybody else at the airport charged  
17 with the responsibility of overseeing your customers,  
18 whether they be airlines or these commercial entities  
19 that are referenced in paragraph 25?

20 A. Overseeing our customers?

21 Q. Yes.

22 A. No, sir.

23 Q. Who at the County has knowledge of the current  
24 list of customers at the airport, whether it be airlines  
25 or the types of commercial entities denoted in

1 paragraph 35?

2 A. Maria Perez, my telecommunications staff has a  
3 direct list. And our finance department, I believe, has  
4 a list of our customers.

5 Q. Who at the finance department would be  
6 knowledgeable about that list of customers?

7 A. I would go with Zeke Orji.

8 Q. Let me show you what I've already marked as  
9 CR-2 for purposes of this deposition, hand a copy to  
10 Mr. Hope, and I'll represent to you, as you can read on  
11 the first page of that document, that this is Miami-Dade  
12 County's answer and affirmative defenses to the second  
13 amended complaint in this case. Do you agree with that  
14 representation?

15 A. Yes, sir.

16 Q. Do you need to take a break?

17 A. No.

18 Q. Are you sure?

19 A. Yes, I'm fine. Thank you.

20 Q. Let me direct your attention to the second --  
21 page 3 of that document, particularly paragraph 19. At  
22 paragraph 19 the County has stated in this lawsuit, and  
23 therefore it's an issue in this lawsuit, that it denies  
24 providing two-way telecommunications services for hire at  
25 the airports. Do you see that?

1           A.    Yes, sir.

2           Q.    What persons at the County would have knowledge  
3 regarding the County's denial that it's providing two-way  
4 telecommunications services for hire at the airport?

5           A.    Pedro Garcia. That would be it.

6           Q.    You were not included in this answer, just to  
7 be clear?

8           A.    Yes, sir, I'm not to be included.

9           Q.    Let me go to the next paragraph, paragraph 20  
10 on page 3. It says regarding paragraph 38, "The County  
11 denies that BellSouth, number one, provides similar  
12 services as such services are defined by the charter to  
13 tenants at Miami International Airport."

14                   Who at the County would have knowledge  
15 regarding the County's denial that BellSouth provides  
16 similar services as such services are defined by the  
17 charter to tenants at Miami International Airport?

18           A.    You'd have Maurice Jenkins, Pedro Garcia.  
19 That's it.

20           Q.    What's the basis for your knowledge as to that  
21 issue as identified in paragraph 20?

22           A.    There are services that the department provides  
23 that BellSouth does not provide.

24           Q.    And that statement at paragraph 20 also says,  
25 "As such services are defined by the charter." Does the



1 charter define similar services or services?

2 A. I'm not sure. I'd have to go back and look at  
3 the charter.

4 Q. If I ask you to go back to the first exhibit I  
5 showed you, CR-1, which is the complaint, and take you  
6 back to the charter provisions cited at page 3,  
7 paragraph 8, let me ask you, is there a definition of  
8 services or similar services in the charter?

9 A. There's a statement of similar service, but  
10 there's no definition as to what a similar service is.

11 Q. Do you know why the answer in this case states,  
12 "As such services are defined by the charter," when  
13 there's no definition?

14 A. It's subject to interpretation. But no.

15 Q. No, you don't?

16 A. No, I do not know what -- the question was what  
17 "similar services" meant. I don't know what they mean.  
18 It's not defined as in -- what "similar service" is as  
19 stated in the charter.

20 MR. GOLDBERG: And let me just ask the court  
21 reporter to read back my last question and I'm  
22 going to ask you to listen to it and answer that  
23 question because I don't think you answered that  
24 particular question.

25 (Thereupon the requested portion of the

1 record was re-read by the court reporter.)

2 THE WITNESS: No, I don't know what it  
3 means. It's just my interpretation based upon  
4 what I know BellSouth provided as a  
5 telecommunications entity and the work that we  
6 provided.

7 BY MR. GOLDBERG:

8 Q. Let me just go back and ask you to look at  
9 CR-2, the answer in this case, paragraph 20.

10 A. Yes, sir.

11 Q. Which says specifically, "as such services,"  
12 making reference to similar services, "are defined by the  
13 charter." My question is, do you know why the answer in  
14 this case makes that statement when the charter does not  
15 contain a definition of "similar services" or "services"?

16 MR. HOPE: Objection to the form.

17 THE WITNESS: No, sir, I do not.

18 BY MR. GOLDBERG:

19 Q. If I could, Mr. Jenkins please turn to page 4  
20 of the answer in this case penned by the County. And  
21 page 4, as you see, contains two affirmative defenses.  
22 Is that correct?

23 A. Yes, sir.

24 Q. Paragraphs 1 and 2?

25 A. Yes, sir.

1 Q. The second defense is entitled, "Latches,"  
2 which you'll see in the parentheses on that page. Can  
3 you identify for me -- let me ask you to take a second to  
4 read that paragraph underneath, "Latches," No. 2, and let  
5 me know when you're done.

6 A. Okay.

7 Q. The first sentence of "Latches" says, "The  
8 County has operated a telecommunications data network and  
9 shared airport tenant services infrastructure and system  
10 and provided such services at MIA since circa 1982.  
11 BellSouth has had knowledge of said infrastructure and  
12 systems since the inception." And it goes on to make a  
13 legal conclusion.

14 What individuals, which individuals at the  
15 County have knowledge regarding the defense of latches  
16 asserted by the County in this case?

17 MR. HOPE: Objection to the form.

18 MR. GOLDBERG: Before you answer that  
19 question, because I want to have a good record  
20 here, what's basis for the form objection?

21 MR. HOPE: That you stated that we've gone  
22 on to make in the answer a legal conclusion.

23 BY MR. GOLDBERG:

24 Q. Let me rephrase the question then. With  
25 respect to the second defense, latches, that the County

1 has asserted in this case, which individuals at the  
2 County have knowledge regarding the County's defense of  
3 latches?

4 A. We have myself, Pedro Garcia, Maria Perez was  
5 around during that time period. I think that's about it.

6 MR. GOLDBERG: All right. At this time what  
7 I'm going to do is just take like a five- or  
8 10-minute break and I will go over my notes and  
9 see if I have any additional questions for you,  
10 if that's acceptable to you.

11 (Recess in Proceedings.)

12 BY MR. GOLDBERG:

13 Q. Are you ready to continue with your deposition,  
14 Mr. Jenkins?

15 A. Yes, sir.

16 Q. I'll remind you, you're still under oath. Is  
17 that correct?

18 A. Yes, sir.

19 Q. One other issue that has arisen in this lawsuit  
20 is whether or not the airport or the County has  
21 partitioned its trunks at the airport, or otherwise known  
22 as its switch, telecommunication switch. Can you  
23 identify for me the individuals that would have knowledge  
24 as to that issue at the airport.

25 A. They would be Pedro Garcia and that would be

1 it.

2 Q. So just Mr. Garcia; is that correct?

3 A. Yes, sir. I remember when you posed this  
4 question to me and I believe I said we did, but I was not  
5 sure, so I did inquire that we do partition our trunks.  
6 The most knowledgeable person would be Mr. Garcia.

7 Q. Going back to your earlier deposition, my  
8 recollection is -- and this is in your deposition as  
9 corporate representative of the County earlier -- my  
10 recollection was that you said that you did not believe  
11 that the trunks had been partitioned or switched, but you  
12 weren't sure, so that you did not give a definitive  
13 answer. Either way, are you stating today that you have  
14 subsequently learned that the County does partition its  
15 trunks or the switch?

16 A. I believe when I ran that by Mr. Garcia at one  
17 point he did say that the trunk is partitioned for the  
18 hotel and our network.

19 MR. HOPE: And if I may, let me just go on  
20 the record and say that my recollection of what  
21 Mr. Jenkins' statement to your question in the  
22 earlier deposition was that the airport did  
23 partition the trunk, but he wasn't sure and he'd  
24 have to see.

25 MR. GOLDBERG: Fair enough. I think we all

1 agree that he did not give a definitive statement  
2 in the last deposition.

3 MR. HOPE: True.

4 MR. GOLDBERG: And that's one of the items  
5 that was open and needed follow-up on by a new  
6 corporate representative.

7 MR. HOPE: That's fair. That's fair.

8 BY MR. GOLDBERG:

9 Q. Do you know when the -- have you learned since  
10 the time of your last deposition when the County  
11 partitioned the trunks or the switch?

12 A. No, sir. The exact period I do not know.

13 Q. When is it that you had this conversation with  
14 Mr. Garcia where he advised you that the County does  
15 partition the trunks or switch?

16 A. I think it was when they -- in the last week.  
17 I'm not sure exactly which day. We were talking -- we  
18 were talking about something and it popped up. And then  
19 I posed the question and he mentioned that we did.

20 MS. DENBURG: I'm sorry, could you please  
21 repeat that.

22 THE WITNESS: It was, I believe, one day  
23 last week. And we were talking, I'm not sure how  
24 it came up, and but he had mentioned it and it  
25 did dawn on me that that was a question that was

1 posed by your counsel.

2 MS. DENBURG: Thank you. I couldn't hear  
3 the answer.

4 THE WITNESS: It clicked. I wanted to make  
5 sure I answered that.

6 BY MR. GOLDBERG:

7 Q. When you asked Mr. Garcia about a week ago, was  
8 anybody else present at that time?

9 A. I'm not sure, sir. I don't know.

10 Q. Is it fair to say that since you've identified  
11 Mr. Garcia as the only person with knowledge as to this  
12 issue, in order to get a definitive answer from the  
13 County, we need to talk to Mr. Garcia on that issue; is  
14 that a fair statement?

15 MR. HOPE: Objection to the form.

16 THE WITNESS: You would need to speak with  
17 Mr. Garcia or anyone from Nextira who is  
18 responsible for support services because they  
19 have been responsible and have been actively  
20 dealing with this since 1982 or prior.

21 Q. But anybody with Nextira is not a County  
22 employee, correct?

23 A. Yes, sir.

24 Q. Having said that, though, is there a particular  
25 person at Nextira that you understand to be knowledgeable

1 about the partitioning or non-partitioning of the trunks  
2 or switch?

3 A. Yes, sir.

4 Q. Who would that be?

5 A. Pedro DeCammillo.

6 Q. Pedro, and can you spell the last name?

7 A. Capital D, lower case e, C-a-m-m-i-l-l-o.

8 I think something like that.

9 MR. GOLDBERG: That is all the questions  
10 that I have for you for the deposition today. We  
11 won't ask what you're going to do afterwards, but  
12 before we conclude, obviously, Mr. Hope, you have  
13 the opportunity to ask questions if you'd like.

14 MR. HOPE: No questions.

15 MR. GOLDBERG: Mr. Hope has stated he does  
16 not have any questions. So, Mr. Jenkins, as I  
17 advised you at the conclusion of an earlier  
18 deposition, you have an opportunity to waive  
19 reading of this deposition or to read the  
20 transcript of your deposition to ensure its  
21 accuracy. Would you like to read?

22 MR. HOPE: He'll read.

23 MR. GOLDBERG: So the court reporter will so  
24 note that and deal with Mr. Hope and yourself on  
25 that issue. I will not be involved.



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Any other comments for the record, Mr. Hope?

MR. HOPE: No.

MR. GOLDBERG: Dorian, is there anything from your end?

MS. DENBURG: No.

MR. GOLDBERG: Mr. Jenkins, I've asked you a number of questions during this deposition, before we conclude, and upon reflection is there any answer that you'd like to change, amend or modify at this time?

THE WITNESS: No, sir.

MR. GOLDBERG: With that, thank you for appearing.

We'll go off the record.

(Thereupon, the deposition was concluded.)

\_\_\_\_\_  
MAURICE JENKINS

Sworn to and subscribed before  
me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public in and for  
the State of Florida at Large.



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IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO. 02-28688 CA (03)

BELLSOUTH  
TELECOMMUNICATIONS, INC

Plaintiff,

v.

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida,

Defendant.

THE ORIGINAL FILED

ON MAY 27 2004

IN THE OFFICE OF  
CIRCUIT COURT DADE CO. FL

SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
AND FOR ISSUANCE OF WRIT OF MANDAMUS

Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth"), files this Second Amended Complaint for Declaratory and Injunctive Relief and for issuance of a Writ of Mandamus against Defendant, Miami-Dade County (the "County"), and alleges:

JURISDICTION AND PARTIES

1. BellSouth brings this action for declaratory and injunctive relief pursuant to Chapter 86 and Section 26.012(3), Florida Statutes (2002), based upon the County's violation of The Home Rule Amendment and Charter of Miami-Dade County, Florida (the "Charter") as well as the County's violation of Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, which incorporate certain prior provisions of the Constitution of 1885, as amended.



2 BellSouth further brings this action for issuance of a Writ of Mandamus to compel the County to perform its ministerial obligation pursuant to Chapter 364 of the Florida Statutes, and its accompanying regulations as set forth in the Florida Administrative Code governing the regulation of telecommunications companies.

3. BellSouth is a Georgia corporation doing business in Miami-Dade County.

4. BellSouth is a local exchange telecommunications company, as defined in Chapter 364, Florida Statutes.

5 Pursuant to its Certificate of Public Convenience and Necessity issued by the Florida Public Service Commission ("FPSC"), BellSouth "offer[s] two-way telecommunications service to the public for hire . . . by use of a telecommunications facility" within its service area in Florida, including Miami-Dade County.

6. The County is a political subdivision of the State of Florida and is located in Miami-Dade County.

7. The County "offer[s] two-way telecommunications service to the public for hire . . . by use of a telecommunications facility," at Miami International Airport ("MIA") and other general aviation airports within Miami-Dade County, including Kendall, Tamiami, Homestead and Opa-Locka (the "Other Airports") (collectively MIA and the Other Airports may be referenced as, "airports").

FACTUAL ALLEGATIONS

A. THE LEGAL FRAMEWORK

8. Section 1.01(A)(14)(b) of the Charter states:

The county shall not operate a . . . telephone utility to serve any territory in the county which is being supplied with a similar service except by a majority vote of those qualified electors voting in an election held not less than six (6) months after the Board has passed an ordinance to that effect by a two-thirds (2/3) vote of the members of the Board present. Such ordinance shall contain information on cost, method of financing, agency to regulate rates, agency to operate, location and other information necessary to inform the general public of the feasibility and practicability of the proposed operation. (Emphasis added).

9. A "telephone utility," as used in the Charter, is a "Telecommunications Company" as provided in Section 364.02 (13), Fla. Stat. and the regulations promulgated thereunder.

10. Section 364.02 (13), Fla. Stat. defines a Telecommunications Company, and thus a telephone utility, as:

13) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. (Emphasis added).

11 The County, a political subdivision, is operating a Telecommunications Company and is thus subject to regulation by, and the exclusive jurisdiction of, the FPSC with respect to the County's offering two-way telecommunications services to the public for hire.

12. Rule 25-9.002 of the Florida Administrative Code, governing the FPSC's regulatory authority, defines the terms "utility" or "public utility" as follows:

"For the purposes of these regulations the following definitions shall apply: . . . (2) Except where a different meaning clearly appears from the context, the word or words "utility" or "public utility" as used in these rules shall mean and include all electric and gas utilities, water systems, wastewater systems, telephone companies and telegraph companies which are, or may hereafter be, subject to the jurisdiction of this Commission. (Emphasis added)

13. Moreover, Rule 25-4.003(10) of the Florida Administrative Code, governing the FPSC's regulation of Telephone Companies, provides the following definitions:

"Company," "Telecommunications Company," "Telephone Company," or "Utility." These terms may be used interchangeably herein and shall mean "telecommunications company" as defined in Section 364.02(12) [sic], Florida Statutes. (Emphasis added)

14. By operating a "Telecommunications Company," the County is *a fortiori* operating a "Telephone Utility."

15. Before the County can operate a telephone utility in a territory within the County where similar services are already supplied, the Charter requires the Board of County Commissioners (the "Board") first to pass an ordinance by 2/3 vote of the members of the Board present, and to obtain the approval of a majority of the qualified electors in Miami-Dade County

16. In addition to the requirements imposed by the Charter, the Board's authority to authorize the provision of telecommunications services to the public for hire is further circumscribed by general law which explicitly grants the FPSC exclusive jurisdiction over the regulation of such services.

17 The Florida Legislature, by general law, provided in § 364.01(2) the following:

It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist (Emphasis added.)

18. The County is presently operating a Telecommunications Company, as evidenced by its offering and providing telecommunications services, including shared tenant services, to airport tenants, the provision of which are subject to regulation by, and the exclusive jurisdiction of, the FPSC.

19 Section 364.339, governing the provision of shared tenant services ("STS"), states that "the [Florida Public Service] Commission shall have exclusive jurisdiction to authorize the provision of any shared tenant service which:

(a) Duplicates or competes with local service provided by an existing local exchange telecommunications company; and

(b) Effective January 1, 1996, is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company" (emphasis added)

20. Pursuant to its authority under § 364.339, Fla. Stat., the FPSC enacted a limited "Airport Exemption." The "Airport Exemption" states:

Airports shall be exempt from the other STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. The airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. However, if the airport partitions its trunks, it shall be exempt from the other STS rules for service provided only to the airport facility. (Emphasis added).

Rule 25-24.580, F.A.C.

21 As the plain language of the rule makes clear, the Airport Exemption does not grant the County an exemption from the certification requirement applicable to all STS providers with respect to the County's provision of shared tenant services to facilities such as hotels, shopping malls and industrial parks.

22 As set forth below, the County offers shared tenant services to at least one hotel, to restaurants, to retail shops, and to other commercial entities which are "facilities such as hotels, shopping malls and industrial parks."

23 Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, incorporates certain prior provisions of the Constitution of 1885, as amended, that expressly limit the authority of Miami-Dade County as follows:

Section 11 (5): Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the state of Florida . . . and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County . . . nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein. (emphasis added).

Section 11(9): [I]t is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of the Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or me municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution (emphasis added)

24. Consequently, the County, through the Board, both (1) violated the Charter and (2) exceeded its constitutional authority, by purporting to authorize the County Manager and the Miami-Dade Aviation Department ("MDAD") to operate a telephone utility by offering telecommunications services to the public for hire, including to facilities such as hotels, shopping malls and industrial parks, based solely on the County's resolutions, without the prior approval of the FPSC, and without passing the required Ordinance or obtaining the required vote of a majority of the qualified electors.

**B. THE BOARD VIOLATED THE CHARTER AND ENACTED RESOLUTIONS THAT UNCONSTITUTIONALLY CONFLICT WITH GENERAL LAWS GRANTING EXCLUSIVE JURISDICTION TO THE FPSC.**

25. On January 29, 2002, the Board approved Resolution No. R-31-02 authorizing the County to enter into a Non-Exclusive Telecommunications, Data Network, and Shared Airport Tenant Services Management Agreement (the "Agreement") with NextiraOne, LLC ("Nextira").

26. Under the Agreement, among other things, the County acquired title to Nextira's telecommunications facilities, and Nextira assigned its agreements with customers for telecommunications service to the County. See County Manager's Memorandum and Resolution R-31-02, dated January 29, 2002, attached as Composite Exhibit A.

27. Under the Agreement, the County acquired telecommunications facilities, authorized MDAD to operate the facilities to provide telecommunications services to customers for hire, and authorized the County to receive all gross revenues from the provision of the telecommunications services.

28. During 2001, the year prior to the County's acquisition and operation of the telephone utility at the airports, the gross revenues for the provision of telecommunications services to airport tenants totaled approximately \$2,670,024.

29. On September 24, 2002, the Board adopted Resolution No. R-1091-02 (collectively, R-1091-02 and R-31-02 are referenced hereinafter as the "Resolutions") authorizing the County Manager or his/her designee to negotiate and execute new Airport Rental Agreements between the County and customers at the airports to govern the County's provision of telecommunications services to these tenants, including hotels, restaurants, retail shops and other commercial entities ("Commercial Tenants"). See Resolution R-1091-02, County Manager's Memorandum and Miami-Dade Aviation Department Airport Rental Agreement attached as Composite Exhibit B.

30. Prior to the passage of these two Resolutions, the County never operated a telephone utility/telecommunications company because it did not offer two-way telecommunications services to the public for hire by use of a telecommunications facility at MIA or the Other Airports.

31. Nextira and, upon information and belief, its predecessor private entities offered the two-way telecommunications services to the airport tenants for hire using telecommunications facilities owned by these private entities prior to the passage of the Resolutions.

32. Thus, by passing the Resolutions, and, based solely on the Resolutions, the County now owns and operates a telephone utility by offering two-way telecommunications



services to the public for hire, including to Commercial Tenants, at MIA and the Other Airports using telecommunications facilities.

33. As testified to by Pedro Garcia, MDAD's Chief of Telecommunications, the County, through its legal counsel and management, and with the participation of the management of the airport, determined that the County had the authority to authorize MDAD and the County Manager to operate the telephone utility/telecommunications company at the airports without seeking prior approval from the FPSC.

34. Thus, the County never submitted an application to the FPSC to obtain a certificate of public convenience and necessity

35. The Commercial Tenants to which the County currently offers and provides two-way telecommunications services for hire at the airports include at least one hotel, several restaurants, retail shops and other commercial entities. A list of the County's customers, as of the date of that list, is attached hereto as Exhibit "C," and Pedro Garcia's deposition testimony confirming that MDAD provides STS to a hotel tenant at MIA is attached hereto as Exhibit "D."

36. By offering telecommunications services to Commercial Tenants, the County is in direct competition with other telecommunications companies operating at the airports, including BellSouth.

37. Indeed, the County's professed goal, as testified to by Pedro Garcia, in offering telecommunications services to Commercial Tenants is to make money and to compete with BellSouth and other telecommunications companies operating at the airports.

38. BellSouth, the incumbent local exchange telecommunications company in Miami-Dade County, provides similar telecommunications services to Commercial Tenants at MIA and the Other Airports, and has been providing such services at all times relevant, subject to the regulation of the FPSC.

39. In fact, by offering shared tenant services to Commercial Tenants at the airports, the County is necessarily offering similar services to those already offered at the airports by BellSouth because shared tenant services, by definition, are services which duplicate or compete with local service provided by an existing local exchange telecommunications company.

40. The provision of shared tenant services to these Commercial Tenants at the airports is not necessary to ensure the safe and efficient transportation of passengers and freight through the airports' facilities.

41. The Commercial Tenants at the airports to which the County offers shared tenant services are facilities, such as hotels, shopping malls and industrial parks.

42. Accordingly, the County's provision of shared tenant services to these Commercial tenants is not exempt from the certification requirements and other regulations enacted by the FPSC and as provided in Chapter 364 of the Florida Statutes.

43. Thus, by passing the Resolutions, the Board purported to authorize the County, based on its own authority and without prior approval of the FPSC, to offer shared tenant services to the Commercial Tenants at MIA and the Other Airports.

44. Moreover, whether or not the County, pursuant to the "Airport Exemption," is entitled to a limited exemption from "other STS rules" governing the provision of shared

tenant services, the County is still operating a telecommunications company, and thus a telephone utility, in violation of the Charter, and the County is still subject to FPSC jurisdiction by virtue of its operation as a telecommunications company.

45. MIA and the Other Airports are territories in Miami-Dade County.

46. BellSouth has standing to bring this action because it has a special injury resulting from the County's violation of Section 1.01(A)(14)(B) of the Charter, as it relates to the operation of a telephone utility by the County.

47. Specifically, BellSouth's injuries are different in kind from that of the general public. The County's operation of a telephone utility in violation of the Charter affects BellSouth's business opportunities with, and potential income from, customers at MIA and the Other Airports.

48. BellSouth also has standing to compel the County to comply with its statutory and regulatory obligations under Chapter 364, Florida Statutes, because those statutes and related rules expressly govern all telecommunications companies and the provision of telecommunications services.

49. The statutory scheme explicitly promotes and seeks to ensure fair and effective competition amongst telecommunications companies, including BellSouth and the County.

50. Finally, BellSouth has standing to bring this action because it is challenging the constitutionality of the County's Resolutions purporting to authorize the County to operate a telecommunications company independently, and in direct conflict with, general

law passed by the Florida Legislature which grants exclusive jurisdiction to the FPSC to authorize persons to provide such services and regulate providers thereof.

**COUNT I**  
**DECLARATORY JUDGMENT**  
**(The County's Violation of the Charter)**

51. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint.

52. An actual and justiciable controversy exists between BellSouth and the County as to whether the County's operation of a telephone utility in Miami-Dade County, absent the necessary votes of the qualified electors and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter, violate the Charter.

53. There is a present, bona-fide need for a declaration that the County's actions violate the Charter.

54. The declaration is ascertainable based on the current state of the facts.

55. BellSouth has an actual, present, and adverse interest in the subject matter of this declaration, which is before this Court by proper process, and the relief it seeks is not merely the giving of legal advice or the answer to questions propounded from curiosity.

WHEREFORE, BellSouth requests this Court issue a judgment declaring that the County is violating Section 1.01(A)(14)(b) of the Charter, declaring that any existing contracts relating to the operation of a telephone utility in violation of Section 1.01(A)(14)(b) of the Charter are void, and further declaring that Resolution No R-31-02 and Resolution R-1091-02, to the extent they authorize the County to operate a telephone

utility in violation of the Charter, are void, and to award Plaintiff its costs pursuant to Section (C) of the Charter's Bill of Rights.

**COUNT II**  
**INJUNCTION**

**(To Prohibit the County from Continuing to Violate the Charter)**

56. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint

57. This is an action for injunctive relief to prevent the County from continuing to operate a telephone utility absent the votes and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter

58. BellSouth has no adequate remedy at law. If the County is permitted to continue to operate its telephone utility at the airports without the majority vote of the qualified electors and the enactment of an ordinance as required under Section 1.01(A)(14)(b) of the Charter, BellSouth will suffer irreparable harm.

WHEREFORE, BellSouth requests that this Court issue an injunction enjoining the County from continuing to operate a telephone utility in the County absent the required votes of the qualified electors and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter, and further enjoining the County from continuing to operate a telephone utility in violation of Section 1.01(A)(14)(b) of the Charter, and to award it costs pursuant to Section (C) of the Charter's Bill of Rights.

**COUNT III**  
**DECLARATORY JUDGMENT**  
**(Constitutional Challenge to the County's Passage of the Resolutions)**

59 BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint.

60. An actual and justiciable controversy exists between BellSouth and the County as to whether the County's Resolutions authorizing the County Manager and MDAD to operate a telecommunications company as a shared tenant service provider to certain airport tenants is an unconstitutional exercise of authority that is inconsistent with and conflicts with the general law applicable to the regulation of telecommunications companies under Chapter 364 of the Florida Statutes, thereby violating Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985 which incorporate Sections 11(5) and 11(9) of the 1885 Constitution.

61. There is a present, bona-fide need for a declaration that the County's actions violate the Florida Constitution.

62. The declaration is ascertainable based on the current state of the facts

63. BellSouth has an actual, present, and adverse interest in the subject matter of this declaration, which is before this Court by proper process, and the relief it seeks is not merely the giving of legal advice or the answer to questions propounded from curiosity.

WHEREFORE, BellSouth requests this Court issue a judgment declaring the following: (1) that the County is a "Telecommunications Company" as defined in § 364.02(13); (2) that the County is offering shared tenant services as defined in §364.339, Fla. Stat ; and (3) that the County's passage of Resolution No. R-31-02 and Resolution R-

1091-02, to the extent they authorize the County to operate a telecommunications company providing shared tenant services in conflict with the general law granting the exclusive jurisdiction for the regulation of telecommunications companies to the Florida Public Service Commission, is a violation of Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, incorporating Sections 11(5) and 11(9) of the 1885 Constitution, and declaring such Resolutions, to the extent they violate the Florida Constitution, null and void.

**COUNT IV**  
**PETITION FOR ISSUANCE OF WRIT OF MANDAMUS**  
**(Compelling the County to Comply with Its Statutory and Regulatory Obligations as a Telecommunications Company)**

64. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint.

65. Miami-Dade County has a clear legal duty to perform certain ministerial acts required by Chapter 364 of the Florida Statutes, and the regulations enacted pursuant thereto, which exclusively govern the regulation of telecommunications companies

66. Section 364.02 (13) defines Telecommunications Company to include political subdivisions, and §364.32(1)(a), Fla Stat, defines "Person" to include any county.

67. Section 364.33, Fla. Stat. then provides that:

A person may not begin the construction or operation of any telecommunications facility, or communications services to the public, or acquire ownership or control thereof, in whatever manner, . . . without prior approval (Emphasis added)

68. With respect to the provision of shared tenant services, §364.339(2), Fla. Stat., further states that "No person shall provide shared tenant services without first obtaining from the commission a certificate of public convenience and necessity to provide such service."

69. To obtain "prior approval," from the FPSC, and to obtain a certificate of public convenience and necessity, the "person" must satisfy the ministerial requirements described in §§ 364.33 and 364.335, Fla. Stat.

70. Enacted pursuant to Section 364.339, Fla. Stat., Rule 25-24.567 of the Florida Administrative Code sets forth additional ministerial requirements that the County must satisfy before it can provide shared tenant services.

71. Alternatively, to the extent the County seeks to take an assignment of an existing certificate for the provision of shared tenant services which may have previously been held by NextiraOne, the County is required to satisfy the requirements set forth in Rule 25-24.569 of the Florida Administrative Code before it can offer the shared tenant services.

72. BellSouth has the right to demand that the County perform the ministerial obligations set forth in the above-referenced statutory and regulatory provisions because the County competes with BellSouth. One of the purposes of Chapter 364 is to promote the development of fair and effective competition with respect to the provision of telecommunications services in Florida.

73. There is no room for the County to exercise discretion in the performance of the stated obligations, and the performance thereof is directed by law.

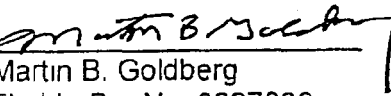


74. BellSouth has no other legal remedy available to it.

WHEREFORE, BellSouth requests this Court issue a Writ of Mandamus (1) compelling the County to perform the ministerial duties required by §§364.32 – 364.335 and §364.339, Fla. Stat. and as required by the Florida Administrative Code, including Rule 25-24 567 or Rule 25-24 569, F A C. and (2) enjoining the County from continuing to operate a telecommunications company and to offer shared tenant services to facilities such as hotels, shopping malls, and industrial parks until the County complies with its statutory and regulatory obligations under Chapter 364, Fla Stat , in addition to the obligations set forth in the Charter

Respectfully submitted:

**LASH & GOLDBERG LLP**  
1200 Bank of America Tower  
100 S.E. 2<sup>nd</sup> Street  
Miami, Florida 33131  
Telephone: (305) 347-4040  
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BY   
Martin B. Goldberg  
Florida Bar No. 0827029  
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BellSouth Telecommunications, Inc.  
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Miami, Florida 33130  
Telephone: (305) 347-5570  
Telefax: (305) 375-0209

Counsel for Plaintiff, BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Overnight Mail on this 27<sup>th</sup> day of May, 2004 to David Hope, Asst. County Attorney, Miami-Dade County Attorneys Office, 111 N.W. 1st Street, Miami, Florida 33130

BY:   
Martin B. Goldberg

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Overrule \_\_\_\_\_

Agenda Item No. 6-(A)-(1)-(B)  
1-29-02

OFFICIAL FILE COPY  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
DADE COUNTY FLORIDA

RESOLUTION NO. R-31-02

RESOLUTION RELATING TO TELECOMMUNICATIONS, DATA NETWORK, AND SHARED AIRPORT TENANT SERVICES AT MIAMI-DADE COUNTY AIRPORT SYSTEM FACILITIES; AUTHORIZING PURCHASE OF LEASED EQUIPMENT; AUTHORIZING APPROVAL AND EXECUTION OF NON-EXCLUSIVE MANAGEMENT AGREEMENT WITH NEXTIRAONE, LLC FOR INTERIM TWO-YEAR PERIOD; AND WAIVING COMPETITIVE BID PROCEDURES AND PROVISIONS

WHEREAS, Miami-Dade County, Florida (the "County") and Centel Communications Company ("Centel") entered into an Equipment Lease and Maintenance Agreement, as of July 24, 1990, and retroactive to February 7, 1988 (the "ELM Agreement") which ELM Agreement terminates on February 6, 2002; and

WHEREAS, the County and Centel also entered into a Shared Airport Tenant Service Agreement (the "SATS Agreement") which SATS Agreement terminates on February 6, 2002; and

WHEREAS, NextiraOne, LLC ("Nextira") is the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC)<sup>1</sup> under both the ELM Agreement and the SATS Agreement; and

WHEREAS, it is in the best interest of the County to acquire title to all telecommunications, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets as detailed on Schedule A of the ELM Agreement and Schedule E of the SATS Agreement, as of February 6, 2002 (the "Assets"); and

<sup>1</sup> In 1991, Centel Communications Company ("Centel") was acquired by WilTel Communications System ("WilTel"), and in 1997, Williams Communications Solutions, LLC was created from the merger of WilTel and Nortel Communications Systems.



WHEREAS, an interim manager is necessary to operate, maintain, and manage the Assets, until a telecommunications and data network request for proposal ("RFP") is circulated and a new manager is selected; and

WHEREAS, Nextira, as the owner and operator of the Assets, has the personnel, technical and product knowledge, expertise, and market recognition to manage the Assets,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board:

Section 1. Authorizes the payment of \$6,450,000 to Nextira, for the purchase of the Assets, to be used and operated by or for the Miami-Dade County Aviation Department.

Section 2. Authorizes the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement (the "Agreement") with Nextira for an interim two (2) year period, and delegates to the County Manager the authority to negotiate all terms and conditions necessary to consummate the Agreement. The Agreement shall contain a random audit provision to be conducted by the Office of the Inspector General, pursuant to § 2-1076(c)(6), Code of Miami-Dade County Florida (the "Code"). The Agreement shall also contain a provision for the County to retain the services of an independent private sector Inspector General ("IPSIG"), pursuant to Administrative Order No. 3-20.

Section 3. Waives competitive bid provisions of Administrative Order Nos. 3-4 and 3-16 related to the procurement of professional services.

Section 4. Waives competitive bid provisions of Section 4.03(D) of the Home Rule Charter and the requirements of Administrative Order No. 3-2 in connection with the purchase by the County for (i) wiring, (ii) cabling, (iii) fiber optic cables and equipment, (iv) telecommunications

equipment, (v) telephone and data network equipment, (vi) software, and (vii) material and supplies, necessary to maintain, support, operate, and expand the telecommunications, data network, and shared airport tenant services at the County airport system facilities. Such waiver is by a two-thirds (2/3) vote of the Board members present.

The foregoing resolution was offered by Commissioner Dorrin D. Rolle, who moved its adoption. The motion was seconded by Commissioner Katy Sorenson and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara Carey-Shuler	aye	Betty T. Ferguson	absent
Gwen Margolis	absent	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
	Javier D. Souto		aye

The Chairperson thereupon declared the resolution duly passed and adopted this 29th day of January, 2002. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF COUNTY  
COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

dsh

David Stephen Hope

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## MEMORANDUM

TO: Honorable Chairperson and Member  
Board of County Commissioners

DATE: January 29, 2002

FROM: Steve Shiver  
County Manager

SUBJECT: Telecommunications  
Services at the Aviation  
Department

### RECOMMENDATION

It is recommended that the Board of County Commissioners (the "Board") approve the attached resolution waiving the competitive bid requirements of Administrative Order No. 3-2 related to the procurement of commodities and services and approve in principle the non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement ("Agreement") between Miami-Dade County, (the "County") and NextiraOne, LLC ("Nextira"), substantially in the form attached hereto, which provides for: 1) the acquisition of, in accordance with the principles delineated in the Agreement, title to all telecommunications network, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets as described in Schedule A to the Equipment Lease and Maintenance agreement ("ELM Agreement") and Schedule E to the Shared Airport Tenant Services agreement ("SATS Agreement"), as of February 6, 2002 for the acquisition price of \$6,450,000 which will be amortized at five (5) percent over five (5) years; 2) resolution of various claims arising out of the ELM Agreement and SATS Agreement; 3) assignment to the County all existing tenant SATS and CUTE agreements entered into by Centel or its successors or assigns with tenants at Miami International Airport ("MIA") or the County's other owned or operated general aviation airports; and, 4) Nextira to become the interim telecommunications infrastructure manager, to provide for the design, installation, maintenance, repair, management, and operational support services for all voice and data network infrastructure for the Miami-Dade Aviation Department ("MDAD") and shared airport tenant services customers at MIA and the General Aviation Airports ("GAAs") until a new provider is selected, but for no longer than a period of twenty-four (24) months.

In addition, it is recommended that the Board approve the attached resolution authorizing the County to make direct purchases of the following equipment: (i) wiring, (ii) cabling, (iii) fiber optic cables and equipment, (iv) telecommunications equipment, (v) telephone and data network equipment, (vi) software, and (vii) material and supplies, necessary to maintain, support, operate, and expand the telecommunications, data network, and shared airport tenant services at the County airport systems facilities. Under this system the County will purchase directly, certain commodities as indicated by Nextira and be exempt from paying state sales taxes and mark-up

<sup>1</sup> NextiraOne, LLC is the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC) under both the ELM Agreement and the SATS Agreement.

costs on these purchases. It is also recommended that the Board authorize, in accordance with Ordinance No. 99-63, the inclusion of a random audit provision, including the one quarter (1/4) of one percent assessment, in the Agreement. It is further recommended that the County Manager be authorized to execute the Agreement.

**BACKGROUND**

The County is currently under contract with Nextira. Nextira leases to the County, and manages, operates and maintains all the telecommunications infrastructure and services serving MIA and the GAAs at an approximate annual cost of \$7,300,000. MDAD's agreement with Nextira expires on February 6, 2002.

**NEGOTIATIONS**

In July 2001, the Board approved Resolution No. R-852-01, approving a professional services agreement between the County and ResAvia. ResAvia is providing specialized technical and negotiation services to resolve the various claims arising out of the ELM Agreement and SATS Agreement entered into between the County and Nextira, and to negotiate a buy-out and new agreement with Nextira to allow MDAD an opportunity to finalize its long term voice and data telecommunications strategy.

**INTERIM MANAGER FOR TELECOMMUNICATIONS INFRASTRUCTURE**

MDAD is simultaneously working to develop a request for proposal ("RFP") to award a contract to a service provider to serve as the manager of the telecommunications infrastructure. Due to time constraints, the County will not be able to award this contract before February 6, 2002, when the Nextira contract expires. To assure the uninterrupted operation of the County airports, ResAvia, MDAD and the County Attorney's Office negotiated a proposed management agreement type contract (the "Agreement") with Nextira, to retain it as manager of the installed telecommunications infrastructure based upon County ownership of the equipment as further described below:

PROJECT LOCATION: Miami International Airport and General Aviation Airports

PROJECT DESCRIPTION: Provides for the operations, management, maintenance, service, support and equipment and supplies of the telecommunications and data, infrastructure, hardware and software systems for the MDAD and the shared airport tenant services customers at Miami International Airport and the General Aviation Airports. The scope of services includes the management of the shared airport tenant services for the County, including CUTE, to tenants and users at the Airport. In addition, Nextira will be

Board of County Commissioners  
Page 3

required to implement a transition program, one hundred and twenty (120) days prior to the expiration of the term of this Agreement, to ensure that either the new vendor selected as a result of the RFP process or MDAD's operating and maintenance personnel are trained in all aspects of the telecommunications and data infrastructure.

FIRM: NextiraOne, LLC

LOCATION OF FIRM: Houston, Texas

TERM OF AGREEMENT: The Agreement shall be for a duration of twenty-four (24) months. The County may terminate the Agreement with or without cause on thirty (30) days written notice to Nextira, provided however, the Agreement shall have a minimum term of eighteen (18) months unless terminated earlier for cause.

AMOUNT OF AGREEMENT: Compensation to the Contractor

One-Time Acquisition Price:

Acquisition of the telecommunications, data network, and CUTE infrastructure, software licenses, permits, and other assets in Schedule A to the ELM Agreement and Schedule E to the SATS Agreement of \$6,450,000 which will be amortized at five (5) percent over five (5) years.

Fixed Management Fee:

This Agreement provides for a fixed management fee of \$6,144,067 for the first year, which includes overhead and profit, staff transition costs, vendor agreements and spare parts carrying charge.

The compensation for the second year is based on this Management Fee as adjusted by the budgeting process that incorporates the requirements of the Capital Improvement Program (CIP) and the change in the Consumer Price Index (CPI) for the salaries of the personnel.

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Variable Costs:

The Agreement also provides for the variable costs, when authorized by the Department, and includes: 1) the procurement of parts, materials and software (\$2,680,000), 2) On-call after hour services (\$273,000), and 3) subcontractor services for wiring installation and maintenance, as necessary (\$899,415).

SATS Revenue:

Per the SATS Agreement, last year MDAD received \$267,000 which was based on ten (10) percent of gross revenues. Under this new Agreement, MDAD will receive all SATS gross revenues which last year was \$2,670,024. This revenue is expected to increase based on new marketing initiatives presently under development.

Compensation to the County

The Contractor will pay to the County the sum of \$110,000, on February 6, 2002, on account of excess space occupied without lease by the Contractor in Building 3030 at MIA for the period from November 1, 1997 to and including February 6, 2002.

RECOMMENDED CONTRACT MEASURES:

No measure

USING AGENCY:

Miami-Dade Aviation Department

FUNDING SOURCE:

Miami-Dade Aviation Department Operating Budget for Consulting Services and Aviation Revenue Bonds.

APPROVED FOR LEGAL SUFFICIENCY:

Yes

CONTINGENCY PLAN

As reported to the Board at its December 18, 2001 meeting, in the event that the negotiations with Nextira fail and no agreement is reached by the contract expiration date, the Department has a contingency plan to assure continuity in the provision of telecommunication services.

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Board of County Commissioners  
Page 5

SUMMARY

In summary, our preferred outcome is a negotiated buyout of the telecommunications equipment and infrastructure, retaining Nextira for a limited time to act as manager of the telecommunications infrastructure, and obtaining a long-term contract for telecommunications infrastructure management through a competitive request for proposal. In addition, the above recommendation begins the implementation of MDAD's long-term, cost-effective strategy to enable better management and control of our telecommunications infrastructure. In the alternative, MDAD has a plan to continue services without Nextira while procurement processes and legal remedies are undertaken.

Attachment

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11



MEMORANDUM  
OFFICE OF THE COUNTY MANAGER

Agenda Item No. 6(A)(1)(A)

TO: Honorable Chairperson and Members  
Board of County Commissioners

DATE: September 24, 2002

FROM: Steve Shiver  
County Manager

SUBJECT: Resolution approving  
recommendations relating to  
shared airport tenant services for  
the Aviation Department

**RECOMMENDATION**

It is recommended that the Board approve the attached resolution that will authorize the County Manager or his designee to: (i) execute standard form airport rental agreements for shared airport tenant services ("SATS") to offer telecommunications and network access to airport tenants; (ii) negotiate such terms and conditions as may be necessary on a tenant by tenant basis; and (iii) issue renewal and event of default notices, and in the instance of default, to take necessary termination actions for failures to correct defaults on a timely basis all in accordance with the airport rental agreement.

**BACKGROUND**

On January 29, 2002, the Board of County Commissioners (the "Board") approved Resolution No. R-31-02 relating to the telecommunications, data network, and shared airport tenant services at Miami-Dade Aviation Department ("MDAD"), and entered into a non-exclusive management agreement with NextiraOne, LLC (the "Contractor") wherein MDAD will receive all SATS gross revenues.

Shared airport tenant services consist of telecommunications, voice and data network services which MDAD offers to its tenants. The Contractor is required to use its best effort to establish, market, maintain, operate and manage SATS for the County to tenants and users at Miami International Airport ("MIA") and the General Aviation Airports ("GAA"), consistent with the requirements of the Public Service Commission of Florida ("PSC") or whatever other governmental entity has jurisdiction over SATS, if and where applicable, and all applicable laws.

It is requested that the Board delegate to the County Manager or his designee certain specified and limited authority that would provide for more efficient management of airport properties, maximization of revenues, and better operational flexibility for users of said facilities. Given the changing or different needs of each tenant requesting SATS, it is also requested that the Board delegate the authority to negotiate such terms and conditions as may be necessary, on a tenant by tenant basis, to allow the County to be responsive to the needs of the MIA and GAA business partners. The rental term may vary depending on the contract but in no occasion will any airport rental agreement exceed forty-eight (48) months.



Honorable Chairperson and Members  
Board of County Commissioners  
Page 2

The installation and monthly rental fees for SATS is dependent on the scope of the tenant's request for services.

The following chart provides a sampling of three levels of service (i.e., small, medium, and large tenant) that is presently offered by MDAD:

Tenant	Type of Service	Number of Subscribers	Installed Costs	Actual Monthly Rental Fee (period 5/1/02 - 5/31/02)
Air Jamaica (small)	Telecommunications Access	6 Subscribers	\$860.00	\$208.88
Miami Airport Duty Free (medium)	Network Access	46 Subscribers	\$15,690.00	\$2,516.44
United Airlines (large)	Telecommunications Access	593 Subscribers	\$99,297.00	\$16,142.88

The requested delegation of authority is similar to that which has existed for standard form aviation leases for the use and occupancy of real property at MDAD facilities.

At present, there are fifty-five (55) tenants with existing SATS agreements with MDAD. These agreements must be renewed, and as MDAD takes additional tenants into service, it is expected the number of users of our telecommunications and data network system and resulting revenues will increase. Per the previous SATS agreement with NextiraOne, LLC<sup>1</sup>, last year the MDAD received \$267,000, which was based on ten (10) percent of gross revenues. Under the new non-exclusive management agreement with NextiraOne, LLC, approved by the Board on January 29, 2002, MDAD will receive all SATS gross revenues which last year totalled \$2,670,024. This revenue is expected to increase based on new marketing initiatives presently under development.

<sup>1</sup> NextiraOne, LLC was the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC) under both the ELM Agreement and the SATS Agreement.

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 6(A)(1)(A)  
9-24-02

OFFICIAL FILE COPY  
CLERK OF THE BOARD  
OF COUNTY COMMISSIONERS  
DADE COUNTY, FLORIDA

RESOLUTION NO. R-1091-02

RESOLUTION AUTHORIZING THE COUNTY  
MANAGER OR DESIGNEE TO EXECUTE  
AIRPORT RENTAL AGREEMENTS FOR AIRPORT  
TENANT TELECOMMUNICATIONS SERVICES AND  
NETWORK ACCESS; NEGOTIATE TERMS AND  
CONDITIONS; AND ISSUE RENEWAL AND  
DEFAULT NOTICES AND TAKE NECESSARY  
TERMINATION ACTION FOR FAILURE TO  
CORRECT DEFAULTS.

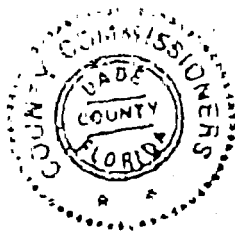
WHEREAS, this Board desires to accomplish the purposes  
outlined in the accompanying memorandum, a copy of which is  
incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY  
COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board  
hereby authorizes the County Manager or designee to: (i) execute  
the standard form of an airport rental agreement attached to the  
accompanying memorandum for shared airport tenant  
telecommunications services and network access; (ii) negotiate  
such terms and conditions as may be necessary on a tenant by  
tenant basis; and (iii) issue renewal and default notices and, in  
the instance of default, to take necessary termination actions  
for failure to timely correct defaults all in accordance with the  
agreement.

The foregoing resolution was offered by Commissioner  
Dorrin D. Rolle, who moved its adoption. The motion  
was seconded by Commissioner Gwen Margolis  
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro	absent	Jose "Pepe" Cancio, Sr.	aye
Dr. Barbara Carey-Shuler	absent	Betty T. Ferguson	absent
Gwen Margolis	aye	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye
		Sen. Javier D. Souto	absent

The Chairperson thereupon declared the resolution duly  
passed and adopted this 24th day of September, 2002. This  
resolution shall become effective ten (10) days after the  
date of its adoption unless vetoed by the Mayor, and if  
vetoed, shall become effective only upon an override by  
this Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency. dsh

David Stephen Hope

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# MIAMI-DADE AVIATION DEPARTMENT

# Airport Rental Agreement

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_, between Miami-Dade County (the "County"), a political subdivision of the State of Florida, and \_\_\_\_\_, a corporation/partnership/sole proprietorship (the "Customer"), conducting business at Miami International Airport ("MIA" or the "Airport").

1) **AGREEMENT.** The County agrees to deliver, install, rent, and maintain telecommunications systems and services consisting of (1) switch access to its communications switching equipment and software which will be shared by the Miami-Dade Aviation Department ("MOAD" or the "Department") and tenants at the Airport ("Switch Access"), (2) network access to the local telephone exchange carrier ("Network Access"), and (3) telecommunication terminal equipment and cabling when itemized and executed on Schedule I. Such equipment and services are described in the Equipment and Services Schedule I and Maintenance Schedule III attached hereto, including optional services and features and made a part hereof (collectively the "System") and the Customer agrees to rent the System (the "Rental") subject to the terms and conditions of this Agreement.

This Agreement is subject to credit approval by the County. The Customer agrees to cooperate with the County by providing all credit and financial information that may be required by the County. Upon the County's approval of the Customer's rental application, the Customer agrees to execute all documents relating to the Rental and to promptly return them to the County. In the event all required and properly executed documents and advance payments are not provided to the County, the County may, in addition to other delineated rights and remedies, delay delivery until such executed documents and advance payments are received and approved by the County.

2) **SCHEDULES.** The attached schedules (the "Schedules") are part of this Agreement:

- Schedule I Equipment and Services Schedule
- Schedule II Acknowledgment and Certificate of Acceptance
- Schedule III Maintenance Schedule

3) **INSTALLATION**

a) The Customer will be responsible for, and provide or arrange for at its own expense (in a timely manner as required or directed by the County) (1) necessary utility lines and accessible System locations free from environmental hazards; (2) reasonable access for the County; (3) completed copies of database, feature forms, as necessary, conduit, holes and wireways, where not otherwise provided hereto; and (5) easements and microwave licenses.

b) The System will meet Federal Communications Commission Part 68 regulations regarding connection to the public telephone network. The County will install the System in a workmanlike manner without damage to the Customer's premises and will obtain necessary work permits to install the System. The County will not be responsible for removing any cabling or equipment of the Customer's old telephone system.

4) **FORCE MAJEURE.** The County's performance under this Agreement shall be excused to the extent and for the time compliance is beyond the County's reasonable control to reasons that include but are not limited to strikes, work stoppage, fire, water, wind, acts of God, disruption in service for any cause, storms, lightning, delays by subcontractors, and subcontractors, delays of power company, delays of the local exchange company, interexchange carrier, or any other carrier, governmental action, or any Customer nonperformance such as (1) non-payment, or (2) failure to execute an acceptance certificate or rental document.

5) **TERM AND ACCEPTANCE.** This Agreement shall be effective upon execution by the Customer and the County, but the term of this Agreement (the "Rental Term") shall commence on the "Commencement Date" (as hereinafter defined) and shall terminate on the last day of the Rental Term stated in Schedule I, provided, however, the Customer's indemnities, assumption of liabilities, and other duties, and all of the County's disclaimers herein shall survive the termination of this Agreement. The Customer shall be deemed to have accepted the System for all purposes of this Agreement, including the payment of rent hereunder, with the Customer's execution of the "Acknowledgment and Certificate of Acceptance" contained in Schedule II, attached hereto and made a part hereof. The date of execution of the Acknowledgment and Certificate of Acceptance shall be the Commencement Date under this Agreement. The Customer shall execute the Acknowledgment and Certificate of Acceptance with the County's completion of installation and pre-operational testing and first connection of the equipment to the public telephone network in a manner permitting calls to be made through the System (the "Cutover").

6) **PAYMENT OF RENT.** The rent for the System (the "System Rent") shall be as listed in Schedule I and shall be payable, without notice or demand, pursuant to said Schedule I.

7) **CANCELLATION.** After paying the first twelve (12) monthly payments under this Agreement including twelve (12) months of payments for any additions, the Customer may cancel this Agreement by giving sixty (60) days written notice to the County and by paying a cancellation fee equal to (a) seventy percent (70%) of the unpaid System Rent AND (b) three (3) months payments for Switch Access and Network Access. With the County's prior written approval, the cancellation fee will be waived if the Agreement is assigned to a MIA tenant who assumes all the obligations of this Agreement.

8) **TRAINING.** The County will provide instruction and training in the use of the System, to employees of the Customer for a reasonable time (not to exceed thirty (30) days) after the Cutover.

9) **MAINTENANCE.** The County will maintain the System in good repair, and will provide the necessary parts and labor to maintain the System as provided in Schedule III, provided the Customer is current on its payments hereunder and is otherwise in compliance with terms and conditions of this Agreement. The Customer's **SOLE AND EXCLUSIVE REMEDY** for the County to correct a defect in the System is limited to the County's performance under this Section 9.

The County's duty to maintain the System:

- a) Excludes any service in connection with maintenance or repair of the equipment caused by negligence, theft or unexplained loss, cause connection to foreign power, fire, water, wind, storms, lightning, acts of God, acts of public enemies, improper wiring, installation of equipment, name, materials or software by the Customer or third parties, failure or changes resulting from local exchange company, failures or changes resulting from local power company, failures or changes resulting from other transmission providers, or repair or abandonment of the equipment or software by anyone other than the County; and
- b) requires that Customer maintain a suitable operating environment for the System.

BY CUSTOMER REQUEST, REPAIRS NECESSITATED BY ANY OF THE EXCEPTED CAUSES IN SECTION 9(A) ABOVE, SHALL BE PERFORMED BY THE COUNTY AT ITS THEN PREVAILING RATES. THIS MAINTENANCE AGREEMENT IS IN LIEU OF ANY WARRANTY OR OTHER OBLIGATION, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY AGREEMENT OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COUNTY DISCLAIMS ANY WARRANTY TO PREVENT UNAUTHORIZED USE OF THE SYSTEM INCLUDING TOLL FRAUD.

10) **LIMITATION OF LIABILITY.** THE COUNTY WILL BE LIABLE FOR PHYSICAL INJURIES TO INDIVIDUALS AND DAMAGES TO TANGIBLE PHYSICAL PROPERTY (OTHER THAN THE SYSTEM WHICH IS COVERED BY THE MAINTENANCE PROVISIONS OF THIS AGREEMENT) CAUSED BY THE COUNTY'S NEGLIGENCE. IN NO EVENT HOWEVER WILL THE COUNTY AND ITS CONTRACTORS, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR: (A) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) COMMERCIAL LOSS OF ANY KIND (INCLUDING LOSS OF BUSINESS OR PROFITS); OR (C) ANY DAMAGE OF ANY KIND RESULTING FROM UNAUTHORIZED USE OF THE SYSTEM INCLUDING TOLL FRAUD. THIS LIMITATION SHALL APPLY TO ANY CLAIM OF THE CUSTOMER WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OF THE COUNTY, ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS, STRICT TORT OR ANY OTHER LEGAL THEORY WHETHER OR NOT THE COUNTY OR ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

11) **TITLE.** The County shall retain title to the System and the Customer shall have no interest in the System other than the rights acquired as a customer hereunder. The Customer acknowledges the County may title to and maintain on such System identifying labels indicating the County's ownership. The System shall remain County personal property and not become a fixture or part of any Customer real estate regardless of the manner in which it may be installed or attached. If requested by the County, the Customer will, at the Customer's expense, furnish a landlord and/or mortgagee waiver with respect to the System. The Customer shall protect and defend the County's title and, at the Customer's expense, keep the System and parts thereof free and clear of all liens, encumbrances and security interests other than those arising through the County, and shall not permit the County's rights or interest hereunder to be subject to any lien, charge or encumbrance, including but not limited to (a) any lien of the owner of real property upon which the System is installed, or (b) of any purchaser of, or future creditor obtaining a lien on, said real property. The Customer shall give the County immediate notice of any attachment or judicial process affecting any part of the System.

12) **USE OF THE SYSTEM(S), INSPECTIONS AND REPORTS.** The Customer shall use the System(s) solely for business and not for personal, family or household purposes. The Customer may only use the System at the location set forth in Schedule I. The Customer's use of the System shall conform with all applicable federal, state and local laws and rules. The County shall have the right to inspect the System at all reasonable times during the Customer's normal business hours.

## Additional Terms and Conditions

- 13) **Alterations and Attachments.** The Customer shall not permit any equipment or other forms or material (the "Other Equipment") or software (the "Other Software") to be used on or in connection with the System, which does not meet the specifications of the manufacturer of the equipment in the System. All Other Equipment and Other Software which may be used on, or in connection with, the System shall be acquired and installed by the Customer at Customer's own expense and risk. The County makes no representation concerning the compatibility of any such Other Equipment and/or Other Software for use with the System.
- Without the prior written approval of the County, at the end of the Rental Term, the Customer must remove any additions to the System not otherwise subject to this Agreement (the "Additions") made by Customer during the Rental Term, and restore the System, at the Customer's expense, to its original condition, reasonable wear and tear hereby excepted. In the event the Customer fails to remove an Addition, it shall become the property of the County.
- 14) **Indemnification.** The County will be responsible only for physical injury to persons (including death) and damage to tangible physical property to the extent caused by its negligence during delivery, installation, or maintenance of the System, and which is reported to the County in writing within sixty (60) calendar days of the incident.
- The Customer shall indemnify and hold harmless the County and its officers, employees, agents and authorized representatives, and instrumentalities from any and all claims, liabilities, losses, damages, and causes of action, including attorney's fees and costs of defense which may arise or be incurred as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Customer or its employees, agents, servants, partners, principals, or subcontractors, except to the extent such act is caused by the County's negligence. The Customer shall pay all claims and losses of any nature whatsoever in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County where applicable including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be issued thereon. The Customer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Customer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and authorized representatives, and instrumentalities as herein provided. Nothing contained in this Section 14 shall be construed so as to require the Customer to indemnify the County's employees, agents and authorized representatives to their own negligence.
- 15) **Return of System.** Upon termination of this Agreement, excepting equipment covered under a renewal agreement, the Customer will make the System available for removal which shall be accomplished in a careful and reasonable fashion by the County. The System will be returned to the County in the same condition as originally installed, ordinary wear and tear excepted, or the Customer will pay for the restoration of the System to such condition. The County shall not be obligated to restore the premises to its original condition. If the Customer does not return the System or make it available for removal by the County, then in addition to all other remedies in this Agreement, the County has available all other remedies available at law or equity. All obligations of the Customer under this Agreement shall remain in force and effect until the System is returned to the County.
- 16) **Events of Default by the Customer.** The occurrence of any one or more of the following events (an "Event of Default") shall constitute a default under this Agreement:
- Failure by the Customer to pay any installment of System Rent or any other amount payable hereunder as and when the same becomes due and payable and the continuation of such failure for a period of ten (10) calendar days thereafter;
  - Failure by the Customer to perform or observe any other term, covenant or condition of this Agreement or any Schedule, or the inaccuracy in any material respect of any representation, warranty or statement made by the Customer in this Agreement, any Schedule, or any document or certificate furnished to the County at any time, which such failure or inaccuracy shall continue for a period of ten (10) calendar days after notice from the County;
  - Dissolution, termination, or discontinuance of the Customer's business (including, without limitation, the death of the proprietor if the Customer is a sole proprietorship or the death of a general partner if the Customer is a partnership), the sale of substantially all of the Customer's assets, or the sale or pledge of the controlling interest in the Customer;
  - The Customer's insolvency, the appointment of a receiver for any property of the Customer, assignment by the Customer for the benefit of creditors, admission by the Customer in writing of its inability to pay its debts as they become due, or the commencement of a proceeding under any bankruptcy, reorganization or similar laws by or against the Customer or any property it possesses, or if the Customer enters into an agreement of composition with its creditors; or
  - The attempted sale by the Customer of a System or any part thereof, or the issuance of any levy, seizure, or attachment thereon or pertaining thereto.
- 17) **Remedies of the County.** At any time after the occurrence of an Event of Default, the County may exercise any one or more of the following remedies:
- The County may, upon seven (7) days written notice, terminate this Agreement with respect to any System, or portion thereof, or all of the Systems;
  - The County may demand and recover from the Customer all System Rent and other amounts then due;
  - The County or its agents may take possession of any portion or all of the Systems, whenever the same be located, on reasonable notice, without any court order or other process of law and without liability to the Customer for any damages occasioned by such taking or possession, and any such taking or possession shall constitute a termination of this Agreement, and whereupon all rights and interest of the Customer to possess and use the Systems shall absolutely cease, but the Customer shall remain liable as provided herein;
  - The County may demand the Customer return any System or portion thereof, or all of the Systems to the County in accordance with this Section 17 herein; and
  - The County may pursue any other remedy available at law or in equity including, without limitation, seeking damages, specific performance and/or an injunction. None of the remedies under this Agreement is intended to be exclusive but shall be cumulative and in addition to any other remedy referred to herein or otherwise available to the County in law or in equity. Any repossession or subsequent sale or lease by the County of any portion of the System shall not bar any action for a deficiency as herein provided, and the bringing of any action or the entry of a judgment against the Customer shall not bar the County's right to repossess any System or portion thereof or all of the Systems.
- 18) **County Event of Default and Written Remedy.** The Customer may terminate this Agreement upon thirty (30) days written notice in the event of the County's material breach of this Agreement. Such written notice shall identify the material breaches and provide a reasonable time to cure in the notification to remedy the causes. The County has fifteen (15) days to cure the cause of the termination (the "Cure Period"). Such Cure Period commences the day after the thirty (30) day written notice period runs. The Customer may extend the Cure Period. This shall be the Customer's exclusive remedy.
- 19) **Insurance.** In addition to such insurance as may be required by law, the Customer shall maintain during the term of this Agreement the following insurance:
- Public Liability Insurance** on a comprehensive basis, including contractual liability products and completed operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be an Additional Insured with respect to this coverage.
  - Automobile Liability Insurance** coverage for all owned, non-owned and hired vehicles used in connection with this agreement in amounts not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
  - Property Damage.** The Customer will bear the risk of loss or damage to the leased equipment for the replacement cost and will reimburse the County for any damages to the equipment.
- The insurance coverage required shall include those classifications, as listed in the standard liability manuals, which most nearly reflect the operations of the Customer under this Agreement. All insurance policies required herein shall be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B" as to management, and no less than "V" as to strength in accordance with the latest edition of "Best's Insurance Guide" published by A.M. Best Company, Inc. or its equivalent as approved by the Miami-Dade County Risk Management Division.
- Prior to the commencement of operations hereunder, and annually thereafter, the Customer shall furnish certificates of insurance to Miami-Dade County Aviation Department and the Risk Management Division, which certificates shall clearly indicate: (1) the Customer has obtained insurance in the type, amount and classifications as required for compliance with this Section 19; (2) any material change or cancellation of the insurance shall not be effective without thirty (30) days prior written notice to the County; and (3) that Miami-Dade County is named as an Additional Insured with respect to the Public Liability coverage.
- The County reserves the right to require the Customer to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to the Customer, which notice shall automatically extend the Agreement effective thirty (30) days after such notice. Compliance with the foregoing requirements shall not relieve the Customer of its liability under any other portion of this Agreement.
- 20) **Further Assurances.** The Customer will execute and deliver to the County such additional instruments as the County deems necessary hereunder.



## Additional Terms and Conditions

- 21) **County's Performance of the Customer's Obligations.** If the Customer fails to perform any of its obligations under this Agreement, the County may perform any or all of the obligations and make any payment which the County deems necessary for the maintenance and preservation of the Systems and the County is liable therefor. All sums so paid by the County (together with all related "Late Payment Charges", as hereinafter defined) and reasonable attorney's fees incurred by the County in connection therewith shall be added to the System Rent immediately due and payable by the Customer to the County. The performance of any act or payment by the County shall not be deemed a waiver or release of any obligation or default on the part of the Customer.
- 22) **Enforceability.** Any provision of this Agreement prohibited by the laws of a state shall, as to such state, be ineffective to the extent of such prohibition, but shall not affect the other provisions of this Agreement.
- 23) **Amendments and Waivers.** This Agreement and the Schedules constitute the entire agreement between the County and the Customer with respect to the use of the Systems, and supersede all previous communications, understandings, and agreements, whether oral or written, between the parties with respect to such subject matter. Any representations, warranties or statements made by an employee, salesperson, agent, or authorized representative of the County and not expressed in this Agreement are not binding upon the County. No provision of this Agreement may be changed, waived, or amended except by written agreement signed by both the County and the Customer, except that the County may insert the serial number of any portion of a System on the applicable Schedule after delivery of such portion of the System and the County may insert the Commencement Date for this Agreement after receiving the Acknowledgment and Certificate of Acceptance.
- 24) **Late Payment Charge.** In the event the Customer fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) calendar days of the due date, interest of the rates established from time to time by the Miami-Dade Board of County Commissioners and/or Florida Statutes (currently set at one and one-half percent (1 1/2%) per month) shall accrue against all such delinquent payment(s) from the original date due until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Customer to pay same shall be in addition to and not in lieu of the County's rights to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
- 25) **Assignment.** The Customer shall not assign this Agreement without the County's written consent. No assignment or transfer of any sort shall relieve the Customer of its obligations hereunder. The County may assign any rights under this Agreement to an affiliate or any other assignee, and the Customer agrees to execute any documents that such assignee may reasonably require. The Customer acknowledges that if this Agreement is assigned to a governmental entity, the indemnity obligations under Section 14 herein may not apply in full to such assignee.
- 26) **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the applicable laws of the County, including (a) the rules and regulations of the Department, (b) Chapter 25 Code of Miami-Dade County, Florida, and (c) operational directives issued thereunder, in addition to all additional laws, ordinances, administrative orders, regulations, and rules of the federal, state, and local governments, and any and all plans and programs developed in compliance therewith, which may be applicable to the operations of this Agreement.
- 27) **Customer's Representations.** The Customer represents that this Agreement is a lawful, binding and valid obligation of the Customer enforceable in accordance with its terms and has been duly authorized, executed and delivered by the Customer, and that all information concerning the Customer's financial condition which has been or will be supplied to the County is and will be true and correct.
- 28) **Notices.** All notices, demands and other communications shall be transmitted in writing by hand delivery or by United States Mail, addressed to such party set forth below or at such other address as may be subsequently submitted by written notice of either party. Notice given pursuant to this Section 28 shall be deemed effective ten (10) days after the date it is mailed or upon receipt, whichever is earlier.

For the Department:

Manager, Information Services Division  
Miami-Dade Aviation Department  
PO Box 592073  
Miami, Florida 33156-2075

For the Customer:

(Billing Customer Name) \_\_\_\_\_  
(Customer Address) \_\_\_\_\_  
(City, State & Zip Code) \_\_\_\_\_  
(Billing Contact) \_\_\_\_\_  
(Telephone Number) \_\_\_\_\_

### 29) Miscellaneous

- a) If the Customer uses a purchase order or similar document to order a System or addition thereto, the Customer acknowledges that the terms and conditions of such purchase order or document shall not apply and that the terms and conditions of this Agreement shall exclusively apply thereto.
- b) The waiver by either party of any default will not operate as a waiver of any subsequent default.
- c) The Customer will pay all of the County's costs or expenses, including reasonable attorney's and collection fees, incurred in enforcing this Agreement.
- d) Any modification must be in writing and executed by an authorized representative of the party against whom enforcement is sought.
- e) This Agreement shall be binding upon and in use to the benefit of the County and the Customer and their respective successors and assigns.
- f) Right to be Exercised by Department. Whenever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

**Additional Terms and Conditions**

**32) Terms and Execution**

- a) This Agreement binds the Customer when it is executed by the Customer and binds the County when executed by the County and delivered to the Customer.
- b) This Agreement allocates the risks of the System's delivery, installation, operation and maintenance between the County and the Customer. The County has provided the Customer a favorable rate in return for the County performing all delivery, installation, and maintenance obligations. This allocation is recognized on both sides and is reflected in the System Rent. The Customer acknowledges that it has read this Agreement, understands it and is bound by its terms.
- c) The Customer agrees that the County shall not be obligated under this Rental Agreement if the federal, state, or county statutory or regulatory authority permitting the County's performance hereunder is withdrawn, abridged, or amended so as to preclude the effective delivery by the County of services hereunder; in such event, the County shall notify the Customer in writing and the Customer's sole obligation thereafter shall be to compensate the County for the equipment and services rendered by the County to date.

**Miami-Dade Aviation Department**

**Customer**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MIAMI-DADE AVIATION DEPARTMENT

Equipment and Services Schedule I

Revised \_\_\_\_\_ Date \_\_\_\_\_

W/C \_\_\_\_\_ to the certain Airport Rental Agreement dated \_\_\_\_\_ 20\_\_\_\_ (the 'Agreement') between the County and \_\_\_\_\_ (the 'Customer'). The County and the Customer agree to incorporate the following additional terms and conditions into said Agreement:

- 1) Location: Miami International Airport
- 2) Rental Term: \_\_\_\_\_ months
- 3) Payment: The Customer shall pay to the County the total rental (which includes maintenance) for the Rental Term of the Agreement, which shall be the total amount of all rental payments set forth on this Schedule, plus any such additional amounts as may arise hereunder or pursuant to any additions hereto as described in Paragraphs 11 and 12 of this Schedule. Except as otherwise specified in this Schedule, rental payments pursuant to this Schedule (each monthly payment of System Rent) shall be made and shall be due and payable in advance on the first day of each calendar month during the Rental Term, provided, however, that the Customer shall pay to the County the first monthly System Rent payment with respect to the System when the Customer delivers to the County the Schedule I and Schedule II executed by the Customer. In the event the Customer does not accept the System for any reason, the County shall be entitled to retain such payment, in addition to its other rights hereunder, unless the parties agree in writing to the contrary. All amounts due hereunder from the Customer shall be paid to the County by check, in immediately available funds, at the address of the County as set forth in the Agreement or at such other place as the County shall designate in writing. Whenever any payment (of System Rent or otherwise) is not made within ten (10) days of the date when due hereunder, the Customer shall pay the "Late Payment Charge" (as defined in Section 24 of the Agreement), calculated from the effective (11th) day after the due date to the date of actual receipt of payment.
- 4) System Rent: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (Monthly System Rent during Rental Term) \$ \_\_\_\_\_ per month during the term of this Agreement, except as it may be increased or decreased by amendments or by an inflation and/or utility company adjustment, plus applicable taxes. Unless otherwise specified, telephone numbers, directory listings, and all other charges of the local exchange company or any interexchange carrier are not included in the rental price unless indicated on a schedule. No cabling, wiring or other items are included unless specifically stated in this Agreement and indicated on this Schedule.
- 5) Security Deposit: The Customer shall pay two (2) months rent as a security deposit that shall be held as long as the Customer is current on its System Rent and applicable taxes, and that shall be returned without interest to the Customer at termination of this Agreement. If not current on either System Rent or applicable taxes, the County may deduct from the Security Deposit any and all amounts due from the Customer under the Agreement. The Customer must maintain the two (2) month rent security deposit amount balance, and must tender to the County the amount needed to maintain this threshold, if a deduction or deductions are made by the County.
- 6) Estimated Commencement Date: \_\_\_\_\_ 20\_\_\_\_
- 7) Attachments: The following Schedules are attached to and made a part of this Agreement: Schedules I, II, & III
- 8) Installation: The total amount due for installation of the System is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) plus applicable taxes. This amount is due and payable on the Agreement execution date and is non-refundable.
- 9) Maintenance Hours: The County will respond to System failures during the hours specified by the maintenance plan chosen by the Customer (see Schedule III).
- 10) Equipment and Features: The equipment and features subject to the Agreement are set forth below:
 

1) Switch Access	\$	_____	month
2) Network Access	\$	_____	month
3) System - Terminal Equipment	\$	_____	month
4) System - Other	\$	_____	month

Monthly Rent \$ See Attached quote # \_\_\_\_\_  
(A continuation sheet may be added if more room is needed)
- 11) Pre-Cutover Changes: In the event that additions and/or deletions to the equipment and/or features described in Section 10 above are made in accordance with the Agreement before the Commencement Date, the monthly Rental shall be adjusted by the change caused by applicable Installation Change Notices ("ICNs"). The County and the Customer hereby agree that any ICN executed by the Customer and delivered to the County in accordance with this Section 11 shall constitute an amendment to the Agreement and this Schedule, thereby adding to each such document the descriptions and rental information with respect to the equipment and the software indicated in such ICN.
- 12) Post-Cutover Changes: If the Customer wishes to add additional County equipment and/or features to the System (excluding however minor equipment and/or features with maintenance related thereto which the Customer purchases from the County for cash), during the Rental Term of the Agreement, the Customer shall add additional equipment and/or features to the Agreement on such terms as the County and the Customer may agree in a Customer Service Order ("CSO") executed by the County and the Customer, and such equipment and/or features shall become, upon amendment of the Agreement and acceptance by the Customer pursuant to the Agreement, subject to the terms of the Agreement, provided the Customer is not in default under the Agreement and has not suffered a material adverse change in its financial condition since the execution of the Agreement. Pricing for additions may be adjusted for changes in tax laws and regulations.  
The term of the Agreement for all CSO additions will commence on the date when such CSO additions are first operated as part of the System and shall have a term of sixty (60) months unless stated otherwise on this Schedule.
- 13) Renewal: If the Customer is not in default under this Agreement, the Customer can either (a) renew this Agreement on its termination at the then current market monthly rate or (b) return the System to the County. Negotiation of any such renewal can be initiated by the Customer's written notice of its willingness to negotiate a renewal not earlier than one hundred twenty (120) days but not later than sixty (60) days prior to the end of the Rental Term, the Agreement can be automatically renewed at the County's discretion for a minimum period of one (1) year if a renewal is not finalized. Renewals will be at the price and on the terms and conditions of the County in effect at the time of renewal unless otherwise agreed to in writing by the parties.
- 14) Miscellaneous: All terms defined in the Agreement shall have the same meaning herein.

IN WITNESS WHEREOF, the parties hereto have caused this Schedule to be executed by their duly authorized representative and this Schedule shall be incorporated into and made a part of the Agreement.

Miami Dade Aviation Department	Customer
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

MI AVIATION DEPARTMENT Acknowledgment and Certificate of Acceptance Schedule II

To: Aviation Department

The \_\_\_\_\_ acknowledges, represents and warrants to the  
Customer that the equipment subject to the Rental Agreement dated \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ and the undersigned: (a) has been delivered, installed and subjected to all necessary pre-  
operational testing; (b) has been inspected; (c) is operating in accordance with the manufacturer's specifications  
(d) has been used or made available to be placed in service for its specifically assigned function for the first  
time on the date indicated below as the "Commencement Date"; and (e) was first connected to a public  
\_\_\_\_\_ in a manner permitting calls to be made through the equipment to and from the facility in which  
the equipment is located on such Commencement Date.

Commencement  
Date: \_\_\_\_\_

Customer: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

The maintenance plan features the following services:

### 1. Types of Failures:

Failures reported by the Customers will fall into two categories: a) Major Failures, and b) Minor Failures

- a) Major Failures are those that severely impede the ability for a Customer to conduct business at the Airport and shall be defined as an occurrence of any of the following:
1. A failure of the telephone switch, its common equipment or power supplies which renders it or them incapable of performing normal functions for five percent (5%) or more of the stations or trunks.
  2. A failure of network components that will render over five percent (5%) of work stations inoperable
- b) Minor Failures are any other failures including a failure of any ancillary equipment such as intercom circuits, paging input arrangement, or any other telecommunications equipment or component

### 2. Response and Repair Time:

Based on the trouble classification, the response will be in the following manner:

- a) Major Failure - Immediate response during business hours (Monday-Friday, 7 A.M. - 11 P.M., Eastern Time) and within two (2) hours for off hours (Monday-Friday, 11 P.M. - 7 A.M., Eastern Time, and twenty-four (24) hours a day Saturday, Sunday, and holidays)

Remedial maintenance will begin immediately for a major malfunction, which may consist of remote diagnostics during the first fifteen (15) to thirty (30) minutes, after the repair notification time by the Customer, via the service provider tracking processes with the appropriate service ticket number, however if not corrected, the service provider's personnel must be on-site no less than forty-five (45) minutes during business hours and no less than two (2) hours during off hours from the repair notification time. Repair work shall start immediately and continue until the problem is resolved. All commercially reasonable efforts will be made to complete repairs within eight (8) hours from the time the Customer reported the incident.

- b) Minor Failure - Response within eight (8) business hours.

Repairs not defined as a major failure will begin as expeditiously as possible, and all commercially reasonable efforts shall be made to complete repairs within one (1) business day from the time the Customer reported the incident. Repairs may be made by a certified technical personnel either through a premise visit or via electronic access through the use of a remote maintenance terminal. However, in all cases, the repair must be confirmed and the status updated by the next business day by notification to the service provider. Response to minor service interruptions will take place within eight (8) business hours.

"Respond" is equated to having technical support and/or troubleshooting the problem within aforementioned times. Note that during the troubleshooting process, the service provider is coordinating directly with the Customer until the problem is resolved.

### 3. Miscellaneous:

- All parts and labor are included, unless the failure is due to abuse or misuse of the equipment or facilities
- Preventive maintenance routines are included
- Utility coordination with the local telephone company and other common carriers are provided
- Consultation services on the Customer's system are included.
- User training (beyond that provided in Section 8 of the Agreement) is optional, and at an additional cost
- Traffic studies to determine adequate system utilization (not to exceed two (2) annual Customer requested studies) are included

**Exhibit 6**  
**SATS Airport Rental and CUTE Agreements**

Page 1 of 22 02	Airline Customers (Excluding MOAD)	Customer Number
1	Abatis International	10391420
2	Aces - CUTE & Voice	10338645
3	ADT Securities	10506587
4	AeroMexico	10506587
5	Aerpostal - CUTE & Voice	10427644
6	Air France - CUTE	10450333
7	Air Jamaica	10518850
8	Air Tran Airways	10354615
9	American Airlines - CUTE & Voice	10363503
10	ASI Baggage	10381496
11	ASIG Miami Inc	10377170
12	Aserca Airlines	10519350
13	Atlas Air	10337970
14	AT&T	10344625
15	Avianca - CUTE & Voice	10484758
16	British Airways - CUTE & Voice	10408278
17	Cafe Versailles	10339696
18	Came Ice Cream Shop	10251663
19	Centers for Disease Control	10396494
20	Cirilo Rodriguez d/b/a Bright Additions	10363032
21	Commodore Aviation	10416024
22	Communtel	10404505
23	Continental Airlines	10421360
24	Copa - CUTE	10494895
25	Cyber Express	10464227
26	Evergreen International	10338837
27	Flagship (American Eagle)	10338283
28	Gray Construction	10497202
29	Gulfstream Airlines	10341784
30	Host Marmot	10406827
31	ICI	10422707
32	Lan Chile - CUTE	10377882
33	Martin Air - CUTE & Voice	10411203
34	Mexicana	10505015
35	Miami Airport Duty Free Joint Venture	10396900
36	Midway Airlines	10506157
37	National Airlines	10477140
38	Polar Air	10345528
39	Sirgany Bencomo	10407537
40	Sila Communications	10459735
41	Smarte Carte	10428523
42	Swiss Air	10462868
43	Taca International	10518491
44	Underground Construction	10514494
45	United Airlines	10342394
46	USDA - Cargo	10344972
47	USDA - Network	10427656
48	USDA - Terminal	10370069
49	USDA - Operations	10517502
50	USDA - Bldg 100	10518439
51	USDA - Bldg 701	10516440
52	Vang Brasil - CUTE	10467672
53	Virgin Atlantic - CUTE	10467591
54	Worldwide Concessions	10518818
55	Worldwide Flight Services	10464296
	<b>Expected New Contracts</b>	
	Global Concessions	TBD

MOAD - NetraOne Management Agreement  
 February 7, 2002



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IN THE CIRCUIT COURT OF THE  
11th JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA  
  
GENERAL JURISDICTION DIVISION  
  
CASE NO. 02-28688 CA (03)

BELLSOUTH TELECOMMUNICATIONS,  
INC.,

ORIGINAL

Plaintiff,

vs.

MIAMI-DADE COUNTY, a political  
subdivision of the State of  
Florida,

Defendant.

2601 South Bayshore Drive  
Miami, Florida  
May 21, 2003  
9:03 a.m.

DEPOSITION OF PEDRO J. GARCIA

Taken before LANCE W. STEINBEISSER,  
Registered Professional Reporter and Notary Public  
in and for the State of Florida at Large, pursuant  
to Notice of Taking Deposition in the above cause.

EXHIBIT

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APPEARANCES:

MITCHELL R. BLOOMBERG, ESQ. and  
NATALIE-CARLOS, ESQ.,  
of the firm of ADORNO & YOSS, P.A.  
on behalf of the Plaintiff

DAVID STEPHEN HOPE, and  
CYNJI A. LEE,  
Assistant Miami-Dade County Attorneys  
on behalf of the Defendant

Also present:

Sharon R. Liebman, Esq., BellSouth  
Jennifer Sasha Kay, Esq., BellSouth

WITNESS EXAMINATION PAGE

PEDRO J. GARCIA

BY MR. BLOOMBERG 4



1           A.    No, sir.

2           Q.    Now, the first sentence of this  
3 regulation says that airports are -- essentially  
4 I'm paraphrasing -- airports are exempt from other  
5 STS rules due to the necessity to ensure safe and  
6 effective transportation of passengers and freight;  
7 fair paraphrase?

8           A.    Yes.

9           Q.    The second sentence says the airport  
10 shall obtain a certificate as a shared tenant  
11 service provider before it provides shared local  
12 services to facilities such as hotels, shopping  
13 malls and industrial parks.

14           . . . . Do you see that? . . .

15           A.    Yes, I see it.

16           Q.    And are you providing facilities, shared  
17 local services to facilities such as hotels, shops  
18 and so forth?

19           A.    We're not providing service to any  
20 shopping malls.

21           Q.    Hotels?

22           A.    We're providing service to hotels --  
23 there's a management company that manages the hotel  
24 and it's a pass-through situation. We're not  
25 making any profit from that.

1 Q. So is that why you determined you don't  
2 need a certificate?

3 A. It was determined that we didn't need a  
4 certificate based on the overall interpretation of  
5 this paragraph. We're now providing services  
6 within the airport. We're not going outside to  
7 shopping malls or to outside hotels or any outside  
8 the airport property, which belongs to Miami-Dade  
9 County.

10 Q. And the hotel belongs to whom?

11 A. The hotel building belongs to Miami-Dade  
12 County, and we have a management company managing  
13 the operation.

14 Q. You mentioned that you started the  
15 process of applying for a certificate at some  
16 point?

17 A. Yes, sir.

18 Q. Who decided to apply? Who decided you  
19 needed to apply?

20 A. I don't believe it was anybody in  
21 particular. It was something that it was just  
22 decided to -- let's do it -- at the time we were  
23 engaged in purchasing the infrastructure from the  
24 service provider NextiraOne which was -- they were  
25 the owners of all the infrastructure at the time.

**FILE COPY**

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN  
AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 02-28688 CA 03

**BELLSOUTH TELECOMMUNICATIONS,  
INC.,**

Plaintiff,

vs.

**MIAMI-DADE COUNTY**, a political  
subdivision of the State of Florida,  
Defendant.

---

**MIAMI-DADE COUNTY'S ANSWER AND AFFIRMATIVE  
DEFENSES TO SECOND AMENDED COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF AND FOR ISSUANCE OF WRIT OF MANDAMUS**

Defendant, Miami-Dade County, by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses, to the Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus of Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth") and states:

1. Miami-Dade County (the "County") admits the allegations contained in Paragraphs 3, 6, and 15.
2. The County denies the allegations contained in Paragraphs 7, 14, 21, 22, 24, 27, 28, 30, 31, 32, 33, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 55, 57, 58, 60, 61, 63, 65, 72, 73, and 74 and therefore demands strict proof thereof.
3. The County is without knowledge as to the allegations contained in Paragraphs 4, 5, 54, and 62, and therefore denies the same and demands strict proof thereof.
4. Regarding Paragraph 8, the Miami-Dade County Home Rule Charter (the "Charter") speaks for itself.



5. Regarding Paragraph 9, the definition of "telephone utility" as used in the Charter speaks for itself.
6. Regarding Paragraph 10, § 364.02(13), Florida Statutes speaks for itself.
7. Regarding Paragraph 11, the County denies operating a telecommunications company offering two-way telecommunications services to the public for hire.
8. Regarding Paragraph 12, Florida Administrative Code Rule 25-9.002 speaks for itself.
9. Regarding Paragraph 13, Florida Administrative Code Rule 25-4.003(10) speaks for itself.
10. Regarding Paragraph 16, the County admits that the authority of the Miami-Dade County Board of County Commissioners (the "Board") shall not conflict with applicable general laws related or applying to Miami-Dade County.
11. Regarding Paragraph 17, § 364.01(2), Florida Statutes speaks for itself.
12. Regarding Paragraph 18, the County admits providing shared airport tenant services to airport tenants at Miami International Airport ("MIA").
13. Regarding Paragraphs 19 and 20, § 364.339, Florida Statutes speaks for itself.
14. Regarding Paragraphs 23, Article VIII, Florida Constitution of 1985 speaks for itself.
15. Regarding Paragraph 25, on January 29, 2002, the Board passed and adopted Resolution No. R-31-02 related to telecommunications, data network, and shared network services at County airport system facilities. The resolution authorized the: (i) purchase of leased telecommunications, data network, and common use terminal equipment infrastructure, software, licenses, permits, and other assets; and (ii) approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement (the "Agreement") with NextiraOne, LLC for an interim two (2) year period.

16. Regarding Paragraph 26, the Agreement speaks for itself.
17. Regarding Paragraph 29, on September 24, 2002, the Board passed and adopted Resolution No R-1091-02 authorizing the County Manager or designee to negotiate and execute airport rental agreements with tenants for shared airport tenant services telecommunications and data network access.
18. Regarding Paragraph 34, the County admits it has not submitted an application to the Florida Public Service Commission to obtain a certificate of public convenience and necessity.
19. Regarding Paragraph 35, the County denies providing two-way telecommunications services for hire at the airports.
20. Regarding Paragraph 38, the County denies that BellSouth: (i) provides similar services, as such services are defined by the Charter, to tenants at Miami International Airport ("MIA"); and (ii) has been providing such services at all times relevant. The County has no knowledge of any other statements in this paragraph, not specifically denied above.
21. Regarding Paragraph 66, §§ 364.02(13) and 364.32(1)(a), Florida Statutes speak for themselves
22. Regarding Paragraphs 67, § 364.33, Florida Statutes speaks for itself.
23. Regarding Paragraphs 68, § 364.339(2), Florida Statutes speaks for itself.
24. Regarding Paragraphs 69, §§ 364.33 and 364.335, Florida Statutes speak for themselves.
25. Regarding Paragraph 70, Florida Administrative Code Rule 25-24.567 speaks for itself.
26. Regarding Paragraph 71, Florida Administrative Code Rule 25-24.569 speaks for itself.
27. Any allegations of the complaint not specifically responded to above are hereby denied, and therefore the County demands strict proof thereof.

**AFFIRMATIVE DEFENSES**

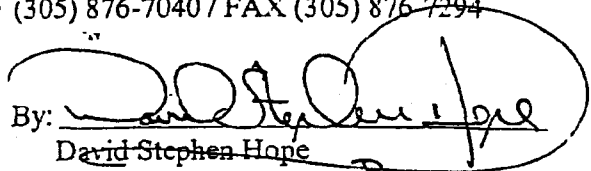
FIRST DEFENSE  
(Failure to State a Claim)

1. For each cause of action of the Second Amended Complaint asserted against Defendant, Plaintiff has failed to state a claim for which relief can be granted.

SECOND DEFENSE  
(Laches)

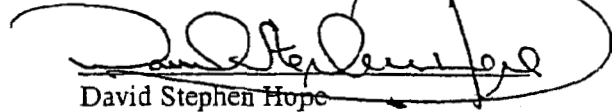
2. The County has operated a telecommunications, data network, and shared airport tenant services infrastructure and system, and provided such services at MIA since circa 1982. BellSouth has had knowledge of said infrastructure and system since its inception. The doctrine of laches is a bar to any and all claims of Plaintiff, given BellSouth's approximate twenty (20) year knowledge of the operation of the system and provision of services now challenged.

ROBERT A. GINSBURG  
Miami-Dade County Attorney  
Aviation Division  
P.O. Box 592075 AMF  
Miami, Florida 33159-2075  
(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 19th day of July 2004, to *Martin B. Goldberg, Esq.*, Lash & Goldberg LLP, 1200 Bank of America Tower, 100 Southeast 2nd Street, Miami, Florida, 33131; *Dorian Denburg, Esq.*, BellSouth Corporation, 1155 Peachtree Street, Suite 1700, Atlanta, Georgia 30309-3610; *Sharon Liebman, Esq.*, BellSouth Telecommunications, Inc., 150 West Flagler Street, Suite 1910, Miami, Florida 33130.



David Stephen Hope  
Assistant County Attorney

IN THE CIRCUIT COURT OF THE 11<sup>TH</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

BELLSOUTH TELECOMMUNICATIONS,  
INC., a foreign corporation,

GENERAL JURISDICTION DIVISION

Plaintiff,

CASE NO: 02-28688 CA 03

v.

NOTICE OF TAKING DEPOSITION

MIAMI-DADE COUNTY, a political  
subdivision of the State of Florida,

Defendant.

TO: David Hope, Esq.  
Assistant County Attorney  
County Attorneys Office  
P.O. Box 592075  
Miami, FL 33159-2075

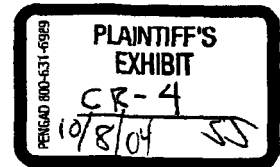
PLEASE TAKE NOTICE that the undersigned will take the deposition of the  
following party:

NAME: Corporate Representative(s) of MIAMI-DADE COUNTY, designated  
pursuant to Rule 1.310(b)(6), Florida Rules of Civil Procedure, with  
the most knowledge concerning (1) the identification of all persons  
who have knowledge regarding any of the issues in this lawsuit,  
including, but not limited to, the County's Answer to BellSouth's  
Second Amended Complaint and the County's Affirmative Defenses;  
and (2) for each person identified, the particular subject matter about  
which the person has knowledge.

DATE: October 8, 2004 *CH*

TIME: 10:00 a.m.

PLACE: Lash & Goldberg LLP  
100 S.E. Second Street, Suite 1200  
Miami, Florida 33131



upon oral examination before Kresse & Associates, Inc., a Notary Public, or any other  
officer authorized by law to take depositions in the State of Florida. The oral examination

BANK OF AMERICA TOWER  
SUITE 1200  
100 SOUTHEAST 2<sup>ND</sup> STREET  
MIAMI, FLORIDA 33131-2158

LASH & GOLDBERG LLP  
ATTORNEYS AT LAW

WESTON CORPORATE CENTER  
SUITE 400  
2500 WESTON ROAD  
FT. LAUDERDALE, FLORIDA 33311



will continue from day to day until completed. The deposition is being taken for the purpose of discovery, for use at trial, or such other purposes as are permitted.

Respectfully submitted:

**LASH & GOLDBERG LLP**

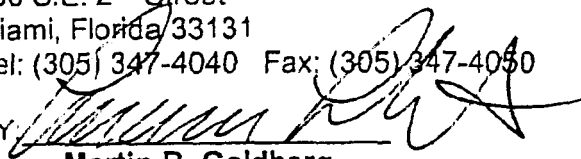
1200 Bank of America Tower

100 S.E. 2<sup>nd</sup> Street

Miami, Florida 33131

Tel: (305) 347-4040 Fax: (305) 347-4050

BY



**Martin B. Goldberg**

Florida Bar No. 0827029

**Lawrence B. Lambert**

Florida Bar No. 0032565

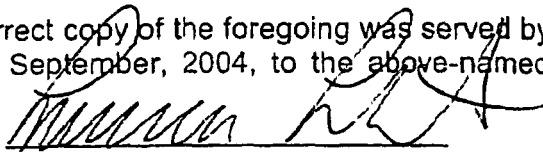
Dorian Denburg, Esq.  
Florida Bar No. 350291  
BellSouth Corporation  
1155 Peachtree Street, Suite 1700  
Atlanta, GA 30309-3610  
Tel: (404) 249-2608 Fax: (404) 249-5664

Sharon Liebman, Esq.  
Fla. Bar No. 0048828  
BellSouth Telecommunications, Inc.  
150 W. Flagler Street, Suite 1910  
Miami, Florida 33130  
Tel: (305) 347-5570 Fax: (305) 375-0209

Counsel for Plaintiff, BellSouth Telecommunications, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Facsimile and U. S. Mail on this 21<sup>st</sup> day of September, 2004, to the above-named addressee.



**Lawrence B. Lambert**

In Accordance with the Americans with Disabilities Act of 1990 (ADA), disabled persons who, because of their disabilities, need special accommodation to participate in this proceeding shall contact the Attorney ADA Coordinator, Martin B. Goldberg, at telephone number 305/347-4040 or telephone voice/TDD 1/800/955-8770, via Florida Relay System, not later than five business days prior to such proceeding.

cc: Kresse & Associates (Court Reporters) - Tel: 305/371-7692 Fax: 305/371-3525