

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

**VIDEO-TAPED DEPOSITION OF PEDRO J. GARCIA
DATED DECEMBER 15, 2004**

FINAL EXHIBIT NO. 24

13 of 29

DOCUMENT NUMBER-DATE

06979 AUG-98

FPSC-COMMISSION CLERK

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

CASE NO. 02-288688 CA 03

BELLSOUTH TELECOMMUNICATIONS,
INC., a foreign corporation,

Plaintiff,

vs.

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

Defendant.

COPY

THE VIDEOTAPED DEPOSITION

OF

PEDRO J. GARCIA

100 SE Second Street
Suite 1200
Miami, FL 33131

Wednesday, December 15, 2004

10:05 a.m.- 1:15 p.m.

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

Final Exhibit
No. 24

PSC 4637

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I N D E X

Witness	Direct	Cross
PEDRO J. GARCIA		
By Mr. Goldberg	4	

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THE VIDEOGRAPHER: Stand by. We're on the video.

THE REPORTER: Would counsel announce their appearances for the record?

MR. GOLDBERG: For the plaintiff, BellSouth Telecommunications, Martin Goldberg, law firm of Lash & Goldberg, present for the plaintiff.

Also for the plaintiff present is Sharon Liebman, in-house counsel for BellSouth. And also present in the room for the deposition is our paralegal from Lash & Goldberg, Denise Sosa.

MR. HOPE: David Stephen Hope, Assistant County Attorney, on behalf of defendant Miami-Dade County.

(Witness sworn)

THE WITNESS: I do.

THEREUPON:

PEDRO J. GARCIA,
a witness named in the notice heretofore filed,
having been first duly sworn, deposes and says as follows:

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DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Good morning, Mr. Garcia, how are you?

A Good morning, well, thank you.

Q Good. We are here for another deposition in the case of BellSouth Telecommunications versus Miami-Dade County.

For the record, you've been deposed in other contexts before in this case, correct?

A Correct.

Q So you're familiar with the process of being deposed, that's fair to say, correct?

A Yes, Sir.

Q Just as a shortcut, just want to remind you that you're under oath this morning. I will be asking you questions. If at any time I ask you a question that you don't understand, please do not answer the question; rather, I'd like you to tell me that you don't understand the question or it's confusing so that I can have an opportunity to rephrase the question so that you do understand it.

Is that okay with you?

A Yes, it is.

Q With that groundwork then, any time

1 that you do answer a question we will all assume
2 in this room, as well as anybody who watches the
3 videotape that's being prepared today or reads
4 the transcript that's being prepared today, we
5 will all assume that you understood the question
6 and answered it truthfully and completely and in
7 a non-misleading manner, because you are under
8 oath.

9 Is that okay with you?

10 A Yes, it is.

11 Q Okay, if at any time you need to take a
12 break for any reason or to consult with Mr. Hope,
13 who is your attorney, the County's attorney here
14 today, please let me know and we'll accommodate you.

15 A Okay.

16 Q I want to show what has been marked as
17 Plaintiff's Exhibit Cert, C-e-r-t, -1. All the
18 exhibits will be Cert, standing for
19 certification, starting with 1 through and
20 including whatever number we get up to.

21 This is the Notice of Taking Videotape
22 Deposition --

23 MR. HOPE: Thank you.

24 BY MR. GOLDBERG:

25 Q -- that has been issued for this

1 particular deposition proceeding.

2 Have you seen this document before?

3 A Yes, I have.

4 Q Are you here pursuant to this Notice of
5 Taking Videotaped Deposition which calls for the
6 corporate representative of Miami-Dade County
7 designated pursuant to Rule 1.310 with the most
8 knowledge concerning all facts related to
9 Miami-Dade County's decision, including knowledge
10 of all persons who participated in making the
11 decision, not to submit an application for
12 certification, including but not limited to a
13 Certificate of Public Convenience and Necessity,
14 and/or to provide Shared Tenant Services to the
15 Public Service Commission pursuant to a number of
16 Florida statutes?

17 Are you here as the County's corporate
18 representative pursuant to this designation I
19 just read?

20 A Yes, Sir.

21 Q And I may have forgot because I'm so
22 familiar with you since you've been deposed
23 today -- or before, can you just identify
24 yourself by name and spell your last name, and
25 then we'll do a little bit of background?

1 A My name is Pedro J. Garcia,
2 G-a-r-c-i-a.

3 Q How are you presently employed?

4 A I'm employed by the Miami-Dade Aviation
5 Department, which is the department of Miami-Dade
6 County, and I am the Chief of Telecommunications
7 for the Miami-Dade Aviation Department.

8 Q How long have you been in that position?

9 A Approximately a little over four years.

10 Q How long have you been working at the
11 County in total?

12 A About 15 years.

13 Q Can you describe generally your duties
14 in your current position that you've occupied for
15 the last four years?

16 A My position is responsible for the --
17 providing the voice -- I mean telephone services,
18 the data network, public address system, the
19 flight information displays at the airport, the
20 wireless services, beepers, cell phones.

21 And generally that's -- the dynamic
22 signs outside the roadway at the airport. That's
23 it.

24 Q Prior to your current position, since
25 you've been with the County 15 years, what was

1 the previous position you occupied?

2 A I was a position of -- I forgot what
3 the title is, but it's equivalent to what I have
4 now, it was like Chief of Telecommunications.

5 Basically I was heading a group of
6 engineers responsible for the installation of
7 telephone systems in all the county buildings.

8 Q How long did you occupy that position?

9 A Oh, 11 years.

10 Q In your current position who is your
11 direct superior or boss?

12 A It's Maurice Jenkins. He's the Manager
13 of Information Systems/Telecommunications.

14 Q Who does Mr. Jenkins report to?

15 A He reports to Bobbie Phillips, she's
16 the Assistant Director for Administrative
17 Services.

18 Q Who does Miss Phillips report to?

19 A Miss Phillips reports to -- to be
20 honest with you, I'm not sure if she reports
21 directly to the director of the airport or to
22 some deputy director, because they've been hiring
23 some folks recently and I'm not sure how that
24 reporting is going.

25 Q If there is a deputy director,

1 Miss Phillips would report to that deputy
2 director, is that fair to say?

3 A If it's in line with her
4 responsibility, yes.

5 I think that's what they're striving to
6 do, I'm not sure exactly what -- the new deputy
7 director started last week, I'm not sure if she
8 reports to him or not.

9 But that would be the. . .

10 Q And then is it fair to say that that
11 deputy director, if he or she is in the chain of
12 command here, reports to the director of the
13 airport?

14 A Yes.

15 Q Who is currently the director of the
16 airport?

17 A It's an interim director because the
18 director resigned or -- about a month ago, and
19 the name of the interim director is Carlos
20 Bonzon, B as in boy, -o-n-z-o-n.

21 Q Notwithstanding this hierarchy, going
22 back to the Notice of Deposition, the County has
23 designated you to be the corporate representative
24 with the most knowledge of the issue raised in
25 the notice, that being what I'll summarily refer

1 to as certification?

2 A Yes.

3 Q How was that designation accomplished?

4 Or in other words, how were you designated to
5 appear today pursuant to this Notice of Taking
6 Deposition?

7 A Well, we had a discussion, and between
8 my boss, Mr. Jenkins, and Mr. Hope, and basically
9 the recollection of the events that -- regarding
10 the certification that we -- basically what went
11 on regarding the certification about three years
12 ago, four years ago, it was deemed that I knew as
13 much as anybody else about this event that took
14 place.

15 And that was -- it was decided for me
16 to come here.

17 Q You understand, since you are appearing
18 as a corporate representative, that you have an
19 obligation as a corporate representative to
20 appear with the most knowledge that the County --
21 or the County can infuse you or provide you with
22 the requisite knowledge to answer the questions
23 at this deposition today?

24 Do you understand that?

25 A Not exactly.

1 Q Okay, well let me ask it another way:
2 Other than whatever personal knowledge you have
3 with respect to this issue, what have you done to
4 prepare for answering the questions at this
5 deposition today?

6 A Like I said before, we had a meeting
7 with my boss, Mr. Jenkins, and we talked about,
8 to the best of our recollection, what took place
9 regarding this certification issue about three or
10 four years ago, and it was decided that I knew as
11 much as anybody else about this -- what took
12 place then.

13 Q All right, let's talk about that
14 meeting first, then I'll go back to any
15 additional preparation.

16 First, when did that meeting take place
17 between you, Mr. Jenkins and Mr. Hope?

18 A Monday.

19 Q Would that be Monday, December 13th?

20 A 13th, right.

21 Q And today, just for the record, is
22 December 15th, on Wednesday?

23 A Correct.

24 Q Where did the meeting take place?

25 A In Mr. Hope's office, in the conference

1 room.

2 Q Just for the record, Mr. Hope is the
3 attorney here today, he's an Assistant County
4 Attorney, correct?

5 A Yes, Sir.

6 Q How long did the meeting take place?

7 A Maybe 20 minutes, half-hour.

8 THE REPORTER: Keep your voice up,
9 please THE WITNESS: 20 minutes,
10 half-hour. I'm sorry.

11 BY MR. GOLDBERG:

12 Q Did you review any documents during
13 that meeting? And I just want a yes or no answer.

14 A No.

15 MR. GOLDBERG: Mr. Hope, are you
16 taking the position that that meeting was
17 a privileged meeting?

18 MR. HOPE: Yes.

19 BY MR. GOLDBERG:

20 Q Outside of that 20-minute meeting that
21 you had with Mr. Hope and Mr. Jenkins, what other
22 preparation have you undertaken to answer the
23 questions here at this deposition?

24 A None whatsoever.

25 Q Can I ask why you haven't undertaken

1 any additional preparation to respond to
2 questions posed during this deposition pursuant
3 to the notice marked as Cert-1?

4 A There was really, in my opinion there
5 was nothing to prepare, because there was really
6 not that much that went on regarding this issue.

7 Q Have you reviewed any of your prior
8 testimony given in this case prior to today?

9 A I should have, but I have not. I
10 haven't had the time.

11 Q Let me show you what's been marked as
12 Plaintiff's Exhibit Cert-2. This is the County's
13 Answer and Affirmative Defenses to the Second
14 Amended Complaint filed in this case, is that
15 correct?

16 A I have no idea. This is legalese to
17 me, I don't know what a second amended complaint
18 is, so. . .

19 MR. GOLDBERG: Well, let me do it
20 this way: Can I ask for a stipulation
21 from Mr. Hope that this is the County's
22 Answer and Affirmative Defenses to the
23 Second Amended Complaint that the County
24 filed in this case?

25 MR. HOPE: So stipulated.

1 MR. GOLDBERG: Thank you.

2 BY MR. GOLDBERG:

3 Q And just for your frame of reference,
4 if you look at the first page of the document,
5 does it not say Miami-Dade County's Answer and
6 Affirmative Defenses to Second Amended Complaint?

7 A Yes, it does.

8 Q Okay, so that's English and not
9 legalese, correct?

10 A That's the first three lines here, but
11 I don't know what the Affirmative Defenses to
12 Second Amended Complaint, I have no what that is.

13 Q Okay, let me direct your attention to
14 paragraph 12 of this answer that's been filed by
15 the County on page 2, and does it say at
16 paragraph 12 that the County admits providing
17 shared airport tenant services to airport tenants
18 at Miami International Airport?

19 MR. HOPE: Before he answers that, I
20 think he probably should see the Second
21 Amended Complaint so he can see the
22 paragraph 18, so he understands
23 completely what the answer refers to.

24 MR. GOLDBERG: Okay, do you have the
25 Second Amended Complaint here?

1 MR. HOPE: Sure, I do. Are you
2 going to enter it?

3 MR. GOLDBERG: That would be great.

4 MR. HOPE: I have a marked-up
5 version, so this one can't come in.

6 MR. GOLDBERG: Okay, well, you want
7 to go grab the Second Amended Complaint?
8 That's fine.

9 Why don't we go off the record right
10 now while we get the Second Amended
11 Complaint?

12 THE VIDEOGRAPHER: Going off the record.

13 MR. HOPE: Sure.

14 (Recess)

15 MR. GOLDBERG: Go back on the
16 record. Since the counsel --

17 THE VIDEOGRAPHER: Sorry, let me
18 queue it up. Back on the record.

19 BY MR. GOLDBERG:

20 Q Prior to the break your counsel asked
21 that you be shown a copy of the Second Amended
22 Complaint in this case, particularly
23 paragraph 18, so what I've done is we have
24 retrieved the Second Amended Complaint, I've
25 marked it as Cert-3.

1 I can direct you to paragraph 18, why
2 don't you review that? And then I'm going to
3 come back to my question. Let me know when
4 you've reviewed it.

5 A Okay.

6 Q And while you're reviewing the Second
7 Amended Complaint why don't you also review
8 paragraph 34? That would relate to an additional
9 question I'll ask in a few seconds.

10 A Okay.

11 Q Going back to, again directing you to
12 Exhibit Cert-2, the County's answer in this case
13 that's been filed, at paragraph 12 does not the
14 County admit to providing shared airport tenant
15 services to airport tenants at Miami
16 International Airport?

17 A Yes.

18 Q And let me direct your attention to the
19 answer again at paragraph 18 of the County's
20 answer, does not the County admit at paragraph 18
21 that it has not submitted an application to the
22 Florida Public Service Commission to obtain the
23 certificate of public convenience and necessity?

24 A Yes.

25 Q If you could, Mr. Garcia, I'd like you

1 to outline for the Court in this case, or any
2 other third party or entity that views this
3 videotape or reads this deposition, each and
4 every reason why the County has not applied for a
5 certificate of public convenience and necessity
6 from the Florida Public Service Commission.

7 A To the best of my recollection, what
8 took place three or four years ago was that the
9 question came up about the whole certificate
10 issue, and I remember myself reading the Florida
11 statutes regarding the airport section to shared
12 tenant services, we talked to the -- our
13 counterparts at the Orlando airport --
14 International Airport in Florida, and basically
15 based on -- I also looked through the application
16 that -- to apply for the certificate, just to see
17 what kind of questions were needed to be answered
18 to apply to that certificate, and basically based
19 on those two inputs, basically the documents that
20 we read from the PSC and the information we
21 obtained from Orlando airport, it was deemed that
22 there was really no need for the airport to apply
23 for the certificate, because of the exception
24 that is granted by the PSC according to those two
25 inputs.

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1 Q Now in your answer you I believe told
2 me a little bit about the process or, you know,
3 the circumstances involved in making this
4 decision, and I will get to that later.

5 My question was, I'd like you to list
6 for me, first, second, third, what the reasons
7 were why the County decided not to file an
8 application for certificate of public convenience
9 and necessity from the Public Service Commission.

10 A Okay, the Florida -- the pertinent
11 Florida statutes that refer to this area, which I
12 don't have the number in my head right now, I
13 recall specific it stated that the airports are
14 exempt from getting certificates for this service
15 as long as the service is used for the safe and
16 efficient and protection of the airport, the
17 passengers and cargo operating the airport.

18 Also, secondly, the information that we
19 received from the Orlando staff was that they had
20 been involved in some case regarding this
21 certificate with the PSC, and also in their
22 opinion they never obtained the certificate, even
23 though they're providing the same services or
24 similar services that are offered at the airport
25 to tenants, and they felt that they -- there was

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1 no need for any airport to obtain that
2 certificate.

3 Those are basically the two reasons.

4 Q Other than -- well, strike that.

5 So the first reason, if I understand
6 you, is that the County determined that the
7 airport exemption rule applied, and therefore
8 relieved the County of any obligation to apply
9 for a certificate of public convenience and
10 necessity, is that correct?

11 A Yes.

12 MR. HOPE: Objection to form.

13 BY MR. GOLDBERG:

14 Q And the second reason you've given is
15 that Orlando airport -- was based on your
16 conversations with the Orlando airport?

17 A Right.

18 Q Are there any other reasons, factual or
19 otherwise, that were considered in making the
20 County's decision not to apply for a certificate
21 from the PSC?

22 A Not to my knowledge.

23 Q Well, you understand as a -- appearing
24 as a corporate representative that it was your
25 obligation to obtain all the facts and knowledge

1 with respect to that decision that was made,
2 correct?

3 A Correct.

4 Q Okay, so -- and you also understand as
5 the corporate representative what you say here
6 today binds the County as a party in this case,
7 correct?

8 A Correct.

9 Q So when you say not to your knowledge,
10 are we all correct to assume that that's not to
11 the County's knowledge?

12 MR. HOPE: Objection to form.

13 THE WITNESS: It's to my knowledge.

14 BY MR. GOLDBERG:

15 Q When was this decision made not to
16 apply for a certificate from the PSC?

17 A I can't recall a specific date. Like I
18 said, we were -- there was some investigation
19 done regarding these two issues that I mentioned
20 before, the Orlando and the reviewing of the PSC
21 documents, and at some point the issue just died.

22 It was no, not really -- there was no
23 meetings, there was no formal decision, there was
24 no letter, there was no memo, it was just not --
25 we went on to other things and didn't pursue the

1 matter.

2 Q Again let me go back to my question,
3 when approximately --

4 A Three or four years ago.

5 Q Who was involved in any manner, shape
6 or form in making this decision and/or
7 considering the two reasons that you've given?

8 A If it was -- it was -- my boss was
9 obviously involved in this, Mr. Jenkins, and it
10 was basically at the time I didn't even -- I
11 don't think I even met with Mr. Hope at the time
12 of this.

13 It was just basically, it was an
14 informal thing between me and my boss. I don't
15 know whether he actually spoke to anyone else.

16 And I basically -- it was a process
17 that it was by omission, I guess, we didn't
18 pursue the matter any further.

19 Q So if you had to list out for me the
20 people who were involved in making the decision,
21 who would they be, please?

22 A Just me and Mr. Maurice Jenkins.

23 Q Nobody else?

24 A No.

25 Q Was that discussion reviewed with

1 anybody else at the County?

2 A Like I said, it was not a decision that
3 somebody told me: Let's not do it. It was just
4 by omission. It was not -- I was not told to do
5 it, so it just died.

6 I went on to other things.

7 Q Is it your testimony under oath today
8 that Mr. Hope, the Assistant County Attorney, was
9 not involved in that decision?

10 A It is my -- what I'm saying is that I
11 don't recall having direct conversations with
12 Mr. Hope at the time on this issue.

13 I don't really know if he was involved
14 in any manner. I don't recall having
15 conversations with him on this issue.

16 Q Let me see if I can refresh your
17 recollection on that point. Do you recall being
18 deposed in this case on approximately May 21st of
19 2003?

20 A Not really, but I'll take your word for it.

21 Q Are you saying you don't recall
22 appearing for a deposition that was taken by an
23 attorney for BellSouth named Mitchell Bloomberg
24 down in Coconut Grove in May of 2003?

25 A I recall being deposed at that

1 location. I don't know exactly the date.

2 Q At page 20 of that deposition you were
3 asked the following question and you gave the
4 following answer:

5 "Question: Were you personally
6 involved in any discussions concerning
7 whether or not there was a certification
8 requirement from the PSC?

9 "Answer: Yes, we had conversations,
10 Maurice Jenkins and counsel and other
11 people."

12 Now after reading that to you does that
13 refresh your recollection as to whether or not
14 Mr. Hope or any other counsel were involved in
15 the -- making this decision?

16 A It's possible, maybe my mind was better
17 at the time, it was closer to the event, it's
18 possible that he could have been involved in the
19 conversation.

20 I'm not saying that he wasn't. I just
21 didn't recall at this time that he was. But
22 maybe he was.

23 Q You would agree with me that your
24 memory of these events was more likely better on
25 May 21st, 2003, when you gave the deposition I

1 just read from, than today in late 2004?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Yes.

4 BY MR. GOLDBERG:

5 Q In refreshing your recollection, your
6 answer on page 20 at lines 15 or 16 I just read
7 to you referenced not only Maurice Jenkins,
8 counsel, but, quote unquote, other people.

9 Does that refresh your recollection as
10 to anybody else that may have been involved in
11 the making of this decision not to apply for a
12 certificate from the PSC?

13 A It refreshes my recollection that I
14 probably said other people.

15 The reason I said other people is
16 because I didn't remember whether -- who were
17 those people or if there were any other people.
18 It was just a general statement that it's
19 possible, but I didn't recall.

20 Q Now back at the time this decision was
21 being contemplated, did that -- isn't it correct
22 that that coincided with the County's decision,
23 resolution and transaction to purchase all of the
24 assets of Nextira and take over the STS services
25 provided at the airport?

1 MR. HOPE: Objection to form.

2 THE WITNESS: Well, that agreement
3 was signed effective 20 -- February 2002,
4 I believe, so if the deposition as you
5 mentioned was 2003, it was after the 2002
6 agreement.

7 BY MR. GOLDBERG:

8 Q No, my question is would you agree that
9 the timing of your -- the County's decision
10 whether to apply or not to apply to the PSC as
11 you've testified to today coincided with the time
12 period at which the County purchased the Nextira
13 assets?

14 A It's within a few months of that event,
15 yes.

16 Q Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q Well, then let me ask you in a more

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

1 decision not to file?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Right.

4 BY MR. GOLDBERG:

5 Q Are you aware of any documents, notes,
6 or memoranda that were generated as a result of
7 this decision-making process regarding whether to
8 apply to the PSC for a certificate?

9 A Do you mean does it exist today?

10 Like I said, this was not a formal
11 process, there was no memos, formal memos written
12 from anybody saying do not do this, or asking
13 whether we should do this.

14 It was mostly an information-gathering
15 situation that, you know, I had -- I have the PSC
16 documents in my files, and then we talked to the
17 Orlando folks, and it was over the telephone
18 conversation.

19 We went there to Orlando to visit and
20 see what they were doing there, for that and
21 other reasons, and spend the day there meeting
22 with them and looking around the airport and see
23 how they were doing, not only -- you know,
24 different installations that they had.

25 And the result of all of that was the

1 decision that we didn't need to apply for the
2 certificate.

3 MR. GOLDBERG: Can you read back my
4 last question, please?

5 Thank you.

6 (Record read by reporter)

7 BY MR. GOLDBERG:

8 Q Did you have an opportunity to listen
9 to that question again?

10 A Yes.

11 Q Okay, I think it calls for a yes or no
12 answer, of course you can explain, but could you
13 begin with a yes or no answer as to whether there
14 were any document as I phrased in the question?

15 THE WITNESS: Can you read the
16 question again?

17 (Record read by reporter)

18 THE WITNESS: No, there's no -- as
19 far as I remember there was no documents
20 regarding the decision not to apply for
21 the certificate.

22 BY MR. GOLDBERG:

23 Q There is no -- is there any analyses --
24 strike that.

25 So am I to assume that there is no

1 analyses or written discussion prepared regarding
2 the two reasons that you've given that went into
3 making the decision?

4 MR. HOPE: Objection to form.

5 THE WITNESS: All I recall is having
6 the PSC documents, which I've had for
7 years, and I put some yellow markings on
8 it and -- to the pertinent paragraphs,
9 and I don't recall any formal documents
10 regarding the decision or -- there could
11 be, I just don't recall. It's been a
12 while since I had that file. It was. . .

13 BY MR. GOLDBERG:

14 Q You said that this didn't involve a
15 formal process, did I hear you correctly?

16 A Yes.

17 Q Does the County consider its legal
18 obligations with respect to the Florida Public
19 Service Commission as serious and important
20 issues?

21 MR. HOPE: Objection to form.

22 THE WITNESS: Yes.

23 I just remembered, there could be
24 the application form itself, I might
25 still have that in my files. That's the

1 one document that I remember reviewing.

2 BY MR. GOLDBERG:

3 Q You'd agree with me that whether or not
4 the County complies with Florida statutes as it
5 relates to the PSC or the Florida Public Service
6 Commission's rules and regulations is a pretty
7 important and serious issue, correct?

8 A Yes.

9 Q And you'd agree that the County would
10 seemingly want to endeavor to ensure to the best
11 of its ability to analyze and make every effort
12 to comply with any obligations that may exist?

13 MR. HOPE: Objection to form.

14 BY MR. GOLDBERG:

15 Q Do you agree with that?

16 A Yes.

17 Q So then can you explain to me why the
18 decision as to whether or not to apply to the PSC
19 for a certificate was -- did not involve a formal
20 process and was simply a couple of people getting
21 together and looking at some documents in a very
22 short period of time and, as you've testified,
23 just sort of being dropped and never followed up
24 on?

25 MR. HOPE: Objection to form.

1 THE WITNESS: Can I explain why that
2 happened? No.

3 BY MR. GOLDBERG:

4 Q Do you think, looking back, that it was
5 an appropriate manner in which to make the decision?

6 MR. HOPE: Objection to form.

7 THE WITNESS: The decision was made
8 by the parties that had the most
9 knowledge on the subject matter, based on
10 information received and documents and
11 discussing with Orlando, like I said, and
12 I think it was a good decision based on
13 fact. And that's all I can say.

14 I don't, you know, I don't know how
15 much of a process that would have been
16 appropriate, but we felt that we -- that
17 the decision was made with the right
18 facts and in the best interests of the County.

19 BY MR. GOLDBERG:

20 Q You said it was made by the proper
21 parties. When you use the word parties, does
22 that mean -- was that referring to you and
23 Mr. Jenkins and counsel, as you recall that may
24 or may not have been involved?

25 A Yes, that was what I was referring to.

1 Q Do you have any -- and one of the
2 reasons you've given -- the first reason you gave
3 was an interpretation I guess of the airport
4 exemption rule or a Florida statute/law, is that
5 correct?

6 A Yes.

7 Q Okay, let me first ask you, do you have
8 any legal training or experience, formal legal
9 training or experience?

10 A No.

11 Q Does Mr. Jenkins have any formal legal
12 training or experience?

13 A Not to my knowledge.

14 Q Have you ever appeared before the
15 Florida Public Service Commission in any capacity
16 in your career?

17 A No.

18 Q To your knowledge has Mr. Jenkins ever
19 appeared before the Florida Public Service
20 Commission in any capacity in his career?

21 A Not to my knowledge.

22 Q Have you ever written any documents
23 which interpret the Florida telecommunications
24 statutes or rulings and regulations in your
25 career?

1 A In my previous job I was -- part of my
2 responsibilities was to be the liaison with the
3 issues related to the Public Service Commission
4 regarding provisioning of local service,
5 interaction with Bell Companies and local service
6 providers, and I've always been involved in this,
7 it was part of my responsibilities, it was
8 actually in my -- writing in my responsibilities:
9 to be that person dealing with the regulatory
10 matters.

11 Q And what years did you occupy that
12 position?

13 A Eleven years, from the -- 15 years ago,
14 I guess -- where are we at, 2003? So it's, do
15 the math --

16 THE REPORTER: So what?

17 THE WITNESS: It's from I guess
18 with, '88, somewhere in there.

19 BY MR. GOLDBERG:

20 Q Have you ever dealt previously with
21 what you referred to as the airport exemption
22 rule, prior to --

23 A I've seen it, but I never dealt with
24 it.

25 I mean I had the document in my

1 possession before I ever started working at the
2 airport, but -- I remember reading it, but not
3 involved in the sense that it was an issue that I
4 was involved in, no.

5 Q Prior to this decision being made,
6 other than reading the airport exemption rule,
7 can you tell me what other experience you've had
8 in working with that rule or analyzing that rule
9 or applying that rule?

10 A None.

11 Q Prior to this decision being made in
12 2002 by the County can you tell me whether
13 Mr. Jenkins had any prior experience with the
14 airport exemption rule or worked with that rule
15 or applied it in any manner, shape or form?

16 A I cannot answer that. I don't know.

17 Q Are you aware of any experience he had
18 with that rule?

19 MR. HOPE: Objection to form.

20 THE WITNESS: I don't -- I'm not
21 aware of it, but I don't know.

22 BY MR. GOLDBERG:

23 Q Other than reading the text of the
24 airport exemption rule, were you aware then of
25 any other legal or factual authority that

1 supported your interpretation of the airport
2 exemption rule?

3 A Well, Orlando Airport provided
4 information, because I believe they were involved
5 in a legal process with the Public Service
6 Commission, and we had discussions and they
7 provided opinions regarding our situation based
8 on their own experiences.

9 Q Other than the Orlando Airport
10 discussion, which we'll talk about later, is
11 there any other legal, factual or other authority
12 that supported your interpretation of the airport
13 exemption rule, leading you not to file an
14 application for a certificate?

15 A No.

16 Q Since the time of making that decision
17 have you been made aware or are you knowledgeable
18 about any legal, factual or other authority that
19 supports the County's decision not to file an
20 application for a certificate with the PSC?

21 A Not any -- no, I'm not aware of any new
22 information since that time. I have not reviewed
23 that subject matter.

24 Q Prior to the decision being made as to
25 whether or not the County should file an

1 application for a certificate, did the County
2 receive any legal opinion to support your
3 position or decision not to file?

4 A You mean from outside, other than the
5 counsel present?

6 Q Any legal opinions.

7 A I really can't say whether the County
8 received any legal opinion from counsel, because
9 he might have said something when I wasn't
10 present.

11 But we didn't receive any opinions from
12 anybody outside, other than the -- our counsel.

13 Q Since the time the decision was made
14 not to file an application in 2002, has the
15 County received any legal opinion that you're
16 aware of that supports that decision?

17 A Not to my knowledge.

18 Q Has the County received any legal
19 opinion that goes contrary to that decision?

20 A Not to my knowledge.

21 Q Prior to the time the County's decision
22 was made not to file an application with the PSC
23 in 2002, did the County make any attempts to
24 contact the Public Service Commission to review
25 whether or not the PSC believed that the County

1 needed to file a certificate?

2 A Not to my knowledge.

3 Q Since the time the decision was made by
4 the County in 2002 not to file an application for
5 a certificate with the PSC, has the County in any
6 manner, shape or form made an effort to contact
7 the PSC to revisit or review that prior decision?

8 A I believe there has been one contact
9 made by my boss, perhaps, to some member of the
10 PSC. Maybe they exchanged some e-mails, one
11 e-mail. It wasn't a formal -- there was a
12 contact, it wasn't a formal thing.

13 But I never saw the, I never saw the
14 documentation or the e-mails.

15 Q Going back to two questions ago, just
16 to make sure the record is clear, did you --
17 strike that -- were you involved in any
18 communications with the PSC regarding whether to
19 file an application for a certificate, either
20 before the decision was made not to file or after
21 the decision was made not to file?

22 A No.

23 Q Has the County filed any application
24 with the Florida Public Service Commission for
25 the provision of any telephone service at the

1 Miami International Airport or any other airports
2 here in Miami-Dade County?

3 A Not to my knowledge.

4 Q When you testified about the decision
5 made to file or not to file a certificate, are
6 you stating that it was the County's decision and
7 the County's decision alone not to file a
8 certificate?

9 MR. HOPE: Objection to form.

10 BY MR. GOLDBERG:

11 Q Did you understand my question? I'll
12 withdraw it and I will ask it again.

13 When we have been speaking about the
14 County's decision not to file a certificate with
15 the PSC, I want to make sure the record is clear
16 that that decision was made by the County and not
17 by, or affected by any other third party such as
18 Nextira or any other entity?

19 A Oh, no, it was definitely only the
20 County making that decision.

21 Q And at that time in 2002 would you
22 agree with me that it was the County's
23 responsibility to make that decision as to
24 whether or not to file or not file?

25 A Yes.

1 MR. HOPE: Objection to form.

2 BY MR. GOLDBERG:

3 Q Let's talk about the two reasons that
4 you've given. Let's take them one by one. The
5 first reason you gave was that you believe that
6 the Miami International Airport -- strike that --
7 that the County is relieved of an obligation to
8 file a certificate with the PSC because of what
9 you've called the airport exemption rule, is that
10 correct?

11 A Correct.

12 Q What is it about the airport exemption
13 rule that led you to believe that the County need
14 not file a certificate?

15 A Well, it's the words that are stated in
16 the PSC document that the airports are exempt
17 from getting a certificate as long as the
18 services are provided for the safe and efficient
19 processing of passengers at the airport.

20 Q So is it your view that -- strike that.
21 Is there any other aspect of the
22 airport exemption rule that you believe supports
23 the County's decision not to have to file an
24 application with the PSC?

25 A Well, it's the content of the document.

1 I don't have the document in front of me, but
2 there's a couple of places where there -- that is
3 stated, and based on the document's content it
4 was, it was deemed that that wasn't necessary

5 Q Let me show you what I've marked as
6 Cert-4, which is a copy of what's been referred
7 to in this deposition as the airport exemption
8 rule, Rule 25-24.580.

9 Let me know when you've had an
10 opportunity to review that.

11 A Yes, I have.

12 Q Now in your answers under oath at this
13 deposition you have summarized, I will use the
14 word, the first sentence of the airport exemption
15 rule which says, and I'll read it: "Airports
16 shall be exempt from other STS rules due to the
17 necessity to ensure the safe and efficient
18 transportation of passengers and freight through
19 the airport facility."

20 A Right.

21 Q Correct? Is that the sentence that you
22 relied on in making the decision not to apply for
23 a certificate?

24 A That was one sentence. We basically
25 relied on this whole paragraph that you just

1 showed me here.

2 Q Well, what else in the paragraph are
3 you relying -- were you relying on that supported
4 your decision not to apply?

5 A It was deemed that the airport
6 basically is complying with this whole paragraph.

7 Q Tell me how.

8 A Well, we have -- we serve a hotel;
9 however, we are partitioning the trunks. We are
10 not providing --

11 THE REPORTER: Serving a hotel?

12 THE WITNESS: We are serving -- we
13 are providing services to a hotel, to the
14 airport hotel, but we are partitioning
15 the trunks, and we're not serving
16 shopping malls and industrial parks.

17 And so therefore, according to what
18 this paragraph says, we have the right to
19 provide STS services without a certificate.

20

21 BY MR. GOLDBERG:

22 Q Any other reasons from the airport
23 exemption rule that you believe support your
24 decision?

25 A Not from this -- well, as far as this

1 paragraph is concerned, we meet all those
2 requirements.

3 Q Let me focus in on the second sentence
4 of the airport exemption rule. It says: "The
5 airport shall obtain a certificate as a shared
6 tenant service provider before it provides shared
7 local services to facilities such as hotels,
8 shopping malls and industrial parks."

9 Did I read that correctly?

10 A Yes.

11 Q Now the airport provides shared tenant
12 services to a hotel, correct?

13 A Correct.

14 Q And is it your testimony that, because
15 you don't provide telephone service to a shopping
16 mall or an industrial park, that there is no need
17 to file a certificate?

18 MR. HOPE: Objection to form.

19 THE WITNESS: Right.

20

21 BY MR. GOLDBERG:

22 Q Can you explain to me how you've taken
23 into account the wording of this sentence in
24 reaching the conclusion that you just reached,
25 where it says that before -- "The airport shall

1 obtain a certificate as a shared tenant service
2 provider before it provides shared local services
3 to facilities such as hotels, shopping malls and
4 industrial parks?

5 A Well --

6 Q And I emphasize, just for the record,
7 the words "such as." Don't you read that to be
8 non-limiting and meaning that the hotels,
9 shopping malls and industrial parks are just
10 simple examples of commercial entities?

11 MR. HOPE: Objection to form.

12 THE WITNESS: Well, but then you're
13 missing the last paragraph which says, if
14 the airport partitions its trunks, it
15 shall be exempt from the other STS rules
16 for service provided only to the airport
17 facility.

18 So because we partitioned the trunks
19 providing services to the hotel, that
20 qualifies for providing the service
21 without the certificate.

22 BY MR. GOLDBERG:

23 Q And we will discuss that and the third
24 sentence in due course, we'll get there, I
25 promise you. Let's go back to my question which

1 you didn't answer.

2 You would agree with me, would you not,
3 that the language of the rule that says
4 facilities such as hotels, shopping malls and
5 industrial parks is non-limiting, meaning that
6 hotels, shopping malls and industrial parks are
7 just examples of, quote unquote, these facilities?

8 MR. HOPE: Objection to form.

9 THE WITNESS: No, I don't agree with
10 you, because the "however" right after
11 that statement qualifies that statement
12 that you just read, so you cannot take it
13 on its own merit because the next
14 sentence qualifies that statement.

15 BY MR. GOLDBERG:

16 Q So when you made the decision --

17 A Excuse me. Go ahead.

18 Q Just so I understand you, is it your
19 testimony that when the County made the decision
20 not to apply for a certificate to the PSC, that
21 it read this sentence as only pertaining to
22 hotels, shopping malls and industrial parks, and
23 no other type of facility or commercial entity
24 like that?

25 MR. HOPE: Objection to form.

1 THE WITNESS: We read the statement
2 that if we -- since we did not provide
3 service to shopping malls and industrial
4 parks, but we did provide to a hotel with
5 partition trunks, we met the requirements
6 of this paragraph.

7 BY MR. GOLDBERG:

8 Q So in your decision -- strike that.

9 In the discussion that you had with
10 Mr. Jenkins leading to this decision, you only
11 considered hotels, shopping malls and industrial
12 parks, and gave no thought or weight to whether
13 or not the County was providing telephone service
14 to any other, quote unquote, facility, is that
15 correct?

16 MR. HOPE: Objection to form.

17 THE WITNESS: We gave consideration
18 to the three items that are mentioned in
19 this paragraph.

20

21 BY MR. GOLDBERG:

22 Q And no others, is that correct?

23 A Correct.

24 Q Now sitting today in 2004 with me
25 reading this airport exemption rule to you and

1 highlighting that the text says facilities such
2 as, quote unquote, would you agree with me that
3 your construction and reading of this language
4 back in 2002 was incorrect?

5 MR. HOPE: Objection to form.

6 THE WITNESS: No, I don't agree with you.

7 BY MR. GOLDBERG:

8 Q So as you sit here today and it's been
9 read to you and you've looked at it, is it your
10 testimony that the airport exemption rule only
11 relates to a hotel, to a shopping mall and to an
12 industrial park, but to no other similar, quote
13 unquote, facility?

14 MR. HOPE: Objection to form.

15 THE WITNESS: Our interpretation was
16 to consider the three, the three
17 facilities mentioned here, and those are
18 the ones that we considered.

19 BY MR. GOLDBERG:

20 Q And my question that I asked which was
21 not answered and I will ask again is, as you sit
22 here today in December 2004, after having read
23 the airport exemption rule at this deposition,
24 and having discussed it, is it still your view
25 that the airport exemption rule is limited to

1 three entities and three entities alone: a hotel,
2 a shopping mall, an industrial park, and no other
3 similar type, quote unquote, facility?

4 MR. HOPE: Objection to form.

5 THE WITNESS: I have the same
6 interpretation that I had in 2002.

7 BY MR. GOLDBERG:

8 Q Please explain to me then how you
9 interpret the words "such as" in that sentence.

10 A Well, facilities that are hotels,
11 shopping malls and industrial parks, and since
12 they're not -- any other facilities that might be
13 implied here are not stated here, how can you
14 consider something that you don't know what it is?

15 So they were not considered.

16 Q Going to the next sentence: "However,
17 if the airport partitions its trunks, it shall be
18 exempt from other STS rules for service provided
19 only to the airport facility."

20 Now you said -- was that sentence
21 considered in 2002 in making your and
22 Mr. Jenkins' decision not to file for a
23 certificate with the PSC?

24 MR. HOPE: Objection to form.

25 THE WITNESS: Yes, it was considered.

1 BY MR. GOLDBERG:

2 Q Tell me how it was considered and how
3 it supported your decision not to file for a
4 certificate.

5 A Well, we had -- we were servicing the
6 hotel, we had partitioned the trunks, and we were
7 not providing services to industrial parks or
8 shopping malls, so that didn't apply.

9 So we were meeting the rule of
10 partitioning trunks to the hotels.

11 Q By the way, let me go back to the prior
12 sentence for a second, I apologize, we'll come
13 back to the last sentence.

14 The words "shopping malls," how did you
15 interpret that in 2002? What did that mean to you?

16 A It was to me, or to us, it was a mall
17 located -- freestanding mall where people from
18 the outside come shopping, like many malls that
19 we have in all cities.

20 Q Did you interpret that word, shopping
21 mall, to include a shopping mall on the airport
22 property or off the airport property or both?

23 A Both.

24 Q How do you provide telephone service to
25 a shopping mall?

1 MR. HOPE: Objection to form.

2 THE WITNESS: How? You run the
3 lines to the shopping mall and connect
4 them to your PBX that you have to provide
5 service to the airport --

6 THE REPORTER: Provide service to
7 the airport, what?

8 THE WITNESS: That you run lines to
9 the shopping mall to provide services
10 from the PBX that the airport owns.

11 BY MR. GOLDBERG:

12 Q When you run a line to the shopping
13 mall, per your testimony today, where does that
14 line go?

15 A Well, if you're providing phone
16 services, it goes from the PBX to the actual
17 phone that the, let's say the stores or whoever
18 is in the mall uses.

19 Q So when you're referring to a shopping
20 mall and you read that word in the airport
21 exemption rule, is it not correct that you're --
22 would view that as providing telephone service to
23 the stores that make up the mall?

24 MR. HOPE: Objection to form.

25 THE WITNESS: To the stores that

1 are -- make up the shopping mall, yes.

2 BY MR. GOLDBERG:

3 Q Okay, because you'd agree with me it's
4 hard to provide telephone service to this entity,
5 this, quote unquote, mall?

6 A Correct, I agree, the mall is not an
7 entity, it's the stores that provide inside the
8 mall.

9 Q What kind of stores would you generally
10 find in a shopping mall?

11 MR. HOPE: Objection.

12 THE WITNESS: Basically a mall is
13 all kinds of stores, from clothing to
14 kitchen, linens and things, basically
15 that sells all kinds of items that people
16 from all over the place come just to shop
17 there.

18 BY MR. GOLDBERG:

19 Q Do you have -- would you agree with me
20 that those stores would include restaurants?

21 A Yes, malls have restaurants, yes.

22 Q And would you agree with me that malls
23 sometimes have bars?

24 A They have bars.

25 Q And that malls sometimes have stores

1 that sell clothes?

2 A Yes.

3 Q Now this is an airport exemption rule,
4 you'd agree that the rule we're discussing
5 pertains just to airports, correct?

6 A Yes.

7 Q So you'd agree that it contemplates
8 stores such as restaurants, clothing stores or
9 bars that are in an airport, correct?

10 MR. HOPE: Objection to form.

11 THE WITNESS: I don't understand the
12 question.

13 I think the definition of shopping
14 mall is a definition where they have a
15 lot of stores where people go from the
16 outside, from all over the place, just to
17 shop there.

18 I don't quite understand your question.

19 BY MR. GOLDBERG:

20 Q Sir, let me rephrase it. I apologize
21 if you didn't understand.

22 Wouldn't you agree with me that the
23 shopping-mall language contained in the airport
24 exemption rule applies to stores such as
25 restaurants, bars or clothing stores that are

1 present in an airport?

2 A No, they're present in a shopping mall.

3 Q So is it your testimony here today that
4 an airport cannot have a shopping, a shopping
5 mall or a mall of shops inside the airport
6 premises?

7 A I'm saying --

8 Q Is that your testimony?

9 A My testimony is that MIA does not have
10 a shopping mall inside the airport.

11 Q Does it have shops inside the airport?

12 A Yes, it does.

13 Q Does it have restaurants inside the
14 airport?

15 A Yes, it does.

16 Q Does it have clothing stores inside the
17 airport?

18 A Yes, it does.

19 Q Does it have bars inside the airport?

20 A Yes, it does.

21 Q But it's your testimony that those
22 shops don't make up a shopping mall inside the
23 airport?

24 A The inter -- correct, the
25 interpretation was that a shopping mall is where

1 people from outside just go there shopping.

2 The people that go at the airport, they
3 go -- most of the things that are sold are for
4 the convenience of passengers traveling through
5 the airport, and the people that go shop there
6 are because they're involved in traveling, not --
7 they don't come from the outside to shop there.

8 Q And is it, along those lines, are you
9 interpreting shopping malls and did you interpret
10 the words shopping malls back in 2002 as being
11 something like the Dadeland Mall in South Miami
12 or Aventura Mall in North Miami or the Sawgrass
13 Mills Mall in Sawgrass?

14 A Any other mall where people go
15 shopping, yes, those and any other kind of mall
16 where people go just there to shop.

17 Q Can you give me any examples of an
18 airport at any place in this country which
19 provides telephone service to a mall as you've
20 defined it, such as, you know, Dadeland or
21 Sawgrass or Aventura?

22 A No, I can't.

23 Q Back in 2002 when the decision was
24 made, you'd agree with me that the airport was
25 providing telephone service to certain

1 restaurants or shops or bars inside the airport,
2 correct?

3 A Yes.

4 Q But back in 2002 your interpretation of
5 shopping malls did not include any of those
6 shops, restaurants or bars, et cetera, is that
7 correct?

8 A We felt that we didn't have a shopping
9 mall at the airport, so that did not apply to MIA.

10 Q Was there any authority that you had in
11 2002 other than you and Mr. Jenkins' review of
12 this language that supported that interpretation
13 of the words shopping mall?

14 MR. HOPE: Objection to form.

15 THE WITNESS: Well, like I said, it
16 was me, Mr. Jenkins and possibly Mr. Hope
17 that provided an opinion, and other than
18 that I don't recall anybody else offering
19 an opinion on this.

20

21 BY MR. GOLDBERG:

22 Q Not just offering an opinion, were you
23 aware of any other authority, factual, legal or
24 otherwise, that supported the interpretation of
25 shopping malls that you just testified to at this

1 deposition?

2 A Well, I believe the Orlando folks felt
3 the same way that we did.

4 Q Talk about Orlando in a second, but is
5 it your testimony that they had malls and shops
6 inside the airport as well that they were
7 providing service to?

8 MR. HOPE: Objection to form.

9 THE WITNESS: No, they were
10 providing services to shops, not to
11 malls, that are located at the airport.

12 BY MR. GOLDBERG:

13 Q When you read the term industrial parks
14 back in 2002 during this decision-making process,
15 what was your interpretation of what industrial
16 parks meant?

17 A Industrial park, the way I would
18 interpret it is it's a conglomeration of
19 warehouses, office buildings with different
20 companies residing in there renting space and --
21 or owning space, and conducting all kinds of
22 different businesses.

23 In other words mostly not condominiums
24 or people living there, but just basically a
25 place to conduct businesses of different types.

1 Q Could I ask you to read back his last
2 answer, please?

3 Thank you.

4 (Record read by reporter)

5 BY MR. GOLDBERG:

6 Q Back in 2002 when the decision not to
7 file a certificate was made with the PSC, were
8 there industrial parks, given your
9 interpretation, at or on the premises of the
10 Miami International Airport?

11 A No.

12 Q Were there any offices or office -- any
13 commercial offices at the Miami International
14 Airport?

15 MR. HOPE: Objection to form.

16 THE WITNESS: There were offices,
17 commercial offices dedicated to, related
18 to the airport business and the
19 conduction of moving passengers and cargo
20 at the airport.

21 BY MR. GOLDBERG:

22 Q Were there any warehouses at the Miami
23 International Airport?

24 A There are warehouses, again dedicated
25 to the aviation industry, passengers and cargo.

1 Q Did the County at that time the
2 decision was made provide telephone service to
3 any of these offices, or warehouses, or what
4 you've termed or interpreted as an industrial
5 park?

6 A The decision that was made was related
7 to providing services to any companies providing
8 activities related to the moving of passengers or
9 cargo at the airport.

10 And to my knowledge there was no
11 businesses residing at the airport facility that
12 did not have something to do with the moving of
13 passengers or cargo at the airport.

14 Q Why do you relate the provision of
15 service to an industrial park to your comments
16 about the safe and efficient transportation of
17 passengers through the airport facility?

18 A The, the definition an industrial park
19 is the conglomeration of businesses, warehouses,
20 factories, what have you, that do not have a
21 common goal, they have different activities for
22 different purposes.

23 At the airport the businesses that
24 reside there are all oriented towards the moving
25 of passengers or cargo through the airport, and

1 that is a big difference.

2 Q Where in the sentence where it says:
3 "The airport shall obtain a certificate as a
4 shared tenant service provider before it provides
5 shared local services to facilities such as
6 hotels, shopping malls and industrial parks,"
7 where does it state or relate anything having to
8 do with the safe and efficient transportation of
9 passengers through the airport?

10 MR. HOPE: Objection to form.

11 THE WITNESS: It was taken from the
12 first sentence in that paragraph.

13 BY MR. GOLDBERG:

14 Q Does the second sentence -- is the
15 second sentence conditioned on the first sentence?

16 Or wouldn't you agree with me that the
17 second sentence is an exception to the first
18 sentence?

19 MR. HOPE: Objection to form.

20 THE WITNESS: No, I -- we
21 interpreted that first sentence to be
22 all-encompassing, as long as you are
23 dealing with the safe and, safe and
24 efficient transportation of passengers
25 and freight through the airport

1 facilities, that that would entitle the
2 airport to be exempt from the certificate.

3 BY MR. GOLDBERG:

4 Q If that were the case, what would be
5 the need for the second sentence or the third
6 sentence at all?

7 A I can't answer that.

8 Q Wouldn't you agree that the second and
9 third sentence are inconsistent with the view
10 that you just gave?

11 MR. HOPE: Objection to form.

12 THE WITNESS: Not necessarily. Some
13 airports could have in their grounds
14 outside the airport a shopping mall that
15 they want to provide services to.

16 BY MR. GOLDBERG:

17 Q Going back to the third sentence,
18 however -- it says: "However, if the airport
19 partitions its trunk, it shall be exempt from
20 other STS rules for service provided only to the
21 airport facility."

22 How was that sentence taken into
23 consideration in making your decision to not file
24 a certificate with the PSC in 2002?

25 A As I explained before, we were

1 providing services to a hotel, and we had the
2 trunks partitioned; therefore, we don't have
3 to -- we're exempt from the STS rules as far as
4 getting a certificate.

5 That's the way it was interpreted.

6 Q Is it your interpretation that the
7 third sentence relieves the County, just relating
8 to the hotel for a second, relieves the County
9 from applying for a certificate if it partitions
10 its trunks to the hotel?

11 A Yes.

12 Q The second sentence says the airport
13 shall obtain a certificate, the third sentence
14 says if it partitions its trunks it shall be
15 exempt from other, quote unquote, STS rules for
16 service.

17 Does it say in there it's exempt from
18 obtaining a certificate?

19 A It doesn't say, it doesn't mention the
20 certificate here. However, the document is a lot
21 more than this paragraph.

22 Q Well, what do you mean, the document is
23 a lot more than this paragraph?

24 A The whole document is a lot more than
25 just this paragraph.

1 Q What document are you referring to?

2 A The Florida statutes, wherever this
3 paragraph was taken from, contains a lot more
4 than just this paragraph.

5 So the overall opinion by reading the
6 document was that, like I said, since we don't
7 provide services to shopping malls and industrial
8 parks, but only to a hotel as mentioned here, and
9 we do partition the trunks in the hotel, that we
10 were not required to have a certificate, since
11 the document expressly says that airports are
12 exempt from getting a certificate.

13 Q All right, the document that's in front
14 of you, Cert-4, the airport exemption rule, I
15 just want to make sure the record is clear, are
16 you saying this isn't the entire airport
17 exemption rule that you've testified about?

18 A No, I'm saying that the document to my
19 recollection, it's -- there's a lot more in that
20 document, the PSC document, than just this
21 paragraph.

22 It might have another title, but it
23 goes obviously --

24 Q Would you agree -- I'm sorry, go ahead.

25 A It has to be more, because the word

1 certificate, I don't believe it's mentioned here.

2 Is the word certificate in this
3 paragraph?

4 Q No, it isn't, that's my --

5 A There has to be some more to it than
6 that.

7 Q Is there anywhere in this paragraph,
8 this airport exemption rule, which says that an
9 airport is exempt from filing a certificate?

10 A If you put it in those words, those
11 words are not in this paragraph.

12 Q Okay, quite to the contrary, you'd
13 agree with me that it says the airport shall
14 obtain the certificate, there's an affirmative
15 obligation, correct?

16 A No, it doesn't say that, because it
17 qualifies that statement in the next sentence.

18 Q In the last sentence?

19 A In the "however," and beyond.

20 Q Where in the text of the last sentence
21 does it say that, however, if an airport
22 partitions its trunk it shall be exempt from the
23 obligation to get a certificate or apply for a
24 certificate?

25 A The word certificate is not there. But

1 it says it's exempt from the other STS rules for
2 service.

3 Q And how do you interpret other STS
4 rules? What does other leave out, in other words?

5 A It was interpreted --

6 MR. HOPE: Objection to form.

7 THE WITNESS: It was interpreted to
8 be the need to get a certificate.

9 BY MR. GOLDBERG:

10 Q Let me mark for you -- we'll continue
11 on with the issue of applying for a
12 certificate -- I'm going to show you what's been
13 marked as Plaintiff's Cert-5, which is a copy
14 of --

15 MR. HOPE: Thank you.

16 BY MR. GOLDBERG:

17 Q -- Rule 25.24.567 of the Florida
18 Administrative Code, of Title 25 of the Public
19 Service Commission, and it's entitled Application
20 For Certificate.

21 Did I read that correct?

22 A Mm-hmm. Yes.

23 Q Why don't you take a minute to look at
24 that document, please?

25 Have you had an opportunity to review

1 that?

2 A Yes, Sir.

3 Q Okay. Now this rule deals specifically
4 with the application for a certificate, what
5 we've just been speaking about, you'd agree with
6 me on that, correct?

7 A Yes.

8 Q Okay, let me refer you to paragraph 1
9 where it says: "An applicant desiring to provide
10 shared tenant service shall" -- I want to
11 emphasize the word shall -- "submit an
12 application on Commission Form PSC/CNP 37, which
13 is incorporated into this rule by reference."

14 Did I read that correctly?

15 A Yes, you did.

16 Q Would you agree with me that the
17 Florida Public Service Commission requires that
18 any applicant who desires to provide shared
19 tenant service shall submit an application?

20 A Yes and no. It says so here, but
21 however again this paragraph is qualified in the
22 next section which you read before, the airport
23 exemption.

24 So the paragraph cannot be taken in its
25 own context without reading the whole document.

1 Q So is it your testimony today that the
2 airport exemption rule 25.24.580 is an exception
3 to this rule dealing with application for a
4 certificate?

5 A The other -- the airport exemption
6 refers to the other STS rules, and this was
7 interpreted to be one of them.

8 Q But as we've talked about in the
9 airport exemption rule, after it says it shall be
10 exempt from other STS rules, the next, very next
11 sentence in the airport exemption rule says the
12 airport shall obtain a certificate as a shared
13 tenant service provider, so how do you reconcile
14 that fact with your interpretation?

15 A I think we already went through this at
16 length and I explained why that is: because we
17 don't provide services to shopping malls and
18 industrial parks, and we do provide to a hotel
19 and we partition the trunks, and it says so, that
20 if you partition the trunks, you are exempt from
21 the other STS rules.

22 Q Did you consider the rule relating to
23 application for a certificate in 2002 when the
24 County made its decision not to file an
25 application with the PSC?

1 MR. HOPE: Objection to form.

2 THE WITNESS: We were aware that the
3 document stated that for other than
4 airports, people -- anybody desiring to
5 provide shared tenant services other than
6 airports would have to apply for a
7 certificate.

8 BY MR. GOLDBERG:

9 Q And you'd agree with me that this rule
10 that I just read, where it uses the word shall,
11 shall is something that means that it's
12 mandatory, that it's required, and that there's
13 no discretion involved?

14 MR. HOPE: Objection to form.

15 THE WITNESS: Shall means that, what
16 you described, yes.

17 BY MR. GOLDBERG:

18 Q Can you explain to me why the County,
19 in making its decision not to file, concluded
20 that it was the County who could decide whether
21 or not -- strike that.

22 When the County decided not to file did
23 the County decide on its own that the airport
24 exemption rule applied to it?

25 MR. HOPE: Objection to form.

1 THE WITNESS: We decided on our own
2 with the help of this document and the
3 Orlando airport experience, yes.

4 BY MR. GOLDBERG:

5 Q What authority or support can you
6 provide me, or facts that support the County's
7 decision that it could make such a determination
8 on its own?

9 MR. HOPE: Objection to form.

10 MR. GOLDBERG: Strike it, I'll
11 withdraw the question.

12 BY MR. GOLDBERG:

13 Q What facts can you give me that support
14 the County's view in 2002 that it could
15 self-determine whether or not the airport
16 exemption rule applied?

17 Do you have any?

18 A The County, or the parties involved in
19 this case, we make decisions all the time of the
20 business and legal nature relating to the airport
21 business.

22 And this was just another decision that
23 was made in the course of conducting our
24 businesses there. That's what we get paid to do.

25 Q Was there any support for your position

1 that the County could self-determine whether or
2 not the airport exemption rule applied instead of
3 having the PSC make that determination?

4 A Support meaning third-party opinion,
5 whether we should do it instead of the PSC, is
6 this your question?

7 Q Are you aware of any facts --

8 A What does support mean?

9 Q -- that supports your decision,
10 supports your view?

11 A The fact of this document itself and
12 the --

13 THE REPORTER: The what?

14 THE WITNESS: This document that we
15 have in front of us and other pages that
16 are not here, and also the opinion of the
17 Orlando Airport based on the process that
18 they went through with the Public Service
19 Commission.

20

21 BY MR. GOLDBERG:

22 Q That's what you're relying on to
23 support your view that it was the County who
24 could determine whether or not the airport
25 exemption rule applied instead of making an

1 application for a certificate and having the PSC
2 determine whether or not the airport exemption
3 rule applied?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The decision was made
6 to make the decision, instead of applying
7 for a certificate.

8 BY MR. GOLDBERG:

9 Q I understand the decision was made not
10 to apply for a certificate. My question is what
11 led the County to conclude that it could make the
12 decision as to whether or not the airport
13 exemption rule applied, instead of having the PSC
14 make that decision?

15 A I can't answer that. We just made the
16 decision not to apply.

17 Q To your knowledge has the PSC ever
18 ruled that the Miami International Airport --
19 strike that -- that the County falls within the
20 airport exemption rule?

21 A No.

22 Q Other than the airport exemption rule,
23 Cert-4, the exhibit I showed you, are there any
24 other Florida laws or statute or rules that you
25 or Mr. Jenkins and Mr. Hope reviewed in making

1 the decision not to file an application?

2 MR. HOPE: Objection to form.

3 THE WITNESS: We read this whole
4 document, like I said, this is just two
5 pages of this bigger document, and that
6 was the only document that we read.

7 BY MR. GOLDBERG:

8 Q What document are you referring to?

9 A I'm referring to the document where
10 these rules are contained, the Florida
11 Administrative Code, whatever -- the Title 25.

12 Q Did you read all of Title 25? Is that
13 the document?

14 A Chapter 25-24, yes, I think, I believe
15 I read the whole thing.

16 Q Are there any other provisions that you
17 recall of Chapters 24 or 25 that supported your
18 decision not to file an application for a
19 certificate?

20 MR. HOPE: I think you mean 25-24.

21 THE WITNESS: 25-24, yes.

22 MR. GOLDBERG: Yes.

23 THE WITNESS: I can't recall exactly
24 what it is, if it's anything else. I
25 don't, I don't have the document memorized.

1 BY MR. GOLDBERG:

2 Q The second reason you gave was
3 circumstances relating to the Orlando
4 International Airport.

5 A Right.

6 Q Can you detail for me and explain how
7 it is that Orlando's airport was brought to your
8 attention in the context of whether or not to
9 make an application to the PSC or not?

10 A Well, Orlando is a an important airport
11 in Florida so we, we had other issues that we
12 wanted to see how Orlando was functioning in
13 general about other telecommunications and
14 information-technology issues, so we contacted
15 them as a matter of peer information.

16 And one of the things that we asked
17 them is about this issue of the providing
18 services, and they had been involved in a, what
19 they described as a lengthy process with the
20 Public Service Commission on this issue, and
21 basically they provided the -- their opinion
22 that, since they're very similar to us in what
23 they provide over there, that we don't need a
24 certificate to do the same thing.

25 Q Who had the contact with the initial --

1 with the Orlando International Airport from the
2 County's side, Miami-Dade County's side?

3 A I believe my boss made the first
4 contact, and to his counterpart, and then I was
5 in touch with my counterpart.

6 And I was the one that actually ended
7 up going up there and meeting with my
8 counterpart, a Mr. Robinson.

9 Q Who was Mr. Jenkins' counterpart at the
10 Orlando International Airport?

11 A It would be Mr. Robinson's boss, but I
12 don't recall his name.

13 Q Who obtained the information you speak
14 about from the Orlando Airport regarding the PSC
15 and the issue as to whether or not to apply for a
16 certificate? Was that you or was that
17 Mr. Jenkins?

18 A When I came back from Orlando I brought
19 a lot of documents that -- from that process that
20 they went through, and I forwarded them to
21 Mr. Hope for review, and I never read them
22 myself.

23 And I just relied on their, basically
24 their verbal opinion when I was there meeting
25 with them on this issue.

1 Q So the answer to my question is it's
2 you and not Mr. Jenkins?

3 A That's right.

4 Q Okay, so let's focus on you then.
5 Before going up to Orlando's airport did you have
6 any discussions by telephone with your
7 counterpart, Mr. Robinson?

8 A Yes, I believe we talked on a couple of
9 occasions.

10 Q What other issues other than, you know,
11 the certificate issue were you inquiring about?

12 A Oh, many issues, like the way they,
13 they have -- the contract they have for the
14 maintenance of the telephone equipment over
15 there, which I believe is, BellSouth is
16 providing. This is what's similar to what
17 Nextira is going to do for us.

18 We also looked at the flight display
19 monitors they had, the clocks they had. We were
20 in the process of deciding what clocks to use at
21 the terminal.

22 We had their -- had meetings regarding
23 the work order system, the way they process the
24 orders for telecommunications with their staff.

25 Basically their 911 response location

1 over there, they respond to 911 calls directly at
2 the airport PSAP, which is primary -- I forgot
3 what it stands for, PSAP, that's where you get
4 the calls from the 911.

5 And all kinds of issues regarding to
6 operational issues at the airport.

7 Q Did you discuss, before going up to the
8 airport to meet with Mr. Robinson, the
9 certification issue by telephone with him?

10 A I'm sure we did, yes.

11 Q Did you have discussions when you were
12 there about the PSC certification issue?

13 A Yes.

14 Q Can you detail for me what Mr. Robinson
15 said to you on that issue, whether it be by
16 telephone or when you were there in person?

17 A Mr. Robinson was very adamant to his
18 position that airports do not need, like Miami
19 and Orlando, do not need a certificate because of
20 the way we -- they provide the services and who
21 do you provide it to.

22 And he basically told me that they have
23 been involved in a long process with the PSC, and
24 really didn't go into any specific details, it
25 was just a general opinion, based on what he went

1 through, that we had a similar situation at MIA
2 and that we really didn't need to get a
3 certificate.

4 Q Did he advise you as to whether or not
5 the PSC had ruled on that issue involving his
6 airport?

7 A Yes.

8 Q And what was your understanding of the
9 ruling?

10 A The same understanding that I have now:
11 based on that -- since they went through the
12 process, he felt that they didn't need a
13 certificate.

14 And he told me that, based on what we
15 do at MIA, we didn't need a certificate.

16 Q And we're talking about Al Robinson, is
17 that his first name?

18 A Yes.

19 Q And was he the manager of telecom at
20 the Orlando Airport?

21 A He's my counterpart.

22 Q And is it your testimony today that he
23 told you that the PSC, the Public Service
24 Commission of the State of Florida, had ruled
25 that the Orlando International Airport did not

1 need a certificate?

2 A That's to my recollection what he said.

3 Q Did he state that the PSC had ruled,
4 with respect to Orlando International Airport,
5 that that airport need not file an application
6 for a certificate?

7 A I believe that's what I said or that's
8 what he said, yes.

9 Q Just so the record is clear, I'm asking
10 about two separate points. Did he represent to
11 you that the Public Service Commission had ruled
12 that the Orlando International Airport, number
13 one, did not need to file an application for a
14 certificate; and/or number two, that the Orlando
15 International Airport need not be granted a
16 certificate?

17 MR. HOPE: Objection to form.

18 THE WITNESS: I don't understand the
19 second version, but --

20

21 BY MR. GOLDBERG:

22 Q How about the first: Did he represent
23 to you that the PSC had ruled that the Orlando
24 International Airport need not apply for a
25 certificate?

1 A That was my understanding, yes.

2 Q Second, did he represent to you that
3 the PSC in the State of Florida had ruled that
4 the Orlando International Airport was exempt from
5 any certification requirements pursuant to the
6 airport exemption rule that you previously
7 testified about?

8 A I believe those two things are pretty
9 much the same thing, so the answer would be yes
10 for both.

11 Q Do you know whether or not the Orlando
12 International Airport ever applied for a
13 certificate?

14 A No, I don't know that.

15 Q I think it was your testimony earlier
16 that it's your understanding that, based on your
17 conversation with Mr. Robinson, that they also
18 made the decision on their own not to apply for a
19 certificate? Is that correct?

20 A I don't know who was involved in their
21 decision. The decision was made not to do it,
22 but I don't know who was involved in that.

23 Q When you were having this discussion or
24 Mr. Robinson was making these representations to
25 you, did you ask to see any supporting

1 documentation with respect to the Florida Public
2 Service Commission's order or rule?

3 A I did --

4 Q Ruling, I mean.

5 A I requested copies of the documents,
6 and actually I brought back a -- files pertaining
7 to that which I forwarded to Mr. Hope.

8 I never read them.

9 Q Did you ever read a Florida Public
10 Service Commission order or ruling on the issues
11 we just discussed?

12 A No, I did not.

13 Q Your testimony, you just accepted what
14 Mr. Robinson had to say without looking at any of
15 the documentation he provided you?

16 MR. HOPE: Objection, form.

17 THE WITNESS: Correct.

18 BY MR. GOLDBERG:

19 Q And with respect to the timing of
20 receiving this documentation, providing it to
21 Mr. Hope, was this done before or after the
22 decision was made by the Miami-Dade County not to
23 file for a certification with the PSC?

24 A It was around that time. I can't say
25 exactly whether it was a little before or a

1 little after. It was all part of the same time
2 period, more or less.

3 But we did have input from Orlando as
4 to what they did or didn't do as far as not
5 applying or not needing a certificate, so that
6 was part of our, probably, our decision, so that
7 information had to be there.

8 Q Did Orlando, at the time that you made
9 your visit there, have shops such as
10 restaurants -- strike that.

11 Were they providing telephone service
12 to hotels?

13 A I believe they have a hotel there, yes,
14 yes.

15 Q Were they providing service to any
16 restaurants or shops that sold clothes or bars at
17 the airport?

18 A Yes.

19 Q Were they providing telephone service
20 to any industrial parks as you've interpreted
21 that phrase?

22 A I don't know -- no, not industrial
23 parks, in the sense they were providing services
24 to, again, to tenants of the airport.

25 Q Did you seek out the opinions or facts

1 from any other airport in the State of Florida on
2 this issue other than Orlando?

3 A I made a contact with the Tampa
4 airport, the lady that runs the telecom over
5 there, by phone. It was just a quick phone call.

6 And I believe she told me that she had
7 applied for a certificate, but they were not
8 providing any services to anybody, so she was
9 really not using the certificate for anything.

10 Q Did she explain to you why they had
11 applied if they weren't providing service?

12 A She couldn't tell me why.

13 Q Could it be what you just read: that an
14 applicant who desires to provide service
15 according to the PSC shall apply for a
16 certificate?

17 A I don't know --

18 MR. HOPE: Objection to form.

19 THE WITNESS: -- what she had in mind.

20

21 BY MR. GOLDBERG:

22 Q Other than the representations you've
23 testified to at this deposition, and other than
24 the documents that you didn't read that you
25 passed on to Mr. Hope, are there any other

1 representations, pieces of information, or any
2 other facts that Miami-Dade County took into
3 account from Orlando's airport in making its
4 decision not to file for a certificate?

5 A No.

6 Q Did you ever have -- strike that.

7 I'm just asking a yes or no question
8 here, did you ever have a conversation with
9 Mr. Hope with respect to the documents that you
10 provided to him from the Orlando airport after
11 you provided those documents to him

12 A You want a yes or no answer?

13 Q Yes.

14 A Yes.

15 Q And is that the -- strike that.

16 Who was present during that discussion?

17 A It was a phone call, it wasn't really a
18 discussion. It was a question.

19 Q A question --

20 A There was nobody present, it was just
21 me and him on the phone.

22 MR. GOLDBERG: Is it your
23 contention, Mr. Hope, that that
24 conversation is privileged?

25 MR. HOPE: Correct.

1 BY MR. GOLDBERG:

2 Q You have a pretty certain recollection
3 of that conversation with Mr. Hope, Mr. Garcia?

4 A Yes.

5 Q Why is it then now, today, during this
6 deposition, you have a certain recollection of
7 Mr. Hope's involvement, but earlier on
8 affirmatively said he was not involved?

9 A You haven't asked me what the
10 conversation was.

11 Q I'm sorry?

12 A You have not asked me what the
13 conversation was.

14 Q What the conversation was?

15 A Right.

16 Q Oh, I asked -- I thought I did, but let
17 me make it clear, did the conversation involve
18 the documents that you provided him from the
19 Orlando Airport?

20 A Yes.

21 MR. HOPE: Let me instruct the
22 deponent not to answer any questions that
23 deals with the nature of the conversation.

24 THE WITNESS: Okay.

25 MR. GOLDBERG: It's 12:00, we

1 haven't taken a break, can we go off the
2 record and take a small lunch break and
3 talk about scheduling? Or do you want to
4 do that on the record?

5 MR. HOPE: Well, no, we can go off
6 the record, I just wanted to --

7 THE VIDEOGRAPHER: Going off the record.

8 (Recess)

9 THE VIDEOGRAPHER: Stand by.

10 We're back on the record, video
11 number 2.

12 BY MR. GOLDBERG:

13 Q Mr. Garcia, are you prepared to
14 continue with your deposition this morning?

15 A Yes, Sir.

16 Q Okay, I have placed in front of you
17 what we'll refer to as Plaintiff's Exhibit
18 Cert-6.

19 Just so I can explain, this is a
20 composite exhibit. A composite exhibit means
21 it's made up of a number of different documents
22 written or created at different times, although
23 they pertain to the same overall subject matter
24 that we've been discussing, so I don't want to
25 mislead you that this is one entire document,

1 it's just a composite of different exhibits, and
2 I'll walk you through it.

3 Is that understood by you?

4 A Yep.

5 Q And also, the documents are documents
6 that the County has produced to BellSouth in
7 discovery in this action.

8 And if I could just get a stipulation
9 by Mr. Hope that that's the case? David, if you
10 look at the Bates-stamp numbers, I think that
11 that will --

12 MR. HOPE: So stipulated.

13 MR. GOLDBERG: Thank you.

14 BY MR. GOLDBERG:

15 Q Let me -- I mean I may, as I go
16 through, although some of the numbers are off,
17 but let me ask you to direct your attention to
18 the first page of the exhibit.

19 Have you seen these handwritten notes
20 before?

21 A It's my handwriting.

22 Q Okay, and can you tell me just so --
23 for the record purposes, is this a set of notes
24 that you wrote with a date up top of
25 December 10th, 2001?

1 A Yes.

2 Q And does it denote Al Robinson, Orlando
3 Airport, and his telephone number at the top?

4 A Yes.

5 Q Can you tell me how it came to be that
6 these notes were created?

7 A I can't recall. It could be something
8 related to the trip that we took over there, it
9 could have been a conversation we had on the
10 phone.

11 I really can't recall the circumstances.

12 Q It says -- well, it has a phone number,
13 does that refresh your recollection as to
14 possibly these are notes arising from a telephone
15 conversation you had with him?

16 A It could be, yeah, it looks like it was
17 a conversation that I had with him over the phone
18 and I was just taking notes.

19 Q To the left up at the top it says Mgr
20 Telecom, does that stand for manager, telecom?

21 A Yes.

22 Q Was that Mr. Robinson's position?

23 A Yes.

24 Q And then can you read for me what it
25 says down below, the next line down starting with

1 STS?

2 A I was just trying to figure that out.

3 Q Does it say STS --

4 A Rent a Car --

5 Q -- Rent a Car --

6 A -- and shop concessions --

7 THE REPORTER: One at a time, please.

8 MR. GOLDBERG: I'm sorry, you're right.

9 THE WITNESS: Rent a Car, shop

10 concessions, and POP customers --

11 THE REPORTER: POP customers?

12 THE WITNESS: P-O-P, and then PCS,
13 airport is one building.

14 I guess that was the interpretation
15 that the PSC considered the airport to be
16 one building. It doesn't matter whether
17 it was one building or three buildings,
18 as long as it's in the airport ground
19 it's considered as one building.

20

21 BY MR. GOLDBERG:

22 Q Okay, and then the next line down?

23 A 25.4, public law, I'm not sure what
24 that -- it could be referring to one of these
25 State of Florida chapters or whatever.

1 Q Having read these notes so far does it
2 refresh your recollection as to any conversation
3 you had with Mr. Robinson on or about
4 December 10th, 2001?

5 A Not really.

6 Q So just so we're clear, at this time as
7 you sit here today you do not recall -- do you
8 recall having a telephone call with Mr. Robinson
9 on December 10th, 2001?

10 A Well, obviously I had a conversation
11 with him because this paper is here and I wrote
12 it, and I have to assume it was 12/10.

13 Do I recall? No.

14 Q Can you use these notes to refresh your
15 memory in order to place in context for us what
16 you said to him or what he said to you on the
17 telephone?

18 A I can probably answer what is written
19 here. I don't -- probably won't recall too much
20 more of what was said or wasn't said, because if
21 it was important I would have written it here.

22 Q You have the words in the middle of the
23 page MTCE agreement, do you know --

24 A It's maintenance agreement.

25 Q And on the left-hand side is that care

1 or car?

2 A Looks like core, but I don't know
3 what -- why it wrote that.

4 Q Core?

5 A I'm not sure what that -- why I wrote
6 that there. I don't recall.

7 Q If you could read -- could you keep
8 reading down your notes?

9 A Three telecommunications analysts and
10 one telecommunications cabling person.

11 I think it was -- this was referring to
12 the staff, because they did have a contract with
13 BellSouth to maintain the equipment that they had
14 over there to provide services, and I think this
15 is the staff that BellSouth had on the premises
16 to do what they do there, which is that -- then
17 it says BellSouth, times and materials for
18 projects, this is how they charge the Orlando
19 Airport to do what they do.

20 And also they perform their own MAC,
21 which is moves, adds and changes, that's the way
22 it's described when moving a telephone from one
23 place to another or to add additional lines as
24 required.

25 Q The next lines down, looks like another

1 set of numbers, what does that refer to?

2 A 407, I imagine that's the air code of
3 Orlando; 825 is the internex (phonetic), or the
4 first three numbers of the airport switch, I
5 think that's what it should be, if -- it's a
6 prefix, that they own that, 825.

7 In other words the whole complement of
8 the four numbers that follow that, the whole 825
9 is Orlando airport.

10 And I don't know the 8500, what it
11 means, but the 6000 is like the number of
12 stations or telephones they have at the airport
13 there.

14 Q What's the words next to 825, the
15 right-hand side?

16 A I'm sorry, what's that?

17 Q What are the words here, next to --

18 A That's the prefix, they own. In other
19 words they own the whole complement of numbers
20 after that.

21 Q Having looked at the entirety of this
22 first page of notes, does it refresh your memory
23 as to any issues you discussed with Mr. Robinson?

24 A Again, this was -- I was trying to --
25 this was all me finding out what they had over

1 there, what kind of operation they were
2 conducting over there at the airport.

3 Q The second page in this exhibit, is
4 this also your handwriting?

5 A Yes.

6 Q Is this a continuation of the notes
7 from the same event or conversation?

8 A I don't think so, because I'm talking
9 about an Nextira STS. Nextira was providing STS
10 services prior to us buying their equipment.
11 This was I guess the services that they were --
12 the type of STS services, could be, that Nextira
13 was providing.

14 Q Okay, what's the next item down?

15 A Develop turn-over requirements --

16 Q You got to keep your voice up, read out
17 lot, that would help.

18 A I'm sorry, it says develop turn-over
19 requirements, general items, manual delivery,
20 training, overlap.

21 I guess these are notes relating to, I
22 would imagine, the things that were needed to
23 take over the operation of Nextira.

24 This was -- the first part was the
25 services that they were providing STS, using our

1 equipment, and then the develop, the turn-over
2 requirements. . .

3 Q If you could read -- keep reading down?

4 A It says on-site equipment, 20 trucks or
5 vehicles, office equipment, 12 months plus,
6 ARINC, that's A-R-I-N-C, and SITA, S-I-T-A, those
7 are two companies that provide CUTE service,
8 C-U-T-E, that's a service that -- what -- the
9 airlines, the airlines equipment to produce
10 tickets and keep their reservations and bag tags
11 and boarding passes and so forth, which Nextira
12 was providing and we are now owning the equipment
13 and providing that.

14 And then the last says STS, do we need
15 to apply? Call the PSC.

16 I was just making notes to myself to --
17 about that issue.

18 Q And this whole -- these whole notes
19 were written related to the turnover of the STS
20 services from Nextira to the County, correct?

21 A Yes, it was all part of the deal that
22 we were buying their equipment.

23 Q So does the last notation on here where
24 it says STS, do we need to apply, call PSC, first
25 my question is does this document sort of cement

1 your testimony and support your testimony that
2 the question of whether to apply for a
3 certificate or not to apply for a certificate
4 arose because of the transaction with Nextira in
5 20 -- in early 2002?

6 A Well, Nextira was providing the
7 services, they did not have a certificate, so I
8 would -- just had a question in my mind whether
9 we should have one or not.

10 Q And it says call the PSC. Whose idea
11 was that?

12 A Just a note to myself that I was, as I
13 was writing these things down, that was just
14 notes to myself.

15 Q Why would you write call the PSC?

16 A Well, that was the -- if I have the
17 question do we need to apply, calling the PSC
18 could be one of the ways to find out.

19 Q Don't you think it might be one of the
20 best ways to find out?

21 MR. HOPE: Objection to form.

22 THE WITNESS: It's a way to find out.

23 BY MR. GOLDBERG:

24 Q Who would you give more weight to, what
25 the PSC says if you call them on this issue, or

1 for example the Orlando International Airport?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Well, the Orlando
4 airport actually had a ruling from the
5 PSC that they didn't need a certificate,
6 so that was to me as good as gold.

7 BY MR. GOLDBERG:

8 Q All right, let me ask you to turn the
9 page. This is a fax cover sheet from you and
10 Mr. Hope to Myra Bustamante.

11 Who is Myra Bustamante?

12 A She was the assistant director of like
13 commercial operations at the airport.

14 Q And this is your signature, Pedro, at
15 the bottom, correct?

16 A Yes.

17 Q Could you explain to me what it was
18 that you were transmitting to her?

19 A I have no idea. Could have been
20 anything.

21 Q Well, was it the next page? It says:
22 Fax contains two pages. If I could ask you to
23 turn the page, was this an e-mail that you were
24 transmitting to her?

25 A It's possible. Leonard Stout was the

1 consultant -- Leonard Stout, S-t-o-u-t, the
2 e-mail was from this gentleman, and to David
3 Hope, myself, and Susan Pascal, which is
4 P-a-s-c-u-l, she's a person in our contracts
5 division at the airport.

6 Q Just for the record, we're looking at a
7 document that's an e-mail from Mr. Stout, to
8 David Hope, Pedro Garcia, and Susan Pascual, dated
9 December 7th, 2001, correct?

10 A Correct.

11 Q What is operations -- the subject is
12 Operation Next Steps. What is Operation Next
13 Steps?

14 A I don't know why he wrote that, but
15 it's basically, I guess this was part of the
16 discovery process of the whole thing of taking
17 over the Nextira operation, and he was providing
18 information in case we wanted to contact these
19 folks and find out more about something.

20 Q Well, wouldn't it have been with
21 respect to the certification issue, as the first
22 entity right here has contact information with
23 the Florida PSC?

24 A Possibly, yes.

25 Q Okay, and then the next contact is a

1 Denver contact, James Winston, who is he?

2 A He's probably a -- well, Assistant
3 Deputy Manager of Aviation and
4 Telecommunications, the title is right here.

5 Q At the Denver International Airport?

6 A Right.

7 Q Okay, and then the Tampa contact is
8 Sharon Weaver?

9 A Director of Administration. And I
10 spoke to Sharon Weaver, that's what I mentioned
11 prior, that I had talked to her, and she had
12 gotten a certificate, but they were not providing
13 any STS services, and she couldn't tell me why
14 she had the certificate.

15 And Denver was deemed that, since it
16 wasn't in Florida, whatever they had to say
17 didn't have any relevance to us.

18 Q Fair enough.

19 And the last one is the Hillsborough
20 County Aviation Authority, did you or anybody
21 from the County contact them on this issue of
22 certification?

23 A I didn't. We didn't feel the airport
24 was important enough to contact. It was probably
25 a small airport.

1 Q Why is the Hillsborough County
2 Aviation -- why did you determine it wasn't
3 important enough?

4 A I don't know, I'm just guessing, but I
5 don't remember talking to them.

6 I don't if I couldn't get a hold of
7 that person or -- that was just a general number,
8 it wasn't a person, so maybe I decided it
9 wasn't -- or maybe I called and I couldn't get
10 anybody, I don't know, I don't remember.

11 Q Okay, but suffice to say nothing about
12 Hillsborough County Aviation Authority was --
13 entered into the decision-making process?

14 A No.

15 Q And this e-mail was copied to both
16 Bobbie Phillips and Maurice Jenkins?

17 A Yes.

18 Q Let's go to the next page, which is
19 also a page of notes. Is this your handwriting?

20 A Yes.

21 Q And just for reference, for the record,
22 it starts on the top saying Orlando APT, or
23 airport. Is this just background information at
24 the top as to who Mr. Robinson is?

25 A That's just how to get in touch with

1 him, his title and phone number and e-mail address.

2 Q And what's below?

3 A Sid is a consultant that we were using
4 to help us with the drafting of the contract
5 agreement with Nextiraone, and those numbers
6 probably mean the millions of dollars that they
7 wanted for the purchase of the equipment.

8 They asking for 7.5, we wanted to offer
9 6.5. I imagine that's what it was, because it
10 was in that neighborhood.

11 Q Let's go to the next document, this is
12 an application form from the Florida Public
13 Service Commission, correct?

14 A Yes.

15 Q And the next number of pages make up
16 the application, and is it -- have you seen this
17 document before?

18 A Yes.

19 Q Is the handwriting on this document
20 yours?

21 A No, not all of it.

22 I gave it to Maria Perez, who is the
23 supervisor that worked for me, and I told her to
24 basically go through this and get any preliminary
25 information that she could so I didn't have to do

1 all the work.

2 And then that was -- then I made some
3 additions and some corrections to what she wrote.

4 Q So the County started the process of
5 filling out an application for the PSC?

6 MR. HOPE: Objection to form.

7 THE WITNESS: Well, I started
8 looking at the process. I mean it
9 wasn't -- if you want to say I'm the
10 County, but I basically was just -- I
11 started informally to look at the
12 information that was here and what will
13 it take us.

14 As you can see it wasn't completely
15 filled up, it was just very coarse
16 evaluation of the application and what we
17 could provide or not in the application.

18 BY MR. GOLDBERG:

19 Q And Question number 1, where it says
20 this is an application for, and you have to check
21 one, be it an original certificate or any others,
22 do you know whether that is your X mark at
23 original certificate?

24 A It was either mine or Maria Perez. But
25 it would have been an original certificate,

1 because we didn't have one before.

2 Q I'll ask you to turn to page 5 of that
3 application where it says Contact Points, or
4 actually question 16 asks: Who will serve as the
5 liaison to the Commission?

6 The application, it's listed as
7 Mr. Jenkins, and then down below it has your name
8 put in, Maria Perez's name crossed out.

9 Is any of that writing on that page yours?

10 A Only my name and the Chief of
11 Telecommunications, because I felt that I should
12 be there, not her name.

13 Q Did you go over and review the answers
14 that were -- strike that.

15 I assume, by the fact that you changed
16 some of the answers, you reviewed the balance of
17 the answers on this application and they were
18 fine with you as --

19 A Yes, I did, yes.

20 Q I'll ask you to keep -- to go on to
21 page 9 of this application where it says
22 applicant acknowledges --

23 A I'd love to if I had it.

24 MR. HOPE: There is no page 9.

25 MR. GOLDBERG: You don't have a page 9?

1 THE WITNESS: I have 8 and 10 --
2 here, it's after 11, I got it.

3 MR. GOLDBERG: It's after 11, isn't
4 that how we number things?

5 THE WITNESS: Okay.

6 MR. GOLDBERG: I can say we received
7 it that way from the County but I won't.

8 THE WITNESS: You can say it.

9 MR. GOLDBERG: Because I don't know
10 that, it would just be a joke -- right,
11 David?

12 MR. HOPE: Absolutely.

13 BY MR. GOLDBERG:

14 Q Okay, do you know why the Applicant
15 Acknowledgement Statement at page 9 was not
16 filled out?

17 A No. Like I said, there's a lot of
18 other things in the application that are not
19 totally filled up because it was just a very
20 preliminary assessment of the application itself,
21 and --

22 Q Did you review page 9 at the time,
23 before making a decision whether or not to file
24 with the PSC for a certificate?

25 A No, this was, this was before making

1 any decision. This was just part of the -- what
2 we were doing, the discovery process, so to speak.

3 Q So you knew at the time that there were
4 various fees or taxes associated with --

5 A Yes, right, mm-hmm.

6 Q -- becoming certificated?

7 A Right.

8 Q Let me ask you to go to the next page
9 in the composite exhibit, this is also a page of
10 handwritten notes.

11 Is this your handwriting?

12 A Yes.

13 Q And just for the record it's -- up at
14 the top it's dated 10/26/01, and the first line
15 of the handwriting notes is PSC on STS, is that
16 correct?

17 A PSC on STS, right.

18 Q Can you tell me how it came about that
19 you created this page of notes?

20 A Obviously I must have talked to one of
21 these gentlemen there and he provided this
22 information over the phone.

23 Q As you sit here today do you recall the
24 telephone conversation?

25 A I don't recall it, but since I wrote it

1 I must have made it, the phone call.

2 Q As you sit here today, after having
3 reviewed these notes, do you recall what you said
4 to the -- does it refresh your recollection as to
5 what you said to the PSC or the PSC said to you?

6 A Not other than what it says here.

7 Q Is it safe to assume that when you
8 wrote these notes you wrote these notes
9 accurately and that they accurately depict what
10 was said on the phone?

11 A Yes.

12 Q So would you agree that this document
13 is an accurate recordation of the telephone call
14 that you had with the PSC on October 26, 2001?

15 A Yes.

16 Q And the title is PSC on STS, so was
17 that the subject you were calling the PSC with
18 respect to the County's position of the shared
19 tenant services?

20 A Yes.

21 Q Do you remember who Jackie Gilcrest,
22 Tom Williams or Rick Moses were, or are?

23 A No, Jackie was probably the boss of the
24 other two gentlemen that are there, and I don't
25 even know which one of those I talked to, to be

1 honest with you.

2 Q Next to Rick Moses it states: He was
3 at M IA 5-6 years ago looking at this issue.

4 A Right, that's what he told me.

5 Q Do you recall anything else about what
6 he had to say on that issue?

7 A No. If it was relevant it would have
8 been -- it would be written here.

9 Q Okay, can you read the next three lines
10 of your notes?

11 A Yes, if MIA is going to provide service
12 not related to public transportation, hotels,
13 shops, et cetera, we need to file an application.

14 Q And the next line?

15 A In any event, trunks will have to be
16 partitioned.

17 Q So you wrote down here, after talking
18 to the PSC, if MIA is going to provide service
19 not related to public transportation, hotels,
20 shops, et cetera, we need to file an application.

21 Was there any ambiguity at the time
22 about that statement or direction from the PSC?

23 MR. HOPE: Objection to form.

24 THE WITNESS: No.

25 BY MR. GOLDBERG:

1 Q Having had that direction from the PSC
2 as a result of the phone call, can you explain
3 why that direction was disregarded and the County
4 did not file an application for a certificate?

5 MR. HOPE: Objection to form.

6 THE WITNESS: I find this opinion
7 very consistent with the documents that
8 we were talking about before.

9 BY MR. GOLDBERG:

10 Q Please explain.

11 A Well, we're not providing any services
12 not related to public transportation, which is
13 the business of the airport, so therefore we
14 don't need to file an application.

15 And the trunks, we provided service for
16 the hotel, and the trunks are partitioned. This
17 is exactly what the paragraph that we discussed
18 prior says, in our interpretation.

19 Q It says if MIA is going to provide
20 service not related to public transportation, and
21 then you wrote, in parentheses, hotels, shops, et
22 cetera, wouldn't one conclude and didn't you
23 conclude that the PSC was saying that hotels,
24 shops, et cetera, are not related to public
25 transportation?

1 MR. HOPE: Objection to form.

2 THE WITNESS: Our interpretation
3 were to shops and hotels and things,
4 again, that not related to the public
5 transportation.

6 There are some cases that those
7 shops and hotels could be outside the
8 airport property.

9 BY MR. GOLDBERG:

10 Q Do you have any notes that reflect any
11 discussion about whether these hotels, shops are
12 outside the airport property or inside the
13 airport property?

14 A No, I don't.

15 Q So don't these notes clearly reflect
16 that the PSC said that if you're going to provide
17 service not related to public transportation,
18 such as hotels, shops, et cetera, you need to
19 file an application?

20 MR. HOPE: Objection to form.

21 THE WITNESS: That's what it says
22 here. But again, this is not the whole
23 document, this is just one piece of
24 information that was compiled along with
25 the other documents or the chapter 24,

1 25, that we discussed before.

2 BY MR. GOLDBERG:

3 Q Wouldn't you agree with me that this
4 directive from the PSC is directly contrary to
5 your -- the bases for your decision not to file
6 an application?

7 MR. HOPE: Objection to form.

8 THE WITNESS: If you just read these
9 three lines, yes, it seems to say that,
10 if you provide services to hotels, shops,
11 et cetera, but again, that is not the
12 ruling of the PSC, that was just my
13 notes, and not necessarily taken into
14 consideration the airport exemptions and
15 all the other things that are spelled out
16 in the paragraph.

17 BY MR. GOLDBERG:

18 Q Well, let's just talk about -- well, I
19 understand, let's talk about this phone call and
20 this directive from the PSC.

21 You would agree with me that this is
22 contrary to what you relied on at the end, not to
23 file an application with PSC?

24 MR. HOPE: Objection to form.

25 MR. GOLDBERG: Just these notes.

1 THE WITNESS: Well, it says here if
2 the MIA is going to provide service not
3 related to public transportation, hotels,
4 shops, et cetera, we need to file an
5 application.

6 It could imply that the hotels and
7 the shops are not related to public
8 transportation; however, we interpreted
9 that the hotel and the shops in the
10 airport to be related to public
11 transportation.

12 BY MR. GOLDBERG:

13 Q Okay, but your interpretation that
14 they're related to public transportation, if
15 that's what you interpreted, is directly contrary
16 to what the representative from the PSC told you
17 on the phone, correct?

18 MR. HOPE: Objection to the form.

19 THE WITNESS: It's different than
20 what it says here.

21 BY MR. GOLDBERG:

22 Q Which means it's different from what
23 the PSC representative told you on the phone,
24 correct?

25 MR. HOPE: Objection to form.

1 THE WITNESS: It's different from
2 what I wrote in here that he said.

3 BY MR. GOLDBERG:

4 Q So then you'd agree with me that your
5 decision not to file an application -- the
6 County's decision not to file an application
7 disregarded what this PSC representative said on
8 the phone on October 26, 2001?

9 MR. HOPE: Objection to form.

10 THE WITNESS: No, this is two and a
11 half lines out of many paragraphs that
12 address this issue and the actual chapter
13 of the Florida statutes, so --

14 BY MR. GOLDBERG:

15 Q Let me restate my question. I don't
16 mean to be argumentative, but you're not
17 answering my question.

18 The County's decision not to file an
19 application disregarded what the PSC
20 representative said on the phone to you on
21 October 26, 2001 as referenced by your notes?

22 A No, we didn't disregard it.

23 MR. HOPE: Objection to form.

24 THE WITNESS: We considered it as
25 part of the decision-making, along with

1 other information pertinent to the issue.

2 BY MR. GOLDBERG:

3 Q So let me rephrase the question. I
4 understand your point. What you're saying is the
5 County's decision not to file an application
6 considered what the PSC representative said on
7 the phone on October 26th, 2001, but did not
8 agree with what the representative said?

9 MR. HOPE: Objection to form.

10 THE WITNESS: Well, we didn't take
11 this literally the way I wrote it here,
12 because there are exceptions to -- and
13 interpretations that are more than
14 what -- these two and a half lines in here.

15 So it was taken that maybe I didn't
16 write the whole thing -- this was the
17 beginning of the discovery process. I
18 don't think I even knew at the time that
19 we had hotel trunk partitions and things
20 like that, so that's why this was taken
21 for what it is: just a phone conversation
22 and part of the discovery process.

23 BY MR. GOLDBERG:

24 Q Suffice to say you did not follow the
25 PSC representative's directions as stated on that

1 phone call?

2 MR. HOPE: Objection to form.

3 BY MR. GOLDBERG:

4 Q Because if you had you would have
5 needed to file an application, correct?

6 MR. HOPE: Objection to form.

7 BY MR. GOLDBERG:

8 Q At the end of the day, I'm saying, you
9 did not follow what you wrote that the PSC
10 representative stated on October 26, 2001?

11 MR. HOPE: Objection to form.

12 THE WITNESS: I did not follow what
13 these two and a half lines says, right.

14 BY MR. GOLDBERG:

15 Q Did you give considerable weight or
16 ascribe some importance to what a PSC
17 representative said on this issue?

18 A Of course, we took everything here and
19 investigated further almost every word that it
20 says here.

21 This was not an official ruling the way
22 we took it, it was just a casual conversation
23 with this fellow. It wasn't taken to be an
24 official ruling from the PSC, which every word
25 means what it says.

1 And, you know, and I would -- and I was
2 just taking notes as we spoke on the phone, so. . .

3 Q Well, subsequent to this phone call,
4 and according to your testimony here today, you
5 took into account other factors such as Orlando
6 Airport and your view of the airport exemption
7 rule, did you ever make an effort to call back up
8 the PSC and speak to the PSC representative,
9 similar to what you did on October 26, 2001, and
10 ask them for some clarification given your
11 contrary view?

12 MR. HOPE: Objection to form.

13 THE WITNESS: No, I don't recall
14 doing that.

15 BY MR. GOLDBERG:

16 Q Why not?

17 A Just didn't do it.

18 Q Since there was an objection to form,
19 let me ask it this way: Subsequent to
20 October 26, 2001 did you ever follow up with the
21 PSC to review any other information or -- any
22 other information that was being taken into
23 account in making a decision whether to apply or
24 not to apply for a certificate?

25 A Did I ever file something with them?

1 No.

2 Q Subsequent to October 26, 2001 did you
3 ever follow up --

4 A Oh, follow up?

5 Q -- with the PSC?

6 A Oh, I don't recall, no.

7 Q -- with the PSC to discuss with them
8 any other information that came to your attention
9 with respect to whether or not you should file or
10 not file a certificate?

11 A I don't recall, but I didn't recall
12 this conversation until you showed it to me, but
13 it's possible, but I don't recall following up.

14 Q And then the last line of your note
15 says, on this issue: In any event, trunks will
16 have to be partitioned.

17 Doesn't that say to you that what the
18 PSC representative said was, separate and apart
19 from whether or not you're providing service
20 related or not related to public transportation
21 and you need to file an application, in any
22 event, separate and apart, the trunks will have
23 to be partitioned?

24 Was that your understanding?

25 MR. HOPE: Objection to form.

1 THE WITNESS: My understanding was
2 that trunks will have to be partitioned.

3 Like I said, this was just capsules
4 of statements, and at the time I didn't
5 even know we had already partitioned the
6 hotel trunks.

7 BY MR. GOLDBERG:

8 Q But at the time in 2002, with respect
9 to partitioning, were any other trunks
10 partitioned by the County separate and apart from
11 the hotel?

12 A No, they're not partitioned, and
13 they're not partitioned now.

14 Q A number of months ago, maybe two
15 months ago you gave a deposition stating that
16 currently the County was in the process of
17 examining whether or not to partition the trunks
18 at the airport. Has that -- has a decision been
19 made on that issue?

20 A It's not whether to partition or not.
21 What is being looked at is the cost, time and so
22 forth of what it would take to partition the
23 trunks.

24 Q How is that different from the question
25 I asked?

1 A Because we didn't ask anybody to make a
2 decision, we just asked Nextira to tell us what
3 would it take to partition the trunks.

4 Q Have you received a response from
5 Nextira as we sit here today?

6 A No.

7 MR. HOPE: Before you go on to
8 continue with the document, will you
9 stipulate that this document and the
10 questions that have gone back and forth
11 serve to amend Mr. Garcia's initial
12 answer in terms of the steps and what he
13 looked at in the analysis as to whether
14 or not the County should seek
15 certification?

16 He had initially only identified two
17 things, this is a third things --

18 MR. GOLDBERG: No, and I don't want
19 a speaking objection to help his
20 testimony.

21 MR. HOPE: Well, it's not an
22 objection, I'm asking you whether or not
23 you're going to stipulate.

24 MR. GOLDBERG: No, no, I'm not. The
25 answer is no.

1 MR. HOPE: Okay.

2 BY MR. GOLDBERG:

3 Q Can you read the bottom half of your
4 notes?

5 A It takes two months, once they receive
6 the application, 12 days before the next
7 commission meeting, and then a fax number for
8 Myra Bustamante.

9 Q Do you recall taking -- strike that.
10 Let me ask you to turn the page to the
11 next document, F.P.S.C. Alphabetical Listing.
12 Have you seen this document before?

13 A I'm sure I have.

14 Q How did the County obtain this document?

15 A I don't recall. I don't know.

16 Q Do you know what this document lists?

17 A I would imagine it means entities that
18 have been given shared tenant service
19 certificates.

20 Q And do you see in the middle of the
21 page that it has Hillsborough County Aviation
22 Authority?

23 A Yes, I do.

24 Q That's another airport in Florida,
25 correct?

1 A Yes.

2 Q Why was that not considered in your
3 decision as to whether to apply or not to apply?

4 A I don't think I saw that as related to
5 the previous e-mail. I don't think I made the
6 connection between this thing and the e-mail that
7 listed the Hillsborough Airport before.

8 I don't recall that connection being
9 made or. . .

10 Q But you're not aware of any efforts to
11 investigate why Hillsborough County Aviation
12 Authority had a certificate?

13 A No.

14 I also don't see Tampa Airport here,
15 and they told me they had a certificate.

16 MR. HOPE: Hillsborough County
17 includes Tampa.

18 THE WITNESS: Oh, that's what it is?
19 Then it must be that, same thing.

20 BY MR. GOLDBERG:

21 Q Can we go to the next document? Are
22 these your notes?

23 A Yes.

24 Q Can you tell me -- this is -- what's
25 the date up top?

1 A 10/20, I don't know, I can't read,
2 10/26?

3 Q And could you read the notes for me?

4 A Says 10/26/01, STS meeting, in the
5 corner it says Maurice, and that's my boss,
6 Maurice Jenkins, and David Hope.

7 Finance will bill for services. Check,
8 something, I don't know, I can't read.

9 BCC, that's the Board of County
10 Commissioners, approval required, (liability).

11 Orlando, Tampa.

12 STS business plan, should we do it?

13 STS certificate in the name of
14 Miami-Dade County.

15 Q What does the BCC, Board of County
16 Commissioners' approval required, and in
17 parentheses liability mean? Why was that written?

18 A I think this was probably issues that
19 were brought up that required further
20 investigation.

21 We were -- it was just a note to
22 investigate whether the Board of County
23 Commissioners needed to approve the airport
24 providing STS services.

25 Q Why is Orlando and Tampa mentioned here?

1 A Just as a memory jogger, to contact
2 them and see what they were doing there.

3 Q And would you agree now that, you know,
4 per your testimony, Orlando per Mr. Robinson did
5 not apply for a certificate, but Tampa or
6 Hillsborough does have a certificate?

7 A Orlando did not apply because the PSC
8 told them that they didn't need to apply.

9 And Tampa applied and didn't have STS
10 services, and she couldn't tell me why she
11 applied.

12 Q When you say STS business plan next,
13 what does that refer to?

14 A Well, it's a question related to was
15 it -- is it profitable or does it make sense
16 businesswise for the airport to do this or not.

17 Q To do what or not?

18 A To provide STS services.

19 Q And when you say from a business sense,
20 what's that mean?

21 A Well, are we going to lose our shirt
22 doing this, or at least are we going to break
23 even, or is it good for the airport? Can we
24 afford to do this?

25 Q Can -- in other words can the airport

1 make money from doing it?

2 A No, I want to make sure we were not
3 going to lose any money doing it.

4 Q And what was the end result on that
5 question?

6 A Well, obviously the result was to go
7 ahead and do it, since we were hiring a lot of
8 people to do the -- maintaining our
9 telecommunications infrastructure, so it was hard
10 to separate the cost of one from the other, but
11 it was decided to go ahead and do it.

12 Q And it says, lastly, STS certificate in
13 the name of Miami-Dade County. What led you to
14 write that?

15 A Well, at the time we were still trying
16 to discover whether we should get a certificate
17 or not, and if we were to get a certificate, it
18 had to be in the name of Miami-Dade County, not
19 of, let's say, versus in the name of the airport
20 or some other name.

21 Q And let me ask you to look at the last
22 document, almost the last document, this is
23 another application to the Public Service
24 Commission, is that correct?

25 A Yes.

1 Q And do you recognize this document?

2 A It looks like a typed version of the
3 previous one that we went through was
4 handwritten.

5 Q So the County went as far as to prepare
6 a typed version of the application, correct?

7 MR. HOPE: Objection to form.

8 MR. GOLDBERG: Correct?

9 THE WITNESS: Yeah, we typed the
10 handwritten form, yes.

11 BY MR. GOLDBERG:

12 Q Then the last document in this
13 composite exhibit is Florida Public Service
14 Commission detailed information for Hillsborough
15 County Aviation Authority print off of, it
16 appears to be the PSC's website, is that
17 accurate?

18 A Yeah, looks that way, yes.

19 Q Is that your handwriting in the notes
20 below, on the bottom half of the page?

21 A Right, I talked to -- I called the
22 lady, the Sharon Weaver, and this is what she
23 told me basically on this phone.

24 Q Can you read that to me, your notes?

25 A Yes, have license since 1995, not using

1 it, have 700 phones in the airport authority,
2 have 2 switches, NEC and Verizon, have two
3 technicians to do MAC -- M-A-C -- have contract
4 agreement.

5 Q Did you come to understand why they --
6 why she said they are not using the certificate?

7 A What that means is they're not
8 providing services to anybody other than their
9 port authority staff.

10 Q Show you what's been marked -- what
11 I'll mark as Cert-7.

12 MR. HOPE: Thank you.

13 BY MR. GOLDBERG:

14 Q This is an e-mail from Rick Moses at
15 the PSC to Maurice Jenkins entitled Certification
16 Issues.

17 Have you seen this document before?

18 A I don't recall seeing it.

19 Q It says: "I have been informed that
20 the Miami Airport may be providing telephone
21 service beyond its current authority. Pursuant
22 to Rule 25-24.580, Florida Administrative Code,
23 an airport is exempt from the certification
24 requirements of this commission as long as it is
25 only providing telephone service necessary to

1 ensure the safe and efficient transportation of
2 passengers and freight through the airport
3 facility. Therefore, any services provided to
4 entities such as concession stands, restaurants
5 or hotels would be outside of the exemption, and
6 certification would be required before telephone
7 service can be provided. Please respond with a
8 list of entities served by the Miami Airport by
9 March 10th, 2003."

10 Let me focus you on the second
11 paragraph there where it says: "Therefore, any
12 services provided to entities such as concession
13 stands, restaurants or hotels would be outside of
14 the exemption and certification would be required
15 before telephone service can be provided."

16 Is that statement -- strike that.

17 Is not that statement contrary to the
18 position you took or the County took when it
19 decided not to apply for a certificate?

20 A Yes.

21 Q Is not that statement contrary to your
22 interpretation of the airport exemption rule
23 which you've testified to in this deposition
24 today?

25 A Yes.

1 Q Is not that statement consistent with
2 what the PSC representative told you on the phone
3 as documented by your notes on October 26, 2001?

4 MR. HOPE: Objection to form.

5 THE WITNESS: Not necessarily.

6 BY MR. GOLDBERG:

7 Q Explain why you say not necessarily.

8 A The other statement was not -- this
9 seems to be very specific. The other one again
10 was my handwritten notes of a conversation and it
11 just doesn't have -- this one seems to be more
12 specific to the point than what the -- my
13 conversation was.

14 Q Did you ever have a conversation with
15 Mr. Jenkins regarding the PSC's position as
16 articulated in this e-mail from Rick Moses?

17 A I don't recall having a conversation.

18 Q Did you ever discuss Mr. Moses' e-mail
19 and the position he took, that the County would
20 require -- strike that.

21 Did you ever discuss this -- the PSC's
22 position as articulated in this e-mail with
23 anybody at the County?

24 A I don't remember, I don't remember
25 seeing this e-mail before.

1 Q The e-mail concludes by saying:
2 "Please respond with a list of entities served by
3 the Miami Airport by March 10th.

4 Let me show you what I'll mark as
5 Cert-8.

6 MR. HOPE: Thank you.

7 BY MR. GOLDBERG:

8 Q Is this an e-mail from you to Rick
9 Moses dated March 17, 2003?

10 A Yes.

11 Q And you copied Maurice Jenkins, Maria
12 Perez and Anthony Brown?

13 A Yes.

14 Q It's entitled MIA, STS List?

15 A Yes.

16 Q And did you type to Mr. Moses the
17 following message: "Mr. Moses, attached is the
18 list that you requested"?

19 A Yes.

20 Q And does this exhibit contain as a
21 second page the customer list for the County as
22 of February 2003 that you transmitted to
23 Mr. Moses?

24 A Yes.

25 Q How did it come to be that you

1 responded to Mr. Moses on behalf of Mr. Jenkins
2 as a result of Mr. Moses' prior e-mail marked
3 Cert-7?

4 A It was probably that Mr. Jenkins, my
5 boss, asked me to forward to Mr. Moses this
6 information, and I requested this information
7 from probably Maria Perez, that worked for me,
8 and she provided to me, and I forwarded it to
9 Mr. Moses.

10 Q Did this interaction with the PSC cause
11 any concern on your behalf or Mr. Jenkins' behalf
12 that perhaps you were not complying with the law?

13 A I just took it as somebody wanted
14 information from us.

15 I don't recall how much I knew about
16 this exchange between Mr. Moses and Mr. Jenkins.

17 Q Is it an everyday occurrence that the
18 Florida Public Service Commission asks for your
19 customer list?

20 MR. HOPE: Objection to form.

21 THE WITNESS: No.

22 BY MR. GOLDBERG:

23 Q Are you suggesting that this was a
24 non-event to you?

25 MR. HOPE: Objection to form.

1 THE WITNESS: No, I'm not suggesting that.

2 BY MR. GOLDBERG:

3 Q When you were asked to send this list
4 to the PSC did you ask Mr. Jenkins why?

5 A He's my boss, I don't question his
6 motives, what he wants to do.

7 Q Didn't you and he, just a year to a
8 year and a half earlier, make the decision not to
9 apply for certification with the PSC?

10 A Yes.

11 Q So wouldn't that be a relevant subject
12 area for you and he to discuss, not, you know,
13 just take a directive as you're phrasing it here
14 today?

15 MR. HOPE: Objection to form.

16 THE WITNESS: Not necessarily. In
17 this case he asked me to do something and
18 I did it.

19 You know, we have a very busy
20 schedule at the airport, I don't have
21 time to question everything that he wants
22 to do.

23 BY MR. GOLDBERG:

24 Q Are you familiar with an entity called
25 the Florida Airport Managers Association?

1 A I'm not a member of that, I'm not
2 familiar with it.

3 Q Okay, I understand your testimony
4 you're not a member of it, have you ever heard of
5 that organization before?

6 A Maybe. I don't recall.

7 Q Do you know of anybody who is a member?

8 A Not firsthand.

9 Q Does the Miami International Airport
10 have an airport manager?

11 A We have many managers. Every division
12 is headed by a manager.

13 Q Are you aware of any discussion the
14 County has had with Nextira with respect to
15 whether or not Nextira had a PSC certificate?

16 A We asked them and they told us that
17 they didn't have done.

18 Q Who did you ask at Nextira, and when?

19 A I asked Pedro de Camillo, the last name
20 is d-e, C-a-m-i-l-l-o, he is the manager, site
21 manager of all the Nextira staff residing at the
22 airport that worked for us, and he told me that
23 they didn't have one.

24 And I don't recall when I asked him,
25 but it was probably at the time that all this

1 2001 stuff was going on, at the end of 2001.

2 And I asked him why, and I think he
3 just shrugged his shoulders, no, we just didn't
4 have one.

5 Actually, that was another input, now
6 that I recall, why we felt that we didn't need
7 one: because Nextira was providing the services
8 and they didn't have one, and nobody has made any
9 issue out of it, so. . .

10 MR. GOLDBERG: At this time I don't
11 have any further questions.

12 MR. HOPE: I don't have any.

13 MR. GOLDBERG: Do you have any cross?

14 MR. HOPE: No.

15 We'll read.

16 MR. GOLDBERG: Thank you,
17 Mr. Garcia, for appearing for the
18 deposition today.

19 THE WITNESS: You're welcome.

20 THE VIDEOGRAPHER: Going off the record.

21 THE REPORTER: Do you want this?

22 MR. GOLDBERG: Yes.

23 MR. HOPE: Yes.

24 (Thereupon, at 1:15 p.m., the deposition was
25 concluded)

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PEDRO J. GARCIA

Sworn to and subscribed before me
this _____ day of _____, 2005.

Notary Public in and for
The State of Florida at Large.

CERTIFICATE OF NOTARY

STATE OF FLORIDA:

SS:

COUNTY OF MIAMI-DADE:

I, CLAUDIA REAM-PINEDO, a Registered Professional Reporter and Notary Public in and for the State of Florida at Large, do hereby certify that I reported in shorthand the deposition of PEDRO J. GARCIA, a witness called by the plaintiff in the above-styled cause; that the witness was first duly sworn by me; that the reading and signing of the deposition were not waived by the witness; that the foregoing pages, numbered from 1 to 131 inclusive, constitute a true record.

I further certify that I am not an attorney or counsel of any of the parties, nor related to any of the parties, nor financially interested in the action.

WITNESS my Hand and Official Seal this 27th day of December, 2004.

Claudia Ream-Pinedo



Claudia Ream-Pinedo
Commission #DD370128
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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BELLSOUTH TELECOMMUNICATIONS,
INC., a foreign corporation,

GENERAL JURISDICTION DIVISION

CASE NO: 02-28688 CA 03

Plaintiff,

v.

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

**NOTICE OF TAKING
VIDEOTAPED DEPOSITION**
(dates per agreement of counsel)

Defendant.

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

THE ORIGINAL FILED

ON NOV 19 2004

**IN THE OFFICE OF
CIRCUIT COURT DADE CO. FL**

PLEASE TAKE NOTICE that the undersigned will take the videotaped 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 all facts related to Miami-Dade County's decision, including knowledge of all persons who participated in making the decision, not to submit an application for certification, including, but not limited to, for a Certificate of Public Convenience and Necessity and/or to provide Shared Tenant Services, to the Florida Public Service Commission pursuant to Florida Statutes §§ 364.33, 364.335 and/or 364.339 as well as Florida Administrative Code §§ 25-24.565, 25-24.567, 25-24.569, 25-24.470, 25-24.471, and/or 25-24.473.

DATE: December 15, 2004

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 and Court Reporter, and Video for the Legal Profession, Videographer, or any other officer authorized by law to take depositions in the State of Florida.

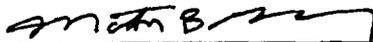
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The oral examination will continue from day to day until completed. The videotaped deposition is being taken for the purpose of discovery, for use at trial, or such other purposes as are permitted under the Florida Rules of Civil Procedure.

LASH & GOLDBERG LLP
1200 Bank of America Tower
100 S.E. 2nd Street
Miami, Florida 33131
Tel: (305) 347-4040 Fax: (305) 347-4050

BY: 

Martin B. Goldberg, FBN 0827029
Lawrence B. Lambert, FBN 0032565

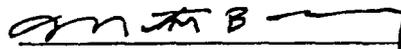
Dorian Denburg, Esq.
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Counsel for Plaintiff, BellSouth Telecommunications, Inc.

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 19th day of November, 2004, to the above-named addressee.



Martin B. Goldberg

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
Video for the Legal Profession (Videographer) - Tel: 954/920-6253 Fax: 954/920-6238

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.

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OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA



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

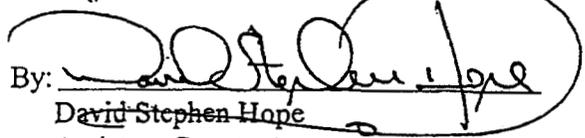
FIRST DEFENSE
(Failure to State a Claim)

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)

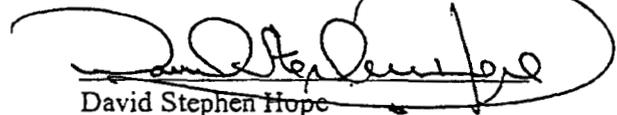
2. The County has operated a telecommunications, data network, and shared airport tenant services infrastructure and system, and provided such services at MIA since circa 1982. BellSouth has had knowledge of said infrastructure and system since its inception. The doctrine of laches is a bar to any and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

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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 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,

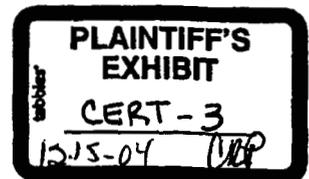
Defendant.

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.



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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.

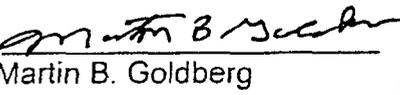
73. There is no room for the County to exercise discretion in the performance of the stated obligations, and the performance thereof is directed by law.

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:

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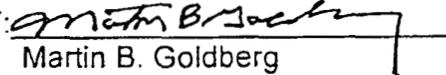
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Counsel for Plaintiff, BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Overnight Mail on this 27th 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 [Signature] Mayor
Veto _____
Override _____

Agenda Item No. 6(A)(1)(D)
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)¹ 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

¹ 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.

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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

¹ 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.

Board of County Commissioners
Page 2

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

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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.

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.

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 Shivas
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 performance 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 efforts 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 tenant but in no occasion will any airport rental agreement exceed forty-eight (48) months.



10/15/02 TUE 12:12 ITX:RX NO 87051

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, LLC¹, 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.

¹ 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

Dorrian 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
Dorrian 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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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 and all obligations and make any payment which the County deems necessary for the maintenance and preservation of the Systems and the County's title thereto. 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 additional 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) **Severability.** 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 rental of the Systems, and supercede 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 at the rate 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 right 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 33150-2075

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. **Rights to be Enforced by Department:** Whenever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

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Additional Terms and Conditions

39) 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 rent in return for the County performing all delivery, installation, and maintenance obligations. This allocation is recognized on both parties 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 preventing 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: _____

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MIAMI-DADE AVIATION DEPARTMENT

Equipment and Services Schedule I

Rental # _____ Date _____

WITNESSETH that 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 eleventh (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 amendment 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 of 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 \$300 Attached quote # _____
(A continuation sheet may be added if more room is needed)

- 11) Pre-Customer 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 amount 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 description and rental information with respect to the equipment and the software included in such ICN.
- 12) Post-Customer 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 no 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: _____

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MILITARY AVIATION DEPARTMENT Acknowledgment and Certificate of Acceptance Schedule II

To: Aviation Department

The _____ acknowledges, represents and warrants to the
Contracting Agency 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
network 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: _____

11 6

The maintenance plan features the following services:

1. Types of Failures:

Troubles 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.

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Exhibit 6
SATS Airport Rental and CUTE Agreements

PS 4701-22-02	Airtele Customers (Excluding MDAD)	Customer Number
1	Abatis International	10391420
2	Aces - CUTE & Voice	10338645
3	ADT Securities	10506587
4	AeroMexico	10506587
5	Aeropostal - 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	10344626
15	Avianca - CUTE & Voice	10484758
16	British Airways - CUTE & Voice	10408278
17	Cafe Versailles	10339696
18	Carrie Ice Cream Shop	10351663
19	Centers for Disease Control	10396494
20	Cirilio Rodriguez d/b/a Bright Additions	10363032
21	Commodore Aviation	10416024
22	Communitel	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 Marriott	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	10518440
52	Varig Brasil - CUTE	10467672
53	Virgin Atlantic - CUTE	10467591
54	Worldwide Concessions	10518818
55	Worldwide Flight Services	10464296
	Expected New Contracts	
	Global Concessions	TBD

MDAD - NextaOne 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.



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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.

Westlaw.

25 FL ADC 25-24.580
Rule 25-24.580, F.A.C.
Fla. Admin. Code Ann. r. 25-24.580

Page 1

**FLORIDA ADMINISTRATIVE CODE
ANNOTATED
TITLE 25. PUBLIC SERVICE COMMISSION
CHAPTER 25-24. TELEPHONE COMPANIES
PART XII. SHARED TENANT SERVICES
Current through August 1, 2004**

25-24.580. Airport Exemption.

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.

Specific Authority 350.127(2) FS. Law
Implemented 364.337, 364.339, 364.345 FS.
History--New 1-28-91, Amended 3-11-92.

25 FL ADC 25-24.580
END OF DOCUMENT

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works



Westlaw

25 FL ADC 25-24.567
Rule 25-24.567, F.A.C.
Fla. Admin. Code Ann. r. 25-24.567

Page 1

C

**FLORIDA ADMINISTRATIVE CODE
ANNOTATED
TITLE 25. PUBLIC SERVICE COMMISSION
CHAPTER 25-24. TELEPHONE COMPANIES
PART XII. SHARED TENANT SERVICES
Current through August 1, 2004**

25-24.567. Application for Certificate.

(1) An applicant desiring to provide shared tenant service shall submit an application on Commission Form PSC/CMP 37 (7/97), which is incorporated into this rule by reference. Form PSC/CMP 37 (7/97), entitled "Application Form For Authority To Provide Shared Tenant Service," may be obtained by contacting the Commission's Division of Competitive Markets and Enforcement. A non-refundable application fee of \$100.00 must accompany the filing of all applications.

(2) An original and six copies of the application shall be filed with the Division of the Commission Clerk and Administrative Services.

(3) A certificate will be granted if the Commission determines that such approval is in the public interest.

(4) Any shared tenant service authority granted hereafter is subject to the following:

(a) Shared tenant authority granted to all companies is on a statewide basis and is restricted to tenants as defined in subsection 25-24.560(10), F.A.C.

(b) Each shared tenant service applicant shall:

1. Advise all customers of its current rates and conditions for resold local exchange service and its quality of service standards.

2. Inform each customer in advance of agreement

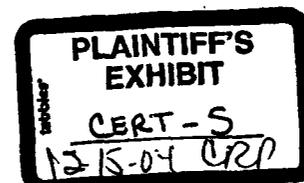
to provide service, that the Florida Public Service Commission will not set rates or regulate the service quality standards.

(c) A certificate to provide shared tenant service does not carry with it the authority to provide competitive local exchange telecommunication, alternative access vendor, interexchange or pay telephone service. A separate application must be made for such authority.

Specific Authority 350.127(2) FS. Law Implemented 364.33, 364.335, 364.339, 364.345 FS. History--New 1-28-91, Amended 5-8-91, 11-20-91, 7-29-97.

25 FL ADC 25-24.567
END OF DOCUMENT

Copr. © West 2004 No Claim to Orig. U.S. Govt. Works



12-10-01

Corporate 5

5-21-02

W/S

MGR Telecom

Al Robinson - Orlando

407-825-3500

APT

STS:

Safety of

Rent a Car, Shops, Insurance

POP Customers / ~~APT~~ PSC: APT is ONE Bldg

25.4 Public Law

Care

MTC Agreement

3 Telecom Analyst
1 " " (calling person)

Bell South - T. Nat.

They do their own MTC.

for ~~APTS~~ Projects.

407-

825 Prefix. They own.

8500

6000 STAT 1045

PLAINTIFF'S EXHIBIT
CERT-6
125-04 MGR

BS V. MDC(5) 00000

Nextiva STS

Phones

Cute w its PC's

Dry Pains

Dark Fiber.

—

② Develop Turn-over requirements

General Items.

Manual Delays

Training.

Over Lap

On site Equipment.

20 Trucks / veh.

Office Eqpt.

12 no +

ARINC →

SITA →

CUTE

②

STS

Do we need to apply?

Call PSC

Miami International Airport
P.O. Box 592075
Miami, Florida 33159

**Miami-Dade County
Attorney's Office**

Fax

To: *Myra Bustamante* From: *Pedro Garcia* +
David Stephen Hope
Assistant County Attorney

Fax: *7736* Pages: *2*

Phone: Date: *12-7-01*

Re: CC:

Urgent For Review Please Comment Please Reply Please Recycle

● Comments:

Myra,
as we discussed.
Thanks,

Pedro
X-7523

From: Leonard Stout
To: David Hope; Pedro Garcia; Susan Pascui
Date: 12/7/01 2:01PM
Subject: Operation Next Step Contacts

Florida PSC
<http://www.floridapsc.com/industry/telecomm/index.cfm>

Denver Contact:
James Winston
Asst. Deputy Manager of Aviation, Telecommunications
303-342-2002
jim.winston@diadenver.net

Tampa Contact:
Sharon Weaver, Director of Administration
813-875-6670
sweaver@TampaAirport.com

Hillsborough County Aviation Authority (813) 870-8700

**** IMPORTANT NOTICE ****

The Miami-Dade County Aviation Department is a public agency subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All e-mail sent and received is captured by our server and kept as a public record.

CC: Bobbie Phillips; Maurice Jenkins

Orlando APT.

Al Robinson

Mgr. •
Telecom

407-825-3500
arobinson@goaa.org.



Sid. -

12-7-01

7.5
Thru

6.5
US

****FLORIDA PUBLIC SERVICE COMMISSION****

**DIVISION OF REGULATORY OVERSIGHT
CERTIFICATION SECTION**

**APPLICATION FORM FOR AUTHORITY TO PROVIDE
SHARED TENANT SERVICE
WITHIN THE STATE OF FLORIDA**

INSTRUCTIONS

-
- ◆ This form is used as an application for an original certificate or for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee. No fee applies for approval of the assignment or transfer of an existing certificate to another certificated company.
 - ◆ Print or type all responses to each item requested in the application. If an item is not applicable, please explain.
 - ◆ Use a separate sheet for each answer which will not fit within the allotted space.
 - ◆ Once completed, submit the original and six (6) copies of this form and a non-refundable application fee of \$100.00 to:

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0050
(850) 413-6770

NOTE: No filing fee is required for an assignment or transfer of an existing certificate to another company.

- ◆ If you have questions about completing the form, contact:

Florida Public Service Commission
Division of Regulatory Oversight
Certification Section
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0050
(850) 413-6480

1. This is an application for (Check One):

Original Certificate

Approval of Transfer of Existing Certificate

Example: a non-certificated company purchases a certificated company and desires to retain the original certificate of authority.

Approval of Assignment of Existing Certificate

Example: a certificated company purchases a certificated company and desires to retain the certificate of authority of that company.

Approval of transfer of control

Example: a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company or name of individual (not fictitious name or d/b/a):

MIAMI-DADE ~~AVIATION DEPARTMENT~~ COUNTY

3. Name under which applicant will do business (fictitious name, etc.):

MIAMI-DADE ~~AVIATION DEPARTMENT~~ COUNTY

4. Official mailing address (including street name & number, Post Office Box, City, State, and Zip code):

MIAMI-DADE AVIATION DEPARTMENT

~~INFORMATION DIVISION~~ IS/T DIVISION

P.O. BOX 592075

MIAMI, FLORIDA 33159

Spelling

5. Florida address (including street name & number, Post Office Box, City, State, and Zip code):

MIAMI-DADE AVIATION DEPARTMENT
INFORMATION SYSTEMS DIVISION
P.O. BOX 592075
MIAMI, FLORIDA 33159

Spillout

6. Structure of organization:

- Individual Corporation
 Foreign Corporation Foreign Partnership
 General Partnership Limited Partnership
 Other: COUNTY AIRPORT POLITICAL SUBDIVISION (COUNTY)

7. If individual, provide:

Name: _____

Title: _____

Address: _____

City/State/Zip: _____

Telephone No.: _____ Fax No.: _____

Internet E-Mail Address: _____

Internet Website Address: _____

8. If incorporated in Florida, provide proof of authority to operate in Florida:

(a) Florida Secretary of State Corporate Registration Number: _____ (TAX ID NO.)

9. If a foreign corporation, provide proof of authority to operate in Florida:

(a) Florida Secretary of State Corporate Registration Number: _____

10. If using fictitious name d/b/a, provide proof of compliance with the fictitious name statute (Chapter 865.09, Florida Statutes) to operate in Florida:

(a) Florida Secretary of State Fictitious Name Registration
Number: _____

11. If a limited liability partnership, provide proof of registration to operate in Florida:

(a) Florida Secretary of State Registration
Number: _____

12. If partnership, provide name, title and address of all partners and a copy of the partnership agreement:

(a) Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Telephone No.: _____ Fax No.: _____
Internet E-Mail Address: _____
Internet Website Address: _____

(b) Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Telephone No.: _____ Fax No.: _____
Internet E-Mail Address: _____
Internet Website Address: _____

13. If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, Florida Statutes):

(a) The Florida Registration Number: _____

14. Provide F.E.I. Number (if applicable): _____

15. Who will bill for your services?

Name: MIAMI-DADE AVIATION DEPT. - FINANCE

Address: P.O. Box 592616

City/State/Zip: MIAMI, FLORIDA 33159

Telephone No.: _____

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: MAURICE JENKINS

Title: MANAGER - INFORMATION SYSTEMS DIV.

Address: MIAMI-DADE AVIATION DEPT. - P.O. Box 592075 ^{MIAMI INTERNATIONAL AIRPORT}

City/State/Zip: MIAMI, FLORIDA 33159

Telephone No. (305) 876-0934 Fax No.: (305) 876-0134

Internet E-Mail Address: MJENKINS@MIAMI-AIRPORT.COM

Internet Website Address: WWW.MIAMI-AIRPORT.COM

(b) Official Point of Contact for ongoing company operations including complaints and inquiries:

X Name: MARIA PEREZ ^{PEDRO J. GARCIA}

Title: TEL SYSTEMS SUPERVISOR ^{Chief of Telecommunications}

Address: MIAMI-DADE AVIATION DEPT. - P.O. Box 592075 ^{MIAMI INTERNATIONAL AIRPORT}

City/State/Zip: MIAMI, FLORIDA 33159

Telephone No.: (305) 876-7092 Fax No.: (305) 876-0993

Internet E-Mail Address: MPEREZ@MIAMI-AIRPORT.COM

Internet Website Address: WWW.MIAMI-AIRPORT.COM

(c) Complaint/Inquiries from Customers:

Name: LORRAINE JONES
Title: CUSTOMER SERVICE REP.
Address: MIAMI-JADE AVIATION DEPT. - MIAMI INTERNATIONAL AIRPORT
City/State/Zip: P.O. Box 598075, MIAMI, FLORIDA 33159
Telephone No.: (305) 876-0938 Fax No.: (305) 876-0993
Internet E-Mail Address: LSONES@MIAMI-AIRPORT.COM
Internet Website Address: WWW.MIAMI-AIRPORT.COM

17. List the states in which the applicant:

(a) has applications pending to be certificated as a shared tenant service provider.

NONE

(b) is certificated to operate as a shared tenant service provider.

NONE

(c) has been denied authority to operate as a shared tenant service provider and the circumstances involved.

NONE

(d) has had regulatory penalties imposed for violations of telecommunications statutes, rules, or orders and the circumstances involved.

NONE

- (e) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

NONE

18. Indicate if any officers, directors, or any of the ten largest stockholders have previously been:

- (a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, provide explanation: _____

N/A

- (b) Officer, director, partner or stockholder and any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

N/A

19.

Submit the following:

A. Managerial Capability

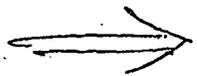
Give resumes of employees and officers of the company that would indicate sufficient managerial experiences of each.

TOO +
RESUMES

B. Technical Capability

Give resumes of employees and officers of the company that would indicate sufficient technical experience or indicate what company has been contracted to perform technical service.

?



C. Financial Capability

The application must contain the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements must be signed by the applicant's chief executive officer and chief financial officers affirming that the financial statements are true and correct and must include:

FIN

1. the balance sheet;
2. income statement, and
3. statement of retained earnings.

NOTE: This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.

Further, the following (which includes supporting documentations) must be provided:

1. A written explanation that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. A written explanation that the applicant has sufficient financial capability to maintain the requested service.
3. A written explanation that the applicant has sufficient financial capability to meet its lease or ownership obligations.

Finance

AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide shared tenant service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

I will comply with all current and future Commission requirements regarding shared tenant services. I understand that I am required to pay a regulatory assessment fee (minimum of \$50.00 per calendar year) and pay gross receipts tax. Furthermore, I agree to keep the Commission advised of any changes in the names or addresses listed in the application within 10 days of the change.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

UTILITY OFFICIAL:

Print Name

Signature

Title

Date

Telephone No.

Fax No.

Address: _____

CERTIFICATE TRANSFER OR ASSIGNMENT STATEMENT

I, (Name) _____
(Title) _____
of (Name of Company) _____
and current holder of Florida Public Service Commission Certificate Number # _____
have reviewed this application and join in the petitioner's request for a:
 transfer
 assignment
of the above-mentioned certificate.

UTILITY OFFICIAL:

Print Name

Signature

Title

Date

Telephone No.

Fax No.

Address: _____

****APPLICANT ACKNOWLEDGMENT STATEMENT****

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of 0.15 of one percent of the gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra- and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra- and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$100.00 must be submitted with the application.

UTILITY OFFICIAL:

Print Name

Signature

Title

Date

Telephone No.

Fax No.

Address: _____

Form PSC/CMU-37 (07/97)
Required by Commission Rule Nos. 25-24.565,
25-24.569, and 25-24.567

9

BS V. MDC(5) 00001

10-26-01

PSC on STB

MAIN Number: (850) 413-6600

- ↳ Jackie Gilcrest (boss)
- ↳ Tom Williams 850 413-6586
- ↳ Richard Moses 850 413-6582

He was at MIA 5-6 years ago looking at this issue.

If MIA is going to provide service not related to public transportation (hotels, shops etc.) we need to file an application

In any event, trunks will have to be partitioned



It takes 2 months once they receive the application.

12 days before the next commission meeting.

Fax 7736 Myra Bustamante



F.P.S.C. Alphabetic Listing of Regulated Telecommunications Companies: Shared Tenant Service

Last Updated on 12/06/2001

Name	Company Code
Access Network Services, Inc.	TS171
Apex Professional Services, Inc.	TS151
Bayfront Health System, Inc.	TS156
Byron Financial & Management Corp. d/b/a Crown Suites & Message Center	TS080
Chicago Suites, Inc. d/b/a HO Global Workplaces	TS190
City of Tallahassee	TS186
Corporate Offices At Phillips Point, Inc.	TS117
Cypress Communications, Inc. d/b/a Cypress Communications of South Florida, Inc.	TS187
Executive Business Centers, Inc.	TS183
Florida Tax Deeds, Inc. d/b/a Senator Building	TS142
Gaedeke Holdings Ltd.	TS181
Hillsborough County Aviation Authority	TS175
HTG Services, L.L.C.	TS191
Interlink Communications Partnership, LLC d/b/a Charter Communications	TS182
Intermedia Communications, Inc.	TS173
J.F.G. Associates, Inc.	TS169
JABS Real Estate Management Corp. d/b/a One Park Place Executive Suites	TS184
Sarasota Memorial Hospital	TS146
St. Vincent's Medical Center, Inc.	TS100
Suite Partners, Inc. d/b/a Summit Executive Suites	TS159
The Amera Corporation d/b/a Pathway Communications	TS150
Travelers Media, Inc.	TS189
TVMAX Telecommunications, Inc. d/b/a OpTel	TS176
UniversalCom, Inc.	TS166
Vantas Management Virginia, Inc.	TS128
World Trade Center TPA, LTD.	TS188
WorldCom Technologies, Inc.	TS185

<http://www.floridapsc.com/mcd/TSTS.html>

12/7/01

BS V. MDC(5) 000018

10-20-01
STS NOTE

Memo to
D. Hope.

FINANCE WILL BILL FOR SERVICES -- Check Pt.

BCC Approval Required (Liability)

OKLANDO TAMPA.

STS Bus Plan: Should we do it?

STS Certificate in the name of Miami-Dade City

****FLORIDA PUBLIC SERVICE COMMISSION****

**DIVISION OF REGULATORY OVERSIGHT
CERTIFICATION SECTION**

**APPLICATION FORM FOR AUTHORITY TO PROVIDE
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 - ◆ Print or type all responses to each item requested in the application. If an item is not applicable, please explain.
 - ◆ Use a separate sheet for each answer which will not fit within the allotted space.
 - ◆ Once completed, submit the original and six (6) copies of this form and a non-refundable application fee of \$100.00 to:

Florida Public Service Commission
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6770

NOTE: No filing fee is required for an assignment or transfer of an existing certificate to another company.

- ◆ If you have questions about completing the form, contact:

Florida Public Service Commission
Division of Regulatory Oversight
Certification Section
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
(850) 413-6480

1. This is an application for (Check One):

Original Certificate

Approval of Transfer of Existing Certificate

Example: a non-certificated company purchases a certificated company and desires to retain the original certificate of authority.

Approval of Assignment of Existing Certificate

Example: a certificated company purchases a certificated company and desires to retain the certificate of authority of that company.

Approval of transfer of control

Example: a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company or name of individual (not fictitious name or d/b/a):

Miami-Dade County

3. Name under which applicant will do business (fictitious name, etc.):

Miami-Dade County

4. Official mailing address (including street name & number, Post Office Box, City, State, and Zip code):

Miami-Dade Aviation Department

Information Systems/Telecommunications Division

P.O. Box 592075

Miami, Florida 33159

5. Florida address (including street name & number, Post Office Box, City, State, and Zip code):

Miami-Dade Aviation Department
Information Systems/Telecommunications Division
P.O. Box 592075
Miami, Florida 33159

6. Structure of organization:

() Individual () Corporation
() Foreign Corporation () Foreign Partnership
() General Partnership () Limited Partnership
(X) Other: Political Subdivision (County)

7. If individual, provide:

Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Telephone No.: _____ Fax No.: _____
Internet E-Mail Address: _____
Internet Website Address: _____

8. If incorporated in Florida, provide proof of authority to operate in Florida:

(a) Florida Secretary of State Corporate Registration
Number: _____

9. If a foreign corporation, provide proof of authority to operate in Florida:

(a) Florida Secretary of State Corporate Registration
Number: _____

10. If using fictitious name d/b/a, provide proof of compliance with the fictitious name statute (Chapter 865.09, Florida Statutes) to operate in Florida:

(a) Florida Secretary of State Fictitious Name Registration
Number: _____

11. If a limited liability partnership, provide proof of registration to operate in Florida:

(a) Florida Secretary of State Registration
Number: _____

12. If partnership, provide name, title and address of all partners and a copy of the partnership agreement:

(a) Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Telephone No.: _____ Fax No.: _____
Internet E-Mail Address: _____
Internet Website Address: _____

(b) Name: _____
Title: _____
Address: _____
City/State/Zip: _____
Telephone No.: _____ Fax No.: _____
Internet E-Mail Address: _____
Internet Website Address: _____

13. If a foreign limited partnership, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, Florida Statutes):

(a) The Florida Registration
Number: _____

14. Provide F.E.I. Number (If applicable): _____

15. Who will bill for your services?

Name: Miami-Dade Aviation Dept. Finance

Address: P.O. Box 592616

City/State/Zip: Miami, Florida 33159

Telephone No.: _____

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: Maurice Jenkins

Title: Manager-Information Systems/Telecommunications Division

Address: Miami-Dade Aviation Dept. Miami Int'l Airport P.O. Box 592075

City/State/Zip: Miami, Florida 33159

Telephone No.: (305) 869-0934 Fax No.: (305) 876-0134

Internet E-Mail Address: mjenkins@miami-airport.com

Internet Website Address: www.miami-airport.com

(b) Official Point of Contact for ongoing company operations including complaints and inquiries:

Name: Pedro J. Garcia

Title: Chief of Telecommunications

Address: Miami-Dade Aviation Dept. Miami Int'l Airport P.O. Box 592075

City/State/Zip: Miami, Florida 33159

Telephone No.: (305) 876-7523 Fax No.: (305) 869-1413

Internet E-Mail Address: pjgarcia@miami-airport.com

Internet Website Address: www.miami-airport.com

(c) Complaint/Inquiries from Customers:

Name: Lorraine Jones
Title: Customer Service Rep.
Address: Miami-Dade Aviation Dept. Miami Int'l Airport P.O. Box 592075
City/State/Zip: Miami, Florida 33159
Telephone No.: (305) 876-0932 Fax No.: (305) 876-0993
Internet E-Mail Address: ljones@miami-airport.com
Internet Website Address: www.miami-airport.com

17. List the states in which the applicant:

(a) has applications pending to be certificated as a shared tenant service provider.

None

(b) is certificated to operate as a shared tenant service provider.

None

(c) has been denied authority to operate as a shared tenant service provider and the circumstances involved.

None

(d) has had regulatory penalties imposed for violations of telecommunications statutes, rules, or orders and the circumstances involved.

None

(e) has been involved in civil court proceedings with an Interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

None

18. Indicate if any officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. If so, provide explanation: _____

N/A

(b) Officer, director, partner or stockholder and any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

N/A

19. Submit the following:

A. **Managerial Capability**

Give resumes of employees and officers of the company that would indicate sufficient managerial experiences of each.

B. **Technical Capability**

Give resumes of employees and officers of the company that would indicate sufficient technical experience or indicate what company has been contracted to perform technical service.

C. **Financial Capability**

The application must contain the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements must be signed by the applicant's chief executive officer and chief financial officers affirming that the financial statements are true and correct and must include:

1. the balance sheet;
2. income statement, and
3. statement of retained earnings.

NOTE: This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.

Further, the following (which includes supporting documentations) must be provided:

1. A written explanation that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
2. A written explanation that the applicant has sufficient financial capability to maintain the requested service.
3. A written explanation that the applicant has sufficient financial capability to meet its lease or ownership obligations.

****APPLICANT ACKNOWLEDGMENT STATEMENT****

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of 0.15 of one percent of the gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra- and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra- and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of **\$100.00** must be submitted with the application.

UTILITY OFFICIAL:

Print Name

Signature

Title

Date

Telephone No.

Fax No.

Address: _____

AFFIDAVIT

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide shared tenant service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

I will comply with all current and future Commission requirements regarding shared tenant services. I understand that I am required to pay a regulatory assessment fee (minimum of \$50.00 per calendar year) and pay gross receipts tax. Furthermore, I agree to keep the Commission advised of any changes in the names or addresses listed in the application within 10 days of the change.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

UTILITY OFFICIAL:

Print Name

Signature

Title

Date

Telephone No.

Fax No.

Address: _____

CERTIFICATE TRANSFER OR ASSIGNMENT STATEMENT

I, (Name) _____
(Title) _____
of (Name of Company) _____
and current holder of Florida Public Service Commission Certificate Number # _____
have reviewed this application and join in the petitioner's request for a:
 () transfer
 () assignment
of the above-mentioned certificate.

UTILITY OFFICIAL:

Print Name _____	Signature _____
Title _____	Date _____
Telephone No. _____	Fax No. _____
Address: _____	



Hillsborough County Aviation Authority

Mailing Address

P. O. Box 22287
Tampa, FL 33622-2287

Location

Tampa International Airport
Tampa, FL 33607

Contact Information

Sharon Weaver, Director of Administration, (813) 870-8717
Fax: (813) 875-6670
Internet Email: sweaver@TampaAirport.com
Internet WWW Home Page: http://www.TampaAirport.com

Regulation Information

Company Code: TS175
Certificate(s): 4680



Have license since 1995.
Are not using it.
Have 700 phones in the Airport Authority
Have 2 switches, NEC + Perigon.
Have 2 Technicians fo fo MAC
Have Contract Agreement.

**PLAINTIFF'S
EXHIBIT**

From:
To:
Subject:

RMoses@PSC.STATE.FL.US
mjenkins@miami-airport.com
Certification Issues

3
5-21-03 LWS

I have been informed that the Miami Airport may be providing telephone service beyond its current authority. Pursuant to Rule 25-24.580, Florida Administrative Code, an airport is exempt from the certification requirements of this commission as long as it is only providing telephone service necessary to ensure the safe and efficient transportation of passengers and freight through the airport facility.

Therefore, any services provided to entities such as concession stands, restaurants, or hotels would be outside of the exemption and certification would be required before telephone service can be provided.

Please respond with a list of entities served by the Miami Airport by March 10, 2003. If you have questions, please contact me at 850/413-6582. Thank you.

**PLAINTIFF'S
EXHIBIT**
CERT-7
12-15-04 (LWS)

**PLAINTIFF'S
EXHIBIT**

-----Original Message-----

From: Pedro Garcia [mailto:PJGarcia@miami-airport.com]
Sent: Monday, March 17, 2003 5:18 PM
To: rmoses@psc.state.fl.us
Cc: Maurice Jenkins; Maria Perez; Anthony Brown
Subject: MIA STS List

2
5-21-03 LWS

Mr. Moses,

Attached is the list that you requested.

<<SATS Customer List.xls>>

Pedro J. Garcia
Chief, Telecommunications
Miami-Dade Aviation Department
Phone: 305 876-7523
Fax: 305 869-1413

> The Miami-Dade County Aviation Department is a public agency subject to
> Chapter 119 of the Florida Statutes concerning public records. E-mail
> messages are covered under such laws and thus subject to disclosure. All
> e-mail sent and received is captured by our server and kept as a public
> record.

>
>
>

**PLAINTIFF'S
EXHIBIT**
CERT-8
12-15-04 CRP

SATS CUSTOMER LIST AS OF 2/03

AIRLINES GOVERNMENT AGENCIES CONCESSIONS/OTHERS MANAGEMENT COMPANIES

ACES GROUP	CENTER FOR DISEASE CONTROL	ADT	AIRPORT PARKING ASSOCIATES (MEYERS)
AEROMEXICO	TRI-COUNTY COMMUTER RAIL	ASI BAGGAGE	AVIATION CLUB B
AEROPOSTAL	US CUSTOMS	ASIG, MIAMI INC	AVIATION CLUB F
AIR FRANCE	USDA, APHIS	AT&T WIRELESS	CLUB AMERICA TWOY
AIR JAMAICA		CAFÉ VERSAILLES	MIAMI INTERNATIONAL AIRPORT HOTEL
AIR TRAN		CARRIES ICE CREAM	N&K ENTERPRISES
ALASKAN AIRLINES		COMMUNTEL	NFL MANAGEMENT
AMERICAN AIRLINES		DATO ELECTRIC	QUALITY AIRCRAFT (SKYCAPS)
ASERCA AIRLINES		GLOBAL MIAMI JOINT VENTURE	SHUTTLE SERVICES
ATLAS AIR		GUAVA & JAVA	SIRGANY CENTURY
AVIANCA		HMS HOST	TERMINAL REXALL
BRITISH AIRWAYS		INTERMEDIA COMMUNICATIONS	TOP OF THE PORT
COMMODORE AVIATION		MATRIX SYSTEMS	UNICO
CONTINENTAL AIRLINES		MIAMI DUTY FREE	VISTA BLDG MANAGEMENT
COPA		SIRGANY BENCOMO	
CYBER EXPRESS		SITA	
TCH CARIBBEAN AIRLINES		SMARTE CARTE	
EVERGREEN AVIATION		UNDERGROUND CONSTRUCTION	
FLAGSHIP AIRLINES		WORLDWIDE CONCESSIONS	
GULFSTREAM AIRLINES		WORLDWIDE FLIGHT SERVICES	
LAN CHILE			
MARTIN AIR			
MEXICANA			
POLAR AIR CARGO			
SWISS AIR			
TACA INTL			
TAMPA AIRLINES			
UNITED AIRLINES			
VARIG			
VIRGIN ATLANTIC			