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Subject: Reply Brief of Miami-Dade County - Docket No. 050257-TL
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September 10, 2007

VIA Electronic Filing

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

**Re: Docket No. 050257-TL: Complaint by BellSouth Telecommunications, Inc.,
Regarding the Operation of a Telecommunications Company by Miami-Dade
County in Violation of the Florida Statutes and Commission Rules**

Dear Ms. Cole:

Enclosed for filing in the above-referenced proceedings is an original "Reply Brief of Miami-Dade County". Copies were served on the parties listed in the attached Certification of Service.

Cordially,

s/David Stephen Hope
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 050257

REPLY BRIEF OF MIAMI-DADE COUNTY

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INTRODUCTION

Miami-Dade County (the "County"), by its undersigned counsel, and pursuant to Florida Public Service Commission (the "Commission" or "PSC") Order No. PSC-06-0326-PCO-TL, issued April 21, 2006, hereby files its reply brief in this matter.¹ For the reasons discussed below, in addition to issues delineated in the County's direct brief, the Florida Public Service Commission (the "Commission") should issue an Order that: (i) Miami-Dade County's operation of the shared telecommunications system at Miami International Airport for the provision of STS services complies with applicable Florida Statutes and Commission rules, given the County's provision of said services is pursuant to Rule 25-24.580 of the Florida Administrative Code (the "Airport Exemption"), which exempts the County from the STS rules; and (ii) the County as an STS provider does not need a Certificate of Public Convenience and Necessity to provide said STS services.

SUMMARY OF ARGUMENT

The County operates a shared airport telecommunications system (the "Airport System") at Miami International Airport ("MIA"), pursuant to Rule 25-24.580 of the Florida Administrative Code and § 364.339 of Florida Statutes. As a part of the Airport System, the County provides shared tenant services ("STS") in a manner consistent with the Commission's rules and orders, which specifically exempt airports from the Commission's STS certification requirement.² BellSouth Telecommunications, Inc.'s ("BellSouth")³ complaint against the

¹ Citations to the Joint Final Exhibit List shall be denoted as Ex. yy, where "yy" refers to the Exhibit Number.

² See e.g., Fla. Admin. Code § 25-24.580 (the "Airport Exemption"); *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange* (cont'd)

County (the "Complaint") is nothing more than an attempt to relitigate the Commission's STS Airport Exemption, which has remained in effect and undisturbed since first adopted in 1987. BellSouth purposely misreads and misinterprets the Airport Exemption to minimize and negate its impact, and hence Florida airports like the Orlando International Airport ("Orlando" or "GOAA"), and the County's ability to operate their shared telecommunications systems. BellSouth presents arguments which are either contradictory or unsubstantiated by the facts and evidence. BellSouth ignores the inconsistencies in its legal interpretation of the Airport Exemption, and its claim(s) are barred by the doctrine of *res judicata*.

The County leased the Airport System with the option to buy in 1982. *See* Exs. 1, 2, 20 at 71-73. The County purchased the system which provides service on a partitioned basis to the hotel located in the MIA Terminal Building (the "MIA Airport Hotel") on October 7, 1987. *See* Exs. 4 at 1, 11, 12, 20 at 71, 29 at 1; *Aff. of Pedro J. Garcia* ¶ 3. The County purchased the Airport System in 2002.⁴ Exs. 9, 13. The County has provided STS services at MIA since 1987, and prior to the 2002 acquisition of the Airport System infrastructure. *See* Exs. 30 at 2, 32 at 1, 244 at 3, 245 at 4, 246 at 6, 249 at 4-5, 251 at 2, 255, 256, 257, 279, 280 at 3-4. The County's purchase of the Airport System infrastructure does not constitute a new provision of STS which requires a PSC Certificate of Public Convenience and Necessity. The Commission has never made a distinction between leasing and owning the equipment used to provide STS services. BellSouth is the County's local service provider at MIA. Ex. 17 at 71, 80, 133. The

Telephone Service, Docket No. 860455-TL, Order No. 17111 (Jan. 15, 1987) (the "STS Order"), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987) (Ex. 240).

³ BellSouth Telecommunications, Inc. ("BellSouth") merged with AT&T and is now doing business as AT&T Florida.

County does not provide shared local services to facilities such as hotels or shopping malls. The current concessions at MIA are the same types of concessions considered and authorized by the Commission as necessary for the safe and efficient movement of passengers and freight through the airport campus.

ARGUMENT

I. MIAMI-DADE COUNTY'S SHARED AIRPORT TELECOMMUNICATIONS SYSTEM FULLY COMPLIES WITH RULE 25-24.580 OF THE FLORIDA ADMINISTRATIVE CODE.

The Commission adopted the Airport Exemption due to airports' unique circumstances.⁵ These unique circumstances have not changed, although as even BellSouth admits, security needs and obligations of airports have increased.⁶ In light of these increased

⁴ The County acquired title to all telecommunications, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets.

⁵ Some airports in Florida such as the Greater Orlando facility share trunks coming from the LEC central office. Airports are unique facilities, generally construed as being operated for the convenience of the traveling public. One unique communication need is the ability of airport tenants to quickly communicate with one another for security reasons. It is for this reason that we will permit intercommunications between and among tenants behind the PBX without accessing the LEC central office.

While we recognize the unique needs of airport such as GOAA, the sharing of local exchange service must be related to the purpose of an airport – the safe and efficient transportation of passengers and freight through the airport campus. To the extent that sharing of local trunks is limited to this purpose, there is no competition with nor duplication of local exchange service by the LEC.

Ex. 240 at 18.

⁶ "It is undisputed that the events of September 11 increased the security needs and obligations of the County in connection with its operation and management of MIA." BellSouth Opp'n to Miami-Dade County Mot. to Dismiss at 17.

safety obligations, the Airport Exemption is more appropriate than ever. The Airport Exemption allows an airport to provide STS to ensure safe and efficient transportation of passengers and freight through the airport.⁷ However, BellSouth purposely misreads and misinterprets the Airport Exemption to minimize and negate its impact, and hence the County GOAA's ability to operate their shared telecommunications systems. BellSouth continues this subterfuge as a means to relitigate and erode the Airport Exemption, whose enactment BellSouth vehemently opposed in 1987 and still opposes twenty (20) years later.⁸

A. The Airport System Ensures The Safe And Efficient Transportation Of Passengers And Freight Through The Airport Facility.

BellSouth states the County's provision of STS is not to ensure safety and efficiency in the transportation of passengers and freight through the airport.⁹ In support of these statements, BellSouth myopically focuses on the revenue and potential profit justifications for the 2002 acquisition of the Airport System, and categorically reiterates that the Airport System is not for safety and security without factual evidence.¹⁰ BellSouth conveniently ignores the reality crystallized through affidavits, depositions, and documents, that the Airport System ensures the safe and efficient transportation of passengers and freight through MIA.

First, Mark Forare ("Forare"), Assistant Aviation Director of Security for the Miami-Dade County Aviation Department ("MDAD") from 2002 until his retirement in 2006, and

⁷ Ex. 240 at 18.

⁸ "I mean, those are all things that I think say this is time to take a second look at it." Nancy White, Esq., counsel for BellSouth, Aug. 2, 2005 Agenda Conference Tr. at 18.

⁹ BellSouth Br. at 1, 11 n.48, 13, 31, 39-44.

¹⁰ "Nor could the County establish that its provision of STS is otherwise necessary for the safe and efficient transportation of passengers and freight through the airport. BellSouth Br. at 42.

with twenty-seven (27) years work experience with the Miami-Dade Police Department (“MDPD”) stated in his affidavit filed in this matter:

MIA has its own fire and rescue, police and emergency personnel and systems. These emergency and security services are all connected to and integrated in the shared airport system. The MIA operations center, fire department, and police department can receive “caller ID” information from telephones on the shared airport system. This enables airport emergency and security personnel to identify the originating entity and extension of the telephone making the call. This allows emergency and security personnel to rapidly respond to any emergency in MIA.

Aff. of Mark Forare ¶ 2.

All MIA concessionaires, vendors and tenants are required to make immediate notification of unattended bags and suspicious incidents/persons via telephone to the MIA operations center, and actively participate in the evacuation plan or bomb threat search if invoked. These notifications and participation require access to the MIA shared tenant services (“STS”) telecommunications network.

Id. ¶ 3.

MDAD operates the STS system to maximize the safety and security of the traveling public. Because the shared system allows emergency and security personnel to immediately identify the originating entity and the telephone extension, the airport is better equipped to address emergencies and other dangerous situations. MIA concessionaires on the STS system, like newsstands, food and beverage establishments, and drug stores, are connected to the system for these reasons. MIA personnel are not able to predict where an emergency situation might arise and must be able to address situations that threaten the safety and security of passengers or aviation personnel, whether they occur at an airline reservation desk or at the shoe shine.

Id. ¶ 4.

Second Lauren Stover (“Stover”), MDAD Assistant Aviation Director for Security and Communications, after less than eight (8) months in the position answered at her deposition in this matter,

When we have an incident a checkpoint our Operations Control Room [("OCR")], which is the nerve center of our airport where incidents are coordinated is contacted. We use a four digit number to contact the OCR. All of our communications with police, fire, all of our responses are coordinated through the STS using the four digit code. So if they require security, they would call me very quickly on my line or if we needed police there, we would dial ... 7373 for fire, 7575. So we're able to quickly call who we need to call to respond to and also we use radios as well.

Ex. 206 at 18. In addition, Stover stated: (i) during checkpoint incidents, the checkpoint calls the OCR and the OCR dispatches the necessary personnel via the STS system; (ii) it is more efficient and timely for OCR to communicate with any and all other entities using four (4) digit dialing;¹¹ (iii) the caller identification feature enables safety and security personnel to detect where a call originates; (iv) MIA's emergency and security services are all connected and integrated into the Airport System; (v) the Airport System enables aviation personnel to respond more quickly to an incident; (vi) having to use a 911 system which takes a call outside

¹¹

And when you're involved in an emergency situation in a Category X airport such as Miami [International Airport], it's best to dial directly quickly and get to your party. Also among other entities that are working this, if I have to call ... the airside operations, I could just dial the four digit number very quickly to get the gate assignment to find what aircraft is on such a gate and that's how we're able to coordinate the information very quickly.

Ex. 206 at 20.

The news media monitors the radios and the minute they hear an incident at Miami International Airport, they are calling us immediately within seconds that they hear the scanners of the police radios. Therefore, I am in a scramble to try and gather that information. So it's much more easier, if you will, if I just pick up the phone and dial quickly the four digit number to – whether it's police, fire or whoever I have to reach. It's a convenience and it's one that cuts a little time for us than to have to dial a ten digit number.

Id. at 20-21.

of the Airport System and MIA operations is a disadvantage,¹² and (vii) the conference call feature allows multiple parties located in separate locations throughout MIA to discuss issues.¹³

Id. at 19-21, 29, 36, 38, 39.

Third, Pedro J. Garcia ("Garcia"), MDAD Chief of Telecommunications answered at his deposition in this matter that: (i) users of the Airport System can call each other or MIA emergency services by dialing four (4) digits in lieu of a ten (10) digit number if they were on an outside service line; (ii) using a Airport System telephone generates the caller's specific airport location for the receiving party (i.e., MIA OCR, police or fire personnel will know where on the airport campus the call originated, and if made from an STS customer location, said STS customer's name);¹⁴ (iii) the caller identification information to a 911 operator,

¹² Well the response could not be as quick as it would be had they known to pick up the phone within our system. If they have to go outside, then it relies on the 911 and the routing and the contacting and the dispatch from wherever and the communications. It just doesn't happen as quickly.

Id. at 37. "I believe it's a disadvantage for people to have to call outside of the airport circle if they have an incident that we can respond to within the airport using a four digit system. *Id.* at 39.

¹³ For example construction. We have a lot of construction at the airport. So if I have some vibrations going on in the ramp that's causing the security checkpoint to shake and then it's alarming and people's bags are alarming like there is [sic] bombs in there when it's construction causing the equipment to shake, then I'll get on the phone with the construction person and get facilities people on the line and security person and TSA person and the six of us are on the call trying to resolve how we can do this.

Id. at 38.

¹⁴ It shows the location where the call is originating from. For example, if you're in an airline counter, it would show, as we say Terminal A and then it would have a number on the counter which is composed of the floor, the Concourse H or G or B and then the number of counter specifically. So the emergency responders, just

(cont'd)

generated by a non-Airport System user, like a BellSouth customer, would be a telephone room or the MIA Terminal Building, not the specific airport campus location; (iv) the conference call feature is used, when things happen at MIA which necessitate several people or entities talking at the same time; and (v) during emergencies like Hurricane Andrew, Airport System users could call one another within MIA. Ex. 207 at 7, 13, 16, 24, 27.

Fourth, Garcia answered at one of his numerous depositions in the state court matter of *BellSouth Telecommunications, Inc. v. Miami-Dade County*, No. 02-28688 CA 03 (Cir. Ct. Fla. filed Nov. 12, 2002), that the Airport System also provides *inter alia*, the connectivity for: (i) CUTE “that allows the airlines to sign on to their host computers for reservations and flight assignment purposes using terminals that are common to any airline...[]”; (ii) “the transmission of security cameras to recorders for the security of the airport[]”; and (iii) “all the information for the flight display monitors that we have at the airport to show the flight information, [and] the public address system....” Ex. 20 at 67-68. In addition, Garcia stated that the Airport Systems’ two (2) PBXs are “interlaced for disaster recovery purposes” so that MIA, MDAD, and STS tenants will still have service if one (1) of the PBXs fails or is lost. *Id.* at 72.

Fifth, Garcia stated in his affidavit filed in this matter:

MIA tenants on the shared Airport System lease equipment, cable facilities, and fiber optics from MDAD for network connectivity within MIA. The leased equipment allows MIA tenants to connect with: (i) MIA tenants on the Airport System, MDAD, FAA, TSA, INS, Customs, MIA police, fire rescue, security, or other emergency personnel by dialing a four (4) digit number; and (ii) BellSouth facilities, which connects to the public network, for

by having that number they know exactly which counter they are calling from.

Ex. 207 at 13.

local service by dialing an eleven (11) digit number (9 + area code + telephone number).

Aff. of Pedro J. Garcia ¶ 4.

MDAD operates the shared Airport System to maximize the safety and security of the traveling public. Because the shared system allows emergency and security personnel to immediately identify the originating entity and telephone extension of any call made on the Airport System, MIA is better equipped to address emergencies and other dangerous situations. Any MIA tenant which is not part of the shared Airport System does not have the ability to reach MDAD, MIA police, fire rescue, security, or other emergency personnel on a four (4) digit basis in emergency situations. In addition, telephone calls placed over the Airport System are not subject to cable cuts and switch overloads that might occur on a public switched network.

Id. ¶ 6.

Last, based upon BellSouth First Request for Production of Documents, dated June 7, 2006, the County produced *inter alia*, a document delineating thirteen (13) incidents where a concourse or concourses at MIA were evacuated between July 2004 and July 2005. *See* Ex. 206 at Ex. 2. Albeit Stover, upon questioning of these specific incidents did not have personal knowledge, given her employment with the Department of Homeland Security from February 2003 to February 2006, she did identify the role the Airport System plays in such events.¹⁵ *Id.* at 16-22, 25-26. BellSouth's allegation that the County does not provide STS to ensure the safety of the traveling public is baseless. Safety at MIA is of the utmost importance.

¹⁵

Basically we physically maneuver the passengers away from an area that we are establishing a perimeter if we have an object or an item our terminal operations staff will come in and work with police so that we can push people back.... [T]hose of us in executive offices are scrambling to call each other on the phone and making sure we have staffing in place.

Ex. 206 at 25.

B. The Airport Exemption Does Not Prohibit Airports From
Defraying Costs And Generating Revenue.

Neither Chapter 364 of Florida Statutes, nor Chapter 25-24, Part XII of the Florida Administrative Code prohibit airports from defraying costs and generating revenues from their STS operations. The County pays BellSouth over \$711,000 annually for local service, trunks, and other equipment, services, and access necessary for MDAD to provide shared services. See Ex. 17 at 81, 133; Ex. 20 at 48, 69, 108, 114-116; Ex. 271. The County paid NextiraOne, LLC and its predecessors: (i) approximately \$65,000,000 to lease the Airport System and manage, operate, and maintain its infrastructure and services provided to MIA on the County's behalf from September 1982 to September 30, 2000; (ii) approximately \$7,300,000 annually to lease the Airport System and manage, operate, and maintain its infrastructure and services provided to MIA on the County's behalf from October 1, 2000 to February 6, 2002; and (iii) \$6,450,000 to purchase the Airport System which included *inter alia* all telecommunications, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets. Ex. 13 at PSC 444-45, PSC 449; Ex. 282 at MDC1(7) 00825, 00829.

A residual airport such as MIA is self-sufficient. Therefore, the only way for MIA to fund its operations and expenditures is via issuing bonds, which may obligate the County and hence the citizens of Miami-Dade County, and generating fee revenue. In fiscal year ("FY") 2005-2006, MDAD's operating expenses for MIA and the general aviation airports was \$299,675,000. For FY 2006-2007, the operating expenses was \$293,484,000 as of August 31, 2007, out of a budget of \$369,596,000. In purchasing the Airport System, the County eliminated an annual leasing expense approximating \$75,000,000 since its inception in 1982.

Id. The County attempts to cover its costs to provide the services necessary to operate MIA.¹⁶ In fact, BellSouth has no evidence as to whether the County has broken even or is profitable since 1982, in providing the Airport System and concomitant services, given the extensive sunk costs spent on the Airport System to date.

More importantly, the Airport Exemption is based upon Airport System ensuring the safe and efficient transportation of passengers and freight through the airport facility, not whether its operation generates a profit. § 25-24.580, Fla. Admin. Code; *see* Ex. 240 at 18 (“While we recognize the unique needs of airports such as GOAA, the sharing of local exchange service must be related to the purpose of an airport – the safe and efficient transportation of passengers and freight through the airport campus.”). To ensure, means to make sure or certain.¹⁷ Forare, Stover, and Garcia presented undisputed and irrefutable evidence that the Airport System ensures the safe and efficient transportation of passengers and freight through MIA.

¹⁶ We don't have a separation of the actual cost to the County of providing STS services. We basically hire the folks from Nextira, 50 of them, and to provide telecommunication services for the aviation department, the airlines, and everybody else that uses the services. We also use all the infrastructure of cables and wires and equipment and PBXs, and the like, and the whole provisioning of services inside for all the – for everybody that uses that equipment is all intermingled. So we really don't have a field that says we are making this business of STS costs us this much, and then we have this profit, and then the net revenue is so much. There is no such thing. We basically do the best we can to cover all the costs of running this situation here.

Ex. 20 at 95-96.

¹⁷ The American Heritage College dic•tion•ary 458 (3d ed. 1993).

II. MIAMI-DADE COUNTY DOES NOT PROVIDE SHARED LOCAL SERVICES TO FACILITIES SUCH AS HOTELS AND SHOPPING MALLS.

Miami-Dade County has never provided shared local service to facilities such as hotels, shopping malls, or industrial parks. Albeit BellSouth continues to ignore, misconstrue, or misinterpret the plain meaning of the Airport Exemption, the deficiencies and inconsistencies of its arguments debunk same.¹⁸

A. Miami-Dade County Does Not Provide Shared Local Service To The Miami International Airport Hotel.

Built in 1959, the MIA Airport Hotel is located in the Terminal Building of Miami International Airport across from Concourse E. Ex. 239, Vol. II at 274. The County owns the MIA Airport Hotel. Ex. 20 at 71. Pursuant to Resolution No. R-361-82, on September 9, 1982, the County leased two (2) separate telecommunication systems (two (2) PBX switches, one of which has been partitioned to provide service to the MIA Airport Hotel). See Exs. 1, 2, 10. Services to the MIA Airport Hotel are provided on a fully partitioned basis. Complaint ¶ 12 (“The County has only partitioned its trunks with respect to the services provided to the hotel. [footnote omitted]”); see also Exs. 20 at 71 (“[T]he trunks for that hotel, they are partitioned in the PBX to be separate. In other words, they have their own trunk groups. They actually get the service from AT&T instead of BellSouth, and they cannot call – they cannot dial four digits and call anybody else at the airport.”), 29 at 1 (“Wiltel recommends converting the peripheral equipment portion of the hotel system to the Option 71 system serving D.C.A.D. The hotel portion of the system will be separated from D.C.A.D. by the systems software. This system

¹⁸ BellSouth cites to Hillsborough County Aviation Authority’s (“HCAA”) Application for Authority to Provide Shared Tenant Services at Tampa International Airport to (cont’d)

separation is in compliance with current Florida Public Service Commission regulations.”). The County purchased the MIA Airport Hotel system on October 7, 1987.¹⁹ See Exs. 4 at 1, 11, 12; Aff. of Pedro J. Garcia ¶ 3.

The partitioned trunks for the MIA Airport Hotel mean: (i) local and long distance calls are carried through a separate trunk group owned by AT&T;²⁰ and (ii) hotel staff and patrons cannot dial other users of the Airport System by using four (4) digits. Ex. 20 at 73; see also GOAA Br. at 11 n.22. The Airport Exemption states *inter alia* that “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.” § 25-24.580, Fla. Admin. Code (emphasis added). There is no sharing of local services when trunks are partitioned. However, although BellSouth admits the County has partitioned the MIA Airport Hotel system trunks, BellSouth continues to incorrectly argue said configuration violates the Airport Exemption. Complaint ¶ 12; BellSouth Br. at 45-46.²¹

The history of the Airport Exemption exposes the fallacy of BellSouth’s position. In, *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Order No. 17111, Docket No. 860455-TL (issued Jan. 15, 1987) (“STS Order”), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987), the Commission

support this proposition. BellSouth Br. at 46; see Ex. 205. BellSouth ignores that HCAA neither provides STS nor uses its certificate. Ex. 16 at 38; Ex. 24 at 81, 96.

¹⁹ Interestingly, given the County’s ownership and operation of the MIA Airport Hotel system since 1987, BellSouth never explains its argument flaw that the County only became an STS provider in 2002 after acquisition of the Airport System infrastructure. See BellSouth Br. at 8-10.

²⁰ Now doing business as AT&T Florida given its merger with BellSouth.

²¹ See also Aug. 2, 2005 Agenda Conference Tr. at 18 (“But there’s a hotel, there’s a – there are airport facilities that are, are facilities that are not on the airport property itself that are being served.”). BellSouth never identifies said non-MIA campus facilities.

cautioned, that extension of an airport's shared telephone services *beyond that in effect at that time to* "facilities such as hotels, shopping malls and industrial parks" would require either (i) the local trunks to such entities be separate from the shared airport system or (ii) the airport obtain a certificate of public convenience and necessity as an STS provider. Ex. 240 at 18. The County's trunks for the MIA Airport Hotel system were fully partitioned from the Airport System and therefore complied. The Commission provided that "[w]ith this caveat **airports may continue to provide service under existing conditions.**" *Id.* (emphasis added). This permitted the County's operations to continue undeterred.

The 1992 rule amendment to the Airport Exemption corroborates the County's compliance with the Airport Exemption. PSC staff in its January 23, 1992 memorandum summarized the rule amendment:

In summary, our interpretation of the STS rules is as follows. An airport may share trunks for airport purposes. This requires no STS certification. An airport may also use one switch to do the following: It may partition trunks into two trunk groups. The first trunk group will serve the airport. This group of trunks does not have to be certified. The second group of trunks will serve an industrial park or a mall or some other arrangement that would be considered an STS arrangement. If shared local service is provided, this group of trunks must be certificated and must comply with all STS requirements. []If the partitioned trunks are purchased directly by the customer from the LEC, no sharing of trunks occurs and no certification is required. Attachment C is a diagram of the serving arrangements.

Ex. 201 at 2-3 (underline in original). First, the Airport System does not provide shared local service to the MIA Airport Hotel. Aff. of Pedro J. Garcia ¶ 3; Ex. 20 at 71-74. More importantly, as explained by PSC Staff, "If the partitioned trunks are purchased directly by the customer from the LEC, no sharing of trunks occurs and no certification is required." Ex. 201

at 3. Given BellSouth's merger with AT&T, the County is neither sharing its trunks, nor required to certify same.²²

B. The Concessions In The Miami International Airport Terminal Are Not A Shopping Mall.

As Chairman Baez stated at the Commission's Agenda Conference to address the County's Motion to Dismiss,

I can tell you one thing, I've been to the Miami Airport – I've been to several airports, as I'm sure you have, probably more than I have. I have never once, never once woken up in the morning and said, hey, I need a pair of pants. Let me go shop at the airport.

Aug. 2, 2005 Agenda Conference Tr. at 35. The concessions at MIA are not a shopping mall. The non-traveling public does not drive to MIA to shop. In addition, various concessions are located past the security checkpoints and cannot be accessed without a valid boarding pass and identification.²³ *No shopping mall in the United States could deny potential customers access based upon such criteria.*

A shopping mall is defined as "1. An urban shopping area limited to pedestrians. 2. A shopping center with stores and businesses facing a system of enclosed walkways for pedestrians."²⁴ A "[c]ollection of independent retail stores, services, and parking areas constructed and maintained by a management firm as a unit."²⁵ Such "shopping mall" definitions denote a separate and independent conglomeration of stores in a building or series

²² BellSouth misunderstands or ignores the plain meaning of the Airport Exemption's certification requirement. BellSouth Br. at 46 n.202.

²³ Like other airports, access to the MIA concourses, and any shops or other concessions in those concourses is limited to *only* ticketed passengers with boarding passes that pass through the airport's security checkpoints.

²⁴ The American Heritage College dictionary 1260 (3d ed. 1993).

²⁵ Britannica Concise Encyclopedia.

of buildings where the general public go to shop, not a major international airport used to transport passengers and freight. Facility is defined as *inter alia*, something created to serve a particular function.²⁶ Consistent with these definitions of “shopping mall” and “facility”, the PSC Staff in its January 23, 1992 memorandum which summarized the rule amendment referenced Attachment C. Said attachment entitled “STS AIRPORT EXEMPTION DIAGRAM” depicts three (3) LEC trunk groups which go through the airport PBX and split off to three (3) separate *stand alone facilities* consisting of ABC Airport, Industrial Park DEF, and XYZ Mall. Ex. 201 at Attach. C.

“In interpreting rules, words should be given their plain and ordinary meaning.” *Boca Raton Artificial Kidney Center, Inc. v. Dep’t of Health & Rehabilitative Servs.*, 493 So. 2d 1055, 1057 (Fla. 1st DCA 1986) (citing *Gar-Con Dev., Inc. v. Dep’t of Env’tl. Regulation (Fla.)*, 468 So. 2d 413, 415 (Fla. 1st DCA 1985)). “[I]nterpretation of agency rules is appropriate only where such rules contain ambiguities, or the language is not plain or the meaning clear.” *Eager v. Fla. Keys Aqueduct Auth.*, 580 So. 2d 771, 772 (Fla. 3d DCA 1991) (citing *Kimbrell v. Great Am. Ins. Co.*, 420 So. 2d 1086, 1088 (Fla. 1982) (when the language of a statute is plain and its meaning clear, resorting to any other rule of statutory construction is unnecessary)). Here, the plain meaning of the Airport Exemption, Attachment C to the 1992 rule amendment, and the definitions of “facility” and “shopping mall” are all inconsistent with BellSouth’s interpretation of the Airport Exemption.²⁷ BellSouth Br. at 45-46. The County’s provision of STS to certain concessions located in the MIA Terminal Building is consistent with the plain meaning of the

²⁶ The American Heritage College dic•tion•ary 489 (3d ed. 1993).

²⁷ In codifying the Airport Exemption, the Commission did not proclaim that a certificate would be required before providing shared local services to facilities *that may exist* in shopping malls. See § 25-24.580, Fla. Admin. Code.

Airport Exemption and PSC Staff's interpretation of same. The County does not provide shared local service to a "shopping mall" facility,²⁸ and the Airport System complies with the Airport Exemption.

C. The STS Concessions Are No Different Than Those Considered By The Commission In 1987.

The Commission's decision in 1987 specifically contemplated that when a retail establishment is located in an airport terminal, the sharing of service to said establishment may be necessary for the safety and efficiency of the airport. The County has continuously supplied STS services to the same types of concessions considered by the Commission in issuing the STS Order. *See* Ex. 17 at 54 ("[W]hen I came on to this airport in 1988, these services were being provided and ongoing. So if it's going on for the last twelve plus years it was more of a surprise that I am hearing this now than before."). As Chairman Deason queried BellSouth at the Commission's Agenda Conference, "*Those entities existed back into that time frame* but now there may be more of them, but why does that change the inherent nature of the airport that they have to be, become certificated?" Aug. 2, 2005 Agenda Conference Tr. at 15 (emphasis added).

BellSouth's response to that question illuminates both its consistent misstatement of the facts and misunderstanding of the STS Order:

Because the airport that you're looking at today is not the same airport that you're looking at when these rules were put into place. I mean, when these rules were put into place, there may have been a coffee shop and a newsstand. Now they are malls. The concession stands are – there are shopping areas. They're not just a coffee shop here and a [sic], and a newsstand there. There are hotels, there are restaurants, there are stores.

²⁸ Ex. 16 at 22.

*Id.*²⁹ First, there is only one (1) hotel, which has existed as part of the MIA Terminal Building since 1959, and the County has owned and operated its telecommunications system since 1987. See *id.* at 37; Exs. 4 at 1, 11, 12, 20 at 71; Aff. of Pedro J. Garcia ¶ 3. Second, there are no malls at MIA. The County does not dispute that MIA's tenants include certain types of shops that may be found in a shopping mall. However, that fact cannot and does not render MIA a "shopping mall" under the STS Order. Additionally, BellSouth fails to mention that the telecommunications provider of many of the concessions at MIA, is BellSouth. See Ex. 284. Last, the restaurants, and stores at MIA were EXACTLY the types of concessions contemplated by the Commission when enacting the STS Order. Commissioner Marks, who opposed the exemption of airports from certification and other STS requirements where they served retail tenants, specifically spoke about MIA at the January 8, 1987 Special Agenda proceedings:

I just don't think that those shops in the hotel – I mean the concourse of the airports, the Miami International Airport, are critical to the traveling public to the extent that they should enjoy the exemptions that some other shop located in a hotel concourse could not enjoy. That's what you're saying under these circumstances.

²⁹ In fact, Commissioner Deason saw through BellSouth's ruse to its real motive, "Well, what's the difference between a coffee shop in an airport that met the exemption and a restaurant or a hotel? I mean, just because there's more lines, all of a sudden it becomes attractive to BellSouth to obtain the business?" Aug. 2, 2005 Agenda Conference Tr. at 16.

Ex. 239, Vol. II at 277-278. However, Chairman Nichols' perspective prevailed four to one.³⁰

It's not a necessity to have a newsstand or a dress shop either. It's just the practicality of the situation for security and other reasons in an airport. I just think we ought to temper this regulation with just a little good common sense. I agree with you. I just don't think anybody goes to an airport to shop for that sole purpose and leaves. I think they're all kind of tied together, and it just strikes me as being a lot more efficient if we just allowed them in and didn't worry about it a whole lot....

Id. at 279³¹. 32,094,712 passengers traveled through MIA in FY 2005-2006. The County has over 1,400 employees working for MDAD, the County department which operates MIA. The airlines facing tighter bottom lines have eliminated or severely reduced meal and beverage services. If not for MIA concessions, where are the majority of these passengers, personnel working at MIA, and airline flight and support personnel supposed to eat and drink? If not for MIA concessions, where could someone at MIA get necessary medication, replace lost or forgotten travel items or luggage, or find a book, magazine, newspaper, or music to pass calmly through a layover or delay? The County provides these retail concessions for the convenience and comfort of (i) travelers passing through the MIA,³² (ii) airline flight and support personnel, and (iii) federal, state, and County employees and contractors working at MIA. This helps to

³⁰ Commissioner Gunther made the prevailing motion, and Commissioner Herndon provided the second. Ex. 239, Vol. II at 279-281.

³¹ See *id.* at 182 ("Where am I going to go if I can't get a hotdog in there? I can't get out and walk down the street, not in that airport. Restaurants are provided for layovers. But the majority, the vast majority of services provided there are for the convenience of the traveling public.").

³² See Exs. 17 at 123 ("They provide the customers with a product. The customer, the traveling public gets a benefit from these entities."), 172 at PSC 2811 ("Our revenues aren't going to be much higher than they were in the past, [b]ut it's important to recognize what consumers want. And when you do that, we'll have a much happier person traveling through Miami....").

ensure the safe and efficient transportation of passengers and freight through the airport facility.³³

III. MIAMI-DADE COUNTY OPERATES ONLY ONE SHARED TELECOMMUNICATIONS SYSTEM AT MIAMI INTERNATIONAL AIRPORT.

First, the resolutions, agreements, and concomitant documents show that only one (1) Airport System exists at MIA. Exs. 1, 2, 3, 4, 6, 7, 8, 10, 11, 12, 13. As part of the Airport System, “all of the counters at the airport where the airlines do their business [and] the gates where the planes leave from” have telephones to facilitate reporting emergencies. Ex. 207 at 7. Having Airport System telephones at all check-in counters and gates are in the interest of security. *Id.* at 32. Second, located throughout the MIA Terminal Building as part of the Airport System, are paging telephones which allows the user to have someone within MIA paged. *Id.* at 35. No separate telephone and paging system exists at MIA. BellSouth Br. at 43.

Last, pursuant to the STS Order and Commission rules, the County cannot require MIA tenants to have STS service. Ex. 240 at 22 (“ORDERED that all Shared Tenant Service providers shall provide local exchange companies direct access to tenants upon the conditions of this Order.”); § 25-24.575(1), Fla. Admin. Code (“All shared tenant service providers shall allow local exchange companies direct access to tenants who desire local service from the local exchange company instead of the shared tenant service provider.”). *See also* Exs. 17 at 81 (“[B]ecause users within the airport can utilize whoever they want to for the provision of services.”), 207 at 25 (“No because it is not allowed by the PSC to have those kind of phones everywhere.” and “We cannot force any tenant to have phone service provided by the airport.”).

³³ *See* Ex. 183 at 1 (“Traveling, as we well know, can be a stressful experience[.] If you can do anything to put your customer at ease, that’s what you’re looking for.”).

CONCLUSION

Miami-Dade County's Airport System complies with Florida Statutes, and Commission Rules. The Airport System has complied with the STS Order and the resulting Airport Exemption since 1987. BellSouth has consistently recognized and acknowledged the County as an STS provider in internal corporate communications, external County communications, and before the Commission.³⁴ BellSouth's 2005 revisionist fiction that the County only became an STS provider in 2002 is a subterfuge to relitigate, and eliminate or erode the Airport Exemption. Nothing has changed at MIA. The same types of concessions specifically discussed by the Commission in enacting the STS Order exist today. Ex 239 at 277-278. The same MIA Airport Hotel discussed by the Commission in enacting the STS Order is served on a fully partitioned basis with no shared local service. Ex. 20 at 71-73. Given BellSouth and the County were parties to (i) the STS proceedings where the same issues were argued and determined, and (ii) a subsequent proceeding addressing the County's provision of STS, BellSouth's Complaint is barred by the doctrine of *res judicata*. See *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 483 F. 3d 1265, 1271 n.4 (11th Cir. 2007) (citing *State v. McBride*, 848 So. 2d 287, 290 (Fla. 2003) ("*Res judicata* applies both to claims actually raised and claims that *could have been raised* and determined in the prior action") (emphasis in original)).

³⁴ See *In re: Dispute between Dade County Aviation Department and BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company Related to Telephone Serving Arrangements at Airports in Dade County*, Docket No. 931033-TL, Nov. 9, 1993 Agenda Conference Tr. at 6 ("In general, we support the Staff recommendation. We think that the recommendation does a very thorough job of analyzing the relationship between Southern Bell as a LEC and DCAD as a non-LEC provider of telecommunications services. Basically, someone who is functioning as an STS provider.").

BellSouth's mischaracterized and revisionist view of the Airport System is meritless. BellSouth's misinterpretation of the Airport Exemption and events subsequent to its creation and codification are unsubstantiated by the facts. PSC Staff never "previously advised the County that it was not exempt pursuant to the Airport Exemption Rule and should obtain a Certificate". BellSouth Br. at 2, 46-48. In fact, Richard A. Moses ("Moses"), PSC Bureau Chief for the Bureau of Service Quality answered at his deposition in the state court matter of *BellSouth Telecommunications, Inc.*, that except for an email he sent on or about March 2003, which included *inter alia*, a request for the County's STS Customer List, Moses has not rendered any opinions as to whether the County's operations at MIA require PSC certification.³⁵ Ex. 18 at 47, Ex. PSC-6. Neither the Commission nor PSC Staff ever issued an order, memorandum, or directive stating the County was either in violation of the Airport Exemption or needed a Certificate of Public Convenience and Necessity. *See* Ex. 16 at 18-20, 39; Ex. 18 at 47; Ex. 24 at 38, 102-105, 111-112

For the aforementioned reasons, Miami-Dade County respectfully requests the Commission issue an Order that: (i) Miami-Dade County's operation of the shared telecommunications system at Miami International Airport for the provision of STS services complies with applicable Florida Statutes and Commission rules, given the County's provision of said services is pursuant to the Airport Exemption, codified as Rule 25-24.580 of the Florida Administrative Code, which exempts the County from the STS rules; and (ii) the County as an STS provider does not need a Certificate of Public Convenience and Necessity to provide said STS services. In the alternative, if the Commission finds that the County is not exempt from

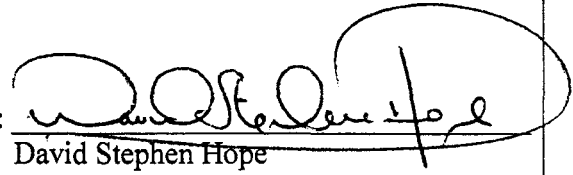
³⁵ Upon cross-examination, Moses also admitted providing BellSouth with a copy of the County's STS Customer List dated February 2003. Ex. 18 at 46, Ex. PSC-5; Ex. 80.

the STS rules pursuant to applicable Florida Statutes and Commission rules, then the Commission should exempt the County and MDAD pursuant to § 364.339(3)(a) of the Florida Statutes and § 25-24.555 of the Florida Administrative Code.

Respectfully submitted,

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10th day of September 2007, to:

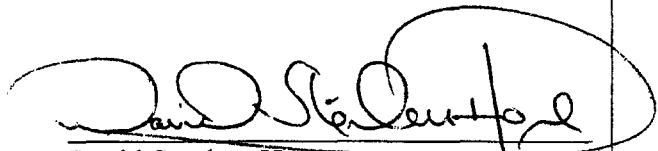
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