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September 10, 2007

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 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 Florida Statutes and Commission Rules

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Reply Brief, which we ask that you file in the captioned docket.

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

Sincerely,

Dorian S. Denburg

Dorian S. Denburg

cc: All Parties of Record
Jerry D. Hendrix
E. Earl Edenfield, Jr.
James Meza III

CERTIFICATE OF SERVICE
Docket No. 050257-TL

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail and First Class U. S. Mail this 10th day of September, 2007 to the following:

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by AT&T Florida Regarding The Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules	)))))	**DOCKET NO. 050257-TL**

AT&T FLORIDA'S REPLY BRIEF

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AT&T FLORIDA'S REPLY BRIEF

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") respectfully submits this Reply Brief in support of its positions in the above-captioned docket.

INTRODUCTION AND SUMMARY

Based upon the Direct Briefs, only two issues remain in dispute: Is Miami Dade County's ("County") operation of a telecommunications company exempt from the Shared Tenant Service ("STS") Rules pursuant to the Airport Exemption Rule? If not, should the Commission require the County to Obtain a Certificate of Public Convenience and Necessity as an STS Provider? In short, the County and the Greater Orlando Aviation Authority ("GOAA") have failed to demonstrate that the County is exempt from regulation pursuant to the Airport Exemption Rule, and have set forth no basis to permit the County, a non-exempt telecommunications company and STS provider, to avoid STS Certification and Commission oversight.

As a preliminary matter, the County's Direct Brief is more important for what it does not address than what it does. Despite the large, comprehensive factual record in this Docket, comprising nearly 300 exhibits, the County completely fails to confront the facts that reveal the true nature and extent of its telecommunications operation – a large, for-profit, commercial enterprise with traditional business objectives such as marketing, expansion and revenue generation. Since these facts make abundantly clear that the County is operating a

telecommunications enterprise that should not be exempt from regulation, the County relies on a litany of flawed legal arguments in an effort to avoid the evidence. However, when the Commission applies the facts to the appropriate law, it is clear that the County should be immediately required to obtain a Certificate of Public Convenience and Necessity.

I. Issue 1: The County Admits It Is a Telecommunications Company

The County admits that it is a telecommunications company.[1] The County does not contest (because it cannot) that the factual record in this docket conclusively demonstrates that the County is "offering two-way telecommunications service to the public for hire within this state by use of a telecommunications facility."[2] Accordingly, this issue is not in dispute.

II. Issue 2: The County Admits It Is Subject to the Jurisdiction of the Commission

The County admits that it is subject to the Commission's jurisdiction.[3] Again, the County does not contest (because it cannot) that the Florida State Legislature has entrusted this Commission with "exclusive jurisdiction in all matters . . . in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist."[4] Accordingly, this issue is not in dispute.

III. Issue 3: The County Fails to Show It Falls Within the Airport Exemption Rule

The County's effort to apply the Airport Exemption Rule ("the Rule") to its 2002 acquisition and operation of the STS facility at Miami International Airport ("MIA" or the "Airport") fails, both factually and legally, for four reasons. First, the County ignores the overwhelming record evidence that demonstrates it does not use the STS offered to commercial tenants at MIA to ensure the safe and efficient transportation of passengers and freight through

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[1] See County's Direct Brief at 1.
[2] Fla. Stat. § 364.01(13).
[3] See County's Direct Brief at 1.
[4] Fla. Stat. § 364.01(2).

the Airport. The Rule, by its clear terms, applies only for this purpose. It thus does not protect the County's far more extensive, competitive, for-profit STS operation.

Second, the County (and GOAA) seek to transform the Rule from a limited exemption for safety and efficiency into a blanket exemption for all telecommunications services offered by airports to their tenants, regardless of the nature and scope of those services or the tenants served. The plain and unambiguous terms of the Rule and its history preclude that misinterpretation.

Third, after misconstruing the Rule, the County then claims that its provision of STS to commercial tenants is, or should be, exempt from regulation by virtue of either or both of two prior PSC Orders from 1987 and 1994. However, the County misstates and misconstrues these prior Orders which, in reality, either reach the opposite conclusion from what the County asserts or simply do not address whether the County's current STS operation is entitled to the exemption.

Finally, the County attempts to circumvent the certification requirement for the Airport Hotel. The Commission explicitly resolved this issue against the County's current position in a 1992 amendment to the Rule. The County is attempting to re-litigate this issue and its position is without merit.[5]

Each of these points is addressed in turn below.

A. The County Does Not Address the Overwhelming Factual Record Demonstrating That Its Provision of STS to Commercial Tenants at MIA Is Unrelated to Safety, Security and Efficiency of Airport Operations

The County's portrayal of its provision of STS at MIA as necessary for the safety of passengers and freight at the Airport is not accurate. As demonstrated by the record evidence, the County is not using or offering its STS to ensure the safe and efficient transportation of

[5] Similarly, the County re-asserts its argument that AT&T Florida lacks standing to pursue this action. The Commission already substantively rejected this argument in its July 21, 2005 Order denying the County's Motion to Dismiss.

passengers through the Airport.[6] Rather, it offers STS to these tenants to make money just like any other commercial telecommunications company.

Given the lack of factual support for its argument, the County instead focuses on the *need* for the County to provide security at the Airport and explains that it provides security and "behavior pattern recognition" training to Airport employees and others.[7] However, the County never explains, nor can it, how its provision of STS to commercial tenants at the Airport is related to the undisputed general need for airport security or the provision of this specific training. Instead, the County relies on the affidavit of Mark Forare, a former Director of Airport Security.[8] His affidavit focused almost exclusively on the County's use of four-digit dialing interconnectivity behind the County's PBX for Airport personnel. He did not attest to any facts indicating that the County's other telecommunication services, such as local service, long distance, call waiting, call forwarding, voice mail, or three-way calling are integral to ensuring safety and security at the Airport.[9]

AT&T Florida accepts that an airport's provision of interconnectivity behind its PBX to allow for communication by and between all airport personnel is helpful in ensuring security at the airport. In this Docket, however, the County does not require all tenants to use the County's four-digit dialing interconnectivity capabilities.[10] Providing shared service to only those tenants

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[6] See AT&T Florida's Direct Brief at 18-26, and 39-45.
[7] See County's Direct Brief at 29.
[8] See County's Direct Brief at 30.
[9] When BellSouth sought to test Mr. Forare's affidavit testimony, he was no longer available for deposition. The representatives with the most knowledge of these facts who took Mr. Forare's place at deposition – Lauren Stover and Pedro Garcia – could not explain how the County's provision of 10-digit dialing through the public network or its provision of optional telecommunications services, like those described above, to commercial tenants helps to ensure Airport safety and security. Moreover, as we know now, Mr. Forare's affidavit was misleading in another manner. The Director of Airport Security when he signed the affidavit, Mr. Forare never mentioned the Airport's separate security and paging telephone system, leaving the reader to conclude that the County relies on the STS system at issue to ensure safety and security.
[10] The County acknowledged, in citing to GOAA's 1987 testimony before the Commission, "shared telecommunications service to **all** tenants in the airport facility is an indispensable aspect of airport safety and security." See County's Direct Brief at 28.

who are willing to pay for the service, as the County does, is clearly focused on making money, not safety and security.[11]

The County's attempt to claim an exemption for its revenue-generating and non-security related STS offered to commercial Airport tenants based solely on its ability to provide interconnectivity through four-digit dialing behind its PBX is not accurate. The County has an entirely separate telephone paging system comprising more than 1000 telephones at MIA which are available to passengers and tenants alike and which are directly connected to Airport security.[12] It is this separate paging and security phone system, which the County did not reference in its Direct Brief, that is used to ensure Airport security – not the County's provision of STS, such as local and long distance service and other optional telecommunications services to commercial tenants for profit.[13]

B. The County and GOAA's Construction and Interpretation of the Airport Exemption Rule and Its History Are Erroneous and Must Be Rejected[14]

To avoid oversight and regulation, the County posits an interpretation of the Rule and its history that would operate as a near blanket and complete exemption for airports. The County's interpretation rests on two flawed arguments. First, the County suggests that during the 1987 STS Special Agenda Hearing ("1987 Hearing"), in which the Rule was first adopted, the Commission rejected a proposed amendment to the Rule which would have required certification for services provided to "other commercial activities that are unrelated to the mission of the

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[11] As AT&T Florida detailed in its Direct Brief at 2-12, when STS first commenced at MIA it was owned and operated by Centel, and the STS agreement in place acknowledged that the purpose of STS and the Commission's approval of same in an airport setting was limited to functions behind the PBX. Notwithstanding this agreement and understanding, as shown in this Docket, the County has gone far beyond this approved and limited connectivity. See AT&T Florida's Direct Brief at 44, n. 196 (citing testimony of Pedro Garcia).

[12] This system is discussed at length in AT&T Florida's Direct Brief at 39-45.

[13] Id.

[14] GOAA's Direct Brief is very similar to the brief filed by the County. Indeed, many arguments within their briefs are virtual copies, word for word. Accordingly, AT&T Florida's replies to the County's brief are equally applicable to GOAA. Where there are material differences, AT&T Florida takes note of same above.

airport," in addition to hotels, shopping malls and industrial parks. Based on the purported rejection of this "fourth category," the County asserts that airports are required to obtain certification only if they provide STS to hotels, shopping malls, and industrial parks. Second, the County argues that the Rule should be interpreted to exempt only stand-alone buildings on an airport's campus, such as a shopping mall or industrial park. Both of these arguments are demonstrably incorrect as explained below.

(1) The Airport Exemption Rule Requires Certification for STS Provided to Commercial Activities Unrelated to the Mission of an Airport: The legislative history of the Rule clearly shows that the Commission in 1987 required airports to become certificated if they provided STS to commercial activities unrelated to the mission of the airport. In addition to the explicit reference to a hotel, shopping mall and industrial park, this category of "unrelated" entities was referred to as the "fourth category."[15] To avoid regulation in this Docket, the County contends that the Commission rejected then-Commissioner Herndon's proposal of this "fourth category"[16] and, as a result, argues that it is exempt from the STS rules and certification if it provides STS to "any commercial tenant within the airport terminal facility."[17] Even the most cursory review of the 1987 Hearing proves that the Commission actually adopted this fourth category and that the County's position in this Docket must fail.

During the 1987 Hearing, the Commissioners recognized that airports are unique, and they were careful to consider the safety and security of airports as well as the efficiency and convenience of the traveling public. However, the Commissioners were equally concerned that granting airports a blanket exemption from Commission regulation for any and all STS provided

[15] See AT&T Florida's Direct Brief at 32-39.
[16] See County's Direct Brief at 24-26.
[17] See County's Direct Brief at 16, 24-26. GOAA claims that the Rule does not apply to "a commercial tenant within the airport terminal facility." GOAA's Direct Brief at 14 (emphasis added).

at airports would allow airports to offer STS for purposes exceeding the core function of the airport and to thereby operate as competitive telecommunications businesses without Commission oversight.[18] As a result, the Commissioners drew a line between an airport providing STS necessary to serve interests that were materially related to the function of the airport and an airport operating its STS as a commercial enterprise.

The Commissioners initially struggled as to where to draw this line.[19] They unanimously agreed as to the opposite ends of the spectrum. On one end, the Commissioners agreed that an airport providing service to a few commercial shops, like a newsstand and coffee shop, would not require certification.[20] On the other end, the Commissioners agreed that an airport that has a shopping mall at its core, like the Tampa airport at the time, or a hotel or industrial park would require certification to provide services to those tenants.[21]

Commissioner Herndon proposed the fourth category of "any other entity not materially related to the mission of the airport" to codify the requirement of certification for STS to all other entities which were commercial in nature and not related to the core mission of an airport.[22] Commissioner Herndon stated:

> [A]irports are governmental entities and as such are exempt from certification as STS providers except in those instances where they provide commercial services that are not materially necessary to the function of that airport. . . . [then] [t]hey become STS providers and must seek a certificate and must file their local rates.[23]

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[18] See Exhibit 239 at 195:2-13.
[19] See id. at 189:11-190:9.
[20] See id. at 200:17-201:5.
[21] See id. at 196:21-197:16.
[22] Although the Commissioners could not agree as to every commercial entity for which certification would be required (for instance, the Commissioners could not agree as to a flower shop), they did agree that when an airport goes beyond providing STS necessary to the operation of the airport, it must be certificated. See id. at 208:8-15 & 280:22-23 (discussions concerning flower shop).
[23] Id. at 197:22-198:5. Further elaborating on this rationale, Commissioner Herndon explained:

> . . . I think in the case of airports, universities and now hospitals, I think we're really talking about the same concept throughout, and that is that in those instances where they're all governmental services, where the activity is materially necessary to the function of that mission, they are exempt from our regulation. But in those instances where they move over into commercial activities that

The Commission then voted 4 to 1 to adopt the fourth category proposed by Commissioner Herndon in addition to hotels, shopping malls and industrial parks. The vote was recorded as follows:

> Chairman Nichols: As I understand the motion now, everything is included in the airport as being a unique entity, and therefore exempt from the STS requirement except for industrial parks, shopping malls, hotels, or any other entity not materially related to the mission of the airport.
>
> Commissioner Marks: Well, see, I'll vote for that because I think that would exclude then the flower shop on the concourse; I think it would exclude then the restaurant and all of that.
>
> Commissioner Herndon: I think you have to go though to the question about the mission of the airport. The mission of the airport is to provide an environment where travelers -- leaving aside the freight for a moment -- where travelers can move in an efficient, safe manner; they have the necessary kind of amenities to make their travel productive. If their clothes are ruined they can replace them. They can get food, buy a trinket for relatives. I think those are a part of the mission of the airport. I don't know about flower shops.
>
> Commissioner Wilson: I would second the amended motion.
>
> Chairman Nichols: All right. All those in favor of the motion say aye. All opposed?
>
> Commissioner Marks: I oppose the motion.
>
> Chairman Nichols: Okay. Four to one.[24]

Therefore, contrary to the County's suggestion, there is no doubt that this "fourth category" was included and adopted.[25] Given that the Commission adopted the fourth category,

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> are unrelated or not materially necessary to the day-to-day function of that agency, they're STS providers.

Id. at 253:9-19 (emphasis added).

[24] Id. at 279:14-281:4.

[25] The County repeatedly makes similar misrepresentations and omissions regarding the Commission's prior proceedings. See also n. 25, and text accompanying nn. 39 and 40, infra. For instance, the County relies upon the following comment made by Julia Russo, a PSC staff member, during the 1992 clarification of the Rule to suggest that an airport need only partition its trunks serving a hotel to remain exempt:

the intent of the Rule is, and always has been, to determine whether an airport is providing STS to tenants that are not materially necessary to the mission of the airport. If it is, the airport must be certificated.[26] Here, the County's STS operation presents the Commission with an airport that has gone into the commercial telecommunications business wholly unrelated to the mission of an airport and any reasoned interpretation of the Rule. This is not a close call. The County is not exempt and must be certificated.

(2) The Term "Shopping Mall" Does Not Mean a Stand-Alone Building: Because the County is operating a sophisticated shopping mall within MIA and nationally markets this shopping experience through its own airport website as well as in the print media and press, the County next attempts to define the term "shopping mall" in a way to make the

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> Julia Russo: Well, I need to point out for clarification that an airport is treated separately. And if an airport is in a situation whereby it is sharing trunks for the purpose of moving the traveling public or freight, then those shared trunks do not need to be certificated and it would not be considered STS.

County's Direct Brief at 11. However, the County omits the following relevant transcript testimony which indicates that Ms. Russo made it clear that this exemption did not apply to any STS provided to nonessential operations, like a hotel, shopping mall or industrial park, even if they are partitioned:

> Julia Russo: I might clarify, however, that should your airport decide to provide service to nonessential operations, such as shopping malls or hotels, then you would need to be certificated and you may want to address your concern under that scenario.
>
> John R. Marks: I think that answers the question. Thank you.

Exhibit 187 at 17:15-18:5.

[26] Ironically, at the same time the County claims that no such "fourth category" exists, the County also attempts to downplay its significance. The County states that Commissioner Herndon "clarified that the intention of the fourth category language was to distinguish terminal restaurants and shops from a 'shopping mall' or the 'Sebring Raceway that's down there on the airport.'" In other words, the County is suggesting that Commissioner Herndon's meant to state that shops located in the airport terminal were acceptable. See County's Direct Brief at 25. What Commissioner Herndon actually clarified was which things did not fit into "the mission of an airport in its broadest sense," and as he stated "a shopping mall clearly fits that category," as did the Sebring Raceway. See Exhibit 239 at 271:22-272:10 (emphasis added). At no time did Commissioner Herndon offer a free pass to all shops and restaurants located in the terminal. In fact, he specifically said he wasn't sure about flower shops, which the County also omits from its Brief by leaving out the last sentence of a quote from Commissioner Herndon. See County's Brief at 25 (citing Exhibit 239 at 280:13-23). Also, the County cites to comments made by Commissioner Gunter, who at one point envisioned a blanket exemption for the airport building. See County's Direct Brief at 25-26. These comments are portrayed out of context, as Commissioner Gunter made these statements prior to Commissioner Herndon's motion to add the fourth category and prior to the vote in which Commissioner Gunter, as part of the majority, adopted the "fourth category," thereby voting not to exempt the entire airport building.

term irrelevant and not applicable to the County. The County first argues that the term "shopping mall" means a "building or series of buildings" rather than "retail shops and restaurants" located in the airport terminal. In other words, the County argues that for the term "shopping mall" to be triggered under the Rule, an airport must have a separate building or series of buildings on its campus.[27]

As its main support for this argument, the County cites to a diagram that depicts a shopping mall and industrial park located in different buildings from the main airport terminal.[28] The County's attempt to use this diagram to support its interpretation of "shopping mall" is blatantly misleading. The County never discloses that the diagram was simply a schematic used to illustrate the concept of partitioning trunks during a 1992 proceeding in which minor revisions were made to the Rule.[29]

The 1992 proceeding involving the diagram arose because the last sentence of the first version of the Rule contained an ambiguity which, if misinterpreted, could be read to allow an airport to provide STS to facilities such as hotels and shopping malls as long as it partitioned its trunks.[30] To correct this ambiguity, PSC Staff proposed new language to clarify the Rule, not to

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[27] See County's Direct Brief at 24. The plain dictionary definition of a "shopping mall" does not require that it be separate from another building. Specifically, the American Heritage Dictionary of the English Language defines a "shopping mall" 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.

See The American Heritage Dictionary of the English Language, Fourth Ed. (2004), http://dictionary.reference.com/browse/shoppingmall. The shopping mall at the Airport clearly meets this definition as it includes stores and businesses that face inward toward the interior walkways of the airport terminal which are accessible only by pedestrians. The County's argument that the definition of a shopping mall is dependent on the types of shoppers (i.e. travelers vs. the general public) is unavailing. The definition of a shopping mall, as cited above, is not premised on the types of shoppers who may frequent the establishment.

[28] See Exhibit 201.

[29] This proceeding was discussed at length in AT&T Florida's Direct Brief at 36-39.

[30] The original text of the Rule reads as follows: "Airports are exempted from the STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. If airports extend their sharing of local service to facilities such as hotels, shopping malls and industrial parks, the airport will be

substantively modify it. Along with the new language, Staff included a diagram showing how partitioning an airport's telecommunications system to provide services to a shopping mall or industrial park might look.[31] Again, the diagram was used by Staff to illustrate the concept of partitioning trunks, not to suggest that a shopping mall, industrial park or hotel had to be in a separate building to require Certification pursuant to the Rule. There is no testimony, PSC memoranda or other documentation to support the County's use of the diagram here for that purpose.

In addition, the regulatory history of the Rule vitiates the County's interpretation. Specifically, when STS and the Rule were first considered by the Commission in 1987, the Commissioners were particularly concerned about, and took into consideration, the Tampa airport which had a shopping mall "at its core."[32] The Commissioners also expressed concern generally about a "shopping mall that's attached to the airport" and "the hotel that's connected to the airport."[33] Thus, the Commission, when it adopted the STS Rule, plainly contemplated and rejected the argument that a hotel or shopping mall must be physically separate (in different buildings or otherwise) from the airport complex to require certification.[34]

Finally, accepting the County's interpretation of "shopping mall" would turn the Rule into a blanket exemption from Commission regulation for any commercial STS provided to any tenant within an airport campus or in any building physically attached to the airport terminal.

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required to be certificated as a shared tenant service provider. However, the airport could partition the trunks serving those entities and forego STS certification." See Exhibit 204.

[31] See Exhibit 201 at Attachment C.

[32] See Exhibit 239 at 196:21-197:16.

[33] Id. at 189:11-190:3.

[34] GOAA similarly argues that the term "facility," by definition, means a separate building, and that a shopping mall cannot mean shops or concessions "connected with the airport terminal buildings." See GOAA's Direct Brief at 17. This argument has no merit and would yield ridiculous results. For example, when applied to the statutory definition of "Telecommunications Company," GOAA's definition would mandate that a telecommunications company is an entity that offers "two-way telecommunications service to the public for hire within this state by use of a telecommunications facility ***in a separate building***." See Fla. Stat. § 364.02(13) (words and emphasis added).

Such a result is not consistent with the terms of the Rule or its regulatory history. Indeed, there exists no better example of an airport shopping mall in the State of Florida (much less the United States)[35] than the commercial shopping mall at MIA. Should the Commission fail to require certification in this Docket, every other airport in the State will be given license to build and conduct its own for-profit commercial STS and telecommunications facility free from Commission oversight and regulation.

C. The County's Reliance on the 1987 Order Adopting the Airport Exemption Rule and the Later 1994 Order Resolving a Demarcation Dispute Between Southern Bell and the County Is Misplaced

The County next argues that prior proceedings before the Commission in 1987 and 1994 granted the County a permanent exemption for any STS it may offer to any tenant at the Airport. As explained below, these arguments are fatally flawed and must be rejected.

(1) The 1987 STS Proceeding Did Not "Grandfather" the County's Pre-Existing Telecommunications Arrangement Under the Airport Exemption Rule: The County argues that it has been granted an indefinite exemption for its STS operation by being "grandfathered" into the Rule by the last sentence of the 1987 STS Order. Contrary to the County's assertion, the 1987 Order did not provide for "grandfathering."

The County does not include important language from the Order that does not support its interpretation. Specifically, the County, on at least three occasions in its Direct Brief, quotes the Order as stating, "[A]irports may continue to provide service under existing conditions."[36] Based on this language, the County concludes that "[e]ntities whose operations and systems

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[35] The Shopping Mall at MIA is currently highly ranked on a national and international basis. See AT&T Florida's Direct Brief at 45.

[36] See County's Direct Brief at 23 ("The STS Order provides that "airports may continue to provide service under existing conditions."); County's Direct Brief at 28 ("[A]irports may continue to provide service under existing conditions."); County's Direct Brief at 31 ("BellSouth's contention that all commercial tenants in the terminals could not be served without partitioning or certification by the airport would eviscerate the entire purpose of the Airport Exemption and the Commission's conclusion to permit "airports [to] continue to provide service under existing conditions.").

preceded the STS Order were exempt from certification."[37] Thus, the County argues that so long as an airport provided STS to then existing facilities such as hotels, shopping malls and industrial parks as of the date of the 1987 Order, the airport is exempt from Commission regulation with regard to the provision of these services indefinitely.

Neither the text of the 1987 Order nor its regulatory history supports a finding that any and all airport sharing arrangements pre-dating the Order were "grandfathered" into the exemption. First, the full text of this sentence in the 1987 Order actually states: "**With these caveats**, airports may continue to provide service under existing conditions."[38] The caveats, which the County ignores, include, among other things, that (1) the existing service must be related to the purpose of an airport (i.e. "the safe and efficient transportation of passengers and freight through the airport campus"); and (2) an airport must be certificated for service provided to facilities such as hotels, shopping malls and industrial parks.[39] Thus, contrary to the County's assertion, there was no "grandfathering" applied to shared services that pre-dated the 1987 Order. The County's interpretation of the 1987 Order must therefore be rejected.

A plain reading of the 1987 Order also makes it clear that if an airport engages in local sharing to a facility such as a hotel or shopping mall at any time, "it must be certificated as an STS provider."[40] Nowhere in the 1987 STS Order does it state, as the County claims in bolded text in its Direct Brief, that only "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 . . . a certificate."[41] Although the County cites and bolds this language, it simply does

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[37] County's Direct Brief at 27-28. The County also concludes in its Direct Brief at 28 that "the STS Order permits airports to share services with such tenants [in the airport facility], given the fact that it permitted airports to continue providing service under existing conditions."
[38] Exhibit 240 (FPSC Order No. 17111) (emphasis added).
[39] Id.
[40] Id.
[41] See County's Direct Brief at 10.

not exist within the 1987 STS Order.

Second, the regulatory history of the Rule further precludes the County's interpretation. In the 1987 proceeding, the Commissioners specifically noted that certain pre-existing sharing arrangements by airports would no longer be exempt under the new STS Rules. For instance, the Commissioners considered the MIA Airport Hotel. Commissioner Gunter asked "is [the MIA Hotel] sharing a PBX with the other facilities? Because if it is, we're going to have to tell them to get off of it according to that vote."[42] Clearly, this indicates that existing sharing arrangements that violated the new STS Rules were not grandfathered into the Rule.

Additionally, even if the Commission intended to grandfather the County's pre-existing sharing arrangements under the new STS Rules and Airport Exemption Rule (which it did not), the County was not then providing STS to commercial tenants like a shopping mall as of the date of the 1987 Order. The sharing arrangements at the Airport under the then existing contracts with Centel were limited "to serve the administrative functions of the Airport."[43] The County did not even enter into the Services Agreement allowing Centel/WilTel to provide STS at the Airport until 1988, after the 1987 Order was issued.[44]

Finally, the STS offered to commercial tenants at MIA today are far more extensive and are provided to many more tenants than was the case in 1987. As of today, the County's STS is a huge, commercial, revenue-generating telecommunications business offering over 100 telecommunications services, such as local and long distance, call waiting, call forwarding, three-way calling, and voicemail, to toy stores, electronics stores and music stores, high-end clothing stores, book stores and numerous restaurants which are clearly a facility such as a

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[42] See Exhibit 239 at 288:17-25.
[43] See AT&T Florida's Direct Brief at 3 (citing Exhibits 10 and 11).
[44] See Exhibits 6 and 7.

shopping mall.[45] Indeed, under the County's interpretation, it could indefinitely expand the STS provided to its shopping mall within the airport (or to facilities such as a hotel or industrial park) by claiming that the enlarged shopping mall, hotel or industrial park was not "new" but "existing." The Commission clearly did not intend to create such a loophole in the otherwise clear and unambiguous terms of the Rule.

(2) The County's Reliance Upon Dicta in a Prior 1994 Commission Order on Demarcation Points Must be Rejected: Similarly, the County's reliance on the Commission's 1994 Order[46] in Docket No. 931033-TL (the "1993 Docket") as a binding and conclusive determination that the County's current provision of STS to commercial tenants at MIA is exempt from regulation is misplaced for several reasons as discussed below.

First, the 1993 Docket involved a dispute between the County and AT&T Florida (then Southern Bell) related to serving arrangements at MIA. Specifically, the issues to be resolved in the 1993 Docket were as follows:

> The dispute concerns the location of Southern Bell's network point of demarcation on DCAD airport complexes, the extent to which DCAD must provide cable support structures for Southern Bell to reach its airport tenant customers, whether Southern Bell shall be responsible for the cost of additional support structures, and whether Southern Bell should be required to use DCAD installed cable to provide service at the airport. Also in dispute is whether DCAD should be able to dictate where Southern Bell's demarcation point should be in future installations.[47]

Contrary to the County's suggestion, the issue was not whether the County was exempt from certification requirements pursuant to the Rule.[48] In fact, the holding of the 1994 Order, as stated in the ordering paragraphs, makes no mention of the Rule; nor does it interpret or apply the Rule to the STS operation at the Airport in 1994. Thus, on its face, the 1994 Order did not grant the

[45] See AT&T's Direct Brief at 2-26.
[46] See Exhibit 244 (PSC Order 94-0123-FOF-TL).
[47] See Exhibit 244 at 2.
[48] See id at 4.

County an exemption for the STS it provides to tenants at MIA today.[49]

Second, the only mention of the Rule in the 1994 Order was a generic statement that, as an airport, the County is "generally exempt from the restrictions placed on other STS providers."[50] This dicta was nothing more than a recognition that airports are treated differently than other STS providers by virtue of the Rule. It was not based on a comprehensive factual record or analysis of the specific STS then provided at the Airport or whether the STS was necessary for the safe and efficient transportation of passengers and freight.[51] The 1994 Order was therefore not a conclusive or binding decision granting the County an exemption under the Rule for any and all STS it might provide to specific tenants then or in the future.

Third, the plain language of the 1994 Order further demonstrates that an interpretation of the Rule was completely unnecessary to the decision in the 1994 Order. Immediately following the dicta referencing the Rule, the Commission concluded that §364.339(4), Fla. Stat., applied to airports and required them to provide LECs with direct access to customers regardless of any

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[49] The chronology of the 1993 Docket also supports this conclusion. The 1994 Order was merely a non-final PAA Order based on an initial Staff Recommendation prepared in October 1993. That Staff Recommendation, in turn, was not based on any formal discovery or detailed factual development or analysis. Thus, the 1994 Order, itself, was not based on formal Commission findings, testimony, or a formal evidentiary hearing. After the 1994 Order was entered, the County filed objections to the Order and requested a formal hearing. This resulted in the submission of the parties' respective written testimony and the exchange of discovery requests by the parties. However, the County subsequently withdrew its objections before the Commission ever considered or analyzed the record or held a formal hearing. The 1994 Order was then made a final order purely by default.

[50] Id. at 3 (emphasis added).

[51] Commission Staff sent only an informal request to the County asking it to identify "the entities served by DCAD's STS switch and for those non airline passenger and freight subscribers; i.e., retail shops, restaurants and personal service providers, explain why DCAD is not in violation of the Commission's requirement to obtain an STS certificate." See Exhibit 247 at 3. In response, the County provided a list of "users of the airport telecommunications system" and a statement that "[i]t is DCAD's understanding of the Commission's rules that an airport is required to become certificated if it offers shared service to a hotel, a shopping center, or an industrial park. Since DCAD is not offering shared service to any of these types of entities, it is not in violation of the rule." See Exhibit 248 at. 5-6. Contrary to the County's implication, the submission of this information was not entered in the Docket and was never formally considered by the Commission in the 1994 Order. Moreover, there is no mention of the Staff's request or the County's response in any subsequent Staff Recommendation, Pre-Hearing Statement or in the 1994 Order itself. The mere submission of this information thus does not establish that the Commission granted the County a blanket exemption for all STS provided to any airport tenant either in 1994 or in perpetuity thereafter.

exemption provided by the Rule.[52] In sum, the Rule, and thus its application to any STS offered at the Airport at the time, was irrelevant to the Commission's decision because, notwithstanding the Rule, the County was still subject to the requirements imposed by §364.339(4). Accordingly, this issue was not decided by the Commission in the 1994 Order. However, this issue is squarely before the Commission now.

Fourth, based on the extensive record evidence now before the Commission for the first time, the 1994 Order's statement that "DCAD, as a result of the nature of its involvement in the provision of telecommunications services is providing shared tenant services (STS)," was, in fact, inaccurate at that time. Until the County purchased the telecommunications facility and acquired all STS customers in 2002, the County was never the STS provider at MIA.[53] Rather, Centel, WilTel, and their successors were the STS providers. It does not appear that the Commission reviewed the governing County/Centel/WilTel contracts in connection with the 1993 Docket. Nor did the Commission analyze whether the shared tenant services provided to commercial tenants at that time had any relationship to ensuring safety and security at the Airport.[54] Moreover, such an investigation would not have been expected in that proceeding as these were not the issues to be decided. Based on the evidence developed in this proceeding, it is certainly now clear that the County was not an STS provider in 1994. It therefore could not have

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[52] Id.

[53] See AT&T Florida's Direct Brief at 3-10.

[54] Additionally, the testimony of the County and its STS provider, WilTel, in the 1993 Docket was confusing, conflicting and contradictory on the question of who the STS provider was at that time. For instance, in both his Direct Testimony and Rebuttal Testimony on behalf of the County, James Nabors testified both that the County was the telecommunications company and STS provider at the Airport, and also that WilTel was the STS provider at the Airport. Compare Exhibit 147 at 5:5-8 & 10:14-15 with Exhibit 147 at 44:9 & Exhibit 149 at 2:9 – 3:12. WilTel's representative, Byron Moore, was equally unreliable, testifying both that WilTel operated lawfully as the STS provider at the Airport and that the County owned and operated the STS system. Compare Exhibit 148 at 1:4-7 & 2:17-24 with Exhibit 153 at 9:23-10:13 & 11:2-13. In sum, both the County and WilTel were inconsistent within their own testimony and with each other regarding who was the STS provider at the Airport in 1993, thereby creating a confusing and misleading picture of the STS operation at MIA. Thus, it is not surprising that parties outside of the County's contractual relationships did not fully understand the nature of the STS operation at the Airport such that the County's reliance on the 1993 Docket and 1994 Order is inapposite, particularly since this issue was not squarely before the Commission in the 1993 proceeding.

been exempt under the Rule at that time. Accordingly, the County's reliance on the 1994 Order is entirely misplaced.

Finally, regardless of the general statements in the 1994 Order, the County's current provision of STS to commercial tenants at the Airport is not exempt under the Rule. The record evidence now before the Commission clearly and unequivocally demonstrates that the County is presently operating as an STS provider and that the shared tenant services it offers to its commercial tenants have no relationship to the safe and efficient transportation of passengers and freight. The evidence also establishes that the County is offering these services to facilities such as a hotel and shopping mall, for which certification is required under any circumstances. Accordingly, as of today, the County is plainly required to obtain certification and otherwise to comply with the applicable STS rules if it intends to continue providing STS in its present form. The earlier 1994 Order is in no way binding on this Commission in its consideration of these new and different facts and issues which are before the Commission in this Docket.

(3) The County's Provision of STS to the Airport Hotel Requires Certification: The County also argues that because the PBX serving the Airport Hotel at MIA is partitioned from the PBX serving the airport terminal, such that there can be no interconnection behind the PBX between the hotel and tenants within the airport terminal, the County is exempt from certification for the STS provided to the Airport Hotel.[55] This interpretation of the Rule has been repeatedly rejected by the Commission. In fact, in 1992, the Commission revised the Rule to clarify explicitly that partitioning trunks serving a facility such as a hotel, shopping mall or industrial park does not extend the exemption to the services offered to these partitioned facilities.

As noted by the Staff, the purpose of the proposed amendment was "to make it clear that

[55] See County's Direct Brief at 19.

an airport must get an STS certificate if it provides local service to a non-airport facility (e.g. hotel), regardless of whether it partitions its trunks[.]"[56] The Commission adopted the Staff's proposal and confirmed its intent by stating that, "[t]he purpose of this rule revision is to clarify that certification of the airport as [sic] STS provider will be required if shared local service is provided to certain facilities by the airport."[57]

GOAA vigorously objected to the 1992 amendment and claimed that the existing Rule allowed or should allow airports to partition their trunks to serve these other facilities without certification.[58] The Commission rejected GOAA's position. Nevertheless, the County is asking the Commission to reach the same conclusion that was already definitively rejected by the Commission in the 1992 Amendment to the Rule.[59] The County's attempt to amend the rule through this proceeding should be soundly rejected. Accordingly, because the County undisputedly provides STS to a hotel at MIA, at the very least, it must be certificated with respect to that service.

IV. Issue 4: Given that the County is Not Exempt Pursuant to the Airport Exemption Rule, the County Must Be Certificated

Lastly, if all else fails and the Commission decides that the Rule does not apply, the County goes so far as to request that the Commission still exempt its operations pursuant to Section 364.339(3)(a). This final argument fails for numerous reasons.

The County's reliance upon Section 364.339(3)(a) is misplaced. This statutory provision is only applicable to "[s]hared tenant services provided to government entities" and allows the Commission the discretion to exempt "such entities" providing service to the government "from

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[56] Exhibit 201 at 2 (emphasis added).
[57] Exhibit 204 (emphasis added).
[58] See AT&T Florida's Direct Brief at 36-38 nn. 166-175.
[59] Tellingly, GOAA does not join the County in making this argument. Indeed, GOAA essentially agrees with AT&T Florida that if the County is offering STS to a partitioned hotel, the County must be certificated for this service. See GOAA's Direct Brief at 14.

any certification requirements imposed by this Chapter."[60] The statute does not authorize the Commission to grant exemptions for STS provided by government entities. Of course, although the County is a governmental entity, it is providing telecommunications and shared tenant services to a litany of non-governmental entities such as concessions, restaurants, vendors, public companies and many more.[61] As such, the text of this statutory provision does not provide for the relief sought by the County.

Even if the statute provided for the relief suggested (which it does not), the County suggests that the Commission should still exempt its STS operation from certification and regulation because the County has "relied" upon the 1994 Commission Order and accompanying Staff memorandum regarding demarcation points. Again, as set forth in detail above, such an argument is both factually and legally of no avail.

As a factual matter, there is no record evidence to support the suggestion that the County relied upon the Commission's 1994 Order. The County decided to purchase and own the telecommunications facility at MIA in 2002 due to purely economic and public relations reasons.[62] The County had been harshly criticized for its expenditures at MIA, and corrupt activities existed within the airport department. This criticism, together with the explicit recognition by the County that it could generate additional revenue, led the County to make this purchase – not a 1994 Commission Order on demarcation points, issued eight years earlier.[63]

Moreover, not once during the extensive litigation of these matters did one County witness suggest that the 1994 Order was in any manner relevant or ever relied upon by the

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[60] Fla. Stat. § 364.339(3)(a).

[61] See Exhibits 95-97 and 99, (various County customer lists); Exhibit 174 (video of extensive non-governmental entities present at airport to which County offers STS services).

[62] See AT&T Florida's Direct Brief at 9-15 (footnotes 38-64)

[63] As extensively reviewed above, this 1994 Order and proceeding did not adjudicate the Airport Exemption Rule and is simply being used by the County as a post-hoc rationalization for exemption.

County concerning its telecommunications operations.

Quite to the contrary, the County cannot plausibly assert it relied upon this 1994 Order when it was twice advised by the PSC Staff subsequent to the 1994 Order to apply for certification.[64] In addition, the County has admitted that certification would be an administrative issue that would not require any technical or operational changes at the airport:

> Q. Let me ask you this, Mr. Garcia. In your capacity as Miami-Dade County corporate representative here today for areas two and three in the notice, if the Public Service Commission were to find that the STS operation operated by Miami-Dade County at the airport were to require certification, would that in any manner in your view negatively impact the County's ability to provide safe and efficient transportation for the passengers at the airport?
>
> A. To me this would be an administrative issue. It would not be anything requiring technical changes to whatever is going on now.[65]

Given this admission, the County cannot argue that it relied upon the Commission's prior statements concerning the Rule, when becoming certificated would not require any technical changes to the operation of the airport.

Finally, the County's reliance argument is inconsistent with its theory in this proceeding that the County has been operating the STS system at MIA for more than 20 years, dating back to 1982. If so, the County did not and could not have relied on the 1994 Commission Order.

In sum, the County does not now possess nor has it ever possessed an absolute right to a permanent exemption from regulation and oversight. The County's position that it should be

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[64] See AT&T Florida's Direct Brief at 46-51, footnotes 204-216. Of course, one would reasonably expect the County to advise the Staff that it had previously addressed this issue in a memorandum and Order back in 1994. No such position was taken at the time (as opposed to now while seeking to justify its position in this Docket).

[65] Exhibit 207 at 31:7-18.

granted a permanent exemption from this Commission's regulation and oversight simply because it relied upon an unrelated Order entered 13 years ago is without merit.

CONCLUSION

Based on the foregoing, AT&T Florida respectfully requests that the Commission find and hold that (a) the County is operating as a Telecommunications Company; (b) the County is subject to the jurisdiction of the Commission; (c) the County is not exempt from Shared Tenant Service ("STS") certification pursuant to the Airport Exemption Rule; (d) the County must immediately obtain a certificate of public convenience and necessity as an STS provider; and (e) enter such other relief as the Commission may find just and necessary under the circumstances.

Respectfully submitted this 10th day of September, 2007.

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