

Ruth Nettles

100144-TP

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Sent: Wednesday, March 24, 2010 6:01 PM
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Subject: STS Petition For Arbitration and Alternatively For Mediation
Attachments: PETITION FOR ARBITRATION AND ALTERNATIVELY FOR MEDIATION 3-24-10.pdf

Enclosed for immediately filing, please find Saturn Telecommunication Services, Inc.'s Petition For Arbitration and Alternatively For Mediation. Thank you.

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March 24, 2010

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

100144-TP

RE: In the Matter of the Petition of Saturn Telecommunication Services, Inc. d/b/a STS Telecom for Arbitration Pursuant to Section 252(b) of the Telecommunication Communications Act of 1934 as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Dear Ms. Cole:

Enclosed for filing, please find the following:

1. Saturn Telecommunication Services, Inc.'s Petition For Arbitration and Alternatively For Mediation.

We thank you for your kind assistance and attention to this matter.

Very truly yours,

s/ Alan C. Gold

ALAN C. GOLD

CC: Robert (Kip) Edenfield, Esquire, (Via Email: ke2722@att.com)
Tracy W. Hatch, Esquire, (Via Email: thatch@att.com)
CT Systems Corp., as Registered Agent for AT&T -Certified Return Receipt Requested

DOCUMENT NUMBER: DATE
02103 MAR 25 09
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**Before the
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION**

In the Matter of:
The Petition of Saturn Telecommunication Services Inc
d/b/a STS Telecom for Arbitration Pursuant to Section
252(b) of the Telecommunication Communications Act
of 1934as amended, and Section 364.162, Florida
Statutes, to Establish an Interconnection Agreement with
BellSouth Telecommunications, Inc. d/b/a AT&T Florida

Docket No. 100144-TP

**SATURN TELECOMMUNICATION SERVICES, INC.'S PETITION FOR
ARBITRATION AND ALTERNATIVELY FOR MEDIATION**

Keith Kramer
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FPSC - COMMISSION CLERK

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PETITION FOR ARBITRATION AND ALTERNATIVELY FOR MEDIATION

Saturn Telecommunication Services Inc d/b/a STS Telecom. ("STS") through its undersigned Counsel, hereby petitions the Florida Public Service Commission ("Commission") for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&") and alternatively for Mediation pursuant to Section 252(b) of the Communications Act of 1934, as amended ("Act")¹ and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, Florida Statutes, and Rule 28-106.201, Florida Administrative Code.

PARTIES

1. The complete name and business address of the petitioner in this matter is:

Saturn Telecommunication Services Inc d/b/a STS Telecom
12399 SW 53RD Street
SUIT 102
Cooper City, Florida 33330
Telephone Number 954 252-1000

STS is a Competitive Local Exchange Carrier ("CLEC") and Interexchange Carrier ("IXC") certified by the Florida Public Service Commission ("FPSC"), to provide telecommunications services in Florida. STS holds a certificate of authority, certificate number TX698, and is a telecommunications company" as that term is defined by Section 364.02(14), Florida Statutes. For purposes of the Act, STS is a "telecommunications carrier" and a "local exchange carrier."²

¹ 47 U.S.C. § 252(b).

² 47 U.S.C. §§ 153(26), (44)

2. A copy of all pleadings, discovery, orders, and other papers in this matter should be served on STS and STS' attorneys in this matter, whose respective contact information is as follows:

Alan C. Gold
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and

Keith Kramer
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3. The respondent in this matter is BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T"). AT&T is an incumbent local exchange carrier ("ILEC") certified by the FPSC to provide local exchange services in Florida. AT&T is an ILEC as defined in §251 (h) (1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (hereinafter, "the Act"), and is a local exchange telecommunications company defined by §364.02(6), Florida Statutes. AT&T is also a Bell Operating Company ("BOC") and an interexchange carrier certified by the FPSC to provide long distance services based upon §271 of the Act.

4. According to the official records of the Florida Secretary of State, AT&T has its principal office at 675 Peachtree Street, NE, Suite 4500, Atlanta, Georgia 30375; and its Registered Agent for Florida, CT Corporation System, is at 1200 Pine Island Road, Plantation, Florida.

JURISDICTION

5. Part II of the Federal Telecommunications Act of 1996 (Act) sets forth provisions controlling the development of competitive markets in the telecommunications industry. Section 251 of the Act regards interconnection with the incumbent local exchange carrier and Section 252 sets forth the procedures for negotiation, arbitration, and mediation and approval of interconnection agreements.

6. 47 USCA § 252(b) addresses agreements arrived at through compulsory arbitration.

Specifically, Section 252(b) (1) states:

(1) Arbitration.

During the period from the 135th to 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

7. 47 USCA § 252(a) (2) provides for mediation before the state commission. Specifically section 252(a) (2) states:

(2) Mediation.

Any party negotiating an agreement under this section may, at any point in the negotiation, ask a State Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiations.

8. Pursuant to 47 USCA ¶ 252, the Florida Public Service Commission clearly has jurisdiction over STS' request for arbitration, and alternatively STS request for the Public Service Commission to participate in the negotiations and mediate any differences.
9. With regards to STS' request for arbitration, 47 USCA ¶ 252 (b) (2) (A) sets forth the requirements that at the time of the filing of the petition, the party requesting arbitration furnish the State Commission with all relevant documentation concerning "(i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issue discussed and resolved by the parties".
10. 47 USCA ¶ 252 (b)(4)(C) states; The State commission shall resolve each issue set forth in the petition and response, if any, by imposing the appropriate conditions as required....“ This section requires this Commission to conclude the resolution of any unresolved issues not later than 9 months after the date on which the local exchange carrier received the request for arbitration under this section.
11. The Commission also has jurisdiction under the Federal Act under 47 U.S.C. § 251 (d)

INTRODUCTION AND OVERVIEW

12. On or about October 7, 2009, STS Telecom advised AT&T that it wished to amend its Interconnection Agreement (“ICA”) with AT&T to provide for the commingling of AT&T's wholesale local switching elements with section 251(c)(3) loops of the following types; UVLs, UCL-ND, SL-1s and SL-2s.

13. When no response was forthcoming from AT&T, on October 16, 2009, STS Telecom through the undersigned counsel advised AT&T in writing that it wanted to amend the ICA to “include the commingling of section 271 elements of the switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops”. Said October 16 correspondence constituted a request for negotiation of a voluntary agreement for “interconnection, services or network elements pursuant to section 251 of this title (“Title 47”)”³.
14. STS repeated its demand for the negotiation of the interconnection agreement to include the commingling of section 271 elements of the switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops on numerous occasions since the October 16, 2009, correspondence.
15. AT&T indicated a willingness to provide STS with a commercial agreement pursuant to 47 USCA § 271, but refused to commence negotiations for the amendment to the ICA to permit the commingling of the section 271 switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops.
16. Due to the unwillingness of AT&T to commence good faith negotiations, there is no documentation concerning the unresolved issues or the position of each of the parties with respect to the unresolved issues. Moreover there are no issues discussed and resolved by the parties.
17. Based on the above AT&T has not negotiated in good faith.

³ 47 USCA § 252 (a) (1)

LEGAL ARGUMENT

18. *Nuvox Communication, Inc. v. BellSouth Communications Inc.*, 530 F.3d 1330 (11 Cir. 2008) definitely established that services available through section 271 could be commingled with 251(c) (3) elements. That case, like the instant case involved the arbitration of an interconnection agreement. “The Florida Commission concluded that the FCC did not intend for its commingling requirement to apply to section-271 elements. The Florida Commission also decided that reading the FCC’s general discussion of commingling to require combinations of section-251 and section-271 elements would be contrary to public policy”⁴ The United States District reversed the Florida Commission’s decision on both points, which decision was affirmed by the United States Eleventh Circuit Court of Appeals. Therefore, it is clearly established that STS is entitled to an Interconnection Agreement that provides for the commingling of 251-elements with 271-elements.

CONCLUSION

STS respectfully requests that this Commission arbitrate STS’ request for an Interconnection Agreement to include the commingling of section 271 elements of the switch port with section 251(c) (3) DS0, UCL-ND and SL-1 voice grade loops. Alternatively, if for any reason this Commission declines to so arbitrate, STS requests that the Commission participate in the negotiation of such an interconnection agreement and mediate any differences.

⁴ See : *Nuvox Communication, Inc. v. BellSouth Communications Inc., Id.* at 1332.

s/ Alan C. Gold
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 24, 2010, I electronically filed the foregoing document with the Florida Public Service Commission. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via email transmission or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/ Alan C. Gold
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