

ORIGINAL**Matilda Sanders**

From: Burt, Danielle [dcburt@swidlaw.com]
Sent: Tuesday, May 24, 2005 2:31 PM
To: Filings@psc.state.fl.us
Cc: Kiddoo, Jean; Bobeck, Joshua; David Hope; Rudy Bradley; Dale Buys; Ray Kennedy; adam.teitzman@dep.state.fl.us
Subject: Docket No. 050257; Miami-Dade County's Answer and Affirmative Defenses
Attachments: Miami-Dade Answer and Affirmative Defenses.pdf

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

C. Miami-Dade County

D. 8 pages (including cover letter, Answer and Affirmative Defenses and certificate of service)

E. Miami-Dade County's Answer and Affirmative Defenses

<<Miami-Dade Answer and Affirmative Defenses.pdf>>

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VIA EMAIL

May 24, 2005

Ms. Blanca S. Bayo
Director, Division of the Commission
Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**Re: Docket No. 050257; 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. Bayo:

Attached is Miami-Dade County's Answer and Affirmative Defenses, which we ask that you file in the above-captioned docket. If you have any questions concerning this filing, please do not hesitate to contact the undersigned at (202) 424-7500.

Respectfully submitted,

s/ Danielle C. Burt

Jean L. Kiddoo
Joshua M. Bobeck
Danielle C. Burt

cc: David Stephen Hope
Service List

ORIGINAL

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

MIAMI-DADE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

Miami-Dade County (the "County"), through its undersigned counsel, hereby files its Answer and Affirmative Defenses to the Complaint by BellSouth Telecommunications, Inc. ("BellSouth") in the above-captioned proceeding.

The County responds to the specific allegations in the Complaint as follows:

1. Upon information and belief, the County admits the allegations contained in Complaint Paragraph 1.
2. Upon information and belief, the County admits the allegations contained in Complaint Paragraph 2.
3. The County admits that it, through Miami-Dade County Aviation Department ("MDAD"), manages Miami International Airport ("MIA") and other County owned and operated airports, and that the address provided is the physical non-mailing address of the Assistant County Attorney representing the County in pending litigation with BellSouth and in the above-captioned matter.
4. Upon information and belief, the County admits that BellSouth is subject to the regulation of the Florida Public Service Commission (the "Commission"). The provisions of Sections 364.01(4)(g) and 364.01, Fla. Stat. speak for themselves and the County neither admits

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nor denies BellSouth's characterization of their meaning. The County denies that BellSouth has demonstrated that its substantial interests will be affected by the Commission's determination as to the matter set forth in the Complaint.

5. Section 364.33, Fla. Stat., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

6. Section 364.32(1), Fla. Stat., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

7. Section 364.339(1), Fla. Stat., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

8. Section 364.339(2), Fla. Stat. and Rule 25-24.565, F.A.C., speak for themselves and the County neither admits nor denies BellSouth's characterization of their meaning.

9. Section 364.339(3), Fla. Stat., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

10. Rule 25-24.585, F.A.C., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

11. Rule 25-24.580, F.A.C., speaks for itself and the County neither admits nor denies BellSouth's characterization of its meaning.

12. The County admits that it operates the airport telecommunications system at MIA pursuant to Rule 25-24.580, F.A.C. and that it has operated said system since circa 1988, that the hotel is served on a partitioned basis and is not part of the shared airport system, and that it has not obtained a certificate of public convenience and necessity. The County also admits that a lawsuit, *BellSouth Telecommunications, Inc. v. Miami-Dade County*, Case No. 02-28688 CA 03,

is pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The County denies the remaining allegations in Complaint Paragraph 12.

13. The County denies the allegations in Complaint Paragraph 13.

14. The County denies the allegations in Complaint Paragraph 14.

15. The County denies the allegations in Complaint Paragraph 15.

16. The County admits that the Commission has previously considered whether airport certification would be required in Docket No. 860455-TL, PSC Order No. 17111. The County also admits that BellSouth has attached a copy of a contract between Metropolitan Dade County and Centel Communications Company for Shared Airport Tenant Services as Exhibit B to the Complaint. The County denies the other allegations in Complaint Paragraph 16.

17. The County admits that the MDAD Chief of Telecommunications, Pedro Garcia, had a telephone conversation with a Commission staff member in October 2001, about the County's STS operations, and denies the remaining allegations in Complaint Paragraph 17.

18. The County admits that the Pedro Garcia's notes, recording the conversation with Commission staff in October 2001, include among other things, the statements contained in Complaint Paragraph 18.

19. The County denies the allegations in Complaint Paragraph 19.

20. The County admits that a Commission staff member, Rick Moses, contacted Maurice Jenkins, MDAD Manager, Information Systems Division, in or about March 2003, and sent an email stating, among other things, the sentence quoted in Complaint Paragraph 20. The County admits that the list of airport tenants provided by MDAD to Mr. Moses in response to his email includes, among others, entities such as concession stands, restaurants and a hotel, and

denies the allegation that such list shows that the shared airport system is provided to facilities such as hotels, shopping malls and industrial parks.

21. The County denies the allegations in Complaint Paragraph 21.

22. The County denies that the allegations in Complaint Paragraph 22.

23. The County denies the allegations in Complaint Paragraph 23.

24. Upon information and belief, the County admits that Hillsborough County Aviation Authority applied for and obtained a shared tenant service provider certificate, but does not provide any shared tenant services.

25. The County admits that the Commission has jurisdiction to enforce its rules, and the provisions of Chapter 364 pursuant to Sections 350.127, 364.285, and 364.337(5), Fla. Stat., speak for themselves and the County neither admits nor denies BellSouth's characterization of their meaning.

26. The County denies that BellSouth's request meets the procedural requirements of Rule 25-22.036(2)(b), F.A.C.

27. With respect to all other allegations and/or requests for relief in BellSouth's Complaint that have not been specifically admitted herein, the County denies the same and respectfully request the Commission to deny all such requests for relief.

AFFIRMATIVE DEFENSES

1. The County's shared airport telecommunications system fully complies with Rule 25-24.580, F.A.C.
2. BellSouth has failed to demonstrate standing according to Rule 25-22.029, F.A.C.
3. BellSouth has failed to state a claim for which the Commission can grant relief.
4. Given the Commission's findings and rulings in Docket No. 860455-TL, PSC Order No. 17111, and Docket No. 931033-TL, PSC Order No. 94-0123-FOF-TL, BellSouth should be precluded from raising the issues and claims contained in the Complaint.

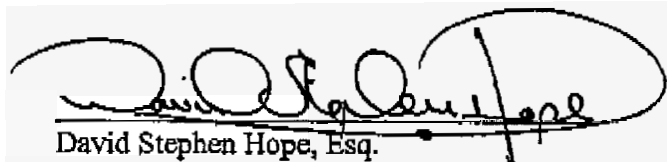
WHEREFORE, the County hereby files this Answer and its Affirmative Defenses and respectfully requests the Commission enter an Order in its favor and deny BellSouth the relief sought.

Dated: May 24, 2005

Respectfully submitted,

Robert A. Ginsburg
Miami-Dade County Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this *24th* day of May, 2005, to: *Nancy B White, Esq.* and *Sharon R. Liebman, Esq.*, c/o Nancy H. Sims, BellSouth Telecommunications, Inc., 150 South Monroe Street, Suite 400, Tallahassee, Florida, 32301; and *R. Douglas Lackey, Esq.*, BellSouth Telecommunications, Inc., 675 West Peachtree Street, N.E., Suite 4300, Atlanta, Georgia 30375.