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August 9, 2007

ORIGINAL

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 an original and 7 copies of BellSouth Telecommunications, Inc. d/b/a AT&T Florida's 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,

Lawrence B. Lambert, Esq.

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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 BRIEF

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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AT&T FLORIDA'S BRIEF

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

INTRODUCTION

This proceeding requires the resolution of four straightforward issues, all of which raise one central question: Should Miami-Dade County ("County") be subject to the jurisdiction and oversight of the Florida Public Service Commission ("Commission") due to its current operation of an extensive commercial telecommunications business at Miami International Airport ("MIA" or "Airport")? The facts set forth below, together with the applicable law, indisputably answer this question in the affirmative. Specifically, and without limitation:

- The County became a telecommunications company in February, 2002 when it acquired the telecommunications facility and customers at MIA from NextiraOne LLC ("Nextira") and its predecessors;
- The County purchased the telecommunications system at MIA for economic and political reasons -- not for safety and security;
- The County admits that it is a Shared Tenant Services ("STS") provider and that it competes with other telecommunications companies for customers at the Airport;
- The County presently offers and provides public customers with local and long distance services, as well as a plethora of other services including call waiting, call conferencing, call pick-up, call parking, call forwarding and voice mail;
- The County currently serves more than 60 STS customers, including a hotel and all forms of retail establishments like those found in a shopping mall, and the

County seeks to market its services to expand its customer base;

- The County charges, bills, and receives payment directly from its customers;
- The County's purpose in offering and providing STS to its tenants is to make money -- not to ensure the safe and efficient transportation of passengers and freight through MIA as required by the Airport Exemption Rule;
- The County does not provide all Airport tenants with STS and, in fact, has separate phone service for the safety and security of passengers and freight;
- The Commission Staff previously advised the County that it was not exempt pursuant to the Airport Exemption Rule and should obtain a Certificate; and
- The County has not applied for or received a Certificate or exemption.

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

ISSUE-BY-ISSUE ANALYSIS

Issue 1: Is Miami-Dade County Operating As A Telecommunications Company At Any County-Owned Airports?

Summary of AT&T's Position**: Yes, Miami-Dade County, like any entity that offers two-way telecommunications to the public for hire by use of a telecommunication facility, is a Telecommunications Company. See Fla. Stat. § 364.02(13).

To conclusively demonstrate that the County is a telecommunications company at MIA, as well as to address the remaining issues before this Commission, AT&T presents the following comprehensive factual background that details: (1) the provision of telecommunications services at MIA prior to the County's ownership; (2) the County's

purchase in 2002 of the telecommunications facility at MIA; (3) the County's telecommunications equipment and network; (4) the telecommunications services offered by the County, including its provision of STS; (5) the County's customers; (6) the County's pricing and charges; and (7) the County's business objectives of making a profit, marketing and future expansion. Based on these facts, the Commission should conclude that the County is operating a telecommunications company as defined by Florida law.

(1) The Provision of Telecommunications Services at MIA Prior to the County's Ownership and Operation in 2002

Beginning in mid-1981, the Dade County Aviation Department ("DCAD" or "Department")[1] sought to install a new telecommunications system at MIA including the MIA Hotel ("Airport Hotel").[2] The new system's purpose was "to serve the administrative functions of the Airport and to replace the outdated mechanical switching system serving the Airport Hotel."[3] The Department decided to outsource its telecommunications services at MIA rather than provide the services itself.[4] As a result, proposals from five telecommunications companies were received and subsequently reviewed by an Evaluation Committee.[5]

The Evaluation Committee recommended that the County purchase the equipment. However, the County elected not to follow that recommendation and, instead, opted to rent the

[1] Dade County was renamed Miami-Dade County on July 22, 1997. The Department was then renamed the Miami-Dade County Aviation Department ("MDAD").
[2] Exhibit 10. AT&T and the County have previously submitted a Joint Final Exhibit List containing 284 exhibits. All Exhibits cited herein refer to the Joint Final Exhibit List. AT&T is also sometimes referred to herein as BellSouth. AT&T and BellSouth merged in 2007.
[3] Exhibit 11.
[4] Exhibit 8.
[5] The telecommunications companies included Centel Communications Company, Southern Bell Telephone & Telegraph Company, Burnup & Sims Communications Services of Florida, Inc., General Dynamics Communication Company, and Florida Telcom, Inc. A sixth firm, Rockwell International, was removed from consideration. See Exhibit 10.

equipment from Centel Communications Company ("Centel").[6] Thus, on March 16, 1982, the County awarded the contract to Centel.[7] This award gave Centel "the right to provide the administrative and operational telephone system for the Aviation Department" at MIA.[8] The County entered into two contracts with Centel on September 9, 1982: (i) a Master Equipment Lease (the "Leasing Agreement"),[9] and (ii) a Service Agreement.[10]

(a) 1982 Master Equipment Lease: The Leasing Agreement was in place from February 7, 1984 through February 6, 1988.[11] Under the Leasing Agreement, Centel owned and installed the telecommunications equipment at the Airport and the Airport Hotel,[12] and the County leased this equipment from Centel.[13] Centel's duties under the Leasing Agreement included, *inter alia*, delivery and installation of the equipment at the Airport and the Airport Hotel. The Leasing Agreement provided the County with the option to purchase the equipment from Centel.[14] On October 7, 1987, the County exercised this purchase option with respect to equipment serving the Airport Hotel, but continued to lease the equipment serving

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[6] Exhibit 10.
[7] Exhibit 10.
[8] Exhibit 11.
[9] Exhibit 2.
[10] Exhibit 1.
[11] The Leasing Agreement defined the "Initial Term" as 48 months from "the Acceptance of either the Airport System or Hotel System, whichever [was] later." See Exhibit 2. Acceptance occurred on February 6, 1984 so the term of the Leasing Agreement began on that date instead of in 1982. See Exhibit 12.
[12] Equipment is defined in Section One of the Leasing Agreement as "all the component parts of the Airport System and Hotel System collectively, including, but not limited to, telephone hand sets, cable, conduit, switches, software and the like, provided by Centel or the County hereunder." Exhibit 2.
[13] Exhibit 2. Specifically, the Leasing Agreement, in Section Two, provides that "Centel agrees to install and lease to the County, and the County agrees to lease from Centel, the Equipment as reqired [sic] for the complete performance by Centel of Contract No. 6-T-600[.]" In Section Three, the Leasing Agreement expressly provides that "[t]he County shall lease from Centel the Airport System and the Hotel System as provided for herein."
[14] See Exhibit 2, Section Seven; see also Exhibit 2, Section Fourteen ("The Equipment provided by Centel at its cost hereunder, not paid for or reimbursed by the County, is and shall remain personal property irrespective of its manner of attachment to realty or use and title to the Equipment shall at all times be and remain with Centel, unless transferred to County by sale.").

the Airport itself.[15]

(b) 1982 Service Agreement: The Service Agreement also commenced on February 7, 1984, but ran for a term of eight years, terminating on February 6, 1992.[16] The Service Agreement provided that Centel was the telecommunications provider at MIA. Centel used the Airport and Airport Hotel facilities to provide telephone service to Airport tenants who paid Centel for those services.[17] In exchange, the County became the "preferred customer" of Centel for telephone service, and received monthly fees from Centel plus a percentage of Centel's gross revenues.[18] Because Centel provided the service, Centel – and not the County – was required to "obtain, pay for, and maintain current all permits and licenses as required for its operation."[19]

(c) Centel Continued To Provide Service Pursuant to Various Agreements: On February 3, 1988, three days before the Leasing Agreement was set to expire, the County sent a letter to Centel, stating that "as long as both parties are satisfied that an agreement can be reached, the parties agree that the Master Equipment Leasing Agreement shall be administratively extended on a month-to-month basis . . . ."[20] The County then enacted Resolution No. R-302-88 on March 15, 1988, which extended the Leasing Agreement on a month-to-month basis, effective retroactively as of February 7, 1988.[21]

On July 24, 1990, the County passed Resolution No. R-788-90, which authorized the

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[15] See, e.g., Exhibit 12; see also Exhibit 3, Article 1A ("The Parties acknowledge and agree that the County purchased the Hotel System on October 7, 1987.").
[16] Exhibit 1, Article 1, 1.01.
[17] See Exhibit 1, Article 3, 3.01 ("Centel is authorized to "operat[e] the Airport and Hotel Systems and provid[e] Telephone Switching Equipment Service to other Airport tenants, including storage of equipment and parts associated with such systems, administration thereof, and other related functions necessary to operate said Systems.").
[18] Exhibit 1, Article 3, 3.01 and Article 4.
[19] Exhibit 1.
[20] Exhibit 4.
[21] Exhibit 11.

County to enter into two new agreements with Centel: (i) an Equipment Lease and Maintenance Agreement (the "ELM Agreement") to continue leasing the Airport System and (ii) a Shared Airport Tenant Services Agreement ("SATS Agreement") under which Centel would provide SATS to airport tenants.[22] In a memorandum dated July 24, 1990, the County Manager recommended to the County that it adopt the 1988 SATS Agreement "by which Centel shall provide telephone service to airport tenants and users."[23] The ELM and SATS Agreements were executed the same day.

(d) ELM Agreement: The 1988 ELM Agreement, like the earlier Leasing Agreement, provided that Centel owned the telecommunications facility at the Airport and that the County would lease the equipment from Centel.[24] Unlike the earlier Leasing Agreement, however, the ELM Agreement did not include the Hotel System, because the County owned the Hotel System at that time pursuant to its purchase on October 7, 1987.[25] The 1988 ELM Agreement commenced retroactively on February 7, 1988, and continued for a period of four years, until February 6, 1992, terminating at the same time as the Service Agreement.[26] Thereafter the County had the option to renew the contract for five consecutive two-year terms.[27] Upon the ELM Agreement's expiration in 1992, the County again had the option to purchase the Airport System, and again opted to continue to lease rather than purchase the

[22] Exhibit 12.
[23] Exhibit 12.
[24] Exhibit 6, Article 3 ("Centel agrees to lease to the County and County agrees to lease from Centel the present Airport System . . . ."); Article 12 ("The Equipment provided by Centel at its cost hereunder, not paid for or reimbursed by the County, is and shall remain personal property of Centel irrespective of its manner of attachment to realty or use, and title to the Equipment shall at all times remain with Centel, unless transferred to County by sale.").
[25] Exhibit 3, Article 3.
[26] Exhibit 6.
[27] Exhibit 6.

Airport System.[28]

(e) SATS Agreement: The SATS Agreement retroactively commenced on February 7, 1988, for an initial four-year term, ending on February 6, 1992, in accordance with the original Service Agreement.[29] The SATS Agreement was similar to the Service Agreement and authorized Centel to use the Airport telecommunications facilities (which Centel owned) to provide telephone service to Airport tenants.[30] Importantly, the SATS Agreement also provided that "the parties contemplate that County may provide the SATS for the Airport and Hotel systems *at some point in the future* . . . ."[31] The SATS Agreement also included several new provisions not found in the 1984 Service Agreement. First, the SATS Agreement specifically acknowledged that the PSC had only recently approved the SATS concept at airports:

> because such approval was based in large part upon the showing that airports in Florida needed a reliable internal telephone system that would allow emergency and security problems to be handled in a prompt and most efficient manner without having to access off-campus local telephone company equipment.[32]

Second, the SATS Agreement included five consecutive two-year renewal options (as in the ELM Agreement), commencing on February 7, 1992.[33] Third, the County received an increased percentage of gross payments based on the SATS Agreement from the charges

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[28] Exhibit 6.
[29] Exhibit 7.
[30] Centel was "authorized to use the equipment and facilities for the purpose of operating the Airport System and providing Shared Airport Tenant Service to tenants and users of the Airport, including storage of equipment and parts associated with such systems, administration thereof, and other related functions reasonably necessary to operate such systems and service."). See Exhibit 7. Furthermore, Centel agreed "to use its best efforts to establish, market, and sell SATS to tenants and users at the airport and at the hotel (except for the department itself and those department accounts specifically identified by the Department), consistent with the authority granted from time-to-time by the Public Service Commission of Florida or whatever governmental entity has jurisdiction over SATS, and all other applicable laws." Id.
[31] Exhibit 7, Section 9(b) (emphasis added).
[32] Exhibit 7 (emphasis added).
[33] Exhibit 7.

Centel collected from its customers.[34] Finally, the term "Airport" was expanded to include Kendall-Tamiami Executive Airport, Opa-Locka Airport, Homestead Airport, Dade-Collier Training and Transition Airport and Opa-Locka West Airport in addition to MIA.[35]

(f) Continued Telecommunications Service up to 2002 by Centel, Williams, WilTel and NextiraOne LLC. The County exercised all five of its two-year renewal options on both the ELM Agreement and the SATS Agreement, continuing to lease the equipment for the Airport System, and Centel, or its successor entities, continued providing SATS until the termination of these contracts on February 6, 2002. During this time, in 1997, Williams Communications Solutions, LLC ("Williams") was created from the merger of WilTel Communications, Inc. (WilTel) and Nortel Communications Systems ("Nortel").[36] In 2002, NextiraOne, LLC ("Nextira") became the successor or assignee of Centel's rights and obligations (via Williams) under both the ELM Agreement and the SATS Agreement.[37]

Thus, prior to 2002, Nextira and its predecessors – not the County – owned the telecommunications facility and provided the telecommunications services at MIA.

(2) The County Purchased and Began to Operate the MIA Telecommunications Facility in February 2002.

As detailed above, between September 9, 1982 and February 6, 2002, the County was the customer and received, rather than provided, telecommunications services at MIA. During this time, and as more fully explained below, the County came to complain that it was losing money under these arrangements and admitted to "paying through the nose" for these

[34] Exhibit 7.
[35] Exhibit 7. The County has taken the position that it provides STS only at MIA and not at any other County-owned airports.
[36] Exhibit 13; Exhibit 38 (Williams Company overview and background).
[37] See also Exhibit 208 at Deposition Exhibit 10, pp. 20-22 (provides a summary description of the business agreements and contracts that Nextira and its predecessors had with the County); Exhibit 166 (PowerPoint presentation by Williams' President showing overview of operations at MIA in 1999); Exhibits 169-170 (Airtele and Communications Network Overviews by WilTel).

services.[38]

As a result, on January 29, 2002, pursuant to the purchase option in the Leasing Agreement, the County authorized the purchase of "all telecommunications, data network, and common use terminal equipment infrastructure, software, licenses, permits, and other assets from Nextira for $6,450,000.[39]

Pursuant to this purchase, the County replaced Nextira and began to operate and provide the telecommunications services at MIA.

(a) Change of Ownership and Provider. Both of the County's principal executives responsible for the telecommunications network at MIA have admitted that a distinct change of telecommunications service providers occurred in early 2002.[40] Pedro Garcia, the Chief of Telecommunications testified "[s]o as of February of 2002 we concluded negotiations with [Nextira] to purchase all of that from them and then at that point we became owners of the equipment and, therefore, we were actually the service providers from that point on. Before that it was them."[41] Maurice Jenkins, the Manager of Information Technology and Telecommunications Systems, also testified that there was "no dispute" that the County took over both ownership and operation of the telecommunications service in 2002.[42]

Furthermore, Nextira's corporate representative testified the County had taken control and ownership of MIA's telecommunications system in 2002 and that the following Nextira

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[38] Exhibit 16 at p. 63:11-12.
[39] See, e.g., Exhibit 13. Nextira's Corporate Representative testified that the replacement cost of the equipment at the time of the sale would have been higher, but that the purchase price was likely knocked down by the County's prior lease and rental payments made over the course of many years to Nextira. Exhibit 208 at pp. 27-30.
[40] This sworn testimony contradicts and refutes the County's assertion in this proceeding that the County has operated the STS system since 1988. See County's Answer and Affirmative Defenses, paragraph 12.
[41] Exhibit 16 at p. 24:9-14.
[42] Exhibit 17 at pp. 195:12-196:13.

statement written in February 2002 (at the time of the County's purchase) was true and correct:

> *NextiraOne and its predecessors had previously owned and operated the systems under an outsourcing arrangement.* The County and the Company agreed that the system and the Aviation Department have evolved to the point where the Department should acquire the equipment and assume greater control.
>
> Under the old contract that expired February 6, 2002, NextiraOne had leased telecommunications equipment to the County and managed, operated and maintained all the telecommunications infrastructure at MIA for about $9.2 million per year.[43]

The fact that the County became the telecommunications provider in early 2002 is thus well documented[44] and has been repeatedly admitted by the County,[45] Nextira and its predecessors [46] and customers.[47]

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[43] Exhibit 208 at pp 22-23, and 31-32 (emphasis added) (also clarifying that the $9.2 million figure likely relates to the most current years, not each of the past 19 years).

[44] For example, the Airport Rental Agreements over time show the change of service provider. Compare Pre-February 2002 Agreements at Exhibits 100, 102-104 and 107 (Centel, Williams, etc); with Post-February 6, 2002 Agreements at Exhibits 108-109 (County); see also Exhibit 16 at p. 114:2-9 (The bills are on a County form – an MDAD form – because "we want to show the name of the company that's providing the service.").

[45] See Exhibit 16 at p. 60:18-25 ("The purpose [of the 2002 Interim Agreement] was to acquire from NextiraOne the infrastructure that they had at the airport – that they own at the airport to provide telecommunications services, including the telephone switches, network equipment and the wiring infrastructure existing at the airport."); Id. at pp. 32:18-33:2 (Referring to Exhibit 46, Garcia stated that, in December 2001, "Nextira was the provider of the service and now we're engaged in buying the infrastructure so we will become the providers of the service."); Id. at p. 61:7-16 ("The County was basically a customer of NextiraOne prior to [the 2002 Interim Agreement]. We were their customers as far as they were providing us the services along with the services they were providing to other tenants of the airport."); Id. at pp. 62:18-63:2 (stating that, up until February 2002, Nextira or its predecessor provided telecommunications services "to some of the tenants," which included "the Miami-Dade Aviation Department"); Id. at p. 63:19-24 (agreeing that "in February 2002, pursuant to this agreement with NextiraOne, the County became the provider and Nextira became, if you will, a subcontractor[.]"); Id. at p. 73:18-22 (answering "Yes, sir" to the question: "So pursuant to the agreement you were entering into with Nextira, all of the Nextira customers at the airports were going to become customers of the County?"); Id. at p. 76:6-9 (answering "Right" to the question: "Because Nextira, it was no longer providing the services, the County was providing the services?").

[46] See Exhibit 40 (In 1999, a Williams executive described the MIA network in an e-mail as follows: "Williams owns and operates the enterprise network and rents services to Miami-Dade Aviation Department, airlines, and other businesses at the County's airports."); Exhibit 42 (In 2000, an internal Williams' memo referred to Williams as "the incumbent service provider."); Exhibit 34 (In 1995, WilTel's Communications Network Overview for Miami International Airport expressly provided that "DCAD and the MIA tenants rent Airtele service from WilTel under the terms of their respective contracts. In accordance with WilTel's contract with the County, WilTel pays Dade County property

(b) The County's Purchase Was Motivated by Economics and Not for Safety and Security. Although completed just four months after the attacks of September 11, 2001, the purchase of these telecommunications assets was a financial and business decision that had been under consideration for several years prior to its completion. Moreover, at the time of the purchase, the County made absolutely no mention of the attacks, or of any purpose related to the safety or security of the airport in connection with the transaction.[48] The County has testified that the purchase was a "business decision."[49] In fact, several years before the purchase and the 9/11 attacks, the South Florida media began investigating and criticizing the County concerning its operations at the airport, including the high cost paid by the County to Williams for its telecommunications services.[50] Through 1999, Williams responded to this

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taxes on the Airtele system, local permit fees, and WilTel pays a percentage of all revenues received from the MIA tenants to DCAD. The County has the option after a one year notice to purchase the Airtele system in its entirety from WilTel and assume WilTel's contractual obligations with its suppliers and customers." WilTel's Quarterly Report also refers to "WilTel's Shared Tenant System" and revenues from WilTel's airport customers. The Communications Network Overview Miami International Airport then provides that WilTel "owns and operates a 'State-of-the-Art' fiber optic based communication network for the Dade County Aviation Department (DCAD) and the tenants at Miami International Airport (MIA)."); Exhibit 27 (In 1991, WilTel wrote to Joann McFarland, a Communications Specialist for the Center for Disease Control ("CDC"), that "Dade County in Board Resolution R-361-82 dated March 16, 1982, authorized WilTel communications to provide Shared Airport Tenant Service (SATS) to Miami Airport (MIA) tenants and users.")

[47] See, e.g., Exhibit 83 (Mr. Rick Cybulski of Cyber Express, an MDAD customer, in an e-mail to MDAD, wrote: "we are nextiraone customer since 1999 and we have always paid our obligations and never have been asked for good faith! Problems with invoices, communications etc. have surfaced since your department took over the telecommunications services.").

[48] In fact, as more fully explained below in response to Issue 3, the County has a separate telephone system designed and used for airport safety and security. This system, which currently comprises up to 1000 phones throughout the Airport (concourses, gates, etc), is made available by the County free of charge and is directly connected to the airport's operations control center. Moreover, the system allows for airport wide paging in the case of emergencies. Accordingly, the County's attempt to portray its commercial STS operation as necessary for safety and security must be summarily rejected.

[49] Exhibit 16 at p. 64:16-22.

[50] Exhibit 160 (South Florida Sun-Sentinel article dated March 5, 1999, heavily criticizing the WilTel contract with the County and beginning with "[a]lready stained by a series of scandals, Miami International Airport faces a widening criminal investigation into its $10.4 million contract with a major telecommunications company." The article also states, "The contract has raised so many troubling questions about possible wasteful spending and purchasing violations that a Miami-Dade police officer recently was placed inside the county's aviation department to help get to the bottom of it all.").

criticism by highlighting the County's decision in 1982 to outsource the operation instead of owning the network itself, detailing the progress of the telecommunications system under William's ownership, and specifically addressing the various pricing and billing concerns the media and others had raised.[51]

As a result of this scrutiny, as well as a public corruption criminal investigation that resulted, in part, in a conviction of a County employee responsible for the airport contracts, the County formed a Competition Committee to evaluate the current state of MIA's telecommunications arrangements.[52] This activity and review led the County to pursue purchasing the telecommunications facility from Nextira.[53] At no time was security, terrorism or safety a motivation for the transaction. Indeed, the County confirmed that the desire to purchase the system was economic in nature in the following testimony in this proceeding: "We were paying a rental for every little jack that you see on the wall, we were being charged like $2.50 for every jack, for every wire, for every nut and bolt at the airport."[54]

(c) Nextira Was Retained Pursuant to a Management Agreement. Concurrent with the purchase and to facilitate the transition of the ownership and operation of the telecommunications facility, the County retained Nextira to manage the commercial telecommunications enterprise by approving a two year Non-Exclusive Telecommunications, Data Network, and Shared Airport Tenant Services Management Agreement ("Interim Agreement").[55] The Interim Agreement provided, *inter alia,* that: the County would purchase

[51] Exhibit 208 at Deposition Exhibit 9 (same as Exhibit 167); see also Exhibits 40, 161-162.
[52] Exhibit 165.
[53] Exhibit 163; see also Exhibit 164 and 42 (internal Williams memorandum concerning County's desire to purchase assets and change relationship, dated October 12, 2000).
[54] Exhibit 16 at p. 69. See also id. at p. 70 ("We were trying to basically improve the situation for the airport, because like I said, it was a business decision, and we felt we could do a lot better by getting into a better mode of operation.").
[55] Exhibits 13 and 8.

and own the assets; the County would acquire all of Nextira's airport telecommunications customers; and Nextira would become the "interim telecommunications infrastructure manager" at the Airport.[56]

On September 24, 2002, the County authorized Steve Shiver, the County Manager, to execute SATS agreements with Airport tenants, negotiate terms and conditions on a tenant-by-tenant basis, and issue renewal and default notices.[57] The purpose of this Resolution, according to Mr. Shiver, was to "provide for more efficient management of airport properties, maximization of revenues, and better operational flexibility for users of said facilities."[58] Still, no mention of safety, security or 9/11 was made. Rather, regarding profit maximization, Mr. Shiver stated:

> At present, there are fifty-five (55) tenants with existing SATS agreements with MDAD. These agreements must be renewed, and as MDAD takes additional tenants into service, it is expected the number of users of our telecommunications and data network system and resulting revenues will increase. Per the previous SATS agreement with NextiraOne, LLC, last year the MDAD received $267,000, which was based on ten (10) percent of gross revenues. Under the new non-exclusive management agreement with NextiraOne, LLC, approved by the Board on January 29, 2002, MDAD will receive all SATS gross revenues which last year totaled $2,670,024. This revenue is expected to increase based on new marketing initiatives presently under development.[59]

As a result, the County, instead of Nextira, now received all SATS gross revenues directly from the airport tenants/customers.[60]

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[56] Exhibit 8.

[57] Exhibit 14. See also Exhibit 58 (Joint County and Nextira letter to customers advising that agreements with Nextira had been assigned to County and advising of overall purchase).

[58] Exhibit 14 (emphasis added).

[59] Exhibit 14 (emphasis added).

[60] Exhibit 14 ("MDAD now receives all SATS gross revenues."); Exhibit 16 at p. 90:11-15 (After the Interim Agreement was executed, the "customers' gross revenue then came into – came to the airport instead of NextiraOne."); Exhibit 16 at p. 125:16-18 ("The money is written to the Miami-Dade Aviation Department. It goes to the finance department at the airport."). See also Exhibit 63, Letter from Nextira to SATS Customer ("Your monthly rental payments as well as any charges for MAC work

The Interim Agreement remained in effect for two years, terminating on February 6, 2004.[61] On January 20, 2004, a few weeks before the Interim Agreement was set to expire, the County authorized an award to Nextira of a Non-Exclusive Telecommunications and Network Management Services Agreement ("2004 Management Agreement").[62] The 2004 Management Agreement was executed on February 2, 2004, became effective February 6, 2004, and ran for a five-year term with a total term management fee to Nextira of $27,588,038.77.[63]

Thus, after February, 2002, the County owned, operated and provided the telecommunications facility and service at MIA.

(3) The County's Current Telecommunications Facility and Provision of Two-Way Telecommunications Services

At MIA today, two-way telecommunications services are provided through two Northern Telecom switches, one for the Airport Hotel and one for all other users.[64] These switches are Northern Telecom Meridian private branch exchanges ("PBX"), which the County owns.[65] The PBXs use a "fiber optic backbone system for delivery of the signals."[66] This extensive network spans approximately 25 miles across the MIA complex and includes, *inter alia*, 19.4 million feet of fiber optic cable backbone fiber and two Meridian Ones with over 8,000 voice ports.[67] Calls originating from both inside and outside of MIA enter the County-

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should now be paid directly to MDAD. Please update your records to reflect this new payment address: Miami Dade County, MDAD Accounting Division, PO Box 592075, Miami, Florida 33159-2075; Please make all checks payable to Miami Dade Aviation Department."); Exhibit 16 at Composite Deposition Exhibit 22, E-mail from Pedro de Camillo to Maria Perez ("We have a new SATS customer [information redacted] that needs to be installed over the next few weeks. The equipment and sub-contractor labor associated with this customer will be charged to MDAD (as per new contract effective February 7, 2002), and MDAD will collect the monthly revenue at 100% from this customer . . . .").

[61] Exhibit 8.

[62] Exhibit 14.

[63] Exhibit 15.

[64] Exhibit 147 at p. 5:2-8; Exhibit 20 at pp. 31:25-32:1 and pp. 36:24-37:1.

[65] Exhibit 147 at p. 6:2-3.

[66] Exhibit 147 at p. 6:3-4.

[67] Exhibit 208 at Deposition Exhibit 10, pp. 21-22.

owned PBXs, and are then routed to a receiver based on the number dialed.[68] The PBX allows for two-way telecommunications between users of the system, regardless of whether they are County customers.[69] The County's PBXs may be utilized for two-way telecommunications in three ways: (1) calls from one airport customer to another airport customer using a four-digit internal dialing sequence; (2) calls from an airport customer to a person outside of the airport, using a ten-digit sequence that allows access to the public network; and (3) calls made by a person outside the airport to an airport customer, using a ten-digit sequence connecting the public network to the County's facility.

(a) Airport Tenant to Airport Tenant (4-Digit Internal Dialing): Four-digit dialing is an internal system, limited to County customers, which exclusively uses County-owned equipment.[70] To place a four-digit call, an airport customer obtains a dial tone originating from the County-owned PBX located at the airport.[71] Without this County-provided dial tone, the County's customers could not utilize their phones for any calling, internal or external.[72] Upon dialing the four digit sequence, the call travels along distribution cables and passes through terminal blocks, and ultimately follows a path to the PBX[73] where it enters through a port.[74] Once the four-digit code enters the PBX, it is interpreted and

[68] See generally Exhibit 20.
[69] Exhibit 147; Exhibit 20 at p. 50.
[70] Exhibit 147; Exhibit 20 at pp. 38:25–39:25.
[71] Exhibit 17 at p. 85:7-14; Exhibit 20 at p. 30:12-16 ("The tenant customer that uses our equipment at the airport will pick up the phone. They will receive an internal dial tone provided by the PBX owned by the aviation department at the airport, and that PBX will connect that call."); Exhibit 20 at p. 31:16-24 (The dial tone "originates from our PBX located in the airport. . . . The PBX owned by the aviation department."); Exhibit 18 at p. 54:16-19 (stating that STS providers provide dial tone from their own switch); Exhibit 20 at pp. 32:24-33:1 ("The County is providing internal dial tone to the customer.").
[72] Exhibit 20 at p. 33:18-23 (agreeing with the statement that "without that dial tone . . . MDAD customers couldn't utilize their phone"); Exhibit 20 at pp. 33:24-34:10 (affirming the proposition that "without that dial tone that the County provides, that phone would be dead").
[73] Exhibit 20 at p. 35:21-24.
[74] Exhibit 20 at p. 37:6-17.

transmitted to the recipient assigned to that particular four-digit code.[75] At no time does this 4-digit internal communication process use telecommunications equipment owned or leased by any other telecommunications provider.[76] Only customers that have entered into a contract to lease equipment from the County can receive four-digit calls "behind" the County's PBX.

(b) Airport Tenant to Outside Recipient (Local Service): When an airport customer wants to place a two-way call to a recipient other than another airport customer, the customer dials 9, followed by a ten-digit number, which travels to the County-owned PBX.[77] There, the PBX switches the customer from the County's PBX-generated dial tone to an external dial tone.[78] The PBX is initially set to route calls internally to other airport customers. Dialing 9, however, tells the PBX to prepare a second path for the call – an external call.[79] The only way to reach the external dial tone is by accessing the PBX, which means that an airport customer cannot access any other telecommunications provider without first using the County's dial tone.[80] Once the call leaves the PBX, the call travels to the AT&T Florida central office via a T1.[81] There are 10 T1s connecting MIA and AT&T Florida, all of which

[75] Exhibit 20 at p. 34:19-24 and p. 36:19-23 (The PBX "knows the frequencies of every one of the digits and knows what numbers they represent and associates that with the number that is being tried to be reached by the calling party and makes the connection.").
[76] Exhibit 20 at p. 38:15-17 (affirming the proposition that the entire process of four-digit dialing "occurs over County owned equipment").
[77] Exhibit 20 at p. 46:19-22.
[78] Exhibit 20 at p. 42:5-10.
[79] See Exhibit 20 at pp. 46:25–47:18. The PBX can be programmed for any number to reach an outside line. MIA's PBX is programmed so that dialing a 9 before placing a call switches the PBX to an external line. Id.
[80] Exhibit 20 at p. 44:12-25 (agreeing that "[w]ithout the County-provided dial tone, an MDAD customer cannot hit 9 and have it be of any significance); Exhibit 20 at p. 54:20-23 (agreeing that, without the County-provided service of providing County-owned equipment, a "customer will not be able to make a local phone call.").
[81] A T1 is "a digital hierarchy designation for a communication linkage that it has the capability for 24 channels each. So we [MIA] basically have ten times 24,250 connections or channels from the PBX's to the BellSouth central offices." Exhibit 20 at p. 48:11-15.

are owned by AT&T Florida.[82] After traveling down the T1, the call is received by an AT&T Florida office switch, which is similar to, but larger than, a PBX.[83] There, the call is routed to either another switching office or to the recipient, depending on where the recipient is located.[84]

(c) Outside Transmitter to Airport Tenant (Local Service): When an outside caller wants to reach an airport customer, the process is the reverse of what occurs when the airport tenant dials an outside recipient (except there is no need to dial 9 before making a 10 digit call). The person making the call from outside the airport dials the ten-digit number of, for example, the ice cream shop located at the airport.[85] The ten digits go through the AT&T Florida central office, which strips the first four digits ("direct inward dialing" or "DID") and then sends the DID to the Airport's PBX.[86] Once the call enters the County-owned PBX, the call travels through the County-owned ports, over County-owned wires, to the County-owned receiver.[87] Again, without this County-owned equipment, it would be impossible for an outside transmitter to reach an airport customer via this local call or otherwise through the customer's phone.[88]

(d) Only the Airport Hotel Is Partitioned: Generally, the trunks, wires or ports that comprise the County's telecommunications network are not grouped or partitioned by any specific category.[89] One exception, according to the County, is the Airport Hotel to which the

[82] Exhibit 20 at p. 48:17-23.
[83] Exhibit 20 at p. 49:5-18.
[84] Exhibit 20 at p. 49:2-18.
[85] Exhibit 20 at p. 50:5-7.
[86] Exhibit 20 at p. 50:7-19.
[87] Exhibit 20 at p. 51:3-10.
[88] See Exhibit 20 at p. 51:20-25 (stating that, if the County's PBX and the County's equipment were taken away, the local phone call could not be completed.).
[89] Exhibit 20 at p. 70:22-24.

County provides telecommunications service. [90] The Airport Hotel is partitioned,[91] which means that (1) calls placed from users at the Airport Hotel enter the PBX separately, and (2) users have their own trunk line and therefore do not have access to four-digit dialing.[92] The Hotel was partitioned prior to the County's acquisition of the network;[93] no other County customer at MIA is partitioned in any manner.[94] Of course, whether an STS provider partitions its trunk or switch has no bearing on whether the company is a telecommunications company.[95]

These facts conclusively demonstrate that the County is providing an array of services, including two-way telecommunications services.

(4) Telecommunications Services Offered by the County, Including STS

In addition to providing two-way telecommunications to its customers via internal four-digit dialing and external local[96] and long distance service, the County provides numerous other telecommunications services to its airport customers, including, but not limited to, call

[90] See Exhibit 283.
[91] Exhibit 20 at p. 71:3-9.
[92] Exhibit 20 at p. 71:3-9 and pp. 72:20-73:15.
[93] Exhibit 20 at pp. 73:25-74:11.
[94] Exhibit 20 at p. 73:21-24.
[95] See Exhibit 18 at p. 39:20-25.
[96] Both principal County representatives, Pedro Garcia and Maurice Jenkins, speciously attempted in deposition testimony to avoid admitting that the County provides local telephone service. According to Mr. Jenkins, local service requires both a dial tone plus the ability to make a local phone call. Jenkins asserted under oath that the County cannot be a local service provider because it does not provide its customers with a dial tone. Upon cross-examination, Mr. Jenkins eventually conceded that the County's PBX must provide dial tone and ultimately admitted that he was unsure as to what constituted local service. Jenkins ultimately also conceded that "it must be true that if the county didn't own its telecommunications facility and equipment, it's [sic] current MDAD customers would not have telephone service unless they went to some other telecommunications company." See Exhibit 17 at p. 100:17-23. Mr. Garcia admitted that one of the services provided by the County is the ability to make a local call, but he asserted that the County is not providing local service but rather "is selling equipment to access the local service." According to Mr. Garcia, the distinction is that the County is providing "the ability to complete the local call" but that the County is not providing local service because part of the local call requires accessing BellSouth's equipment. Exhibit 16 at pp. 115, 128 and 141.

waiting, call conferencing, call pick-up, call parking, call forwarding and voice mail.[97] According to Mr. Garcia, these services are provided by the County-owned PBX, and there are a "myriad" of other features, totaling over one hundred (100).[98] The County also provides, without limitation, Data Services, High Speed Data Services, and links, local area network (LAN) connectivity and complete maintenance service and support.[99]

(a) The County Admits It is an STS Provider: The County has admitted in a Florida State Court action, and again in this proceeding, that it is an STS provider.[100] As more fully outlined below, the County has also repeatedly acknowledged that it provides its customers with a litany of STS[101] and telecommunications services that duplicate and compete with other telecommunication providers.[102]

(b) The County Duplicates Services and Competes with Other Telecommunications Companies: There is no question that the County's operation of its telecommunications facility duplicates and competes with other telecommunications companies. First, when the County was working to purchase the telecommunications system in late 2001, it issued a memorandum that clearly revealed that it specifically intended to compete with other local telecommunication service providers. On September 17, 2001, attached to a County memorandum to the "MIA Tenants & Business Partners," was Operational Directive No. 01-01, stating that "[t]he MDAD management goal is to provide better service at lower

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[97] See Exhibit 17 at pp. 139:22-140:2 and pp. 178:22-179:8; Exhibit 20 at p. 56:20-25 and pp. 58:20-59:2.
[98] Exhibit 20 at p. 56:22-23 and p. 59:1-2.
[99] Id.; Exhibit 210.
[100] Exhibit 91 (The County's Answer in State Court at paragraph 12 provides that "the County admits providing shared airport tenant services to airport tenants at Miami International Airport."); the County's Answer and Affirmative Defenses in this proceeding, at paragraph 12.
[101] "SATS" refers to "Shared Airport Tenant Services," and is used interchangeably herein with "STS" or "Shared Tenant Service."
[102] See Exhibit 14 ("Shared airport tenants services consist of telecommunications, voice and data network services, which MDAD offers to its tenants.").

rates than the existing provider or any other commercial service provider."[103] Confirming this stated intent, the County's own contracts and SATS agreements expressly defined the SATS offered by the County as:

> [t]he provision of service which duplicates or competes with local service provided by an existing local exchange telecommunications company and is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company.[104]

Second, the County's own representatives have repeatedly admitted that the County provides similar telecommunications services and competes with other providers.[105] Third, Nextira, the County's current telecommunications manager, through its corporate representative, testified that: (a) the County offers similar services to those offered by other providers; (b) the County is presently competing with others for various SATS services; and (c) prior to 2002, Nextira, as the telecommunications provider, offered similar services.[106]

Thus, as explained more fully in response to Issue No. 3 below, the services the County offers clearly meet the definition of an STS provider, a type of a telecommunications company.

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[103] Exhibit 45.

[104] Exhibits 8 and 15 (Emphasis Added).

[105] See Exhibit 17 at p. 179:9-14 (admitting that BellSouth provides the same features as the County); Exhibit 16 at pp. 53:25-54:2 (agreeing that "BellSouth offers similar services to [Airport] tenants" as the County provides.); Exhibit 16 at p. 94:2-13 (twice agreeing that MDAD provides similar services as other providers); Exhibit 20 at p. 113:2-9 (stating that the County provides the same repair and maintenance service as BellSouth, but that the County provides a better quality of service). See also Exhibit 16 at p. 29:1-3 ("If they go to the County, we charge them just like BellSouth would charge them for the services."); Exhibit 16 at p. 41:4-6 (agreeing that the County competes with other entities for business); Exhibit 16 at p. 41:7-10 (acknowledging that customers have left the County to receive service from other providers); Exhibit 16 at pp. 47:11-48:14 (Referring to Exhibit 117, Mr. Garcia acknowledges that BellSouth and MDAD are competitors in this business); Exhibit 16 at pp. 53:25-54:2 (agreeing that "BellSouth offers similar services to [Airport] tenants" as the County provides); Exhibit 16 at pp. 90:23-91:17 (interpreting Paragraph 1.32 of the 2004 SATS Agreement to mean that "we can provide a dial tone that you receive on your telephone, among other services, basically, and we basically compete with what the local exchange carrier would do," and stating that, "I mean you can go to services to a local exchange carrier, to us, or to any other company that provides those services.").

[106] See Exhibit 208 at pp. 74-78; see also, id. at pp. 100-105, and at Deposition Exhibit 13 (discussing Aero-Mexico's desire to obtain competing proposals from both Nextira and BellSouth for similar services).

(5) The County's Customers

The County's customer list demonstrates that the County provides local telephone service and other telecommunications service to a wide range and variety of customers.[107] As of June 2006, these approximately 65 customers comprise retail establishments, government services, airlines, general services, restaurants and concessions. While AT&T Florida disputes the County's assertion of confidentiality given its public marketing and use of current customer names.[108] AT&T Florida will refrain from identifying these customers herein by name. As addressed in more detail below in response to Issue No. 3, it is undeniable that many of the County's customers have nothing material to do with the operation of MIA, much less the safety and transportation of passengers at the airport.

(6) The County Bills and Charges for Telecommunications Services

The County requires each telecommunications customer to execute an Airport Rental Agreement. Each rental agreement outlines charges to be billed by the County to the airport customer for telecommunications services. The agreements are broken down generally into four categories of charges, and explained by the County in testimony as follows:

(1) Switch Access: The customer pays this charge for use of the particular port in the PBX, plus all features and services provided by the PBX, such as call forwarding, call parking and voice mail.[109]

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[107] Exhibit 209 (designated Confidential pursuant to Commission Order). Exhibit 95 is a list of the County's SATS customers as of February 7, 2002 that was made public a part of the closing documents in the 2002 transaction. See also Exhibit 96 (a list of customers identified by business category as of February 2003) and Exhibit 97 (a list identifying by customer which type of service is provided, such as phone, data and fiber.)

[108] These Exhibits are marketing materials that the County intentionally discloses and publishes in the public domain. Both documents contain explicit listings of County airport customers thus raising the question as to why and on what basis the County sought protection of this information in this proceeding. See e.g., Exhibits 210 and 95.

[109] See Exhibit 20 at p. 56:14-19.

(2) Network Access: The customer pays this charge for the trunk connection from the PBX to the local exchange carrier's facilities. [110] In other words, the County charges for the portion of the phone call up to the demarcation line, at which point the local exchange carrier's equipment takes over.[111] This network access charge allows the County's customers to complete a local call outside of MIA.[112]

(3) System – Terminal Equipment: This customer charge relates to the terminal equipment at the end of the line, which might include telephones,[113] modems and fax machines.[114]

(4) System – Other. This portion of the charge includes any charges not contained above, such as the lease of any and all cables, as well as fiber optics.[115] The wire and/or optics charged for in this portion are also capable of carrying, *inter alia*, two-way voice communications.[116]

The County bills its customers each month. Thus, overall, the County is charging pursuant to its rental agreements and invoices, and receiving revenue, for all its telecommunications services including the provision of local and long distance phone calls. The County is offering (and selling) these services to the public for hire.

(7) The County's Telecommunications Objectives Are Profit-Making, Marketing and Expansion

(a) Profit-Making: The County's primary goal for this telecommunications system was, and is, to generate substantial revenue and a profit for the County. Shortly after the

[110] See Exhibit 20 at p. 59:5-10.
[111] See Exhibit 20 at p. 60.
[112] See Exhibit 20 at p. 141:1-26.
[113] See Exhibit 20 at p. 62:24-25.
[114] See Exhibit 20 at pp. 61:24-63:1.
[115] See Exhibit 20 at pp. 63:2-65:7.
[116] See Exhibit 20 at p. 66:10-14.

County's purchase of the telecommunications facility at MIA, on June 28, 2002, Pedro Garcia sent an e-mail to Nextira with an enclosed pricing sheet for "Existing MDAD STS Customers" based on their last pricing conversation.[117] The pricing sheet called for a 20% profit to be made on both existing and new STS customers.[118] Also, in March 2002, an internal County email suggested that STS revenue could increase from $2 million to $15 million.[119] Both County representatives, Mr. Garcia and Mr. Jenkins, have confirmed this profit-making goal in depositions:

> MR. GOLDBERG: . . . We've agreed earlier in the deposition that MDAD is engaged in what it hopes to be a profit-making enterprise by providing telecommunication services to tenants of the airport?
>
> MR. GARCIA: Yes.[120]
>
> *********
>
> MR. GOLDBERG: The bottom line is that your telecommunications business has a goal of increasing its profitability and making money for the county, correct?
>
> MR. HOPE: Objection to form.
>
> MR. JENKINS: Yes, sir.
>
> MR. GOLDBERG: And so it behooves you and your entity to charge the customers for all of your costs and including marking up all of those costs to an appropriate profit percentage, correct?
>
> MR. HOPE: Objection to form.
>
> MR. GOLDBERG: You can answer.
>
> MR. JENKINS: To what -- yes.[121]

[117] Exhibit 66 (emphasis in original).
[118] Exhibit 66. The County attempted to back off this admission in Mr. Garcia's subsequent deposition by denying that the County wants to make a profit. Instead, Mr. Garcia insisted that the County is only attempting "not to lose money" and claims that the County does not know whether its provision of SATS is currently losing or making money. Exhibit 20 at p. 98:7-9, 13-16. Garcia admitted that there were no documents supporting these contentions. Id. at p. 99:6-12.
[119] Exhibit 61.
[120] Exhibit 16 at pp. 55:24-56:4.

(b) Marketing: On February 6, 2002, the same day that the County purchased the telecommunications system and became the provider, Nextira (now the management company) released a five-year marketing plan for the SATS system it had produced as mandated by the terms of the purchase and Interim Agreement.[122] The Marketing Plan reveals the extensive nature of the research and effort undertaken to generate additional customers and revenue, and contains the following highlights: (a) the estimated potential customers would grow 8-9% a year;[123] (b) Nextira sees its "potential at MIA to grow the customer base over the next few years to double the number of customer [sic] served in some capacity";[124] (c) "SATS in our market includes virtually any business with a retail, office, airline or professional location inside MIA that requires voice and data services"; (d) "[a]ll MIA customers are faced with the same problem: a reduction in revenue and a needed reduction in expenses"; (e) "[o]ur competitors are RBOCS [Regional Bell Operating Companies] and interconnects"; (f) "[t]he competition has better economics for both boxes and telco services"; (g) "[t]here is no doubt that we compete more against all the service providers (BellSouth, Worldcom, etc.) than against other box pushers. We need to effectively campaign against the idea that businesses should buy equipment from vendors that don't needed [sic] onsite service, support, and training"; and (h) Nextira identified the target market by stating, "We cannot survive just waiting for the customer to come to us. Instead, we must get better at attracting the specific tenants whose needs match what we have to offer. Focusing on tenants prior to their arrival at MIA is the key to our future. Therefore, we need to finely craft our marketing message and our

[121] The profit percentage referred to by Mr. Jenkins was the County's inclusion of a 15% flat markup over its costs on each invoice rendered to customers. See Exhibit 17 at p. 153:8-9 and pp. 155:7-156:2; see also Exhibit 17 at p. 165:2-7; Exhibit 17 at pp. 169:5-170:20 (agreeing that growing the business, increasing revenue is a major goal).
[122] Exhibit 116; see also Exhibit 208 at Deposition Exhibit 12.
[123] Exhibit 116.
[124] Exhibit 116.

product offerings. We need to develop our message, communicate it, and make good on it."[125]

Shortly after taking over the operations, in March 2002, the County began working to market SATS to existing and new customers, and has marketed this business like any other major telecommunications company would do to generate customers, business and revenue.[126] Tellingly, sometime during the tenure of this current dispute between the County and AT&T Florida, the County instructed Nextira "not to actively market" the SATS services.[127]

(c) Expansion: MIA has undergone a tremendous expansion over the past decade and has become one of the largest airport facilities in the world. A large part of the expansion has been dedicated to building a huge retail shopping venue. In May 2006, MIA promoted its expanded retail shops under the slogan "100% Pure Miami Shopping."[128] At least one local publication - *Miami Today* - has referred to these shops as Miami's "newest shopping mall."[129] In July 2006, MIA announced that it provided 44 retail and 8 duty-free store locations, in addition to 68 food and beverage sites, with 14 new national name-brand retails stores opening over the prior 7 months.[130] MIA also announced at the time that many more stores would open during the Summer 2006 including a Jettsetter Mini Spa, where passengers "can pamper

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[125] Exhibit 116 at pp. 1, 4, 6, 7, 9 and 12. With respect to Exhibit 116, Nextira contends that the marketing plan was submitted to the County but to its knowledge it was not acted upon. Exhibit 208 at pp. 95-98. See also Exhibit 208 at Deposition Exhibit 10 (Nextira's proposal to become the manager for the County in 2002 stated that "NextiraOne will use its best efforts to market and expand SATS for MDAD."); Exhibit 210 (the most recent marketing document for distribution to public and prospective customers).

[126] Exhibit 60 (County email to Nextira regarding e-marketing campaign); see also Exhibit 74 (email regarding SATS Contract and Marketing Effort); Exhibits 75-76, 82, 85, 87 (marketing efforts to various airport customers and tenants).

[127] Exhibit 208 at p. 85:4-23.

[128] Exhibit 179.

[129] Exhibit 182.

[130] Exhibit 180. See also Exhibits 172 and 173 (media articles highlighting massive retail expansion at MIA); Exhibit 174 (video of current retail outlets at MIA).

themselves with manicures, pedicures, sleep pods and relaxation products."[131] Not surprisingly, given the foregoing, the County has admitted in testimony that MIA has a shopping mall, or "mall of shops."[132]

(8) The County Is Operating a Telecommunications Company

Section 364.02(13), Florida Statutes, defines a Telecommunications Company as including any political subdivision in the state "offering two-way telecommunications service to the public for hire within this state by use of a telecommunications facility."[133] As shown above, in 2002, the County purchased and began operating a sophisticated commercial telecommunications facility that provides two-way telecommunications service to the public for hire. For more than five years now, the County has marketed, offered and sold two-way telecommunications services to public customers at the Airport. In sum, the County is operating a growing, profit-oriented business that meets each and every element of the legal definition of "Telecommunications Company" under law. As such, AT&T Florida respectfully submits that the County is operating a Telecommunications Company at Miami International Airport.

[131] Id. MIA did not always possess a slew of retail shops. In 1993, during the dispute between BellSouth and the County over facilities and demarcation points, the County provided Commission Staff with a list of customers using the airport telecommunications system. Listed among the 28 customers was only one sundry and two gift shops. Today, the customers number approximately 60, with numerous shops such an ice cream stand, restaurants, concessions and Duty-Free alcohol stores.
[132] Exhibit 17 at p. 130:13-14.
[133] A "telecommunications facility" is defined to include real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire." Section 364.02(14), Fla. Stat.

Issue 2: If Miami-Dade County Is Operating As A Telecommunications Company, Is It Subject To The Jurisdiction Of The Commission?

Summary of AT&T's Position**: Yes, Miami-Dade County is subject to the jurisdiction of the Commission.

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." Fla. Stat., Section 364.01(2). Additionally, the legislature made an equally clear delegation of exclusive jurisdiction over the provision of Shared Tenant Services: "[t]he commission shall have exclusive jurisdiction to authorize the provision of any shared tenant service . . . ." Fla. Stat., Section 364.01(2).[134] Thus, the County is subject to the jurisdiction of the Commission.

Issue 3: Is Miami-Dade County's Operation And Provision Of STS At MIA By MDAD Exempt From The STS Rules Pursuant To The Applicable Florida Statutes And Commission Rules?

***Summary of AT&T's Position:** No, the County's provision of STS at MIA is not exempt pursuant to the Airport Exemption Rule because the services the County provides do not serve the purposes for which the exemption was enacted – to ensure the safe and efficient transportation of passengers and freight through the airport. ***

Below, AT&T Florida examines this issue and (1) outlines the history of the STS statute and regulations; (2) discusses the language and intent of the Airport Exemption Rule; (3) reviews the history of the Airport Exemption Rule; (4) demonstrates that the County's

[134] The Supreme Court of Florida has repeatedly affirmed the extensive nature of the Commission's exclusive jurisdiction and its ability to regulate all issues concerning telecommunications companies. See, e.g., Florida Interexchange Carrier's Association v. Beard, 624 So. 2d 248, 251 (Fla. 1993) (the Commission has been provided with broad authority to regulate telephone companies); PW Ventures, Inc. v. Nichols, 533 so. 2d 281, 283 (Fla. 1988) (the Commission has the authority to interpret the statutes that empowers it, including jurisdictional statutes, and to make rules and issue orders accordingly); Fletcher Properties, Inc. v. Florida Pub. Serv. Comm'n, 356 So., 2d 289, 292 (Fla. 1978) (same).

provision of STS to airport tenants does not comply with the purpose and intent of the Airport Exemption Rule; (5) demonstrates that the County provides STS to facilities such as hotels, shopping malls and industrial parks; and (6) shows that the County was advised by the Staff of its determination in 2001-2002 that certification was required given the extent and nature of the County's STS operations. In sum, the County's attempt to portray its STS operation as necessary for the safety and security of its airport operations is belied by the undisputed facts.

(1) The History and Regulation of Shared Tenant Services

The regulation of STS began in earnest in 1984 when Southern Bell Telephone and Telegraph Company ("Southern Bell") filed a Petition to Initiate Rulemaking with the Commission "to deal with a new technological phenomenon: Shared Tenant Services (STS)."[135] As explained by the Commission in Order No. 17111, Docket No. 86455-TL:

> Shared Tenant Services involved the provision of telecommunications services (particularly local service) to a group of individuals or entities through a common switching or billing arrangement. Typically STS arrangements involved the sharing of local exchange company (LEC) central office trunks via a PBX. STS arrangements also provided the opportunity for individuals to intercommunicate "behind the switch" without accessing the LEC central office.[136]

The Commission ultimately adopted Rule 25-4.041, F.A.C., effective December 22, 1985, to allow, for the first time, the provision of shared service in cases where "no duplicative or competitive local exchange service" was being provided.[137] The major consequence of Rule

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[135] Exhibit 240.
[136] Id. at p. 3.
[137] Rule 25-4.041, F.A.C. (1985). The Rule read as follows:

> 25-4.041 Provision of Shared Service for Hire
> (1) The provision for hire of shared telephone service within a local calling area by other than the certificated local exchange company is prohibited except in those cases in which the Commission determines that no duplicative or competitive local exchange service is being provided.

25-4.041, F.A.C., was to expose numerous entities to Commission regulation, including hotels, hospitals, nursing homes, dormitories and airports, as these entities engaged in the sharing of local exchange service and operated like STS providers. To research the effect of Commission regulation of such sharing arrangements, the Commission initiated an investigation into joint use and sharing of local exchange telephone service.[138]

Simultaneously, in 1986, the Florida Legislature enacted Florida Statute §364.339. This provision granted the Commission exclusive jurisdiction over the regulation of any shared tenant service that "(a) duplicates or competes with local services provided by an existing local exchange telecommunications company, and (b) is furnished through a common switching or billing arrangement to commercial tenants within a single building by an entity other than an existing local exchange telephone company." The Legislature granted the Commission broad authority to "prescribe the type, extent, and conditions under which such services, except appropriate certification, from Commission regulation."[139]

To implement the statute's provisions, the Commission sought comments and held hearings on the Shared Tenant Services statute and proposed regulations in October 1986.[140] Representatives from Southern Bell and the Greater Orlando Aviation Authority ("GOAA") actively participated in these hearings. Following these hearings, the PSC Staff ("Staff")

> (2) The provision for hire of shared WATS Service shall be permitted only when the provider has been granted a certificate of public convenience and necessity by this Commission to do so.
> (3) The foregoing notwithstanding, until October 1, 1986, any person who is providing shared telephone service, is sharing telephone service or who has placed orders for shared telephone service on or before November 4, 1985 may continue to receive that service. Persons affected by this rule shall be notified by the local exchange companies of the content of the rule within 30 days from the effective date of this rule.

The Rule was subsequently renumbered as Rule 25-4.0041, F.A.C.

[138] See In Re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service, 1987 WL 954662 (Fla. P.S.C. January 20, 1987) (Docket No. 860455-TL, Order No. 17111 dated January 15, 1987).

[139] §364.339(3)(b), Fla. Stat.

[140] See supra n. 4.

published a voluminous recommendation regarding the implementation of STS regulation. On January 8, 1987, the Commission discussed and debated the Staff Recommendation in a Special Agenda hearing. The Commission voted unanimously that "a limited type of STS is in the public interest."[141]

In 1995, §364.339, Florida Statutes, was amended to: (1) require certification of all STS providers; (2) remove the commercial designation and single building restriction, effective January 1, 1996, and allow service to residential tenants; (3) require applicants to have sufficient technical, financial and managerial capabilities to provide shared tenant service; and (4) allow service to be offered and priced differently to residential and commercial tenants if deemed to be in the public interest.

In addition to requiring certification, the statutes and regulations require STS providers to: (1) pay applicable Regulatory Assessment Fees;[142] (2) submit applications for exemptions from the STS rules;[143] (3) provide access to 911 service and toll free calling services;[144] (4) accept limitations on the scope of their ability to interconnect with other shared tenant service providers and interconnection carriers;[145] (5) keep records;[146] (6) respond to Staff inquiries;[147] (7) bill customers in a certain manner;[148] and (8) operate telecommunications relay service pursuant to certain requirements.[149] These laws and regulations are intended to protect consumers and to ensure fair competition.

Thus, to the extent the County provides STS to airport tenants (which the County

[141] Exhibit 239 at p. 29:5-9.
[142] §364.336, Fla. Stat. (2007); §25-4.0161, F.A.C.
[143] §25-24.555(3), F.A.C.
[144] §25-24.575 (3) & (4), F.A.C.
[145] §25-24.575(5)(d), F.A.C.
[146] §25-24.585, F.A.C., incorporating § 25-4.019, F.A.C.
[147] §25-24.585, F.A.C., incorporating §25-4.043, F.A.C.
[148] §25-24.585, F.A.C., incorporating §25-4.110, F.A.C.
[149] §25-24.585, F.A.C., incorporating §25-4.4.160, F.A.C.

admits) and is not otherwise subject to the Airport Exemption Rule (as discussed below), it is required to obtain a Certificate of Public Convenience and Necessity and to otherwise comply with all applicable rules governing STS providers.

(2) The Airport Exemption Rule

The Airport Exemption Rule, codified as §25–24.580, F.A.C., creates a limited exemption "from the other STS rules" solely "due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility."[150] This clear and unambiguous language demonstrates that the exemption is not a blanket authorization for airports to offer and provide Shared Tenant Services for any and all purposes and without Commission oversight. Moreover, even if an airport's STS meets the stated purpose of the Airport Exemption Rule, the rule expressly requires that "[t]he 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."[151]

As demonstrated below: (1) the County's provision of STS to the commercial tenants at MIA is not now and never has been designed or intended to provide safety, security or efficiency; (2) the County's true purpose of providing these services is to make money by competing with regulated telecommunications companies for customers at MIA; and (3) the

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[150] §25-24.580, F.A.C. The full text of the Airport Exemption Rule states:

> Airports shall be exempt from the other STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. The airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. However, if the airport partitions its trunks, it shall be exempt from the other STS rules for service provided only to the airport facility.

[151] Id. (emphasis added).

airport tenants to which the County offers and provides STS include facilities such as a shopping mall and hotel. Accordingly, the Airport Exemption Rule, by its explicit terms, does not apply to the County's provision of STS to commercial tenants at MIA. Furthermore, the legislative history of the Airport Exemption Rule confirms that the County's STS operation is not exempt from the Rule.

(3) The History of the Airport Exemption Rule.

The legislative history of the Airport Exemption Rule confirms that the exemption is intended to allow airports to provide STS in connection with operations that are materially related to the functions of an airport – namely, the safe and efficient transportation of passengers and freight through the airport facility – and nothing else. The provision of STS to airport tenants for any other purpose is not exempt from the STS regulations, including certification requirements.

In connection with the 1986 hearings regarding STS, the Commission addressed whether to allow airports to provide STS. Of major concern to the Commission was the possibility that granting too broad an exemption for airports would allow airport authorities to become unregulated competitive telecommunication companies. Former Commissioner Wilson pointed out that creating a blanket exemption for governmental agencies, pursuant to §364.339(2)(a), Fla. Stat. (1986), could lead to abuse. He presciently stated:

> Then you might get into a situation where an airport authority or someone else has the airport and these small commercial shops in there and they have a hotel out there and they have an industrial park and they build a shopping mall and they build a research center and all the sudden they're bigger than half the telephone companies we regulate in the state. Simply because they're a governmental entity, they're no longer pursuing governmental functions that were the basis of the exemption in the first place and all the sudden they're in business.[152]

[152] Id. at p. 195:2-13 (emphasis added).

Commissioner Wilson asserted that hotels and shopping malls "attached to the airport" are "clearly crossing the line."[153] By way of example, several Commissioners took issue with the shopping mall at the center of the Tampa Airport:

> Chairman Nichols: . . . let me just give you an example. Tampa Airport was just renovated so that the center core of the airport is now a shopping mall, with the gates going off all the way around it. And then there's a corridor of shops, banks and so forth leading to the hotel building. At which point would you draw the line? Do you carve out the center, the very core of the airport and the corridor leading to the hotel?
>
> Commissioner Wilson: Well, that's a real good question.
>
> Chairman Nichols: They are promoting their shopping mall, literally.
>
> Commissioner Wilson: That puts them in a business other than being an airport. It's nice that they want to do that and --
>
> Commissioner Marks: I say under those circumstances they need a certificate.
>
> Mr. Vandiver: That's our recommendation.
>
> Mr. McAuley: That was our original recommendation this morning.[154]

To distinguish between those providing STS that are necessary to an airport and those providing STS that are merely commercial in nature, Former Commissioner Herndon proposed an exemption for airports "except in those instances where they provide commercial services that are not materially necessary to the function of that airport" in which case "[t]hey become STS providers and must seek a certificate and must file their local rates."[155] Former Commissioner Herndon further commented that, "in those instances where they move over into commercial activities that are unrelated or not materially necessary to the day-to-day function of that agency, they're STS providers."[156]

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[153] Id. at pp. 189:23-190:3.
[154] Id. at pp. 196:21-197:16.
[155] Id. at pp. 197:18-198:5.
[156] Id. at p. 253:8-19 (emphasis added).

On January 17, 1987, the Commission issued Order No. 17111, which designated airports as unique entities exempt from the STS requirements "except for industrial parks, shopping malls, hotels or any other entity not materially related to the mission of the airport."[157] Specifically, the Commission made the following findings and conclusions:

> 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 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 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. There was some discussion at the hearing of extending local sharing to facilities such as hotels, shopping malls and industrial parks. To the extent an airport engages in this type of local sharing, it must be certificated as an STS provider.[158]

Accordingly, from the inception of the Airport Exemption Rule, the Commission clearly intended that the Rule would apply solely to the provision of STS that are materially necessary for the internal security and operation of an airport, and not to services offered for commercial purposes to commercial tenants within the airport facility.

The Commission's intended limitation was repeatedly reaffirmed with each modification and amendment to the Airport Exemption Rule. For instance, on January 28, 1991, the Commission codified Order No. 17111, along with several other STS rules, into Rules 25-24.555 through 25-24.587, F.A.C.[159] The Airport Exemption Rule was re-designated as Rule 25-24.580, F.A.C.[160] The 1991 version of Rule 25-24.580 provided that:

Airports are exempted from the STS rules due to the necessity to ensure the safe

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[157] Id. at pp. 280:3-281:4.
[158] Exhibit 240 (FPSC Order No. 17111).
[159] Exhibit 193 (FPSC Docket No. 891297; Order No. 23979).
[160] Id.

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

Although the wording of Rule 25-24.580 condensed the language of Order No. 17111, no substantive changes were intended.[161] Thus, while the rule deleted the language which stated that the exemption would not apply if the Airport provided STS to "any other entity not materially related to the mission of the airport," this same limitation was incorporated by stating that the exemption would not apply if "airports extend their sharing of local service to facilities such as hotels, shopping malls and industrial parks." By using the term "facilities such as," the Commission rephrased its intent that the exemption would not apply if an airport provided STS for purposes other than those materially related to the mission of the airport.

Making this point clear, Cynthia Miller, then the Associate General Counsel for the Commission, who was the hearing officer during the August 31, 1990 hearing, explained as follows:

> [I]f 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. . . . [H]owever, . . . should your airport decide to provide nonessential service to nonessential operations, such as shopping malls or hotels, then you would need to be certificated. . . .[162]

Both the County and GOAA objected, in their written comments[163] and at the

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[161] See, e.g., In re Adoption of Rules 25-24.550 through 25-24.587, Florida Administrative Code, 1991 WL 527622 at *2 (Fla. P.S.C. January 10, 1991) (Docket No. 891297-TS; Order No. 22594) (stating, "The only substantive change between current regulation and proposed regulation is the requirement in Rule 25-24.585 that an annual report be filed with the Division of Communications by January 31st each calendar year.

[162] Exhibit 187 at pp. 17:15-18:6.

[163] Exhibit 186 (Miami-Dade County's Comments on Proposed Rules dated July 17, 1990 stating, "On February 22, 1990, the Florida Public Service Commission (Commission) published its Notice of Rulemaking in the Florida Administrative Weekly regarding the adoption of rules relating to Shared Tenant Service providers. As indicated in the notice, the purpose and effect of the adoption of the STS

hearing,[164] to the proposed revisions to the Airport Exemption Rule, claiming that Rule 25-24.580 should precisely follow the language of Order No. 17111. GOAA contended that the exemption authorized providing STS to hotels, shopping malls and the like so long as these services were partitioned from the services provided for airport operations.[165] The Commission overruled the County's and GOAA's objections.

Shortly after the adoption of Rule 25-24.580, the Commission determined that the Rule contained a potential ambiguity that required clarification. The Staff requested the establishment of Docket No. 910867-TS to propose an amendment to the Airport Exemption Rule. The purpose of the amendment was to clarify the last sentence of Rule 25-24.580 which read: "[h]owever, the airport could partition the trunks serving those entities and forego STS certification." The Staff was concerned that this sentence could "be misinterpreted to authorize airports to provide service to hotels, shopping malls and industrial parks without STS

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rules are to codify existing regulatory requirements for STS providers as contained in Section 364.339, F.S. and Commission Orders Nos. 17111, 17369 and 18325. It is the position of the County that no revisions to the proposed rules as noticed are necessary or warranted."); Exhibit 188 (Post-Hearing Comments of the Greater Orlando Aviation Authority stating "Because the proposed rules mirror the provisions of Order No. 17111, they contain a provision which exempts airports such as Orlando International Airport from the STS rules."); Exhibit 190 at ¶4 (Metropolitan Dade County's Post-Hearing Comments on Proposed Shared Tenant Service Rules stating, "The County agrees with the revised proposed rules, specifically Rule 25-24.580 F.A.C., which continues to recognize the exemption granted to airports."); Exhibit 191 at ¶5 (Metropolitan Dade County's Comments on Proposed Final Version of Shared Tenant Service Rules stating "The County re-adopts and restates the positions outlined in its initial comments and post-hearing comments.").

[164] Exhibit 187 at p. 41 (Transcript of August 31, 1990 Hearing, Testimony of John Marks, Esq. on behalf of Dade County stating, "We want to reemphasize as much as we possibly can, that this is a codification of the order that was passed by the Commission several years ago, and that the -- that any proposed rules at this point in time should be consistent with that order."); Id. (Testimony of Jean Kiddoo on behalf of GOAA stating, "The STS order says exactly what the STS order says. There is obviously a disagreement as to the interpretation of that order. That order was adopted at the end of a long hearing. It says what it says, and if the Commission is going [sic] adopt rules, it ought to reflect what that order says.").

[165] Exhibit 200 at pp. 2-4. In its comments, GOAA went so far as to suggest that the final Rule include the following language: "When shared local service is provided on an unpartitioned basis through the airport switch to a facility such as hotels, shopping malls and industrial parks the airport shall not be exempt from the STS rules with regard to such services." Id. at 4. The Commission and Staff rejected this proposal.

certification if the trunks serving those entities are partitioned."[166] As this was not the Commission's intention, the Staff sought to revise the language to more clearly state that such sharing arrangements must be certificated, whether partitioned or not.

On November 25, 1991, the Commission issued a Notice of Rulemaking in Order No. 25390, in which it proposed the following amendment to the Airport Exemption Rule:

> Airports shall be exempt ~~are exempted~~ from the other STS rules (Part XII of Chapter 25-24, F.A.C.) due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. Such exemption shall not extend to local shared service provided by an airport to any other facility such as hotels, shopping malls and industrial parks, unless the service is partitioned. When shared local service is provided through the airport switch to a facility such as hotels, shopping malls and industrial parks the airport shall not be exempt from the STS rules with regard to such services. ~~If airports extend their sharing of local service to facilities such as hotels, shopping malls and industrial parks, the airport will be required to be certificated as a shared tenant service provider. However, the airport could partition the trunks serving those entities and forego STS certification.~~[167]

GOAA filed comments opposing the proposed amendment,[168] arguing that the proposed clarifications were actually substantive modifications that did not comport with Order No. 17111.[169] As in 1990, GOAA's position was that the Airport Exemption Rule, as stated in Order No. 17111, wholly exempted airports from the certification requirements for providing STS to facilities such as hotels, shopping malls and industrial parks so long as the airport partitioned its trunks.[170] The Staff again rejected GOAA's proposal as being inconsistent with Order No. 17111 and the Commission's intent.[171]

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[166] Exhibit 195.
[167] Exhibit 199.
[168] Exhibit 200 at p. 3 (Comments of GOAA filed with the PSC on December 12, 1991 stating, ". . . this new language should not be adopted. . . . There is simply no need for any change in that language.").
[169] Id.
[170] Id.
[171] As with the initial adoption of Rule 25-24.580, the Staff again noted that the newly proposed amendment was not a change, but only a clarification of the original Airport Exemption Rule adopted in

In its final recommendation, the Staff proposed the following amendment to the Airport Exemption Rule, for clarification purposes only:

> Airports shall be exempt from the other STS rules due to the necessity to ensure the safe and efficient transportation of passengers and freight through the airport facility. The airport shall obtain a certificate as a shared tenant service provider before it provides shared local services to facilities such as hotels, shopping malls and industrial parks. However, if the airport partitions its trunks, it shall be exempt from the other STS rules for service provided only to the airport facility.

This amended language was added "to make it clear that 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[.]"[172] The Staff explained the intent of the modifications as follows:

> 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 certificated. 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. . . .
>
> The reason we are proposing the language shown in Attachment D is to assure that this important point is clear and is known to the industry. Without this clarification, we fear that the industry (and airports especially) might wrongly interpret the rule to allow them to offer shared services to STS arrangements without certification.[173]

The Commission adopted this proposed final version of the amended Airport Exemption Rule on February 25, 1992, and it became effective March 11, 1992.[174] In its Order, the Commission stated 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

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Order No. 17111. Exhibit 201 at p. 2. Accordingly, from the outset, GOAA has consistently misinterpreted the Airport Exemption Rule and been told as much by the Commission. Nevertheless, it continues to do so in this proceeding.

[172] Id. (emphasis added).

[173] Id. at p. 3 (emphasis added).

[174] Exhibit 204.

provided to certain facilities by the airport."[175] The text of the Airport Exemption Rule has remained unchanged since 1992. As repeatedly stated by the Commission and the Staff, the intent of the Airport Exemption Rule has also remained unchanged since its creation by Order No. 17111 in 1987.[176] Specifically, the purpose and intent is to grant airports a limited exemption from Commission regulation with respect to the provision of STS for purposes that are materially related to function of an airport – and nothing else.

The limited nature of the exemption is also evidenced by the fact that the Hillsborough County Aviation Authority ("HCAA") applied for and received a Certificate with respect to the Tampa Airport.[177] As noted by the Commission in its 1986 proceedings, the Tampa Airport had a shopping mall as part of its central terminal which it promoted as such.[178] In granting the Certificate, the Commission directly cited and quoted §364.339(2), Fla. Stat.[179] The Commission did not state that HCAA, as an airport, was exempt from the certification requirement or other STS rules. Treatment of the County here should be the same.

(4) The County's Provision of STS at MIA Does Not Comply With the Purpose and Intent of the Airport Exemption Rule.

The County's provision of STS to its commercial tenants at MIA is not related to the safe, secure or efficient transportation of passengers and freight through the airport facility. Instead, as demonstrated in response to Issue 1 above, the County's provision of STS to airport tenants is purely commercial and competitive in nature and is used to generate revenue to fund

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[175] Id. (emphasis added).
[176] The Staff, in its January 23, 1992 Recommendation, stated that "the rewording is for clarification only and in no way changes the interpretation of the Airport Exception in Docket No. 860455-TL since the issuance of Order Nos. 17111 and 17369 and the codification of Rule 25-24.580, F.A.C." Exhibit 201 at p. 2.
[177] Exhibit 205.
[178] See AT&T Florida's Brief, supra, at p. 35.
[179] In Re: Application for Authority to Provide Shared Tenant Services by Hillsborough County Aviation Authority, 1996 WL 392093 (Fla. P.S.C. July 3, 1996) (Docket No. 960446-TS; Order No. PSC-96-0881-FOF-TS).

airport and other County operations.[180] Furthermore, as explained below: (1) the County's STS system is not used or designed to ensure safety and security at MIA, and the County failed to produce any contrary evidence in this proceeding; (2) not all tenants use the County's STS system, which makes no sense if the system was necessary to ensure security and safety and, in fact, the County actually uses a separate telephone and paging system (comprising approximately 1000 phones) for safety and security throughout MIA. The County's portrayal of its STS operation as necessary for the safety and security of its airport operations is simply incorrect.

(a) The County's STS System Is Not Used or Designed for Safety and Security, and the County Has Not Proven Otherwise: The County's attempt to masquerade its STS system as necessary for safety and security was unveiled in its Motion to Dismiss filed in this proceeding and in its oral argument before the Commission on that motion. In its motion, the County asserted that its provision of STS to airport tenants was necessary for security due to the increased threat of attacks following the events of September 11, 2001.[181] In support of this argument, the County filed the affidavit of Mark Forare, its Director of Security. The affidavit, however, focused almost exclusively on the use of the County's STS system to provide four digit internal dialing behind the County's PBX between airport personnel and the fire rescue, police and emergency personnel located at the Airport. Tellingly, Mr. Forare provided no explanation as to how or why the provision of STS to airport tenants, including local and long distance service, call waiting, call forwarding, voice mail, conference calling, data network services, and the myriad other services offered to commercial tenants, had any relationship to airport security.

[180] See AT&T Florida's Brief, supra, at pp. 24-28.
[181] See County's Motion to Dismiss at p. 23.

At oral argument, the County, attempted to suggest that it needed to operate its STS system free of regulation to ensure safety and security at the airport by citing incidents at MIA where the airport terminal had to be evacuated. To test this contention, AT&T Florida requested production of documents and the deposition of "a corporate representative with the most knowledge" to testify as to any facts supporting the relationship between the County's provision of STS to airport tenants and the evacuations. In response, the County produced no documents to support its claims, other than a single list of the evacuations at the Airport, and failed to produce any documents demonstrating any connection between the provision of STS to airport tenants and these incidents.

The County then produced for deposition two individuals as its corporate representatives with the most knowledge on these issues. Instead of supporting the County's position, each witness confirmed that the STS provided to airport tenants is not used for safety and security.

Lauren Stover, the Assistant Aviation Director responsible for security and communications, could not explain how the County's provision of STS to airport tenants supported the County's ability to provide security in connection with the evacuations.[182] At best, Ms. Stover, like Mr. Forare, could only testify generally that the County's provision of four digit dialing behind the PBX for internal communication with the airport's police, fire rescue and emergency services allowed for faster response times to emergencies.[183] She was unable to identify *any* facts to support the County's assertion that providing STS, like local and long distance service, call waiting, voice mail, call forwarding, three way calling, data network access, and the other services offered to airport tenants, ensured the safety and security of airport

[182] Exhibit 206 at pp. 14:22-17:9
[183] Id. at pp. 17:15-19:19 and pp. 23:20-24:9.

passengers and freight.[184] Nor could she explain how such services improved security at the Airport after 9/11.[185]

Mr. Garcia, when asked to detail "each and every fact" that supports such a connection, merely pointed to the time-saving benefit of being able to dial the Airport's control center with a 4 digit number, instead of a 10 digit number.[186] Additionally, he conceded that he had no personal knowledge of how the County's STS was used in connection with any of the evacuation incidents identified by the County. In total, Mr. Garcia, like Ms. Stover, failed to provide any credible testimony linking STS to safety and security. He also acknowledged that obtaining PSC Certification would not alter the operation of STS:

> 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.[187]

Thus, neither corporate representative identified by the County with the most knowledge could support any suggestion that the STS provided to commercial airport tenants was related to the evacuations first raised at oral argument on the County's Motion to Dismiss. 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.

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[184] Id. at p. 35:3-19
[185] Id.
[186] Exhibit 207, at pp. 6-13.
[187] Exhibit 207, at p. 31:7-18.

(b) The Airport Has a Separate Telephone and Paging System: It is patently clear that the provision of STS services to commercial airport tenants is not essential to the safe and efficient transportation of Airport passengers and freight because the County does not require all tenants to use its STS.[188] In fact, the County has never even considered requiring all tenants to use the County's STS.[189] Thus, even if one were to accept the County's argument (which AT&T Florida does not), the County is not ensuring that all of its tenants are safe and secure. Rather, only those tenants willing to pay for the County's STS would receive the alleged benefit offered by its STS. It is not credible that the County would provide or not provide for the safety of its passengers and freight depending on whether the tenant was willing to pay for the County's STS. The more logical conclusion is that the provision of STS to airport tenants is simply unrelated to security.

The County's position is further vitiated by the fact that the County uses a separate telephone system for safety and security that is unrelated to the STS offered to airport tenants. Specifically, the County maintains an extensive network of paging and security phones placed throughout the Airport, principally at the gates, check-in counters, cargo areas and other strategic locations.[190] It has installed several hundred, if not over a thousand, of these phones that are directly connected to the County's Operations Control Room or "OCR."[191] The OCR can then access a separate paging system of over 10,000 speakers to make security or other announcements. These phones are owned and operated by the County at the County's

[188] Exhibits 95, 96, 97, 128, 139, and 209 (the County's customer lists from 2002 through 2006). These customer lists demonstrate that only a portion of the tenants at MIA receive services from the County's STS system. See also Exhibit 207 at p. 10:14-17.
[189] Exhibit 207 at p. 26:2-9.
[190] Id. at pp. 32:10-35:19.
[191] Id. at p. 34:19-25.

expense.[192] The County testified regarding the purpose of these phones:

> Q. What is the purpose of those phones?
>
> A. We feel that in the interest of security of the airport there should be a County phone at every location that is used for the passengers, like all the check-in counters and all the gates.[193]

These security phones are wholly separate from the STS services the County provides to its commercial tenants.[194] Indeed, when asked if these security phones were located in the shops and restaurants within the airport terminal, Mr. Garcia stated that they were not.[195] When asked why, Mr. Garcia candidly admitted that it was because the shops and restaurants "are not paying for them. The airport needs to control expenditures."[196] The County thus explicitly conceded that economic considerations -- not security, not terrorism, and not safety -- govern its provision of STS to commercial tenants at the airport.[197]

In sum, the County's argument that its provision of STS to commercial tenants at the airport is needed for security purposes is factually insupportable and without merit. The undisputed and un-rebutted evidence clearly demonstrates that the County's provision of STS to commercial tenants at MIA has no relationship to ensuring the safety and security of passengers or freight at the Airport. Accordingly, the County's attempt to use the Airport Exemption Rule to avoid Commission regulation of its commercial, profit-generating

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[192] Id. at p. 33:13–23 and p. 34:8-10.
[193] Id. at p. 32:20-24.
[194] Id. at p. 33:13-23.
[195] Id. at p. 35:1-15.
[196] Id. at p. 35:16-19.
[197] Additionally, Maurice Jenkins, the County's director of communications, testified that the County's provision of STS to commercial tenants at MIA does not make the airport a safer place or otherwise help to move freight or passengers more efficiently. See Exhibit 17 at pp. 123-125 and 165. Moreover, as explained under Issue I above, the documents prepared by the County in connection with the County Commission's resolutions authorizing the County to acquire and operate the telecommunications system and to enter into agreements with customers to provide STS services at MIA make no mention of protecting the safety of passengers or freight as the reason for the acquisition, operation or provision of services. See Exhibits 13 & 14.

telecommunications business must therefore be rejected.

(5) The County Undisputedly Provides Service to Facilities Such as a Shopping Mall and Hotel to Which the Exemption Does Not Apply.

Even if the Airport Exemption Rule applied to some portion of the County's STS operation at MIA (which it does not), the County must still be certificated because the County's STS operation is a commercial, revenue-generating business offering services extensively to facilities such as hotels, shopping malls and industrial parks. Moreover, Staff previously advised the County that its provision of STS to these types of customers fell outside the Airport Exemption Rule and required certification.

(a) The County Offers STS to Facilities Such As a Shopping Mall: As described above, the County offers STS to retail shops, bookstores, toy stores, electronics stores, music stores, gift shops, ice cream parlors, restaurants, management companies and numerous other commercial entities that, by the County's own admission, is a facility such as a shopping mall. Specifically, on its website, the County posted the following information under the heading "100% Pure Miami Shopping":

> Whether you come to Miami International Airport these days to take a flight or meet a relative or business associate, you will find a bright and exciting change in the Central Terminal area, between Terminal E and H.
>
> New retail shops with brand names have become a part of the airport family. Names like Ron Jon Surf Shop, Havana Shirt Store, Airport Wireless, Prestige Signature, Borders, Bayside Brush and others now adorn the terminal. It is all part of the continuing new look of MIA.
>
> On Monday, May 15, you are invited to come experience these shops, witness a grand opening celebration and a fashion show, participate in in-store activities, and join a contest to win a grand prize.[198]

The County is also touting its retail shopping as ranking "the highest in customer satisfaction among large airports in North America in 2006, according to a recently released

[198] Exhibit 179.

study by J.D. Powers and Associates."[199] These shops and restaurants are clearly a shopping mall within the MIA airport terminal that is no different, and indeed more extensive than, the shopping mall at the Tampa Airport for which HCAA obtained a Certificate.[200] To see that the retail shopping offered by the County is a robust shopping mall, a review of the videotape of the shopping mall and arcade at MIA submitted as an exhibit demonstrates that these shops and restaurants, including their configuration and signage, are no different than any other shopping mall.[201] Accordingly, there can be no question that as of today, MIA is offering STS to a facility such as a shopping mall, for which it must be certificated.

(b) The County Provides STS to a Hotel: Additionally, it is undisputed that the County provides STS to the Airport Hotel attached to MIA. In 1987, the County purchased the telecommunications system that serviced the hotel from Wiltel.[202]

Thus, the County offers and/or provides STS to both a hotel and a facility such as a shopping mall.

(6) Staff Previously Advised the County that It Must Be Certificated.

That the County's provision of STS to its commercial tenants requires Commission Certification is well known to the County as Staff advised the County that certification was necessary on at least two occasions. First, before the County acquired the telecommunications facility at MIA, and in connection with that transaction, the County investigated whether it would need to be certificated by the Commission to continue providing STS to airport tenants

[199] Exhibit 180.
[200] See AT&T Florida's Brief supra at pp. 41-42.
[201] Exhibit 174 (Videotape of Miami International Airport shopping mall).
[202] While the trunk serving the airport hotel is partitioned from the trunk serving the airport terminal, the Commission has clearly stated that, even if partitioned, the provision of STS to a hotel must be certificated. MIA has ignored this requirement.

after the transaction.[203] Mr. Garcia, on behalf of the County, conducted the investigation.[204] According to Mr. Garcia's contemporaneous handwritten notes, the Staff advised the County that it needed to submit an application for a Certificate: "If MIA is going to provide service not related to public transportation (Hotels, shops, etc.) we need to file an application."[205]

The County also prepared an application for Certification as an STS provider.[206] However, before submitting the application, the County, without approval of the Commission or the Staff, decided that it was not required to be certificated.[207] The County never submitted the application and made no further effort to obtain certification or otherwise comply with the applicable STS regulations. Furthermore, according to Mr. Garcia, the County never held a single formal meeting regarding the issue of certification, and did not generate a single memorandum as to whether certification was required.[208] When asked why the County did not pursue certification, Mr. Garcia could provide no explanation.[209]

On a second occasion, after the County took over the provision of STS at MIA, Rick Moses of Staff sent Mr. Garcia an e-mail stating:

> I have been informed that the Miami Airport may be providing telephone service beyond its current authority. . . . any services provided to entities such as concession stands, restaurants, or hotels would be outside of the exemption and certification would be required before telephone service can be provided. Please respond with a list of entities served by the Miami Airport by March 10, 2003."[210]

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[203] Exhibit 16 at pp. 32:22-35:7 and Deposition Composite Exhibit 5 attached thereto at bates numbers PSC 3026 & 3028.
[204] Id. at pp. 29:15-30:7.
[205] Id.
[206] Id. at Deposition Composite Exhibit 5 attached thereto.
[207] Id. at pp. 36:15-38:16.
[208] Exhibit 24 at pp. 28:5-13-29:18-21 (Mr. Garcia testified that "as far as I remember there was no documents [sic] regarding the decision not to apply for the certificate."); Id. at p. 30:14-17 (agreeing that no formal process ever took place).
[209] Id. at pp. 36:15–37:8.
[210] Exhibit 79 (emphasis added).

Mr. Garcia responded to Mr. Moses' e-mail on March 17, 2003 with the requested customer list.[211] However, the County did not pursue any further discussions with Mr. Moses regarding his contention that the County may need to obtain certification.[212] Instead, Mr. Garcia and Mr. Jenkins testified that they decided not to obtain certification for the County's STS[213] based solely on the County's interpretation of the applicable statutes and Commission rules.[214]

Given the two communications between the PSC Staff and the County's representatives, it is plainly clear that the County knew that its provision of STS to commercial airport tenants, including restaurants, retail shops, management companies and the like, required the County to be certificated by the Commission. Notwithstanding, the County continued its failure to seek certification, much less formally address, discuss or contest the matter with the Commission.[215]

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[211] Exhibit 80.
[212] Exhibit 16 at p. 19:19-25.
[213] Exhibit 16 at p. 20:12-19; Exhibit 24 at p. 22:19-24; Exhibit 24 at p. 33:7-21.
[214] Exhibit 16 at p. 25:12-14 ("[T]he position of the Miami-Dade Aviation Department at this time is that the airport is exempt from obtaining a certificate."); Id. at p. 25:19-22 (stating the airport is exempt "because the tenants are located in the airport property and the airport belongs to Miami-Dade County. We're not going outside those boundaries.").
[215] AT&T expects the County in its Direct Brief to argue (without supporting evidence or testimony) that there was no need to ever become certificated since it had always been operating under the Airport Exemption Rule due to a prior Commission Order. Indeed, the County has asserted an Affirmative Defense in this matter stating that "[g]iven the findings and rulings in . . . Docket No. 93-1033-TL, PSC Order 94-0123-FOF-TL, BellSouth should be precluded from raising the issues and claims contained in this complaint." See County's Affirmative Defense 4. This prior dispute between the County and AT&T related to serving arrangements at airports in Miami-Dade County. In this Order (94-0123-FOF-TL), the Commission reiterated that an airport must obtain a certificate as a shared tenant service provider before providing services to facilities such as hotels, shopping malls and industrial parks. Although the underlying dispute related to serving arrangements for AT&T at the airports, and not which entity was, in fact, providing shared tenant services, the Order went on to say that DCAD, as a result of the nature of its involvement in the provision of telecommunications services, is providing shared tenant services under the Airport Exemption Rule. As shown in the background to Issue No. 1 above, this statement was inaccurate at the time, as (1) the STS provider at the airports in 1994 was WilTel, formerly Centel, which was then under contract with the County and (2) because the County was not an STS provider at the time, it could not be operating under the Airport Exemption Rule. It does not appear that the Commission reviewed the governing County/Centel/WilTel contracts when considering the dispute resulting in PSC Order 94-0123. Moreover, given that the dispute in that proceeding was not about which entity was providing STS there would be no reason for the

In conclusion, as the record evidence demonstrates, the County's provision of STS to its commercial tenants at MIA is not exempt from certification or the other STS rules pursuant to the Airport Exemption Rule or other applicable statutes and regulations.

Issue 4: If No, Should The Commission Require Miami-Dade County To Obtain A Certificate Of Public Convenience And Necessity As An STS Provider?

Summary of AT&T's Position:** Yes, since the County is operating a Telecommunications Company, including by offering STS to commercial tenants at MIA, which is not subject to the Airport Exemption Rule, the County must obtain a Certificate and must comply with all other statutory and regulatory obligations governing STS providers.

The County Must Comply with the Law and Obtain A Certificate.

The County must be certificated pursuant to the clear and unambiguous terms of the applicable statutes and regulations governing STS providers and to enforce the Commission's exclusive jurisdiction. Specifically, §364.339(2), Fla. Stat., mandates that:

> No person shall provide shared tenant services without first obtaining from the commission a certificate of public convenience and necessity to provide such service.[216]

This statutory language could not be clearer. The County, as a telecommunications company and STS provider, must be certificated.

The decision whether to grant or deny a certificate, or to grant an exemption from the applicable regulations governing STS providers, is vested exclusively with the Commission. As noted in response to Issue No. 2, §364.01, Fla. Stat., and §364.339(2), Fla. Stat., unambiguously state that the Commission has exclusive jurisdiction in all matters related to the

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Commission to have reviewed these contracts and the underlying facts. The County's likely forthcoming reliance on this Order, or any other prior dispute before the Commission, is simply another post-hoc argument to avoid the jurisdiction and regulation of this Commission.

[216] §25-24.565, F.A.C., similarly requires STS providers to be certificated. Section 364.33, Fla. Stat., also requires that any person seeking to operate a telecommunications facility offering service to the public, including through the acquisition of an existing telecommunications facility, must obtain first obtain a Certificate from the Commission.

regulation of telecommunications companies, including the provision of STS. Pursuant to that authority, the Commission has the power to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly.[217]

Thus, as a matter of straight-forward statutory interpretation, the County must apply for and obtain a certificate of public convenience and necessity, and only the Commission has the authority to award (or not award) a certificate to the County.[218]

Importantly, to the extent the County claims it is exempt from Commission regulation by virtue of the Airport Exemption Rule, the County is nevertheless subject to the Commission's exclusive authority to make that determination. Specifically, §25-24.555(3), F.A.C., states:

> A shared tenant service company may petition for exemption from applicable portions of Chapter 364, Florida Statutes, or for application of different requirements than otherwise prescribed for telecommunications companies by Chapter 364, Florida Statutes, under the authority of section 364.339, Florida Statutes.

Thus, even if the County was entitled to an exemption from the certification requirements or other STS rules (which it is not), the County was required to petition the Commission to seek such an exemption.[219]

The County has no authority to self-determine that it need not or cannot be required to

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[217] PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 283 (Fla. 1988); Fletcher Properties, Inc. v. Florida Pub. Serv. Comm'n, 356 So, 2d 289, 292 (Fla. 1978).

[218] Beard, 624 So.2d at 251 ("A general rule of statutory construction in Florida is that courts should not depart from the plain and unambiguous language of the statute.").

[219] This is precisely the conclusion the Commission reached in In re Investigation of Central Telephone Company of Florida, 1994 WL 269622 (Fla. P.S.C. June 8, 1994) (FPSC Docket No. 940139-TL; Order No. PSC-94-0696-FOF-TL). In that proceeding, the PSC investigated whether Centel was providing STS to an apartment building without a certificate. The Commission determined that it had jurisdiction and rejected Centel's contention that it was exempt from regulation because the tenants were "transient residents." In doing so, the Commission affirmed its exclusive jurisdiction to grant or deny exemptions from STS regulations and rejected Centel's efforts to circumvent the STS regulations through its improper and self-serving interpretation of the statute.

become certificated and comply with all other Commission regulations. Compliance with these statutory and regulatory obligations is not burdensome, overly-costly or prejudicial to any company under the Commission's oversight, including the County.[220] Accordingly, the County must obtain a Certificate of Public Convenience and Necessity and is otherwise subject to the statutes and regulations governing STS providers.

CONCLUSION

Based on the foregoing, AT&T 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.

[220] Exhibit 207 at p. 31:7-18

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 9th day of August 2007, to:

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