

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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

DOCKET NO. 050257-TL

**DEPOSITION OF NANCY SIMS (VOL. II)
DATED DECEMBER 3, 2004**

FINAL EXHIBIT NO. 22

11 of 29

DOCUMENT NUMBER-DATE

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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO. 02-28688 CA 03

BELLSOUTH TELECOMMUNICATIONS,
INC.,

Plaintiff,

-vs-

MIAMI-DADE COUNTY, a political
subdivision of the State of
Florida,

Defendant.

COPY

DEPOSITION

OF

NANCY SIMS

VOLUME II

Miami International Airport
Terminal Building, Concourse A
Fourth Floor

Miami, Florida

Friday, December 3, 2004
9:00 a.m. - 11:00 a.m.

KRESSE & ASSOCIATES, INC.
(305) 371-7692

Final Exhibit
No. 22

APPEARANCES

For the Plaintiff:

MARTIN B. GOLDBERG, ESQ.
Lash & Goldberg, PA
100 Southeast 2nd Street
Suite 1200
Miami, Florida 33131

SHARON LIEBMAN, ESQ.
Bellsouth Telecommunications, Inc.
150 West Flagler Street
Suite 1910
Miami, Florida 33130

For the Defendant:

DAVID S. HOPE, ESQ.
Miami-Dade County Attorney's Office
Aviation Division
P.O. Box 592075 AMF
Miami, Florida 33159

I N D E X

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CONTINUED DIRECT EXAMINATION

BY MR. HOPE:

Q. Good morning, Miss Sims. Are you prepared to continue your deposition that you commenced yesterday?

A. Yes, I am.

Q. Please remember that you are still under oath.

I'd like you to pull out either in your copy or --

A. Oh, I'm sorry.

MR. GOLDBERG: Note the same appearances.

Q. Pull out either in your copy the Second Amended Complaint, or what's been marked as Defendant's 2. And turn to page six, which starts off with paragraph 21. Please read to yourself paragraph 22.

A. Okay.

Q. What documents support BellSouth's allegation in paragraph two of the Second Amended Complaint?

MR. GOLDBERG: Objection to form.

A. I believe, as I said before, there were in the discovery, in the depositions of Mr. Garcia

1 and Mr. Jenkins, there was discussion about the
2 provision of service to various entities in the
3 airport. And I believe I read some of that
4 yesterday.

5 First of all, in the County's own
6 admissions they indicate that they're providing
7 shared tenant services. And that in itself should
8 basically be the proof. But, that was re-enforced
9 through the testimony of the depositions of the
10 two individuals, the County individuals.

11 For instance, in Maurice Jenkins's
12 deposition, and this is the same reference I made
13 yesterday, this is his deposition of 2004, pages
14 129 through 131, he discusses some of the shops
15 and stores that are being provided
16 telecommunications services through the MDAD. And
17 it talks about various stores, Cafe Versailles,
18 Bacardi, Eddy's.

19 He's asked: Is this basically a mall of
20 shops, correct? He says: Yes, sir. Talks about
21 a shoe shine store and ice cream parlor. And then
22 there's reference later to the hotel.

23 This is Pedro Garcia's deposition dated
24 October 28, 2004. On pages 71, 72 and 73, there's
25 discussion about the Miami International Hotel.

1 The question is: And the Miami
2 International Airport Hotel is an MDAD customer?
3 The Miami International Hotel is owned by the
4 County and operated by a management company. Is
5 it served by MDAD? We provide them with telephone
6 service, with partition trunks, and they own the
7 instruments in the rooms.

8 Now, the Miami Hotel, how is that, when
9 you use the word partition trunk, what do you mean
10 from a typical perspective as it relates to the
11 hotel?

12 He goes on to discuss that it means
13 everybody else that is getting telephone
14 connectivity through the PBX, when they go out to
15 the world, to the local call to the rest to the
16 public network, they go to the ones that Southern
17 Bell or BellSouth provide. I'm showing my age
18 here.

19 So the hotel, the calls go through a
20 separate trunk group, which was accounted by them
21 separately and they are provided by AT&T. That
22 is with the local calls. And the long distance
23 calls go out through the separate trunk.

24 Also what it means, partition, is they
25 cannot dial four digits and talk to any of the

1 other customers connected to the MDAD owned PBX.

2 Question is: That type of situation,
3 where you say the trunks have been partitioned, it
4 only relates to the Miami International Airport
5 Hotel that you spoke about; is that correct?

6 Answer: Yes.

7 Question: For every other MDAD
8 customer, is there any other partitioning of the
9 trunk in any manner, shape, or form?

10 Answer: No.

11 And there's some other references here.
12 And you know, as discovery goes along, there may
13 be other instances.

14 Q. That's fine.

15 Besides the deposition transcripts and
16 the documents produced by the County through
17 BellSouth's discovery requests, are there any
18 other documents which show the County has provided
19 shared tenant services and supports the allegation
20 in Paragraph 22 of the Second Amended Complaint?

21 MR. GOLDBERG: Let me object.

22 Number one, asked and answered. It's
23 an issue that we covered most of the day
24 yesterday. So I want to make clear that
25 she's asked and answered that question.

1 To the extent your question is to any
2 other documents she's aware of, if you can
3 answer that question, please go ahead.

4 MR. HOPE: That was my question.

5 A. I believe there was some reference to it
6 in one of the resolutions.

7 Q. I'm asking for non-County produced
8 documents.

9 A. Oh, non-County.

10 I don't know that I have seen anything.
11 Not to say it doesn't exist, but I don't know of
12 anything. I've looked at a lot of paper.

13 Q. Let me show you what is going to be
14 marked as Defendant's Exhibit 7. It's a three
15 page document. Can you just look at that and let
16 me know when you're ready.

17 (Thereupon, Correspondence was marked as
18 Defendant's Exhibit 7 for Identification.)

19 A. Okay.

20 Q. Have you ever seen any of these
21 correspondence or these documents previous to me
22 presenting them to you?

23 A. Yes, I have.

24 Q. Do you know who at BellSouth requested a
25 copy of the County's shared tenant service list

1 from the Florida Public Service Commission?

2 MR. GOLDBERG: So we're clear, you're
3 referring to the last document in this
4 group?

5 MR. HOPE: Correct.

6 MR. GOLDBERG: It's a composite
7 exhibit containing three documents. Thank
8 you.

9 A. I believe Wayne Tubaugh asked for the
10 list.

11 Q. Do you know why he asked for it?

12 A. I'm making an assumption that he was
13 looking at the situation of the County providing
14 shared tenant services in the context of the
15 lawsuit.

16 Q. And do you know when, approximately, he
17 asked for it?

18 A. No, I do not.

19 Q. Is there any language that you know of
20 in either the Florida statutes or the Florida
21 Public Service Commission rules which supports
22 BellSouth's allegation that the Miami
23 International Airport Hotel retail shops and other
24 commercial entities are "facilities such as
25 hotels, shopping malls, and industrial parks"?

1 MR. GOLDBERG: Object to the form of
2 the question. But if you understand it,
3 you can answer it.

4 A. Well, the statutes basically speak for
5 themselves. And when you read the shared tenant
6 definition -- let me turn to it now, the statute
7 itself.

8 Q. What tab are you under?

9 A. I'm sorry. I'm on tab two. There's an
10 excerpt from the statute 364.339, which is the
11 shared tenant service regulation by commission
12 certification. Limitations as to designated
13 carriers.

14 Now, the statute is pretty
15 straightforward. It defines shared tenant
16 services. It basically doesn't layout any
17 exception.

18 Whereas, if you go to the PSC rules,
19 which is also behind tab two, rule 25.24.575, it
20 lays out in a little more detail shared tenant
21 service. And the -- bear with me here. I think I
22 have a copy of the whole rule here.

23 Sorry. This binder didn't have the
24 entire rule in it.

25 MR. GOLDBERG: David, she's taken out

1 the entire rule. Do you mind if we mark
2 that?

3 MR. HOPE: No. We can make that
4 Plaintiff's Exhibit B.

5 (Thereupon, RSC Rules were marked as
6 Plaintiff's Exhibit B for Identification.)

7 A. In 25.24.580, there is an airport
8 exemption included in the commission rules, which
9 is not found in the statutes.

10 This rule, and I'll read it: Airport
11 shall be exempt from the other STS rules due to
12 the necessity to insure the safe and efficient
13 transportation of passengers and freight through
14 the airport facility. The airport should obtain a
15 certificate as a shared tenant service provider
16 before it provides shared local services to
17 facilities such as hotels, shopping malls and
18 industrial parks.

19 However, if the airport partitions its
20 trunk, it shall be exempt from the other STS rules
21 for service provided only to the airport facility.

22 And this, the interpretation of this
23 section of the rule, talks about providing local
24 services to facilities such as hotels, shopping
25 malls, and industrial parks. And in that

1 interpretation, is that -- that's exactly what
2 the County is doing today. It is providing
3 service to shopping malls, unrelated entities
4 other than itself within the airport, that go
5 beyond what the exemption calls for.

6 Q. Is the allegation contained in paragraph
7 two of the Second Amended Complaint BellSouth's
8 interpretation of the airport exemption that you
9 just spoke of?

10 MR. GOLDBERG: Objection, number one,
11 to the form of the question.

12 You said paragraph two. I think you
13 mean paragraph 22.

14 MR. HOPE: I thought I said 22.

15 Thank you.

16 MR. GOLDBERG: I still have an
17 objection to the form.

18 Q. That should be paragraph 22.

19 A. Well, it's not only BellSouth's
20 interpretation. It is also the interpretation
21 that we have.

22 Q. We, being BellSouth?

23 A. BellSouth has -- well, me, personally.
24 BellSouth has been -- we've talked with the
25 commission staff, about this type of situation.

1 And even Rick Moses, the commission staff, has
2 taken the same interpretation.

3 So we're not alone in our interpretation
4 of this particular statute. I mean rule.

5 For instance, in Rick Moses's
6 deposition, and this is on pages 59 and 60 of his
7 deposition, there's a discussion about the
8 concessions and so forth that are being served by
9 the County in the airport. And there was some
10 discussion about well, does this really meet the
11 definition of what the statute says?

12 It says: Okay. Does it matter where
13 the concession is located?

14 No. There's no difference between the
15 concession being located physically in the
16 terminal building versus a mile away as far as a
17 trunk would need to be partitioned in order to
18 provide service to them absent PSC certificate.

19 Because there was some discussion about
20 if it's not located -- it sounds as if it needs to
21 be located away from the airport. But in this
22 particular case, the commission staff, as well as
23 BellSouth, has the interpretation that it doesn't
24 matter where it's located, whether it's in the
25 terminal building or outside the terminal

1 building. If the County is providing the service
2 to it, it goes beyond the County's exemption.

3 Q. Has Rick Moses provided a written
4 opinion as to this issue?

5 A. I don't know whether that particular
6 issue is written or not. It may be in some form
7 or fashion.

8 There's a lot of commission paper out
9 there. There's a lot of PSC orders. There's been
10 discussion about airports previously. But I can't
11 say it doesn't exist.

12 Q. If you know, has the Florida Public
13 Service Commission Legal Department issued a
14 written opinion on this specific issue?

15 MR. GOLDBERG: Objection to form.
16 What's the issue?

17 MR. HOPE: The issue is BellSouth's
18 interpretation of the airport exemption.

19 What was stated previously by the
20 deponent was --

21 MR. GOLDBERG: As it relates to the
22 County, or just generally?

23 MR. HOPE: Well, she said
24 specifically as it relates to the County.

25 MR. GOLDBERG: So is that what you're

1 asking about?

2 MR. HOPE: Yes.

3 A. Specifically, as it relates to the
4 County, I don't know if there's anything that has
5 been produced by the commission itself.

6 Q. When you say the commission itself, does
7 that include the legal department?

8 A. Yes.

9 MR. HOPE: Let me go off.

10 (Proceedings off the record.)

11 Q. Let me present to you what's going to be
12 marked as Defendant's 8. Let me ask you to look
13 at this real quickly.

14 (Thereupon, Docket Number 93-1033-TL was
15 marked as Defendant's Exhibit 8 for
16 Identification.)

17 MR. HOPE: While the deponent is
18 reading, let me tell you what this is.

19 This is a copy of docket number
20 93-1033-TL. Order number
21 PSC-94-0123-FOFTL, February 1, 1994, In
22 Re: Dispute between Dade County Aviation
23 Department and BellSouth, doing business
24 as Southern Bell and Telegraph Company,
25 relating to a telephone serving

1 arrangement at airports in Dade County.

2 The document is a Notice of Proposed
3 Agency Action Order regarding access to
4 facilities at airports.

5 Q. Ready?

6 A. Okay.

7 Q. I would like you to turn to II,
8 resolution of a dispute.

9 A. Okay.

10 Q. And just read into the record the first
11 three paragraphs, the two on page one and the
12 carry-over paragraph on page two.

13 A. Paragraph two, resolution of the
14 dispute.

15 Commission should order the Dade County
16 Aviation Department to allow Southern Bell to have
17 direct access to its customers at airport
18 complexes. Southern Bell network demarcation
19 point should be within the premises of its
20 customers. DCAD should insure that Southern Bell
21 is included in planning for new construction so
22 that Southern Bell may reasonably forecast demand
23 and install its own cable.

24 However, Southern Bell should be ordered
25 to utilize DCAD cable when a cable dedicated to

1 Southern Bell's use is already available if the
2 cable and the cost of reasonable compensation to
3 DCAD will not exceed Southern Bell's cost of
4 installing its own cable.

5 Southern Bell should have full access to
6 its own network cable and to any DCAD cable which
7 completes Southern Bell's network connections to
8 its customers.

9 DCAD is a Dade County governmental
10 entity charged with administration of Dade County
11 airports. DCAD provides a service to more
12 stations than the state's two smallest local
13 exchange companies combined. It has a
14 multi-million dollar optical fiber phone system
15 installed at Miami International Airport, which
16 serves over 5,000 end user stations through a
17 northern telecom switch. The annual
18 telecommunications is \$3 million.

19 You need me to go on?

20 Q. I just need you to read the first
21 carry-over paragraph on the next page.

22 A. DCAD, as a result of the nature of its
23 involvement in the provision of telecommunications
24 services, is providing shared tenant services.
25 Although DCAD is a shared tenant service provider

1 pursuant to rule 25-24-580 from Florida
2 administrative code, it's generally exempt from
3 the restrictions placed on other STS providers.

4 Q. Thank you.

5 Earlier in the deposition you stated
6 that Miami-Dade County provided telecommunications
7 services as of 2002; is that correct?

8 A. Correct.

9 Q. Now, reading this order from the public
10 service commission, would you revise that date as
11 to the provision of service?

12 A. No. I wouldn't revise that date.

13 This was a discussion about the
14 demarcation of the entrance facilities at the
15 airport. The commission probably would not have
16 had any reason to get into the issue of who is
17 actually -- the details of who is actually
18 providing the service and so forth.

19 DCAD was the contact for the airport.
20 They owned the property. Facilities is involved.
21 I can't say for sure that because this statement
22 is in this order that it means that DCAD was
23 actually providing the telecommunications
24 services.

25 I don't know that I would agree with

1 that statement, because I'm going on what I have
2 read in your -- in the County employees' own
3 statements, that prior to 2002 they were not
4 providing service at the airport, that Nextira was
5 providing the service, and based on the contract
6 that was entered into in early 2002, whereby the
7 County basically took over the telecommunications
8 operations, and regardless of whether or not there
9 is an exception for STS and so forth.

10 In our opinion, as of -- well, we feel
11 that it's 2002, based on the contract, the
12 testimony, and probably further discovery as we go
13 along, that the service was being provided by the
14 County, telecommunications service provided by the
15 County as a telephone company in early 2002.

16 Q. But as of this document, does not
17 BellSouth's opinion contradict the findings of the
18 Florida PSC?

19 MR. GOLDBERG: Objection. Asked and
20 answered.

21 A. No. I don't believe it does.

22 Q. Does this document not state that DCAD,
23 which was formally the Dade County Aviation
24 Department, which is now the Miami-Dade Aviation
25 Department, MDAD, was providing service as of at

1 least February 1st, 1994?

2 A. There's a statement in this order that
3 says that DCAD is providing -- it says DCAD, as a
4 result of the nature of its involvement in the
5 provision of telecommunications services, is
6 providing shared tenant services.

7 I don't know what that involvement is.
8 I mean, that involvement could be just the fact
9 that it's providing the property and allowing
10 Nextira to provide telecommunication services to
11 the tenants of the airport.

12 So I'm not convinced that this statement
13 in this particular order in any way contradicts
14 what we feel, what our position is, that in 2002
15 the County took over the system and started
16 providing telecommunications services.

17 Q. What about the statement that says DCAD
18 provides service to more stations than the state's
19 two smaller local exchange companies, LECs,
20 combined? It is a multi-million dollar optical
21 fiber backbone system installed at Miami
22 International which serves over 5,000 end user
23 stations through a northern telecom switch?

24 A. There again, it's describing the system.
25 It's describing the services at the airport. The

1 airport, it's on the County's property. It's the
2 same answer I gave previously.

3 Q. Okay. If you know, what airports in
4 Florida provide shared tenant services?

5 A. I am not sure. I know there's been
6 discussions about Orlando. But that's the only
7 one that comes to mind. There may be others.

8 Q. Who at BellSouth would know which
9 airports in Florida provided shared tenant
10 services?

11 A. You might ask Wayne Tubaugh. He may be
12 more familiar with it than I am. To the extent
13 that we know.

14 Q. Your knowledge of Orlando, do you have
15 any specific knowledge, or is this something that
16 you just heard? And the reason I'm asking that is
17 if it's not something that you really know, I'm
18 not going to go into that line of questions about
19 it.

20 A. I remember some discussions about it
21 some time ago. But I don't remember the
22 specifics.

23 Q. Do you have any knowledge of any dispute
24 between BellSouth and Orlando International
25 Airport related to Orlando's provision of shared

1 tenant services?

2 A. Here again, I know there was discussion
3 about the Orlando Airport, but I really don't
4 remember the specifics of it.

5 Q. Who at BellSouth would have knowledge of
6 the specifics of that dispute?

7 A. You might ask Wayne Tubaugh. But I
8 don't know how deeply involved he was.

9 Q. Would somebody, maybe, in BellSouth
10 legal have knowledge of that dispute?

11 A. They may. But I don't know who
12 specifically. Because I don't remember exactly
13 the time frame that it came up. Time passes so
14 quickly. I don't remember how long ago it was.
15 It may have been a demarcated issue just similar
16 to this one.

17 Q. Turning back to the Second Amended
18 Complaint, would you please turn to page eight and
19 look at paragraph 32.

20 A. Okay.

21 Q. What specific language in the resolution
22 which is raised in paragraph 32 supports
23 BellSouth's allegation?

24 MR. GOLDBERG: Objection to form.

25 A. Well, there's probably several

1 references. Bear with me.

2 Q. No problem.

3 A. I think we went over quite a few of
4 these similar references in the resolution.

5 Is this a resolution?

6 Q. That's a justification memo.

7 A. That's a justification memo. Let's see
8 if that's included in this.

9 On the resolutions, this is the
10 September 24th, 2002 resolution approving
11 recommendations relating to shared airport tenant
12 services for the aviation department.

13 And of course, the title in itself
14 basically indicates that this is shared tenant
15 services. And shared tenant services, as I went
16 through before, if you go back through the
17 definition, shared tenant services basically is
18 the provision of telecommunications services and a
19 telephone company provides telecommunications
20 services. So that in itself means that the
21 airport is a telecommunications company.

22 Now, in the first paragraph, it talks
23 about there's I, execute standard form airport
24 rental agreements for shared airport tenant
25 services to offer telecommunications and network

1 access to airport tenants. You almost stop there,
2 because of the fact that shared tenant services by
3 definition is offering two-way telecommunications
4 for hire to the public.

5 Now, if you want to get into "for hire"
6 again, it talks about maximization of revenues on
7 the one, two, three, fourth paragraph on the first
8 page.

9 On the second page it talks about the
10 last sentence under the new non-exclusive
11 management agreement with NextiraOne approved by
12 the Board on January 29th, it looks like 2002.
13 MDAD will receive all set gross revenues which
14 last year totalled \$2,670,024. This revenue is
15 expected to increase based on the marketing
16 initiatives presently under development.

17 So definitely it's going to be a
18 business. It's going to be actively marketed.

19 Also attached to the resolution, and
20 this is resolution R-1091-02, it says, "Now,
21 therefore, be it resolved by the Board of County
22 Commissioners of Miami-Dade County, Florida, that
23 this Board hereby authorizes the County Manager or
24 designee to execute the standard form of an
25 airport rental agreement attached to the

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1 accompanying memorandum for shared airport
2 telecommunication service and network access." It
3 says it will also "negotiate such terms and
4 conditions as may be necessary on a tenant by
5 tenant basis."

6 And it goes on and has an attachment of
7 an airport rental agreement and equipment and
8 service schedule, which includes some categories
9 with blanks for charging per month for switched
10 access and network access system terminal
11 equipment system other.

12 Then there's a maintenance schedule.
13 That in itself basically, when you mention the
14 words shared tenant service, if you walk back
15 through the definition it ultimately leads to a
16 telecommunications company.

17 Q. What specific language in the form of
18 airport rental agreement supports BellSouth's
19 allegation in paragraph 32 that the County now
20 owns and operates a telephone utility?

21 MR. GOLDBERG: Objection to form.

22 A. Well, I don't know if -- it's very
23 difficult to read this contract totally.

24 Certainly, it talks about the customer
25 paying to the County for the services. For

1 instance, on equipment and services it says, "The
2 customer shall pay to the County the total
3 rental." And of course that rental includes the
4 switch access, the network access, which is the
5 telecommunication type services. The County is
6 receiving the payments.

7 It's also attached by the sheer fact
8 that it's attached to this resolution whereby the
9 County is taking over the telecommunications
10 network and operation.

11 Q. Are there any other documents besides
12 the resolution and the form of airport rental
13 agreement that supports the allegation in
14 paragraph 32?

15 MR. GOLDBERG: Objection to the form.

16 Asked and answered. You can go ahead.

17 A. I believe I would also include the
18 non-exclusive telecommunications data network and
19 shared airport tenant service management agreement
20 that is dated February 1st, 2002, between the
21 County and NextiraOne. And of course, the
22 testimony of the County's own employees and any
23 further discovery that we make may come across in
24 the course of the discovery period.

25 Q. With the exception of any County

1 generated or produced documents, are there any
2 other documents that support paragraph 32?

3 MR. GOLDBERG: Objection to form.

4 Asked and answered.

5 A. There may be, but I don't recall
6 specifically.

7 Q. What special injury has BellSouth
8 suffered due to the County's provision of
9 telecommunications services at Miami International
10 Airport?

11 A. Well, the sheer fact that the County is
12 now providing telecommunications service at the
13 airport and it is doing so in violation of the
14 County's charter, and it is competing with
15 BellSouth for the business, as well as other local
16 exchange companies that can come in, or
17 telecommunications companies, CLECs, STS
18 providers, whatever, any telecommunications
19 company that wants to provide service to the
20 tenants at the airport. The County is certainly a
21 competitor as admitted by the County's own
22 personnel.

23 Now, if the County had followed the
24 provisions of its charter and put forth this
25 proposal to provide telecommunications services at

1 the airport in front of the electorate, the
2 electorate may or may not have voted for the
3 County to provide the service.

4 And if indeed they had voted and said
5 no, the County can't provide the services, then
6 certainly the local exchange, any other
7 telecommunications service company would be
8 competing for the businesses.

9 Now, if the County had voted for the --
10 if the electorate had voted for the County to come
11 in, yes, you still would be competing with
12 BellSouth for the customers, or any other
13 telecommunications company. But it would be done
14 fairly and by the rules.

15 Q. What rules are you speaking of?

16 A. The charter.

17 Q. Let me present to you what's going to be
18 marked as Defendant's 9, which is a copy of the
19 Miami-Dade County Home Rule Charter. Excuse me,
20 Home Rule Amended Charter. And I'll direct you to
21 page 18, sub-paragraph B, which is what in essence
22 you're referring to in terms of the County's
23 violation.

24 (Thereupon, Miami Dade County Home Rule
25 Amended Charter was marked as Defendant's

1 Exhibit 9 for Identification.)

2 Q. I'll give you a chance to read that and
3 make sure that is the proper section of the
4 charter to which you refer.

5 A. Okay.

6 Q. Before we get into that, I asked you
7 about what special injury BellSouth has suffered
8 due to the County's provision of services at Miami
9 International Airport. What special injury has
10 BellSouth suffered as a result of the County's
11 provision of services at the general airports?

12 A. It would be the same response.

13 Q. The same response as international to
14 the general?

15 A. Yes.

16 Q. What knowledge do you have, if any, that
17 BellSouth has a special injury resulting from the
18 County's alleged violation of its charter?

19 A. The sheer fact that the County is
20 providing telecommunications services to tenants
21 at the airport and is servicing tenants at the
22 airport.

23 Now, I do not have a new customer list
24 from the County. I can't determine for sure what
25 customers have been added, what customers have

1 been subtracted.

2 But you know, if customers had been
3 added, then certainly, the County, by providing
4 telecommunications services to these customers in
5 violation of its charter has not played by the
6 rules, should never have served those customers,
7 and therefore, BellSouth, or any other local
8 exchange company was placed at a disadvantage.

9 Q. What would happen, based on that
10 statement, if the County's customers either had
11 remained the same or had been reduced?

12 MR. GOLDBERG: Objection to form. Go
13 ahead.

14 A. I still believe that there is an injury.
15 The County is still providing the service in
16 violation of its charter and there would still be
17 some question as to whether or not BellSouth --
18 whether or not the competition is fair. Whether
19 it's a fair structure.

20 We all have to play by the rules.
21 That's what we're asking for.

22 Q. Are there any documents not produced by
23 the County in response to BellSouth's discovery
24 requests which show that BellSouth has suffered a
25 special injury?

1 MR. GOLDBERG: Objection to the form
2 of the question.

3 Do you understand that?

4 A. Not really.

5 MR. HOPE: Read that back.

6 (Thereupon, the requested portion of the
7 record was re-read by the Court Reporter.)

8 MR. GOLDBERG: I have to object. How
9 does she know what you didn't produce to
10 us? That's an issue maybe you and I --

11 MR. HOPE: The question is outside of
12 what we've produced, are there any
13 documents that show BellSouth has suffered
14 a special injury? She was talking about
15 documents that were produced.

16 MR. GOLDBERG: Documents not produced
17 by you in discovery.

18 Maybe you just need to rephrase the
19 question. I think you're asking her to
20 address what you didn't produce.

21 MR. HOPE: No. I'm asking her to
22 address outside of anything that the
23 County has produced, what documents exist
24 that show BellSouth has suffered a special
25 injury due to the County's operation?

1 A. I don't know that I have seen any
2 specific document. But we're still in the throws
3 of discovery, so certainly it's something we will
4 pursue.

5 Q. But given that response that you just
6 gave, my question is independent of discovery, do
7 you now have in your possession, in BellSouth's
8 possession, either BellSouth documents or other
9 documents that support BellSouth's allegation that
10 it suffered a special injury due to the County's
11 telecommunications operation?

12 A. Well, I think I've answered basically
13 the question that to the extent that there are --
14 the County is serving customers, and we know the
15 County is serving customers other than itself at
16 the airport, and its serving customers in
17 violation of its charter, that in itself is proof
18 of injury to BellSouth or any other company that
19 may serve those tenants.

20 Q. How is BellSouth's alleged special
21 injury different from other local exchange
22 companies operating in Miami-Dade County?

23 A. I'm not sure that there is a real
24 difference. We all compete for that service. I'm
25 not an attorney, so --

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1 MR. GOLDBERG: To the extent that the
2 special injury issue raises legal
3 questions, I have an objection to the
4 whole line of inquiry. It really is a
5 legal matter.

6 Q. What knowledge do you have, if any, that
7 BellSouth's injuries are different in kind from
8 the general public?

9 MR. GOLDBERG: Same objection.

10 A. I don't understand that question. I
11 don't know that I can answer that question.

12 Q. Do you know what the term special injury
13 means?

14 A. Not totally legally.

15 Q. Okay. Is there someone at BellSouth
16 that has a better understanding of what the term
17 special injury means?

18 A. I don't know. Someone in legal perhaps.

19 Q. Is BellSouth's alleged special injury
20 quantifiable?

21 MR. GOLDBERG: Same objection.

22 A. I think we might be able to get some
23 type of -- it may not be, you know, down to the
24 dollars and the cents, but if we get a customer
25 list and make some assumptions about marketing and

1 service, then perhaps -- and we know what's being
2 provided to the customers, then perhaps there
3 could be some estimate made.

4 Q. As of December 3rd, 2004, is BellSouth's
5 alleged special injury quantifiable?

6 MR. GOLDBERG: Objection. Asked and
7 answered.

8 A. We're still in the midst of discovery.
9 Maybe based on one of the old customer lists we
10 could do something, but we would need more
11 specifics from the County.

12 Q. Has BellSouth tried to quantify its
13 alleged special injury?

14 A. I don't know that there's been any
15 effort made at this point.

16 Q. Do you know whether the County is
17 providing telecommunications services to former
18 BellSouth customers at Miami International
19 Airport?

20 MR. GOLDBERG: Objection. Asked and
21 answered.

22 A. I don't have the total customer list. I
23 don't know.

24 Q. Is there anyone at BellSouth who would
25 be able to respond to that question?

1 A. I don't know. You could ask George
2 Hill. I don't know if he would know.

3 Q. Would that be the same answer for the
4 general aviation reports?

5 A. Yes.

6 Q. Would that be the same answer for the
7 County's provision of data network services at
8 either Miami International Airport or the general
9 aviation airports?

10 A. Probably.

11 Q. And would that be the same answer for
12 the County's provision of shared tenant services
13 at either Miami International Airport or the
14 general aviation airports?

15 A. Well, I think you're overlapping now.
16 Because shared tenant services is
17 telecommunications service. Share tenant
18 services, if you're providing share tenant
19 services, you're a telecommunications provider.

20 You asked me about the customers. I
21 don't know the difference between what you're
22 asking me on shared tenant services. Because
23 shared tenants services is the provision of
24 telecommunications services to the tenants at the
25 airport.

1 Q. So when you look -- when I say to you
2 shared tenant services, you look at shared tenant
3 services and telecommunications services as being
4 synonymous?

5 A. Yes.

6 Q. What documents support BellSouth's
7 allegation in paragraph 47 of the Second Amended
8 Complaint, that is on page 11, that the County's
9 operation "affects BellSouth's business
10 opportunities with and potential income from
11 customers at MIA and the other airports"?

12 A. Would you ask that again?

13 (Thereupon, the requested portion of the
14 record was re-read by the Court reporter.)

15 MR. GOLDBERG: Objection. Asked and
16 answered.

17 A. I don't have anything to add to the
18 answer that I gave for the previous paragraph on
19 the injury. It's the same answer.

20 Q. Is it also the same answer for any
21 documents that BellSouth has that weren't produced
22 by the County in discovery?

23 MR. GOLDBERG: Same objection.

24 A. I'm sorry. Can you ask that again.

25 Q. Previously, when we talked about special

1 injury, I asked about what documents support that
2 special injury allegation and what other documents
3 you had which were outside what you got through
4 discovery.

5 Now I asked you again what documents
6 that you had that support the allegation of the
7 potential business opportunities, and you said it
8 was the same answer that you gave to special
9 injury.

10 So for the follow-up question, in terms
11 of any other documents that BellSouth might have
12 that are independent of what the County produced,
13 is your answer the same?

14 A. Yes.

15 Q. Are there any documents that show the
16 County is providing telecommunications services to
17 former BellSouth customers?

18 MR. GOLDBERG: Objection. Asked and
19 answered.

20 A. I haven't seen any. But that doesn't
21 mean they don't exist.

22 Q. Would that be the same answer for the
23 County's provision of data network services?

24 A. Yes.

25 Q. Are there any documents which show how

1 much income BellSouth has lost due to the County's
2 provision of telecommunications and data network
3 services at Miami International Airport?

4 A. I don't know of any. I haven't seen
5 any. That doesn't, here again, doesn't mean they
6 don't exist.

7 Q. Is there anyone at BellSouth that might
8 know if such a document exists?

9 A. Unless it's marketing. That would be
10 the only thing, the only group I can think of at
11 this point.

12 Q. Is it fair to say that you also haven't
13 seen any documents which show how much income
14 BellSouth has lost for the County's provision of
15 telecommunications and data network services at
16 the general aviation airports?

17 A. Yes.

18 MR. HOPE: Let's take a break.

19 (Recess in the proceedings.)

20 Q. Let me present to you what's going to be
21 marked as Defendant's 10 and give you a chance to
22 read that.

23 (Thereupon, January 16, 2004 Memo was marked
24 as Defendant's Exhibit 10 for
25 Identification.)

1 A. Okay.

2 Q. What I presented to you is an internal
3 BellSouth memorandum dated January 16, 1995, from
4 Wayne Tubaugh to a series of BellSouth employees.
5 The subject is Dade County Aviation Department
6 first set of Interrogatories, and document number
7 931033-TL. Have you ever seen this document?

8 A. I may have, but I don't recall.

9 Q. Would you please read for me the very
10 first paragraph.

11 A. Southern Bell has an ongoing dispute
12 with DCAD at the Miami International Airport
13 concerning the provision of local service. DCAD
14 is providing shared tenant services under an
15 exemption in the Florida Public Service
16 Commission's rules and regulations. DCAD has
17 determined that the provision of all
18 telecommunications services at MIA can be a profit
19 center. They are attempting to convince the
20 Florida PSC that Southern Bell should compensate
21 DCAD for the use of conduits to reach our
22 customers, that only one demarcation is
23 appropriate in MIA, and that Southern Bell should
24 lease facilities to reach our customers from DCAD.

25 Q. What I'm focusing on here is the first

1 two sentences in that paragraph. Earlier on in
2 the deposition you went through a series of
3 questions talking about the date in which
4 BellSouth believes the County started providing
5 telecommunications services, and you stated that
6 date was 2002.

7 I previously showed you Defendant's 8,
8 which at least in the order from the Florida PSC
9 makes statements that reference the County has
10 either been providing telecommunications or STS
11 services since at least the date of that order,
12 which was February 1, 1994.

13 I'm now showing you an internal
14 BellSouth memo dated January 16th, 1995, which
15 states that the County is providing shared tenant
16 services under an exemption to the Florida Public
17 Service Commission's rules and regulations. Does
18 this memo now change your earlier statement that
19 the County has only been providing services since
20 2002?

21 A. No. I think I've got the same response
22 that I had in response to the order in that this
23 was a demarcation issue, and the statement that
24 providing shared -- DCAD is providing shared
25 tenant services under an exemption doesn't

1 necessarily mean that the County itself is
2 providing the service.

3 The County -- it was on County property.
4 Possibly was County equipment. There's not enough
5 information there to determine one way or the
6 other, based on just looking at this document,
7 because the central issue in this case was the
8 placement of facilities and the entrance of
9 facilities. The focus of this was the
10 demarcation, not who was providing the service.

11 Q. Okay. But isn't it true that this
12 document on its face states that DCAD is providing
13 shared tenant services under an exemption in the
14 Florida Public Service Commission's rules and
15 regulations?

16 A. It says that. But that doesn't
17 necessarily mean that the County is actually
18 providing telecommunications services at that
19 time.

20 It could have only to do with the fact
21 that DCAD has the property and it may be a general
22 statement, without having delved into all the
23 underlying information, because it was not the
24 central theme of the case.

25 Q. Whether or not it was the central theme,

1 if there were things that would distinguish or
2 diminish this statement, should not that have been
3 included in this memorandum?

4 A. I don't believe it was pertinent to the
5 purpose of this memorandum. Because as I said,
6 the purpose was to discuss the entrance facility
7 and the demarcation problem, not who was
8 necessarily providing telecommunications services
9 at the airport.

10 Q. Okay. So you disagree with the sentence
11 that I read that states that DCAD was providing --

12 A. Yes. I disagree with your portrayal of
13 that particular sentence.

14 MR. HOPE: I have no further
15 questions.

16 Your counsel has the ability to ask
17 you questions if he chooses to.

18 MR. GOLDBERG: I do have some
19 questions that I'd like to ask. So if
20 that's all right, let me proceed and
21 begin. There's not many questions.

22 CROSS-EXAMINATION

23 BY MR. GOLDBERG:

24 Q. Let me just do some housekeeping and put
25 in front of her this is January 16, 1995 memo,

1 which is Defendant's Exhibit 10. Let me begin by
2 questioning you about Defendant's 10, as well as
3 take you back to Defendant's 8, which is the
4 Florida Public Service Commission order.

5 Then I'm going to also ask you questions
6 about Defendant's 4, if you could put that in
7 front of you, which is the Resolution R-788--90,
8 the 1990 resolution by the County Commission. Do
9 you have those three documents?

10 A. Um-hum.

11 Q. I'm also going to ask you questions
12 about Exhibit 6, which is the Shared Airport
13 Tenant Service Agreement between the County and
14 Centel Communications. Do you have that?

15 A. Yes.

16 Q. Now, let's start with Exhibits 10 and 8,
17 the Florida Public Service Commission order that
18 Mr. Hope questioned you about, as well as the
19 Tubaugh memo.

20 First, let's start with the order,
21 Exhibit 8. You've read a number of Florida Public
22 Service Commission orders in the past; is that an
23 accurate statement?

24 A. Yes, I have.

25 Q. You're familiar with, as you've

1 testified to, the Florida Public Service
2 Commission rules an regulations and their
3 procedures; is that correct?

4 MR. HOPE: Objection to form.

5 A. Yes.

6 Q. And after reviewing this order during
7 the deposition here today, was the central issue
8 in dispute before the Commission back on February
9 1st, 1994, whether or not the County was an STS
10 provider, or was the issue something else?

11 A. The issue was actually something else.
12 It had to do with the entrance facilities and the
13 placement of the demarcation point and the use of
14 the particular entrance facilities.

15 Q. In this lawsuit, what's the principal
16 issue to your understanding?

17 A. Well, the principal issue is that
18 Miami-Dade County is providing telecommunications
19 services in violation of their charter.

20 The charter basically says that in order
21 to provide -- to be a telecommunications utility,
22 telecommunications company, that they must put
23 forth the proposal in front of the electorate for
24 a vote. And this did not occur.

25 Q. That was not the issue before the

1 Commission on February 1st of 1994, correct?

2 A. Correct.

3 Q. And therefore, again, it was not the
4 issue before the Commission as to whether or not
5 Dade County was operating a telecommunications
6 company; is that correct?

7 A. That's correct. It was not an issue.

8 Q. Okay. By the way, can the Florida
9 Public Service Commission address a violation of
10 the County's charter to your knowledge?

11 A. Not to my knowledge. That should be
12 addressed in the courts.

13 Q. Going back to the 1994 order, Florida
14 Public Service Commission, where it says DCAD
15 provides service to more stations than the state's
16 two smallest local exchange companies, and where
17 Mr. Hope pointed you to some language that made
18 reference that DCAD is a shared tenant service
19 provider, those statements by the Commission, they
20 were -- those were not statements that arose out
21 of a dispute in issue; is that fair?

22 MR. HOPE: Objection to form.

23 A. That's correct.

24 Q. And let me refer you to Mr. Tubaugh's
25 memo of January 16th, 1995, Exhibit 10, where he

1 makes a general statement that DCAD is providing
2 shared tenant services. Have you discussed this
3 memo with Mr. Tubaugh?

4 A. No. I have not.

5 Q. Do you know whether or not Mr. Tubaugh
6 had seen any agreements between DCAD and Centel,
7 or any operative agreements that were in place at
8 the time for the provision of STS services at the
9 airport?

10 A. I don't know that he did.

11 Q. Do you even know whether the Florida
12 Public Service Commission, before they entered
13 their order on February 1st, 1994, had seen any of
14 the agreements between Dade County and Centel?

15 A. No, I don't.

16 MR. HOPE: No, you don't know?

17 THE WITNESS: I don't know that they
18 saw any of those documents.

19 Q. Who would be in the better position to
20 evaluate and determine who was actually providing
21 telecommunications services in 1994 when this
22 order was entered into? Would it be the Florida
23 Public Service Commission in a dispute where that
24 wasn't the issue, or would it be the parties, that
25 being DCAD and Centel, who would be in a better

1 position to know that?

2 MR. HOPE: Object to form.

3 A. Certainly, the County and DCAD have
4 knowledge of how and when they were providing
5 telecommunications services at the airport, and
6 whether or not it was being provided, and to who
7 was providing service just to the administrative
8 offices, or who was providing services to more
9 than just the County's operations. The County and
10 Centel would know.

11 Q. And would one look to the agreements
12 that were in place at that time in 1994 between
13 the County and Centel to get some idea and
14 instruction as to who was actually the provider of
15 telecommunications services, or operation of
16 telephone utilities?

17 MR. HOPE: Object to form.

18 A. Those would be the appropriate
19 documents. But they were not necessarily -- those
20 were not necessarily documents for the resolution
21 of this particular dispute.

22 Q. My question, though, is would you agree
23 with me that one would look to the operative
24 documents and agreements between the County and
25 Centel to get appropriate instruction as to who

1 was providing the shared tenant services at the
2 airport at that time in 1994?

3 MR. HOPE: Objection to form.

4 A. Yes.

5 Q. Now, let's look at those documents. I'm
6 going to ask you to put Defendant's Exhibit 4 and
7 Defendant's Exhibit 6 in front of you. Documents
8 that Mr. Hope has questioned you about in this
9 deposition.

10 Do you have those in front of you?

11 A. Yes.

12 Q. These documents are dated 1990. Do you
13 agree with me on that?

14 A. Yes.

15 Q. If I could ask you to look to Exhibit 4,
16 which is the Resolution Approving Equipment Lease
17 and Maintenance Agreement and Shared Tenant
18 Service Agreement with Centel. That's a County
19 resolution.

20 I ask you to turn to the third page of
21 that document, that exhibit, which is entitled
22 memorandum of July 24, 1990. Do you see that
23 page?

24 A. Yes, I do.

25 Q. Does it lay out a recommendation which

1 supports the resolution?

2 A. Yes, it does.

3 Q. Does it say that under the
4 recommendation it is recommended that the Board of
5 County Commissioners approve the following two
6 agreements with Centel Communications Company?

7 I'm going to skip to number two. It
8 says a shared airport tenant service agreement by
9 which Centel shall provide telephone service to
10 airport tenants and users. Did I read that
11 correctly?

12 A. Yes, you did.

13 Q. What's your understanding in 1990 of the
14 agreement that is entered into by and between the
15 County and Centel as to who was going to provide
16 the shared tenant services?

17 A. Based on that statement, Centel would be
18 providing the telephone service to the airport
19 tenants and users.

20 Q. Again, the order that Mr. Hope showed
21 you was a 1994 order, correct?

22 A. Correct.

23 Q. This is a 1994 agreement, correct?

24 A. A 1990 agreement.

25 Q. A 1990 agreement. I'm sorry.

1 Let's talk about timing. Was the term
2 of the 1990 agreement eight years?

3 If you look at the bottom of that page
4 on Exhibit 4 that we just looked at, in the
5 background section where it says the County
6 authorizes Centel for a period of eight years from
7 acceptance. Does it appear to be an eight year
8 term?

9 MR. HOPE: Object to form.

10 A. Yes.

11 Q. If you go eight years from 1990, do you
12 get to 1998?

13 A. According to my math you do.

14 Q. Would that encompass the time period
15 from which the Florida Public Service Commission
16 order was entered on February 1st of 1994?

17 A. Yes, sir, it does.

18 Q. So at least for purposes of this
19 deposition, without any other information, would
20 you agree that these agreements between Centel and
21 Dade County were operative when the Florida Public
22 Service Commission issued its order on February
23 1st, 1994?

24 A. Yes. They'd be right in the middle of
25 the period.

1 Q. Let me ask you some questions as to what
2 the parties contemplated and agreed as to who
3 would be providing the shared tenant services at
4 that time.

5 If I could ask you to go to the Shared
6 Airport Tenant Service Agreement between Centel
7 and the County, which is Exhibit 6. Do you have
8 that in front of you?

9 A. Yes.

10 Q. Now, this is an agreement between the
11 County and Centel, correct?

12 A. That's correct.

13 Q. I ask you to turn to page two, scope of
14 the agreement. Can you read 3A for me, the first
15 clause there?

16 A. "Centel agrees to use its best efforts
17 to establish, market and sell SATS to tenants and
18 users at the airport and at the hotel, except for
19 the department itself, and those department
20 accounts specifically identified by the
21 department."

22 Q. What do you understand that language to
23 suggest as to who was providing the shared airport
24 tenant services at that time?

25 A. Appears to be Centel.

1 Q. Now, let me ask you to turn to page
2 seven of this agreement, paragraph 9B. And again,
3 as to the issue as to who was providing -- who is
4 the shared airport tenant service provider,
5 Mr. Hope pointed you to with respect to the
6 commission order. Let's see what the parties say
7 here. Can you read 9B for me.

8 A. "Because the parties contemplate that
9 the County may provide the SATS for the airport
10 and hotel systems at some point in the future,
11 such documents shall provide at a minimum that the
12 contracts with customers are fully assignable to
13 the County by Centel."

14 Q. Does that language indicate in any
15 manner, shape, or form that the County is
16 providing SATS at the airport or at the hotel at
17 this point in time, the time that this contract
18 was entered into?

19 MR. HOPE: Objection to form.

20 A. It indicates that it was Centel
21 providing the service. That the County was not.

22 Q. Do you see the language which says that
23 because the parties contemplate? Does that mean
24 to you that the parties actually sat down and
25 discussed this issue of who is and who is not the

1 shared airport tenant service provider?

2 A. Yes, it does. Because it means --
3 contemplate means they have discussed it. For
4 them to point it out in the contract they have
5 discussed it.

6 Q. Then it goes on to say that the County
7 may provide the shared airport tenant services for
8 the airport and the hotel systems at some point in
9 the future.

10 Can anyone reading that language
11 conclude correctly that at this point in time the
12 County was not providing and was not the provider
13 of shared airport tenant services here at the
14 airport --

15 MR. HOPE: Objection to form.

16 Q. -- at the time of this agreement was
17 entered into?

18 MR. HOPE: Objection to form.

19 A. I don't how anybody could interpret
20 that the County was providing any services at this
21 point in time, because it says in the future. May
22 provide in the future.

23 Q. That's if anybody read this contract.

24 A. Correct.

25 Q. Now, for somebody on the outside just

1 looking in at this operation, could you see how
2 somebody may get a different view, or incorrect
3 view of actually who was the provider and who is
4 not the provider, without being able to look at
5 what the agreements were between the parties?

6 A. Absolutely it would be difficult.
7 Absolutely it would be difficult for anyone to
8 demonstrate who was providing the service without
9 totally looking at the documents and the
10 underlying contracts.

11 Q. Just a point of housekeeping. These
12 Centel agreements, it was 1990 when they were
13 entered into, approximately, correct?

14 A. Correct.

15 Q. Do you know what happened to Centel
16 Communications Company in 1991? Did it change
17 form in any manner, shape, or form?

18 And I'm going to direct you to
19 Plaintiff's Exhibit B, the Second Amended
20 Complaint, and Exhibit A, the footnote one. Can
21 you answer that question for me?

22 A. I'm looking at Resolution R-310-23. And
23 there's footnote one. It says in 1991 Centel
24 Communications Company (Centel) was acquired by
25 WillTell Communications System (WillTell). And in

1 1997, Williams Communication Solutions, LLC was
2 created from the merger of WillTell and Nortel
3 Communication Systems.

4 Q. So in summary fashion, just for
5 housekeeping and the record being clear, in 1991
6 after Centel entered into the agreement, Centel
7 was acquired by WillTell, correct?

8 A. That's correct.

9 Q. So absent any other information you may
10 be aware of, it appears WillTell was the
11 appropriate party in 1991 going forward, to
12 include 1994 when the Public Service Commission
13 entered this order that Mr. Hope showed you as
14 Defendant's Exhibit 8; is that a fair statement?

15 A. Yes.

16 Q. Based on everything that you're aware of
17 at present?

18 MR. HOPE: Objection to form.

19 A. Yes.

20 Q. When I look at Defendant's Exhibit 8, is
21 WillTell mentioned at all in the FPSC order? Take
22 a minute to look through.

23 A. I don't see any mention of WillTell or
24 Centel.

25 Q. So if WillTell or Centel wasn't even

1 mentioned in the Florida Public Service Commission
2 order, would that lead one to believe that the
3 Commission, you know, easily referred to Dade
4 County as shared airport tenant service providers
5 without reference to the actual agreements between
6 Dade County and Centel or WillTell?

7 MR. HOPE: Objection to form.

8 A. Yes. Because I don't believe in those
9 documents exactly who was providing the
10 telecommunications services was really the focus
11 of this particular case. It was not necessarily
12 necessary to make a determination in this case.

13 Q. And because WillTell obviously isn't
14 mentioned in the order, it makes sense to conclude
15 that they just referred to Dade County and lopped
16 everything together, and perhaps, you know,
17 incorrectly?

18 MR. HOPE: Objection to form.

19 A. Correct.

20 Q. And also let me, just for purposes of
21 the record, although I'm sure we'll talk to
22 Mr. Tubaugh at some point in time, in his memo
23 Exhibit 10, does he mention Centel or WillTell?

24 A. No, he does not.

25 Q. Let me point you to paragraph three,

1 page three of the 1990 agreement, Exhibit 6. Do
2 you see paragraph four where it says shared
3 airport tenant service?

4 A. Yes, I do.

5 Q. It says, "Centel also acknowledges that,
6 because the Florida PSC only recently approved a
7 SATS concept at airports, and because such
8 approval was based in large part upon showing that
9 airports in Florida needed a reliable internal
10 telephone system that would allow emergency and
11 security problems to be handled in a prompt and
12 most efficient manner without having to access
13 off-campus local telephone company equipment, the
14 Centel-provided SATS at Miami International
15 Airport will require the most efficient, effective
16 and reliable telephone service possible."

17 Did I read that correctly?

18 A. Yes, you did.

19 Q. Is that statement consistent with your
20 understanding of what you know has commonly been
21 referred to as the airport exemption, or am I
22 mistaken?

23 MR. HOPE: Objection to form.

24 A. No. I think that is the basis for
25 having the airport exemption, so you can move the

1 traffic and the customers through the airport in a
2 safe and efficient manner.

3 Q. And in addressing that issue, did the
4 parties apply the exemption in this paragraph to
5 the hotel phone service at the airport, or just a
6 certain portion of service?

7 MR. HOPE: Objection to form.

8 A. Well, the exemption is only for the
9 telecommunications services that are necessary to
10 allow for traffic and passengers to move through
11 the airport successfully.

12 But even with that, that's in the
13 exemption of the shared tenant service concept.
14 You can be a telecommunications company utility
15 and the exemption has no bearing on whether or not
16 you're a telecommunications company or utility.

17 Q. Fair enough. I'm going to ask that in a
18 second.

19 Going back to this language. Do you see
20 this contemplated a reliable internal telephone
21 system in that sentence. What does that mean to
22 you?

23 MR. HOPE: Objection to form.

24 A. That could possibly be relating to the
25 provision of services only to the County's own

1 offices, which of course, if you provide service
2 only to yourself, then SATS doesn't even enter
3 into it. But to the extent you provide service to
4 other than yourself, then SATS does enter into it.

5 Q. And going back to your statement before,
6 even if the County were to avail itself of the
7 airport exemption rule as we've discussed in this
8 deposition, does that have any bearing on whether
9 or not they are a telecommunications company as
10 the law currently defines it?

11 A. No. They can be a telecommunications
12 company and not be a shared tenant service
13 provider. Or a shared tenant service provider is
14 a telecommunications company, but a
15 telecommunications company is more broad than just
16 shared tenant services.

17 You can trace that back through the
18 statutes, as I've done a couple times, through the
19 definitions.

20 Q. Does the airport exemption rule have any
21 bearing on whether or not an entity is a
22 telecommunications company or a telephone utility?

23 A. No, it does not.

24 Q. And in this contract that the parties
25 contracted to, that being Centel and the County,

1 did not the County and Centel contemplate and
2 agree that the Florida Public Service Commission
3 rules at least apply?

4 A. Yes, they did.

5 Q. And from your experience and knowledge
6 that Mr. Hope has asked you about, if the parties
7 are agreeing that the Florida Public Service
8 agreement and conditions apply, would they not be
9 agreeing that they are subject to PSC regulation
10 and control?

11 A. Yes.

12 Q. You were asked a number of questions
13 during the deposition about your definition of
14 providing telecommunication services to the
15 public. I want to focus on, you know, those
16 questions that Mr. Hope asked you about providing
17 service to the public.

18 He asked you at one point in time for
19 any authority that you had to support BellSouth's
20 position that they are providing
21 telecommunications services to the public.

22 Do you have to look any further than
23 their Answer to the Complaint in this case where
24 they admit they're an STS service provider for
25 authority on that point?

1 MR. HOPE: Objection to form.

2 A. No.

3 Q. Can you explain that, please.

4 A. They admit in their response that they
5 are a shared tenant service provider. By
6 definition, of course, the shared tenant service
7 provider is a telecommunications company utility
8 service provider.

9 And again by definition, a
10 telecommunications company provides two-way
11 telecommunications to the public for hire. And by
12 definition, the admission of being a shared tenant
13 service provider in itself, you're providing
14 services to other than yourself within the
15 airport, the County is. The County is providing
16 service to other than itself within the airport.
17 And anything other than itself is the public.

18 Q. So along those lines in the hypothetical
19 that Mr. Hope provided to you during this
20 deposition about the County owning a hotel and
21 providing telephone services at that hotel, what
22 would your answer be as to whether or not they're
23 an STS provider in that circumstance as he
24 described?

25 MR. HOPE: Objection to form.

1 A. My understanding is that the County owns
2 the hotel. The County runs the hotel. The hotel
3 is providing telephone service to the hotel. The
4 County is providing telephone service to the hotel
5 and is providing telephone service to itself.

6 Q. Okay. Now, as you understand the
7 situation at the airport generally now, is the
8 County providing telephone services to itself or
9 not?

10 MR. HOPE: Objection to form.

11 A. The County is providing
12 telecommunications service to more than just
13 itself. It's providing it to multiple tenants at
14 the airport.

15 Q. Which includes, just in general, does it
16 include airlines?

17 A. Airlines. It includes concessions.
18 Other companies that are located within the
19 airport.

20 Q. Along the same lines regarding the
21 "public," Mr. Hope asked you some questions as to
22 who has more latitude to deny telephone service to
23 a customer. Do you remember that series of
24 questions?

25 A. Yes.

1 Q. And correct me if I'm wrong, but I think
2 at the end of the day your testimony in essence
3 was the County has a bit more latitude to deny
4 service to customers than BellSouth does; is that
5 a fair representation of your testimony in
6 summary?

7 MR. HOPE: Objection to form.

8 A. Yes, it is.

9 Q. Can you explain why BellSouth has a
10 little bit more restriction on it as a company
11 when it comes to denying service to customers than
12 the County has as an STS provider, or maybe
13 anybody else out there?

14 MR. HOPE: Objection to form.

15 A. Well, I think this was talked about a
16 little towards the very beginning of the
17 deposition.

18 But basically, BellSouth is an incumbent
19 local exchange company. In other words, was in
20 business before local competition, true local
21 competition became a reality.

22 According to statute 364 that was
23 revised in 1995, competitors of BellSouth, other
24 providers of telecommunications services, are not
25 subject to the same rules and regulations that

1 BellSouth is subject to in order to stimulate
2 competition. That was the thought and the purpose
3 of the rules.

4 Therefore, competitors of BellSouth are
5 allowed to pick and choose and make their own
6 determinations on their marketing and who they
7 want to serve and who they don't want to serve.

8 So they're still telecommunications
9 companies, but they do have a lesser degree of
10 restriction and regulation than BellSouth at this
11 point in time.

12 Q. Now, in summary, am I correct in saying
13 that BellSouth has a little more restriction
14 because they're an incumbent provider, or provider
15 of last resort?

16 A. That is correct.

17 Q. That distinguishes BellSouth from, you
18 know, almost every other telecommunications
19 company except for the limited number of
20 incumbents?

21 MR. HOPE: Objection to form.

22 A. That's correct.

23 Q. Now, the fact that the County and/or any
24 of the other telecommunications companies, the
25 fact that they may have a little bit more leeway

1 in denying service to customers, does that in any
2 manner, shape, or form affect the issue as to
3 whether or not these companies or the County is
4 "serving the public"?

5 MR. HOPE: Objection to form.

6 A. Absolutely not.

7 Q. Mr. Hope asked you a number of questions
8 about BellSouth's allegations as to "suffering a
9 special injury" in this case. Do you remember
10 those questions?

11 A. Yes.

12 Q. You also testified that you are not a
13 lawyer and that people in the law department at
14 BellSouth, or other lawyers at BellSouth, may have
15 more knowledge than you do on that issue; is that
16 your testimony?

17 A. Correct.

18 Q. Then he asked you has BellSouth
19 quantified the lost business opportunities and so
20 forth, or come up with a dollars and cents number.
21 Do you remember him asking you that?

22 A. Yes.

23 Q. Do you know whether or not in this
24 lawsuit we're asking the County to pay damages in
25 any way, shape, or form, money, to BellSouth on

1 because of this issue?

2 A. No. We're not asking for damages.

3 Q. But, to the extent Mr. Hope has asked
4 you about quantifying lost business opportunity
5 and asked you about customers who may have gone to
6 the County, may have gone from BellSouth to the
7 County, did I understand your testimony correctly
8 that in order for BellSouth to review that and
9 accurately address that issue, that BellSouth
10 would need the County's current customer list here
11 at the airport?

12 MR. HOPE: Objection to form.

13 A. Yes, we would.

14 Q. How would that customer list help
15 BellSouth identify lost business opportunities?

16 A. It would give us an idea of the
17 customers that are being served by the County.
18 Because BellSouth, certainly, or any other local
19 provider would have had the opportunity to serve
20 those customers.

21 Q. And would identifying the customers
22 allow us to discuss with those customers their
23 choice as to service?

24 A. Absolutely. We could ask them what went
25 into their thought process.

1 Q. Now, the questions I asked you before
2 about service to an entity other than itself, that
3 related to the issue of "the public;" is that
4 correct?

5 A. That's correct.

6 Q. And my questions about the County owned
7 a hotel. Or picking up, I think, on Mr. Hope's
8 hypothetical questions, I believe they were.

9 But let me ask you, stepping apart on a
10 different matter having to do with the airport as
11 a whole, do you understand that there is a hotel
12 on the airport property as a matter of fact here?

13 MR. HOPE: Objection to form.

14 A. Yes.

15 Q. Without dealing in hypotheticals, when
16 you look at the provision of STS services at the
17 airport to commercial entities such as airlines,
18 shops, and the hotel, would the hotel fall in, in
19 your view, as being just another third party which
20 the County is providing STS services to?

21 MR. HOPE: Objection to form.

22 A. As the way I understand that it's being
23 served today, yes.

24 Q. You were asked a few questions about the
25 resolutions. You were asked -- there were

1 allegations, particularly in paragraph 32 of the
2 Second Amended Complaint, if you could turn to
3 that, where BellSouth alleged that based on the
4 resolutions that were entered into in 2002,
5 BellSouth has taken the position that that is when
6 the County began providing telecommunications
7 services at the airport.

8 Mr. Hope, in his questioning, asked you
9 the particular passages or language in the
10 resolution that support that position. Do you
11 recall that question?

12 A. Yes.

13 Q. Would it be more appropriate to look at
14 the resolutions as a whole on that issue, or to
15 pick out particular pieces of language?

16 MR. HOPE: Objection to form.

17 A. Well, you definitely need to look at the
18 resolutions as a whole. The passages I read just
19 emphasize and bring focus to the particular issues
20 that were being asked. But the resolutions as a
21 whole should be considered.

22 Q. And the resolutions as a whole include
23 and adopt and authorize a number of contracts and
24 other business transactions and monetary
25 consideration and non-monetary consideration going

1 back and forth between the parties; is that
2 accurate?

3 MR. HOPE: Objection to form.

4 A. That's accurate.

5 And it should include the
6 recommendations and the total contracts. Anything
7 that goes along, and any input that goes into
8 those resolutions.

9 Q. Mr. Hope asked you a series of
10 questions, if I could take you back to early
11 yesterday, that he pointed or questioned you about
12 the various tariffs that had been filed by
13 BellSouth with the Florida Public Service
14 Commission. Do you recall those questions about
15 the tariffs?

16 A. Yes.

17 Q. And in those questions, do you recall
18 him making continual reference to the use of the
19 word territory, as it relates to the territory
20 that BellSouth serves?

21 A. Yes.

22 Q. Now, when we used the word territory in
23 that context, were your answers given only as it
24 related to BellSouth as an incumbent service
25 provider and the tariffs it filed?

1 MR. HOPE: Objection to form.

2 A. Yes.

3 Q. The territory was strictly in
4 relationship to BellSouth's service area?

5 Were you meaning to use the word
6 territory as it relates to any provision of
7 service that the County is currently offering?

8 A. No. Territory, in the particular
9 context we were talking about, was strictly
10 confined to BellSouth's servicing area.

11 Q. And the maps that are filed with the
12 commission, correct?

13 A. That's correct.

14 Q. Are there any restrictions that you're
15 aware of on an area that can be served by an STS
16 service provider, or CLEC, or other non-incumbent
17 telecommunications companies?

18 MR. HOPE: Objection to form.

19 A. There are really no restrictions as to
20 how large an area or how small an area a
21 competitor or someone who provides
22 telecommunications service can serve.

23 Q. In the telecommunications business,
24 would you agree that the word territory can mean
25 just area, any area?

1 A. Any designated area. Any area as you
2 want to designate it.

3 MR. HOPE: Objection to form.

4 Q. Is that a well-understood principle, or
5 an archaic principle?

6 MR. HOPE: Objection to form.

7 Q. Or definition, I should say, from your
8 experience?

9 A. In my experience, the way we've used it,
10 it's accepted. It's defined. Especially with the
11 introduction of local competition. It's any area,
12 any area, that is located that they designate to
13 serve. The individual providers designate to
14 serve.

15 When you say for any other, for any
16 telecommunications company, territory means an
17 area.

18 Q. Could that area be the property on which
19 the airport is located here in Miami-Dade County?

20 A. It could be the property. Could be the
21 building, yes.

22 MR. GOLDBERG: No further questions.

23 MR. HOPE: I just have some brief
24 requestioning.

25 REDIRECT EXAMINATION

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1 BY MR. HOPE:

2 Q. You just went through initially with
3 your counsel a line of questions dealing with the
4 jurisdiction of the Florida Public Service
5 Commission to deal with alleged violations of the
6 charter which have been raised in the Second
7 Amended Complaint; is that correct?

8 A. We discussed it, yes.

9 Q. Isn't it true that the Second Amended
10 Complaint also has two other counts, Count III and
11 IV, which deal specifically with the Florida
12 Public Service Commission's jurisdiction?

13 Count III starts on page 14. And Count
14 IV starts on page 15.

15 MR. GOLDBERG: We'll stipulate those
16 counts pertain to what we believe the
17 County's obligations are as relates to the
18 Florida Public Service Commission.

19 Q. Then let me go to my next question.

20 Isn't it correct that the Florida Public
21 Service Commission has jurisdiction to resolve
22 Count III and IV in BellSouth's Second Amended
23 Complaint?

24 MR. GOLDBERG: Objection to the form
25 of the question. Also calls for a legal

1 conclusion.

2 A. Well, I think that I don't know how much
3 decision making is needed, because the County has
4 already responded that they are a shared tenant
5 service provider.

6 Q. That's not my question.

7 I asked whether or not the Florida
8 Public Service Commission had jurisdiction to
9 resolve the issues raised in those two counts?

10 MR. GOLDBERG: Same objection. Calls
11 for a legal conclusion.

12 And object to the form of the
13 question.

14 A. The Florida Public Service Commission
15 does have jurisdiction over the provision of
16 shared tenant service provider certificates.

17 Q. Does the Florida Public Service
18 Commission have jurisdiction over chapter 364
19 Florida statutes and the provisions?

20 A. They are given certain levels of
21 jurisdiction. Yes, they are in that particular
22 statute.

23 Q. Are they the only body that has
24 jurisdiction?

25 MR. GOLDBERG: Objection to the form

1 of the question.

2 Q. Primary jurisdiction over chapter 364 of
3 the Florida statutes?

4 MR. GOLDBERG: Objection to the form
5 of the question.

6 A. The Florida Commission has outlined
7 duties in chapter 364.

8 Now, to the extent someone doesn't agree
9 with the Florida commission or so forth, they can
10 appeal to the court.

11 Q. If an entity is operating in violation
12 of obtaining a Certificate of Necessity from the
13 Florida Public Service Commission, can that
14 complaint be brought and resolved in front of the
15 Florida Public Service Commission?

16 MR. GOLDBERG: Objection to the form.
17 Calls for a legal conclusion. But you can
18 answer.

19 A. My understanding is that yes, in order
20 to resolve the issue outlined here about the
21 shared tenant service certificate and in violation
22 of that, yes, the commission is usually the body
23 that would resolve that particular issue.

24 Q. Last --

25 A. They should not resolve -- they don't

1 have any authority to resolve the issue of the
2 violation of the charter.

3 Q. Has not BellSouth used the Complaint
4 process to adjudicate matters governed by the
5 Florida Public Service Commission?

6 MR. GOLDBERG: Objection to the form
7 of the question.

8 A. Are you saying have we used it
9 previously for other issues or whatever?

10 Q. Correct.

11 A. Yes, we've used that complaint process.

12 Q. Does the Florida Public Service
13 Commission have limits in its findings of fact
14 that are entered in its orders?

15 A. I don't know that I can answer that
16 question. I think that's -- I don't know that I
17 can answer that question.

18 Q. Your answer is you don't know?

19 A. I don't know.

20 I don't understand your question. Let
21 me put it that way. Exactly understand your
22 question.

23 Q. Well, you went through a line of
24 questions where you talked about -- and we're
25 referring to Defendant's 8 -- where you talked

1 about the central issue of the order. And then
2 you made assessments based upon the central issue
3 to findings of fact which were in this order.

4 So based upon you making that
5 assessment, do you know whether or not there are
6 limitations on the findings of fact that the
7 Florida Public Service Commission can make when it
8 produces an order?

9 MR. GOLDBERG: I object to the form
10 of the question.

11 A. I do know -- I know how a lot of these
12 proceedings are carried forth, and the processes
13 that are followed in resolving certain issues in
14 front of the commission. There are findings of
15 fact.

16 The commission -- there are usually
17 issues that are laid out prior to doing discovery
18 and so forth. And the focus is on those
19 particular issues and that's as far as they go.
20 They don't necessarily delve into every aspect.
21 They focus on the issue and they stay focused on a
22 particular issue.

23 Q. But do you know whether or not the
24 Florida Public Service Commission is limited in
25 its ability to look at various things and in its

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1 findings of fact?

2 MR. GOLDBERG: Objection to the form
3 of the question.

4 A. They are limited in that they have
5 limitations on what their authority is. There are
6 certain aspects of telecommunications that they
7 have no authority over.

8 Q. So as long as the issue is dealing with
9 something that they have authority, they can
10 investigate it?

11 A. They can investigate it as long as it's
12 within the confines of that docket. They are
13 limited to examining the issues that are
14 identified in the docket.

15 Q. Is the Florida Public Service Commission
16 denied the ability to discuss primary and
17 secondary issues in its orders?

18 MR. GOLDBERG: Objection to the form.

19 A. They are limited. They are supposed to
20 only address the issues that were identified in
21 the docket. They are not to go outside of those
22 issues.

23 Q. Okay.

24 A. And if they do, it has to be referred to
25 possibly another proceeding.

1 Q. Okay. So based upon what you're saying,
2 if something appears in one of the Florida Public
3 Service Commission's orders, based upon what you
4 just said, does that mean that the Public Service
5 Commission has the authority to look at that
6 issue?

7 MR. GOLDBERG: Objection.

8 Mischaracterizes testimony.

9 Objection to the form.

10 You can answer.

11 A. As I said, they are supposed to look
12 specifically at issues that were raised in the
13 docket and they are supposed to address only those
14 particular issues.

15 Q. Okay. You use the term central issue.
16 Can the Florida Public Service Commission, when
17 it's coming out with an order for its docket,
18 prioritize issues as being central and non-central
19 issues?

20 A. No. They don't have a priority. I
21 mean, they're issues in the docket.

22 Q. So central issues, as you've used it, is
23 just your own terminology?

24 A. It's the issues. The issues that are
25 identified in the docket.

1 Q. But that's your terminology and not the
2 Florida Public Service?

3 A. Yes. Central is my terminology.

4 Q. Can the Florida Public Service
5 Commission make multiple findings in its orders?

6 A. Yes, they can.

7 MR. GOLDBERG: Let me just object to
8 the form of the question. And just, you
9 know, the document speaks for itself.

10 A. They can make multiple findings based on
11 the issues that are in the docket.

12 Q. Just like you just talked about the
13 central issue was your terminology, there are
14 issues -- you also use the term primary issue.
15 Primary issue, is that your terminology also?

16 A. Yes.

17 In other words, there are -- I probably
18 shouldn't have used that terminology. There are
19 issues that are specifically laid out in the
20 proceedings. And those are the issues that the
21 parties are to address. Those are the issues that
22 are to be -- if it goes to hearing, those are the
23 issues that testimony is supposed to be presented
24 to. The testimony is not supposed to go outside
25 of those issues.

1 Q. Okay. You have no personal knowledge as
2 to what documents were reviewed by the Florida
3 Public Service Commission in its final
4 determination that is laid out in Defendant's 8?

5 MR. GOLDBERG: Objection to the form
6 of the question.

7 A. No, I do not.

8 Q. You don't have any personal knowledge as
9 to what documents or information Mr. Tubaugh used
10 as a basis for his January 16, 1995 memorandum?

11 A. No, I don't.

12 Q. I also refer you back to what's been
13 marked as Defendant's 6, which is the Shared
14 Airport Tenant Services Agreement. And your
15 counsel directed you to section 9, which talked
16 about in sub-paragraph B, because the parties
17 contemplate that the County may provide the SATS
18 for the airport and hotel systems at some point in
19 the future. And you focused and went through a
20 lot of questioning on this specific document.

21 My question is based solely on the
22 Shared Tenant Service Agreement. You have no
23 personal knowledge as to at what point in time the
24 County may have started providing shared airport
25 tenant services at Miami International Airport?

1 MR. GOLDBERG: Object to form.

2 A. I've already testified to that and read
3 passages from the depositions of the County's own
4 employees that they state that the County started
5 providing telephone service at the airport in
6 2002.

7 Q. That's telephone service?

8 A. Telecommunication service.

9 Q. But you have not stated from the
10 depositions at what point the County provided
11 shared tenant services.

12 A. In Mr. Garcia's deposition, page 61,
13 this is the 2003 deposition the question: Before
14 February of 2002, was the County providing in any
15 way telecommunications services to other tenants
16 at the airport? The answer was no.

17 Q. So I've asked you specifically about
18 shared tenant services. In this answer you're
19 assuming that telecommunication services equates
20 to shared tenant services?

21 A. Well, if you're in no way providing
22 telecommunications services to any tenants at the
23 airport prior to 2002, then the County was not
24 providing shared tenant services.

25 Q. Is there any reference in either

1 Mr. Garcia's deposition, or any other deposition
2 of a County employee, that speaks specifically and
3 uses the specific language shared tenant service
4 and that the County was not providing shared
5 tenant services before 2002?

6 MR. GOLDBERG: Objection to the form
7 of the question. Asked and answered.
8 Take your time.

9 A. Well, just the actual resolution
10 R-310-02. And the actual contract says that the
11 County is assuming the -- is going to assume
12 the -- is going to take over possession of the
13 telecommunications services and the shared airport
14 tenant services. There's nothing here to lead me
15 to believe that there was any provision of shared
16 tenant airport services by the County prior to
17 2002.

18 And here again, if you are not providing
19 telecommunications services prior to 2002, as
20 admitted by your own two employees, then there is
21 no way you could have been providing shared tenant
22 services.

23 Q. That's fair enough.

24 But there's no document that
25 specifically states that the County was not

1 providing shared tenant services prior to 2002?

2 MR. GOLDBERG: Objection. It's
3 argumentative. She's asked and answered
4 it, you know.

5 A. I mean, I don't see anything that tells
6 me that they were.

7 Q. But you don't see anything that says
8 they were not? That's my question.

9 MR. GOLDBERG: Asked and answered.

10 Q. That specific terminology.

11 A. I'd have to review -- I didn't look
12 specifically for that particular word.

13 Because shared tenant and
14 telecommunications, if you're not providing
15 telecommunications services, you're not providing
16 shared tenant services. So I mean, it's
17 impossible.

18 Q. Based solely -- back to my original
19 question. Based solely on the shared airport
20 tenant service agreement, you do not know as you
21 sit here today, based solely on this agreement, at
22 what point in time the County may have started
23 providing shared airport tenant services?

24 MR. GOLDBERG: Can you identify what
25 agreement you're holding up?

1 MR. HOPE: I'm holding up what's been
2 marked as Defendant's 6, which is the
3 shared airport tenant service agreement.

4 MR. GOLDBERG: In what year?

5 MR. HOPE: It is dated -- the stamped
6 copy that I have -- well, it was entered
7 into in 1990, retroactive.

8 A. Based solely on this, it appears to me
9 the County was not providing telecommunications
10 services nor shared tenant services. It was
11 Centel.

12 Q. When the agreement was entered into in
13 1990?

14 A. Based solely on this agreement. Looking
15 at this document by itself.

16 Q. Right.

17 My question is based solely on this, you
18 do not know at what point during the life of this
19 agreement the County started providing or could
20 have commenced providing shared airport tenant
21 services?

22 A. Based solely on this document, you're
23 correct, yes.

24 Q. So based solely on this document, the
25 County, by 1994, could have been the provider of

1 the shared airport tenant services at Miami
2 International Airport?

3 A. The problem I have with answering that
4 is I know differently.

5 But based on just this document, it
6 doesn't tell me -- I can't tell from this document
7 when it ended. I mean, it was for the term of
8 eight years. As far as I know, it went for eight
9 years.

10 Q. So to answer my question, based solely
11 on this document --

12 A. I've already answered your question.

13 Q. The County could have been providing
14 shared tenant services by 1994?

15 A. Based solely on this document I can't
16 tell.

17 Q. I just want to refer you to Defendant's
18 5, which is the Equipment Lease and Maintenance
19 Agreement.

20 A. Which one?

21 Q. Defendant's 5, Equipment Lease and
22 Maintenance Agreement.

23 A. Five. Okay.

24 Q. Page three. Could you just read for me
25 what the definition of equipment is? It's

1 sub-paragraph N under Article II.

2 A. "Equipment shall mean all or any of the
3 component parts of the airport system, shared
4 airport tenant system, and hotel system, including
5 but not limited to telephone handsets, fiber
6 optics, cable, conduit, switches, software and
7 other equipment provide by Centel."

8 Q. Can you read on page two, sub-paragraph
9 D, the definition of airport system?

10 A. "Airport system shall refer to the SL1XT
11 telecommunications switch and equipment installed
12 in connection therewith, and other DCAD approved
13 systems installed by Centel, including the
14 associated software subleased to County by
15 Centel."

16 Q. Is that switch the type of PBX which
17 you've previously referred to which is necessary
18 for the provision of shared tenant services?

19 A. Well, it can be any switch. This type
20 of switch, yes.

21 Q. The last thing I need you to read for me
22 is on page four, Article III, Scope of Agreement.
23 The first paragraph under A, lease of equipment?

24 A. "Centel agrees to lease to the County
25 and County agrees to lease from Centel the present

1 airport system for the term and at the rates
2 provided for herein and subject to additions and
3 changes as further provided for herein."

4 Q. Was BellSouth a party to either the
5 Equipment and Lease Agreement, or the Shared
6 Airport Tenant Services Agreement?

7 A. I don't know. I don't know that we
8 were. I don't know.

9 We're not a party to this agreement, if
10 that's what you're asking.

11 Q. That's my question. And based on these
12 two agreements, you have no actual knowledge of
13 either what was discussed by the parties or the
14 actual relationships between the parties, do you?

15 A. I was not involved in the negotiations
16 between the parties, no.

17 MR. HOPE: I have no further
18 questions. You have the right --

19 MR. GOLDBERG: She'll read.

20 (Thereupon, having not been waived, the
21 proceedings were concluded.)
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Nancy Sims

Sworn to and subscribed before
me this day of _____, 2005.

Notary Public in and for the
State of Florida at Large.

KRESSE & ASSOCIATES, INC.
(305) 371-7692

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STATE OF FLORIDA)
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) SS
COUNTY OF DADE)

I, Beverly Lisa Rabatie, Certified Shorthand Reporter in and for the County of Dade, State of Florida, do hereby certify:

That prior to being examined, the witness named in the forgoing deposition, NANCY SIMS, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken before me at the time and place set forth and was taken down by me in shorthand and thereafter reduced to computerized transcription under my direction and supervision, and I hereby certify the foregoing deposition is a full, true and correct transcript of my shorthand notes so taken.

I further certify that I am neither counsel for nor related to any party to said action nor in anyway interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 31st day of December, 2004.

Beverly Rabatie

Beverly L. Rabatie, Court Reporter
DD# 095884
Expires March 23, 2006

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KRESSE & ASSOCIATES, INC.
(305) 371-7692

Liebman, Sharon

From: RMoses@PSC.STATE.FL.US
To: mjenkins@miami-airport.com
Subject: Certification Issues

I have been informed that the Miami Airport may be providing telephone service beyond its current authority. Pursuant to Rule 25-24.580, Florida Administrative Code, an airport is exempt from the certification requirements of this commission as long as it is only providing telephone service necessary to ensure the safe and efficient transportation of passengers and freight through the airport facility.

Therefore, 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. If you have questions, please contact me at 850/413-6582. Thank you.

DEFENDANT'S
EXHIBIT

7

BST1505

Liebman, Sharon

From: RMoses@PSC STATE FL US
To: Tubaugh, Wayne
Subject: FW: Mia STS List



SATS Customer List.xls

FYI

-----Original Message-----

From: Pedro Garcia (mailto:FJGarcia@miami-airport.com)
Sent: Monday, March 17, 2003 5:18 PM
To: rmoses@psc.state.fl.us
Cc: Maurice Jenkins; Maria Perez; Anthony Brown
Subject: Mia STS List

Mr. Moses,

Attached is the list that you requested.

<<SATS Customer List.xls>>

Pedro J. Garcia
Chief, Telecommunications
Miami-Dade Aviation Department
Phone: 305 876-7523
Fax: 305 869-1413

> The Miami-Dade County Aviation Department is a public agency subject to
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BST1506

SATS CUSTOMER LIST AS OF 2/03

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ACES GROUP	CENTER FOR DISEASE CONTROL	ADT	AIRPORT PARKING ASSOCIATES (MEYERS)
AEROMEXICO	TRI-COUNTY COMMUTER RAIL	ASI BAGGAGE	AVIATION CLUB B
AEROPOSTAL	US CUSTOMS	ASIG, MIAMI INC	AVIATION CLUB F
AIR FRANCE	USDA, APHIS	AT&T WIRELESS	CLUB AMERICA TWOV
AIR JAMAICA		CAFÉ VERSAILLES	MIAMI INTERNATIONAL AIRPORT HOTEL
AIR TRAN		CARRIES ICE CREAM	N&KI ENTERPRISES
ALASKAN AIRLINES		COMMUNITEL	NFL MANAGEMENT
AMERICAN AIRLINES		DATO ELECTRIC	QUALITY AIRCRAFT (SKYCAPS)
ASERCA AIRLINES		GLOBAL MIAMI JOINT VENTURE	SHUTTLE SERVICES
ATLAS AIR		GUAVA & JAVA	SIRGANY CENTURY
AVIANCA		HMS HOST	TERMINAL REXALL
BRITISH AIRWAYS		INTERMEDIA COMMUNICATIONS	TOP OF THE PORT
COMMODORE AVIATION		MATRIX SYSTEMS	UNICO
CONTINENTAL AIRLINES		MIAMI DUTY FREE	VISTA BLDG MANAGEMENT
COPA		SIRGANY BENGOMO	
CYBER EXPRESS		SITA	
DUTCH CARIBBEAN AIRLINES		SMARTE CARTE	
EVERGREEN AVIATION		UNDERGROUND CONSTRUCTION	
FLAGSHIP AIRLINES		WORLDWIDE CONCESSIONS	
GULFSTREAM AIRLINES		WORLDWIDE FLIGHT SERVICES	
LAN CHILE			
MARTIN AIR			
MEXICANA			
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BST1507

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Dispute between Dade County Aviation Department and BELL SOUTH TELECOMMUNICATIONS, INC. d/b/a SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY related to telephone serving arrangements at airports in Dade County.

DOCKET NO. 931033-TL
ORDER NO. PSC-94-0123-FOF-TL
ISSUED: February 1, 1994

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
SUSAN F. CLARK
JULIA L. JOHNSON
DIANE K. KIESLING
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER REGARDING ACCESS TO FACILITIES AT AIRPORTS

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

I. BACKGROUND

A dispute currently exists between the Dade County Aviation Department (DCAD) and BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company 2 (Southern Bell) over the appropriate telephone serving arrangements at airports operated by Dade County. This dispute has continued over the last several years. The dispute appears to have arisen from the entry of DCAD into the provision of telecommunications service in competition with Southern Bell. At present, Southern Bell and DCAD are cooperating under an interim working agreement. This temporary agreement leaves open the respective liabilities of the parties for the costs of constructing and relocating telephone facilities. The

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parties have agreed that the Commission's decision concerning this matter will be the basis for settlement of each party's financial obligation to the other.

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

Our staff, to no avail, has attempted to mediate this dispute during the several years of its existence. Neither party has proposed a settlement agreeable to the other. After attempting mediation, touring each party's airport facilities, observing problem areas at the airport complex, analyzing each party's position, we propose the following resolution of the dispute.

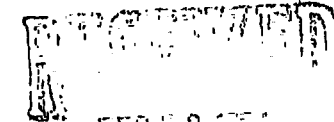
II. RESOLUTION OF THE DISPUTE

The Commission should order the Dade County Aviation Department to allow Southern Bell to have direct access to its customers at airport complexes. Southern Bell's network demarcation point should be within the premises of its customers. DCAD should ensure that Southern Bell is included in planning for new construction so that Southern Bell may reasonably forecast demand and install its own cable. However, Southern Bell should be ordered to utilize DCAD cable when a cable dedicated to Southern Bell's use is already available, if the cable meets appropriate technical standards and the cost of reasonable compensation to DCAD will not exceed Southern Bell's cost of installing its own cable. Southern Bell should have full access to its own network cable and to any DCAD cable which completes Southern Bell's network connections to its customers.

DCAD is the Dade County governmental entity charged with administration of Dade County Airports. DCAD provides service to more stations than the state's two smallest local exchange companies (LECs) combined. It has a multi-million dollar optical fiber backbone system installed at Miami International Airport which serves over 5,000 end user stations through a Northern Telecom switch. Its annual telecommunications operational budget is \$3,000,000.

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DCAD, as a result of the nature of its involvement in the provision of telecommunications services is providing shared tenant services (STS). Although DCAD is a shared tenant services provider, pursuant to Rule 25-24.580, Florida Administrative Code, it is generally exempt from the restrictions placed on other STS providers. Rule 25-24.580 provides as follows:

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.

However, we must also note that Section 364.339(4), Florida Statutes, provides:

The offering of shared tenant service shall not interfere with or preclude a commercial tenant's right to obtain direct access to the lines and services of the serving local exchange telecommunications company or the right of the serving local exchange telecommunications company to serve the commercial tenant directly under the terms and conditions of the commission approved tariffs.

This legislative requirement applies directly to DCAD and its telecommunications operations.

One portion of the dispute concerns the demarcation point. Southern Bell's tariffs include references to the Commission's rule designation of the point at which the LEC networks interface with a customer's inside wiring. This is called the demarcation point. The demarcation point is specified to clearly indicate where the LEC's responsibility ends for providing its tariffed services, including the charges and standards for trouble location, construction, safety, installation, maintenance, repair, rebate and transmission requirements.

The demarcation point is defined in Rule 25-4.0345(1)(b), Florida Administrative Code. The portion of the rule applicable to an airport complex depends on the respective tenant's telephone equipment. Rule 25-4.0345(1)(b) states:

"Demarcation point" is the point of physical interconnection (connecting block, terminal strip, jack, protector, optical network interface, or remote isolation device) between the telephone network and the customer's premises wiring. Unless otherwise ordered by the Commission for good cause shown the location of this point is:

for single Line/Multi customer building -
Within the customer's premises at a point easily accessed by the customer.

for Multi Line Systems/Single or Multi Customer Building - At a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.

These provisions adequately establish the demarcation point for purposes of resolving this portion of the dispute.

A separate portion of the dispute concerns DCAD's desire to require Southern Bell to use DCAD's cable, or pay the full cost of any support structure construction that is otherwise required to provide access for Southern Bell to its airport customers. We note that there is currently no provision in statute or rule that allows a third party, such as DCAD, to provide and be responsible for any portion of a LEC's network. Likewise, there are no provisions for terminating a LEC's service at the location of a third party to be subsequently extended by that third party through non-network facilities to the LEC's customer. However, there is precedent for the LEC using a building owner's cable to gain access to tenants and to pay compensation to the building owner for use of its cable. Rule 25-24.575(11) provides:

If the LEC uses the STS provider's or the STS building owner's cable to gain access to the tenant, the LEC shall be required to provide reasonable compensation. Such compensation shall not exceed the amount it would have cost the LEC to serve the tenant through installation of its own cable. This cost must be calculated on a pro rata basis.

As part of any such arrangement the LEC is fully responsible for compliance with all applicable standards and has full access to the cable involved.

The scenario implicit in Rule 25-24.575(11) is different from the airport situation in that when building is constructed and

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wired, the tenants are not yet identified and facilities requirements to meet demands for LEC service are unknown. However, with airports, LECs already have substantial investments in facilities. LECs also have an obligation to serve their customers.

With respect to the sharing of cable, it appears that there is excessive potential for problems involving shared responsibility for service and maintenance of shared cable. Under these circumstances, for Southern Bell to satisfactorily use DCAD cable, such cable must be fully dedicated to Southern Bell's use.

Accordingly, upon consideration of the foregoing, we find that Southern Bell should be informed of and allowed by DCAD to participate in the airport planning and construction process to ensure Southern Bell has a reasonable opportunity to forecast the need for facilities and to install them in an orderly fashion that is not disruptive to ongoing construction. We also find it appropriate to require DCAD to allow Southern Bell to have direct access to its customers at the airport complex. Southern Bell's network demarcation point shall be at a point consistent with Rule 25-4.0345(1)(b). However, Southern Bell shall utilize DCAD cable when Southern Bell cable is not available, if the DCAD cable is dedicated to Southern Bell's use, meets appropriate technical standards and the cost of reasonable compensation to DCAD will not exceed Southern Bell's cost of installing its own cable. DCAD shall provide Southern Bell full access to its own network cable and to any DCAD cable which completes Southern Bell's network connections to its customers.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that BellSouth Telecommunications, Inc. d/b/a Southern Bell Telephone and Telegraph Company shall be informed of and allowed by the Dade County Aviation Department to participate in the airport planning and construction process as set forth in the body of this Order. It is further

ORDERED that DCAD shall allow Southern Bell to have direct access to its customers at the airport complex as set forth in the body of this Order. It is further

ORDERED that Southern Bell's network demarcation point shall be at a point consistent with Rule 25-4.0345(1)(b). It is further

ORDERED that Southern Bell shall utilize DCAD cable when Southern Bell cable is not available, if the DCAD cable is dedicated to Southern Bell's use, meets appropriate technical

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standards and the cost of reasonable compensation to DCAD will not exceed Southern Bell's cost of installing its own cable. It is further

ORDERED that when Southern Bell utilizes DCAD cable, such cable shall be fully dedicated to Southern Bell's use. It is further

ORDERED that DCAD shall provide Southern Bell full access to its own network cable and to any DCAD cable which completes Southern Bell's network connections to its customers. It is further

ORDERED that if no protest is timely filed according to the requirements set forth below, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of February, 1994.

Director
Division of Records and Reporting

(S E A L)

TWH

by: Kay Helton
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule

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25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on February 22, 1994.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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**THE HOME RULE AMENDMENT AND CHARTER
(AS AMENDED THROUGH OCTOBER 3, 2000)**

**MIAMI-DADE COUNTY
FLORIDA**



The Miami-Dade County Home Rule Amendment to the Florida State Constitution was adopted November 6, 1956.

The Miami-Dade County Home Rule Charter was adopted May 21, 1957.

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HOME RULE AMENDMENT

HOME RULE
AMENDMENT ARTICLE
VIII, SECTION 11 FLORIDA
CONSTITUTION 1885
ARTICLE VIII, SECTION 6
FLORIDA CONSTITUTION
1968

DADE COUNTY, HOME RULE CHARTER.

(1) The electors of Dade County, Florida, are granted power to adopt, revise, and amend from time to time a home rule charter of government for Dade County, Florida, under which the Board of County Commissioners of Dade County shall be the governing body. This charter:

(a) Shall fix the boundaries of each county commission district, provide a method for changing them from time to time, and fix the number, terms and compensation of the commissioners, and their method of election.

(b) May grant full power and authority to the Board of County Commissioners of Dade County to pass ordinances relating to the affairs, property and government of Dade County and provide suitable penalties for the violation thereof; to levy and collect such taxes as may be authorized by general law and no other taxes, and do everything necessary to carry on a central metropolitan government in Dade County

(c) May change the boundaries of, merge, consolidate, and abolish and may provide a method for changing the boundaries of, merging, consolidating and abolishing from time to time all municipal corporations, county or district governments, special taxing districts, authorities, boards, or other governmental units whose jurisdiction lies wholly within Dade County, whether such governmental units are created by the Constitution or the Legislature or otherwise, except the Dade County Board of County Commissioners as it may be provided for from time to time by this home rule charter and the Board of Public Instruction of Dade County.

(d) May provide a method by which any and all of the functions or powers of any municipal corporation or other governmental unit in Dade County may be transferred to the Board of County Commissioners of Dade County.

(e) May provide a method for establishing new municipal corporations, special taxing districts, and other governmental units in Dade County from time to time and provide for their government and prescribe their jurisdiction and powers

(f) May abolish and may provide a method for abolishing from time to time all offices provided for by Article VIII, Section 6, of the Constitution or by the Legislature, except the Superintendent of Public Instruction and may provide for the consolidation and transfer of the functions of such offices, provided, however, that there shall be no power to abolish or impair the jurisdiction of the Circuit Court or to abolish any other court provided for by this Constitution or by general law, or the judges or clerks thereof although such charter may create new courts and judges and clerks thereof with jurisdiction to try all offenses against ordinances passed by the Board of County Commissioners of Dade County and none of the other courts provided for by this Constitution or by general law shall have original jurisdiction to try such offenses, although the charter may confer appellate jurisdiction on such courts, and provided further that if said home rule charter shall abolish any county office or offices as authorized herein, that said charter shall contain adequate provision for the carrying on of all functions of said office or offices as are now or may hereafter be prescribed by general law.

(g) Shall provide a method by which each municipal corporation in Dade County shall have the power to make, amend or repeal its own charter. Upon adoption of this home rule charter by the electors this method shall be exclusive and the Legislature shall have no power to amend or repeal the charter of any municipal corporation in Dade County

(h) May change the name of Dade County.

(i) Shall provide a method for the recall of any commissioner and a method for initiative and referendum, including the initiation of and referendum on ordinances and the amendment or revision of the home rule charter, provided, however, that the power of the Governor and Senate relating to the suspension and removal of officers provided for in this Constitution shall not be impaired, but shall extend to all officers provided for in said home rule charter.

(2) Provision shall be made for the protection of the creditors of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

(3) This home rule charter shall be prepared by a Metropolitan Charter Board created by the Legislature and shall be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Until a home rule

charter is adopted the Legislature may from time to time create additional Charter Boards to prepare charters to be presented to the electors of Dade County for ratification or rejection in the manner provided by the Legislature. Such charter, once adopted by the electors, may be amended only by the electors of Dade County and this charter shall provide a method for submitting future charter revisions and amendments to the electors of Dade County.

(4) The County Commission shall continue to receive its pro rata share of all revenues payable by the state from whatever source to the several counties and the State of Florida shall pay to the Commission all revenues which would have been paid to any municipality in Dade County which may be abolished by or in the method provided by this home rule charter, provided, however, the Commission shall reimburse the comptroller of Florida for the expense incurred, if any, in the keeping of separate records to determine the amounts of money which would have been payable to any such municipality.

(5) Nothing in this section shall limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties in the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida, and the home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein, nor shall the charter of any municipality in Dade County conflict with this Constitution or any such applicable general law except as expressly authorized herein, provided however that said charter and said ordinances enacted in pursuance thereof may conflict with, modify or nullify any existing local, special or general law applicable only to Dade County.

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any ordinance enacted pursuant to said charter and in conflict therewith, and shall supersede any provision of any charter of any municipality in Dade County in conflict therewith.

(7) Nothing in this section shall be construed to limit or restrict the power and jurisdiction of the Railroad and Public Utilities Commission or of any other state agency, bureau or commission now or hereafter provided for in this Constitution or by general law and said state agencies, bureaus and commissions shall have the same powers in Dade County as shall be conferred upon them in regard to other counties.

(8) If any section, subsection, sentence, clause or provision of this section is held invalid as violative of the provisions of Section 1, Article XVII of this Constitution the remainder of this section shall not be affected by such invalidity

(9) It is declared to be the intent of the Legislature and of the electors of the State of Florida to provide by this section home rule for the people of Dade County in local affairs and this section shall be liberally construed to carry out such purpose, and it is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of this Constitution and general laws which shall relate to Dade County and any other one or more counties of the State of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida enacted pursuant thereto by the Legislature shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution.

MIAMI-DADE COUNTY HOME RULE CHARTER

PREAMBLE

We, the people of this County, in order to secure for ourselves the benefits and responsibilities of home rule, to create a metropolitan government to serve our present and future needs, and to endow our municipalities with the rights of self determination in their local affairs, do under God adopt this home rule Charter.

CITIZENS' BILL OF RIGHTS

(A). This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administrative management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:

1. **Convenient Access.** Every person has the right to transact business with the County and the municipalities with a minimum of personal inconvenience. It shall be the duty of the County Manager and the Commission to provide, within the County's budget limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the County.

2. **Truth in Government.** No County or municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.

3. **Public Records.** All audits, reports, minutes, documents and other public records of the County and the municipalities and their boards, agencies, departments and authorities shall be open for inspection at reasonable times and places convenient to the public

4. **Minutes and Ordinance Register.** The Clerk of the Commission and of each municipal council shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than 30 days after the conclusion of the meeting.

5. **Right to be Heard.** So far as the orderly conduct of public business permits, any interested person has the right to appear before the Commission or any municipal council or any County or municipal agency, board or department for the presentation, adjustment or determination of an issue, request or controversy within the jurisdiction of the governmental entity involved. Matters shall be scheduled for the convenience of the public, and the agenda shall be divided into approximate time periods so that the public may know approximately when a matter will be heard. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits for the presentation of a matter.

6. **Right to Notice.** Persons entitled to notice of a County or municipal hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an

individual to receive such notice shall not constitute mandatory grounds for cancelling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.

7. **No Unreasonable Postponements.** No matter once having been placed on a formal agenda by the County or any municipality shall be postponed to another day except for good cause shown in the opinion of the County Commission, the municipal council or other governmental entity or agency conducting such meeting, and then only on condition that any person so requesting is mailed adequate notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for cancelling the hearing or rendering invalid any determination made at such hearing.

8. **Right to Public Hearing.** Upon a timely request of any interested party a public hearing shall be held by any County or municipal agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Law Department of the County or of any municipality, not to any body whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his counsel shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The decision of any such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

9. **Notice of Actions and Reasons.** Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any County or municipal administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.

10. **Managers' and Attorneys' Reports.** The County Manager and County Attorney and each City Manager and City Attorney shall periodically make a public status report on all major matters pending or concluded within their respective jurisdictions.

11. **Budgeting.** In addition to any budget required by state statute, the County Manager shall prepare a budget showing the cost of each program for each budget year. Prior to the County Commission's first public hearing on the proposed

budget required by state law, the County Manager shall make public a budget summary setting forth the proposed cost of each individual program and reflecting all major proposed increases and decreases in funds and personnel for each program, the purposes therefore, the estimated millage cost of each program and the amount of any contingency and carryover funds for each program.

12. **Quarterly Budget Comparisons.** The County Manager shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.

13. **Adequate Audits.** An annual audit of the County and each municipality shall be made by an independent certified public accounting firm in accordance with generally accepted auditing standards. A summary of the results, including any deficiencies found, shall be made public. In making such audit, proprietary functions shall be audited separately and adequate depreciation on proprietary facilities shall be accrued so the public may determine the amount of any direct or indirect subsidy.

14. **Regional Offices.** Regional offices of the County's administrative services shall be maintained at locations in the County for the convenience of the residents.

15. **Financial Disclosure.** The Commission shall by ordinance make provision for the filing under oath or affirmation by all County and municipal elective officials, candidates for County and municipal elective offices, such employees as may be designated by ordinance, and such other public officials, and outside consultants who receive funds from the County or municipalities, within the County and who may legally be included, of personal financial statements, copies of personal Federal income tax returns, or itemized source of income statements. Provision shall be made for preparing and keeping such reports current from time to time, and for public disclosure.

The Commission shall also make provision for the filing annually under oath of a report by full-time County and municipal employees of all outside employment and amounts received therefrom. The County Manager or any City Manager may require monthly reports from individual employees or groups of employees for good cause.

16. **Representation of Public.** The Commission shall endeavor to provide representation at all proceedings significantly affecting the County and its residents before State and Federal regulatory bodies.

17. **Commission on Ethics and Public Trust.** The County shall, by ordinance, establish an independent Commission on Ethics and Public Trust

comprised of five members, not appointed by County Commission, with the authority to review, interpret, render advisory opinions and enforce the county and municipal code of ethics ordinances, conflict of interest ordinances, lobbyist registration and reporting ordinances, ethical campaign practices ordinances, when enacted, and citizens' bill of rights.

- (B). The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of Dade County. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in the County. The orderly, efficient and fair operation of government requires the intelligent participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.
- (C). Remedies for Violations. In any suit by a citizen alleging a violation of this Article filed in the Dade County Circuit Court pursuant to its general equity jurisdiction, the plaintiff, if successful, shall be entitled to recover costs as fixed by the Court. Any public official or employee who is found by the Court to have willfully violated this Article shall forthwith forfeit his office or employment.
- (D). Construction. All provisions of this Article shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Article shall be declared invalid, it shall not affect the validity of the remaining provisions.

ARTICLE - 1

BOARD OF COUNTY COMMISSIONERS

SECTION 1.01. POWERS.

A. The Board of County Commissioners shall be the legislative and the governing body of the county and shall have the power to carry on a central metropolitan government. This power shall include but shall not be restricted to the power to:

1. Provide and regulate arterial, toll, and other roads, bridges, tunnels, and related facilities; eliminate grade crossings; provide and regulate parking facilities, and develop and enforce master plans for the control of traffic and parking
2. Provide and operate air, water, rail, and bus terminals, port facilities, and public transportation systems.
3. License and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire operating in the county.
4. Provide central records, training, and communications for fire and police protection; provide traffic control and central crime investigation; provide fire stations, jails, and related facilities; and subject to Section 1.01A(18) provide a uniform system for fire and police protection.
5. Prepare and enforce comprehensive plans for the development of the county.
6. Provide hospitals and uniform health and welfare programs.
7. Provide parks, preserves, playgrounds, recreation areas, libraries, museums, and other recreational and cultural facilities and programs.
8. Establish and administer housing, slum clearance, urban renewal, conservation, flood and beach erosion control, air pollution control, and drainage programs and cooperate with governmental agencies and private enterprises in the development and operation of these programs.
9. Provide and regulate or permit municipalities to provide and regulate waste and sewage collection and disposal and water supply and conservation programs.
10. Levy and collect taxes and special assessments, borrow and expend money and issue bonds, revenue certificates, and other obligations of

indebtedness in such manner, and subject to such limitations, as may be provided by law.

11 By ordinance, establish, merge, and abolish special purpose districts within which may be provided police and fire protection, beach erosion control, recreation facilities, water, streets, sidewalks, street lighting, waste and sewage collection and disposal, drainage, and other essential facilities and services. All county funds for such districts shall be provided by service charges, special assessments, or general tax levies within such districts only. The Board of County Commissioners shall be the governing body of all such districts and when acting as such governing body shall have the same jurisdiction and powers as when acting as the Board; provided, however, the Board of County Commissioners shall not be the governing body of the Metro-Dade Fire and Rescue Service District established by Ordinance No. 80-86, but said Fire and Rescue Service District shall be governed by five members elected for initial terms of two years by the registered voters of the Metro-Dade Fire and Rescue Service District; provided further, however, that the governing board of the juvenile welfare special district shall not be the Board of County Commissioners, but shall consist of the superintendent of schools, a local school board member, the district administrator of the Department of Health and Rehabilitative Services, a member of the Board of County Commissioners and five members appointed by the Governor.

12. Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.

13. Adopt and enforce uniform building and related technical codes and regulations for both the incorporated and unincorporated areas of the county; provide for examinations for contractors and all parties engaged in the building trades and for the issuance of certificates of competency and their revocation after hearing. Such certificates shall be recognized and required for the issuance of a license in all municipalities in the county. No municipality shall be entitled to require examinations or any additional certificate of competency or impose any other conditions for the issuance of a municipal license except the payment of the customary fee. The municipality may issue building permits and conduct the necessary inspections in accordance with the uniform codes and charge fees therefor.

14. Regulate, control, take over, and grant franchises to, or itself operate gas, light, power, telephone, and other utilities, sanitary and sewage collection and disposal systems, water supply, treatment, and service systems, and public transportation systems, provided, however, that:

(a) Franchises under this subsection may only be granted by a two-thirds vote of the members of the Board present and approved by a majority vote of those qualified electors voting at either a special or general election.

(b) The county shall not operate a light, power, or telephone utility to serve any territory in the county which is being supplied with similar service except by a majority vote of those qualified electors voting in an election held not less than six months after the Board has passed an ordinance to that effect by a two-thirds vote of the members of the Board present. Such ordinance shall contain information on cost, method of financing, agency to regulate rates, agency to operate, location, and other information necessary to inform the general public of the feasibility and practicability of the proposed operation.

15. Use public funds for the purposes of promoting the development of the county, including advertising of the area's advantages.

16. Establish and enforce regulations for the sale of alcoholic beverages in the unincorporated areas and approve municipal regulations on hours of sale of alcoholic beverages.

17. Enter into contracts with other governmental units within or outside the boundaries of the county for joint performance or performance by one unit in behalf of the other of any authorized function.

18. Set reasonable minimum standards for all governmental units in the county for the performance of any service or function. The standards shall not be discriminatory as between similar areas. If a governmental unit fails to comply with such standards, and does not correct such failure after reasonable notice by the Board, then the Board may take over and perform, regulate, or grant franchises to operate any such service. The Board may also take over and operate, or grant franchises to operate any municipal service if:

(a) In an election called by the Board of County Commissioners within the municipality a majority of those voting vote in favor of turning the service over to the county, or

(b) The governing body of the municipality requests the county to take over the service by a two-thirds vote of its members, or by referendum.

19. By ordinance, abolish or consolidate the office of constables, or any county office created by the Legislature, or provide for the consolidation and transfer of any of the functions of such officers.

provided, however, that there shall be no power to abolish the Superintendent of Public Instruction, or to abolish or impair the jurisdiction of the Circuit Court or to abolish any other Court, provided by the Constitution or by general law, or the judges or clerks thereof.

20. Make investigations of county affairs, inquire into the conduct, accounts, records, and transactions of any department or office of the county, and for these purposes require reports from all county officers and employees, subpoena witnesses, administer oaths, and require the production of records.

21. Exercise all powers and privileges granted to municipalities, counties, and county officers by the Constitution and laws of the state, and all powers not prohibited by the Constitution or by this Charter.

22. Adopt such ordinances and resolutions as may be required in the exercise of its powers, and prescribe fines and penalties for the violation of ordinances.

23. Perform any other acts consistent with law which are required by this Charter or which are in the common interest of the people of the county.

24. Supersede, nullify, or amend any special law applying to this county, or any general law applying only to this county, or any general law where specifically authorized by the Constitution.

B. No enumeration of powers in this Charter shall be deemed exclusive or restrictive and the foregoing powers shall be deemed to include all implied powers necessary and proper to carrying out such powers. All of these powers may be exercised in the incorporated and unincorporated areas, subject to the procedures herein provided in certain cases relating to municipalities.

C. The Board shall have the power of eminent domain and the right to condemn property for public purposes. The Board shall make fair and just compensation for any properties acquired in the exercise of its powers, duties, or functions. The Board shall also provide for the acquisition or transfer of property, the payment, assumption, or other satisfaction of the debts, and the protection of pension rights of affected employees of any governmental unit which is merged, consolidated, or abolished or whose boundaries are changed or functions or powers transferred.

D. The Board shall be entitled to levy in the unincorporated areas all taxes authorized to be levied by municipalities and to receive from the state any revenues collected in the unincorporated areas on the same basis as municipalities.

SECTION 1.02. RESOLUTIONS AND ORDINANCES.

A. The Board shall adopt its own rules of procedure and shall decide which actions of the Board shall be by ordinance or resolution, except as otherwise provided in this Charter and except that any action of the Board which provides for raising revenue, appropriating funds, or incurring indebtedness (other than refunding indebtedness), or which provides a penalty or establishes a rule or regulation for the violation of which a penalty is imposed shall be by ordinance.

B. Every ordinance shall be introduced in writing and shall contain a brief title. The enacting clause shall be "Be it Ordained by the Board." After passage on first reading, a short summary of the ordinance shall be published in a daily newspaper of general circulation at least once together with a notice of the time when and place where it will be given a public hearing and be considered for final passage. The first such publication shall be at least one week prior to the time advertised for hearing. No ordinance shall be declared invalid by reason of any defect in publication or title if the published summary gives reasonable notice of its intent.

C. At the time and place so advertised, or at any time and place to which such public hearing may from time to time be adjourned, the ordinance shall be read by title and a public hearing shall be held. After the hearing, the Board may pass the ordinance with or without amendment.

D. The Board may adopt in whole or in part any published code by reference as an ordinance in the manner provided by law.

E. The effective date of any ordinance shall be prescribed therein, but the effective date shall not be earlier than ten days after its enactment.

F. To meet a public emergency affecting life, health, property, or public safety the Board by two-thirds vote of the members of the Board may adopt an emergency ordinance at the meeting at which it is introduced, and may make it effective immediately, except that no such ordinance may be used to levy taxes, grant or extend a franchise, or authorize the borrowing of money. After the adoption of an emergency ordinance, the Board shall have it published in full within ten days in a daily newspaper of general circulation.

G. Each ordinance and resolution after adoption shall be given a serial number and shall be entered by the clerk in a properly indexed record kept for that purpose.

H. Within two years after adoption of this Charter the Board shall have prepared a general codification of all county ordinances and resolutions having the effect of law. The general codification thus prepared shall be adopted by the Board in a single ordinance. After adoption the Board shall have the codification printed immediately in an appropriate manner together with the Charter and such rules and regulations as the

Board may direct. Additions or amendments to the code shall be prepared, adopted, and printed at least every two years.

SECTION 1.03. DISTRICTS.

A. There shall be eight County Commission districts. The initial boundaries of these districts shall be as shown on the map attached as Exhibit A and made a part hereof.

Note: There are thirteen County Commission districts. Meek v. Metropolitan Dade County, 908 F.2d 1540 (11th Cir. 1990), opinion after remand, 985 F.2d 1471 (11th Cir. 1993).

B. The Board may by ordinance adopted by two-thirds vote of the members of the Board change the boundaries of the districts from time to time. The boundaries shall be fixed on the basis of the character, population, and geography of the districts.

SECTION 1.04. COMPOSITION OF THE COMMISSION.

The Commission shall consist of nine members elected as follows:

From each of the eight districts there shall be elected by the qualified electors of the county at large a County Commissioner who shall be a qualified elector residing within the district at least six months and within the county at least three years before qualifying. Commencing with the election of Mayor in 1996, the Commission shall consist of eight members.

Beginning with the state primary elections in 1968, the Mayor and each Commissioner shall be elected for a term of four years.

Note: The Commission consists of thirteen members elected from districts. Meek v. Metropolitan Dade County, 908 F.2d 1540 (11th Cir. 1990), opinion after remand, 985 F.2d 1471 (11th Cir. 1993).

SECTION 1.05. FORFEITURE OF OFFICE.

A. Any member of the Board of County Commissioners who ceases to be a qualified voter of the county or removes himself from the county or the district from which he was elected, or who fails to attend meetings without good cause for a period of six months, shall immediately forfeit his office. Any Commissioner except the Mayor who ceases to reside in the district which he represents shall also immediately forfeit his office.

B. Any elected or appointed county official who holds any other elective office, whether federal, state or municipal, shall forfeit his county position, provided that

the provisions of this subsection shall not apply to any officials presently holding such other office during the remainder of the present terms.

C. Any appointed official or employee of Dade County who qualifies as a candidate for election to any federal, state or municipal office shall immediately take a leave of absence from his or her county position until the date of the election and shall, if elected, immediately forfeit his or her county position. If the candidate is not elected, he or she shall immediately be reinstated to his or her former position

SECTION 1.06. SALARY.

Each County Commissioner shall receive a salary of \$6,000 per year payable monthly and shall be entitled to be reimbursed for such reasonable and necessary expenses as may be approved by the Board.

SECTION 1.07. VACANCIES.

Any vacancy in the office of Mayor or the other members of the Board shall be filled by majority vote of the remaining members of the Board within 30 days, or the Board shall call an election to be held not more than 45 days thereafter to fill the vacancy. The person chosen to fill the office vacated must at the time of appointment meet the residence requirements for the office to which such person is appointed. A person appointed shall serve only until the next county-wide election. A person elected shall serve for the remainder of the unexpired term of office. If a majority of the members of the Board should become appointed rather than elected to office, then the Board shall call an election to be held not more than 45 days thereafter to permit the registered electors to elect commissioners to succeed the appointed commissioners; appointed commissioners may succeed themselves unless otherwise prohibited by the Charter. If a county-wide election is scheduled to be held within 180 days from the date on which the majority of the members of the Board become appointive, the Board may elect to defer the required election until the scheduled county-wide election.

SECTION 1.08. ORGANIZATION OF THE COMMISSION.

Commencing with the election of Mayor in 1996, the Mayor shall not be a member of the Commission. The Mayor shall be the presiding officer of the Commission with the authority to designate another member of the Commission to serve as presiding officer. The Clerk of the Circuit Court or a deputy shall serve as clerk of the Commission. No action of the Commission shall be taken except by a majority vote of those present at a meeting at which a majority of the Commissioners then in office is present. All meetings shall be public.

SECTION 1.09. ELECTION OF MAYOR.

There shall be elected by the qualified electors of the county at large a Mayor who shall be a qualified elector residing within the county at least three years before qualifying. The Mayor shall not serve as a member of the Commission.

SECTION 1.10. RESPONSIBILITIES OF THE MAYOR.

Commencing with the election of Mayor in 1996, the Mayor shall serve as head of the county government with the following specific responsibilities:

A. The Mayor shall within ten days of final adoption by the Commission, have veto authority over any legislative, quasi-judicial, zoning, master plan or land use decision of the Commission, including the budget or any particular component contained therein which was approved by the Commission; provided, however, that if any revenue item is vetoed, an expenditure item in the same or greater dollar amount must also be vetoed. The Commission may at its next regularly scheduled meeting after the veto occurs, override that veto by a two-thirds vote of the Commissioners present.

B. When one person succeeds another in the position of Mayor, the successor shall have the right to appoint the Manager, subject to the approval within 14 days of a majority of the Commissioners then in office. The Mayor shall appoint the Manager, subject to the approval within 14 days of a majority of the Commissioners then in office. The Mayor may remove the Manager subject to the Commission's conducting a hearing within 10 days of said removal and the Commission's overriding the Mayor's action by a two-thirds vote of those Commissioners then in office. Additionally, the Commission by a two-thirds vote of those Commissioners then in office shall be able to remove the Manager.

C. The Mayor shall appoint the members of all standing committees and the chairperson and vice-chairperson of each committee. There shall be as many standing and special committees as deemed necessary by the Mayor.

D. The Mayor shall prepare and deliver a report on the state of the county to the people of the county between November 1 and January 31 annually. Such report shall be prepared after consultation with the Commissioners and the Manager.

E. The Mayor shall prepare and deliver a budgetary address annually to the people of the county between July 1 and September 30. Such report shall be prepared after consultation with the Manager and budget director.

ARTICLE - 2

ELECTIONS

SECTION 2.01. ELECTION AND COMMENCEMENT OF
TERMS OF COUNTY COMMISSIONERS.

A. Unless otherwise provided in the Charter, beginning in 1976, the election of the Mayor and the County Commissioners from four County Commission districts to be selected by voluntary arrangement or by lot prior to June 1, 1976 shall be held at the time of the state primary elections in 1976 and every four years thereafter at the same time. The County Commissioners from the other four County Commission districts shall also be elected in 1976 in the same manner, but only for two year terms; the election of County Commissioners from these four County Commission districts will be held again in 1978 and every four years thereafter at the time of the state primary elections.

Note: The election of the Commissioners from even-numbered districts shall be held in 1994 and every four years thereafter and the election of Commissioners from odd-numbered districts shall be held in 1996 and every four years thereafter. Meek v. Metropolitan Dade County, 908 F.2d 1540 (11th Cir. 1990), opinion after remand, 985 F.2d 1471 (11th Cir. 1993).

B. A candidate must receive a majority of the votes cast to be elected. If no candidate receives a majority of the votes cast there will be a runoff election at the time of the state second primary election between the two candidates receiving the highest number of votes. Should a tie result, the outcome shall be determined by lot.

C. Except as otherwise provided in this Charter, the terms of office of the Mayor and the other County Commissioners shall commence on the second Tuesday next succeeding the date provided for the state second primary elections.

D. Notwithstanding any other provision of this Charter, effective with the term of Mayor scheduled to commence in October, 1996, no person shall be elected as Mayor for more than two consecutive four-year terms. Neither service as Mayor or County Commissioner prior to the terms scheduled to commence in October, 1996, nor service of a partial term subsequent to October, 1996, shall be considered in applying the term limitation provisions of this section.

SECTION 2.02. RESERVED

SECTION 2.03. NONPARTISAN ELECTIONS.

All elections for Mayor and the other members of the Board shall be nonpartisan and no ballot shall show the party designation of any candidate. No candidate shall be required to pay any party assessment or state the party of which he is a member or the manner in which he voted or will vote in any election.

SECTION 2.04. QUALIFICATIONS AND FILING FEE.

All candidates for the office of Mayor or County Commissioner shall qualify with the Clerk of the Circuit Court no earlier than the 63rd day and no later than noon on the 49th day prior to the date of the election at which he is a candidate in the method provided by law or ordinance, and shall pay a filing fee of \$300. All filing fees shall be paid into the general funds of the county.

SECTION 2.05. RESERVED.

SECTION 2.06. ADDITIONAL REGULATIONS AND STATE LAWS.

A. The Board may adopt by ordinance any additional regulations governing elections not inconsistent with this Charter.

B. Except as otherwise provided by this Charter or by ordinance adopted hereunder the provisions of the election laws of this state shall apply to elections held under this Charter.

SECTION 2.07. CANVASSING ELECTIONS.

All elections under this Charter shall be canvassed by the County Canvassing Board as provided under the election laws of this state.

ARTICLE -3

THE COUNTY MANAGER

SECTION 3.01 FUNCTIONS.

Commencing with the election of Mayor in 1996, the Manager shall be the head of the administrative branch of the county government. The Commission shall fix the Manager's compensation, and the Manager shall serve as provided in Section 1.10.

SECTION 3.02. QUALIFICATIONS.

Commencing with the election of Mayor in 1996, the Manager shall be chosen on the basis of the Manager's executive and administrative qualifications. At the time of the Manager's appointment the Manager need not be a resident of the state. Neither the Mayor nor any Commissioner shall be eligible for the position of Manager during or within two years after the expiration of their respective terms.

SECTION 3.03. ABSENCE OF MANAGER.

Commencing with the election of Mayor in 1996, the Mayor, subject to the approval of the Commission, may designate a qualified administrative officer of the county to assume the duties and authority of the Manager during periods of temporary absence or disability of the Manager.

SECTION 3.04. POWERS AND DUTIES.

A. Commencing with the election of Mayor in 1996, the Manager shall be responsible for the administration of all units of the county government under the Manager's jurisdiction, and for carrying out policies adopted by the Commission. The Manager, or such other persons as may be designated by resolution of the Commission, shall execute contracts and other instruments, sign bonds and other evidences of indebtedness, and accept process.

B. Unless otherwise provided for by civil service rules and regulations, the Manager shall have the power to appoint and suspend all administrative department heads of the major departments of the county, to-wit: Tax Collector, Tax Assessor, Department of Public Works, Department of Public Safety, Building and Zoning Department, Planning Department, Finance Department, Park and Recreation Department and Internal Auditing Department, except that before any appointment shall become effective, the said appointment must be approved by the County Commission and if the same is disapproved the said appointment shall be void. In the event such appointment shall be disapproved by the County Commission the appointment shall forthwith become null and void and thereupon the County Manager shall make a new appointment or appointments, each of which shall likewise be submitted for approval by the County Commission. However, the right to suspend, remove or discharge any department head with or without cause, is reserved at all times to the County Manager.

SECTION 3.05. RESTRICTION ON COMMISSION MEMBERS.

Neither the Mayor nor any Commissioner shall direct or request the appointment of any person to, or his or her removal from, office by the Manager or any of the Manager's subordinates, or take part in the appointment or removal of officers and employees in the administrative services of the county. Except for the purpose of inquiry, as provided in Section 1.01A(20), the Mayor and Commissioners shall deal with the administrative service solely through the Manager and neither the Mayor nor any Commissioner shall give orders to any subordinates of the Manager, either publicly or privately. Any willful violation of the provisions of this Section by the Mayor or any Commissioner shall be grounds for his or her removal from office by an action brought in the Circuit Court by the State Attorney of this county.

ARTICLE - 4

ADMINISTRATIVE ORGANIZATION AND PROCEDURE

SECTION 4.01. DEPARTMENTS.

There shall be departments of finance, personnel, planning, law, and such other departments as may be established by administrative order of the Manager. All functions not otherwise specifically assigned to others by this Charter shall be performed under the supervision of the Manager

SECTION 4.02. ADMINISTRATIVE PROCEDURE.

The Manager shall have the power to issue and place into effect administrative orders, rules, and regulations. The organization and operating procedure of departments shall be set forth in administrative regulations which the Manager shall develop, place into effect by administrative orders, and submit to the Board. The Board may, by resolution, modify such orders, rules or regulations providing, however, no such orders, rules or regulations creating, merging, or combining departments, shall become effective until approved by resolution of the Board.

SECTION 4.03. FINANCIAL ADMINISTRATION.

A. The department of finance shall be headed by a finance director appointed by the Manager. The finance director shall have charge of the financial affairs of the county.

B. On or before the date established by law, the Manager shall recommend to the Board a proposed budget presenting a complete financial plan, including capital and operating budgets, for the ensuing fiscal year. A summary of the budget shall be published and the Board shall hold hearings on and adopt a budget.

C. No money shall be drawn from the county treasury nor shall any obligation for the expenditure of money be incurred except pursuant to appropriation and except that the Board may establish working capital, revolving, pension, or trust funds and may provide that expenditures from such funds can be made without specific appropriation. The Board, by ordinance, may transfer any unencumbered appropriation balance, or any portion thereof, from one department, fund, or agency to another, subject to the provisions of ordinance. Any portion of the earnings or balance of the several funds, other than sinking funds for obligations not yet retired, may be transferred to the general funds of the county by the Board.

D. Contracts for public improvements and purchases of supplies, materials, and services other than professional shall be made whenever practicable on the basis of specifications and competitive bids. Formal sealed bids shall be secured for all such contracts and purchases when the transaction involves more than the minimum amount

established by the Board of County Commissioners by ordinance. The transaction shall be evidenced by written contract submitted and approved by the Board. The Board, upon written recommendation of the Manager, may by resolution adopted by two-thirds vote of the members present waive competitive bidding when it finds this to be in the best interest of the county.

E. Any county official or employee of the county who has a special financial interest, direct or indirect, in any action by the Board shall make known that interest and shall refrain from voting upon or otherwise participating in such transaction. Willful violation of this Section shall constitute malfeasance in office, shall effect forfeiture of office or position, and render the transaction voidable by the Board.

F. Such officers and employees of the county as the Board may designate shall give bond in the amount and with the surety prescribed by the Board. The bond premiums shall be paid by the county.

G. At the end of each fiscal year the Board shall provide for an audit by an independent certified public accountant designated by the Board of the accounts and finances of the county for the fiscal year just completed.

H. The Budget Commission created by Chapter 21874, Laws of Florida, 1943, is hereby abolished, and Chapter 21874 shall no longer be of any effect.

SECTION 4.04. ASSESSMENT AND COLLECTION OF TAXES.

A. Beginning with the tax year 1961, the county tax rolls prepared by the county shall be the only legal tax rolls in this county for the assessment and collection of county and municipal taxes. Thereafter no municipality shall have an assessor or prepare an ad valorem tax roll. Each municipality shall continue to have the right to adopt its own budget, fix its own millage, and levy its own taxes. Each municipality shall certify its levies to the County Manager not later than 30 days after the county tax rolls have been finally approved by the Board. Any municipality may obtain a copy of this tax roll upon payment of the cost of preparing such a copy, and copies of the tax rolls shall be available for public inspection at reasonable times. Maps showing the assessed valuation of each parcel of property may be prepared and made available for sale to the public at a reasonable price.

B. All county and municipal taxes for the tax year beginning January 1, 1961, and all subsequent tax years, shall be collected by the county on one bill prepared and sent out by the county. The amounts of county and municipal taxes shall be shown as separate items, and may be paid separately.

C. Delinquent municipal taxes shall be collected in the same manner as delinquent county taxes.

D All the tax revenues collected for any municipality shall be returned monthly by the county to the municipality.

SECTION 4.05. DEPARTMENT OF PERSONNEL.

A. The Board of County Commissioners shall establish and maintain personnel and civil service, retirement, and group insurance programs. The personnel system of the county shall be based on merit principles in order to foster effective career service in county employment and to employ those persons best qualified for county services which they are to perform.

B. The County Manager shall appoint a personnel director who shall head the department of personnel and whose duty it shall be to administer the personnel and civil service programs and the rules governing them. The standards of such programs shall not be less than those prevailing at the time of the effective date of this Charter.

C. Except as provided herein, Chapter 30255, General Laws, 1955, as it exists on the effective date of this Charter, shall remain in effect until amended or changed by ordinance of the Board of County Commissioners adopted by two-thirds vote of the members present after recommendation from either the Personnel Advisory Board or the County Manager.

D. Employees of municipalities who, by merger, transfer, or assignment of governmental units or functions become county employees, shall not lose the civil service rights or privileges which have accrued to them during their period of employment with such municipality, and the county shall use its best efforts to employ these employees within the limits of their capabilities. However, if because of the merger of a department or division of a municipality with the county, all of the employees of such department or division are unable to be employed by the county either because of lack of funds or lack of work, the employee possessing the greater amount of service shall be retained in accordance with civil service rules and regulations. Those employees who are not retained shall be placed on a priority list for employment by the county subject to seniority. Any non-retained employee shall have the option, if a vacancy occurs or exists in another department, and if he is qualified to render the service required, to either accept such employment or remain on the priority list until such time as employment shall be available for him in his own or similar classification.

E. The pension plan presently provided by the state for county employees shall not be impaired by the Board. Employees of municipalities, who by merger, transfer, or assignment of governmental units or functions become county employees shall not lose their pension rights, or any reserves accrued to their benefit during their period of employment with such municipality. The Board of County Commissioners shall provide a method by which these employees' rights and reserves shall be protected, and these employees shall continue until retirement, dismissal, or death in a pension status no less beneficial than the status held by them at the time of merger or assignment.

F. The Board of County Commissioners shall provide and place into effect a practical group insurance plan for all county employees.

SECTION 4.06. DEPARTMENT OF LAW.

There shall be a county attorney appointed by the Board of County Commissioners who shall serve at the will of the Board and who shall head the department of law. He shall devote his full time to the service of the county and shall serve as legal counsel to the Board, Manager, and all county departments, offices, and agencies, and perform such other legal duties as may be assigned to him. With the approval of the Board, he may appoint such assistants as may be necessary in order that his duties may be performed properly. The Board may employ special counsel for specific needs.

SECTION 4.07 DEPARTMENT OF PLANNING.

The department of planning shall be headed by a planning director appointed by the County Manager. The planning director shall be qualified in the field of planning by special training and experience Under the supervision of the Manager and with the advice of the Planning Advisory Board elsewhere provided for in this Charter, the planning director shall among other things:

1. Conduct studies of county population, land use, facilities, resources, and needs and other factors which influence the county's development, and on the basis of such studies prepare such official and other maps and reports as, taken together, constitute a master plan for the welfare, recreational, economic, and physical development of the county.
2. Prepare for review by the Planning Advisory Board, and for adoption by the Board of County Commissioners, zoning, subdivision and related regulations for the unincorporated areas of the county and minimum standards governing zoning, subdivision, and related regulations for the municipalities; and prepare recommendations to effectuate the master plan and to coordinate the county's proposed capital improvements with the master plan.
3. Review the municipal systems of planning, zoning, subdivision, and related regulations and make recommendations thereon with a view of coordinating such municipal systems with one another and with those of the county.

SECTION 4.08. BOARDS.

A. The Board of County Commissioners shall by ordinance create a Planning Advisory Board, a Zoning Appeals Board, and such other boards as it may deem necessary, prescribing in each case the number, manner of appointment, length of term,

and advisory or quasi-judicial duties of members of such boards, who shall serve without compensation but who may be reimbursed for necessary expenses incurred in official duties, as may be determined and approved by the Board of County Commissioners.

B. The Board of County Commissioners may by ordinance provide for the expansion of the City of Miami Water and Sewer Board to an agency county-wide in scope and authority, with the power to acquire, construct and operate water and sewer systems within the incorporated and the unincorporated areas of Dade County, which agency shall be known as the Miami-Dade Water and Sewer Authority. The Miami-Dade Water and Sewer Authority shall have the responsibility to develop and operate a county-wide water and sewer system for the purpose of providing potable water, sewage collection and disposal and water pollution abatement to the citizens of Dade County.

C. Dade County shall retain all its powers, including but not limited to that of eminent domain, in relation to the creation of a county-wide water and sewer system, for the purpose of cooperating with the Miami-Dade Water and Sewer Authority.

ARTICLE - 5

MUNICIPALITIES

SECTION 5.01. CONTINUANCE OF MUNICIPALITIES.

The municipalities in the county shall remain in existence so long as their electors desire. No municipality in the county shall be abolished without approval of a majority of its electors voting in an election called for that purpose. The right of self determination in local affairs is reserved and preserved to the municipalities except as otherwise provided in this Charter.

SECTION 5.02 MUNICIPAL POWERS.

Each municipality shall have the authority to exercise all powers relating to its local affairs not inconsistent with this Charter. Each municipality may provide for higher standards of zoning, service, and regulation than those provided by the Board of County Commissioners in order that its individual character and standards may be preserved for its citizens.

SECTION 5.03. MUNICIPAL CHARTERS.

A. Except as provided in Section 5 04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than

120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal.

B. All municipal charters, amendments thereto, and repeals thereof shall be filed with the Clerk of the Circuit Court.

SECTION 5.04. CHANGES IN MUNICIPAL BOUNDARIES.

A. The planning director shall study municipal boundaries with a view to recommending their orderly adjustment, improvement, and establishment. Proposed boundary changes may be initiated by the Planning Advisory Board, the Board of County Commissioners, the governing body of a municipality, or by a petition of any person or group concerned.

B. The Board of County Commissioners, after obtaining the approval of the municipal governing bodies concerned, after hearing the recommendations of the Planning Advisory Board, and after a public hearing, may by ordinance effect boundary changes, unless the change involves the annexation or separation of an area of which more than 250 residents are electors, in which case an affirmative vote of a majority of those electors voting shall also be required. Upon any such boundary change any conflicting boundaries set forth in the charter of such municipality shall be considered amended

C. No municipal boundary shall be altered except as provided by this Section.

SECTION 5.05. CREATION OF NEW MUNICIPALITIES.

The Board of County Commissioners and only the Board may authorize the creation of new municipalities in the unincorporated areas of the county after hearing the recommendations of the Planning Advisory Board, after a public hearing, and after an affirmative vote of a majority of the electors voting and residing within the proposed boundaries. The Board of County Commissioners shall appoint a charter commission, consisting of five electors residing within the proposed boundaries, who shall propose a charter to be submitted to the electors in the manner provided in Section 5.03. The new municipality shall have all the powers and rights granted to or not withheld from municipalities by this Charter and the Constitution and general laws of the State of Florida. Notwithstanding any provision of this Charter to the contrary, with regard to any municipality created after September 1, 2000, the pre-agreed conditions between the County and the prospective municipality which are included in the municipal charter can only be changed if approved by an affirmative vote of two-thirds (2/3) of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

**SECTION 5.06. CONTRACTS WITH OTHER UNITS OF
 GOVERNMENT.**

Every municipality in this county shall have the power to enter into contracts with other governmental units within or outside the boundaries of the municipality or the county for the joint performance or performance by one unit in behalf of the other of any municipal function.

SECTION 5.07. FRANCHISE AND UTILITY TAXES.

Revenues realized from franchise and utility taxes imposed by municipalities shall belong to municipalities.

ARTICLE - 6

**PARKS, AQUATIC PRESERVES, AND
 PRESERVATION LANDS**

Note: This Article does not apply to municipal property in Coral Gables, Hialeah, Hialeah Gardens, Miami, Sweetwater and West Miami. See Section 6.04.

SECTION 6.01. POLICY.

Parks, aquatic preserves, and lands acquired by the County for preservation shall be held in trust for the education, pleasure, and recreation of the public and they shall be used and maintained in a manner which will leave them unimpaired for the enjoyment of future generations as a part of the public's irreplaceable heritage. They shall be protected from commercial development and exploitation and their natural landscape, flora and fauna, and scenic beauties shall be preserved. In lands acquired by the County for preservation and in parks along the Ocean or the Bay the public's access to and view of the water shall not be obstructed or impaired by buildings or other structures or concessions which are in excess of 1500 square feet each. Adequate maintenance shall be provided.

SECTION 6.02. RESTRICTIONS AND EXCEPTIONS.

In furtherance of this policy parks shall be used for public park purposes only, and subject to the limited exceptions set forth in this Article, there shall be no permanent structures or private commercial advertising erected in a public park or private commercial use of a public park or renewals, expansions, or extensions of existing leases, licenses, or concessions to private parties of public park property, unless each such structure, lease, license, renewal, expansion, extension, concession or use shall be approved by a majority vote of the voters in a County-wide referendum. Nothing in this Article shall prevent any contract with federally tax-exempt not-for-profit youth, adult, and senior cultural, conservation and parks and recreation program providers. To ensure

aquatic preserves, lands acquired by the County for preservation, and public parks or parts thereof which are nature preserves, beaches, natural forest areas, historic or archeological areas, or otherwise possess unique natural values in their present state, such as Matheson Hammock, Greynolds Park, Redlands Fruit and Spice Park, Castellow Hammock, Crandon Park, Trail Glades Park, Deering Estate Park, Pine Shore Park, Old Cutler Hammock, Chapman Field, Tamiami Pinelands, Wainright Park, Larry and Penny Thompson Park, Whispering Pines Hammock, Mangrove Preserve, Owaissa Bauer Park, Fuchs Hammock, Black Point Marina, Simpson Park, Sewell Park, Barnes Park, Virginia Key, mangrove preserves, and all other natural or historical resource based parks do not lose their natural or historical values, any structure, lease, license, renewal, extension, concession or use in any of this class of public parks or in aquatic preserves and preservation lands must be approved by an affirmative vote of two-thirds of the voters in a County-wide referendum. No park shall be designed to be used beyond its appropriate carrying capacity and to the extent required by law all parks and facilities and permitted special events and concessions operating in the parks shall be fully accessible to persons with disabilities. Nothing in this Article shall prevent the maintenance of existing facilities, the maintenance, operation, and renovation of existing golf course and marina restaurants at their existing square footage by government agencies or private operators, provided such private operators are chosen as a result of competitive selection and their initial contract terms are limited to no more than ten years, or the construction, operation, maintenance, and repair by government agencies or private operators of or issuance of temporary permits for.

A. Appropriate access roads, bridges, fences, lighting, flag poles, entrance features, picnic shelters, tables, grills, benches, irrigation systems, walls, erosion control devices, utilities, trash removal, parking and security and fire facilities for the primary use of the park system;

B Food and concession facilities each not in excess of 1500 square feet of enclosed space, with any complementary outdoor or covered areas needed to service park patrons;

C. User-participation non-spectator recreation and, playground facilities, golf courses and golf-course related facilities, and bandstands and bandshells containing less than 1,000 spectator seats and athletic facilities, sports fields and arenas containing less than 3,000 spectator seats;

D. Facilities for marinas, sightseeing and fishing boats, visiting military vessels, and fishing;

E. Park signage and appropriate plaques and monuments;

F. Rest rooms;

G. Fountains, gardens, and works of art;

H. Park service facilities, senior, day care and pre-school facilities, small nature centers with not more than one classroom;

I. Film permits, temporary fairs, art exhibits, performing arts, concerts, cultural and historic exhibitions, regattas, athletic contests and tournaments, none of which require the erection of permanent structures;

J. Advertising in connection with sponsorship of events or facilities in the park, provided however all such facilities and uses are compatible with the particular park and are scheduled so that such events do not unreasonably impair the public use of the park or damage the park.

K. Programming partnerships with qualified federally tax exempt not-for-profit youth, adult, and senior cultural, conservation, and parks and recreation program providers;

L. Agreements with cable, internet, telephone, electric or similar service providers or utilities, so long as any installations are underground or do not adversely impact natural resources, or parks facilities and uses.

No park facilities, golf courses, or County lands acquired for preservation shall be converted to or used for non-park offices, purposes, or uses. The County, the municipalities, and agencies or groups receiving any public funding shall not expend any public money or provide any publicly funded services in kind to any project which does not comply with this Article. No building permit or certificate of occupancy shall be issued for any structure in violation of this Article. The restrictions applying to parks in this Article shall not apply to the Dade County Youth Fair site, Metro Zoo, Tamiami Stadium, Haulover Fishing Pier, the Dade County Auditorium, the Museum of Science, the Gold Coast Railroad Museum, Vizcaya Museum and Gardens, Trail Glade Range, the Orange Bowl, the Commodore Ralph Munroe Marine Stadium, the Seaquarium, Curtis Park track and stadium, Fairchild Tropical Gardens, and mini and neighborhood parks except that no mini or neighborhood park may be leased or disposed of unless a majority of the residents residing in voting precincts any part of which is within 1 mile of the park authorize such sale or lease by majority vote in an election.

SECTION 5.03. ENFORCEMENT AND CONSTRUCTION.

All elections required by this Article shall be held either in conjunction with state primary or general elections or as part of bond issue elections. The provisions of this Article may be enforced in the same manner as provided in Section (C) of the Citizens' Bill of Rights of this Charter. The provisions of this Article shall be liberally construed in favor of the preservation of all park lands, aquatic preserves, and preservation lands. If any provision of this Article shall be declared invalid it shall not affect the validity of the remaining provisions of this Article. This Article shall not be construed to illegally

impair any previously existing valid written contractual commitments or bids or bonded indebtedness.

SECTION 6.04. JURISDICTION.

Except as otherwise provided herein the provisions of this Article shall apply to all County and municipal parks, aquatic preserves, and lands acquired by the County for preservation now in existence or hereafter acquired, provided that if this Article was not favorably voted upon by a majority of the voters voting in any municipality at the time of the adoption of this Article the municipal parks of such municipality shall be excluded from the provisions of this Article.

ARTICLE -7

INITIATIVE, REFERENDUM, AND RECALL

SECTION 7.01. INITIATIVE AND REFERENDUM.

The electors of the county shall have the power to propose to the Board of County Commissioners passage or repeal of ordinances and to vote on the question if the Board refuses action, according to the following procedure:

1. The person proposing the exercise of this power shall submit the proposal to the Board which shall without delay approve as to form a petition for circulation in one or several copies as the proposer may desire.
2. The person or persons circulating the petition shall, within 60 days of the approval of the form of the petition, obtain the valid signatures of voters in the county in numbers at least equal to four percent of the registered voters in the county on the day on which the petition is approved, according to the official records of the County Supervisor of Elections. In determining the sufficiency of the petition, no more than 25 percent of the valid signatures required shall come from voters registered in any single county commission district. Each signer of a petition shall place thereon, after his name, the date, and his place of residence or precinct number. Each person circulating a copy of the petition shall attach to it a sworn affidavit stating the number of signers and the fact that each signature was made in the presence of the circulator of the petition.
3. The signed petition shall be filed with the Board which shall within 30 days order a canvass of the signatures thereon to determine the sufficiency of the signatures. If the number of signatures is insufficient or the petition is deficient as to form or compliance with this Section, the Board shall notify the person filing the petition that the petition is insufficient and has failed.

4. The Board shall within 30 days after the date a sufficient petition is presented either:

(a) Adopt the ordinance as submitted in an initiatory petition or repeal the ordinance referred to by a referendary petition, or

(b) Submit the proposal to the electors in impartial and concise language and in such manner as provides a clear understanding of the proposal.

5. If the Board determines to submit the proposal to the electors, the election shall be held either:

(a) In the next scheduled county-wide election, or

(b) If the petition contains the valid signatures in the county in numbers at least equal to eight percent of the registered voters in the county, the election shall take place within 120 days after the date the petition is presented to the Board, preferably in an election already scheduled for other purposes, otherwise in a special election. The result shall be determined by a majority vote of the electors voting on the proposal.

6. An ordinance proposed by initiatory petition or the repeal of an ordinance by referendary petition shall be effective on the day after the election, except that:

(a) Any reduction or elimination of existing revenue or any increase in expenditures not provided for by the current budget or by existing bond issues shall not take effect until the beginning of the next succeeding fiscal year; and

(b) Rights accumulated under an ordinance between the time a certified referendary petition against the ordinance is presented to the Board and the repeal of the ordinance by the voters, shall not be enforced against the county; and

(c) Should two or more ordinances adopted at the same election have conflicting provisions, the one receiving the highest number of votes shall prevail as to those provisions.

7. An ordinance adopted by the electorate through initiatory proceedings shall not be amended or repealed by the Board for a period of one year after the election at which it was adopted, but thereafter it may be amended or repealed like any other ordinance

SECTION 7.02. RECALL.

Any member of the Board of County Commissioners or the Sheriff or any Constable may be removed from office by the electors of the county, district, or municipality by which he was chosen. The procedure on a recall petition shall be identical with that for an initiatory or referendary petition, except that:

1. The Clerk of the Circuit Court shall approve the form of the petition.
2. The person or persons circulating the petition must obtain signatures of electors of the county, district, or municipality concerned in numbers at least equal to four percent of the registered voters in the county district or municipality on the day on which the petition is approved, according to the official records of the County Supervisor of Elections.
3. The signed petition shall be filed with and canvassed and certified by the Clerk of the Circuit Court.
4. The Board of County Commissioners must provide for a recall election not less than 45 nor more than 90 days after the certification of the petition.
5. The question of recall shall be placed on the ballot in a manner that will give the elector a clear choice for or against the recall. The result shall be determined by a majority vote of the electors voting on the question.
6. If the majority is against recall the officer shall continue in office under the terms of his previous election. If the majority is for recall he shall, regardless of any defect in the recall petition, be deemed removed from office immediately.
7. No recall petition against such an officer shall be certified within one year after he takes office nor within one year after a recall petition against him is defeated.
8. Any vacancy created by recall in the offices of Sheriff or Constables shall be filled for the remaining term by appointment by the Board of County Commissioners, or the Board may require the office to be filled at the next regular election or at a special election called for that purpose.

ARTICLE - 8

GENERAL PROVISIONS

SECTION 8.01. ABOLITION OF CERTAIN OFFICES AND TRANSFER OF FUNCTIONS.

A. On May 1, 1958, the following offices are hereby abolished and the powers and functions of such offices are hereby transferred to the County Manager who shall provide for the continuation of all the duties and functions of these offices required under the Constitution and general laws of this state: County Assessor of Taxes, County Tax Collector, County Surveyor, County Purchasing Agent, and County Supervisor of Registration.

B. The County Manager may delegate to suitable persons the powers and functions of such officers, provided however that until the term of office for which they were elected shall terminate the County Assessor of Taxes, the County Tax Collector, the County Supervisor of Registration, and the County Purchasing Agent shall each if he so desires remain in his position and receive the same salary as presently provided for by statute.

C. In the event that other elective officers are abolished by the Board, the Board shall provide that any person duly elected to such office shall if he so desires remain in the same or similar position and receive the same salary for the remainder of the term for which he was elected, and shall provide for the continuation of all duties and functions of these offices required under the Constitution and general laws.

D. On November 9, 1966, the Office of Sheriff is hereby abolished and the powers and functions of such office are hereby transferred to the County Manager, who shall provide for the continuation of all the duties and functions of this office required under the Constitution and general laws of this state. The County Manager may delegate to a suitable person or persons the powers and functions of such officer. Section 1.01A(19)(a) of this Charter is amended by deleting the word "Sheriff" and subsections (b) and (c) are repealed.

SECTION 8.02. RESERVED.

SECTION 8.03. TORT LIABILITY.

The county shall be liable in actions of tort to the same extent that municipalities in the State of Florida are liable in actions in tort. However, no suit shall be maintained against the county for damages to persons or property or for wrongful death arising out of any tort unless written notice of claim shall first have been given to the county in the manner and within the time provided by ordinance, except that the time fixed by ordinance for notice shall be not less than 30 days nor more than 120 days.

Note: Waiver of County's tort immunity held unconstitutional in *Kaulakis v. Boyd*, Fla. 1962, 138 So.2d 505.

SECTION 8.04. SUPREMACY CLAUSE.

A. This Charter and the ordinances adopted hereunder shall in cases of conflict supersede all municipal charters and ordinances, except as herein provided, and where authorized by the Constitution, shall in cases of conflict supersede all special and general laws of the state.

B. All other special and general laws and county ordinances and rules and regulations not inconsistent with this Charter shall continue in effect until they are superseded by ordinance adopted by the Board pursuant to this Charter and the Constitution.

SECTION 8.05. EXISTING FRANCHISES, CONTRACTS, AND LICENSES.

All lawful franchises, contracts, and licenses in force on the effective date of this Charter shall continue in effect until terminated or modified in accordance with their terms or in the manner provided by law or this Charter.

SECTION 8.06. EFFECT OF THE CHARTER.

A. This Charter shall be liberally construed in aid of its declared purpose, which is to establish effective home rule government in this county responsive to the people. If any Article, Section, subsection, sentence, clause, or provision of this Charter or the application thereof shall be held invalid for any reason, the remainder of the Charter and of any ordinances or regulations made thereunder shall remain in full force and effect.

B. Nothing in this Charter shall be construed to limit or restrict the power and jurisdiction of the Florida Railroad and Public Utilities Commission.

SECTION 8.07. AMENDMENTS.

A. Amendments to this Charter may be proposed by a resolution adopted by the Board of County Commissioners or by petition of electors numbering not less than ten percent of the total number of electors registered in Dade County at the time the petition is submitted to the Board. Initiatory petitions shall be certified in the manner required for initiatory petitions for an ordinance.

B. Amendments to this Charter may be proposed by initiatory petitions of electors biennially, only during even numbered years in which state primary and general elections are held. All elections on charter amendments proposed by initiatory petitions

shall be held in conjunction with state primary or general elections, unless the Board of County Commissioners shall determine to call a special election by two-thirds vote of the entire membership.

C. Amendments to this Charter may be proposed by the Board of County Commissioners at any time. Elections on charter amendments proposed by the Board shall be held not less than 60 nor more than 120 days after the Board adopts a resolution proposing any amendment.

D. The result of all elections on charter amendments shall be determined by a majority of the electors voting on the proposed amendment.

SECTION 8.08. REVISIONS.

At least once in every 5 year period the Board shall review the Charter and determine whether or not there is a need for revision. If the Board determines that a revision is needed, it shall establish a procedure for the preparation of a proposed revision of the Charter. The proposed revision shall then be presented to the Board for review, modification and approval. If the Board approves such proposed revision, either with or without modification, it shall present such proposed revision to the electorate in accordance with the provisions of Section 8.07 (C) and (D). Simultaneous elections may be held on a proposed revision and on individual amendments that are proposed.

SECTION 8.09. EFFECTIVE DATE.

This Charter shall become effective 60 days after it is ratified by a majority of the qualified electors of the county voting on the Charter.

ARTICLE - 9

NAME OF COUNTY

SECTION 9.01. NAME OF COUNTY.

A. The name of Dade County shall officially be changed to Miami-Dade County and all references to Dade County in the Florida Constitution, Florida Statutes, Code of Metropolitan Dade County, federal law, case law and other legal documents, shall be deemed to be references to Miami-Dade County.

B. The Commission shall by ordinance provide a method to implement the official name change.

Note: Miami-Dade County Ordinance 97-212. This ordinance is codified in Section 1-4.2 in the Code of Ordinances and is recorded in the Official Records of Miami-Dade County, Florida at Book 17968, Page 0498.

Carver

January 16, 1995

MEMORANDUM TO: R. Rupe
H. Jackson
B. Franks
G. Lewis
G. Dennis
J. Richardson
O. Primelles
B. Greenlief
J. St. Amant
C. White

FROM: ^{W. Tubaugh} A. W. Tubaugh

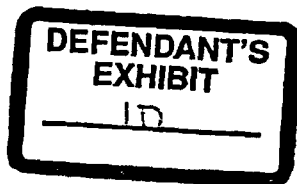
SUBJECT: Dade County Aviation Department (DCAD) First Set of Interrogatories in Docket No. 931033-TL

Southern Bell has an ongoing dispute with DCAD at the Miami International Airport (MIA) concerning the provision of local service. DCAD is providing shared tenant services (STS) under an exemption in the Florida Public Service Commission's (FPSC) rules and regulations. DCAD has determined that the provision of all telecommunication services at MIA can be a profit center. They are attempting to convince the FPSC that Southern Bell should compensate DCAD for the use of conduit to reach our customers, that only one demarc is appropriate at MIA, and that Southern Bell should lease facilities to reach our customers from DCAD.

Mr. Ralph de la Vega, Assistant Vice President-Network Planning and Provisioning Support, is our witness in the hearing to be held in Docket 931033-TL on February 12, 1995. DCAD is represented by Mr. John Marks, Esq., a former FPSC commissioner. Mr. Marks' law firm has served our company with several interrogatories we must answer and document request associated with the interrogatories.

Attached is a list of STS providers in our service areas and the addresses at which they provide service. I have noted the Senior Director whose service area corresponds with the STS provider. In addition, the interrogatories request information concerning any location where we have single demarc location serving multi-tenant buildings. I have provided the answer to interrogatory number 1.

I would appreciate your assistance in responding to the attached interrogatories. Please have your Senior Engineers and Managers of Installation/Maintenance/Special Services I&M, review the attachment and respond accordingly. This information is due February 5, 1995. We need to have the information to legal by February 2, 1995.



BST20239

MEMORANDUM/Tubaugh-DCAD

Page 2

I have recently found out that we have a single demarc point at the Daytona Beach Airport which appears to be a violation of FPSC rules. After the hearing is over in February, I believe, because of the confusion and complexity of the demarc issues, that a meeting with all Senior Engineers, Manager's of Installation, Construction, SSI&M, Building Industry Consultants, and Legal should be convened to discuss the demarc problems we're faced with every day. I will advise you of the date and time of the meetings that will take place in your areas.

Should you or any of your folks have questions concerning the attached interrogatories or production of document request, please contact me at (904) 224-5128 office, or (904) 933-0566 mobile.

Thanks,

Attachments

cc: Strohmeier w/o attachments
Kellermann w/o attachments
Mulcahy w/o attachments
Perry w/o attachments
DiBenedetto w/o attachments
Beatty w/o attachments
Carver w/o attachments
Lee w/o attachments

BST20240

PSC 6734

PART XII

**RULES GOVERNING SHARED TENANT SERVICE PROVIDED
BY OTHER THAN LOCAL EXCHANGE-TELEPHONE COMPANIES -**

25-24.550	Reserved
25-24.555	Scope and Waiver
25-24.557	Types of Shared Tenant Service Companies (Repealed)
25-24.560	Terms and Definitions
25-24.565	Certificate of Public Convenience and Necessity Required
25-24.567	Application for Certificate
25-24.568	Improper Use of a Certificate
25-24.569	Application for Approval of Sale, Assignment, or Transfer of Certificate
25-24.572	Cancellation of a Certificate
25-24.575	Shared Tenant Service Operations
25-24.580	Airport Exemption
25-24.585	Rules Incorporated

25-24.550 Reserved.

25-24.555 Scope and Waiver.

(1) This part applies to persons or companies who provide for sharing or resale of local telecommunications service as defined in 25-24.560(10), F.A.C.

(2) To the extent these rules are inconsistent with provisions of Chapter 364, Florida Statutes, regarding shared tenant service, companies subject to this Part are exempted from such provisions or are subject to different requirements than otherwise prescribed for telecommunications companies under the authority of section 364.339, Florida Statutes.

(3) 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.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.01, 364.339 F.S.

History--New 01/28/91, Amended 07/29/97, 01/31/00.

25-24.557 Types of Shared Tenant Service Companies.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.01, 364.339 F.S.

History--New 1-28-91, Repealed 7-29-97.

25-24.560 Terms and Definitions.

For purposes of this Part, the definitions for the following terms apply:

(1) "Alternative Access Vendor" (AAV) means any telecommunications company, as defined in section 364.337(6)(a), Florida Statutes.

(2) "Agent" means one authorized to act on behalf of another.

(3) "Competitive local exchange telecommunications company" (CLEC) means any company as defined in Section 364.02(1), Florida Statutes.

(4) "Company" means a shared tenant service company.

(5) "Interexchange Company" (IXC) means any telecommunications company, as



defined in section 364.02(6), Florida Statutes, which provides telecommunication service between exchange areas as those areas are described in the approved tariffs of individual local exchange companies.

(6) "Local Exchange Telecommunications Company" (LEC) means any telecommunications company, as defined in section 364.02(6), Florida Statutes.

(7) "Local Service Area" or "Local Calling Area" means the area within which telecommunications service is furnished to subscribers under a specific schedule of exchange rates and within which calls may be completed without toll charges. A local service area may include one or more exchange areas or portions of exchange areas.

(8) "Pay telephone service company" means any telecommunications company, as defined in section 364.02(6), Florida Statutes, other than a Local Exchange Company, which provides pay telephone service as defined in section 364.335(3), Florida Statutes.

(9) "Private Branch Exchange" (PBX) means a system in which trunk lines connect a telephone company central office to a switching system which directs incoming calls to the appropriate user.

(10) "Shared tenant service" (STS) as defined in section 364.339(1), Florida Statutes, means the 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.

(11) "Tenant" means any person entitled to occupy a premises under a rental or lease agreement.

(12) "Unaffiliated Entities" means those corporations, partnerships, proprietorships, or other groups that control less than 50 percent of the stock of the entity which claims to be affiliated.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.33, 364.335, 364.339 F.S.

History--New 1-28-91, Amended 7-29-97.

25-24.565 Certificate of Public Convenience and Necessity Required.

(1) No person shall provide shared tenant service without first obtaining a certificate of public convenience and necessity from the Commission. Services may not be provided, nor may deposits or payment for services be collected, until the effective date of a certificate, if granted. However, acquisition of equipment and facilities, as well as advertising and other promotional activities, may begin prior to the effective date of the certificate at the applicant's risk that it may not be granted. In any customer contracts for advertisements prior to certification, the applicant must advise the customer that certification has not and may never be granted.

(2) On or after January 1, 1996, STS providers with certificates granted prior to January 1, 1996, are authorized to provide shared tenant service statewide to tenants as defined in 25-24.560(10), F.A.C.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.33, 364.335, 364.339 F.S.

History--New 1-28-91, Amended 7-29-97.

25-24.567 Application for Certificate.

(1) An applicant desiring to provide shared tenant service shall submit an application on Commission Form PSC/CMP 37 (07/97), which is incorporated into this rule by reference. Form PSC/CMP 37 (07/97), entitled "Application Form for

Authority to Provide Shared Tenant Service," may be obtained by contacting the Commission's Division of Competitive Markets and Enforcement. A non-refundable application fee of \$100.00 must accompany the filing of all applications.

(2) An original and six copies of the application shall be filed with the Division of the Commission Clerk and Administrative Services.

(3) A certificate will be granted if the Commission determines that such approval is in the public interest.

(4) Any shared tenant service authority granted hereafter is subject to the following:

(a) Shared tenant authority granted to all companies is on a statewide basis and is restricted to tenants as defined in Section 25-24.560(10), F.A.C.

(b) Each shared tenant service applicant shall:

1. Advise all customers of its current rates and conditions for resold local exchange service and its quality of service standards.

2. Inform each customer in advance of agreement to provide service, that the Florida Public Service Commission will not set rates or regulate the service quality standards.

(c) A certificate to provide shared tenant service does not carry with it the authority to provide competitive local exchange telecommunication, alternative access vendor, interexchange or pay telephone service. A separate application must be made for such authority.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.33, 364.335, 364.339, 364.345 F.S.

History--New 1-28-91, Amended 5-8-91, 11-20-91, 7-29-97.

25-24.568 Improper Use of a Certificate.

No certificate of public convenience and necessity authorizing shared tenant service may be, assigned or transferred by the holder to another without prior Commission approval. No certificate shall be used as collateral for any purpose.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.33, 364.335, 364.339, 364.345 F.S.

History--New 1-28-91, Amended 7-29-97.

25-24.569 Application for Approval of, Assignment, or Transfer of Certificate.

(1) A company desiring to obtain a certificate by assignment or transfer from the holder thereof shall submit an application jointly with the certificate holder on Commission Form PSC/CMP 37 (07/97), which is incorporated into this rule by reference. Form PSC/CMP 37 (07/97) is entitled "Application Form for Authority to Provide Shared Tenant Service Within the State of Florida." The application form may be obtained by contacting the Commission's Division of Competitive Markets and Enforcement.

(2) An original and six copies of the application shall be filed with the Division of the Commission Clerk and Administrative Services.

(3) An application for, assignment or transfer of a certificate will be granted if the Commission determines that such approval is in the public interest.

(4) A certificate may be, assigned or transferred only as a whole.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.32, 364.33, 364.335, 364.337, 364.339, 364.345 F.S.

History--New 1-28-91, Amended 11-20-91, 7-29-97.

25-24.572 Cancellation of a Certificate.

(1) The Commission may cancel a company's certificate for any of the following reasons:

(a) Violation of the terms and conditions under which the authority was originally granted;

(b) Violation of Commission rules or orders; or

(c) Violation of Florida Statutes

(2) If a certificated company desires to cancel its certificate, it shall request cancellation from the Commission in writing. Cancellation of a certificate shall be ordered subject to the holder providing the following information:

(a) Statement of intent and date to pay Regulatory Assessment Fee.

(b) Statement of why the certificate is proposed to be cancelled.

(c) Proof of individual customer notice regarding discontinuance of service.

(d) Statement on treatment of customer deposits and final bills.

Specific Authority: 350.127(2) F.S.

Law Implemented: 350.113, 350.127(1), 364.285, 364.339, 364.345 F.S.

History--New 1-28-91, Amended 7-29-97.

25-24.575 Shared Tenant Service Operations.

(1) All shared tenant service providers shall allow the carrier of last resort of local exchange telecommunication services direct access to tenants who desire local service from the carrier of last resort of local exchange telecommunication services instead of the shared tenant service provider.

(2) Each shared tenant service provider shall allow access to a provider of local exchange telecommunication services "zero" operators for emergencies and for line verification purposes.

(3) (a) Each shared tenant service provider shall provide direct access to 911 service where available at a level at least equivalent to the service provided by the incumbent local exchange company.

(b) By July 1, 1997, access to 911 services shall be maintained for the duration of any temporary disconnection for non-payment of a residential subscriber's local service.

(4) Each shared tenant service provider shall provide access via 800, 888, 10XXX, or 950, where available, to all locally available interexchange companies.

(5) Shared tenant service providers shall be subject to the following conditions when operating in a rate base, rate of return local exchange company's service area, as provided in Chapter 364.052(2), F.S.

(a) Where two (2) or more buildings are served by the same private branch exchange (PBX), the trunks serving each building shall be separately partitioned.

(b) Shared tenant service customers in one building shall not access or use the trunks partitioned for another building.

(c) Shared tenant service shall be limited to a total of 250 inward, outward, and combinational trunks per private branch exchange (PBX).

(d) Shared tenant service providers shall not be allowed to:

1. Establish dedicated facilities (provide lines) direct to an interexchange company's point of presence (POP).

2. Construct facilities for interconnecting other shared tenant service locations.

3. Allow intercommunication between unaffiliated entities.

(6) The carrier of last resort of local exchange telecommunication services must be able to gain access to all facilities up to the demarcation point of the

tenant's premises, and retain responsibility for provision and maintenance of the network up to that point.

(7) The carrier of last resort of local exchange telecommunication services shall use the STS provider's or the STS building owner's cable, if made available, to gain access to the tenant. The carrier of last resort of local exchange telecommunication services shall be required to provide reasonable compensation. Such compensation shall not exceed the amount it would have cost the carrier of last resort of local exchange telecommunication services to serve the tenant through installation of its own cable. This cost must be calculated on a pro rata basis.

(8) In those circumstances where the STS provider and landlord of a building are not the same, the STS provider shall obtain and guarantee the permission of the building owner to allow direct access by the carrier of last resort of local exchange telecommunication services to any tenant upon the tenant's request.

Specific Authority: 350.127(2) F.S.

Law Implemented: 364.03, 364.035, 364.337, 364.339, 364.345 F.S.

History--New 1-28-91, Amended 7-29-97.

25-24.580 Airport Exemption

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.

Specific Authority: 350.127(2), F.S.

Law Implemented: 364.337, 364.339, 364.345, F.S.

History: New, 1/28/91, Amended, 3/11/92.

25-24.585 Rules Incorporated.

(1) The following rules are incorporated herein by reference and apply to shared tenant service companies:

<u>SECTION</u>	<u>TITLE</u>	<u>PORTIONS APPLICABLE</u>
25-4.019	Records and Reports in General	All
25-4.020	Location and Preservation of Records	All except (1) and (3)
25-4.036	Design and Construction of Plant	All
25-4.043	Response to Commission Staff Inquiries	All
25-4.0161	Regulatory Assessment Fees; Telecommunication Companies	All
25-4.110	Customer Billing	Subsections (11) and (12)
25-4.160	Operation of Telecommunications Relay Service	All

(2) Each shared tenant service company shall file with the

Commission's Division of Competitive Markets and Enforcement updated information for the following items within ten days after either such change occurs.

(a) The mailing address of the certificate holder.

(b) Name, title, and phone number of individual responsible for Commission contacts.

Specific Authority: 350.127(2), 427.704(8), F.S.

Law Implemented: 350.113, 364.016, 364.17, 364.18, 364.183, 364.185, 364.339, F.S.

History--New 1/28/91, Amended 12/29/91, 11/13/95, 7/29/97, 04/08/98, 11/16/03.