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August 9, 2007

Via Electronic Filing

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

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

Dear Ms. Cole:

Enclosed for filing in the above-referenced proceedings is Greater Orlando Aviation Authority's Direct Brief. Copies were served on the parties listed in the attached Certificate of Service.

Should you have any questions, please do not hesitate to contact the undersigned.

Respectfully submitted,

Jean L. Kiddoo
Joshua M. Bobeck

cc: Parties of Record

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by BellSouth Telecommunications, Inc., Regarding The Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules	)	Docket No. 050257

BRIEF OF GREATER ORLANDO AVIATION AUTHORITY

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** request to serve as Qualified Representatives pending*

Dated: August 9, 2007

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BRIEF OF THE GREATER ORLANDO AVIATION AUTHORITY

The Greater Orlando Aviation Authority ("GOAA"), by its undersigned counsel, hereby files its direct brief requesting that the Commission deny the complaint filed by AT&T f/k/a BellSouth Telecommunications, Inc. ("AT&T") in the above-captioned proceeding on April 13, 2005 (the "Complaint"). AT&T's central argument is that the presence of retail shops for the convenience of the traveling public transmutates an airport into a shopping mall. AT&T seeks to undo longstanding Commission precedent exempting airports from the Commission's Shared Tenant Services ("STS") certification requirements and regulations codified in Rule 25-24.580, Florida Administrative Code (the "Airport Exemption"). The relief requested in the Complaint could undermine the efforts of Airports in Florida to protect the public safety at a time in our nation's history when protecting that safety is a priority concern.

The parties to this proceeding have identified four issues to guide the Commission's resolution of this dispute.[1] The issues GOAA addresses in this direct brief are:

1. Is Miami-Dade County operating as a telecommunications company at any County owned airports?

[1] Docket No. 050257-TL, Order No. PSC-06-0326-PCO-TL, at p. 7 (Jan. 26, 2007).

3. Is Miami-Dade County's operation and provision of shared tenant services at Miami International Airport by the Miami-Dade Aviation Department exempt from the STS rules pursuant to applicable Florida Statutes and Commission rules?

These two issues implicate the principal legal issue at the heart of this dispute — the Commission's enforcement of its Airport Exemption that permits airports to provide STS to retail establishments located in the airports and AT&T's construction of that exemption mistakenly suggesting that the presence of retail shops in an airport transforms the airport into a shopping mall.

The Commission should deny AT&T's complaint because maintaining the airport exemption as the Commission established twenty years ago remains – and indeed, is even more – in the public interest. The plain meaning of the airport exemption codified in the Florida Administrative Code requires that the Commission deny the premise of AT&T's complaint. And if there is any question as to the meaning and scope of the Airport exemption as set forth in the Code, review of the "legislative history" of the provision as set forth in hearing and agenda meeting transcripts from the Commission's 1987 proceedings first adopting the airport exemption confirm that AT&T's complaint is misguided and should be denied.

GOAA is an agency of the City of Orlando, providing shared airport services at Orlando International Airport ("OIA") that are exempt from the Commission's STS certification requirements pursuant to the Airport Exemption. GOAA provides shared airport service in accordance with the Airport Exemption and thus and has a substantial interest in the Commission's application of the Airport Exemption and the *STS Order* in this case since AT&T makes general claims about the meaning of that order and the scope of the Airport Exemption.[2] GOAA thus seeks to ensure that the

[2] GOAA's participation in the proceeding is for the purpose of demonstrating that AT&T is attempting to redefine and substantially narrow the scope of the Airport Exemption adopted by the Commission some twenty years ago. In so participating, GOAA does not have direct knowledge of the details of the sharing arrangements in place at Miami International Airport (cont'd)

Commission affirms the letter and spirit of the Airport Exemption and the STS Order by continuing to exempt shared airport arrangements from the regulations applicable to commercial STS operators, even where the airport provides shared service to concessions located in the airport terminal building, such as restaurants and retail shops.

The Commission adopted the Airport Exemption because it recognized the need for the local government authorities that are responsible for airport operation, for the security, safety and convenience of the traveling public, and for the efficient integration of such support services with other airport functions, to continue to control and operate airport telecommunications systems. In so doing, the Commission recognized and specifically permitted airports to continue existing shared airport services provided to commercial concessions in 1987, and a change in the current practice, some twenty years later, would hamstring an airport operator's ability to provide for the security, safety and convenience of the traveling public in direct contravention of the Commission's 1987 ruling.

SUMMARY

AT&T's complaint is based on an interpretation of the Commission's 1987 *STS Order* that is wholly inconsistent with the terms of that decision and the rationale the Commission articulated at the time of its adoption. As an active participant in that 1987 proceeding, AT&T (then known as Southern Bell Telephone & Telegraph Company ("Southern Bell")) should know and understand completely, what the Commission meant when it created an "Airport Exemption" from the STS rules

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("MIA") or whether they are in all respects similarly structured to the OIA arrangements. Its participation is therefore directed to the legal issue of the proper scope of the Commission's prior decision. As an active participant in the original proceedings that formed the record upon which the Commission based its *STS Order,* GOAA seeks to assure that the Commission has before it a review of the principles and record that formed the basis for its longstanding policy with respect to airport arrangements upon which to make a judgment as to whether the system at MIA falls within the Airport Exemption.

for shared services provided by airport managers in furtherance of their duty to provide for "the safe and efficient transportation of passengers and freight through the airport campus." AT&T's attempt to narrowly redefine the scope of that exemption twenty (20) years later should promptly be denied.

In 1987, after protracted proceedings in which detailed testimony was received and opposing positions considered, the Commission adopted rules governing the provision of shared local exchange services. *See In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, Order No. 17111 (Jan. 15, 1987) (the "*STS Order*"), *recon. denied and clarified*, Order No. 17369 (issued Apr. 6, 1987). In addition to considering rules for commercial STS providers and other types of sharing arrangements, the Commission heard considerable testimony regarding shared airport systems that GOAA had established, prior to that decision, to accommodate the special and unique circumstances of an airport. GOAA's telecommunications system, unlike commercial STS operations, was operated by a governmental authority for the convenience and safety of the traveling public and had (and continues to have) unique and critical communications needs such as the "ability of airport tenants to quickly communicate with one another for security reasons."[3] Based on that testimony, and over the objections of AT&T and other incumbent local exchange telephone companies ("ILECs"), the Commission exempted airports from the commercial STS rules and permitted Florida airports such as OIA and MIA to continue to share local exchange service for their airport purposes (*i.e.*, services related to the "safe and efficient transportation of passengers and freight through the airport campus")[4] without requiring certification or imposing inter-tenant calling prohibitions, single building limitations, and local trunk sharing restrictions applicable to commercial STS providers.

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[3] Exhibit 240, *STS Order* at 13. (Attachment 1 to this Brief.)

[4] *Id.* (the "Airport Exemption").

AT&T's complaint is nothing more than an attempt to relitigate the Commission's 1987 Airport Exemption, which has remained in effect since the Commission first adopted it over twenty years ago. In support of this ruse, AT&T focuses on the Commission's discussion in 1987 of certain future plans and other hypothetical types of possible airport expansions discussed during cross examination by GOAA's witness, and the Commission's resulting caution that some types of possible future expansions (*i.e.*, hotels, shopping malls and industrial parks)[5] would go beyond the limits of the exemption and would need to be served by partitioned trunk groups if part of the airport system.[6] Indeed, the only thing that has materially changed since 1987 is that the management of airports, and in particular the paramount need and importance for airports to do everything possible to assure security, has increased exponentially in complexity since September 11, 2001. As a result, the Commission's justifiable concern for public safety in 1987 that led it to permit airports to provide vital communications services necessary for the safe and efficient transportation of passengers and freight through an airport campus is even more appropriate today.

The Commission should deny AT&T's revisionist interpretation and reaffirm the airport exemption as established by this Commission 20 years ago.

BACKGROUND

A. The Commission's STS Proceedings

In 1985, prior to the opening of local services to competition and in response to a 1984 petition by Southern Bell, the Commission concluded that the Florida Statutes only permitted the sharing or reselling of local telephone service where existing LEC facilities were inadequate to meet the reasonable needs of the public. Accordingly, the Commission adopted a rule prohibiting the

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[5] *Id.*

[6] For example, GOAA was planning a new hotel and a possible tradeport on the airport campus at the time the Commission first decided these matters.

provision of shared tenant services unless and until a provider demonstrated that its proposed services did not duplicate or compete with LEC services. In addition to prohibiting commercial STS operations in Florida, this rule arguably would have prohibited the Florida airports, such as OIA, from continuing to configure their airport telecommunications systems in a way that enabled the airport management to accommodate the specialized and dynamic changing needs of the airports, by permitting the airline, freight carrier, aviation and airport operations support, security and terminal concession tenants to share a common PBX switch and thereby intercommunicate among each other for the safety and security of the airport.[7] *See* Rule 25-4.041, F.A.C. (effective Dec. 22, 1985).

In response to that decision, a number of commercial STS providers and other operators of sharing arrangements, including airports, sought legislative relief. In 1986, the Florida Legislature enacted Chapter 86-270, codified as Section 36.339, Fla. Stat., to permit the Commission to authorize STS to the extent it determined that such services are in the public interest. As a result of that amendment, the Commission instituted a second STS proceeding to make such a public interest determination.

Because the Commission's earlier broad prohibition of the sharing of local service, if applied to airports, would have required GOAA to jettison the communications systems, then in use at OIA, and would have similarly affected other types of non-commercial shared systems, that second STS proceeding considered not only the sharing of local service in a commercial STS context, but also such services provided in the context of other sharing arrangements at facilities such as: (i) resorts and time share facilities; (ii) colleges and universities; (iii) hospitals; and (iv) nursing homes, retirement, and other health care facilities. GOAA intervened and actively participated in that

[7] At that time, the Commission "grandfathered" existing STS providers for an eleven (11) month period to come into compliance by partitioning their PBX switches on both the trunk and line (cont'd)

proceeding to preserve its ability to continue to configure its airport telecommunications system at OIA in the manner best suited to the specialized needs of an airport, and free from restrictions and limitations imposed on commercial STS operations. Miami-Dade County (the "County") also participated in the proceeding. Both AT&T (then known as BellSouth) and Verizon (then known as GTE) argued that the sharing of local telephone service should not be permitted, including the sharing of services at airports similar to that which was in place and operating at OIA.

B. The Commission's STS Rules

In its *STS Order*, the Commission found that limited local sharing is in the public interest under certain conditions. For example, the Commission circumscribed the scope of commercial STS arrangements to:

- a single building (one structure under one roof);[8]
- a maximum of 250 PBX trunks; and
- purchasing message rated PBX trunks.

The *STS Order* also prohibited commercial STS operators from permitting communications between unaffiliated tenants without accessing the LEC central office. Moreover, the Commission required all such commercial STS providers to obtain a certificate of public convenience and necessity to provide service on a building-by-building basis.[9] The Commission also required that commercial STS providers must offer unrestricted access to all locally available interexchange carriers, and provide access to LEC operators and, where available, to 911 centers for emergency services. In

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sides, so that there was no sharing of local trunks and no intercommunication between tenants without use of the LEC network.

[8] If more than one building is served by a single PBX, the trunks serving each building were required to be partitioned, and each building would be required to receive separate Commission certification as a separate STS arrangement.

[9] The Commission also initially required commercial STS providers to file a separate tariff of their rates and charges for each STS building served, but that requirement has since been removed.

addition, the Commission specifically noted that commercial STS providers would be subject to the Commission's regulatory assessment fees and the Florida gross receipts tax, and extended its then-existing "bypass" prohibition to commercial STS arrangements.

C. The Airport Exemption

As noted above, GOAA demonstrated throughout the proceeding that the limitations placed on STS arrangements and the regulation of STS providers were not justified for the unique circumstances of an airport. The Commission was persuaded by those arguments and found that:

> [a]irports are unique facilities, generally construed as being operated for the convenience of the traveling public. One unique communication need is the ability of airport tenants to quickly communicate with one another for security reasons. It is for this reason that we will permit intercommunications between and among tenants behind the PBX without accessing the LEC central office.[10]

1. GOAA Testimony

The Commission conducted a detailed and vigorous examination of the need for regulation of STS providers and whether airports provision of STS services to other business at the airport should be covered by the Commission's STS rules. GOAA's witness, Hugh Macbeth, who provided critical testimony regarding how an airport exemption would enhance the ability of GOAA and other airports to maximize their efforts at protecting the security and safety of the traveling public, explained that the telephone system in the airport is "incidental but critical" to the "movement of passengers safely through the terminal."[11] He testified regarding the important "operational and

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[10] Exhibit 240, *STS Order* at 13.

[11] Exhibit 238, *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Hearing Tr., Vol. III, p. 358:15-17 (Oct. 27-29, 1987). (Attachment 2 to this Brief).

safety benefits" of GOAA's shared system and the "disruption and potential safety risk" if airports in Florida were prohibited from providing STS services with other airport tenants.[12]

Central to this testimony was the principal that the airport's provision of STS enables "timely, coordinated response to assaults, thefts, medical emergencies, terrorist threats and other airport emergencies."[13] The need for rapid communication between and among airport tenants is "unique" and gives the tenants a "strong community of interest."[14]

This community of interest is not dependent on the particular service or function the tenant provides to travelers. Instead, the community of interest comes from location of the business within the airport. As the witness explained, "one of our missions is to be always able to respond to an unexpected event wherever it may happen … and to the extent that the normal operation of that business may not have anything directly to do with the operation of the airport, an emergency … can happen at … any location."[15] In short, the businesses in the airport that use the airports' STS system are "integrated into the airport emergency response system."[16] Mr. Macbeth gave examples where airport emergency and security personnel were able to use a shoeshine stand[17] and restaurant[18] as staging areas in response to hostage crises.

Mr. Macbeth further explained how the speed of communications behind the PBX was critical to safety and complying with the FAA's minimum requirements for emergency response

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[12] *Id.* at p. 277:15-17. (Attachment 3 to this Brief.)

[13] *Id.* at p. 284:14-16. (Attachment 4 to this Brief.)

[14] *Id.* at p. 288:5-6, 11-12. (Attachment 5 to this Brief.)

[15] *Id.* at p. 353:9:16. (Attachment 6 to this Brief.)

[16] *Id.* at p. 356:23-24. (Attachment 7 to this Brief.)

[17] *Id.* at p. 352:24-25 - 353:1-2. (Attachment 8 to this Brief.)

[18] *Id.* at p. 357:17-22. (Attachment 9 to this Brief.)

time.[19] As Mr. Macbeth explained, without a shared system such calls would be routed to local 911 dispatchers making airport emergency calls vulnerable to delays and other disruptions.[20]

2. **Commission Deliberations**

After an extensive review of the type of sharing arrangements in effect at OIA and MIA, the Commission found that, due to their unique circumstances, airports should not be subject to the rules applicable to commercial STS providers so long as their sharing of local telephone service is "*related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus*."[21] (the "Airport Exemption"). The *STS Order* cautioned, however, that extension of an airport's shared telephone services beyond that in effect at that time to "facilities such as hotels, shopping malls and industrial parks" would require either that the local trunks be "partitioned"[22] and not shared with the shared airport system or, if not partitioned, that the airport obtain a certificate of public convenience and necessity as an STS provider.[23] The Commission also provided that with this caveat as to the extension of the shared service to "hotels, shopping malls and industrial parks," which, unless partitioned, would require a certificate, "airports may continue to provide service under existing conditions."[24] As discussed above, "existing conditions" included sharing of service to many types of concessions in the airport that were described by Mr. Macbeth,

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[19] *Id.* at p. 295:25-26. (Attachment 10 to this Brief.)

[20] *Id.* at p. 296:18-22. (Attachment 11 to this Brief.) *See also id*., at p. 379:19-25, 380:1-4. (Attachment 12 to this Brief.)

[21] Exhibit 240, STS Order at 13 (emphasis added).

[22] "Partitioning" refers to the provision of service through separate trunk groups that are not shared or "pooled" with the shared airport system similar to the partitioning that the Commission required for commercial STS providers who wanted to serve separate buildings with a single switch. *Id.* at pp. 7-8.

[23] *Id.*

[24] *Id.*

including such concessions as the shoeshine stand and restaurant that Mr. Macbeth had stated had served as important command posts in hostage situations.

In January 1991, consistent with its *STS Order*, the Commission codified the Airport Exemption in Section 25-24.580 of the Florida Administrative Code (the "Code").[25] That section of the Code provides that:

> Airports shall be exempt from 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.

The parameters within which an airport may share local telephone service without becoming subject to the STS rules have not changed since the Airport Exemption was adopted in 1987. Therefore, so long as the County's sharing of local telephone service is related to the purpose of an airport (*i.e.*, "the safe and efficient transportation of passengers and freight"), under current rules, the Commission may not require the airport to obtain a certification of authority or to comply with the Commission's regulations applicable to telephone companies or STS providers, such as the filing of

[25] Exhibit 193, Adoption of Rules 25-24.550 through 25-24.587, F.A.C., Docket No. 891297-TS, Order No. 23979 (Jan. 19. 1991). Subsequently, in 1995, the Florida Legislature substantially amended Florida Statutes to allow competition in the provision of local exchange services, and among other changes amended Section 364.339 of Florida Statutes to remove certain restrictions placed on STS providers. Importantly, STS providers were no longer statutorily limited to providing service to tenants in a single building. The Commission also subsequently revised its STS rules to conform to the 1995 Florida Legislature's directive. *See* Proposed Repeal of Rules 25-4.0041, F.A.C., Provision of Shared Service For Hire and 25-24.557, F.A.C., Types of Shared Tenant Service Companies and Proposed Amendment of Rules 25-24.555, F.A.C., and 25-24.560 through 25-24.585, F.A.C., Relating to Shared Tenant Services, Docket No. 951522 (1995) ("Proposed Repeal of Rules"), *adopted in part*, Final Order Establishing Rates, Terms and Conditions for Shared Tenant Services Pursuant to Chapter 95-403, Laws of Florida, Docket Nos. 951511-Tl and 951522-TS (1997). In that rulemaking proceeding, the Commission specifically stated that the Airport Exemption would remain unchanged. Proposed Repeal of Rules at 4. (emphasis supplied).

tariffs of its rates and charges or the filing of annual reports at the Commission, given "there is no competition with no duplication of local exchange service by the LEC."[26]

3. 1992 Clarification

In October 1991, the Commission Staff recommended that the Commission clarify the Airport exemption due to a perceived ambiguity regarding the scope of that exemption.[27] GOAA was the only party to file comments and objected to the staff's proposed change on the grounds that it might be interpreted as changing the Commission's earlier decision.[28] In response to GOAA's comments, the Staff modified its proposed rule amendment, but confirmed that if an airport provides shared local service to an industrial park, mall or hotel it needs a certificate to do so."[29] Attached to the memorandum was a diagram of the typical arrangement at issue.30 This diagram clearly shows the "shopping malls and industrial parks" referenced in § 25-24.580 as separate facilities rather than as part of the airport. Nothing in this clarification, which dealt with the meaning of the STS Order's reference to "extending" local sharing to facilities such as hotels, shopping malls and industrial parks in any way modified the Commission's earlier decision to permit the "continued" sharing of local service in the airport terminal under existing conditions. Instead, as the diagram shows clearly, the rule was drafted in the context of a free-standing, independent mall facilities; an airport terminal with retail shops and restaurants for the convenience of passengers is not a shopping mall.

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[26] Exhibit 240, *STS Order* at 13.

[27] Exhibit 201, Docket 910867-TS, Staff Memorandum, Jan. 23, 1992 at 1 ("*1992 Staff Memorandum*"). (Attachment 13 to this Brief.)

[28] *Id.*

[29] *Id.* at 3.

[30] *Id. at* Attachment C (p. 10).

ARGUMENT

AT&T mistakenly contends that the County requires an STS certificate from the Commission in order to provide its shared telephone services to concessions in the MIA terminal.[31] This contradicts both the letter and legislative history of the Commission's Rules as adopted in 1987 and unaltered since that time. Although the Commission did not *per se* define "hotels, shopping malls and industrial parks", the Commission neither intended nor required airports to obtain certification from the Commission in order to serve a commercial tenant within the airport terminal facility. Indeed, there was substantial testimony at the hearings about the security reasons for permitting airport tenants, including not only airlines, freight carriers and aviation and airport operations support services, but also concessions in the airport terminal (*e.g.*, restaurants, newsstands, bars, and even the shoeshine stand) to obtain service through the shared airport system and therefore to continue to intercommunicate "behind" the PBX switch, *i.e.*, without accessing the LEC central office.

To the extent the County provides shared services to such tenants of the airport, such service is entirely consistent with the Commission's rules and orders that specifically exempt airports from the Commission's STS certification requirement. Put simply, it was clear to the Commission in 1987 that the shared operations at OIA and MIA included sharing of service by terminal shops, restaurants, bars, newsstands, shoeshine stands and other terminal concessions in order to

[31] AT&T also complains that MIA's service to a hotel on the airport campus. GOAA is not privy to the manner in which service is provided to that hotel, but notes that the Commission's *STS Order* permitted the provision of service to a hotel on the airport campus on a partitioned basis and, as later clarified by the Commission Staff, the Rules would require certification if shared local service is provided to the partitioned trunk group. Exhibit 201, *1992 Staff Memorandum* at p. 3.

intercommunicate behind a PBX, and the Commission permitted the County and GOAA "to continue to provide service under these conditions."[32]

To the extent AT&T now seeks to restrict the Airport Exemption and argues that airports have now, by virtue of sharing service among concessions located in the airport terminal, become "shopping malls,"[33] AT&T's argument is foreclosed by the unambiguous text of Section 25-24.580 of the Code. And even if the text was ambiguous, as discussed below, the construction advanced by AT&T is patently unreasonable and contrary to the Commission's intent in adopting the Airport exemption twenty years ago and should thus be denied.

I. THE PLAIN LANGUAGE OF SECTION 25-24.580 EXEMPTS THE SHARING OF SERVICE WITH AIRPORT CONCESSIONS FROM STS CERTIFICATION

AT&T's claim that Commission rules require airports to apply for and obtain from the Commission a certificate to provide shared services to airport concessions is wrong. Complaint ¶¶ 13-14. Contrary to AT&T's claims, the Commission's rules adopted in 1987 exempted airports from the Commission's STS certification requirement, and the *STS Order* authorized the sharing of airport service to concessions in the terminal, expressly recognizing that the sharing that was in effect prior to the adoption of the Airport Exemption in the *STS Order* could continue.

Section 364.339 of Florida Statutes provides the Commission exclusive jurisdiction to authorize the provision of STS, and generally requires STS providers to obtain Commission certification, but also exempts service to government entities. §§ 364.339(1), (2) and (3)(a), Fla. Stat. Moreover, Section 363.339(3)(a) of Florida Statutes grants the Commission authority to exempt

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[32] *Id.*

[33] *Complaint by BellSouth Telecommunications, Inc., Regarding The Operation of a Telecommunications Company by Miami-Dade County in Violation of Florida Statutes and Commission Rules,* Docket No. 050257, Agenda Meeting Tr. p. 16:23-24 Aug. 2, 2005 (BellSouth statement that "essentially what [Miami-Dade is] running is a shopping mall." ("Aug. 2, 2005 Agenda Tr.").

entities from any certification requirements. *See also* § 25-24.555 F.A.C. Pursuant to this authority, the Commission generally required STS providers to obtain an STS certificate from the Commission and limited the scope of their services, but *specifically exempted airports from such certification requirements and other limitations*. Section 25-24.580 of the Code, the 1991 codification of the Commission's *STS Order* provides:

> Airports shall be exempt from 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.

(emphasis added.)

Despite the unambiguous language of the rule, AT&T asks the Commission to issue a contradictory ruling requiring the County to obtain an STS certificate in order to continue to share its telecommunications network with retail concessions in the terminal. AT&T argues that the term "shopping mall," as used in section 24.580, includes retail shops and other businesses located in the airport, meaning that airports with shopping conveniences for travelers cannot provide STS services to those businesses within the airport's terminal without an STS certificate.[34]

This is nonsense. The clear meaning of "shopping mall" connotes an independent shopping destination where consumers go to shop, not an airport where they go to travel and only incidentally to use retail and restaurant facilities. Moreover, the plain language of Section 25-24.580 states that "Airports shall be exempt from other STS rules." When "interpreting rules, words should be given their plain and ordinary meaning." *Boca Raton Artificial Kidney Center, Inc. v. Department of Health and Rehabilitative Services*, 493 So.2d 1055, 1057 (Fla. App. 1986). AT&T apparently does

[34] Complaint ¶¶ 21-22; Aug. 2, 2005 Agenda Meeting Tr. p. 16:23-24.

not dispute the meaning of this provision but instead rests its bizarre legal interpretation on the second sentence of the rules that requires certification if the airport intends to serve separate "facilities." AT&T now claims that this sentence includes retail concessions on the airport premises. Complaint ¶¶ 17-18. This argument fails for two reasons: the rules uses the term "facility", suggesting a separate building apart from the airport, and it would be arbitrary and capricious to interpret the term "shopping mall" to include retail shops located in an airport terminal. It defies common sense and the English language. *See Boca Raton,* 493 So.2d at 1057.

The language and structure of Section 25-24.580 lead to the inescapable conclusion that the second sentence of the rule applies only to separate buildings or structures functioning or having its primary purpose as an independent "shopping mall," not shops or concessions located within or connected with the airport terminal buildings. Both the first and second sentences refer to a "facility". One online dictionary defines a facility as "a building or place that provides a particular service or is used for a particular industry; 'the assembly plant is an enormous facility.'"[35] Webster's defines facility as "something (as a hospital) that is built, installed or established to serve a particular purpose."[36]

In other words, the rule only requires an airport to obtain STS certification when the "hotels, shopping malls and industrial parks" are separate and apart from the airport "facility" – *i.e.*, structures used to support the transportation of passengers and freight, and which were built or established for the particular purpose of shopping. This standard clearly does not apply to an airport

[35] Facility. Dictionary.com. WordNet® 3.0. Princeton University. http://dictionary.reference.com/browse/facility (accessed: August 01, 2007).

[36] Facility. Merriam-Webster's Online Dictionary http://www.m-w.com/dictionary/facility (accessed: August 01, 2007).

terminal facility. When services are offered within an airport "facility," the airport need not obtain an STS certificate from the Commission.

This logical reading of an unambiguous rule finds support in the Commission Staff's 1992 clarification of the rule adopted in 1987 and later codified in Section 25-24.580. In Attachment C of the *1992 Staff Memorandum* (Exhibit 201), the Staff cites to a diagram representing a typical airport arrangement. In that diagram, the "hotels, shopping malls and industrial parks" referenced in Section 25-24.580 appear as separate buildings located apart from the airport terminals and other parts of the airport. This diagram demonstrates that the construction of the rule now advanced by AT&T finds support neither in the text of the rule itself nor in the spirit of the rule.

AT&T's backup argument, that the term "shopping mall" somehow encompasses retail businesses located in the airport terminal for the convenience of the traveling public is similarly absurd. It is unreasonable to conclude that because shopping malls may contain restaurants and retail stores, the presence of such establishments in an airport terminal transmogrifies the airport into a "shopping mall". Such an expansive reading of the rule is untenable. The Commission could easily have expanded the rule to retail shops and restaurants by using such terms but did not. Instead, it selected the term "shopping mall". The term shopping mall, in ordinary usage, is understood to be a building or series of buildings built or established for the distinct purpose of housing a collection of retail stores, shops and restaurants to serve the general public who come *in order to shop*. AT&T is the only entity who could possibly confuse an airport terminal with a shopping mall — as noted by Commission Chairman Baez at a hearing in this matter: "I have never once woken up in the morning and said, hey, I need a pair of pants. Let me go shop at the airport."[37] As the *STS Order* noted, the airport provides concessions in its terminals for the convenience and comfort of travelers passing

[37] *See* Aug. 2, 2005 Agenda Tr. at p. 35:8-10.

through the airport.[38] The shopping experience is clearly ancillary to the purpose for which the terminal buildings were built and are used. The plain language of the rule must prevail and AT&T's claim that the term shopping mall actually means individual shops in an airport like MIA should be categorically rejected.

II. AT&T'S PROPOSED CONSTRUCTION OF SECTION 25-24.580 CONTRADICTS THE COMMISSION'S 1987 ORDER AND SUBSEQUENT CLARIFICATION AND IS THUS UNREASONABLE

Contrary to AT&T's effort to parse and curtail the intended scope of the Commission's 1987 decision, the *STS Order* clearly provides that when an airport operates shared airport telecommunications for the purpose of "the safe and efficient transportation of passengers and freight through the airport campus," the airport is exempt from certification because "there is no competition with nor duplication of local exchange service by the LEC." Specifically, the *STS Order* provides that:

> While we recognize the unique needs of airports such as GOAA, the sharing of local exchange service must be related to the purpose of an airport – the safe and efficient transportation of passengers and freight through the airport campus. To the extent that sharing of local trunks is limited to this purpose, there is no competition with nor duplication of local exchange service by the LEC. There was some discussion at the hearing of extending local sharing to facilities such as hotels, shopping malls and industrial parks. To the extent an airport engages in this type of local sharing, it must be certificated as an STS provider. Because of the unique nature of the airport, we consider it to be a single building. As an alternative to becoming certificated as an STS provider, the airport could partition the trunks serving these other entities. With these caveats, airports may continue to provide service under existing conditions.[39]

Thus the general rule, as outlined in the text of the *STS Order* and in Rule 25-24.580, F.A.C., is that certification is not required for an airport providing shared service to airport tenants for the purpose

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[38] Exhibit 240, *STS Order* at 13.

[39] *Id*.

of "the safe and efficient transportation of passengers and freight through the airport campus." This general rule applies to the provision of STS to retail tenants in the airport.

This construction is consistent with the record of the hearing before the Commission and Commission's subsequent deliberations adopting the *STS Order*. In describing the Commission's decision regarding shared service in airports, Chairman Nichols explained that the Commission's exemption would allow usage "incidental" to the airport's purpose "but doesn't make [the airports] have to go through whole certification process because they've got a newsstand and a coffeeshop."[40]

The *STS Order* also reflects the Commission's intent to allow GOAA and MIA, the airports that intervened in the STS proceedings, to continue operating as they had in the past — without any certificate from the Commission. The *STS Order* provides that "airports may continue to provide service under existing conditions."[41] Thus, the Commission should deny AT&T's complaint that the County is required to obtain an STS certificate to serve tenants in the Miami International Airport.

A. The STS Airport Exemption Includes Concessions In The Airport Terminal And Is Not Limited To Aviation Industry Tenants

AT&T's construction of Section 25-24.580 and the *STS Order* rests on the erroneous assumption that the provision of STS services to "restaurants, retail shops or other commercial entities" is not "related to the safe and efficient transportation of passengers and freight through the airport campus." Complaint ¶¶ 13, 15. In support of these arguments, AT&T relies upon the examples of "hotels, shopping malls and industrial parks" used by the Commission in the *STS Order* to illustrate what types of commercial services by an airport authority would not be permitted to be shared without the authority obtaining a certificate as an STS provider.

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[40] Exhibit 239, *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, Special Agenda Tr. at Vol. II, p. 201: 1-5 (Jan. 8, 1987) ("Special Agenda Transcript") (emphasis added). (Attachment 14 to this Brief.)

1. The Retail Concessions that are Part of a Shared Airport System are "Related to the Safe and Efficient Transportation of Passengers and Freight Through the Airport Campus"

That the text of the rule actually means only what it says, and not what AT&T would like it to say, is evident from the transcript of the Commission's deliberations. During the Special Agenda session to consider adoption of the *STS Order*, Chairman Nichols explained that the Commission's exemption would allow usage "incidental" to the airport's purpose "but doesn't make [the airports] have to go through whole certification process because they've got a newsstand and a coffeeshop."[42]

The Commission in fact *rejected* the broad application that AT&T now seeks to insert into the rule twenty years later. During the Special Agenda session, Commissioner Herndon, proposed listing a fourth general category of entities (in addition to "hotels, shopping malls and industrial parks") that an airport would be required to obtain a certificate for the provision of STS.[43] This addition would have required an airport to obtain a certificate to provide STS to any "other commercial activities that are unrelated to the mission of an airport."[44] The other Commissioners, including Commissioner Gunter who sponsored the exemption adopted in the text of the *STS Order*, objected to the additional language, arguing that it "might exclude restaurants," which was clearly not an intended result.[45] Commissioner Herndon then clarified that the intention of the language was to distinguish terminal restaurants and shops from a "shopping mall" or the "Sebring Raceway that's down there on the airport."[46]

As Commissioner Herndon explained:

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41 Exhibit 240, *STS Order* at 13.

42 Exhibit 239, Special Agenda Tr. Vol. II at p. 271:2-7. (Attachment 15 to this Brief.)

43 *Id.*

44 *Id.*

45 *Id.* at p. 271:10. (Attachment 15 to this Brief.)

> The mission of the airport is to provide an environment where travelers – leaving aside the freight for a moment – where travelers can move in an efficient, safe manner; they have the necessary kind of amenities to make their travel productive. **If their clothes are ruined, they can replace them. They can get food, buy a trinket for relatives. I think those are a part of the mission of the airport.**[47]

Obviously, the Commission clearly considered commercial tenants providing retail service to travelers as "*related to the purpose of an airport - the safe and efficient transportation of passengers and freight through the airport campus"* and **NOT** as a "shopping mall". As Commissioner Gunter observed:

> COMMISSIONER GUNTER: Let me tell you what my interpretation is. My interpretation is that the airport, if you just picture a chain link fence around nothing but the airport and you didn't have any warehouses, you didn't have an industrial park and you didn't have a hotel sticking up in there – everything in there that can be construed in a reasonably common-sense approach as being necessary for the operation of the airport.
>
> CHAIRMAN NICHOLS: And that would include –
>
> COMMISSIONER GUNTER: And that would include the traveling public and those aviation services that are available at the airport.
>
> COMMISSIONER MARKS: Let me ask a question then. Does the bar that's on the concourse in the Tallahassee municipal airport as you go past the metal detector on the right, the little cubby hole looking bar, does that include that [--] that would be a part of that services?
>
> COMMISSIONER GUNTER: I would think yes.
>
> COMMISSIONER WILSON: Nobody drives out to the Tallahassee airport to go to that bar.
>
> COMMISSIONER MARKS: Well, that would include that and that would be a part of the airport services in [sic] exempt.
>
> CHAIRMAN NICHOLS: The newsstand would be included.[48]

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[46] *Id.* at p. 272:6-10. (Attachment 16 to this Brief.)

[47] *Id.* at p. 280:13-22 (emphasis supplied). (Attachment 17 to this Brief.)

[48] Note that this response appears to follow from the subsequent question and therefore appears to be out of order in the transcript.

> COMMISSIONER GUNTER: How about a newsstand? Even an old railroad terminal. I used to ride the railroad and they had a magazine rack in the railroad terminal in Jacksonville.

One of the five sitting Commissioners (Commissioner Marks), opposed the exemption of airports from certification and other STS requirements where they serve retail tenants in the terminals, but the exemption nevertheless carried after discussion in a 4 to 1 vote. Thus, provision of STS to such tenants is clearly and indisputably exempt from the Commission's certification requirement for STS providers.

B. Providing STS To Tenants In The Airport Is Necessary "For The Safe And Efficient Transportation Of Passengers And Freight Though The Airport".

The County's interpretation of the rule is consistent with the Commission's stated policy objective in formulating the rule — allowing airports to share local service so as to manage its airport "for the safe and efficient transportation of passengers and freight though the airport."[49]

During the STS Commission hearings, there was considerable discussion concerning the airport's need to share service with tenants such as shoeshine stands, hot dog vendors, and other concessions that serve the public using the airport. Mr. Macbeth, GOAA's witness who provided comprehensive testimony and was extensively cross-examined during the proceedings, demonstrated that shared telecommunications service to all tenants in the airport facility is an indispensable aspect of airport safety and security.[50] Recognizing this, the *STS Order* permits airports to share services

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[49] *See* Exhibit 240, *STS Order* at 13.

[50] *See* Exhibits 236-237, Testimony and Rebuttal Testimony of Hugh J. Macbeth, Docket No. 860455-TL (July 15, 1986 and Aug. 14, 1986, respectively). Commissioner Gunter acknowledged that a bar at the Tallahassee airport is necessary to the operation of the airport's shared telecommunications service. Exhibit 239, Special Agenda Tr. Vol. II, at p. 273:15-23. (Attachment 18 to this Brief.)

with such tenants, given the fact that it permitted airports to continue to provide service under existing conditions.

AT&T's claim that any services provided to entities such as concession stands and restaurants within the MIA terminal is outside of the exemption, and that certification is required before the County may provide such service is incorrect. The County may provide shared service necessary to ensure the safe and efficient transportation of passengers and freight through the MIA facilities, and concessions located in the airport terminal fall squarely within that parameter. The Commission in 1987 recognized the unique communication needs of an airport and now, more than ever, due to the need for increased and tightened airport security after the tragic events of September 11, 2001, these needs have expanded exponentially. The safety and security of the traveling public is now a focus of national security policy. The County must always maintain MIA in the most efficient manner possible to meet unforeseen emergency conditions, and in fact, must rely on the crucial communications links in its airports to respond to a terrorist attack or other crisis.

As part of their mission to ensure the safety of the traveling public, airports typically have their own fire and rescue, police and emergency personnel and systems interconnected to their shared systems to enable "timely, coordinated response[s] to assaults, thefts, medical emergencies, terrorist threats and other airport emergencies.[51] These interconnected systems mean that a caller at any telephone throughout the airport "can reach a specially trained operator familiar with [airport] campus geography and our field conditions by simply dialing "0" or "2911".[52] It is this type of

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[51] *See* Exhibit 236, Direct Testimony of Hugh J. Macbeth, *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, July 15, 1986 at p. 4. (Attachment 19 to this Brief.)

[52] *Id*. at pp. 16-17. (Attachment 20 to this Brief.)

functionality, described in GOAA's testimony,[53] that the Commission relied on in its 1987 *STS Order*, that falls squarely within the ambit of ensuring "the safe and efficient transportation of passengers and freight through the airport campus,"[54] and which the Commission specifically found to be of paramount importance in the "unique" circumstances of an airport. Any airport terminal tenant who is not part of the shared system does not have the ability to intercommunicate with police, fire and the operations center on a direct basis, and AT&T's contention that all commercial tenants in the terminals could not be served without partitioning or certification by the airport would eviscerate the entire purpose of the Airport Exemption and the Commission's conclusion to permit "airports [to] continue to provide service under existing conditions."

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[53] *See, e.g., id*. at pp. 7-8. (Attachment 21 to this Brief.); Exhibit 237, Rebuttal Testimony of Hugh J. Macbeth, *In re: Investigation into Appropriate Rates and Conditions of Service for Shared Local Exchange Telephone Service*, Docket No. 860455-TL, August 4, 1986 at pp. 14-18. (Attachment 22 to this Brief.)

[54] *See* Exhibit 240, *STS Order* at 13.

CONCLUSION

For the aforementioned reasons, AT&T's Complaint should be dismissed.

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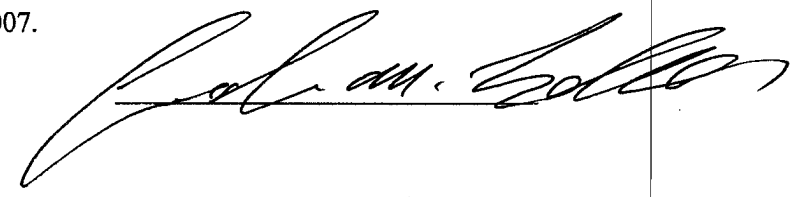
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the parties on the attached service list on August 9, 2007.



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