

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

FINAL EXHIBIT NOS. 88-92 & 94

15 of 29

DOCUMENT NUMBER-DATE

06981 AUG-98

FPSC-COMMISSION CLERK

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IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-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.

MIAMI-DADE COUNTY'S NOTICE
OF FILING AFFIDAVIT OF
MAURICE JENKINS

Defendant, Miami-Dade County (the "County"), by and through its undersigned counsel, pursuant to Fla.R.Civ.P. 1.510(C), gives notice of filing the affidavit of Maurice Jenkins. This affidavit is in support of its Cross-Motion for Summary Judgment and memorandum of law in opposition to Plaintiff, BellSouth Telecommunications, Inc.'s ("BellSouth") Motion for Summary Judgment in this matter.

Respectfully submitted,

ROBERT A. GINSBURG
Miami-Dade County Attorney
Aviation Division
P.O. Box 592075 AMF
Miami, Florida 33159-2075
(305) 876-7040 / FAX (305) 876-7294
Tel: (305) 375-5151
Fax: (305) 375-5634

By: 

David Stephen Hope
Assistant County Attorney
Florida Bar No. 87718

OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA

AFFIDAVIT OF MAURICE JENKINS

STATE OF)
)SS
COUNTY OF)

BEFORE ME, the undersigned authority, personally appeared MAURICE JENKINS, who after being duly sworn, deposes and says:

1. My name is Maurice Jenkins. I am the Information Systems and Telecommunications Manager at Miami International Airport ("MIA") for the Miami-Dade County Aviation Department ("MDAD") responsible for the maintenance and administration of all operations of the Information Technology and Telecommunications ("ITT") systems group at MIA, the management and expansion of MIA shared tenant services, and the management of the Business Systems projects that are part of MIA's Capital Improvement Program. I have held this position for five (5) years and have worked in the MIA Information Technology Department for fifteen (15) years.
2. On March 16, 1982, the Miami-Dade County Board of County Commissioners (the "Board") approved Resolution No. R-361-82 awarding a contract for the installation of a telecommunications system for MDAD at MIA to Centel Communication Company ("Centel"), and authorizing MDAD to negotiate a final agreement with Centel for the purchase or rental of the telecommunications system. See Ex. A, Resolution No. R-361-82.
3. On September 9, 1982, Miami-Dade County (the "County") finalized two (2) agreements with Centel intended to support the telecommunications needs of MDAD. The Equipment Lease and Maintenance Agreement (the "ELM Agreement") provided for the installation and maintenance of a telecommunications system and related equipment for MIA. The Shared Airport Tenant Service Agreement (the "SATS Agreement") allowed Centel to use the telecommunications equipment and facilities within MIA to provide services to airport

C:\Data\dsh\Pleadings\Affidavits\Maurice Jenkins (BellSouth Telecommunications Affidavit).doc

tenants for which, Centel paid the County a monthly fee plus a percentage of the gross revenues.

4. On July 24, 1990, the Board approved Resolution No. R-788-90 for the renewal of the ELM Agreement and SATS Agreement with Centel. *See Ex. D*, Resolution No. R-788-90. Both contracts were attached and made a part of the Resolution in substantial form. Pursuant to the ELM Agreement, the parties acknowledged the purchase of the Hotel System and equipment on October 7, 1987. Therefore, the scope of the lease provisions of the ELM Agreement solely pertained to the Airport System. The County retained the option to purchase all or any portion of the Airport System and equipment Centel leased to the County at MIA. If the County purchased all of the equipment, Centel would assign to the County any and all service and lease agreements between Centel and MIA shared airport tenant services ("SATS" or "STS") users. Centel continued to provide the maintenance and services for both the Airport and Hotel Systems. The term of the ELM Agreement and SATS Agreement commenced retroactively from February 7, 1988 for an initial period of four (4) years, with options for the County to renew for five (5) consecutive two (2) year terms.
5. In 1991, the original vendor, Centel, was acquired by WilTel Communications System, and in 1997, Williams Communications Solutions, LLC ("WCS") was created from the merger of WilTel and Nortel Communications Systems. During this time period, both the ELM Agreement and SATS Agreement were repeatedly renewed without significant modification or updating. Under the ELM Agreement, WCS provided MIA's telephone system, the terminal audio system and a rudimentary, limited and small computer network. The ELM Agreement also provided WCS with a monthly lease amount for all the equipment installed including fiber optic cabling, hardware and software. Pursuant to that contract, all

equipment installed remained the property of WCS. When additions were made to the system over the years, the monthly lease payment to WCS increased substantially.

6. As information technology advanced and MIA grew, telecommunications and data needs changed drastically. The ITT systems grew at MIA in size, complexity and in technology installed and used. MIA began operating a fully digital fiber optics based Asynchronous Transfer Mode ("ATM") network running with NT software and providing service to a variety of sophisticated hardware and software sub-systems. General terminology in the ELM Agreement allowed the installation and lease of other approved systems and related equipment. The ELM Agreement was broadly interpreted to allow the acquisition, by lease, of a variety of additional equipment. The result was the lease of new systems and equipment including, but not limited to: (i) a Flight Information Display System ("FIDS") which receives flight arrival and departure information and displays it through monitors throughout the airport; (ii) Common Use Terminal Equipment ("CUTE") for airlines to set-up or relocate at different gates and access their airline specific information; (iii) Airport-Vision displays which was a system of dynamic signage used to display airline logos; (iv) Audible Information Systems for Elevators which provided audible location information outside the parking garage elevators in two (2) languages; (v) Communications Mobile Command Vehicle, a mobile home-type vehicle equipped with landline telephones, satellite telephones, personal computers, radios, and facsimile machines, and equipped with a power generator and modified to serve as an emergency communications base; and (vi) Communication Switching Consoles used as an interface between the 400 Mhz radios and MDAD telephone switches, to provide communications for landside operations and the MIA Operations Control Room. Upgrades and expansions of existing systems were also leased under the

ELM Agreement. This was all done by accessing the lease provisions of the ELM Agreement.

7. The annual costs incurred by MDAD for the provision of services under the ELM Agreement and the SATS Agreement ranged between \$4,400,000 and \$10,500,000 for the fiscal year periods of 1994 to 2000.
8. In or around mid to late 1998, concerns were first noticed with the management and use of the existing telecommunications contracts with WCS. An analysis of the situation resulted in a management level review being conducted of the WCS contracts by MDAD. We determined that it was important that MIA take control of its information technology and telecommunications infrastructure. Essentially, this refers to the transmission pathways that characterize both wired and wireless communication. Relative to wired communication, this includes copper cabling for telephone transmission and both copper and fiber optic cable for data transmission. It also includes conduits, distribution rooms and the duct banks and tunnels between buildings. The wireless infrastructure includes the cable that runs between the transmitters and the antennas, the antennas themselves, and any superstructures that support the antennas
9. MIA's ownership and control of the infrastructure was needed since it is the foundation for every major telecommunication and technology initiative that occurs. Whomever controls the infrastructure, has significant power over airport operations and it made good business sense for MIA to be in this position. Based on our experience with other airports across the nation, it is the one factor, more than anything else that can facilitate or impede an airport from controlling its future destiny.
10. In April 2001, Platinum Equities acquired WCS. Platinum Equities integrated WCS with Milgo Solutions and the two companies merged operations to form NextiraOne, LLC

("Nextira") on April 3, 2001. Nextira became the successor or assignee of WCS' rights and obligations under both the ELM Agreement and the SATS Agreement.

11. In light of the impending deadline for renewal of the Equipment and the Service Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network, and CUTE infrastructures, software, licenses, permits, and other assets (collectively, the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively, the "Services"). On January 29, 2002, the Board approved Resolution No. R-31-02 authorizing payment of \$6,450,000 to Nextira for the purchase of infrastructure to be used and operated by or for MDAD and authorizing the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement with Nextira for an interim two (2) year period. *See Ex. E, Resolution No. R-31-02.*
12. Nextira, as the previous owner/operator of the Assets had the requisite knowledge and experience to serve as interim manager of the Assets, while MDAD assessed, formulated, and implemented its ITT systems strategy and objectives.
13. On March 6, 2003, the County put forth an Advertisement for Request for Proposals, RFP No. MDAD-04-01 ("RFP"), for a non-exclusive agreement for the provision of telecommunications and network management services agreement for MDAD at MIA and the general aviation airports. *See Ex. F, RFP No. MDAD-04-01.* Pursuant to the terms of the RFP, the successor manager of the Assets, shall be able to furnish all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, management, and operational support services for all (i) voice and data network

infrastructure for MDAD, its users and tenants; and (ii) the management of SATS for the County to tenants users at MIA.


14. Management duties for the new manager of the Assets include, but are not limited to: (a) the provisioning of voice and data network services; (b) maintaining existing and future voice and data networks infrastructure equipment including operation, maintenance, repair, monitoring and support of network devices such as routers, switches, and servers; (c) supporting of circuits, including vendor resolutions and support of environmentals including UPS devices for all switches and routers at all sites; (d) daily analysis of network performance to research trending and troubleshooting from end point to end point to enable quick resolution of system degradation; (e) providing capacity planning for all network links, PBX switches and trunk groups; (f) providing an on-site Help Desk and network Operation Center dedicated to providing uninterrupted service to Airport operations; (g) managing the existing voice and data network infrastructures; (h) maintaining records as required by MDAD, including but not limited to, equipment and cable plant, record keeping of work order activity, equipment inventory, telephone number inventory, number dialing plan, key sheets, and cable management to the Intermediate Distribution Frame level and jack level for existing and new structure; (i) managing the turn-key installation of new voice, data and network services such as user training on equipment, project scheduling, appropriate billing to MDAD and SATS customers; (j) billing user customers for services, and also for the specified equipment, including when specifically requested by appropriate work order; (k) needs assessment; (l) system design; (m) procurement of equipment and parts; (n) documentation; (o) record keeping and inventory; and (p) any other functions related to the provisioning of these services

15. The new manager shall also be responsible for providing, installing and maintaining technical systems hardware and software associated with the management of all telecommunications ATM Gigabit Ethernet & ATM infrastructure. In addition, the new manager shall be responsible for maintaining computer hardware and software and the database associated with the cable record systems, the New Security System Cable Management System (after the initial contract expires with that system's provider), and any billing system the new manager chooses to employ subject to MDAD approval. Back-ups are required to be performed and maintained off-site by the new manager for all key technical systems to ensure data integrity and disaster recovery.
16. Pursuant to the terms of the RFP, the County will receive sealed proposals from qualified, interested parties based upon the covenants and provisions of the RFP. After advertisement of the RFP to the general public, on April 17, 2003 the County received four (4) bids in response. BellSouth is a subcontractor under one of the bids received by primary contractor SITA, who has put together a team of seven (7) companies, SITA included, to offer managed shared airport tenant services ("MSATS") to MIA. In SITA's proposal, BellSouth will only manage the voice communications activities component of the MSATS. See *Ex. G*, SITA Executive Summary. Pursuant to its procurement process, the County has put together an evaluation and selection committee to review the submitted proposals and make recommendations to the County Manager for negotiations and eventual award. The first meeting of the evaluation and selection committee is set for July 31, 2003.
17. The Services are only provided and available for MDAD and MDAD's tenants.
18. Neither the County nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services.

19. Orlando International Airport is another example of an STS service provider without a FPSC certificate.
20. Prior to the sale of the Assets, Nextira provided STS services at MIA without a FPSC certificate.
21. American Telephone and Telegraph ("AT&T") provided telephone and related services to MIA since its inception. After deregulation and the creation of the regional "Bell" telephone companies, BellSouth has provided this same service.
22. WorldCom/MCI, SunCom, BellSouth, and AT&T are the authorized long distance providers for MIA. MDAD pays BellSouth and the other long distance providers, for all long distance service, and then MDAD bills MDAD's tenants for the actual cost of the service, without any mark-up.
23. BellSouth provides MDAD with dial tone for local service. WorldCom/MCI is the local and short-long distance provider (from Miami to West Palm Beach) for the County pursuant to a County contract. MDAD does not charge MDAD tenants for local service.
24. In addition to paying for long distance service, MDAD pays BellSouth to provide voice mail, telephone terminal equipment, premise inside wiring, local area network connectivity and equipment, internet access, network connectivity to the switched public network, dedicated network connectivity to the work, wide-area network connectivity and yellow pages advertising. Representative bills from BellSouth for (i) long distance telephone service to MDAD for MIA and the general aviation airports, MIA SATS customers, and MDAD Management Companies, for the billing period of June 20, 2003, in the amount of \$14,278.31 and (ii) terminal construction work to enable telephone services at MIA (Job No. 2M2200TIB), on April 30, 2003 in the amount of \$27,433.92 are attached to this affidavit as Ex. 7.

25. Bellsouth is free to provide its telephone services, and any of the telephone services MDAD provides, directly to MDAD's tenants

FURTHER AFFIANT SAYETH NAUGHT.



Maurice Jenkins

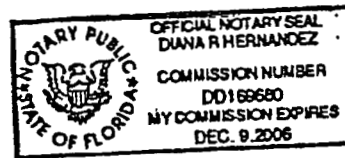
Sworn to and subscribed before me at Miami, Miami-Dade County, Florida this 29
day of July, 2003, by

Who is personally known to me

Who produced identification: _____

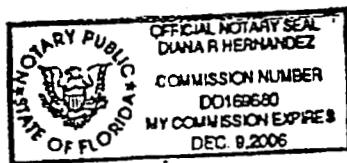
Type of identification


Signature of Notary Public
State of Florida at Large



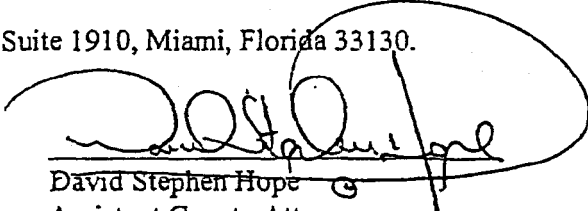
DIANA R. HERNANDEZ
Print, type or stamp name of notary public

My Commission Expires:



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 29th day of July 2003, to *Mitchell R. Bloomberg, Esq.*, Adorno & Yoss, P.A., 2601 South Bayshore Drive, Suite 1600, Miami, Florida, 33133; *Dorian Denburg, Esq.*, BellSouth Corporation, 1155 Peachtree Street, Suite 1700, Atlanta, Georgia 30309-3610; *Sharon Liebman, Esq.*, BellSouth Telecommunications, Inc., 150 West Flagler Street, Suite 1910, Miami, Florida 33130.



David Stephen Hope
Assistant County Attorney

INDEX OF CURRENT CHARGES BILLED

AN ADDITIONAL CHARGE AT THE RATE OF 1.00% FOR REGULATED CHARGES AND AT THE RATE AS PROVIDED BY YOUR TERMS OF SERVICE FOR UNREGULATED CHARGES MAY APPLY TO AN UNPAID BALANCE AS OF SEP 24.

NONPAYMENT OF REGULATED CHARGES MAY RESULT IN DISCONTINUANCE OF SERVICE. FAILURE TO PAY UNREGULATED AND CERTAIN OTHER CHARGES, ALL OF WHICH ARE IDENTIFIED BY ** ON YOUR BILL, WILL NOT RESULT IN AN INTERRUPTION OF LOCAL SERVICE. THE AMOUNT OF REGULATED CHARGES MAY BE OBTAINED BY CALLING 1 800 945-6500.

CLUB(R) SERVICE CUSTOMERS RECEIVE A USOC SUMMARY, DEPENDING ON THE USOC SUMMARY OPTION YOU HAVE CHOSEN, IDENTIFYING ALL ITEMS INCLUDED IN THE MONTHLY LOCAL SERVICE. PLEASE REVIEW THIS INFORMATION FOR ACCURACY. IF YOU HAVE ANY QUESTIONS, CALL THE BELLSOUTH NUMBER LISTED IN THIS BILL.

CHARGES BILLED FROM DEPARTMENT IDENTIFIER DAC
CHARGES BILLED FROM EARNING NUMBER 305 871-0010
BELLSOUTH

ADJUSTMENTS APPLIED (PAGE 1)
MONTHLY LOCAL SERVICE (ITEM 1) 92.86
TOTAL BILLED FROM EARNING NUMBER 305 871-0010

RECEIVED
JUL 07 2003
TELECOMMUNICATIONS

CHARGES BILLED FROM EARNING NUMBER 305 871-0947
BELLSOUTH
MONTHLY LOCAL SERVICE (ITEMS 2-4) 46.07
OTHER CHARGES AND CREDITS (ITEM 5) 0.11
TOTAL BILLED FROM EARNING NUMBER 305 871-0947

46.18

TOTAL BILLED FROM DEPARTMENT IDENTIFIER DAC

139.04

CHARGES BILLED FROM DEPARTMENT IDENTIFIER FIRE ALARM
CHARGES BILLED FROM EARNING NUMBER 305 W72-0180
BELLSOUTH

MONTHLY LOCAL SERVICE (ITEM 6) 341.02
TOTAL BILLED FROM EARNING NUMBER 305 W72-0180

341.02

TOTAL BILLED FROM DEPARTMENT IDENTIFIER FIRE ALARM

341.02

CHARGES BILLED FROM DEPARTMENT IDENTIFIER MTCE
CHARGES BILLED FROM EARNING NUMBER 786 265-7596
BELLSOUTH

MONTHLY LOCAL SERVICE (ITEMS 7-9) 51.57
OTHER CHARGES AND CREDITS (ITEM 10) 0.11
TOTAL BILLED FROM EARNING NUMBER 786 265-7596

51.68

TOTAL BILLED FROM DEPARTMENT IDENTIFIER MTCE

51.66

CHARGES BILLED FROM DEPARTMENT IDENTIFIER PBX
CHARGES BILLED FROM EARNING NUMBER 305 871-0010

EXHIBIT 1

BILLING NUMBER CHARGES

TOTAL MONTHLY LOCAL SERVICE			12,300
TOTAL FCC CHARGE FOR NETWORK ACCESS **			154
TOTAL FCC CHARGE FOR NETWORK ACCESS			807
TOTAL FEDERAL UNIVERSAL SERVICE CHARGE			95
TOTAL OTHER CHARGES AND CREDITS			253
TOTAL RECURRING OC&C		1,115.41	
DEBITS	630.80		
CREDITS	1,746.21		
TOTAL NONRECURRING OC&C		861.92	
DEBITS	861.92		
CREDITS	.00		
TOTAL ITEMIZED CALLS			40
TOTAL LOCAL USAGE			221
7432.TELECOMMUNICATIONS ACCESS SYSTEM ACT SURCHARGE **			7

VOLUME DISCOUNT

Special Services			
7433.BUSINESS SAVER® SERVICE	--		
TOTAL AMOUNT OF ELIGIBLE CALLS	\$12.14		
VOLUME DISCOUNT AT 5.00%			0.
Total Charge for Itemized Calls	39.43		

DIRECTORY ASSISTANCE

7434.DIRECTORY ASSISTANCE (DA) USAGE			
1637 CALLS TO LOCAL DA AT .45 EA PLUS			
5 CALLS TO 555-1212 AT 1.25 EA PLUS			
88 CALLS TO NATIONAL DA AT 1.25 EA			852.

SPECIAL SERVICES

QUICKCOMPLETE™ USAGE - SUMMARY			
(CHARGES INCLUDED IN ITEMIZED CALLS)			
93 LOCAL CALL(S) AT .30 PER CALL		27.90	

EMERGENCY 911 SERVICE **

7435.EMERGENCY 911 CHARGE. THIS CHARGE IS BILLED ON			
BEHALF OF DADE COUNTY			45.

TOTAL CURRENT CHARGES FOR BELLSOUTH 14,270.80

BELLSOUTH

BILLING NUMBER 305 W90-0027 145
BILLING PERIOD JUN 20, 2003 0007

CLUB Service

CURRENT CHARGES	
BELLSOUTH	14,270.80
ENHANCED SERVICES BILLING, INC.	5.95
MCI WORLDCOM	7.51
EXCEL TELECOMMUNICATIONS	90.56
TELECOM*USA	54.82
USBI	548.77
QAN SERVICES, INC.	18.50
ZERO PLUS DIALING, INC.	0.00
SPRINT COMMUNICATIONS CO.	18.37
ILD TELESERVICES, INC.	25.00
CORRECTIONAL BILLING SERVICES	0.41
EBILLIT	28.90
TOTAL CURRENT CHARGES	15,060.55

~~15,060.55~~
14,278.31

TOTAL AMOUNT DUE IN U.S. FUNDS 14,621.20

THANK YOU FOR CHOOSING BELLSOUTH. WE SINCERELY APPRECIATE YOUR BUSINESS.

Abail
7/15/03

M. Perez
7/11/03

Carlos Sanchez for M. Perez
7/16/03

RECEIVED
JUL 07 2003
TELECOMMUNICATIONS

RECEIVED @ BELLSOUTH

BellSouth Telecommunications, Inc.

JAN 28 2003

DESIGN

RECEIVED

JAN 10 2003

TELECOMMUNICATIONS

December 11, 2002

RETURN SIGNED AUTHORIZATION AND PAYMENT TO:

BellSouth
Attention: Manager Bills
250 Williams Street NW, Suite 5020
Atlanta, Georgia 30303

SERVICE DESCRIPTION: Reroute BellSouth service at Concourse C to cut it off the main terminal building as related to Project 745 under Project Manager Felix Perreira.

FOR: Miami-Dade Aviation Department
Attention: Maurice Jenkins
P.O. Box 592075
Miami, Florida 33159 TELEPHONE NUMBER: 305-876-7523 FAX: 305-876-0993

This letter is BellSouth's authorization to proceed with the engineering and construction of facilities necessary to provide the service referred to above:

1. Engineering will start upon BellSouth's receipt of this authorization letter and payment at the above address.
2. The following arrangements will be made by the customer for BellSouth's use as negotiated by the BICS: Conduit as requested on BICS Design Package 870-01-0305 last revised on November 11, 2002.
3. Service will be scheduled for completion within approximately 90 days after:
 - A. Receipt of payment and signed agreement.
 - B. Placement and approval of facilities outlined in Item 2, if any.
4. Cancellation of this letter of authority may result in incurred cost being billed to the undersigned.
5. The special construction charge to be billed is: \$ 31,376.37 *
6. If, in the future, it is necessary for said facilities to be relocated, the subscriber does hereby agree to fully reimburse BellSouth for any and all expense(s) incurred by virtue of such relocation.
7. If the cable facilities are involved, future orders for circuits should be referenced to this authorization letter.

Signed: [Signature] Service Order No. #A 03-003-S
 Title: MANAGER - ISD/TELECOM Job Authorization Number: 2M2200778
 Company: MDAD Case Number: 87-02-1201
 Date: 1/27/03 Facility Specialist: Kenny Wendt 305-889-2823

*BBS mini
1/27/03*

*This estimated cost is only valid for a period of ninety (90) days from the date of this document.

MANAGER BILLS, PLEASE NOTIFY FACILITY SPECIALIST UPON RECEIPT OF PAYMENT

*Project Mgr. Felix Perreira
Project # 745*

*FOR [Signature] R.B.
KILL RODRIGUEZ
T. D. B. FOR HSL 1-30*

87-02-1201 Cost Breakdown

Material.....	\$9,095.94
Engineering	\$4,672.49
Labor.....	<u>\$17,607.94</u>
Total.....	<u>\$31,376.37</u>

RECEIVED
JAN 1 11 1988
TELECOMMUNICATIONS

Rede

BELLSOUTH

BellSouth Telecommunications, Inc.

MP-15028

MIAMI-DADE AVIATION DEPARTMENT
ATTN: MAURICE JENKINS
PO BOX 592075
MIAMI, FL 33159

Remit payment to:
BellSouth PRO Group - Atlanta
Manager Bills
250 Williams Street, Suite 5000 NW
Atlanta, GA 30303

Bill Number: GSC0304157

Amount Paid \$ _____

(305)876-7523

.....
Please return top portion with your payment. Thank you.

Bill Number: GSC0304157

Billing Date: 04/30/2003

Job Number	Description of Service	Amount
2M220077A	REROUTE SERVICE AT CONCOURSE AND CUST CONCOURSE C OFF THE MAIN TERMINAL BUILDING	\$27,433.92

RECEIVED
MAY - 6 2003

INFORMATION SYSTEMS

Advance Payment: \$0.00

Balance: \$27,433.92

M. Peres
6/30/03

M. Peres
6/30/03

*YPO
#03-003S
Project Alga. Felix Peres
Project # 745*

If you have billing questions, please call: (404) 586-1150

***** Payment Due Upon Receipt *****

[Signature]

RECEIVED
COUNTY ATTORNEY
AVIATION DEPARTMENT
2003 JUN 19 PM 3:19

Actual Charges for

2M220077A

	COPPER	ELECTRONICS	FIBER	TOTAL
A. PLANT LABOR				
1. Distributed Labor	16,114.91	-	-	16,114.91
2. Motor Vehicle	398.34	-	-	398.34
3. Other Tools And Equipment	329.68	-	-	329.68
Total Plant Labor	16,842.93	-	-	16,842.93
B. ENGINEERING				
1. Distributed Engineering	-	-	-	-
Total Engineering	-	-	-	-
C. PLANT /MATERIAL SUPPLIES				
1. Major Plant Items	1,472.46	-	-	1,472.46
2. Less Salvage	-	-	-	-
2. Minor Plant Supplies	4,544.59	-	-	4,544.59
3. Material Provisioning	487.84	-	-	487.84
Total Plant and Material Supplies	6,504.89	-	-	6,504.89
D. CONTRACT BILLING				
1. Contract Labor	-	-	-	-
2. Contract Engineering	-	-	-	-
3. Contract Material	-	-	-	-
4. Contract Other	-	-	-	-
Total Contract Billing	-	-	-	-
E. TOTAL COST	23,347.82	-	-	23,347.82
F. OVERHEAD	4,086.10	-	-	4,086.10
TOTAL COST OF WORK	27,433.92	-	-	27,433.92
G. LESS BETTERMENT	-	-	-	-
H. LESS NON-BILLABLE	-	-	-	-
I. TOTAL AMOUNT	27,433.92	-	-	27,433.92
J. Less SUD ADJUSTMENT	-	-	-	-
K. Less Other Credits	-	-	-	-
Balance Due	\$27,433.92	\$0.00	\$0.00	\$27,433.92

ENTER PERCENTAGES TO FORMULA IN BETTERMENT & NONBILLABLE , ADD OTHER CREDITS
 BE SURE TO PUT PERCENTAGES AS CREDITS FOR NONBILLABLE AND BETTERMENT

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

Case No. . 02-28688 CA 03

**BELLSOUTH TELECOMMUNICATIONS,
INC.**, a foreign corporation,
Plaintiff,

vs.

**RESPONSE TO REQUEST FOR
CONTENTION INTERROGATORIES**

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

Defendant, Miami-Dade County (the "County"), by and through its undersigned counsel,
hereby serves its answers to the Request for Contention Interrogatories propounded by Plaintiff,
BellSouth Telecommunications, Inc. ("BellSouth"), and states as follows:

1. Regarding Interrogatory No. 1 –

Maurice Jenkins
Information Systems and Telecommunications Manager
Miami-Dade Aviation Department
P.O. Box 592075
Miami, Florida 33159

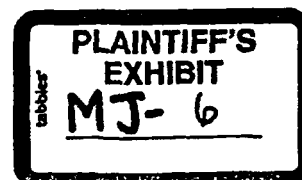
2. Regarding Interrogatory No. 2 –

Maurice Jenkins; and Pedro Garcia. All persons listed may be reached at Miami-Dade Aviation
Department, P. O. Box 592075, Miami, Florida 33159. All persons listed have knowledge of the
various issues in the lawsuit.

In addition, the County's witness list has not been determined at this date.

C:\Data\disk\Discovery\BellSouth Telecommunications (Response to Request for Contention Interrogatories).doc

OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA



Final Exhibit
No. 89

PSC 1132

3. Regarding Interrogatory No. 3 –

American Telephone and Telegraph (“AT&T”) provided telephone and related services to MIA since its inception. After deregulation and the creation of the regional “Bell” telephone companies, BellSouth has provided this same service. WorldCom/MCI, SunCom, BellSouth, and AT&T are the authorized long distance providers for MIA.

The Miami-Dade Aviation Department (“MDAD”) pays BellSouth and the other long distance providers, for all long distance service, and then MDAD bills MDAD’s tenants for the actual cost of the service, without any mark-up. BellSouth provides MDAD with dial tone for local service. WorldCom/MCI also provides local and short-long distance service (from Miami to Monroe and Broward counties) for the County pursuant to a County contract. MDAD does not charge MDAD tenants for local service. In addition to paying for long distance service, MDAD pays BellSouth to provide network connectivity to the switched public network (local dial tone), dedicated network connectivity, Smart Ring (redundant) switched public network access, wide-area network connectivity, and BellSouth telephone directory listings.

Prior to the sale of title to all telecommunications, data network, and common use terminal equipment (“CUTE”) infrastructures, software, licenses, permits, and other assets (collectively, the “Assets”) to the County, and which Assets are used in the provision of telecommunications, data network, and shared airport tenant services (collectively, the “Services”), NextiraOne LLC¹ (“Nextira” or “Contractor”) provided shared airport tenant services (“SATS” or “STS”) services at Miami International Airport (“MIA”) without a Florida Public Service Commission (“FPSC”) certificate. Neither the County nor MDAD possess a FPSC certificate for the provision of the STS portion of the Services. Airports are exempt from other STS rules and FPSC regulation. The Services are only provided and available for MDAD and MDAD’s tenants.

4. Regarding Interrogatory No. 4 –

The non-exclusive “Telecommunications, Data Network, and Shared Airport Tenant Services” management agreement dated February 1, 2002 (the “Agreement”), between the County and Nextira, governed: (i) the County’s acquisition of the Assets; (ii) the terms and conditions by which Nextira operated as the interim manager of the Assets, including but not limited to the scope of services provided; (iii) Nextira’s compensation, representations, and warranties; and (iv) Nextira’s assignment of all SATS Airport rental and CUTE agreements, software license(s), and permits to the County. Pursuant to the Agreement, the Contractor shall provide *inter alia*, for the design, installation, maintenance, repair, management and operational support services for all voice and data

¹ In 1991, the original vendor, Centel Communication Company, was acquired by WilTel Communications System, and in 1997, Williams Communications Solutions, LLC (“WCS”) was created from the merger of WilTel and Nortel Communications Systems. In April 2001, Platinum Equities acquired WCS. Platinum Equities integrated WCS with Milgo Solutions and the two companies merged operations to form NextiraOne, LLC (“Nextira”) on April 3, 2001. Nextira became the successor or assignee of WCS’ rights and obligations under the existing agreements.

network infrastructure for MDAD and the SATS customers at MIA and the general aviation airports (collectively the "Airport"). The scope of services includes the provisioning of voice and data network services and maintenance of existing and future voice and data network infrastructure equipment and facilities, at the Airport, and the management of SATS for the County, including CUTE, to tenants and users at the Airport. The scope of services describes the Contractor's obligations and responsibilities, and is deemed to include labor, materials, equipment, and additional tasks to the extent set forth in the Agreement.

5. Regarding Interrogatory No. 5 –

Neither MIA nor the general aviation airports are territories in the County. Telecommunications companies shall provide adequate and efficient service to the territory described in its certificate of necessity. Neither the County nor MDAD is required to obtain such a certificate for the provision of the Services, and the Services are only provided to MDAD and MDAD tenants at the Airport. In addition, MIA and the general aviation airports are zoned "Institutional and Public Facility", and are private County owned property.

6. Regarding Interrogatory No. 6 –

First, on March 16, 1982, the Miami-Dade County Board of County Commissioners (the "Board") approved Resolution No. R-361-82 awarding a contract for the installation of a telecommunications system for MDAD at MIA (the "Airport System") and the MIA Airport Hotel (the "Hotel System") to Centel Communication Company ("Centel"), and authorized MDAD to negotiate a final agreement with Centel for the purchase or rental of the telecommunications system. On September 9, 1982, the County finalized two (2) agreements with Centel intended to support the telecommunications needs of MDAD. The Equipment Lease and Maintenance Agreement (the "ELM Agreement") provided for the installation and maintenance of a telecommunications system and related equipment for MIA. The Shared Airport Tenant Service Agreement (the "SATS Agreement") allowed Centel to use the telecommunications equipment and facilities within MIA to provide services to airport tenants for which, Centel paid the County a monthly fee plus a percentage of the gross revenues. On July 24, 1990, the Board approved Resolution No. R-788-90 for the renewal of the ELM Agreement and SATS Agreement with Centel. Pursuant to the ELM Agreement, the parties acknowledged the purchase of the Hotel System and equipment on October 7, 1987. Therefore, the scope of the lease provisions of the ELM Agreement solely pertained to the Airport System. The County retained the option to purchase all or any portion of the Airport System and equipment Centel leased to the County at MIA. If the County purchased all of the equipment, Centel would assign to the County any and all service and lease agreements between Centel and MIA shared airport tenant services users. Centel continued to provide the maintenance and services for both the Airport System and Hotel System. The term of the ELM Agreement and SATS Agreement commenced retroactively from February 7, 1988 for an initial period of four (4) years, with options for the County to renew for five (5) consecutive two (2) year terms. In 1991, Centel, was acquired by WilTel Communications System, and in 1997, Williams Communications Solutions, LLC ("WCS") was created from the merger of WilTel and Nortel Communications Systems. During this time

period, both the ELM Agreement and SATS Agreement were repeatedly renewed without significant modification or updating. Under the ELM Agreement, WCS provided MIA's telephone system, the terminal audio system and a rudimentary, limited and small computer network. The ELM Agreement also provided WCS with a monthly lease amount for all the equipment installed including fiber optic cabling, hardware and software. Pursuant to that contract, all equipment installed remained the property of WCS. When additions were made to the system over the years, the monthly lease payment to WCS increased substantially.

As information technology advanced and MIA grew, telecommunications and data needs changed drastically. The information technology and telecommunications ("ITT") systems grew at MIA in size, complexity and in technology installed and used. MIA began operating a fully digital fiber optics based Asynchronous Transfer Mode ("ATM") network running with NT software and providing service to a variety of sophisticated hardware and software sub-systems. General terminology in the ELM Agreement allowed the installation and lease of other approved systems and related equipment. The ELM Agreement was broadly interpreted to allow the acquisition, by lease, of a variety of additional equipment. The result was the lease of new systems and equipment including, but not limited to: (i) a Flight Information Display System ("FIDS") which receives flight arrival and departure information and displays it through monitors throughout the airport; (ii) CUTE for airlines to set-up or relocate at different gates and access their airline specific information; (iii) Airport-Vision displays which was a system of dynamic signage used to display airline logos; (iv) Audible Information Systems for Elevators which provided audible location information outside the parking garage elevators in two (2) languages; (v) Communications Mobile Command Vehicle, a mobile home-type vehicle equipped with landline telephones, satellite telephones, personal computers, radios, and facsimile machines, and equipped with a power generator and modified to serve as an emergency communications base; and (vi) Communication Switching Consoles used as an interface between the 400 Mhz radios and MDAD telephone switches, to provide communications for landside operations and the MIA Operations Control Room. Upgrades and expansions of existing systems were also leased under the ELM Agreement. This was all done by accessing the lease provisions of the ELM Agreement.

In April 2001, Platinum Equities acquired WCS. Platinum Equities integrated WCS with Milgo Solutions and the two companies merged operations to form NextiraOne, LLC ("Nextira") on April 3, 2001. Nextira became the successor or assignee of WCS' rights and obligations under the existing agreements. In light of the impending deadline for renewal of the Equipment and the Service Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to the Assets used in the provision of the Services. On January 29, 2002, the Board approved Resolution No. R-31-02 authorizing payment of \$6,450,000 to Nextira for the purchase of infrastructure to be used and operated by or for MDAD and authorizing the approval and execution of the Agreement with Nextira for an interim two (2) year period. On March 6, 2003, the County put forth an Advertisement for Request for Proposals ("RFP"), RFP No. MDAD-04-01, for a non-exclusive agreement for the provision of telecommunications and network management services agreement for MDAD at the Airport. Pursuant to the terms of the RFP, the successor manager of the Assets, shall be able to furnish all labor, new materials, tools, supplies and other items required for the design, installation, maintenance, repair, management, and operational support services for all (i) voice and

data network infrastructure for MDAD, its users and tenants; and (ii) the management of SATS for the County to tenants users at MIA.

Management duties for the new manager of the Assets include, but are not limited to: (a) the provisioning of voice and data network services; (b) maintaining existing and future voice and data networks infrastructure equipment including operation, maintenance, repair, monitoring and support of network devices such as routers, switches, and servers; (c) supporting of circuits, including vendor resolutions and support of environmentals including UPS devices for all switches and routers at all sites; (d) daily analysis of network performance to research trending and troubleshooting from end point to end point to enable quick resolution of system degradation; (e) providing capacity planning for all network links, PBX switches and trunk groups; (f) providing an on-site Help Desk and Network Operation Center dedicated to providing uninterrupted service to Airport operations; (g) managing the existing voice and data network infrastructures; (h) maintaining records as required by MDAD, including but not limited to, equipment and cable plant, record keeping of work order activity, equipment inventory, telephone number inventory, number dialing plan, key sheets, and cable management to the Intermediate Distribution Frame level and jack level for existing and new structure; (i) managing the turn-key installation of new voice, data and network services such as user training on equipment, project scheduling, appropriate billing to MDAD and SATS customers; (j) billing user customers for services, and also for the specified equipment, including when specifically requested by appropriate work order; (k) needs assessment; (l) system design; (m) procurement of equipment and parts; (n) documentation; (o) record keeping and inventory; and (p) any other functions related to the provisioning of these services.

The new manager shall also be responsible for providing, installing and maintaining technical systems hardware and software associated with the management of all telecommunications ATM Gigabit Ethernet & ATM infrastructure. In addition, the new manager shall be responsible for maintaining computer hardware and software and the database associated with the cable record systems, the New Security System Cable Management System (after the initial contract expires with that system's provider), and any billing system the new manager chooses to employ subject to MDAD approval. Back-ups are required to be performed and maintained off-site by the new manager for all key technical systems to ensure data integrity and disaster recovery. Pursuant to the terms of the RFP, the County received sealed proposals from qualified, interested parties based upon the covenants and provisions of the RFP. After advertisement of the RFP to the general public, on April 17, 2003 the County received four (4) bids in response. BellSouth was a subcontractor under one of the bids received by primary contractor SITA, who has put together a team of seven (7) companies, SITA included, to offer managed shared airport tenant services ("MSATS") to MIA. In SITA's proposal, BellSouth would have only managed the voice communications activities component of the MSATS.

Second, "Home Rule" confers to the Board the full power and authority to enact legislation relating to the affairs and property of the County. Said power and authority is liberally construed to conduct a central metropolitan government. The Board is empowered to provide and operate the Airport. The Board determined ownership of the information technology and telecommunications infrastructure and systems was of paramount importance to the County. It was important that MIA take control of its information technology and telecommunications infrastructure. Essentially, this

refers to the transmission pathways that characterize both wired and wireless communication. Relative to wired communication, this includes copper cabling for telephone transmission and both copper and fiber optic cable for data transmission. It also includes conduits, distribution rooms and the duct banks and tunnels between buildings. The wireless infrastructure includes the cable that runs between the transmitters and the antennas, the antennas themselves, and any superstructures that support the antennas. MIA's ownership and control of the infrastructure was needed since it is the foundation for every major telecommunication and technology initiative that occurs.

Third, the County purchased the leased assets used since 1982 to provide the information technology and telecommunications services necessary for the safe and efficient operation of MIA. The Assets were purchased from a private owner. The Services are provided to MDAD and MIA tenants only, and not to the public generally and indiscriminately. The FPSC is a State of Florida regulatory agency.

Last, this answer has also been provided in Interrogatory Nos. 3 and 5.

7. Regarding Interrogatory No. 7 –

BellSouth, is a foreign corporation and not a Miami-Dade County "citizen" or "resident". Given, MDAD pays BellSouth for (i) local dial tone, (ii) long distance services, (iii) network connectivity to the switched public network (local dial tone), (iv) dedicated network connectivity, (v) Smart Ring (redundant) switched public network access, (vi) wide-area network connectivity, (vii) BellSouth telephone directory listings, (viii) terminal construction work, and (ix) the performance of other telecommunications work for MIA tenants, BellSouth has no special injury and therefore no standing to bring this action.

In addition, this answer has been provided in Interrogatory No. 3.

8. Regarding Interrogatory No. 8, this answer has been provided in Interrogatory Nos. 6 and 7.

9. Regarding Interrogatory No. 9, this answer has been provided in Interrogatory Nos. 3, 5, 6, and 7.

10. Regarding Interrogatory No. 10, this answer has been provided in Interrogatory No. 7.

11. Regarding Interrogatory No. 11, this answer has been provided in Interrogatory No. 6.

12. Regarding Interrogatory No. 12, this answer has been provided in Interrogatory Nos. 7 and 8.

13. Regarding Interrogatory No. 13, these documents are entitled: (i) "Contract Documents for DCAD Telecommunications, DCAD Contract No. 6-T-600"; (ii) "Resolution No. R-361-82" and supporting documentation; (iii) "Resolution No. R-788-90" and supporting documentation; (iv) "Status Report: Telecommunications at the Aviation Department", dated December 18, 2001; (v) "Resolution No. R-31-02" and supporting documentation; (vi) "Resolution No. R-1091-02" and supporting documentation; (vii) "Proposal to MIA, Non-Exclusive Telecommunications and Network Management Services Agreement" dated April 17, 2003, from SITA and BellSouth; and (viii) "Resolution No. R-33-04" and supporting documentation.

14. Regarding Interrogatory No. 14 –

BellSouth provides only a fraction of the telecommunications, data network, and SATS services offered by MDAD. RFP No. MDAD-04-01 was advertised on March 6, 2003, for a successor telecommunications, data network, and shared airport services manager, who would *inter alia* (i) provide for the design, installation, maintenance, repair, management, and operational support services for all voice and data network infrastructure for MDAD, and (ii) manage the shared airport tenant services customers at MIA. After advertisement of the RFP to the general public, on April 17, 2003 the County received four (4) bids in response. BellSouth was a subcontractor under one of the bids received by primary contractor SITA, who has put together a team of seven (7) companies, SITA included, to offer managed shared airport tenant services ("MSATS") to MIA. In SITA's proposal, BellSouth would have only managed the voice communications activities component of the MSATS. In addition, BellSouth does not provide CUTE which is the primary STS service provided by MDAD. A subset of the Services is not similar services.

In addition, this answer has been provided in Interrogatory No. 6.

15. Regarding Interrogatory No. 15 –

WorldCom/MCI, SunCom, BellSouth, and AT&T are the authorized long distance providers for MIA. MDAD pays BellSouth and the other long distance providers, for all long distance service, and then MDAD bills MDAD's tenants for the actual cost of the service, without any mark-up. WorldCom/MCI is the local and short-long distance provider (from Miami to West Palm Beach) for the County pursuant to a County contract.

In addition, this answer has been provided in Interrogatory No. 14.

16. Regarding Interrogatory No. 16 –

Failure to State a Claim - BellSouth's Amended Complaint for Declaratory and Injunctive Relief contains only speculative allegations and provides no factual evidence of a special injury. BellSouth fails to demonstrate: (i) the County is operating a light, power, or telephone utility; (ii) the utility is

operated to serve any territory in the County; and (iii) the territory in which the utility operates is supplied with similar services. BellSouth fails to show all persons have an equal right to the use of the Services. The Services are not tantamount to the operation of a telephone utility to serve any territory in the County supplied with similar services. First, the Services (i) are not available to the public generally and indiscriminately, (ii) do not constitute operation as a public utility, (iii) are exempt from FPSC certification, and (iv) are paid by MDAD to BellSouth and other telecommunications carriers to provide some of the services, therefore the County is not operating a telephone utility. Second, neither MIA nor other County owned general aviation airports are territories as defined by Florida Statutes. Last, BellSouth does not supply similar telecommunications, data network, and shared tenant services, but only a subset of the telecommunications services offered by and to MDAD in the operation of MIA.

Section 1.01(A)(14) of the County Home Rule Charter (the "Charter") allows the Board to "[r]egulate, 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," Subsubsection (b) of § 1.01(A)(14) provides however, that "[t]he county shall not operate a light, power, or telephone utility to serve any territory in the county which is being supplied with similar service" Section 1.01(B) of the Charter states, "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 carry out such powers...." Section 1.01(A)(2) of the Charter grants the Board power to "[p]rovide and operate air, water, rail, and bus terminals, port facilities, and public transportation systems." Therefore, the Board can do all things necessary to establish, legislate, govern, and operate the County. MDAD's provision of telecommunications, data network, and SATS services, to itself and MIA tenants is a constitutionally permissible exercise of power under the Florida Constitution, the Florida Statutes, and the Charter. The Services enable the County to provide and operate aviation facilities. The construction, improvement, maintenance, and operation of the Services are a governmental and municipal function, exercised for a public purpose and matters of public necessity. BellSouth does not have standing to raise an alleged Charter violation. BellSouth has not shown the clear legal right to declaratory or injunctive relief.

17. Regarding Interrogatory No. 17 –

Laches – On November 19, 1981, the County advertised an RFP for Contract No. 6-T-600 for the manufacture, fabrication, delivery, complete installation, performance verification testing, and two (2) year maintenance of the Airport System and the Hotel System. Proposals were due on or before January 13, 1982. Southern Bell Telephone & Telegraph Company,² parent company of BellSouth, submitted one (1) of the six proposals evaluated. This solicitation culminated in the Board approving Resolution No. R-361-82, to award Contract 6-T-600 to Centel for the purchase or lease of the telecommunications systems.

² N/k/a BellSouth Corporation.

STATE OF FLORIDA)
)ss.
COUNTY OF MIAMI-DADE)

By: M. Jenkins

BEFORE ME the undersigned authority, personally appeared MAURICE Jenkins, who, after first being duly sworn under oath by me, deposes and says that he has read the foregoing Answers to Contention Interrogatories, and that they are true and correct to the best of his/her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me
this 1st day of March

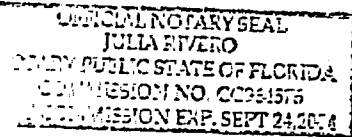
2004. Julia R. Evero

NOTARY PUBLIC

Julia R. Evero

(Print, Type or Stamp Commissioned Name of Notary Public)

My Commission Expires:



Personally Known X or

Produced Identification _____

Type of Identification Produced:

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO. 02-28688 CA (03)

BELLSOUTH
TELECOMMUNICATIONS, INC.

Plaintiff,

v.

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

Defendant

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
AND FOR ISSUANCE OF WRIT OF MANDAMUS**

Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth"), files this Second Amended Complaint for Declaratory and Injunctive Relief and for issuance of a Writ of Mandamus against Defendant, Miami-Dade County (the "County"), and alleges:

JURISDICTION AND PARTIES

1 BellSouth brings this action for declaratory and injunctive relief pursuant to Chapter 86 and Section 26.012(3), Florida Statutes (2002), based upon the County's violation of The Home Rule Amendment and Charter of Miami-Dade County, Florida (the "Charter") as well as the County's violation of Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, which incorporate certain prior provisions of the Constitution of 1885, as amended.

BOYD A. JONES, JUDGE
S.E. 12777
127 SOUTH BAY STREET
MIAMI, FL 33131
305-375-1111

LASH & GOLDBERG, P.A.
www.lgashgoldberg.com

WESTON CORPORATE CENTER
SUITE 400
2700 WESTON ROAD
FT. LAUDERDALE, FLORIDA 33311
954-384-2500 • 954-384-2100 FAX

2. BellSouth further brings this action for issuance of a Writ of Mandamus to compel the County to perform its ministerial obligation pursuant to Chapter 364 of the Florida Statutes, and its accompanying regulations as set forth in the Florida Administrative Code governing the regulation of telecommunications companies.

3. BellSouth is a Georgia corporation doing business in Miami-Dade County.

4. BellSouth is a local exchange telecommunications company, as defined in Chapter 364, Florida Statutes.

5. Pursuant to its Certificate of Public Convenience and Necessity issued by the Florida Public Service Commission ("FPSC"), BellSouth "offer[s] two-way telecommunications service to the public for hire by use of a telecommunications facility" within its service area in Florida, including Miami-Dade County.

6. The County is a political subdivision of the State of Florida and is located in Miami-Dade County.

7. The County "offer[s] two-way telecommunications service to the public for hire by use of a telecommunications facility," at Miami International Airport ("MIA") and other general aviation airports within Miami-Dade County, including Kendall, Tamiami, Homestead and Opa-Locka (the "Other Airports") (collectively MIA and the Other Airports may be referenced as, "airports").

FACTUAL ALLEGATIONS

A. THE LEGAL FRAMEWORK

8. Section 1.01(A)(14)(b) of the Charter states.

The county shall not operate a . . . telephone utility to serve any territory in the county which is being supplied with a similar service except by a majority vote of those qualified electors voting in an election held not less than six (6) months after the Board has passed an ordinance to that effect by a two-thirds (2/3) 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. (Emphasis added)

9. A "telephone utility," as used in the Charter, is a "Telecommunications Company" as provided in Section 364.02 (13), Fla Stat and the regulations promulgated thereunder.

10. Section 364.02 (13), Fla. Stat. defines a Telecommunications Company, and thus a telephone utility, as

13) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in the state offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. (Emphasis added).

11. The County, a political subdivision, is operating a Telecommunications Company and is thus subject to regulation by, and the exclusive jurisdiction of, the FPSC with respect to the County's offering two-way telecommunications services to the public for hire

12. Rule 25-9.002 of the Florida Administrative Code, governing the FPSC's regulatory authority, defines the terms "utility" or "public utility" as follows:

"For the purposes of these regulations the following definitions shall apply: (2) Except where a different meaning clearly appears from the context, the word or words "utility" or "public utility" as used in these rules shall mean and include all electric and gas utilities, water systems, wastewater systems, telephone companies and telegraph companies which are, or may hereafter be, subject to the jurisdiction of this Commission. (Emphasis added).

13. Moreover, Rule 25-4 003(10) of the Florida Administrative Code, governing the FPSC's regulation of Telephone Companies, provides the following definitions:

"Company," "Telecommunications Company," "Telephone Company," or "Utility" These terms may be used interchangeably herein and shall mean "telecommunications company" as defined in Section 364.02(12) [sic], Florida Statutes. (Emphasis added)

14. By operating a "Telecommunications Company," the County is a *fortiori* operating a "Telephone Utility "

15. Before the County can operate a telephone utility in a territory within the County where similar services are already supplied, the Charter requires the Board of County Commissioners (the "Board") first to pass an ordinance by 2/3 vote of the members of the Board present, and to obtain the approval of a majority of the qualified electors in Miami-Dade County.

16. In addition to the requirements imposed by the Charter, the Board's authority to authorize the provision of telecommunications services to the public for hire is further circumscribed by general law which explicitly grants the FPSC exclusive jurisdiction over the regulation of such services.

17. The Florida Legislature, by general law, provided in § 364 01(2) the following.

It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications companies, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. (Emphasis added)

18. The County is presently operating a Telecommunications Company, as evidenced by its offering and providing telecommunications services, including shared tenant services, to airport tenants, the provision of which are subject to regulation by, and the exclusive jurisdiction of, the FPSC

19. Section 364.339, governing the provision of shared tenant services ("STS"), states that "the [Florida Public Service] Commission shall have exclusive jurisdiction to authorize the provision of any shared tenant service which:

(a) Duplicates or competes with local service provided by an existing local exchange telecommunications company; and

(b) Effective January 1, 1996, is furnished through a common switching or billing arrangement to tenants by an entity other than an existing local exchange telecommunications company." (emphasis added).

20. Pursuant to its authority under § 364.339, Fla. Stat., the FPSC enacted a limited "Airport Exemption." The "Airport Exemption" states

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

Rule 25-24.580, F.A.C.

21. As the plain language of the rule makes clear, the Airport Exemption does not grant the County an exemption from the certification requirement applicable to all STS providers with respect to the County's provision of shared tenant services to facilities such as hotels, shopping malls and industrial parks.

22. As set forth below, the County offers shared tenant services to at least one hotel, to restaurants, to retail shops, and to other commercial entities which are "facilities such as hotels, shopping malls and industrial parks."

23. Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, incorporates certain prior provisions of the Constitution of 1885, as amended, that expressly limit the authority of Miami-Dade County as follows.

Section 11 (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 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 . . . 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. (emphasis added)

Section 11(9) . . . [I]t is further declared to be the intent of the Legislature and of the electors of the State of Florida that the provisions of the 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 me 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. (emphasis added).

24 Consequently, the County, through the Board, both (1) violated the Charter and (2) exceeded its constitutional authority, by purporting to authorize the County Manager and the Miami-Dade Aviation Department ("MDAD") to operate a telephone utility by offering telecommunications services to the public for hire, including to facilities such as hotels, shopping malls and industrial parks, based solely on the County's resolutions, without the prior approval of the FPSC, and without passing the required Ordinance or obtaining the required vote of a majority of the qualified electors.

B. THE BOARD VIOLATED THE CHARTER AND ENACTED RESOLUTIONS THAT UNCONSTITUTIONALLY CONFLICT WITH GENERAL LAWS GRANTING EXCLUSIVE JURISDICTION TO THE FPSC.

25 On January 29, 2002, the Board approved Resolution No. R-31-02 authorizing the County to enter into a Non-Exclusive Telecommunications, Data Network, and Shared Airport Tenant Services Management Agreement (the "Agreement") with NextiraOne, LLC ("Nextira").

26 Under the Agreement, among other things, the County acquired title to Nextira's telecommunications facilities, and Nextira assigned its agreements with customers for telecommunications service to the County. See County Manager's Memorandum and Resolution R-31-02, dated January 29, 2002, attached as Composite Exhibit A.

27 Under the Agreement, the County acquired telecommunications facilities, authorized MDAD to operate the facilities to provide telecommunications services to customers for hire, and authorized the County to receive all gross revenues from the provision of the telecommunications services.

28. During 2001, the year prior to the County's acquisition and operation of the telephone utility at the airports, the gross revenues for the provision of telecommunications services to airport tenants totaled approximately \$2,670,024.

29. On September 24, 2002, the Board adopted Resolution No. R-1091-02 (collectively, R-1091-02 and R-31-02 are referenced hereinafter as the "Resolutions") authorizing the County Manager or his/her designee to negotiate and execute new Airport Rental Agreements between the County and customers at the airports to govern the County's provision of telecommunications services to these tenants, including hotels, restaurants, retail shops and other commercial entities ("Commercial Tenants"). See Resolution R-1091-02, County Manager's Memorandum and Miami-Dade Aviation Department Airport Rental Agreement attached as Composite Exhibit B.

30. Prior to the passage of these two Resolutions, the County never operated a telephone utility/telecommunications company because it did not offer two-way telecommunications services to the public for hire by use of a telecommunications facility at MIA or the Other Airports.

31. Nextira and, upon information and belief, its predecessor private entities offered the two-way telecommunications services to the airport tenants for hire using telecommunications facilities owned by these private entities prior to the passage of the Resolutions.

32. Thus, by passing the Resolutions, and, based solely on the Resolutions, the County now owns and operates a telephone utility by offering two-way telecommunications

services to the public for hire, including to Commercial Tenants, at MIA and the Other Airports using telecommunications facilities

33 As testified to by Pedro Garcia, MDAD's Chief of Telecommunications, the County, through its legal counsel and management, and with the participation of the management of the airport, determined that the County had the authority to authorize MDAD and the County Manager to operate the telephone utility/telecommunications company at the airports without seeking prior approval from the FPSC.

34. Thus, the County never submitted an application to the FPSC to obtain a certificate of public convenience and necessity.

35 The Commercial Tenants to which the County currently offers and provides two-way telecommunications services for hire at the airports include at least one hotel, several restaurants, retail shops and other commercial entities. A list of the County's customers, as of the date of that list, is attached hereto as Exhibit "C," and Pedro Garcia's deposition testimony confirming that MDAD provides STS to a hotel tenant at MIA is attached hereto as Exhibit "D."

36 By offering telecommunications services to Commercial Tenants, the County is in direct competition with other telecommunications companies operating at the airports, including BellSouth.

37. Indeed, the County's professed goal, as testified to by Pedro Garcia, in offering telecommunications services to Commercial Tenants is to make money and to compete with BellSouth and other telecommunications companies operating at the airports.

38 BellSouth, the incumbent local exchange telecommunications company in Miami-Dade County, provides similar telecommunications services to Commercial Tenants at MIA and the Other Airports, and has been providing such services at all times relevant, subject to the regulation of the FPSC

39 In fact, by offering shared tenant services to Commercial Tenants at the airports, the County is necessarily offering similar services to those already offered at the airports by BellSouth because shared tenant services, by definition, are services which duplicate or compete with local service provided by an existing local exchange telecommunications company.

40 The provision of shared tenant services to these Commercial Tenants at the airports is not necessary to ensure the safe and efficient transportation of passengers and freight through the airports' facilities

41 The Commercial Tenants at the airports to which the County offers shared tenant services are facilities, such as hotels, shopping malls and industrial parks.

42 Accordingly, the County's provision of shared tenant services to these Commercial tenants is not exempt from the certification requirements and other regulations enacted by the FPSC and as provided in Chapter 364 of the Florida Statutes.

43 Thus, by passing the Resolutions, the Board purported to authorize the County, based on its own authority and without prior approval of the FPSC, to offer shared tenant services to the Commercial Tenants at MIA and the Other Airports.

44 Moreover, whether or not the County, pursuant to the "Airport Exemption," is entitled to a limited exemption from "other STS rules" governing the provision of shared

tenant services, the County is still operating a telecommunications company, and thus a telephone utility, in violation of the Charter, and the County is still subject to FPSC jurisdiction by virtue of its operation as a telecommunications company.

45. MIA and the Other Airports are territories in Miami-Dade County.

46. BellSouth has standing to bring this action because it has a special injury resulting from the County's violation of Section 1 01(A)(14)(B) of the Charter, as it relates to the operation of a telephone utility by the County.

47. Specifically, BellSouth's injuries are different in kind from that of the general public. The County's operation of a telephone utility in violation of the Charter affects BellSouth's business opportunities with, and potential income from, customers at MIA and the Other Airports.

48. BellSouth also has standing to compel the County to comply with its statutory and regulatory obligations under Chapter 364, Florida Statutes, because those statutes and related rules expressly govern all telecommunications companies and the provision of telecommunications services.

49. The statutory scheme explicitly promotes and seeks to ensure fair and effective competition amongst telecommunications companies, including BellSouth and the County

50. Finally, BellSouth has standing to bring this action because it is challenging the constitutionality of the County's Resolutions purporting to authorize the County to operate a telecommunications company independently, and in direct conflict with, general

law passed by the Florida Legislature which grants exclusive jurisdiction to the FPSC to authorize persons to provide such services and regulate providers thereof

COUNT I
DECLARATORY JUDGMENT
(The County's Violation of the Charter)

51. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint

52. An actual and justiciable controversy exists between BellSouth and the County as to whether the County's operation of a telephone utility in Miami-Dade County, absent the necessary votes of the qualified electors and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter, violate the Charter.

53. There is a present, bona-fide need for a declaration that the County's actions violate the Charter.

54. The declaration is ascertainable based on the current state of the facts

55. BellSouth has an actual, present, and adverse interest in the subject matter of this declaration, which is before this Court by proper process, and the relief it seeks is not merely the giving of legal advice or the answer to questions propounded from curiosity.

WHEREFORE, BellSouth requests this Court issue a judgment declaring that the County is violating Section 1.01(A)(14)(b) of the Charter, declaring that any existing contracts relating to the operation of a telephone utility in violation of Section 1.01(A)(14)(b) of the Charter are void, and further declaring that Resolution No R-31-02 and Resolution R-1091-02, to the extent they authorize the County to operate a telephone

utility in violation of the Charter, are void, and to award Plaintiff its costs pursuant to Section (C) of the Charter's Bill of Rights

**COUNT II
INJUNCTION**

(To Prohibit the County from Continuing to Violate the Charter)

56. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint

57 This is an action for injunctive relief to prevent the County from continuing to operate a telephone utility absent the votes and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter.

58. BellSouth has no adequate remedy at law. If the County is permitted to continue to operate its telephone utility at the airports without the majority vote of the qualified electors and the enactment of an ordinance as required under Section 1.01(A)(14)(b) of the Charter, BellSouth will suffer irreparable harm.

WHEREFORE, BellSouth requests that this Court issue an injunction enjoining the County from continuing to operate a telephone utility in the County absent the required votes of the qualified electors and enactment of an ordinance required under Section 1.01(A)(14)(b) of the Charter, and further enjoining the County from continuing to operate a telephone utility in violation of Section 1.01(A)(14)(b) of the Charter, and to award it costs pursuant to Section (C) of the Charter's Bill of Rights.

COUNT III
DECLARATORY JUDGMENT
(Constitutional Challenge to the County's Passage of the Resolutions)

59. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint.

60. An actual and justiciable controversy exists between BellSouth and the County as to whether the County's Resolutions authorizing the County Manager and MDAD to operate a telecommunications company as a shared tenant service provider to certain airport tenants is an unconstitutional exercise of authority that is inconsistent with and conflicts with the general law applicable to the regulation of telecommunications companies under Chapter 364 of the Florida Statutes, thereby violating Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985 which incorporate Sections 11(5) and 11(9) of the 1885 Constitution.

61. There is a present, bona-fide need for a declaration that the County's actions violate the Florida Constitution.

62. The declaration is ascertainable based on the current state of the facts.

63. BellSouth has an actual, present, and adverse interest in the subject matter of this declaration, which is before this Court by proper process, and the relief it seeks is not merely the giving of legal advice or the answer to questions propounded from curiosity.

WHEREFORE, BellSouth requests this Court issue a judgment declaring the following: (1) that the County is a "Telecommunications Company" as defined in § 364.02(13); (2) that the County is offering shared tenant services as defined in §364.339, Fla Stat , and (3) that the County's passage of Resolution No. R-31-02 and Resolution R-

1091-02, to the extent they authorize the County to operate a telecommunications company providing shared tenant services in conflict with the general law granting the exclusive jurisdiction for the regulation of telecommunications companies to the Florida Public Service Commission, is a violation of Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985, incorporating Sections 11(5) and 11(9) of the 1885 Constitution, and declaring such Resolutions, to the extent they violate the Florida Constitution, null and void.

COUNT IV
PETITION FOR ISSUANCE OF WRIT OF MANDAMUS
(Compelling the County to Comply with Its Statutory and Regulatory Obligations as a Telecommunications Company)

64. BellSouth incorporates Paragraphs 1 through 50 of this Second Amended Complaint.

65. Miami-Dade County has a clear legal duty to perform certain ministerial acts required by Chapter 364 of the Florida Statutes, and the regulations enacted pursuant thereto, which exclusively govern the regulation of telecommunications companies

66. Section 364.02 (13) defines Telecommunications Company to include political subdivisions, and §364.32(1)(a), Fla. Stat., defines "Person" to include any county.

67. Section 364.33, Fla. Stat then provides that:

A person may not begin the construction or operation of any telecommunications facility, or communications services to the public, or acquire ownership or control thereof, in whatever manner, . . . without prior approval (Emphasis added).

68. With respect to the provision of shared tenant services, §364.339(2), Fla. Stat., further states that "No person shall provide shared tenant services without first obtaining from the commission a certificate of public convenience and necessity to provide such service."

69 To obtain "prior approval," from the FPSC, and to obtain a certificate of public convenience and necessity, the "person" must satisfy the ministerial requirements described in §§ 364.33 and 364.335, Fla. Stat.

70. Enacted pursuant to Section 364.339, Fla Stat , Rule 25-24.567 of the Florida Administrative Code sets forth additional ministerial requirements that the County must satisfy before it can provide shared tenant services.

71. Alternatively, to the extent the County seeks to take an assignment of an existing certificate for the provision of shared tenant services which may have previously been held by NextiraOne, the County is required to satisfy the requirements set forth in Rule 25-24.569 of the Florida Administrative Code before it can offer the shared tenant services

72. BellSouth has the right to demand that the County perform the ministerial obligations set forth in the above-referenced statutory and regulatory provisions because the County competes with BellSouth. One of the purposes of Chapter 364 is to promote the development of fair and effective competition with respect to the provision of telecommunications services in Florida

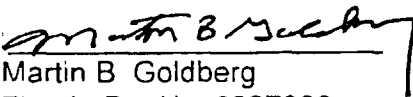
73. There is no room for the County to exercise discretion in the performance of the stated obligations, and the performance thereof is directed by law.

74. BellSouth has no other legal remedy available to it.

WHEREFORE, BellSouth requests this Court issue a Writ of Mandamus (1) compelling the County to perform the ministerial duties required by §§364.32 – 364.335 and §364.339, Fla Stat and as required by the Florida Administrative Code, including Rule 25-24.567 or Rule 25-24.569, F.A.C. and (2) enjoining the County from continuing to operate a telecommunications company and to offer shared tenant services to facilities such as hotels, shopping malls, and industrial parks until the County complies with its statutory and regulatory obligations under Chapter 364, Fla. Stat., in addition to the obligations set forth in the Charter.

Respectfully submitted:

LASH & GOLDBERG LLP
1200 Bank of America Tower
100 S.E. 2nd Street
Miami, Florida 33131
Telephone: (305) 347-4040
Telefax: (305) 347-4050

BY: 
Martin B. Goldberg
Florida Bar No. 0827029
Lawrence B. Lambert
Florida Bar No. 0032565

Dorian Denburg, Esq.
Florida Bar No 350291
BellSouth Telecommunications, Inc
1155 Peachtree Street, Suite 1700
Atlanta, GA 30309-3610
Telephone: (404) 249-2608
Telefax: (404) 249-5664

Sharon Liebman, Esq.
Fla. Bar No 0048828
BellSouth Telecommunications, Inc.
150 W. Flagler Street, Ste. 1910
Miami, Florida 33130
Telephone: (305) 347-5570
Telefax (305) 375-0209

Counsel for Plaintiff, BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by Overnight Mail on this 27th day of May, 2004 to David Hope, Asst County Attorney, Miami-Dade County Attorneys Office, 111 N W. 1st Street, Miami, Florida 33130.

BY 
Martin B. Goldberg

Approved [Signature] Mayor
Veto _____
Ordinance _____

Agenda Item No 6(A)(1)(D)
1-29-02

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-31-02

RESOLUTION RELATING TO TELECOMMUNICATIONS, DATA NETWORK, AND SHARED AIRPORT TENANT SERVICES AT MIAMI-DADE COUNTY AIRPORT SYSTEM FACILITIES; AUTHORIZING PURCHASE OF LEASED EQUIPMENT; AUTHORIZING APPROVAL AND EXECUTION OF NON-EXCLUSIVE MANAGEMENT AGREEMENT WITH NEXTIRAONE, LLC FOR INTERIM TWO-YEAR PERIOD; AND WAIVING COMPETITIVE BID PROCEDURES AND PROVISIONS

WHEREAS, Miami-Dade County, Florida (the "County") and Centel Communications Company ("Centel") entered into an Equipment Lease and Maintenance Agreement, as of July 24, 1990, and retroactive to February 7, 1988 (the "ELM Agreement") which ELM Agreement terminates on February 6, 2002; and

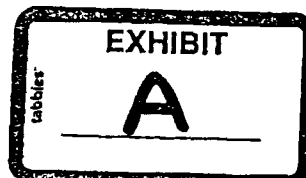
WHEREAS, the County and Centel also entered into a Shared Airport Tenant Service Agreement (the "SATS Agreement") which SATS Agreement terminates on February 6, 2002; and

WHEREAS, NextiraOne, LLC ("Nextira") is the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC)¹ under both the ELM Agreement and the SATS Agreement; and

WHEREAS, it is in the best interest of the County to acquire title to all telecommunications, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets as detailed on Schedule A of the ELM Agreement and Schedule E of the SATS Agreement, as of February 6, 2002 (the "Assets"); and

¹ In 1991, Centel Communications Company ("Centel") was acquired by WilTel Communications System ("WilTel"), and in 1997, Williams Communications Solutions, LLC was created from the merger of WilTel and Nortel Communications Systems.

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WHEREAS, an interim manager is necessary to operate, maintain, and manage the Assets, until a telecommunications and data network request for proposal ("RFP") is circulated and a new manager is selected; and

WHEREAS, Nextira, as the owner and operator of the Assets, has the personnel, technical and product knowledge, expertise, and market recognition to manage the Assets,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Board:

Section 1. Authorizes the payment of \$6,450,000 to Nextira, for the purchase of the Assets, to be used and operated by or for the Miami-Dade County Aviation Department.

Section 2. Authorizes the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement (the "Agreement") with Nextira for an interim two (2) year period, and delegates to the County Manager the authority to negotiate all terms and conditions necessary to consummate the Agreement. The Agreement shall contain a random audit provision to be conducted by the Office of the Inspector General, pursuant to § 2-1076(c)(6), Code of Miami-Dade County Florida (the "Code"). The Agreement shall also contain a provision for the County to retain the services of an independent private sector Inspector General ("PSIG"), pursuant to Administrative Order No. 3-20.

Section 3. Waives competitive bid provisions of Administrative Order Nos. 3-4 and 3-16 related to the procurement of professional services.

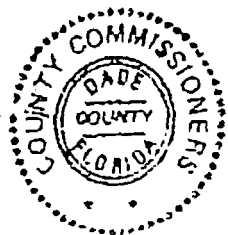
Section 4. Waives competitive bid provisions of Section 4.03(D) of the Home Rule Charter and the requirements of Administrative Order No. 3-2 in connection with the purchase by the County for (i) wiring, (ii) cabling, (iii) fiber optic cables and equipment, (iv) telecommunications

equipment, (v) telephone and data network equipment, (vi) software, and (vii) material and supplies, necessary to maintain, support, operate, and expand the telecommunications, data network, and shared airport tenant services at the County airport system facilities. Such waiver is by a two-thirds (2/3) vote of the Board members present.

The foregoing resolution was offered by Commissioner **Dorrin D. Rolle**, who moved its adoption. The motion was seconded by Commissioner **Katy Sorenson** and upon being put to a vote, the vote was as follows:

Dr. Miriam Alonso	absent	Bruno A. Barreiro	aye
Dr. Barbara Carey-Shuler	aye	Betty T. Ferguson	absent
Gwen Margolis	absent	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	aye
Katy Sorenson	aye	Rebeca Sosa	aye
	Javier D. Souto		aye

The Chairperson thereupon declared the resolution duly passed and adopted this 29th day of January, 2002. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

By: KAY SULLIVAN
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

dsh

David Stephen Hope

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MEMORANDUM

TO: Honorable Chairperson and Member
Board of County Commissioners

DATE: January 29, 2002

FROM: Steve Shiver
County Manager

SUBJECT: Telecommunications
Services at the Aviation
Department

RECOMMENDATION

It is recommended that the Board of County Commissioners (the "Board") approve the attached resolution waiving the competitive bid requirements of Administrative Order No. 3-2 related to the procurement of commodities and services and approve in principle the non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement ("Agreement") between Miami-Dade County, (the "County") and NextiraOne, LLC¹ ("Nextira"), substantially in the form attached hereto, which provides for: 1) the acquisition of, in accordance with the principles delineated in the Agreement, title to all telecommunications network, data network, and common use terminal equipment ("CUTE") infrastructure, software, licenses, permits, and other assets as described in Schedule A to the Equipment Lease and Maintenance agreement ("ELM Agreement") and Schedule E to the Shared Airport Tenant Services agreement ("SATS Agreement"), as of February 6, 2002 for the acquisition price of \$6,450,000 which will be amortized at five (5) percent over five (5) years; 2) resolution of various claims arising out of the ELM Agreement and SATS Agreement; 3) assignment to the County all existing tenant SATS and CUTE agreements entered into by Centel or its successors or assigns with tenants at Miami International Airport ("MIA") or the County's other owned or operated general aviation airports; and, 4) Nextira to become the interim telecommunications infrastructure manager, to provide for the design, installation, maintenance, repair, management, and operational support services for all voice and data network infrastructure for the Miami-Dade Aviation Department ("MDAD") and shared airport tenant services customers at MIA and the General Aviation Airports ("GAAs") until a new provider is selected, but for no longer than a period of twenty-four (24) months.

In addition, it is recommended that the Board approve the attached resolution authorizing the County to make direct purchases of the following equipment: (i) wiring, (ii) cabling, (iii) fiber optic cables and equipment, (iv) telecommunications equipment, (v) telephone and data network equipment, (vi) software, and (vii) material and supplies, necessary to maintain, support, operate, and expand the telecommunications, data network, and shared airport tenant services at the County airport systems facilities. Under this system the County will purchase directly, certain commodities as indicated by Nextira and be exempt from paying state sales taxes and mark-up

¹ NextiraOne, LLC is the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC) under both the ELM Agreement and the SATS Agreement.

Board of County Commissioners
Page 2

costs on these purchases. It is also recommended that the Board authorize, in accordance with Ordinance No. 99-63, the inclusion of a random audit provision, including the one quarter (1/4) of one percent assessment, in the Agreement. It is further recommended that the County Manager be authorized to execute the Agreement.

BACKGROUND

The County is currently under contract with Nextira. Nextira leases to the County, and manages, operates and maintains all the telecommunications infrastructure and services serving MIA and the GAAs at an approximate annual cost of \$7,300,000. MDAD's agreement with Nextira expires on February 6, 2002.

NEGOTIATIONS

In July 2001, the Board approved Resolution No. R-852-01, approving a professional services agreement between the County and ResAvia. ResAvia is providing specialized technical and negotiation services to resolve the various claims arising out of the ELM Agreement and SATS Agreement entered into between the County and Nextira, and to negotiate a buy-out and new agreement with Nextira to allow MDAD an opportunity to finalize its long term voice and data telecommunications strategy.

INTERIM MANAGER FOR TELECOMMUNICATIONS INFRASTRUCTURE

MDAD is simultaneously working to develop a request for proposal ("RFP") to award a contract to a service provider to serve as the manager of the telecommunications infrastructure. Due to time constraints, the County will not be able to award this contract before February 6, 2002, when the Nextira contract expires. To assure the uninterrupted operation of the County airports, ResAvia, MDAD and the County Attorney's Office negotiated a proposed management agreement type contract (the "Agreement") with Nextira, to retain it as manager of the installed telecommunications infrastructure based upon County ownership of the equipment as further described below:

PROJECT LOCATION: Miami International Airport and General Aviation Airports

PROJECT DESCRIPTION: Provides for the operations, management, maintenance, service, support and equipment and supplies of the telecommunications and data, infrastructure, hardware and software systems for the MDAD and the shared airport tenant services customers at Miami International Airport and the General Aviation Airports. The scope of services includes the management of the shared airport tenant services for the County, including CUTE, to tenants and users at the Airport. In addition, Nextira will be

required to implement a transition program, one hundred and twenty (120) days prior to the expiration of the term of this Agreement, to ensure that either the new vendor selected as a result of the RFP process or MDAD's operating and maintenance personnel are trained in all aspects of the telecommunications and data infrastructure.

FIRM: NextiraOne, LLC

LOCATION OF FIRM: Houston, Texas

TERM OF AGREEMENT: The Agreement shall be for a duration of twenty-four (24) months. The County may terminate the Agreement with or without cause on thirty (30) days written notice to Nextira, provided however, the Agreement shall have a minimum term of eighteen (18) months unless terminated earlier for cause.

AMOUNT OF AGREEMENT: Compensation to the Contractor

One-Time Acquisition Price:

Acquisition of the telecommunications, data network, and CUTE infrastructure, software licenses, permits, and other assets in Schedule A to the ELM Agreement and Schedule E to the SATS Agreement of \$6,450,000 which will be amortized at five (5) percent over five (5) years.

Fixed Management Fee:

This Agreement provides for a fixed management fee of \$6,144,067 for the first year, which includes overhead and profit, staff transition costs, vendor agreements and spare parts carrying charge.

The compensation for the second year is based on this Management Fee as adjusted by the budgeting process that incorporates the requirements of the Capital Improvement Program (CIP) and the change in the Consumer Price Index (CPI) for the salaries of the personnel.

Variable Costs.

The Agreement also provides for the variable costs, when authorized by the Department, and includes: 1) the procurement of parts, materials and software (\$2,650,000), 2) On-call after hour services (\$273,000), and 3) subcontractor services for wiring installation and maintenance, as necessary (\$899,415).

SATS Revenue:

Per the SATS Agreement, last year MDAD received \$267,000 which was based on ten (10) percent of gross revenues. Under this new Agreement, MDAD will receive all SATS gross revenues which last year was \$2,670,024. This revenue is expected to increase based on new marketing initiatives presently under development.

Compensation to the County

The Contractor will pay to the County the sum of \$110,000, on February 6, 2002, on account of excess space occupied without lease by the Contractor in Building 3030 at MIA for the period from November 1, 1997 to and including February 6, 2002.

RECOMMENDED CONTRACT MEASURES:

No measure

USING AGENCY:

Miami-Dade Aviation Department

FUNDING SOURCE:

Miami-Dade Aviation Department Operating Budget for Consulting Services and Aviation Revenue Bonds.

APPROVED FOR LEGAL SUFFICIENCY:

Yes

CONTINGENCY PLAN

As reported to the Board at its December 18, 2001 meeting, in the event that the negotiations with Nextira fail and no agreement is reached by the contract expiration date, the Department has a contingency plan to assure continuity in the provision of telecommunication services.

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Board of County Commissioners
Page 5

SUMMARY

In summary, our preferred outcome is a negotiated buyout of the telecommunications equipment and infrastructure, retaining Nextira for a limited time to act as manager of the telecommunications infrastructure, and obtaining a long-term contract for telecommunications infrastructure management through a competitive request for proposal. In addition, the above recommendation begins the implementation of MDAD's long-term, cost-effective strategy to enable better management and control of our telecommunications infrastructure. In the alternative, MDAD has a plan to continue services without Nextira while procurement processes and legal remedies are undertaken.

Attachment



MEMORANDUM
OFFICE OF THE COUNTY MANAGER

Agenda Item No. 6(A)(1)(A)

TO: Honorable Chairperson and Members of the Board of County Commissioners DATE: September 24, 2002

FROM: Steve Shiver, County Manager SUBJECT: Resolution approving recommendations relating to shared airport tenant services for the Aviation Department

RECOMMENDATION

It is recommended that the Board approve the attached resolution that will authorize the County Manager or his designee to: (i) execute standard form airport rental agreements for shared airport tenant services ("SATS") to offer telecommunications and network access to airport tenants; (ii) negotiate such terms and conditions as may be necessary on a tenant by tenant basis; and (iii) issue renewal and event of default notices, and in the instance of default, to take necessary termination actions for failures to correct defaults on a timely basis all in accordance with the airport rental agreement.

BACKGROUND

On January 29, 2002, the Board of County Commissioners (the "Board") approved Resolution No. R-31-02 relating to the telecommunications, data network, and shared airport tenant services at Miami-Dade Aviation Department ("MDAD"), and entered into a non-exclusive management agreement with NextiraOne, LLC (the "Contractor") wherein MDAD receives all SATS gross revenues.

Shared airport tenant services consist of telecommunications, voice and data network services which MDAD offers to its tenants. The Contractor is required to use its best efforts to establish, market, maintain, operate and manage SATS for the County to tenants and users at Miami International Airport ("MIA") and the General Aviation Airports ("GAA"), consistent with the requirements of the Public Service Commission of Florida ("PSC") or whatever other governmental entity has jurisdiction over SATS, if and where applicable, and all applicable laws.

It is requested that the Board delegate to the County Manager or his designee certain specific and limited authority that would provide for more efficient management of airport properties, maximization of revenues, and better operational flexibility for users of said facilities. Given the changing or different needs of each tenant requesting SATS, it is also requested that the Board delegate the authority to negotiate such terms and conditions as may be necessary, on a tenant by tenant basis, to allow the County to be responsive to the needs of the MIA and GAA business partners. The rental term may vary depending on the nature of the use, but on no occasion will any airport rental agreement exceed forty-eight (48) months.



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Honorable Chairperson and Members
Board of County Commissioners
Page 2

The installation and monthly rental fees for SATS is dependent on the scope of the tenant's request for services.

The following chart provides a sampling of three levels of service (i.e., small, medium, and large tenant) that is presently offered by MDAD:

Tenant	Type of Service	Number of Subscribers	Installed Costs	Actual Monthly Rental Fee (period 5/1/02 - 5/31/02)
Air Jamaica (small)	Telecommunications Access	6 Subscribers	\$860.00	\$206.88
Miami Airport Duty Free (medium)	Network Access	46 Subscribers	\$15,690.00	\$ 2,516.44
United Airlines (large)	Telecommunications Access	593 Subscribers	\$99,297.00	\$18,142.88

The requested delegation of authority is similar to that which has existed for standard form aviation leases for the use and occupancy of real property at MDAD facilities.

At present, there are fifty-five (55) tenants with existing SATS agreements with MDAD. These agreements must be renewed, and as MDAD takes additional tenants into service, it is expected the number of users of our telecommunications and data network system and resulting revenues will increase. Per the previous SATS agreement with NextiraOne, LLC¹, last year the MDAD received \$267,000, which was based on ten (10) percent of gross revenues. Under the new non-exclusive management agreement with NextiraOne, LLC, approved by the Board on January 29, 2002, MDAD will receive all SATS gross revenues which last year totalled \$2,870,024. This revenue is expected to increase based on new marketing initiatives presently under development.

¹ NextiraOne, LLC was the successor or assignee of Centel's rights and obligations (via Williams Communications Solutions, LLC) under both the ELM Agreement and the SATS Agreement.

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 6(A)(1)(A)
9-24-02

OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
DADE COUNTY, FLORIDA

RESOLUTION NO. R-1091-02

**RESOLUTION AUTHORIZING THE COUNTY
MANAGER OR DESIGNEE TO EXECUTE
AIRPORT RENTAL AGREEMENTS FOR AIRPORT
TENANT TELECOMMUNICATIONS SERVICES AND
NETWORK ACCESS; NEGOTIATE TERMS AND
CONDITIONS; AND ISSUE RENEWAL AND
DEFAULT NOTICES AND TAKE NECESSARY
TERMINATION ACTION FOR FAILURE TO
CORRECT DEFAULTS.**

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby authorizes the County Manager or designee to: (i) execute the standard form of an airport rental agreement attached to the accompanying memorandum for shared airport tenant telecommunications services and network access; (ii) negotiate such terms and conditions as may be necessary on a tenant by tenant basis; and (iii) issue renewal and default notices and, in the instance of default, to take necessary termination actions for failure to timely correct defaults all in accordance with the agreement.

The foregoing resolution was offered by Commissioner

Dorrin D. Rolle

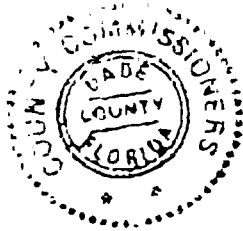
, who moved its adoption. The motion

was seconded by Commissioner ~~Gwen Margolis~~

and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro	absent	Jose "Pepe" Cancio, Sr	aye
Dr. Barbara Carey-Shuler	absent	Betty T. Ferguson	absent
Gwen Margolis	aye	Joe A. Martinez	aye
Jimmy L. Morales	aye	Dennis C. Moss	aye
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	aye
	Sen. Javier D. Souto	absent	

The Chairperson thereupon declared the resolution duly passed and adopted this 24th day of September, 2002. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **KAY SULLIVAN**
Deputy Clerk

Approved by County Attorney as to form and legal sufficiency. dsh

David Stephen Hope

5

MIAMI-DADE AVIATION DEPARTMENT

Airport Rental Agreement

This Agreement is made as of _____, 20____, between Miami Dade County (the "County"), a political subdivision of the State of Florida, and _____ (the "Customer") conducting business at Miami International Airport ("MIA" or the "Airport")

1) **AGREEMENT.** The County agrees to deliver, install, rent, and maintain telecommunications systems and services consisting of: (1) switch access to its common carrier telecommunications switching equipment and software which will be shared by the Miami-Dade Aviation Department ("MDAD" or the "Department") and its tenants at the Airport ("Switch Access"); (2) network access to the local telephone exchange carrier ("Network Access"); and (3) telecommunication terminal equipment and cabling when terminated and executed on Schedule I. Such equipment and services are described in the Equipment and Services Schedule I and Maintenance Schedule III attached hereto, including optional services and features and made a part hereof, (collectively the "System") and the Customer agrees to rent the System (the "Rental") subject to the terms and conditions of this Agreement.

This Agreement is subject to credit approval by the County. The Customer agrees to cooperate with the County by providing all credit and financial information that may be required by the County. Upon the County's approval of the Customer's rental application, the Customer agrees to execute all documents relating to the Rental and to promptly return them to the County. In the event all required and properly executed documents and advance payments are not provided to the County, the County may, in addition to other delineated rights and remedies delay delivery until such executed documents and advance payments are received and approved by the County.

2) **Schedules.** The attached schedules (the "Schedules") are part of this Agreement:

- Schedule I Equipment and Services Schedule
- Schedule II Acknowledgment and Certificate of Acceptance
- Schedule III Maintenance Schedule

3) **Installation**

a) The Customer will be responsible for, and provide or arrange for at its own expense in a timely manner as required or directed by the County: (1) necessary permits and accessible System locations free from environmental hazards; (2) reasonable access for the County; (3) completed copies of database feature information; (4) raceways, conduit, hoses and wireways, where not otherwise provided hereon; and (5) easements and microwave licenses.

b) The System will meet Federal Communications Commission Part 68 regulations regarding connection to the public telephone network. The County will install the System in a workmanlike manner without damage to the Customer's premises, and will obtain necessary work permits to install the System. The County will not be responsible for removing any cabling or equipment of the Customer's old telephone system.

4) **Force Majeure.** The County's performance under this Agreement shall be excused to the extent and for the time compliance is beyond the County's reasonable control for reasons that include but are not limited to strikes, work stoppage, fire, water, and acts of God, disruption in service for any cause, storms, lightning, delays by subcontractors, delays of power company, delays of the local exchange company, interexchange carrier, or any other carrier, governmental action, or any Customer nonperformance such as (i) non-payment, or (ii) failure to execute an acceptance certificate or rental document.

5) **Term and Acceptance.** This Agreement shall be effective upon execution by the Customer and the County, but the term of this Agreement (the "Rental Term") shall commence on the "Commencement Date" (as hereinafter defined) and shall terminate on the last day of the Rental Term stated in Schedule I provided however the Customer's indemnities, assumption of liabilities, and other duties, and all of the County's disclaimers herein shall survive the termination of this Agreement. The Customer shall be deemed to have accepted the System for all purposes of this Agreement, including the payment of rent hereunder, with the Customer's execution of the "Acknowledgment and Certificate of Acceptance" contained in Schedule II, attached hereto and made a part hereof. The date of execution of the Acknowledgment and Certificate of Acceptance shall be the Commencement Date under this Agreement. The Customer shall execute the Acknowledgment and Certificate of Acceptance with the County's completion of installation and pre-operational testing and first connection of the equipment to the public telephone network in a manner permitting calls to be made through the System (the "Customer").

6) **Payment of Rent.** The rent for the System (the "System Rent") shall be as listed in Schedule I and shall be payable, without notice or demand, pursuant to said Schedule I.

7) **Cancellation.** After paying the first twelve (12) monthly payments under this Agreement including twelve (12) months of payments for any additions, the Customer may cancel this Agreement by giving sixty (60) days written notice to the County and by paying a cancellation fee equal to: (a) seventy percent (70%) of the unpaid System Rent, AND (b) three (3) monthly payments for Switch Access and Network Access. With the County's prior written approval, the cancellation fee will be waived if the Agreement is assigned to a MIA tenant who assumed all the obligations of this Agreement.

8) **Training.** The County will provide instruction and training in the use of the System, to employees of the Customer for a reasonable time (not to exceed thirty (30) days) after the Customer.

9) **Maintenance.** The County will maintain the System in good repair, and will provide the necessary parts and labor to maintain the System as provided in Schedule III provided the Customer is current on its payments hereunder and is otherwise in compliance with terms and conditions of this Agreement. The Customer's SOLE AND EXCLUSIVE REMEDY for the County to correct a defect in the System is limited to the County's performance under this Section 9.

The County's duty to maintain the System:

a) Excludes any service in connection with maintenance or repair of the equipment caused by negligence, theft or unexplained loss, abuse, connection to foreign power, fire, water, wind, storms, lightning, acts of God, acts of public enemies, improper wiring, installation of equipment, items, material or software by the Customer or third parties, failure or changes resulting from local exchange company, failures or changes resulting from local power company, failures or changes resulting from other transmission providers, or repair or alteration of the equipment or software by anyone other than the County; and

b) requires that Customer maintain a suitable operating environment for the System.

BY CUSTOMER REQUEST, REPAIRS NECESSITATED BY ANY OF THE EXCEPTED CAUSES IN SECTION 9(a) ABOVE SHALL BE PERFORMED BY THE COUNTY AT ITS THEN PREVAILING RATES. THIS MAINTENANCE AGREEMENT IS IN LIEU OF ANY WARRANTY OR OTHER OBLIGATION, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO ANY WARRANTY AGREEMENT OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE COUNTY DISCLAIMS ANY WARRANTY TO PREVENT UNAUTHORIZED USE OF THE SYSTEM INCLUDING TOLL FRAUD.

10) **LIMITATION OF LIABILITY.** THE COUNTY WILL BE LIABLE FOR PHYSICAL INJURIES TO INDIVIDUALS AND DAMAGES TO TANGIBLE PHYSICAL PROPERTY (OTHER THAN THE SYSTEM WHICH IS COVERED BY THE MAINTENANCE PROVISIONS OF THIS AGREEMENT) CAUSED BY THE COUNTY'S NEGLIGENCE. IN NO EVENT HOWEVER WILL THE COUNTY AND ITS CONTRACTORS, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE FOR: (A) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (B) COMMERCIAL LOSS OF ANY KIND (INCLUDING LOSS OF BUSINESS OR PROFITS); OR (C) ANY DAMAGE OF ANY KIND RESULTING FROM UNAUTHORIZED USE OF THE SYSTEM INCLUDING TOLL FRAUD. THIS LIMITATION SHALL APPLY TO ANY CLAIM OF THE CUSTOMER WHETHER BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OF THE COUNTY, ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AND SUPPLIERS, STRICT TORT OR ANY OTHER LEGAL THEORY WHETHER OR NOT THE COUNTY OR ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, OR SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

11) **Title.** The County shall retain title to the System and the Customer shall have no interest in the System other than the rights acquired as a customer hereunder. The Customer acknowledges the County may title to and maintain on such System identifying labels indicating the County's ownership. The System shall remain County's personal property and not become a fixture or part of any Customer real estate regardless of the manner in which it may be installed or attached. If requested by the County, the Customer will, at the Customer's expense, furnish a landlord and/or mortgage waiver with respect to the System. The Customer shall protect and defend the County's title and at the Customer's expense keep the System and parts thereof free and clear of all liens, encumbrances and security interests other than those which through the County, and shall not permit the County's rights or interest hereunder to be subject to any lien, charge or encumbrance, including but not limited to (a) any lien of the owner of real property upon which the System is installed; or (b) of any purchaser of, or future creditor obtaining a lien on said real property. The Customer shall give the County immediate notice of any attachment or judicial process affecting any part of the System.

12) **Use of the System(s), Inspections and Reports.** The Customer shall use the System(s) solely for business and not for personal, family or household purposes. The Customer may only use the System at the location set forth in Schedule I. The Customer's use of the System shall conform with all applicable federal, state and local laws and rules. The County shall have the right to inspect the System at all reasonable times during the Customer's normal business hours.

Additional Terms and Conditions

- 13) **Alterations and Attachments.** The Customer shall not permit any equipment or other items or material (the "Other Equipment") or software (the "Other Software") to be used on or in connection with the System, which does not meet the specifications of the manufacturer of the equipment in the System. All Other Equipment and Other Software which may be used on, or in connection with, the System shall be acquired and installed by the Customer at Customer's own expense and risk. The County makes no representation concerning the compatibility of any such Other Equipment and/or Other Software for use with the System.
- Without the prior written approval of the County, at the end of the Rental Term, the Customer must remove any additions to the System not otherwise subject to the Agreement (the "Additions") made by Customer during the Rental Term, and restore the System, at the Customer's expense, to its original condition, reasonable wear and tear only excepted. In the event the Customer fails to remove an Addition, it shall become the property of the County.
- 14) **Indemnification.** The County will be responsible only for physical injury to persons (including death) and damage to tangible physical property to the extent caused by its negligence during delivery, installation or maintenance of the System, and which is reported to the County in writing within sixty (60) calendar days of the incident.
- The Customer shall indemnify and hold harmless the County and its officers, employees, agents and authorized representatives, and instrumentalities from any and all claims, liabilities, losses, damages, and causes of action, including attorney's fees and costs of defense, which may arise or be incurred as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this Agreement by the Customer or its employees, agents, servants, partners, principals, or subcontractors, except to the extent such act is caused by the County's negligence. The Customer shall pay all claims and losses of any nature whatsoever in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be issued thereon. The Customer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Customer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and authorized representatives, and instrumentalities as herein provided. Nothing contained in this Section 14 shall be construed so as to require the Customer to indemnify the County's employees, agents and authorized representatives to their own negligence.
- 15) **Return of System.** Upon termination of this Agreement (excepting equipment covered under a renewal agreement), the Customer will make the System available for removal which shall be accomplished in a careful and reasonable fashion by the County. The System will be returned to the County in the same condition as originally installed, ordinary wear and tear excepted, or the Customer will pay for the restoration of the System to such condition. The County shall not be obligated to restore the premises to its original condition. If the Customer does not return the System or make it available for removal by the County, then in addition to all other remedies in this Agreement, the County has available all other remedies available at law or equity. All obligations of the Customer under this Agreement shall remain in force and effect until the System is returned to the County.
- 16) **Events of Default by the Customer.** The occurrence of any one or more of the following events (an "Event of Default") shall constitute a default under this Agreement:
- Failure by the Customer to pay any installment of System Rent or any other amount payable hereunder as and when the same becomes due and payable and the continuation of such failure for a period of ten (10) calendar days thereafter;
 - Failure by the Customer to perform or observe any other term, covenant or condition of this Agreement or any Schedule, or the inaccuracy in any material respect of any representation, warranty or statement made by the Customer in this Agreement, any Schedule, or any document or certificate furnished to the County at any time, which such failure or inaccuracy shall continue for a period of ten (10) calendar days after notice from the County;
 - Discontinuation, termination or discontinuance of the Customer's business (including, without limitation, the death of the proprietor if the Customer is a sole proprietorship or the death of a general partner if the Customer is a partnership), the sale of substantially all of the Customer's assets, or the sale or pledge of the controlling interest in the Customer;
 - The Customer's insolvency, the appointment of a receiver for any property of the Customer, assignment by the Customer for the benefit of creditors, admission by the Customer in writing of its inability to pay its debts as they become due, or the commencement of a proceeding under any bankruptcy reorganization or similar laws by or against the Customer or any property it possesses, or if the Customer enters into an agreement of composition with its creditors; or
 - The attempted sale by the Customer of a System or any part thereof, or the issuance of any levy, seizure, or attachment thereon or pertaining thereto.
- 17) **Remedies of the County.** At any time after the occurrence of an Event of Default, the County may exercise any one or more of the following remedies:
- The County may, upon seven (7) days written notice, terminate this Agreement with respect to any System, or portion thereof, or all of the Systems;
 - The County may demand and recover from the Customer all System Rent and other amounts then due;
 - The County or its agents may take possession of any portion or all of the Systems, whenever the same be located, on reasonable notice, without any court order or other process of law and without liability to the Customer for any damages occasioned by such taking or possession, and any such taking or possession shall constitute a termination of this Agreement, and whereupon all rights and interest of the Customer to possess and use the Systems shall absolutely cease, but the Customer shall remain liable as provided herein;
 - The County may demand the Customer return any System or part thereof, or all of the Systems to the County in accordance with this Section 17 herein; and
 - The County may pursue any other remedy available at law or in equity, including, without limitation, seeking damages, specific performance, and/or an injunction. None of the remedies under this Agreement is intended to be exclusive but shall be cumulative and in addition to any other remedy referred to herein or otherwise available to the County in law or in equity. Any repossession or subsequent sale or lease by the County of any portion of the System shall not bar any action or a deficiency as herein provided, and the bringing of any action or the entry of a judgment against the Customer shall not bar the County's right to repossess any System or portion thereof, or all of the Systems.
- 18) **County Event of Default and Customer Remedy.** The Customer may terminate this Agreement upon thirty (30) days written notice in the event of the County's material breach of this Agreement. Such written notice shall identify the material breach(es) and provide a reasonable time to cure. In the notification to remedy the breach(es), the County has fifteen (15) days to cure the cause of the termination (the "Cure Period"). Such Cure Period commences the day after the thirty (30) day written notice period runs. The Customer may extend the Cure Period. This shall be the Customer's exclusive remedy.
- 19) **Insurance.** In addition to such insurance as may be required by law, the Customer shall maintain during the term of this Agreement the following insurance:
- Public Liability Insurance** on a comprehensive basis, including contractual liability, products, and completed operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be an Additional Insured with respect to this coverage.
 - Automobile Liability Insurance** coverage for all owned, non-owned and hired vehicles used in connection with this agreement in amounts not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
 - Property Damage.** The Customer will bear the risk of loss or damage to the leased equipment for the replacement cost and will reimburse the County for any damages to the equipment.
- The insurance coverage required shall include those classifications, as listed in the standard liability manuals, which most nearly reflect the operations of the Customer under this Agreement. All insurance policies required herein shall be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B" as to management, and no less than "V" as to strength in accordance with the latest edition of "Best's Insurance Guide" published by A.M. Best Company, Inc. or its equivalent as approved by the Miami-Dade County Risk Management Division.
- Prior to the commencement of operations hereunder, and annually thereafter, the Customer shall furnish certificates of insurance to Miami-Dade County, Aviation Department and the Risk Management Division, which certificates shall clearly indicate: (1) the Customer has obtained insurance in the type, amount and classification as required for strict compliance with this Section 19; (2) any material change or cancellation of the insurance shall not be effective without thirty (30) days prior written notice to the County; and (3) that Miami-Dade County is named as an Additional Insured with respect to the Public Liability coverage.
- The County reserves the right to require the Customer to provide such reasonably amended insurance coverage as it deems necessary or desirable upon issuance of notice in writing to the Customer, which notice shall automatically extend this Agreement effective thirty (30) days after such notice. Compliance with the foregoing requirements shall not release the Customer of its liability under any other portion of this Agreement.
- 20) **Further Assurances.** The Customer will execute and deliver to the County such additional instruments as the County deems necessary hereunder.

Additional Terms and Conditions

- 21) **County's Performance of the Customer's Obligations.** If the Customer fails to perform any of its obligations under this Agreement, the County may perform any or make any payment which the County deems necessary for the maintenance and preservation of the Systems and the County's title thereto. All sums so paid by the County (together with all related "Late Payment Charges", as hereinafter defined) and reasonable attorney's fees incurred by the County in connection therewith shall be additional System Rent immediately due and payable by the Customer to the County. The performance of any act or payment by the County shall not be deemed a waiver or release of any obligation or default on the part of the Customer.
- 22) **Severability.** Any provision of this Agreement prohibited by the laws of a state shall, as to such state, be ineffective to the extent of such prohibition, but shall not affect the other provisions of this Agreement.
- 23) **Amendments and Waivers.** This Agreement and the Schedules constitute the entire agreement between the County and the Customer with respect to the rental of its Systems, and supersedes all previous communications, understandings, and agreements, whether oral or written, between the parties with respect to such subject matter. Any representations, warranties or statements made by an employee, salesperson, agent, or authorized representative of the County and not expressed in this Agreement are not binding upon the County. No provision of this Agreement may be changed, waived, or amended except by written agreement signed by both the County and the Customer, except that the County may insert the serial number of any portion of a System on the applicable Schedule after delivery of such portion of the System and the County may insert the Commencement Date for this Agreement after receiving the Acknowledgment and Certificate of Acceptance.
- 24) **Late Payment Charge.** In the event the Customer fails to make any payments, as required to be paid under the provisions of this Agreement, within ten (10) calendar days of the due date, interest at the rate established from time to time by the Miami-Dade Board of County Commissioners and/or Florida Statutes (currently set in one and one-half percent (1 1/2%) per month), shall accrue against all such delinquent payment(s) from the original date due until the Department actually receives payment. The right of the County to require payment of such interest and the obligation of the Customer to pay same shall be in addition to and not in lieu of the County's rights in enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.
- 25) **Assignment.** The Customer shall not assign this Agreement without the County's written consent. No assignment or transfer of any sort shall relieve the Customer of its obligations hereunder. The County may assign any rights under this Agreement to an affiliate or any other assignee, and the Customer agrees to execute any documents that such assignee may reasonably require. The Customer acknowledges that if this Agreement is assigned to a governmental entity, the indemnity obligations under Section 14 herein may not apply in full to such assignee.
- 26) **Applicable Law.** This Agreement shall be governed by, construed and enforced in accordance with the applicable laws of the County, including (a) the rules and regulations of the Department, (b) Chapter 25, Code of Miami-Dade County, Florida, and (c) operational directives issued thereunder, in addition to all additional laws, ordinances, administrative orders, regulations, and rules of the federal, state, and local governments, and any and all plans and programs developed in compliance therewith, which may be applicable to the operations of this Agreement.
- 27) **Customer's Representations.** The Customer represents that this Agreement is a lawful, binding and valid obligation of the Customer enforceable in accordance with its terms and has been duly authorized, executed and delivered by the Customer, and that all information concerning the Customer's financial condition which has been or will be supplied to the County is and will be true and correct.
- 28) **Notices.** All notices, demands and other communications shall be transmitted in writing by hand delivery or by United States Mail, addressed to such party set forth below or at such other address as may be subsequently submitted by written notice of either party. Notice given pursuant to this Section 28 shall be deemed effective four (4) days after the date it is mailed or upon receipt, whichever is earlier.

For the Department:

Manager, Information Services Division
 Miami-Dade Aviation Department
 PO Box 592073
 Miami, Florida 33150-2075

For the Customer:

[Billing Customer Name] _____
 [Customer Address] _____
 [City, State & Zip Code] _____
 [Billing Contact] _____
 [Telephone Number] _____

Miscellaneous

- a. If the Customer uses a purchase order or similar document to order a System or addition thereto, the Customer acknowledges that the terms and conditions of such purchase order or document shall not apply and that the terms and conditions of this Agreement shall exclusively apply thereto.
- b. The waiver by either party of any default will not operate as a waiver of any subsequent default.
- c. The Customer will pay all of the County's costs or expenses, including reasonable attorney's and collection fees, incurred in enforcing this Agreement.
- d. Any modification must be in writing and executed by an authorized representative of the party against whom enforcement is sought.
- e. This Agreement shall be binding upon and in use to the benefit of the County and the Customer and their respective successors and assigns.
- f. Rights to be Exercised by Department. Whenever in this Agreement rights are reserved to the County, such rights may be exercised by the Department.

Additional Terms and Conditions

30) Terms and Execution

- a) This Agreement binds the Customer when it is executed by the Customer and binds the County when executed by the County and delivered to the Customer.
- b) This Agreement allocates the risks of the System's delivery, installation, operation and maintenance between the County and the Customer. The County has provided the Customer a favorable rent in return for the County performing all delivery, installation, and maintenance obligations. This allocation is recognized on both sides and is reflected in the System Rent. The Customer acknowledges that it has read this Agreement, understands it and is bound by its terms.
- c) The Customer agrees that the County shall not be obligated under this Rental Agreement if the federal, state, or county statutory or regulatory authority prohibits the County's performance hereunder is withdrawn, abridged, or amended so as to preclude the effective delivery by the County of services hereunder. In such event, the County shall notify the Customer in writing and the Customer's sole obligation thereafter shall be to compensate the County for the equipment and services rendered by the County to date.

Miami-Dade Aviation Department

Customer

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

MIAMI-DADE AVIATION DEPARTMENT

Equipment and Services Schedule I

Rental # _____ Date _____

With respect to the certain Airport Rental Agreement dated _____ 20__ (the "Agreement") between the County and _____ (the "Customer"), the County and the Customer agree to incorporate the following additional terms and conditions into said Agreement:

- 1) Location: Miami International Airport
- 2) Rental Term: _____ months
- 3) Payment: The Customer shall pay to the County the total rental (which includes maintenance) for the Rental Term of the Agreement, which shall be the total amount of all rental payments set forth on this Schedule, plus any such additional amounts as may arise hereunder or pursuant to any additions hereto as described in Paragraphs 11 and 12 of this Schedule. Except as otherwise specified in this Schedule, rental payments pursuant to this Schedule (each monthly payment of System Rent) shall be made and shall be due and payable in advance on the first day of each calendar month during the Rental Term, provided, however, that the Customer shall pay to the County the first monthly System Rent payment with respect to the System when the Customer delivers to the County the Schedule I and Schedule II executed by the Customer. In the event the Customer does not accept the System for any reason, the County shall be entitled to retain such payments, in addition to its other rights hereunder, unless the parties agree in writing to the contrary. All amounts due hereunder from the Customer shall be paid to the County by check, in immediately available funds, at the address of the County as set forth in the Agreement or at such other place as the County shall designate in writing. Whenever any payment (of System Rent or otherwise) is not made within ten (10) days of the date when due hereunder, the Customer shall pay the "Late Payment Charge" (as defined in Section 24 of the Agreement) calculated from the eleventh (11th) day after the due date to the date of actual receipt of payment.
- 4) System Rent: _____ Dollars (\$ _____) (Monthly System Rent during Rental Term: \$ _____ per month during the term of this Agreement, except as it may be increased or decreased by amendment or by an inflation and/or utility company adjustment, plus applicable taxes. Unless otherwise specified, telephone numbers, directory listings, and all other charges of the local exchange company of any interexchange carrier are not included in the rental price unless indicated on a schedule. No cabling, wiring or other items are included unless specifically stated in this Agreement and indicated on this Schedule.
- 5) Security Deposit: The Customer shall pay two (2) months rent as a security deposit, that shall be held as long as the Customer is current on its System Rent and applicable taxes, and that shall be returned without interest to the Customer at termination of this Agreement. If not current on either System Rent or applicable taxes, the County may deduct from the Security Deposit any and all amounts due from the Customer under the Agreement. The Customer must maintain the two (2) month rent security deposit amount balance, and must tender to the County the amount needed to maintain this threshold, if a deduction or deductions are made by the County.
- 6) Estimated Commencement Date: _____, 20__
- 7) Attachments: The following Schedules are attached to and made a part of this Agreement: Schedules I, II, & III
- 8) Installation: The total amount due for installation of the System is _____ Dollars (\$ _____) plus applicable taxes. This amount is due and payable on the Agreement execution date and is non-refundable.
- 9) Maintenance Hours: The County will respond to System failures during the hours specified by the maintenance plan chosen by the Customer (see Schedule III).
- 10) Equipment and Features: The equipment and features subject to the Agreement are set forth below:

1)	Switch Access	\$	/month
2)	Network Access	\$	/month
3)	Systems - Terminal Equipment	\$	/month
4)	System - Other	\$	/month

Monthly Rent: \$ See Attached quote # _____
(A continuation sheet may be added if more room is needed)
- 11) Pre-Customer Changes: In the event that additions and/or deletions to the equipment and/or features described in Section 10 above are made in accordance with the Agreement before the Commencement Date, the monthly Rental shall be adjusted by the change caused by applicable Installation Change Notices ("ICNs"). The County and the Customer hereby agree that any ICN executed by the Customer and delivered to the County in accordance with this Section 11 shall constitute an amendment to the Agreement and this Schedule, thereby adding to each such document the descriptions and rental information with respect to the equipment and the software included in such ICN.
- 12) Post-Customer Changes: If the Customer wishes to add additional County equipment and/or features to the System (excluding however, minor equipment and/or features with maintenance related thereto which the Customer purchases from the County for cash) during the Rental Term of the Agreement, the Customer shall add additional equipment and/or features to the Agreement on such terms as the County and the Customer may agree in a Customer Service Order ("CSO") executed by the County, and the Customer, and such equipment and/or features shall become, upon amendment of the Agreement and acceptance by the Customer pursuant to the Agreement, subject to the terms of the Agreement, provided the Customer is not in default under the Agreement and has not suffered a material adverse change in its financial condition since the execution of the Agreement. Pricing for additions may be adjusted for changes in tax laws and regulations. The term of the Agreement for all CSO additions will commence on the date when such CSO additions are first operated as part of the System and shall have a term of sixty (60) months unless stated otherwise on this Schedule.
- 13) Renewal: If the Customer is not in default under this Agreement, the Customer can either (a) renew this Agreement on its termination at the then current market monthly rate or (b) return the System to the County. Negotiation of any such renewal can be initiated by the Customer's written notice of its willingness to negotiate a renewal no earlier than one hundred twenty (120) days, but not later than sixty (60) days prior to the end of the Rental Term, the Agreement can be automatically renewed at the County's discretion for a minimum period of one (1) year if a renewal is not finalized. Renewals will be at the price and on the terms and conditions of the County in effect at the time of renewal unless otherwise agreed to in writing by the parties.
- 14) Miscellaneous: All terms defined in the Agreement shall have the same meaning herein.

IN WITNESS WHEREOF, the parties hereto have caused this Schedule to be executed by their duly authorized representative and this Schedule shall be incorporated into and made a part of the Agreement.

Miami Dade Aviation Department

Customer

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

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AVIATION DEPARTMENT Acknowledgment and Certificate of Acceptance Schedule 11

To: Aviation Department

I, _____ acknowledges, represents and warrants to the
Customer and the undersigned, (a) has been delivered, installed and subjected to all necessary pre
operating, (b) has been inspected, (c) is operating in accordance with the manufacturer's specifications
(d) is used or made available to be placed in service for its specifically assigned function for the first
time on the date indicated below as the "Commencement Date", and (e) was first connected to a public
network in a manner permitting calls to be made through the equipment to and from the facility in which
the equipment is located on such Commencement Date.

Commencement Date _____

Customer _____

By _____

Title _____

Date _____

11 6

The maintenance plan features the following services:

1. Types of Failures:

Troubles reported by the Customers will fall into two categories a) Major Failures, and b) Minor Failures

- a) Major Failures are those that severely impede the ability for a Customer to conduct business at the Airport and shall be defined as an occurrence of any of the following
- 1 A failure of the telephone switch, its common equipment or power supplies which renders it or them incapable of performing normal functions for five percent (5%) or more of the stations or trunks.
 - 2 A failure of network components that will render over five percent (5%) of work stations inoperable
- b) Minor Failures are any other failures including a failure of any ancillary equipment such as intercom circuits, paging input arrangement, or any other telecommunications equipment or component

2. Response and Repair Time:

Based on the trouble classification, the response will be in the following manner

- a) Major Failure- Immediate response during business hours (Monday-Friday, 7 A.M. - 11 P.M., Eastern Time) and within two (2) hours for off hours (Monday-Friday, 11 P.M. - 7 A.M., Eastern Time, and twenty-four (24) hours a day Saturday, Sunday, and holidays)

Remedial maintenance will begin immediately for a major malfunction, which may consist of remote diagnostics during the first fifteen (15) to thirty (30) minutes, after the repair notification time by the Customer, via the service provider tracking processes with the appropriate service ticket number, however if not corrected, the service provider's personnel must be on-site no less than forty-five (45) minutes during business hours and no less than two (2) hours during off hours from the repair notification time. Repair work shall start immediately and continue until the problem is resolved. All commercially reasonable efforts will be made to complete repairs within eight (8) hours from the time the Customer reported the incident.

- b) Minor Failure - Response within eight (8) business hours.

Repairs not defined as a major failure will begin as expeditiously as possible, and all commercially reasonable efforts shall be made to complete repairs within one (1) business day from the time the Customer reported the incident. Repairs may be made by a certified technical personnel either through a premise visit or via electronic access through the use of a remote maintenance terminal. However, in all cases, the repair must be confirmed and the status updated by the next business day by notification to the service provider. Response to minor service interruptions will take place within eight (8) business hours.

"Respond" is equated to having technical support and/or troubleshooting the problem within aforementioned times. Note that during the troubleshooting process, the service provider is coordinating directly with the Customer until the problem is resolved.

3. Miscellaneous:

- All parts and labor are included, unless the failure is due to abuse or misuse of the equipment or facilities
- Preventive maintenance routines are included
- Utility coordination with the local telephone company and other common carriers are provided
- Consultation services on the Customer's system are included
- User training (beyond that provided in Section 8 of the Agreement) is optional, and at an additional cost
- Traffic studies to determine adequate system utilization (not to exceed two (2) annual Customer request studies) are included

12 7

Exhibit 6
SATS Airport Rental and CUTE Agreements

Aircraft	Airline Customers (Excluding MDAD)	Customer Number
1	Abalis International	10391420
2	Aces - CUTE & Voice	10338645
3	ADT Securities	10506587
4	AeroMexico	10506587
5	Aerpostal - CUTE & Voice	10427644
6	Air France - CUTE	10450333
7	Air Jamaica	10518850
8	Air Tran Airways	10354615
9	American Airlines - CUTE & Voice	10363503
10	ASI Baggage	10381496
11	ASIG Miami Inc	10377170
12	Aserca Airlines	10519350
13	Allas Av	10337970
14	AT&T	10344625
15	Avianca - CUTE & Voice	10484758
16	British Airways CUTE & Voice	10408278
17	Cafe Versailles	10339696
18	Carne Ice Cream Shop	10351663
19	Centers for Disease Control	10396494
20	Cirilo Rodriguez d/b/a Bright Additions	10363032
21	Commodore Aviation	10416024
22	Communtel	10404505
23	Continental Airlines	10421360
24	Copa - CUTE	10494895
25	Cyber Express	10464227
26	Evergreen International	10338837
27	Flagship (American Eagle)	10338283
28	Gray Construction	10497202
29	Gulfstream Airlines	10341784
30	Host Marnott	10406827
31	ICI	10422707
32	Lan Chile - CUTE	10377882
33	Martin Air - CUTE & Voice	10411203
34	Mexicana	10505015
35	Miami Airport Duty Free Joint Venture	10396900
36	Midway Airlines	10506157
37	National Airlines	10477140
38	Polar Air	10345528
39	Sirgany Bencomo	10407537
40	Sila Communications	10459735
41	Smarte Carte	10428523
42	Swiss Air	10462868
43	Taca International	10518491
44	Underground Construction	10514494
45	United Airlines	10342394
46	USDA - Cargo	10344972
47	USDA - Network	10427656
48	USDA - Terminal	10370069
49	USDA - Operations	10517502
50	USDA - Bldg 100	10518439
51	USDA - Bldg 701	10518440
52	Vang Brasil - CUTE	10467672
53	Virgin Atlantic - CUTE	10467591
54	Worldwide Concessions	10518818
55	Worldwide Flight Services	10464296
	Expected New Contracts	
	Global Concessions	TBD

MDAD NetraOne Management Agreement
February 7, 2002



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IN THE CIRCUIT COURT OF THE
11th JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 02-28688 CA (03)

BELLSOUTH TELECOMMUNICATIONS,
INC.,

ORIGINAL

Plaintiff,

vs.

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

Defendant.

-----/

2601 South Bayshore Drive
Miami, Florida
May 21, 2003
9:03 a.m.

DEPOSITION OF PEDRO J. GARCIA

Taken before LANCE W. STEINBEISSER,
Registered Professional Reporter and Notary Public
in and for the State of Florida at Large, pursuant
to Notice of Taking Deposition in the above cause.



1 APPEARANCES:

2 MITCHELL R. BLOOMBERG, ESQ. and
3 NATALIE-CARLOS, ESQ.,
4 of the firm of ADORNO & YOSS, P.A.
on behalf of the Plaintiff

5 DAVID STEPHEN HOPE, and
6 CYNJI A. LEE,
7 Assistant Miami-Dade County Attorneys
on behalf of the Defendant

8 Also present:

9 Sharon R. Liebman, Esq., BellSouth
10 Jennifer Sasha Kay, Esq., BellSouth
WITNESS EXAMINATION

PAGE

11 PEDRO J. GARCIA

12 BY MR. BLOOMBERG

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1 A. No, sir.

2 Q. Now, the first sentence of this
3 regulation says that airports are -- essentially
4 I'm paraphrasing -- airports are exempt from other
5 STS rules due to the necessity to ensure safe and
6 effective transportation of passengers and freight;
7 fair paraphrase?

8 A. Yes.

9 Q. The second sentence says the airport
10 shall obtain a certificate as a shared tenant
11 service provider before it provides shared local
12 services to facilities such as hotels, shopping
13 malls and industrial parks.

14 Do you see that?

15 A. Yes, I see it.

16 Q. And are you providing facilities, shared
17 local services to facilities such as hotels, shops
18 and so forth?

19 A. We're not providing service to any
20 shopping malls.

21 Q. Hotels?

22 A. We're providing service to hotels --
23 there's a management company that manages the hotel
24 and it's a pass-through situation. We're not
25 making any profit from that.

1 Q. So is that why you determined you don't
2 need a certificate?

3 A. It was determined that we didn't need a
4 certificate based on the overall interpretation of
5 this paragraph. We're now providing services
6 within the airport. We're not going outside to
7 shopping malls or to outside hotels or any outside
8 the airport property, which belongs to Miami-Dade
9 County.

10 Q. And the hotel belongs to whom?

11 A. The hotel building belongs to Miami-Dade
12 County, and we have a management company managing
13 the operation.

14 Q. You mentioned that you started the
15 process of applying for a certificate at some
16 point?

17 A. Yes, sir.

18 Q. Who decided to apply? Who decided you
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the
24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

FILE COPY

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.

**MIAMI-DADE COUNTY'S ANSWER AND AFFIRMATIVE
DEFENSES TO SECOND AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND FOR ISSUANCE OF WRIT OF MANDAMUS**

Defendant, Miami-Dade County, by and through its undersigned counsel, hereby files its Answer and Affirmative Defenses, to the Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus of Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth") and states:

1. Miami-Dade County (the "County") admits the allegations contained in Paragraphs 3, 6, and 15.
2. The County denies the allegations contained in Paragraphs 7, 14, 21, 22, 24, 27, 28, 30, 31, 32, 33, 36, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 53, 55, 57, 58, 60, 61, 63, 65, 72, 73, and 74 and therefore demands strict proof thereof.
3. The County is without knowledge as to the allegations contained in Paragraphs 4, 5, 54, and 62, and therefore denies the same and demands strict proof thereof.
4. Regarding Paragraph 8, the Miami-Dade County Home Rule Charter (the "Charter") speaks for itself.

C:\Data\dsh\Pleadings\Airport\BellSouth Telecommunications (Second Amended Answer and Affirmative Defenses).doc

OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA



5. Regarding Paragraph 9, the definition of "telephone utility" as used in the Charter speaks for itself.
6. Regarding Paragraph 10, § 364.02(13), Florida Statutes speaks for itself.
7. Regarding Paragraph 11, the County denies operating a telecommunications company offering two-way telecommunications services to the public for hire.
8. Regarding Paragraph 12, Florida Administrative Code Rule 25-9.002 speaks for itself
9. Regarding Paragraph 13, Florida Administrative Code Rule 25-4.003(10) speaks for itself.
10. Regarding Paragraph 16, the County admits that the authority of the Miami-Dade County Board of County Commissioners (the "Board") shall not conflict with applicable general laws related or applying to Miami-Dade County.
11. Regarding Paragraph 17, § 364.01(2), Florida Statutes speaks for itself.
12. Regarding Paragraph 18, the County admits providing shared airport tenant services to airport tenants at Miami International Airport ("MIA").
13. Regarding Paragraphs 19 and 20, § 364.339, Florida Statutes speaks for itself.
14. Regarding Paragraphs 23, Article VIII, Florida Constitution of 1985 speaks for itself.
15. Regarding Paragraph 25, on January 29, 2002, the Board passed and adopted Resolution No. R-31-02 related to telecommunications, data network, and shared network services at County airport system facilities. The resolution authorized the: (i) purchase of leased telecommunications, data network, and common use terminal equipment infrastructure, software, licenses, permits, and other assets; and (ii) approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement (the "Agreement") with NextiraOne, LLC for an interim two (2) year period.

16. Regarding Paragraph 26, the Agreement speaks for itself.
17. Regarding Paragraph 29, on September 24, 2002, the Board passed and adopted Resolution No. R-1091-02 authorizing the County Manager or designee to negotiate and execute airport rental agreements with tenants for shared airport tenant services telecommunications and data network access.
18. Regarding Paragraph 34, the County admits it has not submitted an application to the Florida Public Service Commission to obtain a certificate of public convenience and necessity.
19. Regarding Paragraph 35, the County denies providing two-way telecommunications services for hire at the airports.
20. Regarding Paragraph 38, the County denies that BellSouth: (i) provides similar services, as such services are defined by the Charter, to tenants at Miami International Airport ("MIA"); and (ii) has been providing such services at all times relevant. The County has no knowledge of any other statements in this paragraph, not specifically denied above.
21. Regarding Paragraph 66, §§ 364.02(13) and 364.32(1)(a), Florida Statutes speak for themselves.
22. Regarding Paragraphs 67, § 364.33, Florida Statutes speaks for itself.
23. Regarding Paragraphs 68, § 364.339(2), Florida Statutes speaks for itself.
24. Regarding Paragraphs 69, §§ 364.33 and 364.335, Florida Statutes speak for themselves.
25. Regarding Paragraph 70, Florida Administrative Code Rule 25-24.567 speaks for itself.
26. Regarding Paragraph 71, Florida Administrative Code Rule 25-24.569 speaks for itself.
27. Any allegations of the complaint not specifically responded to above are hereby denied, and therefore the County demands strict proof thereof.

AFFIRMATIVE DEFENSES

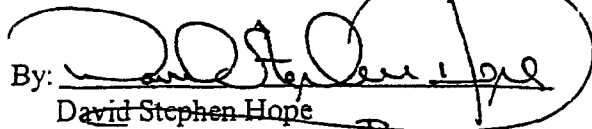
FIRST DEFENSE
(Failure to State a Claim)

1. For each cause of action of the Second Amended Complaint asserted against Defendant, Plaintiff has failed to state a claim for which relief can be granted.

SECOND DEFENSE
(Laches)

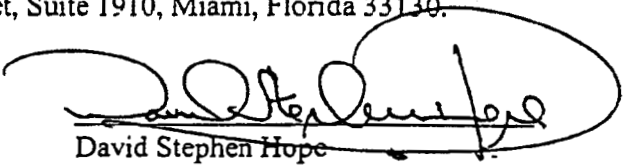
2. The County has operated a telecommunications, data network, and shared airport tenant services infrastructure and system, and provided such services at MIA since circa 1982. BellSouth has had knowledge of said infrastructure and system since its inception. The doctrine of laches is a bar to any and all claims of Plaintiff, given BellSouth's approximate twenty (20) year knowledge of the operation of the system and provision of services now challenged.

ROBERT A. GINSBURG
Miami-Dade County Attorney
Aviation Division
P.O. Box 592075 AMF
Miami, Florida 33159-2075
(305) 876-7040 / FAX (305) 876-7294

By: 
David Stephen Hope
Assistant County Attorney
Florida Bar No. 87718

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 19th day of July 2004, to *Martin B. Goldberg, Esq.*, Lash & Goldberg LLP, 1200 Bank of America Tower, 100 Southeast 2nd Street, Miami, Florida, 33131; *Dorian Denburg, Esq.*, BellSouth Corporation, 1155 Peachtree Street, Suite 1700, Atlanta, Georgia 30309-3610; *Sharon Liebman, Esq.*, BellSouth Telecommunications, Inc., 150 West Flagler Street, Suite 1910, Miami, Florida 33130.


David Stephen Hope
Assistant County Attorney

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BELLSOUTH TELECOMMUNICATIONS,
INC., a foreign corporation,

GENERAL JURISDICTION DIVISION

CASE NO. 02-28688 CA 03

Plaintiff,

v.

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

Defendant.

**PLAINTIFF BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY
TO DEFENDANT MIAMI-DADE COUNTY'S ANSWER AND AFFIRMATIVE
DEFENSES TO SECOND AMENDED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND FOR ISSUANCE OF WRIT OF MANDAMUS**

Pursuant to Rules 1.100(a) and 1.140, Fla. R. Civ. P., Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth") submits its Reply to the Affirmative Defenses filed by Defendant, Miami-Dade County ("Miami-Dade") to BellSouth's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

In addition to the responses set forth below, BellSouth reserves the right to move to strike some or all of Miami-Dade's affirmative defenses at a later date. BellSouth further reserves the right to supplement, modify or amend this Reply in light of ongoing discovery. All remaining allegations in Miami-Dade's Answer and Affirmative Defenses to the Second Amended Complaint not otherwise addressed herein are denied. Additionally, BellSouth denies Miami-Dade's entitlement to any of the relief requested in its Answer and Affirmative Defenses.

10/27/04
7

BANK OF AMERICA TOWER
SUITE 1200
100 SOUTH EAST 2ND STREET
MIAMI, FLORIDA 33131-2358
305 547 4040 • 305 347 4050 FAX

LASH & GOLDBERG
ATTORNEYS AT LAW
www.lashgoldberg.com

WESTON CORPORATE CENTER
SUITE 400
2500 WESTON ROAD
FT. LAUDERDALE, FLORIDA 33331
954 384 2500 • 954 384 3510 FAX


CASE NO. 02-28688 CA 03

With respect to Miami-Dade's affirmative defenses, BellSouth states as follows (the numbers below correspond to the paragraph numbers in Miami-Dade's affirmative defenses):

- 1. BellSouth denies and avoids this "First Defense - Failure to State a Claim."
- 2. BellSouth denies and avoids this "Second Defense - Laches."

Respectfully submitted,

LASH & GOLDBERG LLP
 1200 Bank of America Tower
 100 S.E. 2nd Street
 Miami, Florida 33131
 Telephone: (305) 347-4040
 Facsimile: (305) 347-4050

By: 
 Martin B. Goldberg
 Florida Bar No. 0827029
 Lawrence B. Lambert
 Florida Bar No. 0032565

Dorian Denburg, Esq.
 Florida Bar No. 350291
 BellSouth Corporation
 1155 Peachtree Street, Suite 1700
 Atlanta, GA 30309-3610
 Telephone: (404) 249-2608
 Facsimile: (404) 249-5664

Sharon Liebman, Esq.
 Florida Bar No. 0048828
 BellSouth Telecommunications, Inc.
 150 West Flagler Street, Suite 1910
 Miami, FL 33130
 Telephone: (305) 347-5570
 Facsimile: (305) 375-0209

Counsel for BellSouth Telecommunications, Inc.

CASE NO. 02-28688 CA 03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Facsimile and U.S. Mail this 4th day of August, 2004, to David Hope, Assistant County Attorney, County Attorney's Office, P.O. Box 592075, Miami, FL 33159-2075.

By: 
Martin B. Goldberg

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO: 02-28688 CA 03

BELLSOUTH
TELECOMMUNICATIONS, INC.,
a foreign corporation,

Plaintiff,

v.

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

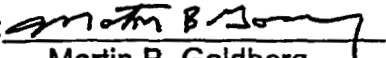
Defendant.

**NOTICE OF SERVICE OF PLAINTIFF'S RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES**

Plaintiff, BellSouth Telecommunications, Inc., by and through undersigned counsel and pursuant to Rule 1.340 of the Florida Rules of Civil Procedure, hereby gives notice of service of Plaintiff's Responses to Defendant's First Set of Interrogatories propounded on February 28, 2005.

Respectfully submitted.

LASH & GOLDBERG LLP
1200 Bank of America Tower
100 S.E. 2nd Street
Miami, Florida 33131
Telephone: (305) 347-4040
Telefax: (305) 347-4050

BY: 
Martin B. Goldberg
Florida Bar No. 0827029
Lawrence B. Lambert
Florida Bar No. 0032565

BANK OF AMERICA TOWER
SUITE 1200
100 SOUTHEAST 2ND STREET
MIAMI, FLORIDA 33131-2158

LASH & GOLDBERG LLP
ATTORNEYS AT LAW
www.lashgoldberg.com

WESTON CORPORATE CENTER
SUITE 400
2500 WESTON ROAD
FT. LAUDERDALE, FLORIDA 33331
954 384 2500 • 954 384 2510 FAX

Final Exhibit
No. 94

PSC 7342

Dorian Denburg, Esq.
Florida Bar No. 350291
BellSouth Corporation
1155 Peachtree Street, Suite 1700
Atlanta, GA 30309-3610
Telephone: (404) 249-2608
Telefax: (404) 249-5664

Sharon Liebman, Esq.
Fla. Bar No. 0048828
BellSouth Telecommunications, Inc.
150 W. Flagler Street, Suite 1910
Miami, Florida 33130
Telephone: (305) 347-5570
Telefax: (305) 375-0209

Counsel for BellSouth Telecommunications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was hand-delivered this 6th day of May, 2005 to David S. Hope, Esq., Assistant County Attorney, County Attorney's Office, Miami International Airport, Terminal Building, Concourse A, 4th Floor, Miami, Florida 33122.

BY 
Martin B. Goldberg

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

BELLSOUTH TELECOMMUNICATIONS,
INC., a foreign corporation,

Plaintiff,

GENERAL JURISDICTION DIVISION

CASE NO: 02-28688 CA 03

v.

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

Defendant.

PLAINTIFF'S RESPONSES
TO DEFENDANT'S FIRST SET OF INTERROGATORIES

Plaintiff, BellSouth Telecommunications, Inc. ("BellSouth"), by and through undersigned counsel, hereby gives its Responses to Defendant's First Set of Interrogatories, propounded on February 28, 2005, pursuant to the Florida Rules of Civil Procedure.

BellSouth also adopts and incorporates herein by reference its Objections to Defendant's First Set of Interrogatories dated April 21, 2005, and submits the following answers to Defendant's First Set of Interrogatories subject to those objections, both generally and with respect to each specific interrogatory as set forth in the Objections.

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Plaintiff's Answer to Interrogatory No. 1 Page 4

Plaintiff's Answer to Interrogatory No. 2 Page 4-5

Plaintiff's Answer to Interrogatory No. 3 Page 5

Plaintiff's Answer to Interrogatory No. 4 Page 5

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Plaintiff's Answer to Interrogatory No. 6 Page 77

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Plaintiff's Answer to Interrogatory No. 8 Page 80-132

Plaintiff's Answer to Interrogatory No. 9 Page 133-197

Plaintiff's Answer to Interrogatory No. 10 Page 197-198

Plaintiff's Answer to Interrogatory No. 11 Page 199-237

Plaintiff's Answer to Interrogatory No. 12 Page 238-276

Plaintiff's Answer to Interrogatory No. 13 Page 276-278

Plaintiff's Answer to Interrogatory No. 14 Page 278-313

Plaintiff's Answer to Interrogatory No. 15 Page 313-348

Plaintiff's Answer to Interrogatory No. 16 Page 348

Plaintiff's Answer to Interrogatory No. 17 Page 349-375

Plaintiff's Answer to Interrogatory No. 18 Page 375-406

Plaintiff's Answer to Interrogatory No. 19 Page 406-407

Plaintiff's Answer to Interrogatory No. 20 Page 408-511

Plaintiff's Answer to Interrogatory No. 21 Page 512-523

Plaintiff's Answer to Interrogatory No. 22 Page 523-531

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Plaintiff's Answer to Interrogatory No. 26 Page 545-546

Plaintiff's Answer to Interrogatory No. 27 Page 546-554

Plaintiff's Answer to Interrogatory No. 28 Page 554-562

Plaintiff's Answer to Interrogatory No. 29 ... Page 562-570

Plaintiff's Answer to Interrogatory No. 30 Page 570-603

PLAINTIFF'S ANSWERS TO INTERROGATORIES

Interrogatory No. 1:

What is the name and address of the person(s) answering these interrogatories, and if applicable, the person's official position or relationship with the party to whom the interrogatories are directed?

Answer:

Nancy Sims, Director of Regulatory Relations for BellSouth for Florida
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301

Interrogatory No. 2:

Please list the names and addresses of all persons who are believed or known by you, your agents or representatives, or your attorneys to have any knowledge concerning any of the issues or allegations in this lawsuit; and specify the subject matter, information and details about which the witness has knowledge.

Answer:

BellSouth directs the Defendant to the deposition transcript of Maurice Jenkins dated August 5, 2004 and the deposition transcript of A. Wayne Tubaugh dated October 27, 2004. Both of these depositions were noticed for the explicit purpose of inquiring about the individuals with the most knowledge of the issues and allegations in this lawsuit and the information about which each such individual had knowledge. This interrogatory is thus wholly duplicative of these prior two depositions. Additionally, extensive additional discovery has been conducted in this matter, including the taking of depositions of the following individuals on the following dates.

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.
Richard Moses was deposed on October 5, 2004.
A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.
George Hill was deposed on December 3, 2004.
Nancy Sims was deposed on December 2, 2004 and December 3, 2004
Maria Johnston was deposed on February 2, 2005.
Dan Paul was deposed on March 8, 2005.

BellSouth directs Defendant to these deposition transcripts as identifying individuals with knowledge of the issues and allegations in the lawsuit and further indicating the information about which they have knowledge.

In addition to the individuals identified in the deposition transcripts referenced above, BellSouth further identifies the following individuals whom BellSouth reasonably believes may have knowledge about the issues and allegations in the lawsuit, although BellSouth does not have specific knowledge about what information these individuals may have.

- | | | |
|-----------------------------|-----------------------|-----------------------------|
| 1. David Hope, Esq. | 8. Katy Sorenson | 15. Javier D. Souto |
| 2. Steve Shiver | 9. Bruno A. Barreiro | 16. Jose "Pepe" Cancio, Sr. |
| 3. Dr. Miriam Alonso | 10. Betty T. Ferguson | |
| 4. Dr. Barbara Carey-Shuler | 11. Joe A. Martinez | |
| 5. Gwen Margolis | 12. Dennis C. Moss | |
| 6. Jimmy L. Morales | 13. Natacha Seijas | |
| 7. Dorrin D. Rolle | 14. Rebecca Sosa | |

Interrogatory No. 3:

Please identify all documents which are a basis for the allegations contained in Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance for Writ of Mandamus, or upon which you intend or reasonably anticipate that you will offer or proffer into evidence in this matter.

Answer:

BellSouth reasserts, adopts and incorporates its prior objections to this interrogatory, as set forth in Plaintiff's Objections to Defendant's First Set of Interrogatories dated April 21, 2005, as though fully set forth herein.

Interrogatory No. 4:

Please quantify the BellSouth's damages from the County's alleged operation of a telephone utility in violation of its Home Rule Charter.

Answer:

BellSouth reasserts, adopts and incorporates its prior objections to this interrogatory as though fully set forth herein

Interrogatory No. 5:

By what specific action(s), operation(s), or equipment does "[t]he County 'offer[] two-way telecommunications service to the public for hire ... by use of a telecommunications facility,' at Miami International Airport ("MIA") and other general aviation airports within Miami-Dade County, ..." as stated in Paragraph 7 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory¹:

On August 5, 2004, Maurice Jenkins was deposed Mr. Jenkins is the Manager of

¹ For ease of reference, objections made by counsel have been redacted from some portions of the deposition excerpts cited herein.

Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

100

17 Q. So it must be true that if the county didn't
18 own its telecommunications facility and equipment,
19 it's current MDAD customers would not have telephone
20 service unless they went to some other
21 telecommunications company, correct?

22 MR. HOPE: Objection to form.

23 A. Yes.

24 Q. Are all local calls made by MDAD customers
25 routed through MDAD's switch?

101

1 A. Yes.

2 Q. Absent routing through MDAD's switch, isn't
3 it true that MDAD's customers would not have a dial
4 tone?

5 A. Yes.

6 Q. And absent routing over a pathway belonging
7 to MDAD that's emanating from MDAD's switch to an
8 MDAD customer, the MDAD customer would not have dial
9 tone, isn't that correct?

10 MR HOPE: Objection to form.

11 A. Yes.

12 Q. Does MDAD as part of the service it provides

13 as a telecommunications facility, don't you have the
14 ability to assign telephone numbers to your
15 customers?

16 MR. HOPE: Objection to form.

17 A. Yes.

18 Q What happens technically if a BellSouth
19 customer in Hialeah wants to call one of your
20 customers, MDAD's customers at the airport?

21 A. They dial their ten digit number of the
22 customer themselves, because it comes into
23 BellSouth's demarcation which I think there's 300X
24 room, and from there to our PBX, and then it gets
25 routed to the customer extension to the number that

102

1 they are dialing

2 Q. What exactly technically does your PBX do
3 once it gets that call into that piece of equipment?
4 There's a number of things that happen, isn't it,
5 that are solely within your control?

6 MR. HOPE: Objection to form

7 A. Yes.

8 Q Can you explain what happens for the court
9 and for this case when that call comes in to your
10 particular piece of equipment, the PBX?

11 A. Call comes in, we verify that you are

12 dialing an extension or a number that does exist, and
13 if it does exist it gets routed to that location.
14 If that location doesn't pick up or depends
15 on what we put on it, it can go to voice mail. We
16 allow that call to be routed somewhere else to insure
17 that it gets picked up.
18 Q. Maybe we are saying the same thing, but see
19 if you would agree with me.
20 Once that call comes into your PBX, doesn't
21 your PBX in essence interpret that telephone number
22 and translate that telephone number so that you then,
23 your equipment redirects that telephone call to the
24 specific facility and specific phone at your
25 customer's office?

103

1 MR. HOPE: Objection to form.
2 A. Yes, sir
3 Q. There's no dispute about that, right?
4 A. Yes, sir.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms Sims testified relating to the subject interrogatory as follows:

71

11 Q. Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?
14 A Yes, they have.
15 Here again, in this initial discovery,
16 Mr. Garcia, again, in that same deposition, page
17 56, the question: Let's do it this way. We've

9

18 agreed earlier in the deposition that MDAD is
19 engaged in what it hopes to be a profit-making
20 enterprise by providing telecommunication services
21 to tenants of the airport?
22 His answer: Yes.
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is:
25 So MDAD is charging for the completion of the

72

1 local call, correct?
2 Answer: For the ability to complete the
3 local call. We don't charge by the call.
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes.
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,
10 page 150 -- well, 149 and 150 Question: So I
11 understand you, you said there is no additional
12 charge. But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?
17 His answer: The County is charging for
18 the equipment that allows you to get the dial tone
19 and complete the call
20 Question: So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes.
24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question. You have

73

1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?
3 His answer: Yes, sir.
4 Question: And you come up with a voice
5 line charge per month of 930, is that correct?
6 Answer: Yes, sir
7 Then on page 164, the question is:
8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?
12 Answer: Yes, sir.
13 The bottom line is that your
14 telecommunications -- Question: The bottom line

10

15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?

18 His answer: Yes, sir

19 Q. Okay. Now--

20 MR. GOLDBERG: Are you done with your
21 answer?

22 THE WITNESS: No.

23 MR. GOLDBERG: Why don't you finish.

24 A. There's also, if you go back to the
25 actual -- and this is behind tab B, which is

74

1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department. This
4 is dated September 24, 2002.

5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities.

13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by
16 the Board on January 29th, 2002. MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024. This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development.

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition

25 Now, you also asked me about was the

75

1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes. And
3 based on, here again, some of the discovery that
4 we have obtained

75

6 Q. Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A. Yes

76

3 A. On the public, first of all, there were

11

4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth And we have got
9 those customer lists

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this. At least you would agree
14 with the general proposition, would you not, that
15 John Q Public, if he meets all-- goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer: As long as he's complied and
20 submitted his bid and is awarded and approved,
21 yes, he can.

22 Question: And that bid process, as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir

77

1 Question: There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir. As long as you meet
5 the minimum qualifications, or whatever
6 qualifications are established that goes out with
7 this bid.

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to. It's entirely
13 up to them.

14 Question: But if they want to, your
15 services are available to John Q. Public, correct?

16 Answer: Yes, sir.

17 Question: And if John Q Public wants
18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?

22 Answer: Yes, sir.

23 Question: And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

78

1 Answer: Yes, sir.

2 Question: And that telecommunications

12

3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?

6 His answer: Yes, sir.

7 Then on page 131, Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mall shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using
14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?

16 Answer: Right.

17 Question: There's no dispute about
18 that They can walk in, do these things, and walk
19 out without traveling?

20 Answer: Yeah. If they want to

21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

79

1 Answer: Yes, sir.

2 There's another one that I wanted to
3 call your attention to. Sometimes my little--
4 bear with me. There was also some discussion with
5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities.

9 And the question was. I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are -- we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific
17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King, Frankly Gourmet, Sunglass Hut.

22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

80

1 Answer: Yes, sir.

2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?

5 And his answer No That's a shoe
6 shine.

7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building.

106

18 Q Let's take it to the point that you
19 currently already stated. I won't go back the
20 three generations. I'll just go the one that you
21 already attested to.

22 Prior to 2002, when the County leased
23 the telecommunications infrastructure from
24 Nextira, and Nextira managed that system for them,
25 them being the County, is there a difference then

107

1 in the situation where the County is leasing the
2 equipment and having someone manage that leased
3 equipment for them versus outright ownership of
4 the equipment?

5 A. I'm not quite sure I agree with your
6 characterization of the way it was prior to 2002.
7 Because it was my understanding that Nextira owned
8 the infrastructure and Nextira was providing the
9 telecommunications services to the County. That's
10 my understanding of it.

11 Then when the County purchased it, the
12 County actually purchased the equipment and the
13 infrastructure.

14 The County-- prior to 2002, Nextira was
15 actually receiving the money. They were actually
16 billing the tenants and they were receiving the
17 money. And they were only giving a commission to
18 the County, a commission payment to the County

19 Then in 2002, the County decided they
20 were going take over the infrastructure and they
21 retained Nextira as a manager of the system. That
22 was my understanding of it.

23 And yes, I would say there's a
24 difference there in that in one case it was
25 Nextira providing telecommunications services, and

108

1 then after 2002 it was the County providing
2 telecommunications services.

114

20 Q. Please describe, if you know, the
21 specific telecommunications services provided or
22 offered by the County at Miami International
23 Airport

120

10 A. I don't know all the services that are
11 provided at Miami Airport.
12 I do know that based on-- for instance,
13 there was a five year marketing plan that was
14 produced, and in that five year marketing plan it
15 talks about the target markets and some of the
16 types of services that are being provided, which
17 included voice, voice and data, voice and CUTE.
18 CUTE is a common use terminal equipment
19 which is used.
20 And also it says, we know, SATS
21 customers, that's share airport tenant service
22 customers, are used. Voice, data network, high
23 end system options.
24 So there's evidently voice, data and the
25 common use terminal equipment is being provided.

121

1 There's also reference to -- it continually goes
2 over references to voice and data services.
3 MR. GOLDBERG: Let me know when
4 you're done.
5 THE WITNESS. Okay.
6 A There's also equipment, terminal type of
7 equipment provided. You provided maintenance of
8 the equipment.
9 There's also references in the actual
10 depositions of the County's own witnesses. Like
11 references from Pedro Garcia talking about -- this
12 is one on page 44, talking about customer--
13 whether or not the customer can-- what type of
14 service they can have. Whether they can pick and
15 choose a service that they have. The fact that
16 they're in competition with BellSouth and with
17 other providers.
18 So they indicate in these particular
19 pages that there are similar services being
20 provided to what BellSouth would provide, or what
21 another telecommunications company would provide.
22 Q. But my question--
23 A. But it's voice and data type services
24 Without getting into the details of the technical
25 make-up of these services.

122

1 And in the contract itself there's a
2 whole litany of descriptions of facilities And
3 part of it has to do with the Nortel switch,
4 evidently, and PBX equipment.

124

15 Q Does the County offer twoway
16 telecommunications services outside of either
17 Miami International Airport or its general
18 aviation airports?

19 MR. GOLDBERG: Objection to the form
20 of the question.

21 A. I don't know.

22 Q. Would that be the same answer if I asked
23 you that question in reference to offering those
24 services outside of the County to other areas of
25 the State of Florida?

125

1 A. I guess. I don't know.

2 And in order to reinforce the previous
3 statement that I had that it was in the
4 depositions about serving the other airports, in
5 Pedro Garcia's deposition dated May 21st, 2003,
6 there was a discussion on pages 13, 14, 15 and 16
7 about serving the other airports There's
8 discussion specifically about Opa Locka and
9 Tamiami.

10 And the question came up: So you would
11 agree with me, wouldn't you, that the County
12 provides telephone services at these airports?
13 And the response was yes.

129

10 Q. Do you know of any documents that exist
11 which depict the area to which the County provides
12 these shared tenant services?

13 A. Well, you have the resolutions and the
14 contracts that state that-- for instance, this
15 kind of refers back to the question you were
16 asking before in this resolution dated September
17 24, 2002. It talks about shared airport tenant
18 services consists of telecommunications, voice and
19 data network service, which MDAD offers to itself.

20 The contract is still required to use
21 its best effort to maintain SATS for the County to
22 tenants -- and I can't read that word-- and
23 users at Miami International Airport and the
24 general aviation airports consistent with the
25 provisions of the Public Service Commission in

130

1 Florida, or whatever government has jurisdiction
2 over SATS, if and when applicable and at
3 applicable laws.

4 That would lead one to believe that the
5 service is being provided that we are referring
6 to, which you are providing is at Miami
7 International Airport and the general aviation
8 airports.

9 So that in itself defines your area. At
10 least, the area that we're discussing in this
11 lawsuit

198

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?

199

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.

200

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"?

201

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

17

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.

202

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 readit: 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

203

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.

204

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

18

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

205

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

213

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

214

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

19

25 services to offer telecommunications and network

215

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

216

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.

20

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

217

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

218

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

251

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

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?

252

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.

253

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?
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

On February 2, 2005, Maria Johnston, the Senior Account Manager for Bellsouth, appeared to answer questions in response to the County's Notice of Taking Deposition. During that testimony, Ms. Johnston testified relating to the subject interrogatory as follows:

85

23 Q. Do you have any knowledge of the entities
24 that the County through its Aviation department
25 might provide shared tenant services to at Miami

22

1 International Airport?

2 A. Let me make sure I understand your
3 question. Do I have any knowledge of what other
4 entities Miami-Dade Aviation might be providing
5 shared tenant services.

6 A. It was based on that RFP you put out and
7 that was an attachment to that RFP that showed a
8 list of other tenants but other than that, I don't

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

23 Q What specific shared tenant services
24 does the County offer the hotel referred to in
25 paragraph 22?

23

4 THE WITNESS: Well, to the extent of
5 what I have seen in documents and heard
6 and read in depositions, there's a
7 switch, a Dade County switch that serves
8 the airport hotel, and they get their
9 dial tone, they enter the local network
10 through that switch, and by services to
11 the people who stay there at night,
12 communicate with the outside world.
13 BY MR HOPE.

23

14 Q Do you know whether or not that switch

15 is partitioned?

16 A Not for a fact, but I believe I have

17 read that the hotel-- services to the hotel are

18 partitioned to the hotel, I believe.

51

22 Q My question is what factual or

23 documentary evidence support the allegations in

24 paragraph 40?

25 A I also read Rick Moses' deposition, and

52

1 Rick Moses specifically says that shopping malls,

2 hotels, you know, are not necessary for the

3 safely moving of passengers and freight through

4 the airport.

5 And he is the Florida Public Service

6 Commission staff person in charge of the rules or

7 interpreting of the rules and filing rules,

8 codifying rules.

9 Q Okay, what shopping malls does the

10 County provide shared tenant services to?

13 THE WITNESS: Well, when I was at

14 Mr Jenkins' deposition he was shown a

15 series of pictures of the different shops

16 through the middle of the airport that

24

17 offer a litany of services, clothes, the
18 drug-- you know, there's a litany of
19 services in these things, and it's a
20 shopping mall. I mean, it's truly a
21 shopping mall.

22 And he agreed that some of those
23 shops he provided service to.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr Garcia testified as follows.

13

24 Q. By the way, does Miami-Dade Aviation
25 Department provide similar services at other
14
1 airports within Dade County?

2 A. The airports that Miami-Dade owns?

3 Q. Right.

4 A. Specifically Opa-Locka and Tamiami we
5 provide the same services, and those airports are
6 owned by Miami-Dade County.

7 Q. Are there any airports within Miami-Dade
8 County within the geographical boundaries of the
9 County that the County does not own?

10 A. As far as I know, the airports are owned
11 by Miami-Dade County, unless there's an obscure
12 landing strip which I'm not aware of.

13 Q. And we won't discuss those.

14 In other words, the County provides

15 these services at every airport it owns --

16 A. At two of the airports.

17 Q. At two of the airports.

18 A. The other two just have independent

19 telephone systems and they're connected to

20 BellSouth for telecommunications. We have a direct

21 connection via T1 to two of those airports in which

22 we provide voice services and network services from

23 MIA connected to the satellite system that they

24 have at those airports.

25 Q. At Opa-Locka and Tamiami?

15

1 A. At Tamiami, right.

16

21 Does the County provide telephone

22 services to customers at airports in Dade County?

23 A. Yes, sir.

24 Q. Does the County provide

25 telecommunications services, using your definition,

17

1 to customers at airports within Dade County?

2 A. Yes, sir.

27

12 Q. And are the same telecommunications

13 services available to all of the customers;

14 regardless of whether they buy them all, are they

15 all available?

16 A. Yes, sir.

17 Q. Are all the services available?

18 A. Yes, sir, they are all available. Not

19 all of them use the services.

20 Q. Right. I could pick services 12 and 4

21 and somebody else could pick 23 and 5?

22 A. Yes.

23 Q. But they're all available to everybody?

24 A. Yes.

46

9 Q. Did the County or MDAD or anybody
10 prepare a marketing plan?

11 A. Yes. We requested from NextiraOne after
12 we purchased their infrastructure that they would
13 prepare a marketing plan on our behalf.

14 Q. To go out and market to tenants of the
15 airport --

16 A. Yes.

17 Q. -- airports?

18 A. Um-hum.

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by
10 providing telecommunications services?

11 MR. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County
15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE: Objection to form.

19 A. To the best of my knowledge, yes.

73

10 Q. And three is the assignment to the

11 County all existing tenant SATS and CUTE agreements
12 entered into by Centel or its successors or assigns
13 with tenants at the airport. That was --

14 A. The company's changed the name through
15 the years from Williams to Centel to Nextira to
16 NextiraOne, but it was an internal thing with them,
17 a spin-off for the main company or so forth.

18 Q. So pursuant to the agreement you were
19 entering into with Nextira, all of the Nextira
20 customers at the airports were going to become
21 customers of the County?

22 A. Yes, sir.

23 MR. HOPE: Objection to form.

24 Q. How many customers were there back in
25 January of 2002, Nextira customers?

74

1 A. I don't recall the number but it's -- it
2 was probably a little more than the list that you
3 saw because since then the economy went down a
4 little and people went out of business and so
5 forth.

6 Q. So it might have been slightly higher than
7 the 2003 list as far as the numbers?

8 A. It's slightly higher than what we had.

86

22 Q. If you go to the definitions section
23 which starts on Page 2 of 98. Down at the bottom
24 it identifies there's airport, and we discussed
25 earlier obviously Miami International and you

87

1 mentioned Opa-Locka and Tamiami.

2 This particular document also refers to
3 other general aviation airports, Kendall, Tamiami,
4 and the training and transition airport in
5 Opa-Locka West.

6 Is there any telecommunications services
7 provided by the County to any of those other
8 airports?

9 A. The two airports that we have a direct
10 connection to, which is Opa-Locka and Tamiami. The
11 other ones basically have a self-contained system
12 connected to BellSouth lines.

13 Q Basically it's to the airports within
14 the county?

15 A. I'm sorry. What was the question?

16 Q. These are the five airports, the
17 airports that are listed --

18 A That are owned by the County.

19 Q. -- in Paragraph 1.305 airports within
20 Dade County, within the geographical limits of the
21 county that are owned by the County?

22 A. Right.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr Garcia testified as follows.

31

16 Q. Where does that dial tone emanate from?
17 Or better stated, where does that dial tone
18 originate from?

19 MR. HOPE: Objection to form.

20 THE WITNESS: It originates from our
21 PBX located in the airport.

22 Q. Now, you used the word "our PBX." What do
23 you mean by our PBX?

24 A. The PBX owned by the aviation department.
25 The PBX is a telephone switch, and it is located

32

1 inside the airport premises. That is where the dial
2 tone originates when you first pick up your phone at
3 the airport.

4 Q. So the dial tone originates from a PBX
5 switch that is owned by the County. Is that
6 correct?

7 A. Yes, sir.

8 Q. And it is that PBX switch that is owned by
9 the County that generates the dial tone; is that
10 correct?

11 A. Yes, sir.

12 Q. So when that customer picks up the
13 receiver and hears a dial tone, is it a correct
14 statement that the County is providing that dial
15 tone that that customer hears?

16 MR. HOPE: Objection to form.

17 THE WITNESS: He is providing the
18 internal dial tone that the customer
19 hears.

20 Q. So the County is providing dial tone to
21 that customer.

22 A. The County --

23 MR. HOPE: Objection to form

24 THE WITNESS: The County is

25 providing internal dial tone to the
1 customer. 33

33

18 Q. And without that dial tone, would you
19 agree that MDAD customers couldn't utilize their
20 phone?

21 MR. HOPE: Objection to form.

22 Q. At all.

23 A. That is correct.

24 Q. In other words, without that dial tone
25 that the County provides, that phone would be dead,
1 correct? 34

2 MR. HOPE: Objection to form.

3 THE WITNESS: Without a dial tone
4 any phone is dead. 35

3 Q. Now, when the person dials the four
4 digits, and you said that goes to the PBX to get
5 interpreted, how exactly do the four digits get to
6 the PBX?

7 A. Through wires that are connected from the
8 phone to the PBX.

9 Q. Who owns those wires?

10 A. The County does.

11 Q. So the County owns the phones, the County
12 owns the wires, and the County owns the PBX,
13 correct?

14 A. Yes.

15 Q. Are there any other pieces of equipment
16 that are involved from the time the person dials th-

17 four-digit number to the time that four digits gets
18 to the PBX, aside from the phone and the wire that
19 you have referenced?

20 A. Well, if we will get really technical, the
21 wires go through blocks. They are punched in the
22 wires, and then they are cross-connected to another
23 wire, and they follow a path until they actually get
24 to the PBX. But it's basically all considered
25 wiring facilities. So it is basically the terminal

36

1 instrument, which is the phone, the wires, and all
2 the interconnections to get to the PBX, and the
3 actual PBX.

24 Q. How many PBX's does the County own?

25 A. We have two major PBX's. Two at the

37

1 airport.

2 Q. I am asking you because you have the
3 technical background, but do all these wires feed
4 into these two PBX's?

5 A. Yes.

6 Q. And do they go through -- do they connect
7 into the PBX through what is called a port?

8 A. The port is the -- it is basically -- yes,
9 the port is a hole that receives the wire to connect
10 the phone to the PBX and all the internal equipment
11 of the PBX.

12 Q. Is the port part of the PBX?

13 A. Yes. They are cards. The ports are cards
14 in multiples of 16 each in a card, and they plug

15 into the PBX which has common equipment, peripheral
16 equipment, different kinds of equipment inside. It
17 is part of the PBX.

18 Q. Once the PBX interprets the four-digit
19 number, it then gets routed to whoever's number that
20 is. Is that a fair statement?

21 A. Yes.

22 Q. And does the call, can we make reference
23 to a call now that gets routed, does that call
24 travel over -- go out of another port out of the
25 PBX, over other wires, to the receiver's destination

1 and phone? 38

2 A. Yes.

3 Q. And is all that equipment that is involved
4 in that process owned by the County as well?

5 A. Yes.

6 Q. Then, in simplistic terms, does that phone
7 ring?

8 A. Yes.

9 Q. And the person can answer if they are
10 there, correct?

11 A. Yes.

12 Q. When that person answers it, it should be
13 the voice of the originating caller, correct?

14 A. Yes.

15 Q. So that whole scenario occurs over County
16 owned equipment, correct?

17 A. Yes.

41

4 Q. Are there any other STS providers at the

5 airport, other than the County?

6 A. No.

45

1 Q. So the County-provided dial tone for a
2 person who wants to make a local call is
3 significant, in fact absolutely needed, for the
4 making of that local call because they need to hit
5 9, correct?

6 MR. HOPE: Objection to form.

7 THE WITNESS: Yes.

8 Q. Once that customer hits 9, are you saying
9 -- are the dial tones then -- is the County-provided
10 dial tone replaced?

11 A. The second dial tone is an indication of
12 the PBX has interpreted an answer back from the
13 BellSouth central office that indeed they are ready
14 to receive digits. So it sends an indication to the
15 telephone that you can dial now; we are ready to
16 establish the communication.

17 Q. So you would agree with me, without the
18 County-provided -- you would agree with me that the
19 County-provided dial tone is part and parcel of the
20 service that is needed to make a local call from the
21 airport.

22 MR. HOPE: Objection to form.

23 Q. Correct?

24 A. The dial tone that is provided to the
25 customer is part of the connection process to make a
1 call.

46

2 Q. A local call?

3 A. Yes, yes.

49

24 Let's say that somebody in Hialeah,
25 outside the airport, wants to call that ice cream

50

1 shop at the airport, who is an MDAD customer. How
2 does that call -- how is that call made from a
3 technical perspective?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The customer -- the
6 person in Hialeah picks up their phone
7 and dials ten digits. The ten digits go
8 through the BellSouth central office, the
9 Hialeah central office, and that central
10 office, sends those digits -- knows that
11 because of the digits that the call needs
12 to go to the airport central office, and
13 when it gets there the central office
14 basically strips the first four digits,
15 and then sends the four digits to the
16 PBX, which is called a DID, direct inward
17 dialing digits. Then the PBX routes that
18 call to whoever is supposed to receive
19 the call.

20 Q. And when you say the PBX, that call goes
21 from Hialeah, through BellSouth's equipment, into
22 the airport PBX? Is that what you are referring to?

23 A. It comes from -- it goes through the
24 airport central office of BellSouth, through those
25 T1's that serve the airport, into the PBX, and from

51

1 the PBX to the terminating phone that the call is
2 going to.

3 Q. When you refer to the PBX, are you
4 referring to the County-owned PBX?

5 A. To the County-owned PBX.

6 Q. And then through the County-owned
7 equipment to the County customer?

8 A. To the County-owned equipment and wires to
9 the County -- to the receiving customer who has a
10 phone there.

11 Q. That, it seems to me, to be a local phone
12 call.

13 A. It is a local phone call.

20 Q. What would happen if -- what would happen
21 to that local phone call if you took away the
22 County's PBX and the County's equipment and the
23 County's phone at the ice cream shop? Would that
24 local phone call be able to be completed?

25 A. No.

52

1 Q. So without the County-owned equipment, the
2 PBX, its wires, its phones, that customer would not
3 have or not be able to receive a local phone call.
4 Is that correct?

5 MR HOPE: Objection to form.

6 THE WITNESS: Again, we are assuming
7 that the receiving customer or tenant is
8 a customer of MDAD for the purpose of
9 providing equipment, telephones,
10 etcetera.

11 Q. Correct, correct.

12 A. So without the County-owned equipment, the
13 call cannot be completed.

53

20 Q. So without that -- well, isn't the rental
21 of equipment and the maintenance of equipment and
22 the use of equipment a service?

23 A. It could be considered a service, yes.

24 Q. And without that service, would the
25 local -- would the ice cream shop be able to place a

54

1 local call?

2 MR. HOPE: Objection to form.

3 THE WITNESS: We do have an ice
4 cream shop as a customer. I don't know
5 about that. But yes, whoever is the
6 customer, he wouldn't be able to complete
7 the call without the County-owned
8 equipment.

9 Q. And without the County-owned service,
10 correct? Or the County provided service?

11 MR. HOPE: Objection to form.

12 THE WITNESS: I am not sure if it
13 applies to service. All they need is the
14 equipment.

15 Q. Mr. Garcia, I mean, let's just see if we
16 can agree with each other. The provision of the
17 County-owned equipment to one of your customers is
18 the service that you provide, right?

19 A. If you define it that way, yes.

20 Q. So then without that service, then that
21 customer will not be able to make a local phone
22 call.

23 A. Correct.

55

6 Q. Okay. If I could ask you to turn to
7 schedule one of that document, which is on page 5.
8 Since you are familiar with the document, I am not
9 going to take you through all the terms and details,
10 and so forth. I want you to focus on the middle of
11 that page, which is paragraph 10. It is entitled
12 "equipment and features." Do you see that?

13 A. Um-hum.

14 Q. And it then lists four particular items:
15 Switch access, network access, system - terminal
16 equipment, and then system - other. Do you see
17 that?

18 A. Yes.

19 Q. Are these equipment and features that are
20 made available to MDAD customers and for which they
21 pay the County?

22 A. Yes.

23 Q. And when you spoke earlier in this
24 deposition about, you know, customers that enter
25 into agreements and lease equipment, were you

56

1 referring in some way to these four items?

2 A. I was referring to this whole document and
3 those four items.

58

6 Q. But isn't the switch that you just used in
7 your last statement the PBX?

8 A. Yes

9 Q. That is why I was saying isn't it really

10 PBX access? Access to the PBX?

11 A. Yes. You can say that.

12 Q. So it's a charge that encompasses your
13 customers' access to the PBX, and everything that
14 occurs in our prior scenario from the time they pick
15 up the phone to the time that call or their
16 instruction gets to the PBX? Is that fair?

17 A. It is, but it also includes -- it is not
18 only access to the PBX, but the features that the
19 PBX provides.

20 Q. And those features include what?

21 A. Everything from call waiting, call
22 conferencing, call pick-up. When you have a group
23 of phones, you can push a button and pick it up.
24 Call parking, you can park your call when somebody
25 is busy and send it later when they get off the

59

1 phone, intercom. There is a myriad of features that
2 the PBX provides that are included in that charge.

3 Q. Number 2, network access. What is network
4 access?

5 A. Network access is the second part of the
6 charge that actually allows the user of the phone to
7 access the public network to the BellSouth
8 facilities. In other words, the trunks -- the trunk
9 is the connection from the PBX to the BellSouth
10 central office.

11 The part of the trunk, when the trunk
12 connects into the PBX through another port, it
13 provides the charge to access that trunk connection

14 that brings them to the BellSouth central office.

15 Q. Let me see if I understand. I apologize
16 if I don't. The switch access covers from the time
17 the user picks up his or her telephone to the PBX
18 and all of its features.

19 A. Right.

20 Q. Would network access then cover your
21 charge for the use of the outgoing port, perhaps,
22 maybe not, and the T1's that you previously
23 referenced?

24 A. It is a combination of the hardware that
25 is needed to -- to the outside port, that is

60

1 hardware, and connection to the BellSouth T1.

2 Q. And what is that outside hardware that you
3 just referenced?

4 A. It is another port. It is a card with --
5 like with holes that you connect to a port, and that
6 provides access to the outside world.

7 Q. Who owns that card that provides access to
8 the outside world?

9 A. The County does.

10 Q. So the use of that card is part of network
11 access.

12 A. Yes. What's charged for, yes.

13 Q. And then the call -- how far does network
14 access go, the charge for network access take that
15 call to the outside world, if you understand my
16 question?

17 A. It takes it to the demarcation where the
18 BellSouth facilities, which actually -- it's

19 basically where the T1 terminates. From that point
20 on, it can go to anywhere in the world.

21 Q. And the County is paying BellSouth for the
22 use of those T1's, correct?

23 A. Yes.

24 Q. So is it fair to say the network access
25 charge that we will talk about more is charged to

61

1 cover that cost, correct?

2 A. Yes.

24 Q. Number three, can you tell me what system
25 - terminal equipment is, please, as used on page 5

62

1 of MJ-8?

2 A. In simple terms, that is the telephone.

3 Q. The telephone with the receiver?

4 A. That is it. That is the terminal

5 equipment, the telephone.

6 Q. Terminal, as it is used there, means like
7 the end of the line or --

8 A. Terminal equipment -- right. When you
9 have like a big network starting with all the
10 BellSouth CO's and our PBX, the end of that is the
11 telephone. That is the terminal -- that is what is
12 called the terminal equipment.

13 Q. Anything else other than the telephone and
14 receiver that goes into system - terminal equipment?

15 A. Well, terminal equipment could be a fax
16 machine. It could be a modem. It could be --
17 usually, those are the three things that are
18 terminal equipment.

2 Q. Number four: System - other. What is
3 meant and understood by the County when it uses that
4 phrase, as contained on page 5 of MJ-8?

5 A. I think in this one here, everything else
6 is bulked in this number four.

7 Q. So then let me ask you through your
8 experience and your knowledge, what else is bulked
9 into number four?

10 A. Well, it could be the lease of the actual
11 wires themselves. We provide a lease for the cables
12 and the fiberoptics. Sometimes it's just
13 point-to-point fiberoptics, not connected to --
14 connected to things that they use that determines
15 what it is. We just provide the (unintelligible)
16 inside. This is all inside the airport grounds or
17 within the airport terminal building. And then --

18 THE COURT REPORTER: I'm sorry. You
19 said "we just provide the" --

20 THE WITNESS: The fiberoptics, for
21 the customer to connect maybe perhaps two
22 of their locations inside the airport.
23 It is all done on a lease basis. We
24 maintain the fiberoptics if something
25 happens or to the cables, maybe.

1 Q. Anything else that would go in system -
2 other in your experience and knowledge working out
3 there at the airport for all these years?

4 MR. HOPE: Objection to form.

5 THE WITNESS: Well, as I said,
6 mostly, it is the cable facilities by the
7 airport. I am not sure. They could --
8 there could be some miscellaneous things.
9 I can't even think of it at this time.

10 Q. Well, let me ask you -- let's go back to
11 what you have testified to, the use of wires,
12 cables, fiberoptics.

13 When you refer to wires, cables,
14 fiberoptics, are you referring to wires, cables or
15 fiberoptics that you haven't before referenced in
16 this deposition about the -- you know, we mention
17 wiring that goes from the phone to the County-owned
18 PBX, and then wiring that would go from the PBX to
19 the second destination? Are these different wires
20 or cables that you are referring to now?

21 MR. HOPE: Objection to form.

22 THE WITNESS: They could be. In
23 some cases they are; in some other cases,
24 like I said, we provide, sometimes lease,
25 fiberoptics or cable.

65

1 A customer has an office in one part
2 of the airport and wants to have a
3 connection of any type. It could be a
4 network computer connection, whatever, to
5 another office located at the airport,
6 and we lease them the cables to connect
7 those two locations.

8 Q. Do you actually do that, in fact, at the
9 airport?

10 A. Yes.

11 Q. And in those occasions, do those cables or
12 wires go through the PBX, the County-owned PBX, or
13 don't go through the County-owned PBX?

14 A. What I described, no, they don't go
15 through the PBX.

16 Q. So essentially, they would go from one
17 customer location to the same customer's second
18 location?

19 A. It is what we call dark fiber, which means
20 it is not lit or exercised electronically in any
21 way. The customer would do that using their own
22 equipment.

23 Q. Can voice travel over those particular
24 wires or cables that go from one customer's location
25 to another customer location that doesn't go through

66

1 the County-owned PBX?

2 A. If the customer connects voice equipment,
3 it would. We wouldn't even know that because we
4 don't care where they connect with.

5 Q. But it can, correct?

6 A. It could.

7 Q. Are you aware of any circumstances out at
8 the airport where customers have done that?

9 A. Not specifically, no.

10 Q. But that wiring that you provide that
11 would fall under number four, system - other, has
12 the capability of carrying two-way communications,
13 two-way voice communications, correct?

14 A. Yes. Inside the airport, yes.

15 Q. And they are charging for that wiring.

16 A. They charge by the foot for, again, the
17 leasing of the facilities and their maintenance.

18 Q. And you would charge any customer who
19 asked for that type of service or that type of
20 wiring, right?

21 A. Yes.

22 Q. Are there any other services that are
23 provided to MDAD's customers by the County that are
24 not encompassed within paragraph 10 of schedule one
25 in the one through four items we have just

67

1 discussed?

2 A. Well, we provide several other services
3 that are basically what we call CUTE, common use
4 terminal equipment, C-U-T-E. And this is a system
5 that allows the airlines to sign on to their host
6 computer for reservations and flight assignment
7 purposes using terminals that are common to any
8 airline, for example. Any airline can sign on and
9 they can access their host computer with this
10 County-owned equipment. We provide that.

11 We actually are starting now to provide
12 cable television service to whoever wants it, the
13 program. Basically, it is provided by CNN, but it
14 is basically cable television and the CUTE, and the
15 -- we provide network connectivity also.

16 We have a big network inside the airport
17 that it's -- it has a multifunction of a security to
18 provide the transmission of security cameras to
19 recorders for the security of the airport. Also, it

20 connects the PC's that the staff uses, the County
21 staff, to do their business every day. And we also
22 sell that service. That network carries the CUTE
23 system that we said.

24 All the -- eventually, we carry all the
25 information for the flight display monitors that we

68

1 have at the airport to show the flight information,
2 the public address system, and so forth.

3 And as far as the customers, we provide
4 all the tenants and the USPS customers, we provide
5 them connectivity using this network for the data
6 for their computers or any other application they
7 may have, network services that we provide to them.

71

3 A. There is only one -- there is a hotel at
4 the airport. And the trunks for that hotel, they
5 are partitioned in the PBX to be separate. In other
6 words, they have their own trunk groups. They
7 actually get the service from AT&T instead of
8 BellSouth, and they cannot call -- they cannot dial
9 four digits and call anybody else at the airport.

10 Q. I have to ask you a number of questions
11 about that to see if I understand it all. Okay?
12 Let me just start from the beginning. What hotel
13 are you referring to?

14 A. The Miami International Airport Hotel,
15 which is located inside the airport.

16 Q. And the Miami International Airport Hotel
17 is an MDAD customer?

18 A. The Miami International Hotel is owned by
19 the County, and is operated by a management company.

20 Q Is it serviced by MDAD?

21 A. We provide them the telephone service with
22 partition trunks, and they own the instruments in
23 the rooms.

24 Q. You say you provide the telephone service
25 with partition trunks. First let me ask you, you

72

1 mentioned that the County owns two PBX's.

2 A. Yes.

3 Q. Is there one PBX for the airport and
4 another PBX for everybody else?

5 A. No. They are interlaced for disaster
6 recovery purposes, so we don't lose one and
7 everybody else is out of service.

8 Q. Does the County own two PBX's just because
9 of size and volume?

10 A. Size and redundancy.

11 Q. What is redundancy?

12 A. You know, like if one fails, you have
13 another.

14 Q. But if MDAD had a smaller operation, is
15 it fair to say they could just use one?

16 MR. HOPE: Objection to form.

17 Q. One PBX?

18 A. Probably not. We would probably still
19 remain like this because we like to have redundancy.

20 Q. Now, the Miami Hotel, how is that -- you
21 say -- when you use the word partition trunks, what
22 exactly do you mean from a technical perspective as

23 it relates to that hotel?

24 A. It means two things. It means that
25 everybody else that is getting telephone

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1 connectivity through our PBX, when they go out to
2 the world, to a local call, to the rest -- to the
3 public network, they go into these ten T1's that I
4 explained before that Southern Bell provides, or
5 BellSouth. I am showing my age here.

6 So the hotel is -- their calls go out
7 through a separate trunk group that also terminates
8 in the PBX, which was contracted by them separately,
9 and they are provided by AT&T. That is with their
10 local calls, and their long-distance calls go out
11 through those separate trunks.

12 Also, what it means, partition, is they
13 cannot dial four digits and talk to any of the other
14 customers connected to the MDAD-owned PBX, the
15 County-owned PBX.

16 Q. In that type of situation where you say
17 those trunks have been partitioned, it only relates
18 to the Miami International Airport Hotel that you
19 spoke about. Is that correct?

20 A. Yes, yes.

21 Q. For every other MDAD customer, is there
22 any partitioning of the trunks in any manner, shape
23 or form?

24 A. No.

140

23 Q. What is the charge for \$18 here or \$72 as

24 shown for single line local network access?

25 A. That is the charge for connecting from the
141

1 PBX out to the world, the network access charge.

2 That is the charge that now we have consolidated

3 into five for \$49. It used to be \$18 per --

4 Q. But that access allows customers to
5 complete a local call, correct? Your customers
6 complete a local call, correct?

7 A. Yes.

8 Q. So MDAD is charging for the completion of
9 the local call, correct?

10 A. For the ability to complete the local
11 call. We don't charge by the call.

12 Q. But for the ability to complete local
13 calls.

14 A. Yes.

15 Q. You would agree with that?

16 A. Yes.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

72

24 Q. You have customers at the airport, correct?

25 A. Yes, sir.

73

1 Q. They can make local phone calls, correct?

2 A. Yes, sir.

3 Q. They can make local phone calls using

49

4 equipment and assets that the county owns, correct?

5 A. Yes, sir.

108

20 Q You say you haven't seen this airport rental

21 agreement in some time. How long has it been?

22 A. Not sure. I believe it might have been

23 revised But I can't tell you the last time I've

24 seen it to read the document itself. I'm not sure,

25 sir.

109

1 Q. Isn't this the blood and guts of your

2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document. Well, it's a

5 document that we use to establish customer

6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering

11 into these agreements with customers at the airport

12 so they will pay you for your telecommunications

13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir.

50

118

21 Q. Let me show you what I am going to mark as

22 Exhibit as MJ10 and MJ11.

23 (Customer lists marked Exhibits MJ10 and

24 MJ11 for identification)

25 Q. Let's take a look at MJ11 first. It's on

119

1 your left

2 A. OK.

3 Q. Have you seen that document before?

4 A. Yes, I have.

5 Q. Is it correct that as of February 7, 2002

6 this roughly depicts customers, MDAD customers who

7 were receiving telecommunications service at the

8 airport?

9 MR HOPE: Objection to form.

10 A. Yes, sir.

11 Q. Let me ask you the same question about MJ10.

12 Does that accurately depict your customer list as of

13 February, 2003, about a year later?

14 A. Yes, sir

15 Q. Since February of 2003 when MJ10 was

16 produced, would it be accurate to say that the number

17 of customers has increased or decreased?

18 A. From March of '03 I believe we lost some

51

19 customers.

20 Q. Have you gained some?

21 A. It's possible --

22 Q. Before I even ask that I should ask, do you
23 have enough knowledge to answer those questions?

24 A. Yes. I do.

25 Q. So have you gained some as well as lost

120

1 some?

2 A. I believe we have gained some as well as

3 lost some.

4 Q. At the present time can you tell me how many
5 customers you have at the airport?

6 A. Exact number, no, I cannot.

7 Q. How about approximate number?

8 MR. HOPE: Objection, privileged as we
9 stated earlier. Instruct deponent not to answer.

10 As we brought up earlier, you asked the same
11 question in terms of quantity and our position is
12 that you can talk about provision of services and
13 do we have customers, but I know that certain
14 documents you already have and I can't stop that
15 now, but in terms of specific customers and what
16 we do and total number of customers that is
17 something that's privileged

52

18 MR. GOLDBERG: The number of customers is
19 privileged?

20 MR. HOPE: Yes. What would give you
21 anything that you need in terms of knowing the
22 number of our customers?

23 MR. GOLDBERG: I just want to make it clear.
24 You are instructing him not to answer about the
25 number of customers?

121

1 MR. HOPE. Correct, which is what I
2 instructed earlier

3 Q. It's fair to say that all the customers
4 listed on MJ10, Mr. Jenkins, pay for your
5 telecommunications service, correct?

6 MR. HOPE: Objection, form.

7 A. Yes.

8 Q. There's no question that having these
9 customers benefits the county financially, correct?

10 A. There's some benefit, yes.

11 Q. There's some benefit?

12 A. Yes, sir.

13 Q. Let me show you what I am going to mark as
14 MJ12 and 13, two photographs.

15 (Photographs marked Exhibits MJ12 and 13 for
16 identification)

17 Q. MJ12 is a picture of Cafe Versaille,

18 correct?

19 A. Yes, sir

20 Q. That's one of the customers listed, one of

21 your customers listed on MJ10, that's correct? I am

22 pointing to it here

23 A. Yes, sir.

24 Q. MJ13 -- by the way, are there a number of

25 Cafe Versailles in the airport?

122

1 A. I believe there are two. Maybe more.

2 Q. Just for the record, because people may read

3 this or see this videotape and don't know what Cafe

4 Versaille is. Can you explain what it is?

5 A. It's a concession within the airport that

6 provides coffee, Danish, pastries.

7 Q. MJ13 depicts a Bacardi shop, correct, or

8 store where you can buy Bacardi liquor?

9 A. It is a restaurant/bar type, yes.

10 Q. It's in the business of selling liquor, is

11 that correct, and food?

12 A. Yes, sir

13 Q. Do you know whether Bacardi is currently an

14 MDAD customer?

15 MR. HOPE: Objection Instruct the deponent

16 not to answer.

17 Q. Let's assume since you have been instructed

18 not to answer that question I'll ask you to assume

19 that they are a customer, they are out at the

20 airport.

21 Again I go back to my question: Having Cafe

22 Versaille and potentially Bacardi as clients at the

23 airport, the purpose is, is it not, to derive income,

24 revenue from them in return for your provision of

25 telecommunications service?

123

1 MR. HOPE: Objection to form.

2 A. Yes.

3 Q. Is there any other benefit that they provide

4 the airport as a customer other than financial?

5 MR. HOPE: Objection to form.

6 A. I'm sorry, you got to repeat that one.

7 Q. Sure. Other than providing you with revenue

8 and increasing the money that you make off of the

9 telecommunications business, is there any other

10 benefit that they provide MDAD?

11 A. These entities?

12 Q. Yes.

13 A. They provide the customers with a product.

14 The customer, the traveling public gets a benefit

15 from these entities.

16 Q. Fair enough. The customers who purchase
17 food or drinks?

18 A. Food, pastries, coffee, yes, sir.

19 Q. But does that provide the airport with a
20 benefit? Does the airport receive any other benefit
21 from having these shops there? No, right?

22 MR. HOPE. Objection to form.

23 A. The benefit to the airport is if we bring
24 quality products to the airport our customers who
25 travel through MIA will choose MIA in comparison to

124

1 Fort Lauderdale or anywhere else. It is a branding
2 of product a product and service.

3 Q. So it is a marketing tool as well I guess?
4 I don't want to put words in your mouth, but you are
5 essentially saying if you have quality shops you are
6 hoping you will get more passengers, is that the--

7 A. Yes, sir.

8 Q. Any other benefit?

9 A. No, sir.

10 Q. Are there any studies that you have reviewed
11 or come across that say if you have quality stores
12 you'll get more traffic, they will choose Miami over
13 Fort Lauderdale as you said?

56

14 A. I don't, I don't have studies and I haven't
15 done anything. But we have a commercial ops division
16 that you can speak with. Their goal is to bring
17 quality merchandise, quality products to the facility
18 to give us what we need to be a world class facility.

19 And the traveling public, I think they have
20 done -- not "they have" but industry has done studies
21 or surveys as to what the traveling public wants to
22 see when they go through a facility, like Miami
23 International Airport and as it is compared to
24 Atlanta, Jacksonville, Tampa, Houston, DFW, anywhere
25 else for that matter.

125

1 Q. You would agree that having a Bacardi shop
2 or have a Cafe Versaille doesn't make the airport a
3 safer place to be, though it may bring more people
4 but doesn't make it a safer place; you have to rely
5 on security or other measures, correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And you also agree that having a Bacardi
9 shop or Cafe Versaille or any of the other
10 concessions stands, concessions on these lists
11 doesn't help move freight or passengers more
12 efficiently through your airport, correct?

57

13 MR HOPE: Objection to form.

14 Q. Except get more passengers there?

15 A. Yes, sir.

16 Q. Let me ask you this. If John Q Public
17 wanted to come into your airport and purchase Cafe
18 Versaille how would John Q Public go ahead and
19 purchase that concession technically, do you know?

20 A. For John Q Public to purchase Cafe Versaille
21 has nothing to do with the airport For John Q
22 Public to purchase Cafe Versaille you need to deal
23 with the enterprise or the entity that owns those
24 rights

25 Cafe Versaille I think is owned by La

126

1 Caretta, the parent company, so you need to deal with
2 them as a franchise or operation.

3 If you want to perform a service or sell a
4 product within the airport you contact our commercial
5 operations folks and you talk to them that you are
6 willing, you are looking to do business within the
7 airport and they tell you where you need to apply,
8 what the airport is looking for, and you, whatever
9 comes up to bid you bid on.

10 So there's a formal process nothing having
11 to do anything with the--

12 Q. With your operation?

13 A. With my operation. They can do whatever
14 they want to do.

15 Q. But I guess I am trying to understand, if
16 John Q Public wanted to come in and let's say go to
17 La Caretta--

18 A. I think La Caretta is the parent company
19 They are both owned by the same parent company.

20 Q They would have to go to the parent company
21 and say basically I want to buy you out of your
22 airport space at the Miami Airport, correct, and
23 let's say the answer from the parent company was
24 fine, are there any other licenses or permits that
25 somebody needs to go in and lease this space?

127

1 A. That's out of my bailiwick. That's entirely
2 within commercial operations.

3 There's a process by which is required to
4 build out, permits, contracts have to be entered into
5 before you can even start doing business. And then
6 what the rental rate would be and what the pay back
7 to the department would be in regards to utilizing
8 that space.

9 Q. You said that's totally out of your
10 bailiwick. Whose bailiwick is it in?

59

11 A. It belongs to property and operations.
12 There's a commercial unit within the division. within
13 the department that's responsible for bringing in
14 business as well as managing or maintaining what
15 these guys deem to be our customers and what they
16 provide and what they do.

17 Q. But the details of how John Q Public gets in
18 there is something you don't feel comfortable from a
19 knowledge base answering, is that fair to say?

20 A. Yes, sir.

21 Q So then I'll move on and ask you this. At
22 least you'd agree with the general proposition, would
23 you not, that John Q Public if he meets all, goes
24 through the hoops and meets the requirements he can
25 come in and operate a concession or a store at the
128

1 airport, right?

2 MR. HOPE: Objection to form.

3 A As long as he's complied and submitted his
4 bid and he's awarded and approved, yes, he can.

5 Q. And that bid process as far as you know is
6 at least open to the public, right, anybody who wants
7 to bid?

8 A Yes, sir.

9 Q. There's no discrimination or anything along

10 those linings, anyone that wants to bid can bid?

11 A. Yes, sir, as long as you meet the minimum
12 qualifications or whatever qualifications are
13 established that goes out with the bid.

14 Q. Let's assume John Q Public takes over Cafe
15 Versaille. They are going to be able to purchase
16 your telecommunications services, correct?

17 A. If they want to, it's entirely up to them.

18 Q. But if they want to your services are
19 available to John Q Public, correct?

20 A. Yes, sir.

21 Q. And if John Q Public wants to obtain
22 telecommunications service from you at the airport
23 John Q Public is going to enter into one of these
24 rental agreements that we discussed earlier, correct?

25 A. Yes, sir.

129

1 Q. And then John Q Public is going to pay for
2 that telecommunications service, correct?

3 A. Yes, sir.

4 Q. And that telecommunications service that you
5 offer that we discussed before includes two way
6 communication capabilities, correct?

7 MR. HOPE: Objection to form.

8 A. Yes, sir.

61

9 Q. Let me mark a couple of more of these
10 because I have another follow-up question. I am
11 going to mark MJ14, MJ15, MJ16, MJ17, MJ18, MJ19,
12 MJ20, MJ21, MJ22 Let me show you what I have marked
13 as Exhibits MJ14 through and including MJ22 and just
14 have you take a look at those photographs.

15 (Series of photographs marked Exhibits MJ14
16 through MJ22 for identification)

17 A. OK.

18 Q. Are those, as far as you can tell, accurate
19 depictions of various stores and/or services as they
20 presently exist at the Miami Airport?

21 A. Yes, sir.

22 Q. And I am just going to walk through them
23 real quickly if you don't mind me looking over your
24 shoulder just to put them on the record because the
25 record can't see the pictures.

130

1 Correct me if I am wrong as I walk through
2 these MJ12 is Cafe Versaille, MJ13 is Bacardi, MJ14
3 is?

4 A. They are both the same--

5 Q. Eddy's ice cream MJ15 shows Eddy's Ice
6 Cream as well, Hebrew National hot dogs. MJ16 is
7 duty free stop.

62

8 MJ17 is TCBY and Cinnabon. MJ18 is Bacardi,
9 a Burger King and Frankly Gourmet. MJ19 is Sunglass
10 Hut. MJ20 is the company you mentioned before. Cafe
11 La Caretta?
12 A. Right.
13 Q MJ21 is basically a mall of shops, correct?
14 A. Yes, sir.
15 Q. And the mall of shops includes Barber Beauty
16 and Nails, a Kleen cleaners--
17 A. No, that's a shoe shine
18 Q. I'm sorry, shoe cleaner?
19 A. And then the ice cream place.
20 Q. Yes.
21 A. You didn't mention this one.
22 Q MJ22 is a leather store?
23 A. Yes, sir.
24 MR. GOLDBERG. Showing his counsel where he
25 can go shopping.

131

1 Q. That leads me to the next question. There
2 is nothing that prevents Mr Hope here or John Q
3 Public or anybody else from going into the Miami
4 International Airport to these mall of shops or any
5 of the other stores that we have depicted here in the
6 photographs, purchasing their product, using their
7 services and then leaving without taking a flight or

63

8 booking a flight or traveling anywhere?

9 A. Right.

10 MR. HOPE. Objection to form.

11 Q. There's no dispute about that, they can walk
12 in, do those things and walk out without traveling?

13 A. Yeah, if they want to.

14 Q. And there's also no dispute, although your
15 counsel is telling you not to answer certain
16 questions, but there is no dispute that you are
17 providing service to some or all of those shops or
18 those type of shops at the airport, correct?

19 MR. HOPE: Objection to form.

20 A. Yes, sir.

152

24 Q. So then you come down, this is for voice
25 line costs. What's voice line?

153

1 A. That's telephone services

2 Q. Two way telecommunication service, correct?

3 A. Yes, sir

4 Q. And you have a total equipment cost in
5 providing the voice line to your customers, correct,
6 is that correct?

7 A. Yes.

8 Q. You have an interest carrying cost, a

64

9 maintenance cost and then you add on profit, correct?

10 A. Yes, sir.

11 Q And you come up with a voice line charge per

12 month of 930, is that correct?

13 A. Yes, sir.

155

7 Q. Back on that page, network access cost,

8 directly below the local line cost of \$60,000 is an

9 entry of 15 percent profit, correct?

10 A. Yes, sir.

11 Q. So MDAD adds 15 percent profit or in this

12 case \$25,000 figure to its cost for network access,

13 correct?

14 A. Yes, sir.

15 Q. And that's over and above the number that's

16 been ascribed to local line cost, correct?

17 A Yes, sir.

18 Q. So wouldn't you conclude that the \$15,000

19 profit is a markup to the cost for network access?

20 MR. HOPE: Objection to form

21 A. The \$15,000 profit?

22 Q. Yes.

23 A. Which \$15,000 are you referring to?

24 Q. Sorry. Wouldn't you agree that the 15

25 percent profit is a markup to the cost depicted for

65

156

1 network access?

2 A. Yes, sir.

164

21 Q. Essentially in this proposal it is fair to
22 say that there's a charge for everything that's
23 associated with providing telecommunications service
24 to your customers, correct?

25 MR. HOPE: Objection to form.

165

1 A. Yes, sir.

2 Q. The bottom line is that your
3 telecommunications business has a goal of increasing
4 its profitability and making money for the county,
5 correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And so it behooves you and your entity to
9 charge the customers for all of your costs and
10 including marking up all of those costs to an
11 appropriate profit percentage, correct?

12 MR. HOPE: Objection to form.

13 Q. You can answer.

14 A. To what -- yes.

173

66

17 Q. Could you tell me when you look at this
18 document, MJ26, what is included in the 81 75 that's
19 being billed where it says "missed charge monthly
20 rental for telephone and maintenance"?

21 A. What's included in it, it's monthly rental
22 for the telephone and the hand set itself as well as
23 the maintenance that goes along with that to deal
24 with our customers if they have a problem. So that's
25 from the hand set to the port that leads back to the

174

1 PBX.

2 Q. Is access billed in this invoice?

3 A. Access to?

4 Q. Well, we have talked about network access,
5 talked about switch access. Are any charges included
6 on this invoice for those services?

7 A. I'm not sure. I would need to look at the
8 detail that may have come along with it.

9 Q. Let's try another example. Let me show you
10 what I will mark as MJ27.

11 (Invoice marked Exhibit MJ27 for
12 identification)

13 The first page of this document is another
14 invoice similar to MJ26, correct?

15 A. Yes, sir.

67

16 Q You want it take a look. This amount is for
17 \$85.75, correct?

18 A. Yes.

19 Q Dated July 1, 2002, correct?

20 A. The total amount is \$91. The first item you
21 are talking about?

22 Q. You are right.

23 A. 85.75.

24 Q. And the sales tax is 5.57 for a total of
25 91.32, correct?

175

1 A. Yes.

2 Q. And if you turn to the second page of this
3 composite exhibit. This a form that also is entitled
4 Miami-Dade Aviation Department standarized form. Who
5 produces this form?

6 A. I believe it's-- I'm not sure. It either
7 comes from us or comes from Nextera I believe it
8 comes from the department.

9 Q. From the department, aviation department?

10 A. Yes, sir.

11 Q. And you see that the amount on there the
12 total, 85.75, equals the first line item on the
13 previous invoice?

14 A. Yes, sir.

68

15 Q. And then if we go to the third document,
16 that is a contract invoice that has Nextera I's logo
17 on there, that also is for rental monthly of 85.75.
18 the same amount that we have seen on the prior two
19 documents, correct?

20 A. Yes, sir.

21 Q. Does Nextera I complete or make this
22 document, the third page?

23 A. Yes.

24 Q. The 85.75 in this instance for this customer
25 during the month for service during the month of May

176

1 because it says billing period from 5/1 to 5/31/02,
2 is made up of these three line items, correct?

3 A. Yes, sir.

4 Q. Meridian I port. you had previously
5 testified that that was a line that went back into
6 the meridian box, correct, or that's actually a port
7 in the box?

8 A. Yes, sir, that was the statement I made.

9 Q. How many ports are in a meridian box?

10 A. I think 256 but I'm not sure. I don't know

11 Q. Not sure. All right. And here, they are
12 charging for four ports. What does that mean?

13 A. Four ports I believe would be four hand

69

14 sets. I'm not sure Unless they are using-- well,
15 the four ports, they have four access ports that
16 could be used either one for fax, one for a phone,
17 two other ports for data if I'm not mistaken I
18 would assume that to be that.

19 Q. Below it has single line access and I think
20 before you testified you don't know what single line
21 access means?

22 A. No, sir.

23 Q. Do you have an explanation why you would
24 need two single line access when you have four
25 meridian 1 ports?

177

1 A. No, sir.

2 Q What's a 2500 set on the third line?

3 A. I believe that's a hand set but I'm not
4 sure. It's a telephone, I believe, but I'm not sure.

5 Q. So if there's four meridian 1 ports are we
6 saying according to your testimony here today that
7 there's four lines that have dial tone?

8 A. That is a possibility.

9 Q. Do you know that for a fact?

10 A. For a hundred percent certain, no, I do not

11 Q. Let me show you now what I'll mark as MJ28.

12 This is also a composite exhibit. And you correct me

70

13 if I am wrong but just for the record this a
14 Miami-Dade County Aviation Department STATS billing
15 form for the period dated March 29, '02, correct?

16 A. Yes.

17 Q. For a billing period of February 7 through
18 March 6 of '02, correct?

19 A. Yes, sir.

20 (MDAD billing form marked Exhibit MJ 28 for
21 identification).

22 Q The amount in total is \$689.59, correct?

23 A. Yes, sir.

24 Q. Let's go to the next sheet in that exhibit.
25 This again is a Nextera 1 document, correct?

178

1 A. Yes, sir.

2 Q. And the coverage says "full serve " What
3 does full serve mean?

4 A I'm assuming full service. I'm not sure
5 what definitions, the acronyms are.

6 Q. On this bill you are charging for 28
7 meridian 1 ports. How is that or why is that?

8 A. It depends on the customer and the
9 requirements of the customer. I don't know unless I
10 know what the customer is and what they have asked
11 for.

71

12 Q. Then they are charged for advance features.
13 I want to talk to you about advance features, call
14 waiting, conference call. Is that something that
15 your telecommunications business provides as a
16 service to your customers?

17 MR. HOPE: Objection to form.

18 A Yes, sir.

19 Q. And do you charge for each particular
20 feature that the customer orders?

21 A. Yes, sir

22 Q. So there would be a charge for call waiting,
23 there would be a charge for conference calling, a
24 charge for call forwarding?

25 A. Sometimes they are bundled. Most of the

179

1 times they are individual items. They would be
2 billed as individual items. Also, including like
3 voice mail

4 Q. And those are features or services that you
5 and only you, I mean MDAD and only MDAD, billed and
6 provided to your customers, correct?

7 MR. HOPE: Objection to form.

8 A Yes

9 Q. And you recognize that carrier such as
10 BellSouth or Worldcom or other telecommunication

72

11 companies also provide these features as well to
12 their customers, correct?

13 A. I know BellSouth does. I'm not sure if
14 Worldcom offers it

15 Q. But at least BellSouth does, correct?

16 A. I use it at home.

17 Q. What's rotary system access?

18 A. I'm not sure.

19 Q. What are the items depicted as M208HFD and
20 M208B and M208D on this document?

21 A. They are products. I would have to look
22 into our inventory and what we have to tell you
23 exactly what those individual items are.

24 Q. Your telecommunications company also has and
25 offers voice mail to your customers, correct?

180

1 MR. HOPE. Objection to form.

2 A. Yes, sir.

3 Q. And that's depicted on this bill as well,
4 correct?

5 A. Yes, sir.

6 Q. That's a service that other companies such
7 as BellSouth provide to its customers, correct?

8 A. Yes, sir.

73

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

22

16 Q Let me continue to ask you along those lines,
17 if you have an STS provider who is not certificated and
18 obviously wouldn't appear on this list, are they still a
19 telecommunications company?

20 A I believe they would meet the requirements
21 under 364 as a telecommunications company if they're
22 providing two-way telecommunications for hire.

23 Q And as a telecommunications company providing
24 two-way telecommunications for hire, would they be
25 subject to the exclusive jurisdiction of the PSC for

23

1 which you work?

2 A Yes.

52

8 Q You said earlier to a question posed that a
9 shared tenant service provider would also be a
10 telecommunications company if it provided two-way
11 communications to the public for hire; is that correct?

12 A That's correct.

13 Q If a shared tenant service provider, an STS
14 provider doesn't provide two-way communications to the
15 public for hire, does that mean that it's not a
16 telecommunications company?

17 MR. GOLDBERG: Objection to the form.

18 A If you weren't providing two-way

19 communications, you wouldn't be a shared tenant
20 provider.

54

9 Q Okay. What do you mean when you say the
10 provision of local service?

11 A Dial tone that is provided to you for the
12 purpose of making a local call.

13 Q Does the local exchange company provide dial
14 tone?

15 A Yes.

16 Q Does a shared tenant service provider provide
17 dial tone?

18 A They provide their own dial tone from their
19 switch, yes.

20 Q Is internal four-digit dialing considered local
21 service?

22 MR. GOLDBERG: Objection to the form.

23 A In what regard?

24 Q You say basically that -- let me explain this,
25 that the shared tenant service provides service from

55

1 this switch back to their customers, if I'm getting your
2 scenario correct. And then from the switch outward is
3 what's being provided by the local exchange carrier?

4 A Right.

5 Q So from the switch back to the customers, if
6 the switch allows four-digit dialing amongst customers
7 on this side of the switch, is that local service?

8 MR. GOLDBERG: Objection to the form.

9 A I believe it would still be local service, yes.

10 Q And why is that?

75

11 A It's two-way telecommunications. It's local.
12 It's not long distance.

57

7 Q If someone inside the facility can only dial
8 inside the facility, hence, dialing another extension
9 inside the facility, but does not have the ability to
10 dial outside the facility, is that considered local
11 service?

12 MR. HOPE: Same objection.

13 A Are you speaking of this as being a shared
14 tenant provider?

15 Q Yes.

16 A That's prohibited under the rules.

17 Q Why?

18 A It says right here, allow intercommunication
19 between unaffiliated entities. It says, "Shared tenant
20 service providers shall not be allowed to," and under
21 (d)3, "Allow intercommunication between unaffiliated
22 entities."

23 Q Can I get the rule you're reading from, for the
24 record?

25 A 25-24.575, and it's titled "Shared Tenant

58

1 Service Operations."

2 MR. GOLDBERG: Thank you.

3 BY MR. HOPE:

4 Q And which sub was it?

5 A It's under paragraph (5)(d)1. No, excuse me,
6 (5)(d)3.

Additionally, BellSouth directs Defendant to the Affidavit of Maurice Jenkins dated July 29, 2003. In paragraph 11 of the affidavit, Mr. Jenkins stated, "In light of the impending deadline for renewal of the Equipment and Services Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided [sic] exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network and CUTE infrastructure, software, licenses, permits and other assets (collectively the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively the "Services"). In paragraph 18 of the affidavit, Mr. Jenkins states, "Neither the County nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services." In paragraph 20, Mr. Jenkins further states, "Prior to the sale of the Assets, Nextira provided STS services at MIA without a FPSC certificate."

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 6:

By what specific action(s), operation(s), or equipment does "[t]he County 'offer[] two-way telecommunications service to the public for hire ... by use of telecommunications facility,' at Miami International Airport ("MIA") and other general aviation airports within Miami-Dade County, ..." as stated in Paragraph 7 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer: This interrogatory is identical to interrogatory No. 5. See answer to Interrogatory No. 5.

Interrogatory No. 7:

Please identify the specific general aviation airports ("GAAs") in which the County offers two-way telecommunications services to the public for hire by use of a telecommunications facility, and the specific service(s) offered by the County at the GAAs, respectively, which support your allegations in Paragraph 7 to Plaintiff's Second Amended

Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer: See answer to Interrogatory Nos. 5 and 10.

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005

George Hill was deposed on December 3, 2004

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Plaintiff further directs Defendant to the following documents which also contain facts responsive to this interrogatory.

1) The Memorandum dated September 24, 2002 from Steve Shiver to the Board of County Commissioners for Agenda Item No. 6(A)(1)(A), Subject: Resolution approving recommendations relating to shared airport tenant services for the Aviation Department. In that Memorandum, the County Manager stated:

Shared airport tenant services consist of telecommunications, voice and data network services which MDAD offers to its tenants. The Contractor is required to use its best efforts to establish, market, operate and manage the SATS for the County to tenants and users at Miami International Airport ("MIA") and the General Aviation Airports ("GAA").

The Memorandum continues as follows:

Given the changing or different needs of each tenant requesting SATS, it is

also requested that the Board delegate the authority to negotiate such terms and conditions as may be necessary, on a tenant by tenant basis, to allow the County to be responsive to the needs of the MIA and GAA business partners

The Board of County Commissioners approved Resolution R-1021-02 about which this Memorandum was prepared.

2) The Memorandum dated January 29, 2002 from Steve Shiver to the Board of County Commissioners, Subject: Telecommunications Services at the Aviation Department. In this Memorandum, the County Manager recommended approval of the Resolution authorizing the County to purchase the telecommunications facility and contracts from NextiraOne at MIA and the other General Aviation Airports. In the "Project Description," the County Manager stated as follows:

Project Description: Provides for the operations, management, maintenance, service, support and equipment and supplies of the telecommunications and data, infrastructure, hardware and software systems for the MDAD and the shared airport tenant services customers at Miami International Airport and the General Aviation Airports.

The introductory paragraph on the first page of this Memorandum further explicitly states that the purpose of the acquisition of NextiraOne's telecommunications facility and operation was to continue to provide and to offer shared airport tenant services to tenants at Miami International Airport and the "County's other owned or operated general aviation airports."

The Board of County Commissioners approved the Resolution to which this Memorandum was directed.

Accordingly, on the face of the Memoranda describing and recommending the approval of the Resolutions authorizing the County to acquire and operate the telecommunications facility from NextiraOne and to provide telecommunications services, including shared tenant services, to airport tenants, it is the stated intent and purpose of the County to offer shared tenant services, including "telecommunications, voice and data network" services, to all General Aviation Airports owned and/or operated by the County.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 8:

Please state all facts which support your allegations in Paragraph 22 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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6 Q Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A. Yes.

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3 A On the public, first of all, there were
4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth. And we have got
9 those customer lists.

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this At least you would agree
14 with the general proposition, would you not, that
15 John Q Public, if he meets all-- goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer. As long as he's complied and
20 submitted his bid and is awarded and approved,
21 yes, he can

22 Question: And that bid process as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir.

77

1 Question. There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir As long as you meet
5 the minimum qualifications, or whatever
6 qualifications are established that goes out with
7 this bid.

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille. They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to It's entirely
13 up to them.

14 Question: But if they want to, your
15 services are available to John Q. Public, correct?

16 Answer. Yes, sir.

17 Question And if John Q. Public wants
18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?

22 Answer: Yes, sir.

23 Question. And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

78

81

1 Answer: Yes, sir.

2 Question: And that telecommunications
3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?

6 His answer: Yes, sir.

7 Then on page 131, Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr. Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mail shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using
14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?

16 Answer: Right.

17 Question: There's no dispute about
18 that. They can walk in, do these things, and walk
19 out without traveling?

20 Answer: Yeah. If they want to.

21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

79

1 Answer: Yes, sir.

2 There's another one that I wanted to
3 call your attention to. Sometimes my little--
4 bear with me. There was also some discussion with
5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities.

9 And the question was: I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are-- we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific
17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King, Frankly Gourmet, Sunglass Hut.

22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

82

80

1 Answer: Yes, sir
2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?
5 And his answer: No. That's a shoe
6 shine.
7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building

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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?

199

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.

200

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"?

201

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

83

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

202

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

203

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.

204

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

84

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

205

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

253

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?

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.

On February 2, 2005, Maria Johnston, the Senior Account Manager for Bellsouth, appeared to answer questions in response to the County's Notice of Taking Deposition. During that testimony, Ms. Johnston testified relating to the subject interrogatory as follows:

85

23 Q. Do you have any knowledge of the entities
24 that the County through its Aviation department
25 might provide shared tenant services to at Miami

86

1 International Airport?

2 A. Let me make sure I understand your
3 question. Do I have any knowledge of what other
4 entities Miami-Dade Aviation might be providing

85

5 shared tenant services.

6 A It was based on that RFP you put out and
7 that was an attachment to that RFP that showed a
8 list of other tenants but other than that, I don't.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

23 Q What specific shared tenant services
24 does the County offer the hotel referred to in
25 paragraph 22?

23

4 THE WITNESS: Well, to the extent of
5 what I have seen in documents and heard
6 and read in depositions, there's a
7 switch, a Dade County switch that serves
8 the airport hotel, and they get their
9 dial tone. they enter the local network
10 through that switch, and by services to
11 the people who stay there at night,
12 communicate with the outside world.

13 BY MR. HOPE:

14 Q Do you know whether or not that switch
15 is partitioned?

16 A Not for a fact, but I believe I have
17 read that the hotel-- services to the hotel are
18 partitioned to the hotel, I believe.

51

22 Q My question is what factual or
23 documentary evidence support the allegations in
24 paragraph 40?

25 A I also read Rick Moses' deposition, and

52

1 RickMoses specifically says that shopping malls,
2 hotels, you know, are not necessary for the
3 safely moving of passengers and freight through
4 the airport

5 And he is the Florida Public Service
6 Commission staff person in charge of the rules or
7 interpreting of the rules and filing rules,
8 codifying rules.

9 Q Okay, what shopping malls does the
10 County provide shared tenant services to?

13 THE WITNESS: Well, when I was at
14 Mr Jenkins' deposition he was shown a
15 series of pictures of the different shops
16 through the middle of the airport that
17 offer a litany of services, clothes, the
18 drug-- you know, there's a litany of
19 services in these things, and it's a
20 shopping mall. I mean, it's truly a
21 shopping mall.

22 And he agreed that some of those

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23 shops he provided service to.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr Garcia testified as follows:

13

24 Q. By the way, does Miami-Dade Aviation
25 Department provide similar services at other
1 airports within Dade County?

14

2 A. The airports that Miami-Dade owns?

3 Q. Right.

4 A. Specifically Opa-Locka and Tamiami we
5 provide the same services, and those airports are
6 owned by Miami-Dade County.

7 Q. Are there any airports within Miami-Dade
8 County within the geographical boundaries of the
9 County that the County does not own?

10 A. As far as I know, the airports are owned
11 by Miami-Dade County, unless there's an obscure
12 landing strip which I'm not aware of.

13 Q. And we won't discuss those.

14 In other words, the County provides
15 these services at every airport it owns --

16 A. At two of the airports.

17 Q. At two of the airports.

18 A. The other two just have independent
19 telephone systems and they're connected to
20 BellSouth for telecommunications. We have a direct
21 correction via T1 to two of those airports in which

22 we provide voice services and network services from
23 MIA connected to the satellite system that they
24 have at those airports.

25 Q. At Opa-Locka and Tamiami? 15

1 A. At Tamiami, right. 16

21 Does the County provide telephone
22 services to customers at airports in Dade County?

23 A. Yes, sir.

24 Q. Does the County provide
25 telecommunications services, using your definition,
17

1 to customers at airports within Dade County?

2 A. Yes, sir. 27

12 Q. And are the same telecommunications
13 services available to all of the customers;
14 regardless of whether they buy them all, are they
15 all available?

16 A. Yes, sir.

17 Q. Are all the services available?

18 A. Yes, sir, they are all available. Not
19 all of them use the services.

20 Q. Right. I could pick services 12 and 4
21 and somebody else could pick 23 and 5?

22 A. Yes.

23 Q. But they're all available to everybody?

24 A. Yes. 46

9 Q. Did the County or MDAD or anybody

10 prepare a marketing plan?

11 A. Yes. We requested from NextiraOne after
12 we purchased their infrastructure that they would
13 prepare a marketing plan on our behalf.

14 Q. To go out and market to tenants of the
15 airport --

16 A. Yes.

17 Q. -- airports?

18 A. Um-hum.

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by
10 providing telecommunications services?

11 MR. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County
15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE: Objection to form.

19 A. To the best of my knowledge, yes.

73

10 Q. And three is the assignment to the
11 County all existing tenant SATS and CUTE agreements
12 entered into by Centel or its successors or assigns
13 with tenants at the airport. That was --

14 A. The company's changed the name through
15 the years from Williams to Centel to Nextira to

16 NextiraOne, but it was an internal thing with them,
17 a spin-off for the main company or so forth.

18 Q. So pursuant to the agreement you were
19 entering into with Nextira, all of the Nextira
20 customers at the airports were going to become
21 customers of the County?

22 A. Yes, sir.

23 MR. HOPE: Objection to form.

24 Q. How many customers were there back in
25 January of 2002, Nextira customers?

74

1 A. I don't recall the number but it's -- it
2 was probably a little more than the list that you
3 saw because since then the economy went down a
4 little and people went out of business and so
5 forth.

6 Q. So it might have been slightly higher than
7 the 2003 list as far as the numbers?

8 A. It's slightly higher than what we had.

86

22 Q. If you go to the definitions section
23 which starts on Page 2 of 98. Down at the bottom
24 it identifies there's airport, and we discussed
25 earlier obviously Miami International and you

87

1 mentioned Opa-Locka and Tamiami.

2 This particular document also refers to
3 other general aviation airports, Kendall, Tamiami,
4 and the training and transition airport in
5 Opa-Locka West.

6 Is there any telecommunications services

7 provided by the County to any of those other

8 airports?

9 A. The two airports that we have a direct
10 connection to, which is Opa-Locka and Tamiami. The
11 other ones basically have a self-contained system
12 connected to BellSouth lines.

13 Q. Basically it's to the airports within
14 the county?

15 A. I'm sorry. What was the question?

16 Q. These are the five airports, the
17 airports that are listed --

18 A. That are owned by the County.

19 Q. -- in Paragraph 1.305 airports within
20 Dade County, within the geographical limits of the
21 county that are owned by the County?

22 A. Right.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

31

16 Q. Where does that dial tone emanate from?
17 Or better stated, where does that dial tone
18 originate from?

19 MR. HOPE. Objection to form.

20 THE WITNESS: It originates from our
21 PBX located in the airport.

22 Q. Now, you used the word "our PBX." What do
23 you mean by our PBX?

24 A. The PBX owned by the aviation department.
25 The PBX is a telephone switch, and it is located

1 inside the airport premises. That is where the dial
2 tone originates when you first pick up your phone at
3 the airport.

4 Q. So the dial tone originates from a PBX
5 switch that is owned by the County. Is that
6 correct?

7 A. Yes, sir.

8 Q. And it is that PBX switch that is owned by
9 the County that generates the dial tone; is that
10 correct?

11 A. Yes, sir.

12 Q. So when that customer picks up the
13 receiver and hears a dial tone, is it a correct
14 statement that the County is providing that dial
15 tone that that customer hears?

16 MR. HOPE: Objection to form.

17 THE WITNESS: He is providing the
18 internal dial tone that the customer
19 hears.

20 Q. So the County is providing dial tone to
21 that customer.

22 A. The County --

23 MR. HOPE: Objection to form.

24 THE WITNESS: The County is
25 providing internal dial tone to the

33

1 customer.

33

18 Q. And without that dial tone, would you
19 agree that MDAD customers couldn't utilize their
20 phone?

21 MR. HOPE: Objection to form.

22 Q. At all.

23 A. That is correct.

24 Q. In other words, without that dial tone
25 that the County provides, that phone would be dead,

1 correct? 34

2 MR. HOPE: Objection to form.

3 THE WITNESS: Without a dial tone
4 any phone is dead. 36

24 Q. How many PBX's does the County own?

25 A. We have two major PBX's. Two at the
1 airport. 37

2 Q. I am asking you because you have the
3 technical background, but do all these wires feed
4 into these two PBX's?

5 A. Yes.

6 Q. And do they go through -- do they connect
7 into the PBX through what is called a port?

8 A. The port is the -- it is basically -- yes,
9 the port is a hole that receives the wire to connect
10 the phone to the PBX and all the internal equipment
11 of the PBX.

12 Q. Is the port part of the PBX?

13 A. Yes. They are cards. The ports are cards
14 in multiples of 16 each in a card, and they plug
15 into the PBX which has common equipment, peripheral
16 equipment, different kinds of equipment inside. It
17 is part of the PBX.

18 Q. Once the PBX interprets the four-digit

19 number, it then gets routed to whoever's number that
20 is. Is that a fair statement?

21 A. Yes.

22 Q. And does the call, can we make reference
23 to a call now that gets routed, does that call
24 travel over -- go out of another port out of the
25 PBX, over other wires, to the receiver's destination

38

1 and phone?

2 A. Yes.

3 Q. And is all that equipment that is involved
4 in that process owned by the County as well?

5 A. Yes.

6 Q. Then, in simplistic terms, does that phone
7 ring?

8 A. Yes.

9 Q. And the person can answer if they are
10 there, correct?

11 A. Yes.

12 Q. When that person answers it, it should be
13 the voice of the originating caller, correct?

14 A. Yes.

15 Q. So that whole scenario occurs over County
16 owned equipment, correct?

17 A. Yes.

41

4 Q. Are there any other STS providers at the
5 airport, other than the County?

6 A. No.

45

1 Q. So the County-provided dial tone for a
2 person who wants to make a local call is

3 significant, in fact absolutely needed, for the
4 making of that local call because they need to hit
5 9, correct?

6 MR. HOPE: Objection to form.

7 THE WITNESS: Yes.

8 Q. Once that customer hits 9, are you saying
9 -- are the dial tones then -- is the County-provided
10 dial tone replaced?

11 A. The second dial tone is an indication of
12 the PBX has interpreted an answer back from the
13 BellSouth central office that indeed they are ready
14 to receive digits. So it sends an indication to the
15 telephone that you can dial now; we are ready to
16 establish the communication.

17 Q. So you would agree with me, without the
18 County-provided -- you would agree with me that the
19 County-provided dial tone is part and parcel of the
20 service that is needed to make a local call from the
21 airport.

22 MR. HOPE: Objection to form.

23 Q. Correct?

24 A. The dial tone that is provided to the
25 customer is part of the connection process to make a

46

1 call.

2 Q. A local call?

3 A. Yes, yes.

49

24 Let's say that somebody in Hialeah,
25 outside the airport, wants to call that ice cream

50

1 shop at the airport, who is an MDAD customer. How
2 does that call -- how is that call made from a
3 technical perspective?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The customer -- the
6 person in Hialeah picks up their phone
7 and dials ten digits. The ten digits go
8 through the BellSouth central office, the
9 Hialeah central office, and that central
10 office, sends those digits -- knows that
11 because of the digits that the call needs
12 to go to the airport central office, and
13 when it gets there the central office
14 basically strips the first four digits,
15 and then sends the four digits to the
16 PBX, which is called a DID, direct inward
17 dialing digits. Then the PBX routes that
18 call to whoever is supposed to receive
19 the call.

20 Q. And when you say the PBX, that call goes
21 from Hialeah, through BellSouth's equipment, into
22 the airport PBX? Is that what you are referring to?

23 A. It comes from -- it goes through the
24 airport central office of BellSouth, through those
25 T1's that serve the airport, into the PBX, and from

51

1 the PBX to the terminating phone that the call is
2 going to.

3 Q. When you refer to the PBX, are you
4 referring to the County-owned PBX?

5 A. To the County-owned PBX.

6 Q. And then through the County-owned
7 equipment to the County customer?

8 A. To the County-owned equipment and wires to
9 the County -- to the receiving customer who has a
10 phone there.

11 Q. That, it seems to me, to be a local phone
12 call.

13 A. It is a local phone call.

51

20 Q. What would happen if -- what would happen
21 to that local phone call if you took away the
22 County's PBX and the County's equipment and the
23 County's phone at the ice cream shop? Would that
24 local phone call be able to be completed?

25 A. No.

52

1 Q. So without the County-owned equipment, the
2 PBX, its wires, its phones, that customer would not
3 have or not be able to receive a local phone call.
4 Is that correct?

5 MR. HOPE: Objection to form.

6 THE WITNESS: Again, we are assuming
7 that the receiving customer or tenant is
8 a customer of MDAD for the purpose of
9 providing equipment, telephones,
10 etcetera.

11 Q. Correct, correct.

12 A. So without the County-owned equipment, the
13 call cannot be completed.

53

20 Q So without that -- well, isn't the rental

21 of equipment and the maintenance of equipment and
22 the use of equipment a service?

23 A. It could be considered a service, yes.

24 Q. And without that service, would the
25 local -- would the ice cream shop be able to place a

1 local call?

54

2 MR. HOPE: Objection to form.

3 THE WITNESS: We do have an ice
4 cream shop as a customer. I don't know
5 about that. But yes, whoever is the
6 customer, he wouldn't be able to complete
7 the call without the County-owned
8 equipment.

9 Q. And without the County-owned service,
10 correct? Or the County provided service?

11 MR. HOPE: Objection to form.

12 THE WITNESS: I am not sure if it
13 applies to service. All they need is the
14 equipment.

15 Q. Mr. Garcia, I mean, let's just see if we
16 can agree with each other. The provision of the
17 County-owned equipment to one of your customers is
18 the service that you provide, right?

19 A. If you define it that way, yes.

20 Q. So then without that service, then that
21 customer will not be able to make a local phone
22 call.

23 A. Correct.

58

6 Q. But isn't the switch that you just used in

7 your last statement the PBX?

8 A. Yes.

9 Q. That is why I was saying isn't it really
10 PBX access? Access to the PBX?

11 A. Yes. You can say that.

12 Q. So it's a charge that encompasses your
13 customers' access to the PBX, and everything that
14 occurs in our prior scenario from the time they pick
15 up the phone to the time that call or their
16 instruction gets to the PBX? Is that fair?

17 A. It is, but it also includes -- it is not
18 only access to the PBX, but the features that the
19 PBX provides.

20 Q. And those features include what?

21 A. Everything from call waiting, call
22 conferencing, call pick-up. When you have a group
23 of phones, you can push a button and pick it up.
24 Call parking, you can park your call when somebody
25 is busy and send it later when they get off the

59

1 phone, intercom. There is a myriad of features that
2 the PBX provides that are included in that charge.

3 Q. Number 2, network access. What is network
4 access?

5 A. Network access is the second part of the
6 charge that actually allows the user of the phone to
7 access the public network to the BellSouth
8 facilities. In other words, the trunks -- the trunk
9 is the connection from the PBX to the BellSouth
10 central office.

11 The part of the trunk, when the trunk

12 connects into the PBX through another port, it
13 provides the charge to access that trunk connection
14 that brings them to the BellSouth central office.

15 Q. Let me see if I understand. I apologize
16 if I don't. The switch access covers from the time
17 the user picks up his or her telephone to the PBX
18 and all of its features.

19 A. Right.

20 Q. Would network access then cover your
21 charge for the use of the outgoing port, perhaps,
22 maybe not, and the T1's that you previously
23 referenced?

24 A. It is a combination of the hardware that
25 is needed to -- to the outside port, that is

60

1 hardware, and connection to the BellSouth T1.

2 Q. And what is that outside hardware that you
3 just referenced?

4 A. It is another port. It is a card with --
5 like with holes that you connect to a port, and that
6 provides access to the outside world.

7 Q. Who owns that card that provides access to
8 the outside world?

9 A. The County does.

10 Q. So the use of that card is part of network
11 access.

12 A. Yes. What's charged for, yes.

13 Q. And then the call -- how far does network
14 access go, the charge for network access take that
15 call to the outside world, if you understand my
16 question?

17 A. It takes it to the demarcation where the
18 BellSouth facilities, which actually -- it's
19 basically where the T1 terminates. From that point
20 on, it can go to anywhere in the world.

21 Q. And the County is paying BellSouth for the
22 use of those T1's, correct?

23 A. Yes.

24 Q. So is it fair to say the network access
25 charge that we will talk about more is charged to

61

1 cover that cost, correct?

2 A. Yes.

24 Q. Number three, can you tell me what system
25 - terminal equipment is, please, as used on page 5

62

1 of MJ-8?

2 A. In simple terms, that is the telephone.

3 Q. The telephone with the receiver?

4 A. That is it. That is the terminal
5 equipment, the telephone.

6 Q. Terminal, as it is used there, means like
7 the end of the line or --

8 A. Terminal equipment -- right. When you
9 have like a big network starting with all the
10 BellSouth CO's and our PBX, the end of that is the
11 telephone. That is the terminal -- that is what is
12 called the terminal equipment.

13 Q. Anything else other than the telephone and
14 receiver that goes into system - terminal equipment?

15 A. Well, terminal equipment could be a fax

16 machine. It could be a modem. It could be --
17 usually, those are the three things that are
18 terminal equipment

71

3 A. There is only one -- there is a hotel at
4 the airport. And the trunks for that hotel, they
5 are partitioned in the PBX to be separate. In other
6 words, they have their own trunk groups. They
7 actually get the service from AT&T instead of
8 BellSouth, and they cannot call -- they cannot dial
9 four digits and call anybody else at the airport.

10 Q. I have to ask you a number of questions
11 about that to see if I understand it all. Okay?
12 Let me just start from the beginning. What hotel
13 are you referring to?

14 A. The Miami International Airport Hotel,
15 which is located inside the airport.

16 Q. And the Miami International Airport Hotel
17 is an MDAD customer?

18 A. The Miami International Hotel is owned by
19 the County, and is operated by a management company.

20 Q. Is it serviced by MDAD?

21 A. We provide them the telephone service with
22 partition trunks, and they own the instruments in
23 the rooms.

24 Q. You say you provide the telephone service
25 with partition trunks. First let me ask you, you

72

1 mentioned that the County owns two PBX's.

2 A. Yes.

3 Q. Is there one PBX for the airport and

4 another PBX for everybody else?

5 A. No. They are interlaced for disaster
6 recovery purposes, so we don't lose one and
7 everybody else is out of service.

8 Q. Does the County own two PBX's just because
9 of size and volume?

10 A. Size and redundancy.

11 Q. What is redundancy?

12 A. You know, like if one fails, you have
13 another.

14 Q. But if MDAD had a smaller operation, is
15 it fair to say they could just use one?

16 MR. HOPE: Objection to form.

17 Q. One PBX?

18 A. Probably not. We would probably still
19 remain like this because we like to have redundancy

20 Q. Now, the Miami Hotel, how is that -- you
21 say -- when you use the word partition trunks, what
22 exactly do you mean from a technical perspective as
23 it relates to that hotel?

24 A. It means two things. It means that
25 everybody else that is getting telephone

73

1 connectivity through our PBX, when they go out to
2 the world, to a local call, to the rest -- to the
3 public network, they go into these ten T1's that I
4 explained before that Southern Bell provides, or
5 BellSouth. I am showing my age here.

6 So the hotel is -- their calls go out
7 through a separate trunk group that also terminates
8 in the PBX, which was contracted by them separately,

9 and they are provided by AT&T. That is with their
10 local calls, and their long-distance calls go out
11 through those separate trunks.

12 Also, what it means, partition, is they
13 cannot dial four digits and talk to any of the other
14 customers connected to the MDAD-owned PBX, the
15 County-owned PBX.

16 Q. In that type of situation where you say
17 those trunks have been partitioned, it only relates
18 to the Miami International Airport Hotel that you
19 spoke about. Is that correct?

20 A. Yes, yes.

21 Q. For every other MDAD customer, is there
22 any partitioning of the trunks in any manner, shape
23 or form?

24 A. No.

140

23 Q. What is the charge for \$18 here or \$72 as
24 shown for single line local network access?

25 A. That is the charge for connecting from the

141

1 PBX out to the world, the network access charge.
2 That is the charge that now we have consolidated
3 into five for \$49. It used to be \$18 per --

4 Q. But that access allows customers to
5 complete a local call, correct? Your customers
6 complete a local call, correct?

7 A. Yes.

8 Q. So MDAD is charging for the completion of
9 the local call, correct?

10 A. For the ability to complete the local

11 call. We don't charge by the call.

12 Q. But for the ability to complete local

13 calls.

14 A. Yes.

15 Q. You would agree with that?

16 A. Yes.

On August 5, 2004, Maurice Jenkins was deposed. Mr Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

72

24 Q. You have customers at the airport, correct?

25 A. Yes, sir.

73

1 Q. They can make local phone calls, correct?

2 A. Yes, sir.

3 Q. They can make local phone calls using

4 equipment and assets that the county owns, correct?

5 A. Yes, sir.

108

20 Q. You say you haven't seen this airport rental

21 agreement in some time. How long has it been?

22 A. Not sure. I believe it might have been

23 revised. But I can't tell you the last time I've

24 seen it to read the document itself. I'm not sure,

25 sir.

109

106

1 Q Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document. Well, it's a
5 document that we use to establish customer
6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering
11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir

118

21 Q. Let me show you what I am going to mark as
22 Exhibit as MJ10 and MJ11.

23 (Customer lists marked Exhibits MJ10 and
24 MJ11 for identification)

25 Q. Let's take a look at MJ11 first. It's on

119

1 your left.

2 A. OK.

3 Q. Have you seen that document before?

107

4 A. Yes, I have

5 Q. Is it correct that as of February 7, 2002
6 this roughly depicts customers, MDAD customers who
7 were receiving telecommunications service at the
8 airport?

9 MR. HOPE. Objection to form.

10 A. Yes, sir

11 Q. Let me ask you the same question about MJ10.
12 Does that accurately depict your customer list as of
13 February, 2003, about a year later?

14 A. Yes, sir.

15 Q. Since February of 2003 when MJ10 was
16 produced, would it be accurate to say that the number
17 of customers has increased or decreased?

18 A. From March of '03 I believe we lost some
19 customers.

20 Q. Have you gained some?

21 A. It's possible--

22 Q. Before I even ask that I should ask, do you
23 have enough knowledge to answer those questions?

24 A. Yes, I do.

25 Q. So have you gained some as well as lost

120

1 some?

2 A. I believe we have gained some as well as

108

3 lost some.

4 Q. At the present time can you tell me how many
5 customers you have at the airport?

6 A. Exact number, no, I cannot.

7 Q. How about approximate number?

8 MR. HOPE. Objection, privileged as we
9 stated earlier. Instruct deponent not to answer.

10 As we brought up earlier, you asked the same
11 question in terms of quantity and our position is
12 that you can talk about provision of services and
13 do we have customers, but I know that certain
14 documents you already have and I can't stop that
15 now, but in terms of specific customers and what
16 we do and total number of customers that is
17 something that's privileged.

18 MR. GOLDBERG: The number of customers is
19 privileged?

20 MR. HOPE: Yes. What would give you
21 anything that you need in terms of knowing the
22 number of our customers?

23 MR. GOLDBERG: I just want to make it clear.
24 You are instructing him not to answer about the
25 number of customers?

121

1 MR HOPE: Correct, which is what I

109

2 instructed earlier.

3 Q. It's fair to say that all the customers
4 listed on MJ10, Mr. Jenkins, pay for your
5 telecommunications service, correct?

6 MR. HOPE. Objection, form.

7 A. Yes.

8 Q. There's no question that having these
9 customers benefits the county financially, correct?

10 A. There's some benefit, yes

11 Q. There's some benefit?

12 A. Yes, sir.

13 Q Let me show you what I am going to mark as
14 MJ12 and 13, two photographs.

15 (Photographs marked Exhibits MJ12 and 13 for
16 identification)

17 Q. MJ12 is a picture of Cafe Versaille,
18 correct?

19 A. Yes, sir.

20 Q. That's one of the customers listed, one of
21 your customers listed on MJ10, that's correct? I am
22 pointing to it here.

23 A. Yes, sir

24 Q. MJ13 -- by the way, are there a number of
25 Cafe Versailles in the airport?

1 A. I believe there are two. Maybe more.

2 Q. Just for the record, because people may read
3 this or see this videotape and don't know what Cafe
4 Versaille is. Can you explain what it is?

5 A. It's a concession within the airport that
6 provides coffee, Danish, pastries.

7 Q. MJ13 depicts a Bacardi shop, correct, or
8 store where you can buy Bacardi liquor?

9 A. It is a restaurant/bar type, yes.

10 Q. It's in the business of selling liquor, is
11 that correct, and food?

12 A. Yes, sir.

13 Q. Do you know whether Bacardi is currently an
14 MDAD customer?

15 MR. HOPE: Objection Instruct the deponent
16 not to answer.

17 Q Let's assume since you have been instructed
18 not to answer that question I'll ask you to assume
19 that they are a customer, they are out at the
20 airport.

21 Again I go back to my question: Having Cafe
22 Versaille and potentially Bacardi as clients at the
23 airport, the purpose is, is it not, to derive income,
24 revenue from them in return for your provision of
25 telecommunications service?

1 MR. HOPE: Objection to form.

2 A Yes.

3 Q. Is there any other benefit that they provide
4 the airport as a customer other than financial?

5 MR HOPE: Objection to form.

6 A. I'm sorry, you got to repeat that one.

7 Q. Sure. Other than providing you with revenue
8 and increasing the money that you make off of the
9 telecommunications business, is there any other
10 benefit that they provide MDAD?

11 A. These entities?

12 Q. Yes.

13 A. They provide the customers with a product.
14 The customer, the traveling public gets a benefit
15 from these entities.

16 Q Fair enough. The customers who purchase
17 food or drinks?

18 A. Food, pastries, coffee, yes, sir.

19 Q. But does that provide the airport with a
20 benefit? Does the airport receive any other benefit
21 from having these shops there? No, right?

22 MR. HOPE: Objection to form.

23 A. The benefit to the airport is if we bring
24 quality products to the airport our customers who

25 travel through MIA will choose MIA in comparison to

124

1 Fort Lauderdale or anywhere else. It is a branding
2 of product a product and service.

3 Q. So it is a marketing tool as well I guess?
4 I don't want to put words in your mouth, but you are
5 essentially saying if you have quality shops you are
6 hoping you will get more passengers, is that the--

7 A. Yes, sir.

8 Q. Any other benefit?

9 A. No, sir.

10 Q Are there any studies that you have reviewed
11 or come across that say if you have quality stores
12 you'll get more traffic, they will choose Miami over
13 Fort Lauderdale as you said?

14 A. I don't, I don't have studies and I haven't
15 done anything. But we have a commercial ops division
16 that you can speak with. Their goal is to bring
17 quality merchandise, quality products to the facility
18 to give us what we need to be a world class facility.

19 And the traveling public, I think they have
20 done -- not "they have" but industry has done studies
21 or surveys as to what the traveling public wants to
22 see when they go through a facility, like Miami
23 International Airport and as it is compared to

113

24 Atlanta, Jacksonville, Tampa, Houston, DFW, anywhere
25 else for that matter.

125

1 Q. You would agree that having a Bacardi shop
2 or have a Cafe Versaille doesn't make the airport a
3 safer place to be, though it may bring more people
4 but doesn't make it a safer place; you have to rely
5 on security or other measures, correct?

6 MR. HOPE: Objection to form

7 A. Yes, sir.

8 Q. And you also agree that having a Bacardi
9 shop or Cafe Versaille or any of the other
10 concessions stands, concessions on these lists
11 doesn't help move freight or passengers more
12 efficiently through your airport, correct?

13 MR. HOPE: Objection to form.

14 Q Except get more passengers there?

15 A. Yes, sir.

16 Q. Let me ask you this. If John Q Public
17 wanted to come into your airport and purchase Cafe
18 Versaille how would John Q Public go ahead and
19 purchase that concession technically, do you know?

20 A. For John Q Public to purchase Cafe Versaille
21 has nothing to do with the airport. For John Q
22 Public to purchase Cafe Versaille you need to deal

114

23 with the enterprise or the entity that owns those
24 rights.

25 Cafe Versaille I think is owned by La

126

1 Caretta, the parent company, so you need to deal with
2 them as a franchise or operation.

3 If you want to perform a service or sell a
4 product within the airport you contact our commercial
5 operations folks and you talk to them that you are
6 willing, you are looking to do business within the
7 airport and they tell you where you need to apply,
8 what the airport is looking for, and you, whatever
9 comes up to bid you bid on.

10 So there's a formal process nothing having
11 to do anything with the--

12 Q. With your operation?

13 A. With my operation. They can do whatever
14 they want to do.

15 Q. But I guess I am trying to understand, if
16 John Q Public wanted to come in and let's say go to
17 La Caretta--

18 A. I think La Caretta is the parent company.
19 They are both owned by the same parent company.

20 Q. They would have to go to the parent company
21 and say basically I want to buy you out of your

115

22 airport space at the Miami Airport, correct, and
23 let's say the answer from the parent company was
24 fine, are there any other licenses or permits that
25 somebody needs to go in and lease this space?

127

1 A. That's out of my bailiwick. That's entirely
2 within commercial operations.

3 There's a process by which is required to
4 build out, permits, contracts have to be entered into
5 before you can even start doing business. And then
6 what the rental rate would be and what the pay back
7 to the department would be in regards to utilizing
8 that space.

9 Q. You said that's totally out of your
10 bailiwick. Whose bailiwick is it in?

11 A. It belongs to property and operations.
12 There's a commercial unit within the division, within
13 the department that's responsible for bringing in
14 business as well as managing or maintaining what
15 these guys deem to be our customers and what they
16 provide and what they do.

17 Q. But the details of how John Q Public gets in
18 there is something you don't feel comfortable from a
19 knowledge base answering, is that fair to say?

20 A. Yes, sir.

116

21 Q. So then I'll move on and ask you this. At
22 least you'd agree with the general proposition, would
23 you not, that John Q Public if he meets all, goes
24 through the hoops and meets the requirements he can
25 come in and operate a concession or a store at the

128

1 airport, right?

2 MR. HOPE: Objection to form.

3 A. As long as he's complied and submitted his
4 bid and he's awarded and approved, yes, he can.

5 Q. And that bid process as far as you know is
6 at least open to the public, right, anybody who wants
7 to bid?

8 A. Yes, sir

9 Q. There's no discrimination or anything along
10 those linings, anyone that wants to bid can bid?

11 A. Yes, sir, as long as you meet the minimum
12 qualifications or whatever qualifications are
13 established that goes out with the bid.

14 Q. Let's assume John Q Public takes over Cafe
15 Versaille. They are going to be able to purchase
16 your telecommunications services, correct?

17 A. If they want to, it's entirely up to them.

18 Q. But if they want to your services are
19 available to John Q Public, correct?

117

20 A. Yes, sir.

21 Q. And if John Q Public wants to obtain
22 telecommunications service from you at the airport
23 John Q Public is going to enter into one of these
24 rental agreements that we discussed earlier, correct?

25 A. Yes, sir.

129

1 Q. And then John Q Public is going to pay for
2 that telecommunications service, correct?

3 A. Yes, sir

4 Q. And that telecommunications service that you
5 offer that we discussed before includes two way
6 communication capabilities, correct?

7 MR. HOPE: Objection to form.

8 A. Yes, sir.

9 Q. Let me mark a couple of more of these
10 because I have another follow-up question. I am
11 going to mark MJ14, MJ15, MJ16, MJ17, MJ18. MJ19.
12 MJ20, MJ21, MJ22. Let me show you what I have marked
13 as Exhibits MJ14 through and including MJ22 and just
14 have you take a look at those photographs

15 (Series of photographs marked Exhibits MJ14
16 through MJ22 for identification)

17 A. OK.

18 Q. Are those, as far as you can tell, accurate

118

19 depictions of various stores and/or service as they
20 presently exist at the Miami Airport?

21 A Yes, sir.

22 Q. And I am just going to walk through them
23 real quickly if you don't mind me looking over your
24 shoulder just to put them on the record because the
25 record can't see the pictures

130

1 Correct me if I am wrong as I walk through
2 these. MJ12 is Cafe Versaille, MJ13 is Bacardi, MJ14
3 is?

4 A They are both the same--

5 Q. Eddy's ice cream. MJ15 shows Eddy's Ice
6 Cream as well, Hebrew National hot dogs. MJ16 is
7 duty free stop

8 MJ17 is TCBY and Cinnabon. MJ18 is Bacardi,
9 a Burger King and Frankly Gourmet. MJ19 is Sunglass
10 Hut. MJ20 is the company you mentioned before, Cafe
11 La Caretta?

12 A. Right

13 Q. MJ21 is basically a mall of shops, correct?

14 A Yes, sir.

15 Q. And the mall of shops includes Barber Beauty
16 and Nails, a Kleen cleaners--

17 A No, that's a shoe shine.

119

18 Q. I'm sorry, shoe cleaner?

19 A. And then the ice cream place.

20 Q. Yes.

21 A. You didn't mention this one.

22 Q MJ22 is a leather store?

23 A. Yes, sir.

24 MR. GOLDBERG: Showing his counsel where he
25 can go shopping.

131

1 Q. That leads me to the next question. There
2 is nothing that prevents Mr. Hope here or John Q
3 Public or anybody else from going into the Miami
4 International Airport to these mall of shops or any
5 of the other stores that we have depicted here in the
6 photographs, purchasing their product, using their
7 services and then leaving without taking a flight or
8 booking a flight or traveling anywhere?

9 A. Right.

10 MR HOPE: Objection to form

11 Q. There's no dispute about that, they can walk
12 in, do those things and walk out without traveling?

13 A. Yeah, if they want to.

14 Q. And there's also no dispute, although your
15 counsel is telling you not to answer certain
16 questions, but there is no dispute that you are
17 providing service to some or all of those shops or

120

18 those type of shops at the airport, correct?

19 MR. HOPE: Objection to form.

20 A. Yes, sir.

152

24 Q. So then you come down, this is for voice

25 line costs. What's voice line?

153

1 A. That's telephone services.

2 Q. Two way telecommunication service, correct?

3 A. Yes, sir.

4 Q. And you have a total equipment cost in

5 providing the voice line to your customers, correct,

6 is that correct?

7 A. Yes.

8 Q. You have an interest carrying cost, a

9 maintenance cost and then you add on profit, correct?

10 A. Yes, sir

11 Q. And you come up with a voice line charge per

12 month of 930, is that correct?

13 A. Yes, sir.

155

7 Q. Back on that page, network access cost,

8 directly below the local linecost of \$60,000 is an

9 entry of 15 percent profit, correct?

10 A. Yes, sir.

121

11 Q So MDAD adds 15 percent profit or in this
12 case \$25,000 figure to its cost for network access,
13 correct?

14 A Yes, sir

15 Q And that's over and above the number that's
16 been ascribed to local line cost, correct?

17 A Yes, sir

18 Q So wouldn't you conclude that the \$15,000
19 profit is a markup to the cost for network access?

20 MR. HOPE: Objection to form

21 A The \$15,000 profit?

22 Q Yes.

23 A Which \$15,000 are you referring to?

24 Q Sorry. Wouldn't you agree that the 15
25 percent profit is a markup to the cost depicted for

1 network access? 156

2 A Yes, sir 164

21 Q Essentially in this proposal it is fair to
22 say that there's a charge for everything that's
23 associated with providing telecommunications service
24 to your customers, correct?

25 MR. HOPE: Objection to form

1 A Yes, sir. 165

2 Q The bottom line is that your

3 telecommunications business has a goal of increasing
4 its profitability and making money for the county.
5 correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And so it behooves you and your entity to
9 charge the customers for all of your costs and
10 including marking up all of those costs to an
11 appropriate profit percentage, correct?

12 MR. HOPE: Objection to form.

13 Q. You can answer.

14 A. To what -- yes.

173

17 Q. Could you tell me when you look at this
18 document, MJ26, what is included in the 81.75 that's
19 being billed where it says "missed charge monthly
20 rental for telephone and maintenance"?

21 A. What's included in it, it's monthly rental
22 for the telephone and the hand set itself as well as
23 the maintenance that goes along with that to deal
24 with our customers if they have a problem. So that's
25 from the hand set to the port that leads back to the

174

1 PBX

2 Q. Is access billed in this invoice?

3 A. Access to?

123

4 Q Well, we have talked about network access,
5 talked about switch access. Are any charges included
6 on this invoice for those services?

7 A. I'm not sure. I would need to look at the
8 detail that may have come along with it.

9 Q. Let's try another example. Let me show you
10 what I will mark as MJ27.

11 (Invoice marked Exhibit MJ27 for
12 identification)

13 The first page of this document is another
14 invoice similar to MJ26, correct?

15 A. Yes, sir

16 Q. You want it take a look. This amount is for
17 \$85.75, correct?

18 A. Yes

19 Q. Dated July 1, 2002, correct?

20 A. The total amount is \$91. The first item you
21 are talking about?

22 Q. You are right.

23 A. 85.75.

24 Q. And the sales tax is 5.57 for a total of
25 91.32, correct?

175

1 A. Yes.

2 Q. And if you tum to the second page of this

124

3 composite exhibit. This a form that also is entitled
4 Miami-Dade Aviation Department standardized form Who
5 produces this form?

6 A. I believe it's-- I'm not sure. It either
7 comes from us or comes from Nextera. I believe it
8 comes from the department.

9 Q. From the department, aviation department?

10 A. Yes, sir.

11 Q. And you see that the amount on there the
12 total, 85.75, equals the first line item on the
13 previous invoice?

14 A. Yes, sir.

15 Q. And then if we go to the third document,
16 that is a contract invoice that has Nextera 1's logo
17 on there, that also is for rental monthly of 85 75,
18 the same amount that we have seen on the prior two
19 documents, correct?

20 A. Yes, sir.

21 Q. Does Nextera 1 complete or make this
22 document, the third page?

23 A. Yes.

24 Q. The 85 75 in this instance for this customer
25 during the month for service during the month of May

176

1 because it says billing period from 5/1 to 5/31/02.

125

2 is made up of these three line items, correct?

3 A. Yes, sir.

4 Q. Meridian 1 port, you had previously
5 testified that that was a line that went back into
6 the meridian box, correct, or that's actually a port
7 in the box?

8 A. Yes, sir, that was the statement I made.

9 Q. How many ports are in a meridian box?

10 A. I think 256 but I'm not sure I don't know.

11 Q. Not sure. All right. And here, they are
12 charging for four ports. What does that mean?

13 A. Four ports I believe would be four hand
14 sets. I'm not sure. Unless they are using-- well,
15 the four ports, they have four access ports that
16 could be used either one for fax, one for a phone,
17 two other ports for data if I'm not mistaken. I
18 would assume that to be that.

19 Q. Below it has single line access and I think
20 before you testified you don't know what single line
21 access means?

22 A. No, sir.

23 Q. Do you have an explanation why you would
24 need two single line access when you have four
25 meridian 1 ports?

177

1 A. No, sir.

126

2 Q. What's a 2500 set on the third line?

3 A. I believe that's a hand set but I'm not
4 sure. It's a telephone, I believe, but I'm not sure.

5 Q. So if there's four meridian 1 ports are we
6 saying according to your testimony here today that
7 there's four lines that have dial tone?

8 A. That is a possibility

9 Q. Do you know that for a fact?

10 A. For a hundred percent certain, no, I do not.

11 Q. Let me show you now what I'll mark as MJ28.

12 This is also a composite exhibit. And you correct me
13 if I am wrong but just for the record this a

14 Miami-Dade County Aviation Department STATS billing
15 form for the period dated March 29, '02, correct?

16 A. Yes.

17 Q. For a billing period of February 7 through
18 March 6 of '02, correct?

19 A. Yes, sir

20 (MDAD billing form marked Exhibit MJ 28 for
21 identification).

22 Q. The amount in total is \$689.59, correct?

23 A. Yes, sir.

24 Q. Let's go to the next sheet in that exhibit
25 This again is a Nextera 1 document, correct?

1 A. Yes, sir.

2 Q. And the coverage says "full serve." What
3 does full serve mean?

4 A. I'm assuming full service. I'm not sure
5 what definitions, the acronyms are.

6 Q. On this bill you are charging for 28
7 meridian 1 ports. How is that or why is that?

8 A. It depends on the customer and the
9 requirements of the customer I don't know unless I
10 know what the customer is and what they have asked
11 for.

12 Q. Then they are charged for advance features.
13 I want to talk to you about advance features, call
14 waiting, conference call. Is that something that
15 your telecommunications business provides as a
16 service to your customers?

17 MR. HOPE: Objection to form.

18 A. Yes, sir.

19 Q. And do you charge for each particular
20 feature that the customer orders?

21 A. Yes, sir.

22 Q. So there would be a charge for call waiting,
23 there would be a charge for conference calling, a
24 charge for call forwarding?

25 A. Sometimes they are bundled. Most of the

1 times they are individual items. They would be
2 billed as individual items. Also, including like
3 voice mail.

4 Q. And those are features or services that you
5 and only you, I mean MDAD and only MDAD, billed and
6 provided to your customers, correct?

7 MR. HOPE: Objection to form.

8 A. Yes.

9 Q. And you recognize that carrier such as
10 BellSouth or Worldcom or other telecommunication
11 companies also provide these features as well to
12 their customers, correct?

13 A. I know BellSouth does. I'm not sure if
14 Worldcom offers it.

15 Q. But at least BellSouth does, correct?

16 A. I use it at home.

17 Q. What's rotary system access?

18 A. I'm not sure.

19 Q. What are the items depicted as M208HFD and
20 M208B and M208D on this document?

21 A. They are products. I would have to look
22 into our inventory and what we have to tell you
23 exactly what those individual items are.

24 Q. Your telecommunications company also has and

25 offers voice mail to your customers, correct?

180

1 MR. HOPE: Objection to form.

2 A. Yes, sir.

3 Q. And that's depicted on this bill as well,

4 correct?

5 A. Yes, sir.

6 Q. That's a service that other companies such

7 as BellSouth provide to its customers, correct?

8 A. Yes, sir.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

23 Q And let's talk about those entities that are
24 not really associated with the airport. Would those
25 entities be entities such as a hotel, concession stands,

34

1 shopping mall, ice cream shops, pizza places, and the
2 like? Would you agree with that?

3 A Yes.

4 Q So if the Miami-Dade County Airport has not
5 partitioned its trunks and is providing
6 telecommunications service to entities such as a hotel,
7 concession stands, pizza places, and the like, would you
8 agree that there's no dispute under the law that they
9 need to apply for a certificate with the PSC?

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10 A I would agree with that.

11 Q And that in fact in that scenario, the act of
12 applying for a certificate is mandated by law?

13 A Yes.

38

15 Q Let me direct your attention back to PSC-5, the
16 customer list that you received from Miami-Dade County
17 Airport as of February 2003. Based on the customer list
18 that you reviewed, and assuming no partitioning of the
19 switch, as you've referred to it here, would Miami-Dade
20 County need to apply for certification as an STS
21 provider?

22 MR. HOPE: Objection to the form.

23 A Yes.

24 Q And can you explain that answer, please?

25 A Under the title "Concession/Others," the

39

1 companies that are listed underneath there, in my
2 opinion, would not be necessary for the safe passage of
3 passengers through the terminal, so it would lay outside
4 of the exemption if they have not partitioned their
5 switch. And the same would hold true for management
6 companies.

7 Q If I could ask you to go back for a minute to
8 PSC-7, which is a composite exhibit of notes and the
9 application, and go again to page 17, I would appreciate
10 that. I'm sorry to have you jump back and forth.

11 A Okay.

12 Q In the middle of the page, the notes written by
13 an individual at the County says, "If MIA is going to
14 provide service not related to public transportation

15 (hotels, shops, et cetera) we need to file an
16 application." Is that language consistent with your
17 testimony that you've given here today?

18 A If they don't partition their switch to those
19 entities, yes, it would be.

20 Q Whether or not an STS provider partitions their
21 trunks, or switch, partitions their switch, as you've
22 used, or did not partition the switch, are they still a
23 telecommunications provider or company under Florida
24 law?

25 A Yes.

Plaintiff further directs Defendant to the following documents which also contain facts responsive to this interrogatory

See the County's Answers to Interrogatories dated March 1, 2004.

See List of "STS Customers" provided by Pedro Garcia to Rick Moses of the PSC.

See List of "STS Customers" attached to the contract with NextiraOne attached as Exhibit C to the Second Amended Complaint.

Additionally, BellSouth directs Defendant to the Affidavit of Maurice Jenkins dated July 29, 2003. In paragraph 11 of the affidavit, Mr. Jenkins stated, "In light of the impending deadline for renewal of the Equipment and Services Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided [sic] exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network and CUTE infrastructure, software, licenses, permits and other assets (collectively the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively the "Services") In paragraph 18 of the affidavit, Mr. Jenkins states, "Neither the County nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services " In paragraph 20, Mr. Jenkins further states, "Prior to the sale of the Assets, Nextira provided STS services at MIA without a FPSC certificate."

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 9:

Please state all facts which support your allegations in Paragraph 24 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004
Richard Moses was deposed on October 5, 2004.
A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.
George Hill was deposed on December 3, 2004.
Nancy Sims was deposed on December 2, 2004 and December 3, 2004.
Maria Johnston was deposed on February 2, 2005.
Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On May 21, 2003, Pedro Garcia was deposed. Mr. Garcia testified that he was the Chief of Telecommunications for the Miami-Dade Aviation Department. Mr. Garcia was the designated corporate representative for the Defendant for the purpose of that deposition. Mr. Garcia testified as follows on that date:

12

5 Q. All right. Is there some kind of
6 requirement that you're aware that the County --

7 and I'll use the County or that MDAD have some sort
8 of authorization from the Florida Public Service
9 Commission to provide telecommunications services
10 to people at the airport?

11 A. There is no explicit authorization that
12 was given from the P.S.C. to the County to provide
13 that service. However, we have interpreted the
14 P.S.C. rulings -- I mean the Florida Statutes that
15 pertain to this area to mean that the airport has a
16 right to provide STS services without any
17 authorization.

18 Q. So I guess the answer to my question,
19 let me see if I understand your answer, is that the
20 County has decided that they don't need
21 authorization from the P.S.C. --

23 Q. -- is that correct?

24 A. The County has interpreted the Florida
25 Statutes as they pertain to this area to mean that

13

1 the airports are exempt from any explicit
2 authorization to perform STS services.

3 Q. What does STS mean?

4 A. It means Shared Tenant Services.

5 Q. What does that mean?

6 A. Which means that provisioning of
7 services -- of telecommunications services to
8 tenants of the airport.

9 Q. So STS is Shared Tenant Services?

10 A. Shared Tenant Services.

11 Q. All right. So back to my question.

12 Has the County interpreted the Florida

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13 law to mean that it does not need explicit
14 authorization from P.S.C.?

15 A. Yes, sir.

16 Q. Who, to your knowledge, has made that
17 determination?

18 A. It was made by the gentleman sitting on
19 my left.

20 Q. The counsel?

21 A. The counsel and basically all the
22 management, Maurice Jenkins and the management of
23 the airport and myself.

17

3 Q. Has your department had any
4 communications with the Public Service Commission
5 about the requirement or nonrequirement of
6 receiving authorization from the Public Service
7 Commission to provide such services?

8 A. We had some communication in the sense
9 of we started the process to obtain an STS license
10 from the Public Service Commission on behalf of the
11 airport to provide those services and then the
12 process was never completed.

13 (Plaintiff's Exhibit 2 was marked for
14 identification.)

15 BY MR. BLOOMBERG:

16 Q. Let me show you what's been marked as
17 Plaintiff's Exhibit No. 2 for the purposes of the
18 deposition and ask if you recognize that document.

19 A. Yes.

20 Q. What is it, please?

21 A. This is a -- seems to be a list of the
22 tenants at the airport that we provide services
23 to --

24 Q. Okay. And --

25 A. -- telecommunications services or either

18

1 voice or data or both.

2 Q. And it's attached to an e-mail what
3 appears to be an e-mail from Pedro Garcia to
4 rmoses@psc.state.fl.us; correct?

5 A. Yes.

6 Q. Did you prepare that list?

7 A. This is a form that we keep. Obviously
8 we need to know who our customers are, and there
9 was a request by Mr. Moses to comply with.

10 Q. And you responded to Mr. Moses?

11 A. We responded.

12 (Plaintiff's Exhibit 3 was marked for
13 identification.)

14 BY MR. BLOOMBERG:

15 Q. And the request, if you take a look at
16 Exhibit 3, ask you first tell me whether you
17 recognize Exhibit 3.

18 A. Okay.

19 Q. Do you recognize Exhibit 3?

20 A. Yes.

21 Q. Is Exhibit 3 Mr. Moses' request for that
22 information, a customer list?

23 A. Yes, I believe this was the -- yes, this
24 was a request they sent us.

25 Q. All right. Now Mr. Moses' request,

1 Exhibit 3, the second paragraph of the request,
2 Mr. Moses' e-mail says therefore, any services
3 provided to entities such as concessions stands,
4 restaurants or hotels would be outside of the
5 exemption, and certification would be required
6 before telephone service can be provided.

7 Do you see that?

8 A. Yes.

9 Q. If you look at Exhibit 2, are there any
10 concessions stands to whom the County provides
11 telephone services or offers telephone services?

12 A. Yes, there's some -- there seems to be
13 some concessions here.

14 Q. Okay. Cafe Versailles, the ice cream
15 place --

16 A. Cafe Versailles, Duty-Free, et cetera.

17 Q. Those would clearly not be airlines?

18 A. That's right.

19 Q. Did you have a discussion with Mr. Moses
20 at any time or anybody with the P.S.C. concerning
21 the P.S.C.'s position that concessions stands,
22 restaurants, hotels would need your certification
23 before you could provide telecommunications
24 services to those entities?

25 A. No, we did not.

1 Q. You just felt he was wrong?

2 A. No. He requested from us a list of
3 entities, and we provided that.

4 Q. These two e-mails, was that the sum and

5 substance of the communication?

6 A. As far as I remember, that was it.

7 Q. And you mentioned the process of
8 applying. Was that before or after these e-mails?

9 A. This was, like, two years ago. It was
10 at the beginning when I started working for the
11 aviation department.

12 Q. Were you personally involved in any
13 discussions concerning whether or not there was a
14 certification requirement from the P.S.C.?

15 A. Yes, we had conversations, Maurice
16 Jenkins and counsel and other people.

17 Q. And you were involved in some of those
18 conversations?

19 A. Yes.

20 Q. Do you agree or do you disagree with
21 Mr. Moses' statement in his e-mail that services
22 provided to entities such as concessions stands,
23 restaurants or hotels would be outside of the
24 exemption, and certification would be required?

25 A. I think this is a -- I read the Florida

21

1 Statutes, and this is an interpretation of
2 Mr. Moses as to the Florida Statute intent, and I
3 respect his opinion, but it's not what the Florida
4 Statutes verbatim, what it says.

5 Q. Have you had the opportunity to review
6 and read at any time the Florida Administrative
7 Code?

8 A. I'm not sure about that name. I
9 don't -- it doesn't ring a bell to me.

10 Q. Let's mark that as Exhibit 4, please.
11 (Plaintiff's Exhibit 4 was marked for
12 identification.)

13 BY MR BLOOMBERG:

14 Q. Let me show you what's been marked as
15 Plaintiff's Exhibit No. 4 for the purposes of the
16 deposition which is a copy of the Florida
17 Administrative Code, Annotated, Chapter 25-24 and
18 ask have you ever seen that before?

19 A. Yes, sir.

20 Q. Is that one of the things you looked at?

21 A. Yes.

22 Q. And do you have any training as a
23 lawyer?

24 A. Any what?

25 Q. Training as a lawyer.

22

1 A. No, sir.

2 Q. Now, the first sentence of this
3 regulation says that airports are -- essentially
4 I'm paraphrasing -- airports are exempt from other
5 STS rules due to the necessity to ensure safe and
6 effective transportation of passengers and freight;
7 fair paraphrase?

8 A. Yes.

9 Q. The second sentence says the airport
10 shall obtain a certificate as a shared tenant
11 service provider before it provides shared local
12 services to facilities such as hotels, shopping
13 malls and industrial parks.

14 Do you see that?

15 A. Yes, I see it.

16 Q. And are you providing facilities, shared
17 local services to facilities such as hotels, shops
18 and so forth?

19 A. We're not providing service to any
20 shopping malls.

21 Q. Hotels?

22 A. We're providing service to hotels --
23 there's a management company that manages the hotel
24 and it's a pass-through situation. We're not
25 making any profit from that.

23

1 Q. So is that why you determined you don't
2 need a certificate?

3 A. It was determined that we didn't need a
4 certificate based on the overall interpretation of
5 this paragraph. We're now providing services
6 within the airport. We're not going outside to
7 shopping malls or to outside hotels or any outside
8 the airport property, which belongs to Miami-Dade
9 County.

10 Q. And the hotel belongs to whom?

11 A. The hotel building belongs to Miami-Dade
12 County, and we have a management company managing
13 the operation.

14 Q. You mentioned that you started the
15 process of applying for a certificate at some
16 point?

17 A. Yes, sir.

18 Q. Who decided to apply? Who decided you
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the
24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

24

1 That was three years ago.

2 They owned all the telephone switches,
3 the wiring, the network equipment. They owned
4 everything and we were basically leasing from them
5 that equipment and we were paying them as customers
6 before the service provision to everybody in the
7 airport, both STS customers and Miami-Dade Aviation
8 Department staff.

9 So as of February of 2002 we concluded
10 negotiations with them to purchase all of that from
11 them and then at that point we became owners of the
12 equipment and, therefore, we were actually the
13 service providers from that point on. Before that
14 it was them. So that at the time it was considered
15 that -- perhaps it was explored and, you know,
16 whether we should get a license or not for STS
17 provisioning and so forth.

18 Q. So as I understand it, before the sale,
19 the Nextira sale, the decision was that Nextira
20 was -- actually the County's perspective was that
21 Nextira was the service provider?

22 A. Not from the County's perspective. It
23 was the service provider.

24 Q. So therefore, you did not need a
25

1 certificate?

2 A. We were not providing the services.

3 Q. Now the County is providing the
4 services; is that correct?

5 A. Now the County, yes, is providing the
6 equipment. We own the equipment.

7 Q. You own the equipment and Nextira is a
8 subcontractor?

9 A. Is a subcontractor.

10 Q. Is it still your position now that the
11 County does not need a certificate?

12 A. It was -- the position of the Miami-Dade
13 Aviation Department at this time is that the
14 airport is exempt from obtaining a certificate.

15 Q. All aspects, regardless of who the
16 end-user is, the airport is exempt from obtaining a
17 certificate; is that correct?

18 MR. HOPE: Objection to form.

19 A. It's exempt because the tenants are
20 located in the airport property and the airport
21 belongs to Miami-Dade County. We're not going
22 outside those boundaries.

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6 Q. And Page 17, whose handwriting is that?

7 A. That's mine.

8 Q. All right. And that's dated 10/26/01?

9 A. Um-hum.

10 Q. What are those notes of?

11 A. These are -- these are my notes. Looks
12 like putting down a conversation that I had with

13 some gentleman that the name's above.

14 Q. And I guess the paragraph below the
15 names, does that paragraph recognize distinction
16 between public transportation and hotels and shops,
17 et cetera? What was the purpose of putting that
18 document --

19 A. This is what this -- one of these people
20 that I spoke to, and I don't know what their titles
21 are or what their -- you know, whether they have
22 the authority to interpret, but this is what they
23 told me as far as the subject matter.

24 Q. The third name is that fella Moses who
25 the e-mail is from?

35

1 A. Yes.

2 Q. And you wrote down MIA is going to
3 provide service not related to public
4 transportation (hotels, shops, et cetera). We need
5 to file applications.

6 A. Obviously somebody -- one of these three
7 people made that statement and I wrote it down.

8 Q. Right. You wrote it down and that's
9 consistent with, as you understand, at least the
10 language of the Florida Statute?

11 A. Not necessarily.

12 Q. Okay.

13 A. Again, we're interpreting it -- if it's
14 not in the -- in the airport -- outside the airport
15 property, you can have a hotel half a block away or
16 a shopping mall half a block away. That's what the
17 interpretation is that we have given this.

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15 Q. The department actually filled out the
16 application?

17 A. We filled out -- it seems to be the
18 typed version. Without reading every page, I can't
19 tell you. But yes, we did type out the
20 application. It was an attempt to file the
21 application.

22 Q. But never filed it?

23 A. Right.

24 Q. Was there somebody within the department
25 or somewhere else within the County, to your

37

1 knowledge, who made the ultimate decision that said
2 we are not filing this application? And if it was,
3 who was it?

4 A. The decision was made not to file it? I
5 don't know exactly who -- whose decision was it.
6 It was communicated to me that we're not filing it
7 or the airport wasn't filing it, and that was the
8 extent of that.

9 Q. Who communicated that to you?

10 A. I don't recall who communicated it to
11 me.

12 Q. During the process in which there were
13 discussions about whether or not to file the
14 application, who did you talk to about that subject
15 matter?

16 A. I talked to my boss Maurice Jenkins, I
17 talked to counsel, I talked to -- you mean as far
18 as within the airport department?

19 Q. Right, within the decision-making group.

20 A. I think that's basically it, as far as
21 me up. From me down it's -- you know, I discussed
22 it with the person that filled out the draft. But
23 basically it was just a discussion with my boss and
24 counsel.

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5 Q. Before I go to the document, was there a
6 vote of the electors of Dade County taken to
7 approve or to allow MDAD to engage in this
8 telecommunications business at the airport?

9 A. Not to my knowledge.

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9 Q. Page 29, No. 4, the contractor shall
10 submit a proposed tariff schedule for all SATS.

11 To whom was the contractor supposed to
12 submit a proposed tariff schedule?

13 A. To MDAD, to the County.

14 Q. And what was that tariff schedule
15 supposed to reflect?

16 A. It should reflect the prices for the
17 services that they were going to charge the
18 customers.

19 Q. And why do you use the word tariff?

20 A. Tariff in the telecommunications
21 business is basically a price list.

22 Q. A term of art in the business; is that a
23 fair statement?

24 A. Yeah, it's a term used in the business
25 for telecommunications prices. In reality, legally

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1 it probably means something approved by the P.S.C.
2 and so forth. But in this case, it was just meant
3 to be a price list Page 49 refers to personnel.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

41

4 Q. Are there any other STS providers at the
5 airport, other than the County?

6 A. No.

45

1 Q. So the County-provided dial tone for a
2 person who wants to make a local call is
3 significant, in fact absolutely needed, for the
4 making of that local call because they need to hit
5 9, correct?

7 THE WITNESS: Yes.

8 Q. Once that customer hits 9, are you saying
9 -- are the dial tones then -- is the County-provided
10 dial tone replaced?

11 A. The second dial tone is an indication of
12 the PBX has interpreted an answer back from the
13 BellSouth central office that indeed they are ready
14 to receive digits. So it sends an indication to the
15 telephone that you can dial now; we are ready to
16 establish the communication.

17 Q. So you would agree with me, without the
18 County-provided -- you would agree with me that the
19 County-provided dial tone is part and parcel of the
20 service that is needed to make a local call from the

21 airport.

23 Q. Correct?

24 A. The dial tone that is provided to the
25 customer is part of the connection process to make a

1 call. 46

2 Q. A local call?

3 A. Yes, yes. 71

3 A. There is only one -- there is a hotel at
4 the airport. And the trunks for that hotel, they
5 are partitioned in the PBX to be separate. In other
6 words, they have their own trunk groups. They
7 actually get the service from AT&T instead of
8 BellSouth, and they cannot call -- they cannot dial
9 four digits and call anybody else at the airport.

10 Q. I have to ask you a number of questions
11 about that to see if I understand it all. Okay?
12 Let me just start from the beginning. What hotel
13 are you referring to?

14 A. The Miami International Airport Hotel,
15 which is located inside the airport.

16 Q. And the Miami International Airport Hotel
17 is an MDAD customer?

18 A. The Miami International Hotel is owned by
19 the County, and is operated by a management company.

20 Q. Is it serviced by MDAD?

21 A. We provide them the telephone service with
22 partition trunks, and they own the instruments in
23 the rooms.

24 Q. You say you provide the telephone service

25 with partition trunks. First let me ask you, you

72

1 mentioned that the County owns two PBX's.

2 A. Yes.

3 Q. Is there one PBX for the airport and
4 another PBX for everybody else?

5 A. No. They are interlaced for disaster
6 recovery purposes, so we don't lose one and
7 everybody else is out of service.

8 Q. Does the County own two PBX's just because
9 of size and volume?

10 A. Size and redundancy.

11 Q. What is redundancy?

12 A. You know, like if one fails, you have
13 another.

14 Q. But if MDAD had a smaller operation, is
15 it fair to say they could just use one?

16 MR. HOPE: Objection to form.

17 Q. One PBX?

18 A. Probably not. We would probably still
19 remain like this because we like to have redundancy.

20 Q. Now, the Miami Hotel, how is that -- you
21 say -- when you use the word partition trunks, what
22 exactly do you mean from a technical perspective as
23 it relates to that hotel?

24 A. It means two things. It means that
25 everybody else that is getting telephone

73

1 connectivity through our PBX, when they go out to
2 the world, to a local call, to the rest -- to the
3 public network, they go into these ten T1's that I

4 explained before that Southern Bell provides, or
5 BellSouth. I am showing my age here.

6 So the hotel is -- their calls go out
7 through a separate trunk group that also terminates
8 in the PBX, which was contracted by them separately,
9 and they are provided by AT&T. That is with their
10 local calls, and their long-distance calls go out
11 through those separate trunks.

12 Also, what it means, partition, is they
13 cannot dial four digits and talk to any of the other
14 customers connected to the MDAD-owned PBX, the
15 County-owned PBX.

16 Q. In that type of situation where you say
17 those trunks have been partitioned, it only relates
18 to the Miami International Airport Hotel that you
19 spoke about. Is that correct?

20 A. Yes, yes.

21 Q. For every other MDAD customer, is there
22 any partitioning of the trunks in any manner, shape
23 or form?

24 A. No.

Mr. Garcia was deposed for a third time on December 15, 2004. Again, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issue addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

17
25 Q If you could, Mr. Garcia, I'd like you

18
1 to outline for the Court in this case, or any
2 other third party or entity that views this
3 videotape or reads this deposition, each and
4 every reason why the County has not applied for a

5 certificate of public convenience and necessity
6 from the Florida Public Service Commission.

7 A To the best of my recollection, what
8 took place three or four years ago was that the
9 question came up about the whole certificate
10 issue, and I remember myself reading the Florida
11 statutes regarding the airport section to shared
12 tenant services, we talked to the -- our
13 counterparts at the Orlando airport --
14 International Airport in Florida, and basically
15 based on -- I also looked through the application
16 that -- to apply for the certificate, just to see
17 what kind of questions were needed to be answered
18 to apply to that certificate, and basically based
19 on those two inputs, basically the documents that
20 we read from the PSC and the information we
21 obtained from Orlando airport, it was deemed that
22 there was really no need for the airport to apply
23 for the certificate, because of the exception
24 that is granted by the PSC according to those two
25 inputs.

19

1 Q Now in your answer you I believe told
2 me a little bit about the process or, you know,
3 the circumstances involved in making this
4 decision, and I will get to that later.

5 My question was, I'd like you to list
6 for me, first, second, third, what the reasons
7 were why the County decided not to file an
8 application for certificate of public convenience
9 and necessity from the Public Service Commission.

16 conversations with the Orlando airport?

17 A Right.

18 Q Are there any other reasons, factual or
19 otherwise, that were considered in making the
20 County's decision not to apply for a certificate
21 from the PSC?

22 A Not to my knowledge.

21

15 Q When was this decision made not to
16 apply for a certificate from the PSC?

17 A I can't recall a specific date. Like I
18 said, we were -- there was some investigation
19 done regarding these two issues that I mentioned
20 before, the Orlando and the reviewing of the PSC
21 documents, and at some point the issue just died.

22 It was no, not really -- there was no
23 meetings, there was no formal decision, there was
24 no letter, there was no memo, it was just not --
25 we went on to other things and didn't pursue the

22

1 matter.

26

16 Q Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q Well, then let me ask you in a more 27

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the 28
1 decision not to file?

3 THE WITNESS: Right.

32

3 Q You'd agree with me that whether or not

4 the County complies with Florida statutes as it
5 relates to the PSC or the Florida Public Service
6 Commission's rules and regulations is a pretty
7 important and serious issue, correct?

8 A Yes.

9 Q And you'd agree that the County would
10 seemingly want to endeavor to ensure to the best
11 of its ability to analyze and make every effort
12 to comply with any obligations that may exist?

14 BY MR. GOLDBERG:

15 Q Do you agree with that?

16 A Yes.

17 Q So then can you explain to me why the
18 decision as to whether or not to apply to the PSC
19 for a certificate was -- did not involve a formal
20 process and was simply a couple of people getting
21 together and looking at some documents in a very
22 short period of time and, as you've testified,
23 just sort of being dropped and never followed up
24 on?

32

1 THE WITNESS: Can I explain why that
2 happened? No.

3 BY MR. GOLDBERG:

4 Q Do you think, looking back, that it was
5 an appropriate manner in which to make the decision?

7 THE WITNESS: The decision was made
8 by the parties that had the most
9 knowledge on the subject matter, based on
10 information received and documents and

11 discussing with Orlando, like I said, and
12 I think it was a good decision based on
13 fact. And that's all I can say.

14 I don't, you know, I don't know how
15 much of a process that would have been
16 appropriate, but we felt that we -- that
17 the decision was made with the right
18 facts and in the best interests of the County.

35

5 Q Prior to this decision being made,
6 other than reading the airport exemption rule,
7 can you tell me what other experience you've had
8 in working with that rule or analyzing that rule
9 or applying that rule?

10 A None.

11 Q Prior to this decision being made in
12 2002 by the County can you tell me whether
13 Mr. Jenkins had any prior experience with the
14 airport exemption rule or worked with that rule
15 or applied it in any manner, shape or form?

16 A I cannot answer that. I don't know.

17 Q Are you aware of any experience he had
18 with that rule?

19 THE WITNESS: I don't -- I'm not
20 aware of it, but I don't know.

21 BY MR. GOLDBERG:

22 Q Other than reading the text of the
23 airport exemption rule, were you aware then of
24 any other legal or factual authority that
25

36

1 supported your interpretation of the airport

2 exemption rule?

3 A Well, Orlando Airport provided
4 information, because I believe they were involved
5 in a legal process with the Public Service
6 Commission, and we had discussions and they
7 provided opinions regarding our situation based
8 on their own experiences.

9 Q Other than the Orlando Airport
10 discussion, which we'll talk about later, is
11 there any other legal, factual or other authority
12 that supported your interpretation of the airport
13 exemption rule, leading you not to file an
14 application for a certificate?

15 A No.

16 Q Since the time of making that decision
17 have you been made aware or are you knowledgeable
18 about any legal, factual or other authority that
19 supports the County's decision not to file an
20 application for a certificate with the PSC?

21 A Not any -- no, I'm not aware of any new
22 information since that time. I have not reviewed
23 that subject matter.

24 Q Prior to the decision being made as to
25 whether or not the County should file an

37

1 application for a certificate, did the County
2 receive any legal opinion to support your
3 position or decision not to file?

4 A You mean from outside, other than the
5 counsel present?

6 Q Any legal opinions.

7 A I really can't say whether the County
8 received any legal opinion from counsel, because
9 he might have said something when I wasn't
10 present.

11 But we didn't receive any opinions from
12 anybody outside, other than the -- our counsel.

13 Q Since the time the decision was made
14 not to file an application in 2002, has the
15 County received any legal opinion that you're
16 aware of that supports that decision?

17 A Not to my knowledge.

21 Q Prior to the time the County's decision
22 was made not to file an application with the PSC
23 in 2002, did the County make any attempts to
24 contact the Public Service Commission to review
25 whether or not the PSC believed that the County

1 needed to file a certificate? 38

2 A Not to my knowledge.

3 Q Since the time the decision was made by
4 the County in 2002 not to file an application for
5 a certificate with the PSC, has the County in any
6 manner, shape or form made an effort to contact
7 the PSC to revisit or review that prior decision?

8 A I believe there has been one contact
9 made by my boss, perhaps, to some member of the
10 PSC. Maybe they exchanged some e-mails, one
11 e-mail. It wasn't a formal -- there was a
12 contact, it wasn't a formal thing.

13 But I never saw the, I never saw the
14 documentation or the e-mails.

15 Q Going back to two questions ago, just
16 to make sure the record is clear, did you --
17 strike that -- were you involved in any
18 communications with the PSC regarding whether to
19 file an application for a certificate, either
20 before the decision was made not to file or after
21 the decision was made not to file?

22 A No.

23 Q Has the County filed any application
24 with the Florida Public Service Commission for
25 the provision of any telephone service at the

39

1 Miami International Airport or any other airports
2 here in Miami-Dade County?

3 A Not to my knowledge.

13 When we have been speaking about the
14 County's decision not to file a certificate with
15 the PSC, I want to make sure the record is clear
16 that that decision was made by the County and not
17 by, or affected by any other third party such as
18 Nextira or any other entity?

19 A Oh, no, it was definitely only the
20 County making that decision.

21 Q And at that time in 2002 would you
22 agree with me that it was the County's
23 responsibility to make that decision as to
24 whether or not to file or not file?

25 A Yes.

45

2 You would agree with me, would you not,
3 that the language of the rule that says

4 facilities such as hotels, shopping malls and
5 industrial parks is non-limiting, meaning that
6 hotels, shopping malls and industrial parks are
7 just examples of, quote unquote, these facilities?

9 THE WITNESS: No, I don't agree with
10 you, because the "however" right after
11 that statement qualifies that statement
12 that you just read, so you cannot take it
13 on its own merit because the next
14 sentence qualifies that statement.

15 BY MR. GOLDBERG:

16 Q So when you made the decision --

17 A Excuse me. Go ahead.

18 Q Just so I understand you, is it your
19 testimony that when the County made the decision
20 not to apply for a certificate to the PSC, that
21 it read this sentence as only pertaining to
22 hotels, shopping malls and industrial parks, and
23 no other type of facility or commercial entity
24 like that?

46

1 THE WITNESS: We read the statement
2 that if we -- since we did not provide
3 service to shopping malls and industrial
4 parks, but we did provide to a hotel with
5 partition trunks, we met the requirements
6 of this paragraph.

9 In the discussion that you had with
10 Mr. Jenkins leading to this decision, you only
11 considered hotels, shopping malls and industrial
12 parks, and gave no thought or weight to whether

13 or not the County was providing telephone service
14 to any other, quote unquote, facility, is that
15 correct?

17 THE WITNESS: We gave consideration
18 to the three items that are mentioned in
19 this paragraph.

21 BY MR. GOLDBERG:

22 Q And no others, is that correct?

23 A Correct.

50

19 Q So when you're referring to a shopping
20 mall and you read that word in the airport
21 exemption rule, is it not correct that you're --
22 would view that as providing telephone service to
23 the stores that make up the mall?

25 THE WITNESS: To the stores that

51

1 are -- make up the shopping mall, yes

2 BY MR. GOLDBERG:

3 Q Okay, because you'd agree with me it's
4 hard to provide telephone service to this entity,
5 this, quote unquote, mall?

6 A Correct, I agree, the mall is not an
7 entity, it's the stores that provide inside the
8 mall.

9 Q What kind of stores would you generally
10 find in a shopping mall?

12 THE WITNESS: Basically a mall is
13 all kinds of stores, from clothing to
14 kitchen, linens and things, basically
15 that sells all kinds of items that people
16 from all over the place come just to shop

17 there

18 BY MR. GOLDBERG:

19 Q Do you have -- would you agree with me
20 that those stores would include restaurants?

21 A Yes, malls have restaurants, yes.

22 Q And would you agree with me that malls
23 sometimes have bars?

24 A They have bars.

25 Q And that malls sometimes have stores

1 that sell clothes?

52

2 A Yes.

53

9 A My testimony is that MIA does not have
10 a shopping mall inside the airport.

11 Q Does it have shops inside the airport?

12 A Yes, it does.

13 Q Does it have restaurants inside the
14 airport?

15 A Yes, it does.

16 Q Does it have clothing stores inside the
17 airport?

18 A Yes, it does.

19 Q Does it have bars inside the airport?

20 A Yes, it does.

21 Q But it's your testimony that those
22 shops don't make up a shopping mall inside the
23 airport?

24 A The inter -- correct, the
25 interpretation was that a shopping mall is where

54

1 people from outside just go there shopping.

2 The people that go at the airport, they
3 go -- most of the things that are sold are for
4 the convenience of passengers traveling through
5 the airport, and the people that go shop there
6 are because they're involved in traveling, not --
7 they don't come from the outside to shop there.

8 Q And is it, along those lines, are you
9 interpreting shopping malls and did you interpret
10 the words shopping malls back in 2002 as being
11 something like the Dadeland Mall in South Miami
12 or Aventura Mall in North Miami or the Sawgrass
13 Mills Mall in Sawgrass?

14 A Any other mall where people go
15 shopping, yes, those and any other kind of mall
16 where people go just there to shop.

17 Q Can you give me any examples of an
18 airport at any place in this country which
19 provides telephone service to a mall as you've
20 defined it, such as, you know, Dadeland or
21 Sawgrass or Aventura?

22 A No, I can't.

56

13 Q When you read the term industrial parks
14 back in 2002 during this decision-making process,
15 what was your interpretation of what industrial
16 parks meant?

17 A Industrial park, the way I would
18 interpret it is it's a conglomeration of
19 warehouses, office buildings with different
20 companies residing in there renting space and --

21 or owning space, and conducting all kinds of
22 different businesses.

23 In other words mostly not condominiums
24 or people living there, but just basically a
25 place to conduct businesses of different types.

57

12 Q Were there any offices or office -- any
13 commercial offices at the Miami International
14 Airport?

16 THE WITNESS: There were offices,
17 commercial offices dedicated to, related
18 to the airport business and the
19 conduction of moving passengers and cargo
20 at the airport.

21 BY MR. GOLDBERG:

22 Q Were there any warehouses at the Miami
23 International Airport?

24 A There are warehouses, again dedicated
25 to the aviation industry, passengers and cargo.

58

1 Q Did the County at that time the
2 decision was made provide telephone service to
3 any of these offices, or warehouses, or what
4 you've termed or interpreted as an industrial
5 park?

6 A The decision that was made was related
7 to providing services to any companies providing
8 activities related to the moving of passengers or
9 cargo at the airport.

10 And to my knowledge there was no

11 businesses residing at the airport facility that
12 did not have something to do with the moving of
13 passengers or cargo at the airport.

14 Q Why do you relate the provision of
15 service to an industrial park to your comments
16 about the safe and efficient transportation of
17 passengers through the airport facility?

18 A The, the definition an industrial park
19 is the conglomeration of businesses, warehouses,
20 factories, what have you, that do not have a
21 common goal, they have different activities for
22 different purposes.

23 At the airport the businesses that
24 reside there are all oriented towards the moving
25 of passengers or cargo through the airport, and

1 that is a big difference. 59

2 Q Where in the sentence where it says:
3 "The airport shall obtain a certificate as a
4 shared tenant service provider before it provides
5 shared local services to facilities such as
6 hotels, shopping malls and industrial parks."
7 where does it state or relate anything having to
8 do with the safe and efficient transportation of
9 passengers through the airport?

11 THE WITNESS: It was taken from the
12 first sentence in that paragraph.

13 BY MR. GOLDBERG:

14 Q Does the second sentence -- is the
15 second sentence conditioned on the first sentence?

16 Or wouldn't you agree with me that the

17 second sentence is an exception to the first
18 sentence?

20 THE WITNESS: No, I - we
21 interpreted that first sentence to be
22 all-encompassing, as long as you are
23 dealing with the safe and, safe and
24 efficient transportation of passengers
25 and freight through the airport

60

1 facilities, that that would entitle the
2 airport to be exempt from the certificate.

3 BY MR. GOLDBERG:

4 Q If that were the case, what would be
5 the need for the second sentence or the third
6 sentence at all?

7 A I can't answer that.

17 Q Going back to the third sentence,
18 however -- it says: "However, if the airport
19 partitions its trunk, it shall be exempt from
20 other STS rules for service provided only to the
21 airport facility."

22 How was that sentence taken into
23 consideration in making your decision to not file
24 a certificate with the PSC in 2002?

25 A As I explained before, we were

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1 providing services to a hotel, and we had the
2 trunks partitioned, therefore, we don't have
3 to -- we're exempt from the STS rules as far as
4 getting a certificate.

5 That's the way it was interpreted.

6 Q Is it your interpretation that the

7 third sentence relieves the County, just relating
8 to the hotel for a second, relieves the County
9 from applying for a certificate if it partitions
10 its trunks to the hotel?

11 A Yes.

62

14 of you, Cert-4, the airport exemption rule, I
15 just want to make sure the record is clear, are
16 you saying this isn't the entire airport
17 exemption rule that you've testified about?

18 A No, I'm saying that the document to my
19 recollection, it's -- there's a lot more in that
20 document, the PSC document, than just this
21 paragraph.

22 It might have another title, but it
23 goes obviously --

24 Q Would you agree -- I'm sorry, go ahead.

25 A It has to be more, because the word

63

1 certificate, I don't believe it's mentioned here.

2 Is the word certificate in this
3 paragraph?

4 Q No, it isn't, that's my --

5 A There has to be some more to it than
6 that.

7 Q Is there anywhere in this paragraph,
8 this airport exemption rule, which says that an
9 airport is exempt from filing a certificate?

10 A If you put it in those words, those
11 words are not in this paragraph.

12 Q Okay, quite to the contrary, you'd

13 agree with me that it says the airport shall
14 obtain the certificate, there's an affirmative
15 obligation, correct?

16 A No, it doesn't say that, because it
17 qualifies that statement in the next sentence.

18 Q In the last sentence?

19 A In the "however," and beyond.

20 Q Where in the text of the last sentence
21 does it say that, however, if an airport
22 partitions its trunk it shall be exempt from the
23 obligation to get a certificate or apply for a
24 certificate?

25 A The word certificate is not there. But

64

1 it says it's exempt from the other STS rules for
2 service.

3 Q And how do you interpret other STS
4 rules? What does other leave out, in other words?

5 A It was interpreted --

7 THE WITNESS: It was interpreted to
8 be the need to get a certificate.

65

8 Q Okay, let me refer you to paragraph 1
9 where it says: "An applicant desiring to provide
10 shared tenant service shall" -- I want to
11 emphasize the word shall -- "submit an
12 application on Commission Form PSC/CNP 37, which
13 is incorporated into this rule by reference."

14 Did I read that correctly?

15 A Yes, you did.

16 Q Would you agree with me that the

17 Florida Public Service Commission requires that
18 any applicant who desires to provide shared
19 tenant service shall submit an application?

20 A Yes and no. It says so here, but
21 however again this paragraph is qualified in the
22 next section which you read before, the airport
23 exemption.

24 So the paragraph cannot be taken in its
25 own context without reading the whole document.

66

1 Q So is it your testimony today that the
2 airport exemption rule 25.24.580 is an exception
3 to this rule dealing with application for a
4 certificate?

5 A The other -- the airport exemption
6 refers to the other STS rules, and this was
7 interpreted to be one of them.

8 Q But as we've talked about in the
9 airport exemption rule, after it says it shall be
10 exempt from other STS rules, the next, very next
11 sentence in the airport exemption rule says the
12 airport shall obtain a certificate as a shared
13 tenant service provider, so how do you reconcile
14 that fact with your interpretation?

15 A I think we already went through this at
16 length and I explained why that is: because we
17 don't provide services to shopping malls and
18 industrial parks, and we do provide to a hotel
19 and we partition the trunks, and it says so, that
20 if you partition the trunks, you are exempt from

21 the other STS rules.

67

22 When the County decided not to file did
23 the County decide on its own that the airport
24 exemption rule applied to it?

68

1 THE WITNESS: We decided on our own
2 with the help of this document and the
3 Orlando airport experience, yes.

13 Q What facts can you give me that support
14 the County's view in 2002 that it could
15 self-determine whether or not the airport
16 exemption rule applied?

17 Do you have any?

18 A The County, or the parties involved in
19 this case, we make decisions all the time of the
20 business and legal nature relating to the airport
21 business.

22 And this was just another decision that
23 was made in the course of conducting our
24 businesses there. That's what we get paid to do.

25 Q Was there any support for your position

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1 that the County could self-determine whether or
2 not the airport exemption rule applied instead of
3 having the PSC make that determination?

4 A Support meaning third-party opinion,
5 whether we should do it instead of the PSC, is
6 this your question?

7 Q Are you aware of any facts --

8 A What does support mean?

9 Q -- that supports your decision,

10 supports your view?

11 A The fact of this document itself and
12 the --

13 THE REPORTER: The what?

14 THE WITNESS: This document that we
15 have in front of us and other pages that
16 are not here, and also the opinion of the
17 Orlando Airport based on the process that
18 they went through with the Public Service
19 Commission.

20

21 BY MR. GOLDBERG:

22 Q That's what you're relying on to
23 support your view that it was the County who
24 could determine whether or not the airport
25 exemption rule applied instead of making an

70

1 application for a certificate and having the PSC
2 determine whether or not the airport exemption
3 rule applied?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The decision was made
6 to make the decision, instead of applying
7 for a certificate.

8 BY MR. GOLDBERG:

9 Q I understand the decision was made not
10 to apply for a certificate. My question is what
11 led the County to conclude that it could make the
12 decision as to whether or not the airport
13 exemption rule applied, instead of having the PSC

14 make that decision?

15 A I can't answer that. We just made the
16 decision not to apply.

81

3 A I made a contact with the Tampa
4 airport, the lady that runs the telecom over
5 there, by phone. It was just a quick phone call.

6 And I believe she told me that she had
7 applied for a certificate, but they were not
8 providing any services to anybody, so she was
9 really not using the certificate for anything.

10 Q Did she explain to you why they had
11 applied if they weren't providing service?

12 A She couldn't tell me why.

13 Q Could it be what you just read: that an
14 applicant who desires to provide service
15 according to the PSC shall apply for a
16 certificate?

17 A I don't know --

18 MR. HOPE: Objection to form.

19 THE WITNESS: -- what she had in mind.

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14 And then the last says STS, do we need
15 to apply? Call the PSC.

16 I was just making notes to myself to --
17 about that issue.

18 Q And this whole -- these whole notes
19 were written related to the turnover of the STS
20 services from Nextira to the County, correct?

21 A Yes, it was all part of the deal that
22 we were buying their equipment.

23 Q So does the last notation on here where
24 it says STS, do we need to apply, call PSC, first
25 my question is does this document sort of cement

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1 your testimony and support your testimony that
2 the question of whether to apply for a
3 certificate or not to apply for a certificate
4 arose because of the transaction with Nextira in
5 20 -- in early 2002?

6 A Well, Nextira was providing the
7 services, they did not have a certificate, so I
8 would -- just had a question in my mind whether
9 we should have one or not.

10 Q And it says call the PSC. Whose idea
11 was that?

12 A Just a note to myself that I was, as I
13 was writing these things down, that was just
14 notes to myself.

15 Q Why would you write call the PSC?

16 A Well, that was the -- if I have the
17 question do we need to apply, calling the PSC
18 could be one of the ways to find out.

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8 Q Let me ask you to go to the next page
9 in the composite exhibit, this is also a page of
10 handwritten notes.

11 Is this your handwriting?

12 A Yes.

13 Q And just for the record it's -- up at
14 the top it's dated 10/26/01, and the first line

15 of the handwriting notes is PSC on STS, is that
16 correct?

17 A PSC on STS, right.

18 Q Can you tell me how it came about that
19 you created this page of notes?

20 A Obviously I must have talked to one of
21 these gentlemen there and he provided this
22 information over the phone.

23 Q As you sit here today do you recall the
24 telephone conversation?

25 A I don't recall it, but since I wrote it

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1 I must have made it, the phone call.

2 Q As you sit here today, after having
3 reviewed these notes, do you recall what you said
4 to the -- does it refresh your recollection as to
5 what you said to the PSC or the PSC said to you?

6 A Not other than what it says here.

7 Q Is it safe to assume that when you
8 wrote these notes you wrote these notes
9 accurately and that they accurately depict what
10 was said on the phone?

11 A Yes.

12 Q So would you agree that this document
13 is an accurate recordation of the telephone call
14 that you had with the PSC on October 26, 2001?

15 A Yes.

16 Q And the title is PSC on STS, so was
17 that the subject you were calling the PSC with
18 respect to the County's position of the shared
19 tenant services?

20 A Yes.

21 Q Do you remember who Jackie Gilcrest,
22 Tom Williams or Rick Moses were, or are?

23 A No, Jackie was probably the boss of the
24 other two gentlemen that are there, and I don't
25 even know which one of those I talked to, to be

1 honest with you.

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2 Q Next to Rick Moses it states: He was
3 at M IA 5-6 years ago looking at this issue.

4 A Right, that's what he told me.

5 Q Do you recall anything else about what
6 he had to say on that issue?

7 A No. If it was relevant it would have
8 been -- it would be written here.

9 Q Okay, can you read the next three lines
10 of your notes?

11 A Yes, if MIA is going to provide service
12 not related to public transportation, hotels,
13 shops, et cetera, we need to file an application.

14 Q And the next line?

15 A In any event, trunks will have to be
16 partitioned.

17 Q So you wrote down here, after talking
18 to the PSC. if MIA is going to provide service
19 not related to public transportation, hotels,
20 shops, et cetera, we need to file an application.

21 Was there any ambiguity at the time
22 about that statement or direction from the PSC?

24 THE WITNESS: No.

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15 Q So don't these notes clearly reflect
16 that the PSC said that if you're going to provide
17 service not related to public transportation,
18 such as hotels, shops, et cetera, you need to
19 file an application?

21 THE WITNESS: That's what it says
22 here. But again, this is not the whole
23 document, this is just one piece of
24 information that was compiled along with
25 the other documents or the chapter 24,

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1 25, that we discussed before.

2 BY MR. GOLDBERG:

3 Q Wouldn't you agree with me that this
4 directive from the PSC is directly contrary to
5 your -- the bases for your decision not to file
6 an application?

8 THE WITNESS: If you just read these
9 three lines, yes, it seems to say that,
10 if you provide services to hotels, shops,
11 et cetera, but again, that is not the
12 ruling of the PSC, that was just my
13 notes, and not necessarily taken into
14 consideration the airport exemptions and
15 all the other things that are spelled out
16 in the paragraph.

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8 Q At the end of the day, I'm saying, you
9 did not follow what you wrote that the PSC
10 representative stated on October 26, 2001?

12 THE WITNESS: I did not follow what

13 these two and a half lines says, right.

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8 Q But at the time in 2002, with respect
9 to partitioning, were any other trunks
10 partitioned by the County separate and apart from
11 the hotel?

12 A No, they're not partitioned, and
13 they're not partitioned now.

10 Q Show you what's been marked - what
11 I'll mark as Cert-7.

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13 BY MR. GOLDBERG:

14 Q This is an e-mail from Rick Moses at
15 the PSC to Maurice Jenkins entitled Certification
16 Issues.

17 Have you seen this document before?

18 A I don't recall seeing it.

19 Q It says: "I have been informed that
20 the Miami Airport may be providing telephone
21 service beyond its current authority. Pursuant
22 to Rule 25-24.580, Florida Administrative Code,
23 an airport is exempt from the certification
24 requirements of this commission as long as it is
25 only providing telephone service necessary to

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1 ensure the safe and efficient transportation of
2 passengers and freight through the airport
3 facility. Therefore, any services provided to
4 entities such as concession stands, restaurants
5 or hotels would be outside of the exemption, and
6 certification would be required before telephone

7 service can be provided. Please respond with a
8 list of entities served by the Miami Airport by
9 March 10th, 2003."

10 Let me focus you on the second
11 paragraph there where it says: "Therefore, any
12 services provided to entities such as concession
13 stands, restaurants or hotels would be outside of
14 the exemption and certification would be required
15 before telephone service can be provided."

16 Is that statement -- strike that.

17 Is not that statement contrary to the
18 position you took or the County took when it
19 decided not to apply for a certificate?

20 A Yes.

21 Q Is not that statement contrary to your
22 interpretation of the airport exemption rule
23 which you've testified to in this deposition
24 today?

25 A Yes.

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1 Q The e-mail concludes by saying:
2 "Please respond with a list of entities served by
3 the Miami Airport by March 10th.

4 Let me show you what I'll mark as
5 Cert-8.

7 BY MR. GOLDBERG:

8 Q Is this an e-mail from you to Rick
9 Moses dated March 17, 2003?

10 A Yes.

11 Q And you copied Maurice Jenkins, Maria

12 Perez and Anthony Brown?

13 A Yes

14 Q It's entitled MIA, STS List?

15 A Yes.

16 Q And did you type to Mr. Moses the
17 following message: "Mr. Moses, attached is the
18 list that you requested"?

19 A Yes.

20 Q And does this exhibit contain as a
21 second page the customer list for the County as
22 of February 2003 that you transmitted to
23 Mr. Moses?

24 A Yes.

25 Q How did it come to be that you

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1 responded to Mr. Moses on behalf of Mr. Jenkins
2 as a result of Mr. Moses' prior e-mail marked
3 Cert-7?

4 A It was probably that Mr. Jenkins, my
5 boss, asked me to forward to Mr. Moses this
6 information, and I requested this information
7 from probably Maria Perez, that worked for me,
8 and she provided to me, and I forwarded it to
9 Mr. Moses.

10 Q Did this interaction with the PSC cause
11 any concern on your behalf or Mr. Jenkins' behalf
12 that perhaps you were not complying with the law?

13 A I just took it as somebody wanted
14 information from us.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County

Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

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24 Q. So then you come down, this is for voice
25 line costs. What's voice line?

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1 A. That's telephone services.

2 Q. Two way telecommunication service, correct?

3 A. Yes, sir

4 Q. And you have a total equipment cost in
5 providing the voice line to your customers, correct.
6 is that correct?

7 A. Yes.

8 Q. You have an interest carrying cost, a
9 maintenance cost and then you add on profit, correct?

10 A. Yes, sir.

11 Q. And you come up with a voice line charge per
12 month of 930, is that correct?

13 A. Yes, sir.

164

21 Q. Essentially in this proposal it is fair to
22 say that there's a charge for everything that's
23 associated with providing telecommunications service
24 to your customers, correct?

165

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1 A. Yes, sir.

2 Q. The bottom line is that your
3 telecommunications business has a goal of increasing
4 its profitability and making money for the county,
5 correct?

7 A. Yes, sir.

8 Q. And so it behooves you and your entity to
9 charge the customers for all of your costs and
10 including marking up all of those costs to an
11 appropriate profit percentage, correct?

13 Q. You can answer.

14 A. To what -- yes.

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

14

9 Q. With respect to that provision, 14 b,
10 could you tell us from your personal knowledge
11 what led to the inclusion of this restriction on
12 the County's power and authority to be placed in
13 the Miami-Dade County Charter and Home Rule
14 Amendment?

15 A. This particular section was heavily
16 lobbied by the president of the Florida Power and
17 Light Company, McGregor Smith, who was very
18 insistent -- strident I should say -- that the
19 charter should contain some restrictions on the
20 County's ability to operate utility systems. And
21 this particular paragraph B was the result of that
22 negotiation and restrictions on the County's power
23 to operate a utility.

16

7 Q. Was there any type of compromise reached
8 with respect to, you know, the request by FP&L to
9 not have the County be able to operate a light,
10 power or telephone utility?

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11 A. Well, this is the compromise. If the
12 Florida Power & Light had had its way, the County
13 would have been prohibited by Charter from
14 operating a light or power utility. And that was
15 finally resolved by putting the restriction in
16 that they could not operate one, except after an
17 election and after a two-third vote of the members
18 of the County Commission

19 Q. So if I understand you correctly, if
20 McGregor Smith or FP&L would have had their way,
21 the Charter would have been an absolute
22 prohibition. But the Board compromised and put in
23 that they can operate it, but only after they get
24 a two-third vote of the members of the Board and a
25 majority vote of the electorate of Dade County?

17

2 A. That's correct.

3 Q. I'm sorry You can answer that again
4 Is that correct?

5 A. Yes, that's correct.

17

20 Q. The provision that we've been speaking
21 about, Paragraph B, utilizes the term telephone
22 utility. Did that, the use of that term, have any
23 special significance? Or what-- did it just
24 relate to any entity who was providing telephone
25 services?

18

1 A. Well, I think it related to any entity
2 that was providing telephone services.

3 The particular utilities then operable
4 in Dade County were not named in the Charter. But
5 you asked me for the background or history on it
6 It was almost exclusively the result of McGregor
7 Smith and his lobbying that this provision is
8 structured the way it is in the Charter.

9 Q. The verbiage in Paragraph B also uses
10 the word territory, the County shall not operate a
11 light, power or telephone utility to serve any
12 territory in the County. When the Charter was
13 drafted, the use of the word territory was decided
14 upon, did territory have any special significance?
15 Or what did it mean?

16 A. It was only a synonym for area, to serve
17 any area. Territory has no other regulatory
18 meaning in that particular section.

19 Q. If I could ask you to turn to another

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20 portion of the Charter, and it's actually in the
21 preamble. It's under Dade County Home Rule
22 Charter, sub-paragraph 1b, where it starts out
23 this Charter, and then it says under B, may grant
24 full power and authority. Do you see that
25 verbiage? I can show it to you in this copy.

19

1 A. Where?

2 Q. Do you see B?

3 A. That's the Home Rule Constitutional
4 Amendment. That's not the Charter.

5 Q. Fair enough. Let me just ask you along
6 those lines, under 1b, it says at the end of that
7 sub-paragraph that the Board of County
8 Commissioners-- well, let me read the whole
9 thing. It says--

10 A. You understand this is the Home Rule
11 Constitutional Amendment, not the Charter.

12 Q. Fair enough.

13 But I guess my question is, it's been
14 argued by the County in this case, that the
15 language at the end of that paragraph that allows
16 the Board to do "everything necessary to carry on
17 a central metropolitan government in Dade County,"
18 would that language in that document supercede or
19 override the restrictions that we just went over
20 in the Charter.

21 A. No.

22 MR. HOPE: Objection to form.

23 A. It was an outline to say that, to carry
24 on, except for metropolitan government, was to be
25 carried on in accordance with the powers and the

20

1 restrictions of the Charter which had been
2 adopted. But it certainly didn't, wasn't a
3 free-wheeling grant to the government to do
4 anything necessary which was not in the Charter or
5 not restricted by the Charter.

6 Q. And similarly, if I could ask you to
7 turn back to the Charter provision 14b that we
8 were speaking about. And actually, under Article
9 1, the Powers of the Board of County
10 Commissioners, I want to ask you about
11 sub-paragraph 2. Just let me know when you've
12 reached that.

13 A. Truth in government? That's the
14 Citizens Bill of Rights.

15 Q. No. I'm actually going to Exhibit 2.

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16 just for the record of page 16.
17 A. 1 01, Powers?
18 Q. Yes. Powers A2.
19 A All right. I have A2, provide and
20 operate air, water, rail and bus terminals, Board
21 facilities and public transportation systems.
22 Q. I have similar questions for you about
23 that language. Would that language in Article 1
24 of the Charter-- you know, providing the power
25 the County Commissioners to provide and operate

21

1 air, water, rail and bus terminals, port
2 facilities and public transportation systems,
3 which could be read to include airports-- would
4 that overcome or supercede the restriction that we
5 just spoke about prohibiting the County from
6 operating a light, power, telephone utility unless
7 they receive the vote of the electorate and vote
8 of the Board?

9 MR. HOPE. Object to form.

10 A No That paragraph that you have just
11 read can only be exercised in accordance with the
12 grants and the restrictions in the Charter itself.

13 Q. So you are not aware of any, you know,
14 intent of the drafters or legislative intent, or
15 anything along those lines that would, you know,
16 provide that paragraph A2 would supercede or
17 overcome the restriction that the County shall not
18 operate a light, power or telephone utility
19 without the appropriate votes?

20 A. No.

21 Q If the County were providing telephone
22 services out at the Miami International Airport
23 without getting a vote of the electorate or the
24 members of the Board of County Commissioners,
25 would that in your opinion run contrary to the

22

1 prohibition outlined in the Charter 14b?
2 A. It would. They would be in violation of
3 the Charter, in my opinion.

35

22 Q. Also, you answered a question earlier in
23 terms of the definition of territory and whether
24 or not the County's provision of service to the
25 Miami International Airport would constitute the

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1 operation of a telephone utility. Do you remember
2 that question and answer?

3 MR. GOLDBERG: Objection to form.

4 A. Whether the operation of a telephone
5 service to the airport would constitute a utility?

6 Q. Correct.

7 A. Yes.

8 Q. Why is it that the provision of service
9 to Miami International Airport would constitute
10 the operation of a telephone utility?

11 A. Because it was telephone service

12 Q. So is your answer specifically that
13 because it's the provision of telephone service,
14 therefore it is tantamount to being a telephone
15 utility?

16 A. Well, in a general way I think that's
17 correct

18 Q. Can you be more specific?

19 A. No. I can't be more specific.

20 Telephone utility is the provision of telephone
21 service to any area in the County.

39

13 Q. So in this case, if the County were to
14 take the position that it's in the best interest
15 of the citizens for airport safety or otherwise,
16 to provide telephone service out at the Miami
17 International Airport, what would they have to do
18 under the Charter?

19 A. They'd have to have an election. If it
20 was important enough for safety or other things,
21 there's a clear path laid out as to how to operate
22 a utility, a telephone utility. By holding an
23 election. I don't know what the reason to fear of
24 an election is.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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11 Q. Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?

14 A. Yes, they have.

15 Here again, in this initial discovery,
16 Mr. Garcia, again, in that same deposition, page
17 56, the question: Let's do it this way. We've
18 agreed earlier in the deposition that MDAD is

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19 engaged in what it hopes to be a profit-making
20 enterprise by providing telecommunication services
21 to tenants of the airport?
22 His answer: Yes.
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is:
25 So MDAD is charging for the completion of the

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1 local call, correct?
2 Answer: For the ability to complete the
3 local call We don't charge by the call.
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes.
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,
10 page 150 -- well, 149 and 150. Question: So I
11 understand you, you said there is no additional
12 charge But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?
17 His answer: The County is charging for
18 the equipment that allows you to get the dial tone
19 and complete the call.
20 Question. So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes.
24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question: You have

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1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?
3 His answer: Yes, sir.
4 Question: And you come up with a voice
5 line charge per month of 930; is that correct?
6 Answer: Yes, sir.
7 Then on page 164, the question is:
8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?
12 Answer: Yes, sir.
13 The bottom line is that your
14 telecommunications -- Question: The bottom line
15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?

18 His answer: Yes, sir.

19 Q. Okay. Now--

24 A There's also, if you go back to the
25 actual -- and this is behind tab B, which is

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1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department This
4 is dated September 24, 2002.

5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities

13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by
16 the Board on January 29th, 2002, MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024 This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development.

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition.

25 Now, you also asked me about wasthe

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1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes And
3 based on, here again, some of the discovery that
4 we have obtained.

6 Q Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A. Yes.

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3 A. On the public, first of all, there were
4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth And we have got
9 those customer lists.

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this. At least you would agree
14 with the general proposition, would you not, that

15 John Q Public, if he meets all-- goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer: As long as he's complied and
20 submitted his bid and is awarded and approved,
21 yes, he can.

22 Question: And that bid process, as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir.

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1 Question: There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir. As long as you meet
5 the minimum qualifications, or whatever
6 qualifications are established that goes out with
7 this bid

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille. They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to. It's entirely
13 up to them.

14 Question: But if they want to, your
15 services are available to John Q. Public, correct?

16 Answer: Yes, sir

17 Question: And if John Q Public wants
18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?

22 Answer: Yes, sir.

23 Question: And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

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1 Answer: Yes, sir.

2 Question: And that telecommunications
3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?

6 His answer: Yes, sir.

7 Then on page 131, Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr. Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mall shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using

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14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?

16 Answer: Right.

17 Question. There's no dispute about
18 that They can walk in, do these things, and walk
19 out without traveling?

20 Answer: Yeah. If they want to.

21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

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1 Answer Yes, sir.

2 There's another one that I wanted to
3 call your attention to Sometimes my little--
4 bear with me. There was also some discussion with
5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities.

9 And the question was. I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are -- we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific
17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King, Frankly Gourmet, Sunglass Hut.

22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

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1 Answer: Yes, sir.

2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?

5 And his answer. No. That's a shoe
6 shine

7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building.

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20 Q. Is the County regulated?

21 A. The County, as a shared tenant service
22 provider, is subject to some of the regulations in
23 the telecommunications statute and the rules, the
24 Florida code.

25 I guess it's regulated by its own

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1 charter. I'm not familiar that much with the
2 government hierarchy, but it does have a charter
3 that has some dictates, which is regulation to
4 some degree

200

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"?

201

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.

202

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

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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

203

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

204

5 For instance, in Rick Møses'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

205

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

213

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

190

20 A Okay.
21 Q What specific language in the resolution
22 which is raised in paragraph 32 supports
23 BellSouth's allegation?
25 A. Well, there's probably several

214

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 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

215

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, forth 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

191

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

26

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?

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

217

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?

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

218

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

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

235

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.

250

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

251

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.

251

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?

252

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.

253

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?

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.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

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15 Q. Let me direct your attention back to PSC-5, the
16 customer list that you received from Miami-Dade County
17 Airport as of February 2003. Based on the customer list

18 that you reviewed, and assuming no partitioning of the
19 switch, as you've referred to it here, would Miami-Dade
20 County need to apply for certification as an STS
21 provider?

22 MP. HOPE: Objection to the form.

23 A Yes.

24 Q And can you explain that answer, please?

25 A Under the title "Concession/Others," the

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1 companies that are listed underneath there, in my
2 opinion, would not be necessary for the safe passage of
3 passengers through the terminal, so it would lay outside
4 of the exemption if they have not partitioned their
5 switch. And the same would hold true for management
6 companies.

7 Q If I could ask you to go back for a minute to
8 PSC-7, which is a composite exhibit of notes and the
9 application, and go again to page 17, I would appreciate
10 that. I'm sorry to have you jump back and forth.

11 A Okay.

12 Q In the middle of the page, the notes written by
13 an individual at the County says, "If MIA is going to
14 provide service not related to public transportation
15 (hotels, shops, et cetera) we need to file an
16 application." Is that language consistent with your
17 testimony that you've given here today?

18 A If they don't partition their switch to those
19 entities, yes, it would be.

20 Q Whether or not an STS provider partitions their
21 trunks, or switch, partitions their switch, as you've
22 used, or did not partition the switch, are they still a

23 telecommunications provider or company under Florida
24 law?
25 A Yes.

BellSouth further incorporates the deposition excerpts identified in response to interrogatory 8 as those excerpts establish additional facts which support the legal conclusion that Defendant has violated the Miami-Dade County Charter, Florida Constitution and Florida statutory and regulatory requirements governing the operation of telecommunications companies as alleged in paragraph 24 of the Second Amended Complaint.

As additional support for BellSouth's claim that the County is violating Section 1.01(A)(14)(b) of the Charter, and that Miami International Airport and the other County owned and operated airports within Miami-Dade County CONSTITUTE "territories" as that term is used in the Section, BellSouth directs Defendant to the ballot presented to the voters of Miami-Dade County, Florida on November 8, 1994. On that ballot, the following question was presented: "Shall the county be authorized to establish a metro-Dade municipal utility to provide electricity only to county owned facilities?" The voters defeated the ballot measure by a vote of 75% against to 25% in favor. As evidenced by the County's course of conduct in submitting this ballot measure for vote, the County acknowledged that operating an electric utility to provide electricity "only to county owned facilities" required a vote of the electorate as required by Section 1.01(A)(14)(b) of the Charter. Several newspaper accounts of the ballot measure specifically stated that one of the "county owned facilities" to which the proposed electric utility would provide service was the Miami International Airport. Accordingly, the County has already admitted that county owned facilities within Miami-Dade County, including the Miami International Airport, are territories and that any effort to operate a utility, including a telephone utility, to provide services already provided to such territories within Miami-Dade County requires a vote of the electorate as specified in the Charter.

BellSouth further directs Defendant to the following statutory, regulatory and constitutional provisions which support Plaintiff's allegations in paragraph 24 of the Second Amended Complaint.

Section 1 01(A)(14)(b) of the Charter of Miami-Dade County.
Florida Statutes Section 364.02
Florida Statutes Section 364.01
Florida Statutes Section 364.339
Florida Statutes Section 364.32
Florida Statutes Section 364.33
Florida Statutes Section 364.335
Rule 25-9.002 of the Florida Administrative Code
Rule 25-4.003(10) of the Florida Administrative Code
Rule 25-24.580 of the Florida Administrative Code
Rule 25-24.567 of the Florida Administrative Code

Rule 25-24.569 of the Florida Administrative Code
Rule 25-24.575 of the Florida Administrative Code

Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985 which incorporates certain prior provisions of the Constitution of 1885, as amended, and in particular sections 11(5) and 11(9).

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 10:

Please state all facts which support your allegations in Paragraph 27 to Plaintiff's Second Amended Complaint for Declaratory Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

BellSouth directs Defendant to Resolution R-31-02 approved by the Board of County Commissioners on January 29, 2002 along with the Memorandum of the same date from Steve Shiver to the Board of County Commissioners with the subject: Telecommunications Services at the Aviation Department. In addition, Plaintiff directs Defendant to the executed Telecommunications, Data Network, and Shared Airport Tenant Services Agreement between the County and NextiraOne, LLC referenced in the January 29, 2002 Memorandum. These documents speak for themselves as to the fact that by virtue of the Agreement referenced in paragraph 27 of the Second Amended Complaint, the County acquired telecommunications facilities, authorized MDAD to operate the facilities to provide telecommunications services to customers for hire, and authorized the County to receive all gross revenues from the provision of the telecommunications services.

Additionally, BellSouth directs Defendant to the Affidavit of Maurice Jenkins dated July 29, 2003. In paragraph 11 of the affidavit, Mr. Jenkins stated, "In light of the impending deadline for renewal of the Equipment and Services Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided [sic] exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network and CUTE infrastructure, software, licenses, permits and other assets (collectively the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively the "Services"). In paragraph 18 of the affidavit, Mr. Jenkins states, "Neither the County nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services." In paragraph 20, Mr. Jenkins further states, "Prior to the sale of the Assets,

Nextira provided STS services at MIA without a FPSC certificate."

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 11:

Please state all facts which support your allegations in Paragraph 30 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005

George Hill was deposed on December 3, 2004

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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- 11 Q. Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?

14 A. Yes, they have.
15 Here again, in this initial discovery,
16 Mr. Garcia, again, in that same deposition, page
17 56, the question: Let's do it this way. We've
18 agreed earlier in the deposition that MDAD is
19 engaged in what it hopes to be a profit-making
20 enterprise by providing telecommunication services
21 to tenants of the airport?
22 His answer: Yes
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is:
25 So MDAD is charging for the completion of the

72

1 local call, correct?
2 Answer: For the ability to complete the
3 local call. We don't charge by the call.
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,
10 page 150 -- well, 149 and 150. Question: So I
11 understand you, you said there is no additional
12 charge. But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?
17 His answer: The County is charging for
18 the equipment that allows you to get the dial tone
19 and complete the call.
20 Question: So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes.
24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question: You have

73

1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?
3 His answer: Yes, sir
4 Question: And you come up with a voice
5 line charge per month of 930; is that correct?
6 Answer: Yes, sir.
7 Then on page 164, the question is:
8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?
12 Answer: Yes, sir.

13 The bottom line is that your
14 telecommunications -- Question: The bottom line
15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?

18 His answer: Yes, sir.

19 Q. Okay. Now--

24 A. There's also, if you go back to the
25 actual -- and this is behind tab B, which is

74

1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department. This
4 is dated September 24, 2002.

5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities

13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by
16 the Board on January 29th, 2002, MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024. This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition.

25 Now, you also asked me about was the

75

1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes. And
3 based on, here again, some of the discovery that
4 we have obtained.

106

22 Prior to 2002, when the County leased
23 the telecommunications infrastructure from
24 Nextira, and Nextira managed that system for them,
25 them being the County, is there a difference then

107

1 in the situation where the County is leasing the
2 equipment and having someone manage that leased
3 equipment for them versus outright ownership of

201

4 the equipment?

5 A. I'm not quite sure I agree with your
6 characterization of the way it was prior to 2002
7 Because it was my understanding that Nextira owned
8 the infrastructure and Nextira was providing the
9 telecommunications services to the County. That's
10 my understanding of it.

11 Then when the County purchased it, the
12 County actually purchased the equipment and the
13 infrastructure.

14 The County – prior to 2002, Nextira was
15 actually receiving the money. They were actually
16 billing the tenants and they were receiving the
17 money. And they were only giving a commission to
18 the County, a commission payment to the County.

19 Then in 2002, the County decided they
20 were going to take over the infrastructure and they
21 retained Nextira as a manager of the system. That
22 was my understanding of it.

23 And yes, I would say there's a
24 difference there in that in one case it was
25 Nextira providing telecommunications services, and

108

1 then after 2002 it was the County providing
2 telecommunications services.

141

19 Q. When did the County commence operating
20 as a telecommunications company?

23 A. In 2002, when the County purchased the
24 assets from Nextira. That's when they became a
25 telecommunications company. And by their own

142

1 admission, they were providing two-way
2 telecommunications services.

3 Now, to further expand on that, in Pedro
4 Garcia's deposition, which was the 2003
5 deposition, on page 61 the question was. Let's go
6 to the 2002 agreement. Had the County been
7 involved in the telecommunications business, so to
8 speak, prior to that?

9 Answer: The County was basically a
10 customer of NextiraOne prior to that. We were
11 their customers as far as they were providing us
12 the services along with the services they were
13 providing to other tenants of the airport.

14 Question: Before February of 2002, was
15 the County providing in any way telecommunications
16 services to other tenants at the airport?

17 Answer: No.

202

18 Then on page 62, the question is: Let
19 me make sure I understand this. Up until 2002, or
20 February, 2002, Nextira or its predecessor,
21 whoever it may have been, provided
22 telecommunications services to tenants of the
23 airport?

24 Answer: To some of the tenants.

25 Question: Some?

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1 Answer. Including the Miami-Dade
2 Aviation Department.

3 Question: All right. And in February,
4 2002, pursuant to this agreement with NextiraOne,
5 the County became the providers and Nextira
6 became, if you will, a subcontractor; is that a
7 fair characterization?

8 Answer: That's correct.

9 Now, this was further corroborated by
10 Maurice Jenkins in his deposition, which was taken
11 in August of 2004, where there was quite a
12 discussion about the 2002 agreement.

13 On page 194, it starts Question. Why
14 did the County enter into the transaction it did
15 in January, 2002, to purchase assets of
16 Nextira?

17 Answer: It was, if I recall properly,
18 based upon an audit and a review by County
19 auditors, as well as there was an individual that
20 came from the police department that was there
21 temporarily -- I believe it was Tom Arnold -- that
22 looked at processes from law enforcement and
23 looked at processes and looked at the agreement
24 and other things and said it would be in the
25 County's best interest to buy-out and own and

144

1 operate, rather than the existing way we were
2 doing business at that time

3 Question: What was the existing way
4 that you were doing business at that time?

5 Answer: It was a managed services
6 agreement in which Nextira provided the service,
7 did the billing, and operated and supported the
8 MDAD voice network or voice system, voice network,
9 as it stood. And they managed and operated an
10 there's a management fee. There was, I think, a
11 percentage of the shared tenant revenue that came
12 back. Whatever was generated came back to the
13 department.

14 Question. So before January, 2002,
15 Nextira owned and operated the telecommunications
16 facility, correct?

203

17 Answer: They owned it. They operated
18 it under a management agreement with the
19 department. Yes, sir.

20 Question: And then after January, 2002,
21 the County owned and operated the facility,
22 correct?

23 Answer: The County owned the facility
24 and we contracted to have someone operate it for
25 us.

145

1 Question: But aren't we saying the same
2 thing? If the County is operating the facility
3 after 2002, albeit through a management agreement,
4 the County is still operating the facility? You
5 are operating it, correct?

6 Answer: We are still operating it, yes.
7 So by the County's own admission, before
8 2002 they were not operating telecommunications
9 services. After 2002, they were. They purchased
10 the agreement. They have this purchase agreement
11 from Nextira.

154

12 Prior to me presenting you with
13 Defendant's 4, had you ever seen Resolution
14 R-788-90?

15 A. No, sir. I don't believe so.

16 Q. Do you know of anyone in BellSouth who
17 would have knowledge of this resolution?

18 A. Not that I know of.

19 Q. If you turn to the forth actual page of
20 Defendant's 4, at the bottom it has a handwritten
21 number two, because they're actually out of order.
22 The justification memo was on top of the actual
23 resolution

24 If you could read the first full
25 paragraph, which come commences on October 7th,

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1 1987.

2 A. On October 7th, 1987, the County
3 exercised its option in the Master Equipment Lease
4 Agreement to purchase the hotel system. The
5 Aviation Department is operating it today with
6 Centel providing maintenance and repair services
7 for that system.

8 Q. Based upon that statement, which is true
9 and it's still going on today, would this make the
10 County a telecommunications company?

12 A. I don't believe so.

13 Because if I'm understanding these

204

14 agreements correctly, all of them together, there
15 are two things working here.
16 First of all, there's equipment that is
17 being provided to the airport and the airport--
18 the County is evidently entered into a lease
19 agreement for the equipment, the telecommunication
20 type equipment. But the actual service is being
21 provided by Centel, as stated in the resolution
22 And in the agreements it says a Shared Airport
23 Tenant Service Agreement by which Centel shall
24 provide telephone service to airport tenants and
25 users.

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1 It says this is in a continuation of the
2 agreements that were authorized in resolution
3 R-361-82, dated March 16, 1982.

4 So it appears that Centel is actually
5 providing the telecommunications services And
6 even though the equipment may be owned by or
7 leased by the County, the actual provision of the
8 telecommunications service, the billing of the
9 services is being done by Centel.

10 Q. Now, what you just read referred to, the
11 airport system, is there anything in there that
12 speaks to Centel as providing the service to the
13 hotel in the airport?

14 A. Well, I'd have to look further in here.
15 It says there is one -- there's a reference on
16 page seven of the Exhibit 6, Shared Airport Tenant
17 Service Agreement. Paragraph 9B says, "Because
18 the parties contemplate that the County may
19 provide the SATS for the airport and hotel system
20 at some point in the future, such documents shall
21 provide at a minimum that the contracts of
22 customers are fully assignable to the County by
23 Centel."

24 I would have to study this a little
25 further to see what Centel is providing service

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1 to. But it would lead you to believe it's
2 providing service to both, even though the
3 equipment may be leased by the County.

4 Q. From your brief review of the documents,
5 the two agreements, the Shared Airport Tenant
6 Service Agreement and the Equipment Lease and
7 Maintenance Agreement, have you seen anything in
8 those documents that contradicts the statement in
9 the paragraph, the last sentence of the two
10 sentence paragraph, which says the aviation
11 department is operating it -- referring to before
12 as the hotel system -- today with Centel providing

205

13 maintenance and repair services for that system?

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2 A. Like I said before, it appears to be
3 unclear. The paragraph says what it says. It
4 says that the Aviation Department is operating it
5 today with Centel providing maintenance and
6 repair.

7 Whereas, on the service agreement-- I
8 mean, the share tenant service agreement, the way
9 the paragraph is worded on page seven that I read
10 before about the parties contemplate the County
11 may provide, because the parties contemplate that
12 the County may provide the SATS for the hotel and
13 airport in the future. I'm not real clear as to
14 whether or not the hotel system was being-- the
15 telecommunications system in the hotel was being
16 provided by the aviation department or by Centel.
17 It says what it says.

18 Q. Okay. Because of the clause that
19 doesn't necessarily clarify who is providing SATS
20 services?

21 A. Correct.

22 Then there would be some question as to
23 whether or not, if it was just a provision of
24 service to a hotel, whether or not that would
25 actually be a shared tenant service type service

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1 anyway.

213

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?

25 A. Well, there's probably several

24

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

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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

25

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 net 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

216

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?

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

217

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?

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

218

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

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

237

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?

208

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 THE WITNESS: I don't know that they
17 saw any of those documents.
18 Q. Who would be in the better position to
19 evaluate and determine who was actually providing
20 telecommunications services in 1994 when this
21 order was entered into? Would it be the Florida
22 Public Service Commission in a dispute where that
23 wasn't the issue, or would it be the parties, that
24 being DCAD and Centel, who would be in a better
25 position to know that?
238

1 position to know that?
2 A. Certainly, the County and DCAD have
3 knowledge of how and when they were providing
4 telecommunications services at the airport, and
5 whether or not it was being provided, and to who
6 was providing service just to the administrative
7 offices, or who was providing services to more
8 than just the County's operations. The County and
9 Centel would know.
10 Q. And would one look to the agreements
11 that were in place at that time in 1994 between
12 the County and Centel to get some idea and
13 instruction as to who was actually the provider of
14 telecommunications services, or operation of
15 telephone utilities?
16 A. Those would be the appropriate
17 documents. But they were not necessarily-- those
18 were not necessarily documents for the resolution
19 of this particular dispute.
20 Q. My question, though, is would you agree
21 with me that one would look to the operative
22 documents and agreements between the County and
23 Centel to get appropriate instruction as to who
24 was providing the shared tenant services at the
25 airport at that time in 1994?
239

1 was providing the shared tenant services at the
2 airport at that time in 1994?
3 A. Yes.

242

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

209

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.

243

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?

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

244

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.

210

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 --

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

19 A. I don't know 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
245

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

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25 Q. Is there any reference in either

273

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?

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

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20 admitted by your own two employees, then there is
21 no way you could have been providing shared tenant
22 services

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr Tubaugh testified relating to the subject interrogatory as follows.

8 Q Starting at heading B, paragraphs 25,
9 26, 27, 28, 29, 30, 31 and 32, the second amended
10 complaint goes into a series of allegations which
11 ultimately, at least in paragraph 32, makes a
12 statement that the County now owns and operates a
13 telephone utility by offering two-way
14 telecommunication services to the public for
15 hire, including to commercial tenants at MIA and
16 other airports, using telecommunication
17 facilities.

18 What specific language in either the
19 resolution, R-31-02, or the accompanying
20 justification memorandum supports the allegation
21 in paragraph 32?

22 MR. GOLDBERG. Objection to the form
23 of the question. It's not a corporate
24 representative deposition, it's his
25 individual deposition.

34

1 MR. HOPE: In your interpretation of
2 the document.

3 MR GOLDBERG. Thank you.

4 THE WITNESS: Because the memorandum
5 which talks about the resolution and says
6 the resolution is attached to it, as
7 opposed to the memorandum being attached
8 to the resolution, says that they're
9 purchasing Nextira's facilities to
10 provide telecommunications, they're
11 buying their infrastructure, it says in
12 the document in several places
13 telecommunications infrastructure,
14 installation, maintenance, repair,
15 management and operational support
16 services for all voice-- which is a
17 telecommunication service, and I added
18 that comment-- and data network
19 infrastructure at Dade-- MDAD, and
20 shared tenant services customers at Miami
21 International, MIA, and the general
22 aviation airports.

23 I mean, it says that you're
24 purchasing that infrastructure and you're
25 keeping these folks on as a management

35

1 overseer for the system; that you're
2 going to operate it, you're going to

213

3 negotiate the contracts with the tenants,
4 apparently you're going to bill them, and
5 you are providing tweway
6 telecommunications for hire, having
7 assumed those things from Nextira.

16 Q Can you turn to what will be the fifth
17 page of the composite exhibit which is
18 Defendant's 4, so it's actually the second page
19 of the justification memorandum,--

20 A Okay.

21 Q -- and read the paragraph that's headed
22 Background?

23 A Okay.

24 Q If the County, according to this
25 memorandum, was already leasing the equipment

37

1 from Nextira, why is it that, under your
2 interpretation of this resolution, the County
3 only became either a telephone utility or
4 telecommunications company upon purchase of these
5 same assets?

8 THE WITNESS: Because you weren't
9 billing the customer. Nextira had the
10 contract, they were billing the customer,
11 they were receiving the revenues, and you

12 were receiving something, I'm not sure
13 exactly what you would call it, but they
14 were the telephone company. They were
15 providing the telecommunications service
16 up to that point in time.

17 After that time you begin providing
18 the telecommunications service and using
19 them as a manager, as a consultant, but
20 your people negotiated, from what I have
21 read in these documents, it authorized
22 the airport manager director of
23 telecommunications to negotiate with the
24 customers specifically, and determine how
25 much they were going to be billed, and if

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1 they were going to get breaks from
2 contracts-- that's an assumption -- with
3 them, and then they billed them on behalf
4 of MiamiDade.

5 They didn't bill them, Nextira
6 didn't bill them, Dade County billed
7 them, and it changed, you became the
8 telecommunications provider yourself

38

10 Q Do you know whether or not the County

215

11 was receiving any of the revenues that Nextira
12 collected?

13 A If I read this-- these documents that
14 you have provided here this morning right, there
15 was some kind of a ten-percent fee that you were
16 getting prior to you taking this over in 2002.

17 Q Do you know whether or not Nextira was
18 performing the billing function as, quote
19 unquote, a billing agent for the County?

20 A I do not know that answer.

21 Q Is it fair to say that your answer
22 therefore focuses on who is doing the billing and
23 who is doing the collecting of the revenues?

25 THE WITNESS: It's more the whole

39

1 thing, you got to look at the whole
2 thing, but the answer to your question is
3 it's a huge difference, yes.

4 I mean, if you're billing the
5 customer and you're receiving the revenue
6 and you're providing the service, then
7 you're a tweway telecommunications for
8 hire, you, the airport are.

9 And so yes, it does make a difference.

42

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2 Q What specific language in resolution
3 R-1091-02 supports paragraph 32?

7 THE WITNESS This is a-- having
8 read this, based on what I have seen
9 written here in this resolution, this is
10 a shorter one than the one you showed me
11 before, and it specifically talks about
12 in here to execute a standard form of
13 airport rental agreement attached to the
14 memorandum, that's attached to this
15 resolution from what I have heard here,
16 and so it's referencing this network
17 agreement and this rental thing, and the
18 very first paragraph in this agreement
19 says: The County agrees to deliver,
20 install, rent, and maintain
21 telecommunications systems and services
22 consisting of (1), switch access to its
23 common telecommunications switching
24 equipment and software which will be
25 shared by MiamiDade and its tenants at

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1 the airport, it talks about network
2 access to the local exchange carrier, it
3 talks about telecommunications terminal
4 equipment and cables, so there's the

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5 telecommunications service, is being
6 provided.

7 And then on item 6 down here it
8 says: Payment of rent. It says the rent
9 for the system shall be based on the
10 Schedule 1 and be payable without notice
11 or demand

12 And, you know, I don't know if the
13 County is bling themselves and their
14 tenants, but clearly you're operating a
15 telecommunications facility and you're
16 receiving revenue for it, and it
17 certainly seems liket meets what's
18 defined there in 32.

44

2 Q Are there any other paragraphs or items
3 in the form of the airport rental agreement which
4 support the allegation contained in paragraph 32?

7 THE WITNESS: If you look at the
8 memorandum that's also attached, it says
9 that the County is taking over the SATS.
10 and in this case they're talking about
11 shared tenant services as defined here,
12 but on that second page it lists a series
13 of tenants and it says the installed cost

218

14 and what the monthly fee is going to be.
15 And you're providing, according to
16 this memo, telecommunications and network
17 access and you're billing them for it,
18 based on just this memorandum, monthly fees.

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19 Q Let me provide to you what's going to
20 be marked as Defendant's 8, which is a memo to
21 various people dated January 16, 1995, from the
22 deponent The subject is Dade County Aviation
23 Department First Set of Interrogatories in Docket
24 Number 931033-TL.

25 (Exhibit 8 marked as requested)

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1 A Okay.

2 Q Is this the-- have you ever seen this
3 memorandum?

4 A Absolutely I wrote it, and that's my
5 signature there.

6 Q Is this the memoandum that we were
7 joking about at the beginning of the deposition?

8 A That's the one I looked at yesterday,
9 and I had read in Nancy Sims' testimony about it

10 Q Letme refer you to the opening two
11 sentences of your memorandum, which I'll read it:

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12 Southern Bell has an ongoing dispute with DCAD at
13 the Miami International Airport concerning the
14 provision of local service. DCAD is providing
15 shared tenant services under an exemption in the
16 Florida Public Service Commission's rules and
17 regulations.

18 Approximately when did the County
19 become an STS provider?

20 A The County became an STS provider
21 themselves in 2002.

22 Q What is the basis for your answer that
23 the County became an STS provider in 2002, given
24 this January 16, 1995 memo?

25 A This memo, this memo had to do and this

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1 docket had to do with access, demarcation rules,
2 and access to the support structures and stuff,
3 and the fact that over the years that I have been
4 in this job, BellSouth and the County and me
5 being involved, have discussed about access
6 issues, whether or not I have access to conduit
7 to serve my customers.

8 And it was an access issue I
9 probably-- at the time Wil-Tel, W-i-l-T-e-l, was
10 a certificated STS provider and was providing the

11 shared tenant services here at the airport. I
12 probably lumped them together, I probably
13 shouldn't have in stating this, but this whole
14 thing had to do with access, demarcs, when I
15 wrote this.

16 And the County, Dade County controlled
17 the infrastructure, Wit-Tel didn't control the
18 infrastructure, and I probably could have been
19 clearer and said that.

20 But, this had nothing to do with
21 necessarily the shared tenant service provider,
22 had to do with demarcation issues and gaining
23 access to conduit to be able to serve my
24 customers, and whether or not the County was
25 going to allow me to do it or make me lease their

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1 facility.

2 There was a whole bunch of issues
3 around that time frame that dealt with demarcs
4 and access, and I could have put it a little
5 clearer in my memo, but I wasn't.

6 He was talking about several airports
7 and the access issue. I asked them to look at
8 the other airports in the state at the same time.

9 Q At what point in time did your analysis
10 of whether or not the County was an STS provider

221

11 change such that your statement today is the
12 County only became an STS provider in 2002, and
13 not back in January 16th of 1995 when you stated
14 that the County was a provider in your memo?

21 THE WITNESS: You purchased the
22 infrastructure from Nextira and have been
23 providing service and billing customers
24 in 2002. Prior to that you had several
25 vendors here, starting with Centrex, then

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1 WiTel, then Williams, and then Nextira,
2 these persons providing shared tenant
3 services.

4 When this memo was written, Wi-Tel,
5 they were certificated with the State of
6 Florida, I was having a problem with
7 access and the ability to place my
8 facility out here to serve my customers

9 Poor choice probably saying
10 specifically that you were, but you were
11 the property owner, and shared tenant
12 services were being provided out here,
13 but they were being provided by WiTel.
14 I probably could have been more clear in
15 the way I should have written this memo

16 But it had to do with access didn't
17 have to do with STS provision.
18 You look at this, I'm talking about
19 other airports other than MiamiDade,
20 okay? I was asking to go look, it was
21 demarc, it was access, and that's what
22 that was about.

23 So, hasn't changed about when you,
24 you representing MiamiDade Aviation
25 Authority, became an STS provider, that

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1 happened in 2002, but you had vendors out
2 here that were providing shared tenant
3 services to customers that were out here,
4 and that's how I wrote that memo.

17 Q This order regarding access to
18 facilities at airports was filed February 1st,
19 1994. In Section II, which is the Resolution of
20 the Dispute, it lays out the background of the
21 dispute between BellSouth and the Dade County
22 Aviation Department, which is now the MiamiDade
23 Aviation Department.

24 On page 2 it states DCAD, as a result
25 of the nature of its involvement in the provision

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1 of telecommunications services, is providing
2 shared tenant services. Although DCAD is a
3 shared tenant services provider, pursuant to
4 Rule 25-24.580, Florida Administrative Code, it
5 is generally exempt from the restrictions placed
6 on other STS providers.

7 Then it goes on to explain the rule and
8 some more information.

9 Given this dispute in 1994 and one of
10 the statements in the background findings from
11 the PSC in 1994, what evidence or documents
12 support your position that the County only became
13 a shared tenant service provider in 2002?

16 THE WITNESS: Well, what evidence do
17 I have? Again, look at my memo, looking
18 at this, this all resolved around access.

19 If you go back and you look, the
20 dispute concerns the location of Southern
21 Bell's network point of demarcation on
22 the DCAD airport complex, the extent to
23 which DCAD must provide cable support
24 structures, so that this whole thing
25 revolved around those issues, and it says

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1 issue here, that they had been trying to
2 mitigate the dispute themselves, and were

3 unable to do that.

4 I think what happens is, like when I
5 wrote that memo, when these people write
6 these things it's based on what they have
7 read, what they see.

8 At the time this order was written
9 shared tenant services was being provided
10 at the airport, but it was being provided
11 by WiTel.

12 Miami Dade International Airport was
13 the property owner and owned the support
14 structures and determined who would have
15 access to it.

16 You know, why they wrote it and said
17 you were doing it as opposed to WiTel
18 on behalf of, or Miami Dade, I mean you
19 asked me what I thought, how I would
20 interpret it, I cannot tell you for
21 certain that's how they arrived at this
22 decision, but this was an issue about
23 access, okay? That's what this was
24 about.

25 And I mean, that's the best I can

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1 tell you, and I truly believe that.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr Garcia testified as follows.

23

18 Q. Who decided to apply? Who decided you
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the
24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

24

1 That was three years ago.

2 They owned all the telephone switches,
3 the wiring, the network equipment. They owned
4 everything and we were basically leasing from them
5 that equipment and we were paying them as customers
6 before the service provision to everybody in the
7 airport, both STS customers and Miami-Dade Aviation
8 Department staff.

9 So as of February of 2002 we concluded
10 negotiations with them to purchase all of that from
11 them and then at that point we became owners of the
12 equipment and, therefore, we were actually the
13 service providers from that point on. Before that
14 it was them. So that at the time it was considered
15 that -- perhaps it was explored and, you know,

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16 whether we should get a license or not for STS
17 provisioning and so forth.

18 Q. So as I understand it, before the sale,
19 the Nextira sale, the decision was that Nextira
20 was -- actually the County's perspective was that
21 Nextira was the service provider?

22 MR. HOPE: Objection.

23 A. Not from the County's perspective. It
24 was the service provider.

25 Q. So therefore, you did not need a 25
1 certificate?

2 A We were not providing the services.

3 Q. Now the County is providing the
4 services; is that correct?

5 A. Now the County, yes, is providing the
6 equipment. We own the equipment.

7 Q. You own the equipment and Nextira is a
8 subcontractor?

9 A. Is a subcontractor. 32

22 Q. All right. Now obviously there are
23 references to the P.S.C. on this particular page?

24 A. But the reasons I stated before was that
25 Nextira was the provider of the service and now 33

1 we're engaged in buying the infrastructure so we
2 will become the providers of the service. So
3 obviously that was one of the questions that needed
4 resolution.

5 Q. As I understand it, in light of the fact
6 that the County was going to be the service

7 provider, you had to make a decision whether the
8 County now because of the change in circumstances
9 needed to obtain a P.S.C. certification?

10 MR. HOPE: Objection to form.

11 A. That's right.

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10 Q. Mr. Garcia, are you familiar with an
11 agreement between Miami-Dade County, Florida and
12 Nextira that was entered into early February of
13 2002?

14 A. Yes, sir.

15 Q. Were you involved in the preparation, if
16 you will, of that agreement?

17 A. Yes, I was.

18 Q. What was the general purpose of the 2002
19 agreement?

20 A. The purpose was to acquire from
21 NextiraOne the infrastructure that they had at the
22 airport -- that they own at the airport to provide
23 telecommunications services, including the
24 telephone switches, network equipment and the
25 wiring infrastructure existing at the airport.

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1 Q. What do you mean by the term
2 infrastructure?

3 A. Infrastructure is all -- basically the
4 wires that are behind the walls that are running
5 through the airport providing where the information
6 flows to provide the services.

7 Q. Let's go to the 2002 agreement. Had the

8 County been involved in the telecommunications
9 business, so to speak, at the airport prior to
10 that?

11 MR. HOPE: Objection to form.

12 A. The County was basically a customer of
13 NextiraOne prior to that. We were their customers
14 as far as they were providing us the services along
15 with the services they were providing to other
16 tenants of the airport.

17 Q. Before February of 2002 was the County
18 providing in any way telecommunications services to
19 other tenants at the airport?

20 MR. HOPE: Objection to form.

21 A. No.

22 Q. Strike that.

23 A. Nextira was providing the services. We
24 were getting -- I believe it was a 10 percent
25 commission on the services provided to other

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1 tenants of the airport other than the aviation
2 department.

3 Q. Was that just for allowing Nextira to
4 provide it?

5 A. Yes.

6 Q. Did Nextira provide those services
7 pursuant to an RFP, or how did Nextira get to the
8 airport to provide those services? What was the
9 arrangement?

10 A. This was a contract that existed, I
11 think, prior to -- ten years prior to me starting
12 there. I'm not sure how it was awarded. I presume

13 it was a process of an RFP at the time. It wasn't
14 even Nextira. It was Williams. It changed names a
15 few times after that. So in any event, this has
16 been going on for over ten years they've been there
17 providing the services, as far as I know.

18 Q. Let me make sure I understand this. Up
19 until 2002 or February 2002, Nextira or its
20 predecessor, whoever it may have been, provided
21 telecommunications services to tenants of the
22 airport?

23 MR. HOPE: Objection to form.

24 A. To some of the tenants.

25 Q. Some?

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1 A. Including the Miami-Dade Aviation
2 Department.

3 Q. Did Miami-Dade County receive some sort
4 of commission or payment from Nextira or its
5 predecessor prior to February 2002?

6 A. We received, I believe, 10 percent of
7 the gross for allowing them to provide the service.

8 Q. Did Miami-Dade County pay Nextira to
9 provide services to the County, or did the County
10 get those services for free?

11 A. We paid them through the nose for the
12 services that they provided us.

13 Q. So on one hand the County was getting
14 10 percent or roughly 10 percent of what Nextira
15 got from other tenants but also the County was
16 paying?

17 A. We were paying and we were paying a lot

18 more than what we were getting for the services.

19 Q. All right. And in February 2002,
20 pursuant to this agreement with NextiraOne, the
21 County became the provider and Nextira became, if
22 you will, a subcontractor; is that a fair
23 characterization?

24 A. That's correct.

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6 MDAD or the County was going to acquire
7 the equipment?

8 A. Yes.

9 Q. And that was all of the equipment
10 related to the telecommunications business that
11 Nextira was doing at the airport?

12 A. All the equipment that Nextira owned at
13 the airport, yes, it belongs to the airport now.

14 Q. And for \$6 million plus which is going
15 to be paid over five years?

16 A. Right.

17 Q. Prior to the agreement, Nextira owned
18 the equipment; is that correct?

19 A. Yes.

20 Q. What kind of equipment is this?

21 A. It's telephone switches, the telephone
22 instruments that people use to make phonecalls, the
23 network equipment behind the scenes, supplies,
24 routing switches, all the wiring inside the airport
25 to provide the services, the outside cables

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1 connecting the different buildings, the CUTE
2 equipment. That's basically most of it.

3 Q. And why did the County, if you know,
4 make the decision to purchase the equipment?

5 A. It was a business decision mostly and
6 also a way to control our own infrastructure at the
7 airport instead of having it owned by some other
8 vendor.

75

1 Q. So the County was going to be the
2 provider to the post 2002 agreement, the County was
3 going to provide the services to the tenants at the
4 airport; is that correct?

5 A. Yes.

6 Q. And that was a change from prior to the
7 2002 agreement?

8 A. That's correct.

Mr Garcia was deposed for a third time on December 15, 2004. Again, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issue addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

26

16 Q. Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A. I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q. Well, then let me ask you in a more

27

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

1 decision not to file?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Right.

8 A I don't think so, because I'm talking

9 about an Nextira STS. Nextira was providing STS
10 services prior to us buying their equipment.
11 This was I guess the services that they were --
12 the type of STS services, could be, that Nextira
13 was providing.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

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18 Q. MDAD sends invoices to its customers on a
19 monthly basis charging for the various services,
20 correct?
21 A. Yes, sir.
22 Q. The customers when they get the invoice pay
23 MDAD for the services, correct?
24 A. Yes, sir.
25 Q. Just like if I have BellSouth as my carrier

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1 at my home and they send me a bill I remit a check to
2 BellSouth, you are sending billsto your customers
3 and the customers are paying you, correct?
4 A. Yes, sir.
5 Q. Likewise, if a customer has a repair problem
6 on their phone, your customer has a repair problem on
7 their phone at the airport they are going to call you

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8 to fix it, correct?

9 A Yes, sir.

10 Q. Just like if I have BellSouth at my home and
11 I have a repair problem I would call them. There's
12 really no difference, correct?

13 A. No, sir.

14 Q. And obviously when -- we just talked about
15 MDAD billing the customers and receiving payment
16 That wasn't always the case, correct?

17 A. True. Yes, sir.

18 Q. When did that change?

19 A. Right after the, January 2002, the buyout of
20 Williams.

21 Q. It is the case now the customers call you to
22 repair the phones, correct? Just talked about that,
23 the customers now call MDAD if they have repair
24 problems, correct?

25 A. They contact both the department as well as

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1 a call center number as well.

2 Q. With respect to the invoicing and payments
3 that changed in 2002. Prior to 2002, isn't it the
4 case that the prior owner of the equipment and
5 operator Nextera was invoicing the clients and
6 receiving payment?

235

7 A. Yes, sir.

8 Q And the county was not involved in that
9 process at all?

10 A 'Yes, sir.

195

12 Q. So before January 2002, Nextera owned and
13 operated the telecommunications facility, correct?

14 MR. HOPE: Objection to form.

15 A. They owned it. They operated it under a
16 management agreement with the department, yes, sir.

17 Q. And then after January of 2002 the county
18 owned and operated the facility, correct?

19 A. The county owned the facility and we
20 contracted to have someone operate it for us.

21 Q. But aren't we saying the same thing. If the
22 county is operating the facility after 2002, albeit
23 through a management agreement, the county is still
24 operating the facility? You are operating it.
25 correct?

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1 A. We are still operating it, yes

2 Q. There is no dispute about the fact that you
3 are operating it, correct?

4 A. All right.

5 Q. And you weren't operating it before January

236

6 2002 because Nextera was?

7 A. Yes, sir.

8 Q. There's no dispute about that, correct?

9 A. Yes, sir.

10 Q. Meaning there's no dispute, you agree with

11 me, right? Sorry. You do agree with me, there is to

12 dispute, right?

13 A. I concur with your last statement.

Additionally, BellSouth directs Defendant to the Affidavit of Maurice Jenkins dated July 29, 2003. In paragraph 11 of the affidavit, Mr. Jenkins stated, "In light of the impending deadline for renewal of the Equipment and Services Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided [sic] exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network and CUTE infrastructure, software, licenses, permits and other assets (collectively the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively the "Services") On January 29, 2002, the Board approved Resolution No R-31-02 authorizing payment of \$6,450,000 to Nextira for the purchase of infrastructure to be sued and operated by or for MDAD and authorizing the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement with Nextira for an interim two (2) year period." In paragraph 18 of the affidavit, Mr. Jenkins states, "Neither the County nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services." In paragraph 20, Mr. Jenkins further states, "Prior to the sale of the Assets, Nextira provided STS services at MIA without a FPSC certificate." BellSouth also directs Defendant to paragraphs 2 – 5 and 10 as facts responsive to this interrogatory.

BellSouth further directs Defendant to the ELM Agreement and SATS Agreement between the County and Centel in place from 1988 through February 2002.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 12:

Please state all facts which support your allegations to Paragraph 31 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms Sims testified relating to the subject interrogatory as follows:

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11 Q. Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?

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14 A Yes, they have
15 Here again, in this initial discovery,
16 Mr. Garcia, again, in that same deposition, page
17 56, the question: Let's do it this way. We've
18 agreed earlier in the deposition that MDAD is
19 engaged in what it hopes to be a profit-making
20 enterprise by providing telecommunication services
21 to tenants of the airport?
22 His answer: Yes
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is
25 So MDAD is charging for the completion of the

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1 local call, correct?
2 Answer: For the ability to complete the
3 local call. We don't charge by the call
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes.
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,
10 page 150 -- well, 149 and 150. Question: So I
11 understand you, you said there is no additional
12 charge. But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?
17 His answer: The County is charging for
18 the equipment that allows you to get the dial tone
19 and complete the call.
20 Question. So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes.
24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question: You have

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1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?
3 His answer: Yes, sir
4 Question: And you come up with a voice
5 line charge per month of 930; is that correct?
6 Answer: Yes, sir.
7 Then on page 164, the question is:
8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?
12 Answer: Yes, sir.

13 The bottom line is that your
14 telecommunications -- Question: The bottom line
15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?

18 His answer: Yes, sir.

19 Q. Okay. Now--

24 A. There's also, if you go back to the
25 actual -- and this is behind tab B, which is

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1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department. This
4 is dated September 24, 2002

5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities.

13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by
16 the Board on January 29th, 2002, MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024. This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development.

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition.

25 Now, you also asked me about was the

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1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes. And
3 based on, here again, some of the discovery that
4 we have obtained.

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22 Prior to 2002, when the County leased
23 the telecommunications infrastructure from
24 Nextira, and Nextira managed that system for them,
25 them being the County, is there a difference then

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1 in the situation where the County is leasing the
2 equipment and having someone manage that leased
3 equipment for them versus outright ownership of

240

4 the equipment?

5 A. I'm not quite sure I agree with your
6 characterization of the way it was prior to 2002.
7 Because it was my understanding that Nextira owned
8 the infrastructure and Nextira was providing the
9 telecommunications services to the County That's
10 my understanding of it.

11 Then when the County purchased it, the
12 County actually purchased the equipment and the
13 infrastructure.

14 The County-- prior to 2002, Nextira was
15 actually receiving the money. They were actually
16 billing the tenants and they were receiving the
17 money And they were only giving a commission to
18 the County, a commission payment to the County.

19 Then in 2002, the County decided they
20 were going take over the infrastructure and they
21 retained Nextira as a manager of the system. That
22 was my understanding of it.

23 And yes, I would say there's a
24 difference there in that in one case it was
25 Nextira providing telecommunications services, and

108

1 then after 2002 it was the County providing
2 telecommunications services

141

19 Q When did the County commence operating
20 as a telecommunications company?

23 A. In 2002, when the County purchased the
24 assets from Nextira. That's when they became a
25 telecommunications company. And by their own

142

1 admission, they were providing two-way
2 telecommunications services.

3 Now, to further expand on that, in Pedro
4 Garcia's deposition, which was the 2003
5 deposition, on page 61 the question was: Let's go
6 to the 2002 agreement. Had the County been
7 involved in the telecommunications business, so to
8 speak, prior to that?

9 Answer: The County was basically a
10 customer of NextiraOne prior to that. We were
11 their customers as far as they were providing us
12 the services along with the services they were
13 providing to other tenants of the airport.

14 Question: Before February of 2002, was
15 the County providing in any way telecommunications
16 services to other tenants at the airport?

17 Answer: No

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18 Then on page 62, the question is. Let
19 me make sure I understand this Up until 2002, or
20 February, 2002, Nextira or its predecessor,
21 whoever it may have been, provided
22 telecommunications services to tenants of the
23 airport?

24 Answer: To some of the tenants.

25 Question: Some?

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1 Answer: Including the Miami-Dade
2 Aviation Department.

3 Question: All right And in February,
4 2002, pursuant to this agreement with NextiraOne,
5 the County became the providers and Nextira
6 became, if you will, a subcontractor; is that a
7 fair characterization?

8 Answer: That's correct.

9 Now, this was further corroborated by
10 Maurice Jenkins in his deposition, which was taken
11 in August of 2004, where there was quite a
12 discussion about the 2002 agreement

13 On page 194, it starts Question: Why
14 did the County enter into the transaction it did
15 in January, 2002, to purchase at assets of
16 Nextira?

17 Answer: It was, if I recall properly,
18 based upon an audit and a review by County
19 auditors, as well as there was an individual that
20 came from the police department that was there
21 temporarily -- I believe it was Tom Arnold -- that
22 looked at processes from law enforcement and
23 looked at processes and looked at the agreement
24 and other things and said it would be in the
25 County's best interest to buy-out and own and

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1 operate, rather than the existing way we were
2 doing business at that time.

3 Question: What was the existing way
4 that you were doing business at that time?

5 Answer: It was a managed services
6 agreement in which Nextira provided the service,
7 did the billing, and operated and supported the
8 MDAD voice network or voice system, voice network,
9 as it stood. And they managed and operated an
10 there's a management fee. There was, I think, a
11 percentage of the shared tenant revenue that came
12 back. Whatever was generated came back to the
13 department.

14 Question: So before January, 2002,
15 Nextira owned and operated the telecommunications
16 facility, correct?

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17 Answer: They owned it. They operated
18 it under a management agreement with the
19 department. Yes, sir.

20 Question: And then after January, 2002,
21 the County owned and operated the facility,
22 correct?

23 Answer: The County owned the facility
24 and we contracted to have someone operate it for
25 us

145

1 Question: But aren't we saying the same
2 thing? If the County is operating the facility
3 after 2002, albeit through a management agreement,
4 the County is still operating the facility? You
5 are operating it, correct?

6 Answer: We are still operating it, yes.
7 So by the County's own admission, before
8 2002 they were not operating telecommunications
9 services. After 2002, they were. They purchased
10 the agreement. They have this purchase agreement
11 from Nextira.

154

12 Prior to me presenting you with
13 Defendant's 4, had you ever seen Resolution
14 R-788-90?

15 A. No, sir. I don't believe so.

16 Q. Do you know of anyone in BellSouth who
17 would have knowledge of this resolution?

18 A. Not that I know of.

19 Q. If you turn to the forth actual page of
20 Defendant's 4, at the bottom it has a handwritten
21 number two, because they're actually out of order.
22 The justification memo was on top of the actual
23 resolution.

24 If you could read the first full
25 paragraph, which commences on October 7th,

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1 1987

2 A. On October 7th, 1987, the County
3 exercised its option in the Master Equipment Lease
4 Agreement to purchase the hotel system. The
5 Aviation Department is operating it today with
6 Centel providing maintenance and repair services
7 for that system.

8 Q. Based upon that statement, which is true
9 and it's still going on today, would this make the
10 County a telecommunications company?

12 A. I don't believe so.

13 Because if I'm understanding these

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14 agreements correctly, all of them together, there
15 are two things working here
16 First of all, there's equipment that is
17 being provided to the airport and the airport--
18 the County is evidently entered into a lease
19 agreement for the equipment, the telecommunication
20 type equipment. But the actual service is being
21 provided by Centel, as stated in the resolution.
22 And in the agreements it says a Shared Airport
23 Tenant Service Agreement by which Centel shall
24 provide telephone service to airport tenants and
25 users.

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1 It says this is in a continuation of the
2 agreements that were authorized in resolution
3 R-361-82, dated March 16, 1982.

4 So it appears that Centel is actually
5 providing the telecommunications services. And
6 even though the equipment may be owned by or
7 leased by the County, the actual provision of the
8 telecommunications service, the billing of the
9 services is being done by Centel.

10 Q. Now, what you just read referred to, the
11 airport system, is there anything in there that
12 speaks to Centel as providing the service to the
13 hotel in the airport?

14 A Well, I'd have to look further in here.
15 It says there is one-- there's a reference on
16 page seven of the Exhibit 6, Shared Airport Tenant
17 Service Agreement. Paragraph 9B says, "Because
18 the parties contemplate that the County may
19 provide the SATS for the airport and hotel system
20 at some point in the future, such documents shall
21 provide at a minimum that the contracts of
22 customers are fully assignable to the County by
23 Centel."

24 I would have to study this a little
25 further to see what Centel is providing service

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1 to. But it would lead you to believe it's
2 providing service to both, even though the
3 equipment may be leased by the County.

4 Q. From your brief review of the documents,
5 the two agreements, the Shared Airport Tenant
6 Service Agreement and the Equipment Lease and
7 Maintenance Agreement, have you seen anything in
8 those documents that contradicts the statement in
9 the paragraph, the last sentence of the two
10 sentence paragraph, which says the aviation
11 department is operating it -- referring to before
12 as the hotel system -- today with Centel providing

244

13 maintenance and repair services for that system?

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2 A. Like I said before, it appears to be
3 unclear. The paragraph says what it says. It
4 says that the Aviation Department is operating it
5 today with Centel providing maintenance and
6 repair.

7 Whereas, on the service agreement-- I
8 mean, the share tenant service agreement, the way
9 the paragraph is worded on page seven that I read
10 before about the parties contemplate the County
11 may provide, because the parties contemplate that
12 the County may provide the SATS for the hotel and
13 airport in the future. I'm not real clear as to
14 whether or not the hotel system was being-- the
15 telecommunications system in the hotel was being
16 provided by the aviation department or by Centel
17 It says what it says.

18 Q. Okay. Because of the clause that
19 doesn't necessarily clarify who is providing SATS
20 services?

21 A. Correct.

22 Then there would be some question as to
23 whether or not, if it was just a provision of
24 service to a hotel, whether or not that would
25 actually be a shared tenant service type service

160

2 anyway.

213

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?

25 A. Well, there's probably several

214

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

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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

215

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, forth 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?

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

217

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?

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

218

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

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

237

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?

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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.
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
238

1 position to know that?
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?

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
239

1 was providing the shared tenant services at the
2 airport at that time in 1994?
4 A Yes.

242

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

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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.

243

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?

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

244

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.

249

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 somepoint 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 --

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

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
245

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.

272

25 Q. Is there any reference in either

273

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?

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

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20 admitted by your own two employees, then there is
21 no way you could have been providing shared tenant
22 services.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

8 Q Starting at heading B, paragraphs 25,
9 26, 27, 28, 29, 30, 31 and 32, the second amended
10 complaint goes into a series of allegations which
11 ultimately, at least in paragraph 32, makes a
12 statement that the County now owns and operates a
13 telephone utility by offering twoway
14 telecommunication services to the public for
15 hire, including to commercial tenants at MIA and
16 other airports, using telecommunication
17 facilities.

18 What specific language in either the
19 resolution, R-31-02, or the accompanying
20 justification memorandum supports the allegation
21 in paragraph 32?

22 MR GOLDBERG Objection to the form
23 of the question. It's not a corporate
24 representative deposition, it's his
25 individual deposition.

34

1 MR. HOPE: In your interpretation of
2 the document.

3 MR GOLDBERG: Thank you

4 THE WITNESS: Because the memorandum
5 which talks about the resolution and says
6 the resolution is attached to it, as
7 opposed to the memorandum being attached
8 to the resolution, says that they're
9 purchasing Nextira's facilities to
10 provide telecommunications, they're
11 buying their infrastructure, it says in
12 the document in several places
13 telecommunications infrastructure,
14 installation, maintenance, repair,
15 management and operational support
16 services for all voice-- which is a
17 telecommunication service, and I added
18 that comment-- and data network
19 infrastructure at Dade -- MDAD, and
20 shared tenant services customers at Miami
21 International, MIA, and the general
22 aviation airports.

23 I mean, it says that you're
24 purchasing that infrastructure and you're
25 keeping these folks on as a management

35

1 overseer for the system, that you're
2 going to operate it, you're going to

252

3 negotiate the contracts with the tenants,
4 apparently you're going to bill them, and
5 you are providing twoway
6 telecommunications for hire, having
9 assumed those things from Nextira.

16 Q Can you turn to what will be the fifth
17 page of the composite exhibit which is
18 Defendant's 4, so it's actually the second page
19 of the justification memorandum,--

20 A Okay.

21 Q -- and read the paragraph that's headed
22 Background?

23 A Okay

24 Q If the County, according to this
25 memorandum, was already leasing the equipment

37

1 from Nextira, why is it that, under your
2 interpretation of this resolution, the County
3 only became either a telephone utility or
4 telecommunications company upon purchase of these
5 same assets?

8 THE WITNESS: Because you weren't
9 billing the customer. Nextira had the
10 contract, they were billing the customer,
11 they were receiving the revenues, and you

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12 were receiving something, I'm not sure
13 exactly what you would call it, but they
14 were the telephone company. They were
15 providing the telecommunications service
16 up to that point in time

17 After that time you begin providing
18 the telecommunications service and using
19 them as a manager, as a consultant, but
20 your people negotiated, from what I have
21 read in these documents, it authorized
22 the airport manager director of
23 telecommunications to negotiate with the
24 customers specifically, and determine how
25 much they were going to be billed, and if

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1 they were going to get breaks from
2 contracts-- that's an assumption -- with
3 them, and then they billed them on behalf
4 of Miami-Dade.

5 They didn't bill them, Nextira
6 didn't bill them, Dade County billed
7 them, and it changed, you became the
8 telecommunications provider yourself.

10 Q Do you know whether or not the County
11 was receiving any of the revenues that Nextira
12 collected?

13 A If I read this -- these documents that
14 you have provided here this morning right, there
15 was some kind of a ten-percent fee that you were
16 getting prior to you taking this over in 2002.

17 Q Do you know whether or not Nextira was
18 performing the billing function as, quote
19 unquote, a billing agent for the County?

20 A I do not know that answer.

21 Q Is it fair to say that your answer
22 therefore focuses on who is doing the billing and
23 who is doing the collecting of the revenues?

25 THE WITNESS: It's more the whole

39

1 thing, you got to look at the whole
2 thing, but the answer to your question is
3 it's a huge difference, yes.

4 I mean, if you're billing the
5 customer and you're receiving the revenue
6 and you're providing the service, then
7 you're a tweway telecommunications for
8 hire, you, the airport are

9 And so yes, it does make a difference.

42

2 Q What specific language in resolution
3 R-1091-02 supports paragraph 32?

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7 THE WITNESS This is a-- having
8 read this, based on what I have seen
9 written here in this resolution, this is
10 a shorter one than the one you showed me
11 before, and it specifically talks about
12 in here to execute a standard form of
13 airport rental agreement attached to the
14 memorandum, that's attached to this
15 resolution from what I have heard here,
16 and so it's referencing this network
17 agreement and this rental thing, and the
18 very first paragraph in this agreement
19 says: The County agrees to deliver,
20 install, rent, and maintain
21 telecommunications systems and services
22 consisting of (1), switch access to its
23 common telecommunications switching
24 equipment and software which will be
25 shared by MiamiDade and its tenants at

43

1 the airport, it talks about network
2 access to the local exchange carrier, it
3 talks about telecommunications terminal
4 equipment and cables, so there's the
5 telecommunications service, is being
6 provided.

7 And then on item 6 down here it
8 says: Payment of rent. It says the rent
9 for the system shall be based on the
10 Schedule 1 and be payable without notice
11 or demand

12 And, you know, I don't know if the
13 County is billing themselves and their
14 tenants, but clearly you're operating a
15 telecommunications facility and you're
16 receiving revenue for it, and it
17 certainly seems like it meets what's
19 defined there in 32.

44

2 Q Are there any other paragraphs or items
3 in the form of the airport rental agreement which
4 support the allegation contained in paragraph 32?

7 THE WITNESS: If you look at the
8 memorandum that's also attached, it says
9 that the County is taking over the SATS,
10 and in this case they're talking about
11 shared tenant services as defined here,
12 but on that second page it lists a series
13 of tenants and it says the installed cost
14 and what the monthly fee is going to be
15 And you're providing, according to

257

16 this memo, telecommunications and network
17 access and you're billing them for it,
19 based on just this memorandum, monthly fees.

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19 Q Let me provide to you what's going to
20 be marked as Defendant's 8, which is a memo to
21 various people dated January 16, 1995, from the
22 deponent. The subject is Dade County Aviation
23 Department First Set of Interrogatories in Docket
24 Number 931033-TL.

25 (Exhibit 8 marked as requested)

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1 A Okay.

2 Q Is this the-- have you ever seen this
3 memorandum?

4 A Absolutely. I wrote it, and that's my
5 signature there.

6 Q Is this the memorandum that we were
7 joking about at the beginning of the deposition?

8 A That's the one I looked at yesterday,
9 and I had read in Nancy Sims' testimony about it.

10 Q Let me refer you to the opening two
11 sentences of your memorandum, which I'll read it.
12 Southern Bell has an ongoing dispute with DCAD at
13 the Miami International Airport concerning the

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14 provision of local service. DCAD is providing
15 shared tenant services under an exemption in the
16 Florida Public Service Commission's rules and
17 regulations.

18 Approximately when did the County
19 become an STS provider?

20 A The County became an STS provider
21 themselves in 2002.

22 Q What is the basis for your answer that
23 the County became an STS provider in 2002, given
24 this January 16, 1995 memo?

25 A Thismemo, this memo had to do and this

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1 docket had to do with access, demarcation rules,
2 and access to the support structures and stuff,
3 and the fact that over the years that I have been
4 in this job, BellSouth and the County and me
5 being involved, have discussed about access
6 issues, whether or not I have access to conduit
7 to serve my customers.

8 And it was an access issue. I
9 probably-- at the time Wil-Tel, W-i-l-T-e-l, was
10 a certificated STS provider and was providing the
11 sharedtenant services here at the airport. I
12 probably lumped them together, I probably

13 shouldn't have in stating this, but this whole
14 thing had to do with access, demarcs, when I
15 wrote this

16 And the County, Dade County controlled
17 the infrastructure, Wi-Tel didn't control the
18 infrastructure, and I probably could have been
19 clearer and said that.

20 But, this had nothing to do with
21 necessarily the shared tenant service provider,
22 had to do with demarcation issues and gaining
23 access to conduit to be able to serve my
24 customers, and whether or not the County was
25 going to allow me to do it or make me lease their

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1 facility.

2 There was a whole bunch of issues
3 around that time frame that dealt with demarcs
4 and access, and I could have put it a little
5 clearer in my memo, but I wasn't.

6 He was talking about several airports
7 and the access issue. I asked them to look at
8 the other airports in the state at the same time.

9 Q At what point in time did your analysis
10 of whether or not the County was an STS provider
11 change such that your statement today is the
12 County only became an STS provider in 2002, and

260

13 not back in January 16th of 1995 when you stated
14 that the County was a provider in your memo?

21 THE WITNESS. You purchased the
22 infrastructure from Nextira and have been
23 providing service and billing customers
24 in 2002. Prior to that you had several
25 vendors here, starting with Centrex, then

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1 WiTel, then Williams, and then Nextira,
2 these persons providing shared tenant
3 services.

4 When this memo was written, WiTel,
5 they were certificated with the State of
6 Florida, I was having a problem with
7 access and the ability to place my
8 facility out here to serve my customers.

9 Poor choice probably saying
10 specifically that you were, but you were
11 the property owner, and shared tenant
12 services were being provided out here.
13 but they were being provided by WiTel
14 I probably could have been more clear in
15 the way I should have written this memo.

16 But it had to do with access, didn't
17 have to do with STS provision.

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18 You look at this, I'm talking about
19 other airports other than MiamiDade,
20 okay? I was asking to go look, it was
21 demarc, it was access, and that's what
22 that was about.

23 So, hasn't changed about when you,
24 you representing MiamiDade Aviation
25 Authority, became an STS provider, that

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1 happened in 2002, but you had vendors out
2 here that were providing shared tenant
3 services to customers that were out here,
5 and that's how I wrote that memo

17 Q This order regarding access to
18 facilities at airports was filed February 1st,
19 1994. In Section II, which is the Resolution of
20 the Dispute, it lays out the background of the
21 dispute between BellSouth and the Dade County
22 Aviation Department, which is now the MiamiDade
23 Aviation Department.

24 On page 2 it states: DCAD, as a result
25 of the nature of its involvement in the provision

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1 of telecommunications services, is providing
2 shared tenant services. Although DCAD is a

3 shared tenant services provider, pursuant to
4 Rule 2524.580, Florida Administrative Code. it
5 is generally exempt from the restrictions placed
6 on other STS providers.

7 Then it goes on to explain the rule and
8 some more information

9 Given this dispute in 1994 and one of
10 the statements in the background findings from
11 the PSC in 1994, what evidence or documents
12 support your position that the County only became
13 a shared tenant service provider in 2002?

16 THE WITNESS: Well, what evidence do
17 I have? Again, look at my memo, looking
18 at this, this all resolved around access.

19 If you go back and you look, the
20 dispute concerns the location of Southern
21 Bell's network point of demarcation on
22 the DCAD airport complex, the extent to
23 which DCAD must provide cable support
24 structures, so that this whole thing
25 revolved around those issues, and it says

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1 issue here, that they had been trying to
2 mitigate the dispute themselves, and were
3 unable to do that.

4 I think what happens is, like when I

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5 wrote that memo, when these people write
6 these things it's based on what they have
7 read, what they see.

8 At the time the order was written
9 shared tenant services was being provided
10 at the airport, but it was being provided
11 by WiTel.

12 MiamiDade International Airport was
13 the property owner and owned the support
14 structures and determined who would have
15 access to it.

16 You know, why they wrote it and said
17 you were doing it as opposed to Wi-Tel
18 on behalf of, or MiamiDade, I mean you
19 asked me what I thought, how I would
20 interpret it, I cannot tell you for
21 certain that's how they arrived at this
22 decision, but this was an issue about
23 access, okay? That's what this was
24 about.

25 And I mean, that's the best I can

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2 tell you, and I truly believe that.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the

issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

18 Q. Who decided to apply? Who decided you 23
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the
24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

24

1 That was three years ago.

2 They owned all the telephone switches,
3 the wiring, the network equipment. They owned
4 everything and we were basically leasing from them
5 that equipment and we were paying them as customers
6 before the service provision to everybody in the
7 airport, both STS customers and Miami-Dade Aviation
8 Department staff.

9 So as of February of 2002 we concluded
10 negotiations with them to purchase all of that from
11 them and then at that point we became owners of the
12 equipment and, therefore, we were actually the
13 service providers from that point on. Before that
14 it was them. So that at the time it was considered
15 that -- perhaps it was explored and, you know,
16 whether we should get a license or not for STS
17 provisioning and so forth.

18 Q. So as I understand it, before the sale,
19 the Nextira sale, the decision was that Nextira

20 was -- actually the County's perspective was that
21 Nextira was the service provider?

22 MR. HOPE: Objection.

23 A. Not from the County's perspective. It
24 was the service provider.

25 Q. So therefore, you did not need a
25
1 certificate?

2 A. We were not providing the services.

3 Q. Now the County is providing the
4 services; is that correct?

5 A. Now the County, yes, is providing the
6 equipment. We own the equipment.

7 Q. You own the equipment and Nextira is a
8 subcontractor?

9 A. Is a subcontractor.

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22 Q. All right. Now obviously there are
23 references to the P.S.C. on this particular page?

24 A. But the reasons I stated before was that
25 Nextira was the provider of the service and now

33

1 we're engaged in buying the infrastructure so we
2 will become the providers of the service. So
3 obviously that was one of the questions that needed
4 resolution.

5 Q. As I understand it, in light of the fact
6 that the County was going to be the service
7 provider, you had to make a decision whether the
8 County now because of the change in circumstances

9 needed to obtain a P.S.C. certification?

10 MR. HOPE: Objection to form.

11 A. That's right.

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10 Q. Mr. Garcia, are you familiar with an
11 agreement between Miami-Dade County, Florida and
12 Nextira that was entered into early February of
13 2002?

14 A. Yes, sir.

15 Q. Were you involved in the preparation, if
16 you will, of that agreement?

17 A. Yes, I was.

18 Q. What was the general purpose of the 2002
19 agreement?

20 A. The purpose was to acquire from
21 NextiraOne the infrastructure that they had at the
22 airport -- that they own at the airport to provide
23 telecommunications services, including the
24 telephone switches, network equipment and the
25 wiring infrastructure existing at the airport.

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1 Q. What do you mean by the term
2 infrastructure?

3 A. Infrastructure is all -- basically the
4 wires that are behind the walls that are running
5 through the airport providing where the information
6 flows to provide the services.

7 Q. Let's go to the 2002 agreement. Had the
8 County been involved in the telecommunications
9 business, so to speak, at the airport prior to
10 that?

11 MR. HOPE: Objection to form.

12 A. The County was basically a customer of
13 NextiraOne prior to that. We were their customers
14 as far as they were providing us the services along
15 with the services they were providing to other
16 tenants of the airport.

17 Q. Before February of 2002 was the County
18 providing in any way telecommunications services to
19 other tenants at the airport?

20 MR. HOPE: Objection to form.

21 A. No.

22 Q. Strike that.

23 A. Nextira was providing the services. We
24 were getting -- I believe it was a 10 percent
25 commission on the services provided to other

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1 tenants of the airport other than the aviation
2 department.

3 Q. Was that just for allowing Nextira to
4 provide it?

5 A. Yes.

6 Q. Did Nextira provide those services
7 pursuant to an RFP, or how did Nextira get to the
8 airport to provide those services? What was the
9 arrangement?

10 A. This was a contract that existed. I
11 think, prior to -- ten years prior to me starting
12 there. I'm not sure how it was awarded. I presume
13 it was a process of an RFP at the time. It wasn't
14 even Nextira. It was Williams. It changed names a
15 few times after that. So in any event, this has

16 been going on for over ten years they've been there
17 providing the services, as far as I know.

18 Q. Let me make sure I understand this. Up
19 until 2002 or February 2002, Nextira or its
20 predecessor, whoever it may have been, provided
21 telecommunications services to tenants of the
22 airport?

23 MR. HOPE: Objection to form.

24 A. To some of the tenants.

25 Q Some?

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1 A. Including the Miami-Dade Aviation
2 Department.

3 Q. Did Miami-Dade County receive some sort
4 of commission or payment from Nextira or its
5 predecessor prior to February 2002?

6 A. We received, I believe, 10 percent of
7 the gross for allowing them to provide the service.

8 Q. Did Miami-Dade County pay Nextira to
9 provide services to the County, or did the County
10 get those services for free?

11 A. We paid them through the nose for the
12 services that they provided us.

13 Q. So on one hand the County was getting
14 10 percent or roughly 10 percent of what Nextira
15 got from other tenants but also the County was
16 paying?

17 A. We were paying and we were paying a lot
18 more than what we were getting for the services.

19 Q. All right. And in February 2002,
20 pursuant to this agreement with NextiraOne, the

21 County became the provider and Nextira became, if
22 you will, a subcontractor; is that a fair
23 characterization?

24 A. That's correct

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6 MDAD or the County was going to acquire
7 the equipment?

8 A. Yes.

9 Q. And that was all of the equipment
10 related to the telecommunications business that
11 Nextira was doing at the airport?

12 A. All the equipment that Nextira owned at
13 the airport, yes, it belongs to the airport now.

14 Q. And for \$6 million plus which is going
15 to be paid over five years?

16 A. Right.

17 Q. Prior to the agreement, Nextira owned
18 the equipment; is that correct?

19 A. Yes.

20 Q. What kind of equipment is this?

21 A. It's telephone switches, the telephone
22 instruments that people use to make phonecalls, the
23 network equipment behind the scenes, supplies,
24 routing switches, all the wiring inside the airport
25 to provide the services, the outside cables

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1 connecting the different buildings, the CUTE
2 equipment. That's basically most of it.

3 Q. And why did the County, if you know,
4 make the decision to purchase the equipment?

5 A. It was a business decision mostly and

6 also a way to control our own infrastructure at the
7 airport instead of having it owned by some other
8 vendor.

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1 Q. So the County was going to be the
2 provider to the post 2002 agreement, the County was
3 going to provide the services to the tenants at the
4 airport; is that correct?

5 A. Yes.

6 Q. And that was a change from prior to the
7 2002 agreement?

8 A. That's correct.

Mr. Garcia was deposed for a third time on December 15, 2004. Again, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issue addressed in that deposition. With respect to the information sought by this interrogatory, Mr Garcia testified as follows:

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16 Q Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q Well, then let me ask you in a more

27

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to

4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

28

1 decision not to file?

2 MR. HOPE: Objection to form.

3 THE WITNESS: Right.

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8 A I don't think so, because I'm talking
9 about an Nextira STS. Nextira was providing STS
10 services prior to us buying their equipment.
11 This was I guess the services that they were --

12 the type of STS services, could be, that Nextira
13 was providing.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr Jenkins testified as follows:

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18 Q MDAD sends invoices to its customers on a
19 monthly basis charging for the various services,
20 correct?

21 A Yes, sir.

22 Q. The customers when they get the invoice pay
23 MDAD for the services, correct?

24 A Yes, sir.

25 Q. Just like if I have BellSouth as my carrier

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1 at my home and they send me a bill I remit a check to
2 BellSouth, you are sending bills to your customers
3 and the customers are paying you, correct?

4 A. Yes, sir.

5 Q. Likewise, if a customer has a repair problem
6 on their phone, your customer has a repair problem on
7 their phone at the airport they are going to call you
8 to fix it, correct?

9 A. Yes, sir.

10 Q. Just like if I have BellSouth at my home and

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11 I have a repair problem I would call them There's
12 really no difference, correct?

13 A. No, sir.

14 Q And obviously when-- we just talked about
15 MDAD billing the customers and receiving payment.
16 That wasn't always the case, correct?

17 A. True. Yes, sir.

18 Q. When did that change?

19 A. Right after the, January 2002, the buyout of
20 Williams

21 Q. It is the case now the customers call you to
22 repair the phones, correct? Just talked about that.
23 the customers now call MDAD if they have repair
24 problems, correct?

25 A. They contact both the department as well as

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1 a call center number as well.

2 Q. With respect to the invoicing and payments
3 that changed in 2002. Prior to 2002, isn't it the
4 case that the prior owner of the equipment and
5 operator Nextera was invoicing the clients and
6 receiving payment?

7 A. Yes, sir.

8 Q. And the county was not involved in that
9 process at all?

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10 A. Yes, sir.

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12 Q. So before January 2002, Nextera owned and
13 operated the telecommunications facility, correct?

14 MR. HOPE: Objection to form.

15 A. They owned it. They operated it under a
16 management agreement with the department, yes, sir.

17 Q. And then after January of 2002 the county
18 owned and operated the facility, correct?

19 A. The county owned the facility and we
20 contracted to have someone operate it for us.

21 Q. But aren't we saying the same thing. If the
22 county is operating the facility after 2002, albeit
23 through a management agreement, the county is still
24 operating the facility? You are operating it,
25 correct?

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1 A. We are still operating it, yes.

2 Q. There is no dispute about the fact that you
3 are operating it, correct?

4 A. All right.

5 Q. And you weren't operating it before January
6 2002 because Nextera was?

7 A. Yes, sir.

8 Q. There's no dispute about that, correct?

275

9 A. Yes, sir.

10 Q. Meaning there's no dispute, you agree with

11 me, right? Sorry. You do agree with me, there is to

12 dispute, right?

13 A. I concur with your last statement.

BellSouth further directs Defendant to the ELM Agreement and SATS Agreement between the County and Centel in place from 1988 through February 2002.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 13:

Please state all facts which support your allegations in Paragraph 32 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005

Many of these depositions were specifically designated as corporate representative

depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

BellSouth further responds to this interrogatory by stating that the allegations in paragraph 32 of the Second Amended Complaint are a factual and legal conclusion based on the language of the applicable statutory and regulatory provisions governing the statutory definition of a telecommunications company and the offer and provision of Shared Tenant Services and further based on the allegations contained in other paragraphs of the Second Amended Complaint. In particular, BellSouth directs the County to the following statutory and regulatory provisions:

Florida Statutes Section 364.02
Florida Statutes Section 364.01
Florida Statutes Section 364.339
Florida Statutes Section 364.32
Florida Statutes Section 364.33
Florida Statutes Section 364.335
Rule 25-9.002 of the Florida Administrative Code
Rule 25-4.003 of the Florida Administrative Code
Rule 25-24.580 of the Florida Administrative Code
Rule 25-24.567 of the Florida Administrative Code
Rule 25-24.569 of the Florida Administrative Code
Rule 25-24.575 of the Florida Administrative Code

Additionally, by way of example, and not of limitation, BellSouth more particularly directs Defendant to the excerpts of the depositions cited in response to Interrogatories 5, 7, 8 - 12, and 14 -18 as facts responsive to this interrogatory.

BellSouth also directs Defendant to the Affidavit of Maurice Jenkins dated July 29, 2003. In paragraph 11 of the affidavit, Mr Jenkins stated, "In light of the impending deadline for renewal of the Equipment and Services Agreement, both of which were scheduled to terminate on February 6, 2002, the County decided [sic] exercise its buyout option under the ELM Agreement and the SATS Agreement to acquire title to all telecommunications, data network and CUTE infrastructure, software, licenses, permits and other assets (collectively the "Assets") used in the provision of telecommunications, data network, and shared airport tenant services (collectively the "Services"). On January 29, 2002, the Board approved Resolution No R-31-02 authorizing payment of \$6,450,000 to Nextira for the purchase of infrastructure to be sued and operated by or for MDAD and authorizing the approval and execution of a non-exclusive "Telecommunications, Data Network, and Shared Airport Tenant Services" management agreement with Nextira for an interim two (2) year period." In paragraph 18 of the affidavit, Mr. Jenkins states, "Neither the County

nor MDAD possess a Florida Public Service Commission ("FPSC") certificate for the provision of the STS portion of the Services." In paragraph 20, Mr. Jenkins further states, "Prior to the sale of the Assets, Nextira provided STS services at MIA without a FPSC certificate." BellSouth also directs Defendant to paragraphs 2 - 5 and 10 as facts responsive to this interrogatory.

BellSouth further directs Defendant to the ELM Agreement and SATS Agreement between the County and Centel in place from 1988 through February 2002.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct

Interrogatory No. 14:

Please state all facts which support your allegations in Paragraph 36 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant

and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

22

4 Q If I could just have a minute, Mr. Paul.
5 If I could ask you to look again at the text of
6 14b. I want to focus in on the words, similar or
7 similar service. Those two words. It says, the
8 County shall not operate a light, power or
9 telephone facility to serve any territory in the
10 County which is being supplied with similar
11 service. And then it goes on to, except by
12 majority vote.

13 With respect to the term similar
14 service, does similar service mean, as you
15 assisted drafting it, does it mean the exact same
16 service?

18 A. No. Only that it would be an electric
19 service, or telephone service of various types.

20 Q. So if the County were to offer telephone
21 service that, you know, competes with a subset of
22 BellSouth's service, but not the exact same
23 service, would that be within the meaning of
24 similar service?

25 A. No. Well, wait a minute. The question

23

1 is in the backwards.

2 Q Do you want me to ask her to read it
3 back?

5 A. Go ahead, read it back

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

8 A. Well, there's no question that the
9 electric company, or the telephone company
10 doesn't have to have the exact same service to
11 compete with similar service.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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20 Q. Please describe, if you know, the
21 specific telecommunications services provided or
22 offered by the County at Miami International
23 Airport.

120

10 A. I don't know all the services that are
11 provided at Miami Airport.
12 I do know that based on-- for instance,
13 there was a five year marketing plan that was
14 produced, and in that five year marketing plan it
15 talks about the target markets and some of the
16 types of services that are being provided, which
17 included voice, voice and data, voice and CUTE.
18 CUTE is a common use terminal equipment
19 which is used.
20 And also it says, we know, SATS
21 customers, that's share airport tenant service
22 customers, are used. Voice, data network, high
23 end system options.
24 So there's evidently voice, data and the
25 common use terminal equipment is being provided.

121

1 There's also reference to -- it continually goes
2 over references to voice and data services.
6 A. There's also equipment, terminal type of
7 equipment provided. You provided maintenance of
8 the equipment.
9 There's also references in the actual
10 depositions of the County's own witnesses. Like
11 references from Pedro Garcia talking about-- this
12 is one on page 44, talking about customer--
13 whether or not the customer can -- what type of
14 service they can have. Whether they can pick and
15 choose a service that they have. The fact that
16 they're in competition with BellSouth and with
17 other providers
18 So they indicate in these particular
19 pages that there are similar services being
20 provided to what BellSouth would provide, or what
21 another telecommunications company would provide.
22 Q. But my question--
23 A. But it's voice and data typeservices.
24 Without getting into the details of the technical
25 make-up of these services

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1 And in the contract itself there's a
2 whole litany of descriptions of facilities. And
3 part of it has to do with the Nortel switch,
4 evidently, and PBX equipment.

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On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

44

24 Q What are the specific similar services
25 provide by BellSouth which support paragraph 38

45

1 of the second amended complaint?

9 THE WITNESS: You know, based on
10 what I have read and what I've seen in
11 the depositions specifically, there are
12 privateline services, that's local
13 service, dialtone service, there's
14 several services in the
15 telecommunications field, and we provide
16 similar services, BellSouth does.

17 And BellSouth does it to tenants
18 here at the airport at the same time the
19 airport is providing similar services to
20 their customers

21 BY MR. HOPE:

22 Q So you said private lines?

23 A Yes

24 Q Dial tone?

25 A Yes.

46

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1 Q What else?

2 A Dial tone, and I correlated it with
3 local services. Those are the two specifically
4 that I mentioned.

5 And I know there are others, but I
6 cannot talk with any specificity about it

7 Q When you say-- when you use the term
8 private lines, what does that mean?

9 A It means that it's a point-to-point
10 service, it's a service that does not go through
11 a switch, and allows an entity at two different
12 locations to either communicate by data or by
13 voice.

14 But it's a private line, other people
15 don't have access to it

16 Q When you say dial tone, what do you
17 mean?

18 A I mean dial tone is generally accepted
19 as the beginning of the provision of local
20 service. Everything in the provision of local
21 service starts with a dial tone.

22 The customer goes off-hook on their
23 instrument, and what they hear in their ear is a
24 dial tone, and then they do a number of things to
25 either complete a local or a long distance call.

1 or in the case of dialing in, you know, to access
2 a computer, it's local service, and it starts
3 with a dial tone.

4 Q When you use the term local service,
5 what do you mean?

6 A Local service is where a customer
7 anywhere in an exchange can connect with another
8 customer in that exchange. The call can be
9 completed.

10 Q When you speak of exchanges, you just
11 said a customer-- for the local service, a
12 customer in an exchange can contact any other
13 customer in that exchange. What do you mean by
14 exchange?

15 A There's a-- for the incumbent local
16 exchange company there is a defined area called
17 an exchange, sometimes consisting of one or more
18 wire senders as it is in Dade County, that we
19 charge a specific rate for, and the customer asks
20 for service from us, they get that, and they can
21 call anybody in that exchange for what they pay
22 for that monthly fee.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought

by this interrogatory, Mr. Garcia testified as follows:

28

3 Q. Are tenants of the airport required to
4 purchase any telecommunications services from the
5 County?

6 A. No, sir.

7 Q. They're free to go anywhere they want
8 to?

9 A. They're free to go anywhere they want
10 to.

11 Q. And if they go somewhere else, they
12 wouldn't use the County facilities?

13 A. That's correct.

14 Q. So would it be fair to say that the
15 County is in competition with other
16 telecommunication providers at the airport?

17 MR. HOPE: Objection to form.

18 A. We -- yes, we are basically there to
19 provide them services, if they want us to provide
20 them services. If not, they go to any company they
21 want.

22 Q. Right. And the County charges for these
23 services?

24 A. Not if they go to another company.

25 Q. If they go to the County --

29

1 A. If they go to the County, we charge them
2 just like BellSouth would charge them for the
3 services.

4 Q. The County engages in the business, so
5 to speak --

6 A. Yes, sir.

7 Q. -- attempting a profit-making
8 enterprise?

9 MR. HOPE: Objection to form.

10 A. Yes, sir.

11 Q. At least you hope it is?

12 A. We're losing money right now, but we're
13 hoping to make money.

39

20 Are there any other entities, to your
21 knowledge, individuals or entities that provide
22 telecommunications services to tenants at the
23 airports within the County?

24 A. Define entities. You mean other
25 companies?

40

1 Q. Other companies, yes, businesses.

2 A. Sure. There are many.

3 Q. Who?

4 A. BellSouth, MCI, there's -- we're not --
5 the tenants do not let us know who do they do
6 business with as far as provisioning their
7 telecommunication services. So they could be
8 almost anybody providing services.

9 Q. The ones you provide services you know
10 you provide service to?

11 A. Right.

12 Q. But you don't know who provide services
13 to the other --

14 A. Yes.

15 Q. But you do know there are other entities
16 out there that provide services?

17 A. Yes. Within their leasehold, they can
18 get services from anybody they want to. They don't
19 even have to tell us who.

20 Q. Would you classify those services as
21 services similar to those that the County provides?

22 MR. HOPE: Objection to form.

23 A. I cannot really tell whether the
24 services are -- you can say similar. They may or
25 may not -- they may be more or less what we

41

1 provided but they're of the same nature.

2 Q. Right, voice and voice network.

3 A. Voice and network, right.

4 Q. Does the County compete with these other
5 entities for the business out there?

6 A. Yes, sir.

7 Q. Are you aware of situations where a
8 potential customer of the County chose to go with
9 BellSouth or MCI or some other entity?

10 A. Yes, sir.

11 Q. And they've told the County we're going
12 elsewhere?

13 A. They don't tell us. They just do it.
14 Most of the time before they even come to the
15 airport they've already made plans to go with
16 somebody else.

...

20 Q. Let me show you what's been marked as
21 Exhibit 6 for the purposes of the deposition and
22 ask you first if you can tell me what it is.

23 A. It looks like a work order cover

24 sheet -- a work order, work description, the work
25 order.

42

1 Q. I mean it's a form that's used by the
2 County?

3 A. Yeah, it's used by NexiraOne basically
4 to transmit the work order information to perform
5 work for the tenants or communicate with us for
6 that.

7 Q. Up at the top it says work order
8 processor-TSR remarks. Do you know what TSR means?

9 A. TSR number, I don't really know what
10 that stands for, but it's just a number of the work
11 order. It could be just the name of the system
12 that produces this.

13 Q. It's an identifying number of some sort?

14 A. An identifying number for the work
15 order.

16 Q. Down in the remarks it says cancel as
17 per Holly. Do you know somebody by the name of
18 Holly out there?

19 A. Holly is the person who works for
20 NextiraOne and she's the one -- the person that
21 does the marketing to get customers to come to
22 our -- to provide -- to let us provide the
23 services.

24 Q. This one says cancel as per Holly,
25 customer opted to use BellSouth?

43

1 A. Right.

2 Q. Which would indicate to you that this

3 particular customer, and we don't know who it is,
4 it's been redacted, but has chose to use BellSouth
5 as its provider as opposed to the County?

6 A. That's right.

7 Q. Below that it says provide quote,
8 install one analog line in room -- whatever the
9 room number is. Analog line is a voice line?

10 A. What happens is everything that
11 NextiraOne does for us, they require permission,
12 which is a work order to do whatever.

13 Q. Permission from whom?

14 A. From MDAD, from the aviation department.
15 They work for us. We pay them for this.

16 Q. Okay.

17 A. So this was a work order that was
18 issued, seems like, for them to provide -- to go
19 out to the customer and provide a quote. Sometimes
20 you need to install a wire or do some work to
21 provide the service.

22 So she went ahead and tried to give this
23 customer a quote, whoever the customer was, and
24 when she got there the customer had already made
25 arrangements for BellSouth to provide the service.

44

1 So this is just basically cancelling the work
2 order.

3 Q. So in this case BellSouth was apparently
4 providing a similar service?

5 A. The customer picked BellSouth as a
6 service provider which is the same service we could
7 have provided.

2 Q. So then this marketing plan
3 acknowledges, does it not, that BellSouth and MDAD
4 are competitors in this venture or in this
5 business?

6 A. Correct. Actually, this term is out of
7 date. The person that wrote this is talking like
8 some many years back.

9 Q. Right.

10 A. The correct term is --

11 Q. Right.

12 A. But it means that.

13 Q. BellSouth?

14 A. BellSouth or any other service provider.

23 A. We provide services to the tenants of
24 the airport which is a County-owned facility.

25 Q. I'm just asking if BellSouth offers
54

1 similar service to those tenants.

2 A. Yes, they do.

23 Q. Paragraph 1.32, shared airport tenant
24 services. The provision of service which
25 duplicates or competes with local service provided

1 by existing local exchange telecommunications
2 company and is furnished through a common switching
3 or billing arrangement to tenants by an entity
4 other than an existing local telecommunications
5 company.

6 Can you explain that to me? I'm a

7 little slow.

8 A. Well, it's basically saying that we can
9 provide a dial tone that you receive on your
10 telephone, among other services, basically, and we
11 basically compete with what the local exchange
12 carrier would do. I mean you can go to services to
13 a local exchange carrier, to us, or to any other
14 company that provides those services.

15 Q. The local exchange carrier being
16 BellSouth?

17 A. Yes.

18 Q. Is BellSouth the only local exchange
19 carrier?

20 A. It's the only local exchange carrier.
21 The other ones are alternate local exchange
22 carriers.

23 Q. In terms of drafting the agreement, then
24 why, if you know, did it say service provided by
25 the existing local exchange telecommunications

92

1 company as opposed to saying service provided by
2 BellSouth?

3 A. I would imagine the wording was probably
4 taken from the definition that is existing in the
5 Florida Statute or SATS, STS.

6 Q. But clearly the reference to existing
7 local exchange telecommunications company, is it
8 fair to say that that is a clear reference to
9 BellSouth?

10 MR. HOPE: Objection to form.

11 A. The -- yes, it looks that way, but the

12 reason is that at the time that this was written,
13 the wording of the statute was probably written
14 before competition was allowed. So the only
15 provision at the time was the local exchange
16 carrier --

17 Q. Okay.

18 A. -- and this was just taken from that
19 just to be accurate, to have some meaning --

20 Q. Right. But what I'm saying is the only
21 existing local exchange telecommunications company
22 referred to in Paragraph 1.32 is BellSouth; is that
23 correct?

24 MR. HOPE: Objection to form.

25 A. In Miami-Dade County.

93

1 Q. Well, this agreement only refers to
2 Miami Dade County, doesn't it?

3 A. Well, I'm trying to be accurate.

4 Q. I understand. I understand. I mean the
5 agreement itself is only operating in Miami-Dade
6 County; correct? Your agreement with Nextira is to
7 cover airports in Miami-Dade County, not anything
8 else?

9 A. Actually the way -- it's anybody that
10 can provide dial tone to -- to access to a public
11 network. That's what it refers to the local
12 exchange -- local exchange -- an existing local
13 exchange telecommunications company. So you can
14 get dial tone from MCI or anybody else. So that's
15 what it's --

16 Q. And clearly shared airport tenant

17 services contemplates the competition between
18 various telecommunications providers; is that a
19 fair statement?

20 MR. HOPE: Objection to form.

21 A. I'm sorry. Can you --

22 Q. Let me rephrase it.

23 This paragraph makes reference to the
24 fact that the services that MDAD is going to
25 provide compete with other providers?

94

1 A. Yes.

2 Q. Okay. Because they're providing similar
3 services?

4 A. Yes.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

31

16 Q. Where does that dial tone emanate from?
17 Or better stated, where does that dial tone
18 originate from?

19 MR. HOPE: Objection to form.

20 THE WITNESS: It originates from our
21 PBX located in the airport.

22 Q. Now, you used the word "our PBX." What do
23 you mean by our PBX?

24 A. The PBX owned by the aviation department.
25 The PBX is a telephone switch, and it is located

32

1 inside the airport premises. That is where the dial

2 tone originates when you first pick up your phone at
3 the airport.

4 Q. So the dial tone originates from a PBX
5 switch that is owned by the County. Is that
6 correct?

7 A. Yes, sir.

8 Q. And it is that PBX switch that is owned by
9 the County that generates the dial tone; is that
10 correct?

11 A. Yes, sir.

12 Q. So when that customer picks up the
13 receiver and hears a dial tone, is it a correct
14 statement that the County is providing that dial
15 tone that that customer hears?

16 MR. HOPE: Objection to form.

17 THE WITNESS: He is providing the
18 internal dial tone that the customer
19 hears.

20 Q. So the County is providing dial tone to
21 that customer.

22 A. The County --

23 MR. HOPE: Objection to form.

24 THE WITNESS: The County is
25 providing internal dial tone to the

33

1 customer.

36

24 Q. How many PBX's does the County own?

25 A. We have two major PBX's. Two at the

37

1 airport.

2 Q. I am asking you because you have the

3 technical background, but do all these wires feed
4 into these two PBX's?

5 A. Yes.

6 Q. And do they go through -- do they connect
7 into the PBX through what is called a port?

8 A. The port is the -- it is basically -- yes,
9 the port is a hole that receives the wire to connect
10 the phone to the PBX and all the internal equipment
11 of the PBX.

12 Q. Is the port part of the PBX?

13 A. Yes. They are cards. The ports are cards
14 in multiples of 16 each in a card, and they plug
15 into the PBX which has common equipment, peripheral
16 equipment, different kinds of equipment inside. It
17 is part of the PBX.

18 Q. Once the PBX interprets the four-digit
19 number, it then gets routed to whoever's number that
20 is Is that a fair statement?

21 A. Yes.

22 Q. And does the call, can we make reference
23 to a call now that gets routed, does that call
24 travel over -- go out of another port out of the
25 PBX, over other wires, to the receiver's destination

38

1 and phone?

2 A. Yes.

3 Q. And is all that equipment that is involved
4 in that process owned by the County as well?

5 A. Yes.

6 Q. Then, in simplistic terms, does that phone
7 ring?

8 A. Yes.

9 Q. And the person can answer if they are
10 there, correct?

11 A. Yes.

12 Q. When that person answers it, it should be
13 the voice of the originating caller, correct?

14 A. Yes.

15 Q. So that whole scenario occurs over County
16 owned equipment, correct?

17 A. Yes.

49

24 Let's say that somebody in Hialeah,
25 outside the airport, wants to call that ice cream

50

1 shop at the airport, who is an MDAD customer. How
2 does that call -- how is that call made from a
3 technical perspective?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The customer -- the
6 person in Hialeah picks up their phone
7 and dials ten digits. The ten digits go
8 through the BellSouth central office, the
9 Hialeah central office, and that central
10 office, sends those digits -- knows that
11 because of the digits that the call needs
12 to go to the airport central office, and
13 when it gets there the central office
14 basically strips the first four digits,
15 and then sends the four digits to the
16 PBX, which is called a DID, direct inward
17 dialing digits. Then the PBX routes that

18 call to whoever is supposed to receive
19 the call

20 Q. And when you say the PBX, that call goes
21 from Hiialeah, through BellSouth's equipment, into
22 the airport PBX? Is that what you are referring to?

23 A. It comes from -- it goes through the
24 airport central office of BellSouth, through those
25 T1's that serve the airport, into the PBX, and from

51

1 the PBX to the terminating phone that the call is
2 going to.

3 Q. When you refer to the PBX, are you
4 referring to the County-owned PBX?

5 A. To the County-owned PBX.

6 Q. And then through the County-owned
7 equipment to the County customer?

8 A. To the County-owned equipment and wires to
9 the County -- to the receiving customer who has a
10 phone there.

11 Q. That, it seems to me, to be a local phone
12 call.

13 A. It is a local phone call.

104

18 Q. Let me show you what has been marked as
19 MJ-24 previously in this deposition.

20 A. Okay.

21 Q. I venture to guess that you are familiar
22 with this document.

23 A. Yes, sir.

24 Q. You have seen this type of document

25 before.

105

1 A. Yes.

2 Q. Can you just explain for the record what
3 this document is, please.

4 A. This is a sample of a typical -- a sample
5 pricing of the basic components of voice equipment.
6 That is basically what it is. And it is broken out
7 between the four components that we saw previously
8 in the contract between switch access, network
9 access, system, and system - other.

10 Q. System - other, which was number four on
11 the rental agreement, correct?

12 A. Yes.

13 Q. Let me just bring you down to where it
14 says network access, number two. In the first line
15 there is single line local network access. Monthly
16 unit rental, \$18. Can you explain to me what that
17 charge is for, specifically.

18 A. Okay. That is the charge that was
19 assessed for the -- we are on the network side of
20 the PBX now, not the side where the phone is
21 connected. We are on the side that is connected to
22 the outside world. That single line network access
23 is the charge that would be assessed for the
24 connection to the outside world, if they want that
25 kind of connection.

106

1 I have to point out, however, that is not
2 used any more. We have dropped -- no, we have not
3 dropped it for everything. We only kept it there

4 for a connection of modems. Like a one connection
5 only. Like anybody that has a fax machine. What we
6 normally -- well, I will let you ask a question. It
7 is the connection to the outside world to the
8 BellSouth lines from the PBX.

9 Q. Why is it not used any more?

10 A. Well, it used to be like let's say you
11 want to connect 25 phones. They used to be charged
12 25 times 18. Now we modify that charge and we are
13 accessing the network access, which is \$49 shown on
14 the third line on a ratio of five to one. In other
15 words, when you connect a phone, you buy five
16 connections, and for \$49 you can connect five
17 phones.

18 Q. If you want ten phones, it is going to be
19 \$98?

20 A. \$98.

21 Q. So you just subsumed the charge that was
22 formerly single line local network access into the
23 third line down, network access?

24 A. Right. We kept the first one just for
25 anybody that has one connection. If you want -- if

107

1 you have a number of telephones, then you go to the
2 49, for five.

3 Q. Why was that change made?

4 A. It was felt that it probably was too
5 expensive. We couldn't explain to the customers.
6 It was kind of high. It was a marketing decision.
7 Actually, I wasn't part of that decision. I was
8 informed by the folks that run the marketing

9 department of Nextira that it was done to have a
10 better price structure.

11 Q. Couldn't you explain it to your customers
12 that this is just to make sure that we are covering
13 our costs?

14 MP. HOPE: Objection to form.

15 THE WITNESS: No, because they have
16 other choices. I mean, we could charge a
17 thousand dollars for the phone, but that
18 wouldn't be too good for us.

19 Q. Because why?

20 A. We wouldn't cover anything because nobody
21 would buy it.

22 Q. Where are they going to go?

23 A. They could go to BellSouth, they could go
24 to anybody else. To AT&T, Sprint. You name it.

140

23 Q. What is the charge for \$18 here or \$72 as
24 shown for single line local network access?

25 A. That is the charge for connecting from the

141

1 PBX out to the world, the network access charge.
2 That is the charge that now we have consolidated
3 into five for \$49. It used to be \$18 per --

4 Q. But that access allows customers to
5 complete a local call, correct? Your customers
6 complete a local call, correct?

7 A. Yes.

8 Q. So MDAD is charging for the completion of
9 the local call, correct?

10 A. For the ability to complete the local
11 call. We don't charge by the call.

12 Q. But for the ability to complete local
13 calls.

14 A. Yes.

15 Q. You would agree with that?

16 A. Yes.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

100

17 Q. So it must be true that if the county didn't
18 own its telecommunications facility and equipment,
19 it's current MDAD customers would not have telephone
20 service unless they went to some other
21 telecommunications company, correct?

22 MR. HOPE: Objection to form

23 A. Yes.

24 Q. Are all local calls made by MDAD customers
25 routed through MDAD's switch?

101

1 A. Yes.

2 Q. Absent routing through MDAD's switch, isn't
3 it true that MDAD's customers would not have a dial
4 tone?

5 A. Yes.

300

6 Q. And absent routing over a pathway belonging
7 to MDAD that's emanating from MDAD's switch to an
8 MDAD customer, the MDAD customer would not have dial
9 tone, isn't that correct?

10 MR. HOPE: Objection to form.

11 A. Yes.

12 Q. Does MDAD as part of the service it provides
13 as a telecommunications facility, don't you have the
14 ability to assign telephone numbers to your
15 customers?

16 MR. HOPE: Objection to form.

17 A. Yes.

18 Q. What happens technically if a BellSouth
19 customer in Hialeah wants to call one of your
20 customers, MDAD's customers at the airport?

21 A. They dial their ten digit number of the
22 customer themselves, because it comes into
23 BellSouth's demarcation which I think there's 300X
24 room, and from there to our PBX, and then it gets
25 routed to the customer extension to the number that

102

1 they are dialing.

2 Q. What exactly technically does your PBX do
3 once it gets that call into that piece of equipment?
4 There's a number of things that happen, isn't it,

301

5 that are solely within your control?

6 MR. HOPE: Objection to form

7 A. Yes.

8 Q. Can you explain what happens for the court
9 and for this case when that call comes in to your
10 particular piece of equipment, the PBX?

11 A. Call comes in, we verify that you are
12 dialing an extension or a number that does exist, and
13 if it does exist it gets routed to that location.

14 If that location doesn't pick up or depends
15 on what we put on it, it can go to voice mail. We
16 allow that call to be routed somewhere else to insure
17 that it gets picked up.

18 Q. Maybe we are saying the same thing, but see
19 if you would agree with me.

20 Once that call comes into your PBX, doesn't
21 your PBX in essence interpret that telephone number
22 and translate that telephone number so that you then,
23 your equipment redirects that telephone call to the
24 specific facility and specific phone at your
25 customer's office?

103

1 MR. HOPE: Objection to form.

2 A Yes, sir

3 Q. There's no dispute about that, right?

302

4 A. Yes, sir.

108

20 Q. You say you haven't seen this airport rental
21 agreement in some time. How long has it been?

22 A. Not sure. I believe it might have been
23 revised. But I can't tell you the last time I've
24 seen it to read the document itself I'm not sure.
25 sir.

109

1 Q. Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document. Well, it's a
5 document that we use to establish customer
6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's-- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering
11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir.

169

303

5 Q. You would agree that growing the business,
6 increasing revenue at the airport is something that
7 gets discussed and it is a major goal of yours and
8 MDAD's correct?

9 MR. HOPE: Objection to form.

10 A. Generating business, yes, I would say yes.

11 Q. And to generate business you would agree
12 that you need to increase your customer base,
13 correct?

14 A. Yes, sir.

15 Q. And in addition, to generate more revenue
16 you could increase your rates that you charge your
17 customers, correct?

18 A. It's a possibility.

19 Q. OK. And to increase your customer base
20 you'd agree that MDAD, the airport, would need to
21 successfully compete with other telecommunications
22 companies for the customer base that you serve,
23 correct?

24 MR. HOPE: Objection to form.

25 Q. Strike that. For the geographical territory

170

1 that you serve.

2 MR. HOPE: Objection to form

3 A. Yes.

304

4 Q. I mean, you would agree that you want to get
5 as many customers as possible within the territory
6 that you are providing service to, correct?

7 MR. HOPE. Objection to form

8 A. Yes, sir.

9 Q. There's no doubt about that, right?

10 A. No, there's no doubt about that.

11 Q. And your territory is Miami International
12 Airport and its associated buildings and the other
13 county owned airports, correct?

14 MR. HOPE: Objection to form

15 A. Yes.

173

17 Q. Could you tell me when you look at this
18 document, MJ26, what is included in the 81.75 that's
19 being billed where it says "missed charge monthly
20 rental for telephone and maintenance"?

21 A. What's included in it, it's monthly rental
22 for the telephone and the hand set itself as well as
23 the maintenance that goes along with that to deal
24 with our customers if they have a problem. So that's
25 from the hand set to the port that leads back to the

174

1 PBX.

2 Q. Is access billed in this invoice?

305

3 A. Access to?

4 Q Well, we have talked about network access.
5 talked about switch access. Are any charges included
6 on this invoice for those services?

7 A. I'm not sure. I would need to look at the
8 detail that may have come along with it.

9 Q. Let's try another example. Let me show you
10 what I will mark as MJ27.

11 (Invoice marked Exhibit MJ27 for
12 identification)

13 The first page of this document is another
14 invoice similar to MJ26, correct?

15 A. Yes, sir.

16 Q. You want it take a look This amount is for
17 \$85.75, correct?

18 A. Yes

19 Q. Dated July 1, 2002, correct?

20 A. The total amount is \$91. The first item you
21 are talking about?

22 Q. You are right.

23 A. 85.75.

24 Q. And the sales tax is 5.57 for a total of
25 91.32, correct?

175

1 A. Yes.

306

2 Q. And if you turn to the second page of this
3 composite exhibit. This a form that also is entitled
4 Miami-Dade Aviation Department standarized form. Who
5 produces this form?

6 A. I believe it's-- I'm not sure. It either
7 comes from us or comes from Nextera. I believe it
8 comes from the department.

9 Q. From the department, aviation department?

10 A. Yes, sir.

11 Q. And you see that the amount on there the
12 total, 85 75, equals the first line item on the
13 previous invoice?

14 A. Yes, sir.

15 Q. And then if we go to the third document,
16 that is a contract invoice that has Nextera 1's logo
17 on there, that also is for rental monthly of 85.75,
18 the same amount that we have seen on the prior two
19 documents, correct?

20 A. Yes, sir.

21 Q. Does Nextera 1 complete or make this
22 document, the third page?

23 A. Yes.

24 Q. The 85.75 in this instance for this customer
25 during the month for service during the month of May

1 because it says billing period from 5/1 to 5/31/02,

2 is made up of these three line items, correct?

3 A. Yes, sir.

4 Q. Meridian 1 port, you had previously

5 testified that that was a line that went back into

6 the meridian box, correct, or that's actually a port

7 in the box?

8 A. Yes, sir, that was the statement I made.

9 Q. How many ports are in a meridian box?

10 A. I think 256 but I'm not sure. I don't know.

11 Q. Not sure. All right. And here, they are

12 charging for four ports. What does that mean?

13 A. Four ports I believe would be four hand

14 sets. I'm not sure. Unless they are using-- well,

15 the four ports, they have four access ports that

16 could be used either one for fax, one for a phone,

17 two other ports for data if I'm not mistaken. I

18 would assume that to be that.

19 Q. Below it has single line access and I think

20 before you testified you don't know what single line

21 access means?

22 A. No, sir.

23 Q. Do you have an explanation why you would

24 need two single line access when you have four

25 meridian 1 ports?

1 A. No, sir

2 Q. What's a 2500 set on the third line?

3 A I believe that's a hand set but I'm not
4 sure. It's a telephone, I believe, but I'm not sure.

5 Q. So if there's four meridian 1 ports are we
6 saying according to your testimony here today that
7 there's four lines that have dial tone?

8 A. That is a possibility.

9 Q Do you know that for a fact?

10 A. For a hundred percent certain, no, I do not

11 Q. Let me show you now what I'll mark as MJ28.

12 This is also a composite exhibit. And you correct me
13 if I am wrong but just for the record this a

14 Miami-Dade County Aviation Department STATS billing
15 form for the period dated March 29, '02, correct?

16 A. Yes.

17 Q. For a billing period of February 7 through
18 March 6 of '02, correct?

19 A. Yes, sir.

20 (MDAD billing form marked Exhibit MJ 28 for
21 identification).

22 Q. The amount in total is \$689.59, correct?

23 A. Yes, sir.

24 Q. Let's go to the next sheet in that exhibit.

25 This again is a Nextera I document, correct?

178

1 A. Yes, sir.

2 Q And the coverage says "full serve " What
3 does full serve mean?

4 A. I'm assuming full service. I'm not sure
5 what definitions, the acronyms are

6 Q. On this bill you are charging for 28
7 meridian I ports. How is that or why is that?

8 A. It depends on the customer and the
9 requirements of the customer. I don't know unless I
10 know what the customer is and what they have asked
11 for.

12 Q. Then they are charged for advance features.
13 I want to talk to you about advance features, call
14 waiting, conference call. Is that something that
15 your telecommunications business provides as a
16 service to your customers?

17 MR. HOPE: Objection to form.

18 A Yes, sir.

19 Q. And do you charge for each particular
20 feature that the customer orders?

21 A. Yes, sir

22 Q. So there would be a charge for call waiting,
23 there would be a charge for conference calling, a

310

24 charge for call forwarding?

25 A. Sometimes they are bundled. Most of the

179

1 times they are individual items. They would be

2 billed as individual items. Also, including like

3 voice mail.

4 Q. And those are features or services that you

5 and only you, I mean MDAD and only MDAD, billed and

6 provided to your customers, correct?

7 MR. HOPE: Objection to form

8 A. Yes.

9 Q. And you recognize that carrier such as

10 BellSouth or Worldcom or other telecommunication

11 companies also provide these features as well to

12 their customers, correct?

13 A. I know BellSouth does. I'm not sure if

14 Worldcom offers it.

15 Q. But at least BellSouth does, correct?

16 A. I use it at home.

17 Q. What's rotary system access?

18 A. I'm not sure.

19 Q. What are the items depicted as M208HFD and

20 M208B and M208D on this document?

21 A. They are products. I would have to look

22 into our inventory and what we have to tell you

311

23 exactly what those individual items are

24 Q Your telecommunications company also has and

25 offers voice mail to your customers, correct?

180

1 MR. HOPE: Objection to form.

2 A. Yes, sir.

3 Q And that's depicted on this bill as well,

4 correct?

5 A. Yes, sir.

6 Q That's a service that other companies such

7 as BellSouth provide to its customers, correct?

8 A. Yes, sir.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

5 Q Mr. Hope was asking various questions about
6 local service, and some of the requests had to do with
7 what can overlap, and I think there was one question
8 that dealt with whether local service can overlap with
9 local service. Be that as it may, my question is, can
10 an STS service, a provider of STS service overlap with a
11 provider of local service?

12 A Yes.

13 Q And when I use the word "overlap," would you
14 agree that an STS provider can overlap and therefore
15 compete with a local service provider?

16

MP. HOPE: Objection to the form.

17

A Yes.

BellSouth further directs Defendant to the following documents which are responsive to this interrogatory

See Memorandum dated January 29, 2002 from Steve Shiver to the Board of County Commissioners

See Memorandum dated September 24, 2002 from Steve Shiver to Board of County Commissioners for Agenda Item No. 6(A)(1)(A), Subject: Resolution approving recommendations relating to shared airport tenant services for the Aviation Department

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 15:

Please state all facts which support your allegations in Paragraph 38 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

BellSouth directs Defendant to the entire transcript of the deposition of George Hill dated December 3, 2004. Mr. Hill was specifically designated as the corporate representative for BellSouth with the most knowledge as to the similar services offered by BellSouth and the Defendant at Miami International Airport. Thus, his entire deposition is responsive to this interrogatory. BellSouth further directs Defendant to Plaintiff's Exhibit C attached to the transcript of George Hill's deposition which is a chart identifying these similar services. A copy of that exhibit is attached hereto for Defendant's convenience.

In addition to the deposition of George Hill, BellSouth directs Defendant to the following additional excerpts of the depositions which are responsive to this interrogatory.

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

22

4 Q. If I could just have a minute, Mr. Paul.
5 If I could ask you to look again at the text of
6 14b. I want to focus in on the words, similar or
7 similar service. Those two words. It says, the
8 County shall not operate a light, power or
9 telephone facility to serve any territory in the
10 County which is being supplied with similar
11 service. And then it goes on to, except by
12 majority vote.

13 With respect to the term similar
14 service, does similar service mean, as you
15 assisted drafting it, does it mean the exact same
16 service?

18 A. No. Only that it would be an electric
19 service, or telephone service of various types

20 Q. So if the County were to offer telephone
21 service that, you know, competes with a subset of
22 BellSouth's service, but not the exact same
23 service, would that be within the meaning of
24 similar service?

25 A. No. Well, wait a minute. The question

314

23

1 is in the backwards.
2 Q. Do you want me to ask her to read it
3 back?
5 A. Go ahead, read it back
6 (Thereupon, the requested portion of the
7 record was re-read by the Court Reporter.)
8 A Well, there's no question that the
9 electric company, or the telephone company,
10 doesn't have to have the exact same service to
11 compete with similar service.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

114

20 Q Please describe, if you know, the
21 specific telecommunications services provided or
22 offered by the County at Miami International
23 Airport.

120

10 A. I don't know all the services that are
11 provided at Miami Airport.
12 I do know that based on -- for instance,
13 there was a five year marketing plan that was
14 produced, and in that five year marketing plan it
15 talks about the target markets and some of the
16 types of services that are being provided, which
17 included voice, voice and data, voice and CUTE.
18 CUTE is a common use terminal equipment
19 which is used.
20 And also it says, we know, SATS
21 customers, that's share airport tenant service
22 customers, are used Voice, data network, high
23 end system options.
24 So there's evidently voice, data and the
25 common use terminal equipment is being provided.

121

1 There's also reference to -- it continually goes
2 over references to voice and data services.
6 A. There's also equipment, terminal type of
7 equipment provided. You provided maintenance of
8 the equipment.
9 There's also references in the actual
10 depositions of the County's own witnesses. Like
11 references from Pedro Garcia talking about-- this
12 is one on page 44, talking about customer--

315

13 whether or not the customer can-- what type of
14 service they can have. Whether they can pick and
15 choose a service that they have. The fact that
16 they're in competition with BellSouth and with
17 other providers.

18 So they indicate in these particular
19 pages that there are similar services being
20 provided to what BellSouth would provide, or what
21 another telecommunications company would provide.

22 Q. But my question--

23 A. But it's voice and data type services.
24 Without getting into the details of the technical
25 make-up of these services.

122

1 And in the contract itself there's a
2 whole litany of descriptions of facilities And
3 part of it has to do with the Nortel switch,
4 evidently, and PBX equipment.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

44

24 Q What are the specific similar services
25 provide by BellSouth which support paragraph 38

45

1 of the second amended complaint?

9 THE WITNESS: You know, based on
10 what I have read and what I've seen in
11 the depositions specifically, there are
12 private-line services, that's local
13 service, dialtone service, there's
14 several services in the
15 telecommunications field, and we provide
16 similar services, BellSouth does

17 And BellSouth does it to tenants

316

18 here at the airport at the same time the
19 airport is providing similar services to
20 their customers.

21 BY MR. HOPE:

22 Q So you said private lines?

23 A Yes.

24 Q Dial tone?

25 A Yes.

46

1 Q What else?

2 A Dial tone, and I correlated it with
3 local services. Those are the two specifically
4 that I mentioned.

5 And I know there are others, but I
6 cannot talk with any specificity about it.

7 Q When you say-- when you use the term
8 private lines, what does that mean?

9 A It means that it's a point-to-point
10 service, it's a service that does not go through
11 a switch, and allows an entity at two different
12 locations to either communicate by data or by
13 voice.

14 But it's a private line, other people
15 don't have access to it.

16 Q When you say dial tone, what do you

317

17 mean?

18 A I mean dial tone is generally accepted
19 as the beginning of the provision of local
20 service. Everything in the provision of local
21 service starts with a dial tone.

22 The customers goes offhook on their
23 instrument, and what they hear in their ear is a
24 dial tone, and then they do a number of things to
25 either complete a local or a longdistance call,

47

1 or in the case of dialing in, you know, to access
2 a computer, it's local service, and it starts
3 with a dial tone.

4 Q When you use the term local service,
5 what do you mean?

6 A Local service is where a customer
7 anywhere in an exchange can connect with another
8 customer in that exchange. The call can be
9 completed

10 Q When you speak of exchanges, you just
11 said a customer-- for the local service, a
12 customer in an exchange can contact any other
13 customer in that exchange What do you mean by
14 exchange?

15 A There's a-- for the incumbent local
16 exchange company there is a defined area called

17 an exchange, sometimes consisting of one or more
18 wire senders as it is in Dade County, that we
19 charge a specific rate for, and the customer asks
20 for service from us, they get that, and they can
21 call anybody in that exchange for what they pay
23 for that monthly fee.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

28

3 Q. Are tenants of the airport required to
4 purchase any telecommunications services from the
5 County?

6 A. No, sir.

7 Q. They're free to go anywhere they want
8 to?

9 A. They're free to go anywhere they want
10 to.

11 Q. And if they go somewhere else, they
12 wouldn't use the County facilities?

13 A. That's correct.

14 Q. So would it be fair to say that the
15 County is in competition with other
16 telecommunication providers at the airport?

17 MR. HOPE: Objection to form.

18 A. We -- yes, we are basically there to
19 provide them services, if they want us to provide
20 them services. If not, they go to any company they

21 want.

22 Q. Right. And the County charges for these
23 services?

24 A. Not if they go to another company.

25 Q. If they go to the County --

29

1 A. If they go to the County, we charge them
2 just like BellSouth would charge them for the
3 services.

4 Q. The County engages in the business, so
5 to speak --

6 A. Yes, sir.

7 Q. -- attempting a profit-making
8 enterprise?

9 MR. HOPE: Objection to form.

10 A. Yes, sir.

11 Q. At least you hope it is?

12 A. We're losing money right now, but we're
13 hoping to make money.

39

20 Are there any other entities, to your
21 knowledge, individuals or entities that provide
22 telecommunications services to tenants at the
23 airports within the County?

24 A. Define entities. You mean other
25 companies?

40

1 Q. Other companies, yes, businesses.

2 A. Sure. There are many.

3 Q. Who?

4 A. BellSouth, MCI, there's -- we're not --
5 the tenants do not let us know who do they do

6 business with as far as provisioning their
7 telecommunication services. So they could be
8 almost anybody providing services.

9 Q. The ones you provide services you know
10 you provide service to?

11 A. Right.

12 Q. But you don't know who provide services
13 to the other --

14 A. Yes.

15 Q. But you do know there are other entities
16 out there that provide services?

17 A. Yes. Within their leasehold, they can
18 get services from anybody they want to. They don't
19 even have to tell us who.

20 Q. Would you classify those services as
21 services similar to those that the County provides?

22 MF. HOPE: Objection to form.

23 A. I cannot really tell whether the
24 services are -- you can say similar. They may or
25 may not -- they may be more or less what we

41

1 provided but they're of the same nature.

2 Q. Right, voice and voice network.

3 A. Voice and network, right.

4 Q. Does the County compete with these other
5 entities for the business out there?

6 A. Yes, sir.

7 Q. Are you aware of situations where a
8 potential customer of the County chose to go with
9 BellSouth or MCI or some other entity?

10 A. Yes, sir.

11 Q. And they've told the County we're going
12 elsewhere?

13 A. They don't tell us. They just do it.
14 Most of the time before they even come to the
15 airport they've already made plans to go with
16 somebody else.

20 Q. Let me show you what's been marked as
21 Exhibit 6 for the purposes of the deposition and
22 ask you first if you can tell me what it is.

23 A. It looks like a work order cover
24 sheet -- a work order, work description, the work
25 order.

42

1 Q. I mean it's a form that's used by the
2 County?

3 A. Yeah, it's used by NexiraOne basically
4 to transmit the work order information to perform
5 work for the tenants or communicate with us for
6 that.

7 Q. Up at the top it says work order
8 processor-TSR remarks. Do you know what TSR means?

9 A. TSR number, I don't really know what
10 that stands for, but it's just a number of the work
11 order. It could be just the name of the system
12 that produces this.

13 Q. It's an identifying number of some sort?

14 A. An identifying number for the work
15 order.

16 Q. Down in the remarks it says cancel as
17 per Holly. Do you know somebody by the name of

18 Holly out there?

19 A. Holly is the person who works for
20 NextiraOne and she's the one -- the person that
21 does the marketing to get customers to come to
22 our -- to provide -- to let us provide the
23 services.

24 Q. This one says cancel as per Holly,
25 customer opted to use BellSouth?

43

1 A. Right.

2 Q. Which would indicate to you that this
3 particular customer, and we don't know who it is,
4 it's been redacted, but has chose to use BellSouth
5 as its provider as opposed to the County?

6 A. That's right.

7 Q. Below that it says provide quote,
8 install one analog line in room -- whatever the
9 room number is. Analog line is a voice line?

10 A. What happens is everything that
11 NextiraOne does for us, they require permission,
12 which is a work order to do whatever.

13 Q. Permission from whom?

14 A. From MDAD, from the aviation department.
15 They work for us. We pay them for this.

16 Q. Okay.

17 A. So this was a work order that was
18 issued, seems like, for them to provide -- to go
19 out to the customer and provide a quote. Sometimes
20 you need to install a wire or do some work to
21 provide the service.

22 So she went ahead and tried to give this

23 customer a quote, whoever the customer was, and
24 when she got there the customer had already made
25 arrangements for BellSouth to provide the service.

44

1 So this is just basically cancelling the work
2 order.

3 Q. So in this case BellSouth was apparently
4 providing a similar service?

5 A. The customer picked BellSouth as a
6 service provider which is the same service we could
7 have provided.

48

2 Q. So then this marketing plan
3 acknowledges, does it not, that BellSouth and MDAD
4 are competitors in this venture or in this
5 business?

6 A. Correct. Actually, this term is out of
7 date. The person that wrote this is talking like
8 some many years back.

9 Q. Right.

10 A. The correct term is --

11 Q. Right.

12 A. But it means that.

13 Q. BellSouth?

14 A. BellSouth or any other service provider.

23 A. We provide services to the tenants of
24 the airport which is a County-owned facility.

25 Q. I'm just asking if BellSouth offers
54

1 similar service to those tenants.

2 A. Yes, they do.

90

23 Q. Paragraph 1.32, shared airport tenant
24 services. The provision of service which
25 duplicates or competes with local service provided

91

1 by existing local exchange telecommunications
2 company and is furnished through a common switching
3 or billing arrangement to tenants by an entity
4 other than an existing local telecommunications
5 company.

6 Can you explain that to me? I'm a
7 little slow.

8 A. Well, it's basically saying that we can
9 provide a dial tone that you receive on your
10 telephone, among other services, basically, and we
11 basically compete with what the local exchange
12 carrier would do. I mean you can go to services to
13 a local exchange carrier, to us, or to any other
14 company that provides those services.

15 Q. The local exchange carrier being
16 BellSouth?

17 A. Yes.

18 Q. Is BellSouth the only local exchange
19 carrier?

20 A. It's the only local exchange carrier.
21 The other ones are alternate local exchange
22 carriers.

23 Q. In terms of drafting the agreement, then
24 why, if you know, did it say service provided by

25 the existing local exchange telecommunications
92

1 company as opposed to saying service provided by
2 BellSouth?

3 A. I would imagine the wording was probably
4 taken from the definition that is existing in the
5 Florida Statute or SATS, STS.

6 Q. But clearly the reference to existing
7 local exchange telecommunications company, is it
8 fair to say that that is a clear reference to
9 BellSouth?

10 MF. HOPE: Objection to form.

11 A. The -- yes, it looks that way, but the
12 reason is that at the time that this was written,
13 the wording of the statute was probably written
14 before competition was allowed. So the only
15 provision at the time was the local exchange
16 carrier --

17 Q. Okay.

18 A. -- and this was just taken from that
19 just to be accurate, to have some meaning --

20 Q. Right. But what I'm saying is the only
21 existing local exchange telecommunications company
22 referred to in Paragraph 1.32 is BellSouth; is that
23 correct?

24 MR. HOPE: Objection to form.

25 A. In Miami-Dade County.

93

1 Q. Well, this agreement only refers to
2 Miami Dade County, doesn't it?

3 A. Well, I'm trying to be accurate.

4 Q. I understand. I understand. I mean the

5 agreement itself is only operating in Miami-Dade
6 County; correct? Your agreement with Nextira is to
7 cover airports in Miami-Dade County, not anything
8 else?

9 A. Actually the way -- it's anybody that
10 can provide dial tone to -- to access to a public
11 network. That's what it refers to the local
12 exchange -- local exchange -- an existing local
13 exchange telecommunications company. So you can
14 get dial tone from MCI or anybody else. So that's
15 what it's --

16 Q. And clearly shared airport tenant
17 services contemplates the competition between
18 various telecommunications providers; is that a
19 fair statement?

20 MP. HOPE: Objection to form.

21 A. I'm sorry. Can you --

22 Q. Let me rephrase it.

23 This paragraph makes reference to the
24 fact that the services that MDAD is going to
25 provide compete with other providers?

94

1 A. Yes.

2 Q. Okay. Because they're providing similar
3 services?

4 A. Yes.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

31

16 Q. Where does that dial tone emanate from?
17 Or better stated, where does that dial tone
18 originate from?

19 MP. HOPE: Objection to form.

20 THE WITNESS: It originates from our
21 PBX located in the airport.

22 Q. Now, you used the word "our PBX." What do
23 you mean by our PBX?

24 A. The PBX owned by the aviation department.
25 The PBX is a telephone switch, and it is located

32

1 inside the airport premises. That is where the dial
2 tone originates when you first pick up your phone at
3 the airport.

4 Q. So the dial tone originates from a PBX
5 switch that is owned by the County. Is that
6 correct?

7 A. Yes, sir.

8 Q. And it is that PBX switch that is owned by
9 the County that generates the dial tone; is that
10 correct?

11 A. Yes, sir.

12 Q. So when that customer picks up the
13 receiver and hears a dial tone, is it a correct
14 statement that the County is providing that dial
15 tone that that customer hears?

16 MR. HOPE: Objection to form.

17 THE WITNESS: He is providing the
18 internal dial tone that the customer
19 hears.

20 Q. So the County is providing dial tone to
21 that customer.

22 A. The County --

23 MR. HOPE: Objection to form.

24 THE WITNESS: The County is
25 providing internal dial tone to the

33

1 customer.

36

24 Q. How many PBX's does the County own?

25 A. We have two major PBX's. Two at the

37

1 airport.

2 Q. I am asking you because you have the
3 technical background, but do all these wires feed
4 into these two PBX's?

5 A. Yes.

6 Q. And do they go through -- do they connect
7 into the PBX through what is called a port?

8 A. The port is the -- it is basically -- yes,
9 the port is a hole that receives the wire to connect
10 the phone to the PBX and all the internal equipment
11 of the PBX.

12 Q. Is the port part of the PBX?

13 A. Yes. They are cards. The ports are cards
14 in multiples of 16 each in a card, and they plug
15 into the PBX which has common equipment, peripheral
16 equipment, different kinds of equipment inside. It
17 is part of the PBX.

18 Q. Once the PBX interprets the four-digit

19 number, it then gets routed to whoever's number that
20 is. Is that a fair statement?

21 A. Yes.

22 Q. And does the call, can we make reference
23 to a call now that gets routed, does that call
24 travel over -- go out of another port out of the
25 PBX, over other wires, to the receiver's destination

38

1 and phone?

2 A. Yes.

3 Q. And is all that equipment that is involved
4 in that process owned by the County as well?

5 A. Yes.

6 Q. Then, in simplistic terms, does that phone
7 ring?

8 A. Yes.

9 Q. And the person can answer if they are
10 there, correct?

11 A. Yes.

12 Q. When that person answers it, it should be
13 the voice of the originating caller, correct?

14 A. Yes.

15 Q. So that whole scenario occurs over County
16 owned equipment, correct?

17 A. Yes.

49

24 Let's say that somebody in Hialeah,
25 outside the airport, wants to call that ice cream

50

1 shop at the airport, who is an MDAD customer. How
2 does that call -- how is that call made from a
3 technical perspective?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The customer -- the
6 person in Hialeah picks up their phone
7 and dials ten digits. The ten digits go
8 through the BellSouth central office, the
9 Hialeah central office, and that central
10 office, sends those digits -- knows that
11 because of the digits that the call needs
12 to go to the airport central office, and
13 when it gets there the central office
14 basically strips the first four digits,
15 and then sends the four digits to the
16 PBX, which is called a DID, direct inward
17 dialing digits. Then the PBX routes that
18 call to whoever is supposed to receive
19 the call.

20 Q. And when you say the PBX, that call goes
21 from Hialeah, through BellSouth's equipment, into
22 the airport PBX? Is that what you are referring to?

23 A. It comes from -- it goes through the
24 airport central office of BellSouth, through those
25 T1's that serve the airport, into the PBX, and from

51

1 the PBX to the terminating phone that the call is
2 going to.

3 Q. When you refer to the PBX, are you
4 referring to the County-owned PBX?

5 A. To the County-owned PBX.

6 Q. And then through the County-owned
7 equipment to the County customer?

8 A. To the County-owned equipment and wires to
9 the County -- to the receiving customer who has a
10 phone there.

11 Q. That, it seems to me, to be a local phone
12 call.

13 A. It is a local phone call.

104

18 Q. Let me show you what has been marked as
19 MJ-24 previously in this deposition.

20 A. Okay.

21 Q. I venture to guess that you are familiar
22 with this document.

23 A. Yes, sir.

24 Q. You have seen this type of document
25 before.

105

1 A. Yes.

2 Q. Can you just explain for the record what
3 this document is, please.

4 A. This is a sample of a typical -- a sample
5 pricing of the basic components of voice equipment.
6 That is basically what it is. And it is broken out
7 between the four components that we saw previously
8 in the contract between switch access, network
9 access, system, and system - other.

10 Q. System - other, which was number four on
11 the rental agreement, correct?

12 A. Yes.

13 Q. Let me just bring you down to where it
14 says network access, number two. In the first line
15 there is single line local network access. Monthly

16 unit rental, \$18. Can you explain to me what that
17 charge is for, specifically.

18 A. Okay. That is the charge that was
19 assessed for the -- we are on the network side of
20 the PBX now, not the side where the phone is
21 connected. We are on the side that is connected to
22 the outside world. That single line network access
23 is the charge that would be assessed for the
24 connection to the outside world, if they want that
25 kind of connection.

106

1 I have to point out, however, that is not
2 used any more. We have dropped -- no, we have not
3 dropped it for everything. We only kept it there
4 for a connection of modems. Like a one connection
5 only. Like anybody that has a fax machine. What we
6 normally -- well, I will let you ask a question. It
7 is the connection to the outside world to the
8 BellSouth lines from the PBX.

9 Q. Why is it not used any more?

10 A. Well, it used to be like let's say you
11 want to connect 25 phones. They used to be charged
12 25 times 18. Now we modify that charge and we are
13 accessing the network access, which is \$49 shown on
14 the third line on a ratio of five to one. In other
15 words, when you connect a phone, you buy five
16 connections, and for \$49 you can connect five
17 phones.

18 Q. If you want ten phones, it is going to be
19 \$98?

20 A. \$98.

21 Q. So you just subsumed the charge that was
22 formerly single line local network access into the
23 third line down, network access?

24 A. Right. We kept the first one just for
25 anybody that has one connection. If you want -- if

107

1 you have a number of telephones, then you go to the
2 49, for five.

3 Q. Why was that change made?

4 A. It was felt that it probably was too
5 expensive. We couldn't explain to the customers.
6 It was kind of high. It was a marketing decision.
7 Actually, I wasn't part of that decision. I was
8 informed by the folks that run the marketing
9 department of Nextira that it was done to have a
10 better price structure.

11 Q. Couldn't you explain it to your customers
12 that this is just to make sure that we are covering
13 our costs?

14 MR. HOPE: Objection to form

15 THE WITNESS: No, because they have
16 other choices. I mean, we could charge a
17 thousand dollars for the phone, but that
18 wouldn't be too good for us.

19 Q. Because why?

20 A. We wouldn't cover anything because nobody
21 would buy it.

22 Q. Where are they going to go?

23 A. They could go to BellSouth, they could go
24 to anybody else. To AT&T, Sprint. You name it.

140

23 Q. What is the charge for \$18 here or \$72 as
24 shown for single line local network access?

25 A. That is the charge for connecting from the

141

1 PBX out to the world, the network access charge.

2 That is the charge that now we have consolidated

3 into five for \$49. It used to be \$18 per --

4 Q. But that access allows customers to
5 complete a local call, correct? Your customers
6 complete a local call, correct?

7 A. Yes.

8 Q. So MDAD is charging for the completion of
9 the local call, correct?

10 A. For the ability to complete the local
11 call. We don't charge by the call.

12 Q. But for the ability to complete local
13 calls.

14 A. Yes.

15 Q. You would agree with that?

16 A. Yes.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

100

17 Q So it must be true that if the county didn't
18 own its telecommunications facility and equipment,
19 it's current MDAD customers would not have telephone

335

20 service unless they went to some other
21 telecommunications company, correct?

22 MR. HOPE: Objection to form.

23 A. Yes.

24 Q. Are all local calls made by MDAD customers
25 routed through MDAD's switch?

101

1 A. Yes.

2 Q. Absent routing through MDAD's switch, isn't
3 it true that MDAD's customers would not have a dial
4 tone?

5 A. Yes.

6 Q. And absent routing over a pathway being
7 to MDAD that's emanating from MDAD's switch to an
8 MDAD customer, the MDAD customer would not have dial
9 tone, isn't that correct?

10 MR. HOPE. Objection to form.

11 A. Yes.

12 Q. Does MDAD as part of the service it provides
13 as a telecommunications facility, don't you have the
14 ability to assign telephone numbers to your
15 customers?

16 MR. HOPE. Objection to form.

17 A. Yes.

18 Q. What happens technically if a BellSouth

336

19 customer in Hialeah wants to call one of your
20 customers. MDAD's customers at the airport?
21 A. They dial their ten digit number of the
22 customer themselves, because it comes into
23 BellSouth's demarcation which I think there's 300X
24 room, and from there to our PBX, and then it gets
25 routed to the customer extension to the number that

102

1 they are dialing.
2 Q What exactly technically does your PBX do
3 once it gets that call into that piece of equipment?
4 There's a number of things that happen, isn't it,
5 that are solely within your control?

6 MR. HOPE: *Objection to form.*

7 A. Yes.

8 Q Can you explain what happens for the court
9 and for this case when that call comes in to your
10 particular piece of equipment, the PBX?

11 A. Call comes in, we verify that you are
12 dialing an extension or a number that does exist, and
13 if it does exist it gets routed to that location

14 *If that location doesn't pick up or depends*
15 *on what we put on it, it can go to voice mail. We*
16 *allow that call to be routed somewhere else to insure*
17 *that it gets picked up.*

337

18 Q. Maybe we are saying the same thing, but see
19 if you would agree with me.

20 Once that call comes into your PBX, doesn't
21 your PBX in essence interpret that telephone number
22 and translate that telephone number so that you then,
23 your equipment redirects that telephone call to the
24 specific facility and specific phone at your
25 customer's office?

103

1 MR. HOPE: Objection to form.

2 A. Yes, sir.

3 Q. There's no dispute about that, right?

4 A. Yes, sir.

108

20 Q. You say you haven't seen this airport rental
21 agreement in some time How long has it been?

22 A. Not sure. I believe it might have been
23 revised But I can't tell you the last time I've
24 seen it to read the document itself. I'm not sure,
25 sir.

109

1 Q. Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document. Well, it's a
5 document that we use to establish customer

338

6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering
11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir.

169

5 Q. You would agree that growing the business,
6 increasing revenue at the airport is something that
7 gets discussed and it is a major goal of yours and
8 MDAD's correct?

9 MR. HOPE: Objection to form.

10 A. Generating business, yes, I would say yes.

11 Q. And to generate business you would agree
12 that you need to increase your customer base,
13 correct?

14 A. Yes, sir.

15 Q. And in addition, to generate more revenue
16 you could increase your rates that you charge your
17 customers, correct?

18 A. It's a possibility.

339

19 Q. OK And to increase your customer base
20 you'd agree that MDAD, the airport, would need to
21 successfully compete with other telecommunications
22 companies for the customer base that you serve,
23 correct?

24 MR. HOPE. Objection to form.

25 Q. Strike that. For the geographical territory

170

1 that you serve.

2 MR. HOPE: Objection to form.

3 A. Yes.

4 Q I mean, you would agree that you want to get
5 as many customers as possible within the territory
6 that you are providing service to, correct?

7 MR. HOPE: Objection to form.

8 A. Yes, sir.

9 Q. There's no doubt about that, right?

10 A. No, there's no doubt about that

11 Q. And your territory is Miami International
12 Airport and its associated buildings and the other
13 county owned airports, correct?

14 MR. HOPE. Objection to form.

15 A. Yes.

173

17 Q. Could you tell me when you look at this

340

18 document, MJ26, what is included in the 81.75 that's
19 being billed where it says "missed charge monthly
20 rental for telephone and maintenance"?

21 A. What's included in it, it's monthly rental
22 for the telephone and the hand set itself as well as
23 the maintenance that goes along with that to deal
24 with our customers if they have a problem So that's
25 from the hand set to the port that leads back to the

174

1 PBX.

2 Q. Is access billed in this invoice?

3 A. Access to?

4 Q. Well, we have talked about network access,
5 talked about switch access. Are any charges included
6 on this invoice for those services?

7 A. I'm not sure. I would need to look at the
8 detail that may have come along with it.

9 Q. Let's try another example. Let me show you
10 what I will mark as MJ27.

11 (Invoice marked Exhibit MJ27 for
12 identification)

13 The first page of this document is another
14 invoice similar to MJ26, correct?

15 A. Yes, sir.

16 Q. You want it take a look This amount is for

341

17 \$85.75, correct?

18 A. Yes.

19 Q. Dated July 1, 2002, correct?

20 A. The total amount is \$91. The first item you
21 are talking about?

22 Q. You are right.

23 A. 85.75.

24 Q. And the sales tax is 5.57 for a total of

25 91.32, correct?

175

1 A. Yes.

2 Q. And if you turn to the second page of this
3 composite exhibit. This a form that also is entitled
4 Miami-Dade Aviation Department standardized form. Who
5 produces this form?

6 A. I believe it's-- I'm not sure. It either
7 comes from us or comes from Nextera. I believe it
8 comes from the department.

9 Q. From the department, aviation department?

10 A. Yes, sir.

11 Q. And you see that the amount on there the
12 total, 85.75, equals the first line item on the
13 previous invoice?

14 A. Yes, sir.

15 Q. And then if we go to the third document.

342

16 that is a contract invoice that has Nextera 1's logo
17 on there, that also is for rental monthly of 85.75.
18 the same amount that we have seen on the prior two
19 documents, correct?

20 A. Yes, sir.

21 Q. Does Nextera 1 complete or make this
22 document, the third page?

23 A. Yes.

24 Q. The 85.75 in this instance for this customer
25 during the month for service during the month of May

176

1 because it says billing period from 5/1 to 5/31/02,
2 is made up of these three line items, correct?

3 A. Yes, sir.

4 Q Meridian 1 port, you had previously
5 testified that that was a line that went back into
6 the meridian box, correct, or that's actually a port
7 in the box?

8 A. Yes, sir, that was the statement I made.

9 Q. How many ports are in a meridian box?

10 A. I think 256 but I'm not sure. I don't know.

11 Q. Not sure. All right. And here, they are
12 charging for four ports. What does that mean?

13 A. Four ports I believe would be four hand
14 sets. I'm not sure Unless they are using-- well,

343

15 the four ports, they have four access ports that
16 could be used either one for fax, one for a phone,
17 two other ports for data if I'm not mistaken. I
18 would assume that to be that

19 Q. Below it has single line access and I think
20 before you testified you don't know what single line
21 access means?

22 A. No, sir.

23 Q. Do you have an explanation why you would
24 need two single line access when you have four
25 meridian 1 ports?

177

1 A. No, sir.

2 Q. What's a 2500 set on the third line?

3 A. I believe that's a hand set but I'm not
4 sure. It's a telephone, I believe, but I'm not sure.

5 Q. So if there's four meridian 1 ports are we
6 saying according to your testimony here today that
7 there's four lines that have dial tone?

8 A. That is a possibility

9 Q. Do you know that for a fact?

10 A. For a hundred percent certain, no, I do not.

11 Q. Let me show you now what I'll mark as MJ28
12 This is also a composite exhibit. And you correct me
13 if I am wrong but just for the record this a

344

14 Miami-Dade County Aviation Department STATS billing

15 form for the period dated March 29, '02, correct?

16 A. Yes.

17 Q. For a billing period of February 7 through

18 March 6 of '02, correct?

19 A. Yes, sir.

20 (MDAD billing form marked Exhibit MJ 28 for

21 identification).

22 Q. The amount in total is \$689.59, correct?

23 A. Yes, sir.

24 Q. Let's go to the next sheet in that exhibit.

25 This again is a Nextera 1 document, correct?

178

1 A. Yes, sir.

2 Q. And the coverage says "full serve." What

3 does full serve mean?

4 A. I'm assuming full service. I'm not sure

5 what definitions, the acronyms are.

6 Q. On this bill you are charging for 28

7 meridian 1 ports. How is that or why is that?

8 A. It depends on the customer and the

9 requirements of the customer. I don't know unless I

10 know what the customer is and what they have asked

11 for.

12 Q. Then they are charged for advance features.

345

13 I want to talk to you about advance features, call
14 waiting, conference call. Is that something that
15 your telecommunications business provides as a
16 service to your customers?

17 MR. HOPE: Objection to form.

18 A. Yes, sir.

19 Q. And do you charge for each particular
20 feature that the customer orders?

21 A. Yes, sir.

22 Q. So there would be a charge for call waiting,
23 there would be a charge for conference calling, a
24 charge for call forwarding?

25 A. Sometimes they are bundled. Most of the

179

1 times they are individual items. They would be
2 billed as individual items. Also including like
3 voice mail.

4 Q. And those are features or services that you
5 and only you, I mean MDAD and only MDAD, billed and
6 provided to your customers, correct?

7 MR. HOPE: Objection to form.

8 A. Yes.

9 Q. And you recognize that carrier such as
10 BellSouth or Worldcom or other telecommunication
11 companies also provide these features as well to

346

12 their customers, correct?

13 A. I know BellSouth does. I'm not sure if

14 Worldcom offers it.

15 Q But at least BellSouth does, correct?

16 A. I use it at home.

17 Q. What's rotary system access?

18 A. I'm not sure.

19 Q. What are the items depicted as M208HFD and

20 M208B and M208D on this document?

21 A. They are products. I would have to look

22 into our inventory and what we have to tell you

23 exactly what those individual items are.

24 Q. Your telecommunications company also has and

25 offers voice mail to your customers, correct?

180

1 MR. HOPE: Objection to form.

2 A. Yes, sir.

3 Q. And that's depicted on this bill as well,

4 correct?

5 A. Yes, sir.

6 Q. That's a service that other companies such

7 as BellSouth provide to its customers, correct?

8 A. Yes, sir.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public

Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows

5 Q Mr. Hope was asking various questions about
6 local service, and some of the requests had to do with
7 what can overlap, and I think there was one question
8 that dealt with whether local service can overlap with
9 local service. Be that as it may, my question is, can
10 an STS service, a provider of STS service overlap with a
11 provider of local service?

12 A Yes.

13 Q And when I use the word "overlap," would you
14 agree that an STS provider can overlap and therefore
15 compete with a local service provider?

16 MR. HOPE: Objection to the form.

17 A Yes.

Interrogatory No. 16:

Please state all facts, and identify the specific shared tenant services offered by BellSouth which support your allegations in Paragraph 39 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

BellSouth reasserts, adopts and incorporates its prior objections to this interrogatory, as set forth in Plaintiff's Objections to Defendant's First Set of Interrogatories dated April 21, 2005, as though fully set forth herein.

Interrogatory No. 17:

Please state all facts which support your allegations in Paragraph 40 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005

George Hill was deposed on December 3, 2004

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

75

6 Q. Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A. Yes.

349

76

3 A. On the public, first of all, there were
4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth. And we have got
9 those customer lists.

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this: At least you would agree
14 with the general proposition, would you not, that
15 John Q Public, if he meets all-- goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer: As long as he's complied and
20 submitted his bid and is awarded and approved.
21 yes, he can

22 Question: And that bid process, as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir.

77

1 Question: There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir. As long as you meet
5 the minimum qualifications, or whatever
6 qualifications are established that goes out with
7 this bid.

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille. They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to. It's entirely
13 up to them.

14 Question: But if they want to, your
15 services are available to John Q. Public, correct?

16 Answer: Yes, sir.

17 Question: And if John Q. Public wants
18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?

22 Answer: Yes, sir.

23 Question: And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

78

350

1 Answer: Yes, sir

2 Question. And that telecommunications
3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?

6 His answer: Yes, sir.

7 Then on page 131, Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr. Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mall shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using
14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?

16 Answer: Right.

17 Question: There's no dispute about
18 that. They can walk in, do these things, and walk
19 out without traveling?

20 Answer: Yeah. If they want to

21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

79

1 Answer. Yes, sir.

2 There's another one that I wanted to
3 call your attention to. Sometimes my little—
4 bear with me. There was also some discussion with
5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities.

9 And the question was. I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are— we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific
17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King, Frankly Gourmet, Sunglass Hut.

22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

80

1 Answer: Yes, sir.
2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?
5 And his answer: No That's a shoe
6 shine.
7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building.

200

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"?

201

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

202

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

352

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

203

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.

204

5 For instance, in Rick Moseés
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

205

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

253

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

353

9 not?

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

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

51

22 Q My question is what factual or
23 documentary evidence support the allegations in
24 paragraph 40?

25 A I also read Rick Moses' deposition, and

52

1 Rick Moses specifically says that shopping malls,
2 hotels, you know, are not necessary for the
3 safely moving of passengers and freight though
4 the airport.

5 And he is the Florida Public Service
6 Commission staff person in charge of the rules or
7 interpreting of the rules and filing rules,
8 codifying rules

9 Q Okay, what shopping malls does the
10 County provide shared tenant services to?

13 THE WITNESS. Well, when I was at
14 Mr Jenkins' deposition he was shown a

354

15 series of pictures of the different shops
16 through the middle of the airport that
17 offer a litany of services, clothes, the
18 drug-- you know, there's a litany of
19 services in these things, and it's a
20 shopping mall. I mean, it's truly a
21 shopping mall.
22 And he agreed that some of those
24 shops he provided service to

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

46

9 Q. Did the County or MDAD or anybody
10 prepare a marketing plan?
11 A. Yes. We requested from NextiraOne after
12 we purchased their infrastructure that they would
13 prepare a marketing plan on our behalf.
14 Q. To go out and market to tenants of the
15 airport --
16 A. Yes.
17 Q. -- airports?
18 A. Um-hum.

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by

10 providing telecommunications services?

11 MR. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County
15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE: Objection to form.

19 A. To the best of my knowledge, yes.

73

10 Q. And three is the assignment to the
11 County all existing tenant SATS and CUTE agreements
12 entered into by Centel or its successors or assigns
13 with tenants at the airport. That was --

14 A. The company's changed the name through
15 the years from Williams to Centel to Nextira to
16 NextiraOne, but it was an internal thing with them,
17 a spin-off for the main company or so forth.

18 Q. So pursuant to the agreement you were
19 entering into with Nextira, all of the Nextira
20 customers at the airports were going to become
21 customers of the County?

22 A. Yes, sir.

23 MR. HOPE: Objection to form.

24 Q. How many customers were there back in
25 January of 2002, Nextira customers?

74

1 A. I don't recall the number but it's -- it
2 was probably a little more than the list that you
3 saw because since then the economy went down a

4 little and people went out of business and so
5 forth.

6 Q. So it might have been slightly hire than
7 the 2003 list as far as the numbers?

8 A. It's slightly higher than what we had.

86

22 Q. If you go to the definitions section
23 which starts on Page 2 of 98. Down at the bottom
24 it identifies there's airport, and we discussed
25 earlier obviously Miami International and you

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

72

24 Q. You have customers at the airport, correct?

25 A. Yes, sir.

73

1 Q. They can make local phone calls, correct?

2 A. Yes, sir.

3 Q. They can make local phone calls using
4 equipment and assets that the county owns, correct?

5 A. Yes, sir.

108

20 Q. You say you haven't seen this airport rental
21 agreement in some time. How long has it been?

22 A. Not sure. I believe it might have been

23 revised But I can't tell you the last time I've

24 seen it to read the document itself I'm not sure.

357

25 sir

109

1 Q. Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document. Well, it's a
5 document that we use to establish customer
6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering
11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir.

118

21 Q. Let me show you what I am going to mark as
22 Exhibit as MJ10 and MJ11

23 (Customer lists marked Exhibits MJ10 and
24 MJ11 for identification)

25 Q. Let's take a look at MJ11 first. It's on

119

1 your left

358

2 A. OK.

3 Q. Have you seen that document before?

4 A. Yes, I have.

5 Q. Is it correct that as of February 7, 2002
6 this roughly depicts customers, MDAD customers who
7 were receiving telecommunications service at the
8 airport?

9 MR. HOPE: Objection to form.

10 A. Yes, sir.

11 Q. Let me ask you the same question about MJ10.

12 Does that accurately depict your customer list as of
13 February, 2003, about a year later?

14 A. Yes, sir.

15 Q. Since February of 2003 when MJ10 was
16 produced, would it be accurate to say that the number
17 of customers has increased or decreased?

18 A. From March of '03 I believe we lost some
19 customers.

20 Q. Have you gained some?

21 A. It's possible--

22 Q. Before I even ask that I should ask, do you
23 have enough knowledge to answer those questions?

24 A. Yes, I do.

25 Q. So have you gained some as well as lost

1 some?

2 A. I believe we have gained some as well as
3 lost some.

4 Q At the present time can you tell me how many
5 customers you have at the airport?

6 A. Exact number, no, I cannot.

7 Q. How about approximate number?

8 MR. HOPE: Objection, privileged as we
9 stated earlier. Instruct deponent not to answer.

10 As we brought up earlier, you asked the same
11 question in terms of quantity and our position is
12 that you can talk about provision of services and
13 do we have customers, but I know that certain
14 documents you already have and I can't stop that
15 now, but in terms of specific customers and what
16 we do and total number of customers that is
17 something that's privileged.

18 MR GOLDBERG: The number of customers is
19 privileged?

20 MR HOPE: Yes. What would give you
21 anything that you need in terms of knowing the
22 number of our customers?

23 MR GOLDBERG: I just want to make it clear.
24 You are instructing him not to answer about the
25 number of customers?

1 MR. HOPE: Correct, which is what I

2 instructed earlier.

3 Q. It's fair to say that all the customers

4 listed on MJ10, Mr. Jenkins, pay for your

5 telecommunications service, correct?

6 MR. HOPE: Objection, form.

7 A. Yes.

8 Q. There's no question that having these

9 customers benefits the county financially, correct?

10 A. There's some benefit, yes.

11 Q. There's some benefit?

12 A. Yes, sir.

13 Q. Let me show you what I am going to mark as

14 MJ12 and 13, two photographs.

15 (Photographs marked Exhibits MJ12 and 13 for

16 identification)

17 Q MJ12 is a picture of Cafe Versaille.

18 correct?

19 A. Yes, sir.

20 Q. That's one of the customers listed, one of

21 your customers listed on MJ10, that's correct? I am

22 pointing to it here.

23 A. Yes, sir.

24 Q. MJ13 -- by the way, are there a number of

25 Cafe Versailles in the airport?

122

1 A. I believe there are two. Maybe more.

2 Q Just for the record, because people may read
3 this or see this videotape and don't know what Cafe
4 Versaille is. Can you explain what it is?

5 A. It's a concession within the airport that
6 provides coffee, Danish, pastries.

7 Q. MJ13 depicts a Bacardi shop, correct, or
8 store where you can buy Bacardi liquor?

9 A. It is a restaurant/bar type, yes.

10 Q. It's in the business of selling liquor, is
11 that correct, and food?

12 A. Yes, sir.

13 Q. Do you know whether Bacardi is currently an
14 MDAD customer?

15 MR. HOPE. Objection. Instruct the deponent
16 not to answer.

17 Q. Let's assume since you have been instructed
18 not to answer that question I'll ask you to assume
19 that they are a customer, they are out at the
20 airport.

21 Again I go back to my question: Having Cafe
22 Versaille and potentially Bacardi as clients at the
23 airport, the purpose is, is it not, to derive income,

362

24 revenue from them in return for your provision of
25 telecommunications service?

123

1 MR. HOPE: Objection to form

2 A. Yes.

3 Q. Is there any other benefit that they provide
4 the airport as a customer other than financial?

5 MR. HOPE: Objection to form.

6 A. I'm sorry, you got to repeat that one.

7 Q. Sure. Other than providing you with revenue
8 and increasing the money that you make off of the
9 telecommunications business, is there any other
10 benefit that they provide MDAD?

11 A. These entities?

12 Q. Yes.

13 A. They provide the customers with a product.
14 The customer, the traveling public gets a benefit
15 from these entities

16 Q. Fair enough. The customers who purchase
17 food or drinks?

18 A. Food, pastries, coffee, yes, sir.

19 Q. But does that provide the airport with a
20 benefit? Does the airport receive any other benefit
21 from having these shops there? No, right?

22 MR. HOPE: Objection to form.

363

23 A. The benefit to the airport is if we bring
24 quality products to the airport our customers who
25 travel through MIA will choose MIA in comparison to

124

1 Fort Lauderdale or anywhere else. It is a branding
2 of product a product and service.

3 Q. So it is a marketing tool as well I guess?
4 I don't want to put words in your mouth, but you are
5 essentially saying if you have quality shops you are
6 hoping you will get more passengers. is that the--

7 A. Yes, sir.

8 Q. Any other benefit?

9 A. No, sir.

10 Q. Are there any studies that you have reviewed
11 or come across that say if you have quality stores
12 you'll get more traffic, they will choose Miami over
13 Fort Lauderdale as you said?

14 A. I don't, I don't have studies and I haven't
15 done anything. But we have a commercial ops division
16 that you can speak with. Their goal is to bring
17 quality merchandise, quality products to the facility
18 to give us what we need to be a world class facility.

19 And the traveling public, I think they have
20 done -- not "they have" but industry has done studies
21 or surveys as to what the traveling public wants to

364

22 see when they go through a facility, like Miami
23 International Airport and as it is compared to
24 Atlanta, Jacksonville, Tampa, Houston, DFW, anywhere
25 else for that matter

125

1 Q. You would agree that having a Bacardi shop
2 or have a Cafe Versaille doesn't make the airport a
3 safer place to be, though it may bring more people
4 but doesn't make it a safer place; you have to rely
5 on security or other measures, correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And you also agree that having a Bacardi
9 shop or Cafe Versaille or any of the other
10 concessions stands, concessions on these lists
11 doesn't help move freight or passengers more
12 efficiently through your airport, correct?

13 MR. HOPE: Objection to form.

14 Q. Except get more passengers there?

15 A. Yes, sir.

16 Q. Let me ask you this. If John Q Public
17 wanted to come into your airport and purchase Cafe
18 Versaille how would John Q Public go ahead and
19 purchase that concession technically, do you know?

20 A. For John Q Public to purchase Cafe Versaille

365

21 has nothing to do with the airport. For John Q
22 Public to purchase Café Versailles you need to deal
23 with the enterprise or the entity that owns those
24 rights.

25 Café Versailles I think is owned by La

126

1 Caretta, the parent company, so you need to deal with
2 them as a franchise or operation.

3 If you want to perform a service or sell a
4 product within the airport you contact our commercial
5 operations folks and you talk to them that you are
6 willing, you are looking to do business within the
7 airport and they tell you where you need to apply,
8 what the airport is looking for, and you, whatever
9 comes up to bid you bid on.

10 So there's a formal process nothing having
11 to do anything with the--

12 Q With your operation?

13 A. With my operation. They can do whatever
14 they want to do.

15 Q. But I guess I am trying to understand, if
16 John Q Public wanted to come in and let's say go to
17 La Caretta--

18 A. I think La Caretta is the parent company.
19 They are both owned by the same parent company.

20 Q. They would have to go to the parent company
21 and say basically I want to buy you out of your
22 airport space at the Miami Airport, correct, and
23 let's say the answer from the parent company was
24 fine, are there any other licenses or permits that
25 somebody needs to go in and lease this space?

127

1 A. That's out of my bailiwick. That's entirely
2 within commercial operations.

3 There's a process by which is required to
4 build out, permits, contracts have to be entered into
5 before you can even start doing business. And then
6 what the rental rate would be and what the pay back
7 to the department would be in regards to utilizing
8 that space.

9 Q. You said that's totally out of your
10 bailiwick. Whose bailiwick is it in?

11 A. It belongs to property and operations.
12 There's a commercial unit within the division, within
13 the department that's responsible for bringing in
14 business as well as managing or maintaining what
15 these guys deem to be our customers and what they
16 provide and what they do

17 Q. But the details of how John Q Public gets in
18 there is something you don't feel comfortable from a

367

19 knowledge base answering, is that fair to say?

20 A. Yes, sir.

21 Q So then I'll move on and ask you this. At
22 least you'd agree with the general proposition, would
23 you not, that John Q Public if he meets all, goes
24 through the hoops and meets the requirements he can
25 come in and operate a concession or a store at the

128

1 airport, right?

2 MR. HOPE. Objection to form.

3 A. As long as he's complied and submitted his
4 bid and he's awarded and approved, yes, he can.

5 Q. And that bid process as far as you know is
6 at least open to the public, right, anybody who wants
7 to bid?

8 A. Yes, sir.

9 Q. There's no discrimination or anything along
10 those linings, anyone that wants to bid can bid?

11 A Yes, sir, as long as you meet the minimum
12 qualifications or whatever qualifications are
13 established that goes out with the bid

14 Q. Let's assume John Q Public takes over Cafe
15 Versaille. They are going to be able to purchase
16 your telecommunications services, correct?

17 A. If they want to, it's entirely up to them.

368

18 Q But if they want to your services are
19 available to John Q Public, correct?

20 A. Yes, sir.

21 Q. And if John Q Public wants to obtain
22 telecommunications service from you at the airport
23 John Q Public is going to enter into one of these
24 rental agreements that we discussed earlier, correct?

25 A. Yes, sir.

129

1 Q. And then John Q Public is going to pay for
2 that telecommunications service, correct?

3 A. Yes, sir.

4 Q. And that telecommunications service that you
5 offer that we discussed before includes two way
6 communication capabilities, correct?

7 MR. HOPE: Objection to form

8 A. Yes, sir.

9 Q. Let me mark a couple of more of these
10 because I have another follow-up question. I am
11 going to mark MJ14, MJ15, MJ16, MJ17, MJ18, MJ19,
12 MJ20, MJ21, MJ22. Let me show you what I have marked
13 as Exhibits MJ14 through and including MJ22 and just
14 have you take a look at those photographs.

15 (Series of photographs marked Exhibits MJ14
16 through MJ22 for identification)

369

17 A. OK.

18 Q. Are those, as far as you can tell, accurate
19 depictions of various stores and/or services as they
20 presently exist at the Miami Airport?

21 A. Yes, sir

22 Q. And I am just going to walk through them
23 real quickly if you don't mind me looking over your
24 shoulder just to put them on the record because the
25 record can't see the pictures.

130

1 Correct me if I am wrong as I walk through
2 these. MJ12 is Cafe Versaille, MJ13 is Bacardi, MJ14
3 is?

4 A. They are both the same--

5 Q. Eddy's ice cream. MJ15 shows Eddy's Ice
6 Cream as well, Hebrew National hot dogs. MJ16 is
7 duty free stop.

8 MJ17 is TCBY and Cinnabon. MJ18 is Bacardi,
9 a Burger King and Frankly Gourmet MJ19 is Sunglass
10 Hut. MJ20 is the company you mentioned before, Cafe
11 La Caretta?

12 A. Right.

13 Q. MJ21 is basically a mall of shops, correct?

14 A. Yes, sir.

15 Q. And the mall of shops includes Barber Beauty

370

16 and Nails, a Kleen cleaners--

17 A. No, that's a shoe shine.

18 Q. I'm sorry, shoe cleaner?

19 A. And then the ice cream place

20 Q. Yes.

21 A. You didn't mention this one.

22 Q. MJ22 is a leather store?

23 A. Yes, sir.

24 MR. GOLDBERG: Showing his counsel where he

25 can go shopping

131

1 Q. That leads me to the next question. There
2 is nothing that prevents Mr. Hope here or John Q
3 Public or anybody else from going into the Miami
4 International Airport to these mall of shops or any
5 of the other stores that we have depicted here in the
6 photographs, purchasing their product, using their
7 services and then leaving without taking a flight or
8 booking a flight or traveling anywhere?

9 A. Right.

10 MR HOPE: Objection to form.

11 Q. There's no dispute about that, they can walk
12 in, do those things and walk out without traveling?

13 A. Yeah, if they want to.

14 Q. And there's also no dispute, although your
15 counsel is telling you not to answer certain

371

16 questions, but there is no dispute that you are
17 providing service to some or all of those shops or
18 those type of shops at the airport, correct?
19 MR. HOPE: Objection to form.
20 A. Yes, sir.

165

2 Q. The bottom line is that your
3 telecommunications business has a goal of increasing
4 its profitability and making money for the county,
5 correct?

6 MR. HOPE. Objection to form.

7 A. Yes, sir

8 Q. And so it behooves you and your entity to
9 charge the customers for all of your costs and
10 including marking up all of those costs to an
11 appropriate profit percentage, correct?

12 MR. HOPE: Objection to form.

13 Q. You can answer.

14 A. To what -- yes.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

38

15 Q Let me direct your attention back to PSC-5, the

372

16 customer list that you received from Miami-Dade County
17 Airport as of February 2003. Based on the customer list
18 that you reviewed, and assuming no partitioning of the
19 switch, as you've referred to it here, would Miami-Dade
20 County need to apply for certification as an STS
21 provider?

22 MR. HOPE: Objection to the form.

23 A Yes.

24 Q And can you explain that answer, please?

25 A Under the title "Concession/Others," the

39

1 companies that are listed underneath there, in my
2 opinion, would not be necessary for the safe passage of
3 passengers through the terminal, so it would lay outside
4 of the exemption if they have not partitioned their
5 switch. And the same would hold true for management
6 companies.

7 Q If I could ask you to go back for a minute to
8 PSC-7, which is a composite exhibit of notes and the
9 application, and go again to page 17, I would appreciate
10 that. I'm sorry to have you jump back and forth.

11 A Okay.

12 Q In the middle of the page, the notes written by
13 an individual at the County says, "If MIA is going to
14 provide service not related to public transportation
15 (hotels, shops, et cetera) we need to file an
16 application." Is that language consistent with your
17 testimony that you've given here today?

18 A If they don't partition their switch to those
19 entities, yes, it would be.

20 Q Whether or not an STS provider partitions their

21 trunks, or switch, partitions their switch, as you've
22 used, or did not partition the switch, are they still a
23 telecommunications provider or company under Florida
24 law?

25 A Yes.

59

6 Q Just a couple more things. You stated earlier,
7 and this refers to PSC-5, which has the listing of
8 customers that are being supplied with shared tenant
9 services at Miami International, that it was your
10 opinion that unless Miami International had partitioned
11 its trunk, it would require certification for provision
12 of services to everyone listed under the concessions and
13 others column and the management companies column.

14 MR. GOLDBERG: Object to the form.

15 A Definitely under the concessions part. As far
16 as the management, not being familiar with every entity
17 under that management part -- actually, if airport
18 management were there, I think that would be part of the
19 necessary persons to serve. But certainly the Miami
20 International Airport Hotel, they would need to
21 partition that.

22 Q Okay. Does it matter where the concession is
23 located?

24 A No.

25 Q So there's no difference between the concession

60

1 being located physically in the terminal building versus
2 a mile away as far as a trunk would need to be
3 partitioned in order to provide service to them absent a
4 PSC certificate?

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 18:

Please state all facts, and identify and quantify the "shopping malls and industrial parks" which support your allegations in Paragraph 41 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

75

6 Q. Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A Yes.

76

3 A. On the public, first of all, there were
4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth. And we have got
9 those customer lists.

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this. At least you would agree
14 with the general proposition, would you not, that
15 John Q Public, if he meets all - goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer: As long as he's complied and
20 submitted his bid and is awarded and approved,
21 yes, he can.

22 Question: And that bid process, as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir.

77

1 Question: There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir. As long as you meet
5 the minimum qualifications, or whatever
6 qualifications are established that goes out with
7 this bid.

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille. They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to. It's entirely
13 up to them

14 Question: But if they want to, your
15 services are available to John Q. Public, correct?

16 Answer: Yes, sir.

17 Question: And if John Q Public wants

18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?
22 Answer: Yes, sir.
23 Question: And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

78

1 Answer: Yes, sir.
2 Question: And that telecommunications
3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?
6 His answer: Yes, sir.
7 Then on page 131, Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr. Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mall shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using
14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?
16 Answer: Right.
17 Question: There's no dispute about
18 that. They can walk in, do these things, and walk
19 out without traveling?
20 Answer: Yeah. If they want to
21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

79

1 Answer: Yes, sir.
2 There's another one that I wanted to
3 call your attention to. Sometimes my little--
4 bear with me. There was also some discussion with
5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities
9 And the question was: I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are-- we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific

377

17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King. Frankly Gourmet, Sunglass Hut.
22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

80

1 Answer: Yes, sir
2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?
5 And his answer: No. That's a shoe
6 shine.
7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building

198

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?

199

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.

200

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"?

201

4 A Well, the statutes basically speak for
5 themselves And when you read the shared tenant

378

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

202

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

203

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.

204

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

379

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

205

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

253

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?

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.

On February 2, 2005, Maria Johnston, the Senior Account Manager for Bellsouth, appeared to answer questions in response to the County's Notice of Taking Deposition. During that testimony, Ms. Johnston testified relating to the subject interrogatory as follows:

85

23 Q. Do you have any knowledge of the entities
24 that the County through its Aviation department
25 might provide shared tenant services to at Miami

86

380

1 International Airport?

2 A. Let me make sure I understand your
3 question. Do I have any knowledge of what other
4 entities Miami-Dade Aviation might be providing
5 shared tenant services.

6 A. It was based on that RFP you put out and
7 that was an attachment to that RFP that showed a
8 list of other tenants but other than that, I don't.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

23 Q What specific shared tenant services
24 does the County offer the hotel referred to in
25 paragraph 22?

23

4 THE WITNESS: Well, to the extent of
5 what I have seen in documents and heard
6 and read in depositions, there's a
7 switch, a Dade County switch that serves
8 the airport hotel, and they get their
9 dial tone, they enter the local network
10 through that switch, and by services to
11 the people who stay there at night,
12 communicate with the outside world.

13 BY MR. HOPE:

14 Q Do you know whether or not that switch

15 is partitioned?

16 A Not for a fact, but I believe I have

17 read that the hotel-- services to the hotel are

18 partitioned to the hotel, I believe.

51

22 Q My question is what factual or

23 documentary evidence support the allegations in

24 paragraph 40?

25 A I also read Rick Moses' deposition, and

52

1 Rick Moses specifically says that shopping malls,

2 hotels, you know, are not necessary for the

3 safely moving of passengers and freight through

4 the airport.

5 And he is the Florida Public Service

6 Commission staff person in charge of the rules or

7 interpreting of the rules and filing rules,

8 codifying rules.

9 Q Okay, what shopping malls does the

10 County provide shared tenant services to?

11 THE WITNESS: Well, when I was at

12 Mr. Jenkins' deposition he was shown a

13 series of pictures of the different shops

14 through the middle of the airport that

15 offer a litany of services, clothes, the

382

18 drug-- you know, there's a litany of
19 services in these things, and it's a
20 shopping mall. I mean, it's truly a
21 shopping mall.

22 And he agreed that some of those
25 shops he provided service to

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

16

21 Does the County provide telephone
22 services to customers at airports in Dade County?

23 A. Yes, sir.

24 Q. Does the County provide
25 telecommunications services, using your definition,

17

1 to customers at airports within Dade County?

2 A. Yes, sir.

27

12 Q. And are the same telecommunications
13 services available to all of the customers;
14 regardless of whether they buy them all, are they
15 all available?

16 A. Yes, sir.

17 Q. Are all the services available?

18 A. Yes, sir, they are all available. Not
19 all of them use the services.

20 Q. Right. I could pick services 12 and 4
21 and somebody else could pick 23 and 5?

22 A. Yes.

23 Q. But they're all available to everybody?

24 A. Yes.

46

9 Q. Did the County or MDAD or anybody
10 prepare a marketing plan?

11 A. Yes. We requested from NextiraOne after
12 we purchased their infrastructure that they would
13 prepare a marketing plan on our behalf.

14 Q. To go out and market to tenants of the
15 airport --

16 A. Yes.

17 Q. -- airports?

18 A. Um-hum.

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by
10 providing telecommunications services?

11 MR. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County
15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE. Objection to form.

19 A. To the best of my knowledge, yes. 73

10 Q. And three is the assignment to the
11 County all existing tenant SATS and CUTE agreements
12 entered into by Centel or its successors or assigns
13 with tenants at the airport. That was --

14 A. The company's changed the name through
15 the years from Williams to Centel to Nextira to
16 NextiraOne, but it was an internal thing with them,
17 a spin-off for the main company or so forth.

18 Q. So pursuant to the agreement you were
19 entering into with Nextira, all of the Nextira
20 customers at the airports were going to become
21 customers of the County?

22 A. Yes, sir.

23 MR. HOPE: Objection to form.

24 Q. How many customers were there back in
25 January of 2002, Nextira customers?

74

1 A. I don't recall the number but it's -- it
2 was probably a little more than the list that you
3 saw because since then the economy went down a
4 little and people went out of business and so
5 forth.

6 Q. So it might have been slightly higher than
7 the 2003 list as far as the numbers?

8 A. It's slightly higher than what we had.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

20 Q. So without that -- well, isn't the rental
21 of equipment and the maintenance of equipment and
22 the use of equipment a service?

23 A. It could be considered a service, yes.

24 Q. And without that service, would the
25 local -- would the ice cream shop be able to place a

1 local call?

2 MR. HOPE: Objection to form.

3 THE WITNESS: We do have an ice
4 cream shop as a customer. I don't know
5 about that. But yes, whoever is the
6 customer, he wouldn't be able to complete
7 the call without the County-owned
8 equipment.

9 Q. And without the County-owned service,
10 correct? Or the County provided service?

11 MR. HOPE: Objection to form.

12 THE WITNESS: I am not sure if it
13 applies to service. All they need is the
14 equipment.

15 Q. Mr. Garcia, I mean, let's just see if we
16 can agree with each other. The provision of the
17 County-owned equipment to one of your customers is
18 the service that you provide, right?

19 A. If you define it that way, yes.

20 Q. So then without that service, then that
21 customer will not be able to make a local phone
22 call.

23 A. Correct.

3 A. There is only one -- there is a hotel at
4 the airport. And the trunks for that hotel, they
5 are partitioned in the PBX to be separate. In other
6 words, they have their own trunk groups. They
7 actually get the service from AT&T instead of
8 BellSouth, and they cannot call -- they cannot dial
9 four digits and call anybody else at the airport.

10 Q. I have to ask you a number of questions
11 about that to see if I understand it all. Okay?
12 Let me just start from the beginning. What hotel
13 are you referring to?

14 A. The Miami International Airport Hotel,
15 which is located inside the airport.

16 Q. And the Miami International Airport Hotel
17 is an MDAD customer?

18 A. The Miami International Hotel is owned by
19 the County, and is operated by a management company

20 Q. Is it serviced by MDAD?

21 A. We provide them the telephone service with
22 partition trunks, and they own the instruments in
23 the rooms.

24 Q. You say you provide the telephone service
25 with partition trunks. First let me ask you, you

72

1 mentioned that the County owns two PBX's.

2 A. Yes.

3 Q. Is there one PBX for the airport and
4 another PBX for everybody else?

5 A. No. They are interlaced for disaster
6 recovery purposes, so we don't lose one and

7 everybody else is out of service.

8 Q. Does the County own two PBX's just because
9 of size and volume?

10 A. Size and redundancy.

11 Q. What is redundancy?

12 A. You know, like if one fails, you have
13 another.

14 Q. But if MDAD had a smaller operation, is
15 it fair to say they could just use one?

16 MR. HOPE: Objection to form.

17 Q. One PBX?

18 A. Probably not. We would probably still
19 remain like this because we like to have redundancy.

20 Q. Now, the Miami Hotel, how is that -- you
21 say -- when you use the word partition trunks, what
22 exactly do you mean from a technical perspective as
23 it relates to that hotel?

24 A. It means two things. It means that
25 everybody else that is getting telephone

73

1 connectivity through our PBX, when they go out to
2 the world, to a local call, to the rest -- to the
3 public network, they go into these ten T1's that I
4 explained before that Southern Bell provides, or
5 BellSouth. I am showing my age here.

6 So the hotel is -- their calls go out
7 through a separate trunk group that also terminates
8 in the PBX, which was contracted by them separately,
9 and they are provided by AT&T. That is with their
10 local calls, and their long-distance calls go out
11 through those separate trunks.

12 Also, what it means, partition, is they
13 cannot dial four digits and talk to any of the other
14 customers connected to the MDAD-owned PBX, the
15 County-owned PBX.

16 Q. In that type of situation where you say
17 those trunks have been partitioned, it only relates
18 to the Miami International Airport Hotel that you
19 spoke about. Is that correct?

20 A. Yes, yes.

21 Q. For every other MDAD customer, is there
22 any partitioning of the trunks in any manner, shape
23 or form?

24 A. No.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

72

24 Q. You have customers at the airport, correct?

25 A. Yes, sir.

73

1 Q. They can make local phone calls, correct?

2 A. Yes, sir.

3 Q. They can make local phone calls using
4 equipment and assets that the county owns, correct?

5 A. Yes, sir

108

20 Q You say you haven't seen this airport rental

389

21 agreement in some time How long has it been?
22 A. Not sure. I believe it might have been
23 revised But I can't tell you the last time I've
24 seen it to read the document itself I'm not sure.
25 sir

109

1 Q. Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE: Objection to form.

4 A. It is the revised document Well, it's a
5 document that we use to establish customer
6 agreements.

7 Q. Isn't that your business?

8 MR. HOPE: Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering
11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form.

15 A. Yes, sir.

118

21 Q. Let me show you what I am going to mark as
22 Exhibit as MJ10 and MJ11.

23 (Customer lists marked Exhibits MJ10 and

390

24 MJ11 for identification)

25 Q Let's take a look at MJ11 first It's on

119

1 your left.

2 A. OK.

3 Q. Have you seen that document before?

4 A. Yes, I have.

5 Q. Is it correct that as of February 7 2002

6 this roughly depicts customers, MDAD customers who

7 were receiving telecommunications service at the

8 airport?

9 MR. HOPE: Objection to form.

10 A. Yes, sir

11 Q. Let me ask you the same question about MJ10.

12 Does that accurately depict your customer list as of

13 February, 2003, about a year later?

14 A. Yes, sir.

15 Q. Since February of 2003 when MJ10 was

16 produced, would it be accurate to say that the number

17 of customers has increased or decreased?

18 A. From March of '03 I believe we lost some

19 customers.

20 Q. Have you gained some?

21 A. It's possible--

22 Q. Before I even ask that I should ask, do you

23 have enough knowledge to answer those questions?

24 A. Yes, I do.

25 Q So have you gained some as well as lost

120

1 some?

2 A. I believe we have gained some as well as

3 lost some.

4 Q. At the present time can you tell me how many

5 customers you have at the airport?

6 A. Exact number, no, I cannot.

7 Q. How about approximate number?

8 MR. HOPE: Objection, privileged as we

9 stated earlier. Instruct deponent not to answer.

10 As we brought up earlier, you asked the same

11 question in terms of quantity and our position is

12 that you can talk about provision of services and

13 do we have customers, but I know that certain

14 documents you already have and I can't stop that

15 now, but in terms of specific customers and what

16 we do and total number of customers that is

17 something that's privileged.

18 MR. GOLDBERG: The number of customers is

19 privileged?

20 MR. HOPE: Yes. What would give you

21 anything that you need in terms of knowing the

392

22 number of our customers?

23 MR. GOLDBERG: I just want to make it clear

24 You are instructing him not to answer about the

25 number of customers?

121

1 MR. HOPE. Correct, which is what I

2 instructed earlier

3 Q. It's fair to say that all the customers

4 listed on MJ10, Mr. Jenkins, pay for your

5 telecommunications service, correct?

6 MR. HOPE: Objection, form.

7 A. Yes.

8 Q. There's no question that having these

9 customers benefits the county financially, correct?

10 A. There's some benefit, yes.

11 Q. There's some benefit?

12 A. Yes, sir.

13 Q. Let me show you what I am going to mark as

14 MJ12 and 13, two photographs.

15 (Photographs marked Exhibits MJ12 and 13 for

16 identification)

17 Q. MJ12 is a picture of Cafe Versaille,

18 correct?

19 A. Yes, sir.

20 Q That's one of the customers listed, one of

21 your customers listed on MJ10, that's correct? I am
22 pointing to it here.
23 A Yes, sir
24 Q. MJ13 -- by the way, are there a number of
25 Cafe Versailles in the airport?

122

1 A. I believe there are two. Maybe more.
2 Q. Just for the record, because people may read
3 this or see this videotape and don't know what Cafe
4 Versaille is. Can you explain what it is?
5 A It's a concession within the airport that
6 provides coffee, Danish, pastries.
7 Q. MJ13 depicts a Bacardi shop, correct, or
8 store where you can buy Bacardi liquor?
9 A. It is a restaurant/bar type, yes.
10 Q. It's in the business of selling liquor, is
11 that correct, and food?
12 A. Yes, sir.
13 Q Do you know whether Bacardi is currently an
14 MDAD customer?
15 MR. HOPE. Objection. Instruct the deponent
16 not to answer
17 Q. Let's assume since you have been instructed
18 not to answer that question I'll ask you to assume
19 that they are a customer, they are out at the

20 airport.

21 Again I go back to my question: Having Cafe
22 Versaille and potentially Bacardi as clients at the
23 airport, the purpose is. is it not. to derive income,
24 revenue from them in return for your provision of
25 telecommunications service?

123

1 MR HOPE: Objection to form.

2 A. Yes.

3 Q. Is there any other benefit that they provide
4 the airport as a customer other than financial?

5 MR. HOPE: Objection to form.

6 A. I'm sorry. you got to repeat that one.

7 Q. Sure. Other than providing you with revenue
8 and increasing the money that you make off of the
9 telecommunications business, is there any other
10 benefit that they provide MDAD?

11 A. These entities?

12 Q. Yes.

13 A. They provide the customers with a product
14 The customer, the traveling public gets a benefit
15 from these entities.

16 Q. Fair enough. The customers who purchase
17 food or drinks?

18 A. Food, pastries, coffee, yes, sir.

395

19 Q. But does that provide the airport with a
20 benefit? Does the airport receive any other benefit
21 from having these shops there? No, right?

22 MR. HOPE: Objection to form

23 A. The benefit to the airport is if we bring
24 quality products to the airport our customers who
25 travel through MIA will choose MIA in comparison to

124

1 Fort Lauderdale or anywhere else. It is a branding
2 of product a product and service

3 Q. So it is a marketing tool as well I guess?
4 I don't want to put words in your mouth, but you are
5 essentially saying if you have quality shops you are
6 hoping you will get more passengers, is that the--

7 A. Yes, sir

8 Q. Any other benefit?

9 A. No, sir.

10 Q. Are there any studies that you have reviewed
11 or come across that say if you have quality stores
12 you'll get more traffic, they will choose Miami over
13 Fort Lauderdale as you said?

14 A I don't, I don't have studies and I haven't
15 done anything. But we have a commercial ops division
16 that you can speak with. Their goal is to bring
17 quality merchandise, quality products to the facility

396

18 to give us what we need to be a world class facility.

19 And the traveling public, I think they have
20 done -- not "they have" but industry has done studies
21 or surveys as to what the traveling public wants to
22 see when they go through a facility, like Miami
23 International Airport and as it is compared to
24 Atlanta, Jacksonville, Tampa, Houston, DFW, anywhere
25 else for that matter.

125

1 Q. You would agree that having a Bacardi shop
2 or have a Cafe Versaille doesn't make the airport a
3 safer place to be, though it may bring more people
4 but doesn't make it a safer place; you have to rely
5 on security or other measures, correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And you also agree that having a Bacardi
9 shop or Cafe Versaille or any of the other
10 concessions stands, concessions on these lists
11 doesn't help move freight or passengers more
12 efficiently through your airport, correct?

13 MR. HOPE: Objection to form.

14 Q. Except get more passengers there?

15 A. Yes, sir.

16 Q. Let me ask you this If John Q Public

17 wanted to come into your airport and purchase Cafe
18 Versaille how would John Q Public go ahead and
19 purchase that concession technically, do you know?
20 A For John Q Public to purchase Cafe Versaille
21 has nothing to do with the airport. For John Q
22 Public to purchase Cafe Versaille you need to deal
23 with the enterprise or the entity that owns those
24 rights.
25 Cafe Versaille I think is owned by La

126

1 Caretta, the parent company, so you need to deal with
2 them as a franchise or operation.

3 If you want to perform a service or sell a
4 product within the airport you contact our commercial
5 operations folks and you talk to them that you are
6 willing, you are looking to do business within the
7 airport and they tell you where you need to apply,
8 what the airport is looking for, and you, whatever
9 comes up to bid you bid on.

10 So there's a formal process nothing having
11 to do anything with the--

12 Q. With your operation?

13 A. With my operation They can do whatever
14 they want to do.

15 Q But I guess I am trying to understand, if

16 John Q Public wanted to come in and let's say go to

17 La Caretta --

18 A I think La Caretta is the parent company.

19 They are both owned by the same parent company.

20 Q. They would have to go to the parent company

21 and say basically I want to buy you out of your

22 airport space at the Miami Airport, correct, and

23 let's say the answer from the parent company was

24 fine, are there any other licenses or permits that

25 somebody needs to go in and lease this space?

127

1 A. That's out of my bailiwick. That's entirely

2 within commercial operations.

3 There's a process by which is required to

4 build out, permits, contracts have to be entered into

5 before you can even start doing business. And then

6 what the rental rate would be and what the pay back

7 to the department would be in regards to utilizing

8 that space.

9 Q. You said that's totally out of your

10 bailiwick. Whose bailiwick is it in?

11 A. It belongs to property and operations.

12 There's a commercial unit within the division, within

13 the department that's responsible for bringing in

14 business as well as managing or maintaining what

15 these guys deem to be our customers and what they
16 provide and what they do.

17 Q. But the details of how John Q Public gets in
18 there is something you don't feel comfortable from a
19 knowledge base answering, is that fair to say?

20 A. Yes, sir.

21 Q. So then I'll move on and ask you this. At
22 least you'd agree with the general proposition, would
23 you not, that John Q Public if he meets all, goes
24 through the hoops and meets the requirements he can
25 come in and operate a concession or a store at the

128

1 airport, right?

2 MR. HOPE: Objection to form.

3 A. As long as he's complied and submitted his
4 bid and he's awarded and approved, yes, he can.

5 Q. And that bid process as far as you know is
6 at least open to the public, right, anybody who wants
7 to bid?

8 A. Yes, sir.

9 Q. There's no discrimination or anything along
10 those linings, anyone that wants to bid can bid?

11 A. Yes, sir, as long as you meet the minimum
12 qualifications or whatever qualifications are
13 established that goes out with the bid.

14 Q. Let's assume John Q Public takes over Cafe

400

15 Versaille They are going to be able to purchase
16 your telecommunications services, correct?

17 A If they want to, it's entirely up to them.

18 Q. But if they want to your services are
19 available to John Q Public, correct?

20 A. Yes, sir.

21 Q. And if John Q Public wants to obtain
22 telecommunications service from you at the airport
23 John Q Public is going to enter into one of these
24 rental agreements that we discussed earlier, correct?

25 A. Yes, sir.

129

1 Q. And then John Q Public is going to pay for
2 that telecommunications service, correct?

3 A. Yes, sir.

4 Q. And that telecommunications service that you
5 offer that we discussed before includes two way
6 communication capabilities, correct?

7 MR. HOPE: Objection to form.

8 A. Yes, sir.

9 Q Let me mark a couple of more of these
10 because I have another follow-up question. I am
11 going to mark MJ14, MJ15, MJ16, MJ17, MJ18, MJ19,
12 MJ20, MJ21, MJ22. Let me show you what I have marked
13 as Exhibits MJ14 through and including MJ22 and just

14 have you take a look at those photographs.

15 (Series of photographs marked Exhibits MJ14
16 through MJ22 for identification)

17 A. OK.

18 Q. Are those, as far as you can tell, accurate
19 depictions of various stores and/or services as they
20 presently exist at the Miami Airport?

21 A. Yes, sir.

22 Q. And I am just going to walk through them
23 real quickly if you don't mind me looking over your
24 shoulder just to put them on the record because the
25 record can't see the pictures.

130

1 Correct me if I am wrong as I walk through
2 these. MJ12 is Cafe Versaille, MJ13 is Bacardi, MJ14
3 is?

4 A. They are both the same--

5 Q. Eddy's ice cream. MJ15 shows Eddy's Ice
6 Cream as well, Hebrew National hot dogs. MJ16 is
7 duty free stop.

8 MJ17 is TCBY and Cinnabon. MJ18 is Bacardi,
9 a Burger King and Frankly Gourmet. MJ19 is Sunglass
10 Hut. MJ20 is the company you mentioned before, Cafe
11 La Caretta?

12 A. Right.

402

13 Q. MJ21 is basically a mall of shops, correct?

14 A. Yes, sir.

15 Q. And the mall of shops includes Barber Beauty
16 and Nails, a Kleen cleaners--

17 A. No, that's a shoe shine.

18 Q. I'm sorry, shoe cleaner?

19 A. And then the ice cream place.

20 Q. Yes.

21 A. You didn't mention this one.

22 Q. MJ22 is a leather store?

23 A. Yes, sir.

24 MR. GOLDBERG: Showing his counsel where he
25 can go shopping.

131

1 Q. That leads me to the next question. There
2 is nothing that prevents Mr. Hope here or John Q
3 Public or anybody else from going into the Miami
4 International Airport to these mall of shops or any
5 of the other stores that we have depicted here in the
6 photographs, purchasing their product, using their
7 services and then leaving without taking a flight or
8 booking a flight or traveling anywhere?

9 A. Right.

10 MR. HOPE: Objection to form.

11 Q. There's no dispute about that, they can walk

403

12 in, do those things and walk out without traveling?

13 A. Yeah, if they want to.

14 Q. And there's also no dispute, although your

15 counsel is telling you not to answer certain

16 questions, but there is no dispute that you are

17 providing service to some or all of those shops or

18 those type of shops at the airport, correct?

19 MR. HOPE: Objection to form.

20 A. Yes, sir.

164

21 Q. Essentially in this proposal it is fair to

22 say that there's a charge for everything that's

23 associated with providing telecommunications service

24 to your customers, correct?

25 MR HOPE: Objection to form.

165

1 A. Yes, sir.

2 Q. The bottom line is that your

3 telecommunications business has a goal of increasing

4 its profitability and making money for the county,

5 correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q. And so it behooves you and your entity to

9 charge the customers for all of your costs and

404

10 including marking up all of those costs to an

11 appropriate profit percentage, correct?

12 MR. HOPE. Objection to form.

13 Q. You can answer

14 A. To what -- yes.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows:

33

12 Q And if they cannot avail themselves of the
13 exemption, then is it clear under the law that they need
14 to apply for a certificate from the PSC to provide STS
15 services?

16 MR. HOPE: Objection to the form.

17 MR. GOLDBERG: You can answer yes or no and
18 explain if you want.

19 A I believe they would need a certificate if
20 they had not partitioned the switch and were providing
21 service to entities that are not really associated with
22 the airport.

23 Q And let's talk about those entities that are
24 not really associated with the airport. Would those
25 entities be entities such as a hotel, concession stands,

34

1 shopping mall, ice cream shops, pizza places, and the
2 like? Would you agree with that?

3 A Yes.

4 Q So if the Miami-Dade County Airport has not

5 partitioned its trunks and is providing
6 telecommunications service to entities such as a hotel,
7 concession stands, pizza places, and the like, would you
8 agree that there's no dispute under the law that they
9 need to apply for a certificate with the PSC?

10 A I would agree with that.

11 Q And that in fact in that scenario, the act of
12 applying for a certificate is mandated by law?

13 A Yes.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 19:

Please state all facts which support your allegations in Paragraph 42 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

BellSouth further responds to this interrogatory by stating that the allegations in paragraph 42 of the Second Amended Complaint are a legal conclusion based on the language of the applicable statutory and regulatory provisions governing the offer and provision of Shared Tenant Services to tenants, other than the County itself, at the Miami International Airport. In particular, BellSouth directs the County to the following statutory and regulatory provisions:

Florida Statutes Section 364.02
Florida Statutes Section 364.01
Florida Statutes Section 364.339
Florida Statutes Section 364.32
Florida Statutes Section 364.33
Florida Statutes Section 364.335
Rule 25-9.002 of the Florida Administrative Code
Rule 25-4.003 of the Florida Administrative Code
Rule 25-24.580 of the Florida Administrative Code
Rule 25-24.567 of the Florida Administrative Code
Rule 25-24.569 of the Florida Administrative Code
Rule 25-24.575 of the Florida Administrative Code

By way of example, and not of limitation, BellSouth more particularly directs Defendant to the excerpts of the depositions cited in response to Interrogatories 5, 7, 8 - 10, and 14 - 18 as facts responsive to this interrogatory.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 20:

Please state all facts which support your allegations in Paragraph 44 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

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Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr Jenkins testified as follows:

25 A. Yes, sir.

73

1 Q. They can make local phone calls, correct?

2 A. Yes, sir.

3 Q. They can make local phone calls using
4 equipment and assets that the county owns, correct?

5 A. Yes, sir.

108

20 Q. You say you haven't seen this airport rental
21 agreement in some time. How long has it been?

22 A. Not sure I believe it might have been
23 revised. But I can't tell you the last time I've
24 seen it to read the document itself. I'm not sure,
25 sir.

109

1 Q. Isn't this the blood and guts of your
2 telecommunications business at the airport?

3 MR. HOPE. Objection to form

4 A. It is the revised document. Well, it's a
5 document that we use to establish customer
6 agreements

7 Q. Isn't that your business?

8 MR. HOPE. Objection to form.

9 A. What's -- what is my business? I'm sorry.

10 Q. Isn't that how you make money, by entering

409

11 into these agreements with customers at the airport
12 so they will pay you for your telecommunications
13 service?

14 MR. HOPE: Objection to form

15 A. Yes, sir.

118

21 Q. Let me show you what I am going to mark as
22 Exhibit as MJ10 and MJ11.

23 (Customer lists marked Exhibits MJ10 and
24 MJ11 for identification)

25 Q. Let's take a look at MJ11 first. It's on

119

1 your left.

2 A. OK.

3 Q. Have you seen that document before?

4 A. Yes, I have.

5 Q. Is it correct that as of February 7, 2002
6 this roughly depicts customers, MDAD customers who
7 were receiving telecommunications service at the
8 airport?

9 MR. HOPE: Objection to form.

10 A. Yes, sir.

11 Q. Let me ask you the same question about MJ10.
12 Does that accurately depict your customer list as of
13 February, 2003, about a year later?

410

14 A Yes, sir

15 Q. Since February of 2003 when MJ10 was
16 produced, would it be accurate to say that the number
17 of customers has increased or decreased?

18 A. From March of '03 I believe we lost some
19 customers.

20 Q. Have you gained some?

21 A. It's possible--

22 Q. Before I even ask that I should ask, do you
23 have enough knowledge to answer those questions?

24 A. Yes, I do.

25 Q So have you gained some as well as lost

120

1 some?

2 A. I believe we have gained some as well as
3 lost some.

4 Q. At the present time can you tell me how many
5 customers you have at the airport?

6 A. Exact number, no, I cannot.

7 Q How about approximate number?

8 MR. HOPE: Objection, privileged as we
9 stated earlier. Instruct deponent not to answer.

10 As we brought up earlier, you asked the same
11 question in terms of quantity and our position is
12 that you can talk about provision of services and

411

13 do we have customers, but I know that certain
14 documents you already have and I can't stop that
15 now, but in terms of specific customers and what
16 we do and total number of customers that is
17 something that's privileged.

18 MR. GOLDBERG. The number of customers is
19 privileged?

20 MR. HOPE: Yes. What would give you
21 anything that you need in terms of knowing the
22 number of our customers?

23 MR. GOLDBERG: I just want to make it clear.
24 You are instructing him not to answer about the
25 number of customers?

121

1 MR HOPE: Correct, which is what I
2 instructed earlier.

3 Q. It's fair to say that all the customers
4 listed on MJ10, Mr. Jenkins, pay for your
5 telecommunications service, correct?

6 MR HOPE: Objection, form.

7 A. Yes.

8 Q. There's no question that having these
9 customers benefits the county financially, correct?

10 A. There's some benefit, yes.

11 Q. There's some benefit?

412

12 A. Yes, sir

13 Q. Let me show you what I am going to mark as

14 MJ12 and 13, two photographs.

15 (Photographs marked Exhibits MJ12 and 13 for

16 identification)

17 Q. MJ12 is a picture of Cafe Versaille.

18 correct?

19 A. Yes, sir.

20 Q. That's one of the customers listed, one of

21 your customers listed on MJ10, that's correct? I am

22 pointing to it here.

23 A. Yes, sir.

24 Q. MJ13 -- by the way, are there a number of

25 Cafe Versailles in the airport?

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1 A. I believe there are two. Maybe more

2 Q. Just for the record, because people may read

3 this or see this videotape and don't know what Cafe

4 Versaille is. Can you explain what it is?

5 A. It's a concession within the airport that

6 provides coffee, Danish, pastries.

7 Q. MJ13 depicts a Bacardi shop, correct, or

8 store where you can buy Bacardi liquor?

9 A. It is a restaurant/bar type, yes.

10 Q. It's in the business of selling liquor, is

413

11 that correct, and food?

12 A. Yes, sir.

13 Q. Do you know whether Bacardi is currently an

14 MDAD customer?

15 MR. HOPE: Objection. Instruct the deponent

16 not to answer.

17 Q. Let's assume since you have been instructed

18 not to answer that question I'll ask you to assume

19 that they are a customer, they are out at the

20 airport.

21 Again I go back to my question: Having Cafe

22 Versaille and potentially Bacardi as clients at the

23 airport, the purpose is, is it not, to derive income,

24 revenue from them in return for your provision of

25 telecommunications service?

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4 the airport as a customer other than financial?

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8 and increasing the money that you make off of the

9 telecommunications business, is there any other

414

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15 from these entities

16 Q. Fair enough. The customers who purchase

17 food or drinks?

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20 benefit? Does the airport receive any other benefit

21 from having these shops there? No, right?

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24 quality products to the airport our customers who

25 travel through MIA will choose MIA in comparison to

124

1 Fort Lauderdale or anywhere else. It is a branding

2 of product a product and service.

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4 I don't want to put words in your mouth, but you are

5 essentially saying if you have quality shops you are

6 hoping you will get more passengers, is that the--

7 A Yes, sir.

8 Q. Any other benefit?

415

9 A. No, sir

10 Q. Are there any studies that you have reviewed
11 or come across that say if you have quality stores
12 you'll get more traffic, they will choose Miami over
13 Fort Lauderdale as you said?

14 A I don't, I don't have studies and I haven't
15 done anything But we have a commercial ops division
16 that you can speak with Their goal is to bring
17 quality merchandise, quality products to the facility
18 to give us what we need to be a world class facility.

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2 or have a Cafe Versaille doesn't make the airport a
3 safer place to be, though it may bring more people
4 but doesn't make it a safer place; you have to rely
5 on security or other measures, correct?

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416

8 Q. And you also agree that having a Bacardi
9 shop or Cafe Versaille or any of the other
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11 doesn't help move freight or passengers more
12 efficiently through your airport, correct?

13 MR. HOPE. *Objection to form.*

14 Q Except get more passengers there?

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17 wanted to come into your airport and purchase Cafe
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417

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9 comes up to bid you bid on.

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11 to do anything with the--

12 Q With your operation?

13 A. With my operation. They can do whatever
14 they want to do.

15 Q But I guess I am trying to understand, if
16 John Q Public wanted to come in and let's say go to
17 La Caretta--

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23 you not, that John Q Public if he meets all, goes
24 through the hoops and meets the requirements he can
25 come in and operate a concession or a store at the

128

1 airport, right?

2 MR. HOPE. Objection to form.

3 A. As long as he's complied and submitted his
4 bid and he's awarded and approved, yes, he can.

5 Q. And that bid process as far as you know is

419

6 at least open to the public, right, anybody who wants
7 to bid?

8 A. Yes, sir.

9 Q. There's no discrimination or anything along
10 those linings, anyone that wants to bid can bid?

11 A. Yes, sir, as long as you meet the minimum
12 qualifications or whatever qualifications are
13 established that goes out with the bid.

14 Q. Let's assume John Q Public takes over Cafe
15 Versaille. They are going to be able to purchase
16 your telecommunications services, correct?

17 A. If they want to, it's entirely up to them.

18 Q. But if they want to your services are
19 available to John Q Public, correct?

20 A. Yes, sir.

21 Q. And if John Q Public wants to obtain
22 telecommunications service from you at the airport
23 John Q Public is going to enter into one of these
24 rental agreements that we discussed earlier, correct?

25 A. Yes, sir.

129

1 Q. And then John Q Public is going to pay for
2 that telecommunications service, correct?

3 A. Yes, sir.

4 Q. And that telecommunications service that you

420

5 offer that we discussed before includes two way
6 communication capabilities, correct?

7 MR. HOPE: Objection to form

8 A. Yes, sir.

9 Q. Let me mark a couple of more of these
10 because I have another follow-up question. I am
11 going to mark MJ14, MJ15, MJ16, MJ17, MJ18, MJ19,
12 MJ20, MJ21, MJ22. Let me show you what I have marked
13 as Exhibits MJ14 through and including MJ22 and just
14 have you take a look at those photographs

15 (Series of photographs marked Exhibits MJ14
16 through MJ22 for identification)

17 A. OK.

18 Q. Are those, as far as you can tell, accurate
19 depictions of various stores and/or services as they
20 presently exist at the Miami Airport?

21 A. Yes, sir.

22 Q. And I am just going to walk through them
23 real quickly if you don't mind me looking over your
24 shoulder just to put them on the record because the
25 record can't see the pictures.

130

1 Correct me if I am wrong as I walk through
2 these. MJ12 is Cafe Versailles, MJ13 is Bacardi, MJ14
3 is?

421

4 A. They are both the same--

5 Q. Eddy's ice cream. MJ15 shows Eddy's Ice

6 Cream as well. Hebrew National hot dogs. MJ16 is

7 duty free stop.

8 MJ17 is TCBY and Cinnabon. MJ18 is Bacardi,

9 a Burger King and Frankly Gourmet. MJ19 is Sunglass

10 Hut. MJ20 is the company you mentioned before, Cafe

11 La Caretta?

12 A. Right.

13 Q. MJ21 is basically a mall of shops, correct?

14 A. Yes, sir.

15 Q. And the mall of shops includes Barber Beauty

16 and Nails, a Kleen cleaners--

17 A. No, that's a shoe shine.

18 Q. I'm sorry, shoe cleaner?

19 A. And then the ice cream place.

20 Q. Yes.

21 A. You didn't mention this one.

22 Q. MJ22 is a leather store?

23 A. Yes, sir.

24 MR. GOLDBERG: Showing his counsel where he

25 can go shopping.

131

1 Q. That leads me to the next question. There

2 is nothing that prevents Mr. Hope here or John Q

422

3 Public or anybody else from going into the Miami
4 International Airport to these mall of shops or any
5 of the other stores that we have depicted here in the
6 photographs, purchasing their product, using their
7 services and then leaving without taking a flight or
8 booking a flight or traveling anywhere?

9 A. Right.

10 MR. HOPE: Objection to form.

11 Q. There's no dispute about that, they can walk
12 in, do those things and walk out without traveling?

13 A. Yeah, if they want to.

14 Q. And there's also no dispute, although your
15 counsel is telling you not to answer certain
16 questions, but there is no dispute that you are
17 providing service to some or all of those shops or
18 those type of shops at the airport, correct?

19 MR. HOPE: Objection to form.

20 A. Yes, sir.

152

24 Q. So then you come down, this is for voice
25 line costs. What's voice line?

153

1 A. That's telephone services.

2 Q. Two way telecommunication service, correct?

3 A. Yes, sir.

423

4 Q And you have a total equipment cost in
5 providing the voice line to your customers, correct.
6 is that correct?

7 A. Yes.

8 Q. You have an interest carrying cost, a
9 maintenance cost and then you add on profit, correct?

10 A. Yes, sir.

11 Q. And you come up with a voice line charge per
12 month of 930, is that correct?

13 A. Yes, sir.

155

7 Q Back on that page, network access cost,
8 directly below the local line cost of \$60,000 is an
9 entry of 15 percent profit, correct?

10 A. Yes, sir.

11 Q. So MDAD adds 15 percent profit or in this
12 case \$25,000 figure to its cost for network access,
13 correct?

14 A. Yes, sir.

15 Q. And that's over and above the number that's
16 been ascribed to local line cost, correct?

17 A. Yes, sir.

18 Q. So wouldn't you conclude that the \$15,000
19 profit is a markup to the cost for network access?

20 MR. HOPE: Objection to form.

424

21 A. The \$15,000 profit?

22 Q. Yes.

23 A. Which \$15,000 are you referring to?

24 Q Sorry Wouldn't you agree that the 15
25 percent profit is a markup to the cost depicted for

156

1 network access?

2 A. Yes, sir.

164

21 Q Essentially in this proposal it is fair to
22 say that there's a charge for everything that's
23 associated with providing telecommunications service
24 to your customers, correct?

25 MR. HOPE: Objection to form.

165

1 A. Yes, sir.

2 Q. The bottom line is that your
3 telecommunications business has a goal of increasing
4 its profitability and making money for the county,
5 correct?

6 MR. HOPE: Objection to form.

7 A. Yes, sir.

8 Q And so it behooves you and your entity to
9 charge the customers for all of your costs and
10 including marking up all of those costs to an

425

11 appropriate profit percentage, correct?

12 MR. HOPE: Objection to form.

13 Q. You can answer.

14 A To what -- yes

173

17 Q. Could you tell me when you look at this
18 document, MJ26, what is included in the 81.75 that's
19 being billed where it says "missed charge monthly
20 rental for telephone and maintenance"?

21 A. What's included in it, it's monthly rental
22 for the telephone and the hand set itself as well as
23 the maintenance that goes along with that to deal
24 with our customers if they have a problem So that's
25 from the hand set to the port that leads back to the

174

1 PBX.

2 Q. Is access billed in this invoice?

3 A. Access to?

4 Q. Well, we have talked about network access,
5 talked about switch access. Are any charges included
6 on this invoice for those services?

7 A. I'm not sure. I would need to look at the
8 detail that may have come along with it

9 Q. Let's try another example. Let me show you
10 what I will mark as MJ27.

426

11 (Invoice marked Exhibit MJ27 for
12 identification)

13 The first page of this document is another
14 invoice similar to MJ26, correct?

15 A. Yes, sir.

16 Q. You want it take a look. This amount is for
17 \$85.75, correct?

18 A. Yes.

19 Q. Dated July 1, 2002, correct?

20 A. The total amount is \$91. The first item you
21 are talking about?

22 Q. You are right

23 A. 85.75.

24 Q. And the sales tax is 5.57 for a total of
25 91.32, correct?

175

1 A. Yes

2 Q. And if you turn to the second page of this
3 composite exhibit. This a form that dso is entitled
4 Miami-Dade Aviation Department standarized form. Who
5 produces this form?

6 A. I believe it's-- I'm not sure. It either
7 comes from us or comes from Nextera. I believe it
8 comes from the department.

9 Q. From the department, aviation department?

427

10 A. Yes, sir.

11 Q. And you see that the amount on there the
12 total, 85.75, equals the first line item on the
13 previous invoice?

14 A Yes, sir

15 Q. And then if we go to the third document,
16 that is a contract invoice that has Nextera 1's logo
17 on there, that also is for rental monthly of 85.75,
18 the same amount that we have seen on the prior two
19 documents, correct?

20 A Yes, sir.

21 Q. Does Nextera 1 complete or make this
22 document. the third page?

23 A Yes

24 Q. The 85.75 in this instance for this customer
25 during the month for service during the month of May

176

1 because it says billing period from 5/1 to 5/31/02,
2 is made up of these three line items, correct?

3 A. Yes,sir.

4 Q Meridian 1 port, you had previously
5 testified that that was a line that went back into
6 the meridian box. correct. or that's actually a port
7 in the box?

8 A. Yes, sir, that was the statement I made.

428

9 Q. How many ports are in a meridian box?

10 A. I think 256 but I'm not sure. I don't know.

11 Q. Not sure. All right. And here, they are
12 charging for four ports. What does that mean?

13 A. Four ports I believe would be four hand
14 sets. I'm not sure. Unless they are using-- well,
15 the four ports, they have four access ports that
16 could be used either one for fax, one for aphone,
17 two other ports for data if I'm not mistaken. I
18 would assume that to be that.

19 Q. Below it has single line access and I think
20 before you testified you don't know what single line
21 access means?

22 A. No, sir.

23 Q. Do you have an explanation why you would
24 need two single line access when you have four
25 meridian 1 ports?

177

1 A. No, sir.

2 Q. What's a 2500 set on the third line?

3 A. I believe that's a hand set but I'm not
4 sure. It's a telephone, I believe, but I'm not sure.

5 Q. So if there's four meridian 1 ports are we
6 saying according to your testimony here today that
7 there's four lines that have dial tone?

429

8 A. That is a possibility.

9 Q. Do you know that for a fact?

10 A. For a hundred percent certain, no, I do not.

11 Q Let me show you now what I'll mark as MJ28.

12 This is also a composite exhibit. And you correct me

13 if I am wrong but just for the record this a

14 Miami-Dade County Aviation Department STATS billing

15 form for the period dated March 29, '02, correct?

16 A. Yes.

17 Q For a billing period of February 7 through

18 March 6 of '02, correct?

19 A. Yes, sir.

20 (MDAD billing form marked Exhibit MJ 28 for

21 identification)

22 Q. The amount in total is \$689 59, correct?

23 A. Yes, sir.

24 Q. Let's go to the next sheet in that exhibit.

25 This again is a Nextera 1 document, correct?

178

1 A. Yes, sir.

2 Q. And the coverage says "full serve." What

3 does full serve mean?

4 A I'm assuming full service. I'm not sure

5 what definitions, the acronyms are.

6 Q. On this bill you are charging for 28

430

7 meridian 1 ports. How is that or why is that?

8 A. It depends on the customer and the
9 requirements of the customer. I don't know unless I
10 know what the customer is and what they have asked
11 for.

12 Q. Then they are charged for advance features.
13 I want to talk to you about advance features. call
14 waiting, conference call. Is that something that
15 your telecommunications business provides as a
16 service to your customers?

17 MR. HOPE: Objection to form.

18 A. Yes, sir.

19 Q. And do you charge for each particular
20 feature that the customer orders?

21 A. Yes, sir.

22 Q. So there would be a charge for call waiting,
23 there would be a charge for conference calling, a
24 charge for call forwarding?

25 A. Sometimes they are bundled. Most of the

179

1 times they are individual items. They would be
2 billed as individual items. Also, including like
3 voice mail

4 Q. And those are features or services that you
5 and only you, I mean MDAD and only MDAD, billed and

431

6 provided to your customers, correct?

7 MR HOPE: Objection to form.

8 A. Yes.

9 Q. And you recognize that carrier such as
10 BellSouth or Worldcom or other telecommunication
11 companies also provide these features as well to
12 their customers, correct?

13 A. I know BellSouth does. I'm not sure if
14 Worldcom offers it.

15 Q. But at least BellSouth does, correct?

16 A. I use it at home.

17 Q. What's rotary system access?

18 A. I'm not sure.

19 Q. What are the items depicted as M208HFD and
20 M208B and M208D on this document?

21 A. They are products. I would have to look
22 into our inventory and what we have to tell you
23 exactly what those individual items are.

24 Q. Your telecommunications company also has and
25 offers voice mail to your customers, correct?

180

1 MR. HOPE: Objection to form.

2 A. Yes, sir.

3 Q. And that's depicted on this bill as well,
4 correct?

432

5 A. Yes, sir.

6 Q That's a service that other companies such
7 as BellSouth provide to its customers, correct?

8 A. Yes, sir

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

14

9 Q. With respect to that provision, 14 b.
10 could you tell us from your personal knowledge
11 what led to the inclusion of this restriction on
12 the County's power and authority to be placed in
13 the Miami-Dade County Charter and Home Rule
14 Amendment?

15 A. This particular section was heavily
16 lobbied by the president of the Florida Power and
17 Light Company, McGregor Smith, who was very
18 insistent -- strident I should say -- that the
19 charter should contain some restrictions on the
20 County's ability to operate utility systems. And
21 this particular paragraph B was the result of that
22 negotiation and restrictions on the County's power
23 to operate a utility.

16

7 Q. Was there any type of compromise reached
8 with respect to, you know, the request by FP&L to
9 not have the County be able to operate a light,
10 power or telephone utility?

11 A. Well, this is the compromise. If the
12 Florida Power & Light had had its way, the County
13 would have been prohibited by Charter from
14 operating a light or power utility. And that was
15 finally resolved by putting the restriction in
16 that they could not operate one, except after an
17 election and after a two-third vote of the members
18 of the County Commission.

19 Q. So if I understand you correctly, if
20 McGregor Smith or FP&L would have had their way,
21 the Charter would have been an absolute
22 prohibition. But the Board compromised and put in
23 that they can operate it, but only after they get
24 a two-third vote of the members of the Board and a
25 majority vote of the electorate of Dade County?

17

433

2 A. That's correct.
3 Q. I'm sorry. You can answer that again.
4 Is that correct?
5 A. Yes, that's correct.

17

20 Q. The provision that we've been speaking
21 about, Paragraph B, utilizes the term telephone
22 utility. Did that, the use of that term, have any
23 special significance? Or what-- did it just
24 relate to any entity who was providing telephone
25 services?

18

1 A. Well, I think it related to any entity
2 that was providing telephone services.
3 The particular utilities then operable
4 in Dade County were not named in the Charter. But
5 you asked me for the background or history on it
6 It was almost exclusively the result of McGregor
7 Smith and his lobbying that this provision is
8 structured the way it is in the Charter.

9 Q. The verbiage in Paragraph B also uses
10 the word territory, the County shall not operate a
11 light, power or telephone utility to serve any
12 territory in the County. When the Charter was
13 drafted, the use of the word territory was decided
14 upon, did territory have any special significance?
15 Or what did it mean?

16 A. It was only a synonym for area, to serve
17 any area. Territory has no other regulatory
18 meaning in that particular section.

19 Q. If I could ask you to turn to another
20 portion of the Charter, and it's actually in the
21 preamble. It's under Dade County Home Rule
22 Charter, sub-paragraph 1b, where it starts out
23 this Charter, and then it says under B, may grant
24 full power and authority. Do you see that
25 verbiage? I can show it to you in this copy.

19

1 A. Where?

2 Q. Do you see B?

3 A. That's the Home Rule Constitutional
4 Amendment. That's not the Charter.

5 Q. Fair enough. Let me just ask you along
6 those lines, under 1b, it says at the end of that
7 sub-paragraph that the Board of County
8 Commissioners-- well, let me read the whole
9 thing. It says--

10 A. You understand this is the Home Rule
11 Constitutional Amendment, not the Charter.

12 Q. Fair enough.

13 But I guess my question is, it's been
14 argued by the County in this case, that the
15 language at the end of that paragraph that allows
16 the Board to do "everything necessary to carry a
17 a central metropolitan government in Dade County,"
18 would that language in that document supercede or
19 override the restrictions that we just went over
20 in the Charter.

21 A No

22 MR. HOPE: Objection to form.

23 A. It was an outline to say that, to carry
24 on, except for metropolitan government, was to be
25 carried on in accordance with the powers and the

20

1 restrictions of the Charter which had been
2 adopted. But it certainly didn't, wasn't a
3 free-wheeling grant to the government to do
4 anything necessary which was not in the Charter or
5 not restricted by the Charter.

6 Q And similarly, if I could ask you to
7 turn back to the Charter provision 14b that we
8 were speaking about. And actually, under Article
9 1, the Powers of the Board of County
10 Commissioners, I want to ask you about
11 sub-paragraph 2 Just let me know when you've
12 reached that.

13 A. Truth in government? That's the
14 Citizens Bill of Rights.

15 Q. No. I'm actually going to Exhibit 2,
16 just for the record, of page 16.

17 A. 1 01, Powers?

18 Q. Yes. Powers A2.

19 A. All right. I have A2, provide and
20 operate air, water, rail and bus terminals, Board
21 facilities and public transportation systems.

22 Q. I have similar questions for you about
23 that language. Would that language in Article 1
24 of the Charter-- you know, providing the power
25 the County Commissioners to provide and operate

21

1 air, water, rail and bus terminals, port
2 facilities and public transportation systems,
3 which could be read to include airports-- would
4 that overcome or supercede the restriction that we
5 just spoke about prohibiting the County from

435

6 operating a light, power, telephone utility unless
7 they receive the vote of the electorate and vote
8 of the Board?

9 MR. HOPE. Object to form.

10 A. No. That paragraph that you have just
11 read can only be exercised in accordance with the
12 grants and the restrictions in the Charter itself.

13 Q. So you are not aware of any, you know,
14 intent of the drafters or legislative intent, or
15 anything along those lines that would, you know,
16 provide that paragraph A2 would supercede or
17 overcome the restriction that the County shall not
18 operate a light, power or telephone utility
19 without the appropriate votes?

20 A. No.

21 Q. If the County were providing telephone
22 services out at the Miami International Airport
23 without getting a vote of the electorate or the
24 members of the Board of County Commissioners,
25 would that in your opinion run contrary to the

22

1 prohibition outlined in the Charter 14b?

2 A. It would. They would be in violation of
3 the Charter, in my opinion.

35

22 Q. Also, you answered a question earlier in
23 terms of the definition of territory and whether
24 or not the County's provision of service to the
25 Miami International Airport would constitute the

36

1 operation of a telephone utility. Do you remember
2 that question and answer?

3 MR. GOLDBERG: Objection to form.

4 A. Whether the operation of a telephone
5 service to the airport would constitute a utility?

6 Q. Correct.

7 A. Yes.

8 Q. Why is it that the provision of service
9 to Miami International Airport would constitute
10 the operation of a telephone utility?

11 A. Because it was telephone service.

12 Q. So is your answer specifically that
13 because it's the provision of telephone service,
14 therefore it is tantamount to being a telephone
15 utility?

16 A. Well, in a general way I think that's
17 correct

18 Q Can you be more specific?
19 A. No. I can't be more specific.
20 Telephone utility is the provision of telephone
21 service to any area in the County.

39

13 Q. So in this case, if the County were to
14 take the position that it's in the best interest
15 of the citizens for airport safety or otherwise,
16 to provide telephone service out at the Miami
17 International Airport, what would they have to do
18 under the Charter?

19 A They'd have to have an election. If it
20 was important enough for safety or other things,
21 there's a clear path laid out as to how to operate
22 a utility, a telephone utility. By holding an
23 election. I don't know what the reason to fear of
24 an election is.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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11 Q Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?
14 A. Yes, they have.
15 Here again, in this initial discovery,
16 Mr. Garcia, again, in that same deposition, page
17 56, the question. Let's do it this way. We've
18 agreed earlier in the deposition that MDAD is
19 engaged in what it hopes to be a profit-making
20 enterprise by providing telecommunication services
21 to tenants of the airport?

22 His answer: Yes.
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is:
25 So MDAD is charging for the completion of the

72

1 local call, correct?
2 Answer: For the ability to complete the
3 local call. We don't charge by the call.
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes.
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,

437

10 page 150 -- well, 149 and 150. Question: So I
11 understand you, you said there is no additional
12 charge. But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?

17 His answer. The County is charging for
18 the equipment that allows you to get the dial tone
19 and complete the call.

20 Question: So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes.

24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question: You have

73

1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?

3 His answer: Yes, sir.

4 Question: And you come up with a voice
5 line charge per month of 930; is that correct?

6 Answer: Yes, sir.

7 Then on page 164, the question is.

8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?

12 Answer: Yes, sir.

13 The bottom line is that your

14 telecommunications -- Question: The bottom line
15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?

18 His answer: Yes, sir.

19 Q Okay. Now--

24 A There's also, if you go back to the
25 actual -- and this is behind tab B, which is

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1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department. This
4 is dated September 24, 2002.

5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities.

13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by
16 the Board on January 29th, 2002, MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024. This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development.

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition

25 Now, you also asked me about was the
75

1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes. And
3 based on, here again, some of the discovery that
4 we have obtained.

6 Q. Let me stop you. You're going to deal
7 just with the "to the public for hire" right now?

8 A. Yes.

76

3 A. On the public, first of all, there were
4 a couple of customer lists which indicated that
5 there were more tenants that were being provided
6 telecommunication service than just airport type
7 services. Like the Cafe, the ice cream shop, the
8 shoe shine shop, and so forth. And we have got
9 those customer lists.

10 But we also had from the deposition, and
11 this is the deposition of Maurice Jenkins, page
12 127 and 128, the question was: So then I'll move
13 on and ask you this. At least you would agree
14 with the general proposition, would you not, that
15 John Q Public, if he meets all - goes through the
16 hoops and meets the requirements, he can come in
17 and operate a concession or store at the airport,
18 right?

19 Answer: As long as he's complied and
20 submitted his bid and is awarded and approved,
21 yes, he can

22 Question: And that bid process, as far
23 as you know, is at least open to the public,
24 right? Anybody who wants to bid?

25 Answer: Yes, sir.

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1 Question. There's no discrimination or
2 anything along these lines? Anyone that wants to
3 bid can bid?

4 Answer: Yes, sir. As long as you meet
5 the minimum qualifications, or whatever

6 qualifications are established that goes out with
7 this bid.

8 Question: Let's assume John Q Public
9 takes over Cafe Versaille. They're going to be
10 able to purchase your telecommunications services,
11 correct?

12 Answer: If they want to. It's entirely
13 up to them.

14 Question: But if they want to, your
15 services are available to John Q Public, correct?

16 Answer: Yes, sir

17 Question: And if John Q Public wants
18 to obtain telecommunication services from you at
19 the airport, John Q Public is going to enter into
20 one of these rental agreements that we discussed
21 earlier, correct?

22 Answer: Yes, sir.

23 Question: And then John Q Public is
24 going to pay for that telecommunications service,
25 correct?

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1 Answer: Yes, sir.

2 Question: And that telecommunications
3 service that you offer that we discussed before
4 includes two-way communications capabilities,
5 correct?

6 His answer: Yes, sir.

7 Then on page 131. Question: That leads
8 me to the next question. There's nothing that
9 prevents Mr Hope here, or John Q Public, or
10 anybody else from going into the Miami
11 International Airport to use these mall shops, or
12 any of the other stores we have depicted here in
13 the photographs, purchasing the products, using
14 their services, and leaving without taking a
15 flight or booking a flight or traveling anywhere?

16 Answer: Right

17 Question: There's no dispute about
18 that. They can walk in, do these things, and walk
19 out without traveling?

20 Answer: Yeah. If they want to.

21 Question: And there's also no dispute,
22 although your counsel is telling you not to answer
23 certain questions, there's no dispute that you are
24 providing service to some or all of these shops,
25 or those types of shops at the airport, correct?

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1 Answer: Yes, sir.

2 There's another one that I wanted to
3 call your attention to. Sometimes my little--
4 bear with me There was also some discussion with

5 Maurice Jenkins in his deposition on page 129 and
6 130, which went through some of the shops that
7 were being provided, which appear to be totally
8 unrelated to the airport facilities

9 And the question was: I'm just going to
10 walk through them real quickly, if you don't mind
11 me looking over your shoulder, just to put them on
12 the record, because the record can't see the
13 pictures. They are-- we're talking about the
14 photographs that were part of the exhibits that
15 were entered into the record with Mr. Jenkins
16 deposition. These were photographs of specific
17 tenants at the airport. And he said correct me if
18 I'm wrong as I walk through these. And he
19 mentions Cafe Versaille, Bacardi, Eddy's Ice
20 Cream, they mention TCBY, Cinnabon, Bacardi,
21 Burger King, Frankly Gourmet, Sunglass Hut.

22 There was also, we asked the question:
23 MJ21, which was the designation of one of the
24 photographs, is basically a mall of shops,
25 correct?

80

1 Answer: Yes, sir

2 Question: And the mall of shops
3 includes Barber, beauty and nails, a Kleen
4 Cleaners?

5 And his answer: No. That's a shoe
6 shine.

7 Anyway, but that shows that there
8 were -- there's more than just airport type
9 facilities. In other words, there are various
10 public type tenants in the building

113

20 Q Is the County regulated?

21 A. The County, as a shared tenant service
22 provider, is subject to some of the regulations in
23 the telecommunications statute and the rules, the
24 Florida code.

25 I guess it's regulated by its own

114

1 charter. I'm not familiar that much with the
2 government hierarchy, but it does have a charter
3 that has some dictates, which is regulation to
4 some degree.

198

15 Besides the deposition transcripts and
16 the documents produced by the County through
17 BellSouth's discovery requests, are there any

441

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?

199

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.

200

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"?

201

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.

202

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

442

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

203

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.

204

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 his
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

205

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

213

17 Q Turning back to the Second Amended
18 Complaint, would you please turn to page eight and

443

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?
25 A. Well, there's probably several

214

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

215

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

444

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

216

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?

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

217

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?

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

218

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

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

235

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.

250

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

251

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.

251

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

446

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?

252

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.

253

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?

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.

On February 2, 2005, Maria Johnston, the Senior Account Manager for Bellsouth, appeared to answer questions in response to the County's Notice of Taking Deposition. During that testimony, Ms. Johnston testified relating to the subject interrogatory as follows:

85

23 Q. Do you have any knowledge of the entities
24 that the County through its Aviation department
25 might provide shared tenant services to at Miami

86

447

1 International Airport?

2 A Let me make sure I understand your
3 question. Do I have any knowledge of what other
4 entities Miami-Dade Aviation might be providing
5 shared tenant services.

6 A It was based on that RFP you put out and
7 that was an attachment to that RFP that showed a
8 list of other tenants but other than that, I don't

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows.

23 Q What specific shared tenant services
24 does the County offer the hotel referred to in
25 paragraph 22?

23

4 THE WITNESS: Well, to the extent of
5 what I have seen in documents and heard
6 and read in depositions, there's a
7 switch, a Dade County switch that serves
8 the airport hotel, and they get their
9 dial tone, they enter the local network
10 through that switch, and by services to
11 the people who stay there at night,
12 communicate with the outside world.

13 BY MR. HOPE.

14 Q Do you know whether or not that switch

15 is partitioned?

16 A Not for a fact, but I believe I have

17 read that the hotel-- services to the hotel are

18 partitioned to the hotel, I believe.

51

22 Q My question is what factual or

23 documentary evidence support the allegations in

24 paragraph 40?

25 A I also read Rick Moses' deposition, and

52

1 Rick Moses specifically says that shopping malls,

2 hotels, you know, are not necessary for the

3 safely moving of passengers and freight through

4 the airport

5 And he is the Florida Public Service

6 Commission staff person in charge of the rules or

7 interpreting of the rules and filing rules,

8 codifying rules.

9 Q Okay, what shopping malls does the

10 County provide shared tenant services to?

13 THE WITNESS: Well, when I was at

14 Mr. Jenkins' deposition he was shown a

15 series of pictures of the different shops

16 through the middle of the airport that

17 offer a litany of services, clothes, the

449

18 drug-- you know, there's a litany of
19 services in these things, and it's a
20 shopping mall. I mean, it's truly a
21 shopping mall

22 And he agreed that some of those
26 shops he provided service to.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

12

5 Q. All right. Is there some kind of
6 requirement that you're aware that the County --
7 and I'll use the County or that MDAD have some sort
8 of authorization from the Florida Public Service
9 Commission to provide telecommunications services
10 to people at the airport?

11 A. There is no explicit authorization that
12 was given from the P.S.C. to the County to provide
13 that service. However, we have interpreted the
14 P.S.C. rulings -- I mean the Florida Statutes that
15 pertain to this area to mean that the airport has a
16 right to provide STS services without any
17 authorization.

18 Q. So I guess the answer to my question,
19 let me see if I understand your answer, is that the
20 County has decided that they don't need
21 authorization from the P.S.C. --

23 Q. -- is that correct?

24 A. The County has interpreted the Florida
25 Statutes as they pertain to this area to mean that
13

1 the airports are exempt from any explicit
2 authorization to perform STS services.

3 Q. What does STS mean?

4 A. It means Shared Tenant Services.

5 Q. What does that mean?

6 A. Which means that provisioning of
7 services -- of telecommunications services to
8 tenants of the airport.

9 Q. So STS is Shared Tenant Services?

10 A. Shared Tenant Services.

11 Q. All right. So back to my question.

12 Has the County interpreted the Florida
13 law to mean that it does not need explicit
14 authorization from P.S.C.?

15 A. Yes, sir.

16 Q. Who, to your knowledge, has made that
17 determination?

18 A. It was made by the gentleman sitting on
19 my left.

20 Q. The counsel?

21 A. The counsel and basically all the
22 management, Maurice Jenkins and the management of
23 the airport and myself.

24 Q. By the way, does Miami-Dade Aviation
25 Department provide similar services at other
14

1 airports within Dade County?

2 A. The airports that Miami-Dade owns?

3 Q. Right.

4 A. Specifically Opa-Locka and Tamiami we
5 provide the same services, and those airports are
6 owned by Miami-Dade County.

7 Q. Are there any airports within Miami-Dade
8 County within the geographical boundaries of the
9 County that the County does not own?

10 A. As far as I know, the airports are owned
11 by Miami-Dade County, unless there's an obscure
12 landing strip which I'm not aware of.

13 Q. And we won't discuss those.

14 In other words, the County provides
15 these services at every airport it owns --

16 A. At two of the airports.

17 Q. At two of the airports.

18 A. The other two just have independent
19 telephone systems and they're connected to
20 BellSouth for telecommunications. We have a direct
21 connection via T1 to two of those airports in which
22 we provide voice services and network services from
23 MIA connected to the satellite system that they
24 have at those airports.

25 Q. At Opa-Locka and Tamiami?

15

1 A. At Tamiami, right.

16

21 Does the County provide telephone
22 services to customers at airports in Dade County?

23 A. Yes, sir.

24 Q. Does the County provide
25 telecommunications services, using your definition,

1 to customers at airports within Dade County?

2 A. Yes, sir.

3 Q. Has your department had any
4 communications with the Public Service Commission
5 about the requirement or nonrequirement of
6 receiving authorization from the Public Service
7 Commission to provide such services?

8 A. We had some communication in the sense
9 of we started the process to obtain an STS license
10 from the Public Service Commission on behalf of the
11 airport to provide those services and then the
12 process was never completed.

13 (Plaintiff's Exhibit 2 was marked for
14 identification.)

15 BY MR. BLOOMBERG:

16 Q. Let me show you what's been marked as
17 Plaintiff's Exhibit No. 2 for the purposes of the
18 deposition and ask if you recognize that document.

19 A. Yes.

20 Q. What is it, please?

21 A. This is a -- seems to be a list of the
22 tenants at the airport that we provide services
23 to --

24 Q. Okay. And --

26 A. -- telecommunications services or either

1 voice or data or both.

2 Q. And it's attached to an e-mail what
3 appears to be an e-mail from Pedro Garcia to
4 rmoses@psc.state.fl.us; correct?

5 A Yes

6 Q. Did you prepare that list?

7 A. This is a form that we keep. Obviously
8 we need to know who our customers are, and there
9 was a request by Mr. Moses to comply with.

10 Q. And you responded to Mr. Moses?

11 A. We responded.

12 (Plaintiff's Exhibit 3 was marked for
13 identification.)

14 BY MR. BLOOMBERG:

15 Q. And the request, if you take a look at
16 Exhibit 3, ask you first tell me whether you
17 recognize Exhibit 3.

18 A. Okay.

19 Q. Do you recognize Exhibit 3?

20 A. Yes.

21 Q. Is Exhibit 3 Mr. Moses' request for that
22 information, a customer list?

23 A. Yes, I believe this was the -- yes, this
24 was a request they sent us.

25 Q. All right. Now Mr. Moses' request, ¹⁹

1 Exhibit 3, the second paragraph of the request,
2 Mr. Moses' e-mail says therefore, any services
3 provided to entities such as concessions stands,
4 restaurants or hotels would be outside of the
5 exemption, and certification would be required
6 before telephone service can be provided.

7 Do you see that?

8 A. Yes.

9 Q. If you look at Exhibit 2, are there any

10 concessions stands to whom the County provides
11 telephone services or offers telephone services?

12 A. Yes, there's some -- there seems to be
13 some concessions here.

14 Q. Okay. Cafe Versailles, the ice cream
15 place --

16 A. Cafe Versailles, Duty-Free, et cetera.

17 Q. Those would clearly not be airlines?

18 A. That's right.

19 Q. Did you have a discussion with Mr. Moses
20 at any time or anybody with the P.S.C. concerning
21 the P.S.C.'s position that concessions stands,
22 restaurants, hotels would need your certification
23 before you could provide telecommunications
24 services to those entities?

25 A. No, we did not.

20

1 Q. You just felt he was wrong?

2 A. No. He requested from us a list of
3 entities, and we provided that.

4 Q. These two e-mails, was that the sum and
5 substance of the communication?

6 A. As far as I remember, that was it.

7 Q. And you mentioned the process of
8 applying. Was that before or after these e-mails?

9 A. This was, like, two years ago. It was
10 at the beginning when I started working for the
11 aviation department.

12 Q. Were you personally involved in any
13 discussions concerning whether or not there was a
14 certification requirement from the P.S.C.?

15 A. Yes, we had conversations, Maurice
16 Jenkins and counsel and other people.

17 Q. And you were involved in some of those
18 conversations?

19 A. Yes.

20 Q. Do you agree or do you disagree with
21 Mr. Moses' statement in his e-mail that services
22 provided to entities such as concessions stands,
23 restaurants or hotels would be outside of the
24 exemption, and certification would be required?

25 A. I think this is a -- I read the Florida
21

1 Statutes, and this is an interpretation of
2 Mr. Moses as to the Florida Statute intent, and I
3 respect his opinion, but it's not what the Florida
4 Statutes verbatim, what it says.

5 Q. Have you had the opportunity to review
6 and read at any time the Florida Administrative
7 Code?

8 A. I'm not sure about that name. I
9 don't -- it doesn't ring a bell to me.

10 Q. Let's mark that as Exhibit 4, please.
11 (Plaintiff's Exhibit 4 was marked for
12 identification.)

13 BY MR. BLOOMBERG:

14 Q. Let me show you what's been marked as
15 Plaintiff's Exhibit No. 4 for the purposes of the
16 deposition which is a copy of the Florida
17 Administrative Code, Annotated, Chapter 25-24 and
18 ask have you ever seen that before?

19 A. Yes, sir.

20 Q. Is that one of the things you looked at?

21 A. Yes.

22 Q. And do you have any training as a
23 lawyer?

24 A. Any what?

25 Q. Training as a lawyer.

22

1 A. No, sir.

2 Q. Now, the first sentence of this

3 regulation says that airports are -- essentially

4 I'm paraphrasing -- airports are exempt from other

5 STS rules due to the necessity to ensure safe and

6 effective transportation of passengers and freight;

7 fair paraphrase?

8 A. Yes.

9 Q. The second sentence says the airport
10 shall obtain a certificate as a shared tenant
11 service provider before it provides shared local
12 services to facilities such as hotels, shopping
13 malls and industrial parks.

14 Do you see that?

15 A. Yes, I see it

16 Q. And are you providing facilities, shared
17 local services to facilities such as hotels, shops
18 and so forth?

19 A. We're not providing service to any
20 shopping malls.

21 Q. Hotels?

22 A. We're providing service to hotels --
23 there's a management company that manages the hotel
24 and it's a pass-through situation. We're not

25 making any profit from that.

23

1 Q. So is that why you determined you don't
2 need a certificate?

3 A. It was determined that we didn't need a
4 certificate based on the overall interpretation of
5 this paragraph. We're now providing services
6 within the airport. We're not going outside to
7 shopping malls or to outside hotels or any outside
8 the airport property, which belongs to Miami-Dade
9 County.

10 Q. And the hotel belongs to whom?

11 A. The hotel building belongs to Miami-Dade
12 County, and we have a management company managing
13 the operation.

14 Q. You mentioned that you started the
15 process of applying for a certificate at some
16 point?

17 A. Yes, sir.

18 Q. Who decided to apply? Who decided you
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the
24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

24

1 That was three years ago.

2 They owned all the telephone switches,
3 the wiring, the network equipment. They owned

4 everything and we were basically leasing from them
5 that equipment and we were paying them as customers
6 before the service provision to everybody in the
7 airport, both STS customers and Miami-Dade Aviation
8 Department staff.

9 So as of February of 2002 we concluded
10 negotiations with them to purchase all of that from
11 them and then at that point we became owners of the
12 equipment and, therefore, we were actually the
13 service providers from that point on. Before that
14 it was them. So that at the time it was considered
15 that -- perhaps it was explored and, you know,
16 whether we should get a license or not for STS
17 provisioning and so forth.

18 Q. So as I understand it, before the sale,
19 the Nextira sale, the decision was that Nextira
20 was -- actually the County's perspective was that
21 Nextira was the service provider?

22 A. Not from the County's perspective. It
23 was the service provider.

24 Q. So therefore, you did not need a
25 certificate? 25

1 A. We were not providing the services.

2 Q. Now the County is providing the
3 services; is that correct?

4 A. Now the County, yes, is providing the
5 equipment. We own the equipment.

6 Q. You own the equipment and Nextira is a
7 subcontractor?

8 A. Is a subcontractor.

10 Q. Is it still your position now that the
11 County does not need a certificate?

12 A. It was -- the position of the Miami-Dade
13 Aviation Department at this time is that the
14 airport is exempt from obtaining a certificate.

15 Q. All aspects, regardless of who the
16 end-user is, the airport is exempt from obtaining a
17 certificate; is that correct?

18 MP. HOPE: Objection to form.

19 A. It's exempt because the tenants are
20 located in the airport property and the airport
21 belongs to Miami-Dade County. We're not going
22 outside those boundaries.

27

12 Q. And are the same telecommunications
13 services available to all of the customers;
14 regardless of whether they buy them all, are they
15 all available?

16 A. Yes, sir.

17 Q. Are all the services available?

18 A. Yes, sir, they are all available. Not
19 all of them use the services.

20 Q. Right. I could pick services 12 and 4
21 and somebody else could pick 23 and 5?

22 A. Yes.

23 Q. But they're all available to everybody?

24 A. Yes.

34

6 Q. And Page 17, whose handwriting is that?

7 A. That's mine.

8 Q. All right. And that's dated 10/26/01?

9 A. Um-hum.

10 Q. What are those notes of?

11 A. These are -- these are my notes. Looks
12 like putting down a conversation that I had with
13 some gentleman that the name's above.

14 Q. And I guess the paragraph below the
15 names, does that paragraph recognize distinction
16 between public transportation and hotels and shops,
17 et cetera? What was the purpose of putting that
18 document --

19 A. This is what this -- one of these people
20 that I spoke to, and I don't know what their titles
21 are or what their -- you know, whether they have
22 the authority to interpret, but this is what they
23 told me as far as the subject matter.

24 Q. The third name is that fella Moses who
25 the e-mail is from?

35

1 A. Yes.

2 Q. And you wrote down MIA is going to
3 provide service not related to public
4 transportation (hotels, shops, et cetera). We need
5 to file applications.

6 A. Obviously somebody -- one of these three
7 people made that statement and I wrote it down.

8 Q. Right. You wrote it down and that's
9 consistent with, as you understand, at least the
10 language of the Florida Statute?

11 A. Not necessarily.

12 Q. Okay.

13 A. Again, we're interpreting it -- if it's

14 not in the -- in the airport -- outside the airport
15 property, you can have a hotel half a block away or
16 a shopping mall half a block away. That's what the
17 interpretation is that we have given this.

36

15 Q. The department actually filled out the
16 application?

17 A. We filled out -- it seems to be the
18 typed version. Without reading every page, I can't
19 tell you. But yes, we did type out the
20 application. It was an attempt to file the
21 application.

22 Q. But never filed it?

23 A. Right.

24 Q. Was there somebody within the department
25 or somewhere else within the County, to your

37

1 knowledge, who made the ultimate decision that said
2 we are not filing this application? And if it was,
3 who was it?

4 A. The decision was made not to file it? I
5 don't know exactly who -- whose decision was it.
6 It was communicated to me that we're not filing it
7 or the airport wasn't filing it, and that was the
8 extent of that.

9 Q. Who communicated that to you?

10 A. I don't recall who communicated it to
11 me.

12 Q. During the process in which there were
13 discussions about whether or not to file the
14 application, who did you talk to about that subject

15 matter?

16 A. I talked to my boss Maurice Jenkins, I
17 talked to counsel, I talked to -- you mean as far
18 as within the airport department?

19 Q. Right, within the decision-making group

20 A. I think that's basically it, as far as
21 me up. From me down it's -- you know, I discussed
22 it with the person that filled out the draft. But
23 basically it was just a discussion with my boss and
24 counsel.

46

9 Q. Did the County or MDAD or anybody
10 prepare a marketing plan?

11 A. Yes. We requested from NextiraOne after
12 we purchased their infrastructure that they would
13 prepare a marketing plan on our behalf.

14 Q. To go out and market to tenants of the
15 airport --

16 A. Yes.

17 Q. -- airports?

18 A. Um-hum.

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by
10 providing telecommunications services?

11 MP. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County

15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE: Objection to form.

19 A. To the best of my knowledge, yes.

59

5 Q. Before I go to the document, was there a
6 vote of the electors of Dade County taken to
7 approve or to allow MDAD to engage in this
8 telecommunications business at the airport?

9 A. Not to my knowledge.

73

10 Q. And three is the assignment to the
11 County all existing tenant SATS and CUTE agreements
12 entered into by Centel or its successors or assigns
13 with tenants at the airport. That was --

14 A. The company's changed the name through
15 the years from Williams to Centel to Nextira to
16 NextiraOne, but it was an internal thing with them,
17 a spin-off for the main company or so forth.

18 Q. So pursuant to the agreement you were
19 entering into with Nextira, all of the Nextira
20 customers at the airports were going to become
21 customers of the County?

22 A. Yes, sir.

23 MR. HOPE: Objection to form.

24 Q. How many customers were there back in
25 January of 2002, Nextira customers?

74

1 A. I don't recall the number but it's -- it

2 was probably a little more than the list that you
3 saw because since then the economy went down a
4 little and people went out of business and so
5 forth.

6 Q. So it might have been slightly hire than
7 the 2003 list as far as the numbers?

8 A. It's slightly higher than what we had.

86

22 Q. If you go to the definitions section
23 which starts on Page 2 of 98. Down at the bottom
24 it identifies there's airport, and we discussed
25 earlier obviously Miami International and you

87

1 mentioned Opa-Locka and Tamiami.

2 This particular document also refers to
3 other general aviation airports, Kendall, Tamiami,
4 and the training and transition airport in
5 Opa-Locka West.

6 Is there any telecommunications services
7 provided by the County to any of those other
8 airports?

9 A. The two airports that we have a direct
10 connection to, which is Opa-Locka and Tamiami. The
11 other ones basically have a self-contained system
12 connected to BellSouth lines.

13 Q. Basically it's to the airports within
14 the county?

15 A. I'm sorry. What was the question?

16 Q. These are the five airports, the
17 airports that are listed --

18 A. That are owned by the County.
19 Q. -- in Paragraph 1.305 airports within
20 Dade County, within the geographical limits of the
21 county that are owned by the County?
22 A. Right.

99

9 Q. Page 29, No. 4, the contractor shall
10 submit a proposed tariff schedule for all SATS.
11 To whom was the contractor supposed to
12 submit a proposed tariff schedule?

13 A. To MDAD, to the County.

14 Q. And what was that tariff schedule
15 supposed to reflect?

16 A. It should reflect the prices for the
17 services that they were going to charge the
18 customers.

19 Q. And why do you use the word tariff?

20 A. Tariff in the telecommunications
21 business is basically a price list.

22 Q. A term of art in the business, is that a
23 fair statement?

24 A. Yeah, it's a term used in the business
25 for telecommunications prices. In reality, legally

100

1 it probably means something approved by the P.S.C.
2 and so forth. But in this case, it was just meant
3 to be a price list. Page 49 refers to personnel.

On October 28, 2004, Pedro Garcia was deposed a second time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was again designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the

information sought by this interrogatory, Mr. Garcia testified as follows:

31

16 Q. Where does that dial tone emanate from?

17 Or better stated, where does that dial tone

18 originate from?

19 MR. HOPE: Objection to form.

20 THE WITNESS. It originates from our

21 PBX located in the airport.

22 Q. Now, you used the word "our PBX." What do

23 you mean by our PBX?

24 A. The PBX owned by the aviation department.

25 The PBX is a telephone switch, and it is located

32

1 inside the airport premises. That is where the dial

2 tone originates when you first pick up your phone at

3 the airport.

4 Q. So the dial tone originates from a PBX

5 switch that is owned by the County. Is that

6 correct?

7 A. Yes, sir.

8 Q. And it is that PBX switch that is owned by

9 the County that generates the dial tone; is that

10 correct?

11 A. Yes, sir.

12 Q. So when that customer picks up the

13 receiver and hears a dial tone, is it a correct

14 statement that the County is providing that dial

15 tone that that customer hears?

16 MR. HOPE: Objection to form.

17 THE WITNESS: He is providing the

18 internal dial tone that the customer
19 hears.

20 Q. So the County is providing dial tone to
21 that customer.

22 A. The County --

23 MR. HOPE: Objection to form.

24 THE WITNESS: The County is
25 providing internal dial tone to the

1 customer. 33

18 Q. And without that dial tone, would you
19 agree that MDAD customers couldn't utilize their
20 phone?

21 MR. HOPE: Objection to form.

22 Q. At all.

23 A. That is correct.

24 Q. In other words, without that dial tone
25 that the County provides, that phone would be dead,

1 correct? 34

2 MR. HOPE: Objection to form.

3 THE WITNESS: Without a dial tone

4 any phone is dead. 36

24 Q. How many PBX's does the County own?

25 A. We have two major PBX's. Two at the
1 airport. 37

2 Q. I am asking you because you have the
3 technical background, but do all these wires feed
4 into these two PBX's?

5 A. Yes.

6 Q. And do they go through -- do they connect
7 into the PBX through what is called a port?

8 A. The port is the -- it is basically -- yes,
9 the port is a hole that receives the wire to connect
10 the phone to the PBX and all the internal equipment
11 of the PBX.

12 Q. Is the port part of the PBX?

13 A. Yes. They are cards. The ports are cards
14 in multiples of 16 each in a card, and they plug
15 into the PBX which has common equipment, peripheral
16 equipment, different kinds of equipment inside. It
17 is part of the PBX.

18 Q. Once the PBX interprets the four-digit
19 number, it then gets routed to whoever's number that
20 is. Is that a fair statement?

21 A. Yes.

22 Q. And does the call, can we make reference
23 to a call now that gets routed, does that call
24 travel over -- go out of another port out of the
25 PBX, over other wires, to the receiver's destination

1 and phone? 38

2 A. Yes.

3 Q. And is all that equipment that is involved
4 in that process owned by the County as well?

5 A. Yes.

6 Q. Then, in simplistic terms, does that phone
7 ring?

8 A. Yes.

9 Q. And the person can answer if they are
10 there, correct?

11 A. Yes.

12 Q. When that person answers it, it should be
13 the voice of the originating caller, correct?

14 A. Yes.

15 Q. So that whole scenario occurs over County
16 owned equipment, correct?

17 A. Yes.

41

4 Q. Are there any other STS providers at the
5 airport, other than the County?

6 A. No.

45

1 Q. So the County-provided dial tone for a
2 person who wants to make a local call is
3 significant, in fact absolutely needed, for the
4 making of that local call because they need to hit
5 9, correct?

6 MR. HOPE: Objection to form.

7 THE WITNESS: Yes.

8 Q. Once that customer hits 9, are you saying
9 -- are the dial tones then -- is the County-provided
10 dial tone replaced?

11 A. The second dial tone is an indication of
12 the PBX has interpreted an answer back from the
13 BellSouth central office that indeed they are ready
14 to receive digits. So it sends an indication to the
15 telephone that you can dial now; we are ready to
16 establish the communication.

17 Q. So you would agree with me, without the
18 County-provided -- you would agree with me that the
19 County-provided dial tone is part and parcel of the
20 service that is needed to make a local call from the

21 airport.

22 MR. HOPE: Objection to form.

23 Q. Correct?

24 A. The dial tone that is provided to the
25 customer is part of the connection process to make a

1 call. 46

2 Q. A local call?

3 A. Yes, yes. 49

24 Let's say that somebody in Hialeah,
25 outside the airport, wants to call that ice cream

1 shop at the airport, who is an MDAD customer. How
2 does that call -- how is that call made from a
3 technical perspective? 50

4 MR. HOPE: Objection to form.

5 THE WITNESS: The customer -- the
6 person in Hialeah picks up their phone
7 and dials ten digits. The ten digits go
8 through the BellSouth central office, the
9 Hialeah central office, and that central
10 office, sends those digits -- knows that
11 because of the digits that the call needs
12 to go to the airport central office, and
13 when it gets there the central office
14 basically strips the first four digits,
15 and then sends the four digits to the
16 PBX, which is called a DID, direct inward
17 dialing digits. Then the PBX routes that
18 call to whoever is supposed to receive

19 the call.

20 Q. And when you say the PBX, that call goes
21 from Hialeah, through BellSouth's equipment, into
22 the airport PBX? Is that what you are referring to?

23 A. It comes from -- it goes through the
24 airport central office of BellSouth, through those
25 T1's that serve the airport, into the PBX, and from

51

1 the PBX to the terminating phone that the call is
2 going to.

3 Q. When you refer to the PBX, are you
4 referring to the County-owned PBX?

5 A. To the County-owned PBX.

6 Q. And then through the County-owned
7 equipment to the County customer?

8 A. To the County-owned equipment and wires to
9 the County -- to the receiving customer who has a
10 phone there.

11 Q. That, it seems to me, to be a local phone
12 call.

13 A. It is a local phone call.

51

20 Q. What would happen if -- what would happen
21 to that local phone call if you took away the
22 County's PBX and the County's equipment and the
23 County's phone at the ice cream shop? Would that
24 local phone call be able to be completed?

25 A. No.

52

1 Q. So without the County-owned equipment, the
2 PBX, its wires, its phones, that customer would not

3 have or not be able to receive a local phone call.

4 Is that correct?

5 MR HOPE: Objection to form.

6 THE WITNESS: Again, we are assuming

7 that the receiving customer or tenant is

8 a customer of MDAD for the purpose of

9 providing equipment, telephones,

10 etcetera.

11 Q. Correct, correct.

12 A. So without the County-owned equipment, the
13 call cannot be completed.

53

20 Q. So without that -- well, isn't the rental
21 of equipment and the maintenance of equipment and
22 the use of equipment a service?

23 A. It could be considered a service, yes.

24 Q. And without that service, would the
25 local -- would the ice cream shop be able to place a

54

1 local call?

2 MR. HOPE: Objection to form.

3 THE WITNESS: We do have an ice

4 cream shop as a customer. I don't know

5 about that. But yes, whoever is the

6 customer, he wouldn't be able to complete

7 the call without the County-owned

8 equipment.

9 Q. And without the County-owned service,
10 correct? Or the County provided service?

11 MR. HOPE: Objection to form.

12 THE WITNESS: I am not sure if it
13 applies to service. All they need is the
14 equipment

15 Q. Mr. Garcia, I mean, let's just see if we
16 can agree with each other. The provision of the
17 County-owned equipment to one of your customers is
18 the service that you provide, right?

19 A. If you define it that way, yes.

20 Q. So then without that service, then that
21 customer will not be able to make a local phone
22 call.

23 A. Correct.

58

6 Q. But isn't the switch that you just used in
7 your last statement the PBX?

8 A. Yes.

9 Q. That is why I was saying isn't it really
10 PBX access? Access to the PBX?

11 A. Yes. You can say that.

12 Q. So it's a charge that encompasses your
13 customers' access to the PBX, and everything that
14 occurs in our prior scenario from the time they pick
15 up the phone to the time that call or their
16 instruction gets to the PBX? Is that fair?

17 A. It is, but it also includes -- it is not
18 only access to the PBX, but the features that the
19 PBX provides.

20 Q. And those features include what?

21 A. Everything from call waiting, call
22 conferencing, call pick-up. When you have a group
23 of phones, you can push a button and pick it up.

24 Call parking, you can park your call when somebody
25 is busy and send it later when they get off the

59

1 phone, intercom. There is a myriad of features that
2 the PBX provides that are included in that charge.

3 Q. Number 2, network access. What is network
4 access?

5 A. Network access is the second part of the
6 charge that actually allows the user of the phone to
7 access the public network to the BellSouth
8 facilities. In other words, the trunks -- the trunk
9 is the connection from the PBX to the BellSouth
10 central office.

11 The part of the trunk, when the trunk
12 connects into the PBX through another port, it
13 provides the charge to access that trunk connection
14 that brings them to the BellSouth central office.

15 Q. Let me see if I understand. I apologize
16 if I don't. The switch access covers from the time
17 the user picks up his or her telephone to the PBX
18 and all of its features.

19 A. Right.

20 Q. Would network access then cover your
21 charge for the use of the outgoing port, perhaps,
22 maybe not, and the T1's that you previously
23 referenced?

24 A. It is a combination of the hardware that
25 is needed to -- to the outside port, that is

60

1 hardware, and connection to the BellSouth T1.

2 Q And what is that outside hardware that you

3 just referenced?

4 A It is another port. It is a card with --
5 like with holes that you connect to a port, and that
6 provides access to the outside world.

7 Q. Who owns that card that provides access to
8 the outside world?

9 A. The County does.

10 Q. So the use of that card is part of network
11 access.

12 A. Yes. What's charged for, yes.

13 Q. And then the call -- how far does network
14 access go, the charge for network access take that
15 call to the outside world, if you understand my
16 question?

17 A. It takes it to the demarcation where the
18 BellSouth facilities, which actually -- it's
19 basically where the T1 terminates. From that point
20 on, it can go to anywhere in the world.

21 Q. And the County is paying BellSouth for the
22 use of those T1's, correct?

23 A. Yes.

24 Q. So is it fair to say the network access
25 charge that we will talk about more is charged to
61

1 cover that cost, correct?

2 A. Yes.

24 Q. Number three, can you tell me what system
25 - terminal equipment is, please, as used on page 5

1 of MJ-8?
62

2 A. In simple terms, that is the telephone.

3 Q. The telephone with the receiver?

4 A. That is it. That is the terminal
5 equipment, the telephone.

6 Q. Terminal, as it is used there, means like
7 the end of the line or --

8 A. Terminal equipment -- right. When you
9 have like a big network starting with all the
10 BellSouth CO's and our PBX, the end of that is the
11 telephone. That is the terminal -- that is what is
12 called the terminal equipment.

13 Q. Anything else other than the telephone and
14 receiver that goes into system - terminal equipment?

15 A. Well, terminal equipment could be a fax
16 machine. It could be a modem. It could be --
17 usually, those are the three things that are
18 terminal equipment.

71

3 A. There is only one -- there is a hotel at
4 the airport. And the trunks for that hotel, they
5 are partitioned in the PBX to be separate. In other
6 words, they have their own trunk groups. They
7 actually get the service from AT&T instead of
8 BellSouth, and they cannot call -- they cannot dial
9 four digits and call anybody else at the airport.

10 Q. I have to ask you a number of questions
11 about that to see if I understand it all. Okay?
12 Let me just start from the beginning. What hotel
13 are you referring to?

14 A. The Miami International Airport Hotel,
15 which is located inside the airport.

16 Q. And the Miami International Airport Hotel
17 is an MDAD customer?

18 A. The Miami International Hotel is owned by
19 the County, and is operated by a management company.

20 Q. Is it serviced by MDAD?

21 A. We provide them the telephone service with
22 partition trunks, and they own the instruments in
23 the rooms.

24 Q. You say you provide the telephone service
25 with partition trunks. First let me ask you, you

72

1 mentioned that the County owns two PBX's.

2 A. Yes.

3 Q. Is there one PBX for the airport and
4 another PBX for everybody else?

5 A. No. They are interlaced for disaster
6 recovery purposes, so we don't lose one and
7 everybody else is out of service.

8 Q. Does the County own two PBX's just because
9 of size and volume?

10 A. Size and redundancy.

11 Q. What is redundancy?

12 A. You know, like if one fails, you have
13 another.

14 Q. But if MDAD had a smaller operation, is
15 it fair to say they could just use one?

16 MR. HOPE: Objection to form.

17 Q. One PBX?

18 A. Probably not. We would probably still
19 remain like this because we like to have redundancy.

20 Q. Now, the Miami Hotel, how is that -- you

21 say -- when you use the word partition trunks, what
22 exactly do you mean from a technical perspective as
23 it relates to that hotel?

24 A. It means two things. It means that
25 everybody else that is getting telephone

73

1 connectivity through our PBX, when they go out to
2 the world, to a local call, to the rest -- to the
3 public network, they go into these ten T1's that I
4 explained before that Southern Bell provides, or
5 BellSouth. I am showing my age here.

6 So the hotel is -- their calls go out
7 through a separate trunk group that also terminates
8 in the PBX, which was contracted by them separately,
9 and they are provided by AT&T. That is with their
10 local calls, and their long-distance calls go out
11 through those separate trunks.

12 Also, what it means, partition, is they
13 cannot dial four digits and talk to any of the other
14 customers connected to the MDAD-owned PBX, the
15 County-owned PBX.

16 Q. In that type of situation where you say
17 those trunks have been partitioned, it only relates
18 to the Miami International Airport Hotel that you
19 spoke about. Is that correct?

20 A. Yes, yes

21 Q. For every other MDAD customer, is there
22 any partitioning of the trunks in any manner, shape
23 or form?

24 A. No.

23 Q. What is the charge for \$18 here or \$72 as
24 shown for single line local network access?

25 A. That is the charge for connecting from the

1 PBX out to the world, the network access charge.
2 That is the charge that now we have consolidated
3 into five for \$49. It used to be \$18 per --

4 Q. But that access allows customers to
5 complete a local call, correct? Your customers
6 complete a local call, correct?

7 A. Yes.

8 Q. So MDAD is charging for the completion of
9 the local call, correct?

10 A. For the ability to complete the local
11 call. We don't charge by the call.

12 Q. But for the ability to complete local
13 calls.

14 A. Yes.

15 Q. You would agree with that?

16 A. Yes.

Mr. Garcia was deposed for a third time on December 15, 2004. Again, Mr Garcia was designated as the Defendant's person with the most knowledge as to the issue addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

25 Q If you could, Mr. Garcia, I'd like you
1 to outline for the Court in this case, or any
2 other third party or entity that views this
3 videotape or reads this deposition, each and
4 every reason why the County has not applied for a

5 certificate of public convenience and necessity
6 from the Florida Public Service Commission.

7 A To the best of my recollection, what
8 took place three or four years ago was that the
9 question came up about the whole certificate
10 issue, and I remember myself reading the Florida
11 statutes regarding the airport section to shared
12 tenant services, we talked to the -- our
13 counterparts at the Orlando airport --
14 International Airport in Florida, and basically
15 based on -- I also looked through the application
16 that -- to apply for the certificate, just to see
17 what kind of questions were needed to be answered
18 to apply to that certificate, and basically based
19 on those two inputs, basically the documents that
20 we read from the PSC and the information we
21 obtained from Orlando airport, it was deemed that
22 there was really no need for the airport to apply
23 for the certificate, because of the exception
24 that is granted by the PSC according to those two
25 inputs.

19

1 Q Now in your answer you I believe told
2 me a little bit about the process or, you know,
3 the circumstances involved in making this
4 decision, and I will get to that later.

5 My question was, I'd like you to list
6 for me, first, second, third, what the reasons
7 were why the County decided not to file an
8 application for certificate of public convenience
9 and necessity from the Public Service Commission.

16 conversations with the Orlando airport?

17 A Right.

18 Q Are there any other reasons, factual or
19 otherwise, that were considered in making the
20 County's decision not to apply for a certificate
21 from the PSC?

22 A Not to my knowledge.

21

15 Q When was this decision made not to
16 apply for a certificate from the PSC?

17 A I can't recall a specific date. Like I
18 said, we were -- there was some investigation
19 done regarding these two issues that I mentioned
20 before, the Orlando and the reviewing of the PSC
21 documents, and at some point the issue just died.

22 It was no, not really -- there was no
23 meetings, there was no formal decision, there was
24 no letter, there was no memo, it was just not --
25 we went on to other things and didn't pursue the

22

1 matter.

26

16 Q Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q Well, then let me ask you in a more

27

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application
5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

28

1 decision not to file?

3 THE WITNESS: Right.

3 Q You'd agree with me that whether or not
4 the County complies with Florida statutes as it
5 relates to the PSC or the Florida Public Service
6 Commission's rules and regulations is a pretty
7 important and serious issue, correct?

8 A Yes.

9 Q And you'd agree that the County would
10 seemingly want to endeavor to ensure to the best
11 of its ability to analyze and make every effort
12 to comply with any obligations that may exist?

14 BY MR. GOLDBERG:

15 Q Do you agree with that?

16 A Yes.

17 Q So then can you explain to me why the
18 decision as to whether or not to apply to the PSC
19 for a certificate was -- did not involve a formal
20 process and was simply a couple of people getting
21 together and looking at some documents in a very
22 short period of time and, as you've testified,
23 just sort of being dropped and never followed up
24 on?

1 THE WITNESS: Can I explain why that
2 happened? No.

3 BY MR. GOLDBERG:

4 Q Do you think, looking back, that it was
5 an appropriate manner in which to make the decision?

7 THE WITNESS: The decision was made
8 by the parties that had the most
9 knowledge on the subject matter, based on

10 information received and documents and
11 discussing with Orlando, like I said, and
12 I think it was a good decision based on
13 fact. And that's all I can say.

14 I don't, you know, I don't know how
15 much of a process that would have been
16 appropriate, but we felt that we -- that
17 the decision was made with the right
18 facts and in the best interests of the County.

35

5 Q Prior to this decision being made,
6 other than reading the airport exemption rule,
7 can you tell me what other experience you've had
8 in working with that rule or analyzing that rule
9 or applying that rule?

10 A None.

11 Q Prior to this decision being made in
12 2002 by the County can you tell me whether
13 Mr Jenkins had any prior experience with the
14 airport exemption rule or worked with that rule
15 or applied it in any manner, shape or form?

16 A I cannot answer that. I don't know.

17 Q Are you aware of any experience he had
18 with that rule?

20 THE WITNESS: I don't -- I'm not
21 aware of it, but I don't know.

22 BY MR. GOLDBERG:

23 Q Other than reading the text of the
24 airport exemption rule, were you aware then of
25 any other legal or factual authority that

1 supported your interpretation of the airport
2 exemption rule?

3 A Well, Orlando Airport provided
4 information, because I believe they were involved
5 in a legal process with the Public Service
6 Commission, and we had discussions and they
7 provided opinions regarding our situation based
8 on their own experiences.

9 Q Other than the Orlando Airport
10 discussion, which we'll talk about later, is
11 there any other legal, factual or other authority
12 that supported your interpretation of the airport
13 exemption rule, leading you not to file an
14 application for a certificate?

15 A No.

16 Q Since the time of making that decision
17 have you been made aware or are you knowledgeable
18 about any legal, factual or other authority that
19 supports the County's decision not to file an
20 application for a certificate with the PSC?

21 A Not any -- no, I'm not aware of any new
22 information since that time. I have not reviewed
23 that subject matter.

24 Q Prior to the decision being made as to
25 whether or not the County should file an

1 application for a certificate, did the County
2 receive any legal opinion to support your
3 position or decision not to file?

4 A You mean from outside, other than the
5 counsel present?

6 Q Any legal opinions.

7 A I really can't say whether the County
8 received any legal opinion from counsel, because
9 he might have said something when I wasn't
10 present.

11 But we didn't receive any opinions from
12 anybody outside, other than the -- our counsel.

13 Q Since the time the decision was made
14 not to file an application in 2002, has the
15 County received any legal opinion that you're
16 aware of that supports that decision?

17 A Not to my knowledge.

21 Q Prior to the time the County's decision
22 was made not to file an application with the PSC
23 in 2002, did the County make any attempts to
24 contact the Public Service Commission to review
25 whether or not the PSC believed that the County

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1 needed to file a certificate?

2 A Not to my knowledge.

3 Q Since the time the decision was made by
4 the County in 2002 not to file an application for
5 a certificate with the PSC, has the County in any
6 manner, shape or form made an effort to contact
7 the PSC to revisit or review that prior decision?

8 A I believe there has been one contact
9 made by my boss, perhaps, to some member of the
10 PSC Maybe they exchanged some e-mails, one
11 e-mail. It wasn't a formal -- there was a

12 contact, it wasn't a formal thing.

13 But I never saw the, I never saw the
14 documentation or the e-mails.

15 Q Going back to two questions ago, just
16 to make sure the record is clear, did you --
17 strike that -- were you involved in any
18 communications with the PSC regarding whether to
19 file an application for a certificate, either
20 before the decision was made not to file or after
21 the decision was made not to file?

22 A No.

23 Q Has the County filed any application
24 with the Florida Public Service Commission for
25 the provision of any telephone service at the

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1 Miami International Airport or any other airports
2 here in Miami-Dade County?

3 A Not to my knowledge.

13 When we have been speaking about the
14 County's decision not to file a certificate with
15 the PSC, I want to make sure the record is clear
16 that that decision was made by the County and not
17 by, or affected by any other third party such as
18 Nextira or any other entity?

19 A Oh, no, it was definitely only the
20 County making that decision.

21 Q And at that time in 2002 would you
22 agree with me that it was the County's
23 responsibility to make that decision as to
24 whether or not to file or not file?

25 A Yes.

45

2 You would agree with me, would you not,
3 that the language of the rule that says
4 facilities such as hotels, shopping malls and
5 industrial parks is non-limiting, meaning that
6 hotels, shopping malls and industrial parks are
7 just examples of, quote unquote, these facilities?

9 THE WITNESS: No, I don't agree with
10 you, because the "however" right after
11 that statement qualifies that statement
12 that you just read, so you cannot take it
13 on its own merit because the next
14 sentence qualifies that statement.

15 BY MR. GOLDBERG:

16 Q So when you made the decision --

17 A Excuse me. Go ahead.

18 Q Just so I understand you, is it your
19 testimony that when the County made the decision
20 not to apply for a certificate to the PSC, that
21 it read this sentence as only pertaining to
22 hotels, shopping malls and industrial parks, and
23 no other type of facility or commercial entity
24 like that?

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1 THE WITNESS: We read the statement
2 that if we -- since we did not provide
3 service to shopping malls and industrial
4 parks, but we did provide to a hotel with
5 partition trunks, we met the requirements
6 of this paragraph.

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9 In the discussion that you had with
10 Mr. Jenkins leading to this decision, you only
11 considered hotels, shopping malls and industrial
12 parks, and gave no thought or weight to whether
13 or not the County was providing telephone service
14 to any other, quote unquote, facility, is that
15 correct?

17 THE WITNESS: We gave consideration
18 to the three items that are mentioned in
19 this paragraph.

21 BY MR. GOLDBERG:

22 Q And no others, is that correct?

23 A Correct.

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19 Q So when you're referring to a shopping
20 mall and you read that word in the airport
21 exemption rule, is it not correct that you're --
22 would view that as providing telephone service to
23 the stores that make up the mall?

25 THE WITNESS: To the stores that

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1 are -- make up the shopping mall, yes.

2 BY MR. GOLDBERG:

3 Q Okay, because you'd agree with me it's
4 hard to provide telephone service to this entity,
5 this, quote unquote, mall?

6 A Correct, I agree, the mall is not an
7 entity, it's the stores that provide inside the
8 mall.

9 Q What kind of stores would you generally

10 find in a shopping mall?

12 THE WITNESS: Basically a mall is
13 all kinds of stores, from clothing to
14 kitchen, linens and things, basically
15 that sells all kinds of items that people
16 from all over the place come just to shop
17 there.

18 BY MR. GOLDBERG:

19 Q Do you have -- would you agree with me
20 that those stores would include restaurants?

21 A Yes, malls have restaurants, yes.

22 Q And would you agree with me that malls
23 sometimes have bars?

24 A They have bars.

25 Q And that malls sometimes have stores

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1 that sell clothes?

2 A Yes.

53

9 A My testimony is that MIA does not have
10 a shopping mall inside the airport.

11 Q Does it have shops inside the airport?

12 A Yes, it does.

13 Q Does it have restaurants inside the
14 airport?

15 A Yes, it does.

16 Q Does it have clothing stores inside the
17 airport?

18 A Yes, it does.

19 Q Does it have bars inside the airport?

20 A Yes, it does.

21 Q But it's your testimony that those
22 shops don't make up a shopping mall inside the
23 airport?

24 A The inter -- correct, the
25 interpretation was that a shopping mall is where

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1 people from outside just go there shopping.

2 The people that go at the airport, they
3 go -- most of the things that are sold are for
4 the convenience of passengers traveling through
5 the airport, and the people that go shop there
6 are because they're involved in traveling, not --
7 they don't come from the outside to shop there.

8 Q And is it, along those lines, are you
9 interpreting shopping malls and did you interpret
10 the words shopping malls back in 2002 as being
11 something like the Dadeland Mall in South Miami
12 or Aventura Mall in North Miami or the Sawgrass
13 Mills Mall in Sawgrass?

14 A Any other mall where people go
15 shopping, yes, those and any other kind of mall
16 where people go just there to shop.

17 Q Can you give me any examples of an
18 airport at any place in this country which
19 provides telephone service to a mall as you've
20 defined it, such as, you know, Dadeland or
21 Sawgrass or Aventura?

22 A No, I can't.

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13 Q When you read the term industrial parks

14 back in 2002 during this decision-making process,
15 what was your interpretation of what industrial
16 parks meant?

17 A Industrial park, the way I would
18 interpret it is it's a conglomeration of
19 warehouses, office buildings with different
20 companies residing in there renting space and --
21 or owning space, and conducting all kinds of
22 different businesses.

23 In other words mostly not condominiums
24 or people living there, but just basically a
25 place to conduct businesses of different types.

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12 Q Were there any offices or office -- any
13 commercial offices at the Miami International
14 Airport?

15 THE WITNESS: There were offices,
16 commercial offices dedicated to, related
17 to the airport business and the
18 conduction of moving passengers and cargo
19 at the airport.
20

21 BY MR. GOLDBERG:

22 Q Were there any warehouses at the Miami
23 International Airport?

24 A There are warehouses, again dedicated
25 to the aviation industry, passengers and cargo.

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1 Q Did the County at that time the
2 decision was made provide telephone service to
3 any of these offices, or warehouses, or what
4 you've termed or interpreted as an industrial

5 park?

6 A The decision that was made was related
7 to providing services to any companies providing
8 activities related to the moving of passengers or
9 cargo at the airport.

10 And to my knowledge there was no
11 businesses residing at the airport facility that
12 did not have something to do with the moving of
13 passengers or cargo at the airport.

14 Q Why do you relate the provision of
15 service to an industrial park to your comments
16 about the safe and efficient transportation of
17 passengers through the airport facility?

18 A The, the definition an industrial park
19 is the conglomeration of businesses, warehouses,
20 factories, what have you, that do not have a
21 common goal, they have different activities for
22 different purposes.

23 At the airport the businesses that
24 reside there are all oriented towards the moving
25 of passengers or cargo through the airport, and

1 that is a big difference. 59

2 Q Where in the sentence where it says:
3 "The airport shall obtain a certificate as a
4 shared tenant service provider before it provides
5 shared local services to facilities such as
6 hotels, shopping malls and industrial parks,"
7 where does it state or relate anything having to
8 do with the safe and efficient transportation of
9 passengers through the airport?

11 THE WITNESS: It was taken from the
12 first sentence in that paragraph.

13 BY MR. GOLDBERG:

14 Q Does the second sentence -- is the
15 second sentence conditioned on the first sentence?

16 Or wouldn't you agree with me that the
17 second sentence is an exception to the first
18 sentence?

20 THE WITNESS: No, I - we
21 interpreted that first sentence to be
22 all-encompassing, as long as you are
23 dealing with the safe and, safe and
24 efficient transportation of passengers
25 and freight through the airport

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1 facilities, that that would entitle the
2 airport to be exempt from the certificate.

3 BY MR. GOLDBERG:

4 Q If that were the case, what would be
5 the need for the second sentence or the third
6 sentence at all?

7 A I can't answer that.

17 Q Going back to the third sentence,
18 however -- it says: "However, if the airport
19 partitions its trunk, it shall be exempt from
20 other STS rules for service provided only to the
21 airport facility."

22 How was that sentence taken into
23 consideration in making your decision to not file
24 a certificate with the PSC in 2002?

25 A As I explained before, we were

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1 providing services to a hotel, and we had the
2 trunks partitioned; therefore, we don't have
3 to -- we're exempt from the STS rules as far as
4 getting a certificate.

5 That's the way it was interpreted.

6 Q Is it your interpretation that the
7 third sentence relieves the County, just relating
8 to the hotel for a second, relieves the County
9 from applying for a certificate if it partitions
10 its trunks to the hotel?

11 A Yes.

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14 of you, Cert-4, the airport exemption rule, I
15 just want to make sure the record is clear, are
16 you saying this isn't the entire airport
17 exemption rule that you've testified about?

18 A No, I'm saying that the document to my
19 recollection, it's -- there's a lot more in that
20 document, the PSC document, than just this
21 paragraph.

22 It might have another title, but it
23 goes obviously --

24 Q Would you agree -- I'm sorry, go ahead.

25 A It has to be more, because the word

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1 certificate, I don't believe it's mentioned here.

2 Is the word certificate in this
3 paragraph?

4 Q No, it isn't, that's my --

5 A There has to be some more to it than

6 that.

7 Q Is there anywhere in this paragraph,
8 this airport exemption rule, which says that an
9 airport is exempt from filing a certificate?

10 A If you put it in those words, those
11 words are not in this paragraph.

12 Q Okay, quite to the contrary, you'd
13 agree with me that it says the airport shall
14 obtain the certificate, there's an affirmative
15 obligation, correct?

16 A No, it doesn't say that, because it
17 qualifies that statement in the next sentence.

18 Q In the last sentence?

19 A In the "however," and beyond.

20 Q Where in the text of the last sentence
21 does it say that, however, if an airport
22 partitions its trunk it shall be exempt from the
23 obligation to get a certificate or apply for a
24 certificate?

25 A The word certificate is not there. But
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1 it says it's exempt from the other STS rules for
2 service.

3 Q And how do you interpret other STS
4 rules? What does other leave out, in other words?

5 A It was interpreted --

7 THE WITNESS: It was interpreted to
8 be the need to get a certificate.

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8 Q Okay, let me refer you to paragraph 1

9 where it says: "An applicant desiring to provide
10 shared tenant service shall" -- I want to
11 emphasize the word shall -- "submit an
12 application on Commission Form PSC/CNP 37, which
13 is incorporated into this rule by reference."

14 Did I read that correctly?

15 A Yes, you did.

16 Q Would you agree with me that the
17 Florida Public Service Commission requires that
18 any applicant who desires to provide shared
19 tenant service shall submit an application?

20 A Yes and no. It says so here, but
21 however again this paragraph is qualified in the
22 next section which you read before, the airport
23 exemption.

24 So the paragraph cannot be taken in its
25 own context without reading the whole document.

66

1 Q So is it your testimony today that the
2 airport exemption rule 25.24.580 is an exception
3 to this rule dealing with application for a
4 certificate?

5 A The other -- the airport exemption
6 refers to the other STS rules, and this was
7 interpreted to be one of them.

8 Q But as we've talked about in the
9 airport exemption rule, after it says it shall be
10 exempt from other STS rules, the next, very next
11 sentence in the airport exemption rule says the
12 airport shall obtain a certificate as a shared
13 tenant service provider, so how do you reconcile

14 that fact with your interpretation?

15 A I think we already went through this at
16 length and I explained why that is: because we
17 don't provide services to shopping malls and
18 industrial parks, and we do provide to a hotel
19 and we partition the trunks, and it says so, that
20 if you partition the trunks, you are exempt from
21 the other STS rules.

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22 When the County decided not to file did
23 the County decide on its own that the airport
24 exemption rule applied to it?

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1 THE WITNESS: We decided on our own
2 with the help of this document and the
3 Orlando airport experience, yes.

13 Q What facts can you give me that support
14 the County's view in 2002 that it could
15 self-determine whether or not the airport
16 exemption rule applied?

17 Do you have any?

18 A The County, or the parties involved in
19 this case, we make decisions all the time of the
20 business and legal nature relating to the airport
21 business.

22 And this was just another decision that
23 was made in the course of conducting our
24 businesses there. That's what we get paid to do.

25 Q Was there any support for your position

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1 that the County could self-determine whether or
2 not the airport exemption rule applied instead of
3 having the PSC make that determination?

4 A Support meaning third-party opinion,
5 whether we should do it instead of the PSC, is
6 this your question?

7 Q Are you aware of any facts --

8 A What does support mean?

9 Q -- that supports your decision,
10 supports your view?

11 A The fact of this document itself and
12 the --

13 THE REPORTER: The what?

14 THE WITNESS: This document that we
15 have in front of us and other pages that
16 are not here, and also the opinion of the
17 Orlando Airport based on the process that
18 they went through with the Public Service
19 Commission.

20

21 BY MR. GOLDBERG:

22 Q That's what you're relying on to
23 support your view that it was the County who
24 could determine whether or not the airport
25 exemption rule applied instead of making an

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1 application for a certificate and having the PSC
2 determine whether or not the airport exemption
3 rule applied?

4 MR. HOPE: Objection to form.

5 THE WITNESS: The decision was made
6 to make the decision, instead of applying
7 for a certificate.

8 BY MR. GOLDBERG:

9 Q I understand the decision was made not
10 to apply for a certificate. My question is what
11 led the County to conclude that it could make the
12 decision as to whether or not the airport
13 exemption rule applied, instead of having the PSC
14 make that decision?

15 A I can't answer that. We just made the
16 decision not to apply.

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3 A I made a contact with the Tampa
4 airport, the lady that runs the telecom over
5 there, by phone. It was just a quick phone call.

6 And I believe she told me that she had
7 applied for a certificate, but they were not
8 providing any services to anybody, so she was
9 really not using the certificate for anything.

10 Q Did she explain to you why they had
11 applied if they weren't providing service?

12 A She couldn't tell me why.

13 Q Could it be what you just read: that an
14 applicant who desires to provide service
15 according to the PSC shall apply for a
16 certificate?

17 A I don't know --

18 MR. HOPE: Objection to form.

19 THE WITNESS: -- what she had in mind.

14 And then the last says STS, do we need
15 to apply? Call the PSC.

16 I was just making notes to myself to --
17 about that issue.

18 Q And this whole -- these whole notes
19 were written related to the turnover of the STS
20 services from Nextira to the County, correct?

21 A Yes, it was all part of the deal that
22 we were buying their equipment.

23 Q So does the last notation on here where
24 it says STS, do we need to apply, call PSC, first
25 my question is does this document sort of cement

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1 your testimony and support your testimony that
2 the question of whether to apply for a
3 certificate or not to apply for a certificate
4 arose because of the transaction with Nextira in
5 20 -- in early 2002?

6 A Well, Nextira was providing the
7 services, they did not have a certificate, so I
8 would -- just had a question in my mind whether
9 we should have one or not.

10 Q And it says call the PSC. Whose idea
11 was that?

12 A Just a note to myself that I was, as I
13 was writing these things down, that was just
14 notes to myself.

15 Q Why would you write call the PSC?

16 A Well, that was the -- if I have the
17 question do we need to apply, calling the PSC

18 could be one of the ways to find out.

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8 Q Let me ask you to go to the next page
9 in the composite exhibit, this is also a page of
10 handwritten notes.

11 Is this your handwriting?

12 A Yes.

13 Q And just for the record it's -- up at
14 the top it's dated 10/26/01, and the first line
15 of the handwriting notes is PSC on STS, is that
16 correct?

17 A PSC on STS, right.

18 Q Can you tell me how it came about that
19 you created this page of notes?

20 A Obviously I must have talked to one of
21 these gentlemen there and he provided this
22 information over the phone.

23 Q As you sit here today do you recall the
24 telephone conversation?

25 A I don't recall it, but since I wrote it

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1 I must have made it, the phone call.

2 Q As you sit here today, after having
3 reviewed these notes, do you recall what you said
4 to the -- does it refresh your recollection as to
5 what you said to the PSC or the PSC said to you?

6 A Not other than what it says here.

7 Q Is it safe to assume that when you
8 wrote these notes you wrote these notes
9 accurately and that they accurately depict what

10 was said on the phone?

11 A Yes.

12 Q So would you agree that this document
13 is an accurate recordation of the telephone call
14 that you had with the PSC on October 26, 2001?

15 A Yes.

16 Q And the title is PSC on STS, so was
17 that the subject you were calling the PSC with
18 respect to the County's position of the shared
19 tenant services?

20 A Yes.

21 Q Do you remember who Jackie Gilcrest,
22 Tom Williams or Rick Moses were, or are?

23 A No, Jackie was probably the boss of the
24 other two gentlemen that are there, and I don't
25 even know which one of those I talked to, to be

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1 honest with you.

2 Q Next to Rick Moses it states: He was
3 at M IA 5-6 years ago looking at this issue.

4 A Right, that's what he told me.

5 Q Do you recall anything else about what
6 he had to say on that issue?

7 A No. If it was relevant it would have
8 been -- it would be written here.

9 Q Okay, can you read the next three lines
10 of your notes?

11 A Yes, if MIA is going to provide service
12 not related to public transportation, hotels,
13 shops, et cetera, we need to file an application.

14 Q And the next line?

15 A In any event, trunks will have to be
16 partitioned.

17 Q So you wrote down here, after talking
18 to the PSC, if MIA is going to provide service
19 not related to public transportation, hotels,
20 shops, et cetera, we need to file an application.

21 Was there any ambiguity at the time
22 about that statement or direction from the PSC?

24 THE WITNESS: No.

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15 Q So don't these notes clearly reflect
16 that the PSC said that if you're going to provide
17 service not related to public transportation,
18 such as hotels, shops, et cetera, you need to
19 file an application?

21 THE WITNESS: That's what it says
22 here. But again, this is not the whole
23 document, this is just one piece of
24 information that was compiled along with
25 the other documents or the chapter 24,

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1 25, that we discussed before.

2 BY MR. GOLDBERG:

3 Q Wouldn't you agree with me that this
4 directive from the PSC is directly contrary to
5 your -- the bases for your decision not to file
6 an application?

8 THE WITNESS: If you just read these
9 three lines, yes, it seems to say that,
10 if you provide services to hotels, shops,
11 et cetera, but again, that is not the

12 ruling of the PSC, that was just my
13 notes, and not necessarily taken into
14 consideration the airport exemptions and
15 all the other things that are spelled out
16 in the paragraph.

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8 Q At the end of the day, I'm saying, you
9 did not follow what you wrote that the PSC
10 representative stated on October 26, 2001?

12 THE WITNESS: I did not follow what
13 these two and a half lines says, right.

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8 Q But at the time in 2002, with respect
9 to partitioning, were any other trunks
10 partitioned by the County separate and apart from
11 the hotel?

12 A No, they're not partitioned, and
13 they're not partitioned now.

10 Q Show you what's been marked - what
11 I'll mark as Cert-7.

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13 BY MR. GOLDBERG:

14 Q This is an e-mail from Rick Moses at
15 the PSC to Maurice Jenkins entitled Certification
16 Issues.

17 Have you seen this document before?

18 A I don't recall seeing it.

19 Q It says: "I have been informed that
20 the Miami Airport may be providing telephone
21 service beyond its current authority. Pursuant
22 to Rule 25-24.580, Florida Administrative Code,
23 an airport is exempt from the certification

24 requirements of this commission as long as it is
25 only providing telephone service necessary to

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1 ensure the safe and efficient transportation of
2 passengers and freight through the airport
3 facility Therefore, any services provided to
4 entities such as concession stands, restaurants
5 or hotels would be outside of the exemption, and
6 certification would be required before telephone
7 service can be provided. Please respond with a
8 list of entities served by the Miami Airport by
9 March 10th, 2003."

10 Let me focus you on the second
11 paragraph there where it says: "Therefore, any
12 services provided to entities such as concession
13 stands, restaurants or hotels would be outside of
14 the exemption and certification would be required
15 before telephone service can be provided."

16 Is that statement -- strike that.

17 Is not that statement contrary to the
18 position you took or the County took when it
19 decided not to apply for a certificate?

20 A Yes.

21 Q Is not that statement contrary to your
22 interpretation of the airport exemption rule
23 which you've testified to in this deposition
24 today?

25 A Yes.

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1 Q The e-mail concludes by saying:

2 "Please respond with a list of entities served by
3 the Miami Airport by March 10th.

4 Let me show you what I'll mark as
5 Cert-8.

7 BY MR. GOLDBERG:

8 Q Is this an e-mail from you to Rick
9 Moses dated March 17, 2003?

10 A Yes.

11 Q And you copied Maurice Jenkins, Maria
12 Perez and Anthony Brown?

13 A Yes.

14 Q It's entitled MIA, STS List?

15 A Yes.

16 Q And did you type to Mr. Moses the
17 following message: "Mr. Moses, attached is the
18 list that you requested"?

19 A Yes.

20 Q And does this exhibit contain as a
21 second page the customer list for the County as
22 of February 2003 that you transmitted to
23 Mr. Moses?

24 A Yes.

25 Q How did it come to be that you

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1 responded to Mr. Moses on behalf of Mr. Jenkins
2 as a result of Mr. Moses' prior e-mail marked
3 Cert-7?

4 A It was probably that Mr. Jenkins, my
5 boss, asked me to forward to Mr. Moses this
6 information, and I requested this information
7 from probably Maria Perez, that worked for me,

8 and she provided to me, and I forwarded it to
9 Mr. Moses.

10 Q Did this interaction with the PSC cause
11 any concern on your behalf or Mr. Jenkins' behalf
12 that perhaps you were not complying with the law?

13 A I just took it as somebody wanted
14 information from us.

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows.

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15 Q Let me direct your attention back to PSC-5, the
16 customer list that you received from Miami-Dade County
17 Airport as of February 2003. Based on the customer list
18 that you reviewed, and assuming no partitioning of the
19 switch, as you've referred to it here, would Miami-Dade
20 County need to apply for certification as an STS
21 provider?

22 MR. HOPE: Objection to the form.

23 A Yes.

24 Q And can you explain that answer, please?

25 A Under the title "Concession/Others," the

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1 companies that are listed underneath there, in my
2 opinion, would not be necessary for the safe passage of
3 passengers through the terminal, so it would lay outside
4 of the exemption if they have not partitioned their
5 switch. And the same would hold true for management

6 companies.

7 Q If I could ask you to go back for a minute to
8 PSC-7, which is a composite exhibit of notes and the
9 application, and go again to page 17, I would appreciate
10 that. I'm sorry to have you jump back and forth.

11 A Okay.

12 Q In the middle of the page, the notes written by
13 an individual at the County says, "If MIA is going to
14 provide service not related to public transportation
15 (hotels, shops, et cetera) we need to file an
16 application." Is that language consistent with your
17 testimony that you've given here today?

18 A If they don't partition their switch to those
19 entities, yes, it would be.

20 Q Whether or not an STS provider partitions their
21 trunks, or switch, partitions their switch, as you've
22 used, or did not partition the switch, are they still a
23 telecommunications provider or company under Florida
24 law?

25 A Yes.

Simply stated, regardless of any exemptions available to the County from any otherwise applicable statutory or regulatory obligations, the County still "offers two-way telecommunications services to the public for hire by way of a telecommunications facility" which is the definition of a telecommunications company as set forth in Florida Statute Section 364.02 (13).

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 21:

Please state all facts which support your allegations in Paragraph 45 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.
Richard Moses was deposed on October 5, 2004.
A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005
George Hill was deposed on December 3, 2004.
Nancy Sims was deposed on December 2, 2004 and December 3, 2004.
Maria Johnston was deposed on February 2, 2005
Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory.

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

18

9 Q. The verbiage in Paragraph B also uses
10 the word territory, the County shall not operate a
11 light, power or telephone utility to serve any
12 territory in the County. When the Charter was
13 drafted, the use of the word territory was decided

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14 upon, did territory have any special significance?
15 Or what did it mean?
16 A. It was only a synonym for area, to serve
17 any area Territory has no other regulatory
18 meaning in that particular section

35

22 Q. Also, you answered a question earlier in
23 terms of the definition of territory and whether
24 or not the County's provision of service to the
25 Miami International Airport would constitute the

36

1 operation of a telephone utility. Do you remember
2 that question and answer?
3 MR. GOLDBERG: Objection to form.
4 A. Whether the operation of a telephone
5 service to the airport would constitute a utility?
6 Q Correct
7 A Yes
8 Q. Why is it that the provision of service
9 to Miami International Airport would constitute
10 the operation of a telephone utility?
11 A. Because it was telephone service.
12 Q. So is your answer specifically that
13 because it's the provision of telephone service,
14 therefore it is tantamount to being a telephone
15 utility?
16 A. Well, in a general way I think that's
17 correct.
18 Q. Can you be more specific?
19 A. No. I can't be more specific.
20 Telephone utility is the provision of telephone
21 service to any area in the County

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

38

4 Q. Now, you just stated that as the
5 "carrier of last resort," BellSouth has to make
6 the effort to provide service to a customer in its
7 territory. What's BellSouth's territory in the
8 State of Florida?
9 A. Well, that territory basically was
10 basically established way back when, when we first
11 got our certificate. And our certificate is-- a

513

12 copy of that is provided under tab one.
13 And you will see several orders behind
14 tab one that layout the definitions of our
15 territory. It goes into specifics, like survey
16 language as to the areas we serve in the various
17 parts of the state.

18 Now, also, these areas, the actual
19 exchange, what they call exchange areas, which are
20 basically dictated by our central offices, our
21 switches, the scope of our switches, these
22 exchanges are laid out in maps that are filed with
23 the Public Service Commission

24 If we ever change a boundary for some
25 reason, then that change has to go in front of the

39

1 Commission, because the Commission authorizes our
2 service boundary. They have first established it.
3 They control that boundary. If we wish to change
4 it, we have to go in front of the Commission to
5 change that boundary. The maps are filed in front
6 of the Commission.

12 Q. Are exchanges synonymous with area
13 codes?

14 A. No. You can have multiple exchanges in
15 one area code.

16 Exchanges are just a service area
17 dictated by the -- you can have more than one
18 central office in an exchange. But they are
19 basically dictated by the service area of the
20 central office and set up often by natural
21 boundaries, like a river, or a creek, or the
22 boundary of a subdivision, outside boundary of a
23 subdivision.

24 Q. Is BellSouth's territory as an incumbent
25 local exchange carrier unique from the territory

40

1 of the other nine incumbent local exchange
2 companies?

5 A. We serve -- each one of the 10 incumbent
6 local exchange companies serve their own
7 territory. And our territories join

8 In other words, in Orlando, part of the
9 Orlando territory is served by Sprint, or the
10 Orlando area is served by Sprint. Part of the
11 Orlando area is served by BellSouth. Part of the
12 Orlando area is served by Smart City. But the
13 boundaries all connect. They hit up against each
14 other. We don't cross over the boundaries, but
15 they connect to each other.

16 So in fact, the 10 local exchange
17 companies serve the entire State of Florida. They

18 have territory designated to them in Florida.
19 Q. I'm looking at the copy of the Florida
20 Railroad and Public Utilities Commission
21 Certificate of Public Convenience and Necessity,
22 dated January 17, 1955 That's a document which
23 you referred me to, which breaks out the
24 territories of BellSouth in the State of Florida
25 And back then it was Southern Bell Telephone and

41

1 Telegraph Company.
2 A. There's an April 25, 1926 one.
3 Q That's what I was going to ask you.
4 A But the April-- the January, 1955 has
5 the attachment of the definition of the area

42

10 Q An incumbent has its territory defined
11 by its Certificate of Public Convenience and
12 Necessity. For a competitive who also has a
13 certificate, would their territory be laid out in
14 the certificate?
15 A. No, sir.

51

25 Q. As far as you know, has MiamiDade

52

1 County been part of BellSouth's territory and
2 BellSouth being the only incumbent local exchange
3 company in Florida for MiamiDade County, has that
4 changed?

7 A. I'm not sure.

8 Q. How was the initial determination of
9 BellSouth's territory made?

12 A. I really can't answer that question.
13 That was done so long ago. I have no idea.

14 Q. Where I was trying to get to, was it
15 something with the application to the PSC? Did
16 BellSouth put it forward?

17 Since it was 1926, basically, you don't
18 know?

19 A. I really don't know the process that was
20 used at that time

21 Q. Now, you've stated that depending on
22 growth and movement, the territories can change.
23 What is the process for modifying a territory?

53

1 A. It's usually, like I said before,
2 usually it involves another local exchange
3 company, for instance, or it could be maybe

515

4 another one of our exchanges.
5 But let's say it involves another local
6 exchange company. Let's say the subdivision, like
7 I said before, was developing into an area that
8 was undeveloped, and when the engineers go out, or
9 the technicians go out, they say we can't serve
10 that area because that belongs to Sprint. And
11 it's very obvious for ease of service, because the
12 facilities perhaps were there, or for the
13 continuity of the subdivision, it would be better
14 for that territory to perhaps be in BellSouth's
15 territory, or if it was a Sprint subdivision it
16 should be in Sprint's territory
17 So the two companies will meet and make
18 a decision as to should the boundary be changed.
19 Usually enter into -- if they agree that the
20 boundary should be changed, both companies redraw
21 their map and then the maps are filed by both
22 companies and they are designated to whatever
23 serving exchange that they are going to be in
24 And it's placed on file with the Commission

260

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 recal
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?

261

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.

516

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?
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?

262

1 A. Any designated area. Any area as you
2 want to designate it.
4 Q. Is that a well-understood principle, or
5 an archaic principle?
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

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows.

55

16 Q. What documents or evidence support
17 paragraph 45?
21 THE WITNESS: I know that Miami,
22 MA, and the other airports fall in
23 exchanges in my franchise territory here

517

24 in South Florida.

56

1 BY MR. HOPE:

2 Q In BellSouth's franchise?

3 A In BellSouth's franchise.

4 Q Does the County have a, quote unquote,
5 franchise territory?

6 A I don't know the answer to that
7 question. They provide telephone service, I
8 don't know how far and wide totally they are.

9 I know they're offering it here at
10 Miami-Dade, based on the testimony and the
11 depositions, Maurice Jenkins and Pedro Garcia.

12 Q Is the franchise territory of
13 BellSouth, since you used that as an example in
14 your answer here, the same as the franchise
15 territory for one of your competitors?

17 THE WITNESS: My competitors are not
18 limited to providing service only in an
19 exchange. They can offer services and
20 make it as big and wide as they want to,
21 best I can tell.

22 I would have to go back and look to
23 give you the specificity, but they are
24 not limited on the sizes of their

518

25 exchange and how far they can provide

57

1 local service, so they compete with me,

2 and in some cases are throughout the

3 county and maybe a little further.

4 BY MR HOPE:

5 Q What documents or rules, if there are

6 any, determine a franchise territory?

7 A 364 gave guidance to the Commission.

8 The Commission defined franchises and the

9 legislature defined it, and then the Public

10 Service Commission over the years has established

11 the exchanges over the years.

12 Q But what determines territories?

13 MR. GOLDBERG: Objection to form,

14 territories in what respect? Are you

15 still talking about franchise territories?

16 MR. HOPE: Correct.

17 THE WITNESS: I use franchise

18 territory as the same thing. There's--

19 the franchise and our territory are

20 defined by the Public Service Commission.

21 Prior to 1995 we served as a

22 monopoly, we were the only local service

23 provider in town, and that -- so I use

24 those two similarly.

519

25 And Dade, MiamiDade County is in

58

1 Dade County, which is in the Dade
2 exchange, which is part of my franchise
3 territory.

15 Q So let me try and tie this all up, so
16 if the word franchise isn't there, how can you
17 attach franchise territory as the basis for the
18 allegation of paragraph 45?

21 THE WITNESS: You know, I'm not a
22 legal guy, but I use franchise and I use
23 territory and sometimes I put them together.

24 But what this paragraph says is the
25 County shall not operate a telephone

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1 utility to serve any territory in the
2 County which is being supplied by a
3 similar service, except by a majority vote.

4 I am providing services throughout
5 the county, throughout the state, you
6 know, and they are similar services to
7 what you're providing here at the airport.

8 Now if you want to talk about the
9 airport as being a territory, I also
10 serve this territory. It says you're not

520

11 to provide similar services here without
12 a vote by the constituents here in Miami-Dade

13 BY MR. HOPE:

14 Q Is the airport a territory?

15 A I guess, I guess a legal definition--

16 I'm not sure, Mr. hope, but it's a piece of
17 ground, it's right here, and we are both
18 providing telecommunications service on it.

19 So by that definition right there I
20 would say that that is territory, at least a
21 portion of a larger territory.

22 But it's-- I mean, I'm out of my
23 league here I guess because of the legal
24 definition, but this is a territory, a portion of
25 a larger territory, and you're providing services

60

1 just like I am, and they are similar services.

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

57

6 Q. Are the airports, to your knowledge,
7 that we talked about the only places within the
8 geographical boundaries of Dade County where a
9 county agency is attempting to make money by

521

10 providing telecommunications services?

11 MR. HOPE: Objection to form.

12 A. To the best of my knowledge, yes.

13 Q. Right.

14 All other facilities where the County
15 has telecommunications services, it is being
16 provided to County employees in a nonprofit-making
17 enterprise?

18 MR. HOPE: Objection to form.

19 A. To the best of my knowledge, yes.

87

1 mentioned Opa-Locka and Tamiami.

2 This particular document also refers to
3 other general aviation airports, Kendall, Tamiami,
4 and the training and transition airport in
5 Opa-Locka West.

6 Is there any telecommunications services
7 provided by the County to any of those other
8 airports?

9 A. The two airports that we have a direct
10 connection to, which is Opa-Locka and Tamiami. The
11 other ones basically have a self-contained system
12 connected to BellSouth lines.

13 Q. Basically it's to the airports within
14 the county?

15 A. I'm sorry. What was the question?

16 Q. These are the five airports, the
17 airports that are listed --

18 A. That are owned by the County.

19 Q. -- in Paragraph 1.305 airports within
20 Dade County, within the geographical limits of the

21 county that are owned by the County?

22 A. Right.

As additional support for BellSouth's claim that the County is violating Section 1.01(A)(14)(b) of the Charter, and that Miami International Airport and the other County owned and operated airports within Miami-Dade County CONSTITUTE "territories" as that term is used in the Section, BellSouth directs Defendant to the ballot presented to the voters of Miami-Dade County, Florida on November 8, 1994. On that ballot, the following question was presented: "Shall the county be authorized to establish a metro-Dade municipal utility to provide electricity only to county owned facilities?" The voters defeated the ballot measure by a vote of 75% against to 25% in favor. As evidenced by the County's course of conduct in submitting this ballot measure for vote, the County acknowledged that operating an electric utility to provide electricity "only to county owned facilities" required a vote of the electorate as required by Section 1.01(A)(14)(b) of the Charter. Several newspaper accounts of the ballot measure specifically stated that one of the "county owned facilities" to which the proposed electric utility would provide service was the Miami International Airport. Accordingly, the County has already admitted that county owned facilities within Miami-Dade County, including the Miami International Airport, are territories and that any effort to operate a utility, including a telephone utility, to provide services already provided to such territories within Miami-Dade County requires a vote of the electorate as specified in the Charter.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 22:

Please state all facts and delineate the "special injury" which support your allegations in Paragraph 46 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and

December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004

Richard Moses was deposed on October 5, 2004.

A Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

37

2 Q Let's go back over the-- he asked you,
3 Mr. Hope asked you a number of questions about
4 section 14 and 14b, and the protection of the
5 citizens and providing services to the
6 unincorporated areas.

7 Let me ask you, if you look at just
8 Paragraph 14, not 14b yet, but Paragraph 14 where
9 it does give the County the authority to regulate,
10 control, take over and grant franchises to or
11 itself operate gas, light, power, telephone and
12 other utilities, et cetera. Is that the part of
13 the power or provision here at the Charter that
14 was meant to protect those or provide service to
15 those in perhaps unincorporated areas?

16 A. Yes.

17 Q. And then, if we turn to sub-paragraph b,
18 the restriction where the County shall not operate
19 a light, power or telephone utility to serve any
20 territory in the County which is being supplied
21 with similar service except by a majority vote, is
22 that the restriction that protected the existing
23 telephone and power utilities?

24 A. Correct. It protected the companies,

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25 not the citizens.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for BellSouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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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

219

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.

220

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

525

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
221

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?

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?

223

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.

224

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

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

225

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?

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.

227

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?

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?

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

25 Q. Previously, when we talked about special
228

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

527

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.

25 Q Are there any documents which show how
229

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

256

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.

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

257

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?

528

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.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

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4 Q At your previous deposition conducted
5 on October 27 I asked you who-- and you appeared
6 as a corporate rep-- I asked you who had
7 knowledge of the allegation contained in
8 paragraph 46, and you identified yourself
9 My question is what knowledge do you
10 have that BellSouth has a special injury
11 resulting from the County's violation of its
12 charter?

15 THE WITNESS: And I will tell you I
16 was trying to be helpful and I thought I
17 knew what it was and, you know, I don't
18 know what the legal definition
19 necessarily is, so the answer to your
20 question is, you know, there's somebody

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21 that would have to give you
22 interpretation better than I can.
23 I mean, I was trying- thinking
24 that I knew, but clearly I'm- I don't
25 know necessarily what's all included in

61

1 special injury

2 BY MR. HOPE:

3 Q Okay, please read paragraph 47.

4 A Okay.

5 Q You also identified yourself as one of
6 the people with knowledge for paragraph 47. What
7 knowledge do you have that BellSouth's injuries
8 are different in kind from that of the general
9 public?

10 A The specific knowledge that I have is
11 that prior to your providing shared tenant
12 services at the airport the customers were my
13 customers, or almost all my customers, especially
14 before 1995, because I was a monopoly and I was
15 the only person providing services. I provided
16 the wire and the telephone service out here

17 You got in the business and you've
18 taken my customers away from me, now probably
19 doing a good job competitively, but you have
20 customers that used to belong me; in fact, you

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21 were my customer, a huge customer of mine, and
22 probably are in some cases still.

23 So therefore I have been injured that
24 you're taking my customers away from me and the
25 money that I would normally have received from

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1 those customers, and I know that for a fact.

2 Q Is it your statement that the County
3 has started taking your customers away since the
4 acquisition, since 2002?

5 A Only as the County-- when the County
6 started providing telecommunications for hire.
7 You took over a base of customers that were here
8 before, and probably have had some pluses and
9 minuses since that time.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 23:

Please state all facts, and quantify BellSouth's injuries and affected business opportunities with, and potential income from customers at MIA which support your allegations in Paragraph 47 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

BellSouth reasserts, adopts and incorporates its prior objections to this interrogatory, as set forth in Plaintiff's Objections to Defendant's First Set of Interrogatories dated April 21, 2005, as though fully set forth herein.

Interrogatory No. 24:

Please state all the facts which support your allegations in which support your allegations in Paragraph 48 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs

Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

On October 5, 2004, Richard Moses was deposed. Mr. Moses is the Bureau Chief of the Bureau of Service Quality of the Florida Public Service Commission. In that position, Mr. Moses' responsibilities include supervising the compliance group, in which the Public Service Commission has people investigating companies for compliance with the Commission's rules, orders and statutes. With respect to the information sought by this interrogatory, Mr. Moses testified as follows

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9 Q Now, in order to get certificated, all that
10 needs to happen from an entity's perspective is to file
11 an application and pay the application fee; is that
12 correct?

13 A For shared tenant?

14 Q Yes.

15 A That's correct.

16 Q And they file an application just like the one
17 we went over; correct?

18 A I believe it hasn't changed; that's correct.

19 Q And that's contained again in Exhibit PSC-7.

20 Would you agree that the act of applying for an
21 application is required by Florida law or Florida
22 Statutes prior to providing STS services?

23 MR. HOPE: Objection to the form.

24 MR. GOLDBERG: You can answer.

25 A Yes.

29

1 Q And the act of applying for a certificate as

2 Florida law describes, it is not ambiguous. I mean,
3 it's pretty direct that a entity shall apply for a
4 certificate; is that correct?

5 A That's correct.

6 Q And let me show you, just to highlight that
7 point, what I've marked as PSC-9. This is a copy of
8 Section 364.339 out of the Florida Statutes. Let me
9 direct your attention to subparagraph 2, where it says,
10 "No person shall provide shared tenant service without
11 first obtaining from the Commission a certificate of
12 public convenience and necessity to provide such
13 service." And is that in part what you've based your
14 prior answer on that it's pretty clear that the law
15 requires an application before providing a service?

16 A Yes.

17 Q And just so we're clear, the application for a
18 certificate, the law calls that a certificate of public
19 convenience and necessity; is that correct?

20 A That's correct.

21 Q So would you agree with me that the act of
22 applying for a certificate is an act directed by the law
23 here in Florida?

24 MR. HOPE: Objection to the form.

25 A Yes.

37

7 Q Okay. If the County were to argue that the
8 fact that they did not apply for a certificate and have
9 been operating without a certificate from the time of
10 these e-mails in March of 2003 to the present, that that
11 somehow approves or sanctions their operation without a

12 certificate, would you agree with that, if you
13 understood my question?

14 MR. HOPE: Objection to the form.

15 A No. Only the Commission can approve the
16 authority to provide shared tenant service.

17 Q And do you say that because the Commission has
18 exclusive jurisdiction over that area?

19 A Yes.

20 Q And actually, the Commission's grant of
21 exclusive jurisdiction is stated very clearly in Florida
22 law; correct?

23 A Correct.

24 Q And would you agree with me that the PSC has
25 exclusive jurisdiction over whether or not an entity

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1 needs or does not need certification, and that by
2 definition means any other person or entity in the State
3 of Florida cannot make that determination?

4 MR. HOPE: Objection to the form.

5 BY MR. GOLDBERG:

6 Q Correct?

7 A Correct.

8 Q So in other words, just to be clear, you would
9 agree that another entity or person cannot
10 self-determine whether or not they need a certificate or
11 do not need a certificate to provide STS services?
12 Would you agree with that?

13 MR. HOPE: Objection to the form.

14 A Yes.

BellSouth further responds to this interrogatory by stating that the allegations in paragraph 48 of the Second Amended Complaint are a legal conclusion based on the language of the

applicable statutory and regulatory provisions governing the offer and provision of Shared Tenant Services to tenants at the Miami International Airport. In particular, BellSouth directs the County to the following statutory and regulatory provisions:

Florida Statutes Section 364.02
Florida Statutes Section 364.01
Florida Statutes Section 364.339
Florida Statutes Section 364.32
Florida Statutes Section 364.33
Florida Statutes Section 364.335
Rule 25-9.002 of the Florida Administrative Code
Rule 25-4.003 of the Florida Administrative Code
Rule 25-24.580 of the Florida Administrative Code
Rule 25-24.567 of the Florida Administrative Code
Rule 25-24.569 of the Florida Administrative Code
Rule 25-24.575 of the Florida Administrative Code

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 25:

Please state all the facts which support your allegations in which support your allegations in Paragraph 50 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.
Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

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2 Q. Let's go back over the-- he asked you,
3 Mr. Hope asked you a number of questions about
4 section 14 and 14b, and the protection of the
5 citizens and providing services to the
6 unincorporated areas.

7 Let me ask you, if you look at just
8 Paragraph 14, not 14b yet, but Paragraph 14 where
9 it does give the County the authority to regulate,
10 control, take over and grant franchises to or
11 itself operate gas, light, power, telephone and
12 other utilities, et cetera Is that the part of
13 the power or provision here at the Charter that
14 was meant to protect those or provide service to
15 those in perhaps unincorporated areas?

16 A. Yes.

17 Q. And then, if we turn to subparagraph b,
18 the restriction where the County shall not operate
19 a light, power or telephone utility to serve any
20 territory in the County which is being supplied
21 with similar service except by a majority vote, is
22 that the restriction that protected the existing
23 telephone and power utilities?

24 A. Correct. It protected the companies,
25 not the citizens

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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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

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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.

220

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

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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?

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?

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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.

224

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

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

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25 list and make some assumptions about marketing and

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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?

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

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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?

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?

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

25 Q. Previously, when we talked about special

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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

25 Q. Are there any documents which show how

229

1 much income BellSouth has lost due to the County's

540

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.

256

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.

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

257

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?

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

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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

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr Tubaugh testified relating to the subject interrogatory as follows.

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4 Q At your previous deposition conducted
5 on October 27 I asked you who-- and you appeared
6 as a corporate rep -- I asked you who had
7 knowledge of the allegation contained in
8 paragraph 46, and you identified yourself.

9 My question is what knowledge do you
10 have that BellSouth has a special injury
11 resulting from the County's violation of its
12 charter?

15 THE WITNESS: And I will tell you I
16 was trying to be helpful and I thought I
17 knew what it was and, you know, I don't
18 know what the legal definition
19 necessarily is, so the answer to your
20 question is, you know, there's somebody
21 that would have to give you
22 interpretation better than I can.

23 I mean, I was trying-- thinking
24 that I knew, but clearly I'm-- I don't

542

25 know necessarily what's all included in

61

1 special injury.

2 BY MR. HOPE:

3 Q Okay, please read paragraph 47.

4 A Okay

5 Q You also identified yourself as one of
6 the people with knowledge for paragraph 47. What
7 knowledge do you have that BellSouth's injuries
8 are different in kind from that of the general
9 public?

10 A The specific knowledge that I have is
11 that prior to your providing shared tenant
12 services at the airport the customers were my
13 customers, or almost all my customers, especially
14 before 1995, because I was a monopoly and I was
15 the only person providing services I provided
16 the wire and the telephone service out here.

17 You got in the business and you've
18 taken my customers away from me, now probably
19 doing a good job competitively, but you have
20 customers that used to belong me; in fact, you
21 were my customer, a huge customer of mine, and
22 probably are in some cases still

23 So therefore I have been injured that

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24 you're taking my customers away from me and the
25 money that I would normally have received from

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1 those customers, and I know that for a fact
2 Q Is it your statement that the County
3 has started taking your customers away since the
4 acquisition, since 2002?
5 A Only as the County-- when the County
6 started providing telecommunications for him.
7 You took over a base of customers that were here
8 before, and probably have had some pluses and
10 minuses since that time

In addition, BellSouth directs Defendant to Article VIII, Sections 6(a) and 6(e) of the Florida Constitution of 1985 which incorporates certain prior provisions of the Constitution of 1885, as amended, and in particular sections 11(5) and 11(9).

BellSouth also directs Defendant to the deposition testimony and citations to statutes and regulations as stated in responses to Interrogatory 24 and incorporates that information as though stated herein.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 26:

Please state all the facts which support your allegations in which support your allegations in Paragraph 55 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.
Richard Moses was deposed on October 5, 2004.
A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.
George Hill was deposed on December 3, 2004
Nancy Sims was deposed on December 2, 2004 and December 3, 2004.
Maria Johnston was deposed on February 2, 2005.
Dan Paul was deposed on March 8, 2005

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

BellSouth further responds to this interrogatory by stating that the allegations in paragraph 55 of the Second Amended Complaint are a legal conclusion based on the totality of the facts regarding the County's conduct and its affect on competition with BellSouth and other telecommunications companies who operate at MIA and the other General Aviation Airports Thus, in response to this interrogatory, BellSouth incorporates by reference its responses to Interrogatories 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 as though set forth herein.

Additionally, with respect to the allegations regarding "proper process" contained in paragraph 55 of the Second Amended Complaint, BellSouth directs Defendant to the Affidavit of Service establishing that service of process was properly perfected as against

Defendant at the outset of this lawsuit.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 27:

Please state all the facts which support your allegations in which support your allegations in Paragraph 58 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004.

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

37

2 Q. Let's go back over the -- he asked you,
3 Mr. Hope asked you a number of questions about
4 section 14 and 14b, and the protection of the
5 citizens and providing services to the
6 unincorporated areas.

7 Let me ask you, if you look at just
8 Paragraph 14, not 14b yet, but Paragraph 14 where
9 it does give the County the authority to regulate,
10 control, take over and grant franchises to or
11 itself operate gas, light, power, telephone and
12 other utilities, et cetera. Is that the part of
13 the power or provision here at the Charter that
14 was meant to protect those or provide service to
15 those in perhaps unincorporated areas?

16 A Yes

17 Q And then, if we turn to subparagraph b,
18 the restriction where the County shall not operate
19 a light, power or telephone utility to serve any
20 territory in the County which is being supplied
21 with similar service except by a majority vote, is
22 that the restriction that protected the existing
23 telephone and power utilities?

24 A Correct. It protected the companies,
25 not the citizens.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for BellSouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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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

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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
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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.

220

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

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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?

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--

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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?

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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

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

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

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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?

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.

227

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?

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?

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

25 Q. Previously, when we talked about special

228

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.

25 Q. Are there any documents which show how

229

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?

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17 A. Yes.

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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.

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

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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?

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.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

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4 Q. At your previous deposition conducted

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5 on October 27 I asked you who-- and you appeared
6 as a corporate rep-- I asked you who had
7 knowledge of the allegation contained in
8 paragraph 46, and you identified yourself.

9 My question is what knowledge do you
10 have that BellSouth has a special injury
11 resulting from the County's violation of its
12 charter?

15 THE WITNESS. And I will tell you I
16 was trying to be helpful and I thought I
17 knew what it was and, you know, I don't
18 know what the legal definition
19 necessarily is, so the answer to your
20 question is, you know, there's somebody
21 that would have to give you
22 interpretation better than I can.

23 I mean, I was trying-- thinking
24 that I knew, but clearly I'm-- I don't
25 know necessarily what's all included in

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1 special injury.

2 BY MR. HOPE:

3 Q Okay, please read paragraph 47.

4 A Okay

5 Q You also identified yourself as one of

6 the people with knowledge for paragraph 47. What
7 knowledge do you have that BellSouth's injuries
8 are different in kind from that of the general
9 public?

10 A The specific knowledge that I have is
11 that prior to your providing shared tenant
12 services at the airport the customers were my
13 customers, or almost all my customers, especially
14 before 1995, because I was a monopoly and I was
15 the only person providing services. I provided
16 the wire and the telephone service out here.

17 You got in the business and you've
18 taken my customers away from me, now probably
19 doing a good job competitively, but you have
20 customers that used to belong me; in fact, you
21 were my customer, a huge customer of mine, and
22 probably are in some cases still.

23 So therefore I have been injured that
24 you're taking my customers away from me and the
25 money that I would normally have received from

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1 those customers, and I know that for a fact.

2 Q Is it your statement that the County
3 has started taking your customers away since the
4 acquisition, since 2002?

5 A Only as the County-- when the County

- 6 started providing telecommunications for hire
- 7 You took over a base of customers that were here
- 8 before, and probably have had some pluses and
- 11 minuses since that time

Interrogatory No. 28:

Please state all the facts which support your allegations in which support your allegations in Paragraph 72 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

- Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
- Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.
- Richard Moses was deposed on October 5, 2004
- A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005
- George Hill was deposed on December 3, 2004.
- Nancy Sims was deposed on December 2, 2004 and December 3, 2004.
- Maria Johnston was deposed on February 2, 2005.
- Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005. During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

37

2 Q. Let's go back over the-- he asked you,
3 Mr. Hope asked you a number of questions about
4 section 14 and 14b, and the protection of the
5 citizens and providing services to the
6 unincorporated areas.

7 Let me ask you, if you look at just
8 Paragraph 14, not 14b yet, but Paragraph 14 where
9 it does give the County the authority to regulate,
10 control, take over and grant franchises to or
11 itself operate gas, light, power, telephone and
12 other utilities, et cetera Is that the part of
13 the power or provision here at the Charter that
14 was meant to protect those or provide service to
15 those in perhaps unincorporated areas?

16 A. Yes.

17 Q. And then, if we turn to subparagraph b,
18 the restriction where the County shall not operate
19 a light, power or telephone utility to serve any
20 territory in the County which is being supplied
21 with similar service except by a majority vote, is
22 that the restriction that protected the existing
23 telephone and power utilities?

24 A. Correct. It protected the companies,
25 not the citizens.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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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

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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

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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

220

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

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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?

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

556

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?

223

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

224

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

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

225

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?

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.

227

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?

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?

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

25 Q Previously, when we talked about special

228

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

25 Q Are there any documents which show how

229

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.

256

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.

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

25

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?

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.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows.

60

4 Q At your previous deposition conducted

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5 on October 27 I asked you who-- and you appeared
6 as a corporate rep -- I asked you who had
7 knowledge of the allegation contained in
8 paragraph 46, and you identified yourself.

9 My question is what knowledge do you
10 have that BellSouth has a special injury
11 resulting from the County's violation of its
12 charter?

15 THE WITNESS: And I will tell you I
16 was trying to be helpful and I thought I
17 knew what it was and, you know, I don't
18 know what the legal definition
19 necessarily is, so the answer to your
20 question is, you know, there's somebody
21 that would have to give you
22 interpretation better than I can.

23 I mean, I was trying-- thinking
24 that I knew, but clearly I'm-- I don't
25 know necessarily what's all included in

61

1 special injury.

2 BY MR. HOPE.

3 Q Okay, please read paragraph 47

4 A Olay.

5 Q You also identified yourself as one of
6 the people with knowledge for paragraph 47. What

7 knowledge do you have that BellSouth's injuries
8 are different in kind from that of the general
9 public?

10 A The specific knowledge that I have is
11 that prior to your providing shared tenant
12 services at the airport the customers were my
13 customers, or almost all my customers, especially
14 before 1995, because I was a monopoly and I was
15 the only person providing services. I provided
16 the wire and the telephone service out here.

17 You got in the business and you've
18 taken my customers away from me, now probably
19 doing a good job competitively, but you have
20 customers that used to belong me; in fact, you
21 were my customer, a huge customer of mine, and
22 probably are in some cases still.

23 So therefore I have been injured that
24 you're taking my customers away from me and the
25 money that I would normally have received from

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1 those customers, and I know that for a fact.

2 Q Is it your statement that the County
3 has started taking your customers away since the
4 acquisition, since 2002?

5 A Only as the County-- when the County

- 6 started providing telecommunications for hire.
- 7 You took over a base of customers that were here
- 8 before, and probably have had some pluses and
- 12 minuses since that time.

Interrogatory No. 29:

Please state all the facts which support your allegations in which support your allegations in Paragraph 74 to Plaintiff's Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

- Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.
- Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.
- Richard Moses was deposed on October 5, 2004.
- A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.
- George Hill was deposed on December 3, 2004
- Nancy Sims was deposed on December 2, 2004 and December 3, 2004.
- Maria Johnston was deposed on February 2, 2005.
- Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory.

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory:

Dan Paul was deposed on March 8, 2005 During that testimony, Mr. Paul testified relating to the subject interrogatory as follows:

37

2 Q Let's go back over the-- he asked you,
3 Mr. Hope asked you a number of questions about
4 section 14 and 14b, and the protection of the
5 citizens and providing services to the
6 unincorporated areas.

7 Let me ask you, if you look at just
8 Paragraph 14, not 14b yet, but Paragraph 14 where
9 it does give the County the authority to regulate,
10 control, take over and grant franchises to or
11 itself operate gas, light, power, telephone and
12 other utilities, et cetera. Is that the part of
13 the power or provision here at the Charter that
14 was meant to protect those or provide service to
15 those in perhaps unincorporated areas?

16 A. Yes.

17 Q And then, if we turn to subparagraph b,
18 the restriction where the County shall not operate
19 a light, power or telephone utility to serve any
20 territory in the County which is being supplied
21 with similar service except by a majority vote, is
22 that the restriction that protected the existing
23 telephone and power utilities?

24 A Correct. It protected the companies,
25 not the citizens

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms Sims testified relating to the subject interrogatory as follows:

218

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

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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
219

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.

220

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

221

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?

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?

223

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.

224

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

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

225

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?

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.

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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?

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?

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

25 Q. Previously, when we talked about special

228

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.

25 Q Are there any documents which show how

229

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.

256

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.

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

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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?

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.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

60

4 Q. At your previous deposition conducted

567

5 on October 27 I asked you who -- and you appeared
6 as a corporate rep-- I asked you who had
7 knowledge of the allegation contained in
8 paragraph 46, and you identified yourself.

9 My question is what knowledge do you
10 have that BellSouth has a special injury
11 resulting from the County's violation of its
12 charter?

15 THE WITNESS. And I will tell you I
16 was trying to be helpful and I thought I
17 knew what it was and, you know, I don't
18 know what the legal definition
19 necessarily is, so the answer to your
20 question is, you know, there's somebody
21 that would have to give you
22 interpretation better than I can.

23 I mean, I was trying-- thinking
24 that I knew, but clearly I'm -- I don't
25 know necessarily what's all included in

61

1 special injury.

2 BY MR. HOPE:

3 Q Okay, please read paragraph 47.

4 A Okay

5 Q You also identified yourself as one of
6 the people with knowledge for paragraph 47. What

568

7 knowledge do you have that BellSouth's injuries
8 are different in kind from that of the general
9 public?

10 A The specific knowledge that I have is
11 that prior to your providing shared tenant
12 services at the airport the customers were my
13 customers, or almost all my customers, especially
14 before 1995, because I was a monopoly and I was
15 the only person providing services. I provided
16 the wire and the telephone service out here.

17 You got in the business and you've
18 taken my customers away from me, now probably
19 doing a good job competitively, but you have
20 customers that used to belong me; in fact, you
21 were my customer, a huge customer of mine, and
22 probably are in some cases still.

23 So therefore I have been injured that
24 you're taking my customers away from me and the
25 money that I would normally have received from

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1 those customers, and I know that for a fact

2 Q Is it your statement that the County
3 has started taking your customers away since the
4 acquisition, since 2002?

5 A Only as the County-- when the County

6 started providing telecommunications for hire
7 You took over a base of customers that were here
8 before, and probably have had some pluses and
13 minuses since that time.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

Interrogatory No. 30:

Please state all facts which support your allegations in Paragraph 2 to Plaintiff's Reply to Defendant Miami-Dade County' Answer and Affirmative Defenses to Second Amended Complaint for Declaratory and Injunctive Relief and for Issuance of Writ of Mandamus.

Answer:

Facts responsive to this interrogatory are contained within the extensive discovery already conducted in this matter, including the production of tens of thousands of pages of documents and the taking of numerous depositions. Specifically, the following depositions have been completed:

Pedro Garcia was deposed on May 21, 2003, October 28, 2004 and December 15, 2005.

Maurice Jenkins was deposed on August 5, 2004 and October 8, 2004.

Richard Moses was deposed on October 5, 2004

A. Wayne Tubaugh was deposed on October 27, 2004 and January 25, 2005.

George Hill was deposed on December 3, 2004.

Nancy Sims was deposed on December 2, 2004 and December 3, 2004.

Maria Johnston was deposed on February 2, 2005.

Dan Paul was deposed on March 8, 2005.

Many of these depositions were specifically designated as corporate representative depositions with respect to the specific issues and allegations to which this and the other interrogatories served by Defendant are now addressed. Accordingly, BellSouth directs

Defendant to these deposition transcripts together with any and all documents referenced therein and attached thereto, as well as the other documents produced by the Defendant and Plaintiff from which the Defendant can equally identify and determine the facts known by BellSouth through discovery completed to date, which are responsive to this interrogatory

Notwithstanding the foregoing, BellSouth specifically references and directs the Defendant to the following facts in response to the subject interrogatory.

On December 2 and 3, 2004, Nancy Sims, the Director for Regulatory Relations for Bellsouth, appeared as the company's corporate representative in response to the County's Notice of Taking Deposition. During that testimony, Ms. Sims testified relating to the subject interrogatory as follows:

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11 Q. Has the County's personnel stated that
12 these two-way telecommunications services are to
13 the public for hire?
14 A. Yes, they have.
15 Here again, in this initial discovery,
16 Mr Garcia, again, in that same deposition, page
17 56, the question: Let's do it this way. We've
18 agreed earlier in the deposition that MDAD is
19 engaged in what it hopes to be a profitmaking
20 enterprise by providing telecommunication services
21 to tenants of the airport?
22 His answer. Yes.
23 This is his later deposition, his 2004
24 deposition. On page 141 he says, the question is:
25 So MDAD is charging for the completion of the

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1 local call, correct?
2 Answer. For the ability to complete the
3 local call. We don't charge by the call.
4 Question: But for the ability to
5 complete local calls?
6 Answer: Yes.
7 Question: You would agree with that?
8 Answer: Yes.
9 And towards the end of that deposition,
10 page 150 -- well, 149 and 150. Question: So I
11 understand you, you said there is no additional
12 charge. But given your prior testimony here
13 today, haven't you testified that since the County
14 charges for the PBX, and the PBX is the piece of
15 equipment that provides the dial tone, that the
16 County is charging for dial tone?
17 His answer: The County is charging for
18 the equipment that allows you to get the dial tone

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19 and complete the call.
20 Question: So you would agree it is just
21 common sense that the County is charging for, in
22 part, the dial tone that it provides through its
23 own PBX? Yes
24 Now, Mr. Jenkins, Maurice Jenkins, in
25 his deposition on page 153. Question: You have

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1 an interest carrying cost, a maintenance cost and
2 then you add a profit, correct?
3 His answer: Yes, sir
4 Question: And you come up with a voice
5 line charge per month of 930; is that correct?
6 Answer: Yes, sir.
7 Then on page 164, the question is:
8 Essentially, in this proposal, it is fair to say
9 there's a charge for everything that's associated
10 with providing telecommunications service to your
11 customers, correct?
12 Answer: Yes, sir.
13 The bottom line is that your
14 telecommunications -- Question: The bottom line
15 is that your telecommunications business has a
16 goal of increasing its profitability and making
17 money for the County, correct?
18 His answer: Yes, sir
19 Q. Okay. Now--
20 MR. GOLDBERG: Are you done with your
21 answer?
22 THE WITNESS: No.
23 MR. GOLDBERG: Why don't you finish.
24 A. There's also, if you go back to the
25 actual -- and this is behind tab B, which is

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1 referring to the resolution approving the
2 recommendations relating to the shared airport
3 tenant services for the aviation department. This
4 is dated September 24, 2002
5 In the recommendation paragraph, part of
6 the recommendation is to offer telecommunication
7 and network access to "airport tenants." And in
8 the background explanation, the third paragraph,
9 there is the use of the word maximization of
10 revenues in the description of the assumption of
11 this purchase of these assets in the operation of
12 the telecommunications facilities
13 And then on the page two, the very last
14 sentence, it says under the new non-exclusive
15 management agreement with NextiraOne, approved by

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16 the Board on January 29th, 2002, MDAD will receive
17 all SATS gross revenues which last year totaled
18 \$2,607,024. This revenue is expected to increase,
19 based on new marketing initiatives presently under
20 development.

21 So that leads you to believe that if
22 you're going to have marketing initiatives, you're
23 going to promote the services as a money making
24 proposition.

25 Now, you also asked me about was the

75

1 County providing two-way telecommunication for
2 hire to the public. In our opinion, yes. And
3 based on, here again, some of the discovery that
4 we have obtained.

106

18 Q. Let's take it to the point that you
19 currently already stated. I won't go back the
20 three generations. I'll just go the one that you
21 already attested to.

22 Prior to 2002, when the County leased
23 the telecommunications infrastructure from
24 Nextira, and Nextira managed that system for them,
25 them being the County, is there a difference then

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1 in the situation where the County is leasing the
2 equipment and having someone manage that leased
3 equipment for them versus outright ownership of
4 the equipment?

5 A. I'm not quite sure I agree with your
6 characterization of the way it was prior to 2002
7 Because it was my understanding that Nextira owned
8 the infrastructure and Nextira was providing the
9 telecommunications services to the County. That's
10 my understanding of it.

11 Then when the County purchased it, the
12 County actually purchased the equipment and the
13 infrastructure.

14 The County-- prior to 2002, Nextira was
15 actually receiving the money. They were actually
16 billing the tenants and they were receiving the
17 money. And they were only giving a commission to
18 the County, a commission payment to the County.

19 Then in 2002, the County decided they
20 were going to take over the infrastructure and they
21 retained Nextira as a manager of the system. That
22 was my understanding of it.

23 And yes, I would say there's a

573

24 difference there in that in one case it was
25 Nextira providing telecommunications services, and

108

1 then after 2002 it was the County providing
2 telecommunications services.

141

19 Q. When did the County commence operating
20 as a telecommunications company?

21 MR. GOLDBERG: Objection to form.

22 Asked and answered.

23 A. In 2002, when the County purchased the
24 assets from Nextira. That's when they became a
25 telecommunications company. And by their own

142

1 admission, they were providing twoway
2 telecommunications services.

3 Now, to further expand on that, in Pedro
4 Garcia's deposition, which was the 2003
5 deposition, on page 61 the question was: Let's go
6 to the 2002 agreement. Had the County been
7 involved in the telecommunications business, so to
8 speak, prior to that?

9 Answer: The County was basically a
10 customer of NextiraOne prior to that. We were
11 their customers as far as they were providing us
12 the services along with the services they were
13 providing to other tenants of the airport.

14 Question Before February of 2002, was
15 the County providing in any way telecommunications
16 services to other tenants at the airport?

17 Answer: No.

18 Then on page 62, the question is: Let
19 me make sure I understand this. Up until 2002, or
20 February, 2002, Nextira or its predecessor,
21 whoever it may have been, provided
22 telecommunications services to tenants of the
23 airport?

24 Answer: To some of the tenants.

25 Question: Some?

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1 Answer: Including the MiamiDade
2 Aviation Department.

3 Question: All right. And in February,
4 2002, pursuant to this agreement with NextiraOne,
5 the County became the providers and Nextira
6 became, if you will, a subcontractor; is that a
7 fair characterization?

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8 Answer. That's correct.
9 Now, this was further corroborated by
10 Maurice Jenkins in his deposition, which was taken
11 in August of 2004, where there was quite a
12 discussion about the 2002 agreement.
13 On page 194, it starts Question: Why
14 did the County enter into the transaction it did
15 in January, 2002, to purchase at assets of
16 Nextira?
17 Answer. It was, if I recall properly,
18 based upon an audit and a review by County
19 auditors, as well as there was an individual that
20 came from the police department that was there
21 temporarily -- I believe it was Tom Arnold -- that
22 looked at processes from law enforcement and
23 looked at processes and looked at the agreement
24 and other things and said it would be in the
25 County's best interest to buy-out and own and

144

1 operate, rather than the existing way we were
2 doing business at that time.
3 Question: What was the existing way
4 that you were doing business at that time?
5 Answer. It was a managed services
6 agreement in which Nextira provided the service,
7 did the billing, and operated and supported the
8 MDAD voice network or voice system, voice network,
9 as it stood. And they managed and operated an
10 there's a management fee. There was, I think, a
11 percentage of the shared tenant revenue that came
12 back. Whatever was generated came back to the
13 department
14 Question: So before January, 2002,
15 Nextira owned and operated the telecommunications
16 facility, correct?
17 Answer: They owned it. They operated
18 it under a management agreement with the
19 department. Yes, sir.
20 Question: And then after January, 2002,
21 the County owned and operated the facility,
22 correct?
23 Answer: The County owned the facility
24 and we contracted to have someone operate it for
25 us.

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1 Question: But aren't we saying the same
2 thing? If the County is operating the facility
3 after 2002, albeit through a management agreement,
4 the County is still operating the facility? You

575

5 are operating it, correct?
6 Answer: We are still operating it, yes
7 So by the County's own admission, before
8 2002 they were not operating telecommunications
9 services. After 2002, they were. They purchased
10 the agreement. They have this purchase agreement
11 from Nextira.

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25 Q. Is there any reference in either

273

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.

On January 25, 2005, Wayne Tubaugh appeared to answer questions in his personal capacity in response to the County's Notice of Taking Deposition. During that testimony, Mr. Tubaugh testified relating to the subject interrogatory as follows:

33

8 Q Starting at heading B, paragraphs 25,
9 26, 27, 28, 29, 30, 31 and 32, the second amended
10 complaint goes into a series of allegations which
11 ultimately, at least in paragraph 32, makes a
12 statement that the County now owns and operates a

576

13 telephone utility by offering twoway
14 telecommunication services to the public for
15 hire, including to commercial tenants at MIA and
16 other airports, using telecommunication
17 facilities.

18 What specific language in either the
19 resolution, R-31-02, or the accompanying
20 justification memorandum supports the allegation
21 in paragraph 32?

22 MR GOLDBERG: Objection to the form
23 of the question. It's not a corporate
24 representative deposition, it's his
25 individual deposition.

34

1 MR. HOPE: In your interpretation of
2 the document.

3 MR GOLDBERG: Thankyou

4 THE WITNESS: Because the memorandum
5 which talks about the resolution and says
6 the resolution is attached to it, as
7 opposed to the memorandum being attached
8 to the resolution, says that they're
9 purchasing Nextira's facilities to
10 provide telecommunications, they're
11 buying their infrastructure, it says in
12 the document in several places

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13 telecommunications infrastructure,
14 installation, maintenance, repair,
15 management and operational support
16 services for all voice -- which is a
17 telecommunication service, and I added
18 that comment-- and data network
19 infrastructure at Dade-- MDAD, and
20 shared tenant services customers at Miami
21 International, MIA, and the general
22 aviation airports
23 I mean, it says that you're
24 purchasing that infrastructure and you're
25 keeping these folks on as a management

35

1 overseer for the system; that you're
2 going to operate it, you're going to
3 negotiate the contracts with the tenants,
4 apparently you're going to bill them, and
5 you are providing tweway
6 telecommunications for hire, having
10 assumed those things from Nextira

16 Q Can you turn to what will be the fifth
17 page of the composite exhibit which is
18 Defendant's 4, so it's actually the second page
19 of the justification memorandum,--

578

20 A Okay.

21 Q -- and read the paragraph that's headed

22 Background?

23 A Okay

24 Q If the County, according to this

25 memorandum, was already leasing the equipment

37

1 from Nextira, why is it that, under your

2 interpretation of this resolution, the County

3 only became either a telephone utility or

4 telecommunications company upon purchase of these

5 same assets?

8 THE WITNESS: Because you weren't

9 billing the customer. Nextira had the

10 contract, they were billing the customer,

11 they were receiving the revenues, and you

12 were receiving something, I'm not sure

13 exactly what you would call it, but they

14 were the telephone company. They were

15 providing the telecommunications service

16 up to that point in time.

17 After that time you begin providing

18 the telecommunications service and using

19 them as a manager, as a consultant, but

20 your people negotiated, from what I have

21 read in these documents, it authorized

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22 the airport manager director of
23 telecommunications to negotiate with the
24 customers specifically, and determine how
25 much they were going to be billed, and if

38

1 they were going to get breaks from
2 contracts-- that's an assumption -- with
3 them, and then they billed them on behalf
4 of MiamiDade.

5 They didn't bill them, Nextira
6 didn't bill them, Dade County billed
7 them, and it changed, you became the
11 telecommunications provider yourself

38

10 Q Do you know whether or not the County
11 was receiving any of the revenues that Nextira
12 collected?

13 A If I read this-- these documents that
14 you have provided here this morning right, there
15 was some kind of a tenpercent fee that you were
16 getting prior to you taking this over in 2002.

17 Q Do you know whether or not Nextira was
18 performing the billing function as, quote
19 unquote, a billing agent for the County?

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20 A I do not know that answer.

21 Q Is it fair to say that your answer
22 therefore focuses on who is doing the billing and
23 who is doing the collecting of the revenues?

25 THE WITNESS: It's more the whole

39

1 thing, you got to look at the whole
2 thing, but the answer to your question is
3 it's a huge difference, yes.

4 I mean, if you're billing the
5 customer and you're receiving the revenue
6 and you're providing the service, then
7 you're a twoway telecommunications for
8 hire, you, the airport are

9 And so yes, it does make a difference.

42

2 Q What specific language in resolution
3 R-1091-02 supports paragraph 32?

7 THE WITNESS: This is a-- having
8 read this, based on what I have seen
9 written here in this resolution, this is
10 a shorter one than the one you showed me
11 before, and it specifically talks about
12 in here to execute a standard form of
13 airport rental agreement attached to the
14 memorandum, that's attached to this

581

15 resolution from what I have heard here,
16 and so it's referencing this network
17 agreement and this rental thing, and the
18 very first paragraph in this agreement
19 says: The County agrees to deliver,
20 install, rent, and maintain
21 telecommunications systems and services
22 consisting of (1), switch access to its
23 common telecommunications switching
24 equipment and software which will be
25 shared by Miami-Dade and its tenants at

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1 the airport, it talks about network
2 access to the local exchange carrier, it
3 talks about telecommunications terminal
4 equipment and cables, so there's the
5 telecommunications service, is being
6 provided.
7 And then on item 6 down here it
8 says: Payment of rent It says the rent
9 for the system shall be based on the
10 Schedule 1 and be payable without notice
11 or demand
12 And, you know, I don't know if the
13 County is billing themselves and their

582

14 tenants, but clearly you're operating a
15 telecommunications facility and you're
16 receiving revenue for it, and it
17 certainly seems like it meets what's
20 defined there in 32

44

2 Q Are there any other paragraphs or items
3 in the form of the airport rental agreement which
4 support the allegation contained in paragraph 32?

7 THE WITNESS: If you look at the
8 memorandum that's also attached, it says
9 that the County is taking over the SATS,
10 and in this case they're talking about
11 shared tenant services as defined here,
12 but on that second page it lists a series
13 of tenants and it says the installed cost
14 and what the monthly fee is going to be.

15 And you're providing, according to
16 this memo, telecommunications and network
17 access and you're billing them for it,
21 based on just this memorandum, monthly fees.

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19 Q Let me provide to you what's going to
20 be marked as Defendant's 8, which is a memo to
21 various people dated January 16, 1995, from the

583

22 deponent. The subject is Dade County Aviation
23 Department First Set of Interrogatories in Docket
24 Number 931033-TL.

25 (Exhibit 8 marked as requested)

72

1 A Okay.

2 Q Is this the-- have you ever seen this
3 memorandum?

4 A Absolutely I wrote it, and that's my
5 signature there.

6 Q Is this the memorandum that we were
7 joking about at the beginning of the deposition?

8 A That's the one I looked at yesterday,
9 and I had read in Nancy Sims' testimony about it.

10 Q Let me refer you to the opening two
11 sentences of your memorandum, which I'll read it:
12 Southern Bell has an ongoing dispute with DCAD at
13 the Miami International Airport concerning the
14 provision of local service. DCAD is providing
15 shared tenant services under an exemption in the
16 Florida Public Service Commission's rules and
17 regulations.

18 Approximately when did the County
19 become an STS provider?

20 A The County became an STS provider

21 themselves in 2002.

22 Q What is the basis for your answer that
23 the County became an STS provider in 2002, given
24 this January 16, 1995 memo?

25 A This memo, this memo had to do and this

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1 docket had to do with access, demarcation rules,
2 and access to the support structures and stuff,
3 and the fact that over the years that I have been
4 in this job, BellSouth and the County and me
5 being involved, have discussed about access
6 issues, whether or not I have access to conduit
7 to serve my customers.

8 And it was an access issue I
9 probably-- at the time Wi-Tel, W-i-l-T-e-l, was
10 a certificated STS provider and was providing the
11 shared tenant services here at the airport. I
12 probably lumped them together, I probably
13 shouldn't have in stating this, but this whole
14 thing had to do with access, demarcs, when I
15 wrote this

16 And the County, Dade County controlled
17 the infrastructure, Wi-Tel didn't control the
18 infrastructure, and I probably could have been
19 clearer and said that.

20 But, this had nothing to do with

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21 necessarily the shared tenant service provider,
22 had to do with demarcation issues and gaining
23 access to conduit to be able to serve my
24 customers, and whether or not the County was
25 going to allow me to do it or make me lease their

74

1 facility.

2 There was a whole bunch of issues
3 around that time frame that dealt with demarcs
4 and access, and I could have put it a little
5 clearer in my memo, but I wasn't.

6 He was talking about several airports
7 and the access issue. I asked them to look at
8 the other airports in the state at the same time.

9 Q At what point in time did your analysis
10 of whether or not the County was an STS provider
11 change such that your statement today is the
12 County only became an STS provider in 2002, and
13 not back in January 16th of 1995 when you stated
14 that the County was a provider in your memo?

21 THE WITNESS. You purchased the
22 infrastructure from Nextira and have been
23 providing service and billing customers
24 in 2002. Prior to that you had several
25 vendors here, starting with Centrex, then

1 WiTel, then Williams, and then Nextira.
2 these persons providing shared tenant
3 services.

4 When this memo was written, WiTel,
5 they were certificated with the State of
6 Florida, I was having a problem with
7 access and the ability to place my
8 facility out here to serve my customers.

9 Poor choice probably saying
10 specifically that you were, but you were
11 the property owner, and shared tenant
12 services were being provided out here,
13 but they were being provided by WiTel.
14 I probably could have been more clear in
15 the way I should have written this memo.

16 But it had to do with access, didn't
17 have to do with STS provision

18 You look at this, I'm talking about
19 other airports other than Miami-Dade,
20 okay? I was asking to go look, it was
21 demarc, it was access, and that's what
22 that was about.

23 So, hasn't changed about when you,
24 you representing Miami-Dade Aviation
25 Authority, became an STS provider, that

76

1 happened in 2002, but you had vendors out
2 here that were providing shared tenant
3 services to customers that were out here,
6 and that's how I wrote that memo

17 Q This order regarding access to
18 facilities at airports was filed February 1st,
19 1994. In Section II, which is the Resolution of
20 the Dispute, it lays out the background of the
21 dispute between BellSouth and the Dade County
22 Aviation Department, which is now the Miami-Dade
23 Aviation Department.

24 On page 2 it states: DCAD, as a result
25 of the nature of its involvement in the provision

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1 of telecommunications services, is providing
2 shared tenant services. Although DCAD is a
3 shared tenant services provider, pursuant to
4 Rule 25-24.580, Florida Administrative Code, it
5 is generally exempt from the restrictions placed
6 on other STS providers.

7 Then it goes on to explain the rule and
8 some more information.

9 Given this dispute in 1994 and one of
10 the statements in the background findings from

588

11 the PSC in 1994, what evidence or documents
12 support your position that the County only became
13 a shared tenant service provider in 2002?

16 THE WITNESS: Well, what evidence do
17 I have? Again, look at my memo, looking
18 at this, this all resolved around access.

19 If you go back and you look, the
20 dispute concerns the location of Southern
21 Bell's network point of demarcation on
22 the DCAD airport complex, the extent to
23 which DCAD must provide cable support
24 structures, so that this whole thing
25 revolved around those issues, and it says

8

1 issue here, that they had been trying to
2 mitigate the dispute themselves, and were
3 unable to do that.

4 I think what happens is, like when I
5 wrote that memo, when these people write
6 these things it's based on what they have
7 read, what they see

8 At the time this order was written
9 sharedtenant services was being provided
10 at the airport, but it was being provided
11 by WiTel.

12 MiamiDade International Airport was
13 the property owner and owned the support
14 structures and determined who would have
15 access to it

16 You know, why they wrote it and said
17 you were doing it as opposed to WiTel
18 on behalf of, or MiamiDade, I mean you
19 asked me what I thought, how I would
20 interpret it, I cannot tell you for
21 certain that's how they arrived at this
22 decision, but this was an issue about
23 access, okay? That's what this was
24 about.

25 And I mean, that's the best I can

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3 tell you, and I truly believe that

On May 21, 2003, Pedro Garcia was deposed for the first time. Mr. Garcia is the Chief of Telecommunications for the Miami-Dade County Aviation Department. For this deposition, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issues identified and addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

18 Q. Who decided to apply? Who decided you
19 needed to apply?

20 A. I don't believe it was anybody in
21 particular. It was something that it was just
22 decided to -- let's do it -- at the time we were
23 engaged in purchasing the infrastructure from the

590

24 service provider NextiraOne which was -- they were
25 the owners of all the infrastructure at the time.

24

1 That was three years ago.

2 They owned all the telephone switches,
3 the wiring, the network equipment. They owned
4 everything and we were basically leasing from them
5 that equipment and we were paying them as customers
6 before the service provision to everybody in the
7 airport, both STS customers and Miami-Dade Aviation
8 Department staff.

9 So as of February of 2002 we concluded
10 negotiations with them to purchase all of that from
11 them and then at that point we became owners of the
12 equipment and, therefore, we were actually the
13 service providers from that point on. Before that
14 it was them. So that at the time it was considered
15 that -- perhaps it was explored and, you know,
16 whether we should get a license or not for STS
17 provisioning and so forth.

18 Q. So as I understand it, before the sale,
19 the Nextira sale, the decision was that Nextira
20 was -- actually the County's perspective was that
21 Nextira was the service provider?

22 MR. HOPE: Objection.

23 A. Not from the County's perspective. It
24 was the service provider.

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25 Q. So therefore, you did not need a 25

1 certificate?

2 A. We were not providing the services.

3 Q. Now the County is providing the
4 services; is that correct?

5 A. Now the County, yes, is providing the
6 equipment. We own the equipment.

7 Q. You own the equipment and Nextira is a
8 subcontractor?

9 A. Is a subcontractor.

32

22 Q. All right. Now obviously there are
23 references to the P.S.C. on this particular page?

24 A. But the reasons I stated before was that
25 Nextira was the provider of the service and now

33

1 we're engaged in buying the infrastructure so we
2 will become the providers of the service. So
3 obviously that was one of the questions that needed
4 resolution.

5 Q. As I understand it, in light of the fact
6 that the County was going to be the service
7 provider, you had to make a decision whether the
8 County now because of the change in circumstances
9 needed to obtain a P.S.C. certification?

10 MR. HOPE: Objection to form.

11 A. That's right.

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10 Q. Mr. Garcia, are you familiar with an
11 agreement between Miami-Dade County, Florida and
12 Nextira that was entered into early February of
13 2002?

14 A. Yes, sir.

15 Q. Were you involved in the preparation, if
16 you will, of that agreement?

17 A. Yes, I was.

18 Q. What was the general purpose of the 2002
19 agreement?

20 A. The purpose was to acquire from
21 NextiraOne the infrastructure that they had at the
22 airport -- that they own at the airport to provide
23 telecommunications services, including the
24 telephone switches, network equipment and the
25 wiring infrastructure existing at the airport.

1 Q. What do you mean by the term
2 infrastructure?

3 A. Infrastructure is all -- basically the
4 wires that are behind the walls that are running
5 through the airport providing where the information
6 flows to provide the services.

7 Q. Let's go to the 2002 agreement. Had the
8 County been involved in the telecommunications
9 business, so to speak, at the airport prior to

10 that?

11 MR. HOPE: Objection to form.

12 A. The County was basically a customer of
13 NextiraOne prior to that. We were their customers
14 as far as they were providing us the services along
15 with the services they were providing to other
16 tenants of the airport.

17 Q. Before February of 2002 was the County
18 providing in any way telecommunications services to
19 other tenants at the airport?

20 MR. HOPE: Objection to form.

21 A. No.

22 Q. Strike that.

23 A. Nextira was providing the services. We
24 were getting -- I believe it was a 10 percent
25 commission on the services provided to other

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1 tenants of the airport other than the aviation
2 department.

3 Q. Was that just for allowing Nextira to
4 provide it?

5 A. Yes.

6 Q. Did Nextira provide those services
7 pursuant to an RFP, or how did Nextira get to the
8 airport to provide those services? What was the
9 arrangement?

10 A. This was a contract that existed, I
11 think, prior to -- ten years prior to me starting

12 there. I'm not sure how it was awarded. I presume
13 it was a process of an RFP at the time. It wasn't
14 even Nextira. It was Williams. It changed names a
15 few times after that. So in any event, this has
16 been going on for over ten years they've been there
17 providing the services, as far as I know.

18 Q. Let me make sure I understand this. Up
19 until 2002 or February 2002, Nextira or its
20 predecessor, whoever it may have been, provided
21 telecommunications services to tenants of the
22 airport?

23 MP. HOPE: Objection to form.

24 A. To some of the tenants.

25 Q. Some?

1 A. Including the Miami-Dade Aviation
2 Department.

3 Q. Did Miami-Dade County receive some sort
4 of commission or payment from Nextira or its
5 predecessor prior to February 2002?

6 A. We received, I believe, 10 percent of
7 the gross for allowing them to provide the service.

8 Q. Did Miami-Dade County pay Nextira to
9 provide services to the County, or did the County
10 get those services for free?

11 A. We paid them through the nose for the
12 services that they provided us.

13 Q. So on one hand the County was getting
14 10 percent or roughly 10 percent of what Nextira
15 got from other tenants but also the County was
16 paying?

17 A. We were paying and we were paying a lot
18 more than what we were getting for the services.

19 Q. All right. And in February 2002,
20 pursuant to this agreement with NextiraOne, the
21 County became the provider and Nextira became, if
22 you will, a subcontractor; is that a fair
23 characterization?

24 A. That's correct.

6 MDAD or the County was going to acquire

7 the equipment?

8 A. Yes.

9 Q. And that was all of the equipment
10 related to the telecommunications business that
11 Nextira was doing at the airport?

12 A. All the equipment that Nextira owned at
13 the airport, yes, it belongs to the airport now.

14 Q. And for \$6 million plus which is going
15 to be paid over five years?

16 A. Right.

17 Q. Prior to the agreement, Nextira owned
18 the equipment; is that correct?

19 A. Yes.

20 Q. What kind of equipment is this?

21 A. It's telephone switches, the telephone
22 instruments that people use to make phonecalls, the
23 network equipment behind the scenes, supplies,
24 routing switches, all the wiring inside the airport
25 to provide the services, the outside cables

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1 connecting the different buildings, the CUTE
2 equipment. That's basically most of it.

3 Q. And why did the County, if you know,
4 make the decision to purchase the equipment?

5 A. It was a business decision mostly and
6 also a way to control our own infrastructure at the
7 airport instead of having it owned by some other
8 vendor.

1 Q. So the County was going to be the
2 provider to the post 2002 agreement, the County was
3 going to provide the services to the tenants at the
4 airport; is that correct?

5 A. Yes.

6 Q. And that was a change from prior to the
7 2002 agreement?

8 A. That's correct.

Mr. Garcia was deposed for a third time on December 15, 2004. Again, Mr. Garcia was designated as the Defendant's person with the most knowledge as to the issue addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Garcia testified as follows:

16 Q. Would you agree with me that it was the
17 purchase of Nextira's assets that precipitated or
18 caused the County to consider whether or not to
19 file for a certificate with the PSC?

20 A. I don't agree with what precipitated,
21 but it was definitely an event that caused the
22 review of a lot things, because we were, we were
23 buying equipment and we wanted to make sure
24 everything was the way it was supposed to be.

25 Q. Well, then let me ask you in a more

1 open-ended manner so that you can explain it to
2 the Court, what caused the County through you,
3 counsel, Mr. Jenkins, and perhaps others, to
4 consider whether or not to file an application

5 for a certificate of public convenience and
6 necessity with the PSC?

7 A Well, it was more mostly try to get
8 ourself educated, because the Nextira or --
9 was -- had been providing shared tenant services
10 at the airport with the equipment that we were
11 leasing from them, and since we were purchasing
12 the equipment, we reviewed a lot of things to
13 make sure, now that we were the owners of the
14 equipment, that everything that had a relation to
15 that was -- we needed to understand how it worked
16 and whether we were meeting all the requirements,
17 et cetera, of the operation.

18 Q And was one of the things that came
19 into your consideration this issue about your
20 obligations with the Florida Public Service
21 Commission, including whether or not to file a
22 certificate?

23 A Yes.

24 Q And that led to the decision we're
25 talking about today, is that correct: the

28

1 decision not to file?

2 MP. HOPE: Objection to form.

3 THE WITNESS: Right.

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8 A I don't think so, because I'm talking
9 about an Nextira STS. Nextira was providing STS
10 services prior to us buying their equipment.
11 This was I guess the services that they were --

12 the type of STS services, could be, that Nextira
13 was providing.

On August 5, 2004, Maurice Jenkins was deposed. Mr. Jenkins is the Manager of Information Technology and Telecommunications Systems for the Miami-Dade County Aviation Department. Mr. Jenkins was designated as the Defendant's person with the most knowledge as to the issues addressed in that deposition. With respect to the information sought by this interrogatory, Mr. Jenkins testified as follows:

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18 Q. MDAD sends invoices to its customers on a
19 monthly basis charging for the various services,
20 correct?

21 A. Yes, sir

22 Q. The customers when they get the invoice pay
23 MDAD for the services, correct?

24 A. Yes, sir

25 Q. Just like if I have BellSouth as my carrier

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1 at my home and they send me a bill I remit a check to
2 BellSouth, you are sending bills to your customers
3 and the customers are paying you, correct?

4 A. Yes, sir.

5 Q. Likewise, if a customer has a repair problem
6 on their phone, your customer has a repair problem on
7 their phone at the airport they are going to call you
8 to fix it, correct?

9 A. Yes, sir.

10 Q. Just like if I have BellSouth at my home and

600

11 I have a repair problem I would call them. There's
12 really no difference, correct?

13 A. No, sir.

14 Q. And obviously when -- we just talked about
15 MDAD billing the customers and receiving payment
16 That wasn't always the case, correct?

17 A. True. Yes, sir.

18 Q. When did that change?

19 A. Right after the, January 2002, the buyout of
20 Williams

21 Q. It is the case now the customers call you to
22 repair the phones, correct? Just talked about that,
23 the customers now call MDAD if they have repair
24 problems, correct?

25 A. They contact both the department as well as

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1 a call center number as well.

2 Q. With respect to the invoicing and payments
3 that changed in 2002. Prior to 2002, isn't it the
4 case that the prior owner of the equipment and
5 operator Nextera was invoicing the clients and
6 receiving payment?

7 A. Yes, sir.

8 Q. And the county was not involved in that
9 process at all?

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10 A. Yes, sir.

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12 Q. So before January 2002, Nextera owned and
13 operated the telecommunications facility, correct?

14 MR. HOPE: *Objection to form.*

15 A. They owned it. They operated it under a
16 management agreement with the department, yes, sir.

17 Q. And then after January of 2002 the county
18 owned and operated the facility, correct?

19 A. The county owned the facility and we
20 contracted to have someone operate it for us.

21 Q. But aren't we saying the same thing. If the
22 county is operating the facility after 2002, albeit
23 through a management agreement, the county is still
24 operating the facility? You are operating it,
25 correct?

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1 A. We are still operating it, yes.

2 Q. There is no dispute about the fact that you
3 are operating it, correct?

4 A. All right.

5 Q. And you weren't operating it before January
6 2002 because Nextera was?

7 A. Yes, sir

8 Q. There's no dispute about that, correct?

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9 A. Yes, sir.

10 Q. Meaning there's no dispute, you agree with
11 me, right? Sorry. You do agree with me, there is to
12 dispute, right?

13 A. I concur with your last statement.

BellSouth reserves the right to supplement this response at a later date, if necessary, because discovery in this matter is not yet completed, and additional facts responsive to this interrogatory are in the possession, custody or control of the Defendant as the allegation to which this interrogatory is addressed seeks information related to Defendant's conduct.

BellSouth Telecommunications, Inc.

By: Wancy H. Sims
Print: Wancy H. Sims
Its: Director - Regulatory Relations
May 4, 2005

STATE OF FLORIDA)
) ss.
COUNTY OF MIAMI-DADE)

BEFORE ME, the undersigned authority, personally appeared _____

_____ as _____ of BellSouth Telecommunications, Inc., who, after first being duly sworn under oath by me, deposes and says that he/she has read the foregoing Answers to Defendant's First Set of Interrogatories to Plaintiff, and that they are true and correct to the best of his/her knowledge, information and belief.

SWORN TO AND SUBSCRIBED before me this ____ day of _____, 2005

*Notary unavailable as I am on vacation
Wancy H. Sims
5/4/05*

Notary Public

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known _____ or
Produced Identification _____
Type of Identification Produced:

My Commission Expires: