

Marguerite McLean

090430-TP

From: Nmsamry@aol.com
Sent: Thursday, April 15, 2010 5:01 PM
To: Timisha Brooks; Adam Teitzman; ke1671@att.com; mg2708@att.com; kkramer@ststelecom.com; mamarant@ststelecom.com; Tracy Hatch; Filings@psc.state.fl.us
Subject: 09-430 TP CORRECTED COMMENTS
Attachments: STS Corrected Comments to Audit Final KK-AG 4-15-10.pdf

Attached please find STS's Corrected Comments to Audit Final. Thank you.

Nancy M. Samry, F.R.P.

Alan C. Gold, P.A.
1501 Sunset Drive
2nd Floor
Coral Gables, FL 33143
305-667-0475, ext 1
305-663-0799, fax

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Law Offices of Alan C. Gold, P.A.

Attorneys:

Alan C. Gold
agold@acgoldlaw.com
James L. Parado, JD, LL.M.
jparado@acgoldlaw.com
Charles S. Coffey
ccoffey@acgoldlaw.com

1501 Sunset Drive
Second Floor
Coral Gables, Florida 33143
Telephone: (305) 667-0475
Facsimile: (305) 663-0799

Paralegal:

Nancy M. Samry, F.R.P.
nmsamry@aol.com

April 15, 2010

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

Via E-Mail Only: filings@psc.state.fl.us

Re: Docket No. 090430-TP: Saturn Telecommunication Services, Inc. v. AT&T Florida

Dear Ms. Cole:

Enclosed for filing, please find CORRECTED COMMENTS BY SATURN TELECOMMUNICATION SERVICES INC. TO THE FLORIDA PUBLIC SERVICE COMMISSION'S STAFF AUDIT AND EVALUATION AND RECOMMENDATIONS OF AT&T's LEX AND LENS OSS INTERFACES.

Sincerely,

James L. Parado

CC: Robert (Kip Edenfield, Esquire (Via Email: ke2722@att.com)
Tracy W. Hatch, Esquire (Via Email: thatch@att.com)
Timisha J. Brooks, Esquire (Via Email: tbrooks@psc.state.fl.us)
Adam J. Teitzman, Esquire (Via Email: ateitzma@psc.state.fl.us)

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reasons why this Commission should not allow AT&T to retire LENS until it has corrected all of the deficiencies in LEX, and LEX is the functional equivalent of AT&T's retail OSS, RNS.

2. Staff's Audit of the AT&T 22 State implementation of the LEX OSS and the retirement of LENS, reinforces the allegations made by STS in its Amended Petition regarding the deficiencies in LEX. The voluminous amount of substantial deficiencies that the Audit found to exist in LEX as compared to LENS is alarming and serves to prove STS' claims that LEX violates the Order that this Honorable Commission

issued in 1998², several FCC Rules and Regulations ³, 47 U.S.C.A. § 251⁴ and 47 U.S.C.A. § 271⁵.

3. The most significant differences between STS' position and the findings in Staff's Audit are: (i) the deficiencies in LEX should be corrected prior to the retirement of LENS, (ii) the reliance in the Staff's Audit on the approximately nine to eleven old studies done by the state commissions of Michigan, Texas, and California on the 271 relief applications by various BOCs (other than Bellsouth) is completely misplaced and has absolutely no relevance whatsoever on the issue of whether the LEX OSS is

² See ORDER NO. PSC - 98 - 1001 - FOF - TP

³47 C.F.R. §51.311(b) states: "To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to themselves."; 47 C.F.R. §51.313(b) states: "Where applicable, the terms and conditions pursuant to which an incumbent LEC offers to provide access to unbundled network elements, including but not limited to, the time within which the incumbent LEC provisions such access to unbundled network elements shall, at a minimum, be no less favorable to the requesting carrier than the terms and conditions under which the incumbent LEC provides such elements to itself."

⁴ 47 §251(c) (3) *Unbundled Access*, states: "The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, non-discriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."; 47 §251(d)(3) *Preservation of State Access Regulations*, states: "In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that—(A) establishes access and interconnection obligations of local exchange carriers...(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part."

⁵ 47 §271(c) (B) *Competitive Checklist*, states: "Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following... (ii) Nondiscriminatory access to network elements in accordance with the requirements of sections 251(c) (3) and 252(d)(1) of this title...."

comparable to AT&T retail OSS (RNS), (iii) the deficiencies found in LEX in the Staff's Audit will have a far more significant impact than assumed in Staff's Audit.

AT&T Must Provide CLECs Wholesale Preordering and Ordering Systems Equivalent to AT&T's Retail Systems

4. The recommendations in Staff's Audit represent a giant step backwards to CLECs and competition in general in the telecommunications industry in the State of Florida. Without justification or even explanation, Staff's Audit recommends that this Commission abandon safeguards that the Commission previously found essential in the 271 relief hearings in Florida in order to promote competition and protect the smaller CLECs from the monopolistic tendencies of the BOCs.
5. Staff's Audit accurately describes how historically the current AT&T wholesale OSS, LENS, evolved to its present condition. Staff's Audit states; "In November 1997, in Docket No. 960786-TL, the FPSC identified several BellSouth (now AT&T) OSS related problems. One specific problem was that LENS and Electronic Data Interchange (EDI) ordering interfaces did not have electronic-edit-checking capabilities at parity with BellSouth's retail systems. This problem, among several others, resulted in a denial of BellSouth's Section 271 application of the Telecommunication Act of 1996".⁶
6. Further, Staff's Audit recites a prior determination by this Commission, stating; "we believe the same interaction and edit-checking capability must take place when a

⁶ See Staff's Audit page 7.

CLEC is working an order as when BellSouth's retail ordering systems interact with BellSouth's Fuel and Solar databases to check the accuracy of BellSouth's orders".⁷

7. Staff's recommendation also recognized the FCC's position that; "By definition, nondiscriminatory access means that BellSouth provides CLECs access to the pre-ordering and ordering functionalities **in substantially the same time and manner** as BellSouth retail systems."⁸ (emphasis added)
8. This Commission refused to grant BellSouth 271 relief until its retail and wholesale systems were at parity. What has changed? Why should the Commission now retreat from its precedence? Adoption by the Commission of the recommendation in Staff's Audit would reverse the prior orders of the Commission requiring parity between AT&T's wholesale and retail OSS systems, be a giant step backwards for CLECs and competition in the telecommunications industry in the state of Florida and require CLECs in Florida to compete with AT&T utilizing an inferior OSS pre-ordering and ordering system as compared to the OSS system utilized by AT&T's retail division.
9. Staff's Audit goes into great detail about the differences between LEN's on line edit-checking capabilities which locate errors in real time prior to the submission of an order and LEX which checks for errors after an order is submitted. Staff's Audit found that LEX is not as "user-friendly" as LENS and that LEX took longer to place an order than LENS.⁹

⁷ See Staff's Audit page 7.

⁸ See Staff's Audit page 9.

⁹ See Staff's Audit pages 26-29.

10. Staff's Audit fails to adequately compare LEX with AT&T's retail ordering systems.

This deficiency alone mandates that the Commission refuse to follow Staff's recommendations, and requires that Staff adequately compare LEX to AT&T retail to insure AT&T provides CLECs access to the pre-ordering and ordering functionalities **in substantially the same time and manner** as AT&T's retail systems.

11. Staff's Audit simply assumes that LEX is comparable to AT&T's retail OSS because

during the 271 relief hearings, in 2002 the Michigan Commission determined that SBC's wholesale OSS preordering and ordering systems provided CLECs with nondiscriminatory access; during the 271 relief hearing in 1999, the Texas Commission determined that SWBT provided CLECs with nondiscriminatory access; and during the 271 relief hearings, California determined that Pacific Bell provided CLECs nondiscriminatory access. **SO WHAT!!!**

12. The decade-old factual findings of the state commissions in Michigan, Texas and

California, regarding three BOCS other than BellSouth have absolutely no bearing, whatsoever, on whether LEX is presently comparable to AT&T's retail OSS in Florida. Staff's Audit did not establish the comparability, if any, between the retail operating systems of the various BOCs in Michigan, Texas and California with AT&T's retail operating systems in Florida as it existed ten years ago, much less today. Florida CLECs are not competing with the BOC in Michigan, Texas or California; Florida CLECs are competing with AT&T in Florida and require a preordering and ordering system equivalent to AT&T's retail systems. Federal law and Florida law require this parity. Furthermore, Staff's Audit fails to account for

changes in the operating systems in the nine to eleven years since the determination. Staff's Audit fails to account for any changes made in LEX over the same period of time. Instead of attempting to do a realistic comparison of LEX to AT&T's retail OSS (RNS), Staff's Audit superficially addresses the issues by making invalid assumptions and unsupported inferences.

13. At a bare minimum, since parity between AT&T's retail and wholesale OSS systems is so critical and a cornerstone of past decisions of this Commission and of the FCC, this Commission should not allow AT&T to retire LENS until a comparison is made between LEX and AT&T retail preordering and ordering systems, and the two systems are found to be functionally equivalent.

LEX Does Not Have the Edit-Checking Process Previously Ordered by this Commission

14. Nearly 12 years ago in Docket Number 980119-TP, this Commission required BellSouth's LENS OSS to have the same edit-checking capabilities of AT&T's retail.¹⁰ The passage of a dozen years did not diminish the CLEC's need for this edit-checking capability. Orders need to be correct before submitted. Edit-checking capabilities allow orders to be processed more quickly with the resulting savings of time and money to the CLEC.

15. Staff's Audit determined; "With regards to the edit-checking process, LENS generates error messages while a user is populating an LSR and will further require the error to be corrected before the user can move forward in processing an order, but in LEX, the user is not informed of errors on the LSR until after the LSR has been

¹⁰ See Staff's Audit pages 7 and 8.

issued to AT&T. Staff believes the edit-checking process in LEX may cause some delays in the overall time to complete an order.”¹¹

16. Staff’s Audit further stated that “AT&T requires that all of the information on an LSR to be 100 percent accurate. An error as small as an extra space in a data entry field can cause an order to be rejected.”¹² Staff also stated that: “The edit-checking process performed in LENS is on a real-time basis. LENS checks for errors at the same time data is being inputted by a CLEC sales representative.”¹³

17. But this is not how LEX performs the edit-checking according to Staff’s Audit; “The edit-checking process performed in LEX occurs after the LSR is completed and submitted to AT&T for processing...if errors are found, LSR transmits a “Reject” to the CLEC with a listing of the LSR errors.”

18. LEX does not provide on-line edits-checking capabilities in the same timely manner as LENS or AT&T’s RNS and therefore is not compliant with this Commission’s Order, nor the FCC’s rules or AT&T’s statutory obligations pursuant to 47 U.S.C.A. § 271. The substantial difference between LEX and LENS as evidenced in Staff’s Audit substantiates STS’ claim that the edit-checking capability that is found in LENS pursuant to the Order from this Commission is not in LEX and therefore is not at parity to AT&T’s Retail Navigation System found in AT&T’s Southeast Region.

LEX Fails in Other Significant Functionalities

¹¹ See Staff’s Audit page 31.

¹² See Staff’s Audit page 25.

¹³ See Staff’s Audit page 26.

19. Staff also found many other substantial deficiencies or areas of concern regarding LEX. Many of these defects or concerns, in and of themselves, are sufficient grounds for this Commission to prohibit the retirement of LENS until the deficiencies are corrected or the concerns addressed and alleviated.
- a. Staff's review of the CLEC defects submitted since November 2009 release revealed 13 currently open LEX defects. Staff has not stated that these defects have been resolved in this audit. (Page 15.)
 - b. Staff has a significant issue with flow-through of orders and believes that AT&T should perform a root cause analysis of the reason for the poor flow through. (Pages 4 and 5)
 - c. Staff does not believe that AT&T can support its statement that LEX will allow for the processing of "all" product types. (Page 4.)
 - d. Staff believes that STS may not be able to order or effectively order commingled arrangements via LEX. (Page 4.)
 - e. Staff strongly believes AT&T has not adequately evaluated and updated all appropriate documentation CLECs are required to use to assist in the placement of these orders through LEX interface. (Page 4.)
 - f. Staff's position is further supported by a matrix of additional concerns that was provided by STS following the demonstration. The concerns were provided to staff on March 1, 2010. (page 5)
 - g. Staff believes that the lack of volume testing in the production environment represents a possible risk for AT&T (and by defacto a serious risk to CLECs if LEX has a failure when stress to the requirements of a normal business day) (page 14)
 - h. Staff is concerned that once all CLECs have migrated to LEX the back-end system may not be able to effectively respond to CLEC inquires and orders. (Page 14.)
 - i. Staff found that two metrics failed equity comparison with a benchmark. The **UNE Loop** CLEC aggregate metric results were 76.47% of valid LSRs flowed through compared to the benchmark of 85%. The **LNP** CLEC aggregate metric was 46.36% when compared to the benchmark of 95%. (This is specifically troubling since if the Local Number is ported incorrectly the End-User will have an out of service condition). (page 16)

- j. Staff also stated that “there were 12 other equity instances that had no volumes on which to determine results.” So there is no determination as of yet of the equity instance. (page 16)
 - k. Staff is concerned regarding the lack of data on which to base a conclusion for the 0-9 Firm Order Commitment Timeliness measure. (page 17)
 - l. Staff also states that “Based on staff’s high-level observations of the LENS and LEX interfaces, it was clearly evident to staff that the data entry screens in LEX are not as user-friendly, and are initially more difficult to comprehend when compared to LENS”. (page 4)
20. The above list of deficiencies and concerns affects not only STS but the entire CLEC community. The above matters were not discovered by STS but rather by Staff when it conducted its Audit. While AT&T has a right to make its operating systems uniform in all states in which it operates, this does not mean that CLECs in Florida should be penalized and be placed at a competitive disadvantage, because the wholesale operating systems in other states were inferior to Florida’s. There is no indication that AT&T is degrading its own retail operating systems to be equivalent with those systems in other states in which AT&T does business. STS competes with AT&T in Florida. It is only asking for what it is entitled to according to the previous pronouncements of this Commission. It wants to compete on a level playing field. This Commission should not allow AT&T to retire Lens until AT&T has addressed the concerns raised in Staff’s Audit, corrected the deficiencies found in Staff’s Audit, and LEX is determined to be in parity with AT&T’s RNS in Florida.

Commingling Concerns

21. STS supplies much of its telecommunication services by commingling. STS routinely commingles DS 1 UNE loops with Special Access transport with both elements

ordered through AT&T. Since early 2006, STS has attempted, through AT&T to commingle UNE Voice Loops with Special Access Transport¹⁴.

22. AT&T's retirement of LENS and its replacement with LEX raises significant concerns that AT&T will continue to erode the protections and safeguards given to all CLECs with regards to the 14 point checklist provided in section 271.¹⁵ It is evident that LEX does not provide the same edit-checking capabilities that this Commission insisted upon when it initially refused to grant AT&T 271 relief. It was only after AT&T brought its wholesale systems in parity with retail, did the Commission recommend the granting of such relief.

23. Staff's Audit contained two recommendations that affected the ordering of commingled arrangements. Staff's recommendation number 4 stated "Staff recommends that AT&T update all appropriate CLEC documentation for commingled orders via the LEX interface."¹⁶ Staff's Recommendation Number 5 states; "Staff

¹⁴ The attempts to commingle Voice Grade Loops with Special Access Transport have been unsuccessful, due to the refusal of AT&T to properly do the conversions. To date AT&T has converted approximately 80 lines to such arrangement. AT&T's actions or more properly, inactions, has forced STS to file an action before the FCC alleging among other allegations the AT&T has breached its statutory duties under 47 U.S.C.A. § 271. AT&T does not provide access on a non-discriminatory basis access to UNE and UNE combination commingled with special access. Currently AT&T does not allow for the access of existing circuits such as by way of example simple phone lines (POTS) that small business owners and residential customers routinely use in Florida. In 2003 the FCC provided that the ILEC must provide to CLEC non-discriminatory access to UNE and UNE combinations in a commingled arrangement with special access in order that the ILEC complies with the terms of Section 251 (c) (3) and Section 271 (Competitive Checklist). It is expected that there will be a determination by the FCC on STS' claims against AT&T within the next 6 months.

¹⁵ The inability of CLECs to access existing circuits [network elements] from another provider whether the network elements are commingled with special access or not is a violation of Section 271 Competitive Checklist, and comes under the sole authority of the FCC. Section 271 (B)(ii) nondiscriminatory access to network elements in accordance with the requirements of section 251 (c)(3) and 252 (d) (1).

¹⁶ See Staffs Audit Report page 5.

recommends that AT&T, STS, and staff continue to work together to resolve the specific LEX ordering issues raised by STS in the March 1, 2010 matrix”.¹⁷

24. Inexplicably, Staff recommends that the recommendations numbers 4 and 5 be achieved after LENS is retired.

25. STS agrees with recommendations 4 and 5 but in light of AT&T’s history of flagrant violations of law and refusal to commingle Voice Grade Loops, STS strongly urges this Commission to require AT&T to comply with all the recommendations in Staff’s Audit before LENS is retired.

26. The facts which show that AT&T is deliberately attempting to evade and/or forestall its obligation to commingle Voice Grade Loops include but are not limited to the following:

- a. In approximately late 2006 pursuant to a Confidential Settlement Agreement, AT&T made available to STS a Bulk Migration Work-around Process (WAP).¹⁸ STS recently discovered that the WAP was only made available to STS and no other CLEC. Although AT&T was required to file this Confidential Settlement agreement with the state commission in Florida pursuant to 47 U.S.C.A. §252, as it was an Interconnection Agreement, AT&T refused to file the same.^{19 20}

¹⁷ See Staffs Audit Report page 5.

¹⁸ Although the WAP was defective and non-functional, it was designed to allow for the conversion through a REQTYP B (conversion of a WLP to a commingled arrangement with Number Portability) of existing circuits to SL 2 UNE loops in a commingled arrangement with special access

¹⁹ See *In the Matter of Qwest Corporation Apparent Liability for Forfeiture*, 19 F.C.C.R. 5169 (2004) (“In this Notice of Apparent Liability for Forfeiture (“NAL”) we find that Qwest Corporation (“Qwest”) is apparently liable for willfully and repeatedly violating its statutory obligations in section 252(a)(1) of the Communication Act of 1934, as amended (the “Act”) by failing to file 46 interconnection agreements with the Minnesota Public Utilities Commission (“Minnesota Commission”) and Arizona Corporation Commission (“Arizona Commission”) for approval under section 252. Based on our review of the facts and circumstances surrounding this matter, we find that Quest is apparently liable for a total forfeiture of \$9 million.”)

²⁰ Since AT&T does not allow, nor have they provided a process to convert existing circuits to UNE and UNE Combinations to a commingled arrangement pursuant to section 251 (c)(3), and section 271, other than the WAP provided to only one CLEC in one State²⁰, AT&T has also failed to abide by the statutory requirements of section 252. “The *Declaratory Ruling* noted

- b. Although in the FCC proceedings, AT&T claimed that commingling an UCL-ND or SL-1 voice grade loop with special access transport is technically infeasible, despite requests for the same by STS for such an arrangement, AT&T has failed to prove to any state commission its technical infeasibility in violation of 47 C.F.R. § 51.311 (b) and 47 C.F.R. § 51.315 (e)
27. During the Audit procedure, AT&T presented a demonstration of various ordering types through LEX to both STS and FPSC Staff.²¹ Upon the demonstration of LEX with the ordering process for commingling, both Staff and STS had numerous questions of AT&T that were taken as “action items.” Many of the questions had to do with perceived flaws in the methodology and documentation supporting the placement of those orders. Specific examples include:
- a. AT&T had not issued an Accessible Letter nor provided documentation that supports the use of the “Other” Category when identifying the “Loop Type” in three of the scenarios. (See page 33)
 - b. AT&T’s business rules (i.e., the Local Service ordering Requirements and the Local Ordering Handbook) for the Service & Product Enhancement Code (SPEC) field required on commingled orders appear to conflict with one another. (See page 33 of Staff’s Audit)
 - c. The Process for populating the “Design Routing Code (DRC)” field on the LSR on orders for designed circuits where a CLEC is requesting a Design layout Report (DLR) is not defined in the business rules. (See page 34 of Staff’s Audit)

some reasonable but narrow exceptions to the general rule that any agreement relating to the duties outlined in sections 251(b) and (c) falls within section 252(a)’s filing requirement. Such exceptions, however, flow from the general standard of ongoing obligations. Specifically, we found that agreements addressing dispute resolution and escalation provisions relating to the obligations set forth in section 251(b) and (c) do not have to be filed if the information is generally available to carriers (footnote omitted). We stated that settlement agreements that simply provide for back-ward looking consideration that do not affect an incumbent LEC’s ongoing obligations relating to section 251 do not need to be filed.” *See In the Matter of Qwest Corporation* at 5181. In the Settlement Agreement it provided for a WAP for the accessing of UNE and UNE Combinations for commingling for one CLEC in one State, Florida.

²¹ STS asserts that this “demonstration” was in fact a dog and pony show put on by AT&T to impress staff, with predetermined and contrived results, not an actual demonstration of what occurs in a real time ordering situation. Despite the controlled and contrived nature of the demonstration, the defects in ordering commingled arrangements were clear.

- d. The process for obtaining a “Project ID” is not defined in AT&T’s business rules (i.e., Ordering Interval Guide) for ordering SL-2 commingled loops that are project managed. (See page 34 of Staff’s Audit)
 - e. The process and documentation regarding ordering limitations per Wire Center for loop Commingling Arrangements with special access is not provided in AT&T’s business rules.²² (See page 34 of Staff’s Audit)
 - f. The Bulk Migration “work-around” ordering scenario presented by AT&T is not defined in any of AT&T’s business rules. (See page 34 of Staff’s Audit)
 - g. The process and documentation for ordering EELS is not provided in AT&T’s business rules. (See page 34 of Staff’s Audit)
28. Following the demonstration, STS provided a detail matrix to staff that documents the various issues with LEX for the types of service requests that STS believes it will be ordering. The matrix is organized by service order type, activity type, and type of service. The matrix also identifies applicable AT&T business rules documentation. STS pinpointed specific concerns where AT&T business rules are in conflict with one another or the LEX interface.
29. Additionally, Staff does not believe that LEX will allow ordering for the conversion of UNE and UNE combinations for commingled arrangements with special access, Staff’s Audit stated: “Based on the errors revealed during the demonstration, staff does not believe AT&T can support its statement that LEX will allow for the processing of “all” product types. Staff believes that STS may not be able to order or effectively order commingled arrangements via LEX. It is important for STS and all

²² The limitations that Staff is referring to is found in the Settlement Agreement attached, which limited the conversion process for the Bulk Migration Work-Around Process, to 2,500 (WLP) lines, and 14 Serving Wire Centers. When STS questioned AT&T with Staff as to whether these limitations applied to all CLECs, AT&T stated that it did. Since the Settlement Agreement provided for the WAP, and limited to one CLEC and one State, as STS discovered pursuant to the discovery in the FCC action, it is reasonable to understand why AT&T has not provided this process or the limitations of the process in the business rules.

CLECs to be allowed access to these network elements. Staff strongly believes AT&T has not adequately evaluated and updated all documentation CLECs are required to use in the placement of these orders through LEX interface.’²³(emphasis added)

30. Based upon the AT&T’s past history on commingling and the severity of the problems that Staff found in the ordering process for commingled arrangements, AT&T should not be allowed to retire LENS until it satisfied all recommended corrective items in the Audit including numbers 4 and 5.
31. Staff believes that STS may not be able to order or effectively order commingled arrangements via LEX. It is important for STS and all CLECs to be allowed access to these network elements.
32. How can LENS be retired until Staff has assured this Commission that LEX can effectively allow for the ordering of commingled arrangements? Staff’s recommendation that AT&T retire LENS and fix the problems regarding commingling at some undefined time in the future is not compliant with State or Federal law, the rules and regulations of the FCC or the case law that Staff stated in their Audit. Furthermore, this deficiency not only affects STS but affects all CLECs. There can be no doubt that AT&T is able to provide for themselves on a timely basis for the ordering and provisioning of the same network elements allowed through commingling, and STS and all other CLECs should be able to order the same. “Sometime in the future” is not allowed by the Act, simply because it discriminates in favor of AT&T and against the other CLECs that do commingling.

²³ See Staff’s Audit page 4.

33. As a matter of law under section 271, the inability in LEX to access network elements under section 251 (c)(3) means the Commission cannot retire a means of accessing elements provided under section 271 (LENS) and replace it with a pre-order and ordering system that does not allow for the accessing of these same network elements. This is further mandated since there is no other method that AT&T provides in the Southeast region for the accessing of existing network elements in a commingled arrangement other than LENS. Thus the retirement of LENS would violate the non-discrimination standards set forth in 47 U.S.C.A. § 251 (c) (3).
34. If there were another means of accessing such existing network elements to a commingled arrangement with special access, the recommendation of staff would have at least some marginal merit, but since there is none, such recommendation by Staff is not only without merit, but violates a clear Federal Statute.
35. At a minimum, this Commission cannot rule on the elimination of a current documented method of accessing network elements to a commingled arrangement using special access²⁴, until the FCC has determined that AT&T has, or has not violated section 271 and issued an Order. If this Commission allows for the retirement of LENS with the replacement of LEX, which staff has stated they do not believe it will allow for the commingling of such UNE and UNE Combinations to a commingled arrangement with special access, and the FCC issues a finding that AT&T has violated the rule of law, then this Commission would have allowed for

²⁴ The Bulk Migration Work-around Process although defective has been shown to the FCC that this is the only method that AT&T has developed to access existing network elements for UNE and UNE Combinations to a commingled arrangement. Although it was developed for one CLEC and in one State (Florida), and has significant limitations placed upon the process by AT&T, it still is the only method of accessing such UNEs.

AT&T's continuing violation of the Telecom Act and STS and other CLECs will continue to be barred from competitive access to UNE and UNE combinations pursuant to section 251 (c)(3).

Survey Shows a Significant Number of CLECs Dissatisfied with LEX

36. A section of the Staff's Audit consisted of a survey on whether CLECs in Florida are satisfied with LEX. There are a number of concerns regarding this survey.
37. In the Audit, Staff observed that AT&T provided testing for LEX last year and only two CLECs attended the testing²⁵. This is incorrect, as the meeting was a Pilot Program called "Train the Trainer." AT&T never advised STS of the program because STS was not providing services outside of the Southeast Region. STS only became aware of the program after it objected to the retirement of LENS to the Commission, and AT&T's counsel advised STS' counsel of the session which was to take place in Birmingham, Alabama. It is STS' belief that any CLECs that were only providing services in Florida and/or in AT&T's Southeast Region were not informed of this "Pilot Program". Birch apparently was invited since they operated outside of AT&T Southeast Region.
38. This is of significance, since based upon the above, it is possible that AT&T did not provide Florida CLECs with the training necessary to use LEX as compared to LENS and therefore the CLECs are unaware of its deficiencies and are unprepared for the retirement of LENS.
39. It must also be noted that the Pilot Program in Birmingham, Alabama was not really a training system. Although only two CLECs, including STS, attended the program,

²⁵ See Staff's Audit pages 14 and 15.

AT&T refused to answer any questions from STS regarding the ordering of commingled arrangements, but rather AT&T informed STS that this would be addressed at a subsequent private session²⁶.

40. STS is also disturbed about the methodology utilized to conduct the survey. It does not appear to be based on any acceptable principles or parameters for conducting surveys. Therefore it is questionable what, if anything of value can be ascertained from the survey. For example AT&T reported that 53 CLECs use LEX in AT&T's Southeast region as compared to 164 CLECs still using LENS.²⁷ Neither Staff nor AT&T has stated whether any of the 53 CLECs in the Southeast were also using LEX in other AT&T regions; if so, for how long had they been using LEX, and whether the CLECs had already developed or were in the process of developing systems to integrate into LEX to make up for its deficiencies. These CLECs would probably want to continue to use LEX in the Southeast region. This Commission should question why such a large number of CLECs still use LENS²⁸ especially if LEX is equivalent to LENS.

41. Staff then determined that of the 24 CLECs certificated in Florida only 14 were actually using LEX.²⁹ Without more information, this statement reveals nothing. It remains unknown how many of these CLECs are using LEX in a region other than

²⁶ STS believes AT&T's requirement that training regarding commingling be conducted in a private session was done to avoid advising other CLECs of the availability of commingled arrangements.

²⁷ See Staff's Audit page 35.

²⁸ 24 of these CLECs are in Florida. See Staff's Audit page 35.

²⁹ See Staff's Audit page 35. It is also notable that if 24 CLECs certified in Florida are using LEX in other states, why are only 14 CLECs actually utilizing LEX in Florida. If LEX is, as AT&T represents, significantly better than LENS, all 24 CLECs should be using LEX in Florida. This anomaly remains unexplained in the limited data contained in the survey.

- AT&T's Southeast Region, and how many are either a BOC or ILEC in other AT&T regions. This information would have a significant effect on the results of the survey.
42. For instance a BOC, e.g. Verizon, may be using LEX in AT&T regions other than AT&T's Southeast Region and may have developed systems for the integration of its systems with LEX. Verizon would have had the luxury of time to develop this integration that CLECs only in Florida using LENS would not have been able to develop. It would be understandable that Verizon would find LEX to be their choice of OSS over LENS.
43. Second it is not clear who actually answered the staff questions with regards to LEX and LENS comparisons. For example, Staff may have discussed LEX with individuals who are managers that are not in the trenches and are not completely involved with day to day ordering of network elements through AT&T's OSS. For instance Staff has not stated how many hours and orders did the individual or company representative responding to the survey complete in LEX and for what time period versus those similar orders placed in LENS.
44. Also Staff did not identify all of the order categories that the CLECs can order through LEX. For instance, a company such as a cable company may only need LEX for number portability, so the issues, such as the pre-order edits, that STS has brought up would not concern them. On the other hand, there may be issues with CLECs that have residential and small business customers with significant orders volumes for access to network elements. These CLECs would be concerned with the additional time in LEX to find the error and then to resolve the error because of the lack of pre-order edits, especially when a live customer is on the phone. STS has provided a

video to the Commission pursuant to its complaint demonstrating examples of these types of issues.

45. Staff in their survey asked 14 CLECs as to the **ease of use** when comparing LEX to LENS. Although this would appear to be a simple question, there are many variables that need to be considered, including but not limited to, what type of orders are being placed, how much experience with LEX does the CLEC have, what training processes for LEX does the CLEC provide to their staff, does the CLEC have a program that provides for their own on-line edit-checking capability, if the CLEC has such a program, how long had the CLEC been using LEX in states other than the Southeast Region, and what relationship does the CLEC have with AT&T. These variables could have a significant impact on the interpretation of the responses to this question.
46. Setting aside the above variables, Staff stated that 2 CLECs answered that LEX is easier than LENS. It is STS' understanding that Verizon was one of the CLECs that answered that LEX was easier than LENS. STS must question whether Verizon's response should have even been considered in the survey. Verizon is a BOC, and is or has been a member of USTA, as has AT&T. Verizon has assets that are far more significant than most CLECs, has been operating in AT&T's regions outside of the Southeast region and has used LEX for years.
47. It should be noted that of the fourteen CLECs that responded to the survey, 6 (43%) answered that LEX is harder to use than LENS³⁰. The Florida Public Service Commission should be concerned that a statistically significant number of CLECs

³⁰ See Staff's Audit page 35.

- find that LEX is more difficult to use, within the scope of the limited statistical relevancy of Staff's survey.
48. The next survey question Staff poses in the survey is to the **functionality** when comparing LEX to LENS.³¹ STS is concerned as to the statistical relevancy of the question. Once again, the survey question is overly broad. First what functionality is staff referring too? Which CLECs responded to the Survey and what functions are vital to each CLEC? For instance Comcast may only use one specific function with LEX; the other functionalities are not their concern. One respondent to the survey is Verizon, a BOC, whose response should be given limited weight, if any, for the reasons previously given.
49. Despite the above concerns about the validity of the question above, five of the CLECs answered that LEX's functionality is not as good as LENS.³² This is a statistically significant and relevant number, as a large percentage of CLECs believe that LEX's functionality is inferior to LENS.
50. If this ratio were to be expanded to the number of CLECs currently using LENS in the Southeast region according to Staff, that would mean 35% of the 164 CLECS or 57 CLECs could potentially have a similar response, namely, LEX's functionality is inferior to LENS.
51. The relevancy of this number cannot be overlooked. In 1998 a single CLEC, Supra, contested the parity of LENS with AT&T's RNS as not having on-line edits and functionality that was the same quality as BellSouth's RNS ordering system. Based on the requirements of law and not a popularity contest, this Commission ordered

³¹ See Staff's Audit page 35.

³² See Staff's Audit page 35.

BellSouth to correct the deficiencies and denied BellSouth's request for 271 relief until the deficiency was corrected. In the Audit, Staff is telling the Commission that it is not only one CLEC having issues with LEX, but rather five CLECs in a very limited survey having issues. Proportionally this represents a large number of CLECs in Florida. Therefore, the retirement of LENS would adversely affect a significant number of CLECs in Florida that have yet to migrate to LEX and who are still using LENS.

52. The next survey question that Staff poses to the fourteen CLECs is “**What would you say about the timeliness (time to place an order) when comparing LEX to LENS?**”³³ Again the question is overly broad. For example, what type of order is the CLEC comparing? Is it an “address validation”; is it a “Number Port” or is it migrating an existing service to a CLECs network for a business customer that has multiple lines and multiple locations? Since the survey is so overly broad and non-specific, with no evaluation of independent variables, or base line “null hypothesis”, this Commission cannot infer anything of relevance from the response.
53. Aside from the flaws of this survey, it is significant that four CLECs stated that LEX is not as timely as LENS. This is a significant number if the survey was correctly applied on a purely statistical basis, considering all possible variables. With such a high number stating that LEX is not as timely as LENS, it seems clear that LEX is not at parity with LENS.
54. The next concern is Staff's statement: “Approximately 46% of the CLECs state that LEX and LENS take about the same time to process and [sic] order. Staff's

³³ See Staff's Audit page 35.

observations of side-by-side comparisons of the two interfaces supports the opinion that LEX is harder to use than [sic] LENS, and the functionality and timeliness are about the same between LENS and LEX.”³⁴ STS questions the validity of Staff’s observations. It is not disclosed, who was demonstrating the comparisons. Was it AT&T, a CLEC, or an independent third party? Since Staff has no training in a real life order entry process and had to rely on an observation, the party demonstrating the comparisons becomes significantly important. For instance, when AT&T demonstrated LEX to both Staff and STS, the demonstration was a staged event; in other words it was not a real life event. On the contrary, when STS wanted to use LEX in a real life conversion of an existing circuit, AT&T refused to perform that test, because it was not part of a scripted demonstration.

55. Furthermore, when AT&T was demonstrating LEX for the ordering of a Commingled arrangement, the demonstration failed, which perplexed AT&T since they explained to both Staff and STS that it worked in the “lab”. Again AT&T was attempting to demonstrate a foregone conclusion. If AT&T wanted to demonstrate that LEX and LENS were functionality equivalent with regard to timeliness, it is obvious that it would not be in their best interest to demonstrate that LEX was **not** as timely or as functional as LENS. Since it appears that Staff relied upon demonstrations by AT&T instead of doing their own independent testing, the results are suspect. It is especially disconcerting, that despite AT&T controlling the demonstrations regarding LEX, Staff found so many deficiencies. Based on that fact alone, one can safely predict a

³⁴ See Staff’s Audit page 35

disaster will occur when LENS is retired and CLECs are forced to obtain services from AT&T through LEX.

56. The next major concern to STS was Staff's statement that "Staff also asked the CLECs if the differences in online edits between LEX and LENS hampered their ability to do business in any way.³⁵ "Eleven of the 13 CLECs answered 'no' to that question. Only two said that it did. When asked if they have any concerns about the approaching LENS retirement, seven said they had concerns and six stated that they did not." Staff then listed ten specific concerns that the CLECS expressed, including; "Takes more time to place an order in LEX: **2 minutes in LENS 10-15 in LEX** [emphasis added].³⁶ Another CLEC concern was: "Online edits are troublesome."³⁷ Additional CLEC concerns included: "Error handling is not the same"; "Receiving invalid errors"; "Error processing yields invalid information"; and "Learning curve for LEX is steep".³⁸

57. The CLEC concern in the survey that it takes 10-15 minutes to process an order in LEX as compared to 2 minutes in LENS³⁹ is extremely disconcerting, and if accurate mandates that LENS not be retired until this major deficiency is corrected. The significant difference in time to process an order between the two systems not only affects the marketing and sales capabilities of the CLEC as compared to AT&T, it significantly increases the Cost of Sales and or the Operational Costs to the CLEC as compared to AT&T's RNS system. For example assume the "worst case scenario"

³⁵ See Staff's Audit pages 35 and 36.

³⁶ See Staff's Audit page 36.

³⁷ See Staff's Audit page 36.

³⁸ See Staff's Audit page 36

³⁹ See Staff's Audit page 36

that to place an Order for a small business customer takes a CLEC 15 minutes to process in LEX as compared to 2 minutes in LENS. That would represent an increase in cost of 750%, if the Commission assumes a CLEC processes 200 orders per day using 10 representatives with an effective work day of 7 hours with each representative doing an average of 20 orders in that work day. If one extrapolates the increase in time that LEX places upon the CLEC, the production ability of each CLEC representative could be negatively impacted almost 750% by the increase in time to complete the order. Where the CLEC representative could have processed 20 orders in LENS, LEX has reduced that capability to 2.6 orders per day. In order for the CLEC to maintain the same production capabilities as with LENS, in LEX the CLEC needs to add an additional 7 to 8 representatives. If one assumes that each representative makes ten dollars per hour, an average cost to the CLEC per day under LENS would be \$1,600.00 plus the cost of two managers each making an average of \$142.00 per day each (each manager supervises 10 representatives) or a cost to the CLEC of \$284.00. This is a weekly cost to the CLEC of \$9,420.00.

58. Now consider the cost increase to the CLEC who now has to use LEX to process the same number of orders—7.5 representatives being paid at \$10.00 per hour and a 7 hour work day, is an increase in cost to the CLEC of \$600.00 per day, plus the additional cost of a manager to supervise the additional representatives at \$142.00, times a five day work week is an increase of \$3,710.00 per week. This is an increase in the cost of sales to the CLEC of \$192,920.00 per year just to match the production in sales and order processing that they enjoyed using LENS.

59. This becomes even more magnified when using Staff's survey as to the number of CLECs in the Southeast Region that are still using LENS, which is 164. The cost increase to the industry is \$31,638,880.00 per year.
60. It is understandable that AT&T wants to retire LENS and move to LEX so as to save money and the cost to them in having to maintain two independent OSS ordering systems.
61. Although the example given above is a potential "worst" case example, and is based solely on the information that Staff provided in their survey, the increased cost to the CLEC industry from the increase in time to process an order may very well be a real number. A thirty one million dollar increase in cost to the CLEC industry caused by AT&T's retiring LENS and replacing it with LEX is neither fair nor reasonable. It would allow AT&T to have operational cost efficiencies that they do not give to the CLECs and would not only violate 47 C.F.R. §§51.311(b) and 51.313(b), also violates 47 U.S.C.A. §§ 201 and 202.⁴⁰
62. AT&T, like many other CLECs, markets a sale to a customer while the customer is on the phone. AT&T's representative has the ability to convert the customer while the customer is on the phone in the sales process. With RNS' on-line edit capability the AT&T sales representative can submit a timely order without errors. A CLEC using

⁴⁰ 47 U.S.C.A. § 201(b) states; "All charges, practices, classifications, and regulations for and in connection with such communication services, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful" 47 U.S.C.A. § 202(a) stated; "It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classification, regulations, facilities, or services for or in connection with like communications service, directly in indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage".

LENS has the same opportunity. But once LENS is retired and a CLEC is using LEX, that quality of services and access to network elements is now taken away. It is unlikely that a customer would stay on the phone for 10-15 minutes while a CLEC's representative prepares and submits an order. There simply is not parity between the systems. LEX is discriminatory to CLECs and gives AT&T's retail representatives a significant competitive advantage.

63. All of the questions in the surveys are problematic for reasons similar to those stated above.

Audit Methodology

64. STS acknowledges and appreciates the very hard work that Staff has done to provide for the Audit of LEX in comparison to LENS.

65. According to STS' experience and the Audit document, the Audit was done by Ms. Lisa Harvey and Mr. Jerry Hallenstein.

66. The methodology was getting the information compiled in the report via company (AT&T) responses to document requests, on-site interviews with key personnel at AT&T and STS, a survey of Florida CLECs currently using the LEX interface, and documents filed in the FPSC Docket No. 090430-TP. Specific information collected includes:

- a. The LEX test plan and testing done to ensure order accuracy and timeliness of orders process through LEX.
- b. A hands-on demonstration of the LEX and LENS interfaces.
- c. A summary of the LENS functionality that has been incorporated into LEX interface.
- d. Side-by-side comparisons of LEX and LENS.

- e. The number of confirmed LEX orders by Florida and southeast CLECs by month since implementation.⁴¹
67. When this methodology is compared to what was provided to ensure that LENS provided the same quality of services as AT&T's RNS, there is a significant difference:
- a. The third-party OSS test, conducted by KPMG Consulting was designed to provide evidence of the adequacy of BellSouth's OSS, as required by the Telecommunication Act. KPMG Consulting's Final Report represents the culmination of 30 months of testing activity involving the joint efforts of Florida CLECs, KPMG Consulting, FPSC staff, and BellSouth. During the course of the test, 22 exceptions and 13 observations remained open. The FPSC considered the deposition of these items during the course of BellSouth's Section 271 proceeding. The FPSC opined that the report results testified to a quantum leap in BellSouth's OSS support capability and delivery during the time between the inception of Docket No. 960786-TL in November 1997 and the completion of this test in July 2002. Based on the results of the completed KPMG Consulting testing, the FPSC found that BellSouth was providing nondiscriminatory access to its OSS, including LENS.
68. Although it is clear that both Ms. Harvey and Mr. Hallenstein put considerable effort into their Audit, it is clear that they did not have the available time, facilities or resources to provide the same thorough type of testing and auditing capabilities that was provided by KPMG.

Conclusion

69. Although Staff's Audit is significantly flawed due to the conditions and limitations that they faced, it is still clear that LEX provides less than favorable access in functionality, ease of use, order entry, learning skills, on-line-pre-order-edit capabilities, timeliness, accuracy, and the inability to access UNE and UNE combinations of existing network elements in a commingled arrangement with special access than what AT&T provides to themselves in their Southeast Region including

⁴¹ See Staff's Audit pages 2 and 3.

Florida through their RNS retail ordering system. Therefore such an implementation of LEX and retirement of LENS is backsliding to a discriminatory access to network elements, in violation to the standards set forth in section 271 of the Act, and the Orders provided by this Commission. Therefore this Commission should stay the retirement of LENS until such time as all the recommendations provided by Staff have been successfully completed to the full and complete satisfaction of the FPSC Staff and STS.

70. Also this Commission should require that Staff evaluate and compare LEX with RNS and update Staff's Audit.

WHEREFORE, the Florida Public Service Commission should reject the recommendations that Staff has made in Docket No. 090430 –TP and prohibit AT&T from retiring LENS until it is demonstrated that LEX is equivalent in all material aspects to RNS.

Respectfully Submitted,

s/ Alan C. Gold
Alan C. Gold (Florida Bar No. 304875)
James L. Parado (Florida Bar No. 580910)
Attorney e-mail address: agold@acgoldlaw.com
jparado@acgoldlaw.com
ALAN C. GOLD, P.A.
1501 Sunset Drive
2nd Floor
Coral Gables, FL 33143
Telephone: (305) 667-0475
Facsimile: (305) 663-0799

CERTIFICATE OF SERVICE
Docket No. 090430-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail this 15th day of April 2010 to the following:

Earl E. Edenfield, Esquire
Tracy W. Hatch, Esquire
Manuel A. Gurdian, Esquire
c/o Gregory R. Follensbee
AT&T Southeast Legal Dept.
150 South Monroe Street, Ste. 400
Tallahassee, FL 33130
Tel. No. (305) 347-5561
Facsimile: (305) 577-4491
Email:ke2722@att.com; mg2708@att.com

Timisha Brooks, Esquire
Adam J. Teitzman, Esquire
Staff Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Tel. No. (850) 413-6212
tbrooks@psc.state.fl.us
ateitzma@psc.state.fl.us

s/ Alan C. Gold
Alan C. Gold (Florida Bar No. 304875)