

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 110087-TP

NOTICE OF ADOPTION OF EXISTING
INTERCONNECTION, UNBUNDLING,
RESALE, AND COLLOCATION AGREEMENT
BETWEEN BELL SOUTH TELECOMMUNICATIONS,
INC. D/B/A AT&T FLORIDA D/B/A AT&T
SOUTHEAST AND IMAGE ACCESS, INC.
D/B/A NEWPHONE, INC. BY EXPRESS
PHONE SERVICE, INC.

VOLUME 2

Pages 202 through 315

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Thursday, May 3, 2012

TIME: Commenced at 9:30 a.m.
Concluded at 2:53 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

APPEARANCES: (As heretofore noted.)

FLORIDA PUBLIC SERVICE COMMISSION

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(Transcript follows in sequence from
Volume 1.)

CHAIRMAN BRISÉ: Okay. We are going to
reconvene at this point.

Ms. Kaufman, you may redirect.

MS. KAUFMAN: Thank you, Mr. Chairman.

DON J. WOOD

continues his testimony under oath from Volume 1:

REDIRECT EXAMINATION

BY MS. KAUFMAN:

Q. Mr. Wood, I just have a couple of questions
for you, and the first has to do with some questions
that Commissioner Balbis asked you in regard to the
application of the effective date of October 20th, 2010.
And I think you mentioned in your response to him that
there are some provisions in the Image Access agreement
that might relate to that question. Can you elaborate
on that?

A. Oh, yes, I did, and I do have that agreement.
In Section 30.1, which is on numbered Page 23 of 408,
there is language that says amounts owed for services
provisioned or orders placed under prior agreements
between the parties shall be due and owing under such
prior agreements between the parties and be governed by

1 the terms and conditions of the prior agreements between
2 the parties until the effective date of this agreement
3 at which time the orders and services will be governed
4 by the terms and conditions of this agreement.

5 Q. What does that mean in English?

6 A. Well, it's a little bit different than making
7 rates retroactive, because certainly Express Phone is
8 not and could not ask to have rates be made retroactive
9 under the old agreement. What I understood this
10 language to do is to take terms and conditions for
11 ordered services and move them from the terms and
12 conditions of the prior agreement to the terms and
13 conditions of this agreement on the effective date of
14 this agreement. And when you think about it, two
15 things: First of all, if AT&T were right that this
16 opt-in ability didn't exist except at renewable time for
17 an interconnection agreement, this language, the
18 presence of this language makes no sense at all, because
19 this language only makes sense in the context of another
20 CLEC opting into this agreement during the term of the
21 agreement. So I think certainly that is at odds with
22 AT&T's argument.

23 And the other is when you think about the
24 equity or the public policy which the AT&T witnesses
25 have tried to bring in here, NewPhone or Image Access,

1 the other CLEC, did operate under the terms of this
2 agreement, the opted in agreement, prior to October 20,
3 and had the benefits of that operation under these
4 terms. So making Express Phone's operation subject to
5 those terms does, in fact, put Express Phone not at some
6 advantage, not allowing it to evade any responsibility,
7 what it simply does is put Express Phone on the same
8 competitive footing with NewPhone that it would have
9 been all along if AT&T hadn't engaged in the
10 discrimination and put the wrong standard agreement or a
11 discriminatory standard agreement in front of Express
12 Phone in the first place.

13 The other advantage that's clear is NewPhone
14 or Image Access operated under this agreement, and as I
15 noted previously in my testimony, the dispute resolution
16 in here is balanced between AT&T and the CLEC, and it
17 creates an incentive if there is a dispute for the
18 parties to sit down and work it out. In the prior
19 Express Phone agreement, because that language is so
20 slanted in AT&T's favor, AT&T doesn't really have an
21 incentive to sit down and work it out, and that is
22 actually borne out by what has really happened. Both
23 Express Phone and NewPhone had basically the same
24 dispute, billing dispute with AT&T. NewPhone operating
25 under this agreement, where AT&T had the incentive to

1 come to the table and negotiate in good faith and work
2 out the dispute, has, in fact, reached an agreement.
3 The parties have reached an agreement of that dispute
4 without having to come to you of that billing dispute.

5 If AT&T had not discriminated and Express
6 Phone had been operating subject to this agreement, it
7 is very likely that they would have resolved their
8 dispute with AT&T without coming to the Commission,
9 without disrupting service to a large number of
10 customers. So that is what could have and should have
11 happened if Express Phone had been operating under these
12 terms all along.

13 Q. Thank you, Mr. Wood, for that answer. My
14 second line in redirect has to do with some questions
15 that Ms. Montgomery asked you, and also I think
16 Commissioner Graham. And I kind of did a shorthand for
17 this serial adoption, the concern that a CLEC might
18 adopt an agreement today, and I think Ms. Montgomery
19 said two or three weeks later they would adopt another,
20 and they just continue down this serial adoption path.
21 In your experience -- well, let me ask this question
22 first. Would that approach make any sense for a CLEC?

23 A. No. The only reason that a CLEC is going to
24 notice an adoption or an opt-in is if it uncovers a
25 discriminatory provision in an existing agreement. And

1 as a practical matter, we don't see that happening. I
2 mean, this is a parade of horrors that could happen,
3 and yet other states permit opt-ins on a regular basis
4 and there is no continuous rolling serial adoption of
5 agreements. You have an occasional adoption. It's
6 handled as a very -- you know, as an administrative
7 straight-forward process. There is a notice, the ILEC
8 receives the notice, they change their operation to the
9 new agreement.

10 I have never seen this kind of serial adoption
11 happening, and we have had plenty of times -- if it was
12 going to happen, we have had since 1996, and it hasn't
13 happened, and there is just no reason for it.

14 **MS. KAUFMAN:** And lastly, Commissioners, I do
15 have a document that I would like to distribute and get
16 a number for.

17 **CHAIRMAN BRISÉ:** Sure.

18 **MS. KAUFMAN:** And I think this would be 43.

19 **CHAIRMAN BRISÉ:** Yes, it would be 43. What
20 would be the short title?

21 **MS. KAUFMAN:** Let's see. BellSouth versus
22 North Carolina Utilities Commission.

23 **MS. MONTGOMERY:** Mr. Chairman?

24 **CHAIRMAN BRISÉ:** Yes.

25 **MS. MONTGOMERY:** We would object to the use of

1 this exhibit. This is redirect. Mr. Wood had
2 opportunities to present exhibits during both his direct
3 testimony and his rebuttal testimony and this is a new
4 exhibit being offered in redirect for the first time.

5 MS. KAUFMAN: Excuse me.

6 CHAIRMAN BRISÉ: Sure. Go right ahead.

7 MS. KAUFMAN: Ms. Montgomery took Mr. Wood
8 through a line of questions asking him about various
9 decisions and how they did or did not impact his
10 testimony, and I am entitled to redirect on that same
11 topic, and that is what this decision goes to.

12 CHAIRMAN BRISÉ: Okay. Ms. Cibula.

13 MS. CIBULA: I think we should give them a
14 chance to ask their questions and see where it goes from
15 there.

16 CHAIRMAN BRISÉ: Okay. I think that that
17 sounds fair to me, as well.

18 So, Ms. Kaufman, you may proceed.

19 MS. KAUFMAN: Thank you.

20 (Exhibit Number 43 marked for identification.)

21 BY MS. KAUFMAN:

22 Q. Mr. Wood, I have just handed you what has been
23 marked, I guess, as Exhibit Number 43, and let me
24 represent to you that this is a decision of the United
25 States District Court in the Eastern District of North

1 Carolina. What is the date of this decision?

2 A. I am familiar with this decision. It is
3 January 26th, 2010.

4 Q. Ms. Montgomery asked you a series of questions
5 regarding the fact that wasn't there some sort of
6 requirement that a Commission approve an opt-in before
7 it could become effective. Do you recall those
8 questions?

9 A. Yes, ma'am, I do.

10 Q. Was that issue presented to the federal court
11 in Exhibit Number 43?

12 A. Yes, it was.

13 Q. And if you would turn over to Page 5, and if
14 you would direct us to the pertinent provision in the
15 case?

16 A. I'm familiar with the case. I have got some
17 relevant language that I have flagged on Page 4.

18 Q. Okay. Maybe I have my pages wrong, I'm sorry.

19 A. Because there was certainly an argument by the
20 plaintiff, which in this case was BellSouth, that there
21 had to be a Commission approval of the opted in
22 agreement before it could become effective. The
23 language on Page 4 states that nothing in the Act or the
24 implementing regulations requires the same approval
25 process for 252(i) opt-in requests. And then lower,

1 later on the page in the last paragraph in the left
2 column on Page 4, the wording of the Act purposefully
3 fails to mention the need for further approval because
4 any ICA, interconnection agreement, sought to be adopted
5 under 252(i) will already have been approved following
6 the original negotiation or arbitration of that
7 agreement.

8 So I was answering one of the Commissioners, I
9 can't remember which one, about that. But since in
10 order to opt-in an agreement will already have been
11 subject to Commission approval, you don't have to go
12 back under a 252(i) adoption and have that reapproved,
13 because it is already an approved agreement or it
14 couldn't be opted into.

15 Q. And let me also direct you to Page 4, the top
16 paragraph on the right. Does that also address the
17 issue of whether an objection by the ILEC would have any
18 impact on the effective date?

19 A. Yes, it does, and I was familiar with that
20 language, as well. I recall Mr. Hatch in his opening
21 pointing out that 47 CFR 51.809 has the requirement that
22 the interconnection be available for opt-in without
23 unreasonable delay, and his suggestion that the fact
24 that the unreasonable delay language is there means that
25 there must be some expectation that there is a period of

1 time between the notice and the effective -- that kind
2 of deadman's land in there.

3 What he didn't mention in his opening is that
4 AT&T had argued that in federal court and lost. The
5 language here is the fact that the FCC requires approved
6 interconnection agreements, ICAs, to be made available
7 for opt-in without unreasonable delay, see 47 CFR
8 51.809, does not suggest that the opt-in requests
9 themselves cannot be self-executing or cannot be made
10 effective as of the date of the requesting carrier's
11 petition. So the notice of adoption, the notice of
12 opt-in provided to AT&T by Express Phone, there is every
13 reason to expect that to be the effective date of the
14 new agreement.

15 Q. And one more sentence in that paragraph. If
16 you would just read the last sentence of the paragraph
17 we have been looking at which begins "there," there is
18 no prohibition?

19 MS. MONTGOMERY: Mr. Chairman, I would object
20 at this point. I mean, Mr. Wood is basically reading
21 this decision into the record. It's clear that this was
22 a prepared script. This was more appropriate, perhaps,
23 for Mr. Wood's rebuttal testimony, and the document
24 speaks for itself. It's a case decision, it can be
25 argued by counsel in their brief.

1 **MS. KAUFMAN:** Mr. Chairman, this is
2 appropriate redirect. Ms. Montgomery, as I said
3 earlier, took Mr. Wood through a series of decisions in
4 an attempt to illustrate that his opinion was incorrect.
5 I am allowed to, I believe, redirect with a court case
6 that says the very opposite of what AT&T is suggesting
7 to you. This will be my last question on this line,
8 anyway.

9 **CHAIRMAN BRISÉ:** Okay. As I allowed latitude
10 a little bit earlier, I think I'm going to allow you
11 some latitude here. And as I stated earlier, you can
12 pose a question and he can answer the question, but we
13 will not read the decision into the record.

14 **MS. KAUFMAN:** Absolutely, okay. I will do
15 that. Thank you, Mr. Chairman.

16 **BY MS. KAUFMAN:**

17 **Q.** That paragraph that I referred you to, the
18 last sentence that is in that paragraph, does that
19 address the question of what the purpose and the result
20 of an adoption or an opt-in should be?

21 **A.** It does. And as I explained earlier today,
22 and I believe this is consistent actually, Commission,
23 with your Nextel decision, as well, that there shouldn't
24 be a benefit to AT&T from its attempt to delay the
25 implementation of an opt-in or to contest it somehow.

1 That you can make the effective date back on the date of
2 the original notice. And, in fact, this says that there
3 is no problem to place the parties in the position they
4 would have been or they would have occupied if not for
5 the objection, which I understand to be fully consistent
6 with your Nextel order and with Express Phone's position
7 here.

8 Yes, AT&T has contested this opt-in
9 appropriately or inappropriately, because there is no
10 provision for them to contest it, but the proper remedy
11 here is to put the parties in the position they would
12 have been otherwise, which is with the new agreement
13 effective on October 20, 2010.

14 **MS. KAUFMAN:** Thank you, Mr. Wood.

15 Thank you, Mr. Chairman. That's all I have on
16 redirect.

17 **MS. MONTGOMERY:** Mr. Chairman, I would request
18 the Commission's latitude to ask just a couple of
19 recross on just this one document that we were just
20 handed for the first time that has never been previously
21 cited in the record in this case.

22 **CHAIRMAN BRISÉ:** Ms. Cibula.

23 **MS. CIBULA:** It's within your discretion if
24 you want to hear additional questions or not.

25 **CHAIRMAN BRISÉ:** Okay. I'll hear from you.

1 **MS. KAUFMAN:** And, I'm sorry, I just want to
2 lodge my objection for the record. I'm not aware of the
3 Commission having a procedure for recross. I have never
4 been aware of it. And also I think that, again, AT&T
5 opened the door on this, and this is a publicly
6 available federal district court decision. I don't
7 think there is any basis for recross here.

8 **MR. HATCH:** Mr. Chair, let me explain to you
9 that there is precedent. I, representing AT&T years
10 ago, was in a case with GTE. They introduced a new
11 exhibit on redirect. I tried to get that excluded, but
12 they gave me the latitude to ask cross on a brand new
13 exhibit that had never been identified, never been cited
14 before in the entire case on the theory that we got
15 ambushed and we have the right to at least ask a couple
16 of questions briefly on those exhibits.

17 **MS. KAUFMAN:** Mr. Chairman, this is not a new
18 exhibit. And, in fact, if Ms. Montgomery, you know,
19 gave -- this is a federal court case. This is not some
20 new calculation that is being seen for the first time,
21 and there is no basis to recross on the law.

22 **CHAIRMAN BRISÉ:** Okay. So let me think
23 through this out loud and give you some logic as to
24 where I'm thinking. So if I allow recross that means
25 they get a redirect to your recross. If we agree to

1 that, then we will move forward in that fashion.

2 MS. MONTGOMERY: If the redirect is limited to
3 the recross we have no objection.

4 CHAIRMAN BRISÉ: The redirect -- obviously you
5 will cross on this and, therefore, the redirect I
6 suppose will be in direct correlation to your cross.

7 MS. MONTGOMERY: And that's acceptable to us,
8 Mr. Chairman.

9 CHAIRMAN BRISÉ: Okay. So we will move
10 forward in that fashion.

11 RECROSS EXAMINATION

12 BY MS. MONTGOMERY:

13 Q. Mr. Wood, I believe one of the passages you
14 quoted from in this North Carolina case is on Page
15 6 where it referred to the effective date being the date
16 of the requesting party's petition. Is that one of the
17 passages?

18 MS. KAUFMAN: I object. I don't think that
19 Mr. Wood talked about Page 6, unless I missed it.

20 MS. MONTGOMERY: And I apologize. Since I'm
21 seeing this for the first time, Mr. Chairman, I was
22 trying furiously to follow along, but I do believe there
23 was one section of this that Mr. Wood quoted from. And
24 I apologize if I missed the page where he referred to
25 the Commission in North Carolina finding that the

1 effective date was on the date of the petition. Is that
2 right?

3 **MS. KAUFMAN:** Are you asking me?

4 **THE WITNESS:** I'm going by the page numbers at
5 the top right of the page, and the language that I
6 referred to is all on Page 4. I did not -- I don't
7 believe I suggested the North Carolina Commission
8 reached a decision one way or the other regarding the
9 effective date being the date of notice. I think what I
10 was pointing out is, number one, there is no reason for
11 a second Commission approval of an opted-in agreement.
12 And, number two, the court's disagreement with
13 BellSouth's claim that the effective date couldn't be
14 the date of notice, and, in fact, the court here, top
15 paragraph on the right column on Page 4, says that, in
16 fact, they disagree with BellSouth and that those opt-in
17 requests can be self-executing and it can be made
18 effective as the date of the requesting carrier.

19 **BY MS. MONTGOMERY:**

20 **Q.** The date they filed their petition, correct?

21 **A.** They are disagreeing with BellSouth's claim
22 that the date couldn't be the date of the requesting
23 carrier's petition, but must be later than that.

24 **MS. MONTGOMERY:** I have nothing further on
25 this exhibit, Mr. Chairman.

1 **CHAIRMAN BRISE:** Thank you.

2 Ms. Kaufman.

3 **MS. KAUFMAN:** I have no re-redirect. Thank
4 you.

5 **CHAIRMAN BRISE:** Thank you very much. At this
6 time we are going to move into the exhibits. Ms.
7 Kaufman.

8 **MS. KAUFMAN:** We would move Exhibit 17 and 43,
9 I believe.

10 **CHAIRMAN BRISE:** 17 and 43.

11 **MS. MONTGOMERY:** We have no objection to 17.
12 I think 43 is a document the Commission can take
13 official recognition of. We have no objection,
14 therefore, if it's admitted as an exhibit, if that's
15 what you would prefer.

16 **CHAIRMAN BRISE:** All right. Thank you. Duly
17 noted. And I think that is all for Express Phone with
18 respect to exhibits.

19 AT&T.

20 **MS. MONTGOMERY:** Thank you, Mr. Chairman.

21 We would move the admission of Exhibits 39 and
22 40. Exhibits 41 and 42, the Commission earlier this
23 morning took official recognition of those documents, so
24 I'm happy to move them in for admission into the record,
25 but I don't believe that is necessary.

1 **CHAIRMAN BRISÉ:** Okay. Are there any
2 objections?

3 **MS. KAUFMAN:** We have no objection.

4 **CHAIRMAN BRISÉ:** Okay. Thank you.

5 Have we moved Exhibit 38? Was that for this
6 witness?

7 **MS. KAUFMAN:** That was Mr. Armstrong, I
8 believe.

9 **CHAIRMAN BRISÉ:** That was Mr. Armstrong's.
10 Okay. Thank you.

11 **MS. KAUFMAN:** Mr. Chairman, so are we
12 admitting 41 and 42?

13 **CHAIRMAN BRISÉ:** Yes.

14 **MS. KAUFMAN:** Okay. Thank you.

15 **CHAIRMAN BRISÉ:** All right. So that is 39,
16 40, 41 -- I mean, 30, 39, and 40, and Number 41 and 42
17 were already recognized by the Commission earlier. I
18 think we're clear on that. Thank you very much.

19 **THE WITNESS:** Thank you, Mr. Chairman.

20 (Exhibit Numbers 17, 43, 39, and 40 admitted
21 into the record.)

22 **CHAIRMAN BRISÉ:** And, Ms. Kaufman, do you have
23 you have any more witnesses?

24 **MS. KAUFMAN:** I do not. And I would ask that
25 Mr. Wood be excused, if that is all right with the

1 Commission.

2 CHAIRMAN BRISÉ: Sure.

3 At this time we will turn over to AT&T and you
4 may call your first witness.

5 (Pause.)

6 MR. HATCH: Sorry, Mr. Chairman.

7 CHAIRMAN BRISÉ: No problem.

8 MR. HATCH: I'm switching gears from my
9 clerical duties to my lawyerly duties.

10 AT&T would call Dave Egan, please.

11 DAVID J. EGAN

12 was called as a witness on behalf of AT&T Florida, and
13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HATCH:

16 Q. Mr. Egan, you have been previously sworn, is
17 that correct?

18 A. Yes, sir.

19 Q. Could you state your name and business address
20 for the record?

21 A. Yes. My name is David J. Egan, E-G-A-N. My
22 business address is 722 North Broadway, Milwaukee,
23 Wisconsin 53223.

24 Q. By whom are you employed and in what capacity?

25 A. I am employed by AT&T Service, Inc., and I am
FLORIDA PUBLIC SERVICE COMMISSION

1 a lead credit analyst.

2 Q. Did you prepare and cause to be filed Direct
3 Testimony in this case consisting of six pages?

4 A. Yes, I did.

5 Q. Do you have any changes or corrections to your
6 Direct Testimony?

7 A. I do.

8 Q. Could you please provide those?

9 A. Yes. On Page 3, Line 21, there is a date that
10 reads October 10, 2010. It should read October 20th,
11 2010 on Line 21. And then on Line 22 there is an amount
12 reflected there. The correct amount is 851,335.94.

13 Q. Are those your only corrections?

14 A. Yes, sir.

15 Q. Subject to those corrections, if I asked you
16 today the same questions that are in your testimony,
17 would your answers be the same?

18 A. Yes, they would.

19 MR. HATCH: AT&T would request that Mr. Egan's
20 Direct Testimony be inserted into the record as though
21 read.

22 CHAIRMAN BRISÉ: Okay. His Direct Testimony
23 will be inserted as though read.

24

25

I. INTRODUCTION

1
2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is David J. Egan. My business address is 722 N. Broadway, Floor 9,
4 Milwaukee, WI 53202.

5 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

6 A. I am employed by AT&T Services, Inc. as a Lead Credit Analyst.

7 **Q. WHAT ARE YOUR RESPONSIBILITIES AS A LEAD CREDIT**
8 **ANALYST?**

9 A. I manage a group within AT&T's Wholesale Credit & Collections group that is
10 responsible for handling Wholesale Global View Collections, Bankruptcy, Exiting
11 CLEC, Litigation Support, Uncollectible Reserve, and Write-off processes for the
12 AT&T incumbent local exchange carriers ("ILECs"), including AT&T Florida.
13 One of my responsibilities in the areas of Bankruptcy and Litigation Support is to
14 provide testimony in Bankruptcy Court or State Regulatory proceedings such as
15 in this matter. I am a subject matter expert for AT&T in the areas of Escrow,
16 Payment of Rates and Charges, and Non-Payment and Procedures for
17 Disconnection.

18 **Q. PLEASE DESCRIBE YOUR EDUCATION AND EMPLOYMENT**
19 **EXPERIENCE.**

20 A. I have a Bachelor of Arts Degree in Business Administration with a major in
21 Accounting from the University of St. Thomas (St. Paul, MN). I have a Masters
22 in Business Administration Degree from the Keller Graduate School of
23 Management. I am a Certified Public Accountant licensed to practice in the State
24 of Wisconsin.

1 As for my work experience, I have worked for AT&T or a predecessor company
2 for nearly thirteen years. I have been in my current position for the last ten years.
3 Prior to that, for one year my primary responsibility was to oversee the Wholesale
4 line collection unit which is responsible for collecting from AT&T's non-
5 bankrupt CLEC customers. When the number of bankruptcies jumped
6 significantly in 2001 it became necessary to dedicate a portion of the collection
7 group to manage AT&T's bankrupt customers and I assumed that role. Further,
8 during my first year of employment with AT&T (then Ameritech), I was hired to
9 develop and implement a credit verification process to assess the risk of new
10 CLEC entrants and to obtain deposits from the CLECs. Prior to coming to work
11 at AT&T, I spent 9 years in the commercial lending groups of a bank and two
12 finance companies. Overall, I have 22 years experience in the areas of credit &
13 collections.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE STATE**
15 **REGULATORY COMMISSIONS?**

16 A. Yes. I have previously testified before the California, Illinois, Michigan, Texas,
17 and Wisconsin Commissions. I have also testified in numerous US Bankruptcy
18 Court proceedings throughout the country.

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A. The purpose of my testimony is in support of Issues 2 and 3 and is to discuss the
21 substantial and unpaid amounts Express Phone owed AT&T Florida under its
22 current Interconnection Agreement ("ICA") at the time it made the adoption
23 requests for a new ICA, as well as the substantial and unpaid amounts that
24 Express Phone currently owes AT&T Florida.

II. DISCUSSION OF ISSUES – DOCKET 110087-TP

A. OCTOBER 20, 2010 ADOPTION REQUEST

Q. WHEN DID EXPRESS PHONE INITIALLY SUBMIT A REQUEST TO AT&T FLORIDA TO ADOPT INTO A DIFFERENT INTERCONNECTION AGREEMENT?

A. As AT&T Florida witness Mr. Greenlaw testifies, Express Phone sent AT&T Florida a letter dated October 20, 2010 informing AT&T Florida that it wished to adopt the ICA between “Southwest Bell Texas and Image Access, Inc. d/b/a NewPhone, Inc.”¹

Q. AT THE TIME OF THIS REQUEST, WAS EXPRESS PHONE OPERATING UNDER AN ICA IN FLORIDA?

A. Yes. As Mr. Greenlaw testifies, Express Phone was operating under an ICA that became effective November 3, 2006 and that, by its own terms, remained in effect until at least November 2, 2011.

Q. HOW DID AT&T FLORIDA REPLY TO EXPRESS PHONE'S OCTOBER 20, 2010 REQUEST?

A. As Mr. Greenlaw testified, AT&T Florida denied the request through a letter dated November 1, 2010.

Q. WAS EXPRESS PHONE CURRENT ON ITS BILLS FROM AT&T FLORIDA ON OCTOBER 20, 2010 AND NOVEMBER 1, 2010?

A. No. On October 10, 2010, Express Phone had a past due balance on its AT&T Florida accounts of ~~\$930,932~~ ^{\$851,335.94}, and on November 1, 2010, Express Phone had a past due balance of \$1,012,190.

¹ As Mr. Greenlaw testifies, Express Phone's requests literally asked to adopt the ICA between "Southwestern Bell Texas" and "Image Access, Inc. d/b/a NewPhone, Inc.," but Express Phone has taken the position that these requests were actually meant to adopt the ICA between AT&T Florida and Image Access, Inc., and we are treating it that way in our direct testimony (reserving the right to address in rebuttal anything Express Phone may say to the contrary in its direct testimony).

1 **Q. IS THERE ANY BASIS IN EXPRESS PHONE'S ICA THAT ALLOWS IT**
2 **TO WITHHOLD PAYMENT OF AMOUNTS BILLED BY AT&T**
3 **FLORIDA?**

4 A. No. Attachment 3—Billing of the ICA states in paragraph 1.4 - Payment
5 Responsibility:

6 Payment of all charges will be the responsibility of Express Phone.
7 Express Phone shall pay invoices by utilizing wire transfer services
8 or automatic clearing house services. Express Phone shall make
9 payment to BellSouth for all services billed **including disputed**
10 **amounts.** BellSouth will not become involved in billing disputes
11 that may arise between Express Phone and Express Phone's
12 customer.

13
14 **B. MARCH 14, 2011 ADOPTION REQUEST**

15 **Q. DID EXPRESS PHONE SUBMIT ANOTHER ADOPTION REQUEST TO**
16 **AT&T FLORIDA?**

17 A. Yes. AT&T Florida subsequently received a letter from Express Phone dated
18 March 14, 2011 requesting an adoption of the ICA between Southwestern Bell
19 Texas and Image Access, Inc. d/b/a New Phone, Inc.

20 **Q. AT THE TIME OF THIS REQUEST, WAS EXPRESS PHONE**
21 **OPERATING UNDER AN ICA IN FLORIDA?**

22 A. Yes, Express Phone was operating under the same ICA that it was operating under
23 at the time of its October 20, 2010 request.

24 **Q. WAS EXPRESS PHONE CURRENT ON ITS BILLS FROM AT&T**
25 **FLORIDA ON MARCH 14, 2011?**

26 A. No. On March 14, 2011, Express Phone had a past due balance on its AT&T
27 Florida accounts of \$1,343,984.

28 **Q. PRIOR TO MARCH 14, 2011, HAD AT&T FLORIDA UNDERTAKEN**
29 **ANY ACTION TO ASK EXPRESS PHONE TO CURE THIS PAST DUE**
30 **BALANCE?**

1 A. Yes. AT&T Florida had previously sent a collection letter dated February 23,
2 2011 to Express Phone demanding payment by March 14, 2011 of \$1,268,490 to
3 AT&T Florida for past due balances owed, or AT&T Florida would take
4 additional action against Express Phone to collect these balances owed. Express
5 Phone has failed to make any payments at any time to satisfy this collection letter.
6 A copy of the collection letter is attached as Exhibit DJE-1.

7 **Q. WHAT ACTION DID AT&T FLORIDA TAKE AGAINST EXPRESS**
8 **PHONE FOR NON-PAYMENT OF THE COLLECTION DEMAND**
9 **LETTER?**

10 A. Per the terms of the ICA, on March 18, 2011, AT&T Florida suspended Express
11 Phone's ability to place orders for new Resale service and on April 20, 2011,
12 AT&T Florida disconnected Express Phone's resale services for failure to satisfy
13 the collection letter.

14 **Q. HOW DID AT&T FLORIDA REPLY TO EXPRESS PHONE'S MARCH**
15 **14, 2011 REQUEST?**

16 A. As Mr. Greenlaw testified, AT&T Florida responded by sending a letter dated
17 March 25, 2011, conditionally accepting Express Phone's request to adopt the
18 new ICA if Express Phone cured the amounts owing under AT&T collection
19 demand letter and submitted adequate security.

20 **Q. WAS EXPRESS PHONE CURRENT ON ITS BILLS FROM AT&T**
21 **FLORIDA ON MARCH 25, 2011?**

22 A. No. By March 25, 2011, Express Phone's past due balance had risen to
23 \$1,417,735.

24 **Q. DID EXPRESS PHONE EVER MEET THE CONDITIONS IN AT&T**
25 **FLORIDA'S MARCH 25, 2011 LETTER?**

1 A. No. Express Phone never paid the past due balance and we never received any
2 security.

3 **Q. DOES AT&T FLORIDA HAVE RECORDS OF THE BILLS IT SENT TO**
4 **EXPRESS PHONE AND PAYMENTS RECEIVED FROM EXPRESS**
5 **PHONE?**

6 A. Yes. The CDs marked as Exhibits DJE-2, DJE-3 and DJE-4 contain copies of the
7 bills that AT&T Florida sent Express Phone from November 2008 through May
8 2011 for its Florida resale accounts. Exhibit DJE-2 contains the bills for Billing
9 Account Number 305Q926878; Exhibit DJE-3 contains the bills for Billing
10 Account Number 561Q926878; and Exhibit DJE-4 contains the bills for Billing
11 Account Number 904Q926878. Those bills reflect current charges, credits, and
12 payments (if any) made.

13 **Q. HAS EXPRESS PHONE CURED THE AMOUNTS IT OWES?**

14 A. No.

15 **Q. HOW MUCH DOES EXPRESS PHONE CURRENTLY OWE AT&T**
16 **FLORIDA FOR SERVICES PROVIDED AND BILLED UNDER THE**
17 **ICA?**

18 A. As of March 1, 2012, the total past due balance Express Phone currently owes
19 AT&T Florida for services provided in Florida is \$1,437,631.

20 **Q. DOES THIS COMPLETE YOUR TESTIMONY?**

21 A. Yes it does.

1 BY MR. HATCH:

2 Q. Now, did you prepare exhibits to your Direct
3 Testimony DJE-1 through DJE-4?

4 A. Yes, I did.

5 Q. Do you have any changes or corrections to
6 those exhibits?

7 A. No.

8 MR. HATCH: I believe, Mr. Chairman, those
9 exhibits have been previously marked as probably 18
10 through 21?

11 CHAIRMAN BRISÉ: Yes.

12 BY MR. HATCH:

13 Q. Now, Mr. Egan, did you prepare and cause to be
14 filed Rebuttal Testimony in this case consisting of
15 three pages?

16 A. Yes.

17 Q. Do you have any changes or corrections to your
18 Rebuttal Testimony?

19 A. No, I don't.

20 Q. If I asked you the same questions today as are
21 in your Rebuttal Testimony, would your answers be the
22 same?

23 A. Yes.

24 MR. HATCH: Mr. Chairman, we would request
25 that Mr. Egan's Rebuttal Testimony be inserted as though

1 read.

2 CHAIRMAN BRISÉ: That will be insert as though

3 read.

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I. INTRODUCTION

Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

A. My name is David J. Egan. I am a Lead Credit Analyst employed by AT&T Services, Inc. My business address is 722 N. Broadway, Floor 9, Milwaukee, WI 53202.

Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I am the same David J. Egan that filed direct testimony on behalf of AT&T Florida on March 1, 2012.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. My rebuttal testimony responds to certain issues raised in the direct testimony filed on March 1, 2012 by Thomas Armstrong on behalf of Express Phone Service, Inc. ("Express Phone").

Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

A. I address certain aspects of Mr. Armstrong's Direct Testimony concerning the disconnection of its service, and I provide information concerning AT&T Florida's experience with Digital Express, Inc. ("Digital Express"), another CLEC with which Mr. Armstrong is associated.

A. EXPRESS PHONE

Q. AT PAGE 5 OF HIS DIRECT TESTIMONY, MR. ARMSTRONG DISCUSSES AT&T FLORIDA'S DISCONNECTION OF EXPRESS PHONE'S SERVICE FOR NONPAYMENT. DID AT&T FLORIDA PROVIDE EXPRESS PHONE NOTICE OF ITS INTENT TO DISCONNECT SERVICE?

A. Yes. AT&T Florida sent a letter on February 23, 2011 that gave Express Phone notice that it had to cure its nonpayment breach by March 14, 2011 or have its ordering process suspended, and that it had until March 29, 2011 to cure its nonpayment breach or have its services disconnected.

1 Q. DID EXPRESS PHONE CURE ITS NONPAYMENT BREACH?

2

3 A. No.

4 Q. WHEN DID AT&T FLORIDA DISCONNECT EXPRESS PHONE'S SERVICE?

5 A. On April 20, 2011.

6

B. DIGITAL EXPRESS

7 Q. ARE YOU FAMILIAR WITH A CLEC KNOWN AS DIGITAL EXPRESS?

8 A. Yes, as Mr. Greenlaw testifies in his rebuttal testimony, Digital Express is another CLEC
9 that operates in Florida and with which Mr. Armstrong appears to be closely associated.

10 Q. DOES DIGITAL EXPRESS ORDER SERVICES FROM AT&T FLORIDA FOR
11 RESALE PURSUANT TO ITS ICA?

12 A. Yes.

13 Q. WHEN DID DIGITAL EXPRESS BEGIN ORDERING SERVICE FROM AT&T
14 FLORIDA?

15 A. We activated Digital Express's first Florida account on September 26, 2011, just a few
16 months after we disconnected Express Phone's service for failing to cure its nonpayment
17 breach. Digital Express began ordering service from AT&T Florida in November, 2011.

18 Q. ARE YOU FAMILIAR WITH THE EXPERIENCE AT&T FLORIDA HAS HAD
19 WITH DIGITAL EXPRESS ON BILLING AND PAYMENTS OVER THE FIVE
20 MONTHS IT HAS BEEN PROVIDING SERVICES TO DIGITAL EXPRESS?

21 A. Yes. Since Digital Express began ordering service in November 2011, the total dollar
22 amount of the billing disputes Digital Express has submitted to AT&T Florida actually
23 exceeds the total dollar amount AT&T Florida has billed Digital Express for services
24 over that same period. In other words, Digital Express appears to expect AT&T Florida
25 to pay Digital Express for the services it orders from AT&T Florida.

26 Q. HAS DIGITAL EXPRESS PAID AT&T FLORIDA ANYTHING SINCE IT
27 BEGAN RECEIVING SERVICES?

1 A. Yes, it has paid a total of \$100. That represents less than one tenth of one percent of the
2 amounts AT&T Florida has billed Digital Express for the services it has ordered from
3 AT&T Florida for resale to its own end users.

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 A. Yes.

6 1028409

1 BY MR. HATCH:

2 Q. And there were no exhibits to your Rebuttal
3 Testimony, is that correct?

4 A. That's correct.

5 Q. Do you have a summary of your testimony?

6 A. Yes, I do.

7 Q. Could you provide that, please?

8 A. Sure. Mr. Chairman, Commissioners, my Direct
9 Testimony describes the past-due amounts owed by Express
10 Phone at some key dates in the timeline here.
11 October 20th, 2010, which is the date of the initial
12 adoption request, the amount owing was approximately
13 \$851,000. That would be a past-due amount.

14 November 1st, 2010, which was the date of AT&T
15 Florida's response to the initial request, there was
16 approximately \$1,012,000. March 14th, 2011, which was
17 the date of the second adoption request was
18 approximately 1,343,000. March 25th, 2011, which was
19 the date AT&T Florida responded to the second adoption
20 request, approximately 1,417,000. And, finally,
21 March 1st, 2012, which was the date my testimony was
22 filed in this case, it was approximately 1,437,000.

23 The testimony also refers to Number Attachment
24 3, Paragraph 1.4 of the interconnection agreement which
25 makes clear that Express Phone was obligated to pay all

1 charges billed under the interconnection agreement
2 including disputed charges. I also describe the
3 collection letter sent to Express Phone on February 23,
4 2011, demanding payment of \$1,268,490, the nonpayment of
5 which led to the suspension of Express Phone's service
6 on March 18th, 2011, and ultimately the disconnection of
7 Express Phone's service on April 20th, 2011.

8 In my Rebuttal Testimony I restate the
9 collection letter timeline discussed in my Direct
10 Testimony. I also discuss AT&T Florida's experience
11 with a CLEC named Digital Express, which Mr. Armstrong
12 is involved with. Digital Express has only paid \$100 to
13 AT&T Florida for services since starting in business in
14 November of 2011, while they have been billed well over
15 \$300,000.

16 Q. Does that conclude your summary?

17 A. Yes, it does.

18 MR. HATCH: We tender the witness for cross.

19 CHAIRMAN BRISÉ: All right. Thank you.

20 Ms. Kaufman, you may proceed.

21 CROSS EXAMINATION

22 BY MS. KAUFMAN:

23 Q. Good afternoon, Mr. Egan. How are you?

24 A. Good afternoon, Ms. Kaufman. Good, thank you.

25 Q. We have met previously for the first time.

1 A. Yes.

2 Q. You have listed your areas of expertise on
3 Page 1, Lines 9 through 17 of your Direct Testimony, is
4 that correct?

5 A. Areas of responsibility is how I would
6 describe it.

7 Q. Well, beginning on Line 15 you tell us you are
8 a subject matter expert for AT&T in the areas of escrow,
9 payment of rates and charges, nonpayment, and procedures
10 for disconnection, correct?

11 A. Yes.

12 Q. So those are the areas in which you consider
13 yourself to be an expert?

14 A. Yes.

15 Q. You don't consider yourself to be an expert in
16 the interpretation of interconnection agreements, do
17 you?

18 A. Just those sections. So not the -- I would
19 not claim expertise over the entire subject matter of
20 interconnection agreements.

21 Q. But you don't claim to be an expert in
22 interpreting interconnection agreements, do you?

23 A. No.

24 Q. And you don't claim to be an expert in the
25 application and interpretation of the federal rules and

1 regulations that we have discussed at some length here?

2 A. No.

3 Q. Have you ever met Mr. Armstrong before this
4 morning?

5 A. No.

6 Q. Have you ever been on any conference calls
7 with Mr. Armstrong or anyone from Express Phone?

8 A. No, I have not.

9 Q. So would it be fair that any knowledge that
10 you have of this case was provided by others?

11 A. No, I wouldn't agree with that. I mean,
12 certainly some information was obtained from others, but
13 it was mainly, you know, reading the, you know, books
14 and records of AT&T to come up with the information I'm
15 providing.

16 Q. Have you ever been involved in any discussions
17 in an attempt to resolve the disputes with Express
18 Phone?

19 A. No.

20 Q. When was the first time that you became
21 involved in the Express Phone matter?

22 A. I couldn't recall an exact date. It was
23 earlier this year, probably January/February timeline.
24 I mean, in preparation for filing testimony.

25 Q. Okay. Has AT&T presented any witnesses here

1 who have had any direct contact with Express Phone or
2 Mr. Armstrong?

3 A. Well, I'm the first witness, so I have not, so
4 I can only speak to that.

5 Q. I'm going to -- well, let me just back up.
6 Your area is very limited, but you would be the
7 gentleman that I would ask about collection attempts and
8 correspondence in that regard that has been sent to
9 Express Phone, is that right?

10 A. Yes.

11 MS. KAUFMAN: Okay. So I'd like to distribute
12 an exhibit, Commissioners. And it's in the red folders
13 because there is just one document here that I believe
14 AT&T claims is confidential. We do not claim it as
15 confidential.

16 MR. HATCH: Could I get a copy of the
17 document, please?

18 MS. KAUFMAN: Are you set, Mr. Hatch?

19 CHAIRMAN BRISÉ: You may proceed.

20 MS. KAUFMAN: Even though these documents are
21 in the record, I'd like to have an exhibit number for
22 this, if that would be all right. I think we are on 44,
23 and a short title would be Staff Interrogatory Number 1.
24 And, again, it is only the last page that is
25 confidential, but since I want to talk about it

1 altogether, I thought it would be easier to do it this
2 way.

3 CHAIRMAN BRISÉ: Sure. Thank you.

4 (Exhibit Number 44 marked for identification.)

5 BY MS. KAUFMAN:

6 Q. Do you have a copy of what has now been marked
7 as Exhibit 44, Mr. Egan?

8 A. Yes.

9 Q. Did you perhaps the response to this
10 interrogatory?

11 A. I did not, no.

12 Q. Who prepared this response?

13 A. I believe it was prepared by a co-worker of
14 mine.

15 Q. Who would that be, sir? Do you know who
16 prepared this response?

17 A. I believe it was Lou Pagliaca (phonetic) is
18 the gentleman's name.

19 Q. I know I'm going to butcher his name, but is
20 Mr. Pagliaca here?

21 A. No, he is not.

22 Q. Okay. Did you review this response before it
23 was submitted?

24 A. No, I did not, just after.

25 Q. So is this correct, this is the first time

1 that you are seeing this response?

2 A. No, you asked if I had reviewed it before it
3 was submitted. I certainly reviewed it after it was
4 submitted.

5 Q. You reviewed it after it was submitted. Okay.

6 If you would turn to the second page of the
7 exhibit. This letter has been discussed before. It is
8 the August 25th letter to Mr. Armstrong signed by Mr. --
9 well, it's not signed, but Mr. Larry Thaxton's name is
10 at the bottom, correct?

11 A. Yes.

12 Q. Do you know Mr. Thaxton?

13 A. I do.

14 Q. Does he work in Minnesota? Wherever you're
15 from. I'm so sorry.

16 A. It's Wisconsin. Actually he is in Atlanta.

17 Q. I'm a Florida girl.

18 A. It's the Great White North, so --

19 Q. He's in Atlanta?

20 A. He's in Atlanta; yes, ma'am.

21 Q. Does he report to you?

22 A. No, he doesn't.

23 Q. I believe you said you have met him before, is
24 that correct?

25 A. Yes, on several occasions. If I might explain

1 the relationship?

2 Q. I just want to ask you if you ever discussed
3 the Express Phone matter with him?

4 A. Not specifically, no.

5 Q. Okay. Mr. Thaxton, I guess, sent this letter
6 to Mr. Armstrong on October 25th. Did you have any
7 input or were you aware that this letter was sent?

8 A. No.

9 Q. And so I guess you didn't discuss it with Mr.
10 Thaxton, did you?

11 A. No. Mr. Thaxton is in a different group. He
12 is in the credit group. I'm on the collection side.

13 Q. Gotcha. The interrogatory asks if -- to
14 paraphrase, whether AT&T made any effort to collect past
15 due amounts on October 20th, 2010, correct?

16 A. Yes.

17 Q. And then the answer is yes. And the parties
18 are referred to this letter of August 25th, correct?

19 A. Yes.

20 Q. Okay. Now, would you agree with me that this
21 letter of October 25th concerns the deposit that AT&T
22 would like Express Phone to carry?

23 A. Yes, it's a deposit request.

24 Q. Okay. And would you also agree, if you know,
25 if there were discussions back and forth between the

1 parties in regard to the amount of the deposit?

2 A. That I don't know.

3 Q. Okay. Do you know how the deposit discussions
4 were resolved?

5 A. No, I do not.

6 Q. Would you flip over to the last confidential
7 page, and I'm going to try to do this without -- I'm not
8 sure what's confidential, and I'm going to try to do it
9 without revealing anything. Could you would take a
10 minute to review this if you have not seen it.

11 Have you ever seen this e-mail before from Mr.
12 Greene?

13 A. No, I have not, so I'll review that.

14 MR. HATCH: If I might interject just one
15 moment. Just so that there is no confusion here, this
16 letter and the other documents attached to the
17 interrogatory response are not part of our interrogatory
18 response, just to be clear.

19 MS. KAUFMAN: Well, it's my understanding it's
20 only the last page that is not part of your response.
21 Okay. I'm sorry if that's what you said.

22 MR. HATCH: That's correct.

23 CHAIRMAN BRISÉ: Duly noted.

24 MR. HATCH: Just trying to keep it between the
25 rails --

1 **CHAIRMAN BRISÉ:** Understood.

2 **MR. HATCH:** And off the third one.

3 **MS. KAUFMAN:** I was just trying to reduce the
4 number of exhibits, so --

5 **THE WITNESS:** Okay. I have read through it.

6 **MS. KAUFMAN:** Okay. Good.

7 **BY MS. KAUFMAN:**

8 **Q.** So looking at this last page, would you agree
9 with me that AT&T and Express Phone reached agreement
10 regarding the amount of deposit that was acceptable to
11 both parties?

12 **A.** That is what it indicates, yes.

13 **Q.** Do you have any reason to doubt that?

14 **A.** No.

15 **Q.** Okay. Would you also agree with me that in
16 determining the amounts of deposits that would be
17 required, the letter states that those amounts will be
18 based only on amounts that are not in dispute between
19 the parties?

20 **A.** I don't see anything on here that speaks to
21 that. Maybe -- I may have missed something.

22 **Q.** Take a look at -- again, I'm not sure what is
23 confidential, so I don't want to take a chance to read
24 it out loud. Take a look at Paragraph Number 4, and
25 then underneath it is Paren 2, and it talks about how

1 the deposit amount is going to be calculated. And take
2 a look at the information that is in parentheses, and
3 that was esoteric enough.

4 A. Okay. I gotcha. Yes, thank you. It's a
5 different color. That helps too.

6 Q. Yes, I'm sorry.

7 A. That's what threw me off. But, yes, I see
8 what you're talking about.

9 Q. So you would agree with me that in the
10 negotiation over the required deposit, AT&T agreed that
11 in calculating the deposit they would take into account
12 only amounts that were not disputed?

13 A. Yes, I would agree that is what it says.

14 MR. HATCH: I'm going to have to object if she
15 is going to pursue this line. Mr. Egan has already said
16 he is not involved in the deposit collections with the
17 credit folks. He is in the collection side. This is
18 not his exhibit.

19 MS. KAUFMAN: Well, if that's the case, he
20 also said he didn't prepare Interrogatory Number 1, and
21 I guess we can move back and see what interrogatories
22 that we have stipulated to should not be admitted into
23 the record. I think that as we discussed with him
24 in my --

25 MR. HATCH: He has verified the truth of the

1 affidavit, the truth of the interrogatory in his
2 affidavit.

3 **MS. KAUFMAN:** I think -- I don't know if you
4 want to hear further argument, Mr. Chairman.

5 Mr. Egan has been presented as the gentleman
6 who knows about collection attempts here and it has been
7 also represented to you that AT&T made a lot of attempts
8 to try to collect these amounts. I think this
9 illustrates that is not the case. They have presented
10 no other witnesses on this topic that I'm aware of
11 except for Mr. Egan.

12 **CHAIRMAN BRISE:** Mr. Hatch, would you restate
13 your original objection, please.

14 **MR. HATCH:** My objection is she is
15 cross-examining him on a exhibit that is related to the
16 credit folks, which is a deposit collection. That is
17 not his area of responsibility. He said that up front,
18 but she is pursuing it anyway. He is involved in
19 collections. With respect to the interrogatory
20 response, we submitted it and we submitted the affidavit
21 where he attested to its veracity.

22 **CHAIRMAN BRISE:** Okay.

23 **MS. KAUFMAN:** Mr. Chairman, I think I can make
24 this shorter for you, if you'd like. I think he has
25 acknowledged and admitted what I asked him, and I am

1 perfectly fine with the state of the record in that
2 regard. I don't intend to ask him any further questions
3 on this.

4 CHAIRMAN BRISÉ: All right. Thank you.

5 MS. KAUFMAN: And that's all.

6 Thank you, Mr. Egan, for your patience.

7 CHAIRMAN BRISÉ: Staff.

8 CROSS EXAMINATION

9 BY MS. TAN:

10 Q. Good afternoon, Mr. Egan.

11 A. Good afternoon.

12 Q. Are you aware whether or not Express Phone's
13 accounts were past due at the time it filed its October
14 20th, 2010, adoption request?

15 A. Yes.

16 Q. And in your opinion was the relationship
17 between AT&T Florida and Express Phone bound by the
18 terms of its existing interconnection agreement at the
19 time that Express Phone filed its October 20th, 2010,
20 adoption request?

21 MS. KAUFMAN: I'm going to have to object to
22 that question. I think we have established Mr. Egan's
23 area of expertise, and I think I expressly asked him if
24 he claimed any expertise in the area of interpretation
25 of interconnection agreements, and he said no. He is

1 not qualified to answer that question.

2 **MR. HATCH:** Mr. Chairman, we're not offering
3 Mr. Egan as an expert in the interpretation of
4 interconnection agreements. But by virtue of his
5 training and experience and his job responsibilities, he
6 is required to know and understand the particular
7 provisions in the interconnection agreements that relate
8 to collections. That is what his testimony is being
9 offered here today to support.

10 **CHAIRMAN BRISÉ:** I think I can hear from staff
11 as to what -- no, no, no, from Ms. Tan as to -- you
12 heard the objection. Do you have comments on the
13 objection as to why?

14 **MS. TAN:** Well, staff would agree with AT&T
15 that Mr. Egan has experience in discussions regarding
16 payments and collections.

17 **CHAIRMAN BRISÉ:** Ms. Cibula.

18 **MS. CIBULA:** I think it has been established
19 what the witness' background is, and he could probably
20 answer the question and the Commission could give the
21 weight that it thinks it's due based on -- with his
22 background.

23 **CHAIRMAN BRISÉ:** So I think with that I will
24 allow the line of questioning.

25 **THE WITNESS:** Could you please repeat that?

1 BY MS. TAN:

2 Q. In your opinion, was the relationship between
3 AT&T Florida and Express Phone bound by the terms of its
4 existing interconnection agreement at the time that
5 Express Phone filed its October 20th, 2010, adoption
6 request?

7 A. Yes.

8 MS. KAUFMAN: I think I have stated my
9 objection for the record. Thank you.

10 THE WITNESS: My answer is yes.

11 MS. TAN: Thank you.

12 Staff has no further questions.

13 CHAIRMAN BRISÉ: All right. Thank you.

14 Commissioners? Commissioner Brown.

15 COMMISSIONER BROWN: Thank you.

16 And thank you for your testimony. Working in
17 the collections department, I'm curious why it took
18 until February 3rd to pursue collection actions against
19 Express Phone?

20 THE WITNESS: I appreciate the question,
21 Commissioner. The situation really was this, there were
22 a lot of customers that were, you know, and still are
23 claiming promotional credits throughout our southeast
24 territory. And really the ability to treat customers
25 for nonpayment was taken away from the collection group.

1 It was all referred to legal, and it was kind of -- I
2 guess I would describe it as a legal hold on us pursuing
3 collections. So our position in collections is we very
4 much did want to pursue those balances and a lot sooner
5 than February, but we were prevented from doing so from
6 internal counsel.

7 **COMMISSIONER BROWN:** And as a follow-up, do
8 you know why, do you personally know why legal did not
9 pursue action?

10 **MR. HATCH:** Objection. To the intent that she
11 is asking a question that's going to get involved in
12 attorney/client privilege. I apologize, Commissioner.

13 **COMMISSIONER BROWN:** I will rephrase it.

14 Do you have any other knowledge as to why any
15 other type of collection actions were not pursued
16 against Express Phone outside of your department?

17 **THE WITNESS:** No.

18 **CHAIRMAN BRISÉ:** Any further questions by
19 Commissioners? All right.

20 Seeing none, redirect.

21 **MR. HATCH:** No redirect.

22 **CHAIRMAN BRISÉ:** At this time we are going to
23 deal with the exhibits.

24 **MR. HATCH:** AT&T would move admission of 18
25 through 21.

1 **CHAIRMAN BRISÉ:** All right. Ms. Kaufman.

2 **MS. KAUFMAN:** Yes, Mr. Chairman. We would
3 move Exhibit 44, please.

4 **CHAIRMAN BRISÉ:** All right. Any objections?
5 All right. Seeing none -- thank you very
6 much.

7 **THE WITNESS:** Thank you, Mr. Chairman.

8 **CHAIRMAN BRISÉ:** And those exhibits have been
9 moved into the record.

10 (Exhibit Numbers 18, 19, 20, 21, and 44
11 admitted into the record.)

12 **CHAIRMAN BRISÉ:** AT&T, your next witness,
13 please.

14 **MS. MONTGOMERY:** Thank you, Mr. Chairman.
15 At this time we would call William Greenlaw.

16 **CHAIRMAN BRISÉ:** Thank you.

17 **WILLIAM E. GREENLAW**

18 was called as a witness on behalf of AT&T Florida, and
19 having been duly sworn, testified as follows:

20 **DIRECT EXAMINATION**

21 **BY MS. MONTGOMERY:**

22 **Q.** Good afternoon, Mr. Greenlaw. You were
23 present this morning when the oath was administered to
24 all the witnesses, is that correct?

25 **A.** Yes, I was.

FLORIDA PUBLIC SERVICE COMMISSION

1 Q. And you took that oath?

2 A. Yes, I did.

3 Q. Can you please state your name and business
4 address?

5 A. Yes. William Greenlaw, 311 South Akard,
6 Dallas, Texas 75202.

7 Q. And by whom are you employed?

8 A. AT&T Florida.

9 Q. And can you please briefly describe your job
10 title and job duties?

11 A. Yes. I am an area manager in our wholesale
12 regulatory relations group and primarily support
13 policies governing our interconnection agreements with
14 both CLECs and wireless carriers.

15 Q. And, Mr. Greenlaw, did you previously cause to
16 be filed on March 1st, 2012, 12 pages of Direct
17 Testimony?

18 A. Yes, I did.

19 Q. And do you have any corrections to that
20 testimony?

21 A. Actually one, kind of pursuant to the same
22 correction that Mr. Egan provided. I also cited the
23 past due balance that Express Phone carried in October
24 of 2010 on Page 7, Line 14, of my Direct Testimony. The
25 figure that was originally cited was the \$930,352 -- or

1 32, excuse me, dollar amount, and I would also move to
2 change that to \$851,335.94. But that is my only
3 correction on my direct.

4 Q. And subject to that correction, if I were to
5 ask you today the same questions that you were asked in
6 your Direct Testimony, would your answers be the same?

7 A. Yes, they would.

8 MS. MONTGOMERY: Mr. Chairman, at this time we
9 would move that Mr. Greenlaw's Direct Testimony be
10 inserted into the record as though read.

11 CHAIRMAN BRISÉ: All right. Let the record
12 reflect that his prefiled testimony is inserted as
13 though read.

14 MS. MONTGOMERY: Thank you.

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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is William Eric Greenlaw. I am an Associate Director in the AT&T
4 Wholesale organization. My business address is 311 S. Akard Street, Dallas, TX
5 75202.

6 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

7 A. I have a Bachelor of Business Administration in Marketing from the University of
8 Oklahoma in Norman, Oklahoma. My career with Southwestern Bell Telephone
9 and AT&T spans over 19 years, the last 15 years of which have been spent
10 working in wholesale organizations that support and interact with Competitive
11 Local Exchange Carriers ("CLECs"). In addition to my current role, I have held
12 management positions in customer care, sales and sales support, product
13 management, segment marketing, and wholesale customer and regulatory support.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY**
15 **PROCEEDINGS?**

16 A. Yes. I have submitted written testimony to the Michigan, Texas and Wisconsin
17 Commissions.

18 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

19 A. AT&T Florida.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. I explain and support AT&T Florida's positions on Issues 1, 2, 3 and 4 identified
22 in Order No. PSC-12-0031-PCO-TP issued on January 19, 2012.

23 **II. OVERVIEW OF THE DISPUTE**

24 **Q. AT A HIGH LEVEL, WHAT IS THE ISSUE IN THIS CASE?**

1 A. Express Phone has been a party to an interconnection agreement ("ICA") with
2 AT&T Florida that became effective on November 3, 2006, which has an initial
3 term of five years and requires Express Phone to pay its bills in full, including
4 disputed amounts. During the course of that ICA, Express Phone failed or refused
5 to pay AT&T Florida nearly \$1.5 million for services AT&T Florida has
6 provided, in breach of its ICA. Rather than paying AT&T Florida the amounts it
7 owes under its ICA, Express Phone purported to adopt the ICA between AT&T
8 Florida and Image Access, Inc., which allows a party to "dispute" amounts AT&T
9 Florida bills under the ICA and withhold payment of those disputed amounts until
10 the disputes are resolved. Express Phone wanted to adopt the Image Access ICA
11 so it could then "dispute" the past due amounts it has accrued under its existing
12 ICA (which does not allow it to withhold disputed amounts) and, thereby, avoid
13 the consequences of its substantial breach of its ICA. AT&T Florida is unwilling
14 to allow Express Phone to adopt the Image Access ICA until it cures its
15 substantial breach of its existing ICA.

16 **Q. HOW MANY TIMES DID EXPRESS PHONE ATTEMPT TO ADOPT**
17 **THE IMAGE ACCESS ICA?**

18 A. In our view, twice – once in October 2010 and again in March 2011. I say "in our
19 view," because these requests literally asked to adopt the ICA between
20 "Southwestern Bell Texas" and "Image Access, Inc. d/b/a NewPhone, Inc.," but
21 Express Phone has taken the position that these requests were actually meant to
22 adopt the ICA between AT&T Florida and Image Access, Inc., and we are
23 treating it that way in our direct testimony (reserving the right to address in
24 rebuttal anything Express Phone may say to the contrary in its direct testimony).

1 **Q. HOW DID AT&T FLORIDA RESPOND TO THE OCTOBER 2010**
2 **REQUEST?**

3 A. AT&T Florida denied Express Phone's October 2010 request primarily because,
4 at that time, there was still more than a year left in the initial term of Express
5 Phone's ICA with AT&T Florida, and AT&T Florida is unwilling to allow a
6 CLEC to unilaterally opt out of an existing ICA in mid-stream before the window
7 for negotiation of a new contract begins. Had that not been the case, AT&T
8 Florida would have conditionally accepted the request in the same manner as it
9 conditionally accepted the subsequent March 2011 request that I address below.

10 **Q. HOW DID AT&T FLORIDA RESPOND TO THE MARCH 2011**
11 **REQUEST?**

12 A. By this time, the contract negotiation window had opened. AT&T Florida
13 therefore conditionally accepted the request, conditioned upon, among other
14 things, Express Phone curing its nonpayment breach. AT&T Florida is unwilling
15 to allow a CLEC that is in material breach of its existing ICA to opt into another
16 ICA without first curing the breach.

17 **III. DISCUSSION OF ISSUES**

18 **ISSUE 1**

19 *Is Express Phone's Notice of Adoption or AT&T Florida's denial of the*
20 *adoption barred by the doctrines of equitable relief, including laches, estoppels*
21 *and waiver?*

22 **Q. TO WHICH REQUEST DOES THIS ISSUE RELATE?**

23 A. This issue relates to both Express Phone's October 20, 2010 request and its March
24 14, 2011 request.

25 **Q. WHAT ARE THE RELEVANT DATES OF THE ENTRY AND**
26 **APPROVAL OF THE EXPRESS PHONE ICA?**

1 A. Express Phone entered its ICA with BellSouth Telecommunications, Inc. (now
2 known as BellSouth Telecommunications, LLC d/b/a AT&T Florida) on October
3 4, 2006. AT&T Florida filed that ICA with the Commission for approval on
4 November 2, 2006, and the agreement was approved by the Commission on
5 January 31, 2007 in compliance with 47 U.S.C. § 252(e). I will sometimes refer
6 to this as the "Express Phone ICA" throughout this testimony.

7 **Q. WHAT ARE THE RELEVANT DATES OF THE ENTRY AND**
8 **APPROVAL OF THE IMAGE ACCESS, INC. D/B/A NEWPHONE ICA?**

9 A. AT&T Florida and Image Access, Inc. d/b/a New Phone entered into an
10 Interconnection Agreement on March 20, 2006, which I will refer to as the
11 "Image Access ICA" throughout this testimony. AT&T Florida filed the Image
12 Access ICA with the Commission for approval on April 4, 2006, and it was
13 approved by Commission on July 3, 2006 in compliance with § 252(e).

14 **Q. WAS THE IMAGE ACCESS ICA IN PLACE WHEN EXPRESS PHONE**
15 **ENTERED INTO ITS ICA WITH AT&T FLORIDA?**

16 A. Yes. The Image Access ICA was entered, filed and approved before Express
17 Phone entered into its ICA with AT&T Florida in October of 2006.

18 **Q. DID EXPRESS PHONE SEEK TO ADOPT THE IMAGE ACCESS ICA IN**
19 **2006?**

20 A. No. Although it could have done so, we have no record of any request by Express
21 Phone to adopt the Image Access ICA in 2006 or, for that matter, at any time
22 before October 2010.

23 **ISSUE 2**

24 ***Is Express Phone permitted, under the applicable laws, to adopt the New Phone***
25 ***Interconnection Agreement during the term of its existing agreement with***
26 ***AT&T?***

1 **Q. TO WHICH ADOPTION REQUEST DOES THIS ISSUE RELATE?**

2 A. This issue relates to both Express Phone's October 20, 2010 request and its March
3 14, 2011 request.

4 **Q. WHY DID AT&T DENY THE OCTOBER 2010 REQUEST?**

5 A. AT&T Florida denied the October 2010 request via a letter dated November 1,
6 2010 which is attached as Exhibit WEG-1. AT&T Florida denied this request
7 primarily because at that time, there was still more than a year left in the initial
8 term of Express Phone's ICA with AT&T Florida, and AT&T Florida is unwilling
9 to allow a CLEC to unilaterally opt out of an existing ICA in mid-stream and
10 before the negotiation window as specified in its existing contract begins. Had
11 that not been the case, AT&T Florida would have conditionally accepted the
12 request in the same manner as it conditionally accepted the subsequent March
13 2011 request that I address below.

14 **Q. WHICH PROVISIONS OF THE EXPRESS PHONE ICA ARE**
15 **PARTICULARLY RELAVANT TO THIS DISPUTE?**

16 A. The Express Phone ICA contains three provisions that are at the core of this
17 dispute.

18 *First*, the ICA was effective on November 3, 2006 and established a term
19 of five years for the ICA. As a result, the Express Phone ICA did not expire until
20 November 2, 2011.

21 *Second*, § 1.4 of Attachment A of the Express Phone ICA expressly
22 requires Express Phone to pay for all services billed, including disputed amounts,
23 on or before the next bill date.

1 Third, Section 2 of the General Terms and Conditions clearly specifies the
2 “window” during which the parties can negotiate a successor ICA. Specifically,
3 Section 2.2 provides in relevant part:

4 2.2 The Parties agree that by no earlier than two hundred seventy days
5 and no later than one hundred and eighty (180) days prior to the
6 expiration of the initial term of this Agreement, they shall commence
7 negotiations for a new agreement to be effective beginning on the
8 expiration date of this Agreement (Subsequent Agreement). . . .

9 These and the other provisions of the Express Phone ICA referenced in this
10 testimony are included in Exhibit WEG-2.

11 **Q. ON WHAT ACTUAL DATE DID THE “WINDOW” FOR NEGOTIATION**
12 **OF A SUCCESSOR TO THE EXPRESS PHONE ICA OPEN?**

13 A. As explained above, the Express Phone ICA did not expire until November 2,
14 2011. Under Section 2.2, therefore, the negotiation window did not open until
15 270 days before that, or on February 6, 2011.

16 **Q. WAS EXPRESS PHONE’S OCTOBER 2010 ADOPTION REQUEST**
17 **MADE WITHIN THIS NEGOTIATION WINDOW?**

18 A. No. Its October 20, 2010 adoption request was made several months before the
19 negotiation window opened on February 6, 2011. As discussed above, because
20 that ICA was not subject to negotiation for a new agreement, AT&T Florida
21 would not entertain Express Phone’s request for a new ICA at that time.

22 **Q. IS THERE A SPECIFIC PROVISION OF THE**
23 **TELECOMMUNICATIONS ACT THAT ADDRESSES**
24 **INTERCONNECTION ADOPTIONS?**

25 A. Yes. Section 252(i) of the Act provides:

26 A local exchange carrier shall make available any interconnection,
27 service or network element provided under an agreement approved
28 under this section to which it is a party to any other requesting
29 telecommunications carrier upon the same terms and conditions as
30 those provided in the agreement.

1 **Q. WAS AT&T FLORIDA'S DECISION TO NOT ALLOW EXPRESS**
2 **PHONE TO UNILATERALLY OPT OUT OF ITS EXISTING ICA IN**
3 **MID-STREAM CONSISTENT WITH THIS STATUTE?**

4 A. I am advised that AT&T Florida's decision is consistent with this statute, and
5 precedent from the FCC, the New York Commission, and the First Circuit. That
6 said, I am not an attorney, and I will rely on AT&T Florida's counsel to explain
7 how AT&T's decision is supported by this authority in briefs and, as appropriate,
8 at oral argument.

9 **Q. ARE THERE ADDITIONAL REASONS WHY AT&T FLORIDA DID NOT**
10 **ALLOW EXPRESS PHONE TO ADOPT THE IMAGE ACCESS ICA?**

11 A. Yes. As Mr. Egan details in his testimony, at the time of each adoption request,
12 Express Phone was in breach of its ICA by failing to pay its bills in full. On
13 October 10, 2010, Express Phone had a past due balance on its AT&T Florida
14 accounts of ~~\$930,932~~ ^{\$751,335.94}, and by March 14, 2011, its past due balance had risen to
15 \$1,343,984.

16 **Q. DOES NONPAYMENT CONSTITUTE A MATERIAL BREACH OF THE**
17 **ICA?**

18 A. Of course. I cannot imagine that any party that provides service as required by a
19 contract would suggest that not being paid for the service is anything other than a
20 material breach of the contract.

21 **Q. BUT EXPRESS PHONE CLAIMS THAT IT HAS "DISPUTED" ALL OF**
22 **THE AMOUNTS IT HAS NOT PAID UNDER THE ICA. DOES THE ICA**
23 **ADDRESS HOW DISPUTED AMOUNTS ARE TREATED?**

24 A. Yes. As Mr. Egan explains in his testimony, the Express Phone ICA expressly
25 states that "Express Phone shall make payment to BellSouth for all services billed
26 **including disputed amounts.**" Attachment 3- Billing. ¶ 1.4 (emphasis added).

1 **Q. HOW DOES THIS RELATE TO AT&T FLORIDA'S DENIAL OF THE**
2 **TWO ADOPTION REQUESTS?**

3 A. AT&T Florida is unwilling to allow a CLEC that is in material breach of its
4 existing ICA to opt into another ICA without first curing the breach. Express
5 Phone's position here underscores the importance of this policy. Rather than
6 honoring the contractual obligations to which it agreed in a binding and
7 Commission-approved ICA, Express Phone is trying to evade those obligations by
8 "adopting" a different contract that has what it perceives to be more favorable
9 terms and conditions (even though it could have adopted that very same contract
10 initially but, instead, agreed to different terms and conditions that it now seeks to
11 evade). In effect, Express Phone is trying to rewrite the rules after it blatantly
12 violated them.

13 **Q. HAS AT&T FLORIDA OFFERED EXPRESS PHONE THE**
14 **OPPORTUNITY TO CURE ITS BREACH?**

15 A. Yes. When Express Phone sent its March 14, 2011 adoption request, it was in the
16 negotiation window for negotiating a successor agreement, but, as discussed was
17 in breach for nonpayment. AT&T Florida therefore responded with a letter dated
18 March 25, 2011, conditionally accepting the request subject to Express Phone
19 curing the breach by payment the past due amounts and posting adequate security.
20 That letter is attached as Exhibit WEG-3.

21 **Q. DID EXPRESS PHONE CURE ITS NONPAYMENT BREACH OR**
22 **SUBMIT THE SECURITY AS SET FORTH IN AT&T FLORIDA'S**
23 **MARCH 25, 2011 LETTER?**

24 A. No. As AT&T Florida witness Mr. Egan explains in his testimony, Express
25 Phone has never cured that breach and did not submit any security in response to
26 that letter.

1 **ISSUE 3**

2 *Is Express Phone permitted under the terms of the interconnection agreement*
3 *with AT&T to adopt the New Phone Interconnection Agreement?*

4 **Q. IS THERE ANY PROVISION IN THE EXPRESS PHONE ICA THAT**
5 **ADDRESSES ADOPTION RIGHTS?**

6 A. Yes. Section 11 of the General Terms and Conditions of the Express Phone ICA
7 states:

8 Pursuant to 47 U.S.C. Section 252(i) and 47 C.F.R. Section 51.809,
9 BellSouth shall make available to Express Phone any entire resale
10 agreement filed and approved pursuant to 47 U.S.C. Section 252.
11 The adopted agreement shall apply to the same states as the
12 agreement that was adopted, and the term of the adopted
13 agreement shall expire on the same date as set forth in the
14 agreement that was adopted.

15 **Q. WHAT IS THE PURPOSE OF THIS PROVISION?**

16 A. This language does not break any new ground or assert any right that Express
17 Phone does not otherwise have both by contract and by operation of law. It
18 simply summarizes the provisions in the Act regarding adoption of other carrier
19 agreements.

20 **Q. IS THERE ANY LANGUAGE IN THE EXPRESS PHONE ICA THAT**
21 **ADDRESSES THE TIMING OF NEGOTIATIONS FOR A SUCCESSOR**
22 **AGREEMENT?**

23 A. Yes. As discussed above, the Express Phone ICA addresses the timing of
24 negotiations for a new ICA in Section 2.2, and it provides that negotiations would
25 begin “no earlier than two hundred seventy (270) days . . . prior to the expiration
26 of the initial term of this Agreement.” For the Express Phone ICA, that date was
27 February 6, 2011.

28 **Q. ARE THERE ANY OTHER RELEVANT PROVISIONS OF THE ICA**
29 **THAT YOU HAVE NOT YET DISCUSSED IN YOUR TESTIMONY?**

1 A. Yes. Section 26 of the General Terms and Conditions requires that both parties
2 “shall act in good faith in its performance under this Agreement.”

3 **Q. HAS EXPRESS PHONE ACTED IN GOOD FAITH UNDER THE TERMS**
4 **OF THE PARTIES’ CURRENT ICA?**

5 A. In my view as a layperson, no. Express Phone has by its own admission withheld
6 payments due AT&T Florida for amounts billed by AT&T Florida for services
7 provided pursuant to the ICA even though it contractually committed that it would
8 not do so. And, when asked to honor its contract by paying those disputed
9 amounts, Express Phone sought to adopt an entirely different ICA for the sole
10 purpose of evading its contractual obligations. I simply do not see how that can
11 be viewed as acting in good faith.

12 **Q. SHOULD THE COMMISSION CONSIDER THE PUBLIC INTEREST IN**
13 **RESOLVING THIS DISPUTE?**

14 A. Yes. The Commission has previously held that it has “authority to reject (a
15 requesting company)’s adoption of the [ILEC/CLEC] Agreement as not being
16 consistent with the public interest” when, as is the case here, there has been “prior
17 inappropriate conduct and actions of one of the parties”¹ I am also advised that
18 AT&T Florida’s view that the public interest is critical to this analysis is also
19 consistent with decisions from other jurisdictions, including precedent from the
20 District of Columbia Commission. I will rely on AT&T Florida’s counsel to
21 explain how this position is supported by this authority in briefs and, as
22 appropriate, oral argument.

¹ See *In re: Notice by BellSouth Telecommunications, Inc., of adoption of an approved interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. by Healthcare Liability Management Corporations d/b/a Fibre Channel Network, Inc. and Health Management Systems, Inc.*, Docket No. 990939-TP, Order No. PSC-99-1930-PAA-TP (issued September 29, 1999)

1 **Q. HOW DOES THE PUBLIC INTEREST APPLY TO THE ISSUE HERE?**

2 A. Setting aside the contractual and legal reasons that Express Phone's attempted
3 adoption must be rejected, under the circumstances Express Phone's attempted
4 adoption is clearly not in the public interest. Reduced to its essential elements,
5 Express Phone is simply trying to use the adoption process to evade its
6 contractual obligations to pay for services it has ordered. I do not see how it can
7 be in the public interest to allow company to sign a contract saying it will do
8 something, have that contract approved pursuant to federal law, and then let the
9 company evade its obligations under that contract.

10 **ISSUE 4**

11 ***If the New Phone Interconnection Agreement is available for adoption by***
12 ***Express Phone, what is the effective date of the adoption?***

13 **Q. WHAT IS THE PARTIES' DISAGREEMENT WITH RESPECT TO THIS**
14 **ISSUE?**

15 A. As I understand it, Express Phone is taking the position that its so-called adoption
16 of the Image Access ICA is effective on October 20, 2010, when it sent the first
17 request to AT&T Florida, and therefore that its payment obligations to AT&T
18 Florida should be governed by that ICA from that date forward. We do not
19 believe that the Commission needs to reach this issue because if it finds in favor
20 of AT&T Florida on Issues 1, 2 and 3, this issue would be moot. If, however, the
21 Commission disagrees, AT&T Florida submits that the adoption request should
22 not be valid until some time after March 29, 2011 when Express Phone filed its
23 first Notice of Adoption with this Commission, claiming that it had unilaterally
24 adopted the Image Access ICA.

25 **Q. PLEASE EXPLAIN THAT POSITION.**

1 A. Express Phone's October 20, 2010 and March 14, 2011 requests for adoption of
2 an agreement are not sufficient to be a binding contract. The request letters do not
3 supersede or take the place of the required Notice of Adoption that is to be filed
4 with this Commission. Instead, letters such as those are intended to simply start
5 the process by which AT&T Florida would then review the request for adoption
6 and the factors that could impact the request. Typically, an ICA is not
7 enforceable and binding until both parties have signed the contract, it is filed with
8 the Commission for approval, and has been approved. To find that October 20,
9 2010 is the effective date of the new ICA would be to find that AT&T Florida can
10 be forced to be a party to a contract without its consent. This Commission has
11 reached a somewhat similar decision in the Nextel Adoption Order, Order No.
12 PSC-08-0584-FOF-TP issued September 8, 2008 in Dockets Nos. 070368-TP and
13 070369-TP, when it held that the effective date is the date the notice of adoption
14 is filed with this Commission. That decision was based on unique facts – it
15 concerned another carrier's dispute with AT&T Florida regarding merger
16 commitments related to the FCC's approval of the AT&T – BellSouth merger.
17 With those unique facts, the Commission still found that the effective date was the
18 date of filing with the Commission and not any earlier. Those unique facts are not
19 present here, and thus the effective date should be some time after the date
20 Express Phone filed its Notice of Adoption with the Commission.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes.

1 BY MS. MONTGOMERY:

2 Q. Mr. Greenlaw, did you attach three exhibits to
3 your Direct Testimony?

4 A. Yes, I did.

5 Q. And do you have any changes to those three
6 exhibits?

7 A. No, I do not.

8 MS. MONTGOMERY: And for the record, those
9 were identified as WGE-1 through 3, and on the Composite
10 Exhibit List it is Exhibits 22 through 24.

11 BY MS. MONTGOMERY:

12 Q. Mr. Greenlaw, did you also cause to be
13 submitted on March 29th ten pages of Rebuttal Testimony?

14 A. Yes, I did.

15 Q. And do you have any changes or corrections to
16 that testimony?

17 A. Just one pursuant to the exact same correction
18 as cited in my Direct. On Page 9, Line 12, of my
19 Rebuttal Testimony, the same past due balance is cited,
20 the \$930,932 amount. And, again, I would move to change
21 that to \$851,335.94. But that is my only correction.

22 Q. Thank you. And if I were to ask you today the
23 same corrections that you were asked in your Rebuttal
24 Testimony, would your answers be the same?

25 A. Yes, they would.

1 **MS. MONTGOMERY:** At this time I move that Mr.
2 Greenlaw's Rebuttal Testimony be inserted into the
3 record as though read.

4 **CHAIRMAN BRISÉ:** Okay. Let the record reflect
5 that.

6 **MS. MONTGOMERY:** Thank you.
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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is William Eric Greenlaw. I am an Associate Director in the AT&T
4 Wholesale organization. My business address is 311 S. Akard Street, Dallas, TX
5 75202.

6 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

7 A. Yes. I am the same William Eric Greenlaw that filed direct testimony on behalf of
8 AT&T Florida on March 1, 2012.

9 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

10 A. My rebuttal testimony responds to certain aspects of the direct testimony filed on
11 March 1, 2012 by Thomas Armstrong and Don Wood on behalf of Express Phone
12 Service, Inc. ("Express Phone").

13 **Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

14 A. I have identified key issues raised in the direct testimony filed in this proceeding by
15 Mr. Armstrong and Mr. Wood and will respond to each of them.

16 **Q. BEFORE WE GET TO THE SUBSTANCE OF YOUR TESTIMONY, THE**
17 **EXPRESS PHONE TESTIMONY REFERS TO THE INTERCONNECTION**
18 **AGREEMENT IT IS SEEKING TO ADOPT AS THE "NEWPHONE ICA"**
19 **WHILE YOUR DIRECT TESTIMONY REFERS TO THE "IMAGE ACCESS**
20 **ICA." ARE THESE TWO DIFFERENT ICAS?**

21 A. No, both the parties are talking about the same contract. Express Phone is seeking to
22 adopt the Interconnection Agreement ("ICA") between AT&T Florida and Image
23 Access, Inc., which does business in Florida under the name NewPhone.

24 **II. REBUTTAL TO EXPRESS PHONE TESTIMONY**

25 A. **Disconnection Of Express Phone Did Not Impact Competition or**
26 **Consumers In The State Of Florida**

1 **Q. AT PAGES 4-5 OF HIS DIRECT TESTIMONY, MR. ARMSTRONG**
2 **DISCUSSES THE PROVISION OF LIFELINE SERVICE IN FLORIDA AND**
3 **STATES HIS OPINION THAT MULTIPLE LIFELINE PROVIDERS ARE**
4 **NEEDED IN FLORIDA. HOW DO YOU RESPOND?**

5 A. Mr. Armstrong seems to suggest that Express Phone's departure from the Florida
6 market makes it much more difficult for Lifeline-eligible consumers to receive
7 service in Florida, but that simply is not the case. Lifeline-eligible consumers in
8 Florida today can choose from a number of providers and types of service. In AT&T
9 Florida's service territory alone, for example, approximately seventeen (17) Eligible
10 Telecommunications Carriers ("ETCs") are certified by this Commission to offer
11 Lifeline service to eligible Florida residents. Some offer wireline service on a strictly
12 "pre-pay" basis like Express Phone did, some offer wireline service on a more
13 traditional monthly billing basis, and some offer wireless service.

14 **Q. MR. ARMSTRONG ALSO SUGGESTS, AT PAGE 5 OF HIS DIRECT**
15 **TESTIMONY, THAT EXPRESS PHONE'S CUSTOMERS WERE**
16 **SUDDENLY LEFT WITHOUT SERVICE WHEN AT&T FLORIDA**
17 **DISCONNECTED EXPRESS PHONE'S SERVICES FOR FAILURE TO PAY**
18 **ITS BILLS. HOW DO YOU RESPOND?**

19 A. Express Phone has only itself to blame if any of its customers did not receive advance
20 notice of the pending disconnection of service.

21 **Q. WHY DO YOU SAY THAT?**

22 A. As Mr. Egan explains in his rebuttal testimony, AT&T Florida provided Express
23 Phone notice of its breach, an opportunity to cure that breach, and more than two
24 months' notice before AT&T Florida finally disconnected the service. Express Phone
25 had ample time to notify its customers of the impending service disconnection and to
26 assist them in transitioning to another provider if it cared to do so.

1 **Q. HAVE ANY NEW PRE-PAY COMPANIES ENTERED THE FLORIDA**
2 **MARKETPLACE SINCE THE DISCONNECTION OF EXPRESS-PHONE'S**
3 **SERVICE FOR NONPAYMENT?**

4 A. Yes. In fact, a CLEC called Digital Express, Inc. ("Digital Express") began
5 operating shortly after AT&T Florida disconnected Express Phone's service for non-
6 payment.

7 **Q. ARE THERE ANY SIMILARITIES BETWEEN THIS NEW CLEC, DIGITAL**
8 **EXPRESS, AND EXPRESS PHONE?**

9 A. Yes. It appears that Mr. Armstrong is an officer of Digital Express, just as he was an
10 officer of Express Phone.

11 **Q. WHY DO YOU SAY THAT?**

12 A. The notice provision of the Interconnection Agreement between AT&T Florida and
13 Digital Express shows that Mr. Armstrong is the Vice President of Digital Express,
14 and Mr. Armstrong executed the signature pages of the interconnection agreement as
15 "President" of Digital Express. Copies of the relevant pages from the Digital
16 Express Interconnection Agreement are attached as Exhibit WEG-4.

17 **Q. IS MR. ARMSTRONG'S AFFILIATION WITH DIGITAL EXPRESS NOTED**
18 **IN HIS DIRECT TESTIMONY OR IN THE CIRRICULUM VITAE**
19 **ATTACHED TO IT?**

20 A. No.

21 **Q. WHEN DID DIGITAL EXPRESS ENTER AN INTERCONNECTION**
22 **AGREEMENT WITH AT&T FLORIDA?**

23 A. In June of 2011, less than two months after AT&T Florida disconnected Express
24 Phone's service for failing to cure its nonpayment breach. In fact, Digital Express
25 adopted the ICA between AT&T Florida and Image Access, which is the very
26 contract Express Phone is seeking to adopt in this docket. See Docket No. 110222-
27 TP.

B. The Dispute Resolution Provisions

1

2 Q. **HOW DO YOU RESPOND TO MR. ARMSTRONG'S DIRECT TESTIMONY**
3 **AT PAGE 6 THAT THE EXPRESS PHONE ICA IS UNFAIR BECAUSE, IN**
4 **HIS VIEW, AT&T FLORIDA HAS FAILED TO RESPOND TO DISPUTES?**

5 A. It is simply a red herring. As explained in both my and Mr. Egan's Direct Testimony,
6 Express Phone is required by its ICA to pay all amounts billed by AT&T Florida
7 whether it disputes them or not. What is unfair is Express Phone's request to be
8 treated differently than other CLECs who have similar language in their ICAs.

9 Q. **WHY DO YOU SAY THAT EXPRESS PHONE IS ASKING TO BE TREATED**
10 **DIFFERENTLY THAN OTHER CLECS WHO HAVE SIMILAR LANGUAGE**
11 **IN THEIR ICAS?**

12 A. Because Express Phone is asking the Commission to allow it to continue operating
13 without either paying disputed amounts as it to committed to do in its ICA or posting
14 a bond for those amounts. But that is exactly what this Commission required of
15 LifeConnex in July 2010 when the Commission rejected LifeConnex's efforts to not
16 comply with the "pay disputed amounts" provisions of its ICA.¹ And, the
17 Commission made a similar ruling just last month in the FLATEL case when it
18 dismissed FLATEL's complaint against AT&T Florida for disconnecting its services
19 due to FLATEL's failure to pay its bills in full as required by its interconnection
20 agreement.² I understand that other state commissions, including for example the

¹ See *In re Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a SwifTel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Docket No. 100021-TP, Order No. PSC-10-0457-PCO-TP, at 4-5 (July 16, 2010).

² *In re Request for emergency relief and complaint of FLATEL, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida to resolve interconnection dispute*, Docket No. 110306-TP, Order No. PSC-12-0085-FOF-TP, at 5 (Feb. 24, 2012).

Alabama³, Kentucky⁴ and North Carolina⁵ Commissions, reached similar decisions enforcing this contract language, most notably in the LifeConnex Cases. These decisions are attached as Exhibits WEG-5 (Alabama), WEG-6 (Kentucky) and WEG-7 (North Carolina). While I am not a lawyer, it seems to me as a layperson that it would be unfair for this Commission to now allow Express Phone to opt out of its interconnection agreement to avoid its payment obligation to pay disputed amounts, especially when other CLECs have been required to comply with that obligation or have their services from AT&T Florida disconnected.

9 Q. **BUT WHAT ABOUT EXPRESS PHONE'S ASSERTION THAT AT&T**
10 **FLORIDA TAKES TOO LONG TO ADDRESS THE DISPUTES IT HAS**
11 **FILED?**

12 A. We disagree with that assertion, but the Commission's prior decisions make clear that
13 this proceeding is not the forum to address those disagreements. In the Lifeconnex
14 docket I mentioned earlier, the Commission explained: "If LifeConnex's fundamental
15 concern in this docket is AT&T's delay in processing discounts and promotional
16 credits, *the ICA provides LifeConnex's options for relief – to file a*
17 *complaint/petition before us to determine the treatment of disputed amounts.*"

18 Q. **HOW MUCH NOTICE DID AT&T PROVIDE EXPRESS PHONE OF ITS**
19 **INTENTION TO DISCONNECT EXPRESS PHONE'S SERVICE FOR**
20 **NONPAYMENT?**

³ Order Granting in Part and Denying in Part LifeConnex Telecom, LLCs Petition and Motion for Emergency Relief in the Matter of BellSouth Telecommunications, Inc., d/b/a AT&T Alabama or AT&T Southeast v. LifeConnex Telecom, LLC, f/k/a Swiftel, LLC, Docket 31450, at 6-8 (Ala. P.S.C. Aug. 20, 2010).

⁴ In the Matter of BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. LifeConnex Telecom, LLC f/k/a Swiftel, LLC, Case. No. 2010-00026, at 6 (Ky. P.S.C. Aug. 20, 2010).

⁵ In the Matter of Disconnection of LifeConnex Telecom, Inc. f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina, Docket No. P-55 Sub 1817, at 11-13 (N.C. Utilities Comm'n Sept. 22, 2010).

1 A. As I mentioned above, AT&T Florida provided Express Phone notice of its breach, an
2 opportunity to cure that breach, and nearly two months' notice before AT&T Florida
3 finally disconnected the service.

4 **Q. AND DURING THAT TIME, DID EXPRESS PHONE FILE A COMPLAINT**
5 **WITH THIS COMMISSION TO ADDRESS WHAT IT NOW CLAIMS TO BE**
6 **A DELAY ON AT&T FLORIDA'S PART IN RESPONDING TO ITS**
7 **DISPUTES?**

8 A. Not specifically. Express Phone did file a complaint seeking emergency relief to
9 prevent AT&T Florida from disconnecting its service, but did not ask for relief on its
10 disputes. That complaint was docketed as Docket No. 110071. After the
11 Commission denied Express Phone's request for emergency consideration, it is likely
12 that Docket No. 110071-TP would have reached the merits of Express Phone's
13 disputes, but Express Phone has demonstrated that it is not interested in resolving
14 those issues, as it first sought to abate that proceeding, and then, less than two weeks
15 after the Commission denied that motion, Express Phone voluntarily dismissed that
16 docket. Attached are the following documents from Docket No. 110071-TP: Express
17 Phone's Request to Hold Dockets in Abeyance (Exhibit WEG-8); Order Denying
18 Request for Abatement (Exhibit WEG-9); and Express Phone's Voluntary Dismissal
19 Without Prejudice (Exhibit WEG-10).

20 **Q. DO YOU HAVE A RESPONSE TO MR. ARMSTRONG'S STATEMENT**
21 **THAT "IN SOME CASES, SUCH AS NEWPHONE, AT&T HAS ENTERED**
22 **INTO AN ICA THAT PERMITS DISPUTED AMOUNTS TO BE WITHHELD**
23 **BY THE CLEC UNTIL SUCH TIME AS THE DISPUTES ARE**
24 **RESOLVED."?**

25 A. As I explained in my Direct Testimony, Express Phone could have adopted the Image
26 Access ICA that contains this language at the time Express Phone signed its
27 interconnection agreement with AT&T Florida in 2006. Instead of adopting that

ICA, however, Express Phone decided to sign an ICA with different payment language. It cannot now ask the Commission to re-write its ICA to include the language it wishes it had adopted years ago.

Q. HOW DO YOU RESPOND TO MR. ARMSTRONG'S TESTIMONY THAT THE PAYMENT PROVISION IN THE EXPRESS PHONE ICA IS SOMEHOW UNFAIR BECAUSE IT IS DIFFERENT FROM THE LANGUAGE IN THE IMAGE ACCESS ICA?

A. This language appears in many interconnection agreements approved by this Commission, and it is fair to both AT&T Florida and Express Phone. Express Phone is protected in that it can dispute any amounts that are billed and, if the disputes are determined to be valid, it will receive these amounts back from AT&T Florida – I am aware of no instance in which AT&T Florida has been unable to pay amounts the Commission has determined it owes. And it is fair to AT&T Florida because it ensures that AT&T Florida will actually receive payment for amounts the Commission determines it is owed. In sharp contrast, allowing Express Phone to withhold disputed amounts would be unfair to AT&T Florida, because experience has shown that many pre-pay resellers like Express Phone are either unable or unwilling to pay amounts they owe AT&T Florida and affiliated entities. In Florida, for example, LifeConnex has not paid amounts the Commission has determined it should pay and instead chose to go out of business. Express Phone itself chose to have its service disconnected rather than paying its full bills. In other states, various resellers with “withhold disputed amounts” language in their ICAs have actually withheld more than they have disputed – in other words, these resellers have not paid **undisputed** amounts to AT&T. When AT&T has demanded payment of these undisputed amounts, some of these resellers have simply gone out of business in that

1 state without paying one penny to AT&T, and it is unlikely that AT&T will ever be
2 paid amounts that clearly are owed to it. In many ways, this is similar to the
3 Commission's own experience with American Dial Tone in Docket No. 100432-TP
4 which entered a settlement agreement with the Commission staff in which it
5 committed to pay penalties on an installment basis and then defaulted on its second
6 payment.

7 **Q. HOW DO YOU RESPOND TO MR. ARMSTRONG'S TESTIMONY AT**
8 **PAGES 11-12 THAT A SMALL CLEC LIKE EXPRESS PHONE DOES NOT**
9 **HAVE THE RESOURCES TO FIGHT AT&T FLORIDA?**

10 A. Mr. Armstrong seems to suggest that that Express Phone signed the ICA that is
11 signed because it either did not understand it or does not have the resources to have
12 filed a simple request with the Commission to either adopt the Image Access ICA or
13 to arbitrate for inclusion of its desired payment language in its own ICA. I find that
14 hard to square with the certification by Mr. Armstrong in Express Phone's
15 Application for Certification as an alternative local exchange company that Express
16 Phone as "the technical expertise, managerial ability, and financial capability to
17 provide alternative local exchange service in the State of Florida." Nor does it square
18 with the fact that the very same company has hired two law firms and a professional
19 witness to prosecute this proceeding before the Commission. A copy of Express
20 Phone's Application is attached here as Exhibit WEG-11.

21 **C. Express Phone's Interconnection Agreement and Adoption Requests**

22 **Q. MOVING TO EXPRESS PHONE'S TWO REQUESTS TO ADOPT THE**
23 **IMAGE ACCESS INTERCONNECTION AGREEMENT, WHY DID AT&T**
24 **FLORIDA'S NOVEMBER 1, 2010 RESPONSE NOT MENTION EXPRESS**
25 **PHONE'S THEN BREACH OF THE INTERCONNECTION AGREEMENT?**

1 A. At that time, Express Phone had more than a year left in its contract term, and, as I
2 stated in my direct testimony, AT&T Florida was not willing to allow Express Phone
3 to adopt a new interconnection agreement midstream. There simply was no need to
4 recite additional reasons that AT&T Florida would have denied that request had that
5 not been the case.

6 **Q. BUT WAS EXPRESS PHONE IN BREACH OF ITS INTERCONNECTION**
7 **AGREEMENT WHEN IT MADE ITS FIRST REQUEST TO ADOPT THE**
8 **IMAGE ACCESS AGREEMENT?**

9 A. Yes, as Mr. Egan stated in his direct testimony, at that time, Express Phone was in
10 breach of Section 1.4 of Attachment 3 of its ICA for failure to pay "for all services
11 billed, including disputed amounts, on or before the next bill date." Specifically, in
12 October 2010, it had an outstanding payment due of ~~\$930,932~~ ^{\$851,335.94} which was a material
13 breach of that contractual provision.

14 **Q. ARE YOU AWARE OF ANY PROVISION OF EXPRESS PHONE'S**
15 **INTERCONNECTION AGREEMENT THAT ALLOWS IT TO LEAVE THAT**
16 **CONTRACT MIDSTREAM FOR ANY REASON?**

17 A. No. In fact, the plain language is directly to the contrary. Section 2.1 of the General
18 Terms and Conditions states that "[t]he initial term of this Agreement *shall be five (5)*
19 *years*, beginning on the Effective Date . . ."

20 **Q. HOW DO YOU RESPOND TO MR. ARMSTRONG'S TESTIMONY AT PAGE**
21 **12 THAT AT&T FLORIDA PRESENTS ITS "STOCK ICA, TAKE IT OR**
22 **LEAVE IT" TO SMALL CLECS?**

23 A. I disagree with that characterization. AT&T Florida does not take that position with
24 CLECs (small or otherwise), and more significantly, it cannot take that position.

25 **Q. WHY DO YOU SAY IT CANNOT TAKE THAT POSITION?**

26 A. Sections 251 and 252 of the federal Telecommunications Act gives CLECs like
27 Express Phone the express rights to ask for Commission assistance in negotiating a

1 contract provision and to have the Commission to arbitrate any language that they and
2 AT&T Florida cannot agree upon.

3 Q. **DID EXPRESS PHONE SEEK COMMISSION ASSISTANCE IN**
4 **CONNECTION WITH ITS 2006 INTERCONNECTION AGREEMENT?**

5 A. No.

6 Q. **MR. WOOD RAISES THE HYPOTHETICAL OF A PURPORTEDLY**
7 **DISCRIMINATORY SITUATION THAT EXISTS WHEN AN ILEC ENTERS**
8 **INTO A BETTER DEAL WITH CLEC B AFTER IT HAS ENTERED A**
9 **DIFFERENT DEAL WITH CLEC A. HOW DO YOU RESPOND TO THAT?**

10 A. I don't see how that hypothetical has anything to do with this case.

11 Q. **WHY NOT?**

12 A. As I stated in my direct testimony, the Image Access ICA that Express Phone is
13 seeking to adopt was signed, filed and approved several months before Express Phone
14 signed its ICA. Express Phone could have adopted the Image Access ICA at that
15 time, but did not do so. Mr. Wood's hypothetical addresses the opposite scenario that
16 would have taken place had Image Access entered its ICA after Express Phone had
17 entered its ICA.⁶

18 Q. **DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 A. Yes.

20 1028413

⁶ I am not suggesting that AT&T Florida agrees with Mr. Wood's analysis in that very different hypothetical scenario – it does not, and our attorneys could explain why if it were relevant to the proceeding.

1 BY MS. MONTGOMERY:

2 Q. And did you also attach various exhibits to
3 your Rebuttal Testimony?

4 A. I did.

5 Q. And there were eight exhibits, is that
6 correct?

7 A. I believe so.

8 Q. And do you have any changes to those exhibits?

9 A. No, I do not.

10 Q. And those are Exhibits WEG-4 through WEG-11?

11 A. Correct.

12 MS. MONTGOMERY: And for the record, those are
13 Exhibits 27 through 34 in the Composite Exhibit List.

14 BY MS. MONTGOMERY:

15 Q. Mr. Greenlaw, have you prepared a summary of
16 your Direct and Rebuttal testimony?

17 A. Yes, I did.

18 Q. Can you please present that at this time?

19 A. Sure. As we have all heard today, AT&T
20 Florida does agree with Express Phone on at least one
21 point, and that is the issue at dispute in this docket
22 is very simple. We just disagree on what that issue is.
23 By now I think we all understand the literal meaning of
24 the words contained in Section 252(i) and in 51.809 when
25 they are read without any additional context or

1 otherwise viewed in a vacuum. But the Act was not meant
2 to be viewed in a vacuum or interpreted in piece-parts
3 whereby certain sections are applicable but other
4 relevant sections are not.

5 While my legal counsel further address the
6 merits of contract law and other legal precedent and how
7 that applies to the particulars in this case at the
8 appropriate time, it is clear the Act was meant to be
9 viewed as a whole and in concert, with not in opposition
10 to, other existing --

11 **MS. KAUFMAN:** Mr. Chairman, I'm sorry. I hate
12 to interrupt, but I'm ready to be corrected if Mr. Egan
13 addresses these provisions in his testimony either
14 direct or prefiled about the interpretation of the Act.
15 And I believe the summary is supposed to be limited to
16 testimony that has been prefiled.

17 **MS. MONTGOMERY:** Mr. Greenlaw does address the
18 provisions of the Act and how they apply to the various
19 requests that Express Phone has made here, and he is
20 simply summarizing those positions here. I don't
21 believe this is much more than -- on this point than he
22 has already stated.

23 **CHAIRMAN BRISÉ:** Okay.

24 **MS. KAUFMAN:** You know, I'm not trying to bog
25 down the process. I don't recall him anywhere

1 testifying about the Act and its entire contents. And
2 if he's done with that, I'm happy to move on.

3 **CHAIRMAN BRISÉ:** Okay. Thank you. You may
4 proceed.

5 **THE WITNESS:** Okay. I'll try to resume past
6 that point, although this next paragraph may bring
7 another objection.

8 **MS. KAUFMAN:** At least he's giving me warning.

9 **THE WITNESS:** Yes. The irony is if you read
10 all of Section 251 and 252, the primary focus of those
11 sections is addressing the ways and means by which a
12 CLEC can enter into an approved agreement with the ILEC,
13 not to escape from such a valid agreement after it's
14 executed by both parties and approved by the appropriate
15 state commission.

16 At the end of the day, though, putting this
17 aside, regardless of whether any of the Express Phone
18 arguments today have gained any merit in the
19 Commission's eyes or not, it doesn't change the known
20 facts of the case nor should it change its outcome. The
21 initial term of the agreement between Express Phone and
22 AT&T Florida did not expire until November of 2011,
23 almost 13 months after the initial October 2010 request
24 was received from Express Phone regarding adopting the
25 Image Access agreement that was actually approved in

1 Texas. At the time Express Phone made its October 2010
2 request, it was not within the stated negotiation window
3 that is clearly outlined in its current and effective
4 agreement, and Express Phone owed over \$800,000 in
5 past-due bill charges. At that time, AT&T Florida
6 properly advised Express Phone that the inquiry was not
7 appropriate on November 1st, 2010.

8 Five months then passed, approximately five
9 months. And in March of 2011, Express Phone made its
10 second request regarding adopting the same agreement.
11 By that time Express Phone owed approximately
12 1.4 million in past due charges. However, at that point
13 the negotiation window of their current and effective
14 agreement had opened as of February 6th, 2011. So given
15 those terms, AT&T offered Express Phone acceptance of
16 the request conditioned upon the material breach of the
17 current agreement being cured, and Express Phone did not
18 do so.

19 With this information as a backdrop, the
20 record will show AT&T has treated all CLECs in the state
21 of Florida, including Express Phone, on a
22 nondiscriminatory basis with respect to 252(i) adoption
23 requests. The adoption of Digital Express that is
24 referenced briefly in my rebuttal and was referenced
25 this morning is actually a prime example of that.

1 Finally, there are other parts of Section 252
2 of the Act worth noting aside from 252(i) by itself.
3 Section 252(e) provides parameters by which a state
4 commission can reject an interconnection agreement for,
5 among other factors, whether the implementation of such
6 an agreement is not consistent with the public interest,
7 convenience, or necessity. In fact, as I have noted in
8 my filed testimony, this Commission has utilized the
9 public interest clause in past decisions involving
10 approval of interconnection agreements in Florida and
11 it's entirely appropriate to do so here.

12 The public interest would not be served in any
13 way by allowing a CLEC, such as Express Phone, to use
14 252(i) solely to opt out of a current and effective
15 agreement outside of any of the termination or
16 negotiation parameters that exist within that agreement
17 simply to escape the obligations that they have under
18 such an agreement. So I respectfully submit to you that
19 AT&T's handling of Express Phone's request to adopt the
20 Image Access ICAs were both proper and appropriate under
21 the Telecom Act as well as under the terms of their
22 current agreement and ask that the Commission rule in
23 favor of AT&T in the issues in dispute in this docket.

24 Thank you.

25 **MS. MONTGOMERY:** Thank you.

FLORIDA PUBLIC SERVICE COMMISSION

1 At this time we tender Mr. Greenlaw for
2 cross-examination.

3 **CHAIRMAN BRISÉ:** Thank you. Ms. Kaufman.

4 **MS. KAUFMAN:** Thank you, Commissioners, Mr.
5 Chairman.

6 **CROSS EXAMINATION**

7 **BY MS. KAUFMAN:**

8 Q. Good afternoon, Mr. Greenlaw.

9 A. Good afternoon.

10 Q. In your summary, and I think in your testimony
11 as well, you say that you are a director in the AT&T
12 wholesale organization, is that correct?

13 A. An area manager. I am in the wholesale
14 organization.

15 Q. So what company do you work for?

16 A. My payroll company is AT&T Services, Inc. But
17 for the purposes of this docket I represent AT&T
18 Florida.

19 Q. Do you have responsibility for certain states
20 in your job or certain entities?

21 A. No, no specific states.

22 Q. Have you ever met Mr. Armstrong prior to
23 today?

24 A. No, not prior to today.

25 Q. Have you ever personally been involved in any

1 meetings or discussions with Mr. Armstrong or any
2 Express Phone personnel?

3 A. No, I have not.

4 Q. When were you first asked to draft testimony
5 for this case?

6 A. I'm just trying to give you an accurate
7 answer. Approximately fall of 2011, early this year
8 when the docket was opened and I was assigned to the
9 case when Direct Testimony and a schedule was set.

10 Q. So the first time of your -- the first time
11 you became involved in this matter was when the hearing
12 was set and AT&T knew it had to file testimony?

13 A. That's correct.

14 Q. And you haven't had any personal involvement
15 in this matter prior to that, is that correct?

16 A. That is also correct.

17 Q. Okay. Now, I think that you mentioned in your
18 summary, and I believe this letter is attached both to
19 your testimony and also Mr. Armstrong's, the
20 November 1st letter, and I believe it's WEG-1 -- let me
21 see if I have that right?

22 A. I'm paging to it. I'm familiar with the
23 letter.

24 Q. I want to look at it.

25 A. It is WEG-1.

1 Q. This is the November 1st, 2010, letter that
2 AT&T sent to Express Phone after it received Express
3 Phone's notice of adoption, correct?

4 A. Express Phone's request; but, yes. I realize
5 that is an issue we agree to disagree on.

6 Q. Absolutely. Did you review this letter before
7 it was sent?

8 A. No, not specifically.

9 Q. Who is Tina Rylander (phonetic)?

10 A. Tina Rylander is a manager in our contract
11 administration group.

12 Q. Is she a witness here today?

13 A. No, she is not.

14 Q. Now, you'll have to help me with this. There
15 is a letter under her stamp that looks like an F to me.
16 Do you have any idea what that is or what that is
17 supposed to represent?

18 A. Honestly, no. I believe it's an overzealous
19 attempt at a unique signature, but it's not my
20 signature.

21 Q. And then below Ms. Rylander's stamped
22 signature there is a name of Eddie A. Reed (phonetic),
23 correct?

24 A. Correct.

25 Q. I'm trying to understand the genesis of this

1 letter. Ms. Rylander stamped her signature on this for
2 Mr. Reed?

3 A. Your guess is as good as mine. It appears
4 that is what happened. For clarification, Mr. Reed was
5 a director in the contract management organization, so
6 Ms. Rylander would have reported to him. This is a form
7 letter that basically is sent to CLECs that make a
8 request for adoption, and so I would assume Mr. Reed's
9 signature or printed name is on that because it is a
10 form letter.

11 Q. And this is the form letter that you sent or
12 that AT&T sent objecting to Express Phone's, as we call
13 it, notice of adoption, correct?

14 A. As you call it, yes.

15 Q. How many other letters like this have been
16 sent out to other CLECs, if this is a form letter?

17 A. I do not have an exact number.

18 Q. Now, you would agree with me, would you not,
19 that the only reason that is given in this November 1st
20 letter for AT&T's objection to Express Phone's notice of
21 adoption is the fact that the window for negotiation has
22 not opened, is that correct?

23 A. I would agree.

24 Q. There are no past due amounts mentioned in
25 this letter, are there?

1 A. Correct.

2 Q. And you wouldn't expect Express Phone to take
3 anything from this letter other than what's on the
4 printed page, would you?

5 A. With respect to this request, no.

6 Q. Now, on Page 3 of your Direct Testimony you
7 talk about this letter beginning at the top of the page,
8 correct?

9 A. Yes, I do, in general terms.

10 Q. Okay. And the question is how did AT&T
11 Florida respond to the October 2010 request, and you say
12 AT&T denied Express Phone's 2010 request primarily, and
13 then you go on to mention the negotiation window not
14 being open. Were there other reasons that AT&T had that
15 aren't expressed in the letter to your knowledge?

16 A. To my knowledge, no. Because at the time we
17 would have receive a request, the first criteria that
18 our contract team would look at in accordance with our
19 policy would be whether the current and effective
20 agreement is within its negotiation window. Since that
21 wasn't the case here, Express Phone received the letter
22 they received in response.

23 Q. On that same paragraph we have been looking at
24 on Page 3, beginning on Line 7, in the middle there you
25 say had that not been the case, the negotiation window

1 issue, AT&T would have conditionally accepted the
2 request. Do you see that?

3 A. I do see that.

4 Q. Okay. And you mention in your summary, and we
5 have talked today at some length about 252(i) and the
6 implementing regulations. Is there any basis in there
7 for a conditional acceptance?

8 A. Are you asking me specifically in the words in
9 252(i)?

10 Q. And in 51.809, which is the implementing
11 regulations that you mentioned?

12 A. Not in those literal sections.

13 Q. In your testimony -- you are still on your
14 Direct at the bottom of Page 3 and moving up to the top
15 of Page 4, you are discussing what is Issue 1 in this
16 case in regard to whether there was any issue regarding
17 the denial of the adoption due to equitable relief,
18 including laches, estoppel, and waiver, correct?

19 A. Correct.

20 Q. Okay. And I know you're not a lawyer, so I'm
21 not going to ask you to opine on those various
22 doctrines, but I would ask you if you could agree with
23 me that in general those equitable doctrines address a
24 situation where one party sits on their rights and
25 doesn't act to the detriment of another party. Can you

1 agree to that?

2 **MS. MONTGOMERY:** Mr. Chairman, I would object.
3 That's clearly a legal question, and Mr. Greenlaw is
4 being here to offer a legal opinion or to define
5 equitable terms.

6 **CHAIRMAN BRISÉ:** Ms. Kaufman, if you could
7 restate the question.

8 **MS. KAUFMAN:** Yes. Mr. Chairman, if you look
9 at Page 3, he is discussing those very issues. And so
10 in order for him to be competent to discuss them, I
11 think he would have to have a layperson's understanding
12 of what they are.

13 **MS. MONTGOMERY:** Mr. Chairman, Mr. Greenlaw is
14 laying a foundation of building block facts to build a
15 legal argument on what's clearly a legal issue
16 identified in the prehearing order in this case. I
17 think he can offer facts, but not legal.

18 **CHAIRMAN BRISÉ:** Okay. Ms. Kaufman.

19 **MS. KAUFMAN:** I was just going to say that if
20 this is strictly a legal issue then there is no need for
21 there to be testimony on it, and this witness is offered
22 as supporting AT&T's position on Issue 1. I don't
23 intend to, as I said, go into a long legal discussion
24 with him on it, I just want us to agree on a working
25 definition.

1 **CHAIRMAN BRISÉ:** I think the question is
2 appropriate. I don't think she's asking for the legal
3 position on it. She's trying to make sure that they are
4 on the same page as to what it means.

5 **MS. MONTGOMERY:** Okay. Thank you.

6 **MS. KAUFMAN:** Do you need me to --

7 **THE WITNESS:** If you don't mind restating.

8 **MS. KAUFMAN:** I will do my best.

9 **BY MS. KAUFMAN:**

10 **Q.** I was just asking if you could agree with me
11 in the context of your testimony that begins on Page 3
12 that, in general, those equitable remedies there relate
13 to a situation where a party I characterized as sits on
14 their rights and doesn't take action to the detriment of
15 another party.

16 **A.** In general, it's my understanding as a
17 layperson that is what laches and estoppel comprise.

18 **Q.** And as I also understand your testimony, one
19 of the positions that you have taken is that because the
20 NewPhone interconnection agreement was executed prior to
21 the agreement between Express Phone and AT&T, that that
22 is one reason to refuse to recognize the adoption, is
23 that correct?

24 **A.** Not in that reason taken literally. The
25 primary issue from AT&T Florida's perspective is, again,

1 that Express Phone sought to invoke 252(i) when they
2 were already under a current and effective agreement.
3 AT&T and NewPhone executed the agreement and it was
4 approved. So depending on the context, there was
5 certainly a time where Express Phone could have come to
6 us as a new entrant or negotiating a successor agreement
7 and the 252(i) request would have been entirely
8 appropriate. So I hope I answered that. I know I
9 didn't necessarily go to your question, but --

10 Q. Well, my question relates specifically to your
11 testimony at the bottom of 3 and top of 4 where you
12 recite dates that you believe are relevant and that the
13 Commission should take into account here. And on Page 4
14 beginning at Line 14 through Line 17, the question posed
15 is, "Was the Image Access agreement in place when
16 Express Phone entered into its ICA?" And you say that
17 it was.

18 So my question is is your position that that
19 somehow bars the adoption?

20 A. The adoption of --

21 MS. KAUFMAN: If you could answer -- I'm
22 sorry. I would ask that the Chairman to direct you to
23 try to answer yes or no, if you can.

24 CHAIRMAN BRISÉ: That would be appropriate.
25 If you could yes or no. That is the preference to

1 answer yes or no and if you need to add an additional
2 statement, then you can do that after, after the initial
3 yes or no.

4 **THE WITNESS:** Can you ask it one more time?
5 Sorry.

6 **BY MS. KAUFMAN:**

7 **Q.** That's okay. I think that I can, and I refer
8 you to your testimony at the bottom of 3, top of 4,
9 where you set out what I believe AT&T must think are
10 dates that have some relevance to this case.

11 And my question is is it AT&T's position that
12 because the NewPhone agreement was executed before the
13 Express Phone agreement that somehow that is a bar to
14 the adoption?

15 **A.** Yes, with the caveat, again, the fact that the
16 NewPhone agreement was approved and available at the
17 time Express Phone came to us -- I know I'm going way
18 beyond your direction, I apologize, Chairman.

19 It could be NewPhone, it could be anybody.
20 The fact of the matter is the adoption request was made
21 before Express Phone was in their current agreement.
22 The relevance of these dates, while it certainly ties
23 into the facts of the case, it could be any CLEC. It is
24 a simple timing issue, it's just at this point in time
25 Express Phone was under a current and effective

1 agreement in October of 2010. So technically, yes, the
2 fact that they had entered into an agreement in 2006 and
3 the Image Access agreement was already effective
4 technically would preclude them from being able to avail
5 themselves of the adoption in our view. But the
6 significance of 2006, I think, is lost. It's more what
7 their current negotiation window and their current
8 interconnection agreement called for that we are basing
9 our position on.

10 Q. Okay. And I just want to be clear, and I
11 believe that I understand and the Commissioners
12 understand the issue of the negotiation window. You
13 don't mention that in the section that we are looking
14 at, and I'm just --

15 A. Fair enough.

16 Q. -- trying to understand if part of your
17 position in this case, regardless -- let's pretend that
18 negotiation window didn't exist. Is it your position
19 that a CLEC cannot adopt an agreement that was executed
20 prior to its agreement?

21 A. No, that's not my position. In essence --
22 and, again, I don't mean to go on, either, but the
23 agreement to be available for adoption would have to be
24 executed prior to their agreement, would it not?

25 Q. I guess I'm not supposed to --

1 A. The Image Access agreement was already
2 approved, so it would have to be available before a CLEC
3 could even identify it as a potential request to adopt.

4 Q. And is that the intent of the discussion
5 mainly on Page 4 in regard of this chronology?

6 A. Well, the intent on Page 4 was simply to line
7 out the timeline that the agreement was available at the
8 time that Express Phone began negotiations with AT&T in
9 2006.

10 Q. I think I might have asked you this already,
11 and if I did, I apologize for repeating it. Were you
12 involved in any discussions with Express Phone leading
13 up to their entry into their original ICA?

14 A. No, I wasn't.

15 Q. Okay. Do you have any information or have you
16 presented any evidence here today that would demonstrate
17 that Express Phone was made aware by AT&T of the
18 NewPhone agreement?

19 A. No, I would not.

20 Q. And would you agree with me, if you know, that
21 the agreement that was presented to New -- I keep
22 getting my phones mixed up, I'm sorry -- to Express
23 Phone was the standard or template agreement?

24 A. To my knowledge at that time it was. I know
25 there has been a lot of discussion about the footer

1 standalone, but my understanding of that footer and our
2 template agreements is such when a CLEC comes to AT&T to
3 negotiate, if they express a desire to opt into a
4 specific agreement, then we certainly would look at that
5 and evaluate it. If they come to us seeking to
6 negotiate, they may identify an agreement they want to
7 negotiate from, they may not, and if they identify a
8 specific business plan whereby certain products and
9 services that are governed under the interconnection
10 agreement really are not applicable to what they desire
11 to do, then we can offer a scaled down, if you will,
12 interconnection agreement.

13 The stand-alone footer that is on this
14 agreement is a byproduct of the impact that this was a
15 resale agreement. I wasn't privy to the negotiations,
16 I'm just going by what I see on the agreement, but
17 apparently at that time Express Phone probably
18 indicated -- you know, I defer to Mr. Armstrong if I'm
19 wrong -- that they were doing resale only, so therefore
20 we provided a resale only agreement to them.

21 Q. And I think Mr. Armstrong, you know, gave
22 testimony as to how that went. I guess what I'm trying
23 to understand or just make clear, as far as you know,
24 AT&T didn't inform Express Phone in regard to the
25 NewPhone agreement being available, did they?

1 A. No, we would not. That is the CLEC's
2 decision. We certainly would help support the CLEC and
3 guide them through the process once negotiations have
4 ensued, but it is not AT&T's place to direct the CLEC to
5 a specific agreement, given the fact that business plans
6 are different. Some terms and conditions may be very
7 important to one carrier and not as important to others.

8 Q. And would that be -- that is AT&T's position
9 regardless of whether interconnection agreements of
10 other carriers have more favorable provisions than those
11 being offered to the carrier engaged in the discussions?

12 A. Yes, it is, because it is not our position to
13 determine what is favorable to one carrier over another.
14 The terms speak for themselves.

15 Q. You would agree with me, would you not, that
16 AT&T was certainly aware of the NewPhone agreement being
17 in effect and available?

18 A. Yes, I would agree with that.

19 Q. Do you know in 2006 how many interconnection
20 agreements AT&T had in the State of Florida?

21 A. In 2006, not exactly, no.

22 Q. Do you know how many employees Express Phone
23 has?

24 A. No, I do not.

25 Q. If you would turn to Page 5 of your Direct

1 Testimony.

2 MS. KAUFMAN: And I have another exhibit,
3 Commissioners, if I can figure out which one it is.

4 THE WITNESS: I'm on Page 5.

5 MS. KAUFMAN: If you will wait one second.
6 Sorry. And, again, this whole agreement, I believe, is
7 in the record. This is just an excerpt so we can deal
8 with just this section. So if I could have an exhibit
9 number, Mr. Chairman.

10 CHAIRMAN BRISÉ: Sure. We are on Exhibit 45.
11 (Exhibit Number 45 marked for identification.)

12 CHAIRMAN BRISÉ: And what would be your short
13 title?

14 MS. KAUFMAN: Excerpt from Express Phone ICA.

15 CHAIRMAN BRISÉ: Okay.

16 (Exhibit 45 marked for identification.)

17 BY MS. KAUFMAN:

18 Q. Okay. Let's take a look, Mr. Greenlaw, at the
19 question and your response that begins on Page 5, Line
20 14.

21 A. Okay. I'm there in my testimony.

22 Q. And the question that's posed to you is what
23 provisions of Express Phone's ICA are particularly
24 relevant, and you list three sections there, correct?

25 A. That's correct.

1 Q. And take a look at what has been distributed
2 and has now been marked as Exhibit Number 45. Would you
3 accept that this is an excerpt from the same agreement
4 that you're talking about?

5 A. I would. In fact, I believe it's cited on
6 Page 9 of my Direct.

7 Q. Take a look at Section 11 of the Express
8 Phone/AT&T agreement, and would you agree with me that
9 that provision specifically relates to adoption of
10 agreements?

11 A. It does.

12 Q. You didn't cite that section in your relevant
13 contractual provisions, did you?

14 A. Not in that question string, no.

15 Q. We have heard a lot of discussion here
16 today -- and you have been in the room, have you not,
17 during the entire day?

18 A. The vast majority of the time. I understand
19 the tenor.

20 Q. Okay. And so I think you would agree with me
21 that we have had discussion about the provisions in the
22 NewPhone agreement which allow a carrier to dispute and
23 hold as opposed to the conditions in the old -- I call
24 it the old, the prior Express Phone/AT&T agreement which
25 required the payment of all amounts in dispute. You are

1 familiar with the two competing provisions?

2 A. Yes, I am.

3 Q. Would you agree with me that it is certainly a
4 more favorable term to a CLEC to be able to dispute and
5 hold rather than being required to pay all disputed
6 amounts?

7 A. Looking at that term by itself, obviously it
8 would be more favorable for a CLEC not to have to pay
9 anything in the interim while a dispute is being
10 resolved, yes.

11 Q. And the reason the CLEC, as you termed it,
12 wouldn't pay anything is because those amounts are in
13 dispute, right, there is a dispute between AT&T and the
14 carrier?

15 A. If they are invoking that specific language,
16 yes.

17 Q. You also say on Page 7 of your Direct
18 Testimony, at Line 16 you talk about there being a
19 material breach of the original Express Phone and AT&T
20 contract, correct?

21 A. Yes, I do.

22 Q. Would you agree that there would also be a
23 material breach of the Express Phone/AT&T contract if
24 AT&T failed to apply the appropriate wholesale discount?

25 A. I don't know if I can answer that. I mean,

1 breach, material breach is a somewhat broad term. I was
2 using it in the context of a direct violation of the
3 terms of the agreement that are clear. I'm not a
4 billing SME, I think the term was used earlier, per se.

5 Q. Me, either.

6 A. So I guess I would need a more detailed
7 example.

8 Q. Okay. Let me try it this way. I want you to
9 just assume because neither am I anywhere close to a
10 billing SME, I want you to assume for the purposes of
11 this question that law requires the application of a
12 wholesale discount under the contract and that AT&T has
13 failed to apply that discount. That would be a breach
14 of the agreement, would it not?

15 A. I guess it depends on the definition of
16 breach. Typically, I would think that would be a
17 dispute before it became a breach.

18 Q. I will accept that. And once the parties, you
19 know, attempted to resolve it and AT&T continued to
20 assume -- not apply the required discount, they would be
21 in breach of their agreement, would they not? This is a
22 hypothetical.

23 A. We've done those today, I guess. I apologize
24 if this sounds evasive. I don't really know what would
25 necessarily constitute a breach under that circumstance.

1 Typically, I would think if there was still a dispute
2 after the dispute resolution process had started, we
3 would probably be before these folks here today
4 discussing that.

5 Q. On Page 10 you also -- not also, but on Page
6 10 beginning at Line 3, you talk about the requirement
7 that Express Phone act in good faith, correct?

8 A. Yes.

9 Q. Both parties have an obligation to act in good
10 faith under the agreement, don't they?

11 A. Certainly.

12 Q. Now, on Page 12, if you turn there, on Line 3
13 you talk about -- you are talking about what we called
14 the notices, what you called the requests that Express
15 Phone sent to AT&T. And on Line 2, you say the request
16 letters do not supersede or take the place of the
17 required notice of adoption, and you capitalize notice
18 of adoption, and that made me curious.

19 Are you referring to some Commission-required
20 form or rule when you used the phrase notice of
21 adoption?

22 A. I capitalized that because as we go down the
23 lines we reference the Nextel adoption order, and it was
24 capitalized in that manner.

25 Q. So you weren't intending to suggest that there

1 is any requirement or form at the Commission that
2 requires a filing of a notice of adoption?

3 A. I don't believe I said that.

4 Q. I just want to clarify, because when you
5 capitalized it, it raised that issue.

6 A. Okay. No, I'm not saying that. We would
7 still expect to see a notice of adoption, not a request.

8 Q. Then in that same paragraph, the next sentence
9 that starts on Line 4, you say instead letters -- and I
10 assume you're referring to the October 20th letter from
11 Express Phone -- are intended to simply start the
12 process by which AT&T would review the request for
13 adoption.

14 Again, referencing back to 252(i) in the
15 rules, is there any language in there that suggests AT&T
16 is supposed to be reviewing adoption requests?

17 A. Well, again, taking 252(i) by itself, no.

18 Q. Let me ask you to turn to your rebuttal,
19 please, Page 5. Line 9 is where the question begins.

20 Are you with me?

21 A. Yes, I am.

22 Q. Okay. And that question asked you to respond
23 to Express Phone's assertion that AT&T Florida takes too
24 long to address disputes, correct?

25 A. That's correct.

1 Q. And you state there that you disagree with
2 Express Phone's assertion. Have you reviewed the
3 Express Phone files and the disputes that they have
4 filed with AT&T?

5 A. Not in detail, no. Are you referring to the
6 prior Docket 110071, or are you referring to the actual
7 context of individual disputes?

8 Q. I'm asking you if you have reviewed the actual
9 context of the original disputes?

10 A. No, I have not.

11 Q. Okay. You would agree with me, would you not,
12 that under the interconnection agreement when a dispute
13 is denied that Express Phone has the right to escalate
14 that dispute?

15 A. Yes, that's part of the process.

16 Q. Okay. And have you reviewed any of Express
17 Phone's requests for escalation?

18 A. No, not directly.

19 Q. Would it surprise you to know that when
20 Express Phone has attempted to escalate a dispute it has
21 been ignored by AT&T?

22 A. Would that surprise me? The characterization
23 of ignored, yes, that would surprise me.

24 Q. Okay. So it would surprise you to learn that
25 Express Phone receives no response when they try to

1 escalate a dispute?

2 **A.** Again, I'm not really privy to what disputes
3 have gone on and the responses AT&T has provided. They
4 certainly would have an escalation process to reach
5 somebody in our billing department if they felt they
6 weren't getting an answer from the representative that
7 initially got the claim.

8 **Q.** And so you don't know whether or not those
9 escalations have simply been ignored by AT&T?

10 **A.** I do not know that, no.

11 **Q.** Do you know Nicole Brazi (phonetic)?

12 **A.** I know her casually, yes. She is a product
13 manager that supports resale.

14 **Q.** If you know, is part of her responsibility to
15 deal with disputes and escalations?

16 **A.** I don't know her direct job responsibilities.
17 There are multiple product managers in that group.

18 **MS. KAUFMAN:** Could I have a second, Mr.
19 Chairman?

20 **CHAIRMAN BRISÉ:** Sure.

21 **MS. KAUFMAN:** I'm just asking if I could have
22 a minute. (Pause.) I've got one more question for you.

23 **BY MS. KAUFMAN:**

24 **Q.** Are you aware that there have been situations
25 where AT&T has permitted adoption during the term of an

1 existing agreement?

2 **A.** Upon investigation for some of the
3 interrogatories in this case, we did find one case of
4 that occurring. And I believe it's provided in a
5 response. I don't know if I have it up in front of me
6 today, though.

7 **Q.** You didn't review that, did you?

8 **A.** When the request came in?

9 **Q.** (Indicating affirmatively.)

10 **A.** No, I did not. I was at a different position
11 in the company at that time. It was five years ago, I
12 think.

13 **MS. KAUFMAN:** I think I'm done, Mr. Chairman.
14 Thank you, Mr. Greenlaw.

15 **CHAIRMAN BRISÉ:** Thank you. Staff?

16 **MS. TAN:** Staff has no questions.

17 **CHAIRMAN BRISÉ:** Commissioners. All right.
18 Commissioner Balbis.

19 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
20 And I just have one question. And I think Ms. Kaufman
21 asked it, but I want to make sure that at least I'm
22 clear on it. The provision of a negotiation window, as
23 you described it, I mean, is that a standard provision
24 in a wholesale contract?

25 **THE WITNESS:** It is.

FLORIDA PUBLIC SERVICE COMMISSION

1 **COMMISSIONER BALBIS:** Okay. And in your
2 experience as either associate director or area manager
3 of wholesale contracts, have you had any other requests
4 to adopt another interconnect agreement outside of that
5 window?

6 **THE WITNESS:** I'm not directly aware of any.
7 I'll try to answer a little more -- unfortunately, sir,
8 I may not be answering your direct question. I'm not
9 aware of any. I think the cases that were cited years
10 prior were typically regarding a dispute over the
11 subject agreement being requested, not the status of the
12 current CLEC making the request in their current
13 agreement. This, by my knowledge, is the first time we
14 have had such a complaint.

15 **COMMISSIONER BALBIS:** So to your knowledge no
16 one has requested adoption of another ICA outside of the
17 negotiation window provision of the contract?

18 **THE WITNESS:** To my knowledge, no, other than,
19 I guess, obviously to Ms. Kaufman's point the exception
20 we noted in our discovery response in 2007. They were
21 outside of the window. I don't know the particulars
22 behind why that was done and why it was accepted,
23 though, sir.

24 **COMMISSIONER BALBIS:** Okay. Thank you.
25 That's all I had.

1 **CHAIRMAN BRISE:** Commissioner Graham.

2 **COMMISSIONER GRAHAM:** Thank you, Mr. Chairman.

3 Welcome, Mr. Greenlaw. I just want to see if
4 I understand. Back in the Fall of 2006, any CLEC that
5 came before BellSouth that looked for an interconnection
6 agreement didn't have any specifics they were looking
7 for, this agreement that was given to Express Phone is
8 pretty much what you gave to anybody.

9 **THE WITNESS:** Not necessarily, but I think I
10 understand your question. If a CLEC came to BellSouth
11 at that time and did not identify an agreement they
12 wanted to get into, or identify an agreement they were
13 wanting to negotiate from, obviously our starting point
14 would be these agreements.

15 Now, the distinction I want to make, though,
16 you can't just say any CLEC only, because some CLECs
17 that maybe had a business plan that involved
18 collocation, or UNEs, interconnection, the generic
19 agreement, if you will, that they would have been
20 provided would have been, of course, different than the
21 one Express Phone was provided. The agreement that
22 Express Phone was provided at the time would have been
23 our standard template agreement for CLECs that had
24 indicated they were only doing resale.

25 **COMMISSIONER GRAHAM:** Now, was that a

1 management decision that everybody that comes in that
2 meets these criteria gets this agreement?

3 **THE WITNESS:** Well, it's really driven by the
4 CLEC. But I guess from the standpoint of creating --
5 again, I'm using the term generic -- from creating a
6 generic agreement and making that the starting point if
7 we weren't given any specific direction by the CLEC to
8 guide us on where to start from, the answer would be
9 yes. But, again, we would have been available to
10 negotiate, contrary to what has been purported today.

11 **COMMISSIONER GRAHAM:** I guess the question is,
12 so I take it this wasn't the first time that specific
13 agreement was given to somebody. Do you know when that
14 specific agreement was drafted?

15 **THE WITNESS:** Unfortunately, I don't. I guess
16 you could say I'm not an AT&T native from the BellSouth
17 Regional Bells, so unfortunately I can't give you
18 specific information at that time. I will say it was
19 common from the inception of the Act where we would --
20 to try to speed the process along and assist the CLECs
21 rather than starting from a blank page, we would start
22 from a generic agreement. Over time those generic
23 agreements are updated to reflect change of law, et
24 cetera.

25 **COMMISSIONER GRAHAM:** The same question I

1 asked Mr. Armstrong earlier, who do you think carries
2 the burden of coming up with the best deal?

3 **THE WITNESS:** Well, of course, I respectfully
4 disagree with Mr. Armstrong. I feel it's incumbent upon
5 the CLEC to identify what the terms and conditions are
6 that they feel is the best deal. And obviously if we
7 can't come to agreement there are avenues available to
8 them per the Act that would allow them to have their
9 side heard.

10 **COMMISSIONER GRAHAM:** Is this the first time
11 that AT&T has run into this sort of problem?

12 **THE WITNESS:** And I apologize, do you mean a
13 problem with respect to a 252(i) request with a carrier
14 being outside of their negotiation window, or a dispute
15 in general that would be brought before the Commission?

16 **COMMISSIONER GRAHAM:** Specifically not
17 outside, necessarily, the negotiation window, but
18 where -- and excuse me if I say something that is
19 legally wrong, but that is not in good standing
20 according to AT&T that got denied switching to a new
21 agreement?

22 **THE WITNESS:** Not to my knowledge, but I
23 assure you I'm probably more capable of saying something
24 legally wrong than you are.

25 **COMMISSIONER GRAHAM:** Okay.

1 Thank you, Mr. Chair.

2 **CHAIRMAN BRISE:** Thank you.

3 Going back to the resale stand-alone
4 agreement, can you sort of talk about the different
5 types of agreements that you all deal with and why the
6 designation of a resale stand-alone agreement is so
7 different than some of the other ones?

8 **THE WITNESS:** I'm sorry, sir, what was your
9 question specific to that? Just why they are different?

10 **CHAIRMAN BRISE:** Yes. Sort of go through the
11 difference between, say, a resale stand-alone versus a
12 contract that includes a collocation or a contract that
13 has sort of reciprocal traffic going back and forth and
14 so forth.

15 **THE WITNESS:** Understood. I will try to
16 answer it, at least to the level I can get to. I mean,
17 when you look at provisions such as dispute resolution,
18 general terms and conditions, a lot of the legal things
19 that, again, I may get wrong, those terms typically are
20 fairly analogous. But when you get into a position
21 where you have a carrier that is ordering UNEs from us,
22 there are entire sections dedicated to that to ensure
23 that the provisions of the Act, any law is memorialized
24 properly.

25 And so, again, it's really a matter of just

1 efficiency. If a CLEC is not interested in that, that
2 is not part of their business plan, there is really no
3 need to put that in the agreement. And I know that
4 sounds like a simplistic answer, but that's really the
5 basis of it as I understand it.

6 **CHAIRMAN BRISÉ:** Okay. So from your
7 perspective, the contracts are pretty much the same
8 other than removing certain provisions based upon the
9 service that is provided, the additional service that is
10 provided?

11 **THE WITNESS:** Well, I wouldn't say pretty much
12 the same. I guess if they were pretty much the same, we
13 probably wouldn't be here today. But the key
14 differences, I guess I would say from if you want to
15 compare apples-to-apples and, say, take our generic
16 interconnection agreement versus our generic resale
17 agreement, in that instance, you know, a lot of the
18 common terms and conditions would be the same, but the
19 provisions that govern the purchase of those services in
20 question are typically what would be different.

21 **CHAIRMAN BRISÉ:** Okay. What is the
22 relationship between Express Phone and Digital Express
23 with respect to AT&T? What is the individual
24 relationships of each one of those with AT&T, if you can
25 answer that?

1 **THE WITNESS:** Well, I mean, obviously they are
2 both CLECs. Digital Express in a current and effective
3 agreement with AT&T, Express Phone's agreement has since
4 expired, and, of course, we are here in front of this
5 Commission to hear this dispute. Were you asking me
6 with respect to the types of services they are
7 purchasing?

8 **CHAIRMAN BRISE:** No, not about respect to the
9 type of services. Without putting words into your mouth
10 or anyone else's mouth, is there any relationship
11 between Express Phone and Digital Express in the mind of
12 AT&T?

13 **THE WITNESS:** Well, they certainly have common
14 personnel involved with running both companies. I mean,
15 that's -- technically, legally they are different
16 entities, so we have to treat them as such, which is,
17 again, part of the reason why, despite some of these
18 commonalities, the Digital Express adoption request was
19 allowed, because they came to us as a new entrant, if
20 you will, or at least not in a current agreement that
21 was not in a negotiation window. So pursuant to the way
22 we address 252(i) we had to give them their requested
23 agreement, which in this case was that NewPhone
24 agreement in question.

25 **CHAIRMAN BRISE:** Okay. I want to ask you sort

1 of a very simplistic question. If AT&T would consider
2 Express Phone to be a bad actor, okay, because obviously
3 we are here, so the thought would be that they would be
4 a bad actor, why would AT&T enter into a contract with
5 the same people and the same, in essence, entity to do
6 business to start from sort of -- give them an
7 opportunity to start from a new page under a different
8 name?

9 **THE WITNESS:** I understand. Well, again,
10 AT&T -- and, again, I realize it's part of the crux of
11 this dispute, but we don't apply 252(i) in a
12 discriminatory basis. We can't discriminate based on
13 who's running the company. Where that typically would
14 come in, possibly, is not in 252(i), but in the types of
15 security deposit, if you will, that we might request.
16 But we have to base that on the information provided to
17 us by the carrier, too.

18 **CHAIRMAN BRISÉ:** All right. Thank you.
19 That's all the questions that I have.

20 I don't know if Commissioners have any further
21 questions? Seeing none, AT&T, if you would like to
22 redirect.

23 **MS. MONTGOMERY:** We have no redirect, Mr.
24 Chairman.

25 **CHAIRMAN BRISÉ:** All right. Thank you very

1 much. At this time we are going to deal with exhibits.

2 Ms. Montgomery.

3 MS. MONTGOMERY: Thank you. We would move in
4 the admission of Exhibits 22 through 24, and 27 through
5 34.

6 CHAIRMAN BRISÉ: All right. Are there any
7 objections to those exhibits, Ms. Kaufman?

8 MS. KAUFMAN: Sorry, Mr. Chairman, no. No
9 objection.

10 CHAIRMAN BRISÉ: All right. There are any
11 exhibits that you would like to enter?

12 MS. KAUFMAN: Yes. I think I would like to
13 Exhibit 45. Thank you.

14 CHAIRMAN BRISÉ: 45. Okay. Let the record
15 reflect that all of those exhibits have been entered
16 into the record.

17 (Exhibit Numbers 22 through 24; 27 through 34;
18 and 45 admitted into the record.)

19 CHAIRMAN BRISÉ: Let's see what else we have.
20 Thank you very much for your testimony today.

21 THE WITNESS: Thank you.

22 CHAIRMAN BRISÉ: Are there any other matters
23 that we need to address at that time? All right.

24 Let's think about some dates, so if staff can
25 help us work through some dates here.

1 **MS. TAN:** Sure. The hearing transcript is due
2 May 14th, 2012. Briefs are due June 1st, 2012. The
3 staff's recommendation will be filed June 27th, 2012,
4 for the July 10th, 2010 Commission Conference, and the
5 final order is due July 30th, 2012.

6 **CHAIRMAN BRISÉ:** All right. Are there any
7 further comments, or questions, or anything from the
8 Commission board up here?

9 Seeing none, we stand adjourned. Thank you
10 very much and have a great day.

11 **MS. KAUFMAN:** Thank you, Commissioners.

12 (The hearing concluded at 2:53 p.m.)
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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter
6 Services Section, FPSC Division of Commission Clerk, do
hereby certify that the foregoing proceeding was heard
at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I
8 stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
9 and that this transcript constitutes a true
transcription of my notes of said proceedings.

10 I FURTHER CERTIFY that I am not a relative,
11 employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
12 attorney or counsel connected with the action, nor am I
financially interested in the action.

13 DATED THIS 14th day of May, 2012.

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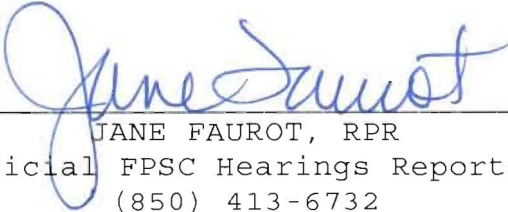
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