

Dorothy Menasco

From: matthew.feil@akerman.com
Sent: Friday, April 30, 2010 3:35 PM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; mg2708@att.com; th9467@att.com; paul.guarisco@phelps.com; jimdry@newphone.com; nicki.garcia@akerman.com
Subject: RE: Electronic Filing - Docket No. 100022-TP
Attachments: 20100430152941009.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

Person Responsible for Filing:

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Docket No. and Name: Docket No. 100022-TP - In Re: Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T Florida Against Image Access, Inc. d/b/a NewPhone

Filed on behalf of: NewPhone

Total Number of Pages: 5 (including cover letter)

Description of Documents: NewPhone's Reply to AT&T Response to Motion to Dismiss or Stay

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April 30, 2010

VIA ELECTRONIC FILING

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

**Re: Docket 100022-TP – Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T
Florida Against Image Access, Inc. d/b/a NewPhone**

Dear Ms. Cole:

Attached for filing in the referenced Docket, please find Image Access, Inc. d/b/a NewPhone's Reply to AT&T's Response to Motion to Dismiss or Stay.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil
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Tallahassee, FL 32302-1877
Phone: (850) 224-9634
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{TL222442;1}Attachments

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STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Complaint of BellSouth Telecom-)
munications, Inc., d/b/a AT&T Florida)
Against Image Access, Inc. d/b/a)
NewPhone)
_____)

Docket No. 100022-TP

NEWPHONE'S REPLY TO AT&T'S RESPONSE TO
MOTION TO DISMISS AND/OR STAY

Image Access, Inc. d/b/a NewPhone ("NewPhone") hereby files the following Reply to the Response ("Response") filed by BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Florida ("AT&T") on April 9, 2010, to NewPhone's Motion to Dismiss and/or Stay.¹ NewPhone maintains that this Reply is permissible and necessary because AT&T's Response makes a request for affirmative relief (in effect, a motion) for security, as addressed in the body of this Reply. To the extent that the Commission deems it necessary for NewPhone to move for leave to file this Reply² under its rules, NewPhone so moves pursuant to Rule 28-106.204, Florida Administrative Code. In support hereof, NewPhone states as follows:

1. AT&T asks that the Commission require NewPhone to deposit into escrow the full amount which AT&T claims in its Complaint should the Commission decide to delay these proceedings.³ NewPhone opposes any escrow requirement. AT&T's request is in direct contravention of the applicable provisions of the parties' Interconnection Agreement, which allow the billed party (here, NewPhone) to withhold payment of disputed amounts pending a

¹ Per Order No. PSC-10-0260-PCO-TP, issued April 26, 2010, this responsive pleading is timely filed.

² This Reply may could have been styled a "Response in Opposition to AT&T's Request for Relief," but for ease in tracking purposes, NewPhone designated it as a "Reply."

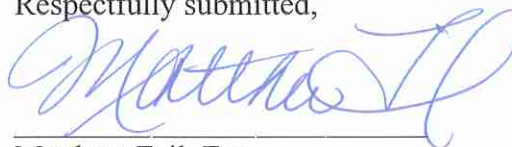
³ See Response p. 10.

NewPhone Reply
April 30, 2010

resolution of a billing dispute.⁴ Requiring NewPhone to escrow any amount subject to a billing dispute would be contrary to the parties Interconnection Agreement as filed with and approved by this Commission. There is no basis in law (and AT&T cites to none) which allows AT&T or this Commission to unilaterally amend the parties' approved Interconnection Agreement by engrafting an escrow requirement for amounts in dispute between the parties. The only reason which AT&T offers in support of its escrow request is that AT&T is "concerned that the resellers will not be able to pay any amounts they ultimately will be found to owe."⁵ NewPhone has denied that it owes AT&T any of the disputed amounts. Moreover, AT&T has not proffered a scintilla of evidence to support its alleged claims, or the amounts allegedly due. Requiring NewPhone to deposit the amount claimed by AT&T would financially harm NewPhone, considering NewPhone ultimately should not be required to pay any portion of the amounts properly withheld by NewPhone that are the subject of AT&T's Complaint. Accordingly, should the Commission decide to dismiss or stay this proceeding, it must do so without any requirement to escrow the amounts in dispute.

Respectfully submitted this 30th day of April, 2010.

Respectfully submitted,



Matthew Feil, Esq.
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⁴ See Interconnection Agreement, Attachment 7 Section 2.2.

⁵ *Id.*

NewPhone Reply
April 30, 2010

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*COUNSEL FOR IMAGE ACCESS, INC. d/b/a
NEWPHONE*

NewPhone Reply
April 30, 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 30th day of April, 2010.

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By: 
Matthew Feil, Esq.