

**Dorothy Menasco**

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**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Tuesday, January 03, 2012 4:14 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 110071-TP AT&T Florida's letter responding to Express Phone's Voluntary Dismissal Without Prejudice

**Importance:** High

**Attachments:** img-103154532-0001.pdf



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001.pdf (772 KI

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B. Docket No.: 110071-TP: Emergency Complaint of Express Phone Service, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida Regarding Interpretation of the Parties' Interconnection Agreement

C. BellSouth Telecommunications, LLC d/b/a AT&T Florida  
on behalf of Tracy W. Hatch

D. 3 pages total (includes letter and certificate of service)

E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's letter responding to Express Phone's Voluntary Dismissal Without Prejudice

.pdf

DOCUMENT NUMBER-DATE

00024 JAN-3 2012

FPSC-COMMISSION CLERK



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January 3, 2012

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

**Re: Docket No.: 110071-TP: Emergency Complaint of Express  
Phone Service, Inc. against BellSouth Telecommunications,  
Inc. d/b/a AT&T Florida Regarding Interpretation of the Parties'  
Interconnection Agreement**

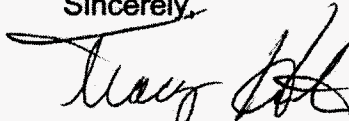
Dear Ms. Cole:

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida") writes in response to the Voluntary Dismissal Without Prejudice filed by Express Phone Service, Inc. ("Express Phone"). To hold this docket in abeyance, Express Phone filed its Voluntary Dismissal Without Prejudice, to effectively grant itself that abatement. AT&T Florida recognizes that the Commission generally acknowledges a petitioner's right to voluntarily dismiss its Complaint prior to the conclusion of the fact-finding process in a proceeding, *see, e.g., In re: Application for authority to issue and sell securities during calendar year 2009 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Co., Docket No. 080621-EI, Order No. PSC-09-0120-FOF-EI, at 2-3 (Mar. 2, 1999)*, and, therefore AT&T Florida does not intend to oppose Express Phone's dismissal.

AT&T Florida, however, respectfully notifies the Commission and Express Phone that if Express Phone chooses to refile the claims brought in this docket, AT&T Florida will take the position that the legal holdings in the Commission's July 6, 2011 Order which was cross-filed in this docket and related Docket No. 110087-TP, shall be considered law of the case. Those holdings include, among other things, findings that 1) "Express Phone must pay all disputed amounts," 2) "AT&T Florida is entitled under the clear terms of the ICA to prompt payment of all sums billed," and 3) "Express Phone cannot withhold disputed amounts." (Order No. PSC-11-0291-PAA-TP at 12-13 (Issued July 6, 2011)).

AT&T Florida further notifies the Commission and Express Phone that it believes that the dismissal of this docket is without prejudice to **both parties**, and that the dismissal does not bar AT&T Florida in any proceeding – including related Docket No. 110087-TP or any later proceeding initiated by Express Phone, AT&T Florida, or some other party – from pursuing the arguments it raised in its Response in Opposition to Express Phone's Emergency Complaint or from pursuing as a counterclaim or separate complaint its claims associated with Express Phone's breach of its Interconnection Agreement that it might otherwise have brought in this docket.

Sincerely,



Tracy W. Hatch

cc: All Parties of Record  
Gregory R. Follensbee  
Suzanne L. Montgomery

**CERTIFICATE OF SERVICE**  
**Docket No. 110071-TP**

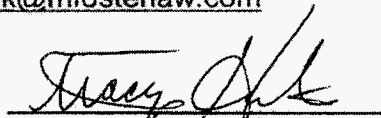
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via  
Electronic Mail and First Class U.S. Mail this 3rd day of January, 2012 to the following:

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