

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth 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.

Docket No. 110087-TP

Filed: March 29, 2012

REBUTTAL TESTIMONY AND EXHIBITS OF  
THOMAS M. ARMSTRONG

ON BEHALF OF  
EXPRESS PHONE SERVICE, INC.

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1 INTRODUCTION

2 Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

3 A. My name is Thomas M. Armstrong. My business address is 1803 W. Fairfield Drive,  
4 Unit 1, Pensacola, Florida 32501. I am President of Express Phone Service, Inc.  
5 (Express Phone).

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

7 A. Yes.

8 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

9 A. My rebuttal testimony will respond to certain assertions contained in the direct  
10 testimony of AT&T witnesses David J. Egan and William E. Greenlaw.

11 REBUTTAL TO WITNESS EGAN

12 Q. MR. EGAN STATES ON PAGE 3 OF HIS DIRECT TESTIMONY THAT  
13 AT&T IS TREATING EXPRESS PHONE'S OCTOBER 10, 2010 ADOPTION  
14 NOTICE AS A REQUEST TO ADOPT THE AGREEMENT BETWEEN  
15 AT&T FLORDIA AND IMAGE ACCESS, INC. D/B/A NEWPHONE, INC. DO  
16 YOU AGREE?

17 A. Yes. That is the agreement Express Phone adopted. It is clear that AT&T understood  
18 this because when it responded to Express Phone on November 1, 2010, it said:

19 Your letter states that Express Phone desires to adopt the **Florida**  
20 **Interconnection Agreement** between BellSouth  
21 Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida)  
22 and Image Access, Inc. in the State of Florida.

23  
24 (Exhibit No. TMA-5, emphasis added). Therefore, this is not an issue in this case.

25 (Mr. Greenlaw makes a comment similar to Mr. Egan in his testimony on this matter).

1 Both parties understood the exact nature of the adoption and the agreement that was  
2 adopted.

3 However, I do quarrel with Mr. Egan's use of the word "request" to describe  
4 our adoption notice. We sent the October 20, 2010 notice of adoption pursuant to  
5 federal law – it was not a "request" and it does not require AT&T's approval.

6 **Q. ON PAGE 2 OF HIS TESTIMONY, MR. EGAN SAYS HE IS TESTIFYING IN**  
7 **SUPPORT OF ISSUES 2 AND 3 IN THIS CASE. WHAT ARE THOSE**  
8 **ISSUES?**

9 A. Issues 2 and 3 appear in Order No. PSC-12-0031-PCO-TP at page 11. Those issues  
10 are:

11 Issue 2: Is Express Phone permitted, under applicable laws,  
12 to adopt the NewPhone Interconnection Agreement during the term  
13 of its existing agreement with AT&T Florida?

14  
15 Issue 3: Is Express Phone permitted under the terms of the  
16 interconnection agreement with AT&T Florida to adopt the  
17 NewPhone Interconnection Agreement?  
18

19 **Q. DOES MR. EGAN ADDRESS EITHER ISSUE 2 OR 3 IN HIS DIRECT**  
20 **TESTIMONY?**

21 A. To me, it does not appear that he does. He provides no information as to whether  
22 Express Phone can adopt the NewPhone ICA during the term of an existing  
23 agreement or whether Express Phone is permitted to do so under the prior agreement  
24 it had with AT&T. Nor does it appear from his experience, as described in his  
25 testimony, that he has any experience as to those areas.

1 **Q. WHAT IS THE SUBSTANCE OF MR. EGAN'S TESTIMONY?**

2 A. Mr. Egan attempts to raise matters that are not at issue here and that have no relation  
3 or relevance to the issues in this docket. Essentially, he provides testimony regarding  
4 his view of the billing disputes between Express Phone and AT&T.

5 **Q. ARE THOSE BILLING DISPUTES AT ISSUE IN THIS DOCKET?**

6 A. No. As I understand it, this docket addresses Express Phone's right pursuant to  
7 federal law to adopt another carrier's interconnection agreement.

8 **Q. DO YOU AGREE WITH THE INFORMATION MR. EGAN HAS PROVIDED  
9 IN HIS TESTIMONY?**

10 A. No. First, as noted above, the numerous billing disputes between Express Phone and  
11 AT&T are not at issue in this docket and are not relevant to this Commission's  
12 decision in this case. Further, such allegations were not raised when AT&T  
13 attempted to reject Express Phone's adoption request on November 1, 2010 – rather,  
14 AT&T is attempting to trump up after-the-fact excuses in violation of Express  
15 Phone's rights.

16 As I discussed in my direct testimony and as Mr. Wood describes in his  
17 rebuttal, AT&T has failed to act in good faith and has unilaterally ignored or rejected,  
18 without any rationale, legitimate billing disputes Express Phone has raised.  
19 Additionally, AT&T has consistently failed in its obligation to proceed in good faith  
20 because not only has it not resolved the majority of the billing disputes it has with  
21 Express Phone, it has provided no reason for failing to provide a resolution as to such  
22 disputes. This appears to be an attempt to force Express Phone from the marketplace  
23 using the vast resources of AT&T.

1           Nonetheless, whatever the status of these disputes, they have nothing to do  
2 with Express Phone's ability, under federal law and regulations, to adopt another  
3 carrier's interconnection agreement. Mr. Wood discusses these clear principles in his  
4 direct and rebuttal testimony.

5           Finally, putting that aside, Express Phone cannot allow Mr. Egan's assertions  
6 to remain unchallenged. Express Phone vehemently disagrees with Mr. Egan's  
7 calculation of what he claims is owed from Express Phone to AT&T. In fact,  
8 according to Express Phone's calculations, as of March 15, 2010, AT&T owed  
9 Express Phone in excess of \$1.5 million. (Exhibit No. TMA-14). Mr. Egan has  
10 failed to recognize or account for the monies AT&T owes Express Phone in any way.

11 **Q. MR. EGAN REFERENCES EXPRESS PHONE'S OCTOBER 10, 2010**  
12 **ADOPTION NOTIFICATION AND AT&T'S RESPONSE AT PAGE 3 OF HIS**  
13 **DIRECT TESTIMONY. HOW DID AT&T RESPOND TO EXPRESS**  
14 **PHONE'S OCTOBER 10<sup>TH</sup> ADOPTION NOTIFICATION?**

15 **A.** AT&T's November 1, 2010 response is attached to my direct testimony as Exhibit  
16 No. TMA-5. While Mr. Egan's testimony appears to infer otherwise, he fails to note  
17 that there was NO mention at all in AT&T's November 2010 response to Express  
18 Phone's adoption notice that AT&T believed any amounts were outstanding. Nor is  
19 that provided as a reason, albeit not a legitimate one, for refusing to implement  
20 Express Phone's adoption.

21           In fact, AT&T's sole reason for refusing to recognize our legitimate adoption  
22 on October 20, 2010 was:

23           Our records indicate that Express Phone is currently operating  
24 under an approved Agreement in the States of Florida and

1 Mississippi which have not expired and are not within the  
2 timeframe to request a successor agreement. Therefore, pursuant  
3 to the Effective Date, Term, and Termination provisions of the  
4 General Terms and Conditions, AT&T denies Express Phone's  
5 adoption [sic] requests.  
6

7 In addition, Express Phone continued to try to negotiate with AT&T until  
8 October 2010. During this time frame, AT&T not only acknowledged the disputed  
9 amounts but agreed to base its new deposit request, which the parties were discussing  
10 at that time, *only on undisputed* amounts. (Exhibit No. TMA-15). This indicates that  
11 AT&T recognized that the amounts were in dispute and that the parties needed to  
12 move forward to resolve the disputes. AT&T never followed through regarding  
13 resolving our disputes and then radically changed course, and ultimately,  
14 disconnected Express Phone. In addition, AT&T accepted payments from Express  
15 Phone and made no effort to resolve any of the outstanding disputed amounts.

16 **Q. DO YOU HAVE ANY OTHER CONCERNS WITH MR. EGAN'S**  
17 **TESTIMONY?**

18 **A.** Yes. Mr. Egan's one-sided recitation of the parties' billing dispute creates a  
19 disingenuous circular argument that can only work in AT&T's favor. Despite the fact  
20 that Express Phone adopted the NewPhone interconnection agreement on October 20,  
21 2010, and that was the agreement in effect from that time forward, Mr. Egan insists  
22 on discussing AT&T's one-sided billing issues which arose, and were not even raised,  
23 until long after the October 20, 2010 adoption.

24 Such alleged claims cannot be used to defeat a legitimate adoption. Further,  
25 AT&T cannot be permitted to profit from its failure to follow the requirements of the  
26 Act and FCC regulations. It is AT&T, not Express Phone, who has continued to

1 delay recognition of Express Phone's adoption and who is making up after-the-fact  
2 reasons to continue to delay, all to Express Phone's detriment.

3 **Q. WHEN WAS THE FIRST TIME THAT AT&T ALLEGED IT WAS DUE**  
4 **MONEY?**

5 A. Initially, as I explain above, AT&T is wrong in its assertion that it is due anything,  
6 and in fact, as of March 15, 2010, AT&T owed Express Phone over \$1.5 million.  
7 That being said, AT&T made no payment request until February 23, 2011 – months  
8 after Express Phone's October 20, 2010 adoption and AT&T's response, in which  
9 AT&T never mentioned any past due amounts. At that time, the NewPhone  
10 interconnection agreement was in effect and AT&T's alleged claims for payment of  
11 amounts in dispute were simply frivolous. AT&T's actions demonstrate that AT&T  
12 was simply acting in bad faith and attempting to remove a competitor from the market  
13 and competitive choice from consumers.

14 **REBUTTAL TO WITNESS GREENLAW**

15 **Q. DOES MR. WOOD PROVIDE REBUTTAL TO MR. GREENLAW'S**  
16 **TESTIMONY?**

17 A. Yes. However, there are a few points I would also like to address.

18 **Q. MR. GREENLAW ALSO CLAIMS THAT EXPRESS PHONE OWES AT&T**  
19 **MONEY AND THEREFORE MAY NOT ADOPT THE NEWPHONE**  
20 **AGREEMENT. WHAT IS YOUR RESPONSE?**

21 A. Mr. Wood addresses policy and legal flaws of this position in detail; however, as I  
22 noted above, this has no relevance to Express Phone's adoption rights. Further,

1 Express Phone believes that AT&T owes it money and that AT&T has failed in its  
2 responsibility to professionally resolve these disputes with Express Phone.

3 **Q. MR. GREENLAW CLAIMS THAT EXPRESS PHONE HAS NOT ACTED IN**  
4 **GOOD FAITH. DO YOU AGREE?**

5 A. No. Express Phone has done its best to work with AT&T on the differences between  
6 the parties. AT&T has responded by ignoring the clear adoption requirements and  
7 ultimately ejecting Express Phone from the marketplace. Such actions are certainly  
8 not indicative of good faith in my opinion.

9 **Q. MR. GREENLAW TESTIFIES THAT THE COMMISSION SHOULD**  
10 **CONSIDER THE PUBLIC INTEREST IN RESOLVING THIS DISPUTE.**  
11 **WHAT IS YOUR POSITION ON THAT?**

12 A. My position is that the Commission should enforce the law as described in detail in  
13 Mr. Wood's direct and rebuttal testimony. Even if the law encompassed some sort of  
14 "public interest" review<sup>1</sup> (which Express Phone does not believe it does), clearly the  
15 public interest lies in ensuring that mammoth companies like AT&T treat their  
16 customers fairly and according to the law, individually and as a group, and that  
17 competition, especially for the underserved market that Express Phone serves, be  
18 encouraged not squelched as AT&T has done.

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

20 A. Yes.

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<sup>1</sup> I will leave it to counsel and Mr. Wood to discuss Order No. PSC-99-1930-PAA-TP.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the Rebuttal Testimony and Exhibits of Thomas M. Armstrong has been furnished by hand delivery\* and U.S. Mail this 29<sup>th</sup> day of March, 2012, to the following:

\*Lee Eng Tan  
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s/ Vicki Gordon Kaufman \_\_\_\_\_

Vicki Gordon Kaufman

Bill Month	Promo/Disputes Due
2007-08	\$ 1,803.00
2007-09	\$ 1,763.00
2007-10	\$ 3,740.00
2007-11	\$ 2,203.00
2007-12	\$ 5,811.00
2008-01	\$ 8,291.00
2008-02	\$ 9,301.00
2008-03	\$ 8,027.00
2008-04	\$ 8,598.00
2008-05	\$ 6,695.00
2008-06	\$ 8,471.00
2008-07	\$ (1,536.00)
2008-08	\$ 10,180.00
2008-09	\$ 10,426.00
2008-10	\$ 10,768.00
2008-11	\$ 22,657.00
2008-12	\$ 22,051.00
2009-01	\$ 23,176.00
2009-02	\$ 27,162.00
2009-03	\$ 23,280.00
2009-04	\$ 25,428.00
2009-05	\$ 33,292.00
2009-06	\$ 49,361.00
2009-07	\$ 42,784.00
2009-08	\$ 41,935.00
2009-09	\$ 32,873.00
2009-10	\$ 33,723.00
2009-11	\$ 17,044.00
2009-12	\$ 16,719.00
2010-01	\$ 16,655.00
2010-02	\$ 24,218.00
2010-03	\$ 26,294.00
2010-04	\$ 101,937.00
2010-05	\$ 85,438.00
2010-06	\$ 88,413.00
2010-07	\$ 85,363.00
2010-08	\$ 96,814.00
2010-09	\$ 81,650.00
2010-10	\$ 54,489.00
2010-11	\$ 92,257.00
2010-12	\$ 125,020.00
2011-01	\$ 102,282.00
2011-02	\$ 90,284.00
	\$ 1,577,138.00

Docket No. 110087-TP  
September 24, 2010 Email from Reginald Greene to Mark Foster  
Exhibit TMA-15, Page 1 of 1

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