

Eric Fryson

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Thursday, January 10, 2013 2:53 PM
To: Filings@psc.state.fl.us
Subject: 120169-TP AT&T Florida's Motion to Compel

Attachments: 0228_001.pdf

- A. Vickie Woods
BellSouth Telecommunications, LLC d/b/a AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5560
vf1979@att.com
- B. Docket No. 120169-TP: Notice of Adopting 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 New Talk, Inc. by Digital Express, Inc.
- C. BellSouth Telecommunications, LLC d/b/a AT&T Florida
on behalf of Suzanne L. Montgomery
- D. 53 pages total (includes letter, certificate of service, pleading and Exhibits A, B, C, and cover sheet for Confidential Exhibit D)
- E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Compel

.pdf

DOCUMENT NUMBER-DATE

00209 JAN 10 2013

FPSC-COMMISSION CLERK

1/10/2013



at&t

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January 10, 2013

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

Re: Docket No. 120169-TP

**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 New Talk, Inc. by
Digital Express, Inc.**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Compel, which we ask that you file in the captioned docket.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,

Suzanne L. Montgomery

cc: Parties of Record
Gregory R. Follensbee

1039849

DOCUMENT NUMBER-DATE

00209 JAN 10 2013

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE
Docket No. 120169-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via Electronic Mail, First Class U. S. Mail and (*) Federal Express this 10th day of January, 2013 to the following:

Lee Eng Tan
Shalonda Hopkins
Staff Counsels
Florida Public Service
Commission
Division of Legal Services
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Digital Express, Inc.
Mr. Tom Armstrong (*)
1803 West Fairfield Drive, Unit 1
Pensacola, FL 32501-1040
Tel. No.: (850) 291-6415
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tom.armstrong.sr@gmail.com


Suzanne L. Montgomery

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of adoption of existing interconnection,) Docket No. 120169-TP
unbundling, resale, and collocation agreement)
between BellSouth Telecommunications, Inc. d/b/a)
AT&T Florida d/b/a AT&T Southeast and New)
Talk, Inc. by Digital Express, Inc.)
_____) Filed: January 10, 2013

AT&T FLORIDA'S MOTION TO COMPEL

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 28.106-204, Fla. Admin. Code, moves the Commission for an order requiring Digital Express, Inc. ("Digital Express") to respond to AT&T Florida's First Set of Interrogatories Nos. 10-12, First Request for Production of Documents Nos. 5-10, and First Request for Admissions Nos. 1-2. Contrary to the broad scope of discovery permitted by Florida law, Digital Express has refused to produce any documents or information relating to AT&T Florida's position that Digital Express is in material breach of its interconnection agreement. For the reasons discussed below, Digital Express should be ordered to produce such discovery responses by January 21, 2013, to give AT&T Florida sufficient time to review them in advance of the upcoming deadline for direct testimony.

I. Background

Digital Express commenced this docket on June 5, 2012, when it filed a unilateral Notice of Adoption, purporting to adopt an interconnection agreement that is different than the one it has been operating under with AT&T Florida. AT&T Florida filed its opposition to Digital Express's notice on July 9, 2012. In that opposition, AT&T Florida argued, among other things, that Digital Express was in material breach of its obligations under its interconnection agreement

and that allowing Digital Express to adopt a new interconnection agreement without curing its contract breaches would be in violation of public policy.¹

AT&T Florida identified two ICA breaches by Digital Express. First, Digital Express breached its ICA by refusing to increase its security deposit to an amount commensurate with its actual monthly billings. Second, Digital Express breached its ICA by refusing to pay its bills based on “disputes” that are not made in good faith and that are inconsistent with the terms of its ICA. With regard to Digital Express’s improper withholding of payments due, AT&T Florida specifically identified two such disputes. Digital Express was improperly withholding payment based on: (a) its position that AT&T Florida is obligated to provide certain credits to Digital Express in connection with the funding of the state portion of the Lifeline assistance program and (b) claims that it is entitled to certain credits associated with long-distance promotions offered by BellSouth Long Distance, Inc., a long distance affiliate of AT&T Florida.

As permitted by the Commission’s Order Establishing Procedure in this docket (Order No. PSC-12-0598-PSC-TP), on December 12, 2012, AT&T Florida served its first set of discovery on Digital Express (attached as Exhibit A). Digital Express served objections on December 26, 2012, and partial responses on January 2, 2013 (attached as Exhibits B and C, respectively). Digital Express objected to and refused to produce any information or documents

¹ Shortly after AT&T Florida filed its opposition, the Commission issued its Order in the docket began by Digital Express’s sister company, Express Phone Service, Inc. In that Order, the Commission held that a “telecommunications company shall not be permitted to adopt an alternative interconnection agreement when it has failed to materially comply with its existing ICA. Express Phone failed to pay disputed amounts as required by its existing interconnection agreement with AT&T Florida and thus shall not be eligible to adopt an alternative interconnection agreement until it is in compliance with the 2006 ICA.” *In re: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecoms., 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 Serv., Inc.*, Docket No. 110087-TP, Order No. PSC-12-0390-FOF-TP, at 8 (July 30, 2012).

in connection with AT&T Florida's position that Digital Express is in breach of its ICA obligations. Those objections are without merit and should be overruled.

II. Argument

The scope of discovery under the Florida Rules of Civil Procedure is broad and liberal. *See Allstate v. Boecher*, 733 So. 2d 993, 995 (Fla. 1999). Rule 1.280(b)(1), Florida Rules of Civil Procedure, provides:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. . . .

Under this standard, “[w]hat is relevant for purposes of discovery is a broader matter than what is relevant and admissible at hearing.” *In re: Complaint of XO Fla., Inc. against BellSouth Telecoms., Inc. for alleged refusal to convert circuits to UNEs; and request for expedited processing*, Docket No. 04114-TP, Order No. OSC-05-0096-PCO-TP, at 1 (Jan. 24, 2005). The purpose of the discovery rules “is to prevent the use of surprise, trickery bluff and legal gymnastics.” *Dodson v. Percell*, 390 So. 2d 704, 707 (Fla. 1980) (quotations and citation omitted).

The thrust of AT&T Florida's position in this case is that Digital Express is in material breach of its ICA, and therefore should not be permitted to unilaterally adopt a different interconnection agreement. AT&T Florida tailored its discovery requests to this specific issue, and focused on gathering information pertaining to Digital Express' breaches of its ICA. The discovery requests that Digital Express refused to answer fall into three categories: (a) Lifeline eligibility; (b) financial status/business plans; and (c) timing of the adoption request vis-à-vis the contract breach.

Applying the applicable standard, the information AT&T Florida seeks is relevant to the subject matter of the issues in this proceeding and is clearly reasonably calculated to lead to the discovery of admissible evidence. Digital Express's position on the discovery requests seems to be that if the documents and information responsive to AT&T Florida's requests are not supportive of Digital Express's own theory of the case, then it does not have to produce those documents and information. That is not the standard. Digital Express's objections are without merit and should be overruled.

A. The Lifeline Discovery Requests are Relevant

AT&T Florida asked Digital Express a series of discovery requests pertaining to its Lifeline processes and the Lifeline eligibility of its customers, as follows:

Interrogatory 10: Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits.

Interrogatory 11: Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to recertify the continued eligibility of its end user customers for Lifeline benefits.

Interrogatory 12: Identify all persons with any responsibility on behalf of Digital Express relating to Lifeline from January 1, 2011 to the present, and describe with particularity each such person's responsibilities.

Request for Production 8: Produce all documents constituting or referring to any and all processes used by Digital Express to verify, or recertify, the eligibility of its end user customers for Lifeline benefits from January 1, 2011 to the present.

Request for Production 9: Produce all documents used by Digital Express at any time from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits, including without limitation application forms, cover letters, letters denying benefits, and recertification requests.

Request for Production 10: Produce documents sufficient to show that each and every end user customer for which Digital Express sought a Lifeline credit from AT&T Florida was in fact eligible for Lifeline.

Digital Express responded to each of the Interrogatories with the same boilerplate objection, "Digital Express objects to Interrogatory No. _____ on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence." See Exhibit C. It responded to the document requests by referencing its General Objections No. 6 and No. 10. Objection No. 6 is the same relevance objection that Digital Express made in connection with the Lifeline interrogatories, and Objection No. 10 is an objection "to each and every individual discovery request that seeks to obtain 'all' of particular documents, items or information to the extent that such requests are overly broad and burdensome." See Exhibits B & C.

Digital Express's relevance objections on these Lifeline discovery requests are not well-founded. Digital Express has withheld payment due to AT&T Florida based on its claim that it is entitled to a credit from AT&T Florida for the state portion of the Lifeline assistance program for its end user customers. See AT&T Florida's Opposition at 6. AT&T Florida disagrees with Digital Express's legal position that AT&T Florida must bear the cost of the state portion of the Lifeline benefit,² and believes that Digital Express is in breach of its ICA by withholding payment based on these claims.

Digital Express' Lifeline claims are thus a live issue in this docket. It is certainly relevant to that issue whether Digital Express' end users were in fact eligible for the Lifeline benefit that Digital Express is claiming that AT&T Florida must fund on behalf of Digital

² While the Florida Commission has not had an opportunity to address this issue, the Tennessee Regulatory Authority and Tennessee Court of Appeals have, and both agreed with AT&T's position. See *In re: Examination of issues surrounding BellSouth Telecoms, LLC d/b/a AT&T Tenn.'s notice of June 28, 2011 concerning BLC Mgmt., LLC d/b/a Angles Commc'n Solutions, dPi Teleconnect, LLC, Ganoco, Inc. d/b/a Am. Dial Tone, Image Access, Inc. d/b/a NewPhone, and Onetone Telecom, Inc.*, Docket No. 11-00109, Final Order at 16 (Dec. 16, 2011); see also *Discount Commc'ns, Inc. v. BellSouth Telecomms., Inc.*, Case No. M2000-02924-COA-R12-CV, 2002 WL 1255674, at *3 (Tenn. Ct. App. Jun. 7, 2002) (affirming decision of Tennessee Regulatory Authority in Docket No. 00-00230).

Express' customers. From its objections, Digital Express is seeking to foreclose this Commission and AT&T Florida from asking the most obvious question for these claims: are Digital Express' end users even eligible for Lifeline? That is a legitimate and relevant question. AT&T Florida's Interrogatories 10-12 and Document Requests 8-10 relate directly to that issue and thus meet the very broad standard of relevance under Florida law.

Digital Express's objections to AT&T Florida's Lifeline document requests as "burdensome" also fail. First, Digital Express has failed to quantify how the requests are burdensome, and that objection should be overruled for that reason alone. *See XO Fla., Inc.*, Order No. PSC-05-0096-PCO-TP, at 2 (citing *First City Dev. of Fla., Inc. v. Hallmark of Hollywood Condominium Ass'n, Inc.*, 545 So. 2d 502, 503 (Fla. 4th DCA 1989)³). More substantively, these requests are not burdensome. In Requests for Production 8 and 9, AT&T Florida is merely asking for the documents relating to how Digital Express verifies the Lifeline eligibility of its end users. Those are narrowly tailored requests and are not improperly open-ended. Request No. 10 is even more limited; AT&T Florida merely asked for "documents sufficient to show" that Digital Express's end users for which it sought Lifeline credits from AT&T Florida are Lifeline eligible. This is a narrow question, and is fairly standard in discovery requests. Digital Express's burdensome objection should be overruled.

B. The Financial Status/Business Plans Discovery Requests are Relevant and Appropriate

AT&T Florida asked Digital Express a series of discovery requests pertaining to its financial status and business plans, as follows:

Request for Production 5: For the period from January 1, 2011 through the present, produce Digital Express' audited and interim financial statements, balance sheets, income

³ This case was overruled on other grounds by *Board of Trustees of Internal Improvement Trust Fund v. American Educational Enterprises, LLC*, 99 So. 3d 450, 459 (2012).

statements and cash flow statements, and any and all documents relating to or referring to such documents.

Request for Production 6: For the period from January 1, 2011 through the present, produce Digital Express' business plan(s), and any and all documents relating to or referring to its business plan(s) during that period.

Request for Production 7: For the period from January 1, 2011 through the present, produce all documents referencing any projections for: (a) volume of services to be purchased from AT&T Florida, including the type of services; and (b) number of end user customers.

Digital Express objected to each of these document requests by reference to its General Objections 1, 2, 6, 10 and 11. These objections are as follows:

- Objection 1: attorney-client privilege
- Objection 2: confidential business information
- Objection 6: relevance
- Objection 10: overly broad and burdensome
- Objection 11: outside the Commission's jurisdiction

Each of Digital Express's objections to the financial status/business plans requests is meritless and should be overruled.

As an initial matter, Digital Express's privilege, confidential business information, and jurisdiction objections fail on their face. AT&T Florida has not asked for any attorney-client privileged communication or attorney work product (Objection No. 1). If Digital Express has withheld information on that basis, AT&T Florida urges that Digital Express be ordered to provide a privilege log so that its claim of privilege can be properly assessed. As for the confidential business information objection (Objection No. 2), AT&T Florida stands ready to enter into an appropriate Confidentiality Agreement with Digital Express, which is common practice in Florida discovery practice. Digital Express's objection that the requests are outside the Commission's jurisdiction (Objection No. 11) also fails. Digital Express is the one who commenced this docket. Under the broad standard of discovery under Florida law as

incorporated into Commission procedure, AT&T Florida is free to pursue discovery on any issue relevant to this docket or likely to lead to the discovery of admissible evidence. And, such discovery appropriately falls within the Commission's jurisdiction.⁴

Substantively, Digital Express's relevance objections on these requests (Objection No. 6) are not well-founded. Digital Express failed to increase its security deposit as requested by AT&T Florida, and thereby breached its obligations under the ICA. See AT&T Florida's Opposition at 4-5. Digital Express's financial status and its business plans are relevant issues to the amount of Digital Express's initial security deposit with AT&T Florida in July 2011 and the propriety of AT&T Florida's request that Digital Express increase that deposit after its billings sky-rocketed to more than 30 times the initial estimate Digital Express provided. Of note, when AT&T Florida was trying to informally resolve the security deposit issue before it became aware of Digital Express' unilateral Notice of Adoption, Digital Express took the position that it did not need to increase its security deposit because it expected its business volumes to decline. See May 22, 2012 email from Armstrong to Wilbanks ("[O]ur monthly billing will be decreasing significantly beginning with the next billing cycle date of May 29th.") (attached as Exhibit D).

Under the broad scope of discovery under Florida law, it is certainly relevant – or at a minimum likely to lead to the discovery of admissible evidence – what Digital Express's financial status was, as well as what its actual business projections showed. AT&T Florida's Document Requests 5-7 relate directly to that issue and thus meet the very broad standard of relevance under Florida law.

Digital Express's burdensome objections (Objection No. 10) are equally without merit. Digital Express has not quantified how the requests are burdensome, as required by Commission

⁴ Rule 28-106.211, Fla. Admin. Code, grants the Commission broad authority to "issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case."

and Florida court precedent. *See supra* at 6. Regardless, the requests are not burdensome. Although Digital Express has existed for more than 16 years, AT&T Florida has narrowly tailored its requests to the time period covered by the case: 2011 to the present, a mere two-year period. This covers the time at issue in this docket: Digital Express' initial Credit Application in July 2011 when it made its initial representation of its projected billings with AT&T Florida, through the time in early 2012 when its billings increased by more than 30 times its initial representation, to the present. These narrowly tailored requests are not burdensome, and Digital Express's burdensome objection should be overruled.

C. The Timing Discovery Requests are Relevant

AT&T Florida asked Digital Express two Requests for Admission relating to the timing of Digital Express' Notice of Adoption vis-à-vis its contract breaches, as follows:

Request for Admission 1: Admit that prior to June 5, 2012, bills were sent on behalf of AT&T Florida to Digital Express for resale services provided in the State of Florida, which Digital Express did not pay the billed amount in full.

Request for Admission 2: Admit that prior to June 5, 2012, AT&T Florida made a request to Digital Express to increase its security deposit, and Digital Express failed to do so.

Digital Express responded to each of these Request for Admission with the same boilerplate relevance objection, "Digital Express objects to Interrogatory No. ___ on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence." *See Exhibit C.* That objection is not well-founded and should be overruled.

AT&T Florida's position in this docket is that because Digital Express was in breach of its ICA at the time it tried to adopt a new interconnection agreement, it would be contrary to public policy to allow its adoption. As noted, this is consistent with the Commission's decision

just six months ago in the *Express Phone* docket. *See supra* note 1. Certainly, it is relevant to the issue in this docket whether the contract breaches identified by AT&T Florida occurred before June 5, 2012, the date when Digital Express filed its Notice of Adoption with the Commission.

III. Conclusion

AT&T Florida met with Mr. Thomas Armstrong, the representative of Digital Express that has been handling this matter on January 9, 2013 to try to reach a resolution of this discovery dispute. The parties were unable to resolve their differences, and Digital Express does not consent to the filing of this motion.

Therefore and for the foregoing reasons, AT&T Florida respectfully requests that Digital Express be ordered to provide full and complete responses to the following discovery requests:

Interrogatories: 10, 11, 12

Requests for Production: 5, 6, 7, 8, 9, 10

Requests for Admission: 1, 2

AT&T Florida further requests that Digital Express be ordered to respond to these discovery requests by January 21, 2013, to give AT&T Florida sufficient time to review the responses in advance of the January 28, 2013 direct testimony deadline.

Respectfully submitted this 10th day of January, 2013.

AT&T FLORIDA



Suzanne L. Montgomery

Authorized House Counsel No. 94116

Tracy W. Hatch

c/o Gregory R. Follensbee

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EXHIBIT A



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General Attorney - Florida

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December 12, 2012

Via Federal Express

Digital Express, Inc.
Mr. Tom Armstrong
1803 West Fairfield Drive, Unit 1
Pensacola, FL 32501-1040

Re: Docket No. 120169-TP

**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 New Talk, Inc. by
Digital Express, Inc.**

Dear Mr. Armstrong:

Enclosed are BellSouth Telecommunications, LLC d/b/a AT&T Florida's First Set of Interrogatories, First Request for Production of Documents and First Request for Admissions to Digital Express, Inc.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,



Suzanne L. Montgomery

cc: Parties of Record
Gregory R. Follensbee

1038849

CERTIFICATE OF SERVICE
Docket No. 120169-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail, First Class U. S. Mail and (*) Federal Express this 12th day of
December, 2012 to the following:

Lee Eng Tan
Shalonda Hopkins
Staff Counsels
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
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Digital Express, Inc.
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tom.armstrong.sr@gmail.com


Suzanne L. Montgomery

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of adoption of existing interconnection,) Docket No. 120169-TP
unbundling, resale, and collocation agreement)
between BellSouth Telecommunications, Inc. d/b/a)
AT&T Florida d/b/a AT&T Southeast and New)
Talk, Inc. by Digital Express, Inc.)
_____) Served: December 12, 2012

**AT&T FLORIDA'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND FIRST REQUEST FOR ADMISSIONS
TO DIGITAL EXPRESS**

BellSouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rule 28.106-206, Fla. Admin. Code, and Rules 1.340, 1.350 and 1.370 of the Florida Rules of Civil Procedure, hereby serves its First Set of Interrogatories, First Request for Production of Documents, and First Request for Admissions to Digital Express, Inc. ("Digital Express").

INSTRUCTIONS

- (a) If any response required by way of answer to these Interrogatories, Requests for Production of Documents and Request for Admissions ("Requests") is considered to contain confidential or protected information, please furnish this information subject to a protective agreement.
- (b) If any response required by way of answer to these Requests is withheld under a claim of privilege, please identify the privilege asserted and describe the basis for such assertion.
- (c) These Requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you.
- (d) If any Request cannot be responded to in full, answer to the extent possible and specify the reason for your inability to respond fully. If you object to any part of a Request, answer all parts of the Request to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

(e) These Requests are continuing in nature and require supplemental responses should information unknown to you at the time you serve your responses to these Requests subsequently become known or should your initial response be incorrect or untrue.

DEFINITIONS

(a) "You" and "Digital Express" means Digital Express, Inc. any predecessors in interest, its parent, subsidiaries, and affiliates, their present and former officers, employees, agents, directors, and all other persons acting or purporting to act on behalf of Digital Express.

(b) "AT&T Florida" means BellSouth Telecommunications, LLC d/b/a AT&T Florida.

(c) "Person" means any natural person, corporation, corporate division, partnership, other unincorporated association, trust, government agency, or entity.

(d) "And" and "or" shall be construed both conjunctively and disjunctively, and each shall include the other whenever such construction will serve to bring within the scope of these Requests information that would not otherwise be brought within their scope.

(e) "Identification" or "identify" when used in reference to: (i) a natural individual, requires you to state his or her full name and residential and business address; (ii) a corporation, requires you to state its full corporate name and any names under which it does business, the state of incorporation, and the address of its principal place of business; (iii) a document, requires you to state the number of pages and the nature of the document (e.g., a letter or memorandum), its title, its date, the name or names of its authors and recipients, and its present location or custodian; written, to identify the document or documents which refer to or evidence the communication, and to the extent that the communication was not written, to identify the persons participating in the communication and to state the date, manner, place, and substance of the communication.

(f) "Commission" means the Florida Public Service Commission.

(g) The term "document" shall have the broadest possible meaning under applicable law. "Document" means every writing or record of every type and description that is in the possession, custody or control of Digital Express, including, but not limited to, emails, correspondence, memoranda, drafts, workpapers, summaries, stenographic or handwritten notes, studies, publications, books, pamphlets, reports, surveys, minutes or statistical compilations, computer and other electronic records or tapes or printouts, including, but not limited to, electronic mail files, and copies of such writing or records containing any commentary or notation whatsoever that does not appear in the original.

(h) The term "Lifeline" refers to the universal service low income program that provides discounts to eligible customers for local phone service, which is commonly referred to as the Lifeline program.

FIRST SET OF INTERROGATORIES

1. Identify each witness from whom you intend to offer testimony (live or via pre-filed testimony) at a hearing in this docket, including but not limited to witnesses who will provide direct testimony, rebuttal testimony, and otherwise. For each such person, include a summary of his/her anticipated testimony and a description of his/her relationship to Digital Express.

2. Identify each consultant or witness who will provide expert testimony (live or via pre-filed testimony) on behalf of Digital Express in this docket, including but not limited to expert witnesses who will provide direct testimony, rebuttal testimony, and otherwise. For each such person, specify the date initially consulted, the date of formal retention (if any), and describe the terms of the financial arrangements or agreement pursuant to which that person or entity will be compensated for work and/or services provided in this case.

3. For each person identified in response to Interrogatory No. 2, please state the following:

- a. The witness' qualifications;
- b. The scope of the witness' employment or retention in this docket;
- c. The witness' general litigation experience, including the percentage of work performed for regulatory bodies or public counsel;
- d. The general substance of the witness' mental impressions and opinions and a brief summary of the basis for them;
- e. Identify all documents reviewed by the witness in connection with this docket; and

f. Identify with specificity the witness' appearances before regulatory or administrative bodies or courts of law, specifying which regulatory or administrative body or court, the caption or style of each proceeding or case and the date of each appearance. For purposes of this interrogatory, the term "appearance" shall include the submission of pre-filed testimony.

4. Identify all officers and directors for Digital Express from January 1, 2007 to the present. For each such person, specify the position(s) held and the dates the position was held.

5. Describe with specificity the relationship between Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC, including whether Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC have had, or do have, any common officers and/or directors at any time from January 1, 2007 to the present, and whether Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC have used the same business address at any time from January 1, 2007 to the present.

6. Identify with specificity the Interconnection Agreement that Digital Express is seeking to adopt through this docket, including without limitation the docket number under which it was approved by the Commission.

7. Describe with specificity the reasons why Digital Express sought to obtain a different Interconnection Agreement through: (a) its June 5, 2012 letter to AT&T "Contract Management"; and (b) by commencing this docket.

8. Is Digital Express aware of any instance from January 1, 2007 to the present where AT&T Florida has consented to a CLEC's request to adopt another CLEC's interconnection agreement when the requesting CLEC was in breach of its then-current interconnection agreement at the time of the adoption request?

9. If the answer to Interrogatory No. 8 is "yes," for each such instance, provide:

- a. The name of the requesting CLEC;**
- b. The date the adoption agreement was entered between AT&T Florida and the requesting CLEC; and**
- c. The docket number and (if applicable) order number approving the adoption.**

10. Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits.

11. Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to recertify the continued eligibility of its end user customers for Lifeline benefits.

12. Identify all persons with any responsibility on behalf of Digital Express relating to Lifeline from January 1, 2011 to the present, and describe with particularity each such person's responsibilities.

13. For each Request for Admission that you do not unequivocally admit, specify all facts supporting your response and identify each person with knowledge of such facts.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. For each consultant or expert witness you identified in your Answer to Interrogatory No. 2 of AT&T Florida's First Set of Interrogatories:
 - a. Produce all direct, rebuttal and/or sur-rebuttal testimony filed with any public utility commission or public service commission, the Federal Communications Commission, or any other state or federal regulatory body in the last five (5) years, deposition transcripts and/or any hearing transcripts for any appearances before any such regulatory authority.
 - b. Produce all articles, texts, treatises, or other materials, published or submitted for publication by the witness in the last five (5) years.
 - c. Provide a copy of the witness' most recent *curriculum vitae*.
2. Produce any and all documents evidencing communications with or evaluations or analyses by any consultant and expert witness identified in response to Interrogatory No. 2.
3. Provide all work-papers, memoranda, documents or other communications of each consultant and expert witness identified in response to Interrogatory No. 2 related to such witness' testimony or the issues in this docket.
4. Produce all records of communications from January 1, 2012 through the present between anyone acting on behalf of Digital Express and anyone acting on behalf of AT&T Florida regarding Digital Express's request(s) for a new interconnection agreement with AT&T Florida.
5. For the period from January 1, 2011 through the present, produce Digital Express' audited and interim financial statements, balance sheets, income statements and cash flow statements, and any and all documents relating to or referring to such documents.

6. For the period from January 1, 2011 through the present, produce Digital Express' business plan(s), and any and all documents relating to or referring to its business plan(s) during that period.

7. For the period from January 1, 2011 through the present, produce all documents referencing any projections for: (a) volume of services to be purchased from AT&T Florida, including the type of services; and (b) number of end user customers.

8. Produce all documents constituting or referring to any and all processes used by Digital Express to verify, or recertify, the eligibility of its end user customers for Lifeline benefits from January 1, 2011 to the present.

9. Produce all documents used by Digital Express at any time from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits, including without limitation application forms, cover letters, letters denying benefits, and recertification requests.

10. Produce documents sufficient to show that each and every end user customer for which Digital Express sought a Lifeline credit from AT&T Florida was in fact eligible for Lifeline.

11. Provide all documents which Digital Express believes supports its claims or defenses in this docket.

12. Produce all documents Digital Express intends to use as exhibits at the hearing in this docket.

13. Produce all documents identified in your answers to AT&T's First Set of Interrogatories.

~~14. Produce all documents you relied on in preparing your answers to AT&T's First~~

~~Set of Interrogatories and First Request for Admission.~~

15. For each Request for Admission that you do not unequivocally admit, produce all documents supporting your response.

FIRST REQUEST FOR ADMISSIONS

1. Admit that prior to June 5, 2012, bills were sent on behalf of AT&T Florida to Digital Express for resale services provided in the State of Florida, which Digital Express did not pay the billed amount in full.
2. Admit that prior to June 5, 2012, AT&T Florida made a request to Digital Express to increase its security deposit, and Digital Express failed to do so.
3. Admit that the Interconnection Agreement that Digital Express claims to have adopted on June 5, 2012 went into effect before Digital Express entered the Interconnection Agreement that it had with AT&T Florida on June 4, 2012.
4. Admit that the Interconnection Agreement that Digital Express claims to have adopted on June 5, 2012 was publicly filed with the Commission in July 2009.
5. Admit that Digital Express is not aware of any instance from January 1, 2007 to the present where AT&T Florida has consented to a CLEC's request to adopt another CLEC's interconnection agreement when the requesting CLEC was in breach of its then-current interconnection agreement at the time of the adoption request.

Respectfully submitted this 12th day of December, 2012.

AT&T FLORIDA



Suzanne L. Montgomery
Authorized House Counsel No. 94116
Tracy W. Hatch
c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558

EXHIBIT B

DIGITAL EXPRESS, INC.

1803 W. Fairfield Drive, Unit 1
Pensacola, FL 32501

December 26, 2012

BellSouth Telecommunications, LLC d/b/a AT&T Florida
Suzanne Montgomery, General Attorney
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Re: Docket No. 120169-TP
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 New Talk, Inc. by Digital Express, Inc.

Dear Ms. Montgomery:

Enclosed is Digital Express, Inc.'s Objections to BellSouth Telecommunications, LLC d/b/a AT&T Florida's First Set of Interrogatories, First Request for Production of Documents and First Request for Admissions dated December 12, 2012.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,



Thomas M. Armstrong
President
Voice: 850-291-6415
Fax: 850-308-1151
tom.armstrong.sr@gmail.com

cc: Parties of Record

CERTIFICATE OF SERVICE
Docket No. 120169-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail this 26th day of December, 2012 to the following:

Lee Eng Tan
Shalonda Hopkins
Staff Counsels
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us
shopkins@psc.state.fl.us

BellSouth Telecommunications, LLC dba AT&T Florida
Ms. Suzanne Montgomery
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
T: 305.347.5558
F: 305.577.4491
Sm6526@att.com



Thomas M. Armstrong

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of the 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 New)
Talk, Inc. by Digital Express, Inc.)

Docket No. 120169-TP

Filed: December 26, 2012

**DIGITAL EXPRESS, INC.'S OBJECTIONS TO BELLSOUTH TELECOMMUNICATIONS, LLC
D/B/A AT&T FLORIDA'S FIRST SET OF INTERROGATORIES, FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND FIRST REQUEST FOR ADMISSIONS**

Digital Express, Inc. (Digital Express), pursuant to Commission Order No. PSC-12-0598-PCO-TP, hereby files its objections to BellSouth Telecommunications, LLC d/b/a AT&T Florida's First Set of Interrogatories, First Request for Production of Documents and First Request for Admissions dated December 12, 2012.

The objections stated herein are preliminary in nature. Should additional grounds for objection be discovered as Digital Express prepares its responses to these discovery requests, Digital Express reserves the right to supplement, revise or modify its objections at the time it serves its responses. All answers provided by Digital Express in response to the discovery requests will be provided to, and without waiver of, the following objections.

GENERAL OBJECTIONS

1. Digital Express objects to each and every individual discovery request to the extent that such request calls for information that is exempt from discovery or protected by virtue of the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. Digital Express in no way intends to waive any such privilege or protection.

2. Digital Express objects to each and every individual discovery request to the extent it requires production of information that is proprietary, confidential business information or constitutes "trade secrets" pursuant to sections 90.506 and 366.093(3)(a), Florida Statutes, without provisions in place to protect the confidentiality of the information. Digital Express in no way intends to waive claims of confidentiality.

3. Digital Express objects to any definitions or instructions accompanying each and every individual discovery request to the extent that they are inconsistent with and expand the scope of discovery specified in the Florida Rules of Civil Procedure that are incorporated into the Model Rules of Procedure or the Commission's rules on discovery. If some question arises as to Digital Express' discovery obligations, Digital Express will comply with applicable rules and not with any of the definitions or instructions accompanying the discovery requests that are inconsistent with or exceed the requirements of those rules. Furthermore, Digital Express objects to each and every individual discovery request that calls for Digital Express to create new data, documents, studies or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

4. Digital Express objects to any definition or instruction in each and every individual discovery request that seeks interrogatory answers containing information from persons or entities who are not parties to this proceeding or that are not subject to discovery under applicable rules. Furthermore, Digital Express objects to each and every individual discovery request to the extent it seeks to impose an obligation upon Digital Express to respond on behalf of subsidiaries, affiliates or other persons that are not party to this proceeding on the grounds that such discovery is overly broad, unduly burdensome, oppressive and not permitted by applicable discovery rules.

5. It is possible that not every relevant document may have been reviewed or considered in developing Digital Express's responses to the discovery requests. Rather, Digital Express will provide all the information that it obtained after a good faith, reasonable and diligent

search conducted in connection with these discovery requests. To the extent that the discovery requests propose to require more, Digital Express objects to each and every discovery request individually and collectively on the grounds that compliance would impose an undue burden or expense on Digital Express.

6. Digital Express objects to each and every discovery request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

7. Digital Express objects to each and every discovery request to the extent it is vague, ambiguous, overly broad, unduly burdensome, expensive, imprecise, oppressive, excessively time consuming as written or utilizes terms that are subject to multiple interpretations but are not properly defined or explained for purposes of such discovery requests.

8. Digital Express expressly reserves and does not waive any objections it may have to the admissibility, authenticity or relevancy of the information provided in its responses to the subject discovery requests.

9. Digital Express objects to providing information already in the public record before the Commission, that is as easily accessible to AT&T Florida as to Digital Express, or that is already in AT&T Florida's possession.

10. Digital Express objects to each and every individual discovery request that seeks to obtain "all" of particular documents, items or information to the extent that such requests are overly broad and burdensome. Any responses provided by Digital Express will be provided to, and without waiver of, the foregoing objection.

11. Digital Express objects to each and every individual discovery request to the extent it is intended to apply to matters other than those subject to the jurisdiction of the Commission. Digital Express objects to such requests as being irrelevant, overly broad, unduly burdensome, and oppressive.

12. In the course of its business, Digital Express creates countless documents that are not subject to Commission or FCC retention of records requirements. It is possible that not every document has been identified in response to these requests. Digital Express will conduct a search of those files that are reasonably expected to contain the requested information. To the extent that the requests purport to require more, Digital Express objects on the grounds that compliance would impose an undue burden or expense.

Respectfully submitted this 26th day of December, 2012.

Digital Express, Inc.

A handwritten signature in cursive script that reads "Thomas M. Armstrong". The signature is written in black ink and is positioned above a horizontal line.

Thomas M. Armstrong
President
Digital Express, Inc.
1803 W. Fairfield Drive, Unit 1
Pensacola, FL 32501
(850) 291-6415

EXHIBIT C

DIGITAL EXPRESS, INC.

1803 W. Fairfield Drive, Unit 1
Pensacola, FL 32501

January 2, 2013

BellSouth Telecommunications, LLC d/b/a AT&T Florida
Suzanne Montgomery, General Attorney
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

Re: Docket No. 120169-TP

Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BeliSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and New Talk, Inc. by Digital Express, Inc.

Dear Ms. Montgomery:

Enclosed is Digital Express, Inc.'s Responses to BellSouth Telecommunications, LLC d/b/a AT&T Florida's First Set of Interrogatories, First Request for Production of Documents and First Request for Admissions dated December 12, 2012.

Copies have been served to the Parties shown on the attached Certificate of Service list.

Sincerely,



Thomas M. Armstrong
President
Voice: 850-291-6415
Fax: 850-308-1151
tom.armstrong.sr@gmail.com

cc: Parties of Record

CERTIFICATE OF SERVICE

Docket No. 120169- TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and UPS Overnight this 2nd day of January, 2013 to the following:

Lee Eng Tan
Shalonda Hopkins
Staff Counsels
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us
shopkins@psc.state.fl.us

BellSouth Telecommunications, LLC dba AT&T Florida
Ms. Suzanne Montgomery
150 South Monroe Street
Suite 400
Tallahassee, FL 32301
T: 305.347.5558
F: 305.577.4491
Sm6526@att.com



Thomas M. Armstrong

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of the Adoption of existing interconnection,)	Docket No. 120169-TP
unbundling, resale, and collocation agreement between)	
BellSouth Telecommunications, Inc. d/b/a AT& T Florida)	
Southeast and New Talk, Inc. by Digital Express, Inc.)	Filed: January 2, 2013
)	

DIGITAL EXPRESS, INC.'S OBJECTIONS AND RESPONSES TO AT&T'S FIRST SET OF INTERROGATORIES (NOS. 1-13), FIRST REQUEST FOR PRODUCTION OF DOCUMENTS (NOS. 1-15), AND FIRST REQUEST FOR ADMISSIONS (NOS. 1-5)

Digital Express, Inc. (Digital Express), pursuant to Rule 28.106-206, Florida Administrative Code and Rules 1.340, 1.350 and 1.370, Florida Rules of Civil Procedure, submits the following responses to BellSouth Telecommunications, LLC d/b/a AT&T Florida's (AT&T) First Set of Interrogatories (Nos. 1-13), First Request for Production of Documents (Nos. 1-15), and First Request for Admissions (Nos. 1-5). All responses contained herein are provided subject to and without waiver of the General Objections filed by Digital Express on December 26, 2012 and subject to the any specific objections herein.

SPECIFIC OBJECTIONS AND RESPONSES TO AT&T'S FIRST SET OF INTERROGATORIES TO DIGITAL EXPRESS PHONE (NOS. 1 - 13)

1. Identify each witness from whom you intend to offer testimony (live or via pre-filed testimony) at a hearing in this docket, including but not limited to witnesses who will provide direct testimony, rebuttal testimony, and otherwise. For each such person, include a summary of his/her anticipated testimony and a description of his/her relationship to Digital Express.

RESPONSE: Digital Express intends, at this time, to offer the direct testimony of the following witnesses:

- Mr. Tom Armstrong, President of Digital Express. Mr. Armstrong will discuss Digital Express' attempts to adopt another CLEC's interconnection agreement and AT&T's refusal to recognize the adoption.

At this time, Digital Express has made no decision regarding the presentation of rebuttal witnesses or testimony.

2. Identify each consultant or witness who will provide expert testimony (live or via pre-filed testimony) on behalf of Digital Express in this docket, including but not limited to expert witnesses who will provide direct testimony, rebuttal testimony, and otherwise. For each such person, specify the date initially consulted, the date of formal retention (if any), and describe the terms of the financial arrangements or agreement pursuant to which that person or entity will be compensated for work and/or services provided in this case.

RESPONSE: See response to Interrogatory No. 1. Mr. Armstrong is an employee of Digital Express.

3. For each person identified in response to Interrogatory No. 2, please state the following:

- a. The witness' qualifications;

RESPONSE: See curriculum vitae of Mr. Armstrong attached.

- b. The scope of the witness' employment or retention in this docket;

RESPONSE: Mr. Armstrong is an employee of Digital Express.

- c. The witness' general litigation experience, including the percentage of work performed for regulatory bodies or public counsel;

RESPONSE: Mr. Armstrong has appeared as a witness in civil proceedings unrelated to telecommunications issues. Mr. Armstrong appeared as a witness in the Alabama certification of

Express Phone Service, Inc., Docket No. 27184. Mr. Armstrong appeared as a witness in Docket

No. 110087-TP before the Commission.

d. The general substance of the witness' mental impressions and opinions and a brief summary of the basis for them;

RESPONSE: Please see direct testimony of Mr. Armstrong which will be filed on January 28, 2013.

e. Identify all documents reviewed by the witness in connection with this docket; and

OBJECTION: See General Objection No. 10.

RESPONSE: Mr. Armstrong has been involved in this docket since its inception and has reviewed all documents received from AT&T regarding this matter and sent to AT&T regarding this matter. Mr. Armstrong has also reviewed the pertinent portions of the Telecommunications Act of 1996, pertinent FCC rules and orders, the Digital Express/AT&T ICA and the New Talk/AT&T ICA.

f. Identify with specificity the witness' appearances before regulatory or administrative bodies or courts of law, specifying which regulatory or administrative body or court, the caption or style of each proceeding or case and the date of each appearance. For purposes of this interrogatory, the term "appearance" shall include the submission of pre-filed testimony.

RESPONSE: See response to Interrogatory No. 3c.

4. Identify all officers and directors for Digital Express from January 1, 2007 to the present. For each such person, specify which position(s) held and the dates the position was held.

OBJECTION: Digital Express objects to Interrogatory No. 4 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. Further, Digital Express objects because such information is readily accessible to AT&T via a quick online search.

RESPONSE: Subject to and without waiver of its objections, Digital Express states:

- Thomas Armstrong, Vice-President, January 1, 2007 to April 1, 2011 / President, April 1, 2011 to present
- William Kloss, President, January 1, 2007 to April 1, 2011 / Vice-President, April 1, 2011 to present.

5. Describe with specificity the relationship between Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC, including whether Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC have had, or do have, any common officers and/or directors at any time from January 1, 2007 to the present, and whether Digital Express, Express Phone Service, Inc., and LTS of Rocky Mount, LLC have used the same business address at any time from January 1, 2007 to the present.

OBJECTION: Digital Express objects to Interrogatory No. 5 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

6. Identify with specificity the Interconnection Agreement that Digital Express is seeking to adopt through this docket, including without limitation the docket number under which it was approved by the Commission.

RESPONSE: Digital Express adopted the Florida Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida) and New Talk, Inc. See, Docket No. 090364-TP.

7. Describe with specificity the reasons why Digital Express sought to obtain a different Interconnection Agreement through: (a) its June 5, 2012 letter to AT&T "Contract Management"; and (b) by commencing this docket.

OBJECTION: Digital Express objects to Interrogatory No. 7 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. The reasons Digital Express sought to adopt another agreement are irrelevant to the issues in this docket. Digital Express further objects to this interrogatory as vague and imprecise in the utilization of term "different" which is not properly defined or explained.

RESPONSE: Subject to and without waiver of its objections, Digital Express adopted the New Talk ICA to mitigate current discriminatory practices by AT&T and prevent further discrimination by AT&T and to foster a competitive market place. This is the express reason behind the federal adoption requirements. As the FCC stated:

We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination. (In the Matter of the Section 251 Unbundling Obligations of Incumbent Local

8. Is Digital Express aware of any instance from January 1, 2007 to the present where AT&T Florida has consented to a CLEC's request to adopt another CLEC's interconnection agreement when the requesting CLEC was in breach of its then-current interconnection agreement at the time of the adoption request?

OBJECTION: Digital Express objects to Interrogatory No. 8 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. There is nothing in statute or FCC rule of which Digital Express is aware which permits AT&T or a state regulatory authority to invalidate an adoption based on any reason, breach or otherwise, other than the two specific reasons set forth by the FCC (technical feasibility and cost). Digital Express further objects to this interrogatory as such information is in AT&T's possession.

RESPONSE: Subject to and without waiver of its objection, Digital Express states that it is attempting to obtain this information from AT&T as well as independently.

9. If the answer to Interrogatory No. 8 is "yes," for each such instance, provide:
- a. The name of the requesting CLEC;
 - b. The date the adoption agreement was entered between AT&T Florida and the requesting CLEC; and
 - c. The docket number and (if applicable) order number approving the adoption.

OBJECTION AND RESPONSE: See objection and response to Interrogatory No. 8.

10. Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits.

OBJECTION: Digital Express objects to Interrogatory No. 10 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

11. Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to recertify the continued eligibility of its end user customers for Lifeline benefits.

OBJECTION: Digital Express objects to Interrogatory No. 11 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

12. Identify all persons with any responsibility on behalf of Digital Express relating to Lifeline from January 1, 2011 to the present, and describe with particularity each such person's responsibilities.

OBJECTION: Digital Express objects to Interrogatory No. 12 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence. Digital Express further objects to this interrogatory as overly broad and burdensome as well as seeking to obtain information from persons or entities who are not parties to this proceeding.

13. For each Request for Admission that you do not unequivocally admit, specify all facts supporting your response and identify each person with knowledge of such facts.

RESPONSE: See Digital Express' objections and responses to AT&T's Requests for Admission.

FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

1. For each consultant or expert witness you identified in your Answer to Interrogatory No.2 of AT&T Florida's First Set of Interrogatories:

- a. Produce all direct, rebuttal and/or sur-rebuttal testimony filed with any public utility commission or public service commission, the Federal Communications Commission, or any other state or federal regulatory body in the last five (5) years, deposition transcripts and/or any hearing transcripts for any appearances before any such regulatory authority.

OBJECTION: Digital Express objects to Request No. 1 on the grounds that it is overly broad, unduly burdensome, it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of this objection, Digital Express states that to the extent AT&T wishes to review Mr. Armstrong's prior testimony, it may be able to access it from the information provided in response to Interrogatory No. 3. Mr. Armstrong did not submit pre-filed testimony and has no transcript of the Alabama proceeding to the extent one exists.

- b. Produce all articles, texts, treatises, or other materials, published or submitted for publication by the witness in the last five (5) years.

OBJECTION: Digital Express objects to Request No. 1 on the grounds that it is overly broad, unduly burdensome, it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Subject to and without waiver of this objection, Digital Express states that no such articles or other materials have been published in the last five (5) years.

c. Provide a copy of the witness' most recent *curriculum vitae*.

RESPONSE: See response to Interrogatory No. 3.

2. Produce any and all documents evidencing communications with or evaluations or analyses by any consultant and expert witness identified in response to Interrogatory No. 2.

OBJECTION: See General Objections No. 1, No. 2 and No. 10.

3. Provide all work-papers, memoranda, documents or other communications of each consultant and expert witness identified in response to Interrogatory No. 2 related to such witness' testimony or the issues in this docket.

OBJECTION: See General Objections No. 1, No. 2 and No. 10.

4. Produce all records of communications from January 1, 2012 through the present between anyone acting on behalf of Digital Express and anyone acting on behalf of AT&T Florida regarding Digital Express's request(s) for a new interconnection agreement with AT&T Florida.

OBJECTION: See General Objection No. 9. All such information is in AT&T's possession.

5. For the period from January 1, 2011 through the present, produce Digital Express' audited and interim financial statements, balance sheets, income statements and cash flow statements, and any and all documents relating to or referring to such documents.

OBJECTION: See General Objections No. 1, No. 2, No. 6, No. 10 and No. 11.

6. For the period from January 1, 2011 through the present, produce Digital Express' business plan(s), and any and all documents relating to or referring to its business plan(s) during that period.

OBJECTION: See General Objections No. 1, No. 2, No. 6, No. 10 and No. 11.

7. For the period from January 1, 2011 through the present, produce all documents referencing any projections for: (a) volume of services to be purchased from AT&T Florida, including the type of services; and (b) number of end user customers.

OBJECTION: See General Objections No. 1, No. 2, No. 6, No. 10 and No. 11.

8. Produce all documents constituting or referring to any and all processes used by Digital Express to verify, or recertify, the eligibility of its end user customers for Lifeline benefits from January 1, 2011 to the present.

OBJECTION: See General Objections No. 6 and No. 10.

9. Produce all documents used by Digital Express at any time from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits, including without limitation application forms, cover letters, letters denying benefits, and recertification requests.

OBJECTION: See General Objections No. 6 and No. 10.

10. Produce documents sufficient to show that each and every end user customer for which Digital Express sought a Lifeline credit from AT&T Florida was in fact eligible for Lifeline.

OBJECTION: See General Objections No. 6 and No. 10.

11. Provide all documents which Digital Express believes supports its claims or defenses in this docket.

OBJECTION: See General Objections No. 1, No. 9, No. 10 and No. 12.

RESPONSE: Subject to and without waiver of its previous objections, see documents referenced or produced herein. In addition, Digital Express is continuing to conduct discovery

and research the issues in this case. Also see direct testimony of Mr. Armstrong which will be filed on January 28, 2013.

12. Produce all documents Digital Express intends to use as exhibits at the hearing in this docket.

OBJECTION: Digital Express objects to this request to the extent it requests information or documents protected by virtue of the work product doctrine.

RESPONSE: Subject to and without waiver of its previous objections, Digital Express states that other than those documents attached to the direct pre-filed testimony of Express Phone's witnesses, which will be filed on January 28, 2013, Digital Express has not yet determined which exhibits it will use at hearing.

13. Produce all documents identified in your answers to AT&T's First Set of Interrogatories.

RESPONSE: Subject to and without waiver of its previous objections, see documents referenced or produced herein. Also see direct testimony of Mr. Armstrong which will be filed on January 28, 2013.

14. Produce all documents you relied on in preparing your answers to AT&T's First Set of Interrogatories and First Request for Admission.

RESPONSE: Subject to and without waiver of its previous objections, see documents referenced or produced herein. Also see direct testimony of Mr. Armstrong which will be filed on January 28, 2013.

15. For each Request for Admission that you do not unequivocally admit, produce all documents supporting your response.

RESPONSE: Subject to and without waiver of its previous objections, see documents

referenced or produced herein. Also see direct testimony of Mr. Armstrong which will be filed on January 28, 2013.

FIRST REQUEST FOR ADMISSIONS

1. Admit that prior to June 5, 2012, bills were sent on behalf of AT&T Florida to Digital Express for resale services provided in the State of Florida, which Digital Express did not pay the billed amount in full.

OBJECTION: Digital Express objects to Request for Admission No. 1 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

2. Admit that prior to June 5, 2012, AT&T Florida made a request to Digital Express to increase its security deposit, and Digital Express failed to do so.

OBJECTION: Digital Express objects to Request for Admission No. 2 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

3. Admit that the Interconnection Agreement that Digital Express claims to have adopted on June 5, 2012 went into effect before Digital Express entered the Interconnection Agreement that it had with AT&T Florida on June 4, 2012.

OBJECTION: Digital Express objects to Request for Admission No. 3 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence and contains a faulty premise. Digital Express further objects to this interrogatory on the grounds that this information is already in AT&T's possession.

RESPONSE: Subject to and without waiver of its objection and with the further objection that this information is easily obtained on line, Digital Express admits this request.

4. Admit that the Interconnection Agreement that Digital Express claims to have adopted on June 5, 2012 was publicly filed with the Commission in July 2009.

OBJECTION: Digital Express objects to Request for Admission No. 4 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence and contains a faulty premise. Further, Digital Express objects because such information is readily accessible to AT&T via a quick online search.

RESPONSE: Subject to and without waiver of its objections, this request is admitted.

5. Admit that Digital Express is not aware of any instance from January 1, 2007 to the present where AT&T Florida has consented to a CLEC's request to adopt another CLEC's interconnection agreement when the requesting CLEC was in breach of its then-current interconnection agreement at the time of the adoption request.

OBJECTION: Digital Express objects to Request for Admission No. 5 on the grounds that it is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE: Digital Express is unable to admit or deny this request and is continuing to make reasonable inquiry as to this matter.

Respectfully submitted this 2nd day of January, 2013.

Digital Express, Inc.



Thomas M. Armstrong
President
Digital Express, Inc.
1803 W. Fairfield Drive, Unit 1
Pensacola, FL 32501
(850) 291-6415

Tom Armstrong

EXPERIENCE

07/2011 – Present <u>President</u>	LTS OF ROCKY MOUNT, LLC	Pensacola, FL
<ul style="list-style-type: none">• Implemented control processes for accounts receivables and payables• Oversaw transition of control from previous ownership• Legal and regulatory point of contact for company matters		
05/2010 – Present <u>Managing Member</u>	SIMPLY CUPCAKES OF PENSACOLA, LLC	Pensacola, FL
<ul style="list-style-type: none">• Network marketing coordinator		
02/2007 – Present <u>Managing Member</u>	MORE INK FOR LESS, LLC	Pensacola, FL
<ul style="list-style-type: none">• Researched and co-developed business model• Foreman in charge of retail site build out• Created and implemented complete procedures & process for administration and operations• Ran day to day operations for first 12 months after startup• Sales consultant for current management staff• Network marketing consultant		
1999 – Present <u>President</u>	EXPRESS PHONE SERVICE, INC.	Pensacola, FL
<ul style="list-style-type: none">• Implemented control processes for accounts receivables and payables• Created provisioning and billing procedures for 5000+ customers• Legal and regulatory point of contact for company matters• Managed transition of company from pre-paid CLEC to Lifeline/Linkup based CLEC		
1997 – Present <u>Office Manager, CSR, General Manager, Vice-President, President</u>	DIGITAL EXPRESS, INC.	Pensacola, FL
<ul style="list-style-type: none">• Created office standard operating procedures for day to day operational stability• Executed CLEC start up plans• Sole CLEC point of contact for customer and ILEC (BellSouth) relationships• Developed and implemented customer service representative job descriptions• Legal and regulatory point of contact for company matters		
1978 – 1998 <u>Staff Sergeant</u>	UNITED STATES MARINE CORPS <u>United States of America, Japan, Philippines, Panama, Korea</u>	Worldwide
<ul style="list-style-type: none">• Honorable Discharge / Military Retirement after 20 years of service• Awards include Good Conduct, Navy Achievement Medal (Gold Star), Expert Pistol/Rifle qualification• Designated as Master Training Specialist by United States Navy• Coordinated Base Realignment and Closure transition of Instructor Training Course from NAS Memphis to NAS Pensacola		

1974 – 1978

PUBLIX SUPERMARKETS

Rockledge/St. Augustine, FL

Bagboy, Stockman

- Began working at age fourteen on state work permit
- Member of new store implementation team in 1977
- Worked full-time as stockman during senior year of high school

ASSOCIATIONS

4/06 – Present

NATIONAL ALEC ASSOCIATION (NALA)

United States

- Board member - 2007 – present
- Chairman - 2009 – 2012

COMMUNITY SERVICE

05/10 – Present

SPECIAL OLYMPICS OF ESCAMBIA COUNTY FLORIDA

Pensacola, FL

- Unified Athlete - 2010 – present (Bowling & Bocce)
- Class A Volunteer Chaperone for State Fall Classic Games in Orlando, FL – 2010, 2011, 2012
- Finance Committee Chairman - 2011 – present (Volunteer position)

EDUCATION

St. Augustine High School

1974 – 1978

Diploma

United States Marine Corps

1979

Basic Electricity & Electronics

Aviation Avionics

Advanced First Term Avionics

1986

Instructor Training Course

1992

Advanced Electronics/Avionics

State Technical Institute of Memphis

1992

Associate of Arts

summa cum laude

Electronic Technology

EXHIBIT D
PROPRIETARY & CONFIDENTIAL