

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint of Express Phone Service, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida regarding interpretation of the parties' interconnection agreement.	DOCKET NO. 110071-TP ORDER NO. PSC-11-0180-PCO-TP ISSUED: March 30, 2011
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ORDER DENYING MOTION FOR EMERGENCY CONSIDERATION

On February 7, 2011, Express Phone Service Inc. (Express Phone) received a notice from BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T) stating that due to non-compliance with the interconnection agreement, suspension and termination proceedings had begun. On February 13, 2011, Express Phone received a revised notice of suspension and termination, with a suspension date of March 14, 2011. Express Phone later received suspension date extension of March 18, 2011. On March 15, 2011, Express Phone filed its complaint against AT&T and requested that the Commission stop AT&T from suspending and disconnecting Express Phone.

On March 17, 2011, a telephonic meeting was held between Commission staff and the parties. The parties failed to reach resolution of the dispute during the meeting. On March 18, 2011, Express Phone filed a Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo (Emergency Motion). On March 23, 2011, Express Phone filed a letter, reiterating the impending disconnection of its customers by AT&T and attached a sample Notice of Termination to be sent to its customers. On March 23, 2011, AT&T filed a Notice of Filing, discussing Express Phone's choice of language used in the sample Notice of Termination.

AT&T's Response in Opposition to Express Phone's Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo, filed on March 25, 2011, argues that the Prehearing Officer does not have the authority to issue injunctions as requested by Express Phone in its Emergency Motion.

Express Phone argues that Rule 28-106.305, Florida Administrative Code (F.A.C.)¹ allows the Prehearing Officer to stay AT&T's disconnection of service to Express Phone. While Prehearing Officers have much discretion regarding the procedural aspects of dockets, Express Phone's Emergency Motion seeks relief that exceeds the bounds of a procedural ruling authorized by Rule 28-106.305, F.A.C. Upon review of Express Phone's request for an Order maintaining the status quo, it appears that

¹Rule 28-106.305, Florida Administrative Code provides that "The presiding officer before whom a case is pending may 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, including bifurcating the proceedings

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Express Phone's request is more akin to a request for injunctive relief.² This Commission has consistently held that we lack authority to grant injunctive relief.³

Further, had Express Phone filed its complaint with the Commission when first receiving AT&T's Notice of Suspension and Termination, there would have been sufficient time to allow the full Commission an opportunity to address this matter. Instead, Express Phone filed its complaint less than three days before its scheduled suspension and requested that I, as prehearing officer, issue an emergency order directing AT&T to take no action to suspend Express Phone's service to its customers.

Upon review of Express Phone's Emergency Motion and consistent with Commission precedent, I find it reasonable and appropriate to deny Express Phone's Emergency Motion.

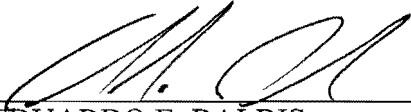
Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Express Phone Service, Inc.'s Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo is denied.

² An injunction is defined by Black's Law Dictionary as a court order commanding or preventing an action. Black's Law Dictionary, 8th Ed. (2004) Express Phone's Emergency Motion requests that I order AT&T to take *no action* to suspend or otherwise interfere with Express Phone's service.

³ In re: Complaint and Petition of Cynwyd Investments Against Tamiami Village Utility, Inc., Docket Nos. 920649-WS and 930642-WS, Order No. PSC-94-0210-FOF-WS, (issued February 21, 1994); Florida Power & Light Company v. Albert Litter Studios, Inc., 896 So.2d 891, 892 (Fla. 3d DCA 2005); In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and Bellsouth Corporation by Bessie Russ, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP, (issued April 16, 2007); In re: Petition for Commission to intervene, investigate and mediate dispute between DSL Internet Corporation d/b/a DSLi and BellSouth Telecommunications, Inc., Docket No. 080631-TP, Order No. PSC-09-0515-PCO-TP, (issued July 21, 2009); In re: Complaint of Qwest Communications Company, LLC against MCImetro Access Transmission Services (d/b/a Verizon Access Transmission Services); XO Communications Services, Inc.; tw telecom of florida, l.p.; Granite Telecommunications, LLC; Cox Florida Telcom, L.P.; Broadwing Communications, LLC; and John Does 1 through 50 (CLECs whose true names are currently unknown) for rate discrimination in connection with the provision of intrastate switched access services in alleged violation of Sections 364.08 and 364.10, F.S., Docket No. 090538-TP, Order No. PSC-10-0296-FOF-TP, (issued May 7, 2010).

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this
30th day of March, 2011.



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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.