



Manuel A. Gurdian  
General Attorney

AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301

T: (305) 347-5561  
F: (305) 577-4491  
manuel.gurdian@att.com

100022-TP

January 8, 2010

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

RECEIVED-FPSC  
10 JAN - 8 PM 4: 22  
COMMISSION  
CLERK

**New Docket: In re: Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against Image Access, Inc. d/b/a New Phone**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Complaint and Petition for Relief, which we ask that you file in the captioned *new* docket.

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

Sincerely,

Manuel A. Gurdian

cc: All parties of record  
Gregory R. Follensbee  
Jerry D. Hendrix  
E. Earl Edenfield, Jr.

COM \_\_\_  
APA \_\_\_  
ECR \_\_\_  
GCL 2  
RAD TCO  
SSC \_\_\_  
ADM \_\_\_  
OPC \_\_\_  
CLK 1

DOCUMENT NUMBER-DATE

00225 JAN-8 0

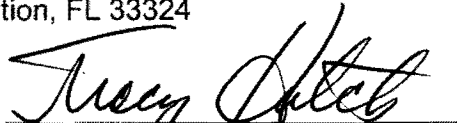
FPSC-COMMISSION CLERK

**Complaint of BellSouth Telecommunications, Inc.  
d/b/a AT&T Florida Against Image Access, Inc.  
d/b/a New phone**

I HEREBY CERTIFY that a true and correct copy was served via (\*) Electronic  
Mail and First Class U. S. Mail this 8th day of January, 2010 to the following:

Florida Public Service Commission  
Adam Teitzman, General Counsel (\*)  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Tel. No. (850) 413-6175  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)

Registered Agent for New Phone  
C T Corporation System  
1200 South Pine Island Rd.  
Plantation, FL 33324

  
Manuel A. Gurdian

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. \_\_\_\_\_  
Florida Against Image Access, Inc. d/b/a )  
New Phone ) Filed: January 8, 2010

**AT&T FLORIDA’S COMPLAINT AND  
PETITION FOR RELIEF**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”), pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code and 47 U.S.C. §252, hereby files the following Complaint and Petition for Relief against Image Access, Inc. d/b/a New Phone (“New Phone”) for breaching the terms of the parties’ Interconnection Agreements. AT&T Florida respectfully requests that the Florida Public Service Commission (“Commission”) convene a docket for the purposes of: resolving billing disputes between New Phone and AT&T Florida; determining the amount New Phone owes AT&T Florida under the parties’ interconnection agreement(s),<sup>1</sup> and requiring New Phone to pay this amount to AT&T Florida.<sup>2</sup>

**I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION**

New Phone owes AT&T Florida a past-due and unpaid balance for telecommunications services AT&T Florida provided it for resale under the terms and conditions of applicable interconnection agreement(s). As of November 9, 2009, this

<sup>1</sup> In September 2009, AT&T Florida began applying a new methodology for calculating the resale promotional credits it will provide New Phone and other CLECs with regard to the cashback component of certain retail promotional offerings. *AT&T Florida is not seeking any amounts billed under this new methodology in this Docket.*

<sup>2</sup> AT&T Florida is filing a similar Complaint and Petition against one other competitive local exchange carrier with the Commission. Because of the commonality of the issues set forth in Section IV. of this Complaint and Petition with the issues set forth in Section IV. of this other Complaint and Petition, AT&T Florida intends to file a motion to consolidate these two dockets for the purposes of resolving those common issues. AT&T Florida will file that motion in each of these dockets after the Commission assigns them docket numbers.

FILED NUMBER DATE  
0225 JAN-8 09  
FPSC-COMMISSION CLERK

past-due and unpaid balance totals, in the aggregate, more than \$245,000 in the State of Florida.<sup>3</sup> To the extent that New Phone has disputed AT&T Florida's bills, AT&T Florida has denied those disputes as required by its interconnection agreement(s) with New Phone. New Phone, however, has declined to pay AT&T Florida the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of New Phone's withholding payments to AT&T Florida for one or both of the following reasons:<sup>4</sup> (1) New Phone erroneously asserts that AT&T Florida cannot apply the resale discount approved by this Commission in the parties' interconnection agreements to the cashback component of various promotional offers that AT&T Florida makes available for resale;<sup>5</sup> and (2) New Phone erroneously asserts that AT&T Florida's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

The interconnection agreement(s) between AT&T Florida and New Phone provide that disputes like these are to be resolved in the first instance by this Commission. AT&T Florida, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that New Phone owes AT&T Florida under the parties' interconnection agreement(s), and require New Phone to pay that amount to AT&T Florida.

---

<sup>3</sup> As of November 9, 2009, New Phone's unpaid and past-due balance is over \$3.9 million across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

<sup>4</sup> A more detailed description of New Phone's assertions, and a brief explanation of why they are erroneous, is set forth in Section IV. below.

<sup>5</sup> For one-time "cash back" promotions, AT&T Florida contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-serve life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this docket because AT&T Florida is not seeking any amounts billed under this new methodology in this docket.

## II. PARTIES

1. AT&T Florida is a corporation organized under the laws of the state of Georgia. AT&T Florida is an incumbent local exchange carrier ("ILEC") as that term is defined by federal<sup>6</sup> law.

2. The full name and address of the authorized representative(s) for AT&T Florida in this proceeding are:

E. Earl Edenfield, Jr.  
Tracy W. Hatch  
Manuel A. Gurdian  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558

3. New Phone is organized under the laws of the state of Louisiana. New Phone is a Competitive Local Exchange Carrier ("CLEC") as that term is defined under federal law and it is authorized to provide resold local exchange telecommunications services within the State of Florida.

## III. NEW PHONE'S BREACH OF ITS INTERCONNECTION AGREEMENT(S)

4. In 2002, AT&T Florida and New Phone entered into a negotiated interconnection agreement (the "New Phone 2002 agreement") in which AT&T Florida agreed, among other things, to offer various telecommunications services for resale to New Phone at specified wholesale rates and subject to specified terms and conditions. A copy of the New Phone 2002 agreement is on a CD attached hereto as Exhibit A.

5. In 2006, AT&T Florida and New Phone entered into a negotiated interconnection agreement (the "New Phone 2006 agreement") in which AT&T Florida

---

<sup>6</sup> See, e.g., 47 U.S.C. §251(h)(1).

agreed, among other things, to offer various telecommunications services for resale to New Phone at specified wholesale rates and subject to specified terms and conditions. A copy of the New Phone 2006 agreement is on a CD attached hereto as Exhibit A.

6. As of November 9, 2009, New Phone owes a past due and unpaid balance to AT&T Florida in the amount of \$245,929.90 (the "Past Due Balance"). The Past Due Balance represents the amounts AT&T Florida billed New Phone for telecommunications services provided to New Phone in Florida pursuant to the parties' interconnection agreement(s) less payments made by New Phone; and credits provided by AT&T Florida to New Phone in connection with valid disputes and approved promotional credit requests submitted by New Phone as of November 9, 2009.

7. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by New Phone, but not yet reviewed by AT&T Florida.

8. To the extent that the Past Due Balance includes any charges on AT&T Florida's invoices that New Phone has disputed, AT&T Florida has denied those disputes as required by its interconnection agreement(s) with New Phone.

9. New Phone has breached the New Phone 2002 agreement and/or the New Phone 2006 agreement by refusing to pay amounts that are due and owing to AT&T Florida under those Agreements.

#### **IV. NEW PHONE'S ERRONEOUS REASONS FOR NONPAYMENT**

10. As noted above, a substantial amount of New Phone's unpaid balance is the result of New Phone's withholding payments to AT&T Florida for one or both of the following reasons.

**A. Application of the resale discount to the “cashback” component of promotional offerings.**

11. New Phone asserts that AT&T Florida cannot apply the resale discount, agreed to by the parties in the interconnection agreements and subsequently approved by this Commission, to the cashback component of various promotional offerings that AT&T Florida makes available for resale. Assume, for example, AT&T Florida’s retail promotional offering provides a retail customer who purchases Telecommunications Service A under certain conditions a coupon that can be redeemed for a \$50 check. When New Phone resells that promotional offering to qualifying end users and submits to AT&T Florida an appropriate promotional credit request, AT&T Florida provides New Phone a bill credit of \$39.08 (\$50 less the 21.83% residential resale discount established by the parties’ interconnection agreements). New Phone, however, erroneously contends that it is entitled to a bill credit for the full \$50 “face value” of the cashback amount.

12. There is no basis in logic or law for New Phone’s assertions. If AT&T Florida were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), New Phone would not receive the full \$50 “face value” of the reduction when it purchased that service for resale. Instead, New Phone would receive a \$39.08 reduction – the \$50 face value of the reduction less the 21.83% avoided cost discount established by the parties interconnection agreements.<sup>7</sup> New Phone clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a “cashback” offer rather than a price reduction.

---

<sup>7</sup> When the retail price of the service was \$200, New Phone paid AT&T Florida \$156.34 (\$200 less the 21.83% residential resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, New Phone pays AT&T Florida \$117.25 (\$150 less the 21.83% residential resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$39.09 reduction in the price New Phone pays for the service (from \$156.34 to \$117.25), which is the \$50 “face value” of the reduction less the 21.83% residential resale discount.

13. The federal Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.” 47 U.S.C. § 252(c)(3). Using this “costs avoided” standard, the parties have used the resale discount rate determined by the Commission in Order No. PSC-96-1579-FOF-TP to determine the percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, AT&T Florida, is to sell its services to New Phone for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

**B. Customer Referral Marketing Promotions.**

14. New Phone asserts that AT&T Florida’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T Florida gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. New Phone contends that it is entitled to resell this customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of New Phone’s end users refers others who purchase services from New Phone.

15. Subject to certain conditions and limitations, AT&T Florida is required “to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are



not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Florida. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Florida's services to others who then purchase services from AT&T Florida. New Phone obviously is free to give similar benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Florida finance any such marketing programs that New Phone may employ.

16. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to "determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*" 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that is incorporated into the New Phone 2002 agreement and the New Phone 2006 agreement (that this Commission established in Order No. PSC-96-1579-FOF-TP) already excludes the costs of customer referral marketing promotions like the "word of mouth" promotion. To go further and also require AT&T Florida to give New Phone additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Florida to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

#### **V. JURISDICTION**

17. The Commission has jurisdiction to interpret and enforce the terms of the interconnection agreement(s) at issue in this docket. The 1996 Act expressly authorizes

state commissions to mediate interconnection agreement negotiations,<sup>8</sup> arbitrate interconnection agreements,<sup>9</sup> and approve or reject interconnection agreements.<sup>10</sup> In addition, the courts have held that section 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.<sup>11</sup>

#### **VI. DISPUTED ISSUES OF MATERIAL FACT**

18. AT&T Florida is not aware of any disputed issues of material fact as to New Phone's failure to pay the amounts due under the interconnection agreements.

#### **VII. STATUTES AND RULES ENTITLING AT&T FLORIDA TO RELIEF**

19. AT&T Florida is entitled to relief under Chapter 120 and 364, Florida Statutes, Chapters 25-22 and 28-106, Florida Administrative Code, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

#### **VIII. REQUEST FOR RELIEF**

WHEREFORE, AT&T Florida respectfully requests that the Commission:

- (1) Serve a copy of this Complaint and Petition upon New Phone;
- (2) Find that New Phone has breached the New Phone 2002 agreement and/or the New Phone 2006 agreement by wrongfully withholding amounts due and payable to AT&T Florida for services provided in accordance with the parties' interconnection agreement(s);

---

<sup>8</sup> 47 U.S.C. § 252(a)(2)

<sup>9</sup> *Id.* § 252(b)

<sup>10</sup> *Id.* § 252(e)

<sup>11</sup> See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements")

(3) Find that AT&T Florida has been financially harmed as a direct result of New Phone's breach of the interconnection agreements;

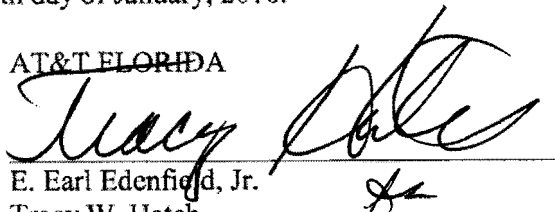
(4) Find that New Phone is liable to AT&T Florida for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

(5) Require New Phone to pay AT&T Florida all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Florida such additional relief as the Commission may deem just and proper.

Respectfully submitted this 8th day of January, 2010.

AT&T FLORIDA

  
E. Earl Edenfield, Jr.  
Tracy W. Hatch  
Manuel A. Gurdian  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558

768615