

**Marguerite McLean**100022-TP

**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Friday, April 09, 2010 3:33 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 100022-TP AT&T Florida's Response to NewPhone's Answer/CounterClaim  
**Importance:** High  
**Attachments:** Document.pdf

- A. Vickie Woods  
BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5560  
[vf1979@att.com](mailto:vf1979@att.com)
- B. Docket No. 100022-TP: Complaint of BellSouth Telecommunications,  
  
Inc. d/b/a AT&T Florida Against Image Access, Inc. d/b/a New Phone
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
  
on behalf of Manuel A. Gurdian
- D. 5 pages total (includes letter, pleading and certificate of service)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to NewPhone's Answer/CounterClaim  
  
.pdf

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4/9/2010

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General Attorney

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April 9, 2010

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

**Docket No. 100022-TP: Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against Image Access, Inc. d/b/a NewPhone**

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to NewPhone's Answer/Counterclaim, which we ask that you file in the captioned 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.

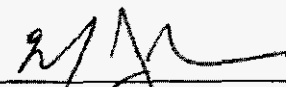
**CERTIFICATE OF SERVICE**  
**Docket Nos. 100022-TP**

I HEREBY CERTIFY that a true and correct copy was served via  
Electronic Mail and First Class U. S. Mail this 9th of April, 2010 to the following:

Charles Murphy  
Staff Counsel  
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2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[cmurphy@psc.state.fl.us](mailto:cmurphy@psc.state.fl.us)

NewPhone, Inc.  
Mr. Jim R. Dry  
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\_\_\_\_\_  
Manuel A. Gurdian

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. 100022-TP  
Florida Against Image Access, Inc. d/b/a )  
New Phone ) Filed: April 9, 2010

**AT&T FLORIDA'S RESPONSE TO NEWPHONE'S  
ANSWER/COUNTERCLAIM**

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Florida ("AT&T Florida") respectfully submits this Response to the Answer, Affirmative Defenses and Counter-Claim ("Answer/Counterclaim") filed by Image Access, Inc. d/b/a NewPhone ("NewPhone") on or about February 25, 2010.

1. Any allegation in the Answer/Counterclaim to which a response is required of AT&T Florida is denied unless expressly and explicitly admitted herein.

2. The allegations in the "Answer" section of the Answer/Counterclaim (at pages 1-5) require no response from AT&T Florida. Without waiving the foregoing, AT&T Florida denies NewPhone's assertions, in Paragraphs 14-16 (at page 4), that it does not claim any credits under referral marketing promotions.

3. The allegations in the "Affirmative Defenses" section of the Answer/Counterclaim (at pages 5-8) require no response from AT&T Florida. Without waiving the foregoing, AT&T Florida denies: that any of the affirmative defenses alleged by NewPhone are valid; that it has violated any provision of law; and that NewPhone is entitled to attorneys' fees. Moreover, for the reasons set forth in AT&T Florida's Response to Motions to Dismiss and/or Stay, AT&T Florida objects to NewPhone's requests, in Paragraphs 2-4 (at pages 5-7) of its Answer/Counterclaim, that the

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Commission dismiss AT&T Florida's Complaint or delay these proceedings, and AT&T Florida denies that NewPhone is entitled to anything it requests in those paragraphs.

### **RESPONSE TO COUNTERCLAIM**

4. AT&T Florida admits the allegations in Paragraph 1 of the Counterclaim (at page 8 of the Answer/Counterclaim).

5. AT&T Florida denies the allegations in Paragraph 2 of the Counterclaim (at page 8-9 of the Answer/Counterclaim).

6. To the extent the allegations in Paragraph 3 of the Counterclaim (at page 9 of the Answer/Counterclaim) require a response from AT&T Florida, they are denied.

7. To the extent the allegations in Paragraph 4 of the Counterclaim (at page 10 of the Answer/Counterclaim) require a response from AT&T Florida, they are denied.

8. AT&T Florida denies the allegations in Paragraph 5 of the Counterclaim (at page 11 of the Answer/Counterclaim).

9. AT&T Florida denies that NewPhone is entitled to any of the relief it seeks in its Answer/Counterclaim, including without limitation the relief sought in the "wherefore" clause at pages 11-12.

### **AFFIRMATIVE DEFENSES**

10. NewPhone's Counterclaim fails to state a cause of action upon which relief can be granted.

11. NewPhone's Counterclaim is barred, in whole or in part, by the doctrines of unclean hands, laches, forbearance, waiver, and/or estoppel.

13. NewPhone's Counterclaim is barred, in whole or in part, by the applicable statute of limitations and/or the applicable "dispute" provisions of the parties

interconnection agreement(s), including without limitation provisions addressing the presentment, pursuit, escalation, and preservation of billing disputes.

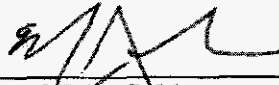
14. NewPhone's Counterclaim is barred, in whole or in part, by NewPhone's failure to mitigate any damages allegedly sustained.

15. To the extent the Commission awards NewPhone any relief with regard to its Counterclaim (and it should not), such relief should be only prospective in nature.

WHEREFORE, AT&T Florida respectfully requests that the Commission enter an Order denying all relief sought by NewPhone, dismissing its Counterclaim, and granting such further relief as the Commission deems appropriate.

Respectfully submitted on this the 9th day of April, 2010.

AT&T FLORIDA



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E. Earl Edenfield, Jr.  
Tracy W. Hatch  
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c/o Gregory R. Follensbee  
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