

Marguerite McLean

100022-TP

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Sent: Tuesday, August 03, 2010 4:36 PM
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Subject: Electronic Filing - Docket No. 100022-TP
Attachments: 20100803162746700.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

Person Responsible for Filing:

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

Filed on behalf of: NewPhone

Total Number of Pages: 5

Description of Documents: First Amended Answer, Affirmative Defenses and Counter-Claim

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 06380 AUG-03 09
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August 3, 2010

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

**Re: Docket 100022-TP – Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T
Florida Against Image Access, Inc. d/b/a NewPhone**

Dear Ms. Cole:

Attached for filing in the above-referenced docket, please find the First Amended Answer, Affirmative Defenses and Counter-Claim filed on behalf of Image Access, Inc. d/b/a NewPhone.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil
AKERMAN SENTERFITT
106 East College Avenue, Suite 1200
Tallahassee, FL 32302-1877
Phone: (850) 224-9634
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Attachments

DOCKET NUMBER-DATE
100022-TP 6380 AUG-3-10
FPSC-COMMISSION CLERK

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Complaint of BellSouth Telecom-)
munications, Inc., d/b/a AT&T Florida)
Against Image Access, Inc. d/b/a)
NewPhone)
_____)

Docket No. 100022-TP
Filed: August 3, 2010

FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES
AND COUNTER-CLAIM OF IMAGE ACCESS, INC. d/b/a NEWPHONE

Image Access, Inc. d/b/a NewPhone ("NewPhone"), hereby amends its Answer, Affirmative Defenses and Counter-Claim of Image Access, Inc. d/b/a NewPhone by amending Paragraph 2 of the Counter-Claim as follows:

1. Paragraph 2 of the Counter-Claim is amended and restated in its entirety to read as follows:

"In this Counter-Claim, NewPhone complains of the following conduct by AT&T:

(a) AT&T has violated 47 U.S.C. § 251(c)(4), 47 CFR 51.603(b), 47 CFR 51.605, 47 CFR 51.607 and 47 CFR 51.613(b) and breached the parties' 2002 Interconnection Agreement and/or 2006 Interconnection Agreement by: (i) failing to provide NewPhone with the appropriate resale discounts, credits and/or refunds to which NewPhone was entitled (both in the form of discounts, refunds and credits owed to NewPhone for amounts that NewPhone disputed but paid and in the form of discounts and credits owed to NewPhone for amounts that NewPhone disputed and withheld) in connection with various AT&T retail promotional or discounted offerings, each reflected in and made the subject of disputes timely submitted by NewPhone to AT&T since 2003, which include, but are not limited to, cashback, line connection charge waivers, secondary service charge waivers, retention credits (e.g., recurring monthly bill credits), bundled services, service block charges and price reduction promotions and offerings; (ii) imposing unreasonable and discriminatory restrictions on resale; and (iii) failing to obtain necessary and prior approval from the Commission, pursuant to 47 C.F.R. 51.613(b), prior to imposing restrictions on resale.

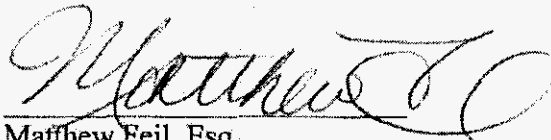
(b) AT&T has wrongfully failed to credit and/or refund NewPhone's account for amounts to which NewPhone is entitled due to inaccurate and erroneous account administration and billing by AT&T, as reflected in and made the subject of disputes timely submitted by NewPhone to AT&T since 2003.

(c) Upon information and belief, AT&T is wrongfully discriminating against NewPhone by failing to provide NewPhone the same promotional credits and/or refunds as AT&T provides to other similarly situated resellers in connection with the cash back promotions. NewPhone disputes and disagrees with AT&T's calculation of the proper amount of credit due resellers under the cash back promotions. However, to the extent that AT&T is crediting other similarly situated resellers for any portion of the proper credit due resellers, NewPhone is entitled to at least the same amount of credit.

AT&T's actions are unlawfully discriminatory and anticompetitive and caused financial harm to NewPhone. AT&T owes NewPhone for all amounts wrongfully withheld and/or not properly credited or refunded to NewPhone."

2. Other than the above amendment to Paragraph 2 of the Counter-Claim, NewPhone reasserts and reiterates all of the paragraphs and provisions of its original Answer, Affirmative Defenses and Counter-Claim of Image Access, Inc. d/b/a NewPhone, including Paragraphs 1, 3 – 5 of its Counter-Claim and prayers for relief, which paragraphs, provisions and prayers remain unchanged.

Respectfully submitted this 3rd day of August, 2010.



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COUNSEL FOR IMAGE ACCESS, INC. d/b/a
NEWPHONE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 3rd day of August, 2010.

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By: 
Matthew Feil, Esq.