

Diamond Williams

110071-TP

From: Vicki Gordon Kaufman [vkaufman@kagmlaw.com]
Sent: Tuesday, March 15, 2011 3:43 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; sm6526@att.com; manuel.gurdian@att.com; Mark Foster
Subject: e-filing, New Docket
Attachments: Express Phone Complaint (as filed) 03.15.11.pdf

Electronic filing

a. Person responsible for this filing:

Vicki Gordon Kaufman
 Keefe Anchors Gordon & Moyle
 118 North Gadsden Street
 Tallahassee, FL 32301
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- b. This is a new docket.
- c. This document is filed on behalf of Express Phone Service, Inc.
- d. There are a total of 21 pages.
- e. The document attached for electronic filing is Express Phone, Inc.'s Emergency Complaint, Request for Emergency Relief to Avoid Customer Disconnection, Request to Hold Docket in Abeyance and Request for Mediation

Vicki Gordon Kaufman

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FPSC-COMMISSION CLERK

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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

Filed: March 15, 2011

**EXPRESS PHONE SERVICE, INC.'S EMERGENCY COMPLAINT, REQUEST FOR
EMERGENCY RELIEF TO AVOID CUSTOMER DISCONNECTION, REQUEST TO
HOLD DOCKET IN ABEYANCE AND REQUEST FOR MEDIATION**

Express Phone Service, Inc. ("Complainant" or "Express Phone"), through its undersigned counsel, pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code, files this Complaint, Request for Emergency Relief against BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T"), Request to Hold Docket in Abeyance, and Request for Mediation to prohibit AT&T from suspending, discontinuing, terminating or otherwise disrupting Express Phone's service in Florida pending resolution of the disputed matters set forth herein, involving billing disputes between the parties and particularly the failure of AT&T to provide promotional credits to Express Phone in violation of law and the failure of AT&T to honor Express Phone's request to opt into the interconnection agreement between AT&T and another CLEC in violation of the federal Telecommunications Act. **Because AT&T has threatened to cut off order provisioning to Express Phone on March 18, 2011, Express Phone seeks emergency relief from the Commission to prevent irreparable injury due to inability to service customer orders and ultimate disconnection of existing customers.**

AT&T improperly seeks to disrupt Express Phone's service order provisioning and ultimately, to cut off service altogether to existing Express Phone customers due to billing

arising out of the parties' interconnection agreement and applicable law. In support of its Request for Emergency Relief, Express Phone states as follows:

INTRODUCTION

1. The name and address of the affected agency is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

2. The name and address of Complainant is:

Express Phone Service, Inc.,
1803 W Fairfield Drive, Unit 1
Pensacola, FL 32501

3. The name, address, and telephone number of Complainant's representatives for purposes of service during the proceeding are:

Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 (Voice)
(850) 681-8788 (Fascimile)
ykaufman@kagmlaw.com

Mark Foster
707 West Tenth Street
Austin, Texas 78701
512-708-8700 (Voice)
512-697-0058 (Fascimile)
Texas State Bar No. 07293850
mark@mfoosterlaw.com

JURISDICTION

4. Express Phone Service, Inc. is a Florida corporation holding Florida Public Service Commission Alternative Local Exchange Telecommunications Certificate No. 5636 (Order No. PSC-00-1495-PAA-TX; Docket No. 000776-TX).

5. AT&T is an “Incumbent Local Exchange Carrier” (“ILEC”) as defined by the Act. 47U.S.C § 251(h). Its designated representatives are:

Suzanne L. Montgomery
General Attorney - Wholesale
AT&T Services, Inc.
One AT&T Way, Room 3A105
Bedminster, New Jersey 07921
908-234-5695
832-213-0359 (Fax)
sm6526@att.com

Manual Gurdian
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
850-425-6360
850-425-6361 (Fax)
manuel.gurdian@att.com

6. This is a post-interconnection dispute concerning billing disputes between AT&T and Express Phone. The Commission has jurisdiction over this matter pursuant to section 252 of the Act, 47 U.S.C. § 252, Section 8 of the “General Terms and Conditions” of the parties’ interconnection agreement, and section 364.01 and 364.162(1), Florida Statutes.

7. Post-interconnection disputes are to be resolved by the state utility commissions. *Southwestern Bell Telephone Co. v. Public Utility Commission of Texas*, 208 F.3d 475, 480 (5th Cir. 2000) (holding that state commissions had power to both approve Interconnection agreements and to interpret and enforce their clauses). AT&T itself recently contended that once the parties enter into an interconnection agreement, the terms of that agreement supplant the provisions of the federal Communications Act of 1996 and that interpreting and enforcing the interconnection agreement is a matter of state law within the original jurisdiction of state commissions, subject to federal court review. *Budget Prepay, Inc. v. AT&T Corp.*, 605 F.3d 273, 278 (5th Cir. 2010).

8. In the *Budget Prepay* case, the Fifth Circuit agreed that state commissions were the proper forum for post-interconnection dispute resolutions. It explained:

The Telecommunications Act of 1996 (“the Act”) was enacted “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Telecommunications Act of 1996, Preamble, Pub. L. No. 104-404, 110 Stat. 56 (1996). The Act creates “a procompetitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition.” H.R. REP. NO. 104-458, at 113 (1996) (Conf. Rep.), *as reprinted in* 1996 U.S.C.C.A.N. 10. To achieve these goals, the Act divides various responsibilities between states and the federal government, “enlist[ing] the aid of state public utility commissions to ensure that local competition was implemented fairly and with due regard to the local conditions and the particular historical circumstances of local regulation under the prior regime.” *Global Naps, Inc. v. Mass. Dep’t of Telecomms. & Energy*, 427 F.3d 34, 46 (1st Cir. 2005) (quoting PETER W. HUBER ET AL., FEDERAL TELECOMMUNICATIONS LAW § 3.3.4, at 227 (2d ed. 1999)) (internal quotation marks omitted). The “intended effect” of such a regime was to “leav[e] state commissions free, where warranted, to reflect the policy choices made by their states.” *Id.*

Budget Prepay at 274.

STATEMENT OF SUBSTANTIAL INTERESTS

9. AT&T has recently demanded payment from Express Phone of a claimed “past due balance” of \$382,780 for services provided in Alabama, \$1,268,490 for services provided in Florida, and \$417,398 for services provided in Mississippi.¹ AT&T demanded payment in full by March 14, 2011. This demand was subsequently extended by agreement between counsel for AT&T and counsel for Express Phone to March 18, 2011. If such unilateral demand is not met,

¹ Express Phone is filing similar complaints and requests for emergency relief with the state utility commissions of all three states (Alabama, Florida and Mississippi).

AT&T has stated that it will suspend or terminate service to Express Phone. Such action will not only affect Express Phone's substantial interests by interfering with its ability to serve current and new customers, it will also be disruptive and detrimental to the customers Express Phone serves in Alabama, Florida and Mississippi, including many LifeLine customers.

10. AT&T's threatened imminent action to suspend services would seriously compromise Express Phone's ability to process new customer orders, change orders or order suspension or restoral of service and potentially provide service to its customers altogether. In a short time thereafter, Express Phone would effectively be out of business and its customers would not be provided telecommunications services at the rates and quality of service offered by Express Phone.

11. Thus, Express Phone's substantial interests will be directly affected in this proceeding and are the type of interests that this proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2nd DCA 1981).

FACTUAL BACKGROUND

12. On February 23, 2011, AT&T sent Express Phone a letter demanding that Express Phone make the payment described in paragraph 9 above. AT&T demanded that the payment in full be provided by March 14, 2011. A true and correct copy of this letter is attached as "Exhibit A." AT&T subsequently agreed to extend its March 14, 2011 demand date to March 18, 2011.

13. Express Phone is currently involved in numerous open billing disputes with AT&T which have been on-going for a long time period. Attached hereto as Exhibit B is the Affidavit of Express Phone's President, Thomas M. Armstrong. Mr. Armstrong explains that AT&T actually *owes* Express Phone a total of \$2,516,260.00 for services provided in three states (Alabama, Florida and Mississippi). In Florida, AT&T owes Express Phone \$1,535,527.

(Armstrong Affidavit at ¶ 5). In this instance then, AT&T's sudden and unilateral threat to discontinue service processing and ultimately disconnect Express Phone's resale service altogether is unlawful and anti-competitive.

14. Express Phone understands that AT&T will claim that Express Phone is contractually obligated to pay all amounts billed by AT&T regardless of disputes over such billings. The Resale Agreement between the parties requires Express Phone to "make payment to [AT&T] for all services billed *including disputed amounts*" "on or before the next bill date." Resale Agreement, Attach. 3 §§ 1.4, 1.4.1 (emphasis added).²

15. The language quoted above is one-sided and ignores the great disparity in bargaining power between a small CLEC and an incumbent who is the sole source of resold telecommunications services. When Express Phone realized that its contract with AT&T did not allow for disputed amounts to be withheld from its monthly payments to AT&T, it attempted in October 2010, to opt into the interconnection agreement between another CLEC, Image Access, Inc. d/b/a New Phone, and AT&T in the States of Alabama, Florida and Mississippi. That interconnection agreement includes the following provision at Attachment 7, Section 1.4:

Payment of all charges will be the responsibility of Image Access. Image Access shall pay invoices by utilizing wire transfer services or automatic clearing house services. Image Access shall make payment to BellSouth for all services billed excluding disputed amounts. Payment for amounts disputed will be made in accordance with the provisions in section 2.3 below.

Section 2.3 of Attachment 7 provides:

² Resale Agreement dated August 23, 2006. Section 1.4 states in part: "Express Phone shall make payment to BellSouth for all services billed including disputed amounts." Section 1.4.1 states in part: "Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date."

If a Party disputes a charge and does not pay such charge by the payment due date, or if a payment or any portion of a payment is received by either Party after the payment due date, or if a payment or any portion of a payment is received in funds which are not immediately available to the other Party, then a late payment charge where applicable, shall be assessed. Such late payment charge shall be calculated in accordance with Section 1.4.3 above. There will be no late payment charges on disputed amounts, if the withholding Party prevails in the billing dispute.

16. AT&T rejected the Express Phone's request to adopt the Image Access agreement because Express Phone was operating under an agreement which had not expired and was not within the timeframe to request a successor agreement.³ However, this reason for rejection of an adoption request is contrary to the directive of the federal Telecommunications Act which provides at Section 252(i):

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The statute makes no exception to the requirement that an ILEC, such as AT&T, must allow a CLEC to adopt an interconnection agreement between the ILEC and another CLEC. It certainly does not say that the ILEC can make a requesting CLEC wait until its existing contract is ripe for re-negotiation. The public policy behind the statute is obvious in that Congress wanted all competing telecommunications providers to have an equal opportunity to compete. When a CLEC learns of another, preferable interconnection agreement, it is to be allowed to adopt such agreement. AT&T cannot make up its own rules.

³ See, Exhibit C; letter dated November 1, 2010, from AT&T's Eddie A. Reed, Jr. to Mark Foster on behalf of Express Phone Service, Inc.

17. Express Phone has renewed its request to opt into the Image Access agreement for Alabama, Florida and Mississippi by letter dated March 14, 2011, and sent by facsimile transmittal to AT&T's Contract Management Department.

18. If Express Phone's lawful request to opt into another CLEC's agreement had been honored by AT&T, then Express Phone would be in full compliance with its contractual obligations to AT&T as Express Phone pays undisputed billed amounts to AT&T.

19. Even if 100% of Express Phone's disputes are not ultimately found in its favor, AT&T has a substantial security deposit of \$120,000 to protect its interests in Florida.

20. Further, the dispute over the application of the promotional discounts has been on going between Express Phone and AT&T for several years. During that time, the parties have engaged in a course of conduct in which Express Phone has disputed inappropriate charges and AT&T has done nothing to collect them. Thus, the parties' course of conduct during this extended period makes it unfair and unreasonable for AT&T to now call for immediate payment of all monies AT&T claims is owed with no substantive decision on the underlying issue.

REQUEST FOR EMERGENCY RELIEF

21. As set forth herein, AT&T has threatened to suspend Express Phone's services on or shortly after March 18, 2011. AT&T's threatened action will effectively put Express Phone out of business. See, Armstrong Affidavit, Exhibit B. The Commission must prevent this unilateral action so that the parties' dispute can be appropriately resolved, rather than permitting AT&T to formulate its own favorable resolution and to essentially put Express Phone out of business.

22. Express Phone asks that the Commission order AT&T to take no action to suspend or otherwise interfere with Express Phone's service pending a determination by the

Commission in this docket. If such emergency relief is not granted, AT&T's threatened actions would undeniably affect the ability of Express Phone to compete and serve its own end users that include low income, Lifeline customers. In order to avoid the dire consequences of suspension of services and to allow time to resolve the dispute, emergency action is needed.

23. Under section 8 of the "General Terms and Conditions" of the parties' interconnection agreement, either party may ask the Commission to resolve any dispute "as to the proper implementation of this Agreement."

24. The parties' efforts at informal dispute resolution have not been successful to date, and AT&T has refused to extend its March 18, 2011 demand date. Express Phone requests emergency action that would preserve the status quo and prevent AT&T from suspending service order processing or other services to Express Phone on or after March 18, 2011, and until such time as this Commission can hear evidence and determine an appropriate resolution of the disputes between the parties.

25. Maintaining the status quo until this matter can be fairly and properly resolved by the Commission will not harm AT&T, given that AT&T in fact owes substantial sums to Express Phone and has a large security deposit from Express Phone. However, failing to maintain the status quo would result in irreparable harm to Express Phone and its customers, which can be mitigated or prevented by emergency action.

26. Express Phone requests that the Commission preliminarily hear this matter at the April 5, 2011 Agenda Conference and that until that time AT&T be prohibited from taking any action to terminate or in any way interfere with service to Express Phone. If necessary, Express Phone requests that a Prehearing Officer be immediately assigned to issue such a preliminary order

REQUEST TO HOLD DOCKET IN ABEYANCE

27. In Docket No. 100021-TP and Docket No. 100022-TP, the Commission reviewed complaints from AT&T concerning the appropriate application of promotional discounts in the wholesale market.

28. These same matters are at issue in Alabama, Louisiana, North Carolina and South Carolina. Resolution of these issues in other states will have a significant impact on the matters raised in this (and other carrier) complaints. The Commission recognized this when it held the two dockets described above in abeyance pending decisions in the other states. *See*, Order No. PSC-10-0402-PCO-TP. Therefore, this docket should be held in abeyance as well for reasons of judicial economy and efficiency.

REQUEST FOR MEDIATION

29. It is clear that the parties to this case have underlying factual and legal disputes. Express Phone believes that mediation would be a valuable way to arrive at resolution of such disputes and that mediation would be efficient and cost effective for the parties and the Staff and Commission.

30. Use of a mediator to evaluate the factual and legal basis for the positions of the parties would be beneficial to the parties and enable them to reach resolution of the issues addressed in this Complaint.

31. The Commission has often commented on its “long-standing practice of encouraging parties to settle contested proceedings...”⁴ Such an approach should be applied in this case as well.

WHEREFORE, Express Phone requests that:

⁴ Order No. PSC-11-0012-PAA-SU. *See also*, Order No. 10-0580-PAA-EU.

1. The Commission or Prehearing Officer enter an emergency order directing AT&T to take no action to suspend or otherwise interfere with Express Phone's service to its customers pending a determination by the Commission in this docket;
2. The Commission hold this matter in abeyance pending resolution of the underlying dispute in other jurisdictions and then conduct a consolidated evidentiary hearing on the dispute, including other affected carriers;
3. Prior to the evidentiary hearing requested above, the Commission require the parties to mediate this dispute; and
4. The Commission grant such other relief as it deems just and proper.

s/ Vicki Gordon Kaufman

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707 West Tenth Street
Austin, Texas 78701
(512) 708-8700 (Voice)
(512) 697-0058 (Fascimile)
mark@mfoosterlaw.com

Attorneys for Express Phone Service, Inc.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail to the following, this 15th day of March 2011:

Adam Teitzman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
ateitzma@psc.state.fl.us

Suzanne L. Montgomery
General Attorney - Wholesale
AT&T Services, Inc.
One AT&T Way, Room 3A105
Bedminster, New Jersey 07921
sm6526@att.com

Manuel Gurdian
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
manuel.gurdian@att.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman



AT&T Southeast
600 North 19th Street
22nd Floor
Birmingham, AL 35203

VIA FED EX, Tracking Number 7944 5821 2260

Exhibit A

February 23, 2011

Thomas M. Armstrong
Express Phone Service, Inc.
1803 W. Fairfield Drive, Unit 1
Pensacola, Florida 32501-1040

RE: REVISED NOTICE OF SUSPENSION AND TERMINATION

Dear Mr. Armstrong:

This notice replaces AT&T Florida's letter dated February 7, 2011, which has been withdrawn.

AT&T Florida's records indicate that the Florida Resale accounts of Express Phone Service, Inc. ("Express Phone") has an outstanding past due balance of \$1,268,490 as of January 22, 2011. The Resale accounts are listed on Attachment A.

The Resale Agreement between AT&T Florida and Express Phone covering resale services purchased for the State of Florida, which was approved by the Florida Public Service Commission on January 31, 2007, requires Express Phone to pay AT&T Florida all billed charges, including disputed amounts. See Resale Agreement, Attachment 3, Billing, at Section 1.4, which reads, in part:

1.4. Payment Responsibility. Payment of all charges will be the responsibility of Express Phone ... Express Phone shall make payment to BellSouth for all services billed including disputed amounts.

Moreover, Section 1.4.1 of Attachment 3, Billing, to the Resale Agreement requires payment for services prior to the next bill date, as follows:

1.4.1. Payment Due. Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date.

Attachment A shows the amounts AT&T Florida billed Express Phone for Resale services purchased in the State of Florida, credit adjustments AT&T Florida applied and payments AT&T Florida received from Express Phone since May 2008.

Significantly, during the period from May 2008 through December 2010, inclusive, AT&T Florida billed Express Phone \$2,784,019 and applied credit for promotions and other adjustments of \$803,128, leaving a net amount owed for that period of \$1,980,891. During that same period, however, Express Phone paid AT&T Florida only \$734,950 (less than 28% of the net amount owed), while increasing its provisioning of Resale services from AT&T Florida from 1,535 Resale lines at the end of January 2009 to 2,709 Resale lines provisioned at the end of January 2011 (more than a 70% increase in Resale lines

¹ In October 2010, AT&T inadvertently applied \$97,500 received in security deposits from Express Phone as payments to its Florida resale accounts. Within days and within the same billing cycle, AT&T reversed the payments as adjustments and posted the \$97,500 as security deposits. This deposit payment and adjustment are not included in the spreadsheet attached hereto as Attachment A. Express Phone currently has security deposits of \$120,000 with AT&T Florida for its Florida resale accounts. Under Section 1.3.1 of Attachment 3, Billing, to the ICA, "[a]ny such security deposit shall in no way release Express Phone from its obligation to make complete and timely payments of its bill(s)."



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provisioned from AT&T Florida). Details of the Resale lines provisioned by Express Phone are included on Attachment B to this letter.

Please remit payment to AT&T Florida at the following address:

AT&T ROC-CABS
600 North Point Parkway
Alpharetta, Georgia 30005

Should Express Phone fail to make payment of \$1,268,490 by March 14, 2011, AT&T Florida will take further action pursuant to the Resale Agreement, including without limitation Suspension, as provided in Section 1.5 *et seq.* of Attachment 3, Billing, to the Resale Agreement.

In addition, should Express Phone fail to make payment of all past due charges for these Resale services on or before March 29, 2011, including all charges for Resale services that become past due before that date, AT&T Florida will take further action, including without limitation Discontinuance and/or Termination, as provided in Section 1.5, *et seq.*, of Attachment 3, Billing, to the Resale Agreement.

Should you have any questions, please contact me directly at (205) 244-6716.

Sincerely,

A handwritten signature in cursive script that reads "Leisa Margina".

Leisa Margina
Manager
Credit & Collections
AT&T Southeast

Attachments (2)

ATTACHMENT A

EXPRESS PHONE SERVICE

State	Balance Forward	Payments	Adjustments	Balance Forward minus (Payments + Adjustments)		Current Charges	Late Payment Charges (not included in Col F)	Amount Due
				Col B	(Col C + Col D)			
Florida	(Bill account number 305Q926878, 561Q926878 and 904Q926878 with 22nd bill dates)							
May-08	\$22,555	(\$22,626)	(\$19,794)		(\$19,865)	\$44,855	\$0	\$24,991
June-08	\$24,991	(\$25,110)	(\$5,152)		(\$5,271)	\$46,426	\$0	\$41,155
July-08	\$41,155	(\$41,230)	(\$13,877)		(\$13,952)	\$43,936	(\$1)	\$29,983
August-08	\$29,983	(\$30,212)	(\$75)		(\$303)	\$41,791	(\$1)	\$41,487
September-08	\$41,487	(\$41,625)	(\$1,838)		(\$1,976)	\$42,664	(\$1)	\$40,687
October-08	\$40,687	(\$40,822)	(\$16,609)		(\$16,744)	\$43,460	\$0	\$26,716
November-08	\$26,716	(\$7,575)	(\$20,630)		(\$1,489)	\$49,634	\$1	\$48,146
December-08	\$48,146	(\$24,600)	(\$19,649)		\$3,896	\$42,172	\$15	\$46,083
January-09	\$46,083	\$0	(\$13,342)		\$32,740	\$40,119	\$0	\$72,859
February-09	\$72,859	\$0	(\$25,636)		\$47,223	\$40,613	\$1	\$87,837
March-09	\$87,837	\$0	(\$6,062)		\$81,776	\$37,325	(\$1)	\$119,100
April-09	\$119,100	(\$100)	(\$12,592)		\$106,408	\$39,479	\$15	\$145,902
May-09	\$145,902	(\$100)	(\$16,466)		\$129,338	\$42,705	\$14	\$172,057
June-09	\$172,057	(\$100)	(\$10,737)		\$161,221	\$63,145	\$16	\$224,382
July-09	\$224,382	(\$100)	(\$12,032)		\$212,250	\$65,029	\$15	\$277,294
August-09	\$277,294	\$0	(\$18,489)		\$258,805	\$65,348	\$15	\$324,168
September-09	\$324,168	(\$58,675)	(\$51,664)		\$213,830	\$76,932	\$44	\$290,806
October-09	\$290,806	(\$1,576)	(\$27,173)		\$262,058	\$86,154	\$44	\$348,256
November-09	\$348,256	\$0	(\$23,407)		\$324,850	\$83,604	\$44	\$408,498
December-09	\$408,498	(\$200)	(\$14,742)		\$393,555	\$85,000	\$46	\$478,601
January-10	\$478,601	(\$60,460)	(\$56,729)		\$361,411	\$84,179	\$45	\$445,635
February-10	\$445,635	(\$63,644)	(\$24,525)		\$357,465	\$100,168	\$46	\$457,679
March-10	\$457,679	(\$50,074)	(\$13,198)		\$394,407	\$137,709	\$45	\$532,161
April-10	\$532,161	\$0	(\$77,913)		\$454,248	\$169,488	\$46	\$623,782
May-10	\$623,782	(\$78,156)	(\$40,308)		\$505,317	\$132,616	\$0	\$637,933
June-10	\$637,933	(\$50)	(\$61,338)		\$576,545	\$154,091	\$0	\$730,636
July-10	\$730,636	\$0	(\$53,596)		\$677,040	\$160,727	\$44	\$837,811
August-10	\$837,811	(\$369)	(\$36,119)		\$801,324	\$164,551	\$45	\$965,920
September-10	\$965,920	(\$50)	(\$34,939)		\$930,932	\$160,855	\$43	\$1,091,830
*October-10	\$1,091,830	(\$75,057)	(\$4,582)		\$1,012,190	\$143,910	\$45	\$1,156,145
November-10	\$1,156,145	(\$67,214)	(\$23,109)		\$1,065,821	\$138,500	\$45	\$1,204,366
December-10	\$1,204,366	(\$34,110)	(\$21,973)		\$1,148,283	\$156,118	\$46	\$1,304,447
January-11	\$1,304,447	(\$11,123)	(\$24,833)		\$1,268,490			
PAST DUE BALANCE								
Totals	5/08 - 01/11	\$ (734,958)	\$ (803,128)			\$ 2,783,303	\$ 716	
6 Month Totals	5/08 - 01/11	\$ (187,923)	\$ (145,555)			\$ 763,934	\$ 224	

*October 2010 payment and adjustment does not reflect the application of \$97,500 received in security deposits from Express Phone as payments to its Florida accounts and AT&T's reversal of those payments within days. See footnote 1 of the letter accompanying this chart.

ATTProprietary (Restricted) - Authorized Individuals Only

Customer Proprietary Information

ATTACHMENT B

Express Phone Services, Inc.

State: Florida

Resale services purchased in state, as of the year and month specified:

2009

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1,535	1,549	1,524	1,571	1,687	1,911	1,761	1,735	1,805	1,903	1,857	1,992

2010

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1,836	2,290	2,845	2,953	2,915	3,055	3,566	3,434	3,675	3,635	3,285	2,709

2011

JAN
2,615

AT&T Proprietary (Restricted) - Authorized Individuals Only

Customer Proprietary Information

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

DOCKET NO. _____

Filed: March 15, 2010

AFFIDAVIT OF THOMAS M. ARMSTRONG

STATE OF FLORIDA

COUNTY OF ESCAMBIA

BEFORE ME, the undersigned authority, on this day personally appeared Thomas M. Armstrong, known to me to be the person whose name is subscribed below, who, being by me first duly sworn, upon oath, deposes and says the following:

1. My name is Thomas M. Armstrong. I am President of Express Phone Service, Inc. ("Express Phone"). I am of sound mind, over eighteen (18) years of age, capable of making this affidavit and have personal knowledge of the facts stated herein. I am a custodian of records for Express Phone.

2. Express Phone is a Florida corporation holding CLEC Certificate No. 5636. Express Phone is an ETC. Express Phone has served customers in Florida since 1998.

3. AT&T has demanded that Express Phone pay AT&T a total of \$2,068,668¹ on or before March 18, 2011. This total sum represents \$382,780 for billings pertaining to services rendered in Alabama, \$1,268,490 for Florida, and \$417,398 for Mississippi. If such sum is not received by AT&T's self-imposed deadline, then AT&T has indicated that it will suspend service ordering. If payment is not received by March 29, 2011, AT&T will discontinue or terminate services to Express Phone altogether. Such suspension and termination will essentially put Express Phone out of business.

4. Express Phone serves 3,332 customers in Florida. Almost of Express Phone's customers receive Lifeline service. If AT&T is permitted to move forward with its suspension and termination threats, thousands of Florida customers will be affected.

¹ This amount includes late payment charges in the amount of \$716 for Florida.

5. Contrary to the claim made by AT&T that Express Phone owes it money, at the present time, Express Phone is due \$1,535,527 in promotions/disputes from AT&T that have been filed and remain unpaid. This number likewise contains the late charges which are also disputed; removing the late charges from this amount results in \$1,534,811 in promotions/disputes that are due Express Phone.

6. Express Phone will suffer irreparable injury if AT&T is allowed to follow through with the unilateral suspension proposed in its letter of February 23, 2011. Express Phone relies on AT&T to furnish voice, features, operational support, operator services and all other elements necessary to provide telephone service to Express Phone customers. If AT&T's threatened suspension is not stopped, Express Phone will be forced to cease operations since it would be cut off from its sole source provider for the required wholesale services. Furthermore, Express Phone's customers would be injured as their service would be interrupted and/or they would be denied the services of their chosen provider. Many of Express Phone's customers are credit-challenged and cannot easily meet the terms of service required by AT&T. There is a substantial likelihood that these low income consumers would be left without telephone service for at least some time.

7. Since January 2005, Express Phone has timely filed promotional/dispute claims with ATT. The total amount filed during that time for Florida is \$2,624,156 of which only \$851,190 or 32% have been credited to Express Phone. From January 2005 to December 2008, Express Phone paid 100% of the AT&T invoice amount in full, on time, every month; during that same time frame, Express Phone was only credited 48% of the promotional/dispute claims it filed with ATT.

8. From November 2008 to July 2009, Express Phone filed \$271,040 in promotional/dispute claims. During that same time, AT&T credited Express Phone with only \$1,846 – less than 1%. To this day, those claims remain unpaid. Express Phone paid the undisputed amounts because despite audits, reviews, conferences and meetings AT&T refused to recognize or credit Express Phone with the credits due to it.

9. Since April 2010, Express Phone has been filing a promotional claim for a single type promotion that AT&T is offering its retail customers.² To date, Express Phone's total filings for this promotion exceed \$439,534. To date AT&T has credited Express Phone nothing for this promotion. In fact, AT&T refuses to acknowledge the promotion itself.

10. When the Interconnection Agreement (ICA) between Express Phone and AT&T was signed in 2006, CLEC promotional/dispute claim handling at AT&T was just ramping up. At that time, AT&T credited only 75% of Express Phone's claims – an inappropriate number.

² The promotion relates to unlimited long distance.

However, over just the last twelve months, credits have dropped to less than 28%. During the time period of the AT&T demand letters, in which AT&T outlines the increased provisioning of Express Phone, the amount of promotional/dispute claims due Express Phone has increased 741%, yet the percent credited by AT&T has dropped from 62% to 16%. Thus, AT&T's behavior in the area of the recognition of promotional credits has continued to deteriorate.

11. AT&T has refused to negotiate with Express Phone in its request to opt in to another CLEC's ICA and has unilaterally rejected Express Phone's request to do so.

12. The issue related to the appropriate application of promotional discounts and the amounts owed to Express Phone has been an ongoing issue between the parties for over 6 years (since January 2005). AT&T has taken no steps during this time to resolve, in good faith, these disputed issues. Now, AT&T wants to unilaterally resolve the on-going dispute in its favor and collect all the money it claims in a matter of days, despite the fact that the dispute has developed over many years, not only with Express Phone but with other carriers as well. For AT&T to continue along its intended course of action, as outlined in its demand letter, and to do so without any attempt or effort to reach a mutual resolution is not fair and reasonable and shows a lack of good faith and fair dealing on AT&T's part. AT&T wants to force Express Phone to unilaterally submit to its demands before the underlying issue has been decided, thus forcing Express Phone out of business. AT&T's proposed action would shut down Express Phone without remedy.

13. AT&T currently holds a security deposit from Express Phone in the amount of \$120,000 in Florida.

14. Emergency action by the Florida Public Service Commission is necessary to preserve the status quo, to prevent harm to Express Phone's customers, and to prevent irreparable injury to Express Phone, which will be essentially put out of business by AT&T's threatened action.

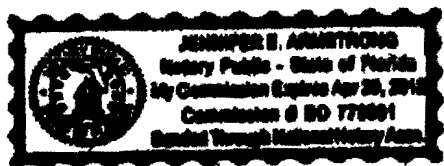
15. I have read Express Phone's Emergency Complaint against AT&T. All factual assertions made on behalf of Express Phone therein are within my personal knowledge and are true and correct.

FURTHER AFFAINT SAYETH NOT.



Thomas M. Armstrong
President, Express Phone Service, Inc.

SUBSCRIBED AND SWORN TO before me on this the 15th day of March, 2011 to certify which witness my Hand and Seal of Office.



Jennifer E. Armatrong
Notary Public In and For the State of Florida

Eddie A. Reed, Jr.
Director-Interconnection Agreements
AT&T Operations, Inc.

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311 S. Akard, Room 940.01
Dallas, TX 75202
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November 1, 2010

Mark Foster
Attorney
c/o Law Office of Mark Foster
707 West Tenth Street
Austin, TX 78701

Re: Express Phone Service, Inc.'s Section 252(i) adoption requests

Dear Mark Foster:

On October 21, 2010, AT&T received your letter dated October 20, 2010, via facsimile, on behalf of Express Phone Service, Inc. ("Express Phone"). Your letter states that Express Phone desires to adopt the Florida Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida (AT&T Florida), and Image Access, Inc. in the State of Florida. In addition, Express Phone desires to adopt the Mississippi Interconnection Agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Mississippi (AT&T Mississippi), and Image Access, Inc. in the State of Mississippi.

Our records indicate that Express Phone is currently operating under an approved Agreement in the States of Florida and Mississippi which have not expired and are not within the timeframe to request a successor agreement. Therefore, pursuant to the Effective Date, Term, and Termination provisions of the General Terms and Conditions, AT&T denies Express Phone's adoption requests.

Crystal Parker Brack will continue to be the AT&T Lead Negotiator assigned to Express Phone and may be reached at 312-335-3070. Please direct any questions or concerns you may have to Ms. Parker Brack.

AT&T looks forward to working with you to meet your business needs.

Sincerely,

EENA RYLANDER

Eddie A. Reed, Jr.

Exhibit C