

**Diamond Williams**

110087-TP

**From:** Charlie Sherrill [csherrill@kagmlaw.com]  
**Sent:** Tuesday, March 29, 2011 11:34 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** Lee Eng Tan; Beth Salak; tom@dei.gccoxmail.com; mark@mfoosterlaw.com; manuel.gurdian@att.com; Vicki Gordon Kaufman  
**Subject:** Docket No. \_\_\_\_: Express Phone Service, Inc. correspondence to Ms. Cole.  
**Attachments:** L- Cole 03.29.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman  
 Keefe Anchors Gordon & Moyle  
 118 North Gadsden Street  
 Tallahassee, FL 32301  
 (850) 681-3828  
[vkaufman@kagmlaw.com](mailto:vkaufman@kagmlaw.com)

- b. This filing is made in Docket No. \_\_\_\_\_.
- c. The document is filed on behalf of Express Phone Service, Inc.
- d. The total pages in the document are 5 pages.
- e. The attached document is correspondence to Ms. Cole.

**Charlie Sherrill**  
 Keefe Anchors Gordon & Moyle  
 118 North Gadsden Street  
 Tallahassee, Florida 32301  
 Telephone: (850) 681-3828  
 Facsimile: (850) 681-8788  
[csherrill@kagmlaw.com](mailto:csherrill@kagmlaw.com)

COM  
 APA  
 ECR  
 GCL  
 RAD  
 SSC  
 ADM  
 OPC  
 CLK



**Keefe, Anchors  
 Gordon & Moyle**

Keefe, Anchors, Gordon and Moyle, P.A.  
 The Perkins House  
 118-N. Gadsden St.  
 Tallahassee, FL 32301

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850-681-3828 (Voice)  
850-681-8788 (Fax)  
[www.kagmlaw.com](http://www.kagmlaw.com)

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3/29/2011



Keefe, Anchors  
Gordon & Moyle

March 29, 2011

110087-TP

VIA ELECTRONIC FILING

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

Re: Notice of the Adoption by Express Phone Service, Inc. of the Existing Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. and Image Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended, Docket No. \_\_\_\_\_

Dear Ms. Cole:

Express Phone, Inc. (Express Phone) hereby provides notice to the Florida Public Service Commission that effective immediately Express Phone has adopted in its entirety, the Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. (AT&T) and Image Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended (ICA).<sup>1</sup> The ICA may be viewed at <http://www.floridapsc.org/library/FILINGS/06/03022-06/03022-06.PDF> . The amendment may be viewed at <http://www.floridapsc.org/library/FILINGS/09/03179-09/03179-09.pdf> .

Express Phone exercises its right to adopt the New Phone ICA pursuant to the clear and unambiguous language of 47 U.S.C. § 252(i). Section 252(i) provides:

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.

<sup>1</sup> This Interconnection Agreement was extended via amendment to April 18, 2012.

850.681.3828  
850.681.8788 fax  
118 N. Gadsden Street  
Tallahassee, Florida 32301

Further, 47 U.S.C. § 51.809(a) provides:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

Additionally, the FCC has made it clear in its 251 Unbundling Order the reasons that adoption must be permitted<sup>2</sup>:

We conclude that under an all-or-nothing rule, re-requesting carriers will be protected from discrimination, as intended by section 252(i).[FN66] Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Express Phone has attempted on two occasions to secure AT&T's acknowledgement of Express Phone's adoption of the New Phone ICA. First, on October 21, 2010, Express Phone corresponded with AT&T indicating its desire to adopt the New Phone ICA. AT&T unlawfully refused to recognize such adoption by imposing conditions on Express Phone which appear nowhere in section 252(i) or its implementing rules. AT&T asserted that Express Phone was not entitled to adopt the New Phone agreement because Express Phone's ICA had not yet expired. (Attachment 1).

AT&T took this position despite the fact that section 11 of the General Terms and Conditions of the ICA between Express Phone and AT&T expressly provides that:

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<sup>2</sup> 19 FCC Rcd, 13494 (2004).

### **Adoption of Agreements**

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, BellSouth shall make available to Express Phone any entire resale agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

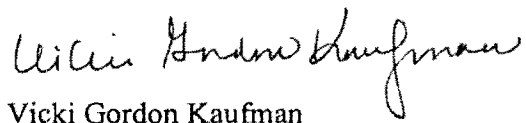
On March 14, 2011, Express Phone again sought to adopt the New Phone ICA. While AT&T did not raise the same issue as it did in October, it again seeks to impose additional burdensome conditions that appear nowhere in section 252(i). (Attachment 2).

As noted above, Express Phone has contacted AT&T regarding Express Phone's adoption of the New Phone ICA, but AT&T refuses to voluntarily acknowledge and honor Express Phone's rights regarding such adoption.

The New Phone ICA Express Phone adopts today replaces in its entirety the existing ICA between Express Phone and AT&T.

Please contact me with any questions.

Sincerely,

  
Vicki Gordon Kaufman

Cc: Lee Eng Tan  
Beth Salak  
Tom Armstrong  
Mark Foster  
Manual Gurdian

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

AT&T Wholesale  
311 S. Akard, Room 940.01  
Dallas, TX 75202  
Fax 800 404-4548



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,

TENA RYLANDER

Eddie A. Reed, Jr.

Attachment 1

AT&T Wholesale  
311 S. Akard, 9<sup>th</sup> Floor  
Dallas, TX 75202  
Fax 800 404-4548



March 25, 2011

Mark Foster  
Law Office of Mark Foster  
707 West Tenth Street  
Austin, TX 78701

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

Dear Mr. Foster:

On March 14, 2011, AT&T received your letters of this same date, via facsimile, in which you requested that Express Phone Service, Inc. ("Express Phone") be permitted to adopt the Interconnection Agreement ("ICA") between BellSouth Telecommunications, Inc. ("AT&T") and Image Access, Inc. for the States of Alabama, Florida, and Mississippi ("Image Access ICAs").

Although the parties are now in the negotiation period provided in Section 2.2 of its present ICAs, Express Phone is not meeting its payment obligations under those Agreements. AT&T conditionally accepts Express Phone's requests provided all of the following occur:

- (1) Express Phone cures all past due amounts, including disputed amounts, existing under its present ICA's by March 29, 2011, as documented in AT&T's Notice Letters of February 23, 2011 and any amounts accrued thereafter, as required by Section 1.4 of Express Phone's ICAs;
- (2) Express Phone provides a suitable form of security to AT&T (in the form of a deposit or one of the other methods available under the Agreement to be adopted for services rendered under that Agreement); and
- (3) The Agreement to be adopted remains available for adoption pursuant to Section 252(i).

To the extent that Express Phone does not comply with the above-listed requirements by March 29, 2011 and still wishes to adopt the Image Access ICA's, Express Phone will be required to submit subsequent written requests to AT&T for consideration.

Julia Johnson will be the AT&T Lead Negotiator assigned to Express Phone and may be reached at 404-927-7806. Please direct any questions or concerns you may have to Ms. Johnson.

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

Sincerely,

A handwritten signature in black ink that reads "Bill Bockelman". The signature is written in a cursive style with a large, looping initial "B".

Bill Bockelman  
Director

Attachment 2