

Diamond Williams

110087-TP

From: Bruette Davis [bdavis@kagmlaw.com]
Sent: Monday, April 04, 2011 3:20 PM
To: Filings@psc.state.fl.us
Cc: Lee Eng Tan; manuel.gurdian@att.com; tom@dei.gccoxmail.com; mark@mfoosterlaw.com
Subject: Docket No. 110087-TP; Amended Notice of the Adoption by Express Phone Service, Inc. of the Existing Agreement

Attachments: Express Phone Amended Notice of Adoption 4.4.11.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
- b. This filing is made in Docket No. 110087-TP.
- c. The document is filed on behalf of Express Phone Service, Inc.
- d. The total pages in the document are 23 pages.
- e. The attached document is Amended 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 NewPhone, dated November 20, 2006, as amended.

Bruette Davis
bdavis@kagmlaw.com



**Keefe, Anchors
 Gordon & Moyle**

Keefe, Anchors, Gordon and Moyle, P.A.
 The Perkins House
 118 N. Gadsden St.
 Tallahassee, FL 32301
 850-681-3828 (Voice)
 850-681-8788 (Fax)
www.kagmlaw.com

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DOCUMENT NUMBER-DATE

02227 APR -4 =

4/4/2011

FPSC-COMMISSION CLERK



Keefe, Anchors
Gordon & Moyle

April 4, 2011

VIA ELECTRONIC FILING

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

Re: *Amended* 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 NewPhone, dated November 20, 2006, as amended, Docket No. 110087-TP

Dear Ms. Cole:

Express Phone, Inc. (Express Phone) hereby provides notice to the Florida Public Service Commission that effective October 20, 2010, Express Phone adopted in its entirety, the Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. (AT&T) and Image Access, Inc. d/b/a NewPhone, dated November 20, 2006, as amended (NewPhone ICA).¹ 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 exercised its right to adopt the NewPhone 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.

¹ 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

DOCUMENT NUMBER-DATE
0227 APR-4 =
FPSC-COMMISSION CLERK

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 *Second Report and Order*, ¶ 19, the reasons that adoption must be permitted:²

We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). 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.

Further, this Commission has previously considered the adoption issue and clearly stated that an adoption is presumptively valid and effective upon receipt of the adoption notice.³

² Second Request and Order in the matter of FCC Docket No. 01-338 Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, (Second Report and Order) ¶ 19, fn omitted.

³ In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners; Docket No. 070368-TP and In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp. Docket No. 070369-TP, Order No. PSC-08-0584-FOF-TP at 11, *affirmed*, *BellSouth Telecommunications, Inc. v. Florida Public Service Commission*, Case No. 4:09-cv-102/RS/WCS (April 19, 2010).

Express Phone attempted on two occasions to secure AT&T's acknowledgement of Express Phone's adoption of the NewPhone ICA. First, on October 21, 2010, Express Phone corresponded with AT&T indicating its adoption of the NewPhone ICA. (Attachment 1). 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 NewPhone ICA because Express Phone's ICA had not yet expired. (Attachment 2).

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:

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 NewPhone ICA. (Attachment 3). While AT&T did not raise the same obstacle as it did in October, it sought to impose additional burdensome conditions that appear nowhere in section 252(i). (Attachment 4). Express Phone clearly set out the basis for its adoption in an e-mail to AT&T, to no avail. (Attachment 5).⁵

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


The NewPhone ICA Express Phone adopted on October 20, 2010 replaces in its entirety the ICA between Express Phone and AT&T.

⁵ It should be noted that since AT&T has refused to recognize the lawful adoption, upon the Commission's confirmation of such adoption, AT&T should be required to reinstate service to Express Phone, which it terminated on March 29, 2010 due to a billing dispute. The dispute is moot under the adoption of the NewPhone ICA.

Ms. Ann Cole
April 4, 2011
Page 4

Please contact me with any questions.

Sincerely,


Vicki Gordon Kaufman

VGK/bjd

Enclosures

cc: Lee Eng Tan
Tom Armstrong
Mark Foster
Manual Gurdian

TO: Contract Management
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

October 20, 2010

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

CARRIER NOTICE CONTACT INFO*	
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.qccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of ACNA. **See attached**

Enclose documentation from NECA as confirmation of OCN(s). **See attached**

Enclose verification of type of entity and registration with Secretary of State. **See attached**

Form completed and submitted by: Mark Foster, mark@mfoosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

Attachment 1

State of Florida

Department of State

I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

*Given under my hand and the Great Seal of
Florida, at Tallahassee, the Capital, this the
Twentieth day of October, 2010*



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

NECA

Services, Inc.

80 South Jefferson Road • Whippany, New Jersey 07981

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com/>.

Sincerely,



Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1627-CO-TX
ISSUED: September 12, 2000

CONSUMMATING ORDER

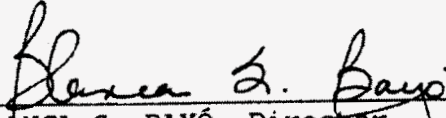
BY THE COMMISSION:

By Order No. PSC-00-1495-PAA-TX, issued August 18, 2000, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-00-1495-PAA-TX has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of September, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JAE

DOCUMENT NUMBER-DATE

11309 SEP 12 8

FPSO RECORDS REPORTING

✓
MEMORANDUM RECEIVED-FPSC

September 12, 2000 10 SEP 12 AM 10:46

RECORDS AND REPORTING
TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (ELLIOTT) JAE 7/16
RE: DOCKET NO. 000776-TX - APPLICATION FOR APPROVAL OF
TRANSFER OF AND NAME CHANGE ON EXISTING ALEC CERTIFICATE
NO. 5636 FROM EXPRESS TITLE FINANCIAL CORPORATION D/B/A
EXPRESS LOANS TO EXPRESS PHONE SERVICE, INC.

1627-CD

Attached is a CONSUMMATING ORDER, to be issued in the above-referenced docket. (Number of pages in order - 2)

JAE/anc

Attachment

cc: Division of Regulatory Oversight (Williams)

I: 000776co.jae

11/0

COMMON LANGUAGE Products

eCoder

2/27/2004

General Codes - IAC Codes

1:47:11 PM EST

Printer Friendly Output

Note: You may want to print using landscape orientation for wider outputs

Code	XPV
Company Name	EXPRESS PHONE SERVICE, INC
Date Created	2/27/2004
Date Changed	2/27/2004
City	PENSACOLA
State/Province	FL
Requestor Name	THOMAS M. ARMSTRONG
Requestor Phone	850-444-9673
Requestor Company Code	XPV
IS2 Number	
Remarks	
Other Previous Names	
Consolidated	No
Status	Valid
Creator ID	c101317
Changer ID	c101317

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Legal Notice and Trademarks

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(j) 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 2

TO: **Contract Management**
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

March 14, 2011

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.gccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose **documentation from Telcordia** as confirmation of ACNA. **See attached**

Enclose **documentation from NECA** as confirmation of OCN(s). **See attached**

Enclose **verification** of type of entity and registration with Secretary of State. **See attached**

Form completed and submitted by: Mark Foster, mark@mfoosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

Attachment 3

NECA

Services, Inc.

80 South Jefferson Road • Whippany, New Jersey 07981

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com>.

Sincerely,



Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1495-PAA-TX
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TRANSFER OF AND NAME CHANGE ON
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On June 27, 2000, Express Title Financial Corporation d/b/a
Express Loans (Express Loans) and Express Phone Service, Inc.
(Express Phone) filed with this Commission a joint request for
transfer of and name change on Alternative Local Exchange
Telecommunications (ALEC) Certificate No. 5636 from Express Loans
to Express Phone.

Express Loans and Express Phone have complied with Rule 25-
24.815, Florida Administrative Code, regarding the transfer of ALEC
certificates. We find the transfer to be in the public interest
and, therefore, approve the transfer. ALEC Certificate No. 5636
shall be amended to reflect that Express Phone is the holder of
this certificate.

DOCUMENT NUMBER DATE

10135 AUG 18 8

10135 AUG 18 8

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 2

If this Order becomes final and effective, it shall serve as Express Phone's certificate. It should, therefore, be retained by Express Phone as proof of certification and as evidence of the name change.

ALECs are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Alternative Local Exchange Companies. ALECs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapters 25-4, Florida Administrative Code.

In addition, Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications service to provide access to 911 services. This Commission has no rules specifying the 911 services that either an incumbent local exchange company (ILEC) or an ALEC must provide; however, 911 service that is inferior to that provided by the ILEC would clearly not be in the public interest. Accordingly, we find that Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications services to provide at least the same level of 911 services as that provided by the ILEC serving the same area.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for transfer of and name change on Alternative Local Exchange Telecommunications Certificate No. 5636 from Express Title Financial Corporation d/b/a Express Loans to Express Phone Service, Inc., is hereby approved. It is further

ORDERED that Express Phone Service, Inc. Alternative Local Exchange Telecommunications Certificate No. 5636 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that Alternative Local Exchange Telecommunications Certificate No. 5636 shall be amended to reflect that Express Phone Service, Inc., is the holder of this certificate.

ORDERED that this Order will serve as Express Phone Service, Inc.'s certificate and that this Order should be retained as proof of certification and as evidence of the name change. It is further

ORDERED that each alternative local exchange company which provides basic local telecommunications services shall provide at least the same level of 911 services as that provided by the

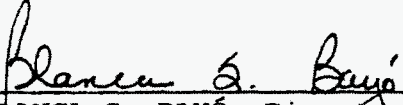
ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 3

incumbent local exchange company serving the same area. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

PW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 4

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

9/5.

✓ RECEIVED-FISC

MEMORANDUM

August 16, 2000

AUG 18 AM 10:48

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *WLC*

RE: DOCKET NO. 000776-TX REQUEST FOR NAME CHANGE ON PAY TELEPHONE CERTIFICATE NO. 6017 FROM JESUS SOLE TO JESUS SOLE D/B/A ADVANCE TELEPHONE USA COMPANY.
Express Title 1495-PAA

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING TRANSFER OF AND NAME CHANGE ON ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE, to be issued in the above-referenced docket. (Number of pages in order - 4)

KMP/anc
 Attachment
 cc: Division of Regulatory Oversight (Williams)
 I: 000776.pw

pg. 1

14/0.

State of Florida

Department of State

I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Twentieth day of October, 2010



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

AT&T Wholesale
311 S. Akard, 9th 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 cursive script that reads "Bill Bockelman".

Bill Bockelman
Director

Attachment 4

From: Mark Foster [<mailto:mark@mfoosterlaw.com>]
Sent: Monday, March 28, 2011 12:02 PM
To: 'JOHNSON, JULIA H (ATTSI)'
Subject: Express Phone Service, Inc. - Section 252(i) Adoption Request

Dear Ms. Johnson:

Attached please find a March 25, 2011, letter from Bill Bockelman of AT&T. He identifies you as the person to contact regarding the pending request of Express Phone Service, Inc. to

adopt the interconnection agreement between AT&T and Image Access, Inc. for the States of Alabama, Florida and Mississippi.

Conditions (1) and (2) set out in the letter are contrary to the federal Telecommunications Act of 1996 and the current resale agreement between the parties.

Section 252(i) of the Act provides:

(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 doesn't

say that the ILEC can require that all past due amounts, including disputed amounts, be “cured” prior to adoption of another interconnection agreement. The statute also makes no provision for a “suitable form of security” to be provided prior to adoption. The FCC has explained the statutory requirement in its 251 Order:

19. We conclude that under an all-or-nothing rule, 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.

Moreover, the existing resale agreement between the parties provides at Section 11 of General Terms and Conditions that BellSouth shall make available to Express Phone any entire resale agreement filed and approved.

With respect to Condition (2) in the attached letter, Express Phone currently maintains a suitable security with AT&T pursuant to an agreement between Express Phone and AT&T through its attorney Reginald Greene dated September 24, 2010.

Mr. Bockelman's letter states that “to the extent 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.” Please understand that Express Phone's March 14, 2011, requests to adopt the Image Access agreements are valid in and of themselves. There is no legal requirement to furnish any more written requests. Without waiving that position, this email communication can be considered by AT&T as the requested “subsequent written request.”

The requested interconnection agreements should be made available by AT&T through appropriate adoption agreements without delay.

Thanks,

Mark

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