

Dorothy Menasco

110087-TP

From: Bruette Davis [bdavis@kagmlaw.com]
Sent: Monday, April 18, 2011 10:21 AM
To: Filings@psc.state.fl.us
Cc: Lee Eng Tan; manuel.gurdian@att.com
Subject: Docket No. 110087-TP: Notice of adoption of existing interconnection, unbundling, resale and collocation agreement - AT&T/NewPhone
Attachments: Response in Opposition to Ext of Time 4.18.11.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:

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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 4 pages.

e. The attached document is Express Phone Service, Inc.'s Response in Opposition to AT&T's Motion for Extension of Time.

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DOCUMENT NUMBER-DATE

02616 APR 18 =

4/18/2011

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Notice of adoption of existing interconnection,
unbundling, resale, and collocation agreement
between BellSouth Telecommunications, Inc.
d/b/a AT&T Florida d/b/a AT&T Southeast
and Image Access, Inc. d/b/a NewPhone, Inc.
by Express Phone Service, Inc.

Docket No. 110087-TP

Filed: April 18, 2011

**EXPRESS PHONE SERVICE, INC.'S
RESPONSE IN OPPOSITION TO AT&T'S MOTION FOR EXTENSION OF TIME**

Express Phone Service, Inc. (Express Phone), pursuant to Rule 28-106.204, Florida Administrative Code, hereby objects and responds in opposition to BellSouth Telecommunications, Inc. d/b/a AT&T Florida's (AT&T) motion for an extension of time to respond to Express Phone Service, Inc.'s (Express Phone) Motion for Summary Final Order. Such motion should be denied. As grounds therefor, Express Phone states:

1. On April 12, 2011, Express Phone filed a Motion for Summary Final Order, in which Express Phone asserts that there is no genuine issue as to any material fact regarding Express Phone's October 20, 2010 notice of adoption of the existing interconnection agreement between AT&T and Image Access Inc. d/b/a NewPhone (NewPhone ICA), as amended.

2. Pursuant to rule 28-106.204(1), Florida Administrative Code, AT&T has seven (7) days to respond to Express Phone's Motion for Final Summary Order, making its response due on April 19th. At the end of the day on April 15th, AT&T filed a motion requesting that it be given until April 26th to respond to Express Phone's Motion for Final Summary Order.¹

¹ In its motion, AT&T asserts that it tried to contact Express Phone's counsel to ascertain its position on the motion. While technically true, AT&T gave Express Phone less than an hour and a half to respond to AT&T's request for its position – not even enough time for Express Phone counsel to contact the client. As soon as contact was made, Express Phone informed both AT&T and Staff that it strongly objected to the request.

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3. This matter is of extreme urgency to Express Phone. Any delay in resolution harms Express Phone, which AT&T essentially put out of business on March 29th by terminating service. Delay in resolution of this case causes irreparable harm to Express Phone every day, while incurring to AT&T's benefit.

4. Further, the reasons for AT&T's request are totally insufficient. First, AT&T notes that Express Phone's motion is over 90 pages in length. AT&T fails to note that much of the 90 pages is made up of attachments, all of which AT&T has seen before and with which AT&T should be entirely familiar. For example, the attachments include correspondence between Express Phone and AT&T, Express Phone's notices of adoption, and a federal court case in which AT&T participated. None of these documents are a surprise to AT&T.

5. The only other reasons given for the request are "other pending litigation commitments," and one of the three listed counsel's need to appear for jury duty. As to "other pending litigation commitments," such commitments are not explained or described in any way nor is any explanation provided as to why such commitments prevent all three listed AT&T lawyers, as well as other AT&T lawyers who have worked on this matter, from timely responding to the Express Phone's Motion.

6. As to one of the listed attorney's need to appear for jury duty on Monday, this does not explain why there are no other AT&T lawyers capable of timely filing a response.

7. While generally requests for extensions of time are not controversial matters, in this case, every day that this matter is not resolved is a day that Express Phone cannot conduct business and that AT&T is permitted to continue to refuse to acknowledge Express Phone's legal adoption of an interconnection agreement.

WHEREFORE, Express Phone requests that the Commission deny AT&T's request for extension of time.

s/ Vicki Gordon Kaufman

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Attorneys for Express Phone Service, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to AT&T's Motion for Extension of Time has been furnished by Electronic Mail and U.S. Mail to the following, this 18th day of April 2011:

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s/ Vicki Gordon Kaufman
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