

Dorothy Menasco

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Thursday, November 17, 2011 4:23 PM
To: Filings@psc.state.fl.us
Subject: 110071-TP AT&T Florida's Response in Opposition to Express Phone's Request to Hold Dockets in Abeyance
Importance: High
Attachments: Document.pdf

A. Vickie Woods

BellSouth Telecommunications, LLC d/b/a AT&T Florida

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vf1979@att.com

B. Docket No.: 110071-TP: Emergency Complaint of Express Phone Service, Inc. against

BellSouth Telecommunications, Inc. d/b/a AT&T Florida Regarding Interpretation of the Parties'

Interconnection Agreement

C. BellSouth Telecommunications, LLC d/b/a AT&T Florida

on behalf of Manuel A. Gurdian

D. 10 pages total (includes letter, certificate of service, pleading and Exhibit A)

E. BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Express Phone's Request to Hold Dockets in Abeyance

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11/17/2011

DOCUMENT NUMBER-DATE

08454 NOV 17 =

FPSC-COMMISSION CLERK



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November 17, 2011

Ann Cole, Commission Clerk
Office of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No.: 110071-TP: Emergency Complaint of Express Phone Service, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida Regarding Interpretation of the Parties' Interconnection Agreement

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, LLC d/b/a AT&T Florida's Response in Opposition to Express Phone's Request to Hold Dockets in Abeyance, which we ask that you file in the captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



Manuel A. Gurdian

cc: All Parties of Record
Jerry D. Hendrix
Gregory R. Follensbee
Suzanne L. Montgomery

909733

DOCUMENT NUMBER DATE

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CERTIFICATE OF SERVICE
Docket No. 110071-TP

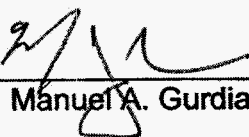
I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 17th day of November, 2011 to the
following:

Lee Eng Tan
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ltan@psc.state.fl.us

Express Phone Service
Mr. Tom Armstrong
1803 West Fairfield Drive, Unit 1
Pensacola, FL 32501-1040
Tel. No.: (850) 291-6415
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tom@dei.qccoxmail.com

Keefe Law Firm
Vicki Gordon Kaufman
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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint of) Docket No. 110071-TP
Express Phone Service, Inc.)
against BellSouth Telecommunications,)
Inc. d/b/a AT&T Florida regarding)
Interpretation of the Parties')
Interconnection Agreement) Filed: November 17, 2011

AT&T FLORIDA'S RESPONSE IN OPPOSITION TO EXPRESS PHONE'S REQUEST TO HOLD DOCKETS IN ABEYANCE

Bellsouth Telecommunications, LLC d/b/a AT&T Florida ("AT&T Florida") respectfully submits this Response in Opposition to the Request to Hold Dockets in Abeyance ("Request") filed by Express Phone Service, Inc. ("Express Phone"). The primary issue identified by Express Phone in its Complaint is not currently scheduled to be addressed in the pending consolidated proceeding involving other resellers filed in Docket Nos. 100021-TP and 100022-TP, and there is no just reason for delaying the instant proceeding. For the reasons set forth below, AT&T Florida respectfully requests that the Florida Public Service Commission ("Commission") deny Express Phone's Request in its entirety.

BACKGROUND AND EXPRESS PHONE'S REQUEST

Express Phone commenced this proceeding in an attempt to avoid paying AT&T Florida the more than \$1.2 million it owes for services in Florida. Express Phone argued that it was not in breach of its interconnection agreement for failing to pay billed charges, despite express language in that agreement requiring it to pay, regardless of disputes, and that AT&T Florida's threatened disconnection action for nonpayment was somehow improper. Despite the Commission entering an Order that 1) "Express Phone must pay all disputed amounts," 2) "AT&T Florida is entitled under the clear terms of the ICA to prompt payment of all sums billed," and 3) "Express Phone cannot withhold disputed amounts," Express Phone, to date, still

has not paid the amounts due AT&T Florida under the parties' interconnection agreement. *See* Order No. PSC-11-0291-PAA-TP at 12-13 (Issued July 6, 2011).

Express Phone argues that it should not have to pay its billed charges because it has made claims for promotions that AT&T Florida has, in its view, improperly denied. In its Complaint, Express Phone listed only one promotion, a "long distance" promotional offering. *See* Thomas Armstrong Affidavit attached to the Complaint as Exhibit "B" at footnote 2. Upon information and belief, AT&T Florida believes that Mr. Armstrong's reference to a "long distance" promotion is not a promotion for telecommunications services offered by AT&T Florida, but instead is a promotion offered in Florida by BellSouth Long Distance, Inc.

Instead of paying its past due bill to AT&T Florida per the terms of Commission Order No. PSC-11-0291-PAA-TP, in another dilatory tactic to avoid paying the amount due, on November 10, 2011, Express Phone filed its Request in Docket No. 110071-TP. In its Request (at ¶ 2), Express Phone claims that there are three other dockets "in which promotional issues are in dispute" and references AT&T Florida's Complaints filed against LifeConnex Telecom, LLC and Image Access, Inc. in Docket Nos. 100021-TP and 100022-TP and FLATEL's Complaint filed against AT&T Florida in Docket No. 110306-TP.¹ Express Phone states (at ¶ 3) that "[i]n the Florida cases cited above, AT&T agreed to hold the dockets in abeyance pending decisions in the other states." Express Phone argues (at ¶ 5) that "economy and efficiency would be served by holding this docket in abeyance while the same issues are litigated elsewhere."

The parties to Docket Nos. 100021-TP and 100022-TP agreed that three issues would be addressed on a consolidated basis in the first phase of the case: "(a) how cash back credits to the resellers should be calculated; (b) whether the word-of-mouth promotion is available for resale

¹ Express Phone's reference to the docket involving FLATEL, Docket No. 110306 is curious. That case was just filed and docketed 10 days ago and there would be no sound basis to abate this nine-month old case to wait for a decision in that new case.

and, if so, how the credits to resellers should be calculated; and (c) how credits to resellers for waiver of the line connection charge should be calculated.” *See* LifeConnex Telecom, LLC, Image Access, Inc. and AT&T Florida’s Joint Motion on Procedural Issues filed on May 13, 2010 in Docket Nos. 100021-TP and 100022-TP. The parties in these dockets further agreed to stay the proceedings pending decisions on these three issues in similar consolidated dockets in four other states. Express Phone is not a party to either docket, and AT&T Florida has made no agreement with it regarding the timing of this proceeding. More importantly, the “long distance” promotional offering referenced in the Affidavit attached to its Complaint is not mentioned as one of the three consolidated issues and is not currently scheduled to be addressed in those dockets.

ARGUMENT

Express Phone’s Request states in very general terms (at ¶ 5) that “economy and efficiency would be served by holding this docket in abeyance while the same issues are litigated elsewhere.” Express Phone’s Request, however, fails to identify with any specificity which promotional offerings it believes are at issue in this docket and that they are the “same” as those being litigated elsewhere. As noted, the three main issues that will be addressed in the consolidated proceeding of Docket Nos. 100021-TP and 100022-TP do not include the single promotional offering referenced in Express Phone’s Complaint, a long distance promotional offering by BellSouth Long Distance, Inc. It is telling that when AT&T Florida attempted to obtain said specificity for the completion of the parties’ Issues List, Express Phone objected. *See* November 4, 2011 correspondence between the parties attached hereto as Exhibit “A.” Express Phone appears to be purposefully obscuring the issues and, possibly, trying to hedge its bets. It

should not be rewarded for engaging in this obstructive behavior by a Commission order indefinitely staying this proceeding.

Even if the parties' stipulation in the consolidated docket is relevant to this proceeding – and it is not – that motion and the order adopting it do not support indefinitely staying this proceeding. In plain language that Express Phone ignores, the Joint Motion on Procedural Issues filed in Docket Nos. 100021-TP and 100022-TP provides:

As stated below, any individual Party may also seek to pursue in its respective docket, either concurrent with or following the Consolidated Phase, *any issue, claim, or counterclaim, including related discovery, that is not addressed in the Consolidated Phase.*

Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's pending motions, claims, counterclaims or defenses or a Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with our following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

See LifeConnex Telecom, LLC, Image Access, Inc. and AT&T Florida's Joint Motion on Procedural Issues filed on May 13, 2010 in Docket Nos. 100021-TP and 100022-TP. Order No. PSC-10-0402-PCO-TP provides that only Docket Nos. 1000021-TP and 100022-TP are held "in abeyance pending either resolution of the cases in the states set forth above or the filing of a persuasive motion to resume the dockets."

As identified by Express Phone, the key, and possibly only, promotional offering at issue in this case is a long distance promotional offering. And, based upon the vague allegations contained in the Complaint and Express Phone's refusal to identify the promotions it is claiming, AT&T Florida is unable to determine whether there are any promotional disputes that are the "same" as the issues raised in Docket Nos. 100021-TP and 100022-TP. The plain language of the Joint Motion in the consolidated docket clearly recognizes AT&T Florida's right to pursue

“any issue” or “claim” that is not going to be addressed in the consolidated phase, such as the long distance promotional offering raised by Express Phone in its Complaint.

Express Phone is seeking to hold this docket in abeyance to await the outcome of proceedings in other states regarding the “issue of applicable promotional discounts,” even though Express Phone is not a party to the consolidated dockets in Florida or any other state, has no rights under those proceedings, and those proceedings do not, in anyway, provide a legitimate basis to stay the instant proceeding. To the extent there may be overlapping issues with the consolidated proceeding – which Express Phone has refused to identify – that possibility is not a sufficient basis to indefinitely abate this case, and Express Phone’s Request should be denied.

CONCLUSION

For all of the reasons set forth above, the Commission should deny Express Phone’s Request.

WHEREFORE, AT&T Florida respectfully requests that the Commission enter an Order denying Express Phone’s Request to Hold Docket No. 110071-TP in abeyance.

Respectfully submitted this 17th day of November, 2011.

AT&T FLORIDA



Tracy W. Hatch
Manuel A. Gurdian
AT&T Florida
c/o Gregory R. Follensbee
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Suite 400
Tallahassee, FL 32301
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GURDIAN, MANNY (Legal)

From: Vicki Gordon Kaufman [vkaufman@kagmlaw.com]
Sent: Friday, November 04, 2011 9:50 AM
To: Lee Eng Tan; GURDIAN, MANNY (Legal)
Cc: greg.follensbee@att.com; tom@dei.gccoxmail.com; mark@mfoosterlaw.com
Subject: RE: Dockets 110071 & 110087, Tentative Issue ID List

Hi Lee Eng, the issue list you circulated last Friday is fine with Express Phone. We think it appropriately captures what is at issue in these two dockets. We object to Manny's addition of "AT&T Florida" to many of the issues as it presupposes the outcome of issues in the cases. In addition, Issue 1 in 110071 should remain as you have worded it.

We believe that these dockets involve totally separate issues and should be handled separately. We anticipate needing 2 days for 110071 and 1 day for 110087. We would prefer to try 110071 first.

Thanks, and let me know if you have any questions. Vicki

From: Lee Eng Tan [<mailto:LTAN@PSC.STATE.FL.US>]
Sent: Friday, October 28, 2011 1:34 PM
To: Vicki Gordon Kaufman; GURDIAN, MANNY (Legal)
Cc: greg.follensbee@att.com; tom@dei.gccoxmail.com; Lee Eng Tan
Subject: Dockets 110071 & 110087, Tentative Issue ID List

Good Afternoon,

I have attached the Tentative Issue ID list from this morning's meeting. Please review and get any comments to me by Noon, Friday, November 4. Also, please let me know if your preference would be for the dockets to be handled together or at separate hearings.

Thank you.

Lee Eng

Lee Eng Tan
Senior Attorney
Office of the General Counsel
(850) 413-6185
ltan@psc.state.fl.us

Exhibit A

GURDIAN, MANNY (Legal)

From: GURDIAN, MANNY (Legal)
Sent: Friday, November 04, 2011 9:01 AM
To: 'Lee Eng Tan'; Vicki Gordon Kaufman
Cc: greg.follensbee@att.com; MONTGOMERY, SUZANNE L (Legal); HATCH, TRACY W (Legal)
Subject: RE: Dockets 110071 & 110087, Tentative Issue ID List
Attachments: Staff Proposed Issues10.28.11.doc

Lee Eng

Attached please find AT&T Florida's proposed changes to the Tentative Issue ID list. Please note that after further discussion with my client, we believe that Express Phone should identify all of the AT&T Florida promotional offerings that Express Phone believes it is entitled to in Issue 1 for Docket No. 110071. Otherwise, AT&T Florida would have to "guess" which promotions Express Phone is claiming in its Direct Testimony and AT&T Florida would then have to address any promotions it may have missed in its Reply Testimony rather than in its Direct.

Also, AT&T Florida's preference is that Docket No. 110071 be tried first and then followed by Docket No. 110087. AT&T Florida has no preference as to whether they are tried on the same day(110071 first and then 110087), on consecutive days or with a time period in between.

Manny

From: Lee Eng Tan [mailto:LTAN@psc.state.fl.us]
Sent: Friday, October 28, 2011 1:34 PM
To: Vicki Gordon Kaufman; GURDIAN, MANNY (Legal)
Cc: greg.follensbee@att.com; tom@dei.gccoxmail.com; Lee Eng Tan
Subject: Dockets 110071 & 110087, Tentative Issue ID List

Good Afternoon,

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Thank you.

Lee Eng

Lee Eng Tan
Senior Attorney
Office of the General Counsel
(850) 413-6185
ltan@psc.state.fl.us

Staff's Proposed Issues

Docket 110071

~~1. Express Phone is claiming that it is entitled to credits for the following AT&T Florida promotional offerings: [Express Phone to insert names of AT&T Florida promotions] For which specific AT&T Florida promotional offerings is Express Phone claiming it is entitled to credits from AT&T Florida?~~

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- (a) Are these offerings available to Express Phone for resale by AT&T Florida?
- (b) How should the credits, if any, be calculated for each promotional offering?
- (c) What is the amount of credits, if any?

~~2. Are Express Phone's claims or AT&T Florida's defenses barred for any reason, including without limitation the applicable statute of limitations, the terms of the parties' interconnection agreements, or application of equitable doctrines such as laches, estoppel, or waiver?~~

~~3. What is the amount, if any, due from AT&T Florida to Express Phone or from Express Phone to AT&T Florida? When and how should those amounts be paid or credited?~~

Docket 110087

1. Is Express Phone's Notice of Adoption or AT&T Florida's denial of the adoption barred by the doctrines of equitable relief, including laches, estoppel and waiver?
2. Is Express Phone permitted, under the applicable laws, to adopt the New Phone Interconnection Agreement during the term of its existing agreement with AT&T Florida?
3. Is Express Phone permitted under the terms of the interconnection agreement with AT&T Florida to adopt the New Phone Interconnection Agreement?
4. If the New Phone Interconnection Agreement is available for adoption by Express Phone, what is the effective date of the adoption?