

STATE OF FLORIDA

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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

DIRECT TESTIMONY

OF

WILLIAM E. GREENLAW

ON BEHALF OF

AT&T FLORIDA

COM 5
APA _____
ECR _____
GCL _____
RAD 9
SRC _____
ADM _____
OPC _____
CLK _____
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ISSUES:
1, 2, 3 and 4

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is William Eric Greenlaw. I am an Associate Director in the AT&T
4 Wholesale organization. My business address is 311 S. Akard Street, Dallas, TX
5 75202.

6 **Q. PLEASE SUMMARIZE YOUR BACKGROUND AND EXPERIENCE.**

7 A. I have a Bachelor of Business Administration in Marketing from the University of
8 Oklahoma in Norman, Oklahoma. My career with Southwestern Bell Telephone
9 and AT&T spans over 19 years, the last 15 years of which have been spent
10 working in wholesale organizations that support and interact with Competitive
11 Local Exchange Carriers ("CLECs"). In addition to my current role, I have held
12 management positions in customer care, sales and sales support, product
13 management, segment marketing, and wholesale customer and regulatory support.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED IN ANY REGULATORY
15 PROCEEDINGS?**

16 A. Yes. I have submitted written testimony to the Michigan, Texas and Wisconsin
17 Commissions.

18 **Q. ON WHOSE BEHALF ARE YOU TESTIFYING?**

19 A. AT&T Florida.

20 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

21 A. I explain and support AT&T Florida's positions on Issues 1, 2, 3 and 4 identified
22 in Order No. PSC-12-0031-PCO-TP issued on January 19, 2012.

23 **II. OVERVIEW OF THE DISPUTE**

24 **Q. AT A HIGH LEVEL, WHAT IS THE ISSUE IN THIS CASE?**

1 A. Express Phone has been a party to an interconnection agreement (“ICA”) with
2 AT&T Florida that became effective on November 3, 2006, which has an initial
3 term of five years and requires Express Phone to pay its bills in full, including
4 disputed amounts. During the course of that ICA, Express Phone failed or refused
5 to pay AT&T Florida nearly \$1.5 million for services AT&T Florida has
6 provided, in breach of its ICA. Rather than paying AT&T Florida the amounts it
7 owes under its ICA, Express Phone purported to adopt the ICA between AT&T
8 Florida and Image Access, Inc., which allows a party to “dispute” amounts AT&T
9 Florida bills under the ICA and withhold payment of those disputed amounts until
10 the disputes are resolved. Express Phone wanted to adopt the Image Access ICA
11 so it could then “dispute” the past due amounts it has accrued under its existing
12 ICA (which does not allow it to withhold disputed amounts) and, thereby, avoid
13 the consequences of its substantial breach of its ICA. AT&T Florida is unwilling
14 to allow Express Phone to adopt the Image Access ICA until it cures its
15 substantial breach of its existing ICA.

16 **Q. HOW MANY TIMES DID EXPRESS PHONE ATTEMPT TO ADOPT**
17 **THE IMAGE ACCESS ICA?**

18 A. In our view, twice – once in October 2010 and again in March 2011. I say “in our
19 view,” because these requests literally asked to adopt the ICA between
20 “Southwestern Bell Texas” and “Image Access, Inc. d/b/a NewPhone, Inc.,” but
21 Express Phone has taken the position that these requests were actually meant to
22 adopt the ICA between AT&T Florida and Image Access, Inc., and we are
23 treating it that way in our direct testimony (reserving the right to address in
24 rebuttal anything Express Phone may say to the contrary in its direct testimony).

1 **Q. HOW DID AT&T FLORIDA RESPOND TO THE OCTOBER 2010**
2 **REQUEST?**

3 A. AT&T Florida denied Express Phone's October 2010 request primarily because,
4 at that time, there was still more than a year left in the initial term of Express
5 Phone's ICA with AT&T Florida, and AT&T Florida is unwilling to allow a
6 CLEC to unilaterally opt out of an existing ICA in mid-stream before the window
7 for negotiation of a new contract begins. Had that not been the case, AT&T
8 Florida would have conditionally accepted the request in the same manner as it
9 conditionally accepted the subsequent March 2011 request that I address below.

10 **Q. HOW DID AT&T FLORIDA RESPOND TO THE MARCH 2011**
11 **REQUEST?**

12 A. By this time, the contract negotiation window had opened. AT&T Florida
13 therefore conditionally accepted the request, conditioned upon, among other
14 things, Express Phone curing its nonpayment breach. AT&T Florida is unwilling
15 to allow a CLEC that is in material breach of its existing ICA to opt into another
16 ICA without first curing the breach.

17 **III. DISCUSSION OF ISSUES**

18 **ISSUE 1**

19 *Is Express Phone's Notice of Adoption or AT&T Florida's denial of the*
20 *adoption barred by the doctrines of equitable relief, including laches, estoppels*
21 *and waiver?*

22 **Q. TO WHICH REQUEST DOES THIS ISSUE RELATE?**

23 A. This issue relates to both Express Phone's October 20, 2010 request and its March
24 14, 2011 request.

25 **Q. WHAT ARE THE RELEVANT DATES OF THE ENTRY AND**
26 **APPROVAL OF THE EXPRESS PHONE ICA?**

1 A. Express Phone entered its ICA with BellSouth Telecommunications, Inc. (now
2 known as BellSouth Telecommunications, LLC d/b/a AT&T Florida) on October
3 4, 2006. AT&T Florida filed that ICA with the Commission for approval on
4 November 2, 2006, and the agreement was approved by the Commission on
5 January 31, 2007 in compliance with 47 U.S.C. § 252(e). I will sometimes refer
6 to this as the “Express Phone ICA” throughout this testimony.

7 **Q. WHAT ARE THE RELEVANT DATES OF THE ENTRY AND**
8 **APPROVAL OF THE IMAGE ACCESS, INC. D/B/A NEWPHONE ICA?**

9 A. AT&T Florida and Image Access, Inc. d/b/a New Phone entered into an
10 Interconnection Agreement on March 20, 2006, which I will refer to as the
11 “Image Access ICA” throughout this testimony. AT&T Florida filed the Image
12 Access ICA with the Commission for approval on April 4, 2006, and it was
13 approved by Commission on July 3, 2006 in compliance with § 252(e).

14 **Q. WAS THE IMAGE ACCESS ICA IN PLACE WHEN EXPRESS PHONE**
15 **ENTERED INTO ITS ICA WITH AT&T FLORIDA?**

16 A. Yes. The Image Access ICA was entered, filed and approved before Express
17 Phone entered into its ICA with AT&T Florida in October of 2006.

18 **Q. DID EXPRESS PHONE SEEK TO ADOPT THE IMAGE ACCESS ICA IN**
19 **2006?**

20 A. No. Although it could have done so, we have no record of any request by Express
21 Phone to adopt the Image Access ICA in 2006 or, for that matter, at any time
22 before October 2010.

23 **ISSUE 2**

24 ***Is Express Phone permitted, under the applicable laws, to adopt the New Phone***
25 ***Interconnection Agreement during the term of its existing agreement with***
26 ***AT&T?***

1 **Q. TO WHICH ADOPTION REQUEST DOES THIS ISSUE RELATE?**

2 A. This issue relates to both Express Phone's October 20, 2010 request and its March
3 14, 2011 request.

4 **Q. WHY DID AT&T DENY THE OCTOBER 2010 REQUEST?**

5 A. AT&T Florida denied the October 2010 request via a letter dated November 1,
6 2010 which is attached as Exhibit WEG-1. AT&T Florida denied this request
7 primarily because at that time, there was still more than a year left in the initial
8 term of Express Phone's ICA with AT&T Florida, and AT&T Florida is unwilling
9 to allow a CLEC to unilaterally opt out of an existing ICA in mid-stream and
10 before the negotiation window as specified in its existing contract begins. Had
11 that not been the case, AT&T Florida would have conditionally accepted the
12 request in the same manner as it conditionally accepted the subsequent March
13 2011 request that I address below.

14 **Q. WHICH PROVISIONS OF THE EXPRESS PHONE ICA ARE**
15 **PARTICULARLY RELAVANT TO THIS DISPUTE?**

16 A. The Express Phone ICA contains three provisions that are at the core of this
17 dispute.

18 *First*, the ICA was effective on November 3, 2006 and established a term
19 of five years for the ICA. As a result, the Express Phone ICA did not expire until
20 November 2, 2011.

21 *Second*, § 1.4 of Attachment A of the Express Phone ICA expressly
22 requires Express Phone to pay for all services billed, including disputed amounts,
23 on or before the next bill date.

1 *Third*, Section 2 of the General Terms and Conditions clearly specifies the
2 “window” during which the parties can negotiate a successor ICA. Specifically,
3 Section 2.2 provides in relevant part:

4 2.2 The Parties agree that by no earlier than two hundred seventy days
5 and no later than one hundred and eighty (180) days prior to the
6 expiration of the initial term of this Agreement, they shall commence
7 negotiations for a new agreement to be effective beginning on the
8 expiration date of this Agreement (Subsequent Agreement). . . .

9 These and the other provisions of the Express Phone ICA referenced in this
10 testimony are included in Exhibit WEG-2.

11 **Q. ON WHAT ACTUAL DATE DID THE “WINDOW” FOR NEGOTIATION**
12 **OF A SUCCESSOR TO THE EXPRESS PHONE ICA OPEN?**

13 A. As explained above, the Express Phone ICA did not expire until November 2,
14 2011. Under Section 2.2, therefore, the negotiation window did not open until
15 270 days before that, or on February 6, 2011.

16 **Q. WAS EXPRESS PHONE’S OCTOBER 2010 ADOPTION REQUEST**
17 **MADE WITHIN THIS NEGOTIATION WINDOW?**

18 A. No. Its October 20, 2010 adoption request was made several months before the
19 negotiation window opened on February 6, 2011. As discussed above, because
20 that ICA was not subject to negotiation for a new agreement, AT&T Florida
21 would not entertain Express Phone’s request for a new ICA at that time.

22 **Q. IS THERE A SPECIFIC PROVISION OF THE**
23 **TELECOMMUNICATIONS ACT THAT ADDRESSES**
24 **INTERCONNECTION ADOPTIONS?**

25 A. Yes. Section 252(i) of the Act provides:

26 A local exchange carrier shall make available any interconnection,
27 service or network element provided under an agreement approved
28 under this section to which it is a party to any other requesting
29 telecommunications carrier upon the same terms and conditions as
30 those provided in the agreement.

1 **Q. HOW DOES THIS RELATE TO AT&T FLORIDA'S DENIAL OF THE**
2 **TWO ADOPTION REQUESTS?**

3 A. AT&T Florida is unwilling to allow a CLEC that is in material breach of its
4 existing ICA to opt into another ICA without first curing the breach. Express
5 Phone's position here underscores the importance of this policy. Rather than
6 honoring the contractual obligations to which it agreed in a binding and
7 Commission-approved ICA, Express Phone is trying to evade those obligations by
8 "adopting" a different contract that has what it perceives to be more favorable
9 terms and conditions (even though it could have adopted that very same contract
10 initially but, instead, agreed to different terms and conditions that it now seeks to
11 evade). In effect, Express Phone is trying to rewrite the rules after it blatantly
12 violated them.

13 **Q. HAS AT&T FLORIDA OFFERED EXPRESS PHONE THE**
14 **OPPORTUNITY TO CURE ITS BREACH?**

15 A. Yes. When Express Phone sent its March 14, 2011 adoption request, it was in the
16 negotiation window for negotiating a successor agreement, but, as discussed was
17 in breach for nonpayment. AT&T Florida therefore responded with a letter dated
18 March 25, 2011, conditionally accepting the request subject to Express Phone
19 curing the breach by payment the past due amounts and posting adequate security.
20 That letter is attached as Exhibit WEG-3.

21 **Q. DID EXPRESS PHONE CURE ITS NONPAYMENT BREACH OR**
22 **SUBMIT THE SECURITY AS SET FORTH IN AT&T FLORIDA'S**
23 **MARCH 25, 2011 LETTER?**

24 A. No. As AT&T Florida witness Mr. Egan explains in his testimony, Express
25 Phone has never cured that breach and did not submit any security in response to
26 that letter.

1 **ISSUE 3**

2 *Is Express Phone permitted under the terms of the interconnection agreement*
3 *with AT&T to adopt the New Phone Interconnection Agreement?*

4 **Q. IS THERE ANY PROVISION IN THE EXPRESS PHONE ICA THAT**
5 **ADDRESSES ADOPTION RIGHTS?**

6 **A. Yes. Section 11 of the General Terms and Conditions of the Express Phone ICA**
7 states:

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

15 **Q. WHAT IS THE PURPOSE OF THIS PROVISION?**

16 **A. This language does not break any new ground or assert any right that Express**
17 **Phone does not otherwise have both by contract and by operation of law. It**
18 **simply summarizes the provisions in the Act regarding adoption of other carrier**
19 **agreements.**

20 **Q. IS THERE ANY LANGUAGE IN THE EXPRESS PHONE ICA THAT**
21 **ADDRESSES THE TIMING OF NEGOTIATIONS FOR A SUCCESSOR**
22 **AGREEMENT?**

23 **A. Yes. As discussed above, the Express Phone ICA addresses the timing of**
24 **negotiations for a new ICA in Section 2.2, and it provides that negotiations would**
25 **begin “no earlier than two hundred seventy (270) days . . . prior to the expiration**
26 **of the initial term of this Agreement.” For the Express Phone ICA, that date was**
27 **February 6, 2011.**

28 **Q. ARE THERE ANY OTHER RELEVANT PROVISIONS OF THE ICA**
29 **THAT YOU HAVE NOT YET DISCUSSED IN YOUR TESTIMONY?**

1 A. Yes. Section 26 of the General Terms and Conditions requires that both parties
2 “shall act in good faith in its performance under this Agreement.”

3 **Q. HAS EXPRESS PHONE ACTED IN GOOD FAITH UNDER THE TERMS**
4 **OF THE PARTIES’ CURRENT ICA?**

5 A. In my view as a layperson, no. Express Phone has by its own admission withheld
6 payments due AT&T Florida for amounts billed by AT&T Florida for services
7 provided pursuant to the ICA even though it contractually committed that it would
8 not do so. And, when asked to honor its contract by paying those disputed
9 amounts, Express Phone sought to adopt an entirely different ICA for the sole
10 purpose of evading its contractual obligations. I simply do not see how that can
11 be viewed as acting in good faith.

12 **Q. SHOULD THE COMMISSION CONSIDER THE PUBLIC INTEREST IN**
13 **RESOLVING THIS DISPUTE?**

14 A. Yes. The Commission has previously held that it has “authority to reject (a
15 requesting company)’s adoption of the [ILEC/CLEC] Agreement as not being
16 consistent with the public interest” when, as is the case here, there has been “prior
17 inappropriate conduct and actions of one of the parties”¹ I am also advised that
18 AT&T Florida’s view that the public interest is critical to this analysis is also
19 consistent with decisions from other jurisdictions, including precedent from the
20 District of Columbia Commission. I will rely on AT&T Florida’s counsel to
21 explain how this position is supported by this authority in briefs and, as
22 appropriate, oral argument.

¹ See *In re: Notice by BellSouth Telecommunications, Inc., of adoption of an approved interconnection, unbundling, and resale agreement between BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. by Healthcare Liability Management Corporations d/b/a Fibre Channel Network, Inc. and Health Management Systems, Inc.*, Docket No. 990939-TP, Order No. PSC-99-1930-PAA-TP (issued September 29, 1999)

1 **Q. HOW DOES THE PUBLIC INTEREST APPLY TO THE ISSUE HERE?**

2 A. Setting aside the contractual and legal reasons that Express Phone's attempted
3 adoption must be rejected, under the circumstances Express Phone's attempted
4 adoption is clearly not in the public interest. Reduced to its essential elements,
5 Express Phone is simply trying to use the adoption process to evade its
6 contractual obligations to pay for services it has ordered. I do not see how it can
7 be in the public interest to allow company to sign a contract saying it will do
8 something, have that contract approved pursuant to federal law, and then let the
9 company evade its obligations under that contract.

10 **ISSUE 4**

11 *If the New Phone Interconnection Agreement is available for adoption by*
12 *Express Phone, what is the effective date of the adoption?*

13 **Q. WHAT IS THE PARTIES' DISAGREEMENT WITH RESPECT TO THIS**
14 **ISSUE?**

15 A. As I understand it, Express Phone is taking the position that its so-called adoption
16 of the Image Access ICA is effective on October 20, 2010, when it sent the first
17 request to AT&T Florida, and therefore that its payment obligations to AT&T
18 Florida should be governed by that ICA from that date forward. We do not
19 believe that the Commission needs to reach this issue because if it finds in favor
20 of AT&T Florida on Issues 1, 2 and 3, this issue would be moot. If, however, the
21 Commission disagrees, AT&T Florida submits that the adoption request should
22 not be valid until some time after March 29, 2011 when Express Phone filed its
23 first Notice of Adoption with this Commission, claiming that it had unilaterally
24 adopted the Image Access ICA.

25 **Q. PLEASE EXPLAIN THAT POSITION.**

1 A. Express Phone's October 20, 2010 and March 14, 2011 requests for adoption of
2 an agreement are not sufficient to be a binding contract. The request letters do not
3 supersede or take the place of the required Notice of Adoption that is to be filed
4 with this Commission. Instead, letters such as those are intended to simply start
5 the process by which AT&T Florida would then review the request for adoption
6 and the factors that could impact the request. Typically, an ICA is not
7 enforceable and binding until both parties have signed the contract, it is filed with
8 the Commission for approval, and has been approved. To find that October 20,
9 2010 is the effective date of the new ICA would be to find that AT&T Florida can
10 be forced to be a party to a contract without its consent. This Commission has
11 reached a somewhat similar decision in the Nextel Adoption Order, Order No.
12 PSC-08-0584-FOF-TP issued September 8, 2008 in Dockets Nos. 070368-TP and
13 070369-TP, when it held that the effective date is the date the notice of adoption
14 is filed with this Commission. That decision was based on unique facts – it
15 concerned another carrier's dispute with AT&T Florida regarding merger
16 commitments related to the FCC's approval of the AT&T – BellSouth merger.
17 With those unique facts, the Commission still found that the effective date was the
18 date of filing with the Commission and not any earlier. Those unique facts are not
19 present here, and thus the effective date should be some time after the date
20 Express Phone filed its Notice of Adoption with the Commission.

21 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

22 A. Yes.

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



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.

EXHIBIT WEG – 2: EXCERPTS FROM AT&T FLORIDA AND EXPRESS PHONE ICA

BELLSOUTH / CLEC Agreement

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Note: This page is not part of the actual signed contract/amendment, but is present for record keeping purposes only.

Resale Agreement

Between

BellSouth Telecommunications, Inc.

And

Express Phone Service, Inc.

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Attachment 3 - Billing

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Attachment 5 - BellSouth Disaster Recovery Plan

Attachment 6 - Bona Fide Request and New Business Request Process

AGREEMENT GENERAL TERMS AND CONDITIONS

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and Express Phone Service, Inc. (Express Phone), a Florida corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or Express Phone or both as a "Party" or "Parties."

W I T N E S S E T H

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, Express Phone is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, pursuant to Sections 251 and 252 of the Act; Express Phone wishes to purchase certain services from BellSouth; and

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and Express Phone agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

General Terms and Conditions
Page 2

FCC means the Federal Communications Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1. CLEC Certification

1.1 Express Phone agrees to provide BellSouth in writing Express Phone's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to BellSouth filing this Agreement with the appropriate Commission for approval. Additionally, Express Phone shall provide to BellSouth an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

1.2 To the extent Express Phone is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Express Phone may not purchase services hereunder in that state. Express Phone will notify BellSouth in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, BellSouth will file this Agreement in that state, and Express Phone may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 3.

1.3 Should Express Phone's certification in any state be rescinded or otherwise terminated, BellSouth may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided in that state shall become due, or BellSouth may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. Express Phone shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

2. Term of the Agreement

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- 2.1 The initial term of this Agreement shall be five (5) years, beginning on the Effective Date and shall apply to the BellSouth territory in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred and eighty (180) days prior to the expiration of the initial term of this Agreement, they shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.
- 2.3 If, within one hundred and thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.
- 2.3.1 Express Phone may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then BellSouth may terminate this Agreement upon sixty (60) days notice to Express Phone. In the event that BellSouth terminates this Agreement as provided above, BellSouth shall continue to offer services to Express Phone pursuant to the rates, terms and conditions set forth in BellSouth's then current standard interconnection agreement. In the event that BellSouth's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.
- 2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and BellSouth is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.

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- 2.4 If, at any time during the term of this Agreement, BellSouth is unable to contact Express Phone pursuant to the Notices provision hereof or any other contact information provided by Express Phone under this Agreement, and there are no active services being provisioned under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to Express Phone pursuant to the Notices section hereof.
- 2.5 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, Express Phone is solely responsible for notifying its customers of any discontinuance of service.
3. **Parity**
- When Express Phone purchases, Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to its Affiliates, subsidiaries and customers.
- 4 **Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for Express Phone, or, if applicable under this Agreement, switching, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to Express Phone customers. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for Express Phone customers for the same length of time it maintains such information for its own customers.
- 4.2 Subpoenas Directed to Express Phone. Where BellSouth is providing resold services to Express Phone, or, if applicable under this Agreement, switching, then Express Phone agrees that in those cases where Express Phone receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Express Phone customers, and where Express Phone does not have the requested information, Express Phone will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with Section 4.1 above.
- 4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

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In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Express Phone, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 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.

12 Modification of Agreement

12.1 If Express Phone changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Express Phone to notify BellSouth of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, Express Phone shall provide BellSouth with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), BellSouth's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

12.3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Express

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Phone or BellSouth to perform any material terms of this Agreement, Express Phone or BellSouth may, on thirty (30) days' written notice, require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within forty-five (45) days after such notice, and either Party elects to pursue resolution of such amendment such Party shall pursue the dispute resolution process set forth in Section 8 above.

13 Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

14 Indivisibility

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

15 Severability

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

16 Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

17 Governing Law

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such time as Express Phone is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

24 Compliance with Law

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

25 Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

26 Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

27. Rates

27.1 Express Phone shall pay the charges set forth in this Agreement. In the event that BellSouth is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, BellSouth reserves the right to back bill Express Phone for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement; provided, however, that subject to Express Phone's agreement to the limitation regarding billing disputes as described in Section 2.2 of Attachment 3 hereof, BellSouth shall not back bill any amounts for services rendered more than twelve (12) months prior to the date that the charges or additional charges for such services are actually billed. Notwithstanding the foregoing, both Parties recognize that situations may exist which could necessitate back billing beyond twelve (12) months. These exceptions are:

- Charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner;

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Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

BellSouth Telecommunications, Inc.

Express Phone Service, Inc.

By: Kristen E. Shore

By: Thomas M. Armistead

Name: Kristen E. Shore

Name: THOMAS M. ARMISTEAD

Title: Director

Title: PRESIDENT

Date: 8/23/06

Date: 8/23/06

Attachment 3
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Attachment 3

Billing

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comply with the foregoing, BellSouth shall thereafter be authorized to draw down the full amount of such letter of credit and utilize the cash proceeds as security for Express Phone accounts(s). If Express Phone provides a security deposit or additional security deposit in the form of a surety bond as required herein, Express Phone shall renew the surety bond or provide BellSouth with evidence that Express Phone has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If Express Phone fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for Express Phone's account(s). If the credit rating of any bonding company that has provided Express Phone with a surety bond provided as security hereunder has fallen below B, BellSouth will provide written notice to Express Phone that Express Phone must provide a replacement bond or other suitable security within fifteen (15) days of BellSouth's written notice. If Express Phone fails to comply with the foregoing, BellSouth shall thereafter be authorized to take action on the surety bond and utilize the cash proceeds as security for Express Phone's account(s). Notwithstanding anything contained in this Agreement to the contrary, BellSouth shall be authorized to draw down the full amount of any letter of credit or take action on any surety bond provided by Express Phone as security hereunder if Express Phone defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein.

- 1.4 Payment Responsibility. Payment of all charges will be the responsibility of Express Phone. Express Phone shall pay invoices by utilizing wire transfer services or automatic clearing house services. Express Phone shall make payment to BellSouth for all services billed including disputed amounts. BellSouth will not become involved in billing disputes that may arise between Express Phone and Express Phone's customer.
- 1.4.1 Payment Due. Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify BellSouth of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by BellSouth. If the Remittance Information is not received with payment, BellSouth will be unable to apply amounts paid to Express Phone's accounts. In such event, BellSouth shall hold such funds until the Remittance Information is received. If BellSouth does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.
- 1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the

payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.

- 1.4.1.2 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth above, or if any portion of the payment is received by BellSouth in funds that are not immediately available to BellSouth, then a late payment and/or interest charge shall be due to BellSouth. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of BellSouth's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the BellSouth intrastate Access Services Tariff, or pursuant to the applicable state law as determined by BellSouth. In addition to any applicable late payment and/or interest charges, Express Phone may be charged a fee for all returned checks at the rate set forth in Section A2 of BellSouth's GSST or pursuant to the applicable state law.
- 1.5 Discontinuing Service to Express Phone. The procedures for discontinuing service to Express Phone are as follows:
- 1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:
- 1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.
- 1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's customers.
- 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.
- 1.5.2 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by Express Phone of the rules and regulations of BellSouth's tariffs.
- 1.5.3 Suspension. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, BellSouth will provide written notice to Express Phone that services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the



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,


Bill Bockelman
Director