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Sent: Monday, April 23, 2012 2:43 PM
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Subject: Docket No. 110087-TP

Attachments: Express Phone Obj and Response to Staff 1st ROGs (1-13) 4.23.12.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 14 pages.

e. The attached document is EXPRESS PHONE SERVICE, INC.'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-13).

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DOCUMENT NUMBER-DATE

02527 APR 23 02

4/23/2012

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Notice of the 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 New Phone, Inc. by Express Phone Service, Inc.

Docket No. 110087-TP

Filed: April 23, 2012

EXPRESS PHONE SERVICE, INC.'S OBJECTIONS AND RESPONSES TO STAFF'S FIRST SET OF INTERROGATORIES (NOS. 1-13)

Express Phone Service, Inc. (Express Phone), pursuant to Rule 28.106-206, Florida Administrative Code and Rules 1.340, 1.350 and 1.370, Florida Rules of Civil Procedure, submits the following objections and responses to Staff's First Set of Interrogatories (Nos. 1-13).

GENERAL OBJECTIONS

1. Express Phone objects to each and every individual discovery request, to the extent it calls for information protected by the attorney-client privilege, the work product doctrine, the accountant-client privilege, the trade secret privilege, or any other applicable privilege or protection afforded by law, whether such privilege or protection appears at the time response is first made or is later determined to be applicable for any reason. Express Phone in no way intends to waive any such privilege or protection.

2. Express Phone objects to each individual request to the extent it requires production of information that is proprietary, confidential business information without provisions in place to protect the confidentiality of the information. Express Phone in no way intends to waive claims of confidentiality.

3. Express Phone objects to any definitions or instructions accompanying the discovery requests to the extent that they are inconsistent with and expand the scope of discovery

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specified in the Florida Rules of Civil Procedure that are incorporated into the Model Rules of Procedure or the Commission's rules on discovery. If some question arises as to Express Phone's discovery obligations, Express Phone will comply with applicable rules and not with any of the definitions or instructions accompanying the discovery requests that are inconsistent with or exceed the requirements of those rules. Furthermore, Express Phone objects to any discovery request that calls for Express Phone to create data or information that it otherwise does not have because there is no such requirement under the applicable rules and law.

4. Express Phone objects to any definition or instruction in any discovery request that seeks interrogatory answers containing information from persons or entities who are not parties to this proceeding or that are not subject to discovery under applicable rules.

5. It is possible that not every relevant document may have been reviewed or considered in developing Express Phone's responses to the discovery requests. Rather, Express Phone will provide all the information that it obtained after a good faith, reasonable and diligent search conducted in connection with these discovery requests. To the extent that the discovery requests propose to require more, Express Phone objects to the requests individually and collectively on the grounds that compliance would impose an undue burden or expense on Express Phone.

6. Express Phone objects to each discovery request to the extent that it seeks information that is not relevant to the subject matter of this docket and is not reasonably calculated to lead to the discovery of admissible evidence.

7. Express Phone objects to each and every discovery request to the extent it is vague, ambiguous, overly broad, burdensome, imprecise, or utilizes terms that are subject to

multiple interpretations but are not properly defined or explained for purposes of such discovery requests.

8. Express Phone expressly reserves and does not waive any objections it may have to the admissibility, authenticity or relevancy of the information provided in its responses to the subject discovery requests.

9. Express Phone objects to any request that requires the creation of new data, documents or studies.

10. Express Phone objects to providing information already in the public record, that is as easily accessible to Staff as to Express Phone, or that is already in Staff's possession.

11. Express Phone objects to every discovery request to the extent the information sought constitutes "trade secrets" which are privileged pursuant to sections 90.506 and 366.093(3)(a), Florida Statutes.

12. Express Phone objects to each discovery request that is unduly burdensome, expensive, oppressive, or excessively time consuming as written.

13. Express Phone objects to any request that seeks to obtain "all" of particular documents, items or information to the extent that such requests are overly broad and burdensome. Any responses provided by Express Phone will be provided to, and without waiver of, the foregoing objection.

RESPONSES TO INTERROGATORIES

The following questions pertain to the testimony of Thomas Armstrong.

Subject to and without waiver of the foregoing objections, including relevancy, Express Phone provides the following responses to Interrogatory No. 1:

1. Express Phone asserts that on March 31, 2011, its customers were disconnected by AT&T Florida.

a. Did Express Phone make other arrangements for service for those customers either with AT&T Florida or the customers themselves?

RESPONSE: Express Phone provided its customers with notice of the projected termination of their service by AT&T. Customers were advised of the need to choose another provider of their own choosing.

b. Did Express Phone migrate those customers to an affiliated carrier, i.e., Digital Express, following AT&T Florida's action? If so, how many customers were migrated to affiliated carriers?

RESPONSE: No. No customers were migrated to any other carrier.

c. Were any Express Phone lines subject to disconnect migrated to Commercial Agreements with AT&T Florida or other unaffiliated carriers?

RESPONSE: No.

Subject to and without waiver of the foregoing objections, including relevancy, Express Phone provides the following responses to Interrogatory No. 2:

2. Express Phone alleges that AT&T Florida only paid 34% of the disputed amounts.

a. Is it your testimony that AT&T Florida failed to address the remaining 66% of the disputed amounts?

RESPONSE: Yes.

b. Did AT&T Florida reject 66% of the disputed amounts, or just not address them?

RESPONSE: Both – disputes are denied with no explanation or justification. When Express Phone escalates the disputes, they are ignored by AT&T.

c. In accordance with its ICA with Express Phone, is AT&T Florida obligated to explain its basis for rejecting billing disputes? If so, please explain the basis for this obligation?

RESPONSE: Pursuant to Section 26 of the AT&T/Express Phone agreement, AT&T is required to act in good faith in its performance under the ICA. Categorically denying disputes with no justification and then ignoring requests from Express Phone for escalation is not good faith.

Subject to and without waiver of the foregoing objections, including relevancy, Express Phone provides the following response to Interrogatory No. 3:

3. Was the Image Access ICA, Docket No. 060319-TP, available to Express Phone for adoption on August 22, 2006? Please explain your answer.

RESPONSE: As a preliminary matter, whether this agreement was “available,” regardless of the meaning given to “available,” is irrelevant to the matters at issue. Express Phone has the right to adopt another CLEC’s agreement if it meets the requirements of section 252(i), which it does.

Further, the answer to this question is linked to the definition of “available.” Upon information and belief, in 2006, there were 141 CLECs in the state of Florida. Express Phone does not know whether all of these CLECs had one or more interconnection agreements with AT&T. Additionally, Express Phone knows of no obligation requiring it to search all interconnection agreements at the Commission to determine what agreements are “available.” Neither of the two parties (AT&T and Image Access [NewPhone]), that would have been aware of the Image Access [NewPhone] agreement on August 22, 2006, made its presence known to Express Phone. AT&T should have made Express Phone aware of the Image Access

[NewPhone] agreement. In addition, the Commission should have made sure that the ICAs it reviewed were not discriminatory with relation to previously approved ICAs.

4. Did Express Phone's ICA with AT&T Florida in Docket No. 060714-TP expire on October 19, 2010? Please explain your answer.

RESPONSE: Express Phone's ICA with AT&T was superseded by its adoption of the NewPhone agreement on October 20, 2010.

5. Did Express Phone terminate its ICA with AT&T Florida on October 19, 2010?

RESPONSE: Express Phone's ICA with AT&T was superseded by its adoption of the NewPhone agreement on October 20, 2010.

Subject to and without waiver of the foregoing objections, including relevancy, Express Phone provides the following response to Interrogatory No. 6:

6. Does Express Phone believe that AT&T Florida owes the company any monetary amount at the present time?

RESPONSE: Yes. See Exhibit No. TMA-14.

The following questions pertain to the testimony of Don Wood.

7. Has Witness Wood offered testimony in proceedings in any state or federal proceedings related to adoptions based on §252(i) of the Act?

RESPONSE: Yes.

a. If the answer is yes, please summarize Witness Wood's testimony in the venues noted in Question No. 7 and include the relevant identifying information.

RESPONSE: Mr. Wood participated in *ex parte* meetings and assisted with the development of comments for filing with the FCC in CC Docket No. 96-98, specifically related

to the development of 47 CFR §51.809, including the FCC's decision on remand to adopt its current "all or nothing rule" to replace the prior "pick and choose rule."

To the best of his recollection, Mr. Wood addressed ICA adoptions in testimony in the following proceedings. His testimony addressed the importance of ICA adoption as a regulatory safeguard against discrimination.

Alabama Public Service Commission

Docket No. 25835: In Re: Petition for Approval of a Statement of Generally Available Terms and Conditions Pursuant to §252(f) of the Telecommunications Act of 1996 and Notification of Intention to File a §271 Petition for In-Region InterLATA Authority with the Federal Communications Commission Pursuant to the Telecommunications Act of 1996.

Delaware Public Service Commission

Docket No. 02-001: In the Matter of the Inquiry into Verizon Delaware Inc.'s Compliance with the Conditions Set Forth in 47 U.S.C. § 271(c).

Florida Public Service Commission

Docket No. 960786-TL: In Re: Consideration of BellSouth Telecommunications, Inc.'s Entry Into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996.

Georgia Public Service Commission

Docket No. 7253-U: In Re: BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms and Conditions Under Section 252 (f) of the Telecommunications Act of 1996.

Kentucky Public Service Commission

Administrative Case No. 96-608: In the Matter of: Investigation Concerning the Provision of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

Louisiana Public Service Commission

Docket No. U-22252: In Re: Consideration and Review of BST's Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, including but not limited to the fourteen requirements set forth in Section 271(c)(2)(b) in order to verify

compliance with section 271 and provide a recommendation to the FCC regarding BST's application to provide interLATA services originating in-region.

Public Service Commission of the State of Montana

Docket No. D2007.7.86: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Ronan Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA; and Docket No. D.2007.7.87: In the Matter of the Filing of a Notice of the Making of a Bona Fide Request for Interconnection with Hot Springs Telephone Company by Gold Creek Cellular of Montana Limited Partnership and Verizon Wireless LLC Both d/b/a Verizon Wireless Pursuant to 47 U.S.C. §§251 and 252 and §69-3-834, MCA (consolidated).

South Carolina Public Service Commission

Docket No. 97-101-C: In Re: Entry of BellSouth Telecommunications, Inc. into the InterLATA Toll Market.

State of Vermont Public Service Board

Docket No. 6533: Application of Verizon New England Inc. d/b/a Verizon Vermont for a Favorable Recommendation to Offer InterLATA Services Under 47 U.S.C. 271.

8. Has Witness Wood's [sic] ever offered testimony in dockets related specifically to contested notices of adoption?

RESPONSE: No. In Mr. Wood's experience, the act of "contesting" the adoption of an existing ICA is very rare. The language of 47 USC §252(i) and 47 CFR §51.809 create a requirement that existing ICAs be made available by an ILEC for adoption, subject only to the specific exceptions set forth in §51.809(b). Neither the Act nor the FCC rules create any opportunity for an ILEC to "contest" such an adoption, beyond the opportunity to "prove to a state commission" that one of the conditions set forth in §51.809(b)(1) and (2) exist. AT&T has made no such claim in this case.

a. If the answer is yes, please summarize Witness Wood's testimony as noted in response to Question No. 8 and include the relevant identifying information.

RESPONSE: N/A.

9. Has Witness Wood's [sic] negotiated an interconnection agreement on behalf of a CLEC with an ILEC? Between a CLEC and a CLEC?

RESPONSE: Mr. Wood has participated in the negotiation of ICAs between CLECs and ILECs in multiple states (see response to Interrogatory No. 10 below). In most cases, a large number of issues were resolved through negotiation, though unresolved issues remained and were arbitrated before state regulators or their designees. In Mr. Wood's experience, large CLECs have historically engaged in comprehensive negotiations/arbitrations with ILECs. In contrast, smaller CLECs have typically been unable to engage in such a resource-intensive process, and have been more likely to adopt existing ICAs.

Mr. Wood has not participated in the negotiation of interconnection agreements between CLECs.

10. If the answers to the above are yes, please include the state in which the ICA was negotiated, the docket or case number, and the parties to the agreement.

RESPONSE: Mr. Wood has participated in the negotiation of ICAs in the following states: Alabama, Colorado, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Montana, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Texas, Washington, the District of Columbia, Puerto Rico, and here in Florida. Cases that went to arbitration are listed in Exhibit DJW-1 to Mr. Wood's March 1, 2012 prefiled Direct Testimony.

11. Is it Witness Wood's testimony that two independently negotiated and executed ICAs that do not contain the exact terms and conditions are inherently discriminatory?

RESPONSE: It is Mr. Wood's testimony that two ICAs that do not contain the exact same terms and conditions are inherently *potentially* discriminatory. In this case, such a

potential for discrimination has been realized: the terms of the AT&T-NewPhone ICA (adopted by Express Phone in 2010) are more favorable to the CLEC than those in the initial AT&T-Express Phone ICA. Express Phone's adoption of the AT&T-NewPhone ICA, via the mechanism set forth in 47 USC §252(i) and 47 CFR §51.809, allows Express Phone to avoid this discrimination by AT&T.

12. Please identify any legal authority that specifically authorizes a CLEC to terminate an ICA without the consent of all parties to the ICA?

RESPONSE: It is Mr. Wood's understanding that the adoption of an existing ICA by a CLEC causes the new agreement to supersede the prior agreement in effect between that CLEC and an ILEC. This is not a termination; rather the CLEC is exercising its rights under federal law to adopt another agreement. There is nothing in 47 USC §252(i) or 47 CFR §51.809 that even suggests that this right may not be exercised until a prior agreement is terminated. If such reasoning were followed, it would negate the entire purpose of 47 USC §252(i) and 47 CFR §51.809 and force a CLEC to remain in a discriminatory agreement for the term of the agreement. See Mr. Wood's direct testimony, p. 16, l. 15- p. 17, l.2.

13. Does Express Phone believe that the adoption of the Image Access ICA would release the company from having to pay disputed amounts incurred under the existing agreement between AT&T Florida and Express Phone?

RESPONSE: First, the agreement that now exists is the one Express Phone adopted on October 20, 2010. Second, it is Mr. Wood's position that the ability of a CLEC to adopt an existing ICA pursuant to 47 USC §252(i) and 47 CFR §51.809 is not dependent on the resolution of any disputes that may exist between that CLEC and the ILEC under the initial ICA. The existence of a dispute is *not* one of the two explicit exceptions listed in §51.809(b).

It should be noted, however, that the ability of a CLEC to adopt an existing agreement serves to prevent discrimination and provides the necessary incentives for both the ILEC and CLEC to work together to resolve any existing disputes. The discriminatory provisions of the initial AT&T-Express Phone ICA provide little, if any, incentive for AT&T to act in good faith to resolve any billing disputes between the parties. In contrast, the language of the AT&T-NewPhone ICA (adopted by Express Phone) provides such an incentive for AT&T to work to resolve the dispute.

s/ Vicki Gordon Kaufman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Express Phone Service, Inc.'s Objections and Responses to Staff's First Set of Interrogatories (Nos. 1-13) has been furnished by Electronic Mail and U.S. Mail this 23rd day of April, 2012, to the following:

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s/ Vicki Gordon Kaufman _____

Vicki Gordon Kaufman

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

AFFIDAVIT

STATE OF FLORIDA)

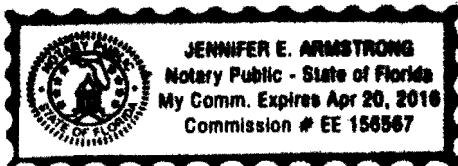
COUNTY OF ESCAMBIA)

I hereby certify that on this 17th day of April, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Thomas M. Armstrong, who is personally known to me, and he acknowledged before me that he provided the answers to interrogatory numbers 1-6 from STAFF'S FIRST SET OF INTERROGATORIES TO EXPRESS PHONE SERVICE, INC. (NOS. 1-13) in Docket No. 110087-TP, and that the responses are true and correct based on his personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 17th day of April, 2012.

Thomas M. Armstrong
Thomas M. Armstrong

Jennifer E. Armstrong
Notary Public
State of Florida, at Large



My Commission Expires:
4 | 20 | 16

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

AFFIDAVIT

STATE OF GEORGIA)

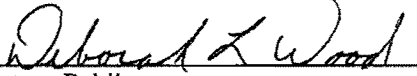
COUNTY OF FULTON)

I hereby certify that on this 17 day of APRIL, 2012, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Don J. Wood, who is personally known to me, and he acknowledged before me that he provided the answers to interrogatory numbers 7-13 from STAFF'S FIRST SET OF INTERROGATORIES TO EXPRESS PHONE SERVICE, INC. (NOS. 1-13) in Docket No. 110087-TP, and that the responses are true and correct based on his personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 17 day of APRIL, 2012.



Don J. Wood



Notary Public
State of Georgia, at Large

My Commission Expires:

3-24-2012

