

Diamond Williams

110071-TP

From: Charlie Sherrill [csherrill@kagmlaw.com]
Sent: Friday, March 18, 2011 8:36 AM
To: Filings@psc.state.fl.us
Cc: manuel.gurdian@att.com; Lee Eng Tan; sm6526@att.com; Vicki Gordon Kaufman
Subject: Express Phone Services, Inc.'s Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo
Attachments: Express Phone Service, Inc.'s Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo 03.18.11.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:

Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828
vkaufman@kagmlaw.com

b. This filing is made in Docket No. 110071-TP.

c. The document is filed on behalf of Express Phone Service, Inc.

d. The total pages in the document are 5 pages.

e. The attached document is Express Phone Services, Inc.'s Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo.

Charlie Sherrill

Keefe Anchors Gordon & Moyle
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850) 681-3828
Facsimile: (850) 681-8788
csherrill@kagmlaw.com

Charlie Sherrill
csherrill@kagmlaw.com



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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Emergency Complaint of
Express Phone Service, Inc.
against BellSouth Telecommunications,
Inc. d/b/a AT&T Florida Regarding
Interpretation of the Parties'
Interconnection Agreement

DOCKET NO. 110071-TP

Filed: March 18, 2011

**EXPRESS PHONE SERVICE, INC.'S MOTION FOR EMERGENCY
CONSIDERATION BY THE PREHEARING OFFICER TO MAINTAIN STATUS QUO**

Express Phone Service, Inc. ("Express Phone"), through its undersigned counsel, pursuant to rules 25-22.036 and 28-106.201, Florida Administrative Code, files this Motion for Emergency Consideration by the Prehearing Officer to prohibit BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast ("AT&T") AT&T from suspending, discontinuing, terminating or otherwise disrupting Express Phone's service in Florida pending resolution of the disputed matters set forth in Express Phone's Emergency Complaint filed on March 15, 2011. **Because AT&T has threatened to cut off order provisioning to Express Phone on March 18, 2011, Express Phone seeks emergency relief from the Prehearing Officer to maintain the status quo and to prevent irreparable injury due to inability to service customer orders and ultimate disconnection of existing customers until this matter can be considered by the entire Commission at its next regularly scheduled Agenda Conference on April 5, 2011.** As grounds therefor, Express Phone states:

1. On March 15, 2011, Express Phone filed an Emergency Complaint, Request for Emergency Relief to Avoid Customer Disconnection, Request to Hold Docket in Abeyance and Request for Mediation ("Complaint").¹ As set forth in the Complaint, AT&T improperly seeks to

¹ The details of the dispute, as well as an affidavit of Express Phone President, Mr. Armstrong, are contained in the Emergency Complaint filed on March 15, 2011.

disrupt Express Phone's service order provisioning and ultimately, to cut off service altogether to existing Express Phone customers due to billing arising out of the parties' interconnection agreement and applicable law.

2. As set out in Express Phone's Complaint, AT&T has recently demanded payment from Express Phone of a claimed "past due balance" of \$1,268,490 for services provided in Florida. If such unilateral demand is not met, AT&T has stated that it will suspend or terminate service to Express Phone on March 18th. Such unilateral action will interfere with Express Phone's ability to serve current and new customers and will be disruptive and detrimental to the customers Express Phone serves in Florida, including many LifeLine customers.

3. AT&T's threatened imminent action to suspend services would seriously compromise Express Phone's ability to process new customer orders, change orders or order suspension or restoral of service and potentially provide service to its customers altogether. In a short time thereafter, Express Phone would effectively be out of business and its customers would not be provided telecommunications services at the rates and quality of service offered by Express Phone.

4. After the filing of the Complaint, Staff conducted a conference call between the parties to discuss the dispute. Despite this discussion and attempts to work out an extension until this matter can be considered by the Commission, AT&T refused to relent from its suspension date on this Friday, March 18th.

5. The next regularly scheduled Agenda Conference at which the entire Commission can take action on this matter is April 5th. Such date is well after AT&T's threatened actions will have already occurred and the damage to Express Phone will have become irreparable and would include loss of its customer base and its ability to provide service in Florida. Counsel expressly

asked AT&T if it would agree to delay any action until consideration by the full Commission and it refused to do so.

6. Therefore, it is critical that the status quo be maintained until the entire Commission has had the opportunity to hear from both parties and make a considered determination.

7. Rule 28-106.305, Florida Administrative Code, authorizes the Prehearing Officer to enter such an order in this case. The rule provides:

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

8. This rule authorizes the Prehearing Officer to enter any order necessary to effectuate the just determination of any aspect of a pending case. Due to the dates chosen by AT&T to terminate service to Express Phone, it will be impossible for the entire Commission to take any action until after AT&T's unilateral action. Therefore, if some action is not taken to maintain the status quo until the April 5th Agenda Conference date, any relief that may be awarded at that time will be too little too late and will result in AT&T unilaterally prevailing on the disputed issues before the Commission has even heard them. Such a result is highly prejudicial and unfair to Express Phone.

WHEREFORE, Express Phone requests that the Prehearing Officer enter an emergency order directing AT&T to take no action to suspend or otherwise interfere with Express Phone's service to its customers pending a determination by the Commission in this docket.

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman
Keefe Anchors Gordon & Moyle, PA
118 North Gadsden Street
Tallahassee, FL 32301
(850) 681-3828 (Voice)
(850) 681-8788 (Fascimile)
vkaufman@kagmlaw.com

Mark Foster, Attorney at Law
707 West Tenth Street
Austin, Texas 78701
(512) 708-8700 (Voice)
(512) 697-0058 (Fascimile)
mark@mfoosterlaw.com

Attorneys for Express Phone Service, Inc.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by Electronic Mail and U.S. Mail to the following, this 18th day of March 2011:

Lee Eng Tan
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
ltan@psc.state.fl.us

Suzanne L. Montgomery
General Attorney - Wholesale
AT&T Services, Inc.
One AT&T Way, Room 3A105
Bedminster, New Jersey 07921
sm6526@att.com

Manuel Gurdian
150 South Monroe Street, Suite 400
Tallahassee, FL 32301
manuel.gurdian@att.com

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman