

Diamond Williams

100022-TP

From: Garcia, Nicki [NGarcia@gunster.com]
Sent: Thursday, March 31, 2011 4:13 PM
To: Filings@psc.state.fl.us
Cc: Feil, Matthew; Charles Murphy; 'mg2708@att.com'; 'th9467@att.com'; 'ke2722@att.com'; 'Paul Guarisco (paul.guarisco@phelps.com)'; 'Jim Dry (jimdry@newphone.com)'
Subject: Electronic Filing - Docket No. 100022-TP
Attachments: 20110331155616824.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact Matt Feil at the number below. Thank you.

Person Responsible for Filing:

Matthew Feil
 Gunster Law Firm
 215 South Monroe Street, Suite 601
 Tallahassee, FL 32301
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Docket Name and Number: Docket No. 100022-TP – Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T Florida Against Image Access, Inc. d/b/a NewPhone

Filed on Behalf of: Image Access, Inc. d/b/a NewPhone

Total Number of Pages: 5

Description of Documents: Motion for Leave to File Second Amended Answer, Affirmative Defenses and Counter-Claim of Image Access, Inc. d/b/a NewPhone



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DOCUMENT NUMBER-DATE

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March 31, 2011

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 100022-TP

Dear Ms. Cole:

Attached for filing in the above referenced docket, please find enclosed the Motion for Leave to File Second Amended Answer, Affirmative Defenses and Counter-Claim of Image Access, Inc. d/b/a NewPhone.

If you have any questions, please contact me at 850-521-1708.

Sincerely,



Matthew J. Feil

cc: Parties of Record

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Complaint of BellSouth Telecom-)
munications, Inc., d/b/a AT&T Florida)
Against Image Access, Inc. d/b/a)
NewPhone)
_____)

Docket No. 100022-TP

MOTION FOR LEAVE TO FILE
SECOND AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTER-CLAIM
OF IMAGE ACCESS, INC. d/b/a NEWPHONE

Image Access, Inc. d/b/a NewPhone ("NewPhone") respectfully requests leave to file its Second Amended Answer, Affirmative Defenses and Counter-Claim. In support, NewPhone states as follows:

1. The Second Amended Answer, Affirmative Defenses and Counter-Claim of NewPhone is being filed for the purpose of supplementing, amending and restating Paragraph 12 of NewPhone's Affirmative Defenses, and for the purpose of supplementing, amending and restating the Counter-Claim in its entirety.

2. As contemplated by the Parties' Joint Motion on Procedural Issues filed May 13, 2010, a consolidated approach was contemplated for the limited purpose of addressing certain common issues in this proceeding and another AT&T proceeding against LifeConnex Telecom, LLC f/k/a Swiftel, LLC (Docket No. 100021). Pursuant to the Order Holding Dockets in Abeyance dated June 18, 2010 (Order No. PSC-10-0402-PCO-TP) (the "Abeyance Order"), this docket is currently being held in abeyance pending resolution of similar proceeding before other State Commissions or upon further motion of either party. The instant NewPhone motion will not cause delay or prejudice in the above-captioned docket, and the instant motion is consistent

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with the Abeyance Order, as all Parties understood that this docket would not proceed even though the Parties reserved their rights to amend their pleadings.

3. Allowing NewPhone to supplement and clarify its Defenses and Counter-Claim at this stage does not prejudice any party to this proceeding because this proceeding is currently being held in abeyance, no procedural schedule has been established and the issue identification process has not taken place. The filing of this amended pleading neither expands nor contracts the issues that the parties requested be consolidated in their May 13, 2010 Joint Motion on Procedural Issues.

4. Counsel for NewPhone has contacted counsel for AT&T and advised of this filing. While AT&T reserves its rights to respond to the allegations in the amended pleading, AT&T does not object to the filing of the amended pleading. Accordingly, NewPhone respectfully requests leave to file its amended pleading.

WHEREFORE, NewPhone respectfully requests that this motion be granted, permitting it to file its Second Amended Answer, Affirmative Defenses and Counter-Claim of Image Access, Inc. d/b/a NewPhone, which is submitted on even date herewith.

Respectfully submitted this 3rd day of March, 2011.

Respectfully submitted,



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AND

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COUNSEL FOR IMAGE ACCESS, INC. d/b/a
NEWPHONE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 31 day of March, 2011.

Charles Murphy, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 cmurphy@psc.state.fl.us	E. Earl Edenfield, Jr. Tracy W. Hatch Manuel A. Guardian c/o Gregory R. Follensbee 150 South Monroe Street Suite 400 Tallahassee, FL 32301 mg2708@att.com th9467@att.com ke2722@att.com
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By: 
Matthew Feil, Esq.