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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-~~4~~ COMMISSION CLERK

Filed: April 12, 2011

EXPRESS PHONE SERVICE, INC.'S MOTION FOR SUMMARY FINAL ORDER

Express Phone Service, Inc. (Express Phone), pursuant to section 120.57(1)(f), Florida Statutes, and rule 28-106.204(4), Florida Administrative Code, hereby moves the Florida Public Service Commission (Commission) for a Summary Final Order that: 1) finds Express Phone's adoption of the existing interconnection agreement between BellSouth Telecommunications, Inc., d/b/a AT&T Florida (AT&T) and Image Access Inc. d/b/a NewPhone (NewPhone ICA), as amended, valid pursuant to 47 U.S.C. § 252(i) and the FCC's implementing rule 47 C.F.R. § 51.809 as a matter of law, and effective on October 20, 2010 and 2) requires AT&T to reinstate service to Express Phone.

In support of this Motion, and as further discussed in detail below, Express Phone states that there is no genuine issue as to any material fact regarding Express Phone's adoption of the NewPhone ICA pursuant to 47 U.S.C. § 252(i) as a matter of law.

I. CASE BACKGROUND

Express Phone Service, Inc. is a Florida corporation holding Florida Public Service Commission Alternative Local Exchange Telecommunications Certificate No. 5636. (Order No. PSC-00-1495-PAA-TX; Docket No. 000776-TX).

On August 23, 2006, Express Phone entered into a Resale Agreement with BellSouth Telecommunications, Inc. (now known as AT&T). The Resale Agreement was filed for

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approval in Docket No. 060714-TP. The Resale Agreement became effective on or about November 4, 2006.¹

The Resale Agreement provides:

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.

(Exhibit 1).

On October 20, 2010, Express Phone sent an Adoption Notice to AT&T. (Exhibit 2).

The Adoption Notice states:

Express Phone Service, Inc. (“Carrier”) desires to exercise its right to opt into the existing Interconnection Agreement (“ICA”) between Southwestern Bell Texas (“AT&T”)² and Images Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process set forth in Section 252(i) and Rule 51.809.

The NewPhone ICA was filed on April 6, 2006 and became effective for three years. The NewPhone ICA was amended in March 2009 to extend the ICA until April 18, 2012. (Exhibit 3).³ As discussed below, Express Phone’s right to opt into the NewPhone ICA is broad. FCC rule 51.809 contains only two exceptions, neither of which applies in this case.

Despite Express Phone’s right to opt in, AT&T responded to Express Phone on November 1, 2010. (Exhibit 4). AT&T claimed Express Phone was not entitled to exercise its

¹ The interpretation of the Resale Agreement is not at issue in this docket, but is the subject of a complaint in Docket No. 110071-TP.

² The use of “Southwestern Bell Texas” is a scrivener’s error. In its response of November 1, 2010, AT&T refers to the Florida Interconnection Agreement between AT&T Florida and NewPhone. (Exhibit 4).

³ The entire NewPhone ICA may be viewed at <http://www.floridapsc.org/library/filings/06/03022-06/03022-06.pdf>. The amendment can be viewed at <http://www.floridapsc.org/library/filings/09/03179-09/03179-09.pdf>. Only excerpts are provided herein.

opt in rights because its current ICA was still in effect. As discussed below, this does not affect Express Phone's federal opt in rights and is not an exception to Express Phone's opt in rights.

On March 14, 2011, Express Phone again notified AT&T of its opt in to the NewPhone ICA. (Exhibit 5). On March 25, 2011, AT&T responded and provided a list of conditions it required Express Phone to meet before it would "permit" the opt in. (Exhibit 6). None of AT&T's conditions are lawful excuses to refuse to acknowledge Express Phone's opt in. On March 28, 2011, counsel for Express Phone corresponded with AT&T and pointed out the fallacy of AT&T's position. (Exhibit 7). On March 29, 2011, Express Phone filed a Notice of Adoption. (Exhibit 8). AT&T responded on March 29, 2011, (Exhibit 9), and on April 6, 2011, (Exhibit 10) again refusing to acknowledge the adoption. To date, AT&T has continued to refuse to acknowledge the opt in. On April 4, 2011, Express Phone filed its Amended Notice of Adoption with the Commission. (Exhibit 11).

For the reasons stated above and explained in greater detail below, there are no legitimate genuine issues of material fact that remain to be resolved in the this docket. Accordingly, the Commission should issue a Summary Final Order that finds Express Phone's adoption of the NewPhone ICA, as amended, on October 20, 2010 valid pursuant to 47 U.S.C. § 252(i) and the FCC's implementing rule 47 C.F.R. § 51.809 as a matter of law. The Commission should further find such adoption effective on October 20, 2010.

II. STANDARD FOR SUMMARY FINAL ORDER

Section 120.57(1)(h), Florida Statutes, provides authority for the issuance of a summary final order:

Any party to a proceeding in which an administrative law judge of the Division of Administrative Hearings has final order authority may move for a summary final order when there is no genuine issue as to any material fact. A summary final order shall be

rendered if the administrative law judge determines from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order. A summary final order shall consist of findings of fact, if any, conclusions of law, a disposition or penalty, if applicable, and any other information required by law to be contained in the final order.⁴

Rule 28-106.204(4), Florida Administrative Code, also provides that any party may move for summary final order when there is no genuine issue as to any material fact. A summary final order avoids the expense and delay of a formal administrative hearing when no dispute exists concerning the material facts. When a motion for summary final order is filed, the Commission views the record in the light most favorable to the entity against whom the summary order is sought. When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to the opponent to demonstrate the falsity of the showing; if the opponent cannot do so, a summary order should be entered.⁵

The Commission has articulated the requirements for issuance of a summary final order:

The question for determination on a motion for summary judgment is the existence or nonexistence of a material factual issue. There are two requisites for granting summary judgment: first, there must be no genuine issue of material fact, and second, one of the parties must be entitled to judgment as a matter of law on the undisputed facts. (See Trawick's Florida Practice and Procedure, §25-5, Summary Judgment Generally, Henry P. Trawick, Jr. (1999) .)⁶

As demonstrated below, both requirements are met in this case and entry of a summary final order is appropriate.

⁴ Because the Commission has not referred this case to the Division of Administrative Hearings, it is the entity issuing the Final Order.

⁵ *In re: Request for arbitration concerning complaint of ITC DeltaCom Communications, Inc. against BellSouth Telecommunications, Inc. for breach of interconnection terms, and request for immediate relief*, Docket No. 991946-TP, Order No. PSC-00-1540-FOF-TP at 11.

⁶ *Id.* at 11-12.

III. UNDISPUTED FACTS

A motion for a summary final order may be accompanied by supporting affidavits, but affidavits are not required.⁷ In this instance, no such affidavits are needed because all relevant facts are undisputed.

The following are the relevant, undisputed material facts necessary for the Commission's resolution of Express Phone's position that it is entitled to adopt the NewPhone ICA effective October 20, 2010 pursuant to 47 U.S.C. § 252(i) and that such adoption was effective for all purposes on that date:

1. Express Phone entered into a Resale Agreement with BellSouth Telecommunications, Inc. (now known as AT&T) on October 4, 2006. This Resale Agreement was filed for approval in Docket No. 060714-TP.

2. The Resale Agreement provides:

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.

(Exhibit 1).

3. On October 20, 2010, Express Phone faxed an Adoption Notice to AT&T stating that it adopted the existing interconnection agreement between AT&T and NewPhone. (Exhibit 2).

⁷ Rule 28-106.204(4), Florida Administrative Code.

4. AT&T responded to Express Phone on November 1, 2010. (Exhibit 4). AT&T claimed Express Phone was not entitled to exercise its opt in rights because its current ICA was still in effect.

5. On March 14, 2011, Express Phone again notified AT&T of its opt in to the NewPhone ICA. (Exhibit 5).

6. On March 25, 2011, AT&T responded with a list of conditions it required to be fulfilled before it would recognize the opt in. (Exhibit 6).

7. AT&T has continued to refuse to acknowledge Express Phone's opt in to the NewPhone ICA. (Exhibits 9, 10).

8. The NewPhone ICA is an interconnection agreement previously approved by this Commission; therefore, AT&T is required by Section 252(i) of the Telecommunications Act of 1996 (Act) to make the NewPhone ICA available to Express Phone for adoption.

9. On March 29, 2011, Express Phone filed a Notice of Adoption of the NewPhone ICA with the Commission. (Exhibit 8).

10. On April 4, 2011, Express Phone filed its Amended Notice of Adoption with the Commission. (Exhibit 11).

IV. EXPRESS PHONE IS ENTITLED TO ADOPT THE NEWPHONE ICA AS A MATTER OF LAW PURSUANT TO 47 U.S.C. § 252(i).

A. EXPRESS PHONE'S RIGHT TO ADOPT THE NEWPHONE ICA IS CLEAR.

1. Federal statute and rules.

A competitor's right to adopt an existing interconnection agreement (ICA) is set out in the Telecommunications Act of 1996 (Act). 47 U.S.C. § 252(i) provides:

A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved

under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The Federal Communications Commission (FCC) has implemented this statute in subpart i of Title 47. Subpart i is titled "Procedures for Implementation of Section 252 of the Act," indicating that the rule was intended to implement § 252(i). The title of rule 47 C.F.R. § 51.809 is "Availability of agreements to other telecommunications carriers under section 252(i) of the Act." The rule states (emphasis added):

51.809 - Availability of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC *shall make available* without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, *upon the same rates, terms, and conditions as those provided in the agreement*. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that: (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or (2) The provision of a particular agreement to the requesting carrier is not technically feasible.

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

The rule contains two explicit exceptions to the requirement that AT&T *shall* make approved ICAs available. Those exceptions are applicable if AT&T proves to the Commission that the cost to serve Express Phone is greater than the cost to serve NewPhone or that the

provision of the NewPhone ICA is not technically feasible. Neither of these explicit exceptions has been proffered by AT&T nor could they as neither has any applicability to this case.

The FCC reviewed its original §252(i) rule (the pick-and-choose rule, which allowed selection of certain provisions of an ICA) in 2004 after the rule was vacated by the Eighth Circuit. In the *Second Report and Order*, the FCC adopted the all-or-nothing rule, which requires a CLEC to adopt an ICA in its entirety, rather than just certain provisions.⁸ In doing so, the FCC said:

Under the all-or-nothing rule we adopt here, a requesting carrier may only adopt an effective interconnection agreement in its entirety, taking all rates, terms, and conditions of the adopted agreement. . . . the new all-or-nothing rule will apply to all effective interconnection agreements, including those approved and in effect before the date the new rule goes into effect.⁹

In discussing the move to the all-or-nothing rule, the FCC noted that it expected the rule to protect carriers from discrimination.¹⁰ The FCC held:

We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). *Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers.* If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.¹¹

Unless one of the two exceptions of rule 51.809(b) is met, the adoption is valid and must be

⁸ *In the Matter of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 04-164 (*Second Report and Order*).

⁹ *Id.* at ¶10.

¹⁰ *Id.* at ¶18.

¹¹ *Id.* at ¶19, emphasis supplied.

recognized.

2. The Florida Commission's Interpretation of the Opt In Requirement.

This Commission had the opportunity to extensively explore the requirements of the federal opt in provision in a 2007 docket involving AT&T and Nextel.¹² In that docket, AT&T refused to recognize Nextel's adoption of an AT&T/Sprint ICA based on § 252(i) as well as merger conditions (which are not relevant here). AT&T's refusal was based on balance of traffic issues between the original parties to the ICA and AT&T's position that a specific mix of parties (wireline and wireless) was required.

Quoting the *Second Report and Order*, this Commission said:

At its sole discretion, an interested carrier may choose to adopt an existing interconnection agreement on file with the Commission that best meets its business needs. The requesting carrier must adopt all terms and conditions included within the existing interconnection agreement

Whether a telecommunications carrier may adopt an entire, effective interconnection agreement is determined by whether a genuine exception to the above provision exists. The rule which implements §252(i), 47 C.F.R. § 51.809, describes the only two instances where an incumbent LEC may deny a requesting carrier the right to adopt an entire effective agreement.¹³

The Commission then cited the rule and the two sections quoted above. The Commission held:

Unless an incumbent LEC can demonstrate its costs will be greater to provide the agreement to the new carrier(s) or the agreement is not technically feasible to provide to the new carrier(s), the incumbent LEC may not restrict the carrier's right to adopt. The FCC said that it would "deem an incumbent

¹² *In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners*, Docket No. 070368-TP and *In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp.*, Docket No. 070369-TP, Order No. PSC-08-0584-FOF-TP at 11, *affirmed*, *BellSouth Telecommunications, Inc. v. Florida Public Service Commission*, Case No. 4:09-cv-102/RS/WCS (April 19, 2010) (*Nextel Adoption Order*).

¹³ *Id.* at 7, emphasis supplied.

LEC's conduct discriminatory if it denied a requesting carrier's request to adopt an agreement to which it is entitled under section 252(i) and our all-or-nothing rule."¹⁴

The Commission rejected AT&T's position in the Nextel docket, found AT&T's position to be "fatally flawed,"¹⁵ and upheld Nextel's adoption as valid. AT&T appealed the Commission's decision to federal district court, which affirmed the Commission's ruling using a *de novo* standard.¹⁶

The same result should occur here. As noted above, neither of rule 51.809's two exceptions have any applicability to Express Phone's adoption nor does AT&T even suggest that they do.

B. ATT&T'S EXCUSES FOR ITS REFUSAL TO RECOGNIZE EXPRESS PHONE'S ADOPTION DO NOT COMPORT WITH SECTION 252(I) DISCUSSED ABOVE AND MUST BE REJECTED.

As discussed above, 47 C.F.R. § 51.809 provides two exceptions to a carrier's ability to opt into an approved agreement. Even AT&T itself does not claim that its actions fall within either of those exceptions. Rather, it has come up with its own excuses to refuse to recognize the adoption. AT&T's positions are discussed below and must be rejected.

1. The fact that a current ICA is in place does not preclude adoption.

In response to Express Phone's October 20, 2010 adoption notice, AT&T responded that adoption was not permissible because "Express Phone is currently operating under an approved Agreement in the State[] of Florida." (Exhibit 4). Thus, it appears to be AT&T's view that if a carrier is operating under a current agreement, it may not adopt another agreement. This position is erroneous for several reasons.

¹⁴ *Id.* at 7-8.

¹⁵ *Id.* at 8.

¹⁶ *BellSouth Telecommunications, Inc., d/b/a AT&T Florida v. Florida Public Service Commission*, Case No. 4:09-cv-102/RS/WCS (April 19, 2010). (Exhibit 12).

First, section 11 of the General Terms and Conditions of the ICA between AT&T and

Express Phone explicitly states:

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.

(Exhibit 1, emphasis supplied). Thus, the very ICA that AT&T attempts to rely upon to block Express Phone's adoption contains an explicit clause allowing the adoption. There would be no need to include such language in the ICA if it had no meaning. AT&T would prefer to ignore this clause and rely instead on language in the ICA setting out the term of the agreement. However, to do so ignores federal law – which provides only two exceptions to the right to opt in.

It is AT&T's view that regardless of the above-quoted clause and Express Phone's federal right to adoption, Express Phone is locked into its ICA with AT&T for five (5) years, despite the fact that AT&T has negotiated more favorable language with another CLEC. This position is directly contrary to the stated purpose of the opt in rule which is to protect carriers from discrimination:

We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). *Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers.* If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from

engaging in such discrimination.¹⁷

To accept AT&T's position would be to allow AT&T to discriminate among carriers.

This case presents the perfect example of why such discrimination cannot be permitted and why the FCC was concerned about the discriminatory actions of incumbents. The ICA between AT&T and Express Phone contains provisions which AT&T argues require Express Phone to pay all amounts AT&T claims are due to it, even amounts in dispute. AT&T claims "payment in full" is required even before the Commission has determined the legitimacy of the disputes. In contrast, the NewPhone ICA contains provisions which require the CLEC to pay *undisputed* amounts to AT&T until any disputes are resolved. (Exhibit 13). Clearly, the NewPhone ICA is more favorable as it allows the CLEC to retain its funds until a disputed item is resolved. To prohibit Express Phone from adopting the NewPhone ICA would allow AT&T to discriminate against Express Phone in billing matters. This is something the FCC prohibits.

AT&T will no doubt attempt to rely upon *Global Naps, Inc. v. Verizon New England, Inc.*, 396 F.3d 16 (1st Cir. 2004). However, that case is inapposite here for numerous reasons.

First, the *Global NAPS* case arose from a ruling of the Massachusetts Commission and was appealed to the First Circuit. As such, neither the Massachusetts Commission's ruling nor the First Circuit's decision is binding on this Commission nor has this issue ever been addressed in this circuit or by any southeast Commission as far as Express Phone is aware.

But more importantly, the facts of the *Global NAPS* case are entirely distinguishable from the case before the Commission here. In *Global NAPS*, the issue considered was one of a larger dispute between Global NAPS and Verizon. Verizon and Global NAPS attempted to negotiate a new ICA, but when they were unable to do so, Global NAPS sought to arbitrate the disputes. A hearing was held by the Massachusetts Commission and all the disputes between the parties were

¹⁷ *Second Report and Order* at ¶19, emphasis supplied.

resolved and a final arbitration order entered. *After* the parties had engaged in arbitration and *after* the Commission had entered an arbitration order disposing of all the disputed issues, Global NAPS (apparently dissatisfied with the result) attempted to adopt another agreement. Because the Massachusetts Commission had conducted arbitration, had directed the parties to file an agreement based on that arbitration, and had provided no alternatives, Global NAPS' attempt to opt into another agreement was not permitted.

The Court was concerned that Global NAPS' action implicated the statutory duties of good faith and cooperation with the commission as arbitrator. *Id.* at 25. The basic holding of the *Global NAPS* case is that once parties have concluded arbitration and the state commission has issued an order, the parties must abide by it. *Id.* at 27.

But most important to the case before the Commission is what the *Global NAPS* case *does not* hold, as the Court itself described:

The [Massachusetts Commission] did not, contrary to Global NAPS' assertion, hold that a party to an arbitrated agreement can never exercise rights under §252(i). It also does not, contrary to Verizon's assertion, hold that a party subject to valid arbitration order could never, under §252(i), take advantage of terms in a previously available agreement.

Id. at 21.

The facts in this case are entirely distinguishable from *Global NAPS*. Express Phone has not engaged in a lengthy arbitration with AT&T before this Commission, received a decision, rejected it, and attempted to opt into another agreement. Express Phone has not failed to act in good faith. Finally, to refuse to recognize the opt in here would permit AT&T to discriminate among providers.

Similarly, AT&T will also rely on a *Supra Order* of this Commission.¹⁸ Again, that case is easily distinguishable. First, it is notable that the *Supra Order* was issued long before the *Second Report and Order* adopting the all-or-nothing rule and discussing discriminatory conduct of incumbents. Further, in the *Supra* case, Supra filed a petition with the Commission seeking a generic arbitration for all Florida CLECs or alternatively, an individual petition for arbitration. The Commission found it had no authority to conduct a generic arbitration or to arbitrate where the parties had an agreement. In this case, Express Phone is not asking the Commission to conduct an expensive and time-consuming arbitration; it merely wants access to an agreement the Commission has already approved.

AT&T will also rely on a decision of the New York Commission involving Pac-West.¹⁹ In that case, the New York Commission considered a dispute between Pac-West and Verizon regarding Pac-West's request to opt in to a different ICA. The New York Commission ruled that unilateral early termination was not authorized based on the provisions in the existing interconnection agreement between PAC-West and Verizon.²⁰ There is no mention in the New York Commission's decision of the existence of a specific contractual provision (like the one described above from the present or "old" Express Phone/AT&T agreement) requiring AT&T to provide other interconnection agreements for adoption upon the request of the CLEC.

Moreover, the New York Commission's decision should not be regarded as a persuasive authority or even a reasoned modification of the federal statutory mandate of § 252(i). The New

¹⁸ *In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (*Supra Order*).

¹⁹ *Declaratory Ruling, Petition of Pac-West Telecomm, Inc. for a Declaratory Ruling Respecting Its Rights to Interconnection with Verizon New York, Inc.*, Case No. 06-C-1042 (Feb. 27, 2007) (*Pac-West Order*). As explained, this case is inapposite to the case before the Commission. Further, this Commission is not bound by a decision of the New York Commission.

²⁰ *Id.* at 11.

York Commission observed that § 252(i) “does not confer an unconditional right to opt in to an existing agreement or authorize unilateral termination of an existing interconnection agreement.”²¹ In support of that statement, the New York Commission provided this footnote:

A CLEC’s ability to pick and choose provisions from existing agreements was restricted from the FCC’s first interpretation of §252(i) in the *Local Competition Order*, i.e., ILEC’s were required to make provisions available only for a reasonable period of time and could avoid the rule based on technical nonfeasibility or greater cost . 47 C.F.R. §51.809.²²

Thus, the New York Commission did not offer anything new other than a recitation of the statutory mandate which expressly requires ILECs to make interconnection agreements available for adoption by CLECs with only two exceptions as noted. The New York Commission’s decision does nothing to change the law or the contractual provision in Section 11 of the General Terms and Conditions of the present or “old” ICA between AT&T and Express Phone.

2. AT&T’s attempt to impose additional non-252(i) conditions does not block adoption.

In response to Express Phone’s March 2011 Notice of Adoption, AT&T took a different approach. (Exhibit 6). Acknowledging that the parties are now in the negotiation period provided by the Express Phone/AT&T ICA, thus mooted the prior obstacle AT&T raised, AT&T responded to Express Phone’s Notice of Adoption with an entire laundry list of AT&T generated demands which appear nowhere in § 252(i):

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 [sic] 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;

²¹ *Id.* at 12.

²² *Id.*

(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 [sic], Express Phone will be required to submit subsequent written requests to AT&T for consideration.

(Exhibit 6, emphasis supplied). The conditions AT&T seeks to impose before it will recognize Express Phone's adoption are unrelated to the only two exceptions to § 252(i) – lack of technical feasibility or greater costs to serve adopting party.²³ Rather, AT&T is attempting to use the parties' billing dispute in Docket No. 110071-TP²⁴ to prohibit Express Phone from adopting the NewPhone ICA. Further, AT&T intends to make itself the decision maker regarding what requirements it will consider before it allows adoption. The billing dispute in a separate docket is unrelated to Express Phone's federal adoption rights and AT&T cannot use that dispute to avoid its obligations. Whether Express Phone can adopt the NewPhone ICA is strictly a matter of law regardless of the circumstances in another docket. AT&T's position runs contrary to the entire purpose of § 252(i).

C. THE EFFECTIVE DATE OF THE OPT IN IS OCTOBER 20, 2010.

Express Phone anticipates that AT&T may argue over the appropriate opt in date so Express Phone will address that issue here. The effective opt in date of the NewPhone ICA is October 20, 2010.

²³ 47 C.F.R. § 51.809.

²⁴ The issues raised in Docket No. 10071-TP relate to billing disputes between the parties; the disputes will be considered and resolved in a separate docket and are unrelated to the adoption issue.

The Commission itself addressed the issue of the effective date of an opt in the *Nextel Adoption Order*, which was affirmed by the federal court. In that case, AT&T argued that the adoption at issue should not become effective until 30 days after the final party executed the adoption contract.²⁵ The Commission rejected AT&T's position and held:

When an interconnection agreement is available for adoption under 47 C.F.R. 51.809(a), the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party.²⁶

The Commission noted the incumbent's right to object to the adoption but further said that "[t]he effective date should not be affected by the passage of time during litigation of this issue...."²⁷

That is, delay on the incumbent's part via unfounded objections does not delay the effective date.

The federal court affirmed the Commission's order finding that:

...FPSC's determination that backdating is allowed because "the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party" and that effective dates are not affected by any filed objections is not contrary to federal law.²⁸

Thus, in this case, the Express Phone adoption must be treated as effective on October 20, 2010 and the NewPhone ICA govern the parties' relationship from that day forward.

V. AT&T SHOULD BE REQUIRED TO REINSTATE SERVICE TO EXPRESS PHONE.

As mentioned earlier, in Docket No. 110071-TP, Express Phone and AT&T are involved in a billing dispute in which AT&T has demanded payment of disputed bills. The underlying issue relates to AT&T's refusal to appropriately credit promotional discounts as the Act requires.

As a result of this dispute, AT&T terminated service to Express Phone on March 29, 2011.

²⁵ *Nextel Adoption Order* at 10.

²⁶ *Id.* at 11.

²⁷ *Id.*

²⁸ *BellSouth Telecommunications, Inc. v. Florida Public Service Commission*, Case No. 4:09-cv-102/RS/WCS (April 19, 2010). (Exhibit 12).

However, had AT&T recognized the lawful adoption discussed herein, the NewPhone ICA would have been in effect at the time AT&T made its demand for payment and the payment that AT&T demanded would not be due because such payment relates to disputed amounts.

Attachment 7, section 1.4 of the NewPhone ICA requires payment of amounts that are *not* disputed:

Payment Responsibility. Payment of all charges will be the responsibility of Image Access. Image Access shall pay invoices by utilizing wire transfer services or automatic clearing house services. Image Access shall make payment to BellSouth for all services billed *excluding disputed amounts*. Payment for amounts disputed will be made in accordance with the provisions in section 2.3 below. BellSouth will not become involved in billing disputes that may arise between Image Access and Image Access's End User.

(Exhibit 13, emphasis added). Had AT&T recognized the NewPhone adoption when it was made, it would not have terminated Express Phone. Thus, AT&T should be directed to immediately reinstate service to Express Phone.

VI. CONCLUSION

For all of the reasons stated above, there is no genuine issue as to any material fact regarding Express Phone's adoption of the NewPhone ICA, and Express Phone is entitled to adopt the NewPhone ICA pursuant to 47 U.S.C. § 252(i) as a matter of law.

WHEREFORE, Express Phone requests that the Commission:

1. Issue a Summary Final Order that finds Express Phone's adoption of the NewPhone ICA, as amended, on October 20, 2010 valid pursuant to 47 U.S.C. § 252(i) and the FCC's implementing rule 47 C.F.R. § 51.809 as a matter of law.
2. Issue a Summary Final Order that finds such adoption effective on October 20, 2010.

3. Require AT&T to reinstate Express Phone's service which AT&T terminated on March 29, 2011;
4. Retain jurisdiction of this matter and the parties hereto as necessary to enforce the adopted NewPhone ICA;
5. Grant such other and further relief as the Commission deems just and proper.

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
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 Motion for Summary Final Order has been furnished by Hand Delivery (*) to the following, this 12th day of April 2011:

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

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

s/ Vicki Gordon Kaufman
Vicki Gordon Kaufman

EXHIBIT 1

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

EXHIBIT 2

TO: **Contract Management**
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

October 20, 2010

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.gccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of ACNA. See attached

Enclose documentation from NECA as confirmation of OCN(s). See attached

Enclose verification of type of entity and registration with Secretary of State. See attached

Form completed and submitted by: Mark Foster, mark@mfoosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

State of Florida

Department of State

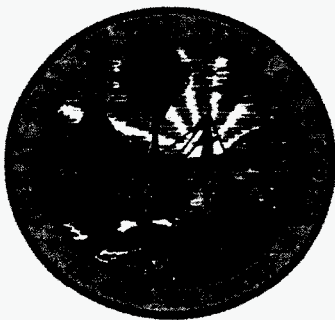
I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

*Given under my hand and the Great Seal of
Florida, at Tallahassee, the Capital, this the
Twentieth day of October, 2010*



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com/>.

Sincerely,



Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1627-CO-TX
ISSUED: September 12, 2000

CONSUMMATING ORDER

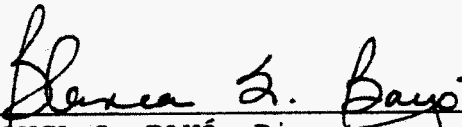
BY THE COMMISSION:

By Order No. PSC-00-1495-PAA-TX, issued August 18, 2000, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-00-1495-PAA-TX has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of September, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JAE

DOCUMENT NUMBER-DATE

11309 SEP 12 8

FPSO-FIDELITY REPORTING

✓
MEMORANDUM RECEIVED-FPSC

September 12, 2000 (1) SEP 12 AM 10:46

RECORDS AND REPORTING
TO: DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF LEGAL SERVICES (ELLIOTT) JAE BIC
RE: DOCKET NO. 000776-TX - APPLICATION FOR APPROVAL OF
TRANSFER OF AND NAME CHANGE ON EXISTING ALEC CERTIFICATE
NO. 5636 FROM EXPRESS TITLE FINANCIAL CORPORATION D/B/A
EXPRESS LOANS TO EXPRESS PHONE SERVICE, INC.

1627-CD

Attached is a CONSUMMATING ORDER, to be issued in the above-referenced docket. (Number of pages in order - 2)

JAE/anc

Attachment

cc: Division of Regulatory Oversight (Williams)

I: 000776co.jae

11/0

2/27/2004

General Codes - IAC Codes

1:47:11 PM EST

Printer Friendly Output

Note: You may want to print using landscape orientation for wider outputs

Code	XPV
Company Name	EXPRESS PHONE SERVICE, INC
Date Created	2/27/2004
Date Changed	2/27/2004
City	PENSACOLA
State/Province	FL
Requestor Name	THOMAS M. ARMSTRONG
Requestor Phone	850-444-9673
Requestor Company Code	XPV
IS2 Number	
Remarks	
Other Previous Names	
Consolidated	No
Status	Valid
Creator ID	clon1317
Changer ID	clon1317

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 Logo, Name and Trademark.

EXHIBIT 3

**AMENDMENT TO
INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE TELECOMMUNICATIONS ACT
OF 1996
BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T ALABAMA, AT&T FLORIDA, AT&T GEORGIA,
AT&T KENTUCKY, AT&T LOUISIANA, AT&T MISSISSIPPI,
AT&T NORTH CAROLINA, AT&T SOUTH CAROLINA AND
AT&T TENNESSEE
AND
IMAGE ACCESS, INC. D/B/A NEWPHONE**

The Interconnection Agreement dated April 19, 2006 by and between BellSouth Telecommunications, Inc. d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee ("AT&T") and Image Access, Inc. dba NewPhone, and in Florida, Image Access, Inc. d/b/a NewPhone, Inc. ("Image Access") ("Agreement") effective in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee is hereby amended as follows:

1. The Parties agree that ~~AT&T-STATE~~ shall be defined as the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.
2. Section 2.1 of the General Terms and Conditions is amended by adding the following section:
 - 2.1.1 Notwithstanding anything to the contrary in this section 2.1, the original expiration date of this Agreement, as modified by this Amendment, will be extended for a period of three (3) years from April 18, 2009 until April 18, 2012 (the "Extended Expiration Date"). The Agreement shall expire on the Extended Expiration Date; provided, however, that during the period from the effective date of this Amendment until the Extended Expiration Date, the Agreement may be terminated earlier either by written notice from Image Access, by AT&T pursuant to the Agreement's early termination provisions, or by mutual agreement of the parties.
3. The Parties acknowledge and agree that they will promptly amend the Agreement to reflect future changes of law as and when they may arise pursuant to the Agreement's change of law provision.
4. EXCEPT AS MODIFIED HEREIN, ALL OTHER TERMS AND CONDITIONS OF THE UNDERLYING AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
5. In entering into this Amendment neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the Intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof, which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.
6. This Amendment shall be filed with and is subject to approval by the Commission(s) and shall become effective on the date of the last signature executing the Amendment.

EXHIBIT 4

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

AT&T Wholesale
311 S. Akard, Room 940.01
Dallas, TX 75202
Fax 800 404-4548



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 5

TO: **Contract Management**
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

March 14, 2011

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.gccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of ACNA. See attached

Enclose documentation from NECA as confirmation of OCN(s). See attached

Enclose verification of type of entity and registration with Secretary of State. See attached

Form completed and submitted by: Mark Foster, mark@mfoosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com>.

Sincerely,



Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1495-PAA-TX
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TRANSFER OF AND NAME CHANGE ON
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On June 27, 2000, Express Title Financial Corporation d/b/a
Express Loans (Express Loans) and Express Phone Service, Inc.
(Express Phone) filed with this Commission a joint request for
transfer of and name change on Alternative Local Exchange
Telecommunications (ALEC) Certificate No. 5636 from Express Loans
to Express Phone.

Express Loans and Express Phone have complied with Rule 25-
24.815, Florida Administrative Code, regarding the transfer of ALEC
certificates. We find the transfer to be in the public interest
and, therefore, approve the transfer. ALEC Certificate No. 5636
shall be amended to reflect that Express Phone is the holder of
this certificate.

DOCUMENT NUMBER DATE

10135 AUG 18 8

THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 2

If this Order becomes final and effective, it shall serve as Express Phone's certificate. It should, therefore, be retained by Express Phone as proof of certification and as evidence of the name change.

ALECs are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Alternative Local Exchange Companies. ALECs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapters 25-4, Florida Administrative Code.

In addition, Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications service to provide access to 911 services. This Commission has no rules specifying the 911 services that either an incumbent local exchange company (ILEC) or an ALEC must provide; however, 911 service that is inferior to that provided by the ILEC would clearly not be in the public interest. Accordingly, we find that Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications services to provide at least the same level of 911 services as that provided by the ILEC serving the same area.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for transfer of and name change on Alternative Local Exchange Telecommunications Certificate No. 5636 from Express Title Financial Corporation d/b/a Express Loans to Express Phone Service, Inc., is hereby approved. It is further

ORDERED that Express Phone Service, Inc. Alternative Local Exchange Telecommunications Certificate No. 5636 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that Alternative Local Exchange Telecommunications Certificate No. 5636 shall be amended to reflect that Express Phone Service, Inc., is the holder of this certificate.

ORDERED that this Order will serve as Express Phone Service, Inc.'s certificate and that this Order should be retained as proof of certification and as evidence of the name change. It is further

ORDERED that each alternative local exchange company which provides basic local telecommunications services shall provide at least the same level of 911 services as that provided by the

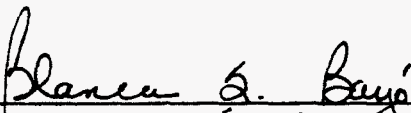
ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 3

incumbent local exchange company serving the same area. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

PW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 4

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

9/5-

✓ RECEIVED-FISC

MEMORANDUM

August 16, 2000 AUG 18 AM 10:48

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *W*

RE: DOCKET NO. 000776-TX REQUEST FOR NAME CHANGE ON PAY TELEPHONE CERTIFICATE NO. 6017 FROM JESUS SOLE TO JESUS SOLE D/B/A ADVANCE TELEPHONE USA COMPANY.
Express Title 1495-DAA

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING TRANSFER OF AND NAME CHANGE ON ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE, to be issued in the above-referenced docket. (Number of pages in order - *4*)

KMP/anc
 Attachment
 cc: Division of Regulatory Oversight (Williams)
 I: 000776.pw

pg. 1

11/0

State of Florida

Department of State

I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Twentieth day of October, 2010



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

EXHIBIT 6

AT&T Wholesale
311 S. Akard, 9th Floor
Dallas, TX 75202
Fax 800 404-4548



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,

A handwritten signature in black ink that reads "Bill Bockelman". The signature is written in a cursive style with a large, looping "B" and "E".

Bill Bockelman
Director

EXHIBIT 7

From: Mark Foster [<mailto:mark@mfoosterlaw.com>]
Sent: Monday, March 28, 2011 12:02 PM
To: 'JOHNSON, JULIA H (ATTSI)'
Subject: Express Phone Service, Inc. - Section 252(i) Adoption Request

Dear Ms. Johnson:

Attached please find a March 25, 2011, letter from Bill Bockelman of AT&T. He identifies you as the person to contact regarding the pending request of Express Phone Service, Inc. to

adopt the interconnection agreement between AT&T and Image Access, Inc. for the States of Alabama, Florida and Mississippi.

Conditions (1) and (2) set out in the letter are contrary to the federal Telecommunications Act of 1996 and the current resale agreement between the parties.

Section 252(i) of the Act provides:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The statute makes no exception to the requirement that an ILEC such as AT&T must allow a CLEC to adopt an interconnection agreement between the ILEC and another CLEC. It certainly doesn't

say that the ILEC can require that all past due amounts, including disputed amounts, be “cured” prior to adoption of another interconnection agreement. The statute also makes no provision for a “suitable form of security” to be provided prior to adoption. The FCC has explained the statutory requirement in its 251 Order:

19. We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i).^[FN66] Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Moreover, the existing resale agreement between the parties provides at Section 11 of General Terms and Conditions that BellSouth shall make available to Express Phone any entire resale agreement filed and approved.

With respect to Condition (2) in the attached letter, Express Phone currently maintains a suitable security with AT&T pursuant to an agreement between Express Phone and AT&T through its attorney Reginald Greene dated September 24, 2010.

Mr. Bockelman’s letter states that “to the extent 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.” Please understand that Express Phone’s March 14, 2011, requests to adopt the Image Access agreements are valid in and of themselves. There is no legal requirement to furnish any more written requests. Without waiving that position, this email communication can be considered by AT&T as the requested “subsequent written request.”

The requested interconnection agreements should be made available by AT&T through appropriate adoption agreements without delay.

Thanks,

Mark

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

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EXHIBIT 8



March 29, 2011

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Notice of the Adoption by Express Phone Service, Inc. of the Existing Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. and Image Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended, Docket No. _____

Dear Ms. Cole:

Express Phone, Inc. (Express Phone) hereby provides notice to the Florida Public Service Commission that effective immediately Express Phone has adopted in its entirety, the Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. (AT&T) and Image Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended (ICA).¹ The ICA may be viewed at <http://www.floridapsc.org/library/FILINGS/06/03022-06/03022-06.PDF> . The amendment may be viewed at <http://www.floridapsc.org/library/FILINGS/09/03179-09/03179-09.pdf> .

Express Phone exercises its right to adopt the New Phone ICA pursuant to the clear and unambiguous language of 47 U.S.C. § 252(i). Section 252(i) provides:

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

¹ This Interconnection Agreement was extended via amendment to April 18, 2012.

850.681.3828
850.681.8788 fax

118 N. Gadsden Street
Tallahassee, Florida 32301

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Further, 47 U.S.C. § 51.809(a) provides:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

Additionally, the FCC has made it clear in its 251 Unbundling Order the reasons that adoption must be permitted²:

We conclude that under an all-or-nothing rule, re-requesting carriers will be protected from discrimination, as intended by section 252(i).[FN66] Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Express Phone has attempted on two occasions to secure AT&T's acknowledgement of Express Phone's adoption of the New Phone ICA. First, on October 21, 2010, Express Phone corresponded with AT&T indicating its desire to adopt the New Phone ICA. AT&T unlawfully refused to recognize such adoption by imposing conditions on Express Phone which appear nowhere in section 252(i) or its implementing rules. AT&T asserted that Express Phone was not entitled to adopt the New Phone agreement because Express Phone's ICA had not yet expired. (Attachment 1).

AT&T took this position despite the fact that section 11 of the General Terms and Conditions of the ICA between Express Phone and AT&T expressly provides that:

² 19 FCC Rcd, 13494 (2004).

Ms. Ann Cole
March 29, 2011
Page 3

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.

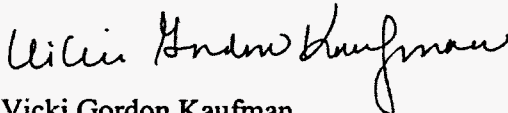
On March 14, 2011, Express Phone again sought to adopt the New Phone ICA. While AT&T did not raise the same issue as it did in October, it again seeks to impose additional burdensome conditions that appear nowhere in section 252(i). (Attachment 2).

As noted above, Express Phone has contacted AT&T regarding Express Phone's adoption of the New Phone ICA, but AT&T refuses to voluntarily acknowledge and honor Express Phone's rights regarding such adoption.

The New Phone ICA Express Phone adopts today replaces in its entirety the existing ICA between Express Phone and AT&T.

Please contact me with any questions.

Sincerely,


Vicki Gordon Kaufman

Cc: Lee Eng Tan
Beth Salak
Tom Armstrong
Mark Foster
Manual Gurdian

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

AT&T Wholesale
311 S. Akard, Room 940.01
Dallas, TX 75202
Fax 800 404-4548



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.

Attachment 1

AT&T Wholesale
311 S. Akard, 9th Floor
Dallas, TX 75202
Fax 800 404-4548



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(f) 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,

A handwritten signature in black ink that reads "Bill Bockelman". The signature is written in a cursive, flowing style.

Bill Bockelman
Director

Attachment 2

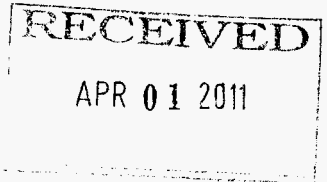
EXHIBIT 9



Manuel A. Gurdian
General Attorney

AT&T Florida
150 South Monroe Street
Suite 400
Tallahassee, FL 32301

T: (305) 347-5561
F: (305) 577-4491
manuel.gurdian@att.com



March 29, 2011

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

Re: Notice of the Adoption by Express Phone Service, Inc. of the Existing Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. and Image Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended, Docket No. _____

Dear Ms. Cole:

AT&T Florida is in receipt of Express Phone, Inc.'s ("Express Phone") "notice" letter purporting to unilaterally adopt an interconnection agreement different from its current and effective Agreement on file with the Commission in Docket No. 060714-TP. Please be advised that AT&T Florida objects and does not consent to Express Phone's letter and asserts that the letter does not alter the effectiveness of the current Agreement between AT&T Florida and Express Phone, which was signed by both parties and approved by the Commission.

As previously indicated in AT&T Florida's Notice of Suspension and Disconnection dated February 23, 2011, AT&T Florida intends to move forward with disconnection of service to Express Phone today if Express Phone does not cure its non-payment breach.

Sincerely,

Manuel A. Gurdian

cc: All Parties of Record
Jerry D. Hendrix
Greg Follensbee
E. Earl Edenfield, Jr.

CERTIFICATE OF SERVICE
Notice of the Adoption by Express Phone Service, Inc. of the
Existing Interconnection, Unbundling, Resale and Collocation
Agreement Between BellSouth Telecommunications, Inc. and Image
Access, Inc. d/b/a New Phone, dated November 20, 2006, as amended,

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via
Electronic Mail and First Class U.S. Mail this 29th day of March, 2011 to the following:

Adam Teitzman
Staff Counsel
Florida Public Service
Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
ateitzma@psc.state.fl.us

Keefe Law Firm
Vicki Gordon Kaufman
118 North Gadsden Street
Tallahassee, FL 32301
Tel. No.: 850-681-3828
Fax No.: 850-681-8788
vkaufman@kagmlaw.com



Manuel A. Gurdian

EXHIBIT 10

From: JOHNSON, JULIA H (ATTSI) [mailto:jj2506@att.com]
Sent: Wednesday, April 06, 2011 9:28 AM
To: Mark Foster
Subject: RE: Express Phone Service, Inc. - Section 252(i) Adoption Request

Dear Mr. Foster:

I write in response to your e-mail below, dated March 28, 2011, regarding the March 25 letter that AT&T sent to Express Phone Service, Inc. ("Express Phone") in response to Express Phone's request to adopt the Interconnection Agreement between BellSouth Telecommunications, Inc. ("AT&T") and Image Access, Inc. for the States of Alabama, Florida, and Mississippi ("Image Access ICA").

I understand that after AT&T's receipt of your email, Express Phone filed Notices with the Alabama, Florida and Mississippi commissions purporting to unilaterally adopt the Image Access ICA for these states without the consent or agreement from AT&T. AT&T has filed responses to those Notices with the commissions and I refer you to those responses to address the concerns you raise.

I note that Express Phone did not cure its non-payment breach within the time specified in AT&T's February 23, 2011 letter, and it therefore did not meet a necessary condition that AT&T specified in its March 25 response. As a result, Express Phone's request to adopt the Image Access ICA is denied.

The remaining issues raised in your March 28 email have been referred to the AT&T Legal Department.

Julia H. Johnson
Lead Interconnection Agreements Manager
AT&T Wholesale
(404) 927-7806

This email and any files transmitted with it are the property of AT&T, are confidential, and are intended solely for the use of the individual or entity to whom this email is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please notify the sender at (404) 927-7806 and delete this message from your computer immediately. Any other use, dissemination, forwarding, printing or copying of this email is strictly prohibited.

From: Mark Foster [mailto:mark@mfoosterlaw.com]
Sent: Monday, March 28, 2011 1:02 PM
To: JOHNSON, JULIA H (ATTSI)
Subject: Express Phone Service, Inc. - Section 252(i) Adoption Request

Dear Ms. Johnson:

Attached please find a March 25, 2011, letter from Bill Bockelman of AT&T. He identifies you as the person to contact regarding the pending request of Express Phone Service, Inc. to

adopt the interconnection agreement between AT&T and Image Access, Inc. for the States of Alabama, Florida and Mississippi.

Conditions (1) and (2) set out in the letter are contrary to the federal Telecommunications Act of 1996 and the current resale agreement between the parties.

Section 252(i) of the Act provides:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The statute makes no exception to the requirement that an ILEC such as AT&T must allow a CLEC to adopt an interconnection agreement between the ILEC and another CLEC. It certainly doesn't say that the ILEC can require that all past due amounts, including disputed amounts, be "cured" prior to adoption of another interconnection agreement. The statute also makes no provision for a "suitable form of security" to be provided prior to adoption. The FCC has explained the statutory requirement in its 251 Order:

19. We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i).^[FN66] Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Moreover, the existing resale agreement between the parties provides at Section 11 of General Terms and Conditions that BellSouth shall make available to Express Phone any entire resale agreement filed and approved.

With respect to Condition (2) in the attached letter, Express Phone currently maintains a suitable security with AT&T pursuant to an agreement between Express Phone and AT&T through its attorney Reginald Greene dated September 24, 2010.

Mr. Bockelman's letter states that "to the extent 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." Please understand that Express Phone's March 14, 2011, requests to adopt the Image Access agreements are valid in and of themselves. There is no legal requirement to furnish any more written requests. Without waiving that position, this email communication can be considered by AT&T as the requested "subsequent written request."

The requested interconnection agreements should be made available by AT&T through appropriate adoption agreements without delay.

Thanks,

Mark

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

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EXHIBIT 11



April 4, 2011

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: *Amended* Notice of the Adoption by Express Phone Service, Inc. of the Existing Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. and Image Access, Inc. d/b/a NewPhone, dated November 20, 2006, as amended, Docket No. 110087-TP

Dear Ms. Cole:

Express Phone, Inc. (Express Phone) hereby provides notice to the Florida Public Service Commission that effective October 20, 2010, Express Phone adopted in its entirety, the Interconnection, Unbundling, Resale and Collocation Agreement Between BellSouth Telecommunications, Inc. (AT&T) and Image Access, Inc. d/b/a NewPhone, dated November 20, 2006, as amended (NewPhone ICA).¹ The ICA may be viewed at <http://www.floridapsc.org/library/FILINGS/06/03022-06/03022-06.PDF>. The amendment may be viewed at <http://www.floridapsc.org/library/FILINGS/09/03179-09/03179-09.PDF>.

Express Phone exercised its right to adopt the NewPhone ICA pursuant to the clear and unambiguous language of 47 U.S.C. § 252(i). Section 252(i) provides:

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

¹ This Interconnection Agreement was extended via amendment to April 18, 2012.

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850.681.8788 fax
118 N. Gadsden Street
Tallahassee, Florida 32301

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Further, 47 U.S.C. § 51.809(a) provides:

An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.

Additionally, the FCC has made it clear in its *Second Report and Order*, ¶ 19, the reasons that adoption must be permitted:²

We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i). Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Further, this Commission has previously considered the adoption issue and clearly stated that an adoption is presumptively valid and effective upon receipt of the adoption notice.³

² Second Request and Order in the matter of FCC Docket No. 01-338 Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, (Second Report and Order) ¶ 19, fn omitted.

³ In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by NPCR, Inc. d/b/a Nextel Partners; Docket No. 070368-TP and In re: Notice of adoption of existing interconnection agreement between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Sprint Communications Company Limited Partnership, Sprint Communications Company L.P., Sprint Spectrum L.P., by Nextel South Corp. and Nextel West Corp. Docket No. 070369-TP, Order No. PSC-08-0584-FOF-TP at 11, *affirmed*, *BellSouth Telecommunications, Inc. v. Florida Public Service Commission*, Case No. 4:09-cv-102/RS/WCS (April 19, 2010).

Express Phone attempted on two occasions to secure AT&T's acknowledgement of Express Phone's adoption of the NewPhone ICA. First, on October 21, 2010, Express Phone corresponded with AT&T indicating its adoption of the NewPhone ICA. (Attachment 1). AT&T unlawfully refused to recognize such adoption by imposing conditions on Express Phone which appear nowhere in section 252(i) or its implementing rules. AT&T asserted that Express Phone was not entitled to adopt the NewPhone ICA because Express Phone's ICA had not yet expired. (Attachment 2).

AT&T took this position despite the fact that section 11 of the General Terms and Conditions of the ICA between Express Phone and AT&T expressly provides that:

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.

On March 14, 2011, Express Phone again sought to adopt the NewPhone ICA. (Attachment 3). While AT&T did not raise the same obstacle as it did in October, it sought to impose additional burdensome conditions that appear nowhere in section 252(i). (Attachment 4). Express Phone clearly set out the basis for its adoption in an e-mail to AT&T, to no avail. (Attachment 5).⁵

As noted above, Express Phone has contacted AT&T regarding Express Phone's adoption of the NewPhone ICA, but AT&T refuses to voluntarily acknowledge and honor Express Phone's rights regarding such adoption.

The NewPhone ICA Express Phone adopted on October 20, 2010 replaces in its entirety the ICA between Express Phone and AT&T.

⁵ It should be noted that since AT&T has refused to recognize the lawful adoption, upon the Commission's confirmation of such adoption, AT&T should be required to reinstate service to Express Phone, which it terminated on March 29, 2010 due to a billing dispute. The dispute is moot under the adoption of the NewPhone ICA.

Ms. Ann Cole
April 4, 2011
Page 4

Please contact me with any questions.

Sincerely,


Vicki Gordon Kaufman

VGK/bjd

Enclosures

cc: Lee Eng Tan
Tom Armstrong
Mark Foster
Manual Gurdian

TO: Contract Management
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

October 20, 2010

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.gccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of ACNA. See attached

Enclose documentation from NECA as confirmation of OCN(s). See attached

Enclose verification of type of entity and registration with Secretary of State. See attached

Form completed and submitted by: Mark Foster, mark@mfoosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

Attachment 1

State of Florida

Department of State

I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Twentieth day of October, 2010



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>



Services, Inc.

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com/>.

Sincerely,

Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1627-CO-TX
ISSUED: September 12, 2000

CONSUMMATING ORDER

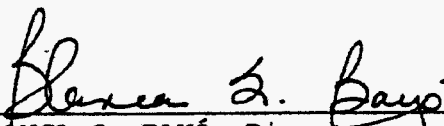
BY THE COMMISSION:

By Order No. PSC-00-1495-PAA-TX, issued August 18, 2000, this Commission proposed to take certain action, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. No response has been filed to the order. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-00-1495-PAA-TX has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 12th day of September, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JAE

DOCUMENT NUMBER-DATE

11309 SEP 12 8

FPSC PUBLIC REPORTING

✓
M E M O R A N D U M RECEIVED-FPSC

September 12, 2000.) SEP 12 AM 10:46

RECORDS AND
REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (ELLIOTT) JAE BIK

RE: DOCKET NO. 000776-TX - APPLICATION FOR APPROVAL OF
TRANSFER OF AND NAME CHANGE ON EXISTING ALEC CERTIFICATE
NO. 5636 FROM EXPRESS TITLE FINANCIAL CORPORATION D/B/A
EXPRESS LOANS TO EXPRESS PHONE SERVICE, INC.

1627-CO

Attached is a CONSUMMATING ORDER, to be issued in the above-
referenced docket. (Number of pages in order - 2)

JAE/anc

Attachment

cc: Division of Regulatory Oversight (Williams)

I: 000776co.jae

11/0

COMMON LANGUAGE Products

eCoder

2/27/2004

General Codes - IAC Codes

1:47:11 PM EST

Printer Friendly Output

Note: You may want to print using landscape orientation for wider outputs

Code	XPV
Company Name	EXPRESS PHONE SERVICE, INC
Date Created	2/27/2004
Date Changed	2/27/2004
City	PENSACOLA
State/Province	FL
Requestor Name	THOMAS M. ARMSTRONG
Requestor Phone	850-444-9673
Requestor Company Code	XPV
LSZ Number	
Remarks	
Other Previous Names	
Consolidated	No
Status	Valid
Creator ID	cior1317
Changer ID	cior1317

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Legal Notice and Trademarks

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

AT&T Wholesale
311 S. Alford, Room 940.01
Dallas, TX 75202
Fax 800 404-4548



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(f) 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.

Attachment 2

TO: Contract Management
311 S Akard
Four AT&T Plaza, 9th floor
Dallas, TX 75202
Fax: 1-800-404-4548

March 14, 2011

RE: Request to Adopt Interconnection Agreement

Director – Contract Management:

Express Phone Service, Inc. ("Carrier") desires to exercise its right to opt into the existing Interconnection Agreement ("ICA") between Southwestern Bell Texas ("AT&T") and Image Access, Inc. d/b/a NewPhone, Inc. in the state of Florida. Carrier understands that its request to opt into the ICA is subject to applicable requirements governing this process as set forth in Section 252(i) and Rule 51.809. Moreover, if the Agreement has not been amended to reflect changes of law, Carrier acknowledges that it is obligated to negotiate in good faith the execution of an Amendment regarding such change of law and agrees to complete said execution within 30 days after it has opted into the ICA. AT&T will reply in writing to this formal request.

	CARRIER NOTICE CONTACT INFO*
NOTICE CONTACT NAME	Tom Armstrong
NOTICE CONTACT TITLE	President
STREET ADDRESS	1803 W. Fairfield Drive
ROOM OR SUITE	Unit 1
CITY, STATE, ZIP CODE	Pensacola, FL 32501
E-MAIL ADDRESS	tom@dei.gccoxmail.com
TELEPHONE NUMBER	850-291-6415
FACSIMILE NUMBER	850-305-1151
STATE OF INCORPORATION	Texas

Enclose proof of certification for state requested.

Enclose documentation from Telcordia as confirmation of ACNA. See attached

Enclose documentation from NECA as confirmation of OCN(s). See attached

Enclose verification of type of entity and registration with Secretary of State. See attached

Form completed and submitted by: Mark Foster, mark@mfosterlaw.com

Contact number: 512-708-8700

* All requested carrier contact information and documentation are required. Be aware that the failure to provide accurate and complete information may result in return of this form to you and a delay in processing your request.

Attachment 3

NECA

Services, Inc.

80 South Jefferson Road • Whippany, New Jersey 07981

September 03, 2002

Mr. Tom Armstrong
Express Title Financial Corporation dba Express Telephone Services
1020 N. 9th Ave.
Pensacola, Florida 32501
Phone: 850-444-9673
Fax: 850-444-9674
Email: tom@dei.gccoxmail.com

Dear Mr. Tom Armstrong:

This letter confirms your request for company code(s) for Express Title Financial Corporation dba Express Telephone Services, headquartered at 1020 N. 9th Ave., Pensacola, Florida 32501.

<u>Company Code</u>	<u>Company Name</u>	<u>Category</u>
126A	Express Title Financial Corporation dba Express Telephone Services - FL	ULEC (Florida)

If you have any questions, please contact the Company Code Administrator on (973)884-8249 or at ccfees@necaservices.com. For future code requests, please use our online ordering system, or print the latest version of the company code request form from our website at <http://www.necaservices.com>.

Sincerely,



Melanie Proehl-Steinhart
Manager - Tariff No. 4 and AOCN Services

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for approval
of transfer of and name change
on existing ALEC Certificate No.
5636 from Express Title
Financial Corporation d/b/a
Express Loans to Express Phone
Service, Inc.

DOCKET NO. 000776-TX
ORDER NO. PSC-00-1495-PAA-TX
ISSUED: August 18, 2000

The following Commissioners participated in the disposition of
this matter:

J. TERRY DEASON, Chairman
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING TRANSFER OF AND NAME CHANGE ON
ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

On June 27, 2000, Express Title Financial Corporation d/b/a
Express Loans (Express Loans) and Express Phone Service, Inc.
(Express Phone) filed with this Commission a joint request for
transfer of and name change on Alternative Local Exchange
Telecommunications (ALEC) Certificate No. 5636 from Express Loans
to Express Phone.

Express Loans and Express Phone have complied with Rule 25-
24.815, Florida Administrative Code, regarding the transfer of ALEC
certificates. We find the transfer to be in the public interest
and, therefore, approve the transfer. ALEC Certificate No. 5636
shall be amended to reflect that Express Phone is the holder of
this certificate.

DOCUMENT NUMBER DATE

10135 AUG 18 8

THE FLORIDA PUBLIC SERVICE COMMISSION

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 2

If this Order becomes final and effective, it shall serve as Express Phone's certificate. It should, therefore, be retained by Express Phone as proof of certification and as evidence of the name change.

ALECs are subject to Chapter 25-24, Florida Administrative Code, Part XV, Rules Governing Telecommunications Service Provided by Alternative Local Exchange Companies. ALECs are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapters 25-4, Florida Administrative Code.

In addition, Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications service to provide access to 911 services. This Commission has no rules specifying the 911 services that either an incumbent local exchange company (ILEC) or an ALEC must provide; however, 911 service that is inferior to that provided by the ILEC would clearly not be in the public interest. Accordingly, we find that Section 364.337(2), Florida Statutes, requires ALECs which provide basic local telecommunications services to provide at least the same level of 911 services as that provided by the ILEC serving the same area.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the request for transfer of and name change on Alternative Local Exchange Telecommunications Certificate No. 5636 from Express Title Financial Corporation d/b/a Express Loans to Express Phone Service, Inc., is hereby approved. It is further

ORDERED that Express Phone Service, Inc. Alternative Local Exchange Telecommunications Certificate No. 5636 is subject to the terms and conditions set forth in the body of this Order. It is further

ORDERED that Alternative Local Exchange Telecommunications Certificate No. 5636 shall be amended to reflect that Express Phone Service, Inc., is the holder of this certificate.

ORDERED that this Order will serve as Express Phone Service, Inc.'s certificate and that this Order should be retained as proof of certification and as evidence of the name change. It is further

ORDERED that each alternative local exchange company which provides basic local telecommunications services shall provide at least the same level of 911 services as that provided by the

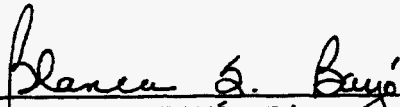
ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 3

incumbent local exchange company serving the same area. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

By ORDER of the Florida Public Service Commission, this 18th day of August, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

PW

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

ORDER NO. PSC-00-1495-PAA-TX
DOCKET NO. 000776-TX
PAGE 4

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 8, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

9/5-

✓ RECEIVED-FR-SC

MEMORANDUM

August 16, 2000 AUG 18 AM 10:48

RECORDS AND REPORTING

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (PEÑA) *HL*

RE: DOCKET NO. 000776-TX ~~REQUEST~~ FOR NAME CHANGE ON PAY TELEPHONE CERTIFICATE NO. 6017 FROM JESUS SOLE TO JESUS SOLE D/B/A ADVANCE TELEPHONE USA COMPANY.
Express Title 1495-DAA

Attached is a NOTICE OF PROPOSED AGENCY ACTION ORDER APPROVING TRANSFER OF AND NAME CHANGE ON ALTERNATIVE LOCAL EXCHANGE TELECOMMUNICATIONS CERTIFICATE, to be issued in the above-referenced docket. (Number of pages in order - 4)

KMP/anc
 Attachment
 cc: Division of Regulatory Oversight (Williams)
 I: 000776.pw

pg. 1

11/0.

State of Florida

Department of State

I certify from the records of this office that EXPRESS PHONE SERVICE, INC. is a corporation organized under the laws of the State of Florida, filed on May 17, 1999.

The document number of this corporation is P99000046171.

I further certify that said corporation has paid all fees due this office through December 31, 2010, that its most recent annual report was filed on March 18, 2010, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Twentieth day of October, 2010



Laura K. Roberts
Secretary of State

Authentication ID: 900186913469-102010-P99000046171

To authenticate this certificate, visit the following site, enter this ID, and then follow the instructions displayed.

<https://efile.sunbiz.org/certauthver.html>

AT&T Wholesale
311 S. Akard, 9th Floor
Dallas, TX 75202
Fax 800 404-4548



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,

A handwritten signature in black ink that reads "Bill Bockelman".

Bill Bockelman
Director

Attachment 4

From: Mark Foster [<mailto:mark@mfoosterlaw.com>]
Sent: Monday, March 28, 2011 12:02 PM
To: 'JOHNSON, JULIA H (ATTSI)'
Subject: Express Phone Service, Inc. - Section 252(i) Adoption Request

Dear Ms. Johnson:

Attached please find a March 25, 2011, letter from Bill Bockelman of AT&T. He identifies you as the person to contact regarding the pending request of Express Phone Service, Inc. to

adopt the interconnection agreement between AT&T and Image Access, Inc. for the States of Alabama, Florida and Mississippi.

Conditions (1) and (2) set out in the letter are contrary to the federal Telecommunications Act of 1996 and the current resale agreement between the parties.

Section 252(i) of the Act provides:

(i) AVAILABILITY TO OTHER TELECOMMUNICATIONS CARRIERS- A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

The statute makes no exception to the requirement that an ILEC such as AT&T must allow a CLEC to adopt an interconnection agreement between the ILEC and another CLEC. It certainly doesn't

say that the ILEC can require that all past due amounts, including disputed amounts, be “cured” prior to adoption of another interconnection agreement. The statute also makes no provision for a “suitable form of security” to be provided prior to adoption. The FCC has explained the statutory requirement in its 251 Order:

19. We conclude that under an all-or-nothing rule, requesting carriers will be protected from discrimination, as intended by section 252(i).^[FN66] Specifically, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

Moreover, the existing resale agreement between the parties provides at Section 11 of General Terms and Conditions that BellSouth shall make available to Express Phone any entire resale agreement filed and approved.

With respect to Condition (2) in the attached letter, Express Phone currently maintains a suitable security with AT&T pursuant to an agreement between Express Phone and AT&T through its attorney Reginald Greene dated September 24, 2010.

Mr. Bockelman's letter states that “to the extent 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.” Please understand that Express Phone's March 14, 2011, requests to adopt the Image Access agreements are valid in and of themselves. There is no legal requirement to furnish any more written requests. Without waiving that position, this email communication can be considered by AT&T as the requested “subsequent written request.”

The requested interconnection agreements should be made available by AT&T through appropriate adoption agreements without delay.

Thanks,

Mark

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

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EXHIBIT 12

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

BELLSOUTH TELECOMMUNICATIONS,
INC., d/b/a AT&T FLORIDA,

Plaintiff,

vs.

CASE NO. 4:09-cv-102/RS/WCS

FLORIDA PUBLIC SERVICE
COMMISSION, et al.,

Defendants.

ORDER

This is a challenge under the Telecommunications Act of 1996, 47 U.S.C. §§ 251-52, of a decision by the Florida Public Service Commission (FPSC) to approve an “opt-in” interconnection agreement between Nextel and AT&T Florida pursuant to 47 U.S.C. §252(i). Plaintiff alleges that in approving Nextel’s “opt-in” agreement, the FPSC violated federal law by backdating the approved agreement. In the alternative, Plaintiff alleges that FPSC’s decision to backdate the approved agreement to June 8, 2007, was erroneous and should be corrected to reflect a different date.

I. Standard of Review

The court reviews *de novo* questions of federal law. *Nuvox Commc 'ns, Inc. v. BellSouth Commc 'ns, Inc.*, 530 F.3d 1330, 1333 (11th Cir. 2008). “Federal courts generally accord no deference to the state commission’s interpretations of federal law.” *Id.* (quoting *MCI Worldcom Commc 'ns, Inc. v. BellSouth Telecommc 'ns, Inc.*, 446 F.3d 1164, 1170 (11th Cir. 2006)). The state public service commission’s findings of fact “will not be disturbed unless they are arbitrary and capricious or not supported by substantial evidence.” *Id.*

II. Background

This action arises from proceedings before the FPSC initiated on June 8, 2007, by notices filed by Nextel of its decision to opt-in to the January 2001 interconnection agreement (ICA) between Plaintiff and Sprint Communications Company L.P. and Sprint Spectrum L.P. (Sprint) pursuant to 47 U.S.C. § 252(i). The Sprint ICA provided that the agreement would continue in force at least through December 31, 2004, and that it would continue on a month-to-month basis thereafter unless a party exercised its right to terminate the agreement. The Sprint ICA continued in force on a month-to-month basis from January 1, 2005 until May 2007, when Sprint elected to extend its ICA by three years pursuant to merger commitments made voluntarily by AT&T Florida when it merged with BellSouth.

By joint motion with the FPSC, Sprint and AT&T set a commencement date for the extension of March 20, 2007.

The FPSC case presented two primary issues: (1) whether Nextel should be allowed to opt into the Sprint ICA; and (2) if so, the date on which Nextel's adoption should be considered effective. The FPSC found that § 252(i) authorized Nextel to opt into the Sprint agreement. Turning to the effective date, the FPSC rejected Plaintiff's argument that the Sprint ICA was expired when Nextel sought to adopt it on June 8, 2007, because AT&T and Sprint had previously set March 20, 2007, as the start date for a three-year extension to the ICA. The FPSC determined "When Sprint and AT&T filed their joint motion to approve [the extension] amendment . . . [they agreed] that the interconnection agreement was in operation and enforceable by both parties." (Doc. 34, p. 14). The FPSC also set forth its general rule for determining the effective date of an adopted agreement: "When an interconnection agreement is available for adoption under 47 C.F.R. 51.809(a), the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party." *Id.* at 15. FPSC found that Plaintiff's objections to Nextel's opt-in did not alter the rule, "The effective date should not be affected by the passage of time during the litigation of [AT&T's objection], and the effective date shall remain June 8, 2007."

Plaintiff has never articulated how the FPSC's determination has damaged it. Plaintiff's briefings rely more on "creative" argument than on fact and legal precedent.

III. Analysis

A. Backdating

Plaintiff argues, without providing legal basis, that federal law prohibits the backdating of opt-in ICAs. A review of statutes, regulations, and case law persuades me that Federal law is silent on the issue of backdating. Plaintiff argues that 47 U.S.C. § 252(e)(1), which provides for state commission review of ICAs reached through negotiation or arbitration, creates a general requirement for state commission approval as a condition precedent for all ICAs to become effective. Plaintiff's argument is meritless, however, because the opt-in ICA at issue in this case is governed by § 252(i) and the FCC's rules implementing that section, not by § 252(e). The FCC has stated that the administration of § 252(i) opt-in agreements is left to the discretion of the individual state public service commissions.

Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 16141, ¶ 1321. Consequently, FPSC's determination that backdating is allowed because "the adoption is considered presumptively valid and effective upon receipt of the notice by the adoption party"

and that effective dates are not affected by any filed objections is not contrary to federal law.

B. Reasonable Period of Time

In implementing § 252(i), the FCC has directed that an ICA “shall remain available” for opt in “for a reasonable period of time after the approved agreement is available for public inspection.” 47 C.F.R § 51.809(c). Plaintiff would have the court find that the Nextel ICA failed to meet the “reasonable time” limitation of 47 C.F.R § 51.809(c). The FCC, however, has left the interpretation of its regulation to the individual state commissions. The fact that the various state commissions will interpret this ambiguous phrase differently is a natural consequence of permitting fifty state commissions to interpret and apply the law. In fact, it is likely that the FCC intended this consequence when choosing the language, encouraging each state commission to determine its own standard of “reasonableness.” If the FCC did not want each commission to have the ability to determine reasonableness, it surely would have set a specific timeframe that it considered reasonable.

In this case, FPSC found reasonable the eighty days between March 20, 2007, the date Sprint and AT&T set a commencement date for the three-year extension of their ICA, and June 8, 2007, the date Nextel filed its opt-in notice

with the Commission. Plaintiff's argument that the court cannot consider this finding because it is "a new *post hoc* rationale" is meritless. (Doc. 36, p. 25). A review of the record makes clear that FPSC did consider the March 20 commencement date when ruling on Nextel's agreement. (Doc. 34, p. 14). Furthermore, since the AT&T/Sprint ICA extension had to be approved by FPSC and was approved before the ruling on the Nextel opt-in agreement, it is obvious that FPSC did consider the effective date of the extension.

IV. Conclusion

Upon a *de novo* review of federal law, I find that the orders of FPSC challenged by Plaintiff were lawful and contained no plain error.

IT IS ORDERED:

1. This case is **dismissed with prejudice**.
2. The clerk is directed to close the file.

ORDERED on April 19, 2010.

/S/ Richard Smoak

RICHARD SMOAK
UNITED STATES DISTRICT JUDGE

EXHIBIT 13

- 1.3.10 BellSouth shall refund, release or return any security, including all accrued interest, if any, within thirty (30) days of its determination that such security is no longer required by the terms of this Section 1.3 above or within thirty (30) days of Image Access establishing that it satisfies the standards set forth in Section 1.3.5 above. Image Access may make the requisite showing in a letter directed to the Notices recipients set forth in the General Terms and Conditions of this Agreement. Image Access shall attach supporting financial reports to such letter and such documents shall be accorded confidential treatment, in accordance with Section 7 of the General Terms and Conditions, unless such documents are otherwise publicly available.
- 1.4 Payment Responsibility. Payment of all charges will be the responsibility of Image Access. Image Access shall pay invoices by utilizing wire transfer services or automatic clearing house services. Image Access shall make payment to BellSouth for all services billed **excluding disputed amounts**. Payment for amounts disputed will be made in accordance with the provisions in section 2.3 below. BellSouth will not become involved in billing disputes that may arise between Image Access and Image Access's End User.
- 1.4.1 Payment Due. Payment for services provided by BellSouth 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 Image Access'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.
- 1.4.2 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 1.4.3, below, shall apply.
- 1.4.3 Late Payment. If any portion of the payment is not received by BellSouth on or before the payment due date as set forth preceding, 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 the General Subscriber Services Tariff, Section B2 of the Private Line Service Tariff or Section E2 of the Intrastate Access Tariff, or pursuant to the applicable state law. In addition to any applicable late payment and/or interest charges, Image Access may be charged a fee for all returned checks at the rate set forth in Section A2 of the General Subscriber Services Tariff or pursuant to the applicable state law.