

**Dorothy Menasco**

**From:** Kim Hancock [khancock@kagmlaw.com]  
**Sent:** Thursday, November 10, 2011 12:09 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Lee Eng Tan; manuel.gurdian@att.com; Vicki Gordon Kaufman  
**Subject:** Docket No. 110071-TP  
**Attachments:** Request to Hold Dockets in Abeyance 11.10.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

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

- b. This filing is made in Docket No. 110071-TP.
- c. The document is filed on behalf of Express Phone Service, Inc.
- d. The total pages in the document are 13 pages.
- e. The attached document is REQUEST TO HOLD DOCKETS IN ABEYANCE.

Kim Hancock  
[khancock@kagmlaw.com](mailto:khancock@kagmlaw.com)



**Keefe, Anchors  
 Gordon & Moyle**

Keefe, Anchors, Gordon and Moyle, P.A.  
 The Perkins House  
 118 North Gadsden Street  
 Tallahassee, Florida 32301  
 (850) 681-3828 (Voice)  
 (850) 681-8788 (Fax)  
[www.kagmlaw.com](http://www.kagmlaw.com)

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11/10/2011

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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DOCKET NO. 110071-TP

FILED: November 10, 2011

**REQUEST TO HOLD DOCKETS IN ABEYANCE**

Express Phone Service, Inc. (Express Phone), pursuant to rule 28-106.204, Florida Administrative Code, requests that the Commission enter an order holding the above docket in abeyance. As grounds therefor, Express Phone states:

1. Docket No. 110071-TP involves issues related to the applicability of certain wholesale discounts to services Express Phone purchases from AT&T. The issue of applicable promotional discounts is not an issue unique to Express Phone or even unique to the state of Florida. Rather, it is an issue that is being litigated across the AT&T region.

2. The Florida Commission itself has three pending cases, in addition to this docket, in which promotional issues are in dispute. *Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC*, Docket No. 100021-TP; *Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against Image Access, Inc. d/b/a New Phone*, Docket No. 100022-TP; *Request for Emergency Relief and Complaint Against BellSouth Telecommunications, Inc. d/b/a AT&T Florida to Resolve Interconnection Agreement Dispute*, Docket No. 110306-TP. Further, cases are pending in the other AT&T states.

3. In the Florida cases cited above, AT&T agreed to hold the dockets in abeyance pending decisions in the other states. See, Joint Motion on Procedural Schedule, Docket Nos.

100021-TP, 100022-TP, filed June 15, 2010. (Exhibit A).<sup>1</sup> The basis for the Joint Motion was “[t]o promote the reasonable and economical determination of these proceedings....” (Exhibit A, Joint Motion at 1). The Commission granted that request in Order No. PSC-10-0402-PCO-TP, issued June 18, 2010.

4. And in fact, those dockets remain in abeyance today. On October 31, 2011, the parties, including AT&T, in Docket Nos. 100021-TP and 100022-TP filed a Joint Status Report advising the Commission of the status of the dockets in the other states and requesting that the abeyance be continued. (Exhibit B). The report states: “At the present time, the Parties [including AT&T] do not anticipate any activity in the instant dockets until the cases in the above listed states have been resolved.” As the Commission can see from a review of Exhibit B, cases in other states are much closer to resolution than this docket which is just beginning. It would conserve resources and effort on the part of all parties and the Commission to await the outcome of the same matters pending in other states.

5. In this case, as in Docket Nos. 100021-TP and 100022-TP, economy and efficiency would be served by holding this docket in abeyance while the same issues are litigated elsewhere. Most of the promotional cases in other states are much further along than this docket. (See Exhibit B.) Decisions in the states of Alabama, Louisiana, North Carolina and South Carolina will have a significant impact on this docket and the parties’ relationship.

6. Express Phone has consulted with AT&T and is authorized to represent that AT&T opposes this request.

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<sup>1</sup> Though AT&T has indicated that it is opposed to Express Phone’s request for abeyance, its posture is the total opposite of its position in Docket Nos. 100021-TP and 100022-TP.

**WHEREFORE**, Express Phone requests that the Commission hold this docket in abeyance pending resolution of the dockets in the other states.

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](mailto:vkaufman@kagmlaw.com)

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

Attorneys for Express Phone Service, Inc.

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of Express Phone Service, Inc.'s Request to Hold Dockets in Abeyance has been furnished by Electronic Mail and U.S. Mail to the following, this 10<sup>th</sup> day of November, 2011:

Lee Eng Tan  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399  
[ltan@psc.state.fl.us](mailto:ltan@psc.state.fl.us)

Manuel Gurdian  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301  
[manuel.gurdian@att.com](mailto:manuel.gurdian@att.com)

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth ) Docket No. 100021-TP  
Telecommunications, Inc. d/b/a AT&T )  
Florida Against LifeComex Telecom, LLC )  
f/k/a Swiftel, LLC )  
\_\_\_\_\_ )

In re: Complaint of BellSouth ) Docket No. 100022-TP  
Telecommunications, Inc. d/b/a AT&T )  
Florida Against Image Access, Inc. d/b/a New )  
Phone )  
\_\_\_\_\_ )  
Filed: June 15, 2010

**JOINT MOTION ON PROCEDURAL SCHEDULE**

Pursuant to the "Joint Motion on Procedural Issues" filed May 13, 2010, , the Parties have engaged in extensive discussions concerning how to schedule proceedings in the above-captioned dockets which are similar, not only to each other but to more than thirty other cases pending in the eight other states in the former BellSouth region. To promote the reasonable and economical determination of these proceedings, the Parties respectfully submit the following procedural schedule.


The Parties propose to proceed to hearings in Alabama, Louisiana, North Carolina, and South Carolina while asking that proceedings in the five remaining states (Georgia, Florida, Kentucky, Mississippi, and Tennessee) be held in abeyance. Considered together, the four states selected for hearings involve all nine Respondents and, the Parties believe, a substantial portion of the disputed billing amounts. Decisions reached in those four states will likely have a significant impact on the Parties' ongoing discussions of the issues raised in the Parties' complaints and counterclaims.

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The Parties anticipate that hearings will begin in October.<sup>1</sup> The Parties will submit a progress report by November 1, 2010 to those states where the proceedings have been held in abeyance. The Parties also agree to hold in abeyance any applicable time limits or other procedural rights which are inconsistent with this joint request. Through this process, the Parties anticipate that they will agree to stipulations and conduct depositions that can be used in all nine states. The Parties also expect to present testimony in the four hearings that can be used, with appropriate modifications, as the basis for testimony in the other states. Therefore, this proposal likely will result in the development of a record which will expedite proceedings in all the states.

WHEREFORE, the Parties ask that this "Joint Motion on Procedural Schedule" be granted.

Respectfully submitted this 15<sup>th</sup> day of June, 2010,



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E. Earl Edenfield, Jr.  
Tracy W. Hatch  
Manuel A. Gurdian  
AT&T Florida  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301  
Tel. No. (305) 347-5558  
Fax. No. (305) 577-4491  
[ke2722@att.com](mailto:ke2722@att.com)  
[th9467@att.com](mailto:th9467@att.com)  
[mg2708@att.com](mailto:mg2708@att.com)  
*Attorneys for BellSouth  
Telecommunications, Inc. d/b/a AT&T  
Florida*

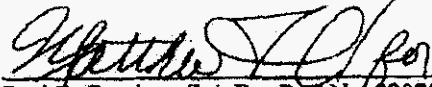
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<sup>1</sup> In Alabama, Louisiana, North Carolina and South Carolina, the Parties propose the following schedule: stipulations due July 16; simultaneous direct testimony August 27, simultaneous rebuttal testimony September 27, depositions (if requested) between September 28 and October 8.



Matthew Feil, Esq.  
Akerman Senterfitt  
106 East College Avenue  
Suite 1200  
Tallahassee, FL 32301  
(850) 425-1614

*Attorney for LifeConnex Telecomm, LLC  
and Image Access, Inc. d/b/a NewPhone*



Paul R. Guarisco (LA Bar Roll No. 22070)  
W. Bradley Kline (LA Bar Roll No. 32530)  
PHELPS DUNBAR LLP  
11 City Plaza, 400 Convention Street,  
Suite 1100  
Post Office Box 4412  
Baton Rouge, Louisiana 70821  
Tel. No. (225) 376-0241  
Fax. No. (225) 381-9197

[pguarisco@phelps.com](mailto:pguarisco@phelps.com)  
*Attorneys for Image Access, Inc. d/b/a  
NewPhone*

821913



**CERTIFICATE OF SERVICE**  
**Docket Nos. 100021-TP and 100022-TP**

I HEREBY CERTIFY that a true and correct copy was served via  
Electronic Mail and First Class U. S. Mail this 15th of June, 2010 to the following:

Charles Murphy  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[cmurphy@psc.state.fl.us](mailto:cmurphy@psc.state.fl.us)

LifeConnex Telecom, LLC  
Mr. Edward Heard  
13700 Perdido Key Drive, Unit B222  
Pensacola, FL 32507-7475  
Tel. No. (877) 450-5544  
Fax No. (850) 895-3019  
[ehheard@lifeconnex.net](mailto:ehheard@lifeconnex.net)

NewPhone, Inc.  
Mr. Jim R. Dry  
5555 Hilton Avenue, Suite 415  
Baton Rouge, LA 70808  
Tel. No. (225) 214-4412  
Fax No. (225) 214-4111  
[jimdry@razorline.com](mailto:jimdry@razorline.com)

Matthew J. Feil  
Akerman Senterfitt  
106 East College Avenue  
Suite 1200  
Tallahassee, FL 32301  
Tel. No. (850) 224-9634  
[matt.feil@akerman.com](mailto:matt.feil@akerman.com)  
*Attorney for LifeConnex Telecom,  
LLC and Image Access, Inc. d/b/a  
New Phone*

Paul F. Guarisco/W. Bradley Kline  
PHELPS DUNBAR LLP  
11 City Plaza, Suite 1100  
400 Convention Street  
Post Office Box 4412  
Baton Rouge, Louisiana 70821  
Tel. No. (225) 376-0241  
Fax. No. (225) 381-9197  
[paul.guarisco@phelps.com](mailto:paul.guarisco@phelps.com)  
*Attorneys for Image Access, Inc.  
d/b/a NewPhone*

  
\_\_\_\_\_  
Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. 100021-TP  
Florida Against LifeConnex Telecom, LLC )  
f/k/a Swiftel, LLC )  
..... )

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. 100022-TP  
Florida Against Image Access, Inc. d/b/a New )  
Phone ) Filed: October 31, 2011  
..... )

JOINT STATUS REPORT OCTOBER 31, 2011

Pursuant to Commission Staff's request, BellSouth Telecommunications, LLC d/b/a ("AT&T Florida"), LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") and Image Access, Inc. d/b/a New Phone ("New Phone") (collectively "the Parties") hereby file the following Joint Status Report.

The Consolidated Phase proceedings address three issues: (a) how cashback credits to resellers should be calculated; (b) whether the word-of-mouth promotion is available for resale and, if so, how the credits to the resellers should be calculated; and (c) how credits to resellers for waiver of the line connection charge should be calculated. The Consolidated Phase is being held in abeyance in five states (Georgia, Florida, Kentucky, Mississippi, and Tennessee), and it has proceeded to a hearing on the merits in four states (Alabama, Louisiana, South Carolina, and North Carolina). The status of the proceedings in these four states is as follows:

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EXHIBIT B

Alabama. An administrative law judge presided over an evidentiary hearing on January 21, 2011, and the parties have submitted initial and reply post-hearing briefs. The matter is ripe for a decision on the merits by the Alabama Commission.


Louisiana. An administrative law judge (ALJ) presided over an evidentiary hearing on November 4-5, 2010, and on August 18, 2011 the judge issued a final recommendation adopting AT&T's position on each of the three issues in the proceeding. Following oral argument by the parties and Commission Staff before the full Commission, on September 28, 2011, the Louisiana Commission issued an Order remanding this matter to the ALJ "for further consideration of the calculation methodology to be applied to cash back promotions." The matter is currently pending before the ALJ on remand.

North Carolina. On September 22, 2011, the North Carolina Commission entered an order adopting AT&T's position on each of the three issues in the proceeding. On or about October 20, 2011, dPi Teleconnect, LLC, Image Access, Inc. d/b/a NewPhone, Affordable Phone Services, Inc. and BLC Management, LLC d/b/a Angles Communications Solutions filed a Complaint and Request for Declaratory and Injunctive Relief in the United States District Court for the Eastern District of North Carolina, Case No. 5:11-cv-576-FL.

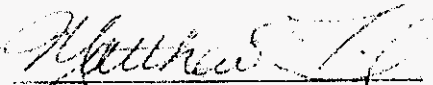
South Carolina. The South Carolina Commission presided over an evidentiary hearing on December 15, 2010, and the parties have submitted post-hearing briefs and proposed orders. The South Carolina Office of Regulatory Staff subsequently submitted a recommendation to the Commission. The Commission heard oral argument on August 24, 2011, and the matter is ripe for a decision on the merits by the South Carolina Commission.

The instant dockets are in abeyance "pending either resolution of the cases in the states set forth above or the filing of a persuasive motion to resume the dockets". See Order No. PSC-0402-PCO-TP (Issued June 18, 2010). At the present time, the Parties do not anticipate any activity in the instant dockets until the cases in the above listed states have been resolved.

Respectfully submitted this 31st day of October, 2011.

  
\_\_\_\_\_  
Tracy W. Hatch  
Manuel A. Curdian  
AT&T Florida  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301  
Tel. No. (305) 347-5558  
Fax. No. (305) 577-4491  
[lh9467@att.com](mailto:lh9467@att.com)  
[mg2708@att.com](mailto:mg2708@att.com)

*Attorneys for BellSouth  
Telecommunications, LLC d/b/a AT&T  
Florida*

  
\_\_\_\_\_  
Matthew Feil, Esq.  
Gunster Yoakley & Stewart, P.A.  
215 S. Monroe St., Ste. 618  
Tallahassee, FL 32301  
(850) 521-1708

*Attorney for LifeCommex Telecomm, LLC  
and Image Access, Inc. d/b/a NewPhone*

950454

**CERTIFICATE OF SERVICE**  
**Docket Nos. 100021-TP/100022-TP**

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 31st day of October, 2011 to the following:

Charles Murphy  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[cmurphy@psc.state.fl.us](mailto:cmurphy@psc.state.fl.us)

Larry Harris  
Staff Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[lharris@psc.state.fl.us](mailto:lharris@psc.state.fl.us)

LifeConnex Telecom, LLC  
Mr. Edward Heard  
13700 Perdido Key Drive, Unit B222  
Pensacola, FL 32507-7475  
Tel. No. (877) 450-5544  
Fax No. (850) 895-3019  
[ehheard@lifeconnex.net](mailto:ehheard@lifeconnex.net)

Matthew Feil  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe, Suite 618  
Tallahassee, FL 32301  
Tel. No. 850-521-1708  
[mfeil@gunster.com](mailto:mfeil@gunster.com)  
*Attorney for LifeConnex Telecom,  
LLC and Image Access, Inc. d/b/a  
New Phone*

LifeConnex Telecom, LLC  
Mr. David Gainer  
6905 North Wickham Road  
Suite 403  
Melbourne, FL 32940-7553  
Tel. No.: (321) 373-1343  
Fax No.: (321) 248-0787  
[tom@telecomgroup.com](mailto:tom@telecomgroup.com)

Associated Telecommunications  
Management Services, LLC  
Christina B. Sutch  
6905 N. Wickham Road  
Suite 403  
Melbourne, FL 32940  
Tel. No.: (321) 373-1360  
Fax No.: (321) 275-4877  
[legal@telecomgroup.com](mailto:legal@telecomgroup.com)

New Phone, Inc.  
Mr. Jim R. Dry  
5555 Hilton Avenue, Suite 415  
Baton Rouge, LA 70808  
Tel. No. (225) 214-4412  
Fax No. (225) 214-4111  
[jimdry@razorline.com](mailto:jimdry@razorline.com)

Paul F. Guarisco/W. Bradley Kline  
PHELPS DUNBAR LLP  
11 City Plaza, Suite 1100  
400 Convention Street  
Post Office Box 4412  
Baton Rouge, Louisiana 70821  
Tel. No. (225) 376-0241  
Fax. No. (225) 381-9197  
[paul.guarisco@phelps.com](mailto:paul.guarisco@phelps.com)  
*Attorneys for Image Access, Inc.*  
*d/b/a New Phone*



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Manuel A. Gurdian