

**Diamond Williams**

**From:** Kim Hancock [khancock@kagmlaw.com]  
**Sent:** Wednesday, July 27, 2011 12:05 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Lee Eng Tan; manuel.gurdian@att.com; Vicki Gordon Kaufman  
**Subject:** Docket Nos. 110071-TP and 110087-TP  
**Attachments:** Express' Protest to PAA 7.27.11.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 Nos. 110071-TP and 110087-TP.

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

d. The total pages in the document are 7 pages.

e. The attached document is EXPRESS PHONE SERVICE, INC.'S PROTEST OF PORTIONS OF ORDER NO. PSC-11-0291-PAA-TP AND PETITION FOR FORMAL HEARING.

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



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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DOCUMENT NUMBER - DATE

05208 JUL 27 =

7/27/2011

FPSC-COMMISSION CLERK



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

DOCKET NO. 110071-TP

In re: Notice of adoption of existing  
interconnection, unbundling, resale, and  
collocation agreement between BellSouth  
Telecommunications, Inc. d/b/a AT&T  
Florida d/b/a AT&T Southeast  
and Image Access, Inc. d/b/a NewPhone, Inc.  
by Express Phone Service, Inc.

DOCKET NO. 110087-TP

Filed: July 27, 2011

**EXPRESS PHONE SERVICE, INC.'S  
PROTEST OF PORTIONS OF ORDER NO. PSC-11-0291-PAA-TP AND  
PETITION FOR FORMAL HEARING**

Express Phone Service, Inc. (Express Phone), by and through undersigned counsel, pursuant to sections 120.569 and 120.57, Florida Statutes, and rules 25-22.029 and 28-106.201, Florida Administrative Code, hereby protests those portions of Order No. PSC-11-0291-PAA-TP (PAA Order), issued July 6, 2011, which relate to Express Phone's adoption of another carrier's Interconnection Agreement (ICA). Express Phone further requests the initiation of formal proceedings. As required by the PAA Order, Express Phone states that this protest applies to all issues in Docket No. 110087-TP.<sup>1</sup>

**AGENCY AFFECTED AND DOCKET**

1. The name and address of the affected agency is:

The Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

<sup>1</sup> Express Phone does not protest the Commission's decision in Docket No. 110071-TP to directly set for evidentiary hearing all issues related to the calculation and appropriate credit of promotional credits.

DOCUMENT NUMBER - DATE

05208 JUL 27 =

FPSC-COMMISSION CLERK

The Docket No. is 110087-TP.

**PETITIONER'S INFORMATION**

2. The name and address of Petitioner is:

Express Phone Service, Inc.  
1803 W. Fairfield Drive, Unit 1  
Pensacola, Florida 32501

3. Copies of all correspondence, pleadings, notices, orders and other documents in

this docket should be provided to:

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

**NOTICE OF RECEIPT OF ACTION**

4. Express Phone received notice of this proceeding through receipt of the Commission's PAA Order.

**BACKGROUND**

5. Express Phone is a Florida corporation holding Florida Public Service Commission Alternative Local Exchange Telecommunications Certificate No. 5636.<sup>2</sup>

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<sup>2</sup> See, Order No. PSC-00-1495-PAA-TX; Docket No. 000776-TX.

6. 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 approval in Docket No. 060714-TP. The Resale Agreement became effective on or about November 4, 2006 and expires shortly. Express Phone is now in the negotiation window.

7. On October 20, 2010, Express Phone sent an Adoption Notice to AT&T regarding its adoption of the Interconnection Agreement (ICA) between AT&T and Image Access, Inc., d/b/a NewPhone, Inc. (NewPhone ICA).<sup>3</sup> Subsequent notices were sent to AT&T on March 14, 2011 and April 4, 2011.

8. AT&T refused to recognize Express Phone's right to adopt the NewPhone ICA. Nor did it file the Adoption Notice with the Commission as its ICA with Express Phone requires.

9. On April 12, 2011, Express Phone filed a Motion for Summary Order with the Commission addressing the adoption issues and other issues.

10. On July 6, 2011, the Commission entered the PAA Order which is the subject of this protest. In the PAA Order, the Commission found that Express Phone was not permitted to adopt the NewPhone ICA.

#### **STATEMENT OF SUBSTANTIAL INTERESTS**

11. Express Phone is entitled under federal law, this Commission's orders, and its ICA with AT&T to adopt the NewPhone ICA. Express Phone's substantial interests are affected by AT&T's failure to recognize and implement Express Phone's lawful adoption under federal law. Thus, Express Phone's substantial interests will be directly affected by the Commission's decision in this proceeding and are the type of interests that this proceeding is designed to protect. *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478 (Fla. 2<sup>nd</sup> DCA 1981).

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<sup>3</sup> See, Docket Nos. 060319-TP, 090176-TP.

**DISPUTED ISSUES OF MATERIAL FACT AND LAW**

12. Express Phone's allegations of disputed issues of material fact and law include, but are not limited to, the following:

- a. Whether Express Phone is permitted under federal law, this Commission's orders, and the terms of its ICA with AT&T to adopt the NewPhone ICA;
- b. Whether Express Phone's ICA with AT&T requires AT&T to recognize and file Express Phone's Notice of Adoption;
- c. Whether the Commission may consider matters outside the applicable federal law in determining if Express Phone's adoption is valid;
- d. The date of Express Phone's adoption of the NewPhone ICA;
- e. The effective date of Express Phone's adoption of the NewPhone ICA;
- f. Whether Express Phone is entitled to adopt the NewPhone ICA during the term of a current ICA;
- g. Whether there was an alleged breach of the ICA at the time of Express Phone's October 2010 adoption request;
- h. The date on which AT&T notified Express Phone regarding an alleged breach of the ICA.

**STATEMENT OF ULTIMATE FACTS**

13. Without waiving or relinquishing the right to allege additional ultimate facts should they become known through discovery or otherwise, Express Phone's allegations of ultimate facts include the following:

- a. Express Phone validly adopted the NewPhone ICA on October 20, 2010;

- b. The adoption became valid upon AT&T's receipt of Express Phone's Notice of Adoption;
- c. AT&T may not place additional non-252(i) requirements upon Express Phone's adoption;
- d. AT&T's failure to recognize the Express Phone's adoption results in discrimination among carriers and is contrary to federal law;
- e. It is AT&T's responsibility to file the notice of adoption with the Commission;
- f. AT&T erroneously terminated service to Express Phone and such service should be restored.

**STATEMENT OF SPECIFIC RULES AND STATUTES REQUIRING  
REVERSAL OF THE AGENCY'S DECISION**

- 14. Express Phone is entitled to relief pursuant to:
  - a. Sections 120.569 and 120.57, Florida Statutes, which entitle Express Phone to a hearing when its substantial interests are affected as they are in this matter;
  - b. 47 U.S.C. § 252(i) which requires incumbents to make all ICAs available for adoption; and
  - c. 47 C.F.R. § 51.809, which requires ICAs to be made available for adoption, with only two exceptions which are inapplicable in this docket.

**RELIEF REQUESTED**

**WHEREFORE**, Express Phone requests that the Commission:

- a. Require AT&T to recognize the valid adoption by Express Phone on the NewPhone ICA on October 20, 2010;
- b. Require AT&T to restore service to Express Phone;

- c. Set this matter for evidentiary hearing; and
- d. Grant such other relief as appropriate.

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  
Mark Foster Law Firm  
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



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Express Phone Service, Inc.'s Protest of Portions of Order No. PSC-11-0291-PAA-TP and Petition for Formal Hearing has been furnished by electronic mail and U.S. Mail this 27<sup>th</sup> day of July, 2011, to the following:

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)

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

s/ Vicki Gordon Kaufman  
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Vicki Gordon Kaufman