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March 29, 2012

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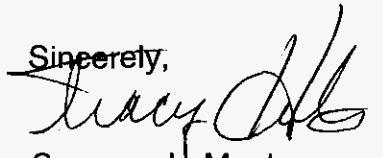
Ann Cole, Commission Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Docket No. 110087-TP: Notice of the 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 New Phone, Inc. by Express Phone Service, Inc.**

Dear Ms. Cole:

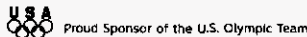
Enclosed is an original and fifteen copies of BellSouth Telecommunications, LLC d/b/a AT&T Florida's Rebuttal Testimony of David J. Egan and William E. Greenlaw, which we ask that you file in the captioned docket.

Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,  
  
Suzanne L. Montgomery

cc: All Parties of Record  
Gregory R. Follensbee

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APA \_\_\_\_\_  
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**CERTIFICATE OF SERVICE  
Docket No. 110087-TP**

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, 2012 to the following:

Lee Eng Tan  
Staff Counsel  
Florida Public Service  
Commission  
Division of Legal Services  
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[ltan@psc.state.fl.us](mailto:ltan@psc.state.fl.us)

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Suzanne L. Montgomery

**(+) Signed Protective Agreement**  
916796

**STATE OF FLORIDA**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

**REBUTTAL TESTIMONY**

**OF**

**DAVID J. EGAN**

**ON BEHALF OF**

**AT&T FLORIDA**

**ISSUES:**  
**2 and 3**

DOCUMENT NUMBER-DATE  
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1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

3 A. My name is David J. Egan. I am a Lead Credit Analyst employed by AT&T Services,  
4 Inc. My business address is 722 N. Broadway, Floor 9, Milwaukee, WI 53202.

5 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?**

6 A. Yes. I am the same David J. Egan that filed direct testimony on behalf of AT&T Florida  
7 on March 1, 2012.

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 A. My rebuttal testimony responds to certain issues raised in the direct testimony filed on  
10 March 1, 2012 by Thomas Armstrong on behalf of Express Phone Service, Inc. ("Express  
11 Phone").

12 **Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?**

13 A. I address certain aspects of Mr. Armstrong's Direct Testimony concerning the  
14 disconnection of its service, and I provide information concerning AT&T Florida's  
15 experience with Digital Express, Inc. ("Digital Express"), another CLEC with which Mr.  
16 Armstrong is associated.

17 **A. EXPRESS PHONE**

18 **Q. AT PAGE 5 OF HIS DIRECT TESTIMONY, MR. ARMSTRONG DISCUSSES**  
19 **AT&T FLORIDA'S DISCONNECTION OF EXPRESS PHONE'S SERVICE FOR**  
20 **NONPAYMENT. DID AT&T FLORIDA PROVIDE EXPRESS PHONE NOTICE**  
21 **OF ITS INTENT TO DISCONNECT SERVICE?**  
22

23 A. Yes. AT&T Florida sent a letter on February 23, 2011 that gave Express Phone notice  
24 that it had to cure its nonpayment breach by March 14, 2011 or have its ordering process  
25 suspended, and that it had until March 29, 2011 to cure its nonpayment breach or have its  
26 services disconnected.

1 **Q. DID EXPRESS PHONE CURE ITS NONPAYMENT BREACH?**

2  
3 A. No.

4 **Q. WHEN DID AT&T FLORIDA DISCONNECT EXPRESS PHONE'S SERVICE?**

5 A. On April 20, 2011.

6 **B. DIGITAL EXPRESS**

7 **Q. ARE YOU FAMILIAR WITH A CLEC KNOWN AS DIGITAL EXPRESS?**

8 A. Yes, as Mr. Greenlaw testifies in his rebuttal testimony, Digital Express is another CLEC  
9 that operates in Florida and with which Mr. Armstrong appears to be closely associated.

10 **Q. DOES DIGITAL EXPRESS ORDER SERVICES FROM AT&T FLORIDA FOR**  
11 **RESALE PURSUANT TO ITS ICA?**

12 A. Yes.

13 **Q. WHEN DID DIGITAL EXPRESS BEGIN ORDERING SERVICE FROM AT&T**  
14 **FLORIDA?**

15 A. We activated Digital Express's first Florida account on September 26, 2011, just a few  
16 months after we disconnected Express Phone's service for failing to cure its nonpayment  
17 breach. Digital Express began ordering service from AT&T Florida in November, 2011.

18 **Q. ARE YOU FAMILIAR WITH THE EXPERIENCE AT&T FLORIDA HAS HAD**  
19 **WITH DIGITAL EXPRESS ON BILLING AND PAYMENTS OVER THE FIVE**  
20 **MONTHS IT HAS BEEN PROVIDING SERVICES TO DIGITAL EXPRESS?**

21 A. Yes. Since Digital Express began ordering service in November 2011, the total dollar  
22 amount of the billing disputes Digital Express has submitted to AT&T Florida actually  
23 exceeds the total dollar amount AT&T Florida has billed Digital Express for services  
24 over that same period. In other words, Digital Express appears to expect AT&T Florida  
25 to pay Digital Express for the services it orders from AT&T Florida.

26 **Q. HAS DIGITAL EXPRESS PAID AT&T FLORIDA ANYTHING SINCE IT**  
27 **BEGAN RECEIVING SERVICES?**

1 A. Yes, it has paid a total of \$100. That represents less than one tenth of one percent of the  
2 amounts AT&T Florida has billed Digital Express for the services it has ordered from  
3 AT&T Florida for resale to its own end users.

4 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5 A. Yes.

6 1028409

**STATE OF FLORIDA**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Notice of adoption of existing interconnection, )  
unbundling, resale and collocation agreement between )  
Bellsouth Telecommunications, Inc. d/b/a AT&T ) Docket No. 110087-TP  
Florida d/b/a AT&T Southeast and Image Access, Inc. )  
d/b/a NewPhone Inc., by Express Phone Service, Inc. )

**REBUTTAL TESTIMONY**

**OF**

**WILLIAM E. GREENLAW**

**ON BEHALF OF**

**AT&T FLORIDA**

**ISSUES:**  
**1, 2, 3 and 4**

DOCUMENT NUMBER-DATE

**01868 MAR 29 92**

FPSC-COMMISSION CLERK

1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.

3 A. My name is William Eric Greenlaw. I am an Associate Director in the AT&T  
4 Wholesale organization. My business address is 311 S. Akard Street, Dallas, TX  
5 75202.

6 Q. HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?

7 A. Yes. I am the same William Eric Greenlaw that filed direct testimony on behalf of  
8 AT&T Florida on March 1, 2012.

9 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

10 A. My rebuttal testimony responds to certain aspects of the direct testimony filed on  
11 March 1, 2012 by Thomas Armstrong and Don Wood on behalf of Express Phone  
12 Service, Inc. ("Express Phone").

13 Q. HOW IS YOUR REBUTTAL TESTIMONY ORGANIZED?

14 A. I have identified key issues raised in the direct testimony filed in this proceeding by  
15 Mr. Armstrong and Mr. Wood and will respond to each of them.

16 Q. BEFORE WE GET TO THE SUBSTANCE OF YOUR TESTIMONY, THE  
17 EXPRESS PHONE TESTIMONY REFERS TO THE INTERCONNECTION  
18 AGREEMENT IT IS SEEKING TO ADOPT AS THE "NEWPHONE ICA"  
19 WHILE YOUR DIRECT TESTIMONY REFERS TO THE "IMAGE ACCESS  
20 ICA." ARE THESE TWO DIFFERENT ICAS?

21 A. No, both the parties are talking about the same contract. Express Phone is seeking to  
22 adopt the Interconnection Agreement ("ICA") between AT&T Florida and Image  
23 Access, Inc., which does business in Florida under the name NewPhone.

24 II. REBUTTAL TO EXPRESS PHONE TESTIMONY

25 A. Disconnection Of Express Phone Did Not Impact Competition or  
26 Consumers In The State Of Florida



1 Q. AT PAGES 4-5 OF HIS DIRECT TESTIMONY, MR. ARMSTRONG  
2 DISCUSSES THE PROVISION OF LIFELINE SERVICE IN FLORIDA AND  
3 STATES HIS OPINION THAT MULTIPLE LIFELINE PROVIDERS ARE  
4 NEEDED IN FLORIDA. HOW DO YOU RESPOND?

5 A. Mr. Armstrong seems to suggest that Express Phone's departure from the Florida  
6 market makes it much more difficult for Lifeline-eligible consumers to receive  
7 service in Florida, but that simply is not the case. Lifeline-eligible consumers in  
8 Florida today can choose from a number of providers and types of service. In AT&T  
9 Florida's service territory alone, for example, approximately seventeen (17) Eligible  
10 Telecommunications Carriers ("ETCs") are certified by this Commission to offer  
11 Lifeline service to eligible Florida residents. Some offer wireline service on a strictly  
12 "pre-pay" basis like Express Phone did, some offer wireline service on a more  
13 traditional monthly billing basis, and some offer wireless service.

14 Q. MR. ARMSTRONG ALSO SUGGESTS, AT PAGE 5 OF HIS DIRECT  
15 TESTIMONY, THAT EXPRESS PHONE'S CUSTOMERS WERE  
16 SUDDENLY LEFT WITHOUT SERVICE WHEN AT&T FLORIDA  
17 DISCONNECTED EXPRESS PHONE'S SERVICES FOR FAILURE TO PAY  
18 ITS BILLS. HOW DO YOU RESPOND?

19 A. Express Phone has only itself to blame if any of its customers did not receive advance  
20 notice of the pending disconnection of service.

21 Q. WHY DO YOU SAY THAT?

22 A. As Mr. Egan explains in his rebuttal testimony, AT&T Florida provided Express  
23 Phone notice of its breach, an opportunity to cure that breach, and more than two  
24 months' notice before AT&T Florida finally disconnected the service. Express Phone  
25 had ample time to notify its customers of the impending service disconnection and to  
26 assist them in transitioning to another provider if it cared to do so.

1 **Q. HAVE ANY NEW PRE-PAY COMPANIES ENTERED THE FLORIDA**  
2 **MARKETPLACE SINCE THE DISCONNECTION OF EXPRESS-PHONE'S**  
3 **SERVICE FOR NONPAYMENT?**

4 A. Yes. In fact, a CLEC called Digital Express, Inc. ("Digital Express") began  
5 operating shortly after AT&T Florida disconnected Express Phone's service for non-  
6 payment.

7 **Q. ARE THERE ANY SIMILARITIES BETWEEN THIS NEW CLEC, DIGITAL**  
8 **EXPRESS, AND EXPRESS PHONE?**

9 A. Yes. It appears that Mr. Armstrong is an officer of Digital Express, just as he was an  
10 officer of Express Phone.

11 **Q. WHY DO YOU SAY THAT?**

12 A. The notice provision of the Interconnection Agreement between AT&T Florida and  
13 Digital Express shows that Mr. Armstrong is the Vice President of Digital Express,  
14 and Mr. Armstrong executed the signature pages of the interconnection agreement as  
15 "President" of Digital Express. Copies of the relevant pages from the Digital  
16 Express Interconnection Agreement are attached as Exhibit WEG-4.

17 **Q. IS MR. ARMSTRONG'S AFFILIATION WITH DIGITAL EXPRESS NOTED**  
18 **IN HIS DIRECT TESTIMONY OR IN THE CIRRICULUM VITAE**  
19 **ATTACHED TO IT?**

20 A. No.

21 **Q. WHEN DID DIGITAL EXPRESS ENTER AN INTERCONNECTION**  
22 **AGREEMENT WITH AT&T FLORIDA?**

23 A. In June of 2011, less than two months after AT&T Florida disconnected Express  
24 Phone's service for failing to cure its nonpayment breach. In fact, Digital Express  
25 adopted the ICA between AT&T Florida and Image Access, which is the very  
26 contract Express Phone is seeking to adopt in this docket. See Docket No. 110222-  
27 TP.

1 **B. The Dispute Resolution Provisions**

2 Q. **HOW DO YOU RESPOND TO MR. ARMSTRONG'S DIRECT TESTIMONY**  
3 **AT PAGE 6 THAT THE EXPRESS PHONE ICA IS UNFAIR BECAUSE, IN**  
4 **HIS VIEW, AT&T FLORIDA HAS FAILED TO RESPOND TO DISPUTES?**

5 A. It is simply a red herring. As explained in both my and Mr. Egan's Direct Testimony,  
6 Express Phone is required by its ICA to pay all amounts billed by AT&T Florida  
7 whether it disputes them or not. What is unfair is Express Phone's request to be  
8 treated differently than other CLECs who have similar language in their ICAs.

9 Q. **WHY DO YOU SAY THAT EXPRESS PHONE IS ASKING TO BE TREATED**  
10 **DIFFERENTLY THAN OTHER CLECS WHO HAVE SIMILAR LANGUAGE**  
11 **IN THEIR ICAS?**

12 A. Because Express Phone is asking the Commission to allow it to continue operating  
13 without either paying disputed amounts as it to committed to do in its ICA or posting  
14 a bond for those amounts. But that is exactly what this Commission required of  
15 LifeConnex in July 2010 when the Commission rejected LifeConnex's efforts to not  
16 comply with the "pay disputed amounts" provisions of its ICA.<sup>1</sup> And, the  
17 Commission made a similar ruling just last month in the FLATEL case when it  
18 dismissed FLATEL's complaint against AT&T Florida for disconnecting its services  
19 due to FLATEL's failure to pay its bills in full as required by its interconnection  
20 agreement.<sup>2</sup> I understand that other state commissions, including for example the

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<sup>1</sup> See *In re Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a Swifitel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Docket No. 100021-TP, Order No. PSC-10-0457-PCO-TP, at 4-5 (July 16, 2010).

<sup>2</sup> *In re Request for emergency relief and complaint of FLATEL, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida to resolve interconnection dispute*, Docket No. 110306-TP, Order No. PSC-12-0085-FOF-TP, at 5 (Feb. 24, 2012).

1 Alabama<sup>3</sup>, Kentucky<sup>4</sup> and North Carolina<sup>5</sup> Commissions, reached similar decisions  
2 enforcing this contract language, most notably in the LifeConnex Cases. These  
3 decisions are attached as Exhibits WEG-5 (Alabama), WEG-6 (Kentucky) and WEG-  
4 7 (North Carolina). While I am not a lawyer, it seems to me as a layperson that it  
5 would be unfair for this Commission to now allow Express Phone to opt out of its  
6 interconnection agreement to avoid its payment obligation to pay disputed amounts,  
7 especially when other CLECs have been required to comply with that obligation or  
8 have their services from AT&T Florida disconnected.

9 Q. **BUT WHAT ABOUT EXPRESS PHONE'S ASSERTION THAT AT&T**  
10 **FLORIDA TAKES TOO LONG TO ADDRESS THE DISPUTES IT HAS**  
11 **FILED?**

12 A. We disagree with that assertion, but the Commission's prior decisions make clear that  
13 this proceeding is not the forum to address those disagreements. In the Lifeconnex  
14 docket I mentioned earlier, the Commission explained: "If LifeConnex's fundamental  
15 concern in this docket is AT&T's delay in processing discounts and promotional  
16 credits, *the ICA provides LifeConnex's options for relief – to file a*  
17 *complaint/petition before us to determine the treatment of disputed amounts.*"

18 Q. **HOW MUCH NOTICE DID AT&T PROVIDE EXPRESS PHONE OF ITS**  
19 **INTENTION TO DISCONNECT EXPRESS PHONE'S SERVICE FOR**  
20 **NONPAYMENT?**

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<sup>3</sup> Order Granting in Part and Denying in Part LifeConnex Telecom, LLCs Petition and Motion for Emergency Relief in the Matter of BellSouth Telecommunications, Inc., d/b/a AT&T Alabama or AT&T Southeast v. LifeConnex Telecom, LLC, f/k/a Swiftel, LLC, Docket 31450, at 6-8 (Ala. P.S.C. Aug. 20, 2010).

<sup>4</sup> In the Matter of BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. LifeConnex Telecom, LLC f/k/a Swiftel, LLC, Case. No. 2010-00026, at 6 (Ky. P.S.C. Aug. 20, 2010).

<sup>5</sup> In the Matter of Disconnection of LifeConnex Telecom, Inc. f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina, Docket No. P-55 Sub 1817, at 11-13 (N.C. Utilities Comm'n Sept. 22, 2010).

1 A. As I mentioned above, AT&T Florida provided Express Phone notice of its breach, an  
2 opportunity to cure that breach, and nearly two months' notice before AT&T Florida  
3 finally disconnected the service.

4 **Q. AND DURING THAT TIME, DID EXPRESS PHONE FILE A COMPLAINT**  
5 **WITH THIS COMMISSION TO ADDRESS WHAT IT NOW CLAIMS TO BE**  
6 **A DELAY ON AT&T FLORIDA'S PART IN RESPONDING TO ITS**  
7 **DISPUTES?**

8 A. Not specifically. Express Phone did file a complaint seeking emergency relief to  
9 prevent AT&T Florida from disconnecting its service, but did not ask for relief on its  
10 disputes. That complaint was docketed as Docket No. 110071. After the  
11 Commission denied Express Phone's request for emergency consideration, it is likely  
12 that Docket No. 110071-TP would have reached the merits of Express Phone's  
13 disputes, but Express Phone has demonstrated that it is not interested in resolving  
14 those issues, as it first sought to abate that proceeding, and then, less than two weeks  
15 after the Commission denied that motion, Express Phone voluntarily dismissed that  
16 docket. Attached are the following documents from Docket No. 110071-TP: Express  
17 Phone's Request to Hold Dockets in Abeyance (Exhibit WEG-8); Order Denying  
18 Request for Abatement (Exhibit WEG-9); and Express Phone's Voluntary Dismissal  
19 Without Prejudice (Exhibit WEG-10).

20 **Q. DO YOU HAVE A RESPONSE TO MR. ARMSTRONG'S STATEMENT**  
21 **THAT "IN SOME CASES, SUCH AS NEWPHONE, AT&T HAS ENTERED**  
22 **INTO AN ICA THAT PERMITS DISPUTED AMOUNTS TO BE WITHHELD**  
23 **BY THE CLEC UNTIL SUCH TIME AS THE DISPUTES ARE**  
24 **RESOLVED."?**

25 A. As I explained in my Direct Testimony, Express Phone could have adopted the Image  
26 Access ICA that contains this language at the time Express Phone signed its  
27 interconnection agreement with AT&T Florida in 2006. Instead of adopting that

1 ICA, however, Express Phone decided to sign an ICA with different payment  
2 language. It cannot now ask the Commission to re-write its ICA to include the  
3 language it wishes it had adopted years ago.

4 **Q. HOW DO YOU RESPOND TO MR. ARMSTRONG'S TESTIMONY THAT**  
5 **THE PAYMENT PROVISION IN THE EXPRESS PHONE ICA IS**  
6 **SOMEHOW UNFAIR BECAUSE IT IS DIFFERENT FROM THE**  
7 **LANGUAGE IN THE IMAGE ACCESS ICA?**

8 A. This language appears in many interconnection agreements approved by this  
9 Commission, and it is fair to both AT&T Florida and Express Phone. Express Phone  
10 is protected in that it can dispute any amounts that are billed and, if the disputes are  
11 determined to be valid, it will receive these amounts back from AT&T Florida – I am  
12 aware of no instance in which AT&T Florida has been unable to pay amounts the  
13 Commission has determined it owes. And it is fair to AT&T Florida because it  
14 ensures that AT&T Florida will actually receive payment for amounts the  
15 Commission determines it is owed. In sharp contrast, allowing Express Phone to  
16 withhold disputed amounts would be unfair to AT&T Florida, because experience has  
17 shown that many pre-pay resellers like Express Phone are either unable or unwilling  
18 to pay amounts they owe AT&T Florida and affiliated entities. In Florida, for  
19 example, LifeConnex has not paid amounts the Commission has determined it should  
20 pay and instead chose to go out of business. Express Phone itself chose to have its  
21 service disconnected rather than paying its full bills. In other states, various resellers  
22 with “withhold disputed amounts” language in their ICAs have actually withheld  
23 more than they have disputed – in other words, these resellers have not paid  
24 **undisputed** amounts to AT&T. When AT&T has demanded payment of these  
25 undisputed amounts, some of these resellers have simply gone out of business in that

1 state without paying one penny to AT&T, and it is unlikely that AT&T will ever be  
2 paid amounts that clearly are owed to it. In many ways, this is similar to the  
3 Commission's own experience with American Dial Tone in Docket No. 100432-TP  
4 which entered a settlement agreement with the Commission staff in which it  
5 committed to pay penalties on an installment basis and then defaulted on its second  
6 payment.

7 **Q. HOW DO YOU RESPOND TO MR. ARMSTRONG'S TESTIMONY AT**  
8 **PAGES 11-12 THAT A SMALL CLEC LIKE EXPRESS PHONE DOES NOT**  
9 **HAVE THE RESOURCES TO FIGHT AT&T FLORIDA?**

10 A. Mr. Armstrong seems to suggest that that Express Phone signed the ICA that is  
11 signed because it either did not understand it or does not have the resources to have  
12 filed a simple request with the Commission to either adopt the Image Access ICA or  
13 to arbitrate for inclusion of its desired payment language in its own ICA. I find that  
14 hard to square with the certification by Mr. Armstrong in Express Phone's  
15 Application for Certification as an alternative local exchange company that Express  
16 Phone as "the technical expertise, managerial ability, and financial capability to  
17 provide alternative local exchange service in the State of Florida." Nor does it square  
18 with the fact that the very same company has hired two law firms and a professional  
19 witness to prosecute this proceeding before the Commission. A copy of Express  
20 Phone's Application is attached here as Exhibit WEG-11.

21 **C. Express Phone's Interconnection Agreement and Adoption Requests**

22 **Q. MOVING TO EXPRESS PHONE'S TWO REQUESTS TO ADOPT THE**  
23 **IMAGE ACCESS INTERCONNECTION AGREEMENT, WHY DID AT&T**  
24 **FLORIDA'S NOVEMBER 1, 2010 RESPONSE NOT MENTION EXPRESS**  
25 **PHONE'S THEN BREACH OF THE INTERCONNECTION AGREEMENT?**

1 A. At that time, Express Phone had more than a year left in its contract term, and, as I  
2 stated in my direct testimony, AT&T Florida was not willing to allow Express Phone  
3 to adopt a new interconnection agreement midstream. There simply was no need to  
4 recite additional reasons that AT&T Florida would have denied that request had that  
5 not been the case.

6 **Q. BUT WAS EXPRESS PHONE IN BREACH OF ITS INTERCONNECTION**  
7 **AGREEMENT WHEN IT MADE ITS FIRST REQUEST TO ADOPT THE**  
8 **IMAGE ACCESS AGREEMENT?**

9 A. Yes, as Mr. Egan stated in his direct testimony, at that time, Express Phone was in  
10 breach of Section 1.4 of Attachment 3 of its ICA for failure to pay “for all services  
11 billed, including disputed amounts, on or before the next bill date.” Specifically, in  
12 October 2010, it had an outstanding payment due of \$930,932 which was a material  
13 breach of that contractual provision.

14 **Q. ARE YOU AWARE OF ANY PROVISION OF EXPRESS PHONE’S**  
15 **INTERCONNECTION AGREEMENT THAT ALLOWS IT TO LEAVE THAT**  
16 **CONTRACT MIDSTREAM FOR ANY REASON?**

17 A. No. In fact, the plain language is directly to the contrary. Section 2.1 of the General  
18 Terms and Conditions states that “[t]he initial term of this Agreement *shall be five (5)*  
19 *years*, beginning on the Effective Date . . .”

20 **Q. HOW DO YOU RESPOND TO MR. ARMSTRONG’S TESTIMONY AT PAGE**  
21 **12 THAT AT&T FLORIDA PRESENTS ITS “STOCK ICA, TAKE IT OR**  
22 **LEAVE IT” TO SMALL CLECS?**

23 A. I disagree with that characterization. AT&T Florida does not take that position with  
24 CLECs (small or otherwise), and more significantly, it cannot take that position.

25 **Q. WHY DO YOU SAY IT CANNOT TAKE THAT POSITION?**

26 A. Sections 251 and 252 of the federal Telecommunications Act gives CLECs like  
27 Express Phone the express rights to ask for Commission assistance in negotiating a



1 contract provision and to have the Commission to arbitrate any language that they and  
2 AT&T Florida cannot agree upon.

3 **Q. DID EXPRESS PHONE SEEK COMMISSION ASSISTANCE IN**  
4 **CONNECTION WITH ITS 2006 INTERCONNECTION AGREEMENT?**

5 A. No.

6 **Q. MR. WOOD RAISES THE HYPOTHETICAL OF A PURPORTEDLY**  
7 **DISCRIMINATORY SITUATION THAT EXISTS WHEN AN ILEC ENTERS**  
8 **INTO A BETTER DEAL WITH CLEC B AFTER IT HAS ENTERED A**  
9 **DIFFERENT DEAL WITH CLEC A. HOW DO YOU RESPOND TO THAT?**

10 A. I don't see how that hypothetical has anything to do with this case.

11 **Q. WHY NOT?**

12 A. As I stated in my direct testimony, the Image Access ICA that Express Phone is  
13 seeking to adopt was signed, filed and approved several months before Express Phone  
14 signed its ICA. Express Phone could have adopted the Image Access ICA at that  
15 time, but did not do so. Mr. Wood's hypothetical addresses the opposite scenario that  
16 would have taken place had Image Access entered its ICA after Express Phone had  
17 entered its ICA.<sup>6</sup>

18 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

19 A. Yes.

20 1028413

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<sup>6</sup> I am not suggesting that AT&T Florida agrees with Mr. Wood's analysis in that very different hypothetical scenario – it does not, and our attorneys could explain why if it were relevant to the proceeding.

# AT&T Wholesale Agreement

## MFN AGREEMENT

This MFN Agreement ("MFN Agreement"), which shall be filed with and is subject to approval by the State Commission and shall become effective ten (10) days after approval by such Commission ("Effective Date"), is entered into by and between Digital Express, Inc. ("CLEC"), a Texas corporation on behalf of itself, and 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"), having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

**WHEREAS**, CLEC has requested that AT&T make available the Interconnection Agreement in its entirety executed between AT&T and Image Access, Inc. d/b/a NewPhone, Inc. dated March 20, 2006 for the State of Florida.

**WHEREAS**, pursuant to Section 252(i) of the Act, for purposes of this MFN Agreement, CLEC has adopted the Interconnection Agreement for the State of Florida;

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this MFN Agreement, CLEC and AT&T hereby agree as follows:

1. **AT&T-9STATE** shall be defined as the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.
2. CLEC and AT&T shall adopt in its entirety the Interconnection Agreement dated March 20, 2006 and any and all amendments to said Interconnection Agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this MFN Agreement. The Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this Interconnection Agreement with amendment(s) consists of the following:

ITEM
Adoption Papers
Signature Page
Exhibit 1 Cover Page
Image Access, Inc. d/b/a NewPhone, Inc. Agreement
GA Rate Remand Order Amendment - Effective April 19, 2006
Amendment to Extend Term Date - Effective March 31, 2009

3. In the event that CLEC consists of two (2) or more separate entities as set forth in the preamble to this MFN Agreement, all such entities shall be jointly and severally liable for the obligations of CLEC under this MFN Agreement.
4. The term of this MFN Agreement shall be from the Effective Date as set forth above and shall expire as set forth in Section 2 of the General Terms and Conditions of the Interconnection Agreement. For the purposes of determining the expiration date of this MFN Agreement, the expiration date shall be April 18, 2012.
5. CLEC shall accept and incorporate any approved amendments to the Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.
6. In entering into this MFN Agreement, the Parties acknowledge and agree that neither Party waives, and each Party expressly reserves, any of its rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in this MFN Agreement with respect to any orders, decisions, legislation or proceedings and any remands by the FCC, state utility commission, court, legislature or other governmental body including, without limitation, any such orders, decisions, legislation, proceedings, and remands which were issued, released or became effective prior to the Effective Date of this MFN Agreement, or which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further government review.

7. Every notice, consent or approval of a legal nature, required or permitted by this MFN Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid addressed to:

To AT&T:

Contract Management  
ATTN: Notices Manager  
311 S. Akard, 9<sup>th</sup> Floor  
Dallas, TX 75202-5398  
Facsimile Number: 214-464-2006

With a Copy To:

Business Markets Attorney  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375

To CLEC:

Tom Armstrong  
Vice President  
1801 W. Fairfield Drive, Unit 1  
Pensacola, FL 32501

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this MFN Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

Digital Express, Inc.

BellSouth Telecommunications, Inc. d/b/a  
AT&T Florida, by AT&T Services, Inc., its  
authorized agent

By: Thomas M. Armstrong

By: Patrick Doherty

Name: THOMAS M. ARMSTRONG

Name: Patrick Doherty

Title: President

Title: Director - Regulatory

Date: 6/6/2011

Date: JUN 08 2011

**EXHIBIT 1**



**Customer Name: Image Access, Inc. d/b/a NewPhone**

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**Interconnection Agreement**

**Between**

**BellSouth Telecommunications, Inc.**

**and**

**Image Access, Inc. d/b/a NewPhone**



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## AGREEMENT GENERAL TERMS AND CONDITIONS

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and Image Access, Inc. d/b/a NewPhone and in Florida, Image Access, Inc. d/b/a NewPhone, Inc. (Image Access), a Louisiana corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or Image Access or both as a "Party" or "Parties."

### W I T N E S S E T H

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, Image Access is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

**WHEREAS**, Image Access wishes to resell certain BellSouth's Telecommunications Services as set forth in Attachment 1, purchase Network Elements and Other Services as set forth in Attachment 2, and, primarily in connection therewith, may wish to utilize collocation space as set forth in Attachment 4 of this Agreement; and;

**WHEREAS**, the Parties wish to interconnect their facilities, exchange traffic and perform Local Number Portability ("LNP") pursuant to and consistent with the rights and obligations set forth in Sections 251 and 252 of the Act.

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and Image Access agree as follows:

#### **Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

## BILLING

### 1. PAYMENT AND BILLING ARRANGEMENTS

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 BellSouth will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to Image Access under this Agreement. BellSouth will format all bills in CABS Billing Output Specification (CBOS) Standard or CLUB/EDI format, depending on the type of service provided. For those services where standards have not yet been developed, BellSouth's billing format may change in accordance with applicable industry standards.
  - 1.1.1 For any service(s) BellSouth receives from Image Access, Image Access shall bill BellSouth in CBOS format.
  - 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to BellSouth.
  - 1.1.3 BellSouth will render bills each month on established bill days for each of Image Access's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in BellSouth's Non-Regulated Services Pricing List N6.
  - 1.1.4 BellSouth will bill Image Access in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
    - 1.1.4.1 For resold services, charges for services will be calculated on an individual End User account level, including, if applicable, any charge for usage or usage allowances. BellSouth will also bill Image Access, and Image Access will be responsible for and remit to BellSouth, all charges applicable to said services including but not limited to 911 and E911 charges, End Users common line charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.
  - 1.1.5 BellSouth will not perform billing and collection services for Image Access as a result of the execution of this Agreement.
- 1.2 Establishing Accounts. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, Image Access will provide the appropriate BellSouth advisory team/local contract manager the necessary documentation to enable BellSouth to establish accounts for Local Interconnection, Network Elements and Other Services and/or

resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide telecommunications services, the appropriate Operating Company Numbers (OCN) for each state as assigned by the National Exchange Carriers Association (NECA), Carrier Identification Code (CIC), if applicable, Access Customer Name and Abbreviation (ACNA), if applicable, Blanket Letter of Authorization (LOA), Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, Image Access may not order services under a new account established in accordance with this Section 1.2 until thirty (30) days after all information specified in this Section 1.2 is received from Image Access.

- 1.2.1 Company Identifiers. OCN, CC, CIC, ACNA and BAN Changes. If Image Access needs transfer collocation (i.e., transfer assets) to change its ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s) under which it operates when Image Access has already been conducting business utilizing that ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s), Image Access shall bear all costs incurred by BellSouth to convert Image Access to the new ACNA(s)/BAN(s)/CC(s)/CIC(s)/OCN(s). ACNA/BAN/CC/CIC/OCN conversion charges include the time required to make system updates to all of Image Access's End User customer records and will be handled by the BFR/NBR process.
- 1.2.2 Tax Exemption. It is the responsibility of Image Access to provide BellSouth with a properly completed tax exemption certificate at intervals required by the appropriate taxing authorities. A tax exemption certificate must be supplied for each individual Image Access entity purchasing Services under this Agreement. Upon BellSouth's receipt of a properly completed tax exemption certificate, subsequent billings to Image Access will not include those taxes or fees from which Image Access is exempt. Prior to receipt of a properly completed exemption certificate, BellSouth shall bill, and Image Access shall pay all applicable taxes and fees. In the event that Image Access believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to BellSouth's receipt of a properly completed exemption certificate, BellSouth shall assign to Image Access its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by BellSouth, BellSouth shall, after receiving a written request from Image Access and at Image Access's sole expense, pursue such refund claim on behalf of Image Access, provided that Image Access promptly reimburses BellSouth for any costs and expenses incurred by BellSouth in pursuing such refund claim, and provided further that BellSouth shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to Image Access. Image Access shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by Image Access to its End Users.

- 1.3 Deposit Policy. BellSouth reserves the right to secure the accounts of new CLECs (entities with no existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date) and existing CLECs (entities with an existing relationship with BellSouth for the purchase of wholesale services as of the Effective Date) with a suitable form of security pursuant to this Section. Image Access may satisfy the requirements of this Section through the presentation of a payment guarantee with terms acceptable to BellSouth executed by a company with a credit rating of greater than or equal to 5A1.
- 1.3.1 With the exception of new CLECs with a D&B credit rating equal to 5A1, BellSouth may secure the accounts of all new CLECs consistent with the terms set forth in subsection 1.3.2. Further, if Image Access has filed for bankruptcy protection within twelve (12) months prior to the Effective Date of this Agreement, BellSouth may treat Image Access, for purposes of establishing security on its accounts, as a new CLEC as set forth in subsection 1.3.5.
- 1.3.2 The security required by BellSouth shall take the form of cash, an Irrevocable Letter of Credit (BellSouth Form or substantially similar in substantive parts to the BellSouth Form), Surety Bond (BellSouth Form or substantially similar in substantive parts to the BellSouth Form).
- 1.3.3 The amount of the security shall not exceed two (2) month's estimated billing for new CLECs or actual billing for existing CLECs. Interest shall accrue per the appropriate BellSouth tariff on cash deposits.
- 1.3.3.1 The amount of the security due from Image Access Data shall be reduced by the undisputed amounts due to Image Access Data by BellSouth pursuant to Attachment 3 of this Agreement that have not been paid by the Due Date at the time of the request by BellSouth to Image Access Data for a deposit. Within ten (10) days of BellSouth's payment of such undisputed past due amounts to Image Access Data, shall provide the additional security necessary to establish the full amount of the deposit that BellSouth originally requested.
- 1.3.4 Any such security shall in no way release Image Access from its obligation to make complete and timely payments of its bills, subject to the bill dispute procedures set forth in Section 2 below.
- 1.3.5 BellSouth may secure the accounts of existing CLECs where an existing CLEC does not meet the following factors:
- 1.3.5.1 Image Access must have a good payment history, based upon the preceding twelve (12) month period. A good payment history shall mean that less than ten percent (10%) of the non-disputed receivable balance is received over thirty (30) days past the Due Date.
- 1.3.5.2 The existing CLEC's liquidity status, based upon a review of EBITDA, is EBITDA positive for the prior four (4) quarters of financials (at least one of which must be an

audited financial report) excluding any nonrecurring charges or special restructuring charges.

- 1.3.5.3 If the existing CLEC has a current bond rating, such CLEC must have a bond rating of BBB or above or the existing CLEC has a current bond rating between CCC and BB and meets the following criteria for the last Fiscal Year End and for the prior four (4) quarters of reported financials:
- 1.3.5.3.1 Free cash flow positive;
- 1.3.5.3.2 Positive tangible net worth; and
- 1.3.5.3.3 Debt/tangible net worth rating of two point five (2.5) or better.
- 1.3.6 Subject to Section 1.3.7 following, in the event Image Access fails to remit to BellSouth any deposit requested pursuant to this Section within thirty (30) days of Image Access's receipt of such request, service to Image Access may be terminated in accordance with the terms of Section 1.5 below and subtending sections of this Attachment, and any security deposits will be applied to Image Access's account(s). Notwithstanding the foregoing, in the event that BellSouth proceeds with service discontinuance pursuant to this section of the Agreement, such discontinuance shall be performed in accordance with the applicable state law governing telecommunications service withdrawal and/or discontinuance.
- 1.3.7 The Parties will work together to determine the need for or amount of a reasonable deposit. If Image Access does not agree with the amount or need for a deposit requested by BellSouth, Image Access may file a petition with the Commissions for resolution of the dispute and both Parties shall cooperatively seek expedited resolution of such dispute. BellSouth shall not terminate service during the pendency of such a proceeding provided that Image Access posts a payment bond for fifty percent (50%) of the requested deposit during the pendency of the proceeding. Notwithstanding the foregoing, in the event that BellSouth proceeds with service discontinuance pursuant to this section of the Agreement, such discontinuance shall be performed in accordance with the applicable state law governing telecommunications service withdrawal and/or discontinuance.
- 1.3.8 At any such time as the provision of services to Image Access is terminated pursuant to Section 1.5 below, the amount of the deposit will be credited against Image Access's account(s) and any credit balance that may remain will be refunded immediately.
- 1.3.9 Subject to a standard of commercial reasonableness, if a material change in the circumstances of Image Access so warrants and/or gross monthly billing has increased more than twenty-five percent (25%) beyond the level most recently used to determine the level of security deposit, BellSouth reserves the right to request additional security subject to the criteria set forth herein this Section 1.3.

- 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.





**STATE OF ALABAMA**  
ALABAMA PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130-4260

LUCY BAXLEY, PRESIDENT  
JAN COOK, ASSOCIATE COMMISSIONER  
SUSAN D. PARKER, PH.D, ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
SECRETARY

**IN THE MATTER OF :**

**BELLSOUTH TELECOMMUNICATIONS, INC.,  
d/b/a AT&T ALABAMA or AT&T SOUTHEAST**

**v.**

**LIFECONNEX TELECOM, LLC,  
f/k/a SWIFTEL, LLC**

**IN RE: PETITION OF LIFECONNEX  
TELECOM, LLC, F/K/A SWIFTEL, LLC  
CONCERNING IMPLEMENTATION OF ITS  
INTERCONNECTION AGREEMENT WITH  
BELLSOUTH TELECOMMUNICATIONS,  
INC., D/B/A AT&T ALABAMA OR AT&T  
SOUTHEAST AND MOTION FOR  
TEMPORARY, EMERGENCY RELIEF TO  
PREVENT SUSPENSION OF SERVICE**

**DOCKET 31450**

**ORDER GRANTING IN PART AND DENYING IN PART  
LIFECONNEX TELECOM, LLC'S  
PETITION AND MOTION FOR EMERGENCY RELIEF**

**BY THE COMMISSION:**

**I. BACKGROUND**

On January 15, 2010, BellSouth Telecommunications, Inc., d/b/a AT&T Alabama or AT&T Southeast ("AT&T") filed a Complaint and Petition for Relief ("Complaint") against LifeConnex Telecom, LLC, f/k/a Swiftel, LLC ("LifeConnex") urging the Commission to resolve certain billing disputes between LifeConnex and AT&T; to determine the amount LifeConnex owes AT&T under the Parties' Interconnection Agreement ("ICA") and to require LifeConnex to pay that amount to AT&T. In summary, AT&T explained that LifeConnex had purchased telecommunications services from AT&T for resale to end-user consumers and had requested certain promotional bill credits from AT&T. AT&T alleged, however, that LifeConnex was not entitled to all of the promotional credits it had requested. AT&T also alleged that LifeConnex had failed to pay disputed amounts owed to AT&T and had instead deducted the amounts in dispute from its payments to AT&T.

DOCKET 31450- #2

The AT&T Complaint against LifeConnex discussed immediately above was assigned to Docket 31317. Notably, AT&T filed complaints substantially mirroring the LifeConnex Complaint against six (6) other competitive local exchange carriers ("CLECS") in Alabama. The similar complaints against the other six CLECs (the "other CLEC Respondents") were consecutively assigned to Dockets 31318 - 31323.<sup>1</sup>

On January 25, 2010, AT&T filed a Motion for Consolidation of Dockets 31317, 31318, 31319, 31320, 31321, 31322, and 31323. In support of its Motion for Consolidation, AT&T asserted that the dockets identified should be consolidated for the limited purpose of expeditiously resolving two common issues present in each docket: (1) whether AT&T can apply the resale discount approved by this Commission to the cash back component of various promotional offers that AT&T Alabama makes available for resale; and (2) whether AT&T's customer referral marketing promotions (such as the "Word of Mouth" promotion) are subject to resale. AT&T maintained that the facts associated with the common issues identified did not vary significantly, if at all, from one docket to the next. AT&T further asserted that the legal issues associated with the matters in controversy were the same from docket to docket. AT&T thus concluded that the limited consolidation requested in its petition would provide numerous administrative and judicial efficiencies.

On February 25, 2010, LifeConnex filed its Answer and Counterclaims ("Answer") to AT&T's Complaint in Docket 31317. In its Answer, LifeConnex alleged that it was entitled under federal law to the same discounts and promotional credits that AT&T offers its own retail customers. LifeConnex argued, however, that AT&T incorrectly calculated those discounts and in some cases refused to apply them. LifeConnex asserted that the credits and discounts in dispute were usually sufficient to offset, in large part, the payments due to AT&T from LifeConnex. LifeConnex accordingly raised counterclaims which alleged that LifeConnex was

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<sup>1</sup> *AT&T v. Tennessee Telephone Service, Inc., d/b/a Freedom Communications USA, LLC* was assigned to Docket 31318; *AT&T v. Affordable Phone Services, Inc., d/b/a High Tech Communications* was assigned to Docket 31319; *AT&T v. Image Access, Inc., d/b/a New Phone* was assigned to Docket 31320; *AT&T v. Budget Prepay, Inc., d/b/a Budget Phone*, was assigned to Docket 31321; *AT&T v. BLC Management, LLC, d/b/a Angles Communications Solutions* was assigned to Docket 31322; and *AT&T v. dPi Teleconnect, LLC* was assigned to Docket 31323.

DOCKET 31450- #3

entitled to additional discounts and asserted affirmative defenses to AT&T's Complaint. In particular, LifeConnex urged the Commission to either dismiss the Complaint of AT&T or hold the matter in abeyance pending the results of proceedings in federal court and/or a petition currently being considered by the Federal Communications Commission.<sup>2</sup>

AT&T filed its Response to LifeConnex' Answer on April 9, 2010. AT&T also submitted on April 9, 2010, a Motion to Dismiss or Sever Certain Counterclaims raised by LifeConnex and the other CLEC respondents. LifeConnex submitted a Response to AT&T's Motion to Dismiss or Sever its Counterclaims on or about April 30, 2010.

After a number of procedural motions addressing AT&T's January 25, 2010, Motion for Consolidation were submitted by AT&T, LifeConnex and the other CLEC Respondents (collectively the "Parties"), a Joint Motion on Procedural Issues was submitted by the Parties on June 1, 2010. Said Motion urged the Commission to hold all other pending motions in the proceedings in Dockets 31317 – 31323 in abeyance and to convene a consolidated proceeding in which AT&T, LifeConnex and the other CLEC respondents would resolve the issues of: (1) how cash back credits to resellers should be calculated; (2) whether "Word of Mouth" promotions are available for resale and, if so, how the credits to resellers should be calculated; and (3) how credits to resellers for waiver of line connection charges should be calculated. Pursuant to a procedural ruling issued by the Commission on June 4, 2010, the Parties' Joint Motion on Procedural Issues was granted ("Procedural Ruling Granting Joint Motion on Procedural Issues").

On June 21, 2010, AT&T filed a "Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement" ("Notice of Commencement of Treatment"), wherein AT&T notified the Commission that it had sent LifeConnex a Notice of Suspension and Termination on or about June 18, 2010, informing LifeConnex that unless it paid AT&T all past due balances (the balances at issue in this Docket), "AT&T would suspend, discontinue, and/or terminate

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<sup>2</sup> See WC Docket No. 06-129, *In the matter of Petition of Image Access, Inc., d/b/a New Phone for Declaratory Ruling regarding Incumbent Local Exchange Carrier Promotions available for Resale under the Communications*

DOCKET 31450- #4

LifeConnex' service in Alabama." In the Notice to LifeConnex, AT&T stated that if payment was not made by July 6, 2010, AT&T would take further action pursuant to the Parties' ICA, including the suspension of LifeConnex' ability to order new services or make changes to existing lines. If all past due balances were not made by July 21, 2010, AT&T advised LifeConnex that it would take further action, including discontinuance of service to LifeConnex (and therefore to LifeConnex' end user customers) and/or termination of the ICA with LifeConnex. In the Notice of Commencement of Treatment, AT&T noted that suspension, discontinuance, and/or termination were actions authorized by the Parties' ICA, and that specific language in Section 1.4 of Attachment 7 to the ICA stated that "LifeConnex shall make payment to AT&T for all services billed including disputed amounts." AT&T subsequently informed the Commission informally that it had extended the July 6, 2010, suspension date until July 13, 2010, or beyond.

On June 29, 2010, LifeConnex filed the Petition Concerning Implementation of Its Interconnection Agreement with AT&T and Motion for Temporary, Emergency Relief to Prevent Suspension of Service ("Emergency Request") which is the subject of this Docket. Said Emergency Request urged the Commission to issue an order instructing AT&T to take no actions to suspend or otherwise interfere with LifeConnex' service to its customers" pending a final determination by the Commission in the consolidated phase of Dockets 31317 - 31323. LifeConnex alleged in the Emergency Request that it was providing telecommunications service through resale of AT&T's facilities to almost 22,000 Alabama customers, nearly all of whom are low income residential customers. LifeConnex asserted that it was entitled to receive from AT&T the same credits and promotional discounts that AT&T gave to its own retail customers and that LifeConnex had hired a private firm, Lost Key Telecom, Inc., to keep track of its credits.

DOCKET 31450- #5

LifeConnex further urged the Commission in its June 29, 2010, Emergency Request to hold the issues raised by AT&T's June 18, 2010, Notice of Suspension and Termination in abeyance pending a generic determination on the underlying issues common to Dockets 31317 – 31323. LifeConnex pointed out that it disputed similar claims raised by AT&T in the Complaint which led to the establishment of Docket 31317 and had, in fact, agreed with AT&T in the Joint Motion on Procedural Issues to suspend consideration of such matters. Indeed, LifeConnex emphasized that the Commission's June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues held in abeyance continued proceedings in the consolidated phase of Dockets 31317 - 31323 pending the resolution of underlying issues common to the cited Dockets. LifeConnex thus maintained that AT&T's Notice of Commencement of Treatment was contrary to the letter and spirit of the Parties' agreement and the Commission's June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues. LifeConnex further intimated that AT&T's failure to strictly enforce Section 1.4 of Attachment 7 of the Parties' ICA over an extended period constituted a waiver of those provisions requiring payment of all charges due.

On June 30, 2010, AT&T filed its Response in Opposition to LifeConnex' Request for Emergency Relief ("Response in Opposition"). AT&T therein stated that the ICA entered between AT&T and LifeConnex was approved pursuant to Commission Order entered on November 6, 2007, in Docket U-4854. In accordance with the unambiguous terms of Attachment 7, Sections 1.4 and 1.41, of that ICA, AT&T asserted that LifeConnex was obligated to pay all amounts billed to it by AT&T, including disputed charges. AT&T further maintained that the Joint Motion on Procedural Issues in Docket Numbers 31317 - 31323 did not relieve LifeConnex of its contractual obligation to pay all such amounts, including disputed charges. To the contrary, AT&T argued that the ICA constituted a binding contract between the Parties which the Commission was obligated to enforce under state and federal law. AT&T further argued that despite the claims of LifeConnex to the contrary, AT&T had not waived its right to demand payments of all amounts, including amounts LifeConnex disputes, by not insisting on

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full payment in the past. AT&T lastly argued that LifeConnex had not demonstrated that it was entitled to the relief requested in its Emergency Request as a matter of law.

On July 7, 2010, LifeConnex submitted its Reply to AT&T's Response in Opposition. LifeConnex asserted therein that until the Commission determines the pending issues concerning the calculation and application of resale credits in consolidated Dockets 31317 – 31323 as contemplated in the Commission's June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues, the dollar amounts owed AT&T, the credits due to LifeConnex and the past due amounts, if any, owed by LifeConnex to AT&T can not be determined in any reasonable way. LifeConnex further argued that AT&T's Response in Opposition failed to acknowledge the tacit agreement of AT&T to accept "net" payments from LifeConnex which deducted the credits in dispute in this matter and Docket 31317 since October 2007. LifeConnex thus concluded that AT&T should not be allowed to pursue the actions threatened in the June 18, 2010, Notice of Suspension and Termination until the Commission's resolution of the matters clearly delineated for consideration in the June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues in Consolidated Dockets 31317 - 31323.

**II. DISCUSSION AND CONCLUSIONS**

After reviewing the pleadings discussed above, all associated documentation, including the summary of the billings and payments submitted to LifeConnex by AT&T and the controlling provisions of the Parties' ICA, the Commission staff determined that LifeConnex has not specifically disputed AT&T's claim that AT&T submitted to LifeConnex bills in excess of \$12 million that remained unpaid as of the date of the Notice of Suspension and Termination that was submitted by AT&T to LifeConnex on or about June 18, 2010. In particular, staff determined that LifeConnex has not submitted specific documentation rebutting AT&T's claim that LifeConnex owes AT&T over \$5 million in charges above and beyond the \$6 million or more in unsubstantiated credits which LifeConnex claims it is entitled to as of the date reflected in the June 18, 2010, Notice of Suspension and Termination. The staff surmised that, given the plain language of Attachment 7, Sections 1.4 and 1.41 of the Parties' ICA, LifeConnex is

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required to timely pay all charges on invoices submitted by AT&T, including the charges that are disputed. LifeConnex has the latitude to dispute amounts billed by AT&T under the Parties' ICA, but LifeConnex must pay all amounts billed, including disputed amounts, within the time specified by the ICA subject to resolution through the ICA's dispute resolution provisions or a determination by the Commission. The staff accordingly concluded that the plain language of the ICA supports AT&T's right to take the type of action outlined in the Notice of Suspension and Termination served on LifeConnex on or about June 18, 2010.

The Commission staff also gave consideration to LifeConnex' argument that AT&T's apparent prior practice of allowing LifeConnex to deduct disputed amounts from its payments to AT&T constitutes a tacit agreement to accept "net" payments outside of the Parties' ICA. The staff concluded, however, that LifeConnex' arguments in that regard are fatally undermined by the provisions of Section 17 of the general terms of the Parties' ICA and conditions which state:

17. Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

The staff found that the language above is unambiguous and clearly allows AT&T the right to withhold enforcement of provisions in the ICA on a discretionary basis without then being required to completely waive enforcement of those provisions in the future.

The staff also considered and rejected LifeConnex' argument that a substantial portion of the money demanded by AT&T does not properly fall into the category of "disputed" billing amounts as that term is used in the Parties' ICA, but instead consists of promotional credits which AT&T has improperly refused to apply to LifeConnex' account. Similarly, the staff considered and rejected LifeConnex' argument that AT&T should be precluded from suspending/terminating service to LifeConnex due to the Commission's June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues in Dockets 31317 - 31323, which

DOCKET 31450- #8

held the proceedings in the noted Dockets in abeyance pending resolution of the common issues in those dockets concerning the calculation and/or application of resale credits. LifeConnex' argument was that given the June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues, AT&T should not now be allowed to suspend or terminate service to LifeConnex when the issues concerning the proper calculation of the credits claimed by LifeConnex and the other CLEC Respondents in consolidated Dockets 31317 – 31323 are set to be decided expeditiously per the agreement of all affected Parties including AT&T.

The staff noted that the Joint Motion on Procedural Issues which led to the Commission's June 4, 2010, Procedural Ruling granting said Joint Motion included the following language:

5. Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's pending motions, claims, counterclaims or defenses or any Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with, or following, the Consolidated Phase, or to seek other relief as a change in circumstances may warrant.

The staff thus concluded that AT&T was free to pursue any pending "issue, claim or counterclaim" despite the ultimate entry of the June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues. As a signatory to the June 1, 2010, Joint Motion on Procedural Issues which led to the June 4, 2010, Ruling, the staff determined that LifeConnex cannot now argue that its agreed upon language in that document should somehow not be applied but instead be either ignored or interpreted as a bar to further actions by AT&T.

Having considered all of the foregoing, we hereby adopt and ratify all of the findings and determinations reached by the staff. While we understand that the consolidated consideration of Dockets 31317 – 31323 contemplated by our June 4, 2010, Procedural Ruling Granting Joint Motion on Procedural Issues will likely resolve the issues in controversy in the instant proceeding in a manner that will be less disruptive to the end users of LifeConnex, we also understand that AT&T has the right per the Parties' ICA and the express terms of the Joint



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Motion on Procedural Issues to address the amounts it claims to be owed by LifeConnex in the manner that best protects its business interests. Given the substantial nature of the billing disputes involved at present, we accordingly conclude that:

1. LifeConnex shall within five (5) business days of the effective date of this Order, pay to AT&T the undisputed outstanding billing amount of the \$12,917,771 in total billings for which AT&T submitted documentation at the time of the June 18, 2010, Notice of Suspension and Termination served on LifeConnex. Said payment shall be in cash or certified funds.
2. LifeConnex shall post within five (5) business days of the effective date of this Order, a bond for the full amount of the outstanding disputed amount of the \$12,917,771 in total billings for which AT&T submitted documentation at the time of the June 18, 2010, Notice of Suspension and Termination served on LifeConnex. Any bond posted will remain in place during the pendency of the proceedings in consolidated Dockets 31317 – 31323 and the rendering of a final determination regarding AT&T's complaint against LifeConnex in Docket 31317. Said bond shall contain language stating that it will remain in place as directed herein and shall be released or terminate only upon the entry of subsequent order of the Commission.
3. LifeConnex must fully comply with the terms of its Interconnection Agreement with AT&T from the effective date of this Order going forward, including the provisions of said agreement which require the payment of all disputed charges. In particular, LifeConnex shall, from the effective date of this Order, pay all amounts reflected in bills from AT&T within the time prescribed, including disputed amounts, as required by the Parties' Interconnection Agreement.
4. In the event that LifeConnex fails to comply with any or all of the provisions set forth above, LifeConnex must begin to notify its customers within 48 hours of said failure that AT&T will be initiating suspension, discontinuance and/or termination of LifeConnex' service and that said customers have 14 calendar days to find another service provider after which time their service may be disconnected. LifeConnex shall, however, authorize AT&T, in writing, to notify the affected LifeConnex customers of impending disconnection in the event that LifeConnex fails to comply with all the terms and conditions set forth immediately above and determines that it cannot issue the notices required herein. LifeConnex shall provide a draft of the required customer notification to the Commission's Telecommunications Division Staff for verbal approval prior to dispatching same. LifeConnex shall also keep the Commission's Telecommunications Division Staff fully advised of the status of its operations until resolution of the issues discussed herein.
5. LifeConnex shall not solicit additional customers upon defaulting on any of the terms and conditions set forth herein and shall provide customers who have prepaid for their service with the full benefit of the service purchased to the fullest extent possible.

DOCKET 31450- #10

IT IS SO ORDERED BY THE COMMISSION.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as may appear to be just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 20<sup>th</sup> day of August, 2010.

ALABAMA PUBLIC SERVICE COMMISSION

  
Lucy Baxley, President

  
Jan Cook, Commissioner

  
Susan D. Parker, Commissioner

ATTEST: A True Copy

  
Walter L. Thomas, Jr., Secretary

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BELLSOUTH TELECOMMUNICATIONS, INC.	)	
D/B/A AT&T SOUTHEAST D/B/A AT&T	)	
KENTUCKY	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO.
	)	2010-00026
	)	
LIFECONNEX TELECOM, LLC F/K/A	)	
SWIFTEL, LLC	)	
	)	
DEFENDANT	)	

O R D E R

On June 26, 2010, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") filed a document titled "Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement" notifying the Commission that AT&T Kentucky was on the verge of suspending, discontinuing, and/or terminating the service it provides LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") for lack of payment.

LifeConnex is a competitive local exchange carrier ("CLEC") that resells services purchased from AT&T Kentucky to its own customers. AT&T Kentucky charges LifeConnex for the purchased service and LifeConnex, under applicable circumstances, is eligible to receive credit for promotions and other discounts that AT&T Kentucky provides to its own customers. LifeConnex then subtracts these credits from the total it

remits to AT&T Kentucky for service purchased. On January 22, 2010, AT&T Kentucky filed this complaint against LifeConnex alleging that LifeConnex was incorrectly claiming promotional credits while making remittance to AT&T Kentucky for the purchase of services. AT&T Kentucky requested that the Commission find that LifeConnex incorrectly withheld payment from AT&T Kentucky and order that payment of the past-due amounts be made to AT&T Kentucky.<sup>1</sup>

AT&T Kentucky alleges that, although the billing dispute is the reason for its complaint against LifeConnex, LifeConnex is obligated under the parties' interconnection agreement to continue to pay both disputed and undisputed charges. The pertinent tariff language states, "[LifeConnex] shall make payments to AT&T for all services . . . payment for services provided by AT&T, including disputed charges, is due on or before the next bill date."<sup>2</sup> Attachment 7 of the parties' interconnection agreement states, in part, that "[p]ayment of all charges will be the responsibility of Swiftel, LLC [LifeConnex]. . . . Swiftel, LLC [LifeConnex] shall make payment to AT&T for all services billed including disputed amounts."<sup>3</sup>

AT&T Kentucky alleges that LifeConnex has paid less than four percent of the net amount billed to LifeConnex since December 2009.<sup>4</sup> AT&T Kentucky asserts that it is within its rights to invoke Section 1.5 of the parties' interconnection agreement that

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<sup>1</sup> AT&T Kentucky Complaint at 9.

<sup>2</sup> Interconnection Agreement, Section 1.4.

<sup>3</sup> Interconnection Agreement, Attachment 7, Section 1.4, at 6.

<sup>4</sup> AT&T Kentucky's Notice of Commencement of Treatment at 2.

allows AT&T Kentucky to suspend, disconnect, and/or discontinue service to LifeConnex for the unpaid bills.<sup>5</sup>

In response, LifeConnex asserts that, as the billing dispute is ongoing, AT&T Kentucky should not be allowed to collect disputed amounts.<sup>6</sup> LifeConnex also argues that, because AT&T Kentucky had heretofore not required LifeConnex to pay disputed charges, AT&T Kentucky should not be allowed to change its practices now and demand payment.<sup>7</sup> LifeConnex argues that Section 8 of the parties' interconnection agreement allows the parties to seek Commission review of any dispute arising out of the interconnection agreement. Section 8 states:

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

On May 20, 2010, the parties moved jointly for the issuance of a procedural schedule and to hold in abeyance all pending motions in this proceeding. In the May 20, 2010 motion, the parties jointly stated that nothing in the motion "is intended, or shall be construed, as a waiver of any Party's . . . right to . . . pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with or following the Consolidated Phase, or to seek such

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<sup>5</sup> Id. at 3.

<sup>6</sup> Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) Concerning Implementation of Its Interconnection Agreement with AT&T and Emergency Motion to Prevent Suspension of Service at 7, filed July 1, 2010.

<sup>7</sup> Id. at 7.

other relief as a change in circumstances may warrant."<sup>8</sup> On June 17, 2010, the parties submitted another joint motion for the issuance of a procedural schedule<sup>9</sup> and asked for permission to file a status report on the progress of negotiations and discovery no later than November 1, 2010. By Order dated July 14, 2010, the Commission placed this proceeding in abeyance and ordered the submission of a status report by November 1, 2010.

However, on July 26, 2010, AT&T Kentucky provided written notice to the Commission of its intent to disconnect LifeConnex for nonpayment of bills. AT&T Kentucky requested authorization to invoke the Emergency Service Continuity Tariff approved by this Commission on May 20, 2003 in Case No. 2002-00310.<sup>10</sup> Invoking this tariff is necessary only if LifeConnex has not notified its end-users of the service disconnection. If the Emergency Service Continuity Tariff is invoked, AT&T Kentucky will continue to provide telephone service to LifeConnex's customers for a minimum of 14 days after LifeConnex ceases to operate. In that notice, AT&T Kentucky states that disconnection of LifeConnex will affect less than 2,200 Kentucky customers. The primary obligation to notify end-users of the proposed disconnection of service rests

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<sup>8</sup> The phrase "Consolidated Phase" refers to the parties' request to consolidate the LifeConnex case with three other Commission proceedings filed simultaneously against other competitive carriers centering on the same issues. The parties also note that there are identical proceedings involving all four carriers and AT&T before the commissions in eight other southern states. Joint Motion at 2, as filed on May 20, 2010.

<sup>9</sup> The parties propose to submit a joint schedule that would be identical to a joint schedule submitted for approval before the commissions in the eight other southern states referenced in fn. 8.

<sup>10</sup> Case No. 2002-00310, Customer Billing and Notice Requirements for Wireline Telecommunications Carriers Providing Service in Kentucky (Ky. PSC May 20, 2003).

with LifeConnex until such time as the Commission allows AT&T Kentucky to invoke its Emergency Service Continuity Tariff. Under this tariff, AT&T Kentucky would be required to notify the affected end-users and inform them that they may continue to receive telecommunications services through the Emergency Service Continuity Plan for a minimum of 14 days and that the end-user must make provisions to transition to a new service provider.

Prior to filing the notice of intent to disconnect, AT&T Kentucky filed with the Commission, on June 22, 2010, a schedule of the billed amounts, payments made, and the current balance of the amount due to AT&T Kentucky under confidential protection.<sup>11</sup> The Commission has reviewed the schedule and finds that a significant amount is owed by LifeConnex. The Commission finds that, although the parties agreed to place this proceeding in abeyance while discovery and settlement efforts move forward, AT&T Kentucky has invoked its right to disconnect services to LifeConnex and LifeConnex is a willing party to an existing interconnection agreement containing provisions requiring payment of disputed charges pursuant to Section 1.5 and Attachment 7 of that agreement. Based on the information provided, LifeConnex has failed to render payment for unpaid charges which, at best, can be categorized as substantial. Despite the rounds of joint motions submitted by the parties and their stated intentions of pursuing negotiations for partial settlement of the claims in this

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<sup>11</sup> The petition was filed on June 22, 2010. The Commission granted protection to this information by letter dated August 10, 2010. For this reason, the exact amount owed by LifeConnex will not be outlined in this Order. However, at paragraph 17 in its petition concerning implementation of its interconnection agreement, as filed on July 1, 2010, LifeConnex notes that AT&T Kentucky alleges it owes in excess of \$1.8 million for all services billed.

proceeding, the underlying issue of nonpayment by LifeConnex is ongoing. The Commission also notes that LifeConnex was a willing signatory to the portion of the May 20, 2010 joint motion which allowed either party to pursue any claim or issue not addressed as part of that motion. The Commission finds that the abeyance, as granted by Order on July 14, 2010, does not serve as any type of bar to AT&T Kentucky's Notice of Commencement of Treatment or the Notice of Intent to Disconnect. Therefore, although the underlying question of whether LifeConnex is entitled to receive certain credits when it resells services that are the subject of certain promotional offers has not been resolved, that fact cannot be used to supersede LifeConnex's existing payment obligations for services rendered, as outlined in the current interconnection agreement. The Commission finds that AT&T Kentucky is entitled to move forward with disconnection of services.

The Commission, having reviewed the pleadings and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. LifeConnex shall notify the Commission, within seven calendar days of the date of this Order, of its intent to pay the delinquent bill to AT&T Kentucky within 10 days of the date of this Order or, in the alternative, of its intent to notify its end-users of the proposed service disconnection. Such written comments shall include a copy of LifeConnex's customer notice and an affidavit indicating when the notice was mailed and the number of Kentucky customers to whom it was mailed.

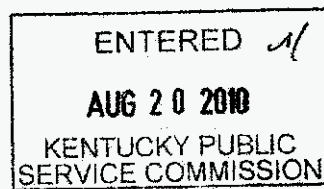
2. A copy of AT&T Kentucky's Notice of Intent to Disconnect LifeConnex is attached hereto in the Appendix and incorporated herein.



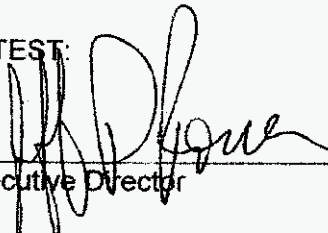
3. If LifeConnex has not responded as prescribed in ordering paragraph 1 within seven calendar days of the date of this Order, AT&T Kentucky shall implement the procedures established in its Emergency Service Continuity Tariff.

4. The Executive Director shall send a copy of this Order by certified mail to LifeConnex.

By the Commission



ATTEST:

  
\_\_\_\_\_  
Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00026 DATED **AUG 20 2010**



Tony Taylor  
Executive Director

AT&T  
601 W. Chestnut Street  
4<sup>th</sup> Floor  
Louisville, KY 40203

T: 502-582-2164  
F: 502-582-8667  
Tony.Taylor@att.com

July 23, 2010

RECEIVED

JUL 26 2010

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602-0615

2010-00026

Dear Mr. Derouen:

Pursuant to the Kentucky PSC's May 20, 2003 order in KY PSC Case No. 2002-0310, AT&T Kentucky is providing notice to the Kentucky Public Service Commission (PSC) of AT&T Kentucky's intent to disconnect LifeConnex Telecom, Inc. (f/k/a Swiftel, LLC) ("LifeConnex") for non-payment.

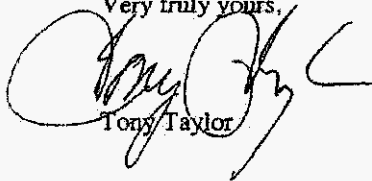
AT&T Kentucky's records indicate that LifeConnex is delinquent in payment of its bills to AT&T Kentucky. Attempts to collect past due amounts from LifeConnex have been unsuccessful. AT&T made numerous written notifications to LifeConnex informing them of AT&T's intent to suspend or terminate services consistent with the terms and conditions of the Interconnection Agreement between LifeConnex and AT&T Kentucky. As of today, AT&T Kentucky has received no payment from LifeConnex and we seek to begin discontinuance of services immediately. Disconnection of LifeConnex service will affect less than 2,200 Kentucky customers.

Under terms of their agreement, LifeConnex is solely responsible for notifying its end users of the proposed service disconnection. AT&T Kentucky is copying LifeConnex to remind them of their obligations to notify their end users of this situation regarding pending disconnection of services.

Should the Commission determine the need to invoke AT&T Kentucky's Emergency Service Continuity Tariff, AT&T Kentucky will take steps to notify the affected end users and inform them that they may continue to receive telecommunications services through The Emergency Services Continuity Plan for a minimum of fourteen (14) days and that the end user must transition to a new service provider.

If there are any questions or the need for additional information concerning this filing, please call me at 502-582-2164.

Very truly yours,



Tony Taylor

cc: Edward Heard  
LifeConnex Telecom, Inc.

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-55, SUB 1817  
DOCKET NO. P-55, SUB 1818  
DOCKET NO. P-55, SUB 1819

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1817

In the Matter of )  
Disconnection of LifeConnex Telecom, )  
Inc. f/k/a Swiftel, LLC by BellSouth )  
Telecommunications, Inc. d/b/a AT&T )  
Southeast d/b/a AT&T North Carolina )

DOCKET NO. P-55, SUB 1818

In the Matter of )  
Disconnection of EveryCall Communications, )  
Inc. by BellSouth Telecommunications, Inc. )  
d/b/a AT&T Southeast d/b/a AT&T North )  
Carolina )

DOCKET NO. P-55, SUB 1819

In the Matter of )  
Notice of Suspension and Disconnection of )  
Tennessee Telephone Service, Inc. LLC d/b/a )  
Freedom Communications USA, LLC by )  
BellSouth Telecommunications, Inc. d/b/a )  
AT&T Southeast d/b/a AT&T North Carolina )

ORDER RULING ON DOCKETS

**BY THE COMMISSION:** These dockets concern efforts by BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina (AT&T) to collect monies owed from three competing local providers (CLPs) in the business of providing phone service mainly to credit-challenged customers. These CLPs are LifeConnex Telecom, Inc. f/k/a Swiftel, LLC (LifeConnex), EveryCall Communications, Inc. (EveryCall), and Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC (Freedom). Each of these dockets concerns nonpayment by these CLPs and was initiated by AT&T to collect from them by threatening disconnection under the relevant interconnection agreement (ICA). As can be seen below, EveryCall and Freedom are currently in bankruptcy, leaving only LifeConnex to

be considered by the Commission on the question of the suspension and/or termination of service.

On June 23, 2010, AT&T filed Notices of Disconnect with respect to LifeConnex<sup>1</sup> and EveryCall respectively. On July 6, 2010, both LifeConnex and EveryCall filed Petitions for Temporary Emergency Relief to prevent Suspension and Termination of Service. On July 8, 2010, an Order Seeking Comments from AT&T and the Public Staff was issued regarding the Petitions of LifeConnex and EveryCall. On July 12, 2010, an Order was issued requiring AT&T not to suspend service to LifeConnex or to EveryCall "pending further Order issued after and in response to the filings made by AT&T and the Public Staff."

On July 16, 2010, LifeConnex also filed a Petition to Intervene and Motion for Temporary Emergency Relief to Prevent Suspension of Service in the Consolidated Proceeding.<sup>2</sup> LifeConnex argued that the cases involved in the Consolidated Proceeding were similar not only to each other but to cases involving the same parties pending before the regulatory commissions of eight other states in the former BellSouth region. LifeConnex said it is a Respondent in four of those pending proceedings, and, in each of those four states, LifeConnex has agreed to the same joint motions that were filed in North Carolina.<sup>3</sup>

Also on July 16, 2010, Freedom filed (1) a Motion for Emergency Relief to Prevent Suspension and Service in the Sub 1819 docket; and (2) a Petition to Intervene in the Consolidated Proceeding. With respect to the Consolidated Proceeding cases, Freedom argued their similarity not only to each other but to cases involving the same parties pending before the regulatory commission in each of the other eight states of the former BellSouth region. Freedom said that it is a Respondent in six of those pending proceedings and, in each of those six states, Freedom has agreed to the same joint motions that were filed by the parties in North Carolina and agrees to be bound by all joint motions and Commission orders previously issued in the Consolidated Proceeding.

On July 20, 2010, the Commission issued an Order Authorizing Further Reply Comments by AT&T and Public Staff to respond to the July 16, 2010 filings by LifeConnex and Freedom. On July 26, 2010, the Commission issued an Order

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<sup>1</sup> The amount that AT&T claimed in its June 23, 2010, filing that LifeConnex owed was \$1,366,386.

<sup>2</sup> BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina v. dPi Teleconnect, LLC, Image Access, Inc. d/b/a NewPhone, Affordable Phone Services, Inc. and BLC Management LLC d/b/a Angles Communications Solutions. The respective docket references are Docket Nos. P-836, Sub 5, P-908, Sub 2, P-1272, Sub 1, and P-1415, Sub 2. The purpose of the Consolidated Proceeding is to attempt to settle certain questions related to the resale of promotional discounts.

<sup>3</sup> On August 3, 2010, an Order Allowing Intervention by LifeConnex was issued allowing LifeConnex to participate as a party in the Consolidated Proceeding. LifeConnex was also granted its request to have its Motion for Temporary Emergency Relief restyled as a Motion for Relief in the Consolidated Proceeding subject, however, to the right of the Commission to decide on the subject matter of such motion "separate and apart from the Consolidated Proceeding."

Authorizing Further Comments by AT&T regarding the responses and recommendations filed by the Public Staff.

LifeConnex's Petition

LifeConnex stated that it is a competing local provider in North Carolina providing service to approximately 4,500 subscribers, the majority of whom are low income residential customers. It is an affiliate of Angles, a respondent in the Consolidated Proceeding. Angles and LifeConnex are wholly owned subsidiaries of the same parent. AT&T's June 23, 2010, Notice of Disconnect was to give notice to the Commission of AT&T's intent to disconnect wholesale services and to request an order authorizing AT&T to initiate notices to LifeConnex's customers pursuant to Commission Rule R21-4(j). AT&T proposed to suspend wholesale services to LifeConnex because of LifeConnex's failure to pay disputed, billed charges.<sup>4</sup> LifeConnex, on the other hand, believes that, while the Consolidated Proceeding is pending, AT&T should not be permitted to suspend service to LifeConnex or otherwise interfere with LifeConnex's service to its customers, because, according to LifeConnex, the core issues in dispute between the parties in the instant case are the same as those in the Consolidated Proceeding. LifeConnex argues that it is relevant that LifeConnex has been deducting from its bill claims for promotional credits and disputed charges without any objection from AT&T since October 2007.<sup>5</sup>

LifeConnex further noted that in AT&T's June 21, 2010, Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement, AT&T acknowledged that it had denied a number of LifeConnex's requests for bill credits for various promotional offerings and that LifeConnex had disputed certain of those denials. Nevertheless, AT&T wants LifeConnex to pay AT&T \$1,366,386 for resold services in North Carolina, citing Section 1.4 of the ICA stating that LifeConnex will make payments to AT&T for all services billed, including disputed amounts. However, LifeConnex does not believe that this is a good faith calculation and argues that requiring payment at this time is inappropriate in light of the pending Consolidated Proceeding. Moreover, notwithstanding Section 1.4,<sup>6</sup> AT&T has not heretofore required LifeConnex to pay

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<sup>4</sup> "Suspend" is defined in the interconnection agreement (ICA) between AT&T and LifeConnex as "the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted." ICA 1.5.1.1

<sup>5</sup> LifeConnex argued that, under federal law, it is entitled to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. It asserted that those credits and discounts might largely offset LifeConnex's monthly bills from AT&T. To keep track of these credits, LifeConnex said it has hired a billing firm (Lost Key Telecom, Inc.) for the purpose of working with AT&T's billing and collection department to insure that all monthly claims for promotional credits are correctly and promptly applied.

<sup>6</sup> Section 1.4 of Attachment 7, Billing of the LifeConnex ICA reads in part: "LifeConnex shall make payment to BellSouth for all services billed including disputed amounts." Section 1.4.1 of

disputed amounts. AT&T's demand for payment does not reflect AT&T's financial risk, is consistent with AT&T's practices heretofore, and jeopardizes service to 4500 customers.

### EveryCall Petition

EveryCall likewise is a reseller of AT&T services for which it states it is entitled under federal law to receive from AT&T the same credits and promotional discounts that AT&T gives to its retail customers. It maintains that it has timely paid to AT&T all sums due *after* the subtraction of promotional discounts. It has employed CGM, LLC, a telecommunications consulting firm, to help figure out the sums that are owed by AT&T. EveryCall states that it did not receive notice from AT&T regarding suspension or disconnection of service. It thus disputes AT&T's Notice on the grounds of insufficiency and/or lack of notice and due process.

EveryCall stated that, although it has been a CLP for over two years, it has received only one past due notice (in addition to the most recent one) and one request for financial information to assess EveryCall's credit worthiness. EveryCall said it answered promptly, and heard nothing further from AT&T. By contrast, EveryCall has, from time to time, raised concerns with AT&T about the growing unresolved promotional credits and disputes, but AT&T has ignored EveryCall's attempts at timely resolution.

Now that AT&T has demanded a lump sum payment of all monies AT&T claims are due, EveryCall contends that those amounts do not reflect a good faith calculation of the sums due. Moreover, EveryCall stated that it has requested that it be allowed to opt-in to the "Image Access" ICA, which would specifically allow EveryCall to withhold payment for disputed amounts until those disputes are ultimately resolved. AT&T has refused, claiming that EveryCall could not opt-in to the agreement until 270 days from the expiration of its current ICA. If AT&T had allowed the opt-in, AT&T would have no grounds for disconnection. EveryCall should be considered to have opted in to the Image Access ICA as of October 2009.

Like LifeConnex, EveryCall believed that AT&T should not be allowed to suspend service during the pendency of the Consolidated Proceeding. Suspension or termination of EveryCall's service could lead to its being forced out of business.

On July 13, 2010, the Commission received Notice that EveryCall had filed for Chapter 11 Bankruptcy in Case No. 10-11504, U.S.B.C., M.D.La. and received an automatic stay prohibiting AT&T from unilaterally suspending, discontinuing or terminating its ICA with EveryCall.

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Attachment 7 reads: "Payment due. Payment for services provided by BellSouth, including disputed charges, is due on or before the next bill date." There are identical provisions in EveryCall's ICA.

### Freedom's Petition

With respect to the emergency relief sought by Freedom to prevent suspension of service, Freedom noted that it had been notified by AT&T that its service would be suspended on July 13, 2010, and that, unless Freedom paid to AT&T \$161,946.00 in "disputed amounts" before that date, AT&T would terminate service to Freedom. Freedom urged that, at this time, AT&T is holding \$234,039.01 in claims for promotional credits filed by Freedom, consisting primarily of credits owed to Freedom for reselling AT&T's "\$50 cash back" promotion. The essential disagreement, according to Freedom, is whether AT&T must pay \$50 or \$40 on each sale. Freedom characterized these open claims for promotional credits as not including amounts which AT&T labels as "billing disputes" as that term is used in the parties' ICA, although Freedom admits that the parties' ICA requires Freedom to pay its bills including disputed amounts. Until AT&T issued its threat of suspension on June 21, 2010, AT&T has consistently followed the practice of allowing Freedom to deduct from its bills the total amount of pending claims for promotional credits. Freedom also sought intervention in the Consolidated Proceeding.

On July 27, 2010, Freedom filed a Notice of Withdrawal of Motion for Emergency Relief to Prevent Disruption of Service and [of] Petition to Intervene, stating that Freedom and AT&T have reached a settlement agreement that is reflected in the Memorandum of Understanding attached to its filing.

In the Memorandum of Understanding (MOU) entered into on July 22, 2010, the chief provisions include the following: Freedom must increase its regional security deposit to \$600,000 by July 26, 2010, and to make additional increases to that deposit of \$225,000 on the 15<sup>th</sup> day of each of the next four months beginning August 15, 2010, until the total deposit would be \$1.5 million. That deposit is intended to constitute approximately 50% of the past due amounts claimed by AT&T. Freedom also agreed to pay the billed amount of new charges on its bills in full by the bill due date—with no offsets of any kind—in all nine states for bills rendered on or after July 1, 2010. AT&T will not suspend or terminate anywhere in the nine-state region as long as all requirements imposed by the Memorandum are timely met and Freedom complies with its other obligations under the ICA.

On July 30, 2010, however, AT&T filed a Notice of Suspension of Service regarding Freedom. On July 28, 2010, AT&T sent a letter notifying Freedom that it was in breach of the MOU. Specifically, the \$600,000 "Increase Certificate" that Freedom submitted did not comply with Paragraph 5 of the MOU, which provides that the increased security Freedom agreed to provide must provide security for past-due balances. Instead, the "Increase Certificate" Freedom submitted states that "the liability of the Surety for any acts or defaults occurring before the effective date hereof shall in no event exceed the total sum of \$200,000, which is the amount of the original surety. AT&T pointed out also that the MOU provides that Freedom has waived the protection of any commission order it may have received with regard to the suspension or termination of service.



Furthermore, in its August 6, 2010, Comments on Public Staff's Recommendation Related to LifeConnex, AT&T also noted that Freedom had "agreed to provide security for its past-due amounts, but it failed to honor that agreement and recently filed for bankruptcy." Exhibit B of AT&T's filing showed that Freedom had filed for Chapter 11 bankruptcy on August 4, 2010.

### Public Staff Comments

On July 20, 2010, the Public Staff filed Comments addressing the LifeConnex, EveryCall, and Freedom Petitions. As an initial matter, the Public Staff noted that both AT&T and the Joint Respondents in what became the Consolidated Proceeding sought consolidation of those dockets because of the commonality of issues regarding (1) how cashback credits to resellers should be calculated, (2) whether the word-of-mouth promotion is available for resale, and, if so, how the credits to resellers should be calculated, and (3) how credits to resellers for waiver of the line connection charge should be calculated. The joint proposal also provided that the matter be bifurcated into two phases: first, a consolidated proceeding to determine the promotion issues and, then, separate proceedings to determine consider the claims and counterclaims between AT&T and each individual respondent. Pursuant to recommendation from the parties, hearings on the promotion issues will be held in four of the nine states, including North Carolina, beginning in late October 2010. Both LifeConnex and Freedom have filed motions to intervene in the Consolidated Proceeding, stating that AT&T's complaints against them implicate the same promotion-related issues as the Consolidated Proceeding. Moreover, LifeConnex is involved in and is a party to complaint proceedings brought by AT&T in the four other states in the former BellSouth region in which it operates, and Freedom is a party to complaint proceedings brought by AT&T involving promotion-related issues in six other states in the former BellSouth region in which it operates.

The Public Staff observed that Section 1.4 of Attachment 7 to the ICAs of LifeConnex, EveryCall, and Freedom contain identical language requiring the payment of all amounts due under the respective ICAs, including disputed amounts. However, the AT&T Notices to these three parties indicate that the balances have been accruing over 25 months.

According to the Public Staff as of the time of its comments, one other state commission had considered the relief sought by LifeConnex in its Emergency Petition. In Florida, AT&T brought a complaint against LifeConnex on January 8, 2010, involving the same promotion issues.<sup>7</sup> The Florida Public Service Commission (FPSC) is holding that proceeding in abeyance pending the disposition of the promotion issues in four states, including North Carolina, beginning in late October. However, on June 21, 2010, AT&T notified LifeConnex that it would suspend LifeConnex's ability to order new

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<sup>7</sup> See *In re Complaint and Petition for Relief Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida*, Order Granting LifeConnex Telecom LLC's Request for Emergency Relief with Conditions, Docket No. 100021-TP, Order No. PSC-10-0457-PCO-TP (July 16, 2010) (FPSC Order).

services in Florida or to make changes to existing lines if partial payments were not made by July 6, 2010 and would terminate LifeConnex's service in Florida if all past due balances were not paid by July 21, 2010. On July 1, 2010, LifeConnex asked the FPSC to prohibit AT&T from suspending, discontinuing, terminating or otherwise disrupting service in Florida pending resolution of the disputed matters in the complaint proceeding.

The FPSC granted LifeConnex's request on July 16, 2010, subject to conditions. Those conditions included that AT&T and LifeConnex comply with all terms of the parties' ICA, including billing provisions, from July 13, 2010 onward; that, if LifeConnex fails to comply with the terms of the ICA, including such billing provisions, from July 13, 2010, onward, AT&T may suspend, terminate or disconnect service pursuant to the ICA; that the amounts in dispute were to be resolved through the hearing process; and that LifeConnex was to post a bond of \$1.4 million (the past due amount claimed by AT&T in Florida). The FPSC also imposed customer notification requirements (similar to those in NCUC Rule R21-4) on LifeConnex should AT&T initiate disconnection of service due to LifeConnex's failure to comply with the ICA's billing provisions.

According to the Public Staff, in the instant cases, the primary arguments in favor of allowing AT&T to suspend or terminate service to LifeConnex and Freedom are that the parties' ICAs are clear that even amounts in dispute must be paid each month, and AT&T has followed proper procedure in filing these notices with the Commission. On the other hand, the Public Staff believes that it is significant that AT&T allowed the disputed amounts to accrue for 25 months and then gave the parties only 30 days to pay the entire amount or have the service terminated—all at a time when the Consolidated Proceeding was pending and less than ten days after joint motions regarding the procedural schedule were filed therein. While LifeConnex and Freedom are not parties to the Consolidated Proceeding, at least at this time, AT&T's action after 25 months of inaction to terminate service could have a profound effect on the ability of LifeConnex and Freedom to participate in the ongoing proceedings in other states. Moreover, due to the relative size of the past due amounts and the length of time over which the charges have accrued, the Public Staff is concerned that the impact of a bond requirement such as that imposed by the FPSC may affect the financial ability of LifeConnex to continue to participate in the regional proceedings and maintain its ability to provide service to its customers at the same time. In any event, the Public Staff believes that there may be some question as to whether all amounts considered past due or disputed are actually in question or merely reflect promotional credits that have not yet been processed by AT&T.

The Public Staff stated that it supports the requests of LifeConnex and Freedom to be made parties to the Consolidated Proceeding, as it appears that there is commonality of issues between these dockets and the Consolidated Proceeding. It would also promote judicial economy and efficiency.

The Public Staff also recommended that the Commission grant the Petition of LifeConnex and the Motion of Freedom barring AT&T from suspending, terminating, or disconnecting service to them pending final order on the promotion issues in the

Consolidated Proceeding. However, this should be subject to the condition that these parties pay all amounts due under their respective ICAs from the issuance of the Commission Order onward. This will preserve the status quo pending resolution of the Consolidate Proceeding, ensuring that any past due or disputed amounts will not increase and that AT&T will receive payment of amounts owed to it, prospectively, under the ICAs. Should LifeConnex or Freedom fail to comply with the conditions of such an order and AT&T seeks to disconnect service, the Commission should remind LifeConnex and Freedom that they are required to comply with the requirements set forth in Commission Rule R21-4.

With respect to EveryCall, the Public Staff believed that AT&T's proposed suspension and disconnection may be subject to the automatic stay imposed by the bankruptcy court. The Public Staff therefore recommended that AT&T take no further action as to the suspension, termination, or disconnection of service to EveryCall while the automatic stay related to its bankruptcy filing is in effect. Should the bankruptcy court permit AT&T to take action regarding its service to EveryCall, EveryCall should notify the Commission of such action by the bankruptcy court and indicate how it wishes to proceed.

#### AT&T Comments

AT&T also filed comments on July 20, 2010. While formally denying some of the allegations in LifeConnex's Petition and admitting others, AT&T concentrated its comments on several specific areas.

First, AT&T emphasized that the LifeConnex ICA specifically provided that LifeConnex agreed to "make payment [to AT&T] for all services billed, *including disputed amounts*. (Emphasis added).<sup>8</sup> From December 20, 2009, to May 20, 2010, LifeConnex has paid AT&T only a small percentage of the net amounts owed (the billed amounts less credits AT&T applied for promotions and other adjustments). AT&T claims in excess of \$1.3 million from LifeConnex. LifeConnex alleges that it is entitled to an offset of "perhaps even more" than this past due amount, presumably in promotional credits that LifeConnex has requested and AT&T has denied. Even if true, AT&T maintains that this is irrelevant, because LifeConnex is required to pay the full amount billed as required by the plain language of the ICA.

Second, AT&T argued that the ICA requires LifeConnex to pay all amounts billed, including disputed charges. North Carolina law requires that an unambiguous written contract must be strictly enforced according to the plain meaning of its express terms and conditions and without resort to extrinsic evidence.<sup>9</sup> The Commission-approved

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<sup>8</sup> See ICA, Attachment 7, pp. 6-7, Sections 1.4 and 1.4.1.

<sup>9</sup> See, e.g., *Hemric v. Groce*, 169 N.C. App. 69, 76 (quoting *Martin v. Martin*, 26 N.C. App. 506, 508 (1975) and *Potter v. Hilemn, Inc.*, 150 N.C. App. 326 (2002), *disc. review dismissed and cert. denied*, 359 N.C. 631 (2005).

ICA is a lawful contract, and its language is unambiguous. The Commission is therefore obliged to enforce its terms.

Third, the Joint Motion on Procedural Issues in the Consolidated Proceeding does not relieve LifeConnex of its contractual obligation to pay all amounts, including disputed charges. On the contrary, the Joint Motion by its terms does not prevent AT&T from pursuing "any issue" or "claim" not addressed in the Consolidated Proceeding.<sup>10</sup> It is not true that the "core issues in dispute between the parties are pending in the Consolidated Complaints proceeding." The Consolidated Proceeding involves how much, if any, credit the resellers are entitled to receive when they resell services that are the subject of certain promotional offers.

Fourth, AT&T argued that it has not waived its right to demand payment of all amounts, including those under dispute from LifeConnex. AT&T has not "acquiesced" in LifeConnex's "practice" of not paying its bills, nor does failure to demand payment of all charges in the past waive the right of AT&T to collect those amounts now. Moreover, the ICA specifically provides that "[a] failure or delay of either party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement."<sup>11</sup>

Finally, AT&T maintained that LifeConnex has not demonstrated and cannot demonstrate that it is entitled to the extraordinary injunctive relief it seeks, that relief being an order requiring AT&T to take no actions to suspend or otherwise interfere with LifeConnex's service to its customers. Under North Carolina law, in deciding whether to grant such extraordinary relief, courts must consider (1) the likelihood of irreparable harm to the plaintiff if a preliminary injunction is denied, (2) the likelihood of harm to the defendant if the preliminary injunction is granted, (3) the likelihood that the plaintiff will succeed on the merits, and (4) the public interest. The plaintiff bears the burden of proof, and LifeConnex cannot meet it. LifeConnex cannot show a substantial likelihood of success on the merits. If it has the money to pay its bills, it will suffer no harm. If its disputes are valid, AT&T can provide appropriate bill credits or payments. If LifeConnex cannot pay its bills, then the harm to AT&T to provide even more service for which it will not be paid clearly outweighs any purported harm to LifeConnex. The purported harm to LifeConnex's customers is overstated: if AT&T terminates service, there are a

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<sup>10</sup> The relevant portion of the Joint Motion reads: "As stated below, any individual Party may also seek to pursue its respective docket, either concurrent with or following the Consolidated Phase, any issue, claim, or counterclaim, including related discovery, that is not addressed in the Consolidated Phase. Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's pending motions, claims, counterclaims or defenses or any Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with or following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant."

<sup>11</sup> ICA, General Terms and Conditions, p. 15, Sec. 17.

number of other carriers in North Carolina, including prepay resellers, from whom LifeConnex's current end users can receive service. LifeConnex's failure to pay its wholesale bills has the effect of burdening other customers who pay their bills.

With respect to EveryCall, AT&T noted in a separate filing that EveryCall's bankruptcy filing created an automatic stay of any judicial, administrative or other action or proceeding against the debtor. Hence, AT&T is precluded from making further filings in the docket and has, therefore, not provided comments otherwise due on this matter. AT&T reserves the right to make any appropriate motions or filings with the United States Bankruptcy Court.

#### Further Comments by AT&T on Public Staff's Recommendation Related to LifeConnex

On August 6, 2010, AT&T filed a response to the Public Staff's recommendation that the Commission grant the Petition of LifeConnex barring AT&T from suspending, terminating, or disconnecting service LifeConnex pending final order on the promotion issues in the Consolidated Proceeding subject to the condition that LifeConnex be required to pay all amounts due under the parties' ICA or a going-forward basis. AT&T noted that, while it was pleased that the Public Staff recommended that it be paid in full for the services that it provides to LifeConnex in the future, the recommendation provides no protection against LifeConnex's inability or unwillingness to pay its past due balance for the substantial services that AT&T has already provided. AT&T asserted that two recent events bolstered its concern about the inability of LifeConnex and other similarly situated companies to pay past due amounts. First, AT&T noted that EveryCall filed for bankruptcy when faced with the prospect of having to pay or provide security for its past-due amounts. Second, AT&T stated that, in a companion proceeding before the FPSC, LifeConnex was unable to post a bond necessary to secure payment of the past due amounts in issue in that proceeding.

Also, AT&T asserted that the Public Staff's suggestion that AT&T may have waived its rights to demand payment of all past due balances from LifeConnex by AT&T's failure to make an earlier demand for the payment of amounts due was without merit. According to AT&T, the Public Staff's suggestion that AT&T's decision to pursue a negotiated resolution of its differences with LifeConnex, instead of making an immediate demand for payments, resulted in a waiver by AT&T of its rights to pursue payment for amounts due through the Commission is unsound regulatory policy and contrary to the explicit terms of the ICA. The ICA expressly provides that, notwithstanding a party's prior failure or delay to enforce any provision of the agreement, that party "shall have the right thereafter to insist upon the performance of any and all provisions of this Agreement."

**WHEREUPON**, the Commission reaches the following

### **CONCLUSIONS**

At the present time, there is only one docket which the Commission needs to consider with respect to suspension and/or termination of service in this matter—the LifeConnex docket. As noted above, the others—EveryCall and Freedom—have filed for bankruptcy. It is perhaps noteworthy that, in connection with its July 27, 2010, filing of a Notice of Withdrawal of Motion for Emergency Relief, Freedom had voluntarily entered into separate agreement with AT&T providing for the posting of a bond. It was unable to satisfy this requirement, leading, as AT&T noted, to Freedom's filing for Chapter 11 bankruptcy. In both the EveryCall and Freedom cases, the Commission lacks the power to proceed.

The LifeConnex docket presents a single question. It is whether the Commission should or should not extend the temporary protection that the Commission has granted to LifeConnex against suspension and termination and, if it should, for how long and under what conditions. Answering this question involves weighing and balancing a number of factors. Below are the chief alternatives:

1. Not allow AT&T to suspend or terminate LifeConnex during the pendency of the Consolidated Proceeding in which LifeConnex seeks to participate. Under LifeConnex's preferred option, it would not have to pay any disputed existing balances nor any future disputed balances until such time as clear ground rules regarding promotions have been established in the Consolidated Proceeding. In the meantime, AT&T must continue to provide service to LifeConnex. LifeConnex believes that this is appropriate because, once the appropriate set-offs are applied, it is convinced that the amounts it will owe AT&T will be minimal. In any event, LifeConnex believes that AT&T was wrong not to have protested sooner when LifeConnex unilaterally deducted claims for promotional credits from its bill. This led to its building up the large balances before AT&T took the action about which LifeConnex now complains.

The Commission believes that this option is less than compelling for a number of reasons. First, as noted in Footnote 5 above, in Section 1.4 of Attachment 7 to the LifeConnex ICA, LifeConnex must "make payment to [AT&T] for all services billed *including disputed amounts.*" (Emphasis added). Section 1.4.1 stated that "[p]ayment for services provided by [AT&T], *including disputed charges,* is due on or before the next bill date." (Emphasis added).<sup>12</sup> Second, instead of paying the disputed charges as required by the ICA, LifeConnex has engaged in a form of self-help in which it has deducted from the bill what it unilaterally believes it ought to get back, whereas the

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<sup>12</sup> Interestingly, the ICAs of the current participants in the Consolidated Proceeding do *not* include an explicit requirement to pay disputed amounts up front. See, e.g., dPI ICA, Section 1.4.1 ("Payment for services provided by BellSouth, **not** including disputed charges, is due on or before the next bill date." (emphasis in original)); Image Access ICA, Attachment 7, Sections 1.7 et seq.; Angles ICA, Attachment 7, Section 1.7 et seq.; and Affordable Access ICA (adopted from Level 3), Attachment 7, Section 17.1 et seq.

proper course of action under the ICA would be not to withhold payments of the amount of the bill but rather to seek those set-offs on a timely basis from AT&T and, if unsuccessful, to file a complaint with the Commission. Third, it is not a defense for LifeConnex, as it insists, that AT&T was to blame for not demanding its money sooner, when, in light of the time value of money, LifeConnex has actually benefited from not paying it.

2. Continue the ban on suspension or termination pending the final Order on the promotion issues in the Consolidated Proceeding, provided LifeConnex keeps current on amounts due under its ICA on a going forward basis. If LifeConnex fails to stay current, then AT&T may seek to suspend or terminate service. This is the Public Staff position. The Public Staff has argued that this will preserve the status quo, insuring that past due and disputed amounts will not increase and that AT&T will eventually receive payments on the amounts it is owed.

The Commission believes that the Public Staff recommendation arguably has more merit than LifeConnex's position but not enough merit that the Commission should adopt it. Its primary merit is that it requires LifeConnex to pay "amounts due" (presumably identical to amounts that have been billed by AT&T) on a going forward basis, or else face the prospect of suspension and termination. However, the Commission believes there are significant demerits as well. Most prominently, it holds the past due amounts, which are considerable, in limbo without security that they will ever be paid. If they are paid, it will be only after a prolonged period of time and so deprive AT&T of what it is owed in the shorter term under the plain reading of the ICA, *which, of course, includes the provision that LifeConnex pay disputed amounts.* Here again, LifeConnex benefits from its unauthorized self-help and AT&T is disadvantaged. While the Public Staff is confident that, under its proposal, AT&T will eventually receive all that it is due, the Commission is more skeptical. While LifeConnex is only required prospectively to do what it should have been doing all along—pay amounts due, including disputed amounts—it receives a not inconsiderable temporary "pass" on paying amounts in arrears.

3. Continue a ban on suspension or termination, provided that LifeConnex posts a bond for all or a substantial part of the amounts in arrears and stay current on future bills from AT&T. Otherwise, AT&T may suspend or terminate LifeConnex's service. Essentially, the FPSC Order granted LifeConnex's request for protection against suspension or disconnection but subject to conditions. The most prominent conditions were that LifeConnex was to be strictly compliant with the terms of the ICA, including billing provisions, from July 13, 2010, onward and was to post of bond of \$1.4 million, representing the past due amount claimed by AT&T. If LifeConnex failed to comply with the ICA, then AT&T could suspend, terminate, or disconnect service to LifeConnex, and LifeConnex would have to notify consumers of impending disconnection of service if there is a failure to comply with the ICA's billing provisions. The FPSC also explained that, in granting LifeConnex relief with conditions, it was not granting equitable relief or an injunction but was rather acting under its authority to issue an interim procedural order under its clear jurisdiction to enforce the terms of the ICA and to resolve matters in dispute.

Alabama took this approach as well, although Kentucky did not.<sup>13</sup> Under the bond approach, AT&T receives security for balances past due but is to receive actual payments for balances due on a going-forward basis. On the other hand, LifeConnex is arguably not overly rewarded for its "self help" strategy. It must pay to have the bond established, but it is not immediately required to pay the past monies owed, only balances on a going-forward basis. Moreover, LifeConnex customers are not faced with an immediate inconvenience of having to change carriers. All of this depends, of course, on LifeConnex first obtaining the bond and, second, paying the charges on a going-forward basis. Neither the experience of LifeConnex in Florida nor that of similarly situated companies elsewhere is encouraging.

4. Allow AT&T to suspend or terminate, if all amounts due past and present are not paid within a short period of time. Having set forth and assessed the other principal options, the Commission believes that this option is the best and most prudent, given the circumstances. It is the option that accords best with the plain reading of the ICA which, as noted before, obliged LifeConnex to pay disputed amounts. While the Commission has no way of knowing whether LifeConnex has the resources to make good on all the amounts it owes (including disputed amounts) under the ICA, there are empirical reasons to be skeptical. Most notably, LifeConnex has been unable to post the bond in Florida, and is now subject to the disconnection process there.<sup>14</sup> Past is prologue. The sad reality is, when there is a likelihood that a bond cannot or will not be posted, offering that opportunity would be in vain and would merely prolong an unsatisfactory state of affairs.

IT IS, THEREFORE, ORDERED as follows:

1. That LifeConnex shall be granted five (5) business days from the effective date of this Order to pay to AT&T in cash or certified funds the amount of \$1,366,386. AT&T shall promptly notify the Commission whether LifeConnex has complied with this provision.

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<sup>13</sup> See, *Petition of LifeConnex Telecom, LLC, f/k/a Swiftel, LLC Concerning Implementation of its Interconnection Agreement with BellSouth Telecommunications, Inc. d/b/a AT&T Alabama or AT&T Southeast and Motion for Temporary Emergency Relief to Prevent Suspension of Service*, Order Granting in Part and Denying in Part LifeConnex Telecom LLC's Petition and Motion for Emergency Relief, Docket 31450, August 20, 2010 (LifeConnex to post a bond of \$12,917,771 representing total billings for which AT&T submitted documentation in its Notice of Suspension and Termination of June 16, 2010; failure to comply to lead to disconnection). A curious aspect of the Alabama Order is that the first ordering paragraph directs LifeConnex to *pay* the \$12,917,771 within five business days, while the second ordering paragraph directs LifeConnex to *post a bond* within five business days. Presumably, the latter, if actually posted, would take precedence over the former. *But see, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. LifeConnex Telecom LLC f/k/a Swiftel, LLC*, Order, Case No. 2010-00026, August 20, 2010 (AT&T authorized to move forward with disconnection of services; no opportunity afforded to LifeConnex to post a bond on amount estimated to be in excess of \$1.8 million).

<sup>14</sup> See, Letter of LifeConnex in Response to FPSC Order to Post Bond, Docket No. 100021-TP, July 21, 2010, reporting that it could not post the bond and informing the FPSC that it was notifying its customers of the pending disconnection.



2. That, if LifeConnex has failed to pay to AT&T the sum set forth in Ordering Paragraph No. 1, AT&T is authorized to resume the process of suspending and/or terminating its service to LifeConnex.

3. That, in the case that AT&T has chosen termination of services to LifeConnex, AT&T shall notify LifeConnex and the Commission of the projected termination date, which shall be in no case less than 30 days from the date of such notice.

4. That LifeConnex shall comply with all relevant provisions in Rule R21-4 with respect to the responsibilities of CLPs, with particular attention to Rule R21-4(h) regarding notification of customers.

5. That AT&T shall promptly notify the Commission if LifeConnex has been unwilling or unable to provide notice to its customers as provided in Rule R21-4(h). AT&T in such circumstances shall provide notice to LifeConnex's customers as set forth in Rule R21-4(j) concerning notice to CLP customers by the underlying carrier.

6. That Docket No. P-55, Sub 1818, concerning EveryCall shall be held in abeyance pending further Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 22nd day of September, 2010.

NORTH CAROLINA UTILITIES COMMISSION



Patricia Swenson, Deputy Clerk

DI092210.01

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 110071-TP

FILED: 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.

1

DOCKET NUMBER 110071-TP

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FPSC-COMMISSION CLERK

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

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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  
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s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. 100021-TP  
Florida Against LifeComex 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: June 15, 2010

**JOINT MOTION ON PROCEDURAL SCHEDULE**

Pursuant to the "Joint Motion on Procedural Issues" filed May 15, 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.

FILED NUMBER DATE  
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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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Manuel A. Gurdian  
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c/o Gregory R. Follensbee  
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Florida

<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.



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*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:

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d/b/a NewPhone



Manuel A. Gurdian

---

EXHIBIT A

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 )  
d/b/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 d/b/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.

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  
ORDER NO. PSC-11-0574-PCO-TP  
ISSUED: December 14, 2011

ORDER DENYING REQUEST FOR ABEYANCE

On March 15, 2011, Express Phone filed a complaint against AT&T Florida (Complaint).<sup>1</sup> The Complaint alleges that AT&T Florida planned to improperly disrupt Express Phone's service order provisioning, and cut off all services to existing Express Phone customers due to billing disputes arising out of the parties' Interconnection Agreement (ICA).<sup>2</sup>

On March 18, 2011, Express Phone filed a motion seeking emergency relief to maintain the status quo, allowing Express Phone to continue service to its customers.<sup>3</sup> By Order No. PSC-11-0180-PCO-TP, issued March 30, 2011, Express Phone's Emergency Motion was denied. Express Phone was disconnected on March 30, 2011.

On April 4, 2011, AT&T Florida filed its Response in Opposition to Express Phone's Emergency Complaint, Request to Hold Docket in Abeyance and Request for Mediation. On July 6, 2011, Order No. PSC-11-0291-PAA-TP set this docket for an evidentiary hearing.

Express Phone filed a request on November 10, 2011, asking that the docket be placed in abeyance. AT&T Florida filed its Response in Opposition on November 17, 2011. In its request for abeyance, Express Phone argues that this Commission has other dockets in which similar promotional credits are in dispute. Express Phone asserts that these same disputes are pending in other states. Express Phone states that the parties jointly requested to hold the dockets in abeyance in Docket Nos. 100021-TP and 100022-TP (Lifeconnex dockets), which the Commission granted on June 18, 2010.<sup>4</sup> Express Phone argues that an abeyance would conserve resources and effort on the part of all parties while Commissions in other states resolve similar promotional credit issues. As such, Express Phone requests that this docket be held in abeyance pending resolution of the Lifeconnex dockets in other states.

<sup>1</sup> Emergency Complaint, Request for Emergency Relief to Avoid Customer Disconnection, Request to Hold Docket in Abeyance, and Request for Mediation against BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

<sup>2</sup> Express Phone states that the billing disputes stem from the calculation/application of promotional credits for resold services.

<sup>3</sup> Express Phone Service, Inc's Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo.

<sup>4</sup> Order No. PSC-10-0402-PCO-TP, Docket No. 100021-TP, In re: Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Docket No. 100022-TP, In re: Complaint and petition for relief against Image Access, Inc. d/b/a New Phone by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.


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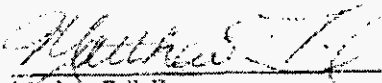
FPSC-COMMISSION CLERK

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.

  
\_\_\_\_\_  
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Mamuel A. Chardian  
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*Attorney for LifeCommex Telecom, LLC  
and Image Access, Inc. d/b/a NewPhone*

93454

**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:

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EXHIBIT B

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*Attorneys for Image Access, Inc.*  
*d/b/a New Phone*



---

Manuel A. Gurdian

EXHIBIT B

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  
ORDER NO. PSC-11-0574-PCO-TP  
ISSUED: December 14, 2011

ORDER DENYING REQUEST FOR ABEYANCE

On March 15, 2011, Express Phone filed a complaint against AT&T Florida (Complaint).<sup>1</sup> The Complaint alleges that AT&T Florida planned to improperly disrupt Express Phone's service order provisioning, and cut off all services to existing Express Phone customers due to billing disputes arising out of the parties' Interconnection Agreement (ICA).<sup>2</sup>

On March 18, 2011, Express Phone filed a motion seeking emergency relief to maintain the status quo, allowing Express Phone to continue service to its customers.<sup>3</sup> By Order No. PSC-11-0180-PCO-TP, issued March 30, 2011, Express Phone's Emergency Motion was denied. Express Phone was disconnected on March 30, 2011.

On April 4, 2011, AT&T Florida filed its Response in Opposition to Express Phone's Emergency Complaint, Request to Hold Docket in Abeyance and Request for Mediation. On July 6, 2011, Order No. PSC-11-0291-PAA-TP set this docket for an evidentiary hearing.

Express Phone filed a request on November 10, 2011, asking that the docket be placed in abeyance. AT&T Florida filed its Response in Opposition on November 17, 2011. In its request for abeyance, Express Phone argues that this Commission has other dockets in which similar promotional credits are in dispute. Express Phone asserts that these same disputes are pending in other states. Express Phone states that the parties jointly requested to hold the dockets in abeyance in Docket Nos. 100021-TP and 100022-TP (Lifeconnex dockets), which the Commission granted on June 18, 2010.<sup>4</sup> Express Phone argues that an abeyance would conserve resources and effort on the part of all parties while Commissions in other states resolve similar promotional credit issues. As such, Express Phone requests that this docket be held in abeyance pending resolution of the Lifeconnex dockets in other states.

<sup>1</sup> Emergency Complaint, Request for Emergency Relief to Avoid Customer Disconnection, Request to Hold Docket in Abeyance, and Request for Mediation against BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

<sup>2</sup> Express Phone states that the billing disputes stem from the calculation/application of promotional credits for resold services.

<sup>3</sup> Express Phone Service, Inc's Motion for Emergency Consideration by the Prehearing Officer to Maintain Status Quo.

<sup>4</sup> Order No. PSC-10-0402-PCO-TP, Docket No. 100021-TP, In re: Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida and Docket No. 100022-TP, In re: Complaint and petition for relief against Image Access, Inc. d/b/a New Phone by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

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ORDER NO. PSC-11-0574-PC0-TP  
DOCKET NO. 110071-TP  
PAGE 2

AT&T Florida asserts that Express Phone's request should be denied in its entirety because Express Phone is not a party to the aforementioned dockets in Florida or any other state. AT&T Florida further asserts that the Lifeconnex dockets involve different promotional credit issues. AT&T concludes that Express Phone has not provided a sufficient basis to place this docket into abeyance.


Upon review of Express Phone's complaint and the relevant promotional dockets cited by Express Phone, I find that the promotional credits at issue in this proceeding are not identical to those cited by Express Phone as the basis for the requested abeyance. It is therefore unnecessary to place the docket in abeyance at this time. If Express Phone does not wish to proceed at this time, the company may withdraw its complaint without prejudice and refile at a later date.

Therefore, as the Lifeconnex dockets are not directly related to the issues in this docket, I do not find it appropriate to hold this docket in abeyance at this time and shall deny Express Phone's motion.

Based on the foregoing, it is

ORDERED by Commissioner Eduardo E. Balbis, as Prehearing Officer, that Express Phone's Request for Abeyance is hereby denied.

By ORDER of Commissioner Eduardo E. Balbis, as Prehearing Officer, this 14th day of December, 2011.



EDUARDO E. BALBIS  
Commissioner and Prehearing Officer  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
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TLT

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and

ORDER NO. PSC-11-0574-PCO-TP  
DOCKET NO. 110071-TP  
PAGE 3

time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

---

DOCKET NO. 110071-TP

Filed: December 27, 2011

**VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

Express Phone Service, Inc. (Express Phone) hereby voluntarily dismisses, without prejudice, its Complaint filed on March 15, 2011 in this matter.

DATED 27<sup>th</sup> day of December, 2011

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman  
Keefe Anchors Gordon & Moyle, PA  
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[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 Voluntary Dismissal Without Prejudice has been furnished by Electronic Mail and U.S. Mail to the following, this 27<sup>th</sup> day of December 2011:

Lee Eng Tan  
Florida Public Service Commission  
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Tallahassee, FL 32399  
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Manuel Gurdian  
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[manuel.gurdian@att.com](mailto:manuel.gurdian@att.com)

s/ Vicki Gordon Kaufman  
Vicki Gordon Kaufman

**ORIGINAL**

56319

**\*\* FLORIDA PUBLIC SERVICE COMMISSION \*\***

**DIVISION OF TELECOMMUNICATIONS**  
**BUREAU OF CERTIFICATION AND SERVICE EVALUATION**

**APPLICATION FORM**  
**for**  
**AUTHORITY TO PROVIDE**  
**ALTERNATIVE LOCAL EXCHANGE SERVICE**  
**WITHIN THE STATE OF FLORIDA**

000776-TX

Instructions

- ◆ This form is used as an application for an original certificate and for approval of the assignment or transfer of an existing certificate. In the case of an assignment or transfer, the information provided shall be for the assignee or transferee (See Appendix A).
- ◆ Print or type all responses to each item requested in the application and appendices. If an item is not applicable, please explain why.
- ◆ Use a separate sheet for each answer which will not fit the allotted space.
- ◆ Once completed, submit the original and six (6) copies of this form along with a non-refundable application fee of \$250.00 to:

**Florida Public Service Commission**  
**Division of Records and Reporting**  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6770**

- ◆ If you have questions about completing the form, contact:

**Florida Public Service Commission**  
**Division of Telecommunications**  
**Bureau of Certification and Service Evaluation**  
**2540 Shumard Oak Blvd.**  
**Tallahassee, Florida 32399-0850**  
**(850) 413-6600**

Check received with filing and forwarded to Fiscal for deposit.  
Fiscal to forward a copy of check to RAR with proof of deposit.  
Initials of person who forwarded checks

FORM PSC/CMU 8 (11/95)  
Required by Commission Rule Nos. 25-24.805,  
25-24.810, and 25-24.815

DOCUMENT NUMBER-DATE

07790 JUN 27 8

PSC-RECORDS REPORTING

### APPLICATION

1. This is an application for  (check one):

**Original certificate** (new company).

**Approval of transfer of existing certificate:** Example, a non-certificated company purchases an existing company and desires to retain the original certificate of authority.

**Approval of assignment of existing certificate:** Example, a certificated company purchases an existing company and desires to retain the certificate of authority of that company.

**Approval of transfer of control:** Example, a company purchases 51% of a certificated company. The Commission must approve the new controlling entity.

2. Name of company:

Express Phone Service, Inc.

3. Name under which the applicant will do business (~~fictitious name, etc.~~):

Express Phone Service, Inc.

4. Official mailing address (including street name & number, post office box, city, state, zip code):

4709 Mobile Highway  
Pensacola, FL 32506

5. Florida address (including street name & number, post office box, city, state, zip code):

4709 Mobile Highway  
Pensacola, FL 32506

6. Structure of organization:

- ( ) Individual (  ) Corporation  
( ) Foreign Corporation ( ) Foreign Partnership  
( ) General Partnership ( ) Limited Partnership  
( ) Other \_\_\_\_\_

7. If individual, provide:

Name: \_\_\_\_\_ N/A  
Title: \_\_\_\_\_ N/A  
Address: \_\_\_\_\_ N/A  
City/State/Zip: \_\_\_\_\_ N/A  
Telephone No.: \_\_\_\_\_ N/A Fax No.: \_\_\_\_\_ N/A  
Internet E-Mail Address: \_\_\_\_\_ N/A  
Internet Website Address: \_\_\_\_\_ N/A

8. If incorporated in Florida, provide proof of authority to operate in Florida:

- (a) The Florida Secretary of State corporate registration number:

\_\_\_\_\_ P99000046171 \_\_\_\_\_

9. If foreign corporation, provide proof of authority to operate in Florida:

- (a) The Florida Secretary of State corporate registration number:

\_\_\_\_\_ N/A \_\_\_\_\_

10. If using fictitious name-d/b/a, provide proof of compliance with fictitious name statute (Chapter 865.09, FS) to operate in Florida:

- (a) The Florida Secretary of State fictitious name registration number:

\_\_\_\_\_ N/A \_\_\_\_\_

11. **If a limited liability partnership**, provide proof of registration to operate in Florida:

(a) **The Florida Secretary of State registration number:**

N/A

12. **If a partnership**, provide name, title and address of all partners and a copy of the partnership agreement.

Name: N/A

Title: N/A

Address: N/A

City/State/Zip: N/A

Telephone No.: N/A Fax No.: N/A

Internet E-Mail Address: N/A

Internet Website Address: N/A

13. **If a foreign limited partnership**, provide proof of compliance with the foreign limited partnership statute (Chapter 620.169, FS), if applicable.

(a) **The Florida registration number:** N/A

14. Provide **F.E.I. Number**(if applicable): 59-3580244

15. Indicate if any of the officers, directors, or any of the ten largest stockholders have previously been:

(a) adjudged bankrupt, mentally incompetent, or found guilty of any felony or of any crime, or whether such actions may result from pending proceedings. Provide explanation.

NONE



(b) an officer, director, partner or stockholder in any other Florida certificated telephone company. If yes, give name of company and relationship. If no longer associated with company, give reason why not.

EXPRESS TITLE FINANCIAL CORP.

WILLIAM KLOSS - PRESIDENT

THOMAS M. ARMSTRONG - VICE PRESIDENT

16. Who will serve as liaison to the Commission with regard to the following?

(a) The application:

Name: Thomas M. Armstrong

Title: President

Address: 4709 Mobile Highway

City/State/Zip: Pensacola, FL 32506

Telephone No.: 850-455-0623 Fax No.: 850-455-0635

Internet E-Mail Address: tmarstrong@worldnet.att.net

Internet Website Address: None

(b) Official point of contact for the ongoing operations of the company:

Name: Thomas M. Armstrong

Title: President

Address: 4709 Mobile Highway

City/State/Zip: Pensacola, FL 32506

Telephone No.: 850-455-0623 Fax No.: 850-455-0635

Internet E-Mail Address: tmarstrong@worldnet.att.net

Internet Website Address: NONE

(c) Complaints/Inquiries from customers:

Name: KYLE BALLARD

Title: Manager

Address: 4709 Mobile Highway

City/State/Zip: Pensacola, FL 32506

Telephone No.: 850-456-8048 Fax No.: 850-

Internet E-Mail Address: etfcbill@bellsouth.net

Internet Website Address: NONE

17. List the states in which the applicant:

(a) has operated as an alternative local exchange company.

NONE

(b) has applications pending to be certificated as an alternative local exchange company.

NONE

(c) is certificated to operate as an alternative local exchange company.

Mississippi

- (d) has been denied authority to operate as an alternative local exchange company and the circumstances involved.

NONE

- (e) has had regulatory penalties imposed for violations of telecommunications statutes and the circumstances involved.

NONE

- (f) has been involved in civil court proceedings with an interexchange carrier, local exchange company or other telecommunications entity, and the circumstances involved.

NONE

18. Submit the following:

A. Financial capability.

The application **should contain** the applicant's audited financial statements for the most recent 3 years. If the applicant does not have audited financial statements, it shall so be stated.

The unaudited financial statements should be signed by the applicant's chief executive officer and chief financial officer affirming that the financial statements are true and correct and should include:

1. the balance sheet;
2. income statement; and
3. statement of retained earnings.

**NOTE:** *This documentation may include, but is not limited to, financial statements, a projected profit and loss statement, credit references, credit bureau reports, and descriptions of business relationships with financial institutions.*

Further, the following (which includes supporting documentation) should be provided:

1. **written explanation** that the applicant has sufficient financial capability to provide the requested service in the geographic area proposed to be served.
  2. **written explanation** that the applicant has sufficient financial capability to maintain the requested service.
  3. **written explanation** that the applicant has sufficient financial capability to meet its lease or ownership obligations.
- B. **Managerial capability:** give resumes of employees/officers of the company that would indicate sufficient managerial experiences of each.
- C. **Technical capability:** give resumes of employees/officers of the company that would indicate sufficient technical experiences or indicate what company has been contracted to conduct technical maintenance.

**\*\* APPLICANT ACKNOWLEDGMENT STATEMENT \*\***

1. **REGULATORY ASSESSMENT FEE:** I understand that all telephone companies must pay a regulatory assessment fee in the amount of .15 of one percent of gross operating revenue derived from intrastate business. Regardless of the gross operating revenue of a company, a minimum annual assessment fee of \$50 is required.
2. **GROSS RECEIPTS TAX:** I understand that all telephone companies must pay a gross receipts tax of two and one-half percent on all intra and interstate business.
3. **SALES TAX:** I understand that a seven percent sales tax must be paid on intra and interstate revenues.
4. **APPLICATION FEE:** I understand that a non-refundable application fee of \$250.00 must be submitted with the application.

**UTILITY OFFICIAL:**

Signature	<u>Thomas M. Armstrong</u>	Date	<u>6/15/00</u>
Title	<u>President</u>	Telephone No.	<u>850-455-0623</u>
Address:	<u>4709 Mobile Highway</u>	Fax No.	<u>850-455-0635</u>
	<u>Pensacola, FL 32506</u>		

**ATTACHMENTS:**

- A - CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT
- B - INTRASTATE NETWORK
- C - AFFIDAVIT

**\*\* APPENDIX A \*\***

**CERTIFICATE SALE, TRANSFER, OR ASSIGNMENT STATEMENT**

I, (Name) Thomas M. ARMSTRONG  
(Title) VICE PRESIDENT of (Name of Company)  
EXPRESS TITLE FINANCIAL CORPORATION

and current holder of Florida Public Service Commission Certificate Number # \_\_\_\_\_

TX 191, have reviewed this application and join in the petitioner's request for  
a:

- ( ) sale
- (  ) transfer
- ( ) assignment

of the above-mentioned certificate.

**UTILITY OFFICIAL:**

Signature	<u>Thomas M. Armstrong</u>	Date	<u>6/15/00</u>
Title	<u>Vice - President</u>	Telephone No.	<u>850-455-0623</u>
Address:	<u>4709 Mobile Highway</u>	Fax No.	<u>850-455-0635</u>
	<u>Pensacola FL 32506</u>		

**\*\* APPENDIX B \*\***

**INTRASTATE NETWORK (if available)**

Chapter 25-24.825 (5), Florida Administrative Code, requires the company to make available to staff the alternative local exchange service areas only upon request.

**1. POP: Addresses where located, and indicate if owned or leased.**

- |               |          |
|---------------|----------|
| 1) <u>N/A</u> | 2) _____ |
| _____         | _____    |
| 3) _____      | 4) _____ |
| _____         | _____    |

**2. SWITCHES: Address where located, by type of switch, and indicate if owned or leased.**

- |               |          |
|---------------|----------|
| 1) <u>N/A</u> | 2) _____ |
| _____         | _____    |
| 3) _____      | 4) _____ |
| _____         | _____    |

**3. TRANSMISSION FACILITIES: POP-to-POP facilities by type of facilities (microwave, fiber, copper, satellite, etc.) and indicate if owned or leased.**

- | <u>POP-to-POP</u> | <u>OWNERSHIP</u> |
|-------------------|------------------|
| 1) <u>N/A</u>     | _____            |
| 2) _____          | _____            |
| 3) _____          | _____            |
| 4) _____          | _____            |

**\*\* APPENDIX C \*\***

**AFFIDAVIT**

By my signature below, I, the undersigned officer, attest to the accuracy of the information contained in this application and attached documents and that the applicant has the technical expertise, managerial ability, and financial capability to provide alternative local exchange company service in the State of Florida. I have read the foregoing and declare that, to the best of my knowledge and belief, the information is true and correct. I attest that I have the authority to sign on behalf of my company and agree to comply, now and in the future, with all applicable Commission rules and orders.

Further, I am aware that, pursuant to Chapter 837.06, Florida Statutes, "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 and s. 775.083."

UTILITY OFFICIAL:

Signature	<u>Thomas M. Armstrong</u>	Date	<u>6/15/00</u>
Title	<u>President</u>	Telephone No.	<u>850-455-0623</u>
Address:	<u>4709 Mobile Highway</u>	Fax No.	<u>850-455-0635</u>
	<u>Pensacola FL 32506</u>		



# 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 and penalties due this office through December 31, 2000, that its most recent annual report/uniform business report was filed on February 20, 2000, and its status is active.

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



CR2EO22 (1 99)

Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Twenty-fourth day of February, 2000

*Katherine Harris*

Katherine Harris  
Secretary of State

EXPRESS PHONE SERVICE, INC.  
FINANCIAL STATEMENTS  
December 31, 1999

RANDALL L. SANSOM, C.P.A., P.A.  
CERTIFIED PUBLIC ACCOUNTANTS  
87 BAYBRIDGE PARK  
GULF BREEZE, FL 32561

JANUARY 18, 2000

EXPRESS PHONE SERVICE, INC.  
PENSACOLA, FL 32506

TO THE STOCKHOLDERS OF EXPRESS PHONE SERVICE, INC.:

We have compiled the accompanying statement of assets and liabilities -income tax basis of EXPRESS PHONE SERVICE, INC. (an S corporation) as of DECEMBER 31, 1999, and the related statement of revenues and expenses-income tax basis for the nine months then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the basis of accounting used by the Company for income tax purposes, which is a comprehensive basis of accounting other than generally accepted accounting principles.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all of the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's assets, liabilities, revenues and expenses. Accordingly, these financial statements are not designed for those who are not informed about such matters.

The Company, with the consent of its shareholders, has elected under the Internal Revenue Code to be an S corporation. In lieu of corporation income taxes, the shareholders of an S corporation are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for federal income taxes has been included in these financial statements.



RANDALL L. SANSOM, C.P.A., P.A.  
CERTIFIED PUBLIC ACCOUNTANTS

EXPRESS PHONE SERVICE, INC.  
STATEMENT OF ASSETS AND LIABILITIES-INCOME TAX BASIS  
December 31, 1999

ASSETS

CURRENT ASSETS		
CASH ON HAND IN STORE	\$28,122.52	
CASH (BANK OF THE SOUTH-#2)	38,218.75	
RETURNED CHECKS	65.70	
INVENTORY	1,952.70	
	<hr/>	
TOTAL CURRENT ASSETS		\$68,359.67
FIXED ASSETS		
EQUIPMENT	\$3,100.92	
ACCUMULATED DEPRECIATION	(3,100.92)	
	<hr/>	
NET FIXED ASSETS		\$0.00
OTHER ASSETS		
ORGANIZATIONAL COSTS	\$500.00	
ACCUMULATED AMORTIZATION	(57.64)	
LEASE DEPOSIT	2,857.13	
SOUTHERN BELL DEPOSIT	2,142.87	
	<hr/>	
TOTAL OTHER ASSETS		\$5,442.36
TOTAL ASSETS		<hr/> <hr/> \$73,802.03

"SEE ACCOUNTANT'S COMPILATION REPORT"

EXPRESS PHONE SERVICE, INC  
STATEMENT OF ASSETS AND LIABILITIES-INCOME TAX BASIS  
December 31, 1999

LIABILITIES AND S/H EQUITY

CURRENT LIABILITIES		
ACCOUNTS PAYABLE	\$37,607.52	
SALES TAX PAYABLE	222.88	
DUE TO EXPRESS TITLE FINL CORP	15,784.90	
	<hr/>	
TOTAL CURRENT LIABILITIES		\$53,615.30
LONG TERM LIABILITIES		
	<hr/>	
TOTAL LONG TERM LIABILITIES		\$0.00
		<hr/>
TOTAL LIABILITIES		\$53,615.30
STOCKHOLDERS' EQUITY		
CAPITAL STOCK	\$100.00	
YEAR-TO-DATE NET INCOME	20,086.73	
	<hr/>	
TOTAL STOCKHOLDERS' EQUITY		\$20,186.73
		<hr/>
TOTAL LIABILITIES AND S/H EQUITY		\$73,802.03
		<hr/> <hr/>

"SEE ACCOUNTANT'S COMPILATION REPORT"

EXPRESS PHONE SERVICE, INC.  
STATEMENT OF REVENUES AND EXPENSES-INCOME TAX BASIS  
Nine Months Ended December 31, 1999

	Nine Months	%
<b>REVENUES</b>		
TELEPHONE SERVICE REVENUES	\$394,167.38	95.5
TELEPHONE PRODUCTS SALES	18,525.18	4.5
<b>TOTAL REVENUES</b>	<u>\$412,692.56</u>	100.0
<b>COST OF SALES</b>		
PURCHASES-PHONE PRODUCTS	\$19,668.17	4.8
<b>TOTAL COST OF REVENUES</b>	<u>\$19,668.17</u>	4.8
<b>GROSS MARGIN</b>	<u>\$393,024.39</u>	95.2
<b>OPERATING EXPENSES</b>		
ACCOUNTING AND LEGAL	\$2,806.36	.7
ADVERTISING	8,598.01	2.1
AUTO AND TRUCK EXPENSES	959.56	.2
AMORTIZATION	57.64	.0
BAD DEBTS	250.35	.1
BANK CHARGES	16.00	.0
SEC 179 DEPRECIATION	3,100.92	.8
INSURANCE-HEALTH	493.78	.1
INSURANCE-EMPLOYEE LIFE	317.32	.1
INSURANCE-PROPERTY	271.96	.1
LICENSES AND TAXES	1,330.70	.3
MISCELLANEOUS EXPENSES	3,195.01	.8
OFFICE EXPENSES	4,650.08	1.1
PAYROLL PROCESSING COSTS	358.00	.1
POSTAGE	4,253.61	1.0
RENT EXPENSE	4,885.67	1.2
REPAIRS AND MAINTENANCE	176.64	.0
SALARIES-LEASED EMPLOYEES	49,122.28	11.9
TELEPHONE	787.44	.2
TELEPHONE SERVICE EXPENSE	286,673.59	69.5
UTILITIES	1,155.16	.3
<b>TOTAL OPERATING EXPENSES</b>	<u>\$373,460.08</u>	90.5
<b>INCOME FROM OPERATIONS</b>	<u>\$19,564.31</u>	4.7
<b>OTHER INCOME</b>		
INTEREST INCOME	\$75.71	.0
SALES TAX COMMISSION	2.24	.0
MISCELLANEOUS INCOME	444.47	.1
<b>TOTAL OTHER INCOME</b>	<u>\$522.42</u>	.1

"SEE ACCOUNTANT'S COMPILATION REPORT"

EXPRESS PHONE SERVICE, INC.  
STATEMENT OF REVENUES AND EXPENSES-INCOME TAX BASIS  
Nine Months Ended December 31, 1999

	Nine Months	%
OTHER EXPENSES		
TOTAL OTHER EXPENSES	<u>\$0.00</u>	.0
NET INCOME	<u>\$20,086.73</u>	4.9

"SEE ACCOUNTANT'S COMPILATION REPORT"

**RANDALL L. SANSOM, CPA, PA**  
**P.O. BOX 957**  
**GULF BREEZE, FL 32562**  
**(850) 932-5335**

MAY 27, 2000

EXPRESS PHONE SERVICE, INC.  
PENSACOLA, FL 32506

TO THE STOCKHOLDERS OF EXPRESS PHONE SERVICE, INC.:

We have compiled the accompanying statement of assets and liabilities-income tax basis of EXPRESS PHONE SERVICE, INC. (an S corporation) as of MARCH 31, 2000, and the related statement of revenues and expenses - income tax basis for the two months then ended, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The financial statements have been prepared on the basis of accounting used by the Company for income tax purposes, which is a comprehensive basis of accounting other than generally accepted accounting principles.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them.

Management has elected to omit substantially all the disclosures ordinarily included in financial statements prepared on the income tax basis of accounting. If the omitted disclosures were included in the financial statements, they might influence the user's conclusions about the Company's assets, liabilities, revenues and expenses. Accordingly, these financial statements are not designed for those who are not informed about such matters.

The Company, with the consent of its shareholders, has elected under the Internal Revenue Code to be a S corporation. In lieu of corporation income taxes, the shareholders of an S corporation are taxed on their proportionate share of the Company's taxable income. Therefore, no provision or liability for federal income taxes has been included in these financial statements.

  
RANDALL L. SANSOM  
CERTIFIED PUBLIC ACCOUNTANT



# EXPRESS PHONE SERVICE, INC.

STMT OF ASSETS AND LIABILITIES-INCOME TAX BASIS  
March 31, 2000

## ASSETS

### CURRENT ASSETS

CASH ON HAND IN STORE	\$	39,769.18	
CASH (BANK OF THE SOUTH-#2)		64,945.81	
RETURNED CHECKS		310.45	
INVENTORY		<u>1,952.70</u>	
<b>Total Current Assets</b>	\$		<b>106,978.14</b>

### PROPERTY AND EQUIPMENT

EQUIPMENT	\$	3,100.92	
ACCUMULATED DEPRECIATION		<u>(3,100.92)</u>	

### OTHER ASSETS

ORGANIZATIONAL COSTS	\$	500.00	
ACCUMULATED AMORTIZATION		(82.63)	
LEASE DEPOSIT		2,857.13	
SOUTHERN BELL DEPOSIT		<u>2,142.87</u>	
<b>Total Other Assets</b>	\$		<b><u>5,417.37</u></b>

<b>TOTAL ASSETS</b>	\$		<b><u>112,395.51</u></b>
---------------------	----	--	--------------------------

**EXPRESS PHONE SERVICE, INC.**

**STMT OF ASSETS AND LIABILITIES-INCOME TAX BASIS  
March 31, 2000**

**LIABILITIES AND STOCKHOLDERS' EQUITY**

**CURRENT LIABILITIES**

ACCOUNTS PAYABLE	\$	47,933.35
DUE TO EXPRESS TITLE FINL COR		<u>15,784.90</u>

**Total Current Liabilities** \$ 63,718.25

**LONG-TERM LIABILITIES**

**Total Long-Term Liabilities** \$ 0.00

**Total Liabilities** \$ 63,718.25

**STOCKHOLDERS' EQUITY**

CAPITAL STOCK	\$	100.00
ACCUMULATED ADJUSTMENTS ACCTS		20,086.73
YEAR TO DATE NET INCOME		<u>28,490.53</u>

**Total Stockholders' Equity** \$ 48,677.26

**TOTAL LIABILITIES AND  
STOCKHOLDERS' EQUITY** \$ 112,395.51

**EXPRESS PHONE SERVICE, INC.**  
**STMT OF REVENUES AND EXPENSES-INCOME TAX BASIS**

	<b>1 Month Ended</b>		<b>%</b>	<b>3 Months Ended</b>		<b>%</b>
	<b>March 31, 2000</b>			<b>March 31, 2000</b>		
<b>Sales</b>						
TELEPHONE SERVICE REVENUE	\$	72,582.76	\$	\$	196,492.18	\$
TELEPHONE PRODUCTS SALE		<u>1,989.71</u>	<u>2.67</u>		<u>7,020.59</u>	<u>3.45</u>
<b>Total Sales</b>	\$	\$ 74,572.47	\$	\$	\$ 203,512.77	\$ 100.00
<b>Cost of Goods Sold</b>						
PURCHASES-PHONE PRODUCT	\$	2,742.20	\$	\$	9,923.14	\$
<b>Total Cost of Goods Sold</b>	\$	<u>2,742.20</u>	\$	<u>9,923.14</u>	\$	<u>4.88</u>
<b>Gross Profit</b>	\$	\$ 71,830.27	\$	\$	\$ 193,589.63	\$ 95.12
<b>Operating Expenses</b>						
ACCOUNTING AND LEGAL	\$	200.00	\$	\$	1,399.02	\$
ADVERTISING		2,339.66	3.14		3,444.99	1.69
AMORTIZATION		8.33	0.01		24.99	0.01
INSURANCE-HEALTH		41.00	0.05		81.00	0.04
LICENSES AND TAXES		50.00	0.07		453.07	0.22
OFFICE EXPENSES		1,574.03	2.11		2,908.30	1.43
POSTAGE		529.55	0.71		1,567.41	0.77
RENT EXPENSE		500.00	0.67		1,136.33	0.56
SALARIES-LEASED EMPLOYEE		9,519.65	12.77		20,103.81	9.88
TELEPHONE		225.43	0.30		529.20	0.26
TELEPHONE SERVICE EXPENS		46,829.35	62.80		133,488.77	65.59
UTILITIES		<u>112.21</u>	<u>0.15</u>		<u>112.21</u>	<u>0.06</u>
<b>Total Operating Expenses</b>	\$	<u>61,929.21</u>	\$	<u>83.05</u>	\$	<u>165,249.10</u>
<b>Operating Income (Loss)</b>	\$	\$ 9,901.06	\$	\$	\$ 28,340.53	\$ 13.93
<b>Other Income</b>						
MISCELLANEOUS INCOME	\$	60.00	\$	\$	150.00	\$
<b>Total Other Income</b>	\$	<u>60.00</u>	\$	<u>0.08</u>	\$	<u>150.00</u>
<b>Other Expenses</b>						
<b>Net Income (Loss)</b>	\$	<u>9,961.06</u>	\$	<u>13.36</u>	\$	<u>28,490.53</u>

**Express Phone Service, Inc.**

4709 Mobile Highway  
Pensacola, Florida 32506

June 19, 2000

Express Phone Service, Inc. is privately owned by two shareholders. The corporation does not have audited financial statements. Enclosed with this application are unaudited financial statements that show the corporations assets, liabilities and stockholders' equity and a statement of revenues and expenses-income tax basis. These statements cover from date of incorporation through December 31, 1999 and January 1, 2000 to present.

These statements clearly show that Express Phone Service, Inc. has sufficient financial capability to provide resale services within the state of Florida. Since Express Phone Service, Inc. is a reseller and there are no facilities-based service being provided by Express Phone Service, Inc., the financial information provided also clearly indicates that there is sufficient financial capability to maintain the requested service. Additionally, Express Phone Service, Inc. is physically collocated with Express Title Financial Corp. and therefore has more than sufficient financial capability to meet its lease obligation of approximately seven hundred dollars (\$700.00) per month.

**Express Phone Service, Inc.** 4709 Mobile Highway  
Pensacola, FL 32506

June 19, 2000

Express Title Financial Corp. was certificated to operate as an alternative local exchange company by the Florida Public Service Commission in late summer 1998. In May of 1999, the shareholders of Express Title Financial Corp., William Kloss and Thomas M. Armstrong, formed Express Phone Service, Inc. to provide management services to Express Title Financial Corp. in support of its telecommunication services. Both corporations are owned by the same shareholders with the same percentage of ownership in each corporation. The vice-president of Express Title Financial Corp., Thomas M. Armstrong, is the president of Express Phone Service, Inc.

The employees and officers of Express Phone Service, Inc. are the same individuals that are associated with Express Title Financial Corp.'s providing of telecommunication services. The managerial experience and technical experience necessary for Express Phone Service, Inc. to provide resell services exists as proven with Express Title Financial Corp. A brief resume outlining those capabilities is enclosed.

8160 Briese Lane  
Pensacola, Florida 32514

(850) 474-3682 fax (850) 494-9904  
tmarmstrong@worldnet.att.net

# Thomas M. Armstrong

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<b>Experience</b>	1978-1998	United States Marine Corps	Worldwide
	<b>Retired 20-year Veteran</b>		
	<ul style="list-style-type: none"><li>▪ Aviation Weapon Systems Technician</li><li>• Master Training Specialist Instructor</li><li>▪ Staff Non-Commissioned Officer</li></ul>		
	1996-1998	Express Title Financial Corp.	Pensacola, FL
	<b>Office Manager</b>		
	<ul style="list-style-type: none"><li>▪ Coordinated payroll overhaul to improve accuracy and employee benefits</li><li>• Doubled financial managers efficiency</li><li>• Coordinated multiple site relocations, openings, closings</li><li>▪ Personally responsible for development of corporate procedures for marketing and support of reselling BellSouth services</li><li>▪ Attended training syllabus provided by BellSouth – Basic CLEC Course, LENS Course</li><li>▪ Corporate liaison for Florida Public Service Commission, Department of Revenue, Department of Banking and Finance, Department of Agriculture</li></ul>		
	1999-present		Pensacola, FL
	<b>Executive Officer / Shareholder</b>		
	<ul style="list-style-type: none"><li>▪ Express Title Financial Corp. – Vice-President – 10% shareholder</li><li>▪ Express Phone Service, Inc. – President – 10% shareholder</li><li>▪ Responsible for complete day-to-day operations of both corporations</li></ul>		
<b>Education</b>	1993-1994	State Technical Institute of Memphis	Memphis, TN
	<ul style="list-style-type: none"><li>▪ A.A., Electronic Technology</li><li>▪ Graduated Summa Cum Laude.</li></ul>		
	2000	Fred Pryor Professional Development	Pensacola, FL
	Microsoft Excel Basic and Intermediate		

EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
Original Sheet 1

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TITLE SHEET

FLORIDA TELECOMMUNICATIONS PRICE LIST

This price list contains the descriptions, regulations, service standards and rates applicable to the furnishing of service and facilities for telecommunications services provided by Express Phone Service, Inc., with principal offices at 4709 Mobile Highway, Pensacola, FL 32506. This price list applies for services furnished within the State of Florida. This price list is on file with the Florida Public Service Commission, and copies may be inspected, during normal business hours, at the Company's principal place of business.

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Issued: June 15, 2000

EFFECTIVE:

by:

Thomas M. Armstrong, President  
4709 Mobile Highway  
Pensacola, FL 32506

EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
Original Sheet 2

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CHECK SHEET

The sheets listed below, which are inclusive of this price list, are effective as of the date shown at the bottom of the respective sheet(s). Original and revised sheets as named below comprise all changes from the original price list and are currently in effect as of the date at the bottom of this page.

SHEET	REVISION
1	Original
2	Original
3	Original
4	Original
5	Original
6	Original
7	Original
8	Original
9	Original
10	Original
11	Original

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EXPRESS PHONE SERVICE, INC.

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Original Sheet 3

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TABLE OF CONTENTS

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
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SYMBOLS SHEET

The following are the only symbols used for the purposes indicated below:

- D - Delete or Discontinue
- I - Change Resulting In An Increase to A Customer's Bill
- M - Moved From Another Price List Location
- N - New
- R - Change Resulting In A Reduction To A Customer's Bill
- T - Change in Text or Regulation But No Change In Rate Or Charge

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
Original Sheet 5

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PRICE LIST FORMAT SHEETS

A. Sheet Numbering - Sheet numbers appear in the upper right corner of the page. Sheets are numbered sequentially. However, new sheets are occasionally added to the price list. When a new sheet is added between sheets already in effect, a decimal is added. For example, a new sheet added between sheets 14 and 15 would be 14.1.

B. Sheet Revision Numbers - Revision numbers also appear in the upper right corner of each page. These numbers are used to determine the most current sheet version on file with the FPSC. For example, the 4th revised Sheet 14 cancels the 3rd revised Sheet 14. Because of various suspension periods, deferrals, etc., the FPSC follows in their price list approval process, the most current sheet number on file with the Commission is not always the price list page in effect. Consult the Check Sheet for the sheet currently in effect.

C. Paragraph Numbering Sequence - There are nine levels of paragraph coding. Each level of coding is subservient to its next higher level:

2.  
2.1.  
2.1.1.  
2.1.1.A.  
2.1.1.A.1.  
2.1.1.A.1.(a).  
2.1.1.A.1.(a).I.  
2.1.1.A.1.(a).I.(i).  
2.1.1.A.1.(a).I.(i).(1).

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
Original Sheet 6

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PRICE LIST FORMAT SHEETS

D. Check Sheets - When a price list filing is made with the FPSC, an updated check sheet accompanies the price list filing. The check sheet lists the sheets contained in the price list, with a cross reference to the current revision number. When new pages are added, the check sheet is changed to reflect the revision. All revisions made in a given filing are designated by an asterisk (\*). There will be no other symbols used on this page if these are the only changes made to it (i.e., the format, etc. remains the same, just revised revision levels on some pages). The price list user should refer to the latest check sheet to find out if a particular sheet is the most current on file with the FPSC.

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
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SECTION 1 - TECHNICAL TERMS AND ABBREVIATIONS

Company - Express Phone Service, Inc.

Customer - The person, firm corporation or other entity which orders service and is responsible for payment of charges due and compliance with the Company's price list regulations.

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
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SECTION 2 - RULES, REGULATIONS AND SERVICE QUALITY CRITERIA

2.1 Undertaking of Express Phone Service, Inc. - Express Phone Service, Inc. hereby undertakes the provision of telecommunication services to the exchanges listed previously herein and do guarantee to provide such services in a manner that is in the best interest of the public. The quality of the service provided will be equal to the quality of the service provided to us for resale.

2.2 Service Availability - All services available to us from our provider for resale will be made available to our customers.

2.3 Billing - Billing processes will be handled by personnel employed by the Company. Customers will be billed by the Company ten calendar days prior to their due date. Accounts on which payment has not been received by the due date will be considered delinquent and are subject to a late fee.

2.4 Termination - Accounts delinquent for five calendar days will be subject to having their service terminated on the following business day. Once terminated, accounts will be subject to a reconnection fee should further service be desired by the customer.

2.5 Taxes - The Company hereby acknowledges its responsibility and intent to properly and promptly pay all taxes lawfully due.

2.6 Refunds/Credits - If a customer's service is terminated or interrupted due to the fault of the Company, the customer will be reimbursed for unused time. Requests for termination of service by the customer will be handled on a pro-rated basis.

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EXPRESS PHONE SERVICE, INC.

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SECTION 3 - BASIC SERVICE DESCRIPTIONS AND RATES

3.1 SERVICE OFFERINGS

Basic Local Service, Residential, Monthly 49.95  
(Includes access to 911 and operator services)

Basic Local Service, Business, Monthly 69.95  
(Includes access to 911 and operator services)

3.1.1 PROMOTIONAL SERVICE OFFERINGS

Basic Local Service, Residential, Monthly 39.95  
Effective Dates 15 Jun 2000 - 31 Dec 2001

Connection Fee Waived  
Effective dates 15 Jun 2000 - 31 Dec 2001

Basic Local Service, Business, Monthly 59.95  
Effective Dates 15 Jun 2000 - 31 Dec 2001

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
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SECTION 4 - NON BASIC SERVICE DESCRIPTIONS AND RATES

4.1 SERVICE OFFERINGS

Call Waiting	4.75
Call Forwarding	4.75
Three Way Calling	4.75
Unpublished Number	4.75
8 Code Speed Dialing	4.75
Call Return	4.75
Multi-Feature Package (Call Waiting, 3-Way Calling, Call Forwarding, Call Return, Speed Dialing, Unpublished Number)	19.95
Multi-Feature Package (Call Waiting, 3-Way Calling, Call Forwarding, Call Return, Speed Dialing, Unpublished Number, Deluxe Caller ID)	29.00
Deluxe Caller ID	9.75
Call Waiting Deluxe with Caller ID	14.75
Connection Fee	40.00
Reconnection Fee	30.00
Late Fee	1.00 per day 10.00 Maximum
Voice Mail Answering Service	9.75

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EXPRESS PHONE SERVICE, INC.

Florida Price List No. 1  
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SECTION 4 - NON BASIC SERVICE DESCRIPTIONS AND RATES

4.1 SERVICE OFFERINGS (continued)

Message Waiting Indicator - Stutter Tone	1.50
Change/Add/Delete Features	20.00
Change Phone Number	25.00
Transfer (Moving) Fee	40.00
Call Blocking	4.75

4.2 Non-Routine Installation and/or Maintenance

Repair/Installation Visit	30.00 per hour
Parts	5.00 per jack

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