

**Eric Fryson**

**From:** Tom Armstrong [tom.armstrong.sr@gmail.com]  
**Sent:** Friday, January 18, 2013 5:42 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Digital Express Response in Opposition to AT&T Florida's Motion to Compel Service Letter Docket No. 120169-TP

**Attachments:** DEI Oppose Response to ATT Compel filed 011813.pdf

A. Person responsible for filing:

Thomas M. Armstrong  
1803 W. Fairfield Drive, Unit 1  
Pensacola, FL 32501  
850-291-6415  
[tom.armstrong.sr@gmail.com](mailto:tom.armstrong.sr@gmail.com)

B. Docket number and title if filed in an existing docket.

**Docket No. 120169-TP**

**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 New Talk, Inc. by Digital Express, Inc.**

C. Party on whose behalf the document is filed

Digital Express, Inc.

D. Number of pages in each attached document.

18 pages total (includes cover letter, certificate of service and response)

E. Brief but complete description of each attached document.

Digital Express' Response in Opposition to AT&T Florida's Motion to Compel in Docket No. 120169-TP



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Tom Armstrong  
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DOCUMENT NUMBER - DATE

00382 JAN 22 2013

FPSC-COMMISSION CLERK

# DIGITAL EXPRESS, INC.

1803 W. Fairfield Drive, Unit 1  
Pensacola, FL 32501

January 18, 2013

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

**Re: Docket No. 120169-TP**

**Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BeliSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and New Talk, Inc. by Digital Express, Inc.**

Dear Ms. Cole:

Today Digital Express, Inc. served its Response in Opposition to BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Compel dated January 10, 2013.

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

Sincerely,



Thomas M. Armstrong  
President  
Voice: 850-291-6415  
Fax: 850-308-1151  
tom.armstrong.sr@gmail.com

cc: Parties of Record

DOCUMENT NUMBER: DATE  
00382 JAN 22 2013  
FPSC-COMMISSION CLERK

**CERTIFICATE OF SERVICE**  
**Docket No. 120169- TP**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

Electronic Mail and overnight delivery this 18th day of January, 2013 to the following:

Lee Eng Tan  
Shalonda Hopkins  
Staff Counsels  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
ltan@psc.state.fl.us  
shopkins@psc.state.fl.us

BellSouth Telecommunications, LLC dba AT&T Florida  
Ms. Suzanne Montgomery  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301  
T: 305.347.5558  
F: 305.577.4491  
Sm6526@att.com

  
\_\_\_\_\_  
Thomas M. Armstrong

# DIGITAL EXPRESS, INC.

1803 W. Fairfield Drive, Unit 1  
Pensacola, FL 32501

January 18, 2013

BellSouth Telecommunications, LLC d/b/a AT&T Florida  
Suzanne Montgomery, General Attorney  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301

**Re: Docket No. 120169-TP**

**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 New Talk, Inc. by Digital Express, Inc.**

Dear Ms. Montgomery:

Enclosed is Digital Express, Inc.'s Response in Opposition to BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion to Compel dated January 10, 2013.

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

Sincerely,



Thomas M. Armstrong  
President  
Voice: 850-291-6415  
Fax: 850-308-1151  
tom.armstrong.sr@gmail.com

cc: Parties of Record


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Shalonda Hopkins  
Staff Counsels  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
ltan@psc.state.fl.us  
shopkins@psc.state.fl.us

BellSouth Telecommunications, LLC dba AT&T Florida  
Ms. Suzanne Montgomery  
150 South Monroe Street  
Suite 400  
Tallahassee, FL 32301  
T: 305.347.5558  
F: 305.577.4491  
Sm6526@att.com

  
\_\_\_\_\_  
Thomas M. Armstrong

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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 New )  
Talk, Inc. by Digital Express, Inc. )  
\_\_\_\_\_ )

Docket No. 120169-TP

Filed: January 18, 2013

**DIGITAL EXPRESS, INC.'S RESPONSE IN OPPOSITION  
TO BELLSOUTH TELECOMMUNICATIONS, LLC D/B/A  
AT&T FLORIDA'S MOTION TO COMPEL**

Digital Express, Inc. ("Digital Express"), in accordance with Rule 28-106.204, Florida Administrative Code, respectfully submits this Response in Opposition to BellSouth Telecommunications, LLC d/b/a AT&T Florida's ("AT&T Florida's") Motion to Compel dated January 10, 2013 (the "Motion").

AT&T Florida's Motion should be denied in its entirety. Digital Express provided responses to AT&T Florida's discovery requests that were in the proper format and which were proper under Florida law. Many of AT&T Florida's discovery requests were objectionable, however, and Digital Express stands by its objections.

AT&T Florida's Motion discusses the discovery requests collectively. Because the Commission will need to resolve each discovery request individually, we address each discovery request that is the subject of the Motion separately and explain why the Motion should be denied.

**Background**

On June 5, 2012, Digital Express filed Notice of Adoption ("Notice") of the existing ICA between AT&T Florida and New Talk, Inc. ("New Talk"). Digital Express filed its Notice with this Commission as required by Commission rules and served notice of adoption upon AT&T Contract Management in accordance with the process established by AT&T itself at AT&T's CLEC OnLine website.

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On June 20, 2012, over two full weeks after AT&T received Digital Express' Notice, AT&T Florida filed a letter with the Commission Clerk claiming that it had only then become aware of Digital Express' Notice. Nowhere in its letter to the Commission dated June 20, 2012 does AT&T Florida provide any reason whatsoever for the obvious failure of AT&T Contract Management to communicate the adoption of the New Talk ICA by Digital Express. Instead of acknowledging its own corporate failure, AT&T Florida instead tries to improperly place the blame on Digital Express for following AT&T's own process and Commission rules. On July 9, 2012, thirty-four days after AT&T received Digital Express' Notice, AT&T Florida finally filed its official Response in Opposition to Digital Express' Notice of Adoption.

Federal law and prior rulings of the Commission make it clear that no response or approval by AT&T or AT&T Florida is necessary for an adoption to be effective. AT&T Florida has sought remedy at this Commission; seeking such remedy does not, however, extinguish the effectiveness of the adoption. Accordingly, any remedy sought by AT&T Florida would need to be in accordance with applicable federal law and the scope of this docket as it pertains to that adoption, applicable law and the issues pertaining to such.

#### Argument

In its Motion, AT&T Florida references (i) *Allstate v. Boecher*, 733 So. 2d 993, 995 (Fla 1999), Rule 1.280(b)(1), (ii) Florida Rules of Civil Procedure and (iii) Complaint of XO Fla., Inc. against BellSouth Telecoms., Inc., Docket No. 04114-TP, Order No. OSC-05-0096-PCO-TP.

In the case of (iii), Digital Express could not locate on the Commission website (i) a regulated or previously regulated company by the name of XO Fla., Inc., (ii) a regulated or previously regulated company by the name of BellSouth Telecoms., Inc., (iii) Docket No. 04114-TP or (iv) Order No. OSC-05-0096-TP. Whether this reference by AT&T Florida actually exists is unknown at this time to Digital Express. If it does in fact really exist, AT&T will undoubtedly eventually claim a simple scrivener's error and perhaps a single claim of such would hold water. Using non-existent party names, a non-existent docket number **and** a non-existent order

number, however, could very well serve as textbook example of the use of surprise, trickery, bluff and legal gymnastics by AT&T Florida.

In *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108, 111 (Fla. 1970), which is referenced within AT&T Florida's reference identified as (i) above, there were four exceptions recognized to the general rule requiring complete discovery (Fla. R. Civ. P. 1.280(b)(1)):

- (1) The subject matter of the discovery procedure must be relevant to the cause.
- (2) Discovery procedures may not be used or conducted to harass or embarrass litigants or witnesses or for malicious purposes.
- (3) The inquiry must not invade the ancient and necessary right of privileged communications between lawyers and clients.
- (4) The work product of the litigant, his attorney or agent, cannot be examined, absent rare and exceptional circumstances.

The thrust of Digital Express' position in this case is that AT&T failed to recognize the valid notice of adoption filed by Digital Express on June 5, 2012. The adoption of the New Talk ICA by Digital Express, as governed by applicable law, is the cause to which the subject matter of the discovery procedure must be relevant. AT&T Florida cannot be permitted to go on fishing expeditions on irrelevant issues that are not reasonably calculated to lead to the discovery of admissible evidence. AT&T Florida cannot be permitted to use this docket to "tee up" possible underlying issues. If AT&T Florida wishes to pursue discovery in those issues, it has the right to do so under separate proceedings before the Commission. Until such time that AT&T Florida commences such action, its discovery must be limited to subject matter relevant to the matter at hand in the instant matter before the Commission, the adoption of the New Talk ICA by Digital Express.

Additionally, discovery requests are not permitted to be used by AT&T to harass Digital Express nor can they be used in attempts to invade privileged communication nor can they be used to view work product of Digital Express, its attorneys or agents absent rare and exceptional circumstances, which AT&T Florida has not claimed or attempted to show.

AT&T Florida's Motion posits that Digital Express' objections fall into three categories:  
(a) Lifeline eligibility; (b) financial status/business plans; and (c) timing of the adoption request.



Furthermore, while AT&T Florida's Motion discusses the discovery requests collectively, the Commission may need to resolve some or each discovery request individually so we address each discovery request that is the subject of the Motion both collectively and separately and explain why the Motion should be denied.

**A. Lifeline related Discovery Requests**

**AT&T Interrogatory 10:** Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits.

**Response:** In addition to its general objections, Digital Express objects to this interrogatory on the basis that it is (i) overly broad, (ii) that the information it seeks is protected by the work product doctrine, (iii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence and (iv) that such information is available to and already in AT&T Florida's possession.

The Federal Communications Commission ("FCC") and this Commission established processes to be followed in order to verify the eligibility of end users for Lifeline benefits. These processes are easily available to any local exchange company, incumbent or competitive alike. AT&T Florida, if they were following the prescribed processes themselves, is already aware of and in the possession of the processes used to verify end user eligibility for Lifeline benefits.

Digital Express followed the processes established by the FCC and this Commission to verify the eligibility of end users for Lifeline eligibility. In implementing the requirements of those processes, Digital Express used resources at its disposal to ensure the processes established by the FCC and this Commission were followed. This utilization did not create any new process that would be subject to discovery and even by furthest stretch of the AT&T Florida's imagination, the utilization of its own resources by Digital Express would be protected by work product doctrine.

The subject matter of this proceeding is whether AT&T Florida can arbitrarily choose to ignore federal laws with regards to the adoption of interconnection agreements. Section 47

CFR § 51.809 describes the only two instances where the adoption statute is inapplicable as (i) the costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement or (ii) the provision of a particular agreement to the requesting carrier is not technically feasible. End user Lifeline eligibility clearly does not fall into either of these exceptions to adoption requirements and therefore are outside the subject matter of this proceeding.

This Commission has not addressed the disputes owed to Digital Express by AT&T Florida. Neither AT&T Florida nor Digital Express has sought any dispute resolution before this Commission. AT&T Florida's discovery request is a veiled attempt to seek information that is not relevant to the subject matter of this proceeding. If the Commission staff believes that there are significant substantive underlying issues to be resolved, it has means to do so, for example, by initiating a Chapter 120 hearing process.

AT&T Florida's discovery request for "particularity" with regards to those processes is overly broad as it has no context, scope or limitations and constitutes nothing more than a fishing expedition. The discovery rules do not require Digital Express to guess what AT&T Florida means by "particularity" and it would be extraordinarily burdensome, if not impossible, for Digital Express to try and interpret what AT&T had in mind. A party that propounds discovery needs to make reasonably clear what it is asking for. AT&T Florida has failed to do so with this interrogatory.

Digital Express' objection to Interrogatory 10 should be sustained.

**AT&T Interrogatory 11:** Describe with particularity the processes Digital Express followed from January 1, 2011 to the present to recertify the eligibility of its end user customers for Lifeline benefits.

**Response:** In addition to its general objections, Digital Express objects to this interrogatory on the basis that it is (i) overly broad, (ii) that the information it seeks is protected by the work product doctrine, (iii) that the information it seeks is not relevant to the subject

matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence and (iv) that such information is available to and already in AT&T Florida's possession.

Processes for recertifying the eligibility of end user customers for Lifeline benefits are (i) established by the FCC and this Commission, (ii) well published and easily available by AT&T Florida and (iii) were followed by Digital Express in recertifying the eligibility of end user customers. See discussion of Interrogatory 10.

Digital Express' objection to Interrogatory 11 should be sustained.

**AT&T Interrogatory 12:** Identify all persons with any responsibility on behalf of Digital Express relating to Lifeline from January 1, 2011 to the present, and describe with particularity each such person's responsibilities.

**Response:** In addition to its general objections, Digital Express objects to this interrogatory on the basis that it is (i) overly broad, (ii) that the information it seeks is protected by the work product doctrine, (iii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. See discussion of Interrogatory 10 and 11.

The party that propounds discovery needs to make reasonably clear what it is asking for. AT&T Florida fails to do so with this interrogatory by using the words "all" and "any". Taken at face value and with its lack of scope, context or limitation, this interrogatory is impossible to begin to answer. What is responsibility as compared to job requirements? Is removing an incoming fax and routing it properly a responsibility or a task assigned? Is opening incoming mail and routing it properly a responsibility? Did AT&T Florida mean for Digital Express to first interpret what it means by "responsibility" and then recall, for a period of 744 days, "all" persons that were had "any" responsibility?

The discovery rules do not require Digital Express to guess what AT&T Florida meant. Rather, Digital Express is entitled to take AT&T Florida's request at face value, especially when, as is the case here, it is impossible to determine what AT&T Florida really had in mind. Taken at

face value, this interrogatory is ridiculously overbroad and would be extraordinarily burdensome, if not impossible, for Digital Express to determine a response.

In the United States Marine Corps, leaders are taught that while they may be able to delegate authority to do something, they cannot delegate responsibility. Many different individuals may have been tasked with carrying out the steps necessary to complete the processes established by the FCC and this Commission for Lifeline certification and verification. The officer(s) of Digital Express would have the responsibility.

Digital Express' objection to Interrogatory 12 should be sustained.

**AT&T Request for Production 8:** Produce all documents constituting or referring to any and all processes used by Digital Express to verify, or recertify, the eligibility of its end users customers for Lifeline benefits from January 1, 2011 to the present.

**Response:** In addition to its general objections, Digital Express objects to this request for production on the basis that it is (i) overly broad, (ii) that the information it seeks is protected by the work product doctrine, (iii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence and (iv) that such information is available to and already in AT&T Florida's possession.

Digital Express uses an inordinate number of documents in the course of its daily business. On the day of the preparation of this response, the President of Digital Express received in excess of 100 emails alone. Extrapolated out for the period AT&T Florida posits in its request, Digital Express is being asked to sift through approximately 75,000 emails alone just for one person. Adding in other personnel utilized by Digital Express during the time period AT&T posits, even if they only receive half of the volume the President of Digital Express received and there were only four personnel to add in, would push the total number of emails alone to over 225,000 emails. Since there are none of the aforementioned extra personnel available to perform work for Digital Express any longer, the task of reviewing the 225,000 emails would fall to one person, a task that is clearly extraordinarily burdensome. AT&T Florida's use of the words "all" and "constituting or referring to any and all" is clearly ridiculously

overbroad and would be extraordinarily burdensome, if not impossible, for Digital Express to determine a response.

If there are specific forms or documents AT&T Florida wanted to see, they should have asked for them. As previously stated, the discovery rules do not require Digital Express to interpret what AT&T Florida means nor do they permit AT&T Florida to conduct fishing expeditions, in this particular case with a request that is a trawler pulling a miles long seine net.

Forms established by the FCC and this Commission for use in the certification and verification of Lifeline eligibility processes are easily obtainable by AT&T and should already be in their possession, if they are in fact following the rules established by the FCC and this Commission.

See discussion of Interrogatory 10, 11 and 12.

Digital Express' objection to Request for Production 8 should be sustained.

**AT&T Request for Production 9:** Produce all documents used by Digital Express at any time from January 1, 2011 to the present to verify the eligibility of its end user customers for Lifeline benefits, including without limitation application forms, cover letters, letters denying benefits, and recertification requests.

**Response:** In addition to its general objections, Digital Express objects to this request for production on the basis that it is (i) overly broad, (ii) that the information it seeks is protected by the work product doctrine, (iii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence and (iv) that such information is available to and already in AT&T Florida's possession.

AT&T Florida's use again of "all" and "any time" clearly makes this request overly broad and impossible for Digital Express to determine what it is that AT&T Florida wants to see. At the end of the request, AT&T Florida does provide a list of possible types of documents but it prefaces that list with "without limitation". The use of that phrase, "without limitation", leaves Digital Express in the position to try and figure out what all AT&T is asking for and as stated previously, the discovery rules do not require Digital Express to do so.

The application form for the certification of end user customers Lifeline eligibility is available to AT&T Florida on the Commission's website.

As AT&T Florida is already aware, as evidenced by the statements in the documents it has filed with the Commission in this matter, Digital Express obtained service for its end users from November 2011 to June 2012. AT&T Florida should also be aware, if it is cognizant of the rules and policies established by the FCC and this Commission with regards to the Lifeline program, that end users were able to self-certify their eligibility for Lifeline benefits. At this time, Digital Express is not aware of any cover letters or letters denying benefits.

Service to Digital Express end user customers was terminated by AT&T Florida on or about July 19, 2012. AT&T Florida should be aware that the FCC changed the verification of continued eligibility process in FCC order 12-11, Lifeline and Linkup Reform & Modernization. Pursuant to the new process established by FCC 12-11, Digital Express sent no recertification requests.

See discussion of Interrogatory 10, 11 and 12 and Request for Production 8.

Digital Express' objection to Request for Production 9 should be sustained.

**AT&T Request for Production 10:** Produce documents sufficient to show that each and every end user customer for which Digital Express sought a Lifeline credit from AT&T Florida was in fact eligible for Lifeline.

**Response:** In addition to its general objections, Digital Express objects to this request for production on the basis that it is (i) overly broad, (ii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence and (iv) that such information is available to and already in AT&T Florida's possession.

From the time Digital Express began providing service to its end user customers in November 2011 until that service was illegally terminated by AT&T Florida in July 2012, Digital Express provided service to 5,640 customers. If AT&T Florida's request is seeking to obtain a copy of each and every certification form, the expense of reproduction plus labor plus shipping

is estimated to cost Digital Express over \$2,500.00. Given that Digital Express' revenue was cut off by AT&T Florida, the expense of providing this overly broad response would be unnecessarily burdensome.

Furthermore, on June 9, 2012, Pensacola, Florida experienced its second heaviest rainfall ever with over 13 inches of rain being recorded locally. Digital Express offices and storage areas experienced interior flooding ranging from 2 to 24 inches, destroying the majority of its archived records.

At [http://wholesale.att.com/products\\_and\\_services/local/resale/lifeline.html](http://wholesale.att.com/products_and_services/local/resale/lifeline.html), which is part of AT&T's Wholesale website, notes that:

Certification, verification and recordkeeping requirements are required by the FCC (reference the FCC's Lifeline and Link-Up Order FCC 04-87) or as dictated by the applicable State PSC and is applicable to all resellers. As referenced in the above order, effective 06/22/2005, BellSouth is required to obtain a certification from each reseller that it is complying with FCC Lifeline/Link-Up recordkeeping requirement rules as set forth in 47 § 54.417.

AT&T Florida, if it complied with the orders it references on its own website, is already in possession of the "documents sufficient" that its discovery request entails. At the time the orders for Lifeline service for resale to Digital Express' end users customers were placed, this document was sufficient proof for AT&T Florida to complete the service order, which they did. If there was any question by AT&T Florida with regards to Digital Express' compliance with the recordkeeping requirements as set forth above, the time for AT&T Florida to request further documentation was before they completed the service order. They did not do so then and they should not be allowed to embark on yet another fishing expedition now.

See discussion of Interrogatory 10, 11 and 12 and Request for Production 8 and 9.

Digital Express' objection to Request for Production 10 should be sustained.

#### **B. Financial/Business Plans related Discovery Requests**

**AT&T Florida Request for Production 5:** For the period from January 1, 2011 through the present, produce Digital Express' audited and interim financial statements, balance sheets, income statements and cash flow statements, and any and all documents relating to or referring to such documents.

**AT&T Florida Request for Production 6:** For the period from January 1, 2011 through the present, produce Digital Express' business plan(s), and any and all documents relating to or referring to its business plan(s) during that period.

**AT&T Florida Request for Production 7:** For the period from January 1, 2011 through the present, produce all documents referencing any projections for: (a) volume of services to be purchased from AT&T Florida, including the type of services; and (b) number of end user customers.

**Response:** In addition to its general objections, Digital Express objects to all three of these this requests for production on the basis that they are (i) overly broad and burdensome and (ii) that the information it seeks is not relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

AT&T Florida's continued use of the words "all", "any", "relating to or referring to" and "referencing" supports Digital Express' objections to these requests as overly broad. Digital Express is not unlike any other corporate entity in that it generates numerous documents in the normal course of its business. Just the email volume alone, as described above, coupled with the lack of availability of any personnel to conduct such a search, is clearly unduly burdensome, if not impossible.

Additionally, the subject matter in this proceeding is the adoption of the New Talk ICA by Digital Express. In its Motion, AT&T Florida has not demonstrated how any financial reports or business plans are relevant to this subject matter. AT&T Florida instead relies on the same tired message of "at a minimum likely to lead to the discovery of admissible evidence" without supporting that statement in any substantial way.

AT&T Florida claims that Digital Express' initial security deposit makes this request for two years of financial data relevant. Yet AT&T Florida did not ask for those documents at the time the initial security deposit was requested and paid by Digital Express. Digital Express completed AT&T's own credit profile form and submitted it to AT&T. AT&T Florida did not request anything further from Digital Express before AT&T established the initial security deposit amount. If the documents covered in these requests are relevant to the initial security deposit



request by AT&T, it should have requested them then. Requesting them now and claiming that they are now, January 2013, relevant to a decision made by AT&T in July 2011 when they weren't relevant enough then to have been asked for makes AT&T Florida's claim of relevancy woefully weak.

AT&T Florida continues its weak argument by next claiming that the requested documents are now also relevant to AT&T Florida's increased security deposit request to Digital Express. In AT&T's letter dated April 10, 2012 initially requesting an additional security deposit, AT&T claims that because gross monthly billing had increased more than 25%, it was requesting an additional deposit amount from Digital Express. AT&T continued in that letter with the statement that Digital Express' accounts would continue to be reviewed periodically for possible additional deposit requests or refunding of paid deposit amounts. Nowhere in that letter does AT&T ever broach, mention, refer to or even hint at any relevancy Digital Express' financial status and/or business plans had to AT&T's increased deposit request.

AT&T Florida's request for documents relating to Digital Express' financial status is nothing more than a veiled attempt to get a second bite of an apple. AT&T Florida is not going to go back now and increase the initial deposit it set nor is AT&T Florida going to go back and increase its additional deposit request based on any information that might be contained in the requested documents. And those two instances – the initial deposit and the increased deposit – are what AT&T Florida's Motion argues as justification for getting the second bite the apple; a bite that leaves a sour taste in the mouth of reasonable discovery of admissible evidence.

Digital Express has reviewed the documents it has in its possession and has not identified any documents that meet AT&T Florida's request as far as business plans. Digital Express is a closely held corporation and business discussions between the shareholders is primarily conducted verbally of which there are no transcripts available.

Digital Express' objection to Request for Production 5, 6 and 7 should be sustained.

### **C. Timing**

**AT&T Request for Admission 1:** Admit that prior to June 5, 2012, bills were sent on behalf of AT&T Florida to Digital Express for resale services provided in the State of Florida, which Digital Express did not pay the billed amount in full.

**AT&T Request for Admission 2:** Admit that prior to June 5, 2012, AT&T Florida made a request to Digital Express to increase its security deposit, and Digital Express failed to do so.

**Response:** In addition to its general objections, Digital Express objects to these two Requests for Admission on the basis that they are that the information it seeks is not relevant to the subject matter of this proceeding.

Digital Express provided AT&T a proper notice of the valid adoption of the New Talk ICA on June 5, 2012. The issue in this docket is that AT&T failed to recognize that legal adoption on June 5, 2012. The federal law governing the adoption of ICA's entered into by the ILEC and another party and previously approved by the Commission by another CLEC provides only two reasons that the ILEC can object to the adoption – technical feasibility and greater costs. AT&T Florida did not claim either of these reasons in its initial objection to the Commission on June 20, 2012 or its second chance objection on July 9, 2012.

Notwithstanding the objections contained herein and previously made by Digital Express, with regards to AT&T Request for Admission 1, Digital Express admits that prior to June 5, 2012, bills were sent on behalf of AT&T Florida to Digital Express for resale services provided in the State of Florida. Digital Express did not remit payment of the billed amount in full because the ICA effective prior to June 5, the New Phone ICA, Section 1.4 provides that Digital Express “*shall make payment to BellSouth for all services billed **excluding** disputed amounts*” (emphasis added).

Notwithstanding the objections contained herein and previously made by Digital Express, with regards to AT&T Request for Admission 2, Digital Express admits that prior to June 5, 2012, AT&T Florida did make a request to Digital Express to increase its security deposit. As of June 5, 2012, AT&T Florida and Digital Express had not reached a mutually agreeable need for or amount of a reasonable deposit.

Digital Express' objection to Request for Admission 1 and 2 should be sustained.

Respectfully submitted this 18<sup>th</sup> day of January, 2013.

Digital Express, Inc.

A handwritten signature in black ink that reads "Thomas M. Armstrong". The signature is written in a cursive style with a large, looping flourish at the end of the name.

---

Thomas M. Armstrong  
President  
Digital Express, Inc.  
1803 W. Fairfield Drive, Unit 1  
Pensacola, FL 32501  
(850) 291-6415