**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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| In re: Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | ) ) )  )  ) | Docket No. 100021-TP  Filed: July 6, 2010 |

**AT&T FLORIDA’S RESPONSE IN OPPOSITION TO LIFECONNEX’S**

**REQUEST FOR EMERGENCY RELIEF**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”) respectfully submits its Response to the Request[[1]](#footnote-1) for Emergency Relief[[2]](#footnote-2) (“Request”) filed by LifeConnex Telecom, LLC f/k/a Swiftel, LLC (“LifeConnex”). The Florida Public Service Commission (“the Commission”) should deny the Request because: (a) the Request is contrary to the plain and unambiguous language of the Commission-approved contract between the parties, (b) AT&T Florida’s demand is not inconsistent with the procedural status of this docket, and (c) the relief sought in the Request is outside of the Commission’s jurisdiction.

1. **INTRODUCTION**

On September 28, 2007, AT&T Florida filed a request for approval of the interconnection, unbundling, resale, and collocation agreement and one amendment with LifeConnex.[[3]](#footnote-3) By operation of law, on December 27, 2007, the Commission approved the negotiated interconnection agreement (“ICA”) between LifeConnex and AT&T Florida.[[4]](#footnote-4) In that Commission-approved and binding ICA, LifeConnex expressly agreed to “make payment to [AT&T Florida] for all services billed ***including disputed amounts***,” and it agreed to make those payments “on or before the next bill date.”[[5]](#footnote-5) On June 18, 2010, AT&T Florida sent LifeConnex a letter and attachments that, among other things: sets forth LifeConnex’s substantial past due balance; quotes the operative language of the parties’ ICA; notes that from December 20, 2009 to May 20, 2010, LifeConnex paid AT&T Florida less than ten percent of the net amount owed (the billed amounts less credits AT&T Florida applied for promotions and other adjustments) for that same time period; and demands payment of all past due charges on or before July 6, 2010, or suffer suspension of order processing,[[6]](#footnote-6) and payment on or before July 21, 2010 or LifeConnex’s service will be disconnected. Exhibit 2 to this Response is a copy of that letter[[7]](#footnote-7) and its attachments, supported by the affidavit of Gert Andersen.

In its Request, Lifeconnex acknowledges that it has breached its ICA by consistently refusing to make the payments it agreed to make,[[8]](#footnote-8) and as a result it has a past-due balance due AT&T Florida in excess of $1.4 million.[[9]](#footnote-9) LifeConnex alleges that “if all pending disputes are resolved in favor of LifeConnex, AT&T would owe money to LifeConnex” (presumably in promotional credits that LifeConnex has requested and AT&T Florida has denied). AT&T Florida denies this allegation, which is, in effect, an argument that AT&T Florida must pay LifeConnex for having ordered services from AT&T Florida and resold those services to its end users. More importantly, LifeConnex’s allegation does nothing to alter the fact that the plain language of the ICA requires it to pay all amounts it is billed, even if it disputes those amounts.[[10]](#footnote-10)

**II. ARGUMENT**

**A. The unambiguous language of the ICA requires LifeConnex to pay all amounts billed, including disputed charges.**

The parties’ Commission-approved ICA requires LifeConnex to pay all amounts it is billed, even if it disputes those amounts:

Payment of ***all*** charges will be the responsibility of [LifeConnex].[[11]](#footnote-11)

[Lifeconnex] shall make payment to [AT&T Florida] for all services billed ***including disputed amounts.***[[12]](#footnote-12)

Payment for services provided by [AT&T Florida], ***including disputed charges,*** is due on or before the next bill date.[[13]](#footnote-13)

The language quoted above is unambiguous, and the Commission-approved ICA is a valid contract. The Commission, therefore, is required by law to enforce the ICA as written as Florida law is clear that "an unambiguous agreement must be enforced in accordance with its terms." *Paddock v. Bay Concrete Indus., Inc.*, 154 So.2d 313 (Fla. 2d DCA 1963). *See also, Brooks v. Green*, 993 So. 2d 58 (Fla. 1st DCA 2008)(“It is established law in this state that a contract must be applied as written, absent an ambiguity or some illegality.”) and *Medical Center Health Plan v. Brick*, 572 So. 2d 548, 551 (Fla. 1st DCA 1990)(“A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract. *Nat’l* *Health Laboratories, Inc. v. Bailmar, Inc.,* 444 So.2d 1078, 1080 (Fla. 3d DCA 1984).”). Moreover,“[i]t is a fundamental rule of contract interpretation that a contract which is clear, complete, and unambiguous does not require judicial construction,” *Jenkins v. Eckerd Corp.*, 913 So.2d 43 (Fla. 1st DCA 2005), and “[i]t is not the role of the courts to make an otherwise valid contract more reasonable from the standpoint of one contracting party.” *Stack v. State Farm Mut. Auto Ins. Co.*, 507 So.2d 617, 619 (Fla. 3d DCA 1987).

This principle applies even when contractual terms bind a party to a seemingly harsh or out of the ordinary bargain. *See Barakat v. Broward County Hous. Auth.*, 771 So.2d 1193, 1195 (Fla. 4th DCA 2000)(“Contracts are to be construed in accordance with the plain meaning of the words contained therein….It is never the role of the trial court to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be bad bargain….A fundamental tenet of contract law is that parties are free to contract, even when one side negotiates a harsh bargain.”). *See also, Applica Inc. v. Newtech Electronics Indus., Inc.*, 980 So.2d 1194 (Fla. 3d DCA 2008)(“where an agreement is unambiguous…we enforce the contract as written, no matter how disadvantageous the language might later prove to be.”).

The parties’ interconnection agreement is not only a contract but also “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,” *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003), and once a carrier enters “into an interconnection agreement in accordance with section 252, … it is then regulated directly by the interconnection agreement.” *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp*., 305 F.3d 89, 104 (2d Cir. 2002), *rev’d in part on other grounds sub nom;* *Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). *See also,* *Mich. Bell Tel. Co. v. MCImetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”). Moreover, “[t]he Act does not authorize a state commission to alter terms within an approved negotiated agreement or to nullify an approved negotiated agreement.” *In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or, in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (March 31, 1998).

The language quoted above from Sections 1.4 and 1.4.1 of the parties’ ICA is unambiguous, and the Commission-approved ICA is a “valid contract.” The Commission, therefore, is required to enforce the ICA as written. LifeConnex has admitted that it breached the ICA; thus, the Commission should deny LifeConnex’s Request in which LifeConnex does nothing more than ask to be relieved of its contractual obligations.

**B. The Joint Motions on Procedural Issues and the Commission Order Regarding the Joint Motions in this Docket do not relieve LifeConnex of its contractual obligation to pay all amounts, including disputed charges.**

LifeConnex correctly notes that the May 13, 2010 Joint Motion on Procedural Issues (“May 13, 2010 Joint Motion”) in this Docket provides, in part, that “[o]nce the Commission has issued an order resolving the issues in the Consolidated Phase, the Parties will work in good faith to address all remaining unresolved claims and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each party.”[[14]](#footnote-14) Moreover, LifeConnex correctly notes that the parties filed their June 15, 2010 Joint Motion on Procedural Schedule (“June 15, 2010 Joint Motion”) requesting that the proceeding in Florida be held in abeyance[[15]](#footnote-15) and that Order No. PSC-10-0402-PCO-TP was issued on June 18, 2010 holding the docket in abeyance.[[16]](#footnote-16) AT&T Florida does not dispute these points. But, LifeConnex then stretches these motions beyond recognition and contends that AT&T Florida’s lawful demand for payment of past-due amounts is contrary to the abeyance granted by Order No, PSC-10-0402-PCO-TP.[[17]](#footnote-17) This is where LifeConnex’s logic fails.

In Order No, PSC-10-0402-PCO-TP, in addressing the May 13, 2010 Joint Motion and the June 15, 2010 Joint Motion, the pre-hearing officer held the docket “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.” Order No. PSC-10-0402-PCO-TP did not in any way excuse LifeConnex from complying with the plain terms of the ICA, nor did it prohibit AT&T Florida from taking an action which is clearly permitted by the plain language of the ICA. i.e. demanding payment from LifeConnex “for all services billed ***including disputed amounts***.”

In fact, the plain language of the May 13, 2010 Joint Motion supports AT&T Florida’s position that LifeConnex must comply with all terms of the ICA while this docket is pending. That motion provides:

As stated below, any individual Party may also seek to pursue in 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 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 our following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

LifeConnex ignores this section of the motion in its Request. The reason is obvious: the May 13, 2010 Joint Motion does not prevent AT&T Florida from pursuing “any issue” or “claim” that is not addressed in the Consolidated Phase nor does Order No. PSC-10-0402-PCO-TP, and thus does not prevent AT&T Florida from enforcing Sections 1.4 and 1.4.1 of the ICA.

LifeConnex’s assertion that “the primary issues in dispute between the parties are pending” in this docket is simply wrong. The issues raised in AT&T Florida’s Complaint in this Docket are how much (if any) credit LifeConnex is entitled to receive when it resells services that are the subject of certain promotional offers. LifeConnex’s request for emergency relief in this Docket has nothing to do with the merits of those issues. The separate and distinct issue addressed by LifeConnex’s Request is: who bears the risk of non-payment while those disputed issues are resolved? That question clearly is not being addressed in this docket and, as explained above, the Commission-approved ICA already addresses (and resolves) that issue by requiring LifeConnex to pay all amounts AT&T bills, even if it disputes those amounts.

**C. AT&T Florida has not waived its right to demand payment of all amounts, including amounts LifeConnex disputes.**

LifeConnex alleges that it “has been deducting from its bill claims for promotional credits and disputed charges – without any objection from AT&T – since October, 2007.”[[18]](#footnote-18) It then alleges that AT&T Florida has “acquiesced” to LifeConnex’s “practice” of not paying its bills. In essence, LifeConnex argues that by not having demanded payment of all charges due in the past, AT&T Florida has waived its right to do so now.

Once again, LifeConnex’s argument is refuted by the unambiguous language of the parties’ Commission-approved ICA:

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.[[19]](#footnote-19)

Even if AT&T Florida had not insisted that LifeConnex pay all amounts (including disputed amounts) in the past, it clearly has the right “thereafter (i.e. now) to insist upon the performance of any and all provisions” of the ICA. AT&T Florida has exercised its lawful right to insist that LifeConnex pay all amounts it has been billed, and if it does not do so, AT&T Florida has the right to suspend, disconnect, and terminate LifeConnex’s service as allowed by the ICA.[[20]](#footnote-20)

**D. Commission does not have the authority to issue an Injunction**

In order to hear and determine a complaint or petition, a court or agency must be vested not only with jurisdiction over the parties, but also with subject matter jurisdiction to grant the relief requested by the parties. *See Keena v. Keena*, 245 So. 2d 665, 666 (Fla. 1st DCA 1971). Subject matter jurisdiction arises only by virtue of law – it must be conferred by constitution or statute and cannot be created by waiver or acquiescence. *Jesse v. State*, 711 So. 2d 1179, 1180 (Fla. 2d DCA 1998). This Commission, therefore, must dismiss a complaint or deny a request for relief to the extent that it asks the Commission to address matters over which it has no jurisdiction or to the extent that it seeks relief that the Commission is not authorized to grant. *See, e.g, In re: Petition by AT&T Communications of the Southern States, Inc. TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries.*  Docket No. 010345-TP, PSC-01-2178-FOF-TP (Nov. 6, 2001) (granting BellSouth’s Motion to Dismiss AT&T’s and FCCA’s Petition for Structural Separation because “the Petitions fail to state a cause of action upon whichrelief can be granted. Namely, we have neither Federal nor State authority to grant the relief requested”.); *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (Commission dismissed a complaint because the complaint involved “a claim…outside this Commission’s jurisdiction.”).

The Commission, therefore, must determine whether the Legislature has granted it any authority to force AT&T Florida to continue to provide service to LifeConnex for which AT&T Florida is not being paid. In making this determination, the Commission must keep in mind that the Legislature has never conferred upon the Commission any general authority to regulate public utilities, including telephone companies. *See City of Cape Coral v. GAC Util., Inc.*, 281 So. 2d 493, 496 (Fla. 1973). Instead, “[t]he Commission has only those powers granted by statute expressly or by necessary implication.” *See Deltona Corp. v. Mayo*, 342 So. 2d 510, 512 n.4 (Fla. 1977); *accord East Central Regional Wastewater Facilities Oper. Bd. v. City of West Palm Beach,* 659 So.2d 402, 404 (Fla. 4th DCA 1995) (noting that an agency has “only such power as expressly or by necessary implication is granted by legislative enactment” and that “as a creature of statute,” an agency “has no common law jurisdiction or inherent power . . . .”).

Moreover, any authority granted by necessary implication must be derived from fair implication and intendment incident to any express authority. *See Atlantic Coast Line R.R. Co. v. State*, 74 So. 595, 601 (Fla. 1917); *State v. Louisville & N. R. Co., 49* So. 39 (Fla. 1909). Finally, “any reasonable doubt as to the existence of a particular power of the Commission must be resolved against it.” *State v. Mayo*, 354 So. 2d 359, 361 (Fla. 1977). For the reasons discussed below, LifeConnex cannot demonstrate that the Commission has the authority to grant the “emergency relief” LifeConnex requests.

The “emergency relief” LifeConnex seeks is for the Commission to order AT&T Florida “to take no actions to suspend or otherwise interfere with LifeConnex’s service to its customers….” *See* Request at p.10, ¶ 25. That relief is identical to that which a court would call an injunction, *See First Nat’l Bank in St. Petersburg v. Ferris*, 156 So.2d 421 (Fla. 2d DCA 1963)(An injunction “commands that acts be done or undone.”). However, the Commission cannot grant the relief requested because it lacks the authority to issue injunctions. *See In re: Complaint and Petition of Cynwyd Investments Against Tamiami Village Utility, Inc.*, Docket Nos. 920649-WS and 930642-WS, Order No. PSC-94-0210 at p. 9 (February 21, 1994) (“We agree that this Commission does not have subject matter jurisdiction to issue injunctions . . . .”); see *also* *Florida Power & Light Company v.* *Albert Litter Studios, Inc.,* 896 So.2d 891, 892 n.3 (Fla. 3d DCA 2005)(The Commission “concedes that it lacks the authority to issue injunctive relief.”); *In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) (“We find it appropriate to grant BellSouth’s Partial Motion to Dismiss. The Petition/Complaint shall be dismissed in part because we do not have judicial power required to… (b) issue injunctions”) and *In re:* *Petition for Commission to intervene, investigate and mediate dispute between DSL Internet Corporation d/b/a DSLi and BellSouth Telecommunications, Inc.*, Docket No. 080631-TP, Order No. PSC- 09-0515-PCO-TP (Issued July 21, 2009) (“we find that this Commission does not have the authority to provide injunctive relief to [Petitioner]. Thus, assuming all of [Petitioner]’s allegations as true, we find that [Petitioner] has failed to state a cause of action for which injunctive relief can be granted. As such, we shall grant the AT&T Partial Motion to Dismiss and thereby dismiss the portion of the Petition in which [Petitioner] requests injunctive relief.”).

Because LifeConnex seeks a remedy that the Commission has no authority to provide, LifeConnex’s requested relief should be denied.[[21]](#footnote-21)

**E. Even if the Commission had authority to issue injunctions (which it does not) LifeConnex has not demonstrated, and cannot demonstrate, that it is entitled to the extraordinary injunctive relief it seeks.**

The “emergency relief” LifeConnex seeks is for the Commission to order AT&T Florida “to take no actions to suspend or otherwise interfere with LifeConnex’s service to its customers….” *See* Request at p.10, ¶ 25. This is a request for injunctive relief, which is an extraordinary form of relief. Accordingly, a party seeking an injunction must produce evidence that satisfies a demanding test.

The test, which LifeConnex cannot meet, consists of a showing of the following criteria: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of public interest. *See Tom v. Russ*, 752 So.2d 1250 (Fla. 1st DCA 2000) citing *Spradley v. Old Harmony Baptist Church*, 721 So.2d 735, 737 (Fla. 1st DCA 1998). In order for an injunction to be entered a court must specify the reasons for entry and “clear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a preliminary injunction.” *Id.*

In light of the plain language of the ICA discussed above, LifeConnex cannot prove that it has a right to refuse to pay its bills or that it has a substantial likelihood of success on the merits of that position – to the contrary, it acknowledges that it “does not have the right to withhold disputed amounts.”[[22]](#footnote-22) Further, if LifeConnex has the money to pay its bills as it committed to do in the ICA, it will suffer no harm whatsoever – if its disputes are invalid, it merely will have paid amounts it was obligated to pay (and there is no “harm” in that), and if its disputes are valid, there is nothing to suggest that AT&T Florida cannot provide it bill credits or payments in accordance with the Commission’s rulings in the Consolidated Phase of this Docket. In contrast, if LifeConnex does not have the money to pay its bills (which apparently is the case), then the harm of requiring AT&T Florida to provide even more service for which it will not be paid clearly outweighs any purported “harm” to LifeConnex. And while LifeConnex claims that its end users would no longer receive service if AT&T Florida disconnects or terminates LifeConnex for nonpayment, that claim goes too far. While they may no longer receive service from LifeConnex, there are a number of other carriers in Florida, including other prepay resellers, from whom LifeConnex’s current end users can receive service.

**III. CONCLUSION**

In conclusion, based upon the reasons set forth above, AT&T Florida respectfully requests that the Commission deny LifeConnex’s Request.

WHEREFORE, for the foregoing reasons, AT&T Florida requests that the Commission deny the LifeConnex’s Request for Emergency Relief.

Respectfully submitted this 6th day of July, 2010.

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ATTORNEYS FOR BELLSOUTH

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AT&T FLORIDA

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1. Under the Commission’s Rules, there is no such procedural vehicle as a “Request” for Emergency Relief. AT&T Florida believes that LifeConnex styled its pleading as a “Request” rather than as a Petition or Motion because LifeConnex understands that the Commission has no jurisdiction to enter the requested injunctive relief. [↑](#footnote-ref-1)
2. On June 29, 2010, LifeConnex filed a similar Request in a docket pending before the Alabama Public Service Commission. *See In re: Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) for Temporary Emergency Relief to Prevent Suspension of Service*. LifeConnex owes AT&T Alabama more than $12 million in past due charges for services provided in Alabama. [↑](#footnote-ref-2)
3. *See* Docket No. 070632, *In re: Request for approval of interconnection, unbundling, resale and collocation agreement, and one amendment, between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Swiftel, LLC.* [↑](#footnote-ref-3)
4. *See* Commission Staff Memorandum dated December 28, 2007 filed in Docket No. 070632. [↑](#footnote-ref-4)
5. See ICA, Attachment 7, p. 6, §§1.4 and 1.4.1 (emphasis added). Exhibit 1 to this Response is a copy of Attachment 7 to the parties’ ICA. [↑](#footnote-ref-5)
6. On Friday, July 2, 2010, AT&T Florida offered to extend this deadline to July 13, 2010. [↑](#footnote-ref-6)
7. The June 18, 2010 letter and attachments are also attached as Exhibit A to LifeConnex’s Request. [↑](#footnote-ref-7)
8. Request at pp. 4-5, ¶9. *See also,* page 4, n.2 of LifeConnex’s Alabama filing entitled Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) Concerning Implementation of Its Interconnection Agreement with AT&T and Motion for Temporary, Emergency Relief to Prevent Suspension of Service where it admits that “**LifeConnex does not have the right to withhold disputed amounts**” (emphasis added). Exhibit 3 to this Response is a copy of the referenced page. Moreover, LifeConnex admits at page 5 of its Florida Request, n. 4, that “[m]any CLECs, if not most CLECs, in the former BellSouth region, have ICAs which allow the CLEC to withhold payments of disputed amounts until the disputes are resolved. **LifeConnex does not currently have such language in its own ICA**.” (emphasis added). [↑](#footnote-ref-8)
9. Request at pp. 7-8, ¶18. [↑](#footnote-ref-9)
10. In its Request, Lifeconnex makes no offer to pay any portion of the balance now. Instead, it asks the Commission to allow it to continue ordering services from AT&T Florida and continue violating its ICA by paying AT&T Florida nothing for those services indefinitely. To require AT&T Florida to waive indefinitely for LifeConnex to pay its bills would require AT&T Florida’s stockholders, in essence, to continue subsidizing non-paying wholesale customers like LifeConnex. In these trying economic times, that is simply too much to ask. [↑](#footnote-ref-10)
11. ICA, Attachment 7, p. 6, §1.4 (emphasis added). [↑](#footnote-ref-11)
12. *Id.,* (emphasis added). [↑](#footnote-ref-12)
13. *Id.*, §1.4.1 (emphasis added). [↑](#footnote-ref-13)
14. *See* Request at p. 3, ¶5; p. 4, ¶8; May 13, 2010 Joint Motion at pp. 2-3. [↑](#footnote-ref-14)
15. *See* Request at p. 3, ¶6. [↑](#footnote-ref-15)
16. *Id.* [↑](#footnote-ref-16)
17. *See* Request at p. 5, ¶9. [↑](#footnote-ref-17)
18. *See* Request at p. 5, ¶9. Moreover, in a footnote 4 on p. 5 of the Request, LifeConnex alleges that in a docket pending in Alabama, AT&T has agreed to accept a security deposit of two months “net bills” pending resolution of a separate Complaint LifeConnex filed over the “proper deposit amount.” While AT&T disagrees with Lifeconnex’s characterization of the alleged agreement, the fact remains that the deposit issue to which LifeConnex refers has no bearing on LifeConnex’s Request in this docket. A deposit provides AT&T some level of protection against LifeConnex’s inability to pay its bills for services it purchases from AT&T *in the future.* A deposit is not intended to – and does not – provide AT&T any protection against LifeConnex’s inability to pay more than $1.4 million for services it has purchased in the past and for which it refused to pay in Florida. Similarly, AT&T’s agreement not to disconnect Lifeconnex in Alabama for nonpayment of a deposit is in no way an agreement not to suspend or disconnect LifeConnex for nonpayment of past-due bills. [↑](#footnote-ref-18)
19. ICA, General Terms and Conditions, Page 15, §17. Exhibit 4 to this Response is a copy of the General Terms and Conditions of the ICA. [↑](#footnote-ref-19)
20. *See* ICA, Attachment 7, pp. 7-9, §§1.5 to 1.5.5. [↑](#footnote-ref-20)
21. At paragraph 25 of its Request, LifeConnex also cites to Section 364.01, Florida Statutes to support its argument that the Commission is empowered to provide the relief requested. Section 364.01 is an expression of legislative intent and provides guidance to the Commission in how to view and interpret the exercise of substantive jurisdiction. This section is not a legislative grant of authority and does not convey to the Commission any independent authority to act. In particular, it provides no authority to act in this instance. [↑](#footnote-ref-21)
22. *See* Exhibit 3 to this Response. [↑](#footnote-ref-22)