

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

RECEIVED-FPSC

In re: Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

DOCKET NO. 100340-10 JUL 29 PM 4:14

FILED: JULY 29, 2010 COMMISSION  
CLERK

RESPONSE IN OPPOSITION  
TO OBJECTIONS TO NONPARTY SUBPOENAS AND MOTION TO QUASH

The staff of the Florida Public Service Commission (“Staff”), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, and Order No. PSC-10-0461-PCO-TP, issued in this docket on July 19, 2010, hereby files its Response In Opposition (“Response”) to Bellerud Communications, LLC’s, LifeConnex Telecom, LLC’s, Triarch Marketing, Inc.’s, American Dial Tone, Inc.’s, BLC Management, LLC’s, and All American Telecom, Inc.’s (Collectively, “ATMS”) Objections to Non-Party Subpoenas and Motion to Quash (“Motion”) filed on July 12, 2010, and states:

1. As part of Staff’s ongoing effort to monitor Universal Service Funds being distributed to eligible telecommunications carriers, staff reviews the Universal Service Administrative Company’s (“USAC”) disbursement database on a monthly basis. In this process, Staff has observed atypical monthly growth in the amount of lifeline disbursements received by some ATMS companies. (Attachment 1).

2. Information provided to the Commission in response to a Staff data request by the general counsel’s office of Associated Telecommunications Management Services, LLC (“Associated Telecommunications”) (Attachment 2) reflects that Mr. Thomas E. Biddix is the sole owner of Associated Telecommunications and that he is director or manager of each ATMS company that is the subject of a subpoena.

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FPSC-COMMISSION CLERK

3. The ATMS companies that are the subject of a subpoena are each either certificated by the Florida Public Service Commission (“Commission”) or have a request for certification or eligible telecommunications carrier (“ETC”) designation pending before the Commission.

4. Based on the atypical growth in Lifeline disbursements for some companies under this ownership and management structure, on June 28, 2010, Staff requested that the instant compliance investigation docket be opened to evaluate compliance with Chapter 25-24, Florida Administrative Code, and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

5. Verizon Florida Inc. (“Verizon”) and BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (“AT&T”) are not parties in this compliance investigation docket. Verizon and AT&T provide telecommunications services for resale by competitive local exchange carriers (“CLECs”) such as the ATMS companies. On June 30, 2010, Staff served both Verizon and AT&T with Subpoenas Duces Tecum requiring that narrowly targeted information related to the ATMS companies be produced on July 19, 2010.

6. On July 12, 2010, ATMS filed its Motion.

7. As acknowledged by ATMS, the purpose Rule 1.351, FRCP, is to avoid the premature production of documents by non-parties. Because ATMS filed its Motion prior to production of the requested information by the non-parties, and the information will not be produced by the non-parties prior to resolution of the Motion, a) ATMS has had an opportunity to raise concerns regarding the subpoenas prior to production b) this is substantially the same protection afforded by the prior notice requirement in the Rule, and thus, c) voiding the subpoenas and requiring them to be refilled with a ten day notice would serve no purpose.

8. While acknowledging that the Commission has a rule providing for the confidentiality of the information requested, ATMS argues that the subpoenaed records will contain “sensitive competitive information” and that the records should not be assembled by the subpoenaed non-parties absent a compelling showing by Staff that the information is needed for a specific and legitimate purpose. ATMS also avers that the “issuance of a subpoena is not a blanket vehicle to request a broad and vast array of documents which are not tied in any way to matters at issue in a proceeding,” and relies on *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454 (Fla. 5<sup>th</sup> DCA 2001), and Rule 120.569(2)(k)(1), Florida Administrative Code, to support the assertion that a subpoena must be “limited in scope, relevant in purpose and specific in directive, in order not to be unduly burdensome.” ATMS concludes that the subpoenas fail this test.

9. The First District Court of Appeal has summarized the standard of review as follows: “an agency’s investigatory subpoenas and other statutorily authorized investigative devices are *presumptively entitled to be given effect judicially* ‘if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.’” *Florida Department of Insurance and Treasurer v. Bankers Insurance Company*, 694 So.2d 70, 73 (quoting *United States v. Morton Salt*, 338 U.S. 632, 652 ((1950) (emphasis supplied).

10. In the *Check 'N Go* decision, relied upon by ATMS, the Fifth District Court of Appeal considered the authority of the Florida Attorney General to issue subpoenas pursuant to its investigative authority under the Florida RICO Act. *Id* at 457. The court recognized that “[t]he limits of the production that can lawfully be sought in an investigatory subpoena cannot be reduced to a formula. ‘[R]elevancy and adequacy or excess in the breadth of the subpoena are matters variable in relation to the nature, purposes and scope of the inquiry’... Thus, each investigatory subpoena must be evaluated on its own merits.” *Check 'N Go* at 460, quoting *Oklahoma*.

*Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946). In its review of the Attorney General's subpoenas, the court did disallow some, but not all, of the information sought. *Id* at 460-61 and fn.3.

11. Based on its review of the *Check 'N Go* decision, Staff recedes, at this time, from its request for non-Florida information. Also, consistent with that decision, to the extent that non-Florida information is subsequently determined to be necessary for the investigation, Staff reserves the right to file a subsequent subpoena for AT&T and/or Verizon to provide such information.

12. The remainder of the subpoenaed information, is clearly within the parameters established by applicable case law because the investigation is within the Commission's authority, the demand is not too indefinite, and the information sought is reasonably relevant.

a. **Commission has Authority.** The Commission has jurisdiction over lifeline services pursuant to Section 364.10, Florida Statutes, and investigative authority pursuant to e.g., Sections 350.121 and 350.123, Florida Statutes.

b. **Demand is not too indefinite.** The ATMS customer information is very specific and limited to the months of January 2010, through May 2010. Information related to Ganoco/American Dial Tone Inc.'s UNE purchases is limited to the months of October 2008 through April 2009.

c. **Information Is Reasonably Relevant.** The Florida-specific information that the Staff has subpoenaed is needed in order for Staff to determine whether the ATMS companies that serve Florida lifeline customers (through resale of lifeline discounted Verizon or AT&T service, or as an ETC with USAC reimbursement) are complying with applicable reporting and reimbursement requirements governing those services. In order to make this evaluation, the information requested from these non-parties is vitally necessary. This is

especially true given questions regarding the veracity of ATMS data as reflected in the observed anomalies in USAC data and the possibility of errors in the ATMS lifeline data.<sup>1</sup> The subpoenaed information related to UNEs is needed for Staff to determine whether Ganoco/American Dial Tone, Inc. has complied with facilities requirements applicable to ETC providers.

As such, the Subpoenas, when limited to Florida information, are consistent with applicable standards.

**WHEREFORE**, pursuant to Rule 28-106.204, Florida Administrative Code, the staff of the Florida Public Service Commission requests the following:

1. the Commission order that the subpoenas served on AT&T and Verizon in this Docket are not void;
2. the Commission acknowledge Staff's receding from the request for non-Florida information;
3. the Commission deny the Motion to Quash; and
4. the Commission establish a date for AT&T and Verizon to provide all remaining information described in the subpoenas.



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Senior Attorney, Office of the General Counsel

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<sup>1</sup> For example, LifeConnex, Telecom, LLC's ("LifeConnex") has recently filed a lawsuit in Florida against its consultant in which LifeConnex references a USAC audit of that company's lifeline reimbursement requests and acknowledges the "inability of [LifeConnex] to explain, justify and or substantiate the basis for USAC Reimbursement Forms and/or payments received by [LifeConnex] from USAC." A copy of the May 25, 2010, Complaint filed in the Eighteenth Circuit Court for Brevard County by LifeConnex against CGM, LLC is included as Attachment 3 of this Response.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

DOCKET NO. 100340-TP

FILED: JULY 29, 2010

**CERTIFICATE OF SERVICE**

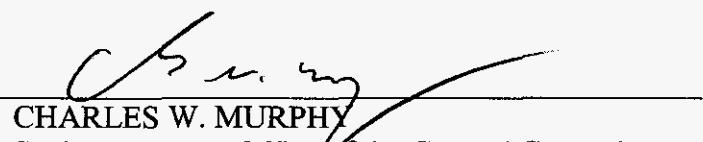
I HEREBY CERTIFY that the original of the foregoing RESPONSE IN OPPOSITION TO OBJECTIONS TO NONPARTY SUBPOENAS AND MOTION TO QUASH has been filed with the COMMISSION CLERK and that a true copy thereof has been furnished to the following by electronic and U. S. mail this 29<sup>th</sup> day of July, 2010:

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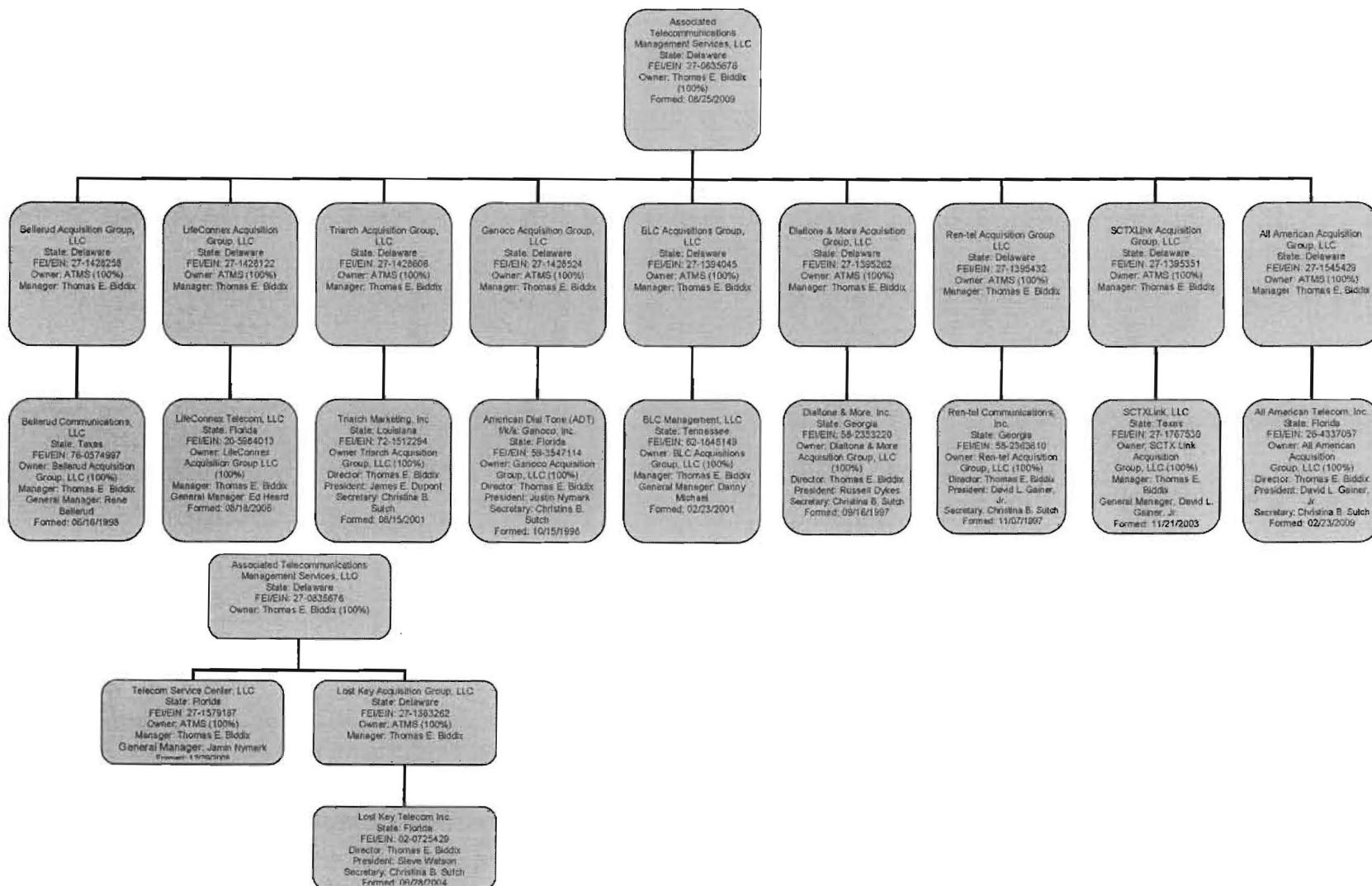
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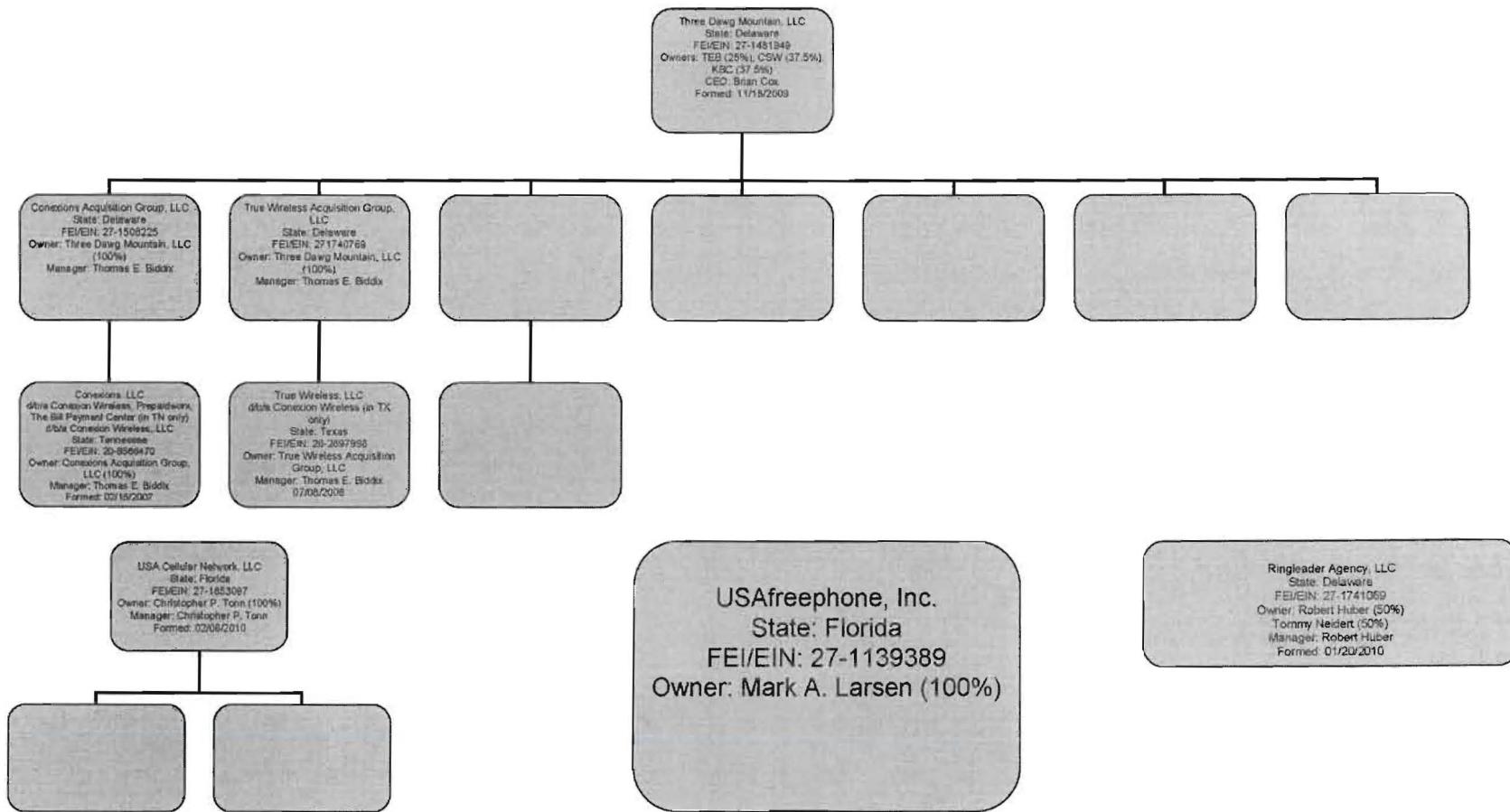
ATMS USAC Disbursements																											
		Jun-10	May-10	Apr-10	Mar-10	Feb-10	Jan-10	Dec-09	Nov-09	Oct-09	Sep-09	Aug-09	Jul-09	Jun-09	May-09	Apr-09	Mar-09	Feb-09	Jan-09	Dec-08	Nov-08	Oct-08	Sep-08	Aug-08	Jul-08	Jun-08	Totals
<u>LifeConex</u>																											
Alabama	\$1,234,972	\$810,994	\$551,930	\$319,376	\$235,920	\$754,712	\$754,273	\$663,767	\$1,071,548	\$426,133	\$566,308	\$369,207	\$263,445	\$374,666	\$301,920	\$285,040	\$216,718	\$286,262	\$299,141	\$189,407	\$138,922	\$85,972	\$70,374	\$26,066	\$4,453 \$10,281,526		
Kentucky	\$178,954	\$207,271	\$120,191	\$62,701	\$149,254	\$137,060	\$133,723	\$128,889	\$102,672	\$89,345	\$140,269	\$96,826	\$25,343	\$21,410	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,574,908	
North Carolina	\$149,246	\$88,945	\$326,111	\$270,709	\$259,298	\$201,989	\$130,066	\$136,323	\$7,587	\$8,533	\$3,960	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,594,787		
	\$1,564,172	\$1,118,210	\$998,232	\$852,786	\$644,472	\$1,093,761	\$1,018,062	\$928,879	\$1,181,807	\$505,011	\$710,537	\$486,033	\$288,788	\$396,076	\$301,920	\$265,040	\$216,718	\$286,262	\$299,141	\$189,407	\$138,922	\$85,972	\$70,374	\$26,066	\$4,453 \$13,451,201		
<u>American Dial Tone</u>																											
Florida	\$893,535	\$841,650	\$314,724	\$298,187	\$404,949	\$124,409	\$19,400	\$24,815	\$39,843	\$57,457	\$26,394	\$6,752	\$35,344	\$32,263	\$51,874	\$32,577	\$37,002	\$26,022	\$33,742	\$55,491	\$28,398	\$14,671	\$0	\$0	\$0	\$3,399,499	
<u>BellErud Comms.</u>																											
Alabama	\$7,021	\$7,276	\$444	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$14,741	
Arkansas	\$373,907	\$214,783	\$110,508	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$699,198	
	\$380,928	\$222,059	\$110,952	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$713,939	
<u>Triarch Marketing</u>																											
Louisiana	\$75,576	\$837,926	\$698,255	\$350,365	\$374,632	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$2,336,754	
<u>BLC Management</u>																											
Alabama	\$120,435	\$996,183	\$498,799	\$384,682	\$727,142	\$440,942	\$395,606	\$190,477	\$122,094	\$49,931	\$84,423	\$401,055	\$210,484	\$31,879	\$5,130	\$71,613	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$4,730,875	
Kentucky	\$27,680	\$498,742	\$260,563	\$244,587	\$16,296	\$360,685	\$129,389	\$68,410	\$41,885	\$46,009	\$75,365	\$60,521	\$51,935	\$12,862	\$1,465	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$1,661,782	
Louisiana	(\$242,221)	\$1,179,230	\$522,861	\$512,149	\$844,486	\$322,766	\$224,504	\$443,101	\$354,097	\$273,805	\$225,880	\$363,422	\$176,372	\$96,491	\$38,082	\$13,843	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$5,350,868	
North Carolina	\$496,812	\$846,086	\$231,751	\$231,420	\$368,803	\$140,270	\$114,194	\$266,996	\$136,482	\$470	\$79,773	\$394,641	\$109,385	\$9,928	\$2,065	\$16,912	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$3,286,529	
	\$402,708	\$3,318,221	\$1,533,974	\$1,572,838	\$1,924,135	\$1,264,663	\$883,673	\$988,984	\$654,538	\$370,215	\$465,441	\$1,219,633	\$550,186	\$151,161	\$47,342	\$102,368	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$15,230,054	
<u>True Wireless LLC</u>																											
Texas	\$0	\$65,161	\$44,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$109,161	
<b>Grand Totals</b>	<b>\$3,316,917</b>	<b>\$8,403,227</b>	<b>\$3,656,137</b>	<b>\$2,674,176</b>	<b>\$3,348,188</b>	<b>\$2,482,833</b>	<b>\$1,901,135</b>	<b>\$1,942,778</b>	<b>\$1,876,188</b>	<b>\$932,683</b>	<b>\$1,202,372</b>	<b>\$1,692,424</b>	<b>\$874,288</b>	<b>\$579,500</b>	<b>\$401,136</b>	<b>\$399,985</b>	<b>\$253,720</b>	<b>\$312,284</b>	<b>\$332,883</b>	<b>\$244,898</b>	<b>\$167,320</b>	<b>\$100,643</b>	<b>\$70,374</b>	<b>\$26,066</b>	<b>\$4,453 \$35,240,608</b>		

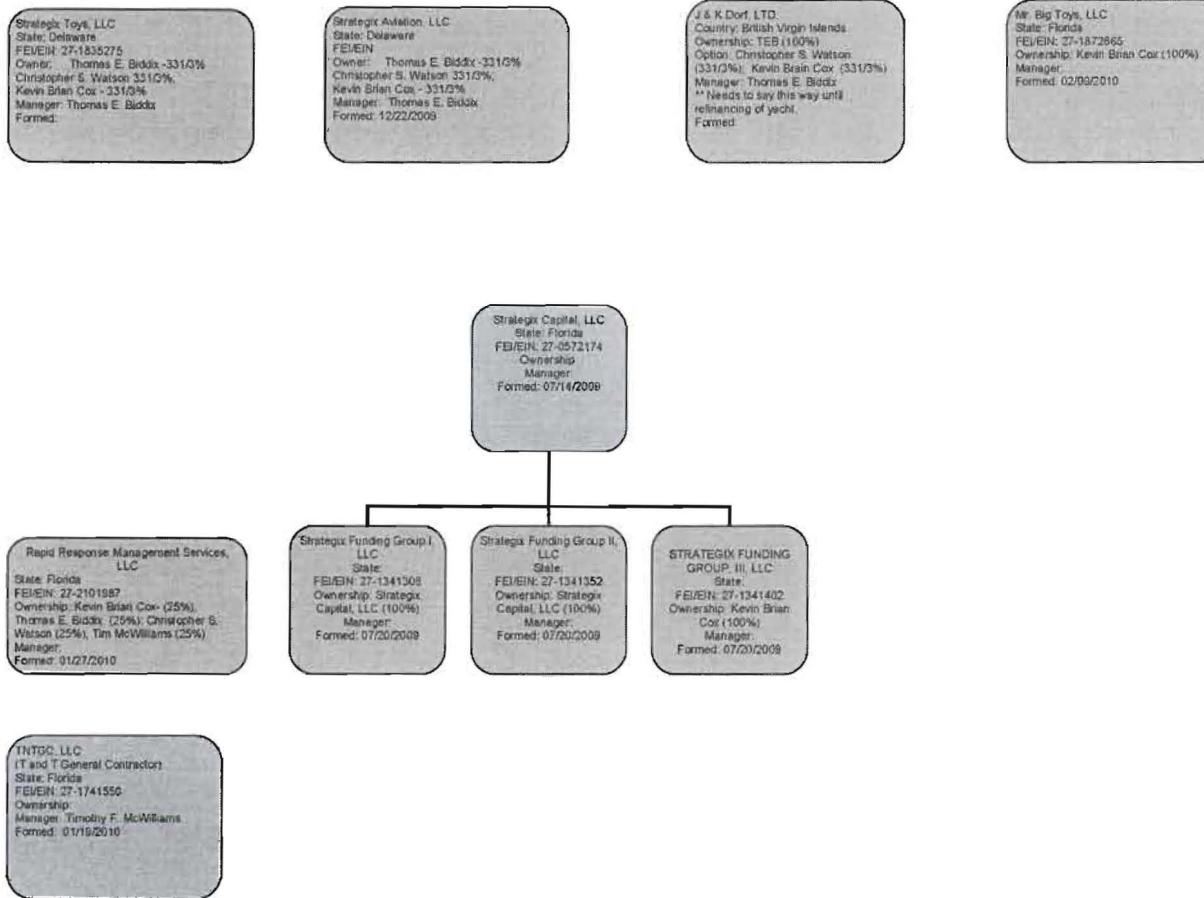
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FPSC-COMMISSIONER: CLP







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IN THE CIRCUIT COURT OF THE EIGHTEENTH  
JUDICIAL CIRCUIT IN AND FOR BREVARD  
COUNTY, FLORIDA

CASE NO.: 05-26 DCA 35128 XXXX-XX

LIFECONNEX TELECOM, LLC  
f/k/a SWIFTEL, LLC, a Florida limited  
liability company,

Plaintiff,

v

CGM, LLC, a Georgia limited liability  
company,

Defendant.

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FEEBORN MBS  
CLERK OF C.R.C.T.  
BREVARD CO., FL

SCOTT ELLIS

COMPLAINT

Plaintiff, Lifeconnex Telecom, LLC f/k/a Swiftel, LLC, a Florida limited liability company ("Plaintiff"), by and through its undersigned attorney sues Defendant, CGM, LLC, a Georgia limited liability company ("Defendant") and states as follows:

COUNT I

1. This is a cause of action for damages that exceed \$15,000.00, exclusive of interest, costs and attorney's fees and for equitable relief.
2. Plaintiff is a Florida limited liability company maintaining an office in Brevard County, Florida.
3. Defendant is a Georgia limited liability company which entered into a contract or agreement within the State of Florida which required the performance of services in Brevard County, Florida.
4. Defendant is also subject to the long-arm jurisdiction of the Court pursuant to §48.193, Fla. Stat. (1995) as a result of entering into the contract within the State of Florida; doing business within the State of Florida, soliciting business through the Internet within the State of Florida and for breach of a contract which required performance within the State of Florida.
5. On or about October 23, 2007, Plaintiff and Defendant entered into a contract, a copy of which is attached as Exhibit "A" (the "Contract").

6. Pursuant to the Contract, Defendant was to provide certain data processing, accumulation and storage services in exchange for a fee. Part of the services to be provided by Defendant concerned the accumulation and processing of certain customer data provided by Plaintiff to Defendant for the purpose of providing accounting information to Universal Service Administrative Company ("USAC") on behalf of Plaintiff to obtain reimbursement and/or refunds for qualifying customers of Plaintiff from USAC and where applicable, provide all necessary information to respond to audits conducted by USAC for claims for rebates and reimbursements submitted by Plaintiff to USAC (through Defendant).
7. Pursuant to the Contract, Plaintiff deliver to Defendant all ILEC billing invoices provided by AT&T Southwest or BellSouth in electronic data format to be loaded into Plaintiff's software known as WIN (Wholesale Invoice Navigation) for submittal to USAC through Form 497 filing on behalf of Plaintiff.
8. Pursuant to the Contract, CGM agreed to return all of electronically provided customer and ILEC billing invoices and information and data to Plaintiff at the conclusion of the term of the Contract.
9. Prior to the inception of the Contract and thereafter, representatives, agents and employees of CGM would contact Plaintiff at its offices located in Brevard County, Florida to discuss the status of the Contract and the status for the matters set forth in the Contract, including status of Form 497 filings with USAC on behalf of Plaintiff.
10. The Contract was terminated by Plaintiff and Plaintiff requested a return of any and all customer usage information and data, incumbent local exchange carrier (ILEC) and subscriber line use information submitted by Plaintiff to Defendant under the Contract for processing and storage as set forth in the Contract such that Plaintiff could respond to USAC audit and/or justify and support all requests for rebates and reimbursements from USAC as processed by the Defendant for Plaintiff under the Contract including Form 497 filings.
11. After termination of the Contract, USAC initiated an audit of all of Plaintiff's requests for rebates/reimbursements for customers of Plaintiff (through 497 filings) which were previously submitted by Defendant under the Contract for Plaintiff.
12. Plaintiff has complied with all conditions precedent to the maintenance of this action or such conditions have been waived or modified by the Defendant.

13. Plaintiff has obtained the services of Fallace & Larkin, L.C. to represent it in this action and has agreed to pay a reasonable fee for its services.

COUNT I

14. Plaintiff realleges the Common Allegations as set forth herein as Paragraph 14 of Count I.
15. CGM breached the Contract by (a) failing to properly compile and calculate and file accurate USAC Reimbursement Request Forms in accordance with governing USAC filing processes; (b) failing to properly track and audit monthly USAC reimbursements and failing to provide reporting on the status of all pending USAC reimbursement requests; (c) failing to protect and store all proprietary and customer information data filed and other information provided by Plaintiff to Defendant for processing pursuant to the terms of the Contract; and (d) failing to return all of Plaintiff's proprietary information, customer information, subscriber line information, ILEC subscriber data; (e) failing to return all ILEC billing invoices, in the original electronic data format that were delivered to Defendant by AT&T Southeast, BellSouth, LifeConnex or an Affiliated Entity (as defined in the Contract) or by the client identified in the applicable Services Management Agreement including an Affiliated Entity in complete detail; (f) failing to return all disputes and promotions that were auto-shipped or manually shipped to the ILEC by Defendant in complete detail and all of the status correspondence received from ILEC in complete detail; (g) failing to return all "497" filings sent to USAC and the supporting data, files, and documentation to create the 497 forms; and (h) failing to return all audit information and correspondence between USAC, the CGM Client and/or CGM.
16. As a result of Defendant's breach of the Contract, Plaintiff suffered and continues to suffer damages which include, without limitation, costs and expenses incurred to re-create/regenerate all data and records provided to Defendant under the Contract and which Defendant failed and refuses to return; costs, interest and penalties imposed by USAC as a result of the inability of the Plaintiff to explain, justify and/or substantiate the basis for USAC Reimbursement Forms and/or payments received by Plaintiff from USAC based upon USAC Reimbursement Forms submitted by Defendant for and on behalf of Plaintiff, and lost profits.

WHEREFORE, Plaintiff, Lifeconnex Telecom, LLC f/k/a Swiftel, LLC, a Florida limited liability company demands judgement against Defendant CGM, LLC, a Georgia limited liability company for damages, plus an award of its costs, expenses and attorney's fees and for such other relief this Court deems just and proper.

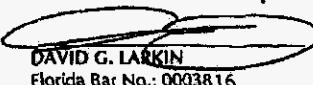
COUNT II

17. Plaintiff realleges the Common Allegations in Paragraphs 1 through 9 of the Contract as if set forth herein as Paragraph 17 of Count II.
18. This is a cause of action for specific performance to require Defendant to return (a) all of Plaintiff's customer information, subscriber line information, ILEC information, all ILEC billing invoices in the original electronic data format that were delivered to CGM by AT&T Southeast, BellSouth, LifeConnex or an Affiliated Entity or other Plaintiff clients that were loaded into WIN in complete detail; (b) all disputes and promotions that were auto-shipped or manually shipped to the ILEC by Defendant in complete detail; (c) all of the status correspondence received from ILEC in complete detail, all "497" filings sent to USAC and the supporting data, files, and documentation to create the 497 form; (d) all audit information and correspondence between USAC, the CGM Client and/or CGM; and (e) all data and information provided by the Plaintiff to Defendant under the terms of the Agreement for processing, accounting and USAC reimbursement submittals to USAC.
19. The customer data, ILEC billing invoices, USAC filings, supporting files, 497 forms, audit information and other customer and client information provided to Defendant under the Contract is unique and the summary, compilation and collation utilized by Defendant in submitting requests for refunds and reimbursement from USAC for Plaintiff are impossible to recover.
20. Plaintiff is unable to regenerate and/or accumulate all such data and information provided to Defendant pursuant to the terms of the Agreement.
21. Defendant does not have an otherwise adequate remedy law.

WHEREFORE, Plaintiff, Lifeconnex Telecom, LLC f/k/a Swiftel, LLC, a Florida limited liability company demands judgment against Defendant, CGM, LLC, a Georgia limited liability company requiring Defendant to return all of Plaintiff's proprietary information, customer lists, ILEC information, all ILEC billing invoices in the

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original electronic data format that were delivered to CGM by AT&T Southeast, Bellsouth, LifeConnex or an Affiliated Entity or by the CGM Client that was loaded into WIN in complete detail, all disputes and promotions that were auto-shipped or manually shipped to the ILEC by CGM in complete detail and all of the status correspondence received from ILEC in complete detail, all "497" filings sent to USAC and the supporting data, files, and documentation to create the 497 form, all audit information and correspondence between USAC, the CGM Client and/or CGM and all data and information provided by the Plaintiff to Defendant under the terms of the Agreement for processing, accounting and USAC reimbursement submittals to USAC, and all other such information provided by Plaintiff to Defendant under the terms of the Contract, plus an award of its costs, expenses and attorney's, and for such other relief this Court deems just and proper.

  
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