

**Diamond Williams**

100021-TP

**From:** nicki.garcia@akerman.com  
**Sent:** Thursday, September 23, 2010 4:35 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Charles Murphy; mg2708@att.com; th9467@att.com; matthew.feil@akerman.com; ke2722@att.com; hwalker@babco.com; eheard@lifeconnex.net; legal@telecomgroup.com; Beth Salak; Adam Teitzman; matthew.feil@akerman.com  
**Subject:** Electronic Filing - Docket No. 100021-TP  
**Attachments:** LifeConnex Notice of Filing and Letter ( TL257977).PDF

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

**Person Responsible for Filing:**

Matthew Feil  
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**Docket No. and Name:** Docket No. 100021 -TP - In Re: Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC

**Filed on behalf of:** LifeConnex Telecom, LLC

**Total Number of Pages:** 7

**Description of Documents:** Notice of Filing and Letter

Nicki Garcia

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September 23, 2010

**VIA ELECTRONIC FILING**

Ms. Ann Cole  
Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399

**Re: Docket 100021-TP – Complaint of BellSouth Telecommunications, Inc., d/b/a AT&T  
Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC**

Dear Ms. Cole:

Attached for filing in the referenced Docket, please find LifeConnex Telecom, LLC's Notice of Filing. Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Matthew Feil  
AKERMAN SENTERFITT  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32302-1877  
Phone: (850) 224-9634  
Fax: (850) 222-0103

c: Parties per attached Certificate of Service

{TL257973;1}Attachments

DOCUMENT NUMBER DATE

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FPSC-COMMISSION CLERK

**STATE OF FLORIDA**  
**PUBLIC SERVICE COMMISSION**

In Re: Complaint of BellSouth Telecom- )  
munications, Inc., d/b/a AT&T Florida )  
Against LifeConnex Telecom, LLC f/k/a )  
Swiftel, LLC )  
\_\_\_\_\_ )

Docket No. 100021-TP  
Filed: September 23, 2010

**LIFE CONNEX'S NOTICE OF FILING**

LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") hereby files the attached correspondence replying to AT&T Florida's September 13, 2010, Notice of Filing and letter to LifeConnex and American Dial Tone, Inc.

Respectfully submitted this 23<sup>rd</sup> day of September, 2010.



Matthew Feil, Esq.  
Akerman Senterfitt  
106 East College Avenue, Suite 1200  
Tallahassee, FL 32301  
(850) 425-1614

*Attorneys for LifeConnex Telecom, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 23rd day of September, 2010.

|   |  |
|---|--|
| Charles Murphy, Esq.<br>Office of the General Counsel<br>Florida Public Service Commission<br>2540 Shumard Oak Boulevard<br>Tallahassee, FL 32399-0850<br>cmurphy@psc.state.fl.us | E. Earl Edenfield, Jr.<br>Tracy W. Hatch<br>Manuel A. Guardian<br>AT&T Florida<br>c/o Gregory R. Follensbee<br>150 South Monroe Street<br>Suite 400<br>Tallahassee, FL 32301<br>ke2722@att.com<br>mg2708@att.com<br>th9467@att.com |
| Henry M. Walker, Esq.<br>Bradley Arant Boulton Cummings, LLP<br>1600 Division Street<br>Suite 700<br>Nashville, TN 37203<br>hwalker@babc.com                                      | Chris Sutch<br>Associated Telecom Management Svcs, LLC<br>6095 North Wickham Road<br>Suite 403<br>Melbourne, FL 32940-7553<br>legal@telecomgroup.com   |

By:   
Matthew Feil, Esq.



Mr. Eddie A. Reed, Jr.  
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More importantly, ADT has not breached its interconnection agreement with AT&T. As explained below, all residential services purchased by ADT from AT&T are resold to residential end users.

Your allegation that ADT has breached the Agreement by reselling residential service to business customers relies principally on the language of Attachment 1, Section 4.1.1 of the Agreement which states, "The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions." AT&T also relies on the Florida Commission rule which approves "restrictions that would limit resale of . . . residential services . . . to end users who are eligible to purchase such services directly from BellSouth." In other words, ADT may not purchase residential lines from AT&T and resell those lines to end users who are not residential customers. As the FCC said, "There is general agreement that residential services should not be resold to non-residential end users . . . For example, this would prevent resellers from reselling wholesale-priced residential service to business customers." FCC "First Report and Order," CC Docket 96-98 (August 8, 1996), paragraph 962.

In sum, AT&T claims that ADT is improperly reselling AT&T's residential service to Life Connex, a business customer. AT&T has apparently overlooked, or chosen to disregard, the definitions of "telecommunication service," "resale," and "end user" as those terms are used in the parties' interconnection agreement. "Telecommunications Service" is defined in the Agreement as the offering of telecommunications for a fee directly to the public. General Terms and Conditions, p. 2 (emphasis added). Similarly, "resale" is defined as "the activity wherein a certificated CLEC . . . subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public." Attachment 1, Section 2.7 (emphasis added). Finally, the Agreement defines "end user" as "the ultimate user of the telecommunications service." General Terms and Conditions, p. 2 and Attachment 1, Section 2.4 (emphasis added).

In other words, the "resale" of "telecommunications service" means the sale of service "to the public." It does not mean the use of ADT's lines by Life Connex. Furthermore, Life Connex is not the "end user" of these services. The "end user", i.e., the "ultimate user" of every such line is a residential customer of Life Connex. Therefore, ADT is not engaged in the "resale" of "telecommunications services" to Life Connex, nor are those residential lines being resold to "end users" who are business customers. ADT is therefore not in violation of the Agreement or the federal and state prohibitions against the cross-class resale of residential service.

Your letters also implies that the Agreement states that ADT may only purchase wholesale services for resale directly to residential customers. That implication is incorrect. Contrary to your letter, the Agreement expressly permits ADT to "purchase resale services from BellSouth [AT&T] for its own use in operating its business." Attachment 1, Section 3.2. Here, the "business" of ADT includes, for a few months, the provision of wholesale, residential service

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to its affiliate, Life Connex. ADT is entitled to purchase resale service from AT&T for that purpose, "for [ADT's] own use in operating its business."<sup>2</sup>

Finally, please be advised that AT&T may not unilaterally terminate the Agreement solely because the parties disagree over its "interpretation" or "implementation." The Agreement requires that if AT&T disputes this "interpretation" or "implementation" of the Agreement, AT&T "shall petition the [Florida Public Service] Commission for a resolution of the dispute." General Terms and Conditions, Section 8 (emphasis added). AT&T has not petitioned the Commission for resolution of the dispute and may not by-pass that requirement of the Agreement with an unprecedented and disproportionate act of self-help.

In conclusion, AT&T has no right to terminate the Agreement with ADT because a small portion of the residential lines purchased at wholesale by ADT are being used by Life Connex to serve its own residential customers. ADT, not Life Connex, is responsible to AT&T for the cost of those lines under the Agreement and is paying the charges for those lines.<sup>3</sup> ADT is merely acting as the underlying provider for Life Connex so that the remaining customers of Life Connex may continue receiving service for the next few months. Even if the Agreement prohibited this arrangement (which it does not), AT&T cannot reasonably contend that ADT's temporary provision of wholesale service to Life Connex justifies termination of the Agreement. To warrant termination of a contract, the alleged breach must be "so substantial and fundamental as to defeat the object of the parties in making the agreement." General Steel, Inc., v. Delta Building Systems Inc., 676 S.E. 2d 451 (Georgia Court of Appeals, 2009); see Mayor of Douglasville v. Hildebrand, 333 S.E.2d 674 (Ga. Supreme Ct., 1985). The temporary use by Life Connex of 5% of ADT's lines to maintain service to residential customers is hardly a "substantial and fundamental" breach of the parties intentions, or the purposes of the federal and state laws which govern the Agreement.

On the whole, your letter appears intended more as editorial comment about alleged issues between Life Connex and the Florida Commission than about the legal rights of ADT under its Agreement with AT&T. As you are aware, AT&T has an obligation under federal law to provide wholesale services to ADT pursuant to the parties' Agreement. If AT&T intends to proceed with termination of the Agreement, ADT will seek injunctive relief and monetary damages in a court of competent jurisdiction. To avoid unnecessary expense and litigation,

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<sup>2</sup> In your letter, you also cite Section 18 of the Agreement concerning "Assignments and Transfers" and claim that ADT cannot "transfer" service to another provider unless AT&T and the other provider agree to "separately negotiated rates, terms and conditions." General Terms and Conditions, Section 18.2. As you should know, the language in Section 18 refers to the transfer to another party of ADT's contractual rights under the parties' Interconnection Agreement. See U.C.C. §§3-201(1) and 7-504(1) and Black's Law Dictionary ("Transfer is the all encompassing term used by the Uniform Commercial Code to describe the act which passes an interest in an instrument to another.") That Section on Assignments and Transfers concerns ADT's rights under the parties' contract and has nothing to do with the circumstances here.

<sup>3</sup> Since no new customers are being added by Life Connex, ADT does not claim any promotional credits associated with the purchase of those lines from AT&T.



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please have your attorney contact me before AT&T takes any action to disrupt its service to ADT.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:

  
Henry Walker

HW/dnr