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100340-TP

From: Charlie Sherrill [csherrill@kagmlaw.com]
Sent: Friday, March 25, 2011 3:30 PM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; Adam Teitzman; Vicki Gordon Kaufman; mstudstill@telecomgroup.com
Subject: Docket Nos. 100340-TP and 110082-TP: ATMS Petition for Mediation and to Hold Docket in Abeyance
Attachments: ATMS Petition for Mediation and to Hold Docket in Abeyance 03.25.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vicki Gordon Kaufman
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b. This filing is made in Docket Nos. 100340-TP and 110082-TP.

c. The document is filed on behalf of Associated Telecommunications Management Services, LLC.

d. The total pages in the document are 8 pages.

e. The attached document is Associated Telecommunications Management Services, LLC's Petition for Mediation and to Hold Docket in Abeyance.

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3/25/2011

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

Initiation of show cause proceedings against
American Dial Tone, Inc., All American
Telecom, Inc., Bellerud Communications, LLC,
BLC Management LLC d/b/a Angles
Communications Solutions, and LifeConnex
Telecom LLC for apparent violations of Chapter
364, F.S., Chapters 25-4 and 25

Docket No. 110082-TP

Filed: March 25, 2011

PETITION FOR MEDIATION AND TO HOLD DOCKET IN ABEYANCE

All American Telecom, Inc., American Dial Tone, Inc., Bellerud Communications, LLC,
BLC Management, LLC, LifeConnex Telecom, LLC, and Triarch Marketing, Inc. (the
Companies) file this request for mediation and to hold this docket in abeyance during the
pendency of mediation.

INTRODUCTION

1. Associated Telecommunications Services, LLC (ATMS), through acquisition,
purchased nine telephone companies a little over a year ago. At the time, four were doing
business in Florida. Today, the Florida companies provide telephone service to nearly 9,000
customers in Florida and employ nearly 600 people in Florida who work on telephone operations
all over the country.

2. During the acquisition process described above, ATMS does not deny that there
may well have been regulatory issues that it failed to discover. When such issues were

identified, ATMS made the decision to bring all activities on-site and did so, rather than having such activities in different locations. The movement of all regulatory activities on site occurred in June 2010.¹ Since that time ATMS and the Companies have been diligently working to make the necessary changes to ensure that all regulatory requirements are met.²

DOCKET BACKGROUND

3. This docket was opened on June 28, 2010 via a memorandum from Staff. The memorandum contained no information regarding what Staff's investigation might concern. At the same time, subpoenas were issued to each of the Companies seeking voluminous information, some of it clearly outside the Commission's jurisdiction. After the filing of extensive motions to quash, the Companies were ultimately able to work with the Staff to narrow the subpoena and have provided all information agreed upon.

4. At the same meeting at which the subpoenas were discussed, the Companies pledged their cooperation to Staff and indicated their desire and willingness to work with Staff to timely resolve the issues with which Staff was concerned.

5. The Companies have diligently attempted to work with Staff in this matter. At all times, the Companies have stood ready to timely address all reasonable concerns brought forward by Staff.

6. Numerous meetings have been held with Commission Staff and the Companies believed that substantial progress had been made toward resolution of the myriad issues involved in this docket. Without divulging the substance of the discussions, the Companies have made it clear that they are ready, willing and able to implement any reasonable measures Staff believes

¹ Some issues arose during the off-site to on-site transition, including some data corruption issues as well as litigation with third party vendors.

² It is important to recognize that such changes cannot happen overnight, but often require computer programming changes and other operational changes which take time to implement.

necessary to address issues Staff might have. Further, it appeared to the Companies that agreement had been reached on all the operational components of an agreement with just one issue remaining open for resolution.

7. However, at the last meeting held between Staff and the Companies on March 23rd, Staff raised new and highly questionable demands that had not been discussed before. It became clear that Staff had made up its mind regarding the matters in dispute in this case and that no agreement could be reached despite the many hours of work and meetings invested in the settlement process. The Companies thought the parties were very close to agreement and were surprised at the tenor of the last meeting held on March 23rd.

8. Thus, it is clear, given the history of this matter, that the assistance of an unbiased mediator who can objectively evaluate the law and the facts would be extremely helpful in this case.³

MEDIATION REQUEST

9. Based on the background provided above, it is the Companies' view that mediation of this dispute by an independent mediator would be extremely helpful in formulating an appropriate and positive conclusion to this matter. The use of an independent mediator to resolve this issue would be efficient and effective and bring quick resolution to this matter.⁴

10. As a preliminary matter, as the state attempts to manage its budget and its scarce resources, mediation is an efficient and cost-effective way to resolve issues and greatly mitigate the costs of litigation, as well as Staff and Commission resources. A full-blown evidentiary hearing in this matter, to which the Companies are entitled, could well run several weeks. And

³ See, Affidavit of Thomas Biddix, attached hereto as Exhibit A.

⁴ The Companies recognize that the Commission is the ultimate decision maker. Thus, the Companies would suggest that the mediation order return to the Commission for adoption, much in the same way that a recommended order is sent to an agency.

prior to that hearing, it would be necessary to engage in extensive depositions, including depositions of Staff involved in this matter.

11. Further, because certain Staff members have been intricately involved in this matter, as well as in settlement talks, it would be extremely helpful to have an objective mediator, who has no connection to or knowledge about these talks, critically evaluate the positions of the parties.

12. Use of an independent mediator to evaluate the factual and legal basis of the issues raised in this docket would also require all parties to rely only on documented, verifiable information. A good description of the role of a mediator and why it would be useful in this instance is found in *Evans v. State*, 603 So.2d 15, 17 (Fl. 5th DCA 1992):

The function of a mediator is to encourage settlement of a dispute and a mediator uses various techniques in an attempt to achieve this result. A mediator may separate the parties and conduct *ex parte* proceedings in which the mediator may either subtly or candidly point out weaknesses in a particular party's factual or legal position. A mediator, through training and experience, approaches different parties in different ways. Because a mediator will not be deciding the case, both the mediator and the parties are free to discuss without fear of any consequence the ramifications of settling a particular dispute as opposed to litigating it.

13. The Commission has often commented that settlement of disputes is a valuable and efficient way in which to handle contested matters. The Commission has encouraged parties to engage in settlement or mediation as an efficient, cost-effective way to settle disputes. Recently, the Commission commented on its "long-standing practice of encouraging parties to settle contested proceedings..."⁵ The Commission also commented in its approval of a settlement regarding a Verizon show cause proceeding:

This Settlement Agreement avoids the time, expense and uncertainty associated with adversarial litigation, in keeping with

⁵ Order No. PSC-11-0012-PAA-SU. *See also*, Order No. 10-0580-PAA-EU.

the Commission's longstanding policy and practice of encouraging parties in contested proceedings to settle issues whenever possible.⁶

14. The Companies assert that mediation would be similarly useful in this case to attempt to resolve the issues rather than proceeding to a full scale evidentiary hearing, with the attendant time and resource commitments of the Companies, Staff and the Commission.

15. Therefore, the Companies request that the Commission order mediation of this matter by an independent mediator and that while such mediation is on-going this docket be held in abeyance pending the results of the mediation.

WHEREFORE, the Companies request that the Commission hold this docket in abeyance and that the parties be directed to engage in mediation.

s/ Vicki Gordon Kaufman

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Attorneys for the Companies

⁶ Order No. PSC-09-0782A-AS-TP.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Request for Mediation has been furnished by electronic mail and US Mail this 25th day of March 2011 to the following:

Adam Teitzman
Charles Murphy
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
ateitzma@psc.state.fl.us
cmurphy@psc.state.fl.us

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

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

Initiation of show cause proceedings against
American Dial Tone, Inc., All American
Telecom, Inc., Bellerud Communications, LLC,
BLC Management LLC d/b/a Angles
Communications Solutions, and LifeConnex
Telecom LLC for apparent violations of Chapter
364, F.S., Chapters 25-4 and 25

Docket No. 110082-TP

Filed: March 25, 2011

AFFIDAVIT OF THOMAS BIDDIX

STATE OF FLORIDA

COUNTY OF BREVARD

BEFORE ME, the undersigned authority, on this day personally appeared Thomas Biddix, known to me to be the person whose name is subscribed below, who, being by me first duly sworn, upon oath, deposes and says the following:

1. My name is Thomas Biddix. I am the owner and chief executive of Associated Telecommunications Management Services ("ATMS"), a company which is based in Florida and employs about six hundred Floridians. ATMS owns a number of telephone companies that operate in thirteen states in the Southeast and Midwest. We provide telephone service to thousands of low income residential customers.

2. This docket was opened in June 2010 and during the entire time, we have been open and above board with Staff and have done our best to work with them and to provide them all the information requested. Additionally, we have attempted to address and resolve any issues or concerns raised.

3. Six weeks ago, we were presented with Staff "findings" which were primarily based on inaccurate or, at best, incomplete information and differences of opinion concerning the applicable laws.

Exhibit A

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4. At our request, we have met with the Staff several times to try to resolve this matter and to show our good faith going forward. On numerous separate occasions, we travelled to Tallahassee to meet with the Staff. Despite the Staff's initial reluctance to come to the table, these meetings proved to be very productive. In fact, it is my understanding that my company representatives and the Staff had negotiated a settlement document which addressed every single operational concern the Staff raised. One issue remained open and to resolve that one remaining issue, we held a fourth meeting with the Staff on Wednesday, March 23rd.

5. At this meeting, the Staff brought up new and highly questionable demands, which had never been previously discussed, and which clearly made settlement impossible. It may be that some members of the Staff never intended to work diligently to settle the case. I believe that the Staff now knows, or should know, that many of the factual statements made in their original findings are not correct and some of the legal arguments upon which those findings are based are questionable.

6. I am entitled to request mediation by an unbiased, third party. Certain members of the Staff are clearly acting in an adversarial role in this matter. Though I'm sure they believe that they are acting in the public interest that can best be demonstrated through mediation with an independent mediator. Before we all spend hundreds of thousands of dollars and thousands of man hours on formal hearings, I have asked my attorneys to petition the Commission to send this matter to mediation and request that the Commission direct those staff members who have been involved in prosecuting this matter to make their presentation of their legal arguments and their evidence to an objective third party. We will do the same. It is my hope that with the assistance of a knowledgeable, expert mediator, the two sides can finally put this matter to rest to the benefit of all.

FURTHER AFFAIRS SAYETH NOT.




THOMAS BIDDIX

SUBSCRIBED AND SWORN TO
this 25 day of March, 2011. *personally known*


Notary Public
My commission expires: Aug. 21, 2013

Exhibit A



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COMMISSION
CLERK

March 28, 2011

Via U.S. Mail

Ms. Ann Cole, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 100340-TP; Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunications carrier, and universal service requirements
Docket No. 110082-TP; Initiation of show cause proceedings against American Dial Tone, Inc., All American Telecom, Inc., Bellerud Communications, LLC, BLC Management LLC d/b/a Angles Communications Solutions, and LifeConnex Telecom LLC for apparent violations of Chapter 364, F.S., Chapters 25-4 and 25

Dear Ms. Cole:

On March 25th, Associated Telecommunications Management Services filed a Petition for Mediation and to Hold Docket in Abeyance in the above dockets. Please substitute Mr. Biddix's original affidavit enclosed herein for the e-mailed copy filed on March 25th. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman

VGK/bjd

cc: Parties of Record (w/encl.)

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