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January 8, 2010

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

**New Docket: In re: Complaint of BellSouth Telecommunications, Inc.  
d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel,  
LLC LifeConnex** TX922

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's  
Complaint and Petition for Relief, which we ask that you file in the captioned *new*  
docket.

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

Sincerely,

Manuel A. Gurdian

cc: All parties of record  
Gregory R. Follensbee  
Jerry D. Hendrix  
E. Earl Edenfield, Jr.

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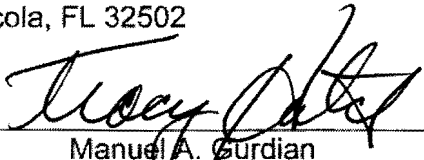
FPSC-COMMISSION CLERK

**Complaint of BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC LifeConnex**

I HEREBY CERTIFY that a true and correct copy was served via (\*)  
Electronic Mail and First Class U. S. Mail this 8th day of January, 2010 to the  
following:

Florida Public Service Commission  
Adam Teitzman, General Counsel (\*)  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Tel. No. (850) 413-6175  
[ateitzma@psc.state.fl.us](mailto:ateitzma@psc.state.fl.us)

Registered Agent for LifeConnex  
Angie Watson  
811 W. Garden St.  
Pensacola, FL 32502

  
Manuel A. Gurdian

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. \_\_\_\_\_  
Florida Against LifeConnex Telecom, )  
LLC f/k/a Swiftel, LLC LifeConnex ) Filed: January 8, 2010

**AT&T FLORIDA'S COMPLAINT AND  
PETITION FOR RELIEF**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida"), pursuant to Rules 25-22.036 and 28-106.201, Florida Administrative Code and 47 U.S.C. §252, hereby files the following Complaint and Petition for Relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") for breaching the terms of the parties' Interconnection Agreement. AT&T Florida respectfully requests that the Florida Public Service Commission ("Commission") convene a docket for the purposes of: resolving billing disputes between LifeConnex and AT&T Florida; determining the amount LifeConnex owes AT&T Florida under the parties' interconnection agreement,<sup>1</sup> and requiring LifeConnex to pay this amount to AT&T Florida.<sup>2</sup>

**I. BACKGROUND AND SUMMARY OF COMPLAINT AND PETITION**

LifeConnex owes AT&T Florida a past-due and unpaid balance for telecommunications services AT&T Florida provided it for resale under the terms and conditions of the applicable interconnection agreement. As of November 9, 2009, this

<sup>1</sup> In September 2009, AT&T Florida began applying a new methodology for calculating the resale promotional credits it will provide LifeConnex and other CLECs with regard to the cashback component of certain retail promotional offerings. *AT&T Florida is not seeking any amounts billed under this new methodology in this Docket.*

<sup>2</sup> AT&T Florida is filing a similar Complaint and Petition against one other competitive local exchange carrier with the Commission. Because of the commonality of the issues set forth in Section IV. of this Complaint and Petition with the issues set forth in Section IV. of this other Complaint and Petition, AT&T Florida intends to file a motion to consolidate these two dockets for the purposes of resolving those common issues. AT&T Florida will file that motion in each of these dockets after the Commission assigns them docket numbers.

past-due and unpaid balance totals, in the aggregate, more than \$1 million in the State of Florida.<sup>3</sup> To the extent that LifeConnex has disputed AT&T Florida's bills, AT&T Florida has denied those disputes as required by its interconnection agreement with LifeConnex. LifeConnex, however, has declined to pay AT&T Florida the amounts associated with these denied disputes. A substantial amount of this past-due and unpaid balance is the result of LifeConnex's withholding payments to AT&T Florida for one or both of the following reasons:<sup>4</sup> (1) LifeConnex erroneously asserts that AT&T Florida cannot apply the resale discount approved by this Commission in the parties' interconnection agreement to the cashback component of various promotional offers that AT&T Florida makes available for resale;<sup>5</sup> and (2) LifeConnex erroneously asserts that AT&T Florida's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

The interconnection agreement between AT&T Florida and LifeConnex provides that disputes like these are to be resolved in the first instance by this Commission. AT&T Florida, therefore, respectfully requests that the Commission resolve the outstanding disputes, determine the amount that LifeConnex owes AT&T Florida under the parties' interconnection agreement, and require LifeConnex to pay that amount to AT&T Florida.

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<sup>3</sup> As of November 9, 2009, LifeConnex's unpaid and past-due balance is over \$6.2 million across the nine southeastern states that comprised the former BellSouth's ILEC operating territory.

<sup>4</sup> A more detailed description of LifeConnex's assertions, and a brief explanation of why they are erroneous, is set forth in Section IV. below.

<sup>5</sup> For one-time "cash back" promotions, AT&T Florida contends that resellers should receive less than the face amount of the promotion minus the wholesale discount because such valuation does not reflect the true economic value of the promotion on retail rates. Among other things, it does not consider the redemption rate, the in-serve life of the subject customer, or the net present value of a one-time upfront payment associated with the promotion. Recently, AT&T implemented a new methodology aimed at providing the true economic value of the promotion to resellers. Several resellers are challenging the methodology in other proceedings, but that issue is not before the Commission in this docket because AT&T Florida is not seeking any amounts billed under this new methodology in this docket.

## **II. PARTIES**

1. AT&T Florida is a corporation organized under the laws of the state of Georgia. AT&T Florida is an incumbent local exchange carrier ("ILEC") as that term is defined by federal<sup>6</sup> law.

2. The full name and address of the authorized representative(s) for AT&T Florida in this proceeding are:

E. Earl Edenfield, Jr.  
Tracy W. Hatch  
Manuel A. Gurdian  
c/o Gregory R. Follensbee  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5558

3. LifeConnex is organized under the laws of the state of Florida. LifeConnex is a Competitive Local Exchange Carrier ("CLEC") as that term is defined under federal law and it is authorized to provide resold local exchange telecommunications services within the State of Florida.

## **III. LIFECONNEX'S BREACH OF ITS INTERCONNECTION AGREEMENT**

4. In 2007, AT&T Florida and LifeConnex entered into a negotiated interconnection agreement (the "LifeConnex 2007 agreement") in which AT&T Florida agreed, among other things, to offer various telecommunications services for resale to LifeConnex at specified wholesale rates and subject to specified terms and conditions. A copy of the LifeConnex 2007 agreement is on a CD attached hereto as Exhibit A.

5. As of November 9, 2009, LifeConnex owes a past due and unpaid balance to AT&T Florida in the amount of \$1,106,595.59 (the "Past Due Balance"). The Past

<sup>6</sup> See, e.g., 47 U.S.C. §251(h)(1).

Due Balance represents the amounts AT&T Florida billed LifeConnex for telecommunications services provided to LifeConnex in Florida pursuant to the parties' interconnection agreement less payments made by LifeConnex; and credits provided by AT&T Florida to LifeConnex in connection with valid disputes and approved promotional credit requests submitted by LifeConnex as of November 9, 2009.

6. The Past Due Balance does not include any amounts related to disputes or promotional credit requests submitted by LifeConnex, but not yet reviewed by AT&T Florida.

7. To the extent that the Past Due Balance includes any charges on AT&T Florida's invoices that LifeConnex has disputed, AT&T Florida has denied those disputes as required by its interconnection agreement with LifeConnex.

8. LifeConnex has breached the LifeConnex 2007 agreement by refusing to pay amounts that are due and owing to AT&T Florida under this Agreement.

#### **IV. LIFECONNEX'S ERRONEOUS REASONS FOR NONPAYMENT**

9. As noted above, a substantial amount of LifeConnex's unpaid balance is the result of LifeConnex's withholding payments to AT&T Florida for one or both of the following reasons.

##### **A. Application of the resale discount to the "cashback" component of promotional offerings.**

10. LifeConnex asserts that AT&T Florida cannot apply the resale discount, agreed to by the parties in the interconnection agreement and subsequently approved by this Commission, to the cashback component of various promotional offerings that AT&T Florida makes available for resale. Assume, for example, AT&T Florida's retail promotional offering provides a retail customer who purchases Telecommunications

Service A under certain conditions a coupon that can be redeemed for a \$50 check. When LifeConnex resells that promotional offering to qualifying end users and submits to AT&T Florida an appropriate promotional credit request, AT&T Florida provides LifeConnex a bill credit of \$39.08 (\$50 less the 21.83% residential resale discount established by the parties' interconnection agreement). LifeConnex, however, erroneously contends that it is entitled to a bill credit for the full \$50 "face value" of the cashback amount.

11. There is no basis in logic or law for LifeConnex's assertions. If AT&T Florida were to reduce the retail price of a telecommunications service by \$50 in a given month (say from \$200 to \$150), LifeConnex would not receive the full \$50 "face value" of the reduction when it purchased that service for resale. Instead, LifeConnex would receive a \$39.08 reduction – the \$50 face value of the reduction less the 21.83% avoided cost discount established by the parties' interconnection agreement.<sup>7</sup> LifeConnex clearly should not receive a greater wholesale reduction merely because the retail reduction takes the form of a "cashback" offer rather than a price reduction.

12. The federal Act expressly contemplates that when an incumbent LEC resells services under §251(c)(4), "a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier." 47 U.S.C. §

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<sup>7</sup> When the retail price of the service was \$200, LifeConnex paid AT&T Florida \$156.34 (\$200 less the 21.83% residential resale discount) when it purchased the service for resale. When the retail price of the service is reduced to \$150, LifeConnex pays AT&T Florida \$117.25 (\$150 less the 21.83% residential resale discount) when it purchases the service for resale. In other words, a \$50 reduction in the retail price of the service results in a \$39.09 reduction in the price LifeConnex pays for the service (from \$156.34 to \$117.25), which is the \$50 "face value" of the reduction less the 21.83% residential resale discount.

252(c)(3). Using this “costs avoided” standard, the parties have used the resale discount rate determined by the Commission in Order No. PSC-96-1579-FOF-TP to determine the percentage discount from the retail rate that is used to determine the wholesale rate at which the incumbent LEC, AT&T Florida, is to sell its services to LifeConnex, a CLEC, for resale. Far from being inappropriate, subtracting the wholesale discount from the face value of the promotion is exactly what is contemplated by the federal Act.

**B. Customer Referral Marketing Promotions.**

13. LifeConnex asserts that AT&T Florida’s customer referral marketing promotions (such as the “word-of-mouth” promotion) are subject to resale. Assume, for example, that AT&T Florida gives retail customers who qualify a \$50 bill credit when they refer others who purchase AT&T services. LifeConnex contends that it is entitled to resell this customer referral marketing promotion and that it therefore is entitled to a \$50 bill credit when one of LifeConnex’s end users refers others who purchase services from LifeConnex.

14. Subject to certain conditions and limitations, AT&T Florida is required “to offer for resale at wholesale rates any *telecommunications service* that [it] provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. §251(c)(4)(A)(emphasis added). Customer referral marketing promotions, however, are not telecommunications services that are subject to resale obligations. An end user does not receive any benefit under these promotions for purchasing telecommunications services from AT&T Florida. Instead, an end user receives benefits under these promotions only if he or she successfully markets AT&T Florida’s services to others who then purchase services from AT&T Florida. LifeConnex obviously is free to give similar



benefits to its end users who successfully market its services to others, but it is not entitled to have AT&T Florida finance any such marketing programs that LifeConnex may employ.

15. The federal Act makes it clear that CLECs must finance their own marketing programs when it directs State commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing . . . costs that will be avoided by the local exchange carrier.*” 47 U.S.C. §252(d)(3). Accordingly, the resale discount rate that is incorporated into the LifeConnex 2007 agreement (that this Commission established in Order No. PSC-96-1579-FOF-TP) already excludes the costs of customer referral marketing promotions like the “word of mouth” promotion. To go further and also require AT&T Florida to give LifeConnex additional promotional credits for these customer referral marketing promotions would impermissibly force AT&T Florida to double-count its marketing expenses -- first in the wholesale rate, and again in the promotional credit.

#### V. JURISDICTION

16. The Commission has jurisdiction to interpret and enforce the terms of the interconnection agreement at issue in this docket. The 1996 Act expressly authorizes state commissions to mediate interconnection agreement negotiations,<sup>8</sup> arbitrate interconnection agreements,<sup>9</sup> and approve or reject interconnection agreements.<sup>10</sup> In

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<sup>8</sup> 47 U.S.C. § 252(a)(2)

<sup>9</sup> *Id.* § 252(b)

<sup>10</sup> *Id.* § 252(e)

addition, the courts have held that section 252 implicitly authorizes state commissions to interpret and enforce the interconnection agreements they approve.<sup>11</sup>

#### **VI. DISPUTED ISSUES OF MATERIAL FACT**

17. AT&T Florida is not aware of any disputed issues of material fact as to LifeConnex's failure to pay the amounts due under the interconnection agreement.

#### **VII. STATUTES AND RULES ENTITLING AT&T FLORIDA TO RELIEF**

18. AT&T Florida is entitled to relief under Chapter 120 and 364, Florida Statutes, Chapters 25-22 and 28-106, Florida Administrative Code, and the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

#### **VIII. REQUEST FOR RELIEF**

WHEREFORE, AT&T Florida respectfully requests that the Commission:

- (1) Serve a copy of this Complaint and Petition upon LifeConnex;
- (2) Find that LifeConnex has breached the LifeConnex 2007 agreement by wrongfully withholding amounts due and payable to AT&T Florida for services provided in accordance with the parties' interconnection agreement;
- (3) Find that AT&T Florida has been financially harmed as a direct result of LifeConnex's breach of the interconnection agreement;
- (4) Find that LifeConnex is liable to AT&T Florida for all amounts wrongfully withheld by it, including without limitation late payment charges and interest;

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<sup>11</sup> See, e.g., *Bell Atl. Md., Inc. v. MCI WorldCom, Inc.*, 240 F.3d 279, 304 (4th Cir. 2001) ("The critical question is not whether State commissions have authority to interpret and enforce interconnection agreements – we believe they do"), *vacated on other grounds in Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 65 (2002). See also *Core Commc'ns v. Verizon Pennsylvania, Inc.*, 493 F.3d 333, 342 n.7 (3rd Cir. 2007) ("[E]very federal appellate court to consider the issue has determined or assumed that state commissions have authority to hear interpretation and enforcement actions regarding approved interconnection agreements")

(5) Require LifeConnex to pay AT&T Florida all amounts wrongfully withheld by it, including without limitation late payment charges and interest; and

(6) Grant AT&T Florida such additional relief as the Commission may deem just and proper.

Respectfully submitted this 8th day of January, 2010.

AT&T FLORIDA



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