

Diamond Williams

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Monday, September 13, 2010 4:24 PM
To: Filings@psc.state.fl.us
Subject: 100021-TP AT&T Florida's Notice of Filing
Attachments: Document.pdf

A. Vickie Woods

BellSouth Telecommunications, Inc. d/b/a AT&T Florida

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B. Docket No.: 100021-TP: Complaint of BellSouth Telecommunications,

Inc. d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC

C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida

on behalf of Manuel A. Gurdian

D. 7 pages total (includes letter, pleading, certificate of service and attachment)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Notice of Filing

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9/13/2010

FPSC-COMMISSION CLERK



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September 13, 2010

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

Docket No.: 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:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Notice of Filing, which we ask that you file in the captioned 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.

CERTIFICATE OF SERVICE
Docket Nos. 100021-TP

I HEREBY CERTIFY that a true and correct copy was served via
Electronic Mail and First Class U. S. Mail this 13th day of September, 2010 to the
following:

Charles Murphy
Staff Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
cmurphy@psc.state.fl.us

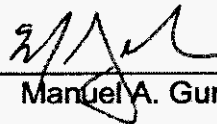
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LifeConnex Telecom, LLC
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LLC and Image Access, Inc. d/b/a
New Phone*

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)
Telecommunications, Inc. d/b/a AT&T) Docket No. 100021-TP
Florida Against LifeConnex Telecom, LLC)
f/k/a Swiftel, LLC) Filed: September 13, 2010
_____)

AT&T FLORIDA'S NOTICE OF FILING

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") hereby files the attached correspondence to LifeConnex Telecom, LLC f/k/a Swiftel, LLC and American Dial Tone, Inc.

Respectfully submitted this 13th day of September, 2010.



E. Earl Edgenfield, Jr.
Tracy W. Hatch
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ATTORNEYS FOR BELL SOUTH
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AT&T FLORIDA

FILED NUMBER-DATE

17654 SEP 13 0

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September 13, 2010

VIA UPS, Tracking Number 1Z4AF1020191291578
Stephen D. Klein
American Dial Tone, Inc. f/k/a Ganoco, Inc.
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VIA UPS, Tracking Number 1Z4AF1020194520387
Thomas Biddix
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VIA UPS, Tracking Number 1Z4AF1020191912405
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RE: SUSPENSION AND DISCONNECTION NOTICE TO AMERICAN DIAL TONE, INC.

Dear Sirs:

AT&T Florida hereby provides notice that it will suspend order processing for American Dial Tone, Inc. f/k/a Ganoco, Inc. ("American Dial Tone") on September 29, 2010 and disconnect American Dial Tone's services on October 14, 2010.

In a flagrant attempt to help its affiliate, LifeConnex Telecom, LLC ("LifeConnex"), evade compliance with an order entered by the Florida Public Service Commission (the "Commission"), American Dial Tone is improperly cross-class selling residential services in violation of its interconnection agreement with AT&T Florida. Collectively, the actions of American Dial Tone and LifeConnex violate state law, federal law, and AT&T Florida's General Subscriber Services Tariff ("Tariff") as incorporated into the parties' interconnection agreements. AT&T Florida therefore has the right to refuse service to American Dial Tone.

- *The arrangement is a blatant attempt to circumvent lawful directives of the Florida Public Service Commission.*

As you know, LifeConnex owes AT&T Florida a substantial past-due and unpaid balance for telecommunications services AT&T Florida provided it for resale under the applicable interconnection agreement. As a result of this past-due and unpaid balance, in June 2010, AT&T Florida notified LifeConnex that if all unpaid balances were not paid, LifeConnex would be disconnected. In response, LifeConnex filed a Request for Emergency Relief asking that the Commission prohibit AT&T Florida from suspending, discontinuing or terminating LifeConnex's service in Florida.

The Commission entered an Order requiring LifeConnex to post a \$1.4 million bond and to comply with the terms of the parties' interconnection agreement by paying all amounts billed by AT&T Florida (whether disputed or not) on a going-forward basis. LifeConnex failed to comply with the Commission's Order and was subsequently disconnected by AT&T Florida on August 9, 2010.

Prior to disconnection and pursuant to the Commission's order, LifeConnex advised its customers, via letter dated July 26, that their local telephone service would not be available after August 6, 2010 due to "a billing dispute between LifeConnex and its wholesale supplier." The very next day, however, LifeConnex advised its customers, via a different letter, that it was "able to resolve the situation", nothing would change on their account and the subscriber was required to take "NO ACTION".

After investigating the matter, AT&T Florida has learned that LifeConnex's "wholesale supplier" is American Dial Tone, but that American Dial Tone is classifying this service as residential service when it places its orders with AT&T Florida. American Dial Tone, therefore, is ordering residential service for resale pursuant to its interconnection agreement with AT&T Florida. Instead of reselling that residential service to residential end users, however, American Dial Tone is improperly offering that residential service to an affiliated business entity that does not even purport to be the end user of the service.¹

- ***The FCC and the Florida Commission have authorized restrictions on cross-class selling.***

In its *Local Competition Order*, the Federal Communications Commission ("FCC") held that pursuant to Section 251(c)(4) of the federal Act, state commissions have the authority to prevent resellers from reselling wholesale-priced residential services to business customers. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, First Report and Order (August 8, 1996) at Paragraph 962 ("We conclude that section 251(c)(4)(B) permits states to prohibit resellers from selling residential services to customers ineligible to subscribe to such services from the incumbent LEC. For example, this would prevent resellers from reselling wholesale-priced residential services to business customers."). See also 47 C.F.R. §51.813(a)(1) ("A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.").

Consistent with these FCC decisions, the Florida Commission has ordered that a cross-class selling prohibition is valid. *In re: Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corp., MCI Metro Access Transmission Services, Inc., American Communications Services, Inc. and American Communications Services of Jacksonville, Inc. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. concerning interconnection and resale under the Telecommunications Act of 1996*, Docket Nos. 960833-TP, 960846-TP, 960916-TP, Order No. PSC-96-1579-FOF-TP (issued December 31, 1996) at 60 the Commission ruled:

Upon consideration, we believe that certain cross-class selling restrictions are appropriate. In particular, we find appropriate restrictions that would limit resale of...residential services... to end users who are eligible to purchase such service directly from BellSouth. Thus, based on the evidence and arguments presented, we find that no restrictions on the resale of services shall be

¹ If American Dial Tone is not LifeConnex's "wholesale supplier", AT&T Florida is concerned that LifeConnex and American Dial Tone may have conspired to "slam" LifeConnex's customers and secretly transfer these customers to American Dial Tone without authorization in direct violation of Florida Commission Rule 25-4.118 and Section 8.2 of Attachment 1 (Resale) of the parties' interconnection agreement through which American Dial Tone certified that it will have end user authorization before placing an order with AT&T Florida.

allowed, except for restrictions applicable to the resale of...residential services... to end users who are eligible to purchase such service directly from BellSouth.²

- **American Dial Tone's interconnection agreement with AT&T Florida contains valid cross-class selling restrictions.**

The Commission-approved interconnection agreement between AT&T Florida and American Dial Tone provides that AT&T Florida will make telecommunications services available to American Dial Tone for resale "subject to effective and applicable FCC and Commission rules and orders" See ICA, Attachment 1 (Resale), §3.1, and it specifically states that the "resale of telecommunications services shall be **limited to users and uses conforming to the class of service restrictions.**" See ICA, Attachment 1 (Resale), § 4.1.1 (emphasis added). American Dial Tone, therefore, cannot "purchase at wholesale rates for resale, telecommunications services that [AT&T Florida] makes available only to residential customers" and then "offer such services to classes of customers that are not eligible to subscribe to such services from [AT&T Florida]." See 47 C.F.R. §51.613(a)(1). Because a business entity like LifeConnex is not eligible to subscribe to residential services from AT&T Florida, American Dial Tone cannot purchase residential services from AT&T at wholesale rates for resale and then offer those services to LifeConnex.

Additionally, the interconnection agreement provides that "[r]esold services can only be used in the same manner as specified in [AT&T Florida]'s Tariffs" and that resold services "are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of [AT&T Florida] in the appropriate section of [AT&T Florida]'s Tariffs." See ICA, Attachment 1, § 4.2. AT&T Florida's Tariff, in turn, provides that "[t]elephone equipment, facilities, and service are furnished to the subscriber for use by the subscriber" and "[t]he subscriber's service may be shared with, but not resold to, the following individuals as authorized by the subscriber for that specific service..." See Tariff §A2.2.1A.³ Moreover, "[i]n general, basic local exchange service as set forth in Section A2 of this Tariff is furnished for the exclusive use of the subscriber, employees, agents, representatives, or members of the subscriber's domestic establishment," and "[r]esale of local exchange service is permitted only under specific conditions as described in this Tariff." See Tariff §A23.1.1.A. Those "specific conditions" provide that "[r]esale is permitted where facilities permit and within the confines of specifically identified continuous property areas under the control of a single owner or management unit," *id.* §A23.1.2.B, a condition which clearly is not met when American Dial Tone purchases residential services from AT&T Florida for resale and then provides those services to a business entity like LifeConnex for end-users in various locations throughout AT&T Florida's service area.

Finally, the interconnection agreement provides that if American Dial Tone uses a resold telecommunications service "in a manner other than that for which the service was originally intended as described in [AT&T Florida's] retail tariffs, [American Dial Tone] has the responsibility to notify [AT&T Florida]." See ICA, Resale Attachment, §3.13. It further provides that if American Dial tone "desires to transfer any services hereunder to another provider of Telecommunications Service, or if [American Dial Tone] desires to assume hereunder any services provisioned by [AT&T Florida] to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions." See ICA, GTC, § 18.2. American Dial Tone failed to notify AT&T Florida that it was providing residential services it purchase from AT&T for resale to a business entity, and American Dial Tone and AT&T Florida have not "negotiated rates, terms and conditions" under which American Dial tone may transfer residential services AT&T Florida provides to American Dial Tone for resale to another service provider.


² See also *id.* at 57 ("The FCC's rules, 47 C.F.R. § 51.613, elaborate that restrictions may be imposed on cross-class selling and short term promotions.")

³ Tariff § A2.2.1B provides that services specified in the Tariff may be resold; however, "except as otherwise noted by the Florida Public Service Commission", interconnection agreements and the Tariff. As indicated, all three prohibit American Dial Tone from cross-class selling to its affiliate, LifeConnex.

Inasmuch as American Dial Tone and LifeConnex are violating state law, federal law, and AT&T Florida's Tariff as incorporated into the parties' interconnection agreement, AT&T Florida has the right to refuse service to American Dial Tone. See ICA, Attachment 1, § 3.9 ("Service is furnished subject to the condition that it will not be used for any unlawful purpose.") and ICA, Attachment 1, § 3.11 ("[AT&T Florida] can refuse service when it has grounds to believe that service will be used in violation of the law.").

Accordingly, based upon the foregoing, AT&T Florida hereby provides fifteen (15) day notice of suspension of services and thirty (30) day notice of disconnection of services.

Sincerely,



Eddie A. Reed, Jr.
Director - Interconnection Agreements

cc: Matt Feil, Esq.
Adam Teitzman, Florida Public Service Commission
Beth Salak, Florida Public Service Commission
Ann Cole, Florida Public Service Commission