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November 15, 2012

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

Re: Docket No. 100432-TP: Request for Emergency Relief and Complaint against BellSouth Telecommunications, Inc. d/b/a AT&T Florida by American Dial Tone, Inc.

Dear Ms. Cole:

Enclosed is an original and seven copies of BellSouth Telecommunications, LLC d/b/a AT&T Florida's Motion for Summary Final Order, which we ask that you file in the captioned docket.

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

Sincerely,

Tracy W. Hatch

cc: Parties of Record
Gregory R. Follensbee
Suzanne L. Montgomery

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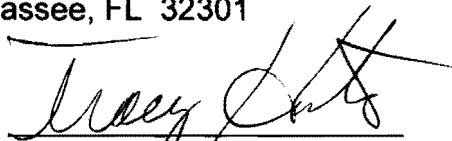
CERTIFICATE OF SERVICE
Docket No. 100432-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via (*) Electronic Mail and First Class U.S. Mail this 15th day of November, 2012 to the following:

Adam Teitzman (*)
Larry D. Harris (*)
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Florida Public Service
Commission
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515 East Park Avenue
Tallahassee, FL 32301


Tracy W. Hatch

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Emergency Relief and) Docket No.: 100432-TP
Complaint against BellSouth Telecommunications,)
Inc. d/b/a AT&T Florida by American Dial Tone, Inc.)
_____) Filed: November 15, 2012

AT&T FLORIDA’S MOTION FOR SUMMARY FINAL ORDER

I. Introduction

This is a case brought by ADT, a reseller CLEC, seeking Commission relief after it was caught improperly reselling AT&T Florida’s¹ residential service to its affiliate, LifeConnex,² in violation of its interconnection agreement with AT&T Florida and AT&T Florida’s General Subscriber Services Tariff, then in effect. ADT came up with this affiliate resale scheme to aid LifeConnex in circumventing a Commission Order requiring it to post a bond for \$1,400,000 it owed AT&T Florida or have its services disconnected. After it became aware of the scheme, AT&T Florida issued a breach notice to ADT and threatened to disconnect its services if it failed to timely cure the breach. ADT responded by commencing this action, seeking a Commission ruling that its scheme was not unlawful. The parties negotiated a Memorandum of Understanding, through which AT&T Florida agreed to refrain from disconnecting ADT’s service, in exchange for ADT disconnecting the offending lines and paying the wholesale business rate for those lines (approximately \$197,000) to AT&T Florida, to be held in a segregated account pending resolution of this docket. Those funds are currently being held by AT&T Florida.

¹ At the time this proceeding began, BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida”) was known as BellSouth Telecommunications, Inc. In July 2011, AT&T Florida became a limited liability company by operation of Georgia law.

² American Dial Tone, Inc. f/k/a Ganoco, Inc. (“ADT”) and LifeConnex Telecom, LLC f/k/a Swiftel, LLC (“LifeConnex”) are both subsidiaries of Associated Telecommunications Management Services, LLC (“ATMS”).

AT&T Florida now seeks a Summary Final Order disposing of this long dormant case in its favor, pursuant to § 120.57(1)(f), Fla. Stat., and Rule 28-106-2.4(4), Fla. Admin. Code. There is no genuine issue as to any material fact regarding ADT's unlawful use of AT&T Florida's residential service by reselling such service to its affiliate in violation of both the parties' interconnection agreement and AT&T Florida's tariff. For the reasons discussed below, the Commission should deny all relief ADT sought in its Complaint,³ dismiss the Complaint in its entirety, and award AT&T Florida the funds currently held in the segregated account.

II. Undisputed Facts

1. During the relevant time, ADT and LifeConnex were CLECs operating in the State of Florida. Both ADT and LifeConnex are owned by ATMS. *See generally* Docket No. 110082-TP.

2. ADT and AT&T Florida are parties to an interconnection agreement, entered on July 7, 2006, under which AT&T Florida agreed to provide certain wholesale telecommunications services to ADT for resale by ADT to retail end-users (the "ADT ICA"). ADT adopted the interconnection agreement between AT&T Florida and AmeriMex Communications Corp., which was approved by the Commission in Docket No. 050768-TP. The Commission approved the ADT ICA pursuant to 47 U.S.C. § 252(e) on October 26, 2006 through Docket No. 060522-TP. *See* Complaint ¶ 2. A copy of the adoption agreement between AT&T Florida and ADT is available as part of Docket No. 060522-TP, at <http://www.psc.state.fl.us/library/FILINGS/06/06718-06/06718-06.PDF>, and a copy of the interconnection agreement that ADT adopted is available as part of Docket No. 050768-TP, at

³ Hereinafter, ADT's Request for Emergency Relief and Complaint to Resolve Interconnection Agreement Dispute shall be referred to as the "Complaint."

<http://www.psc.state.fl.us/library/FILINGS/05/09709-05/09709-05.PDF>. The relevant pages of the ADT ICA are attached hereto as Exhibit 1.

3. Pursuant to the ICA, ADT ordered and AT&T Florida provided residential telecommunications services to ADT for resale by ADT to ADT's residential end-users. *See* Complaint ¶ 2. AT&T Florida billed ADT monthly for the residential resale services that ADT ordered and AT&T Florida provided to ADT at the residential service rate.

4. On January 8, 2010, AT&T Florida filed a Complaint and Petition for Relief against LifeConnex based upon LifeConnex's wrongful withholding of amounts due to AT&T Florida under the parties interconnection agreement; this complaint was assigned Docket No. 100021-TP (the "LifeConnex Docket").

5. On June 21, 2010, AT&T Florida filed a Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement in the LifeConnex Docket, wherein AT&T Florida notified the Commission that it had sent LifeConnex a letter stating that it would suspend and discontinue service to LifeConnex unless LifeConnex paid AT&T Florida certain past due balances within the time period to cure the nonpayment breach under the parties' interconnection agreement. In response, LifeConnex filed a Request for Emergency Relief seeking to prohibit AT&T Florida from suspending, discontinuing or terminating LifeConnex's service in Florida. *See generally* Docket No. 100021-TP.

6. On July 16, 2010, the Commission issued an Order requiring LifeConnex to post a \$1,400,000 bond in favor of AT&T Florida, requiring LifeConnex to pay future bills in full and, granting AT&T Florida authority to cease doing business with LifeConnex if LifeConnex fails to do so (the "LifeConnex Order"). *See* Complaint ¶ 7; *see also* Docket No. 100021-TP, Order No. PSC-10-0457-PCO-TP, at 8-10 (July 16, 2010).

7. After LifeConnex failed to post the bond within the time required by the Commission, AT&T Florida disconnected LifeConnex's service. *See* Complaint ¶ 8.

8. AT&T Florida subsequently learned that LifeConnex and ADT were engaged in a scheme to circumvent the Commission's LifeConnex Order whereby ADT stepped in as a "straw man" for its affiliate, and began purchasing residential service from AT&T Florida and reselling it to LifeConnex. In other words, ADT began purchasing residential service from AT&T Florida at wholesale, not just for resale to end users of ADT, but also for its affiliate, LifeConnex, which is a business entity. *See* Complaint ¶¶ 6,8; *see also* ADT's Brief in Support of Preliminary Injunction, filed in Case No. 8:10-CV-2194-T-27MAP, at 2 ("For a short time (a matter of months), ADT is also purchasing residential lines from AT&T Florida which are used by LifeConnex, an affiliate of ADT, to provide retail service to its own remaining residential customers in Florida."). A copy of this brief are attached hereto as Exhibit 2.

9. Upon discovering what ADT was doing, AT&T Florida sent a "Suspension and Disconnection Notice" dated September 13, 2010, detailing ADT's contract and tariff breaches and advising ADT that AT&T Florida intended to suspend order processing for ADT on September 29, 2010 and disconnect ADT's services on October 14, 2010. *See* 9/13/2010 Letter, attached as Exhibit 3.

10. ADT neither cured its breaches in the time frame set forth in the breach letter nor sought relief at the Commission. Instead, ADT sent a letter to AT&T Florida on September 23, 2010 admitting that it was reselling residential service to its business affiliate, LifeConnex, and disputing the legal basis of AT&T Florida's position. *See* 9/23/2010 Letter, attached as Exhibit 4.

11. Thereafter, ADT commenced this proceeding, seeking a Commission declaration that its scheme with its affiliate was proper under the interconnection agreement and AT&T Florida's Tariff, and otherwise completely lawful.⁴ *See generally* Complaint.

12. On November 3, 2010, AT&T Florida suspended ADT's order processing. *See* Complaint at 1; *see also* Affidavit of Marc Cathey ¶ 2, attached as Exhibit 5.

13. Thereafter, the parties negotiated an interim resolution to provide a temporary solution to allow ADT to remain in service during the pendency of this docket. On December 1, 2010, AT&T Florida and ADT entered a Memorandum of Understanding in which they agreed, *inter alia*, as follows:

- a. ADT agreed to pay AT&T Florida \$197,081.30 by December 1, 2010, which AT&T Florida would place into an interest-bearing segregated account.
- b. ADT agreed to disconnect the service to LifeConnex.
- c. AT&T Florida agreed to restore ADT's order processing.

See Memorandum of Understanding ¶¶ 1(a), 1(c), 3, 4. The Memorandum of Understanding is attached to the Affidavit of Marc Cathey as Exhibit A.⁵

14. The amount of the payment in the segregated account represents the wholesale business rate (\$29.80) for the local service lines that AT&T Florida sold to ADT, which ADT in turn resold to LifeConnex. *See* Affidavit of Marc Cathey ¶ 4.

⁴ ADT also sought an injunction in the United States District Court for the Middle District of Florida, which was denied on November 3, 2010. *See* Complaint ¶ 10. The District Court also *sua sponte* dismissed ADT's Complaint without prejudice. A copy of the District Court order is attached as Exhibit F to AT&T Florida's Response, Answer and Affirmative Defenses in this proceeding (filed on Nov. 12, 2010).

⁵ The Memorandum of Understanding has an Exhibit A, which is a list of phone numbers. This was previously filed with the Commission on December 2, 2010 under a Notice of Intent to Request Confidential Classification. The Commission approved that Request for Confidential Classification on February 8, 2011. The details of that exhibit are not relevant to this motion, and therefore AT&T Florida is not separately filing it again.

15. ADT made the necessary payment to AT&T Florida as required by the Memorandum of Understanding, and AT&T Florida placed the funds into a segregated account. With interest, the account is now \$197,412.74. *See id.* ¶ 5. Pursuant to the Memorandum of Understanding, AT&T Florida restored ADT's order processing in December 2010. *See id.* ¶ 6.

16. With regard to disbursement of the funds in the segregated account, ADT and AT&T Florida agreed:

Notwithstanding any provisions of the ICA, the Parties agree that AT&T Florida will maintain the funds in the segregated account until they mutually agree that it is no longer needed or until Docket No. 100432-TP pending in the Florida Public Service Commission is finally resolved through final appeal or settlement. Disbursements from the segregated account shall be made only in accordance with written authorization by both Parties hereto or in accordance with written order of the Florida Public Service Commission. All interest earned on funds in the segregated account shall be disbursed to ADT and/or AT&T Florida in the same proportion as the principal.

Memorandum of Understanding ¶ 1(e).

17. AT&T Florida has since disconnected ADT's service for reasons unrelated to the issues in this docket. Specifically, the Commission revoked ADT's certificate effective November 30, 2011, after it failed to comply with the provisions of a settlement agreement it had reached with the Commission on an unrelated matter.⁶ *See* Staff Memorandum, Docket No. 110082-TP (Dec. 1, 2011), attached as Exhibit 6. Because ADT was no longer authorized to do business as a CLEC in Florida, AT&T Florida could no longer sell it residential local service for resale to end users. *See* Affidavit of Marc Cathey ¶ 7.

III. Argument

A. Standard for Summary Final Order

Under Rule 28-106.204(4), Fla. Admin. Code, "[a]ny party may move for summary final

⁶ According to the on-line records of the Florida Department of State, ADT was administratively dissolved as a corporation effective September 28, 2012, for failure to file an annual report.

order whenever there is no genuine issue of material fact.” The purpose of summary final order is to avoid the expense and delay of trial when no dispute exists as to the material facts. *See In re: Request for arbitration concerning complaint of ITC DeltaCom Commc 'ns, Inc. against BellSouth Telecoms., Inc. for breach of interconnection terms, and request for immediate relief*, Docket No. 991946-TP, Order No. PSC-00-1540-FOF-TP, at 11 (Aug. 24, 2000). This is particularly appropriate here, where the case has been long dormant and the plaintiff has shown no interest in more than a year in pursuing this case.

When the movant presents a showing that no material fact on any issue is disputed, the burden shifts to the opponent to demonstrate the falsity of the showing; if the opponent cannot do so, a summary order should be entered. *See id.* Thus, there are two requirements for a summary final order: (1) there is no genuine issue of material fact; and (2) a party is entitled to judgment as a matter of law. As demonstrated below, AT&T Florida satisfies both requirements in this proceeding and is entitled to judgment in its favor.

B. ADT's Claims Fail as a Matter of Law

The shell game LifeConnex and ADT chose to play to avoid the effect of the Commission's LifeConnex Order clearly violates state law, federal law, the parties' interconnection agreement, and AT&T Florida's tariff. There is no dispute that ADT has engaged in improper cross-class selling and, therefore, ADT is entitled to no relief whatsoever. The Commission should enter a summary final order in favor of AT&T Florida.

1. The “Wholesale Arrangement” Between ADT and LifeConnex Violates Order No. PSC-10-0457-PCO-TP Issued in Docket No. 100021-TP

The Commission ordered LifeConnex to comply with the provisions of its interconnection agreement with AT&T Florida and to post a \$1,400,000 bond as a condition of continuing to receive services from AT&T Florida. Rather than comply with the Commission's

Order, two ATMS companies – LifeConnex and ADT – conspired to violate the Commission’s Order by LifeConnex’s use of ADT as a “wholesale provider.” This scenario was nothing more than an end run around the Commission’s LifeConnex Order and it allowed LifeConnex to avoid its obligations under that Order to post a \$1,400,000 bond with AT&T Florida and to comply with its payment obligations as set forth in its interconnection agreement. After all, when ADT was acting as its straw man, LifeConnex was not receiving different services from a different provider than it was before. To the contrary, the scheme these ATMS companies hatched allowed LifeConnex to continue to receive exactly the same underlying service from exactly the same underlying provider, AT&T Florida, as it did before it failed to comply with the Order. The Commission should not tolerate the circumvention of its Order by these companies.⁷

2. The FCC and Commission Authorize Restrictions on Cross-Class Selling

In AT&T Florida’s tariff, which was in effect during the relevant time and had the force and effect of law,⁸ residential service is one “class” of telecommunications service, and business service is another “class” of telecommunications service. The Tariff defined “Class of Service” as a “description of telephone service furnished a subscriber in terms such as: (3) Character of

⁷ LifeConnex’s actions in ordering residential services via ADT’s ICA with AT&T Florida, while LifeConnex had an existing interconnection agreement with AT&T Florida, is also an improper attempt to substitute the terms of LifeConnex’s interconnection agreement with the terms of ADT’s ICA. This would violate the spirit, if not the letter, of the FCC’s “all-or-nothing” rule. See Second Report and Order, *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 19 F.C.C. Rc’d 13494, ¶ 10 (July 13, 2004) (“A requesting carrier may only adopt an effective interconnection agreement in its entirety, taking all rates, terms and conditions of the adopted agreement.”). It also would, in effect, allow LifeConnex to adopt an interconnection agreement with different terms and conditions while it is in breach of its existing interconnection agreement. The Commission recently held that it would not permit a CLEC to do so. See *In re: Notice of adoption of existing interconnection, unbundling, resale, and collocation agreement between BellSouth Telecomms., Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Image Access, Inc. d/b/a NewPhone, Inc. by Express Phone Serv., Inc.*, Docket No. 110087-TP, Order No. PSC-12-0390-FOF-TP (July 30, 2012).

⁸ AT&T Florida withdrew its tariff effective November 1, 2011, following the enactment of Law 2011-36. While it was in effect, the tariff had the force and effect of law. See *MCI Telecom. Corp. v. Best Tel. Co.*, 898 F. Supp. 868, 872 (S.D. Fla. 1994). The relevant pages of the tariff are attached as Exhibit 7.

Use: Business or residence.” Tariff, § A1, Definition of Terms. ADT has admitted that it purchased a residential service from AT&T Florida, resold that residential service to LifeConnex, an affiliated business entity, and that LifeConnex then resold the service to LifeConnex’s end user customers. This is a pure example of improper cross-class selling that is prohibited under federal law, state law, the parties’ interconnection agreement, and AT&T Florida’s Tariff.

Both the FCC and this Commission have authorized restrictions on improper cross-class selling. In its *Local Competition Order*, the FCC held that 47 U.S.C. § 251(c)(4) authorizes state commissions to prevent resellers from reselling wholesale-priced residential services to business customers. See First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C. Rcd 15499, ¶ 962 (Aug. 8, 1996) (“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.”). This authorization is further codified in the FCC’s regulations implementing the 1996 Act. Through 47 C.F.R. § 51.613(a)(1), the FCC specifically granted “state commission[s]” the authority to “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 this FCC authorization, this Commission has ruled that a cross-class selling prohibition is valid:

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 no restrictions on the resale of services shall be allowed, except for restrictions applicable to the resale of . . . residential services . . . to end users who are eligible to purchase such service directly from BellSouth.

In re: Petitions by AT&T Commc'sn of the S. States, Inc., et al. for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecomms., Inc. concerning interconnection and resale under the Telecommunications Act of 1996, Docket Nos. 960833-TP, 960846-TP, 96-0916-TP, Order No. PSC-96-1579-FOF-TP, at 60 (Dec. 31, 1996).

3. ADT Breached its ICA with AT&T Florida by Cross-Class Selling to LifeConnex

The ICA between AT&T Florida and ADT provides that AT&T Florida will make telecommunications services available to ADT for resale “[s]ubject to effective and applicable FCC and Commission rules and orders.” ICA, Attach. 1 (Resale), § 3.1. As permitted by the FCC and this Commission, the ICA specifically states that the “resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.” *Id.* § 4.1.1 (emphasis added). ADT, 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].” 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, ADT cannot purchase residential services from AT&T Florida at wholesale rates for resale and then offer those services to LifeConnex.

Additionally, the ICA 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.” ICA, Attach. 1 (Resale), § 4.2. AT&T Florida’s General Subscriber Services Tariff, which was in effect during the relevant time, provided 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 authorized by the subscriber for that specific service.”⁹ Tariff § A2.2.1.A. 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.” *Id.* § 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 ADT purchases residential services from AT&T Florida for resale and then provides those services to a business entity like LifeConnex. These tariff provisions, of course, have the force and effect of law. *See MCI Telecom. Corp.*, 898 F. Supp. at 872.

Despite its acknowledgement that it “may not purchase residential lines from AT&T Florida and resell those lines to end users who are not residential customers,” Complaint ¶ 22, ADT contends that the ICA “expressly permits ADT to ‘purchase resale services from BellSouth [AT&T] for its own use in operating its business.’” Complaint ¶ 24 n.13. It then argues that the “business” of ADT includes the provision of wholesale, residential service to its affiliate,

⁹ Tariff § A2.2.1B allows services in the Tariff to be resold, “except as otherwise noted by the Florida Public Service Commission,” interconnection agreements, and the tariff. As discussed, all three exceptions prohibit ADT from cross-class selling of residential service to its business affiliate, LifeConnex.

LifeConnex. *See id.* However, this provision simply does not allow ADT to buy residential service at wholesale rates and provide that residential service to another CLEC (in this instance LifeConnex) for that CLEC to in turn, sell to that CLEC's customers. Instead, this provision would allow ADT to, for example, buy business lines at wholesale rates, for its employees to use to make business calls. It is clear that the "for its own use in operating its business" provision (ICA, Attach. 1 (Resale), § 3.2) only allows ADT to order telephone lines for "its business" not to order lines for another company to resell.

Finally, the ICA provides that if ADT 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, [ADT] has the responsibility to notify [AT&T Florida]." ICA, Attach. 1 (Resale), § 3.13. It further provides that if ADT "desires to transfer any services hereunder to another provider of Telecommunications Service, or if [ADT] 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." ICA, General Terms & Conditions, § 18.2. ADT failed to notify AT&T Florida that it was providing residential services it purchased from AT&T Florida for resale to a business entity, and ADT and AT&T Florida have not "negotiated rates, terms and conditions" under which ADT may transfer residential services AT&T Florida provides to ADT for resale to another provider.

4. AT&T Florida's Breach Notice to ADT was Appropriate and Consistent with its Contract Rights

ADT's actions were in breach of its ICA obligations and in violation of AT&T Florida's tariff. AT&T Florida's breach letter was therefore fully appropriate, and ADT's claims to the

contrary fail as a matter of law. Indeed, numerous provisions of the ICA grant AT&T Florida the right to refuse service to ADT and authorized AT&T Florida's breach notice:

- [AT&T Florida] can refuse service when it has grounds to believe that service will be used in violation of the law. ICA, Attach. 1 (Resale), § 3.11.
- Service is furnished subject to the condition that it will not be used for any unlawful purpose. *Id.* § 3.9.
- In addition to as otherwise set forth in this Agreement, [AT&T Florida] reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of [AT&T Florida]'s facilities or service, abuse of [AT&T Florida's] facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. *Id.*, General Terms & Conditions, § 2.4.
- [AT&T Florida] reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of [AT&T Florida]'s facilities, abuse of [AT&T Florida's] facilities, or any other violation of noncompliance by [ADT] of the rules and regulations of [AT&T Florida]'s tariffs. *Id.*, Attach. 7 (Billing), § 1.5.2

In the LifeConnex Order, the Commission interpreted Section 1.5.2 of Attachment 7 of the LifeConnex and AT&T Florida interconnection agreement (which is identical to the same section in the ADT ICA) to allow AT&T Florida to take unilateral action to suspend and disconnect a CLEC in the event of non-compliance with the provisions of the interconnection agreement. As the Commission found:

[T]he plain language of the ICA supports AT&T's right to take the type of action outlined in the Notice of Commencement of Treatment. The language of Sections 1.5 through 1.5.5 of Attachment 7 to the parties' ICA clearly lays out the procedures AT&T is entitled to take in the event of LifeConnex's non-compliance with the ICA, including billing provisions. Given our finding (based on the pleadings to date and not prejudging facts that may be developed at hearing) that LifeConnex is not currently complying with the terms of the ICA, and the ICA's language setting forth AT&T's rights, we find no reason to conclude the language of the ICA prohibits the actions set forth in AT&T's Notice of Commencement of Treatment.

Order No. PSC-10-0457-PCO-TP, at 6-7.

The provisions of the ADT ICA cited above unambiguously grant AT&T Florida the right to suspend and disconnect ADT's services. When, as here, the ICA, is an "unambiguous agreement," it "must be interpreted according to its terms." *Paddock v. Bay Concrete Indus., Inc.*, 154 So. 2d 313 (Fla. 2d DCA 1963); *see also Brooks v. Green*, 993 So. 2d 58 (Fla. 1st DCA 2008) ("It is established law in this state that a contract must be applied as written, absent an ambiguity or some illegality.").

AT&T Florida's breach notice and threat of disconnection are fully supported by the law and undisputed facts, and ADT's claims fail as a matter of law.

C. The Commission Should Award AT&T Florida the Funds Held in the Segregated Account

During the pendency of this proceeding, AT&T Florida and ADT reached an interim resolution, whereby ADT paid AT&T Florida the wholesale business rate for the lines that ADT resold to LifeConnex, a business customer. *See Memorandum of Understanding ¶¶ 1(a)*. That was the proper rate for those lines because ADT's customer – LifeConnex – is a business entity. To hold that the residential rate applies would be to authorize ADT's cross-class selling of residential lines to LifeConnex. For the reasons stated above, that would be contrary to AT&T Florida's tariff and the ADT ICA.

It is appropriate that ADT be required to pay the wholesale business rate for the local service lines that it purchased from AT&T Florida for resale to LifeConnex, its affiliated business entity. The Commission, therefore, should award the amounts paid by ADT pursuant to the Memorandum of Understanding to AT&T Florida.

IV. Conclusion

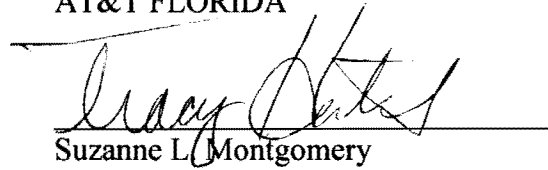
For the foregoing reasons, there is no genuine issue as to any material fact, and AT&T Florida is entitled to judgment as a matter of law on the claims brought by ADT, and ADT is entitled to no relief whatsoever.

WHEREFORE, AT&T Florida requests that the Commission:

1. issue a Summary Final Order that finds in favor of AT&T Florida on the claims in ADT's Complaint;
2. order that AT&T Florida is entitled to the funds in the segregated account; and
3. grant such other and further relief deemed appropriate by the Commission.

Respectfully submitted this __ day of November, 2012.

AT&T FLORIDA



Suzanne L. Montgomery
Authorized House Counsel No. 94116
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c/o Gregory R. Follensbee
150 South Monroe Street
Suite 400
Tallahassee, Florida 32301
(305) 347-5558

EXHIBIT 1

BELLSOUTH® / CLEC Agreement

Customer Name: Ganoco, Inc. dba American Dial Tone

Ganoco, Inc. dba American Dial Tone - 2006 ICA	2
Adoption Papers	3
Signature Page	5

By and Between

BellSouth Telecommunications, Inc.

And

Ganoco, Inc. dba American Dial Tone

AGREEMENT

This Agreement, which shall become effective thirty (30) days following the date of the last signature of both Parties ("Effective Date"), is entered into by and between Ganoco, Inc. dba American Dial Tone ("American Dial Tone"), a Florida corporation on behalf of itself, and BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

WHEREAS, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement in its entirety; and

WHEREAS, American Dial Tone has requested that BellSouth make available the interconnection agreement in its entirety executed between BellSouth and AmeriMex Communications Corp. dated September 22, 2005 for the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee.

NOW, THEREFORE, in consideration of the promises and mutual covenants of this Agreement, American Dial Tone and BellSouth hereby agree as follows:

1. American Dial Tone and BellSouth shall adopt in its entirety the AmeriMex Communications Corp. Interconnection Agreement dated September 22, 2005 and any and all amendments to said agreement executed and approved by the appropriate state regulatory commission as of the date of the execution of this Agreement. The AmeriMex Communications Corp. Interconnection Agreement and all amendments are attached hereto as Exhibit 1 and incorporated herein by this reference. The adoption of this agreement with amendment(s) consists of the following:

ITEM	NO. PAGES
Adoption Papers	5
AmeriMex Communications Corp. Agreement	869
TOTAL	874

2. In the event that American Dial Tone consists of two (2) or more separate entities as set forth in the preamble to this Agreement, all such entities shall be jointly and severally liable for the obligations of American Dial Tone under this Agreement.

3. The term of this Agreement shall be from the Effective Date as set forth above and shall expire as set forth in Section 2.1 of the AmeriMex Communications Corp. Interconnection Agreement. For the purposes of determining the expiration date of this Agreement pursuant to Section 2.1 of the AmeriMex Communications Corp. Interconnection Agreement, the effective date shall be September 22, 2005.

4. American Dial Tone shall accept and incorporate any amendments to the AmeriMex Communications Corp. Interconnection Agreement executed as a result of any final judicial, regulatory, or legislative action.

5. Every notice, consent, approval, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered in person or given by postage prepaid mail, address to:

BellSouth Telecommunications, Inc.

BellSouth Local Contract Manager
600 North 19th Street, 8th floor
Birmingham, Alabama 35203

and

ICS Attorney
Suite 4300
675 W. Peachtree St.
Atlanta, GA 30375

Ganoco, Inc. dba American Dial Tone

Stephen D. Klein
2323 Curlew Road
Suite 7C
Dunedin, FL 34698
Contact: 727-450-4980
Email: steve@americandialtone.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party. Where specifically required, notices shall be by certified or registered mail. Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

BellSouth Telecommunications, Inc.

By: Kristen E. Shore

Name: Kristen E. Shore

Title: Director

Date: 1/7/06

Ganoco, Inc, dba American Dial Tone

By: Stephen D. Klein

Name: STEPHEN D. KLEIN

Title: ITS PROS

Date: 12-15-05

**AGREEMENT
GENERAL TERMS AND CONDITIONS**

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and AmeriMex Communications Corp. (AmeriMex), a Georgia corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or AmeriMex or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

WHEREAS, AmeriMex is or seeks to become a CLEC authorized to provide telecommunications services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and

WHEREAS, pursuant to Sections 251 and 252 of the Act; AmeriMex wishes to purchase certain services from BellSouth; and

WHEREAS, Parties wish to interconnect their facilities, exchange traffic, and perform Local Number Portability ("LNP") pursuant to Sections 251 and 252 of the Act as set forth herein; and

NOW THEREFORE, in consideration of the mutual agreements contained herein, BellSouth and AmeriMex agree as follows:

Definitions

Affiliate is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or equivalent thereof) of more than 10 percent.

Commission is defined as the appropriate regulatory agency in each state of BellSouth's nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within BellSouth's franchised area.

shall not continue on a month to month basis but shall be deemed terminated as of the expiration date hereof.

2.4 In addition to as otherwise set forth in this Agreement, BellSouth reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of BellSouth's facilities or service, abuse of BellSouth's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due.

2.5 If, at any time during the term of this Agreement, BellSouth is unable to contact AmeriMex pursuant to the Notices provision hereof or any other contact information provided by AmeriMex under this Agreement, and there are no active services being provided under this Agreement, then BellSouth may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to AmeriMex pursuant to the Notices section hereof.

3. Nondiscriminatory Access

When AmeriMex purchases Telecommunications Services from BellSouth pursuant to Attachment 1 of this Agreement for the purposes of resale to End Users, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides to others, including its End Users. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by BellSouth to AmeriMex shall be at least equal to that which BellSouth provides to itself and shall be the same for all Telecommunications carriers requesting access to that Network Element. The quality of the interconnection between the network of BellSouth and the network of AmeriMex shall be at a level that is equal to that which BellSouth provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within BellSouth's network and shall extend to a consideration of service quality as perceived by BellSouth's End Users and service quality as perceived by AmeriMex.

4 Court Ordered Requests for Call Detail Records and Other Subscriber Information

4.1 Subpoenas Directed to BellSouth. Where BellSouth provides resold services for AmeriMex, or, if applicable under this Agreement, switching, BellSouth shall respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to AmeriMex End Users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request. BellSouth shall maintain such information for AmeriMex End Users for the same length of time it maintains such information for its own End Users.

4.2 Subpoenas Directed to AmeriMex. Where BellSouth is providing resold services to AmeriMex, or, if applicable under this Agreement, switching, then AmeriMex agrees that in those cases where AmeriMex receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to AmeriMex End Users, and where AmeriMex does not have the requested information, AmeriMex will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth for handling in accordance with 4.1 above.

4.3 In all other instances, where either Party receives a request for information involving the other Party's End User, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

5 **Liability and Indemnification**

5.1 AmeriMex Liability. In the event that AmeriMex consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using AmeriMex's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of AmeriMex under this Agreement.

5.2 Liability for Acts or Omissions of Third Parties. Neither Party shall be liable to the other Party for any act or omission of another entity providing any services to the other Party.

5.3 Limitation of Liability. Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to AmeriMex pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to AmeriMex pursuant to this Agreement.

5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the End User or third party for (i) any loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first

the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

- 7.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees of Recipient with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipient will not make any copies of the Information inspected by it.
- 7.3 Exceptions. Recipient will not have an obligation to protect any portion of the Information which:
- 7.3.1 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 7.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.
- 7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

8 Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper

implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9 Taxes

9.1 Definition. For purposes of this Section, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefore, excluding (a) any taxes levied on either Party’s corporate existence, status or income, (b) any corporate franchise taxes or (c) tax on property.

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party. Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.

9.2.1 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

9.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party. Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

9.3.1 To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed. If the providing Party fails to bill or to collect any taxes or fees herein, then as between the providing Party and purchasing Party, the providing Party shall be liable for any penalty assessed with respect to such uncollected taxes or fees by such authority.

9.3.2 If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or

the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

17 Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

18 Assignments and Transfers

18.1 Any assignment by either Party to any entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. Such consent shall not be unreasonably withheld, delayed or conditioned. If the assignee is an assignee of AmeriMex, the assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that AmeriMex is entitled to provide Telecommunications Service. After BellSouth's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, AmeriMex shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) AmeriMex pays all bills, past due and current, under this Agreement, or (2) AmeriMex's assignee expressly assumes liability for payment of such bills.

18.2 In the event that AmeriMex desires to transfer any services hereunder to another provider of Telecommunications Service, or AmeriMex desires to assume hereunder any services provisioned by BellSouth to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

19 Notices

19.1 With the exception of billing notices, governed by Attachment 7, every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

Attachment 1

Resale

3. General Provisions

- 3.1 All of the negotiated rates, terms and conditions set forth in this Attachment pertain to the resale of BellSouth's retail telecommunications services and other services specified in this Attachment. Subject to effective and applicable FCC and Commission rules and orders, BellSouth shall make available to AmeriMex for resale those telecommunications services BellSouth makes available, pursuant to its General Subscriber Services Tariff and Private Line Services Tariff, to customers who are not telecommunications carriers.
- 3.1.1 When AmeriMex provides Resale service in a cross boundary area (areas that are part of the local serving area of another state's exchange) the rates, regulations and discounts for the tariffing state will apply. Billing will be from the serving state.
- 3.1.2 In Tennessee, if AmeriMex does not resell Lifeline service to any End Users, and if AmeriMex agrees to order an appropriate Operator Services/Directory Assistance block as set forth in BellSouth's General Subscriber Services Tariff, the discount shall be 21.56%.
- 3.1.2.1 In the event AmeriMex resells Lifeline service to any End User in Tennessee, BellSouth will begin applying the 16% discount rate to all services. Upon AmeriMex and BellSouth's implementation of a billing arrangement whereby a separate Master Account (Q-account) associated with a separate Operating Customer Number (OCN) is established for billing of Lifeline service End Users, the discount shall be applied as set forth in 3.1.2 preceding for the non-Lifeline affected Master Account (Q-account).
- 3.1.2.2 AmeriMex must provide written notification to BellSouth within 30 days prior to either providing its own operator services/ directory services or orders the appropriate operator services/directory assistance blocking, to qualify for the higher discount rate of 21.56%.
- 3.2 AmeriMex may purchase resale services from BellSouth for its own use in operating its business. The resale discount will apply to those services under the following conditions:
- 3.2.1 AmeriMex must resell services to other End Users.
- 3.2.2 AmeriMex cannot be a competitive local exchange telecommunications company for the single purpose of selling to itself.
- 3.3 AmeriMex will be the customer of record for all services purchased from BellSouth. Except as specified herein, BellSouth will take orders from, bill and receive payment from AmeriMex for said services.

(Automatic Location Identification/Location Information) databases used to support 911/E911 services.

- 3.22 BellSouth shall bill, and AmeriMex shall pay, the End User line charge associated with implementing Number Portability as set forth in BellSouth's FCC No. 1 tariff. This charge is not subject to the wholesale discount.
- 3.23 Pursuant to 47 CFR Section 51.617, BellSouth shall bill to AmeriMex, and AmeriMex shall pay, the End User common line charges identical to the End User common line charges BellSouth bills its End Users.
- 4. BellSouth's Provision of Services to AmeriMex**
- 4.1 Resale of BellSouth services shall be as follows:
- 4.1.1 The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.
- 4.1.2 Hotel and Hospital PBX services are the only telecommunications services available for resale to Hotel/Motel and Hospital End Users, respectively. Similarly, Access Line Service for Customer Provided Coin Telephones is the only local service available for resale to Payphone Service Provider (PSP) customers. Shared Tenant Service customers can only be sold those local exchange access services available in BellSouth's A23 Shared Tenant Service Tariff in the states of Florida, Georgia, North Carolina and South Carolina, and in A27 in the states of Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
- 4.1.3 BellSouth reserves the right to periodically audit services purchased by AmeriMex to establish authenticity of use. Such audit shall not occur more than once in a calendar year. AmeriMex shall make any and all records and data available to BellSouth or BellSouth's auditors on a reasonable basis. BellSouth shall bear the cost of said audit. Any information provided by AmeriMex for purposes of such audit shall be deemed Confidential Information pursuant to the General Terms and Conditions of this Agreement.
- 4.2 Subject to Exhibit A hereto, resold services can only be used in the same manner as specified in BellSouth's Tariffs. Resold services are subject to the same terms and conditions as are specified for such services when furnished to an individual End User of BellSouth in the appropriate section of BellSouth's Tariffs. Specific tariff features (e.g. a usage allowance per month) shall not be aggregated across multiple resold services.
- 4.3 AmeriMex may resell services only within the specific service area as defined in its certificate of operation approved by the Commission.

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 - 4.3 AmeriMex may resell services only within the specific service area as defined in its certificate of operation approved by the Commission.

- 3.8 BellSouth will allow AmeriMex to designate up to 100 intermediate telephone numbers per CLLIC, for AmeriMex's sole use. Assignment, reservation and use of telephone numbers shall be governed by applicable FCC rules and regulations. AmeriMex acknowledges that there may be instances where there is a shortage of telephone numbers in a particular CLLIC and BellSouth has the right to limit access to blocks of intermediate telephone numbers. These instances include: 1) where jeopardy status has been declared by the North American Numbering Plan (NANP) for a particular Numbering Plan Area (NPA); or 2) where a rate center has less than six months supply of numbering resources.
- 3.9 Service is furnished subject to the condition that it will not be used for any unlawful purpose.
- 3.10 Service will be discontinued if any law enforcement agency advises that the service being used is in violation of the law.
- 3.11 BellSouth can refuse service when it has grounds to believe that service will be used in violation of the law.
- 3.12 BellSouth will cooperate with law enforcement agencies with subpoenas and court orders relating to AmeriMex's End Users, pursuant to Section 6 of the General Terms and Conditions.
- 3.13 If AmeriMex or its End Users utilize a BellSouth resold telecommunications service in a manner other than that for which the service was originally intended as described in BellSouth's retail tariffs, AmeriMex has the responsibility to notify BellSouth. BellSouth will only provision and maintain said service consistent with the terms and conditions of the tariff describing said service.
- 3.14 Facilities and/or equipment utilized by BellSouth to provide service to AmeriMex remain the property of BellSouth.
- 3.15 White page directory listings for AmeriMex End Users will be provided in accordance with Section 8 below.
- 3.16 Service Ordering and Operations Support Systems (OSS)
- 3.16.1 AmeriMex must order services through resale interfaces, i.e., the Local Carrier Service Center (LCSC) and/or appropriate Complex Resale Support Group (CRSG) pursuant to this Agreement. BellSouth has developed and made available the interactive interfaces by which AmeriMex may submit a Local Service Request (LSR) electronically as set forth in Attachment 6 of this Agreement. Service orders will be in a standard format designated by BellSouth.
- 3.16.2 LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic charge as set forth in Exhibit D of this Attachment. An individual LSR

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- 3.16.2 LSRs submitted by means of one of these interactive interfaces will incur an OSS electronic charge as set forth in Exhibit D of this Attachment. An individual LSR

Attachment 7

Billing

- 1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:
- 1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.
- 1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's End Users or customers. Additionally, at the time of Discontinuance, BellSouth will remove any Local Service Freezes in place on the billed Party's End Users.
- 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.
- 1.5.2 BellSouth reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of BellSouth facilities or service, abuse of BellSouth facilities, or any other violation or noncompliance by AmeriMex of the rules and regulations of BellSouth's tariffs.
- 1.5.3 Suspension. If payment of undisputed amounts due as described herein is not received by the bill date in the month after the original bill date, i.e., the same date in the following month as the bill date, or as required in Section 1.3 in the case of security deposits, BellSouth will provide written notice to AmeriMex that services will be Suspended if payment of such undisputed amounts, and all other undisputed amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above, or in the case of a security deposit request, in the manner set forth in Section 1.3.1: (1) within seven (7) days following such notice for CABS billed services; (2) within fifteen (15) days following such notice for CRIS and IBS billed services; and (3) within seven (7) days following such notice for security deposit requests in accordance with Notices Section of the General Terms and Conditions.
- 1.5.3.1 The Suspension notice shall also provide that all past due undisputed charges for CRIS and IBS billed services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CRIS and IBS billed services.
- 1.5.3.2 For CABS billed services, BellSouth will provide a Discontinuance notice that is separate from the Suspension notice, that all past due undisputed charges for CABS billed Services, and all other undisputed amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed services.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

AMERICAN DIAL TONE, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
BELLSOUTH TELECOMMUNICATIONS,)	CIVIL ACTION FILE NO:
INC. D/B/A AT&T FLORIDA,)	8:10-CV-2194-T-27MAP
)	
Defendant.)	
)	
)	
)	

ADT'S BRIEF IN SUPPORT OF PRELIMINARY INJUNCTION

Plaintiff American Dial Tone, Inc. ("ADT") submits the following brief in support of its request for a preliminary injunction in order to maintain the status quo pending this Court's determination of the merits of ADT's claims. In support thereof, ADT states as follows:

I. Preliminary Statement

Plaintiff ADT has filed a Verified Complaint seeking injunctive relief and damages against Defendant BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") for AT&T's breach of its interconnection agreement with ADT. In essence, the dispute between the parties is simply a billing dispute: whether ADT should pay a residential rate or a business rate for a small number of lines (approximately 5% of the total lines) purchased from AT&T and resold by ADT's affiliate, Life Connex, to residential customers. Based on AT&T's position in that dispute, AT&T threatened and still plans to unilaterally terminate its interconnection agreement by which ADT provides telephone services to over 18,500 Florida customers (who

have nothing to do with ADT's relation with Life Connex). AT&T's actions are not warranted by, and in fact are in direct contravention of, the interconnection agreement. Accordingly, a preliminary injunction is appropriate and necessary in order to prevent irreparable harm to ADT and its customers.

II. Factual Background

ADT provides retail telephone service to over 18,500 residential customers in Florida. Virtually all of ADT's subscribers receive some kind of federal or state assistance and, because of prior unpaid telephone bills, cannot obtain telephone service from the "incumbent" telephone company (usually, AT&T) serving the area. Affidavit of Thomas E. Biddix at ¶ 3.

ADT is a "prepay" carrier. Each customer must prepay for service, one month at a time. When a customer pays for service, his line is activated. If, at the end of the month, the customer fails to prepay for the following month, his service is interrupted. When the customer pays for another month, service is restored. *Id.* at ¶ 4.

ADT serves its customers by purchasing wholesale residential telephone services from Defendant AT&T and reselling those services to residential end users. ADT purchases those services from AT&T pursuant to an "interconnection agreement" (the "Agreement"). (A true and correct copy of the relevant portions of the Agreement is attached as Exhibit A to the earlier-filed Declaration of Tom Biddix). *See* Verified Complaint at ¶ 5.

For a short time (a matter of months), ADT is also purchasing residential lines from AT&T which are used by Life Connex, an affiliate of ADT, to provide retail service to its own remaining residential customers in Florida. At the time of the filing of the Complaint, there were only about 1,000 of those customers left, and, within a few months, nearly all of those will be

gone.¹ See Biddix Aff. at ¶ 10 and **Exhibit 1**. Life Connex uses only a small percentage of ADT's lines – approximately 5%. See Biddix Aff. at ¶¶ 11, 14; Verified Complaint at ¶ 6.

By way of a letter from AT&T to ADT dated September 13, 2010, AT&T stated a belief that ADT's arrangement with Life Connex violated the Agreement, and an intent (1) to discontinue processing new orders from ADT for wholesale service in Florida effective September 29, 2010 and (2) to terminate AT&T's Agreement with ADT on October 14, 2010. See **Exhibit 2** to Biddix Aff. In effect, based upon its belief concerning the provision of telephone service to the few and rapidly-decreasing Life Connex residential customers, AT&T intended to terminate the entire Agreement and eliminate service to over 18,500 ADT customers (who have nothing to do with Life Connex). Not only would such action deprive these customers of telephone service, but it would result in the loss of virtually all of ADT's customers and the loss of ADT's goodwill with those customers and across the marketplace. See Verified Complaint at ¶ 7; Biddix Aff. at ¶¶ 6-7.

In a letter to AT&T dated September 23, 2010, counsel for ADT explained that, under the terms of the Agreement and under the orders of the Federal Communications Commission, the use of ADT's lines by Life Connex is allowed by, and not inconsistent with, the Agreement. See **Exhibit 3** to Biddix Aff. Counsel for ADT also explained that the Agreement expressly requires all disputes concerning the interpretation or implementation of the Agreement must be ultimately submitted to the Florida Public Service Commission for resolution (which AT&T did not do and has not done). See *id.*; Verified Complaint at ¶ 8.

¹ In July, 2010, Life Connex discontinued marketing in Florida and has added no new customers since that time. Through normal attrition, the number of remaining customers is dwindling rapidly and, after five or six months, should be fewer than 100. The temporary arrangement with ADT allows Life Connex to continue serving these customers during this period. See Biddix Aff. at ¶ 10 and **Exhibit 1**.

After some further discussions between the parties, on September 28, 2010, AT&T informed ADT that AT&T would decide by the close of business on September 29, 2010, whether to proceed with the termination of the Agreement (which process would commence the following day, September 30). AT&T then extended that timeframe by 24 hours. *See Exhibits 4-6 to Biddix Aff.; Verified Complaint at ¶ 9.*

Based on AT&T's statements, AT&T had planned, on September 30, 2010, to discontinue processing new orders from ADT for wholesale service in Florida and to, within days thereafter, terminate AT&T's Agreement with ADT, thus cutting off service to ADT's Florida customers. *See Verified Complaint at ¶ 10; Exhibits 2-6 to Biddix Aff.* However, after the filing of this action and an Emergency Motion for a Temporary Restraining Order on September 30, 2010, AT&T agreed not to take any such action until this Court had an opportunity to determine whether such action should be preliminarily enjoined pending a ruling on the merits.

III. Legal Argument and Citations to Authority

A. Standards Governing the Issuance of a Preliminary Injunction

A preliminary injunction is designed "to preserve the status quo until the merits of the controversy can be fully and fairly adjudicated." *SunTrust Bank v. Houghton Mifflin Co.*, 268 F.3d 1257, 1265 (11th Cir. 2001). This Court may issue an injunction where a Plaintiff shows "(1) a substantial likelihood of success on the merits; (2) that Plaintiff will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to Plaintiff outweighs the potential damage that the proposed injunction may cause Defendant[]; and (4) that the injunction will not be adverse to the public interest." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dunn*,

191 F. Supp. 2d 1346, 1350 (M.D. Fla. 2002). “[N]o particular quantum of proof is required as to each of the four criteria....” *Louis v. Meissner*, 530 F. Supp. 924, 925 (S.D. Fla. 1981).

As set forth in more detail below, the evidence of record supports the issuance of a preliminary injunction.

B. ADT Requires Preliminary Injunctive Relief Against AT&T

ADT has established the central allegations of each count of the Complaint, by means of its Verified Complaint and the sworn declaration and affidavit of Thomas E. Biddix. Pending final judgment on ADT’s claims, ADT and its customers will suffer immediate and continuing irreparable injury if AT&T is not enjoined from (1) discontinuing processing new orders from ADT for wholesale service in Florida and (2) terminating AT&T’s Agreement with ADT and thereby cancelling the telephone service of over 18,500 ADT Florida customers.

ADT seeks this preliminary injunction because it is the sole means to preserve the status quo of its business operations without further interference on the part of AT&T until such time as a hearing can be held on the propriety of a preliminary injunction. As set forth below, the need for preliminary injunctive relief is clear.

1. ADT Is Likely to Succeed On The Merits Against AT&T

ADT has demonstrated a likelihood of success on the merits of its claims, as AT&T has is now in breach of the Agreement, and has threatened to imminently further breach – indeed, to completely and unilaterally terminate – the Agreement, to ADT’s and ADT’s customers’ great detriment. See *TechBios, Inc. v. Champagne*, 688 S.E.2d 378, 381 (Ga. Ct. App. 2009) (“The elements for a breach of contract claim in Georgia are the breach, which must be more than de

minimis, and the resultant damages to the party having the right to complain about the contract being broken.”)²

As evidenced by its September 13, 2010, letter, *see Exhibit 2* to Biddix Aff., AT&T claims that the temporary use by Life Connex – an affiliate of ADT – of a small number of the lines ADT purchased from AT&T is inconsistent with the Agreement. As shown below, AT&T’s interpretation of the Agreement is incorrect. However, AT&T has already breached Agreement, in that AT&T has not followed the Agreement’s dispute resolution procedures before threatening suspension and termination. AT&T was contractually required to ultimately submit any dispute concerning the interpretation or implementation of the Agreement to the Florida Public Service Commission (“the Commission”):

Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

Exhibit A to Biddix Dec. at General Terms and Conditions at Section 8. With regard to billing disputes – which characterizes the nature of this dispute – the Agreement further states that, before the matter is to be submitted to the PSC, the parties would attempt to resolve any such dispute on their own through an escalating dispute resolution procedure (set forth in full in the **Appendix** to this brief).³

² Pursuant to the Agreement, this dispute is governed by the laws of the State of Georgia. *See Exhibit A* to Biddix Dec. at General Terms and Conditions, Section 17.

³ Indeed, the Agreement provides that ADT is required to pay only “undisputed” charges to AT&T. *See Exhibit A* to Biddix Dec. at Attachment 7, Section 1.4.1 (section entitled “Payment

None of these procedures were followed by AT&T, and, although AT&T's dispute with ADT undoubtedly concerns an interpretation or implementation of the agreement, the matter was never submitted to the PSC. Instead, AT&T simply threatened immediate suspension of service and termination of the Agreement. See **Exhibit 2** to Biddix Aff. Had AT&T submitted its contentions to ADT through the escalating dispute resolution procedures or even directly to the Commission *before* moving to immediately terminate the Agreement, ADT and its customers would be protected from harm until a proper resolution of the dispute could be reached. Accordingly, there is *at the very least* a likelihood -- and, in reality, a strong case - that AT&T is already in breach of the Agreement. That breach has harmed and will continue to harm ADT and ADT's Florida customers.

Furthermore, AT&T is also liable for anticipatory breach. AT&T has stated its clear intent to immediately discontinue processing new orders from ADT for wholesale service in Florida and terminate AT&T's Agreement with ADT, thus cutting off service to ADT's over 18,500 Florida customers. See Verified Complaint at ¶¶ 7, 10. These drastic actions are not justified in any way, and are in fact contrary to the express terms of the contract.

The Agreement provides that “[t]he resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions.” **Exhibit A** to Biddix Dec., at Attachment 1, Section 4.1.1. And the Florida Public Service Commission has approved, by rule, “restrictions that would limit resale of . . . residential services . . . to end users who are eligible to purchase such services directly from BellSouth.” FPSC Docket Nos. 960833-TP,

Due,” providing “Payment of undisputed charges for services provided by BellSouth, is due on or before the next bill date....” (emphasis added).

960846-TP, 960916-TP, Order No. PSC-96-1579-FOF-TP (issued Dec. 31, 1996) at 60.⁴ 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 Federal Communications Commission has 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), ¶ 962.⁵

AT&T’s contention is that ADT is improperly reselling AT&T’s residential service to Life Connex, a business customer (although it is undisputed that all lines are used by residential users). However, AT&T has overlooked, or chosen to disregard, the definitions of “telecommunication service,” “resale,” and “end user” as those terms are used in the parties’ Agreement. As defined in the Agreement, “Telecommunications Service means the offering of telecommunications for a fee directly to the public...” Exhibit A to Biddix Dec. at General Terms and Conditions, at p.2 (emphasis added). Similarly, “resale” is defined as “the activity wherein [ADT] . . . subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public.” *Id.* at Attachment 1, Section 2.7 (emphasis added). Finally, the Agreement twice defines “end user” as “the ultimate user of the telecommunications service.” *Id.* at General Terms and Conditions, p.2 and Attachment 1, Section 2.4 (emphasis added).

⁴ Available at <http://www.psc.state.fl.us/library/filings/96/13820-96/13820-96.pdf>.

⁵ Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-96-325A1.pdf. See errata sheet at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1996/da961321.txt.

In other words, the language of the Agreement relied upon by AT&T (“resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions”) contains three separate terms that are each defined in the Agreement: “telecommunications services,” “resale,” and “end users.” Each of those terms as defined in the Agreement refers to the offering of telephone service “to the public” and to the “ultimate user.” Those terms do not apply, and cannot be applied, to the use of ADT’s lines by Life Connex. Here, the “resale” of “telecommunications services,” i.e., the offering of services “directly to the public” occurs when ADT and Life Connex sell service directly to their residential customers. Here, the “users” of the services i.e., the “ultimate users,” are all residential subscribers. Therefore, ADT is not engaged in the “resale” of “telecommunications services” to Life Connex, nor are those residential lines being resold to “end users” or “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.

Furthermore, the Agreement expressly permits ADT to “purchase resale services from BellSouth [AT&T] for its own use in operating its business.” Exhibit A to Biddix Dec. at Attachment 1, Section 3.2. Here, the “business” of ADT includes, for a few months, the provision of wholesale, residential service 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.”

And, with exceptions not implicated here, the FCC actually prohibits AT&T from imposing any other restrictions on how ADT uses those lines. Except for the restrictions against cross-class selling (and except where the product offered by AT&T is only a short term promotion – 90 days or less), FCC regulations forbid AT&T from “impos[ing] restrictions on the

resale by a requesting carrier [here, ADT] of telecommunications services offered by [AT&T].” 47 C.F.R. § 51.605(e). In other words, as long as ADT is not violating the prohibition against cross-class selling (it is not), AT&T cannot impose any other restrictions on ADT’s transfer of the services it purchases from AT&T. If ADT wants to transfer those services to an affiliate before the service is “resold” to the public, ADT is free to do so. Once it is determined that the “end users” are residential customers (they are, in this case), not business customers, AT&T cannot question whether ADT sells directly to residential end users or allows Life Connex to use those lines to serve residential end users.

Accordingly, there is no justification under the contract for AT&T to unilaterally terminate the Agreement and thereby completely cut off service to ADT’s over 18,500 Florida customers – especially given the fact that ADT’s Florida customer have nothing to do with ADT’s relation with Life Connex, the purported source of AT&T’s grievance. Therefore, by AT&T’s statement of intent to unilaterally and imminently terminate the Agreement, there is *at the very least* a likelihood that AT&T is in anticipatory breach of the Agreement, and that breach will result in substantial damages to ADT and its Florida customers. *See Textile Rubber & Chem. Co. v. Thermo-Flex Techs., Inc.*, 687 S.E.2d 919, 922 (Ga. Ct. App. 2009) (“The anticipatory repudiation of a contract occurs when one party thereto repudiates his contractual obligation to perform prior to the time such performance is required under the terms of the contract. Thus when one party to a bilateral contract of mutual dependent promises *absolutely* refuses to perform and repudiates the contract prior to the time of his performance, the innocent party is at liberty to consider himself absolved from any future performance on his part. The breach which will form the basis for an anticipatory breach of contract action is an *unqualified*

repudiation of the entire contract prior to the time for performance.”) (internal quotations omitted; emphasis added).

Even if the Agreement prohibited the ADT/Life Connex 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 *entire* Agreement. To warrant termination of a contract, the alleged breach cannot be “incidental and subordinate to the main purpose of the contract” and must be “so substantial and fundamental as to defeat the object of the parties in making the agreement.” *General Steel, Inc., v. Delta Bldg. Sys., Inc.*, 676 S.E.2d 451, 454 (Ga. Ct. App. 2009) (internal quotations omitted). The temporary, rapidly-diminishing 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.⁶

In sum, there is at the very least a likelihood that ADT will succeed on the merits of its claims.

⁶ Indeed, the lack of justification for AT&T’s procedurally incorrect and unnecessarily overbroad threats may provide a basis to award attorney’s fees under Georgia law if ADT prevails in its breach of contract claim. GA. CODE ANN. § 13-6-11 (attorney’s fees allowed in a contract action “where the defendant has acted in bad faith, has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense”); *Davis v. Whitford Props., Inc.*, 637 S.E.2d 849, 852 (Ga. Ct. App. 2006) (holding that the award of such fees are recoverable when other elements of damage are recoverable under the underlying claim). Completely cutting off phone service to over 18,500 people over a billing dispute that has nothing to do with those people is, ADT believes, unjustified and beyond the pale.

2. ADT Will Suffer Irreparable Injury For Which There Is No Adequate Remedy At Law Should Defendants Be Permitted To Continue Their Unlawful Conduct.

ADT faces certain loss of its existing Florida customer relationships, as well as its reputation in the industry and goodwill as a result of AT&T's breach. And as the Eleventh Circuit has recognized – even in the context of providing telecommunications service – “the loss of customers and goodwill is an irreparable injury.” *Bellsouth Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) (quoting *Ferrero v. Associated Materials Inc.*, 923 F.2d 1441, 1449 (11th Cir. 1991) (internal quotation marks omitted)); see also *Dunkin' Donuts, Inc. v. Kashi Enters., Inc.*, 119 F. Supp. 2d 1363, 1364 (N.D. Ga. 2000) (harm to business reputation and goodwill “constitutes an irreparable injury”).

Given the nature of ADT's business, there is little doubt that irreparable injury would result if AT&T was allowed to follow through on its threats. As stated in detail in the Affidavit of Thomas E. Biddix, ADT provides local, wireline telephone service to approximately 18,600 residential customers in Florida, the vast majority of which receive some kind of federal or state assistance and, because of prior unpaid telephone bills, cannot obtain telephone service from the “incumbent” telephone company (usually, AT&T) serving the area. ADT is a “prepay” carrier, meaning that each customer must prepay for service, one month at a time. When a customer pays for service, his line is activated. If, at the end of the month, the customer fails to prepay for the following month, his service is interrupted. When the customer pays for another month, service is restored. About 30% of ADT's existing customers leave the company each month and must be replaced by new customers. This churn rate is typical for prepay telephone companies like ADT and Life Connex. Biddix Aff. at ¶¶ 3-5.

Accordingly, if AT&T cuts off service for ADT, this will severely damage and could even end ADT's business. ADT's customers obviously cannot and will not be without phone service during the entire pendency of this litigation; instead, as those customers need day-to-day phone service, such customers will certainly and *immediately* find another provider. ADT would lose its entire customer base and, additionally, the company's reputation and goodwill would be irreparably damaged. If ADT's customers suddenly lose service, ADT would be unjustifiably known as the company that cannot guarantee continued, consistent and effective phone service. Many if not most of those customers would not return to ADT. *See Biddix Aff.* at ¶¶ 6-7. And "[i]f customers are likely to stop patronizing a supplier because it can no longer continue to provide goods or services available elsewhere, the impossibility of calculating the value of this loss of goodwill amounts to irreparable injury." *Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 958 n.3 (11th Cir. 1981).

Accordingly, ADT will suffer irreparable harm if AT&T is allowed to discontinue processing new orders from ADT for wholesale service in Florida and terminate AT&T's Agreement with ADT.

3. The Threatened Injury To ADT Outweighs Any Possible Harm To AT&T.

As stated above, ADT faces certain and significant harm unless injunctive relief is granted to maintain the status quo. On the other hand, AT&T suffers no irreparable harm, as AT&T is simply claiming that it is entitled to a different, slightly higher payment rate from those telephone services Life Connex uses (which services will not even exist in a few months). Even if AT&T was correct in its interpretation of the Agreement – which it isn't – it would be entitled only to monetary damages, which are easily recoverable (especially because AT&T currently

holds a \$592,000 security deposit from ADT, *see* Biddix Aff. at ¶ 12, and the amount AT&T claims is less than \$100,000, *see* Exhibit 5 to Biddix Aff.).

4. The Public Interest Weighs In Favor Of Granting Temporary Injunctive Relief.

On this factor, the Court is required only to find that a preliminary injunction will not disserve or be adverse to the public interest. *See United States v. Metropolitan Dade County*, 815 F. Supp. 1475, 1477 (S.D. Fla. 1993). Here, AT&T's current and threatened actions threaten thousands of ADT customers with loss of service, merely for a dispute over payment rates (i.e., money). But disputes over money can be remedied at any time, whereas losing telephone service is immediately detrimental. Thus, the public interest only can be served (and will not be adversely impacted) through issuance of an injunction in this case. *See Martin v. Pinellas County*, 444 So. 2d 439, 442 (Fla. Dist. Ct. App. 1984) (issuance of temporary injunction affirmed where injunction designed to protect public from harm).⁷

V. Conclusion

For the reasons set forth above, Plaintiff ADT respectfully requests that this Court issue an order preliminarily enjoining Defendant AT&T from (1) discontinuing the processing of new orders from ADT for wholesale service in Florida, and (2) terminating AT&T's Agreement with ADT pending this Court's resolution of ADT claims.

⁷ Indeed, a telephone company, like every public utility, is "affected with the public interest." *Munn v. Illinois*, 94 U.S. 113, 126 (1877). It provides services "which are more or less essential to the economy and which are public in their nature." Charles Phillips, *The Regulation of Public Utilities* (1984) at 6. As Justice Brandeis noted in a landmark case on telephone regulation, *Missouri ex rel. Southwestern Bell Tel. Co. v. Missouri Pub. Serv. Comm'n*, 262 U.S. 276, 291 (1923), a telephone company "is the substitute for the State in the performance of the public service, thus becoming a public servant." In sum, there is "a high degree of public interest" attached to the services rendered by a telephone company. That, in fact, is "the primary legal basis for regulation." *Phillips, supra*, at 5.

Respectfully submitted,

s/ Joseph R. Hutchison

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American Dial Tone, Inc.

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**Special Admission Application Pending*

CERTIFICATE OF SERVICE

I hereby certify that on this the 13th day of October, 2010, I have served the foregoing to each of the following by electronic mail and/or by electronic notification through the CM/ECF system:

Kip Edenfield
Manny Gurdian
AT&T Florida, Legal Department
150 West Flagler Street
Suite 1910
Miami, Florida 33130
ke@2722@att.com
mg@2708@att.com

s/ Joseph R. Hutchison

OF COUNSEL

APPENDIX

2. BILLING DISPUTES

- 2.1 The Parties shall electronically submit all billing disputes to each other utilizing email or other mutually agreed upon electronic method. The Parties will utilize BellSouth's RF-1461 form or another mutually agreed upon format. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within ten (10) business days of the billing Party's denial, or partial denial, of the billing dispute, if the billed Party is not satisfied with the billing Party's resolution of the billing dispute or if no response to the billing dispute has been received by the billed Party by such sixtieth (60th) day, the billed Party shall pursue the escalation process as outlined below.
- 2.1.1 If the billed Party has not received resolution of a billing dispute within sixty (60) days of the notification date, the billed Party will contact the billing Party's designated first level of escalation. That first level of escalation will commit to resolve the dispute within a mutually agreed upon interval.
- 2.2 If the billed party receives a billing dispute resolution and is not satisfied with the billing party's dispute resolution, the billed party will initially contact the billing party's representative who prepared the dispute response. After review of dispute with that representative, if the billed party elects to pursue the dispute, they must utilize the escalation levels as provided by the billing party. For Bellsouth the escalation levels are in the billing dispute escalation matrix, set forth on Bellsouth's interconnection services website. For AmeriMex the escalation will be to the next highest level of management up to the chief financial officer. The billed party will escalate disputes within ten (10) business days of denial or partial denial by the billing party.
- 2.2.1 At each level of escalation, the billing party's designated escalation contact will commit to respond to the billed party's escalation within a mutually agreeable interval. If that commitment is not met, or if the response from that level of escalation does not satisfy the billed party, if the billed party elects to pursue the dispute, they must escalate within ten (10) business days to the billing party's next highest level of escalation. If the billed party does not elect to pursue the dispute by utilizing the escalation process, the billing party's resolution will be considered as accepted by the billed party and the dispute will be closed.
- 2.2.2 If after escalation, the parties are unable to reach resolution, then the aggrieved party, if it elects to pursue the dispute shall pursue the dispute resolution process in the general terms and conditions of this agreement.

- 2.3 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 of a specific amount of money actually billed by BellSouth. The billing dispute must be clearly explained by AmeriMex and supported by written documentation, which clearly shows the basis for disputing charges. The determination as to whether the billing dispute is clearly explained or clearly shows the basis for disputing charges shall be within BellSouth's sole reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by BellSouth. Claims by AmeriMex for damages of any kind will not be considered a billing dispute for purposes of this Section. If BellSouth resolves the billing dispute, in whole or in part, in favor of AmeriMex, any credits and interest due to AmeriMex as a result thereof shall be applied to AmeriMex's account by BellSouth upon resolution of the billing dispute.

Exhibit A to Biddix Dec. at Attachment 7, Section 2.

EXHIBIT 3

AT&T Wholesale
Four AT&T Plaza
9th Floor
311 S. Akard
Dallas, TX 75202



September 13, 2010

VIA UPS, Tracking Number 1Z4AF1020191291578
Stephen D. Klein
American Dial Tone, Inc. *W/a* Ganoco, Inc.
2323 Curlew Road
Suite 7C
Dunedin, FL 34698

VIA UPS, Tracking Number 1Z4AF1020194520387
Thomas Biddix
Director
American Dial Tone, Inc. *W/a* Ganoco, Inc.
6905 N. Wickham Road
Suite 403
Melbourne, FL 32940

VIA UPS, Tracking Number 1Z4AF1020190625996
Edward Heard
General Manager
LifeConnex Telecom, LLC
13700 Perdido Key Drive, Suite 222
Perdido Key, FL 32507

VIA UPS, Tracking Number 1Z4AF1020191912405
Thomas Biddix
Manager
LifeConnex Telecom, LLC
6905 N. Wickham Road
Suite 403
Melbourne, FL 32940

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. *W/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 Rod 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. §51.619(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 "steal" 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.")

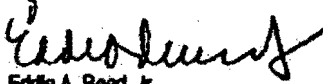
³ Tariff § A2.2.1B provides that services specified in the Tariff may be resold; however, "except as otherwise noted by the Florida Public Service Commission", interconnection agreements and the Tariff. As indicated, all three prohibit American Dial Tone from cross-class selling to its affiliate, LifeConnex.

September 13, 2010
Page 4

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

EXHIBIT 4



Henry Walker
Direct: 615.252.2363
Fax: 615.252.6363
hwalker@tubc.com

September 23, 2010

Mr. Eddie A. Reed, Jr.
AT&T Wholesale
Four AT&T Plaza, 9th Floor
311 S. Akard
Dallas, TX 75202

Re: Suspension and Disconnection Notice to American Dial Tone, Inc.

Dear Mr. Reed:

I am writing on behalf of American Dial Tone ("ADT") in response to your letter to ADT dated September 13, 2010, in which AT&T states its intention to discontinue processing new orders from ADT for wholesale service in Florida effective September 29, 2010 and to terminate AT&T's Florida contract with ADT on October 14, 2010.

Please be advised that AT&T is bound by the parties' interconnection agreement (the "Agreement") to provide wholesale service to ADT in Florida and that any interruption in service will result in substantial damages to ADT and its Florida customers. ADT will, if necessary, file suit to prevent this threatened interruption of service and to recover damages from AT&T.

ADT provides retail service to 18,577 residential customers in Florida and serves them by purchasing wholesale residential services from AT&T and reselling those services to residential end users. For a few months, ADT is also purchasing residential lines from AT&T which are used by Life Connex, an affiliate of ADT, to provide retail service to its own remaining residential customers in Florida. At this time, there are only about 1,000 of those customers left. Within a few months, nearly all of those will be gone too.¹

Your letter states that AT&T believes that by allowing its affiliate, Life Connex, to use ADT's lines to serve residential customers, ADT is "improperly cross-class selling residential services" in violation of the Agreement between AT&T and ADT. Even if AT&T's position were the correct interpretation of the Agreement and law - which it clearly is not, as explained below - AT&T's threat to engage in "self-help" by suspending, then terminating, service to more than 18,000 ADT customers in Florida goes far beyond any appropriate recourse and unjustifiably threatens service to ADT's retail customers who have nothing to do with Life Connex.

¹ In July, 2010, Life Connex discontinued marketing in Florida and has added no new customers since that time. Through normal attrition, the number of remaining customers is dwindling rapidly and, after six months, should be fewer than 100. The temporary arrangement with ADT allows Life Connex to continue serving these customers during this period.

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Mr. Eddie A. Reed, Jr.
September 23, 2010
Page 2

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 CLBC . . . 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

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."²

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.³ 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,

² 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.

³ 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.

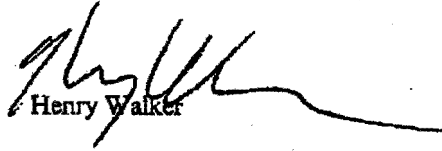
Mr. Eddie A. Reed, Jr.
September 23, 2010
Page 4

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

EXHIBIT 5

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Emergency Relief and) Docket No.: 100432-TP
Complaint against BellSouth Telecommunications,)
Inc. d/b/a AT&T Florida by American Dial Tone, Inc.)
_____)

AFFIDAVIT OF MARC CATHEY

COMES NOW Affiant and swears under oath as follows:

1. My name is Marc Cathey. I am currently an Executive Director-Corporate Strategy for AT&T Services, Inc., and provide support to the AT&T incumbent local exchange carriers (“ILECs”), including BellSouth Telecommunications, LLC d/b/a AT&T Florida (“AT&T Florida”), with regard to their business relationships with various competitive local exchange carriers (“CLECs”). Among other things, my responsibilities include conducting negotiations with CLEC customers regarding various business disputes between the CLECs and the AT&T ILECs. This Affidavit is made upon my personal knowledge and belief and is filed in support of AT&T Florida’s Motion for Summary Final Order.

2. On November 3, 2010, AT&T Florida suspended the order processing of American Dial Tone, Inc. (“ADT”).

3. In November 2010, with the assistance of counsel, I negotiated a Memorandum of Understanding between AT&T Florida and ADT to provide a temporary solution to allow ADT to remain in service during the pendency of this docket. AT&T Florida and ADT entered the Memorandum of Understanding on December 1, 2010. A true and accurate copy of the Memorandum of Understanding is attached hereto as Exhibit A.

4. In the Memorandum of Understanding, ADT agreed to pay AT&T Florida \$197,081.30 by December 1, 2010. This amount represents the wholesale business rate (\$29.80)

for the local service lines that AT&T Florida sold to ADT, which ADT admittedly resold to LifeConnex, for the length of time the lines were in service under that arrangement.

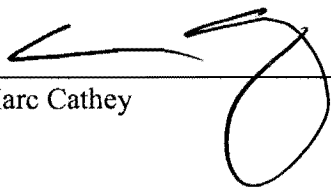
5. ADT made the necessary payment to AT&T Florida as required by the Memorandum of Understanding, and AT&T Florida caused the funds to be placed into a segregated account. With interest, the amount in the segregated account is \$197,412.74 as of October 31, 2012, as shown on the Northern Trust Company Statement of Account for this segregated account, a true copy of which is attached hereto as Exhibit B.

6. Pursuant to the interim agreement reached in the Memorandum of Understanding, AT&T Florida restored ADT's order processing on December 1, 2010.

7. AT&T Florida disconnected ADT's service and terminated the interconnection agreement between the parties in December 2011 after AT&T Florida learned that the Commission had revoked ADT's certificate in Docket No. 110082-TP.

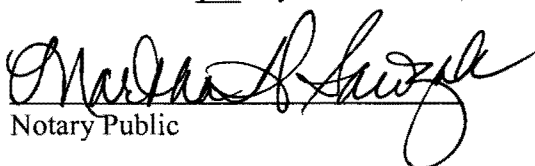
FURTHER, Affiant sayeth not.

This 14th day of November, 2012.



Marc Cathey

Subscribed and sworn to
Before me this 14th day of November, 2012.



Notary Public

My commission expires:

**NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: May 10, 2016
BONDED THRU NOTARY PUBLIC UNDERWRITERS**

MEMORANDUM OF UNDERSTANDING

American Dial Tone, Inc. f/k/a Ganoco, Inc. ("ADT"), Federal Taxpayer ID Number - 59-3547114, and BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") (hereinafter sometimes individually referred to as a "Party" and together referred to as the "Parties") enter into this Memorandum of Understanding ("MOU") to memorialize an interim agreement that enables AT&T Florida to restore order processing for ADT on its Florida resale accounts on an interim basis, pending a final resolution in Docket No. 100432-TP before the Florida Public Service Commission. In a letter dated September 13, 2010, AT&T Florida notified ADT of AT&T Florida's belief that ADT is in breach of its Interconnection Agreement that became effective on August 6, 2006 (the "ICA") and AT&T Florida's tariff by reselling AT&T Florida's residential service to LifeConnex Telecom, LLC ("LifeConnex"), an affiliate of ADT. Pursuant to the September 13 breach letter and the ICA, AT&T Florida has suspended order processing for ADT's Florida resale accounts. In response, ADT filed a complaint at the Florida Public Service Commission, Docket No. 100432-TP. To restore order processing and avoid disconnection of service during the pendency of Docket No. 100432-TP, the Parties agree to this MOU, under the following terms and conditions:

1. Payment(s) to Segregated Account.

a. ADT will pay \$197,081.30 to AT&T Florida in immediately available funds pursuant to AT&T Florida's standard payment procedures and designated to an account number which AT&T Florida will provide to ADT by 6:00 pm EST on Wednesday, December 1, 2010. AT&T Florida will hold the funds in an interest-bearing segregated account. Attached as Exhibit A is a list of telephone numbers that ADT represents and warrants are the telephone numbers for all LifeConnex end users who, as

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of the Effective Date (as defined below), are being served by using an AT&T Florida wholesale residential line purchased by ADT from AT&T Florida.

b. After the Effective Date of this MOU and until there is a final resolution in Docket No. 100432-TP, on or before its monthly bill payment date for each of its Florida resale accounts, ADT will make additional payment(s) to AT&T Florida in the amount of \$29.80 x N, where N is the number of telephone numbers listed on Exhibit A that remained in service on the date AT&T Florida issued the then-current monthly bill to ADT. ADT will make such payment(s) pursuant to AT&T Florida's standard payment procedures and designated to the account number which AT&T Florida provided to ADT pursuant to the paragraph 1(a) hereof. AT&T Florida will add such payment(s) to the interest-bearing segregated account. The Parties acknowledge and agree that if ADT complies with paragraph 3 hereof, then, at the most, ADT will be required to make additional payment(s) to AT&T Florida for the segregated account for one billing cycle after the initial payment required by this paragraph.

c. Any and all interest earned on the funds held in the segregated account shall be deposited into same.

d. The funds held in the segregated account will not be considered a "security deposit" for the purposes of determining whether the security deposit maintained by ADT with AT&T Florida complies with the parties' ICA. Payments made pursuant to this MOU shall not impact in any way ADT's obligation to pay bills issued by AT&T Florida, and ADT shall not have the right to deduct payment from or dispute any portion of any bill issued by AT&T Florida based on a payment made pursuant to this MOU.

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e. Notwithstanding any provisions of the ICA, the Parties agree that AT&T Florida will maintain the funds in the segregated account until they mutually agree that it is no longer needed or until Docket No. 100432-TP pending in the Florida Public Service Commission is finally resolved through final appeal or settlement. Disbursements from the segregated account shall be made only in accordance with written authorization by both Parties hereto or in accordance with written order of the Florida Public Service Commission. All interest earned on funds in the segregated account shall be disbursed to ADT and/or AT&T Florida in the same proportion as the principal.

2. ADT represents and warrants that it is not currently allowing any telecommunications providers other than LifeConnex to use lines or other services purchased by ADT from AT&T Florida. ADT agrees to not add any new service(s) to LifeConnex or, pending the final resolution of Docket 100432-TP, provide AT&T Florida's service to any other telecommunications provider.

3. Within ten (10) business days after the Effective Date (as defined below) of this MOU, ADT shall disconnect service for all LifeConnex end users for which ADT is currently reselling AT&T Florida's residential service to LifeConnex. To the extent there is any inconsistency between paragraphs 1 and 3 hereof, paragraph 3 shall control.

4. Within one (1) business day after ADT has paid AT&T Florida \$197,081.30 in compliance with paragraph 1(a) hereof, AT&T Florida will restore ADT's order processing for its Florida resale accounts. In the event ADT fails to timely perform any of the requirements imposed by paragraphs 1, 2 and 3 hereof, then AT&T Florida will be entitled to suspend order processing immediately on ADT's resale accounts in Florida. In the event ADT breaches paragraph 2 hereof, then AT&T Florida will be entitled to disconnect ADT's resale accounts in

Florida with five (5) business days' notice. AT&T Florida will not suspend order processing on or disconnect ADT's resale accounts in Florida so long as all requirements imposed on ADT by this MOU are timely met and ADT complies with all of its other obligations under the ICA.

5. This MOU is not intended to and does not in any way alter ADT's contractual obligations to pay for services provided by AT&T Florida pursuant to the ICA and does not impact in any way ADT's obligation to pay any past due amount(s), nor does it limit in any manner AT&T Florida's rights and ability to pursue collection from ADT or its affiliates of any amount(s) owed to AT&T Florida.

6. The Parties agree that this MOU reflects the Parties' intent and does not necessarily address all of the circumstances which may arise while this agreement is in effect. The Parties therefore agree that this MOU will be filed with the Florida Public Service Commission and that either Party may seek assistance or, if necessary, relief from the Commission concerning the implementation and/or amendment of any provision of this MOU to implement the Parties' intent.

7. The Parties and the undersigned hereby acknowledge and represent that the undersigned are authorized to bind the Parties on whose behalf they have signed. The Parties agree that the use of faxed or pdf signatures is acceptable. This MOU shall be effective on the date of last signature executing the MOU, and such date shall be the "Effective Date."

[remainder of page intentionally left blank]

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This Memorandum of Understanding is accepted and agreed by the Parties as of the date of signatures below.

AMERICAN DIAL TONE, INC. v/k/a
GANOCO, INC.

By: Christina B Sutel
Signature

Name: Christina B Sutel
Typed or Printed

Title: Secretary

Date: 12-1-2010

BELLSOUTH TELECOMMUNICATIONS,
INC. d/b/a AT&T FLORIDA

By: Kathy J Wilkinson
Signature

Name: KATHY J. WILKINSON
Typed or Printed

Title: AVP- CALL CENTER

Payroll Co. Name: AMERITECH SERVICES, INC.
(authorized signatory for BellSouth
Telecommunications, Inc. d/b/a AT&T
Florida)

Date: DECEMBER 1, 2010

875456

Exhibit 5

(Exhibit "B")

PROPRIETARY AND CONFIDENTIAL

EXHIBIT 6

110082-TP

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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-M-E-M-O-R-A-N-D-U-M- COMMISSION CLERK

DATE: December 1, 2011

TO: Ann Cole, Commission Clerk, Office of Commission Clerk

FROM: Beth W. Salak, Director, Division of Regulatory Analysis
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel

RE: CLEC certificate No. TX 274 issued to American Dial Tone, Inc.

Handwritten initials: MS, AT

Commission Order No. PSC-11-0259-AS-TP, issued June 16, 2011, approved a settlement agreement with Associated Telecommunications Management Services (ATMS) in which ATMS agreed that it would make a \$4 million payment to the State's General Revenue Fund in 8 quarterly increments of \$250,000. The agreement provided that ATMS certificates for All American Telecom, Inc., Bellerud Communications, LLC., and LifeConnex Telecom, LLC. would be cancelled within 14 days of the final Order, leaving American Dial Tone, Inc. as the only certificated ATMS company in Florida.

The agreement also stated that ATMS would respond accurately and within a reasonable time to all Commission data requests within the Commission's jurisdiction. On October 5, 2011, staff informed ATMS of its failure to respond to an August 19, 2011, staff data request to American Dial Tone, Inc. As provided for in the settlement agreement, an automatic assessment of \$25,000 for failure to provide access to records was imposed.

ATMS failed to make the second payment of \$250,000 which was due October 28, 2011, and failed to make the automatic assessment fine payment of \$25,000. In accordance with the terms of the Settlement Agreement, staff is administratively authorized to cancel the company's certificate for failing to meet any payment date contained in the final Order.

Please cancel American Dial Tone's Competitive Local Exchange Certificate No. TX 274 effective November 30, 2011.

Thank you.

- COM _____
- APA _____
- ECR _____
- GCL _____
- RAD _____
- SRC _____
- ADM _____
- OPC _____
- CLK NG

Cc: Docket No. 110082-TP

DOCUMENT NUMBER-DATE

08704 DEC-1-

FPSC-COMMISSION CLERK

EXHIBIT 7

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

Second Revised Page 1
Cancels First Revised Page 1

ISSUED: July 27, 1998
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: August 11, 1998

A2. GENERAL REGULATIONS

A2.1 Application

- A. The regulations specified herein are applicable to all communication services offered in this Tariff by BellSouth Telecommunications, Inc., hereinafter referred to as the Company. Additional regulations, where applicable, pertaining to specific service offerings accompany such offerings in various sections of this Tariff.
- B. Service to Century, Florida is provided by BellSouth Telecommunications, Inc. from the Flomaton, Alabama, exchange. Rules, regulations and rates applicable at Century are as specified in the this Tariff.

A2.2 Limitations and Use of Service

A2.2.1 Use of Subscriber's Service

A. Restricted to Authorized Users

Telephone equipment, facilities, and services are furnished to the subscriber for use by the subscriber.

- 1. The subscriber's service may be shared with, but not resold to, the following individuals as authorized by the subscriber for that specific service:
 - a. Members of the subscriber's domestic establishment;
 - b. Employees, agents, or representatives of the subscriber;
 - c. Members of clubs at the specified club locations; (T)
 - d. Patients of hospitals at those establishments; (T)
 - e. Occupants of licensed Nursing Homes, licensed Adult Congregate Living Facilities, or licensed continuing care facilities or facilities certified in accordance with the National Housing Act at those establishments; (T)
 - f. Students living in quarters furnished by the school, college, or university which subscribes to the service; (T)
 - g. Persons temporarily subleasing the subscriber's residential premises; (T)
 - h. Transient public in connection with the use of reservation service at airport terminals for use by the general public; (T)
 - i. Exhibitors in exhibition halls authorized to use the subscriber's service on a temporary basis, not to exceed 30 days, at those locations; (T)
 - j. Businesses located at the airport terminal and engaged in airport operations for the subscribing airport's local service extended for the proper functioning of the airport. (T)

B. Resale of Service

Unless otherwise specified, service furnished by the Company is intended only for communications in which the subscriber has a direct interest. However, most services specified in this Tariff are available for resale, except as otherwise noted by the Florida Public Service Commission and in the Alternative Local Exchange Carriers' (ALECs) resale agreements, by the ALECs and subject to the terms and conditions specified in this Tariff.

- 1. (DELETED) (D)

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

First Revised Page 1
Cancels Original Page 1

ISSUED: March 27, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: April 11, 1997

A23. INTERCONNECTION OF LOCAL EXCHANGE SERVICES TO SHARED TENANT SERVICES

(T)

A23.1 Provision of Service

A23.1.1 General

- A. In 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. Resale of local exchange service is permitted only under specific conditions as described in this Tariff.
- B. For the purpose of this Tariff section "Shared Tenant Services" or STS is defined as the sharing or resale of a common group of local exchange service access lines through a common switching or billing arrangement to tenants.
- C. The rates specified herein are in addition to the rates shown elsewhere in this Tariff for services with which this offering is associated. (N)
- D. Basic local exchange service provided for resale may be flat or measured. (N)

A23.1.2 Conditions for Service

- A. Customers desiring to resell exchange services provided by the Company must apply to the Florida Public Service Commission for certification as an STS provider. Resale of local service will only be permitted if such certification is granted. Customers desiring to resell local service must submit all Company required documentations (i.e. Letter of Agreement, PSC Tracking Requirement, Request Notice, etc.) including proof of their approved certification before service will be established.
- B. Resale 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. Areas designated for resale may be intersected or transversed by public thoroughfares provided that the adjacent property segments created by intersecting or transversing thoroughfares would be continuous in the absence of the thoroughfare. The designated resale service area must be wholly within the confines of existing wire centers and/or exchange boundaries.
- C. The provision of STS shall in no way interfere with a Reseller Client's right to direct service or the right of the Company to directly serve the tenant under the terms and conditions of this Tariff.
- D. In order to fulfill the Company's obligation to provide local exchange service to all customers within its franchised area, including those located within an STS building, the Company must be guaranteed access to the premises of all individual tenants. Resale of local service will only be permitted once such direct access including support facilities (e.g., conduit, equipment space, etc.) to any and all individual subscribers has been secured. To fulfill its obligation, the Company generally installs and maintains its own transmission facilities. However, at the Company's option, in lieu of Company owned facilities, the Company may choose to negotiate for the use of privately owned transmission facilities. Should the Company elect this option, such negotiation would provide reasonable compensation for the use of privately owned facilities.
- E. **DELETED** (D)
- F. Conditions and limitations restricting the resale or sharing of Foreign Exchange Service apply.
- G. All rates and charges in connection with the resale operation and all repairs and rearrangements behind and including the communication switch of the Reseller will be the responsibility of the Customer of Record. The Reseller will be the single point of contact for all Resale Client services provided in connection with the Sharing and Resale of Basic Local Exchange Service.

BELLSOUTH
TELECOMMUNICATIONS, INC.
FLORIDA

GENERAL SUBSCRIBER SERVICE TARIFF

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Cancels Original Page 4

ISSUED: March 3, 1997
BY: Joseph P. Lacher, President -FL
Miami, Florida

EFFECTIVE: April 1, 1997

A1. DEFINITION OF TERMS

(T)

CIRCUIT

See "Exchange Access Line".

CLASS OF SERVICE

A description of telephone service furnished a subscriber in terms such as:

- a. For Exchange Service:
 - (1) Grade of Line: Individual Line
 - (2) Type of Rate: Flat rate or message rate.
 - (3) Character of Use: Business or residence.
 - (4) Dialing Method: Touch-Tone or Rotary.
- b. For Long Distance Telecommunications Service:
 - (1) Type of Call: Station-to-Station or Person-to-Person.
- c. For Wide Area Telecommunications Service:
 - (1) Type of Service: Outward or 800 Service .

(DELETED)

(D)

COIN REFUND AND REPAIR REFERRAL SERVICE

Coin Refund and Repair Referral Service (CRS) provides handling of refund requests and repair referrals generated by the end users of Independent Payphone Provider (IPP) public telephones.

COLLECT CALL

The term "Collect Call" denotes a billing arrangement by which the charge for a call may be reversed provided the charge is accepted at the called station. A collect call may be billed to a Calling Card or third party number. In the case of a coin telephone the charges must be billed to a Calling Card or third party number, or the call may be reoriginated from the called station.

(C)

COMMITMENT GUARANTEE

A plan establishing a credit that will be issued to a customer in the event that the Company misses a commitment in connection with installation or repair of service provided over the Company's facilities, unless an exception is applicable.

COMMON BATTERY SERVICE

The type of telephone service in connection with which electrical energy for talking and signaling is supplied from a central point.

COMMUNICATIONS SYSTEMS

Channels and other facilities which are capable, when not connected to telecommunications services, of communications between terminal equipment.

The term "Communications Systems" when used in connection with communications systems provided by an Other Carrier (OC), denotes channels and other facilities furnished by the OC for private line services as such OC is authorized by the Federal Communications Commission or Public Service Commission to provide.