

**Marguerite McLean**

100021-TP

**From:** WOODS, VICKIE (Legal) [vf1979@att.com]  
**Sent:** Friday, April 09, 2010 3:31 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** 100021-TP AT&T Florida's Response to LifeConnex's Answer/Counterclaims  
**Importance:** High  
**Attachments:** Document.pdf

- A. Vickie Woods  
BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
150 South Monroe Street  
Suite 400  
Tallahassee, Florida 32301  
(305) 347-5560  
[vf1979@att.com](mailto:vf1979@att.com)
- B. Docket No.: 100021-TP: Complaint of BellSouth Telecommunications,  
  
Inc. d/b/a AT&T Florida Against LifeConnex Telecom, LLC f/k/a Swiftel, LLC
- C. BellSouth Telecommunications, Inc. d/b/a AT&T Florida  
  
on behalf of Manuel A. Gurdian
- D. 12 pages total (includes letter, pleading, certificate of service and Exhibits A and B)
- E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to LifeConnex's Answer/Counterclaims  
  
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4/9/2010

DOCUMENT NUMBER-DATE

02698 APR-9 2010

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Manuel A. Gurdian  
General Attorney

AT&T Florida  
150 South Monroe Street  
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Tallahassee, FL 32301

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April 9, 2010

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

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

Dear Ms. Cole:

Enclosed is BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response to LifeConnex's Answer/Counterclaims, which we ask that you file in the captioned docket.

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

Sincerely,

Manuel A. Gurdian

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

DOCUMENT NUMBER-DATE

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**CERTIFICATE OF SERVICE  
Docket Nos. 100021-TP**

I HEREBY CERTIFY that a true and correct copy was served via  
Electronic Mail and First Class U. S. Mail this 9th of April, 2010 to the following:

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

LifeConnex Telecom, LLC  
Mr. Edward Heard  
13700 Perdido Key Drive, Unit B222  
Pensacola, FL 32507-7475  
Tel. No. (877) 450-5544  
Fax No. (850) 895-3019  
[eheard@lifeconnex.net](mailto:eheard@lifeconnex.net)

Matthew J. Feil  
Akerman Senterfitt  
106 East College Avenue  
Suite 1200  
Tallahassee, FL 32301  
Tel. No. (850) 224-9634  
[matt.feil@akerman.com](mailto:matt.feil@akerman.com)

  
\_\_\_\_\_  
Manuel A. Gurdian

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of BellSouth )  
Telecommunications, Inc. d/b/a AT&T ) Docket No. 100021-TP  
Florida Against LifeConnex Telecom, )  
LLC f/k/a Swiftel, LLC ) Filed: April 9, 2010

**AT&T FLORIDA'S RESPONSE TO LIFECONNEX'S  
ANSWER/COUNTERCLAIMS**

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Florida ("AT&T Florida") respectfully submits this Response to the Answer, Affirmative Defenses and Counter-Claims ("Answer/Counterclaims") filed by LifeConnex Telecom, LLC, f/k/a Swiftel, LLC ("LifeConnex") on or about February 25, 2010.

1. Any allegation in the Answer/Counterclaims to which a response is required of AT&T Florida is denied unless expressly and explicitly admitted herein.

2. The "Narrative Summary" at pages 1-7 of the Answer/Counterclaims is LifeConnex's version of the situation, and it requires no response from AT&T Florida.

3. The "Specific Responses to AT&T's Complaint" at pages 7-9 of the Answer/Counterclaims requires no response from AT&T Florida.

4. For the reasons set forth in AT&T Florida's Response to Motions to Dismiss and/or Stay, AT&T Florida objects to LifeConnex's requests, in Paragraphs 1-2 of the Affirmative Defenses (pages 9-10), that the Commission dismiss AT&T Florida's Complaint or delay these proceedings, and AT&T Florida denies that LifeConnex is entitled to anything it requests in those paragraphs.

**ANSWER TO "LINE CONNECTION CHARGE WAIVER" COUNTERCLAIM**

5. For the reasons set forth in AT&T Florida's Motion to Dismiss or Sever LifeConnex's Counterclaims, AT&T Florida respectfully requests that the Commission

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dismiss the Counter-Claim in Paragraph 1 on pages 10-11 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Florida's Complaint.

6. In the alternative, in response to the allegations of Paragraph 1 on pages 10-11 of the Answer/Counterclaims, AT&T Florida asserts that some of its retail promotional offerings waive the line connection charge for qualifying end users. When a reseller like LifeConnex buys the telecommunications services associated with those offerings for resale, AT&T Florida initially bills the reseller the retail charge for the line connection less the applicable wholesale discount. Assuming a retail line connection charge of \$40 and a wholesale discount of 20%, for example, AT&T Florida initially bills the reseller \$32. If the reseller timely submits a request for a promotional credit and otherwise satisfies the qualifications of a specific retail promotional offering, AT&T Florida then credits the reseller's bill in the same amount it initially billed the reseller for the line connection charge. In the example above, for instance, AT&T Florida would credit a qualifying reseller's bill in the amount of \$32. As a result, a qualifying reseller pays \$0 for the line connection, just as a qualifying retail customer pays \$0 for the line connection. AT&T Florida denies the remaining allegations of Paragraph 1 on pages 10-11 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Florida denies that in this example, it is "required to give the reseller the full, \$40 value of the waiver," that the process described above (which has been in place for years) is a condition or restriction on resale, and that AT&T Florida was required to make any showing to the Commission prior to implementing the process described above. AT&T Florida further denies that LifeConnex has disputed any of the

outstanding balance described in AT&T Florida's Complaint on the grounds alleged in Paragraph 1 on pages 10-11 of the Answer/Counterclaims.

**ANSWER TO "BUNDLED OFFERING" COUNTERCLAIM**

7. For the reasons set forth in AT&T Florida's Motion to Dismiss or Bifurcate LifeConnex's Counterclaims, AT&T Florida respectfully requests that the Commission dismiss the Counter-Claim in Paragraph 3 on page 11 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Florida's Complaint.

8. In the alternative, in response to the allegations of Paragraph 3 on page 11 of the Answer/Counterclaims, AT&T Florida asserts that some retail offerings bundle telecommunications services offered by AT&T Florida with non-telecommunications services offered by AT&T Florida, its affiliates, and/or other entities, often at a single price. AT&T Florida denies the remaining allegations of Paragraph 3 on page 11 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Florida denies that it has improperly refused to offer telecommunications services included in such bundled offerings for resale, that it has billed LifeConnex an inappropriate amount for any telecommunications services LifeConnex has purchased for resale; that it has not complied with 47 C.F.R. §51.613(b), and that it was required to make any showing pursuant to 47 C.F.R. §51.613(b) with regard to the offerings described in Paragraph 3 on page 11 of the Answer/Counterclaims. AT&T Florida further denies that LifeConnex has disputed any of the outstanding balance described in AT&T Florida's Complaint on the grounds alleged in Paragraph 3 on page 11 of the Answer/Counterclaims.

## **ANSWER TO “NEW METHODOLOGY” COUNTERCLAIM**

9. For the reasons set forth in AT&T Florida’s Motion to Dismiss or Bifurcate LifeConnex’s Counterclaims, AT&T Florida respectfully requests that the Commission dismiss the Counter-Claim in Paragraph 4 on page 11 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Florida’s Complaint.

10. In the alternative, in response to the allegations of Paragraph 4 on page 11 of the Answer/Counterclaims, AT&T Florida admits that on July 1, 2009 it issued Accessible Letter No. CLECSE09-100 (a copy of which is attached to this Response as Exhibit A) informing competitive local exchange carriers (“CLECs”) of its intent to change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers that are available for resale. AT&T Florida admits that on July 1, 2009, it also issued Accessible Letter No. CLECSE09-105 (a copy of which is attached to this Response as Exhibit B) informing CLECs that effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$6.07 using the methodology announced in Accessible Letter No. CLECSE09-100. AT&T Florida denies the remaining allegations of Paragraph 4 of page 11 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Florida denies that it has imposed any condition or restriction on the resale of telecommunications services associated with retail cashback offerings, that it was required to make any showing to the Commission regarding the new methodology, that it

is seeking any amounts billed under the new methodology in this Docket, and that it currently is billing LifeConnex for any amounts calculated under this new methodology.

#### **ANSWER TO "RELIEF SOUGHT"**

11. AT&T Florida denies that LifeConnex is entitled to any of the relief it seeks in its Answer/Counterclaims, including without limitation the relief sought in the "wherefore" clause at page 12.

#### **AFFIRMATIVE DEFENSES**

12. Each Counterclaim fails to state a cause of action upon which relief can be granted.

13. To the extent it is not dismissed, each Counterclaim should be addressed separate and apart from the claims presented in AT&T Florida's Complaint.

14. Each Counterclaim is barred, in whole or in part, by the doctrines of unclean hands, laches, forbearance, waiver, and/or estoppel.

15. Each Counterclaim is barred, in whole or in part, by the applicable statute of limitations and/or the applicable "dispute" provisions of the parties interconnection agreement(s), including without limitation provisions addressing the presentment, pursuit, escalation, and preservation of billing disputes.

16. Each Counterclaim is barred, in whole or in part, by LifeConnex's failure to mitigate any damages allegedly sustained.

17. To the extent the Commission awards LifeConnex any relief with regard to its Counterclaims (and it should not), such relief should be only prospective in nature.



WHEREFORE, AT&T Florida respectfully requests that the Commission enter an Order denying all relief sought by LifeConnex, dismissing all Counterclaims, and granting such further relief as the Commission deems appropriate.

Respectfully submitted on this the 9th day of April, 2010.

AT&T FLORIDA



E. Earl Edenfield, Jr.

Tracy W. Hatch

Manuel A. Gurdian

c/o Gregory R. Follensbee

150 South Monroe Street

Suite 400

Tallahassee, Florida 32301

(305) 347-5558

799297

**EXHIBIT A**



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-100**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Resale of Cash-Back Promotions**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee**

Issuing AT&T ILECS: **AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee (collectively referred to, for purposes of this Accessible Letter, as "AT&T Southeast Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southeast Region is sending this letter to provide notice that it will change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers (including but not limited to promotional offers involving checks, coupons, and other similar items) that are available for resale.

The change will be implemented initially for residential acquisition cash-back promotion offers requested on or after September 1, 2009, in all AT&T ILEC states, regardless of whether the underlying promotion is new or existing.

Details regarding the specific resale credits available for applicable promotions will be communicated via separate Accessible Letters. The formulae AT&T Southeast Region will use to calculate these credits is available in the Resale Product section of the CLEC Handbook on CLEC Online at:

<https://clec.att.com/clec/hb/index.cfm>

AT&T Southeast Region reserves the right to make any modifications to or to cancel the above information prior to the proposed effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Southeast Region will send additional notification at the time of cancellation. AT&T Southeast Region will incur no liability to the CLECs if the above mentioned information and/or approach is modified or discontinued for any reason.

**EXHIBIT B**



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-105**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Win-back Cash Back Promotion - FL**

Related Letters: **CLECSE09-100**

Attachment: **NA**

States Impacted: **Florida**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

Effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$6.07 using the methodology announced in **CLECSE09-100**, dated July 1, 2009.

AT&T Florida reserves the right to modify or cancel the above information. Should any such action be taken, it will be reflected in a subsequent letter to CLECs. AT&T Florida will incur no liability for the foregoing.