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100021-TP

From: WOODS, VICKIE (Legal) [vf1979@att.com]
Sent: Tuesday, July 06, 2010 4:08 PM
To: Filings@psc.state.fl.us
Subject: 100021-TP AT&T Florida's Request in Opposition to LifeConnex's Request for Emergency Relief
Attachments: Untitled.pdf; LEGAL-#827393-v1-100021-TP_AT&T_s_Response_in_Opposition_to_LifeConnex_s_Request_for_Emergency_Relief.docx

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

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

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

on behalf of Manuel A. Gurdian

D. 62 pages total (.pdf version) (includes letter, pleading, certificate of service and Exhibits 1 thru 4)

13 pages total (word version)

E. BellSouth Telecommunications, Inc. d/b/a AT&T Florida's Response in Opposition to LifeConnex's Request for Emergency Relief

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7/6/2010



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July 6, 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.'s Response in Opposition to LifeConnex's Request for Emergency Relief, which we ask that you file in the captioned docket.

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

Sincerely,

Manuel A. Gurdian

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

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

I HEREBY CERTIFY that a true and correct copy was served via Electronic Mail and First Class U. S. Mail this 6th day of July, 2010 to the following:

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Manuel A. Gurdian

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of BellSouth)
Telecommunications, Inc. d/b/a AT&T) Docket No. 100021-TP
Florida Against LifeConnex Telecom, LLC)
f/k/a Swiftel, LLC) Filed: July 6, 2010
_____)

**AT&T FLORIDA'S RESPONSE IN OPPOSITION TO LIFECONNEX'S
REQUEST FOR EMERGENCY RELIEF**

BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T Florida") respectfully submits its Response to the Request¹ for Emergency Relief² ("Request") filed by LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex"). The Florida Public Service Commission ("the Commission") should deny the Request because: (a) the Request is contrary to the plain and unambiguous language of the Commission-approved contract between the parties, (b) AT&T Florida's demand is not inconsistent with the procedural status of this docket, and (c) the relief sought in the Request is outside of the Commission's jurisdiction.

I. INTRODUCTION

On September 28, 2007, AT&T Florida filed a request for approval of the interconnection, unbundling, resale, and collocation agreement and one amendment with LifeConnex.³ By operation of law, on December 27, 2007, the Commission approved the negotiated interconnection agreement ("ICA") between LifeConnex and AT&T Florida.⁴ In that Commission-approved and binding ICA, LifeConnex expressly agreed to "make payment to

¹ Under the Commission's Rules, there is no such procedural vehicle as a "Request" for Emergency Relief. AT&T Florida believes that LifeConnex styled its pleading as a "Request" rather than as a Petition or Motion because LifeConnex understands that the Commission has no jurisdiction to enter the requested injunctive relief.

² On June 29, 2010, LifeConnex filed a similar Request in a docket pending before the Alabama Public Service Commission. *See In re: Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) for Temporary Emergency Relief to Prevent Suspension of Service.* LifeConnex owes AT&T Alabama more than \$12 million in past due charges for services provided in Alabama.

³ *See* Docket No. 070632, *In re: Request for approval of interconnection, unbundling, resale and collocation agreement, and one amendment, between BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast and Swiftel, LLC.*

⁴ *See* Commission Staff Memorandum dated December 28, 2007 filed in Docket No. 070632.

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[AT&T Florida] for all services billed *including disputed amounts*,” and it agreed to make those payments “on or before the next bill date.”⁵ On June 18, 2010, AT&T Florida sent LifeConnex a letter and attachments that, among other things: sets forth LifeConnex’s substantial past due balance; quotes the operative language of the parties’ ICA; notes that from December 20, 2009 to May 20, 2010, LifeConnex paid AT&T Florida less than ten percent of the net amount owed (the billed amounts less credits AT&T Florida applied for promotions and other adjustments) for that same time period; and demands payment of all past due charges on or before July 6, 2010, or suffer suspension of order processing,⁶ and payment on or before July 21, 2010 or LifeConnex’s service will be disconnected. Exhibit 2 to this Response is a copy of that letter⁷ and its attachments, supported by the affidavit of Gert Andersen.

In its Request, Lifeconnex acknowledges that it has breached its ICA by consistently refusing to make the payments it agreed to make,⁸ and as a result it has a past-due balance due AT&T Florida in excess of \$1.4 million.⁹ LifeConnex alleges that “if all pending disputes are resolved in favor of LifeConnex, AT&T would owe money to LifeConnex” (presumably in promotional credits that LifeConnex has requested and AT&T Florida has denied). AT&T Florida denies this allegation, which is, in effect, an argument that AT&T Florida must pay LifeConnex for having ordered services from AT&T Florida and resold those services to its end

⁵ See ICA, Attachment 7, p. 6, §§1.4 and 1.4.1 (emphasis added). Exhibit 1 to this Response is a copy of Attachment 7 to the parties’ ICA.

⁶ On Friday, July 2, 2010, AT&T Florida offered to extend this deadline to July 13, 2010.

⁷ The June 18, 2010 letter and attachments are also attached as Exhibit A to LifeConnex’s Request.

⁸ Request at pp. 4-5, ¶9. See also, page 4, n.2 of LifeConnex’s Alabama filing entitled Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) Concerning Implementation of Its Interconnection Agreement with AT&T and Motion for Temporary, Emergency Relief to Prevent Suspension of Service where it admits that “LifeConnex does not have the right to withhold disputed amounts” (emphasis added). Exhibit 3 to this Response is a copy of the referenced page. Moreover, LifeConnex admits at page 5 of its Florida Request, n. 4, that “[m]any CLECs, if not most CLECs, in the former BellSouth region, have ICAs which allow the CLEC to withhold payments of disputed amounts until the disputes are resolved. LifeConnex does not currently have such language in its own ICA.” (emphasis added).

⁹ Request at pp. 7-8, ¶18.

users. More importantly, LifeConnex's allegation does nothing to alter the fact that the plain language of the ICA requires it to pay all amounts it is billed, even if it disputes those amounts.¹⁰

II. ARGUMENT

A. The unambiguous language of the ICA requires LifeConnex to pay all amounts billed, including disputed charges.

The parties' Commission-approved ICA requires LifeConnex to pay all amounts it is billed, even if it disputes those amounts:

Payment of *all* charges will be the responsibility of [LifeConnex].¹¹

[Lifeconnex] shall make payment to [AT&T Florida] for all services billed *including disputed amounts*.¹²

Payment for services provided by [AT&T Florida], *including disputed charges*, is due on or before the next bill date.¹³

The language quoted above is unambiguous, and the Commission-approved ICA is a valid contract. The Commission, therefore, is required by law to enforce the ICA as written as Florida law is clear that "an unambiguous agreement must be enforced in accordance with 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.") and *Medical Center Health Plan v. Brick*, 572 So. 2d 548, 551 (Fla. 1st DCA 1990)("A party is bound by, and a court is powerless to rewrite, the clear and unambiguous terms of a voluntary contract. *Nat'l Health Laboratories, Inc. v. Bailmar, Inc.*, 444 So.2d 1078, 1080 (Fla. 3d DCA 1984)."). Moreover, "[i]t

¹⁰ In its Request, Lifeconnex makes no offer to pay any portion of the balance now. Instead, it asks the Commission to allow it to continue ordering services from AT&T Florida and continue violating its ICA by paying AT&T Florida nothing for those services indefinitely. To require AT&T Florida to waive indefinitely for LifeConnex to pay its bills would require AT&T Florida's stockholders, in essence, to continue subsidizing non-paying wholesale customers like LifeConnex. In these trying economic times, that is simply too much to ask.

¹¹ ICA, Attachment 7, p. 6, §1.4 (emphasis added).

¹² *Id.*, (emphasis added).

¹³ *Id.*, §1.4.1 (emphasis added).

is a fundamental rule of contract interpretation that a contract which is clear, complete, and unambiguous does not require judicial construction,” *Jenkins v. Eckerd Corp.*, 913 So.2d 43 (Fla. 1st DCA 2005), and “[i]t is not the role of the courts to make an otherwise valid contract more reasonable from the standpoint of one contracting party.” *Stack v. State Farm Mut. Auto Ins. Co.*, 507 So.2d 617, 619 (Fla. 3d DCA 1987).

This principle applies even when contractual terms bind a party to a seemingly harsh or out of the ordinary bargain. *See Barakat v. Broward County Hous. Auth.*, 771 So.2d 1193, 1195 (Fla. 4th DCA 2000)(“Contracts are to be construed in accordance with the plain meaning of the words contained therein....It is never the role of the trial court to rewrite a contract to make it more reasonable for one of the parties or to relieve a party from what turns out to be bad bargain....A fundamental tenet of contract law is that parties are free to contract, even when one side negotiates a harsh bargain.”). *See also, Applica Inc. v. Newtech Electronics Indus., Inc.*, 980 So.2d 1194 (Fla. 3d DCA 2008)(“where an agreement is unambiguous...we enforce the contract as written, no matter how disadvantageous the language might later prove to be.”).

The parties’ interconnection agreement is not only a contract but also “the Congressionally prescribed vehicle for implementing the substantive rights and obligations set forth in the Act,” *Michigan Bell Tel. Co. v. Strand*, 305 F.3d 580, 582 (6th Cir. 2003), and once a carrier enters “into an interconnection agreement in accordance with section 252, ... it is then regulated directly by the interconnection agreement.” *Law Offices of Curtis V. Trinko LLP v. Bell Atl. Corp.*, 305 F.3d 89, 104 (2d Cir. 2002), *rev’d in part on other grounds sub nom; Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP*, 540 U.S. 398 (2004). *See also, Mich. Bell Tel. Co. v. MCImetro Access Trans. Servs., Inc.*, 323 F.3d 348, 359 (6th Cir. 2003) (“[O]nce an agreement is approved, these general duties [under the 1996 Act] do not control” and parties

are “governed by the interconnection agreement” instead, and “the general duties of [the 1996 Act] no longer apply”). Moreover, “[t]he Act does not authorize a state commission to alter terms within an approved negotiated agreement or to nullify an approved negotiated agreement.” *In re: Petition of Supra Telecommunications & Information Systems for generic proceeding to arbitrate rates, terms, and conditions of interconnection with BellSouth Telecommunications, Inc., or, in the alternative, petition for arbitration of interconnection agreement*, Docket No. 980155-TP; Order No. PSC-98-0466-FOF-TP (March 31, 1998).

The language quoted above from Sections 1.4 and 1.4.1 of the parties’ ICA is unambiguous, and the Commission-approved ICA is a “valid contract.” The Commission, therefore, is required to enforce the ICA as written. LifeConnex has admitted that it breached the ICA; thus, the Commission should deny LifeConnex’s Request in which LifeConnex does nothing more than ask to be relieved of its contractual obligations.

B. The Joint Motions on Procedural Issues and the Commission Order Regarding the Joint Motions in this Docket do not relieve LifeConnex of its contractual obligation to pay all amounts, including disputed charges.

LifeConnex correctly notes that the May 13, 2010 Joint Motion on Procedural Issues (“May 13, 2010 Joint Motion”) in this Docket provides, in part, that “[o]nce the Commission has issued an order resolving the issues in the Consolidated Phase, the Parties will work in good faith to address all remaining unresolved claims and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each party.”¹⁴ Moreover, LifeConnex correctly notes that the parties filed their June 15, 2010 Joint Motion on Procedural Schedule (“June 15, 2010 Joint Motion”) requesting that the proceeding in Florida be held in abeyance¹⁵ and that Order No. PSC-10-0402-PCO-TP was issued on June 18, 2010 holding the

¹⁴ See Request at p. 3, ¶5; p. 4, ¶8; May 13, 2010 Joint Motion at pp. 2-3.

¹⁵ See Request at p. 3, ¶6.

docket in abeyance.¹⁶ AT&T Florida does not dispute these points. But, LifeConnex then stretches these motions beyond recognition and contends that AT&T Florida's lawful demand for payment of past-due amounts is contrary to the abeyance granted by Order No, PSC-10-0402-PCO-TP.¹⁷ This is where LifeConnex's logic fails.

In Order No, PSC-10-0402-PCO-TP, in addressing the May 13, 2010 Joint Motion and the June 15, 2010 Joint Motion, the pre-hearing officer held the docket "in abeyance pending either resolution of the cases in the states set forth above or the filing of a persuasive motion to resume the dockets." Order No. PSC-10-0402-PCO-TP did not in any way excuse LifeConnex from complying with the plain terms of the ICA, nor did it prohibit AT&T Florida from taking an action which is clearly permitted by the plain language of the ICA. i.e. demanding payment from LifeConnex "for all services billed *including disputed amounts*."

In fact, the plain language of the May 13, 2010 Joint Motion supports AT&T Florida's position that LifeConnex must comply with all terms of the ICA while this docket is pending.

That motion provides:

As stated below, any individual Party may also seek to pursue in its respective docket, either concurrent with or following the Consolidated Phase, any issue, claim, or counterclaim, including related discovery, that is not addressed in the Consolidated Phase.

Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with our following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

LifeConnex ignores this section of the motion in its Request. The reason is obvious: the May 13, 2010 Joint Motion does not prevent AT&T Florida from pursuing "any issue" or "claim" that is

¹⁶

Id.

¹⁷

See Request at p. 5, ¶9.

not addressed in the Consolidated Phase nor does Order No. PSC-10-0402-PCO-TP, and thus does not prevent AT&T Florida from enforcing Sections 1.4 and 1.4.1 of the ICA.

LifeConnex's assertion that "the primary issues in dispute between the parties are pending" in this docket is simply wrong. The issues raised in AT&T Florida's Complaint in this Docket are how much (if any) credit LifeConnex is entitled to receive when it resells services that are the subject of certain promotional offers. LifeConnex's request for emergency relief in this Docket has nothing to do with the merits of those issues. The separate and distinct issue addressed by LifeConnex's Request is: who bears the risk of non-payment while those disputed issues are resolved? That question clearly is not being addressed in this docket and, as explained above, the Commission-approved ICA already addresses (and resolves) that issue by requiring LifeConnex to pay all amounts AT&T bills, even if it disputes those amounts.

C. AT&T Florida has not waived its right to demand payment of all amounts, including amounts LifeConnex disputes.

LifeConnex alleges that it "has been deducting from its bill claims for promotional credits and disputed charges – without any objection from AT&T – since October, 2007."¹⁸ It then alleges that AT&T Florida has "acquiesced" to LifeConnex's "practice" of not paying its bills. In essence, LifeConnex argues that by not having demanded payment of all charges due in the past, AT&T Florida has waived its right to do so now.

¹⁸ See Request at p. 5, ¶9. Moreover, in a footnote 4 on p. 5 of the Request, LifeConnex alleges that in a docket pending in Alabama, AT&T has agreed to accept a security deposit of two months "net bills" pending resolution of a separate Complaint LifeConnex filed over the "proper deposit amount." While AT&T disagrees with LifeConnex's characterization of the alleged agreement, the fact remains that the deposit issue to which LifeConnex refers has no bearing on LifeConnex's Request in this docket. A deposit provides AT&T some level of protection against LifeConnex's inability to pay its bills for services it purchases from AT&T *in the future*. A deposit is not intended to – and does not – provide AT&T any protection against LifeConnex's inability to pay more than \$1.4 million for services it has purchased in the past and for which it refused to pay in Florida. Similarly, AT&T's agreement not to disconnect LifeConnex in Alabama for nonpayment of a deposit is in no way an agreement not to suspend or disconnect LifeConnex for nonpayment of past-due bills.

Once again, LifeConnex's argument is refuted by the unambiguous language of the parties' Commission-approved ICA:

A failure or delay of either party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of 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.¹⁹

Even if AT&T Florida had not insisted that LifeConnex pay all amounts (including disputed amounts) in the past, it clearly has the right "thereafter (i.e. now) to insist upon the performance of any and all provisions" of the ICA. AT&T Florida has exercised its lawful right to insist that LifeConnex pay all amounts it has been billed, and if it does not do so, AT&T Florida has the right to suspend, disconnect, and terminate LifeConnex's service as allowed by the ICA.²⁰

D. Commission does not have the authority to issue an Injunction

In order to hear and determine a complaint or petition, a court or agency must be vested not only with jurisdiction over the parties, but also with subject matter jurisdiction to grant the relief requested by the parties. *See Keena v. Keena*, 245 So. 2d 665, 666 (Fla. 1st DCA 1971). Subject matter jurisdiction arises only by virtue of law – it must be conferred by constitution or statute and cannot be created by waiver or acquiescence. *Jesse v. State*, 711 So. 2d 1179, 1180 (Fla. 2d DCA 1998). This Commission, therefore, must dismiss a complaint or deny a request for relief to the extent that it asks the Commission to address matters over which it has no jurisdiction or to the extent that it seeks relief that the Commission is not authorized to grant. *See, e.g., In re: Petition by AT&T Communications of the Southern States, Inc. TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth*

¹⁹ ICA, General Terms and Conditions, Page 15, §17. Exhibit 4 to this Response is a copy of the General Terms and Conditions of the ICA.

²⁰ *See* ICA, Attachment 7, pp. 7-9, §§1.5 to 1.5.5.

Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries. Docket No. 010345-TP, PSC-01-2178-FOF-TP (Nov. 6, 2001) (granting BellSouth's Motion to Dismiss AT&T's and FCCA's Petition for Structural Separation because "the Petitions fail to state a cause of action upon which relief can be granted. Namely, we have neither Federal nor State authority to grant the relief requested"); *In re: Complaint and petition of John Charles Heekin against Florida Power & Light Company*, Docket No. 981923-EI, Order No. PSC-99-1054-FOF-EI (May 24, 1999) (Commission dismissed a complaint because the complaint involved "a claim...outside this Commission's jurisdiction.").

The Commission, therefore, must determine whether the Legislature has granted it any authority to force AT&T Florida to continue to provide service to LifeConnex for which AT&T Florida is not being paid. In making this determination, the Commission must keep in mind that the Legislature has never conferred upon the Commission any general authority to regulate public utilities, including telephone companies. *See City of Cape Coral v. GAC Util., Inc.*, 281 So. 2d 493, 496 (Fla. 1973). Instead, "[t]he Commission has only those powers granted by statute expressly or by necessary implication." *See Deltona Corp. v. Mayo*, 342 So. 2d 510, 512 n.4 (Fla. 1977); *accord East Central Regional Wastewater Facilities Oper. Bd. v. City of West Palm Beach*, 659 So.2d 402, 404 (Fla. 4th DCA 1995) (noting that an agency has "only such power as expressly or by necessary implication is granted by legislative enactment" and that "as a creature of statute," an agency "has no common law jurisdiction or inherent power . . .").

Moreover, any authority granted by necessary implication must be derived from fair implication and intendment incident to any express authority. *See Atlantic Coast Line R.R. Co. v. State*, 74 So. 595, 601 (Fla. 1917); *State v. Louisville & N. R. Co.*, 49 So. 39 (Fla. 1909). Finally, "any reasonable doubt as to the existence of a particular power of the Commission must

be resolved against it.” *State v. Mayo*, 354 So. 2d 359, 361 (Fla. 1977). For the reasons discussed below, LifeConnex cannot demonstrate that the Commission has the authority to grant the “emergency relief” LifeConnex requests.

The “emergency relief” LifeConnex seeks is for the Commission to order AT&T Florida “to take no actions to suspend or otherwise interfere with LifeConnex’s service to its customers....” See Request at p.10, ¶ 25. That relief is identical to that which a court would call an injunction, See *First Nat’l Bank in St. Petersburg v. Ferris*, 156 So.2d 421 (Fla. 2d DCA 1963)(An injunction “commands that acts be done or undone.”). However, the Commission cannot grant the relief requested because it lacks the authority to issue injunctions. See *In re: Complaint and Petition of Cynwyd Investments Against Tamiami Village Utility, Inc.*, Docket Nos. 920649-WS and 930642-WS, Order No. PSC-94-0210 at p. 9 (February 21, 1994) (“We agree that this Commission does not have subject matter jurisdiction to issue injunctions”); see also *Florida Power & Light Company v. Albert Litter Studios, Inc.*, 896 So.2d 891, 892 n.3 (Fla. 3d DCA 2005) (The Commission “concedes that it lacks the authority to issue injunctive relief.”); *In re: Petition to investigate, claim for damages, complaint and other statements against respondents Evercom Systems, Inc. d/b/a Correctional Billing Services and BellSouth Corporation by Bessie Russ*, Docket No. 060640-TP, Order No. PSC-07-0332-PAA-TP (Issued April 16, 2007) (“We find it appropriate to grant BellSouth’s Partial Motion to Dismiss. The Petition/Complaint shall be dismissed in part because we do not have judicial power required to... (b) issue injunctions”) and *In re: Petition for Commission to intervene, investigate and mediate dispute between DSL Internet Corporation d/b/a DSLi and BellSouth Telecommunications, Inc.*, Docket No. 080631-TP, Order No. PSC- 09-0515-PCO-TP (Issued July 21, 2009) (“we find that this Commission does not have the authority to provide injunctive

relief to [Petitioner]. Thus, assuming all of [Petitioner]'s allegations as true, we find that [Petitioner] has failed to state a cause of action for which injunctive relief can be granted. As such, we shall grant the AT&T Partial Motion to Dismiss and thereby dismiss the portion of the Petition in which [Petitioner] requests injunctive relief.”).

Because LifeConnex seeks a remedy that the Commission has no authority to provide, LifeConnex's requested relief should be denied.²¹

E. Even if the Commission had authority to issue injunctions (which it does not) LifeConnex has not demonstrated, and cannot demonstrate, that it is entitled to the extraordinary injunctive relief it seeks.

The “emergency relief” LifeConnex seeks is for the Commission to order AT&T Florida “to take no actions to suspend or otherwise interfere with LifeConnex's service to its customers...” See Request at p.10, ¶ 25. This is a request for injunctive relief, which is an extraordinary form of relief. Accordingly, a party seeking an injunction must produce evidence that satisfies a demanding test.

The test, which LifeConnex cannot meet, consists of a showing of the following criteria: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of public interest. See *Tom v. Russ*, 752 So.2d 1250 (Fla. 1st DCA 2000) citing *Spradley v. Old Harmony Baptist Church*, 721 So.2d 735, 737 (Fla. 1st DCA 1998). In order for an injunction to be entered a court must specify the reasons for entry and “clear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a preliminary injunction.” *Id.*

²¹ At paragraph 25 of its Request, LifeConnex also cites to Section 364.01, Florida Statutes to support its argument that the Commission is empowered to provide the relief requested. Section 364.01 is an expression of legislative intent and provides guidance to the Commission in how to view and interpret the exercise of substantive jurisdiction. This section is not a legislative grant of authority and does not convey to the Commission any independent authority to act. In particular, it provides no authority to act in this instance.

In light of the plain language of the ICA discussed above, LifeConnex cannot prove that it has a right to refuse to pay its bills or that it has a substantial likelihood of success on the merits of that position – to the contrary, it acknowledges that it “does not have the right to withhold disputed amounts.”²² Further, if LifeConnex has the money to pay its bills as it committed to do in the ICA, it will suffer no harm whatsoever – if its disputes are invalid, it merely will have paid amounts it was obligated to pay (and there is no “harm” in that), and if its disputes are valid, there is nothing to suggest that AT&T Florida cannot provide it bill credits or payments in accordance with the Commission’s rulings in the Consolidated Phase of this Docket. In contrast, if LifeConnex does not have the money to pay its bills (which apparently is the case), then the harm of requiring AT&T Florida to provide even more service for which it will not be paid clearly outweighs any purported “harm” to LifeConnex. And while LifeConnex claims that its end users would no longer receive service if AT&T Florida disconnects or terminates LifeConnex for nonpayment, that claim goes too far. While they may no longer receive service from LifeConnex, there are a number of other carriers in Florida, including other prepay resellers, from whom LifeConnex’s current end users can receive service.

III. CONCLUSION

In conclusion, based upon the reasons set forth above, AT&T Florida respectfully requests that the Commission deny LifeConnex’s Request.

WHEREFORE, for the foregoing reasons, AT&T Florida requests that the Commission deny the LifeConnex’s Request for Emergency Relief.

²² See Exhibit 3 to this Response.

Respectfully submitted this 6th day of July, 2010.



E. Earl Edenfield, Jr.
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AT&T FLORIDA

827393

Exhibit 1

DOCUMENT NUMBER DATE

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FPSC-COMMUNICATIONS

Attachment 7

Billing

Version: 2Q07 Standard ICA
04/26/07

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DOCUMENT NUMBER DATE

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FPSC-DOCUMENTS/CLERK

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BILLING

1. **Payment and Billing Arrangements**

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.
- 1.1 AT&T will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to Swiftel, LLC under this Agreement. AT&T will use its best efforts to format bills in CABS Billing Output Specification (CBOS) standard format. AT&T's billing format may change in accordance with applicable industry standards; provided, however, that AT&T may, in some instances, not apply CBOS standard format for certain types of billing for certain products and services. Billing in a format other than CBOS shall not be the basis of any Swiftel, LLC dispute or withholding of payment.
- 1.1.1 For any service(s) AT&T receives from Swiftel, LLC, Swiftel, LLC shall bill AT&T in CBOS format.
- 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to AT&T.
- 1.1.3 AT&T will render bills each month on established bill days for each of Swiftel, LLC's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in AT&T's Non-Regulated Services Pricing List N6.
- 1.1.4 AT&T will bill Swiftel, LLC in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
- 1.1.4.1 For resold services, charges for services will be calculated on an individual customer account level, including, if applicable, any charge for usage or usage allowances. AT&T will also bill Swiftel, LLC, and Swiftel, LLC will be responsible for and remit to AT&T, all charges applicable to said services including but not limited to 911 and E911 charges, EUCL charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.
- 1.1.5 AT&T will not perform billing and collection services for Swiftel, LLC as a result of the execution of this Agreement.
- 1.2 Establishing Accounts and Subsequent State Certifications. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, Swiftel, LLC will provide the appropriate AT&T Local Contract Manager responsible for new CLEC activation,

the necessary documentation to enable AT&T to establish accounts for Local Interconnection, Network Elements and Other Services and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide Telecommunications Services, the appropriate OCN for each state as assigned by the NECA, CIC, if applicable, ACNA, if applicable, AT&T's blanket form LOA, Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, Swiftel, LLC may not order services under a new account and/or subsequent state certification, established in accordance with this Section until thirty (30) days after all information specified in this Section is received from Swiftel, LLC.

- 1.2.1 ACNAs. Swiftel, LLC shall provide AT&T with documentation from Telcordia identifying the ACNA assigned to it by Telcordia (as applicable) in the same legal name as reflected in the preamble to this Agreement. Such ACNA will be used by Swiftel, LLC to order services pursuant to this Agreement and will not be shared by Swiftel, LLC with another entity.
- 1.2.2 Company Identifiers. If Swiftel, LLC needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when Swiftel, LLC has already been conducting business utilizing those Company Identifiers, Swiftel, LLC shall follow the Mergers and Acquisitions Process as described on AT&T's Interconnection Web site, and shall be subject to separately negotiated rates, terms and conditions.
- 1.2.3 Tax Exemption. It is the responsibility of Swiftel, LLC to provide AT&T with a properly completed tax exemption certificate in the current version of the form customarily used by AT&T and at intervals required by the appropriate taxing authorities or reasonably requested by AT&T. A tax exemption certificate must be supplied for each individual Swiftel, LLC entity purchasing Services under this Agreement. Upon AT&T's receipt of a properly completed tax exemption certificate, subsequent billings to Swiftel, LLC will not include those taxes or fees from which Swiftel, LLC is exempt. Prior to receipt of a properly completed exemption certificate, AT&T shall bill, and Swiftel, LLC shall pay all applicable taxes and fees. In the event that Swiftel, LLC believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to AT&T's receipt of a properly completed exemption certificate, AT&T shall assign to Swiftel, LLC its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by AT&T, AT&T shall, after receiving a written request from Swiftel, LLC and at Swiftel, LLC's sole expense, pursue such refund claim on behalf of Swiftel, LLC, provided that Swiftel, LLC promptly reimburses AT&T for any costs and expenses incurred by AT&T in pursuing such refund claim; and, provided further, that AT&T shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to Swiftel, LLC or to deduct any such outstanding costs and expenses from

any amounts owed by AT&T to Swiftel, LLC if no refund is obtained. Swiftel, LLC shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by Swiftel, LLC to its customers.

- 1.3 Deposit Policy. Prior to the inauguration of service or, thereafter, upon AT&T's request, Swiftel, LLC shall complete the AT&T Credit Profile (AT&T form) and provide information to AT&T regarding Swiftel, LLC's credit and financial condition. Based on AT&T's analysis of the AT&T Credit Profile and other relevant information regarding Swiftel, LLC's credit and financial condition, AT&T reserves the right to require Swiftel, LLC to provide AT&T with a suitable form of security deposit for Swiftel, LLC's account(s). If, in AT&T's sole discretion, circumstances so warrant and/or Swiftel, LLC's gross monthly billing has increased, AT&T reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in Swiftel, LLC's "accounts receivables and proceeds".
- 1.3.1 Security deposit shall take the form of cash, an irrevocable letter of credit (AT&T form), surety bond (AT&T form) or, in AT&T's sole discretion, some other form of security proposed by Swiftel, LLC and accepted by AT&T. Any such security deposit shall in no way release Swiftel, LLC from its obligation to make complete and timely payments of its bill(s). If AT&T requires Swiftel, LLC to provide a security deposit, Swiftel, LLC shall provide such security deposit prior to the inauguration of service or within fifteen (15) days of AT&T's request, as applicable. Security deposit request notices will be sent to Swiftel, LLC via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in AT&T's GSST.
- 1.3.2 Security deposits collected under this Section shall not exceed two (2) months' estimated billing for services pursuant to this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if Swiftel, LLC has received service from AT&T during such period at a level comparable to that anticipated to occur over the next six (6) months. If either Swiftel, LLC or AT&T has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, Swiftel, LLC and AT&T shall agree on a level of estimated billings based on all relevant information.
- 1.3.3 In the event Swiftel, LLC fails to provide AT&T with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to Swiftel, LLC may be Suspended, Discontinued or Terminated in accordance with the terms of

Section 1.5 below. Upon Termination of services, AT&T shall apply any security deposit to Swiftel, LLC's final bill for its account(s). If no bill is rendered to Swiftel, LLC, AT&T shall, nevertheless, apply any security deposit to Swiftel, LLC's outstanding balance.

- 1.3.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by Swiftel, LLC as security under this Agreement, Swiftel, LLC shall renew such letter of credit or provide AT&T with evidence that Swiftel, LLC has obtained a suitable replacement for the letter of credit. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to draw down the full amount of such letter of credit and utilize the cash proceeds as security for Swiftel, LLC account(s). If Swiftel, LLC provides a security deposit or additional security deposit in the form of a surety bond as required herein, Swiftel, LLC shall renew the surety bond or provide AT&T with evidence that Swiftel, LLC has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for Swiftel, LLC's account(s). If the credit rating of any bonding company that has provided Swiftel, LLC with a surety bond provided as security hereunder has fallen below B, AT&T will provide written notice to Swiftel, LLC that Swiftel, LLC must provide a replacement bond or other suitable security within fifteen (15) days of AT&T's written notice. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for Swiftel, LLC's account(s). Notwithstanding anything contained in this Agreement to the contrary, AT&T shall be authorized, in its sole discretion, to draw down the full amount of any letter of credit or take action on any surety bond provided by Swiftel, LLC as security hereunder if Swiftel, LLC defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein and apply the cash proceeds to any outstanding balance on Swiftel, LLC's accounts and utilize any remaining cash proceeds as security for Swiftel, LLC's account(s).
- 1.4 Payment Responsibility. Payment of all charges will be the responsibility of Swiftel, LLC. Swiftel, LLC shall pay invoices by utilizing wire transfer services or automatic clearing house services. Swiftel, LLC shall make payment to AT&T for all services billed including disputed amounts. AT&T will not become involved in billing disputes that may arise between Swiftel, LLC and Swiftel, LLC's customer.
- 1.4.1 Payment Due. Payment for services provided by AT&T, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify AT&T of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by

AT&T. If the Remittance Information is not received with payment, AT&T will be unable to apply amounts paid to Swiftel, LLC's accounts. In such event, AT&T shall hold such funds until the Remittance Information is received. If AT&T does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.

- 1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.
- 1.4.1.2 Late Payment. If any portion of the payment is not received by AT&T on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T in funds that are not immediately available to AT&T, then a late payment and/or interest charge shall be due to AT&T. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of AT&T's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the AT&T intrastate Access Services Tariff, or pursuant to the applicable state law as determined by AT&T. In addition to any applicable late payment and/or interest charges, Swiftel, LLC may be charged a fee for all returned checks at the rate set forth in Section A2 of AT&T's GSST or pursuant to the applicable state law.
- 1.5 Discontinuing Service to Swiftel, LLC. The procedures for discontinuing service to Swiftel, LLC are as follows:
- 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 customers. Additionally, at the time of Discontinuance, AT&T will remove any Local Service Freezes in place on the billed Party's customers.
- 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.
- 1.5.2 AT&T reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of AT&T facilities or service, abuse

of AT&T facilities, or any other violation or noncompliance by Swiftel, LLC of the rules and regulations of AT&T's tariffs.

- 1.5.3 **Suspension.** If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, AT&T will provide written notice to Swiftel, LLC that services will be Suspended if payment of such amounts, and all other 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 above: (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.
- 1.5.3.1 The Suspension notice shall also provide that all past due 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, AT&T will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS 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 CABS billed services. This Discontinuance notice may be provided at the same time that AT&T provides the Suspension notice.
- 1.5.4 **Discontinuance.** If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, AT&T will provide written notice that AT&T may discontinue the provision of existing services to Swiftel, LLC if payment of such amounts, and all other amounts that become past due before Discontinuance, including requested security deposits, 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 deposit in accordance with Section 1.3.1 above, within thirty (30) days following such written notice; provided, however, that AT&T may provide written notice that such existing services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.4.1 below.
- 1.5.4.1 AT&T may take the action to Discontinue the provision of existing service upon fifteen (15) days from the day after AT&T provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b) Swiftel, LLC has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:

- (1) AT&T has sent the subject bill(s) to Swiftel, LLC within seven (7) business days of the bill date(s), verifiable by records maintained by AT&T:
 - i. in paper or CDROM form via the United States Postal Service (USPS),
or
 - ii. in magnetic tape form via overnight delivery, or
 - iii. via electronic transmission; or
- (2) AT&T has sent the subject bill(s) to Swiftel, LLC, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

- 1.5.4.2 In the case of Discontinuance of services, all billed charges, as well as applicable disconnect charges, shall become due.
- 1.5.4.3 Swiftel, LLC is solely responsible for notifying the customer of the Discontinuance of service. If, within seven (7) days after Swiftel, LLC's services have been Discontinued, Swiftel, LLC pays, by wire transfer, automatic clearing house or cashier's check, all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of AT&T's GSST, then AT&T will reestablish service for Swiftel, LLC.
- 1.5.5 Termination. If within seven (7) days after Swiftel, LLC's service has been Discontinued and Swiftel, LLC has failed to pay all past due charges as described above, then Swiftel, LLC's service will be Terminated.

2. Billing Disputes

- 2.1 Swiftel, LLC shall electronically submit all billing disputes to AT&T using the form specified by AT&T. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within five (5) business days of AT&T's denial, or partial denial, of the billing dispute, if Swiftel, LLC is not satisfied with AT&T's resolution of the billing dispute or if no response to the billing dispute has been received by Swiftel, LLC by such sixtieth (60th) day, Swiftel, LLC must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on AT&T's Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute shall pursue dispute resolution in accordance with General Terms and Conditions.
- 2.2 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 above of a specific amount of money actually billed by AT&T within twelve (12) months of the submission of such dispute. Swiftel, LLC agrees to not submit billing disputes for amounts billed more than

twelve (12) months prior to submission of a billing dispute filed for amounts billed. The billing dispute must be clearly explained by Swiftel, LLC 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 AT&T's sole reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by AT&T. Claims by Swiftel, LLC for damages of any kind will not be considered a billing dispute for purposes of this Section. If AT&T resolves the billing dispute, in whole or in part, in favor of Swiftel, LLC, any credits and interest due to Swiftel, LLC as a result thereof shall be applied to Swiftel, LLC's account by AT&T upon resolution of the billing dispute.

3. Non-InterCompany Settlements

- 3.1 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the Centralized Message Distribution System (CMDS) Data Center (Direct Participant) and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center.
- 3.2 The Non-InterCompany Settlements (NICS) is the national system administered by Telcordia that is used in the settlement of revenues for calls that are originated and billed by two (2) different local exchange carriers (LEC) within a single Direct Participant's territory to another for billing. NICS applies to calls involving another LEC where the Earning Company and the Billing Company are located within AT&T's Southeast Region 9-State.
- 3.3 In association with message distribution service, AT&T will provide Swiftel, LLC with associated intercompany settlements reports as appropriate.
- 3.4 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.

3.5 Intercompany Settlements Messages

- 3.5.1 *Intercompany Settlements Messages* facilitate the settlement of revenues associated with traffic originated from or billed by Swiftel, LLC as a facilities based provider of local exchange Telecommunications Services.
- 3.5.2 AT&T will receive the monthly NICS reports from Telcordia on behalf of Swiftel, LLC and will distribute copies of these reports to Swiftel, LLC on a monthly basis.
- 3.5.3 Through NICS, AT&T will collect the revenue earned by Swiftel, LLC within the AT&T Southeast Region 9-State from another LEC also within the AT&T Southeast Region 9-State where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of Swiftel, LLC. AT&T will

remit the revenue billed by Swiftel, LLC within the AT&T Southeast Region 9-State to the LEC also within the AT&T Southeast Region 9-State, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two (2) amounts will be netted together by AT&T and the resulting charge or credit issued to Swiftel, LLC via a CABS miscellaneous bill on a monthly basis in arrears.

3.5.4 AT&T and Swiftel, LLC agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.

Exhibit 2

DECLASSIFICATION DATE

05505 JUL-68

FPSC-CONFERENCE CENTER

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

Complaint of BellSouth)
Telecommunications, Inc., d/b/a AT&T) Docket No. _____
Florida Against LifeConnex Telecom, LLC)
f/k/a Swiftel, LLC)

AFFIDAVIT OF GERT ANDERSEN

I, Gert Andersen, of lawful age and being sworn upon my oath, do state as follows:

1. I am a Director – Credit & Collections of AT&T Services, Inc., and have been employed by AT&T Services, Inc. or an affiliated company for 29 years. Among other things, AT&T Services, Inc. provides billing and collection services for its affiliated companies, including BellSouth Telecommunications, Inc. d/b/a AT&T Florida (“AT&T Florida”). I am authorized to make this Affidavit on behalf of AT&T Florida. This Affidavit is based on my personal knowledge and my review of the business records of AT&T Florida.

2. On Friday, June 18, 2010, AT&T Florida sent a collection letter to LifeConnex Telecom, LLC f/k/a Swiftel, LLC (“LifeConnex”), demanding payment of the past due amounts owed by Lifeconnex to AT&T Florida on its Florida resale accounts. Exhibit 1, attached hereto, is a true and correct copy of the June 18 collection letter. Exhibit 1 was created and maintained by AT&T Florida in the normal course of business and is based on the business records of AT&T Florida.

3. The document attached hereto as Exhibit 2 is a true and correct copy of a chart, which was prepared at my direction and under my supervision, detailing LifeConnex’s billing and payment account history with AT&T Florida for the period April 2008 through May 2010. Exhibit 2 is a true and accurate summary regarding LifeConnex’s billing and payment account history with AT&T Florida, and was created from the business records of AT&T Florida.

DOCUMENT ACCEPDATE

05505 JUL-6 e

FPSC-COMM088, 11010

Exhibit 2 was sent to LifeConnex as Attachment A to the collection letter that was sent on June 18, 2010.

4. The document attached hereto as Exhibit 3 is a true and correct copy of a chart that I am familiar with which details the number of resale lines that LifeConnex has purchased from AT&T Florida on a month-by-month basis from January 2009 through May 2010. Exhibit 3 is a true and accurate summary of the number of resale lines LifeConnex received from AT&T Florida in the State of Florida, and was created from the business records of AT&T Florida. Exhibit 3 was sent to LifeConnex as Attachment B to the collection letter that was sent on June 18, 2010.

FURTHER AFFIANT SAYETH NOT.


Gert Andersen

Sworn to me on 6th of July 2010

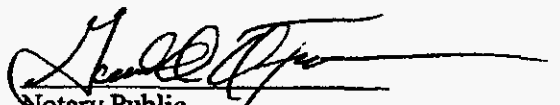

Notary Public
COMMISSION IS PERMANENT

Exhibit 1

DOCUMENT NUMBER-DATE

05505 JUL-6 2

FPSC-COMMISSION DE F.P.



AT&T Southeast
600 North 19th Street
22nd Floor
Birmingham, AL 35203

VIA FED EX, Tracking Number 8726 2365 8103
June 18, 2010

Edward Heard
General Manager
Lifeconnex Telecom, Inc.
13700 Perdido Key Drive, Suite 222
Perdido Key, FL 32507

Dear Mr. Heard:

RE: NOTICE OF SUSPENSION AND TERMINATION

AT&T Florida's records indicate that the Lifeconnex Telecom, Inc. (formerly known as Swiftel, L.L.C.) ("Lifeconnex") Florida Resale accounts have a combined outstanding **past due balance of \$1,431,372** as of May 20, 2010. These Resale accounts are listed on Attachment A.

The Interconnection Agreement between AT&T Florida and Lifeconnex covering services purchased in the State of Florida, which was approved by the Florida Public Service Commission on December 28, 2007 ("ICA"), requires you to pay AT&T Florida all billed charges, including disputed amounts. See ICA, Attachment 7, Billing at Section 1.4, which reads, in part:

Swiftel, LLC shall make payment to AT&T for all services billed including disputed amounts.

Moreover, Section 1.4.1 of Attachment 7, Billing to the ICA requires payment for services prior to the next bill date, as follows:

1.4.1 Payment Due. Payment for services provided by AT&T, including disputed charges, is due on or before the next bill date.

Attachment A shows the amounts AT&T Florida billed Lifeconnex for Resale services purchased in the State of Florida, credit adjustments AT&T Florida applied and payments AT&T Florida received from Lifeconnex since April 2008.

Significantly, during the period from December 20, 2009 through May 20, 2010, inclusive, AT&T Florida billed Lifeconnex \$768,731 and applied credit for promotions and other adjustments of \$601,648, leaving a net amount owed for that period of **\$167,083**. During that same period, however, Lifeconnex paid AT&T Florida only **\$15,324** (less than ten percent of the net amount owed).

Details of the Resale lines provisioned by Lifeconnex are included on Attachment B to this letter.

484

DOCUMENT NUMBER-DATE

35505 JUL-6 0

FPSC-CONNECTIONS CLERK



Please remit payment to AT&T Florida at the following address:

AT&T ROC-CABS
600 North Point Parkway
Alpharetta, Georgia 30005

Should you fail to make payment of \$1,431,372 by July 6, 2010, AT&T Florida will take further action pursuant to our ICA, including without limitation Suspension, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

In addition, should you fail to make payment of all past due charges for these Resale services on or before July 21, 2010, including all charges for Resale services that become past due before that date, AT&T Florida will take further action, including without limitation Discontinuance and/or Termination, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

If you have questions, please contact me directly at (205) 970-5337.

Sincerely,

A handwritten signature in cursive script that reads "Ann Mason".

Ann Mason
Manager
AT&T Credit & Collections

Attachments (2)

Exhibit 2

RECEIVED - 50 - 195 - 5041

5505 JUL -6 e

FPSC - COMMISSION CANAD

Attachment A

LifeConnex Telecom, LLC f/k/a Swiftel, LLC

State	Balance Forward		Payments		Adjustments		Current Charges		Late Payment Charges		Amount Due
	Balance Forward	Payment	Adjustments	(Payments)	(Adjustments)	(Payments)	Current Charges	(not included in col 7)			
Florida	(Bill account numbers: 804090889889, 551090889889, and 904090889889, all with 20th bill dates)										
Apr-08	\$ 60,750	\$ (750)	\$ (13,981)	\$ 46,019	\$ 34,743	\$ 15	\$ 80,777				
May-08	\$ 80,777	\$ -	\$ (1,079)	\$ 79,697	\$ 29,628	\$ 31	\$ 109,356				
Jun-08	\$ 109,356	\$ -	\$ (76,422)	\$ 32,933	\$ 31,077	\$ -	\$ 64,010				
Jul-08	\$ 64,010	\$ -	\$ (16,317)	\$ 47,693	\$ 28,244	\$ 16	\$ 75,953				
Aug-08	\$ 75,953	\$ (1,716)	\$ (13,663)	\$ 60,573	\$ 17,001	\$ 31	\$ 77,605				
Sep-08	\$ 77,605	\$ (13)	\$ (292)	\$ 77,301	\$ 21,284	\$ 29	\$ 98,614				
Oct-08	\$ 98,614	\$ (1,500)	\$ (11,456)	\$ 85,658	\$ 21,543	\$ 31	\$ 107,232				
Nov-08	\$ 107,232	\$ -	\$ (6,446)	\$ 100,786	\$ 16,873	\$ 29	\$ 117,688				
Dec-08	\$ 117,688	\$ -	\$ (21,636)	\$ 96,051	\$ 17,403	\$ 29	\$ 113,483				
Jan-09	\$ 113,483	\$ -	\$ (2,982)	\$ 110,503	\$ 25,213	\$ 15	\$ 135,731				
Feb-09	\$ 135,731	\$ -	\$ (31,665)	\$ 104,065	\$ 51,672	\$ 16	\$ 155,753				
Mar-09	\$ 155,753	\$ -	\$ (243)	\$ 155,510	\$ 78,761	\$ 14	\$ 234,285				
Apr-09	\$ 234,285	\$ (20)	\$ (56,082)	\$ 178,183	\$ 77,989	\$ 45	\$ 256,217				
May-09	\$ 256,217	\$ -	\$ (74,410)	\$ 181,807	\$ 92,977	\$ 44	\$ 274,828				
Jun-09	\$ 274,828	\$ (15)	\$ (15,458)	\$ 259,356	\$ 110,164	\$ 46	\$ 369,566				
Jul-09	\$ 369,566	\$ -	\$ (88,955)	\$ 280,611	\$ 151,839	\$ 44	\$ 432,494				
Aug-09	\$ 432,494	\$ (27)	\$ (87,324)	\$ 345,145	\$ 238,219	\$ 46	\$ 583,410				
Sep-09	\$ 583,410	\$ (55)	\$ (60,981)	\$ 522,372	\$ 285,143	\$ 47	\$ 807,562				
Oct-09	\$ 807,562	\$ (170)	\$ 73	\$ 807,465	\$ 336,366	\$ 45	\$ 1,143,876				
Nov-09	\$ 1,143,876	\$ (35)	\$ (204,184)	\$ 939,656	\$ 339,687	\$ 45	\$ 1,279,388				
	\$ 1,279,388	\$ (90)	\$ (315,646)	\$ 963,653	\$ 225,939	\$ 45	\$ 1,189,637				
Jan-10	\$ 1,189,637	\$ (54)	\$ (28,452)	\$ 1,161,130	\$ 151,504	\$ 45	\$ 1,312,679				
Feb-10	\$ 1,312,679	\$ (50)	\$ (177,345)	\$ 1,135,283	\$ 118,731	\$ 46	\$ 1,254,060				
Mar-10	\$ 1,254,060	\$ (9,130)	\$ (69,730)	\$ 1,175,199	\$ 98,944	\$ 46	\$ 1,274,189				
Apr-10	\$ 1,274,189	\$ -	\$ (10,605)	\$ 1,263,584	\$ 95,213	\$ 45	\$ 1,358,842				
May-10	\$ 1,358,842	\$ (6,000)	\$ 130	\$ 1,352,972	\$ 78,400	\$ -					
Totals	4/08 - 5/10	\$	\$ (19,625)	\$ (1,385,151)	\$	\$ 2,774,557	\$	\$ 845			
6 Month Totals		\$	\$ (15,324)	\$ (601,648)	\$	\$ 768,731	\$	\$ 227			

15505 JUL-6-09
 15505 JUL-6-09
 15505 JUL-6-09

Exhibit 3

DOCUMENT NUMBER - 1000

05505 JUL-68

FPSC-CONFIDENTIAL

ATTACHMENT B

Lifeconnex Telecom, Inc. f/k/a Swiftel, L.L.C.

State: **Florida**

Resale services purchased in state, as of the year and month specified.

2009

2010

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
1,081	2,184	3,178	4,004	4,077	5,281	7,438	9,892	12,720	14,579	15,900	7,721	5,804	5,692	4,887	4,264	3,641

AT&T Proprietary (Restricted) – Authorized Individuals Only

Customer Proprietary Information

10.11.10 10:00 AM - DATE

5505 JUL -6 9

FPSC-COMPLIANCE CLERK

Exhibit 3

FORMER NUMBER-DATE
05505 JUL-6 e
FPSC-CCM MISSION CLERK

BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

IN RE:

**Petition of LifeConnex Telecom, Inc. (f/k/a
Swiftel) for Temporary, Emergency Relief to
Prevent Suspension of Service**

DOCKET NO. _____

**Petition of LifeConnex Telecom, Inc. (f/k/a Swiftel) Concerning Implementation of Its
Interconnection Agreement With AT&T and Motion for Temporary, Emergency Relief
to Prevent Suspension of Service**

LifeConnex Telecom, Inc. (f/k/a Swiftel) ("LifeConnex") files this Petition asking that the Alabama Public Service Commission prohibit BellSouth Telecommunications, Inc. d/b/a AT&T Alabama ("AT&T") from suspending, discontinuing or terminating LifeConnex's service in Alabama pending resolution of the matters at issue in Docket 31317.

NARRATIVE SUMMARY

1. LifeConnex is a local exchange telephone company providing service to approximately twenty thousand subscribers in Alabama, the majority of whom are low income, residential customers. As of June 24, 2010, LifeConnex' customer count in Alabama was 21,954.

2. LifeConnex resells the services of AT&T. As a reseller, LifeConnex is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discounts are usually sufficient to offset, in large part, LifeConnex's monthly bills from AT&T. To keep track of these credits, LifeConnex has hired a billing firm, *i.e.*, Lost Key Telecom, Inc. ("Lost Key"), which works

above would be resolved in the Consolidated Phase of proceedings, and then, the parties would, "[w]ork in good faith to address all remaining unresolved claims and counterclaims...and to determine what, if any, dollar amounts are owed or credits due each party."

8. Until now, both AT&T and LifeConnex have, consistent with the Joint Motion filed with this Commission, "work[ed] in good faith" toward resolution of all disputed claims and a final determination of the dollar amounts due to each party. LifeConnex has agreed to an expedited schedule which will bring these disputed issues to hearing in Alabama later this year. Meanwhile, LifeConnex has been deducting from its bill claims for promotional credits and disputed charges -- without any objection from AT&T -- since October, 2007.² Even now, executives from AT&T and LifeConnex have been engaged in extensive discussions over the last two months to resolve various issues between the parties. Despite those discussions, despite LifeConnex's agreement to expedite the resolution of the pending complaints, and despite AT&T's acquiescence for a period of nearly three years in LifeConnex's practice of paying

² Many CLECs in the former BellSouth region, including five of the seven Respondents in this consolidated docket, have interconnection agreements which allow the CLE to withhold payments of disputed amounts until the disputes are resolved. LifeConnex does not currently have such language in its own ICA but has requested to "opt in" to an agreement which does have that language.

LifeConnex, like the other Respondents in this proceeding, primarily resells promotional offerings tied to the sale of residential telephone service, such as AT&T's "\$50 cash back" promotion. (The pending complaints address, inter alia, whether the reseller is entitled to a \$50 rebate or, as AT&T claims, a credit of only \$40.) AT&T has acknowledged that the company has had difficulty keeping up with the large number of claims for promotional credits and disputes filed by LifeConnex and the other resellers. Consequently, the resellers, including LifeConnex, typically deduct from their monthly bills all pending claims for promotional credits and disputes and pay only the net amounts owed, if any. Although, LifeConnex does not have the right to withhold disputed amounts, AT&T has, until now, treated all of these carriers the same, allowing them to pay only the net amounts owed. AT&T, in fact, informed the Alabama Commission just last year that AT&T would agree to accept from LifeConnex (then called "Swiftel") a security deposit equal to two months of "net bills," pending the resolution of a complaint filed by LifeConnex over the proper deposit amount. See Docket No. 31156, Answer of BellSouth, paragraph 9.

Exhibit 4

DOCUMENT NUMBER-DATE

05505 JUL-62

FPSC CONFIDENTIAL CLASS

**AGREEMENT
GENERAL TERMS AND CONDITIONS**

THIS AGREEMENT is made by and between BellSouth Telecommunications, Inc., d/b/a 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, (AT&T), and Swiftel, LLC (Swiftel, LLC), a Florida limited liability company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either AT&T or Swiftel, LLC or both as a "Party" or "Parties."

WITNESSETH

WHEREAS, AT&T 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, Swiftel, LLC is or seeks to become a CLEC authorized to provide telecommunications services in the state of Florida; and

WHEREAS, pursuant to Sections 251 and 252 of the Act; Swiftel, LLC wishes to purchase certain services from AT&T; and

WHEREAS, the 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

WHEREAS, Swiftel, LLC wishes to purchase and AT&T wishes to provide other services as described in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements contained herein, AT&T and Swiftel, LLC 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 ten percent (10%).

Commission is defined as the appropriate regulatory agency in each state of AT&T Southeast Region 9-State (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 AT&T's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

FCC means the Federal Communications Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1 CLEC Certification

1.1 Swiftel, LLC agrees to provide AT&T in writing Swiftel, LLC's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to AT&T filing this Agreement with the appropriate Commission for approval. Additionally, Swiftel, LLC shall provide to AT&T an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

1.2 To the extent Swiftel, LLC is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Swiftel, LLC may not purchase services hereunder in that state. Swiftel, LLC will notify AT&T in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, AT&T will file this Agreement in that state, and Swiftel, LLC may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 7.

1.3 Should Swiftel, LLC's certification in any state be rescinded or otherwise terminated, AT&T may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided

in that state shall become due, or AT&T may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. Swiftel, LLC shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

2 Term of the Agreement

- 2.1 The initial term of this Agreement shall be five (5) years, beginning on the Effective Date and shall apply to the AT&T Southeast Region 9-State in the state of Florida. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred eighty (180) days prior to the expiration of the initial term of this Agreement, the Parties shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.
- 2.3 If, within one hundred thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.
- 2.3.1 Swiftel, LLC may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then AT&T may terminate this Agreement upon sixty (60) days notice to Swiftel, LLC. In the event that AT&T terminates this Agreement as provided above, AT&T shall continue to offer services to Swiftel, LLC pursuant to the rates, terms and conditions set forth in AT&T's then current standard interconnection agreement. In the event that AT&T's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.
- 2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent

Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and AT&T is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.

2.4 If, at any time during the term of this Agreement, AT&T is unable to contact Swiftel, LLC pursuant to the Notices provision hereof or any other contact information provided by Swiftel, LLC under this Agreement, and there are no active services being provisioned under this Agreement, then AT&T may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to Swiftel, LLC pursuant to the Notices section hereof. Furthermore, if after eighteen (18) months following the Effective Date of this Agreement Swiftel, LLC has no active services pursuant to this Agreement, AT&T may terminate this Agreement, without any liability to AT&T, upon notification to Swiftel, LLC pursuant to the Notices section hereof.

2.5 In addition to as otherwise set forth in this Agreement, AT&T 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's facilities or service, abuse of AT&T's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, Swiftel, LLC is solely responsible for notifying its customers of any discontinuance of service.

3 Nondiscriminatory Access

When Swiftel, LLC purchases Telecommunications Services from AT&T pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that AT&T provides to others, including its customers. 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 AT&T to Swiftel, LLC shall be at least equal to that which AT&T 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 AT&T and the network of Swiftel, LLC shall be at a level that is equal to that which AT&T 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 AT&T's network and shall extend to a consideration of service quality as perceived by AT&T's customers and service quality as perceived by Swiftel, LLC.

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

4.1 Subpoenas Directed to AT&T. Where AT&T provides resold services for Swiftel, LLC, AT&T shall respond to subpoenas and court ordered requests delivered

directly to AT&T for the purpose of providing call detail records when the targeted telephone numbers belong to Swiftel, LLC customers. Billing for such requests will be generated by AT&T and directed to the law enforcement agency initiating the request. AT&T shall maintain such information for Swiftel, LLC customers for the same length of time it maintains such information for its own customers.

4.2 Subpoenas Directed to Swiftel, LLC. Where AT&T is providing resold services to Swiftel, LLC, then Swiftel, LLC agrees that in those cases where Swiftel, LLC receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Swiftel, LLC customers, and where Swiftel, LLC does not have the requested information, Swiftel, LLC will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to AT&T for handling in accordance with Section 4.1 above.

4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, 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 Swiftel, LLC Liability. In the event that Swiftel, LLC 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 Swiftel, LLC's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of Swiftel, LLC under this Agreement.

5.2 Liability for Acts or Omissions of Third Parties. AT&T shall not be liable to Swiftel, LLC for any act or omission of another entity providing any services to Swiftel, LLC.

5.3 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 Swiftel, LLC pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to Swiftel, LLC 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 customers 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 customer 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 Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

- 5.3.2 Neither AT&T nor Swiftel, LLC shall be liable for damages to the other Party's terminal location, equipment or customer premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 5.3.4 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 5.4 Indemnification for Certain Claims. Except as otherwise set forth in this Agreement and except to the extent caused by the indemnified Party's gross negligence or willful misconduct, the Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by any third party (including, but not limited to, a customer of the Party receiving services) arising from the third party's use or reliance on and arising from the Party receiving services use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

5.5 Disclaimer. EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

6 Intellectual Property Rights and Indemnification

6.1 No License. Except as expressly set forth in Section 6.2 below, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

6.2 Ownership of Intellectual Property. Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

6.3 Intellectual Property Remedies

6.3.1 Indemnification. The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of

such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 5 above.

6.3.2 **Claim of Infringement**

6.3.2.1 In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party, promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below, shall:

6.3.2.2 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

6.3.2.3 obtain a license sufficient to allow such use to continue.

6.3.2.4 In the event Sections 6.3.2.2 or 6.3.2.3 above are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

6.3.3 **Exception to Obligations.** Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

6.3.4 **Exclusive Remedy.** The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

6.3.5 **Dispute Resolution.** Any claim arising under Sections 6.1 and 6.2 above shall be excluded from the dispute resolution procedures set forth in Section 8 below and shall be brought in a court of competent jurisdiction.

7 **Proprietary and Confidential Information**

7.1 **Proprietary and Confidential Information.** It may be necessary for AT&T and Swiftel, LLC, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing

and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by 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 consultants, contractors and agents of Recipient or its Affiliates 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. Recipients may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original. Information remains at all times the property of Discloser. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information) will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such information has been returned or destroyed.

7.3 Exceptions

7.3.1 Recipient will not have an obligation to protect any portion of the Information which:

7.3.2 (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 therefor, excluding any taxes levied on income.

9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party

- 9.2.1 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.
- 9.2.2 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
- 9.3.1 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.
- 9.3.2 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.
- 9.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not applicable, 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 applicable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with

respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

- 9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party
- 9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 9.4.2 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.
- 9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application of or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

- 9.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.5 Additional Provisions Applicable to All Taxes and Fees
- 9.5.1 In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.
- 9.5.2 Notwithstanding any provision of this Agreement to the contrary, any administrative, judicial, or other proceeding concerning the application or amount of a tax or fee shall be maintained in accordance with the provisions of this Section and any applicable federal, state or local law governing the resolution of such disputed tax or fee; and under no circumstances shall either Party have the right to bring a dispute related to the application or amount of a tax or fee before a regulatory authority.

10 Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Swiftel, LLC, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 Adoption of Agreements

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, AT&T shall make available to Swiftel, LLC any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

12 Modification of Agreement

12.1 If Swiftel, LLC changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Swiftel, LLC to notify AT&T of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, Swiftel, LLC shall provide AT&T with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), AT&T's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

13 Intervening Law

This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party in accordance with Section 20.1 below ("Written Notice"). With respect to any Written Notices

hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

14 Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

15 Indivisibility

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by AT&T of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement as set forth in Attachment 4. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

16 Severability

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

17 Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of 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.

18 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.

19 Assignments and Transfers

19.1 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. The assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that Swiftel, LLC is entitled to provide Telecommunications Service. After AT&T'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, Swiftel, LLC shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) Swiftel, LLC pays all bills, past due and current, under this Agreement, or (2) Swiftel, LLC's assignee expressly assumes liability for payment of such bills.

19.2 In the event that Swiftel, LLC desires to transfer any services hereunder to another provider of Telecommunications Service, or Swiftel, LLC desires to assume hereunder any services provisioned by AT&T to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

20 Notices

20.1 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:

AT&T

AT&T Local Contract Manager
600 North 19th Street, 10th floor
Birmingham, AL 35203

and

Business Markets Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375

Swiftel, LLC

Angie M. Franco
3048 Cobblestone Dr.
Pace, FL 32571
813-915-6201 Phone
850-995-0165 Fax
850-304-1496 Cell
angie.franco@mchsi.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

- 20.2 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.
- 20.3 Notwithstanding the above, AT&T will post to AT&T's Interconnection Web site changes to business processes and policies and shall post to AT&T's Interconnection Web site or submit through applicable electronic systems, other service and business related notices not requiring an amendment to this Agreement.
- 21 **Rule of Construction**
No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.
- 22 **Headings of No Force or Effect**
The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.
- 23 **Multiple Counterparts**
This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

24 Filing of Agreement

This Agreement, and any amendments hereto, shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, or as otherwise required by the state and the Parties shall share equally in any applicable fees. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as Swiftel, LLC is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

25 Compliance with Law

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. This Agreement also contains certain provisions that were negotiated without regard to the Parties' obligations as set forth Section 251 of the Act. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

26 Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

27 Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28 Rates

28.1 Swiftel, LLC shall pay the charges set forth in this Agreement. In the event that AT&T is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, AT&T reserves the right to back bill Swiftel, LLC for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement; provided, however, that subject to Swiftel, LLC's agreement to the limitation regarding billing disputes as described in Section 2.2 of Attachment 7 hereof, AT&T shall not back bill any amounts for services rendered more than

twelve (12) months prior to the date that the charges or additional charges for such services are actually billed. Notwithstanding the foregoing, both Parties recognize that situations may exist which could necessitate back billing beyond twelve (12) months. These exceptions are:

- Charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner;
- Charges incorrectly billed due to erroneous information supplied by the non-billing Party;
- Charges for which a regulatory body has granted, or a regulatory change permits, the billing Party the authority to back bill.

28.2 To the extent a rate element is omitted or no rate is established, AT&T has the right not to provision such service until the Agreement is amended to include such rate.

28.3 To the extent Swiftel, LLC requests services not included in this Agreement, such services shall be provisioned pursuant to the rates, terms and conditions set forth in the applicable tariffs or a separately negotiated Agreement, unless the Parties agree to amend this Agreement to include such service prospectively.

29 Rate True-Up

29.1 This section applies to rates that are expressly subject to true-up.

29.2 The rates shall be true-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final and effective order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any discrepancy between the records or disagreement between the Parties regarding the amount of such true-up, the dispute shall be subject to the dispute resolution process set forth in this Agreement.

29.3 A final and effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon AT&T and Swiftel, LLC specifically or upon all carriers generally, such as a generic cost proceeding.

30 Survival

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

31 Entire Agreement

31.1 This Agreement means the General Terms and Conditions, the Attachments hereto and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and Swiftel, LLC acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 Any reference throughout this Agreement to a tariff, industry guideline, AT&T's technical guideline or reference, AT&T business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at AT&T's Interconnection Web site at: www.interconnection.bellsouth.com. References to state tariffs throughout this Agreement shall be to the tariff for the state in which the services were provisioned; provided, however, that in any state where certain AT&T services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which AT&T provides such services as a result of detariffing or deregulation.

General Terms and Conditions
Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

**BellSouth Telecommunications, Inc.
d/b/a 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**

Swiftel, LLC

By: *Kristen E. Shore*
Name: Kristen E. Shore
Title: Director
Date: *5/18/07*

By: *Angie Franco*
Name: *Angie M. Franco*
Title: *President*
Date: *5.18.07*