

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint and petition for relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC by BellSouth Telecommunications, Inc. d/b/a AT&T Florida.

DOCKET NO. 100021-TP
ORDER NO. PSC-10-0457-PCO-TP
ISSUED: July 16, 2010

The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman
LISA POLAK EDGAR
NATHAN A. SKOP

ORDER GRANTING LIFECONNEX TELECOM, LLC'S REQUEST FOR EMERGENCY RELIEF WITH CONDITIONS

BY THE COMMISSION:

CASE BACKGROUND

On January 8, 2010, BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") filed a Complaint and Petition for Relief ("Complaint") against LifeConnex Telecom, LLC, f/k/a Swiftel, LLC ("LifeConnex") seeking resolution of billing disputes between LifeConnex and AT&T; determination of the amount LifeConnex owes AT&T under the parties' Interconnection Agreement ("ICA"), and requiring LifeConnex to pay that amount to AT&T. In summary, AT&T alleges that LifeConnex purchases telecommunications services from AT&T for resale to end use consumers. Under the terms of the ICA and federal law, LifeConnex is authorized to apply certain discounts or promotional credits which AT&T applies to its own customers. AT&T alleges that LifeConnex improperly calculates the amount of discounts or credits it is entitled to. AT&T also alleges that LifeConnex fails to pay disputed amounts owed to AT&T, as required by the ICA, and rather deducts the amounts in dispute from its payments, in violation of the terms of the ICA.

On February 25, 2010, LifeConnex filed its Answer, Affirmative Defenses, and Counterclaims ("Answer") to AT&T's Complaint. In its Answer, LifeConnex alleges that it is entitled under federal law to the same discounts and promotional credits AT&T offers its own retail customers, and as a result, AT&T in fact owes significant sums to LifeConnex, which sums AT&T refuses to pay. LifeConnex raises a number of affirmative defenses and counterclaims. In its Answer, LifeConnex also suggests that we should either dismiss or hold this matter in abeyance pending the results of similar lawsuits pending in Federal court and a Petition pending at the Federal Communications Commission.

After a number of procedural motions, on May 13, 2010, the parties filed a Joint Motion on Procedural Issues, which was followed on June 15, 2010, by a Joint Motion on Procedural

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Schedule (the "Joint Motions"). In the Joint Motions, the parties requested this matter be held in abeyance pending the outcomes of similar suits proceeding to hearing in Alabama, Louisiana, North Carolina, and South Carolina. The Joint Motions were granted by Order No. PSC-10-0402-PCO-TP, issued June 18, 2010, ("Abeyance Order"), which stated in part:

Having reviewed the Joint Motions, I will hold these two Dockets 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. Upon resumption of the dockets, I will consider motions from the parties which take into account intervening events and address both the appropriate scope of the proceedings and the appropriate posture of the proceedings with respect to consolidation. Upon resumption of the Dockets, the parties will be expected to withdraw all moot or superseded motions that are currently pending before this Commission but held in abeyance pursuant to this Order.

On June 21, 2010, AT&T filed a "Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement" ("Notice of Commencement of Treatment"), wherein AT&T notified us that it had sent LifeConnex a letter, informing LifeConnex that unless it paid AT&T all past due balances (the balances at issue in this docket), "AT&T would suspend, discontinue, and/or terminate LifeConnex's service in Florida..." In the letter to LifeConnex, AT&T stated that if a partial payment was not made by July 6, 2010, AT&T would suspend LifeConnex's ability to order new services or make changes to existing lines; and if all past due balances were not paid by July 21, 2010, AT&T would take further action, including discontinuance of service to LifeConnex (and therefore to LifeConnex's end user customers) and/or termination of the ICA with LifeConnex. In the Notice of Commencement of Treatment, AT&T states that suspension, discontinuance, and/or termination are actions authorized by the parties' ICA, and that specific language in Section 1.4 of Attachment 7 to the ICA states "LifeConnex shall make payment to AT&T for all services billed including disputed amounts." AT&T subsequently informed our staff that it had extended the July 6, 2010, suspension date to July 13, 2010.

On July 1, 2010, LifeConnex filed a Request for Emergency Relief ("Emergency Request"), requesting that we issue an order "prohibiting AT&T from suspending, discontinuing, terminating, or otherwise disrupting LifeConnex's service in Florida pending resolution of the disputed matters in this docket." In the Emergency Request, LifeConnex alleges that it is currently providing telecommunications service to over 2,500 Florida customers, the majority of whom are low income, residential customers, through resale of AT&T's facilities. LifeConnex asserts that it is entitled to receive from AT&T the same credits and promotional discounts that AT&T gives to its own retail customers, and that LifeConnex has hired a private firm, Lost Key Telecom, Inc., to keep track of the credits. LifeConnex asserts that it disputes AT&T's claims in AT&T's Complaint filed in this docket, and has agreed with AT&T to the Joint Motions on Procedure and Scheduling.

In the Emergency Request, LifeConnex asks us to prevent AT&T from disrupting LifeConnex's service, including the ordering of new services. LifeConnex states that the parties agreed, and we ordered, that this proceeding would be held in abeyance until proceedings in

other states are resolved, at which time the instant Florida proceeding may be revived and the matters in dispute resolved. LifeConnex asserts that AT&T's Notice of Commencement of Treatment is contrary to the letter and spirit of the parties' agreement and the Order.

In its Response in Opposition to LifeConnex's Request for Emergency Relief ("Response in Opposition"), filed July 6, 2010, AT&T states that the ICA was approved by operation of law on December 27, 2007, and that the terms of the ICA thus constitute a binding contract between the parties, which we are obligated to enforce under state and federal law. AT&T states that Sections 1.4 and 1.4.1 of Attachment 7 to the ICA require LifeConnex to make payments of all amounts billed, including disputed amounts, on or before the billing due date. AT&T denies that it will owe LifeConnex any amounts at the conclusion of this case. AT&T further alleges that the plain language of the Joint Motions and the Abeyance Order make clear AT&T's Notice of Commencement of Treatment is not barred in any way, and in fact support AT&T's position that LifeConnex must comply with the ICA during the pendency of this dispute. AT&T further argues that AT&T's past conduct in allowing LifeConnex to deduct disputed amounts before paying its bills in no way constitutes a waiver of AT&T's right to enforce the terms of the ICA at this point in time. Finally, AT&T argues that we are without authority to issue injunctive relief, and even were we to have such authority, the facts in this case would not support such extraordinary relief.

Upon receipt of LifeConnex's July 1, 2010, Emergency Request, on July 2, 2010, our staff made contact with both AT&T and LifeConnex. Our staff specifically requested AT&T extend the disconnect date from July 21, 2010 to August 3, 2010, to enable our staff to bring a recommendation to us prior to AT&T taking action. Our staff reiterated this request the following week. After receiving no commitment from AT&T, our staff scheduled a status meeting/conference call on July 9, 2010, with all parties participating. Our staff specifically asked both parties about the status of negotiations between the parties to continue service to LifeConnex after the July 21, 2010, date; the parties' plans for LifeConnex's end use customers if the parties could not reach an agreement and AT&T discontinued service to LifeConnex; and whether AT&T would agree to extend the discontinuance date until August 3, 2010, in order to allow us to hear and consider the Emergency Request at a regularly scheduled Agenda Conference. Our staff was informed that the parties, while continuing to negotiate, did not appear to be close to any kind of agreement regarding continued service to LifeConnex. AT&T's attorneys participating in the status call indicated they had not been authorized to extend the discontinuance deadline until August 3, 2010. Finally, AT&T further indicated that LifeConnex's end-use customers were LifeConnex's, and it was the responsibility of LifeConnex to notify its customers regarding the potential discontinuance of service and assist its customers in finding alternative telecommunications services.¹

As a result of the failure of the parties to indicate any firm commitment to LifeConnex's end user customers; the apparently negative outlook for a successful resolution to this dispute prior to the July 21, 2010, discontinuance deadline; and the possibly severe effects that discontinuance could have on over 2,500 mostly lifeline pre-paid consumers in this state, our

¹ AT&T did point out that the discontinuance would result in the access lines remaining "warm;" that is, LifeConnex customers would still have access to 911 emergency service calls even though their phones have no dial-tone.

staff determined that we should address LifeConnex's Emergency Request prior to the July 21, 2010, discontinuance deadline. Therefore, on July 12, 2010, our staff filed an Emergency Recommendation for the July 13, 2010, regularly scheduled Agenda Conference.

We have jurisdiction pursuant to 47 U.S.C. Section 252 of the Telecommunications Act of 1996 (the Act), Sections 120.80(13)(d) and (e), 364.01 and 364.161, Florida Statutes (F.S.) and Rules 25-22.036 and 28-106.201, Florida Administrative Code (F.A.C.).

REQUEST FOR EMERGENCY RELIEF

In its Request for Emergency Relief, LifeConnex "asks that the Commission order AT&T to take no actions to suspend or otherwise interfere with LifeConnex's service to its customers pending a final determination by the Commission in the Consolidated Phase of this Docket."

LifeConnex argues three bases for its requested relief: our general authority to protect the public interest, ensure fair competition, and prevent anti-competitive behavior under Section 364.01, F.S.; the Order holding the docket in abeyance; and the terms of the parties' Interconnection Agreement itself.

General Jurisdiction under Section 364.01, F.S.

LifeConnex asserts that we should take action to prevent AT&T from suspending, discontinuing and/or terminating LifeConnex under our general jurisdiction contained in Section 364.01, F.S.² We do not interpret Section 364.01, F.S., as authority to grant the specific relief requested by LifeConnex under these facts.

We agree that we have authority to promote competition and to prevent anti-competitive behavior. But, we also find this authority goes both ways. In this fact pattern, the parties' conduct is governed by an ICA with clear terms. The Federal and Florida statutory schemes regarding telecommunications services allow parties to enter into binding contracts, and expect to have the terms of those contracts enforced bilaterally. We do not find our authority under Section 364.01, F.S., is intended to provide emergency relief when one party seeks to be relieved of its obligations under a negotiated contract in the absence of extraordinary and compelling circumstances.

If LifeConnex's fundamental concern in this docket is AT&T's delay in processing discounts and promotional credits, the ICA provides LifeConnex options for relief – to file a

² LifeConnex does not cite a specific subsection to Section 364.01 in support of its argument. Upon review, we find the following three subsections would be implicated in this matter: our jurisdiction to "[p]rotect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all consumers in the state at reasonable and affordable prices" 364.01(4)(a); "[e]ncourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services" 364.01(4)(b); and "[e]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint" 364.01(4)(g).

complaint/petition before us to determine the treatment of disputed amounts. LifeConnex did not avail itself of this remedy, instead resorting to self help. A Petition to determine the correct treatment of discounts and credits is now pending before us, and whenever the parties seek to reinstate the proceeding, we will determine these matters through the hearing process. Given this fact pattern, we do not find that allowing AT&T to take action clearly contemplated by the ICA rises to the level of “anti-competitive” activity or denies “fair competition” sufficient to invoke our general authority under Section 364.01, F.S.

Order Holding Dockets in Abeyance

We do not find the Order Holding Dockets In Abeyance bars this action, and language contained in the Joint Motions themselves supports AT&T’s position that the Notice of Commencement of Treatment may proceed independently of the underlying dispute. In the Joint Motion on Issues, the parties specifically included the following language:

5. Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party’s pending motions, claims, counterclaims or defenses or 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 or following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

We find the plain language of the parties’ Joint Motion makes clear that the abeyance does not serve as any type of bar to AT&T’s Notice of Commencement of Treatment. LifeConnex was a signatory to the Joint Motion, and will not be allowed to argue that its agreed upon language should somehow not be applied, and should instead be either ignored or re-interpreted as a bar to further actions. We therefore find that the terms of the Joint Motion and the Order are controlling, and mean what they say – that the Joint Motions and the Order Granting Abeyance clearly contemplated that neither party was precluded from seeking additional relief.

In addition, we find that the purpose of the underlying “dispute docket” held in abeyance is fundamentally retroactive; that is, it deals with past due sums currently in dispute. We acknowledge that, absent any additional actions, our final decision on the dispute will impact the parties’ future relationship, but the majority of the docket deals with prior billings.

On the other hand, the instant Notice of Commencement of Treatment is fundamentally prospective in nature: AT&T is attempting to limit on-going exposure to what could possibly turn out to be unpaid bills for actual services rendered.³ We find this to be reasonable on AT&T’s part. Otherwise, unpaid sums, if any, could continue to accrue for months, and in the

³ This determination is based solely on the pleadings to date. It is clear that there is a dispute about whether any sums are due to either party and the amount of those sums. This dispute will only be resolved following an evidentiary hearing and our decision based on the final record. As such, we may substantially depart from our current findings regarding the terms of the ICA and the parties’ responsibilities as the record is further developed.

event we find against LifeConnex, the pleadings reveal no clear evidence that LifeConnex could or would make good on those bills.

Interconnection Agreement

As a third basis for its requested emergency relief, LifeConnex invokes the parties' Interconnection Agreement. Both parties agree that we have authority under state and federal law to enforce the terms of the Interconnection Agreement. The parties also agree that the terms of the ICA control the relationship between the parties. We do find, however, that the plain language in the ICA entitles LifeConnex to the relief it seeks. That is, with respect to the matter before us today, AT&T is entitled under the plain terms of the ICA to prompt payment of all sums billed; and in the absence of such payment, is entitled to proceed with the actions outlined in the Notice of Commencement of Treatment; and that AT&T has not waived its right to take such action.

As noted by AT&T, Sections 1.4 and 1.4.1 of Attachment 7 to the parties' Commission-approved ICA state:

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. (Emphasis added.)

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. (Emphasis added.)

We find the plain language of these provisions is clear that while LifeConnex can dispute amounts billed by AT&T, it must pay those amounts as billed within the time specified by the ICA, subject to resolution through the ICA's dispute provisions, or ultimately, our determination. As a result of this language, we find the ICA does not support LifeConnex's Emergency Request.

Exclusive of LifeConnex's arguments regarding the effect of the Joint Motions and Abeyance Order, as well as LifeConnex's waiver argument, discussed below, we also find the plain language of the ICA supports AT&T's right to take the type of action outlined in the Notice of Commencement of Treatment. The language of Sections 1.5 through 1.5.5 of Attachment 7 to the parties' ICA clearly lays out the procedures AT&T is entitled to take in the event of

LifeConnex's non-compliance with the ICA, including billing provisions. Given our finding (based on the pleadings to date and not prejudging facts that may be developed at hearing) that LifeConnex is not currently complying with the terms of the ICA, and the ICA's language setting forth AT&T's rights, we find no reason to conclude the language of the ICA prohibits the actions set forth in AT&T's Notice of Commencement of Treatment.

LifeConnex's final argument is that AT&T's apparent prior practice of allowing LifeConnex to deduct disputed amounts from payments constitutes a waiver by AT&T of the suspension/discontinuance/termination provisions of the ICA. This is not the case. As pointed out by AT&T in its Response in Opposition, Section 17 of the ICA's General Terms and Conditions states:

17 Non-Waiver 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.

We find this "boilerplate" contract term is unambiguous, and clearly allows AT&T the right to fail to enforce provisions in the ICA on a flexible basis, without then being required to waive enforcement of those provisions in the future.

Furthermore, in addition to the plain language of the non-waiver provision, we find the general legal concept of "waiver" is not implicated on these facts. As stated in one legal treatise:

[i]n the case of a true waiver implied in fact from conduct, the intent to waive must be clearly manifested or the conduct must be such that an intent to waive may reasonably be inferred...rather, in the absence of an express declaration manifesting the intent not to claim the right allegedly waived, there must be a clear, unequivocal, and decisive act of the party who is claimed to have waived its rights, so consistent with an intention to waive that no other reasonable explanation is possible. 13 Williston on Contracts Section 39:28 (4th edition.)

Under these facts, we cannot determine that AT&T's conduct in failing to strictly enforce the terms of the ICA with respect to billing is so unequivocal or decisive that it can be decided that AT&T, contrary to the ICA's non-waiver language, clearly demonstrated the intent to permanently waive those provisions.

We are aware of the legal concept of "equitable estoppel," which is so similar to the legal concept of waiver that it should be discussed, despite not being raised by either of the parties' pleadings. As we stated in Order No. PSC-01-2515-FOF-EI, issued December 24, 2001, in Docket No. 950379-EI, Re: Tampa Electric Company:

In order to demonstrate equitable estoppel, the following elements must be shown:
1) a representation as to a material fact that is contrary to a position asserted later;

2) reliance on that representation; and 3) a detrimental change in position to the party claiming estoppel caused by reliance on the representation. *State Department of Revenue v. Anderson*, 403 So. 2d 397, 400 (Fla. 1981). See also *United Contractors Inc. v. United Construction Corp.*, 187 So. 2d 695 (Fla. 2d DCA 1966). Estoppel operates to prevent the benefitting party from repudiating the accompanying or resulting obligation. *Doyle v. Tutan*, 110 So. 2d 42, 47 (Fla. 3d DCA 1959).

We find that LifeConnex has not demonstrated that AT&T either made a representation as to a material fact contrary to a later position, nor that LifeConnex changed its position to its detriment. In fact, if anything, LifeConnex has been consistent in its conduct of not promptly paying its bills as required by the ICA, and rather acted contrary to those terms, and benefited from its conduct, to the extent that there is now over \$1.4 Million in dispute in Florida. We therefore decide that LifeConnex's arguments regarding waiver fail.

Grant of Relief With Conditions

We are troubled by AT&T's insistence on strictly enforcing the terms of the ICA at this point in time. We find the facts developed to date indicate that AT&T has allowed LifeConnex to continue service for several years, despite the fact that LifeConnex did not follow the terms of Sections 1.4 and 1.4.1 of Attachment 7 to the ICA, and that this failure has directly contributed to the accrual of approximately \$1.4 Million in disputed payments over the previous years. As a condition of providing future service, AT&T is attempting to insist on payment of the entire amount in dispute (the underlying amounts in this docket, which AT&T agreed in the Joint Motion to hold in Abeyance) in order to continue to provide ongoing service. AT&T's position in agreeing to hold determination of the disputed amount in abeyance, and then insisting on payment of a balance that took several years to accrue be paid within 30 days, is not fair, just, or reasonable, and we therefore grant LifeConnex's requested relief, with specific conditions, as follows.

We find that the \$1.4 Million in dispute, as discussed above, is fundamentally retroactive in character, and the proceeding currently held in Abeyance is the most efficient means of resolving that dispute. We also find that AT&T has the right to protect itself on a going-forward basis, pending the resolution of the dispute. To this end, we grant AT&T the right to insist on strict compliance with the payment terms of the ICA from July 13, 2010, onwards. To be clear: from the date of this decision, July 13, 2010, the terms of the Interconnection Agreement regarding billing and payment shall be followed, such that, upon receiving a bill from AT&T for service, LifeConnex shall pay such bill, including disputed amounts, within the time period prescribed in the ICA. If LifeConnex fails to comply with the terms of the ICA, including billing provisions, AT&T may take action as authorized by the ICA, including suspension, disconnection, and/or termination of service to LifeConnex.

Given the magnitude of the sum in dispute (approximately \$1.4 Million), we are concerned with ensuring that once this docket is resumed, and we make a final determination of the correct disposition of the amount currently in dispute, sufficient funds will be available for LifeConnex to pay AT&T such sums as we may determine are due and owing to AT&T.

Therefore, as a further condition of allowing LifeConnex to continue to receive service from AT&T under the ICA during the pendency of this dispute, we order LifeConnex Telecom, LLC to post a bond in the amount of \$1.4 Million by July 21, 2010. The bond will remain in place throughout the remainder of this proceeding until we make final resolution of AT&T's Complaint and LifeConnex's claims and counterclaims and final disposition of all disputed matters, including funds in dispute, and the bond shall state that it will be released or shall terminate only upon subsequent order of this Commission.

Further, in order to protect LifeConnex's end user customers, we order that in the event AT&T initiates action to suspend, discontinue, or terminate LifeConnex's service, LifeConnex shall be required to provide notice to its end use customers, within 14 days of the receipt of written notice by AT&T that AT&T is initiating suspension, discontinuance and/or termination of LifeConnex's service, that the customer's service may be cut off and that the customer may wish to immediately begin seeking alternative telecommunications services in order to avoid lapse of service. Further, LifeConnex shall provide a copy of this notice to our staff for prior approval, and shall keep us fully advised of the status of its end use customers until AT&T's actions are resolved.

We wish to make clear that in granting LifeConnex relief with the above conditions, we are not granting equitable relief, nor are we granting an injunction. Instead, we are taking this action under our authority to issue an interim procedural order under our clear jurisdiction to enforce the terms of the ICA and to resolve matters in dispute. AT&T filed a complaint seeking our resolution of a dispute, after allowing an unpaid balance to accumulate over an extended period of time.⁴ With both parties having affirmatively invoked our jurisdiction under both Federal and State law to interpret and enforce the ICA, and to adjudicate this dispute in particular, we determine to take interim action to protect both parties and LifeConnex Telecom, LLC's end user customers while this dispute is pending before us.

Based upon the foregoing, it is

ORDERED by the Florida Public Service Commission that LifeConnex Telecom, LLC's Request for Emergency Relief is GRANTED with conditions. It is further

ORDERED that AT&T and LifeConnex Telecom, LLC shall fully comply with all terms of the parties' Interconnection Agreement, including billing provisions, from July 13, 2010, onward. It is further

ORDERED that if LifeConnex Telecom, LLC fails to comply with the terms of the Interconnection Agreement, including billing provisions, AT&T may take such actions as are authorized by the parties' Interconnection Agreement, including suspension, discontinuance, and/or termination of service to LifeConnex Telecom, LLC. It is further

⁴ We note that AT&T could have sought to suspend, discontinue, and/or terminate LifeConnex at anytime during the extended period of non-payment of disputed amounts. Rather, AT&T chose to continue providing service and seek our resolution of this dispute. Now that the dispute is pending before us, AT&T shall not be allowed to subvert the judicial process by taking such sudden and detrimental action.

ORDERED that amounts currently in dispute shall be resolved through the hearing process. It is further

ORDERED that LifeConnex Telecom, LLC shall, by July 21, 2010, post a bond in the amount of 1.4 Million Dollars, containing wording that the bond will be released or shall terminate only upon subsequent order of this Commission. It is further

ORDERED that in the event AT&T takes action to suspend, discontinue, and/or terminate service to LifeConnex Telecom, LLC, within fourteen (14) days of receipt of written notice that AT&T is taking such action, LifeConnex Telecom, LLC shall provide Notice to its customers informing them of the possibility their service may be interrupted and of their option to find alternative telecommunications services. It is further

ORDERED that LifeConnex Telecom, LLC, shall provide this Notice to Commission staff for review and prior approval in sufficient time as will allow LifeConnex Telecom, LLC to meet the fourteen (14) day notice requirement above. It is further

ORDERED that this docket shall remain open pending the resolution of AT&T's underlying Complaint and Petition for Relief and LifeConnex Telecom, LLC's claims and counter-claims.

By ORDER of the Florida Public Service Commission this 16th day of July, 2010.



ANN COLE
Commission Clerk

(S E A L)

AJT

DISSENT BY: CHAIRMAN ARGENZIANO

CHAIRMAN ARGENZIANO dissents without separate opinion.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.0376, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.