

Diamond Williams

100432-TP

From: nicki.garcia@akerman.com
Sent: Wednesday, November 10, 2010 10:51 AM
To: Filings@psc.state.fl.us
Cc: Charles Murphy; mg2708@att.com; th9467@att.com; matthew.feil@akerman.com; ke2722@att.com; hwalker@babco.com; legal@telecomgroup.com; Beth Salak; Adam Teitzman; Larry Harris
Subject: Electronic Filing - Docket No. 100432-TP
Attachments: 20101110102759413.pdf

Attached is an electronic filing for the docket referenced below. If you have any questions, please contact either Matt Feil or Nicki Garcia at the numbers below. Thank you.

Person Responsible for Filing:

Matthew Feil
AKERMAN SENTERFITT
 106 East College Avenue, Suite 1200
 Tallahassee, FL 32301
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matt.feil@akerman.com

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

Filed on behalf of: American Dial Tone, Inc. (ADT)

Total Number of Pages: 25

Description of Documents: Affidavit of Thomas E. Biddix in Support of ADT's Request for Emergency Relief.

Nicki Garcia

Executive Assistant to Lila Jaber, Matthew Feil & Beth Keating
 Akerman Senterfitt | 106 East College Avenue | 12th Floor | Tallahassee, FL 32301
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09285 NOV 10 9

FPSC-COMMISSION CLERK

11/10/2010



Matthew Feil

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Fax: 850.222.0103

November 10, 2010

VIA ELECTRONIC FILING

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 100432-TP

Dear Ms. Cole:

Attached for filing in the above docket, please find the affidavit of Thomas E. Biddix in support of ADT's Request for Emergency Relief.

Your assistance in this matter is greatly appreciated. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Matthew Feil

akerman.com

Attachments

DOCUMENT NUMBER DATE

09285 NOV 10 09

FPSC-COMMISSION CLERK

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Request for Emergency Relief and)
Complaint against BellSouth Telecom-)
munications, Inc., d/b/a AT&T Florida)
by American Dial Tone, Inc.)
_____)

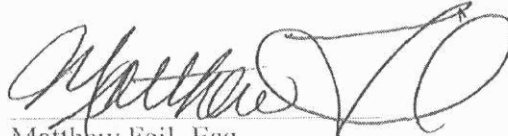
Docket No. 100432-TP

Filed: November 10, 2010

AMERICAN DIAL TONE, INC.'S NOTICE OF FILING

American Dial Tone, Inc. ("ADT") hereby files the attached affidavit of Thomas E. Biddix in support of ADT's Request for Emergency Relief.

Respectfully submitted this 10th day of November, 2010.



Matthew Feil, Esq.
Akerman Senterfitt
106 East College Avenue, Suite 1200
Tallahassee, FL 32301
(850) 425-1614

Attorneys for American Dial Tone, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by email, and/or U.S. Mail this 10th day of November, 2010.

<p>Adam Teitzman, Esq. Larry Harris, Esq. Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 cmurphy@psc.state.fl.us</p>	<p>E. Earl Edenfield, Jr. Tracy W. Hatch Manuel A. Guardian AT&T Florida c/o Gregory R. Follensbee 150 South Monroe Street, Suite 400 Tallahassee, FL 32301 ke2722@att.com mg2708@att.com th9467@att.com</p>
<p>Henry M. Walker, Esq. Bradley Arant Boult Cummings, LLP 1600 Division Street Suite 700 Nashville, TN 37203 hwalker@babc.com</p>	<p>Chris Sutch Associated Telecom Management Svcs, LLC 6095 North Wickham Road Suite 403 Melbourne, FL 32940-7553 legal@telecomgroup.com</p>

By: 
Matthew Feil, Esq.

STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

In Re: Request for Emergency Relief and)
Complaint against BellSouth Telecom-)
munications, Inc., d/b/a/ AT&T Florida)
by American Dial Tone, Inc.)
) Docket No. 100432-TP.
) Filed November 10, 2010

AFFIDAVIT OF THOMAS E. BIDDIX

1. My name is Thomas E. Biddix. I am over 21 years of age, am of sound mind, and am competent to make this affidavit. This affidavit is based upon my personal knowledge.

2. I am president and owner of American Dial Tone, Inc. ("ADT").

3. As of October 10, 2010, ADT provided local, wireline telephone service to approximately 18,600 residential customers in Florida. Virtually all of ADT's subscribers receive some kind of federal or state assistance and, because of prior unpaid telephone bills, cannot obtain telephone service from the "incumbent" telephone company (usually, AT&T) serving the area. ADT purchases wholesale telephone service from AT&T pursuant to an Interconnection Agreement, the relevant parts of which are attached to the Declaration I filed earlier in this litigation.

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

5. ADT experiences a customer "churn" rate of about 30% per month. In other words, about 30% of ADT's existing customers leave the company each month and must be replaced by new customers. This churn rate is typical for prepay telephone companies like ADT.

6. If AT&T "suspends" wholesale service to ADT, ADT is unable to add new customers or to restore service to existing customers whose service has been interrupted for failure to pay for the next month of service. Because of the 30% churn rate and because many of ADT's customers do not pay for the next month of service until after the service has been interrupted, AT&T's "suspension" of wholesale service to ADT, even for a short period, would have a severe, adverse financial impact on ADT.

7. AT&T suspended service to ADT on November 3, 2010, at approximately 6:00 p.m. Since November 3, 2010, there are approximately 323 ADT customers who have paid for service but cannot receive service because of AT&T's suspension. Finally, there are 270 customers who have not paid ADT but are continuing to receive service from ADT. ADT cannot cut them off because of AT&T's suspension.

8. If AT&T terminates wholesale service to ADT, ADT would not be able to continue providing local telephone service to its customers. ADT's customers would either be without landline telephone service or would have to obtain landline service from another carrier if one is available and willing to provide service. ADT would lose its entire customer base and the company's reputation and good will would be irreparably damaged. Many of those customers would not return to ADT.

9. I am also president and owner of Life Connex Telecom, LLC ("Life Connex"). Life Connex is another prepay carrier providing local, wireline telephone service in Florida. Life Connex is an affiliate of ADT.

10. As a result of a billing dispute between Life Connex and AT&T and a ruling by the Florida Public Service Commission, AT&T has terminated wholesale telephone service to Life Connex in Florida.

11. Life Connex has ceased all marketing and advertising in Florida and has added no new customers since early July, 2010. Through normal attrition, Life Connex is expected to lose approximately 30% of its customers each month. As of November 9, 2010, Life Connex has 856 active and interrupted customers in Florida. By June, 2011, Life Connex is expected to have fewer than 100 remaining customers.

12. Since AT&T has terminated wholesale service to Life Connex, ADT is allowing Life Connex to service its remaining customers by using wholesale, residential lines purchased by ADT from AT&T. ADT is financially responsible to AT&T for those wholesale lines and is current on its bill to AT&T. All of the wholesale lines purchased by ADT from AT&T at the wholesale, residential rate are resold either to residential customers of ADT or residential customers of Life Connex.

13. The current amount of ADT's security deposit held by AT&T is \$592,000.

14. Attached to this affidavit are true and correct copies of (1) a letter dated September 13, 2010, from Eddie A. Reed, Jr., of AT&T to Thomas Biddix and others threatening "suspension and disconnection" of service to American Dial Tone, Inc., (2) a letter in response, dated September 23, 2010, to Eddie A. Reed, Jr., from Henry Walker, counsel for ADT, (3) a letter dated September 24, 2010, to Thomas Biddix from Marcus Cathey of AT&T, (4) a letter dated September 29, 2010, to Thomas Biddix from Marcus Cathey, and (5) an email dated September 30, 2010 from Tom Biddix to Marcus Cathey.



Thomas E. Biddix, Affiant

STATE OF Florida)
)
COUNTY OF Brevard)

Subscribed and sworn to before me this 10 day of November, 2010.
personally known

Rachel Stephens
Notary Public

My Commission expires: Aug 21, 2013

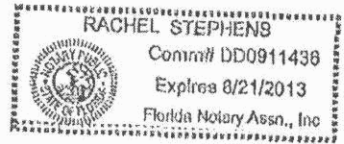


EXHIBIT 1

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



September 13, 2010

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

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

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

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

RE: SUSPENSION AND DISCONNECTION NOTICE TO AMERICAN DIAL TONE, INC.

Dear Sirs:

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

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

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

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

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

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

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

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

In its *Local Competition Order*, the Federal Communications Commission ("FCC") held that pursuant to Section 251(c)(4) of the federal Act, state commissions have the authority to prevent resellers from reselling wholesale-priced residential services to business customers. See *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, First Report and Order (August 8, 1996) at Paragraph 962 ("We conclude that section 251(c)(4)(B) permits states to prohibit resellers from selling residential services to customers ineligible to subscribe to such services from the incumbent LEC. For example, this would prevent resellers from reselling wholesale-priced residential services to business customers."). See also 47 C.F.R. §51.613(a)(1) ("A state commission may permit an incumbent LEC to prohibit a requesting telecommunications carrier that purchases at wholesale rates for resale, telecommunications services that the incumbent LEC makes available only to residential customers or to a limited class of residential customers, from offering such services to classes of customers that are not eligible to subscribe to such services from the incumbent LEC.").

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

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

¹ If American Dial Tone is not LifeConnex's "wholesale supplier", AT&T Florida is concerned that LifeConnex and American Dial Tone may have conspired to "slam" LifeConnex's customers and secretly transfer these customers to American Dial Tone without authorization in direct violation of Florida Commission Rule 25-4.11B and Section 6.2 of Attachment 1 (Resale) of the parties' interconnection agreement through which American Dial Tone certified that it will have end user authorization before placing an order with AT&T Florida.

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

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

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

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

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

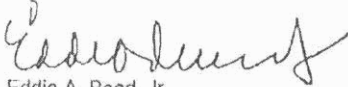
² See also *id.* at 57 ("The FCC's rules, 47 C.F.R. § 51.613, elaborate that restrictions may be imposed on cross-class selling and short term promotions.").

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

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

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

Sincerely,



Eddie A. Reed, Jr.
Director - Interconnection Agreements

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

EXHIBIT 2



Henry Walker
Phone: 615.252.2363
Fax: 615.252.6363
hwalker@bac.com

September 23, 2010

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

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

Dear Mr. Reed:

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

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

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

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

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

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

More importantly, ADT has not breached its interconnection agreement with AT&T. As explained below, all residential services purchased by ADT from AT&T are resold to residential end users.

Your allegation that ADT has breached the Agreement by reselling residential service to business customers relies principally on the language of Attachment 1, Section 4.1.1 of the Agreement which states, "The resale of telecommunications services shall be limited to users and uses conforming to the class of service restrictions." AT&T also relies on the Florida Commission rule which approves "restrictions that would limit resale of . . . residential services . . . to end users who are eligible to purchase such services directly from BellSouth." In other words, ADT may not purchase residential lines from AT&T and resell those lines to end users who are not residential customers. As the FCC said, "There is general agreement that residential services should not be resold to non-residential end users . . . For example, this would prevent resellers from reselling wholesale-priced residential service to business customers." FCC "First Report and Order," CC Docket 96-98 (August 8, 1996), paragraph 962.

In sum, AT&T claims that ADT is improperly reselling AT&T's residential service to Life Connex, a business customer. AT&T has apparently overlooked, or chosen to disregard, the definitions of "telecommunication service," "resale," and "end user" as those terms are used in the parties' interconnection agreement. "Telecommunications Service" is defined in the Agreement as the offering of telecommunications for a fee directly to the public." General Terms and Conditions, p. 2 (emphasis added). Similarly, "resale" is defined as "the activity wherein a certificated CLBC . . . subscribes to the telecommunications services of BellSouth and then offers those telecommunications services to the public." Attachment 1, Section 2.7 (emphasis added). Finally, the Agreement defines "end user" as "the ultimate user of the telecommunications service." General Terms and Conditions, p. 2 and Attachment 1, Section 2.4 (emphasis added).

In other words, the "resale" of "telecommunications service" means the sale of service "to the public." It does not mean the use of ADT's lines by Life Connex. Furthermore, Life Connex is not the "end user" of these services. The "end user", i.e., the "ultimate user" of every such line is a residential customer of Life Connex. Therefore, ADT is not engaged in the "resale" of "telecommunications services" to Life Connex, nor are those residential lines being resold to "end users" who are business customers. ADT is therefore not in violation of the Agreement or the federal and state prohibitions against the cross-class resale of residential service.

Your letter also implies that the Agreement states that ADT may only purchase wholesale services for resale directly to residential customers. That implication is incorrect. Contrary to your letter, the Agreement expressly permits ADT to "purchase resale services from BellSouth [AT&T] for its own use in operating its business." Attachment 1, Section 3.2. Here, the "business" of ADT includes, for a few months, the provision of wholesale, residential service

Mr. Eddie A. Reed, Jr.
September 23, 2010
Page 3

to its affiliate, Life Connex. ADT is entitled to purchase resale service from AT&T for that purpose, "for [ADT's] own use in operating its business."²

Finally, please be advised that AT&T may not unilaterally terminate the Agreement solely because the parties disagree over its "interpretation" or "implementation." The Agreement requires that if AT&T disputes this "interpretation" or "implementation" of the Agreement, AT&T "shall petition the [Florida Public Service] Commission for a resolution of the dispute." General Terms and Conditions, Section 8 (emphasis added). AT&T has not petitioned the Commission for resolution of the dispute and may not by-pass that requirement of the Agreement with an unprecedented and disproportionate act of self-help.

In conclusion, AT&T has no right to terminate the Agreement with ADT because a small portion of the residential lines purchased at wholesale by ADT are being used by Life Connex to serve its own residential customers. ADT, not Life Connex, is responsible to AT&T for the cost of those lines under the Agreement and is paying the charges for those lines.³ ADT is merely acting as the underlying provider for Life Connex so that the remaining customers of Life Connex may continue receiving service for the next few months. Even if the Agreement prohibited this arrangement (which it does not), AT&T cannot reasonably contend that ADT's temporary provision of wholesale service to Life Connex justifies termination of the Agreement. To warrant termination of a contract, the alleged breach must be "so substantial and fundamental as to defeat the object of the parties in making the agreement." General Steel, Inc., v. Delta Building Systems Inc., 676 S.E. 2d 451 (Georgia Court of Appeals, 2009); see Mayor of Douglasville v. Hildebrand, 333 S.E.2d 674 (Ga. Supreme Ct., 1985). The temporary use by Life Connex of 5% of ADT's lines to maintain service to residential customers is hardly a "substantial and fundamental" breach of the parties intentions, or the purposes of the federal and state laws which govern the Agreement.

On the whole, your letter appears intended more as editorial comment about alleged issues between Life Connex and the Florida Commission than about the legal rights of ADT under its Agreement with AT&T. As you are aware, AT&T has an obligation under federal law to provide wholesale services to ADT pursuant to the parties' Agreement. If AT&T intends to proceed with termination of the Agreement, ADT will seek injunctive relief and monetary damages in a court of competent jurisdiction. To avoid unnecessary expense and litigation,

² In your letter, you also cite Section 18 of the Agreement concerning "Assignments and Transfers" and claim that ADT cannot "transfer" service to another provider unless AT&T and the other provider agree to "separately negotiated rates, terms and conditions." General Terms and Conditions, Section 18.2. As you should know, the language in Section 18 refers to the transfer to another party of ADT's contractual rights under the parties' Interconnection Agreement. See U.C.C. §§3-201(1) and 7-504(1) and Black's Law Dictionary ("Transfer is the all encompassing term used by the Uniform Commercial Code to describe the act which passes an interest in an instrument to another.") That Section on Assignments and Transfers concerns ADT's rights under the parties' contract and has nothing to do with the circumstances here.

³ Since no new customers are being added by Life Connex, ADT does not claim any promotional credits associated with the purchase of those lines from AT&T.

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

please have your attorney contact me before AT&T takes any action to disrupt its service to ADT.

Very truly yours,

BRADLEY ARANT BOULT CUMMINGS LLP

By:


Henry Walker

HW/dnr

EXHIBIT 3



Marcus Cathey,
Executive Director Wholesale
600 19th St. N
Floor 9
Birmingham, AL 35203

T: 205-321-4900
F: 205-321-4334
www.marcus.cathey@atl.com

September 24, 2010

Thomas Biddix
Director
American Dial Tone, Inc. f/k/a Ganoco, Inc.
6905 N. Wickham Road
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Suite 403
Melbourne, FL 32940

RE: September 13, 2010 Suspension and Disconnection Notice to American Dial Tone, Inc.

Dear Mr. Biddix:

Thank you for your telephone call of September 23, 2010, requesting an opportunity to cure the contract breaches and legal violations that AT&T Florida noticed through its September 13, 2010 Suspension and Disconnection Notice (the "Notice") to American Dial Tone, Inc. f/k/a Ganoco, Inc. ("American Dial Tone"). While we appreciate that American Dial Tone has exhibited a willingness to resolve this issue amicably, the proposed solution – that American Dial Tone simply disconnect the end user resale lines that it is providing on a "wholesale" basis to its affiliate LifeConnex Telecom, LLC ("LifeConnex") – is not a sufficient cure.

Rather, the following are the necessary components of any cure:

1. American Dial Tone must immediately cease and desist from the practice of reselling telecommunications services it purchase from AT&T Florida under the parties' interconnection agreement to any person or entity other than the end user of the service and agree to refrain from such practice in the future.
2. An accounting, verified by an officer of American Dial Tone, listing by telephone number ("TN"), dates of service, residential promotional credits claimed, and residential promotional credits paid, for all resale lines that American Dial Tone provided to another telecommunications service provider for service to an end user who was not a customer of American Dial Tone. This accounting should include, but is not limited to, all lines resold to LifeConnex.
3. For each such resale line resold to another telecommunications service provider:

- a. an agreement by American Dial Tone to not make any residential promo claims, withdraw any pending promo claims, and return any promo claims AT&T Florida has already credited;
- b. payment in full, by certified funds or wire transfer, of the 1FB rate for the resold lines; and,
- c. Disconnection of the resold lines by October 14, 2010.

Unless and until American Dial Tone meets each and every one of these cure obligations, AT&T Florida will go forward with suspension of order processing on September 29, 2010, and disconnect American Dial Tone's service on October 14, 2010, as specified in the Notice.

AT&T Florida does want to amicably resolve this issue with American Dial Tone, and I look forward to hearing from you to implement the cure outlined above.

Original Signed by Marcus Cathey

EXHIBIT 4



Marcus Cathey.
Executive Director Wholesale
600 19th St. N
Floor 9
Birmingham, AL 35203

T: 205-321-4900
F: 205-321-4334
www.marcus.cathey@alt.com

September 29, 2010

Thomas Biddix
Director
American Dial Tone, Inc. f/k/a Ganoco, Inc.
6905 N. Wickham Road
Suite 403
Melbourne, FL 32940

Thomas Biddix
Manager
LifeConnex Telecom, LLC
6905 N. Wickham Road
Suite 403
Melbourne, FL 32940

Dear Mr. Biddix:

We appreciate your interest in trying to resolve the dispute regarding the actions of American Dial Tone, Inc. ("American Dial Tone") purchasing residential service from AT&T Florida for resale to other telecommunications providers, including its affiliate LifeConnex Telecom, LLC ("LifeConnex"). Although AT&T Florida believes that its position is sound and fully consistent with its legal rights and obligations, subject to the conditions set forth below, AT&T Florida will accept your proposal to make a joint submission to the Florida Commission with a joint filing seeking expedited treatment on this issue:

- The parties will file a Joint Petition (with a request for expedited treatment) with the Florida Commission by close of business on October 8. AT&T Florida will commit to providing American Dial Tone with a draft petition and draft stipulated undisputed facts by close of business on Monday, October 4, and American Dial Tone will provide any comments to the draft petition and draft stipulated undisputed facts by close of business on Wednesday, October 6. The parties will then exercise good faith efforts to file the joint petition and stipulated undisputed facts by October 8. Subsequent to this joint filing, the parties will then file briefs (25 page limit) setting forth their respective positions fourteen (14) days thereafter. The parties agree that the Commission would then make its decision based upon the Joint Petition, the stipulated facts and the parties' briefs. The parties agree to waive the right to a hearing before the Commission.
- For purposes of this interim proposal only, AT&T Florida will accept your representation from yesterday that 951 LifeConnex end users are currently being serviced by American Dial Tone on a wholesale basis to LifeConnex as of September 28, 2010. Based on your representation, AT&T will rely on the accuracy of the number in making

the following offer, although we understand that the number was higher when American Dial Tone first began its wholesale practice to LifeConnex.

- o By October 6, 2010, American Dial Tone will pay AT&T Florida a minimum of the 1FR resale rates for the 951 end users for July and August by cash or certified funds pursuant to the payment requirements of the ICA and directed to one or more of the Florida Billing Account Numbers.
1FR resale rate = \$10.38¹
 $\$10.38 \times 2 \text{ months} \times 951 \text{ end users} = \$19,742.76$
 - o By October 6, 2010, American Dial Tone will establish an escrow account for the benefit of AT&T Florida for the difference between the 1FR and 1FB resale rates for the 951 end users for July and August.
1FB resale rate = \$29.80
 $(\$29.80 - \$10.38) \times 2 \text{ months} \times 951 \text{ end users} = \$36,936.84$
 - o During the pendency of the Joint Petition, American Dial Tone will pay the 1FR resale rates to AT&T Florida pursuant to the terms above and escrow the difference between the 1FR and 1FB resale rates for the 951 end users, within the time provided for payment in the ICA and without dispute.
 - o If American Dial Tone provides verifiable evidence that the number of end users has decreased, the parties will work in good faith to reduce these payment and escrow obligations.
- By Monday, October 4, American Dial Tone informs AT&T Florida, through a written verification signed by an officer, whether it is reselling AT&T Florida's service to any telecommunications provider other than LifeConnex, and if so, the number of resale lines American Dial Tone is providing to that telecommunications provider. For each resale line identified, American Dial Tone agrees to make the payments and escrow deposits outlined above, within the time specified above.
 - American Dial Tone agrees to not submit any promotional credit requests for any resale line that it is providing to another telecommunications provider for resale to the ultimate end user.
 - American Dial Tone will comply with all other obligations in its ICA.
 - American Dial Tone will not add new LifeConnex customers or customers of other telecommunications service providers to the resale arrangement unless it is expressly authorized to do so by the Florida Commission as a result of the referenced Joint Petition.
 - Should AT&T issue a breach letter to American Dial Tone or any its affiliates in Florida or any other state for similar reselling of AT&T's service to a telecommunications provider, American Dial Tone and its affiliates agree to not argue that through agreeing to American Dial Tone's proposal to make a joint filing with the Florida Commission, AT&T has conceded that there is some doubt as to its legal position.
 - So long as American Dial Tone complies and continues to comply with the conditions set forth above, AT&T Florida will hold the deadlines set forth in its September 13, 2010, notice of breach in abeyance.

AT&T Florida reserves all other rights and remedies available to it under the applicable law, including without limitation the right to pursue collection activity under the ICA should American Dial Tone continue to fail to meet its payment obligations under the ICA.

¹ American Dial Tone, of course, owes AT&T Florida more than the 1FR resale rate for these lines, including features, applicable taxes and government surcharges, is obligated to pay all undisputed amounts due under its ICA. By proposing this 1FR per line payment for purposes of this interim agreement, AT&T Florida is by no means waiving American Dial Tone's obligations to comply with all requirements under the ICA.

Please let me know by 2 pm EST tomorrow if you agree with this proposal. Otherwise, AT&T Florida will act in accordance with its September 13, 2010 notice of breach.

Original Signed by Marcus Cathey

EXHIBIT 5

From: Thomas Biddix
Sent: Thursday, September 30, 2010 3:11 PM
To: 'CATHIEY, MARC (ATTOPS)'
Subject:

Marc,

I have reviewed and discussed with my attorneys your latest letter which you emailed to me yesterday at about 6:00 pm EST. In that letter, you say that unless I agree to all of the terms set out in the letter by 2:00 pm EST today, AT&T will proceed today with the suspension of wholesale service to ADT (refusing to allow ADT to add new customers or to reconnect old customers who were disconnected for nonpayment but have now paid for service) followed two weeks later by the disconnection of wholesale service to all of ADT's 18,500 residential customers in Florida.

The terms demanded by AT&T in the letter include the payment of charges which ADT does not owe, the creation of an escrow account to cover additional amounts claimed by AT&T (above and beyond the \$600,000 security deposit that ADT has already posted) and a demand that ADT waive its right to a hearing, as well as other procedural rights, in a proceeding you want the parties to file at the Florida Commission. ADT does not agree to those conditions. AT&T and ADT are bound by the parties' interconnection agreement which provides for the withholding of disputed charges and sets out a procedure for the resolution of billing disputes. While your letter acknowledges, finally, that this dispute boils down to whether ADT should pay the residential rate or the business rate for lines purchased from AT&T and resold by ADT's affiliate, Life Connex, to residential customers, AT&T has ignored the provisions of the interconnection agreement for handling this kind of billing dispute. Under the circumstances, ADT has no choice except to go to court today and ask a judge to order AT&T to abide by the terms of the agreement.

Thomas Biddix
Manager/ Chairman of the Board
321-373-1343
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Melbourne, FL 32940
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Melbourne, FL 32940

