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From: Jack C. Moyle [cmoyle@kagmlaw.com]
Sent: Friday, May 06, 2011 3:21 PM
To: Filings@psc.state.fl.us
Cc: Adam Teitzman; Larry Harris; Beth Salak
Subject: Docket Nos. 100340-TP and 110082-TP; Motion for Approval of Offer of Settlement Agreement with attachments

Attachments: Offer of Settlement FINAL 05.06.11.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

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b. This filing is made in Docket Nos. 100340-TP and 110082-TP.

c. The document is filed on behalf of The Companies.

d. The total pages in the document are 13 pages.

e. The attached document is Motion for Approval of Offer of Settlement Agreement with attachments.

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DOCUMENT NUMBER-DATE

03179 MAY -6 =

5/6/2011

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of Associated
Telecommunications Management
Services, LLC (ATMS) companies
For compliance with Chapter 25-
24, F.A.C., and applicable lifeline,
Eligible telecommunication carrier, and
Universal service requirements.

Docket No. 100340-TP

Initiation of show cause proceedings against
American Dial Tone, Inc., All American
Telecom, Inc., Bellerud Communications, LLC,
BLC Management LLC d/b/a Angles
Communications Solutions and LifeConnex
Telecom LLC for apparent violations of Chapter
364, F.S., Chapters 25-4 and 25

Docket No. 110082-TP

Filed: May 6, 2011

MOTION FOR APPROVAL OF OFFER OF SETTLEMENT AGREEMENT

All American Telecom, Inc., American Dial Tone, Inc., Bellerud Communications, LLC, BLC Management, LLC, LifeConnex Telecom, LLC, and Triarch Marketing, Inc. (the Companies), hereby file this Offer of Settlement in full and complete settlement of the issues in the above-styled dockets and request that it be approved by the Commission. After extensive negotiations with Commission Staff regarding this Settlement, it is the Companies' understanding that Commission Staff is in agreement with the provisions contained in the Settlement and intends to recommend that it be approved. In support of this Motion, the Companies state:

1. Associated Telecommunications Services, LLC (ATMS), through acquisition, purchased nine telephone companies a little over a year ago. At the time, four were doing business in Florida.

2. Staff opened Docket No. 100340-TP in June 2010 and Docket No. 110082-TP in March 2011 to address concerns it had with the Companies' operations.¹

3. During the course of these dockets, the Companies and Staff have engaged in extensive negotiations (including numerous face to face meetings as well as extended conference calls) to attempt to reach a comprehensive settlement of all issues in this docket and avoid the need for expensive and time-consuming litigation of the issues in hearing before the Commission and in potential appellate proceedings. The Companies are pleased to report that such negotiations have been productive and successful and submit the attached Settlement for the Commission's approval. The Companies also wish to thank Staff for their continued willingness to meet with the Companies to resolve the matters at issue.

4. The attached agreement demonstrates the Companies' willingness to be held to even stricter standards than the Commission's statutes and rules require. The provisions of the Framework are substantial proof of the Companies' good faith efforts to address Staff's concerns and to continue to serve the people of Florida.

5. The settlement consists of a Framework for moving forward, a schedule of assessments if the Companies do not comply with the Framework, and an expedited process for resolving any disputes. It also provides for a substantial payment to the General Revenue Fund.

6. The attached settlement fairly and reasonably balances the positions of the Commission Staff and the Companies on the issues in these dockets. The Settlement is fully consistent with and supportive of this Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that is beneficial to all parties and avoids the need for costly and time-consuming litigation before the Commission.

¹ While this Settlement addresses Staff's concerns, the Companies must make it clear that they do not agree with many of Staff's preliminary conclusions or legal analysis.

7. The Companies note that this Offer of Settlement is not an admission of any wrong doing on the part of the Companies, but rather an offer to settle this matter without expensive and time-consuming litigation.

WHEREFORE, the Companies respectfully request that the Commission accept and approve their Offer of Settlement attached as Exhibit A.

s/ Vicki Gordon Kaufman

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Attorneys for the Companies

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Approval of Offer of Settlement has been furnished by electronic mail and US Mail this 6th day of May 2011 to the following:

Adam Teitzman
Larry Harris
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399
ateitzma@psc.state.fl.us
lharris@psc.state.fl.us

s/ Vicki Gordon Kaufman

Vicki Gordon Kaufman

FRAMEWORK FOR SETTLEMENT¹

Introduction

This proposed Framework is provided in the spirit of compromise and settlement and is not an admission of wrong doing. All American Telecom, Inc., American Dial Tone, Inc., Bellerud Communications, LLC, BLC Management, LLC, and LifeConnex Telecom, LLC, (the Companies)², propose the following provisions to efficiently and expeditiously resolve the matters at issue in these dockets.

General Provisions

- Commission Staff will be permitted unrestricted access, accompanied by an authorized employee, to the Companies' headquarters in Florida and its call center in Florida, with 24 hours notice, to review any documents and/or processes within its jurisdiction.
- Commission Staff may assign a Staff member full time to the aforementioned facilities. An office will be provided for Staff if desired.
- Key personnel will attend USAC training and quarterly meetings and stay informed regarding current FCC updates and USAC's low income best practices.

USAC

- American DialTone will provide true-ups according to USAC guidelines.

Regulatory

- The Companies, through their management company, will replace their current third party tax and regulatory vendor with Thomson Reuters. If Thomson Reuters is subsequently replaced, Staff will be notified.
- The Companies, through its then current management company, will maintain a Regulatory Department. The Regulatory Department will be responsible for monitoring the third party tax and regulatory vendor to ensure all tax and regulatory filings are timely filed. A representative of the Regulatory Department will meet, at the request of the Commission or of the Companies to review any regulatory issues the Commission or the Companies identify and promptly resolve such issues.
- The Regulatory Department shall be responsible for maintaining the Companies' schedules and price lists to ensure they are current.

¹ The timing and implementation of some of the provisions set forth herein are subject to implementation schedules.

² Some of these companies have no Florida customers and thus many of the provisions contained herein would be inapplicable.

Operations

- The Companies will require potential Lifeline subscribers to initiate a call to the Company's designated toll-free sales number, make a request in person at an authorized agent location, or complete a Company specific application form for service online. The Companies will maintain records of all such calls, requests and on line forms for as long as the subscriber remains an active Lifeline subscriber and thereafter, for a minimum of three (3) years. All such forms or a sampling of such forms shall be provided to Staff upon request. This affirms the subscriber's request to establish service with the Company of their choosing.
- The Companies will not initiate Lifeline service or file a FCC Form 497 claiming a Florida Lifeline subscriber without having an accurate, complete certification form on file.³
- The Companies, through their then current management company, will modify the billing and subscriber account system to alert the sales representatives if a subscriber has previously established service with the same Company in order to prevent duplicate orders.⁴ Duplicate orders will not be processed or provisioned.

Certification Forms

- The Companies will provide via CD on the 10th of each month all Lifeline certification forms for Florida from the prior month.
- The Companies, through their then current management company, will maintain a Compliance Department to ensure the proper processing of certification forms in addition to ensuring that the publicized form is current. The Compliance Department will use UPS, fax, mail, invoices, the internet, and any other acceptable means to collect certification forms in a timely manner. Such certification forms will be provided to Staff as noted above. All certification forms will be reviewed for accuracy prior to claiming the subscriber on FCC Form 497.
- The Companies, through their then current management company, will keep accurate records of the eligibility forms and store them for as long as the subscriber remains an active Lifeline subscriber and thereafter, for a minimum of three (3) years.

Data Management

- The Companies, through their then current management companies, will host and

³ This shall not preclude the Companies from offering a non-Lifeline promotional plan at the Lifeline rate.

⁴ The FCC has recently recognized that duplicate outcomes are a wide-spread issue. This issue is not exclusive to the Companies as evidenced by the FCC's letter to USAC's Chief Operating Officer dated January 21, 2011 in response to USAC's request for guidance as to how to resolve the issue of duplicate lifeline claims.

maintain data management on-site.

- The Companies, through their then current management company, will reconcile in-house data against the billing and subscriber account system to the ILEC's data each month to ensure accuracy.
- The Companies, through their then current management company, will populate and submit the FCC form 497.

Commission Requests

- The Companies will work with Staff to ensure that Lifeline certification forms meet Commission criteria. The Companies will provide the Commission with any proposed changes to their Lifeline certification forms and Commission Staff will approve such changes or suggest alternate language within seven (7) days of receipt of such proposed changes.
- The Companies will respond accurately and within a reasonable time to all Commission data requests within the Commission's jurisdiction.
- The Companies will ensure that all applications and certification forms bear the accurate logo or company identification, whether in on line or printed format.

Regulatory Assessment Fees

- The Companies will timely pay all regulatory assessment fees.

Audit

If requested by the Commission Staff, the Companies will agree to undergo an audit no more frequently than once a year pursuant to this Framework. The audit will be conducted by an independent third party auditor. The results of the audit and underlying work papers and data responses will be treated according to the Commission's confidentiality procedures in section 364.183, Florida Statutes, and rule 25-22.006, Florida Administrative Code. Audits will be conducted as follows:

- The cost of the audit will be borne by the Company or Companies audited.
- The independent third party auditor shall be selected by the Staff from a list of four (4) auditors provided by the Company or Companies audited. Disagreement over the selection of an auditor shall be determined by the Commission.
- The Staff and the Company or Companies audited shall jointly determine the scope of the audit. Disagreement about the scope of the audit shall be determined by the Commission.
- The audits are intended to provide the basis for the Commission to determine compliance

with this Framework on a going-forward basis.

Payment to General Revenue Fund

- Within fourteen (14) calendar days of the Commission's issuance of a final non appealable order approving this Framework, the Companies will begin payment of \$4 million to the General Revenue Fund.
- For the first two (2) years of the Framework, such amount shall be paid in equal installments of \$250,000 per quarter. The first payment shall be made within 90 calendar days of the Commission's issuance of a final order approving this Framework. Subsequent payments for the first two (2) years of the Framework shall be made 90 days after each prior payment.
- After eight (8) quarterly payments, further payments shall be suspended pending a report by the Staff concerning the Companies' compliance with this Framework. The report may include, at the discretion of the Staff, the results of an audit as described in the Framework. If the Staff concludes and the Commission finds that the Companies have materially complied with the Framework, further payments will remain suspended pending the Companies' continued compliance with the Framework. If the Commission finds that the Companies have not materially complied with the Framework, regular quarterly payments will resume, and the Commission may also direct that all or part of any suspended payments will become due and payable. If, at the conclusion of the Framework period, the Staff reports and the Commission finds that the Companies have materially complied with the Framework, the suspended payments will be forgiven.
- In the event the Companies fail to meet any payment date contained in the final order, and Staff and the Companies cannot reasonably agree otherwise, Staff shall be administratively authorized to cancel the Companies' certificate, absent good cause shown by the Companies to the Commission.

Assessment Plan

- If the Companies fail to comply with a rule or regulation, the Companies shall meet and confer with Staff within seven (7) days of notification from Staff that it is alleged that a violation has occurred. If the Companies agree that a violation has occurred, they shall have a fourteen (14) calendar days to remedy such violation, absent good cause shown that such violation cannot be remedied within that time period. Further, the Companies shall pay the appropriate assessment amount listed in Attachment 1.
- If Staff and the Companies do not agree that a violation has occurred, the procedure set forth in Attachment 2 shall be used to resolve the dispute.

Term of Agreement

- This Framework shall be in effect for four (4) years from the date of the Commission's

issuance of a final non-appealable order.⁵

Change of Law

- To the extent that there is a change in the applicable state or federal law during the term of the Framework, at the request of the Companies or of the Commission Staff, the Companies and the Commission Staff will meet to discuss such change(s) and determine if modifications to the Framework are needed in light of the change in law. If the parties agree that any changes are needed, such changes will be presented to the Commission for approval as an amendment to the Framework. If either the Companies or the Commission Staff disagrees that a modification to the Framework is needed to comply with changes in state or federal law, the Companies or the Commission Staff shall file a petition for modification of the Framework with the Commission for determination.

Other

- Within 14 calendar days of the Commission's issuance of a final order approving this Framework, the Companies will voluntarily surrender the CLEC certificates of All American Telecom, Inc., Bellerud Communications, LLC, and LifeConnex Telecom, LLC. Upon the surrender of such CLEC certificates, "Companies" as used herein shall refer only to American Dial Tone, Inc., as it will be the only surviving Florida-regulated company. The Companies which have surrendered their certificates are precluded from providing regulated telecommunications service in Florida.⁶
- Within fourteen (14) calendar days of the Commission's issuance of a final order approving this Framework, American Dial Tone's (ADT) ETC certificate as it pertains to providing service to new ETC customers shall be suspended. Such suspension shall be for two (2) years. The Commission shall review such suspension after one (1) year to determine if it should be lifted. ADT may serve new LifeLine customers via resale.
- Regarding ADT ETC customers currently receiving service from ADT, within fourteen (14) calendar days of the Commission's issuance of a final order approving this Framework, ADT shall provide Staff with a list of all current customers, indicating which customers have and which customers do not have a LifeLine certification form.
- Staff may request, and ADT will provide, the Staff with a random sample⁷ of such forms. For current customers, who have a LifeLine certification form, ADT may continue to provide service to such customers as an ETC and submit such customers on its Form 497. For customers who do not have a LifeLine form, ADT will provide notice that such customers must provide the certification form within 60 days or they will be transferred to the non-LifeLine rate.

⁵ Where specific times are mentioned, such as record retention, those time frames shall govern those specific provisions.

⁶ Staff and the Companies will work cooperatively to address the phase out of any current customers.

⁷ This provision regarding a random sample does not preclude Commission Staff from requesting additional samples or all certification forms if necessary.

- During the term of this Framework, no new companies will be formed or acquired to conduct telecommunications business regulated by the Commission in Florida by ATMS, its affiliates, subsidiaries, owners, officers or managing members.
- The then current management company, during the term of this Framework, will not provide services to any Florida certificated telecommunications carrier, including any wireless ETC carrier, that are not currently managed by the management company, with the exception of services provided at the call center.
- The Companies shall not share their data bases with each other, except for purposes allowed under state and federal law.
- The Framework is not intended to, and does not, abridge any statutory rights of the Commission.
- During the term of this Framework, either Staff or the Companies may suggest needed changes to Framework to the other. If both Staff and the Companies are in agreement, such changes shall be submitted to the Commission for approval.
- Agreement to this Framework is not an admission of guilt or wrongdoing on the part of the Companies but a good faith effort to compromise and come to an agreement as to allegations that have been made in this proceeding.
- The terms of the Framework are integral to each other and must be approved in their entirety in order for the Framework to have force and effect.

Attachment 1

Assessment Fee Schedule¹

<u>Action</u>	<u>Units</u>	<u>Assessment²</u>		
		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
Failure to obtain appropriate Letter of Authorization as Set forth in rule 25-4.118, FAC (per year)	5	\$10,000	\$2,000 for each additional	
Failure to obtain signed Signed certification form Prior to submitting Form 497 for reimbursement or initiating Lifeline service ³ (per year)	5	\$10,000	\$2,000 for each additional	
Provision of willfully false response to Staff data request	1	\$25,000	\$35,000	\$50,000
Failure to pay appropriate Regulatory assessment Fee	1	\$1,000	\$5,000	\$10,000
Failure to comply with The provision of access To records, pursuant to	1	\$25,000	\$35,000	\$50,000

¹ The Companies are not obligated to pay any assessment for non-compliance with the Framework if such non-compliance was the result of any Force Majeure Event that either directly or indirectly prevented, restricted or interfered with performance. Such Force Majeure Events include non-compliance caused 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, or any other circumstances beyond the reasonable control and without the fault or negligence of the Companies. The Companies, upon giving prompt written notice to the Commission, shall be excused from performance on a day-to-day basis to the extent of such prevention, restriction or interference. The Companies will promptly notify the Commission when the Force Majeure event has been resolved.

² This schedule is applicable from the issuance of a non-appeal order by the Commission approving the Framework document for activities occurring during the Framework period. This chart is intended to apply only to matters within the jurisdiction of the Commission.

³ This shall not preclude the Companies from offering a non-Lifeline promotional plan at the Lifeline rate.

Section 364.183(1),
Florida Statutes

Provision of service by a Non-certificated carrier	1	\$25,000	surrender certificate	
Failure to file or maintain a price List pursuant to section 364.10, F.S.	1	\$15,000	\$20,000	\$25,000
Failure to maintain and use Compliant Lifeline certification Forms (per year)	5	\$25,000	\$35,000	\$50,000 ⁴
Seek reimbursement for Lifeline service for non-qualified subscribers in violation of USAC procedures (per year)	5	\$1,000	\$5,000	\$10,000 ⁵

⁴ Penalties are intended to be \$25,000 on the 5th violation, \$35,000 on the 10th violation and \$50,000 on the 15th violation.

⁵ Penalties are intended to be \$1,000 on the 5th violation, \$5,000 on the 10th violation and \$10,000 on the 15th violation.

Attachment 2

Process for Resolving Violation Disputes

In the event there is a disagreement as to whether the Companies have violated a statute or rule pursuant to the Framework and the Companies and Staff are unable to informally resolve such disagreement, the procedure below shall be used to resolve any such dispute on an expedited basis. This schedule is modeled on rule 25-22.0365(9), Florida Administrative Code.

Day 0 Companies file petition for resolution, direct testimony and exhibits

Day 14 Staff files testimony and exhibits

Day 28 Companies file rebuttal testimony and exhibits

Responses to discovery shall be made within seven (7) days of service of the discovery requests, unless the Prehearing Officer decides otherwise based on the unique circumstances of the case.

The Commission shall schedule a hearing and make a decision on the dispute as soon as practically possible.

The Prehearing Officer shall decide whether post-hearing briefs will be filed or if closing arguments will be made in lieu of post-hearing briefs.

Service of all documents on the parties shall be by e-mail, facsimile or hand delivery. An additional copy shall be furnished by hand delivery, overnight mail or U.S. mail if the initial service was by e-mail or facsimile. Filing of all documents with the Commission shall be by hand delivery, overnight mail or any method of electronic filing authorized by the Commission.

Nothing in Attachment 2 shall prevent the Prehearing Officer from making a later determination that the case is no longer appropriate for expedited processing as described herein. Further, nothing herein shall prevent the Commission from initiating an expedited proceeding on its own motion.