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Public Service Commission

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DATE: May 12, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Harris, Teitzman)
Division of Regulatory Analysis (Kennedy, Salak)

*OH AT
RK
VNTJ*

RE: Docket No. 100340-TP – 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. 110082-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 Communication Solutions, and LifeConnex Telecom, LLC for apparent violations of Chapter 364, F.S., Chapters 25-4 and 25-24, F.A.C., and FPSC Orders.

AGENDA: 05/24/11 – Regular Agenda – Decision on Offer of Settlement – Final Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham (100340-TP)
Administrative (110082-TP)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\100340.RCM.DOC

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Case Background

In 2009, as in past years, Florida was the number one net contributor to the Federal universal service fund (“USF”), contributing \$495,839,000 into the USF while receiving only \$221,903,000 from the fund. Florida consumer contributions account for approximately seven percent of the USF monies contributed nationally.¹ In accordance with this Florida Public Service Commission’s (FPSC or Commission) desire for accountability in the federal universal service program, and elimination of fraud, waste, and abuse in the USF, staff monitors all eligible telecommunications carriers (“ETC”) in Florida. On June 28, 2010, staff opened Docket No. 100340-TP to evaluate Associated Telecommunications Management Services’ (“ATMS”) compliance with Chapter 25-24, Florida Administrative Code, and applicable Lifeline, ETC, and universal service requirements applicable to ATMS companies doing business in Florida. As a result of its investigation, on March 24, 2011, staff opened Docket Number 110082-TP in order to recommend the initiation of a show cause proceeding against ATMS.

Florida Lifeline and Link Up

Lifeline was originally implemented in 1985 to ensure that the increase in local rates that occurred in the aftermath of the breakup of AT&T would not put local phone service out of reach for low-income households. Support for low-income households has long been a partnership between the states and the federal government, and the universal service program historically was administered in cooperation with states.² Under authority of Chapter 364.10, Florida Statutes, the Florida PSC adopted the requirements of the federal Lifeline and Link Up programs for Florida’s Lifeline and Link Up programs.

The Lifeline, Link-Up, and Toll Limitation Services (“TLS”) programs allow an ETC providing services to qualifying low-income consumers to seek and receive reimbursement through the Universal Service Administrative Company (“USAC”)³ for revenues it forgoes each month for providing these services. The program was never intended to provide a profit for service providers.⁴ In order for a carrier to receive low-income support from USAC, the carrier must first be designated as an ETC. Currently, the Commission has the authority to approve or deny ETC designation for all telecommunications companies, including wireless in Florida.

Investigation Background and Overview

Associated Telecommunications Management Services is a Delaware limited liability company (“LLC”). On April 26, 2010, in answer to a staff data request, ATMS provided its organizational structure showing ATMS-owned companies, including American Dial Tone, Inc. (“ADT”), All American Telecom, Inc. (“All American Telecom”), Bellerud Communications, LLC (“Bellerud”), BLC Management LLC d/b/a Angles Communication Solutions (“BLC”), and

¹ 2010 Universal Service Monitoring Report, CC Docket No. 98-202.

² FCC 11-32, ¶14.

³ The Universal Service Administrative Company is an independent, not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the Federal Communications Commission.

⁴ FCC 11-32, ¶ 14.

LifeConnex Telecom, LLC (“LifeConnex”). ATMS companies received approximately \$37 million in universal service low-income program monies from the USF on a national basis for the year 2010. Staff noticed the atypical growth in federal universal service low-income program disbursements for some companies under this ownership and management structure, and also received information from multiple anonymous sources that ATMS’ business practices may not be in compliance with state and federal Lifeline and Link-Up regulations. The Commission had received the following *allegations* against ATMS companies:

- ATMS using multiple companies so that it can claim duplicate subsidies resulting in overpayments from USAC;
- ATMS sharing customer information and forms among ATMS companies;
- USA Freephone (an ATMS marketing company) placing lifeline applicants with any ATMS company it chooses;
- ATMS not providing written disconnect notices to customers;
- ATMS violating Customer Propriety Network Information (CPNI)⁵ requirements by sharing wholesale customer information with sister companies;
- ATMS receives Link Up reimbursement from USAC even though ATMS companies do not charge new applicants a hook up fee (resulting in possible over collection from USAC);
- Lifeline subscriber numbers submitted to USAC by ATMS are inaccurate and result in possible over payment of Universal Service funds;
- resold Lifeline lines claimed at USAC by the underlying carrier may be claimed by ATMS companies resulting in possible overpayment of Universal Service funds;
- ATMS companies providing Lifeline service and collecting Universal Service funds prior to customer completion of Lifeline eligibility certification resulting in possible overpayment of Universal Service funds;
- ATMS companies designated as ETCs may provide the required services using 100 percent resale in violation of law;
- All ATMS-associated companies may not have been disclosed to the Commission;
- All ATMS owners and officers may not have been disclosed to the Commission; and,
- ATMS companies may be operating as a single entity in contradiction of ATMS data request response that each of the ATMS companies is independent.

⁵ The Telecommunications Act of 1996 defines Customer Proprietary Network Information as "information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service" that the carrier possesses solely as a result of serving that customer. Customers' information, compiled from individuals' telephone calling behaviors, include subscribers personal data, services, amount of usage of services, and calling records. A carrier is allowed to use individual calling records only for purposes such as increasing business or publishing directories, and prohibits a carrier from otherwise disclosing CPNI without express prior authorization by the subscriber. (Order PSC-07-0730-PAA-TL)

The following nine ATMS companies were the initial subject of staff's investigation in Docket No. 100340-TP.⁶

| Company | CLEC Certificate Number | IXC Registration Number |
|--|--|--|
| Bellerud Communications, LLC | TX 464 | TK 293 |
| LifeConnex Telecom, LLC, f/k/a Swiftel LLC | TX 922 | TK 290 |
| TriArch Marketing, Inc. | N/A (Withdrew application 9/14/10) | N/A (Withdrew application 9/14/10) |
| American Dial Tone Inc., f/k/a Ganoco, Inc. | TX 274 | TK 292 |
| BLC Management, LLC, d/b/a Angles Communications Solutions | TX 840 (Cancelled by PSC) TX997(Withdrew application 9/27/10) | TK 070 (Cancelled by PSC) TK 251 (Withdrew application 9/27/10) |
| DialTone & More, Inc. | TX 939 (Cancelled by PSC) | TK 155 (Cancelled by PSC) |
| Ren-Tel Communications, Inc. | N/A | N/A |
| SCTXLink, LLC | N/A | N/A |
| All American Telecom, Inc. | TX 996 | N/A |

Bellerud, LifeConnex, BLC, and All American Telecom have all previously applied for ETC status in Florida.⁷ The Bellerud and All American Telecom petitions for ETC designation were withdrawn by the companies after staff sent data requests to them. The BLC docket was closed administratively by staff because BLC's competitive local exchange certificate (CLEC) was cancelled⁸ and CLEC certification in Florida is a condition for receiving landline ETC designation in Florida. LifeConnex withdrew its petition for ETC designation after staff filed a recommendation to deny ETC status to LifeConnex and prior to consideration by Commissioners.⁹ American Dial Tone had already received its ETC designation at the time it was purchased by ATMS on September 30, 2009.

The following chart reflects low-income USF monies received nationally by five ATMS companies from January 2009 through May 2010: LifeConnex; American Dial Tone; Bellerud;

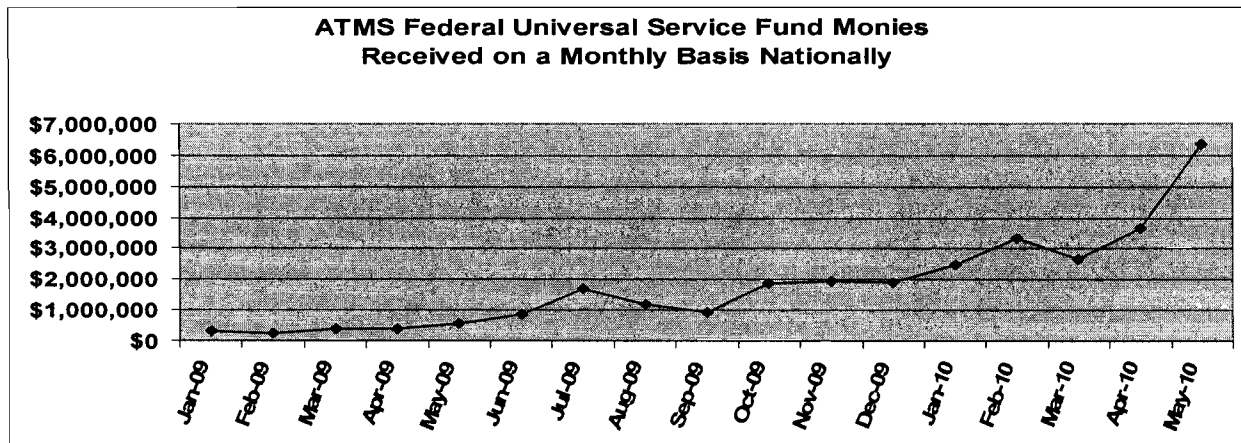
⁶ Through discovery, staff learned that Triarch Marketing, Inc., Dialtone & More, Inc., Ren-Tel Communications, Inc, and SCTXLink were not conducting business in Florida.

⁷ Docket No. 090457-TX, In Re: Petition for designation as an ETC by Bellerud Communications, LLC. Petition withdrawn March 3, 2010. Docket No. 070348-TX, In Re: Amended petition for designation as eligible telecommunications carrier by Swiftel, LLC. Petition withdrawn July 21, 2009. Docket No. 080157-TX, In Re: Application for designation as an eligible telecommunications carrier by BLC Management LLC d/b/a Angles Communications Solutions. Docket closed administratively December 10, 2008. Docket No. 090437-TX, In Re: Petition for designation as eligible telecommunications carrier by All American Telecom, Inc. Petition withdrawn August 5, 2010.

⁸ Docket No. 080475-TX, In Re: Compliance investigation of CLEC Certificate No. 8579, issued to BLC Management LLC d/b/a Angles Communication Solutions, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. Order No. PSC-08-0617-CO-TX, issued September 23, 2008.

⁹ Recommendation filed June 4, 2009, Document No. 05570-09, Docket No. 070348-TX, Amended petition for designation as eligible telecommunications carrier by Swiftel, LLC n/k/a LifeConnex Telecom, LLC.

TriArch Marketing, Inc. (Triarch); and BLC. ATMS purchased these companies between September 1, 2009, and November 30, 2009. Each of these five companies received ETC designation in at least one state which allows each to file for reimbursement from the USF for revenues it forgoes providing service to Lifeline customers in states where such companies have been designated as an ETC. American Dial Tone is the only ATMS company which presently has ETC designation in Florida.



On September 7, 2010, staff met with ATMS to discuss staff's specific concerns related to ATMS companies appearing to provide inaccurate information to regulators and engaging in questionable activities; staff also discussed allegations which the Commission had received from other third parties about ATMS companies. Among the additional concerns staff expressed to ATMS were the following:

- the ATMS chief operating officer appeared to have provided false testimony in a regulatory proceeding in South Carolina;
- despite problems with a United States Administrative Company ("USAC") audit of an ATMS company (LifeConnex), the ATMS owner represented to staff that LifeConnex had "passed" the USAC audit;
- refusal by ATMS to provide Commission staff with a copy of a USAC audit of an ATMS company in Alabama (that also provided service in Florida);
- concerns raised by the USAC audit of an ATMS company in Alabama (obtained from the FCC pursuant to a Freedom of Information Act request);
- ATMS companies may be understating revenue information to the PSC for purposes of calculating the regulatory assessment fee ("RAF");
- an inaccurate statement was included in an ATMS motion that, "BLC does not have any Florida Lifeline customers;"
- BLC continuing to do business in Florida after its certification had been cancelled for failure to pay RAFs;
- consumer complaints alleging improper disconnects, slamming, and improper bills by ATMS companies.

On January 31, 2011, staff again met with ATMS and presented concerns raised by the investigation. ATMS declined the opportunity to review each staff concern and instead chose to focus on how the matter might be settled. While initially agreeing to submit a proposed settlement by Friday, February 3, 2011, ATMS sought additional time and clarification of what was needed. Staff agreed to additional time and to ATMS providing a framework for a possible settlement. On February 8, 2011, ATMS timely filed a framework for settlement. On that date, pursuant to Section 120.573, Florida Statutes, ATMS companies also filed a Request for Settlement Discussions, Mediation and to Hold Docket in Abeyance. Staff met with ATMS to discuss a possible settlement on February 18, 2011, February 28, 2011, March 7, 2011, March 16, 2011, and March 23, 2011, and conducted a telephone conference with ATMS on March 9, 2011.

The company insisted that any negotiation discussions during these meetings with staff remain confidential and anything discussed during the negotiations could not be used against the company in possible future prosecutory proceedings. On February 21, 2011, after the first meeting, ATMS withdrew, without prejudice, its Request for Settlement Discussions, Mediation and to Hold Docket in Abeyance, noting that settlement discussions were currently on-going. Although ATMS representatives and staff had a total of seven meetings and a conference call during February and March, those discussions failed to produce a workable resolution of the issues, and on March 25, 2011, ATMS filed a "Petition for Mediation and to Hold Docket in Abeyance," along with a "Request for Oral Argument."

On March 29, 2011, staff filed a combined Recommendation in Dockets 100340-TP and 110082-TP, recommending the Commission deny ATMS' Petition for Mediation and initiating show cause proceedings against ADT, Bellerud, LifeConnex, BLC, and All American Telecom.¹⁰ Staff's investigation concluded that American Dial Tone apparently misrepresented the number of certified Florida Lifeline, Link-Up, and TLS customers it was serving when it filed its 497 forms with USAC. This appeared to result in an overpayment by USAC to American Dial Tone of \$1,945,866 from the USF for January 2010, through May 2010.

The March 29, 2011 staff recommendation concluded that American Dial Tone, Bellerud, LifeConnex, All American Telecom, BLC Management, and American Dial Tone were each in apparent willful violation of one or more of the following statutes, rules and orders: Section 364.10(2)(a), Florida Statutes, Section 364.10(2)(e)1, Florida Statutes, Section 364.10(2)(f), Florida Statutes, Section 364.107(3)(a), Florida Statutes, Section 364.24(2), Florida Statutes, Section 364.183(1), Florida Statutes, Rule 25-4.0161, Florida Administrative Code, Rule 25-4.0665(1), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, Rule 25-24.825(1), Florida Administrative Code, Order No. PSC-06-0298-PAA-TX, Order No. PSC-06-0680-PAA-TL, and Order No. PSC-07-0417-PAA-TL. As a result, staff recommended the show cause proceedings include the cancellation of all companies' CLEC certificates; the revocation of ADT's ETC designation; and the imposition of over \$16.4 Million in fines.¹¹ The Recommendation was deferred from the April 5, 2011, Agenda Conference.

¹⁰ As noted in Footnote 6, Ren-Tel Communications and SCTXLink have never been certificated in Florida, and Triarch Marketing withdrew its certificate application in September, 2010.

¹¹ A complete breakdown of staff's recommendations regarding apparent violations by company is contained in Attachment 2.

Following the filing of the Recommendation, staff continued to work with ATMS in an attempt to reach a settlement of this matter, including a conference call on April 13, 2011, and an in-person meeting on April 27, 2011. As a result of both parties' continued efforts to reach a settlement, both staff and ATMS were able to agree on a Framework for Settlement ("Settlement Agreement") which both parties believe meets the goal of a show cause, which is to ensure compliance with Florida Statutes and Commission Rules. Following the agreement on the Framework, on May 6, 2011, ATMS filed a Motion for Approval of Offer of Settlement Agreement, included in its entirety as Attachment One.

Jurisdiction

Pursuant to Section 364.285(1), F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, F.S.

A willful violation of a statute, rule or order is one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982). Utilities are charged with knowledge of the Commission's orders, rules, and statutes, and the intent of Section 364.285(1) is to penalize those who affirmatively act in opposition to those orders, rules, or statutes. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 (Fla. 1963), and Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992) (utilities are subject to the rules published in the Florida Administrative Code).

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833); see also, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3rd DCA 2000) (ignorance of the law is never a defense). Thus, any intentional act, such as the acts described in this docket, would meet the standard for a "willful violation."

Federal law recognizes that individual states and territories play an important role in accomplishing universal service goals. The FCC also has recognized the important role of the states. Courts have also previously determined that the Telecom Act "plainly contemplates a partnership between the federal and state governments to support universal service,"¹² and that "it is appropriate—even necessary—for the FCC to rely on state action."¹³ The Commission has Florida jurisdiction and authority to impose penalties on the ATMS companies pursuant to the

¹² Qwest I, 258 F.3d at 1203; Qwest II, 398 F.3d at 1232.

¹³ Qwest I, at 1203.

Docket Nos. 100340-TP, 110082-TP

Date: May 12, 2011

following: Chapter 364, Florida Statutes; Sections 120.80(13)(d) and 364.285, Florida Statutes;
Rules 25-24.820 and 25-24.474, Florida Administrative Code.

Discussion of Issues

Issue 1: Should the Commission accept Associated Telephone Management Services' Offer of Settlement to resolve apparent violations of Florida Statutes and Commission Rules?

Recommendation: Yes, the Commission should accept Associated Telephone Management Services Offer of Settlement to resolve apparent violations of Florida Statutes and Commission Rules. **(Harris, Kennedy)**

Staff Analysis: As discussed in the case background, on May 6, 2011, ATMS filed the attached Framework for Settlement (Settlement Agreement) in an effort to fully resolve all apparent violations identified by staff in both the investigation and show cause dockets. Staff notes that from the onset of this investigation, staff's goal, as is the goal of any investigation or show cause proceeding, was to ensure the companies' compliance with Florida law and the Commission's rules and orders. Staff believes the Settlement Offer accomplishes this goal, as well as providing a remedy for apparent past violations. Highlights of specific provisions of the settlement offer are as follows:

Surrender of CLEC certificates. Within 14 days of the final order, ATMS will surrender the CLEC certificates of All American Telecom, Inc., Bellerud Communications, LLC, and LifeConnex Telecom, LLC. As a result, the only ATMS company which may conduct regulated telecommunications service in Florida will be American Dial Tone, Inc.

Suspension of ETC designation. ATMS agrees that within 14 days of the final order, the ETC designation of American Dial Tone will be suspended for a period of two years, subject to Commission review after one year. At the one-year review, based upon ATMS' compliance with the terms of the Settlement, the Commission may determine that ADT's ETC suspension may be lifted. During the suspension period, ADT may continue to seek USF reimbursement for those existing customers for which ADT has valid Lifeline certification/eligibility forms on file. ADT may serve new Lifeline customers through resale.

Length of Agreement. ATMS commits to a four year period of heightened monitoring and compliance. The Agreement contains numerous specific provisions detailing compliance metrics and goals, and includes escalating penalties for non-compliance with any of the measures during the four year term.

Compliance with Lifeline Rules. ATMS commits that it will maintain all calls, requests, and forms regarding potential lifeline customers for as long as the subscriber remains an ATMS customer, and then three years thereafter. ATMS commits that it will not seek reimbursement from USF without an accurate, complete certification form. ATMS will provide all lifeline forms from the previous month to staff on a CD, will maintain a regulatory compliance department, and will provide the staff any proposed changes to its lifeline certification forms in advance of changes being made.

Audits ATMS agrees to audits, by independent, third party auditors selected by the staff from a list proposed by ATMS, no more than once per year. The cost of the audits will be borne

by ATMS, and shall be for purposes of determining the company's compliance with the Settlement Agreement.

Payments to the General Revenue Fund. The Settlement Agreement specifies that ATMS will make a \$4 Million payment to the State's General Revenue Fund, in quarterly increments of \$250,000, with the first payment to be due 14 days after the Commission's final order becomes non-appealable. The Settlement Agreement further provides that after the first 8 quarterly payments, further payments will be suspended pending a review of the companies' compliance with the terms of the Settlement Agreement. If at any time the payments are suspended, the Commission finds that the companies' are not materially complying with the terms of the Settlement Agreement, then the payments may be resumed and any suspended payments may become due and payable.

Management Services. ATMS commits that it will not provide any management services to any additional Florida certificated telecommunications companies or new wireless Florida ETCs during the term of the Settlement Agreement.

Abridgement of Rights. The Settlement Agreement clearly expresses that the Settlement Agreement does not abridge any statutory rights of the Commission.

Staff believes that, taken in its entirety, the Settlement Agreement provides a reasonable resolution of the outstanding issues in Docket Nos.100340-TP and 110082-TP. Staff further believes that the Commission's approval of the Settlement Agreement is in the public interest, as it provides for future compliance with Florida Statutes and Commission Rules and provides a voluntary contribution to the State's General Revenue fund as a remedy for any apparent past violations. Staff suggests that Commission approval of the Settlement Agreement will promote administrative efficiency and will avoid the time and expense of a hearing. Therefore, Staff recommends that the Commission approve the Revised Settlement Agreement submitted by ATMS.

Docket Nos. 100340-TP, 110082-TP

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Issue 2: Should these Dockets be closed?

Recommendation: If the Commission approves staff's recommendation on Issue 1, Docket Number 100340-TP should be closed, while Docket Number 110082-TP should remain open to process the quarterly settlement payments as well as to monitor ongoing compliance with the Settlement Agreement during the four year period of the agreement. **(Harris)**

Staff Analysis: If the Commission approves staff's recommendation on Issue 1, Docket Number 100340-TP should be closed, while Docket Number 110082-TP should remain open to process the quarterly settlement payments as well as to monitor ongoing compliance with the Settlement Agreement during the four year period of the agreement.

Revised Settlement Agreement

Attachment A

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.

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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.

Attachment A

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

Attachment A

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 fourteen (14) calendar days of the Commission's issuance of a final order non appealable 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

Attachment A

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.

Attachment A

- 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.

Summary of Staff's Recommended Show Cause Penalties, by Company.

| <u>Violation</u> | <u>American Dial Tone</u> | <u>LifeConnex</u> | <u>BLC Management</u> | <u>Bellerud</u> | <u>All American Telecom</u> | <u>Total</u> |
|--|-------------------------------|-------------------|---------------------------|------------------|-------------------------------------|--------------------|
| Unauthorized customer moves | \$610,000 | \$150,000 | \$1,160,000 | \$0 | \$0 | \$1,920,000 |
| Multiple ATMS companies providing service to same customer | \$2,220,000 | \$1,340,000 | \$1,270,000 | \$20,000 | \$0 | \$4,850,000 |
| Missing Lifeline certification forms | \$3,643,000 | \$828,500 | \$2,702,000 | \$25,000 | \$0 | \$7,198,500 |
| Senior Citizen Low-Income Discount Plan Qualifier | \$1,500 | \$2,500 | \$500 | \$0 | \$0 | \$4,500 |
| USAC Form 497 | \$125,000 | \$0 | \$0 | \$0 | \$0 | \$125,000 |
| Access to company records | \$100,000 | \$50,000 | \$25,000 | \$25,000 | \$25,000 | \$225,000 |
| Failure to file price list | \$25,000 | \$25,000 | \$25,000 | \$25,000 | \$0 | \$100,000 |
| Providing CLEC service in Florida without a certificate | \$0 | \$0 | \$25,000 | \$0 | \$0 | \$25,000 |
| CPNI | <u>\$500,000</u> | <u>\$500,000</u> | <u>\$500,000</u> | <u>\$500,000</u> | <u>\$0</u> | <u>\$2,000,000</u> |
| | \$7,224,500 | \$2,896,000 | \$5,707,500 | \$595,000 | \$25,000 | \$16,448,000 |