

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 100021-TP

In re: Request for emergency relief and complaint of American Dial Tone, Inc. against BellSouth Telecommunications, Inc. d/b/a AT&T Florida to resolve interconnection agreement dispute.

DOCKET NO. 100432-TP
ORDER NO. PSC-13-0081-FOF-TP
ISSUED: February 13, 2013

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DISMISSING COMPLAINT, GRANTING DEFAULT
FINAL JUDGMENT AND CLOSING DOCKETS

BY THE COMMISSION:

Case Background

Docket No. 100021-TP (the "LifeConnex Docket") was opened in January, 2010, when BellSouth Telecommunications, Inc. d/b/a AT&T Florida ("AT&T") filed a Complaint and Petition for Relief against LifeConnex Telecom, LLC f/k/a Swiftel, LLC ("LifeConnex") for recovery of approximately \$1.4 million in unpaid charges. AT&T petitioned for an order allowing it to suspend, disconnect, and ultimately terminate service to LifeConnex unless the amounts were promptly paid. After several months of procedural actions, the docket was placed into abeyance on June 18, 2010.¹ Three days later, however, on June 21, 2010, AT&T filed a Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement, whereby we were informed that AT&T had notified LifeConnex that "unless it promptly pays AT&T Florida the past-due balance for services it has purchased from AT&T Florida, AT&T Florida will suspend, discontinue, and/or terminate LifeConnex's service in Florida."

LifeConnex responded on July 1, 2010, by filing an Emergency Request seeking to prevent AT&T from taking any of the specified actions pending resolution of the parties' underlying billing dispute. At our July 13, 2010, Agenda Conference, we determined that in

¹ Order Holding Dockets In Abeyance, Order No. PSC-10-0402-PCO-TP, Issued June 18, 2010, in Docket Nos. 100021-TP and 100022-TP.

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order to avoid disconnection prior to the dispute being resolved, LifeConnex was required to post a security bond in the amount of \$1.4 million.² If LifeConnex failed to post the security, AT&T would have the right to discontinue LifeConnex's service, pending notification to LifeConnex's end user customers.³

Subsequent to the our Order, on July 21, 2010, LifeConnex notified AT&T and our staff that it was unable to post the required bond, and had began notifying its customers by telephone that their service was to be discontinued. On August 23, 2010, our staff became aware that after mailing a July 27, 2010, "Notice of Disconnection" to its customers, LifeConnex sent those same customers a July 28, 2010, letter without informing AT&T or us of its contents.⁴ This second letter informed customers that LifeConnex "had been able to resolve the situation, and your service with your existing number will not be affected." As laid out by the parties in their subsequent filings, LifeConnex reached an agreement with its affiliate company,⁵ American Dial Tone, Inc. ("ADT"), whereby ADT would purchase wholesale residential resale lines from AT&T, and ADT would resell those lines to LifeConnex for use in continuing to serve LifeConnex's end user customers. We characterize this arrangement as ADT reselling AT&T resale lines, and we had no knowledge of this arrangement until August 23, 2010. As a result, LifeConnex end user customers experienced no change in their service or billing.

On September 3, 2010, AT&T notified ADT by letter that AT&T intended to suspend, discontinue, and terminate service to all 18,000 plus ADT customers for ADT's failure to comply with terms of the parties' Interconnection Agreement ("ICA"). AT&T asserted that the ADT-LifeConnex resale arrangement was a clear and unambiguous violation of the terms of the parties' ICA. AT&T further insisted that due to the nature of the violation, the dispute resolution provisions of the ICA did not apply, and other provisions of the parties' ICA granted AT&T the legal right to immediately suspend, discontinue, and terminate service to ADT unless ADT immediately ended the arrangement with LifeConnex. ADT responded to AT&T by letter dated September 23, 2010;⁶ in its letter, ADT agreed that it was reselling the lines to LifeConnex, but asserted it had the legal right to do so under the terms of the parties' ICA.

On September 30, 2010, ADT filed a Verified Complaint and Emergency Motion for Temporary Restraining Order in Federal District Court in Tampa, which was later converted into a Motion for a Preliminary Injunction. In its District Court filing, ADT sought to enjoin AT&T from disrupting service to ADT pending the resolution of the parties' ICA dispute. On November 3, 2010, the District Court dismissed ADT's Motion without prejudice, ruling that we have primary jurisdiction to resolve the parties' dispute, and we appear to have authority to fashion relief to protect ADT and its end user customers, in part based on our action in the

² See Order No. PSC-10-0457-PCO-TP, Issued July 16, 2010 ("LifeConnex Order").

³ LifeConnex represented it served over 2,400 "low income, residential customers" with lines it resold from AT&T. We were particularly concerned about the impact of a sudden service disconnection on LifeConnex's consumers, who likely faced limited options to obtain alternative telephone service.

⁴ We received this information when a customer of LifeConnex contacted our call center seeking explanation of the two letters the customer received.

⁵ Both LifeConnex and ADT were owned by Associated Telecommunications Management Service ("ATMS"), which was the subject of a formal investigation and initiation of show cause proceedings in Docket No. 110082-TP.

⁶ See Document No. 09285-10, Exhibit 2, Page 13 of 26, filed in Docket No. 100432-TP.

LifeConnex docket. On November 4, 2010, ADT filed a Request for Emergency Relief and Complaint to Resolve Interconnection Agreement Dispute (“Request and Complaint”).⁷ This Request for Emergency Relief was scheduled for our December 14, 2010, Agenda Conference.

Prior to our consideration of ADT’s Emergency Request, however, the parties negotiated a Memorandum of Understanding,⁸ wherein AT&T agreed not to disconnect ADT’s service, in return for ADT placing approximately \$197,000 into a segregated escrow account pending resolution of the ADT Docket.⁹ ADT placed the amount into the escrow account as required. Subsequently, however, ADT ceased doing business in the state of Florida, and its Competitive Local Exchange Certificate was cancelled, as well as being administratively dissolved as a Florida corporation. There has been no substantive activity in the LifeConnex Docket since October, 2011, and no substantive activity in the ADT Docket since February, 2011. In this Order, we determine what actions to take to resolve and close both dockets. We have jurisdiction pursuant to Sections 364.01, 364.02(13) and 364.162(1), Florida Statutes (“F.S.”).

Dismissal of LifeConnex Complaint

Docket No. 100021-TP was opened in 2010. Following our July, 2010 Order, the parties have not sought to continue with proceedings before us. Further, there has been no substantive activity in the docket since October, 2011.¹⁰ In addition, several attorneys and law firms have filed notices of withdrawal from representation of LifeConnex, which currently has no legal representative identified with us. Finally, we cancelled LifeConnex’s Competitive Local Exchange Company (“CLEC”) certificate on July 30, 2011,¹¹ and LifeConnex was administratively dissolved as a Florida limited liability corporation for failure to file an annual report with the Florida Secretary of State in September, 2012.

Given the lack of activity in the docket, on October 29, 2012, our staff sent a letter to both AT&T and Mr. Thomas Biddix, the owner of LifeConnex and its registered contact, notifying both parties that due to the non-activity in the docket, the parties needed to either take actions to put this item on a procedural schedule for resolution or our staff would recommend that we close the docket for failure to prosecute the case. Neither AT&T nor LifeConnex filed any response to our staff’s letter.

Given the lack of response, we find it is appropriate to close Docket No. 100021-TP. LifeConnex no longer conducts any business in the State of Florida, its Florida CLEC certificate has been cancelled, and it has no customers in the state of Florida. Further, given that

⁷ ADT’s Request and Complaint was assigned Docket No. 100432, and will be referred to as the “ADT Docket.”

⁸ Document No. 09712-10, filed in Docket. No. 10432-TP.

⁹ This amount represents the difference in price between AT&T’s business and residential wholesale lines. See Document No. 09285-10, Exhibit 4, Page 23 of 26, filed in Docket No. 100432-TP.

¹⁰ The October 31, 2011 Joint Status Report was in response to our staff’s inquiry, requesting an update on the Docket and whether further proceedings were contemplated. The parties indicated that they did not anticipate any activity until proceedings involving AT&T and LifeConnex in a number of other states were resolved. No timeframe was indicated.

¹¹ LifeConnex’s certificate was cancelled as part of the negotiated settlement we approved between our staff and ATMS in Docket No. 110082-TP. See Document No. 05487-11.

LifeConnex has ceased to exist as a legal entity in Florida, there are no remaining actions to be taken in this docket, and there is no reason why we should continue to hold the docket open. Therefore, since there has been no response from either of the parties requesting that the docket remain open, nor are there any actions that we should take, the docket shall be closed for the parties' failure to prosecute the case.

Default Judgment Against American Dial Tone, Inc.

As discussed above, on October 29, 2012, our staff sent both AT&T and ADT a letter, requesting the parties notify our staff whether they planned to resume Docket Nos. 100021-TP and 100432-TP, or whether the dockets could be closed. While neither party responded in the LifeConnex docket, on November 15, 2012, AT&T filed a Motion for Summary Final Order (Motion) in the ADT docket. ADT failed to respond to either our staff's letter or AT&T's Motion.

In its Motion, AT&T states that as of October 31, 2012, it is holding \$197,412.74 in the segregated escrow account established by the AT&T-ADT Memorandum of Understanding. AT&T maintains that it requires our Order to disburse these monies from the escrow account. AT&T further alleges that it is entitled to the entire amount, and we should issue an Order finding in its favor, disposing of the Complaint, and closing the docket.

A Summary Final Order, as authorized by Rule 28-106.204(4), Florida Administrative Code ("F.A.C."), is a procedural mechanism whereby a party to a legal proceeding can avoid the expense and delay of trial, by obtaining a judgment in its favor when there is no dispute as to any material fact.¹² In order to be entitled to a Summary Final Order, a party must show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Id.* AT&T asserts in its Motion that it has satisfied both elements, and is therefore entitled to a Summary Final Order in its favor.

We have considered AT&T's Motion, and given that ADT has not responded to either our staff's communication nor to AT&T's Motion, we understand why AT&T believes a Summary Final Order is appropriate in this docket. However, we find that it would be more appropriate to issue a default final judgment against ADT. While the end result would be the same, that is, AT&T would obtain a judgment in its favor and entitling it to release of the funds held in escrow, we find the default judgment is procedurally superior.

Our finding that AT&T is entitled to a Summary Final Order is in essence our determination of all of the facts plead in AT&T's Motion, and more importantly, a determination that AT&T is entitled to judgment as a matter of law. The determination of this matter would revolve around the interpretation of specific language contained in the ADT-AT&T Interconnection Agreement. Given that contract language is often general (or "boilerplate"), we are concerned that a precedential order, such as the Summary Final Order requested by AT&T,

¹² See Order No. PSC-00-1540-FOF-TP, Issued August 24, 2000, in Docket No. 991946-TP, In re: Request for arbitration concerning complaint of ITC^DeltaCom Communications, Inc. against BellSouth Telecommunications, Inc. for breach of interconnection terms, and request for immediate relief.

would constitute our determination of the meaning of contract language in the future, without us having had the full opportunity to determine the potential policy implications of such a decision.

A default judgment, in contrast, is merely our finding that, in light of ADT's failure to respond to our staff's October communication and AT&T's Motion, AT&T is entitled to the relief it seeks.¹³ Thus, a default judgment would entitle AT&T to the entirety of the monies placed in the segregated escrow account, as well as constitute a finding against ADT on the allegations in AT&T's original Complaint, and the docket would be closed. Accordingly, we hereby enter a default judgment against ADT on the original Complaint, filed November 3, 2010, and award AT&T the entirety of the monies held in the escrow account.

Closure of Both Dockets

We have decided to dismiss the Complaint by AT&T against LifeConnex for failure to prosecute, and to grant AT&T a default judgment against American Dial Tone, Inc. In both cases, no further actions remain to be taken in either docket, and after the time for filing an appeal has run, both dockets shall be closed.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that AT&T's Complaint against LifeConnex is dismissed. It is further

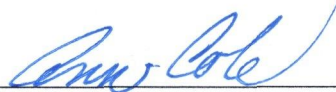
ORDERED that a default judgment is entered against ADT on its original Complaint filed against AT&T on November 3, 2010. It is further

ORDERED that AT&T is awarded all monies held in the segregated escrow account, established by the parties' Memorandum of Understanding, and AT&T is entitled to release and disbursement of the entire amount immediately. It is further

ORDERED that, after the time for filing an appeal has expired, both dockets shall be closed.

¹³ See Ginsberg v. Lennar Florida Holdings, Inc., 645 So. 2d 490 (Fla. 3rd DCA 1994). See also Chapter 9.1 of Florida Civil Practice 2012 Edition by Judge Philip Padavano (West 2012).

By ORDER of the Florida Public Service Commission this 13th day of February, 2013.



ANN COLE
Commission Clerk
Florida Public Service Commission
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.