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JUL 25 2011

PUBLIC SERVICE  
COMMISSION

**DOUGLAS F. BRENT**  
DIRECT DIAL: 502-568-5734  
douglas.brent@skofirm.com

July 25, 2011

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

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JUL 25 2011

PUBLIC SERVICE  
COMMISSION

Re: Investigation of LifeConnex Telecom, LLC for Continuation as an Eligible  
Telecommunications Carrier in the Commonwealth of Kentucky  
Case No. 2011-00045

Dear Mr. DeRouen:

Enclosed please find an original and ten copies of the LifeConnex Telecom, LLC's Partial Response to Data Request and Request to Hold Case in Abeyance in the above referenced matter.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via the enclosed self-addressed, postage paid envelope.

Sincerely yours,

Douglas F. Brent

DFB:jms  
Enclosures  
cc: Henry Walker

113406.136866/701692.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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JUL 25 2011

PUBLIC SERVICE  
COMMISSION

**In the Matter of:**

INVESTIGATION OF LIFECONNEX TELECOM, )  
LLC FOR CONTINUATION AS AN ELIGIBLE )  
TELECOMMUNICATIONS CARRIER IN THE )  
COMMONWEALTH OF KENTUCKY )

CASE NO.  
2011-00045

**LIFECONNEX TELECOM, LLC  
PARTIAL RESPONSE TO DATA REQUEST AND  
REQUEST TO HOLD CASE IN ABEYANCE**

LifeConnex Telecom, LLC (“LifeConnex”), by its counsel, hereby files a partial response to the Commission staff’s April 27 data requests and requests that the Commission hold this case in abeyance, subject to periodic reporting, to allow Lifeconnex to wind down its service to Kentucky Lifeline customers.

In support of this request, on April 27, 2011 Staff inquired about how a pending Florida Public Service Commission proceeding involving the Applicant could affect the Applicant’s ability to fulfill ETC obligations in Kentucky. Attached hereto as Exhibit 1 is the “Order Approving Settlement Agreement” issued June 16, 2011 by the Florida Commission. That order, at Attachment A, memorializes an agreement (“Florida PSC Agreement”) whereby Lifeconnex has agreed, *inter alia*, to voluntarily surrender its CLEC certificate in Florida.<sup>1</sup> The Florida PSC Agreement, at n. 5, implicitly recognizes that the surrender of authority to provide service has implications for customers currently receiving service. Accordingly, the Florida PSC Agreement states that Florida PSC staff and Lifeconnex “will work cooperatively to address the phase out of

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<sup>1</sup> See Revised Settlement Agreement between Associated Telecommunications Management Services and Florida Public Service Commission, at 5.

any current customers.” But the Florida PSC Agreement does not order Lifeconnex to immediately disconnect Lifeline customers. Nor does it set a fixed date whereby Lifeconnex must deny service to customers who are, after all, blameless with respect to any of the Florida PSC’s concerns about Lifeconnex.

Lifeconnex requests that the Commission adopt a similar posture here, permitting Lifeconnex to serve its miniscule Kentucky customer base (currently 388 Lifeline customers) as attrition reduces it even further. Lifeconnex proposes to file periodic reports to show the number of customers being served. If attrition trends are unexpected, the case could be removed from abeyance. If attrition is as expected, remaining data requests will be moot and this case can be closed. Otherwise, were the Commission to conclude as a matter of law that Lifeconnex is “unqualified” to serve low income customers receiving Lifeline service, those customers might be forced to change carriers by a regulatory decision.

The Commission staff previously asked if Lifeconnex intends to continue to be a provider in Kentucky and the company responded, explaining that all marketing efforts ended in 2010 and that existing customers would receive service for the foreseeable future.<sup>2</sup> Nothing has changed. Moreover, during an informal conference on May 20, 2011, there was discussion about a bulk transfer<sup>3</sup> of Lifeconnex customers to another entity authorized as a Kentucky ETC. Upon consideration, Lifeconnex believes that while a bulk transfer might cure any regulatory concern extant in this investigation, it would do so at a high cost, through unnecessary customer inconvenience and confusion. Moreover, such a decision logically should weigh expenses against any benefit to the small and declining customer base. Finally, by the time that FCC notice process was complete, even fewer customers would remain.

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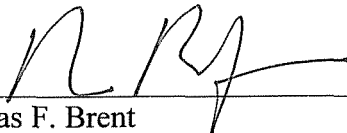
<sup>2</sup> Lifeconnex responses to Staff Requests No. 5 and 6 (filed March 21, 2011).

<sup>3</sup> See 14 C.F.R. § 64.1120(e).

Lifeconnex anticipates that the Commission will not want a proceeding like this to continue forever, and states affirmatively that over time, a handful of customers could easily remain. Accordingly, Lifeconnex is willing to stipulate that if the Commission orders it to cease providing service to Lifeline customers, it will do so promptly, and consistent with any notice requirement lawfully imposed by the Commission.

Wherefore, Lifeconnex requests that the Commission place this case in abeyance, subject to periodic reporting of customer counts.

Dated: July 25, 2011

By   
\_\_\_\_\_  
Douglas F. Brent  
STOLL KEENON OGDEN PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
(502) 333-6000



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

In re: 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.

DOCKET NO. 110082-TP

ORDER NO. PSC-11-0259-AS-TP

ISSUED: June 16, 2011

The following Commissioners participated in the disposition of this matter:

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

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

**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.<sup>1</sup> In accordance with our desire for accountability in the federal universal service program, and elimination of fraud, waste, and abuse in the USF, we have directed our staff to monitor all eligible telecommunications carriers ("ETC") in Florida. On June 28, 2010, our 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

<sup>1</sup> 2010 Universal Service Monitoring Report, CC Docket No. 98-202.

DOCUMENT NO. DATE

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~~FILED~~

investigation, on March 24, 2011, our 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.<sup>2</sup> 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")<sup>3</sup> for revenues it forgoes each month for providing these services. The program was never intended to provide a profit for service providers.<sup>4</sup> 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 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. Our 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 following nine ATMS companies were the initial subject of our staff's investigation in Docket No. 100340-TP.<sup>5</sup>

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<sup>2</sup> FCC 11-32, ¶14.

<sup>3</sup> 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.

<sup>4</sup> FCC 11-32, ¶ 14.

<sup>5</sup> Through discovery, our staff learned that Triarch Marketing, Inc., Dialtone & More, Inc., Ren-Tel Communications, Inc, and SCTXLink were not conducting business in Florida.

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.<sup>6</sup> 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 our staff because BLC's competitive local exchange certificate (CLEC) was cancelled<sup>7</sup> and CLEC certification in Florida is a condition for receiving landline ETC designation in Florida. LifeConnex withdrew its petition for ETC designation after our staff filed a recommendation to deny ETC status to LifeConnex and prior to our consideration.<sup>8</sup> 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; 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

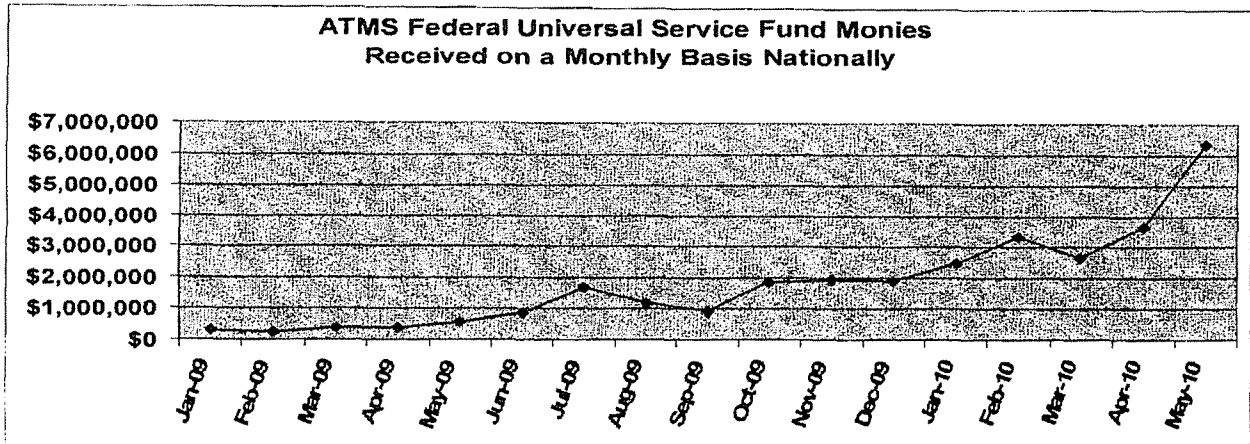
<sup>6</sup> Docket No. 090457-TX, In Re: Petition for designation as an ETC by Bellerud Communications, LLC. Petition withdrawn March 3, 2010. Docket No. 070348-TX, In Re: Amended petition for designation as eligible telecommunications carrier by Swiftel, LLC. Petition withdrawn July 21, 2009. Docket 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.

<sup>7</sup> 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.

<sup>8</sup> 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.



been designated as an ETC. American Dial Tone is the only ATMS company which presently has ETC designation in Florida.



On September 7, 2010, our staff met with ATMS to discuss our staff's specific concerns related to ATMS companies appearing to provide inaccurate information to regulators and engaging in questionable activities; we understand our staff also discussed allegations which had been received from other third parties about ATMS companies. On January 31, 2011, we understand our staff again met with ATMS and presented concerns raised by its investigation. ATMS declined the opportunity to review each of our staff's concerns 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. We understand our 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. Our 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 our 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 our 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, our staff filed a combined Recommendation in Dockets 100340-TP and 110082-TP, recommending we deny ATMS' Petition for Mediation and initiating show

cause proceedings against ADT, Bellerud, LifeConnex, BLC, and All American Telecom.<sup>9</sup> Our 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, our 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.<sup>10</sup> The Recommendation was deferred from our April 5, 2011, Agenda Conference.

Following the filing of the Recommendation, we understand our 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 ATMS' and our staff's continued efforts to reach a settlement, both our staff and ATMS were able to agree on a Framework for Settlement ("Settlement Agreement") which both represent meet the goal of a show cause, which is to ensure compliance with Florida Statutes and our 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., we are authorized to impose upon any entity subject to our 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, 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 our 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.

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<sup>9</sup> 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.

<sup>10</sup> A complete breakdown of staff's recommendations regarding apparent violations by company is contained in Attachment 2.

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., having found that the company had not intended to violate the rule, we 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. 3<sup>rd</sup> DCA 2000) (ignorance of the law is never a defense). Thus, we find that 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,”<sup>11</sup> and that “it is appropriate—even necessary—for the FCC to rely on state action.”<sup>12</sup> We have Florida jurisdiction and authority to impose penalties on the ATMS companies pursuant to the 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.

#### **Acceptance of Settlement Agreement**

On May 6, 2011, ATMS filed the attached Framework for Settlement (Settlement Agreement) in an effort to fully resolve all apparent violations identified by our staff in both Dockets 100340-TP and 110082-TP. We understand that from the onset of this investigation, our staff’s goal, as is the goal of any investigation or show cause proceeding before us, was to ensure the companies’ compliance with Florida law and our rules and orders. It appears that the Settlement Offer accomplishes this goal, as well as providing a remedy for apparent past violations.

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

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<sup>11</sup> Qwest I, 258 F.3d at 1203; Qwest II, 398 F.3d at 1232.

<sup>12</sup> Qwest I, at 1203.

**Closure of Dockets**

Since we have approved staff's recommendation to accept the Settlement Agreement proposed by ATMS, Docket Number 100340-TP shall be closed. However, Docket Number 110082-TP shall 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Revised Settlement Agreement submitted by Associated Telecommunications Management Services, attached hereto as Attachment A, is approved. It is further

ORDERED that within fourteen days of this order becoming final and non-appealable, Associated Telecommunications Management Services shall make the first payment of \$250,000 to the general revenue fund, with additional payments of \$250,000 to be made quarterly thereafter. It is further

ORDERED that Docket Number 100340-TP shall be closed. It is further

ORDERED that Docket Number 110082-TP shall 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.

By ORDER of the Florida Public Service Commission this 16th day of June, 2011.



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ANN COLE  
Commission Clerk  
Florida Public Service Commission  
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Tallahassee, Florida 32399  
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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.

Attachment A

## FRAMEWORK FOR SETTLEMENT<sup>1</sup>

### 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)<sup>2</sup>, 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.

<sup>1</sup> The timing and implementation of some of the provisions set forth herein are subject to implementation schedules.  
<sup>2</sup> Some of these companies have no Florida customers and thus many of the provisions contained herein would be inapplicable.

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Attachment A

**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.<sup>3</sup>
- 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.<sup>4</sup> 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

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

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup>
- 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 sample<sup>7</sup> 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.

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

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

<sup>7</sup> 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 Schedule<sup>1</sup>**

<u>Action</u>	<u>Units</u>	<u>Assessment<sup>2</sup></u>		
		<u>1<sup>st</sup></u>	<u>2<sup>nd</sup></u>	<u>3<sup>rd</sup></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 <sup>3</sup> (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

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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 <sup>4</sup>
Seek reimbursement for Lifeline service for non-qualified subscribers in violation of USAC procedures (per year)	5	\$1,000	\$5,000	\$10,000 <sup>5</sup>

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

<sup>5</sup> Penalties are intended to be \$1,000 on the 5<sup>th</sup> violation, \$5,000 on the 10<sup>th</sup> violation and \$10,000 on the 15<sup>th</sup> 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