



Mary K. Keyer  
General Attorney  
Kentucky Legal Department

AT&T Kentucky  
601 W. Chestnut Street  
Room 407  
Louisville, KY 40203

T 502-582-8219  
F 502-582-1573  
[mary.keyer@att.com](mailto:mary.keyer@att.com)

June 22, 2010

**VIA HAND DELIVERY**

RECEIVED

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, KY 40602

JUN 22 2010

PUBLIC SERVICE  
COMMISSION

Re: BellSouth Telecommunications, Inc. d/b/a AT&T SouthEast d/b/a AT&T  
Kentucky, Complainant v. LifeConnex Telecom, LLC f/k/a Swiftel LLC  
Defendant  
PSC 2010-00026

Dear Mr. Derouen:

Enclosed for filing in the above-captioned case is Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement.

A portion of AT&T's filing contains confidential commercial information and AT&T files herewith its Motion for Confidentiality, pursuant to 807 KAR 5:001, Section 7, seeking protection of that material. Specifically, AT&T requests the Commission to grant confidentiality to the highlighted information contained in Exhibit 1 and its attachments to the Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement. One copy of the proprietary version of the filing is provided to the Commission. Edited copies of the filing are provided for the public file and to parties of record.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record

823955

**EDITED**

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )  
 )  
 BELLSOUTH TELECOMMUNICATIONS, INC. )  
     d/b/a AT&T SOUTHEAST )  
     d/b/a AT&T KENTUCKY )  
 )  
                                   Complainant )  
 )  
 v. ) Case No. 2010-00026  
 )  
 LIFECONNEX TELECOM, LLC )  
     f/k/a SWIFTEL LLC )  
 )  
                                   Defendant )

MOTION FOR CONFIDENTIALITY OF  
BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTHEAST  
AND D/B/A AT&T KENTUCKY

Petitioner, BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky (“AT&T”), by counsel, hereby moves the Public Service Commission of the Commonwealth of Kentucky (the “Commission”), pursuant to KRS 61.878 and 807 KAR 5:001, § 7, to classify as confidential the highlighted information in Exhibit 1 and its attachments to AT&T’s Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement filed herewith. The material that is highlighted contains company information specific to the types of service purchased by Lifeconnex from AT&T Kentucky and the amounts owed by Lifeconnex to AT&T Kentucky for those services.

The Kentucky Open Records Act exempts certain information from the public disclosure requirements of the Act, including confidential and/or proprietary information, the disclosure of which would permit an unfair commercial advantage to competitors. KRS 61.878(1)(c)1. To qualify for the commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors and the parties seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001 § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed.

The information for which AT&T seeks confidentiality is account information specific to Lifeconnex, a competitive local exchange carrier and a customer of AT&T Kentucky. Exhibit 1 and its attachments specify amounts owed by Lifeconnex to AT&T Kentucky and identify the types of service Lifeconnex obtains from AT&T Kentucky. The information is specific to Lifeconnex, the disclosure of which could competitively advantage Lifeconnex's competitors. AT&T Kentucky believes the information qualifies for confidential treatment and should be protected.

The Commission has granted confidentiality to similar information in Case Nos. 2005-00519 and 2005-00533 ("SouthEast cases") in a letter dated April 30, 2008. See *also* the Commission's March 31, 2006, Order in the SouthEast cases. The information for which AT&T Kentucky is seeking confidentiality in this petition is similar information to that for which the Commission granted confidentiality in the SouthEast cases.

Public disclosure of the identified information would provide competitors with an unfair competitive advantage. The Commission should also grant confidential treatment to the information for the following reasons:

(1) The information for which AT&T is requesting confidential treatment is not known outside of AT&T and Lifeconnex;

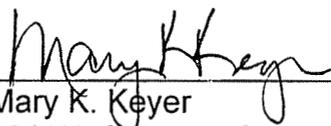
(2) The information is not disseminated within AT&T and is known only by those of AT&T's employees who have a legitimate business need to know and act upon the information;

(3) AT&T seeks to preserve the confidentiality of this information through appropriate means, including the maintenance of appropriate security at its offices; and

(4) By granting AT&T's petition, there would be no damage to any public interest.

For the reasons stated herein, AT&T respectfully requests the Commission to grant AT&T's request for confidential treatment of the information highlighted in Exhibit 1 and its attachments filed on June 22, 2010, in this case.

Respectfully submitted,



---

Mary K. Keyer  
601 W. Chestnut Street, Room 407  
Louisville, KY 40203  
(502) 582-8219  
mary.keyer@att.com

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.  
d/b/a AT&T SOUTHEAST  
d/b/a AT&T KENTUCKY

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of: )  
 )  
 BELLSOUTH TELECOMMUNICATIONS, INC. )  
     d/b/a AT&T SOUTHEAST )  
     d/b/a AT&T KENTUCKY )  
 )  
   Complainant )  
 )  
 v. ) Case No. 2010-00026  
 )  
 LIFECONNEX TELECOM, LLC )  
     f/k/a SWIFTEL LLC )  
 )  
   Defendant )

**NOTICE OF COMMENCEMENT OF TREATMENT  
PURSUANT TO CURRENT INTERCONNECTION AGREEMENT**

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) respectfully notifies the Public Service Commission of Kentucky (“Commission”) that on June 18, 2010, AT&T Kentucky sent a letter informing Lifeconnex Telecom, LLC f/k/a Swiftel LLC (“Lifeconnex”) that unless it promptly pays AT&T Kentucky the past-due balance for services it has purchased from AT&T Kentucky, AT&T Kentucky will suspend, discontinue, and/or terminate Lifeconnex’s service in Kentucky in compliance with the terms and conditions of the Parties’ current interconnection agreement (“ICA”). A redacted copy of that letter and its attachments are attached hereto as **Exhibit 1**. In light of pending proceedings between AT&T Kentucky and Lifeconnex before this and various other State commissions in the southeastern states, AT&T Kentucky respectfully submits the following additional information to provide the Commission a

more complete understanding of the facts that support AT&T Kentucky's delivery of this letter to Lifeconnex.

Lifeconnex's unpaid balance for services it has purchased from AT&T Kentucky pursuant to the ICA as of May 2010 is **more than 7,891 times** the amount of the balance as of September 2008. This disturbing and unacceptable trend has developed because each month, Lifeconnex pays only a tiny fraction of the amounts AT&T Kentucky bills it for services it purchases pursuant to the Parties' ICA. For instance, Attachment A to Exhibit 1 demonstrates that during the six months from December 2009 through May 2010, inclusive, Lifeconnex paid AT&T Kentucky **less than four percent of the net amount billed.**<sup>1</sup> During the same time period, Lifeconnex increased the volume of services it purchased from AT&T Kentucky by more than two percent.

AT&T Kentucky acknowledges that it has denied a number Lifeconnex's requests for bill credits for various promotional offerings and that Lifeconnex has disputed certain of those denials. Disputing amounts AT&T Kentucky has billed Lifeconnex for the services it has purchased, however, does not permit Lifeconnex to withhold payment and saddle AT&T Kentucky with the significant risk that Lifeconnex would be unable to pay those disputed amounts if those disputes are resolved in favor of AT&T Kentucky. That much is clear from the plain language of the Parties' ICA, which Lifeconnex negotiated with AT&T and which was submitted to and approved by this Commission on September 9, 2008.

Attachment 7. Billing of the ICA, attached hereto as **Exhibit 2**, states in pertinent part:

---

<sup>1</sup> The "net amount billed" is the total amount billed less credits and other adjustments AT&T Kentucky applied to Lifeconnex's bill during that time period.

Payment of **all** charges will be the responsibility of Swiftel, LLC [Lifeconnex]. . . . Swiftel, LLC [Lifeconnex] shall make payment to AT&T for all services billed **including disputed amounts**.<sup>2</sup>

Payment for services provided by AT&T, **including disputed charges**, is due on or before the next bill date.<sup>3</sup>

The ICA also expressly allows AT&T Kentucky to protect itself against the risk of nonpayment by taking the suspension, discontinuance, and termination actions referenced in Exhibit 1 upon Lifeconnex's continued refusal to pay the amounts AT&T Kentucky has billed it.<sup>4</sup>

Moreover, to the extent that any past due amounts are for services Lifeconnex may have purchased under prior ICAs with AT&T Kentucky, Lifeconnex's obligation to pay AT&T Kentucky all amounts billed, including those it disputes, extends to those amounts as well. The General Terms and Conditions in the current ICA plainly state that that ICA "supersedes prior agreements between the Parties" and that "[a]ny orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement . . . ."<sup>5</sup> A copy of the relevant portions of the General Terms and Conditions is attached hereto as **Exhibit 3**. Moreover, in the current ICA, Lifeconnex

**"acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement."**<sup>6</sup>

---

<sup>2</sup> ICA, Attachment 7, §1.4, p.6, (emphasis added).

<sup>3</sup> *Id.*, §1.4.1 (emphasis added).

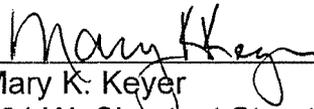
<sup>4</sup> See e.g., *id.*, §1.5, pp. 7-9.

<sup>5</sup> ICA, General Terms and Conditions, §31.1, p. 20.

<sup>6</sup> *Id.* (emphasis added).

Accordingly, Lifeconnex is obligated to pay all amounts AT&T Kentucky has billed it pending the resolution of any disputes that may have been timely and appropriately presented by Lifeconnex.

Respectfully submitted on this 22nd day of June, 2010.

  
\_\_\_\_\_  
Mary K. Keyer  
601 W. Chestnut Street, Room 407  
Louisville, Kentucky 40203  
(502) 582-8219  
mary.keyer@att.com

COUNSEL FOR BELL SOUTH  
TELECOMMUNICATIONS, INC.  
d/b/a AT&T SOUTHEAST  
d/b/a AT&T KENTUCKY

# **EXHIBIT 1**



AT&T Southeast  
600 North 19th Street  
22nd Floor  
Birmingham, AL 35203

VIA FED EX, Tracking Number 8726 2365 8125  
June 18, 2010

Edward Heard  
General Manager  
Lifeconnex Telecom, Inc.  
13700 Perdido Key Drive, Suite 222  
Perdido Key, FL 32507

Dear Mr. Heard:

**RE: NOTICE OF SUSPENSION AND TERMINATION**

AT&T Kentucky's records indicate that the Lifeconnex Telecom, Inc. (formerly known as Swiftel, L.L.C.) ("Lifeconnex") Kentucky [REDACTED] account has an outstanding **past due balance of [REDACTED]** as of May 20, 2010. This [REDACTED] account is listed on Attachment A.

The Interconnection Agreement between AT&T Kentucky and Lifeconnex covering services purchased in the State of Kentucky, which was approved by the Kentucky Public Service Commission on September 9, 2008 ("ICA"), requires you to pay AT&T Kentucky all billed charges, including disputed amounts. See ICA, Attachment 7, Billing at Section 1.4, which reads, in part:

**Swiftel, LLC shall make payment to AT&T for all services billed including disputed amounts.**

Moreover, Section 1.4.1 of Attachment 7, Billing to the ICA requires payment for services prior to the next bill date, as follows:

**1.4.1 Payment Due. Payment for services provided by AT&T, including disputed charges, is due on or before the next bill date.**

Attachment A shows the amounts AT&T Kentucky billed Lifeconnex for [REDACTED] services purchased in the State of Kentucky, credit adjustments AT&T Kentucky applied and payments AT&T Kentucky received from Lifeconnex since September 2008.

Significantly, during the period from December 20, 2009 through May 20, 2010, inclusive, AT&T Kentucky billed Lifeconnex [REDACTED] and applied credit for promotions and other adjustments of [REDACTED], leaving a net amount owed for that period of [REDACTED]. During that same period, however, Lifeconnex paid AT&T Kentucky only [REDACTED] (less than four percent of the net amount owed), while increasing its provisioning of [REDACTED] services from AT&T Kentucky from [REDACTED] lines at the end of December 2009 to [REDACTED] lines provisioned at the end of

**EDITED**



at&t

May, 2010 (more than a two percent increase in [REDACTED] lines provisioned from AT&T Kentucky). Details of the [REDACTED] lines provisioned by Lifeconnex are included on Attachment B to this letter.

Please remit payment to AT&T Kentucky at the following address:

AT&T ROC-CABS  
600 North Point Parkway  
Alpharetta, Georgia 30005

Should you fail to make payment of [REDACTED] by July 6, 2010, AT&T Kentucky will take further action pursuant to our ICA, including without limitation Suspension, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

In addition, should you fail to make payment of all past due charges for these [REDACTED] services on or before July 21, 2010, including all charges for [REDACTED] services that become past due before that date, AT&T Kentucky will take further action, including without limitation Discontinuance and/or Termination, as provided in Section 1.5, *et seq.*, of Attachment 7, Billing, to our ICA.

If you have questions, please contact me directly at (205) 970-5337.

Sincerely,

Ann Mason  
Manager  
AT&T Credit & Collections

Attachments (2)

**EDITED**

Attachment A

LifeConnex Telecom, LLC f/k/a Swiftel, LLC

State	Balance Forward (Bill account number)	Payments	Adjustments with 20th bill date	Balance Forward minus (Payments + Adjustments) Col B - (Col C + Col D)	Current Charges	Late Payment Charges (not included in Col F)	Amount Due
Kentucky	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Sep-08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Oct-08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Nov-08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Dec-08	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Jan-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Feb-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Mar-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Apr-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
May-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Jun-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Jul-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Aug-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Sep-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Oct-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Nov-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Dec-09	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Jan-10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Feb-10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Mar-10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Apr-10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
May-10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	9/08 - 5/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
6 Month Totals	12/09 - 5/10	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

**EDITED**

**ATTACHMENT B**

Lifeconnex Telecom, Inc. f/k/a Swiftel, L.L.C.

State: **Kentucky**

services purchased in state, as of the year and month specified.

2009

2010

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY
[REDACTED]																

**EDITED**

# **EXHIBIT 2**

**Attachment 7**

**Billing**

**TABLE OF CONTENTS**

**1. Payment and Billing Arrangements..... 3**

**2. Billing Disputes..... 9**

**3. Non-Intercompany Settlements..... 10**

## BILLING

### 1. Payment and Billing Arrangements

The terms and conditions set forth in this Attachment shall apply to all services ordered and provisioned pursuant to this Agreement.

- 1.1 AT&T will bill through the Carrier Access Billing System (CABS), Integrated Billing System (IBS) and/or the Customer Records Information Systems (CRIS) depending on the particular service(s) provided to Swiftel, LLC under this Agreement. AT&T will use its best efforts to format bills in CABS Billing Output Specification (CBOS) standard format. AT&T's billing format may change in accordance with applicable industry standards; provided, however, that AT&T may, in some instances, not apply CBOS standard format for certain types of billing for certain products and services. Billing in a format other than CBOS shall not be the basis of any Swiftel, LLC dispute or withholding of payment.
  - 1.1.1 For any service(s) AT&T receives from Swiftel, LLC, Swiftel, LLC shall bill AT&T in CBOS format.
  - 1.1.2 Any switched access charges associated with interexchange carrier access to the resold local exchange lines will be billed by, and due to AT&T.
  - 1.1.3 AT&T will render bills each month on established bill days for each of Swiftel, LLC's accounts. If either Party requests multiple billing media or additional copies of the bills, the billing Party will provide these at the rates set forth in BellSouth's FCC No. 1 Tariff, Section 13.3.6.3, except for resold services which shall be at the rates set forth in AT&T's Non-Regulated Services Pricing List N6.
  - 1.1.4 AT&T will bill Swiftel, LLC in advance for all services to be provided during the ensuing billing period except charges associated with service usage and nonrecurring charges, which will be billed in arrears.
    - 1.1.4.1 For resold services, charges for services will be calculated on an individual customer account level, including, if applicable, any charge for usage or usage allowances. AT&T will also bill Swiftel, LLC, and Swiftel, LLC will be responsible for and remit to AT&T, all charges applicable to said services including but not limited to 911 and E911 charges, EUCL charges, federal subscriber line charges, telecommunications relay charges, and franchise fees, unless otherwise ordered by a Commission.
  - 1.1.5 AT&T will not perform billing and collection services for Swiftel, LLC as a result of the execution of this Agreement.
- 1.2 Establishing Accounts and Subsequent State Certifications. After submitting a credit profile and deposit, if required, and after receiving certification as a local exchange carrier from the appropriate Commission, Swiftel, LLC will provide the appropriate AT&T Local Contract Manager responsible for new CLEC activation,

Version: 2Q07 Standard ICA  
04/26/07

the necessary documentation to enable AT&T to establish accounts for Local Interconnection, Network Elements and Other Services and/or resold services. Such documentation shall include the Application for Master Account, if applicable, proof of authority to provide Telecommunications Services, the appropriate OCN for each state as assigned by the NECA, CIC, if applicable, ACNA, if applicable, AT&T's blanket form LOA, Misdirected Number form, and a tax exemption certificate, if applicable. Notwithstanding anything to the contrary in this Agreement, Swiftel, LLC may not order services under a new account and/or subsequent state certification, established in accordance with this Section until thirty (30) days after all information specified in this Section is received from Swiftel, LLC.

- 1.2.1 ACNAs. Swiftel, LLC shall provide AT&T with documentation from Telcordia identifying the ACNA assigned to it by Telcordia (as applicable) in the same legal name as reflected in the preamble to this Agreement. Such ACNA will be used by Swiftel, LLC to order services pursuant to this Agreement and will not be shared by Swiftel, LLC with another entity.
- 1.2.2 Company Identifiers. If Swiftel, LLC needs to change, add to, eliminate or convert its OCN(s), ACNAs and other identifying codes (collectively "Company Identifiers") under which it operates when Swiftel, LLC has already been conducting business utilizing those Company Identifiers, Swiftel, LLC shall follow the Mergers and Acquisitions Process as described on AT&T's Interconnection Web site, and shall be subject to separately negotiated rates, terms and conditions.
- 1.2.3 Tax Exemption. It is the responsibility of Swiftel, LLC to provide AT&T with a properly completed tax exemption certificate in the current version of the form customarily used by AT&T and at intervals required by the appropriate taxing authorities or reasonably requested by AT&T. A tax exemption certificate must be supplied for each individual Swiftel, LLC entity purchasing Services under this Agreement. Upon AT&T's receipt of a properly completed tax exemption certificate, subsequent billings to Swiftel, LLC will not include those taxes or fees from which Swiftel, LLC is exempt. Prior to receipt of a properly completed exemption certificate, AT&T shall bill, and Swiftel, LLC shall pay all applicable taxes and fees. In the event that Swiftel, LLC believes that it is entitled to an exemption from and refund of taxes with respect to the amount billed prior to AT&T's receipt of a properly completed exemption certificate, AT&T shall assign to Swiftel, LLC its rights to claim a refund of such taxes. If applicable law prohibits the assignment of tax refund rights or requires the claim for refund of such taxes to be filed by AT&T, AT&T shall, after receiving a written request from Swiftel, LLC and at Swiftel, LLC's sole expense, pursue such refund claim on behalf of Swiftel, LLC, provided that Swiftel, LLC promptly reimburses AT&T for any costs and expenses incurred by AT&T in pursuing such refund claim; and, provided further, that AT&T shall have the right to deduct any such outstanding costs and expenses from the amount of any refund obtained prior to remitting such refund to Swiftel, LLC or to deduct any such outstanding costs and expenses from

any amounts owed by AT&T to Swiftel, LLC if no refund is obtained. Swiftel, LLC shall be solely responsible for the computation, tracking, reporting and payment of all taxes and fees associated with the services provided by Swiftel, LLC to its customers.

- 1.3 Deposit Policy. Prior to the inauguration of service or, thereafter, upon AT&T's request, Swiftel, LLC shall complete the AT&T Credit Profile (AT&T form) and provide information to AT&T regarding Swiftel, LLC's credit and financial condition. Based on AT&T's analysis of the AT&T Credit Profile and other relevant information regarding Swiftel, LLC's credit and financial condition, AT&T reserves the right to require Swiftel, LLC to provide AT&T with a suitable form of security deposit for Swiftel, LLC's account(s). If, in AT&T's sole discretion, circumstances so warrant and/or Swiftel, LLC's gross monthly billing has increased, AT&T reserves the right to request additional security (or to require a security deposit if none was previously requested) and/or file a Uniform Commercial Code (UCC-1) security interest in Swiftel, LLC's "accounts receivables and proceeds".
- 1.3.1 Security deposit shall take the form of cash, an irrevocable letter of credit (AT&T form), surety bond (AT&T form) or, in AT&T's sole discretion, some other form of security proposed by Swiftel, LLC and accepted by AT&T. Any such security deposit shall in no way release Swiftel, LLC from its obligation to make complete and timely payments of its bill(s). If AT&T requires Swiftel, LLC to provide a security deposit, Swiftel, LLC shall provide such security deposit prior to the inauguration of service or within fifteen (15) days of AT&T's request, as applicable. Security deposit request notices will be sent to Swiftel, LLC via certified mail or overnight delivery. Such notice period will start the day after the deposit request notice is rendered by certified mail or overnight delivery. Interest on a cash security deposit shall accrue and be applied or refunded in accordance with the terms in AT&T's GSST.
- 1.3.2 Security deposits collected under this Section shall not exceed two (2) months' estimated billing for services pursuant to this Agreement. Estimated billings are calculated based upon the monthly average of the previous six (6) months current billings, if Swiftel, LLC has received service from AT&T during such period at a level comparable to that anticipated to occur over the next six (6) months. If either Swiftel, LLC or AT&T has reason to believe that the level of service to be received during the next six (6) months will be materially higher or lower than received in the previous six (6) months, Swiftel, LLC and AT&T shall agree on a level of estimated billings based on all relevant information.
- 1.3.3 In the event Swiftel, LLC fails to provide AT&T with a suitable form of security deposit or additional security deposit as required herein, defaults on its account(s), or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time required, service to Swiftel, LLC may be Suspended, Discontinued or Terminated in accordance with the terms of

Section 1.5 below. Upon Termination of services, AT&T shall apply any security deposit to Swiftel, LLC's final bill for its account(s). If no bill is rendered to Swiftel, LLC, AT&T shall, nevertheless, apply any security deposit to Swiftel, LLC's outstanding balance.

1.3.3.1 At least seven (7) days prior to the expiration of any letter of credit provided by Swiftel, LLC as security under this Agreement, Swiftel, LLC shall renew such letter of credit or provide AT&T with evidence that Swiftel, LLC has obtained a suitable replacement for the letter of credit. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to draw down the full amount of such letter of credit and utilize the cash proceeds as security for Swiftel, LLC accounts(s). If Swiftel, LLC provides a security deposit or additional security deposit in the form of a surety bond as required herein, Swiftel, LLC shall renew the surety bond or provide AT&T with evidence that Swiftel, LLC has obtained a suitable replacement for the surety bond at least seven (7) days prior to the cancellation date of the surety bond. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for Swiftel, LLC's account(s). If the credit rating of any bonding company that has provided Swiftel, LLC with a surety bond provided as security hereunder has fallen below B, AT&T will provide written notice to Swiftel, LLC that Swiftel, LLC must provide a replacement bond or other suitable security within fifteen (15) days of AT&T's written notice. If Swiftel, LLC fails to comply with the foregoing, AT&T shall thereafter be authorized, in its sole discretion, to take action on the surety bond and utilize the cash proceeds as security for Swiftel, LLC's account(s). Notwithstanding anything contained in this Agreement to the contrary, AT&T shall be authorized, in its sole discretion, to draw down the full amount of any letter of credit or take action on any surety bond provided by Swiftel, LLC as security hereunder if Swiftel, LLC defaults on its account(s) or otherwise fails to make any payment or payments required under this Agreement in the manner and within the time, as required herein and apply the cash proceeds to any outstanding balance on Swiftel, LLC's accounts and utilize any remaining cash proceeds as security for Swiftel, LLC's account(s).

1.4 Payment Responsibility. Payment of all charges will be the responsibility of Swiftel, LLC. Swiftel, LLC shall pay invoices by utilizing wire transfer services or automatic clearing house services. Swiftel, LLC shall make payment to AT&T for all services billed including disputed amounts. AT&T will not become involved in billing disputes that may arise between Swiftel, LLC and Swiftel, LLC's customer.

1.4.1 Payment Due. Payment for services provided by AT&T, including disputed charges, is due on or before the next bill date. Information required to apply payments must accompany the payment. The information must notify AT&T of Billing Account Numbers (BAN) paid; invoices paid and the amount to be applied to each BAN and invoice (Remittance Information). Payment is considered to have been made when the payment and Remittance Information are received by

AT&T. If the Remittance Information is not received with payment, AT&T will be unable to apply amounts paid to Swiftel, LLC's accounts. In such event, AT&T shall hold such funds until the Remittance Information is received. If AT&T does not receive the Remittance Information by the payment due date for any account(s), late payment charges shall apply.

- 1.4.1.1 Due Dates. If the payment due date falls on a Sunday or on a holiday that is observed on a Monday, the payment due date shall be the first non-holiday day following such Sunday or holiday. If the payment due date falls on a Saturday or on a holiday which is observed on Tuesday, Wednesday, Thursday, or Friday, the payment due date shall be the last non-holiday day preceding such Saturday or holiday. If payment is not received by the payment due date, a late payment charge, as set forth in Section 1.4.1.2, below, shall apply.
- 1.4.1.2 Late Payment. If any portion of the payment is not received by AT&T on or before the payment due date as set forth above, or if any portion of the payment is received by AT&T in funds that are not immediately available to AT&T, then a late payment and/or interest charge shall be due to AT&T. The late payment and/or interest charge shall apply to the portion of the payment not received and shall be assessed as set forth in Section A2 of AT&T's GSST, Section B2 of the Private Line Service Tariff or Section E2 of the AT&T intrastate Access Services Tariff, or pursuant to the applicable state law as determined by AT&T. In addition to any applicable late payment and/or interest charges, Swiftel, LLC may be charged a fee for all returned checks at the rate set forth in Section A2 of AT&T's GSST or pursuant to the applicable state law.
- 1.5 Discontinuing Service to Swiftel, LLC. The procedures for discontinuing service to Swiftel, LLC are as follows:
  - 1.5.1 In order of severity, Suspend/Suspension, Discontinue/Discontinuance and Terminate/Termination are defined as follows for the purposes of this Attachment:
    - 1.5.1.1 Suspend/Suspension is the temporary restriction of the billed Party's access to the ordering systems and/or access to the billed Party's ability to initiate PIC-related changes. In addition, during Suspension, pending orders may not be completed and orders for new service or changes to existing services may not be accepted.
    - 1.5.1.2 Discontinue/Discontinuance is the denial of service by the billing Party to the billed Party that will result in the disruption and discontinuation of service to the billed Party's customers. Additionally, at the time of Discontinuance, AT&T will remove any Local Service Freezes in place on the billed Party's customers.
    - 1.5.1.3 Terminate/Termination is the disconnection of service by the billing Party to the billed Party.
  - 1.5.2 AT&T reserves the right to Suspend, Discontinue or Terminate service in the event of prohibited, unlawful or improper use of AT&T facilities or service, abuse

of AT&T facilities, or any other violation or noncompliance by Swiftel, LLC of the rules and regulations of AT&T's tariffs.

- 1.5.3 Suspension. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, or fifteen (15) days from the date of a deposit request in the case of security deposits, AT&T will provide written notice to Swiftel, LLC that services will be Suspended if payment of such amounts, and all other amounts that become past due before Suspension, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above, or in the case of a security deposit request, in the manner set forth in Section 1.3.1 above: (1) within seven (7) days following such notice for CABS billed services; (2) within fifteen (15) days following such notice for CRIS and IBS billed services; and (3) within seven (7) days following such notice for security deposit requests.
- 1.5.3.1 The Suspension notice shall also provide that all past due charges for CRIS and IBS billed services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CRIS and IBS billed services.
- 1.5.3.2 For CABS billed services, AT&T will provide a Discontinuance notice that is separate from the Suspension notice, that all past due charges for CABS billed Services, and all other amounts that become past due for such services before Discontinuance, must be paid within thirty (30) days from the date of the Suspension notice to avoid Discontinuance of CABS billed services. This Discontinuance notice may be provided at the same time that AT&T provides the Suspension notice.
- 1.5.4 Discontinuance. If payment of amounts due as described herein is not received by the bill date in the month after the original bill date, AT&T will provide written notice that AT&T may discontinue the provision of existing services to Swiftel, LLC if payment of such amounts, and all other amounts that become past due before Discontinuance, including requested security deposits, is not received by wire transfer, automatic clearing house or cashier's check in the manner set forth in Section 1.4.1 above or in the case of a deposit in accordance with Section 1.3.1 above, within thirty (30) days following such written notice; provided, however, that AT&T may provide written notice that such existing services may be Discontinued within fifteen (15) days following such notice, subject to the criteria described in Section 1.5.4.1 below.
- 1.5.4.1 AT&T may take the action to Discontinue the provision of existing service upon fifteen (15) days from the day after AT&T provides written notice of such Discontinuance if (a) such notice is sent by certified mail or overnight delivery; (b) Swiftel, LLC has not paid all amounts due pursuant to a subject bill(s), or has not provided adequate security pursuant to a deposit request; and (c) either:

- (1) AT&T has sent the subject bill(s) to Swiftel, LLC within seven (7) business days of the bill date(s), verifiable by records maintained by AT&T:
  - i. in paper or CDROM form via the United States Postal Service (USPS), or
  - ii. in magnetic tape form via overnight delivery, or
  - iii. via electronic transmission; or
- (2) AT&T has sent the subject bill(s) to Swiftel, LLC, using one of the media described in (1) above, more than thirty (30) days before notice to Discontinue service has been rendered.

1.5.4.2 In the case of Discontinuance of services, all billed charges, as well as applicable disconnect charges, shall become due.

1.5.4.3 Swiftel, LLC is solely responsible for notifying the customer of the Discontinuance of service. If, within seven (7) days after Swiftel, LLC's services have been Discontinued, Swiftel, LLC pays, by wire transfer, automatic clearing house or cashier's check, all past due charges, including late payment charges, outstanding security deposit request amounts if applicable and any applicable restoral charges as set forth in Section A4 of AT&T's GSST, then AT&T will reestablish service for Swiftel, LLC.

1.5.5 Termination. If within seven (7) days after Swiftel, LLC's service has been Discontinued and Swiftel, LLC has failed to pay all past due charges as described above, then Swiftel, LLC's service will be Terminated.

## 2. **Billing Disputes**

2.1 Swiftel, LLC shall electronically submit all billing disputes to AT&T using the form specified by AT&T. In the event of a billing dispute, the Parties will endeavor to resolve the dispute within sixty (60) days of the notification date. Within five (5) business days of AT&T's denial, or partial denial, of the billing dispute, if Swiftel, LLC is not satisfied with AT&T's resolution of the billing dispute or if no response to the billing dispute has been received by Swiftel, LLC by such sixtieth (60<sup>th</sup>) day, Swiftel, LLC must pursue the escalation process as outlined in the Billing Dispute Escalation Matrix, set forth on AT&T's Interconnection Services Web site, or the billing dispute shall be considered denied and closed. If, after escalation, the Parties are unable to reach resolution, then the aggrieved Party, if it elects to pursue the dispute shall pursue dispute resolution in accordance with General Terms and Conditions.

2.2 For purposes of this Section 2, a billing dispute means a reported dispute submitted pursuant to Section 2.1 above of a specific amount of money actually billed by AT&T within twelve (12) months of the submission of such dispute. Swiftel, LLC agrees to not submit billing disputes for amounts billed more than

twelve (12) months prior to submission of a billing dispute filed for amounts billed. The billing dispute must be clearly explained by Swiftel, LLC and supported by written documentation, which clearly shows the basis for disputing charges. The determination as to whether the billing dispute is clearly explained or clearly shows the basis for disputing charges shall be within AT&T's sole reasonable discretion. Disputes that are not clearly explained or those that do not provide complete information may be rejected by AT&T. Claims by Swiftel, LLC for damages of any kind will not be considered a billing dispute for purposes of this Section. If AT&T resolves the billing dispute, in whole or in part, in favor of Swiftel, LLC, any credits and interest due to Swiftel, LLC as a result thereof shall be applied to Swiftel, LLC's account by AT&T upon resolution of the billing dispute.

### **3. Non-InterCompany Settlements**

- 3.1 Direct Participants are Telecommunications carriers that exchange data directly with other Direct Participants via the Centralized Message Distribution System (CMDS) Data Center (Direct Participant) and may act as host companies (Host) for those Telecommunications carriers that do not exchange data directly via the CMDS Data Center.
- 3.2 The Non-InterCompany Settlements (NICS) is the national system administered by Telcordia that is used in the settlement of revenues for calls that are originated and billed by two (2) different local exchange carriers (LEC) within a single Direct Participant's territory to another for billing. NICS applies to calls involving another LEC where the Earning Company and the Billing Company are located within AT&T's Southeast Region 9-State.
- 3.3 In association with message distribution service, AT&T will provide Swiftel, LLC with associated intercompany settlements reports as appropriate.
- 3.4 Notwithstanding anything in this Agreement to the contrary, in no case shall either Party be liable to the other for any direct or consequential damages incurred as a result of the obligations set out in this Section 3.
- 3.5 Intercompany Settlements Messages
- 3.5.1 Intercompany Settlements Messages facilitate the settlement of revenues associated with traffic originated from or billed by Swiftel, LLC as a facilities based provider of local exchange Telecommunications Services.
- 3.5.2 AT&T will receive the monthly NICS reports from Telcordia on behalf of Swiftel, LLC and will distribute copies of these reports to Swiftel, LLC on a monthly basis.
- 3.5.3 Through NICS, AT&T will collect the revenue earned by Swiftel, LLC within the AT&T Southeast Region 9-State from another LEC also within the AT&T Southeast Region 9-State where the messages are billed, less a per message billing and collection fee of five cents (\$0.05), on behalf of Swiftel, LLC. AT&T will

remit the revenue billed by Swiftel, LLC within the AT&T Southeast Region 9-State to the LEC also within the AT&T Southeast Region 9-State, where the messages originated, less a per message billing and collection fee of five cents (\$0.05). These two (2) amounts will be netted together by AT&T and the resulting charge or credit issued to Swiftel, LLC via a CABS miscellaneous bill on a monthly basis in arrears.

- 3.5.4 AT&T and Swiftel, LLC agree that monthly netted amounts of less than fifty dollars (\$50.00) will not be settled.

# **EXHIBIT 3**

## **AGREEMENT GENERAL TERMS AND CONDITIONS**

**THIS AGREEMENT** is made by and between BellSouth Telecommunications, Inc., d/b/a AT&T Alabama, AT&T Florida, AT&T Georgia, AT&T Kentucky, AT&T Louisiana, AT&T Mississippi, AT&T North Carolina, AT&T South Carolina and AT&T Tennessee, (AT&T), and Swiftel, LLC (Swiftel, LLC), a Florida limited liability company, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either AT&T or Swiftel, LLC or both as a “Party” or “Parties.”

### **W I T N E S S E T H**

**WHEREAS**, AT&T is a local exchange telecommunications company authorized to provide Telecommunications Services (as defined below) in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, Swiftel, LLC is or seeks to become a CLEC authorized to provide telecommunications services in the state of Florida; and

**WHEREAS**, pursuant to Sections 251 and 252 of the Act; Swiftel, LLC wishes to purchase certain services from AT&T; and

**WHEREAS**, the Parties wish to interconnect their facilities, exchange traffic, and perform Local Number Portability (LNP) pursuant to Sections 251 and 252 of the Act as set forth herein; and

**WHEREAS**, Swiftel, LLC wishes to purchase and AT&T wishes to provide other services as described in this Agreement;

**NOW THEREFORE**, in consideration of the mutual agreements contained herein, AT&T and Swiftel, LLC agree as follows:

#### **Definitions**

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or equivalent thereof) of more than ten percent (10%).

**Commission** is defined as the appropriate regulatory agency in each state of AT&T Southeast Region 9-State (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**30 Survival**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

**31 Entire Agreement**

31.1 This Agreement means the General Terms and Conditions, the Attachments hereto and all documents identified therein, as such may be amended from time to time and which are incorporated herein by reference, all of which, when taken together, are intended to constitute one indivisible agreement. This Agreement sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained in this Agreement and merges all prior discussions between them. Any orders placed under prior agreements between the Parties shall be governed by the terms of this Agreement and Swiftel, LLC acknowledges and agrees that any and all amounts and obligations owed for services provisioned or orders placed under prior agreements between the Parties, related to the subject matter hereof, shall, as of the Effective Date, be due and owing under this Agreement and be governed by the terms and conditions of this Agreement as if such services or orders were provisioned or placed under this Agreement. Neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

31.2 Any reference throughout this Agreement to a tariff, industry guideline, AT&T's technical guideline or reference, AT&T business rule, guide or other such document containing processes or specifications applicable to the services provided pursuant to this Agreement, shall be construed to refer to only those provisions thereof that are applicable to these services, and shall include any successor or replacement versions thereof, all as they are amended from time to time and all of which are incorporated herein by reference, and may be found at AT&T's Interconnection Web site at: [www.interconnection.bellsouth.com](http://www.interconnection.bellsouth.com). References to state tariffs throughout this Agreement shall be to the tariff for the state in which the services were provisioned; provided, however, that in any state where certain AT&T services or tariff provisions have been or become deregulated or detariffed, any reference in this Agreement to a detariffed or deregulated service or provision of such tariff shall be deemed to refer to the service description, price list or other agreement pursuant to which AT&T provides such services as a result of detariffing or deregulation.

CERTIFICATE OF SERVICE – PSC 2010-00026

I hereby certify that a copy of the foregoing was served on the following individuals by mailing a copy thereof via U.S. Mail, this 22nd day of June 2010.

Douglas F. Brent  
Stoll Keenon Ogden, PLLC  
2000 PNC Plaza  
500 W Jefferson Street  
Louisville, KY 40202-2828

Henry M. Walker  
Bradley Arant Boult Cummings LLP  
1600 Division Street, Suite 700  
Nashville, TN 37203

  
\_\_\_\_\_  
Mary K. Keyer