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July 1, 2010

RECEIVED

JUL 01 2010

PUBLIC SERVICE
COMMISSION

Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

*RE: BellSouth Telecommunications, Inc. d/b/a Southeast d/b/a AT&T KY
v. LifeConnex Telecom, Inc.
Case No. 2010-00026*

Dear Mr. DeRouen:

Enclosed please find the original and ten copies of LifeConnex Telecom, Inc.'s (f/k/a Swiftel) ("LifeConnex") Petition Concerning Implementation of Its Interconnection Agreement With AT&T and EMERGENCY Motion to Prevent Suspension of Service in the Commonwealth of Kentucky.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Sincerely yours,

Douglas F. Brent

c: Henry M. Walker, Esq.

DFB: jms
Enclosures

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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Bellsouth Telecommunications, Inc. d/b/a)	
Southeast d/b/a AT&T Kentucky)	
)	
Complainant)	
)	
v.)	Case No. 2010-00026
)	
LifeConnex Telecom, LLC f/k/a Swiftel, LLC)	
)	
)	
Defendant)	

PETITION OF LIFECONNEX TELECOM, INC. (F/K/A SWIFTEL) CONCERNING IMPLEMENTATION OF ITS INTERCONNECTION AGREEMENT WITH AT&T AND EMERGENCY MOTION TO PREVENT SUSPENSION OF SERVICE

LifeConnex Telecom, Inc. (f/k/a Swiftel) ("LifeConnex") files this Petition asking that the Kentucky Public Service Commission prohibit BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky ("AT&T") from suspending, discontinuing or terminating LifeConnex's service in Kentucky pending resolution of the matters at issue in Case No. 2010-00026.

NARRATIVE SUMMARY

1. LifeConnex is a local exchange telephone company providing service to approximately two thousand five hundred subscribers in Kentucky, the majority of whom are low income, residential customers. As of June 24, 2010, LifeConnex' customer count in Kentucky was 2,516.

2. LifeConnex resells certain services of AT&T and is entitled under federal law to receive from AT&T the same "cash back" credits and promotional discounts that AT&T gives to its own retail customers. Those credits and discounts are usually sufficient to offset, in large

part, LifeConnex's monthly bills from AT&T. To keep track of these credits, LifeConnex has hired a billing firm, *i.e.*, Lost Key Telecom, Inc. ("Lost Key"), which works closely with AT&T's billing and collection department to insure that all monthly claims for promotional credits are correctly and promptly applied and that LifeConnex remains current on its bills.¹

3. On January 21, 2010, AT&T filed a Formal Complaint against LifeConnex that was assigned Case No. 2010-00026. AT&T's Complaint and Petition pertains to amounts which AT&T claims that LifeConnex owes AT&T relating to resold service in the State of Kentucky. LifeConnex disputes these amounts. The crux of the dispute between AT&T and LifeConnex is whether (1) AT&T can apply the resale discount approved by the Kentucky Public Service Commission to the cash back component of various promotional offers that AT&T Kentucky makes available for resale, and (2) whether AT&T's customer referral marketing promotions (such as the "word-of-mouth" promotion) are subject to resale.

4. AT&T filed similar Formal Complaints at the Commission against three other competitive local exchange carriers ("CLEC"), Budget Prepay, Inc. d/b/a Budget Phone; BLC Management, LLC d/b/a Angles Communications Solutions; and dPi Teleconnect, LLC., respectively.

5. By Joint Motion on Procedural Issues filed May 20, 2010, in Case Nos. 2010-00023, 2010-00025, 2010-00026 and 2010-00029, AT&T and the parties to these proceedings, *i.e.*, including LifeConnex, requested that the Commission:

Convene a consolidated proceeding to which AT&T and the seven respondents would be parties to resolve the following issues:

¹ AT&T claims that LifeConnex owes AT&T more than \$1.8 million dollars in Kentucky but LifeConnex, on the other hand, believes that once this case is resolved AT&T will owe LifeConnex more than enough to offset that claim. Working with Lost Key, LifeConnex is now in the process of breaking down these amounts into categories and will file that information with the Commission as soon as it is available.

- (a) how cash back credits to resellers should be calculated;
- (b) whether the word-of-mouth promotion is available for resale and if so, how the credits to resellers should be calculated; and
- (c) how credits to resellers for waiver of the line connection charge should be calculated.

The Joint Motion on Procedural Issues continued, “Once the Commission has issued an order resolving the issues in the Consolidated Phase, the Parties will work in good faith to address or, if necessary, request the Commission to resolve, all remaining unresolved claims and counterclaims related to the Consolidated Phase and determine what, if any, dollar amounts are owed or credits due each Party.”

6. Although the Commission has never formally acted on the Joint Motion, shortly thereafter (June 17, 2010) the parties filed an additional Joint Motion on Procedural Schedule in which they proposed that all four of these related cases be held in abeyance until similar cases proceed to hearings before the state commissions of Alabama, Louisiana, North Carolina, and South Carolina. To date, this subsequent Joint Motion has not been ruled upon.

7. While Case No. 2010-00026 is pending and prior to resolution of the matters at issue in the pending procedural motions, LifeConnex asks that the Commission order AT&T not to suspend service to LifeConnex or otherwise interfere with LifeConnex's service to its customers. The primary issues in dispute between the parties are already identified and pending in this case, and, as indicated above, the parties agreed that the issues identified above would be resolved in the Consolidated Phase of proceedings, and then, the parties would, “[w]ork in good faith to address all remaining unresolved claims and counterclaims...and to determine what, if any, dollar amounts are owed or credits due each party.”

8. Until now, both AT&T and LifeConnex have, consistent with the Joint Motion filed with this Commission, "work[ed] in good faith" toward resolution of all disputed claims

and a final determination of the dollar amounts due to each party. LifeConnex has agreed to an expedited schedule which will bring these disputed issues to hearing *first* in the states that involve a substantial portion of the disputed billing amounts. Meanwhile, LifeConnex has been deducting from its bill claims for promotional credits and disputed charges -- without any objection from AT&T -- since October, 2007. Even now, executives from AT&T and LifeConnex have been engaged in extensive discussions over the last two months to resolve various issues between the parties. Despite those discussions, despite LifeConnex's agreement to expedite the resolution of the pending complaints, and despite AT&T's acquiescence for a period of nearly three years in LifeConnex's practice of paying AT&T the net amounts due each month, AT&T now threatens to disrupt service to over two thousand low-income Kentucky customers. AT&T threatens to do this rather than wait a few additional months for the Kentucky Commission to resolve the disputes raised in AT&T's complaint.

PARTIES

9. LifeConnex is a competitive local exchange provider authorized to offer telecommunications services in Kentucky. LifeConnex's address is 6095 N. Wickham Road, Suite 403, Melbourne, Florida 32940.

10. AT&T is a Georgia corporation authorized to do business in Kentucky as an incumbent local exchange provider. AT&T's address is 601 West Chestnut Street, Room 407, Louisville, Kentucky 40203.

11. The person authorized to received notices, pleadings and other communications regarding this Complaint is:

Henry M. Walker
BRADLEY ARANT BOULT CUMMINGS, LLP
1600 Division Street
Suite 700
Nashville, TN 37203

JURISDICTION

12. The Kentucky Public Service Commission ("KPSC" or "the Commission") has jurisdiction over the claims asserted in this Petition under Section 252 of the federal Telecommunications Act of 1996 (the "Act"), 47 U.S.C. § 252, KRS 278.040, KRS 278.260 and Section 8 of the "General Terms and Conditions" of the parties' interconnection agreement.

FACTS

13. LifeConnex offers prepaid, local telephone service to approximately two thousand five hundred residential customers in Kentucky. Nearly all of these customers are eligible for subsidized ("Lifeline") service. LifeConnex purchases residential services from AT&T at the discounted, wholesale rate established by the state commissions and resells that service to its customers.

14. When it chooses to resell services, LifeConnex is entitled under federal law to receive the benefit of certain promotional credits and discounts offered from time-to-time by AT&T. Those promotional credits and discounts include such programs as offering cash payments to new customers and waiving the customer's initial connection charge.

15. LifeConnex contracts with Lost Key to monitor LifeConnex's wholesale bills and to file requests for promotional credits and, when necessary, billing disputes. Lost Key tracks

these claims and meets regularly with representatives of AT&T to calculate what monies, if any, are owed AT&T each month after promotional credits and other disputes are deducted from LifeConnex's monthly bill. Based on the figures determined from these ongoing discussions between Lost Key and AT&T, LifeConnex pays AT&T each month the net amount due, if any.

16. Because of the high turnover rate among low income customers, including those of LifeConnex, and the application of various sales promotions offered by AT&T, the promotional credits and related disputes filed by Lost Key on behalf of LifeConnex substantially offset the amount of new charges billed to LifeConnex by AT&T.

17. AT&T's June 22, 2010, Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement stated, "AT&T Kentucky acknowledges that it has denied a number of LifeConnex's requests for bill credits for various promotional offerings and that LifeConnex has disputed certain of those denials." By and large, these are the very issues to be addressed in the cases proposed to be consolidated before the Commission. AT&T, however, seeks to require LifeConnex to pay AT&T more than \$1.8 million for resold service in the State of Kentucky pursuant to a provision, *i.e.*, § 1.4., of the ICA between AT&T and LifeConnex that states that LifeConnex will make payments to AT&T for all services billed, including disputed amounts. LifeConnex contends, however, that AT&T's claim of an amount in excess of \$1.8 million to be paid by LifeConnex does not reflect a good faith calculation or determination of any amount owed AT&T by LifeConnex, and that requiring payment of such amount prior to determination of the matters at issue in this case is contrary to the parties' May 20 and June 17 Joint Motions on Procedural Issues.²

² See footnote 1, *supra*.

18. Notwithstanding the wording of § 1.4 of the ICA between AT&T and LifeConnex, AT&T has not heretofore required that LifeConnex pay disputed amounts.

19. Moreover, AT&T's suspension or termination of service to LifeConnex in the State of Kentucky would leave more than 2,500 subscribers, many of whom are lifeline subscribers, without service. AT&T's Notice is silent as to any intention to provide continuity of service.³

EMERGENCY RELIEF SOUGHT

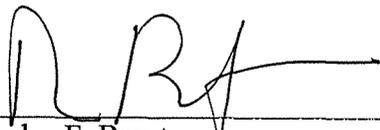
20 Under Section 8 of the "General Terms and Conditions" of the parties' interconnection agreement, either party may ask the Commission to resolve any dispute "as to the proper implementation of this Agreement." AT&T's demand of payment does not reflect AT&T's financial risk, is inconsistent with AT&T's practices heretofore, and jeopardizes service to 2,500 subscribers.

21 Pending a final determination by the Commission in the Consolidated Phase of Case No. 2010-00026, LifeConnex asks that the Commission instruct AT&T to take no actions to suspend or otherwise interfere with LifeConnex's service to its customers.

22 LifeConnex further requests such relief as the Commission finds appropriate.

³ Cf. Case No. 2002-00310, *Customer Billing and Notice Requirements for Wireline Telecommunications Carriers Providing Service in Kentucky* (May 20, 2003) (requiring ILECs to provide not only prior notice of a proposed disconnection of a CLEC, but also "a plan for addressing customer notice and service issues").

Respectfully submitted,

By:  _____

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1600 Division Street
Suite 700
Nashville, TN 37203

Attorneys for LifeConnex

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by First Class Mail on those persons whose names appear below this 1st day of July, 2010.

Mary K. Keyer
AT&T Kentucky
601 West Chestnut Street
Suite 407
Louisville, Kentucky 40203

A handwritten signature in black ink, appearing to read 'D. Brent', written over a horizontal line.

Douglas F. Brent