



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)

April 8, 2010

**VIA OVERNIGHT MAIL**

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

**RECEIVED**  
APR 08 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 are the original and five (5) copies of AT&T Kentucky's Response to LifeConnex's Answer and Counter-Claims, AT&T Kentucky's Motion to Dismiss or Sever Counterclaims and AT&T Kentucky's Reply to Response to Motion to Consolidate.

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

Sincerely,

Mary K. Keyer

Enclosures

cc: Parties of Record

778955

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 8<sup>th</sup> day of April 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

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

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

**AT&T KENTUCKY'S RESPONSE TO LIFECONNEX'S  
ANSWER AND COUNTER-CLAIMS**

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") respectfully submits this Response to the Answer and Counter-Claims ("Answer/Counterclaims") filed by LifeConnex Telecom, LLC, f/k/a Swiftel, LLC ("LifeConnex") on or about February 25, 2010.

1. AT&T Kentucky denies any allegation in the Answer/Counterclaims to which a response is required unless expressly and explicitly admitted herein.
2. The "Narrative Summary" at pages 1-7 of the Answer/Counterclaims is LifeConnex's version of the situation and requires no response from AT&T Kentucky.
3. The "Specific Responses to AT&T's Complaint" at pages 8-9 of the Answer/Counterclaims requires no response from AT&T Kentucky.

4. AT&T Kentucky objects to, and denies that LifeConnex is entitled to, its requests in Paragraphs 18-19 of its Answer/Counterclaims that the Commission dismiss AT&T Kentucky's Complaint or delay this proceeding.

**ANSWER TO "LINE CONNECTION CHARGE WAIVER" COUNTERCLAIM**

5. For the reasons set forth in AT&T Kentucky's Motion to Dismiss or Sever Counterclaims filed concurrently with this Response, AT&T Kentucky requests that the Commission dismiss the Counterclaim in Paragraph 20 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Kentucky's Complaint.

6. In the alternative, in response to the allegations of Paragraph 20 of the Answer/Counterclaims, AT&T Kentucky asserts that some of its retail promotional offerings waive the line connection charge for qualifying end users. When a reseller like LifeConnex buys the telecommunications services associated with those offerings for resale, AT&T Kentucky initially bills the reseller the retail charge for the line connection less the applicable wholesale discount. Assuming a retail line connection charge of \$40 and a wholesale discount of 20%, for example, AT&T Kentucky initially bills the reseller \$32. If the reseller timely submits a request for a promotional credit and otherwise satisfies the qualifications of a specific retail promotional offering, AT&T Kentucky then credits the reseller's bill in the same amount it initially billed the reseller for the line connection charge. In the example above, for instance, AT&T Kentucky would credit a qualifying reseller's bill in the amount of \$32. As a result, a qualifying reseller pays \$0 for the line connection, just as a qualifying retail

customer pays \$0 for the line connection. AT&T Kentucky denies the remaining allegations of Paragraph 20 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Kentucky denies that in this example, “the reseller [LifeConnex] is entitled to receive the full value of the line connection waiver,” that the process described above (which has been in place for years) is a condition or restriction on resale, and that AT&T Kentucky was required to make any showing to the Commission prior to implementing the process described above. AT&T Kentucky further denies that LifeConnex has disputed any of the outstanding balance described in AT&T Kentucky’s Complaint on the grounds alleged in Paragraph 20 of the Answer/Counterclaims.

---

**ANSWER TO “BUNDLED OFFERING” COUNTERCLAIM**

7. For the reasons set forth in AT&T Kentucky’s Motion to Dismiss or Sever Counterclaims filed concurrently with this Response, AT&T Kentucky requests that the Commission dismiss the Counterclaim in Paragraph 21 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Kentucky’s Complaint.

8. In the alternative, in response to the allegations of Paragraph 21 of the Answer/Counterclaims, AT&T Kentucky asserts that it makes available some retail offerings that bundle telecommunications services provided by AT&T Kentucky with non-telecommunications services provided by AT&T Kentucky, its affiliates, and/or other entities, often at a single price. AT&T Kentucky denies the remaining allegations of Paragraph 21 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Kentucky

denies that it has improperly refused to offer telecommunications services included in such bundled offerings for resale; that it has billed LifeConnex an inappropriate amount for any telecommunications services LifeConnex has purchased for resale; that it has not complied with 47 C.F.R. §51.613(b); and that it was required to make any showing pursuant to 47 C.F.R. §51.613(b) with regard to the offerings described in Paragraph 21 of the Answer/Counterclaims. AT&T Kentucky further denies that LifeConnex has disputed any of the outstanding balance described in AT&T Kentucky's Complaint on the grounds alleged in Paragraph 21 of the Answer/Counterclaims.

#### **ANSWER TO "NEW METHODOLOGY" COUNTERCLAIM**

9. For the reasons set forth in AT&T Kentucky's Motion to Dismiss or Sever Counterclaims filed concurrently with this Response, AT&T Kentucky respectfully requests that the Commission dismiss the Counterclaim in Paragraph 22 of the Answer/Counterclaims or, in the alternative, address it separate and apart from the claims presented in AT&T Kentucky's Complaint.

10. In the alternative, in response to the allegations of Paragraph 22 of the Answer/Counterclaims, AT&T Kentucky admits that on July 1, 2009, it issued Accessible Letter No. CLECSE09-100 (a copy of which is attached to this Response as **Exhibit A**) informing competitive local exchange carriers ("CLECs") of its intent to change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers that are available for resale. AT&T Kentucky admits that on July 1, 2009, it also issued Accessible Letter No. CLECSE09-107 (a copy of which is attached to this

Response as **Exhibit B**) informing CLECs that effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cash-back amount of \$5.92 using the methodology announced in Accessible Letter No. CLECSE09-100. AT&T Kentucky denies the remaining allegations of Paragraph 22 of the Answer/Counterclaims to the extent they are inconsistent with the assertions herein. Specifically, AT&T Kentucky denies that it has imposed any condition or restriction on the resale of telecommunications services associated with retail cash-back offerings, that it was required to make any showing to the Commission regarding the new methodology, that it is seeking any amounts billed under the new methodology in this docket, and that it currently is billing LifeConnex for any amounts calculated under this new methodology. AT&T Kentucky further denies that LifeConnex has disputed any of the outstanding balance described in AT&T Kentucky's Complaint on the grounds alleged in Paragraph 22 of the Answer/Counterclaims.

#### **ANSWER TO "RELIEF SOUGHT"**

11. AT&T Kentucky denies that LifeConnex is entitled to any of the relief it seeks in its Answer/Counterclaims, including without limitation the relief sought in the "wherefore" clause at pages 11-12.

#### **AFFIRMATIVE DEFENSES**

12. Each Counterclaim fails to state a cause of action upon which relief can be granted.

13. To the extent it is not dismissed, each Counterclaim should be addressed separate and apart from the claims presented in AT&T Kentucky's Complaint.

14. Each Counterclaim is barred, in whole or in part, by the doctrines of unclean hands, laches, forbearance, waiver, and/or estoppel.

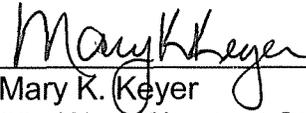
15. Each Counterclaim is barred, in whole or in part, by the applicable statute of limitations and/or the applicable "dispute" provisions of the Parties' Interconnection Agreement, including without limitation provisions addressing the presentment, pursuit, escalation, and preservation of billing disputes.

16. Each Counterclaim is barred, in whole or in part, by LifeConnex's failure to mitigate any damages allegedly sustained.

17. To the extent the Commission awards LifeConnex any relief with regard to its Counterclaims (and it should not), such relief should be only prospective in nature.

WHEREFORE, AT&T Kentucky respectfully requests that the Commission enter an Order denying all relief sought by LifeConnex, dismissing all Counterclaims, and granting such further relief as the Commission deems appropriate.

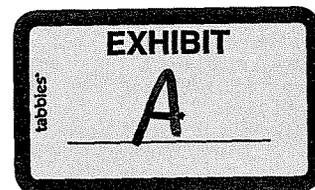
Respectfully submitted on this the 9th day of April, 2010.



Mary K. Keyer  
601 West Chestnut Street, Room 407  
Louisville, KY 40203  
(502) 582-8219

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

798936



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-100**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Resale of Cash-Back Promotions**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee**

Issuing AT&T ILECS: **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 (collectively referred to, for purposes of this Accessible Letter, as "AT&T Southeast Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

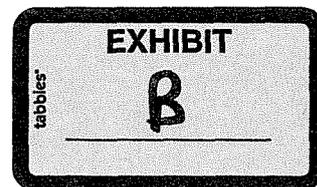
AT&T Southeast Region is sending this letter to provide notice that it will change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers (including but not limited to promotional offers involving checks, coupons, and other similar items) that are available for resale.

The change will be implemented initially for residential acquisition cash-back promotion offers requested on or after September 1, 2009, in all AT&T ILEC states, regardless of whether the underlying promotion is new or existing.

Details regarding the specific resale credits available for applicable promotions will be communicated via separate Accessible Letters. The formulae AT&T Southeast Region will use to calculate these credits is available in the Resale Product section of the CLEC Handbook on CLEC Online at:

<https://clec.att.com/clec/hb/index.cfm>

AT&T Southeast Region reserves the right to make any modifications to or to cancel the above information prior to the proposed effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Southeast Region will send additional notification at the time of cancellation. AT&T Southeast Region will incur no liability to the CLECs if the above mentioned information and/or approach is modified or discontinued for any reason.



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-107**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Win-back Cash Back Promotion - KY**

Related Letters: **CLECSE09-100**

Attachment: **NA**

States Impacted: **Kentucky**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

Effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$5.92 using the methodology announced in **CLECSE09-100**, dated July 1, 2009.

AT&T Kentucky reserves the right to modify or cancel the above information. Should any such action be taken, it will be reflected in a subsequent letter to CLECs. AT&T Kentucky will incur no liability for the foregoing.

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

<b>In Re:</b>	)	
	)	
<b>In the Matter of:</b>	)	
	)	
<b>BELLSOUTH</b>	)	
<b>TELECOMMUNICATIONS, INC.</b>	)	
<b>d/b/a AT&amp;T Southeast</b>	)	
<b>d/b/a AT&amp;T Kentucky</b>	)	
	)	
<b>Complainant</b>	)	
	)	<b>Case No. 2010-00026</b>
<b>v.</b>	)	
	)	
<b>LIFECONNEX TELECOM, LLC</b>	)	
<b>f/k/a Swiftel LLC</b>	)	
	)	
<b>Defendant</b>	)	

**AT&T KENTUCKY’S MOTION TO DISMISS OR SEVER COUNTERCLAIMS**

BellSouth Telecommunications Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky (“AT&T Kentucky”) respectfully moves the Public Service Commission of Kentucky (“Commission”) to dismiss without prejudice the counterclaims filed on or about February 25, 2010, by LifeConnex Telecom, LLC f/k/a Swiftel LLC (“LifeConnex”) in its Answer and Counter-Claims (“Answer/Counterclaims”) or, in the alternative, to sever them for consideration in their own dockets, separate and apart from the claims presented in AT&T Kentucky’s Complaint.

**I. INTRODUCTION**

AT&T Kentucky’s Complaint in this docket is straightforward – it seeks to have LifeConnex pay AT&T Kentucky’s previously rendered bills for

telecommunications services AT&T Kentucky provided to LifeConnex pursuant to the Parties' Interconnection Agreement, but which LifeConnex has not paid. LifeConnex has either failed to dispute the billed amounts, or has submitted disputes that AT&T Kentucky has denied because they are invalid.

In addition to asking that the Commission dismiss or, in the alternative, stay the Complaint as an affirmative defense,<sup>1</sup> LifeConnex has asserted a variety of purported one and two-paragraph "counterclaims" asking the Commission to render sweeping declaratory rulings regarding resale promotional *pricing practices* that have nothing to do with the issues presented in AT&T Kentucky's Complaint: *i.e.*, a failure by LifeConnex to abide by the Parties' Interconnection Agreement and pay AT&T Kentucky for bills previously rendered for services provided under that Agreement. LifeConnex's counterclaims should be dismissed because LifeConnex has not alleged (and cannot allege) that it has disputed any billing addressed in AT&T Kentucky's Complaint on the grounds alleged in its counterclaims; as a result, there is no "live" dispute between LifeConnex and AT&T Kentucky with respect to the issues purportedly presented in LifeConnex's counterclaims. It is not surprising, therefore, that the three counterclaims look nothing like the detailed factual allegations and claims for relief that one would expect to see in a true counterclaim. Instead, they look like statements of policy issues that a party might ask the Commission to address in

---

<sup>1</sup> LifeConnex has not filed a motion to dismiss and/or stay in this docket, but for the reasons stated in AT&T Kentucky's responses to motions to dismiss and/or stay filed in similar cases by Budget Phone in *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky, v. Budget Prepay, Inc. d/b/a Budget Phone*, Case No. 2010-00025, and by dPi in *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. dPi Teleconnect, LLC*, Case No. 2010-00029, on or about February 25, 2010, the Commission should neither dismiss nor stay this case.

an arbitration under Section 251 or 252 of the federal Telecommunications Act of 1996 (the “1996 Act”) or in a generic docket. Clearly, they do not belong in a complaint proceeding, such as this one that addresses a specific complaint for breach of, and past amounts due under, an existing Interconnection Agreement.

In the alternative, if the Commission does not dismiss LifeConnex's counterclaims outright, it should at a minimum sever them for consideration in separate dockets or at least separate hearings, because the issues raised in the counterclaims have nothing to do with the matters at issue in AT&T Kentucky's Complaint. If included in this proceeding, the counterclaims will only serve to confuse and improperly delay resolution of AT&T Kentucky's claims in this case.

---

## **II. THE COMMISSION SHOULD DISMISS LIFECONNEX'S COUNTERCLAIMS**

AT&T Kentucky seeks dismissal of LifeConnex's counterclaims referred to herein as the “line connection charge waiver” counterclaim, the “bundled offering” counterclaim, and the “new methodology” counterclaim. In this section, AT&T Kentucky describes each of these three counterclaims and explains why each should be dismissed without prejudice.

### **A. The “Line Connection Charge Waiver” Counterclaim.**

Some of AT&T Kentucky's retail promotional offerings waive the line connection charge for qualifying end users. When a reseller, such as LifeConnex, buys the telecommunications services associated with those offerings, AT&T Kentucky initially bills the reseller the retail charge for the line connection less the applicable wholesale discount. For example, assuming a retail line connection charge of \$40 and applying the wholesale discount of

16.79% established by this Commission, AT&T Kentucky initially bills the reseller, and expects the reseller to pay (absent a promotion allowing otherwise) \$33.28.

With the promotion, however, if the reseller timely submits a request for a promotional credit and otherwise satisfies the qualifications of a specific retail promotional offering, AT&T Kentucky credits the reseller's bill in the same amount it initially billed, and would have expected the reseller to pay but for the promotion, for the line connection charge. In the example above, due to the promotion, AT&T Kentucky would credit the reseller's bill in the amount of \$33.28. As a result, the reseller, like the qualifying retail customer, would pay \$0 for the line connection.

LifeConnex, however, filed a two-paragraph counterclaim claiming that it is entitled to more.<sup>2</sup> To use the example above, LifeConnex contends that, instead of crediting the reseller's bill in the amount of the line connection charge of \$33.28 (so the qualifying reseller, like the qualifying retail customer, pays nothing for the line connection), AT&T Kentucky should credit the reseller's bill in the amount of the full line connection charge of \$40 (so AT&T Kentucky *pays* the reseller \$6.72 for a service the reseller has ordered from AT&T Kentucky).

Setting aside the obvious absurdity of LifeConnex's position, to AT&T Kentucky's knowledge, LifeConnex has not disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set forth in the "line connection charge waiver" counterclaim, and LifeConnex does not allege that it has done so.

---

<sup>2</sup> See LifeConnex Answer/Counterclaims at 10-11, ¶ 20.

**B. The “Bundled Offering” Counterclaim.**

In addition to the “line connection charge waiver” counterclaim, LifeConnex filed a “bundled offering” counterclaim that alleges, in its entirety:

AT&T offers discounted telephone service bundled with other, non-regulated services such as cable television and internet services. AT&T, however, refuses to offer its telephone services for resale at a comparable discounted rate. Defendant asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T “proves to the state commission that the restriction is reasonable and nondiscriminatory.” 47 C.F.R. § 51.613(b).<sup>3</sup>

To AT&T Kentucky’s knowledge, LifeConnex has not disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set forth in the “bundled offering” counterclaim, and LifeConnex does not allege that it has done so.

---

**C. The “New Methodology” Counterclaim.**

LifeConnex also asserts a “new methodology” counterclaim that alleges, in its entirety:

AT&T has recently informed Defendant that AT&T intends to reduce from approximately \$40 to \$5.92 the amount paid to resellers under AT&T’s “\$50 cash back” rebate offer. Defendant asks the Commission to declare that AT&T cannot impose this condition on resale unless and until AT&T “proves to the state commission that the restriction is reasonable and nondiscriminatory.” 47 C.F.R. §51.613(b).<sup>4</sup>

AT&T Kentucky did issue Accessible Letter No. CLECSE09-100 dated July 1, 2009, attached hereto as **Exhibit A**, announcing that AT&T Kentucky planned to change, effective September 1, 2009, the manner in which it calculated the credits available to CLECs that purchase certain retail cash-back promotional offers that are available for resale. AT&T Kentucky believes the first sentence of

---

<sup>3</sup> See LifeConnex Answer at 11, ¶ 21.

<sup>4</sup> *Id.*, ¶ 22.

LifeConnex's one-paragraph counterclaim refers to Accessible Letter No. CLECSE09-107, also issued by AT&T Kentucky on July 1, 2009, a copy of which is attached hereto as **Exhibit B**.

To AT&T Kentucky's knowledge, LifeConnex has not disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set forth in the "new methodology" counterclaim, and LifeConnex does not allege that it has done so. This is hardly surprising, because AT&T Kentucky emphasizes on the first page of its Complaint that "***AT&T Kentucky is not seeking any amounts billed under this new methodology in this docket.***"<sup>5</sup> Moreover, AT&T Kentucky is not currently applying the new methodology to any CLEC, including LifeConnex, and AT&T Kentucky commits that it will not bill any reseller, including without limitation LifeConnex, in the future for any amounts calculated under this new methodology without providing the requisite notice in the form of an Accessible Letter.

As noted above, AT&T Kentucky is unaware of LifeConnex having disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set forth in any of the three counterclaims asserted by LifeConnex, and LifeConnex has not alleged that it has done so.<sup>6</sup> Accordingly, LifeConnex has failed to allege

---

<sup>5</sup> AT&T Kentucky Complaint at 1, fn. 1 (emphasis in original).

<sup>6</sup> Each of the three counterclaims does suggest (without explicitly alleging) that AT&T Kentucky has somehow engaged in a "restriction" on resale and asks this Commission to declare that AT&T Kentucky may not "impose" the restriction without first proving to the Commission that the restriction is reasonable and nondiscriminatory under the 1996 Act. See, LifeConnex Answer/Counterclaims at 11, ¶¶ 20-22. As the discussion of each of the three counterclaims above makes clear, each counterclaim involves the *pricing* of telecommunications services that AT&T Kentucky *does make available for resale*, and not any attempt by AT&T Kentucky to restrict or limit the resale of telecommunications services. The Commission, however, need not – and should not – address that issue in this docket because, as explained above, LifeConnex has not alleged that it has disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set

any cause of action for which relief can be granted with regard to amounts AT&T Kentucky has billed LifeConnex. See, e.g., *Commonwealth ex rel. Watkins v. Winchester Water Works Co.*, 303 Ky. 420, 197 S.W.2d 771 (Ky. 1946) (a declaratory judgment action is not to “decide speculative rights or duties which may or may not arise in the future, but only rights and duties about which there is a present actual controversy presented by adversary parties.”)

The issues LifeConnex improperly seeks to inject into this proceeding in its counterclaims could be presented for resolution in a more appropriate proceeding (for instance, a generic docket to consider policy issues that apply industry-wide, or an arbitration under Section 252 of the 1996 Act). This docket is not the appropriate forum to address those broad policy issues,<sup>7</sup> especially since any delay in resolving AT&T Kentucky’s Complaint will only harm AT&T Kentucky and benefit LifeConnex. AT&T Kentucky, therefore, respectfully requests that the Commission dismiss LifeConnex’s three counterclaims without prejudice to LifeConnex’s right to raise the issues in an appropriate proceeding.

**III. IF THE COMMISSION DOES NOT DISMISS THE COUNTERCLAIMS ADDRESSED ABOVE, IT SHOULD AT A MINIMUM SEVER THEM FROM THIS DOCKET.**

If the Commission permits any of the disputed counterclaims to go forward as pleaded, it should do so for the sole purpose of deciding those issues on a prospective basis in one or more proceedings or hearings separate and apart

---

forth in any of its counterclaims and, therefore, LifeConnex fails to state a claim upon which relief can be granted.

<sup>7</sup> AT&T Kentucky expounds on this further in its responses to motions to dismiss and/or stay filed in similar cases by Budget Phone in *BellSouth Telecommunications, Inc. d/b/a AT&T SouthEast d/b/a AT&T Kentucky v. Budget Prepay, Inc. d/b/a Budget Phone*, Case No. 2010-00025 and dPi in *BellSouth Telecommunications, Inc. d/b/a AT&T SouthEast d/b/a AT&T Kentucky v. dPi Teleconnect, LLC*, Case No. 2010-00029.

from that held in this docket (because, as explained above, AT&T Kentucky is unaware of LifeConnex having disputed any amount AT&T Kentucky seeks in its Complaint on the grounds set forth in the disputed counterclaims, and LifeConnex has not alleged that it has done so). LifeConnex's counterclaims have nothing to do with the issues raised in AT&T Kentucky's Complaint and will only serve to confuse and delay the issues herein. Based on the sparse pleading of these counterclaims (literally one or two paragraphs each), it appears LifeConnex may have interposed these unrelated "counterclaims" for the sole – and improper – purpose of delay and complication of an otherwise straightforward case. The Commission should not permit this.

---

#### IV. CONCLUSION

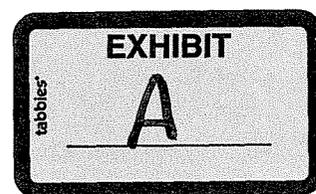
For the reasons set forth above, the disputed counterclaims should be dismissed without prejudice or, in the alternative, severed from this proceeding.

Respectfully submitted,



Mary K. Keyer  
601 W. Chestnut Street, Room 407  
Louisville, Kentucky 40203  
(502) 582-8219

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



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-100**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Resale of Cash-Back Promotions**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee**

Issuing AT&T ILECS: **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 (collectively referred to, for purposes of this Accessible Letter, as "AT&T Southeast Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

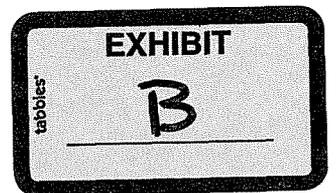
AT&T Southeast Region is sending this letter to provide notice that it will change the manner in which it calculates the credits available to CLECs that purchase certain retail cash-back promotional offers (including but not limited to promotional offers involving checks, coupons, and other similar items) that are available for resale.

The change will be implemented initially for residential acquisition cash-back promotion offers requested on or after September 1, 2009, in all AT&T ILEC states, regardless of whether the underlying promotion is new or existing.

Details regarding the specific resale credits available for applicable promotions will be communicated via separate Accessible Letters. The formulae AT&T Southeast Region will use to calculate these credits is available in the Resale Product section of the CLEC Handbook on CLEC Online at:

<https://clec.att.com/clec/hb/index.cfm>

AT&T Southeast Region reserves the right to make any modifications to or to cancel the above information prior to the proposed effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter. Should the information be canceled, AT&T Southeast Region will send additional notification at the time of cancellation. AT&T Southeast Region will incur no liability to the CLECs if the above mentioned information and/or approach is modified or discontinued for any reason.



Accessible

Date: **July 1, 2009**

Number: **CLECSE09-107**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Win-back Cash Back Promotion - KY**

Related Letters: **CLECSE09-100**

Attachment: **NA**

States Impacted: **Kentucky**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

Effective September 1, 2009, Competitive Acquisition Customers who purchase Complete Choice® Basic or Enhanced will receive a one-time cashback amount of \$5.92 using the methodology announced in **CLECSE09-100**, dated July 1, 2009.

AT&T Kentucky reserves the right to modify or cancel the above information. Should any such action be taken, it will be reflected in a subsequent letter to CLECs. AT&T Kentucky will incur no liability for the foregoing.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

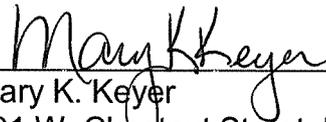
In the Matter of: )  
)  
BELLSOUTH TELECOMMUNICATIONS, INC.)  
d/b/a AT&T SOUTHEAST )  
d/b/a AT&T KENTUCKY )  
)  
Complainant )  
)  
v. ) Case No. 2010-00026  
)  
LIFECONNEX TELECOM, LLC )  
f/k/a SWIFTEL LLC )  
)  
Defendant )

**AT&T KENTUCKY'S REPLY TO RESPONSE TO MOTION TO CONSOLIDATE**

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky ("AT&T Kentucky") for its reply to the Response to Motion to Consolidate filed by Lifeconnex Telecom, LLC, f/k/a Swiftel LLC, on or about February 25, 2010, incorporates its arguments made in its Response to Motion to Dismiss and/or Stay and its Reply to Response to Motion for Consolidation filed in similar cases by dPi Teleconnect, LLC in *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky v. dPi Teleconnect, LLC*, Case No. 2010-00029, and by Budget Prepay, Inc. d/b/a Budget Phone in *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Kentucky, v. Budget Prepay, Inc. d/b/a Budget Phone*, Case No. 2010-00025.

The fact that the same arguments are being made in this case and in the three other cases that AT&T Kentucky has requested be consolidated (Case Nos. 2010-00023, 00025, and 00029) further support consolidation as an efficient means of handling these four cases.

Respectfully submitted this 9<sup>th</sup> day of April, 2010.



Mary K. Keyer  
601 W. Chestnut Street, Room 407  
Louisville, Kentucky 40203  
(502) 582-8219

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

799493