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July 12, 2010

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**PUBLIC SERVICE
COMMISSION**

VIA COURIER

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

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 ten (10) copies of AT&T Kentucky's Response to Petition of LifeConnex Telecom, LLC f/k/a Swiftel, LLC.

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

Sincerely,


Mary K. Keyer

Enclosures

cc: Parties of Record

828160

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 RESPONSE TO PETITION

BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”) respectfully submits its response to the unverified Petition Concerning Implementation of Its Interconnection Agreement with AT&T and Emergency Motion to Prevent Suspension of Service (“Petition”) filed by LifeConnex Telecom, Inc. f/k/a Swiftel (“LifeConnex”). In this Response, AT&T Kentucky first explains why the Kentucky Public Service Commission (“the Commission”) should deny the Petition and Motion. AT&T Kentucky then responds to the specific allegations of the Petition and Motion.

I. INTRODUCTION AND ARGUMENT

By Order dated September 9, 2008, the Commission approved a negotiated interconnection agreement (“ICA”) between LifeConnex and AT&T Kentucky.¹ In that Commission-approved and binding ICA, LifeConnex expressly agreed to “make

¹ See letter, *In re: Interconnection Agreement Negotiated by BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky and Swiftel*, PSC Reference No. 01000 (Amendments 01 and 02) (September 9, 2008).

payment to [AT&T Kentucky] for all services billed ***including disputed amounts,***” and it agreed to make those payments “on or before the next bill date.”² On June 18, 2010, AT&T Kentucky sent LifeConnex a letter and attachments that, among other things: set forth LifeConnex’s substantial past due balance; quoted the operative language of the Parties’ ICA; noted that from December 15, 2009, to May 20, 2010, LifeConnex paid AT&T Kentucky just a meager percentage of the net amount owed (the billed amounts less credits AT&T Kentucky applied for promotions and other adjustments) during that same time period; and demanded payment of all past due charges on or before July 20, 2010.³

In its Petition, LifeConnex acknowledges the relevance of the terms of the Parties’ ICA – including the provision requiring LifeConnex to make payment for all services billed, including disputed amounts -- and AT&T’s claim for a past-due amount in excess of \$1.8 million.⁴ LifeConnex nevertheless alleges it is entitled to offset perhaps even more than this past due amount (presumably in promotional credits that LifeConnex has requested and AT&T Kentucky has denied),⁵ and AT&T Kentucky denies that allegation. Even if that allegation were true, however, it does not excuse LifeConnex’s failure to pay the full amount billed as required by the plain language of its ICA.

And even now, LifeConnex has not offered to pay the balance due to AT&T Kentucky – or any portion of it. Instead, LifeConnex asks the Commission to allow it to

² See ICA, Attachment 7 (attached as **Exhibit A** hereto), pp 6-7, §§1.4 and 1.4.1 (emphasis added).

³ A redacted copy of that letter and its attachments are attached as Exhibits 1, 2 and 3 to the affidavit of Gert Andersen, attached hereto as **Exhibit B**. Unredacted versions of those documents were submitted to the Commission on June 22, 2010, along with a Motion for Confidentiality.

⁴ Petition at 6, ¶ 17.

⁵ *Id.*

continue ordering services from AT&T Kentucky and to continue violating its ICA by unilaterally withholding amounts billed by and due to AT&T Kentucky, effectively paying AT&T Kentucky nothing for those services.⁶ The delay requested by LifeConnex, of course, is nothing more than a suggestion that AT&T Kentucky's paying retail customers should continue subsidizing its non-paying wholesale customers like LifeConnex. In these trying economic times, that is simply too much to ask. Accordingly, for the reasons set forth below, AT&T Kentucky respectfully asks that the Commission deny LifeConnex's Petition.

A. The unambiguous language of the ICA requires LifeConnex to pay all amounts billed, including disputed charges.

The Parties' ICA is one that both Parties negotiated and agreed to and the one that this Commission approved. That same ICA requires LifeConnex to pay all amounts it is billed, even if it disputes those amounts:

Payment of **all** charges will be the responsibility of [LifeConnex].⁷

[LifeConnex] shall make payment to [AT&T Kentucky] for all services billed **including disputed amounts**.⁸

Payment for services provided by [AT&T Kentucky], **including disputed charges**, is due on or before the next bill date.⁹

It is well-settled law in Kentucky that an unambiguous written contract must be strictly enforced according to the plain meaning of its express terms and without resort to extrinsic evidence. *Allen v. Lawyers Mut. Ins. Co. of Kentucky*, 216 S.W.3d 657, 659 (Ky.App. 2007). The Commission-approved ICA is a lawful contract, and its language is

⁶ *Id.* at 3, ¶ 7.

⁷ ICA, Attachment 7, p. 6, § 1.4 (emphasis added).

⁸ *Id.*, pp. 6-7, § 1.4 (emphasis added).

⁹ *Id.*, p. 7, § 1.4.1 (emphasis added).

unambiguous. The Commission, therefore, is required by law to enforce the ICA as written. Accordingly, the Commission should deny LifeConnex's Petition.

B. The Joint Motion on Procedural Issues in Case No. 2010-00026 does not relieve LifeConnex of its contractual obligation to pay all amounts, including disputed charges.

LifeConnex correctly notes that the Joint Motion on Procedural Issues in Case Nos. 2010-00023, 2010-00025, 2010-00026 and 2010-00029 ("Joint Motion") provides, in part, that "[o]nce 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."¹⁰ LifeConnex then contends that AT&T Kentucky's lawful demand for payment of past-due amounts is contrary to that Joint Motion.¹¹ As explained below, however, it is not.

In plain language that LifeConnex does not address in its Petition, the Joint Motion goes on to provide:

As stated below, any individual Party may also seek to pursue in its respective docket, either concurrent with or following the Consolidated Phase, any issue, claim, or counterclaim, including related discovery, that is not addressed in the Consolidated Phase.

Nothing in this Joint Motion is intended, or shall be construed, as a waiver of any Party's right to amend and supplement its claims, counterclaims, or other pleadings, or to pursue any issue, claim, or counterclaim that is not addressed in the Consolidated Phase in each Party's respective docket, either concurrent with or following the Consolidated Phase, or to seek such other relief as a change in circumstances may warrant.

¹⁰ See Petition at 3, ¶ 5, and 4, ¶ 7; Joint Motion at 2-3.

¹¹ See Petition at 6, ¶ 17.

Clearly, the Joint Motion does not prevent AT&T Kentucky from pursuing “any issue” or “claim” that is not addressed in the Consolidated Phase. And while LifeConnex asserts that “the primary issues in dispute between the Parties are already identified and pending” in Case No. 2010-00026,¹² that assertion is simply wrong.

The issues in Case No. 2010-00026 involve how much (if any) credit LifeConnex is entitled to receive when it resells services that are the subject of certain promotional offers. LifeConnex’s request for emergency relief in this case has nothing to do with the merits of those issues. Rather, the separate and distinct issue addressed by LifeConnex’s Petition is who bears the risk of non-payment while those disputed issues are resolved? That question clearly is not being addressed in Case No. 2010-00026. As explained above, however, the Commission-approved ICA definitively addresses (and resolves) that issue by requiring LifeConnex to pay all amounts AT&T Kentucky bills, even if LifeConnex disputes those amounts.

C. AT&T Kentucky has not waived its right to demand payment of all amounts, including amounts LifeConnex disputes.

LifeConnex alleges that it “has been deducting from its bill claims for promotional credits and disputed charges – without any objection from AT&T – since October, 2007.”¹³ It then alleges that AT&T Kentucky has “acquiesced” to LifeConnex’s “practice” of not paying its bills.¹⁴ In essence, LifeConnex argues that by not having demanded payment of all charges due in the past, AT&T Kentucky has waived its right to do so now.

¹² Petition at 3, ¶ 7.

¹³ *Id.* at 4, ¶ 8.

¹⁴ *Id.*

Once again, LifeConnex's argument is refuted by the unambiguous language of the Parties' negotiated and Commission-approved ICA:

A failure or delay of either party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.¹⁵

Even if AT&T Kentucky has not insisted that LifeConnex pay all amounts (including disputed amounts) in the past, it clearly has the right "thereafter (*i.e.*, now) to insist upon the performance of any and all provisions" of the ICA.¹⁶ AT&T Kentucky has exercised its lawful right to insist that LifeConnex pay all amounts it has been billed, and if it does not do so, AT&T Kentucky has the right to suspend, disconnect, and terminate LifeConnex's service as allowed by the ICA.¹⁷

D. LifeConnex has not demonstrated, and cannot demonstrate, that it is entitled to the extraordinary injunctive relief it seeks.

The "emergency relief" LifeConnex seeks is an order requiring AT&T Kentucky "to take no action to suspend or otherwise interfere with LifeConnex's service to its customers"¹⁸ That relief is identical to an injunction, an extraordinary form of relief. *See Maupin v. Stansbury*, 575 S.W. 2d 695, 697 (Ky. App. 1978) ("the injunction is an extraordinary remedy"). Under Kentucky law a party seeking an injunction must satisfy a demanding test that requires the denial of injunctive relief unless (1) the petitioner presents "a substantial question" on the underlying merits of the case, *i.e.*, that there is a substantial possibility that the petitioner will ultimately prevail; (2) the petitioner's

¹⁵ ICA, General Terms and Conditions (attached hereto as **Exhibit C**), p. 15, § 17.

¹⁶ *Id.*

¹⁷ ICA, Attachment 7, pp. 7-10, §§ 1.5 to 1.6.

¹⁸ Petition at 7, ¶ 21.

remedy will be irreparably impaired absent the extraordinary relief; and (3) an injunction will not be inequitable, *i.e.*, will not unduly harm other parties or disserve the public.

Price v. Paintsville Tourism Com'n, 261 S.W.3d 482, 484 (Ky. 2008); see also Sturgeon Mining Co. v. Whymore Coal Co., Inc., 892 S.W.2d 591, 592 (Ky.1995) (“for a temporary injunction to be granted, it must be ‘clearly shown ... that the movant ... will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action.’”).

LifeConnex cannot meet this test. In light of the plain language of the ICA discussed above, for example, LifeConnex cannot prove that it has a right to refuse to pay its bills or that it has a substantial likelihood of success on the merits of that position. Further, if LifeConnex has the money to pay its bills, as it committed to do in the ICA, it will suffer no harm whatsoever – if its disputes are invalid, it merely will have paid amounts it was obligated to pay (and there is no “harm” in that), and if its disputes are valid, there is nothing to suggest that AT&T Kentucky cannot provide appropriate bill credits or payments in accordance with the Commission’s rulings in the Consolidated Phase of Case No. 2010-00026. In contrast, if LifeConnex does not have the money to pay its bills, then the harm of requiring AT&T Kentucky to provide even more service for which it will not be paid clearly outweighs any purported “harm” to LifeConnex.¹⁹ And while LifeConnex claims that its end users would no longer receive service if AT&T Kentucky disconnects or terminates LifeConnex for nonpayment, that claim goes too far. Although those end users may no longer receive service from LifeConnex, there

¹⁹ As noted above, this harm extends beyond AT&T Kentucky to its paying retail customers, who effectively would be subsidizing non-paying wholesale customers like LifeConnex.

are a number of other carriers in Kentucky, including other prepay resellers, from whom LifeConnex's current end users can receive service.

II. RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraphs 1 through 8 of the Petition and the accompanying footnotes advocate LifeConnex's legal positions and require no response from AT&T Kentucky. To the extent that a response is required, however, AT&T Kentucky denies those allegations to the extent they are inconsistent with Section I of this Response and to the extent that they are not expressly admitted herein.

2. AT&T Kentucky admits the allegations in Paragraphs 9, 10, and 11 of the Petition.

3. AT&T Kentucky admits that the Commission has jurisdiction over the matters set forth in the Petition and denies the remaining allegations in Paragraph 12 of the Petition to the extent that they are inconsistent with that admission.

4. AT&T Kentucky admits that LifeConnex offers prepaid local telephone service to residential customers in Kentucky and that it purchases certain services from AT&T Kentucky for resale pursuant to the Parties' ICA, and lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 13 of the Petition and, therefore, denies those allegations.

5. AT&T Kentucky admits that it has the duty to offer for resale at wholesale rates any telecommunications service that it provides at retail to subscribers who are not telecommunications carriers as required by 47 U.S.C. §251(c)(4) and denies the remaining allegations in Paragraph 14 of the Petition to the extent they are inconsistent with this admission.

6. AT&T Kentucky admits that certain of its representatives have participated in meetings and/or calls with representatives of Lost Key and/or LifeConnex and that, at times, promotional credit and billing disputes have been discussed during those meetings and/or calls, and denies the remainder of the allegations in Paragraph 15 of the Petition.

7. AT&T Kentucky denies the allegations in Paragraph 16 of the Petition.

8. AT&T Kentucky states that the Notice of Commencement of Treatment Pursuant to Current Interconnection Agreement, and the Parties' ICA, and the Joint Motion on Procedural Issues speak for themselves, and denies the remainder of the allegations in Paragraph 17 of the Petition.

9. AT&T Kentucky admits the allegations in Paragraph 18 of the Petition, but denies that this constitutes a waiver of its right to insist upon the performance of any and all of the provisions of the ICA.

10. AT&T Kentucky denies the allegations in Paragraph 19 of the Petition.

11. AT&T Kentucky states that the Parties' ICA speaks for itself and denies the remainder of the allegations in Paragraph 20 of the Petition.

12. AT&T Kentucky denies that LifeConnex is entitled to the relief sought in Paragraphs 21 and 22 of the Petition.

Respectfully submitted this 12th day of July, 2010.



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EXHIBIT A
(Attachment 7 of the Interconnection Agreement)

Attachment 7

Billing

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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,

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 (60th) 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 B
(Affidavit of Gert Andersen)

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)	

AFFIDAVIT OF GERT ANDERSEN

I, Gert Andersen, of lawful age and being sworn upon my oath, do state as follows:

1. I am a Director – Credit & Collections of AT&T Services, Inc., and have been employed by AT&T Services, Inc. or an affiliated company for 29 years. Among other things, AT&T Services, Inc. provides billing and collection services for its affiliated companies, including BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky (“AT&T Kentucky”). I am authorized to make this Affidavit on behalf of AT&T Kentucky. This Affidavit is based on my personal knowledge and my review of the business records of AT&T Kentucky.

2. On Friday, June 18, 2010, AT&T Kentucky sent a collection letter to LifeConnex Telecom, LLC f/k/a Swiftel, LLC (“LifeConnex”), demanding payment of the past due amounts owed by LifeConnex to AT&T Kentucky on its Kentucky resale

accounts. The document attached hereto as Exhibit 1 is a true and correct copy of the redacted version of the June 18 collection letter. Exhibit 1 was created and maintained by AT&T Kentucky in the normal course of business and is based on the business records of AT&T Kentucky.

3. The document attached hereto as Exhibit 2 is a true and correct copy of the redacted version of a chart, which was prepared at my direction and under my supervision, detailing LifeConnex's billing and payment account history with AT&T Kentucky for the period April 2008 through May 2010. The unredacted version of Exhibit 2 is a true and accurate summary regarding LifeConnex's billing and payment account history with AT&T Kentucky, and was created from the business records of AT&T Kentucky. The unredacted version of Exhibit 2 was sent to LifeConnex as Attachment A to the collection letter that was sent on June 18, 2010.

4. The document attached hereto as Exhibit 3 is a true and correct copy of a redacted version of a chart that I am familiar with which details the number of resale lines that LifeConnex has received by AT&T Kentucky on a month-by-month basis from January 2009 through May 2010. The unredacted version of Exhibit 3 is a true and accurate summary of the number of resale lines LifeConnex has purchased from AT&T Kentucky in the State of Kentucky, and was created from the business records of AT&T Kentucky. The unredacted version of Exhibit 3 was sent to LifeConnex as Attachment B to the collection letter that was sent on June 18, 2010.

5. AT&T Kentucky stands ready to provide unredacted versions of Exhibits 1, 2, and 3 once appropriate protections are in place in this proceeding to protect the confidential nature of the proprietary information contained therein.

FURTHER AFFIANT SAYETH NOT.

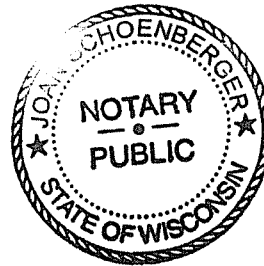
Gert Andersen

Gert Andersen

Sworn to me on 7th of July 2010

Joan Schoenberger
Notary Public

Commission expires 3/3/13





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.

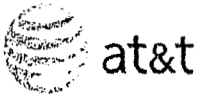
Moreover, Section 1.4.1 of Attachment 7, Billing to the ICA requires payment for services prior to the next bill date, as follows:

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



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,

A handwritten signature in cursive script that reads "Ann Mason".

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	Sep-08 \$	\$	\$	\$	\$	\$	\$
	Oct-08 \$	\$	\$	\$	\$	\$	\$
	Nov-08 \$	\$	\$	\$	\$	\$	\$
	Dec-08 \$	\$	\$	\$	\$	\$	\$
	Jan-09 \$	\$	\$	\$	\$	\$	\$
	Feb-09 \$	\$	\$	\$	\$	\$	\$
	Mar-09 \$	\$	\$	\$	\$	\$	\$
	Apr-09 \$	\$	\$	\$	\$	\$	\$
	May-09 \$	\$	\$	\$	\$	\$	\$
	Jun-09 \$	\$	\$	\$	\$	\$	\$
	Jul-09 \$	\$	\$	\$	\$	\$	\$
	Aug-09 \$	\$	\$	\$	\$	\$	\$
	Sep-09 \$	\$	\$	\$	\$	\$	\$
	Oct-09 \$	\$	\$	\$	\$	\$	\$
	Nov-09 \$	\$	\$	\$	\$	\$	\$
	Dec-09 \$	\$	\$	\$	\$	\$	\$
	Jan-10 \$	\$	\$	\$	\$	\$	\$
	Feb-10 \$	\$	\$	\$	\$	\$	\$
	Mar-10 \$	\$	\$	\$	\$	\$	\$
	Apr-10 \$	\$	\$	\$	\$	\$	\$
	May-10 \$	\$	\$	\$	\$	\$	\$
Totals	9/08 - 5/10	\$	\$	\$	\$	\$	\$
6 Month Totals	12/09 - 5/10	\$	\$	\$	\$	\$	\$

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
																

EDITED

EXHIBIT C
(General Terms and Conditions of ICA)

**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).

Competitive Local Exchange Carrier (CLEC) means a telephone company certificated by the Commission to provide local exchange service within AT&T's franchised area.

Effective Date is defined as the date that the Agreement is effective for purposes of rates, terms and conditions and shall be thirty (30) days after the date of the last signature executing the Agreement. Future amendments for rate changes will also be effective thirty (30) days after the date of the last signature executing the amendment.

FCC means the Federal Communications Commission.

Telecommunications means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications Service means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Telecommunications Act of 1996 (Act) means Public Law 104-104 of the United States Congress effective February 8, 1996. The Act amended the Communications Act of 1934 (47 U.S.C. Section 1 et. seq.).

1 CLEC Certification

- 1.1 Swiftel, LLC agrees to provide AT&T in writing Swiftel, LLC's CLEC certification from the Commission for all states covered by this Agreement except Kentucky prior to AT&T filing this Agreement with the appropriate Commission for approval. Additionally, Swiftel, LLC shall provide to AT&T an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.
- 1.2 To the extent Swiftel, LLC is not certified as a CLEC in each state covered by this Agreement as of the execution hereof, Swiftel, LLC may not purchase services hereunder in that state. Swiftel, LLC will notify AT&T in writing and provide CLEC certification from the Commission when it becomes certified to operate in, as well as an effective certification to do business issued by the secretary of state or equivalent authority for, any other state covered by this Agreement. Upon receipt thereof, AT&T will file this Agreement in that state, and Swiftel, LLC may purchase services pursuant to this Agreement in that state, subject to establishing appropriate accounts in the additional state as described in Attachment 7.
- 1.3 Should Swiftel, LLC's certification in any state be rescinded or otherwise terminated, AT&T may, at its election, suspend or terminate this Agreement immediately and all monies owed on all outstanding invoices for services provided

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in that state shall become due, or AT&T may refuse to provide services hereunder in that state until certification is reinstated in that state, provided such notification is made prior to expiration of the term of this Agreement. Swiftel, LLC shall provide an effective certification to do business issued by the secretary of state or equivalent authority in each state covered by this Agreement.

2 Term of the Agreement

- 2.1 The initial term of this Agreement shall be five (5) years, beginning on the Effective Date and shall apply to the AT&T Southeast Region 9-State in the state of Florida. Notwithstanding any prior agreement of the Parties, the rates, terms and conditions of this Agreement shall not be applied retroactively prior to the Effective Date.
- 2.2 The Parties agree that by no earlier than two hundred seventy (270) days and no later than one hundred eighty (180) days prior to the expiration of the initial term of this Agreement, the Parties shall commence negotiations for a new agreement to be effective beginning on the expiration date of this Agreement (Subsequent Agreement). If as of the expiration of the initial term of this Agreement, a Subsequent Agreement has not been executed by the Parties, then except as set forth in Sections 2.3.1 and 2.3.2 below, this Agreement shall continue on a month-to-month basis while a Subsequent Agreement is being negotiated. The Parties' rights and obligations with respect to this Agreement after expiration of the initial term shall be as set forth in Section 2.3 below.
- 2.3 If, within one hundred thirty-five (135) days of commencing the negotiation referred to in Section 2.2 above, the Parties are unable to negotiate new terms, conditions and prices for a Subsequent Agreement, either Party may petition the Commission to establish appropriate rates, terms and conditions for the Subsequent Agreement pursuant to 47 U.S.C. § 252.
- 2.3.1 Swiftel, LLC may request termination of this Agreement only if it is no longer purchasing services pursuant to this Agreement. Except as set forth in Section 2.3.2 below, notwithstanding the foregoing, in the event that as of the date of expiration of the initial term of this Agreement and conversion of this Agreement to a month-to-month term, the Parties have not entered into a Subsequent Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above, then AT&T may terminate this Agreement upon sixty (60) days notice to Swiftel, LLC. In the event that AT&T terminates this Agreement as provided above, AT&T shall continue to offer services to Swiftel, LLC pursuant to the rates, terms and conditions set forth in AT&T's then current standard interconnection agreement. In the event that AT&T's standard interconnection agreement becomes effective between the Parties, the Parties may continue to negotiate a Subsequent Agreement.
- 2.3.2 Notwithstanding Section 2.2 above, in the event that as of the expiration of the initial term of this Agreement the Parties have not entered into a Subsequent

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Agreement and no arbitration proceeding has been filed in accordance with Section 2.3 above and AT&T is not providing any services under this Agreement as of the date of expiration of the initial term of this Agreement, then this Agreement shall not continue on a month-to-month basis but shall be deemed terminated as of the expiration date hereof.

- 2.4 If, at any time during the term of this Agreement, AT&T is unable to contact Swiftel, LLC pursuant to the Notices provision hereof or any other contact information provided by Swiftel, LLC under this Agreement, and there are no active services being provisioned under this Agreement, then AT&T may, at its discretion, terminate this Agreement, without any liability whatsoever, upon sending of notification to Swiftel, LLC pursuant to the Notices section hereof. Furthermore, if after eighteen (18) months following the Effective Date of this Agreement Swiftel, LLC has no active services pursuant to this Agreement, AT&T may terminate this Agreement, without any liability to AT&T, upon notification to Swiftel, LLC pursuant to the Notices section hereof.
- 2.5 In addition to as otherwise set forth in this Agreement, AT&T reserves the right to suspend access to ordering systems, refuse to process additional or pending applications for service, or terminate service in the event of prohibited, unlawful or improper use of AT&T's facilities or service, abuse of AT&T's facilities or any other material breach of this Agreement, and all monies owed on all outstanding invoices shall become due. In such event, Swiftel, LLC is solely responsible for notifying its customers of any discontinuance of service.
- 3 Nondiscriminatory Access**
- When Swiftel, LLC purchases Telecommunications Services from AT&T pursuant to Attachment 1 of this Agreement for the purposes of resale to customers, such services shall be equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that AT&T provides to others, including its customers. To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element provided by AT&T to Swiftel, LLC shall be at least equal to that which AT&T provides to itself and shall be the same for all Telecommunications carriers requesting access to that Network Element. The quality of the interconnection between the network of AT&T and the network of Swiftel, LLC shall be at a level that is equal to that which AT&T provides itself, a subsidiary, an Affiliate, or any other party. The interconnection facilities shall be designed to meet the same technical criteria and service standards that are used within AT&T's network and shall extend to a consideration of service quality as perceived by AT&T's customers and service quality as perceived by Swiftel, LLC.
- 4 Court Ordered Requests for Call Detail Records and Other Subscriber Information**
- 4.1 Subpoenas Directed to AT&T. Where AT&T provides resold services for Swiftel, LLC, AT&T shall respond to subpoenas and court ordered requests delivered

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directly to AT&T for the purpose of providing call detail records when the targeted telephone numbers belong to Swiftel, LLC customers. Billing for such requests will be generated by AT&T and directed to the law enforcement agency initiating the request. AT&T shall maintain such information for Swiftel, LLC customers for the same length of time it maintains such information for its own customers.

4.2 Subpoenas Directed to Swiftel, LLC. Where AT&T is providing resold services to Swiftel, LLC, then Swiftel, LLC agrees that in those cases where Swiftel, LLC receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Swiftel, LLC customers, and where Swiftel, LLC does not have the requested information, Swiftel, LLC will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to AT&T for handling in accordance with Section 4.1 above.

4.3 In all other instances, where either Party receives a request for information involving the other Party's customer, the Party receiving the request will advise the law enforcement agency initiating the request to redirect such request to the other Party.

5 **Liability and Indemnification**

5.1 Swiftel, LLC Liability. In the event that Swiftel, LLC consists of two (2) or more separate entities as set forth in this Agreement and/or any Amendments hereto, or any third party places orders under this Agreement using Swiftel, LLC's company codes or identifiers, all such entities shall be jointly and severally liable for the obligations of Swiftel, LLC under this Agreement.

5.2 Liability for Acts or Omissions of Third Parties. AT&T shall not be liable to Swiftel, LLC for any act or omission of another entity providing any services to Swiftel, LLC.

5.3 Except for any indemnification obligations of the Parties hereunder, each Party's liability to the other for any loss, cost, claim, injury, liability or expense, including reasonable attorneys' fees relating to or arising out of any cause whatsoever, whether based in contract, negligence or other tort, strict liability or otherwise, relating to the performance of this Agreement, shall not exceed a credit for the actual cost of the services or functions not performed or improperly performed. Any amounts paid to Swiftel, LLC pursuant to Attachment 9 hereof shall be credited against any damages otherwise payable to Swiftel, LLC pursuant to this Agreement.

5.3.1 Limitations in Tariffs. A Party may, in its sole discretion, provide in its tariffs and contracts with its customers and third parties that relate to any service, product or function provided or contemplated under this Agreement, that to the maximum extent permitted by Applicable Law, such Party shall not be liable to the customer or third party for (i) any loss relating to or arising out of this Agreement, whether

in contract, tort or otherwise, that exceeds the amount such Party would have charged that applicable person for the service, product or function that gave rise to such loss and (ii) consequential damages. To the extent that a Party elects not to place in its tariffs or contracts such limitations of liability, and the other Party incurs a loss as a result thereof, such Party shall, except to the extent caused by the other Party's gross negligence or willful misconduct, indemnify and reimburse the other Party for that portion of the loss that would have been limited had the first Party included in its tariffs and contracts the limitations of liability that such other Party included in its own tariffs at the time of such loss.

- 5.3.2 Neither AT&T nor Swiftel, LLC shall be liable for damages to the other Party's terminal location, equipment or customer premises resulting from the furnishing of a service, including, but not limited to, the installation and removal of equipment or associated wiring, except to the extent caused by a Party's negligence or willful misconduct or by a Party's failure to ground properly a local loop after disconnection.
- 5.3.3 Under no circumstance shall a Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or accessories attached thereto, delay, error, or loss of data. In connection with this limitation of liability, each Party recognizes that the other Party may, from time to time, provide advice, make recommendations, or supply other analyses related to the services or facilities described in this Agreement, and, while each Party shall use diligent efforts in this regard, the Parties acknowledge and agree that this limitation of liability shall apply to provision of such advice, recommendations, and analyses.
- 5.3.4 To the extent any specific provision of this Agreement purports to impose liability, or limitation of liability, on either Party different from or in conflict with the liability or limitation of liability set forth in this Section, then with respect to any facts or circumstances covered by such specific provisions, the liability or limitation of liability contained in such specific provision shall apply.
- 5.4 Indemnification for Certain Claims. Except as otherwise set forth in this Agreement and except to the extent caused by the indemnified Party's gross negligence or willful misconduct, the Party providing services hereunder, its Affiliates and its parent company, shall be indemnified, defended and held harmless by the Party receiving services hereunder against any claim, loss or damage arising from the receiving Party's use of the services provided under this Agreement pertaining to (1) claims for libel, slander or invasion of privacy arising from the content of the receiving Party's own communications, or (2) any claim, loss or damage claimed by any third party (including, but not limited to, a customer of the Party receiving services) arising from the third party's use or reliance on and arising from the Party receiving services use or reliance on the providing Party's services, actions, duties, or obligations arising out of this Agreement.

5.5 **Disclaimer.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES, OR FACILITIES PROVIDED UNDER THIS AGREEMENT. THE PARTIES DISCLAIM, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

6 **Intellectual Property Rights and Indemnification**

6.1 **No License.** Except as expressly set forth in Section 6.2 below, no patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. The Parties are strictly prohibited from any use, including but not limited to, in the selling, marketing, promoting or advertising of telecommunications services, of any name, service mark, logo or trademark (collectively, the "Marks") of the other Party. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion between its own service and the service of the other Party.

6.2 **Ownership of Intellectual Property.** Any intellectual property that originates from or is developed by a Party shall remain the exclusive property of that Party. Except for a limited, non-assignable, non-exclusive, non-transferable license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right, now or hereafter owned, controlled or licensable by a Party, is granted to the other Party. Neither shall it be implied nor arise by estoppel. Any trademark, copyright or other proprietary notices appearing in association with the use of any facilities or equipment (including software) shall remain on the documentation, material, product, service, equipment or software. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third Parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement.

6.3 **Intellectual Property Remedies**

6.3.1 **Indemnification.** The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of

such service in the manner contemplated under this Agreement and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 5 above.

6.3.2 **Claim of Infringement**

6.3.2.1 In the event that use of any facilities or equipment (including software), becomes, or in the reasonable judgment of the Party who owns the affected network is likely to become, the subject of a claim, action, suit, or proceeding based on intellectual property infringement, then said Party, promptly and at its sole expense and sole option, but subject to the limitations of liability set forth below, shall:

6.3.2.2 modify or replace the applicable facilities or equipment (including software) while maintaining form and function, or

6.3.2.3 obtain a license sufficient to allow such use to continue.

6.3.2.4 In the event Sections 6.3.2.2 or 6.3.2.3 above are commercially unreasonable, then said Party may terminate, upon reasonable notice, this contract with respect to use of, or services provided through use of, the affected facilities or equipment (including software), but solely to the extent required to avoid the infringement claim.

6.3.3 **Exception to Obligations.** Neither Party's obligations under this Section shall apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor, provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

6.3.4 **Exclusive Remedy.** The foregoing shall constitute the Parties' sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

6.3.5 **Dispute Resolution.** Any claim arising under Sections 6.1 and 6.2 above shall be excluded from the dispute resolution procedures set forth in Section 8 below and shall be brought in a court of competent jurisdiction.

7 **Proprietary and Confidential Information**

7.1 **Proprietary and Confidential Information.** It may be necessary for AT&T and Swiftel, LLC, each as the "Discloser," to provide to the other Party, as "Recipient," certain proprietary and confidential information (including trade secret information) including but not limited to technical, financial, marketing, staffing

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and business plans and information, strategic information, proposals, request for proposals, specifications, drawings, maps, prices, costs, costing methodologies, procedures, processes, business systems, software programs, techniques, customer account data, call detail records and like information (collectively the "Information"). All such Information conveyed in writing or other tangible form shall be clearly marked with a confidential or proprietary legend. Information conveyed orally by the Discloser to Recipient shall be designated as proprietary and confidential at the time of such oral conveyance, shall be reduced to writing by the Discloser within forty-five (45) days thereafter, and shall be clearly marked with a confidential or proprietary legend.

- 7.2 Use and Protection of Information. Recipient agrees to protect such Information of the Discloser provided to Recipient from whatever source from distribution, disclosure or dissemination to anyone except employees consultants, contractors and agents of Recipient or its Affiliates with a need to know such Information solely in conjunction with Recipient's analysis of the Information and for no other purpose except as authorized herein or as otherwise authorized in writing by the Discloser. Recipients may make tangible or electronic copies, notes, summaries or extracts of Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original. Information remains at all times the property of Discloser. Upon Discloser's request, all or any requested portion of the Information (including, but not limited to, tangible and electronic copies, notes, summaries or extracts of any Information) will be promptly returned to Discloser or destroyed, and Recipient will provide Discloser with written certification stating that such information has been returned or destroyed.
- 7.3 Exceptions
- 7.3.1 Recipient will not have an obligation to protect any portion of the Information which:
- 7.3.2 (a) is made publicly available by the Discloser or lawfully by a nonparty to this Agreement; (b) is lawfully obtained by Recipient from any source other than Discloser; (c) is previously known to Recipient without an obligation to keep it confidential; or (d) is released from the terms of this Agreement by Discloser upon written notice to Recipient.
- 7.4 Recipient agrees to use the Information solely for the purposes of negotiations pursuant to 47 U.S.C. § 251 or in performing its obligations under this Agreement and for no other entity or purpose, except as may be otherwise agreed to in writing by the Parties. Nothing herein shall prohibit Recipient from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.

- 7.5 Recipient agrees not to publish or use the Information for any advertising, sales or marketing promotions, press releases, or publicity matters that refer either directly or indirectly to the Information or to the Discloser or any of its affiliated companies.
- 7.6 The disclosure of Information neither grants nor implies any license to the Recipient under any trademark, patent, copyright, application or other intellectual property right that is now or may hereafter be owned by the Discloser.
- 7.7 Survival of Confidentiality Obligations. The Parties' rights and obligations under this Section 7 shall survive and continue in effect until two (2) years after the expiration or termination date of this Agreement with regard to all Information exchanged during the term of this Agreement. Thereafter, the Parties' rights and obligations hereunder survive and continue in effect with respect to any Information that is a trade secret under applicable law.

8 Resolution of Disputes

Except as otherwise stated in this Agreement, if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, the aggrieved Party, if it elects to pursue resolution of the dispute, shall petition the Commission for a resolution of the dispute. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

9 Taxes

- 9.1 Definition. For purposes of this Section, the terms "taxes" and "fees" shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments therefor, excluding any taxes levied on income.
- 9.2 Taxes and Fees Imposed Directly On Either Providing Party or Purchasing Party
- 9.2.1 Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, shall be borne and paid by the providing Party.
- 9.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.

- 9.3 Taxes and Fees Imposed on Purchasing Party But Collected And Remitted By Providing Party
- 9.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 9.3.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 9.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not applicable, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be applicable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.
- 9.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 9.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorney fees) with

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respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

- 9.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.
- 9.4 Taxes and Fees Imposed on Providing Party But Passed On To Purchasing Party
- 9.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, shall be borne by the purchasing Party.
- 9.4.2 To the extent permitted by applicable law, any such taxes and/or fees shall be shown on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 9.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application of or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party shall abide by such determination and pay such taxes or fees to the providing Party. The providing Party shall further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense.
- 9.4.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery. The purchasing Party shall have the right to contest, at its own expense, any such tax or fee that it believes is not applicable or was paid by it in error. If requested in writing by the purchasing Party, the providing Party shall facilitate such contest either by assigning to the purchasing Party its right to claim a refund of such tax or fee, if such an assignment is permitted under applicable law, or, if an assignment is not permitted, by filing and pursuing a claim for refund on behalf of the purchasing Party but at the purchasing Party's expense.
- 9.4.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

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9.4.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses (including reasonable attorneys' fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

9.4.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; provided, however, that the failure of a Party to provide notice shall not relieve the other Party of any obligations hereunder.

9.5 Additional Provisions Applicable to All Taxes and Fees

9.5.1 In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

9.5.2 Notwithstanding any provision of this Agreement to the contrary, any administrative, judicial, or other proceeding concerning the application or amount of a tax or fee shall be maintained in accordance with the provisions of this Section and any applicable federal, state or local law governing the resolution of such disputed tax or fee; and under no circumstances shall either Party have the right to bring a dispute related to the application or amount of a tax or fee before a regulatory authority.

10 Force Majeure

In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Swiftel, LLC, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); provided, however, that the Party so affected shall use diligent efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease. The Party affected shall provide notice of the Force Majeure event within a reasonable period of time following such an event.

11 Adoption of Agreements

Pursuant to 47 U.S.C. § 252(i) and 47 C.F.R. § 51.809, AT&T shall make available to Swiftel, LLC any entire interconnection agreement filed and approved pursuant to 47 U.S.C. § 252. The adopted agreement shall apply to the same states as the agreement that was adopted, and the term of the adopted agreement shall expire on the same date as set forth in the agreement that was adopted.

12 Modification of Agreement

12.1 If Swiftel, LLC changes its name or makes changes to its company structure or identity due to a merger, acquisition, transfer or any other reason, it is the responsibility of Swiftel, LLC to notify AT&T of said change, request that an amendment to this Agreement, if necessary, be executed to reflect said change and notify the Commission of such modification of company structure in accordance with the state rules governing such modification in company structure if applicable. Additionally, Swiftel, LLC shall provide AT&T with any necessary supporting documentation, which may include, but is not limited to, a credit application, Application for Master Account, proof of authority to provide telecommunications services, the appropriate Operating Company Number (OCN) for each state as assigned by National Exchange Carrier Association (NECA), Carrier Identification Code (CIC), Access Customer Name and Abbreviation (ACNA), AT&T's blanket form letter of authority (LOA), Misdirected Number form and a tax exemption certificate.

12.2 No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties.

13 Intervening Law

This Agreement is the result of negotiations between the Parties and may incorporate certain provisions that resulted from arbitration by the appropriate state Commission(s). In entering into this Agreement and any Amendments to such Agreement and carrying out the provisions herein, neither Party waives, but instead expressly reserves, all of its rights, remedies and arguments with respect to any orders, decisions, legislation or proceedings and any remands thereof and any other federal or state regulatory, legislative or judicial action(s) which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review. If any action by any state or federal regulatory or legislative body or court of competent jurisdiction invalidates, modifies, or stays the enforcement of laws or regulations that were the basis or rationale for any rate(s), term(s) and/or condition(s) ("Provisions") of the Agreement and/or otherwise affects the rights or obligations of either Party that are addressed by this Agreement, the affected Provision(s) shall be immediately invalidated, modified or stayed consistent with the action of the regulatory or legislative body or court of competent jurisdiction upon the written request of either Party in accordance with Section 20.1 below ("Written Notice"). With respect to any Written Notices

hereunder, the Parties shall have sixty (60) days from the Written Notice to attempt to reach agreement on appropriate conforming modifications to the Agreement. If the Parties are unable to agree upon the conforming modifications within sixty (60) days from the Written Notice, any disputes between the Parties concerning such actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement.

14 Legal Rights

Execution of this Agreement by either Party does not confirm or imply that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s).

15 Indivisibility

Subject to Section 15 below, the Parties intend that this Agreement be indivisible and nonseverable, and each of the Parties acknowledges that it has assented to all of the covenants and promises in this Agreement as a single whole and that all of such covenants and promises, taken as a whole, constitute the essence of the contract. Without limiting the generality of the foregoing, each of the Parties acknowledges that any provision by AT&T of collocation space under this Agreement is solely for the purpose of facilitating the provision of other services under this Agreement as set forth in Attachment 4. The Parties further acknowledge that this Agreement is intended to constitute a single transaction and that the obligations of the Parties under this Agreement are interdependent.

16 Severability

If any provision of this Agreement, or part thereof, shall be held invalid or unenforceable in any respect, the remainder of the Agreement or provision shall not be affected thereby, provided that the Parties shall negotiate in good faith to reformulate such invalid provision, or part thereof, or related provision, to reflect as closely as possible the original intent of the parties, consistent with applicable law, and to effectuate such portions thereof as may be valid without defeating the intent of such provision. In the event the Parties are unable to mutually negotiate such replacement language, either Party may elect to pursue the dispute resolution process set forth in Section 8 above.

17 Non-Waivers

A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options, and each Party, notwithstanding such failure, shall have the right thereafter to insist upon the performance of any and all of the provisions of this Agreement.

18 Governing Law

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.

19 Assignments and Transfers

19.1 Any assignment by either Party to any entity of any right, obligation or duty, or of any other interest hereunder, in whole or in part, without the prior written consent of the other Party shall be void. The assignee must provide evidence of a Commission approved certification to provide Telecommunications Service in each state that Swiftel, LLC is entitled to provide Telecommunications Service. After AT&T's consent, the Parties shall amend this Agreement to reflect such assignments and shall work cooperatively to implement any changes required due to such assignment. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignment or delegation hereof shall relieve the assignor of its obligations under this Agreement in the event that the assignee fails to perform such obligations. Notwithstanding anything to the contrary in this Section, Swiftel, LLC shall not be permitted to assign this Agreement in whole or in part to any entity unless either (1) Swiftel, LLC pays all bills, past due and current, under this Agreement, or (2) Swiftel, LLC's assignee expressly assumes liability for payment of such bills.

19.2 In the event that Swiftel, LLC desires to transfer any services hereunder to another provider of Telecommunications Service, or Swiftel, LLC desires to assume hereunder any services provisioned by AT&T to another provider of Telecommunications Service, such transfer of services shall be subject to separately negotiated rates, terms and conditions.

20 Notices

20.1 Every notice, consent or approval of a legal nature, required or permitted by this Agreement shall be in writing and shall be delivered either by hand, by overnight courier or by US mail postage prepaid, or email if an email address is listed below, addressed to:

AT&T

AT&T Local Contract Manager
600 North 19th Street, 10th floor
Birmingham, AL 35203

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and

Business Markets Attorney
Suite 4300
675 West Peachtree Street
Atlanta, GA 30375

Swiftel, LLC

Angie M. Franco
3048 Cobblestone Dr.
Pace, FL 32571
813-915-6201 Phone
850-995-0165 Fax
850-304-1496 Cell
angie.franco@mchsi.com

or at such other address as the intended recipient previously shall have designated by written notice to the other Party.

20.2 Unless otherwise provided in this Agreement, notice by mail shall be effective on the date it is officially recorded as delivered by return receipt or equivalent, and in the absence of such record of delivery, it shall be presumed to have been delivered the fifth day, or next business day after the fifth day, after it was deposited in the mails.

20.3 Notwithstanding the above, AT&T will post to AT&T's Interconnection Web site changes to business processes and policies and shall post to AT&T's Interconnection Web site or submit through applicable electronic systems, other service and business related notices not requiring an amendment to this Agreement.

21 Rule of Construction

No rule of construction requiring interpretation against the drafting Party hereof shall apply in the interpretation of this Agreement.

22 Headings of No Force or Effect

The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

23 Multiple Counterparts

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

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24 Filing of Agreement

This Agreement, and any amendments hereto, shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, or as otherwise required by the state and the Parties shall share equally in any applicable fees. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as Swiftel, LLC is duly certified as a local exchange carrier in such state, except as otherwise required by a Commission.

25 Compliance with Law

The Parties have negotiated their respective rights and obligations pursuant to substantive Federal and State Telecommunications law and this Agreement is intended to memorialize the Parties' mutual agreement with respect to each Party's rights and obligations under the Act and applicable FCC and Commission orders, rules and regulations. Nothing contained herein, nor any reference to applicable rules and orders, is intended to expand on the Parties' rights and obligations as set forth herein. This Agreement also contains certain provisions that were negotiated without regard to the Parties' obligations as set forth Section 251 of the Act. To the extent the provisions of this Agreement differ from the provisions of any Federal or State Telecommunications statute, rule or order in effect as of the execution of this Agreement, this Agreement shall control. Each Party shall comply at its own expense with all other laws of general applicability.

26 Necessary Approvals

Each Party shall be responsible for obtaining and keeping in effect all approvals from, and rights granted by, governmental authorities, building and property owners, other carriers, and any other persons that may be required in connection with the performance of its obligations under this Agreement. Each Party shall reasonably cooperate with the other Party in obtaining and maintaining any required approvals and rights for which such Party is responsible.

27 Good Faith Performance

Each Party shall act in good faith in its performance under this Agreement and, in each case in which a Party's consent or agreement is required or requested hereunder, such Party shall not unreasonably withhold or delay such consent or agreement.

28 Rates

28.1 Swiftel, LLC shall pay the charges set forth in this Agreement. In the event that AT&T is unable to bill the applicable rate or no rate is established or included in this Agreement for any services provided pursuant to this Agreement, AT&T reserves the right to back bill Swiftel, LLC for such rate or for the difference between the rate actually billed and the rate that should have been billed pursuant to this Agreement; provided, however, that subject to Swiftel, LLC's agreement to the limitation regarding billing disputes as described in Section 2.2 of Attachment 7 hereof, AT&T shall not back bill any amounts for services rendered more than

twelve (12) months prior to the date that the charges or additional charges for such services are actually billed. Notwithstanding the foregoing, both Parties recognize that situations may exist which could necessitate back billing beyond twelve (12) months. These exceptions are:

- Charges connected with jointly provided services whereby meet point billing guidelines require either Party to rely on records provided by a third party and such records have not been provided in a timely manner;
- Charges incorrectly billed due to erroneous information supplied by the non-billing Party;
- Charges for which a regulatory body has granted, or a regulatory change permits, the billing Party the authority to back bill.

28.2 To the extent a rate element is omitted or no rate is established, AT&T has the right not to provision such service until the Agreement is amended to include such rate.

28.3 To the extent Swiftel, LLC requests services not included in this Agreement, such services shall be provisioned pursuant to the rates, terms and conditions set forth in the applicable tariffs or a separately negotiated Agreement, unless the Parties agree to amend this Agreement to include such service prospectively.

29 Rate True-Up

29.1 This section applies to rates that are expressly subject to true-up.

29.2 The rates shall be true-up, either up or down, based on final prices determined either by further agreement between the Parties, or by a final and effective order of the Commission. The Parties shall implement the true-up by comparing the actual volumes and demand for each item, together with the rates for each item, with the final prices determined for each item. Each Party shall keep its own records upon which the true-up can be based, and any final payment from one Party to the other shall be in an amount agreed upon by the Parties based on such records. In the event of any discrepancy between the records or disagreement between the Parties regarding the amount of such true-up, the dispute shall be subject to the dispute resolution process set forth in this Agreement.

29.3 A final and effective order of the Commission that forms the basis of a true-up shall be based upon cost studies submitted by either or both Parties to the Commission and shall be binding upon AT&T and Swiftel, LLC specifically or upon all carriers generally, such as a generic cost proceeding.

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. 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.

General Terms and Conditions
Signature Page

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

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

Swiftel, LLC

By: [Signature]

Name: Kristen E. Shore

Title: Director

Date: 5/18/07

By: [Signature]

Name: Angie France

Title: President

Date: 5/18/07

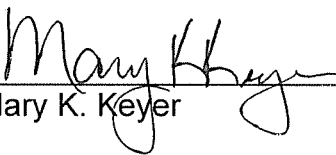
Version: 2007 Standard R.O.A.
04/29/07

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 12th day of July 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