

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Assist)
Wireless, L.L.C. for Designation as an) **File No. RA-2011-0384**
Eligible Telecommunications Carrier in)
the State of Missouri)

STAFF MOTION FOR INDEFINITE CONTINUANCE

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation, states as follows:

1. On May 27, 2011 Assist Wireless, LLC, a wireless carrier, filed an application with the Missouri Public Service Commission seeking designation as an Eligible Telecommunications Carrier (“ETC”) for the purpose of receiving federal universal service fund support for low income customers through Lifeline and LinkUp programs.

2. Since mid-February, the Staff has been in receipt of an ever-increasing volume of material concerning assertions of fraud and other illegal activities by some wireless and some wireline ETCs. The Staff has been able to identify certain entities that are known to have engaged in improper activities, at this time it has not been able to conclusively ascertain whether any of these entities is an affiliate of any of the present applicants. In addition, the Staff’s investigation to date reveals that some wireless companies subcontract the end-user application process, the wireless handset distribution and the customer contact interface to companies, of whose purportedly improper activities they can disavow any knowledge or participation.. The Staff is unequipped, at present to ascertain the veracity of those disavowals.

3. As the Staff noted in prior pleadings, the review of low-income-only ETC requests are much more intricate than in the past. Due to the relationship and personnel overlap of the companies and their use of common contractors, the review of these applications has become much more time consuming. The Staff believes that all pending applications for designation as an ETC, by wireless and wireline companies that have never been designated as ETCs in Missouri, should be held in abeyance until the Staff can devise an application process that requires potential ETCs to disclose all of its

affiliates and contractors, any complaints by any other Commissions, penalty actions or settlements with other Commissions, any State Attorney General, or any federal consumer protection or law enforcement Agency and any other pertinent information. The Staff expects to promulgate such an application process by rule. The Staff would leave it to the Commission's discretion as to whether it may continue to process such pending ETC applications once the process is established but not yet formally adopted or hold all applications from companies that have never been designated as ETCs in Missouri until such rule is adopted and effective (the present application process is sufficiently broad that the Staff could begin to ask a standard set of Data Requests as soon as they are written).

4. As the Staff stated in prior pleadings, ETC applications are filed pursuant to 47 USC §214(e). That section requires that, as to non-rural areas such as are described in the applications referred to above, the State Commission is required to designate at least two eligible telecommunications carriers. Having done so, the Commission is under no obligation to grant ETC status to the Applicants, even if they meet all of the established criteria, because the Commission must find that each designation of an additional ETC is in the public interest. In addition, neither the federal statutes nor the regulations (47 CFR §§54.201 et seq.) set any time limit on the Commission's deliberation as to whether the grant of ETC status is proper and in the public interest.

5. It is the Staff's belief that continuing to process ETC applications for companies that have never been designated as ETCs in Missouri, without clearly-stated and consistently applied criteria is contrary to the public interest in that it jeopardizes the continued viability of the Federal Universal Service Fund and undermines the viability of those carriers who abide by applicable restrictions and regulations.

6. Attached hereto in support of this Motion are the following public documents that the Staff believes highlight the severity of the problems surrounding the provision of service by companies recently granted ETC status in other states or enabled to provide discounted services to customers through another carrier's ETC designation.

a. Attachment 1: An e-mail from the New Jersey Board of Public Utilities that notifies its applicants that it has suspended processing of ETC applications.

b. Attachment 2: Staff's Motion to Dismiss in Docket No. 2009-414-C at the Public Service Commission of South Carolina (excluding the attachments, which may be viewed at:

<http://dms.psc.sc.gov/pdf/matters/AD916C93-95AF-D71A-A273FE76CC42D35B.pdf>).

c. Attachment 3: The March 29, 2011 Memorandum to be presented at the April 4, 2011 Agenda in Docket No. 100340-TP at the Florida Public Service Commission (attached are the first four pages, including the cover page and the Table of Contents; the remainder may be viewed at:

<http://www.floridapsc.com/library/FILINGS/11/03312-11/03312-11.pdf>).

d. Attachment 4: The May 12, 2011 Memorandum to be presented at the May 24, 2011 Agenda in Docket No. 100340-TP at the Florida Public Service Commission (attached are the first seven pages, including the cover page and the "Case Background" section; the remainder may be viewed at:

<http://www.floridapsc.com/library/FILINGS/11/03312-11/03312-11.pdf>).

WHEREFORE, the Staff moves that the Commission indefinitely continue or hold in abeyance this matter, until the Staff is able to establish a more thorough vetting process for low-income-only Eligible Telecommunications Carrier Applications.

Respectfully submitted,



Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 7th day of June, 2011.

A handwritten signature in black ink, appearing to be "Allan D. [unclear]".

From: Parish, Dana
Sent: Wednesday, May 25, 2011 8:18 AM
To: Dietrich, Natelle*; VanEschen, John; Dale, Cully
Subject: FW: NJ Letter to ETC/Lifeline

Attachment 1

Here's an example of what New Jersey is sending its ETC apps in light of the investigations and NPRM.

From: Bond, Harold [mailto:Harold.Bond@bpu.state.nj.us]
Sent: Wednesday, May 18, 2011 9:07 AM
Subject: NJ Letter to ETC/Lifeline

Below is a copy of a letter that Staff emailed to the 11 open ETC applicants that we have before us.

Harold Bond



State of New Jersey
BOARD OF PUBLIC UTILITIES
TWO GATEWAY CENTER
NEWARK, NJ 07102

Lee A. Solomon
President

Anthony Centrella
Director
Tel: (973) 648-7865
Fax: (973) 624-9453

May 18, 2011

This letter is to inform you that Staff has received your company's petition for eligibility to receive Lifeline funds through the Federal Universal Service Fund.

On March 4, 2011, the Federal Communications Commission (FCC) released its Notice of Proposed Rulemaking (NPRM) in the matter of Lifeline and Link Up Reform and Modernization. In its proposal, the FCC sought comments from interested parties on, among other things, immediate reforms to eliminate waste, fraud and abuse and to clarify consumer eligibility rules.

While Staff is committed to reviewing and evaluating individual company petitions on their merits, the aforementioned NPRM is expected to result in final rules which would have a direct impact on this Board's ultimate determination on ETC applications. This necessarily requires Staff to take a cautious approach. Staff will monitor the progress of the FCC NPRM and determine the appropriate course of action in accordance with the FCC's findings.

Sincerely,

Anthony Centrella

Anthony Centrella
Director

/HB

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-414-C

IN RE: Application of LifeConnex Telecom,) LLC for Designation as an Eligible) Telecommunications Carrier) <hr style="width: 80%; margin-left: 0;"/>	OFFICE OF REGULATORY STAFF'S MOTION TO DISMISS
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The South Carolina Office of Regulatory Staff ("ORS") hereby moves to dismiss the Application of LifeConnex Telecom, LLC (hereafter referred to as "LifeConnex" or "the Company") for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to 26 S.C. Code Ann. Regs. 103-829 and 103-690 (C)(b) (Supp. 2009), 47 U.S.C. §214(e)(2), and 47 C.F.R. §54.201(i).

Lifeconnex filed its Application for ETC designation on October 5, 2009. Lifeconnex is a wholly owned subsidiary of Associated Telecommunications Management Services ("ATMS"). Other subsidiaries include, but are not limited to, Bellerud Communications, LLC, BLC Management, LLC, and Dialtone and More, Inc.¹

In order to qualify as an ETC, a company must provide the nine (9) "supported services" identified in 47 C.F.R. 54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services. The nine services are:

- i. Voice grade access to the public switched network;
- ii. Local usage;

¹ Dialtone and More, Inc. and BLC Management, LLC, have filed ETC applications with the Commission, but hearings were canceled in both dockets. An organizational chart is attached as Exhibit 1.

- iii. Dual tone multi-frequency signaling or its functional equivalent;
- iv. Single-party service or its functional equivalent;
- v. Access to emergency services;
- vi. Access to operator services;
- vii. Access to interexchange service;
- viii. Access to directory assistance; and
- ix. Toll limitation for qualifying low-income consumers.

It is ORS's position that an ETC in this state must provide all (or substantially all) of the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." The Company has failed to demonstrate that it will provide all of the nine required services in compliance with the Federal Communication Commission's ("FCC's") regulations.

As grounds for this Motion, ORS states as follows:

1. LifeConnex's "Implementation Plan" is significantly altered from its Application filed on October 5, 2009 and fails to meet the requirements of 47 C.F.R. 54.201(d)1.

LifeConnex, in its Application, claimed that it would provide facilities-based service "using facilities obtained as UNEs" from AT&T. (Application at page 5, section 5). As explained later in this Motion, the Company now appears to have a different business plan, one that fails to meet the requirements of 47 C.F.R. 54.201(d)1.

This new approach, which LifeConnex proposed through responses to questions from ORS and in a meeting on June 23, 2010 where members of ORS met with LifeConnex's management team, is different than the plan proposed in its Application and its prefiled direct

testimony. LifeComex has failed to provide evidence that its new implementation plan meets the FCC's facilities-based requirements found in 47 C.F.R. 54.201(d).

Through responses to data requests proffered by ORS, and further revealed in the June 23rd meeting, LifeComex has proposed a new approach to offering facilities-based service; an approach not found in its Application, or in the testimony of Paul Watson, and one that the Company has not received approval for from the FCC. This new approach uses no Company-owned local facilities or local facilities of the Incumbent LEC purchased as unbundled network elements ("UNE"), and most importantly, it does not use a combination of its own facilities and resale of another carrier's services in offering the services that are supported by federal universal service support mechanisms.² As such, ORS cannot find any evidence that this new approach complies with either the letter or the intent of 47 C.F.R. 54.201(d)(1).

The FCC envisioned carriers would use UNEs as a stepping stone, giving new entrants to the local marketplace a method to start first by buying unbundled network elements from the incumbent LEC and then adding components of their own network as they built out toward the end user. The FCC recognized that a company could start up by purchasing UNEs for each of its customers, then leasing its own local network, and this would satisfy the facilities-based requirements. Without purchasing UNEs, leasing the local loop, or providing its own local loop, ORS submits that LifeComex does not meet the requirements of 47 C.F.R. 54.201(d)(1).

2. The Company relies exclusively on resale to provide the services supported by Federal universal service support.

² While LifeComex's new approach may provide one or possibly two of the ancillary supported services, its approach fails to provide the primary supported service, local service, in compliance with the facilities-based requirements of 47 C.F.R. 54.201(d)(1).

ORS cannot substantiate that LifeConnex will offer basic local exchange service through a combination of its own facilities and resale of another carrier's services as required by 47 C.F.R. 54.201(d)(1). A state commission shall not designate as an ETC a carrier that offers the services supported by federal universal service support mechanisms exclusively through resale. See 47 C.F.R. 54.201(i).

Based on information obtained at the June 23rd meeting, the Company apparently intends to either: (1) place a de minimus number of orders for UNE combinations (although ORS can find no evidence that the Company has ever ordered UNEs or the loop/port combination); or (2) use long distance switches which the Company asserts provide "supported services" and meets the requirements of Section 54.201(d)(1). Yet, as described further below, LifeConnex's explanation of its facilities-based service model is a constantly moving target.

In contrast to the information provided to ORS at the June 23, 2010 meeting, the Company's testimony relies on the purchase of the port/loop combination to meet the FCC's "facilities" requirement. Mr. Watson states in his prefiled testimony that LifeConnex has an interconnection agreement with BellSouth/AT&T.⁴ (Test. p. 4, lines 14-16). During the course of ORS's investigation, ORS inquired about this interconnection agreement. On April 6, 2010, the Company and AT&T submitted for approval an interconnection agreement, which was approved by the Commission on April 21, 2010, in Docket No. 2010-136-C.

Further, Mr. Watson states in his prefiled testimony that LifeConnex offers the supported services either through the purchase of switched port/loop combinations or through resale of another carrier's services, depending upon the type of service requested and the precise location of the customer. (Test. pgs. 11, lines 2-16; see also, Test. pgs. 4-5 and footnote 8 of the

⁴ On the other hand, the Company responded on April 29, 2010 to information request number 3.6 that it planned to add South Carolina as an addendum to its southeast agreement.

Company's Application). Mr. Watson goes on to explain that UNEs meet the FCC's definition of "own facilities" and "thereby make the method by which LifeConnex provisions the supported services consistent with the FCC's rules found at 47 C.F.R. § 54.201(d)(1) through (i)." As a result of the Triennial Review Remand Order⁵ ("TRRO"), switching is no longer subject to Total Element Long Run Incremental Cost pricing and consequently the only way to obtain a "port/loop combination" from AT&T is through a commercial agreement. In response to an ORS information request, AT&T has confirmed that LifeConnex does not have a commercial agreement with AT&T for port/loop combinations. (See Exhibit 2, Response 1-4).

Later, on March 22, 2010, in response to information request number 2.1 attached as Exhibit 3, the Company states that it does not plan to utilize any UNE platform of the incumbent carrier but rather the facilities of 321 Communications. 321 Communications is not certified by this Commission to provide telecommunications services in the state of South Carolina. In response to information request number 2.9, the Company responded that it does not plan to offer Lifeline discounted local service through the purchase of AT&T UNEs. (See Exhibit 4). Furthermore, in response to information request 2.11, the Company stated that out of 23,796 lifeline customers in Alabama, all are served via resold AT&T local service. In responses to information requests 2.13 and 3.1, the Company indicated that all customers are resale and none are served via UNEs. (See Exhibit 5).

ORS learned through response number 3.3 on April 29, 2010, that the Company's interpretation of 47 C.F.R. 54.201(d)(1) is that it would meet the FCC's facilities requirement by obtaining "facilities via 321 Communications their Long Distance provider as every line is provisioned with this long distance services." (See Exhibit 6). Nowhere in Mr. Watson's

⁵ *In re Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 FCC Rcd 2533 (2005) ("Triennial Review Remand Order," or "TRRO").

prefiled direct testimony or in the Company's Application is this argument advanced. To aid in resolving the apparent discrepancies, ORS requested at the June 23, 2010 meeting information such as but not limited to call flow diagrams detailing how each supported service will be provisioned.⁶ As of the date of this filing, ORS has not received that information.

3. ORS has received contradictory responses from the Company during the course of ORS's review of the Company's application.

Mr. Watson states in his February 8, 2010 prefiled testimony that LifeConnex has not been audited by USAC, or any other entity, with regard to Lifeline and Link-Up. (Test. p.19, lines 2-4). ORS representatives have reviewed the filings of LifeConnex in other jurisdictions as well as at the FCC and have spoken to individuals at the Universal Service Administration Company ("USAC"). Thus, ORS was made aware through those conversations that the Company is currently being audited by USAC. During the June 23, 2010 meeting, ORS was informed that the USAC audit had been going on for approximately three (3) years, which is inconsistent with the prefiled testimony. ORS was also informed by the Company at the June 23, 2010 meeting that the results of USAC's audit will be released in July/August of 2010. ORS is concerned that the Company stated in its prefiled testimony that it was not subject to an audit by USAC when in fact it had been subject to an audit for three years.

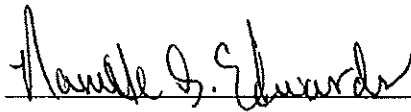
4. The Company is not currently in compliance with Commission rules and regulations.

As of today's date, Lifeconnex has not submitted its USF contribution report, which was due July 1, 2010. ORS has concerns as to whether Lifeconnex is willing and able to comply with Commission rules and regulations.

⁶ See also, discussion of FCC's facilities requirement in Florida Staff Recommendation in Docket No. 070348-TX attached as Exhibit 7.

WHEREFORE, for all the reasons set forth above, ORS finds that granting the Company's application is not in the public interest and respectfully requests the Commission to dismiss this Application for ETC designation. Should the Commission decide to deny ORS's request, ORS asks that this Commission delay any hearings in this matter until after USAC releases its audit findings.

Respectfully submitted,



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Fax: (803) 737-0895
Email: nsedwar@regstaff.sc.gov

July 7, 2010

State of Florida



Public Service Commission
CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED FPSC
11 MAR 29 PM 2:55
COMMISSION
CLERK

DATE: March 29, 2011

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Analysis (Casey, Kennedy, Salak) *PK*
Office of the General Counsel (Harris, Teitzman) *AK*

RE: Docket No. 100340-TP – Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

Docket No. 110082-TP – Initiation of show cause proceedings against American Dial Tone, Inc., All American Telecom, Inc., Bellerud Communications, LLC, BLC Management LLC d/b/a Angles Communication Solutions, and LifeConnex Telecom, LLC for apparent violations of Chapter 364, F.S., Chapters 25-4 and 25-24, F.A.C., and FPSC Orders.

AGENDA: 04/05/11 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham (100340-TP)
Administrative (110082-TP)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Issue Nos. 1,2,3, and 10 apply to both dockets; Issue Nos. 4 through 9 apply only to Docket No. 110082-TP.

FILE NAME AND LOCATION: S:\PSC\RAD\WP\100340.RCM.110082.RCM.DOC

DOCUMENT NUMBER-DATE
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FPSC:COMMISSION CLERK

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Issue 4: Should American Dial Tone, Inc. be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why its Eligible Telecommunications Carrier status in Florida should not be revoked because it is no longer in the public interest based on its apparent willful violation of one or more of the following statutes, rules and orders: Section 364.10(2)(a), Florida Statutes, Section 364.10(2)(e)1, Florida Statutes, Section 364.10(2)(f), Florida Statutes, Section 364.107(3)(a), Florida Statutes, Section 364.24(2), Florida Statutes, Section 364.183(1), Florida Statutes, Rule 25-4.0665(1), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, Rule 25-24.825(1), Florida Administrative Code, Order No. PSC-06-0298-PAA-TX, Order No. PSC-06-0680-PAA-TL, and Order No. PSC-07-0417-PAA-TL? - 17 -
Issue 5: Should Bellerud Communications, LLC be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why its Competitive Local Exchange Company Certificate No. 7563 should not be cancelled pursuant to Rule 25-24.572(1), Florida Administrative Code, for apparent violation of the terms and conditions under which authority was originally granted, apparent violation of Commission rules or orders, or violation of Florida Statutes? - 33 -
Issue 6: Should LifeConnex Telecom, LLC be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why its Competitive Local Exchange Company Certificate No. 8682 should not be cancelled pursuant to Rule 25-24.572(1), Florida Administrative Code, for apparent violation of the terms and conditions under which authority was originally granted, apparent violation of Commission rules or orders, or violation of Florida Statutes? - 41 -
Issue 7: Should American Dial Tone, Inc. be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why its Competitive Local Exchange Company Certificate No. 5805 should not be cancelled pursuant to Rule 25-24.572(1), Florida Administrative Code, for apparent violation of the terms and conditions under which authority was originally granted, apparent violation of Commission rules or orders, or violation of Florida Statutes? - 51 -
Issue 8: Should All American Telecom, Inc. be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why its Competitive Local Exchange Company Certificate No. 8758 should not be cancelled pursuant to Rule 25-24.572(1), Florida Administrative Code, for apparent violation of the terms and conditions under which authority was originally granted, apparent violation of Commission rules or orders, or violation of Florida Statutes? - 53 -
Issue 9: Should the following ATMS companies be ordered to show cause, in writing within 21 days from the issuance of the Commission's show cause order, why they should

Docket Nos. 100340-TP and 110082-TP

Date: March 29, 2011

not be fined collectively \$16,448,000 for apparent willful violations of Florida Statutes, the Florida Administrative Code, and Florida PSC orders as follows:..... - 56 -
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Case Background

In 2009, as in past years, Florida was the number one net contributor to the Federal universal service fund (USF), contributing \$495,839,000 into the USF while receiving only \$221,903,000 from the fund. Florida consumer contributions account for approximately seven percent of the USF monies contributed nationally.¹ In accordance with this Florida Public Service Commission's (FPSC or Commission) desire for accountability in the federal universal service program, and elimination of fraud, waste, and abuse in the USF, staff monitors all eligible telecommunications carriers (ETCs) in Florida. This investigation was commenced to determine whether ATMS companies are compliant with federal and state regulations regarding universal service. On June 28, 2010, staff opened Docket No. 100340-TP to evaluate ATMS companies' compliance with Chapter 25-24, Florida Administrative Code, and applicable Lifeline, ETC, and universal service requirements applicable to ATMS companies doing business in Florida.

Florida Lifeline and Link Up

Lifeline was originally implemented in 1985 to ensure that the increase in local rates that occurred in the aftermath of the breakup of AT&T would not put local phone service out of reach for low-income households. Support for low-income households has long been a partnership between the states and the federal government, and the universal service program historically was administered in cooperation with states.² Under authority of Chapter 364.10, Florida Statutes, the Florida PSC adopted the requirements of the federal Lifeline and Link Up programs for Florida's Lifeline and Link Up programs.

The Florida Lifeline and Link-Up programs enable low-income households to obtain and maintain basic local telephone service. Under the Federal Communications Commission's (FCC) rules, there are four tiers of monthly federal Lifeline support.

- The first tier of federal support is a \$6.50 monthly credit for the federal subscriber line charge (SLC), which is available to all eligible subscribers. All 50 states have approved this tier of support.
- The second tier of federal support is a \$1.75 monthly credit that is available to subscribers in those states that have approved the credit. All 50 states have also approved this tier of support.
- The third tier of federal support is one-half the amount of additional state support up to a maximum of \$1.75 in federal support. Because Florida carriers provide an additional \$3.50 credit to Lifeline customers' bills,³ Florida Lifeline subscribers

¹ 2010 Universal Service Monitoring Report, CC Docket No. 98-202.

² FCC 11-32, ¶14.

³ Since Florida does not have a state Universal Service Fund, the \$3.50 credit is absorbed by the ETC or Lifeline reseller providing service.

Attachment 4

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State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: May 12, 2011

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Harris, Teitzman)
Division of Regulatory Analysis (Kennedy, Salak)

*OK AT
RK WNTS*

RE: Docket No. 100340-TP – Investigation of Associated Telecommunications Management Services, LLC (ATMS) companies for compliance with Chapter 25-24, F.A.C., and applicable lifeline, eligible telecommunication carrier, and universal service requirements.

Docket No. 110082-TP – Initiation of show cause proceedings against American Dial Tone, Inc., All American Telecom, Inc., Bellerud Communications, LLC, BLC Management LLC d/b/a Angles Communication Solutions, and LifeConnex Telecom, LLC for apparent violations of Chapter 364, F.S., Chapters 25-4 and 25-24, F.A.C., and FPSC Orders.

AGENDA: 05/24/11 – Regular Agenda – Decision on Offer of Settlement – Final Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham (100340-TP)
Administrative (110082-TP)

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\100340.RCM.DOC

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Case Background

In 2009, as in past years, Florida was the number one net contributor to the Federal universal service fund ("USF"), contributing \$495,839,000 into the USF while receiving only \$221,903,000 from the fund. Florida consumer contributions account for approximately seven percent of the USF monies contributed nationally.¹ In accordance with this Florida Public Service Commission's (FPSC or Commission) desire for accountability in the federal universal service program, and elimination of fraud, waste, and abuse in the USF, staff monitors all eligible telecommunications carriers ("ETC") in Florida. On June 28, 2010, staff opened Docket No. 100340-TP to evaluate Associated Telecommunications Management Services' ("ATMS") compliance with Chapter 25-24, Florida Administrative Code, and applicable Lifeline, ETC, and universal service requirements applicable to ATMS companies doing business in Florida. As a result of its investigation, on March 24, 2011, staff opened Docket Number 110082-TP in order to recommend the initiation of a show cause proceeding against ATMS.

Florida Lifeline and Link Up

Lifeline was originally implemented in 1985 to ensure that the increase in local rates that occurred in the aftermath of the breakup of AT&T would not put local phone service out of reach for low-income households. Support for low-income households has long been a partnership between the states and the federal government, and the universal service program historically was administered in cooperation with states.² Under authority of Chapter 364.10, Florida Statutes, the Florida PSC adopted the requirements of the federal Lifeline and Link Up programs for Florida's Lifeline and Link Up programs.

The Lifeline, Link-Up, and Toll Limitation Services ("TLS") programs allow an ETC providing services to qualifying low-income consumers to seek and receive reimbursement through the Universal Service Administrative Company ("USAC")³ for revenues it forgoes each month for providing these services. The program was never intended to provide a profit for service providers.⁴ In order for a carrier to receive low-income support from USAC, the carrier must first be designated as an ETC. Currently, the Commission has the authority to approve or deny ETC designation for all telecommunications companies, including wireless in Florida.

Investigation Background and Overview

Associated Telecommunications Management Services is a Delaware limited liability company ("LLC"). On April 26, 2010, in answer to a staff data request, ATMS provided its organizational structure showing ATMS-owned companies, including American Dial Tone, Inc. ("ADT"), All American Telecom, Inc. ("All American Telecom"), Bellerud Communications, LLC ("Bellerud"), BLC Management LLC d/b/a Angles Communication Solutions ("BLC"), and

¹ 2010 Universal Service Monitoring Report, CC Docket No. 98-202.

² FCC 11-32, ¶14.

³ The Universal Service Administrative Company is an independent, not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the Federal Communications Commission.

⁴ FCC 11-32, ¶ 14.

Date: May 12, 2011

LifeConnex Telecom, LLC ("LifeConnex"). ATMS companies received approximately \$37 million in universal service low-income program monies from the USF on a national basis for the year 2010. Staff noticed the atypical growth in federal universal service low-income program disbursements for some companies under this ownership and management structure, and also received information from multiple anonymous sources that ATMS' business practices may not be in compliance with state and federal Lifeline and Link-Up regulations. The Commission had received the following *allegations* against ATMS companies:

- ATMS using multiple companies so that it can claim duplicate subsidies resulting in overpayments from USAC;
- ATMS sharing customer information and forms among ATMS companies;
- USA Freephone (an ATMS marketing company) placing lifeline applicants with any ATMS company it chooses;
- ATMS not providing written disconnect notices to customers;
- ATMS violating Customer Propriety Network Information (CPNI)⁵ requirements by sharing wholesale customer information with sister companies;
- ATMS receives Link Up reimbursement from USAC even though ATMS companies do not charge new applicants a hook up fee (resulting in possible over collection from USAC);
- Lifeline subscriber numbers submitted to USAC by ATMS are inaccurate and result in possible over payment of Universal Service funds;
- resold Lifeline lines claimed at USAC by the underlying carrier may be claimed by ATMS companies resulting in possible overpayment of Universal Service funds;
- ATMS companies providing Lifeline service and collecting Universal Service funds prior to customer completion of Lifeline eligibility certification resulting in possible overpayment of Universal Service funds;
- ATMS companies designated as ETCs may provide the required services using 100 percent resale in violation of law;
- All ATMS-associated companies may not have been disclosed to the Commission;
- All ATMS owners and officers may not have been disclosed to the Commission; and,
- ATMS companies may be operating as a single entity in contradiction of ATMS data request response that each of the ATMS companies is independent.

⁵ The Telecommunications Act of 1996 defines Customer Proprietary Network Information as "information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service" that the carrier possesses solely as a result of serving that customer. Customers' information, compiled from individuals' telephone calling behaviors, include subscribers personal data, services, amount of usage of services, and calling records. A carrier is allowed to use individual calling records only for purposes such as increasing business or publishing directories, and prohibits a carrier from otherwise disclosing CPNI without express prior authorization by the subscriber. (Order PSC-07-0730-PAA-TL)

Date: May 12, 2011

The following nine ATMS companies were the initial subject of staff's investigation in Docket No. 100340-TP.⁶

Company	CLEC Certificate Number	IXC Registration Number
Bellerud Communications, LLC	TX 464	TK 293
LifeConnex Telecom, LLC, f/k/a Swiftel LLC	TX 922	TK 290
TriArch Marketing, Inc.	N/A (Withdrew application 9/14/10)	N/A (Withdrew application 9/14/10)
American Dial Tone Inc., f/k/a Ganoco, Inc.	TX 274	TK 292
BLC Management, LLC, d/b/a Angles Communications Solutions	TX 840 (Cancelled by PSC) TX997(Withdrew application 9/27/10)	TK 070 (Cancelled by PSC) TK 251 (Withdrew application 9/27/10)
DialTone & More, Inc.	TX 939 (Cancelled by PSC)	TK 155 (Cancelled by PSC)
Ren-Tel Communications, Inc.	N/A	N/A
SCTXLink, LLC	N/A	N/A
All American Telecom, Inc.	TX 996	N/A

Bellerud, LifeConnex, BLC, and All American Telecom have all previously applied for ETC status in Florida.⁷ The Bellerud and All American Telecom petitions for ETC designation were withdrawn by the companies after staff sent data requests to them. The BLC docket was closed administratively by staff because BLC's competitive local exchange certificate (CLEC) was cancelled⁸ and CLEC certification in Florida is a condition for receiving landline ETC designation in Florida. LifeConnex withdrew its petition for ETC designation after staff filed a recommendation to deny ETC status to LifeConnex and prior to consideration by Commissioners.⁹ American Dial Tone had already received its ETC designation at the time it was purchased by ATMS on September 30, 2009.

The following chart reflects low-income USF monies received nationally by five ATMS companies from January 2009 through May 2010: LifeConnex; American Dial Tone; Bellerud;

⁶ Through discovery, staff learned that Triarch Marketing, Inc., Dialtone & More, Inc., Ren-Tel Communications, Inc. and SCTXLink were not conducting business in Florida.

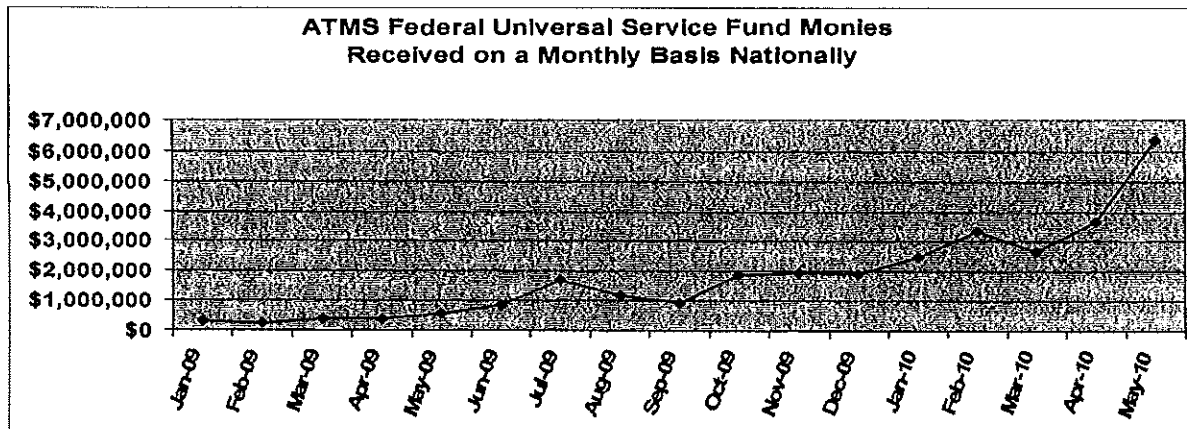
⁷ Docket No. 090457-TX, In Re: Petition for designation as an ETC by Bellerud Communications, LLC. Petition withdrawn March 3, 2010. Docket No. 070348-TX, In Re: Amended petition for designation as eligible telecommunications carrier by Swiftel, LLC. Petition withdrawn July 21, 2009. Docket No. 080157-TX, In Re: Application for designation as an eligible telecommunications carrier by BLC Management LLC d/b/a Angles Communications Solutions. Docket closed administratively December 10, 2008. Docket No. 090437-TX, In Re: Petition for designation as eligible telecommunications carrier by All American Telecom, Inc. Petition withdrawn August 5, 2010.

⁸ Docket No. 080475-TX, In Re: Compliance investigation of CLEC Certificate No. 8579, issued to BLC Management LLC d/b/a Angles Communication Solutions, for apparent first-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies. Order No. PSC-08-0617-CO-TX, issued September 23, 2008.

⁹ Recommendation filed June 4, 2009, Document No. 05570-09, Docket No. 070348-TX, Amended petition for designation as eligible telecommunications carrier by Swiftel, LLC n/k/a LifeConnex Telecom, LLC.

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TriArch Marketing, Inc. (Triarch); and BLC. ATMS purchased these companies between September 1, 2009, and November 30, 2009. Each of these five companies received ETC designation in at least one state which allows each to file for reimbursement from the USF for revenues it forgoes providing service to Lifeline customers in states where such companies have been designated as an ETC. American Dial Tone is the only ATMS company which presently has ETC designation in Florida.



On September 7, 2010, staff met with ATMS to discuss staff's specific concerns related to ATMS companies appearing to provide inaccurate information to regulators and engaging in questionable activities; staff also discussed allegations which the Commission had received from other third parties about ATMS companies. Among the additional concerns staff expressed to ATMS were the following:

- the ATMS chief operating officer appeared to have provided false testimony in a regulatory proceeding in South Carolina;
- despite problems with a United States Administrative Company ("USAC") audit of an ATMS company (LifeConnex), the ATMS owner represented to staff that LifeConnex had "passed" the USAC audit;
- refusal by ATMS to provide Commission staff with a copy of a USAC audit of an ATMS company in Alabama (that also provided service in Florida);
- concerns raised by the USAC audit of an ATMS company in Alabama (obtained from the FCC pursuant to a Freedom of Information Act request);
- ATMS companies may be understating revenue information to the PSC for purposes of calculating the regulatory assessment fee ("RAF");
- an inaccurate statement was included in an ATMS motion that, "BLC does not have any Florida Lifeline customers;"
- BLC continuing to do business in Florida after its certification had been cancelled for failure to pay RAFs;
- consumer complaints alleging improper disconnects, slamming, and improper bills by ATMS companies.

On January 31, 2011, staff again met with ATMS and presented concerns raised by the investigation. ATMS declined the opportunity to review each staff concern and instead chose to focus on how the matter might be settled. While initially agreeing to submit a proposed settlement by Friday, February 3, 2011, ATMS sought additional time and clarification of what was needed. Staff agreed to additional time and to ATMS providing a framework for a possible settlement. On February 8, 2011, ATMS timely filed a framework for settlement. On that date, pursuant to Section 120.573, Florida Statutes, ATMS companies also filed a Request for Settlement Discussions, Mediation and to Hold Docket in Abeyance. Staff met with ATMS to discuss a possible settlement on February 18, 2011, February 28, 2011, March 7, 2011, March 16, 2011, and March 23, 2011, and conducted a telephone conference with ATMS on March 9, 2011.

The company insisted that any negotiation discussions during these meetings with staff remain confidential and anything discussed during the negotiations could not be used against the company in possible future prosecutory proceedings. On February 21, 2011, after the first meeting, ATMS withdrew, without prejudice, its Request for Settlement Discussions, Mediation and to Hold Docket in Abeyance, noting that settlement discussions were currently on-going. Although ATMS representatives and staff had a total of seven meetings and a conference call during February and March, those discussions failed to produce a workable resolution of the issues, and on March 25, 2011, ATMS filed a "Petition for Mediation and to Hold Docket in Abeyance," along with a "Request for Oral Argument."

On March 29, 2011, staff filed a combined Recommendation in Dockets 100340-TP and 110082-TP, recommending the Commission deny ATMS' Petition for Mediation and initiating show cause proceedings against ADT, Bellerud, LifeConnex, BLC, and All American Telecom.¹⁰ Staff's investigation concluded that American Dial Tone apparently misrepresented the number of certified Florida Lifeline, Link-Up, and TLS customers it was serving when it filed its 497 forms with USAC. This appeared to result in an overpayment by USAC to American Dial Tone of \$1,945,866 from the USF for January 2010, through May 2010.

The March 29, 2011 staff recommendation concluded that American Dial Tone, Bellerud, LifeConnex, All American Telecom, BLC Management, and American Dial Tone were each in apparent willful violation of one or more of the following statutes, rules and orders: Section 364.10(2)(a), Florida Statutes, Section 364.10(2)(e)1, Florida Statutes, Section 364.10(2)(f), Florida Statutes, Section 364.107(3)(a), Florida Statutes, Section 364.24(2), Florida Statutes, Section 364.183(1), Florida Statutes, Rule 25-4.0161, Florida Administrative Code, Rule 25-4.0665(1), Florida Administrative Code, Rule 25-4.118, Florida Administrative Code, Rule 25-24.825(1), Florida Administrative Code, Order No. PSC-06-0298-PAA-TX, Order No. PSC-06-0680-PAA-TL, and Order No. PSC-07-0417-PAA-TL. As a result, staff recommended the show cause proceedings include the cancellation of all companies' CLEC certificates; the revocation of ADT's ETC designation; and the imposition of over \$16.4 Million in fines.¹¹ The Recommendation was deferred from the April 5, 2011, Agenda Conference.

¹⁰ As noted in Footnote 6, Ren-Tel Communications and SCTXLink have never been certificated in Florida, and Triarch Marketing withdrew its certificate application in September, 2010.

¹¹ A complete breakdown of staff's recommendations regarding apparent violations by company is contained in Attachment 2.

Following the filing of the Recommendation, staff continued to work with ATMS in an attempt to reach a settlement of this matter, including a conference call on April 13, 2011, and an in-person meeting on April 27, 2011. As a result of both parties' continued efforts to reach a settlement, both staff and ATMS were able to agree on a Framework for Settlement ("Settlement Agreement") which both parties believe meets the goal of a show cause, which is to ensure compliance with Florida Statutes and Commission Rules. Following the agreement on the Framework, on May 6, 2011, ATMS filed a Motion for Approval of Offer of Settlement Agreement, included in its entirety as Attachment One.

Jurisdiction

Pursuant to Section 364.285(1), F.S., the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of the Commission, or any provision of Chapter 364, F.S.

A willful violation of a statute, rule or order is one done with an intentional disregard of, or a plain indifference to, the applicable statute or regulation. See, L. R. Willson & Sons, Inc. v. Donovan, 685 F.2d 664, 667 n.1 (D.C. Cir. 1982). Utilities are charged with knowledge of the Commission's orders, rules, and statutes, and the intent of Section 364.285(1) is to penalize those who affirmatively act in opposition to those orders, rules, or statutes. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 (Fla. 1963), and Commercial Ventures, Inc. v. Beard, 595 So.2d 47, 48 (Fla. 1992) (utilities are subject to the rules published in the Florida Administrative Code).

In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, In Re: Investigation Into The Proper Application of Rule 25-14.003, F.A.C., Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., the Commission, having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Additionally, "[i]t is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833); see also, Perez v. Marti, 770 So.2d 284, 289 (Fla. 3rd DCA 2000) (ignorance of the law is never a defense). Thus, any intentional act, such as the acts described in this docket, would meet the standard for a "willful violation."

Federal law recognizes that individual states and territories play an important role in accomplishing universal service goals. The FCC also has recognized the important role of the states. Courts have also previously determined that the Telecom Act "plainly contemplates a partnership between the federal and state governments to support universal service,"¹² and that "it is appropriate—even necessary—for the FCC to rely on state action."¹³ The Commission has Florida jurisdiction and authority to impose penalties on the ATMS companies pursuant to the

¹² Qwest I, 258 F.3d at 1203; Qwest II, 398 F.3d at 1232.

¹³ Qwest I, at 1203.