

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

Nexus Communications, Inc.,)	
)	
Complainant,)	
)	
v.)	File No. TC-2011-0132
)	
Southwestern Bell Telephone Company, d/b/a)	
AT&T Missouri,)	
)	
Respondent.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF SOUTHWESTERN
BELL TELEPHONE COMPANY D/B/A AT&T MISSOURI TO THE FIRST AMENDED
COMPLAINT OF NEXUS COMMUNICATIONS, INC.**

COMES NOW Southwestern Bell Telephone Company (f/k/a Southwestern Bell Telephone, L. P.) d/b/a AT&T Missouri (“AT&T Missouri”) and, pursuant to the Commission’s May 4 Order Granting Leave to File Amended Complaint and Directing Filing, respectfully submits its Answer and Affirmative Defenses to the First Amended Complaint of Nexus Communications, Inc. (“Nexus”).

ANSWER

As and for its Answer to the First Amended Complaint, AT&T Missouri states as follows:

1. AT&T Missouri is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, denies same.
2. AT&T Missouri admits the allegations of Paragraph 2.
3. AT&T Missouri admits that Nexus’ First Amended Complaint arises under its interconnection agreement (“ICA”) with AT&T Missouri, and that the Commission has jurisdiction over this matter pursuant to its authority under the Communications Act of 1934, as

amended, and its authority to interpret and enforce approved interconnection agreements. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 3.

4. AT&T Missouri admits the allegations of the first sentence of paragraph 4. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 4.

5. AT&T Missouri admits that it has made available certain promotional offerings to its retail customers that have lasted for more than 90 days. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 5.

6. AT&T Missouri admits that at certain times beginning in early 2008, it made available an Acquisition Cash-Back Promotion (a/k/a “Win” or “Win-Back” Promotion) and a Movers Promotion, that the terms of the tariffs filed with the Commission under which they were offered speak for themselves, and that neither promotion is currently available. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 6.

7. AT&T Missouri admits that the terms of the tariffs filed with the Commission under which the above-referenced promotions were offered, and accessible letters regarding such tariffs, speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 7.

8. AT&T Missouri admits that the terms of the tariffs filed with the Commission under which the above-referenced promotions were offered, and accessible letters regarding such tariffs, speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 8.

9. AT&T Missouri denies the allegations of Paragraph 9 of the Complaint.

10. AT&T Missouri admits that Exhibit C as referred to in Paragraph 10 speaks for itself, but denies the accuracy of the information contained on Exhibit C and/or that Nexus is entitled to the amount claimed on Exhibit C. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 10.

11. AT&T Missouri admits that Exhibit D as referred to in Paragraph 11 speaks for itself, but denies the accuracy of the information contained on Exhibit D and/or that Nexus is entitled to the amount claimed on Exhibit D. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 11.

12. AT&T Missouri admits that to the extent a reseller is entitled to the benefit of the cashback component of a promotional offering, the maximum amount to which it is entitled is the face value of the retail cashback component reduced by the Commission-approved resale discount. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 12.

13. AT&T Missouri denies the allegations of Paragraph 13.

14. AT&T Missouri admits that that the provisions of federal law cited in Paragraph 14 speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 14.

15. AT&T Missouri denies the allegations of Paragraph 15.

16. AT&T Missouri admits that the terms of the parties' ICA speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 16.

17. AT&T Missouri admits that the terms of the parties' ICA speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 17.

18. AT&T Missouri admits that the terms of an interconnection agreement approved by the Texas Public Utilities Commission speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 18.

19. AT&T Missouri denies the allegations of Paragraph 19.

20. AT&T Missouri denies the allegations of Paragraph 20.

21. AT&T Missouri admits that the Federal Communications Commission's ("FCC's") rules speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 21.

22. AT&T Missouri admits that the FCC's orders speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 22.

23. AT&T Missouri denies the allegations of Paragraph 23.

24. AT&T Missouri denies the allegations of Paragraph 24.

25. AT&T Missouri admits that the Communications Act of 1934, as amended, and the FCC's rules speak for themselves. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 25.

26. AT&T Missouri admits that to the extent a reseller is entitled to the benefit of the cashback component of a promotional offering, the maximum amount to which it is entitled is the face value of the retail cashback component reduced by the Commission-approved resale

discount rate. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 26.

27. AT&T Missouri denies the allegations of Paragraph 27.

28. AT&T Missouri denies the allegations of Paragraph 28.

29. AT&T Missouri denies the allegations of Paragraph 29.

30. AT&T Missouri denies the allegations of Paragraph 30.

31. AT&T Missouri denies the allegations of Paragraph 31.

32. AT&T Missouri denies the allegations of Paragraph 32.

33. AT&T Missouri admits that the text of a transcribed hearing record speaks for itself. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 33.

34. AT&T Missouri admits that the text of a judicial opinion speaks for itself. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 34. AT&T Missouri denies the allegations of Paragraph 34.

35. AT&T Missouri admits that the text of a state commission order speaks for itself. Except as expressly admitted herein, AT&T Missouri denies the remainder of the allegations of Paragraph 35.

36. AT&T Missouri denies the allegations of Paragraph 36.

AFFIRMATIVE DEFENSES

As and for its affirmative defenses to the First Amended Complaint, AT&T Missouri states as follows:

1. The First Amended Complaint fails to state a claim upon which relief may be granted.

2. The First Amended Complaint is fatally deficient and must be dismissed for Nexus' failure to have first filed a notice of its intent to file its Complaint, as required by 4 CSR 240-4.020(2).

3. The First Amended Complaint is barred for Nexus' failure to have first exhausted the Dispute Resolution provisions of the parties' Commission-approved ICA, the fulfillment of which are an express condition precedent to the filing of any claims arising under the ICA with the Commission.

4. The First Amended Complaint is barred and/or relief thereunder limited by the applicable statutory and/or parties' contractually agreed-upon period of limitations stated in their ICA which governs the time within which a party may bring a claim for a dispute arising under the ICA.

5. The First Amended Complaint is barred and/or relief thereunder limited by the parties' contractually agreed-upon period stated in their ICA which governs the time within which a party may claim a credit for charges allegedly over-billed.

6. The First Amended Complaint is barred and/or relief thereunder limited by the parties' contractually agreed-upon period stated in their ICA which governs the time within which to dispute charges appearing on a bill.

7. The First Amended Complaint is barred and/or relief thereunder limited to the extent that Nexus and/or its end users failed to meet the terms and conditions of eligibility and/or qualification to receive the benefits of the promotional offers associated with the telecommunications services resold to Nexus.

8. The First Amended Complaint is barred by the doctrines of laches, estoppel, and/or waiver.

WHEREFORE, AT&T Missouri, having stated its Answer to the First Amended Complaint and having submitted its Affirmative Defenses thereto, respectfully requests that the Commission forthwith dismiss the First Amended Complaint in its entirety, and grant AT&T Missouri such other and further relief as may be just and appropriate under the circumstances.

Respectfully submitted,

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D/B/A AT&T MISSOURI

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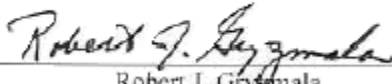
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to each of the below by e-mail on May 24, 2011.


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