

**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.)	

NEXUS' MOTION TO ESTABLISH PROCEDURAL SCHEDULE

COMES NOW Nexus Communications, Inc. ("Nexus") and respectfully submits its response to the Commission's March 7 Order to File Proposed Procedural Schedule.

1. As the Commission is aware, this case presents a complaint by Nexus, a competitive local exchange carrier ("CLEC"), against AT&T Missouri ("AT&T") pursuant to the terms of their interconnection agreement as well as federal law. Nexus claims that with respect to certain "cash back promotions" provided by AT&T over several years and purchased by Nexus on a wholesale basis, AT&T has not given Nexus all of the "credit" or "discount" to which Nexus believes it is entitled. AT&T denies this claim in its entirety.

2. It should be noted from the outset that neither AT&T nor counsel for Nexus is walking into uncharted territory in this case. In fact, counsel for Nexus has represented other CLECs with positions identical to Nexus' position in this case in at least eight jurisdictions,¹

1

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Alabama v. dPi Teleconnect, LLC, Docket No. 31323 before the Alabama Public Service Commission; *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Louisiana v. Image Access, Inc. d/b/a New Phone, et al.*, Consolidated Docket No. U-31364 before the Louisiana Public Service Commission; *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina v. dPi Teleconnect, LLC*, Docket No. P-863, Sub 5 before the North Carolina Utilities Commission; *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC*, Docket No. 2010-18-C before the Public Service Commission of South Carolina; *dPi*

three of which have completed hearings on the merits to date, with another to take place in April 2011. Having participated in these cash back cases a number of time with AT&T already, both AT&T and Nexus have a roadmap for how to put these cases together. The hearings on the merits of these cases have taken about 2/3 to 3/4 of a day to put on, including opening statements and testimony and cross of three expert witnesses – this despite the fact that the cases counsel for Nexus has been involved in have included not just this cash back issue the basis of Nexus' case, but two other promotion issues as well.

3. Next, please note that the amounts Nexus seeks are tied to orders for services subject to promotions *which have already been acknowledged to be valid and paid in part by AT&T*. The issue is thus not one of attempting to identify orders qualifying for a particular promotion, but rather the issue is one of underpayment for orders previously acknowledged as qualifying. Furthermore, although Nexus has already provided detailed information on the disputes in business to business communications through AT&T's dispute resolution portal, Nexus will be amending its petition in the next week to clarify for the record the specific promotions and qualifying orders involved, with dates and amounts in controversy.

4. Nexus' proposed schedule allows the same amount of time for discovery as initially requested by AT&T, though Nexus doubts that significant discovery will be necessary, as the difficult issues to be decided are largely legal and policy issues which the parties have developed fully in litigation in other jurisdictions. The timeline is thereafter streamlined to move

Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Florida, Docket No. 090258-TP before the Florida Public Service Commission; *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Georgia*, Docket Nos. 21849 and 29374 before the Georgia Public Service Commission; *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky*, Docket No. 2009-00127 before the Kentucky Public Service Commission; *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T Louisiana*, Docket No. U-30976 before the Louisiana Public Service Commission; *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Cause No. 5:10-CV-00466-BO before the Eastern District Court of North Carolina; and *dPi Teleconnect, LLC v. BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina*, Docket No. 2008-160-C before the Public Service Commission of South Carolina.

the case forward as efficiently as possible and closely resembles the kinds of deadlines, and their timing, employed in the previously mentioned cases already litigated by AT&T against other CLECs.

5. Accordingly, Nexus suggests the following procedural schedule to take place within 2011, subject to modification as discovery proceeds and/or as good cause otherwise may be presented:

April 1 - June 30	Discovery period available to the parties (all discovery must be generated in a manner and in sufficient time to allow responses to be provided within the period)
June 30	Stipulations of Facts (if any) due Nexus and AT&T Missouri Pre-filed Direct Testimony due
July 30	Staff Testimony due
August 30	Nexus and AT&T Missouri Rebuttal Testimony due
September 15	Statements of Positions; Issues list; List of Witnesses; and Order of Opening Statements, Witnesses and Cross-examination; all due
TBD (Oct., 2011)	Hearing on Merits (1 day contemplated)
TBD (21 days after transcript)	Post-Hearing Briefs to be filed

WHEREFORE, the parties request that the Commission enter an order consistent with the foregoing.

Respectfully submitted,

/s/ Christopher Malish

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served via e-mail upon each of the below on March 22, 2011.

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