

STATE OF MISSOURI
MISSOURI PUBLIC SERVICE COMMISSION

In the matter of:)	
)	
NEXUS COMMUNICATIONS, INC.)	
)	
Complainant,)	
v.)	DOCKET NO. TC-2011-0132
)	
SOUTHWESTERN BELL TELEPHONE CO.)	
D/B/A AT&T MISSOURI)	
)	
Respondent.)	

NEXUS' SECOND DATA REQUESTS TO AT&T

COMES NOW Nexus Communications, Inc. ("Nexus") and pursuant to 4 CSR 240-2.090, directs its Second Data Requests to Southwestern Bell Telephone Co. d/b/a AT&T Missouri ("AT&T") in the above-styled and numbered cause.

Instructions

All information and documents responsive to the Data Requests should be provided to Nexus by not later than August 10, 2011. Responses to the Data Requests should be signed by a person who is able to attest to the truthfulness and correctness of the responses (and be subject to examination, whether at hearing or at deposition), and Nexus should be promptly notified of any modifications or changes to any response provided.

Definitions

For purposes of these data requests, the following definitions shall apply, unless the context requires otherwise:

(A) The term “Complainant” means Nexus Communications, Inc., its agents, or others acting on its behalf.

(B) “Respondent” or “AT&T” means Southwestern Bell Telephone Co. d/b/a AT&T Missouri, its officers, agents, employees or others acting on its behalf.

(C) “You” or “yours” means Southwestern Bell Telephone Co. d/b/a AT&T Missouri, its agents, or others acting on its behalf.

(D) “Document” or “materials” means all written, typed, or printed matters, and all magnetic or other records or documentation of any kind or description (including, without limitation, letters, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, records, or notations of telephone or personal conversations, conferences, inter-office communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, facsimiles, invoices, audio recordings, tape recordings, video recordings, computers printouts and work sheets), including drafts and copies not identical to the originals, all photographs and graphic matter, however produced or reproduced, and all compilations of data from which information can be obtained, and any and all writings or recordings of any type or nature, in your actual possession, custody or control, including those in the possession, custody or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys or other agents, whether or not prepared by you.

(E) “Witness statement” means (1) a written statement signed or otherwise adopted or approved in writing by the person making it, or (2) a stenographic, mechanical, electrical, or other type of recording of a witness’s oral statement, or any substantially verbatim transcription of such a recording.

(F) “Describe” and “identify” when referring to a person or business organization means to state the name, business address, primary business telephone number and title, if applicable, of the person or business organization.

(G) “Describe” and “identify” when referring to a document means to state the nature (*e.g.*, letter, handwritten note, etc.) of the document; the title or heading that appears on the document; the date of the document and the date of each addendum, supplement, or other addition or change; the identity of the author and of the signer of the document, and of the person on whose behalf or at whose request or direction the document was prepared or delivered; and the present location of the document, and the name, address, position, or title, and telephone number of the person having custody of the document.

(H) The word “and” means “and/or.” The word “or” means “or/and.”

(I) Unless otherwise specifically stated, the relevant time period for the purpose of these Data Requests is February 15, 2008, through November 1, 2010.

(J) Unless otherwise specifically stated, the two relevant promotions for the purpose of these Data Requests are “cash back” promotions generically known as the “Movers” promotion and “Competitive Acquisition” (or “Win-back”) promotion. The Movers promotion means the “Movers Cash Back Promotion” or the “Movers Rewards Promotion” or ordering code “SW-100.” The Competitive Acquisition promotion means the “New Win-back Cash Back Promotion-SW” or “Win-back Cash Back Promotion-SW” or ordering code “SW-121.” “Acquisition Complete Choice[®] Package Promotion” means either or both the Movers promotion and the Competitive Acquisition promotion.

(K) “Avoided costs” means the portion of the ordinary retail rate attributable to any marketing, billing, collection, and other costs that will be avoided by AT&T Missouri by

offering for resale telecommunications services at wholesale rates. *See* 47 U.S.C. § 252(d)(3).
In Missouri, the avoided cost discount is 19.2%.

(L) “Ordinary retail rate” means the standard or tariffed rate associated with a telecommunications service.

(M) “Effective retail rate” or “retail promotional rate” means the net retail rate associated with a telecommunications service after any applicable price reductions or promotions have been applied in full. “Wholesale promotional rate” means the corresponding rate at wholesale.

Data Requests

DATA REQUEST NO. 2-1: Admit or deny that, in instances where the end user retains telecommunications service for only 31 days and where the amount of the cash back promotion is greater than the ordinary retail rate, the following formula *always* results in a wholesale promotional rate that is *less than* the retail promotional rate by the avoided costs associated with such services sold at the ordinary retail rate:

$$\text{wholesale promotional rate} = (\text{ordinary retail rate} - \text{cash back promotion}) - (0.192 \times \text{ordinary retail rate})$$

DATA REQUEST NO. 2-2: If your response to Data Request No. 2-1, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 2-3: Admit or deny that, for each month in which a competitive local exchange carrier purchases telecommunications services for resale in Missouri, the wholesale rate for such services should always be the *same* amount *less than* the retail rate for those services (*i.e.*, the amount equal to the costs avoided by AT&T by providing such telecommunications services at wholesale to competitive local exchange carriers) regardless of whether such services are subject to a cash back promotion.

DATA REQUEST NO. 2-4: If your response to Data Request No. 2-3, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 2-5: Admit or deny that, for each month in which a competitive local exchange carrier purchases telecommunications services for resale in Missouri, the

wholesale rate for such services should *always* be the wholesale discount percentage of 19.2% *less than* the effective retail rate.

DATA REQUEST NO. 2-6: If your response to Data Request No. 2-5, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 2-7: Admit or deny that, in instances where the end user retains telecommunications services for only 31 days and where the amount of the cash back promotion is greater than the ordinary retail rate, the following formula *always* results in a wholesale promotional rate that is 19.2% *less than* the effective retail rate for such services:

$$\text{wholesale promotional rate} = (\text{ordinary retail rate} - \text{cash back promotion}) - (0.192 \times |(\text{ordinary retail rate} - \text{cash back promotion})|).$$

DATA REQUEST NO. 2-8: If your response to Data Request No. 2-7, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 2-9: Admit or deny that, in instances where the end user retains telecommunications service for only 31 days and where the amount of the cash back promotion is greater than the ordinary retail rate, the following formula *always* results in a wholesale promotional rate that is *more than* the retail promotional rate for such services:

$$\text{wholesale promotional rate} = (0.808 \times \text{ordinary retail rate}) - (0.808 \times \text{cash back promotion}).$$

DATA REQUEST NO. 2-10: If your response to Data Request No. 2-9, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 2-11: Explain how the wholesale rate for telecommunications services should be calculated pursuant to Appendix Resale, Section 3.5 of the parties' interconnection agreement, in situations where AT&T offers cash back promotions of 89 days or less and the full face value of the cash back promotion amount is more than the ordinary retail rate for such services.

DATA REQUEST NO. 2-12: Explain how the wholesale rate for telecommunications services should be calculated pursuant to Appendix Resale, Section 3.5 of the parties' interconnection agreement, in situations where AT&T offers cash back promotions of 90 days or more and the full face value of the cash back promotion amount is more than the ordinary retail rate for such services.

Respectfully submitted,

s/ Chris Malish

Christopher Malish (Texas Bar No. 00791164)

Admitted *pro hac vice* in Missouri

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above instrument was transmitted to Counsel for Respondent at the below address via electronic mail on July 21, 2011.

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s/ Chris Malish
Christopher Malish