

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 COMMUNICATIONS, INC.'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT

Complainant Nexus Communications, Inc. ("Nexus") respectfully brings this Motion for Leave to File Second Amended Complaint to the Missouri Public Service Commission ("Commission") seeking to recover cash back promotional credits from Southwestern Bell Telephone, Co. d/b/a AT&T Missouri ("AT&T"). Counsel for Nexus has conferred with counsel for AT&T prior to filing this motion.

The amended complaint does not allege or seek any new claims; rather, it merely re-states Nexus' position with greater particularity and more specificity. Furthermore, this amended complaint eliminates any ambiguity as to the promotional credit requests in dispute and erases any doubt as to whether AT&T approved and deemed valid those promotional credit requests and ultimately credited Nexus an amount on same. The key issue brought by Nexus for consideration by the Commission is: what is the formula that should be used to calculate the wholesale price for telecommunications services subject to cash back promotions? This is not

the proper docket for AT&T to re-examine and litigate each of the 15,634 promotional credit requests, on an item-by-item basis, that it has previously approved, but has not previously disputed and therefore, AT&T should be estopped from doing so. The concern here is the amount Nexus is due to be credited in situations where it is acknowledged that some amount of credit is due.

WHEREFORE, PREMISES CONSIDERED, based upon the foregoing, Nexus respectfully requests and prays the Missouri Public Service Commission grants its Motion for Leave to File Second Amended Complaint pursuant to Commission Rule 2.080(20) (4 CSR 240-2.080(20)) in the instant matter.

Respectfully submitted,

s/ Chris Malish

Christopher Malish (Texas Bar No. 00791164)
Admitted *pro hac vice* in Missouri

Malish & Cowan, P.L.L.C.
1403 West Sixth Street
Austin, Texas 78703
(512) 476-8591
(512) 477-8657 – facsimile
cmalish@malishcowan.com

Mark W. Comley #28847
Newman, Comley & Ruth, P.C.
P.O. Box 537
Jefferson City, Missouri 65102-0537
(573) 634-2266, ext. 301
(573) 636-3306 – facsimile
comleym@ncrpc.com

Attorneys for Complainant

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing Motion for Leave to File Second Amended Complaint was served by electronic mail this 11th day of July 2011, to:

General Counsel's Office at gencounsel@psc.mo.gov;
Office of Public Counsel at opcservice@ded.mo.gov;
Cully Dale at cully.dale@psc.mo.gov;
William Voight at william.voight@psc.mo.gov; and
AT&T Missouri at robert.grysmala@att.com and leo.bub@att.com.

s/ Chris Malish
Christopher Malish