

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 TO EXTEND DISCOVERY PERIOD

Complainant Nexus Communications, Inc. (“Nexus”) respectfully moves the Missouri Public Service Commission (the “Commission”) to extend the discovery period in this case by three weeks without further modification of the procedural schedule. This extension of time will allow Southwestern Bell Telephone Co. d/b/a AT&T Missouri (“AT&T Missouri”) sufficient time to respond to data requests recently submitted by Nexus before the expiration of the existing discovery period. Nexus believes that no prejudice or undue harm will result from such extension of the discovery period because its data requests were relatively few in number and relatively simple to answer (19 requests for admission with corresponding requests to explain any denial, and three requests to identify witnesses or witness statements). Furthermore, Nexus’ data requests are directly on point as to the underlying issue, *i.e.*, how to calculate the amount of the cash back promotion due Nexus. Nexus’ data requests to AT&T Missouri are attached in Exhibit 1.

In any event, discovery issues are still pending before the Commission due to a motion to compel filed by AT&T Missouri on May 27, 2011, in which it asked the Commission to compel Nexus to respond to data requests no later than 14 days after any such order is issued. Nexus responded on June 8, 2011, maintaining its objection that the subject data requests were irrelevant and not likely to lead to the discovery of admissible evidence. Later, AT&T Missouri filed its reply in support of its motion on June 23, 2011, in which it again asked the Commission to compel Nexus to respond no later than 14 days after any such order is issued. No ruling on AT&T Missouri's motion has yet been rendered or order been issued by the Commission. Furthermore, no hearing on AT&T Missouri's motion has been noticed or set. Thus, it may well be some time before the Commission even rules on AT&T Missouri's motion. Accordingly, for all intents and purposes, the discovery period will effectively extend beyond the June 30, 2011, closing date as established in the procedural schedule of March 29, 2011, at least for as long as AT&T Missouri's motion is pending before the Commission. Therefore, because AT&T Missouri's motion has effectively extended the discovery period, Nexus moves the Commission to expressly extend the discovery period in order to allow AT&T Missouri sufficient time to respond to relevant data requests recently submitted by Nexus.

Counsel for AT&T Missouri has conferred with counsel for Nexus and requested that Nexus withdraw its data requests. However, because Nexus' data requests: (1) were submitted before the expiration of the existing discovery period, (2) will result in no prejudice or undue harm to AT&T Missouri, and (3) are directly on point, and because AT&T Missouri has effectively extended the discovery period by its own motion, Nexus respectfully moves the Commission to grant this motion to extend the discovery period for three weeks from the date of any such order.

Respectfully submitted,

s/ Chris Malish

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

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Attorneys for Complainant

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 and U.S. First Class Mail on June 30, 2011.

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(314) 247-0014 - facsimile
robert.gryzmala@att.com

s/ Chris Malish

Christopher Malish

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PROPOSED ORDER

Issue Date: _____

Effective Date: _____

Before the Missouri Public Service Commission (“Commission”) is Nexus Communications, Inc.’s *Motion to Extend Discovery Period*. Having considered the motion, the Commission hereby **GRANTS** the motion.

Signed this _____ day of _____, 2011.

EXHIBIT 1

STATE OF MISSOURI
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NEXUS' FIRST DATA REQUESTS TO AT&T MISSOURI

COMES NOW Nexus Communications, Inc. ("Nexus") and pursuant to 4 CSR 240-2.090, directs its First Data Requests to Southwestern Bell Telephone Co. d/b/a AT&T Missouri ("AT&T Missouri") 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 July 18, 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 Missouri” 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).

Data Requests

DATA REQUEST NO.1: Identify the name, address, and telephone number of persons having knowledge of relevant facts, and provide a brief statement of each identified person's connection with the case.

DATA REQUEST NO. 2: For any testifying expert, identify:

- (a) the expert's name, address, and telephone number;
- (b) the subject matter on which the expert will testify;
- (c) the general substance of the expert's mental impressions and opinions and provide a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
- (d) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (i) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (ii) the expert's current resume and bibliography.

DATA REQUEST NO. 3: Identify any discoverable witness statements.

DATA REQUEST NO. 4: Admit or deny that the wholesale rate for telecommunications services is calculated by subtracting the avoided costs (*i.e.*, wholesale discount) from the retail rate.

DATA REQUEST NO. 5: If your response to Data Request No. 4, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 6: Admit or deny that the costs to AT&T Missouri associated with providing telecommunications services do not change regardless of whether such services are sold at the ordinary retail rate, the wholesale rate, or at a promotional rate.

DATA REQUEST NO. 7: If your response to Data Request No. 6, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 8: Admit or deny that the avoided costs to AT&T Missouri associated with providing telecommunications services do not change regardless of whether such services are provided at the ordinary retail rate, the wholesale rate, or at a promotional rate.

DATA REQUEST NO. 9: If your response to Data Request No. 8, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 10: Admit or deny that to 47 C.F.R. § 51.607 expects that the wholesale rate for telecommunications services provided by AT&T Missouri for resale to other competitive local exchange carriers to be less than the retail rate for same.

DATA REQUEST NO. 11: If your response to Data Request No. 10, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 12: Admit or deny that federal law requires AT&T Missouri to reduce the net retail rate for telecommunications services it offers to other competitive local exchange carriers for resale of same.

DATA REQUEST NO. 13: If your response to Data Request No. 12, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 14: Admit or deny that the costs to AT&T Missouri associated with providing telecommunications services are not negative (*i.e.*, not less than \$0).

DATA REQUEST NO. 15: If your response to Data Request No. 14, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 16: Admit or deny that the avoided costs to AT&T Missouri associated with providing telecommunications services are not negative (*i.e.*, not less than \$0).

DATA REQUEST NO. 17: If your response to Data Request No. 16, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 18: Admit or deny that -\$25 is less than -\$20.

DATA REQUEST NO. 19: If your response to Data Request No. 18, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 20: Admit or deny that a discount in the price for telecommunications services means a reduction in the price for same.

DATA REQUEST NO. 21: If your response to Data Request No. 20, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 22: Admit or deny that the benefit of a \$50 cash back promotion is equivalent to \$50 cash for end users fulfilling the eligibility requirements and following through on all measures required by AT&T Missouri to secure the cash back promotion.

DATA REQUEST NO. 23: If your response to Data Request No. 22, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 24: Admit or deny that benefit of the cash back promotion is payable only once during one single billing period (*i.e.*, the cash back promotion is not payable in installments over more than one billing period).

DATA REQUEST NO. 25: If your response to Data Request No. 24, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 26: Admit or deny that a cash back promotion changes the rate for telecommunications services subject to same.

DATA REQUEST NO. 27: If your response to Data Request No. 26, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 28: Admit or deny that in order to receive the benefit of a cash back promotion, a qualified end user must only retain telecommunications services for no more than one month (*i.e.*, 30 days).

DATA REQUEST NO. 29: If your response to Data Request No. 28, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 30: Admit or deny that the business process used to evaluate and approve promotional credit requests received by AT&T Missouri is the same business process used to evaluate and approve promotional credit requests received by AT&T Texas.

DATA REQUEST NO. 31: If your response to Data Request No. 30, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 32: Admit or deny that the business method used by AT&T Missouri to evaluate and approve promotional credit requests received from competitive local exchange carriers is the same business method used by AT&T Texas.

DATA REQUEST NO. 33: If your response to Data Request No. 32, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 34: Admit or deny that the business method used by AT&T Missouri to calculate the value of promotional credit requests received from competitive local exchange carriers is the same business method used by AT&T Texas.

DATA REQUEST NO. 35: If your response to Data Request No. 34, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 36: Admit or deny that AT&T Missouri is directed by AT&T Services, Inc., located in Dallas, Texas, as to how AT&T Missouri evaluates, approves, and calculates the value of promotional credit requests received from competitive local exchange carriers.

DATA REQUEST NO. 37: If your response to Data Request No. 36, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 38: Admit or deny that AT&T Missouri has sole discretion and control over creating promotional rates by establishing certain promotions such as the cash back promotions.

DATA REQUEST NO. 39: If your response to Data Request No. 38, above, was anything other than an unconditional admission, explain each and every reason why.

DATA REQUEST NO. 40: Admit or deny that for the single month in which a cash back promotion applies, for such promotions in which the promotion amount exceeds the ordinary retail rate for telecommunications services, by reducing the cash back promotional credit paid to qualifying competitive local exchange carriers, AT&T Missouri effectively increases the wholesale promotional rate as compared to its own end users' retail promotional rate.

DATA REQUEST NO. 41: If your response to Data Request No. 40, above, was anything other than an unconditional admission, explain each and every reason why.

Respectfully submitted,

s/ Chris Malish

Christopher Malish (Missouri 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 and U.S. First Class Mail on June 28, 2011.

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s/ Chris Malish
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