

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 10th day of
August, 2011.

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

ORDER GRANTING STAY AND SUSPENDING SCHEDULE

Issue Date: August 10, 2011

Effective Date: August 10, 2011

The Missouri Public Service Commission is granting the motion to stay this action¹ ("motion") pending compliance with the non-litigation dispute resolution ("ADR") provisions of the interconnection agreement ("agreement") that governs this action.

a. Background

Nexus Communications, Inc. ("Nexus") initiated this action on November 5, 2010, by filing a complaint against Southwestern Bell Telephone Company d/b/a AT&T Missouri ("ATT"). ATT filed the motion. Nexus filed a response.²

¹ *Motion to Stay of Southwestern Bell Telephone Company d/b/a AT&T Missouri*, filed on July 21, 2011

² *Nexus Communications, Inc.'s Response to AT&T's Motion to Stay*, filed on August 1, 2011.

b. Arguments

In the *First Amended Complaint*,³ Nexus seeks “a ruling such that Nexus is entitled to recover all promotional credits due”⁴ from ATT on claims under the agreement. In the motion, ATT alleges that Nexus failed to comply with the ADR provisions. On that basis, ATT seeks dismissal in its answer⁵ to the *First Amended Complaint*, but seeks a stay of these proceedings in the motion.

ATT and Nexus (“the parties”)⁶ agree that the agreement required a party to submit a claim to ADR before submitting a claim to the Commission. Both parties cite the agreement, including the following language:

1 0.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party’s receipt of written notice of a controversy or claim arising out of or relating to this Agreement or its breach. No Party may pursue any claim unless such written notice has first been given to the other Party. [⁷]

The parties also agree on the method of giving written notice.⁸ Further, the parties agree that Nexus did not giving written notice until December 13, 2010, which was after the filing of the complaint. Those facts show that Nexus did not comply with the ADR provisions.

³ Filed on April 29, 2011.

⁴ *First Amended Complaint*, p. 19. The *Second Amended Complaint*, for which a motion for leave to file is pending, would seek the same relief at p. 21.

⁵ *Answer and Affirmative Defenses of Southwestern Bell Telephone Company d/b/a AT&T Missouri*, filed on December 9, 2010, page 6, paragraph 3.

⁶ The Commission’s staff and the Office of the Public Counsel are parties to this action, 4 CSR 240-2.010(11), but not to the agreement.

⁷ Case No. TK-2006-0044, [*Agreement*], filed August 3, 2005, General Terms and Conditions, pages 37-38. Significantly, Nexus cites that language to thwart one of ATT’s defenses to the claims. *Reply to Response of Southwestern Bell Telephone Co. d/b/a AT&T Missouri to Nexus Communications, Inc.’s Motion to Reconsider Order Granting in Part, and Denying in Part, AT&T’s Motion to Compel Nexus to Respond to Discovery*, filed August 1, 2011, page 2.

⁸ Case No. TK-2006-0044, [*Agreement*], filed August 3, 2005, General Terms and Conditions, page 38, Section 10.4.4.

Nexus argues that a stay would constitute an undue delay, because the motion is tardy, but the record shows that ATT raised the ADR provisions at its earliest opportunity. In ATT's answer to the original complaint,⁹ and in ATT's motion to dismiss,¹⁰ ATT alleged Nexus' failure to comply with the ADR provisions.

When the Commission ruled on ATT's motion to dismiss the original complaint, the record lacked support, by either admissible evidence or an admission in lieu of evidence, for ATT's allegation of non-compliance. That deficiency has found a remedy in the motion. In the motion, ATT shows that Nexus did not submit claims under the ADR provisions before submitting them to the Commission by attaching Nexus's discovery responses.¹¹

Nexus also argues that it complied with the ADR provisions on December 13, 2010. But that date was after, not before, the filing of the original complaint¹² on November 5, 2010. Therefore, Nexus's allegation confirms the discovery responses that ATT cites. There is no dispute as to the facts supporting a stay under the ADR provisions and they show no compliance with the ADR provisions.

Nexus further alleges that compliance the ADR provisions will be futile. In support, Nexus cites ATT's position in other actions in other jurisdictions. But Nexus has not shown, nor even alleged, that the dispute resolution provisions, interconnection agreements, non-litigation dispute resolution clauses, and law governing the respective forums are the same as those before the Commission. Nexus also alleges that ATT's

⁹ *Answer and Affirmative Defenses of Southwestern Bell Telephone Company d/b/a AT&T Missouri*, filed on May 24, 2011, page 3, paragraph 4.

¹⁰ *Motion to Dismiss of Southwestern Bell Telephone Company d/b/a AT&T Missouri*, filed on December 9, 2010, page 3, paragraph 7.

¹¹ *Motion, Attachment A*.

¹² *Nexus Communications, Inc.'s Original Complaint*.

strategy bars any settlement or compromise on the complaint's subject matter but that is mere speculation.

Therefore, the Commission will grant the motion. Nevertheless, the Commission agrees with Nexus that the ADR provisions' purpose is resolution, not delay. Therefore, the Commission will address ADR proceedings by separate order.

c. Ruling

Therefore, the Commission will suspend the procedural schedule pending compliance with the ADR provisions.

THE COMMISSION ORDERS THAT:

1. The *Motion to Stay of Southwestern Bell Telephone Company d/b/a AT&T Missouri* is granted.
2. The procedural schedule is suspended pending compliance with the interconnection agreement's dispute resolution provisions.
3. This order shall be effective immediately upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Davis, Jarrett, and
Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge