

## Prehearing Conference

September 20, 2011

Jefferson City, Missouri

Volume 1

Nexus Communications, Inc., )

)

Complainant, )

)

vs. ) File No. TC-2011-0132

)

Southwestern Bell Telephone, L.P. )

d/b/a AT&T Missouri, )

Respondent )

DANIEL JORDAN, Presiding,

SENIOR REGULATORY LAW JUDGE

REPORTED BY:

Kristy B. Bradshaw, CCR No. 1269

TIGER COURT REPORTING, LLC

## A P P E A R A N C E S

MEGHAN MCCLOWRY, Legal Counsel

200 Madison Street, Suite 700

Jefferson City, Missouri 65102

573.751.8700

FOR: Staff of the Missouri Public Service Commission

CHRIS MALISH, Attorney at Law, via telephone

Foster Malish & Cowan, LLP

1403 West Sixth Street

Austin, Texas 78703

512.473.8591

FOR: Nexus Communications, Inc.

BOB GRYZMALA, Attorney at Law, via telephone

AT&T Corp.

909 Chestnut

St. Louis, Missouri 63101

314.235.6060

FOR: Southwestern Bell Telephone,

d/b/a AT&T Missouri

BRIAN MOORE, Attorney at Law

AT&T Corp.

One AT&T Way

Bedminster, New Jersey 07920

908.234.6263

FOR: Southwestern Bell Telephone,

d/b/a AT&T Missouri

## P R O C E E D I N G S

JUDGE JORDAN: Good morning everyone. The Commission is calling File No. TC-2011-0132. This is a conference in the matter of Nexus Communications, Inc. versus Southwestern Bell Telephone, LP, doing business as AT&T Missouri. We're going to discuss alternative dispute resolution procedures today, and we are on the record.

So I will begin by introducing myself. I'm Daniel Jordan; I'm the senior regulatory law judge assigned to this action. And we'll now take some entries of appearance. I'd like to start with counsel for the complainant, please.

MR. MALISH: It's Chris Malish here on behalf of Nexus.

JUDGE JORDAN: All right. And for respondent?

MR. GRYZMALA: Good morning, your Honor. This is Bob Gryzmala, G-r-y-z-m-a-l-a, for Southwestern Bell Telephone Company, d/b/a AT&T Missouri. Your Honor, we are the successor company to the limited partnership which was named as the respondent here. The office address: 909 Chestnut in St. Louis 63101.

JUDGE JORDAN: Okay. And for Staff?

MS. MCCLOWRY: Meghan McClowry for the Staff of the Public Service Commission. My business address is

1 P.O. Box 360, Jefferson City, Missouri 65102. And with me  
2 are Staff people Bill Voight and John Van Eschen.

3 JUDGE JORDAN: Thank you. Now, did  
4 complainant and respondent have any representatives of  
5 their clients with them today?

6 MR. GRYZMALA: Not for AT&T at present, your  
7 Honor.

8 MR. MALISH: And nor for Nexus.

9 JUDGE JORDAN: All right.

10 MR. MOORE: Well, your Honor, just as a  
11 point of clarification, also on this call, this is Brian  
12 Moore. I'm with AT&T's offices at One AT&T Way in  
13 Bedminster, New Jersey 07920. And I am an attorney for the  
14 business unit within AT&T that has a stake in this  
15 litigation.

16 JUDGE JORDAN: Okay. Thank you. First  
17 thing I want to mention is the issue of a successor entity.  
18 Are we going to need any substitution of parties? Do we  
19 need to amend the complaint at all on this? Any ideas or  
20 thoughts on that?

21 MR. GRYZMALA: We would not, and we just  
22 acknowledge that we are the party responsible, your Honor.  
23 I'm not sure anything more is necessary. We would agree to  
24 the substitution.

25 JUDGE JORDAN: Okay. That's fine.

1                   MR. GRYZMALA: I mean, if Mr. Malish is okay  
2 with that. It's very clear; we are the successor Missouri  
3 corporation to the Texas limited partnership which is named  
4 in the complaint.

5                   JUDGE JORDAN: Okay. And is that okay with  
6 Mr. Malish?

7                   MR. MALISH: Yes, it is.

8                   JUDGE JORDAN: Okay. That's fine. Thank  
9 you for clarifying that. Also, does anyone -- this  
10 transcript should be filed -- the transcript of this  
11 conference should be filed by the 4th of October. Will any  
12 of the parties want their own printed copy?

13                  MR. GRYZMALA: AT&T would like that, your  
14 Honor.

15                  JUDGE JORDAN: Okay. I see the reporter is  
16 writing that down.

17                  MR. GRYZMALA: Actually, let me back that  
18 up. If it's filed in EFIS, we could obtain it from EFIS;  
19 is that correct?

20                  JUDGE JORDAN: As far as I know, you can do  
21 it on EFIS, just like anything else.

22                  MR. GRYZMALA: Yeah. That would be fine.  
23 That would be acceptable.

24                  JUDGE JORDAN: Okay. Good. Very good.  
25 Well, the purpose for being here -- and I don't want to

1 take up a lot of the parties' valuable time with this, but  
2 I wanted to discuss the provisions for Alternative Dispute  
3 Resolutions set forth in the Interconnection Agreement.

4 I wanted to make sure that I understood  
5 them. I wanted to find out where we are with them. I  
6 wanted to find out whether the Public Service Commission  
7 could possibly facilitate this. And I wanted to discuss  
8 some reporting -- progress reporting as we go through the  
9 dispute resolution process.

10 I'll start with my understanding of the  
11 process, and if the parties want to correct me, I'd be  
12 perfectly grateful for that. Looking at the provisions  
13 from the Interconnection Agreement, I see that there are  
14 multiple stages. One at the service center, another that  
15 is labeled, Informal Resolution of Disputes, and then we  
16 may have either a formal dispute resolution or an  
17 arbitration.

18 And I suppose those could be successive or  
19 they could be alternatives. Am I correct about that? And  
20 when you respond, please identify yourself for the  
21 reporter. That would be helpful.

22 MR. GRYZMALA: Judge, I'll have to take a  
23 moment. To be candid, I was trying to get my copy of the  
24 ICA.

25 JUDGE JORDAN: That's a fine idea. I'm

1 looking at the provisions. For your quick reference, it's  
2 Section 10.

3 MR. GRYZMALA: Yeah. Bear with me.

4 JUDGE JORDAN: Certainly. I have mine  
5 printed out as pages 37 through 40, it looks like.

6 MR. GRYZMALA: Chris, I don't know if you  
7 have a copy. I can't seem to lay my hands on the ICA copy.

8 MR. MALISH: Well, I just dragged one up  
9 right now. So I do, but -- I know it's online also, but I  
10 pulled a piece of -- an extract out of my hard file.

11 JUDGE JORDAN: Well, as you're running down  
12 the provisions, I'll give you my understanding of this, and  
13 I think I'm reading this correctly. I see the service  
14 center procedure as lasting somewhere between 30 and  
15 90 days. The Informal Resoulution of Dispute section, I  
16 don't actually see a time limit. That's consensual.

17 And then, the Formal Dispute Resolution  
18 procedure is supposed to begin -- it has a limit for when  
19 it starts. And then, arbitration also has a time -- has a  
20 similar date, before which it cannot start. Does anyone  
21 have any reason to believe that my understanding is not  
22 correct?

23 MR. GRYZMALA: No, I don't. AT&T would not.  
24 This is Bob Gryzmala, your Honor.

25 MR. MALISH: And I agree.

1 JUDGE JORDAN: Okay. Very good. When the  
2 Commission first determined to apply the dispute resolution  
3 clause, one of the concerns as to it was that it involves a  
4 certain amount of delay in the resolution of claims. And  
5 that's simply a matter of the time that it takes to resolve  
6 disputes.

7 What I'd like to do is keep the Commission  
8 informed as to the progress of the dispute resolution  
9 process. So with that in mind, I'd like to start by asking  
10 the parties where they think they are in this procedure.  
11 I'll start with Mr. Malish.

12 MR. MALISH: Judge, we think that we're in  
13 formal dispute resolution, which is being handled at the  
14 Commission. So we feel like we've already gone through  
15 10.3 and, I guess, 10.4, and we are now in 10.6.

16 JUDGE JORDAN: Okay.

17 MR. GRYZMALA: Judge, on behalf of AT&T, I  
18 think that our view differs. We've sort of crossed this  
19 bridge in the sense that it was, you know, our view, and I  
20 think Staff's view, that no meaningful ADR had proceeded,  
21 whether it's formal, informal, or what. The case was filed  
22 before the process was even triggered, and that's  
23 absolutely crystal clear.

24 Where we are is in a mode of trying to reach  
25 an informal resolution, which is the letter of the ICA.



1 Typically -- and I don't have the ICA in front of me, your  
2 Honor, and I'll take responsibility for that. I had it  
3 electronically and I lost my hard drive for IT issues a few  
4 weeks back, so I haven't recovered it.

5 But the experience that we've had here at  
6 AT&T is that ADR, Alternative Dispute Resolution, in the  
7 CLEC environment includes folks who appoint business  
8 managers to meet with each other on a business-to-business  
9 basis, and seek to resolve the matter, either --  
10 preferably in whole, or at least in part, to the extent the  
11 parties can do that, before we engage the Commission's  
12 resources.

13 So to that extent -- and, again, even though  
14 I don't have the ICA in front of me -- I think this is, you  
15 know, an informal means of resolution-- attempting to resolve  
16 the matter. I think that we envisioned that business  
17 managers would meet with business managers to talk through  
18 the handful of issues we have in this case, and we all know  
19 what they are.

20 And we would look forward to Staff's, you  
21 know, guidance, involvement, in whatever ways that Staff's  
22 counsel would like to join, or Messrs. Van Eschen  
23 or Voight.

24 MR. MALISH: And, Judge, if I may respond.

25 JUDGE JORDAN: Please do.

1                   MR. MALISH: I didn't really give you a full  
2 explanation of why I think we are where we are, but I'll  
3 go ahead and do that. And you're right. Each one of these  
4 steps in the process has, you know, a 30-day or a 60-day  
5 provision that they expect things to be done during those  
6 time frames.

7                   I will remind the tribunal that this is not  
8 an issue that is confined to Missouri. In fact, Missouri  
9 is only one of the most recent of a number of states in  
10 which AT&T has been litigating this issue with Nexus, and  
11 with other resellers.

12                  And so typically, as Mr. Gryzmala says,  
13 these dispute resolution provisions in the contract are  
14 designed to allow the parties to explore one another's  
15 position to see if there might be some sort of common  
16 ground that can be reached.

17                  The problem is that, in our particular  
18 situation with this case -- which extends beyond the  
19 borders of Missouri, because, of course, these promotions  
20 are region-wide, and they are not confined to Missouri --  
21 we already know what AT&T's position is. We've known  
22 AT&T's position for years. We are, and have been, at an  
23 impasse on this issue for years now. We are litigating  
24 this after having failed to resolve it in informal dispute  
25 resolution processes in over a dozen states over many

1 months and, in fact, years.

2 And so for Missouri what was important was  
3 starting the process off by identifying each of the  
4 underlying qualifying orders for which Nexus is attempting  
5 to get the full cash-back promotional rate that it  
6 should've gotten from AT&T, so that we can figure out what  
7 the math is. In other words, it's however many thousand  
8 requests at however many dollars per request gives us the  
9 total.

10 But each and every one of those requests  
11 that is involved in Nexus' case, all have the same issue:  
12 Do you get the full cash-back amount of the promotion, or  
13 do you get something less? That core issue is one that has  
14 been, as I said before, not just dealt with in informal  
15 resolution with AT&T, but is actually in litigation in many  
16 places with AT&T.

17 And so there is not going to be any real  
18 opportunity for negotiation, exploring the positions of the  
19 parties, all the things that would typically be involved in  
20 this sort of more informal dispute resolution that is  
21 anticipated by the contract that's there, filed in  
22 Missouri. But to go through that would be, of course,  
23 really an exercise in futility.

24 We know what it is that they will say. And  
25 they know what we will say. Because we've said these

1 things in court over and over and over again, just not in  
2 Missouri yet. And so that's -- you know, that's the big  
3 problem here.

4 And I will point out that -- I mean, I  
5 understand that AT&T is -- keeps pointing to, Well, we  
6 haven't -- this was filed, you know, X number of days  
7 before they even completed their informal -- excuse me --  
8 before they completed their identification, by telephone  
9 number, each and every claim that was involved through our  
10 web portal. I understand that they're saying that.

11 But the fact of the matter is, even if  
12 those -- the timing of those two things was switched, that  
13 shouldn't kill the case that we have at Missouri  
14 Commission. Because over 260 days have elapsed since this  
15 case was filed there at the Commission, which is more than  
16 enough time in which to have explored any kind of informal  
17 settlement that could be made on this issue.

18 But the fact remains that there is no middle  
19 ground on this question of, Should it be 50 or should it be  
20 less than 50 for everyone of these cash-back promotions at  
21 issue.

22 JUDGE JORDAN: Okay. Before I take a brief  
23 response from AT&T, I will note that among the issues in  
24 dispute when the Commission elected to send this to ADR was  
25 that the disputes -- well, the claims at issue were --

1     which claims were at issue was in dispute. So I hope that  
2     when the ADR process is done, we'll have that, at least,  
3     clarified. Now I'll go ahead and take a brief response  
4     from AT&T before we get on with this.

5                 MR. MALISH: If you don't mind, Judge,  
6     there's something I'd like to add.

7                 JUDGE JORDAN: Go ahead.

8                 MR. MALISH: Okay. In Texas AT&T -- we have  
9     the same case against AT&T in Texas. In Texas AT&T made  
10    the same complaint, but earlier on in the proceeding that,  
11    Well, we haven't gone through informal dispute resolution  
12    yet. The case was abated in Texas for over 90 days in  
13    which to achieve some sort of informal resolution. And  
14    guess what happened? Absolutely nothing. So what it  
15    amounted to was just a 90-day delay in which nothing was  
16    accomplished.

17                JUDGE JORDAN: Well --

18                MR. MALISH: The exact same issue.

19                JUDGE JORDAN: Well, thank you for that --  
20    for informing me of that. I can't really do anything about  
21    Texas.

22                MR. MALISH: Right.

23                JUDGE JORDAN: My duty is to move this case  
24    along, as best I can, in Missouri, under the instructions  
25    that the Commission has set forth. So I'll take a brief

1 response from AT&T before we proceed with that. Does AT&T  
2 have anything he wants to say in response to that?

3 MR. GRYZMALA: Just briefly, your Honor, and  
4 Brian can chime in as he would like. Just a preliminary  
5 matter, to the point that AT&T made the same complaint in  
6 Texas earlier. I think the record will reflect that we  
7 moved very early on in this case and the motion was  
8 initially denied because of a misunderstanding on the  
9 record.

10 Be that as it may, I don't dispute that we  
11 are at some loggerheads with regard to one of the issues in  
12 the case. I mean, we are in litigation with Nexus in Texas  
13 and with other resellers in other states. But that is not  
14 to say that there cannot be a settlement or progress made  
15 on one of the issues that is the discount, as it were.

16 You know, when Mr. Malish filed the pleading  
17 in Ohio to abate the case to, in part, move into settlement  
18 negotiations, we took that at face value. And I relied on  
19 that, and I submitted it to the Commission.

20 To the point with regard to your Honor,  
21 there are additional issues. There are issues under the  
22 ICA as to whether or not efficacy will be applied -- or  
23 effectiveness will be applied to the claims that were made  
24 for the discount. Are these eligible tickets? Are they  
25 qualified tickets? And we've heard argument back and forth

1       about that.

2                       But that is a matter about which we  
3       certainly would relish the opportunity to do ADR. We can  
4       certainly limit, if -- at a minimum, you know, what's at  
5       stake. Let's not also forget that that ICA has time  
6       provisions, that parties can only reach back, as it were,  
7       for a certain period of time and make complaints about past  
8       bill credits that they're owed, or whatever.

9                       Those are things that, you know, are in the  
10      ICA, and they're enforceable under federal law. So there's  
11      more than one issue. There are multiple issues, and we are  
12      hopeful of at least some progress. That's all I can say  
13      for Missouri. We are hopeful of some progress.

14                      Brian, anything more?

15                      MR. MOORE: No, Bob, thanks. I think that's  
16      a very good summary. I agree with you that we're hoping to  
17      make progress on at least some of the issues here.

18                      Look, Judge, I certainly am well aware of  
19      your statement that you can't help us in Texas. It is what  
20      it is. But to do a little bit of a compare and contrast --  
21      and I did not have personal involvement with the Texas  
22      situation. Quite frankly, I wasn't even in the job at the  
23      time.

24                      But it seems like one of the hurdles, or one  
25      of the problems that arose in Texas was the fact that

1 clients may not have been directly engaged in that  
2 mediation process. And going back to something that Bob  
3 said earlier, we think that that could be very helpful  
4 here, if that client engagement took place.

5 But, Judge, speaking as the business unit  
6 attorney -- and I won't pretend to know that I know all of  
7 the ins and outs of the ongoing proceeding -- we're  
8 certainly prepared to share some information with the folks  
9 at Nexus, as it relates to Missouri. And hopefully to, if  
10 nothing else, perhaps find some common factual ground so  
11 that when the case -- if and when the case proceeds back on  
12 the Commission, there's that much less, you know, that we  
13 need to fight over and dispute.

14 As Bob pointed out -- and I obviously  
15 wouldn't put any words in Mr. Malish's mouth -- there's  
16 never a given in these things. But that opportunity  
17 certainly exists to try to find some common factual ground  
18 that could prove useful in the case at a later stage.  
19 Beyond that though I have nothing more to add to what  
20 Mr. Gryzmala had to say.

21 JUDGE JORDAN: Okay. Thank you. It seems  
22 to me that the parties, in addition to their other  
23 disputes, are not in agreement as to what stage of the  
24 dispute resolution process they're at. And part of why  
25 we're talking today is to clarify that, and to begin to get



1       us on track and keep us on track with some kind of clarity  
2       and clarification for the Commission on that issue alone.

3               So what I'd like to do, I think, is I'd like  
4       to discuss some kind of periodic reporting. And how that  
5       should be done and what it can contain, I think, is subject  
6       to discussion. I understand that the parties may not want  
7       to disclose certain matters to the Commission that may be  
8       sensitive, should this proceed to litigation. But at the  
9       same time, I have to know how dispute resolution is  
10      proceeding.

11             MR. MALISH: And, Judge, if I may interject  
12      for a moment here. You know, the fact that we are in  
13      litigation right now, because we are. I mean, we are in  
14      litigation in other states, and we are in litigation in  
15      Missouri with AT&T on this issue of what amount the  
16      reseller gets when a cash-back promotion is in play.

17             The fact that we're in litigation does not  
18      preclude AT&T from entering into settlement discussions  
19      with Nexus. But they've chosen not to. In other words, I  
20      don't see -- if there was something -- information they  
21      wanted to share with us, there's no reason they could not  
22      have done so already.

23             JUDGE JORDAN: Well, Mr. Malish, I  
24      understand and appreciate and respect your desire to move  
25      the case along to resolution.

1 MR. MALISH: Uh-huh.

2 JUDGE JORDAN: That's why we're here. So it  
3 seems to me that when you're not satisfied with the  
4 progress of DR, you should be able to report that to the  
5 Commission. And what I want to discuss now is the format  
6 for that kind of reporting.

7 What I'd like to do -- and I'll throw this  
8 out as a suggestion to begin, to get the ball rolling -- is  
9 that perhaps after some discussions maybe off the record  
10 with Staff, maybe you can sort that out. Maybe Staff can  
11 file a report with me as to what the parties think is going  
12 on.

13 I think eventually -- eventually, when Nexus  
14 believes that the process is exhausted and can show that  
15 it's been through the stages set forth in the  
16 Interconnection Agreement, I think that Nexus can then  
17 bring the case back to the Commission to resume litigation.

18 MR. MALISH: Well, I'm sorry, Judge. I'm  
19 just so frustrated. I hear what you're saying, but, you  
20 know, I -- well, I should just keep my mouth shut.

21 MR. GRYZMALA: Judge, maybe one way to at  
22 least get our feet wet here, and in the spirit of the ICA,  
23 is to start kind of at the beginning by -- and I'm just  
24 throwing this out for consideration by all. Maybe by a  
25 date certain, whatever date we put a stake in the ground

1 on, the parties should be responsible to identify those who  
2 will negotiate on their respective behalfs.

3 MR. MALISH: Well, we can do that right now  
4 because I have been appointed by Nexus to attempt to --

5 MR. GRYZMALA: Let me finish, please. I do  
6 believe, your Honor, as I think was mentioned at least a  
7 couple times earlier, that it's important that the matter  
8 be, you know, inclusive of business managers who have, you  
9 know, authority, who have the knowlege, who have the  
10 business information available that will be exchanged by  
11 the parties.

12 Lawyers just don't pull this stuff up out of  
13 their pocket. We get it from clients. In the spirit of  
14 that and in negotiations, we think parties should have a  
15 distinct role there.

16 We should have an agenda, or at least a  
17 checklist of those items which we -- will be submitted for  
18 ADR so that everybody has clarity about what subject  
19 matters will be the basis of exchange and negotiation.  
20 Exchange of information and negotiation including, not only  
21 the legal principle, but the others we talked about.

22 Those are two good places to start: Perhaps  
23 identification of those at the table -- well, conference  
24 call, as it were -- and the issues that will be the matter  
25 of the dispute resolution process.

1                   MR. MALISH: And, your Honor, if I may  
2     interject.

3                   JUDGE JORDAN: Please.

4                   MR. MALISH: Nexus has already begun the  
5     dispute resolution process. They identified through a  
6     filing all 13,000 -- however many it was -- orders that  
7     were involved in this case. So each one of those has been  
8     specifically listed out, and AT&T has a copy of each and  
9     every one of those.

10                  JUDGE JORDAN: That's sounds like --

11                  MR. MALISH: AT&T cannot force upon Nexus,  
12     Nexus' choice of representative in these negotiations.

13                  JUDGE JORDAN: And I'm going to interupt you  
14     there because I think that -- I didn't hear that from AT&T.  
15     What I heard AT&T doing was making reference to  
16     Section 10.5, which refers to a knowledgeable, responsible  
17     representative negotiating in good faith. And that may be  
18     yourself, but AT&T is suggesting a little enhancement of  
19     the team, and I don't think that's -- I think that is  
20     constructive.

21                  MR. MALISH: Well --

22                  JUDGE JORDAN: What I'm hearing from  
23     Mr. Malish sounds like the process under 10.4 at the  
24     service center, and that's a good start. If we have been  
25     through informal resolution of disputes, such as I referred

1 to, if we have been -- under 10.5, if we have been through  
2 formal dispute resolution at 10.6 and 10.7, Nexus should be  
3 able to show me that.

4 In other words, what I'm doing is trying to  
5 prevent delay -- undue delay. And insofar as delay would  
6 prejudice Nexus, I'm offering Nexus a remedy. So that when  
7 Nexus can show the Commission that it has been through the  
8 dispute resolution process, as set forth in the  
9 Interconnection Agreement, it should be able to say what it  
10 wants, cite the provisions that show the dispute resolution  
11 is over, as set forth in the agreement, and then come up  
12 with some facts that are relevant under those provisions.

13 When that happens, I envision the dispute  
14 resolution process will be over, and litigation before the  
15 Commission will resume. Okay. So that's my idea here is  
16 to make sure this thing does not stall. And as I say, I  
17 can't do anything about what happens with Nexus in Texas,  
18 but I intend to manage this case in Missouri.

19 So that's what I have in mind. And I think  
20 there is a few issues that will be fundamental to that:  
21 No. 1, where are the parties? They seem to disagree with  
22 that. And then, how they should proceed from there? And  
23 those are the topics that I'd like the parties to discuss.  
24 And I think Staff may be helpful in helping the parties  
25 sort that out. So I think that's where I'd like to go from

1 here, unless the parties have a better idea. Anything from  
2 Nexus on that?

3 MR. MALISH: Well, it sounds to me like we  
4 are going to go back and go through the motions of,  
5 quote/unquote, informal dispute resolution, so --

6 JUDGE JORDAN: That's pretty much how I read  
7 the Interconnection Agreement. And if they turn out to be  
8 only motions, well, at least you've given it a try, as  
9 required by this document.

10 MR. MALISH: Yes. But I'm sure you  
11 understand Nexus' position on this, which is that we've  
12 gone through the motions. And by the way, you know, AT&T,  
13 you know, their position on this is not something that's  
14 calculated internally, in-house, in Missouri. It comes  
15 from the corporate headquarters in Dallas, or sometimes  
16 with input from New Jersey, or whatever. So this is not --  
17 this is not Nexus' first rodeo here.

18 JUDGE JORDAN: I understand that. I  
19 understand that. And I hope that that experience will  
20 benefit the dispute resolution process as much as it  
21 possibly can.

22 MR. MALISH: Well, you know, it has informed  
23 us that AT&T -- and I don't blame them -- they are stuck on  
24 their position, just like we are stuck on our position.  
25 And as they themselves have announced to other Commissions,

1 the sides are at an impasse on this issue, and we need your  
2 help to resolve it.

3 JUDGE JORDAN: That is as may be. When you  
4 can show the Commission that you have been through this  
5 dispute resolution process, as set forth in the  
6 Interconnection Agreement, I'm sure the Commission will  
7 consider some relief. And I think --

8 MR. MALISH: Is it necessary to show that's  
9 taken place in Missouri, or just in general?

10 JUDGE JORDAN: We have -- it has to have  
11 taken place as to the claims that are subject to this  
12 complaint, because that's all I deal with is the claims  
13 subject to this complaint. I don't deal with the claims  
14 that were brought in Texas.

15 MR. MALISH: Okay.

16 JUDGE JORDAN: So that's how I see it. Any  
17 ideas from AT&T on that?

18 MR. GRYZMALA: No. I --

19 MR. MOORE: Your Honor, this is Brian Moore.  
20 Could I interject one thing very briefly, without  
21 attempting to exacerbate any situation?

22 JUDGE JORDAN: Briefly.

23 MR. MOORE: Judge, I have way too much time  
24 on my hands -- I have way too many things on my hands. I  
25 am a very busy lawyer. I don't go through the motions. So

1 let me be crystal clear that AT&T is not coming into this  
2 with the intent of, quote/unquote, going through the  
3 motions. I have far better uses of my time, and that's  
4 what my -- was the purpose of me being on this phone call.

5 JUDGE JORDAN: Well, I --

6 MR. MOORE: So I just want that to be clear  
7 that we certainly don't buy any theory whatsoever that we  
8 have been or we intend to just, quote, go through the  
9 motions. That's the response of the business unit attorney  
10 rather than the litigator. I'll turn it back over to Bob  
11 at this point in time.

12 MR. GRYZMALA: No. Judge, I -- I mean, I  
13 didn't mean to acquiesce in what Mr. Malish said. I just  
14 felt a little frustration on my own. Personally, I would  
15 not have asked a position in Missouri that I didn't think,  
16 you know, we could hold up our end of the bargain. So, you  
17 know, having said that, I'm not going through the motions  
18 either. It may or may not prove up that we can do  
19 business, do good, but dog-gone-it, we got to try. So  
20 that's all I have to say.

21 JUDGE JORDAN: Okay. I appreciate your  
22 remarks on that. And I'd like to turn to the idea of the  
23 progress for which we are here, and reporting that to the  
24 Commission. I had a couple ideas: One is periodic  
25 reporting to the Commission, and we could get that from



1 Nexus; we could get that from Staff. Any thoughts or ideas  
2 on that?

3 MS. MCCLOWRY: Judge, this is Meghan  
4 McClowry. I don't know that Staff would want to be  
5 responsible for the status reports, in that we don't want  
6 to be speaking for the other parties who will be engaging  
7 in the dispute resolution process. And it might be best to  
8 have them do it since it might help push them along in some  
9 way.

10 JUDGE JORDAN: My sense of that is that  
11 Nexus has the incentive to move this case along. So my  
12 first thought was that Nexus would file such reporting as  
13 is called for. Does Nexus have any problem with that?

14 MR. MALISH: Well, I don't know -- I don't  
15 know what would necessarily be called for. I guess we  
16 will --

17 JUDGE JORDAN: We can talk about that.

18 MR. MALISH: I mean, you know, I guess it  
19 will be -- I would say that we'd just inform you when we're  
20 done.

21 JUDGE JORDAN: We could do that.

22 MR. MALISH: Because I'm anticipating laying  
23 out what the deadlines are going to be for when these  
24 different -- under the rule for when these different things  
25 take place. Because I am going to go through these as

1 quickly as we can in order to get back in front of the  
2 Commission.

3 JUDGE JORDAN: Well, that sounds reasonable  
4 to me. Anything from AT&T on that?

5 MR. GRYZMALA: I think we're generally okay  
6 with the concept of Nexus making the filing to apprise the  
7 Commission of status. However, I am more persuaded that it  
8 would be more effective if we have periodic reporting  
9 rather than at the end of the day.

10 JUDGE JORDAN: You know, it would seem to  
11 me --

12 MR. GRYZMALA: Yeah.

13 JUDGE JORDAN: -- that Nexus wanting to move  
14 this along might do better to remind the Commission  
15 periodically, at the end of each stage.

16 MR. MALISH: I think we're already --  
17 there's only one stage left.

18 JUDGE JORDAN: Okay. Fair enough.

19 MR. GRYZMALA: I don't know about what that  
20 would be. What would be the one stage left, may I ask?

21 MR. MALISH: Well, I think that we're in --  
22 I think we're in 10.5, informal resolution of disputes.

23 JUDGE JORDAN: Well, I think, if I'm reading  
24 the agreement correctly, there is the possibility for  
25 formal dispute resolution after that in 10.6, and 10.7,

1 arbitration. So there could be other phases. That's all  
2 I'm saying.

3 MR. MALISH: Okay. Well --

4 MR. GRYZMALA: And I kind of thought that  
5 the first -- the preliminary issues have yet to be  
6 resolved, that is the designation of the party  
7 representatives and the issues to be, you know, the subject  
8 of ADR.

9 MR. MALISH: Okay. Well, we've already  
10 identified those. Those are -- that was done  
11 electronically, and we provided -- provided more than once,  
12 all those orders.

13 MR. GRYZMALA: That's just one of the  
14 issues, but -- and that's part of --

15 MR. MALISH: Well, that -- okay. We're  
16 talking about Nexus' dispute. And Nexus' dispute is  
17 contained in that filing. And so if you have some other  
18 disputes of Nexus that haven't been brought yet, that's up  
19 to y'all. I don't know.

20 Of the dispute that Nexus has with AT&T,  
21 Nexus' dispute with AT&T has been identified back in  
22 December -- or November of last year. We churned -- and  
23 that's been churned through the system on these sort of LSE  
24 type evaluations. Those have been rejected. And we're at  
25 least in 10.5 or 10.6.

1 JUDGE JORDAN: Well, here's what I'd like to  
2 do, if I may make this suggestion: What I'd like to do is  
3 leave the parties to discuss these issues with the  
4 facilitation of Staff, to sort out where the parties think  
5 they are, and what they think they can tell the Commission  
6 about their progress, and where they intend to go next.  
7 And that would include a schedule for reporting as well.  
8 Does that sound like a constructive next step for this  
9 conference? Nexus?

10 MR. MALISH: I suppose so.

11 JUDGE JORDAN: And AT&T?

12 MR. GRYZMALA: I agree with that, your  
13 Honor.

14 JUDGE JORDAN: All right. Then I think  
15 that's what we ought to do. And I think we're talking  
16 about reporting from Nexus. And I don't think we need  
17 anything tremendously lengthy, just something covering  
18 those issues. And, of course, AT&T will always have the  
19 opportunity to respond. And what would be even better  
20 would be a joint filing from the complainant and the  
21 respondent. And with that kind of periodic reporting, I  
22 think we can move measurably and expeditiously through the  
23 DR process to whatever resolution it can come.

24 Finally, I'm going to remind the parties  
25 that the Public Service Commission does offer mediation

1 services, that -- as I read this Interconnection  
2 Agreement -- mediation is among the possibilities that is  
3 suggested in the informal resolution process, and that is  
4 possible anywhere else along the DR process.

5 We have about a half dozen judges, all  
6 trained in civil mediation, and their services are at the  
7 disposal of the parties. So you might want to discuss that  
8 too as a way, if not to get to a substantive resolution of  
9 all your claims, to at least make some progress on them.

10 Is there anything else that the parties want  
11 to raise during this conference while I'm with you, and on  
12 the record?

13 MR. GRYZMALA: Judge, one last item for  
14 AT&T. I just want to make certain I understood correctly.  
15 Your Honor's preference would be that, you know, business  
16 managers would be most in keeping with the spirit and  
17 letter of the ICA, that is that those folks should be  
18 participants in the process.

19 JUDGE JORDAN: Well, I see that the  
20 Interconnection Agreement expressly relates to,  
21 Knowledgeable and responsible persons. And my reading of  
22 the term "responsible" is someone who refers -- at least  
23 suggests the client. I'm not going to tell anyone whom  
24 they should bring at the table. I'm just suggesting that  
25 in order to make progress in this process, the right people

1       ought to be available. That's all I would say.

2                   MR. MALISH: I understand your position,  
3       Judge, but from Nexus' perspective, the key issues in this  
4       case are legal ones.

5                   MR. GRYZMALA: We disagree with that, your  
6       Honor, but it may be a -- as you say, you can't compel  
7       Nexus to acquiesce, but AT&T would be prepared to do just  
8       as you suggest.

9                   JUDGE JORDAN: Right. And, you know, how  
10      constructive this process is, we have yet to see. What I  
11      want to see is that the process does go forward, that if  
12      someone believes it is not constructive, they can show me  
13      that. And that's the purpose of our reporting -- the  
14      reports that the Commission should receive. Do the parties  
15      have anything else for me before I go off the record and  
16      leave you with Staff? I'll leave this line open so that  
17      you can have your discussions off the record. Is there  
18      anything else from the parties for me?

19                  MR. MALISH: No, not from Nexus.

20                  MR. GRYZMALA: For AT&T, no, from Bob  
21      Gryzmala. Brian, anything to add?

22                  MR. MOORE: No.

23                  MR. GRYZMALA: All right. Nothing further  
24      from AT&T, your Honor.

25                  JUDGE JORDAN: Well, I thank the parties for

1 making time for being here, and it's not easy to work  
2 through these issues. I appreciate the parties' efforts.  
3 And anything more from Staff before I go off the record?

4 MS. MCCLOWRY: Nothing.

5 JUDGE JORDAN: Okay. Thank you very much  
6 everyone. I'm going to go off the record. I'll leave this  
7 line open. This conference is adjourned. We're off the  
8 record.

9 (Off the record.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

## 1 CERTIFICATE OF REPORTER

2  
3 I, Kristy Bradshaw, CCR No. 1269, within the State  
4 of Missouri, do hereby certify that the testimony  
5 appearing in the foregoing matter was taken by me to the  
6 best of my ability and thereafter reduced to typewriting  
7 under my direction; that I am neither counsel for, related  
8 to, nor employed by any of the parties to the action in  
9 which this hearing was taken, and further, that I am not a  
10 relative or employee of any attorney or counsel employed  
11 by the parties thereto, nor financially or otherwise  
12 interested in the outcome of the action.

13  
14  
15 \_\_\_\_\_  
16 Kristy Bradshaw, CCR  
17  
18  
19  
20  
21  
22  
23  
24  
25