

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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

ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT AND DIRECTING FILING

Issue Date: May 4, 2011

Effective Date: May 4, 2011

The Missouri Public Service Commission is granting *Nexus Communications, Inc.’s Unopposed Motion for Leave to File First Amended Complaint* (“motion”). The Commission is also directing Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (“AT&T”) to file an answer to *Nexus Communications, Inc.’s First Amended Complaint* (“amended complaint”). Further, the Commission will address a matter in the *Staff Report* (“report”).

Nexus Communications, Inc. (“Nexus”) filed the motion with the amended complaint on April 29, 2011. On May 4, AT&T informed the Commission that it had agreed with Nexus on the time for filing an answer to the amended complaint. Also on April 29, 2011, Staff filed the report.

The report sets forth Staff’s preliminary findings and reminds the Commission that an issue, raised in AT&T’s answer to the original complaint, remains undecided. The issue relates to certain provisions of the interconnection agreement between Nexus

and AT&T (“agreement”) that is the subject of this action. The issue is whether the agreement’s dispute resolution provisions bar Nexus’ claims in this action.

AT&T raised that issue, as an affirmative defense in its answer to the original complaint, and in a motion to dismiss. AT&T’s motion to dismiss stood on the allegation that Nexus had failed to give AT&T the notice of claims required in the agreement. That allegation lacked supporting evidence in the record, so the Commission denied AT&T’s motion to dismiss by order dated January 5, 2011. But the Commission has never made a determination on the merits of the issue. Any motion seeking relief on the basis of that issue should address the burden and quantum of proof required to prevail on such motion.

Therefore, the Commission will grant the motion, order the amended complaint filed as of the date on which the Commission received it, and set a time for filing an answer to the amended complaint.

THE COMMISSION ORDERS THAT:

1. The *Nexus Communications, Inc.’s Unopposed Motion for Leave to File First Amended Complaint* is granted, and *Nexus Communications, Inc.’s First Amended Complaint* (“amended complaint”) is deemed filed on April 29, 2011.

2. Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri shall file an answer to the amended complaint no later than May 24, 2011.

3. This order shall be effective immediately upon issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. C. Reed', written in a cursive style.

Steven C. Reed
Secretary

(S E A L)

Daniel Jordan, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of May, 2011.