

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 2nd
day of March, 2011.

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|------------------------------------|---|--|
| Nexus Communications, Inc., |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | |
| |) | |
| Southwestern Bell Telephone, L.P., |) | |
| d/b/a AT&T Missouri, |) | |
| |) | |
| Respondent. |) | |

File No. TC-2011-0132

**ORDER GRANTING REHEARING, WAIVING NOTICE OF INTENT, AND
DENYING MOTION TO DISMISS**

Issue Date: March 2, 2011

Effective Date: March 2, 2011

Background

Nexus filed a complaint against ATT. The complaint seeks relief under the interconnection agreement between Nexus and ATT. In a show cause order, the Commission partially denied ATT's motion to dismiss. In the order of dismissal,¹ the Commission denied Nexus's request for waiver² of, and granted the motion to dismiss for non-compliance with, the notice of intent requirement in 4 CSR 240-4.020(2). Nexus

¹ *Order Dismissing Complaint without Prejudice*, issued on January 26, 2011.

² *Nexus Communications, Inc.'s Response to AT&T's Motion to Dismiss*, filed on December 20, 2010.

filed its *Application for Rehearing* ³ of the Commission's order of dismissal, and a supporting affidavit.⁴ ATT filed a response to the application for rehearing.⁵

Rehearing

The application for rehearing is timely because Nexus filed it "before the effective date of such order [of dismissal.]" ⁶ ATT argues that the affidavit was untimely because Nexus filed it after the order of dismissal's effective date. But no authority limits the time that may run, or the proceedings that may occur, between (i) the filing of an application for rehearing and (ii) 30 days after final submission of the application for rehearing.⁷ Therefore, the Commission will consider the affidavit.

Nexus seeks a waiver, argues good cause, and alleges that dismissal for noncompliance is unduly onerous under Nexus' circumstances. The circumstances alleged in the application for rehearing include \$75,000 in claims lost to the agreement's time bar if the complaint is dismissed. As support for those allegations, Nexus offers the affidavit.

In the affidavit, Nexus's affiant testifies that his professional duties include auditing invoices between Nexus and ATT. ATT also argues that the affiant is insufficiently credentialed, but ATT's critiques do not rob the affidavit of probative value. The affidavit supports the estimate of the claims at issue and establishes an undue burden and ATT offers no evidence to the contrary.

³ *Nexus Communications, Inc.'s Application for Rehearing*, filed on February 4, 2011.

⁴ Filed on February 7, 2011.

⁵ *AT&T Missouri's Response to Nexus' Application for Rehearing*, filed on February 14, 2011.

⁶ Section 386.500.1 and .2, RSMo 2000.

⁷ Section 392.500.1 RSMo 2000.

ATT argues that Nexus has had chances enough to establish good cause for the waiver. But the notice of intent requirement is new, so its import is unfamiliar to even the most experienced parties. To forfeit claims before they are filed is not the purpose of the notice of intent requirement. The purpose of the waiver provision is remedial. The Commission will apply it generously to prevent needless forfeiture—upon a showing of good cause.

Ruling

On those considerations, the Commission finds that Nexus has carried its burden of proof. The Commission concludes that Nexus has, in its *Application for Rehearing* and supporting affidavit, shown good cause to waive the notice of intent requirement. Therefore, the Commission will grant the request for waiver, deny the motion to dismiss, and change the order of dismissal. The Commission's rulings stand on the requirement that a party must file notice of intent, subject to waiver for good cause.⁸

THE COMMISSION ORDERS THAT:

1. *Nexus Communications, Inc.'s Application for Rehearing* is granted. The request for a waiver of the notice of intent requirement of Nexus Communications, Inc. is granted. The *Motion to Dismiss of Southwestern Bell Telephone Company D/B/A AT&T Missouri* is denied.

2. The *Order Dismissing Complaint without Prejudice* is changed and modified as set forth in the body of this order.

⁸ 4 CSR 240-4.020(2).

3. This order shall be effective immediately on issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

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

Jordan, Senior Regulatory Law Judge