

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

**MOTION TO STAY OF SOUTHWESTERN BELL TELEPHONE
COMPANY D/B/A AT&T MISSOURI**

COMES NOW Southwestern Bell Telephone Company, d/b/a AT&T Missouri (“AT&T Missouri”), and in response to the Commission’s Order Amending Schedule and Directing Filing, files this Motion to Stay this case and all proceedings thereunder on the ground that Nexus Communications, Inc. (“Nexus”) has failed to comply with the requirements of the Interconnection Agreement (“ICA”) to invoke and exhaust the ICA’s dispute resolution provisions.

As explained below, although the Commission earlier declined to dismiss Nexus’ Complaint on this ground, the order doing so rested on incomplete information supplied by Nexus, as shown by later discovery and other developments pertinent to AT&T Missouri’s affirmative defense relating to dispute resolution. Moreover, if the Commission determines to stay this case on the ground that Nexus’ own claims must first be made the subject of dispute resolution before they are addressed by the Commission, AT&T Missouri would be amenable to placing the subject of Nexus’ end users’ qualifications/eligibility into the ICA’s dispute resolution process, as a matter of practicality even though it is not legally necessary to do so.

In further support of this Motion, AT&T Missouri states as follows:

1. In its December 9, 2010 Answer to Nexus' November 5, 2010, Complaint, AT&T

Missouri asserted the following Affirmative Defense:

The Complaint is barred and must be dismissed for Nexus' failure to have first exhausted the Dispute Resolution provisions of the parties' Commission-approved ICA, the fulfillment of which are an express condition precedent to the filing of any claims arising under the ICA with the Commission.¹

2. Also on December 9, 2010, AT&T Missouri moved to dismiss Nexus' Complaint on the ground that Nexus had failed to first invoke and exhaust the dispute resolution provisions of the parties' ICA before bringing its Complaint. In its motion, AT&T Missouri stated that the parties' ICA contains a dispute resolution process that Nexus did not invoke (much less exhaust) prior to the filing of its Complaint. Section 10 of the Agreement's General Terms and Conditions is entitled "Dispute Resolution." Section 10.2 is entitled "Alternative to Litigation." Section 10.2.1 reflects the parties' agreement to attempt to resolve disputes matters *without litigation*:

The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

3. AT&T Missouri's December 9, 2010 motion also stated that generally speaking, the Dispute Resolution procedures later described in the ICA's General Terms and Conditions are known as the "Service Center Dispute Resolution" process, the "Informal Resolution"

¹ In its May 24, 2011, Answer to Nexus' Amended Complaint, AT&T Missouri stated the same Affirmative Defense ("The First Amended Complaint is barred for Nexus' failure to have first exhausted the Dispute Resolution provisions of the parties' Commission-approved ICA, the fulfillment of which are an express condition precedent to the filing of any claims arising under the ICA with the Commission.").

process, and (failing informal resolution), the “Formal Dispute Resolution” *Id.*, Sections 10.3 through 10.6.

4. Finally, AT&T Missouri’s motion stated that the ICA’s General Terms and Conditions also specify that neither party can pursue a claim without *first* giving notice to the other party. Section 10.3.1, entitled “Commencing Dispute Resolution,” states as follows:

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.

5. In its January 5, 2011 Order to Show Cause, the Commission addressed AT&T Missouri’s motion to dismiss. In its Order, the Commission correctly acknowledged that “the parties agree” that their ICA contains the language quoted above. Order to Show Cause, at 4. Nevertheless, the Commission denied AT&T Missouri’s motion based on its determination that “as to whether Nexus has given [AT&T Missouri] the required notice, the parties do not agree.” *Id.*, at 5.

6. When the Commission made that factual determination, it did so on the strength of a single factual assertion made by Nexus within a single paragraph set forth at page 6 of Nexus’ December 20, 2010 Response to AT&T Missouri’s Motion to Dismiss. *Id.*, at note 13, *citing*, “Nexus’s Response, page 6, paragraph 14.” The factual assertion made by Nexus in paragraph 14 recited that “Nexus has filed actual dispute claims with AT&T according to Section 10.4 of the ICA.” However, that statement was incomplete and misleading. Subsequent discovery undertaken and Nexus’ admission elsewhere reveal that no disputes were *first* presented to AT&T Missouri by Nexus before it filed this litigation, as required by the parties’ ICA. Rather, no dispute was presented by Nexus until December 13, 2010, over five weeks *after* it had already filed its November 5 Complaint.

7. On March 21, 2011, AT&T Missouri generated a Data Request to Nexus regarding the assertion on which the Commission relied in its Order to Show Cause. Data Request No. 20, and Nexus' April 11, 2011, response to the request, are as follows:

DATA REQUEST NO. 20: Paragraph 14 of Nexus' December 20, 2010 Response to AT&T's Motion to Dismiss states: "In the alternative, Nexus has filed actual dispute claims with AT&T according to Section 10.4 of the ICA." Please produce copies of each of the actual dispute claims which you filed with AT&T Missouri.

RESPONSE: Please see the responses to Data Requests No. 2 and 4, which are incorporated herein by reference the same as if set forth at length.

8. Data Request No. 4, and Nexus' April 11, 2011, response to the request, are in pertinent part as follows:

DATA REQUEST NO. 4: For each amount, bill and/or invoice identified in the answer to Data Request No. 3, please (a) state the date, time, and manner by which Complainant notified AT&T Missouri that Complainant believed it was entitled to more credit than AT&T Missouri provided, and (b) produce all documents in Complainant's possession, custody, or control referencing, referring or pertaining to each such notification.

RESPONSE: The disputes were filed using AT&T's Exclaim Dispute web portal on December 13, 2010.² (emphasis added).

9. While the Commission was apparently lead to believe otherwise, there is no true disagreement "as to whether Nexus has given [AT&T Missouri] the required notice," Order to Show Cause, at 5, and it was inaccurate when Nexus suggested otherwise to the Commission by

² Data Request 2, and Nexus' April 11, 2011, response to the request, are as follows:

DATA REQUEST NO. 2: Please identify each and every AT&T Missouri cash-back promotion to which the Complaint relates and the number of Nexus customers that Nexus believes qualified for each promotion identified.

RESPONSE: See attached tariff sheets and/or accessible letters published by AT&T in Exhibit 1. Please see also, the attached disk containing a file labeled Data Request No. 2.zip. This file contains the actual dispute forms with the requested detail that were submitted to AT&T via its Exclaim Dispute web portal.

See also, Nexus' Motion to Reconsider Order Granting in Part, and Denying in Part, AT&T Missouri's Motion to Compel, July 13, 2011, at 6, n. 5 ("AT&T has been in receipt of all relevant information regarding each and every one of the 15,634 promotional credit disputes . . . since December 13, 2010). (emphasis added).

claiming it “has filed actual dispute claims.” It is clear that the only activity Nexus undertook to submit its claims to AT&T Missouri for dispute resolution was to identify them to AT&T Missouri on *December 13, 2010*, over 5 weeks after Nexus had already filed its November 5 Complaint (and just 4 days after AT&T Missouri had filed its motion to dismiss based on Nexus’ having failed to invoke and exhaust the ICA’s dispute resolution procedures).

10. Discovery has also revealed that required activities which follow the notice triggering the dispute resolution process have not been undertaken. Nexus was specifically asked to specify its efforts undertaken in accordance with Sections 10.3 through 10.5 of the ICA’s Terms and Conditions. Yet, despite its express acknowledgement that the ICA “employs an elaborate dispute resolution procedure,”³ Nexus confirmed that it had done nothing other than to make its December 13 submission.⁴

11. Under these circumstances, it is plain that Nexus has not complied with the ICA’s mandatory dispute resolution procedures. As Staff unequivocally stated in its report to the Commission, “the contract between the parties as approved by the Commission[] requires that they engage in at least some level of alternative dispute resolution, and the parties have not done

³ See, Nexus’ Motion to Reconsider Order Granting in Part, and Denying in Part, AT&T Missouri’s Motion to Compel, July 13, 2011, at 4. Moreover, given Nexus’ responses to the above-referenced discovery, there is no basis to suggest, as has Nexus, that “Nexus had to follow that process,” for it did not do so. *Id.*, at 2.

⁴ Data Request No. 19, and Nexus’ April 11, 2011, response to the request, are in pertinent part as follows:

DATA REQUEST NO. 19: Section 10.2.1 of the General Terms and Conditions of the Parties’ Section 252 Interconnection Agreement states that “the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.” Please produce all documents in Complainant’s possession, custody, or control that reference, refer to or pertain to your commencing and participating in the dispute resolution procedures set forth within Sections 10.3 through 10.5 of the Interconnection Agreement’s Terms and Conditions, and the results of such participation.

RESPONSE: . . . Notwithstanding the futility of informal dispute resolution, Nexus has filed actual dispute forms which were submitted to AT&T via its Exclaim Dispute web portal. Please see the responses to Data Requests No. 2 and 4, which are incorporated herein by reference the same as if set forth at length.

AT&T Missouri attaches hereto as Attachment A complete copies of AT&T Missouri’s Data Requests, Nos. 2, 4, 19 and 20, and Nexus’ responses to them (excluding voluminous data provided by Nexus via disk).

that.” Staff Report, April 29, 2011, at 1. Staff’s conclusion is entirely correct. The parties’ ICA expressly provides that “no Party may pursue any claim unless such written notice has *first* been given to the other Party,” ICA, General Terms and Conditions, Section 10.3.1, (emphasis added), and by Nexus’ own admission, there is no dispute that Nexus failed to do so. As a result, the parties’ agreement to effectuate their “desire to resolve disputes arising out of this Agreement *without litigation*” will be frustrated unless it is enforced. ICA, General Terms and Conditions, Section 10.2.1 (emphasis added),

12. Though Nexus argues that it has complied with dispute resolution procedures, Nexus has also argued (inconsistently) that engaging in dispute resolution should be excused because it would be futile. Its reasoning is that AT&T Missouri cannot compromise its position with Nexus without adversely affecting AT&T’s litigation stance in other ongoing cases involving Nexus and other CLECs in other jurisdictions. But that is a non sequitur. Merely engaging in settlement negotiations in one jurisdiction does not prevent a litigant from continuing to press its available legal arguments in the same jurisdiction, much less other jurisdictions. Stated another way, settlement discussions are not binding unless and until an agreement is reached, and then only as to the specific dispute, or the collection of specific disputes, agreed to be settled by the parties.

13. Moreover, Nexus’ argument is undercut by its own conduct. For example, on July 6, Nexus and AT&T Ohio jointly moved the Public Utilities Commission of Ohio to hold the Nexus complaint case against AT&T Ohio “in abeyance pending the outcome of ongoing settlement negotiations and the resolution of cases in other states involving the same or similar issues.” See, Joint Motion, at 1 (attached hereto as Attachment B).

14. On a separate note, as the Commission is aware, the qualifications/eligibility of Nexus’ end users to receive the promotional credits is also at issue in this case. Despite Nexus’

claim that discovery on the subject is irrelevant and despite Nexus' claim that the inquiry cannot be pressed without AT&T Missouri's having first exhausted the ICA's dispute provisions, the Commission recently held otherwise. *See*, Order Granting in Part, and Denying in Part, AT&T's Motion to Compel, July 6, 2011.

15. AT&T Missouri continues to maintain, for the reasons stated in its pleadings and in the Commission's order of last week, that Nexus' claims are mistaken. Moreover, on at least two occasions now, AT&T Missouri has brought to the attention of the parties and the Commission that it has voiced concern to Nexus about the legitimacy of Nexus' orders for the "Movers" promotion. In its May 27 motion to compel (at 6), AT&T Missouri wrote:

For example, AT&T Missouri wrote Nexus on December 8, 2010, regarding the Movers Reward promotion, and asked for verifiable evidence that the end users for which Nexus had submitted service orders to AT&T Missouri had in fact moved. *See*, Attachment B [to the May 27 motion; attached hereto as Attachment C] Nexus has not responded to this letter, thus declining the opportunity "to demonstrate that its promotion requests have been submitted properly." *Id.*, at p. 1. The Commission should now compel such a demonstration by granting AT&T Missouri's motion.⁵

Throughout, Nexus has carefully avoided mentioning AT&T Missouri's letter, and Nexus has yet to respond to the letter.

16. Under these circumstances, AT&T Missouri continues to vigorously deny that consideration of Nexus' end users' qualifications/eligibility must be deferred. AT&T Missouri substantially complied with the dispute resolution procedures by presenting its concerns in its December 8, 2010, letter and raising the matter three times since. Moreover, Nexus has waived any objection it might otherwise have had to AT&T Missouri's affirmative defense when it submitted its own claims to the Commission while ignoring the parties' commitment to "resolve

⁵ *See also*, AT&T Missouri's Reply in Support of its Motion to Compel Responses to Data Requests Directed to Nexus Communications, Inc., June 23, 2011, at 3-4; Response to Nexus' Motion to Reconsider Order Granting in Part, and Denying in Part, AT&T Missouri's Motion to Compel Responses to Discovery, July 21, 2011, at 2-3.

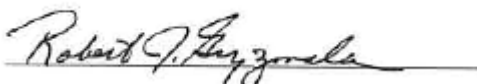
disputes arising out of this Agreement *without litigation.*” ICA, General Terms and Conditions, Section 10.2.1 (emphasis added).

17. Having said this, however, AT&T Missouri would be amenable to placing the subject of Nexus’ end users’ qualifications/eligibility into the ICA’s dispute resolution process if – and only if – the Commission determines to stay this case on the ground that Nexus’ own claims must first be made the subject of dispute resolution before they are addressed by the Commission. Perhaps with the issuance of such an order, Nexus will in fact discuss on a business-to-business basis the matter of AT&T Missouri’s affirmative defense. At the very least, such an order would render moot any lingering question, as insubstantial as it may be, about dispute resolution with respect to the qualifications/eligibility issue.

WHEREFORE, AT&T Missouri respectfully moves the Commission to stay this case pending the completion of informal dispute resolution of all pending claims and defenses raised by the parties.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY,
D/B/A AT&T MISSOURI

BY 

| | |
|--------------------|--------|
| JEFFREY E. LEWIS | #62389 |
| LEO J. BUB | #34326 |
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Attorneys for Southwestern Bell Telephone Company,
d/b/a AT&T Missouri

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' RESPONSES TO AT&T MISSOURI'S FIRST DATA REQUESTS

TO: Southwestern Bell Telephone Co. d/b/a AT&T Missouri, by and through its attorney of record, Robert Gryzmala, One AT&T Center, Room 3516, St. Louis, Missouri 63101.

COMES NOW Complainant Nexus Communications, Inc. and serves these responses to Southwestern Bell Telephone Co. d/b/a AT&T Missouri's ("AT&T") First Data Requests as shown on the following pages.

Respectfully submitted,

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

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Austin, Texas 78703
(512) 476-8591
(512) 477-8657 – facsimile
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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 April 11, 2011.

Robert Gryzmala
One AT&T Center, Room 3516
St. Louis, Missouri 63101
(314) 235-6060
(314) 247-0014 - facsimile
robert.gryzmala@att.com

s/ Chris Malish
Christopher Malish

NEXUS' RESPONSES TO AT&T MISSOURI'S FIRST DATA REQUESTS

DATA REQUEST NO. 1: Please state the name and address of each person having personal knowledge of any of the facts or circumstances alleged in the Complaint filed by you with the Missouri Public Service Commission.

RESPONSE:

Steven Fenker
President
Nexus Communications, Inc.
c/o Counsel for Nexus

Mark Deek
CTO
Nexus Communications, Inc.
c/o Counsel for Nexus

Thad Pellino
Smart Telecom Concepts, LLC
2300 Cabot Drive, Suite 410
Lisle, IL 60532
(630) 245-9070

DATA REQUEST NO. 2: Please identify each and every AT&T Missouri cash-back promotion to which the Complaint relates and the number of Nexus customers that Nexus believes qualified for each promotion identified.

RESPONSE:

See attached tariff sheets and/or accessible letters published by AT&T in Exhibit 1.

Please see also, the attached disk containing a file labeled Data Request No. 2.zip. This file contains the actual dispute forms with the requested detail that were submitted to AT&T via its Exclaim Dispute web portal.

DATA REQUEST NO. 3: For each cash-back promotion identified in your response to Data Request No. 2, please identify the beginning and ending dates of each promotion, the dollar amount associated with each promotion, the dollar amount received by Complainant from AT&T Missouri, and the dollar amount that Complainant believes it should have received from AT&T Missouri, and identify and produce each bill or other invoice (together with Billing Account Number or "BAN") rendered by AT&T Missouri to Nexus which reflects the promotional credit(s) challenged or otherwise disputed by Nexus in this case.

RESPONSE:

Please see the response to Data Request No. 2, which is incorporated herein by reference the same as if set forth at length.

DATA REQUEST NO. 4: For each amount, bill and/or invoice identified in the answer to Data Request No. 3, please (a) state the date, time, and manner by which Complainant notified AT&T Missouri that Complainant believed it was entitled to more credit than AT&T Missouri provided, and (b) produce all documents in Complainant's possession, custody, or control referencing, referring or pertaining to each such notification.

RESPONSE:

The disputes were filed using AT&T's Exclaim Dispute web portal on December 13, 2010. The claim numbers assigned to each filing by AT&T are noted below:

| Bill Date | Billing Account Number (BAN) | Exclaim Confirmation # | Dispute Amount |
|-----------|------------------------------|------------------------|----------------|
| 13-Aug-08 | 314L017027 | 500051133 | \$1,382.40 |
| 13-Sep-08 | 314L017027 | 500051136 | \$6,393.60 |
| 13-Oct-08 | 314L017027 | 500051139 | \$8,841.60 |
| 13-Nov-08 | 314L017027 | 500051143 | \$13,776.00 |
| 13-Dec-08 | 314L017027 | 500051147 | \$10,876.80 |
| 13-Jan-09 | 314L017027 | 500051108 | \$10,540.80 |
| 13-Feb-09 | 314L017027 | 500051112 | \$11,510.40 |
| 13-Mar-09 | 314L017027 | 500051117 | \$14,035.20 |
| 13-Apr-09 | 314L017027 | 500051119 | \$15,110.40 |
| 13-May-09 | 314L017027 | 500051122 | \$11,635.20 |
| 13-Jun-09 | 314L017027 | 500051127 | \$9,436.80 |
| 13-Jul-09 | 314L017027 | 500051131 | \$8,033.20 |
| 13-Aug-09 | 314L017027 | 500051134 | \$8,188.80 |
| 13-Sep-09 | 314L017027 | 500051137 | \$7,140.40 |
| 13-Oct-09 | 314L017027 | 500051140 | \$3,628.80 |
| 13-Nov-09 | 314L017027 | 500051144 | \$1,286.40 |
| 13-Dec-09 | 314L017027 | 500051148 | \$950.40 |
| 13-Jan-10 | 314L017027 | 500051110 | \$950.40 |
| 13-Feb-10 | 314L017027 | 500051115 | \$1,200.00 |
| 13-Mar-10 | 314L017027 | 500051118 | \$921.60 |
| 13-Apr-10 | 314L017027 | 500051121 | \$508.80 |
| 13-May-10 | 314L017027 | 500051125 | \$585.60 |
| 13-Jun-10 | 314L017027 | 500051129 | \$787.20 |
| 13-Jul-10 | 314L017027 | 500051132 | \$633.60 |
| 13-Aug-10 | 314L017027 | 500051135 | \$441.60 |
| 13-Sep-10 | 314L017027 | 500051138 | \$451.20 |
| 13-Oct-10 | 314L017027 | 500051141 | \$460.80 |
| 13-Nov-10 | 314L017027 | 500051145 | \$316.80 |

Please see also, the attached disk containing a file labeled Data Request No. 4.xls.

Complaint, and please produce all documents in Complainant's possession, custody, or control that reference, refer to or pertain to such losses, as well as the means or methodology by which they were calculated.

RESPONSE:

Nexus is owed at least \$150,024.80 in improperly retained promotional credit by AT&T. Please see also the responses to Data Requests No. 2 and 4, which are incorporated herein by reference the same as if set forth at length.

Furthermore, Nexus has incurred reasonable attorneys' fees and costs necessary to recover the above-referenced damages. These costs and attorneys' fees continue to increase with each dilatory and litigious action taken by AT&T to improperly retain promotional credits rightfully owed Nexus.

DATA REQUEST NO. 18: Please provide copies of any notes, logs, correspondence, compilations, or other documents in your possession pertaining to the factual and/or other allegations of the Complaint.

RESPONSE:

Objection. Nexus objects to this request to the extent that it seeks attorney-client privileged communications, attorney work product, or material prepared in anticipation of litigation.

Subject to the forgoing objection, please see all responses as provided herein and/or attached hereto.

DATA REQUEST NO. 19: Section 10.2.1 of the General Terms and Conditions of the Parties' Section 252 Interconnection Agreement states that "the Parties agree to use the following Dispute Resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach." Please produce all documents in Complainant's possession, custody, or control that reference, refer to or pertain to your commencing and participating in the dispute resolution procedures set forth within Sections 10.3 through 10.5 of the Interconnection Agreement's Terms and Conditions, and the results of such participation.

RESPONSE:

Past experience in attempting to negotiate this issue on behalf of other, but identically situated CLECs, has shown that "negotiation" of the core issue in this case is futile: the instant matter before the Commission is only one out of 12 cases in jurisdictions that are ongoing or pending between the Nexus and AT&T regarding identical claims.

Since December 2009, AT&T has been involved in litigation in approximately 12 other substantively identical pending cases in various jurisdictions with a number of other CLECs similar to Nexus.¹ Counsel for Nexus represents other CLECs in many of these cases, some of which are in jurisdictions which require an attempt at informal dispute resolution prior to bringing a formal complaint. These cases exist precisely because AT&T and CLECs cannot agree on the resolution of the polarizing issue now before the Commission – namely, the promotional credits that are due Nexus from AT&T as a result of Nexus reselling AT&T telecommunications services subject to “cash back” promotions offered at retail. Thus, further negotiation at this stage is futile because AT&T cannot compromise its position with Nexus in Missouri without adversely affecting AT&T’s litigation stance in the other ongoing cases both with Nexus and with other CLECs in other jurisdictions.

Notwithstanding the futility of informal dispute resolution, Nexus has filed actual dispute forms which were submitted to AT&T via its Exclaim Dispute web portal. Please see the responses to Data Requests No. 2 and 4, which are incorporated herein by reference the same as if set forth at length.

DATA REQUEST NO. 20: Paragraph 14 of Nexus’ December 20, 2010 Response to AT&T’ Motion to Dismiss states: “In the alternative, Nexus has filed actual dispute claims with AT&T according to Section 10.4 of the ICA.” Please produce copies of each of the actual dispute claims which you filed with AT&T Missouri.

RESPONSE:

Please see the responses to Data Requests No. 2 and 4, which are incorporated herein by reference the same as if set forth at length.

DATA REQUEST NO. 21: In the Texas Commission’s January 21, 2011 Order No. 2 in Docket No. 39028 (attached), the Texas Commission stated that “[d]uring the course of the [January 31, 2100] [sic] prehearing conference, it became apparent that the parties had not yet engaged in informal dispute resolution as required by the interconnection agreement.” Please state specifically whether Nexus has undertaken any efforts and/or other measures to commence and participate in informal dispute resolution with respect to its claims against AT&T Missouri beyond those which it undertook with respect to its claims against AT&T Texas. If Nexus’ response is in the affirmative, specifically describe each such effort and/or other measure, and with respect to each such effort and/or other measure, identify the date on which each occurred

¹ See also e.g., *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Alabama v. dPi Teleconnect, LLC*, Docket No. 31323 before the Alabama Public Service Commission; *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Louisiana v. dPi Teleconnect, LLC*, Consolidated Docket No. U-31364 before the Louisiana Public Service Commission; *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T North Carolina v. dPi Teleconnect, LLC*, Docket No. P-863, Sub 5 before the North Carolina Utilities Commission; and *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC*, Docket No. 2010-18-C before the Public Service Commission of South Carolina. These cases also involve Competitive Acquisition and Movers cash back promotions which are substantively identical to those in this case.

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---------------------------------------|---|-------------------------|
| Nexus Communications, Inc. |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 10-2518-TP-CSS |
| |) | |
| The Ohio Bell Telephone Company d/b/a |) | |
| AT&T Ohio, |) | |
| |) | |
| Respondent. |) | |

JOINT MOTION TO HOLD IN ABEYANCE

Nexus Communications, Inc. (“Nexus”) and The Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T Ohio”) file this joint motion to hold this case in abeyance.

Pursuant to an agreement between the parties, Nexus and AT&T Ohio file this joint motion asking the Public Utilities Commission of Ohio (“PUCO”) to hold this proceeding in abeyance pending the outcome of ongoing settlement negotiations and the resolution of cases in other states involving the same or similar issues.

AT&T Ohio reserves the right to file a motion to request that the PUCO lift the abeyance if Nexus does not pay all future amounts billed by AT&T Ohio on a timely basis in accordance with the parties’ interconnection agreement.

Respectfully submitted,

NEXUS COMMUNICATIONS, INC.

/s/ Chris Malish

Christopher Malish (Texas Bar No. 00791164)

Admitted *pro hac vice* in Ohio

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THE OHIO BELL TELEPHONE COMPANY
D/B/A AT&T OHIO

/s/ Chris Malish (w/ permission)

Jon F. Kelly

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andy.jones@att.com

December 8, 2010

Steven Fenker, President
Nexus Communications, Inc.
3629 Cleveland Ave., Ste. B
Columbus, OH 43224

Re: questionable claims for mover's promotion

Dear Mr. Fenker:

AT&T's records indicate that, between January 1 and September 30, 2010, Nexus Communications, Inc. ("Nexus") submitted at least 12,925 claims for the Cash Back Rewards Promotion for Residential End Users ("Mover's Reward Promotion"). AT&T has serious concerns about the legitimacy of the claims submitted by Nexus and this letter is intended to seek prompt resolution of those concerns.

The Accessible Letters clearly indicate that the Mover's Reward Promotion is available only in instances in which actual residential moves for the end users occur. This applies to existing end users who are moving and who transfer their existing service to a new service address; it also applies to new end users who are moving and who purchase new local service at a new service address.¹

Nexus' claims for the Mover's Reward Promotion, which Nexus submitted via LSRs (Local Service Requests), have resulted in credits to Nexus totaling at least \$307,992.00 in the Midwest Region, and at least \$99,847 in the Southwest Region. AT&T's investigation has revealed that Nexus has sought the promotion on more than 82% of its LSRs (9,624 claims) in the Midwest Region, and 100% of its LSRs (3,301 claims) in the Southwest Region.² Nexus' high percentage of claims for the Mover's Reward Promotion is a primary reason for our concerns.

Please be advised that AT&T continues to investigate this matter given the above noted concerns. Given the serious nature of the current situation, Nexus should retain all information and records associated with this matter.

AT&T wishes to afford Nexus an opportunity to demonstrate that its promotion requests have been submitted properly. In order to do so, with respect to each and every request for the Mover's Reward Promotion that Nexus has submitted, Nexus

¹ See Movers Rewards Promotion terms and conditions, Accessible Letters CLEC09-517, CLEC10-258, CLEC08-028, CLEC07-374, CLEC09-032, CLEC08-469, CLEC08-452, CLEC08-448, CLEC09-516, CLEC09-518, CLEC09-516, CLEC09, CLEC10-033, CLEC10-259, CLEC10-261 and CLEC10-245. Accessible Letter CLEC10-258 is attached as a representative example.

² All of the figures noted in this letter – that being number of claims submitted, dollars credited, percentages, and so forth – are subject to revision.

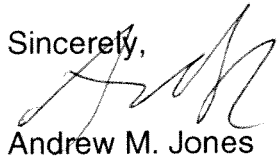
Mr. Fenker
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should provide: (1) verifiable disconnection ("D") orders from an end user's prior service provider; (2) a verifiable prior address for the end user; or (3) other verifiable evidence that the end user moved. This information should be provided no later than December 23, 2010. Nexus should contact Robert Zawilinski in this regard, at (214) 858-0184 or rz1414@att.com, or Nexus' legal counsel may contact the undersigned.

Should Nexus fail to respond as set forth above, AT&T will assume that Nexus does not have evidence to support its claims for the Movers Reward Promotion and that accordingly, they are invalid. AT&T reserves the right to take appropriate legal action against Nexus in regard to this matter.

We look forward to your prompt response, and we stand willing to discuss arrangements for the reimbursement to AT&T of improperly extended claims.

Sincerely,


A handwritten signature in black ink, appearing to read "AMJ", is written over the word "Sincerely,".

Andrew M. Jones

Attachment

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to each of the below by e-mail on July 21, 2011.


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