

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

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

**AT&T MISSOURI’S RESPONSE TO ORDER TO FILE
PROPOSED PROCEDURAL SCHEDULE**

COMES NOW Southwestern Bell Telephone Company, d/b/a AT&T Missouri (“AT&T Missouri”) and respectfully submits its response to the Commission’s March 7 Order to File Proposed Procedural Schedule.

1. This case presents a complaint by Nexus, a competitive local exchange carrier (“CLEC”), against AT&T Missouri pursuant to the terms of their interconnection agreement as well as federal law. Nexus claims that with respect to certain AT&T Missouri “cash back” promotions “going back to late 2003,” which were purchased by Nexus on a wholesale basis, AT&T Missouri has not given Nexus all of the “credit” or “discount” to which Nexus believes it is entitled. AT&T Missouri denies this claim in its entirety and has raised several affirmative defenses to it based on the parties’ interconnection agreement.

2. The procedural schedule must include a period for discovery, which is needed to identify, among other things, the specific promotions involved, the period(s) over which each promotion was offered by AT&T Missouri and then resold by Nexus, whether Nexus was entitled to the credits/discounts it claims and if so, to what extent and in what amounts. Discovery is also necessary, not only as to the merits of Nexus’ complaint, but also as to the

affirmative defenses AT&T Missouri raised in its Answer to the Complaint.¹ Of particular significance are those defenses related to the important “dispute resolution” and “time bar” provisions of the parties’ interconnection agreement.²

3. Consequently, if the Commission allows the case to go forward on its merits now without first requiring the parties to engage in informal dispute resolution, AT&T Missouri respectfully submits that the Commission should enter an order closing discovery at or about June 30. The order should also direct the parties to appear at a pre-hearing conference shortly thereafter, for the purpose of conveying the status/results of discovery, resolving discovery

¹ AT&T Missouri’s First Data Requests Directed to Nexus (thirty in number) were served upon Nexus’ counsel of record yesterday. Responses are due by April 11.

² Reference is made, for example to the following sections of the “General Terms and Conditions” section of the Parties’ Section 252 Interconnection Agreement:

Section 10.2.1 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 [. . .].” Notably, in a similar complaint case filed by Nexus against AT&T Texas, the Texas Commission recently concluded that “[d]uring the course of the [January 31, 2100] prehearing conference, *it became apparent that the parties had not yet engaged in informal dispute resolution as required by the interconnection agreement.*” See, Petition of Nexus Communications, Inc. For Post-Interconnection Dispute Resolution With Southwestern Bell Telephone Company d/b/a AT&T Texas Under FTA Relating to Recovery of Promotional Credit Due, Docket No. 39028, Order No. 2, Memorializing Prehearing Conference and Abating Proceeding, January 21, 2011 (Attachment 1 hereto), at p. 1. (emphasis added). The Texas Commission last week concluded that information requested to be produced by Nexus had not been forthcoming, and the Commission thus ordered its production. *Id.*, Order No. 3, Responding to Parties Updates and Requiring Filing of Certain Information, March 18, 2011 (Attachment 2 hereto).

Section 9.9.1.1 states that: “Notwithstanding anything to the contrary in this Agreement, a Party shall be entitled to . . . [b]ack-bill for or dispute for any charges for services provided pursuant to this Agreement that are found to be unbilled, under-billed or over-billed, but only when such charges appeared or should have appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party provided written notice to the Billed Party of the amount of the back-billing or the Billed Party provided written notice to the Billing Party of the claimed credit amount.”

Section 10.1.2 states that: “Notwithstanding anything contained in this Agreement to the contrary, a Party shall be entitled to dispute only those charges which appeared on a bill dated within the twelve (12) months immediately preceding the date on which the Billing Party received notice of such Disputed Amounts.”

Section 10.1.1 states that: “Except as otherwise specifically provided for in this Agreement, no claim may be brought for any dispute arising from this Agreement more than twenty-four (24) months from the date the occurrence which gives rise to the dispute is discovered or reasonably should have been discovered with the exercise of due care and attention.”

disputes (if any), determining whether any stipulations of fact can be achieved, and determining the most expeditious means of proceeding thereafter to resolving the merits of the dispute.

4. Alternatively, AT&T Missouri suggests the following procedural schedule, subject to modification as the circumstances may warrant:

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|---------------------|--|
| June 30 | Discovery closes (all discovery must be generated in a manner and in sufficient time to allow responses to be provided by no later than June 30) |
| August 1 | Stipulations of Facts (if any) due |
| September 1 | Nexus Pre-filed Direct Testimony due |
| October 1 | AT&T Missouri Pre-filed Rebuttal Testimony due |
| November 1 | Staff Pre-filed Testimony due |
| December 1 | Nexus and AT&T Missouri Pre-filed Surrebuttal Testimony (directed to Staff Pre-filed Testimony) due |
| January 6, 2012 | Issues list, List of Witnesses, Order of Opening Statements, Witnesses and Cross-examination due |
| January 20, 2012 | Statements of Positions due |
| TBD (Jan/Feb, 2012) | Hearing on Merits (2 days contemplated) |
| TBD (Jan/Feb, 2012) | Post-Hearing Briefs due |

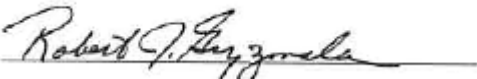
5. Nexus may propose, as it proposed to AT&T Missouri, an approach which, as AT&T Missouri understood it, would involve “phases” such that legal issues regarding the appropriate resale discount would be presented first (with simultaneous briefing by the parties), with an application to the facts later. While that approach may have been applied among different CLECs’ disputes with different AT&T affiliates in different states, the approach would likely result in increased cost and lack of efficiency for both parties here in Missouri. In those other states, the cases involved claims by AT&T affiliates for unpaid balances due under their respective interconnection agreements. Accordingly, those various cases presented a wide range

of CLEC-specific issues (such as the specific amount due AT&T, the types of promotion claims made, and whether the terms and conditions of the promotions were met). The parties to those multiple complaint proceedings agreed that three “threshold” legal issues were common to all of the underlying complaints, and to promote efficiency, they jointly asked the commissions to rule on those three threshold legal issues before proceeding to the various CLEC-specific claims. Here, since there is only one CLEC party, there is no need to bifurcate the individual issues and AT&T Missouri should be permitted to address Nexus’ Complaint only after Nexus has presented specific evidence in support of it. Finally, and very importantly, there is no efficiency to be gained by deferring for a later day consideration of evidence regarding AT&T Missouri’s affirmative defenses which could prove dispositive.³

WHEREFORE, AT&T Missouri requests that the Commission enter an order consistent with the foregoing response.

Respectfully submitted,

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

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³ As one example, if Nexus has not engaged in informal dispute resolution -- as the Texas Commission found, *see*, n. 2, *supra* -- then it is not entitled to Commission relief. Where the parties to the contract are “bound by dispute resolution clauses in their interconnection agreement to seek relief in a particular fashion,” the Commission has “no responsibility under section 252 to interpret and enforce an agreement.” In the Matter of Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996, Memorandum Opinion and Order, 15 FCC Rcd 11277, 11280, at n. 14 (2000).

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was served via e-mail upon each of the below on March 22, 2011.


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DOCKET NO. 39028

PETITION OF NEXUS §
 COMMUNICATIONS, INC. FOR POST- §
 INTERCONNECTION DISPUTE §
 RESOLUTION WITH SOUTHWESTERN §
 BELL TELEPHONE COMPANY D/BA/ §
 AT&T TEXAS UNDER FTA RELATING §
 TO RECOVERY OF PROMOTIONAL §
 CREDIT DUE

PUBLIC UTILITY COMMISSION
 OF TEXAS

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 PUBLIC UTILITY COMMISSION
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ORDER NO. 2

MEMORALIZING PREHEARING CONFERENCE AND
 ABATING PROCEEDING

On January 13, 2011, the Arbitrators in this docket held a prehearing conference. During the course of the prehearing conference, it became apparent that the parties had not yet engaged in informal dispute resolution as required by the interconnection agreement (ICA). On January 14, 2011, Nexus Communications, Inc. filed an Unopposed Motion to Abate so the parties might have time to engage in further settlement discussions. On January 14, 2011, AT&T Texas filed a letter stating that it would not challenge an order abating this proceeding as long as the Arbitrators require Nexus' compliance with the informal dispute resolution provisions of the ICA.

This docket is hereby abated and the parties shall either request a dismissal of this docket or file a status report on or before March 11, 2011. Additionally, Nexus is ordered to fully comply with the informal dispute resolution provisions outlined in General Terms and Conditions, Section 11.0 - Dispute Resolution of the parties ICA.

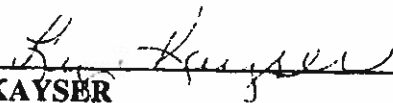
DOCKET NO. 39028

ORDER NO. 1

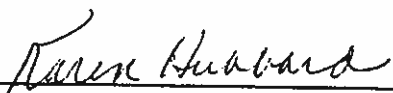
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SIGNED AT AUSTIN, TEXAS the 21st day of January, 2011.

PUBLIC UTILITY COMMISSION OF TEXAS



LIZ KAYSER
ARBITRATOR



KAREN HUBBARD
ARBITRATOR

DOCKET NO. 39028

| | | |
|--|----------|----------------------------------|
| PETITION OF NEXUS | § | PUBLIC UTILITY COMMISSION |
| COMMUNICATIONS, INC. FOR POST- | § | |
| INTERCONNECTION DISPUTE | § | OF TEXAS |
| RESOLUTION WITH SOUTHWESTERN | § | |
| BELL TELEPHONE COMPANY D/BA/ | § | |
| AT&T TEXAS UNDER FTA RELATING | § | |
| TO RECOVERY OF PROMOTIONAL | § | |
| CREDIT DUE | | |

ORDER NO. 3**RESPONDING TO PARTIES UPDATES AND REQUIRING FILING OF CERTAIN INFORMATION**

On January 13, 2011, the parties participated in a prehearing conference. On January 21, 2011, the Arbitrators in this docket issued Order No. 2 abating this proceeding in order to allow the parties to engage in informal dispute resolutions as required by provisions in the interconnection agreement (ICA) (see General Terms and Conditions, Section 11.0 - Dispute Resolution). Order No. 2 also required the parties to either request a dismissal of this docket or file a status report on or before March 11, 2011. The parties filed individual status reports on March 11, 2011. Based on the information provided in the parties Status Reports¹, the Arbitrators find that the sixty day timeframe for the informal dispute resolution process shall be calculated from March 7, 2011. Therefore, the parties shall file a final status report on the information dispute resolution process no later than **May 6, 2011**.

Additionally, the Arbitrators note that at the prehearing conference the Arbitrators requested Nexus Communications to provide the following information:²

1. a list (Excel spreadsheet) of each and every Cash Back promotion for which Nexus is seeking relief, including a description of the promotion, the start and ending date of the promotion and the amount of the cash back offer;

¹ AT&T Status Report, AIS Item No. 8, and Nexus Status Report, AIS Item No. 9, Docket No. 39028 (pending), (March 11, 2011).

² Prehearing Conference Tr. 4:15-25 and 5:1-7 (Jan. 13, 2011).

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ORDER NO. 3


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2. a list (Excel spreadsheet) showing how much Nexus received for each customer for the promotions listed in No. 1 above and how much Nexus felt it was entitled to receive (provide the calculations used to arrive at this amount).

Although this information was requested to be produced by January, 21, 2011,³ it has not yet been filed in the docket. Nexus is ordered to provide this information no later than April 1, 2011.

SIGNED AT AUSTIN, TEXAS the 18th day of March, 2011.

PUBLIC UTILITY COMMISSION OF TEXAS



LIZ KAYSER
ARBITRATOR



KAREN S. HUBBARD
ARBITRATOR

³ Prehearing Conference Tr. at 16:21-25 and 17:1-3 (Jan. 13, 2011).