

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

Nexus Communications, Inc.,)	
)	
Complainant,)	
)	
v.)	File No. TC-2011-0240
)	
Southwestern Bell Telephone Company, d/b/a)	
AT&T Missouri,)	
)	
Respondent.)	

AT&T MISSOURI’S OBJECTION TO NEXUS’ REQUEST FOR WAIVER

COMES NOW AT&T Missouri,¹ and submits its objection to Nexus Communications, Inc.’s (Nexus’) January 27, 2011, Request for Waiver filed in the above-referenced matter. In support thereof, AT&T Missouri states as follows:

1. On January 27, 2011, filed a Notice of Intent to File Contested Case (“Notice”) and a Request for Waiver (“Request”) which is presently pending before the Commission. In its Request, Nexus asks the Commission “waive the 60 day notice provision of 4 CSR 240-4.020(2)” applicable to the complaint which Nexus attached to its Request. Given that Nexus’ Request is presently pending, AT&T Missouri is not presently a party in this matter. Nevertheless, inasmuch as Nexus requests relief which, if granted, would affect AT&T Missouri’s substantive legal rights, AT&T Missouri respectfully submits its objection to Nexus’ Request.

2. 4 CSR 240-4.020(2) states:

Any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case. Such notice shall detail the type of case and issues likely to be before the [C]ommission.

3. Nexus’ Request fails to provide any “good cause” as to why the Commission should grant its Request. While Nexus refers to Case No. TC-2011-0132, in which the

¹ Southwestern Bell Telephone Company d/b/a AT&T Missouri (“AT&T Missouri”).

Commission, on January 26, issued its Order Dismissing [Nexus'] Complaint Without Prejudice ("Order"), Nexus offers no further "good cause" grounds for granting its Request than it offered in the earlier case, which grounds the Commission correctly rejected. The only thing which has occurred since the Commission's January 26 Order and Nexus' January 27 Notice and Request is the mere passage of time. This does not qualify as good cause to grant Nexus' Request.

4. Nor is it correct to say, as Nexus' Request asserts (at p. 1), that "AT&T and the Commission have *enjoyed* more than 60 days' notice of Nexus' intent to file a contested case." (emphasis added). Instead, Nexus' failure to abide by the same rules applicable to all regulated utilities in Missouri has compelled AT&T Missouri and the Commission to expend significant time and resources on a deficiency Nexus could have cured as long ago as December 9, 2010, when AT&T Missouri moved to dismiss the complaint in Case No. TC-2011-0132 for failure to comply with the Commission's notice of intent rule.

5. Having said this, AT&T Missouri would not object to the Commission's issuing an order (1) granting Nexus' Request, and (2) determining that Nexus shall be deemed as having filed its complaint on the effective date of said order (and no earlier), so long as the Commission also permits AT&T Missouri to respond to the complaint within the time (30 days) and manner provided for under the Commission's rules. Commission Rule 2.070(7) (4 CSR 240-2.070(7)) states that upon service by certified mail from the secretary of the Commission, a respondent shall answer the complaint "unless otherwise ordered, within thirty (30) days." Commission Rule 2.070(8) (4 CSR 240-2.070(8)) allows the respondent to file an answer to a complaint and to raise all grounds of defense, both of law and of fact. These important protections and safeguards should be afforded AT&T Missouri in the instant matter, as Nexus' Request represents the attempted bringing of a new complaint. Moreover, there are matters which AT&T Missouri can and should

be able to assert even though it filed an answer to Nexus' earlier complaint in Case No. TC-2011-0132.

5. Two examples illustrate. First, Commission Rule 2.040(3)(C) (4 CSR 240-2.040(3)(C)) governs the requirements applicable to attorneys who are not members of the Missouri Bar but who seek to practice before the Commission. In recognition of this rule, Nexus' Texas counsel indicated at today's pre-hearing conference held in this matter that he intended to file soon his pro hac vice motion to reflect compliance with the rule. Nevertheless, at present, failure to comply with the rule is a subject which AT&T Missouri is entitled to raise as an affirmative defense in its answer, or by way of a motion to dismiss. Second, the interconnection agreement between Nexus and AT&T Missouri contains a dispute resolution process that Nexus did not invoke (much less exhaust) prior to the filing of its Request. When, on January 5, the Commission denied AT&T Missouri's motion to dismiss in Case No. TC-2011-0132 for Nexus' failure to comply with this process, it did so on the strength of a factual assertion by counsel.² However, that assertion appears suspect in light of the Texas Commission's conclusion that, "[d]uring the course of the prehearing conference [held on January 21 in Texas], it became apparent that the parties had *not yet engaged* in informal dispute resolution as required by the interconnection agreement."³ (emphasis added). Given this development, AT&T Missouri is entitled to raise the subject of the contract's requirements as an affirmative defense in its answer, or by way of a motion to dismiss.


WHEREFORE, AT&T Missouri respectfully submits that the Commission should find that Nexus has not shown good cause to waive 4 CSR 240-4.020(2) or, in the alternative, that it issues an order consistent with the foregoing.

² See, Case No. TC-2011-0240, January 5, 2011, at p. 5, n. 13, *citing*, Nexus' Response to AT&T Missouri's Motion to Dismiss, p. 6, para. 14. The cited paragraph states: "In the alternative, Nexus has filed actual dispute claims with AT&T according to Section 10.4 of the ICA. Because Nexus has complied with the Service Center dispute resolution method, AT&T's Motion should be denied."

³ See, Docket No. 39028, Order No. 2, Memorializing Prehearing Conference and Abating Proceeding, January 21, 2011, at p. 1. (attached hereto).

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served to each of the below by e-mail on February 7, 2011.


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Control Number: 39028



Item Number: 6

Addendum StartPage: 0

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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ORDER NO. 2

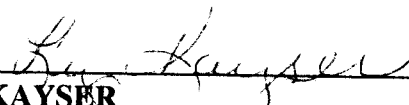
**MEMORALIZING PREHEARING CONFERENCE AND
ABATING PROCEEDING**

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.

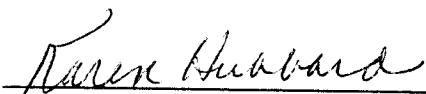
This docket is hereby abated and the parties shall either request a dismissal of this docket or file a status report on or before March 11, 2011. Additionally, Nexus is ordered to fully comply with the informal dispute resolution provisions outlined in General Terms and Conditions, Section 11.0 - Dispute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

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

PUBLIC UTILITY COMMISSION OF TEXAS



LIZ KAYSER
ARBITRATOR



KAREN HUBBARD
ARBITRATOR