

**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 DISMISS OF SOUTHWESTERN BELL TELEPHONE
COMPANY D/B/A AT&T MISSOURI**

COMES NOW Southwestern Bell Telephone Company (f/k/a Southwestern Bell Telephone, L. P.), d/b/a AT&T Missouri (“AT&T Missouri”), and respectfully submits its Motion to Dismiss the Complaint of Nexus Communications, Inc. (“Nexus”) on the grounds that: (1) Nexus has failed to comply with the Commission’s Rule requiring the filing of a notice of intent to file a contested case, (2) Nexus has failed to comply with the Commission’s Rule governing attorneys who seek to practice before the Commission, and (3) Nexus has failed to comply with the requirements of its Interconnection Agreement to invoke and exhaust the Agreement’s dispute resolution provisions. In support thereof, AT&T Missouri states as follows:

1. On three separate and independent grounds, Nexus’ Complaint is fatally deficient and must be dismissed. The first has to do with Nexus’ failure to have first timely filed a notice of its intent to file its Complaint, as required by the Commission’s rules. The second has to do with Nexus’ representation by Texas counsel, who has not complied with the Commission’s rules governing who may practice as an attorney before the Commission. The third has to do with Nexus’ failure to have followed the dispute resolution requirements set forth in its Interconnection Agreement with AT&T Missouri.

A. Nexus Has Failed to Comply with the Commission’s Rule Requiring the Filing of a Notice of Intent to File a Contested Case.

2. Commission Rule 4.020(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. Clearly, a CLEC’s filing of a “Complaint” generates a “contested case.” In any event, the Commission resolved any potential doubt on the matter when, in response to the filing of Nexus’ Complaint, the Commission issued its November 9 Notice of *Contested Case* (emphasis added), and when, in that same Notice, the Commission expressly indicated that Nexus had “instituted a contested case.” Notice of Contested Case, at p. 1.

4. Nexus’ Complaint does not allege that it has complied with this rule and AT&T Missouri is unaware that Nexus has filed any such notice. The consequence of Nexus’ failure is expressly provided for by Rule 4.020(2(A), (4 CSR 240-4.020(2)(A)): “Any case filed which is not in compliance with this section shall not be permitted and the secretary of the commission shall reject any such filing.” (emphasis added). Consequently, the Complaint must be dismissed.

B. Nexus Has Failed to Comply with the Commission’s Rule Governing Attorneys Who Seek To Practice Before the Commission.

5. 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. The rule states:

Any attorney who is not a member of the Missouri Bar, but who is a member in good standing of the bar of any court of record may petition the commission for leave to be permitted to appear and participate in a particular case under all of the following conditions:

1. The visiting attorney shall file in a separate pleading a statement identifying each court of which that attorney is a member and certifying that neither the visiting attorney nor any member of the attorney's firm is disqualified to appear in any of these courts;
 2. The statement shall designate some member in good standing of the Missouri Bar having an office within Missouri as associate counsel; and
 3. The designated Missouri attorney shall simultaneously enter an appearance as an attorney of record.
6. The Complaint reflects on its face that Nexus is represented by Texas counsel.

However, the Complaint does not allege that counsel has complied with Rule 2.040(3)(C) and AT&T Missouri is unaware of any such compliance. Consequently, the Complaint must be dismissed on this separate and independent ground.

C. Nexus Has Failed to Comply with the Requirements of its Interconnection Agreement to Invoke and Exhaust the Agreement's Dispute Resolution Provisions.

7. The interconnection agreement between Nexus and AT&T Missouri¹ 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 provides as follows:

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. (emphasis added.)

Generally speaking, the Dispute Resolution procedures later described in the Agreement's General Terms and Conditions are known as the "Service Center Dispute Resolution" process, the "Informal

¹ Nexus is one of those CLECs which, in connection with the 2005 Post-M2A Arbitration Proceeding, was deemed to have selected the Sprint Successor Interconnection Agreement. *See*, Southwestern Bell Telephone, L.P., d/b/a SBC Missouri's Petition for Compulsory Arbitration of Unresolved Issues For a Successor Interconnection Agreement to the Missouri 271 Agreement ("M2A"), Case No. TO-2005-0336, Notice Regarding CLECs That Have Not Selected An ICA, filed October 24, 2005.

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

8. The Agreement’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. (emphasis added.)

9. Because Nexus has neither invoked nor exhausted the applicable dispute resolution provisions and because it failed to give AT&T Missouri notice of the claim, as required under the parties' Agreement, its Complaint must be dismissed.

10. In order to make the most efficient use of the Commission’s, its Staff’s and AT&T Missouri’s limited resources, AT&T Missouri specifically requests that the Commission consider and rule on this motion before scheduling a prehearing conference or otherwise taking any other steps toward proceeding to the hearing of this case. The failures indicated above are obvious and Nexus’ proceeding to file its Complaint without abiding by them should not be countenanced.

11. AT&T Missouri also requests that the Commission, upon issuance of an appropriate dismissal order, should state in its order that to the extent that Nexus may ultimately re-file its complaint, Nexus should detail with specificity in that complaint the claimed wrong(s) and specific relief sought. While AT&T Missouri has certain obligations under federal law to resell services to CLECs, sometimes at a discount, this is accomplished according to the terms and conditions of interconnection agreements approved by this Commission. Nexus has failed to

provide any citations to its Agreement with AT&T Missouri that govern the resale of services by AT&T Missouri to Nexus. Nexus has also failed to provide the service name, price, term or duration of even a single promotional offering for which “promotional credits” are allegedly due.

WHEREFORE, AT&T Missouri respectfully requests that the Commission forthwith dismiss the Complaint in its entirety, and grant AT&T Missouri such other and further relief as may be just and appropriate under the circumstances.

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 December 9, 2010.


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