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APR 29 2011

Via UPS Next Day Air Tracking # 1Z F7V 320 01 9544 5984

Missouri Public Service Commission
Attn: Data Center
200 Madison Street
Jefferson City, Missouri 65101-3254

Missouri Public
Service Commission

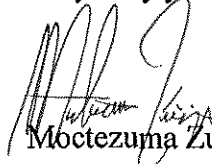
Re: *Nexus Communications, Inc. v. Southwestern Bell Telephone Co. d/b/a AT&T*
Missouri: Docket No. TC-2011-0132 before the Missouri Public Service
Commission

Dear Data Center:

Regarding the above-referenced case, please find enclosed a CD titled Exhibit D and Nexus Communications, Inc.'s First Amended Complaint for filing with the Missouri Public Service Commission. An additional copy is add and asked to be file-stamped and return in the envelope provided.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact the office.

Very truly yours,


Moctezuma Zuniga

Enclosures

FILED

APR 29 2011

Missouri Public
Service Commission

STATE OF MISSOURI

MISSOURI PUBLIC SERVICE COMMISSION

In the matter of:)	
)	
NEXUS COMMUNICATIONS, INC.)	DOCKET NO. TC-2011-0132
)	
v.)	
)	
SOUTHWESTERN BELL TELEPHONE CO.)	
D/B/A AT&T MISSOURI)	
)	
Dispute over Interpretation of the Parties')	
Interconnection Agreement regarding)	
AT&T's failure to extend full value of)	
Cash Back promotions to Nexus)	

NEXUS COMMUNICATIONS, INC.'S FIRST AMENDED COMPLAINT

TO THE HONORABLE MISSOURI PUBLIC SERVICE COMMISSION:

Nexus Communications, Inc. ("Nexus") brings this amended complaint seeking to recover cash back promotional credits from Southwestern Bell Telephone, Co. d/b/a AT&T Missouri ("AT&T") on the basis that AT&T is in violation of its statutory, regulatory, and contractual duties under the Telecommunications Act of 1996 (hereinafter "the Act")¹ by refusing to provide Nexus promotional credits due from AT&T under the parties' interconnection agreement ("ICA") and in support thereof, shows as follows:

I. IDENTIFICATION OF PARTIES AND JURISDICTION

1. Complainant Nexus is a corporation headquartered at 3629 Cleveland Avenue, Suite C, Columbus, Ohio, 43224, and is a competitive local exchange carrier ("CLEC").

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et seq.*).

Designated representatives for complainant are:

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2. AT&T is an incumbent local exchange carrier (“ILEC”) as defined by the Act.² AT&T is registered in Missouri and its principal place of business is 208 S. Akard Street, Dallas, Texas 75202.
3. The Missouri Public Service Commission (“Commission”) has jurisdiction over the subject matter pursuant to Sections 252(d)(1) and 252(e) of the Act and Section 386.250(2) RSMo. The Commission has continuing jurisdiction to enforce the terms and conditions in the ICA.³

II. FACTS AND NATURE OF THE DISPUTE

A. Background Facts

4. AT&T provides wholesale telecommunications services to Nexus pursuant to the terms of the parties’ ICA entered into under Sections 251 and 252 of the Act, and approved by the Commission as adopted from Case No. TK-2006-0044.⁴ The parties’

² 47 U.S.C. § 251(h)(1): Definition.

For purposes of this section, the term “incumbent local exchange carrier” means, with respect to an area, the local exchange carrier that

(A) on February 8, 1996, provided telephone exchange service in such area; and

(B)(i) on February 8, 1996, was deemed to be a member of the exchange carrier association pursuant to section 69.601(b) of the Commission’s regulations (47 C.F.R. 69.601(b)); or (ii) is a person or entity that, on or after February 8, 1996, became a successor or assign of a member described in clause (i).

³ 47 U.S.C. § 252(e).

⁴ Nexus adopted the ICA arbitrated and agreed upon between Southwestern Bell Telephone, L.P., d/b/a/ SBC Missouri and Sprit Communications Company, L.P., Case. No. TK-2006-0044, effective August 10, 2005.

dispute arises under their ICA and centers on promotional credits which are due Nexus from AT&T as a result of Nexus reselling AT&T telecommunication services subject to AT&T “cash back” promotions offered at retail.

5. Over the past months and years, AT&T has sold its retails services at a discount to its end users under various promotions that have lasted more than 90 days. Nexus is entitled to purchase and resell those same services at the promotional rate, less the costs avoided by AT&T’s providing the services at wholesale, rather than retail.

6. Of concern in this particular case are “cash back” promotions AT&T has provided to retail end users going back to August 2008. The two promotions figuring in this dispute are known generically as the “Movers” promotion and the “Competitive Acquisition” promotion (for some reason also known as the “Win-back” promotion). For reasons unknown to Nexus, AT&T referred to these promotions by slightly different names in different sources (*e.g.*, marketing materials CLEC accessible letters, and tariff sheets) over time, although the eligibility criteria and ordering codes for these promotions remained largely the same. Presumably the differences stem from the fact that these materials are marketing materials rather than legal documents, and because the tariffs are directed towards AT&T’s customers and the Commission, while the audience for the accessible letters is the CLEC community. In any event, the differences are considered non-substantive.

7. Thus, for example in Missouri, the Movers promotion and the Competitive Acquisition promotion are both included in AT&T’s tariff sheet titled “Acquisition

Complete Choice[®] Package Promotion.”⁵ However, the Movers promotion is alternatively referred to by AT&T as the “Movers Cash Back Promotion” and the “Movers Rewards Promotion” in its accessible letters. Regardless, the ordering code associated with the Movers promotion is always “SW-100” and the criteria likewise remain largely unchanged, irrespective of how the title may have been altered from time to time. A form of the Movers promotion was offered from February 15, 2008, to November 1, 2010. A copy of the tariff sheet and accessible letters setting out the terms of this promotion are attached as Exhibit A.

8. The Competitive Acquisition promotion is alternatively referred to as the “New Win-back Cash Back Promotion-SW” and “Win-back Cash Back Promotion-SW” in AT&T’s accessible letters. Either way, the ordering code associated with the Competitive Acquisition promotion is always “SW-121” and the criteria likewise remain largely unchanged, regardless of how the title may have been altered from time to time. A form of the Competitive Acquisition promotion was offered from September 29, 2008,

⁵ For example, the tariff sheet for the Movers promotion and Competitive Acquisition promotion describes the promotion terms as shown below. The CLEC accessible letters, although distinct in their promotion, generally track the same requirements.

ACQUISITION COMPLETE CHOICE[®] PACKAGE PROMOTION

The promotion is available from October 1, 2009 through March 20, 2010. Eligible customers are residential customers who have at least one local exchange access line or a substitute (e.g. a wireless line or VoIP service) with a carrier other than the Company at a service location that can be served by the Company. New customers moving from an AT&T local service area in a state and location where AT&T provides local exchange access service as an incumbent local exchange carrier are also eligible. Employees of the Company and its affiliates are not eligible.

During the promotion period, eligible customers who establish local service with the Company and purchase Complete Choice[®] Basic, Complete Choice[®] Enhanced, or a package containing the same features will receive a coupon redeemable for a \$50.00 rewards card. The customer must redeem the coupon within 30 days of receipt.

All nonrecurring feature or package installation charges associated with adding the features or a package that contains the required features to the customer's account will be waived. Customers must retain the Caller ID and Call Waiting for a minimum of 30 days.

to March 20, 2010. Copies of the accessible letters setting out the terms of this promotion are attached as Exhibit B.

9. In any event, Nexus met the same qualifications as AT&T's retail end users and applied for these promotional credits. AT&T did not dispute that Nexus was entitled to the promotions at issue; in fact, AT&T approved Nexus' applications for promotional credit in principle. The problem is that AT&T has extended Nexus only a fraction of the promotional credit due for each request Nexus filed, rather than the full face value of the promotion as it should under federal law. Table 1, below, provides a summary of the promotional credit requests filed by Nexus in Missouri.

Table 1. Summary of "Cash Back" Promotional Credit Requests Filed, Full Face Retail Value, Discounted Amount Received, and Amount Underpaid.				
"Cash Back" Promotion (type and amount)	Number of Requests Filed (08/08 to 11/10)	Retail Amount¹ (\$50.00 each)	Amount Received² (\$40.40 each)	Amount Underpaid³ (\$9.60 each)
Movers \$50 Cash Back	13,255	\$662,750.00	\$535,502.00	\$127,248.00
Competitive Acquisition/Win-back \$50 Cash Back	2,379	\$118,950.00	\$96,111.60	\$22,838.40
TOTAL	15,634	\$781,700.00	\$631,613.60	\$150,086.40

1. The full face retail value for either cash back promotion is \$50.00.
 2. AT&T did not provide Nexus with the full face value for either cash back promotion as it does its own retail customers; rather, AT&T provided Nexus with an improperly reduced amount where by AT&T discounted the cash back promotion by the wholesale discount percentage. ($\$50.00 \text{ less } 19.2\% = \40.40).
 3. Nexus seeks the difference between the full face value of the promotions, as AT&T should have provided (and what AT&T gives its own retail customers), and what AT&T improperly discounted and underpaid Nexus.
10. Exhibit C, attached, provides detailed information regarding the promotional credits at issue. It shows the promotion category, billing date, number of Nexus lines requesting the promotion, full retail amount of the promotion, discounted promotional amount Nexus received from AT&T, and the amount which AT&T owes Nexus.

11. Nexus also attaches Exhibit D which provides 28 spreadsheets containing the raw data detailing the 15,634 promotional credit requests submitted via AT&T's web portal system for the underpaid promotional credits at issue in this dispute. Again, please note these are for orders in which AT&T has *already approved* each and every one of the promotional credit requests, but only disputes the amount due qualifying reseller orders under the promotions at issue. Furthermore, as described further, *infra*, AT&T has been in receipt of all relevant information regarding the promotional credit disputes as this material was provided by Nexus – in the very manner and via the proprietary web portal system that AT&T themselves prescribed – since December 13, 2010.⁶
12. To date, AT&T owes Nexus at least \$150,086.40 in past due underpaid promotional credits. AT&T contends that it should not be required to extend to CLECs the entire amount of the promotion, but rather a lesser amount derived by reducing the promotional amount by the wholesale discount. AT&T's contention is incorrect and incompatible with the requirements of the Act, violates federal law, and harms competition. To comply with the law, the Commission should require AT&T to provide the full amount of the cash back promotion to Nexus and all other CLECs.

⁶ In using AT&T's system to request the promotional credits, Nexus provided all the information AT&T's system required for the identification of each and every promotional credit request, such as:

- Record type;
- Claim type;
- Account identification;
- Billing date;
- Customer claim number;
- Amount requested;
- Customer comments (which are limited by AT&T's system to 256 characters, including space); and
- Circuit identification/actual telephone number to which the promotion credit applies.

13. AT&T's actions result in unreasonable or discriminatory conditions, limitations, or prohibitions on the resale of telecommunications services and anti-competitive practices.

B. Controlling Law

14. Federal law provides, among other things, the following with respect to the terms and conditions of resale, including the obligation to make promotions available to resellers:

- 47 U.S.C. § 251(c)(4)(A). ILECs have the duty to “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”
- 47 C.F.R. § 51.603(a). An ILEC “shall make its telecommunications services available for resale to requesting telecommunications carriers on terms and conditions that are reasonable and non-discriminatory.”
- 47 C.F.R. § 51.605(a). ILECs “shall offer to any requesting telecommunications carrier any telecommunications service that the incumbent LEC offers on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates. . . .”
- 47 U.S.C. § 251(c)(4)(B). ILECs have a duty not to “prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service.”
- 47 C.F.R. § 51.603(b). “A LEC must provide services to requesting telecommunications carriers for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that the LEC provides these services to others, including end users.”
- 47 C.F.R. § 51.605(e). “Except as provided in §51.613, an incumbent LEC shall not impose restrictions on the resale by a requesting carrier of telecommunications services offered by the incumbent LEC.”
- 47 C.F.R. § 51.613(a)(2). “The following types of restrictions on resale may be imposed: Short term promotions. An incumbent LEC shall apply the wholesale discount to the ordinary rate for a retail service rather than a special promotional rate only if:

- i. Such promotions involve rates that will be in effect for no more than 90 days; and
- ii. The incumbent LEC does not use such promotional offerings to evade the wholesale rate obligation, for example by making available a sequential series of 90-day promotional rates.”

Federal law provides, among other things, the following with respect to calculating the wholesale price of retail services which must be resold:

- 47 U.S.C. § 252(d)(3): “Wholesale prices for telecommunication services. For the purposes of section 251(c)(4) of this title, a State commission shall determine *wholesale* rates on the basis of *retail* rates charged to subscribers for the telecommunications service requested, *excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided* by the local exchange carrier.” (Emphasis added.)
- 47 C.F.R. § 51.607. “The wholesale rate that an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, *less avoided retail costs*, as described in section 51.609.”

15. The overarching purpose behind these federal resale provisions is to permit CLECs to purchase, for subsequent resale, telecommunication services from the ILEC at a *lower* rate than the ILEC sells those services at *retail*. In short, *wholesale should always be less than retail*.

C. Controlling Contract Provisions

16. The ICA preserves the parties’ reservation of rights. In part, the ICA provides:

[i]n entering into this Amendment, neither Party waives, and each Party expressly reserves, any rights, remedies or arguments it may have at law or under the intervening law or regulatory change provisions in the underlying Agreement (including intervening law rights asserted by either Party via written notice predating this Amendment) with respect to any orders, decisions, legislation or proceedings and any remands thereof,

which the Parties have not yet fully incorporated into this Agreement or which may be the subject of further review.⁷

Furthermore, the ICA establishes governing law:

Unless otherwise provided by Applicable Law, this Agreement shall be governed by and construed in accordance with the Act, the FCC Rules and Regulations interpreting the Act and other applicable federal law. To the extent that federal law would apply state law in interpreting this Agreement, the domestic laws of the state in which the Interconnection, Resale Services, . . . products and services at issue are furnished or sought shall apply, without regard to that state's conflict of laws principles. The Parties submit to personal jurisdiction in . . . St. Louis, Missouri . . . and waive any and all objection to any such venue.⁸

17. Moreover, the parties' ICA provides a method for calculating the wholesale price for services subject to promotions in effect for 90 or more days: in such circumstances the wholesale price should be the promotional price further reduced by the wholesale discount.

3.5.2 This section applies only to . . . [AT&T in Missouri]:

3.5.2.1 Promotions of eighty-nine (89) days or less are not available to CLEC for resale.

3.5.2.2 Promotions of ninety (90) days or more are available to CLEC for resale at the applicable wholesale discount, state specific.⁹

18. Compare how AT&T treats the same promotions in Texas:

[r]esale services offered by [AT&T] through promotions will be available to CLEC on terms and conditions no less favorable than those [AT&T] makes available to its End Users, provided that promotions of 90 days or less, [AT&T] will offer the services to CLEC for resale at the promotional rate without a wholesale discount. For promotions of more than 90 days,

⁷ See Interconnection Agreement, AT&T Wholesale Amendment, Amendment to Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 Between Southwestern Bell Telephone Company d/b/a AT&T Missouri and Nexus Communications, Inc., Section 9, at 442.

⁸ See Interconnection Agreement, General Terms and Conditions, Governing Law, Section 22.1 at 54.

⁹ See Interconnection Agreement, Appendix Resale/SBC Missouri at 302.

[AT&T] will make the services available at the avoided cost discount from the promotional rate.¹⁰

This shows that services subject to promotions lasting 90 or more days should be resold at an amount less than the promotional price.

D. Proper Method for Determining Wholesale Price

19. It is undisputed that the costs of providing a particular service do not change, even if purchasers of that service may be able to purchase the service at a special sale, or promotional, price. In other words, the avoided cost is the same for both a service sold at the standard/tariffed retail rate, and the same service sold pursuant to a special sale, or promotional rate. This is because the *costs* associated with the service are the same, even if the *price* is temporarily changed (for a single month) for a particular customer pursuant to a special sale or promotion.¹¹ Just as this estimate is correct for every other month for the service – and for every other customer, including those that are not eligible for the promotion – the estimate remains appropriate to the single month that the promotional credit is processed.

20. The appropriate method for determining the wholesale price is to first calculate the amount of the avoided cost discount, then subtract the avoided cost from the actual sales price.¹² As we know from the law, the wholesale price is supposed to be the net

¹⁰ See Public Utility Commission of Texas, Docket No. 29468, effective March 17, 2004; Docket No. 31778, effective September 28, 2005; and Docket No. 35754, approved June 28, 2008; Interconnection Agreement, Attachment 1: Resale, Section 3.2, at 3.

¹¹ At the time this Commission established the wholesale discount rate at 19.2% of the retail rate for telecommunications services, it focused on the tariffed, retail rate of services provided to calculate a wholesale discount percentage based on the methodology that the avoided costs for each product is proportional to its price. This methodology need not change just because AT&T has offered a promotion – the best estimate of a product's avoided retail cost is still best estimated by applying the discount to its pre-promotion retail price. Such an approach also ensures that resellers are entitled to the full, dollar-for-dollar value of an ILEC's promotional offerings to the same extent as retail, end-use customers.

¹² 47 U.S.C. § 252(d)(3): Wholesale prices for telecommunication services.

retail price less the avoided costs involved with providing the service.¹³ However, the Commission has already determined how to calculate the avoided costs associated with these services: to properly determine the avoided cost, one multiplies the resale discount factor by the pre-promotion, standard/tariffed price. This gives one the base amount of the avoided cost associated with the service, and thus the amount by which the wholesale price should be less than the effective retail price.

21. Furthermore, because the actual sales price is not necessarily the standard/tariff price, but can be lowered by short term “promotional” offers, *i.e.*, special sales, the Federal Communication Commission (“FCC”) requires all ILECs, including AT&T, to make the benefits of those promotions available to CLECs, such as Nexus.¹⁴
22. Indeed, in the *Local Competition Order* the FCC expressly recognized that ILECs (such as AT&T) could use promotions to manipulate their retail rates and effectively avoid their resale obligations. Consequently, the FCC found that the resale rates requirement in Section 251(c)(4) of the Act:

makes no exception for promotional or discounted offerings, including contract and other customer-specific offerings. We therefore conclude that no basis exists for creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs. A contrary result would permit incumbent LECs to

For the purposes of section 251(c)(4) of this title, a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

¹³ 47 C.F.R. § 51.607: Wholesale pricing standard.

The wholesale rate than an incumbent LEC may charge for a telecommunications service provided for resale to other telecommunications carriers shall equal the rate for the telecommunications service, less avoided retail costs, as described in section 51.609.

¹⁴ 47 C.F.R. § 51.605: Additional obligations of incumbent local exchange carriers.

(a) An incumbent LEC shall *offer* to any requesting telecommunications carrier any telecommunications service that the incumbent LEC *offers* on a retail basis to subscribers that are not telecommunications carriers for resale at wholesale rates. . . . (emphasis added).

avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.¹⁵

23. Thus, the price from which the avoided cost discount is subtracted is the *lower* of the standard/tariff price, or, if any, the promotional price in effect for the services in question. Stated another way, the three steps to finding the wholesale price are:

STEP 1: Find the pre-promotion standard/tariffed retail price.

STEP 2: Find the avoided cost: multiply the standard/tariffed retail price by the wholesale discount factor.

STEP 3: Subtract the avoided cost from the effective retail sales price, which is the standard/tariffed retail price

OR, if a promotion applies,

Apply the promotion to the standard/tariffed retail price (this is the net retail price a retail customer would pay) and *then* subtract the avoided costs (which is the discount a wholesale customer receives).

By applying this method, the wholesale price is always the *same amount less* than the retail price, *i.e.*, the amount equal to the costs avoided by providing the services at wholesale, which is a better reflection of the fact that the cost to provide the services is constant regardless of temporary fluctuations in the sales price caused by non-standard special sales. Table 2, below, shows how this works.

¹⁵ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499, ¶ 948 (rel. Aug. 8, 1996) ("*Local Competition Order*") (emphasis added).

Table 2. Results of applying avoided cost discount based on standard/tariffed retail price.				
Standard/Tariff Retail Price	Standard Wholesale Discount Percentage ¹	Promotional Discount	Net Retail Price ²	Net Wholesale Price ³ (assuming avoided cost calculated as % of standard retail price)
\$25	20%	\$0	\$25	\$20 (\$5 less than net retail)
\$25	20%	\$50	-\$25	-\$30 (still \$5 less than net retail)
\$25	20%	\$100	-\$75	-\$80 (still \$5 less than net retail)

1. A hypothetical 20% wholesale discount percentage is used in this table for demonstration purposes and mathematical simplicity only. The wholesale discount percentage in Missouri is 19.2%.
 2. Standard/Tariff Retail Price – Promotional Discount = Net Retail Price
 3. Standard/Tariff Retail Price x Wholesale Discount Percentage = Avoided Costs
Standard/Tariff Retail Price – Promotional Discount - [Avoided Costs] = Net Wholesale Price
24. Note that calculating the wholesale discount – that is, the avoided cost discount – from the standard/tariff rate in this manner conforms to the principle that *the wholesale price should always be less than the retail price*. As will be shown, AT&T’s method of determining the avoided cost discount does not produce such results, and in fact AT&T’s method actually results in a situation where the wholesale price is *higher than retail*.
25. Another reason for adopting the method above is that the Act and FCC regulations require AT&T to offer certain promotions for resale “subject to the same conditions” as offered to retail customers. Thus, Nexus is entitled to the full value of AT&T’s cash back promotions. According to the Act and pertinent FCC regulations, AT&T is required to offer its services for resale “subject to the same conditions” that AT&T offers its own end-users and at “the rate for the telecommunications service, less avoided retail costs.”¹⁶ For example, when AT&T offers retail telephone service in

¹⁶ 47 C.F.R. §§ 51.603(b) and 51.607.

conjunction with a “\$50 cash back” rebate to new customers, AT&T must make that offer available to CLECs “subject to the same conditions,” that is, with a \$50 cash rebate, and at “the rate for the telecommunications service, less avoided retail costs,” that is, at the tariffed retail price less the wholesale discount. FCC rules unambiguously place the reseller in the shoes of the retail customer when it acquires a service for resale. The FCC rules make clear that no additional conditions can be placed on the reseller, particularly any condition that would have the effect of imposing some restriction on the reseller that does not apply to AT&T retail customers. As such, resellers, like Nexus, are fully entitled to the full value of the cash back promotion just like an AT&T retail end-user. To provide any less – or to impose any other qualifying requirements – violates the Act and FCC rules prohibiting any additional conditions or restrictions on Nexus.

D. Improper Method for Determining Wholesale Price

26. AT&T contends that, if it is required to extend cash back promotions to CLECs at all, then it should not be required to extend the entire amount of the promotion to CLECs, but rather a lesser amount derived by reducing the promotional amount by the resale discount percentage.
27. The flaw in AT&T’s methodology is that it results in a situation where its calculation of the wholesale price produces *a wholesale price that is greater than the retail price*. This flaw is dramatically illustrated by the promotions in question as shown in Table 3 below:

Furthermore, other than in limited circumstances not applicable here, AT&T cannot impose any restrictions on the resale of its services unless AT&T “proves to the state commission that the restriction is reasonable and non-discriminatory.” 47 C.F.R. § 51.613.

Table 3.
Results of applying AT&T's method for calculating promotion amount due resellers (applying hypothetical 20% wholesale discount to both standard/tariff price and to promotional discount.

Standard/Tariff Retail Price	Standard Wholesale Discount Percentage ¹	Promotional Discount	Net Retail Price ²	Net Wholesale Price ³ (assuming avoided cost calculated as % of standard/tariff retail price)
\$25	20%	\$0	\$25	\$20 (5\$ less than net retail)
\$25	20%	\$50	-\$25	\$0 (same as net retail)
\$25	20%	\$100	-\$75	-\$60 (\$15 MORE than net retail)

1. A hypothetical 20% wholesale discount percentage is used in this table for demonstration purposes and mathematical simplicity only. The wholesale discount percentage in Missouri is 19.2%.
2. Standard/Tariff Retail Price – Promotional Discount = Net Retail Price
3. (Standard/Tariff Retail Price x Wholesale Discount Percentage) – (Promotional Discount x Wholesale Discount Percentage) = Net Wholesale Price

28. Obviously, adopting a model which results in a wholesale price that is more than the retail price guts the purpose of the Act, violates federal law, and dooms competition. Accordingly, AT&T's model cannot be correct.

29. Because Nexus has consistently been credited not the full amount of the promotions to which it is entitled, but instead by that amount less the wholesale discount, Nexus is entitled to recover the difference, and hereby pleads for the same.

III. PARTIES' EFFORTS TO RESOLVE DIFFERENCES

30. Because of past experience in attempting to negotiate this issue on behalf of other, but identically situated CLECs, counsel for Nexus knows 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.

31. Moreover, AT&T has for many months been involved in litigation in

approximately 12 other substantively identical pending cases in various jurisdictions, including before the Commission, with a number of other CLECs similar to Nexus.¹⁷ 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. However, 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 essentially futile not only because AT&T cannot compromise its position with Nexus in Missouri and the other cases between the parties, but also because AT&T cannot compromise in Missouri without adversely affecting AT&T’s overall litigation stance in the other ongoing cases that it has itself filed and been pursuing with a number of other CLECs for many months.

32. Nonetheless, Nexus has made an attempt at informal dispute resolution by teleconference with between counsel for Nexus and AT&T at a high level. However, AT&T has been firm on its refusal to offer the full face value of its cash back promotions to Nexus and other CLECs since at least 2006.¹⁸

¹⁷ 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-836, 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.

¹⁸ See *In the Matter of: Petition of Image Access, Inc. d/b/a New Phone for Declaratory Ruling Regarding Incumbent Local Exchange Carrier Promotions Available for Resale Under the Communications Act of 1934, as Amended, and Sections 51.601 et seq. of the Commission’s Rules*; WC Docket No. 06-129 before the Federal Communications Commission.

33. In fact, AT&T has repeatedly admitted on the record that AT&T's position and the CLEC position (which Nexus also espouses) on how to calculate the wholesale price for services subject to a cash back promotion are fundamentally irreconcilable, thereby necessitating commission intervention. For example, at a hearing before the Public Service Commission of South Carolina, counsel for AT&T affirmatively stated:

Right now the resellers are folding their arms and saying, "We are right on the law." Frankly, we're folding our arms and saying, "We are right on the law." And there's no negotiation on the past-due billing because of that, and we need your guidance to break that logjam.¹⁹

34. Because AT&T cannot and will not negotiate – as required under the parties' ICA – Nexus should be excused from performing such a futile act. In such situations, it is black-letter law that performance of a condition precedent otherwise required by contract is excused where such performance would be a futile act.²⁰ The rule in Missouri is no different:

One who hinders performance by the other party may not avail himself of the nonperformance which he induced or occasioned. *See* 17A C.J.S.

¹⁹ *BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC*, Consolidated Docket Nos. 2010-14-C ~19-C before the Public Service Commission of South Carolina, Hearing #10-11166, p. 24, lines 4-11, (P.S.C.S.C. December 16, 2010) (from opening statements by AT&T attorney, Mr. Patrick Turner).

See also 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, (Hearing transcript, p. 44, lines 11-16, (A.P.S.C. January 21, 2011) (from opening statements by AT&T attorney, Mr. Patrick Turner):

[W]e've got a log jam that's building every day. We need to break it. We need to end this vicious cycle on going forward basis so we know the rules going forward. . . .;

and

BellSouth Telecommunications, Inc. d/b/a AT&T Southeast d/b/a AT&T Louisiana v. Image Access, Inc. d/b/a New Phone, et al., Consolidated Docket No. U-31364 before the Louisiana Public Service Commission, Hearing transcript, p. 14, lines 3-7, (L.P.S.C. November 4, 2010) (from opening statements by AT&T attorney, Mr. Patrick Turner):

Once we understand what the ground rules are, there's probably some opening for some good negotiations. But today, both sides are saying, "I'm right on the Law." And no one's moving off the (INAUDIBLE). So we need that ruling. We also need it to end this vicious cycle of continuing disputes. . . .

²⁰ Samuel Williston, Williston on Contracts § 47:4 (4th ed.).

Contracts s 468, p. 645, wherein it is stated: ‘*** and, where he prevents, hinders, or renders impossible the fulfillment of a condition precedent or its performance by the adverse party, or is himself the cause of failure to perform the condition he cannot rely on such condition to defeat his liability.’

Hillis v. Blanchard, 433 S.W.2d 276, 279 (Mo. 1968). *Kreitz v. Egelhoff*, 231 Mo. 694, 132 S.W. 1124, 1127 (Mo. 1910) (“[I]f defendants wrongfully prevented full performance, they may claim nothing by virtue of so much of the nonperformance as was brought about by their own wrongful act.”).

35. The North Carolina Utilities Commission has said much the same thing about enforcing IDR provisions under circumstances like those we have here:

We believe that the purpose of the escalation provision was to permit the parties, in good faith, to attempt to resolve disputes prior to resorting to a forum such as this Commission. To be effective, each party has to be open to a negotiated resolution of a disputed issue. Here, because of the unyielding position taken by [AT&T], there could be no negotiated resolution. [AT&T’s] position was that these cashback promotions were not available for resale. No matter how many times dPi asked [AT&T], the answer would always be the same: denial, because “AT&T did not offer cashback promotions for resale.” (Tr. P. 165) Thus, any action taken by dPi to comply with the escalation process would have been futile. dPi’s nonperformance in this regard is therefore deemed to have been excused.²¹

36. Because AT&T in Missouri cannot compromise AT&T’s overall position with Nexus (and other CLECs) without adversely affecting AT&T’s litigation stance in the many other pending cases, informal dispute resolution in this case is doomed. Therefore, the Commission should conclude that enforcement of the dispute resolution provisions is futile and allow the case to proceed.

²¹ Recommended Order, *In the Matter of dPi Teleconnect, LLC, Complainant v. BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina, Respondent*, 2010 WL 1922679, *1922679 (N.C.U.C. May 07, 2010) (No. P-55, SUB 1744).

WHEREFORE, PREMISES CONSIDERED, based upon the foregoing, Nexus respectfully requests and prays the Missouri Public Service Commission:

- Issue a declaration such that when a cash back promotion is offered by the ILEC in connection with a retail service, and the CLEC otherwise qualifies for the promotion, the service must be offered at the effective retail rate less the costs avoided in providing the service. More particularly, this means the service must be offered at the standard/tariffed price, less the wholesale discount, less the *full amount of the cash back promotion*;
- Issue a ruling such that Nexus is entitled to recover all underpaid promotional credits due; and
- Award Nexus any other such relief as it is entitled to in law and equity.

Respectfully submitted,

s/ Chris Malish

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

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Attorneys for Complainant

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing First Amended Complaint was served by electronic mail as well as by regular U.S. Mail this 28th day of April 2011, to:

General Counsel's Office at gencounsel@psc.mo.gov;
Office of Public Counsel at opcservice@ded.mo.gov;
Cully Dale at cully.dale@psc.mo.gov;
William Voight at william.voight@psc.mo.gov; and
AT&T Missouri at robert.grysmala@att.com and leo.bub@att.com.

s/ Chris Malish
Christopher Malish

EXHIBIT A

P.S.C. Mo. - No. 24
LOCAL EXCHANGE TARIFF

Southwestern Bell Telephone
Company d/b/a AT&T Missouri

APPENDIX
2nd Revised Sheet 83
Replacing 1st Revised Sheet 83

ACQUISITION COMPLETE CHOICE® PACKAGE PROMOTION

The promotion is available from October 1, 2009 through March 20, 2010. Eligible customers are residential customers who have at least one local exchange access line or a substitute (e.g. a wireless line or VoIP service) with a carrier other than the Company at a service location that can be served by the Company. New customers moving from an AT&T local service area in a state and location where AT&T provides local exchange access service as an incumbent local exchange carrier are also eligible. Employees of the Company and its affiliates are not eligible. (CT)

During the promotion period, eligible customers who establish local service with the Company and purchase Complete Choice® Basic, Complete Choice® Enhanced, or a package containing the same features will receive a coupon redeemable for a \$50.00 rewards card. The customer must redeem the coupon within 30 days of receipt. (CT)

All nonrecurring feature or package installation charges associated with adding the features or a package that contains the required features to the customer's account will be waived. Customers must retain the Caller ID and Call Waiting for a minimum of 30 days.



Accessible

Date: **December 31, 2007**

Number: **CLEC07-374**

Effective Date: **February 15, 2008**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Movers Cash Back Promotion (9278; SW-100)
AR KS MO OK TX**

Related Letters:

Attachment: **NA**

States Impacted: **Arkansas, Kansas, Missouri, Oklahoma and Texas**

Issuing AT&T ILECS: **AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and
AT&T Texas (collectively referred to for purposes of this Accessible
Letter as "AT&T Southwest Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southwest Region is sending notice of intent to file tariff revisions to introduce the Movers Cash Back Promotion. The effective date is February 15, 2008.

The following are the details of this offer:

- Existing end users who are moving and transfer existing service to a new service address qualify for this offer.
- New end users who are moving and purchase new local service at a new service address qualify for this offer.
- The customer must also have or newly subscribe to Caller-ID and Call Waiting at the new location to qualify.
- Qualifying customers will receive a \$50 bill credit.
- Can not be combined with any other regulated promotions; May be combined with the online Installation charge waiver offer.
- Any rates referenced below are Retail rates and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

State	Effective Date	End Date	Retention Period	Product Name	Product's USOC/FID	Benefit to be Provided
MO	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
OK	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
KS	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call	NNK or NSD, or NMP and	\$50.00

				Waiting	ESX	
AK	02/15/08	01/31/09	One month	Access Line with Caller- ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
TX	02/15/08	01/31/09	One month	Access Line with Caller- ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00

AT&T Southwest Region reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Southwest Region will send additional notification at the time of cancellation. AT&T Southwest Region will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Southwest Region or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes.

http://www.att.com/search/tariffs.jsp?category=TEXAS/TELCO/FILING_LOG



Accessible

Date: **February 13, 2008**

Number: **CLEC08-028**

Effective Date: **February 15, 2008**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revisions to Movers Cash Back Promotion (9278; SW-100) AR KS MO OK TX**

Related Letters: **CLEC07-374**

Attachment: **NA**

States Impacted: **Arkansas, Kansas, Missouri, Oklahoma and Texas**

Issuing AT&T ILECS: **AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas (collectively referred to for purposes of this Accessible Letter as "AT&T Southwest Region")**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southwest Region is sending notice of intent to file tariff revisions to introduce the Movers Cash Back Promotion for residential end users. The effective date is February 15, 2008.

The following are the details of this offer:

- Existing end users who are moving and transfer existing service to a new service address qualify for this offer.
- New end users who are moving and purchase new local service at a new service address qualify for this offer.
- The customer must also have or newly subscribe to Caller-ID and Call Waiting at the new location to qualify.
- Qualifying customers will receive a \$50 bill credit.
- Can not be combined with any other regulated promotions; May be combined with the online Installation charge waiver offer.
- Any rates referenced below are Retail rates and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

State	Effective Date	End Date	Retention Period	Product Name	Product's USOC/FID	Benefit to be Provided
MO	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
OK	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
KS	02/15/08	01/31/09	One month	Access Line with Caller-ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00

AK	02/15/08	01/31/09	One month	Access Line with Caller- ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00
TX	02/15/08	01/31/09	One month	Access Line with Caller- ID and Call Waiting	NNK or NSD, or NMP and ESX	\$50.00

AT&T Southwest Region reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Southwest Region will send additional notification at the time of cancellation. AT&T Southwest Region will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Southwest Region or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes.

http://www.att.com/search/tariffs.jsp?category=TEXAS/TELCO/FILING_LOG



Accessible

Date: **December 18, 2008**

Number: **CLEC08-452**

Effective Date: **February 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Movers Cash Back Promotion - MO
(08SW10441, SW-100)**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Missouri**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Missouri is sending notice of intent to file tariff revisions to introduce the Movers Cash Back Promotion for Residential end users. The effective date is February 1, 2009.

The following are the details of this offer:

- Existing end users who are moving and transfer existing service to a new service address qualify for this offer.
- New end users who are moving and purchase new local service at a new service address qualify for this offer.
- The customer must purchase a Complete Choice Basic or Enhanced package.
- Customers must receive a marketing contact such as a Direct Mailing, 3rd Part Movers Package, etc. to be eligible for the offer.
- Qualifying customers will receive a \$50 bill credit.
- This offer can only be combined with the Online Installation waiver offer.
- This offer cannot be combined with any Competitive Acquisition offer.
- Any rates referenced below are Retail rates and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

Effective Date	End Date	Retention Period	Product Name	Product's USOC/FID	Benefit to be Provided
02/01/09	01/31/10	One Month	Complete Choice Basic	PGOC3	\$50.00
			Complete Choice Enhanced	PGOC4	

AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the

time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Missouri or is not ultimately approved by the commission.

Date: **November 27, 2009**Number: **CLEC09-516**Effective Date: **February 1, 2010**Category: **Resale**Subject: **(ORDERING AND PROVISIONING) Movers Rewards Promotion - MO
(08SW12085, SW-100)**Related Letters: **NA**Attachment: **NA**States Impacted: **Missouri**Response Deadline: **NA**Contact: **Account Manager**

AT&T Missouri is sending notice of intent to file tariff revisions to make permanent the Movers Rewards Promotion for Residential end users. The effective date is February 1, 2010.

The following are the details of this offer:

- Existing end users who are moving and transfer existing service to a new service address qualify for this offer.
- New end users who are moving and purchase new local service at a new service address qualify for this offer.
- The customer must purchase a Complete Choice Basic or Enhanced package.
- Customers must receive a marketing contact such as a Direct Mailing, 3rd Part Movers Package, etc. to be eligible for the offer.
- Qualifying customers will receive a \$50 reward card.
- This offer can only be combined with the Online Installation waiver offer.
- This offer cannot be combined with any Competitive Acquisition offer.
- Any rates referenced below are Retail rates and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

Effective Date	End Date	Retention Period	Product Name	Product's USOC/FID	Benefit to be Provided
02/01/10	Permanent	One Month	Complete Choice Basic	PGOC3	\$50.00
			Complete Choice Enhanced	PGOC4	

AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Missouri or is not ultimately approved by the commission.



Accessible

Date: **July 30, 2010**

Number: **CLEC10-245**

Effective Date: **September 30, 2010**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Movers Cash Back Promotion – MO (10SW-12712, SW-100)**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Missouri**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Missouri is sending notice of intent to file tariff revisions to revise the Movers Cash Back Promotion for Residential end users **to require that services must be retained for a minimum of 30 days and at the time of the processing the reward.** The effective date of this change is September 30, 2010.

The following are the details of this offer:

- Existing end users who are moving and transfer existing service to a new service address qualify for this offer.
- New end users who are moving and purchase new local service at a new service address qualify for this offer.
- The customer must purchase a Complete Choice Basic or Enhanced package.
- Customers must receive a marketing contact such as a Direct Mailing, 3rd Part Movers Package, etc. to be eligible for the offer.
- Qualifying customers will receive a \$50 bill credit.
- This offer can only be combined with the Online Installation waiver offer.
- This offer cannot be combined with any Competitive Acquisition offer.
- **The required services must be retained for a minimum of 30 days and at the time of processing the reward.**
- Any rates referenced below are Retail rates and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

Effective Date	End Date	Retention Period	Product Name	Product's USOC/FID	Benefit to be Provided
02/01/10	01/31/11	One Month	Complete Choice Basic	PGOC3	\$50.00

			Complete Choice Enhanced	PGOC4	
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AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Missouri or is not ultimately approved by the commission.



Accessible

Date: **October 20, 2010**

Number: **CLEC10-063**

Effective Date: **November 1, 2010**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revised End Date for the Movers Rewards Promotion - AR, MO, OK, TX (SW-100)**

Related Letters: **CLEC10-258, CLEC10-259, CLEC10-261, CLEC10-245** Attachment: **NA**

States Impacted: **Arkansas, Missouri, Oklahoma, Texas**

Issuing AT&T ILECS: **AT&T Arkansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

On October 20, 2010 AT&T Arkansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas filed a tariffs withdrawing the Cash Back Rewards Promotion for Residential end users (movers offer). Effective November 1, 2010, the movers offer will no longer be available for resale.

The effective date stated in this accessible letter shall control unless in direct conflict with the minimum time period for notification of termination of a promotional offering specified in a carrier's interconnection agreement. In the case of such a conflict, the minimum advance notification period stated in the carrier's interconnection agreement shall apply as to that specific carrier.

AT&T Arkansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T will send additional notification at the time of cancellation. AT&T will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes. <http://cpr.bellsouth.com/pdf/tx/filings/txfiling.htm>

Why is just Texas on this page? Shouldn't we just leave that off?



Accessible

Date: **October 21, 2010**

Number: **CLEC10-323**

Effective Date: **November 1, 2010**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Typographical Corrections to Notice Revising
End Date for the Movers Rewards Promotion - AR, MO, OK, TX (SW-100)**

Related Letters: **CLEC10-063**

Attachment: **NA**

States Impacted: **Arkansas, Missouri, Oklahoma, Texas**

Issuing AT&T ILECS: **AT&T Arkansas, AT&T Missouri, AT&T Oklahoma and AT&T Texas**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

This Accessible Letter is being sent to make typographical corrections to Accessible Letter **CLEC10-063**, dated October 20, 2010. No content changes are being made.

On October 20, 2010 AT&T Arkansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas filed a tariff withdrawing the Cash Back Rewards Promotion for Residential end users (movers offer). Effective November 1, 2010, the movers offer will no longer be available for resale.

The effective date stated in this accessible letter shall control unless in direct conflict with the minimum time period for notification of termination of a promotional offering specified in a carrier's interconnection agreement. In the case of such a conflict, the minimum advance notification period stated in the carrier's interconnection agreement shall apply as to that specific carrier.

AT&T Arkansas, AT&T Missouri, AT&T Oklahoma, and AT&T Texas reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T will send additional notification at the time of cancellation. AT&T will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes. <http://cpr.bellsouth.com/pdf/tx/filings/txfiling.htm>

EXHIBIT B



Number: **CLEC08-253**

Category: **Resale**

**Subject: (ORDERING AND PROVISIONING) New Win-back Cash Back Promotion-SW
(08SW10275,SW-121)**

Attachment: **NA**

States Impacted: Texas, Kansas, Oklahoma, Arkansas, Missouri

Issuing AT&T ILECS: **AT&T Texas, AT&T Kansas, AT&T Oklahoma, AT&T Arkansas, AT&T Missouri (collectively referred to for purposes of this Accessible Letter as "AT&T Southwest Region")**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Southwest Region is sending notice of intent to file tariff revisions to introduce the Win-Back Cash Back Promotion. The effective date of the promotion is September 29, 2008 and the end date is March 31, 2009.

The following are the details of this offer:

- End Users who switch their service to a CLEC Customer and purchase a minimum package of Complete Choice Basic or any package with those components will receive a \$50 bill credit.
- All nonrecurring feature or package installation charges associated with adding the features or a package that contain the required features to the customer's account will also be waived.

Any rates referenced below are Retail rates and the applicable Resale discount will be applied.
End User must retain service for 30 days.

The table below summarizes the products and USOCs included in this promotion.

	USOC	AR	KS	MO	OK	TX	Effective Date
Complete Choice® Basic	PGOC3	\$21.00	\$21.00	\$21.00	\$21.00	\$21.00	9/29/2008
Access line and Caller ID and Call Waiting	NMP						
CID with Name	NSD						
Call Waiting	ESX						
Complete Choice® Enhanced	PGOC4	\$26.00	\$26.00	\$26.00	\$26.00	\$26.00	9/29/2008
Access line and up to 11 calling features:							
Three-Way Calling	ESC						
Speed Calling 8	ESL						
Call Forwarding	ESM						
Call Blocker	NSY						
Call Return	NSS						
Selective Call Forwarding	NCE						
Priority Call	NSK						
CID with Name (only Bk Office can remove if feature cannot be provisioned)	NMP						
CID with Number (only Bk Office can remove if feature cannot be provisioned)	NSD						
Deselectable Features							
Privacy Manager (default is deselectable - available upon req. at no charge)	CPU						
Call Waiting	ESX						
Call Waiting ID	NWT						
All vertical features will be auto-selected at time of order except Privacy Mgr.							

AT&T Southwest Region reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Southwest Region will send additional notification at the time of cancellation. AT&T Southwest Region will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Southwest Region or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes. <http://cpr.bellsouth.com/pdf/tx/filings/txfiling.htm>



Accessible

Date: **February 13, 2009**

Number: **CLEC09-051**

Effective Date: **April 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Extension of Win-back Cash Back Promotion-SW (09SW11028, SW-121)**

Related Letters: **CLEC08-253**

Attachment: **NA**

States Impacted: **Texas, Kansas, Arkansas, Missouri**

Issuing ILECS: **AT&T Texas, AT&T Kansas, AT&T Arkansas, AT&T Missouri (collectively referred to for purposes of this Accessible Letter as "AT&T Southwest Region")**

Response Deadline: **NA**

Contact: **Account Manager**

AT&T Southwest Region is sending notice of intent to file tariff revisions to extend the Win-Back Cash Back Promotion. The effective date of this extension is April 1, 2009 and the end date is September 30, 2009.

The following are the details of this offer:

- For end Users who switch their service to a CLEC Customer and purchase a minimum package of Complete Choice Basic or any package with those components will receive a \$50 bill credit.
- All nonrecurring feature or package installation charges associated with adding the features or a package that contain the required features to the customer's account will also be waived.

Any rates and benefits referenced are Retail rates/benefits and the applicable Resale discount will be applied.

End User must retain service for 30 days.

The table below summarizes the products and USOCs included in this promotion.

	USOC	AR	KS	MO	TX
Complete Choice® Basic	PGOC3	\$21.00	\$21.00	\$21.00	\$21.00
Access Line and Caller ID and Call Waiting					
CID with Name	NMP				
CID with Number	NSD				
Call Waiting	ESX				
Complete Choice® Enhanced		\$26.00	\$26.00	\$26.00	\$26.00
Access Line and up 11 Calling Feature					
Three-Way Calling	ESC				
Speed Calling 8	ESL				
Call Forwarding	ESM				
Call Blocker	NSY				
Call Return	NSS				
Selective Call Forwarding	NCE				
Priority Call	NSK				

CID with Name	NMP				
CID with Number	NSD				
Deselectable Features					
Privacy Manager default is deselectable – available upon request at no charge.	CPU				
Call Waiting	ESX				
Call Waiting ID	NWT				

AT&T Southwest Region reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Southwest Region will send additional notification at the time of cancellation. AT&T Southwest Region will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Southwest Region or is not ultimately approved by the commission.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes. <http://cpr.bellsouth.com/pdf/tx/filings/txfiling.htm>



Accessible

Date: **July 1, 2009**

Number: **CLEC09-247**

Effective Date: **September 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Revision to Win-back Cash Back Promotion - SW (SW-121) - AR, KS, MO, TX**

Related Letters: **CLEC09-051; CLEC09-048**

Attachment: **NA**

States Impacted: **Arkansas, Kansas, Missouri, Texas**

Issuing ILECS: **AT&T Arkansas, AT&T Kansas, AT&T Missouri, AT&T Texas (collectively referred to for purposes of this Accessible Letter as "AT&T Southwest Region")**

Response Deadline: **NA**

Contact: **Account Manager**

AT&T Southwest Region is sending notice that effective September 1, 2009, credits available to resellers of the Win-back Cash Back promotion, details of which were provided in Accessible Letter **CLECAM09-051**, dated February 13, 2009, will be calculated using the methodology announced in **CLECALL09-048**, dated July 1, 2009. The one-time credit available to resellers on and after the effective date will be as follows:

State	Credit Amount
Arkansas	\$5.15
Kansas	\$9.61
Missouri	\$7.18
Texas	\$5.54

AT&T Southwest Region reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Southwest Region will send additional notification at the time of cancellation. AT&T Southwest Region will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Southwest Region.

A copy of AT&T Texas' filing with the Public Utility Commission of Texas and any accompanying tariff sheets (if applicable) can be viewed on the Internet at the following website, typically on the effective date of the changes. <http://cpr.bellsouth.com/pdf/tx/filings/txfiling.htm>



Accessible

Date: **July 28, 2009**

Number: **CLEC09-287**

Effective Date: **October 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Extension of Win-back Cash Back Promotion-SW (09SW11698, SW-121) - MO**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Missouri**

Response Deadline: **NA**

Contact: **Account Manager**

Conference Call/Meeting: **NA**

AT&T Missouri is sending notice of intent to a tariff for the Win-Back Cash Back Promotion. The effective date of this promotion is October 1, 2009 and the end date is March 20, 2010.

The following are the details of this offer:

- For residential customers who switch their service to AT&T and purchase a minimum package of Complete Choice Basic or any package with those components will receive a \$50.00 benefit.
- All nonrecurring feature or package installation charges associated with adding the features or a package that contain the required features to the customer's account will also be waived.
- The customer must retain service for 30 days.

Any rates and benefits referenced are Retail rates/benefits and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

	USOC
Complete Choice® Basic	PGOC3
Complete Choice® Enhanced	PGOC4

AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Missouri or is not ultimately approved by the commission.



Date: **August 25, 2009**

Number: **CLEC09-343**

Effective Date: **October 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Extension of Win-back Cash Back Promotion-SW (09SW11569, SW-121) - MO**

Related Letters: **NA**

Attachment: **NA**

States Impacted: **Missouri**

Response Deadline: **NA**

Contact: **Account Manager**

AT&T Missouri is sending notice of intent to a tariff for the Win-Back Cash Back Promotion. The effective date of this promotion is October 1, 2009, and the end date is March 13, 2010.

The following are the details of this offer:

- For residential customers who switch their service to AT&T Missouri and purchase a minimum package of Complete Choice Basic or any package with those components will receive a \$50.00 benefit.
- All nonrecurring feature or package installation charges associated with adding the features or a package that contain the required features to the customer's account will also be waived.
- The customer must retain service for 30 days.

Any rates and benefits referenced are Retail rates/benefits and the applicable Resale discount will be applied.

The table below summarizes the products and USOCs included in this promotion.

	USOC
Complete Choice® Basic	PGOC3
Complete Choice® Enhanced	PGOC4

AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information, mentioned above, is canceled by AT&T Missouri or is not ultimately approved by the commission.



Accessible

Date: **September 30, 2009**

Number: **CLEC09-412**

Effective Date: **October 1, 2009**

Category: **Resale**

Subject: **(ORDERING AND PROVISIONING) Clarification of the Extension of Win-back Cash Back Promotion - MO (SW-121)**

Related Letters: **CLEC09-247; CLEC09-287;
CLEC09-343**

Attachment: **NA**

States Impacted: **Missouri**

Response Deadline: **NA**

Contact: **Account Manager**

AT&T Missouri is sending this notice to clarify the extension of the Win-Back Cash Back Promotion provided in Accessible Letters **CLEC09-287** and **CLEC09-343**, dated July 28, 2009 and August 25, 2009, respectively. The effective date of this extension is October 1, 2009 and the correct end date is March 20, 2010.

The following are the details of this offer:

- Residential customers who switch their service to AT&T Missouri and purchase a minimum package of Complete Choice Basic, or any package with those components, will receive a \$50.00 benefit.
- All nonrecurring feature or package installation charges associated with adding the features or a package that contains the required features to the customer's account will also be waived.
- The customer must retain service for 30 days.

The benefit referenced above is the retail benefit. As noticed in Accessible Letter **CLEC09-247**, dated July 1, 2009, credits for this promotion are shown in the table below. These credits were calculated using the methodology announced in **CLECALL09-048**, dated July 1, 2009.

State	Credit Amount
Missouri	\$7.18

The table below summarizes the products and USOCs included in this promotion.

	USOC
Complete Choice® Basic	PGOC3
Complete Choice® Enhanced	PGOC4

AT&T Missouri reserves the right to make any modifications to or to cancel the above information prior to the proposed filing or effective dates. Should any modifications be made to the information, these modifications will be reflected in a subsequent letter sent at the time of the filing. Should the information be canceled, AT&T Missouri will send additional notification at the time of cancellation. AT&T Missouri will incur no liability to the CLECs if such information,

mentioned above, is canceled by AT&T Missouri or is not ultimately approved by a commission, if required.

EXHIBIT C

\$50 Movers Promo					
Promo Category	Bill Date	Number of Requests Filed	Retail Amount (\$50.00 each)	Amount Received (\$40.40 each)	Amount Underpaid (\$9.60 each)
Movers	8/13/2008	144	\$ 7,200.00	\$ 5,817.60	\$ 1,382.40
Movers	9/13/2008	666	\$ 33,300.00	\$ 26,906.40	\$ 6,393.60
Movers	10/13/2008	913	\$ 45,650.00	\$ 36,885.20	\$ 8,764.80
Movers	11/13/2008	1130	\$ 56,500.00	\$ 45,652.00	\$ 10,848.00
Movers	12/13/2008	889	\$ 44,450.00	\$ 35,915.60	\$ 8,534.40
Movers	1/13/2009	870	\$ 43,500.00	\$ 35,148.00	\$ 8,352.00
Movers	2/13/2009	838	\$ 41,900.00	\$ 33,855.20	\$ 8,044.80
Movers	2/13/2009	133	\$ 6,650.00	\$ 5,373.20	\$ 1,276.80
Movers	3/13/2009	45	\$ 2,250.00	\$ 1,818.00	\$ 432.00
Movers	3/13/2009	1120	\$ 56,000.00	\$ 45,248.00	\$ 10,752.00
Movers	4/13/2009	2	\$ 100.00	\$ 80.80	\$ 19.20
Movers	4/13/2009	1303	\$ 65,150.00	\$ 52,641.20	\$ 12,508.80
Movers	5/13/2009	1015	\$ 50,750.00	\$ 41,006.00	\$ 9,744.00
Movers	6/13/2009	825	\$ 41,250.00	\$ 33,330.00	\$ 7,920.00
Movers	7/13/2009	702	\$ 35,100.00	\$ 28,360.80	\$ 6,739.20
Movers	8/13/2009	722	\$ 36,100.00	\$ 29,168.80	\$ 6,931.20
Movers	9/13/2009	654	\$ 32,700.00	\$ 26,421.60	\$ 6,278.40
Movers	10/13/2009	378	\$ 18,900.00	\$ 15,271.20	\$ 3,628.80
Movers	11/13/2009	112	\$ 5,600.00	\$ 4,524.80	\$ 1,075.20
Movers	12/13/2009	86	\$ 4,300.00	\$ 3,474.40	\$ 825.60
Movers	1/13/2010	92	\$ 4,600.00	\$ 3,716.80	\$ 883.20
Movers	2/13/2010	106	\$ 5,300.00	\$ 4,282.40	\$ 1,017.60
Movers	3/13/2010	91	\$ 4,550.00	\$ 3,676.40	\$ 873.60
Movers	4/13/2010	45	\$ 2,250.00	\$ 1,818.00	\$ 432.00
Movers	5/13/2010	56	\$ 2,800.00	\$ 2,262.40	\$ 537.60
Movers	6/13/2010	80	\$ 4,000.00	\$ 3,232.00	\$ 768.00
Movers	7/13/2010	66	\$ 3,300.00	\$ 2,666.40	\$ 633.60
Movers	8/13/2010	45	\$ 2,250.00	\$ 1,818.00	\$ 432.00
Movers	9/13/2010	47	\$ 2,350.00	\$ 1,898.80	\$ 451.20
Movers	10/13/2010	47	\$ 2,350.00	\$ 1,898.80	\$ 451.20
Movers	11/13/2010	33	\$ 1,650.00	\$ 1,333.20	\$ 316.80
Total		13,255	\$ 662,750.00	\$ 535,502.00	\$ 127,248.00

\$50 Competitive Acquisition/Win-back Promo					
Promo Category	Bill Date	Number of Requests Filed	Retail Amount (\$50.00 each)	Amount Received (\$40.40 each)	Amount Underpaid (\$9.60 each)
Competitive Acquisition	10/13/2008	8	\$ 400.00	\$ 323.20	\$ 76.80
Competitive Acquisition	11/13/2008	305	\$ 15,250.00	\$ 12,322.00	\$ 2,928.00
Competitive Acquisition	12/13/2008	244	\$ 12,200.00	\$ 9,857.60	\$ 2,342.40
Competitive Acquisition	1/13/2009	227	\$ 11,350.00	\$ 9,170.80	\$ 2,179.20
Competitive Acquisition	2/13/2009	228	\$ 11,400.00	\$ 9,211.20	\$ 2,188.80
Competitive Acquisition	3/13/2009	297	\$ 14,850.00	\$ 11,998.80	\$ 2,851.20
Competitive Acquisition	4/13/2009	269	\$ 13,450.00	\$ 10,867.60	\$ 2,582.40
Competitive Acquisition	5/13/2009	197	\$ 9,850.00	\$ 7,958.80	\$ 1,891.20
Competitive Acquisition	6/13/2009	158	\$ 7,900.00	\$ 6,383.20	\$ 1,516.80
Competitive Acquisition	7/13/2009	138	\$ 6,900.00	\$ 5,575.20	\$ 1,324.80
Competitive Acquisition	8/13/2009	131	\$ 6,550.00	\$ 5,292.40	\$ 1,257.60
Competitive Acquisition	9/13/2009	93	\$ 4,650.00	\$ 3,757.20	\$ 892.80
Competitive Acquisition	11/13/2009	22	\$ 1,100.00	\$ 888.80	\$ 211.20
Competitive Acquisition	12/13/2009	13	\$ 650.00	\$ 525.20	\$ 124.80
Competitive Acquisition	1/13/2010	8	\$ 400.00	\$ 323.20	\$ 76.80
Competitive Acquisition	2/13/2010	19	\$ 950.00	\$ 767.60	\$ 182.40
Competitive Acquisition	3/13/2010	5	\$ 250.00	\$ 202.00	\$ 48.00
Competitive Acquisition	4/13/2010	8	\$ 400.00	\$ 323.20	\$ 76.80
Competitive Acquisition	5/13/2010	5	\$ 250.00	\$ 202.00	\$ 48.00
Competitive Acquisition	6/13/2010	2	\$ 100.00	\$ 80.80	\$ 19.20
Competitive Acquisition	8/13/2010	1	\$ 50.00	\$ 40.40	\$ 9.60
Competitive Acquisition	10/13/2010	1	\$ 50.00	\$ 40.40	\$ 9.60
Total		2,379	\$ 118,950.00	\$ 96,111.60	\$ 22,838.40

EXHIBIT D