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December 6, 2010

VIA HAND DELIVERY

Hon. Mary Freeman, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

filed electronically in docket office on 12/06/10

Re: *Nexus Communications, Inc. v. BellSouth Telecommunications, Inc. dba AT&T
Tennessee*
Docket No. 10-00212

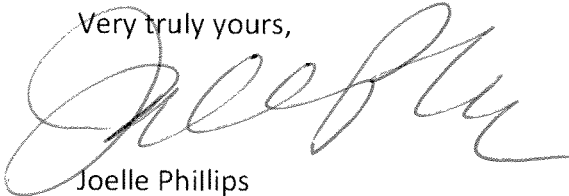
Dear Chairman Freeman:

Enclosed for filing in the referenced docket are the original and four copies of the following documents:

Answer of AT&T Tennessee

AT&T Tennessee's Motion to Dismiss.

Very truly yours,



Joelle Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Nexus Communications, Inc. v. BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee*

Docket No. 10-00212

ANSWER OF AT&T TENNESSEE

Comes now, BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T Tennessee”) and answers the *Original Petition* of Nexus Communications, Inc. (“Nexus”) as follows:

1. AT&T Tennessee admits the allegations of Paragraph 1 of the Petition.
2. AT&T Tennessee admits the allegations of Paragraph 2 of the Petition.
3. AT&T Tennessee admits the allegations of the first sentence of Paragraph 3 of the Petition. AT&T denies the allegations of the second sentence of Paragraph 3 of the Petition and avers that its principal place of business is 675 Peachtree Street NW, Atlanta, Georgia 30375.
4. AT&T Tennessee admits that Nexus’ Petition arises under its interconnection agreement(s) (“ICA(s)”) with AT&T Tennessee. AT&T Tennessee denies the remainder of the allegations of paragraph 4 of the Petition.
5. AT&T Tennessee admits that the provisions of federal law cited in Paragraph 5 of the Petition and its sub-parts say what they say, and AT&T denies any allegations in Paragraph 5 of the Petition to the contrary.

6. AT&T Tennessee admits that it has made available certain promotional offerings to its retail customers that have lasted for more than 90 days. AT&T Tennessee denies the remainder of the allegations of Paragraph 6 of the Petition.

7. AT&T Tennessee admits that it has made available certain cashback promotional offerings to its retail customers. AT&T Tennessee denies the remainder of the allegations of Paragraph 7 of the Petition.

8. AT&T Tennessee admits that to the extent a reseller like Nexus is entitled to the benefit of the cashback component of a promotional offering, the maximum amount to which it is entitled is the face value of the retail cashback component reduced by the Authority-approved resale discount rate set forth in the parties' ICA(s).

9. AT&T Tennessee denies the allegations of Paragraph 9 of the Petition.

10. AT&T Tennessee denies the allegations of Paragraph 10 of the Petition.

11. AT&T Tennessee denies the allegations of Paragraph 11 of the Petition.

12. AT&T Tennessee denies the allegations of Paragraph 12 of the Petition.

13. AT&T Tennessee denies the allegations of Paragraph 13 of the Petition.

14. AT&T Tennessee denies the allegations of Paragraph 14 of the Petition.

15. AT&T Tennessee denies the allegations of Paragraph 12 of the Petition.

16. AT&T Tennessee denies that Nexus is entitled to any of the relief requested in the "wherefore" clause of the Petition.

17. Any and all allegations in the Petition that are not expressly admitted herein are denied.

AFFIRMATIVE DEFENSES

18. The Petition fails to state a cause of action for which relief can be granted.
19. The Petition should be dismissed because Nexus is not represented by an attorney admitted to practice law in Tennessee or by an attorney in compliance with Authority Rule 1220-1-2-.04(7), T.C.A. § 23-3-103(a) and Tennessee Supreme Court Rule 19.
20. Nexus did not notify AT&T Tennessee in writing upon the discovery of a billing dispute as required by the parties ICA(s).
21. Nexus' claims are barred by the doctrines of laches, estoppel, and waiver.
14. Nexus' claims are barred by the statute of limitations.

WHEREFORE, having fully answered, Respondent AT&T Tennessee respectfully prays that this Petition be dismissed.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee

By: 

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Joelle Phillips

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2010, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Nexus Communications, Inc. v. BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee*

Docket No. 10-00212

AT&T TENNESSEE'S MOTION TO DISMISS

AT&T Tennessee files this Motion to Dismiss the *Original Petition* filed by Nexus Communications, Inc. ("Petition") on the grounds that (1) Nexus is not represented by an attorney admitted to the practice of law in Tennessee or an attorney in compliance with Authority Rule 1220-1-1-.04(7), T.C.A. § 23-3-103(a) and Tenn. Supreme Court Rule 19; and (2) Nexus' Petition fails to state a cause of action for which relief can be granted.¹

1. Nexus is not Represented by an Attorney Admitted to the Practice of Law in Tennessee or an Attorney in Compliance with Authority Rule 1220-1-1-.04(7), T.C.A. § 23-3-103(a) and Tenn. Supreme Court Rule 19.

The Complainant in this docket, Nexus Communications, Inc. ("Nexus") is an Ohio corporation represented by Texas counsel. In order to be qualified to file and prosecute a petition before the Tennessee Regulatory Authority ("Authority"), an attorney must be admitted to practice in Tennessee or must be specifically admitted under the *pro hac vice* rules of the Authority and the Tennessee Supreme Court. The attorney in this case, Mr. Christopher Malish, has not met either criterion.²

Rule 1220-1-2-.04(7) governs attorney practice before the Authority. It provides that "out of state counsel shall comply with T.C.A. § 23-3-103(A) and Tennessee Supreme Court Rule

¹ This Motion to Dismiss is filed pursuant to Authority Rule 1220-1-2-.06.

² Mr. Malish has not made any filings in this docket suggesting that he has met either criterion.

19, except that the affidavit referred to in the latter rule shall be filed with the Chair of the Authority.”

The state statute referenced in the Authority’s Rule, T.C.A. § 23-3-103(a) prohibits a person from engaging in the practice of law in Tennessee unless that person is licensed to practice law in Tennessee or complies with the applicable rules of court. The statute provides that:

(a) No person shall engage in the practice of law or do law business, or both, as defined in §23-3-101, unless the person has been duly licensed and while the person’s license is in full force and effect, nor shall any association or corporation engage in the practice of the law or do law business, or both. However, nonresident attorneys associated with attorneys in this state in any case pending in this state who do not practice regularly in this state shall be allowed, as a matter of courtesy, to appear in the case in which they may be thus employed without procuring a license, if properly authorized in accordance with applicable rules of court, and when introduced to the court by a member in good standing of the Tennessee bar, if all the courts of the resident state of the nonresident attorney grant a similar courtesy to attorneys licensed in this state.

(b) Any person who violates the prohibition in subsection (a) commits a Class A misdemeanor.

Tennessee Supreme Court Rule 19, *Appearance Pro Hac Vice in the Trial and Appellate Courts of Tennessee by Lawyers Not Licensed to Practice Law in Tennessee*, is the applicable rule of court referenced in T.C.A. § 23-3-103(a). To AT&T Tennessee’s knowledge, Mr. Malish has made no effort to comply with Supreme Court Rule 19 requirements.

Accordingly, the Petition must be dismissed on the grounds that it was filed by an attorney not licensed in Tennessee who has not been granted *pro hac vice* status by the Authority.

2. Nexus' Petition Fails to State a Cause of Action for Which Relief can be Granted.

In its Petition, Nexus seeks "... to recover cash back promotional credits ..." and demands that the Authority "issue a ruling such that Nexus is entitled to recover all promotional credits due..."³

The Petition includes no specific facts upon which the Authority could issue such a ruling. Nexus fails to identify any specific AT&T promotions. Nexus fails to identify any specific promotional credits or any specific dollar amounts allegedly owed. Nexus fails to cite any specific language from its interconnection agreement in support of its claim. Nexus vaguely describes the relevant time period of the dispute as "... the past months and years...."⁴ Nexus cannot reasonably expect the Authority to be able to analyze its claims based on such a vague and threadbare Petition.

Based on all of the foregoing grounds, AT&T Tennessee moves that the Petition be dismissed.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T Tennessee

By: 

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³ See Paragraphs 1 and 15 of Nexus' Petition.

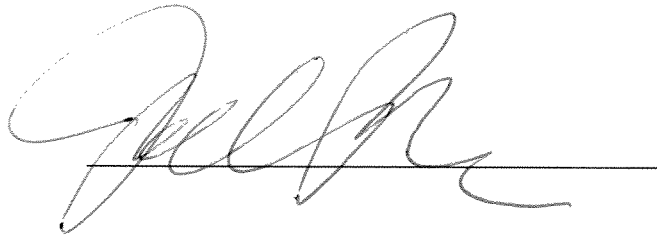
⁴ See Paragraph 6 of Nexus' Petition.

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2010, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

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A handwritten signature in black ink, appearing to read "Chris Malish", is written over a horizontal line.