

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

| | | |
|---|---|-------------------|
| IN RE: |) | |
| |) | |
| NEXUS COMMUNICATIONS, INC. |) | |
| |) | DOCKET NO. |
| v. |) | 10-00212 |
| |) | |
| BELLSOUTH TELECOMMUNICATIONS, INC. |) | |
| D/B/A AT&T TENNESSEE |) | |

**NEXUS COMMUNICATIONS, INC.'S RESPONSE TO
MOTION TO DISMISS**

Nexus Communications, Inc. ("Nexus") files this response to BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee's ("AT&T") Motion to Dismiss ("Motion").¹ For the reasons set forth below, Nexus respectfully requests that the Tennessee Regulatory Authority ("Authority") deny AT&T's Motion.

ARGUMENT

AT&T asserts (Motion, at 1) that the TRA should dismiss the Complaint because:

- (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) (*sic*), 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. In response to the first argument, Nexus is represented by local counsel as evidenced by the signatures below.²

¹ AT&T's *Motion* was filed on December 6, 2010. The TRA's rules do not address the time period for filing a response to a dispositive Motion but the agency has typically granted parties thirty days to respond to such motions, consistent with the time period for responding to a counter-claim under T.R.C.P. 12.01.

² Chris Malish, who signed the Complaint, has also applied for pro hac vice admission with the Authority.

2. In response to the second argument, Tennessee's Rules of Civil Procedure state that "[a] pleading which sets forth a claim for relief . . . shall contain: (1) a short and plain statement of the claim showing that the pleader is entitled to relief; and (2) a demand for judgment for the relief the pleader seeks." Rule 8.01. The Complaint filed by Nexus complies fully with this requirement.

In the first paragraph of the Complaint, Nexus states the company "seek[s] to recover cash back promotion credits."³ Furthermore, Nexus states "[t]he parties dispute arises under their interconnection agreement and centers on credits which are due from AT&T to Nexus as a result of Nexus reselling services subject to AT&T promotional discounts." (Complaint, paragraph 4) Similar language is found throughout Nexus' Complaint. See paragraphs 6,7 and 15. Additionally, the Complaint states "Nexus is entitled to recover the [full amount of the cash back promotion] and hereby pleads for the same." Paragraph 15. Nexus has satisfied the requirements of Rule 8.01 and has stated a cause of action for which relief can and should be granted.

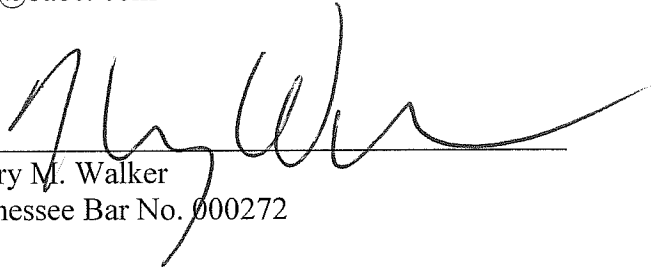
Furthermore, AT&T has actual knowledge of every dispute at issue in this Complaint. When Nexus submits a request for a "cash back" promotional credit, AT&T either denies the credit or gives Nexus less than the full amount of the cash rebate. Nexus then files a dispute for the withheld amount. To date, Nexus has disputed more than \$100,000 in promotional credits wrongfully withheld by AT&T. In other words, AT&T has notice and actual knowledge of every "cash back" claim filed by Nexus.

For these reasons, Nexus respectfully requests that the TRA deny AT&T's Motion and further issue a ruling such that Nexus is entitled to recover all promotional credits due and any other such relief as it is entitled to in law and equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 27th day of December 2010, a true and correct copy of the forgoing document was served on the following, via the method indicated:

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

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