

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 15, 2013**

**IN RE:**

**PETITION OF NEXUS COMMUNICATIONS, INC.  
TO RECOVER CASH BACK PROMOTION CREDITS  
FROM BELL SOUTH D/B/A AT&T TENNESSEE**

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**DOCKET NO.  
10-00212**

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**ORDER GRANTING JOINT MOTION TO DISMISS AND CLOSING DOCKET**

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This matter came before Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on June 17, 2013, for consideration of the *Joint Motion to Dismiss* filed by Nexus Communications, Inc. (“Nexus”) and BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T”) (together, the “Parties”) on May 30, 2013.

On November 5, 2010, Nexus filed a Petition alleging that AT&T had violated the Parties’ interconnection agreement by failing to extend the full value of its “cash back” promotional discounts to Nexus.<sup>1</sup> AT&T filed a response on December 6, 2010, contending that, if it were required to extend the cash back discount at all to a reseller like Nexus, the maximum amount to which Nexus would be entitled was the face value of the retail cash back component reduced by the resale discount rate set forth in the Parties’ interconnection agreement.<sup>2</sup> AT&T also filed a Motion to Dismiss on the grounds that the Petition was filed by an attorney not licensed to practice in

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<sup>1</sup> *Nexus Communications, Inc.’s Original Petition*, p. 6 (November 5, 2010).

<sup>2</sup> *Answer of AT&T*, p. 2 (December 6, 2010).

Tennessee, nor admitted *pro hac vice*, and that the Petition was so vague that it failed to state a claim on which relief could be granted.<sup>3</sup>

On December 20, 2010, Nexus' attorney filed a Motion to be admitted *pro hac vice*.<sup>4</sup> On December 29, 2010, Nexus' local counsel filed a response to AT&T's Motion to Dismiss, stating that the complaint contained enough facts within AT&T's actual knowledge to state a sufficient claim.<sup>5</sup> On March 3, 2011, the Parties agreed that Nexus would file an amended complaint and filed a motion to abate this proceeding pending the resolution of companion cases in Louisiana, North Carolina, South Carolina and Alabama.<sup>6</sup>

On May 30, 2013, the Parties filed the *Joint Motion to Dismiss*, indicating that they have resolved their disputes and requesting that the pleadings be dismissed with prejudice and this docket be closed.<sup>7</sup>


At the Authority Conference held on June 17, 2013, the panel considered the *Joint Motion to Dismiss*. Based on the foregoing, the Authority voted unanimously to grant the *Joint Petition to Dismiss*, thereby dismissing all claims and demands with prejudice and closing the docket.

**IT IS THEREFORE ORDERED THAT:**

The *Joint Motion to Dismiss* is granted, thereby dismissing all claims and demands with prejudice, and this docket is closed.

**Chairman James M. Allison, Vice Chairman Herbert H. Hilliard and Director Kenneth C. Hill concur.**

**ATTEST:**

  
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**Earl R. Taylor, Executive Director**

<sup>3</sup> *AT&T's Motion to Dismiss*, p. 1 (December 6, 2010).

<sup>4</sup> *Application to Appear Pro Hac Vice* (December 20, 2010).

<sup>5</sup> *Nexus Communications, Inc's Response to Motion to Dismiss*, pp. 1-2 (December 29, 2010).

<sup>6</sup> *Joint Status Report and Proposed Joint Motion to Abate*, p. 1 (March 3, 2011).

<sup>7</sup> *Joint Motion to Dismiss*, p. 1 (May 30, 2013).