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RECEIVED

Kentucky Public Service Commission
Attn: Mr. Jeff Derouen
Executive Director
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

FEB 23 2012

PUBLIC SERVICE
COMMISSION

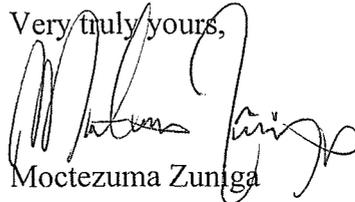
Re: *Nexus Communications, Inc. v. BellSouth Telecommunications, Inc. d/b/a AT&T
Kentucky* before the Kentucky Public Service Commission

Dear Mr. Derouen:

Regarding the above-referenced case, please find enclosed an original and 10 copies of Nexus Communication, Inc.'s Amended Complaint to be filed with the Kentucky Public Service Commission. Please file the petition and disseminate 10 copies as necessary.

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

Very truly yours,



Moctezuma Zuniga

Enclosures

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2. AT&T is an incumbent local exchange carrier (“ILEC”) as defined by the Act.² AT&T’s principal place of business is 675 West Peachtree Street NW, Atlanta, Georgia 30375.

II. FACTS AND NATURE OF THE DISPUTE

A. Background Facts

3. AT&T provides wholesale telecommunication services to Nexus pursuant to the terms of their interconnection agreement (the “Agreement” or “ICA”) entered into under Section 251 and 252 of the Act, and approved by the Kentucky Public Service Commission (“Commission”). The parties’ 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 telecommunications services subject to AT&T “cash back” promotions offered at retail.

4. Over the past months and years, AT&T has sold its retail 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 when AT&T provides the services at wholesale, rather than retail.

5. Of concern in this particular case are “cash back” promotions AT&T has provided to retail end users going back to at least September 2007. The two promotions figuring in this dispute are known generically as the “Movers” promotion and the “Competitive Acquisition” promotion (also sometimes known as the “Win-back” promotion). For reasons unknown to

² 47 U.S.C. § 251(h).

Nexus, AT&T referred to these promotions by slightly different names in different sources (*e.g.*, CLEC accessible letters, notices, 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 notices and accessible letters is the CLEC community. In any event, the differences are considered non-substantive.

6. While the accessible letters and tariffs for the two promotions have apparently been removed from AT&T's CLEC websites,³ the language of the documents for each respective promotion was essentially the same. Because neither the accessible letters nor tariffs are currently available, copies of notices for the Movers promotion are attached as Exhibit A. A form of the Movers promotion was offered until November 1, 2010.

7. Likewise, a copy of the notice for the Competitive Acquisition promotion is attached as Exhibit B. A form of the Competitive Acquisition promotion was offered until March 20, 2010.

8. 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. Furthermore, AT&T is barred by laches and equity from now asserting questions regarding eligibility. The only issue needing to be addressed by the Commission is the fact that AT&T has extended Nexus only a fraction of the promotional credit due for each request Nexus

³ See generally, https://clec.att.com/clec/access_letters/search.cfm. Last accessed December 19, 2011.
See generally, <http://cpr.att.com/pdf/ky/ky.htm>. Last accessed December 19, 2011.

filed, rather than the full face value of the promotion as it should under federal and state law.

Table 1, below provides a summary of the promotional credit requests filed by Nexus in Kentucky.

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 (09/07 to 05/10)	Retail Amount¹	Amount Received²	Amount Underpaid³
2 Pack Incentive \$25 Cash Back	5	\$125.00	\$104.01	\$20.99
Pre-Mover Incentive \$50 Cash Back	10	\$500.00	\$416.05	\$83.95
Premovers \$50 Cash Back	105	\$5,250.00	\$4,368.53	\$881.48
2 Pack Incentive Comp Acq \$25 Cash Back	170	\$4,250.00	\$3,536.43	\$713.58
Competitive Acquisition \$50 Cash Back	1,333	\$66,650.00	\$55,459.47	\$11,190.54
Complete Choice or Preferred Incentive \$100 Cash Back	204	\$20,400.00	\$16,974.84	\$3,425.16
Comp Acq for Complete or Preferred \$100 Cash Back	6	\$600.00	\$499.26	\$100.74
TOTAL	1,833	\$97,775.00	\$81,358.58	\$16,416.42

1. The retail amount is equal to the full face value of the cash back promotion multiplied by the number of cash back promotion credit requests.
2. AT&T did not provide Nexus with the full face value for any cash back promotion as it does its own retail customers; rather, AT&T provided Nexus with a reduced amount whereby AT&T improperly discounted the cash back promotion by the wholesale discount percentage.
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.

9. 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, discounted promotional amount Nexus received from AT&T, full retail amount of the promotion, and the amount which AT&T owes Nexus.

10. Nexus also attaches Exhibit D, which contains spreadsheets containing the raw data detailing the 1,833 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, 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 2010.⁴

11. To date, AT&T owes Nexus at least \$16,416.42 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 other federal and state law, and harms competition. To comply with the law, the Commission should properly require AT&T to provide the full amount of the cash back promotion to Nexus and all other CLECs.

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

⁴ 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:

- Promotion name;
- Billing account number;
- Record type;
- Claim type;
- Account ID;
- Billing date;
- Customer audit number;
- Amount bill;
- Amount claimed;
- Customer comments;
- Telephone number; and
- ILEC confirmation number.

B. Jurisdiction

13. The Commission has jurisdiction over this proceeding pursuant to 47 U.S.C. §§ 251 and 252 and related statutes.

C. 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.”

15. 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.”

16. 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, the *wholesale rate should always be less than retail*.

D. Controlling Contract Provisions

17. The ICA establishes governing law:

Where applicable, this Agreement shall be governed by and construed in accordance with federal and state substantive telecommunications law, including rules and regulations of the FCC and appropriate Commission. In all other respects, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia without regard to its conflict of laws principles.⁵

18. Moreover, the parties’ ICA provides that when promotions last longer than 90 days, the telecommunications services must also be offered for resale less a further wholesale discount.⁶

⁵ See Interconnection Agreement, General Terms and Conditions, Section 18 at 15.

⁶ See Interconnection Agreement, Attachment 1, Resale, Exhibit A at 15.

E. Supplemental Authority

19. As in the instant matter, the Public Service Commission of South Carolina (“PSCSC”) was tasked with resolving the general issue of how the promotional wholesale rate for telecommunications services should be calculated when a cash back promotion is offered for more than 90 days.⁷ In a 7-0 directive issued on November 9, 2011, the PSCSC characterized cash back promotions as rebates and stated:

[S]ince the retail customer gets his rebate after keeping the service for thirty days, this Commission finds that *thirty days should be the basis for calculating the rebate*. . . . In the case where the rebate is greater than the first month’s charges, discounting the rebate means that the [AT&T] retail customer in effect gets a better price than the CLEC. *This is definitely not what we believe the Telecommunications Act of 1996 intended*. Therefore, in the special cases where the rebate exceeds the first month’s cost of service, we find that *the retail discount should not be applied to [the] rebate*.

See Exhibit E, PSCSC Directive at 2 (emphasis added).

20. In essence, the PSCSC recognizes (as Nexus has advocated in this proceeding): (1) that because the cash back promotion/rebate is available after maintaining 30 days of telecommunications service, it is improper to presume that it is to be paid out over a period of multiple months; (2) that AT&T’s method results in AT&T’s retail customers receiving a better price than AT&T’s resale customers, a result which contradicts the intent of the Act; and (3) as a consequence, in situations (such as the one at hand) where the cash back promotion/rebate exceeds the monthly charge for telecommunications service, it is improper to discount the amount of the cash back promotion/rebate.

⁷ *Complaint and Petition for Relief of BellSouth Telecommunications, Inc. d/b/a/ AT&T Southeast d/b/a AT&T South Carolina v. Affordable Phone Services, Inc. d/b/a High Tech Communications; Dialtone & More, Inc.; Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC; OneTone Telecom, Inc.; dPi Teleconnect, LLC; and Image Access, Inc. d/b/a New Phone*; in Docket Nos. 2010-14-C, 2010-15-C, 2010-16-C, 2010-17-C, 2010-18-C, and 2010-19-C before the Public Service Commission of South Carolina.

21. In a similar proceeding in Louisiana,⁸ Staff for the Louisiana Public Service Commission (“LPSC”) also rejected AT&T’s methodology and stated:

In no uncertain terms, AT&T’s methodology for calculating the cash-back credit provided to a reseller when the amount of the cash-back exceeds the price of the service, results in the reseller receive less of a benefit than the retail customer in the month that credit is applied. Such a result cannot be logical, particularly when its justification is that the “wholesale discount is applied” resulting in the 20% reduction in the discount. . . . Thus, as Staff has argued throughout this proceeding, while mathematically correct, *the formula defies logic*. One need not be an economist, mathematician, or even an attorney, to reach such a conclusion.

See Exhibit F, LPSC’s Brief on Remand at 4 (emphasis added).

F. Proper Method for Determining Wholesale Price

22. 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 ordinary 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.⁹ 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.

⁸ *BellSouth Telecommunications, Inc. d/b/a/ AT&T Southeast d/b/a AT&T Louisiana v. Image Access, Inc. d/b/a New Phone; Budget Prepay, Inc. d/b/a Budget Phone d/b/a Budget Phone Inc.; BLC Management, LLC d/b/a Angles Communications Solutions d/b/a Mexicall Communications; dPi Teleconnect, LLC; and Tennessee Telephone Service, Inc. d/b/a Freedom Communications USA, LLC*; in Docket No. U-31364 before the Louisiana Public Service Commission.

⁹ At the time this Commission established the wholesale discount rate at 16.79% 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 products 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.

23. 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.¹⁰ As we know from the law, the wholesale price is supposed to be the net retail price less the avoided costs involved with providing the service.¹¹ 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 wholesale discount factor by the ordinary retail 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.

24. Furthermore, because the actual sales price is not necessarily the ordinary retail 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.¹²

25. 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:

¹⁰ 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.

¹¹ 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.

¹² 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).

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 avoid the statutory resale obligation by shifting their customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act.¹³

26. Thus, the price from which the avoided cost discount is subtracted is the *lower* of the ordinary retail price, or, if any promotion applies, the promotional retail price in effect for the services in question. Stated another way, the three steps to finding the wholesale price are:

- STEP 1: Find the ordinary retail price (*i.e.*, pre-promotion standard/tariffed retail price).
- STEP 2: Find the avoided costs: multiply the ordinary retail price by the wholesale discount factor.
- STEP 3: Subtract the avoided costs from the ordinary retail price

OR, if a promotion applies,

Subtract the promotion from the ordinary retail price (this is the effective retail or promotional retail price a retail customer would pay) and *then* subtract the avoided costs from the effective retail price (which incorporates 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.

¹³ *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 ordinary retail price.				
Ordinary Retail Price	Wholesale Discount Percentage¹	Cash Back Promotion	Promotional Retail Price²	Promotional Wholesale Price³ (assuming avoided cost calculated as % of ordinary 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 Kentucky is 16.79%.
2. Ordinary Retail Price – Cash Back Promotion = Promotional Retail Price
3. Ordinary Retail Price x Wholesale Discount Percentage = Avoided Costs
(Ordinary Retail Price – Cash Back Promotion) – |Avoided Costs| = Promotional Wholesale Price

27. Note that calculating the wholesale discount – that is, the avoided cost discount – from the ordinary retail price 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 wholesale price 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*.

28. 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.”¹⁴ For example, when AT&T offers retail

¹⁴ 47 C.F.R. §§ 51.603(b) and 51.607.

telephone service in 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 ordinary 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.

G. Improper Method for Determining Wholesale Price

29. 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 wholesale discount percentage.

30. 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 ordinary retail price and to cash back promotion).

Ordinary Retail Price	Wholesale Discount Percentage ¹	Cash Back Promotion	Promotional Retail Price ²	Promotional Wholesale Price ³ (assuming avoided cost calculated as % of ordinary 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 Kentucky is 16.79%.
2. Ordinary Retail Price – Promotional Discount = Promotional Retail Price
3. (Ordinary Retail Price x (1 – Wholesale Discount Percentage)) – (Cash Back Promotion x (1 – Wholesale Discount Percentage)) = Promotional Wholesale Price

31. 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.

32. Because Nexus has consistently not been credited the full amount of the cash back 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. CONCLUSION AND PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, based upon the foregoing, Nexus respectfully requests and prays that:

- (a) The Commission asserts jurisdiction over this Complaint;
- (b) A declaration and/or determination be made such that when a cash back promotion is offered by an ILEC in connection with a retail service, and a CLEC otherwise

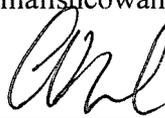
qualifies for the promotion, the service must be offered at the standard rate, less the wholesale discount, less the full amount of the cash back promotion;

- (c) A judgment be made such that Nexus is allowed to recover all promotional credits due under federal and state laws, and the terms of the ICA;
- (d) An order be entered directing AT&T to apply, offset, and credit to Nexus' account the full amount for disputes related to cash back promotions as well as any associated charges or costs associated therewith;
- (e) Following a hearing on the merits of the issues set forth above, Nexus' suggested solutions be implemented and ordered; and
- (f) That Nexus be awarded any and all such other and further legal and equitable relief to which it may be entitled.

Respectfully submitted,

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By:



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Attorneys for Nexus Communications, Inc.

CERTIFICATE OF SERVICE

I hereby certify that true copy of the foregoing document has been served on the following on this

22nd day of February 2012, electronically, via facsimile, and/or through U.S. First Class Mail.



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EXHIBIT A



Notice

Notification Type:	Promotion
Jurisdiction:	KENTUCKY
Notice Date:	12/18/2008
Filing Package Number:	KY-09-0024
Service Name:	PR - Residential Movers Promotion - 2009
Tariff /Price List Sections:	
Expected Issue Date:	01/30/2009
Expected Effective Date:	02/01/2009
Descriptive Narrative:	New or existing customers identified as movers who receive a marketing contact (dm, email, coupon, insert, rep offer, etc) and who place an order to move their service to a new service address and have or add Complete Choice Basic or Complete Choice Enhanced are eligible for a \$50 Gift Check after mail in redemption.



Notice

Notification Type:	Promotion
Jurisdiction:	KENTUCKY
Notice Date:	12/18/2008
Filing Package Number:	KY-09-0029
Service Name:	PR-Res Mover's \$50 Offer
Tariff /Price List Sections:	n/a
Expected Issue Date:	02/01/2009
Expected Effective Date:	02/01/2009
Descriptive Narrative:	New and existing residential customers who establish local service with AT&T and subscribe to Complete Choice Basic or Complete Choice Enhanced at a new service address may be eligible for a \$50 Gift Check.



Notice

Notification Type:	Promotion
Jurisdiction:	KENTUCKY
Notice Date:	10/20/2010
Filing Package Number:	KY-10-0034
Service Name:	PR -- Residence Mover Promotion - Extension (1669)
Tariff /Price List Sections:	
Expected Issue Date:	02/01/2010
Expected Effective Date:	02/01/2010
Descriptive Narrative:	<p>Effective 11/1/10, the Cash Back Rewards Promotion for Residential end users (movers offer) will no longer be available for resale.</p> <p>Revised 8/16/10: Effective 9/30/10, the required services must be retained for a minimum of 30 days and at the time of processing the reward.</p> <p>New or existing customers identified as movers who receive a marketing contact (dm, email, coupon, insert, rep offer, etc) and who place an order to move their service to a new service address and have or add Complete Choice Basic or Complete Choice Enhanced are eligible for a \$50 reward</p>

EXHIBIT B



Notice

Notification Type:	Promotion
Jurisdiction:	KENTUCKY
Notice Date:	02/03/2010
Filing Package Number:	KY-09-0060
Service Name:	PR -- \$50 Comp Acquisition Reward Promo Extension
Tariff /Price List Sections:	
Expected Issue Date:	10/01/2009
Expected Effective Date:	10/01/2009
Descriptive Narrative:	<p>Revised 2/3/10: Offer ends March 20, 2010.</p> <p>Revised 10/1/09: The customer must retain service for 30 days.</p> <p>Competitive Acquisition customers who purchase Complete Choice Basic or Complete Choice Enhanced will receive a \$50 incentive</p>

EXHIBIT C

Movers Promotions					
Promo Category	Bill Date	Number of Requests Filed	Retail Amount	Amount Received	Amount Underpaid
Pre-Mover \$50 Incentive	11/20/2007	2	\$ 100.00	\$ 83.21	\$ 16.79
Pre-Mover \$50 Incentive	12/20/2007	4	\$ 200.00	\$ 166.42	\$ 33.58
Pre-Mover \$50 Incentive	1/20/2008	4	\$ 200.00	\$ 166.42	\$ 33.58
Premovers \$50 Cash Back	3/20/2008	5	\$ 250.00	\$ 208.03	\$ 41.98
2 Pack \$25 Incentive	4/20/2008	5	\$ 125.00	\$ 104.01	\$ 20.99
Premovers \$50 Cash Back	4/20/2008	9	\$ 450.00	\$ 374.45	\$ 75.56
Premovers \$50 Cash Back	5/20/2008	4	\$ 200.00	\$ 166.42	\$ 33.58
Premovers \$50 Cash Back	6/20/2008	7	\$ 350.00	\$ 291.24	\$ 58.77
Premovers \$50 Cash Back	7/20/2008	10	\$ 500.00	\$ 416.05	\$ 83.95
Premovers \$50 Cash Back	8/20/2008	8	\$ 400.00	\$ 332.84	\$ 67.16
Premovers \$50 Cash Back	9/20/2008	4	\$ 200.00	\$ 166.42	\$ 33.58
Premovers \$50 Cash Back	10/20/2008	3	\$ 150.00	\$ 124.82	\$ 25.19
Premovers \$50 Cash Back	11/20/2008	5	\$ 250.00	\$ 208.03	\$ 41.98
Premovers \$50 Cash Back	12/20/2008	2	\$ 100.00	\$ 83.21	\$ 16.79
Premovers \$50 Cash Back	1/20/2009	3	\$ 150.00	\$ 124.82	\$ 25.19
Premovers \$50 Cash Back	2/20/2009	8	\$ 400.00	\$ 332.84	\$ 67.16
Premovers \$50 Cash Back	3/20/2009	8	\$ 400.00	\$ 332.84	\$ 67.16
Premovers \$50 Cash Back	4/20/2009	2	\$ 100.00	\$ 83.21	\$ 16.79
Premovers \$50 Cash Back	5/20/2009	3	\$ 150.00	\$ 124.82	\$ 25.19
Premovers \$50 Cash Back	6/20/2009	4	\$ 200.00	\$ 166.42	\$ 33.58
Premovers \$50 Cash Back	8/20/2009	1	\$ 50.00	\$ 41.61	\$ 8.40
Premovers \$50 Cash Back	9/20/2009	2	\$ 100.00	\$ 83.21	\$ 16.79
Premovers \$50 Cash Back	10/20/2009	4	\$ 200.00	\$ 166.42	\$ 33.58
Premovers \$50 Cash Back	11/20/2009	3	\$ 150.00	\$ 124.82	\$ 25.19
Premovers \$50 Cash Back	12/20/2009	2	\$ 100.00	\$ 83.21	\$ 16.79
Premovers \$50 Cash Back	1/20/2010	2	\$ 100.00	\$ 83.21	\$ 16.79
Premovers \$50 Cash Back	4/20/2010	3	\$ 150.00	\$ 124.82	\$ 25.19
Premovers \$50 Cash Back	5/20/2010	3	\$ 150.00	\$ 124.82	\$ 25.19
Total		120	\$ 5,875.00	\$ 4,888.59	\$ 986.41

Competitive Acquisition Promotions					
Promo Category	Bill Date	Number of Requests Filed	Retail Amount	Amount Received	Amount Underpaid
2 Pack Incentive Comp Acq \$25 Cash Back	9/20/2007	1	\$ 25.00	\$ 20.80	\$ 4.20
2 Pack Incentive Comp Acq \$25 Cash Back	10/20/2007	4	\$ 100.00	\$ 83.21	\$ 16.79
2 Pack Incentive Comp Acq \$25 Cash Back	11/20/2007	101	\$ 2,525.00	\$ 2,101.05	\$ 423.95
2 Pack Incentive Comp Acq \$25 Cash Back	12/20/2007	28	\$ 700.00	\$ 582.47	\$ 117.53
Complete Choice or Preferred Incentive \$100 Cash Back	12/20/2007	80	\$ 8,000.00	\$ 6,656.80	\$ 1,343.20
2 Pack Incentive Comp Acq \$25 Cash Back	1/20/2008	9	\$ 225.00	\$ 187.22	\$ 37.78
Complete Choice or Preferred Incentive \$100 Cash Back	1/20/2008	70	\$ 7,000.00	\$ 5,824.70	\$ 1,175.30
2 Pack Incentive Comp Acq \$25 Cash Back	2/20/2008	8	\$ 200.00	\$ 166.42	\$ 33.58
Complete Choice or Preferred Incentive \$100 Cash Back	2/20/2008	37	\$ 3,700.00	\$ 3,078.77	\$ 621.23
2 Pack Incentive Comp Acq \$25 Cash Back	3/20/2008	19	\$ 475.00	\$ 395.25	\$ 79.75
Complete Choice or Preferred Incentive \$100 Cash Back	3/20/2008	17	\$ 1,700.00	\$ 1,414.57	\$ 285.43
Competitive Acquisition \$50 Cash Back	4/20/2008	13	\$ 650.00	\$ 540.87	\$ 109.14
Comp Acq for Complete or Preferred \$100 Cash Back	4/20/2008	6	\$ 600.00	\$ 499.26	\$ 100.74
Competitive Acquisition \$50 Cash Back	5/20/2008	12	\$ 600.00	\$ 499.26	\$ 100.74
Competitive Acquisition \$50 Cash Back	6/20/2008	18	\$ 900.00	\$ 748.89	\$ 151.11
Competitive Acquisition \$50 Cash Back	7/20/2008	21	\$ 1,050.00	\$ 873.71	\$ 176.30
Competitive Acquisition \$50 Cash Back	9/20/2008	348	\$ 17,400.00	\$ 14,478.54	\$ 2,921.46
Competitive Acquisition \$50 Cash Back	10/20/2008	167	\$ 8,350.00	\$ 6,948.04	\$ 1,401.97
Competitive Acquisition \$50 Cash Back	11/20/2008	36	\$ 1,800.00	\$ 1,497.78	\$ 302.22
Competitive Acquisition \$50 Cash Back	12/20/2008	27	\$ 1,350.00	\$ 1,123.34	\$ 226.67
Competitive Acquisition \$50 Cash Back	1/20/2009	66	\$ 3,300.00	\$ 2,745.93	\$ 554.07
Competitive Acquisition \$50 Cash Back	2/20/2009	1	\$ 50.00	\$ 41.61	\$ 8.40
Competitive Acquisition \$50 Cash Back	3/20/2009	65	\$ 3,250.00	\$ 2,704.33	\$ 545.68
Competitive Acquisition \$50 Cash Back	4/20/2009	104	\$ 5,200.00	\$ 4,326.92	\$ 873.08
Competitive Acquisition \$50 Cash Back	5/20/2009	126	\$ 6,300.00	\$ 5,242.23	\$ 1,057.77
Competitive Acquisition \$50 Cash Back	6/20/2009	59	\$ 2,950.00	\$ 2,454.70	\$ 495.31
Competitive Acquisition \$50 Cash Back	7/20/2009	83	\$ 4,150.00	\$ 3,453.22	\$ 696.79
Competitive Acquisition \$50 Cash Back	8/20/2009	105	\$ 5,250.00	\$ 4,368.53	\$ 881.48
Competitive Acquisition \$50 Cash Back	9/20/2009	35	\$ 1,750.00	\$ 1,456.18	\$ 293.83
Competitive Acquisition \$50 Cash Back	10/20/2009	21	\$ 1,050.00	\$ 873.71	\$ 176.30
Competitive Acquisition \$50 Cash Back	11/20/2009	15	\$ 750.00	\$ 624.08	\$ 125.93
Competitive Acquisition \$50 Cash Back	12/20/2009	6	\$ 300.00	\$ 249.63	\$ 50.37
Competitive Acquisition \$50 Cash Back	1/20/2010	4	\$ 200.00	\$ 166.42	\$ 33.58
Competitive Acquisition \$50 Cash Back	3/20/2010	1	\$ 50.00	\$ 41.61	\$ 8.40
Total		1,713	\$ 91,900.00	\$ 76,469.99	\$ 15,430.01

EXHIBIT D

Client Name	Vendor	Platform	Dispute Category	Bill Date	Account Number (BAN)	ILEC Confirmation	Dispute Amount	State
TSI	Bell South	Resale	Missing Resale	20-Jan-08	502Q909746	500051475	\$1,246.66	KY
TSI	Bell South	Resale	Missing Resale	20-Jan-09	502Q909746	500051476	\$579.26	KY
TSI	Bell South	Resale	Missing Resale	20-Jan-10	502Q909746	500051477	\$50.37	KY
TSI	Bell South	Resale	Missing Resale	20-Feb-08	502Q909746	500051478	\$654.81	KY
TSI	Bell South	Resale	Missing Resale	20-Feb-09	502Q909746	500051479	\$75.56	KY
TSI	Bell South	Resale	Missing Resale	20-Mar-08	502Q909746	500051480	\$407.16	KY
TSI	Bell South	Resale	Missing Resale	20-Mar-09	502Q909746	500051481	\$612.84	KY
TSI	Bell South	Resale	Missing Resale	20-Mar-10	502Q909746	500051482	\$8.40	KY
TSI	Bell South	Resale	Missing Resale	20-Apr-08	502Q909746	500051483	\$306.42	KY
TSI	Bell South	Resale	Missing Resale	20-Apr-09	502Q909746	500051484	\$889.87	KY
TSI	Bell South	Resale	Missing Resale	20-Apr-10	502Q909746	500051485	\$25.19	KY
TSI	Bell South	Resale	Missing Resale	20-May-08	502Q909746	500051486	\$134.32	KY
TSI	Bell South	Resale	Missing Resale	20-May-09	502Q909746	500051487	\$1,082.96	KY
TSI	Bell South	Resale	Missing Resale	20-May-10	502Q909746	500051488	\$25.19	KY
TSI	Bell South	Resale	Missing Resale	20-Jun-08	502Q909746	500051489	\$209.88	KY
TSI	Bell South	Resale	Missing Resale	20-Jun-09	502Q909746	500051490	\$528.89	KY
TSI	Bell South	Resale	Missing Resale	20-Jul-08	502Q909746	500051491	\$260.25	KY
TSI	Bell South	Resale	Missing Resale	20-Jul-09	502Q909746	500051492	\$696.79	KY
TSI	Bell South	Resale	Missing Resale	20-Aug-08	502Q909746	500051493	\$67.16	KY
TSI	Bell South	Resale	Missing Resale	20-Aug-09	502Q909746	500051494	\$889.87	KY
TSI	Bell South	Resale	Missing Resale	20-Sep-07	502Q909746	500051495	\$4.20	KY
TSI	Bell South	Resale	Missing Resale	20-Sep-08	502Q909746	500051496	\$2,955.04	KY
TSI	Bell South	Resale	Missing Resale	20-Sep-09	502Q909746	500051497	\$310.62	KY
TSI	Bell South	Resale	Missing Resale	20-Oct-07	502Q909746	500051498	\$16.79	KY
TSI	Bell South	Resale	Missing Resale	20-Oct-08	502Q909746	500051794	\$1,427.15	KY
TSI	Bell South	Resale	Missing Resale	20-Oct-09	502Q909746	500051499	\$209.88	KY
TSI	Bell South	Resale	Missing Resale	20-Nov-07	502Q909746	500051500	\$440.74	KY
TSI	Bell South	Resale	Missing Resale	20-Nov-08	502Q909746	500051796	\$344.20	KY
TSI	Bell South	Resale	Missing Resale	20-Nov-09	502Q909746	500051501	\$151.11	KY
TSI	Bell South	Resale	Missing Resale	20-Dec-07	502Q909746	500051502	\$1,494.31	KY
TSI	Bell South	Resale	Missing Resale	20-Dec-08	502Q909746	500051797	\$243.46	KY
TSI	Bell South	Resale	Missing Resale	20-Dec-09	502Q909746	500051503	\$67.16	KY

Wfn	Customer Comments	Circuit	Location	USOC	Billed Phrase	Code	SO	PN	CL	CI	MOU	Jurisdiction	Tax Amount	Type	Ticket Number
2107261922	Billed amt reflects the amt of the promo as reduced by the wholesale disc: this is incorrect.														
2707259436	CLEC entitled to full cash amt of the cash back promo														
2707406425	CLEC entitled to full cash amt of the cash back promo														
2705989303	CLEC entitled to full cash amt of the cash back promo														
2705989345	CLEC entitled to full cash amt of the cash back promo														
502474779	CLEC entitled to full cash amt of the cash back promo														
6063371263	CLEC entitled to full cash amt of the cash back promo														
6066642115	CLEC entitled to full cash amt of the cash back promo														
5023617098	CLEC entitled to full cash amt of the cash back promo														
5023615669	CLEC entitled to full cash amt of the cash back promo														
5029475830	CLEC entitled to full cash amt of the cash back promo														
5029374865	CLEC entitled to full cash amt of the cash back promo														
6052485093	CLEC entitled to full cash amt of the cash back promo														
6052485018	CLEC entitled to full cash amt of the cash back promo														
6052353069	CLEC entitled to full cash amt of the cash back promo														
6052357965	CLEC entitled to full cash amt of the cash back promo														
8597347883	CLEC entitled to full cash amt of the cash back promo														
6063376534	CLEC entitled to full cash amt of the cash back promo														
6063376594	CLEC entitled to full cash amt of the cash back promo														
6063376752	CLEC entitled to full cash amt of the cash back promo														
6062835774	CLEC entitled to full cash amt of the cash back promo														
5029694907	CLEC entitled to full cash amt of the cash back promo														
6065737898	CLEC entitled to full cash amt of the cash back promo														
6065422779	CLEC entitled to full cash amt of the cash back promo														
6065640876	CLEC entitled to full cash amt of the cash back promo														
6062581435	CLEC entitled to full cash amt of the cash back promo														
5028969793	CLEC entitled to full cash amt of the cash back promo														
5028662572	CLEC entitled to full cash amt of the cash back promo														
5029662572	CLEC entitled to full cash amt of the cash back promo														
5029644576	CLEC entitled to full cash amt of the cash back promo														
5029642472	CLEC entitled to full cash amt of the cash back promo														
5029640528	CLEC entitled to full cash amt of the cash back promo														
5029374637	CLEC entitled to full cash amt of the cash back promo														
5029372181	CLEC entitled to full cash amt of the cash back promo														
5029571466	CLEC entitled to full cash amt of the cash back promo														
5029333647	CLEC entitled to full cash amt of the cash back promo														
6065749406	CLEC entitled to full cash amt of the cash back promo														
6065456669	CLEC entitled to full cash amt of the cash back promo														
5028333191	CLEC entitled to full cash amt of the cash back promo														
5027789475	CLEC entitled to full cash amt of the cash back promo														
5027789360	CLEC entitled to full cash amt of the cash back promo														
5027788667	CLEC entitled to full cash amt of the cash back promo														
5027786142	CLEC entitled to full cash amt of the cash back promo														
5027785426	CLEC entitled to full cash amt of the cash back promo														
5027785285	CLEC entitled to full cash amt of the cash back promo														
5029359716	CLEC entitled to full cash amt of the cash back promo														
5029677616	CLEC entitled to full cash amt of the cash back promo														
6065490443	CLEC entitled to full cash amt of the cash back promo														
5028712362	CLEC entitled to full cash amt of the cash back promo														
5026369758	CLEC entitled to full cash amt of the cash back promo														
5026368749	CLEC entitled to full cash amt of the cash back promo														
5026368660	CLEC entitled to full cash amt of the cash back promo														
5026345747	CLEC entitled to full cash amt of the cash back promo														
5026345438	CLEC entitled to full cash amt of the cash back promo														
5026341883	CLEC entitled to full cash amt of the cash back promo														
5026341197	CLEC entitled to full cash amt of the cash back promo														
5025643031	CLEC entitled to full cash amt of the cash back promo														
5025643031	CLEC entitled to full cash amt of the cash back promo														
5027720161	CLEC entitled to full cash amt of the cash back promo														
5025677507	CLEC entitled to full cash amt of the cash back promo														
5025677396	CLEC entitled to full cash amt of the cash back promo														
5025677256	CLEC entitled to full cash amt of the cash back promo														
5025671942	CLEC entitled to full cash amt of the cash back promo														
5025671902	CLEC entitled to full cash amt of the cash back promo														
5025671794	CLEC entitled to full cash amt of the cash back promo														
5025671617	CLEC entitled to full cash amt of the cash back promo														
5025671172	CLEC entitled to full cash amt of the cash back promo														
5025647230	CLEC entitled to full cash amt of the cash back promo														
5025647098	CLEC entitled to full cash amt of the cash back promo														
5026070799	CLEC entitled to full cash amt of the cash back promo														
5027721242	CLEC entitled to full cash amt of the cash back promo														
6066642630	CLEC entitled to full cash amt of the cash back promo														
6027761136	CLEC entitled to full cash amt of the cash back promo														
6314310870	CLEC entitled to full cash amt of the cash back promo														
6027756191	CLEC entitled to full cash amt of the cash back promo														
6027748377	CLEC entitled to full cash amt of the cash back promo														
6027729654	CLEC entitled to full cash amt of the cash back promo														
6027724066	CLEC entitled to full cash amt of the cash back promo														
6027723903	CLEC entitled to full cash amt of the cash back promo														
6027723946	CLEC entitled to full cash amt of the cash back promo														
6027721485	CLEC entitled to full cash amt of the cash back promo														
6066642481	CLEC entitled to full cash amt of the cash back promo														
5027720956	CLEC entitled to full cash amt of the cash back promo														
5027720443	CLEC entitled to full cash amt of the cash back promo														

with	Circuit Location	USOC	Billed Phrase Code	SO	PON	CLL	GC	MOU	Jurisdiction	Tax Amount	Type	Ticket Number
5027478670												
5027478670												
5027720993												
5027721606												
5027723810												
5027729643												
5027729699												
5027755395												
5027761377												
5027765089												
5027765242												
5027768096												
5027781691												
5027786878												
5028958773												
5029353244												
5029354360												
5029373929												
5029374167												
5029379119												
5029663542												
5029669263												
5029692354												
5029693470												
5029953110												
5029957364												
6052466076												
6052994921												
6053371038												
6053376266												
6053379340												
605732752												
605734905												
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605736002												
605737486												
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2704832257												
2705224873												
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2705665288												
2705866573												
270701495												
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2707259402												
2707259671												
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2707261686												
2708461299												
2708652262												
2708652403												
2708652687												
2708653380												
2708657511												
2708676767												
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5023310416												
5023495574												
5023615433												
5023619312												
5023619786												
5023634375												
5023634754												
5023637131												
5023648282												
5023648746												
5023661911												
5023664094												
5023664503												
5023675814												
5023806651												
5023809093												
5023859372												
5023869457												
5023869504												
5023869531												
5023869576												
5023869930												

WTR	Circuit Location	USOC	Billed Phrase Code	SO	PN	CL	CL	CL	MOU	Jurisdiction	Tax Amount	Type	Ticket Number
270987907													
270989965													
270990708													
270998743													
270998721													
2707259109													
2708814250													
2708852057													
2708995046													
27089959212													
2708958229													
2708858528													
2708869117													
2708878665													
5022559130													
5022619845													
5023488874													
5023634237													
5023654120													
5023656480													
5023693402													
5023693799													
5023735025													
5024255011													
5024412674													
5025686123													
5025810893													
5025919315													
5025959763													
5026356804													
5026361506													
5026362670													
5026364628													
5026369232													
5026371672													
5026369686													
5027741529													
5027748423													
5027748654													
5027751412													
5027755935													
5027781231													
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6069499606													
6069493670													
6065731021													
2704391084													
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2704391955													
2704399725													
2704759749													
2705226609													
2705229163													
2705863164													
2707259067													
2707259605													
2707261612													
2707263924													
2707266340													
2707264890													
2707562480													
2707562719													
2708857420													
2708866252													
2708869094													
5022405823													
5022424347													
5023491085													
5023496574													
5023610863													
5023611938													
5023612392													
5023613845													
5023631757													
5023661984													
5023680599													
5023680733													
5023684094													
5023758955													
5023803845													

EXHIBIT E

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>November 09, 2011</u>
			<u>2010-14-C/2010-15-C</u>
			<u>2010-16-C/2010-17-C</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2010-18-C/2010-19-C</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	_____

SUBJECT:

DOCKET NO. 2010-14-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Affordable Phones Services, Incorporated d/b/a High Tech Communications;

DOCKET NO. 2010-15-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Dialtone & More, Incorporated;

DOCKET NO. 2010-16-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Tennessee Telephone Service, LLC d/b/a Freedom Communications USA, LLC;

DOCKET NO. 2010-17-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. OneTone Telecom, Incorporated;

DOCKET NO. 2010-18-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. dPi Teleconnect, LLC;

-and-

DOCKET NO. 2010-19-C - Complaint and Petition for Relief of BellSouth Telecommunications, LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Image Access, Incorporated d/b/a New Phone - Discuss this Matter with the Commission.

COMMISSION ACTION:

My motion addresses the consolidated complaints by BellSouth Telecommunications against various telecommunications service resellers for amounts allegedly owed to BellSouth in connection with certain promotions offered by BellSouth to end users. Federal law requires that former Bell System companies offer these promotions to competitive local exchange carriers (CLECs). Other federal law requires that retail services purchased for resale by CLECs be provided at the same terms and conditions, less an appropriate discount representing avoided costs by the RLEC. Under South Carolina law, that discount has been established at 14.8%.

The disputed amounts relate to three types of offers:

I. Cash Back Offers. These are rebates to the purchasing consumer that require the purchaser to remain on the BellSouth network for thirty days before the rebate check is forwarded to the customer. These rebates could be for more or less than the first month's service. BellSouth claims that the cash back promotions should be the amount provided to the BellSouth customer less the 14.8% resale discount. The CLECs argue that in order to be on the same terms and conditions as sales to BellSouth Customers, the cash back offer should not be

discounted.

This Commission finds that the rebates should be subject to the resale discount. However since the retail customer gets his rebate after keeping the service for thirty days, this Commission finds that thirty days should be the basis for calculating the rebate. If the rebate is less than the first month's charges the discount should apply to the rebate, since this has the effect of keeping that month's charges to the CLEC within the 85.2% ratio of CLEC charges to the retail rates. In the case where the rebate is greater than the first month's charges, discounting the rebate means that the BellSouth retail customer in effect gets a better price than the CLEC. This is definitely not what we believe the Telecommunications Act of 1996 intended. Therefore, in the special cases where the rebate exceeds the first month's cost of service, we find that the retail discount should not be applied to rebate.

II. Line Connection Charge Waivers. In this promotion, BellSouth offers a waiver of the Line Connection charge to the new customer. BellSouth claims that it is meeting the requirements of equal terms and conditions by waiving the Line Connection Charges. The CLECs argue that the same terms and condition clause requires BellSouth to rebate to them the difference between the BellSouth retail charge and the discounted charge that is being waived.

We find that federal law and regulations do not require the full retail amount of the Line Connection Charge to be credited to the reseller.

III. Word of Mouth Promotions. BellSouth also offers current customers a cash payment for referring new customers to BellSouth. BellSouth argues that these payments are sales promotion activities that are already included in the 14.8% discount and are therefore not available for resale. The CLECs argue that the payment is a reduction of price for the retail service and is subject to resale requirements.

We find that Word of Mouth Promotions are indeed a marketing expense included in the resale discount. It is also important that the payment goes to the referrer and not to the new retail customer. Therefore we find that Word of Mouth Promotions are not included in the resale obligation and are not subject to being paid to the reseller.

PRESIDING: Howard

SESSION: Regular

TIME: 1:30 p.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WRIGHT	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding



EXHIBIT F



Louisiana Public Service Commission

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Executive Secretary

DENNIS WEBER
Executive Counsel

JOHNNY E. SNELMGROVE, JR.
Deputy Undersecretary

July 12, 2011

2011 NOV 18 PM 4:13
LA PUBLIC SERVICE
COMMISSION

Ms. Terri Lemoine
Louisiana Public Service Commission
Docketing Division
P. O. Box 91154
Baton Rouge, LA 70821

Docket No. U-31364- In re: Consolidated Proceeding to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31259, and U-31260.

Dear Ms. Lemoine:

Please find attached hereto an original and two copies of Staff's Brief on Remand on behalf of the Louisiana Public Service Commission for the above referenced docket. Parties are being served via e-mail and U.S. mail. Should you have any questions regarding this filing, please contact me.

Please return me a date stamped copy.

Very truly yours,

Brandon M. Frey
LPSC Deputy General Counsel

BMF/khb

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

2011 NOV 18 PM 4: 13

DOCKET NO. U-31364

LA PUBLIC SERVICE
COMMISSION

BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A AT&T SOUTHEAST D/B/A
AT&T LOUISIANA VERSUS IMAGE ACCESS, INC. D/B/A NEW PHONE;
BUDGET PREPAY, INC. D/B/A BUDGET PHONE D/B/A BUDGET PHONE, INC.;
BLC MANAGEMENT, LLC D/B/A ANGLES COMMUNICATIONS SOLUTIONS D/B/A
MEXICALL COMMUNICATIONS;
DPI TELECONNECT, LLC;
AND
TENNESSEE TELEPHONE SERVICE, INC. D/B/A FREEDOM COMMUNICATIONS
USA, LLC

In re: Consolidated Proceeding to Address Certain Issues Common to Dockets U-31256, U-31257, U-31258, U-31259, and U-31260.

STAFF'S BRIEF ON REMAND

The Staff of the Louisiana Public Service Commission ("Staff") respectfully submits this Brief on Remand in accordance with the procedural schedule established by this Tribunal. For the reasons set forth herein, Staff re-urges its position advocated in Staff's Post-Hearing brief filed February 9, 2011 and in the exceptions to this Tribunal's recommendation filed by Staff on July 12, 2011. In the alternative, Staff urges this tribunal to adopt a compromise position, as addressed herein, that insures a reseller receives no less of a benefit than an AT&T retail customer.

I. The Scope of this Remand is Dictated by Order U-31364

As set forth in Order U-31364, adopted by the Commission, this matter "shall be remanded to the Administrative Hearings Division for further consideration of the calculation

methodology to be applied to cash back promotions.”¹ Thus the Commission, after reviewing the prior filings of the parties, this Tribunal’s recommendation on all pending issues, and listening to oral argument, determined that the cash back promotion methodology necessitated further consideration.

While the Order does not specify what further consideration was anticipated, it is clear that, based on the information before it, the majority of the Commission was not comfortable in reaching a vote on the merits. A review of the prior filings, as well as the transcripts, leads Staff to conclude that this discomfort is a direct result of the issue before the Commission being muddled by the spurious arguments that have been made. Rather than rehash Staff’s prior arguments, and those of AT&T and the resellers, Staff will attempt to focus on what it believes is the core problem with AT&T’s methodology and why it should be rejected when the cash-back amount results in a “negative price”.

A. What is at issue is the “negative effective price” that exists when the cash-back offering exceeds the price of the service. AT&T’s “red herrings” should be ignored.

While it should be clear that the focus of this issue is how to properly allocate a cash-back credit to a reseller when the amount of the credit exceeds the price of the service, Staff believes that issue has been confused by AT&T arguing that a) resellers aren’t harmed because they fail to pass these credits on to their customers, b) resellers work with affiliates to churn customers to take advantage of the system c) Staff’s position, if adopted, would “improperly pad the pockets of resellers without providing any benefit to Louisiana customers,” and d) the effect of the cash-back credit must be considered in the aggregate over time.²

¹ Order U-31364, Ordering paragraph 1.

² See AT&T’s reply brief dated March 1, 2011.

What AT&T fails to mention from its statements is that a) there is absolutely no requirement that resellers pass on any credits to their customers, b) there is no evidence in this proceeding that the resellers in this proceeding are engaging in such activity, c) Staff's position would ensure resellers receive no less of a benefit than retail customers and d) the fallacy of considering the effect in the aggregate over time is the lack of a requirement to keep the service over time.

Staff also reminds this Tribunal that AT&T used Staff's failed attempt at humor in characterizing counsel's inability to perform mathematical equations as "dangerous", into an attempt to discredit Staff, using the phrase "dangerous legal mathematics" in a pejorative sense no less than four times in its reply brief. Finally, Staff would also remind this Tribunal that AT&T vehemently argued throughout its reply brief that Staff's methodology was "new" and "unprecedented", despite the fact that the same method was, as properly pointed out the resellers, discussed by Mr. Gillan, and thus not a novel approach.

But why is it important to address these prior arguments again? In simple terms, AT&T's methodology, when applied in a "negative effective price" scenario, produces results that are illogical, a conclusion that cannot be ignored. Any attempt to shift the focus from this illogical conclusion should be rejected.

B. Staff's proposed methodology, rejected by AT&T and this Tribunal, provides the same wholesale price when the credit does not exceed the retail price.

Somewhat glossed over in this proceeding is that Staff's proposed methodology, (despite its warts discussed above), when applied to a scenario wherein the amount of the credit is less than the price of the service, **produces the exact same result as AT&T's methodology**. This occurs even though a different formula is applied. The following example illustrates the above conclusion:

STAFF Methodology:

If AT&T's retail service is \$30 a month, and if it offers a cash back amount of \$20 to sign up for that service, in the first month, the \$20 cash back has the effect of changing the retail rate for that month to \$10. Under Staff's proposal, the 20% avoided cost discount is applied to that \$10, resulting in an avoided cost in month one of \$2. **The wholesale customer thus gets the service for \$8.**

AT&T Methodology:

AT&T argues that the 20% discount must be applied to both the \$30 monthly fee ($\$30 \times 20\%$) and the cash back offering ($\$20 \times 20\%$). Under this scenario, the monthly fee for month one is \$24, the credit is \$16, **the result is the same \$8 charge to the wholesale customer.**

C. AT&T's methodology, however, results in a greater benefit being provided to its retail customers than is provided to wholesaled customers when the effective price is negative.

In no uncertain terms, AT&T's methodology for calculating the cash-back credit provided to a reseller when the amount of the cash-back exceeds the price of the service, results in the reseller receiving less of a benefit than the retail customer in the month that credit is applied. Such a result cannot be logical, particularly when its justification is that the "wholesale discount is applied" resulting in the 20% reduction in the discount. AT&T, through what it has called an appropriately applied avoided cost discount, has devised a method by which it ensures its reseller customers will receive a net benefit of 20% less than its retail customers.³ Thus, as Staff has argued throughout this proceeding, while mathematically correct, the formula defies logic. One need not be an economist, mathematician, or even an attorney, to reach such a conclusion.

³ See Attachment G to AT&T's Reply Brief wherein the \$8.00 credit is characterized as 20% different from net retail.

AT&T will no doubt respond, as it has throughout this proceeding, that it is improper to look at the credit on a one month basis. This argument fails, however, on the fundamental grounds that the cash-back promotion that is the subject of this proceeding requires the customer to remain with AT&T for **ONE** month only. Regardless of what the average length of time is the customer stays with the company, AT&T still places no obligation the customer remain for that time. As a result, it is only the month in which the credit is applied, that its impact should be addressed.⁴

What hasn't been briefed previously is the absurd consequences that could result from applying AT&T's methodology and formula. If, for example, AT&T decided to offer a \$500 cash-back promotion, under the same terms as the current promotion, and the retail price was \$30, the AT&T retail customer would get a credit of \$470 the first month. Under the AT&T formula, the reseller customer's credit, "reduced" by the avoided cost discount, would result in credit of \$376 dollars. The difference between the \$470 credit and the \$376 credit - 20%. Clearly this cannot be what was contemplated by the Telecommunications Act. While it is unlikely that AT&T would make such a promotional offering, looking at the absurd consequences of AT&T's methodology under such a scenario illustrates how it logically fails.

II. Staff's Logical, Mathematic-Free, Compromise Approach

As shown above, AT&T's methodology could result in a situation resellers are greatly harmed by its application. While Staff is aware that a solution to address such absurd consequences is being considered by the South Carolina Commission⁵, and solution that may have some merit, Staff believes a more simple solution could apply, that would address the

⁴ Staff is aware that the North Carolina Commission has adopted AT&T's argument, and looked at the aggregate impact of the credit over time. Staff respectfully disagrees with this application.

⁵ The South Carolina Commission order, as of the date of this filing, has not been issued to the best of Staff's knowledge. Staff only references this potential decision to the extent it is rendered prior to the briefing schedule in this matter being concluded.

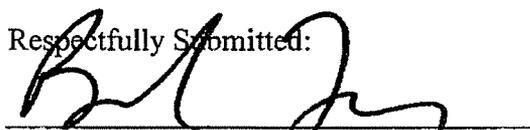
concerns. In simple terms, AT&T should provide the same credit amount to a reseller than it provides to its retail customers, if the cash-back amount is greater than the price of the service.

Under this scenario, the reseller customer would receive precisely the same credit as the retail customer in month one. In simple terms, if the retail price is \$30, and the cash-back amount is \$40, both customers should receive a credit of \$10 in the first month. In each subsequent month the customer maintains service, that month's service is reduced by the avoided cost, as would be the case absent the cash-back offering. Staff fully anticipates AT&T will argue this compromise position has not been argued before this Tribunal and thus should not be considered. However, failing to consider a position that, at the very least, ensures the reseller receives at least the same benefit retail customer, would continue to defy logic.

III. Conclusion

For the reasons stated herein, and in Staff's prior filings, Staff respectfully requests that this Tribunal adopt on remand the position advanced by Staff with respect to the correct treatment of "cash-back" promotions. In the alternative, Staff respectfully requests this tribunal consider Staff's alternative compromise that ensures resellers receive equal benefits as retail customers.

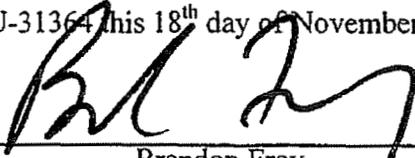
Respectfully Submitted:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via email to the service lists for docket U-31364 this 18th day of November 2011.



Brandon Frey

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as of 11/18/2011

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