

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Nexus Communications, Inc.	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 10-2518-TP-CSS
	)	
Ohio Bell Telephone Company d/b/a AT&T	)	
Ohio	)	
	)	
Respondent.	)	

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**MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

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Pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-06 and Rule 15 of the Ohio Rules of Civil Procedure, Nexus Communications, Inc. (“Nexus”) herby moves the Public Utilities Commission of Ohio (“Commission”) for leave to file its Second Amended Complaint against the Ohio Bell Telephone Company d/b/a AT&T Ohio (“AT&T”). A copy of the Second Amended Complaint was submitted to AT&T and the Commission on April 28, 2011.

The Second Amended Complaint does not allege or seek any new claims; rather, it merely re-states Nexus’ position with greater particularity and more specificity. The pleading further provides more data with respect to Nexus’ claims and the underlying facts. The reasons in support of this Motion are more fully set forth in the attached Memorandum of Support.

Respectfully submitted,

NEXUS COMMUNICATIONS, INC.



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**CERTIFICATE OF SERVICE**

The undersigned hereby acknowledges that a copy of the foregoing document was served by electronic mail as well as by regular U.S. Mail this 4<sup>th</sup> day of May 2011.



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## MEMORANDUM IN SUPPORT

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OAC Rule 4901-1-06 governs the amendment of complaints in Commission proceedings and states as follows:

Unless otherwise provided by law, the commission, the legal director, the deputy legal director, or the attorney examiner assigned to a case may, upon their own motion or upon motion of any party for good cause shown, authorize the amendment of any application, complaint, long-term forecast report, or other pleading filed with the commission.

Good cause exists for leave to amend the First Amended Complaint filed by Nexus in this matter.

Nexus is an Ohio corporation and competitive local exchange carrier (“CLEC”) providing telecommunication services to the public in Ohio. AT&T is an incumbent local exchange carrier (“ILEC”) providing wholesale telecommunication services to Nexus pursuant to the terms of an interconnection agreement entered into under Sections 251 and 252 of the Telecommunications Act of 1996<sup>1</sup> and approved by operation of law on July 30, 2002, in Public Utilities Commission of Ohio (“PUCO” or the “Commission”) Case No. 02-994-TP-NAG.<sup>2</sup> This action arises out of AT&T’s refusal to provide Nexus promotional credits due from AT&T under the Interconnection Agreement and resale provisions under both state and federal law.

On November 5, 2010, Nexus’ counsel from Texas filed a formal complaint against AT&T that was styled an “Original Petition.” In response, AT&T filed an answer and motion to dismiss on November 29, 2010. Among other things, the answer and motion to dismiss certain alleged procedural flaws in the filing of the complaint. On December 1, 2010, and to cure one of

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

<sup>2</sup> When the Interconnection Agreement was executed, AT&T operated under the name Ameritech Ohio.

the procedural flaws, local Ohio counsel filed a Motion for Admission Pro Hac Vice for Nexus' Texas counsel who initially filed the complaint.

On December 13, 2010, Nexus filed its Motion for Leave to File First Amended Complaint, Memorandum in Support, and its First Amended Complaint. Nexus' First Amended Complaint involved the same set of facts sets forth in the initial complaint, resolved many of the procedural flaws alleged by AT&T in its answer and motion to dismiss, and avoided the unnecessary exercise of a voluntary dismissal and the refilling of the same complaint in a new docket. Thus, AT&T was not prejudiced by Nexus' First Amended Complaint.

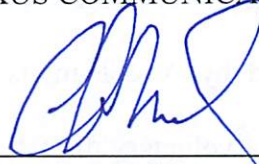
Similarly, AT&T will not be prejudiced by the filing of Nexus' Second Amended Complaint. Since the filing of the initial complaint, both parties have conducted and responded to discovery requests and counsel for both parties have participated in several electronic and telephonic discussions regarding the scope and contested issues of the instant matter. The Second Amended Complaint does not allege or seek any new claims; rather it merely re-states Nexus' position with greater particularity and more specificity. Furthermore, the Second Amended Complaint provides AT&T and the Commission with additional data regarding Nexus' claims and the underlying facts of the case. For these reasons, Nexus requests that the Commission grant its Motion.

Finally, Rule 15 of the Ohio Rules of Civil Procedure states that "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading." As noted above, the claims set forth in the Second Amended Complaint arise from the same conduct, transaction, or occurrence set forth in the initial

complaint. For this reason, the filing date of the Second Amended Complaint relates back to the date of the filing of the initial complaint.

Respectfully submitted,

NEXUS COMMUNICATIONS, INC.



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**This foregoing document was electronically filed with the Public Utilities**

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Summary: Motion Motion for Leave to File Second Amended Complaint electronically filed by Mr. Christopher Malish on behalf of Nexus Communications, Inc.