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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF)	
NEXUS COMMUNICATIONS, INC. FOR)	CASE NO. NCI-T-11-01
DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER IN)	
IDAHO.)	COMMENTS OF THE
)	COMMISSION STAFF
)	

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32717 on January 22, 2013, in Case No. NCI-T-11-01, submits the following comments.

BACKGROUND

On April 6, 2011, Nexus Communications, Inc. ("Nexus" or "Company") filed an Application, pursuant to 47 U.S.C. § 214(e)(6) of the Communications Act of 1934 ("the Act"), 47 C.F.R. § 54.201 *et seq.*, and Order No. 29841, seeking designation as an eligible telecommunications carrier ("ETC") in the State of Idaho for the sole purpose of receiving Lifeline/Link-up ("Lifeline") support. Application at 1. The Lifeline program is intended to provide telecommunications service to eligible low-income customers by using federal USF

revenues to make such services more affordable. Idaho participates in the residential Lifeline program pursuant to *Idaho Code* § 56-901. See Order No. 21813.

On September 17, 2012, Nexus filed an amendment to its original Application describing how it will comply with the new requirements of the Federal Communication Commission's ("FCC") rules for the Lifeline Universal Service program instituted by the FCC's November 18, 2011 ("Connect America Fund Order") and February 6, 2012 ("Lifeline Reform Order") Orders. Amendment at 1.

On March 18, 2013, Nexus filed the second amendment to its Application. In this amendment the Company describes in more detail how it will comply with several new requirements in the *Connect America Fund Order* and the *Lifeline Reform Order*. The amendment also includes updated information provided to Commission Staff in data responses submitted prior to the release of these order. Second Amendment at 1.

The Application

Nexus is an Ohio corporation with its principal place of business in Lewis Center, Ohio. Nexus has been issued a Certificate of Authority by the Idaho Secretary of State. Application Exhs. B and C. The Company states that it will serve its Idaho consumers through wireless technology, i.e., commercial mobile radio service ("CMRS"). *Id.* at 3. Nexus does not seek, and will not accept federal High Cost support for Idaho. *Id.* at 1. Rather, Nexus asserts that it will "offer services that give low income consumers a simple and effective means of obtaining critically needed communications services while managing their family budgets and avoiding bill shock." *Id.* at 2.

If approved for ETC designation, Nexus intends to offer services using a combination of its own facilities and the resale of another carrier's facilities.¹ The Application includes a list of 76 wire centers it intends to serve in Idaho. Application Exh. A. Nexus states that it is designated as an ETC in 26 states and provides wireline service as an ETC in 13 states, and as a wireless service provider in 18 states. Third Amended Compliance Plan at Summary.

In the amendment to its Application, filed on September 17, 2012, Nexus describes how the Company will comply with the new requirements as stated in the FCC rules for the Lifeline Universal Service program instituted by the FCC's November 18, 2011 *Connect America Fund*

¹ Production Request No. 5 Response. Confidential Exhibit A.

Order and the February 6, 2012 *Lifeline Reform Order*. Amendment at 1. Additionally, the Company declares that it has received a forbearance from the Facilities Requirement of Section 47 U.S.C. § 214(e)(1)(A). *Id.* at 6.

On December 31, 2012, the Company submitted its Third Amended Compliance Plan filed with the FCC and the FCC's Public Notice (DA 12-2063, released on December 26, 2012) announcing the FCC Wireline Competition Bureau's acceptance of Nexus's Compliance Plan.

Nexus's Lifeline Service Offerings²

Nexus states that it will offer three standard Lifeline plans: 1) 250 free minutes per month with no carryover, and one text per airtime minute; 2) 125 free minutes per month with carryover of unused minutes/SMS³ to the next month, one text per airtime minute, and \$0.20 per international text sent or received; and 3) 68 free minutes with unused minutes/SMS carryover to the next month, two texts per airtime minute, and \$0.20 per international text sent or received.⁴ The Company states that other offerings may be available. Nexus will impose a standard activation fee of \$72.00 applicable to all new service activations including the Lifeline service. *See* Response to Request No. 26.

The Company states that the Idaho Lifeline subscribers may also purchase additional airtime cards in seven denominations ranging from \$3.00 to \$50.00 that allow additional airtime of 20 to 950 minutes, respectively. *Id.* International SMS text messaging is available at a rate of \$0.20 per each international text sent or received. The rate for directory assistance calls is \$1.50 per request. Nexus permits Lifeline subscribers to block international calls at no additional charge. No deduction of minutes will be incurred for calls to *611 customer service department or to 911 emergency services. Second Amendment at 11-12. Calls from the handset to check or retrieve voicemail count against the voice minutes provided by the plan. Calls from a source other than the handset to check or retrieve voicemail messages and incoming calls that leave a voicemail message are free to the Nexus end user. *Id.*

² All plans include at no extra charge; free 911-compliant handset; and "anytime" nationwide minutes that can be used for domestic calls, including local or intrastate/interstate long distance calls. Second Amendment at 10-11.

³ Short Message Service (SMS) is a text messaging service.

⁴ This plan is described as an offering that Nexus does not actively market. "Although available to subscribers, it is rarely selected except by a few subscribers who infrequently use voice service and more frequently send text messages." *Id.* at 10.

The Federal Lifeline and Link Up Reform and Modernization Order

On February 6, 2012, the FCC released a Report and Order (“the Order”) to comprehensively reform the low-income program of the Universal Service Fund (“USF”). The Order substantially strengthens protection against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.⁵ The Order also establishes rigid requirements for ETCs to obtain annual customer certifications to prevent duplication of lifeline benefits.

Nexus explains how it will conform to the requirements outlined in the Order, including the requirements associated with Lifeline subscriber eligibility/certification, annual re-certifications, public safety and 911/E911 access, and procedures to prevent waste, fraud and abuse of Lifeline funds. *See* Amended Compliance Plan of Nexus Communications, Inc.

Nexus’s Compliance Plan

The FCC approves compliance plans pursuant to the Order as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended, for the provision of Lifeline service.⁶ In the Order, the FCC found that “a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers seeking to provide Lifeline-only service.”⁷ Therefore, the FCC conditionally granted forbearance from the Act’s facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau⁸ approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligation contained in the Order. Accordingly, the Third Amended Compliance Plan of Nexus Communications, Inc. was reviewed and approved by the FCC on December 26, 2012.⁹

⁵ *See Lifeline and Link Up Reform and Modernization et al*, WC Dkt no. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at paras. 361-38, Appendix A (rel. Feb. 6, 2012).

⁶ *Id.* at paras. 379-380 (rel. Feb. 6, 2012).

⁷ FCC Public Notice DA 12-828, WC Docket Nos. 09-197 and 11-42 (rel. December 26, 2012 at 1-2).

⁸ The FCC’s Wireline Competition Bureau.

⁹ FCC Public Notice DA 12-2063, WC Docket Nos. 09-197 and 11-42 (rel. December 26, 2012 at 1).

STAFF ANALYSIS

Staff has reviewed Nexus's Application along with the Company's FCC-approved Compliance Plan. Staff analyzed the Company's Application to verify compliance with the requirements of the federal Telecommunications Act of 1996, the *Lifeline and Link Up Reform and Modernization Order* and Commission Order No. 29841. In addition, Staff has reviewed Nexus's request for ETC designation in the 76 non-rural wire centers identified in Exhibit A of the Application.

Public Interest Considerations

When applying the public interest test in an Application for ETC designation, Staff believes there are two considerations that merit discussion.

1. Contribution to Idaho Programs. As in the TracFone Wireless Inc. ETC Application and all subsequent pre-paid wireless ETC Applications, the Commission considered the carrier's contribution to the Idaho Telephone Service Assistance Program ("ITSAP") fund and to the Idaho Emergency Communications Act ("IECA") fund and determined that it was in the public interest to require an ETC to contribute to these funds. *See* Case No. TFW-T-09-01; Order No. 32301 at 9. Nexus states that it "will collect and remit all applicable surcharges and pay applicable taxes and fees, including those related to universal service funding pursuant to chapter 9 of title 56 of the *Idaho Code* and the emergency communications fee collected pursuant to Idaho Code § 31-4804. Specifically, Nexus will remit applicable 911 and ITSAP surcharges based on its entire Idaho subscriber base." Second Amendment at 12. Based upon the foregoing, Staff believes that Nexus intends to make the required contributions to the ITSAP and IECA programs.

2. Cream Skimming Analysis. The Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is the Applicant's commitment to provide universal service throughout the rural areas or, if not, whether the potential for "cream skimming" exists.

Nexus's list of exchanges in its proposed service area are all currently in the legacy Qwest Corporation's non-rural service area. Application Exh. A. Staff believes that the Company's exclusion of high-cost support in its Application makes this cream skimming analysis moot.

Network Improvement Plan

In the Idaho ETC Designation Order, the two-year network improvement and progress report is required of all ETCs receiving high-cost support. *See* Commission Order No. 29841 at 18. However, as with the Cricket Communications, Inc.'s ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs and granted Cricket's ETC designation. *See* CRI-T-11-01, Order No. 32501.

Additionally, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM*, the FCC included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an ETC by the Commission to submit a five-year plan describing its proposed network improvements and upgrades. However, as Lifeline-only ETCs do not receive funds to improve or extend its networks, the FCC stated that it "saw little purpose in requiring such plans as part of the ETC designation process."¹⁰ Nexus's Application seeks only low-income USF support as a Lifeline-only ETC designation. Thus, the requirement to provide a network improvement plan does not apply to this Application and Staff believes Nexus is exempt from Idaho's two-year network improvement plan requirement.

Ability to Remain Functional in Emergencies

Nexus states that it "commits to remaining functional in emergency situations." Since Nexus will "provide services in part through the use of facilities obtained from a major carrier vendor for wireless spectrum and other related wireless services, Nexus will provide to its customers the same ability to remain functional in emergency situations as is currently provided by the vendor to its own customers." This includes "access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities and the capability to manage traffic spikes in the event of emergency situations." Second Amendment at 9. The Company states that its underlying carrier is "widely recognized for the quality and reliability of its wireless network." Third Amended Compliance Plan at 4. "All Nexus' vendor's cell sites consist of facilities with sufficient backup power that is

¹⁰ *See Lifeline and Link up Reform and Modernization et al*, WC Dkt no. 11-42 *et al*. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

both independent from a municipal power supply and provides sufficient backup power to permit the site to remain functional until municipal power can be restored. In addition, all sites, including the mobile switching center, have redundant transport and routing capabilities.” See Productions Request No. 10 Response. Staff believes Nexus, as a reseller of wireless services, satisfies this requirement.

Adequate Financial Resources

In Order No. 29841, the Commission “determined that our current certification process requires a certain showing of financial capability, and that is sufficient for the Commission’s purposes.” Idaho Code §§ 61-526 through -528, IDAPA 31.01.01.11 and 112 (Rules 111 and 112), and Procedural Order No. 26665.¹¹ In response to Production Request No. 21, Nexus submitted its current financial statements under seal as Confidential Exhibit C. In the first amendment, Nexus addressed its financial and technical capability to provide Lifeline service. The Company states that it had been in business since 2000; operated as a competitive local exchange carrier since 2001; received its first ETC designation in June 2006; and is now focused on providing service to low income consumers. Nexus explains that it initially began providing its services over wireline technology, and has responded to strong customer demand by offering wireless technology as well. Amendment at 4.

Nexus states that its management has many years of experience in the telecommunications industry and that it supplements its underlying wireless carrier with its own network facilities, back-office and operations support systems, which Nexus operates. The Company asserts it has made a significant financial investment to integrate these systems and it owns and operates its own switching and other facilities located in the state of Ohio, which are housed in a Tier IV co-location facility. *Id.* Lastly, Nexus states it is financially stable and fully capable of honoring its service obligation to customers and federal and state regulatory obligations. Staff believes the Company has adequate financial resources to provide Lifeline services.

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

¹¹ Order No. 29841 at 20.

1. Common Carrier Status. Nexus is a common carrier as defined in U.S.C. Title 47. Application at 3.
2. Provide the Universal Services. Nexus will provide each of the supported services identified in Section 54.101 of C.F.R. Title 47, as amended by the FCC on December 23, 2011 and February 6, 2012, throughout its designated service area. *Id.* at 4.
3. Advertising. Nexus will advertise the availability and rates for its services described in the Application through media of general distribution. *Id.* at 7.
4. The Commitment and Ability to Provide Supported Services. Consistent with the requirements of 47 C.F.R. § 54.202(a)(1)(i), Nexus states that it commits to provide the supported services throughout the proposed designated service area, consistent with applicable requirements including the Commission's ETC service provisioning requirements. *Id.*
5. A commitment to Consumer Protection and Service. Nexus commits to continuing compliance with all applicable state and federal consumer protection and service quality standards, as well as the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. The Company states that it "has already adopted this code for its existing operations, and will honor the code in the proposed designated service area." *Id.* at 8.
6. Description of the Local Usage Plan. Nexus states that it will offer three prepaid wireless service plans as well as other offerings. These plans include a combination of local and domestic long distance calling and texting as described earlier under Nexus's Lifeline Service Offering. Production Request No. 37 Response.
7. Tribal Notification. The Company states that it "will provide a copy of the Application of the affected tribal government or tribal regulatory authority of the tribal areas it intends to serve. The applicable tribal areas include those of the Nez Perce Tribe, the Shoshone-Bannock Tribe, and the Coeur d'Alene Tribe." Second Amendment at 12.

Staff believes Nexus fulfils the aforementioned ETC designation requirements where applicable for a Lifeline-only ETC designation.

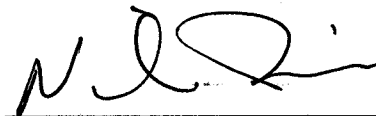
STAFF RECOMMENDATION

Staff has reviewed Nexus Communications, Inc's Application for designation as a Lifeline-only ETC. Staff believes that the Application demonstrates the Company's commitment

to fulfill the obligations of an ETC in Idaho. Nexus will provide all universal service supported by the federal USF throughout its service territory; it has addressed all of the public interest questions that accompany an ETC Application; the Company's compliance plan has been approved by the FCC; the Company will provide multiple pricing plans which will increase customer choice for low-income service in Idaho; and the Company demonstrates that it has the financial capabilities of providing lifeline service. Nexus also states it will contribute to the ITSAP and IECA funds.

Staff believes Nexus's Application for designation as an ETC is in the public interest and should be approved for those wire centers listed in Exhibit A of the initial Application.

Respectfully submitted this 20th day of March 2013.



Neil Price
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 20TH DAY OF MARCH 2013, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. NCI-T-11-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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