

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF NEXUS COMMUNICATIONS,)	
INC. FOR ADDITIONAL DESIGNATION AS AN)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER)	2009-00110
IN KENTUCKY)	

ORDER

On March 12, 2009, Nexus Communications, Inc. d/b/a ReachOut Wireless (“Nexus”), a reseller of Commercial Mobile Radio Service, also known as a Mobile Virtual Network Operator, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (“ETC”). On September 27, 2011, the Commission granted Nexus’s motion to hold this proceeding in abeyance. On December 28, 2012, Nexus requested that the Commission reactivate the proceeding. Concurrent with the request, Nexus amended its petition. Nexus amended its petition to reflect changes to the Lifeline rules and policies of the Federal Communications Commission (“FCC”), promulgated in its Lifeline Reform Order¹ and its USF/ICC Order on reconsideration,² as well as the Commission’s Order dated May 1, 2012 in Administrative Case No. 2012-00146.

Nexus seeks to receive both federal low-income and Kentucky Universal Service Fund (“USF”) support for wireless services. Nexus seeks ETC designation only for the

¹ Lifeline and Link Up Reform and Modernization, et al., WC Docket No. 11-42 et al., Report and Order and Further Notice Of Proposed Rulemaking, 21 FCC Rcd. 6656 (FCC, 2012) (“Lifeline Reform Order”).

² Connect America Fund, et al., Order on Reconsideration, WC Docket No. 10-90 et al. (Dec. 23, 2011) (“USF/ICC Order on Reconsideration”).

purpose of participation in the Lifeline program. Nexus does not seek high-cost support.³

The application states that: (1) Nexus meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;⁴ (2) in accordance with 47 U.S.C. § 214(e)(2), Nexus seeks to be designated as an ETC in the wireless coverage area of its underlying carrier;⁵ and (3) designation of Nexus as an ETC for the designated areas served in Kentucky will serve the public interest.⁶

Nexus's planned wireless Lifeline offering will provide eligible customers with the following three alternative Lifeline plans: 68 minutes per month with unused minutes that carry over to the next month and text messages at the rate of two per each minute of airtime; 125 minutes with unused minutes that carry over to the next month and text messages at the rate of one per each minute of airtime; or 250 minutes with unused minutes that do not carry over to the next month and text messages at the rate of one per each minute of airtime. Lifeline customers will receive a free handset and have the ability to purchase additional airtime.⁷

Nexus uses a variety of outreach programs for its Lifeline supported services, which include direct mail, Internet advertising, and radio and television advertising. Nexus also reaches potential subscribers through retail marketing, including kiosks and point-of-sale promotional materials located in third-party retail establishments, as well

³ Nexus requests ETC designation throughout the licensed service area of its underlying wireless carrier, Verizon Wireless. Amended App. at p. 2.

⁴ Id. at pp. 3-5.

⁵ Id. at p. 2.

⁶ Id. at p. 17.

⁷ Id. at p. 6.

as one retail establishment owned by Nexus. Each channel is intended to induce potential subscribers to contact Nexus either in person, over the Internet or by telephone. Although the logistics of the enrollment process vary somewhat for each channel, as is further described below, in all cases, Nexus asserts that Lifeline applicants are thoroughly screened to ensure that they are qualified before a handset is delivered.⁸

Nexus has stated that it will submit to the Commission the Kentucky USF fee and the Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer (although not billed directly to the customer because the customers do not receive bills.)⁹ Nexus also states that it will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services Board.¹⁰ Nexus states it will not provide toll-limitation services since its calling plans do not charge any fees for toll calls.¹¹

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support mechanisms, using either its own facilities or a combination of its own

⁸ Amended App. Ex. 1, p. 9.

⁹ Amended App. at p. 10

¹⁰ Id.

¹¹ Id. at p. 4.

facilities and resale of another carrier's services throughout its designated service area, and it must advertise the availability and charges for those services.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

Requirements for ETC Designation by the Federal
Communications Commission ("FCC")

In 1997, the FCC issued a Public Notice setting forth the procedures a carrier must use when requesting designation as an ETC from the FCC.¹² The Commission likewise collects similar information pursuant to that Notice. A carrier seeking ETC designation must file a petition providing the following: (1) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Telecommunications Act of 1996 ("the Act"); (2) certification that the petitioner offers the supported services using either its own facilities or a

¹² Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice).

combination of its own facilities and resale of another carrier's services;¹³ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution; and (4) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests to be designated as an ETC from the Commission.¹⁴

In addition, the FCC's rules require that in order to be designated as an ETC, a petitioner must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate that it is financially and technically capable of providing the Lifeline service; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.¹⁵

Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.¹⁶ In determining the public interest, the Commission historically has considered the benefits of increased consumer

¹³ Lifeline Reform Order, FCC 12-11 at ¶. 368 (adopting a blanket forbearance of the facilities requirement of section 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) ("Lifeline Reform Order"). In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Lifeline and Link Up, WC Docket No. 03-109; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23; Report and Order and Further Notice of Proposed Rulemaking Adopted: January 31, 2012 Released: February 6, 2012.

¹⁴ Section 214(e)(6).

¹⁵ 47 C.F.R. § 54.202(a).

¹⁶ 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

choice and the unique advantages and disadvantages of the petitioner's service offering.

The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. The Lifeline program reimburses ETCs for providing qualifying low-income consumers with discounts of \$9.25 off the monthly cost of their telephone service.¹⁷ The Kentucky Lifeline program provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 off the monthly cost of their telephone service.¹⁸

As described below, Nexus has provided the Commission with the information required for designation as an ETC in the service area at issue. We find that the public interest supports such designation, subject to Nexus's compliance with the representations and commitments made by Nexus in its application and the FCC's rules. Nexus must also comply with the conditions set forth in its compliance plan.¹⁹

Offering the Services Designated for Support

Petitioners for ETC designation must certify that they offer all services designated for support by the Commission pursuant to section 254(c) of the Act.²⁰ Nexus has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as a limited ETC, the voice telephony services supported by the Lifeline program. Nexus certifies that it now provides, or will provide

¹⁷ 47 C.F.R. § 54.403(a)(1).

¹⁸ Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues (Ky. PSC May 22, 1998), at 37, determining Kentucky USF support of \$3.50 per line per month.

¹⁹ Amended App. Ex. 1.

²⁰ See 47 U.S.C. § 214(e)(1)(A); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the licensed service areas of its underlying carriers.²¹

Offering the Supported Services Using a Carrier's Own Facilities

In general, petitioners for ETC designation must certify that they will offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.²² In its Lifeline Reform Order,²³ the FCC decided to forbear, on its own motion, from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC. Nexus opted to pursue forbearance. On December 26, 2012, the FCC approved Nexus's Compliance Plan ("Compliance Plan").²⁴ A copy of the approved Compliance Plan and the FCC Public Notice of Approval was included with the amended application as Exhibit 1.

²¹ Specifically, Nexus certifies that it provides voice telephony services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, which includes: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) access to emergency services; and (4) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See amended application at pp. 3-5. In the Lifeline Reform Order, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See Lifeline Reform Order at ¶ 49.

²² 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Rcd at 22949; See also 47 U.S.C. § 214(e)(1)(A); Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

²³ See generally Lifeline Reform Order.

²⁴ Lifeline and Link Up Reform and Modernization, et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (December 26, 2012).

Nexus, in its provision of wireless services, will offer resold services which Nexus will obtain from Verizon Wireless, its underlying wireless provider. This service area footprint allows Nexus to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, Nexus has shown it is able to offer all of the services and functionalities supported by the universal-service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service area.

Advertising Supported Services

Petitioners for ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how they will do so.²⁵ Nexus has committed to advertise the availability of the supported services using media of general distribution.²⁶ In addition, Nexus has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁷ To increase accountability within the program and to target support where it is needed most, the FCC has adopted rules requiring ETCs to explain in their marketing materials that Lifeline service is a government benefit, that the individual must be eligible to receive the benefit, and that the consumer may receive no more than one benefit at a time from the program.²⁸ Nexus has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²⁹

²⁵ 47 U.S.C. § 214(e)(1)(B); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

²⁶ Amended App. at pp. 7-8.

²⁷ Id.

²⁸ Lifeline Reform Order at ¶¶ 274-77; 47 C.F.R. § 54.405.

²⁹ App. at p. 8.

Designated Service Areas

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.³⁰ In its application, Nexus seeks designation as a limited ETC, eligible only for Lifeline support, in the licensed service areas of its underlying carrier in Kentucky.³¹

Compliance with Applicable Service Requirements

Petitioners for ETC designation must certify that they will comply with all service requirements applicable to the support they receive.³² Nexus has done so and has demonstrated its commitment to comply with the FCC's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.³³ We also find that Nexus's sample Lifeline certification forms used for consumer enrollment, and attached as exhibits to its amended application, satisfy the FCC's rules.³⁴

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³⁵ Since Nexus is providing service to its customers through the use of service obtained from another carrier, it is able to provide to its customers the same ability to remain functional in emergency situations as currently

³⁰ Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 5.

³¹ Amended App. at p. 2 and Supplement Exhibit 1.

³² 47 C.F.R. § 54.202(a)(1)(i).

³³ Amended App. Ex. 1 at p. 7.

³⁴ Amended App. at Ex. 1; 47 C.F.R. § 54.410 (setting forth the Commission rules on subscriber eligibility determination and certification); and Lifeline Reform Order at Appendix C (setting forth certification requirements for Lifeline subscribers).

³⁵ 47 C.F.R. § 54.202(a)(2).

provided by the carrier to its own customers, including 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 of managing traffic spikes resulting from emergency situations.³⁶ We find that Nexus has demonstrated its ability to remain functional in emergency situations.

Satisfaction of Applicable Consumer Protection and Service-Quality Standards

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer protection and service-quality standards.³⁷ Nexus has committed to complying with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Services and will therefore satisfy this requirement.³⁸

Financial and Technical Capability

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing Lifeline-supported services.³⁹ Nexus has been in the telecommunications business since 2000. Nexus started in the competitive local exchange carrier market in 2001 and received its first ETC designation in June 2006. Nexus has been designated as an ETC in 26 states and provides wireless service in 18 states. Nexus is focused on providing service to Lifeline consumers, mainly in the wireless market. Nexus is only a recipient of low-income USF and does not receive high-cost USF support in any state.⁴⁰

³⁶ Amended App. at p 8.

³⁷ 47 C.F.R. § 54.202(a)(3).

³⁸ Amended App. at pp. 7.

³⁹ 47 C.F.R. § 54.202(a)(4); See also Lifeline Reform Order at ¶ 387.

⁴⁰ Amended App. at 9.

Nexus's management includes President Steven Fenker, who has held management positions in the telecommunications industry for 28 years, and Mark Deek, who has 15 years of experience in intercarrier relations, subscriber care, and billing database management. In order to provide wireless Lifeline services, Nexus purchases wireless minutes from Verizon Wireless. Nexus supplements Verizon Wireless' wireless network with its own network facilities, back-office and operations support systems. Nexus owns and operates its own switching and other facilities, which are housed in a Tier IV co-location facility located in Ohio.⁴¹

Nexus derives most of its revenue from the sale of prepaid wireless services, including the Lifeline program. Nexus's other revenue sources are from the sale of wireline and wireless services to non-Lifeline subscribers, including the sale of optional replenishment airtime and text minutes.⁴² Based on the foregoing, we find that Nexus is financially and technically capable of providing Lifeline-supported services.

Information Regarding the Terms and Conditions of Lifeline Plans

Petitioners for ETC designation must submit information regarding the terms and conditions of any voice telephony plans they offer to Lifeline subscribers.⁴³ Nexus's planned wireless Lifeline offering will provide eligible customers with the three alternative Lifeline plans as discussed above.

All plans will include a free 911-compliant handset. Minutes in each plan can be used "anytime" nationwide for domestic calls, including local or intrastate/interstate long distance calls. Nexus' Lifeline subscribers may purchase additional minutes on a

⁴¹ Id.

⁴² Id. at 10.

⁴³ 47 C.F.R. § 54.202(a)(5).

prepaid basis in various denominations ranging from \$3.00 to \$50.00. Nexus will also offer an unlimited talk and text additional air-time card to Lifeline Subscribers for \$26.50. This card provides unlimited local and domestic long distance calling, and unlimited text messaging for 30 calendar days. Nexus permits Lifeline subscribers to block international calls at no additional charge. Calls to 911 emergency services and Nexus's subscriber services are always free, and may be made regardless of service activation or availability of minutes.⁴⁴

Public Interest Analysis

Prior to designating a carrier as an ETC, the Commission must examine the carrier's services and determine whether such designation is in the public interest.⁴⁵ We find that Nexus offers a Lifeline plan that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility. New entrants in the Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

Nexus will provide competitive wireless services throughout its service area in Kentucky. Nexus is a reseller of commercial mobile radio service, will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), and will provide competitive wireless services throughout its service area through resale of other carriers' services. The provision of services through resale of other carriers' services will ensure that Nexus can provide services to customers throughout the service area.

Designation of Nexus as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. Therefore, in order

⁴⁴ Amended App. at 6-7.

⁴⁵ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

to remain competitive in low-income markets, all providers will have greater incentives to improve coverage, increase service offerings, and lower prices. This results in improved consumer services and, consistent with federal law, benefits consumers by allowing Nexus to offer the services designated for support at rates that are just, reasonable, and affordable. Nexus will offer an easy-to-use, competitive, and affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.

Regulatory Oversight

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, we find it necessary to require Nexus to comply with certain conditions. The designation of Nexus as a limited ETC is conditioned on Nexus's compliance with: (1) the representations and commitments made by Nexus in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.⁴⁶

Subject to the above-stated conditions, we find that designating Nexus as an ETC eligible only to receive Lifeline support is in the public interest.

Under 47 U.S.C. § 254(e), the petitioners are required to use the specific universal-service support they receive "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁴⁷ An ETC

⁴⁶ See generally Lifeline Reform Order.

⁴⁷ 47 U.S.C. § 254(e). We note that because petitioners are not eligible to receive federal universal service high-cost support, they are not required to file reports and certifications pursuant to section 54.313 of the FCC's rules.

receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁴⁸

As previously noted, Nexus has an approved compliance plan that currently governs its provision of Lifeline service.⁴⁹ In providing Lifeline services pursuant to the conditional ETC designation granted herein, Nexus must comply with the measures described in its existing compliance plan and in its application, as well as the FCC's rules.

Finally, we note that the Commission or the FCC may institute an inquiry on its own motion to examine the petitioner's records and documentation to ensure that the universal-service support it receives is being used for the purpose for which it was intended.⁵⁰ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company ("USAC") upon request. We further emphasize that, if the petitioner fails to fulfill the requirements of the Act, the FCC's rules, or the terms of this Order after it begins receiving universal-service support, the Commission may exercise its authority to revoke such petitioner's ETC designation.⁵¹ The FCC also may assess forfeitures for violations of FCC rules and orders.⁵²

⁴⁸ See TracFone Forbearance Order, 20 FCC Rcd at 15105-06, ¶¶ 26.

⁴⁹ Lifeline and Link Up Reform and Modernization, et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (August 8, 2012).

⁵⁰ 47 U.S.C. §§ 220, 403.

⁵¹ See Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, ¶ 15 (2000); See also 47 U.S.C. § 254(e).

⁵² See 47 U.S.C. § 503(b).

Annual Certification and Verification

Each year Nexus will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁵³ The Commission finds that Nexus's plan to meet the annual certification and verification requirements is in accordance with the FCC's requirements.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:


1. The designation of Nexus as a limited ETC is conditioned on Nexus's compliance with: (1) the representations and commitments made by Nexus in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.
2. Nexus is designated as an ETC for the purpose of offering Lifeline service only in the underlying carriers' licensed service areas throughout the state.
3. During the current certification period, Nexus shall be eligible to receive federal and Kentucky USF support for Lifeline.
4. Nexus shall advertise the availability of and charges for these services using media of general distribution.
5. Nexus shall comply with the FCC's annual certification process for Lifeline customers.
6. A copy of this Order shall be served upon the FCC and the USAC.

⁵³ Administrative Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012).

By the Commission

ENTERED ¹¹
MAY 16 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



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Case No. 2009-00110

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