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August 7, 2015

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PUBLIC SERVICE
COMMISSION

Public Service Commission
211 Sower Blvd.
Frankfort, Kentucky 40601

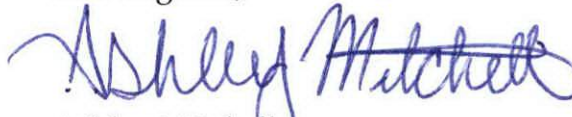
Re: Case No. 2014-00367

Dear Sir or Madam Clerk:

Please find enclosed one original and eleven (11) copies of a Status Report and Notice of Withdrawal in the above named matter. Please file this Status Report and Notice accordingly and one copy to our office in the enclosed self-addressed, stamped envelope.

Thank you for your assistance in this matter. Should you have any questions or need anything further, please do not hesitate to call.

Best Regards,



Ashley Mitchell
Legal Assistant

Enclosures: as stated

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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In the Matter of:

Nexus Communications, Inc. Request for
Rehearing of Denial of Confidential
Treatment of FCC Form 555

Case No. 2014-00367

AUG 10 2015
PUBLIC SERVICE
COMMISSION

**STATUS REPORT
AND NOTICE OF WITHDRAWAL OF REQUEST FOR REHEARING**

Nexus Communications, Inc. ("Nexus") respectfully submits the following consistent with the October 22, 2014 order ("Order") of the Kentucky Public Service Commission ("Commission):

In a letter sated September 11, 2014, the Commission denied Nexus' request for confidential treatment of certain portions of its FCC Form 555. The basis for denial was that the information is publicly available at the Federal Communications Commission ("FCC") and Universal Service Administration Company ("USAC").

On October 3, 2014, Nexus filed a request for rehearing of the September 11, 2014 letter. The basis for a rehearing was that, contrary to the September 22, 2014 letter, the information in question is not publically available at through the FCC or USAC because the information was filed at the FCC together with a motion for confidential treatment. The FCC's Wireline Competition Bureau ("Bureau") had denied the request, but Nexus had petitioned the FCC to reconsider that denial. While the FCC had not at the time made a decision, it and the USAC were treating the information as confidential pending the FCC's determination on reconsideration of the Bureau's decision.

In the Order, the Commission agreed that since the information was being afforded confidential status pending the FCC's decision that it would also afford confidential status to the

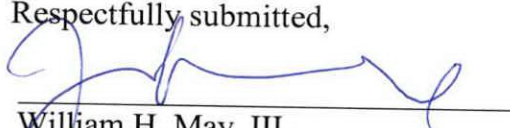
martial pending that decision. The Commission also instructed Nexus to file a report every 90 days indicating the status of reconsideration at the FCC and to file a copy of the decision within 20 days of the decision.

On June 22, 2015, the FCC issued an order upholding the Bureau's initial denial of Nexus' petition for reconsideration, meaning that the information is no longer entitled to confidential status at the FCC or USAC. Consistent with the Order, the portions of the FCC order addressing Nexus' request for confidential treatment are attached hereto as Exhibit A.¹

At this time, Nexus recognizes that there is no need for confidentiality in this proceeding since the information in question is publicly available at the federal level. Nexus also recognizes, based on the Commission's September 11, 2014 letter and the Order, that the Commission was only going to afford permanent confidential status, if at all, if the FCC chose to do so. Accordingly, Nexus hereby submits this final status report and withdraws its request for rehearing.

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August 7, 2015

¹ Only portions relating to confidentiality are attached. However, the order can be viewed in full at: https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-71A1.pdf (last accessed 08/07/15).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Lifeline and Link Up Reform and)
Modernization) WC Docket No. 11-42
Telecommunications Carriers Eligible for)
Universal Service Support) WC Docket No. 09-197
Connect America Fund) WC Docket No. 10-90

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING, ORDER ON
RECONSIDERATION, SECOND REPORT AND ORDER, AND MEMORANDUM OPINION
AND ORDER

Adopted: June 18, 2015

Released: June 22, 2015

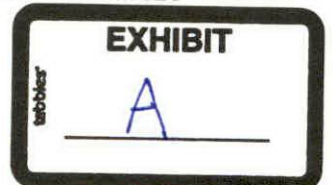
Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Wheeler and Commissioners Clyburn and Rosenworcel issuing separate
statements; Commissioners Pai and O’Rielly dissenting and issuing separate
statements.

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I. INTRODUCTION

1. For nearly 30 years, the Lifeline program has ensured that qualifying low-income Americans have the opportunities and security that voice service brings, including being able to find jobs, access health care, and connect with family.¹ As the Commission explained at the program's inception,

¹ The Lifeline program was originally established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service in the wake of the divestiture of AT&T. See *MTS and WATS Market Structure, and Amendment of Parts 67 & 69 of the Commission's Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985) (*MTS and WATS Market Structure Report and Order*).

specified in current section 54.420(b) of the rules would not be useful.⁵⁴¹ We emphasize that we do not intend for these Lifeline providers to avoid being audited, but OMD should grant appropriate waivers to delay the audits until such time as it would be possible to conduct a quality and cost-effective audit, as discussed above.⁵⁴² We note we are seeking comment on revising our rule accordingly in the further notice section of this item.⁵⁴³

V. MEMORANDUM OPINION AND ORDER

271. The Commission has before it for consideration an Application for Review filed on May 13, 2013, by Nexus Communications, Inc. (Nexus), Nexus Request for Confidential Treatment of its FCC Form 555 filed January 31, 2014 and February 3, 2015 (collectively, Nexus 2014 and 2015 Confidentiality Request) and Kingdom Telephone Company's (Kingdom Telephone) confidential filing of its FCC Form 555 filed January 22, 2014 (Kingdom Telephone's Filing).⁵⁴⁴ We affirm the Bureau's conclusion, and also find that making this information publicly available would serve the public interest by furthering transparency in the Lifeline program. As a result, we deny Nexus' Application for Review, the Nexus 2014 Confidentiality Request, and confidentiality of Kingdom Telephone's Filing.

272. *Background.* Nexus seeks review of a Bureau order denying its request for confidential treatment of its FCC Form 555 annual recertification and non-usage results filed with the Commission and USAC for data year 2012 and a pending request for confidentiality of its FCC Form 555 results for data year 2013.⁵⁴⁵ In the *Nexus Order*, the Bureau denied Nexus's request because it concluded that public inspection of the number of Nexus's subscribers that were de-enrolled under the Lifeline program rules would not cause Nexus substantial competitive harm.⁵⁴⁶

273. In the *Lifeline Reform Order*, the Commission required all ETCs to recertify annually the eligibility of their subscribers and required ETCs that do not charge a fee to the customer for the Lifeline service to ensure Lifeline subscribers are using the service on a regular basis.⁵⁴⁷ Subscribers who are no longer eligible or have not used the service in a 60-day period are subject to de-enrollment from the program.⁵⁴⁸ The Commission required ETCs to submit the results of their recertification and non-usage

⁵⁴¹ The auditee should have enough subscribers and Lifeline support so that the auditors can make a determination regarding auditee compliance with Commission rules.

⁵⁴² See *supra* para. 269.

⁵⁴³ See *supra* para. 216.

⁵⁴⁴ See Nexus Communications, Inc. Application for Review, WC Docket No. 11-42 (filed May 13, 2013) (Nexus AFR); see also Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Jan. 31, 2014); Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42 (filed Feb. 3, 2015); (collectively, Nexus 2014 and 2015 Confidentiality Request). The Nexus 2014 and 2015 Confidentiality Request raises the same arguments raised in the Nexus AFR regarding the confidential nature of information contained in the FCC Form 555. See generally Nexus 2014 and 2015 Confidentiality Request. Kingdom Telephone filed its FCC Form 555 for data year 2013 under confidentiality but did not submit any arguments substantiating its claim that its FCC Form 555 is highly confidential. See Kingdom Telephone Company FCC Form 555, WC Docket No. 11-42 (filed Jan. 22, 2014) (Kingdom Telephone Filing).

⁵⁴⁵ See *Nexus Confidentiality Denial Order*, 28 FCC Rcd 5535 (2013) (*Nexus Order*); Nexus AFR; Nexus 2014 Confidentiality Request.

⁵⁴⁶ See *Nexus Order*, 28 FCC Rcd at 5536-37, paras. 6-7.

⁵⁴⁷ See *Lifeline Reform Order*, 27 FCC Rcd at 6714-15, 6768-69, paras. 129-30, 257-58; see also 47 C.F.R. §§ 54.405(e)(3), 54.410(f).

⁵⁴⁸ The Commission noted in the *Lifeline Reform Order* that Lifeline support is wasted when an ETC seeks and receives Lifeline support for a consumer who has abandoned the service because "the program is not actually benefiting the consumer for which it was intended." *Lifeline Reform Order*, 27 FCC Rcd at 6768, para. 255.

de-enrollments on FCC Form 555 by January 31 of each year.⁵⁴⁹ The FCC Form 555 required all carriers receiving Lifeline support to provide by study area code: (i) the number of subscribers claimed on FCC Form(s) 497 filed with USAC in May 2012 for data year 2012 and in February as the baseline going forward;⁵⁵⁰ (ii) the number of subscribers contacted to recertify eligibility and the number that were de-enrolled or are scheduled for de-enrollment for non-response or ineligibility; and (iii) the number of subscribers that were de-enrolled each month for non-usage of prepaid service (service for which ETC does not assess or collect a monthly fee from its subscribers) during the relevant calendar year.

274. The FCC Form 555 used by ETCs is approved by the Office of Management and Budget (OMB) under OMB Control No. 3060-0819. When submitting the request for approval of that form pursuant to the Paperwork Reduction Act,⁵⁵¹ the Commission stated that it was not requesting ETCs to submit confidential information to the Commission, and that if ETCs believed that the requested information was confidential they could request confidential treatment under section 0.459 of the Commission's rules any time during the Paperwork Reduction Act approval process.⁵⁵² After a sixty-day Commission comment period, and an additional thirty-day OMB comment period, no comments were submitted with regard to the Commission's statement that the information requested is not confidential.⁵⁵³

275. Nexus submitted its FCC Form 555s on January 31, 2013, January 31, 2014, and February 3, 2015, and Kingdom Telephone submitted its FCC Form 555 on January 22, 2014. Concurrently, Nexus filed a request for confidential treatment of the information contained in its FCC Form 555, claiming that the state-specific subscriber counts, including the number of subscribers that responded to recertification contacts, the number of ineligible subscribers, and other information regarding the company's communications services are confidential pursuant to sections 0.457 and 0.459 of the Commission's rules, as well as the Freedom of Information Act (FOIA) Exemption 4 and the Trade Secrets Act.⁵⁵⁴ Nexus claimed that divulging such sensitive information to the public would cause it to suffer competitive harm. The Bureau denied Nexus' 2013 request, determining that release of state-by-state Lifeline subscriber count and de-enrollments would not cause Nexus competitive harm in the market.⁵⁵⁵

276. On May 13, 2013, Nexus submitted its Application for Review, asking the Commission to reverse the Bureau's determination and arguing again that the data contained in the FCC Form 555 is

⁵⁴⁹ See *id.* at 6715-16, 6722, 6767, paras. 130-32, 148, 257; see also 47 C.F.R. §§ 54.405(e)(3), 54.416.

⁵⁵⁰ See *Lifeline Reform Order*, 27 FCC Rcd at 6715, para. 130; see also *Wireline Competition Bureau Provides Guidance Regarding the 2013 Lifeline Recertification Process*, WC Docket No. 11-42, Public Notice, DA 13-1188 (Wireline Comp. Bur. May 22, 2013) (*Lifeline Recertification PN*). When the Commission instituted the recertification requirement in the *Lifeline Reform Order*, the Commission required ETCs to use the May 2012 Form 497 and established May 2012 data as the baseline. While this baseline was appropriate for the initial recertification round, the *Lifeline Recertification PN* clarified that the Commission will use an ETC's February Form 497 data as the baseline going forward to ensure that nearly all subscribers subject to recertification in 2013 and future years were included in the baseline.

⁵⁵¹ See 44 U.S.C. § 3507.

⁵⁵² See Supporting Statement (Sept. 2012), <http://www.reginfo.gov/public/do/DownloadDocument?documentID=346743&version=2>; 47 C.F.R. § 0.459.

⁵⁵³ See OIRA Conclusion (Nov. 7, 2012), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201207-3060-011 (last visited June 18, 2015).

⁵⁵⁴ See Nexus Request for Confidential Treatment of FCC Form 555, WC Docket No. 11-42, at 1-2 (filed Jan. 31, 2013); Letter from Christopher W. Savage, Counsel to Nexus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 (filed Feb. 19, 2013) (Nexus Supplement); Nexus 2014 and 2015 Confidentiality Request; see also 5 U.S.C. § 552(b)(4) (FOIA Exemption 4); 18 U.S.C. § 1905 (Trade Secrets Act); 47 C.F.R. § 0.457.

⁵⁵⁵ See *Nexus Order*, 28 FCC Rcd at 5536-37, para. 6.

competitively sensitive and should be withheld from public disclosure.⁵⁵⁶ For data year 2013, Nexus filed a request for confidential treatment of its FCC Form 555.⁵⁵⁷ On January 22, 2014, Kingdom Telephone filed its FCC Form 555 for data year 2013 claiming such information was highly confidential.⁵⁵⁸

277. *Discussion.* Based on the record before us, we deny Nexus's Application for Review regarding confidentiality of its FCC Form 555 filed January 2013, deny Nexus's request for confidentiality of the FCC Form 555 filed January 2014 and February 2015, and deny confidentiality of Kingdom Telephone's FCC Form 555 filed January 2014. We are not persuaded by Nexus's arguments that the release of the FCC Form 555 data will place it at a competitive disadvantage and cause it substantial competitive harm. Additionally, when balancing the public and private interests at stake, we conclude that making this information available will serve the public interest by furthering transparency in the Lifeline program and that the public interest outweighs any countervailing interest that Nexus has in keeping the information confidential. We conclude that each of these reasons provide a sufficient basis for our denial of Nexus's and Kingdom Telephone's requests.

278. Nexus contends the information reported in its FCC Form 555 should be withheld from public disclosure pursuant to sections 0.457 and 0.459 of our rules, FOIA Exemption 4, and the Trade Secrets Act. The Trade Secrets Act acts as an affirmative restraint on an agency's ability to release business competitive information to the public and provides criminal and civil penalties for federal employees who disclose "information . . . [that] concerns or relates to trade secrets, processes, operations, style of work or apparatus," except to the extent that such disclosure is "permitted by law."⁵⁵⁹

279. FOIA Exemption 4 provides that information that is required to be submitted to the Government may be withheld by the Government "if the disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained."⁵⁶⁰ In order for the latter criterion to apply, there must be a showing of actual competition and a likelihood of substantial competitive injury.⁵⁶¹ Information that is in the public domain, however, is not subject to protection as "confidential" under Exemption 4.⁵⁶² The United States Court of Appeals for the D.C. Circuit has held that the Trade Secrets Act is "at least coextensive with" FOIA Exemption 4.⁵⁶³ Consequently, if an agency may withhold information under Exemption 4, the agency is barred from releasing it under the Trade Secrets Act, unless the disclosure is otherwise authorized by law.⁵⁶⁴

280. We do not find a basis on which to justify withholding this information under either Exemption 4 of the FOIA or the Trade Secrets Act. Each ETC's Lifeline disbursement amounts are

⁵⁵⁶ See Nexus AFR.

⁵⁵⁷ See Nexus 2014 Confidentiality Request.

⁵⁵⁸ See Kingdom Telephone Filing.

⁵⁵⁹ 18 U.S.C. § 1905.

⁵⁶⁰ *National Parks & Cons. Ass'n v. Kleppe*, 498 F.2d 765, 770 (D.C. Cir. 1974) (*National Parks*); see also *Mercury PCS II, LLC*, FOIA Control No. 98-85, 15 FCC Rcd 14559, 14562, para. 7 (2000) (citing *National Parks & Cons. Ass'n v. Kleppe*, 547 F.2d 673, 684 (D.C. Cir. 1976) (stating that, generally, business strategies or marketing plans that would enable competitors to devise counter-strategies are competitively sensitive materials within the meaning of Exemption 4), and *In the Matter of Johan Karlsen*, 24 FCC Rcd 12299 (2009) (upholding Enforcement Bureau's withholding of detailed financial statements, such as revenue data and tax returns).

⁵⁶¹ See, e.g., *CNA Fin'l Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987).

⁵⁶² *Id.* at 1154.

⁵⁶³ *Id.* at 1151-52.

⁵⁶⁴ *Id.*

available on USAC's website on a monthly basis for each study area code, and for most of the year, all ETCs were paid a flat rate amount of \$9.25 in non-Tribal areas, which gives the public an estimate of subscriber counts per study area code. Nexus argues that the USAC disbursement tool does not break down disbursements for Tribal and non-Tribal areas, which it claims makes it difficult to derive subscriber counts for states with a wide-mix of Tribal and non-Tribal subscribers.⁵⁶⁵ Although the disbursement tool on USAC's website does not currently disaggregate disbursements, there are other sources of publicly available information from which the public can derive subscriber counts. Not only does the disbursement tool provide some highly useful information about disbursement amounts each month in each state for each ETC, but USAC's Quarterly Reports provide the break-out of Tribal and non-Tribal subscribers by state, all of which could be used to estimate subscriber numbers within a limited range.⁵⁶⁶ Nexus' subscriber counts for the period in question are therefore effectively public and thus cannot be considered to be confidential under the FOIA.⁵⁶⁷ Further, given that the public already has available estimates of Nexus's subscriber counts, Nexus has not shown how the release of a slightly more accurate count would cause it substantial competitive harm.

281. Additionally, for data year 2012, Nexus' claim of substantial competitive harm is undercut by the fact that every other ETC has publicly filed the same information Nexus claims would damage its competitive position in the marketplace without confidential treatment.⁵⁶⁸ This calls into question whether Nexus' information is competitively sensitive and belies its arguments that the release places it at a competitive disadvantage. We also are not convinced that public inspection of de-enrollment counts for failure to recertify or failure of subscribers to use such service within 60 days will result in substantial competitive harm. In its Application for Review and 2014 and 2015 Request for Confidentiality, Nexus attempts to bolster its argument by analyzing the data of its competitors and making claims of how such data provides competitors insight into competitive business strategies.⁵⁶⁹ We are not persuaded that such speculative examples will place such competitors at a disadvantage, especially

⁵⁶⁵ Nexus AFR at 9. Nexus also argues that the USAC disbursement tool, which provides the disbursements based on the filed FCC Form 497s, may not represent a fully accurate count of subscribers because ETCs can file revisions to the data contained in the FCC Form 497s at a later date. *Id.* The USAC disbursement tool, however, is updated to account for revisions to the FCC Form 497 so this tool, along with USAC Low-Income Quarterly Reports, provide the public the ability to deduce with a high level of accuracy an ETC's subscriber count. *See* USAC Funding Disbursement Search, <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited June 18, 2015); USAC FCC Filings, 2012 First Quarter Appendices, <http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx> (last visited June 18, 2015).

⁵⁶⁶ *See* USAC Quarterly Reports, <http://www.universalservice.org/about/tools/fcc/filings/2012/q1.aspx> (last visited June 18, 2015) (providing number of non-Tribal and Tribal subscribers by state or jurisdiction, disbursement amounts by ETC and state or jurisdiction which also breaks out Tribal and non-Tribal for prior months).

⁵⁶⁷ *Worthington Compressors Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981) (*Worthington*) (stating that, with regard to FOIA Exemption 4, "[i]f the information is freely or cheaply available from other sources, such as reverse engineering, it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm" (emphasis added). Conversely, *Worthington* states that, if obtaining information from public sources "would be so expensive or arcane as to be impracticable," Exemption 4 could apply. *Id.* Based on the record before us, we conclude that it would not be so expensive or arcane to be impracticable for the public to approximate subscriber counts contained in the FCC Form 555 based on publicly available data.

⁵⁶⁸ Under the Commission's rules, ETCs are required to file the FCC Form 555 with the Commission and the Administrator. *See* 47 C.F.R. § 54.416. In filing with the Commission, USAC directed ETCs to submit to the Commission via the Electronic Comment Filing System in Docket 11-42. TracFone initially requested confidential treatment of its Form 555 information, but withdrew its request shortly thereafter. For calendar year 2014, Nexus and an incumbent local exchange carrier, Kingdom Telephone Company, were the only ETCs that filed their FCC Form 555 under confidentiality. *See* Nexus 2014 Confidentiality Request; Kingdom Telephone Company Letter claiming FCC Form 555 as Highly Confidential; WC Docket No. 11-42 (filed Jan. 22, 2014).

⁵⁶⁹ *See* Nexus AFR at 16-18; Nexus AFR, Attach. 1; Nexus 2014 Confidentiality Request, Attachment.

when, for data year 2013, no other competitors have raised such arguments. We therefore reject Nexus's assertion that public disclosure of the FCC Form 555 data will cause it substantial competitive harm in the marketplace. This conclusion is buttressed by the fact that the state of Iowa required that Nexus's Form 555 information be made public and Nexus complied with that requirement.⁵⁷⁰

282. As an independent reason for denying Nexus's and Kingdom Telephone's requests, we conclude that making the FCC Form 555 information available would serve the public interest by furthering transparency in the Lifeline program. Even if the Nexus data is covered by the Trade Secrets Act, the Commission may release such information where permitted by law. The Commission has determined that sections 0.457(d)(1) and 0.457(d)(2) of its rules can serve as authorization to release records otherwise falling within the scope of the Trade Secrets Act.⁵⁷¹ Under section 0.457(d)(2), the Commission will not release records that contain trade secrets or confidential commercial information and are subject to a request for confidential treatment, without a "persuasive showing" that release is warranted. The Commission has found that, consistent with the Supreme Court's decision in *FCC v. Schreiber*,⁵⁷² the rules contemplate a balancing of the public and private interests at stake prior to release of confidential records.⁵⁷³ Where such a balancing has taken place, and a persuasive showing that release is warranted is present, we may release properly exempt information on a discretionary basis.

283. Consistent with section 0.457(d)(2) of our rules, we find a strong public interest in ensuring that Lifeline funds are properly allocated and in understanding the extent to which ETCs are complying with the Commission's Lifeline rules.⁵⁷⁴ The information contained in the FCC Form 555 provides the public a view of how ETCs are implementing key provisions of the Commission's reform of the Lifeline program.⁵⁷⁵ These provisions are essential safeguards in protecting the Lifeline program from waste, fraud, and abuse. By implementing a recertification requirement that all ETCs de-enroll subscribers who are no longer eligible for the Lifeline program or who fail to respond to the ETC's efforts to determine subscriber eligibility, the Commission ensured "that support is not distributed where subscribers fail to evidence their ongoing eligibility for Lifeline."⁵⁷⁶

284. The FCC Form 555, and the information contained therein, is an important tool in allowing the Commission and the public to monitor and enforce these crucial provisions in the Lifeline

⁵⁷⁰ Nexus has already publicly filed Iowa-specific FCC Form 555 information before the Iowa Utilities Board because that state commission has determined that such information is not deemed confidential. See Nexus FCC Form 555 Iowa, Iowa Utilities Board (filed Jan. 31, 2013), <https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mtcw/~edisp/140164.pdf>.

⁵⁷¹ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Notice of Inquiry and Notice of Proposed Rulemaking, 11 FCC Rcd 12406, 12411-15, paras. 9-16 (1996); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24820, para. 5 (1998).

⁵⁷² *FCC v. Schreiber*, 381 U.S. 279 (1965).

⁵⁷³ 47 C.F.R. § 0.461(f)(4); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁴ In their comments, NASUCA and NCLC argue that competition between ETCs will not guarantee that federal Universal Service Lifeline funds are well allocated. In order to assure Lifeline funds are well allocated, NASUCA and NCLC argue that reforms to the current Lifeline program should be the subject of public discourse and be information driven. Public access to ETC and state specific information as reported by Nexus and other ETCs through, among other vehicles, the FCC Form 555 is therefore critical to our ongoing Lifeline regulation. See Comments of NASUCA and NCLC, WC Docket No. 11-42 (filed June 6, 2013) (NASUCA Comments).

⁵⁷⁵ See NASUCA Comments at 10.

⁵⁷⁶ *Lifeline Reform Order*, 27 FCC Rcd at 6720, para. 142.

program.⁵⁷⁷ In balancing the public and private interests at stake, we find that there is a strong public interest in favor of the release of Nexus's and Kingdom Telephone's FCC Form 555 information.⁵⁷⁸ Based on the determination that the public interest outweighs the risk of competitive harm to Nexus and Kingdom Telephone, we find a persuasive basis on which to release these documents.⁵⁷⁹

285. We delay the effective date of this Memorandum Opinion and Order because under section 0.459(g) of the Commission's rules, if an Application for Review of the denial of a confidentiality request is denied, the person who submitted the request may, within ten business days, seek a judicial stay of the ruling.⁵⁸⁰ The release of information, even under a protective order, will be delayed pursuant to section 0.459(g) unless and until any judicial stay request is resolved.⁵⁸¹

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

286. As required by the Regulatory Flexibility Act of 1980 (RFA),⁵⁸² the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Order on Reconsideration and Second Report and Order. The FRFA is set forth in Appendix D.

B. Paperwork Reduction Act Analysis

287. This Order on Reconsideration and Second Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,⁵⁸³ the Commission previously sought specific comment on how it might further reduce the information collection burden on small business concerns with fewer than 25 employees.

⁵⁷⁷ See 47 C.F.R. § 0.459(d)(2); *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁸ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 11 FCC Rcd at 12417, para. 21.

⁵⁷⁹ See 47 C.F.R. §§ 0.459(d)(2), 0.461(f)(4). Although we do not believe that such a finding is necessary, we also conclude that the information constitutes a "necessary link in a chain of evidence" that will resolve an issue before the Commission. See *CBS Corp. v. FCC*, No. 14-1242, slip op. at 9-17 (D.C. Cir. May 8, 2015) (citing *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd at 24823, para. 8). Specifically, the public cannot monitor that Lifeline funds are properly allocated and ensure that ETCs are complying with the Commission's Lifeline rules without knowing the details of those expenditures. *Lifeline Reform Order* or *Lifeline FNPRM*

⁵⁸⁰ 47 C.F.R. § 0.459(g).

⁵⁸¹ See *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, GC Docket No. 96-55, Report and Order, 13 FCC Rcd 24816, 24883, para. 23 (1998) (noting "that where a request for confidential treatment is pending, release of information, even under a protective order, will be delayed pursuant to Section 0.459(g) to permit the submitting party to file an application for review with the Commission and then a judicial stay").

⁵⁸² See 5 U.S.C. § 604. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

⁵⁸³ See 44 U.S.C. § 3506(c)(4).