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July 16, 2009

RECEIVED

JUL 16 2009

**PUBLIC SERVICE
COMMISSION**

Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RE: PSC Case No. 2009-00110

Dear Mr. DeReoun:

Enclosed for filing in this case please find an original and four copies of Nexus Communications, Inc.'s Responses to Commission Staff's Data Requests and Nexus's Petition for Exemption. Please place your file stamp on the extra copies and return to me via our runner.

If you have any questions concerning this filing, please do not hesitate to contact me. Thank you very much for your attention to this matter.

Sincerely yours,

Stoll Keenon Ogden PLLC

Deborah T. Eversole

DTE: jms
Enclosures

Cc:

107514.122280/587429.1

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 16 2009

PUBLIC SERVICE
COMMISSION

In the Matter of:

PETITION OF NEXUS)
COMMUNICATIONS, INC. FOR)
ADDITIONAL DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS)
CARRIER IN KENTUCKY)

CASE NO. 2009-00110

RESPONSES OF NEXUS COMMUNICATIONS, INC.
TO COMMISSION STAFF'S DATA REQUESTS

1. The Federal Communications Commission granted TracFone Wireless, Inc.'s ('TracFone') Petition for Forbearance and designated TracFone as an Eligible Telecommunications Carrier ("ETC") in certain states subject to six conditions.¹ Please explain in detail if Nexus is willing to accept those same conditions and how it will accomplish each condition.

RESPONSE: Nexus meets the federal requirements of 47 C.F.R. § 54.201 as it will "[o]ffer the services supported by federal universal service support mechanisms...either using its own facilities or a combination of its own facilities and resale of another carrier's services"² and as such Nexus does not need, and is not compelled to seek, forbearance from the facilities requirement enumerated in 47 C.F.R. § 54.201. A forbearance is required only in instances where a carrier is requesting waiver from specific federal requirements, as Tracfone, as a pure reseller, was compelled to do in its acquiring forbearance from the facilities requirement of 47

¹ Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order") and In the Matter of Federal-State Joint Board on Universal Service: TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al., 23 FCC Rcd 6206 (2009) (granting TracFone's ETC petitions for Alabama, Connecticut, Delaware, District of Columbia, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, and Virginia) ("TracFone ETC Order").

C.F.R. § 54.201. Therefore Nexus should not be required to meet the six conditions placed on Tracfone as a result of its forbearance.

The following discussion of the TracFone Petition for Forbearance and the conditions that precipitated the need for that Petition demonstrates the key differences between the ETC application of TracFone and that of Nexus.

Carrier Qualifications and Obligations to Offer Low Income Support

Only a telecommunications carrier designated, under 47 C.F.R. § 54.201, as an Eligible Telecommunications Carrier (“ETC”) is eligible to receive support. 47 C.F.R. § 54.201(d) of the FCC’s Rules requires that “[a] common carrier designated as an eligible telecommunications carrier...shall be eligible to receive universal service support...and shall, throughout the service area for which the designation is received” “[o]ffer the services supported by federal universal service support mechanisms...either using its own facilities or a combination of its own facilities and resale of another carrier’s services”³ and mandate that a “state commission shall designate a common carrier...as an eligible telecommunications carrier irrespective of the technology used” by the carrier to meet this requirement.⁴ Section 214(e)(1)(A) of the Telecommunications Act states that ETCs shall offer services, at least in part, over their own facilities while 47 C.F.R. § 54.201(i) prohibits state commissions from designating as an ETC a telecommunications carrier that offers the services exclusively through the resale of another carrier’s services.

As stated in the FCC’s Order granting TracFone forbearance from the requirements of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), “TracFone is a non-facilities-based commercial mobile radio service (CMRS) provider (*i.e.* a pure wireless reseller) that provides prepaid wireless telecommunications services. On June 8, 2004, TracFone filed a Petition for

² See 47 C.F.R. § 54.201(d)(1).

³ See 47 C.F.R. § 54.201(d)(1).

Forbearance from section 214(e) of the Act, which requires that an ETC offer services using *its own facilities or a combination of its own facilities and resale of another carrier's services* (Forbearance Petition or Petition)".⁵ (Emphasis added.)

Nexus will use a combination of its own facilities and resale of another carriers services in its provision of the services that are designated for support as necessary to supplement the Company's own facilities. Carriers that use a combination of facilities are allowed under federal rules to obtain ETC designation. As explained by the FCC:

“We adopt the Joint Board’s analysis and conclusion that a carrier need not offer universal service wholly over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.”⁶

This is fully consistent with the three types of carriers envisioned in the federal Telecommunications Act of 1996, which are 1) pure facilities-based carriers that would need interconnection only; 2) pure resellers that would simply resell the services of another carrier; and 3) “combination” or “mixed-mode” carriers that would be neither purely facilities-based nor purely resale. Under the “mixed-mode” model, the carrier uses resale but also has its “own facilities” such as a switch or other “network element” in order to compete.

Carriers such as TracFone are non-facilities-based commercial mobile radio service (CMRS) providers that offer the services designated for support exclusively through resale of another carrier's services and as such fall under the classification of a “pure reseller.” Such a pure reseller would ordinarily be ineligible for designation as an ETC. As a result, TracFone was compelled to seek forbearance from the FCC to overcome the facilities requirement of 47 U.S.C.

⁴ See 47 C.F.R. § 54.201(h).

⁵ Order granting TracFone Wireless, Inc. Forbearance from 47 USC § 214(e)(I)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Adopted September 6, 2005 at ¶ 2.

§ 214(e)(I)(A) and 47 C.F.R. § 54.201. Section 10 of the Act requires that the Commission (FCC) forbear from applying any regulation or provision of the Act if the Commission determines that the three conditions set forth in section 10(a) of the Act are satisfied, which include:

- 1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications services are just and reasonable and are not unjustly or unreasonably discriminatory;
- 2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- 3) forbearance from applying such provision is consistent with the public interest.⁷

Specifically, the FCC examined each of these statutory goals for preserving universal service in the context of low-income consumers. In doing, so, the FCC granted TracFone's request for forbearance, but did so with specific conditions, which include:

- (a) providing its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;
- (b) providing its Lifeline customers with E911-compliant handsets and replacing, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;
- (c) complying with conditions (a) and (b) as of the date it provides Lifeline service;
- (d) obtaining a certification from each Public Safety Answering Point ("PSAP") where TracFone provides Lifeline service confirming that TracFone complies with condition (a);
- (e) requiring its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported serviced only from TracFone; and
- (f) establishing safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.

While the receipt of Lifeline support only is not included in the list of specific conditions imposed by the FCC for the grant of TracFone's forbearance from the facilities requirements of 47 U.S.C. § 214(e)(I)(A) and 47 C.F.R. § 54.201(i), it can not be ignored that TracFone's

⁶ USF Order at ¶169.

⁷ 47 U.S.C. § 160(a).

amendment of its ETC Petition to limit its receipt of low-income support to Lifeline only nevertheless played a significant role in FCC approval. The receipt of Lifeline-only support can thus be logically viewed as an additional condition placed on TracFone.

Nexus, as a “combination” or “mixed-mode” carrier, does not require forbearance from the provisions of 47 C.F.R. § 54.201 and directly meets the FCC’s requirements for ETC designation as it 1) offers the “services that are supported by federal universal support mechanisms...either using its own facilities *or a combination of its own facilities and resale of another carrier’s service*”⁸ and 2) advertises “the availability of such services and the charges thereof using media of general distribution.”⁹ When a carrier is relying on the “combination” or “mixed-mode” standard, a state commission, such as this Commission, is directed to grant ETC designation “irrespective of the technology”¹⁰ used by the applicant and cannot require the facilities to be in the “relevant service area” as long as the facilities are used “to provide services designated for support...within the service area.”¹¹ In short, as long as Nexus offers *any* portion of the supported services through the use of its own facilities, the Commission can not require those facilities to be located in the relevant service area. In addition, the FCC considers such an arrangement to be sufficient to meet the facilities requirement and to be sufficient for such a carrier to qualify for the receipt of universal support.

The FCC, in the USF order, also expressed concerns that a strict interpretation of the term “facilities” would violate the FCC’s express policy of competitive neutrality:

“We also decline to adopt a more restrictive definition of the term “facilities,” as some commenters suggest. For example, we reject the suggestion that we define “facilities” as both loop and switching

⁸ See 47 C.F.R. § 54.201(d)(1) (emphasis added).

⁹ See 47 C.F.R. § 54.201(d)(2).

¹⁰ See 47 C.F.R. § 54.201(h).

¹¹ See 47 C.F.R. § 54.201(g).

facilities based on our concern that such a restrictive definition would erect substantial entry barriers for potential competitors seeking to enter local markets and, therefore, would unduly restrict the class of carriers that may be designated as eligible telecommunications carriers. Rather, we conclude that the definition of "facilities" that we adopt will serve the goals of universal service and competitive neutrality to the extent that it does not dictate the specific facilities that a carrier must provide or, by implication, the entry strategy a carrier must use and, therefore, will not unduly restrict the class of carriers that may be designated as eligible.¹²

Currently, there are no state or federal definitions or requirements as to the number of or the amount of the supported services that an ETC must offer via its "own facilities." The ETC merely must provide some portion of the supported facilities through the use of the same, which Nexus does. Additionally, Federal law does not require any particular level of facilities. The FCC stated in the USF Order that:

"We adopt the Joint Board's analysis and conclusion that a carrier need not offer universal service wholly over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale. Although the Joint Board did not reach this issue, we find that the statute does not dictate that a carrier use a specific level of its "own facilities" in providing the services designated for universal service support given that the statute provides only that a carrier may use a "combination of its own facilities and resale" and does not qualify the term "own facilities" with respect to the amount of facilities a carrier must use. For the same reasons, we find that the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services."¹³

In affirming its own decisions, the FCC choose to continue to define the term "own facilities" as "*any physical components* of the telecommunications network that are used in the transmission of the services that are designated for support."¹⁴ (Emphasis added). The statutory

¹² USF Order at para. 153

¹³ USF Order at para. 169 (emphasis added).

¹⁴ See 47 CFR § 54.101; 47 CFR § 54.201(e).

definition of “network element” matches that of the FCC and defines a “network element” as “a facility or equipment used in the provision of a telecommunications service such as features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.”¹⁵ All facilities-based carriers – not just incumbent LECs – have and use network elements.¹⁶

Consistent with federal requirements, Nexus will offer the supported services using a combination of its “own facilities” and the services of another carrier and therefore is not compelled to seek forbearance in order to provide Low-Income support to qualified consumers, which includes both Lifeline and Link Up. As a result, Nexus believes the burden that the commission seeks to introduce here has no basis in law or in fact. Nevertheless, Nexus provides the following discussion with regard to the conditions imposed upon Tracfone as requested.

Compliance with the Condition Imposed on TracFone is Unnecessary to Insure that Nexus Will Provide its Lifeline Customers with Access to Emergency Services.

In its Consumer Protection analysis, the FCC noted that it is obligated to promote safety of life and property and that the provision of 911 and E911 services are critical to the nation’s ability to respond to a host of crises. In addition, the Commission noted its longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers. Given the possibility that TracFone’s Lifeline-supported service could be the customers’ only means of accessing emergency personnel, the FCC found it essential that TracFone’s Lifeline-supported service be capable of

¹⁵ See 47 USC § 153(29).

providing emergency services “immediately upon activation of service”¹⁷ and found this requirement to be consistent with TracFone’s representation that customers will be able to make emergency calls at any time.¹⁸ Accordingly, the FCC imposed, as a condition of approval, the requirement that TracFone provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes.

However, all common carriers that are designated as eligible telecommunications carriers are required to “[o]ffer the services that are supported by federal universal service support mechanisms” enumerated in 47 C.F.R. § 54.101 and to do so “throughout the service area for which the designation is received,” which includes “Access to emergency services”, which 47 C.F.R. § 54.101(a)(5) defines as:

Access to emergency services. “Access to emergency services” includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government. “Enhanced 911” is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. “Access to emergency services” includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems.

To comply, a wireless carrier designated as an ETC would be obligated to ensure that its customers have access to 911 and E911 services and that emergency calls properly terminate to

¹⁶ Only ILEC network elements can be designated as “unbundled” under § 251(c)(3) using the criteria in § 251(d)(2), but all facility-based carriers, including nondominant wireline and wireless carriers also have “network elements.”

¹⁷ Order granting TracFone Wireless, Inc. Forbearance from 47 USC § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Adopted September 6, 2005 at ¶ 16.

¹⁸ August Reply Comments at 10.

the appropriate PSAP. As is the case for a wireline ETC, a wireless ETC would automatically be compelled to ensure access so long as the customer remains active on the carrier's platform, regardless of the availability of wireless minutes.

Nexus has already affirmed in its application that it will comply with the requirement to provide the supported services throughout the designated service area, which includes access to emergency services through the routing and termination of 911 and E911 calls for its customers, and will do so using a combination of its "own facilities" and the services of another carrier. In doing so, Nexus will be able to delivery emergency calls to the appropriate PSAP immediately upon activation of service. Nexus also affirms that it will provide access regardless of the availability of wireless minutes and will continue to deliver emergency calls even if the subscriber's handset does not have any minutes. As an ETC is obligated to take all steps necessary to ensure access to emergency services, Nexus continues with its current plans to provide all qualified Lifeline customers with 911 compliant handsets and will do so at no additional charge to the customer.

Nexus believes that current FCC rules are sufficient in their requirement which obligate an ETC to take any and all steps necessary to provide access to emergency services. As such, Nexus does not believe that any additional statement that it will comply with this condition imposed upon TracFone is either warranted or necessary.

Compliance with the Condition Imposed on TracFone is Unnecessary to Ensure That Nexus Will Provide Lifeline Customers with E911-Compliant Handsets.

The Company, from day one, has planned to provide qualified Lifeline customers with E911 compliant handsets and to do so at no additional charge to the customer. As previously stated, the requirements of 47 C.F.R. § 54.101(a)(5) obligate an ETC to provide access to

emergency services which requires a telecommunications user access “by dialing the three-digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government” and to take all steps appropriate and necessary to fulfill this obligation.. As such, Nexus believes that current FCC rules applicable to ETCs are sufficient in regard to the obligation to require an ETC to take any and all steps necessary in order to provide access to emergency services.

The Condition Imposed on TracFone is Not Necessary to Ensure That Nexus Will be Able to Provide Access to 911 and E911, Will Provide 911 Compliant Handsets, at No Additional Charge, to Qualified Lifeline Customers and Will Do So As of the Date it Provides Lifeline Service

As previously stated, Nexus affirms that it will provide the supported services, including the routing and termination of 911 and E911 calls for its customers, through the use of a combination of its “own facilities” and the services of another carrier. For wireless customers, Nexus will do so irrespective of the availability of wireless minutes. Nexus will be able to delivery emergency calls to the appropriate PSAP immediately upon activation of service. As an ETC, Nexus will be obligated to take all steps necessary to ensure access to emergency services.

Current FCC rules obligate an ETC to take any and all steps necessary in order to provide access to emergency services and as such, Nexus does not believe that compliance with the conditions imposed on TracFone as a condition of forbearance are applicable to a “combination” carrier such as Nexus.

Certification from Each PSAP That a Carrier’s Customers Are Able to Make Emergency Calls is Applicable Only to ETCs Compelled to Seek Forbearance from the Facilities Requirements of Federal Law.

As a condition of forbearance from the facilities requirements of 47 U.S.C. § 214(e)(I)(A) and 47 C.F.R. § 54.201(i), TracFone was required to demonstrate compliance with TracFone’s

representation that its Lifeline customers will be able to make emergency calls at any time by obtaining a certification for each PASP where it provides Lifeline service “confirming that TracFone provides its customers with access to basic and E911 service” and to “furnish copies of these certifications to the Commission upon request”.¹⁹ TracFone, as a “pure reseller,” relies on the ability of its underlying carriers to route and terminate emergency calls placed by its customers, and has demonstrated compliance with this requirement evidenced by the numerous filings on behalf of Tracfone’s by its underlying carriers. Additionally TracFone has asked and received FCC approval allowing certification to be considered complete if certification has not been received from a PSAP within ninety (90) days of the date of request.

These facts notwithstanding, it is crucial to remember that this condition was applicable to the grant of TracFone’s request of forbearance from the requirements of 47 U.S.C. § 214(e)(I)(A) and 47 C.F.R. § 54.201(i), which require that “[a] common carrier designated as an eligible telecommunications carrier...shall be eligible to receive universal service support...and shall, throughout the service area for which the designation is received” provided that carrier “[o]ffer the services supported by federal universal service support mechanisms...either using its own facilities or a combination of its own facilities and resale of another carrier’s services”²⁰

Pursuant to current FCC Rules, Nexus will use a combination of its own facilities and resale of another carriers services in its provision of the services that are designated for support. The condition that required TracFone to seek forbearance is inapplicable to Nexus, as operating as a “combination” provider allows Nexus to directly meet the FCC’s test that require an ETC to provide the supported services, at least in part, over its own facilities. As such, Nexus believes

¹⁹ Order granting TracFone Wireless, Inc. Forbearance from 47 USC § 214(e)(I)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Adopted September 6, 2005 at ¶ 16.

²⁰ See 47 C.F.R. § 54.201(d)(1).

that the condition that the commission would potentially seek to introduce here has no basis in law.

The Condition Imposed upon TracFone Is Not Necessary to Ensure That Nexus Will Require Its Customers to Self-Certify at Time of Service Activation and Annually Thereafter.

In granting TracFone’s Petition for Forbearance, the FCC stated that the conditions of the grant were sufficient to safeguard the fund from fraud and abuse. Conditions include the requirements that TracFone require its “Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are head of household and only receive Lifeline-supported service from TracFone”²¹ and that TracFone track its Lifeline customers’ primary residential address in order to “prohibit more than one supported TracFone supported service at each residential address.”²²

FCC rules describe certification and verification as “the process by which eligible consumers establish their qualification” for Lifeline/Link-Up with certifications defined as occurring “at the time an individual is applying to enroll in Lifeline/Link-Up” and verification as certifying continued eligibility “on a periodic basis after the subscriber has already been certified”.²³

With regard to initial certification, the FCC found current certification procedures sufficient and agreed with the joint Board that “the ease of self-certification imposes minimal burdens on consumers,” “provides an easily verifiable means of participation in a need-based program,” and “serves as an effective disincentive to abuse the system.”²⁴ In addition, 47 C.F.R.

²¹ Order granting TracFone Wireless, Inc. Forbearance from 47 USC § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Adopted September 6, 2005 at ¶ 18.

²² *Id.*

²³ Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109 (2004) at Section III, ¶ 23.

²⁴ *Id.* at ¶ 27.

§ 54.410 requires an ETC to self-certify a customer's eligibility, under penalty of perjury, through participation in one or more of the approved needs based programs.

With regard to verification, the FCC agreed with the Joint Board's recommendation that ETCs be allowed to verify annually the continued eligibility of a statistically valid sample of their Lifeline subscribers.

Current federal and state requirements protect the fund from fraud and abuse by obligating an ETC to certify consumer eligibility at time of enrollment and annually thereafter. Nexus affirms that it will meet all current requirements for initial certification and annual verification by allowing customers to self-certify eligibility either by submitting a signed self-certification form to the Company or by electronic self-certification via the Company's Lifeline web application. All self-certifications require the subscriber to self-certify under penalty of perjury.

Thus, Nexus believes that further conditions are unnecessary and will do nothing to strengthen current FCC or state rules that protect the fund above and beyond those measures already in place, which obligate an ETC to certify a customer's eligibility at time of enrollment in Lifeline and/or Link Up and to verify subscribers' continued eligibility on an annual basis.

The Conditions Imposed on TracFone Are Unnecessary to Ensure that Nexus Has Safeguards to Prevent its Customers from Receiving Multiple Nexus Lifeline Subsidies at the Same Address

As a condition of forbearance, TracFone was required to track its Lifeline customers' primary residential addresses in order to "prohibit more than one TracFone supported service at each residential address".²⁵ Currently, FCC Rules limit Lifeline discounts to the monthly cost of telephone service for "a single [one] telephone line" at the "principle residence" of a qualifying

²⁵ *Id.*

consumer²⁶ and further limits that discount to only one wireline or wireless connection per household.²⁷

Accordingly, all ETCs are obligated to put safeguards in place that are reasonably designed to prevent a subscriber from receiving more than one Lifeline subsidy at the same place of residence. Consistent with this obligation, Nexus affirms that it has the requisite safeguards in place that allow it to determine if a Lifeline applicant's residential address matches the address of a customer that is currently receiving Nexus Lifeline subsidies, or has received Lifeline and Link-Up benefits in the past. Specifically, Nexus will take the address, included in the customer's self-certification, and scrub it through its database of active and inactive customers. A customer who certifies eligibility for Lifeline at an address where the Company is currently providing a Lifeline subsidy will be offered the opportunity to subscribe to the Company's non-Lifeline wireless service. However, under no circumstance will Nexus provide more than one Company provided Lifeline subsidy at the same residential address to the same subscriber.

2. Kentucky currently requires that all ETCs perform an audit of all customers receiving Lifeline benefits. Each customer must provide proof of eligibility. Does Nexus agree to audit all wireline and wireless Lifeline customers each year rather than conduct a yearly audit of only a sample of customers?

RESPONSE: Concurrently with its responses to these data requests, Nexus is filing a Petition for Exemption from this requirement requesting permission to audit pursuant to an alternative permitted by, and described in, the FCC's rules.

3. All the Incumbent Local Exchange Carriers ("ILECs") in Kentucky offer

²⁶ Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109 (2004) at Section II, ¶ 4.

²⁷ See USAC's website at "Telephone Assistance Programs for Low Income Households".

unlimited local calls. Provide an explanation as to how Nexus will offer a local usage plan comparable to the plans offered by the ILECs in Kentucky for both wireline and wireless usage. Provide demonstrative evidence of such Nexus plans in other states where Nexus has received ETC designations.

RESPONSE: An ETC is required to “[d]emonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.”²⁸ However, the FCC has explained that the local usage plan(s) of an ETC applicant should be reviewed on a case-by-case basis²⁹ in order to ensure that each ETC is providing a local usage component as a part of its universal service offering that meets the requirements of the FCC’s Rules.³⁰ As the FCC has not adopted any minimum local usage requirements, it is important to point out that an ETC is required to offer a local usage plan that is “comparable,” not one that is “identical.” It is no more reasonable to require a wireless ETC to provide “unlimited” local minutes than it would be to require a wireline ETC to provide service mobility if any other ETC (i.e. a wireless carrier) provides that feature to Lifeline customers. Some Lifeline customers value mobility more than unlimited calling. That choice should remain with the Lifeline customer.

With respect to its wireline service, Nexus will provide qualified wireline Lifeline customers with unlimited local calling within the local calling area of each exchange and will do so at a flat rate per month.

Recognizing that wireless and wireline services, although increasingly substitutable for each other, are different, the FCC chose not to require ETCs to offer local usage *identical* to that of the ILEC. Rather, the FCC chose to require an ETC to offer local usage plans “comparable to

²⁸ 47 CFR § 54.202(a)(ii)(4).

²⁹ Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

the one offered by the incumbent LEC in the serviced areas for which it seeks designation.”³¹ Nor has the FCC chosen to quantify an amount of local usage a wireless ETC must offer. In fact the FCC has repeatedly declined to specify a minimum quantity of local usage that must be included as a part of any ETCs universal service offering. Instead, the FCC has determined that when a carrier offers a choice of rate plans containing varying local usage, it meets the local usage requirement enumerated in 47 C.F.R. § 54.202(a)(4).

As a wireless ETC, Nexus will provide qualified Lifeline customers with sixty-eight (68) minutes that can be used to place and receive calls. Unused minutes will rollover from month to month. Minutes can be used twenty-four (24) hours a day seven (7) days a week.

Nexus’s wireless Lifeline service offers a calling scope that goes beyond that of competing wireline carriers. By comparison, minutes made available to qualified customers under Nexus’ Lifeline plan can be used to place both local and domestic long distance calls, thereby providing customers with a local calling scope that is significantly larger than that of traditional wireline ETCs.

Nexus’ service also goes beyond that of other wireless carriers in providing qualified customers, as a part of their Lifeline service, with the specified amount of minutes **completely free of charge**. This clearly separates Nexus from other ETCs where, to Nexus’ knowledge, there are a limited number of wireless providers offering USF-subsidized service.

4. Explain the process by which Nexus will verify the eligibility of Lifeline customers. Provide details about how and where Lifeline subscribers will be able to initiate service.

³⁰ 47 CFR § 54.201(a)(ii)(4).

³¹ 47 C.F.R. § 54.202(a)(4)

RESPONSE: Although a non-federal default state, Kentucky’s rules governing Low-Income support have followed the federal rules. According to Administrative Case No. 360, individuals who are enrolled in one or more of the following programs are considered eligible for Lifeline and Link Up support:

- Medicaid
- Food Stamps
- Supplemental Security Income
- Federal Public Housing Assistance
- Low-Income Home Energy Assistance
- Temporary Assistance to needy Families
- National School Lunch’s free lunch program

In addition, a consumer is eligible to participate in Lifeline and Link Up if his income is at or below 135 percent of the federal poverty guidelines.

In the Report and Order and Further Notice of Proposed Rulemaking, the FCC agreed “with the Joint Board that the current certification procedures for program-based qualification,” which allow an applicant to self-certify proof of eligibility, under penalty of perjury, through participation in one or more of the approved income based programs, are sufficient. According to USAC, proof of eligibility can be established by self-certifying, under penalty of perjury, that the applicant receives benefits from or a copy of any dated document which verifies participation in one of the qualifying programs listed above.³² The FCC found that the ease of self-certification 1) “encourages eligible consumers to participate in Lifeline/Link-Up” 2) “imposes minimal burdens on consumer”; and 3) “serves as an effective disincentive to abuse the system.”³³

Eligible subscribers who request service from Nexus may either complete an enrollment form “on-line” or print it and send it to Nexus via a toll-free fax number or by mail. Processing

³² See USAC’s website, “Telephone Assistance Programs for Low Income Households”.

of these forms will be handled by Nexus personnel who have been specially trained in the specifics of the Lifeline and Link Up programs.

Upon a subscriber's enrollment in the program Nexus will deliver a 911 compliant handset to the Lifeline customer at no cost with the first month's amount of usage pre-loaded on the handset.

Potential wireless Lifeline subscribers can initiate service either by contacting Nexus at its toll-free number or by visiting the Company's website at www.reachout_wireless.com. Subscribers who contact Nexus by phone will be informed of the availability of the Lifeline and Link Up programs. Those who indicate that they qualify will have the option of completing an enrollment form on-line or have the option to print and send a completed enrollment form to Nexus by fax or mail.

5. Refer to Exhibit 1 of the Nexus petition. It states that a Lifeline customer may purchase additional minutes of use.

(a) Will the discounted minutes of use be made available only for Lifeline customers, or are they rated at the same usage rates as other Nexus customers?

RESPONSE: The rate that a qualified Lifeline customer will pay for additional minutes of usage will be exactly the same as the rate a non-lifeline customer will pay. Details of the rates for additional minutes of usage are detailed below.

As a part of its Lifeline program, Nexus will use 100% of all Low-Income universal service support funding, for which the Company will seek reimbursement, to provide qualified Lifeline customers, residing in the State of Kentucky, with an amount of sixty-eight (68) free anytime minutes each month with no recurring charge. Minutes can be used to place local and domestic long distance calls resulting in a larger calling area than that provided by traditional

³³ Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109 (2004) at Section III, ¶ 27.

wireline ETCs. Unused minutes will roll over from month-to-month and “fresh” free minutes will be automatically added, on a monthly basis, to the account of all customers with active service.

In the event that all airtime has been used, Lifeline customers will have the capability to supplement their usage by purchasing additional minutes of use, which will be made available in \$5.00, \$10.00, and \$20.00 denominations. Airtime cards will be made available at retail outlets frequented by low-income consumers throughout the designated service area. In addition, Lifeline customers are never required to purchase additional minutes directly from Nexus. The service provided by Nexus is subject to competition, which ensures that the Company’s rates are market-based..

(b)If the minutes are discounted for only Lifeline customers, what security measures will Nexus put into place to ensure that only Lifeline customers will be able to purchase the usage cards?

RESPONSE: Please see the response to 5a.

6. Refer to Exhibit 1 of the Nexus petition. The Exhibit states that a Lifeline telephone account number will remain active for one year as long as the customer continues to receive government assistance.

(a) How will Nexus monitor the accounts of Lifeline customers to ensure that customers are receiving the benefit of the service? For example, if a customer stops using his or her Lifeline Nexus after six months, or if the wireless device is damaged so that it cannot be used, will Nexus continue to credit the customer with minutes to his or her accounts?

RESPONSE: Nexus has implemented a policy whereby the inactive handsets that are enrolled in Lifeline and exceed two (2) months without incurring usage will be deactivated.

Deactivated handsets will be allowed 30 days for reactivation at no charge. Should a customer attempt to use his handset within the 30 day grace period, he will be routed to a voice recording asking him/her to contact Nexus at its toll free number in order to reactive the handset. A customer's ability to dial 911 will not be affected.

Information included with the handset will direct customers to contact Nexus to report damaged or non-working handsets. Handsets that are still in the manufacturers' warranty period if applicable will be replaced at no charge.

As previously stated, handsets that exceed two (2) months without incurring usage will be deactivated. Deactivated handsets will no longer receive free minutes.

(b) Under the scenario described above, will Nexus continue to receive Universal Service Fund disbursements for the provision of service even if the service is not being used?

RESPONSE: Nexus will no longer seek reimbursement from the federal Universal Service Fund for any handset that has been deactivated. Customers who have been deactivated following 60 days of non-usage may re-enroll by contacting Nexus at the Company's toll-free number. Applicants who qualify for Lifeline will be re-enrolled in the program and will be provided with the allotted amount of free minutes each month.

7. The Kentucky Universal Service Fund for the Lifeline support is maintained by a fee of eight cents per access line per month which is collected by carriers from every wireline and wireless subscriber. Nexus has not previously collected those funds from its Kentucky subsidiaries.

(a) Upon receiving ETC designation, will Nexus begin contributing to the fund?

RESPONSE: Nexus is aware that in an Inquiry into Universal Service and Funding Issues, order Administrative Case No. 360, at page 4, states “For services rendered on or after January 1, 1999, all ILECs, CLECs, and wireless providers shall place on all customer’s bills a charge of five cents per month per bill.” In a subsequent order, dated June 3rd, 2004, the surcharge was increased to eight cents and was to be accessed on a per access line per month basis. Unlike postpaid carriers, Nexus provides Lifeline subscribers with free minutes of use and consequently does not render a bill for its service. Optional additional minutes are offered on a prepaid basis, which again does not necessitate the need for a bill. The plain reading of the requirements of Administrative Case No. 360 clearly indicates that the charge is to be imposed only on subscribers who receive a bill from their carrier. As a result, Nexus does not believe this requirement is applicable to Nexus’ wireless offering.

(b) If so, explain how Nexus will implement the collection process and provide a detailed explanation of the methodology to be used to equate prepaid minutes to a month of service.

RESPONSE: See response to 7(a) above.

8. As of June 1, 2009, the Commission requires wireless carriers to support the Kentucky Telecommunications Relay Service and the Kentucky Telecommunications Access Program.³⁴ Each fund is supported by a fee of two cents per access line per month which is collected by carriers from every wireline and wireless subscriber.

(a) Upon receiving ETC designation, will Nexus begin contributing to the funds?

³⁴ See Case No. 2007-00464, *Petition of the Kentucky Commission on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program* (Ky. PSC Feb. 16, 2009). Wireless carriers had not been required to participate in the collection of either fee from their subscribers prior to this Order.

RESPONSE: Nexus is aware that the Commission Order that extended the collection of fees to support the Kentucky Telecommunications Relay Service fund (“TRS Fund”) and the Kentucky Telecommunications Access Program fund (“TAP” fund) to wireless providers. As specified in the Order, these fees are to be collected on a monthly basis from billed retail customers with the “combined fees” appearing “on each retail customer’s bill as a separate line item denoted as ‘Kentucky TRS/TAP Fee’ or some similar title”.³⁵ The Order also directs wireless carriers to provide notice to their retail customers of the collection of TRS and TAP fees with notice to be made “through...bill inserts or bill messages”.³⁶

However, since Nexus’ Lifeline subscribers do not receive monthly bills, this requirement is inapplicable to Nexus’ wireless offering.

(b) If so, explain how Nexus will implement the collection process and provide a detailed explanation of the methodology to be used to equate prepaid minutes to a month of service.

RESPONSE: Please see response to 8(a) above.

9. Does Nexus seek to receive Lifeline support from the Kentucky Universal Service Fund?

RESPONSE: No.

³⁵ Petition of the Kentucky Commission on the Deaf and Hard of Hearing to Expand the Funding Base for the Kentucky Telecommunications Access Program, Case No. 2007-00464 and Request for Proposal and Selection of a Vendor for Telecommunications Relay Service, Administrative Case No. 372, Order (Kentucky Public Service Commission: Feb. 16, 2009) at 8.

Respectfully submitted,

By: 

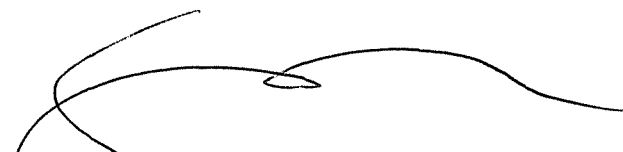
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³⁶ *Id.*

VERIFICATION


STATE OF OHIO)
)
COUNTY OF DELAWARE)

Steven Fenker, being duly sworn, states that he supervised the preparation of these responses of Nexus Communications, Inc. to the Public Service Commission Staff's Data Request and that the responses are true and accurate to the best of his knowledge, information and belief, formed after a reasonable inquiry.



Steven Fenker

Subscribed and sworn before me on this date of 7/14, 2009.



Notary Public

My Commission expires: 4/25/14



MUWAFEK ABDULLAH
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
April 25, 2014
Recorded in
Franklin County