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May 7, 2010

RECEIVED

MAY 07 2010

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. DeRouen:

Enclosed for filing in this case please find an original and ten copies of Nexus Communications, Inc.'s Response to Commission Order Dated April 20, 2010. Please place your file stamp on the extra copy 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,

Deborah T. Eversole

DTE: jms  
Enclosures

107514.122280/587429.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 07 2010

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

**RESPONSE OF NEXUS COMMUNICATIONS, INC.  
TO COMMISSION ORDER DATED APRIL 20, 2010**

Nexus Communications, Inc. (“Nexus,” or the “Applicant”), by counsel, files the following response to the Commission’s Order dated April 20, 2010 and issued simultaneously in a number of cases concerning eligible telecommunications status. In that Order, the Commission questioned its own jurisdiction to grant the requested relief, based on certain decisions of the United States District Court of Eastern Kentucky.

1. First, with respect, the Commission mischaracterizes the holding of the Court in *BellSouth Telecommunications, Inc. v. Kentucky Public Service Comm’n*, 3:08-cv-00007-DCR (Feb. 22, 2010). In its April 20, 2010 Order, the Commission states that the Court “held that regional Bell Operating Companies do not have affirmative, ongoing obligations to permit the commingling of certain elements under 47 U.S.C. § 251 and 47 U.S.C. § 271.” The holding of

the Court is neither so broad nor so clear.<sup>1</sup> In fact, the Court’s decision is most reasonably read to mean that regional Bell Operating Companies *do* have an affirmative, ongoing obligation to commingle Section 251 and Section 271 elements pursuant to 47 C.F.R. § 51.309(f). The Court expressly held that “AT&T Kentucky must, upon request, perform the functions necessary for a competitive LEC to connect, attach, or otherwise link § 251 elements with wholesale services” [Memorandum Opinion and Order at 23]. The Court then defined Section 271 elements as “wholesale services” [Memorandum Opinion and Order at 22] (“any network element provided by AT&T Kentucky to a competitive LEC is a ‘wholesale service’”). AT&T Kentucky, which argues that it is not obligated to commingle Section 251 with Section 271 elements, has appealed the District Court’s holding on this issue. *See* Notice of Appeal, Exhibit A hereto. It would not have done so if it believed that it had already prevailed.

2. More essentially, the Commission’s jurisdiction over any particular unbundled network element or its pricing is not relevant to Applicant’s request for ETC status. The question the Commission must address pursuant to 47 U.S.C. §§ 251 and 214(e) is whether unbundled network elements *are actually being provided* to the Applicant, not whether the Commission can order an incumbent carrier to provide elements, or to provide them at any particular price or configuration. As Applicant’s petition makes clear, those unbundled network elements are being provided to the Applicant. There is no question that the Commission retains

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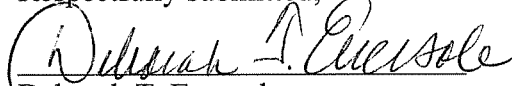
<sup>1</sup> The Court in its Memorandum Opinion and Order, at 22, discussing 47 C.F.R. § 51.309(e) **only**, says that subsection (e) “does not place any affirmative obligations on AT&T Kentucky.” That is accurate. That subsection of the FCC’s commingling regulation merely requires an incumbent to “permit” a competitor to commingle elements. The Court’s discussion of 47 C.F.R. § 51.309(f) -- which states that an incumbent must “perform the functions necessary” to commingle Section 251 elements with wholesale services -- is very different, and appears in the next paragraph of the Memorandum Opinion and Order, as discussed above.

authority under federal law to certify eligible telecommunications carriers, and there is no indication to the contrary in any of the court opinions the Commission cites in its April 20, 2010 Order.

3. Additionally, since access to UNEs applies specifically to Nexus's ETC authority to provide the Company's *wireline* service offering, Nexus utilizes a combination of its own facilities and the interconnected facilities of another carrier in regards to Nexus' *wireless* Low Income service offering. More specifically, the commercial agreement between Nexus and AT&T, which provides the company with access to UNEs, is a "negotiated" agreement under Section 252(a) and therefore is without regard to the standards set out in Sections 251 and 252. Under the agreement between the parties, Nexus obtains access to Section 251(c)(3) elements, in particular loop and transport. Numerous states have approved Nexus's application for ETC status. Applicant attaches, as Exhibit B hereto, the recent approvals from the New Jersey and Maryland commissions.

4. Finally, Applicant requests only low income, and not high cost, federal universal service support. Refusal to granting ETC status as requested in the Application will serve no legal or policy principle. It will only limit the choices of low-income Kentuckians.

Respectfully submitted,



Deborah T. Eversole

Douglas F. Brent

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500 West Jefferson Street

Louisville, Kentucky 40202-2828

Telephone: (502) 333-6000

Counsel for Nexus Communications, Inc.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
AT FRANKFORT**

BELLSOUTH  
TELECOMMUNICATIONS, INC.,

Plaintiff,

v.

KENTUCKY PUBLIC SERVICE  
COMMISSION; DAVID L.  
ARMSTRONG, in his official capacity  
as Chairman of the PSC, as successor to  
MARK DAVID GOSS, in his official  
capacity as Chairman of the PSC;  
JAMES W. GARDNER, in his official  
capacity as Vice Chairman of the PSC,  
as successor to CAROLINE PITT  
CLARK, in her official capacity as a  
Commissioner of the PSC; and Charlie  
Borders, in his official capacity as  
Commissioner of the PSC, as successor  
to JOHN W. CLAY, in his official  
capacity as Commissioner of the PSC;  
SOUTHEAST TELEPHONE INC.; and  
COMPETITIVE CARRIERS OF  
SOUTH, INC.

Defendants.

Civil Action No. 3:08-07-DCR

**NOTICE OF APPEAL**

Notice is hereby given that Plaintiff BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky (“AT&T Kentucky”) hereby appeals to the United States Court of Appeals for the Sixth Circuit from those portions of the Memorandum Opinion and Order (DN 66) and the Judgment (DN 67) entered in this action on February 22, 2010, that denied AT&T Kentucky’s request for declaratory and injunctive relief and that addressed AT&T Kentucky’s obligation to commingle network elements.

Messrs. Armstrong, Gardner and Borders succeeded to the positions held by Mr. Goss, Ms. Clark and Mr. Clay, respectively, and were automatically substituted as parties in their official capacities pursuant to Fed. R.Civ. P. 25(d).

Respectfully submitted,

/s/ Mark R. Overstreet

Mark R. Overstreet  
STITES & HARBISON PLLC  
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P.O. Box 634  
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(502) 223-3477

Mary K. Keyer  
BELLSOUTH TELECOMMUNICATIONS,  
INC.  
601 West Chestnut Street, Room 407  
Louisville, Kentucky 40203  
(502) 582-8219

March 22, 2010

*Of Counsel:*

Brendan J. Crimmins

KELLOGG, HUBER, HANSEN, TODD,

EVANS & FIGEL, P.L.L.C.

1615 M Street, N.W., Suite 400

Washington, D.C. 20036

(202) 326-7900

*Counsel for BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 22<sup>nd</sup> day of March, 2010, I electronically filed the foregoing **Notice of Appeal** with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:

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2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202

/s/ Mark R. Overstreet  
Mark R. Overstreet





Agenda Date: 4/28/10  
Agenda Item: 4A

**STATE OF NEW JERSEY**  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF A PETITION BY NEXUS	)	ORDER OF APPROVAL
COMMUNICATIONS, INC. D/B/A TSI FOR	)	
DESIGNATION AS AN ELIGIBLE	)	
TELECOMMUNICATIONS CARRIER IN THE	)	
STATE OF NEW JERSEY FOR THE LIMITED	)	
PURPOSE OF OFFERING LIFELINE AND	)	
LINK-UP SERVICES TO QUALIFIED	)	
HOUSEHOLDS	)	DOCKET NO. TO09040331

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition dated April 3, 2009, Nexus Communications, Inc. (Nexus), petitioned the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval to be designated as an Eligible Telecommunications Carrier ("ETC") solely to provide Lifeline and Link-Up services to qualified New Jersey consumers, pursuant to Section 214(e)(2) of the Communications Act, as amended by the Telecommunications Act of 1996. Designation as an ETC would permit Nexus to receive universal service support for these services. Nexus requests the ETC designation for the geographic area served by Verizon New Jersey.

Nexus has been designated as an ETC to provide wireless Lifeline and Link-Up service to qualifying low income consumers in 9 states (Arkansas, Illinois, Kansas, Louisiana, Michigan, Missouri, Tennessee, West Virginia and Wisconsin).

Section 214(e)(2) of the federal Telecommunications Act of 1996 authorizes state commissions to designate ETC status for federal universal service purposes. A telecommunications carrier may be designated as an ETC provided that the carrier demonstrates a commitment to: (a) offer the services that are supported by federal universal support mechanisms, and (b) advertise the availability of such services.

Pursuant to the requirements of 47 C.F.R. § 54.201(d)(1), Nexus attests that it "[o]ffers the services that are supported by federal universal support mechanisms...using its own facilities or a combination of its own facilities and resale of another carriers services". Specifically, Nexus is a facilities based carrier in its home state of Ohio. Elsewhere, including New Jersey, it obtains service from underlying wireless providers that currently operate owned networks. Nexus will route some traffic through its own facilities, allowing Nexus to meet the ETC test of providing services through a combination of resold service and its own facilities.

Through the use of its own facilities and resale arrangements with Verizon Wireless, Nexus asserts that it will provide Lifeline-eligible customers 68 minutes of free monthly service and that unused minutes will roll over from month-to-month. Additionally, Lifeline-eligible customers will be permitted to purchase additional usage cards at a rate of \$.20 per minute. The cards will be sold in denominations of \$5.00, \$10.00 and \$20.00.

In addition, Nexus will provide Lifeline customers an Enhanced 911 ("E911") compatible handset at no cost. Nexus also asserts that its customers will always be able to contact 911 or E911 from their wireless handset, regardless of whether they have depleted their free Lifeline minutes or additional airtime.

With regard to Link-Up, Nexus originally proposed to apply a \$30.00 credit to their customary \$72.00 charge for service activation, resulting in a \$42.00 net charge to the customer. In response to questions from staff, Nexus agreed to waive the \$42.00 balance.

Furthermore, Nexus asserts that it meets all the requirements of the Federal Communications Commission ("FCC") for designation as an ETC. 47 C.F.R. § 54.101(a) requires the following services and functionality: (1) Voice grade access to the public switched telephone network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to 911 or E911 emergency service (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualified low-income customers.

## DISCUSSION

To qualify as an ETC, a carrier must provide nine services identified in 47 C.F.R. § 54.101. The Board FINDS that the services Nexus states that it will provide to Lifeline-eligible customers satisfy the requirements of 47 U.S.C. Section 214(e) and 47 C.F.R. § 54.101. The services required to be provided under the law and those to be provided by Nexus are:

- 1) Voice grade access to the public switched network – Voice grade access enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.  
Nexus states that it complies with this requirement by enabling customers to transmit voice communications, including signaling to the network that a caller wishes to place a call, and enabling customers to receive voice communications, including receiving a signal indicating there is an incoming call;
- 2) Local usage – Local usage means an amount of minutes of use of exchange service, provided free of charge to end users. Under Nexus' proposal, customers can send and receive local calls wherever Nexus provides service. Nexus includes local usage in its calling plan;
- 3) Dual tone multi-frequency signaling or its functional equivalent – Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, which shortens call set-up time. According to Nexus all handsets provided by Nexus are DTMF capable;

- a. Single-party service – Single-party service permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission. Nexus provides customers with single-party access for the duration of every call, and it does not provide "multi-party" or "party-line" services;
- 4) Access to emergency services – Access to emergency services includes access to services, such as 911 or E911 provided by local governments or other public safety organizations. 911 or E911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911", to call emergency services through a PSAP operated by the local government. E911 is defined as a 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 providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 services to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems. Nexus provides access to the 911 or E911 system for its customers through its underlying carrier, and Nexus will continue to do so;
- 5) Access to operator services – Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call. Nexus contends that its customers have access to operator services;
- 6) Access to interexchange service – Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. Nexus states that its customers are able to complete toll calls and are not charged separately for interexchange calls. Long distance calling is included in Nexus' service, with no additional charge to the customer;
- 7) Access to directory assistance – Access to directory assistance is a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. According to Nexus, its customers have access to directory assistance provided through the vendor being used by Nexus; and
- 8) Toll limitation for qualifying low-income consumers – Toll limitation or blocking restricts all direct dial toll access. There will be no toll limitation because Nexus provides a fixed number of minutes per month service, which means that there will be no disconnect for non-payment.

The Board has reviewed Nexus' petition for designation as an ETC in New Jersey, as well as additional documents filed with this Board and with the FCC. The Board is satisfied that Nexus has complied with the above requirements to be eligible as an ETC in New Jersey and Nexus has demonstrated its ability to provide the nine services identified in 47 C.F.R. § 54.101.

Nexus has provided an initial plan outlining their media advertising in order to advertise the offered Lifeline and Link-Up services, as required in 47 U.S.C. § 214(e)(1). Nexus will use retail outlets and other methods for Lifeline advertising and for customers to purchase its prepaid cards. As a safeguard to prevent more than one Lifeline supported service per household, customers will not be able to receive Lifeline certification through a retail provider. Customers will have to contact Nexus directly to self-certify for Lifeline. Customers must self-

certify, under penalty of perjury, that they qualify for Lifeline service either by being a participant of one of New Jersey's eligible programs, or because they are within the relevant threshold of income level.

The Board is satisfied that Nexus' petition for designation as an ETC for the limited purpose of Lifeline and Link-Up support eligibility should be approved subject to several conditions, as described below. These conditions, combined with Nexus' commitment to provide Lifeline service in New Jersey in accordance with its E911 obligations, convinces the Board that this optional service will be of value to eligible New Jersey consumers.

In a letter dated May 11, 2009, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") recommends that the Board approve the ETC petition.

The Board FINDS that Nexus has met all statutory and regulatory requirements for designation as an ETC. The Board also concludes that it has the authority to grant ETC status to wireless carriers. Section 214(e)(2) provides that a state commission shall designate as an ETC a carrier that meets the requirements of 47 U.S.C. §214(e)(1).

The Board HEREBY APPROVES the petition and ORDERS that Nexus be designated an ETC and approved to offer Lifeline and Linkup services.

The request for ETC designation to offer Lifeline service is HEREBY APPROVED, subject to:

- Certification from each PSAP where Nexus provides Lifeline service, or from the state Office of Emergency Telecommunications Services on behalf of each PSAP in New Jersey, confirming that Nexus provides its customers with access to basic and E911 regardless of activation status and the availability of prepaid minutes. These certifications must be filed with the Board in this proceeding. Service shall not be provided to any Lifeline customer in an area where such certification has not been granted or received;
- Certification that the handsets to be provided to Nexus customers are E911 complaint;
- Each of Nexus' Lifeline customers in New Jersey will receive 68 minutes of airtime each month for all months in which the customer is enrolled in the program and any unused minutes will roll over to the following month;
- Eligibility for participation in Nexus' Lifeline program will be based upon customer enrollment in one of the eight qualifying New Jersey public assistance programs. The eight qualifying programs are: Medicaid; Food Stamp Program; General Assistance ("GA"); Supplemental Security Income ("SSI"); Home Energy Assistance Program ("HEAP"); Lifeline Utility Credit/Tenants Lifeline Assistance; Pharmaceutical Assistance to the Aged and Disabled ("PAAD"); and Temporary Assistance to Needy Families/Work First New Jersey ("TANF/WFNJ"). Additionally those persons 65 or older whose household incomes are at or below 150% of the federal poverty level are also eligible.<sup>1</sup>

<sup>1</sup> See I/M/O Petition by Warwick Valley Telephone Company for Approval to Provide Lifeline Services, BPU Docket No. TT97080605 (November 18, 1997); and I/M/O Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, BPU Docket No. TO01020095 (August 19, 2003), Attachment A.

The eligibility requirements are subject to modification by the Board, and applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs;

- Self-certification of Nexus' customers under penalty of perjury that they meet the eligibility requirements prior to service being activated and also annual certification that the customer is the head of household and is only receiving a Lifeline discount from Nexus and from no other carrier;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address;
- Nexus must deal directly with its customers to certify and verify Lifeline eligibility;
- Nexus shall ensure that 100% of federal universal service funds flow through directly to Lifeline customers. The Board reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes;
- Nexus ETC designation may, at any time, be suspended or revoked by order of the Board;
- Nexus shall make all service offerings, including Lifeline, available on its Web site;
- Nexus shall file, within 30 days of approval of its ETC application, its terms and conditions of service, applicable to qualifying low-income customers. Further, Nexus shall have the ongoing obligation to notify the Board of any future changes to its rates, terms or conditions;
- Nexus shall file, within 30 days of approval of its ETC application, proposed language to be used in all advertising of Lifeline service and on its Web site. The language should include information directing customers to the Board's Telecommunications Division for complaints regarding any service issues. The Staff shall have the right to review and make changes to any proposed language;
- Nexus shall file the following information on December 31, 2010 (and updated information every December 31 thereafter), unless otherwise ordered by the Board:
  1. Nexus shall report all instances in which it receives customer complaints. Nexus shall be required to provide the nature and number of customer complaints, and their resolution annually on December 31, 2010, and updated every December 31 thereafter.
  2. Actual total federal funds received in 2010, and estimated total funds to be received in 2011.
- Nexus must reach satisfactory resolution of complaints filed with the Board's Telecommunications Division on a timely basis.
- Nexus must provide its customers with access to live customer assistance operators.

Based upon the above, the Board HEREBY DESIGNATES Nexus as an ETC solely to provide Lifeline and Link-up service to all qualifying customers who request such service in New Jersey.

Nexus shall not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas.

This ETC Designation is issued on the representation that the statements contained in the Petitioner's application are true, and the undertakings therein contained shall be adhered to and be enforceable unless specific waiver is granted by the Board pursuant to the authority contained in N.J.S.A. 48:1-1 et seq.

DATED: 4/28/10

BOARD OF PUBLIC UTILITIES  
BY:



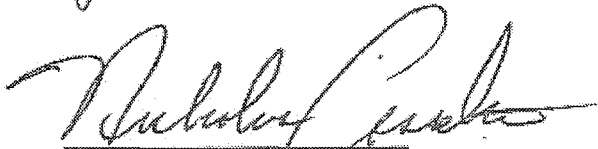
LEE A. SOLOMON  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER



NICHOLAS ASSELTA  
COMMISSIONER



ELIZABETH RANDALL  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities





**Nexus Wireless Inc. Designation as  
Eligible Telecommunications Carrier in New Jersey**

**BPU DOCKET NO. TO09040331**

Anthony Centrella, Director  
Division of Telecommunications  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102

John DeLuca  
Bruce Gallagher  
Board of Public Utilities  
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DOUGLAS R. M. NAZARIAN  
CHAIRMAN

HAROLD D. WILLIAMS  
SUSANNE BROGAN  
LAWRENCE BRENNER  
THERESE M. GOLDSMITH



**PUBLIC SERVICE COMMISSION**

**#4, 4/7/10 AM, ML# 121337, TE-10095**

April 7, 2010

Erik J. Cecil, Esq.  
Nexus Communications, Inc.  
3150 E. Yarrow Cir.  
Superior, CO 80027

Dear Mr. Cecil:

The Commission has reviewed the Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Verizon Maryland, Inc. for the Limited Purpose of Offering Lifeline and Linkup services filed on February 8, 2010 by Nexus Communications, Inc.

After considering this matter at the April 7, 2010 Administrative Meeting, the Commission granted the Company designation as an Eligible Telecommunications Carrier for the limited purpose of offering Lifeline service to qualified households as specified in the application pursuant to 47 U.S.C. 214(e) for the service territory specified in the application following a 30-day comment period.

By Direction of the Commission,

*/s/ Terry J. Romine*

Terry J. Romine  
Executive Secretary

TJR/gjd