

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Federal-State Joint Board on Universal Service) CC Docket No. 96-45
)
Petition of Conexions, LLC for Forbearance)
Pursuant to 47 U.S.C. § 160 from the Own)
Facilities Requirement for Eligible)
Telecommunications Carrier Status)

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON PETITION FOR FORBEARANCE**

On July 8, 2009, Conexions, LLC (“Conexions”), a wireless reseller, filed a petition for forbearance in this docket pursuant to 47 U.S.C. § 160, seeking forbearance from the provision of 47 U.S.C. § 214(e)(1)(A) that requires eligible telecommunications carriers (“ETCs”) to provide service at least partly over their own facilities.¹ The Federal Communications Commission (“FCC” or “Commission”) put the petition out for public comment.² The National Association of State Utility Consumer Advocates (“NASUCA”)³ files these comments on the Petition.

¹ See Conexions Petition (“Petition”) at 1. Unless otherwise specified, all citations here are to filings in CC Docket No. 96-45.

² Public Notice DA 09-1777 (rel. August 10, 2009).

³ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

First, although the Public Notice states that the Petition is filed solely in order to receive federal support for Lifeline service,⁴ it appears that the only place in the Petition where Conexions explicitly states this limitation is in its Summary.⁵ Elsewhere, the connection is only by implication, as in the statement that this Petition is consistent with the Commission's TracFone and Virgin Mobile decisions.⁶ Clearly, in order to be consistent with those decisions, any order granting forbearance to Conexions must specify that the company is to receive only low-income support.⁷

More substantively, however, as stated before,⁸ NASUCA fully supports increasing the options available to Lifeline-eligible consumers. But it does not appear that the Commission can find that forbearance is in the public interest here without more specificity as to how Conexions plans to apply the federal support it will receive upon designation as a Lifeline ETC.

Conexions states that it will provide prepaid wireless service.⁹ "Conexions will offer consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets and high-quality customer service."¹⁰ Conexions also states,

Conexions intends to be a price leader in the prepaid marketplace by offering consumers exceptional value, and including highly competitive amounts of voice

⁴ Id. at 1.

⁵ Petition at ii.

⁶ See id. at 1, citing *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 (2005) ("*TracFone Order*") and *Petition of Virgin Mobile USA, L.P. for Forbearance*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) ("*Virgin Mobile Order*").

⁷ In addition, the conditions placed on TracFone and Virgin Mobile must also apply to Conexions. See *TracFone Order*, ¶ 21; *Virgin Mobile Order*, ¶ 12.

⁸ See NASUCA comments on Petition by Consumer Cellular, Inc. (filed August 20, 2009); NASUCA combined comments on Petitions by i-Wireless, LLC ("i-Wireless") and Head Start Telecom, Inc. ("Head Start") (filed July 6, 2009).

⁹ Petition at 2.

¹⁰ Id. at 3.

usage at all price points. Low-income consumers will further benefit from Conexions' service because of Conexions' unique software distribution platform that will allow customers to purchase both phones and refill minutes at small, local stores in neighborhoods where many Lifeline-eligible customers reside. Conexions has existing relationships with over 20,000 such neighborhood retailers. This innovative distribution model is more practical and convenient for existing and potential Lifeline customers than other mechanisms, because it allows customers to obtain phones, service, and minutes without the expense and trouble of traveling to retail locations outside their neighborhoods or to having access to a computer to go online.¹¹

On the Conexions website, available plans appear to range from a \$29.99 per month plan that includes 300 minutes with 3,000 nights and weekend minutes to a \$239.99 per month plan that includes 5900 minutes, again with 3,000 nights and weekends minutes.¹²

The forbearance statute – 47 U.S.C. § 160 – requires the Commission to forbear from any statute or regulation if (1) the provision is not necessary to ensure that charges and practices for a service are just and reasonable and not unreasonably discriminatory; (2) the provision is not necessary for the protection of consumers; and (3) forbearance is consistent with the public interest. As discussed, the Conexions petition follows, and is largely based on, the grants of forbearance from the facilities-based services requirement of 47 U.S.C. § 214(e)1)(A) to TracFone in 2005 and to Virgin Mobile earlier this year.¹³

NASUCA filed comments on the TracFone petition that, inter alia, focused on how TracFone was going to apply the Lifeline discount.¹⁴ TracFone clarified that it would “apply” the discount by offering two services specifically to Lifeline customers, indicating that

¹¹ Id. at 3.

¹² See <http://conexionwireless.com/management/customerpos/en/rateplan/pos.aspx>. There are more limited plans available, but their details are unclear. See <http://conexionwireless.com/management/customerpos/en/rateplan/pos.aspx>.

¹³ See footnote 6.

¹⁴ *TracFone Wireless, Inc. Petitions for Designation as an ETC*, CC Docket No. 96-45, NASUCA/PULP Comments (January 14, 2008) at 6-7.

“customers who qualify for Lifeline will receive up to \$10.00 worth of wireless service at no charge each month.”¹⁵ The two plans have since become one, and there appear to be substantial variations in the number of free minutes TracFone is offering in various states.¹⁶

On the other hand, Virgin Mobile offers a uniform 120 free minutes and a free (refurbished) handset.¹⁷ This appears substantially superior to TracFone’s plan, although still including less usage than the Commission has determined would be a reasonable amount to meet consumers’ needs.¹⁸

As a prepaid cellphone provider, Conexions’ service is similar to both TracFone and Virgin Mobile. But that does not resolve the public interest issue. One would like to assume that Conexions will simply apply the Lifeline discount to a Lifeline customer’s plan, and will allow the discount to be applied to any of the Conexions plans, but such assumptions have no place in a Commission determination of whether forbearance is in the public interest. If Conexions intends to limit which of its plans will be available to Lifeline customers, or intends to create a new Lifeline plan, it is important for the Commission to know.

Conexions should be required to explain how its Lifeline discounts will be applied before the Commission can address its petition. The petition cannot be granted as filed.¹⁹

¹⁵ Id., TracFone Reply Comments at (emphasis added).

¹⁶ See <http://www.allbusiness.com/society-social/families-children-family/12271130-1.html>.

¹⁷ See Virgin Mobile ex parte (October 24, 2009).

¹⁸ It should be recalled that, in the Hurricane Katrina Order, the FCC estimated that consumers receiving 300 wireless minutes a month in exchange for the maximum federal low-income funding was a reasonable benefit. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 16883 (2005) at ¶ 12.

¹⁹ If Conexions supplements its petition, the supplemented version should be sent out for fresh public comment. See *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, FCC 09-56 (rel. June 29, 2009), ¶¶ 29, 40.

Respectfully submitted,

/s/

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