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Federal Communications Commission  
Office of the Secretary

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re: Ex Parte Filing in WC Dockets 09-197 and 03-109**

Dear Ms. Dortch:

In its January 11, 2011 meeting with Wireline Competition Bureau staff, the undersigned counsel for Nexus Communications, Inc. ("Nexus") discussed the issues raised in TracFone's recently-filed Petition for Declaratory Ruling.<sup>1</sup> The purpose of this filing is to provide staff with an overview of Nexus' operations so that staff can become more familiar with carriers focused on serving participants in the Low Income program, such as Nexus.

Nexus is committed to serving the specific needs of low income Americans. Nexus has received eligible telecommunications carrier ("ETC") designation in twenty states, pursuant to which it receives Lifeline/Link Up ("Low Income") funding.<sup>2</sup> Moreover, Nexus engages in extensive outreach efforts, including deploying mobile information vehicles directly to economically disadvantaged neighborhoods, which was recently recognized by the Federal-State

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<sup>1</sup> Letter from Danielle Frappier, Davis Wright Tremaine LLP, to Secretary Dortch (filed Jan. 11, 2011) (providing notice of an *ex parte* with WCB staff regarding the TracFone Petition for Declaratory Ruling in the above-captioned dockets).

<sup>2</sup> Nexus became a competitive local exchange carrier in 2000, and received its first ETC designation in June 2006. Nexus now focuses on providing service to Low Income consumers. It provides service to customers using wireline technology in Alabama, Florida, Kentucky, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Wisconsin. It serves customers using both wireline and wireless technology to Low Income participants in Illinois, Kansas, Louisiana, Michigan, and Mississippi. It uses only wireless technology to serve Low Income consumers in Arkansas, Georgia, Maryland, Missouri, New Jersey, and West Virginia. Although ETCs may receive funding from both the federal High Cost and Low Income programs, Nexus has declined all High Cost funding and therefore, only receives Low Income funding.

Joint Board on Universal Service.<sup>3</sup> It also provides services on a prepaid basis, which offers these consumers a simple and effective means of managing their family budgets and avoiding bill shock.<sup>4</sup> After several years serving its customers via wireline technology, in the second quarter of 2009 Nexus began to offer wireless services to satisfy the overwhelming demand for such services in the communities it serves. Consumers have clearly indicated a strong preference for mobile wireless services in recent years and Nexus has worked to satisfy this demand by growing and investing in wireless technology. For example, Nexus has acquired PCS spectrum in Montana and is building out facilities to offer services using that spectrum and associated Nexus-owned network equipment.<sup>5</sup> Because of the strong consumer preference for wireless services, Nexus's wireless offerings have been very successful in the marketplace, such that it now provides wireless services to Low Income participants in eleven states. Nexus' wireless services have been so successful at meeting the objectives of the Low Income program – getting phone service to this underserved population – because prepaid wireless services are uniquely well-positioned to meet the needs of low income, most-at-risk and most-in-need Americans, and help provide the crucial link they need to jobs, healthcare services, education and other vital information.<sup>6</sup>

Nexus' expansion into wireless services has not been without its challenges, however. ETC status is a creature of federal law, but under that law, states have been delegated the authority to carry out the federally-created process of designating ETCs. The applicable federal statute, Section 214(e), is entirely neutral with regard to the technology an ETC uses to provide the supported services. However, states are often confused about the way in which Section 214(e) applies to different technologies, particularly wireless technology. This confusion arises from the specific way in which wireless services have evolved over time. In particular, most wireless services have been offered by a legal entity that has been exclusively focused on offering wireless telecommunications service. As a result, it has been the exception rather than the rule for the same entity to utilize both wireline and wireless technologies in a fully integrated manner. The result has been that on many occasions states have been called upon to designate as ETCs entities that only used wireless technology at the time of their designation and had no plan or expectation to use other technologies within any reasonably foreseeable period. When states have designated such entities as ETCs, the states have, therefore, understandably only mentioned the use of wireless technology. As a result, when a fully integrated carrier such as Nexus has approached the states, many state commissions (typically wrongly, in Nexus' view) have interpreted state statutes prohibiting state authorities from regulating wireless services as prohibiting the state commission from applying the federal statute to confer ETC status on these

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<sup>3</sup> *In Re Federal-State Joint Board on Universal Service; Lifeline and Link Up*, Recommended Decision, 2010 FCC LEXIS 6557, at ¶ 64 (Jt. Bd. rel. Nov. 4, 2010). Attached is a photograph of one Nexus' mobile outreach vehicles and campaigns.

<sup>4</sup> *In Re Empowering Consumers to Avoid Bill Shock Consumer Information and Disclosure*, Comments of Nexus Communications, Inc., CG Docket Nos. 10-207, 09-158 (filed Jan. 10, 2011).

<sup>5</sup> Radio Station Authorization, Call Sign WQB1768, File No. 0004028462. Nexus has deployed and is currently deploying additional infrastructure for its non-Low Income subscribers with a goal of providing supported services to Low Income customers through use of this spectrum.

<sup>6</sup> See attached white paper that more fully discusses the benefits of prepaid wireless services for the target demographic. In addition to providing services that are supported by the Low Income program, Nexus also provides its wireless customers with a company subsidized handset at no cost to the customer.

entities.<sup>7</sup> In these circumstances, prospective ETCs have often made the business decision to simply separately apply for a “wireless” designation, either from states that view themselves as having the authority to grant it, or from this Commission. Nexus itself has sought such designations to ensure that there would be no question regarding its authority to receive Low Income funding for its wireless customers.<sup>8</sup>

While there has been no reason in the past for Nexus to challenge the practice of some states to consider “wireless only” ETC designations, the fact remains that no such separate designation based on technology is reflected either in Section 214(e) or in the Commission’s rulings and regulations implementing that section. And the fact remains that Nexus is a fully integrated, “blended-facilities” carrier that offers the supported services, in part, over its own facilities that employ both wireline and wireless technologies. Nexus treats its specific network configuration as highly confidential information. As a result, a more detailed description of the specific facilities Nexus uses to provide the supported services is provided in Confidential Exhibits 1 and 2.

Like other carriers providing service over wireless technology, Nexus is not alone in charging an SAF for wireless services. In fact, charging a SAF is a wireless industry standard, rather than an exception. For example, each of the top five wireless providers in the nation charge an SAF—AT&T, Verizon (including the formerly Alltel operations, which continues to have separate pricing), Sprint-Nextel, T-Mobile and US Cellular. Similarly, a Nexus survey identified over 40 other wireless carriers that charge SAF, including seventeen carriers that charge an SAF on prepaid plans.

In addition to Nexus, seventeen other carriers charge SAFs on prepaid wireless plans: Alaska Wireless Communications LLC; Cellular South; Chariton Valley Communications; Corr Wireless; DPI Teleconnect, L.L.C.; Illinois Valley Cellular - IV Cellular; I-Q Telecom, Inc.; Lucky Wireless; Mobi PCS (Coral Wireless); Pine Tree Cellular (Maine); Smith Bagley - Cellular One; STi Prepaid, LLC; Telrite - Life Wireless; Terracom Wireless; True Wireless, LLC; West Central Wireless (Right Wireless); and YourTel America, Inc. Other wireless carriers that charge SAF include the following: Airlink Mobile; Arctic Slope Wireless; Caprock Cellular; CellularOne of East Texas; CloseCall America, Inc.; Cordova Wireless Communications Inc; Cross Mobile - Mobilz; E.N.M.R. Telephone Cooperative - Plateau Wireless; FTC Communications, Inc.; Immix - Keystone Wireless; Greatcall, Inc., d/b/a Jitterbug Wireless; Lamar County Cellular; Long Lines Metro; North East Colorado Cellular - Viaero Wireless; nTelos; OTZ Telecommunications Inc. - OTZ Cellular; SouthernLINC; and Union Wireless - Union Telephone Company. Nexus is providing additional information regarding its SAF in Confidential Exhibit 3.

Lastly, there currently exists at least ten wireless ETCs that receive Link Up funding. These include: Midwestern Telecommunications a/k/a MTI, Tennessee Telephone Service d/b/a Freedom Communications, Telrite Corporation a/k/a Life Wireless, True Wireless a/k/a New

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<sup>7</sup> For a more thorough discussion of this issue, please see *In Re TracFone Wireless, Inc. Petition for Declaratory Ruling*, Reply Comments of Nexus Communications, Inc., WC Docket Nos. 09-197, 03-109 (filed Jan. 10, 2011) (“Nexus Reply Comments”) at 11-14.

<sup>8</sup> Please see attached a few examples of these “wireless-specific” designation orders.

Talk, Inc, DPI Teleconnect a/k/a DPI Mobile, Smith Bagley, Inc., Verizon Wireless, AT&T Wireless, T-Mobile, and Cricket Wireless a/k/a Leap Wireless.

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Nexus strongly believes in the mission of the Low Income program, and looks forward to working further with staff on these issues. Nexus would suggest a follow up meeting to discuss the foregoing and any further questions staff may have regarding Nexus' operations, as well as to discussion Nexus' continued investment in its operations.

Respectfully submitted,

A handwritten signature in cursive script that reads "Danielle Frappier". The signature is written in black ink and is positioned above the printed name.

Danielle Frappier

cc: Vickie Robinson  
Kimberly Scardino  
Nicholas Degani

# Prepaid Wireless: Exactly What's Needed For Universal Service

## Prepared for Nexus Communications

### Introduction

For over twenty-five years, the Federal Government has assisted low income Americans gain access to the telephone system that knits the nation together.<sup>1</sup> The modern Low Income program (Lifeline and Link Up) was created in 1996 as part of the formal, explicit Universal Service program established by the Telecommunications Act of 1996. It is intended to help ensure that “[q]uality services [will] be available at just, reasonable, and affordable rates” for *all* citizens.<sup>2</sup> In the years since passage of the 1996 Act, services supported by the Low Income program have grown more varied and sophisticated as technology has evolved. Much of this change has been driven by consumers themselves. Like everyone else, low income consumers look for new ways of communicating, new technologies, and new service offerings. And like everyone else, low income consumers know that they need wireless services to navigate in today’s economy.

The goals of the Universal Service program remain undiminished today, but whereas 25 years ago all that was really at issue was plain old wired telephone service, today the program operates in a communications industry that continues to evolve at an ever-increasing pace. It is a testament to Congress’s foresight – in declaring Universal Service to be an “evolving” standard, and one that is not bound to any particular technology – that the program has adapted and has

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<sup>1</sup> The Lifeline program was created by the FCC in 1984. *MTS and WATS Market Structure, and Amendment of Part 67 of the Commission’s Rules and Establishment of a Joint Board*, Recommended Decision, CC Docket nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (rel. November 23, 1984) (recommending the adoption of federal Lifeline assistance measures); Decision and Order, CC Docket nos. 78-72 and 80-286, FCC 84-637, 50 Fed. Reg. 939 (rel. December 28, 1984) (adopting the Joint Board’s recommendation).

<sup>2</sup> 47 U.S.C. § 254(b).

come to encompass wireless services for low income Americans. Wireless, especially prepaid wireless, is one of the best tools presently available to combat the communications divide. Prepaid wireless has introduced new services and new power to low income customers, and they have responded positively and overwhelmingly. The result is an enlivened Low Income program—that makes these services possible for these consumers—that is on course to complete the goal of connecting all Americans in a wireless century.

### **Wireless Telephone Service is Ubiquitous**

Wireless telephone service is now the dominant form of communication in the nation. According to the Federal Communications Commission, 90% of Americans have a mobile device.<sup>3</sup> The availability of this technology is virtually universal: 99.6% of Americans live and work in areas that are covered by one or more mobile voice providers.<sup>4</sup> Now that wireless service has become ubiquitous, it is quickly displacing the older wireline system. Wireline service has been declining for years, and currently one quarter of American households have “cut the cord” and rely on wireless voice service alone.<sup>5</sup> In 2009, the number of American households that had only wireless phones exceeded the number that had only landlines for the first time.<sup>6</sup> Twenty or even ten years ago that would have been remarkable – the majority of Americans have both landline and wireless but among those who have only one service, there are *more* that choose wireless-only than choose landline-only. And, this balance will only continue to tilt in favor of wireless: fifteen percent of those who retain wireline service report that they

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<sup>3</sup> FCC 10-81, “Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, including Commercial Mobile Services,” 20 May 2010, p.5, p.11

<sup>4</sup> *Id.*, p.7

<sup>5</sup> *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics

<sup>6</sup> Amy Farnsworth, *A cellphone plan to bridge digital divide: Firms and feds offer free connections to customers shut out by high costs*, Christian Science Monitor, July 2, 2009.

receive all or almost all of their calls on wireless telephones.<sup>7</sup> Wireline is a “legacy” service – it’s not going away entirely any time soon, but it is shrinking, not growing, as it is displaced by wireless service throughout the population.

It’s not surprising that customers prefer wireless to landline by such a large margin. Wireless service by its very nature is portable, and it has allowed Americans to adapt to a new era of ubiquitous and constant connectivity, something that was never possible with landline service. Wireless service also engenders more excitement than wireline service ever could, with new technology – both more robust handsets and associated features implemented in hardware, as well as new network capabilities – expanding the possibilities of communication and related economic productivity year after year. Even the lowest-priced wireless handsets offer features that landline phones don’t, such as text messages, built-in phonebooks, and mobile voicemail. The cost of wireless service has also decreased dramatically, making it easily affordable for the majority of Americans.<sup>8</sup> At the same time, consumer satisfaction with wireless offerings has reached higher levels.<sup>9</sup> The wireless industry’s dramatic rise is not a fluke; it is the result of millions of Americans—especially those on limited budgets—making the rational decision to choose a mobile, technologically advanced product over the increasingly antiquated and wall-bound Twentieth Century telephone system.

### **Wireless Provides Special Advantages for Low Income Americans**

Congress took specific steps to ensure that low income Americans aren’t left out of the wireless revolution. Like other wireless customers, low income Americans enjoy the better

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<sup>7</sup> *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics

<sup>8</sup> CTIA, *Semi-annual wireless industry survey*, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10316>

<sup>9</sup> CTIA, *The Wireless Industry Facts: An Independent Review*, available at [http://files.ctia.org/pdf/082010\\_Independent\\_Assessment\\_of\\_Wireless\\_Industry.pdf](http://files.ctia.org/pdf/082010_Independent_Assessment_of_Wireless_Industry.pdf)

handsets and added features that come with wireless service. But wireless also provides critical benefits for low income Americans that improve their security, mobility, and economic welfare in ways that are particularly important to them in light of the economic and at times social challenges they face. Numerous studies have demonstrated that wireless phones help low income Americans in profound ways, and that they recognize it.

First, wireless phones provide and enhance physical, personal security. Survey respondents prefer wireless to landline for emergency uses by more than three to one, and forty-eight percent of Americans have already used a wireless phone in an emergency.<sup>10</sup> Wireless phones have been called a “lifeline” for the homeless, who use them to call for help and to report assaults.<sup>11</sup> Studies have called wireless phone service “essential” to low income Americans, largely because it provides a constant connection with family, friends, and others who can offer support and protection when needed.<sup>12</sup>

Second, low income Americans benefit, even more than other wireless customers, from the mobility of their phones. Low income customers often spend less time during the day at a fixed location like a home or a desk. If unemployed, a wireless service is more useful than a landline service, as discussed below. But employed Americans with lower incomes will more likely be in jobs that do not come with an office phone available to them. This is particularly true for the homeless. For homeless Americans, wireless service is the only realistic means of

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<sup>10</sup> Amy Farnsworth, *A cellphone plan to bridge digital divide: Firms and feds offer free connections to customers shut out by high costs*, Christian Science Monitor, July 2, 2009; Sullivan, N.P. *Cell phones provide significant economic gains for low-income American households: A review of literature and data from two new surveys* at 15; available at [http://www.newmilleniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://www.newmilleniumresearch.org/archive/Sullivan_Report_032608.pdf) (“Sullivan Report”)

<sup>11</sup> Petula Dvorak, *D.C. Homeless People Use Cellphones, Blogs and E-mail to Stay on Top of Things*, Washington Post, March 23, 2009.

<sup>12</sup> Janice A. Hauge, et al., *Whose call is it? Targeting universal service programs to low-income households’ telecommunications preferences*, 33 *Telecomm. Pol’y* 129, 130 (2009), available at [http://warrington.ufl.edu/purc/purcdocs/papers/0805\\_Hauge\\_Whose\\_Call\\_is.pdf](http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_is.pdf)

voice communication, especially as payphones disappear.<sup>13</sup> Advocates report that wireless phones are crucial for the homeless, who use them to stay in touch with their families, arrange appointments for medical care, and pay bills.<sup>14</sup>

Wireless service is also very important in helping low income Americans get and keep jobs. Unless they have a wireless phone and accessible voicemail, low income job applicants are at a serious disadvantage during the process of seeking and setting up job interviews, as well as making and receiving the follow-up calls that are an integral part of actually getting hired. A mobile phone allows prospective employees to respond immediately to potential employers and, once hired, allows them to stay in contact with their employers and to better manage their schedules. In this respect, inbound use of wireless phones – the ability to receive calls – is just as critical as the ability to call others. Once they are employed, low income Americans use their wireless phones to contact employers and co-workers. In this regard, most wireless customers use their phones for work-related calls, and it would be difficult to imagine navigating the responsibilities and assignments of the work world without a mobile telephone.<sup>15</sup>

Another way wireless is useful to low income Americans is as a tool for obtaining the most effective access to other social services for which they are targeted. A wireless service allows low income families to have reliable communication with government or medical offices, since they will not have to sit near a wired phone – which may not be an option in any case – and since, if they do miss a call, there is typically Caller ID and voice mail available to facilitate the exchange of information and any necessary call-backs.

Prepaid billing is perhaps the most important aspect of wireless service for low income Americans. As the observers have noted, the flat fees attached to most contractual postpaid

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<sup>13</sup> Kevin Graham, *Wireless a Lifeline for Homeless*, St. Petersburg Times, April 9, 2007.

<sup>14</sup> *Id.*

<sup>15</sup> Sullivan Report at 22.

plans are disproportionately onerous on low income customers.<sup>16</sup> By contrast, prepaid wireless service costs only as much as a customer can afford. The low income customer does not have to commit to pay for more service than she will likely use, and does not have to worry about bill shock if the unduly-large monthly commitment becomes too onerous. With pre-paid, the financial burden is both precise and fair. This is a crucial benefit to families who must count every dollar each month. The FCC itself has noted that the “prepaid feature, which essentially functions as a toll control feature, may be an attractive feature to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.”<sup>17</sup> With prepaid, low income customers can purchase only as many minutes as they need for their phone.

### **Prepaid Wireless—Bridging the Communications Divide**

The advantages of wireless service are not lost on low income Americans. Quite the contrary: low income customers are migrating quickly to wireless, and their rate of switching to wireless only – that is, “cutting the cord” – is higher than that of the rest of the population.<sup>18</sup> When asked, low income families confirm that if they can only have one phone, they want it to be wireless.<sup>19</sup> They also want it to be prepaid. In the last few years, the increase in prepaid subscribership has been particularly high in low income households, which makes sense. Studies

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<sup>16</sup> Reply Comments of the Minority Media and Telecommunications Council, *In the Matter of Fostering Innovation and Investment in the Wireless Communications Market: A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket Nos. 09-157, 09-51, FCC 09-66 (rel. Aug., 27, 2009).

<sup>17</sup> *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia*, CC Docket No. 96-45, FCC 08-100, Released April 11, 2008.

<sup>18</sup> Hauge at 141; *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics.

<sup>19</sup> Hauge at 136.

have shown that low income customers choose prepaid in higher numbers than any other group.<sup>20</sup>

The success of prepaid wireless among this segment of the population is borne out by a recent study that found that the penetration of prepaid service in low income Floridian households has doubled over the past three years.<sup>21</sup> The prepaid wireless industry is also growing quickly as a whole: two out of three new wireless subscribers choose prepaid.<sup>22</sup> As the FCC predicted, the ability to control costs is the big reason that prepaid wireless has been so successful among low income purchasers.<sup>23</sup> Being able to decide how much or how little to spend on phone service from month to month allows low income families to manage their costs and phone usage in accordance with family budget. By pre-paying, they can control the cost of critical wireless service on a highly granular level, down to the dollar and the minute.<sup>24</sup>

Crucially, minority populations are of particular interest in any policy discussion concerning prepaid wireless and the digital divide. First, minorities have a higher wireless penetration rate than the overall population.<sup>25</sup> Additionally, the Low Income program is of particular relevance in combating the communications divide in minority populations because they suffer from higher poverty rates. For example, the poverty rate for Latinos in was 23.2 percent and 24.7 percent for African-Americans in 2008, compared to the overall poverty rate of

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<sup>20</sup> *Id.* at 138.

<sup>21</sup> *Id.* at 137.

<sup>22</sup> Marguerite Reardon, *Prepaid wireless outpaces contract service*, CNET News, April 5, 2010, available at [http://news.cnet.com/8301-30686\\_3-20001793-266.html](http://news.cnet.com/8301-30686_3-20001793-266.html)

<sup>23</sup> Hauge at 139.

<sup>24</sup> As the National Consumers League has written, “[p]repaid wireless service is a good option for low-income consumers because there are no long-term contracts, no credit checks, and no early termination penalties or late payment fees. With prepaid service, people pay only for the service that they can afford.” Comments to the Federal Communications Commission from the National Consumers League *In the matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, WC Docket 03-109, September 17, 2004.

<sup>25</sup> Hauge at 135.

13.2 percent.<sup>26</sup> Prepaid wireless is crucial to narrowing the communications divide due to its unique mix of affordability and ease of use allows it to achieve high penetration in minority communities.

### **Prepaid Wireless as Low Income Eligible Telecommunication Carriers (“ETCs”)**

The overwhelming success of prepaid wireless among low income households has rejuvenated the Lifeline and Link Up programs. Unlike the High Cost program, Lifeline and Link Up payments are directly tied to the exact number of qualifying low income customers that an ETC serves.<sup>27</sup> Thus, while growth in the High Cost program might well be a basis for concern – if costs are so high, and growing, perhaps there is an underlying inefficiency in how the service is providing – growth in the Low Income program means that more and more of the population the program is trying to reach, is actually being reached. This is a success, not a problem. And, where states have approved prepaid wireless providers as eligible telecommunications carriers (ETCs), participation rates in these programs have jumped. Texas saw an immediate 10% increase in Lifeline participation when it began approving wireless ETCs.<sup>28</sup> In Florida, the combination of automatic enrollment and the approval of SafeLink, a prepaid wireless phone provider, to be a Lifeline ETC, led to a increased participation rate of 236% in a single year.<sup>29</sup>

Still, overall participation in the Lifeline and Link Up programs is still far from what it should be if the program’s goals – all Americans, including low income Americans, having

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<sup>26</sup> U.S. Census Bureau, *Summary of the Current Population Survey (CPS), 2009 Annual Social and Economic Supplement (ASEC)*, available at <http://www.census.gov/hhes/www/poverty/about/overview/index.html>

<sup>27</sup> The High Cost program provides subsidies based on the total amount of cost a carrier incurs (incumbent eligible telecommunications carriers (ETCs)) or total volume of customers (competitive ETCs).

<sup>28</sup> Memorandum from Edward Randolph, Director of the Office of Governmental Affairs, to the California Public Utilities Commission on AB 2213 (Fuentes) – Moore Universal Telephone Service Act as Amended (May 26, 2010). available at <http://docs.cpuc.ca.gov/PUBLISHED/REPORT/118920.htm>

<sup>29</sup> Florida Public Service Commission news release, *Florida's lifeline enrollment increases dramatically*, December 28, 2009. available at <http://www.psc.state.fl.us/home/news/index.aspx?id=615>

access to modern, effective, affordable communications – are going to be met. Unfortunately, only 32% percent of eligible households took part last year.<sup>30</sup> The FCC has attributed this low success rate in part to state restrictions on wireless ETCs, of which it urges reconsideration.<sup>31</sup> Certainly, new outreach efforts should be encouraged.

### **Best Practices in the Prepaid Wireless Industry**

As the prepaid wireless industry grows in size, its business practices are also evolving. Already, there are a recognizable set of best practices that many companies follow in order to offer the most attractive packages to consumers and to maintain the advantages of prepaid for low income Americans. First, many ETCs offer a reasonable number of minutes upon activation of the phone, and additional minutes can be purchased affordably. Nexus Communications' ("Nexus"), like most prepaid wireless ETCs, offers additional prepaid cards, whose minutes rollover into the next month if not used, at stores such as Walmart, CVS/Pharmacy, Rent A Center and Giant Eagle.<sup>32</sup> Second, Nexus and other wireless ETCs waive the balance of their activation fees not covered by Link Up, and also provide free wireless handsets, thereby eliminating any cost barrier to obtaining service. Third, as mentioned before, Nexus and Tracfone (in most markets) provide sixty eight free minutes of service with basic service packages, and unused minutes roll over from month to month for as long as the Lifeline subscriber remains enrolled in the lifeline program. Just recently, Tracfone announced that it is adding additional packages for Lifeline subscribers to choose from, including one plan that provides Lifeline subscribers with up to two hundred fifty free minutes every month.

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<sup>30</sup> USAC Lifeline Participation Rate Study (2009), *available at* <http://www.usac.org/li/about/participation-rate-information.aspx>

<sup>31</sup> National Broadband Plan, Chapter 9, at 172.

<sup>32</sup> Details of Nexus' service offerings are available at <https://www.reachoutmobile.com/index.php/site/page/C3/>

Fourth, as active and responsible participants in the government's Low Income programs, prepaid wireless ETCs support the creation of a national certification and verification database. In addition, prepaid wireless ETCs are helping to eliminate fraud, waste, and abuse from the Low Income program by de-enrolling Lifeline subscribers who do not use the handset for 60 days. This ensures that ETCs will not inadvertently seek USF reimbursements for subscribers who are no longer using their services. Only subscribers who actually use their wireless service will continue to participate in the Lifeline program, and wireless ETCs will only receive Low Income support for those subscribers who remain enrolled in the Lifeline program.

### **The Challenges that Remain**

The rapid growth of prepaid wireless within the Lifeline program has not been without critics. Some have charged that prepaid wireless ETCs have not demonstrated a commitment to consumer value in the services they offer through Lifeline and Link Up, and that the number of minutes offered monthly is too low.<sup>33</sup> Others have noted that the non-contractual nature of the prepaid model makes it difficult to verify that customers remain eligible for government support.<sup>34</sup>

It's certainly true that prepaid wireless ETCs don't operate like traditional landline ILECs when offering Lifeline services. But over the last few years, low income Americans have announced clearly, in every way possible, that they prefer limited minutes on a wireless phone to unlimited local minutes on a landline phone. Given all the advantages of wireless noted above,

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<sup>33</sup> Comments of the Advocates for Basic Legal Equality, et al. *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Lifeline and Link-Up Eligibility, Verification, and Outreach Issues Referred to Joint Board*, Public Notice, FCC 10J-2, CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), seeking comment on In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up, Order, FCC 10-72, CC Docket 96-45 and WC Docket 03-109 (FCC rel. May 4, 2010).

<sup>34</sup> Comments of the National Association of National Association of State Utility Advocates *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Lifeline and Link-Up Eligibility, Verification, and Outreach Issues Referred to Joint Board*, Public Notice, FCC 10J-2, CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), seeking comment on In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up, Order, FCC 10-72, CC Docket 96-45 and WC Docket 03-109 (FCC rel. May 4, 2010).

this is hardly surprising. The old landline model is simply not useful to most Americans in today's economic and social environment. Likewise, it is true that making sure prepaid wireless customers can be certified and verified through the Low Income system has required some innovative solutions, and may require further adjustments to guard against waste, fraud, and abuse. But this innovation is happening, will continue to happen, and is indicative of the prepaid wireless industry's ability to expand the boundaries of service and the traditional definitions of telephone networks. Fundamentally, the problems identified by critics, mismatching of service offerings to need, and a potential for waste while more effective verification methods are put in place, are simply growing pains. Any new entrant into established programs like Lifeline and Link Up will face these kinds of challenges. But these challenges are far preferable to the problems that would face a wireline-only Lifeline program: quickly decreasing participation and growing irrelevance to the needs of those Americans it is supposed to help. Prepaid wireless has already solved the problems that would otherwise endanger the very existence of the Low Income programs, and it is one of the best tools to combat the communications divide.

### **Solutions**

None of the challenges facing prepaid wireless ETCs is intractable. By following the best practices outlined above, companies like Safelink Wireless, Nexus, and Assurance Wireless already give their customers great value in prepaid wireless phones, and subscription numbers show that low income consumers recognize this value. Many ETCs are also offering new types of packages to Lifeline subscribers, including ones with up to two hundred fifty free minutes ever month, as part of their efforts to respond to the suggestions of consumer groups. The wide availability of prepaid cards and the increasing competition among providers are also making it easier for customers to find the best choice among phones. State public service commissions can

provide another easy way to increase competition among wireless ETCs. Many states, through their implementation of the Lifeline and Link Up programs, already publish the names of qualifying ETCs that customers may choose among.<sup>35</sup> State public service commissions could take the next step of publishing the terms of various prepaid plans, which would point out which ETCs' plans offer the best value for state residents. This centralized information repository, combined with the natural competition in a fast-growing industry, would do much to eliminate or reduce cost concerns.

Prepaid wireless ETCs are also playing an active role in the push to reform the eligibility and verification systems that the Lifeline and Link Up programs use to prevent fraud and abuse. A nationally-maintained eligibility database, which wireless ETCs have urged the FCC to implement soon, would resolve any issues associated with subscribers attempting to obtain Lifeline service from more than one carrier simultaneously or when a subscriber is not qualified for the Lifeline program.<sup>36</sup>

## **Conclusion**

Low Income Americans were among the first to recognize how well prepaid wireless meets their needs by providing security, mobility, and cost control that was not being offered by traditional landline services. Their response has been swift and clear, and the rate at which low income customers abandon landlines in order to make the move to prepaid wireless is increasing. The FCC and many state governments have recognized the trend, and are adapting the Lifeline

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<sup>35</sup> See, e.g., Illinois (<http://www.icc.illinois.gov/utility/list.aspx?type=prepaid>), California (<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelinedetails.htm>)

<sup>36</sup> See, e.g. Comments of Leap Wireless International, Inc. and Cricket Communications, Inc.; Comments of Nexus Communications, Inc.; Comments of PR Wireless, Inc.; Comments of TracFone Wireless; CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), *seeking comment on In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up*, Order, FCC 10-72, CC Docket 96-45 and EC Docket 03-109 (FCC rel. May 4, 2010).

and Link Up programs so that they can help more low income Americans get jobs and stay employed, better manage their budgets, and care for their families. This constitutes no less than a revolution in the usefulness and desirability of Lifeline and Link Up service for low income Americans



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**Entered: December 3, 2009**

**FINAL**

12/23/2009

CASE NO. 09-0903-T-PC

NEXUS COMMUNICATIONS, INC., doing business  
as TSI, a corporation, Columbus, Ohio.

Petition for consent and approval for Nexus  
Communications, dba TSI, to be designated  
an eligible telecommunications carrier.

**RECOMMENDED DECISION**

On June 3, 2009, Nexus Communications, Inc., a corporation doing business as TSI (TSI or Nexus), filed an application under §214(e)(2) of the Communications Act of 1996, as amended, seeking designation by the Public Service Commission of West Virginia as an eligible telecommunications carrier (ETC) for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers. TSI indicated that it will not seek access to funds from the federal Universal Service Fund (USF) for the purpose of providing service to high cost locales. TSI provides commercial mobile radio service (CMRS) in West Virginia and other states, using its own facilities, and has been granted ETC status in approximately 14 other states. TSI alleged that it is able to provide all services and functions supported by the universal service program, as detailed in the Federal Communications Commission (FCC) rules, 47 C.F.R. §54.201(d)(1). TSI proposed, upon receiving ETC designation, to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

On June 30, 2009, Staff Attorney Chris Howard filed the Initial Joint Staff Memorandum, attaching the June 29, 2009 Internal Memorandum and Utilities Division Initial Recommendation from Utilities Analyst David Kennedy. Staff highlighted all of the criteria it believes that TSI must meet before being designated as an ETC and indicated that, once it had completed its investigation into this matter, Staff would submit a final substantive recommendation.

By the July 15, 2009 Commission Referral Order, the Commission referred this matter to the Division of Administrative Law Judges (ALJ Division) for decision on or before December 30, 2009.

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On August 18, 2009, TSI amended its petition to obtain designation as a full ETC carrier, although it still limited its request to obtaining funding from the USF's low-income mechanism, i.e., not from the USF's high-cost mechanism.

On August 24, 2009, Staff Attorney Howard submitted the Further Initial Joint Staff Memorandum, attaching the August 19, 2009 Utilities Division Interim Recommendation from Mr. Kennedy. Mr. Kennedy emphasized that TSI has not furnished Commission Staff with all of the information and documentation needed to complete its review, including, but not limited to, a list of facilities located in West Virginia. Staff requested this additional information within ten days.

On September 3, 2009, TSI responded to Staff's recommendation, indicating that the case should not be dismissed and requesting that a hearing be scheduled to resolve the dispute.

On September 16, 2009, Staff Attorney Howard submitted the Final Joint Staff Memorandum, attaching the September 8, 2009 Utilities Division Final Recommendation from Mr. Kennedy. Together, these Memoranda comprise Commission Staff's final substantive recommendation in this matter. Staff maintained that the only point of contention between TSI and Staff is the need for TSI to furnish Staff with information required for ETC status. Staff recommended that the Commission deny the request for ETC status unless TSI furnishes this information.

On September 25, 2009, TSI responded to Staff's final substantive recommendation, arguing that, in the context of today's technology, TSI does not have to have physical facilities in West Virginia in order to provide telecommunications service. TSI argued that requiring it to locate facilities in West Virginia would violate FCC regulations. TSI has facilities based on its relationship with other telecommunications providers, rather than through building its own facilities which would only duplicate existing facilities and be economically inefficient. TSI also stated that, as of September 25, 2009, sixteen other states have granted TSI the ETC status it seeks in West Virginia.

Responding to all of the above, by the October 6, 2009 Procedural Order, the Administrative Law Judge (ALJ) adopted a procedural schedule to process and resolve this matter, including a Friday, November 6, 2009 hearing date.

On October 30, 2009, Staff Attorney Howard submitted a Further Joint Staff Memorandum indicating that the parties had resolved their dispute and would be submitting a joint stipulation and agreement for settlement. Accordingly, Staff requested that the ALJ cancel the November 6, 2009 hearing.

By the November 2, 2009 Order Canceling Hearing, the ALJ canceled the procedural schedule adopted by the October 6, 2009 Order, including the Friday, November 6, 2009 hearing date, and directed that the parties file an executed joint stipulation and agreement for settlement no later than Tuesday, December 1, 2009.

On November 24, 2009, Staff Attorney Howard submitted the Further Joint Staff Memorandum, attaching the Joint Stipulation duly executed by counsel for Nexus and Staff. Staff reported that the parties had resolved all of their differences and opined that TSI had met all of the qualifications for ETC status. The Joint Stipulation recites:

3. After extensive negotiations with the Staff of the Public Service Commission ("Staff"), Nexus has agreed to further modify its initial Application, to-wit:

I) Each of Nexus' Lifeline customers in West Virginia will receive 68 minutes of air time each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month;

ii) Nexus will provide free E911 compliant handsets to all West Virginia Lifeline [customers] at no charge to the customers upon their enrollment in the Lifeline program;

iii) Nexus will waive any monthly maintenance fees for Nexus' Lifeline customers in West Virginia;

iv) Nexus will waive the balance of Nexus' customary Service Activation Fee ("SAF") not covered via Link-Up to ensure there will be zero deferred activation charges for all Nexus' Lifeline customers in West Virginia;

v) Nexus will inform all newly enrolling Nexus' Lifeline customers in West Virginia of the applicability of Roaming Fees if a subscriber roams outside of the home coverage area; and

4. As a result of, and in return for these modifications, Staff will recommend that the Commission grant Nexus designation as a full ETC carrier. Staff acknowledges that Nexus has provided information on Nexus facilities in Columbus, Ohio, that Staff believes satisfies FCC Rule 47 C.F.R. §54.201(d)(1).

### DISCUSSION

Having considered all of the above, since no dispute remains to be resolved in this proceeding, as evidenced by the executed Joint Stipulation, the ALJ will consider the parties to have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since the parties have resolve their differences by entering into a Joint Stipulation; since the Joint Stipulation modifies the original application filed by Nexus; and since Nexus otherwise has satisfied FCC Rule 47 C.F.R. §54.201(d)(1) to be designated as a full ETC carrier, he will grant the application, as amended by the Joint Stipulation filed on November 24, 2009.

## **FINDINGS OF FACT**

1. Nexus Communications, Inc., doing business as TSI, filed an application under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Commission as an ETC for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers. TSI indicated that it will not seek access to funds from the federal USF for the purpose of providing service to high cost locales. TSI provides CMRS in West Virginia and other states, using its own facilities, and has been granted ETC status in approximately 14 other states. TSI alleged that it is able to provide all services and functions supported by the universal service program, as detailed in the FCC rules, 47 C.F.R. §54.201(d)(1). TSI proposed, upon receiving ETC designation, to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia. (See, June 3, 2009 application).

2. Staff Attorney Howard submitted a Joint Stipulation duly executed by representatives of Staff and Nexus. (See, Further Joint Staff Memorandum, and the attached Joint Stipulation, filed November 24, 2009).

3. The Joint Stipulation provides that Nexus will provide E911 compliant handsets to all Lifeline customers and that non-compliant handsets in the possession of existing TracFone customers will be replaced with E911 compliant handsets at no charge to the customers upon their enrollment in the Lifeline program. (See, Joint Stipulation, filed November 24, 2009).

4. Each of Nexus' Lifeline customers in West Virginia will receive 68 minutes of air time each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month. (See, Joint Stipulation, filed November 24, 2009).

5. Nexus will provide free E911 compliant handsets to all West Virginia Lifeline customers at no charge to the customers upon their enrollment in the Lifeline program. Nexus will waive any monthly maintenance fees for Nexus' Lifeline customers in West Virginia. Nexus will waive the balance of Nexus' customary SAF not covered via Link-Up to ensure there will be zero deferred activation charges for all Nexus' Lifeline customers in West Virginia. Nexus will inform all newly enrolling Nexus' Lifeline customers in West Virginia of the applicability of Roaming Fees if a subscriber roams outside of the home coverage area. (See, Joint Stipulation, filed November 24, 2009).

6. Staff opined that Nexus has demonstrated that it will comply with each of Staff's final substantive recommendations. (See, Further Joint Staff Memorandum, filed November 24, 2009).

7. As a result of, and in return for the modifications to the original application, Staff recommended that the Commission grant Nexus designation as a full ETC carrier. Staff acknowledged that Nexus has provided information on Nexus facilities in Columbus, Ohio, which Staff believes satisfies FCC Rule 47 C.F.R. §54.201(d)(1). (See, Further Joint Staff Memorandum, filed November 24, 2009).

## CONCLUSIONS OF LAW

1. Nexus has demonstrated that it is a common carrier capable of offering and advertising all of the service offerings set forth in Section 214(e) of the Telecommunications Act of 1996 for eligible telecommunications carriers through the designated service areas, using either its own facilities or a combination of its own facilities and the resale of another carrier's services, for the sole purpose of providing Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

2. Nexus should be designated as an ETC to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia.

3. It is reasonable to require that the Commission's Executive Secretary provide the FCC and the Universal Service Administrative Company a certified copy of this Order designating Nexus as an ETC to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia, but that Nexus will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost locales.

4. It is reasonable to require that Nexus publish a Notice of the granting of its petition for designation as an ETC solely to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia, one time each in the newspapers duly qualified under *West Virginia Code §59-3-1 et seq.*, published and generally circulated in each of the 19 cities designated for statewide legal publications.

5. It is reasonable to approve the Joint Stipulation as the full and proper settlement of all issues joined in this filing and to approve the application.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed with the Commission on June 3, 2009, by Nexus Communications, Inc., doing business as TSI, under §214(e)(2) of the Communications Act of 1934, as amended, seeking designation by the Commission as an Eligible Telecommunications Carrier for the sole purpose of providing "Lifeline" and "Link Up" service to qualifying low income West Virginia consumers, be, and hereby is, approved, as follows:

1. The Joint Stipulation filed on November 24, 2009, be, and hereby is, ratified, adopted and approved as the proper and complete settlement of this proceeding, including the following specific stipulations:

(a) Nexus shall provide E911 compliant handsets to all Lifeline customers and non-compliant handsets in the possession of existing Nexus

customers will be replaced with E911 compliant handsets at no charge to the customers upon their enrollment in the Lifeline program;

- (b) Each of Nexus' Lifeline customers in West Virginia shall receive 68 minutes of airtime each month for all months in which the customers are enrolled in the program and any unused minutes will roll over to the following month;
  - (c) Nexus shall waive any monthly maintenance fees for Nexus' Lifeline customers in West Virginia;
  - (d) Nexus shall waive the balance of Nexus' customary SAF not covered via Link-Up to ensure there will be zero deferred activation charges for all Nexus' Lifeline customers in West Virginia;
  - (e) Nexus shall inform all newly enrolling Nexus' Lifeline customers in West Virginia of the applicability of Roaming Fees if a subscriber roams outside of the home coverage area; and
2. The Commission's Executive Secretary shall provide the Federal Communications Commission and the Universal Service Administrative Company a certified copy of this Order designating Nexus Communications, Inc., doing business as TSI, as an Eligible Telecommunications Carrier solely to provide Lifeline and Link Up services to all qualifying customers who request such service in West Virginia, and that Nexus will not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost locales;
3. Nexus Communications, Inc., doing business as TSI, shall publish the Notice of ETC Status, attached as Appendix A, one time each in the newspapers duly qualified under *West Virginia Code* §59-3-1 *et seq.*, published and generally circulated in each of the 19 cities designated for statewide legal publications.

IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Recommended Decision upon the Commission by hand delivery and upon all parties of record by United States Certified Mail, return receipt requested.

Leave hereby is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this Recommended

Decision is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this Recommended Decision shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's recommended decision by filing an appropriate petition in writing with the Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



**Ronnie Z. McCann**  
Deputy Chief Administrative Law Judge

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