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February 23, 2011

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

Re: Ex Parte Filing in WC 03-109 Lifeline and Link Up, CC 96-45 Federal-State Joint Board on Universal Service

Dear Ms. Dortch:

In this letter, Nexus Communications, Inc. ("Nexus") provides an outline of a possible pilot program to explore ways to expand broadband services to participants in the federal Low Income program. We understand that this is a topic that may be considered in the Commission's forthcoming Notice of Proposed Rulemaking ("NPRM") regarding the Low Income program.[1]

Nexus is an eligible telecommunications carrier ("ETC") that focuses on serving communities with a high proportion of consumers eligible for participation in the Low Income program.[2] Over the last several years, Nexus has developed a number of community outreach and related programs that have proven successful in encouraging eligible citizens to take advantage of the support the Low Income program provides. As a result, Nexus believes that it can provide valuable insight into how the Commission should structure a pilot program that would actually be effective in bringing broadband services—particularly mobile broadband—to low income Americans.

Nexus' extensive outreach efforts include deploying mobile information vehicles directly to economically disadvantaged neighborhoods, which was recently recognized by the Federal-State Joint Board on Universal Service.[3] Nexus regularly engages in this type of outreach effort.

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[1] The NPRM is on the Commission's agenda for its March 3, 2011 meeting.

[2] Nexus has received ETC designation in the states of Alabama, Arkansas, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, West Virginia and Wisconsin.

[3] *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).

require the participation of broadband spectrum holders and ETCs with successful real-world experience marketing communications service to the target community, providing ongoing customer support to the community, etc.

The purpose of conducting the pilot program in four different markets is to enable the Commission and the industry to obtain real-world market data with regard to the community response to four different pricing and service arrangements – data that could be used to inform the Commission's longer-term conclusions regarding how to structure a permanent broadband universal service program for low income Americans. Thus, as Nexus envisions the pilot program, the specific offering would vary in each of the four market cities, as outlined below:

(1) in one market, end users would pay no out-of-pocket non-recurring fees and a low monthly recurring charge (perhaps $1.00);

(2) in a second market, end users pay a nominal out-of-pocket fee to activate the service (perhaps $1.00 or $5.00) and a low monthly recurring charge (perhaps $1.00 per month);

(3) in a third market, end users pay a more substantial service activation charge (perhaps $10.00), and a commensurate monthly recurring charge, such as $5.00 or $10.00; and

(4) in a fourth market, end users pay a higher activation fee (perhaps $25.00 or more), but nevertheless provides a significant level of subsidy, and a commensurate monthly recurring charge, such as $20.00.

The point of offering an option with no out-of-pocket fee, versus several options with progressively higher out-of-pocket offerings, would be to obtain information on how much of a deterrent to program participation even seemingly low or nominal out-of-pocket fees, as well as higher fees, might actually be. The different levels of recurring fees would provide similar information regarding the degree to which low income consumers value broadband functionality as compared to other goods and services on which they could spend their limited household resources.

As Nexus envisions this program, the pilot markets would be selected based on an analysis of income and unemployment levels, lack of broadband services and availability of wholesale broadband backbone capacity. The ETCs would undertake the outreach efforts.[5]

At the end of the six month trial, the ETCs, the Commission and the underlying broadband spectrum holders would review the performance of the pilot, including the relative "take rates" of the different service options, whether any demographic or other factors appeared to play a significant role in the differences, etc. Our hope and expectation would be that this information would provide useful guidance to the Commission in formulating broader support of broadband services by the Low Income program.

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[5] Other possibilities for the Commission to consider would include soliciting agreement on the part of some or all consumers who choose to take advantage of the pilot program's subsidized services to be interviewed from time to time (logically, although not necessarily, via phone or email) to discuss their use of the service, agreement to allow statistical information regarding their usage to be retained and analyzed (with appropriate protection of individually identifiable information), etc.

Nexus believes that the decisions the Commission will be making regarding extending the current low income universal service program to embrace broadband services will have profound effects on the nation's low income consumers for many years to come. Those decisions, therefore, should be based on real-world experience and data to the maximum extent possible. The pilot program outlined above would provide such experience and data. Nexus stands ready to work with the Commission and other industry participants to develop and participate in such a program, and we invite the Commission to seek further information from the industry and others regarding how such a program could be implemented in the near future.

Respectfully submitted,

Christopher W. Savage
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ATTORNEYS AT LAW

April 26, 2011

Ex Parte

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109

Dear Ms. Dortch:

On April 22, 2011, Mary Henze of AT&T and Chris Miller of Verizon Communications, Inc., along with Brita D. Strandberg and the undersigned of this firm on behalf of General Communication, Inc., spoke by telephone with Kim Scardino of the Wireline Competition Bureau to discuss the industry proposal to reduce the number of individual qualified Lifeline subscribers that are simultaneously receiving Lifeline-supported service from multiple ETCs filed in the above-captioned docket on April 15, 2011 (the "Proposal"). During the call, we explained that we would file a corrected version of the ex parte letter filed with the Proposal – a copy of that corrected letter is attached to this ex parte. We also discussed the appropriate vehicle for the Commission to adopt the Proposal, and clarified that the Commission may act by adopting rules and directing the Bureau to instruct USAC to implement those rules and the Proposal.

If you have any questions or require any additional information, please do not hesitate to contact me at (202) 730-1320.

Respectfully submitted,

John T. Nakahata
Counsel for General Communication, Inc.

cc: Kim Scardino

conduct some of the functions in the Proposal or for a period beyond the six months of this proposal. For some ETCs, any such funding will depend on the cost of the vendor and the allocation of those costs among ETCs.

The Proposal is designed to reduce the number of individual qualified Lifeline subscribers who are simultaneously receiving Lifeline-supported service from multiple ETCs, while still providing low-income consumers with the opportunity to choose their provider of Lifeline-supported service. The Proposal also recognizes, however, that ETCs that have customers who are simultaneously receiving Lifeline services from multiple ETCs today have no means of verifying whether any Lifeline customer is already receiving Lifeline service from another ETC. These ETCs are complying with the Commission's rules and mandates when they provide Lifeline service in good faith (based on the information available to the ETC at the time it received the request for service) to an individual who demonstrates that he / she qualifies for Lifeline support in accordance with existing rules. Under the Proposal, ETCs would therefore continue to be reimbursed for any Lifeline benefits provided to qualifying low income consumers until directed by USAC to de-enroll such customers, and would not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Furthermore, until there is a centralized database or other mechanism for real-time certification and verification of low-income subscribers' eligibility for enrollment in an ETC's Lifeline program, ETCs that in the future provide service to a qualifying low income consumer that is also receiving Lifeline service from another ETC will also receive reimbursement for any Lifeline benefits provided to that consumer until directed by USAC to de-enroll the customer, and will not be subject to retroactive denial or repayment of reimbursements for periods prior to USAC's direction to de-enroll a particular customer. Any other approach would effectively deny Lifeline consumers the ability to port services among Lifeline providers and would penalize ETCs for providing services that they were required to provide based on current requirements and regulations.

In light of the particular facts before the Commission and the fact that no consumer will lose all Lifeline service as a result of this interim proposal, the ETCs identified below recognize that that it may be appropriate for the Commission to adopt the attached Proposed Rules—and move forward with the related procedures discussed in the Proposal—under the "good cause" exception to the Administrative Procedure Act's typical notice and comment procedures,[2] and would not object to the Commission doing so.

The Proposal would impose new duties that have the force of law and that modify existing legislative rules, and therefore must be adopted through legislative rulemaking.[3] Most notably, notwithstanding rule 54.405(a), a legislative rule which directs all ETCs to make Lifeline service available to qualifying low-income consumers, the Proposal would both modify rule 54.405 to establish that ETCs have no obligation to provide Lifeline to low-income

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[2] 5 U.S.C. § 553(b)(3)(B).

[3] *Chao v. Rothermel,* 327 F.3d 223, 227 (3d Cir. 2003); *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003).

First, the Commission must preempt any state or local requirements[5] or state-approved tariff requirements that conflict with the obligation under newly adopted rule 54.405(e) to immediately de-enroll duplicate subscribers.

Second, the Commission must expressly permit Lifeline providers either to (a) terminate service or (b) change a customer to another service tier immediately upon notice from USAC of de-enrollment. The Commission's Order must make it clear that ETCs may take these steps notwithstanding any arguably contrary service terms and conditions (applicable by tariff or otherwise) or federal, state or local legal or regulatory requirements.

Third, to permit Lifeline providers to move customers to a rate or service plan that does not reflect a Lifeline benefit and to streamline the interactive voice response ("IVR") process through which Lifeline subscribers would indicate their intent to retain Lifeline service from a different ETC than the one identified in USAC's letter to the consumer, Lifeline providers must be granted a blanket waiver of the slamming and cramming rules to the extent such rules are applicable.

Fourth, the Commission's Order must make clear that any customer found to be receiving duplicate benefits from a state Universal Service or Lifeline fund must be de-enrolled from both the federal and the state program upon receipt by the provider of a de-enrollment notice from USAC.

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[5] *See, e.g.,* Fla. Admin. Code r. 25-4.0665(14) ("An eligible telecommunications carrier must provide 60 days written notice prior to the termination of Lifeline service."); Wisc. Admin. Code ATCP 123.04 (with limited exceptions, "no provider may initiate any price increase or other subscription change without giving the consumer prior notice of that price increase or subscription change. The provider shall give the notice at least 25 days, but not more than 90 days, prior to the subscription change.").

Finally, the Commission's Order should note that production of information necessary to identify and de-enroll recipients of duplicate Lifeline benefits is consistent with Section 222(d) of the Communications Act.

Respectfully submitted,

United States Telecom Association	CTIA – The Wireless Association ®
AT&T	CenturyLink
Cox Communications, Inc.	General Communication, Inc.
Nexus Communications, Inc.	Sprint Nextel Corp.
Tracfone Wireless, Inc.	Verizon Communications, Inc.

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