BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of	
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

REPLY COMMENTS OF NEXUS COMMUNICATIONS, INC.

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INTRODUCTION AND SUMMARY

The prior comment cycles in the present proceeding have covered a wide range of issues raised in the Commission's notice of proposed rulemaking ("NPRM").[1] The Commission subsequently issued a Further Inquiry to more closely examine four issues of particular interest, including Link Up.[2] This opportunity to focus on Link Up has revealed a consensus: Link Up is crucial to serving the poorest Americans who qualify for the Low Income program because the eligible telecommunications carriers ("ETCs") that serve them incur real activation costs and these consumers are unlikely to be served by ETCs that do not receive Link Up.

Nexus Communications, Inc. ("Nexus"), as an ETC that focuses primarily on the needs of qualifying low-income customers, understands the obstacles that the poorest Americans face in obtaining telephone service. It also knows that reducing or eliminating Link Up support for these Americans would threaten their ability to connect to the nation's fast-evolving and increasingly necessary telecommunications network. The activation costs for wireless ETCs are real and significant, and yet the margins associated with serving the target demographic are thin. This means that activation costs must be recovered either through Link Up or, if that support is eliminated, through new charges to customers. Its on-the-ground experience in this market has led Nexus to conclude that if Low Income service is only available after out-of-pocket fees, the poorest segment of the low income population will simply go severely underserved.

It is clear from reviewing the numerous comments filed that Nexus is not alone. Due to continuing increased competition in the Lifeline market there are now numerous wireless ETCs that focus their extensive marketing efforts on the low income population. This population is not

[1] *In the Matter of Lifeline and Link Up Reform and Modernization*, Notice of Proposed Rulemaking, WC Docket No. 11-42, FCC 11-32, Notice of Proposed Rulemaking (FCC rel. Mar. 4, 2011) (hereinafter, "NPRM").
[2] Further Inquiry into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding, WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45 (rel. August 5, 2011).

an afterthought (as it is for ILECs) or the lower end of an otherwise mid-income level customer base for the larger ETCs, most of which are non-facilities based forbearance providers.

Nexus does not target the higher end or even mid-income customers that are courted by the providers that have forgone Link Up. The forbearance provider's focus on the top income levels of the low income population is demonstrated by the fact that these providers seek to serve only those who are in the upper income levels of the qualifying population, such as those with Internet access. It is likely the case that these forbearance providers simply cannot reach the rest of the low income population without Link Up. The experience of Nexus bears this fact out.

The consensus of a majority of commenters is that Link Up is necessary and should not be eliminated or reduced. In fact, it appears that the forbearance providers are alone in suggesting that Link Up be completely eliminated. Frankly, Nexus is dumbfounded by suggestions that Link Up should be eliminated when—by all accounts—nationwide participation in the Low Income program is still approximately ***only a third*** of all eligible consumers. The uptick in competition with the advent of wireless ETCs over the past few years has only increased participation a few percentage points from about a third to approximately 36%.[3]

This lack of participation is not due to a lack of need or qualification. One in eight Americans currently receives food stamps—approximately 38.5 million people.[4] At typical monthly funding rates of $10 in federal Low Income disbursements, this means that the overall

[3] NPRM, Statement of Commissioner Michael J. Copps, (rel. March 4, 2011) ("The low-income programs have been historically underutilized and although there has been recent growth in the program, in 2009 only 36% of eligible consumers participated in Lifeline.").

[4] *See* Supplemental Nutrition Assistance Program, Data as of March 2011, United States Department of Agriculture (showing increase from 30 million to 45 million citizens, and from $3.6 to $5.7 billon monthly in food stamp program from October 2008 to January 2011), available at http://www.fns.usda.gov/pd/34SNAPmonthly.htm; *see also* Reaching Those in Need: State Supplemental Nutrition Assistance Program Participation Rates in 2008—Summary, United States Department of Agriculture, Office of Research and Analysis, December 2010, p. 1 ("Nationally, the SNAP participation rate among all eligible persons was 67 percent (Leftin, 2010) in fiscal year 2008"), available at http://www.fns.usda.gov/ora/menu/Published/snap/FILES/Participation/Reaching2008Summary.pdf.

disbursement level of the program should be approximately $4.6 billion (*i.e.*, 38.5 million people x $10 x 12 months). Yet the disbursements in 2010 were only 28% of this figure.[5] Widespread eligibility for the Low Income program, therefore, is simply a fact.

Finally, Nexus urges the Commission not to further curtail the success of the Low Income program by requiring eligible subscribers to provide proof of governmental benefits in addition to the time tested self-certification process. Any substantial increase to the administrative burdens on consumers in the certification process, will result in a significant decrease in Lifeline participation. The self-certification process works and will soon be replaced by a more efficient national database. At most, the Commission should require state agencies administering qualifying programs to work with ETCs to verify eligibility data in preparation for the national database. Additional administrative burdens should not be shouldered solely by a population that is ill-equipped to handle them and is the very population that the program is meant to assist.

[5] 2010 Low Income disbursements were $1,315,734,000.

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I. Nexus Agrees with the Majority of Commenters that Link Up Should Be Preserved

Nexus agrees with the majority of commenters that Link Up should not be reduced or eliminated, but preserved as a necessary tool to help low-income customers overcome the real up-front costs of activation. Without Link Up, these are costs that ETCs will have to shift to low income Americans, creating a strong disincentive for participation. This is exactly the wrong time to increase the burdens on America's poor, while the participation rate in the program is already low and when the Commission is attempting to provide support for broadband. Moreover, Link Up constitutes approximately 2% of the overall Low Income program. Nexus submits that although Link Up funding involves significant amounts of money, it is more critical that the Commission focus its efforts on creating a national database to ensure the eligibility for Lifeline subsidies, which constitute the vast majority of funding involved.

That being said, as Nexus has stated in numerous filings before this Commission activation costs for facilities-based wireline and wireless carriers are significant and would, if shifted to customers, create an immediate obstacle to increased participation in Lifeline by eligible Americans.[6] This fact is echoed by many other commenters. COMPTEL writes that eliminating Link Up "would recreate a barrier to obtaining voice service and discourage low-income consumers from subscribing."[7] Budget PrePay, GreatCall, and PR Wireless note that the reduction or elimination of Link Up support would be particularly deleterious on small carriers, who "would not be able to 'eat' the costs of low-income customer activation" and would have to pass these on to customers.[8] This is consistent with Nexus' comments, in which it showed that large carriers that are not focused primarily on low-income customers can shift costs and cross-subsidize with significant non-Lifeline subsidies. The California Public Utilities Commission

[6] Comments of the Link Up for America Coalition on *Further Inquiry* at 11.
[7] Comments of COMPTEL at 7.
[8] Comments of Budget PrePay, GreatCall, and PR Wireless at 9.

also recognizes that the high burden that would be imposed on low-income customers without Link Up will prevent many from participating in both state and federal programs: "[s]ervice initiation cost serves as a disincentive for low-income consumers to purchase telephone service" because "the connection non-recurring charge for customers is still high."[9] Put starkly, "[w]ithout Link Up discounts or [state] LifeLine connection charge subsidies, LifeLine customers could not afford telephone service."[10]

A number of commenters also addressed the proposal of the Indiana Utility Regulatory Commission to limit Link Up support to physical connections alone. Nexus agrees with Atlantic Tele-Network, Allied Wireless, Commnet, Choice Communications, and Smith Bagley that limiting Link Up to physical installation would violate the Commission's commitment to technology neutrality.[11] As COMPTEL has written, "[t]here is no support for the contention that Link Up subsidies are only intended to cover the costs of physical installation of equipment or facilities at the customer's premises."[12] Even CenturyLink, which opposes Link Up support for wireless carriers, acknowledges that there is no merit to basing recovery of costs on whether a given customer activation requires physical installation.[13] Simply put, ***the record in this proceeding is devoid of any fact-based support*** for the contention that Link Up should only support the physical connection of facilities.

Link Up's critics offer no evidence that the existence of Link Up generates any fraud, waste, or abuse. As COMPTEL points out, the loudest voices clamoring for the elimination of the program are wireless carriers that sought and were denied Link Up support because they did

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[9] Comments of the California Public Utilities Commission at 8.
[10] *Id.*
[11] Comments of Atlantic Tele-Network, Allied Wireless, Commnet, and Choice Communications at 13; Comments of Smith Bagley at 9.
[12] Comments of COMPTEL at 2.
[13] Comments of CenturyLink at 3-4.

not meet the requirements of the law and sought forbearance. The evolution of technology has changed the makeup of activation costs and these costs may include everything from recordkeeping to address validation,[14] but the fact that carriers (wireline and wireless) no longer have to perform truck rolls for most activations does not make their costs illegitimate. Indeed, as the Coalition notes, there is no evidence that carrier activation costs have declined as physical installations have become more rare.[15] The overwhelming majority of wireline connections involve back office reactivation of a soft dial tone that requires no labor at the customer premises, and this has been the case for many years.

Yet wireless carriers incur real and substantial costs associated with activating customers. As a result, charging service activation fees ("SAF") is standard in the wireless industry, rather than an exception. As Nexus pointed out in its initial comments on the NPRM, each of the top five wireless providers in the nation charge 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 SAFs, including seventeen carriers that charge an SAF on prepaid plans.[16] In the wireline industry, SAFs (non-recurring service connection fees) appear to be nearly universal. Specifically, in a Commission survey, residential connection charges were present in each of the 95 sampled cities (cities that

[14] Comments of Budget PrePay, GreatCall, and PR Wireless at 8.
[15] Comments of the Link Up for American Coalition at 11.
[16] 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.

represent 45 states and eight largest ILECs, including AT&T, Verizon and Qwest).[17] A review of specific ILEC tariffs shows that the ILEC SAFs are sometimes composed of several fees, such as "service ordering" (including "service establishment" and "records only"), "central office connection" and "premises work" fees.[18] The fact that ILECs may charge a service order (or even a "records only") non-recurring charge that is separate from physical wiring charges is another indication that SAFs are legitimate even if no physical wiring takes place.

To the extent the Commission has concerns about the costs supported by Link Up, Nexus supports NASUCA's proposal to use a cost-based support system so long as appropriate confidentiality protections are in place.[19] Before it shifts to a cost-based regime, however, the Commission should carefully consider ways to balance the administrative burdens against the benefits. It may suffice, for example, for the Commission to settle on a periodic examination of average industry costs rather than engaging in individual cost studies for each ETC. In fact, a review of average industry costs specific to serving the Low Income population would provide the Commission with further data to support the continuation of the Link Up program.

II. Link Up Should Be Used to Support the Transition to Broadband

A number of commenters echo Nexus' proposal that the Commission explore using Link Up to provide additional support for the Broadband transition.[20] As Gila River notes, the Commission has authority to do this under its mandate to promote universal service.[21] Given the importance of the Link Program, however, Nexus believes that any Link Up funding used to ease the transition to broadband should not reduce the amount of support available to traditional

[17] *See* FCC 2008 Reference Book of Rates, Price Indices, and Household Expenditures for Telephone Service, Table 1.3, available at http://www.fcc.gov/wcb/iatd/lec.html.

[18] *See* for example, AT&T Tariff Illinois Bell Telephone Company, I.C.C. No. 19, Part 3, Sec. 1 p. 1 available at http://cpr.bellsouth.com//pdf/ic/0003-0001.pdf.

[19] Comments of NASUCA at 9-10.

[20] Comments of Sprint at 4; Comments of Minority Media and Telecommunications Council at 6.

[21] Comments of Gila River Telecommunications at 4.

Lifeline customers for activation costs. The reasons for this are two-fold. First, access to basic telephony services are of increasing importance and will not diminish with improved access to broadband services. Telephony services are less expensive and provide an efficient means of ensuring that the most vulnerable Americans remain connected to their jobs, doctors, families, and critical services. It is unlikely to be a practical choice for the very poorest to choose a Link Up supported broadband service (which would likely still have not insignificant end user out-of-pocket fees) in lieu of basic telephony services. Second, a recognized barrier to the expansion of broadband services is the cost of customer premise equipment ("CPE") such as laptops. Broadband-enabled mobile telephones are a lower-cost option. To the extent that the Commission desires to expand broadband services to the poor, mobile telephones are almost certainly the best vehicle. It serves the Commission's broadband goals, therefore, to expand the availability of mobile phones in general, which are increasingly capable of supporting broadband services.

Over the past several years there has been a strong record of commenters that have actually argued for *increasing* the actual dollar amounts of Link-Up subsidies for broadband. The Commission must consider that any elimination of Link-Up subsidies will severely limit the success rate for broadband in the Lifeline context. Alternatively, allowing Link-Up subsides for broadband but disallowing Link-Up subsides for wireless is discriminatory and by its very nature is not competitively-neutral.

III. The Customer Certification Process Can Be Made Stronger Without Imposing Additional Burdens on Consumers

Increased requirements for consumer participation, especially requirements that demand copies of various documents, make it harder for eligible customers to participate. As Sprint acknowledges, "the more frequently a customer is required to verify and the more that is required … the greater the likelihood of customer confusion and the lower the response rate." Nexus proposes that instead of requiring customers to carry around copies of eligibility documents, which may be difficult to duplicate, the Commission modify the self-certification procedure so that customers may authorize designated ETCs to contact the relevant state agencies and verify social service program participation. In states where these agencies maintain a real-time database, it could be relatively simple for an ETC to "dip" to verify customer eligibility. In states with other systems, ETCs and state agencies could work together to develop sampling procedures that would accomplish the same task.

Tracfone recently filed information with the Commission that compared their Lifeline enrollments in two states, Louisiana and Missouri. Tracfone stated that it utilized "…virtually identical advertising and outreach approaches in both states."[22] Missouri is a full certification state (*i.e.*, it requires proof of program-based eligibility) whereas Louisiana follows the current federal rule allowing self-certification under penalty of perjury. TracFone stated that it was able to enroll more than "…six times as many Lifeline customers in Louisiana as it has in Missouri, despite the fact that the states have comparable populations."[23]

Nexus likewise provides wireless Lifeline in both Louisiana and Missouri and Nexus' experience has been the same as Tracfone's. A substantial majority of the amount of potential Nexus subscribers in Missouri and states like Missouri, are unable to provide documentation and simply abandon the enrollment process. As a result, the number of Nexus Lifeline subscribers in

[22] Ex Parte Filing of TracFone Wireless in WC Dockets 11-42, 03-109, and CC Docket 96-45 (Aug. 3, 2011) at 2.
[23] *Id.*

Missouri is substantially less than any other state in which Nexus commits similar levels of outreach resources.

There are many possibilities for increasing verification standards that will provide sufficient level of authentication of eligibility, but the burden of overly stringent document production requirements will fall primarily on low income consumers. No proposal, however, should delay or hinder the ongoing process of establishing a national database to coordinate certification and verification efforts.

IV. Conclusion

For the foregoing reasons and based on the referenced comments, Nexus respectfully requests that the Commission retain Link Up support at current levels, expand Link Up's scope to include broadband connections and equipment, and not impose additional documentation requirements until the national database is operational.

Respectfully submitted,

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