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January 20, 2012

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

Re: Permitted Ex Parte Contacts In WC Docket No. 11-42

Dear Ms. Dortch:

On Wednesday, January 18, representatives of Nexus Communications, Inc. (Nexus), met separately with: (a) Chairman Genachowski, Zachary Katz, Michael Steffan, Kim Scardino, and Carol Mattey; (b) Wireline Competition Bureau Chief Sharon Gillett, Ms. Scardino, and Ms. Mattey; and (c) Commissioner McDowell and Christine Kurth.[1] Former Commissioner Deborah Taylor Tate was also in attendance at the meetings with the Chairman and Commissioner McDowell and Ms. Kurth. Also, on Thursday, January 19, undersigned counsel and his partner Danielle Frappier met with Ms. Angela Kronenberg of Commissioner Clyburn's office.

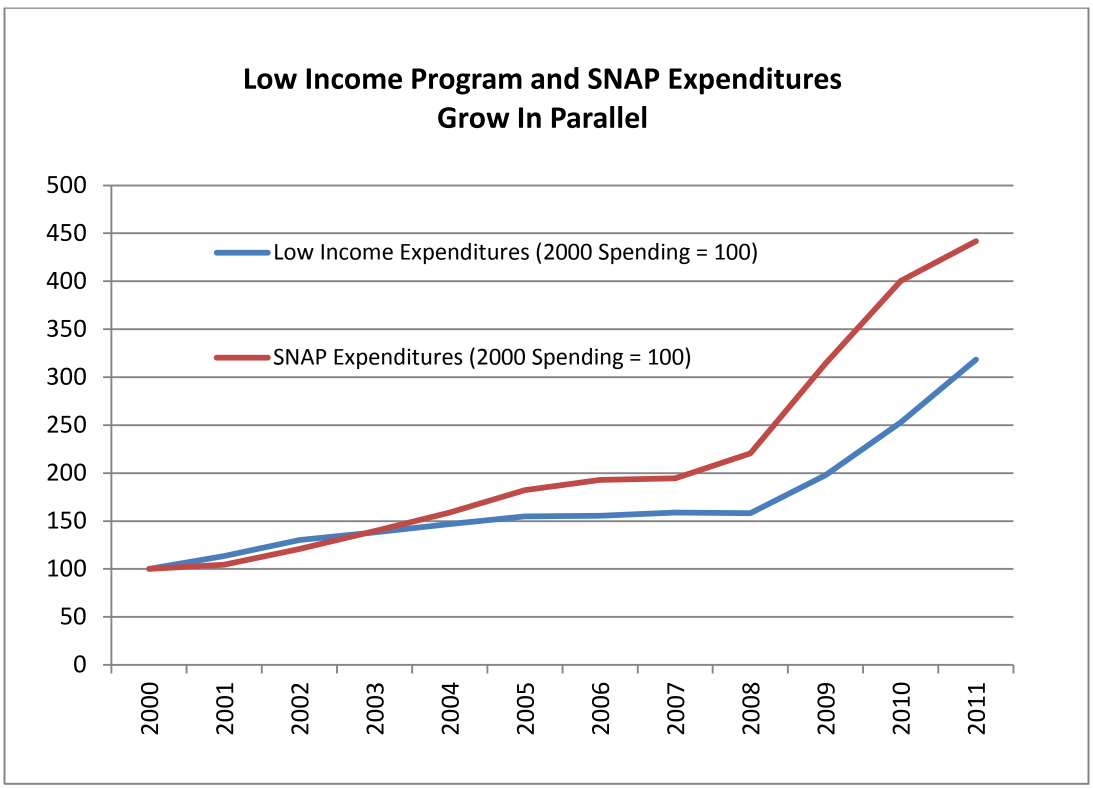
The purpose of all of these meetings was to discuss Nexus' concerns with the Commission's upcoming order regarding administration of the Low Income Program. Our focus was on pragmatic and cost-effective ways that the Commission could streamline and modernize both the Lifeline and Link Up programs, and obtain substantial savings with respect to those programs, without taking steps that would unreasonably interfere with the practical ability of eligible consumers to take advantage of them.

Nexus acknowledged that in recent years there has been growth in the Low Income Program, and noted that this arises from two key factors. First, the economic downturn affecting the country since mid-2008 has, unfortunately, greatly increased the number of eligible consumers. Second, around that same time, the ongoing decline in the cost of wholesale wireless minutes, combined with the availability of affordable wireless handsets, made it possible for entrepreneurial firms to meet the program's objective of providing basic phone service to the neediest Americans, within the economic constraints imposed by the program's current funding levels. For the first time, therefore, competitive businesses had an incentive to actively market to, and reach out to, this portion of the population.[2]

[1] Undersigned counsel, along with his partner Danielle Frappier, attended the meeting with the Chairman and with Ms. Gillett. Mr. James Smith attended the meeting with Commissioner McDowell and Ms Kurth, where he provided them with a copy of the attached presentation.

[2] This is in contrast to the generally desultory "outreach" efforts to the relevant population traditionally undertaken by some existing ETCs, notably existing landline ILECs. Indeed, recent developments bear out traditional landline ILECs' less-than-enthusiastic view of their obligation as ETCs to serve this population: AT&T has asked to be relieved of its landline ETC obligations altogether, noting that wireless services are increasingly popular with the relevant population. *AT&T Wants Mandatory Lifeline Service Requirements Lifted*, COMMUNICATIONS DAILY (Jan. 17, 2012) at 5.

With respect to the size of the fund, the impact of the economic downturn cannot be overemphasized. In this regard, Nexus noted that consumers typically rely on their participation in one of two programs – food stamps (also known as "SNAP"), and Medicaid – to establish eligibility for Lifeline and Link Up. The graph below shows that the growth in the Low Income program has generally paralleled growth in the SNAP program. In particular, the sharp upturn in SNAP expenditures in the 2008-2009 time frame is accompanied by a similarly sharp upturn in Low Income Program expenditures. Without in any way trying to minimize concerns regarding inappropriate payments for services provided to ineligible consumers or consumers receiving more than one subsidized service (addressed below), Nexus submits that this data shows that the growth in the Low Income program is the unfortunate result of the significant economic downturn that has driven millions of Americans to rely on food stamps and other programs simply to make ends meet. We are spending more on subsidized phone service for low income Americans because, unfortunately, there are a lot more low income Americans today than there were a few years ago. As the economy recovers and more Americans get jobs with reasonable compensation, these numbers can be expected to decrease. Indeed, it is easy to see that putting working mobile phones in the hands of unemployed or underemployed citizens could assist them in finding work – calling to set up job interviews, being available to get calls for further discussions with potential employers, etc.



In response to recent concerns about the existence of significant "waste, fraud and abuse" in the Low Income Program, Nexus noted that there were a number of straightforward and specific steps the Commission could take to minimize these problems and at the same time achieve substantial savings.

First and foremost, the Commission should direct industry to work with the states and their contractors to develop a database of consumers subscribing to, or eligible to subscribe to, Lifeline service. Such a database would simultaneously minimize the problem of multiple ETCs providing subsidized service to the same subscriber, and the problem of ETCs providing subsidized service to ineligible subscribers.

The recent experience with the interim duplicate resolution process has shown that the number of truly duplicate subscribers was not as high as some had originally feared.[3] Even so, with the Low Income program disbursements running at an annual level of $1.3 billion or more, if duplicates were at a level of 10%, use of a database to verify that a potential subscriber is not already receiving subsidized service could easily save $100 million or more per year.[4]

Similarly, establishing an eligibility database would lead to substantial savings as well, depending on what level of ineligibility exists in the current program overall – a figure that has not been determined with any accuracy. At present there is no viable nationwide eligibility database. It would be reasonable for the Commission, therefore, to direct industry to develop such a database within a reasonable time (perhaps two years, given the complexity of the undertaking). This would be analogous to so-called "technology forcing" regulations in other industries – the regulator determines the required objective (here, the minimization of provision of subsidized service to ineligible consumers), and the time frame for achieving that objective, but leaves the actual process of developing the solution to industry. The Commission can avoid getting bogged down in trying to choreograph technical details that cannot easily be specified in advance while still ensuring that the statutory and policy objectives of the Low Income program are met.

In this regard, the development of an eligibility database would make it unnecessary for the Commission to pursue the burdensome and impractical notion of requiring full documentation of each customer's eligibility status, either at the time of service initiation or thereafter.[5] At the same time, the Commission could provide a strong incentive to industry to get the database up and running by the specified deadline by requiring that, after the deadline, any customer whose eligibility was not verified through an approved database would need to provide full documentation of eligibility.

The Commission can also streamline the Low Income program – and save money – by reforming the rules applicable to Link Up. Today's Link Up rules were developed nearly fifteen years ago when the focus of the program was on providing partially subsidized landline service to fixed locations. Those rules bear little relationship to the modern, forward-looking reality of wireless as the primary and preferred subsidized service for low income consumers. As a result, a more appropriate focus going forward would be simply to recognize that providing service to the target population requires the incurrence of customer acquisition costs, which may vary with any particular ETC's business model. These include the costs of advertising, the costs of outreach efforts, the costs of service activation, the costs of obtaining and shipping a handset, etc. It is entirely logical for the program to subsidize those customer acquisition costs in a reasonable amount, irrespective of the specific technology or business model used by a particular ETC. While Nexus would of course favor a decision to leave Link Up support at its current level of

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[3] Letter from Karen Majcher, Vice President, USAC High Cost and Low Income Division, to Sharon Gillett, Chief, Wireline Competition Bureau (Jan. 10, 2012) (providing the results of the Lifeline duplicate IDV process).

[4] In this regard, USAC recently submitted information to the Commission projecting roughly $35 million in annual savings from eliminating duplicates in only 12 states – not including populous states such as New York, Illinois, or Pennsylvania. *Id.*

[5] In a recent ex parte filing, Verizon emphasized the impracticality of requiring annual verification of Lifeline subscriber eligibility. Letter to M. Dortch from A. Buzacott in WC Docket No. 11-42 *et al.* (January 17, 2012).

(generally) $30 per customer, we noted that the record would support a lower figure of $24 per customer, or perhaps even as low as $20 per customer. Given that Link Up support in 2011 amounted to approximately $120 million, streamlining Link Up to simply cover any ETC's customer acquisition cost, while simultaneously lowering Link Up support to $20 per customer, would save $40 million per year, in addition to the more than $100 million in savings achievable via a non-duplication and eligibility database.

Finally, in the meeting with Ms. Kronenberg on January 19, Nexus also briefly discussed concerns about the Commission's recent ruling that appears to require ETCs to literally own (as opposed to leasing, or obtaining under contract) some portion of the facilities used to provide some or all of the (recently redefined) supported service of "voice telephony." Nexus has always met the "own facilities" requirement of Section 214(e)(1) of the Act. We noted, however, that requiring actual facilities ownership, or indeed focusing unduly on specific facilities at all, is not consistent with the policy and language of Section 214(e)(1). That provision is concerned with ensuring that a pure reseller, purchasing an already-subsidized Lifeline service from an ILEC-ETC, is not eligible to receive a second Lifeline subsidy. As long as an entity is not obtaining and reselling a subsidized service as its "wholesale input," there is no reason to interpret the "own facilities" requirement as barring certification of that entity as an ETC, whatever its particular serving arrangements might be. In addition, requiring actual facilities ownership is inconsistent with the Commission's own rules, which expressly state that an entity that provides service by means of UNEs – network elements leased from the ILEC rather than owned by the entity itself – is nonetheless fully eligible to be an ETC. At the time that rule was promulgated (1997) and thereafter, many CLECs operated using an entire suite of UNEs (known as the "UNE-platform," or "UNE-P"), with no facilities of their own. It is therefore impossible to square the Commission's recent ruling regarding ETC certification with either the statute or the Commission's existing rules.

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Nexus respectfully requests that the Commission consider these points in its decision in the above-referenced matter.

Please contact undersigned counsel if you have any questions about this letter.

Sincerely,

Davis Wright Tremaine LLP

Christopher W. Savage

cc: Chairman Genachowski
Commissioner McDowell
Mr. Katz
Ms. Kurth
Mr. Steffan
Ms. Gillett
Ms. Mattey
Ms. Scardino

Lifeline and Link Up to Ensure Service to All, Wireless to Modernize the Program

Preserving Lifeline and Link Up for Low Income Americans

Nexus Communications, Inc. d/b/a

ReachOut wireless

January 2012

About Nexus d/b/a ReachOut Wireless

- Low Income ETC committed to serving the very poorest Americans
- Engages in intensive, in-person outreach
- Poorest of the poor not reached by ILECs or larger wireless carriers, many of which rely on Internet sign ups
  - 75% of Nexus Lifeline subscribers have no Internet access

Nexus' Commitment in Action

- Nexus' "Direct Action Teams": outreach vans to poor neighborhoods; highly trained in program requirements, Nexus <u>employees</u>
- Provided phones to qualified Americans in time of need:
  - 2010 West Virginia mine disaster
  - 2010 flooding in Arkansas
  - 2011 tornados, windstorms in Arkansas, Kansas, Missouri, Illinois and Wisconsin

Link Up: Supporting the Very Poorest

- Link Up was established to remove one of the key barriers to participation—service activation fees
- Eliminating Link Up would prevent the very poorest from obtaining service, or force them to divert money from their already extremely limited family budgets (for many, an impossible task)

Link Up: Supporting the Very Poorest

- Nearly all wireless carriers either charge activation fees OR impose contract terms coupled with early termination fees.
- Cricket's lowest rate plan is $35. Maximum Lifeline support is $10-- meaning that Cricket receiving about $20/month out-of-pocket from consumers (Cricket April 2011 *ex parte*)
  - Simply a different target population.

Activation Fees—Little Change Since '87

- In 1987, $30 Link Up cap was based on $45 fee (Industry Analysis Division, Trends in Telephone Service (Jt. Bd. Rec., Feb. 2, 1987)
- In 2010, FCC reported national average of $43.22 fee
- Some are lower than average—Verizon Wireless and AT&T charge $36
  - 20% reduction (to $24) would still save about $18M (approx. $91M in Link Up in 2011)

Revenue Replacement Mechanism

- Link Up has always been a revenue-replacement mechanism
- ETCs like Nexus built business models to serve the very poorest, a population that is dependent on Link Up because even a “small” out-of-pocket expense is too much.

"Explosive" Growth Reflects Greater Participation– The Goal of the Program

- ***"Almost 10% of low-income households nationally lack telephone service***. . . 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."
  - Statement of Commissioner Copps, March 2011 Low Income NRPM (emphasis added)

Technology and Plans Adapted to the Needs of the Poor

- The modest advance in serving the poorest of the poor came about when the costs of providing wireless decreased.
- At roughly the same time, large increase in poverty levels led to modest growth of participation to 36%.
- Many wireless ETCs offer "free" plans entirely covered by subsidy because even modest out-of-pocket fees are burdensome for the very poorest.

Wireless is the Technology Best Suited to Optimize the Low Income Program

- Wireless makes for better, more efficient use of Low Income funds.
  - Mobility—not a phone on the wall. Poor people live transient lives.
  - Feature-rich—texting, voicemail, call waiting, etc. Key to job hunting, “on call” work, multiple jobs, etc.
  - CPE (handset) provided, usually at no charge. ILECs **<u>don’t</u>** provide a handset.
  - Yet the standard is often whether ETC is offering a package comparable to ILEC wireline service. This standard is outmoded and should be abolished.

A True Lifeline

- Approximately 62% of Nexus' Lifeline subscribers have no phone at time of enrollment—many have had no phone in past year
- 16% of Americans are living in poverty. Census Bureau reports this is highest level of poverty in the 52 years it has tracked poverty
- Existence of entities like Community Voicemail demonstrate the real need for phones for employment, housing, healthcare, vital services (http://www.cvm.org/whatiscvm.cfm)

Cap/Overly Restrictive Budget Will Deny Lifeline to Millions--Opposite of Program Objective

- Even with recent growth, the program remains stuck at low (1/3) enrollment
- Basic phone service gives the poor a hand up—not a handout—to employment and staying connected to critical services
- Full participation in the 2012 economy is just not possible without these services
- Cap, slashed budget is inimical to the National Broadband Plan core objective of ***maximizing*** adoption by the poor

The Enemy of the Good: "Full" Certification and Minimum Fees

- "Full" certification = euphemism for requiring people without access to scanners, photocopiers, fax machines, computers or even stable housing to submit official proof of program participation.
- With 1 in 8 Americans on food stamps, true eligibility is not the problem.
- States with "full" certification requirements experience much lower enrollment rates.
- Underutilization persists—let's not make it worse.

The Enemy of the Good: "Full" Certification and Minimum Fees

- *Theory*: minimum fees = consumers having "skin in the game" and avoid unused, subsidized phones
- Reality: 9 million American households have no bank account
  - A "mere" $2 fee becomes a $8-$11 fee due to money order or wire fees
- Reality: De-enrollment for non-usage policy solves this problem
  - ETC de-enrolls after 60 days of non-use, subsidies discontinued
  - Nexus voluntarily adopted from beginning of wireless operations

National Database is a Real Solution

- National database would:
  - Avoid duplicate support, achieving significant program cost savings
    - Current interim process doesn't reach all ETCs or consumers
  - Definitively establish eligibility
    - State administrators directly confirm eligibility
    - Avoids the scanner/photocopier, paper handling problems
- Nexus and other ETCs have been pushing for database vs. years of "interim" non-solutions