

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Lifeline and Link Up Reform and Modernization

WC Docket No. 11-42

Lifeline and Link Up

WC Docket No. 03-109

Federal-State Joint Board on Universal Service

CC Docket No. 96-45

Advancing Broadband Availability Through Digital
Literacy Training

WC Docket No. 12-23

**REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION
AND INITIAL COMMENTS OF NEXUS COMMUNICATIONS, INC.**

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March 30, 2012

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**REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION AND
INITIAL COMMENTS OF NEXUS COMMUNICATIONS, INC.**

Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Initial Comments in response to the Further Notice of Proposed Rulemaking (“Further Notice”) released by the Federal Communications Commission (“Commission”) on February 6, 2012 in the above-captioned proceeding.¹ In addition, Nexus requests that the Commission clarify and/or reconsider several aspects of the Report and Order portion of the *Lifeline Reform Order*.

I. INTRODUCTION AND SUMMARY

Nexus is committed to serving the specific communications needs of low income Americans. Nexus has been designated an eligible telecommunications carrier (“ETC”) in 26 states, pursuant to which it receives Lifeline funding.² Nexus currently offers wireless Lifeline service in 18 states, and wireline Lifeline service in 14 states. It also provides services on a

¹ *Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. WC 11-42, *et al.* (FCC rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

² Although ETCs may receive funding from both the federal High Cost and Lifeline programs, Nexus has declined all High Cost funding.

prepaid basis, which offers low income consumers a simple, effective means of managing their family budgets and eliminating bill shock.

Nexus respectfully requests that the Commission clarify and/or reconsider the following issues raised in the Report and Order portion of the *Lifeline Reform Order*:

- **Eligibility Databases.** Nexus asks that the Wireline Competition Bureau (“Bureau”) identify each state that has an eligibility database available for use by ETCs and publish a Public Notice containing a definitive list of these states and databases, to be updated quarterly.
- **Verifying Subscribers’ Identities.** The Commission should clarify that its new rules do not require ETCs to verify the identity of subscribers, either at the point of sign up, service activation, or at the time of annual verification.
- **Guidance on Program Eligibility Documentation.** Nexus requests that the Commission provide additional clarification as to acceptable forms of eligibility documentation.
- **IVR Recordings/Text Messages.** Nexus requests that the Commission clarify whether ETCs are required to include, word-for-word, all the text otherwise included in its self-certification forms, or whether the ETC may utilize a shortened or modified version in an interactive voice response (“IVR”) recording or text message, and if so, what specific information the shortened version must contain.
- **State Programs.** Nexus asks that the Commission clarify which particular state programs or criteria are “based solely on income or factors directly related to income,” or otherwise clarify that a state must take a definitive action to identify additional state programs participation in which may provide a basis for Lifeline qualification. The list of such state programs should be published in a Public Notice and updated quarterly.
- **State Review of ETC Petitions.** In order to avoid undue delay in the review and processing of state ETC petitions, Nexus asks the Commission to encourage state commissions to continue to review and process any pending or new ETC petition filed by a forbearance carrier that also has filed a compliance plan with the Bureau.
- **Additional Acts Constituting Usage.** Nexus asks the Commission to clarify that certain additional acts beyond those enumerated in Rule 54.407 constitute “usage” of Lifeline service and that ETCs may ship a “live” handset to new Lifeline subscribers.
- **Process for Transition of Payments.** Nexus requests that the Commission reconsider its process for transitioning ETCs to payments based on actual claims for support rather than projections, and require USAC to provide each ETC not already

subject to payments based on actuals, an accounting of USAC's predicted true-up, on a study-area-by-study-area basis, how much money the ETC would be required to give back or alternatively, how much it would be receiving in the true-up process. Nexus also requests that the revised rule require USAC to provide this accounting to the ETC by May 1, 2012.

Should the Commission not wish to clarify some or any of these issues, Nexus respectfully requests that the Commission reconsider its rules and directives in a manner consistent with Nexus' recommendations.

The following is a summary of Nexus' comments pertaining to various issues raised in the Further Notice portion of the *Lifeline Reform Order*:

- **Lifeline Support Level.** Nexus strongly urges the Commission to maintain a flat, uniform reimbursement amount for all voice services. Nexus encourages the Commission to adjust the Lifeline support level infrequently and only as needed to reflect significant changes to the underlying costs of providing telecommunications services, and only when such changes will not endanger the continued provision of Lifeline service. The Commission should use the Producer's Price Index for Telecommunications (NAICS Subsector 517) to determine if there have been any significant changes in the costs of providing telecommunications services. If the Commission were to see a marked increase or decrease in the Telecommunications PPI (*e.g.*, 10% in one year), the Commission would request public comment about whether the Lifeline support level should be adjusted. Otherwise, the Lifeline support level should remain unchanged.
- **Monthly Remittances to All ETCs.** Nexus strongly urges the Commission to continue to remit payments on a monthly basis to *all* ETCs, including those that offer service packages that are entirely paid for by the Lifeline subsidy.
- **Benefit Transfer Process with Database.** Once the National Lifeline Accountability Database is operational, the process governing the transfer of Lifeline benefits from one ETC to another should be modeled after Commission's local number portability rules. The Commission should insure that this process is competitively neutral, completed in a timely manner, involves minimal administrative burdens, and prohibits ETCs from engaging in "retention marketing." The process initially designed by USAC should be placed on public notice and made available for comment prior to approval by the Bureau.
- **Record Retention for Five Years.** Nexus recommends that the Commission revise the record retention period to five years, which will ensure that all pertinent documents are retained through two full audit cycles, and yet, will not impose an undue administrative burden on ETCs.

II. REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION OF CERTAIN PORTIONS OF THE *LIFELINE REFORM ORDER*

Nexus respectfully requests that the Commission clarify and/or reconsider several issues raised in the Report and Order portion of the *Lifeline Reform Order*.

A. Eligibility Databases

In the *Lifeline Reform Order*, the Commission amended Section 54.410 of its rules “to require all ETCs, prior to enrolling a new subscriber in Lifeline, to access state or federal social services eligibility databases, where available, to determine a consumer’s program-based eligibility.”³ Nexus submits, however, that it is not always clear as to whether a state or federal social services eligibility database actually is “available” to ETCs, particularly non-ILEC entities that only participate in the federal program.

This lack of clarity is apparent in the *Lifeline Reform Order* itself. For example, in footnote 265, the Commission states: “there are *at least* nine states with an automated means for ETCs or state administrators to determine consumer participation in at least some programs which qualify consumers for Lifeline support.” (Emphasis added). This language suggests that the Commission itself does not know the precise number of states that have an eligibility database available to ETCs. Moreover, in the chart that follows paragraph 106 of the *Lifeline Reform Order*, Maryland is referred to as a self-certification state, but paragraph 400 indicates that the Maryland PSC “makes a list of consumers who are receiving benefits under *certain state social service programs* that qualify consumers for Lifeline available to any ETC signing a confidentiality agreement.” (Emphasis added). As a result, it is not clear whether Maryland qualifies as a database state or as a self-certification state. In fact, Nexus has received conflicting opinions from Maryland state agencies about whether this list is intended for use by federal-only

³ *Lifeline Reform Order* at ¶ 98.

Lifeline ETCs. Moreover, some state databases do not contain eligibility information for all programs under which consumers may qualify for the Lifeline program, even under present eligibility rules.

ETCs should not be required to guess which states do or do not have eligibility databases available to them, or which programs are covered by any particular databases, especially now that 47 C.F.R. § 54.410 mandates their use and many ETCs will be subject to biennial audits and stiff penalties for non-compliance with the Commission's rules. Instead, the Bureau should systematically identify each state that has an eligibility database available for use by ETCs and publish a Public Notice containing a definitive list of these states and databases. This list should be updated and published on a quarterly basis. The Public Notice also should identify the programs for which the database has eligibility information, and also confirm that for programs not covered by a mandatory state database, the ETC may rely on a subscriber certification that he or she participates in that program, subject to the new certification rules.

Nexus anticipates that this process may require the Bureau to ask state commissions about the availability of state databases and the process for ETCs to obtain access to those databases. NARUC also may assist in the process. However, the additional clarity to be gained through this effort would be extremely valuable to ETCs, USAC, the Commission and, ultimately, low income consumers. Should the Commission not wish to clarify which specific state databases must be used by ETCs participating in the federal Lifeline program, which programs are covered by such databases, and confirm that self-certifications may be used for programs not incorporated into such databases, Nexus requests that the Commission reconsider the requirement to make participation in these databases mandatory, unless participation is otherwise clearly mandated by relevant state law.

B. Verifying Subscribers' Identities Not Required

The Commission should clarify that its new rules do not require ETCs to verify the identity of subscribers, either at the point of sign up, service activation or at the time of annual verification. Although Nexus utilizes Lexis/Nexis to verify, to the extent possible, the identity of prospective and current subscribers, Nexus requests that the Commission clarify that it is not legally responsible for verifying the subscriber's identity, and that Nexus' only obligation is to review the program and income documentation per revised Rule 54.410. Verifying subscribers' identities is a difficult and expensive process, and would impose further administrative and cost burdens on ETCs and subscribers. To the extent this is incorrect, Nexus seeks reconsideration and requests that the Commission issue a revised rule that does not require ETCs to verify subscribers' identities for the aforementioned reasons.

C. Further Guidance on Program Eligibility Documentation

Revised Rule 54.410 includes a list of acceptable documentation to demonstrate program-based eligibility. The list, however, does not provide sufficient guidance to ETCs. For example, it does not specify whether a food stamp "EBT" card would qualify as an official "document" with which a subscriber may qualify for Lifeline. Moreover, it does not specify whether such card or documentation must include the subscriber's name and/or address. Many food stamp EBT cards include neither. The new rule does not specify whether a photocopy of the card, letter or other documentation is sufficient. Nor does the rule specify whether any dated materials must be dated within a particular timeframe in order to be valid. It may be that the Commission is relying on the representations of the subscriber that he or she qualifies in order to provide assurances that the subscriber continues to qualify even in situations where the ETC is provided with a food stamp letter that is several years old. Additional clarification on acceptable forms of documentation is needed.

The Commission also should clarify that the effective date of revised Rule 54.410 is June 1, 2012, and is not contingent on OMB approval. Nexus' understanding is that the inclusion of Rule 54.410 in the Federal Register notice as one of the rules becoming effective upon OMB approval was in error, and that the intended effective date of this rule is June 1, 2012. Nexus therefore requests that the Commission formally clarify this in an erratum, and if it chooses not to do so, that it reconsider this issue. Implementing the necessary administrative procedures to review subscriber eligibility documentation is a major undertaking. In fact, meeting the June 1, 2012 deadline will be a major challenge, so any earlier effective date would simply be unworkable.

D. IVR Recordings and Text Messages

While Nexus applauds the Commission for recognizing that modern technology should play a role in easing the administrative burdens of ETCs and subscribers alike, more guidance is needed with respect to the precise content in interactive voice response ("IVR") recordings and text messages for initial self-certifications and annual verifications. Nexus therefore requests that the Commission clarify whether ETCs are required to include, word-for-word, all the text otherwise included in its self-certification forms, or whether the ETC may utilize a shortened or modified version in an IVR recording or text message, and if so, what specific information the shortened version must contain. For example, it would be very difficult for an ETC to include each and every certification found at revised Rule 54.410(d) in a text message, along with all the other information found in a self-certification such as name, address, program participation, etc. Nexus therefore requests clarification on these points, or in the alternative, suggests that the Commission issue a Public Notice with sample IVR scripts and text messages.

E. State Programs

In Section VI(A) of the *Lifeline Reform Order*, the Commission established baseline eligibility requirements on top of which states may adopt additional program or income criteria to address the unique circumstances facing consumers in their states.”⁴ Accordingly, newly amended Rule 54.409(a)(3) provides that a consumer may qualify for Lifeline benefits if he or she meets “eligibility criteria established by a state for its residents, provided that such state-specific criteria are based solely on income or factors directly related to income.”⁵

However, it is very difficult for an ETC to make an independent determination as to whether a particular state program or criteria is based solely on income or factors directly related to income, and ETCs should not be required to guess or make assumptions. Instead, the Commission should clarify which particular state programs or criteria are “based solely on income or factors directly related to income,” or otherwise clarify that a state must take a definitive action to identify additional state programs participation in which may provide a basis for Lifeline qualification. The list of additional state programs (*i.e.*, in addition to the seven programs listed in revised 47 C.F.R. § 54.409) should be published in a Public Notice and updated quarterly. If the Commission does not wish to provide such clarification, then Nexus requests that the Commission reconsider its rule that makes the use of such programs to qualify consumers for the Lifeline program mandatory.

F. State Review of ETC Petitions

The *Lifeline Reform Order* sets forth a clear, coherent process for Lifeline-only ETCs such as Nexus to obtain forbearance from the “own facilities” requirement of 47 U.S.C. §

⁴ *Lifeline Reform Order* at ¶ 65.

⁵ 47 C.F.R. § 54.409(a)(3).

214(e)(1)⁶ by securing approval of compliance plans with the Bureau. Indeed, a number of ETCs already have submitted compliance plans to the Bureau, and Nexus is in the process of finalizing its own plan, which soon will be submitted to the Bureau.

While some state commissions have continued to review and process petitions for ETC designation filed by forbearance carriers, unfortunately, other state commissions have dismissed pending ETC petitions and have indicated that they will not process ETC petitions filed by forbearance carriers until after that carrier has secured Bureau approval of its compliance plan.

Nexus believes this approach is misguided and detrimental to low income consumers, who benefit from greater choices among ETCs offering Lifeline supported services. There is no reason for a state commission to dismiss a pending ETC petition and require carriers to bear the expense and delay associated with “restarting” the application process anew. Instead, Nexus believes state commissions should continue to review and process these pending petitions while the Bureau conducts its review of proposed compliance plans. There are other, significant aspects to these applications that are not affected by the forbearance issue that state commissions and applicants can review while the Bureau reviews and approves compliance plans. Of course, a forbearance ETC with a pending state ETC petition may not receive its ETC designation or Lifeline support until after the Bureau has approved an ETC’s compliance plan, but the Bureau’s compliance plan review and the state ETC petition review should proceed essentially in parallel. Nexus therefore asks the Commission to provide leadership and guidance on this issue and encourage state commissions to continue to review and process any pending or new ETC petition filed by a forbearance carrier that also has filed a compliance plan with the Bureau.

⁶ See *Lifeline Reform Order*, Section XI(A).

G. Acts Constituting Usage; Shipment of “Live” Phones

The revisions to Rule 54.407 too narrowly define usage for purposes of initial activation and continued usage. Nexus has had a 60-day non-usage policy in effect from the launch of its wireless operations. Nexus’ policy has always defined usage as any of the following acts:

1. Making a call
2. Adding airtime
3. Receiving a call
4. Making an attempted call
5. Checking a voicemail message
6. Sending a text message
7. Opening a text message
8. Checking airtime balance by dialing a pound code
9. Downloading content to the handset
10. Data usage

Any one of these acts unquestionably demonstrates the subscriber’s actual usage of the service, continued or initial. Yet the revisions to Rule 54.407, as written, would seem to eliminate all but the first three acts, at least for purposes of the 60-day non-usage Rule 54.407(c)(2). Nexus submits that all these acts are reasonable means for the subscriber to activate his or her service, and to demonstrate continued usage. Nexus requests that the Commission clarify that all these acts constitute usage for purposes of revised 47 C.F.R. § 54.407(c)(1) and (c)(2), and that the list of acts that constitute usage are non-exhaustive. If the Commission does not so clarify, then Nexus seeks reconsideration of this rule and requests that the Commission find that all these acts constitute usage for purposes of revised 47 C.F.R. § 54.407(c)(1) and (c)(2), or otherwise find that the list found at subsection (c)(2) is non-exhaustive.

Nexus also notes that TracFone appears to have interpreted the newly revised 47 C.F.R. § 54.407(c) as prohibiting the shipment of a “live” phone.⁷ Nexus does not interpret this rule in such a narrow way. In Nexus’ view, an ETC may ship a working phone to a qualified subscriber – the rule simply requires Nexus to check for some reasonable indication of usage prior to claiming a subsidy for that subscriber, such as one of the acts listed above. To the extent that this is incorrect, Nexus seeks reconsideration of this rule. The reason that TracFone, Nexus and other ETCs ship handsets that are call-ready is that the burdens involved with walking a customer through a technical activation of a handset are simply overwhelming for most low income subscribers and involve very heavy administrative burdens for the ETC.

H. ETCs Transitioning to Payments Based on Actuals

The Commission’s plan for transitioning ETCs to payments based on actual claims for support, rather than projections, assumes that USAC’s calculations of any balance due to USAC or vice versa will be non-controversial.⁸ An ETC that operates in over half the states and for multiple years such as Nexus, many of whom will have filed multiple rounds of revised FCC Form 497s, likely will involve a relatively complex true-up process during the transition period. Both the ETC and USAC have an interest in making correct calculations prior to actually implementing any necessary true-ups, and both would certainly benefit from the ETC receiving a statement of USAC’s calculations as well as an opportunity to correct and/or protest prior to the actual implementation. Nexus therefore requests that the Commission reconsider this transition process and require USAC to provide each ETC not already subject to payments based on actuals, an accounting of USAC’s predicted true-up, on a study-area-by-study-area basis, how

⁷ *Lifeline and Link Up Reform, et al.*, WC Docket Nos. 11-42, 03-109, 12-23, CC Docket No. 96-45 Comments of TracFone Wireless, Inc. in Response to Petition for Waiver and Clarification of the United States Telecom Association, *et al.* (filed Mar. 20, 2012) at 5 *et seq.*

⁸ *Lifeline Reform Order* at ¶ 302 *et seq.*

much money the ETC would be required to give back or alternatively, how much it would be receiving in the true-up process, in sufficient detail such that the ETC can effectively verify USAC's calculations. Moreover, Nexus requests that the further revised rule require USAC to provide this accounting to the ETC by May 1, 2012, so the ETC will have at least one month to protest or correct USAC's calculations prior to the June 1, 2012 deadline by which the ETC will be required to provide the list of study area codes for each of the three transition months during which the true-up will take place.

III. NEXUS' COMMENTS IN RESPONSE TO THE FURTHER NOTICE PORTION OF THE *LIFELINE REFORM ORDER*

In response to the Commission's request, Nexus submits these comments pertaining to various issues raised in the Further Notice portion of the *Lifeline Reform Order*.

A. Lifeline Support Level

In paragraphs 24 – 43 of the *Lifeline Reform Order*, the Commission adopted on an interim basis a uniform reimbursement amount of \$9.25 in monthly Lifeline support for voice service. In the Further Notice, the Commission has requested comment about whether it should continue with a uniform level of support that replaces the current "Tiers" system,⁹ and whether support levels could in the future be linked to a communications price index.¹⁰

As an initial matter, Nexus applauds the Commission's adoption of a uniform reimbursement amount. The Commission is entirely correct in its belief that a flat, uniform reimbursement amount offers significant benefits to all Lifeline stakeholders: the Commission, ETCs, and most importantly, low income consumers. The benefits of the administrative

⁹ *Lifeline Reform Order* at ¶ 463. Given that the reason for ETCs to offer an additional company discount was linked to the requirements of Tier 3, and Tier 3 funding has been eliminated, Nexus understands that there is no longer a need to offer a company discount in order to receive Lifeline funding. To the extent this is not correct, Nexus requests clarification from the Commission regarding what amount, if any, of a Company discount must be provided.

¹⁰ *Lifeline Reform Order* at ¶ 469.

simplicity that this flat rate brings cannot be overstated. In addition, Nexus (which provides some wireline Lifeline services) believes that a uniform support level *vis á vis* wireline and wireless service is essential to ensure that the Commission's Lifeline rules and policies do not favor one particular technology over another. Instead, *consumers* should decide which particular type of service best suits their communications needs. Accordingly, Nexus strongly urges the Commission to maintain a flat, uniform reimbursement amount for all voice services.

Another critical factor for ETCs providing Lifeline services is *stability* of the support level. Stability in the support level is absolutely essential to allow ETCs to engage in effective business planning and to develop business models and service plans for the medium- and long-range future. For example, an ETC offering wireless services will devise entirely different service plans based on a \$9.25 support level than one based on, for example, a \$7.50 support level. Clearly, a \$7.50 support level would severely restrict the monthly allotment of minutes a carrier could offer.

In this respect, the Lifeline support level is fundamentally different from the universal service contribution factor, which is adjusted quarterly. The contribution factor is simply a surcharge that is tacked on to the retail price of telecommunications services, similar to a tax. Quarterly adjustments of such fees and taxes are relatively simple to implement and carriers' billing systems were designed to take such periodic changes into account. On the other hand, the Lifeline support level is a *fundamental component* of short- and long-term business planning for carriers such as Nexus that focus on serving low income consumers, and form an essential component of their pricing.

Frequent and/or substantial changes in the support level would require ETCs to radically alter their service offerings to Lifeline subscribers and would create enormous administrative

burdens for ETCs. Such changes would require, for example, changes to: tariffs, service plans, marketing materials, web sites, service agreements, billing systems, forms, employee training materials, etc. Frequent changes inhibit the ability of ETCs to focus on their primary objective: providing high quality communications services to qualified low income consumers. Accordingly, Nexus respectfully submits that the Commission should adjust its Lifeline support level only as needed to reflect very significant changes in the underlying costs to provide telecommunications services to low income consumers, and make changes no more frequently than every two years.

Because Lifeline services are provided by a combination of wireline and wireless technologies, and will continue to be provided as such for the foreseeable future, Nexus submits that the Commission should look to a broad index of the costs of providing telecommunications services: namely, the Bureau of Labor Statistics' ("BLS") cost index for North American Industry Classification System ("NAICS") Subsector 517, titled "Telecommunications."¹¹ The

¹¹ BLS describes the Telecommunication subsector as follows:

Industries in the Telecommunications subsector group establishments that provide telecommunications and the services related to that activity (*e.g.*, telephony, including Voice over Internet Protocol (VoIP); cable and satellite television distribution services; Internet access; telecommunications reselling services). The Telecommunications subsector is primarily engaged in operating, and/or providing access to facilities for the transmission of voice, data, text, sound, and video. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in the Telecommunications subsector are grouped into four industry groups. The first three are comprised of establishments that operate transmission facilities and infrastructure that they own and/or lease, and provide telecommunications services using those facilities. The distinction among the first three industry groups is the type of infrastructure operated (*i.e.*, wired, wireless, or satellite). The fourth industry group is comprised of establishments that provide support activities, telecommunications reselling services, or many of the same services provided by establishments in the first three industry groups, but do not operate as telecommunications carriers.

PPI for Telecommunications has been relatively stable over the past decade, which Nexus believes is an accurate reflection of the real-world costs of providing telecommunications service during this period.

However, Nexus does not believe the Commission should mechanically tie changes in the Telecommunications PPI to the Lifeline support level. Instead, the Commission should use the Telecommunications PPI only as a baseline or starting point to further investigate whether changes to the Lifeline support level are necessary or appropriate. For example, if the Commission were to see a marked increase or decrease in the Telecommunications PPI – *e.g.*, a 10 percent change over a one year period – the Commission would then request public comment about whether the Lifeline support level should be adjusted. On the other hand, if the Telecommunications PPI remains relatively stable, the Commission could reasonably presume that no adjustment to the Lifeline support level is necessary. For the reasons discussed above, stability in the Lifeline support level is far more beneficial than any benefits that might accrue from periodic “tweaking” of the support level.

Moreover, the profit margins for ETCs that focus on the target demographic of the Lifeline program are already thin, particularly when compared to large carriers with significant customer bases that purchase higher-margin services. Because these carriers focus on this segment of the market, they are particularly adept at serving this market segment, and in particular, the poorest of the low income population. While the PPI would provide valuable input, the Commission must be careful to carefully consider the effects of any changes on the Lifeline program and the target demographic, including potential negative consequences on penetration. This consideration should include public notice and comments. Therefore, the

See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517&search=2007> NAICS Search (last visited March 30, 2012).

Commission should adjust the Lifeline support level infrequently and only as needed to reflect significant changes to the underlying costs of providing telecommunications services, and only when such changes will not endanger the continued provision of service to low income consumers and ETCs that focus on serving their needs.

B. Frequency of Payments

The Commission asks whether support should be paid monthly to ETCs that “do not charge for service on a monthly basis.”¹² Nexus assumes that the Commission is referring to ETCs that offer service packages that are entirely paid for by the Lifeline subsidy. The effect, therefore, is that these ETCs do charge on a monthly basis and do depend on this monthly income to provide these much-needed services to subscribers. Nexus, unlike an ILEC or other large carrier with significant revenues from non-Lifeline subscribers, simply cannot carry the costs of providing service to its Lifeline customers without monthly disbursements of the Lifeline funding, funding for which its subscribers are qualified under program rules. Moreover, to single out ETCs such as Nexus that focus on serving the needs of this population would be anticompetitive. There is no competitively-neutral reason to pay ETCs like Nexus on a schedule that is different from other ETCs, and any schedule other than a monthly one would deprive millions of the poorest Americans of the valuable services provided by these ETCs.

C. National Lifeline Accountability Database

In Section VII(A) of the *Lifeline Reform Order*, the Commission established a National Lifeline Accountability Database (“Database”),¹³ which is intended to eliminate existing duplicative support and prevent duplicative support in the not-too-distant future, as well as eventually determine eligibility. Nexus has consistently supported the creation of a national

¹² *Lifeline Reform Order* at ¶ 463.

¹³ See *Lifeline Reform Order* at ¶¶ 179 – 225.

database to definitively eliminate duplicative supports and to provide a definitive means to determine consumers' eligibility, and applauds the Commission for moving forward with implementation of the Database. In paragraph 205 of the *Lifeline Reform Order*, the Commission indicated its intent to “simplify the process for subscribers to transfer their Lifeline benefits from one ETC to another.” The Commission directed USAC “to submit for Bureau review and approval a process for facilitating a transfer of benefits.”¹⁴ In the Further Notice, the Commission requested comment on the features and functionality of the Database.¹⁵

Nexus believes the benefit transfer process is of utmost importance, particularly with the increased level of competitive choices available for consumers seeking Lifeline-supported services. Nexus believes that USAC and the Bureau need not “reinvent the wheel” to develop a Lifeline benefit transfer process. Instead, the process generally should be modeled after Commission’s local number portability (“LNP”) rules.¹⁶ Moreover, the Commission should insure that this process is competitively neutral, completed in a timely manner, involves minimal administrative burdens, and expressly prohibits ETCs from engaging in “retention marketing” (as with is the case with the LNP process).¹⁷

Finally, the process initially designed by USAC for facilitating a transfer of benefits should be placed on public notice and made available for public comment prior to review and approval by the Bureau. Only ETCs that are directly affected will have a full understanding of how any proposal for an administrative process to transfer benefits will impact this market

¹⁴ *Lifeline Reform Order* at ¶ 205.

¹⁵ *Lifeline Reform Order* at ¶ 415.

¹⁶ 47 C.F.R. § 52.20 *et seq.*

¹⁷ See *Bright House Networks, LLC v. Verizon California, Inc.*, Memorandum Opinion and Order, 23 FCC Rcd. 10704 (2008).

segment. ETCs therefore should be afforded opportunity to provide input about the real-world implications of the transfer process on their operations and on Lifeline subscribers.

D. Record Retention Rules

The Commission requested comment on its proposal to increase the mandatory record retention period from three to ten years.¹⁸ Nexus submits that the proposed ten-year period is excessive and unduly burdensome on ETCs. The Commission has implemented a variety of measures that unquestionably will minimize waste, fraud and abuse in the Lifeline program. In particular, any ETC with substantial operations (*i.e.*, drawing at least \$5 million in annual Lifeline support) will be subject to a full, independent audit every *two years*. This requirement ensures that any systematic noncompliance with the Commission's rules will be identified within a few years. It is unnecessary to mandate that ETCs retain documents through *five* audit cycles. Instead, Nexus recommends that the Commission revise the period of record retention to **five years**, which will ensure that all pertinent documents are retained through two full audit cycles, and yet, will not impose an undue administrative burden on ETCs.

¹⁸ *Lifeline Reform Order* at ¶¶ 505 – 506.

IV. CONCLUSION

For the foregoing reasons, Nexus respectfully asks the Commission to clarify and/or reconsider the unsettled matters in the Report and Order and to resolve the issues addressed in the Further Notice in a manner consistent with Nexus' recommendations herein.

Respectfully submitted,



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