

**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

**REPLY COMMENTS OF NEXUS COMMUNICATIONS, INC.**

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Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Reply Comments in response to the Further Notice of Proposed Rulemaking (“Further Notice”) released by the Federal Communications Commission (“Commission”) on February 6, 2012 and initial comments filed by interested parties in the above-captioned proceeding.<sup>1</sup>

**I. THE LIFELINE DATABASE MUST BE NATIONAL AND INTRODUCED AS SOON AS POSSIBLE**

A majority of commenters that participated in the initial round of comments on the Further notice agree: the Lifeline database should be national. Among industry participants, 3PV,<sup>2</sup> AT&T,<sup>3</sup> CenturyLink,<sup>4</sup> COMPTTEL,<sup>5</sup> Cox,<sup>6</sup> Cricket,<sup>7</sup> CTIA,<sup>8</sup> i-wireless,<sup>9</sup> Joint

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<sup>1</sup> *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*”). All references to comments herein are to comments filed in the Further Notice.

<sup>2</sup> Comments of Third Party Verification, Inc. at 2-4.

<sup>3</sup> AT&T Comments at 4-10.

<sup>4</sup> CenturyLink Comments at 2-4.

<sup>5</sup> COMPTTEL Comments at 2-7.

<sup>6</sup> Cox Comments at 5-7.

<sup>7</sup> Cricket comments at 3-6.

<sup>8</sup> CTIA Comments at 2-4.

Commenters,<sup>10</sup> Solix,<sup>11</sup> Sprint,<sup>12</sup> T-Mobile<sup>13</sup> and Verizon<sup>14</sup> all support the creation of a national database.

Moreover, the commissions of the District of Columbia,<sup>15</sup> Michigan,<sup>16</sup> and Ohio<sup>17</sup> agree that the database should be national. The Public Service Commission of the District of Columbia aptly summarized the advantages of a national database as such:<sup>18</sup>

[t]he existence of a national eligibility database designed specifically for verification of Lifeline eligibility would eliminate the need for ETCs to query state databases that would not have been designed for such purposes, reducing the potential for confusion due to different methods of collecting and storing data. In jurisdictions that do not regulate certain types of ETCs, a national eligibility database would avoid the problem of requiring agencies to provide access to their databases to ETCs that are unregulated in their jurisdiction.

The Michigan Public Service Commission notes that many states lack the necessary expertise and resources to establish a state-level database.<sup>19</sup>

Most telecommunications carriers—ranging from incumbent local exchange carriers (“ILECs”) to prepaid wireless ETCs—offer services on a national scale. A national database, or at least a single, national interface, would reduce the administrative burdens for ETCs as well as for regulators at the state and federal level. For example, in the context of a USAC audit, USAC would not need to have separate lines of inquiry for multiple database systems. As Cricket points out, it may be that the national database needs to draw information from existing state-level databases, such that the national database would function as a centralized clearinghouse,

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<sup>9</sup> i-wireless Comments at 4.-5.

<sup>10</sup> Joint Commenters Comments at 16-17.

<sup>11</sup> Solix Comments at 4-5.

<sup>12</sup> Sprint Comments at 3-6.

<sup>13</sup> T-Mobile Comments at 3-5.

<sup>14</sup> Verizon Comments at 2-3.

<sup>15</sup> Public Service Commission of the District of Columbia Commission at 2

<sup>16</sup> Michigan Public Service Commission Comments at 2.

<sup>17</sup> Ohio Public Utilities Commission at 3.

<sup>18</sup> Public Service Commission of the District of Columbia Commission at 2 (footnote omitted).

<sup>19</sup> Michigan Public Service Commission Comments at 2.

but it is critical that industry and regulatory authorities only have a single interface in order to minimize the administrative costs.

Only four commenters—the Alabama Public Service Commission, the California Public Utility Commission, and the Public Service Commission of Wisconsin—argue for separate databases for each state, largely based on privacy concerns or concerns that relevant state agencies will be entirely excluded from the eligibility process. Neither of these concerns is insurmountable, nor are they particularly difficult to overcome. As many commenters have pointed out, advance consent from the subscriber, combined with limited information transmitted to the ETC (*i.e.*, an eligible or noneligible) should alleviate most if not all privacy concerns.<sup>20</sup> Moreover, a national database does not preclude the involvement of state social service agencies or from the contribution of data from existing state Lifeline databases. In fact, a national database would likely be enhanced by such efforts. There is no valid argument to support a myriad of separate databases that would require ETCs to utilize different processes, and have 50+ interfaces to maintain in order to provide service nationwide.

Nexus also agrees with COMPTTEL that the creation of some interim, manual process for determining eligibility by a third party administrator would be a major distraction and drain on the limited resources of the Commission, USAC and ETCs, which would be better spent on implementing a permanent database solution as fast as possible.<sup>21</sup>

Nexus strongly believes that the many efficiencies and overall program administration benefits to be gained from a national database are so significant that the Commission should expedite implementation of the national database. In Nexus' view, the national database should be the Bureau's top priority because only a national database will definitely solve the issues

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<sup>20</sup> See *e.g.*, AT&T Comments at 8-9; Michigan Public Service Commission Comments at 3; and TracFone Comments at 8.

<sup>21</sup> COMPTTEL Comments at 10.

surrounding duplicate support and eligibility determination. Furthermore, it should launch the eligibility portion of the database as soon as eligibility data for one of the critical programs is achieved. Nexus' experience is that the vast majority of Lifeline participants participate on the basis of just Supplemental Nutrition Assistance Program ("SNAP") and Medicaid, and that SNAP alone is the basis for approximately over 90% of all enrollments. While the additional eligibility programs should be added when possible, if the eligibility database were to encompass SNAP eligibility alone, the Commission will have ensured that the overwhelming majority of Lifeline enrollments are valid.

## **II. THE RECORD REFLECTS THAT A REIMBURSEMENT LEVEL OF \$9.25 SHOULD BE INCREASED**

The Communications Act provides that ". . . the Commission shall base policies for the preservation and advancement of universal service on the following principles: . . . [t]here should be specific, predictable and *sufficient* Federal and State mechanisms to preserve and advance universal service."<sup>22</sup>

In the *Lifeline Reform Order*, the Commission created an interim uniform Lifeline support amount of \$9.25, and it has inquired in the *Further Notice* whether it should maintain this rate. The majority of entities that commented on the Lifeline support amount either supported maintaining support at \$9.25 per subscriber or advocated for a higher level.<sup>23</sup> This is a strong indication that the rate should not be reduced and, in fact, may be too low in order to meet the statutory requirement that universal service support be sufficient. For example, the National

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<sup>22</sup> 47 U.S.C. § 254(b) & (b)(5) (emphasis added).

<sup>23</sup> See e.g., COMPTTEL Comments at 24; Cox Comments at 9-10; i-wireless Comments at 7; Joint Commenters Comments at 4-6; NASUCA Comments at 10-11; NTCA Comments at 3-4; Public Utilities Commission of Ohio Comments at 6; Sprint Comments at 8; TracFone Comments at 12-14; T-Mobile Comments at 5; USTA Comments at 5; Verizon Comments at 4; see also Michigan Public Service Commission at 2 (commenting that "if the FCC is uncertain whether the established amount is adequate, the FCC could maintain this amount for a year. . .").

Association of State Utility Consumer Advocates (“NASUCA”) notes that the interim rate of \$9.25 will result in a decrease for many consumers because it reflects the *average* support level.<sup>24</sup> The mean support amount, according to USAC’s own calculations, is \$9.58, which demonstrates that for more consumers that not, \$9.25 is a decrease in funding.<sup>25</sup> This is why NASUCA, and others such as Sprint, advocate increasing the support level to \$10.00. NASUCA raises an additional reason to increase the \$9.25 rate: recent changes in the High Cost fund will make basic telephony services more expensive for many consumers.<sup>26</sup> Nexus agrees with NASUCA that a modest increase of \$0.75 is needed to offset some of the effects of both High Cost and Lifeline reforms. Finally, NASUCA advocates *increasing* Lifeline support every two years.<sup>27</sup> Given the record put forth before the Commission, it appears that the interim rate of \$9.25 may be insufficient to meet the universal service needs of low income Americans, and it is clear that any decrease would not meet the statutory requirement for sufficient support.

For the foregoing reasons, Nexus believes that the Commission should increase the interim rate to somewhere between \$9.58 and \$10.00, and at a later date, undertake a separate proceeding focused on reimbursement rate after the industry has had time to absorb the numerous and significant changes to the Lifeline program. Many of these changes will likely result in a considerable increase in ETCs’ underlying costs, which should be taken into account. This separate proceeding should be launched in a year or two in order to give the industry time to incorporate the many new requirements and gather the necessary data to determine whether a further increase is appropriate.

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<sup>24</sup> NASUCA Comments at 11.

<sup>25</sup> Letter from Karen Majcher, Vice President High Cost and Low Income Division, USAC, to Sharon Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission (Jan. 10, 2012) at 2.

<sup>26</sup> NASUCA Comments at 11-12.

<sup>27</sup> NASUCA Comments at 11-12.

Nexus would also like to briefly address proposals to have regional support rates, or support based on some percentage of the ETC's standard price. Regional support rates based on regional costs would necessarily involve costly and time-consuming cost studies, and entail administrative burdens for industry and regulatory authorities alike. Moreover, given that wireless is quickly becoming the dominant technology chosen by Lifeline subscribers, there are unlikely to be significant regional cost differences. In Nexus' experience, the majority of Lifeline consumers live in urban areas, and the costs of serving urban areas via wireless technology does not significantly vary from one region to another. Any cost differences in deploying networks between urban and rural areas is an issue more appropriately addressed by the new Connect American Fund and the Mobility Fund—not the Lifeline program.

Moreover, basing support on some percentage of each ETC's monthly service charge would simply be moving the program in the wrong direction, and a voucher-like system would be wholly unworkable. A flat, uniform rate is administratively simpler for ETCs, regulatory authorities and consumers. Comparing rates for Lifeline plans becomes a straight-forward reduction of a flat amount, such as \$10, making comparison shopping easier for consumers. Regulators have no need to determine which particular underlying charges may be subject to the discount, whether an ETC is correctly applying the discount or create a new system to distribute vouchers. The new flat rate will introduce much-needed clarity and administrative simplicity to a program plagued by arcane and out-of-date regulatory concepts for too long.

### **III. RESELLERS CAN BE PROPERLY REGULATED BY FOLLOWING THE SAME RULES AS ETCs**

The Commission should not eliminate the resale model, which lowers barriers to market entry for new providers. Currently, resellers provide Lifeline service much in the same way that ETCs do with the exception that they do not directly receive reimbursement from the Lifeline

program. Instead, an underlying carrier provides lines on a wholesale basis discounted to reflect the Lifeline discount. Resellers otherwise collect certification forms from consumers and follow the other rules applicable to ETCs providing Lifeline service. There is no need to require these entities to engage in lengthy and expensive regulatory proceedings to seek ETC designation because the same result can be achieved via other, simpler means: the resellers can and should be subject to the same rules as ETCs with respect to their interactions with consumers, requirements to file reports with the Commission, etc. The Commission could also require resellers to file compliance plan if it required additional assurance that these entities would provide adequate protections against waste fraud and abuse. If the Commission were to take these steps, there would be no greater risk of waste, fraud or abuse occurring in the case of a reseller than there would be in the case of an ETC providing Lifeline service.

Should the Commission eliminate the resale model, however, it must give an appropriate transition period to these carriers and their subscribers to transition to a new regulatory model that only permits direct Lifeline participation by ETCs. There are many small entities that operate as Lifeline resellers—many of which that may not have participated in the present proceeding—that would need sufficient time to seek and obtain ETC designations in their respective states of operation. ETC designation can take anywhere from a few months to several years. Resellers should be given at least six months to seek ETC designation in states in which they operate, and twelve months thereafter to obtain the designation, subject to waiver for additional time if the carrier is making reasonable efforts to further the processing of its application.

#### **IV. A 10-YEAR RECORD RETENTION PERIOD IS UNNECESSARY AND OVERLY BURDENSOME**

A decade-long requirement to retain records to demonstrate the eligibility for each of the 13 million plus individual consumers served by the Lifeline program each year is unworkable, and nearly all commenters agree.<sup>28</sup> Unlike the High Cost program, which entails records of network build out, or the E-rate program, which entails records not for each individual student but for the services provided on a school-district wide basis, the Lifeline program entails records for each individual consumer, many of which are only consumers for a matter of months. More than doubling the record retention period for the Lifeline program would be extremely burdensome and unjustified, given that the record does not reflect any particular issues with the current retention periods. The stated reason for extending the period is that the False Claims Act would permit civil penalties for a ten year prior period, resulting in civil penalties between \$5,000 and \$10,000, plus treble damages.<sup>29</sup> Nexus submits that the current rule, which requires the retention of certain key documents to be retained as long as the individual is a subscriber, is sufficient to root out bad actors from the industry and adequately balances record keeping burdens with the need for sufficient records for adequate auditing. Moreover, the record does not reflect any otherwise valid claims under the False Claims Act that were thwarted by the current document retention rules. A claim under the False Claims Act would remain possible for any ETC systematically disregarding the Commission's rules, as a full three years' worth of records (and more, in the case of some current subscribers) would still be available for such proceedings.

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<sup>28</sup> AT&T Comments at 29-30; CenturyLink Comments at 7-8; COMPTTEL Comments at 29-32; Cricket Comments at 12-13; General Communication, Inc. Comments at 11-12; i-wireless Comments at 8; Joint Commenters Comments at 15; Verizon Comments at 9.

<sup>29</sup> *Further Notice* at n. 1231.

## V. CONCLUSION

Nexus respectfully submits that the most crucial task currently before the Commission with respect to this program is to establish a national duplicates and eligibility database as quickly as possible. Among all the reforms undertaken in the *Lifeline Reform Order*, a national database has the greatest potential for rooting out waste, fraud and abuse in the program, as well as generally increasing administrative efficiencies for ETCs and regulatory authorities. Moreover, the Commission must take into account the increasing regulatory burdens on ETCs when considering unnecessary rule changes such as expanding its record keeping requirements or increasing barriers to market entry by resellers. Finally, the Commission should not rush to adjust the reimbursement rate but rather, should launch a separate proceeding in a year or two to more fully develop the record regarding the appropriate rate structure.

Respectfully submitted,



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