

**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

COMMENTS OF NEXUS COMMUNICATIONS, INC.

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REPLY COMMENTS OF NEXUS COMMUNICATIONS, INC.

Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Comments in response to the waiver petitions filed by the United States Telecom Association (USTA) and the California Public Utilities Commission (“CPUC”).¹ There is significant confusion among the states and eligible Telecommunications Carriers (“ETCs”) regarding the specific requirements in a significant number of states—including large states such as California—that require additional time for states and ETCs. The confusion is significant enough that the only reasonable approach may be to grant TracFone’s Request for Postponement in order to provide ETCs sufficient time to receive adequate guidance and eligibility information on a state-specific basis.

I. ETCS MUST BE ABLE TO FILE FOR SUBSIDY FOR SERVICE RENDERED EVEN IF STATE MISSES THE RELEVANT DEADLINE

ETCs should not be punished if states are not ready to meet their obligations under the Commission’s new rules governing subscriber eligibility for Lifeline. These new rules divide the

¹ *Comment Sought on USTelecom Petition for Waiver of Lifeline Rules*, Public Notice, DA 12-692 (WCB rel. May 1, 2012); *Comment Sought on California PUC Petition for Waiver of Lifeline Rules*, Public Notice, DA 12-719 (WCB rel. May 4, 2012).

states into two groups: those states that have taken on the task of the initial determination of a subscriber's eligibility ("database states") and those in which that responsibility falls on the eligible telecommunications carrier ("non-database states"). For database states, the rules leave intact current processes for determining subscriber with two exceptions:

- first, they require the database administrator or state agency to forward to the ETC *notice* that the subscriber meets the relevant income or program-based criteria (47 C.F.R. § 54.410(b)(2)(i) and (c)(2)(i)); and
- second, they require the database administrator or state agency to forward a copy of the subscriber's *certification* to the ETC (47 C.F.R. § 54.410(b)(2)(ii) and (c)(2)(ii), § 54.410(e)).²

Both the notice and certification must be received by the ETC in order for the ETC to seek Lifeline subsidy for that subscriber.

As explained in the USTA Petition for Waiver, ETCs have no control over whether the database states will be ready to meet these obligations. Since the time that USTA filed its initial petition, several states have made oral or other representations to the Commission that they will be ready to forward the requisite notice and certifications to ETCs by the June 1, 2012 effective date of new rule 54.410.³ It seems that other states, however, will require additional time, in which case the Commission may extend the deadline

The Commission must make clear that failure by a state database administrator or agency to have in place mechanisms to forward the requisite notice and certification for any or all

² Nexus agrees with USTA that providing an actual copy of the certification form is unnecessary and overly burdensome. Only the entity charged with determining the sufficiency of a certification needs to receive a copy. If that entity is a state administrator or agency, then that entity should be responsible for maintaining copies of the certification forms. With respect to t

³ See *Lifeline and Link Up Reform and Modernization et al.*, Ex Parte Notice of USTelecom, WC Docket Nos. 11-42, 96-45, 03-109 (filed May 14, 2012) ("USTA Ex Parte").

subscribers by the relevant deadline will result in an automatic waiver of the requirement that the ETC obtain notice and a copy of the certification until such time as the state has met its obligations. Moreover, on an on-going basis, the Commission must make clear that the database administrator or state agency must timely forward these documents each month to the ETC, which should be no later than one business day following the end of the calendar month. This will permit ETCs to review the notices and certifications forwarded prior to the filing deadline for the FCC Form 497 on which ETCs file claims for Lifeline subsidies.⁴

Finally, the Commission must make it clear which states qualify as database states so that ETCs and states alike clearly understand in which states ETCs will be required to obtain eligibility information from the state. For example, as explained in its Petition for Reconsideration, it is far from clear whether the state of Maryland's "list" should be considered a database for purposes of section 54.410 of the Commission's rules.⁵

II. ETCs SHOULD NOT BE REQUIRED TO OBTAIN DOCUMENTATION IN DATABASE STATES AND A LIST OF ELIGIBLE CONSUMERS SHOULD BE SUFFICIENT

The Commission must make clear that as the states work with the Commission to fully implement section 54.410, the new Lifeline rules simply do not contemplate a temporary "solution" of requiring ETCs to gather from the consumer supporting documentation and certifications in database states. The unambiguous text of the new rules only requires ETCs to gather supporting documentation and certifications in non-database states. Specifically, the new rules provide the following at subsections (b)(1) and (c)(1):⁶

⁴ Currently, this deadline is the 15th of every month. Beginning in October, the deadline in order to receive timely payment will be the 8th of every month.

⁵ *Lifeline and Link Up Reform and Modernization et al.*, Request for Clarification and/or Reconsideration and Initial Comments of Nexus Communications, Inc., WC Dockets 11-42, 03-109, 96-45, 12-23 (filed Mar. 30, 2012) at 4-5.

⁶ 47 C.F.R. § 54.410(b)(1), (c)(1) (emphasis added).

Except where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline or using the income-based [or program-based] eligibility criteria . . . an eligible telecommunications carrier . . . [must either access an income or program database, or] must ***review documentation*** that establishes that the prospective subscriber meets the income-eligibility criteria set forth in sections 54.409(a)(1) or (a)(3) . . . [or] must ***review documentation*** demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements. . .

This is the only portion of section 54.410 that imposes any requirement to review documentation, and it clearly only applies in instances where the state Lifeline administrator or state agency has not taken on the task of determining initial eligibility.

California is a database state that has requested, under its own waiver petition, additional time to meet its obligations under 47 C.F.R. § 54.410, and in particular, subsection 54.410(e).⁷

This subsection provides:⁸

State Lifeline administrators or other state agencies ***that are responsible for the initial determination of a subscriber's eligibility for Lifeline*** must provide each eligible telecommunications carrier with a copy of each of the certification forms collected by the state Lifeline administrator or other state agency from that carrier's subscribers.

The fact that the CPUC has sought a waiver of this subsection confirms Nexus' understanding that California, indeed, is a database state, meaning that the state (through its third-party contractor, Solix) is responsible for the initial determination of a subscriber's eligibility for Lifeline.

To recap, under the structure of section 54.410 ETCs are not required to seek supporting documentation or certifications from the subscribers. Rather, the qualification process has been undertaken by the state, and it is the state database's responsibility to make the initial determination and forward the notice and certification to the ETC, as discussed in Section I of

⁷ *Lifeline and Link Up Reform and Modernization et al.*, Petition for Waiver of the California Public Utilities Commission and the People of the State of California, WC Dockets 11-42, 03-109, 96-45, 12-23 (filed Apr. 26, 2012) ("CPUC Waiver Petition").

⁸ 47 C.F.R. § 54.4010(e).

these comments. California is not the only state to need additional time to implement the new requirements of 54.410.⁹ It is understandable that these states require additional time in order to implement the major changes to their database processes required by section 54.410.

That being said, Nexus was concerned with a statement made by the CPUC in its recent Opposition to various petitions for reconsideration. In the CPUC Opposition, the CPUC stated:¹⁰

Under Section 54.410(c)(1)(i)(B), if a state does not have an electronic eligibility database that carriers can access to determine an applicant's eligibility, the carrier – or the state administrator, where applicable – is required to obtain documentation from the applicant.

While it is true that there is a reference to one type of database in subsection (c)(1) (found at (c)(1)(A)), that reference is simply to a situation where an ETC might have direct access to a food stamp database, or a Medicaid database.¹¹

The Commission should make it very clear that (1) the references to databases in (b)(1)(A) and (c)(1)(A) are *not* references to Lifeline databases maintained in states that have taken on the responsibility of making the initial determination of Lifeline eligibility; (2) where state Lifeline databases exist, the ETCs need only follow the procedures found at subsections (b)(2) and (c)(2) of rule 54.410 and (3) ETCs will not be required to seek supporting documentation or certifications from the consumers in states with Lifeline databases, even as an interim solution

The effective date of revised rule 54.410 (June 1) is a mere two weeks away. Moreover, requiring ETCs to seek supporting documentation in a database state is neither contemplated in

⁹ *Lifeline and Link Up Reform and Modernization et al.*, The United States Telecom Association's Petition for Waiver, WC Dockets 11-42, 03-109, 96-45, 12-23 (filed Apr. 25, 2012) ("USTA Waiver Petition") at Appendix 1 (listing states that may require additional time other than California); USTA Ex Parte (updating the list of affected states).

¹⁰ *Lifeline and Link Up Reform and Modernization et al.*, Opposition of the California Public Utilities Commission and the People of the State of California to Petitions for Reconsideration of the *Lifeline Reform Order*, WC Dockets 11-42, 03-109, 96-45, 12-23 (filed May 7, 2012) ("CPUC Opposition")

¹¹ While not currently common for ETCs to have direct access to program-specific databases, it is possible that ETCs will successfully negotiate such access prior to the establishment of a national Lifeline database that includes an eligibility component.

the Commission's rules nor was it contemplated in the underlying rulemaking proceeding. Imposing such a requirement now—even on an interim basis—would create massive disruption for ETCs and Lifeline consumers. No ETC had any notice that such a requirement was being proposed, not to mention that the ETC might only have a matter of weeks to adjust its operations in multiple states. Lifeline ETCs have had to make massive changes to their operations to meet the deadlines set forth in the revised rules, many of which also have effective dates of June 1. There is simply no fair means of shifting the compliance burdens of database states to ETCs because the state administrator or agency requires. Nexus submits that the only reasonable solution is for the Commission to grant the database states additional time to comply as necessary and appropriate.

III. COMPETITIVE ETCs SHOULD HAVE ACCESS TO STATE LIFELINE DATABASES HISTORICALLY USED BY ILECS

The USTA petition confirms Nexus' understanding that certain state databases have traditionally only been available to incumbent local exchange carriers ("ILECs"). It may be, however, that certain competitive ETCs are seeking access to these same databases, which would alleviate the need for those ETCs to obtain documentation and certifications from the consumers. Instead, these ETCs could simply access the state database. Nexus submits that in the interests of competitive neutrality that competitive ETCs should be permitted to access Lifeline databases that were historically accessed only by ILECs, and if one competitive provider has been granted, that all competitive ETCs should be granted access. To that end, states should be required to clarify whether they maintain a Lifeline database that historically has only been made available to ILECs and how CETCs may gain access to such databases.

IV. GIVEN THE WIDESPREAD CONFUSION THE FCC SHOULD GRANT TRACFONE'S REQUEST FOR ADDITIONAL TIME

As the above discussion amply demonstrates, there remains considerable confusion regarding whether an ETC may rely on the state Lifeline database in multiple states and which states are subject to the documentation-plus-certification requirements and for which ETCs. Both states and ETCs are struggling to understand the precise requirements in each state with respect to initial certification, in addition to the numerous other changes required by the Commission's new Lifeline rules. Given the lack of clarity surrounding the new certification rules, Nexus agrees with TracFone that it would be wise to postpone the implementation of the burdensome "full certification" requirements found at 54.410(c)(1)(i)(B) in order to give ETCs and the states sufficient time to (1) understand what the new requirements are and then (2) implement them in an orderly fashion.¹² The current timetable is simply too rushed to permit the industry and state regulators to even understand which state processes qualify as Lifeline databases, let alone permit the database states to meet the new deadlines.

V. CONCLUSION

For the foregoing reasons, Nexus respectfully asks the Commission to clarify and/or provide appropriate waivers and extensions of time consistent with Nexus' recommendations herein.

Respectfully submitted,



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¹² *Lifeline and Link Up Reform and Modernization et al.*, Request for Postponement, WC Dockets 11-42, 03-109, 96-45, 12-23 (filed May 11, 2012).

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