

**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

REPLY COMMENTS OF NEXUS COMMUNICATIONS, INC.

Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Reply Comments in response to the Petition for Rulemaking filed by TracFone Wireless, Inc. (“TracFone”) in the docket captioned above.¹ Although Nexus completely supports TracFone’s efforts to eliminate the waste, fraud, and abuse that often accompanies Lifeline distribution in temporary structures such as tents and out of vehicles, Nexus believes that the proposal Nexus has put forward in its initial comments is narrowly tailored to address this problem and therefore, is the better answer.

I. NEXUS’ PROPOSAL IS NARROWLY TAILORED

Nexus’ proposal to eliminate Lifeline enrollment in temporary structures such as tents and out of vehicles is narrowly tailored to root out waste, fraud, and abuse without broadly precluding in-person distribution and enrollment. The Nexus-proposed ban would eliminate alleged abuses perpetrated by some third party agents operating from tents and vehicles without banning ETCs themselves from engaging in in-person interaction with applicants.

¹ *Wireline Competition Bureau Seeks Comment on TracFone’s Petition to Amend Lifeline Rules to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers*, Public Notice, DA-13-1109 (WCB rel. May 16, 2013). All references to comments herein are to comments filed in response to the Public Notice.

Several major ETCs support a more limited ban similar to Nexus' proposal. In its comments, Cricket describes the "targeted" restrictions that Georgia, California, and South Carolina have imposed to prohibit enrollment from tents, vehicles, and other temporary structures, and writes that "the Commission could implement more limited rules that prohibit enrollment of Lifeline subscribers from tents, vehicles, or other temporary structures."² Similarly, Budget PrePay has indicated that it is not opposed to banning in-person distribution of Lifeline handsets from mobile locations that are not operating in conjunction with a brick-and-mortar store.³

Nexus supports exemptions from the ban in special cases, such as in service areas with sparse populations like those described by Smith Bagley, NNTRC, and GCI. Nexus proposes a streamlined waiver process through which ETCs serving tribal areas or other sparsely-populated regions could engage in specialized marketing and enrollment campaigns.⁴ Nexus has modeled its proposal to eliminate a major source of fraud, but Nexus does not suggest that such a ban would be a "one-size-fits-all" solution—just "one-size-fits-most."

Further, Nexus' proposal avoids the jurisdictional problems that might attend TracFone's proposal. The FCC clearly has jurisdiction to regulate methods of Lifeline enrollment, which is the focus of Nexus' proposal (as opposed to a ban focused on the treatment of only the handsets). Further, Nexus' proposal does not implicate the First Amendment concerns that are inherent in TracFone's proposal to ban a wide range of communication between ETCs and their customers. Thus the FCC can implement Nexus' proposal immediately, avoiding unnecessary legal challenges.

² Comments of Leap Wireless International, Inc. and Cricket Communications at 5-6.

³ Comments of Budget PrePay at 7.

⁴ Nexus does not propose that all tribal areas should be eligible for a waiver. Oklahoma, for instance, is predominantly designated as a tribal area, but generally does not merit the special considerations described by Smith Bagley and GCI.

II. ALL IN-PERSON LIFELINE HANDSET DISTRIBUTION SHOULD NOT BE BANNED

Many commenters point out the potential pitfalls of the broader proposal to ban on all in-person Lifeline handset distribution. First, a ban on in-person distribution of Lifeline phones would prevent ETCs from showing new Lifeline customers how to activate and use their own phones when they receive them. As the Joint ETC Commenters note, “many Lifeline customers will require training to ensure that they are familiar with the features and functionalities of their handsets,” especially because these refurbished phones often lack instruction manuals.⁵ Nexus agrees that person-to-person training can be important for certain Lifeline customers, particularly for elderly low-income customers and those with limited education and literacy skills. And, as the NNRTC points out, for some communities such as tribal communities, service culture “revolves around personal interaction.”⁶

Second, it is important to recognize, as Smith Bagley and Cricket state in their comments, that not all Lifeline subscribers have access to reliable, secure, mail delivery. This may be particularly true in sparsely populated areas like those Smith Bagley serves,⁷ and also in urban areas where packages may be stolen or where recipients may be homeless.⁸ The challenges of reaching eligible Lifeline participants in these settings point to the need for flexible reform that can root out the sources of waste, fraud, and abuse while still allowing a variety of approaches to serve those in need.

⁵ Comments of Absolute Mobile, Assist Wireless, Blue Jay Wireless, Boomerang Wireless, Easy Wireless, Global Connection, I-Wireless and TelRite at 6.

⁶ Comments of the Navajo Nation Telecommunications Regulatory Commission at 4.

⁷ Comments of Smith Bagley at 4-5.

⁸ Comments of Leap Wireless International, Inc. and Cricket Communications at 4.

Third, several commenters explain that a rigid ban on in-person distribution of Lifeline phones could undercut their unique and successful methods of reaching new Lifeline applicants in certain areas. For Smith Bagley and GCI, the ability to enroll eligible tribal subscribers depends on reaching out into the sparsely-populated service areas they have committed to serve. The challenges they face would not be taken into account by a strict ban on in-person distribution. Similarly, the California Public Utilities Commission has emphasized “timely and immediate access to telephone service for Lifeline customers over limiting handset distribution” and has devised a unique pre-qualification system that requires subscribers to have an activated handset before Lifeline service can begin.⁹ Both examples show the value in giving ETCs and administrators flexibility to devise solutions that address unique circumstances.

Fourth, the Joint ETC Commenters and COMPTTEL question whether the Commission has jurisdiction to regulate handsets. This is one more reason why the Commission should instead limit its action to the narrowly-tailored measures proposed by Nexus, which are designed to address the sources of abuse without unduly restricting ETCs’ ability to interact with their subscribers.

CONCLUSION

Nexus respectfully submits that its proposal to eliminate Lifeline enrollment at temporary locations such as tents and out of vehicles, is the best solution to eliminate this source of waste, fraud, and abuse. Nexus’ proposal is designed to address the concern at hand while providing the flexibility ETCs and state administrators need to use in-person communication when appropriate. Ultimately, Nexus’ approach will curtail a particularly nettlesome source of abuse in the program without unduly restricting the activities of its participants.

⁹ Comments of the California Public Utilities Commission at 1-2.

Respectfully submitted,

A handwritten signature in cursive script, reading "Danielle Frappier". The signature is written in black ink and is positioned above the typed name and contact information.

Danielle Frappier
Adam Shoemaker
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W., Suite 800
Washington, D.C. 20006-3401
(202) 973 - 4200

Counsel to Nexus Communications, Inc.

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