



Suite 800  
1919 Pennsylvania Avenue NW  
Washington, D.C. 20006-3401

**Danielle Frappier**  
202.973.4242 tel.  
[daniellefrappier@dwt.com](mailto:daniellefrappier@dwt.com)

**VIA ECFS**

December 13, 2013

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: WC Docket 11-42  
Comments of Nexus Communications, Inc. Regarding the Proposed Lifeline  
Biennial Audit Plan**

Dear Secretary Dortch:

Attached please find the Comments of Nexus Communications, Inc. in the above-captioned docket.

Please contact me if you have any questions.

Respectfully submitted,

A handwritten signature in blue ink that reads "Danielle Frappier".

Danielle Frappier

Cc: Garnet Hanly, TAPD (via e-mail to [Garnet.Hanly@fcc.gov](mailto:Garnet.Hanly@fcc.gov))  
Charles Tyler, TAPD (via e-mail to [Charles.Tyler@fcc.gov](mailto:Charles.Tyler@fcc.gov))

**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

**COMMENTS OF NEXUS COMMUNICATIONS, INC.  
REGARDING THE PROPOSED LIEFLINE BIENNIAL AUDIT PLAN**

Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Comments in response to the Public Notice released on September 30, 2013 in the above-captioned docket.<sup>1</sup> In the Public Notice, the Wireline Competition Bureau (“Bureau”) requested comment on the proposed Lifeline Biennial Audit Plan (“*Audit Plan*”) set forth as Attachment 2 of the Public Notice.

From the beginning of its participation in the Lifeline program, Nexus has worked diligently to minimize waste, fraud and abuse in the program through such measures as voluntarily de-enrolling inactive subscribers, adopting rigorous internal mechanisms to prevent duplicates within Nexus’ subscriber base, and more recently, supporting the Commission’s interim duplicate resolution process as one of the founding industry participants. Nexus has also been a strong supporter of the Commission’s initiatives to reform the Lifeline program, especially through the development of the National Lifeline Accountability Database (“NLAD”). Nexus understands the need for measures such as the *Audit Plan* to further reduce waste, fraud and abuse, particularly until the NLAD becomes fully operational. Indeed, Nexus has publicly

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<sup>1</sup> *Lifeline and Link Up Reform and Modernization*, Wireline Competition Bureau Seeks Comment on the Lifeline Biennial Audit Plan, Public Notice, DA 13-2015, WC Docket No. 11-42 (WCB rel. Sept. 30, 2013).

supported a proposal<sup>2</sup> that *all* eligible telecommunications carriers (“ETCs”) providing Lifeline-supported services should be subject to compliance audits on a periodic basis.<sup>3</sup>

Below, Nexus sets forth several proposals intended to further clarify the Lifeline biennial audit process.

**I. THE BUREAU SHOULD ESTABLISH A FIRM SCHEDULE FOR THE COMPLETION OF ATTESTATION REPORTS, WHICH INCLUDES ADEQUATE TIME FOR ETC COMMENT**

Paragraph 5 of Section I of the *Audit Plan* describes in general terms the process for creating final attestation reports. Specifically, the auditor is directed to submit a draft attestation report to the Commission and the Universal Service Administrative Company (“USAC”) within 60 days after completion of field work testing. The *Audit Plan* also states that ETCs may submit comments to the audit firm prior to the submission of the draft and final reports to the Commission and USAC. Nexus anticipates that the draft attestation reports will be lengthy, complex documents covering a wide variety of topics. The Bureau should ensure that ETCs are afforded ample time to review, analyze and comment on both preliminary reports and draft reports submitted to USAC and the Commission.

Accordingly, Nexus believes that the Bureau should provide greater specificity about the process for creating final attestation reports by adopting the following schedule:

1. After field work testing is complete, the audit firm has *three weeks* to prepare a first draft attestation report, which is supplied to the ETC.

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<sup>2</sup> *Lifeline and Link Up Reform and Modernization, et al.*, Lifeline Reform 2.0 Coalition’s Petition to Further Reform the Lifeline Program, WC Docket No. 11-42 (filed June 28, 2013).

<sup>3</sup> *Lifeline and Link Up Reform and Modernization, et al.*, Comments of Nexus Communications, Inc. in Response to the Lifeline Reform 2.0 Coalition’s Petition to Further Reform the Lifeline Program, WC Docket No. 11-42 at 5 (filed August 14, 2013).

2. The ETC then has at least *three weeks* to provide feedback on the first draft attestation report to the audit firm.
3. The audit firm has two and a half weeks, or *18 days*, to revise the first draft attestation report using feedback provided by the ETC to produce the draft attestation report supplied to the Commission and USAC.
4. After the draft report has been filed by the audit firm, the ETC has at least *30 days* to provide written comments on the draft to the Commission, USAC and the audit firm for preparation of the final attestation report.

This schedule is consistent with the *Audit Plan*, which establishes (1) a period of 60 days between completion of field work testing and submission of the draft attestation report to the Commission and USAC (steps 1-3 above), and (2) a one-year due date between the release of the final Lifeline Biennial Audit Plan to the issuance of the final attestation report.

## **II. THE BUREAU SHOULD TAKE MEASURES TO PROTECT ETCs' CONFIDENTIAL INFORMATION**

Due to the extremely competitive nature of the market of Lifeline-supported services, Nexus strongly believes that the draft attestation reports, and any written comments prepared by ETCs in response to those draft reports should be afforded confidential treatment. Nexus recognizes, as noted in the *Audit Plan*,<sup>4</sup> that the Commission determined in the *Lifeline Reform Order*<sup>5</sup> that “audit reports” will not be considered confidential.<sup>6</sup> However, Nexus understands the *Lifeline Reform Order* to refer only to *final* attestation reports, not any draft versions thereof. By their very nature, draft reports contain tentative findings and analysis that has not been fully

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<sup>4</sup> *Audit Plan* at footnote 14.

<sup>5</sup> *Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42 *et al.*, 27 FCC Rcd 6656 (FCC rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

<sup>6</sup> *Id.* at ¶ 294.

vetted, corrected, refuted or explained by ETCs, and based on the first round of comments by the ETC, the auditors could change their draft findings. The public disclosure of such non-final documents therefore, would potentially risk unduly damaging the business reputation of the audited ETC and provide highly protected trade secrets to actual and potential competitors. Moreover, the ETC comments prepared in response to the draft reports are likely to delve intimately into the confidential business and marketing practices employed by the ETC, which should not be subject to disclosure to competitors providing Lifeline-supported services unless and until all findings related thereto have been fully considered by the auditors.

Conversely, the ETC's comments on the final audit report should be made part of the publicly-available document so that the ETC's position on the auditors' findings is clear and the report does not present a one-sided view of the facts or legal positions.

Moreover, although Nexus understands that the Commission has deemed final attestation reports to be non-confidential, Nexus believes the Commission should consider ETC requests for the redaction of certain limited, critical portions of those reports on a case-by-case basis, consistent with the Commission's rules. Nexus anticipates that redaction may be necessary to prevent the disclosure of key information to competitors or to the public, such as proprietary marketing or business practices or confidential subscriber or financial data. At the very least, the auditors should be directed to draft audit reports such that the reports do not disclose confidential company financial or subscriber data unless absolutely necessary to demonstrate the validity of the finding. In such instances, the Commission should clarify that any confidential information will be subject to its standard rules governing confidentiality at 47 C.F.R. §§ 0.457 and 0.459.

### III. THE BUREAU SHOULD MAKE CLEAR THAT ANY EVIDENCE COLLECTED DURING LIFELINE BIENNIAL AUDITS MUST BE RELEVANT TO THEIR LIMITED SCOPE

In the *Lifeline Reform Order*, the Commission ordered that Lifeline biennial audits must “focus on the company’s overall compliance program and internal controls regarding Commission requirements as implemented on nationwide basis.”<sup>7</sup> This scope is echoed by the Bureau in the *Audit Plan*, which states that Lifeline biennial audits must be “focused on an ETC’s corporate-wide compliance,” the ETC’s “overall compliance with the Lifeline rules” and “whether the company has internal controls necessary to comply with the Lifeline rules.”<sup>8</sup> Nexus believes that the Commission and the Bureau have appropriately limited the scope of the Lifeline biennial audits to ETCs’ overall compliance with Lifeline program rules and internal controls. Both the *Lifeline Reform Order* and the *Audit Plan* make clear that Lifeline biennial audits are *not* full financial audits of an ETC’s operations.

Generally Accepted Government Accounting Standards (“GAGAS”)<sup>9</sup> specifies that auditors “must obtain sufficient, *appropriate* evidence to provide a reasonable basis for their findings and conclusions.”<sup>10</sup> GAGAS also states that the *relevance* of the evidence obtained is a component of its appropriateness,<sup>11</sup> where relevance is defined as “the extent to which evidence has a logical relationship with, and importance to, the issue being addressed.”<sup>12</sup> Given the limited focus of Lifeline biennial audits, therefore, relevant evidence in this context is that which has a logical relationship with, and importance to, an ETC’s overall compliance with Lifeline

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<sup>7</sup> *Lifeline Reform Order* at ¶ 292.

<sup>8</sup> *Audit Plan* at Section I, ¶ 4.

<sup>9</sup> GOVERNMENT ACCOUNTABILITY OFFICE, GOVERNMENT AUDITING STANDARDS, December 2011, available at: <http://www.gao.gov/govaud/iv2011gagas.pdf>.

<sup>10</sup> GAGAS at ¶ 6.56 (emphasis added).

<sup>11</sup> GAGAS at ¶¶ 6.57 and 6.60.

<sup>12</sup> GAGAS at ¶ 6.60(a).

program rules and internal controls for the audited time period and state(s). Nexus asks the Bureau to clarify that ETCs must be provided, upon request, with written justification of the relevancy of any request from the auditor (aside from information and document requests set forth in the *Audit Plan*), explaining how the requested evidence meets the GAGAS standard for relevance in the context of Lifeline biennial audits.

Nexus is concerned that, absent further guidance from the Bureau, ETCs may receive requests for documents and other information that is outside the specific scope of Lifeline biennial audits. Many ETCs that provide Lifeline-supported service also provide non-Lifeline supported services. Lifeline providers should be assured that only the *Lifeline portion* of their businesses should be subject to the audit process.

Lifeline biennial audits are entirely new for auditing firms (because to date, the only Lifeline-related audits have been conducted by USAC), and these firms are likely to be more familiar with the more extensive nature of financial audits than the limited nature of Lifeline audits. The potential for requests for documents and information in excess of the focused scope of Lifeline biennial audits would add to the already considerable cost and management resource burden on ETCs presented by the audits. Finally, Nexus' concern about this issue heightened is by the fact that overbroad evidence – particularly confidential and/or proprietary information – may find its way into final attestation reports, which will be public documents.

Accordingly, Nexus believes that in the final version of the *Audit Plan*, the Bureau should provide clear directions to auditing firms that any documents, information or other evidence requested from an audited ETC must have a logical relationship to, and importance with, the ETC's overall compliance with Lifeline program rules and internal controls.

For the foregoing reasons, Nexus respectfully asks the Commission to incorporate these proposals into the final version of the *Lifeline Biennial Audit Plan* in the manner discussed above.

Respectfully submitted,



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Danielle Frappier  
James W. Tomlinson  
Davis Wright Tremaine LLP  
1919 Pennsylvania Avenue, N.W., Suite 800  
Washington, D.C. 20006-3401  
Tel. (202) 973 - 4242

*Counsel to Nexus Communications, Inc.*

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