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VIA ECFS

December 30, 2013

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

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

Dear Secretary Dortch:

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

Please contact me if you have any questions.

Respectfully submitted,

A handwritten signature in cursive script that reads "James W. Tomlinson".

James W. Tomlinson

cc: Garnet Hanly, TAPD (via e-mail to Garnet.Hanly@fcc.gov)
Charles Tyler, TAPD (via e-mail to 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

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

Nexus Communications, Inc. (“Nexus”), through its undersigned counsel, hereby submits these Reply Comments in response to the Public Notice released on September 30, 2013¹ and initial comments filed by other parties in the above-captioned docket.

I. THE BUREAU SHOULD CAREFULLY CONSIDER THE PROPOSALS OF MANY COMMENTERS TO DELETE OVERLY BROAD QUESTIONS AND DOCUMENTATION AND DATA REQUESTS

As a general matter, Nexus shares the concerns expressed by many other commenters that the scope of the draft *Audit Plan* appears to exceed the Commission’s intended scope of Lifeline biennial audits announced in the *Lifeline Reform Order*.² Nexus, which provides Lifeline-supported services in more than 40 study areas and is concerned about the cost and management resource burden of the audits, believes the Bureau should carefully consider the recommendations of AT&T,³ Verizon and Verizon Wireless,⁴ the United States Telecom

¹ *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) (“Public Notice”). 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.

² *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*”).

³ *Lifeline and Link Up Reform and Modernization*, Comments of AT&T, WC Docket No. 11-42 (filed Dec. 13, 2013) at 5-7 (“*AT&T Comments*”).

Association,⁵ TracFone Wireless⁶ and other commenters to delete overly broad and inapt background questions and documentation and data requests.

The Bureau's evaluation of these proposals should be guided by the *Lifeline Reform Order*⁷ and GAGAS,⁸ which defines the relevance of collected evidence as "the extent to which evidence has a logical relationship with, and importance to, the issue being addressed."⁹ Accordingly, Nexus submits that the Bureau should any eliminate background questions and documentation and data requests that lack a logical relationship with, and importance to, an eligible telecommunications carrier's ("ETC's") overall compliance with Lifeline program rules and internal controls for the audited time period and state(s).

II. OTHER COMMENTERS RECOGNIZE THE NEED FOR A FIRM SCHEDULE FOR THE COMPLETION OF ATTESTION REPORTS, AS PROPOSED BY NEXUS

In its *Initial Comments*,¹⁰ Nexus requested that the Bureau establish a firm schedule for the completion of attestation reports, which includes adequate time for ETCs to comment.¹¹ AT&T raised similar concerns about the lack of specificity in the *Audit Plan* about the process

⁴ *Lifeline and Link Up Reform and Modernization*, Comments of Verizon and Verizon Wireless, WC Docket No. 11-42 (filed Dec. 13, 2013) at 2-4 ("*Verizon Comments*").

⁵ *Lifeline and Link Up Reform and Modernization*, Comments of the United States Telecom Association, WC Docket No. 11-42 (filed Dec. 13, 2013) ("*USTA Comments*").

⁶ *Lifeline and Link Up Reform and Modernization*, Comments of TracFone Wireless, Inc., WC Docket No. 11-42 (filed Dec. 13, 2013) ("*TracFone Comments*").

⁷ See *Lifeline Reform Order* at ¶ 292 where 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."

⁸ GOVERNMENT ACCOUNTABILITY OFFICE, GOVERNMENT AUDITING STANDARDS, December 2011, available at: <http://www.gao.gov/govaud/iv2011gagas.pdf> ("GAGAS").

⁹ GAGAS at ¶ 6.60(a).

¹⁰ *Lifeline and Link Up Reform and Modernization*, Initial Comments of Nexus Communications, Inc. Regarding the Proposed Lifeline Biennial Audit Plan, WC Docket No. 11-42 (filed Dec. 13, 2013) ("*Initial Comments*").

¹¹ See *Initial Comments* at 2-3.

for creating final attestation reports.¹² Specifically, AT&T recommended that “the Bureau should direct independent auditors to give the auditees at least 15 business days to review and respond to a draft report before the independent auditor files a copy of the draft with the Commission and USAC.”¹³ This request mirrors Nexus’ request that ETCs should be provided at least three weeks to provide feedback on the first draft attestation report to the audit firm.¹⁴

Nexus also agrees with AT&T that, in order to ensure a fair and transparent audit process: (1) the Bureau should require that any communication between the auditor and USAC and/or the Commission be in writing, copying the ETC and giving the ETC an opportunity to respond;¹⁵ and (2) audit work papers should not be provided to USAC or the Commission, or, at the very least, these documents should be afforded confidential treatment.¹⁶

III. OTHER COMMENTERS RECOGNIZE THE NEED TO PROTECT ETCs’ CONFIDENTIAL INFORMATION

In its *Initial Comments*, Nexus urged the Bureau to afford confidential treatment to draft attestation reports and to any written comments prepared by ETCs in response to those draft reports.¹⁷ As summarized below, Nexus’ concerns were echoed by several other commenters.

- CenturyLink: “The Bureau should clarify the draft audit report and any comments provided to the draft report ... will be confidential and not subject to public disclosure.”¹⁸

¹² See *AT&T Comments* at 7-8.

¹³ *AT&T Comments* at 7.

¹⁴ *Initial Comments* at 3.

¹⁵ *AT&T Comments* at 7.

¹⁶ *AT&T Comments* at 8.

¹⁷ *Initial Comments* at 3-4.

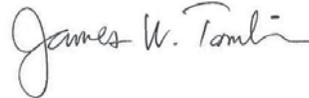
¹⁸ *Lifeline and Link Up Reform and Modernization*, Comments of CenturyLink, WC Docket No. 11-42 (filed Dec. 13, 2013) at 9.

- USTA: “Draft audit reports should remain confidential ... Making draft audit reports public is grossly unfair to providers that may not have a reasonable opportunity to refute proposed findings and correct auditor errors.”¹⁹
- AT&T: “Given that these draft [reports] are subject to change, AT&T believes it is appropriate to keep such documents confidential.”²⁰

The Bureau should recognize, as these commenters noted, that 47 C.F.R. § 0.457(d)(1)(iii) provides for the automatic confidentiality of “information submitted in connection with audits.”

Nexus respectfully asks the Bureau to amend the draft *Audit Plan* in accordance with the foregoing.

Respectfully submitted,



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December 30, 2013

¹⁹ *USTA Comments* at 5-6

²⁰ *AT&T Comments* at 3.