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VIA ECFS

February 28, 2014

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: WC Dockets No. 11-42, 03-109
In the Matter of Request for Review by Nexus Communications, Inc. of
Decisions of Universal Service Administrator**

Dear Ms. Dortch:

Please find the attached redacted, public version of a Request for Review by Nexus Communications, Inc. of Decisions of the Universal Service Administrator. The confidential version of this document has been hand delivered today to the Commission, along with a request for confidential treatment.

In accordance with 47 C.F.R. § 54.721(c), Nexus will serve a copy of this document on the Universal Service Administrator consistent with 47 C.F.R. § 1.47.

Please contact us if you have any questions about this Request for Review.

Sincerely,

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

Danielle Frappier
James W. Tomlinson

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Review by Nexus
Communications, Inc. of Decisions of
Universal Service Administrator

WC Dockets 11-42, 03-109

REQUEST FOR REVIEW BY NEXUS COMMUNICATIONS, INC.

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February 28, 2014

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	STATEMENT OF THE RELEVANT MATERIAL FACTS	3
	A. Background Regarding Nexus	3
	B. Nexus’ Interest In The Matter Presented For Review	4
	C. The Decisions For Which Review Is Requested.....	6
	D. Request For Waiver Of The 60-Day Deadline To Seek Review Of Certain USAC IDV Decisions	6
	E. Nexus’ Process for Screening Intra-Company Duplicates.....	7
III.	QUESTION PRESENTED FOR REVIEW: DID USAC PROPERLY FOLLOW GUIDANCE FROM THE COMMISSION IN FINDING ALLEGED INTRA-COMPANY DUPLICATES FOR NEXUS?	10
	A. The Commission Has Defined An Intra-Company Duplicate As Individuals With The “Same Name, Same Address”	10
	B. USAC Impermissibly Made Policy Decisions In Identifying The Alleged Intra-Company Duplicates	12
	C. USAC’s Erroneous Findings Of Intra-Company Duplicates.....	14
IV.	REQUESTED RELIEF	16

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Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Review by Nexus
Communications, Inc. of Decisions of
Universal Service Administrator

WC Dockets 11-42, 03-109

REQUEST FOR REVIEW BY NEXUS COMMUNICATIONS, INC.

In accordance with 47 C.F.R. § 54.721, Nexus Communications, Inc. (“Nexus”) hereby files this Request for Review of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** decisions of the Universal Service Administrative Company (“USAC”), the administrator of the Universal Service Fund (“USF”). The decisions erroneously found that Nexus had requested Lifeline support for intra-company duplicate subscribers.

For the reasons discussed below, the Commission should vacate the decisions and, in order to avoid similar, erroneous decisions in the future either: (1) order USAC to abide by the Commission’s current definition of an intra-company duplicate; or (2) clarify its definition of what constitutes an intra-company duplicate and publicly explain what parameters will be used by USAC on a prospective basis for their identification.

I. INTRODUCTION AND SUMMARY

Nexus seeks review of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** decisions of USAC collectively finding that Nexus had a total of **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** intra-company duplicate Lifeline subscribers. The actions were taken in the form of in-depth data validations (“IDVs”) of Nexus’ subscriber data as part of the

national Industry Duplicate Resolution Process (“IDRP”). USAC erred in determining that these subscribers were intra-company duplicates because it based its determinations on policies and rules other than official Commission rules or guidance. In fact, the Commission’s only explicit guidance for dealing with the question of intra-company duplicates is a June 2011 letter from the Wireline Competition Bureau to USAC directing USAC to recover funding provided for services to an “intra-company duplicate” subscriber, which the Commission described as “same name, same address within one ETC’s records.” USAC is specifically prohibited under Commission rules from creating its own regulations or policies, or even making its own interpretation of Commission rules. Yet that is exactly what happened here because some of the relevant subscriber information is *similar* to the information of another subscriber – although in some instances, there is little to no similarity. Subjective judgments of similarity, however, are not permitted under Commission rules. The governing standard is “same name, same address.” Exactly *zero* of the subscribers identified by USAC have the same name and address as any other Nexus subscriber, and therefore, the USAC findings in these IDVs must be vacated.

Normally, the costs of seeking review of such a decision would be outweighed by the amount of funding at issue. In fact, the monthly funding associated with the subscribers identified by USAC as intra-company duplicates is only **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Recent Commission enforcement actions, however, in which multi-million dollar penalties have been proposed in a series of Notices of Apparent Liability for relatively small numbers of alleged intra-company duplicates have changed the cost-benefit analysis of deciding whether or not to appeal. As a result, Nexus seeks review of the aforementioned IDV decisions, and for **BEGIN CONFIDENTIAL** [REDACTED] **END**

CONFIDENTIAL of the decisions, respectfully requests a waiver of the normal 60-day deadline to appeal.

As demonstrated below, the Commission should vacate each of the decisions and, in order to avoid similar erroneous decisions in the future, either: (1) order USAC to abide by the Commission's current definition of an intra-company duplicate; or (2) clarify its definition of what constitutes an intra-company duplicate and publicly explain what parameters will be used by USAC for their identification on a prospective basis.

II. STATEMENT OF THE RELEVANT MATERIAL FACTS

A. Background Regarding Nexus

Nexus has been designated an eligible telecommunications carrier ("ETC") in 36 states and has been participating in the Lifeline program since 2006.¹ From the beginning of its participation, 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 IDRPs as one of the founding industry participants.² 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").

¹ Affidavit of Nexus President, Steven Fenker at ¶ 1. ("Fenker Affidavit").

² Fenker Affidavit at ¶ 2; *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link Up*, WC Docket No. 03-109, Letter from Nexus Communications, *et al.* (April 11, 2011) available at: <http://apps.fcc.gov/ecfs/document/view?id=7021341102>.

Nexus has also supported a proposal³ that *all* ETCs providing Lifeline-supported services should be subject to compliance audits on a periodic basis.⁴

B. Nexus' Interest In The Matter Presented For Review

Nexus has a strong interest in this matter. During the period from September 30, 2013 to December 11, 2013, the Commission issued a series of eleven separate Notices of Apparent Liability (“NALs”)⁵ against other ETCs, which propose collective forfeitures of almost \$91 million. The NALs indicate that the Commission relied exclusively on USAC’s IDV decisions as its supposed “investigations” as to whether the ETCs may have violated Commission rules by

³ *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).

⁴ *Lifeline and Link Up Reform and Modernization, et al.*, Comments of Nexus Communications, Inc. in Response to Lifeline Reform 2.0 Coalition’s Petition to Further Reform the Lifeline Program, WC Docket No. 11-42 (filed Aug. 14, 2013).

⁵ *In the Matter of Telrite Corporation d/b/a Life Wireless*, Notice of Apparent Liability for Forfeiture, FCC 13-154, File No. EB-IHD-13-000106674 (FCC rel. Dec. 11, 2013) (“*Telrite NAL*”); *In the Matter of Global Connection Inc. of America d/b/a Stand Up Wireless*, Notice of Apparent Liability for Forfeiture, FCC 13-155, File No. EB-IHD-13-00010970 (FCC rel. Dec. 11, 2013); *In the Matter of Cintex Wireless, LLC*, Notice of Apparent Liability for Forfeiture, FCC 13-156, File No. EB-IHD-13-00010671 (FCC rel. Dec. 11, 2013); *In the Matter of Conexions, LLC d/b/a Conexions Wireless*, Notice of Apparent Liability for Forfeiture, FCC 13-145, File No. EB-IHD-13-00010793 (FCC rel. Nov. 1, 2013); *In the Matter of i-Wireless, LLC*, Notice of Apparent Liability for Forfeiture, FCC 13-148, File No. EB-IHD-13-00010656 (FCC rel. Nov. 1, 2013); *In the Matter of True Wireless, LLC*, Notice of Apparent Liability for Forfeiture, FCC 13-149, File No. EB-IHD-13-00010727 (FCC rel. Nov. 1, 2013); *In the Matter of Icon Telecom, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 13-130, File No. EB-IHD-13-00010650 (FCC rel. Sept. 30, 2013); *In the Matter of TracFone Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 13-133, File No. EB-IHD-13-00010668 (FCC rel. Sept. 30, 2013); *In the Matter of Easy Telephone Services d/b/a Easy Wireless*, Notice of Apparent Liability for Forfeiture, FCC 13-129, File No. EB-IHD-13-00010590 (FCC rel. Sept. 30, 2013); *In the Matter of Assist Wireless, LLC*, Notice of Apparent Liability for Forfeiture, FCC 13-131, File No. EB-IHD-13-00010791 (FCC rel. Sept. 30, 2013); *In the Matter of UTPhone, Inc.*, Notice of Apparent Liability for Forfeiture, FCC 13-132, File No. EB-IHD-13-00010646 (FCC rel. Sept. 30, 2013).

claiming funding for intra-company duplicate lines.⁶ Each NAL proposed a base forfeiture of: (i) \$5,000 for each alleged intra-company duplicate; (ii) \$20,000 for each instance in which the ETC filed a Form 497 that included alleged ineligible subscribers in the line count; and (iii) three times the reimbursement requested and/or received by the ETC for the allegedly ineligible subscribers.⁷ Given that the Commission apparently did not conduct any independent investigations into the accuracy of USAC's IDV decisions, Nexus is concerned that USAC's erroneous decisions could result in the imposition of a potentially significant forfeiture against the company by the Commission despite the finding of a small number of alleged intra-company duplicates.

In addition, as detailed in Section IV (Requested Relief), Nexus believes it would be beneficial for Nexus and other ETCs (as well as USAC and the Commission itself) for the Commission to either (1) order USAC to strictly abide by its definition of what constitutes an intra-company duplicate; or (2) clarify its definition of what constitutes an intra-company duplicate and publicly explain what parameters will be used in future proceedings by USAC and the Commission to positively identify an intra-company duplicate.

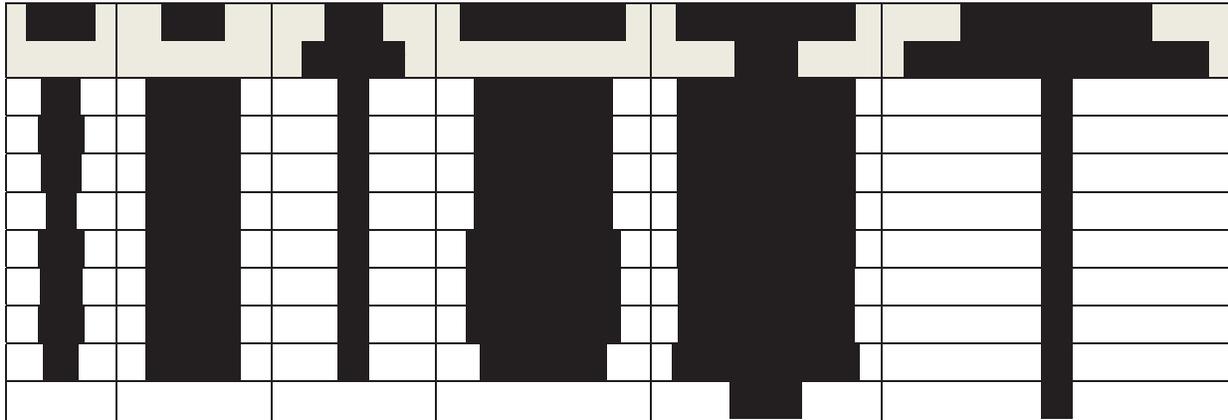
⁶ See, e.g., *Telrite NAL* at ¶¶ 9, 11 (“USAC conducted IDVs of the Lifeline support requested by Telrite for its subscribers ... Based on USAC's [IDV] analysis, Telrite apparently had 4,387 individual intra-company duplicate lines for which Telrite improperly sought Lifeline support reimbursement. ... Based on the record evidence developed in this investigation, we conclude that Telrite apparently willfully and repeatedly violated Sections 54.507, 54.409 and 54.510 of the rules by concurrently requesting Lifeline support reimbursement for 4,387 individual intra-company duplicate lines.”).

⁷ See, e.g., *Telrite NAL* at ¶ 14.

C. The Decisions For Which Review Is Requested

Nexus requests review of the erroneous findings of intra-company duplicates in the following USAC IDV decisions, which are attached in [REDACTED] **Confidential Exhibit 1**:

BEGIN CONFIDENTIAL



END CONFIDENTIAL

D. Request For Waiver Of The 60-Day Deadline To Seek Review Of Certain USAC IDV Decisions

In accordance with 47 C.F.R. § 1.3,¹¹ Nexus respectfully requests a waiver of the 60-day deadline set forth in 47 C.F.R. § 54.720(a) to seek review the USAC decisions dated November 1, 2013 pertaining to **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED] **END CONFIDENTIAL**. Good cause exists for this waiver. These decisions

⁸ As discussed in Section II(D) below, Nexus requests a waiver of the 60-day deadline to request review of this decision.

⁹ As discussed in Section II(D) below, Nexus requests a waiver of the 60-day deadline to request review of this decision.

¹⁰ As discussed in Section II(D) below, Nexus requests a waiver of the 60-day deadline to request review of this decision.

¹¹ This rule permits the Commission to suspend, waive, amend or revoke any Commission rule “for good cause shown.”

involve **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** alleged intra-company duplicates, which Nexus believed *standing alone* did not warrant a request for review. However, when USAC issued additional – and similarly erroneous – IDV decisions almost precisely 60 days later (on December 30, 2013), it became clear that USAC was systematically issuing unlawful IDV decisions and that Nexus must request review by the Commission. However, this need became apparent only after the 60-day timeframe to appeal the initial decisions had expired. Under these circumstances, therefore, the Commission should allow Nexus to appeal all of USAC’s erroneous IDV decisions, including those for which the deadline technically has expired.

E. Nexus’ Process for Screening Intra-Company Duplicates

BEGIN CONFIDENTIAL [REDACTED]

¹² Fenker Affidavit at ¶ 3.
¹³ Fenker Affidavit at ¶ 4.
¹⁴ Fenker Affidavit at ¶ 5.
¹⁵ Fenker Affidavit at ¶ 5.

[REDACTED]

[REDACTED] END CONFIDENTIAL

BEGIN CONFIDENTIAL [REDACTED]

[REDACTED]

¹⁶ Fenker Affidavit at ¶ 6.
¹⁷ Fenker Affidavit at ¶ 7.
¹⁸ Fenker Affidavit at ¶ 8.
¹⁹ Fenker Affidavit at ¶ 9.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL**

Indeed, even with respect to the appealed decisions, Nexus' internal review process is well ahead of USAC's. On December 13, 2013, Nexus submitted revised Form 497s for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** study areas at issue in this review, including **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the alleged intra-company duplicates.²² Nexus filed the revised Form 497 for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** well within the one-year period permitted by FCC rules for filing revised Form 497s,²³ and several weeks before Nexus received the IDV decision from USAC.²⁴ As a result, by the time USAC sent Nexus the IDV decision for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** Nexus had already reduced its request for Lifeline funds.

²⁰ Fenker Affidavit at ¶ 10.

²¹ Fenker Affidavit at ¶ 10.

²² Fenker Affidavit at ¶ 11.

²³ *In the Matter of Lifeline and Link Up Reform and Modernization*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket 11-42, 27 FCC Rcd 6656 at ¶ 305 (FCC rel. Feb. 6, 2012).

²⁴ Fenker Affidavit at ¶ 11.

III. QUESTION PRESENTED FOR REVIEW: DID USAC PROPERLY FOLLOW GUIDANCE FROM THE COMMISSION IN FINDING ALLEGED INTRA-COMPANY DUPLICATES FOR NEXUS?

Nexus presents to the Commission the following question for review: did USAC properly follow the Commission’s guidance in determining that Nexus requested Lifeline support for **BEGIN CONFIDENTIAL** ■ **END CONFIDENTIAL** alleged intra-company duplicates in the **BEGIN CONFIDENTIAL** ■■■ **END CONFIDENTIAL** referenced decisions? For the reasons detailed below, the answer to that question clearly is “no.”

A. The Commission Has Defined An Intra-Company Duplicate As Individuals With The “Same Name, Same Address”

Although the Commission has adopted a rule that prohibits an ETC from providing more than one Lifeline-supported services to a consumer – 47 C.F.R. § 54.409(c)²⁵ – that rule does not define an intra-company duplicate. Nor does any other FCC rule or order describe what constitutes a duplicate. For example, in a 2011 order, the Commission adopted “measures to prevent, detect and resolve duplicative Lifeline claims for the same consumer,”²⁶ and amended its rules to “ensure that consumers do not, whether inadvertently or knowingly, subscribe to multiple Lifeline-supported services.”²⁷ However, the *Duplicative Payments Order* does not specify what parameters are to be used by the Commission or USAC to identify duplicative Lifeline claims for the same consumer.

²⁵ The rule states in pertinent part that “in order to constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber’s household subscribed to a Lifeline service.”

²⁶ *In the Matter of Lifeline and Link Up Reform and Modernization*, Report and Order, WC Docket No. 11-42, 26 FCC Rcd 2770 (FCC rel. June 21, 2011) at ¶ 1 (“*Duplicate Payments Order*”).

²⁷ *Duplicate Payments Order* at ¶ 8.

The first – and only – official Commission statement directly addressing the situation of intra-company duplicates is a letter from the Chief of the Wireline Competition Bureau to the acting head of USAC in June 2011.²⁸ That letter was issued at the specific direction of the Commission in the *Duplicative Payments Order* in connection with Commission’s amendment rules to clarify that a given consumer is only entitled to one subsidized service and to expressly require ETCs to take steps to try to prevent consumers from signing up for multiple services.²⁹ The overall focus of the *June 2011 Letter* was the problem of a single subscriber obtaining multiple subsidized services from different ETCs. However, the letter did expressly, if briefly, address the issue of intra-company duplicates:

All ETCs will continue to provide Lifeline-supported service to [subscribers receiving service from more than one ETC] until notified by USAC, pursuant to section 54.405 of the Commission’s rules, as amended, to de-enroll certain subscribers, and shall be reimbursed for the Lifeline benefits provided to subscribers up until the date of de-enrollment, subject to normal adjustments, ***recoveries for*** bad, uncorrected data and ***intra-company duplicates (same name, same address within one ETC’s records)***, and other reporting requirements. ***USAC shall recover support for*** any subscriber for which subscriber data cannot be substantiated by the ETC and ***intra-company duplicative subscribers (same name, same address within one ETC’s records)***.

June 2011 Letter at 5 (emphasis added). The emphasized language is entirely clear: an intra-company duplicate is a situation in which an ETC is providing subsidized service to two subscribers with the “same” name and the “same” address. In practical terms, this guidance

²⁸ DA 11-1082, Letter from Sharon Gillett (Chief, Wireline Competition Bureau) to D. Scott Barash (Acting CEO, USAC) dated June 21, 2011 (“*June 2011 Letter*”).

²⁹ *Duplicate Payments Order* at ¶ 2 (“Further, we direct the Wireline Competition Bureau (Bureau) to send a letter to USAC to implement an administrative process to detect and resolve duplicative claims.”).

means that “same” must be interpreted to mean “same” – *i.e.*, literally identical.³⁰ Indeed, given that the Commission is fully aware that ETCs with large subscriber bases will necessarily use computerized/electronic means to screen their subscriber lists, the most reasonable interpretation of that term is a subscriber with a literally identical name and address to another subscriber already in the ETC’s list.

B. USAC Impermissibly Made Policy Decisions In Identifying The Alleged Intra-Company Duplicates

USAC is “an independent, not-for-profit corporation designated by the Commission as the administrator of the [USF].”³¹ Section 54.702(c) of the Commission’s rules explicitly provides that USAC “*may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress.*”³² USAC also is required by its contract with the Commission to strictly and literally apply the Commission’s rules regarding the Universal Service program without interpretation or modification,³³ and where the statute or the

³⁰ Webster’s Dictionary defines the word “same” as an adjective meaning “not different” and “exactly like someone or something else.” See <http://www.merriam-webster.com/dictionary/same>.

³¹ See “About USAC” page on the USAC website, available at <http://www.usac.org/about/> (last visited Feb. 19, 2014).

³² 47 C.F.R. § 54.702(c) (emphasis added).

³³ See Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company (Sept. 9, 2008) available at <http://transition.fcc.gov/omd/usac-mou.pdf> at Section III(B) (“The Commission is responsible for the overall management, oversight, and administration of the USF, *including all policy decisions.*”) and Section III(A) (USAC “is responsible for the daily administration of the USF. In conducting these duties, [USAC] administers the fund on behalf of the Commission and is subject to the Commission’s oversight and instructions. [USAC] shall administer the USF consistent with the rules, orders, and directives promulgated by the Commission”) (emphasis added) (“*USAC MOU*”).

Commission's rules are unclear, or do not address a particular situation, USAC must to seek guidance from the Commission.³⁴

USAC has indicated in its IDV training materials that it has a "Low Income Duplicate Detection System" that it uses to (1) "standardize addresses" through the USPS's address matching system and (2) conduct name comparison using "lexical and phonetic approaches" to determine name variances.³⁵ It is impossible for Nexus and other ETCs to know what "lexical and phonetic approaches" USAC employs, or the extent to which USAC uses manual processes and/or subjective judgments to identify potentially duplicative names/addresses. The IDV decisions do not indicate how the alleged intra-company duplicates were identified and USAC has not disclosed any further details about its "lexical and phonetic approaches" to intra-company duplicate detection. Indeed, by contrast to this approach, the NLAD, which is now in the final stages of implementation, uses an *entirely different* – and seemingly more restrictive – algorithm for identifying intra-company duplicates that utilizes subscriber names, addresses, DOBs and last four SSN digits.

In any event, it is apparent that USAC has devised a secret, proprietary "lexical and phonetic" system for attempting to detect alleged intra-company duplicates that goes beyond the "same name, same address" definition of intra-company duplicates established by the Commission. Thus, it is clear that USAC violated 47 C.F.R. § 54.702(c) and the *USAC MOU* by

³⁴ See 47 C.F.R. § 54.702(c) ("Where the [Communications] Act or the Commission's rules are unclear, or do not address a particular situation, [USAC] shall seek guidance from the Commission."); *USAC MOU* at Sections III(A) and L.

³⁵ Presentation, FCC-USAC Joint Training Event, In-Depth Data Validations, June 19, 2012, at 11.

making policy decisions and erroneously interpreting the rules and directives of the Commission with respect to its findings of intra-company duplicates in the appealed decisions.

C. USAC’s Erroneous Findings Of Intra-Company Duplicates

As part of the IDV process, USAC provided Nexus with spreadsheets that reflect the results of USAC’s review of Nexus’ subscriber lists. The results of Nexus’ own review of those spreadsheets are contained in [REDACTED] **Confidential Exhibit 2** and are summarized as follows:

Category of Erroneous Intra-Company Duplicate	Number of Occurrences	Percent of Total
Same Name, Same Address	-0-	0.00%
Same Name, Different Address	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL
Different Name, Same Address	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL
Different Name, Different Address	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL
Total	BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL	100.0%

Of critical importance for purposes of this review is the fact that *not a single one* of the alleged intra-company duplicates identified by USAC meet the Commission’s governing “same name, same address” standard required for the proper finding of an intra-company duplicate. **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the alleged duplicates are individuals with the same name, but residing at different addresses – normally situations in which male family members with the same name (*e.g.*, father and son) live near each other. **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the alleged duplicates

involve situations with two individuals with similar but not identical names and the same address.

BEGIN CONFIDENTIAL [REDACTED] **END CONFIDENTIAL** of the alleged duplicates involve subscribers with *both* different names and different addresses, and USAC's methodology yielded some bizarre, and obviously erroneous, results. For example, USAC asserts that **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** are the same individual, apparently because they reside in the same apartment building in **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Similarly, USAC asserts that **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** are the same individual, apparently because they live in the same apartment building in **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. But in both cases, the individuals are obviously different people who happen to reside in the same apartment building and apparently share some phonetic similarities in their names according to USAC's secret algorithm. It would be patently unfair to deny Lifeline support to these individuals or to assess a potentially enormous monetary penalty against Nexus based on such obviously erroneous findings by USAC.

More generally, for *every one* of the alleged duplicates, USAC apparently made subjective judgments on a case-by-case basis to conclude that particular subscriber listings are duplicates – essentially, if two purportedly separate subscribers have a name/address combination that is “close enough” to a human reviewer, USAC appears to have deemed a duplicate to exist. But even if USAC's judgments were reasonable in some cases, applying that standard *at all* necessarily reflects an impermissible deviation from the Commission's “same name, same address” standard. Given the need for Nexus (or for that matter, ETCs of any size)

to rely on computer matching and computerized sorting to identify duplicates as a matter of practical business reality, only exactly matching name/address duplicates may permissibly “count” for this purpose. Even if it were permissible for the Commission or USAC to adopt a definition of “duplicate” that permits it to use some form of subjective judgment as to names or addresses that are “close enough” for these purposes, it violates due process for the Commission or USAC to purport to adopt such a standard and then impose it on past behavior, because in that case the ETCs will not have received “fair notice of what is prohibited.”³⁶

In short, based on current FCC rules and guidance from the Commission to date, USAC could not have lawfully determined that the particular subscribers represent intra-company duplicates.

IV. REQUESTED RELIEF

USAC already has recovered the Lifeline support for each of the alleged intra-company duplicates at issue in this review. Indeed, as noted above, Nexus submitted revised Form 497s requesting reduced support levels even before USAC sent **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** of the alleged intra-company duplicates, so Nexus had largely self-identified and resolved any issue of over-payment even before it received the IDV results. Nonetheless, the Commission must vacate the IDV decisions with respect to USAC’s improper and unlawful findings of intra-company duplicates, which do not meet the Commission’s governing standard.

Furthermore, in order to prevent future erroneous decisions from USAC, the Commission should either: (1) order USAC to abide by its current governing definition of an intra-company

³⁶ *Federal Communications Commission v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2317 (2012).

REDACTED FOR PUBLIC INSPECTION

duplicate (*i.e.*, “same name, same address”); or (2) clarify its definition of what constitutes an intra-company duplicate and publicly explain what parameters will be used by USAC for their identification on a prospective basis. In either case, Nexus urges the Commission to act promptly, in order to smooth the on-going transition to the NLAD.

Respectfully submitted,



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Attorneys for *Nexus Communications, Inc.*

Dated: February 28, 2014

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Request for Review by Nexus
Communications, Inc. of Decisions of
Universal Service Administrator

WC Dockets 11-42, 03-109

**AFFIDAVIT OF STEVEN FENKER, PRESIDENT
NEXUS COMMUNICATIONS, INC.**

I, Steven Fenker, President of Nexus Communications, Inc., do hereby declare as follows:

1. Nexus has been designated an eligible telecommunications carrier (“ETC”) in 36 states and has been participating in the Lifeline program since 2006.
2. 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 Industry Duplicate Resolution Process as one of the founding industry participants.
3. **BEGIN CONFIDENTIAL** [REDACTED] **END**
CONFIDENTIAL
4. **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**
5. **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**

6. **BEGIN CONFIDENTIAL** [REDACTED]
END CONFIDENTIAL

7. **BEGIN CONFIDENTIAL** [REDACTED]
END CONFIDENTIAL

8. **BEGIN CONFIDENTIAL** [REDACTED]
END CONFIDENTIAL

9. **BEGIN CONFIDENTIAL** [REDACTED] **END**
CONFIDENTIAL

10. **BEGIN CONFIDENTIAL** [REDACTED]
END CONFIDENTIAL

11. On December 13, 2013, Nexus submitted revised Form 497s for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** study areas at issue in this review, including **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL**. Nexus filed the revised Form 497 for **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** several weeks before Nexus received the IDV decision from USAC.

Confidential Exhibit 1 (Redacted)

Confidential Exhibit 2 (Redacted)