

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

_____)	
In the Matter of the Application of Nexus)	
Communications, Inc. for Designation as an)	Docket No. 13-2540-01
Eligible Telecommunications Carrier for Low)	
Income Support Only)	
_____)	

STIPULATION AND SETTLEMENT AGREEMENT

NEXUS COMMUNICATIONS, INC. (“Nexus”), the Division of Public Utilities (“DPU”), and the Office of Consumer Services (“OCS”) (collectively the “Stipulating Parties” or the “Parties”), through their undersigned representatives, enter into this Stipulation and Settlement Agreement (“Stipulation”) regarding the application filed by Nexus in the instant docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the “Commission” or the “PSC”) pursuant the Commission’s Rules of Practice and Procedure, R746-100-10.

PRELIMINARY STATEMENT

1. On May 8, 1997, the Federal Communications Commission (“FCC”) issued its *Universal Service First Report and Order* implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Federal Act”).¹ The FCC provided further guidance on Eligible Telecommunications Carrier (“ETC”) designation in the *USF/ICC*

¹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd 8776 (released May 8, 1997) (“*Universal Service First Report and Order*”).

Transformation Order, released November 18, 2011,² and in its *Lifeline Reform Order* released February 6, 2012.³

2. Under federal law and the FCC's rules, ETCs designated by a state public utilities commission ("State Commission") shall receive federal universal service support. *See* 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b). Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. 47 U.S.C. § 214(e)(2). The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. 47 U.S.C. § 214(e)(1); *Universal Service First Report and Order*, 12 FCC Rcd at 8791, ¶ 24; *USF/ICC Transformation Order*, 26 FCC Rcd at 17692-93, ¶ 78; *Lifeline Reform Order*, 27 FCC Rcd 6656 at 6812, ¶¶ 365-366.

4. The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:

² *See In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform -- Mobility Fund*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663 (released Nov. 18, 2011) ("*ICC/USF Transformation Order*").

³ *See In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

- a. voice grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service provided at no additional charge to end users;
- c. access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and
- d. toll limitation services to qualifying low-income consumers as defined under 47 C.F.R. § 54.400(d).

5. In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

6. On February 28, 2013, Nexus filed a Second Amended Application (“Application”) seeking Designation as an ETC in the State of Utah, Docket Number 13-2540-01.⁴ Nexus seeks designation throughout the non-rural telephone exchange areas of Qwest/CenturyLink identified in Exhibit A to the Application.⁵

7. Nexus, the DPU, and the OCS engaged in settlement discussions in an attempt to resolve their differences regarding issues raised by Nexus’ Application, including during a settlement conference held on April 3, 2013.

⁴ The Second Amended Application (“Application”) superseded Nexus’ First Amended Application, which was filed on January 9, 2013 in the same docket number 13-2540-01. That application superseded Nexus’ original application, filed in Docket No. 11-2540-01. *See In the Matter of Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only*, Utah PSC Docket No. 11-2540-01 (filed April 6, 2011; withdrawn July 7, 2011).

8. The Parties have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree that this Stipulation should have no legal effect outside of the instant docket.

AGREEMENT

WHEREFORE, based on their review of all discovery, testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

1. Nexus is a wireless reseller of Verizon Wireless (“Verizon”) commercial mobile radio service (“CMRS”).
2. Nexus seeks ETC designation for the limited purpose of providing federal universal service low-income Lifeline service in Utah. Nexus will not seek universal service high-cost support in its service area, nor will Nexus seek to provide universal service low-income Link Up service.
3. Nexus’ Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah.
4. Nexus’ Lifeline product offering will offer an additional choice of providers offering service for low-income consumers, which represents a benefit for those consumers and is in the public interest.

⁵ Apparently due to an error on the PSC web site, the document identified as Exhibit A on the PSC web site is actually Exhibit B. Exhibit A is attached to the Second Amended Application available on the web site.

5. Nexus is a CMRS provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).

6. Nexus provides each of the supported services set forth in 47 C.F.R. § 54.101(a) and it has shown an intent and ability to offer those services once designated throughout its requested service areas.⁶

7. Nexus filed its Amended Compliance Plan with the FCC on December 6, 2012. Nexus' Amended Compliance Plan outlines the measures it will take to implement the conditions imposed by the FCC.⁷ The FCC approved Nexus' Compliance Plan, as amended, on December 26, 2012.

8. Nexus will make available Lifeline service to qualifying low-income consumers. Nexus will not offer Link Up because the FCC has restricted Link Up to where an ETC receives high-cost support on Tribal Lands, and Nexus does not seek ETC designation on Tribal Lands or high-cost support.

9. Nexus shall make available three (3) different Lifeline plan choices, the details of which are described on page 9 of the Application. Nexus agrees that it will seek the \$9.25 federal reimbursement from the Universal Service Administrative Company ("USAC").

10. The Parties stipulate and agree that designating Nexus as an ETC in the wire centers set forth in Exhibit A to the Application serves the public interest, convenience and necessity, as defined in 47 U.S.C. § 214(e)(2).

⁶ With respect to toll limitation, in its *Lifeline Reform Order*, the FCC stated that toll limitation would no longer be deemed a supported service in the case of ETCs. See *Lifeline Reform Order* at ¶¶ 49 and 367. Nonetheless, Nexus' offerings inherently allow Lifeline subscribers to control their usage because of the prepaid nature of Nexus' Lifeline plans. Nexus' service is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same. The nature of Nexus' service and plans act as a toll limitation. Nexus will not seek reimbursement for toll limitation service.

⁷ See *Lifeline Reform Order*.

11. The Parties stipulate and agree that Nexus shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties agree that Nexus' provision of its universal service offering as an ETC should be governed by the following additional requirements:

- A. Nexus will use a Utah-specific fact sheet that provides subscribers with concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. Nexus agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.
- B. Nexus is not currently seeking any Utah USF funding.
- C. If Nexus seeks Utah USF funding in the future, Nexus will file a separate application requesting such state support.
- D. Nexus will comply with all applicable state service quality and consumer protection requirements.
- E. Nexus acknowledges that approval of its Application will be conditioned upon the payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services.
- F. Nexus agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01.
- G. Nexus meets the requirements for federal ETC designation.
- H. Upon implementing any changes to its Lifeline offerings, Nexus will timely file a notice with the DPU and OCS describing the changed plans.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of Nexus' Application and pre-filed Testimony and exhibits. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Admin. Code R746-100-10.F.5, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and

does not provide any inferences regarding such issues, and the Parties are free to take any position with respect to any issues not specifically called out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. Nexus, the DPU, and the OCS will make one or more witnesses available to explain and offer further support for this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or, if the Commission's approval is rejected or materially conditioned, by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or

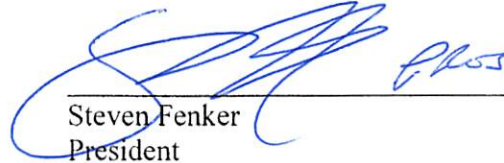
materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any remaining Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 7 day of June, 2013.

FOR NEXUS COMMUNICATIONS, INC.:




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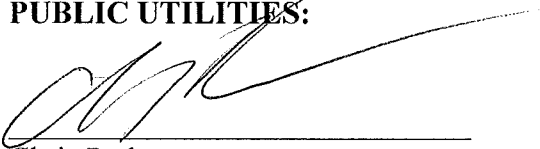
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Dated this ___ day of _____, 2013.

FOR NEXUS COMMUNICATIONS, INC.:

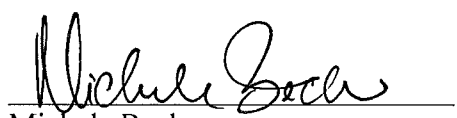
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ATTACHMENT 1

Utah-specific Fact Sheet

IMPORTANT INFORMATION ABOUT YOUR REACHOUT WIRELESS LIFELINE SERVICE

REACHOUT WIRELESS Lifeline Service is brought to you by NEXUS COMMUNICATIONS, INC. and includes the provision of a free E911 compliant wireless handset. This government sponsored Lifeline telephone service is subject to continuing eligibility and annual recertification. Only one Lifeline subsidy per household is allowed; your participation in this program requires that you do not receive Lifeline subsidy on any other phone, either wireless or wireline. If you no longer receive the low-income assistance or your income exceeds the qualifying amount, you must notify REACHOUT WIRELESS. As a recipient of Lifeline service you may not give away or sell this phone.

- Your enrollment in the program will be for 12 months. (Unless your eligibility status changes, you select a different carrier, or there is no activity on your phone for 60 consecutive days.)
- You will receive a minimum of 68, 125, or 250 free minutes each month, depending on the plan you choose. This offer may increase but will not decrease. ReachOut will inform you of any changes. (You must follow the procedures described in the enrollment kit to receive free minutes and select a plan.)
- If you choose the 125 or 68 minute plan, unused free minutes will carry over to the following month.*
- Minutes will be charged for both outgoing and incoming calls.
 - a. Note: Calls to directory assistance and time you are on hold will also count as minutes used.
 - b. Emergency calls to 911 will not count against your minutes
 - c. Calls to ReachOut subscriber service will not count against your minutes.
 - d. Partial minute usage is rounded up.
 - e. Text messages are charged at one minute per incoming or outgoing text.**
- To contact Nexus/ReachOut subscriber service, please dial ReachOut's toll-free number 1-877-870-9222. You can also contact ReachOut subscriber service representatives via the "Live Support" link on ReachOut's website at www.reachoutmobile.com.
- Emergency calls to 911 CAN be made even if you have NO remaining minutes.
- Additional minutes can be added by calling ReachOut subscriber service, or via ReachOut's website.
 - Purchase 20 minutes for \$3.00
 - Purchase 40 minutes for \$5.00
 - Purchase 120 minutes for \$10.00
 - Purchase 300 minutes for \$20.00
 - Purchase 500 minutes for \$30.00
 - Purchase 950 minutes for \$50.00
 - Purchase unlimited local and domestic long distance calling, and unlimited text messaging for thirty (30) calendar days for \$26.50.
- At the end of 12 months ReachOut will contact you to verify that you are still eligible for Lifeline support to continue to receive free minutes monthly.
- If you have purchased additional airtime and have remaining minutes and days of service at the end of your Lifeline eligibility, you will be subject to the terms and conditions of ReachOut's retail wireless services.

YOU ARE ENCOURAGED TO READ YOUR ENROLLMENT KIT CAREFULLY FOR COMPLETE DETAILS REGARDING YOUR REACHOUT WIRELESS LIFELINE SERVICE.

* If you elect the 250 minutes per month plan, then unused minutes do not carry over.

** If you elect the 68 minutes per month plan, then text messages are charged at one minute per two (2) incoming or outgoing texts.