

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only

Docket No. _____

**FIRST AMENDED APPLICATION OF NEXUS COMMUNICATIONS, INC.
FOR LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER PURSUANT TO 47 U.S.C. § 214(e)**

Nexus Communications, Inc. (“Nexus” or “Company”) hereby submits this Application, pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (the “Act”), and the Public Service Commission of Utah’s (“Commission”) rules and regulations¹ for designation as an Eligible Telecommunications Carrier (“ETC”) throughout the non-rural telephone exchange areas of Qwest/CenturyLink described in **Exhibit A**, excluding Tribal Lands (the “Designated Service Area”) for the limited purpose of receiving federal Lifeline universal service support and support from the Utah Universal Public Telecommunications Service Support Fund pursuant to R746-360.² Nexus does not seek and will not accept any high-cost funds.

This First Amended Application (“Application”) supersedes Nexus’ original application, which was filed on April 6, 2011 and withdrawn on July 7, 2011.³ Since that time, the Federal

¹ Utah Administrative Code R746-341-3 and R746-341-4 set forth certain requirements for initial and continuing eligibility for Lifeline service.

² Nexus would receive support pursuant to R746-360-7 C.2 and D in non-rate-of-return territories and under R746-360-8 A.2 and B in rate-of-return territories.

³ 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Eligible Telecommunications Carrier for Low Income Support Only*, Utah PSC Docket No. 11-2540-01 (filed April 6, 2011; withdrawn July 7, 2011). The confidentiality concerns that prompted withdrawal of the original applications no longer pose an obstacle to Nexus’ desire to serve the wireless needs of qualifying low-income subscribers in Utah.

Communications Commission (“FCC”) has altered and clarified the requirements for ETC designation, and the FCC has approved Nexus’ Compliance Plan for meeting the new requirements. The Application describes how Nexus meets the current requirements for ETC designation in light of recent FCC orders, including the November 18, 2011 *Connect America Fund Order*,⁴ the February 6, 2012 *Lifeline Reform Order*,⁵ as well as the FCC Wireline Competition Bureau’s clarifications in the February 29, 2012 *Public Notice*.⁶

Nexus hereby requests that this Application be deemed a Request for Agency Action under the Utah Administrative Procedures Act. Granting this Application would serve the public interest and advance the goals of universal service by enabling Nexus to provide vital wireless telecommunications service to low-income subscribers in Utah. In support of this Application, Nexus states as follows:

I. INTRODUCTION

Nexus Communications, Inc. is a wireless telecommunications carrier serving the specific communications needs of low-income consumers. Nexus is a privately held company that is organized under Ohio law and headquartered in Columbus, Ohio. It has no holding company and no affiliates that provide telecommunications services.⁷ Nexus is authorized to provide Commercial Mobile Radio Services (“CMRS”) to qualifying low-income consumers in 27

⁴ *In the Matter of Connect America Fund, et al.*, CC Docket No. 96-45 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (FCC, rel. Nov. 18, 2011) (“*Connect America Fund Order*”).

⁵ *In Re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (FCC, rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

⁶ *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (WCB, rel. Feb. 29, 2012) (“*Public Notice*”).

⁷ Nexus owns 100% of Telecom Services, Inc., but that company does not provide telecommunications services.

states.⁸ Nexus now proposes to provide these services in Utah. Nexus operates its wireless business under the name “ReachOut Wireless.” A copy of Nexus’ Articles of Incorporation is attached as **Exhibit B**. Nexus is authorized to do business in Utah, and a copy of Nexus’ Certificate of Existence from the Utah Secretary of State is attached as **Exhibit C**.

Nexus’ address and telephone number are set forth below:

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⁸ Nexus has been designated an ETC in the following states: Alabama, Arkansas, California, Florida, Georgia, Indiana, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, West Virginia and Wisconsin.

II. NEXUS MEETS THE STATUTORY AND REGULATORY REQUIREMENTS FOR ETC DESIGNATION

Nexus commits to meeting all applicable requirements for ETC designation as established under federal law and rules of the FCC, including 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, applicable Utah statutes, and the Commission's rules set forth in Title R746 of the Utah Administrative Code, except those for which waiver is requested herein.

In particular, Nexus:

- is a common carrier (*see* 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));
- will offer the services supported by federal universal service support mechanisms as defined in 47 C.F.R. § 54.101(a) (*see also* 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1));
- has filed a compliance plan for forbearance from the “own facilities” requirement of 47 U.S.C. § 214(e)(1)(A) (included as **Exhibit D**), and in light of an FCC order approving that compliance plan (included as **Exhibit E**) and thus granting forbearance from the federal “own facilities” requirement, and accordingly seeks a similar waiver of the facilities requirement in R746-360-6 with respect to the Utah Universal Public Telecommunications Service Support Fund;
- will provide the supported services throughout its designated service area (47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d));
- will advertise the availability of its universal service offerings and charges for such offerings using media of general distribution (47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2));
- will make available Lifeline service to qualifying low income consumers (47 C.F.R. § 54.405);
- will contribute to the Utah state USF end-user surcharge applicable to its Lifeline offerings under Utah Code Ann. § 54-8b-15(10);⁹
- will contribute to the Utah Hearing Impaired program per the terms under Utah Code Ann. § 54-8b-10;

⁹ *See In the Matter of the Petition of TracFone Wireless, Inc.*, Docket No. 09-2511-01, Order on Reconsideration, March 9, 2011, at 1–5 (addressing applicability of surcharge).

- will contribute to 911, E911 and Poison Control surcharges under Utah Code Ann. §§ 69-2-5(3)(f)(i)-(ii), 69-2-5.5, and 69-2-5.6;
- will provide Lifeline service to any applicant who self-certifies his or her household's eligibility for public assistance under a program identified in R746-341-3(A), or who certifies that his or her household's income is 135 percent of the Federal Poverty Guidelines or less, via supporting documentation as specified in R746-341-3(B);
- will comply with the annual subscriber verification requirements applicable to ETCs set forth in R746-341-4, including informing the agency responsible for verification if Nexus has a reasonable basis to believe that a Lifeline subscriber no longer qualifies;
- will provide services equivalent to dial tone service and will provide Lifeline subscribers with \$9.25 in federal support, any state support received, and other matching funds established by the FCC (R746-341-5(A));
- will not require security deposits from Lifeline subscribers (R746-341-5(B));
- will waive any nonrecurring service charge for changing service once for Lifeline subscribers during a twelve month period (R746-341-5(D));
- will not disconnect Lifeline subscribers for nonpayment of toll service (R746-341-5(E));
- will, based upon verification procedures, provide only a single Lifeline discount per subscriber (R746-341-5(F));
- will neither require nor prohibit purchase of other services by subscribers complying with Nexus' terms and conditions (R746-341-5(G));
- requests a waiver from the requirement that it apply for and offer the FCC's Link Up America Plan (R746-341-5(C); R746-341-6(A)-(B)), 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; and
- will comply with Commission's semi-annual reporting requirements (R746-341-7).

A. Nexus Is A Common Carrier

Nexus will provide CMRS throughout its requested Designated Service Area, and as a CMRS provider, Nexus is regulated as a common carrier pursuant to 47 U.S.C. § 332(c)(1)(A) and 47 C.F.R. § 20.9.¹⁰

B. Nexus Offers The Services Supported By Federal Universal Service Support Mechanisms

Upon ETC designation, Nexus will provide the services supported by federal Lifeline universal service support mechanism, as defined in 47 C.F.R. § 54.101(a), which as revised by the FCC's recent *Connect America Fund Order* reads as follows:

Services designated for support. Voice telephony services shall be supported by federal universal support mechanisms. Eligible voice telephony service must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to 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 telecommunications carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).¹¹

Nexus complies with the revised version of 47 C.F.R. § 54.101(a) and provides the services designated for support, as set forth below:

- Voice Grade Access to the Public Switched Network. Voice grade access permits a telecommunications user to transmit and receive voice communications with a minimum bandwidth of 300 to 3,000 Hertz. Nexus will meet this requirement

¹⁰ See also 47 U.S.C. § 153 (“The term ‘common carrier’ or ‘carrier’ means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio....”).

¹¹ 47 C.F.R. § 54.101(a); see *Connect America Fund Order* at 62.

through its provision of mobile voice communications service and interconnection to the public switched telephone network.

- Minutes of Use for Local Service at No Additional Charge. Local usage is an amount of minutes of use provided free of charge. Nexus will meet this requirement by providing a nationwide local calling area, permitting subscribers to call throughout the United States without toll charges.
- Access to Emergency Services. Access to emergency services includes both access to 911 and E911 services, to the extent the local government has implemented such services. Nexus currently: (1) provides its Lifeline subscribers with 911/E911 access at the time Lifeline service is initiated, regardless of activation status and availability of minutes, and (2) provides its Lifeline subscribers with E911-compliant handsets, and replaces, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services.
- Toll Limitation Service for Qualifying Low-Income Consumers. Toll limitation means both toll blocking and toll control, or, if a carrier is not capable of providing both toll blocking and toll control, then toll limitation is defined as either toll blocking or toll control. Nexus will meet the requirement to provide toll limitation to Lifeline subscribers by offering service on a prepaid basis, as well as toll blocking for international calls. As the FCC found in its grant of ETC designation to Virgin Mobile, “the prepaid nature of [a prepaid wireless carrier’s] service offering works as an effective toll control.” Moreover, Nexus will provide traditional toll blocking for international calls to qualifying low-income consumers at no additional charge.

Nexus also provides its users with the ability to monitor their minute usage and balance as an additional means of controlling their communications budget.

C. Nexus Will Provide the Supported Services Throughout Its Designated Service Area

Nexus commits to provide the supported services throughout its Designated Service Area, consistent with all applicable requirements. If a potential subscriber requests service within Nexus' Designated Service Area, but outside its anticipated network coverage, Nexus will, in cooperation with its carrier vendor, and to the extent necessary, follow the process specified in 47 C.F.R. § 54.202(a)(1)(i).

D. Nexus Will Advertise the Availability of Its Universal Service Offerings and Charges for Such Offerings Using Media of General Distribution

Nexus commits to advertise the availability of, and charges for, the supported services using media of general distribution. This advertising will occur through some combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet. In addition, Nexus will use appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements. Sample Lifeline advertising is included as Exhibit 2 to Nexus' FCC-approved compliance plan (**Exhibit D**).

E. Nexus Will Make Available Lifeline Service to Qualifying Low-Income Consumers

Upon designation as an ETC, Nexus will make available to qualified low-income consumers a discounted service offering that meets all applicable Lifeline requirements. Consumers increasingly rely on their mobile phones for their communications needs and qualifying low-income consumers are no exception. Low-income consumers would be the

primary beneficiaries of Nexus' Lifeline service offerings. Nexus intends to offer the following prepaid wireless service plans to Lifeline subscribers in Utah:

- 250 Minute Plan (non-rollover): Minutes are “anytime” minutes and can be used for domestic calls, including local or intrastate/interstate long distance calls. Unused minutes or domestic Short Message Service (“SMS”) text messages do not carry over to the following month. SMS text messaging is available at a rate of one text per minute of airtime.
- 125 Minute Plan (rollover): Minutes are “anytime” minutes and can be used for domestic calls, including local or intrastate/interstate long distance calls. Unused minutes or domestic SMS text messages carry over to the following month. SMS text messaging is available at a rate of one text per minute of airtime.
- 68 Minute Plan (rollover): Minutes are “anytime” minutes and can be used for domestic calls, including local or intrastate/interstate long distance calls. Unused minutes or domestic SMS text messages carry over to the following month. Domestic SMS text messaging is available at a rate of two text messages per each minute of airtime. Note that Nexus does not actively market the 68 Minute Plan and, it is selected only by a few subscribers who infrequently use voice service and more frequently send text messages.

All plans include at no extra charge: free E911-compliant handset; and “anytime” nationwide minutes that can be used for domestic calls, including local or intrastate/interstate long distance calls.

Lifeline subscribers may purchase additional minutes on a prepaid basis in denominations of \$3.00 (20 minutes), \$5.00 (40 minutes), \$10.00 (120 minutes), \$20.00 (300 minutes), \$30.00

(500 minutes), and \$50.00 (950 minutes). Nexus also offers an unlimited talk and text additional airtime card. This card provides unlimited local and domestic long distance calling, and unlimited text messaging for thirty (30) calendar days. The cost to Lifeline subscribers is \$26.50.

International SMS text messaging is available at a rate of \$0.20 for each international text sent or received. The rate for directory assistance calls is \$1.50 per request. Nexus permits Lifeline subscribers to block international calls at no additional charge. There is no deduction of minutes for calls to 911 or Nexus' subscriber service department.

Calls from the handset checking or retrieving voicemails count against the voice minutes provided by the plan. Calls from a source other than the handset checking or retrieving voicemail messages and incoming calls that leave a voicemail message are free to the Nexus end user. Calls to 911 emergency services are always free, and may be made regardless of service activation or availability of minutes.

Nexus will timely describe any changes to its service offerings to the Division of Public Utilities and the Office of Consumer Services.¹²

F. Satisfaction of Applicable Consumer Protection and Service Quality Standards

Nexus will comply with all applicable state and federal consumer protection and service quality standards.¹³ If designated as an ETC, Nexus will provide service on a timely basis to requesting subscribers within the Designated Service Area. Further, Nexus will abide by the CTIA's Consumer Code for Wireless Service ("CTIA Code"). Nexus has already adopted the

¹² Cf. *In the Matter of: the Petition of Q LINK WIRELESS LLC for Designation as an Eligible Telecommunications Carrier in the State of Utah*, Utah PSC Docket No. 12-2549-01, Report and Order (December 14, 2012) ("*Q Link Order*"), at 6.

¹³ Cf. *Q Link Order* at 6.

CTIA Code and is committed to compliance with the CTIA Code throughout its service areas, including in those areas where it is seeking designation as an ETC.

G. Forbearance from the Facilities Requirement of Section 214(e)(1)(A)

Although 47 U.S.C. § 214(e)(1)(A) states that carriers will use their “own facilities” to provide supported services, the FCC has granted Nexus forbearance from that provision. In the *Lifeline Reform Order*, the FCC used its authority under 47 U.S.C § 160 to grant blanket forbearance from the facilities requirement of Section 214(e)(1)(A) to Lifeline-only ETCs that comply with certain conditions, including the filing of a compliance plan for FCC approval.¹⁴ On December 26, 2012, the FCC approved Nexus’ Compliance Plan,¹⁵ included as **Exhibit D**, thereby granting Nexus forbearance from 47 U.S.C. § 214(e)(1)(A). In light of the FCC’s approval, included as **Exhibit E**, Nexus meets all applicable federal requirements for ETC designation. Nexus’ FCC-approved Compliance Plan explains how Nexus satisfies all federal requirements, including 47 C.F.R. §§ 54.201 and 54.202, and the Commission may not apply or enforce the facilities requirement from which the FCC has granted forbearance.¹⁶ Nexus commits to fully comply with its Compliance Plan when providing Lifeline service in Utah.

¹⁴ *Lifeline Reform Order*, at ¶ 368.

¹⁵ *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible to Receive Universal Service Support, et al.*, Third Amended Compliance Plan of Nexus Communications, Inc., WC Dockets 11-42 and 09-197 (filed December 6, 2012; approved December 26, 2012).

¹⁶ See 47 U.S.C. § 160(e) (“A State commission may not continue to apply or enforce any provision of this chapter that the Commission has determined to forbear from applying under subsection (a) of this section.”).

H. Nexus Is Financially and Technically Capable of Providing Lifeline Service.

Pursuant to the requirements of the *2012 Lifeline Order*, Nexus offers this description of its financial and technical capability to provide Lifeline service.¹⁷ Nexus has been in business since 2000. Nexus became a competitive local exchange carrier in 2001 and received its first ETC designation in June 2006. Nexus now focuses on providing service to low-income consumers. Nexus initially began providing its services over wireline technology, and has responded to strong consumer demand by offering wireless technology as well. Nexus was one of the first telecommunications providers to recognize the low-income market segment as a business opportunity rather than a regulatory burden. Its success in the market is based on its willingness to tailor its services to the specific needs of low-income consumers, including the budget management tools and mobility that prepaid wireless services provide.

Nexus has been designated as an ETC in 27 states.¹⁸ It provides wireline service as an ETC in 13 states,¹⁹ and wireless service in 18 states.²⁰ Nexus does not seek, and will not accept, High Cost support in any of those states. Nexus is successfully providing Lifeline-supported services in these states and has a steadily increasing subscriber base. Nexus' management has

¹⁷ *Lifeline Reform Order*, at ¶ 388.

¹⁸ Nexus has been designated an ETC in the following states: Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, West Virginia and Wisconsin.

¹⁹ Those states are Alabama, Arkansas, Illinois, Kansas, Louisiana, Michigan, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wisconsin. Although Nexus has been designated a wireline ETC in Florida and Kentucky, it currently only provides services on a resold basis in these states. In other words, Nexus resells the wireline services of an ILEC, which passes through a Lifeline discount on the wholesale line it sells to Nexus. Nexus does not file FCC Form 497s for its wireline operations in these states.

²⁰ Those states are Arkansas, California, Georgia, Iowa, Illinois, Kansas, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, Ohio, Rhode Island, West Virginia and Wisconsin. Nexus also has recently received wireless ETC designation in Indiana and Oklahoma, but has not yet commenced providing wireless Lifeline service in those states.

many years of experience in the telecommunications industry. Nexus' President Steven Fenker has held management positions in the telecommunications industry for 28 years. Also part of the Nexus senior management team is Mark Deek, who has 15 years of experience in the telecommunications industry, with particular expertise in intercarrier relations, and subscriber care and billing database management.

In order to provide Lifeline services, Nexus purchases wireless minutes from a national carrier that is widely-recognized for the quality and reliability of its wireless network. Nexus supplements this robust wireless network with its own network facilities, back-office and operations support systems, which Nexus operates and which are ideally suited to serve lower revenue subscribers. Nexus has made a significant financial investment to evaluate, design, develop and integrate these systems. With respect to this network investment, Nexus owns and operates its own switching and other facilities located in Ohio, which are housed in a Tier IV co-location facility.

Nexus has good relationships with the commissions in the states in which it operates. Moreover, Nexus is financially stable and fully capable of honoring its service obligations to subscribers and federal and state regulatory obligations. Although Nexus currently derives the majority of its revenue from the sale of prepaid wireless services, Nexus does not rely exclusively on disbursements from the Lifeline program to operate. For example, Nexus derives additional revenue from the sale of wireline and wireless services to non-Lifeline subscribers, and the sale of optional replenishment airtime and text minutes.

I. Nexus Satisfies Utah Requirements for Lifeline ETC Designation

Nexus agrees to comply with each of the Commission's requirements for Lifeline ETC designation, which the Commission has identified as R746-341-3 and R746-341-4, as well as

other applicable Utah law. Nexus asks the Commission to waive those provisions of R746 that require provision of Link Up support, as explained below.

1. Nexus Will Comply with Applicable Statutory Requirements

Nexus will voluntarily contribute to the Utah Universal Public Telecommunications Service Support Fund on the “equitable and nondiscriminatory basis” set forth in Utah Ann. Code § 54-8b-15(10) and specified by the Commission at “1 percent of billed intrastate retail rates.”²¹ Nexus proposes to determine intrastate rate levels by applying the FCC intrastate safe harbor percentage to the amount it bills subscribers after Lifeline discounts are applied. In addition, and pursuant to Utah Code Ann. § 54-8b-10 and R746-343-15, Nexus will support the Utah Hearing Impaired program by contributing the amount fixed by the Commission, currently \$0.06 per month per subscriber, up to the statutory limit of \$0.20 per month per subscriber.

Nexus will support state and local emergency services as required by statute. Specifically, Nexus commits to pay emergency services telecommunications charges levied by counties, cities, or towns pursuant to Utah Code Ann. §§ 69-2-5(3)(c)(ii) and (3)(f)(i)-(ii) up to \$0.61 per month per subscriber. Nexus will likewise pay Utah’s state emergency charges of \$0.07 for Poison Control and \$0.08 per month per subscriber for E911 under Utah Code Ann. §§ 69-2-5.5 and 69-2-5.6, respectively.

2. Nexus Will Comply with the Commission’s Initial Lifeline Eligibility Rules [R746-341-3, R746-341-4].

Nexus recognizes that in light of recent FCC activity, the Commission is re-evaluating eligibility and verification requirements in Docket No. 10-2528-01, and whether to adopt changes to relevant Commission’s rules as a result of that analysis. Nexus’ Application

²¹ R746-360-4.

addresses the Commission's currently existing rules. Nexus anticipates that it will be able to comply with any rules stemming from Docket No. 12-2549-01, but reserves the right to supplement its Application to address any new or modified rules adopted by the Commission.

In compliance with the Commission's rules, Nexus commits to provide its Lifeline offerings to all applicants that are certified as qualified under R746-341-3. In particular, Nexus commits to provide Lifeline services to any applicant who: (A) self-certifies under the penalty of perjury that his/her household is eligible for public assistance under a program identified in R746-341-3(A), or (B) certifies under the penalty of perjury, that his/her household income to be at or below 135 percent of the Federal Poverty Guidelines, via supporting documentation as specified in R746-341-3(B). Nexus will inform the Utah agency responsible for verifying Lifeline subscribers' continued eligibility if Nexus has a reasonable basis to believe that a subscriber no longer qualifies for Lifeline service, in compliance with R746-341-4. Moreover, Nexus will make efforts to provide only a single Lifeline discount per subscriber, based on state agencies' verification of eligibility and Nexus' comparisons of new and existing subscribers.

Furthermore, Nexus commits to employ a Utah-specific Fact Sheet for subscribers, which will be substantially equivalent to that included as **Exhibit F**.²²

3. Nexus Will Comply with the Commission's Rules Concerning Lifeline Discounts, Service Offerings, and Fees (R746-341(A)-(B), (D)-(G)).

Lifeline also commits to adhering with the Commission's rules on applying discounts and forgoing certain fees with respect to required Lifeline offerings. Rule R746-341-5(A) states:

Lifeline telephone service provided by ETCs shall consist of dial tone line, usage charges or their equivalent, and any Extended Area Service (EAS) charges, less a discount of \$3.50 and any other matching funds established by the Federal Communication Commission

²² Cf. *Q Link Order*, at 5.

Nexus will provide Lifeline subscribers the functional equivalent to dial tone services, as described above, and will pass through federal support of \$9.25. Nexus also proposes to provide a discount of \$3.50 supported by the Universal Public Telecommunications Service Support Fund to Lifeline subscribers, for a total discount of \$12.75 per month.²³ Nexus will additionally pass discounts from other matching funds established by the FCC to subscribers. In satisfaction with R746-341-5(B), Nexus will not require security deposits for Lifeline subscribers. Nexus will, once per year, waive any nonrecurring service charge that a subscriber would otherwise incur for changing service (R746-341-5(D)); will not require or prohibit purchase of other services by subscriber complying with Nexus' terms and conditions (R746-341-5(G)); and will not disconnect Lifeline subscriber for nonpayment of toll service (R746-341-5(E)).

J. Nexus Requests a Waiver from the Commission's Rules Concerning Link Up [R746-341-5(C) and R746-341-6(A)-(B)].

R746-341-5(C) and R746-341-6 concern the federal Link Up America Plan, which formerly offered up to \$30.00 in support to reduce activation fees for all qualifying low-income subscribers by 50%. R746-341-5(C) requires companies providing Lifeline service to apply for Link Up support, and the provisions R746-341-6 requires application of Link Up benefits to eligible subscriber, except on Tribal Lands.²⁴ Nexus meets the goal of these rules, because Nexus will waive its activation fee to initiate service for Utah subscribers, and additionally will provide free handsets to Utah subscribers. However, Nexus requests that the Commission waive R746-341-5(C) and R746-341-6(A)-(B). In the *Lifeline Reform Order*, the FCC has restricted

²³ See Nexus' request for waiver of R746-360-6(D), in Section K, below.

²⁴ See R746-341-6(A)-(B) (substantive requirements) and R746-341-6(C) (excluding Link-Up discounts on Tribal Lands from the scope of the Commission's rules).

Link Up to Tribal Lands where a Lifeline ETC also receives high-cost support.²⁵ Nexus does not seek ETC designation on Tribal Lands or high-cost support. Therefore, requiring Nexus to apply for Link Up support would not benefit subscribers or advance the purpose of the rules, which as stated above, are already met by Nexus. For those reasons, a waiver is appropriate.

K. Nexus Asks the Commission to Waive the Facilities Requirement for Lifeline-related Support from the Utah Universal Public Telecommunications Service Support Fund [R746-360-6(D)]

In keeping with the goal of “ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates” set forth in Utah Code Ann. § 54-8b-15, Commission rule R746-360-7(D) provides a separate mechanism for funding discounts to Lifeline subscribers, distinct from the proxy cost model used for high-cost support.²⁶ However, Commission rule R746-360-6(D) provides that “only facilities-based providers, will be eligible to receive support from the fund,” and excludes carriers that provide identical services through resale, stating that “[w]here service is provided through one telecommunications corporation’s resale of another telecommunications corporation’s service, support may be received by the latter only.” This requirement appears aimed at preventing duplication with respect to high-cost support, *i.e.*, avoiding paying twice to support the same facilities. However, R746-360-6(D)’s broad language not only prohibits duplicative high-cost support for network infrastructure, but precludes support for discounts that flow to low-income subscribers if the carrier providing service does so through resale—a factor that has nothing to do with the benefits to subscribers.

²⁵ See *Lifeline Reform Order*, ¶ 479.

²⁶ See R746-360-7(A)-(C).

Extending a facilities requirement to Lifeline—where support is passed through to low-income subscribers—would *undermine* the goals of universal service that are shared by the federal Universal Service Fund and the Utah Universal Public Telecommunications Service Support Fund. The FCC recognized this by granting blanket forbearance from the federal facilities requirement in its *Lifeline Reform Order*. Yet the facilities restriction in R746-360-6(D) is an impediment to helping low-income citizens receive discounted telephone service, and instead serves to reduce competition and consumer choice. Waiving R746-360-6(D) would promote universal service, rather than restricting wireless service to facilities-based carriers (which may not even offer Lifeline).

Indeed, R746-360-7(E) expressly contemplates situations where application of certain provisions would be inconsistent with the purpose of universal service:

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

Accordingly, pursuant to the purpose of universal service and R746-360-7(E), Nexus requests a waiver of R746-360-6(D), or in the alternative requests that the Commission hold that R746-360-6(D) applies only to high-cost support.

1. Nexus Will Comply with the Commission's Rules Concerning Semi-Annual Reporting

Finally, Nexus commits that it will comply with the Commission's reporting requirements, set forth Rule R746-341-7, by reporting semi-annually on (1) revenue forgone because of Lifeline discounts; (2) the amounts of administrative, advertising, voucher and other

program expenses; (3) interest accrued on Lifeline funds; (4) the number of Lifeline subscribers by exchange area; and (5) a detailed report of the company's outreach efforts.

III. DESIGNATION OF NEXUS AS AN ETC IS IN THE PUBLIC INTEREST

Section 214(e)(2) of the Act requires that the Commission “shall” designate a common carrier that satisfies the requirements of 47 U.S.C. § 214(e)(1) as an ETC in service areas that are not served by rural telephone companies. A finding that designation is in the public interest is required only for areas served by a rural telephone company.²⁷ Because Nexus seeks designation only in areas served by a non-rural ILEC, designation is appropriate under federal law without a public interest analysis. Nonetheless, as a courtesy to the Commission, Nexus provides the following showing as to why designating Nexus an ETC would serve the public interest.

As the Commission has recognized, providing free and discounted wireless service “enhance competition” and “make the benefits of wireless service more available to low-income consumers who have not had access to this technology due to typical contractual requirements of wireless carriers.”²⁸ Nexus meets all of the requirements for designation as an ETC by providing the supported services, committing to serve all consumers throughout its Designated Service Area, offering a Lifeline service consistent with all applicable requirements, advertising the availability of its universal service offerings, and furthering the goals of the universal service program. Designation of Nexus as an ETC is in the public interest because eligible consumers will benefit from competitive pricing and new services, such as Nexus' Lifeline plans. As Nexus extends its service offerings to Utah, consumers will also benefit from a high level of service quality and more service options.

²⁷ 47 U.S.C. § 214(e)(2).

²⁸ *In the Matter of Virgin Mobile USA, L.P., Petition for Limited Designation as an Eligible Telecommunications Carrier*, Docket No. 10-2521-01, Report and Order, at 9 (May 25, 2011).

Access to wireless services is no longer a luxury, but a necessity for many economically disadvantaged Americans. Low-income consumers are mobile and transient, often balancing multiple jobs and moving far more frequently than consumers with higher incomes, making wireless telecommunications the only technology that truly suits their needs in most cases. Because low-income consumers spend less time during the day at a fixed location, and even less time at a fixed location with a phone available for their use, access to wireless telecommunications is of crucial importance to low-income consumers.

Nexus fulfills a critical role in the marketplace by ensuring that these low-income consumers, who cannot afford the services provided by other wireless providers, can still access these important services. Nexus' designation as an ETC will result in low-income consumers having greater access to wireless telecommunications services in Utah, thereby advancing the basic goal of preserving and advancing universal service. Indeed, Nexus will pass through the entirety of the federal Lifeline program discount and corresponding Utah state discount to qualifying low-income subscribers. Designating Nexus as an ETC will improve its ability to serve these subscribers, and thus will serve the public interest.

IV. CERTIFICATION FOR USE OF UNIVERSAL SERVICE FUNDS

Nexus certifies that it will use federal low income universal service support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended, in accordance with 47 U.S.C. § 254(e).

V. CONCLUSION

For the reasons stated herein, Nexus respectfully requests designation as an ETC for the Designated Service Area for the purpose of receiving federal Lifeline universal service support

and Utah Universal Public Telecommunications Service Support Fund support, and requests that the Commission waive R746-341-5(C), R746-341-6(A)-(B), and R746-360-6(D).

Dated this ____ day of January, 2013.

Respectfully submitted,

Nexus Communications, Inc.

By: _____

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LIST OF EXHIBITS

EXHIBIT A – DESIGNATED SERVICE AREA

EXHIBIT B – CERTIFICATE OF FORMATION

EXHIBIT C – CERTIFICATE OF EXISTENCE FROM UTAH SECRETARY OF STATE

EXHIBIT D – NEXUS' FCC-APPROVED COMPLIANCE PLAN

EXHIBIT E – FCC ORDER APPROVING NEXUS' COMPLIANCE PLAN

EXHIBIT F – UTAH-SPECIFIC FACT SHEET

EXHIBIT G – DECLARATION OF STEVEN FENKER

EXHIBIT A**DESIGNATED SERVICE AREA**

RATE CENTER	OCN	TYPE	COMPANY
ALTA	9636	RBOC	Qwest Corporation
AMERCNFORK	9636	RBOC	Qwest Corporation
BOUNTIFUL	9636	RBOC	Qwest Corporation
BRIGHAM CY	9636	RBOC	Qwest Corporation
CEDAR CITY	9636	RBOC	Qwest Corporation
CLEARFIELD	9636	RBOC	Qwest Corporation
FARMINGTON	9636	RBOC	Qwest Corporation
HEBER CITY	9636	RBOC	Qwest Corporation
HOLLADAY	9636	RBOC	Qwest Corporation
HYRUM	9636	RBOC	Qwest Corporation
KAYSVILLE	9636	RBOC	Qwest Corporation
KEARNS	9636	RBOC	Qwest Corporation
LEHI	9636	RBOC	Qwest Corporation
LOGAN	9636	RBOC	Qwest Corporation
MAGNA	9636	RBOC	Qwest Corporation
MIDVALE	9636	RBOC	Qwest Corporation
MURRAY	9636	RBOC	Qwest Corporation
NEPHI	9636	RBOC	Qwest Corporation
OGDEN	9636	RBOC	Qwest Corporation
PARK CITY	9636	RBOC	Qwest Corporation
PAYSON	9636	RBOC	Qwest Corporation
PLEASATGRV	9636	RBOC	Qwest Corporation
PROVO	9636	RBOC	Qwest Corporation
RICHFIELD	9636	RBOC	Qwest Corporation
SALT LAKE	9636	RBOC	Qwest Corporation
SMITHFIELD	9636	RBOC	Qwest Corporation
SPANIHFORK	9636	RBOC	Qwest Corporation
SPRINGVL	9636	RBOC	Qwest Corporation
ST GEORGE	9636	RBOC	Qwest Corporation
TOOELE	9636	RBOC	Qwest Corporation

EXHIBIT B

CERTIFICATE OF FORMATION

EXHIBIT C

CERTIFICATE OF EXISTENCE FROM UTAH SECRETARY OF STATE

EXHIBIT D

NEXUS' FCC-APPROVED COMPLIANCE PLAN

EXHIBIT E

FCC ORDER APPROVING NEXUS' COMPLIANCE PLAN

EXHIBIT F

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.
 - Note: Calls to directory assistance and time you are on hold will also count as minutes used.
 - Emergency calls to 911 will not count against your minutes
 - Calls to ReachOut subscriber service will not count against your minutes.
 - Partial minute usage is rounded up.
 - 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.

EXHIBIT G

DECLARATION OF STEVEN FENKER

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, in accordance with Utah Administrative Code R746-100-4, the original and five (5) copies of the foregoing document upon the Public Service Commission of Utah, at the following address:

Public Service Commission of Utah
Heber M. Wells Building
160 East 300 South
Salt Lake City, UT 84114
psc@utah.gov

and have caused an electronic copy of the foregoing document in Word format to be sent via e-mail to psc@utah.gov.

I further certify that I have this day served the foregoing document on all intervening parties in this docket.

Dated this _____ day of January, 2013.