

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

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

Docket No. 13-2540-01

DIRECT TESTIMONY OF NEXUS COMMUNICATIONS, INC.

Nexus Communications, Inc. (“Nexus” or “Company”), by counsel, files this Direct Testimony with the Public Service Commission of Utah in this matter. Nexus’ Direct Testimony includes the testimony of Nexus’ President Steven Fenker and the exhibits identified in the foregoing testimony.

Respectfully submitted,

Stephen D. Swindle
Rylee McDermott
VAN COTT, BAGLEY, CORNWALL &
MCCARTHY
36 South State Street, Suite 1900
Salt Lake City, UT 84111
Phone (801) 237 0276
sswindle@vancott.com
rmcdermott@vancott.com

Danielle Frappier
James W. Tomlinson
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW, Suite 800
Washington, DC 20006
(202) 973-4242
daniellefrappier@dwt.com
jimtomlinson@dwt.com

Alan J. Galloway
Davis Wright Tremaine LLP
1300 SW Fifth Ave, Suite 2400
Portland, OR 97201
(503) 778-5219
alangalloway@dwt.com

Counsel for Nexus Communications, Inc.

February 28, 2013

DIRECT TESTIMONY OF STEVEN FENKER

1 Q **WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A My name is Steven Fenker and my business address is 3629 Cleveland Avenue, Suite C,
3 Columbus, Ohio 43224.

4

5 Q **ON WHOSE BEHALF ARE YOU TESTIFYING?**

6 A I am testifying on behalf of Nexus Communications, Inc. the Applicant in this
7 proceeding.

8

9 Q **BY WHOM ARE YOU EMPLOYED AND WHAT POSITION DO YOU HOLD?**

10 A I am employed by Nexus and serve as President of the Company.

11

12 Q **PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
13 **EXPERIENCE.**

14 A I hold a Bachelors of Arts (cum laude) from Ohio University and a Juris Doctor from
15 Cleveland Marshall College of Law. My experience and responsibilities include compliance
16 with governmental mandates, regulatory issues, and negotiation of agreements.

17

18 Q **HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?**

19 Yes. I testified before the Utah Public Service Commission in Docket No. 11-2540-01 on June
20 9, 2011 concerning an application that Nexus filed on April 6, 2011. Nexus voluntarily
21 withdrew that application, due to confidentiality concerns, and the docket was terminated on July
22 7, 2011.

1 **Q HAVE YOU PREVIOUSLY TESTIFIED BEFORE OTHER REGULATORY**
2 **COMMISSIONS?**

3 A I have also testified before state regulatory commissions in Arkansas, California,
4 Colorado, Georgia, Iowa, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan,
5 Mississippi, Missouri, Nevada, New Jersey, Ohio, Rhode Island, South Carolina, West Virginia
6 and Wisconsin on behalf of Nexus.

7
8 **Q HAVE YOU REVIEWED NEXUS' APPLICATION AND OTHER DOCUMENTS**
9 **FILED ON BEHALF OF NEXUS IN THIS PROCEEDING?**

10 A Yes. Most recently, I have reviewed Nexus' Second Amended Application
11 ("Application"), which was filed on February 26, 2013, including all exhibits to that application.

12
13 **Q WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

14 A The purpose of my testimony is to demonstrate that Nexus fully satisfies the requirements
15 for designation as an Eligible Telecommunications Carrier ("ETC") in the State of Utah within
16 the service area proposed in the Company's Application and, further, that grant of this
17 designation is in the public interest.

18
19 **Q WHAT RELIEF DOES THE COMPANY SEEK IN ITS APPLICATION?**

20 A Nexus seeks designation as an ETC in the State of Utah for purposes of receiving federal
21 universal service Lifeline support. The Company does not seek funding from the Utah Universal
22 Public Telecommunications Service Support Fund ("UPTSSF"). The Company does not seek to
23 receive state or federal high cost fund support or support from any other universal service funds.

1 In connection with its request for ETC designation, Nexus requests waiver of certain Utah
2 regulations as the Commission may deem appropriate. Those requests are explained in section J
3 of the Application.

4

5 **Q PLEASE BRIEFLY DESCRIBE NEXUS AND ITS OPERATIONS.**

6 A Nexus is a telecommunications carrier headquartered in Cleveland, Ohio and has been
7 and providing communications services since 2000. Nexus is committed to serving the specific
8 communications needs of low income Americans and has already received ETC designation in
9 twenty-seven states, pursuant to which it receives Lifeline funding. In the second quarter of
10 2009, after several years of serving consumers, including Lifeline consumers, via wireline
11 technology, Nexus began to offer wireless services in recognition of the high demand for such
12 services in the communities it serves.

13

14 **Q PLEASE BRIEFLY DESCRIBE THE SERVICES THAT NEXUS INTENDS TO**
15 **PROVIDE IN UTAH.**

16 A Nexus offers prepaid wireless services, which give Lifeline consumers a simple effective
17 means of obtaining critically needed communications services. If the Application is granted,
18 Nexus subscribers in Utah will be able to choose between three Lifeline plans, as described in
19 detail below. Lifeline subscribers may also purchase additional minutes on a prepaid basis.
20 Nexus will provide its service by resale of Verizon Wireless' underlying services.

21

22 **Q HOW WILL NEXUS' SERVICE OFFERINGS IN UTAH BE DISTINCT FROM**
23 **THOSE OFFERED BY OTHER WIRELESS CARRIERS?**

1 A In contrast to traditional prepaid wireless and Lifeline services offered by many carriers
2 in Utah, Nexus offers subscribers a free plan option and will provide eligible subscribers a free
3 handset. Nexus does not require credit checks and does not require subscribers to sign a
4 contract.

5

6 Q **PLEASE DESCRIBE THE COMPANY'S PROPOSED SERVICE AREA FOR**
7 **ETC DESIGNATION.**

8 A As a reseller of wireless service, Nexus seeks certification to operate as an ETC in the
9 geographic service area where its underlying carrier, Verizon Wireless, provides coverage in the
10 state of Utah, not including any rural service areas. In its Application, Nexus has proposed
11 designation in certain non-rural telephone exchange areas of Qwest Corporation (now doing
12 business as CenturyLink). A list of Nexus' proposed wire centers was attached to the
13 Company's Application as Exhibit A.

14

15 Q **IS NEXUS SEEKING DESIGNATION IN ANY AREA SERVED BY A RURAL**
16 **LOCAL EXCHANGE CARRIER?**

17 A No.

18

19 Q **PLEASE DESCRIBE HOW THE COMPANY WILL PROVIDE ITS SERVICES**
20 **IN UTAH.**

21 A Nexus intends to operate as a wireless reseller, purchasing wireless network infrastructure
22 and transmission facilities on a wholesale basis from Verizon Wireless. Nexus' wireless
23 offerings have been very successful with Lifeline participants, and Nexus now provides wireless

1 services to Lifeline participants in eighteen states. Nexus will apply the expertise it has gained
2 through its offering in these other states to manage service plan design and pricing, marketing,
3 and ongoing subscriber service operations.

4

5 **Q WHAT ARE THE REQUIREMENTS FOR DESIGNATION AS AN ETC**
6 **PURSUANT TO FEDERAL LAW?**

7 A The primary requirements of Section 214 of the Communications Act of 1934 (“Act”)
8 with respect to designation as an ETC are that the requesting entity (i) be a common carrier; (ii)
9 offer the services that are designated for federal universal service support; and (iii) advertise the
10 availability of these services. Federal law requires that ETCs provide the supported services
11 using their own facilities or a combination of their own facilities and resale of other carriers’
12 facilities unless they are granted forbearance from this requirement. Notably, the FCC’s *Lifeline*
13 *Reform Order* established a process in early 2012 for granting blanket forbearance to resellers
14 based upon satisfaction of specified conditions.¹ Additional conditions for ETC designation
15 include (i) the applicant’s certification that it will comply with service requirements applicable to
16 the support it receives; (ii) demonstration that the applicant will be able to remain functional in
17 emergency situations; (iii) demonstration that the applicant will satisfy specified consumer
18 protection and service quality standards; and (iv) demonstration of financial and technical ability
19 to provide the supported services.

20

21

¹ *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*”) at ¶ 368.

1 **Q DOES NEXUS SATISFY THOSE REQUIREMENTS?**

2 A Yes, it does. Nexus filed its Third Amended Compliance Plan (“Compliance Plan”) on
3 December 6, 2012, which outlines Nexus’ compliance with the federal ETC requirements.
4 Consistent with Nexus’ satisfaction of all federal ETC requirements, the FCC approved Nexus’
5 Compliance Plan on December 26, 2012. Nexus submitted the FCC-approved Compliance Plan
6 as Exhibit D to the Application. The FCC order approving Nexus’ plan was included as Exhibit
7 E to the Application.

8
9 **Q WILL NEXUS BE A COMMON CARRIER, AS DEFINED IN FEDERAL LAW?**

10 A Yes. Section 153(10) of the Act defines a common carrier as “any person engaged as a
11 common carrier for hire, in interstate or foreign communications by wire or radio....” Nexus
12 meets this definition because it offers interstate communications by radio and is a common
13 carrier for hire. Section 332(c)(1)(A) of the Act specifically provides that providers of
14 commercial mobile radio services are to be regulated as common carriers. The FCC and this
15 Commission have both recognized that telecommunications providers offering wireless service
16 are eligible for the ETC designation.

17
18 **Q DOES NEXUS COMMIT TO PROVIDE THE SUPPORTED SERVICES**
19 **IDENTIFIED BY THE FCC’S RULES?**

20 A Yes. Upon designation as an ETC in Utah, Nexus will provide the services supported by
21 the federal Lifeline universal service support mechanism, defined in Section 54.101(a) of the
22 FCC’s rules as follows:

1 Services designated for support. Voice telephony services shall be
2 supported by federal universal support mechanisms. Eligible voice
3 telephony service must provide voice grade access to the public
4 switched network or its functional equivalent; minutes of use for
5 local service provided at no additional charge to end users; access
6 to emergency services provided by local government or other
7 public safety organizations, such as 911 and enhanced 911, to the
8 extent the local government in an eligible telecommunications
9 carrier's service area has implemented 911 or enhanced 911
10 systems; and toll limitation for qualifying low-income consumers
11 (as described in subpart E of this part).

12 Nexus will offer all of the supported services identified above, as follows:

13 • Voice grade access to the public switched telephone network or its functional equivalent
14 – Nexus will provide its subscribers with the ability to make and receive calls on the public
15 switched network.

16 • Minutes of use for local service provided at no additional charge to the end user – Nexus
17 intends to offer qualifying subscribers a variety of wireless plans that will provide specified
18 amounts of minutes of nationwide calling (as well as Short Message Service (“SMS”) text
19 messaging) with the option to purchase additional minutes of use to meet a subscriber's
20 individual needs.

21 • Access to emergency services provided by local government or other public safety
22 organizations, such as 911 or enhanced 911, to the extent the local government in Nexus' service
23 area has implemented 911 or enhanced 911 systems – Nexus meets this requirement by
24 providing access to 911 service and meeting all requests for access to E911 service through local
25 public safety answering points (“PSAPs”), including forwarding automatic numbering
26 information (“ANI”) and automatic location information (“ALI”) to PSAPs as appropriate.

27 There is no deduction of minutes for calls to Nexus' subscriber service department. Calls to 911

1 emergency services are always free, and may be made regardless of service activation or
2 availability of minutes.

3 • Toll limitation for qualifying low-income consumers, which means toll blocking service
4 and toll control service – Nexus will meet this requirement by offering service on a prepaid, or
5 pay-as-you-go, basis. Moreover, Nexus’ calling plans do not distinguish between local or toll
6 services for domestic calls (*i.e.*, nationwide calling). Nexus will provide this toll control to
7 qualifying Lifeline consumers at no additional charge. Nexus will also provide traditional toll
8 blocking for international calls to subscribers at no additional charge.

9

10 **Q WILL NEXUS ADVERTISE THE AVAILABILITY OF THESE SUPPORTED**
11 **SERVICES USING MEDIA OF GENERAL DISTRIBUTION, AS REQUIRED BY 47**
12 **U.S.C. § 214(E)(1)(B)?**

13 **A** Yes. Nexus will broadly advertise the availability and rates for the services described
14 above and will comply with the FCC’s revised rules regarding information to be included in
15 advertisements. Nexus intends to advertise its Lifeline services using media such as newspapers
16 of general circulation, and radio and television, as a means of reaching those consumers that are
17 likely to qualify for Lifeline services. Nexus will use these advertising media to advertise the
18 availability of its services to Lifeline-eligible consumers and will expand its advertising efforts if
19 necessary to ensure that Lifeline-eligible consumers are aware of the service offerings. Nexus
20 will ensure that all of its Lifeline advertising materials comply with the FCC’s revised rule,
21 Section 54.405(c). An example of the type of advertising materials that Nexus intends to use in
22 Utah was attached as Exhibit 2 to Nexus’ Compliance Plan (which is Exhibit D of the
23 Application).

1 **Q HOW DOES NEXUS PROPOSE TO COMPLY WITH THE REQUIREMENT**
2 **THAT ETCs PROVIDE SERVICES SUPPORTED BY FEDERAL UNIVERSAL**
3 **SERVICE SUPPORT MECHANISMS EITHER BY USE OF THEIR OWN FACILITIES**
4 **OR BY USE OF A COMBINATION OF THEIR OWN FACILITIES AND RESALE?**

5 A In its 2012 *Lifeline Reform Order*, the FCC granted conditional forbearance for Lifeline
6 ETCs, provided that these ETCs meet certain conditions. These conditions include: (i) provision
7 of 911 and E911 service regardless of activation status or available minutes; (ii) provision of
8 E911-compliant handsets and replacement of non-compliant handsets to Lifeline subscribers;
9 (iii) filing of a compliance plan containing specific information concerning both the carrier's
10 service offerings and its compliance with ETC obligations as set forth in the *Lifeline Reform*
11 *Order*, including those aimed at preventing waste, fraud and abuse within the Lifeline program.
12 Nexus meets each of these requirements and thus to operate pursuant to the FCC's blanket
13 forbearance. As noted above, the FCC approved Nexus' Compliance Plan on December 26,
14 2012.

15

16 **Q HOW WILL NEXUS MEET THE REQUIREMENT TO PROVIDE 911 AND E911**
17 **ACCESS TO ITS LIFELINE SUBSCRIBERS?**

18 A Nexus understands its obligation as an ETC to provide access to emergency services
19 provided by local government or public safety officials. As explained, the Company will operate
20 by reselling the facilities-based services of Verizon Wireless, an established national wireless
21 carrier. Nexus' subscribers will be provided the same access to emergency services that Verizon
22 Wireless provides to its own subscribers. Calls to 911 emergency services will always be free
23 and emergency service access will be available regardless of service activation status or the

1 availability of minutes. Finally, Nexus will comply with all FCC and Commission requirements
2 regarding provision of E911-compatible handsets to ensure subscriber access to these critical
3 services.

4

5 **Q DOES NEXUS INTEND TO SUBMIT A FIVE-YEAR SERVICE IMPROVEMENT**
6 **PLAN RELATING TO PLANNED INFRASTRUCTURE IMPROVEMENTS OR**
7 **UPGRADES?**

8 A No. My understanding is that federal rules require such a plan for certain applicants
9 seeking ETC designation from the FCC under 47 U.S.C. § 214(e)(6) to “[s]ubmit a five-year plan
10 that describes with specificity proposed improvements or upgrades to the applicant’s network on
11 a wire center-by-wire center basis” that demonstrates “how signal quality, coverage or capacity
12 will improve due to the *receipt of high-cost support*,” and “the projected start date and
13 completion date for each improvement and the estimated amount of investment for each project
14 that is *funded by high-cost support*.” 47 C.F.R. § 54.202(A)(1)(ii) (Emphases added). I also
15 understand that progress reports on such plans are required only for “[a]ny recipient of high-cost
16 support.” 47 C.F.R § 54.313(a). Because Nexus is seeking designation from the Commission
17 pursuant to 47 U.S.C. § 214(e)(2) for low-income funds only, and does not seek high-cost funds,
18 those requirements do not apply to Nexus.

19

20 **Q HOW DOES NEXUS DEMONSTRATE ITS ABILITY TO REMAIN**
21 **FUNCTIONAL IN EMERGENCY SITUATIONS?**

22 A As discussed in this testimony and in the Company’s Application, Nexus will utilize the
23 extensive and well-established Verizon Wireless network and facilities to provide Nexus’ mobile

1 services. The Company believes that the Verizon Wireless network is capable of managing
2 traffic issues and to ensure adequate back-up power in order to remain functional in an
3 emergency. Verizon Wireless will provide the same functionality to Nexus' subscribers as it
4 provides its own subscribers.

5

6 **Q HOW DOES NEXUS INTEND TO SATISFY ALL THE CONSUMER**
7 **PROTECTION AND SERVICE QUALITY STANDARDS APPLICABLE TO ITS**
8 **PROPOSED ETC OPERATIONS?**

9 A If designated as a wireless ETC, Nexus commits to satisfying all consumer protection and
10 service quality standards set forth by the FCC, as well as all applicable Utah consumer protection
11 and service quality standards. Additionally, Nexus commits to comply with the Cellular
12 Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service
13 and will protect Customer Proprietary Network Information.

14

15 **Q DOES NEXUS HAVE THE REQUISITE FINANCIAL AND TECHNICAL**
16 **QUALIFICATIONS TO PROVIDE THE PROPOSED SERVICES?**

17 A Yes it does. Elements of these carrier qualifications include (i) prior experience
18 providing Lifeline service; (ii) length of the carrier's business history; (iii) the degree to which
19 the carrier's operations rely upon Lifeline revenues; (iv) additional sources of revenue available
20 to the carrier; and (v) the carrier's regulatory history, specifically with respect to any
21 enforcement or ETC revocation actions.

22 As discussed in its Application, Nexus has been in business since 2000. Nexus became a
23 competitive local exchange carrier in 2001 and received its first ETC designation in June 2006.

1 Nexus now focuses on providing service to low-income consumers. Nexus initially began
2 providing its services over wireline technology, and has responded to strong subscriber demand
3 by offering wireless technology as well. Nexus was one of the first telecommunications
4 providers to recognize the low-income market segment as a business opportunity rather than a
5 regulatory burden. Its success in the market is based on its willingness to tailor its services to the
6 specific needs of low-income consumers, including the budget management tools and mobility
7 that prepaid wireless services provide.

8 Nexus has been designated as an ETC in a total of 27 states. The Company is
9 successfully providing Lifeline supported services in these states and has a steadily increasing
10 subscriber base. Further, Nexus' management has many years of experience in the
11 telecommunications industry. As President of the Company, I have held management positions
12 in the telecommunications industry for 27 years. Also part of Nexus' senior management team is
13 Mark Deek, who has 15 years of experience in the telecommunications industry, with particular
14 expertise in intercarrier relations, and subscriber care and billing database management.
15 Although Nexus currently derives the majority of its revenue from the sale of prepaid wireless
16 services, Nexus does not rely exclusively on disbursements from the Lifeline program to operate.
17 For example, Nexus derives additional revenue from the sale of wireline and wireless services to
18 non-Lifeline subscribers, and the sale of optional replenishment airtime and text minutes.

19

20 **Q HAS NEXUS APPLIED FOR OR BEEN GRANTED ETC DESIGNATION IN**
21 **ANY OTHER STATES?**

22 **A** Yes. As noted in its Application, Nexus has been granted ETC designation in 27 states.
23 Nexus has applications pending for all but a handful of the states in which it is not already

1 designated a wireless ETC. Nexus continues to prepare applications for filing in those
2 remaining states.

3

4 **Q PLEASE DESCRIBE THE COMPANY’S PROPOSED LIFELINE SERVICE**
5 **OFFERINGS FOR UTAH.**

6 **A** As explained in its Application, Nexus intends to offer three basic Lifeline service
7 packages throughout its designated service area in Utah. Each plan offers a set number of
8 minutes of local service free of charge to its subscribers:

9 • 250 Minute Plan (non-rollover): Minutes are “anytime” minutes and can be
10 used for domestic calls, including local or intrastate/interstate long distance
11 calls. Unused minutes or domestic SMS text messages do not carry over to
12 the following month. SMS text messaging is available at a rate of one text per
13 minute of airtime.

14 • 125 Minute Plan (rollover): Minutes are “anytime” minutes and can be used
15 for domestic calls, including local or intrastate/interstate long distance calls.
16 Unused minutes or domestic SMS text messages carry over to the following
17 month. SMS text messaging is available at a rate of one text per minute of
18 airtime.

19 • 68 Minute Plan (rollover): Minutes are “anytime” minutes and can be used
20 for domestic calls, including local or intrastate/interstate long distance calls.
21 Unused minutes or domestic SMS text messages carry over to the following
22 month. Domestic SMS text messaging is available at a rate of two text
23 messages per each minute of airtime. Note that Nexus does not actively

1 market the 68 Minute Plan and, it is selected only by a few subscribers who
2 infrequently use voice service and more frequently send text messages.

3 All plans include at no extra charge: three-way calling, call-waiting, caller ID, free
4 E911-compliant handset; and “anytime” nationwide minutes that can be used for domestic calls,
5 including local or intrastate/interstate long distance calls.

6 Lifeline subscribers may purchase additional minutes on a prepaid basis in denominations
7 of \$3.00 (20 minutes), \$5.00 (40 minutes), \$10.00 (120 minutes), \$20.00 (300 minutes), \$30.00
8 (500 minutes), and \$50.00 (950 minutes). Nexus also offers an unlimited talk and text additional
9 airtime card. This card provides unlimited local and domestic long distance calling, and
10 unlimited text messaging for thirty (30) calendar days. The cost to Lifeline subscribers is
11 \$26.50.

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

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

21

22 **Q ARE THERE ADDITIONAL TERMS AND CONDITIONS ASSOCIATED WITH**
23 **NEXUS’ LIFELINE SERVICE PLANS?**

1 A Yes. The Company's Terms and Conditions are provided to subscribers upon request and
2 are available on the Nexus website at <http://www.reachoutmobile.com/terms.php>.

3

4 Q **WOULD DESIGNATION OF NEXUS AS AN ETC IN UTAH BE IN THE PUBLIC**
5 **INTEREST?**

6 A Absolutely. Designation of Nexus as an ETC for Lifeline purposes in Utah will ensure
7 that Utah consumers have another choice among carriers. As the Commission has recognized,
8 providing free and discounted wireless service "enhance competition" and "make the benefits of
9 wireless service more available to low-income consumers who have not had access to this
10 technology due to typical contractual requirements of wireless carriers." ² More importantly, it
11 will ensure the availability of high-quality mobile service to a population that uniquely benefits
12 from such services. Prepaid wireless services give Lifeline consumers a simple and effective
13 means of obtaining critically needed communications services while managing their family
14 budgets and avoiding bill shock and long term contract issues. With Nexus' wireless service
15 packages, subscribers will enjoy the considerable savings of all-distance domestic calling, and
16 spared the burdensome expense of long distance calling charges. Consumers who experience an
17 unexpected sudden need for more airtime will be easily able to purchase additional airtime on a
18 one-time basis. In a persistently challenging economy, low-income consumers need all of these
19 tools at an affordable rate. Because Nexus does not impose credit checks or collect deposits, the
20 Company's services will be readily available to consumers with the greatest need and Nexus'
21 prepaid pricing plans will enable low-income subscribers to anticipate their monthly

² *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).

1 expenditures. Finally, Nexus' offering of these consumer-friendly service packages in the Utah
2 telecommunications market should motivate other carriers to improve their own competitive
3 offerings, to the benefit of all Utah wireless consumers.

4

5 **Q WILL DESIGNATION OF NEXUS AS AN ETC IN UTAH ENHANCE**
6 **COMPETITION IN THE STATE?**

7 A Yes. Designation of Nexus will not only provide consumers with new affordable choices
8 for essential telephone service, but, as explained above, Nexus' entry into the Utah market for
9 telecommunications services should apply a degree of pressure on other providers to increase the
10 competitive caliber of their service offerings.

11

12 **Q WILL DESIGNATION OF NEXUS AS AN ETC IN UTAH HAVE ANY ADVERSE**
13 **EFFECT UPON THE UNIVERSAL SERVICE FUND?**

14 A No, it will not. Nexus is seeking reimbursement for federal Lifeline services only,
15 whereas the vast bulk of federal Universal Service Fund ("Fund") expense arises from the high
16 cost fund subsidies. The FCC has confirmed that the advantages of adding Lifeline-only ETCs
17 outweigh any potential disadvantages, including the effect on the Fund.³ Further, it warrants
18 mention that Lifeline subsidies are subscriber-specific and remain the same regardless which
19 carrier provides the services. Should a subscriber transfer to Nexus from a different Lifeline
20 provider, the Lifeline reimbursement amount associated with each subscriber – and thus the
21 expense to the Fund – will not change.

³ See *TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Order, FCC 08-100, ¶16, n. 47 (2008).

1

2 **Q WILL NEXUS SATISFY THE REQUIREMENTS FOR LIFELINE ELIGIBILITY**
3 **CERTIFICATION AND VERIFICATION?**

4 A Yes. Nexus will certify and verify consumer eligibility to participate in the Lifeline
5 programs in accordance with the rules of this Commission and the FCC. Nexus is committed to
6 full compliance with these requirements and, as described in Nexus' FCC-approved Compliance
7 Plan, Nexus has developed detailed and comprehensive procedures to address subscriber
8 certification and verification requirements as well as the requirements concerning de-enrollment
9 and duplication of service. These procedures comply fully with the FCC's current subscriber
10 certification and verification requirements.

11

12 **Q HOW DOES THE COMPANY'S DE-ENROLLMENT PROTOCOL WORK?**

13 A As discussed in its Compliance Plan, Nexus has detailed and comprehensive procedures
14 in place to address subscriber certification and verification requirements as well as those
15 requirements addressing de-enrollment and duplication of service. Specifically, after 60 days of
16 non-use, Nexus provides notice to the subscriber that failure to use the Lifeline service or
17 provide other confirmation to Nexus that the subscriber wishes to retain his or her Lifeline
18 service within 30 days from the date of the de-enrollment notice will result in de-enrollment
19 from the Lifeline program. Nexus will not request further Lifeline reimbursement for any de-
20 enrolled subscriber and Nexus will report annually to the Commission the number of subscribers
21 de-enrolled for non-usage by month. See Nexus' Compliance Plan, Exhibit D to the Application,
22 at 19.

23

1 **Q HOW WILL NEXUS ENSURE THAT PROSPECTIVE SUBSCRIBERS COMPLY**
2 **WITH THE “ONE-PER-HOUSEHOLD” RULE FOR LIFELINE SUPPORT?**

3 A As described in Nexus’ Compliance Plan, Nexus has implemented policies and practices
4 in accordance with the FCC’s rules and the *Lifeline Reform Order* to ensure that it provides only
5 one Lifeline service per household. When the National Lifeline Accountability Database
6 becomes available, Nexus will fully comply with the requirements of 47 C.F.R. § 54.404 and
7 utilize the database to determine if an applicant is currently receiving Lifeline benefits from
8 another carrier or if another person residing at the applicant’s residential address is receiving
9 Lifeline benefits.

10 Nexus also will retain the following data: the date Nexus queried the duplicates database;
11 the date and information Nexus transmitted to the database; the date of transmission of updated
12 subscriber information to the database; the date of transmission of subscriber de-enrollment to
13 the database; the date and database upon which Nexus determined income-based eligibility; state
14 Lifeline administrator documentation of subscriber eligibility, and subscriber’s certification of
15 eligibility; the notice of program certification and subscriber self-certification, when performed
16 by a state agency or state Lifeline administrator. Nexus has also instructed its subscriber service
17 representatives to explain the one-per-household requirement to prospective and existing
18 subscribers.

19 If Nexus has a reasonable basis to believe that one of its Lifeline subscribers no longer
20 meets the eligibility criteria, for example, due to a violation of the one-per-household rule, Nexus
21 initiates its termination process in accordance with the procedures set forth in 47 C.F.R. §
22 54.405(e)(1).

23

1 **Q DOES NEXUS SEEK WAIVER OR VARIANCE OF ANY UTAH**
2 **REGULATIONS?**

3 A Yes, it does. Nexus requests a waiver from the requirement R746-341-5(C) and R746-
4 341-6(A)-(B). Those requirements concern the federal Link Up America Plan, which formerly
5 offered up to \$30.00 in support to reduce activation fees for all qualifying low-income
6 subscribers by 50%. The reason for the waiver is that the FCC has restricted Link Up to
7 situations in which an ETC receives high-cost support on Tribal lands. Because Nexus does not
8 seek ETC designation on Tribal lands and does not seek high-cost support, a waiver is
9 appropriate. Nonetheless, Nexus satisfies the goals of these rules, because Nexus will waive its
10 activation fee to initiate service for Utah subscribers, and additionally will provide free handsets
11 to Utah subscribers.

12

13 **Q WILL NEXUS COMPLY WITH THE COMMISSION'S RULES CONCERNING**
14 **SEMI-ANNUAL REPORTING?**

15 A Yes. Nexus commits that it will comply with the Commission's reporting requirements,
16 set forth Rule R746-341-7, by reporting semi-annually on (1) revenue forgone because of
17 Lifeline discounts; (2) the amounts of administrative, advertising, voucher and other program
18 expenses; (3) interest accrued on Lifeline funds; (4) the number of Lifeline subscribers by
19 exchange area; and (5) a detailed report of the Company's outreach efforts.

20 **Q WILL NEXUS MAINTAIN A UTAH-SPECIFIC FACT SHEET?**

21 A Yes. As described in the Application, Nexus will maintain a Utah-specific fact sheet,
22 attached as Exhibit F to the Application, and will make that fact sheet available from Nexus'
23 ReachOut Wireless web site (www.reachoutmobile.com). Nexus will update that fact sheet any

1 time it changes its Utah Lifeline offerings to ensure that its Utah subscribers have access to
2 concise, up-to-date Utah-specific plan information.

3

4 **Q IS NEXUS SEEKING ANY UTAH STATE UNIVERSAL SERVICE FUNDING?**

5 A No. Although an earlier version of Nexus' application included a request for such funds,
6 the Application affirms that Nexus is not seeking any Utah universal service funding. In the
7 event that Nexus seeks any state support in the future, Nexus will file a separate application.

8

9 **Q WILL NEXUS ABIDE BY ANY CHANGES TO THE LIFELINE**

10 **CERTIFICATION AND VERIFICATION PROCESS IN DOCKET NO. 10-2528-01?**

11 A Yes. Nexus shall, within a reasonable time, abide by any changes to the Lifeline
12 certification and verification rules developed by the Commission in Docket No. 10-2528-01.

13

14 **Q WILL NEXUS NOTIFY THE DPU AND THE OCS IF IT MAKES CHANGES TO**
15 **ITS CALLING PLANS OFFERINGS?**

16 A Yes. Upon implementing any changes to its Lifeline offerings, Nexus shall timely file a
17 notice with Division of Public Utilities and the Office of Consumer Services describing the
18 changed plans.

19

20 **Q WILL NEXUS TIMELY PAY ALL APPLICABLE FEDERAL, STATE AND**
21 **LOCAL REGULATORY FEES AND ASSESSMENTS APPLICABLE TO ITS ETC**
22 **OPERATIONS IN UTAH?**

1 A Yes, it will. Nexus acknowledges and accepts its obligations with respect to payment of
2 federal, state and local regulatory fees, taxes and assessments including, but not limited to,
3 universal service fees, emergency services, and relay services.

4

5 Q **WILL NEXUS COMPLY WITH ALL OTHER FCC AND COMMISSION RULES**
6 **APPLICABLE TO ETC OPERATIONS IN UTAH?**

7 A Yes. The Company stands by the commitments made in its Application to comply with
8 the rules and regulations of the FCC and of this Commission with respect to provision of Lifeline
9 services in Utah.

10

11 Q **WHEN WILL NEXUS BE READY TO OFFER LIFELINE SERVICES IN UTAH?**

12 A Nexus is currently finalizing its arrangements in order to be ready to initiate operations as
13 soon as the Commission grants the Company's Application.

14

15 Q **DOES THIS CONCLUDE YOUR TESTIMONY?**

16 A Yes, it does.

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 28th day of February, 2013.

By: _____