

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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

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HEARING PROCEEDINGS  
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TAKEN AT: Public Service Commission
Hearing Room 451
160 East 300 South
Salt Lake City, Utah

DATE: Tuesday, June 25, 2013

TIME: 10:32 a.m.

REPORTED BY: Scott M. Knight, RPR

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A P P E A R A N C E S

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1 PROCEEDINGS

2 THE HEARING OFFICER: Thank you, everyone, for
3 being here this morning. And we're on the record. I'm
4 Melanie Reif, administrative law judge for the Utah Public
5 Service Commission. And this is the hearing in Docket
6 13-2540-01 entitled In the Matter of the Application of
7 Nexus Communications, Inc., for Designation as an Eligible
8 Telecommunications Carrier for Low Income Support Only.

9 I wish to thank you all for your patience this
10 morning. And Mr. McDermott, my apologies for the delay.
11 This is the date, and I'm sorry that the time has gone a
12 little bit past our normal starting time, the hearing having
13 run a little longer than expected, so--just before yours.

14 Let's start with taking appearances, please.

15 MR. McDERMOTT: I'm Rylee McDermott with Van Cott
16 Bagley, Cornwall & McCarthy here on behalf of Nexus
17 Communications.

18 THE HEARING OFFICER: And Mr. McDermott, you have
19 some individuals who are joining on the telephone?

20 MR. McDERMOTT: Yes.

21 Alan, would you like to introduce everybody?

22 MR. GALLOWAY: Sure. I'll introduce myself. This
23 is Alan Galloway of Davis, Wright, Tremaine, LLP, counsel
24 for Nexus. With me on the phone are Danielle Frappier and
25 Steven Fenker. I'll let them introduce themselves.

1 MS. FRAPPIER: This is Danielle Frappier. I'm a
2 partner with Davis, Wright, Tremaine, and national counsel
3 to Nexus Communications.

4 MR. FENKER: And this is Steven Fenker, president
5 of Nexus Communications.

6 THE HEARING OFFICER: Okay. And Mr. McDermott,
7 were you planning to call one or more of those individuals
8 in this case?

9 MR. McDERMOTT: I don't believe--Alan, we weren't
10 going to call anybody in the case, were we?

11 MR. GALLOWAY: Your Honor, I believe our
12 understanding was that if there are any questions about the
13 application, we're happy to answer them, but we were not
14 going to present any additional testimony.

15 THE HEARING OFFICER: Okay. Well--okay. Let's
16 hope that everything goes well.

17 Mr. Jetter, please.

18 MR. JETTER: Justin Jetter for the Utah Division
19 of Public Utilities. And with me is Casey Coleman, a
20 technical expert for the Division of Public Utilities.

21 MS. MURRAY: Cheryl Murray with the Office of
22 Consumer Services.

23 THE HEARING OFFICER: And Ms. Murray, are you
24 appearing pro se today?

25 MS. MURRAY: I am.

1 THE HEARING OFFICER: Okay. Okay. Very good.
2 And Mr. McDermott, this is your application, so I'll let you
3 proceed.

4 MR. McDERMOTT: Okay. I have--Alan has kind of
5 taken the--was preparing everything, so I figured I'd let
6 Alan explain what--what has been going on, if that's okay
7 with you, Alan.

8 THE HEARING OFFICER: Let's--let's back off just
9 one second.

10 MR. McDERMOTT: Okay.

11 THE HEARING OFFICER: Okay. So just for the
12 record, is it your wish, Mr. McDermott, to have the proposed
13 stipulation and settlement heard by the Commission today?

14 MR. McDERMOTT: Yes.

15 HEARING OFFICER: And that is the reason for the
16 expedited hearing--

17 MR. McDERMOTT: Yes.

18 THE HEARING OFFICER: --correct? Okay. And is--
19 is Mr. Galloway--has he entered an appearance in this--in
20 this docket?

21 MR. McDERMOTT: Yes. Yes.

22 MR. GALLOWAY: Yes, your Honor, I have. And I
23 have been granted pro hac status for this matter.

24 THE HEARING OFFICER: Okay. Terrific. I was just
25 looking for some evidence of that.

1 Okay. So Mr. Galloway, if it's your pleasure to
2 do the presentation, please--please proceed.

3 MR. GALLOWAY: Sure. So your Honor, thank you.
4 You know, what we've accomplished so far in this case,
5 through settlement negotiations, is the parties, including
6 the Division and Office of Consumer Services and Nexus
7 Communications, Inc., have worked out a stipulation and
8 settlement agreement that we believe resolves the issues
9 that would need to be resolved prior to designation of Nexus
10 as an Eligible Telecommunications Carrier by the Commission.
11 I believe that that stipulation and settlement agreement is
12 before you and before the Commission. Nexus asks that in
13 light of the parties' agreement in that stipulation that the
14 Commission proceed with approving Nexus's application as an
15 ETC.

16 To the extent that we need to, you know,
17 supplement the record or make--or answer questions the
18 Commission may have, we're happy to provide additional input
19 from--or testimony from Mr. Fenker today, but I don't think
20 that's necessary, given the fact that the parties have
21 reached agreement. So if--if the Commission does not
22 request that, then we would not be planning to present
23 additional testimony.

24 THE HEARING OFFICER: Thank you, Mr. Galloway.
25 Are there any questions? Mr. Jetter?

1 MR. JETTER: No.

2 MS. MURRAY: No.

3 THE HEARING OFFICER: Ms. Murray?

4 Mr. Galloway, as you may be aware, settlement
5 stipulations are reviewed by the Commission under Utah Code
6 54-7-1. Do you happen to have that code section before you?

7 MR. GALLOWAY: Your Honor, I can have that
8 section--yes, I do now have that section before me.

9 THE HEARING OFFICER: Okay. Just wanted to go
10 over some things with you because under subsection (3), it
11 basically provides the rule that the Commission applies when
12 adopting settlement proposals. So I'm going to ask you some
13 questions. And if you wish, since these are questions that
14 really would be questions that we would ask a party who has
15 been placed under oath--or if you wish to proffer, that's--
16 that's--that's up to you, although it would be preferable if
17 we had a witness who is testifying under oath as to these
18 issues. Is it your position that the settlement proposal as
19 drafted is just and reasonable?

20 MR. GALLOWAY: Yes, your Honor. Nexus's position
21 is that the settlement that has been reached by the parties
22 satisfies all requirements of 54-7-1, including that it is a
23 just and reasonable settlement.

24 THE HEARING OFFICER: Okay. Thank you. And just
25 to be absolutely clear here, were there any intervenors in

1 this docket?

2 MR. GALLOWAY: Your Honor, the only parties to the
3 docket were the Division and the Utah--and the Office of
4 Consumer Services. And I believe Mr. Jetter and Mr. Coleman
5 and Ms. Murray are there in the hearing room. There were no
6 other intervening parties in this docket.

7 THE HEARING OFFICER: Okay. And is it correct
8 that the purpose of the application is to receive federal
9 funding but you do not seek state funding?

10 MR. GALLOWAY: That's correct, your Honor. In the
11 earliest version of the application we had a request for
12 state funding, and we revised the application to make clear
13 that Nexus does not seek any Utah state funding at this
14 time, and has no plans to do so.

15 THE HEARING OFFICER: Okay. And should you wish
16 to do so in the future, you would file a separate
17 application indicating that intent?

18 MR. GALLOWAY: That's correct, your Honor. I
19 believe we have stated such in the stipulation. Just trying
20 to find the exact paragraph, but--

21 THE HEARING OFFICER: It's page 6, paragraph--

22 MR. GALLOWAY: Yes.

23 THE HEARING OFFICER: --11 C.

24 MR. GALLOWAY: That's the one.

25 THE HEARING OFFICER: And are there any other

1 points or issues that you wish to raise with respect to the
2 proposed stipulation, Mr. Galloway?

3 MR. GALLOWAY: Your Honor, I'd just add that Nexus
4 looks forward to serving the needs of low-income Utah
5 residents and providing additional choice for telephone
6 service for those individuals, and we appreciate the work of
7 staff of the Division and the Office of Consumer Services in
8 working through the issues in this docket.

9 THE HEARING OFFICER: Thank you. And I'm sure the
10 Office and Division both appreciate that.

11 Mr. Jetter?

12 MR. JETTER: Thank you, your Honor. Division
13 would like to call our witness, Casey Coleman.

14 THE HEARING OFFICER: Mr. Coleman, would you
15 please raise your right hand? And do you testify that
16 the--excuse me--do you swear that the testimony you are
17 about to give is the truth?

18 MR. COLEMAN: Yes.

19 THE HEARING OFFICER: Thank you.

20 Please proceed.

21 CASEY J. COLEMAN,
22 being first duly sworn, was examined and testified as
23 follows:

24 EXAMINATION

25 BY-MR.JETTER:

1 Q Mr. Coleman, would you please state your name and
2 occupation for the record?

3 A Yeah. My name is Casey J. Coleman, and occupation
4 is technical utility consultant with the Division of Public
5 Utilities.

6 Q Thank you. And Mr. Coleman, have you read the
7 application and the amended applications filed by Nexus
8 Communication, Incorporated, along with all the other filing
9 by parties in this docket?

10 A Yes.

11 Q And have you reviewed the stipulated agreement
12 between the parties to this docket?

13 A Yes.

14 Q Do you believe that approval by the Commission of
15 the stipulation settlement agreement would result in service
16 to the public that is just, reasonable, and in the public
17 interest?

18 A Yes.

19 Q Are you aware--or is the Division aware of any
20 other parties not a party to this docket that have objected
21 or--or had any reasons for which this stipulated agreement
22 should not be approved?

23 A No.

24 MR. JETTER: Thank you. I have no further
25 questions.

1 THE HEARING OFFICER: Thank you.

2 Mr. Galloway, do you have any questions for

3 Mr. Coleman?

4 MR. GALLOWAY: Thank you, your Honor. I do not
5 have any questions.

6 THE HEARING OFFICER: Ms. Murray, any questions
7 for--

8 MS. MURRAY: No, thank you.

9 THE HEARING OFFICER: Ms. Murray, are you
10 prepared?

11 MS. MURRAY: I am.

12 THE HEARING OFFICER: Okay. And you would like to
13 testify?

14 MS. MURRAY: I would.

15 THE HEARING OFFICER: Okay. And do you swear that
16 the testimony you're about to give is the truth?

17 MS. MURRAY: Yes.

18 THE HEARING OFFICER: Thank you.

19 TESTIMONY OF CHERYL MURRAY

20 MS. MURRAY: My name is Cheryl Murray. I'm a
21 utility analyst with the Office of Consumer Services. And
22 the Office is responsible for assessing the impact of
23 utility rate changes and regulatory actions upon residential
24 and small commercial customers. The Office recognizes the
25 need for low-income persons to have access to telephone

1 service, and in general, we support the ability to receive
2 that service through wireless telephone service.

3 We analyzed Nexus Communications' testimony,
4 application in the request for limited designation as an
5 Eligible Telecommunications Carrier, considering both the
6 benefits to be provided to low-income customers and the cost
7 to telecommunications customers to fund wireless ETCs such
8 as Nexus. The stipulation that is being presented today
9 incorporates conditions the Office asserts are necessary to
10 the public interest. And in the Office's judgments--
11 judgment, the settlement is in the public interest and we
12 recommend Commission approval.

13 That concludes my testimony.

14 THE HEARING OFFICER: Thank you, Ms. Murray.

15 Any questions, Ms. Galloway, for Ms. Murray?

16 MR. GALLOWAY: No questions, your Honor.

17 THE HEARING OFFICER: Mr. Jetter?

18 MR. JETTER: I have no questions, your Honor.

19 THE HEARING OFFICER: Okay. Thank you.

20 Mr. McDermott or Mr. Galloway, is there anything
21 further you wish the Commission to be aware of concerning
22 the stipulation before we conclude this hearing?

23 MR. McDERMOTT: I would just like to echo
24 Mr. Galloway's statements about appreciation for everyone in
25 helping expedite this hearing and getting everything squared

1 away.

2 THE HEARING OFFICER: Thank you, Mr. McDermott.

3 Mr. Galloway, do you wish to add anything before
4 we conclude today?

5 MR. GALLOWAY: Your Honor, if it would be helpful,
6 we could certainly, you know, present Mr. Fenker as a
7 witness to affirm basically the same thing that I said about
8 the settlement being just and reasonable, or to talk about
9 the benefits of Nexus service. If--if you think that would
10 be essentially helpful, we'd be happy to do that; otherwise,
11 I would have nothing else to add.

12 THE HEARING OFFICER: If I--yes, I do think that
13 that would be helpful. And if you don't mind, let's do
14 that.

15 MR. GALLOWAY: Okay. So let's--so we'll swear in
16 Mr. Fenker and present him as a witness on behalf of Nexus
17 Communications, Inc.

18 THE HEARING OFFICER: Okay. Mr. Fenker, I'm
19 Melanie Reif, the ALJ who has been doing a fair amount of
20 the speaking here. And I know this is a little bit awkward
21 because you're not here, but if you would kindly raise your
22 right hand and--

23 MR. FENKER: Okay.

24 THE HEARING OFFICER: Do you swear that the
25 testimony you're about to give is the truth?

1 MR. FENKER: I do.

2 THE HEARING OFFICER: Thank you.

3 Mr. Galloway, you may proceed with questioning.

4 STEVEN FENKER,

5 being first duly sworn, was examined and testified as
6 follows:

7 EXAMINATION

8 BY-MR.GALLOWAY:

9 Q Mr. Fenker, could you please state your name for
10 the record?

11 A Yes. It's Steven Fenker. That's spelled F, as in
12 Frank, e-n-k-e-r.

13 Q And can you tell us your position?

14 A Yes, I'm president of Nexus Communications, Inc.

15 Q And Mr. Fenker, have you reviewed the application
16 and the stipulation and settlement agreement in this docket?

17 A Yes, I have.

18 Q And do you believe that the settlement agreement
19 achieves a fair and reasonable result?

20 A Yes, I do.

21 Q And do you believe that--sorry. Just a minute.
22 Do you believe that the proposed settlement resolves all the
23 outstanding issues required--required for designation of
24 Nexus as an Eligible Telecommunications Carrier in this
25 docket?

1 A Yes, I do.

2 Q And just so I have the magic language, do you
3 believe that the settlement proposal is just and reasonable
4 in result?

5 A Yes, I do. I do.

6 Q Do you want to tell us a little bit about the
7 benefits of Nexus's service offerings?

8 A Absolutely. Nexus is a privately owned company
9 based here in Columbus, Ohio. Our two largest competitors
10 are publicly traded multinational corporations. We've been
11 in the business for--the telecommunications business since
12 the year 2000. We've been providing local exchange service
13 since the year 2001. We started providing wireless service
14 in approximately 2008 based upon customer demand. So we've
15 had a long history of experience with providing services in
16 the Lifeline--

17 THE REPORTER: In the Lifeline what? I didn't
18 hear. I didn't hear him.

19 THE HEARING OFFICER: Mr. Galloway, the court
20 reporter indicated that he was having a difficult time
21 hearing Mr. Fenker the last few things that he mentioned
22 about Lifeline. Could he please repeat those?

23 MR. GALLOWAY: Sure.

24 BY MR. GALLOWAY:

25 Q Go ahead, Mr. Fenker.

1 A Yeah, absolutely. Yeah. As I mentioned, we have
2 been in business since the year 2000. We are a privately
3 owned company based out of Columbus, Ohio. The two largest
4 competitors above us are multinational publicly traded
5 companies. We have been successful in providing services to
6 mid- to low-income people for over 12 years. And we believe
7 that our Lifeline offering will provide a competitive
8 offering for potential Lifeline applicants in the state of
9 Utah.

10 Q Thank you, Mr. Fenker. I just--one last question:
11 Could you affirm that Nexus is committed to follow through
12 on the commitments it made in the stipulation and settlement
13 agreement?

14 A Yes, we will.

15 MR. GALLOWAY: Thank you.

16 Your Honor, I don't think we have any other
17 testimony that we plan to present.

18 THE HEARING OFFICER: Okay. Mr. Galloway, thank
19 you very much. I appreciate you putting on your witness.
20 And as we normally would, we--we will open the opportunity
21 for further questioning.

22 Mr. Jetter, do you have any questions of the
23 witness?

24 MR. JETTER: I have no--I have no questions, your
25 Honor.

1 THE HEARING OFFICER: Ms. Murray?

2 MS. MURRAY: No, thank you, your Honor.

3 THE HEARING OFFICER: Okay. Thank you,
4 Mr. Galloway.

5 And Mr. Fenker, you are just--you are dismissed.
6 Thank you for your testimony.

7 I wish to ask one final question before we
8 conclude today, and that is whether there is anyone here who
9 wishes to voice an opposition to the application--in
10 particular, the stipulated settlement. And hearing no
11 objection, the record will so reflect.

12 Are there any questions before we adjourn today?

13 Okay. I want to thank you all for coming. And
14 for those of you on the phone, thank you for joining us as
15 well.

16 Pursuant to the code that I referenced earlier,
17 54-7-1, the Commission will review this matter and, based on
18 there being no objection, will issue an order authorizing
19 the stipulation and settlement approving it. And that
20 should be within relatively short order, depending on when
21 we see the transcript.

22 So thank you, once again, for coming. And again,
23 I apologize for the delay this morning. Have a good day.
24 (Proceedings concluded at 10:52 a.m.)

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CERTIFICATE

This is to certify that the foregoing proceedings were taken before me, SCOTT M. KNIGHT, a Registered Professional Reporter and Notary Public in and for the State of Utah, residing at South Jordan, Utah;

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

Scott M. Knight, RPR
Utah License No. 110171-7801

