

STATE OF SOUTH DAKOTA

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of Nexus)
Communications, Inc., for Designation as)
an Eligible Telecommunications Carrier)
Pursuant to 47 U.S.C. § 214(e))

Case No. _____

**APPLICATION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER FOR LOW INCOME SUPPORT
ONLY**

Nexus Communications, Inc. (“Nexus” or “Company”) hereby submits this Application, pursuant to 47 U.S.C. § 214(e) of the Communications Act of 1934, as amended (the “Act”), and the South Dakota Public Utilities Commission’s (“Commission”) rules and regulations¹ for designation as an Eligible Telecommunications Carrier (“ETC”) throughout all exchanges indicated in Exhibit A (the “Designated Service Area”) for the purpose of receiving federal Lifeline universal service support. As explained herein, the public interest would be served by granting this Application, thereby enabling Nexus to advance universal service by serving the basic and advanced communications needs of low income consumers. In support of this Application, Nexus states as follows:

I. INTRODUCTION

Nexus is a wireless telecommunications carrier serving the basic specific communications needs of low income consumers. Nexus is a privately-held company that is organized under Ohio law and headquartered in Columbus, Ohio. Nexus has no holding company and no affiliates that provide telecommunications services. Nexus has applied for authorization to do business in South Dakota and throughout the requested Designated Service

¹ ARSD 20:10:32:42; ARSD 20:10:32:43; ARSD 20:10:32:43.01 *et seq.*

Area. Nexus provides Commercial Mobile Radio Services (“CMRS”) to qualifying low income consumers in 26 states and proposes to provide these services in South Dakota. Nexus operates its wireless business under the name “ReachOut Wireless.” A copy of Nexus’s Articles of Incorporation is attached as **Exhibit B**. Nexus’s address and telephone number are set forth below:

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

Nexus meets or commits to meet all the requirements for designation as an ETC as established under federal law and rules of the Federal Communications Commission (“FCC”) 47 U.S.C. § 214(e); 47 C.F.R. § 54.201 and state regulations. 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));
- will provide the supported services throughout its designated service area (ARSD 20:10:32:43.01; 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);
- has filed the necessary Compliance Plan with the FCC to receive forbearance from the “own facilities” requirement of 47 U.S.C. § 214(e)(1)(A), and has obtained FCC approval of that Plan²;
- will remain functional in emergency situations (ARSD 20:10:32:43.03);
- will offer local usage comparable to that offered by ILECs in its designated service area (ARSD 20:10:32:43.05); and
- will be able to provide equal access under certain circumstances.

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 (47 C.F.R. § 20.9), subject to all applicable regulations, and therefore meets the ETC requirement of being a common carrier.

² Attached at **Exhibit C** are copies of the Third Amended Compliance Plan of Nexus Communications, Inc., filed with the Federal Communications Commission (“FCC”), and the FCC’s Public Notice of December 26, 2012 announcing its approval of that Plan.

B. Nexus Offers the Services Supported by Federal Universal Service Support Mechanisms

Nexus will provide the services supported by the federal Lifeline universal service support mechanism upon designation as an ETC, as defined in recently revised 47 C.F.R. § 54.101(a), which 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).

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 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 customers to call throughout the United States without toll charges.
- Access to Emergency Services. Access to emergency services includes access to both 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.³ Nexus will meet the requirement to provide toll limitation to Lifeline subscribers by offering service on a prepaid, or pay-as-you-go, 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.”⁴ 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 Areas Upon Reasonable Request

Nexus commits to provide the supported services throughout its Designated Service Area, consistent with all applicable requirements. To the extent a potential customer requests service within Nexus’s Designated Service Area, but outside its anticipated network coverage, Nexus will, in cooperation with its carrier vendor, follow the six-step process specified in ARSD 20:10:32:43.01. Specifically, Nexus will determine if service can be provided with the cooperation of its vendor at reasonable cost to the requesting customer by: (1) modifying or replacing the requesting customer’s equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier’s facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment.

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

³ 47 C.F.R. § 54.400(d).

⁴ *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, Order, 24 FCC Rcd. 3381, 3394 at ¶ 34 (FCC 2009).

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. Nexus provides a sample Lifeline advertisement as **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's Lifeline service offering. Nexus intends to offer the following prepaid wireless service plans to Lifeline subscribers in South Dakota:

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.

All plans include at no extra charge: free 911-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's customer 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.

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. If designated as an ETC, Nexus will continue to provide service on a timely basis to requesting customers 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 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)

In its recent *Lifeline Reform Order*, the FCC granted conditional forbearance for Lifeline ETCs, provided that these ETCs receive FCC approval of a compliance plan.⁵ Nexus has filed the necessary compliance plan with the FCC to receive forbearance from the “own facilities” requirement of 47 U.S.C. § 214(e)(1)(A), and the FCC has approved that plan.⁶

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.⁷ 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 customer 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.

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, FCC 12-11 (FCC rel. Feb. 6, 2012) (“*2012 Lifeline Order*”) at 368.

⁶ *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 Dec. 4, 2012; *approved*, FCC Public Notice DA 12-2063 (released Dec. 26, 2012). See **Exhibit C**.

⁷ *Lifeline Reform Order* at 388.

Nexus has been designated as an ETC in 27 states.⁸ It provides wireline service as an ETC in 13 states,⁹ and wireless service in 18 states.¹⁰ 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 customer base. Nexus's management has many years of experience in the telecommunications industry.

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 the state of Ohio, which are housed in a Tier IV co-location facility.

Nexus has very 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 customers 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

⁸ 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.

⁹ 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.

¹⁰ 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. It has also been authorized to provide wireless service in Indiana and Oklahoma, but has not yet commenced wireless service in those states.

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 customers, and the sale of optional replenishment airtime and text minutes.

I. Nexus Seeks Waiver of Requirement to Submit Two-Year Plan

The requirement of submitting network improvement and maintenance plans, as initially issued by the FCC and adopted by this Commission, relates only to those ETCs seeking high-cost support. As the FCC explained in its 2012 Lifeline Order and Further Notice of Proposed Rulemaking, “[g]iven that Lifeline-only ETCs are not receiving funds to improve or extend their networks, we see little purpose in requiring such plans as part of the ETC designation process.”¹¹ The FCC has amended 47 CFR 54.202 to reflect this change.

ARSD 20:10:32:43.02 requires that an ETC applicant demonstrate:

- (1) How service quality, signal quality, coverage, or capacity will improve due to *the receipt of high-cost support*;
- (2) The projected start date and completion date for each improvement and the estimated amount of investment for *each project that is funded by high-cost support*; (emphasis added).

The high-cost portion of the federal Universal Service Fund is designed to promote the construction of infrastructure and facilities in areas where such endeavors are more expensive or uneconomical compared to more typical geographical areas.¹² The Lifeline program, on the other hand, provides support directly to consumers based on the consumer’s economic means

¹¹ 2012 Lifeline Order at 386.

¹² *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776 (FCC rel. May 7, 1997) (“First Report and Order”) at ¶199 (“As the Joint Board recommended, we today establish that the level of support for service to a particular customer will ultimately be determined based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide that service.”)

regardless of geography.¹³ Lifeline funding simply does not support network build-outs or maintenance. Instead, it reimburses the carrier for discounts provided directly to the consumer. These consumers may all potentially be located in areas with sufficient network facilities but the consumer will nevertheless qualify for the support based entirely on the consumer's personal financial means. Network improvement and maintenance is a critical part of Nexus's operations, as well as those of its underlying carrier, but Nexus believes that it is inappropriate to disclose the details of this business information, which is highly confidential and subject to internal decisions and change. Based on the foregoing, Nexus believes that it should not be required to submit a two-year plan. Nexus is entirely willing, however, to provide any further necessary information on this point should that be of assistance in the Commission's consideration of its application.

¹³ First Report and Order at ¶319 (“Since 1985, the Commission, pursuant to its general authority under sections 1, 4(i), 201, and 205 of the Act and in cooperation with state regulators and local telephone companies, has administered two programs designed to increase subscribership by reducing charges to low-income consumers. The Commission's Lifeline program reduces qualifying consumers' monthly charges, and Link Up provides federal support to reduce eligible consumers' initial connection charges by up to one half.”).

J. Nexus Will Remain Functional in Emergency Situations

Under the Commission's rules (ARSD 20:10:32:43.03), an ETC applicant must demonstrate its ability to remain functional in emergency situations. Since Nexus will provide services in part through the use of facilities obtained from a major carrier vendor for wireless spectrum and other related wireless services, Nexus will provide to its customers the same ability to remain functional in emergency situations as is currently provided by the vendor to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability to manage traffic spikes in the event of emergency situations.

K. Nexus Offers a Comparable Local Usage Plan

Consistent with ARSD 20:10:32:43.05, Nexus will offer a local usage plan comparable to those of the incumbent local exchange carriers ("ILECs") in its South Dakota service area. As described above, Nexus's offering provides nationwide calling that is not limited to a traditional local calling area. Nexus will also offer a number of features to its customers, including caller ID, call waiting and voicemail. Nexus's plan and offerings therefore are comparable with or more attractive than those of the incumbent LECs.

L. Nexus Certifies that It Will Be Able to Provide Equal Access Under Certain Circumstances

Pursuant to ARSD 20:10:32:43.06, Nexus acknowledges that it may be required to provide equal access within a designated service area if no other ETC is providing equal access in that area.

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

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. Moreover, designation of Nexus as an ETC is in the public interest because consumers will benefit from competitive pricing and new services, such as Nexus's Lifeline plan.

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's designation as an ETC will result in low income consumers having greater access to wireless telecommunications services in South Dakota, thereby advancing the basic goal of preserving and advancing universal service.¹⁴ Indeed, Nexus will pass through to its Lifeline eligible customers the entirety of the federal Lifeline discount. Designating Nexus as an ETC will improve its ability to serve these customers, and thus will serve the public interest.

¹⁴ See 47 U.S.C. § 254(b).

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

Nexus respectfully requests designation as an ETC for the Designated Service Area for purposes of receiving federal Lifeline universal service support.

Dated this 4th day of January, 2013.

Respectfully submitted,

Nexus Communications, Inc.

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