FILED
July 1, 2011
INDIANA UTILITY
REGULATORY COMMISSION

Before the

INDIANA UTILITY REGULATORY COMMISSION

In The Matter Of The Designation of Eligible)	
Telecommunications Carriers By The Indiana)	
Utility Regulatory Commission Pursuant To The)	
Telecom Act of 1996, And Related FCC Orders)	CAUSE No. 41052-ETC-59
And In Particular, The Petition Of Nexus)	
Communications, Inc. To Be So Designated For The)	
Limited Purpose of Offering Wireless Lifeline and)	
Link Up Service to Qualified Households)	
)	

DIRECT PRE-FILED TESTIMONY OF STEVEN FENKER ON BEHALF OF NEXUS COMMUNICATIONS, INC.

JULY 1, 2011

	Q:	PLEASE STATE YOUR NAME, YOUR POSITION WITH NEXUS
1		PHONE AND YOUR BUSINESS ADDRESS.
2		My name is Steven Fenker, and my business address is 3629
3		Cleveland Ave., STE C, Columbus, OH 43224 (740) 549-1092,
4		(740) 548-1173 Fax. I am President of Nexus Communications, Inc.
5		
6	Q:	PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR EXPERIENCE.
7	A:	My background combines 25 years in telecommunications services and
8		telecommunications business development. I am responsible for
9		executing agreements between Nexus and the various Incumbent Local Exchanges
10		Carriers LECs while working closely with the various state and federal regulatory
11		agencies to ensure ongoing regulatory compliance. Nexus is a Federal Communications
12		Commission ("FCC") licensed Commercial Mobile Radio Service ("CMRS" or
13		"wireless") provider with principal offices located at 3629 Cleveland Ave., Suite C
14		Columbus, Ohio. As of the date of this application, Nexus has been designated as an ETC
15		in the states of Alabama, Arkansas, California, Florida, Georgia, Illinois, Kansas
16		Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, North
17		Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, West Virginia and
18		Wisconsin and is currently offering, or will soon offer, Lifeline and Link Up service in
19		each of these states.
20		
21	Q:	HAVE YOU PREVIOUSLY TESTIFIED BEFORE PUBLIC UTILITY
22		COMMISSIONS?
23	A:	Yes, I previously testified or filed testimony before the various Public Utilities
24		Commissions in the states of Illinois, Mississippi, South Carolina,
25		and Alabama.

1	Q:	WHAT IS THE PURPOSE OF YOUR TESTIMONY?
2	A:	The purpose of my testimony is to demonstrate that Nexus meets the state
3		and federal requirements for designation as an Eligible Telecommunications
4		Carrier ("ETC") in the designated areas of Indiana's incumbent local
5		exchange carriers AT&T Indiana, and Verizon.
6		
7	Q:	DOES NEXUS CURRENTLY PROVIDE
8		TELECOMMUNICATIONS SERVICE IN INDIANA?
9	A:	Yes. As noted in Nexus' Application, Nexus was certified by this Commission to provide
10		competitive local telecommunications services in the State of Indiana in accordance with
11		Cause No. 42364 on 4/23/2003. Nexus was previously granted a Certificate of Territorial
12		Authority to Resell Bundled Local Exchange Telecommunications Services in Cause
13		No. 42242 on 7/17/2002. Nexus is also a common carrier as defined in 47 U.S.C. §
14		153(10), and Nexus meets the requirements of 47 U.S.C. § 214(e)(1).
15		
16	Q:	DOES NEXUS CURRENTLY PROVIDE
17		CRMS SERVICE IN INDIANA.
18	A:	No. Nexus has or will file a petition to provide CRMS service contemporaneous with this
19		testimony.
20		
21	Q.	PLEASE DESCRIBE NEXUS' PLANS TO PROVIDE ETC SERVICE IN
22		INDIANA.
23	A:	Pursuant to the requirements of 47 C.F.R. §§ 54.201(d)(1) and 54.201(d)(2) and the
24		IURC's 1997 ETC Order in Cause Number 41052, as amended, Nexus "[o]ffers the
25		services that are supported by federal universal support mechanismsusing its own
26		facilities or a combination of its own facilities and resale of another carrier's services"
27		and will "advertise the availability" of the nine supported services and the corresponding
28		charges "using media of general distribution" throughout the designated service area.
29		Using a its own facilities or a combination of the Company's own facilities and resale of

another carriers services will enable Nexus to offer all of the "services and functionalities... supported by federal universal support mechanisms" as detailed in Section 54.101(a) of the FCC's Rules throughout the requested designated service area.¹

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Q. PLEASE EXPLAIN HOW THE SERVICE PROVIDED BY NEXUS WILL BENEFIT CONSUMERS OF WIRELESS TELECOMMUNICATIONS IN

Nexus is a "telecommunications carrier," as that term is defined by 47 U.S.C. § 153(44) 8 A. 9 and I.C. 8-1-2-88, and seeks to provide Lifeline and Link-Up support to qualifying lowincome consumers in accordance with 47 C.F.R. § 54.202(a)(1) throughout the wire 10 11 Telephone Company ("AT&T Indiana"), centers of Indiana Bell 12 Communications Corp. (which acquired the landline properties and obligations of 13 Verizon North, Inc. - IN and Verizon North, Inc. - IN(Contel)) (referred to as "Frontier") all of which are non-rural incumbent Local Exchange Carriers ("ILECs") in Indiana. The 14 Lifeline program offered by Nexus will differ from the Lifeline programs offered by 15 16 more traditional ETCs in a number of important respects. First, Nexus will offer low-17 income consumers the convenience and portability of wireless service and the ability to 18 receive a free wireless handset. Nexus believes that many Lifeline-eligible consumers 19 will take advantage of the opportunity to obtain subsidized wireless service and will offer a unique, easy-to-use service with quantities of wireless usage included at no charge to 20 21 the consumer. Traditional Lifeline programs provide qualified consumers with discounts 22 below the carrier's standard rates. However, customers still face the possibility of service

disconnection if they fail to pay the reduced charges. Second, consumers will also have

¹ See 47 C.F.R. § 54.101(a).

the ability to purchase additional minutes on an as-needed basis, which the Company will make available at a uniform per minute rate throughout the designated service area. As a result, Nexus will offer service without requiring a credit check, deposit, term agreement or overage charges and as such, no termination fees associated with the same. Third, unlike traditional carriers, Nexus provides nationwide airtime minutes, thereby providing consumers with local and domestic intralata/interlata long distance calling without incurring any toll charges. In addition to offering hearing-aid compatible handsets², subscribers will also have the ability to use the service to send text messages, a feature that is ideal for hearing impaired consumers. All of these factors contribute to a wireless service that is innovative, unique, and affordable. Nexus provides additional details of its wireless Lifeline and Link-Up plans in subsequent sections of this Petition.

Upon designation as an ETC, Nexus will make available Lifeline and Link Up service to qualifying consumers throughout the designated service area pursuant to the requirements of the universal service program and in accordance with 47 C.F.R. §§ 54.202(a)(1)(a)(2) and the Commission's ETC Orders.

Q. PLEASE EXPLAIN YOUR UNDERSTANDING OF THE COMMISSION'S ROLE IN GRANTING ETC STATUS TO NEXUS FOR WIRELESS SERVICES.

A. Pursuant to the provisions of Section 214(e)(2) of the Act, state commissions have primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2). Although Section 332(c)(3)(A) of the Act prohibits states from regulating the entry of or the rates charged by commercial mobile radio service providers,

² Nexus complies with all applicable FCC Hearing Aid Compatibility handset requirements and annually files its hearing aid compatibility report.

this prohibition does not allow states to deny wireless carriers ETC status because of the technology they use and more specifically merely because states do not have regulatory jurisdiction over wireless carriers.³

Per the requirements of 47 C.F.R. § 54.201, only a common carrier can be designated an eligible telecommunications carrier by a state commission. Section 153(10) of the Act defines a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio…" Nexus meets the definition as it is offers interstate communications by radio and is a common carrier for hire and as such qualifies as a common carrier.

In addition, the Act allows common carriers that are not subject to a state commission's jurisdiction to petition the FCC to obtain such designation. However, the IURC has determined that it has jurisdiction over ETC Petitions of wireless providers and subsequently designated SprintCom, Inc. and WirelessCo., L.P. d/b/a Sprint PCS as an ETC in Cause No. 41052-ETC-44 and has established requirements that must be met by carriers seeking certification as an ETC. See also Virgin Mobile USA, L.C., Cause No. 41052-ETC-55, issued Nov. 10, 2010. Consistent with federal and state rules, the Commission has the statutory authority to designate a common carrier as an ETC that uses "either its own facilities or a combination of its own facilities and resale of another carrier's services" and advertises "the availability of such services and the related charges using media of general distribution." As discussed in subsequent sections,

³ See USF Order, at 8858-59, ¶ 145.

⁴ See 47 C.F.R. § 54.201(d)(1).

⁵ See 47 C.F.R. § 54.201(d)(2).

Nexus meets the facilities-based requirement of The Act and commits to advertise the availability of its Lifeline and Link Up programs in a manner that is compliant with these requirements. Therefore, the Commission has the authority to act under Section 214(e)(2) of the Communications Act to grant Nexus request to be designated as an ETC.

5 Q. PLEASE EXPLAIN IN DETAIL WHY YOU BELIEVE NEXUS MEETS THE 6 REQUIREMENTS TO BE DESIGNATED AS AN ETC.

A.

Section 254(e) of the Telecommunications Commission Act of 1996 (the "Act") provides for universal service, which is a principle component of the federal telecommunications policy that seeks to ensure access to basic telecommunications services at affordable prices for all Americans. In Indiana, the goals of universal service are pursued, at least in part, through Lifeline and Link Up. Section 214(e)(2) provides that a State commission "shall...upon request designate a common carrier that meets the requirements of paragraph 1 [of Section 214(e)] as an eligible telecommunications carrier for a service designated by the State commission" while Section 254 of the Act states "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal support." As demonstrated below, Nexus meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of The Act and the IURC's 2005 ETC Order. In addition, Nexus complies with the standards established by the FCC and this Commission for determining whether applicants for ETC status serve the public interest. Nexus notes that under FCC rules

⁶ See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, ¶¶ 40-43(2005).

applications for ETC status in "non-rural" areas are deemed to be in the public interest per se.⁷

A. Nexus Offers the Services and Functionalities Supported by the Federal Low-Income Universal Service Program (47 C.F.R. § 54.101)

In Cause No. 40785, the IURC adopted the FCC's original eligibility requirements for designation of ETCs in the State of Indiana. Nexus provides each of the services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, and will offer these supported services throughout the requested designated service area and will do so using a combination of its own facilities and the resale of another carrier's service. In certain instances, these facilities may include (in various ways and in different combinations depending on the specific supported service in use) the same antennae, cell-sites, towers, trunking, mobile switching and interconnection facilities used by the underlying carrier vendor for spectrum and related wireless services to serve its own wireless customers. Upon designation as an ETC in Indiana, Nexus will offer all of the services and functionalities enumerated in Sections 54.101(a)(1) – (9) of the FCC's Rules, which include the following:

1. Voice Grade Access (47 C.F.R. § 54.101(a)(1)).

"Voice grade access" permits a telecommunications user to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal that there is an incoming call. Through Verizon Wireless's interconnection agreements with local exchange carriers ("LECs"), Nexus's customers will be able to make and receive calls on the public switched network with a minimum bandwidth of 300 to 3000 hertz. As

⁷ Cellco Partnership d/b/a Bell Atlantic Mobile, 16 FCC Rcd. 39, 45 (2000).

explained elsewhere, some calls related to certain of the supported services will be routed by Verizon to Nexus's own facilities for processing and completion.

2. Local Usage (47 C.F.R. § 54.101(a)(2)).

"Local usage means an amount of minutes of use of exchange service, prescribed by the FCC, provided free of charge to end users." The FCC has interpreted its rule as requiring carriers to offer customers rate plans with varying amounts of local usage. ⁹ Nexus does in fact offer customer rate plans that provide varying amounts of local usage. Additionally, all Nexus plans include nationwide local calling areas, the availability of mobile service, and the ability to access a live operator who can perform a wide range of services.

3. Dual Tone Multi-Frequency Equivalent (47 C.F.R. 54.101(a)(3)).

Dual tone multi-frequency ("DTMF") signaling is a method of transmitting call set-up and call detail information. The FCC has recognized that, with respect to wireless carriers, it "is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling." The Verizon Wireless network currently uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling.¹⁰

4. Single-Party Service or its Functional Equivalent (47 C.F.R. § 54.101(a)(4)).

With respect to wireless carriers, "single-party service" affords a user a dedicated

⁸ 47 C.F.R. § 54.101(a)(2).

See, Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd $48, 52 \ 10 \ (2000)$.

¹⁰ See USF Order, 12 FCC Rcd 8776, at ¶ 71 (1997).

message path for the length of a user's particular transmission. Nexus meets this requirement with respect to each of its service offerings.

5. Access to Emergency Services (47 C.F.R. § 54.101(a)(5)).

"Access to emergency service" includes access to services, such as 911 and enhanced 911 ("E-911"), provided by local governments or other public safety organizations. All of the phones that Nexus distributes are capable of delivering automatic numbering information ("ANI") and automatic location information ("ALI"), and otherwise satisfy applicable state and federal E-911 requirements.

6. Access to Operator Services (47 C.F.R. § 54.101(a)(6)).

"Access to operator services" means access to automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call. Nexus meets this requirement by providing access to operator services to customers.

7. Access to Interexchange Service (47 C.F.R. § 54.101(a)(7)).

With respect to wireless carriers, "access to interexchange service" means access to the functional equivalent of the use of the loop, as well as that portion of the switch that is paid for by the end user, necessary to access an interexchange carrier's network. Nexus meets this requirement by providing access to interexchange service.

8. Directory Assistance (47. C.F.R. § 54.101(a)(8)).

"Access to directory assistance" means access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. Nexus meets this requirement by providing access to directory assistance to customers.

9. Toll Limitation (47 C.F.R. § 54.101(a)(9)).

"Toll limitation" includes the offering of either "toll control" or "toll blocking" to qualifying low-income customers, as a means of limiting or blocking the completion of outgoing calls and the charges associated with these calls. Nexus meets this requirement by providing access to Toll Limitation.

B. Nexus Will Provide the Supported Services Through a Combination of its Own Facilities and Resale (47 C.F.R. § 54.201(d)(1))

1. Nexus as a "Blended" Facilities Common Carrier

As a blended facilities-based carrier that utilizes its own facilities in combination with the facilities and wholesale services of other carriers, Nexus complies with the Federal requirement that an ETC offer service over its own facilities. Nexus's service complies with FCC Rule 54.201(d) which states that a common carrier "either using its own facilities or a combination of its own facilities and resale of another carrier's services" shall be "eligible to receive universal service support" throughout the service area "for which the designation is received." As explained by the FCC:

We adopt the Joint Board's analysis and conclusion that a carrier need not offer universal service *wholly* over its own facilities in order to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.¹²

This is fully consistent with the three types of carriers envisioned in the federal Telecommunications Act of 1996, which are (1) pure facilities-based carriers that would need interconnection only; (2) pure resellers that would simply resell the services of another carrier; and (3) "combination" or "mixed-mode" carriers that would be neither purely facilities-based nor purely resale. Under the "mixed-mode" model, the telecom

¹¹ See 47 C.F.R. §54.201(d)(1).

¹² See In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776 at ¶ 169 (1997) ("USF Order").

entrant uses both the facilities of the interconnected carrier and its "own facilities," such as a switch or other "network elements" in order to compete.

2. Only Pure Resellers Need to Seek FCC Forbearance

Carriers that provide the supported services *exclusively* through resale of another carrier's services fall under the classification of a "pure reseller" making them ineligible for designation as an ETC. As a result, pure resellers are compelled to seek forbearance from the FCC to overcome the facilities requirement of 47 C.F.R. § 54.201 to receive ETC designation. Carriers that are not pure resellers are not required to seek FCC forbearance.

3. No Federal Forbearance Required for Combined Facilities-Based Common Carriers

Nexus, in contrast to "pure resellers" provides the supported services using a combination of its own facilities and resale and therefore need not seek forbearance from the provisions of 47 C.F.R. § 54.201. The Company directly meets the FCC's requirements for ETC designation by offering the "services that are supported by federal universal support mechanisms...either using its own facilities or a combination of its own facilities and resale of another carrier's service." Whenever a carrier relies, at a minimum, on the "combination" or "mixed-mode" standard, a commission must grant ETC designation "irrespective of the technology" deployed by the applicant. 14

4. Combined Facilities-Based Common Carriers May Locate Facilities According to Technical and Economic Feasibility

Because federal policy promotes the wide availability of affordable services, combined facilities-based common carriers must be able to locate their facilities according to

¹³ 47 C.F.R. § 54.201(d)(1). (Emphasis added.)

¹⁴ 47 C.F.R. § 54.201(h).

technical and economic feasibility. Accordingly, an ETCs' facilities may be placed at any physical location, so long as they are utilized "to provide services designated for support...within the service area." The FCC, in the *USF Order*, explained the rationale behind this principle and expressly rejected a strict interpretation of the term "facilities" that would violate the FCC's express policy of competitive neutrality, stating:

We also decline to adopt a more restrictive definition of the term "facilities," as some commenters suggest. For example, we reject the suggestion that we define "facilities" as both loop and switching facilities based on our concern that such a restrictive definition would erect substantial entry barriers for potential competitors seeking to enter local markets and, therefore, would unduly restrict the class of carriers that may be designated as eligible telecommunications carriers. Rather, we conclude that the definition of "facilities" that we adopt will serve the goals of universal service and competitive neutrality to the extent that it does not dictate the specific facilities that a carrier must provide or, by implication, the entry strategy a carrier must use and, therefore, will not unduly restrict the class of carriers that may be designated as eligible. ¹⁶

There is at present no state or federal definition or requirement as to the number or the amount of the supported services that an ETC must offer via its "own facilities." The ETC merely must provide at least one supported service through the use its own facilities, which Nexus does. Additionally, Federal law does not require any particular level of facilities. As further explained in the *USF Order*:

[W]e find that the statute does not dictate that a carrier use a specific level of its "own facilities" in providing the services designated for universal service support given that the statute provides only that a carrier may use a "combination of its own facilities and resale" and does not qualify the term "own facilities" with respect to the amount of facilities a carrier must use. For the same reasons, we find that the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services."

FCC Rules therefore define the term "own facilities" as "any physical components of the

¹⁵ 47 C.F.R. § 54.201(g).

¹⁶ See USF Order, 12 FCC Rcd 8776 at ¶ 153 (1997).

telecommunications network that are used in the transmission of the services that are designated for support."¹⁷ Nexus has physical components used in the transmission of supported services, and therefore meets the "own facilities" requirement.

5. Eligible Facilities-based Common Carriers Must Offer *Both* Lifeline and Link-Up

Combined facilities-based carriers who meet the ETC prerequisites must provide all of the Lifeline services listed under FCC rules. ¹⁸ Carrier obligations, however, do not end there. Because qualifying consumers may require assistance with nonrecurring costs, FCC rules also require that ETCs provide Link-Up services in conjunction with their Lifeline obligations. ¹⁹ In other words, unless specifically prohibited by the FCC, a facilities-based carrier like Nexus, is required to provide Lifeline *and* Link-Up. Therefore, Nexus is hereby petitioning for designation as an ETC to provide both Lifeline and Link-Up to its eligible customers.

C. Nexus Will Advertise the Availability of and the Charges for Its Universal Service Qualifying Offers in accordance with 47 C.F.R. § 54.201(d)(2)

Nexus will advertise the availability of the supported services detailed above, and the corresponding rates and charges, in a manner designed to inform the general public within the designated service area. This advertising will occur through a combination of media of general distribution, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.

Q. IN WHAT AREAS DOES NEXUS PROPOSE TO SERVE?

¹⁷ See 47 C.F.R. §§ 54.201(d) and (e).

¹⁸ See 47 C.F.R. §§ 54.101, 54.201(d), and 54.405.

¹⁹ See 47 C.F.R. § 54.411(a).

1	A. Nexus is not a tural telephone company as that term is defined in Section of
2	153(37) of the Communications Act. As such, Nexus is required to describe the
3	geographic area(s) within which it request designation as an ETC. ²⁰ In compliance with
4	this requirement, Nexus has included a listing of the wire centers that make up the
5	designated service area as Exhibit A to our Petition.
6	Nexus reiterates that it is applying for ETC designation solely for the purpose of
7	providing Lifeline and Link Up discounts to qualified low-income consumers and to seek
8	reimbursement for the same and will not seek or accept high cost support. As such,
9	Nexus' designation as an ETC will not pose any adverse effect in the growth in the high
10	cost portion of the Universal Service Fund ("USF"), nor will it create or contribute to an
11	erosion of high cost funding provided to or obtained by any rural or non-rural telephone
12	company. As Nexus' Designated Service Area is the same as that of AT&T Indiana and
13	Verizon, the Commission is authorized to designate Nexus as an ETC in non-rural areas
14	that Nexus will serve without redefining the service areas of non-rural telephone
15	companies. ²¹

IN ITS 2005 ETC ORDER, THE FCC ADOPTED ADDITIONAL Q.

REQUIREMENTS. HOW WILL NEXUS ADDRESS THESE?

Certainly. Please allow me to address them in sequence. A.

²⁰ Public Notice – Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, FCC 97-419, 12 Rcd 22947 (1997).

²¹ Nexus will not offer its ETC Service in areas that The Commission has not yet opened to local competition.

A. The Requirement to Provide Service Throughout its Proposed Designated Service Area to all Customers making a Reasonable Request for Service (47 C.F.R. §§ 54.202(a)(1)(A) and 54.202(a)(1)(B)

In order to be designated as an ETC, a common carrier in its application must "[c]ommit to provide service in its designated service area to all customers making a reasonable request for service and to do so "on a timely basis.²² As previously stated, Nexus provides service either using its own facilities or through a combination of its own facilities and resale of another carrier's services. As the networks of both Nexus and its underlying carrier are already operational and largely built-out, Nexus will be able to commence offering service, including Lifeline, to all qualified consumers as soon as it receives approval from the Commission. Nexus will also provide 911 compliant handsets at no charge to qualified low-income customers and will implemented procedures and internal systems necessary to offer its service programs including distribution of point-ofsale materials to authorized locations. In compliance with the requirements of 47 C.F.R. §§ 54.202(a)(1), 54.202(a)(1)(A) 54.202(a)(1)(B), Nexus certifies that it will 1) provide service throughout its proposed designated service area to all customers making a reasonable request for service; 2) provide service on a timely basis to requesting customers within its service area where the Company's network already passes the potential customer's premises; and 3) provide service within a reasonable period of time.

B. The Requirement to Submit a Five-Year Plan (47 C.F.R. § 54.202(1)(ii))

Federal Rules require an Petitioner to "[s]ubmit a fire-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire

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²² See §§ 54.202(a)(1) and 54.202(a)(1)(A).

center-by-wire center basis" that demonstrates "how signal quality, coverage or capacity will improve due to the *receipt of high-cost support*."²³ (Emphasis added) However, this requirement is based on the receipt of high-cost funding and is not applicable to an ETC that seeks designation solely for the receipt of low-income support. As Nexus is seeking designation solely to provide Lifeline and Link-Up support to qualified low-income consumers, and to seek reimbursement for the same, the submission of a five-year plan is not applicable to Nexus.

C. The Requirement to Demonstrate the Capability to Remain Functional in Emergency Situations (47 C.F.R. § 54.202(a)(2))

47 C.F.R. § 54.202(a)(2) requires an ETC to provide a "[d]emonstration of the carrier's ability to remain functional in emergency situations". Nexus certifies that it has the ability to remain functional in emergency situations, which includes access to reasonable amount of back- up power, rerouting of traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations.

D. The Requirement to Demonstrate That the ETC Will Satisfy Applicable Consumer Protection and Service Quality Standards (47 C.F.R. § 54.202(a)(3)

Nexus will satisfy all consumer privacy protection standards as provided in 47 C.F.R. § 64 Subpart U as applicable and will protect Customer Proprietary network Information ("CPNI") as required by state and federal law and will certify compliance of the same on an annual basis.

In addition, Nexus certifies that it will comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service as required by 47 C.F.R. § 54.202(a)(3). As a part of its Petition, Nexus has included, as **Exhibit B**, a copy

²³ See 47 C.F.R. § 54.202(a)(1)(ii).

of the CTIA consumer Code and will Nexus will file with the Commission any changes to the same.

E. The Requirement to Demonstrate that an ETC Will Offer a Local Usage Plan Comparable to That Offered by the Incumbent Local Exchange Carrier ("ILEC") (47 C.F.R. § 54.202(a)(4))

Federal Rules require an ETC to "[d]emonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation." However, the FCC has explained that the local usage plan(s) of an ETC applicant should be reviewed on a case-by-case basis²⁵ in order to ensure that each ETC is providing a local usage component as a part of its universal service offering that meets the requirements of the FCC's Rules²⁶. As the FCC has not adopted any minimum local usage requirements, an ETC is required to offer a local usage plan that is "comparable," not identical.

usage that is required to be included by an ETC as a part of its universal service offering.

27 In the <u>First Report and Order</u>, the FCC deferred a determination on the amount of local usage that a carrier would be required to provide. ²⁸ In a subsequent rulemaking docket, the FCC sought comment on a definition of the public service package that must be offered by all ETCs, including how much local usage should be required to be provided

With respect to wireless service, to date, the FCC has not quantified an amount of local

²⁴ See 47 CFR § 54.202(a)(ii)(4).

²⁵ See Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6385, ¶ 33 (2005).

²⁶ See 47 CFR § 54.201(a)(ii)(4).

²⁷ See NPCR, Inc, d/b/a Nextel Partners, 19 FCC Rcd 16530, 16536 (2004) ("Nextel Partners").

²⁸ See Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd at 8776, 8809-25 (1997).

to customers as a part of a universal service offering.²⁹ After considering public comments and recommendations of the Joint Board, the FCC, in July 2003, released an order declining to impose a specific amount of local usage as a condition of ETC status.³⁰ Recently, the FCC again sought comment on another set of recommendations by the Joint Board regarding ETC criteria and again declined to specify a minimum quantity of local usage.³¹ Instead, the FCC has determined that when a carrier offers a choice of rate plans containing varying amounts of local usage, it meets the local usage requirement.³² Nexus, consistent with the FCC's pronouncements, will allow qualifying consumers to select from a variety of plans that include varying amounts of local and domestic long distance usage. Nexus will also allow customers to purchase additional minutes of use, if needed, in varying quantities. In doing so, Nexus will fulfill the requirements of 47 CFR §§ 54.101(2) and 54.202(a)(4), which require an ETC to meet the local usage requirement by offering "a choice of rate plans."

F. The Requirement to Certify Acknowledgment that the ETC May be Required to Provide Equal Access (47 C.F.R. § 54.202(a)(5))

Per the requirements of 47 C.F.R. § 54.202(a)(5), Nexus certifies that it will "provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the designated service

²⁹ See Federal-State Joint Board on Universal Service, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21252, 21279-81 (1998).

³⁰ See Federal-State Joint Board on Universal Service, Order and Order on Reconsideration, FCC 03-170 at ¶ 14 (rel. July 14, 2003).

³¹ See <u>Federal-State Joint Board on Universal Service, Notice of Proposed Rulemaking,</u> 19 FCC Rcd 10800, 10826-27 (2004).

³² See e.g. Sprint Corp, DA 04-3617 at ¶ 11 (rel. Nov 18, 2004); <u>ALLTEL Communications</u>, <u>Inc.</u>, 19 FCC Rcd 20496, 20500-01 (2004); <u>Nextel Partners</u>, supra, 19 FCC Rcd at 16536.

area"33 pursuant to section 214(e).

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Q. PLEASE DESCRIBE HOW GRANTING THIS ETC STATUS TO NEXUS WILL BENEFIT THE PUBLIC INTEREST.

Under section 214 of the Act, the FCC and state commissions are responsible for A. determining "that an ETC designation is consistent with the public interest, convenience, and necessity" and whether "designation serves the public interest consistent with section 254 of the Act." Nexus seeks designation as an ETC in geographic area served by nonrural carriers AT&T and Verizon. Although Nexus is seeking ETC designation in areas typically served by wireline carriers, designation as an ETC will provide a valuable alternative to the existing telecommunications services currently available in these areas. As required by state and federal rules, Nexus submits that the public interest benefits of designating Nexus as an ETC include, but are not limited to, 1) a larger local calling area (as compared to traditional wireline carriers); 2) the convenience and security afforded by mobile telephone service; 3) the opportunity for customers to control cost by receiving a preset amount of free monthly airtime; 4) the ability to purchase additional usage in the event that included usage has been exhausted; 5) the ability of users to use the supported service to send and receive SMS text messages; and 6) 9-1-1 and, where available, E9-1-1 service in accordance with current FCC requirements. In addition, the inclusion of domestic telephone toll calling as a part of Nexus' wireless offering will allow consumers to avoid the risk of becoming burdened with large and unexpected charges for domestic

telephone toll and overage charges.

³³ See 47 C.F.R. § 54.202(a)(5).

The FCC has also identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest, which include whether the benefits of an additional ETC would outweigh potential harms. These factors include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.³⁴ Nexus affirms that its ETC designation meets these criteria as described following.

A. The Benefits of Increased Competitive Choice

The FCC has long acknowledged the benefits to consumers of being able to choose from variety of telecommunications providers and the resulting variety telecommunications services they provide.³⁵ This is of particular interest in cases where wireless providers, such as Nexus, seek to provide service as an alternative to those of the traditional incumbent LEC. In the Highland Cellular case, the FCC recognized and affirmed that some households may not have access to the public switched network as provided by the incumbent local exchange carrier. The availability of a wireless competitor benefits consumers, residing in the more rural exchanges of wireline providers such as AT&T Indiana and Frontier, who routinely drive long distances to attend work or school or to accomplish everyday tasks such as shopping or attending community and social events.³⁶ Nexus' wireless service will provide those consumers with a convenient and affordable alternative to traditional telecommunications service that is able to used while at home or away from home.

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³⁴ See 47 U.S.C. § 54.202(c).

³⁵ See e.g.. Specialized Common Carrier Services, 29 FCC2d 870 (1971).

³⁶ See <u>Highland Cellular, Inc. petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia</u>, 19 FCC Rcd 6422, ¶ 23 (2004).

Nexus believes that in today's market consumers, including those who qualify for Lifeline and Link-Up, view the portability and convenience of wireless service not as a luxury, but as a necessity. Wireless service allows children to reach their parents wherever they may be, provides persons seeking work the ability to be contacted by potential employers, and the security of contacting emergency service providers, regardless of location. Nexus fully expects many consumers will select the Company's wireless service in lieu of the more traditional wireline service. Nexus also notes that ETC designation of wireless companies is also supported by a number of consumer advocacy groups and was included with the Petition, as Exhibit C.

Nexus also believes that designation will also provide the incumbent LECs, serving the same area, an incentive to improve their existing networks and service offerings in order to remain competitive, which will result in improved consumer services and will benefit consumers by allowing Nexus to offer the services designated for support at rates that are "just, reasonable, and affordable."³⁷

B. Unique Advantages of Nexus' Service Offerings

As described throughout this Application, Nexus will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to qualified consumers either who have no other service alternatives or who choose a wireless prepaid solution in lieu of a more traditional wireline or wireless service. Qualified consumers will have the ability to acquire a wireless service that includes a free E911 compliant handset, local and domestic long distance calling, texting, and several other features, all without the requisite credit check, deposit, contract

³⁷ See 47 U.S.C. § 254(b)(1).

requirements, and monthly recurring service charges associated with more traditional wireline and wireless service providers.³⁸ Although not required to do so, customers will be able to purchase varieties of airtime cards at authorized retail outlets located throughout the designed service area, in denominations of \$3.00, \$5.00, \$10.00, \$20.00, \$30.00 and \$50.00. Unused replenishment minutes carry over to subsequent months. Airtime cards will be clearly and distinctly labeled in both English and Spanish with the available minutes for each denomination and will include instructions on how to load the minutes into the handset. Customers will be able to access their usage balances through their handset on a real time basis. In short, Nexus' Lifeline Service Plan offers qualified Lifeline customers a combination of wireless access and quality service at rates that are just, reasonable, and affordable.

Through the Link Up program, Nexus will be able to provide consumers with a reduction in the cost associated with the connection of service.

Because Nexus' Lifeline and Link Up service is available with no credit check, deposit requirement, minimum service periods, or early termination fees, the service will be an attractive and affordable alternative to all consumers, without regard to age, residency, or credit worthiness.

Nexus will offer qualified consumers the following Lifeline Service Plan.

1. Nexus Wireless Lifeline Plan

Lifeline is a component of one of four separate federal universal service fund mechanisms³⁹ know as the "low-income support mechanism." Lifeline is defined in 47

³⁸ Nexus is also fully compliant with the FCC's rules regarding hearing aid compatibility.

³⁹ See 47 C.F.R. § 54.8(a)(1); See "Definitions" at second sentence.

⁴⁰ See 47 C.F.R. § 54.8(a)(1); See "Definitions" at first sentence.

C.F.R. § 54.401 as "a retail local service offering" "available only to qualified low-income consumers" "for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount" "that includes the services or functionalities enumerated in § 54.401(a)(1) through (a)(9)", which the Company will use to "[m]ake available Lifeline service...to qualifying low-income consumers." Nexus commits that it will flow one hundred percent of the federal Lifeline support dollars it receives by providing qualified Lifeline customers, who reside in the State of Indiana, with a specified amount of free minutes depending on the Lifeline plan selected, which will be based on the amount of federal support available to Indiana residents. Currently, Nexus anticipates that it will receive the following amount of federal USF Lifeline support:

<u>Tier 1</u> - The tariffed rate in effect for the primary residential End User Common Line("EUCL") charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. Currently this amount is \$6.50.

<u>Tier 2</u> - \$1.75

Tier 3 - Additional federal matching credit of \$1.75

In addition to federal support, Nexus, consistent with current requirements, will provide an additional support amount of \$3.50 per month for each qualified customer bringing the total amount of monthly support per eligible resident in the requested designated service area in Indiana to \$13.50. Lifeline qualified consumers will be able to choose from the following Lifeline Plans.

following Lifeline Plans

⁴¹ See 47 C.F.R. §§ 54.401(a), 54.401(a)(1), 54 401 (a)(2), 54.401(a)(3), 54.405(a).

PLAN #1. Two hundred fifty (250) minutes of free airtime each month. Free minutes will automatically be added to each subscriber's prepaid account each month. 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 messaging does not carry over to the following month if unused. SMS text messaging will be available at a rate of one text per minute of airtime.

PLAN #2. One hundred twenty five (125) minutes of free airtime each month. Free minutes will automatically be added to each subscriber's prepaid account each month. Minutes are "anytime" minutes and can be used for domestic calls, including local or intrastate/interstate long distance calls. Unused minutes/SMS text messaging will carry over to the following month if unused. Domestic SMS text messaging will be available at a rate of one text messages per each minute of airtime. International SMS text messaging will be available at a rate of \$0.20 for each international text sent or receive.

PLAN #3. Sixty eight (68) minutes of free airtime each month. Free minutes will automatically be added to each subscriber's prepaid account each month. Minutes are "anytime" minutes and can be used for domestic calls, including local or intrastate/interstate long distance calls. Unused minutes/SMS text messaging carry over to the following month if unused. Domestic SMS text messaging will be available at a rate of two text messages per each minute of airtime, International SMS text messaging will be available at a rate of \$0.20 for each international text sent or received.

All plans will include caller ID, call waiting and basic Voice Messaging service. In the event that all included minutes are used, Lifeline customers will be allowed the option, but in no way will be required, to purchase special low volume usage cards in

denominations of \$3.00, \$5.00, \$10.00, \$20.00, \$30.00 and \$50.00. In addition, Nexus will offer qualified subscribers the benefit of an additional discount in the form of bonus minutes that will effectively reduce the cost per subscribers cost per minute. Details are provided in the chart below:

Airtime Card Face Value	Standard Minutes	Bonus Minutes	Total Minutes	Actual Cost per Minute
\$3.00	15		15	\$0.200
\$5.00	25	15	40	\$0.125
\$10.00	50	70	120	\$0.083
\$20.00	100	200	300	\$0.066
\$30.00	150	350	500	\$0.060
\$50.00	250	700	950	\$0.053

Wireless handsets will be delivered at no charge to qualifying customers, service will be activated, and the requisite number of free minutes will be added upon certification of the customer for Lifeline and Link-Up.

2. Nexus Link Up Plan

Like Lifeline, Link Up is also a component of one of four separate federal universal service fund mechanisms⁴² known as the "low-income support mechanism." Link Up is defined in 47 C.F.R. § 54.411 as an "assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligations set forth in §§ 54.101(a)(9) and 54.101(b)." (emphasis added)

⁴² See 47 C.F.R. § 54.8(a)(1); See "Definitions" at second sentence.

⁴³ See 47 C.F.R. § 54.8(a)(1); See "Definitions" at first sentence.

⁴⁴ See 47 C.F.R. § 54.411(a). The plain reading of this definition is that an ETC is obligated to provide this discount to qualifying low-income consumers. In addition, § 54.413(a) stipulates that carriers, that provide Link Up discounts, "may receive universal service support reimbursement for the revenue they forgo in reducing their customary charge for commencing telecommunications service..."

Assistance is in the form of a "reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection" and "shall be half of the customary charge or \$30.00, whichever is less". ⁴⁶ Nexus "customary charge for commencing telecommunications service" is \$72.00. Consistent with FCC requirements, Nexus will use Link Up support to reduce the company's "customary charge for commencing service" by an amount equal to the amount of Link Up support.

Qualifying subscribers will have the option of deferring the reduced activation charge over a twelve-month period with no interest allowing subscribers to obtain service without being required to pay any up front fees to activate service with Nexus.

C. Impact on the Universal Service Fund

As previously stated, Nexus' ETC designation will enable the Company to offer Lifeline and Link-Up benefits to eligible low income consumers and to seek reimbursement for the same. Nexus is not seeking access to universal service funds designated for high cost support. As such, the designation of Nexus as an ETC will have a minimal impact on the universal service fund. In fact, the FCC has stated that "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.⁴⁷ In 2005, low-income

⁴⁵ See § 54.101(a)(9) is the specific obligation to offer Telephone toll Limitation for qualifying low-income consumers while § 54.101(b) is the requirement that an "eligible telecommunications carrier must offer each of the" services designated for support "in order to receive federal universal service support". As a part of its application, Nexus has demonstrated that it has the capability to and will offer all of the supported services specified in § 54(a)(1) – (9).

⁴⁶ See 47 C.F.R. § 54.411(a)(1).

⁴⁷ See TracFone Forbearance Order, at ¶ 17.

support accounted for only 12.4 percent of the total distribution of the universal service fund while high-cost accounted for over 58 percent. Addressing the impact of additional ETC designations on the overall size of the fund, the FCC stated "any increase in the size of the fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline and Link Up programs, furthering the statutory goal of providing access to low-income consumers". The FCC further acknowledged the benefits of designating a carrier as an ETC, when the carrier is seeking only to participate in the Universal Service Fund's low-income program, which is exemplified in the following statement included in the FCC's May 1, 2008 Order establishing an interim cap on high-cost support:

Moreover, there are advantages in obtaining and maintaining an ETC designation regardless of whether a competitive ETC receives high-cost support. In particular, the ability of competitive ETCs to receive low-income universal service support shows value in obtaining and maintaining ETC designation separate and apart from high-cost support. 50

Further, by offering Lifeline and Link Up service, a competitive ETC may attract new subscribers that nay not otherwise have taken telephone service. This would increase a competitive ETC's base of subscribers and, consequently, lower its average cost of serving all of its subscribers. Moreover, competitive ETCs may be eligible for separate universal service support at the state level.⁵¹

It is also vital to accurately point out the differences between low-income funding for the Lifeline and Link Up programs and high cost funding. In the case of Lifeline and Link

⁴⁸ See 2007 Wireline Competition Bureau, FCC, <u>Trends in Telephone Service</u>, Table 19.1 and Chart 19.1.

⁴⁹ See <u>TracFone Forbearance Order</u>, at ¶ 17.

 $^{^{50}}$ See <u>High-Cost Universal Service Support, et al.</u>, Order, WC Docket No. 96-45, FCC 08-122 (released: May 1, 2008), ¶ 30.

⁵¹ *Id*.

Up support, an ETC receives USF support only for the customers they obtain and retain. For example, when a competitive ETC obtains a Lifeline customer from another ETC, only the "capturing" ETC receives support reimbursement. In contrast, under the high cost program when ETCs enter a market and capture customers from an existing ETC, both the losing ETC and the capturing ETC receive high cost support, which is based on the original cost incurred by the incumbent LEC, resulting in an increase to the size of the universal service fund.

D. Designation of Nexus as an ETC Will Benefit the Public Interest of Low Income Consumers Throughout the Designated Service Area in the State of Indiana

In 1984, the year that the Lifeline and Link-Up programs were established, wireless service was still in its infancy and landline service was the most common form of telecommunications service available to consumers. Since that time, new technologies have greatly expanded the range of telecommunications services available to consumers and wireless service has unshackled consumers from traditional landline service. As a result, wireless service should also be allowed to play a major role in bringing programs, such as Lifeline and Link-Up, into the 21st Century. Doing so also affirms cornerstone federal and state regulatory principles of competitive and technological neutrality. Lowincome consumers should have the same choice of the technology and service available to all other consumers. Participation in vital low-income programs, such as Lifeline and Link-Up, should not serve as a barrier to new technologies. These programs should instead be a channel to greater access to competitive choices, including wireless.

Approval of Nexus' ETC Application will serve the public interest by increasing participation of qualified consumers in the Lifeline and Link-Up programs in the State of

Indiana. It will also increase the number of carriers eligible for federal USF support, thereby proportionately increasing the amount of federal USF dollars available to Indiana consumers. Federal figures for 2009 indicate that Indiana received only \$102,858,000 of its total state USF contribution of \$145,484,000. This resulted in a negative USF dollar flow of \$43,626,000. Granting ETC status to Nexus will contribute to more Indiana residents receiving Lifeline and Link-Up, thereby increasing the amount of federal USF dollars flowing into and thereby benefiting Indiana residents. Indiana residents will get more of their money back. Nexus Lifeline and Link Up service also provides important benefits needed by lowincome Indiana residents in this time of economic downturn. As the commission is aware, the Dow Jones Average, a primary indicator of the health of the economy, has been running at a twelve (12) year low resulting in a depletion of the stocks and savings upon which many Americans depend on for emergencies and retirement. Since the start of the recession in December 2007, the number of unemployed persons nationally has increased 7.6 by million. By February of 2010, more than 15.1 million persons in the United States were unemployed and the national unemployment rate grew to 9.8 percent. Indiana's unemployment rate in December 2010 was reported at 9.5 percent, has had a significant impact on many residents of the state. Clearly, the availability of a mobile telephone will be critical to the efforts of the unemployed as they search for other employment opportunities. In fact, author and scholar Nicholas P. Sullivan, in association with a Washington think tank, produced a study that clearly indicated that access to wireless services could lead to a significant increase in income for millions of the poorest American households. Wireless access allows people to be reachable by potential

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employers and other job resources. According to the study, low-income applicants without access to a wireless phone are at a strategic disadvantage in comparison to higher income job applicants who are part of the "mobile workforce" because they are more likely to miss calls for work opportunities given that they cannot receive calls. According to Mr. Sullivan:

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Millions of Americans who are most in need are missing out today on the economic gains that other Americans attribute to their cell phones. The overall conclusion in this study is that the cell phone is extremely important to Americans for personal safety and a huge boon to an individual's potential economic productivity and earning power.

To explore the potential of cell phones as an income tool in the U.S. and the extent to which cell phones function as security in emergencies, Mr. Sullivan reported that he relied upon two major surveys: a statistically large online sampling of 110,000 prepaid cellular users and a scientific survey of 1,005 Americans by the Opinion Research Corporation. The report revealed that among those who *do not* own a cell phone, 37 percent are retired, 29 percent have a high school education or less, 38 percent make less than \$35,000 annually, and 30 percent are unemployed. Citing the online survey of the 110,000 prepaid cell phone customers, the Sullivan report pointed out that those identified as belonging to a working household attributed an annual income gain of \$2,361 to their cell phone. Based on this data, if non-cell phone households possessed the ability to obtain a phone, the total potential income gain would result in \$11.1 billion in additional annual revenue. In addition, survey participants, who used cell phones to aid them in their attempt to find work reportedly earned \$748.50 more per year than those individuals who did not have a cell phone. While this advantage was a little less for lower income families, survey participants who earned \$35,000 a year or

- less still reported making an additional \$530 per year simply by having a cell phone to aid them in their search for employment opportunities.
- If there is no regular paycheck, wireless telephone service becomes a necessity beyond
- 4 the means of many of those persons. For example, according to a March 2009 report by
- 5 the New Millenium Research Council:

- Nearly one in five Americans without a cell phone (19 percent) report that they have "discontinued cell phone service in the last six months because of actual job loss, fear of job loss, the recession, or any other related financial concerns." This figure includes 29 percent of 18-34 year olds and 28 percent of those living in households earning \$35,000 a year or less.
- More than one out of five Americans with contract-based cell phone service (21 percent) either "have considered cutting back" (4 percent) or already "have cut back" (17 percent) on their contract-based cell phone service due to job or recession-related concerns. This figure includes 41 percent of those in households making \$35,000 a year or less.
- About two out of five Americans with contract-based cell phone service (39 percent) will be "very" (19 percent) or "somewhat" (21 percent) likely to cut back on their cell phones to save money "if the economy gets worse in the next six months." This group includes 44 percent of those aged 18-34, 54 percent of those in households making \$35,000 a year or less, and 55 percent of African Americans.
- More than one in four Americans with contract-based cell phone service (26 percent) say they now are "more inclined today than ... six months ago to look at a way to save money on your cell phone bill, such as by switching to a prepaid cell phone service." This group includes 38 percent of those in households making \$35,000 a year or less, 32 percent of African Americans and 30 percent of those age 18-34. By contrast, 83 percent of those in households earning \$100,000 a year or more are not inclined to consider ways to save money on their cell phone bill like switching to prepaid phone service.
- Nearly one in five Americans who now have prepaid cell phone service (17 percent) say they switched in the last six months from a contract-based cell phone service due to job or recession-related concerns. This figure includes 23 percent of 18-34 year olds and 29 percent of African Americans with prepaid phones.
- Two thirds of prepaid cell phone customers say they are saving money "compared to a landline phone or contract-based cell phone." Fewer than three in 10 (29 percent) said they were not saving money.

Approval of Nexus' ETC Application will unshackle Lifeline subscribers from obsolete landline technology, bring Lifeline and Link-Up into the 21st century and will allow the Company to provide a low-income only wireless offering that will confirm the principle of competitive and technological neutrality consistent with federal and state requirements. Low-income consumers should not be restricted to only traditional landline technology. Added together, Nexus expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers to select the Company's wireless Lifeline and Link-Up service in lieu of the more traditional wireline or wireless services. In support of its wireless Lifeline service offerings, Nexus, as Exhibit C to its Petition, letters of support from consumer advocacy groups.

Finally, designation of Nexus as a wireless ETC will serve the public interest by furthering the extensive role that Nexus believes it will play in the provision of communications service to low-income consumers, transient users, and other consumers who, due to the restrictive credit criteria, deposit requirements, and long-term commitments of wireline and traditional wireless service providers, are off network and, without a viable alternative, are likely to remain so.

Q. HOW WILL NEXUS ENSURE THAT SERVICE IS RECEIVED ONLY BY OUALIFIED CUSTOMERS?

A. Nexus has implemented a non-usage policy to ensure that Lifeline support is being received only by those Lifeline qualified subscribers who use the service and to prevent reimbursement from the federal Universal Service Fund ("USF") for inactive subscribers.

Nexus non-usage policy provides that a wireless subscriber that exceeds sixty days

without any Utilization will be de-enrolled from the Company's wireless Lifeline Program. "Utilization" is defined as any transaction including, but not limited to, making or receiving a call, making an attempted call, checking voicemail message, sending or opening a text message, checking airtime balance, downloading content, data usage or adding airtime. In the event that none of the aforementioned types of usage occurs, Nexus will attempt to contact the Lifeline subscriber in an attempt to verify whether the service is still wanted. Upon de-enrollment for non-Usage, the wireless subscriber will have up to a thirty (30) day grace period to reenroll by demonstrating usage activity or by contacting the wireless Lifeline Program by calling 877-870-9444. Once a subscriber has been deenrolled from Lifeline, Nexus will cease seeking reimbursement from the federal USF for that subscriber. Should a subscriber reinstate as a Lifeline customer, within the 30 day period immediately following de-enrollment for non-usage ("grace period"), Nexus will re-enroll the subscriber in the Lifeline program and will apply all free usage to the subscribers account and will then seek reimbursement for the Lifeline benefits provided to the subscriber during the 30-day grace period. Should a subscriber re-enroll in Lifeline after the expiration of the 30-day grace period, Nexus will resume providing Lifeline benefits from the date of certification and will resume seeking reimbursement for the federal USF consistent with the subscriber's certification. Nexus non-usage policy not only ensures that subscribers with no usage will no longer continue to receive Lifeline benefits, but also ensures that reimbursement is not received for customers with inactive service accounts.

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Q. HOW WILL NEXUS COMPLY WITH LIFELINE AND LINKUP

CERTIFICATION REQUIREMENTS?

Sections 54.410 and 54.416 of the FCC's rules require ETCs to comply with the requirements of initial certification of eligibility and the verification of continued eligibility for participation in the Lifeline and Link Up programs. Nexus commits that it will certify and verify consumer eligibility in accordance with applicable Indiana and/or FCC rules governing both certification and verification of Lifeline and Link Up eligibility. Nexus has developed internal company procedures for initial certification of eligibility to ensure the potential subscriber truly is qualified for participation in these vital low-income programs and will make these materials available to the Commission upon request.

A.

A.

Q. HOW WILL NEXUS ASSIST AND COOPERATE WITH THE COMMISSION'S REGULATORY OVERSIGHT OF ETC FUNDS?

As stated in the Commission's investigation into "any and all matters relating to access reform and universal service reform," in Cause No. 40785, Dated November 5, 1997, "[a]ll applicants and future applicants should be aware that future orders...as well as future FCC Orders, may affect the requirements to be met in order to be designated as an ETC." As a result, the Commission "recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana" and that "[s]uch regulatory requirements stem from the FCC's mandate that state commissions certify that the federal USF funds are being used 'only for the provision, maintenance, and upgrading of facilities and services for which

1	the support is intended" In order to be able to satisfy its federal ETC certification
2	requirements, the IURC "requires ETC applicants to present evidence concerningtheir
3	proposed Lifeline/Link Up offering, including filing a Lifeline/Link Up tariff with the
4	Commission." Nexus will provide a copy of its proposed Lifeline/Link Up tariff to the
5	Commission within 30 days of ETC designation.
6	The Commission also requires ETCs, consistent with its regulatory oversight
7	responsibilities, "to present evidence ofaccounting protocols" that will "be used to
8	track and account for USF expenditures." As required, Nexus affirms that it is familiar
9	with and agrees to comply with USF tracking requirements previously established by the
10	IURC in its Nextel Order and that it will ensure that funds received from USAC for
11	Indiana are devoted to furthering universal service goals within its Indiana ETC service
12	territory.
13	In addition the Commissions has also set forth a series of additional requirements for
14	tracking of USF expenditures.

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Q. PLEASE DESCRIBE THE REPORTING REQUIREMENTS WITH WHICH

- 17 **NEXUS WILL COMPLY.**
- A. Consistent with the requirements of 47 C.F.R. § 54.209 and the Commission's ETC order, Nexus will comply with the following annual reporting requirements.
- A. Certification that Nexus will use universal service support only for the purpose for which the support is intended

47 C.F.R. § 54.7 states that a carrier that received federal universal service support shall use that support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended. Consistent with this requirement, Nexus commits that it will certify annually with the Commission that it will use all support received for the purpose for which the support is intended.

B. Detailed Information on any Outage

As required by § 54.209(a)(2), Nexus will report, on an annual basis, "any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration" that potentially affects 1) at least ten percent of the end users served in a designated service area; or 2) a 911 special facility. The report will include 1) the date and time of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected 4) the geographic areas affected; 4) the steps take to prevent a similar situation in the future; and 5) the number of customers affected.

C. Number of Request for Service that Went Unfulfilled

As required by § 54.209(a)(3), Nexus will report the number of request for potential customers within its ETC service area that were unfulfilled in the past year and how it attempted to provide service to those potential customers.

D. Number of Complaints per 1,000 Handsets

Consistent with the requirements of §54.209(a)(4), Nexus will annually report the number of complaints received by the Company from the FCC, this Commission, or the Better Business Bureau, per 1,000 handsets.

1 2 3		E. Compliance with Applicable Service Quality Standards and Consumer Protection Rules
4		As required by § 54.209(a)(5), Nexus will certify its continuing compliance with all
5		applicable service quality standards and consumer protection rules.
6		F. Certification That the Company is Able to Function in Emergency Situations
7		Consistent with the requirement of § 54.209(a)(6), Nexus will certify, on an annual basis,
8		its continued ability to remain functional in emergency situations.
9		G. Compliance with Local Usage Requirements
10		Pursuant to the requirements of § 54.209(a)(7), Nexus will certify annually that it offers a
11		local usage plan comparable to that offered by the incumbent LEC operating in the
12		designated service area.
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14	Q.	ARE THERE ADDITIONAL STATE REPORTING REQUIREMENTS WITH
15		WHICH NEXUS WILL COMPLY?
16		A. Yes. In addition to the federal reporting requirements, Nexus commits voluntary
17		compliance with the following quarterly and annual reporting requirements imposed by
18		the Commission on TracFone as a condition for approval as an ETC in Indiana.
19		A. The Number of Lifeline Customers in Indiana
20 21		Nexus will report to the Commission the number of active Lifeline customers in the State
22		of Indiana as of the beginning of the last calendar quarter. The reporting methodology
23		will be as follows: Number of Active Lifeline customers as of the beginning of the
24		beginning of the last calendar quarter plus the number of Lifeline customers added during

the last calendar quarter plus the number of Lifeline customers reactivated during the last

1	calendar quarter less the number of Lifeline customers deactivated during the last
2	calendar quarter.
3	B. The Number of New Lifeline Customers in Indiana
4	Nexus will report to the Commission the number of new Lifeline customers in the State
5	of Indiana added during the last calendar quarter.
6	C. The Number of Inactive Indiana Lifeline Customers
7	Nexus will report the total number of inactive Lifeline customers in the State of Indiana
8	whose service was reactivated during the last calendar quarter.
9	D. The Number of Indiana Lifeline Customers Deactivated
10	Nexus will report the total number of Lifeline customers in the State of Indiana whose
11	service was deactivated during the last calendar quarter.
12	E. The Amount of Federal Universal Service Fund Revenue Received in Indiana
13	Nexus will report the total amount of revenue received by the Company from the Federal
14	Universal Service Fund ("USF") for providing Lifeline service in Indiana during the last
15	calendar quarter.
16 17 18	F. The Number of Indiana Lifeline Customers Deactivated Due to Non-use or Cancellation
19	Nexus will report the number of Lifeline customers in the State of Indiana whose service
20	was deactivated during the last calendar year due to non-use or cancellation.
21 22	G. The Total Annual Expenditures of Promoting and Advertising Lifeline and Link Up in Indiana
23 24	Nexus will report its total annual expenditures for promoting and advertising Lifeline and
25	Link Up in Indiana during the last calendar year, detailed by category (e.g. print media,
26	broadcast media, direct mailings, etc).

1 2 3		H. The Number of Indiana Lifeline Customers Receiving Lifeline Service for one or more months
4		Nexus will report the number of Lifeline service customers in Indiana receiving Lifeline
5		service from Nexus for one or more months.
6		
7	Q.	DOES THIS CONCLUDE YOUR TESTIMONY?
8	A.	Yes, it does.

1 2	<u>VERIFICATION</u>
3	I, Steven Fenker, here affirm that the above statements are true and correct to the best of
4 5 6 7 8 9 10	my knowledge and belief. Steven Fenker Date: 6/30/201/
12 13	
14 15	CERTIFICATE OF SERVICE
16 17 18	The undersigned hereby certifies that a copy of the foregoing document has been served upon the following via electronic mail, hard copies available upon request, this 1st day of July, 2011:
19	
20	
21	Robert K. Johnson, Attorney-at-Law, Inc.
22 23	2454 Waldon Dr.
24	Greenwood, IN 46143
25	Tel: 317-506-7348
26 27 28	<u>rjohnson@utilitylaw.us</u> Indiana Attorney # 5045-49