

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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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 AND IN )  
PARTICULAR, THE PETITION OF NEXUS )  
COMMUNICATIONS, INC. TO BE SO )  
DESIGNATED FOR THE LIMITED )  
PURPOSE OF OFFERING WIRELESS )  
LIFELINE SERVICE TO QUALIFIED )  
HOUSEHOLDS )

CAUSE NO. 41052 ETC 59

APPROVED: NOV 7 2012

ORDER OF THE COMMISSION

**Presiding Officers:**  
**Larry S. Landis, Commissioner**  
**David E. Veleta, Administrative Law Judge**

On April 11, 2011, Nexus Communications, Inc. ("Petitioner" or "Nexus") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Indiana for the Limited Purpose of Offering Wireless Lifeline and Link-Up Service to Qualified Households ("Verified Petition") with the Indiana Utility Regulatory Commission ("Commission"). In its Verified Petition, Nexus sought designation as an ETC pursuant to §214(e)(2) of the Federal Communications Act of 1934, as amended ("Act") to provide wireless services supported by the Federal Universal Service Fund's ("USF") Lifeline and Link-Up program.

On July 1, 2011, Nexus pre-filed its direct testimony and exhibits. On September 2, 2011, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed the direct testimony of Senior Analyst Ronald Keen. On May 3, 2012, Nexus filed rebuttal testimony. On May 3, 2012, Nexus filed an unopposed motion to amend its Verified Petition so that it could withdraw its request for Link-Up support. On May 25, 2012, the Presiding Officers granted Nexus's motion to amend. On June 12, 2012, Nexus and the OUCC filed a Settlement Agreement purporting to resolve all issues and questions raised by the OUCC in this proceeding, and pre-filed testimony in support thereof.

On June 19, 2012, pursuant to notice duly published according to law, an evidentiary hearing was convened at 10:00 a.m. at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Nexus and the OUCC appeared and participated. No members of the general public were present or sought to testify. The testimony and exhibits of

the parties were admitted into evidence without objection. The Presiding Officers asked Petitioner's witness a brief series of questions.

The Commission, having examined all of the evidence of record, and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal, and timely notice of the hearing in this cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Act, 47 U.S.C. § 151 *et seq.*, and applicable Federal Communications Commission ("FCC") Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with the Commission's Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has jurisdiction pursuant to Indiana Code § 8-1-2.6-13(d)(5)(B). The Commission therefore has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a communications service provider which offers commercial mobile radio service ("CMRS") as acknowledged by the Commission in its CTA orders issued in Cause Nos. 42242 and 42364. Petitioner is also a common carrier as defined by 47 C.F.R. § 20.9 and a telecommunications carrier as defined by 47 U.S.C. § 153.

3. **Requirements for ETC Designation.** The Commission's November 5, 1997 Order in Cause No. 40785 ("40785 Order") adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the universal services or functionalities set out in 47 C.F.R. § 54.101(a). We note that the FCC modified the list of supported services that must be offered by ETC designees in the *USF/ICC Transformation Order*.<sup>1</sup> We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order*,<sup>2</sup> which is discussed in more detail below. In addition to offering the delineated universal services, to be eligible for designation as an ETC, applicants are required by 47 C.F.R. § 54.405 to offer qualifying low-income customers Lifeline programs. The Amended Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's Lifeline program as a wireless carrier. If the Amended Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Petitioner as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the supported services and the Lifeline programs using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the 40785 Order, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. *Federal-State Joint*

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<sup>1</sup> *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*")

<sup>2</sup> *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

*Board on Universal Service*, 20 FCC Rcd. 6371, 6389-6390 (2005) (“2005 FCC ETC Order”). The Commission adopted the FCC’s new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, the Commission issued the first “Lifeline only” ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 (“Virgin Mobile ETC Order”). Subsequently, we granted Lifeline only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54; i-Wireless, LLC in Cause No. 41052 ETC 56; TerraCom, Inc. in Cause No. 41052 ETC 60; Telrite Corporation in Cause No. 41052 ETC 58; and T-Mobile Central LLC and Powertel/Memphis, Inc. in Cause No. 41052 ETC 61 and Budget Prepay, Inc. d/b/a Budget Mobile in Cause No. 41052 ETC 63. In each of these Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*,<sup>3</sup> the FCC revised the ETC designation eligibility requirements by: (1) eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance from the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings; (2) requiring carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (3) eliminating the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (4) eliminating the requirement that Lifeline only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC’s *Lifeline Reform Order*<sup>4</sup> is designed to:

...substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund.

The *Lifeline Reform Order* changed the requirements pertaining to state ETC designations found in 47 C.F.R. § 54.201(h). In the Order, the FCC concluded that “in order to ensure Lifeline-only ETCs, whether designated by the [FCC] or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service.”<sup>5</sup> Relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.<sup>6</sup>

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<sup>3</sup> *Connect America Fund*, 27 FCC Rcd 605 (2012) (“*USF/ICC Clarification Order*”).

<sup>4</sup> *Lifeline Reform Order* at 6659.

<sup>5</sup> *Id.* at 6819.

<sup>6</sup> *Id.*

The *Lifeline Reform Order* modified and added new requirements for ETC designation that apply to ETC applications filed with state commissions that specifically adopt the additional requirements. The requirement to demonstrate financial and technical capability was added in 47 C.F.R. § 54.202(a)(4). The requirement to offer a Lifeline plan comparable to the incumbent local exchange carrier (“ILEC”) in the service areas for which it seeks designation was replaced with 47 C.F.R. § 54.202(a)(5), which requires ETC applicants to explain the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Additionally, once designated by this Commission as a Lifeline ETC, the designee’s Lifeline offerings must reflect a uniform \$9.25 per month federal reimbursement of the Lifeline discount; include specific disclosures in advertising and outreach; include required processes for determining initial and ongoing eligibility; and comply with the reporting and compliance obligations set forth herein. In keeping with the Commission’s past practice of adopting the FCC’s ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order*, as well as the requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner’s requested relief.

#### **4. Evidence Presented.**

(a) Petitioner’s Case-in-Chief. Nexus offered direct and rebuttal pre-filed testimony of Steven Fenker. Mr. Fenker set forth the FCC’s requirements for designation as a Lifeline-only ETC, including the changes made as a result of the *Lifeline Reform Order* and the *USF/ICC Transformation Order*. Mr. Fenker testified that Nexus meets the requirements to be designated as an ETC. Mr. Fenker testified that Nexus is a common carrier that offers the services that are supported by the Lifeline Program of the Federal Universal Service Fund. These services are embodied in the recently-revised FCC rule 47 C.F.R. § 54.101(a), which states that the supported services are “voice telephony services. . . [which must include] 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 the 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 carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services. . . .” In response to a question from the Presiding Officers at hearing, Mr. Fenker testified that 911 service will be provided by contract with Nexus’s underlying wireless provider in the same manner currently available to that provider’s own customers.

Mr. Fenker testified that Nexus’ service will meet all the technical elements of the supported service. Specifically, Mr. Fenker stated that Nexus will provide voice grade access to the public switched network; local usage at no additional charge to end users; access to emergency services to the extent available by the local government or public safety organization; and toll limitation service. Moreover, Mr. Fenker testified that Nexus would comply with all new requirements imposed in the FCC’s *Lifeline Reform Order*, which include providing the supported services, as defined in the revised FCC Rule at 47 C.F.R. § 54.101(a), to qualified Lifeline subscribers.

In his direct testimony, Mr. Fenker also testified that 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). In addition, Mr. Fenker discussed how Nexus meets the additional requirements adopted by the FCC in its *2005 FCC ETC Order*.

Specifically, he testified that: Nexus will provide service throughout its proposed designated service area to all customers making a reasonable request for service (previously embodied in 47 C.F.R. §§ 54.202(a)(1)(A) and 54.202(a)(1)(B)), and after the FCC's *Lifeline Reform Order*, embodied in revised 47 C.F.R. § 54.101(b). He noted the requirement to submit a five-year plan does not apply to lifeline-only ETCs such as Nexus (47 C.F.R. § 54.202(1)(ii)), which was recently confirmed by the FCC in the *Lifeline Reform Order* and in revised 47 C.F.R. § 54.202(a)(1)(ii). He also testified that Nexus meets the requirement to demonstrate the capability to remain functional in emergency situations (revised 47 C.F.R. § 54.202(a)(2)); will satisfy applicable consumer protection and service quality standards (revised 47 C.F.R. § 54.202(a)(3)); will offer a local usage plan comparable to that offered by the ILEC (which exceeds the requirements in revised 47 C.F.R. § 54.202(a)(4)); and agreed to certify acknowledgment that it may be required to provide equal access, even though this requirement was removed from the federal rules (previously embodied in 47 C.F.R. § 54.202(a)(5)).

Further, Mr. Fenker explained the public benefit of designating Nexus as an ETC, and highlighted the benefits of increased competitive choice, the unique advantages of Nexus's service offerings, Nexus's wireless Lifeline plan, and the impact on the Universal Service Fund. Mr. Fenker described Nexus's 60-day non-usage policy and Nexus's commitment to follow certification and verification procedures to make sure that its customers are eligible to receive Lifeline benefits. Mr. Fenker also explained that Nexus will comply with applicable annual reporting requirements. In addition to the federal reporting requirements, Mr. Fenker testified that Nexus would commit to comply with the quarterly and annual reporting requirements imposed by the Commission on TracFone as a condition for approval as an ETC in Indiana.

(b) OUCC's Evidence. The OUCC offered the pre-filed testimony of OUCC Senior Analyst Ronald L. Keen, which discussed and described the OUCC's analysis of and recommendations regarding Nexus's petition for designation as an ETC. Mr. Keen first explained that Nexus is a public utility under Indiana law.

Mr. Keen set forth the main issues the OUCC considers in ETC designation cases, including whether designation will contribute to three overall goals: promoting a healthy competitive environment to afford consumer choice; increasing Indiana's Lifeline take rate, thereby ensuring low income consumers in Indiana remain connected to the public switched telephone network; and ensuring that ETC designated providers are companies committed to Indiana communities and Indiana customers. Mr. Keen testified that Nexus's designation as an ETC would contribute to these goals.

Mr. Keen also described the Commission's requirements for ETC designation in Indiana, and explained that while the OUCC recommended the Commission grant Nexus's request, the OUCC would prefer that Nexus apply with the FCC for forbearance from the requirement that an ETC provide support services, at least in part, over its own facilities. 47 U.S.C. § 214(e). At the time of Mr. Keen's testimony, Nexus had not yet applied for

forbearance from this requirement.

Mr. Keen explained that although Nexus argued that it should not be required to obtain individual certification from PSAPs, because its underlying carrier's connection to the PSAPs is already fully functional, the OUCC nevertheless recommended that the Commission require Nexus obtain the PSAP certifications directly.

Mr. Keen also testified as to various public interest factors the OUCC had considered in evaluating Nexus's petition, including competitive choice, infrastructure, carrier of last resort obligations, rates, service quality, fraud, creamskimming, and public comments.

Mr. Keen explained that the OUCC recommended that Nexus be granted conditional designation as an ETC and that it should petition the FCC for forbearance from the "own facilities" requirement. In addition, the OUCC recommended that Nexus be required to submit annual reporting requirements on service outages, unfulfilled service requests, complaints, service quality, emergency functionality, local usage, and equal access.

Finally, Mr. Keen testified as to a number of other OUCC recommendations, including that Nexus be required to implement a policy for deactivation for non-use; the Commission impose minimum usage and tariff requirements; Nexus submit to the Commission its annual report to Universal Service Administrative Company ("USAC"); Nexus submit quarterly reports on program participation; Nexus require each customer to self-certify that they are the only member of their household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone; Nexus verify the eligibility of its subscribers annually; and Nexus pay applicable state fees, including InTRAC and IUSF fees.

(c) Petitioner's Rebuttal Evidence. Mr. Fenker explained how Nexus would comply with the changes implemented by the FCC's *Lifeline Reform Order* by withdrawing its request for Link-Up support; complying with new advertisement and disclosure policies and practices; and complying with new policies pertaining to subscriber eligibility, initial certifications, and annual verifications.

Mr. Fenker testified that under the *Lifeline Reform Order*, ETCs now receive a revised amount of federal Lifeline support, a flat \$9.25 per month. However, he noted Nexus will not change its service packages, which include a 250 minute (non-rollover) plan, a 125 minute (rollover) plan, and a 68 minute (rollover) plan.

Mr. Fenker also testified that Nexus will comply with the reporting requirements recommended by the OUCC, by providing detailed information on the number of requests for service that have gone unfulfilled, the number of complaints received per 1,000 handsets, service quality standards, certification that the company is able to function in emergency situations, and certification that the company offers a local usage plan comparable to that offered by the ILEC. Mr. Fenker explained that Nexus would also comply with the OUCC's additional recommended requirements, including offering a local usage plan comparable to the ILEC plan, the OUCC's recommended non-usage policy, minimum usage and tariff requirements, self-certification requirements, and request for annual verification of eligibility.

Mr. Fenker had asked the OUCC to clarify that it does not intend to require duplicate filings in those cases where its requirements mirror new FCC requirements. He also explained that the FCC has recommended against imposing minimum charges and minimum service packages, imposing a 90-day deactivation rule in light of the new FCC 60-day policy, and that although Nexus fulfills OUCC's recommendations, Nexus believes the FCC's subsequent statements render the OUCC's recommended requirements on these points moot. This position has not been challenged by the OUCC.

Mr. Fenker testified that, consistent with 47 C.F.R. § 54.202(a)(4), as amended by the *Lifeline Reform Order*, Nexus has the financial and technical capabilities to provide Lifeline service in Indiana.

Mr. Fenker also explained that Nexus is willing to comply with the Commission's requirements as listed on pages 22 and 23 of its January 25, 2012 order in Cause No. 41052-ETC-60, *In re TerraCom*, including implementing a non-usage plan, offering a 250-minute Lifeline service plan, and submitting a compliance plan.

In response to questions from the Presiding Officers at hearing, Mr. Fenker confirmed that no early termination fee would apply to a Lifeline customer, nor would a charge apply to a service call made via \*611.

**5. Settlement Agreement.** The OUCC and Nexus agreed to the following terms as part of their Settlement Agreement.

(a) Nexus shall deactivate a Lifeline account if the customer has no usage for sixty (60) consecutive days. Before deactivation, Nexus shall send the customer a written notice about the potential deactivation and ways to avoid unwanted deactivation. The customer shall have a thirty (30) day grace period from the deactivation date to reactivate the Lifeline account and restore the minutes accrued during the sixty (60) day non-usage period and the thirty (30) day grace period. At the end of the applicable 30-day period following notification of ineligibility, if the customer has not utilized the service, the customer will no longer receive a monthly allocation of free minutes and Nexus will no longer report the customer on FCC Form 497.

(b) Nexus shall offer Lifeline eligible customers a minimum of 68 free minutes per month and additional minutes at a charge of \$.20 per minute as provided in Mr. Keen's testimony. Prior to providing Lifeline service in Indiana, Nexus shall file a tariff of its proposed offering and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.

(c) Nexus shall provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.

(d) Nexus shall provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain

Lifeline supported services as of the date it provides Lifeline services in Indiana.

(e) Nexus shall obtain a certification from each PSAP where it seeks to provide Lifeline service confirming that Nexus provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met.

(f) Nexus shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. 54.401(a)(1) and 54.405 and abide by the FCC's 2011 Duplicative Program Payments Order, which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.

(g) Nexus shall provide the Commission with a copy of its annual Lifeline Verification survey results that it files with the USAC by August 31 of each year.

(h) On a quarterly basis Nexus shall provide the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month. In these quarterly reports, Nexus shall also report the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 60 consecutive days, unsuccessful annual verification, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Nexus will continue to make such quarterly filings until otherwise instructed by the Commission.

(i) To safeguard against misuse of the Lifeline service plan, Nexus shall deal directly with the customer and require each customer to self-certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.

(j) Nexus shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer self-certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.

(k) In the event the ILAP becomes law, Nexus shall seek Commission approval of its new Lifeline offering subject to the additional Indiana discount.

(l) Nexus shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTRAC monthly surcharge (currently \$0.03) multiplied by the number of active Nexus accounts during each month, consistent with Cause No. 39880 and Indiana Code § 8-1-2.8.

(m) Nexus shall pay applicable fees, such as the public utility fee, pursuant to Indiana

Code § 8-1-6, the InTRAC fee pursuant to Indiana Code § 8-1-2.8, the IUSF fee pursuant to the Commission's Order in Cause No. 42144, the wireless emergency enhanced 911 fee pursuant to Indiana Code § 36-8-16.5-30.5 and any other applicable fees.

(n) Nexus shall file with the Commission its FCC compliance plan demonstrating how it complies with the requirements of the Lifeline Program as revised by the *Lifeline Reform Order*.

**6. Commission Discussion and Findings.** Universal service funds are provided in four areas: (1) funds to support service to high cost areas; (2) provision of discounted telecommunications and internet access to eligible schools and libraries (also known as the "E-Rate" program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs; and (4) provision of discounted service to rural health care providers. *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, 22 FCC Rcd 16372, 16374 (2007).

Nexus seeks designation in Indiana for the limited purpose of offering wireless Lifeline service to low-income customers. Accordingly, Nexus's application does not implicate the other three Universal Service fund programs. Based on the evidence in the record and the discussion below, we find Nexus meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) of the Act and related FCC Rules for the limited purpose of offering Lifeline service in Indiana, and satisfies the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*.

Further, a Settlement Agreement which resolves questions raised by the OUCC was submitted in this proceeding. Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order - including the approval of a settlement - must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330,331 (Ind. 1991)). The Commission's own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, and consistent with the purpose of Indiana Code § 8-1-2, and that such agreement serves the public interest.

The Settlement Agreement entered into by Petitioner and the OUCC in this Cause is attached hereto and incorporated herein by reference. The Settlement Agreement presents

conditions which Petitioner has agreed to abide by in order to be designated as an ETC. The conditions are similar to conditions which the Commission has required other parties to abide by. Furthermore, some of the conditions and reporting requirements agreed to by Petitioner are more stringent than prior conditions imposed by the Commission on other parties. Specifically, the Settlement Agreement requires Nexus to obtain individual certification from PSAPs. This requirement for Lifeline-only resellers was relaxed by the FCC pursuant to the *Lifeline Reform Order*. Nexus has provided a statement from its underlying carrier indicating its connection to PSAPs is fully functional, and thus, this requirement seems unnecessary, but for the fact that Nexus voluntarily agreed to it. The Commission has made one alteration to the Settlement Agreement, for the purpose of making the “per minute” offering described in the Settlement Agreement consistent with the “per minute” offering submitted to the FCC in Nexus’s currently pending compliance plan. This modification is described in more detail below in Section (c). Therefore, based on the evidence presented and as set forth further below, we find the Settlement Agreement as modified herein is reasonable and in the public interest.

(a) **Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(11) as any person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Nexus is a “common carrier” for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

(b) **Services Required to Be Offered by an ETC.** The evidence confirms that upon designation as an ETC in Indiana, Nexus will provide all of the functionalities required of an ETC in the *Lifeline Reform Order* and pursuant to 47 C.F.R. §54.101(a) as follows:

i. **Voice-grade access to the public switched telephone network.** The FCC has concluded that voice grade service means the ability to make and receive phone calls within a specified bandwidth and frequency range. 47 U.S.C. § 54.101(a). We find that Nexus meets this requirement. No evidence was presented that Nexus’s customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Nexus satisfies this requirement.

ii. **Local usage.** ETCs must provide minutes of use for local service at no additional charge to end users. As the record demonstrates, Nexus will offer users the ability to send and receive local phone calls wherever the company offers service. For the monthly Lifeline subsidy of \$9.25, and free to eligible subscribers, customers will have a choice of Lifeline packages that include 250 free minutes per month (without rollover); 125 free minutes per month (with rollover); or 68 free minutes per month (with rollover), which may be used for local phone calls. Mr. Fenker noted that Nexus intends to offer Lifeline customers access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services, and call forwarding. Based on the evidence, we find that Nexus’s offerings satisfy this requirement.

iii. **Access to Emergency Services.** The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Mr. Fenker testified that 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. In response to a data request from the Commission, Nexus also provided information regarding its underlying wireless carrier indicating that the underlying carrier routes emergency calls from Nexus’s customers in the same manner it routes emergency calls from its own customers. Based on the foregoing, we find that Nexus satisfied this requirement.

iv. Toll Limitation for Qualifying Low-Income Consumers. Toll limitation allows customers to either block the completion of outgoing long distance calls or specify a certain amount of toll usage to prevent them from incurring significant long distance charges and risking disconnection. Nexus indicates that it will provide toll blocking to qualified Lifeline customers, at no charge, as part of its Lifeline offerings. Accordingly, we find that Nexus satisfies this requirement.

(c) Lifeline Service Offering Requirements. 47 C.F.R. § 54.202(a)(5) requires common carriers seeking designation as an ETC to submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Mr. Fenker provided evidence that Nexus will offer several lifeline plans, including a 250 minute non-rollover plan, a 125 minute rollover plan, and a 68 minute rollover plan, each with SMS text messaging available at a rate of one text per minute of airtime. All plans will include caller ID, call waiting and basic voice messaging service. Usage cards that supply additional minutes may be purchased in denominations of \$3.00, \$5.00, \$10.00, \$20.00, \$30.00 and \$50.00. However, for one of the prepaid usage cards there was an inconsistency between the per minute rates offered in a filing made in this proceeding and the per minute rate offered in the compliance plan submitted to the FCC. None of the usage cards in the compliance plan exceeded 15 cents per minute, while the Settlement Agreement permits a rate of 20 cents per minute. The Lifeline packages and per minute rates in usage cards should, at a minimum, be congruent with the packages and rates in the compliance plan approved by the FCC. We find the Settlement Agreement should be amended in this area and Petitioner’s tariff should be changed accordingly and resubmitted. In addition, Petitioners’ revised tariff and terms and conditions should reflect Mr. Fenker’s testimony indicating that Nexus does not charge Lifeline customers for \*611 calls. With these changes, the evidence shows that Nexus satisfies this requirement.

(d) Functionality in Emergency Situations. FCC Rule 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 has certified 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. Based on the foregoing, we find that Nexus meets the requirement to remain functional in emergency situations.

(e) Advertising Requirements. Nexus has demonstrated that it will advertise the availability of the supported services, 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. Nexus has all demonstrated that it will comply with the requirements of the *Lifeline Reform Order*, including the requirements that advertisements display the disclosures described in that Order. Based on the foregoing, we find that the evidence in the record indicates that Nexus will comply with all applicable advertising requirements.

(f) **Petitioner's Designated ETC Service Area.** The FCC's rules define "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). Nexus is authorized to provide telecommunications service throughout the State of Indiana, but only intends to offer Lifeline service in the non-rural ILEC territories of AT&T and Frontier. Based upon the foregoing, we approve Nexus's proposed service area for Lifeline ETC purposes.

(g) **Facilities-Ownership.** Nexus is not a facilities-based CMRS provider but will be reselling the services of another wireless carrier. Federal rules prohibit pure resellers from being designated as ETCs. However, the FCC can grant wireless resellers who seek ETC designation for the limited purpose of providing Lifeline services forbearance from the facilities requirement of 47 U.S.C. § 214(e)(1)(A) if the reseller files a compliance plan that is approved by the FCC and complies with certain 911 requirements. *See Lifeline Reform Order*, at 6813-6814. The evidence shows that Nexus submitted a compliance plan to the FCC on April 24, 2012. We note that the FCC had not approved the compliance plan before the record was closed in this proceeding, however the federal rules on the facilities requirement changed during the course of this proceeding. In this instance, we do not find it is in the public interest to delay this proceeding until the compliance plan is approved by the FCC. However, we do find Petitioner's ETC designation is conditioned upon the approval of its FCC compliance plan.

(h) **Public Interest Consideration.** As noted above, the designation of Nexus as an ETC requires a public interest analysis. *See 2005 FCC ETC Order*, at 6389-6390. In the absence of statutory strictures for evaluating the public interest, the FCC has recommended that ETC designations be analyzed "in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas." *2005 FCC ETC Order*, at 6388.

i. **Use of Lifeline Funding.** The record indicates that Nexus will use funds from the federal Lifeline program to provide supported services to Lifeline customers. Nexus has met its burden of proof for the Lifeline program. We find that Nexus plans are consistent with current FCC regulations on the use of such funds.

ii. **Impact on the Universal Service Fund.** We have previously recognized that the FCC has undertaken various steps to address the growth in high-cost universal support disbursements. *Perry-Spencer Communications, Inc.*, Cause No. 41052-ETC-53, 2008 Ind. PUC LEXIS 510, at \*33 (IURC July 24, 2008). Notably, however, Nexus is not seeking access to funding from the federal USF to provide service to high-cost areas. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By

tying support to actual service of a customer, the Lifeline program ensures that universal service fund support only funds the carrier that serves the customer. However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers.

We have historically underscored our concern that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. Therefore, we find as we did in the Virgin Mobile ETC Order that the public interest requires that we impose certain safeguards on Nexus. To ensure that a prepaid Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on Nexus's adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers; dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility among other conditions enumerated in this Order. Provided these requirements are satisfied, along with other conditions and safeguards promulgated in this Order and in FCC rules to deter waste fraud and abuse, we find that Nexus's Lifeline-only designation should not have an excessive impact on the universal service fund.

iii. Consumer Protection. The FCC found that an ETC applicant must make a specific commitment to objective measures to protect customers. *See 2005 FCC ETC Order.* Mr. Fenker stated that Nexus abides by the CTIA Consumer Code of Conduct and commits to complying with the applicable consumer protection requirements.

iv. Creamskimming. The FCC identified creamskimming as an appropriate factor to consider in "areas where an ETC applicant seeks designation below the study area level of a rural company." *See 47 C.F.R. § 54.202(c).* That type of analysis is unnecessary in this case since Nexus seeks ETC designation to serve only non-rural ILEC areas of AT&T and Frontier.

v. Increased Customer Choice. Currently in Indiana all ILECs are required to provide the Lifeline discount to eligible customers. In light of Indiana's low Lifeline take rate and the recent ETC relinquishments by other Indiana carriers, we agree with Mr. Keen's testimony that this offering brings increased competitive choice to the Lifeline eligible customers in Indiana and that this offering may reach a particular segment of Lifeline eligible customers that have not yet been reached. Based on the record, we find that Nexus's designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

vi. Affordable Rates. We must also consider whether designation as an ETC will "ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]" *2005 FCC ETC Order* at 6388. Nexus presented evidence that its Lifeline offering is free and includes a choice of 250 non-rollover-eligible anytime minutes, 125 rollover-eligible anytime minutes, or 68 rollover-eligible anytime minutes. Nexus's Lifeline offering also includes calling features including call waiting, caller

identification, and voice mail. Nexus allows qualified Lifeline subscribers to purchase certain optional features such as text messaging. Nexus offers these “pay-as-you-go” services so that customers need not purchase packages that are not completely beneficial to them. These packages are similar to other prepaid wireless ETC offerings previously approved by this Commission. The OUCC did not dispute the affordability of Nexus’s rates. Accordingly, we find that the designation of Nexus as an ETC would serve the public interest by providing additional competition. Therefore, Nexus should file tariffs consistent with the testimony filed herein prior to offering Lifeline services in Indiana.

vii. *Advantages and Disadvantages of the Offering.* The record reflects that Nexus’s service offering is comparable to ILEC Lifeline plans. Accordingly, we find that Nexus has satisfied this criterion of our public interest inquiry.

viii. *Commitment to Provide Service upon Reasonable Request.* Nexus provided evidence that to the extent that it does not currently have wireless coverage within a portion of its proposed ETC service area, it will consider requests for service consistent with its universal service obligations and, over time, will expand its coverage to serve consumers throughout its ETC service area. We find that Nexus’s commitments satisfy the requirements of 47 C.F.R. § 54.405(a). Accordingly, we find that Nexus has demonstrated its willingness and ability to provide service throughout its requested service area.

ix. *Additional Public Interest Analysis.* ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute its fair share to public interest funds from which its network and its customers benefit. Nexus has testified to its willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Indiana Code ch. 8-1-6, the InTRAC fee pursuant to Indiana Code ch. 8-1-2.8, and the Indiana Universal Service Fund pursuant to the Commission’s Order in *Commission Investigation of Universal Service Reform*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004). Based on the foregoing public interest analysis, we conclude that designating Nexus as an ETC will promote the public interest and further the goals of the Act.

7. **Regulatory Oversight.** This Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. See e.g., *Re Nextel*, Cause No 41052 ETC 43, 2004 Ind. PUC LEXIS 87, at \*84 (IURC March 17, 2004). Such regulatory requirements stem from the FCC’s mandate that state commissions certify that federal USF support is being used “only for the provision, maintenance and upgrading of facilities and services for which the support is intended,” consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. 47 U.S.C. § 254(e). In order for this Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to file a tariff with the Commission and track its USF expenditures. See *Commission Investigation of Universal Service*

*Reform*, Cause No. 40785, 1997 Ind. PUC LEXIS 354 (IURC November 15, 1997). The record reflects Nexus's intention to comply with the Commission's Lifeline tariff filing requirement. Applicant must also comply with USF tracking requirements this Commission previously established to ensure that funds received from Universal Service Administrative Company for Indiana are devoted to furthering universal service goals within Nexus's designated service area. Accordingly, we find that Nexus's terms and conditions of service should be incorporated into its Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Nexus making its universal service offering available to eligible consumers in Indiana.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Nexus committed in testimony to require each customer to self-certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Nexus indicated it will require Lifeline customers to provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income. Nexus will abide by the applicable regulations of the FCC and the Commission regarding certification and verification of customer eligibility.

Finally, we find that Nexus shall be required to meet the prospective reporting requirements consistent with new federal rules in 47 C.F.R. § 54.422 which include reporting: (1) the ETCs holding company and operating names, any affiliate relationships, and branding as well as universal service identifiers; (2) information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; (3) detailed information on any outage in the prior calendar year; (4) number of complaints per 1000 handsets; (5) certification of compliance with applicable service quality standards; and (6) certification that the carrier is able to function in emergency situations. Nexus's compliance filings should be filed under this Cause, due on July 1<sup>st</sup> of each year beginning in 2013, unless otherwise directed by the Commission. Furthermore, Nexus should provide the Commission with copies of the results of their annual recertification efforts performed pursuant to 47 C.F.R. § 54.410(f).

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Settlement Agreement shall be and hereby is approved, subject to the modifications herein.

2. Nexus's petition for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Nexus's evidence, shall be and hereby is granted, subject to the FCC's approval of Nexus's Compliance Plan.

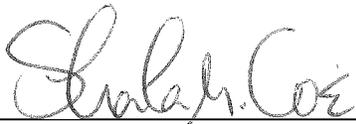
3. Nexus's request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Nexus's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

4. This Order shall be effective on and after the date of its approval.

**ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**

**APPROVED:      NOV 7 2012**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Shala M. Coe**  
**Acting Secretary to the Commission**

STATE OF INDIANA

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 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.

CAUSE No. 41052-ETC-59

SETTLEMENT AGREEMENT

CAUSE NO. 41052-ETC-59

**A. Introduction**

This Settlement Agreement (“Settlement”) is entered into by and between Nexus Communications, Inc. (“Nexus”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively the “Settling Parties”). The Settling Parties agree that this Settlement resolves all questions and issues raised by the OUCC in Indiana Utility Regulatory Commission (“Commission”) Cause No. 41052-ETC-59 regarding Nexus’s verified petition for designation as an Eligible Telecommunications Carrier (“ETC”) in Indiana, which was filed on April 11, 2011, and amended on May 4, 2012. The Settling Parties agree that this Settlement is a reasonable compromise and that each Settling Party, if called upon by the Commission, will explain how, in that Settling Party’s view, the Settlement is just and reasonable and in the public interest, based on substantial evidence of the record.

**B. The Settling Parties Agree that Nexus Should Be Designated as an ETC**

The Settling Parties agree that, based on the evidence presented in Nexus’s verified petition, the direct testimony of Steven Fenker, the direct testimony of Ronald L. Keen on behalf of the OUCC, and the rebuttal testimony of Steven Fenker, Nexus meets the requirements for designation as an ETC and that it is in the public interest for Nexus to be so designated.

**C. Evidence Supporting the Settlement**

**1. Petitioner’s Testimony**

Steven Fenker. Nexus offered direct and rebuttal pre-filed testimony of Steven Fenker. Mr. Fenker established the FCC’s requirements for designation as a Lifeline-only ETC, including the

changes made as a result of the *Lifeline Reform Order*<sup>1</sup> and the *USF/ICC Transformation Order*<sup>2</sup>. Mr. Fenker testified that Nexus meets the requirements to be designated as an ETC. He demonstrated that Nexus is a common carrier that offers the services that are supported by the Lifeline Program of the Federal Universal Service Fund.<sup>3</sup> These services are embodied in the recently-revised FCC rule 47 C.F.R. § 54.101(a), which states that the supported services are “voice telephony services. . . [which must include] 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 the 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 carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services. . .” Mr. Fenker’s direct testimony provides adequate detail to demonstrate that Nexus’ service will meet all the technical elements of the supported service. Specifically, the testimony demonstrates that Nexus will provide voice grade access to the public switched network, that it will provide local usage at no additional charge to end users, access to emergency services to the extent available by the local government or public safety organization, and toll limitation service.<sup>4</sup> Moreover, in Mr. Fenker’s rebuttal testimony, he testified that Nexus would comply with all new requirements imposed in the FCC’s *Lifeline Reform Order*, which include providing the supported services, as defined in the revised rule 54.101(a), to qualified Lifeline subscribers.

In his direct testimony, Mr. Fenker also testified that 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).

In addition, Mr. Fenker discussed how Nexus meets the additional requirements adopted by the FCC in its 2005 ETC Order. Specifically, he testified that:

- Nexus will provide service throughout its proposed designated service area to all customers making a reasonable request for service (previously embodied in 47 C.F.R. §§ 54.202(a)(1)(A) and 54.202(a)(1)(B)), and after the FCC’s *Lifeline Reform Order*, embodied in revised 47 C.F.R. § 54.101(b);
- The requirement to submit a five-year plan does not apply to lifeline-only ETCs such as Nexus (47 CFR § 54.202(1)(ii)), which was recently confirmed by the FCC in the *Lifeline Reform Order* and in revised 47 C.F.R. § 54.202(a)(1)(ii);
- Nexus meets the requirement to demonstrate the capability to remain functional in emergency situations (revised 47 CFR § 54.202(a)(2));

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<sup>1</sup> *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*”).

<sup>2</sup> *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, rel. November 18, 2011).

<sup>3</sup> 47 CFR § 54.101.

<sup>4</sup> These elements were previously listed in the FCC’s rules as separate “services,” along with other, additional services that were eliminated in the revised rule 54.101(a), including access to operator services, access to directory assistance. Mr. Fenker’s direct testimony separately addressed, therefore, each of the new elements of the new definition of supported services in detail.

- Nexus will satisfy applicable consumer protection and service quality standards (revised 47 CFR § 54.202(a)(3));
- Nexus will offer a local usage plan comparable to that offered by the incumbent local exchange carrier (“ILEC”) (which exceeds the requirements in revised 47 CFR § 54.202(a)(4)); and
- Nexus will certify acknowledgment that it may be required to provide equal access (previously embodied in 47 CFR. § 54.202(a)(5)).

Further, Mr. Fenker explained how designating Nexus as an ETC would benefit the public interest, highlighting the benefits of increased competitive choice, the unique advantages of Nexus’s service offerings, Nexus’s wireless Lifeline plan, and the impact on the Universal Service Fund. Mr. Fenker described Nexus’s 60-day non-usage policy and Nexus’s commitment to follow certification and verification procedures to make sure that its customers are eligible to receive Lifeline benefits. Mr. Fenker also explained that, consistent with the requirements of the FCC and the Commission’s ETC order, Nexus will comply with applicable annual reporting requirements. In addition to the federal reporting requirements, Mr. Fenker testified that Nexus would voluntarily commit to comply with the quarterly and annual reporting requirements imposed by the Commission on TracFone as a condition for approval as an ETC in Indiana.

In his rebuttal testimony, Mr. Fenker explained how Nexus would comply with the changes implemented by the FCC’s *Lifeline Reform Order* by withdrawing its request for Link Up support; complying with new advertisement and disclosure policies and practices; and complying with new policies pertaining to subscriber eligibility, initial certifications, and annual verifications.

Mr. Fenker testified that although under the *Lifeline Reform Order*, ETCs now receive a revised amount of federal Lifeline support, a flat \$9.25 per month, Nexus will not change its service packages, which include a 250 minute (non-rollover) plan, a 125 minute (rollover) plan, and a 68 minute (rollover) plan.

Mr. Fenker also testified that Nexus will comply with the reporting requirements recommended by the OUCC, including by providing detailed information on the number of requests for service that have gone unfulfilled, the number of complaints received per 1000 handsets, service quality standards, certification that the company is able to function in emergency situations, and certification that the company offers a local usage plan comparable to that offered by the ILEC. Mr. Fenker explained that Nexus would also comply with the OUCC’s additional recommended requirements, including offering a local usage plan comparable to the ILEC plan, the OUCC’s recommended non-usage policy, minimum usage and tariff requirements, self-certification requirements, and request for annual verification of eligibility. Mr. Fenker had asked the OUCC to clarify that it does not intend to require duplicate filings in those cases where its requirements mirror new FCC requirements. He also explained that the FCC has recommended against imposing minimum charges and minimum service packages, imposing a 90-day deactivation rule in light of the new FCC 60-day policy, and that although Nexus fulfills OUCC’s recommendations, Nexus believes the FCC’s subsequent statements

render OUCC's recommended requirements on these points moot. This position has not been challenged by the OUCC.

Mr. Fenker testified that, consistent with 47 CFR § 54.202(a)(4), as amended by the *Lifeline Reform Order*, Nexus has the financial and technical capabilities to provide Lifeline service in Indiana.

Mr. Fenker also explained that Nexus is willing to comply with the Commission's requirements as listed on pages 22 and 23 of its January 25, 2012 order in Cause No. 41052-ETC-60, *In re TerraCom*, including implementing a non-usage plan, offering a 250-minute Lifeline service plan, and submitting a compliance plan.

## 2. OUCC Testimony

Ronald L. Keen. The OUCC offered the pre-filed testimony of OUCC Senior Analyst Ronald L. Keen, which discussed and described the OUCC's analysis of and recommendations regarding the Nexus's petition for designation as an ETC. Mr. Keen first explained that Nexus is a public utility under Indiana law.

Mr. Keen then explained the main issues the OUCC considers in ETC designation cases, which include whether designation will contribute to three overall goals: promoting a healthy competitive environment to afford consumer choice; increasing Indiana's Lifeline take rate, thereby ensuring low income consumers in Indiana remain connected to the public switched telephone network; and ensuring that ETC designated providers are companies committed to Indiana communities and Indiana customers. Mr. Keen testified that Nexus's designation as an ETC would contribute to these goals.

Mr. Keen also described the Commission's requirements for ETC designation in Indiana, and explained that while the OUCC recommended the Commission grant Nexus's request, the OUCC would prefer that Nexus apply with the FCC for forbearance from the requirement that an ETC provide support services, at least in part, over its own facilities. 47 USC §214(e). At the time of Mr. Keen's testimony, Nexus had not yet applied for forbearance from this requirement. It has now done so by filing the requisite compliance plan on April 24, 2012.

Mr. Keen explained that although Nexus argued that it should not be required to obtain individual certification from PSAPs, because its underlying carrier's connection to the PSAPs is already fully functional, the OUCC nevertheless recommended that the Commission require Nexus obtain the PSAP certifications directly.

Mr. Keen also testified as to various public interest factors the OUCC had considered in evaluating Nexus's petition, including competitive choice, infrastructure, carrier of last resort obligations, rates, service quality, fraud, creamskimming, and public comments.

Mr. Keen explained that the OUCC recommended that Nexus be granted conditional designation as an ETC and that it should petition the FCC for forbearance from the "own facilities" requirement. In addition, the OUCC recommended that Nexus be required to submit

annual reporting requirements on service outages, unfulfilled service requests, complaints, service quality, emergency functionality, local usage, and equal access.

Finally, Mr. Keen testified as to a number of other OUCC recommendations, including that Nexus be required to implement a policy for deactivation for non-use; that the Commission impose minimum usage and tariff requirements; that Nexus submit to the Commission its annual report to USAC; that Nexus submit quarterly reports on program participation; that Nexus require each customer to self-certify that they are the only member of their household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone; that Nexus verify the eligibility of its subscribers annually; and that Nexus pay applicable state fees, including InTRAC and IUSF fees.

**D. The Settling Parties Agree that Nexus Meets the Conditions for Designation Recommended by the OUCC**

1. In light of Nexus's rebuttal testimony and its amendment of its ETC petition to reflect compliance with the OUCC's recommended conditions and new federal requirements under the *Lifeline Reform Order*, the Settling Parties agree that Nexus has met or has demonstrated that it will meet all of the conditions recommended by the OUCC. Specifically, Nexus:
  - (a) Nexus shall deactivate a Lifeline account if the customer has no usage for sixty (60) consecutive days. Before deactivation, Nexus shall send the customer a written notice about the potential deactivation and ways to avoid unwanted deactivation. The customer shall have a thirty (30) day grace period from the deactivation date to reactivate the Lifeline account and restore the minutes accrued during the sixty (60) day non-usage period and the thirty (30) day grace period. At the end of the applicable 30-day period following notification of ineligibility, if the customer has not utilized the service, the customer will no longer receive a monthly allocation of free minutes and Nexus will no longer report the customer on FCC Form 497.
  - (b) Nexus shall offer Lifeline eligible customers a minimum of 68 free minutes per month and, for additional minutes, at a charge of \$.20 per minute as provided in Mr. Keen's testimony. Prior to providing Lifeline service in Indiana, Nexus shall file a tariff of its proposed offering and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.
  - (c) Nexus shall provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.
  - (d) Nexus shall provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain Lifeline supported services as of the date it provides Lifeline services in Indiana.

- (e) Nexus shall obtain a certification from each PSAP where it seeks to provide Lifeline service confirming that Nexus provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met.
- (f) Nexus shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. 54.401(a)(1) and 54.405 and abide by the FCC's 2011 Duplicative Program Payments Order, which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy
- (g) Nexus shall provide the Commission with a copy of its annual Lifeline Verification survey results that it files with the USAC by August 31 of each year.
- (h) On a quarterly basis Nexus shall provide the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month. In these quarterly reports, Nexus shall also report the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 60 consecutive days, unsuccessful annual verification, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Nexus will continue to make such quarterly filings until otherwise instructed by the Commission.
- (i) To safeguard against misuse of the Lifeline service plan, Nexus shall deal directly with the customer and require each customer to self-certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.
- (j) Nexus shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer self-certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.
- (k) In the event the ILAP becomes law, Nexus shall seek IURC approval of its new Lifeline offering subject to the additional Indiana discount.
- (l) Nexus shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTRAC monthly surcharge (currently \$0.03) multiplied by the number of active Nexus accounts during each month, consistent with Cause No. 39880 and Indiana Code § 8-1-2.8.
- (m) Nexus shall pay applicable fees, such as the public utility fee, pursuant to Indiana Code § 8-1-6, the InTRAC fee pursuant to Indiana Code § 8-1-2.8, the IUSF fee pursuant to the

Commission's Final Order in Cause 42144, the wireless emergency enhanced 911 fee pursuant to Indiana Code § 36-8-16.5-30.5 and any other applicable fees.

- (n) Nexus shall file with the Commission its FCC compliance plan demonstrating how it complies with the requirements of the Lifeline Program as revised by the *Lifeline Reform Order*.
2. The Settling Parties agree that Nexus otherwise fulfills all requirements for designation as an ETC and that the OUCC advises that no additional requirements need be imposed on Nexus by the Commission as conditions of its designation.
  3. The Settling Parties therefore recommend that the Commission grant Nexus's request for designation as a Lifeline-only ETC.
  4. The Settling Parties will support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. This Settlement is a complete, interrelated package, and the Settling Parties believe that it should be accepted in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party.
  5. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.
  6. The provisions of this Settlement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED AND AGREED TO THIS 12<sup>th</sup> DAY OF JUNE 2012:

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Steven Fenker, President  
Nexus Communications, Inc.

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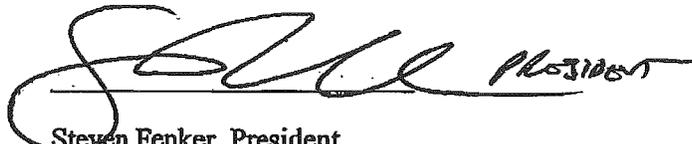
Lorraine Hitz-Bradley, Deputy Consumer Counselor  
Indiana Office of Utility Consumer Counselor

Commission's Final Order in Cause 42144, the wireless emergency enhanced 911 fee pursuant to Indiana Code § 36-8-16.5-30.5 and any other applicable fees.

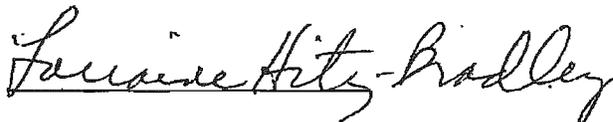
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ACCEPTED AND AGREED TO THIS 12<sup>th</sup> DAY OF JUNE 2012:

Handwritten signature of Steven Fenker in black ink, with the number '12531055' written to the right of the signature.

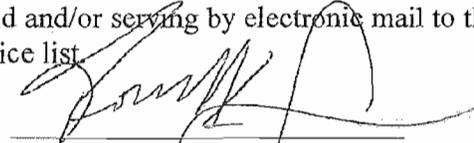
Steven Fenker, President  
Nexus Communications, Inc.

Handwritten signature of Lorraine Hitz-Bradley in black ink.

Lorraine Hitz-Bradley, Deputy Consumer Counselor  
Indiana Office of Utility Consumer Counselor

CERTIFICATE OF SERVICE

I hereby certify that I have on this 12th day of June, 2012, served the foregoing document by mailing copies, first class, postage prepaid and/or serving by electronic mail to the parties identified on the Commission's official service list.



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