

ORIGINAL

NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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Commissioner

Arizona Corporation Commission

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Commissioner

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TOM FORESE
Commissioner

APR 11 2016

ANDY TOBIN
Commissioner

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION
OF NEXUS COMMUNICATIONS, INC.
FOR APPROVAL OF RELINQUISHMENT
OF ITS ELIGIBLE
TELECOMMUNICATIONS CARRIER
DESIGNATION

Docket No. T-20871A-16-0124

APPLICATION

Nexus Communications, Inc. ("Nexus" or the "Company"), by its counsel, respectfully requests approval to relinquish its Eligible Telecommunications Carrier ("ETC") designation in Arizona pursuant to the procedural recommendation from the staff of the Arizona Corporation Commission ("Commission"). Nexus requests that the relinquishment be effective May 31, 2016, or upon Commission approval, and that its Arizona Wireless Services Tariff (issued through Decision 74011) be cancelled on that date as well.

I. BACKGROUND

Nexus Communications, Inc. is an Ohio corporation with its principal place of business at 3629 Cleveland Avenue, Suite C, Columbus, Ohio 43224. Nexus provides Commercial Mobile Radio Service ("CMRS") through the resale of service of other wireless carriers.

201 E Washington Street Suite 1200
Phoenix, Arizona 85004-4429

Lewis Roca
ROTHGERBER CHRISTIE

1 On July 30, 2013, the Commission approved the application of Nexus
2 Communications, Inc. for designation as a wireless ETC pursuant to 47 U.S.C. § 214(e)(1)
3 for the purpose of receiving federal universal service Lifeline support in Arizona, for the
4 designated service area set forth in the application and subject to the conditions set forth in
5 Decision No. 74011, Finding of Fact No. 43.

6 Nexus intends to relinquish its ETC designation in all areas of Arizona for which it
7 is currently so designated, with such relinquishment to become effective May 31, 2016, or
8 upon Commission approval. Relinquishment of Nexus' ETC designation will not affect
9 the amount of federal Lifeline support available to other ETCs in the state or deprive
10 eligible subscribers access to Lifeline service from other ETCs.

11 II. DISCUSSION

12 Nexus is entitled to relinquish its ETC designation pursuant to 47 U.S.C. §
13 214(e)(4) which states, in pertinent part:

14 A State commission...shall permit an eligible
15 **telecommunications carrier to relinquish its designation as**
16 **such a carrier in any area served by more than one eligible**
17 **telecommunications carrier.** An eligible telecommunications
18 carrier that seeks to relinquish its eligible telecommunications
19 carrier designation for an area served by more than one eligible
20 telecommunications carrier shall give advance notice to the
21 State commission...of such relinquishment. Prior to permitting
22 a telecommunications carrier designated as an eligible
23 telecommunications carrier to cease providing universal
24 service in an area served by more than one eligible
25 telecommunications carrier, the State commission... shall
26 require the remaining eligible telecommunications carrier or
carriers to ensure that all customers served by the relinquishing
carrier will continue to be served, and shall require sufficient
notice to permit the purchase or construction of adequate
facilities by any remaining eligible telecommunications carrier.

(Emphasis added.)

24 The Federal Communications Commission ("FCC") rule reiterates these statutory
25 requirements by providing, in pertinent part, that a "state commission shall permit" an
26 ETC to "relinquish its designation as such in any area served by more than one [ETC]." 47

1 C.F.R. § 54.205(a). The FCC rule also requires that the ETC “shall give advance notice to
2 the state commission of such relinquishment.” *Id.* Finally, the FCC rules require state
3 commissions to ensure that the relinquishing ETC’s subscribers will be served by the
4 remaining ETC(s) and ensure sufficient notice to permit the purchase and construction of
5 facilities, if necessary. 47 C.F.R. § 54.205(b).

6 The Commission, when it granted Nexus’ ETC status, provided a procedural
7 mechanism by which relinquishment would occur:

8 In the event that Nexus requests to relinquish its ETC status
9 and no longer provide Lifeline services, it must provide notice
10 to both the Commission and its customers. Such notice(s) shall
11 be in accordance with A.A.C. R14-2-1107....¹

12 A.A.C. R14-2-1107 sets forth the following procedure:

13 A. Any telecommunications company providing
14 competitive local exchange or interexchange service on
15 a resold or facilities-based basis that intends to
16 discontinue service or to abandon all or a portion of its
17 service area shall file an application for authorization
18 with the Commission setting forth the following:

- 19 1. Any reasons for the proposed discontinuance of
20 service or abandonment of service area;
- 21 2. Verification that all affected customers have been
22 notified of the proposed discontinuance or
23 abandonment, and that all affected customers will
24 have access to an alternative local exchange
25 service provider or interexchange service
26 provider;
3. Where applicable, a plan for the refund of
deposits collected pursuant to subsection R14-2-
503(B);
4. A list of all alternative utilities providing the
same or similar service within the affected
geographic area.

¹ Decision No. 74011, Finding of Fact 43(f).

1 **III. REASONS FOR DISCONTINUANCE OF ETC SERVICE**

2 Nexus is requesting relinquishment of its Lifeline-only ETC designation in response
3 to changes in the industry and proposed modifications to the Lifeline program.

4 **IV. VERIFICATION OF NOTICE AND ACCESS TO ALTERNATIVE**
5 **SERVICE**

6 On March 22, 2016, all Nexus subscribers were notified by text message of Nexus'
7 proposed discontinuance of service as follows:

8 ReachOut Wireless will stop providing your service on April 22. Please contact
9 another Lifeline provider like SafeLink or Assurance Wireless if you still want
10 Lifeline service after April 22. Questions? Call 1-866-392-7123.

11 This text message notice alerted subscribers of the April 22 discontinuance date, which
12 Nexus determined as reasonable based on a plain language reading of its ETC designation
13 order. Pursuant to recommendations from Commission staff, Nexus has since sent a
14 customer notice letter revising the proposed discontinuance date, as discussed below.

15 On April 11, 2016, Nexus sent a letter by U.S. Mail to each of its subscribers,
16 notifying them that Nexus plans to relinquish its ETC status in Arizona, file an application
17 with the Commission seeking approval of that change, provide further notice to customers
18 of exact discontinuance date upon regulatory approval, and discontinue service May 31,
19 2016, subject to regulatory approval. The letter also informed these subscribers that, upon
20 ETC relinquishment, a Lifeline discount could be obtained from the remaining ETC(s) in
21 the area. **Exhibit A** to this Application is a sample copy of the notification letter Nexus
22 sent its Lifeline subscribers. **Exhibit B** is an affidavit attesting that the notification letters
23 were sent on April 11, 2016.

24 Upon Commission approval of the Application, each subscriber will receive at least
25 one text message reminder from Nexus regarding the discontinuation of the Lifeline
26

1 discount. The message will also direct the subscriber to its customer service line and
2 alternative Lifeline providers.

3 **A. REQUEST FOR WAIVER OF AAC R14-2-1107(B)**

4 Nexus seeks waiver of compliance with A.A.C. R14-2-1107(B), which requires
5 publication of legal notice within 20 days of filing this Application. Waiver is reasonable
6 for several reasons: (i) legal notice in multiple counties is prohibitively expensive,
7 especially for a small company like Nexus that is in the process of winding up its business;
8 (ii) affected subscribers will already be notified with both text message and formal letter;
9 (iii) as shown below, Nexus subscribers will have ample access to alternative wireless
10 Lifeline service in Arizona, including TracFone Wireless d/b/a SafeLink or Virgin Mobile
11 d/b/a Assurance Wireless, as stated in the notice to subscribers; and (iv) Nexus' ETC
12 designation order only calls for notice to the Commission and subscriber, but does not
13 require publication of legal notice.

14 **V. NO DEPOSITS TO REFUND**

15 Nexus does not require its Lifeline subscribers to pay a deposit to initiate or
16 maintain service. Therefore, no plan for the return of deposits is necessary.

17 **VI. LIST OF ALTERNATIVE CARRIERS IN AFFECTED GEOGRAPHIC**
18 **AREA**

19 Nexus was certified to operate as an ETC in the geographic service areas where its
20 underlying carrier, Verizon Wireless, provides coverage, with the exception of Federally-
21 Recognized Tribal Lands located within the State of Arizona. Further, there are several
22 alternative carriers that provide competitive wireless Lifeline service in non-Tribal areas of
23 the state, including TracFone Wireless, TerraCom, i-wireless, Budget Prepay, Global
24 Connection Inc. of America, Q Link Wireless, Virgin Mobile, Telrite, Blue Jay Wireless,
25 Total Call Mobile, and Boomerang Wireless. Given that there is already at least one other
26

1 ETC in all areas in which Nexus is currently designated as an ETC, the requirements for
2 relinquishment set forth in 47 U.S.C. § 214(e)(4) and 47 C.F.R. § 54.205 have been met.

3 Nexus owns no facilities in Arizona as evidenced by the fact that it sought approval
4 from the FCC of its Lifeline Compliance Plan, which the FCC approved.² Because Nexus
5 does not own facilities in Arizona, there is no need for other carriers to purchase or
6 construct facilities to ensure that Nexus' subscribers will continue to receive service.
7 Therefore, the notice to other carriers described in 47 U.S.C. § 214(e)(4) is unnecessary.

8 Questions concerning the ongoing operations of Nexus following discontinuance
9 should be directed to the persons listed below:

10 Zeb Zankel
11 Davis Wright Tremaine LLP
12 505 Montgomery Street, Suite 800
13 San Francisco, CA 94110
14 Phone: (415) 276-6551
15 Email: zebzankel@dwt.com

16 Steven Fenker, President
17 Nexus Communication, Inc.
18 3629 Cleveland Avenue - Suite C
19 Columbus, OH 43224
20 Telephone: (740) 549-1092
21 Email: steve@tsihomephone.com

22 VII. RELINQUISHMENT TIMELINE

23 Nexus seeks relinquishment of its ETC designation effective May 31, 2016 or upon
24 Commission approval. Upon approval, Nexus will provide further notice to its customers
25 of the exact date of discontinuance. Accordingly, Nexus respectfully requests the
26

² *In Re Wireline Competition Bureau Approves the Compliance Plans of AirVoice Wireless, AmeriMex Communications, Blue Jay Wireless, Millennium 2000, Nexus Communications, PlatinumTel Communications, Sage Telecom, Telrite, and Telscape Communications*, Public Notice, FCC Rcd 15927 (WCB 2012); *see also In Re Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816, para. 379 (FCC 2012) (requiring carriers without their own network facilities to obtain approval from the FCC's Wireline Competition Bureau of a compliance plan).

1 Commission issue its order approving Nexus' Application as soon as possible, so that
2 Nexus can provide sufficient notice to its subscribers and ensure an orderly transition.

3 In order to avoid subscriber confusion and assist with a smooth transition process,
4 Nexus will inform potential subscribers inquiring about Lifeline of the pendency of this
5 Application. Nexus has already stopped enrolling new Lifeline subscribers. This avoids
6 any Nexus subscriber from having to change to another Lifeline provider shortly after
7 enrollment. Nexus will not seek reimbursement for the Lifeline discount after the
8 relinquishment effective date.

9 **VIII. CONCLUSION**

10 Based on the foregoing, Nexus respectfully requests that the Commission grant this
11 Application in an expedited fashion approving (1) relinquishment of Nexus' ETC
12 designation and right to receive federal universal service funding in Arizona, (2)
13 cancellation of Nexus' Arizona Wireless Service Tariff on that same date, and (3) such
14 other and further relief as the Commission deems just and reasonable under the
15 circumstances.

16 RESPECTFULLY SUBMITTED this 11th day of April, 2016.

17 LEWIS ROCA ROTHGERBER CHRISTIE, LLP

18 

19 _____
20 Michael T. Hallam
21 201 E. Washington Street
22 Phoenix, AZ 85004
23 (602) 262-5704
24 Attorneys for Nexus Communications,
25 Inc.

23 ORIGINAL AND thirteen (13) copies
24 of the foregoing hand-delivered this
25 11th day of April, 2016, to:

25 The Arizona Corporation Commission
26 Utilities Division - Docket Control
1200 W. Washington Street
Phoenix, Arizona 85007

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Copy of the foregoing hand-delivered
this 11th day of April, 2016, to:

Thomas Broderick
Director, Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Dwight Nodes
Chief Administrative Law Judge, Hearing Division
1200 W. Washington Street
Phoenix, Arizona 85007

Janice Alward
Chief Counsel, Legal Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007



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EXHIBIT A
SAMPLE COPY OF SUBSCRIBER NOTIFICATION LETTER

SAMPLE

ReachOut Wireless Logo

IMPORTANT LIFELINE INFORMATION

{Subscriber Name} {Date}

{Mailing Address 1} Wireless Number(s): wireless Number}

{Mailing Address 2}

{City, MN Zip}

Dear {Subscriber Name},

We're writing to let you know that ReachOut is preparing to terminate your wireless on **May 31, 2016**, or upon regulatory approval. We'll contact you again in the near future to provide more information about ReachOut's shutdown and options available to you.

As part of shutting down its service, ReachOut intends to no longer participate in the federal Lifeline program in Arizona after May 31, 2016, subject to approval of its application by the Arizona Corporation Commission. We will send you a text message prior to discontinuing participation in the federal Lifeline program. In the meantime, as an existing ReachOut Lifeline subscriber, you'll continue to receive your Lifeline credit on your current ReachOut rate plan until your service is terminated (unless your service is suspended, you voluntarily upgrade your device, or you change your current plan).

You'll have the option of moving to another service provider that still offers Lifeline discounts. If you'd like to receive Lifeline discounts from another service provider, visit lifelinesupport.org or see the following list of wireless Lifeline providers in Arizona:

TRACFONE WIRELESS INC. d/b/a SafeLink Wireless - 1-800-SAFELINK (723-3546)
TERRACOM INC. d/b/a TerraCom Wireless - 1-877-351-4747
I-WIRELESS LLC d/b/a Access Wireless - 1-888-900-5899
BUDGET PREPAY INC. d/b/a Budget Mobile - 1-888-777-4007
GLOBAL CONNECTION INC. OF AMERICA d/b/a StandUp Wireless - 1-800-544-4441
VIRGIN MOBILE USA LP d/b/a Assurance Wireless - 1-888-898-4888
TELRITE CORPORATION d/b/a Life Wireless - 1-888-543-3620
BOOMERANG WIRELESS LLC d/b/a enTouch Wireless - 1-866-488-871 9
Q LINK WIRELESS LLC - 1-855-754-6543
BLUE JAY WIRELESS LLC - 1-855-425-8529
TOTAL CALL MOBILE, INC. - 1-800-550-5265

At least one of these providers offers Lifeline service in your area.

Sincerely,

ReachOut Wireless

201 E Washington Street Suite 1200
Phoenix, Arizona 85004-4429

Lewis Roca
ROTHGERBER CHRISTIE

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EXHIBIT B
AFFIDAVIT REGARDING SUBSCRIBER NOTIFICATION LETTER

AFFIDAVIT OF STEVEN FENKER

Steven Fenker, being first duly sworn, states under oath that:

1. I am a President of Nexus Communications, Inc. ("Nexus"). In that position, I have personal knowledge of the matters set forth herein.
2. I certify that on April 11, 2016, Nexus sent a letter by U. S. Mail to each of its subscribers in Arizona, notifying them that Nexus plans to relinquish its Eligible Telecommunications Carrier ("ETC") status in Arizona and that it is filing an Application with the Arizona Corporation Commission seeking approval of that change.
3. The letter also informed each affected subscriber that a Lifeline discount could be obtained from the remaining ETC(s) in the area.
4. Exhibit A to the Application is a sample copy of the notification letter Nexus sent its Lifeline customers pursuant to Arizona Administrative Code R14-2-1107(A)(2).


Steven Fenker

Subscribed and sworn to before me on this 11th day of April, 2016


Notary Public

My Commission Expires:

May 6th, 2019



All J. Deak
Notary Public, State of Ohio
My Commission Expires 5-6-19