

Designated Service Area
Nebraska Non-rural Wirecenters

Company	Wirecenter
QWEST CORPORATION	BGTNNECO
QWEST CORPORATION	ELKHNEW
QWEST CORPORATION	EMSNNENW
QWEST CORPORATION	FRMTNENW
QWEST CORPORATION	GRETNENW
QWEST CORPORATION	HOMRNENW
QWEST CORPORATION	LYNSNENW
QWEST CORPORATION	OKLDNEUW
QWEST CORPORATION	OMAHNE78
QWEST CORPORATION	OMAHNE84
QWEST CORPORATION	OMAHNE90
QWEST CORPORATION	OMAHNEBE
QWEST CORPORATION	OMAHNECE
QWEST CORPORATION	OMAHNEFO
QWEST CORPORATION	OMAHNEFW
QWEST CORPORATION	OMAHNEHA
QWEST CORPORATION	OMAHNEIZ
QWEST CORPORATION	OMAHNENW
QWEST CORPORATION	OMAHNEOS
QWEST CORPORATION	PNDRNEUW
QWEST CORPORATION	SPFDNENW
QWEST CORPORATION	SSCYNENW
QWEST CORPORATION	TKMHNENW
QWEST CORPORATION	VLLYNENW
QWEST CORPORATION	WKFDNENW
WINDSTREAM NEBRASKA, INC.	ADMSNEXL
WINDSTREAM NEBRASKA, INC.	ALXNNEXL
WINDSTREAM NEBRASKA, INC.	BNNTNEXL
WINDSTREAM NEBRASKA, INC.	BRCHNEXL
WINDSTREAM NEBRASKA, INC.	BRNGNEXL
WINDSTREAM NEBRASKA, INC.	BRTNNEXL
WINDSTREAM NEBRASKA, INC.	BTRCNEXL
WINDSTREAM NEBRASKA, INC.	BURRNEXL
WINDSTREAM NEBRASKA, INC.	CATNNEXL
WINDSTREAM NEBRASKA, INC.	CLATNEXL

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RYMNNEXL
SHCKNEXL
STCYNEXL
STNGNEXL
STNRNEXL
SWTNNEXL
SYRCNEXL
TBRK.NEXL
TCMSNEXL
TOBSNEXL
UNADNEXL
VLPRNEXL
WLBRNEXL
WSTRNEXL
WVRLNEXL
WYMRNEXL
YUTNNEXL

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4570/NUSF-87
of Nexus Communications, Inc.)
Columbus, Ohio, for designation) GRANTED
as an eligible)
telecommunications carrier to 47)
U.S.C. 214(e) for low income)
support only.) Entered: June 18, 2013

APPEARANCES:

For the Applicant:

Deonne Bruning
Donne Bruning PC, LLO
2901 Bonacum Drive
Lincoln, Nebraska 68502

and

Danielle Frappier
Davis Wright Tremaine
1919 Pennsylvania Avenue
NW Suite 800
Washington, D.C. 20006

For the Commission:

Shana Knutson
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

On January 11, 2013, an application was filed by Nexus Communications, Inc. ("Nexus" or "Applicant"), of Columbus, Ohio, seeking designation as an Eligible Telecommunications Carrier (ETC) so it may receive available support from the federal and Nebraska universal service funds for the Lifeline and Nebraska Telephone Assistance Programs. Notice of this application was published in the Daily Record, Omaha, Nebraska, on January 16, 2013. No other party protested the application or filed a Petition seeking Formal Intervention.

A hearing on the application was held on May 14, 2013, in the Commission Hearing Room, Lincoln, Nebraska. Appearances at the hearing are indicated above. Nexus presented one witness in support of its application.

Summary of Testimony and Evidence

Nexus, an Ohio corporation headquartered in Columbus, has been providing communications services since 2000. Nexus is a common carrier that provides digital wireless services. Nexus provided a copy of its registration to do business in the State of Nebraska.

Nexus presented one witness, Steven Fenker, who serves as President of the company. In his pre-filed testimony, Mr. Fenker described how Nexus satisfied each of the applicable federal and state prerequisites for designation as a competitive ETC for Lifeline, known in Nebraska as the Nebraska Telephone Assistance Program (NTAP), services throughout the Company's requested service areas in Nebraska. Nexus is not seeking eligibility for high-cost support from the state or federal universal service funds.

Nexus's application and witness testimony provided that Nexus provides digital wireless service on a common carrier basis, offering customers a handset and a set of free talk or text minutes without requiring a fixed-term contract. Nexus Lifeline customers will be able to choose between two plans: 250 minutes (non-rollover) or 125 minutes (with rollover). Nexus will provide its services by resale of Verizon Wireless' underlying services.

Nexus stated it does not charge an activation fee and does not require customers to sign long-term contracts. A free handset is provided, and its service offerings include a variety of telephone features at no additional charge, including caller ID, call waiting, and three-way calling.

Nexus seeks a Lifeline-only ETC and NETC designation in the Nebraska non-rural wire centers listed in the appendix to this order. Nexus does not seek a designation for high-cost support. Nexus further stated it provides service to hundreds of thousands of wireless customers. To date, Nexus has been designated as a low-income wireless ETC in over 25 states.

In response to questions from the Commissioners and Commission staff, Mr. Fenker stated that Applicant conducts extensive training on the Lifeline qualifications and requirements. Applicants' associates are trained to know the qualifications and to determine whether potential applicants are qualified. Mr. Fenker testified that Nexus will not send an incomplete application to the Commission. Nexus will make sure that the applicant has provided documentation and proof of eligibility.

Nexus stated that it satisfies all of the applicable requirements for ETC and NETC designation in Nebraska. Nexus demonstrated it is a common carrier as defined by the FCC and provides all of the services and functionalities supported by the universal service program. Nexus also committed to advertise the availability of these services using media of general distribution. Finally, Nexus agreed to comply with Nebraska-specific ETC and NETC requirements including but not limited to audit and reporting requirements.

Nexus has obtained forbearance of the facilities requirement by meeting the requisite criteria laid out by the FCC.¹ On December 4, 2012 Nexus submitted an amended Compliance Plan with the FCC in WC Docket No. 09-197 and WC Docket No. 11-42.² The Compliance Plan details the verification, certification and other anti-fraud measures Nexus will take to comply with state and federal requirements and ensure that Lifeline support is provided only to consumers who are truly eligible. Nexus's Compliance Plan was submitted as Exhibit D to Nexus's application. On December 26, 2012, the FCC issued a Public Notice that it had approved Nexus's Compliance Plan.

O P I N I O N A N D F I N D I N G S

Section 214(e) of the Telecommunications Act of 1996 (the Act) initially set forth the standards and processes for a state commission to grant carriers the designation of eligible telecommunications carrier. The three general requirements listed in Section 214(e) are that: (1) the carrier must be a common carrier; (2) the carrier must offer the "services" that are supported by the federal fund; and (3) the carrier must advertise the availability of those services. In addition, the carrier must fulfill these criteria throughout the service area for which the designation is received.

In its *Lifeline Reform Order*, the FCC revised 47 C.F.R. § 54.101(a) to read as follows:

- (a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanism. Eligible voice telephony services must provide voice grade access to the public

¹ See *In the Matter of Lifeline and Link UP Reform and Modernization*, WC Docket Nos. 09-197 and 11-42 (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

² See Third Amended Compliance Plan of Nexus Communications, Inc., WC Docket Nos. 09-197 and 11-42 (filed Dec. 4, 2012) approved in Public Notice DA 12-2063 on December 26, 2012.

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 systems. . .; and toll limitation to qualifying low-income consumers as provided in subpart E of this part.³

Federal law also requires the Commission to determine that the ETC is financially and technically capable⁴ of providing the supported Lifeline service and that the designation of an ETC would be consistent with the public interest.⁵ 47 U.S.C. § 214(e)(2). The FCC offered additional guidance on the public interest question through its past decisions.⁶

To implement the forgoing federal requirements and FCC guidance, the Commission has adopted regulations governing the application process and ETC designation requirements in the State of Nebraska ("ETC designation rules"). The Commission's ETC designation rules are found at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.01-009.02C. The Commission's annual reporting rules are codified at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.03-009.04B.

Common Carrier

Upon review of the Application and testimony presented, the Commission finds that Nexus is a common carrier for purposes of ETC designation. The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. 47 U.S.C. § 153(10). The FCC's Rules also specifically provide that CMRS is a common carrier service. 47 C.F.R. § 54.20.9(a).

³ 47 C.F.R. § 54.101(a)(April 2, 2012).

⁴ See 47 C.F.R. § 54.201(h).

⁵ See 47 U.S.C. § 214(e)(2); see also 47 C.F.R. § 54.201(c).

⁶ See *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 03-338 (rel. Jan 22, 2004) ("Virginia Cellular"); *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. April 12, 2004) ("Highland Cellular"); and *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order, FCC 05-46 (rel. March 17, 2005) ("March 2005 Order").

Supported Services

We further find that Nexus has demonstrated the ability and commitment to provide the Supported Services listed above using its own network facilities or a combination of its own facilities and the resale of another carrier's services. Nexus's Application states it will make service available to consumers through underlying carriers including Verizon.

Voice Grade Access

Nexus stated its subscribers will receive voice grade access. Nexus will provide its customers with the ability to make and receive calls on the public switched telephone network.

Local Usage

Nexus stated that it will provide its Lifeline customers with minutes of use for local service at no additional charge.

We find that Applicant meets the local usage requirement.

Access to Emergency Services

The Applicant provided evidence of its ability to remain functional during emergency situations. Nexus demonstrated that it was capable of delivering automatic numbering information (ANI) and automatic location information (ALI) over its existing network, and otherwise satisfies applicable Nebraska and federal E-911 requirements. Further, Nexus stated it pays all applicable E-911 fees in a timely manner. Nexus further provided it will continue to work with local public safety answering points (PSAPs) within its ETC service areas to make 911 and E-911 service available to its customers.

Toll Limitation

Nexus will provide toll limitation services at no cost to qualifying low-income customers.

In sum, we find Nexus provided evidence that it will fulfill the requirements of 47 C.F.R. § 54.101(a) and confirmed that it will provide all of the above-referenced services. Further, Nexus demonstrated it would offer the above-mentioned supported services via its own facilities in combination with resale of another carrier's services.

Advertising

We find that Nexus has provided sufficient evidence of its commitments to advertise the availability of and charges for the Supported Services using media of general distribution. The Application provided that Nexus will advertise through a combination of media channels such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.

Designated Service Areas

We find that Nexus has properly identified the service areas in which it is requesting ETC designation. Nexus seeks to be designated as an ETC throughout each of the non-rural telephone company service areas identified in Exhibit A to its Application for the purpose of receiving Lifeline/NTAP support only.

Provision of Service to Requesting Customers

Pursuant to Section 009.02A5 of the Commission's ETC designation rules, an Applicant must demonstrate its commitment to provide service throughout its designated service area to customers who make a reasonable request for service. Nexus demonstrated it was capable of providing service and committed to providing service dedicated to support as defined in 47 C.F.R. § 54.101. We find Nexus has sufficiently demonstrated its commitment to provide service throughout its designated service area to customers making a reasonable request for service.

Ability to Function During Emergencies

Pursuant to Section 009.02A7 of the Commission's ETC designation rules, applicants must demonstrate an ability to remain functional during emergency situations. Although this requirement applies to carriers seeking high-cost support which Nexus is not, Nexus demonstrated it satisfies this requirement. Nexus will provide services through the use of facilities obtained from a major carrier and will provide to its customers the same ability to remain functional in emergency situations as is currently provided by the vendor to its own customers including a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability to manage traffic spikes in the event of emergency situations.

Public Interest

Public interest considerations may include the benefits of increased consumer choice and the unique advantages of the Applicant's service offering. In support of this requirement, Nexus stated that its designation will serve the public interest and the needs of low-income consumers. Further, Nexus states it has specifically tailored its wireless service plans to the needs of underserved customers by offering a limited voice service for free and an expanded plan at affordable rates. Nexus has adopted the CTIA Consumer Code for Wireless Service and has committed to using its best efforts to resolve complaints received by the Commission. In addition, Nexus confirmed its intention of meeting consumer protection and service quality standards by committing to comply with all applicable Nebraska statutes and rules and regulations and paying all applicable federal, state, and local regulatory fees, including universal service and E-911 surcharges. Based on the particular facts before us, we find Nexus's business plan provides a unique advantage to low-income consumers that would serve the public interest. We conclude Nexus demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the *Lifeline Reform Order*, and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed geographic area.

Lifeline Certification and Verification Requirements

The Commission utilizes a coordinated enrollment process to initially enroll and certify Lifeline/NTAP subscriber eligibility. The Commission maintains an agreement with the Nebraska Department of Health and Human Services (NDHHS) to determine whether a subscriber participates in a number of qualifying programs. In addition, all ETCs are required to utilize the Commission's NTAP Application form for the enrollment of potential subscribers. At the hearing, Nexus committed to comply with the Commission's requirements relative to Lifeline/NTAP certification and verification. Nexus will also be required, on a monthly basis, to provide the Commission with a list of all subscribers added or removed and a full report of all Lifeline/NTAP subscribers twice annually. Nexus committed to following these requirements.

Continuing Jurisdiction

Finally, the Commission has jurisdiction and authority to ensure that Nexus continues to meet the ETC criteria set forth in Section 214(e) of the Act and the Commission's rules and regulations. Nothing prevents the Commission from, on its own motion, modifying, suspending, or revoking Nexus's ETC designation if it at any time fails to meet the obligations of the Act, applicable federal rules, Commission rules and regulations, or if it fails to provide the supported services within a reasonable time frame.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Nexus Communications, Inc. to be designated as an Eligible Telecommunications Carrier for the limited purpose of receiving low-income program (Lifeline/NTAP) universal service support shall be, and is hereby, granted.

IT IS FURTHER ORDERED that Nexus Communications, Inc. shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Nexus Communications, Inc. is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving low-income program (Lifeline/NTAP) universal service support in the wire centers identified in **Appendix A** to this Order.

IT IS FINALLY ORDERED that Nexus Communications, Inc. shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of June, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Deputy Director

Application No. C-4570/NUSF-87

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MADE AND ENTERED at Lincoln, Nebraska, this 18th day of June, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:





//s// Anne Boyle

//s// Frank E. Landis



Chair

ATTEST:



Deputy Director