

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Nexus)
Communications, Inc., dba TSI for Designation as)
an Eligible Telecommunications Carrier in the)
State of Missouri for the Limited Purpose of)
Offering Wireless Lifeline and Link up Service to)
Qualifying Households)

File No. RA-2009-0375

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits its *Staff Recommendation*, hereby respectfully stating the following:

Procedural History

1. On April 15, 2009, Nexus Communications, Inc., d/b/a TSI (Nexus or Company), submitted an *Application* seeking the designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 (1996 Act) and Commission rule 4 CSR 240-3.570, to provide wireless Lifeline and Link UP services to qualifying Missouri customers. Nexus will provide fifty (50) free minutes of wireless airtime to qualifying customers. Additionally, within the *Application*, Nexus requests waivers from 4 CSR 240-3.570(2)(A)1 through 3, 4 CSR 240-3.570(4)(A)1 through 5, 4 CSR 3.570(4)(B) 1 through 4, and 4 CSR 240-3.5701(2)(C).
2. On April 16, 2009, the Commission issued its *Order Directing Filing*, directing Staff to file its Recommendation no later than May 18, 2009.
3. On April 30, 2009, the Commission issued its *Notice of Application and Order Setting Deadline* directing the Commission’s Data Center to send notice of the *Application* to each Missouri incumbent and competitive local exchange carrier, allowing applications

of intervention until May 18, 2009. As of the time of Staff's filing its *Recommendation*, no applications to intervene have been received.

4. On May 14, 2009, Nexus filed an *Amendment To Application Of Nexus Communications, Inc., DBA TSI*. The *Amendment* states Nexus commits to complying with consumer privacy protection and service quality standards. Additionally, the *Amendment* states the amounts of Lifeline Tier support the Company intends to provide to eligible consumers as free air time.

Applicable Statutes and Rules

5. Section 214(e)(2) of the 1996 Act provides that a state commission shall designate a common carrier as an ETC, provided that the carrier meets the requirements of Section (e)(1), which requires a carrier designated as an ETC to offer the services that are supported by the Federal universal service support mechanisms using either its own facilities or a combination of its own facilities and resale of another carrier's services and to advertise the availability of such services and the related charges using media of general distribution.
6. 4 CSR 240-3.570 contains the Commission's filing requirements for an application to be designated as an ETC, and the service and filing requirements of an ETC once so designated.
7. 4 CSR 240-3.015 and 240-2.015 allow a rule in Chapter 3 to be waived by the Commission for good cause. Good cause refers to a remedial purpose and is to be applied with discretion to prevent a manifest injustice or to avoid a threatened one. *Bennett v. Bennett*, 938 S.W.2d 952 (Mo. App. S.D. 1997).

Staff Recommendation

8. Staff has reviewed the Company's *Application* and finds that it meets the Commission's ETC designation requirements. Staff recommends the Commission conditionally grant ETC designation to Nexus for Lifeline and Link UP support only. The programs Nexus seeks to administer potentially lack control over verifying customer eligibility, therefore Staff recommends the Commission impose the customer eligibility and verification standards of 4 CSR 240-31.050(3)(D) and (E).
9. Staff has reviewed the Company's request for waivers as stated in paragraph one above. Staff recommends the Commission grant the waivers as these rules relate to the provision of high cost funds and construction or installation costs. Nexus states it will not be applying for nor accepting federal high cost funding, and the networks used in the proposed provision of services are already operational.
10. Attached as Appendix A is the *Staff Recommendation*, including Attachment 1, which allocates the amount that will be contributed from each of the three tiers of funding to provide the fifty (50) free airtime minutes.
11. Nexus is not deficient in any annual report requirement or remittance of assessments.

WHEREFORE, the Staff of the Missouri Public Service Commission recommends the Missouri Public Service Commission issue an order which: (1) grants Nexus waivers from 4 CSR 240-3.570(2)(A)1 through 3, 4 CSR 240-3.570(4)(A)1 through 5, 4 CSR 3.570(4)(B) 1 through 4, and 4 CSR 240-3.5701(2)(C) for good cause shown; and (2) conditions Nexus' ETC designation for only Lifeline and Link UP services on the use of the following customer eligibility and verification standards of 4 CSR 240-31.050(3)(D) and (E)

- Individuals shall only be eligible for Lifeline and Link Up assistance if the customer requesting or receiving Nexus service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94);
- Customers shall complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
 - receives benefits from one of the qualifying programs, identifies the program or programs which that individual receives benefits;
 - agrees to notify the carrier if that individual ceases to participate in the program or programs;
- Customers shall provide documentation of participation in the applicable program(s) as identified on the application;
- Nexus shall develop a process for recording the type of documentation received;
- Nexus shall develop a process for returning or destroying the documentation once recorded;
- Nexus shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the office of public counsel for review within thirty days of request; and
- Nexus shall terminate an individual's enrollment in Lifeline and Link Up if the individual ceases to meet eligibility requirements.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
 Legal Counsel
 Missouri Bar No. 59814

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 Missouri Public Service Commission
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record this 18th day of May, 2009, either by hand delivery, electronic mail or First Class United States Mail, postage prepaid.

/s/ Jennifer Hernandez

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No. RA-2009-0375
Company Name: Nexus Communications, Inc. d/b/a TSI

From: Sara Buyak
Telecommunications Department

Natelle Dietrich
Division Director

Subject: Approve Nexus Communication Inc. d/b/a TSI's Application for Designation as an Eligible Telecommunications Carrier.

Date: April 18, 2009

Summary

On April 15, 2009, Nexus Communication Inc. d/b/a TSI (Nexus) filed an application for Designation as an Eligible Telecommunications Carrier (ETC). On May 14, 2009, Nexus submitted an Amendment to Application of Nexus Communications, Inc. d/b/a TSI, correcting the reference to the wrong rule for Missouri's Customer Proprietary Network Information as well as providing additional information on the allocation of Lifeline Funds. Nexus seeks ETC designation to provide Lifeline and Link Up wireless service for qualifying low-income customers.

Staff recommends the Commission grant Nexus ETC designation for Lifeline and Link Up support only and with conditions as outlined below.

History

Nexus' ETC designation is for the purpose of receiving funding assistance to provide discounted Federal USF Lifeline and Link Up support to qualifying low-income consumers in the non-rural exchanges of AT&T Missouri identified in Exhibit A of its Application. Nexus does not seek high cost federal universal support. Nexus intends to route some traffic through wireless providers that own networks and route other traffic through Nexus-owned facilities located in Ohio.

Nexus' activation charge is \$72.00. After the Link Up discount is applied, the activation charge will be reduced to \$42.00. Consistent with 47 CFR § 54.411, qualified low-income subscribers can defer the balance of the activation charge over a twelve month period and Nexus will not charge interest for the deferred billing. In addition, Nexus will provide its customers a free handset, the cost of which will not be reimbursed by the federal universal service fund.

Customers will receive an amount of free minutes without a credit check, deposit, or term agreements (Page 4 & 5 of the Application).

The Application states that Nexus will comply with all ETC designation requirements including Missouri's ETC Rule, 4 CSR 240-3.570 except for a waiver of certain provisions. Nexus seeks a waiver of: 4 CSR 240-3.570 (2)(A) 1 through 3, 4 CSR 240-3.570 (4)(A) 1 through 5, 4 CSR 240-3.570 (4)(B) 1 through 4, and 4 CSR 240-3.570 (2)(C) (paragraph 12 and 13 of the Application). Nexus is seeking a waiver of the requirements on the basis these pertain to ETC applicants seeking high-cost USF support. Staff agrees these rules relate to the provision of high cost USF and does not object to these waivers.

The Application includes a public interest statement which states that the Nexus designation is consistent with the public interest, convenience and necessity providing consumers with increased customer choice, and the ability to purchase additional usage minutes (Page 19, 20, and 21 of the Application). Part of the public interest review should include a review of the impact of the request on the federal universal service fund. Inherent to lifeline programs where the customer does not make any monthly payment to the service provider, and service is obtained through authorized agents, is the potential for a lack of control over the identity of the consumer using the service. Therefore, it is important that customer eligibility and verification standards similar to those in 4 CSR 240-31.050(3)(D) and (E) be followed. Staff recommends the Commission condition ETC designation on the following requirements:

Nexus will comply with the following procedures for certification and verification of customer eligibility for Lifeline and Link Up support:

- Individuals shall only be eligible for Lifeline and LinkUp assistance if the customer requesting or receiving Nexus service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94).
- Customers shall complete an application similar to the Missouri Universal Service Board approved application, which certifies under penalty of perjury that the individual or a dependent residing in the individual's household:
 - receives benefits from one of the qualifying programs, identifies the program or programs which that individual receives benefits
 - agrees to notify the carrier if that individual ceases to participate in the program or programs.

- Customers shall provide documentation of participation in the applicable program(s) as identified on the application.
- Nexus shall develop a process for recording the type of documentation received.
- Nexus shall develop a process for returning or destroying the documentation once recorded.
- Nexus shall establish state procedures to verify a customer's continued eligibility and shall provide such procedures to the commission staff and/or the office of public counsel for review within thirty days of request.
- Nexus shall terminate an individual's enrollment in Lifeline and Link Up if the individual ceases to meet eligibility requirements.

Nexus will provide qualifying low income customers 50 free minutes of airtime. At \$.20 per minute, the customer would pay \$10 for monthly service if the customer did not receive Lifeline support. Pursuant to 47 CFR §54.403, there are three tiers by which carriers typically receive federal Lifeline support. Nexus intends to maximize support under the tiers as follows:

Tier 1 - Provide qualifying low income customers up to \$5.31 per month in Lifeline support consistent with the amount AT&T, the incumbent local exchange carrier (ILEC), receives as reimbursement for the subscriber line charge (SLC). Carriers are required to submit Form 497 to the Universal Service Administrative Company (USAC) to claim support reimbursement. In Form 497, Tier 1 support, or reimbursement of the SLC, is available to all eligible subscribers. Although Nexus and other wireless resellers do not charge the SLC, this form does not distinguish between landline and wireless carriers. For this reason, Nexus is requesting the amount of AT&T's SLC as support under Tier 1.

Tier 2 - The federal fund will provide up to a maximum of \$1.75 per month under Tier 2 support.

Tier 3 - Offers an additional maximum amount of \$1.75 per month in support from the fund, which is one-half of the state-mandated support. Since wireless providers do not participate in the MoUSF, and Nexus only charges \$10 for the service qualifying low income customers will receive, Nexus will apply \$1.96 as the wireline state-mandated support amount to the customer's bill in order to receive the Tier 3 federal matching portion of the fund. In this case, the federal matching amount will be \$.98. (See Attachment 1).

Staff Recommendation

Staff has reviewed the instant Application. Nexus's pending application meets the Missouri Commission's ETC requirements. Staff recommends Nexus be granted the requested waivers. Staff further recommends Nexus be granted ETC designation for Lifeline and Link Up support only.

Staff recommends the Commission condition ETC designation on the following requirements:

Nexus will comply with the following procedures for certification and verification of customer eligibility for Lifeline and Link Up support:

- Individuals shall only be eligible for Lifeline and LinkUp assistance if the customer requesting or receiving Nexus service participates or has a dependent residing in the customer's household who participates in a program pursuant to 42 U.S.C. sections 1396-1396v, food stamps (7 U.S.C. section 51), Supplementary Security Income (SSI) (42 U.S.C. section 7), federal public housing assistance or Section 8 (42 U.S.C. section 8), National School Lunch Program's free lunch program (42 U.S.C. section 13), Temporary Assistance for Needy Families (42 U.S.C. section 7(IV)), or Low Income Home Energy Assistance Program (LIHEAP) (42 U.S.C. section 94).
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- Nexus shall develop a process for returning or destroying the documentation once recorded.
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- Nexus shall terminate an individual's enrollment in Lifeline and Link Up if the individual ceases to meet eligibility requirements.

The Company is not delinquent in filing an annual report and paying the PSC assessment.

The Company is delinquent:(No annual report Unpaid PSC assessment.
Amount owed:)

Attachment 1:

Nexus Allocation of Lifeline Funds

Nexus per minute charge of \$.20 @ 50 free minutes =			\$10.00
Less:			
	Tier One	Maximum AT&T SLC	\$5.31
	Tier Two	Federal Support	\$1.75
		State-mandated support that Nexus is providing since wireless providers do not participate in MoUSF	\$1.96
	Tier Three	Federal Matching Amount	\$0.98
		Total	\$0.00

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OF THE STATE OF MISSOURI**

In the Matter of the Application of Nexus)
 Communications, Inc., dba TSI for) Case No. RA-2009-0375
 Designation as an Eligible)
 Telecommunications Carrier.)

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
 COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.

Sara Buyak

 SARA BUYAK

Subscribed and affirmed before me this 18th day of May, 2009

Rosemary R. Robinson

 NOTARY PUBLIC

ROSEMARY R. ROBINSON
 Notary Public - Notary Seal
 State of Missouri
 Commissioned for Callaway County
 My Commission Expires: September 23, 2012
 Commission Number: 08499510