

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

On-the-Record Presentation

July 7, 2009  
Jefferson City, Missouri  
Volume 1

In the Matter of the Application )  
of Nexus Communications, Inc., )  
d/b/a TSI for Designation as an )  
Eligible Telecommunications )Case No. RA-2009-0375  
Carrier in the State of Missouri )  
for the Limited Purpose of )  
Offering Wireless Lifeline and )  
Link Up Services to Qualifying )  
Households, )

DANIEL R.E. JORDAN, Presiding  
REGULATORY LAW JUDGE

KENNARD L. JONES, Presiding  
SENIOR REGULATORY LAW JUDGE

ROBERT M. CLAYTON, III, Chairman,  
TERRY JARRETT,  
KEVIN GUNN,  
COMMISSIONERS

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## 1 P R O C E E D I N G S

2 JUDGE JORDAN: Good morning, everyone. This is  
3 Daniel Jordan, Regulatory Law Judge for the Public Service  
4 Commission of the State of Missouri.

5 The Missouri Public Service Commission is  
6 calling the File Nos. TA-2009-0327 and RA-2009-0375. We  
7 are convening an on-the-record presentation with regard to  
8 applications pending before the Commission.

9 I'll begin by taking entries of appearance in  
10 the case -- in the Petition of TracFone Wireless, Inc.  
11 Will counsel for the applicant please enter an appearance?

12 MR. JOHNSON: Judge Jordan, members of the  
13 Commission, Mark Johnson of the law firm Sonnenschein,  
14 Nath & Rosenthal, appearing on behalf of TracFone  
15 Wireless, Incorporated. Also appearing on behalf of  
16 TracFone is Mitchell F. Brecker of the Washington D.C.  
17 office of the law firm of Greenberg Traurig.

18 MR. STEINER: This is Roger Steiner with the law  
19 firm of Sonnenschein, Nath & Rosenthal. I'm appearing on  
20 behalf of Applicant Nexus Communications, Inc.

21 JUDGE JORDAN: All right. And entries of  
22 appearance from Staff, please.

23 MR. DEARMONT: Good morning. This is Eric  
24 Dearmont on behalf of the Staff of the Commission, P.O.  
25 Box 360, Jefferson City, Missouri, 65102.

1           MS. HERNANDEZ: And Jennifer Hernandez for File  
2 No. RA-2009-0375.

3           JUDGE JORDAN: Thank you. Entry of appearance  
4 from the Office of Public Counsel?

5           MR. DANDINO: Thank you, your Honor. Michael  
6 Dandino, Office of the Public Counsel, Post Office Box  
7 2230, Jefferson City, Missouri, 65102, representing the  
8 Office of Public Counsel and the Public.

9           JUDGE JORDAN: Thank you. For the record, also  
10 present on the Bench are Commissioners Kevin Gunn, Terry  
11 Jarrett, and Chairman Robert Clayton, III.

12           This is an on-the-record presentation. Do the  
13 parties -- do either parties have any presentation that  
14 they wish to make before we open this proceeding up to  
15 questions from the Bench?

16           MR. JOHNSON: Judge Jordan, on behalf of  
17 TracFone, we do not have a presentation. We're pleased to  
18 answer any questions that either you, Judge Jones or  
19 members of the Commission have.

20           JUDGE JORDAN: Okay. And Nexus?

21           MR. STEINER: Your Honor, we also do not have a  
22 presentation. We are ready to answer questions. Steve  
23 Finker from Nexus, the President of Nexus, is on the line  
24 to answer questions.

25           JUDGE JORDAN: Very good. Thank you.

1           MR. JOHNSON: Judge Jordan, I should point out  
2 that I believe that there are also, you know, members of  
3 the management of TracFone on the line. I don't know  
4 exactly who is on the line, however.

5           JUDGE JORDAN: Okay. Well, let's find out. Is  
6 there someone from -- from TracFone on the line with us  
7 that has not spoken up yet? I don't hear anyone.

8           MR. BRECKER: This is Mitchell Brecker in  
9 Washington, your Honor. I got an e-mail from some of my  
10 colleagues with TracFone who were having difficulty  
11 dialing in. I told them to try again. I don't know if  
12 they were able to do so or not.

13          JUDGE JORDAN: Well, all right. Well, we'll  
14 keep an ear open for anyone joining us on the line.  
15 Anything from Staff before we begin questioning?

16          MR. DEARMONT: Counsel for Staff prepared a  
17 short opening statement. If the Commissioners would like  
18 to hear that statement, we'd be more than pleased to give  
19 that. If not, we have members from Staff here to answer  
20 any questions that you may have.

21          JUDGE JORDAN: Well, okay. Well, let's -- let's  
22 hear your opening statement, then.

23                                    OPENING STATEMENT

24 BY MR. DEARMONT:

25           MR. DEARMONT: On March 9th, 2009, TracFone

1 Wireless submitted to the Commission a Petition in which  
2 the company requested designation as an eligible  
3 telecommunications carrier as an ETC in the State of  
4 Missouri for the purpose of receiving federal lifeline  
5 universal service support. This case was designated by  
6 the Commission as Case No. TA-2009-0327.

7 On April 15th, 2009, Nexus Communications d/b/a  
8 TSI, submitted a similar request, which was designated by  
9 the Commission as Case No. RA-2009-0375.

10 After a thorough investigation of each company's  
11 request, the Staff of the Commission issued a  
12 recommendation in which the Staff recommended that each  
13 company be granted ETC designation subject to certain  
14 conditions contained therein.

15 Substantively, a number of these conditions seek  
16 to prescribe customer certification and company  
17 verification requirements, which are contained in  
18 Commission Rule 4 CSR 240-31.050.

19 It is Staff's position that under Title 47,  
20 Section 54.409 of the Code of Federal Regulations, the  
21 Staff not only has the authority, but, rather, the  
22 obligation to apply the Commission rule, and, thus, the  
23 conditions contained in Staff's recommendations.

24 On May 22nd, 2009, Nexus filed a response to  
25 Staff's recommendation stating that it supported the



1 BY MR. DANDINO:

2 MR. DANDINO: May it please the Commission.  
3 Public Counsel is noted as neither opposed or supporting  
4 the applications. It has been our position on many of  
5 these -- of the wireless or -- especially any prepaid  
6 phones.

7 We take this position because while we support  
8 the whole idea that -- that a application of ETC status  
9 for low income persons with -- with the prepaid offers  
10 more choice, gives them a reduced price and, in fact, some  
11 services is free, it gives them scope of the -- a larger  
12 scope of calling and also has the built-in toll  
13 restrictions. And because of -- because of it being  
14 prepaid, it might cause a burden to the family.

15 On the opposite side, Public Counsel is always  
16 concerned about the industry which has been known as toll  
17 sharks. And as long as these companies follow the --  
18 follow the rules and agree to the conditions that the  
19 wireless ETCs have -- have adopted, we have no problem  
20 with -- with that.

21 We would just rather not go on the record and  
22 support them. However, we do agree with the Staff that  
23 the certification waiver that the companies seek is not  
24 appropriate.

25 One of the biggest concerns in -- in the prepaid



1 is that anyone who walks in the door -- walks in the door,  
2 picks up a phone and can receive -- can receive service.  
3 We think there ought to be this certification process  
4 that's applied to -- to wireless -- to other wireless  
5 carriers equally applicable to the prepaid. That's all I  
6 have, your Honor. Thank you.

7 JUDGE JORDAN: Thank you. Well, I'm going to  
8 open up the proceeding to questions from the Bench now.  
9 And before I do that, I'm going to swear in all the  
10 representatives of the applicants, other than the lawyers,  
11 of course. So anyone who is representing either applicant  
12 will feel free to respond to the Commission's inquiries.

13 They will be taken on the record and are usable  
14 in the decision of these applications. So I'm going to  
15 ask everyone -- every one of those people that I described  
16 to please raise your right hand, and I will swear you in.

17 Do you solemnly swear that the testimony you  
18 will give in this proceeding will be the truth, the whole  
19 truth, and nothing but the truth?

20 (All parties said I do.)

21 JUDGE JORDAN: Okay. And when you respond to  
22 Commission inquiries, I'd like everyone to identify  
23 themselves before they start speaking. That will help our  
24 court reporter immensely, I think, and the Commission as  
25 well. And with that, I'll open it up to questions from

1 the Bench. Commissioner Gunn?

2 COMMISSIONER GUNN: I actually do have a couple  
3 questions for Staff. Are -- are we talking about any  
4 Missouri Universal Service Fund dollars here that are  
5 impacted at all?

6 MR. BRECKER: Commissioner Gunn, this Mitchell  
7 Brecker in Washington. With respect to TracFone, let me  
8 be unequivocally clear that TracFone has not sought a  
9 single nickel in Missouri Universal Service funds.

10 This is a federal program only. And it is not,  
11 repeat, not, seeking any Missouri Universal Service  
12 Funding.

13 COMMISSIONER GUNN: I appreciate that answer.  
14 I've directed this toward Staff. I'm sure you'll have an  
15 opportunity to respond. So let me ask that of Staff  
16 again. Staff, are there any Missouri dollars that are  
17 impacted in this Petition?

18 MS. DIETRICH: I think I need to be sworn in  
19 first.

20 MS. HERNANDEZ: We apologize. We thought that  
21 you were swearing in -- swearing in separately, so --

22 JUDGE JORDAN: I'm sorry. Okay. Well, all  
23 right. I will do the same for everyone who is here  
24 present in the hearing room. Please raise your right  
25 hand. Do you solemnly swear that the testimony you will

1 give in this proceeding will be the truth, the whole truth  
2 and nothing but the truth?

3 MS. DIETRICH: Yes.

4 MS. BUYAK: Yes.

5 NATELLE DIETRICH,  
6 being first duly sworn to testify the truth, the whole  
7 truth, and nothing but the truth, testified as follows:

8 MS. DIETRICH: All right. That -- that is  
9 correct.

10 THE COURT REPORTER: I'm sorry. What's your  
11 name?

12 MS. DIETRICH: Natelle Dietrich, the Commission  
13 Staff. The Missouri Universal Service Fund is restricted  
14 to land line companies only. And so even if they had  
15 requested access to Missouri dollars for the Missouri  
16 Universal Service Fund, they would not have qualified.

17 COMMISSIONER GUNN: They're not eligible. So  
18 we're only talking about Federal dollars here?

19 MS. DIETRICH: Correct.

20 COMMISSIONER GUNN: Now, do you believe that the  
21 Federal requirements are inadequate?

22 MS. DIETRICH: Yes.

23 COMMISSIONER GUNN: The Federal reporting  
24 requirements are inad -- inadequate?

25 MS. DIETRICH: Yes. The Federal requirements

1 simply require the customer to self-certify. And that was  
2 the process that we had in Missouri originally. And based  
3 on the audit of the Missouri Universal Service Fund and  
4 discussions with the Commissioners, it was determined that  
5 we need the additional verification and certification  
6 process to make sure that the customers were actually  
7 eligible, not just signing a form.

8           Because, basically, at that point they were  
9 signing the form under perjury that they qualified, but  
10 there was no doublecheck to make sure that they really  
11 did.

12           COMMISSIONER GUNN: All right. So that's -- but  
13 that's for the Missouri --

14           MS. DIETRICH: That's the same requirement for  
15 the other --

16           COMMISSIONER GUNN: Let me get to the basis of  
17 my -- really what I'm trying to figure out. Why are we  
18 requiring extra certification to protect the Federal  
19 Government's money when the Federal Government has decided  
20 that their reporting requirements are adequate to protect  
21 themselves from fraud? And I'll be -- any -- any --  
22 either lawyers or Staff members would be happy to answer  
23 that question.

24           MR. DANDINO: Your Honor, this is Mike Dandino,  
25 if I may respond.

1 JUDGE JORDAN: Mike, we're going to let Staff go  
2 and --

3 MR. DANDINO: Okay. I'm sorry.

4 JUDGE JORDAN: Then Public Counsel can respond.

5 MR. DANDINO: Okay. Thank you.

6 MS. HERNANDEZ: In sub-part E of the Universal  
7 Service Report for low income consumers, Title 47 of the  
8 Code of Federal Regulations, 54.409, that's the provision  
9 for consumer qualification for lifeline. And I can read  
10 that out loud. I think that might be helpful.

11 COMMISSIONER GUNN: Sure.

12 MS. HERNANDEZ: Sub-part A, to qualify to  
13 receive to lifeline service in the state that mandates  
14 state lifeline support, that's -- Missouri does so,  
15 consumers must meet the eligibility criteria established  
16 by the State Commission to such support.

17 And we have eligibility requirements in Chapter  
18 31.050, paragraph 3. And that directs you to the  
19 definition provision in 240-31.010(9). So, really, the --  
20 the provisions -- the conditions we put in the Staff's  
21 recommendation are those that are mandated by Title 47 and  
22 the Code of Federal Regulations.

23 COMMISSIONER GUNN: Okay. All right. Public  
24 Counsel, do you want to respond to that? Mike?

25 MR. DANDINO: You're talking to me, your Honor?

1 JUDGE JORDAN: Yes.

2 MR. DANDINO: Okay. This is Michael Dandino  
3 with Office of Public Counsel. I agree with what Ms.  
4 Dietrich has said.

5 The point I would like to make is that Universal  
6 Service Funds, whether they come from the State or whether  
7 they come from the Federal Government, those are funds  
8 paid in by the ultimate consumers. Even though they're  
9 called assessments on -- on -- on the companies, it is the  
10 ultimate consumer. It is the ratepayers that pay those.

11 I think it's important for the integrity of the  
12 entire system that there be a -- a -- a standardized  
13 accounting -- accountability for -- for eligibility. And  
14 I think that was one of the purposes that -- that the  
15 Commission has adopted the rules -- the new rules to  
16 establish that certification program.

17 So I think it's very important to have a -- a --  
18 really, a check on -- on -- on the -- the eligibility of  
19 the -- of the -- of the customers whether or not --  
20 whether it's federal USF funds or Missouri USF funds.  
21 Thank you.

22 COMMISSIONER GUNN: Would TracFone like to -- to  
23 respond to Staff's --

24 MR. BRECKER: Yes, we would. Thank you very  
25 much, your Honor. This is Mitchell Brecker in Washington

1 D.C. Let me just make a few observations.

2 Staff relies on Section 240-31.050 of the  
3 Commission's rules. And let me read to you, if you have  
4 no objection, the -- the paragraph which is captioned  
5 Purpose.

6 This rule establishes the eligibility of  
7 telecommunications companies to receive support from the  
8 Missouri Universal Service Fund for essential local  
9 telecommunications services provided to low income and  
10 disabled customers and the individual eligibility  
11 requirements for participation in the Missouri Universal  
12 Service Fund by low income and disabled customers.

13 I would submit, your Honor, that everything in  
14 that rule that follows the Purpose paragraph as stated by  
15 that paragraph is very clear and very specific. It is  
16 rule that governs eligibility for funds from the Missouri  
17 fund, not the Federal fund.

18 No. 2, I'd like to respond to the comment made  
19 by Public Counsel, by Mr. Dandino. Yes, it is correct  
20 that ultimately ratepayers are responsible for the funds  
21 that are used to support universal service.

22 However, and this is an important distinction,  
23 the Federal fund is supported by customers of interstate  
24 services only. Not one dime from the Federal fund comes  
25 from ratepayers of Missouri intrastate services.

1           Now, the FCC didn't just make up this  
2 self-certification under penalty of perjury rule in a  
3 vacuum or on a whim. It was a product of an extensive  
4 proceeding that originally was done by a Federal State  
5 Joint Board consisting of representatives of State  
6 Commissions and State Commission staffs as well as members  
7 of the FCC and its staff.

8           And that Federal State Joint Board did a  
9 weighing, did a balancing of the competing interests  
10 between making the lifeline program user friendly and  
11 relatively convenient for low income customers to enroll  
12 in on the one hand and protecting ratepayers against  
13 waste, fraud and abuse of Universal Service Fund dollars  
14 on the other hand.

15           And it -- and the Federal State Joint Board and  
16 ultimately the FCC concluded that the appropriate balance  
17 was requirement for self-certification under penalty of  
18 perjury.

19           And I have read nothing and heard nothing in the  
20 years since that rule was adopted that has caused the FCC  
21 or the Joint Board to question the wisdom of that  
22 decision. It works. It works well.

23           So we would submit that there is no reason why  
24 the -- why the Commission would want to impose a State  
25 requirement on an exclusively Federal program funded



1 exclusively out of Federal dollars when that program is  
2 working.

3           One final thing that I think is significant is  
4 TracFone customers have an additional measure -- well, let  
5 me put it this way. The Fund has an additional measure of  
6 protection with respect to TracFone's program.

7           Not only is TracFone required to obtain  
8 self-certifications under penalty of perjury from every  
9 single customer, but unlike other ETCs, TracFone is  
10 subject to a separate FCC imposed requirement that the  
11 specific perjury penalties be listed on every TracFone  
12 lifeline enrollment form, including the form that will be  
13 used in Missouri. That was a requirement imposed by the  
14 FCC back in 2005.

15           So when you weigh all those factors together, I  
16 think the -- the justification for following the Federal  
17 rule for this Federal lifeline program is rather  
18 compelling.

19           COMMISSIONER GUNN: Thank you. I don't have any  
20 further questions, Judge.

21           JUDGE JORDAN: Anything else from the parties in  
22 response to what's been said?

23           MS. HERNANDEZ: I would just like to rebut that  
24 position that the Title 47 -- although our State rule  
25 is --

1           JUDGE JORDAN: Please identify yourself first to  
2 the people on the phone.

3           MS. HERNANDEZ: I'm sorry. Jennifer Hernandez  
4 for Staff. Although Chapter 41 is written, we'll admit,  
5 in the Universal Service Fund, Title 47 of the Federal  
6 Rules state that you are to use the rules that you have --  
7 that a state has in place for the type of funds that  
8 they're requesting. So even though our rule was written  
9 for the State Universal Service Funds, it is to be applied  
10 in this situation.

11          JUDGE JORDAN: Has anyone else joined us on the  
12 line? I thought I heard someone dialing in. Anyone new  
13 to us? Okay. Thank you. Questions from Commissioner  
14 Jarrett?

15          COMMISSIONER JARRETT: Thank you, Judge. My  
16 first question is for the counsel for Nexus. It's my  
17 understanding that Nexus agrees to this condition that  
18 we've been talking about; is that correct?

19          MR. STEINER: That's correct.

20          COMMISSIONER JARRETT: Nexus doesn't consider it  
21 to be onerous in any way?

22          MR. STEINER: We -- we did agree to it for --  
23 we'd like our application approved. I believe we believe  
24 that the -- the company believes that if the Commission is  
25 going to grant a waiver to other companies that we -- we

1 should have the same waiver so the playing field would be  
2 level. I would ask Steve Finker of Nexus, if you have any  
3 additions to -- to what I just said as far as the onerous  
4 nature of the -- of the rule.

5 MR. FINKER: Yeah. May it please the  
6 Commission. This is Steve Finker from Nexus  
7 Communications. Our insight in this is that by placing an  
8 additional burden on the customer to provide  
9 documentation, in essence, adds an additional layer of  
10 activity and requirements on the customer that don't  
11 normally exist under the rules of federal  
12 self-certification.

13 So, obviously, in terms of operational impact,  
14 any additional requirements are going to put a higher  
15 burden on low income consumers. That's -- that's our main  
16 issue at this point.

17 COMMISSIONER JARRETT: But you don't find it  
18 onerous as far as your procedures?

19 MR. FINKER: I'm sorry. I didn't hear the  
20 question.

21 COMMISSIONER JARRETT: Do you find it onerous  
22 from Nexus' perspective for the company?

23 MR. FINKER: No. I -- what I'm saying is that  
24 the -- the -- we find that -- you know, by dealing  
25 directly with the consumer and talking to them and

1 understanding their issues associated with certification,  
2 it -- it places an additional burden on the consumer, not  
3 the company.

4 COMMISSIONER JARRETT: Okay. So there's no  
5 burden on the company, is that right, from your  
6 perspective?

7 MR. FINKER: I'm sorry. I could barely hear  
8 that.

9 COMMISSIONER JARRETT: There's no burden -- what  
10 you were saying, I guess, is that there is no burden on  
11 the company?

12 MR. FINKER: Well, what I'm -- what I'm saying  
13 is that -- the net result of requiring both a signed form  
14 and documentation is that it -- it places an additional  
15 burden on the customer that doesn't necessarily have  
16 access to a fax machine.

17 That's one of the biggest hurdles that we  
18 encounter, explain to the customer where they can go and  
19 fax a document, the cost associated with it and the  
20 additional time associated with provisioning that  
21 customer.

22 COMMISSIONER JARRETT: All right. I'll ask this  
23 one more time. And it's really a yes or no question.  
24 Does this condition place a burden on the company?

25 MR. FINKER: Well, to answer the question, it

1 places an additional burden on the company to compile the  
2 documentation and retain it in accordance with -- I think  
3 there's a rule from Office of Management Budget associated  
4 with that, which -- again, I'm not -- I'm not specifically  
5 answering the question in terms of the impact on Nexus.  
6 It's the impact, we believe, on the availability of the  
7 fund and the -- the -- the availability of lifeline  
8 link-up for low income consumers.

9 COMMISSIONER JARRETT: Well, I guess I'll just  
10 give up. I can't get a yes or no answer. My question,  
11 then, goes to counsel for TracFone. What -- what does  
12 TracFone find onerous about this condition?

13 MR. BRECKER: Well, Commissioner, to answer your  
14 question directly, the requirement does place a burden on  
15 the company. It places -- it's additional work. It's  
16 additional record-keeping. And also it delays the  
17 completion of the enrollment process.

18 This is like any other business. The company  
19 wants to acquire customers, get them enrolled in the  
20 program sooner than later. And the delay itself -- and I  
21 -- to be quite candid, in some cases, the delay occasioned  
22 by requiring an applicant to go home and look for a piece  
23 of paper which may or may not be readily available and  
24 then find a fax machine to fax it in can be multiple  
25 weeks, that is a burden. And I make no -- no bones about

1 that.

2           Let me be very clear. It is a burden. However,  
3 that's really not why TracFone sought a waiver or sought a  
4 ruling that the rule wouldn't apply. It is, more  
5 importantly, we think, an unnecessary step and one that  
6 will have the effect of reducing participation in lifeline  
7 -- in the lifeline program by the people that the program  
8 is designed for, low income consumers.

9           According to the most recent data that I've been  
10 able to locate, which is an FCC report, approximately 10  
11 percent of eligible for Missouri low income households  
12 participate in lifeline. Stated another way, that's a 90  
13 percent non-participation rate.

14           I think that's a shame. I think that's  
15 shameful. I think it's shameful any time a government  
16 program intended to help poor people is not being used in  
17 90 percent of the situation where's it was intended to be  
18 used.

19           We want to make the program more user friendly  
20 so the people that were intended to benefit from it can  
21 benefit from it so we can get that 10 percent  
22 participation rate up to a much more respectable,  
23 appropriate number.

24           COMMISSIONER JARRETT: Ms. Dietrich, I know that  
25 beef been using this application form here in Missouri.

1 Counsel just stated it might delay getting the services to  
2 the customers for weeks. Has that been the experience  
3 under our program here with this type of application?

4 MS. DIETRICH: We've not heard any --

5 MR. BRECKER: I'm sorry. We're having a  
6 difficult time hearing, Commissioner.

7 MR. JARRETT: My question was to Staff.

8 MR. BRECKER: Okay.

9 MR. JARRETT: Since we use this application here  
10 in Missouri and use these procedures here in Missouri for  
11 the Missouri USF, I was asking Ms. Dietrich if we  
12 experienced the problems that you said might occur if you  
13 were required to use the problem, such as customers having  
14 to wait for weeks to get the service. And I'm asking her,  
15 has that been our experience using these procedures?

16 MS. DIETRICH: Natelle Dietrich with Commission  
17 Staff. We have not heard any complaints that the  
18 companies have had issues with having to follow-up with  
19 the documentation, having to wait -- the customer having  
20 to wait several weeks before they were eligible to sign  
21 up.

22 We've talked to -- not only -- as you know, some  
23 of the companies in Missouri would have customers that  
24 walk right into their office because they're, you know,  
25 just small companies locally owned.

1           But we also have companies like AT&T, CenturyTel  
2 and Embarq that have to do a lot of this by mail because  
3 the customer is not necessarily located in the same area  
4 where the office that handles the lifeline support would  
5 be located.

6           And so they -- they do it by mail. The customer  
7 mails in documentation, faxes them, you know, whatever the  
8 case might be. The companies have set up procedures --  
9 there are -- there are Federal requirements. The  
10 companies cannot keep any form of documentation, for  
11 instance, if they would mail in a copy of their Medicaid  
12 card. Because of privacy laws, they can't keep those.

13           So they've set up a process that we've seen --  
14 we've now marked that we've seen it and then we destroyed  
15 the document. So we've been doing that for about a year  
16 and have not have any complaints.

17           COMMISSIONER JARRETT: So we've been doing it  
18 for a year. In that year, have we received any consumer  
19 complaints that they weren't getting their service in a  
20 timely manner or that the procedures and documentation  
21 that they were required to follow were onerous?

22           MS. DIETRICH: Not -- not related to having to  
23 provide documentation. We have received some complaints  
24 for whatever reason there was miscommunication or things  
25 like that, but not related to what we're talking about



1 here.

2 COMMISSIONER JARRETT: Okay. That's all the  
3 questions I have for now. Thanks.

4 JUDGE JORDAN: All right. Any response from the  
5 Office of Public Counsel on this issue, on Commissioner  
6 Jarrett's questions?

7 MR. DANDINO: No, your Honor.

8 JUDGE JORDAN: Okay. Thank you. Commissioner  
9 Clayton, questions?

10 CHAIRMAN CLAYTON: Thank you, Judge. For those  
11 listening on the phone, this is Robert Clayton. I want to  
12 start out with Staff, and I want to work through this.  
13 And the first question I want to ask -- and I guess who --  
14 who is the lead Staff person? Is this Ms Buyak, or is  
15 this Ms. Dietrich?

16 MS. DIETRICH: For the applications, Ms. Buyak.

17 CHAIRMAN CLAYTON: Ms. Buyak, is the -- well,  
18 let me throw these out there, and you all decide who you  
19 want to chime in. But my initial questions are for  
20 Staff.

21 First of all, I want to ask, in terms of  
22 history, is this the first Petition of its kind that we  
23 have seen in the State of Missouri?

24 MS. DIETRICH: This -- these are the first  
25 Petitions for prepaid wireless service. We have had a

1 couple requests for prepaid -- I guess they were land line  
2 service. They weren't wireless service.

3 CHAIRMAN CLAYTON: Is your mic. on?

4 MS. DIETRICH: Uh-huh.

5 CHAIRMAN CLAYTON: Okay.

6 MS. DIETRICH: One -- one of the requests was  
7 ultimately withdrawn by the company. The second request  
8 actually went to hearing, and the Commission denied it.

9 CHAIRMAN CLAYTON: Okay. Let me step back here.  
10 I always get confused on Universal Service Fund issues.  
11 So I want to ask how many Petitions have we had for  
12 lifeline support for wireless carriers?

13 I'm sorry. Sir, can you -- Eric, can you move?  
14 I'm sorry. You keep -- you -- you keep swiveling around,  
15 and you're blocking her. Sorry about that.

16 MS. DIETRICH: For lifeline wireless? Prepaid  
17 wireless? Is that --

18 CHAIRMAN CLAYTON: Just wireless, period.

19 MS. DIETRICH: Just wireless?

20 CHAIRMAN CLAYTON: Yeah.

21 MS. DIETRICH: For lifeline only, none.

22 CHAIRMAN CLAYTON: Okay. so this is the first  
23 of its kind?

24 MS. DIETRICH: Right. Uh-huh.

25 CHAIRMAN CLAYTON: Okay. Have -- do -- have we

1 had any wireless Petitions for any ETC designations in  
2 this state?

3 MS. DIETRICH: Yes. We've had three -- well,  
4 we've -- we've had a couple that were withdrawn, but we've  
5 had three that have gone through the entire process.

6 CHAIRMAN CLAYTON: Let's talk about just what's  
7 -- just what's been approved by the Commission.

8 MS. DIETRICH: Yes. We have approved --

9 CHAIRMAN CLAYTON: Walk me through that. Were  
10 those Petitions for Federal or State Universal Service  
11 Fund support?

12 MS. DIETRICH: They were for ETC designation for  
13 Federal support, high cost and low income.

14 CHAIRMAN CLAYTON: Okay. So we've had three  
15 wireless, and that was for Federal support for both high  
16 cost and low income?

17 MS. DIETRICH: Correct.

18 CHAIRMAN CLAYTON: And do you recall the --  
19 those carriers' names?

20 MS. DIETRICH: U.S. Cellular, Northwest Missouri  
21 Cellular, and RSA No. 5, which is also known as Chariton  
22 Valley Cellular.

23 CHAIRMAN CLAYTON: Okay. And those are for --  
24 for both Federal high cost and low income support?

25 MS. DIETRICH: Correct.

1           CHAIRMAN CLAYTON: Now, are -- are any of those  
2 three carriers eligible for Missouri support?

3           MS. DIETRICH: No, they're not.

4           CHAIRMAN CLAYTON: Okay. Why not?

5           MS. DIETRICH: Because wireless carriers are  
6 specifically exempted by Missouri statute.

7           CHAIRMAN CLAYTON: So Missouri Universal Service  
8 Fund issues are not even -- I mean, Missouri Universal  
9 Service Fund support is not available for any wireless  
10 carriers regardless of whether they're prepaid or  
11 traditional wireless carriers; is that correct?

12          MS. DIETRICH: That's correct.

13          CHAIRMAN CLAYTON: Okay. Now, did those  
14 carriers apply for -- is it life -- lifeline support?

15          MS. DIETRICH: It -- it was included in their  
16 application. It -- in the past --

17          CHAIRMAN CLAYTON: Is that the low income piece?

18          MS. DIETRICH: Yes. Uh-huh. In the past, more  
19 or less, low income just went along with the high cost.

20          CHAIRMAN CLAYTON: Okay. So when you say low  
21 income support, is that equal to lifeline, or are there  
22 different components included in lifeline?

23          MS. DIETRICH: Lifeline support or low income  
24 support includes the low income component, which is a  
25 discount off of the monthly rate and, also, the link-up

1 program, which is a discount off of the connection fees.

2 CHAIRMAN CLAYTON: So -- so when -- when a party  
3 says that it is seeking low income support, ETC  
4 designated, it refers to both lifeline and link-up?

5 MS. DIETRICH: Typically, yes.

6 CHAIRMAN CLAYTON: Typically. Okay. Now, in  
7 this application, this -- this refers to lifeline. But  
8 does it include lifeline and link-up?

9 MS. DIETRICH: No.

10 CHAIRMAN CLAYTON: Just the lifeline?

11 MS. DIETRICH: Well, Trac -- TracFone is  
12 lifeline only. Nexus, I believe, was both.

13 CHAIRMAN CLAYTON: Thank you. Now, can you  
14 describe what lifeline actually means?

15 MS. DIETRICH: The -- the lifeline support is a  
16 discount off of the monthly rate that the customer pays.

17 CHAIRMAN CLAYTON: And can you give me -- is  
18 that standard across for all carriers, or does it vary by  
19 carrier?

20 MS. DIETRICH: It varies -- well, the amount is  
21 standard. It -- it can be up to \$13.50. And the way it  
22 works is they receive \$1.75 from the Federal fund. They  
23 receive 3.50 from the State fund, or the carrier can kick  
24 in 3.50 to maximize --

25 CHAIRMAN CLAYTON: Okay. Now, wait a minute.

1 You're confusing me. The State kicks in 3.50, but I  
2 thought we already established that the State can't kick  
3 in 3.50 --

4 MS. DIETRICH: Right.

5 CHAIRMAN CLAYTON: -- or can't kick in anything.

6 MS. DIETRICH: For the wireless carriers, the  
7 State can't contribute the \$3.50. The -- the State can't  
8 contribute the \$3.50, so the carrier credits the customer  
9 that amount so that the Federal Government maximizes the  
10 State support.

11 So in other words, if a carrier receives 3.50  
12 from the State fund or from the carrier itself, then the  
13 customer also received an additional \$1.75 from the  
14 Federal fund. So in order to maximize that additional  
15 \$1.75 in this case, the carriers have agreed to contribute  
16 that \$3.50.

17 CHAIRMAN CLAYTON: All right. This is the first  
18 time I've worked through this before because I know  
19 there's this Universal -- this fund support from the  
20 State. But usually we're talking about it from a wire  
21 line level.

22 So -- so, basically, right off the bat for  
23 lifeline service, there is \$1.75 in Federal support on a  
24 monthly basis --

25 MS. DIETRICH: Right.

1           CHAIRMAN CLAYTON:  -- ongoing?

2           MS. DIETRICH:  Right.

3           CHAIRMAN CLAYTON:  And then there is an  
4 additional \$1.75 that -- that they can apply for if there  
5 is some degree of match, either from the State or from the  
6 carrier, and that matching amount is \$3.50?

7           MS. DIETRICH:  Correct.

8           CHAIRMAN CLAYTON:  Okay.  So the carrier throws  
9 in 3.50 as a credit, and then they get another \$1.75 --

10          MS. DIETRICH:  Right.

11          CHAIRMAN CLAYTON:  -- per month.

12          MS. DIETRICH:  So -- so now we're up to \$7.  And  
13 then the additional funding comes from the subscriber line  
14 charge.  The ILECs have a subscriber line charge of up to  
15 \$6.50.  Most carriers in Missouri charge \$6.50, but AT&T  
16 territories, it's \$5.31.

17                 So the way the Federal rules are written, a  
18 wireless carrier or a competitor can get the amount of the  
19 ILEC slick.  So in most of the areas in Missouri, the  
20 wireless carriers, TracFone and Nexus, can also get an  
21 additional \$6.50 from the Federal fund as the slick, so to  
22 speak, component of the fund.

23          CHAIRMAN CLAYTON:  Okay.  So that's how you get  
24 the up to \$13.50 --

25          MS. DIETRICH:  Correct.

1           CHAIRMAN CLAYTON:  -- for lifeline?

2           MS. DIETRICH:  Right.

3           CHAIRMAN CLAYTON:  So in this instance, what we  
4 would have is Federal fund contribution of the \$1.75, the  
5 \$1.75 plus 6.50.  So there's actually \$10 that the Feds  
6 are kicking in, plus a \$3.50 credit the carrier?

7           MS. DIETRICH:  Up to \$10.

8           CHAIRMAN CLAYTON:  Yeah.  Up to --

9           MS. DIETRICH:  In AT&T areas, it would be just a  
10 little bit less.

11          CHAIRMAN CLAYTON:  Okay.  It would be slightly  
12 different.  And I'm assuming this application is for  
13 state-wide service.  Or is it designated in exchanges or  
14 MTA?

15          MS. DIETRICH:  One of the applications is  
16 state-wide.  One of them is AT&T only.

17          CHAIRMAN CLAYTON:  Let's talk about that real  
18 quick.  TracFone, is it state-wide?  Or just AT&T?

19          MR. BRECKER:  TracFone is seeking state-wide  
20 designation, Chairman Clayton.

21          CHAIRMAN CLAYTON:  Yes.  Thank you.  Go ahead,  
22 Sarah.

23          MS. BUYAK:  this is Sarah Buyak with the  
24 Commission Staff.  That's what I was going to say is that  
25 TracFone is requesting state-wide.



1           CHAIRMAN CLAYTON: Okay. And Nexus, their  
2 application is for?

3           MS. BUYAK: It is just the large areas only.

4           CHAIRMAN CLAYTON: The large areas only?

5           MS. BUYAK: The -- the what? Non-rural. Sorry.

6           CHAIRMAN CLAYTON: Okay. So non-rural?

7           MS. BUYAK: AT&T.

8           CHAIRMAN CLAYTON: So would that be AT&T,  
9 CenturyTel and Embarq? I guess I don't know if Embarq is  
10 a --

11          COMMISSIONER JARRETT: It is the same thing.

12          CHAIRMAN CLAYTON: Yeah. It's the same thing.  
13 Embarq has a separate designation, a different -- AT&T and  
14 CenturyTel are the same thing. And Embarq is what? A  
15 non-rural utility or -- I don't know.

16          MR. STEINER: Your Honor, can I -- can I answer?

17          CHAIRMAN CLAYTON: Sir, hang on just a second.  
18 Staff's working on an answer. We'll come to you in just a  
19 second. Thank you.

20          MS. DIETRICH: I think you're mixing apples and  
21 oranges.

22          CHAIRMAN CLAYTON: Just tell me what the  
23 territory is, the response of all large areas. And I --

24          MS. DIETRICH: It's non-rural exchanges of AT&T.

25          CHAIRMAN CLAYTON: Okay. Non-rural exchanges of

1 AT&T. Thank you. Okay. Now, is that -- do you agree  
2 with that, sir, whoever chimed in there?

3 JUDGE JORDAN: Mr. Steiner? Roger Steiner?

4 MR. STEINER: Yes. We agree with that, your  
5 Honor.

6 CHAIRMAN CLAYTON: Thank you. Okay. All right.  
7 Briefly, can you give me a description of the link-up  
8 program, what that means for Nexus?

9 And I'm assuming that for Nexus, the lifeline  
10 calculation would be identical as to what -- they're the  
11 same for both area, except for the AT&T slick, which would  
12 be slightly off.

13 MS. DIETRICH: Correct.

14 CHAIRMAN CLAYTON: Okay.

15 MS. DIETRICH: The link-up program is a discount  
16 off of the connection fee. I don't know the exact dollar  
17 amounts. But, say, for instance, their connection fee is  
18 \$40, then they can receive -- the customer can receive a  
19 discount of half of that amount up to 25 or \$30.

20 CHAIRMAN CLAYTON: Okay. Okay. I appreciate  
21 the refresher course on this. We haven't visited this in  
22 a while.

23 So we have three wireless carriers that -- that  
24 have been granted both high cost and low income support,  
25 which includes lifeline and link-up. Now, do we have any

1 prepaid wire line Federal ETC carriers?

2 MS. DIETRICH: No, we do not.

3 CHAIRMAN CLAYTON: We don't have any. Do we  
4 have any State supported ETC carriers that are prepaid  
5 wire line?

6 MS. DIETRICH: No, we do not.

7 CHAIRMAN CLAYTON: Okay. So these applications  
8 would be the first prepaid wireless carriers, correct?

9 MS. DIETRICH: Correct. There was -- there was  
10 one prepaid carrier that the Commission denied.

11 CHAIRMAN CLAYTON: Which one was that?

12 MS. DIETRICH: VCI Company. And that was  
13 CO-2006-0464.

14 CHAIRMAN CLAYTON: Okay. All right. Walk me  
15 through how this case has proceeded since it's slightly  
16 different and we don't deal with these issues all the  
17 time.

18 TracFone and Nexus filed their Petitions. What  
19 was Staff's initial response, either Ms. Buyak or Ms.  
20 Dietrich?

21 MS. DIETRICH: Staff looked at both  
22 applications, compared them to Chapter 3, which is the ETC  
23 Rule 3.570, made sure that it had all the components that  
24 are -- that are required to be included in an application.

25 Both applications had some deficiencies, so we

1 went back to the company, and they both supplemented their  
2 applications. We sent out DRs asking some additional  
3 questions on how they -- their plans would work and things  
4 like that.

5 CHAIRMAN CLAYTON: Can you give me an example of  
6 a deficiency? Is it just basically not dotting an I or  
7 crossing a T, or is it --

8 MS. DIETRICH: No. There were specific rules  
9 that -- specific rules in Chapter 3 that the companies did  
10 not have in their application, commitments to abide by --  
11 say, for instance, abide by the CTIA wireless code.

12 CHAIRMAN CLAYTON: Okay.

13 MS. DIETRICH: And it also requires a copy of  
14 the code. And so it was things like that.

15 CHAIRMAN CLAYTON: Now, where are those  
16 obligations located? Those are in Chapter 3 of our rules?

17 MS. DIETRICH: Correct. 3.570.

18 CHAIRMAN CLAYTON: Okay. And have those  
19 deficiencies been addressed to the Staff's satisfaction?

20 MS. DIETRICH: Yes.

21 CHAIRMAN CLAYTON: Okay. So then at that point,  
22 what was Staff's recommendation once the initial  
23 deficiencies were addressed?

24 MS. DIETRICH: Staff's recommendation was to  
25 approve both the applications with the conditions that we

1 outlined that are contained in Chapter 31 of the  
2 Commission rules, which are the certification and  
3 verification requirements, and then, also, a clarification  
4 condition that the companies would receive no more from  
5 the Federal fund than the customer would have paid if they  
6 had paid for the service.

7 CHAIRMAN CLAYTON: Okay. And Chapter 31 is in  
8 our rules, correct?

9 MS. DIETRICH: That's correct.

10 CHAIRMAN CLAYTON: Okay. Now, is it -- what is  
11 the title of Chapter 31?

12 MS. DIETRICH: Missouri Universal Service Fund.

13 CHAIRMAN CLAYTON: Okay. And are the criteria  
14 located in Chapter 31 what we use -- do we use those for  
15 Federal USF certification for wire line carriers?

16 MS. DIETRICH: Yes.

17 CHAIRMAN CLAYTON: We do use those?

18 MS. DIETRICH: They apply to State and Federal  
19 requests for --

20 CHAIRMAN CLAYTON: Are there any differences in  
21 ETC designation for a State USF applicant versus a Federal  
22 USF applicant? Any substantive differences? I guess I'll  
23 ask it that way.

24 MS. DIETRICH: There is no State ETC designation  
25 process. But the process that we do use and go through

1 with the Board is substantively the same.

2 CHAIRMAN CLAYTON: Okay. So the analysis is the  
3 same?

4 MS. DIETRICH: Right.

5 CHAIRMAN CLAYTON: And the criteria used by the  
6 Missouri Universal Service Fund Board is the same that we  
7 would use for certifying ETCs at the Federal level?

8 MS. DIETRICH: Correct.

9 CHAIRMAN CLAYTON: All right. Except the ETCs  
10 at the Federal level have been granted that many -- at  
11 least prior to my time, and now we just kind of recertify  
12 them, don't we? Do we re-approve them on an annual basis?

13 MS. DIETRICH: Right. You're talking about high  
14 cost now, high cost funds.

15 CHAIRMAN CLAYTON: That is high cost?

16 MS. DIETRICH: Uh-huh.

17 CHAIRMAN CLAYTON: We don't re-approve for low  
18 income fund?

19 MS. DIETRICH: No, no.

20 CHAIRMAN CLAYTON: So those are ongoing,  
21 those --

22 MS. DIETRICH: The low --

23 CHAIRMAN CLAYTON: Those continue in perpetuity  
24 as of right now?

25 MS. DIETRICH: Right. Uh-huh.

1           CHAIRMAN CLAYTON: Okay. Okay. So the Staff is  
2 recommending approval subject to certain conditions?

3           MS. DIETRICH: Correct.

4           CHAIRMAN CLAYTON: All right. Can you set out  
5 those conditions? Or Ms. Buyak or -- if it's Ms. Buyak's  
6 case, maybe she should just throw out the recommendations.

7           MS. BUYAK: Yes. This is Sarah Buyak with the  
8 Staff.

9           CHAIRMAN CLAYTON: Make sure you speak up for  
10 our -- so our telephone folks can hear you.

11          MS. BUYAK: Okay. Yes. I looked at the -- this  
12 -- these applications according to 4 CSR 240.31.050 and  
13 3.570. And what I looked at -- what I required the  
14 companies to do is show that they had the proper  
15 certification, verification, customer eligibility for  
16 lifeline support. And those were some of the requirements  
17 that I required in the 30 -- Chapter 31.

18          CHAIRMAN CLAYTON: Let's start with the -- you  
19 verified that they met -- that they met the criteria, I  
20 think is what you said --

21          MS. BUYAK: Yes.

22          CHAIRMAN CLAYTON: -- at the start. But I want  
23 to know what conditions the Staff is recommending. Under  
24 what rule do you cite for -- for any additional  
25 conditions? Or do you cite to a rule?

1 MS. BUYAK: Yes. 4 CSR 240-31.050, 3-D and E.

2 CHAIRMAN CLAYTON: C and -- D and E?

3 MS. BUYAK: No. 3-D and E.

4 CHAIRMAN CLAYTON: Okay. And what are those  
5 conditions?

6 MS. BUYAK: That individuals shall be eligible  
7 for lifeline assistance if the customer requests or  
8 receiving TracFone service participates or has a dependent  
9 residing in the customer's household who participates in  
10 programs pursuant for Federal Rule 42 USC Sections 1396 to  
11 1396-B. Also, that customers shall complete an  
12 application similar to the --

13 CHAIRMAN CLAYTON: Okay. I've got it. You're  
14 reading from the Staff recommendation, paragraph 11-B?

15 MS. BUYAK: Correct. Yes.

16 CHAIRMAN CLAYTON: You don't need to re-read  
17 that. So, basically, you're just stating that eligibility  
18 is based on eligibility or enrollment in these programs,  
19 correct?

20 MS. BUYAK: That's correct.

21 CHAIRMAN CLAYTON: NOkay. Go ahead. What  
22 else? Should we just work down the page here? You've got  
23 they receive no more support reimbursement per customer  
24 than the amount a TracFone customer would have paid at  
25 each customer's respective ILEC service area. That's



1 11-A?

2 MS. BUYAK: Correct.

3 CHAIRMAN CLAYTON: Staff recommendation 11-C is  
4 completing the application. And D requires customers to  
5 provide documentation. E, develop a process for recording  
6 the type of documentation. F, returning or destroying the  
7 documentation system. G, verify continued eligibility and  
8 terminate if they -- if they cease to meet those  
9 eligibility.

10 Is there anything else that Staff is requiring  
11 and associated with either of these --

12 MS. BUYAK: No. That's it.

13 CHAIRMAN CLAYTON: Okay. Are these conditions  
14 consistent with what conditions were placed, if any, on  
15 the other USF low income applicants on the wireless or the  
16 wire line side?

17 MS. DIETRICH: They're consistent. And,  
18 actually, there's a few more that the wire line companies  
19 have to do because of the Missouri fund, which didn't make  
20 sense to apply to companies that didn't access Missouri  
21 funds.

22 CHAIRMAN CLAYTON: Okay. So -- so these are  
23 consistent. There may be more on the wire line side, but  
24 these are consistent for wireless, correct?

25 MS. DIETRICH: Correct. Uh-huh.

1           CHAIRMAN CLAYTON: Okay. Going to -- I'm ready  
2 for TracFone and Nexus now. And I'm sorry. Who is  
3 representing whom for each?

4           MR. JOHNSON: Mr. Chairman, this is Mark  
5 Johnson. I'm appearing on behalf of TracFone, and as is  
6 Mitchell Brecker.

7           CHAIRMAN CLAYTON: Okay.

8           MR. STEINER: And Roger Steiner appearing for  
9 Nexus.

10          CHAIRMAN CLAYTON: Thank you. Okay. And I --  
11 forgive me for going through this. It's been a busy week  
12 already. Mr. Johnson, from -- I'm sorry. From -- from  
13 TracFone's perspective, tell me which of those conditions  
14 we went through gives TracFone heartburn.

15          MR. JOHNSON: Well, I think Mr. Brecker is  
16 probably best to answer that. But could I add one thing  
17 in -- you asked Ms. Dietrich whether there had been a  
18 prepaid wireless application, and -- and she said, I  
19 believe, no.

20          In fact, there has been. I filed one on behalf  
21 of YourTel America earlier this year, and I'm looking at  
22 the Staff recommendation right now. By the way, that's  
23 Case No. -- let me find it for you. CO-2009-0257. And  
24 that was for prepaid wireless -- YourTel was actually  
25 seeking to amend its ETC designation to include a prepaid

1 wireless service.

2 CHAIRMAN CLAYTON: I see.

3 MR. JOHNSON: And that was granted on March 11th  
4 of this year. But I'll defer to Mr. Brecker in response  
5 to your direct questions, Mr. Chairman.

6 CHAIRMAN CLAYTON: Okay. Hang on.

7 Mr. Johnston, before we leave you there, I want to clear  
8 up, does Staff agree with that?

9 MS. DIETRICH: YourTel did apply to expand its  
10 previous ETC designation to include wireless. We had  
11 discussions about whether they even had to apply because  
12 they had already received ETC designation in Missouri and  
13 this was adding a new service, so to speak.

14 And we decided out of an abundance of caution,  
15 it would make sense to have them go through the process.  
16 But we didn't go through the full-blown analysis like we  
17 did with a brand new service.

18 CHAIRMAN CLAYTON: They were already providing  
19 service. But you would still apply the same analysis to  
20 the wireless side, wouldn't you?

21 MS. DIETRICH: Right. Uh-huh. And they are  
22 doing the various things for the wire line side.

23 CHAIRMAN CLAYTON: For the criteria. Did the  
24 Staff require the same conditions that we're talking about  
25 here on that expansion?

1 MS. DIETRICH: No. It just didn't come up  
2 because we have the history with YourTel.

3 CHAIRMAN CLAYTON: But I think you said that the  
4 conditions you're requesting in this case are consistent  
5 with what you've done in the past. So in the YourTel ETC  
6 designation before that, the original one, would these  
7 conditions have been included?

8 MS. DIETRICH: I -- I guess the difference I'm  
9 -- distinction I'm drawing is we didn't put them as  
10 conditions under ETC designations but they do comply with  
11 our rules, and those conditions in our rules. So that  
12 way, yes, they are required to do that.

13 CHAIRMAN CLAYTON: Okay. Do you agree or  
14 disagree with that characterization, Mr. Johnston?

15 MR. JOHNSON: Was that directed to me,  
16 Mr. Chairman?

17 CHAIRMAN CLAYTON: Yeah. I think Mr. Johson  
18 brought up the YourTel --

19 MR. JOHNSON: Okay. Well, I believe the YourTel  
20 complies with the State -- pardon me -- the State  
21 eligibility rule because it -- and Natelle, I'm sure, will  
22 correct me if I'm wrong, because I believe that YourTel  
23 gets -- receives State Universal Service Fund for its low  
24 income customers.

25 MS. DIETRICH: For the land line customers,

1 that's right.

2 MR. JOHNSON: Yeah. Exactly. For land line.

3 CHAIRMAN CLAYTON: For the land line.

4 MR. JOHNSON: And so, you know, the extension of  
5 this to its -- its wireless service, which hasn't been  
6 ruled out yet, is no additional burden on the company.  
7 It's simply the process that it was already following.

8 CHAIRMAN CLAYTON: Okay. Thank you,  
9 Mr. Johnson. I appreciate that clarification.

10 MR. JOHNSON: Sure.

11 CHAIRMAN CLAYTON: It's completing my score card  
12 here. Now, Mr. Brecker, are you -- are you there?

13 MR. BRECKER: Yes, I am. Thank you,  
14 Mr. Chairman. Let me preface my remarks by saying that I  
15 think at this point the only area of disagreement between  
16 TracFone and Staff has to do with the request for -- well,  
17 the -- the interpretation that the Missouri State  
18 certification rules are not applicable or if they are  
19 applicable to our request for a waiver.

20 In every other respect, I think we and Staff are  
21 in agreement. Staff has been extremely cooperative.  
22 They've pointed out shortcomings in the application, in  
23 the Petition. We made the -- we worked with Staff. We  
24 got a number of calls. We made the changes in the form of  
25 amendments.

1           And I think we're pretty -- we're pretty close,  
2 and they've been very helpful in that regard. But we do  
3 disagree a little bit on this whole question of  
4 certification.

5           Staff bases its -- its argument that a wireless  
6 ETC seeking only Federal Universal Service Fund money  
7 should be made subject to the State requirements. It  
8 bases that argument on Section 54.409(A) of the FCC's  
9 rules, which it cites in its responsive pleading which  
10 counsel read earlier in the hearing.

11           And that rule, I don't think, really applies.  
12 And I'll tell you why. The rule says, in relevant part,  
13 that to qualify to receive lifeline service in a state  
14 that mandates state lifeline support, a consumer must meet  
15 the eligibility criteria established by the State  
16 Commission for such support.

17           Well in my mind, there is a difference between  
18 the eligibility criteria established by the State  
19 Commission on the one hand and the procedures to be  
20 followed to certify or verify compliance with those  
21 eligibility criteria on the other hand.

22           Those are two very different types of  
23 requirements. There's no disagreement with -- from  
24 TracFone that the eligibility criteria or participation in  
25 the seven programs, seven public assistance programs

1 listed in the Commission's rule, LIHEAP, temporary  
2 assistance, Medicaid, et cetera, et cetera.

3           But those criteria are separate and apart from  
4 the provision of the rules which sets forth the ground  
5 rules for how companies pulling money out of the Missouri  
6 Universal Service Fund are required to certify that  
7 applicants have met those -- those eligibility criteria.

8           The requirements that -- customers provide  
9 documentation of participation and that a process for  
10 recording the documentation, those are not part of  
11 eligibility criteria. They're part of the certification  
12 process.

13           And that's why we had suggested that they are  
14 not applicable. And to the extent that they are  
15 applicable, they're not appropriate, and they would be  
16 unduly burdensome to the company, and, more importantly,  
17 to the customers that are supposed to again benefit from  
18 the program by imposing an unnecessary delay and roadblock  
19 to their lifeline enrollments.

20           CHAIRMAN CLAYTON: I'm going to get back to this  
21 argument because I do want to -- I'm looking for some  
22 documents to make sure I'm organized here. Let me nail  
23 this down. I want to get clarification. Is -- is your --  
24 your client objecting to all of the conditions that are  
25 proposed or just certain of the conditions?

1           MR. BRECKER: No. No, Chairman Clayton. The  
2 only condition that we're objecting to is the requirement  
3 that we comply -- those certification requirements. And  
4 they're listed on page 3 of Staff's response as -- I  
5 believe as A, B, C -- A, B and C.

6           CHAIRMAN CLAYTON: Okay. So D -- D through H,  
7 you're good. Those -- those don't cause you any problems?  
8 I mean, other -- not conceding your legal argument?

9           MR. BRECKER: Right.

10          CHAIRMAN CLAYTON: Okay. Now, from Nexus'  
11 perspective, Mr. Steiner, are you still there?

12          MR. STEINER: Yes. I'm here.

13          CHAIRMAN CLAYTON: I don't want to put you to  
14 sleep. Is your position basically the same as what  
15 Mr. Brecker has just indicated?

16          MR. STEINER: No, your Honor. We're -- we  
17 accepted the Staff's condition. We appreciate Staff's  
18 working with us and accepted the condition in the filing.  
19 But we -- we do feel that if the waiver is granted that it  
20 should also be granted for Nexus, which -- so that there's  
21 a level playing field.

22          CHAIRMAN CLAYTON: Be consistent with whatever  
23 we do. That's basically what you're saying?

24          MR. STEINER: Right.

25          CHAIRMAN CLAYTON: Okay.



1           MR. STEINER: But I wanted to clarify, I think  
2 when Commissioner Jarrett was asking about burden, I think  
3 I sensed some frustration. I think there is -- Nexus  
4 believes there is a burden on the company, that we believe  
5 the main burden is on the consumer with Staff's extra  
6 requirements. But there is a burden on the company.

7           CHAIRMAN CLAYTON: Okay. Okay. I want to come  
8 back to Mr. Brecker, and I want to talk about this rule  
9 54.0 -- excuse me. 54.409(A). That seems to be the  
10 section that you've just referred to and the Staff just  
11 referred to that basically says a customer "must meet the  
12 eligibility criteria established by the State Commission  
13 for such support."

14           Explain to me again why that is not applicable  
15 in this instance.

16           MR. BRECKER: Okay. The -- it's based on the  
17 distinction between what are the eligibility criteria and  
18 how companies are required to determine that somebody's  
19 met those criteria.

20           CHAIRMAN CLAYTON: Yeah.

21           MR. BRECKER: Let me see if I can put it kind of  
22 in lay terms.

23           CHAIRMAN CLAYTON: Basically, you're saying that  
24 this refers to the consumer eligibility and not to the  
25 carrier eligibility?

1           MR. BRECKER: No. No, no, no, no, no, no.  
2 Eligibility criteria means the things that make a lifeline  
3 -- a potential lifeline customer eligible for the program.  
4 And the Missouri rules are very specific.

5           There's a list of Federal programs -- or support  
6 programs that you must participate in at least one of  
7 them, food stamps, supplemental security income, public  
8 housing assistance, school lunch program, et cetera.

9           Those -- in order to be eligible for lifeline,  
10 you've got to be in one of those. And that applies to  
11 Federal lifeline and pursuant to the Federal rule that we  
12 just talked about, in Section 54.409(A) of the FCC's  
13 rules, it's extended to State lifeline to the Missouri  
14 program.

15           You get no argument or disagreement from me  
16 beyond that point. But that -- what makes a customer  
17 eligible is different than how the carrier -- what steps  
18 the carrier has to jump through to confirm that the  
19 customer is eligible.

20           If I'm a low income consumer and I get public  
21 housing assistance, I'm eligible. If TracFone wants to  
22 sign me up as a lifeline customer under the Federal rule,  
23 if I self-certify that I'm in Public Housing assistance,  
24 and they sign me up.

25           Under the Missouri rule, that's not good enough.

1 Even though I'm a participant in housing -- public housing  
2 assistance, I have to provide a document that says I am.

3 All I'm suggesting, Chairman Clayton, is that  
4 the Federal rule that says that the states that mandate  
5 lifeline support establish their own eligibility criteria  
6 does not give the states the right to impose on a wholly  
7 Federal program with no State support the certification  
8 requirements to implement that criteria.

9 CHAIRMAN CLAYTON: Mr. Brecker, how many states  
10 is TracFone certified as an ETC now?

11 MR. BRECKER: Last count, it was 16 or 17.

12 CHAIRMAN CLAYTON: Sixteen. Okay. Those other  
13 16, 17 states, do any of them require some burden of  
14 establishing eligibility with providing documentation or  
15 anything similar to this, or is it all self-certification  
16 with no documentation?

17 MR. BRECKER: I'm going to let Jose Fuentes from  
18 TracFone correct me if I'm wrong, but to date, I believe  
19 that every single state that TracFone is providing  
20 lifeline service in, it follows the Federal  
21 self-certification under penalty of perjury rule.

22 There have been a few states where the issue has  
23 come up. One state that comes to mind right away is  
24 Massachusetts where it had a requirement similar to  
25 Missouri's. We took the position that it wasn't

1 applicable, that we -- and if it was applicable, we asked  
2 for a waiver, and we were able to work with the  
3 Commission. And, basically, we are following the Federal  
4 rule there, and it's working very nicely.

5 CHAIRMAN CLAYTON: Did -- is it Mr. Fuentes?

6 MR. FUENTES: Yes, Commissioner.

7 CHAIRMAN CLAYTON: What's your last name? I'm  
8 sorry.

9 MR. FUENTES: Fuentes, F-u-e-n-t-e-s.

10 CHAIRMAN CLAYTON: But it has an S. Okay. Mr.  
11 Fuentes, do you agree with that? Is that your  
12 understanding?

13 MR. FUENTES: Yes. That is a correct statement.

14 CHAIRMAN CLAYTON: Okay. Okay. I want to go  
15 back to Staff at this point. Is this the same issue that  
16 we faced on the Missouri Universal Service Board that --  
17 that our auditor brought up in terms of certification,  
18 whether or not we were certifying -- whether the companies  
19 were certifying appropriately?

20 MS. DIETRICH: I don't believe the auditor  
21 brought up the issue of whether -- like the documentation  
22 part. What the auditor raised was -- was anybody auditing  
23 to make sure that the documentation was received, that the  
24 companies were applying the planning correctly, that type  
25 of thing.

1           CHAIRMAN CLAYTON: Yeah. Yeah. Okay. That --  
2 but that documentation is that -- that they're -- that the  
3 auditor suggested, whether it was there or not. I mean,  
4 it wouldn't have to be there in this instance. If we were  
5 to approve this -- or approve this waiver and grant the  
6 Petition, then there would be no documentation. So there  
7 would be nothing to audit if -- if this company were  
8 subject to that. And I'm not saying that they are, but --

9           MS. DIETRICH: That's correct.

10          CHAIRMAN CLAYTON: Okay. Now -- now would  
11 Federal lifeline petitioners, carriers, are they subject  
12 to audit by the Commission in reviewing ETC designations  
13 on -- on either the wire line or the wireless side?

14          MS. DIETRICH: The Commission only audits the  
15 State lifeline customers.

16          MR. BRECKER: Let me -- if I -- if I may --  
17 Chairman Clayton, I know that was directed to Staff. And  
18 I apologize, but I want to clarify that point. You should  
19 be aware that Federal -- ETCs providing Federal lifeline  
20 service are subject to audit by the FCC and by the  
21 lifeline -- the Universal Service Administrator -- the  
22 Universal Service Administrative Company or USAC.

23                 And I can assure you that virtually every ETC  
24 goes through a USAC audit.

25          CHAIRMAN CLAYTON: Okay.

1 JUDGE JORDAN: Was that Mr. Brecker speaking?

2 MR. BRECKER: Yes. That was Mr. Brecker. I  
3 apologize.

4 MS. DIETRICH: And I was going to add that we  
5 did not make that recommendation as a condition because  
6 the Federal lifeline program is audited by USAC, the  
7 Universal Service Administrative Company.

8 CHAIRMAN CLAYTON: Okay. My question, I think  
9 -- I may be mistaken, by I -- my question was, do we -- do  
10 we audit any ETC carrier that receives lifeline support at  
11 -- and it has to be Federal support, correct? Do we audit  
12 any of those people right now?

13 MS. DIETRICH: We -- we audit the lifeline from  
14 -- from the State perspective. We audit the companies  
15 periodically from the high cost perspective, and we get  
16 some information on them based on their low income  
17 customers at that time.

18 CHAIRMAN CLAYTON: This is what I'm trying to be  
19 clear on. We do conduct some random audits on Federal ETC  
20 carriers?

21 MS. DIETRICH: Correct.

22 CHAIRMAN CLAYTON: We do our annual  
23 certification on the high cost side?

24 MS. DIETRICH: Correct.

25 CHAIRMAN CLAYTON: And that's the audit that is

1 in my mind. And in the low -- the low income are the  
2 lifeline pieces just as you and Mr. Brecker corrected me,  
3 both of you corrected me, that -- that the low income  
4 piece is done by USAC and the FCC?

5 MS. DIETRICH: Correct.

6 CHAIRMAN CLAYTON: Okay. And do you know for  
7 sure, do they actually conduct those audits? Have you  
8 ever participated or been included in one of those audits?

9 MS. DIETRICH: We haven't actually participated  
10 in those audits. We have received questions from the  
11 carriers. For instance, they'll call up and say, USAC is  
12 here, and they need a copy of our ETC designation order or  
13 a copy of our annual certification letter for the high  
14 cost fund. So we have received requests for information.  
15 So we know that USAC is going out there. The extent of  
16 their audit, I have no idea.

17 CHAIRMAN CLAYTON: Okay. I want to ask  
18 Mr. Dearmont, from a legal standpoint, does -- I'm  
19 assuming Staff believes it's on firm legal ground in  
20 requiring this certification. Can you explain that in  
21 light of Mr. Brecker's argument?

22 MR. DEARMONT: Yes, Mr. Chairman. Up to this  
23 point, Staff has not attempted to draw a legal description  
24 between the authority for its conditions on customer  
25 eligibility versus the authority for its conditions

1 related to certification and verification of customer  
2 eligibility.

3           So up until this point, we have cited, as we've  
4 mentioned numerous times, Title 47, Section 54.409 as  
5 authority for Staff's position. If -- if we would apply  
6 some type of distinction between conditions related to he  
7 eligibility and those conditions related to certification  
8 and verification, we could just as easily apply Section  
9 54.410, which is entitled Certification and Verification  
10 of Customer Qualification for Lifeline.

11           And just like the mandates in Section 409,  
12 Section 410 provides, in relevant part, Subsection C,  
13 verification of continued eligibility. I'm reading this  
14 section. Consumers qualifying for lifeline may be  
15 required to verify continued eligibility on an annual  
16 basis. Subsection 1 of C provides that by one year from  
17 the effective date of these rules, ETCs in states that  
18 mandate state lifeline support, such as Missouri, must  
19 comply with the State verification procedures to validate  
20 customer's continued eligibility for lifeline.

21           CHAIRMAN CLAYTON: Is 410 cited anywhere in your  
22 pleadings? I'm looking for 410, right?

23           MR. DEARMONT: It is not.

24           CHAIRMAN CLAYTON: It is not. It is not.

25 Mr. Brecker, do you want to respond to that 410 argument?



1           MR. BRECKER: Sure. There's a difference  
2 between certification of eligibility and verification of  
3 continued eligibility. And they're dealt with separately  
4 in Section 410.

5           Certification is what we've been talking about  
6 for the last several minutes or so, which is what a -- a  
7 carrier or an ETC must retain from the customer at the  
8 outset of the relationship to ensure that the customer  
9 qualifies for lifeline.

10          Verification, which is really shorthand for  
11 verification of continued eligibility, is an annual  
12 process that ETCs are required to go through once a year  
13 to determine that the customers are still eligible for  
14 lifeline.

15          And I would direct your attention to -- I guess  
16 it's subsection E of the Missouri rule that we've been  
17 talking about, which says in E-1, State verification  
18 procedures may include, but are not limited to, compliance  
19 with Federal verification requirements, processes or  
20 guidelines.

21          Now, the generally applicable Federal  
22 verification requirement and one that is followed in most  
23 states, I think I can say correctly in all states where  
24 TracFone is operating as an ETC today is that the ETC  
25 verifies its lifeline customers' continued eligibility by

1 surveying a statistically valid sample of the customer  
2 base.

3 I would not dispute that states that have their  
4 own lifeline program have the authority under the Federal  
5 rule under Section 410 who adopt a -- a different  
6 verification requirement, but as the Missouri rule itself  
7 says, the State may follow the Federal verification  
8 requirements.

9 But again, verification is an annual event, not  
10 at the outset of the relationship, but each year  
11 thereafter.

12 CHAIRMAN CLAYTON: Thank you. Mr. Dearmont, do  
13 you want in on -- do you want to respond to that?

14 MR. DEARMONT: Yes. Mr. Chairman, we would  
15 agree that there is a meaningful distinction between  
16 certification and between verification of customer program  
17 eligibility jilt.

18 However, it's -- the section that I just read  
19 provides authority for our position related to our  
20 conditions related to company verification, that annual  
21 verification that the company would have to go through.

22 And in addition to that, Section 410(b)(1)  
23 provides authority for our conditions related to company  
24 certification of customer program eligibility. B-1  
25 provides that.

1           An officer of an ETC in a state that mandates  
2 state lifeline support, again, the State of Missouri, must  
3 certify that the ETC carrier is in compliance with State  
4 lifeline income certification procedures.

5           MR. BRECKER: But that's not relevant because  
6 there are no State income lifeline certifications in  
7 Missouri. There's no lifeline eligibility. Eligibility  
8 is based solely on program based eligibility. The rule  
9 doesn't apply.

10           CHAIRMAN CLAYTON: I'm going to defer.  
11 Commissioner Gunn has a question, and I need a break.

12           COMMISSIONER GUNN: I just -- I have one other  
13 question. You said that the reason why the Missouri --  
14 this was earlier to my question and -- and brought up  
15 during the auditing questions that the -- the Missouri  
16 requirements are necessary because the Federal  
17 requirements are inadequate to protect the fund, the  
18 Federal fund.

19           And that was -- I'm paraphrasing, obviously, and  
20 Public Counsel can join in. But that's what Public  
21 Counsel's position is, too. My question is -- is -- is  
22 who are they inadequate to? Does USAC -- USAC is  
23 satisfied with simply the Federal self-certification  
24 procedure.

25           So a company in a state that doesn't have the

1 extra requirement that just has the federal application,  
2 USAC is -- and this is directed toward Staff, so I'd ask  
3 the folks on the phone to not jump in too quickly.

4 In a state where there is no additional  
5 requirement and USAC only has the materials to review as  
6 the federal self-certification requirement, that is  
7 satisfactory to USAC; is that -- am I -- am I correct on  
8 that?

9 MS. DIETRICH: I would assume so.

10 COMMISSIONER GUNN: So -- so if -- if -- in  
11 order -- in order to protect the Federal dollars, the  
12 auditing agency charged with protecting those Federal  
13 dollars say that the only application that needs to be  
14 carried out is the self-certification procedure as put in  
15 by the -- by the FCC, then who looks -- who would look at  
16 the Missouri documentation?

17 Would -- if USAC doesn't care because in every  
18 other state they've got the Federal form and if Missouri  
19 dollars aren't involved so the Missouri auditor -- the  
20 Missouri Commission isn't looking to save, that those --  
21 those dollars aren't into effect, then who -- who cares  
22 that that extra certification is there?

23 MS. DIETRICH: I -- I think there's two points  
24 to your question. USAC doesn't have the ability to go to  
25 the FCC and say, There's a problem with your verification

1 procedures. And -- and they're not like a party to a case  
2 or that type of thing where they can raise an issue before  
3 the FCC. So they're just following the rules.

4           The -- the other part of it is if there -- my  
5 understanding is if there is a State rule that prescribes  
6 some verification and certification method, USAC audit is  
7 based on that, not based on Federal funds.

8           So if they came to Missouri, for instance, they  
9 would be looking at the documentation if our rule was  
10 applied to these two companies. They would not be looking  
11 just at the self-certification.

12           COMMISSIONER GUNN: But that's -- that's really  
13 great. I mean, because -- because they -- you know, in  
14 other states that don't have the State rules, they are --  
15 I mean, if they don't have the authority to bring this up,  
16 then what happens if a state isn't complying with the --  
17 let's assume a state has a federally mandated  
18 self-certification and that's it, and a state's not  
19 complying with that or a company is not complying with  
20 that. And they -- an audit is done. Who has enforcement  
21 power over -- over that?

22           MS. DIETRICH: The FCC has enforcement power if  
23 there's a violation of the rules. What I was saying is  
24 that just assuming that because USAC applies the rules  
25 that it considers the rule satisfactory, it doesn't have

1 the means to raise any issues with it.

2 COMMISSIONER GUNN: Is -- I understand your  
3 distinction. So USAC is saying, yes, they comply with the  
4 rules? USAC is not taking a position on whether there is  
5 adequate information provided through a -- a -- merely a  
6 self-certification alone?

7 MS. DIETRICH: Correct.

8 COMMISSIONER GUNN: The auditor may say, at some  
9 point, we would really like this extra stuff, but the FCC  
10 doesn't require it, so we're just making sure that you  
11 require what the FCC regulations --

12 MS. DIETRICH: Correct.

13 COMMISSIONER GUNN: Do you know of other states  
14 that require this? TracFone says, and I have no reason to  
15 -- to disagree with them, that they are in 16 states and  
16 none of them require this extra certification. Do we know  
17 of any other state that requires this extra certification?

18 MS. DIETRICH: I -- I don't know of any other  
19 state that has verification, certification procedures like  
20 we have. I know there are other states that are looking  
21 at ways of verifying the information.

22 But I also know that there are other states, you  
23 know, whether you're talking about the high cost fund or  
24 the low income fund, they -- they have different statutes  
25 and different rules that apply. And so it's kind of hard

1 to just say, well, because nobody else has required  
2 conditions or these types of conditions, then that assumes  
3 that there is no problem because they have rules and rules  
4 that allow them to do different things related to ETC  
5 designations.

6 COMMISSIONER GUNN: And I'm not saying we  
7 should --

8 MS. DIETRICH: No. I know.

9 COMMISSIONER GUNN: Please don't anyone take my  
10 questions as a statement of position. I'm merely trying  
11 to gather information. So -- all right. I appreciate it.  
12 If anybody now wants to weigh in on the phone, they're  
13 certainly welcome to.

14 MR. JOHNSON: Mr. Chairman, it is -- this is  
15 Mark Johnson. I just want to verify what -- from personal  
16 experience what Mr. Brecker said.

17 YourTel actually had quite a searching USAC  
18 audit last year. USAC sent in an auditor. They -- they  
19 -- I think they contract with -- with KPMG, if I'm not  
20 mistaken. And they sent somebody in for two weeks. And  
21 they looked through thousands of pages of documents. It  
22 was a thorough going audit.

23 COMMISSIONER GUNN: That's all I have.

24 MR. BRECKER: Yeah. This is -- this is  
25 Mr. Brecker. And I don't want to belabor the point. But

1 I, too, have had the pleasure of living through a USAC  
2 audit. And they are -- it is -- the organization is very  
3 aggressive, No. 1, in the auditing process. But, also,  
4 it's not the paper tiger that some people may think.

5 I can tell you of multiple situations where USAC  
6 has interpreted rules in a very gretonious fashion and  
7 attempted to impose those rules. And we've actually gone  
8 to the FCC and opposed USAC in their interpretations.  
9 It's pretty aggressive in doing what it thinks is  
10 necessary to preserve the resources of the Federal  
11 Universal Service Fund.

12 JUDGE JORDAN: Anything from Nexus in response  
13 to Commissioner Gunn's inquiries?

14 MR. BRECKER: No.

15 MR. STEINER: No, your Honor.

16 JUDGE JORDAN: Okay. Commissioner Jarrett, do  
17 you have an other inquiry to make?

18 COMMISSIONER JARRETT: Well, thank you, Judge.  
19 Just an additional question. For the gentlemen on the  
20 phone, I guess is it your position or -- just give your --  
21 you know, your thoughts on what I'm about to say.

22 Is it your position that this Commission can't  
23 apply any conditions on your application as long as you  
24 meet the Federal requirements? We just have a ministerial  
25 duty to approve it without condition?



1           MR. BRECKER: Well, as we've been discussing for  
2 quite some time, there's no question and no dispute from  
3 -- from me that the Commission has the authority to  
4 establish eligibility criteria and make those applicable  
5 to all ETCs, including those that are only ETCs under the  
6 Federal program.

7           I don't know if you would call that a condition  
8 or not. But -- but I certainly don't dispute that  
9 authority. The only thing that we've disputed is the  
10 imposition of the certification requirements.

11           Now, if you look at Section 214(e)(2) of the  
12 Communications Act, which is the provision of the  
13 Communications Act that gives the State Utility  
14 Commissions the authority to designate ETCs and you read  
15 Section 214(e)(2) literally, it's very clear. And it says  
16 that if a -- if an ETC has demonstrated that it complies  
17 with the requirements of Section 214(e)(1)(a) and  
18 (e)(1)(b), then the State Commission shall, underscore the  
19 word shall, designate it as an ETC.

20           And just for your information, the requirements  
21 of Section 214(e)(1)(1) and (b) are first that the -- that  
22 the ETC applicant has demonstrated that it provides  
23 service using its own facilities or a combination of its  
24 own facilities, and TracFone meets that requirement  
25 through the FCC's forbearance decision.

1           And Section -- subsection B requires the  
2 applicant to demonstrate that it will advertise the  
3 availability of its lifeline service using media of  
4 general distribution. And TracFone demonstrated that.

5           So I think the way the statute is written, once  
6 those two showings have been made, the State -- the State  
7 Utility Commission has an obligation to designate the ETC.

8           COMMISSIONER JARRETT: I guess I'm wondering  
9 why, you know, you even have to come to Missouri at all  
10 then. What's -- what's the rationale for having to come  
11 to the State Commission to get approval?

12           MR. BRECKER: Well, at risk of -- I don't mean  
13 this to be flip, but I think that question should best be  
14 directed to Congress because Congress created -- and trust  
15 me. I do this for a living, and I get confused by it  
16 every day. Congress created a fairly complex bifurcated  
17 system where part of the Universal Service Fund  
18 administration is done by the FCC and part is done by the  
19 State.

20           Certainly, the ground -- many of the ground  
21 rules are cod -- codify the FCC's regulations, and the  
22 program was created by the FCC. But as I mentioned a  
23 moment ago, Congress then gave the states authority and  
24 the responsibility to do the actual designation of the  
25 ETCs except to those states which, for whatever reason,

1 disclaimed jurisdiction over the ETCs.

2           We've encountered that in about ten states where  
3 the State said, We don't do that. In that case, you go  
4 back to the FCC. Missouri is not one of those states.

5           COMMISSIONER JARRETT: But I don't presume to  
6 know what Congress means when they do things, so -- I  
7 don't have any further questions. Thank you, gentlemen.

8           JUDGE JORDAN: Before we return to Chairman  
9 Clayton's questioning, I just want to make sure that --  
10 whether Nexus has anything to say in response to  
11 Commissioner Jarrett's questioning.

12           MR. STEINER: No, we don't, your Honor.

13           JUDGE JORDAN: Does Staff have any response?

14           MR. DEARMONT: We do not, your Honor. Thank  
15 you.

16           JUDGE JORDAN: Okay. And does the Office of the  
17 Public Counsel have anything to say with regard to the  
18 issues raised by Commissioner Jarrett or Commissioner  
19 Gunn's questioning?

20           MR. DANDINO: No, your Honor.

21           JUDGE JORDAN: Was that a no from the Office of  
22 Public Counsel? Okay. Then we will resume Chairman  
23 Clayton's inquiries.

24           CHAIRMAN CLAYTON: I'm going to wrap this up.

25 First of all, I want to thank the parties for being

1 available. This has been very helpful, and I'm sorry that  
2 it's taken a lot longer than what I thought.

3           The original request for oral argument in this  
4 case came up because of communications that I received,  
5 and I disclosed those in the case. Primarily, those  
6 communications related to policies associated with the  
7 Universal Service Funds and the growth of the fund.

8           And I think all of us who were involved in  
9 telecommunications regulation are definitely aware of  
10 recent changes at the Fund that have caused it to go up,  
11 increased the assessment that ends up going back on  
12 customers. And I wanted to talk to Staff from a policy  
13 standpoint whether it has any concerns with approving or  
14 taking the steps to approve -- and I know we've -- we've  
15 already done YourTel's, which is a little different  
16 because it was an expansion. But does Staff have any  
17 concerns with moving forward on this type of Petition and  
18 its potential impact on the Universal Service Fund?

19           Is there anything else we need to be thinking  
20 about? You know, because we have a limited role.  
21 Basically, we certify these things and then the money  
22 starts coming in, and we're kind of out, with the  
23 exception of, you know, looking at eligibility down the  
24 road for these customers.

25           But is there anything we should be considering

1 right now as we contemplate approving this Petition?

2 MS. DIETRICH: The Staff has concerns about the  
3 size of the fund. But unless every customer that these  
4 companies sign up are -- unless they're a brand new  
5 customer, never had lifeline service before, the Fund --  
6 the money is just going to switch from one carrier to  
7 another. So it would be only new customers that would  
8 receive new Universal Service funding.

9 The reason we recommend approval, especially of  
10 these low income only fund requests is that the issues  
11 with the fund and the reason that it's growing so  
12 drastically and, you know, that type of thing, it's a lot  
13 bigger issue than just approving an application or two or  
14 ten or whatever.

15 The -- the Fund has a lot of problems. The  
16 Federal Government, the FCC has to address those problems.  
17 And it's not only just the low income. It's the high  
18 cost. Schools and libraries. There's been fraud.  
19 So the issues are a lot bigger than just looking at these  
20 applications.

21 So that's why we have never said, Deny this  
22 application, because the fund will grow.

23 CHAIRMAN CLAYTON: Would Staff anticipate that  
24 we're going to get additional Petitions from other  
25 wireless carriers regardless of whether they're prepaid or

1 not for eligibility under the low income side?

2 MS. DIETRICH: I think it's quite possible. And  
3 if the Commission grants the waiver request, I think it's  
4 possible that we'll see companies that are already  
5 complying with the verification and certification process  
6 coming in and asking for waivers, also. So then we lose  
7 that avenue.

8 CHAIRMAN CLAYTON: Okay. Is -- is there a  
9 reason why other carriers, other wireless carriers,  
10 especially the larger ones, haven't sought low income  
11 assistance?

12 MS. DIETRICH: Well, up until a year or two ago,  
13 something like that, carriers could only request high cost  
14 and low income together. It's only -- it's just been in  
15 the last year or two that the FCC has allowed carriers to  
16 come in and request low income only support.

17 CHAIRMAN CLAYTON: So the Commission hasn't been  
18 quick to approve high cost support, although it has  
19 approved high cost support. Is that the reason, just  
20 being tied together, why they haven't filed?

21 MS. DIETRICH: Being tied together. I think  
22 it's because Missouri has more stringent ETC requirements  
23 than in other states. Some other states have no  
24 requirements at all, so I think that's the reason.

25 CHAIRMAN CLAYTON: Okay. Last question, then.

1 Is there any verification method that -- that assures that  
2 a customer, perhaps, is receiving lifeline assistance  
3 through AT&T, they go out and apply for a TracFone  
4 lifeline assistance, but they don't disclose that they're  
5 changing phones. They just say, you know, we don't -- we  
6 don't have another phone.

7           Could a customer get double support? And what  
8 systems are in place to try to stop that?

9           MS. DIETRICH: I don't know the name of the  
10 system who provides it or anything, but there -- it's my  
11 understanding there is a system where if, say, for  
12 instance, Robert Clayton is a customer of AT&T and he goes  
13 to TracFone and applies, there is a way for them to -- for  
14 anybody to check and make sure that Robert Clayton is not  
15 already receiving lifeline support.

16           But it's also my understanding that if you would  
17 go in as Bob Clayton, then it would not make the  
18 connection. So you would be able to get it that way from  
19 both carriers.

20           CHAIRMAN CLAYTON: Will you use someone else as  
21 an example? I don't feel comfortable.

22           MS. DIETRICH: I'm just looking at your name  
23 plate, so --

24           CHAIRMAN CLAYTON: I appreciate the parties'  
25 responses, and I appreciate the folks on the phone. Sorry

1 that we -- that we had to do it this way, and I hope that  
2 you've been able to hear. I don't have any other  
3 questions. Does anyone on the phone want to chime in?

4 Or, Mr. Dearmont, do you want to chime in?

5 Or, Mr. Dandino, do you want to chime in on this  
6 action? Where do you all stand again, Mr. Dandino?

7 MR. DANDINO: We agree with Staff that they  
8 ought to have the certification on a -- it ought to be as  
9 the Staff recommends.

10 One thing I did -- I do want to point out, and  
11 -- and these are the -- the certification process is -- is  
12 more of a protection for whether people are eligible. And  
13 I think if the Commission -- and if the Commission is --  
14 is taking the initiative to approve ETC applications and  
15 someone is going to look at the Commission or they're  
16 responsible to make sure that there is some type of -- of  
17 verification that those people are actually eligible, and  
18 I think it goes to the question of the -- of the USF's  
19 credibility and the support of it and just that -- that  
20 people are assured that -- that the money is used for the  
21 -- you know, for the purpose it is -- that it's supposed  
22 to be.

23 As far as -- you know, all you have to do is  
24 mention -- and I don't know if it's fair or not, but it  
25 comes to mind, the Cass County Telephone. You know, one



1 -- somebody has to make sure -- somebody's going to take  
2 responsibility that only those funds that were spent for  
3 the right reason.

4 CHAIRMAN CLAYTON: Let's cut to the chase right  
5 now, Mr. Dandino. Can TracFone and Nexus, can they affirm  
6 that the Gambinos are not involved in their business? Are  
7 they willing to make that assertion on the record?

8 MR. DANDINO: I don't even know that they can do  
9 that with the Dandinos.

10 JUDGE JORDAN: The Dandino family.

11 MR. DANDINO: And the Dandino is a customer of  
12 the TracFone.

13 MR. JOHNSON: Mr. Chairman, for the record, I'm  
14 not going to explain that reference to my client.

15 CHAIRMAN CLAYTON: I get -- I don't have any  
16 other questions.

17 MR. JOHNSON: I think I can affirm that my  
18 client has nothing to do with organized crime.

19 MR. DANDINO: I think just the point that I was  
20 trying to make is we don't want to put burdens in front of  
21 the customers to get -- to get service. And -- and it's  
22 very important that they -- that they get service.

23 But I think it's also very important for the --  
24 for the -- for the ratepayer -- the regular ratepayer,  
25 whether or not it's a customer or not, to have some

1 assurance, too, that the funds that they're paying in are  
2 just for the purposes for which they were collected.

3 CHAIRMAN CLAYTON: Thank you.

4 JUDGE JORDAN: Well, that concludes the  
5 questioning from the Bench. So I thank the parties for  
6 their attention and for their patience. And we will  
7 adjourn this on-the-record proceeding. We're off the  
8 record. Thank you.

9 MS. HERNANDEZ: Thank you.

10 (The proceedings were concluded at 11:45 p.m. on  
11 July 7, 2009.)

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## 1 REPORTER'S CERTIFICATE

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3 STATE OF MISSOURI )  
 )ss.  
4 COUNTY OF OSAGE )

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6 I, Monnie S. VanZant, Certified Shorthand Reporter,  
7 Certified Court Reporter #0538, and Registered  
8 Professional Reporter, and Notary Public, within and for  
9 the State of Missouri, do hereby certify that I was  
10 personally present at the proceedings as set forth in the  
11 caption sheet hereof; that I then and there took down in  
12 stenotype the proceedings had at said time and was  
13 thereafter transcribed by me, and is fully and accurately  
14 set forth in the preceding pages.

15

16 IN WITNESS WHEREOF, I have hereunto set my hand and  
17 seal on July 8, 2009.

18

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21 Monnie S. VanZant, CSR, CCR #0539

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Registered Professional Reporter

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