

**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) File No. RA-2009-0375
State of Missouri for the Limited Purpose of)
Offering Wireless Lifeline and Link up Service to)
Qualifying Households)

STAFF RESPONSE

COMES NOW Counsel for the Staff of the Missouri Public Service Commission and submits this *Response* for the Missouri Public Service Commission’s (Commission) information and consideration, 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 LinkUP 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. No applications to intervene were received.

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

5. On May 18, 2009, the *Staff Recommendation* was filed, in which the Staff recommended the Commission conditionally grant ETC designation to Nexus for Lifeline and LinkUP support only, on the imposition of the customer eligibility and verification standards of 4 CSR 240-31.050(3)(D) and (E). Further, Staff recommended the Commission grant the waivers as identified in paragraph one above.

6. On May 22, 2009, the Commission issued an *Order Directing Reply*, allowing until June 12, 2009, for Nexus to file a reply to the *Staff Recommendation*. On the same day, Nexus filed a reply which stated “*it supports Staff’s recommendation and will comply with the conditions in the recommendation.*” (emphasis added).

7. On June 12, 2009, the Commission issued an *Order Setting On-The-Record Presentation* for July 7, 2009, which scheduled a presentation by all parties to allow the Commission to “better understand the implications of the applications, the effect that approval of the application will have on the Universal Service Fund, and other issues”.

8. At the July 7, 2009 on the record presentation, Nexus requested waiver of the application of the Commission’s rule 4 CSR 240-31.050(3), the customer certification requirements for enrollment in Lifeline Services.

9. On August 26, 2009, the Commission granted Nexus' *Application* for ETC status and waived the requested provisions which deal with high-cost support, conditioned on the Company's compliance with the *Staff Recommendation*.

10. On September 4, 2009, Nexus filed an *Application For Rehearing*, which stated:

“[t]he Commission’s denial of Nexus’ request for waiver of Missouri Certification rules, in lieu of allowing Nexus to comply with the FCC Lifeline certification rule (47 C.F.R. . § 54.409(d)) is unlawful, unreasonable, and unjust as well as unnecessary to protect the interest of Missouri ratepayers. Accordingly, that denial should be reconsidered on rehearing.” Additionally, Nexus “adopts by reference, the arguments advanced by the TA-2009-0327 applicant in its application for rehearing”.

Staff Response

11. Section 386.500 RSMo 2000 provides for rehearing before the Commission. It states:

[a]fter an order or decision has been made by the commission,....any....public utility interested therein shall have the right to apply for a rehearing in respect to any matter determined therein, and the commission shall grant and hold such rehearing, if in its judgment *sufficient reason therefor be made to appear*.

(emphasis added).

12. In Case Number GA-2006-0561, In the Matter of the Application of Ozark Energy Partners, LLC, *sufficient reason* was explained by the Commission’s March 13, 2008 Order Denying Application for Rehearing. In that case, the Commission stated the issues raised in the application for rehearing were before the Commission when it issued its order. As such, the Commission denied the application for rehearing.

13. As in this case, Nexus has failed to raise any new issues in support of its *Application for Rehearing* that were not before the Commission prior to its issuance of the August *Order* granting Nexus ETC status. Additionally, Nexus’ May 22nd reply stated it

supported the *Staff Recommendation* and would comply therewith. Therefore, Nexus' *Application for Rehearing* must be denied.

14. Further, as Nexus has relied on the arguments made in the TA-2009-0327 *Application For Rehearing*, Staff's response in that case is attached as Attachment A and incorporated herein.

WHEREFORE, Counsel for Staff respectfully requests the Missouri Public Service Commission issue an order denying Nexus Communications, Inc., dba TSI's *Application for Rehearing*.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic mail on Roger Steiner, counsel for Nexus Communications, Inc., dba TSI at rsteiner@sonnenschein.com ; and the Office of Public Counsel of The State of Missouri, at opcservice@ded.mo.gov, this 11th day of September 2009.

/s/ Jennifer Hernandez

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

In the Matter of a Petition of TracFone Wireless, Inc.)
for Designation as an Eligible Telecommunications)
Carrier in the State of Missouri and for the Limited)
Purpose of Offering Lifeline and Link Up Service to)
Qualified Households)
Case No. TA-2009-0327

**STAFF RESPONSE TO TRACFONE WIRELESS, INC.'S
APPLICATION FOR REHEARING**

COMES NOW Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its Staff Response to TracFone Wireless, Inc.'s Application for Rehearing states as follows:

1. On August 26, 2009, the Missouri Public Service Commission (the Commission) issued its Order Granting Designation as an Eligible Telecommunications Carrier (Order), (1) granting TracFone Wireless, Inc. (TracFone or the Company) designation as an eligible telecommunications carrier (ETC), subject to those conditions suggested by Staff and as set out in the Commission's Order, (2) granting the Company a waiver of Commission Rules 4 CSR 240-43.570(3)(A) and (3)(B), and (3) denying the Company's request for a waiver of Commission Rule 4 CSR 240-31.050(3). The Commission's Order bears an effective date of September 5, 2009.

2. On September 4, 2009, TracFone filed TracFone Wireless, Inc.'s Application for Rehearing (Application for Rehearing), seeking only reconsideration of the Commission's denial of TracFone's request for waiver of Commission Rule 4 CSR-31.050(3).

3. On September 8, 2009, the Commission issued its Order Shortening Time for Response, establishing September 11, 2009 as the deadline for parties to respond to TracFone's Application for Rehearing.

Attachment A

4. Applications for rehearing and reconsideration, generally, are governed by Section 386.500 RSMo¹, and Commission Rule 4 CSR 240-2.160. Section 386.500.2 states that such applications “shall set forth specifically the ground or grounds on which the applicant considers said order or decision to be unlawful, unjust, or unreasonable.” Section 386.500.4 provides that “[i]f, after a rehearing and a consideration of the facts, including those since the arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify the same.”

5. The facts have already been considered by the Commission in this matter. TracFone raises few new arguments in its Application for Rehearing, but rather reiterates those arguments that the Commission has found unpersuasive to date. Staff does not wish to burden the Commission with same responses to these same unpersuasive arguments, and therefore incorporates by reference those responses raised by Staff in the pleadings previously filed on its behalf in this matter.

6. In the one new suggestion raised by TracFone in its Application for Rehearing, the Company urges the Commission to adopt a “computer-based system” that would allow all ETC’s to confirm customer program participation eligibility. This system, as advocated by TracFone, is premised on *states* obtaining and provided to ETC’s the data necessary to confirm customer eligibility. First, it is improper for TracFone to raise this proposal at this point in these proceedings. No new facts are brought to light by this argument, TracFone offered no support for such a proposal during the proceeding, and Staff has had no opportunity to respond. Assuming, for the sake of argument, that this proposal can be made and considered at this time, the Staff

¹ Unless otherwise noted, all references to statute refer to the Missouri Revised Statutes (2000), as currently supplemented.

notes that it considered this sort of solution during the rulemaking proceeding in which 4 CSR 240.31.050 was amended. The proposed solution is not feasible because the social service agencies that hold the eligibility information quite properly hold it with the highest regard for the privacy of the individuals served and will not allow the Public Service Commission access to it. The only way to get the eligibility information is from the recipients themselves.

7. In conclusion, Staff would like to remind the Commission that the fact that TracFone's service offering will have no effect on the Missouri Universal Service Fund does not mean that TracFone's offering will not have an effect on Missouri ratepayers. The Commission's Order, including its decision to denying the Company's request for a waiver of Commission Rule 4 CSR 240-31.050(3) is lawful and reasonable and should not be altered, abrogated, or amended by this Commission.

WHEREFORE, Staff submits this Staff Response to TracFone Wireless, Inc.'s Application for Rehearing for the Commission's consideration in this matter.

Respectfully submitted,

/s/ Eric Dearmont

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 11th day of September, 2009.

/s/ Eric Dearmont