

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Nexus Communications, Inc.  
Designated Eligible Carrier  
Application

Case No. PU-13-98

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Cara DeSaye** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 30<sup>th</sup> day of **January, 2014**, she deposited in the United States Mail, at Bismarck, North Dakota, **three** envelopes with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

**First Amended Order**

The envelopes were addressed as follows:

David Hogue  
Pringle & Herigstad, P.C.  
PO Box 1000  
Minot, ND 58702

Alan J. Galloway  
Davis Wright Tremaine, LLP  
1300 SW 5<sup>th</sup> Ave, Suite 2400  
Portland, OR 97201

**Cert. No. 7013 2630 0001 2317 0361**

**Cert. No. 7013 2630 0001 2317 0354**

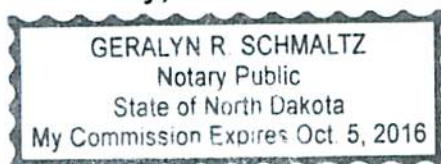
Danielle Frappier  
James W. Tomlinson  
Davis Wright Tremaine, LLP  
1919 Pennsylvania Ave., NW, Suite 800  
Washington, DC 20006

**Cert. No. 7013 2630 0001 2317 0347**

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this 30<sup>th</sup> day of **January, 2014**.

SEAL



*Cara DeSaye*

*James W. Tomlinson*  
Notary Public

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Nexus Communications, Inc.**  
**Designated Eligible Carrier**  
**Application**

**Case No. PU-13-98**

**FIRST AMENDED ORDER ON ELIGIBLE TELECOMMUNICATIONS CARRIER  
DESIGNATION**

**January 29, 2014**

**Preliminary Statement**

On February 25, 2013, Nexus Communications, Inc. (Nexus), a privately held company organized under Ohio law and headquartered in Columbus Ohio, filed an application for designation as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. This designation is also known as Lifeline-only ETC designation. Nexus originally proposed to provide prepaid Lifeline universal services to qualifying low income customers as a commercial radio service (CMRS) carrier in North Dakota wire centers currently served by Qwest Corporation and SRT Communications, Inc. excluding Tribal Lands.

On March 13, 2013, the Commission issued a Notice of Opportunity for Hearing (Notice) providing until April 26, 2013 for comments and requests for hearing. No comments or requests for hearing were received. The Notice identified the issues to be considered in this matter are:

1. Is the applicant qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding?
2. What ETC universal service support area should be designated?
3. Is designation of the applicant as an ETC in the public interest?

The Notice stated that the Commission can determine the matter without a formal hearing.

On June 19, 2013, the Commission held an Informal Hearing to discuss the issues with Nexus. On June 26, 2013, the Commission held a work session where it was decided that the Commission would request additional information for the record and add additional requirements to the certification relating to order provisions for all ETC applicants. On August 15, 2013, Nexus responded to the additional information requests and filed a revised certification document.

On September 6, 2013, Nexus representatives met with Commission Staff to further discuss their application and business practices. On September 27, Nexus filed additional information including a revised certification relating to order provisions.

On October 9, 2013, the Commission issued its order designating Nexus Communications, Inc. as an eligible telecommunications carrier.

On November 29, 2013, Nexus filed an addendum to its application requesting designation to provide Lifeline universal services throughout the entire state, including Tribal Lands.

On December 4, 2013, the Commission issues a notice of opportunity for hearing regarding the Company's addendum. No comments or requests for hearing were received.

### **ETC Designation**

The Telecommunications Act of 1996 provides financial support for universal services to common carriers that have been designated as ETCs and that (1) offer the universal services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services and (2) advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

In its *Report and Order and Further Notice of Proposed Rulemaking* released February 6, 2012 in Docket No. FCC 12-11 at paragraph 368, the Federal Communications Commission found that it would forbear from the "own-facilities" requirement contained in section 214(e)(1)(A) for carriers that seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements and (2) the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement Lifeline service obligations as well as further safeguards against waste, fraud and abuse the FCC may deem necessary.

Under 47 CFR 54.201, a carrier seeking Lifeline-only ETC designation must demonstrate that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E. Nexus is seeking Lifeline-only ETC designation. Nexus is not seeking high-cost support as part of its ETC Application.

Both federal law and state law give the Commission the authority to designate a common carrier as an ETC. In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

Nexus, based in Columbus Ohio, was organized and incorporated in the State of Ohio on September 11, 2000. Nexus is a common carrier and reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules. Nexus is currently authorized to provide CMRS to qualifying low-income consumers in 27 states. Nexus is requesting to do business in

North Dakota under the names "Nexus Communications, Inc." and "ReachOut Wireless." Nexus currently derives the majority of its revenue from the sale of prepaid wireless service, but it does not rely exclusively on disbursements from the Lifeline program to operate. Nexus operates its own network facilities, back-office and operations support systems. It also operates its own switching and other facilities in Ohio. Nexus has not been subject to any enforcement action at the FCC or in any state.

Nexus has a resale agreement with Verizon and will be using Verizon's network to provide wireless services in North Dakota.

Nexus will offer telecommunications services primarily to qualified low-income subscribers.

Nexus will offer qualified consumers their choice of a 68, 125, or a 250 anytime prepaid minutes per month Lifeline Service Plan at no charge as well as a free handset, though it should be noted that the 68 minute plan is not actively marketed by Nexus. Minutes do not expire for the 68 and 125 minute plans and unused minutes are rolled over to the next month. Unused minutes for the 250 minute plan do not roll over. In the 68 minute plan, domestic text messaging is available at a rate of two text messages per minute of airtime. In the 125 and 250 minute plans, text messages are available at the rate of one text per minute of airtime. Calls from a source other than the handset checking or retrieving voicemail messages and incoming voicemail messages are free of charge. Calls to 911 emergency services are free regardless of service activation or availability of minutes. Nexus offers additional minutes, as well as unlimited talk and text airtime cards and international texting for additional charges.

Nexus seeks only Lifeline support from the low-income mechanism of the federal Universal Service Fund and does not seek support from the high-cost support mechanism. This program is designed to reduce the monthly cost of telecommunication services for eligible consumers, is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays. Because Nexus does not seek support from the high-cost support mechanism, designation of Nexus as a Lifeline-only ETC will not pose any adverse effect on the growth in the high-cost portions of the Universal Service Fund (USF), nor will it create or contribute to an erosion of high-cost funding from any rural or nonrural telephone company. Increasing the number of designated Lifeline-only ETCs in North Dakota will provide the opportunity for increased participation by qualified consumers in the Lifeline program.

North Dakota Administrative Code § 69-09-05-12(6)(a) requires a full description of available services in the ETC's official telephone directory. Since Nexus is a CMRS provider, it does not have an official telephone directory in North Dakota and requests a waiver from this requirement pursuant to North Dakota Administrative Code § 69-09-05-12(2)(c) and (d).

Nexus filed a Compliance Plan with the FCC on December 4, 2012. The FCC approved Nexus' Compliance Plan on December 26, 2012, and thereby granted Nexus forbearance from the statutory requirement that Nexus provide service using its own facilities in order to be designated as a Lifeline-only ETC.

The Certification Relating to Order Provisions as signed by Steven Fenker, President of Nexus on September 24, 2013 is incorporated by reference and attached to this order.

Customers qualifying for the Lifeline discounts offered by Nexus will receive the benefits of nationwide calling areas and the convenience and security of mobile telephone service. Nexus will bring increased customer choice and the benefits of competition.

### **Universal Service Support Area**

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5).

The Act defines service area:

**SERVICE AREA DEFINED--** The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In its *Memorandum Opinion and Order*, FCC 13-44, released April 15, 2013, the Federal Communications Commission has determined that carriers may be designated as a Lifeline-only ETC in partial rural service areas.

In this proceeding, Nexus is requesting ETC designation in all North Dakota telephone exchanges, including Tribal Lands.

Nexus has demonstrated that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E.

Based on the evidence in this proceeding, Nexus is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E.

It is in the public interest that Nexus be designated as a Lifeline-only ETC in all North Dakota telephone exchanges, including Tribal Lands.

Nexus is registered with the Commission to provide commercial mobile radio and long distance services.

Nexus Communications, Inc. and its trade name ReachOut Wireless, are both registered with the Secretary of State of North Dakota and Nexus Communications, Inc. is in good standing.

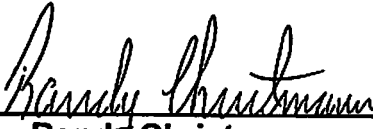
Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

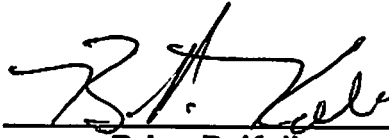
**Order**

The Commission orders:

1. Nexus Communications, Inc. is designated an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. The designated service area in this proceeding consists of all study areas in North Dakota, including Tribal Lands.
2. Nexus Communications, Inc. shall comply with the applicable annual reporting requirements set forth in North Dakota Administrative Code §69-09-05-12.1.
3. Pursuant to North Dakota Administrative Code §69-09-05-12(2)(c) and (d), Nexus Communications, Inc. is granted a waiver of the requirements of North Dakota Administrative Code § 69-09-05-12(6)(a) regarding the publication of a full description of its services in an official telephone directory.
4. Until further notice, Nexus shall file at least annually or, more often if requested by the Public Service Commission, a complete list of Nexus' customers and waivers, including North Dakota Department of Human Services Department Form SFN 1059, Authorization for Release of Information 449-55-05, for each customer on the list.

**PUBLIC SERVICE COMMISSION**

  
Randy Christmann  
Commissioner

  
Brian P. Kalk  
Chairman

  
Julie Fedorchak  
Commissioner

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**Nexus Communications, Inc.**  
**Eligible Telecommunications Carrier**  
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**Case No. PU-13-098**

**CERTIFICATION**

I am Steven Fenker, a representative of Nexus Communications, Inc. (Nexus) with authority to bind Nexus and I certify that:

1. Nexus understands and agrees to the conditions and criteria set forth in Chapter 49-21 of the North Dakota Century Code and Chapter 69-09-05 of the North Dakota Administrative Code that pertain to Wireless Lifeline Only Eligible Telecommunications Carriers (ETC), and that Nexus will be responsible for compliance with this Certification, the Public Service Commission's order designating Nexus as an ETC, and conditions and criteria set forth in the applicable federal and state laws and rules pertaining to Eligible Telecommunications Carriers offering Lifeline Only services.
2. Nexus agrees to comply with all statements, processes and procedures set forth in its Application for designation as an ETC in the non-rural and rural wire centers in North Dakota identified in its Application. Nexus agrees that all statements made and matters set forth in its Application are true and correct to the best of Nexus's knowledge, information, and belief.
3. Nexus will use the federal low-income universal service support it receives only for the provision of services for which the support is intended.
4. Nexus meets all of the prerequisites to be designated as an ETC throughout its proposed ETC Designated Area in the state of North Dakota.
5. Nexus provides each of the services supported by federal universal service support mechanisms, specified in Federal Communications Commission's (FCC's) rules, 47 C.F.R. § 54.101, and will offer these supported services in North Dakota upon designation as an ETC, including voice grade access, minutes of use for local service at no additional charge, access to emergency services and toll limitation services.
6. Nexus will provide the supported services on a timely basis to requesting customers within Nexus's designated service area where Nexus's underlying carriers' network exists.

7. Nexus will provide service within a reasonable period of time, if the potential customer is within Nexus's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:
  - (a) Modifying or replacing the requesting customer's equipment;
  - (d) Adjusting network or customer facilities; or
  - (e) Reselling services from another carrier's facilities to provide service.
8. Nexus is not seeking Universal Service Fund high-cost support as part of its Application.
9. Nexus will use all available means to ensure customers are eligible for the Lifeline program at the time of sign-up and recertification in accordance with the federal default eligibility criteria in 47 C.F.R. § 54.409(2) and the relevant proof documentation specified in 47 C. F. R. § 54.410. Nexus will check all available databases including the FCC's National Accountability Database and the National Lifeline Eligibility Database when fully functional to prevent duplication and determine eligibility.
10. Nexus has taken, and will continue to take, steps to work with its underlying carriers to remain functional in emergency situations by: (1) maintaining a reasonable amount of backup power to ensure functionality without an external power source; (2) maintaining the ability to re-route traffic around damaged facilities and to manage traffic spikes resulting from emergency situations; and (3) establishing procedures for employees to follow in an emergency to prevent or minimize interruption or impairment of telecommunications services.
11. Nexus will meet or exceed applicable consumer protection and quality standards and will comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.
12. Nexus will advertise the availability of the supported services detailed in its Application, and the corresponding rates and charges, in a manner designed to inform the general public within North Dakota. This advertising will occur through a combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.
13. Nexus will offer the services described in its Application.
14. Nexus understands and agrees that if Nexus has not advertised its Lifeline services or signed up any North Dakota customers within 12 months of the effective date of Nexus's designation as a Lifeline-only ETC, the Public

Certification Relating to Order Provisions

Case No. PU-13-098

Page 2

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- Service Commission may revoke Nexus's ETC designation and Nexus may reapply to be designated as a Lifeline-only ETC in North Dakota.
15. Nexus understands and agrees that it may be required by the FCC to provide equal access to long distance carriers in the event that no other ETC provides equal access within Nexus's designated ETC service area.
  16. Nexus will comply with all applicable annual reporting requirements associated with being an ETC in North Dakota including filing with the Public Service Commission a copy of each report filed with the FCC, within 30 days of filing with the FCC.
  17. Nexus will file at least annually or more often if requested by the Public Service Commission, a complete list of its customers and waivers, including North Dakota Department of Human Services' Form SFN 1059, Authorization for Release of Information 449-55-05, for each customer on the list.
  18. Nexus understands and agrees that its ability to offer service is subject to suspension or revocation for failure to comply with the Public Service Commission's orders, or applicable statutes, rules, regulations, standards, and other authorizations.
  19. Nexus agrees to maintain the records to demonstrate that Nexus has complied with the requirements of the Public Service Commission's order(s) and that Nexus will preserve records demonstrating compliance for Public Service Commission inspection at any reasonable time upon reasonable notice.
  20. Nexus understands and agrees that, to the extent there are any conflicts or inconsistencies between Nexus's Application and the provisions in this Certification, the Certification provisions control.

Dated this 24 day of SEPTEMBER, 2013.

NEXUS COMMUNICATIONS, INC

By

  
Steven Fenker

Its President