

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Consumer Programs Branch
And Carrier Oversight Branch**

**RESOLUTION T-17389
February 28, 2013**

RESOLUTION

RESOLUTION T-17389. This Resolution approves the request of Nexus Communications, Inc. (U- 4387-C), doing business as Reachout Wireless, to offer new wireless federal Lifeline service plans to eligible consumers in Verizon and AT&T service areas in California - Advice Letter Nos. 7, 7A, and 7B filed December 11, 2012, January 18, 2013, and January 23, 2013, respectively.

SUMMARY

By this Resolution, the California Public Utilities Commission (Commission or CPUC) approves Nexus Communications, Inc.'s (Nexus) (U-4387-C), doing business as (dba) Reachout Wireless (Reachout Wireless), Advice Letter (AL) No. 7 to offer new wireless federal Lifeline plans to eligible consumers in Verizon and AT&T service areas in California. We find that the request is consistent with the applicable law and in the public interest. Nexus AL 7, as supplemented, is approved.

BACKGROUND

Nexus is a facilities-based wireless service provider. It is an Ohio-based corporation with its principal offices at 3629 Cleveland Ave., Suite C, Columbus, Ohio, 43223. On March 20, 2009, the Commission issued a Wireless Registration Identification (WRI) U-4327-C and authorized Nexus to operate as a reseller of Commercial Mobile Radio Services (CMRS) to the public in California.

On June 3, 2009, Nexus filed a Tier III AL 1, requesting a limited Eligible Telecommunications Carrier (ETC) status for the purpose of offering federal Lifeline and Link Up services to qualifying California customers in the service areas of Verizon California (Verizon) and AT&T California (AT&T). On May 5, 2011, the Commission

adopted Resolution T-17258 and granted Nexus ETC designation in California¹ and authorized Nexus to offer three federal Lifeline service offerings² in California. Nexus did not request authority to offer California LifeLine services or to receive a subsidy from the California LifeLine fund.

The Nexus federal lifeline rate plans approved in Resolution T-17258 are: 1) 250 minutes for \$2.50 per month; 2) 500 minutes for \$5.00 per month; and 3) 1000 minutes for \$20.00 per month. All these plans include a free handset, Caller ID, Call waiting and voicemail and require an activation charge of \$42.00. Minutes are anytime minutes that can be used for domestic calls including local and intrastate/interstate long distance. Any unused minutes expire at the end of each service month. Text messages are available at the rate of one text per minute of airtime. Customers can also add additional airtime minutes by purchasing \$3, \$5, \$10, \$20, and \$50 denominations with an airtime rate of \$0.033 per minute.

SUBJECT OF ADVICE LETTER FILING

On December 11, 2012, Nexus filed AL 7³ and requested approval from the Commission to offer three new wireless federal Lifeline plans to eligible consumers throughout its ETC service area in California. These three plans will replace the current \$2.50, \$5.00 and \$20 plans offered by Nexus. The proposed three new plans are as follows:

- Free Plan: 250 voice minutes and 250 domestic messages (text, IM and/or emails) each month at no cost to the customer;
- \$5 Plan: 500 voice minutes and 500 domestic messages each month with an option to default to the new Free Plan;
- \$20 Plan: 1000 voice minutes and 1000 domestic messages each month with an option to default to the new free Plan.

Nexus will provide each eligible customer with a free 911/E911 compliant handset at no charge. The service for these plans includes local and long distance domestic voice calls that are distance and time of use insensitive, no service contracts, no activation or termination fees, and no charge to change from any service plan to any other Nexus plan or to default to the new Free Plan. In addition, customers have the ability to purchase additional voice minutes and additional domestic messages on an a la carte basis in \$3, \$5, \$10, \$20, \$30 and \$50 denominations with an airtime rate of \$0.033 per

¹ Resolution T-17258 OP 3.

² Resolution T-17258, pp.4 and 5.

³ Nexus AL 7 replaces AL 6, which was rejected by CD staff on December 7, 2012 as to form.

minute/message or purchase additional voice/messages on an unlimited basis directly from Nexus or from an authorized retailer.⁴

On December 21, 2012, CD suspended Nexus AL 7 and on January 9, 2013, CD requested additional information from Nexus regarding the terms and conditions of its new service plans. Nexus responded by filing supplements AL 7A and AL 7B on January 18, 2013 and January 23, 2013 respectively. Advice Letter 7 and supplements AL 7A and AL 7B include the following information about Nexus' new wireless federal Lifeline plans:

- Unused optional additional purchased airtime minutes/messages will roll over to the next service month as long as the subscriber's service remains active.⁵ However, the standard usage allowance included in a subscriber's selected plan expires at the end of the monthly service period.⁶
- The optional unlimited airtime card allows a subscriber to obtain unlimited voice and text messages usage for a thirty (30) day period over and above the monthly usage allowance that applies to the subscriber's plan. Once the unlimited airtime card expires, the standard usage allowance under the subscriber's lifeline plan applies for the duration of the current monthly plan cycle.⁷
- Nexus clarifies that subscribers waiting for Federal lifeline eligibility determination by the California LifeLine Administrator, may receive service under any of the Nexus' non-Lifeline plans and will be charged the usage rate that applies to the selected non-Lifeline plan⁸ until eligibility for federal Lifeline is confirmed. At the time the subscriber's eligibility for federal Lifeline is confirmed, the subscriber chooses a federal Lifeline plan and Nexus will credit the customer for the difference in price between the selected Lifeline plan and the comparable non-Lifeline plan. If a subscriber is determined to be ineligible for federal Lifeline, the subscriber will continue to receive service under the previously selected non-Lifeline plan at the applicable charges, or the customer may also switch to another non-Lifeline plan.⁹

⁴ AL 7, p. 2.

⁵ AL 7A, p. 1.

⁶ AL 7B, p. 2.

⁷ AL 7A, pp. 1 and 2.

⁸ AL 7A, p.2 some non-lifeline plans: \$18.50 for 500 minutes (\$0.037 per minute or message), \$16.00 for 250 minutes (\$0.065 per minute or message), \$33.50 for 1000 minutes (\$0.033 per minute or message), or *a la carte* rates of \$3.00 for 91 minutes (\$0.0329 per minute or message), \$5.00 for 152 minutes (\$0.0328 per minute or message), \$10.00 for 304 minutes (\$0.0327 per minute or message), \$20.00 for 607 minutes (\$0.0329 per minute or message), \$30.00 for 910 minutes (\$0.0329 per minute or message), \$50.00 for 1,515 minutes (\$0.0329 per minute or message), or \$39.95 Unlimited Plan.

⁹ AL 7A, p. 2.

- Nexus certifies that it currently complies with the CPUC's pre-qualification rules and that it will continue to do so for its new federal Lifeline plans. Nexus further certifies that it will comply with the processes established by the CPUC and the California Lifeline Administrator regarding the LifeLine application and subscriber eligibility determinations for federal Lifeline service.¹⁰
- Nexus states that it waives Service Activation Fee for California wireless subscribers.¹¹
- Nexus clarifies that it will provide a free compliant handset to all subscribers that Nexus determines will meet the Lifeline eligibility requirements. If a customer is subsequently determined by the California LifeLine Administrator to be ineligible, the subscriber will not be required to pay for the handset and will not be required to return it to Nexus. The customer may continue to use the handset to receive service under the previously selected non-Lifeline service plan.¹²
- Nexus certifies that information concerning rates, terms, and conditions of Nexus' service and plans will be provided in writing with the handset and will be included in Nexus' relevant marketing materials. The information will also be available on Nexus' website or through a free call to Nexus' customer service.¹³
- Nexus states it will identify and inform its current and potential subscribers of potential safety issues related to wireless federal Lifeline service and potential coverage and service quality issues resulting from poor reception from weather, terrain or gaps in service coverage, consistent with industry best practices and applicable CPUC and federal regulations, standards, and guidelines.¹⁴
- Nexus also states it will clearly label its new offerings as federal Lifeline to minimize customer confusion between state and federal Lifeline programs. Nexus will also continue to provide marketing and informational materials relating to federal Lifeline to the Communications Division (CD) for review and approval prior to distribution and publication on its website.¹⁵

¹⁰ AL 7A, pp. at 2 and 3.

¹¹ AL 7A, p. 3.

¹² *Id.*

¹³ AL 7B, p. 1.

¹⁴ AL 7B, p. 2.

¹⁵ *Id.*

DISCUSSION

I. Nexus's New Rate Plans Comply with the FCC and the Commission's Lifeline Rules.

We find that Nexus's three new wireless rate plans comply with the FCC's Lifeline rules. In the *Lifeline Reform Order*, the FCC addressed the issue of a minimum consumer charge for federal Lifeline services. It concluded that imposing a minimum charge could impose a significant burden on some classes of Lifeline consumers.¹⁶ A minimum charge could potentially discourage consumers from enrolling in the program and could result in current Lifeline subscribers leaving the program.¹⁷ The FCC found that there is insufficient data to establish that requiring a minimum charge would effectively protect the program from waste, fraud, and abuse without thwarting the FCC's goal of making vital communications services available to low-income consumers.¹⁸ The FCC also concluded that in light of the other significant steps it is taking to reform the Lifeline program and prevent waste, fraud and abuse, it declined to adopt a minimum consumer charge requirement for federal Lifeline service.¹⁹ Therefore, Nexus' new rate plans are consistent with the federal Lifeline rules.

We find that Nexus' three new rate plans also comply with the Commission's LifeLine rules. In D.10-11-033, the Commission adopted price floors for California LifeLine services in order to ensure an orderly phase-in of the Specific Support Amounts (SSA) available to carriers through January 1, 2013. The Commission set the price floor at \$5.00 and capped the LifeLine rate for Basic Residential service at \$6.84. The LifeLine rate for measured rate service was capped at \$3.66 with a price floor of \$2.50. The Commission required carriers to charge LifeLine customers at least \$5.00 or \$2.50 for flat or measured service, respectively.

In Ordering Paragraph (OP) 14 of D.10-11-033, the Commission held that "Beginning January 1, 2013, the Commission will limit California LifeLine Program support paid to carriers to the lesser of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$5.00 monthly rate. A similar limitation applies to subscribers of regular measured rate service (1MR) such that the support paid to carriers is the lesser of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$2.50 monthly rate."²⁰

¹⁶ *Lifeline Reform Order* at para. 266.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ The FCC's order does not preclude states from requiring state-designated ETCs to assess and collect a minimum charge from Lifeline subscribers and amended 47 CFR part 54. 47 CFR 54.416(c) reads "States that mandate Lifeline support may impose additional standards on ETCs operating in their states to ensure compliance with state Lifeline programs."

²⁰ D.10-11-033 at OP 14; *See also* GO 153, sections 8.14. and 8.1.5.

Carriers are no longer required to have minimum price floors for California LifeLine services. Beginning January 1, 2013, the price floors will only apply in calculating SSA reimbursements for carriers that provide California LifeLine services to eligible customers. In conformance with D.10-11-033, on November 30, 2012, CD issued an administrative letter to carriers reminding them that price floors established in D.10-11-033 on LifeLine services will no longer apply for pricing purposes and that the \$5.00/\$2.50 price floor amounts will be used only for the purposes of calculating the SSA amounts.

Nexus does not and is not authorized to offer California LifeLine. It offers wireless federal Lifeline services and only receives federal Lifeline support for those services. However, when determining ETC status for Wireless Carrier's requests for the purpose of offering Federal Lifeline and Link Up services in California, the Commission considers its pricing rules adopted in D.10-11-033. Staff evaluates the proposed Lifeline rate plans filed via Advice Letter against the adopted \$2.50 price floor and \$3.66 ceiling for California LifeLine Measured Rate service. In Resolution T-17258, staff recommended that free plans are not in compliance with the Commission's LifeLine pricing policies. The Commission concurred by denying Virgin Mobile authorization to offer its proposed free plans. Consistent with our policy to remove the price floors for California LifeLine service beginning January 1, 2013, we will not impose minimum price floors for wireless federal Lifeline service plans.

II. Safety Considerations

We find that there are two safety considerations inherent with any Lifeline wireless services: 1) The removal of the handset from the home; and 2) Poor mobile reception resulting from weather conditions, terrain, or gaps in service coverage. In Resolution T-17258, we noted these concerns and in OP 7 of that Resolution, we required Nexus to "include adequate information about the potential coverage and service quality issues a customer may encounter if s/he opts to select a federal wireless LifeLine plan versus a State LifeLine wireline plan. And Nexus, prior to publication, shall provide to CD staff copies of all marketing materials for review of message clarity." We remind Nexus to continue to address these safety concerns on its websites and in any of its marketing and informational materials that it provides to potential and existing wireless federal Lifeline customers. Nexus should continue so provide any marketing and informational materials that it intends to use in California for review and approval by CD prior to publication.

III. Cricket's Protest

On December 21, 2012, Cricket Communications, Inc. (U-3076-C) (Cricket) filed a Protest to Nexus AL 7 asserting that it was improperly filed as a Tier II AL. Cricket

states that it has no position on the merits of the AL, but asserts that, at a minimum, the free rate plan proposed by Nexus in AL 7 requires an approval by the full Commission because a free federal Lifeline rate plan was previously rejected by the Commission in Resolution T-17284.²¹ In addition, Cricket states that the Lifeline plans rejected in Resolution T-17284 are the subject of a pending application for rehearing (Application (A.) 11-06-012). Cricket further states that the Nexus “free rate plan conflicts with the Commission’s general policy that Lifeline customers should pay a minimum monthly amount”²² and that “... LifeLine customers should be invested in the purchase of phone service to understand that there is a cost associated with it.”²³

On December 31, 2012, Nexus filed a response to Cricket’s Protest stating that the Protest should be rejected because it lacks merit and is moot. The Commission’s decision not to approve the free plan in Resolution T-17284 applied to one carrier, (namely Virgin Mobile, Inc.), not to all carriers. Therefore, the Commission does not need to modify that Resolution in order to approve the Nexus’ free plan proposed here. We find Nexus’ free plan to be in compliance with the Commission’s LifeLine pricing rules a discussed above in Discussion, Section I. Therefore, Cricket’s Protest is moot and without merit.

IV. Summary of CD Recommendations

CD recommends that the Commission approve Nexus AL 7 as supplemented and authorize Nexus to offer the following three new rate plans to federal Lifeline eligible customers in the Verizon and AT&T service areas.

- Free Plan: 250 voice minutes and 250 domestic messages each month at no cost to the customer if approved for federal Lifeline;
- \$5 Plan: 500 total voice minutes and 500 domestic messages each month for \$5.00 a month if approved for federal Lifeline;
- \$20 Plan: 1,000 voice minutes and 1000 domestic messages each month for \$20.00 a month if approved for federal Lifeline;

²¹ Resolution T-17284 (dated May 5, 2011). “Virgin’s 250 Free Anytime Minutes plan do not comply with D. 10-11-033’s pricing policies for measured rate service and should not be approved.” Findings 18. “Virgin’s 250 free anytime minutes ... plans are not in the public interest, they do not comply with D. 10-11-033, and are not approved for California federal LifeLine customers.” OP 4.

²² Cricket Protest, p. 2.

²³ D. 10-11-033, p. 65.

- Nexus shall continue to comply with G.O. 153's verification and certification processes, and shall not provide federal Lifeline pricing to customers until the customer's Lifeline eligibility is approved by the LifeLine Administrator.
- Nexus shall also continue to clearly label its Lifeline offerings as Federal Lifeline to minimize customer confusion between State and Federal Lifeline programs. Nexus will also provide adequate information to its customers about the potential coverage and service quality and safety issues between federal wireless and state wireline LifeLine plans. And, prior to publication, Nexus must provide to CD staff copies of marketing and informational materials for review and approval.

NOTICE

In compliance with GO 96-B, Nexus' ALs 7 was posted on the Commission Daily Calendar on December 14, 2012, and supplements AL 7A and AL 7B were calendared on January 25, 2013. The suspension of AL 7 was calendared on December 28, 2012.

COMMENTS

Public Utilities Code Section 311(g)(1) requires that the Commission (1) serve a draft Resolution on all parties, and (2) make that draft Resolution available for public review and comment for a period of 30 days or more, prior to a vote of the Commission on the Resolution. On January 29, 2013, the Commission distributed a draft of this Resolution for comments to the attached Service List (Attachment A).

FINDINGS AND CONCLUSIONS

1. Resolution T-17258 (dated May 5, 2011) designated Nexus Communications, Inc. as an Eligible Telecommunications Carrier (ETC) and authorized Nexus to provide federal lifeline services in Verizon and AT&T service areas in California.
2. On December 03, 2012, Nexus Communications, Inc. dba as Reachout Wireless (U-4387-C) filed Advice Letter (AL) 6 as an Information Only Advice Letter notifying the Commission of its new wireless Lifeline plans in California.
3. On December 7, 2012, the Communications Division rejected AL 6 as to form.
4. On December 11, 2012, Nexus filed AL 7 under Tier II, which is a re-filing of AL 6.

5. On December 21, 2012, Cricket Communications, Inc. (U- 3076 -C) filed a protest to Nexus' AL 7.
6. Cricket Protest asserts that approval of Nexus' new Free Plan requires approval of the full Commission because the Commission rejected free plans in Resolution T-17284.
7. Cricket's Protest is moot because we find Nexus' new rate plans to be in compliance with the Commission's current LifeLine pricing rules.
8. On December 21, 2012, CD suspended Nexus AL 7 for disposition by Resolution.
9. On December 31, 2012, Nexus filed a response to the Cricket Protest.
10. On January 18, 2013, Nexus filed AL 7A.
11. On January 23, 2013, Nexus submitted additional information about its new federal Lifeline service offerings, AL 7B.
12. Nexus does not receive Universal Service support from the California LifeLine Fund.
13. Nexus' Free Plan, \$5 Plan, and \$20 Plan are consistent with the applicable law and in the public interest.
14. In the FCC's *Lifeline Reform Order*, the FCC declined to impose a minimum consumer charge for federal Lifeline services.
15. The FCC rules do not prohibit states from requiring state-designated ETCs to assess and collect a minimum charge from Lifeline subscribers.
16. Decision 10-11-033 and General Order 153, Sections 8.1.4 and 8.1.5 require price floors of \$5.00 and \$2.50 for Flat and Measured Rate services, respectively, for California LifeLine customers through December 31, 2012.
17. In accordance with D.10-11-033, beginning January 1, 2013, the \$5.00 and \$2.50 price floor amounts for Flat and Measured Rate California LifeLine services respectively are applicable only for the purposes of calculating carriers' Specific Support Amount reimbursements for its California LifeLine customers.
18. Consistent with our policy to remove the price floors for California LifeLine service, beginning January 1, 2013, we will not impose minimum price floors for

wireless federal Lifeline service plans.

19. Two safety considerations are inherent with any wireless Lifeline service: the removal of the handset from the home and poor mobile reception resulting from weather conditions, terrain, or gaps in service coverage.
20. Nexus should address wireless safety issues in its customer informational and marketing materials and on its websites.
21. Nexus shall continue to comply with General Order 153's verification and certification processes.
22. Nexus shall not offer federal Lifeline plans to customers until their Lifeline eligibility is approved by the Commission's LifeLine Administrator.
23. Nexus shall continue to clearly label its offerings as federal Lifeline services to minimize customer confusion between state and federal Lifeline programs.
24. Nexus shall provide adequate information about the potential coverage and service quality issues to its customers.
25. Nexus shall provide and obtain approval from CD staff of its marketing and informational materials prior to publication.
26. On January 29, 2013, the Commission served a draft of this Resolution for comments to all persons on the attached Service List (Attachment A).

THEREFORE, IT IS ORDERED that:

1. The Commission authorizes Nexus Communications, Inc. (U-4387-C) (Nexus) doing business as Reachout Wireless to offer the three new federal LifeLine plans submitted by Advice Letter No.(AL) 7 as supplemented by AL 7A and AL 7B filed December 11, 2012, January 18, 2013 and January 23, 2013 respectively.
2. Nexus' new rate plans are consistent with D. 10-11-033 and General Order 153 and the Federal Communications Commission's (FCC's) Universals Service Rules.

3. Nexus is authorized to offer its federal Lifeline Free Plan, new \$5 Plan and new \$20 Plan to eligible customers in California, in the Verizon and AT&T California service areas.
4. Nexus is not authorized to receive any LifeLine subsidy from the California LifeLine Fund for providing federal Lifeline services in California.
5. Nexus shall continue to comply with the requirements of General Order 153 regarding verification and certification processes.
6. Nexus shall not provide federal Lifeline plans to customers until their Lifeline eligibility is approved by the California LifeLine Administrator.
7. Nexus shall continue to clearly label its federal Lifeline offerings as Federal Lifeline to minimize customer confusion between state and federal Lifeline programs.
8. Nexus shall provide adequate information to its customers about the potential coverage, service quality and safety issues a customer may encounter when selecting a wireless federal Lifeline plan versus a state wireline LifeLine plan.
9. Nexus shall provide and obtain approval from Communications Division staff of its marketing and informational materials prior to publication.

Resolution T-17389
CD/CHR

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on February 28, 2013, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

Attachment A
Resolution T-17389 Service List

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Attachment A
Resolution T-17389 Service List

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