PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division
Carrier Oversight and Programs Branch

RESOLUTION T-17258
February 24, 2011

R E S O L U T I O N

RESOLUTION T-17258. This Resolution denies the request of Nexus Communications Inc. (U-4327-C) for limited eligible telecommunications carrier status within California. The request is denied given Nexus Communications has not met the requirements for eligible Telecommunications carrier designation.

SUMMARY

By this Resolution, the Commission denies the request of Nexus Communications Inc. (U-4387-C) [hereafter Nexus] for limited eligible telecommunications carrier (ETC) designation in California, for the purpose of offering Federal-only LifeLine and Linkup services statewide to qualifying end-user customers. The Commission finds that Nexus does not comply with federal ETC requirements and the Commission's ETC requirements in Commission Resolution T-17002.

BACKGROUND

Eligible Telecommunications Carrier (ETC) is a federal designation[1] given to a common carrier that is eligible to receive federal support for providing services that are supported by the federal universal support mechanism[2] to low-income consumers and/or those in high cost areas of a state.

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[1] C.F.R § 54.201
[2] C.F.R § 54.101

To be designated an ETC, an applicant must meet the following five generally established ETC requirements:

1) commitment to, and ability to provide service in its proposed service area;
2) ability to remain functional in emergencies;
3) commitment to satisfying consumer protection and service quality standards;
4) an offering of local usage comparable to that offered by the incumbent LEC; and
5) ability to offer equal access if all other ETCs in the area relinquish their ETC designations.[3]

The FCC encourages state commissions to apply these requirements to all ETC applicants over which they have jurisdiction. Additionally, the FCC and state commissions must determine that an ETC designation is in the public interest. Factors to be included in the public interest analysis are the following: 1) increased consumer choice, 2) advantages and disadvantages of particular service offerings, and 3) potential for cream-skimming in rural service areas. [4]

To be eligible for universal service subsidies, an ETC must offer the services the FCC reimburses through the federal universal service support mechanisms under 47 U.S.C. § 254(c). The ETC can accomplish this either by using its own facilities or through combining its own facilities with resale of another carrier's services. The ETC must advertise the availability of such services and the charges for these services using media of general distribution.[5]

The primary responsibility for designating a carrier as an ETC rests with state commissions for those carriers over which they have jurisdiction[6]. In cases where a state does not have jurisdiction over a carrier, the Federal Communications Commission (FCC) conducts the ETC designation process.[7]

To discharge its obligation to evaluate ETC designation requests, the California Public Utilities Commission (hereafter referred to as the Commission or CPUC) issued Resolution T-17002 in May 2006 that contains comprehensive procedures, guidelines, and reporting requirements that are consistent with, yet broader than federal rules[8] for

[3] FCC 05-46 §IV. ETC Designation Process ¶20

[4] FCC 05-46 § IV.B

[5] 47 U.S.C. § 214(e)(1)

[6] 47 U.S.C § 214(e)(2).

[7] 47 U.S.C. § 214(e)(6).

[8] Resolution T - 17002, pg. 2 ,"CPUC finds that additional mandatory requirements for ETC designation and ETC eligibility reasonable as it provides a means to monitor and ensure that any funds given to California ETCs are used to achieve the goals of universal service."

ETC designation requests. Resolution T-17002 reflects the ETC designation requirements found in FCC 97-157[9] and portions of FCC 05-46[10], which are contained in Appendices A & B of the resolution, and are included as Attachment 1 to this resolution.

In addition to reviewing ETC designation requests for compliance with the federal and CPUC ETC requirements, the Communications Division (CD) staff reviews the requests for compliance with CPUC Lifeline rules contained in General Order (G.O.) 153 and Decision (D.) 10-11-033, and other state regulatory requirements for telephone corporations operating in California, including but not limited to paying CPUC User Fees, Public Purpose Program surcharges, and submitting required reports.

G.O. 153 implements the Moore Universal Telephone Service Act, and contains California LifeLine service requirements for wireline carriers offering basic residential telephone service in California, including twenty-two elements of LifeLine service that carriers must provide. A list of the LifeLine service elements is included in Attachment 2 to this resolution. CD staff has applied the provisions of G.O. 153 in its evaluation of Nexus' ETC designation request. CD recommends that, until the Commission adopts California LifeLine rules for wireless service providers in Phase II of R. 06-05-028, all federal LifeLine offerings must comply with G.O. 153.

On November 19, 2010, the Commission adopted D. 10-11-033, which made changes to the California LifeLine program. The decision allows customers living in Small LEC service areas to choose alternative/non-traditional providers, such as wireless and VoIP, for California LifeLine service[11]

All telephone corporations operating in California are required to possess a certificate of public convenience and necessity (CPCN) for wireline carriers, or a wireless identification number (WIN) for commercial mobile radiotelephone service (CMRS) providers[12]. Both of these classes of carriers are required to pay CPUC user fees[13] and submit surcharge[14] amounts assessed on customers' intrastate telecommunications services to support the CPUC's universal service programs. CD reviews each ETC

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9 FCC 97-157, adopted May 7, 1997, established the definition of services to be supported by the federal USF support mechanism and a timetable for implementation. It also adopted the statutory criteria in 47 U.S.C. §214(e) as the rules to govern which carriers are eligible to receive federal USF support.

10 FCC 05-46, Docket No. 96-45, adopted February 25, 2005, addressed the minimum requirements for a telecommunications carrier to be designated an ETC.

11 See D. 10-11-033, mimeo, at 72

12 See D. 94-10-031.

13 See P.U. Code § 432.

14 See D. 96-10-066 (8)(g).

applicant for compliance with these regulatory requirements as part of the determination as to whether it is in the public interest to approve an ETC designation request.

<u>SUBJECT OF ADVICE LETTER/FILING</u>

On June 3, 2009 Nexus filed Tier III a Advice Letter (AL) 1, requesting limited ETC status, for the purpose of offering federal LifeLine and Linkup services to qualifying California customers[15], while at the same time, narrowing this area to customers served by AT&T California and Verizon. Nexus is not seeking federal Universal Service high-cost support or California state Universal Service support. In AL 1, Nexus originally proposed offering LifeLine customers a free wireless handset, 50 free anytime rollover minutes, with minutes exceeding 50 priced at $0.20 per minute through airtime cards costing $5.00, $10.00, or $20.00. All cards would be depleted at $.020 per minute. Customers would be also charged a $42.00[16] activation fee after subtracting the $30.00 Linkup subsidy. This offering would include Caller ID and Call Waiting.

On October 20, 2010, Nexus supplemented AL 1 with Advice Letter 1A to provide information on modified LifeLine offerings. These new offerings range from 68 free minutes per month to a 500 minute per month for $5.00 offering. Additionally, the revised offerings included text messaging capabilities, voice mail, and refillable airtime cards in $3.00, $5.00, $10.00, $20.00, $30.00, $50.00 denominations, with calls now priced at $0.10 per minute. The LifeLine activation charge remained at $42.00.[17].

The following summarizes Nexus' proposed Federal LifeLine offerings:

(1) 250 free minutes per month;
- Free wireless handset;
- 250 *non*-rollover minutes added to the customers account each month.
- Minutes are only usable for domestic calls;
- Text messages are available at the rate of one text per minute of airtime;
- Caller ID, Call Waiting, and voicemail are available;
- Activation charge of $42.00.

[15] See Nexus AL1, at 1
[16] The regular activation charge of Nexus is $72.00.
[17] Nexus allows LifeLine customers to defer this remaining $42.00 charge over a twelve month period, without an interest charge.(AL 1A at 9)

(2) 500 minutes for $5.00 per month[18]

- Free wireless handset.
- 250 additional minutes can be purchased for $5.00 if paid prior to the 250 free minute replenishment cycle.
- If the $5.00 payment is not made by the customer, the plan defaults to the free 250 non-rollover minutes per month plan.
- Minutes can only be used for domestic calls;
- Text messages are available at the rate of one text per minute of airtime.
- Caller ID, Call Waiting, and voicemail are available.
- Activation charge of $42.00

(3) 125 free rollover minutes per month

- Free Wireless handset.
- Minutes can only be used for domestic calls;
- Text messages are available at the rate of one text per minute of airtime.
- International text messaging is available for $0.20 per incoming or outgoing message.
- Caller ID, Call Waiting, and voicemail are available.
- Activation charge of $42.00

(4) 100 free rollover minutes or 100 text messages for free per month.

- Free Wireless handset.
- Minutes can only be used for domestic calls.
- Caller ID, Call Waiting, and voicemail are available.
- Activation charge of $42.00

(5) 68 free rollover anytime minutes per month.

- Free Wireless handset.
- Minutes can only be used for domestic calls;
- Text messages are available at the rate of (2) text messages per minute of air time.
- International text messaging is available for $0.20 per incoming or outgoing message.
- Activation charge of $42.00

Nexus is an Ohio based corporation, with principal offices at 3629 Cleveland Ave., Suite C, Columbus Ohio, 43223. Nexus is a facilities-based wireless service provider; the Commission issued it WIN U-4387-C on March 20, 2009. A copy of this authorization is included in Attachment 3 to this resolution. Requirements for providing service in California include, but are not limited to, payment of surcharges and fees. Failure to

[18] This plan is only available to customers if they subscribe to the 250 minutes of free airtime per month, and per AL 1A pg. 6, “affirmatively indicate” they want to purchase an additional 250 minutes for $5.00.

comply with these requirements, as identified in Nexus' March 20, 2009 WIN authorization, can result in revocation of the WIN[19]

NOTICE/PROTEST

Nexus filed its Advice Letter for ETC status on June 3, 2009, and the filing was published in the Commission's Daily Calendar on June 8, 2009.

On June 22, 2009 and November 9, 2010, the Small Local Exchange Carriers (LECs) [20] filed timely protests of the Nexus ALs pursuant to G.O. 96-B § 7.4.2(2).[21] The Small LECs argue that Nexus should not be designated as a LifeLine-only ETC, because Nexus does not offer local service comparable to the service offered by incumbent ETCs[22] . The Small LECs also claim Nexus cannot be granted ETC status, until it shows how it will exclude LifeLine subsidies to customers in Small LEC territories.[23]

The Small LECs further state that the Commission should defer consideration of Nexus' ETC designation, until the pending reforms to the California LifeLine program have been fully considered.[24] Finally, the Small LECs claim that Nexus should be required to comply with the certification and verification requirements of GO 153, as well as with eligibility verification based upon Zip code[25]

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[19] See requirement #15, March 20, 2009 letter addressed to Nexus Communications, Inc, issuing Wireless Identification Number U-4387-C (Attachment 3).

[20] This group is composed of Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co. These telephone companies generally operate in rural areas, and have rates that are regulated.

[21] G.O. 96-B § 7.4.2 in general provides Grounds for Protest of advice letters. Subsection (2) states the "The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies."

[22] See Protest and Comments of the Small LECs, dated November 8, 2010, at 3.

[23] See Protests and Comments of Small LECs dated June 22, 2009, at 3

[24] See Protests and Comments of Small LECs dated June 22, 2009, at 3

[25] See Protest and Comments of the Small LECs, dated November 8, 2010, at 3.

DISCUSSION

I. Has Nexus Complied With Federal ETC Eligibility Requirements?

CD concludes that Nexus has complied with Federal requirements for ETC's[26] except for the public interest element. In addition, Nexus has not proposed offering a comparable local usage plan. Nexus will offer services that are supported by the USF, and will advertise the availability of its Federal LifeLine services through general advertising media such as: print, commercial radio, free publications, and point of purchase materials at retail outlets.

CD also concludes that Nexus has complied with other FCC ETC eligibility requirements[27], because it has committed to do the following: (1) provide the supported services, as previously discussed; (2) remain functional in an emergency situation based upon the underlying carrier's services; (3) satisfy consumer protection and service quality standards, and (4) comply with the CTIA Consumer Code for Wireless Service. In addition, Nexus acknowledges that it may be required to provide equal access to long distance carriers if all other ETCs in the service area relinquish their ETC status.

Comparable Local Usage

The Small LECs argue that Nexus should not be designated as an ETC, because it does not offer local service comparable to the incumbent ETCs. They state first that the Nexus plan does not provide sufficient airtime to each household, and as a result the household could be left without services once the free minutes are used and that advanced features are not enough to make Nexus' offerings comparable. Nexus responded by stating that the federal rule of comparability is met by a carrier offering a *choice* of plans, which they provide. Nexus also stated that, since the Commission included advanced features in the Cricket Resolution, it places weight upon inclusion of such features in an ETC proposal.

Neither the CPUC nor the FCC has adopted minimum local usage standards or quantity of minutes to measure comparability. However, the FCC encourages state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbents in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC. The FCC has not prevented states from determining the minimum number of local usage minutes for an applicant to be awarded ETC status.[28]

[26] 47 U.S.C. §§ 214 (e)(1) and 254(c)
[27] FCC 05-46 ¶¶ 20 - 68 addresses Federal ETC eligibility requirements.
[28] FCC 05-46, ¶ 34

No specific federal or state policies or standards for comparable local usage for wireless carriers exist. Consequently, CD used CPUC General Order (G.O.) 153 call allowance rules and Decision (D.)10-11-033 pricing rules for Measured Rate (MR) Lifeline service as a baseline in evaluating Nexus' request regarding the comparable local usage requirement. in Resolution T-17266, Ordering Paragraph 3, the Commission approved use of G.O. 153 for evaluating wireless carriers' requests for ETC designation..

Pursuant to G.O. 153, MR wireline Lifeline customers are given a call allowance of 60 untimed outgoing calls. Calls in excess of the call allowance are priced at $.08 per call.[29] D.10-11-033 adopted a price range for MR Lifeline service with a floor of $2.50 and a cap of $3.66 per month[30]. Nexus proposes to offer five plans to Lifeline customers, as identified on pages 4 & 5 of the resolution. These plans are similar to wireline MR service, providing a base level of usage for a set fee with additional charges for usage in excess of the base amount.

In evaluating wireless LifeLine plans that have similar characteristics to wireline MR service, CD deemed it appropriate to determine how many wireless minutes of use (MOU) a wireless MR Lifeline customer should receive, and at what cost, based on G.O. 153 MR criteria and wireless industry average length of call data, as well as on LifeLine measured rate service rates adopted in D.10-11-033.

For its analysis, CD used wireless MOU, average bill, and average revenue per MOU data for the six-month period ending December 31, 2008 from Table 19 of the FCC's 14th Mobile Wireless Competition Report to Congress (14th Report) and data for the same period from the Cellular Telecommunications Industry Association's (CTIA) Semi-Annual Wireless Industry Survey[31]. CD used the 2008 data because the FCC data ended then, even though the CTIA data continued through the six-month period ending June 30, 2010. See Attachment 4 for summaries of the FCC and CTIA data used by CD.

In order to evaluate Nexus' offerings on a consistent and comparable basis with G.O. 153 MR lifeline service requirements, CD used CTIA average call length data to convert the G.O. 153 MR per call allowance to the MOU unit of measure on which Nexus' plans are based.

CD estimated the average number of MOU per month that a typical wireless customer would reasonably be expected to use for purposes of estimating what each of Nexus' plans could cost an average Lifeline customer. CD estimated that a Lifeline customer with average monthly voice usage would use an average of 769 voice MOU per month for local calls. To arrive at this estimate, CD used data from the 14th Report, dividing the average local monthly bill (excluding data) by the average revenue for voice minute ($38.45/$0.05 = 769 MOU). See Attachment 5 for pricing details.

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[29] G.O. 153 §8.5.1

[30] D.10-11-033, pg.56, *mimeo*

[31] http://files.ctia.org/pdf/CTIA__Survey_Midyear_2010_Graphics.pdf

CD further estimated that a wireless lifeline customer should get 146 wireless voice MOU's per month as a basic monthly allowance, and calculated this amount by multiplying the average call length from the CTIA study, by the G.O. 153 call allowance (2.43 minutes*60 untimed calls = 146 MOU). Using these estimates, CD determined that a typical wireless Lifeline customer will use 623 MOU in excess of the estimate of the G.O. 153 MR calculated MOU monthly call allowance (769 average monthly voice MOU – 146 calculated MOU call allowance = 623 excess MOU). CD calculated the cost of each excess MOU to be $.033 ($.08 per call in excess of allowance/2.43 average minutes per call).

CD therefore, estimates that a wireless Lifeline plan that is consistent with G.O. 153 MR service requirements and D.10-11-033 MR pricing policies would cost a Lifeline customer between $23.07 [$2.50 allowance + ($.033*623 excess MOU)] and $24.23 [$3.66 allowance + ($.033*623 excess MOU)] per month for 769 local voice only MOU.

To determine if Nexus' Lifeline plans are comparable to CPUC local usage requirements for MR service, CD compared the cost to the customer of each of Nexus' proposed plans priced using 769 monthly average local voice MOUs to the cost of MR LifeLine plans based on G.O. 153 and D.10-11-033 requirements with 769 average monthly MOUs. CD concluded that none of Nexus' LifeLine plans are comparable to the approved MR requirements when converted to MOU's, and using 769 wireless average monthly local voice MOU. The table below shows a comparison of each plan:

Estimated Cost of Nexus' Plans Compared to G.O. 153 Measured Rate Calculated Costs for 769 MOU****

	Nexus 250 Minute Plan	Nexus 500 Minute Plan	Nexus 125 Rollover Minute Plan	Nexus 100 Rollover Minute Plan	Nexus 68 Rollover Minute Plan	AT&T Estimate per G.O. 153	Verizon Estimate per G.O. 153
LifeLine Plan Cost to Customer	$ 51.90	$ 31.90	$ 64.40	$ 66.90	$ 70.10	$23.07 to $24.23	$23.07 to $24.23
Caller ID, Call Waiting, Long Distance, Voicemail and Tax Cost	$0	$0.15	$0	$0	$0	$17.06 to $17.09***	$31.47 to $31.50
Total Cost to LifeLine Customer for 769** MOU	$ 51.90	$ 32.05	$ 64.40	$ 66.90	$ 70.10	$ 40.12 to $41.32*	$ 54.53 to $55.73*

* Price range reflects $2.50 LifeLine floor and $3.66 cap established in D. 10-11-033.
** 769 MOU reflects calculated average local wireless usage based upon FCC and CTIA Data.
*** CD could not find an AT&T package that contained all the elements Nexus has included in its packages. Neither AT&T or Verizon packages include Call Waiting.
**** See Attachment 7 for calculation details.

Because Nexus' plans include free Nationwide long distance, Caller I.D., voice mail, and Call Waiting in addition to local calling, for comparison purposes it is appropriate to consider what a Lifeline customer would pay under G.O. 153 for MR service with these additional features. CD used the cost of ILEC packages that include the additional features contained in Nexus' plans to calculate the cost of G.O. 153/D.10-11-033 based MR service and compared the results to the calculated cost of Nexus' plans using the 769 average local voice MOU.

Though CD finds that none of Nexus' five plans are comparable to the cost of the ILEC measured rate LifeLine plans, when the cost of additional features are factored into the analysis, CD considers two of Nexus' LifeLine plans to be comparable to the ILEC plans with additional features. Nexus' 250 free minutes plan is $2.63 less than the Verizon's LifeLine offering with added features and its $5.00/500 minute plan is $22.48 less than Verizon's lowest LifeLine offering with added features.

The Small LECs also cite concern that free MOUs can be converted to texts under the Nexus proposals. They believe that a LifeLine plan should offer affordable access to emergency, essential non-emergency and government services. The Small LECs state that text messaging does not necessarily provide this access[32]. Nexus responded to the Small LECs by stating that subscribers have access to emergency 911 services, regardless of the number of minutes they have or their activation status[33], and this allows them to meet the requirement s of 47 C.F.R. § 101 (a).

Federal rules (47 U.S.C. § 254 and 47 C.F.R. 54.101) identify services designated for LifeLine support, but do not prohibit a customer from choosing to utilize text as a MOU,. Nor does the CPUC have such a prohibition. Because Nexus is offering Federal LifeLine service, CD does not believe that Nexus should be precluded from allowing customers to utilize text messaging as a MOU.

Finally, the Small LECs believe Nexus's activation charge is an area of concern, given that it is nearly six times more than Cricket's activation charge after the Linkup credit has been applied. The Small LECs also believe that free Caller ID and Call Waiting are not sufficient to make Nexus' offering comparable. They also assert that the poor service quality of wireless signals in rural areas actually undermines claims of comparability. Nexus responded by stating that CD included Caller ID and Call Waiting in the Cricket resolution, and therefore places weight on these custom calling features[34]. Regarding the activation charge, Nexus argues that states are prohibited from regulating the rates of wireless carriers, and that Nexus offers an additional discount to customers in the amount of the remainder of the activation charge after applying Linkup support[35].

CD agrees that Caller ID and Call Waiting alone are not the measure of comparability; however these features should be considered as an element in the evaluation of the total LifeLine offering. The $42.00 activation charge of Nexus, though high, is not the basis for finding the offering incomparable. CD believes each customer can make a determination as to whether to pay this activation amount or seek a provider with a lower charge.

After reviewing the comments and reply comments of the Small LECs, Nexus, and CD's analysis, the Commission agrees that Nexus does not provide comparable local usage to the ILECs. However, after factoring in the costs of additional features, CD finds that Nexus' 250 Free Minutes and $5.00 for 500 Minutes plans are comparable to the ILEC LifeLine plans with advanced features.

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32 See Protest and Comments of the Small LECs, dated November 8, 2010, at 5.
33 See Reply Comments of Nexus Communications, dated November 21, 2010, at 9.
34 See Reply Comments of Nexus Communications, dated November 21, 2010, at 9.
35 See Reply Comments of Nexus Communications, dated November 21, 2010, at 10.

II. Is Granting ETC Status to Nexus in the Public Interest?

CD believes that Nexus meets the FCC's three suggested public interest criteria as discussed on page 2 of this resolution. Nexus will increase consumer choice by providing wireless LifeLine service in areas that do not currently have wireless options. The advantages of Nexus' offerings would outweigh the disadvantages. The advantages to Nexus' offerings include (1) Caller ID, Call Waiting, and free voicemail; (2) receipt of a free handset; (3) expanded local calling area; (4) no credit check, deposit, or contract; (5) no customer bills or termination fees; and (6) telephone mobility.

The disadvantages of the wireless service include the potential that the handset is removed from the home and poor mobile reception resulting from weather conditions, terrain, or gaps in service coverage.

There is no possibility of cream-skimming in rural areas because Nexus is not requesting Federal High Cost funding.

In addition to the three FCC established public interest criteria, to determine if each of the proposed plans is in the public interest, CD considered what the total cost of each of Nexus' plans is to LifeLine customers that have average MOU per month. CD has concluded that it is not in the public interest to recommend a plan that costs the LifeLine customer more than an off-the-shelf retail priced wireless plan. Attachment 6 compares the five Nexus proposed Lifeline offerings to the off-the-shelf wireless offerings of Virgin's PayLo, metroPCS, Nexus' ReachOut wireless, AT&T Go phone, Verizon Wireless, and Sprint.

CD further concludes that none of Nexus' proposed offerings are in the public interest because all five of Nexus' LifeLine plans are more expensive for average monthly MOUs than Virgin's off-the-shelf PayLo plan, which costs $30.00 for 1500 MOUs. Additionally, metroPCS offers unlimited minutes for $40.00. (See Attachment 6.) In each of these cases, a LifeLine customer can purchase an off-the-shelf wireless prepaid plan with more minutes at a lower price than any of the Nexus' LifeLine offerings. For this reason, CD does not believe approving any of Nexus' five plans would be in the public interest, and does not recommend that the Commission approve any of these plans.

Based on consideration of CD's analysis, the Commission finds that designating Nexus as an ETC would not be in the public interest.

Because we conclude both that Nexus' proposed LifeLine plan offerings do not meet the FCC requirement that such offerings be comparable to those of the ILECs, and that

Nexus plans are not in the public interest, we need not address whether Nexus would meet the requirements of our California LifeLine program. Nexus' service offerings must be "comparable" and in the public interest, or we cannot approve the ETC request. Accordingly, we also do not address here whether Nexus will comply with GO 153 certification and verification requirements, or whether Nexus could be designated an ETC without demonstrating how it would exclude LifeLine subsidies to Small LEC customers. Since Nexus has failed to meet the first prong of a multi-step review of its application, we need not address these other factors.

VII. <u>Summary of CD Recommendations</u>

- CD recommends that Nexus' limited ETC designation request be denied without prejudice, based upon failing to provide LifeLine offerings which are comparable to the ILEC offerings, and failing to provide offerings which are in the public interest.

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 25, 2011, the Commission distributed a draft of this resolution for comments to the Nexus Service List, utilities and other interested parties.

FINDINGS

1. On June 3, 2009, Nexus Communications, Inc. (U-4387-C) filed Advice Letter 1 requesting limited eligible telecommunications carrier (ETC) status to offer only Federal LifeLine and Linkup services to qualifying California customers.

2. Nexus Communications, Inc is a facilities-based wireless carrier in California, registered on March 20, 2009 operating as TSi. Nexus is an Ohio based corporation with principal offices at 3629 Cleveland Ave., Suite C, Columbus Ohio, 43223. Nexus is required to pay CPUC user fees and public purpose program surcharges as a condition of its wireless carrier designation in California.

3. On June 22, 2009 the Small LECs, filed Protest against Advice Letter 1.

4. Nexus supplemented Advice Letter 1 on October 20, 2010 with Advice Letter 1A, which proposed to expand the number of its LifeLine offerings.

5. On November 9, 2010, the Small LECs Protested Advice Letter 1A.

6. CD has concluded that the Nexus proposed LifeLine offerings are more expensive than off-the-shelf non-LifeLine pre-paid wireless plans.

7. It is not in the public interest to grant Nexus' request for ETC designation at this time, because a LifeLine customer with average usage can purchase a non-LifeLine pre-paid wireless plan for less than the proposed LifeLine plans.

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THEREFORE, IT IS ORDERED that:

1. Nexus Communications, Inc.'s. request for limited eligible telecommunications carrier status for purposes of receiving only Federal LifeLine and Linkup service subsidies is denied without prejudice.

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 ________________, the following Commissioners voting favorably thereon:

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PAUL CLANON
Executive Director

Resolution T-17002

Appendix A

Comprehensive Procedures and Guidelines For Eligible Telecommunications Carrier Designation

Each telecommunications carrier seeking eligible telecommunications carrier designation must file an advice letter with the Commission with the following information:

Section I – Compliance with FCC 97-157

A) The service areas for which the carrier is requesting ETC designation including a List of Geographic Service Areas and a map in .shp format showing the proposed service area. For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial mobile radio service or similar service.

B) An itemized list of the designated services to be provided, i.e.

- ✓ Single party service;
- ✓ Voice grade access to the public switched network;
- ✓ Local usage;
- ✓ Dual tone multi-frequency signaling or its functional equivalent;
- ✓ Access to emergency services;
- ✓ Access to operator services;
- ✓ Access to interexchange services;
- ✓ Access to directory assistance; and
- ✓ Toll limitation for qualifying low-income consumers.

C) A list of any services which the carrier proposes not to provide and for which the carrier is seeking an extension of time.

D) An indication of whether the carrier plans to apply for a waiver of the requirement that an ETC not disconnect lifeline for non-payment of toll.

E) A description of the carrier's advertising plan, indicating the advertising media to be used, and an explanation of how its plan meets the advertising requirement in section 214(e) of the Telecommunications Act.

F) If necessary, implement tariff changes via the advice letter filing process. This provision would not apply to carriers that are not required to maintain tariffs.

G) If applicable, request additional time to perform network upgrades to provide single-party service, access to E911 service, and/or toll limitation to low income customers.

Section II – Compliance with FCC 05-46

A) Commitment to Provide Service

An ETC applicant must demonstrate that it has the commitment and ability to provide supported services throughout the designated area by providing services to all requesting customers within its designated service area. Each applicant shall certify that it will:

1. provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and
2. provide service within a reasonable period of time, if the potential customer is within the applicant's licensed 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;
   b. deploying a roof-mounted antenna or other equipment;
   c. adjusting the nearest cell tower;
   d. adjusting network or customer facilities;
   e. reselling services from another carrier's facilities to provide service; or
   f. employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

If the carrier determines that it cannot serve the customer using one or more of these methods, then the carrier must report the unfulfilled request within 30 days after making such determination.

B) Submission of Two-Year Service Quality Improvement Plan

In submitting a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation, an ETC must submit a two-year plan describing its proposed improvements or upgrades to the ETC's network on a wire center-by-wire center basis throughout its designated service area. The two-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not otherwise be made without such support. This must include:

1) a description of any plan for investment to be made or expenses to be incurred which will improve or permit the offering of services that are the subject of reporting requirements in FCC Form 477 (the form and instructions may be accessed at: http://www.fcc.gov/formpage.html#477);

2) a description of investments made and expenses paid with support from the high-cost fund;
3) the projected start date and projected completion date for each improvement and the estimated amount of investment for each project;
4) the specific geographic areas where the improvements will be made;
5) the ETC's projected operating expense requirements for the current and following year;
6) a certification that the investments made and expenses paid will be incurred to maintain and provide telecommunication services to any customer requesting service in ETC's service area;
7) a description of any capital improvements planned including whether the funds for the improvements are from operating expenses, grants, or loaned funds from the Rural Utilities Service or some other government or private institution; and
8) a description of the benefits to consumers that resulted from the investments and expenses reported pursuant to this requirement.

Carriers should provide this information for each wire center in each service area for which they expect to receive universal service support. Service quality improvements in the two-year plan do not necessarily require additional construction of network facilities.

C) Ability to Remain Functional

In order to be designated as an ETC, the carrier must demonstrate that it has back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

D) Consumer Protection

The carrier seeking ETC designation should demonstrate its commitment to meet consumer protection and service quality standards in its application. Thus, an ETC applicant should report information on consumer complaints per 1,000 handsets or lines on an annual basis. Likewise, a carrier should commit to serve the entire service area and provide two-year network improvement plans addressing each wire center for which it expects to receive support.

E) Local Usage

The carrier should be able to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the carrier seeks designation.

F) Equal Access

The carrier should be able to provide equal access if all other ETCs in the service area relinquish their designations pursuant to section 214 (e) (4) of the ACT.

G) Public Interest Determination

The carrier should be able to show that the carrier's designation as an ETC is consistent with the public interest, convenience and necessity. Therefore, the ETC applicant should demonstrate: that the designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming.

Appendix B

Comprehensive Reporting Requirements For Eligible Telecommunications Carriers Eligible for Federal High-Cost Support

Each telecommunications carrier eligible for federal universal service high-cost support must file an advice letter with the Commission with the following information:

Section I – Compliance with FCC 03-249

A. Carrier Information:

1. Name of the carrier;
2. The carrier's Study Area Code;
3. Carrier type as designated by the FCC such as rural ILEC, non-rural ILEC, competitive ETC serving lines in the rural and/or non-rural service areas;
4. The applicable Code of Federal Regulations (CFR) section(s) for which the federal universal service high-cost support is provided;
5. The current basic residential rate excluding Extended Area Service in the area they serve; and
6. A statement, under oath, that the federal universal service high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

B. Basic Residential Service Rate:

All ETCs, whether, rural or non-rural, are required to include in their current basic residential service rates excluding Extended Area Service (EAS) in the areas they serve.

C. Filing Dates:

1. On or before September 15 if eligible for the federal universal service high-cost support for the first, second, third and fourth quarters of succeeding year.
2. On or before December 15 if eligible for the federal universal service high-cost support for the second, third and fourth quarters of the succeeding year.
3. On or before March 15 if eligible for the federal universal service high-cost support for the third and fourth quarters of that year.
4. On or before June 15 if eligible for the federal universal service support for the fourth quarter of that year.

Section II – Compliance with FCC 05-46

A. A two-year service quality improvement plan, including, as appropriate, maps detailing progress towards meeting its prior two-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why network improvement targets, if any, have not been met. If a designated ETC has submitted a five-year plan in a GRC application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.

B. Detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future. If an ETC has submitted a Major Service Interruptions report in accordance with CPUC Memorandum dated October 5, 1977, the ETC need not submit the same report. However, in their self-certification letter, the ETC should cite the date(s) of submission of the report; and

C. Information on the number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines. If an ETC has submitted the Held Primary Service Order and Customer Trouble Reports in accordance with Sections 3.1 and 3.3 of G. O. 133-B, the ETC need not submit the same reports. However, in their self-certification letter, the ETC should cite the date(s) of submission of the reports.

Nexus' Compliance with the Service Elements of LifeLine
Source: Nexus' Advice Letters 1 – 1A
December 10, 2010

	Service Element of LifeLine	In Compliance	Comments
1)	Access to single party local exchange service that is substantially equivalent to single party local exchange service.	Yes	
2)	Access to all interexchange carriers offering service in the LifeLine customer's local exchange.	Yes	
3)	Ability to place calls	Yes	
4)	Ability to receive free incoming calls	No	
5)	Free touch-tone dialing	Yes	
6)	Free unlimited access to 911/E-911	Yes	
7)	Access to local directory assistance (DA). Each utility shall offer its LifeLine customers the same number of free DA calls that it provides to its non-LifeLine customers.	Yes	
8)	Access to foreign Numbering Plan Areas.	Yes	
9)	LifeLine rates and charges.	Yes	
10)	Customer choice of flat-rate local service or measured-rate local service. The 17 smaller LECs identified in D. 96-10-066 do not have to offer LifeLine customers the choice unless they offer the choice to their non-LifeLine customers.	No	Nexus offers a measured- rate to all customers.
11)	Free provision of one directory listing per year as provided for in D. 96-02-072.	No	No Publicly available wireless listings of telephone numbers are available.

Nexus' Compliance with the Service Elements of LifeLine
Source: Nexus's Advice Letters 1 – 1A
December 10, 2010

	Service Element of LifeLine	**In Compliance**	**Comments**
12)	Free white pages telephone directory	No	Wireless carriers do not provide this resource.
13)	Access to operator service.	Yes	
14)	Voice grade connection to the public switched telephone network.	Yes	
15)	Free Access to 800 or 800-like toll-free services.	Yes	There is no additional charge for 800 access; however usage minutes are deducted.
16)	Access to telephone relay services as provided for in PU Code § 2881 et seq.	Yes	Hearing impaired service.
17)	Toll free access to customer service for information about LifeLine, service activation, service termination, service repair, and bill inquires.	Yes	
18)	Toll free access to customer service representatives fluent in the language (English and non-English) the LifeLine service was originally sold in.	Yes	
19)	Free access to toll blocking service.	N/A	Nexus service provides uniform pricing for local and long distance calls.
20)	Free access to toll control service, but only if (i) the utility is capable of offering toll-control service, and (ii) the LifeLine customer has no unpaid bill for toll service.	N/A	Nexus service provides uniform pricing for local and long distance calls.

Nexus's Compliance with the Service Elements of LifeLine
Source: Nexus's Advice Letters 1 – 1A
December 10, 2010

	Service Element of LifeLine	**In Compliance**	**Comments**
21)	Access to two residential telephone lines if a low income household with a disabled person requires both lines to access LifeLine	Yes	
22)	Free access to the California Relay Service via 711 abbreviated dialing code.	Yes	

STATE OF CALIFORNIA Arnold Schwarzenegger, Gover

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

March 20, 2009

Nexus Communications, Inc.
Attn: Peter A. Casciato
332 Bryant Street, Suite 410
San Francisco, CA 94107

Re: Wireless Identification Number (U-4387-C) Nexus Communications, Inc.

Dear Mr. Casciato:

This is to notify you that the information provided to the Communications Division in a letter received on March 13, 2009 meets the information filing requirements for Wireless Registration Identification (WRI) in Decision 94-10-031 as modified by Decision 94-12-042. Your corporate identification number is U-4387-C. Nexus Communications, Inc. may begin to provide resold Commercial Mobile Radiotelephone Service (CMRS) to the public in California..

In all respects except authorization for market entry and rates, the authority of the Commission to regulate terms and conditions of newly registered wireless carriers shall apply to the same extent as those holding certificates of CPCN prior to August 10, 1994. Specifically this includes, but is not limited to the following requirements:

1. The corporate identification number assigned to applicant is U-4387-C, which should be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

2. Applicant shall notify the Director of the Communications Division in writing of the date service is first rendered to the public as authorized herein, within five days after service begins.

3. Applicant shall be granted a waiver of P.U. Code sections 816-830 and 851-855, consistent with Decisions 85-07-081 and 85-11-044.

4. Applicant shall comply with General Order 159-A and D. 96-05-035, as they pertain to cell citing or to a Mobile Telephone Switching Office.

5. Applicant is subject to the current 1.15% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code Section 879; Resolution T-17071, effective April 1, 2007).

6. Applicant is subject to the user fee provided in Pub. Util. Code Sections 431-435, which is 0.18% of gross intrastate revenue for the 2007-2008 fiscal year (Resolution M-4819).

7. Applicant is subject to the current 0.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code Section 2881; D.98-12-073 and Resolution T-17072, effective April 1, 2007).

Wireless Registration for "carrier"

8. Applicant is subject to the current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code Section 739.30; D.96-10-066, pp.3-4, App. B, Rule 1.C; set by Resolution T-17128 at 0.13% effective January 1, 2008).

9. Applicant is subject to the current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Decision 07-12-054, effective January 1, 2008).

10. Applicant is subject to the current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Advances Services Fund (D.07-12-054).

11. Applicant is subject to the current 0.079% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G; set by Resolution T-17142, effective June 1, 2008).

12. All surcharges shall be shown as a single item on a customer's bill.

13. The corporate identity number and authority to render cellular service will expire if not exercised within 12 months after the date of this letter.

14. Within 60 days of the issuance of a Wireless registration Identification number, applicant shall comply with PU Code Section 708, Employee Identification Cards, and notify, in writing that compliance has been met, to the Chief of the Communications Division.

15. If applicant fails to report and remit the fees discussed above (even if zero), then the Communications Division shall prepare a Commission resolution that revokes the applicant's Wireless Identification Number for Commission approval.

16. Applicant is subject to the jurisdiction of the Commission for the resolution of customer complaints. Prior to initiating service, applicant shall provide the "Manager of the Commission's Consumer Affairs Branch (in the Consumer Services and Information Division) with the designated contact person(s) for purpose of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

17. Applicant shall notify the Communications Division in writing of any changes to the information it submitted for wireless registration within 30 days. Such information does not have to be served on competitors, cities and counties.

Sincerely,

Jack Leutza

Jack Leutza, Director
Communications Division

Cpuc01

Table 19 (extract)

Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services

FCC 14th Report May 20, 2010

Year	Average Local Monthly Bill	Minutes of Use Per Month	Average Local Monthly Bill (excluding Data Revenues)	Average Revenue Per Voice Minute
1993	$61.49	140	$61.49	$0.44
1994	$56.21	119	$56.21	$0.47
1995	$51.00	119	$51.00	$0.43
1996	$47.70	125	$47.70	$0.38
1997	$42.78	117	$42.78	$0.37
1998	$39.43	136	$39.43	$0.29
1999	$41.24	185	$41.16	$0.22
2000	$45.27	255	$45.09	$0.18
2001	$47.37	380	$46.94	$0.12
2002	$48.40	427	$47.82	$0.11
2003	$49.91	507	$48.66	$0.10
2004	$50.64	584	$48.21	$0.08
2005	$49.98	708	$45.83	$0.06
2006	$50.56	714	$43.73	$0.06
2007	$49.79	769	$40.88	$0.05
2008	$50.07	708	$38.45	$0.05

Calculated Voice Minutes ($38.45/$0.05) = 769

CTIA Semi-Annual Wireless Industry Survey Results (extract) -June 1993 To June 2008		
6-Month Period Ending:	**AVG. LOCAL MONTHLY BILL**	**Average Local Call Length in Minutes**
Jun-93	$67.31	2.38
Jun-94	$58.65	2.36
Jun-95	$52.45	2.27
Jun-96	$48.84	2.24
Jun-97	$43.86	2.25
Jun-98	$39.88	2.34
Jun-99	$40.24	2.4
Jun-00	$45.15	2.48
Jun-01	$45.56	2.62
Jun-02	$47.42	2.6
Jun-03	$49.46	2.63
Jun-04	$49.49	3.06
Jun-05	$49.52	3.04
Jun-06	$49.30	2.94
Jun-07	$49.94	3.13
Jun-08	$48.54	2.43
Average Local Call Length of 2.43 minutes is utilized for calculations, given that it is contemporaneous with the FCC 14th Report's Minutes of Use Data.		

Table I

Conversion of Measured Rate Call Allowance to Wireless MOUs			
FCC Average Local Voice MOU			769
G.O. 153 Call Allowance		60 untimed calls	
CTIA Average Call Duration		X 2.43 Minutes	
G.O. 153 Call Allowance in MOU			<146>
MOU in Excess of G.O. 153 Allowance			623

Table II

Pricing of Converted MOUs per G.O. 153 & D. 10-11-033			
D. 10-11-033 Measured Rate Price Call Allowance Range for first 146 MOU (60 calls allowance)		$ 2.50	$ 3.66
Price of 623 MOU in Excess of 146 MOU allowance	$0.033 ($.08 per call/2.43 average call duration)	$20.57	$20.57
Total G.O. 153/D. 10-11-033 Cost for 769 MOU		$ 23.07	$ 24.23

Comparison of Nexus' LifeLine Plans to Off-The-Shelf Retail Pre-Paid Wireless Plans											
	LifeLine Plans					**Retail Plans**					
	Nexus - 250	**Nexus - 500**	**Nexus Rollover 125**	**Nexus Rollover 100**	**Nexus Rollover 68**	**Virgin Mobile - PayLo: 1500 Minutes**	**metroPCS $40.00**	**Nexus *dba* Reach Out Wireless Simple Plan**	**ATT -Go Phone $60.00 Unlimited Talk & Text**	**Sprint Talk: 450**	**Verizon - Talk: 450**
Average MOU*	769	769	769	769	769	769	769	769	769	769	769
Basic Plan Minutes	250	500	125	100	68	***1500***	Unlimited	***1000***	***Unlimited***	450	450
Average Excess MOUs	519	269	644	669	701	0	0	0	0	319	319
Cost per Minute in Excess of Allowance	$0.10	$0.10	$0.10	$0.10	$0.10	$0.10	$0.00	$0.00	$0.00	$0.45	$0.45
Cost of Excess Minutes	$51.90	$26.90	$64.40	$66.90	$70.10	$0.00	0	$0.00	$0.00	$143.55	$143.55
Caller ID	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included
Long Distance	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included
Voicemail	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included	Included
Plan Price	$0.00	$5.00	$0.00	$0.00	$0.00	$30.00	$40.00	$52.95	$60.00	$39.99	$44.99
Cost to Customer with Average Usage	**$51.90**	**$31.90**	**$64.40**	**$66.90**	**$70.10**	**$30.00**	**$40.00**	**$52.95**	**$60.00**	**$183.54**	**$188.54**
*See Attachment 5 for Calculation											

Comparable Local Usage Analysis									
Comparison of Nexus Proposed LifeLine Plans to ILEC LifeLine Measured Rate Plans									
(Assuming Average Wireless MOU)									
	Nexus - 250	**Nexus - 500**	**Nexus Rollover 125**	**Nexus Rollover 100**	**Nexus Rollover 68**	**ATT (Minimum)**	**ATT (Maximum)**	**Verizon (Minimum)**	**Verizon (Maximum)**
Average Normal Usage (calculated)	769	769	769	769	769	769	769	769	769
GO 153 Allowance or Plan Allowance	250	500	125	100	68	146	146	146	146
Use in Excess of G.O. 153 or Plan Allowance	519	269	644	669	701	623	623	623	623
Cost per Minute of Excess MOUs	0.1	0.1	0.1	0.1	0.1	0.033	0.033	0.033	0.033
Total Cost of Excess Minutes	$51.90	$26.90	$64.40	$66.90	$70.10	$20.57	$20.57	$20.57	$20.57
Minimum LifeLine Plan Price (Per D. 10-11-033) or Plan Cost	$0.00	$5.00	$0.00	$0.00	$0.00	$2.50	$3.66	$2.50	$3.66
Total G.O. 153 Cost to Customer	$51.90	$31.90	$64.40	$66.90	$70.10	$23.07	$24.23	$23.07	$24.23
Caller ID	Included	Included	Included	Included	Included	$9.99	$9.99	$7.95	$7.95
Long Distance	Included	Included	Included	Included	Included	6.99*	6.99*	$15.99	$15.99
Voicemail	Included	Included	Included	Included	Included	Not Available	Not Available	$7.45	$7.45
Federal Excise Tax	$0.00	$0.15	$0.00	$0.00	$0.00	$0.08	$0.11	$0.08	$0.11
Total Additional Costs	$0.00	$0.15	$0.00	$0.00	$0.00	$17.06	$17.09	$31.47	$31.50
Total Cost to LifeLine Customer	$51.90	$32.05	$64.40	$66.90	$70.10	$40.12	$41.32	$54.53	$55.73
* AT&T One Rate Nationwide 5¢ Advantage Plan									