LAW OFFICE OF ALAN D. MANDL
90 GLEZEN LANE
WAYLAND, MA 01778

Admitted in Massachusetts
and Rhode Island

Telephone: (508) 276-1365
Fax: (508) 276-0992
Email: alan@admlawoffice.com

January 13, 2014

VIA ELECTRONIC AND OVERNIGHT DELIVERY

Catrice Williams
Executive Secretary
Department of Telecommunications and Cable
1000 Washington Street- Suite 820
Boston, Massachusetts 02118-6500

Re: D.T.C. 11-7
Application of Nexus Communications, Inc. for Designation as an
Eligible Telecommunications Carrier for Low Income Support Only

Dear Secretary Williams:

On behalf of Nexus Communications, Inc. ("Nexus"), enclosed please find for filing one (1) original, three (3) copies and one (1) "Stamp & Return" copy of Nexus' **MOTION FOR ABEYANCE**.

Please date stamp the enclosed "Stamp & Return" copy of this cover letter and return it in the Fed Ex envelope provided.

Do not hesitate to contact me if the Department has any questions concerning this filing.

Thank you for your assistance.

Sincerely yours,

Alan D. Mandl

Enclosures
cc: Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Application of Nexus Communications, Inc. for Designation as an Eligible Telecommunications Carrier for Low Income Support Only	)	D.T.C. 11-7

MOTION FOR ABEYANCE

In accordance with 220 CMR 1.04(5) of the Department's Rules of Procedure, Nexus Communications, Inc. ("Nexus") moves that the Department hold this proceeding in abeyance pending action by the Federal Communications Commission ("FCC") on appeals filed by Nexus that will materially affect information that was denied confidential treatment in the December 20, 2013 Hearing Officer Ruling ("Hearing Officer Ruling") in this matter.

Background

The Hearing Officer Ruling denied Nexus' request for confidential treatment as to Nexus' Lifeline subscriber counts,[1] the results of various In-Depth Data Validations ("IDVs") conducted by the Universal Service Administrative Company ("USAC") ("IDV data")[2] and a summary of Nexus' data from its various FCC Form 555 filings ("Form 555 data").[3] *See* Hearing Officer Ruling at 14 – 21.

As discussed below, the issues that Nexus would raise on appeal from the Hearing Officer Ruling substantially overlap appeals that are now pending or will be filed shortly with the FCC regarding the substance and/or confidentiality of the same type of information: IDV

[1] This information was supplied to the Department under seal in response to Information Request D.T.C. 2-5(b).
[2] This information was supplied to the Department under seal in response to Information Request D.T.C. 2-6.
[3] This information was supplied to the Department under seal in response to Record Request 8.

data and Form 555 data, which include Lifeline subscriber data. Abeyance of this proceeding is necessary in order to preserve the rights of Nexus with respect to its appeals at the FCC, the details of which are discussed below. In addition, abeyance of this proceeding will conserve the resources of the Department and Nexus and allow for a Department decision that can take into account the FCC's actions. Nexus is the only party to this proceeding and no rights of other parties would be prejudiced by granting the requested abeyance.

Department Precedent

The Department previously has stayed proceedings in light of possible action by the FCC or the courts that would affect the proceeding, and has let those "[e]vents … inform its course of action."[4] Similarly, the Department has held a proceeding in abeyance where moving forward with the proceeding is an inefficient use of the Department's and the parties' resources,[5] and the Department has previously recognized that Department proceedings should be "stayed pending the outcome of FCC proceedings" in certain cases, particularly where failure to do so would risk rulings that "subsequently may be deemed inconsistent with" FCC rulings.[6]

Form 555 Appeal

As the Department is aware, the FCC's Wireline Competition Bureau issued an order on April 29, 2013 denying Nexus' request for confidential treatment of its FCC Form 555 filings.[7] On May 13, 2013, Nexus filed an "Application for Review" appealing the Bureau

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[4] D.T.E. 03-60, *Interlocutory Order on Motion to Stay of Verizon New England d/b/a Verizon Massachusetts* at 15-17 (Apr. 4, 2004); D.T.E. 01-20 *Interlocutory Ruling* at 13 (Apr. 4, 2001).

[5] D.T.C. 13-6, *Hearing Officer Ruling on Verizon Motion for Abeyance* at 6-7 (Nov. 4, 2013).

[6] D.T.E. 01-20, *Investigation by the Dept. of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass. Resale Services in the Commonwealth of Massachusetts*, Interlocutory Order on Part B Motions (Apr. 4, 2001) at p. 20.

[7] *Request for Confidential Treatment of Nexus Communications, Inc. Filing of FCC Form 555*, WC Docket 11-42, DA 13-871 (Wireline Competition Bureau, rel. April 29, 2013) ("Bureau Confidentiality Order").

Confidentiality Order.[8] That Application for Review remains pending before the FCC commissioners and during the appeal process, Nexus' FCC Form 555 filings continue to be kept confidential.[9] If the Department were to publicly disclose Nexus' Form 555 data during the pendency of the FCC appeal process, it would nullify Nexus' pending appeal of the Bureau Confidentiality Order. The question of the confidential status of Nexus' Form 555 data is squarely before the FCC and, obviously, the outcome of that appeal will have a material impact on the confidential status of Nexus' Form 555 data. Moreover, part of the Hearing Officer Ruling's reasoning on the Form 555 data was informed by the Bureau Confidentiality Order.[10] Thus, further action by the full Federal Communications Commission on Nexus' FCC Application for Review could affect one of the underpinnings of the Hearing Officer Ruling on this issue.

Granting Nexus' Motion for Abeyance will preserve Nexus' rights at the FCC and allow the Department to take into account any FCC action after the resumption of this matter. Abeyance also will preserve Department and Nexus resources and may avoid an appeal by Nexus of the Hearing Officer Ruling to the Commission. Accordingly, Nexus believes it would be prudent to hold this proceeding in abeyance until the FCC appeal process has been completed.

Appeal of IDVs

Nexus is now preparing an appeal to the FCC of various IDVs performed by USAC. Those appeals will explain to the FCC how USAC materially erred in its finding of "intra-

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[8] *Request for Confidential Treatment of Nexus Communications, Inc. Filing of FCC Form 555*, Application for Review of Nexus Communications, Inc., WC Docket 11-42 (filed May 13, 2013) available at: http://apps.fcc.gov/ecfs/document/view?id=7022416389.

[9] *See* 47 C.F.R. § 0.459(d)(3) ("The information will be accorded confidential treatment … until the Commission acts on the confidentiality request and all subsequent appeal and stay proceedings have been exhausted.").

[10] *See* Hearing Officer Ruling at 15-16.

company duplicates" and will ask the FCC to invalidate those erroneous findings. Nexus intends to appeal the IDVs to the FCC by the end of January 2014.

If successful, the appeal would materially change the information provided by Nexus in response to Information Request D.T.C. 2-6. In turn, such a change in information may affect the Department's findings on Nexus' Amended ETC Application. Such potentially inaccurate information regarding Nexus should not be subject to public disclosure. To Nexus' knowledge, USAC and the FCC do not publicly disclose the results of IDVs, as such material contains confidential subscriber information (including customer proprietary network information that is protected from public disclosure by 47 U.S.C. § 222) and may automatically be subject to protection from public disclosure in accordance with 47 C.F.R. § 0.457(d)(iii).[11]

A number of other ETCs that provide Lifeline-supported services have filed similar appeals with the FCC of alleged intra-company duplicate findings by USAC,[12] and Nexus expects the FCC to promptly resolve this issue of significant importance to the industry.

Conclusion

For the reasons above, Nexus respectfully requests that the Department hold this proceeding in abeyance pending the outcome of two FCC appeals filed/or soon to be filed by Nexus. During the period of abeyance, Nexus requests that information provided under seal in response to Information Requests D.T.C. 2-5(b) and D.T.C. 2-6 and Record Request 8 be kept confidential. Following action by the FCC, Nexus requests that the Department schedule a status

[11] Nexus is not aware of any specific FCC rulings as to the confidentiality of IDV results, but IDVs may fall within the scope of 47 C.F.R. § 0.457(d)(iii), which gives automatic protection from public disclosure to "information submitted in connection with audits."

[12] *See, e.g., Request for Review by Boomerang Wireless, LLC of Decision of the Universal Service Administrator*, Boomerang Wireless, LLC's Request for Review, W.C. Docket No. 11-42 (filed Jan. 7, 2014), available at: http://apps.fcc.gov/ecfs/document/view?id=7521065031.

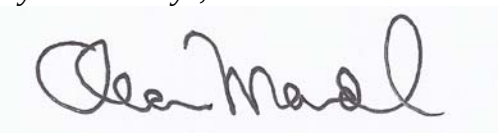
conference in order to discuss the course of action by the Department and Nexus after the period of abeyance has concluded.

During the period of abeyance, Nexus will provide the Department with status reports on the relevant FCC appeals every 90 days (including providing a copy of the appeal of IDVs) and respond to any Department requests for additional information regarding those appeals.

Respectfully submitted,

NEXUS COMMUNICATIONS, INC.

By its attorneys,



Alan D. Mandl, Esq.
Law Office of Alan D. Mandl
90 Glezen Lane
Wayland, MA 01778
Tel: (508) 276 - 1365
E-mail: alan@admlawoffice.com

Danielle Frappier, *pro hac vice*
James W. Tomlinson, *pro hac vice*
Davis Wright Tremaine LLP
1919 Pennsylvania Avenue, N.W. Suite 800
Washington, DC 20006-3401
Tel: (202) 973 - 4242
E-mail: daniellefrappier@dwt.com
E-mail: jimtomlinson@dwt.com

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