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Attorney for the Commission Staff

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF )	
CRICKET COMMUNICATIONS, INC. FOR )	CASE NO. CRI-T-11-01
DESIGNATION AS AN ELIGIBLE )	
TELECOMMUNICATIONS CARRIER )	
)	COMMENTS OF THE
)	COMMISSION STAFF
)	
)	

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**COMES NOW** the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32464 on February 17, 2012, in Case No. CRI-T-11-01, submits the following comments.

### BACKGROUND

On November 7, 2011, Cricket Communications, Inc. (Cricket or Company) filed an Application to be designated as “eligible telecommunications carrier” (ETC) in Idaho. Cricket is an existing facilities-based wireless provider serving Idaho customers with digital wireless services.<sup>1</sup> The Company requests ETC designation pursuant to 47 USC § 214(e) and this

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<sup>1</sup> Application at 2.

Commission's ETC requirements in Order No. 29841. Cricket is seeking ETC status in Idaho for the purpose of receiving only low-income Lifeline support from the federal Universal Service Fund (USF). Cricket will not seek access to funds from the USF for the purpose of providing service to high-cost areas, nor does Cricket seek Link-Up support in Idaho.<sup>2</sup>

### **The Application**

Cricket is a Delaware corporation and states that it currently provides service to approximately 5.8 million customers in 34 states, and the District of Columbia.<sup>3</sup> The Company is a commercial mobile radio services (CMRS) carrier licensed by the FCC and is authorized to provide wireless service throughout the requested ETC designation area.<sup>4</sup> Cricket's designated service areas currently include the wire centers of non-rural incumbent local exchange carriers (ILECs) currently served by CenturyLink dba Qwest Communications and Citizens dba Frontier Communications, Inc.<sup>5</sup> The Application also includes one rural ILEC wire center served by Farmers Mutual Telephone Company.<sup>6</sup> Cricket proposes as its Idaho service territory all rural and non-rural ILEC service areas listed in Exhibit A of its Application, excluding any portions of service areas on tribal lands.<sup>7</sup> Cricket is currently designated as an ETC in the following states: California, Oregon, Illinois, Missouri, Maryland, Colorado, and South Carolina.<sup>8</sup>

Cricket's Application contains information related to the Company's voice grade access service, local usage plan, functionally equivalent dual tone multi-frequency signaling, single party service, access to emergency services, access to operator services, access to interexchange (long-distance) services, directory assistance and toll limitation for qualifying low-income consumers.<sup>9</sup>

Cricket states that it will comply with the additional criteria mandated by the Idaho ETC Requirements in Order No. 29841.<sup>10</sup> Cricket's services will be provided through the use of "primarily its own facilities" and network infrastructure.<sup>11</sup> The Company pledges to advertise its services throughout its ETC service area using general media sources, through retail stores, and

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<sup>2</sup> Application at 1.

<sup>3</sup> *Id.* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> Includes the partial service area in the GTE legacy area and the disaggregated service area of Frontier.

<sup>6</sup> *Id.*, Attachment A.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 5-10.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 10.

authorized agents.<sup>12</sup> Cricket does not seek ETC designation, nor does it intend to offer its Lifeline service on federal tribal lands.<sup>13</sup> The Company asserts that adequate backup battery power and the ability to re-route traffic around damaged facilities will allow the Company to remain functional during emergencies.<sup>14</sup> Cricket is committed to consumer protection and the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service (CTIA).<sup>15</sup>

Cricket believes that designating the Company as an ETC would serve the public interest and that it will comply with the annual certification requirements adopted by the Commission in Order No. 29841, as applicable.<sup>16</sup>

### **The Federal Lifeline and Link Up Reform and Modernization**

On February 6, 2012, the FCC released a Report and Order (Order) to comprehensively reform the low-income program of the Universal Service Fund (USF).<sup>17</sup> The Order substantially strengthens protection against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.<sup>18</sup>

On February 29, 2012, the FCC's Wireline Competition Bureau (Bureau) provided guidance on the compliance plans that must be submitted to the Bureau by carriers seeking to avail themselves of the Commission's conditional grant of forbearance in the above *Lifeline Reform Order*.<sup>19</sup>

### **STAFF ANALYSIS**

Staff has reviewed the Cricket Application and has conducted an analysis of the Company's compliance with the federal Telecommunications Act of 1996 ("The Act") and Commission Order No. 29841. In addition, Staff has reviewed Cricket's FCC Petition seeking

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<sup>12</sup> *Id.* at 11.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.* at 15.

<sup>17</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Dkt no. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at para. 1, Appendix A (rel. Feb. 6, 2012) (*Lifeline Reform Order*).

<sup>18</sup> *Id.* at paras. 361-381.

<sup>19</sup> Wireline Competition Bureau's *Guidance for Compliance Plans* pursuant to the *Lifeline Reform Order* WC Dkt No. 09-197, 11-42.

Forbearance from the requirement that the service area of a Lifeline-only ETC conform to the service area of any rural telephone company serving the same area. Finally, Staff reviewed the Bureau's Order approving Cricket's Compliance Plan pertaining to conditions imposed in the Cricket Forbearance Order.

### **Cricket's FCC Petition for Forbearance**

On September 16, 2011, the FCC granted Cricket's Petition for Forbearance from the requirement that the service area of a competitive ETC conform to the service area<sup>20</sup> of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETC.<sup>21</sup> The FCC concluded that forbearance in these limited circumstances furthers the Act's and its goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program. Moreover, the FCC determined that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the FCC's rules for this limited circumstance was not necessary to ensure that rates remained just and reasonable or to protect consumers. The FCC states that this forbearance is limited to Cricket's Lifeline-only support status. If the Company petitions to become an ETC to receive high-cost support, this forbearance order is inapplicable and Cricket must satisfy all of the statutory requirements of an ETC under the Act.<sup>22</sup> The FCC evaluated Cricket's petitions using the following criteria.

Just and Reasonable. The FCC agreed with Cricket's assertions that, if granted forbearance and thereafter designated as a limited ETC, Cricket's Lifeline offerings will compete, at a minimum, with the Lifeline offerings of the incumbent wireline carrier, as well as other wireline and wireless providers, in any given geographic area. The FCC also determined that this competition would spur innovations among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. For these reasons, the FCC determined that Cricket had met the "just and reasonable" criteria.<sup>23</sup>

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<sup>20</sup> The Act defines the service area of each rural telephone company to be that "company's" 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board...establish a different definition of service area for such company." 47 U.S.C. § 214(e)(5); see also 47 C.F.R. § 54.207(b).

<sup>21</sup> See WC Docket No. 09-197, FCC 11-137 *Cricket Forbearance Order*.

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 6.

Conformance and Public Interest. In the Petition for Forbearance, it is construed that a designation for Lifeline support must conform to the service area of any rural telephone company serving the same area. As such, the FCC's analysis focused on whether it should forbear from applying the conformance requirement of section 214(e) of the Act and section 54.207(b) of the federal rules. The FCC considered whether applying the conformance requirement to a facilities-based mobile wireless carrier that seeks ETC designation for Lifeline-only support is in the public interest. The FCC determined that applying the conformance requirement in these limited circumstances would not be in the public interest when balanced against the benefits of introducing a competitive, alternative Lifeline provider to low-income consumers.<sup>24</sup> Further, the FCC found that the Act contained safeguards to address concerns submitted by the California ILECs. The FCC noted that the Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance. The FCC stated it was confident that any concerns raised by a rural telephone company will be evaluated by the relevant commission when it considers designating a limited, Lifeline-only ETC.<sup>25</sup>

Finally, in an effort to clarify its commitment to improve accountability for providers receiving universal service support in the continued effort to fight waste, fraud, and abuse, the FCC placed 11 additional conditions on its forbearance. These added conditions required Cricket to take specific actions to improve program administration and accountability, to improve enrollment and consumer disclosure, and to help constrain the growth of the program. The final condition imposed on the Company, required Cricket to submit to the Wireline Competitive Bureau a compliance plan outlining the measures the Company will take to implement the obligations contained in the forbearance Order within 30 days of the effective date.<sup>26</sup> For additional details, see attached *Forbearance Order*.

On February 7, 2012, the Bureau approved the Cricket Compliance Plan pertaining to the above conditions imposed in the *Cricket Forbearance Order*.<sup>27</sup> Thus, Cricket satisfies the conditions established by the FCC and therefore, is eligible to apply for designation as an ETC for

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<sup>24</sup> *Id.* at 6-7.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 8-9.

<sup>27</sup> See Attached *Compliance Plan Order*, WC Dkt Nos. 09-197, 11-42.

Lifeline-only support, without redefining its service area to mirror the service area of the underlying rural telephone company.<sup>28</sup>

### **Other Public Interest Considerations**

When applying the public interest test in an Application for ETC designation, Staff believes there are considerations that merit discussion.

1. Contribution to Idaho Programs. As in the more recent TracFone ETC Application,<sup>29</sup> the Commission considered the carrier's contribution to the Idaho Telephone Service Assistance Program (ITSAP) and to the Idaho Emergency Communications Act (IECA) Fund and determined that it was in the public interest to contribute to these funds.<sup>30</sup> Cricket states that it has been remitting and will continue to remit ITSAP and E911 fees on all wireless services that it provides to Idaho customers, including plans that are paid in advance.

2. Cream Skimming Analysis. In evaluating the public interest portion of an ETC Application, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is whether the Applicant is committed to providing universal service throughout the rural areas or, if not, whether the potential for cream skimming exists. In this Application, Staff believes that the Company's elimination of high cost support voids the cream skimming analysis.

### **Network Improvement Plan**

In the Idaho ETC Designation Order, the two-year network improvement and progress report is required for all ETCs receiving high-cost support.<sup>31</sup> "To reinforce the initial eligibility requirements and ensure that federal USF funding is being used for its intended purpose, the Commission requires the annual submission of a progress report on the ETC's most recent two-year network improvement plan as well as the submission of a new two-year network improvement plan. Each applicant must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support..."<sup>32</sup>

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<sup>28</sup> *Id.* at para.1.

<sup>29</sup> Case No. TFW-T-09-01, Order No. 32301 at 9.

<sup>30</sup> *Id.*

<sup>31</sup> See Case No. WST-T-05-1, IPUC Order No. 29841, Appendix at 3.

<sup>32</sup> *Id.* at 18.

Cricket states that because it seeks only low-income support, the requirement to provide a network improvement plan does not apply to this petition.<sup>33</sup>

In the *Lifeline Reform Order*, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC.<sup>34</sup> In the *USF/ICC Transformation Order and FNPRM*, the FCC included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an eligible telecommunications carrier by the Commission to submit a five-year plan describing its proposed network improvements and upgrades. However, as Lifeline-only ETCs are not receiving funds to improve or extend their networks, the FCC stated that it saw little purpose in requiring such plans as part of the ETC designation process.<sup>35</sup>

Because Cricket is seeking Lifeline-only support and is not seeking high cost support, Staff believes Cricket is exempt from Idaho's two-year network improvement plan requirement.

#### **Ability to Remain Functional in Emergencies**

Cricket states that it maintains "a reasonable amount of back-up power to ensure functionality without an external power source." Specifically, Cricket has at least four hours of back up battery power at all of its Idaho cell sites in Idaho in the event of a commercial power outage. Second, the Company is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.<sup>36</sup> Additionally, Cricket has the ability to deploy mobile cell sites and power sources to areas where needed to avoid significant interruptions in coverage.<sup>37</sup> Based on this information, Staff believes the fault-tolerant network, as described in this Application, provides adequate support to demonstrate the Company's ability to remain functional in an emergency.

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<sup>33</sup> Application at 14.

<sup>34</sup> *Lifeline and Link Up Reform and Modernization et al*, WC Dkt no. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para. 386.

<sup>35</sup> *Id.*

<sup>36</sup> Application at 12.

<sup>37</sup> *Id.*

### **Other ETC Designation Requirements**

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

1. Common Carrier Status. Cricket is a Commercial Mobile Radio Services carrier providing “mobile service” as defined in 47 U.S.C. §§ 153(27).<sup>38</sup>
2. Provide the Universal Services. Cricket offers all of the federally required services defined in 47 U.S.C. § 54.10(a).<sup>39</sup>
3. Advertising. Cricket will advertise the availability and cost of its universal service offerings using media of general distribution, to publicize the availability of its Lifeline service.<sup>40</sup>
4. The Commitment and Ability to Provide Supported Services. Cricket will provide the supported services throughout its designated service area, consistent with all applicable requirements.<sup>41</sup>
5. A Commitment to Consumer Protection and Service. Cricket states that it will abide by the CTIA consumer code for wireless service. The Company has already adopted the CTIA Code and is committed to compliance with the CTIA Code.<sup>42</sup>
6. Description of the Local Usage Plan. Cricket states that it will offer local usage plans that compare favorably to those of incumbent local exchange carriers.<sup>43</sup>
7. Tribal Notification. Cricket agrees to comply with this requirement and states that, although one service area in which it seeks designation overlaps with the Coeur d’Alene Indian Reservation, it does not seek designation in the portion of the service area that is on Tribal lands, nor will it seek to provide Tier IV support.<sup>44</sup>

Staff believes Cricket meets the aforementioned ETC designation requirements.

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<sup>38</sup> *Id.* at 3-4.

<sup>39</sup> *Id.* at 4.

<sup>40</sup> *Id.* at 11.

<sup>41</sup> *Id.* at 10.

<sup>42</sup> *Id.* at 13.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 11.

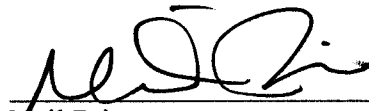


## STAFF RECOMMENDATION

Staff has reviewed the Application of Cricket Communications, Inc. for designation as an ETC. Staff believes that the Application demonstrates a commitment by the Company to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its territory; the Company has addressed all of the public interest questions that accompany an ETC Application; and the Company will provide multiple pricing plans which will increase customer choice for low-income service.

Staff believes that the application of Cricket for designation of an ETC is in the public interest and should be approved.

Respectfully submitted this 9th day of March 2012.



Neil Price  
Deputy Attorney General

Technical Staff: Grace Seaman

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket No. 09-197
Universal Service Support	)	
	)	
NTCH, Inc. Petition for Forbearance from 47	)	
U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b)	)	
	)	
Cricket Communications, Inc.	)	
Petition for Forbearance	)	

**ORDER**

**Adopted: September 16, 2011**

**Released: September 16, 2011**

By the Commission:

**I. INTRODUCTION**

1. In this order, we address two petitions for forbearance, one filed by Cricket Communications, Inc. (Cricket) and one filed by NTCH, Inc. and its affiliated operating entity NTCH-West Tenn, Inc. (collectively, NTCH), pursuant to section 10 of the Communications Act of 1934, as amended (the Act).<sup>1</sup> These petitions seek forbearance from the requirement that the service area of a competitive eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area, for the limited purpose of becoming designated as Lifeline-only ETCs.<sup>2</sup>

2. We conclude that forbearance in these limited circumstances furthers the Act's and Commission's goals of promoting access to affordable service for low-income consumers by reducing barriers to carriers participating in the Lifeline program. Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules in this limited circumstance is not necessary to ensure that rates remain just and reasonable or to protect consumers.<sup>3</sup> To promote accountability of universal service funding and guard against waste, fraud, and abuse in the Universal Service Fund (USF or Fund), we condition our forbearance from applying the rural service area conformance requirement of the Act to NTCH and Cricket upon their compliance with certain conditions previously imposed on other Lifeline-only ETCs.<sup>4</sup>

<sup>1</sup> Cricket Communications, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 21, 2010) (Cricket Forbearance Petition); 47 U.S.C. § 160. On May 16, 2011, pursuant to section 10(c) of the Act, the Wireline Competition Bureau (Bureau) extended until September 19, 2011, the date on which the Cricket Forbearance Petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act. *Telecommunications Carriers Eligible to Receive Universal Service Support; Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 6822 (2011); NTCH, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 20, 2011) (NTCH Forbearance Petition).

<sup>2</sup> See *infra* para. 9.

<sup>3</sup> See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

<sup>4</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102-03, paras. 17-18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; (continued . . .)

We emphasize that the forbearance we are granting is limited to NTCH and Cricket's designation as a Lifeline-only ETC. If either entity petitions to become an ETC to receive high-cost support, this forbearance order is inapplicable and each entity must satisfy all of the statutory requirements applicable to ETCs under the Act.

## II. BACKGROUND

3. Congress directed the Commission to establish a universal service fund to help ensure that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation, "including low-income consumers."<sup>5</sup> The Commission's Lifeline program furthers this goal by reducing the price of monthly telephone service for low-income consumers.<sup>6</sup> Section 254(e) of the Act provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support.<sup>7</sup> To become an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.<sup>8</sup>

4. The Act and the Commission's rules define the term "service area" and how it is established for each ETC. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.<sup>9</sup> Although a carrier seeking to become an ETC usually requests designation in a specific service area, it is the commission designating that carrier—not the ETC itself—that establishes an ETC's service area.<sup>10</sup> When a competitive ETC seeks to serve an area already served by a rural telephone company,<sup>11</sup> section 214(e)(5) of the Act imposes an additional requirement that the competitive ETC's service area must conform to the rural telephone company's service area.<sup>12</sup> Accordingly, if a commission seeks to designate a competitive ETC

(continued from previous page)

*Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire*, WC Docket No. 09-197, Order, 25 FCC Rcd 17797, 17804-05, paras. 20-24 (Wireline Comp. Bur. 2010).

<sup>5</sup> 47 U.S.C. § 254(b)(3).

<sup>6</sup> Through the Lifeline program, low-income consumers may receive discounts of up to \$13.50 off the monthly cost of telephone service, with the federal program reimbursing the ETC up to \$10 each month. 47 C.F.R. § 54.401(a)(2). In Tribal areas, the federal program reimburses ETCs up to \$25 each month. 47 C.F.R. § 54.403(a)(4).

<sup>7</sup> 47 U.S.C. § 254(e). An entity need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii); *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114-15, para. 19 (1999) (*Fourteenth Order on Reconsideration*).

<sup>8</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

<sup>9</sup> *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

<sup>10</sup> *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

<sup>11</sup> *See* 47 U.S.C. § 153(37) (defining "rural telephone company").

<sup>12</sup> 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

for an area that differs from a rural telephone company's existing service area, that rural service area must first be redefined under the process set forth under the Act.<sup>13</sup>

5. The Act defines the service area of each rural telephone company to be that "company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."<sup>14</sup> The Commission has interpreted this language to mean that "neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."<sup>15</sup> In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: creamskimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition.<sup>16</sup> These factors were identified in the context of an entity seeking ETC designation to receive high cost and low-income support. The Commission's rules set forth the procedures for considering redefinition petitions and allow either the state commission or the Commission to propose to redefine a rural telephone company's service area.<sup>17</sup> A proposed redefinition, however, does not take effect until the Commission and the appropriate state commission agree upon a new definition.<sup>18</sup>

6. *Cricket Forbearance Petition.* Cricket states that it provides digital wireless services in 35 states across the country.<sup>19</sup> On December 22, 2009, Cricket filed with the Commission a petition seeking designation as an ETC for the limited purpose of offering Lifeline and Link Up services in New York, North Carolina, Tennessee, Virginia, and the District of Columbia.<sup>20</sup> On June 21, 2010, Cricket filed a petition seeking forbearance from applying section 214(e)(5) of the Act and section 54.207 of the Commission's rules to allow Cricket to become eligible to be designated a limited ETC to participate in the Lifeline and Link Up programs only.<sup>21</sup> Cricket subsequently narrowed the scope of its forbearance

<sup>13</sup> 47 U.S.C. § 214(e)(5); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582, para. 41 (2004) (*Virginia Cellular Order*) ("In order to designate [a competitive carrier] as an ETC in a service area that is smaller than the affected rural telephone company [service] areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act."); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6439, paras. 37-38 (2004) (*Highland Cellular Order*) (same).

<sup>14</sup> 47 U.S.C. § 214(e)(5); see also 47 C.F.R. § 54.207(b).

<sup>15</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8880, para. 187 (1997) (*Universal Service First Report and Order*) (subsequent history omitted).

<sup>16</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179-80, paras. 172-74 (1996) (*1996 Recommended Decision*); see also *Highland Cellular Order*, 19 FCC Rcd at 6426, para. 9. A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. See *Universal Service First Report and Order*, 12 FCC Rcd at 8881-82, para. 189.

<sup>17</sup> 47 C.F.R. § 54.207(c), (d).

<sup>18</sup> 47 C.F.R. § 54.207(c)(3), (d)(2).

<sup>19</sup> Cricket Forbearance Petition at 3; Letter from Matthew A. Brill, Counsel for Cricket Communications, Inc., to Marlene Dortch, FCC, WC Docket No. 09-197, at 3 (*Cricket Ex Parte Presentation June 21, 2011*).

<sup>20</sup> Cricket Communications, Inc. Petition for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (filed Dec. 22, 2009).

<sup>21</sup> Cricket Forbearance Petition at 1, 3-5. On June 25, 2010, the Bureau issued a public notice seeking comment on the Cricket Forbearance Petition. *Comment Sought on Cricket Communications, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC (continued . . .)

petition to seek forbearance only for Lifeline support; it no longer seeks forbearance or ETC designation with regard to Link Up support.<sup>22</sup>

7. *NTCH Forbearance Petition.* NTCH states that it provides mobile wireless voice service under the brand name ClearTalk in 17 different markets.<sup>23</sup> On June 20, 2011, NTCH filed a petition seeking forbearance from the application of the definition of “service area” in section 214(e)(5) of the Act and section 54.207 of the Commission’s rules so that it may be designated as a limited ETC eligible to receive Lifeline-only support.<sup>24</sup> In addition, NTCH filed with the Commission petitions for limited ETC designation in the states of Alabama and Tennessee, and North Carolina.<sup>25</sup> NTCH states that its request for forbearance satisfies the statutory requirements for forbearance and is in the public interest.<sup>26</sup>

### III. DISCUSSION

8. The Act requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of that requirement is not necessary for the protection of consumers; and (3) forbearance from applying that requirement is consistent with the public interest.<sup>27</sup>

9. As we have previously recognized, our ability to analyze a petition for forbearance is highly dependent on knowing the exact scope of the requested forbearance.<sup>28</sup> Here, the petitions of NTCH and Cricket for forbearance are construed as seeking forbearance from the requirement that the service area of a competitive ETC that only seeks designation for Lifeline support must conform to the service area of any rural telephone company serving the same area.<sup>29</sup> As such, our analysis focuses on

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Rcd 8195 (Wireline Comp. Bur. 2010). The Pennsylvania Public Utility Commission (Pennsylvania Commission) and TracFone Wireless, Inc. (TracFone) filed comments on this petition. Cricket filed reply comments.

<sup>22</sup> Letter from Matthew A. Brill, Counsel for Cricket Communications, Inc., to Marlene Dortch, FCC, WC Docket No. 09-197, at 1 (filed April 29, 2011) (*Cricket Ex Parte Letter April 29, 2011*); see also 47 C.F.R. § 1.59(b).

<sup>23</sup> NTCH Forbearance Petition at 1.

<sup>24</sup> See *id.* at i. On June 29, 2011, the Bureau issued a public notice seeking comment on the Forbearance Petition. *Comment Sought on NTCH, Inc. Petition for Designation as an Eligible Telecommunications Carrier in Alabama and Tennessee and Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 2569 (Wireline Comp. Bur. 2011). NTCH filed comments to clarify its petition. No other party filed comments. NTCH is not seeking universal service support for Link Up.

<sup>25</sup> NTCH, Inc. Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama and Tennessee, WC Docket No. 09-197 (filed Mar. 5, 2010); NTCH, Inc. Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of North Carolina, WC Docket 09-197 (filed Mar. 3, 2011).

<sup>26</sup> NTCH Forbearance Petition at 3–9.

<sup>27</sup> 47 U.S.C. § 160(a). In making a public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions. 47 U.S.C. § 160(b).

<sup>28</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543, 9551, 9553, paras. 13, 16 (2009).

<sup>29</sup> See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207. We do not read NTCH’s or Cricket’s petitions as requesting forbearance from the requirement that a designating commission establish the service area of the competitive ETC because neither petition examines that requirement in any detail nor argues how forbearing from that requirement would be in the public interest. Instead, both petitions focus on the redefinition process that often occurs as a result of the “conformance” requirement, i.e., that a competitive ETC service area conform to that of the relevant rural (continued . . .)

whether we should forbear from applying the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules to NTCH and Cricket. Because both NTCH and Cricket seek forbearance only for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services and as it relates to the Commission's Lifeline program.<sup>30</sup> We conclude that conditionally forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest under these limited circumstances.<sup>31</sup> As such, and for the limited purpose of participation in the Lifeline program only, we conditionally forbear from applying the second sentence of section 214(e)(5) of the Act as well as section 54.207(b) of our rules insofar as those sections would require that NTCH or Cricket's service area conform to the service area of any rural telephone company serving the same area. We note that by forbearing from the conformance requirements for NTCH and Cricket to be eligible for ETC designation for Lifeline-only support as stated herein, section 54.207(c) of the Commission's rules is inapplicable because redefinition is not necessary. As a result, if a commission designates either NTCH or Cricket as a facilities-based, limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. We emphasize, however, that if either Cricket or NTCH petitions to be an ETC to receive high-cost support in part of a service area served by a rural telephone company, redefinition would be required by the Act.

10. *Just and Reasonable.* Section 10(a)(1) of the Act requires that we consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.<sup>32</sup> We conclude that compliance with the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that NTCH's and

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telephone company. See, e.g., NTCH Forbearance Petition at 4; Cricket Forbearance Petition at 3-4 (characterizing section 214(e)(5) as only embodying the conformance requirement).

<sup>30</sup> See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15099-00, paras. 9-10 (2005) (*TracFone Forbearance Order*); *Petition for Designation as an Eligible Telecommunications Carrier in the State of New York*; *Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina*; *Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381, 3388, paras. 15-16 (2009) (*Virgin Mobile Forbearance Order*); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784, 8787, para. 6 (2010) (*i-wireless Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 10510, 10514, para. 6 (2010); *Telecommunications Carriers Eligible for Universal Service Support; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, Order, 25 FCC Rcd 13866, 13868, para. 6 (2010) (*Conexions Forbearance Order*). TracFone argues that the forbearance requested by Cricket should be extended to all similarly situated ETCs who have been designated for the limited purpose of providing services supported by the Universal Service Fund low income program. See TracFone Comments at 1. In the alternative, TracFone requests that the Commission issue a declaratory ruling that section 214(e)(5) of the Act and section 54.207 of the Commission's rules do not require carriers seeking Lifeline-only ETC designations to conduct cream skimming analyses. See TracFone Comments at 5. TracFone did not properly file its request as a petition for forbearance and thus, its request goes beyond the scope of this proceeding, and we decline to address it at this time. See 47 C.F.R. § 1.53

<sup>31</sup> See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

<sup>32</sup> 47 U.S.C. §§ 160(a)(1), 214(e).

Cricket's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only.<sup>33</sup> Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-subscriber basis and is directly reflected in the price that the eligible subscriber pays.<sup>34</sup> NTCH and Cricket maintain that forbearance would give consumers access to lower rates and increased competition, which would help to ensure that rates are just, reasonable and non-discriminatory.<sup>35</sup> Furthermore, forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.<sup>36</sup> We agree with NTCH and Cricket's assertions that, if granted forbearance and thereafter designated as a limited ETC, NTCH and Cricket's Lifeline offerings will compete, at a minimum, with the Lifeline offerings of the incumbent wireline carrier, as well as other wireline and wireless providers, in any given geographic area.<sup>37</sup> We also expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.<sup>38</sup> For these reasons, we find that NTCH and Cricket have demonstrated that the first prong of section 10(a) is met.

11. *Consumer Protection.* Section 10(a)(2) requires that we consider whether applying the conformance requirement to a mobile wireless voice service provider that seeks a Lifeline-only ETC designation is necessary for the protection of consumers. If NTCH or Cricket receives Lifeline-only ETC designations, they will be offering Lifeline-eligible consumers an additional choice of providers for discounted telecommunications services. NTCH states that it plans to offer Lifeline services over its third-generation network without an annual contract requirement, which would provide reliability as well as flexibility to consumers who need the mobility, security, and convenience of a wireless phone, but who are concerned about credit checks, deposits, or long-term contracts.<sup>39</sup> Similarly, Cricket states that its flat-rate, unlimited service model will be attractive for many consumers on a limited budget.<sup>40</sup> We disagree with the argument that forbearing from the conformance requirement for Lifeline-only support may harm consumers<sup>41</sup>—these new offerings provide additional competitive choices to many low-income consumers who cannot afford non-discounted offerings. Moreover, there is no evidence that forbearance from the conformance requirement for the limited purpose of being a Lifeline-only ETC would harm

<sup>33</sup> A provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal. *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

<sup>34</sup> 47 C.F.R. §§ 54.401, 54.403.

<sup>35</sup> NTCH Forbearance Petition at 6 (noting that forbearance from the service area conformance requirement would also help to ensure that the rates and terms of other carriers are kept reasonable through competition as competitors can also offer Lifeline service); Cricket Forbearance Petition at 5-6.

<sup>36</sup> Cricket Forbearance Petition at 6; *see* 47 U.S.C. §§ 201, 202.

<sup>37</sup> NTCH Forbearance Petition at 6; Cricket Forbearance Petition at 6-7; *see* 47 C.F.R. § 54.405(a)–(b) (requiring ETCs to offer and publicize the availability of Lifeline services).

<sup>38</sup> *See, e.g., TracFone Forbearance Order*, 20 FCC Rcd at 15101, para. 13; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 19; *i-wireless Forbearance Order*, 25 FCC Rcd at 8787, para. 9.

<sup>39</sup> NTCH Forbearance Petition at 1.

<sup>40</sup> Cricket Forbearance Petition at 8.

<sup>41</sup> Letter from Patrick M. Rosvall, Counsel for Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 3 (filed Apr. 20, 2011) (California Rural Telephone Companies *Ex Parte* Letter); *see also* Letter from Stuart Polikoff, OPASTCO, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 1 (filed Aug. 5, 2011) (OPASTCO *Ex Parte*).

consumers currently served by the rural telephone companies in the relevant service areas. For these reasons, we find that NTCH and Cricket have demonstrated that the second prong of section 10(a) is met.

12. *Public Interest.* Section 10(a)(3) requires that we consider whether applying the conformance requirement to a facilities-based mobile wireless carrier that seeks ETC designation for Lifeline support only is in the public interest. Petitioners assert, and we agree, that forbearing from the conformance requirement in these limited circumstances will promote competitive market conditions for the low-income program.<sup>42</sup> Both petitioners seek to be designated as Lifeline-only ETCs in a number of states in order to provide services to low-income consumers. Requiring each petitioner to conform its service areas to those of the rural carriers in the states they seek to participate only in the Lifeline program would result in numerous redefinition proceedings, which could delay their entry into those markets, make it more difficult to market to potential Lifeline consumers on a statewide basis, and deprive low-income consumers in areas where the incumbent wireline provider is a rural telephone company of an additional choice of service provider. For example, Cricket and NTCH both state that they have confronted situations in which the redefinition process has taken years to resolve and, as such, has cost consumers competitive alternatives to Lifeline offerings.<sup>43</sup> We find that applying the conformance requirement in these limited circumstances would not be in the public interest when balanced against the benefits of introducing a competitive, alternative Lifeline provider to low-income consumers.

13. We disagree with assertions that granting forbearance from the conformance requirement for Lifeline-only ETC designation will have a detrimental effect on rural telephone companies.<sup>44</sup> As both Cricket and NTCH note, the amount of Lifeline support is not tied to the cost of serving an area.<sup>45</sup> Rather, Lifeline support is a fixed, per-line amount nationwide, and ETCs are required to pass through the Lifeline support they receive to the benefit of their subscribers.<sup>46</sup> As such, any creamskimming concerns that may have been raised in the context of an ETC designation for high cost support in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. The California Rural ILECs express concerns that granting Cricket and NTCH forbearance from the conformance requirement and redefinition process can impact rural carriers' abilities to serve the entire rural service territories and therefore states should be able to consider a competitive ETC's impact on the rural telephone companies and its consumers.<sup>47</sup> We find, however, that the Act contains safeguards to address the concerns stated by the California ILECs. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest, and this is not affected by this grant of forbearance. We are confident that any concerns raised by a rural telephone company will be evaluated by the relevant commission when considering designating a limited, Lifeline-only ETC.

<sup>42</sup> See 47 U.S.C. §§ 160(b), 254(b); NTCH Forbearance Petition at 7-8.

<sup>43</sup> Cricket Forbearance Petition at 4; NTCH Forbearance Petition at 4 (stating that NTCH has suffered losses of tens of thousands of dollars in revenues and legal fees and an ultimate loss of a foothold in the marketplace, ultimately resulting in loss of competition and consumer choice).

<sup>44</sup> California Rural Telephone Companies *Ex Parte* Letter at 2-3; *OPASTCO Ex Parte*.

<sup>45</sup> See NTCH Forbearance Petition at 5; Cricket Forbearance Petition at 7-9.

<sup>46</sup> See NTCH Forbearance Petition at 5; Cricket Forbearance Petition at 7-9; 47 C.F.R. §§ 54.401, 54.407, 54.504.

<sup>47</sup> Letter from Patrick M. Rosvall, Counsel for Calaveras Telephone Co., Cal-Ore Telephone Co., Ducor Telephone Co., Foresthill Telephone Co., Happy Valley Telephone Co., Hornitos Telephone Co., Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Co., The Siskiyou Telephone Co., Volcano Telephone Co., and Winterhaven Telephone Co., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197, at 3 (filed July 15, 2011); *OPASTCO Ex Parte*.



14. We also disagree with the argument that granting these petitions will eliminate the role of states in ETC designation and redefinition.<sup>48</sup> Forbearance in these limited circumstances merely removes the conformance requirement for NTCH and Cricket when seeking ETC designation for Lifeline-only support, so that states, which have jurisdiction over most ETCs, may now designate NTCH or Cricket as limited ETCs eligible for Lifeline only support in part of a rural service area without requiring redefinition of that rural service area. State commissions are still required to consider the public interest, convenience and necessity of designating Cricket and NTCH as a competitive ETC in a rural area already served by a rural telephone company.<sup>49</sup> Our action does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.<sup>50</sup>

15. The Commission has made clear its commitment to improve accountability for providers receiving universal service support in its continued effort to fight waste, fraud, and abuse.<sup>51</sup> Accordingly, consistent with obligations imposed on other carriers seeking to become Lifeline-only ETCs, we require NTCH and Cricket to assume additional obligations designed to protect against waste, fraud, and abuse.<sup>52</sup> Specifically, we condition our forbearance from the conformance requirement on NTCH and Cricket by:

- (1) requiring each eligible Lifeline consumer to self-certify under penalty of perjury at the time of enrollment and annually thereafter until a national duplicates database is in place that he or she is the head of household, receives Lifeline-supported service only from NTCH or only from Cricket, and does not receive Lifeline from any other provider;
- (2) requiring each eligible Lifeline consumer at the time of enrollment to initial on the certification form that to the best of his or her knowledge that he or she is not receiving Lifeline-supported service from any other Lifeline provider, and listing as examples the brand names of at least the leading wireline and leading two wireless Lifeline providers in the area to ensure the consumer understands what is meant by "Lifeline-supported service";
- (3) requiring NTCH and Cricket to make available state-specific subscriber data, including name and address of Lifeline subscribers, to the Universal Service Administrative Company (USAC)

<sup>48</sup> Pennsylvania Commission Comments at 2.

<sup>49</sup> 47 U.S.C. § 214(e)(3); 47 C.F.R. § 54.201(c).

<sup>50</sup> The redefinition process is still required for ETCs to receive federal universal service high-cost support and nothing in this order alters the redefinition process for ETCs seeking federal universal service High Cost support.

<sup>51</sup> *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4554 (2011); *Lifeline and Link UP Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC 96-45, Report and Order, FCC 11-97, (rel. June 21, 2011).

<sup>52</sup> See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102-03, paras. 17-18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Telecommunications Carriers Eligible for Universal Service Support; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware; Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire*, WC Docket No. 09-197, Order, 25 FCC Rcd 17797, 17804-05, paras. 20-24 (Wireline Comp. Bur. 2010).

and to each state public utilities commission where it operates for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier;

(4) requiring NTCH and Cricket to assist the Commission, USAC, state commissions, and other ETCs in resolving instances of duplicative enrollment by Lifeline subscribers, including by providing to USAC and/or any state commission, upon request, the necessary information to detect and resolve duplicative Lifeline claims;

(5) requiring NTCH and Cricket to establish safeguards to prevent their subscribers from receiving multiple Lifeline subsidies at the same address and safeguards to prevent individual subscribers from receiving more than one Lifeline discount;

(6) requiring NTCH and Cricket to implement a non-usage policy, if applicable, in all states where NTCH and Cricket provide Lifeline services to subscribers at no monthly charge<sup>53</sup>, requiring NTCH and Cricket to identify its subscribers that have not used its Lifeline service for 60 days and not seek support for such subscribers if they do not actively use its Lifeline service during a 30-day grace period;

(7) requiring NTCH and Cricket to deal directly with the subscriber to certify and verify the subscriber's Lifeline eligibility;

(8) requiring NTCH and Cricket to explain in prominent, plain, easily comprehensible language to all new and potential subscribers that no consumer is permitted to receive more than one Lifeline subsidy;

(9) requiring NTCH and Cricket to ensure that all marketing materials for the service make clear that it is a Lifeline-supported service;

(10) requiring NTCH and Cricket to immediately de-enroll any subscriber whom Cricket or NTCH knows is receiving Lifeline-supported service from another ETC or knows is no longer eligible;

and

(11) requiring NTCH and Cricket to submit to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement the obligations contained in this order within 30 days of the effective date of this order.

16. We find that these obligations are appropriate to improve the accountability of the disbursement of universal service funds while deterring waste, fraud, and abuse.<sup>54</sup> These obligations apply in any state in which NTCH or Cricket seeks to take advantage of this forbearance order. Consistent with obligations previously imposed on other companies seeking forbearance from ETC requirements for the purpose of participating as a provider in the Lifeline program, we require NTCH and Cricket to state the penalties for perjury in clear and conspicuous language on the subscriber self-certification form to comply with the first obligation and to monitor compliance of subscribers' self-certifications by retaining those self-certifications and providing them, as well as documentation of how

<sup>53</sup> This obligation does not apply if NTCH or Cricket requires subscribers to pay a monthly fee for the service.

<sup>54</sup> These obligations are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. *See, e.g.*, 47 C.F.R. § 54.410. On May 4, 2010, the Commission asked the Federal-State Joint Board on Universal Service to review the Commission's eligibility, verification, and outreach rules for the Lifeline and Link Up universal service programs. *See Federal-State Joint Board on Universal Service; Lifeline and Link Up*, CC Docket No. 96-45, WC Docket No. 03-109, Order, 25 FCC Rcd 5079 (2010).

the carrier obtained the certification, to the Commission upon request.<sup>55</sup> Moreover, these obligations further underscore the Commission's commitment to reduce waste, fraud, and abuse in Lifeline.<sup>56</sup>

17. We note that after NTCH and Cricket submit their compliance plans, the Bureau will review those compliance plans for conformance with this order. Although NTCH or Cricket may be designated an ETC by either a state commission or this Commission in non-rural areas or for entire rural service areas in the meantime, neither NTCH nor Cricket may be designated in a part of a rural service area or receive federal Lifeline support in these areas until the Bureau approves the respective compliance plan.

18. For the reasons stated herein, we find that the statutory requirements for forbearance pursuant to section 10 of the Act are met and that conditionally granting NTCH and Cricket forbearance from the conformance requirement for the limited purpose of seeking a Lifeline-only ETC designation will further the statutory goals of providing low-income subscribers access to telecommunications and emergency services and promoting more competitive options for low-income consumers while protecting the universal service fund against waste, fraud, and abuse.<sup>57</sup> To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, parties may file appropriate petitions with the Commission and we have the option of reconsidering this forbearance ruling.<sup>58</sup> We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting NTCH and Cricket an ETC designation is in the public interest before including any part of a rural service area in NTCH's or Cricket's service area.<sup>59</sup> Furthermore, forbearance from the conformance requirement stated herein does not apply if NTCH or Cricket seeks ETC designation to receive high cost support. In that instance, NTCH and Cricket must conform its service area to that of the rural telephone company or else seek redefinition of the service area.

<sup>55</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15103-04, paras. 18-21; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3392, para. 25; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, paras. 16-17.

<sup>56</sup> On June 21, 2011, the Commission addressed potential waste in the Lifeline program by preventing duplicative program payments for multiple Lifeline-supported services to the same individual. See *Federal-State Joint Board on Universal Service; Lifeline and Link Up*, WC Docket Nos. 11-42, 03-109, CC 96-45, Report and Order, FCC 11-97, (rel. June 21, 2011) (*Duplicates Order*). The *Duplicates Order* adopts two changes to the Commission's Lifeline rules: 1) clarifies that low-income consumers may receive no more than a single lifeline discount at a time; and 2) requires ETCs to de-enroll subscribers that are receiving multiple benefits in violation of that rule within five business days of receiving notification from USAC that the consumer has not chosen that ETC after a minimum 30-day notice period to continue receiving service from that ETC. These rules will assist the Commission in its efforts to detect and resolve duplicative Lifeline claims. The Commission is also actively evaluating the longer-term program reforms proposed in the *Connect America Fund*. See *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4554 (2011) (*Connect America Fund*).

<sup>57</sup> 47 U.S.C. § 160(a).

<sup>58</sup> See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-09, para. 26 & n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 & n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998).

<sup>59</sup> 47 U.S.C. § 214(e)(2), (e)(6).

**IV. ORDERING CLAUSES**

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petitions for forbearance filed by NTCH, Inc., NTCH-West Tenn, Inc., and Cricket Communications, Inc. ARE GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

20. IT IS FURTHER ORDERED, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, that the request of Cricket Communications, Inc. to narrow its petition for forbearance IS GRANTED to the extent discussed herein.

21. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 214, 254, we FORBEAR from applying the conformance requirement of section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207(b) of the Commission's rules, 47 C.F.R. § 54.207(b), to NTCH, Inc., NTCH-West Tenn, Inc., and Cricket Communications, Inc. to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

22. IT IS FURTHER ORDERED that, pursuant to section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
 )  
Telecommunications Carriers Eligible for ) WC Docket No. 09-197  
Universal Service Support )  
 )  
Cricket Communications, Inc. )  
Petition for Forbearance )  
 )  
 )

ORDER

Adopted: February 7, 2012

Released: February 7, 2012

By the Chief, Wireline Competition Bureau:

1. In this Order, we approve a Compliance Plan submitted by Cricket Communications, Inc. (Cricket) for complying with conditions imposed in the *Cricket Forbearance Order*.<sup>1</sup> In the *Cricket Forbearance Order*, the Commission conditionally granted, for the limited purpose of Lifeline-only federal universal service support, Cricket's request for forbearance from the service area conformance requirement of the Communications Act of 1934, as amended (the Act) and section 54.207(b) of the Commission's rules.<sup>2</sup> In order to receive federal universal service support for Lifeline service, Cricket must comply with the conditions set forth in the *Cricket Forbearance Order*.<sup>3</sup> In this Order, we conclude that the Cricket Compliance Plan adequately implements the conditions of forbearance established in the *Cricket Forbearance Order*. Accordingly, Cricket is eligible to seek ETC designation without conforming its service area to that of the underlying rural telephone company for Lifeline-only support provided that it fulfills the commitments in its Compliance Plan in each state where it is designated to provide Lifeline service.

2. Cricket is a facilities-based provider of digital wireless telecommunications services in 35 states nationwide.<sup>4</sup> On June 21, 2010, Cricket filed a petition seeking forbearance from the service area conformance requirement of section 214(e)(5) of the Act and section 54.207 of the Commission's rules for the limited purpose of Lifeline-only federal universal service support.<sup>5</sup> The service area conformance

<sup>1</sup> Cricket Communications, Inc. Petition for Forbearance, WC Docket No. 09-197, Compliance Plan (filed September 23, 2011) (Cricket Compliance Plan); *NTCH, Inc. Petition for Forbearance from 47 U.S.C. §§ 214(e)(5) and 47 C.F.R. §§ 54.207(b)*; *Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011) (*Cricket Forbearance Order*).

<sup>2</sup> *Cricket Forbearance Order*, 26 FCC Rcd at 13723, 13726-27, paras. 1, 9; see 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b). Forbearance from the service area conformance requirement applies only to federal universal service Lifeline support; Cricket must abide by the service area conformance requirements and seek redefinition of a service area if it seeks federal universal service high-cost support. *Cricket Forbearance Order*, 26 FCC Rcd at 13723-24, para. 2.

<sup>3</sup> Cricket narrowed the scope of its forbearance request to not seek Link Up support and is therefore not eligible for Link Up support. *Cricket Forbearance Order*, 26 FCC Rcd at 13726, para. 6.

<sup>4</sup> *Cricket Forbearance Order*, 26 FCC Rcd at 13726, para. 6.

<sup>5</sup> Cricket Communications, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 21, 2010) (Cricket Forbearance Petition).

requirement of section 214(e)(5) of the Act and section 54.207 of the Commission's rules require that, in the case of an area served by a rural telephone company, a competitive ETC's service area must be defined as the rural telephone company's "study area" unless and until the Commission and the States redefine the underlying service area.<sup>6</sup> In the *Cricket Forbearance Order*, the Commission found that Cricket met the statutory requirements for forbearance, subject to certain conditions, and forbore from applying the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules, for the limited purpose of allowing Cricket to seek designation as a Lifeline-only ETC eligible for support from the universal service fund for the provision of Lifeline service to eligible subscribers.<sup>7</sup> On September 23, 2011, Cricket filed a plan outlining measures that it will undertake to implement the conditions imposed in the *Cricket Forbearance Order*, including certification procedures and measures to prevent waste, fraud and abuse, including measures to prevent duplicative Lifeline benefits from being provided to the same person or household.<sup>8</sup> The Bureau released a public notice concerning Cricket's Compliance Plan on October 5, 2011.<sup>9</sup>

3. In the *Cricket Forbearance Order*, the Commission conditioned forbearance on Cricket implementing certain protections designed to prevent waste, fraud and abuse in the program.<sup>10</sup> Cricket's Compliance Plan implements these protections, in particular by committing to the following:<sup>11</sup>

(1) requiring each eligible Lifeline consumer to self-certify under penalty of perjury, at the time of enrollment and annually thereafter until a national duplicates database is in place, that he or she is the head of household, and that to the best of his or her knowledge, he or she receives Lifeline service only from Cricket and is not receiving Lifeline-supported service from another Lifeline provider;<sup>12</sup>

(2) assisting consumers in making the self-certification by accurately listing as examples the brand names of at least the leading wireline and two leading wireless Lifeline providers in the area to ensure the consumer understands what is meant by "Lifeline-supported service;"<sup>13</sup>

(3) requiring Cricket to make available state-specific subscriber data, including name and address of Lifeline subscribers, to the Universal Service Administrative Company (USAC) and to each state public utilities commission (PUC) where it operates for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier;<sup>14</sup>

(4) requiring Cricket to investigate any notification that it receives from a state PUC, the Commission or USAC that one of its subscribers already receives Lifeline service from another carrier, and to assist the Commission, USAC, state commissions, and other ETCs in resolving instances of duplicative enrollment by Lifeline subscribers, including by providing to USAC and/or any state commission, upon request, the necessary information to detect and resolve duplicative Lifeline claims;<sup>15</sup>

<sup>6</sup> See 47 U.S.C. §214(e)(5); 47 C.F.R. §54.207(b).

<sup>7</sup> *Cricket Forbearance Order*.

<sup>8</sup> See Cricket Compliance Plan.

<sup>9</sup> *Comment Sought on Cricket Communications, Inc. Plan for Conditions Associated with Forbearance*, WC Docket No. 09-197, Public Notice, 26 FCC Rcd 14245 (Wireline Comp. Bur. 2011). No parties filed comments to Cricket's Compliance Plan.

<sup>10</sup> *Cricket Forbearance Order*, 26 FCC Rcd at 13730-32, paras. 15-16.

<sup>11</sup> See *Cricket Forbearance Order*, 26 FCC Rcd at 13730-32, paras. 15-16; Cricket Compliance Plan.

<sup>12</sup> Cricket Compliance Plan at 8.

<sup>13</sup> Cricket Compliance Plan at 7.

<sup>14</sup> Cricket Compliance Plan at 10. We note that this condition may not sunset upon implementation of a national duplicates database, as Cricket argues. Therefore, Cricket must comply with this condition until further notice.

<sup>15</sup> *Id.*

(5) requiring Cricket to establish safeguards to prevent their subscribers from receiving multiple Lifeline subsidies at the same address and safeguards to prevent individual subscribers from receiving more than one Lifeline discount;<sup>16</sup>

(6) requiring Cricket to deal directly with the subscriber to certify and verify the subscriber's Lifeline eligibility;<sup>17</sup>

(7) requiring Cricket to explain in prominent, plain, easily comprehensible language to all new and potential subscribers that no consumer is permitted to receive more than one Lifeline subsidy;<sup>18</sup>

(8) requiring Cricket to review proof of eligibility for consumers in all states in which Cricket provides Lifeline service;<sup>19</sup>

(9) requiring Cricket to ensure that all marketing materials for the service make clear that it is a Lifeline-supported service;<sup>20</sup> and

(10) requiring Cricket to immediately de-enroll any subscriber whom Cricket knows is receiving Lifeline-supported service from another ETC or knows is no longer eligible, and no longer report that subscriber on an FCC Form 497 if a Cricket investigation, a state commission, the Commission or USAC concludes that the subscriber receives Lifeline services from another carrier in violation of the Commission's regulations.<sup>21</sup>

4. Cricket maintains that its implementing procedures, as set forth in its Compliance Plan, fully satisfy the conditions established by the Commission.<sup>22</sup> We agree and conclude that Cricket's Compliance Plan adequately implements the conditions of forbearance imposed by the *Cricket Forbearance Order*. We therefore approve the Compliance Plan, and, subject to Cricket's fulfilling the commitments it makes therein, it may be eligible to apply for designation as an ETC for Lifeline-only support, without redefining its service area to mirror the service area of the underlying rural telephone company. In taking this action, we remind Cricket that the Commission may institute an inquiry on its own motion to examine the company's records and documentation to ensure that the universal service Lifeline support it receives is being used for the purpose for which it was intended.<sup>23</sup> Cricket must provide such records and documentation to the Commission and USAC upon request. If Cricket fails to fulfill its obligations under the Act, the Commission's rules, or the *Cricket Forbearance Order* after it begins receiving Lifeline support, the Commission may revoke Cricket's forbearance and/or limited ETC designations, should they be granted, or assess forfeitures as permitted under the Act and the Commission's rules.<sup>24</sup>

<sup>16</sup> Cricket Compliance Plan at 3-8.

<sup>17</sup> Cricket Compliance Plan at 6.

<sup>18</sup> Cricket Compliance Plan at 7.

<sup>19</sup> Cricket Compliance Plan at 6. For states that require Cricket to enroll subscribers identified by the state or as eligible in a state database, Cricket may continue to rely on the state database.

<sup>20</sup> Cricket Compliance Plan at 4.

<sup>21</sup> Cricket Compliance Plan at 10.

<sup>22</sup> Cricket Compliance Plan at 11. The Non-Usage condition stated in the *Cricket Forbearance Order*, is inapplicable because Cricket requires subscribers to pay a monthly fee for the service. See Cricket Compliance Plan at 2.; *Cricket Forbearance Order*, 26 FCC Rcd at 13732, para. 15.

<sup>23</sup> 47 U.S.C. §§ 220, 403.

<sup>24</sup> See 47 U.S.C. §§ 254(e), 503(b); *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

5. ACCORDINGLY, IT IS ORDERED, pursuant to the authority contained in sections 10 and 214(e) of the Communications Act, 47 U.S.C. §§ 160, 214(e), and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Cricket Communications, Inc. Compliance Plan submitted as a condition of forbearance eligible only for Lifeline support in its licensed service areas IS APPROVED as described herein.

6. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

7. IT IS FURTHER ORDERED that a copy of this order SHALL BE transmitted to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION


Sharon E. Gillett  
Chief  
Wireline Competition Bureau



## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 9<sup>th</sup> DAY OF MARCH 2012, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. CRI-T-11-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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SECRETARY

CERTIFICATE OF SERVICE