

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

In the Matter of)	
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Petition for Forbearance of Airvoice Wireless, LLC)	
)	

ORDER

Adopted: March 24, 2011

Released: March 24, 2011

By the Chief, Wireline Competition Bureau:

1. On December 1, 2010, Airvoice Wireless, LLC (Airvoice) filed the above-captioned petition for forbearance from section 214(e)(1)(A) of the Communications Act of 1934, as amended, in order to seek designation as an eligible telecommunications carrier (ETC) for the sole purpose of participating in the universal service fund Lifeline program.¹ On December 8, 2010, the Wireline Competition Bureau sought comment on that petition, with comments and reply comments due on January 7 and January 24, 2011, respectively.² To date, no comments have been filed in response to Airvoice's petition for forbearance. On February 14, 2011, Airvoice submitted a request to withdraw its petition for forbearance.³

2. The Commission's rules give a petitioner the right to "withdraw . . . a petition for forbearance without approval of the Commission" only if the petitioner exercises that right "by filing a notice of full or partial withdrawal at any time prior to the end of the tenth business day after the due date for reply comments announced in the public notice."⁴ In the instant matter, Airvoice would have had to file its withdrawal request by February 7, 2011 in order to do so without Commission approval. Because Airvoice filed its request to withdraw one week later, we must affirmatively approve Airvoice's request.⁵

3. Given the particular circumstances surrounding Airvoice's petition and its request to withdraw, we grant the request and dismiss the petition. Specifically, Airvoice represents that it "is unable to commit resources to starting a Lifeline program at this time" due to "market changes and possible regulatory changes to the program."⁶ Further, as previously noted, no comments were received in this proceeding, and Airvoice filed its request to withdraw only 7 days late. As such, we find that

¹ Petition for Forbearance of AirVoice Wireless, LLC, WC Docket No. 09-197 (filed Dec. 1, 2010); *see* 47 U.S.C. § 214(e)(1)(A) (requiring that ETCs provide service, at least in part, over their own facilities).

² *Wireline Competition Bureau Seeks Comment on Airvoice Wireless, LLC Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 17106 (Wireline Comp. Bur. 2010); *see also* 47 C.F.R. § 1.55.

³ Request for Withdrawal of Petition for Forbearance of Airvoice Wireless, LLC, WC Docket No. 09-197 (filed Feb. 14, 2011) (Airvoice Request).

⁴ 47 C.F.R. § 1.59(a).

⁵ 47 C.F.R. § 1.59(b) ("Except as provided in paragraph (a) of this section, a petition for forbearance may be withdrawn . . . only with approval of the Commission.").

⁶ Airvoice Request at 1.

acting on Airvoice's petition would not be in the public interest and that Airvoice should be permitted to withdraw its petition.

4. We advise Airvoice that we take its representation seriously and that if Airvoice subsequently seeks forbearance for the purpose of becoming an ETC or seeks designation as such, we expect that Airvoice will notify the relevant commission of its decision here to withdraw its petition for forbearance and explain with specificity the change of circumstances that warrant any such request by Airvoice.⁷

5. ACCORDINGLY, IT IS ORDERED, pursuant to section 1.59(b) of the Commission's rules, 47 C.F.R. § 1.59(b), 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 request to withdraw the petition of Airvoice Wireless, LLC IS GRANTED and that the petition for forbearance filed on December 1, 2010 IS DISMISSED WITHOUT PREJUDICE.

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

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

⁷ In other words, if Airvoice later seeks forbearance from the facilities requirement from the Commission, it must explicitly state in that petition that it previously sought forbearance and withdrew its forbearance petition and then explain the change in circumstances justifying its decision to seek forbearance again. If Airvoice acquires facilities and seeks ETC designation from either a state commission or this Commission, Airvoice must explicitly state in its petition seeking designation that it previously lacked facilities and sought forbearance from the facilities requirement and that it withdrew its forbearance petition and then explain both the specific facilities it acquired and plans to use to provide the supported services and the change in circumstances justifying its decision to seek to participate in the Commission's low-income program.