

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

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

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. 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. In order to receive federal universal service support for Lifeline service, Cricket must comply with the conditions set forth in the Cricket Forbearance Order. 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. 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. The service area conformance

1 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).

2 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.

3 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.

4 Cricket Forbearance Order, 26 FCC Rcd at 13726, para. 6.

5 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>

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<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