

**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
	)	
PlatinumTel, LLC Petition for Forbearance	)	
	)	
CAL Communications, Inc. Petition for Forbearance	)	
	)	
ReCellular, Inc. (MSA Wireless) Petition for Forbearance	)	
	)	

**ORDER**

**Adopted: September 20, 2011**

**Released: September 23, 2011**

By the Commission:

**I. INTRODUCTION**

1. In this order, we grant the petitions for forbearance filed by PlatinumTel Communications, LLC (PlatinumTel), ReCellular, Inc., operating under the brand name MCA Wireless, (ReCellular), and we grant in part and deny in part a petition for forbearance filed by CAL Communications, Inc. (CAL Communications).<sup>1</sup> PlatinumTel, ReCellular, and CAL Communications are non-facilities based, wireless resellers seeking forbearance from the requirement that carriers designated as eligible telecommunications carriers (ETCs) for purposes of federal universal service support provide services, at least in part, over their own facilities. Consistent with Commission precedent, we grant PlatinumTel, ReCellular, and CAL Communications forbearance with respect to the Lifeline program, but deny CAL Communications’ request to extend forbearance to Link Up.<sup>2</sup> As a result of forbearance, these carriers may seek ETC designation to offer discounted service to qualified low-income consumers through the universal service Lifeline program; this forbearance does not apply to Link Up or any federal high cost universal service support. To promote accountability and guard against waste, fraud and abuse

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<sup>1</sup> Petition for Forbearance of PlatinumTel Communications, LLC, WC Docket No. 09-197 (filed July 2, 2010) (PlatinumTel Petition); Petition of CAL Communications, Incorporated, for Forbearance Pursuant to 47 U.S.C. § 160 from the Own Facilities Requirement for Eligible Telecommunications Carrier Status, WC Docket No. 09-197 (filed August 6, 2010) (CAL Communications Petition); Petition for Forbearance of ReCellular, Inc., WC Docket No. 09-197 (filed Oct. 13, 2010) (ReCellular Petition).

<sup>2</sup> See *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 (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 (2010) (*Global Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, 25 FCC Rcd 13866 (2010) (*Conexions Forbearance Order*).

in the Universal Service Fund (USF or Fund) we condition forbearance on compliance with conditions imposed on other Lifeline-only ETCs.<sup>3</sup> If PlatinumTel, CAL Communications, and ReCellular are granted ETC designation for the purpose of providing Lifeline service, these conditions will help ensure that their low-income consumers have access to 911 and enhanced 911 (E911) services and will help protect the USF against waste, fraud, and abuse. We deny CAL Communications' petition for forbearance for the purpose of participating in the Link Up program because the company has not demonstrated that granting its request satisfies the three-prong statutory test for forbearance.<sup>4</sup>

## II. BACKGROUND

2. Congress directed the Commission to establish the universal service support mechanisms 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, and the Commission’s Link Up program furthers this goal by reducing the connection charge for commencing telephone service at a low-income consumer’s principal place of residence.<sup>6</sup>

3. Section 254 of the Communications Act of 1934, as amended (the Act), provides that entities designated as eligible telecommunications carriers shall be eligible for universal service support.<sup>7</sup> To become an ETC, a common carrier must offer the services supported by the federal universal service

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<sup>3</sup> After PlatinumTel, CAL Communications and ReCellular submit their compliance plans, the Wireline Competition Bureau (Bureau) will review those compliance plans for conformance with this order. The Chief of the Wireline Competition Bureau has general delegated authority to “[d]evelop and administer recordkeeping and reporting requirements for telecommunications carriers.” 47 C.F.R. § 0.91(e). Neither PlatinumTel, CAL Communications nor ReCellular may be designated as non-facilities based ETC or receive any Lifeline universal service support until the Bureau approves the respective compliance plan. The conditions adopted herein are consistent with conditions adopted in previous decisions. *See, e.g., 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 (2005) (*TracFone Forbearance Order*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*; *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 (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 (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 (2010) (*Global Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, 25 FCC Rcd 13866 (2010) (*Conexions Forbearance Order*).

<sup>4</sup> *See* 47 U.S.C. § 160(a).

<sup>5</sup> 47 U.S.C. § 254(b)(1), (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 an additional \$25 each month. 47 C.F.R. § 54.405(a)(4). Through the Link Up program, low-income consumers may receive discounts of up to \$30 off the connection charge. 47 C.F.R. § 54.411(a)(1). In Tribal areas, low-income consumers may receive discounts of up to an additional \$70 off the connection charge. 47 C.F.R. § 54.411(a)(3).

<sup>7</sup> 47 U.S.C. § 254(e).

support mechanisms “either using its own facilities or a combination of its own facilities and resale of another carrier’s services” to each consumer in its designated service area. Carriers designated as ETCs generally must participate in the Lifeline and Link Up programs and are reimbursed for the revenues foregone as a direct result of their participation in these programs.<sup>8</sup>

4. The Commission has granted several petitions for forbearance from the facilities requirement for ETC designation in section 214(e) of the Act.<sup>9</sup> In each of those cases, the Commission forbore from applying the facilities requirement only insofar as those carriers sought ETC designation solely for the limited purpose of receiving Lifeline support.<sup>10</sup> Moreover, the Commission conditioned forbearance on satisfaction of certain obligations (if the carrier is designated an ETC) tailored to the concerns arising from the carrier’s lack of facilities and proposed service offerings.

5. *Forbearance Petitions.* PlatinumTel, ReCellular and CAL Communications are non-facilities-based commercial mobile radio service (CMRS) providers (i.e., wireless resellers) that provide wireless telecommunications services. On July 2, 2010, PlatinumTel filed a petition requesting that the Commission forbear from applying the facilities requirement so that it could become an ETC for the limited purpose of participating in the Lifeline program.<sup>11</sup> On August 6, 2010, CAL Communications filed a petition seeking forbearance from the facilities requirements for the purposes of participating in the Lifeline program as well as the USF’s Link Up program.<sup>12</sup> On October 13, 2010, ReCellular filed a

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<sup>8</sup> See 47 C.F.R. § 54.407(b)–(c). ETCs designated for the limited purpose of participating in the Lifeline program, in contrast, may only receive Lifeline universal service support.

<sup>9</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 (2005) (*TracFone Forbearance Order*); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); 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 (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 (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 (2010) (*Global Forbearance Order*); *Telecommunications Carriers Eligible for Universal Service Support; Federal-State Joint Board on Universal Service; Conexions Petition for Forbearance*, WC Docket No. 09-197, CC Docket No. 96-45, 25 FCC Rcd 13866 (2010) (*Conexions Forbearance Order*).

<sup>10</sup> See *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381, para. 1; *i-wireless Forbearance Order*, 25 FCC Rcd at 8784, para. 1; *Global Forbearance Order*, 25 FCC Rcd at 10510–11, para. 1.

<sup>11</sup> PlatinumTel Petition at 1–2, App. A. On July 13, 2010, the Bureau issued a public notice seeking comment on PlatinumTel’s petition. *Comment Sought on PlatinumTel Communications LLC Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 9147 (Wireline Comp. Bur. 2010). The National Association of State Utility Consumer Advocates (NASUCA) filed comments on the petition. PlatinumTel filed reply comments. Pursuant to section 10(c) of the Act, Bureau extended until September 30, 2011, the date on which the PlatinumTel 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; PlatinumTel, LLC. Petition for Forbearance*, WC Docket No. 09-197, Order, DA 11-1038 (rel. June 9, 2011).

<sup>12</sup> CAL Communications Petition at 1–2, App. A. On August 20, 2010, the Bureau issued a public notice seeking comment on CAL Communications’ petition. *Comment Sought on CAL Communications, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 11054 (Wireline Comp. Bur. 2010). No party filed comments or reply comments on the (continued . . .)

petition seeking forbearance from applying the facilities requirement so that it could become an ETC for the limited purpose of participating in the Lifeline program.<sup>13</sup> These carriers state that their requests satisfy the statutory requirements for forbearance and are in the public interest.<sup>14</sup> Further, these carriers agree to abide by the same conditions that the Commission imposed on other wireless resellers when the agency granted forbearance from the ETC facilities requirement to allow the other wireless resellers to seek ETC designation for Lifeline support.<sup>15</sup>

### III. DISCUSSION

6. The Act requires the Commission to forbear from applying any requirement of the Act or our regulations to a telecommunications carrier if and only 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 the requirement is not necessary for the protection of consumers; and (3) forbearance from applying the requirement is consistent with the public interest.<sup>16</sup> We examine the facilities requirement from which PlatinumTel, CAL Communications and ReCellular seek forbearance in light of the statutory goal of providing low-income consumers with access to telecommunications services and in light of the specific programs in which the petitioner seeks to participate. We first evaluate the petitions in the context of the Lifeline program. We then turn to the issue of whether CAL Communications has demonstrated that the statutory requirements for forbearance are met in the context of the Link Up program.

#### A. Forbearance for Lifeline

7. We conditionally grant the request for forbearance from the facilities requirement of section 214(e) for the purpose of allowing PlatinumTel, CAL Communications and ReCellular to seek ETC designation to participate in the Lifeline program only.

8. *Just and Reasonable.* A provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal.<sup>17</sup> Under section 10(a)(1) of the Act, we must consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless

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petition. No comments were filed on the petition. Pursuant to section 10(c) of the Act, the Bureau extended until November 4, 2011, the date on which the CAL Communications 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; CAL Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, DA 11-1119 (rel. June 27, 2011).

<sup>13</sup> ReCellular Petition at 1-2. On October 20, 2010, the Bureau issued a public notice seeking comment on ReCellular’s petition. *Comment Sought ReCellular, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 14565 (Wireline Comp. Bur. 2010). ReCellular filed reply comments.

<sup>14</sup> See PlatinumTel Petition at 8–12; CAL Communications Petition at 8–14. ReCellular Petition at 5-13. We note that both petitions seek forbearance from both the statutory facilities requirement, 47 U.S.C. § 214(e)(1)(A), as well as our parallel regulatory requirements, 47 C.F.R. § 54.201(d)(1), (i). We have previously read our regulatory requirements to have the same scope and purpose as the statutory provision. See, e.g., *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3386–87 n.41.

<sup>15</sup> PlatinumTel Petition at 7; CAL Communications Petition at 11; ReCellular Petition at 12; see, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15098–99, 15104, paras. 6, 19; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3386–87, 3392, paras. 12, 26.

<sup>16</sup> 47 U.S.C. § 160(a)–(b). In making the public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions.

<sup>17</sup> See *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

reseller that seeks ETC designation for Lifeline support is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.<sup>18</sup>

9. We conclude that compliance with the section 214(e) facilities requirement is not necessary to ensure that PlatinumTel, CAL Communications or ReCellular's charges, practices, and classifications for Lifeline service are just and reasonable and not unjustly or unreasonably discriminatory.<sup>19</sup> As a reseller, these carriers face existing or potential competition, which should ensure that their rates are just and reasonable and not unjustly or unreasonably discriminatory.<sup>20</sup> If PlatinumTel, CAL Communications and ReCellular are granted limited ETC status, their Lifeline offerings will likely compete, at a minimum, with the Lifeline offerings of the incumbent wireline carriers in the area. These carriers may also face competition from competitive ETCs, including other wireless resellers that have received similar forbearance.<sup>21</sup> We expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. For these reasons, we find that the first prong of section 10(a) is met. In the limited context of Lifeline support, we find that the facilities requirement is not necessary to ensure that PlatinumTel's, CAL Communications', and ReCellular's charges, practices, and classifications are just and reasonable.

10. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. We find that imposing the facilities requirement on PlatinumTel, CAL Communications and ReCellular is not necessary for the protection of consumers so long as the carriers comply with the obligations described below. We conclude that forbearance from this provision will benefit consumers. If PlatinumTel, CAL Communications and ReCellular are granted ETC status for the limited purpose of receiving universal service support to provide Lifeline service, they will offer Lifeline-eligible consumers an additional choice of providers for accessing telecommunications services.<sup>22</sup> The prepaid feature of the carriers' service offerings may be an attractive alternative for consumers who need the mobility, affordability, security, and convenience of a wireless phone, but who are concerned about usage charges, credit checks and/or long-term contracts.<sup>23</sup>

11. Given the importance of public safety and in light of the fact that a Lifeline only ETC may be a low-income subscriber's only ability to make and receive telephone calls, we condition this grant of forbearance on each carriers' compliance with certain obligations if it is designated as an ETC. These conditions are consistent with those we have imposed on other wireless resellers.<sup>24</sup> Specifically, our forbearance is conditioned on each of the carriers, PlatinumTel, CAL Communications and ReCellular, as follows:

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<sup>18</sup> 47 U.S.C. § 160(a)(1); 47 U.S.C. § 214(e).

<sup>19</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15100, para. 12; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 20; *i-wireless Forbearance Order*, 25 FCC Rcd at 8787, para. 9; *Global Forbearance Order*, 25 FCC Rcd at 10514, para. 9.

<sup>20</sup> PlatinumTel Petition at 9; CAL Communications Petition at 8-9 (noting that "CAL is...subject to competition in the diverse marketplace, which effectively precludes it from raising its rates to an unreasonable or discriminatory level."); ReCellular Petition at 8-9.

<sup>21</sup> See 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service); PlatinumTel Petition at 9; CAL Communications Petition at 8-9; ReCellular Petition at 8..

<sup>22</sup> PlatinumTel Petition at 9-10; CAL Communications Petition at 10; ReCellular Petition at 9.

<sup>23</sup> PlatinumTel Petition at 3, 9; CAL Communications Petition at 9-10; ReCellular Petition at 9.

<sup>24</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15101-02, paras. 15-16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, paras. 21-23; *i-wireless Forbearance Order*, 25 FCC Rcd at 8788, para. 11; *Global Forbearance Order*, 25 FCC Rcd at 10515, para. 11.

- (1) requiring PlatinumTel, CAL Communications and ReCellular to provide its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes;
- (2) requiring PlatinumTel, CAL Communications and ReCellular to provide its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of existing Lifeline-eligible subscribers who obtain Lifeline-supported service;
- (3) requiring PlatinumTel, CAL Communications and ReCellular to comply with conditions (1) and (2) as of the date it provides Lifeline service; and
- (4) requiring PlatinumTel, CAL Communications and ReCellular to obtain a certification from each public safety answering point (PSAP) where PlatinumTel, CAL Communications and ReCellular each respectively seek to provide Lifeline service confirming that the carrier provides its subscribers with 911 and E911 access. Alternatively, under certain conditions described below, PlatinumTel, CAL Communications and ReCellular may self-certify that it provides such access.

12. To satisfy condition (4) above, PlatinumTel, CAL Communications and ReCellular must each request certification from the PSAP serving the relevant area. If, within the “evaluation period” (described below), the PSAP neither provides certification nor makes an affirmative finding that the particular carrier does not provide its subscribers with access to 911 and E911 service, PlatinumTel, CAL Communications and ReCellular may self-certify that it provides access to 911 and E911 services. The evaluation period commences when the carrier requests certification from the PSAP and notifies the PSAP of its right to self-certify. The evaluation period runs for 90 days but will be tolled if a PSAP reasonably requests information or equipment to evaluate the carrier’s request and tolling will continue until that carrier responds with the requested information or equipment.<sup>25</sup> If a PSAP determines that PlatinumTel, CAL Communications or ReCellular will not offer its Lifeline subscribers appropriate access to emergency services, or if the PSAP has concerns regarding one of these carriers’ ability to provide such access, and if the PSAP notifies the carrier of its concerns during the evaluation period, the evaluation period will be extended by an additional 90 days and that particular carrier may not self-certify compliance until it has addressed the PSAP’s concerns.<sup>26</sup> PlatinumTel, CAL Communications, and ReCellular must provide the PSAP with a copy of the relevant self-certification at the time it is effective.<sup>27</sup> Moreover, if a PSAP finds, after self-certification, that PlatinumTel, CAL Communications or ReCellular does not provide its subscribers with 911 and E911 access, the carrier must notify the Commission of this finding upon receiving notice and must explain how it plans to address the PSAP’s concerns and provide Lifeline subscribers with appropriate 911 and E911 access.<sup>28</sup> In addition, before self-certifying, PlatinumTel, CAL Communications and ReCellular must obtain a certification from the underlying carrier from whom it purchases service in that area, that the underlying carrier routes emergency calls from PlatinumTel’s, CAL Communications’s, or ReCellular’s subscribers to the PSAP in the same manner that the underlying carrier routes emergency calls from its own subscribers.<sup>29</sup>

13. The foregoing obligations shall apply in any state in which PlatinumTel, CAL Communications, or ReCellular is designated an ETC as a condition of serving consumers without using

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<sup>25</sup> *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3391, para. 22.

<sup>26</sup> *Id.* at 3390 n.67.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 3391, para. 22. Like other certifications, the carrier is required to retain these underlying carrier certifications and provide them to the Commission upon request.

its own facilities. Additionally, the carriers must furnish to the Commission, upon request, copies of all certifications required by the fourth obligation.<sup>30</sup>

14. The Commission has an obligation to promote “safety of life and property” and to “encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure” for public safety.<sup>31</sup> The provision of 911 and E911 services is critical to our nation’s ability to respond to a host of crises, and the Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline consumers.<sup>32</sup> We find that these obligations are necessary to ensure that non-facilities based carriers’ Lifeline subscribers will have meaningful access to emergency services.<sup>33</sup>

15. We find that, subject to the 911 and E911 conditions and the self-certification and other conditions set out above, the facilities requirement is not necessary for consumer protection with respect to PlatinumTel, CAL Communications, and ReCellular in the context of Lifeline support. We therefore conclude that the second element of section 10(a) is satisfied.

16. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support is in the public interest. In evaluating whether forbearance is in the public interest, we follow the path that we laid out in earlier forbearance orders. We note first that the Commission’s traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high-cost fund does not apply in the low-income context because Lifeline support is directly passed through to low-income consumers rather than built into the rates of facilities-based carriers.<sup>34</sup> We also note that Lifeline support is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers and is directly reflected in the price that the low-income consumer pays.<sup>35</sup> Requiring a Lifeline-only provider to own the facilities it uses to offer service does not necessarily further the statutory goal of the low-income program.<sup>36</sup> We therefore find that the public interest is served by forbearing from the facilities requirement in section 214(e) to allow PlatinumTel, CAL Communications and ReCellular to seek ETC designation for Lifeline-only support.<sup>37</sup>

17. The Commission has made clear its ongoing commitment to fight waste, fraud, and abuse in the Lifeline program.<sup>38</sup> Accordingly, in addition to the consumer protection conditions outlined above,

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<sup>30</sup> See, e.g., *id.* at 3390, para. 22.

<sup>31</sup> *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

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

<sup>33</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15101–02, paras. 15–16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390–91, para. 21–23; *i-wireless Forbearance Order*, 25 FCC Rcd at 8788, para. 12; *Global Forbearance Order*, 25 FCC Rcd at 10515, para. 12.

<sup>34</sup> See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8789, para. 15.

<sup>35</sup> 47 C.F.R. §§ 54.401, 54.504.

<sup>36</sup> See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8789, para. 15; PlatinumTel Petition at 7; CAL Communications Petition at 12-13; ReCellular Petition at 14..

<sup>37</sup> See *id.*

<sup>38</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 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, 4560, para. 10 (2011); *Lifeline and Link Up Reform and* (continued . . .)

and consistent with obligations imposed on other carriers seeking to become Lifeline-only ETCs, we require PlatinumTel, CAL Communications, and ReCellular to assume additional obligations designed to protect against waste, fraud, and abuse.<sup>39</sup> Specifically, we condition our forbearance from the facilities requirement for PlatinumTel, CAL Communications, and ReCellular by:

- (5) requiring each eligible Lifeline consumer to self-certify under penalty of perjury at 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 PlatinumTel, CAL Communications or ReCellular, and does not receive Lifeline from any other provider,;
- (6) 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”;
- (7) requiring PlatinumTel, CAL Communications and ReCellular 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 where it operates for the purpose of determining whether an existing Lifeline subscriber receives Lifeline service from another carrier;
- (8) requiring PlatinumTel, CAL Communications and ReCellular 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;
- (9) requiring PlatinumTel, CAL Communications and ReCellular to establish safeguards to prevent its subscribers from receiving multiple Lifeline subsidies at the same address, and safeguards to prevent individual subscribers from receiving more than one Lifeline discount;
- (10) requiring PlatinumTel, CAL Communications and ReCellular to implement a non-usage policy, if applicable, in all states where PlatinumTel, CAL Communications or ReCellular provides Lifeline services to subscribers at no monthly charge<sup>40</sup>, requiring PlatinumTel, CAL Communications or ReCellular 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;
- (11) requiring PlatinumTel, CAL Communications and ReCellular to deal directly with the subscriber to certify and verify the subscriber’s Lifeline eligibility;

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*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) (*Connect America Fund*).

<sup>39</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).

<sup>40</sup> This obligation does not apply if PlatinumTel, CAL Communications or ReCellular require subscribers to pay a monthly fee for the service.



(12) requiring PlatinumTel, CAL Communications and ReCellular to explaining in prominent, plain, easily comprehensible language to all new and potential subscribers that no consumer is permitted to receive more than one Lifeline subsidy;

(13) requiring PlatinumTel, CAL Communications and ReCellular to ensure that all marketing materials for the service make clear that it is a Lifeline-supported service;

(14) requiring PlatinumTel, CAL Communications and ReCellular to immediately de-enroll any subscriber who PlatinumTel, CAL Communications or ReCellular knows is receiving Lifeline-supported service from another ETC or knows is no longer eligible;

(15) requiring PlatinumTel, CAL Communications and ReCellular to provide a detailed description of the company's various Lifeline service plan offerings, including subscriber rates, number of minutes included, and types of plans available;

and

(16) requiring PlatinumTel, CAL Communications and ReCellular 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.

18. We find that these obligations are appropriate to improve the accountability of the disbursement of universal service funds while preventing waste, fraud, and abuse.<sup>41</sup> These obligations apply in any state in which PlatinumTel, CAL Communications, or ReCellular participate in the Lifeline program. 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 PlatinumTel, CAL Communications, and ReCellular to clearly state the penalties for perjury in clear and conspicuous language on the 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 the carrier obtained the certification, to the Commission upon request.<sup>42</sup> Moreover, these obligations further underscore the Commission's commitment to eliminate waste, fraud, and abuse in Lifeline.<sup>43</sup>

19. We disagree with parties that argue that the Commission should withhold forbearance until carriers describe with particularity the service plans that will be associated with its Lifeline offering and that any public interest determination with regard to forbearance may not be deferred to a later ETC

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<sup>41</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).

<sup>42</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>43</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*.

designation proceeding.<sup>44</sup> We find that it is appropriate to leave those assessments to whichever governmental entity addresses the carriers' petitions for ETC designation. ETC designation proceedings also require a public interest assessment separate and apart from the public interest assessment required in forbearance proceedings. In most cases, the state commission will decide whether to grant ETC designation, and state commissions are generally in a better position to assess whether a particular offering will benefit that state's low-income consumers.<sup>45</sup>

20. We note that after PlatinumTel, CAL Communications and ReCellular submit their compliance plans, the Bureau will review those compliance plans for conformance with this order. PlatinumTel, CAL Communications or ReCellular may not be designated as a non-facilities based ETC by either a state commission or this Commission and, therefore are not eligible to receive Lifeline universal service support, until the Bureau approves the respective compliance plans.

### **B. Forbearance for Link Up**

21. To date, the Commission has not granted forbearance from the facilities requirement to any Lifeline-only ETC to offer Link Up, as there has been no adequate showing by a petitioner that its request for forbearance for Link Up support, which offers discounts on the initial connection of the service, meets the statutory requirements for forbearance.<sup>46</sup> We likewise decline to grant CAL Communications' request for forbearance from the facilities requirement for the purpose of seeking ETC designation to receive Link Up support. Petitioners seeking forbearance bear the burden of proof and must show that each of the statutory elements of forbearance is met, and we need only find that petitioner has failed to meet one of the forbearance criteria to deny its petition.<sup>47</sup> We find that CAL Communication has not demonstrated that forbearance from the facilities requirement to receive Link Up support is in the public interest.<sup>48</sup> General references to the statutory goal of ensuring that low-income consumers have access to telecommunications services are not sufficient in this instance to justify forbearance from the facilities requirement.<sup>49</sup> Specifically, in its public interest discussion, CAL Communications relies only on Commission precedent granting Lifeline-only forbearance but does nothing to distinguish its petition

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<sup>44</sup> See NASUCA Comments at 3 (“[T]he Commission must know what kind of service plan the applicant plans to offer before determining that forbearance is in the public interest.”).

<sup>45</sup> Of course, if a state commission does not have jurisdiction to designate a carrier as a limited-purpose ETC, we will consider that carrier's application as well as whether any additional obligations are necessary for that particular designation to be in the public interest. See 47 U.S.C. § 214(e)(6).

<sup>46</sup> See Petition at 8–14; cf. *i-wireless Forbearance Order*, 25 FCC Rcd at 8791–92, para. 21; *Global Forbearance Order*, 25 FCC Rcd at 10519, para. 21; *Conexions Forbearance Order*, 25 FCC Rcd at 13872 para. 21.

<sup>47</sup> See, e.g., *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, 9554–55, para. 20 (2009) (“We now state explicitly that the burden of proof is on forbearance petitioners at the outset and throughout the proceeding.”); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11750, 11754–58, paras. 28, 36, 39 (2008) (noting that Qwest had failed to meet its burden of persuasion regarding sufficiency of market share). See also *Cellular Communications & Internet Ass'n v. FCC*, 330 F.3d 502, 509 (D.C. Cir. 2003) (explaining that the three prongs of Section 10(a) are conjunctive and that the Commission could properly deny a petition for failure to meet any one prong).

<sup>48</sup> See Petition at 7–14 (discussing Link Up only in the context of its discussion of Lifeline).

<sup>49</sup> See *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19879–80, para. 55 (1998) (“MariTEL's request cannot be granted because it is too vague, both as to the specific provisions from which we should forbear from enforcing, and as to why forbearance would be in the public interest.”).

from previous Commission decisions denying forbearance for Link Up.<sup>50</sup> Moreover, CAL Communications has not demonstrated why a non-facilities based wireless reseller should be able to participate in the Link Up program. We thus find that CAL Communications has failed to meet its burden to show that forbearing from the facilities requirement in the context of the Link Up program is in the public interest, and we deny its request.<sup>51</sup>

### C. Conclusion

22. In conclusion, we find that granting forbearance to PlatinumTel, CAL Communications, and ReCellular, subject to the conditions set forth above, so that these carriers may seek limited ETC designation to participate in the Lifeline program will further the statutory goal of providing low-income subscribers access to telecommunications and emergency services, while protecting the universal service fund against waste, fraud, and abuse. 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 to reconsider this forbearance ruling.<sup>52</sup> We also decline to grant CAL Communications' request for forbearance from the facilities requirement for the purpose of seeking ETC designation to receive Link Up support, finding CAL Communications failed to demonstrate any public interest benefit from the Commission forbearing from this requirement.

## IV. ORDERING CLAUSES

23. 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 PLATINUMTEL COMMUNICATIONS, LLC IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

24. 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), 214, 254, the petitions for forbearance filed by RECELLULAR, INC. IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

25. 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), 214, 254, the petitions for forbearance filed by CAL COMMUNICATIONS, INC. IS GRANTED IN PART to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order and otherwise DENIED.

26. 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), 214, 254, we forbear from applying section 214(e)(1)(A) of the Communications Act, 47 U.S.C. § 214(e)(1)(A) and 54.201(d)(1) and (i) of the Commission's rules, 47 C.F.R. § 54.201(d)(1), (i), to PlatinumTel Communications, LLC, CAL Communications, Inc. and ReCellular, Inc. to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

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<sup>50</sup> CAL Communications Petition at 12-14.

<sup>51</sup> We have reached the same conclusion in similar cases. *See i-wireless Forbearance Order*, 25 FCC Rcd at 8791-92, para. 21; *Global Forbearance Order*, 25 FCC Rcd at 10519, para. 21; *Conexions Forbearance Order*, 25 FCC Rcd at 13872 para. 21.

<sup>52</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).

27. 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.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary