

**BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**UT-111534**

**In the Matter of** )  
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**PETITION OF CRICKET COMMUNICATIONS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER AND A TEMPORARY PARTIAL WAIVER OF WAC 480-123-030(1)(G) AND WAC 480-123-070(6)** ) **AMENDED PETITION OF CRICKET COMMUNICATIONS, INC. FOR DESIGNATION AS AN ETC AND A TEMPORARY PARTIAL WAIVER OF WAC 480-123-030(1)(g) AND WAC 123-070(6)**

**AMENDED PETITION OF CRICKET COMMUNICATIONS, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

Cricket Communications, Inc. (“Cricket”) respectfully submits this Amended Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) (“Amended Petition”) pursuant to Section 214(e)(2) of the federal Communications Act of 1934, as amended (“Act”),<sup>1</sup> Section 54.201 of the Federal Communications Commission (“FCC”) rules, and consistent with this Commission’s requirements set forth in Wash. Admin. Code 480-123-030. Cricket requests that it be designated as eligible to receive available Lifeline support from the federal Universal Service Fund (“USF”) for low-income customers only; it will not seek access to funds from the USF for the purpose of providing service to high cost areas.<sup>2</sup> Cricket filed its original Petition in this matter on August 19,

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<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> Because Cricket seeks only Lifeline support from the low-income program, ETC designation requirements for the high-cost program (such as W.A.C. § 480-123-030(1)(d), requiring a substantive plan of investments to be made with federal support during the first two years) do not apply to this petition. Likewise, because Cricket seeks designation only for the low-income program and because it seeks designation only in non-rural areas, no cream-skimming analysis will apply to this petition. *See In the Matter of Virgin Mobile USA, L.P. Petition for*

2011. The Amended Petition corrects minor errors, provides supplemental information to the Commission and withdraws Cricket’s request for a Temporary Partial Waiver of WAC 480-123-030(l)(g) and WAC 480-123-070(6). In support of this Amended Petition, the following is respectfully shown:

**I. BACKGROUND**

*Cricket.* Cricket provides digital wireless services on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract or a credit check. Directly and through its affiliates, Cricket currently serves approximately 5.8 million customers in 34 states, and the District of Columbia. Cricket is a Delaware corporation authorized to do business in Washington, and throughout the requested ETC area, pursuant to a Commercial Mobile Radio Service (“CMRS”) license granted by the Federal Communications Commission (“FCC”).<sup>3</sup>

**II. ALLEGATION OF FACTS**

**A. Eligibility and Identification of the Service Area.**

Under Sections 214(e) and 254 of the Act, the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) is authorized to designate Cricket as an ETC. Section 214(e)(2) of the Act requires state commissions to designate as an ETC, throughout the service area for which ETC status is sought, any common carrier that: (i) offers services that are

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*Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, Order 09-18, ¶ 39 n. 101 (March 5, 2009) (explaining that “we need not perform a cream-skimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only”) (hereinafter “*Virgin Mobile Order*”); *ETC Requirements Order*, at ¶ 52 (finding that cream-skimming is a concern in rural areas but that the analysis is “unnecessary” in non-rural service areas because of the different cost model). Cricket does not charge activation fees and does not seek Link Up support.

<sup>3</sup> Cricket holds the following FCC licenses covering its Spokane and Vancouver markets in Washington: Portland, OR BTA 358; Oregon 1 – Clatsop CMA 606; Portland, Oregon CMA 030; Spokane, WA BTA 425, and Spokane, WA BEA 147.

supported by federal universal service support mechanisms; and (ii) advertises the availability of such services.

Cricket's proposed ETC area in southwest Washington is in the Portland metropolitan area as well as Spokane. Attached as Exhibit A is a list of the non-rural ILEC and rural ILEC wire centers for which Cricket seeks to be designated as an ETC. Attached as Exhibit B is a map in .shp format depicting Cricket's proposed ETC service area in the state of Washington. Attached as Exhibit B-2 is a map in .shp format depicting ILEC wire center locations within this proposed service area. This Commission has previously redefined the study areas of rural ILECs in the State to the wire center level, including the study area of rural ILEC CenturyTel of Washington, Inc ("CenturyTel").<sup>4</sup> Cricket's proposed ETC area covers portions of several CenturyTel wire centers located near Spokane. Cricket is not applying for high-cost universal service support. Accordingly, no cream-skimming analysis and no further redefinition are required.<sup>5</sup>

Cricket is currently designated as an ETC in 5 States: California, Oregon, Illinois, Missouri, and South Carolina.

### **III. CRICKET SATISFIES THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS A FEDERAL ETC**

Cricket satisfies each of the statutory and regulatory prerequisites set forth in the Act, the FCC's Rules<sup>6</sup>, and Washington's regulations.<sup>7</sup> On March 17, 2005, the FCC released its *ETC*

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<sup>4</sup> *In the Matter of the Petitions of Yelm Telephone Company, et al., for designation as an Eligible Telecommunications Carrier*, UT-97033, et al., Order Designating Eligible Telecommunications Carrier at 17-18 (1997).

<sup>5</sup> See *Virgin Mobile USA, L.P.*, Order, 24 FCC Rcd 3381, at ¶38 n 101 (2009) ("in addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.") In addition, Cricket has filed with the FCC a Petition for Forbearance from enforcement of Sections 214(e)(5) and FCC Rule 54.207 relating to redefinition when an ETC applicant seeks only Low Income support. See *In the Matter of Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197. The FCC will likely issue its decision on Cricket's pending Petition in late September.

<sup>6</sup> 47 U.S.C. § 214(e)(1)-(2), and 47 C.F.R. § 54.201.

<sup>7</sup> WAC 480-123-030.

*Requirements Order*<sup>8</sup> establishing additional requirements for carriers seeking ETC designation before the FCC. These additional requirements, however, are not binding on state commissions. This Commission then considered whether to adopt all or some portion of the rules promulgated by the FCC, and issued its regulations governing petitions for ETC designation.<sup>9</sup> In this Petition, Cricket provides all of the information required by the Commission pursuant to state and federal requirements.

**A. Cricket is a Common Carrier**

Cricket is a “common carrier” under 47 U.S.C. 214(e)(1) and 214(e)(6) for purposes of ETC designation.

**B. Cricket Offers the Services and Functionalities Supported by the Federal Low-Income Universal Service Program**

Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that carriers designated as ETCs shall, throughout their service area, (1) offer the services that are supported by the federal universal service support mechanisms either using their own facilities or a combination of their own facilities and resale of another carrier’s services, and (2) advertise the availability of such services and the charges therefore using media of general distribution.<sup>10</sup> The services which are supported by the federal USF are:

- (1) voice-grade access to the public switched telephone network;
- (2) local usage;
- (3) dual-tone multi-frequency signaling or its functional equivalent;
- (4) single-party service or its functional equivalent;
- (5) access to emergency services;
- (6) access to operator services;
- (7) access to interexchange service;
- (8) access to directory assistance; and

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<sup>8</sup> *In the Matter of Federal-State Joint Board of Universal Service*, Report and Order, 20 FCC Rcd 6371, CC Docket No. 96-45, Order 05-46, (March 17, 2005) (hereinafter “*ETC Requirements Order*”).

<sup>9</sup> WAC 480-123-030.

<sup>10</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d); *see also* WAC 480-123-030(1)(b).

(9) toll limitation for qualifying low-income consumers.<sup>11</sup>

Cricket provides all of the nine supported services in satisfaction of the requirements of Section 214(e)(1) of the Act and Wash. Admin. Code 480-123-030(1)(b). Cricket accepts the obligation to offer these supported services throughout its ETC designated area in the state upon reasonable request in full compliance with the obligation of an ETC.

Voice Grade Access. “Voice grade access” permits a telecommunications user to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal that there is an incoming call. The FCC has determined that voice grade access to the public switched telephone network means the ability to make and receive calls with a minimum bandwidth of 300 to 3000 Hertz.<sup>12</sup> Through its interconnection agreements with local exchange carriers (LECs) in Washington, Cricket’s customers are currently able to make and receive calls on the public switched telephone network within the specified bandwidth.

Local Usage. “Local usage” is defined as an amount of minutes of use of exchange service, as prescribed by the FCC, provided without an additional charge to end users.<sup>13</sup> For those carriers seeking ETC designation before the FCC, the carrier must demonstrate that it offers at least one rate plan that is comparable to the local usage plan of the ILEC serving the same area.<sup>14</sup> The FCC has declined to adopt a specific local usage threshold; it instead requires that the local usage plan of an ETC applicant be reviewed on a case-by-case basis.

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<sup>11</sup> 47 C.F.R. § 54.101(a)(1)-(9).

<sup>12</sup> *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776 (1997) (“*First Report and Order*”), ¶¶63-64.

<sup>13</sup> 47 C.F.R. §54.101(2).

<sup>14</sup> See *Federal-State Joint Board on Universal Service, Report and Order*, 20 FCC Rcd 6371, 6385 (2005); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, ¶ 20 (2005). Washington’s regulations do not expressly require a showing of a comparable local usage plan, but CRICKET nonetheless provides this description to the WUTC.

Cricket is committed to providing all its customers with valuable calling plans and believes that its calling plans are comparable in value to those offered by the incumbent LECs. Calling plans cannot be compared solely on price, but must also consider calling scope and the additional features and functionalities offered. Cricket's current calling plans offer consumers numerous benefits including the inherent mobile nature of wireless service. For example, Cricket's "local" calling area is much broader than the incumbent LEC. All of Cricket's rate plans include unlimited local and long distance calling. Furthermore, customers can choose from among plans that also provide unlimited domestic text, picture, and video messaging; data backup; navigation; and call waiting, three-way calling, and voicemail, among other services.

Summaries of Cricket's four individual calling plans are attached as Exhibit C.<sup>15</sup> All of Cricket's plans are inclusive of taxes. The \$35 per month plan offers unlimited local calls and unlimited long distance through the United States and Puerto Rico, unlimited domestic text messaging, voice mail and caller ID. This entry-level plan is the only Cricket plan not including unlimited 411 directory assistance, but customers on the \$35 per month plan may purchase such service for an additional \$5 per month, or \$1 per directory assistance call if the additional monthly service is not purchased in advance. The \$45 plan includes all the items above, while adding unlimited international text messaging, unlimited picture and video messaging with capable phones, three-way calling, call forwarding, 411, navigation, and mobile web allowing users to access the Internet. There are two \$55 rate plans. One is an Unlimited Music plan, which has all the same features except 411 and Navigator. The other is the Smart Phone rate plan. This plan has all features noted above, plus Mobile Video Entertainment.

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<sup>15</sup> See also <http://www.mycricket.com/cricketplans/>

Cricket's plans do not include free handsets. Cricket customers have the option of purchasing a handset from Cricket or of providing a technologically compatible handset, on which Cricket will activate service. If a customer experiences a handset defect, the customer may return the handset directly to the manufacturer for warranty service. In the alternative, for a fee of \$20, Cricket issues a comparable new or reconditioned handset to the customer and returns the defective handset to the manufacturer. This fee offsets costs incurred by Cricket in handling such returns. For example, if the manufacturer determines that the defect is not covered by warranty and refuses to service the handset, Cricket bears the cost of the replacement issued to the customer. Customers may purchase handset insurance from Cricket.

Cricket's calling plans are attractive to low income customers. By offering unlimited voice service at affordable rates starting as low as \$35 per month without the typical strings attached (such as activation fees, credit checks, long-term commitments, and early termination fees) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. Because Cricket is aware that many of its low income customers depend on Cricket as their sole source of telephone service, Cricket offers a range of payment options. Customers may pay online, by mail, by telephone or in-store. If a customer is unable to pay the full bill when due, the customer may make a partial payment (referred to as a "bridge payment") to continue service for one week. After one week, the customer pays the balance of the bill to continue service.

Cricket proposes to offer a Lifeline discount of \$10. Any customer qualifying for the Lifeline discount could apply the discount to any of these individual or family plans. Lifeline customers would also be eligible for all other discounts and promotions offered by Cricket. Finally, Cricket allows each customer to keep his or her rate plan even if the plan is no longer offered to new

customers. Any customer with a grandfathered rate plan who qualifies for Lifeline support would be able to apply the Lifeline discount to that plan.

Dual Tone Multi-frequency Signaling or its Functional Equivalent. “DTMF” is a method of signaling that facilitates the transportation of call set-up and call detail information. DTMF makes “touchtone” dialing possible by facilitating the transportation of signaling through the network. The FCC has recognized that “wireless carriers use out-of-band signaling mechanisms...[It] is appropriate to support out-of-band signaling mechanisms as an alternative to DTMF signaling.”<sup>16</sup> Cricket currently uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF signaling, in accordance with the FCC’s requirements.

Single party Service. “Single-party service” permits the exclusive use of a particular subscriber loop or access line by a single subscriber. The FCC has determined that a CMRS provider meets the requirement of offering single party service when it offers a dedicated message path for the length of a user’s particular transmission.<sup>17</sup> Cricket meets the requirement of single-party service in all of its service offerings by providing a dedicated message path for the length of a user’s wireless transmission.

Access to Emergency Services. “Access to emergency service” means the ability to reach a public service answering point (“PSAP”) by dialing “911”. The FCC requires that a carrier must provide access to enhanced 911 or “E911”, which includes the capability of providing both automatic numbering information (“ANI”) and automatic location information (“ALI”), when the PSAP is capable of receiving such information and the service is requested from the carrier.<sup>18</sup> Cricket currently provides its voice customers in the requested ETC area with E911 service according to FCC

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<sup>16</sup> *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 97-157 (May 8, 1997), ¶ 71 (hereafter “*Universal Service Order*”).

<sup>17</sup> 47 C.F.R. § 54.101(a)(4); *Universal Service Order*, ¶ 62.

<sup>18</sup> 47 C.F.R. § 20.18(j); *Universal Service Order*, ¶ 73.



requirements. Cricket is also capable of delivering ANI and ALI information over its existing network and is in compliance with all applicable federal E911 requirements. Cricket currently pays and will continue to pay all applicable state and county E911 taxes.

Access to Operator Services. “Access to operator services” means any automatic or live assistance provided to a customer to arrange for the billing or completion, or both, of a telephone call.<sup>19</sup> Cricket meets this requirement by providing access to operator services to its customers by dialing “411”.

Access to Interexchange Services. An ETC must offer consumers access to interexchange service to make and receive toll or interexchange calls. Cricket currently meets this requirement by providing all of its subscribers with the ability to make and receive interexchange or toll calls.<sup>20</sup> Cricket agrees to abide by this requirement consistent with the parameters of federal law.

Directory Assistance. “Access to directory assistance” means the ability to provide access to a service that makes directory listings available.<sup>21</sup> Cricket currently meets this requirement by providing its customers access to directory assistance by dialing “411.”<sup>22</sup>

Toll Limitation. “Toll limitation” includes the offering of either “toll control” or “toll blocking” to qualifying low-income customers, as a means of limiting or blocking the completion of outgoing toll calls.<sup>23</sup> An ETC is not required to provide both services if the carrier is incapable of providing both.<sup>24</sup> The specific Lifeline calling plans that Cricket intends to offer do not distinguish

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<sup>19</sup> 47 C.F.R. § 54.101(a)(6); *Universal Service Order*, ¶ 75.

<sup>20</sup> To the extent this Commission requires the ETC to acknowledge that it may be required to provide equal access if it is the only remaining ETC in an area, Cricket makes that acknowledgement.

<sup>21</sup> 47 C.F.R. § 54.101(a)(8).

<sup>22</sup> As described in the plan summaries provided in this petition and in Exhibit C, directory assistance is offered at an additional charge of \$2 per month for the rate plans set at \$30, \$35, and \$40 per month; if that service is not purchased in advance, then each call to directory assistance costs \$1 under those plans. Directory assistance is included in the bundled charge for the \$45, \$50, and \$60 per month rate plans. This pricing is reflected in the calling plans attached as Exhibit C.

<sup>23</sup> 47 C.F.R. § 54.400(b)-(d); *Universal Service Order*, ¶82.

<sup>24</sup> 47 C.F.R. § 54.400(d).

between local and toll calls. If for any reason Cricket changes that offer, it will meet the toll limitation requirement by providing toll blocking.

**C. Cricket Will Provide the Supported Services Using its Own Facilities or a Combination of Its Own Facilities and Resale of Another Carrier's Services**

Cricket will provide the supported services using its own facilities or a combination of its own facilities and the resale of another carrier's service. Cricket primarily will use its own network infrastructure, which includes the same antennae, cell-sites, towers, trunking, mobile switching and interconnection facilities used to serve its existing customers.

**D. Cricket Will Advertise the Availability of and Charges for its Universal Service Qualifying Offerings**

Pursuant to Section 54.201 of the FCC's rules, Cricket will advertise the availability of the supported services detailed above and the corresponding rates and charges in a manner designed to inform the general public within its designated ETC service areas. This advertising will occur through some combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet. Specifically, Cricket will primarily promote its Lifeline service in Washington through print and radio advertising, collateral in its stores and direct outreach by Cricket to community health, welfare and employment offices. Cricket's advertising materials will clearly state that customers are limited to one Lifeline-supported line per household.

Cricket will not use third-party marketing agents to sell Lifeline products. Customers must sign up for Cricket service, including Lifeline service, at a Cricket store. At that time, the customer will complete a Lifeline application and receive the terms and conditions associated with the plan selected by the customer. Cricket's application form for Lifeline service requires that the customer specifically acknowledge (by initialing) that Lifeline support is available for only one line per

household. The customer must also separately sign the application and agree to the terms of Lifeline service, including the one-per-household limitation. In addition, Cricket conducts a monthly reconciliation of its Lifeline accounts database and checks for duplicate addresses at that time.

**E. Commitment to Consumer Protection**

Consistent with the FCC’s ETC Report and Order and this Commission’s requirements, Cricket will abide by the Cellular Telecommunications and Internet Association’s Consumer Code for Wireless Service (“CTIA Code”).<sup>25</sup> Cricket has already adopted the CTIA Code and is committed to compliance with the CTIA Code throughout its service areas, including in those areas where it is seeking designation as an ETC.

As it does today, Cricket agrees to use its best efforts to resolve complaints received by the Commission, and designates the following contact person to work with the Commission’s Consumer Services Division for complaint resolution: Customer Operations Manager, 1750 NW Naito Pkwy, #250, Portland, OR 97209, (503) 306-2505.

**F. Commitment to Provide Service upon Reasonable Request**

Cricket commits that if a request is made by a potential customer within its existing network coverage, Cricket will provide service immediately using its standard customer equipment (handsets/wireless devices). If a potential customer requests service within Cricket’s designated area, but outside its existing network coverage, Cricket will follow the six-step process specified in 47 C.F.R. 54.202(a)(1)(A). Specifically, Cricket will determine if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer’s equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier’s facilities to provide service; or (f)

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<sup>25</sup> See 47 C.F.R. § 54.202(a)(3); WAC 480-123-030(h).

employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

**G. Request for Waiver of Network Improvement Plan Requirement**

Because Cricket seeks only low-income support, the requirement of providing a network improvement plan does not apply to this petition.<sup>26</sup> Therefore, Cricket requests that the Commission waive the requirements of WAC 480-123-030(1)(d).

**H. Ability to Remain Functional in an Emergency**

This Commission requires that wireless ETC applicants submit a plan demonstrating how it will function in an emergency. In particular, a wireless ETC applicant must demonstrate that it has “at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch.” WAC 480-123-030(g). In addition, WAC 480-123-070(6) requires each ETC that receives federal high-cost funds to certify annually that it continues to adhere to the standards in WAC 480-123-030(g).

Cricket’s network is designed, maintained and operated in a manner intended to ensure continued functioning in emergency conditions. Cricket has back-up generators at each microwave hub, and at least five hours back-up battery power and diesel back-up generators at each switch. Cricket has at least four hours of back-up battery power at all of its cell sites in Washington. Cricket will commit to providing at least four hours of back-up power at all new cell sites .

**IV. ANNUAL RECERTIFICATION PROCESS**

Cricket commits to comply with the annual certification requirements adopted by the Commission.<sup>27</sup>

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<sup>26</sup> See WAC 480-123-030(1)(d).

<sup>27</sup> WAC 480-123-060, 070.

**V. LEGAL AUTHORITY**

The Commission has the legal authority to grant the relief requested by the Applicant pursuant to 47 U.S.C. §214(e)(2); 47 C.F.R. § 54.201.

**VI. RELIEF REQUESTED**

For the reasons set forth above, and pursuant to Section 214(e)(2) of the Act, Cricket requests that the Commission enter an Order designating Cricket as an ETC for the areas described herein and granting Cricket's request waiver request, and that the Commission enter this Order at the earliest possible date.

Dated this 31<sup>st</sup> day of January, 2012

Respectfully submitted,

CRICKET COMMUNICATIONS, INC.

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