

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	DOCKET UT-111534
)	
CRICKET COMMUNICATIONS, INC.,)	ORDER 01
)	
)	
)	ORDER GRANTING THE PETITION
)	FOR EXEMPTION FROM
)	PROVISIONS OF WAC 480-123-
For an Exemption from WAC 480-123- 030(1)(d), and Designation as an Eligible Telecommunications Carrier)	030(1)(d), AND DESIGNATION AS
)	AN ELIGIBLE
)	TELECOMMUNICATIONS
)	CARRIER
.....)	

INTRODUCTION AND BACKGROUND

- 1 On August 22, 2011, Cricket Communications, Inc. (Cricket or Company), filed a petition with the Washington Utilities and Transportation Commission (UTC or Commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. Cricket is a facility-based wireless carrier. It seeks ETC designation in Washington for the purpose of receiving the federal Low Income Support (Lifeline) support that subsidizes monthly charges for basic telephone service for qualified low-income households. Lifeline support is part of the federal Universal Service Fund (USF). Cricket seeks ETC designation for exchanges listed in Appendix A, mainly in portions of the Portland metropolitan area located in southwest Washington and the Spokane metropolitan area in eastern Washington. The Company will not withdraw funds from the state Lifeline program, Washington Telephone Assistance Program (WTAP).
- 2 Cricket filed three amendments to its original petition. On January 31, 2012, the Company filed a supplement that provides additional details of its Lifeline offering and a network map in Adobe Acrobat format. In this filing, the Company updates its compliance status on cell site battery backup requirements and requests exemption from the investment plan requirement under WAC 480-123-030(1)(d). On March 29, 2012, the Company provided electronic files of its wireless network map in compliance with WAC 480-123-030(1)(f). On April 6, 2012, Cricket provided a letter from the Washington Emergency Management Division certifying that the Company is equipped with wireless location capability in providing access to enhanced 911 for its Lifeline customers in Washington.
- 3 Cricket is a Delaware corporation authorized to do business in Washington pursuant to Commercial Mobile Radio Service licenses granted by the Federal Communications Commission (FCC). It has been operating in various states as a wireless carrier for

approximately 13 years. It now serves approximately 5.8 million customers in 34 states and the District of Columbia. It is designated as an ETC in California, Oregon, Illinois, Missouri, South Carolina, Maryland, Colorado, Arizona and Kentucky.

- 4 The Commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Fund.¹ By rule, WAC 480-123-040, the Commission has the authority to approve petitions from carriers requesting ETC designation. The Commission’s authority to grant or deny petitions for ETC designation includes the authority to impose conditions.²

DISCUSSION

- 5 Commission Staff (Staff) finds that Cricket qualifies for ETC designation with the proposed conditions in Appendix B. Pursuant to 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in a particular area if such designation is “consistent with the public interest, convenience, and necessity” and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):
- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
 - (B) advertise the availability of such services and the charges therefore using media of general distribution.
- 6 The Company is a common carrier capable of offering services supported by federal universal service support mechanism, as defined in 47 C.F.R. § 54.101(a). It will primarily use its own network facilities including cell sites, towers, antennae, trunking, mobile switching and interconnection facilities to provide services throughout the proposed ETC areas. It also commits that if a potential customer requests service within Cricket’s designated area but outside its existing network coverage, it will follow the process prescribed in 47 C.F.R. 54.202(a)(1)(A) to determine if it can provide service at reasonable cost. The Company commits that it will advertise the availability of Lifeline services.
- 7 The Company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsection (1)(d), which requires an ETC applicant to file a “substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those

¹ 47 U.S.C. § 214(e)(2); see 47 C.F.R. § 54.201(c).

² *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, Order 03 (June 24, 2010), UT-093012, ¶ 78.

expenditures will benefit customers.” Cricket requests an exemption from the rule because the Company seeks only Lifeline support, not federal High Cost Support. Staff supports the Company’s request for exemption from the investment plan requirement. The exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Granting the exemption will also be consistent with the Commission’s designation of other Lifeline-only ETCs such as TracFone Wireless, Inc. (TracFone), Virgin Mobile USA, L. P. (Virgin Mobile) and YourTel American, Inc. (YourTel).

- 8 In its initial petition, Cricket requested an exemption from WAC 480-123-030(1)(g), which requires an ETC applicant to have at least four hours of back up battery power at each cell site. A small number of the Company’s cell sites did not meet the back up battery standard. In the first amendment to the petition, the Company informed Staff that it is now fully in compliance with this requirement.
- 9 Like other Lifeline-only ETCs in Washington, Cricket offers prepaid wireless service plans that do not require a fixed-term contract or a customer credit check. However, Cricket distinguishes its Lifeline product from other prepaid Lifeline providers in Washington by offering rate plans with unlimited calling minutes. The Company’s plans for non-Lifeline customers range from \$35 (before discount) for unlimited voice minutes and unlimited domestic text messaging to \$55 (before discount) for unlimited voice and text messaging with additional texting and data usage options. Individual feature packages not included in the plan can be purchased on an a la carte basis. A Lifeline customer will be able to get a \$10 discount from any individual or family plan. Lifeline customers will also be eligible for all other discounts and promotions offered by Cricket. Any existing customer with a grandfathered rate plan, if qualified for Lifeline support, will be able to apply for the Lifeline discount to that plan.
- 10 The Company does not provide free cell phone handsets. Customers can buy cell phones from Cricket retail stores, or they can use their own cell phones as long as the handsets are technologically compatible with the Company’s network. If a customer experiences a handset defect purchase from Cricket, the customer may return the handset to the manufacturer for warranty service or a customer can pay a small service fee to have the Company exchange a defective handset for a new one.
- 11 Staff also reviewed the Company’s financial and technical capabilities to provide the supported Lifeline service. Staff considered relevant factors suggested in the FCC’s recent Lifeline and Link Up Reform Order.³ Based on the Company’s operational history and its recent financial statements, Staff concludes that the Company is financially and technically capable of providing the supported Lifeline service in compliance with all the low-income program rules.

³ *Lifeline and Link Up Reform and Modernization et al*, WC Dkt No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6, 2012) (*Lifeline and Link Up Reform Order*), paragraph 388.

- 12 In the proceedings involving the ETC petitions of TracFone, Virgin Mobile and YourTel, Staff recommends the Commission add conditions to ensure that the companies would provide Lifeline services in a manner consistent with the public interest. Staff recommends that the Commission apply a similar set of conditions to Cricket's ETC designation. Staff has slightly modified the condition list based on unique features of the Company's Lifeline products and the upcoming implementation of the FCC's Lifeline rule changes. For example, Staff removed the requirement to deactivate service after 60 days of no activity, and the requirement to offer a minimum of 250 minutes a month. These conditions do not apply to Cricket, because the Company offers unlimited prepaid calling plans that require a fee to be paid each month to continue the service.
- 13 One of Staff's proposed modifications concerns customer eligibility criteria. Customer eligibility verification and duplicative claims for Lifeline benefits remain a challenge for the federal Lifeline program. The Commission, accordingly, adopted safeguards in TracFone, Virgin Mobile and YourTel proceedings. The Commission required these companies to use the customer eligibility criteria for WTAP so that the Department of Social and Health Services (DSHS) can verify the eligibility of these companies' Lifeline customers on the annual basis, and detect whether any of their customers already receive Lifeline benefits from a wireline ETC. However, this approach will no longer be sufficient, given recent rule changes enacted by the FCC. In the Lifeline and Link Up Reform Order, the FCC mandates all states use, at a minimum, the income and program criteria currently used by the federal default states.⁴ Under the federal criteria, participants in one of seven public assistance programs qualify for Lifeline service: Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income, Temporary Assistance for Needy Family, Federal Public Housing Assistance (Section 8), Low-Income Home Energy Assistance Program and National School Lunch Program's free lunch program. The first four federal criteria are also WTAP criteria, but the last three programs are not. DSHS does not administer these three programs and has no relevant client data pertaining to those programs. Therefore, DSHS's verification ability will be limited to customers who participate in the first four public assistance programs. Requiring Cricket to use the WTAP eligibility criteria alone is no longer as effective in deterring fraud as it was with TracFone, Virgin Mobile and YourTel.
- 14 However, Staff believes a large portion of the Lifeline customers will qualify for Lifeline discounts based on the four programs that are WTAP criteria. DSHS's database will remain a valuable resource for customer verification both initially and on an ongoing basis. Before the company gains access to the DSHS database, or if the company fails to gain such access, the company must use the proof documentation review process as directed by the FCC to enroll customers for Lifeline service. For customers who qualify based on their participation in the three additional federal assistance programs that are not in the DSHS database, or for customers who qualify based on income-based criteria, the company must review relevant proof documentations. Thus, through a combination of the DSHS WTAP criteria and the requirement to submit proof documentation of participation in one of the three programs specified by the FCC, discussed below, the

⁴ See 47 C.F.R. 54.409(2).

eligibility can be determined across all potential customers, not just those who meet WTAP requirements, and there are improved safeguards against fraud.

- 15 The FCC's recent reform in customer verification rules alleviates Staff's concerns of fraudulent enrollment that initially supported the use of the WTAP customer eligibility criteria. In its Lifeline and Link Up Reform Order, the FCC has mandated actions to strengthen preventive measures against waste, fraud and abuse of federal Low Income Support. The new federal rule requires an ETC enrolling a Lifeline customer not only to have the customer self-certify his or her eligibility for the service but to conduct its own investigation. Such an investigation may take one of two forms. If an ETC can determine a prospective subscriber's program-based eligibility for Lifeline service by accessing one or more databases containing information regarding enrollment in qualifying assistance programs, the ETC must use such eligibility databases; if an ETC cannot access eligibility databases, the ETC must review documentation demonstrating that a prospective subscriber qualifies for Lifeline under the program-based eligibility requirements. The FCC will also implement a National Lifeline Accountability Database to identify customers who may receive Lifeline benefits from more than one ETC and a National Eligibility Database to facilitate the verification of customer eligibility.
- 16 Staff is less concerned about customers fraudulently taking advantage of Lifeline discounts from Cricket, because Cricket's customers will pay at least \$25.00 per month for the wireless service. This reduces the risks of fraud as compared to providers that offer free cell phone service. Furthermore, in seeking forbearance from the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the FCC rules, the Company also commits to deploy a number of certification procedures and measures to prevent waste, fraud and abuse of the Lifeline fund.⁵
- 17 Given the FCC's mandate on minimum federal eligibility criteria, the constraints of the DSHS database, the FCC's new rules on customer verification, and the Company's commitment to the FCC's new rules, Staff recommends that the Commission not require Cricket to use the WTAP customer eligibility criteria, but rather require the Company to use the federal default eligibility criteria in 47 C.F.R. § 54.409(2). Staff encourages Cricket to work with DSHS to gain access to the agency's eligibility query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families.
- 18 The annual audit by the DSHS specified by Condition 8 in Appendix B, despite its limitations, remains an important safeguard to curb fraudulent enrollment. Staff recommends that the Commission keep this condition until the National Accountability Database and the National Lifeline Eligibility Database are fully functional.

⁵ *Telecommunications Carriers Eligible for Universal Service Support, Cricket Communications, Inc. Petition for Forbearance*, WC Dkt No. 09-197, Order, DA 12-158 (rel. Feb 7, 2012).

FINDINGS AND CONCLUSIONS

- 19 (1) The Commission has jurisdiction over eligible telecommunications carriers in Washington and the subject matter of this Order pursuant to 47 U.S. C. § 214(e)(2), 47 C.F.R. §§ 54.201(b)-(c) and WAC 480-123-040.
- 20 (2) Cricket commits to offer all services that are to be supported by the federal universal service support mechanisms set forth in 47 U.S.C. § 254(c) and 47 C.F.R. § 54.101(a) and advertise the availability of the services.
- 21 (3) Subject to the conditions in this Order and except for the requested exemption, Cricket meets the requirements for ETC designation under 47 U.S. C. § 214(e)(1), 47 C.F.R. § 54.201(d) and WAC 480-123-030.
- 22 (4) The Commission finds that granting the Company's petition for an exemption from the requirement of submitting an investment plan in WAC 480-123-030(1)(d) is consistent with the public interest, the purposes underlying regulation, and applicable statutes.
- 23 (5) The Commission finds that granting the Company's petition for designation as an Eligible Telecommunications Carrier for the purpose of receiving federal Lifeline support, subject to the conditions in this Order, will advance the purposes of universal service found in 47 U.S.C. § 254. The designation will benefit low-income households in Washington. The designation is in the public interest and should be granted subject to the conditions set forth in Appendix B to this Order.
- 24 (6) The Commission should retain jurisdiction over the subject matter and the parties to effectuate the terms of this Order.
- 25 (7) The Commission should reserve the right to modify the ETC designation and the conditions at a future date.

ORDER

THE COMMISSION ORDERS:

- 26 (1) The Commission grants the petition of Cricket Communications, Inc., for an exemption from WAC 480-123-030(1)(d), which requires an ETC applicant to provide a substantive two-year plan of the investments to be made with initial federal support and the associated customer benefits.

- 27 (2) The Commission grants the petition of Cricket Communications, Inc., for designation as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in service areas specified in Appendix A to this Order. The designation is subject to the conditions set forth in Appendix B to this Order.
- 28 (3) Cricket Communications, Inc. must comply with applicable federal laws and regulations on ETC obligations and requirements.
- 29 (4) Cricket Communications, Inc. must comply with Washington's rules on ETC obligations and requirements set forth in WAC 480-123, with the exception of WAC 480-123-030(1)(d).
- 30 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding.
- 31 (6) The Commission has authority to modify, suspend, or revoke Cricket Communications, Inc.'s ETC designation granted in this Order at a future date.

DATED at Olympia, Washington, and effective May 10, 2012.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

Appendix A

Cricket Communications, Inc.
Areas for Eligible Telecommunications Carrier Designation

<u>INCUMBENT LOCAL EXCHANGE CARRIER</u>	<u>EXCHANGE</u>
CENTURYTEL OF WASHINGTON, INC.	
	CHENEY
	EDWALL-TYLER
	MEDICAL LAKE
	REARDAN
	SPRAGUE
FRONTIER COMMUNICATIONS NORTHWEST INC.	
	CAMAS-WASHOUGAL
QWEST CORPORATION	
	BATTLE GROUND
	DEER PARK
	GREEN BLUFF
	LIBERTY LAKE
	NEWMAN LAKE
	RIDGEFIELD
	SPOKANE
	VANCOUVER

Appendix B
Washington State Conditions on Designation of Cricket Communications, Inc. as an Eligible Telecommunications Carrier

1. Within 30 days of approval of its ETC designation in Washington and prior to offering Lifeline services, Cricket must make a compliance filing for approval by the Commission containing the following:
 - a. Cricket's Lifeline rate plans, terms and conditions. The rates, terms and conditions shall include all provisions that apply to the Lifeline services offered by Cricket in Washington state and detailed procedures explaining how customers can participate in a particular Lifeline plan.
 - b. Cricket's proposed language to be used in all advertising of Lifeline services and on its websites. The language shall include information directing customers to the Washington State Office of the Attorney General for complaints regarding any Lifeline service issues.
 - c. Cricket's Lifeline Customer Application Form.

Commission Staff shall review Cricket's compliance filing and recommend to the Commission whether it should be approved or rejected within ten business days. Cricket shall not offer Lifeline services until the Commission has approved its compliance filing.

2. Cricket shall file with the Commission any future changes to its rates, terms, or conditions at least one day prior to the effective date of the change.
3. The information on Cricket's rates, terms and conditions shall be provided in a package sent to Lifeline customers after enrollment in Cricket's Lifeline program, as well as at Cricket's official Lifeline websites.
4. Cricket shall also provide Lifeline customers with the choice of all other rate plans available to its regular customers.
5. On a quarterly basis beginning with the quarter ending on September 30, 2012, Cricket shall provide the number of Lifeline customers that it enrolls each month. Cricket shall also report the number of deactivated Lifeline customers each month by service plan and the reasons for deactivation (e.g., disconnection due to non-payment, annual verification unsuccessful, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter.

6. Cricket shall respond within 30 days to Commission Staff's information requests on Cricket's Lifeline operations, including but not limited to Lifeline customers' usage patterns and Lifeline customer records.
7. Cricket shall cooperate with the Commission and the Department of Social and Health Services (DSHS) to work out a procedure to verify Cricket Lifeline customers' eligibility.
8. Cricket shall have DSHS audit its Lifeline customers' eligibility (including program eligibility and duplication with other Lifeline providers) at least once a year. Beginning in 2013, by March 31 of each year, Cricket shall file with the Commission the record of its Lifeline customers who qualify based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families in the prior calendar year. The customer records are subject to review of the Commission and DSHS. The records must have all the necessary information and be in an electronic format required by DSHS. After the Commission and DSHS notify Cricket of the results of the eligibility review, Cricket must take appropriate measures to either correct the customer records or stop providing services to ineligible customers and report the resolutions to the agencies within 60 days of the notice. This condition shall be in place until the national accountability database for duplicate Lifeline claims and the national database for Lifeline customer eligibility are fully functional.
9. Cricket shall provide the Commission a copy of its annual Lifeline recertification results that it files with the Universal Service Administration Company (USAC). The report shall be filed within 30 days after the due date with USAC.
10. Cricket shall file with the Commission, by March 31 of each year, a report on the number of complaints, categorized by the different nature of complaints that it received from Washington Lifeline customers during the prior calendar year (e.g., billing disputes and service quality complaints). This report shall include complaints filed with Cricket, the Commission's Consumer Protection and Communications Section, the Washington State Office of the Attorney General, and the Federal Communications Commission (FCC). The Commission reserves the rights to revoke Cricket's ETC designation if Cricket fails to provide reasonable quality of service.
11. Cricket shall cooperate with the Washington State Enhanced 911 Program (E911) and all Public Safety Answering Points on E911 issues and shall, upon request, designate a representative to serve as a member or alternate member of the Washington State E911 Advisory Committee or its Communications Sub-committee.
12. Cricket shall participate in the Washington State E911 Program's "What's Your Location" public information campaign if the E911 Program requests the participation of wireless carriers.

13. Cricket shall collaborate with the Washington State E911 Program to test the compatibility of its handsets with the new Emergency Service Information Network in Washington, including supplying handsets representative of Cricket's proprietary software and technical assistance should call delivery discrepancies be discovered.
14. Cricket shall comply with rules on cessation of business as specified in WAC 480-120-083.
 - a. Prior to cessation of business, Cricket shall make arrangements with its underlying carriers to provide minutes already sold to customers under the same terms and conditions it has with the customers, or provide refunds to the existing customers.
 - b. Cricket shall provide written notice to the following persons at least 30 days in advance of cessation of service:
 - i. The Commission;
 - ii. The state 911 program;
 - iii. Each of its customers;
 - iv. The national number administrator.
 - c. The notice to the Commission and the state 911 program must include the same information required by WAC 480-120-083 (3).
 - d. The notice to the customers must include the same information required by WAC 480-120-083 (4).
 - e. The notice to the national number administrator must include the same information required by WAC 480-120-083 (7).
 - f. Cricket shall file with the Commission at least 30 days in advance of its cessation of business and request the relinquishment of its ETC designation in Washington.
15. Cricket shall collect and maintain necessary records and documentation to ensure its compliance with the applicable FCC and Commission requirements, including existing requirements and any future modifications. The records and documentation shall be provided to Commission Staff upon request.
16. Cricket shall cooperate with Commission Staff on phone number conservation issues and shall comply with 47 C.F.R. § 52.
17. Cricket shall comply with all applicable federal and Washington state statutes and regulations, including Enhanced 911 tax contributions.