

Agenda Date: May 10, 2012
Item Number: A1

Docket: UT-111534
Company Name: Cricket Communications, Inc.

Staff: Jing Liu, Regulatory Analyst
Tim Zawislak, Regulatory Analyst
Roger Hahn, Regulatory Analyst
William Weinman, Assistant Director – Telecommunications

Recommendation

Grant the exemption from Washington Administrative Code 480-123-030(1)(d), which requires the filing of a substantive investment plan, and designate Cricket Communications, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2.

I. Background

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 Attachment 1, 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).

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.

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.

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

II. Discussion

Commission staff finds that Cricket qualifies for ETC designation with the proposed conditions in Attachment 2. 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.

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.

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 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 designations of other Lifeline-only ETCs such as

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.

TracFone Wireless, Inc. (TracFone), Virgin Mobile USA, L. P. (Virgin Mobile) and YourTel American, Inc. (YourTel).

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.

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 minutes and domestic 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.

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, the customer may return the handset to the manufacturer for warranty service. In the alternative, a customer can pay a small service fee to the company to exchange a defective handset for a new one and have the company deal with handset warranty.

Staff also reviewed the company's financial and technical capabilities to provide the supported Lifeline service. We 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.

In the proceedings involving the ETC petitions of TracFone, Virgin Mobile and YourTel, staff recommended additional 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.

One of staff's proposed modifications concerns customer eligibility criteria. Customer eligibility

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.

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 may 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.

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 review proof documentation of participation in one of the three programs specified by the FCC, discussed below, the eligibility can be determined across all potential customers, not just those who meet WTAP requirements, and there are improved safeguards against fraud.

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

⁴ See 47 C.F.R. § 54.409(2).

to facilitate the verification of customer eligibility.

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

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.

The annual audit by the DSHS specified by Condition 8 in Attachment 2, 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.

III. Conclusion

Based on the above analysis, staff believes Cricket is technically and financially capable of providing Lifeline services in proposed service areas. Designating Cricket as a Lifeline-only ETC will deliver competitive benefits to low-income households in Washington. Staff recommends the commission issue an order granting the exemption from WAC 480-123-030 (1)(d), which requires the company to file a substantive investment plan. Staff recommends the commission designate Cricket Communications, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support (Lifeline) from the federal Universal Service Fund in the service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2.

Attachments - 2

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).