

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible to Receive Universal Service Support)	WC Docket No. 09-197
)	
CRICKET COMMUNICATIONS, INC.)	
)	
Petition for Forbearance)	
)	

PETITION OF CRICKET COMMUNICATIONS, INC. FOR FORBEARANCE

Pursuant to Section 10 of the Communications Act of 1934, as amended (the “Act”),¹ Cricket Communications, Inc. (“Cricket”) petitions the Commission to forbear from enforcing Section 214(e)(5) of the Act and Section 54.207 of the Commission’s rules (which implements Section 214(e)(5))² in connection with Cricket’s pending applications for limited designation as an eligible telecommunications carrier (“ETC”) to participate in the Lifeline and Link Up programs.³ More specifically, Cricket seeks such forbearance with respect to: (i) those areas in New York, North Carolina, Tennessee, Virginia, and the District of Columbia in which Cricket has sought such ETC designation from the Commission and (ii) those areas in other

¹ 47 U.S.C. § 160.

² 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

³ See Petition of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (Dec. 22, 2010); see also 47 C.F.R. § 54.101 (describing Lifeline and Link Up support). Cricket notes that NTCH, Inc., also a provider of mobile wireless voice services, filed a similar forbearance petition on March 5, 2010. See Petition for Forbearance of NTCH, Inc., WC Docket No. 09-197 (Mar. 5, 2010). Cricket urges the Commission to ensure that any relief granted to NTCH, Inc. also is extended to Cricket.

states in which Cricket has sought, or will seek, designation as an ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.⁴

As explained herein, Sections 214(e)(5) and 54.207 are intended to prevent recipients of high-cost universal service support from engaging in “cream-skimming”—*i.e.*, the practice of targeting only the lower-cost portions of a rural study area. The Commission has explained that, where a competitive ETC obtains support that is based on the cost of serving particularly high-cost portions of an incumbent carrier’s study area without actually serving those areas, it can distort competition and potentially undermine universal service.⁵ Thus, Sections 214(e)(5) and 54.207 effectively require an ETC to either: (i) serve the entirety of relevant rural study areas; or (ii) complete a lengthy and complex series of boundary-modification proceedings at the federal and state levels to demonstrate that the provision of service to a subset of the incumbent carrier’s service territory would not result in cream-skimming or otherwise harm the public interest.

Critically, however, concerns regarding cream-skimming have no application in the context of Lifeline/Link Up services, as the Commission has made clear. Carriers that receive support only for serving low-income consumers, as opposed to serving high-cost areas, have no incentive or ability to engage in cream-skimming. Accordingly, because Cricket is not seeking any high-cost support, but rather seeks designation as an ETC only for the limited purpose of receiving low-income support (*i.e.*, Lifeline and Link Up support), enforcement of Sections 214(e)(5) and 54.207 would be unnecessary and would waste federal, state, and company resources. In fact, the requested forbearance would strongly *promote* the universal

⁴ 47 U.S.C. § 214(e)(2).

⁵ *See, e.g., Virginia Cellular, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 1563, at ¶ 32 (2003). *See also Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, at ¶ 172 (1996).

service objectives embodied in the Act and reflected in Commission policy. Therefore, Cricket respectfully requests that the Commission grant this Petition expeditiously, so that low-income customers can benefit from the variety of high-quality calling plans provided by Cricket without any unnecessary delay.

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 and without any termination fee. Directly and through its affiliates, Cricket currently serves approximately 4.6 million customers in 34 states and the District of Columbia. Cricket is a Delaware corporation authorized to do business pursuant to Commercial Mobile Radio Service (“CMRS”) licenses granted by the Commission.

Cricket Petition for Designation as an Eligible Telecommunications Carrier.

On December 22, 2009, Cricket filed with the Commission a petition seeking designation as an ETC throughout Cricket’s coverage area in certain counties in New York, North Carolina, Tennessee, Virginia, and the District of Columbia.⁶ These areas encompass portions of the study areas of several rural telecommunications carriers. Consequently, the requirements of Sections 214(e)(5) and 54.207 are implicated. Critically, Cricket seeks ETC designation only for the purpose of receiving available low-income support (*i.e.*, Lifeline and Link Up support).

Sections 214(e)(5) and 54.207. Under Section 214(e)(1) of the Act, an ETC must offer supported services and advertise the availability of and charges for such services “throughout the *service area* for which the designation is received[.]”⁷ Section 214(e)(5) of the

⁶ See Petition of Cricket Communications, Inc. for Designation as an Eligible Telecommunications Carrier, WC Docket No. 09-197 (Dec. 22, 2010).

⁷ 47 U.S.C. § 214(e)(1) (emphasis added).

Act, in turn, provides that “[i]n the case of an area served by a rural telephone company, ‘service area’ means such company’s ‘study area’ unless and until the Commission and the States . . . establish a different definition of service area for such company.”⁸ Section 54.207 of the Commission’s rules specifies a series of procedural steps that must be followed for this purpose at the federal and state levels to ensure that the provision of service to smaller portions of those areas would not result in cream-skimming or otherwise harm the public interest.⁹ These steps often take years to complete, at great cost to both the carrier and relevant regulators.

As noted above, Cricket’s coverage area overlaps with a number of rural study areas. Yet Cricket cannot serve the entirety of any of those study areas. Consequently, Sections 214(e)(5) and 54.207, if enforced, would preclude Cricket from operating as an ETC until the Commission and the states could redefine Cricket’s service areas to be narrower than the relevant rural study areas—even though the Commission has made clear that no “cream-skimming” analysis is necessary where an ETC applies only for low-income support.¹⁰

Forbearance Standard. Section 10(a) of the Act provides that the Commission *shall* forbear from applying any provision of the Act to a telecommunications carrier if the Commission determines that: (i) enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (ii) enforcement of such provision is not necessary for the protection of consumers; and (iii) forbearance from applying such provision is consistent with the public

⁸ 47 U.S.C. § 214(e)(5).

⁹ 47 C.F.R. § 54.207.

¹⁰ 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.”) (“*Virgin Mobile Forbearance Order*”).

interest.¹¹ Section 10(b) of the Act further provides that in evaluating whether forbearance would be consistent with the public interest, the Commission *shall* consider whether such forbearance would promote competitive market conditions or enhance competition.¹²

II. DISCUSSION

Forbearance from enforcement of Sections 214(e)(5) and 54.207 in connection with Cricket's ETC applications is appropriate and, indeed, required because: (i) enforcement is not necessary to ensure that Cricket's rates, terms and conditions are just, reasonable, and non-discriminatory; (ii) enforcement is not necessary to protect consumers; and (iii) forbearance is consistent with the public interest.

A. Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary To Ensure that Cricket's Rates, Terms and Conditions are Just, Reasonable, and Non-Discriminatory.

A carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that such enforcement is not necessary to ensure that the carrier's rates, terms and conditions are just, reasonable, and non-discriminatory. This prong of the analysis is easily satisfied because Sections 214(e)(5) and 54.207 have no bearing on a carrier's relationship with its customers. Rather, Sections 214(e)(5) and 54.207 serve to ensure that ETCs serving rural areas are not able to engage in cream-skimming, while at the same time preventing ETCs from complicating certain calculations with respect to high-cost support in rural areas.¹³

Far from leading to rate increases or unreasonable service terms, forbearance would enable Cricket to make Lifeline discounts available to its subscribers, thus giving consumers access to lower rates and the benefit of the additional commitments Cricket has made

¹¹ 47 U.S.C. § 160(a).

¹² 47 U.S.C. § 160(b).

¹³ See *Virgin Mobile Forbearance Order* at ¶ 38 n.101.

in its ETC designation petition. Nor would the requested forbearance in any way diminish the benefits of competition, which helps to ensure that rates are just, reasonable, and non-discriminatory.¹⁴ To the contrary, by enabling Cricket to obtain available discounts for Lifeline-eligible customers, forbearance would better enable Cricket to compete with larger nationwide wireless carriers and incumbent LECs. By the same token, forbearance would not prevent the Commission from enforcing Section 201 or Section 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.¹⁵ For these reasons, enforcement of Sections 214(e)(5) and 54.207 is not necessary to ensure that a Lifeline provider's rates, term, and conditions are just, reasonable, and non-discriminatory.¹⁶

B. Enforcement of Sections 214(e)(5) and 54.207 Is Not Necessary To Protect Consumers.

A carrier seeking forbearance from enforcement of a provision of the Act also must demonstrate that such enforcement is not necessary to protect consumers. Again, Sections 214(e)(5) and 54.207 do not govern the relationship between the carrier and its customers and thus are not consumer protection provisions. Rather, forbearance would protect consumers' interests by enabling them to obtain Lifeline discounts. Moreover, the requested forbearance would not affect the consumer protection provisions of the Act (*e.g.*, Sections 201, 202, and 222), or the Commission's rules—including Sections 54.101 and 54.201.¹⁷ Similarly, the requested forbearance would not affect Cricket's ability to provide E-911 or other critical

¹⁴ See *e.g.*, *id.* at ¶ 19.

¹⁵ 47 U.S.C. §§ 201, 202.

¹⁶ See *Virgin Mobile Forbearance Order* at ¶ 19 n.53 (citing *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003)).

¹⁷ See, *e.g.*, 47 U.S.C. §§ 201, 202, 22; 47 C.F.R. §§ 54.101, 54.201.

services to consumers.¹⁸ Cricket also would continue to abide by CTIA’s Consumer Code for Wireless Service (the “CTIA Code”), including in those areas where it is seeking designation as an ETC. Thus, enforcement of Sections 214(e)(5) and 54.207 is not necessary to protect consumers.

C. Forbearance from Applying Sections 214(e)(5) and 54.207 Is Consistent with the Public Interest.

Finally, a carrier seeking forbearance from the enforcement of a provision of the Act must demonstrate that such forbearance is consistent with the public interest. In this case, forbearance from the enforcement of Sections 214(e)(5) and 54.207 of the Act against Cricket not only is consistent with, but would strongly promote, the public interest. In particular, the requested forbearance would expedite Cricket’s ability to market its Lifeline and Link Up offerings to the public, thereby providing consumers with a valuable opportunity to obtain discounted service that includes a host of advantages. The particular nature of Cricket’s offerings—including, for example, its monthly prepaid calling plans¹⁹—would offer eligible consumers an attractive option that may not be available to them today.

As noted in Cricket’s ETC designation petition, Cricket has specifically tailored its wireless service plans to share the benefits of wireless telecommunications with underserved customers who have been left behind by other providers. Cricket offers unlimited voice service at affordable rates starting as low as \$30 per month and unlimited broadband starting at \$35 per month, without the typical strings attached (such as credit checks, long-term commitments, and early termination fees) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. With this foundation of simplicity and affordability as its business

¹⁸ Cf. *Virgin-Mobile Forbearance Order* at ¶¶ 21-22.

¹⁹ See, e.g., *id.* at ¶ 21.

model, Cricket and its joint venture partners have built a network covering almost 92 million individuals in 34 states and the District of Columbia, and are steadily expanding into new communities where the telecommunications needs of consumers are not being met by existing providers.

Cricket fulfills a critical role in the marketplace by ensuring that many Americans who cannot qualify for, or afford, the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications, including wireless broadband. Cricket's flat-rate, unlimited service model is ideal for many consumers on a limited budget; other carriers often impose hefty overage charges if consumers exceed their usage limit. Many consumers cannot even qualify for service from other providers because of creditworthiness concerns or the inability to commit to a long-term contract.

As a result, Cricket's customer base of approximately 4.6 million customers is quite unlike those of other wireless providers. Notably, approximately 80 percent of Cricket's customers have annual household incomes of less than \$50,000 and 55 percent have annual household incomes of less than \$30,000. In contrast, just 48 percent of other wireless carriers' customers have annual household incomes of less than \$50,000. The usage patterns of Cricket's customers also are distinct. Ninety percent of Cricket's subscribers use the service for their primary phone (compared to an industry average of 50 percent), and 68 percent do not have a traditional landline phone service at home (compared to an industry average of 15 percent).

Cricket's customers also use an average of approximately 1500 minutes per month—almost twice as many minutes per month as the industry average. These figures reveal that Cricket reaches market segments that other carriers have ignored, and its customers look to Cricket for all of their telecommunications needs, including an entrance to the online world. In

fact, nearly 50 percent of customers subscribing to Cricket’s flat-rate wireless broadband service have never had Internet access at home—not even dial-up.

The requested forbearance would expedite Cricket’s ability to serve these customers, and thus promote the public interest. In particular, forbearance would enable Cricket to introduce a competitive alternative that better responds to the particular needs of low-income consumers, consistent with Commission policy generally and the specific guidance provided in Section 10(b) of the Act. At the same time, forbearance from the enforcement of Sections 214(e)(5) and 54.207 against Cricket would not harm the public interest. As explained above, such enforcement is not necessary to ensure that Cricket’s rates are just, reasonable, and non-discriminatory, or to otherwise protect consumers.

Further, such enforcement is not necessary to advance the universal service policies set forth in Section 214 of the Act. First, as the Commission already has found, there is no need to perform a “cream-skimming” analysis where, as here, an ETC seeks to receive only low-income support.²⁰ Second, and perhaps more importantly, forbearance from the enforcement of Sections 214(e)(5) and 54.207 simply would expedite Cricket’s ability to provide Lifeline and Link Up service, but would not prevent the Commission from designating Cricket as an ETC within *some* defined “service area” (*i.e.*, its existing coverage area), nor would it negate the service obligations specified in Section 214(e)(1) of the Act and the Commission’s implementing rules.

III. ANTI-DRUG ABUSE CERTIFICATION

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1998, 21 U.S.C. Section 862.

²⁰ See *Virgin Mobile Forbearance Order* at ¶ 38 n.101 (2009).

IV. CONCLUSION

For the reasons set forth above, Cricket respectfully submits that forbearance from the enforcement of Section 214(e)(5) of the Act and Section 54.207 of the Commission's rules against Cricket is appropriate and required.

Respectfully submitted,
CRICKET COMMUNICATIONS, INC.

By: /s/ Matthew A. Brill
Matthew A. Brill
Jarrett S. Taubman
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

Its Counsel

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APPENDIX A
Description of Relief Sought

Cricket hereby provides the following information required by Section 1.54(a) and (e) of the Commission's rules, 47 C.F.R. §§ 1.54(a), (e):

- (1) Cricket petitions the Commission to forbear from enforcing Section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and Section 54.207 of the Commission's rules, 47 C.F.R. § 54.207.
- (2) Cricket seeks forbearance on behalf of itself only.
- (3) Cricket seeks forbearance with respect to its provision of Commercial Mobile Radio Service ("CMRS").
- (4) Cricket seeks forbearance with respect to (i) those areas in New York, North Carolina, Tennessee, Virginia, and the District of Columbia in which Cricket has sought such designation as an eligible telecommunications carrier ("ETC") from the Commission; (ii) those areas in other states in which Cricket has sought, or will seek, designation as an ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.

Cricket has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

All supporting data upon which Cricket intends to rely, for purposes of this petition, are included in the preceding narrative. Cricket is not relying on any separate market analysis, and, as such, Cricket is not attaching a separate appendix with supporting data.