

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED) CAUSE NO. 41052 ETC 57
PETITION OF CRICKET COMMUNICATIONS,)
INC. FOR DESIGNATION AS AN ELIGIBLE) APPROVED:
TELECOMMUNICATIONS CARRIER)

OCT 17 2012

J. O. A.
[Handwritten signatures and initials]

ORDER OF THE COMMISSION

Presiding Officers:

Larry S. Landis, Commissioner

David E. Veleta, Administrative Law Judge

On September 30, 2010, Denali Spectrum Operations, LLC (“Denali” or “Petitioner”) filed its Verified Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Indiana for the Limited Purpose of Offering Wireless Lifeline Service to Qualified Households with the Indiana Utility Regulatory Commission (“Commission”). In its Petition, Denali sought designation as an ETC pursuant to § 214(e)(2) of the Federal Communications Act of 1934, as amended, (“Act”) solely to provide wireless service supported by the Federal Universal Service Fund’s (“USF”) Lifeline program. On January 11, 2012, Cricket Communications, Inc. (“Cricket” or “Petitioner”) filed its Verified Amended Petition for Designation as an Eligible Telecommunications Carrier reflecting that Cricket had acquired the remaining interest in Denali since the time of the Original Petition; Cricket also included in its Amended Petition a broader territorial request (“Amended Petition”).

On October 12, 2010, CenturyTel of Central Indiana, d/b/a CenturyLink (“CenturyLink”) filed its Petition for Leave to Intervene. On November 23, 2010 the Commission granted CenturyLink’s Petition for Leave to Intervene. On December 22, 2010, Petitioner filed its direct testimony and exhibits. On January 12, 2011, CenturyLink filed its responsive testimony. Petitioner submitted supplemental testimony on August 26, 2011. On September 16, 2011, CenturyLink submitted supplemental testimony. On September 23, 2011, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its direct testimony of Senior Analyst Ronald L. Keen.

On January 11, 2012, Petitioner filed supplemental testimony. On February 9, 2012, the OUCC filed its supplemental testimony. On February 28, 2012, Petitioner filed its rebuttal testimony. On March 13, 2012, the OUCC filed a motion to amend the procedural schedule, to allow it and the Commission time to review the Federal Communications Commission’s (“FCC”) February 6, 2012 Lifeline Reform Order (“*Lifeline Reform Order*”)¹; the OUCC in its motion also requested a technical conference to address its concerns with the *Lifeline Reform Order*. On March 13, 2012 the Commission denied the OUCC’s request for a technical conference. On April 11, 2012 Cricket filed additional supplemental testimony, to respond to the

¹ *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656 (2012).

OUC's concerns about the implications of the *Lifeline Reform Order*. On June 29, 2012, Cricket filed a Motion for Administrative Notice, so that the Commission would take notice of the FCC's ruling that Cricket was designated as an ETC in nineteen states.²

On July 18, 2012, pursuant to notice properly published according to law, an evidentiary hearing was convened at 10:00 a.m. at the PNC Center, 101 West Washington Street, Indianapolis, Indiana, Room 222. At the hearing, Cricket, the OUC, and Intervenor CenturyLink appeared and participated. No members of the general public were present or sought to testify at the hearing. The testimony and exhibits of the parties were admitted into evidence and cross examination of the witnesses was waived by all parties involved in the proceeding.

The Commission, having examined all of the evidence of record, and being duly advised in the premises now finds as follows:

1. Notice and Jurisdiction. Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Act, 47 U.S.C. § 151 *et seq.*, and applicable FCC Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with Commission orders of generic application in Cause Nos. 40785, 41052 and 42067. The Commission also has jurisdiction pursuant to Indiana Code § 8-1-2.6-13(d)(5)(B). The Commission therefore has jurisdiction over the subject matter of this Cause.

2. Petitioner's Characteristics. Cricket is a wholly-owned subsidiary of Leap Wireless International, Inc., a Delaware corporation headquartered in San Diego, California. Cricket is a Delaware corporation authorized to do business in Indiana, and authorized to provide services throughout the requested ETC area, pursuant to a Commercial Mobile Radio Service ("CMRS") license granted by the FCC, and a certification that the Commission granted Cricket's predecessor, Denali, on April 30, 2007, which allowed Petitioner to provide commercial mobile telecommunication service throughout northern Indiana. Petitioner is a national provider of wireless voice, messaging, and data services, and is a common carrier as defined by 47 C.F.R. § 20.9 and a telecommunications carrier as defined by 47 U.S.C. § 153(51).

3. Requirements for ETC Designation. The Commission's November 5, 1997 Order in Cause No. 40785 ("40785 Order") adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the universal services or functionalities set out in 47 C.F.R. § 54.101(a). We note that the FCC modified the list of supported services that must be offered by ETC designees in the *USF/ICC Transformation Order*.³ We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order*, which is discussed in more detail below. In addition to offering the delineated universal

² The Commission granted Cricket's Motion for Administrative Notice at the July 18, 2012 Evidentiary Hearing.

³ *Connect America Fund*, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*").

services, to be eligible for designation as an ETC, applicants are required by 47 C.F.R. § 54.405 to offer qualifying low-income customers Lifeline programs. The Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's Lifeline program as a wireless carrier. If the Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Cricket as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the supported services and the Lifeline programs using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the 40785 Order, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designated area is served by a rural or non-rural carrier. *Federal-State Joint Board on Universal Service*, 20 FCC Rcd 6371, 6389-6390 (2005) ("2005 FCC ETC Order"). The Commission adopted the FCC's new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, the Commission issued the first "Lifeline only" ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 ("Virgin Mobile ETC Order"). Subsequently, we granted Lifeline only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54; i-Wireless, LLC in Cause No. 41052 ETC 56; TerraCom, Inc. in Cause No. 41052 ETC 60; Telrite Corporation in Cause No. 41052 ETC 58; and T-Mobile Central LLC and Powertel/Memphis, Inc. in Cause No. 41052 ETC 61 and Budget Prepay, Inc. d/b/a Budget Mobile in Cause No. 41052 ETC 63. In each of these Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*,⁴ the FCC revised the ETC designation eligibility requirements by: (1) eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance from the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings; (2) requiring carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (3) eliminating the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (4) eliminating the requirement that Lifeline only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC's *Lifeline Reform Order*⁵ is designed to:

...substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund.

⁴ *Connect America Fund*, 27 FCC Rcd 605 (2012) ("*USF/ICC Clarification Order*").

⁵ *Lifeline Reform Order* at 6659.

The *Lifeline Reform Order* changed the requirements pertaining to state ETC designations found in 47 C.F.R. § 54.201(h). In the Order, the FCC concluded that “in order to ensure Lifeline-only ETCs, whether designated by the [FCC] or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service.”⁶ Relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.⁷

The *Lifeline Reform Order* modified and added new requirements for ETC designation that apply to ETC applications filed with state commissions that specifically adopt the additional requirements. The requirement to demonstrate financial and technical capability was added in 47 C.F.R. § 54.202(a)(4). The requirement to offer a Lifeline plan comparable to the incumbent local exchange carrier (“ILEC”) in the service areas for which it seeks designation was replaced with 47 C.F.R. § 54.202(a)(5), which requires ETC applicants to explain the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Additionally, once designated by this Commission as a Lifeline ETC, the designee’s Lifeline offerings must reflect a uniform \$9.25 per month federal reimbursement of the Lifeline discount; include specific disclosures in advertising and outreach; include required processes for determining initial and ongoing eligibility; and comply with the reporting and compliance obligations set forth herein. In keeping with the Commission’s past practice of adopting the FCC’s ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order*, as well as the requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner’s requested relief.

4. **Evidence Presented.**

(a) **Petitioner’s Testimony.** Petitioner is a Delaware corporation and a wholly-owned subsidiary of Leap Wireless International, Inc. Petitioner provides prepaid digital wireless service on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract or a credit check. Petitioner operates as a facilities-based carrier in the State of Indiana, and it intends to launch Lifeline services as soon as it receives Commission approval of its Amended Petition.

Petitioner presented the pre-filed testimony of Julie Buechler, Cricket’s Manager for Government Programs Government Affairs at the Evidentiary Hearing. (Ms. Buechler adopted the pre-filed direct testimony of Brian Root, former Manager of Wireless Operations for Denali, as well as sponsored several other pieces of testimony.) Ms. Buechler testified that designating Cricket as a competitive ETC will be in the public interest because such a designation will serve

⁶ *Id.* at 6819.

⁷ *Id.*

the public generally and the needs of low income customers in Indiana in particular. Ms. Buechler testified that Cricket has specifically tailored its wireless service plan to share the benefits of wireless telecommunications with under-served customers who have been left behind by other providers by offering unlimited voice service at affordable rates starting as low as thirty-five dollars (\$35.00) per month or twenty-five dollars (\$25.00) for Lifeline customers. Cricket will offer a \$10.00 discount to Lifeline customers, absorbing the difference between the federal reimbursement rate and their discount. Cricket's Lifeline plan does not require credit checks, long term commitments and early termination fees. These offerings permit many economically disadvantaged customers to obtain wireless service.

Ms. Buechler set forth the FCC's requirements for designation as a Lifeline-only ETC, including the changes made as a result of the *Lifeline Reform Order* and the *USF/ICC Transformation Order*. Ms. Buechler testified that Cricket meets the requirements to be designated as an ETC. Ms. Buechler stated Cricket is a common carrier that offers the services that are supported by the Lifeline Program of the Federal Universal Service Fund.⁸ She noted these services are embodied in the recently-revised FCC rule 47 C.F.R. § 54.101(a), which states that the supported services are "voice telephony services. . . [which must include] voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services. . . ." Ms. Buechler's testified that Cricket's service will meet all the technical elements of the supported service. Specifically, Cricket will provide voice grade access to the public switched network; local usage at the flat fee charged for all service, with no additional charge to end users; and access to emergency services to the extent available by the local government or public safety organization.⁹

Ms. Buechler also testified that the FCC granted Cricket's request for forbearance from the service area conformance requirement of the Act, as amended, and section 54.207(b) of the FCC's Rules ("*Forbearance Order*"). Ms. Buechler further testified that Cricket will be a completely facilities-based provider with respect to its Indiana Lifeline services, via owned and operated cell sites and switches. She explained that Cricket has 135 cell sites in Indiana - all with four-hour battery back-up. The cell sites in Indiana are homed in to switches in either Northbrook, Illinois or Dayton, Ohio.

Moreover, in Ms. Buechler's rebuttal testimony, she testified that Cricket would comply with all new requirements imposed in the FCC's *Lifeline Reform Order*, which include providing the supported services, as defined in the revised FCC Rule 47 C.F.R. § 54.101(a), to qualified Lifeline subscribers.

⁸ 47 C.F.R. § 54.101.

⁹ These elements were previously listed in the FCC's rules as separate "services," along with other, additional services that were eliminated in the revised rule 54.101(a), including access to operator services, access to directory assistance. Therefore, Ms. Buechler's testimony separately addressed the new elements of the new definition of supported services in detail.

In her testimony, Ms. Buechler also testified that Cricket will advertise the availability of and the charges for its universal service qualifying offers in accordance with 47 C.F.R. § 54.201(d)(2).

In addition, Ms. Buechler discussed how Cricket meets the additional requirements adopted by the FCC in its *2005 ETC Order*. Specifically, she testified that:

- Cricket will provide service throughout its proposed designated service area to all customers making a reasonable request for service (previously embodied in 47 C.F.R. §§ 54.202(a)(1)(A) and 54.202(a)(1)(B)), and after the FCC's *Lifeline Reform Order*, embodied in revised 47 C.F.R. § 54.101(b);
- The requirement to submit a five-year plan does not apply to lifeline-only ETCs such as Cricket (47 C.F.R. § 54.202(1)(ii)), which was recently confirmed by the FCC in the *Lifeline Reform Order* and in revised 47 C.F.R. § 54.202(a)(1)(ii);
- Cricket meets the requirement to demonstrate the capability to remain functional in emergency situations (revised 47 C.F.R. § 54.202(a)(2));
- Cricket will satisfy applicable consumer protection and service quality standards (revised 47 C.F.R. § 54.202(a)(3));
- Cricket will offer a local usage plan comparable to that offered by the ILEC (which exceeds the requirements in revised 47 C.F.R. § 54.202(a)(4)); and
- Cricket will certify acknowledgment that it may be required to provide equal access (previously embodied in 47 C.F.R. § 54.202(a)(5)).

Ms. Buechler explained how designating Cricket as an ETC would benefit the public interest, highlighting the benefits of increased competitive choice, the unique advantages of Cricket's service offerings, Cricket's wireless Lifeline plan, and the impact on the Universal Service Fund. Ms. Buechler described Cricket's policy regarding non-usage, in that if a customer does not prepay then the services are suspended until payment is made, therefore there is not ongoing billing if a customer is not using the service. Ms. Buechler also described Cricket's commitment to follow certification and verification procedures to make sure that its customers are eligible to receive Lifeline benefits. Ms. Buechler also explained that, consistent with the requirements of the FCC and any Commission ETC order, Cricket will comply with applicable annual reporting requirements, including filing a report with the Commission consistent with 47 C.F.R. § 54.209.

In her rebuttal testimony, Ms. Buechler explained how Cricket would comply with the changes implemented by the FCC's *Lifeline Reform Order*, including complying with new advertisement and disclosure policies and practices; and complying with new policies pertaining to subscriber eligibility, initial certifications, and annual verifications. Ms. Buechler testified that, consistent with 47 C.F.R. § 54.202(a)(4), as amended by the *Lifeline Reform Order*, Cricket has the financial and technical capabilities to provide Lifeline service in Indiana.

(b) CenturyLink's Testimony. Alan Matsumoto, a State Regulatory Manager at CenturyLink, filed direct testimony and testified that Cricket's Petition listed several CenturyLink wire centers. Mr. Matsumoto testified that CenturyLink's status as a "rural telephone company" is a key distinction because when a Competitive ETC applies for ETC designation in an area served by an incumbent rural telephone company, the "designated service area" must be the incumbent provider's entire study area unless a special request is made to re-define the study area. Mr. Matsumoto later submitted responsive testimony and testified that CenturyLink was aware that Cricket had filed its Forbearance Petition with the FCC and requested relief from the obligations to serve the entire study area of a rural telephone company and to perform a creamskimming analysis. Mr. Matsumoto testified that until the FCC ruled on the Forbearance Petition, the Commission should not rule on the Amended Petition.

(c) OUCC's Testimony. The OUCC presented direct testimony from Ronald Keen, Senior Analyst in the Resource Planning and Communications Division. Mr. Keen stated that he reviewed the original Petition, Petitioner's responses to data requests issued by the OUCC, the FCC's September 16, 2011 *Forbearance Order*, granting Cricket's request for relief from having to perform a creamskimming analysis when seeking limited, Lifeline-only ETC designations for areas that include less than an underlying rural ILECs' complete rural study area. Mr. Keen testified that he discussed various points and concepts of the case with other members of the OUCC.

Mr. Keen set forth the main issues the OUCC considers in ETC designation cases: to promote a healthy competitive environment to afford consumers choice; to increase Indiana's Lifeline take rate, thereby ensuring low income consumers in Indiana remain connected to the Public Switched Telephone Network ("PSTN"); and to ensure ETC designated providers are companies committed to Indiana communities and Indiana customers. Mr. Keen testified that Cricket's designation as an ETC would contribute to these goals. Mr. Keen also testified that introducing additional wireless prepaid C-ETC providers into the market would afford low-income individuals and families a wider choice of providers and available services, and would create a robust competitive marketplace for Lifeline service providers and offerings.

Mr. Keen also described the Commission's requirements for ETC designation in Indiana, and recommended the Commission grant Cricket's request. Mr. Keen testified that the OUCC believes that Cricket can meet the nine mandated service requirements of 47 C.F.R. § 54.202(a). Mr. Keen testified that Cricket has been approved as a Lifeline-only ETC in seven states, and has pending applications for ETC designation in nine other states. Mr. Keen also testified as to the analysis involving various public interest factors that the OUCC had considered in evaluating Cricket's petition, including competitive choice, infrastructure, carrier of last resort obligations, rates, service quality, fraud, its FCC *Forbearance Order* regarding creamskimming, and public comments. In that analysis Mr. Keen emphasized several key points. Mr. Keen testified that the granting of an ETC designation to Cricket will create a competitive choice for low income consumers in the areas the company serves and testified that providers requesting limited, Lifeline-only ETC status provide a substantial benefit by helping low income customers remain connected to their larger communities. Mr. Keen testified that the OUCC believes that Cricket's rates are competitive. Mr. Keen concluded his analysis by opining that the granting of C-ETC status to Cricket is consistent with the public interest.

5. Commission Discussion and Findings. Universal Service funds are provided in four areas: (1) funds to support service to high cost areas; (2) provision of discounted telecommunications and internet access to eligible schools and libraries (also known as the “E-Rate” program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs; and (4) provision of discounted service to rural health care providers. *Comprehensive Review of Universal Service Management, Administration and Oversight*, 22 FCC Rcd 16372, 16374 (2007).

Cricket seeks ETC designation in Indiana for the limited purpose of offering Lifeline only services. Accordingly, Cricket’s application does not implicate the other three Universal Service fund programs. Based on the evidence in the record and the discussion below, we find that Petitioner meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) of the Act and related FCC Rules, and for the limited purpose of offering Lifeline only service in Indiana, and satisfies the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*.

(a) Common Carrier Status. The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(10) as any person engaged as a common carrier for-hire in interstate telecommunications utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Cricket is a common carrier for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

(b) Facilities-Ownership. Cricket is a facilities-based carrier as required by 47 C.F.R. § 54.201(d)(1). Cricket is a full service facilities-based CMRS provider with its own switching, network facilities, cell sites, transmit and receive radios, and spectrum in Indiana which will serve consumers in its proposed ETC service area. Cricket has 135 cell sites in Indiana – all with four hour battery back-up. Based on the foregoing, we conclude that Cricket meets the requirements of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(d)(1) by using its own facilities to provide the supported services.

(c) Services Required to be Offered by an ETC. The evidence confirms that upon designation as an ETC in Indiana, Cricket will provide all of the functionalities required of an ETC in the *Lifeline Reform Order* and pursuant to 47 C.F.R. § 54.101(a) as follows:

i. *Voice-grade access to the public switched telephone network.* The FCC has concluded that voice grade service means the ability to make and receive phone calls within a specified bandwidth and frequency range. 47 C.F.R. § 54.101(a)(1). We find that Petitioner meets this requirement. No evidence was presented that Petitioner’s customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Petitioner satisfies this requirement.

ii. *Local usage.* ETCs must provide minutes of use for local service at no additional charge to end users. As the record demonstrates, Cricket will offer users the ability to send and receive local phone calls wherever Cricket offers service. For a flat monthly rate of

\$25.00 for the basic package, Cricket Lifeline customers will receive unlimited local calling. Ms. Buechler provided testimony that Cricket would offer Lifeline customers access to several features that are included in the company's flat-fee plan, including voice mail, caller I.D., call waiting services and 911 capabilities. Based on the evidence, we find that Petitioner's offering satisfies this requirement to provide minutes of use.

iii. Access to Emergency Services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Evidence submitted by Cricket demonstrates that so long as the phone has a charge, it provides access to 911 and E911 services to all of its customers, regardless of their activation status, and Cricket complies with federal regulations regarding 911 and PSAPs. Because Cricket is a facilities-based carrier in Indiana rather than a reseller, Cricket is not subject to a requirement that it obtain certification of access to PSAPs from underlying carriers.

iv. Toll Limitation for Qualifying Low-Income Consumers. Voice telephony services eligible for federal universal service support mechanisms must provide toll limitation services to qualifying low-income consumers. Cricket indicates that it will provide toll limitation to Lifeline customers. Accordingly, we find Cricket satisfies this requirement.¹⁰

(d) Lifeline Service Offering Requirements. Carriers seeking designation as an ETC for purposes of receiving support for Lifeline only are required to submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans. (See 47 C.F.R. § 54.202(a)(5)) Ms. Buechler testified that Cricket intends to offer Lifeline customers a \$10.00 discount off all of their packages, the lowest of which is \$35.00 before the Lifeline discount, as indicated in Exhibit C of Cricket's Amended Petition. The packages include a flat fee for unlimited minutes, and its services will also include several functions and features. The evidence shows that Petitioner satisfies this requirement.

(e) Functionality in Emergency Situations. FCC regulations require that applicants for ETC designation demonstrate their ability to remain functional in emergency situations 47 C.F.R. § 54.202(a)(2). Ms. Buechler testified that Cricket is committed to providing and maintaining essential telecommunications services in times of emergency. In particular, Cricket maintains a reasonable amount of back-up power to ensure the functionality of its service without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. More specifically, all mobile switching centers and cell sites have battery backup power, each switching center has a

¹⁰ We noted that in the *Lifeline Reform Order*, the FCC clarified that it does not consider a subscriber who has a Lifeline calling plan that includes a set number of calling minutes available for either local or domestic long distance calls to have voluntarily elected to receive toll limitation support ("TLS"); therefore, TLS will not be provided to ETCs providing such plans. *Lifeline Reform Order* at 6756.

dedicated diesel generator, and there are several cell site generators in the market area. In instances of power outages, priority is set based upon traffic, cell site location and time of day. In certain parts of the service area, a cell on wheels can be deployed. In case of a total switch outage, a mobile command center may be established by each switch vendor. Based on Ms. Buechler's testimony we find that Petitioner satisfactorily meets the requirement to remain functional in emergency situations.

(f) **Advertising Requirements.** Ms. Buechler testified that Cricket will advertise the availability of the supported services, and the corresponding rates and charges, in a manner designed to inform the general public within the designated service area. This advertising may occur through a combination of media of general distribution, such as radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet. Ms. Buechler testified that Cricket will comply with the requirements of the *Lifeline Reform Order*, including the requirements that advertisements display the disclosures described in that Order. Based on the foregoing, we find that the evidence in the record indicates that Cricket will comply with all applicable advertising requirements.

(g) **Petitioner's Designated ETC Service Areas.** The FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). Cricket has provided a map of its coverage area and has indicated that it has the ability to serve these areas and has provided a list of ILEC wire centers and rural study areas included in the designated service area as required by the Commission's Order in Cause No. 41052. In addition, Cricket demonstrated it has forbearance from the FCC to serve rural service territories that it is unable to serve in their entirety.

(h) **Public Interest Considerations.** As noted in the OUCC's evidence, the designation of Cricket as an ETC requires a public interest analysis. See *2005 FCC ETC Order* at 6389-6390. In the absence of statutory structures for evaluating the public interest, the FCC has recommended that ETC designations be analyzed "in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas." *2005 FCC ETC Order* at 6388.

i. **Use of Lifeline Funding.** The record indicates that Cricket will use funds from the federal Lifeline program to provide supported services to Lifeline customers. Cricket met this burden of proof for the Lifeline program. We find that Cricket's plans are consistent with current FCC regulations on the use of such funds.

ii. **Impact on the Universal Service Fund.** We have previously recognized that the FCC has undertaken various steps to address the growth in lifeline disbursements. *Perry-Spencer Communications, Inc.*, Cause No. 41052-ETC-53, 2008 Ind. PUC LEXIS 510, at *33 (IURC July 24, 2008). Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, the Lifeline

program ensures that universal service fund support only funds the carrier that serves the customer. However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers.

We note that Cricket is proposing a prepaid Lifeline offering, and we have historically underscored our concern that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. While, Cricket's plans do not offer free minutes, we nevertheless find that many of the same requirements to control waste, fraud and abuse of the Lifeline program are applicable to Cricket. Therefore, we find as we did in the Virgin Mobile ETC Order that the public interest requires that we impose certain safeguards on Cricket. To ensure that a prepaid Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on Cricket's adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers; dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility, among other conditions enumerated in this Order. Provided these requirements are satisfied, along with other conditions and safeguards promulgated in this Order and in FCC rules to deter waste fraud and abuse, we find that Cricket's Lifeline-only designation should not have an excessive impact on the universal service fund.

iii. Consumer Protection. The FCC found that an ETC applicant must make a specific commitment to objective measures to protect consumers. *See 2005 FCC ETC Order.* Cricket stated in its Verified Petition and testimony that it will comply with the CTIA Code of Conduct as a condition of its ETC designation. Mr. Keen testified that the OUCC anticipates that while Cricket is not a signatory to the CTIA Consumer Code, it accepts Cricket's testimony that it will voluntarily satisfy the requirements contained in the CTIA Consumer Code for Wireless Service, and that the CTIA Consumer Code is comparable to Cricket's "Terms and Conditions".

iv. Creamskimming. The FCC identified creamskimming as an appropriate factor to consider in "areas where an ETC applicant seeks designation below the study area level of a rural company." *See 47 C.F.R. § 54.202(b).* However, in its *Forbearance Order*, the FCC granted Cricket relief from any creamskimming analysis.

v. Increased Customer Choice. Currently in Indiana all ILECs are required to provide the Lifeline discount to eligible customers. In light of Indiana's low Lifeline take rate and the recent ETC relinquishments by other Indiana carriers, we agree with Mr. Keen's testimony that this offering may bring increased competitive choice to the Lifeline eligible customers in Indiana and that this offering may further assist in reaching additional Lifeline eligible customers. Based on the record, we find that Cricket's designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

vi. Affordable Rates. We must also consider whether designation as an ETC will “ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]” *2005 FCC ETC Order at 6388*. Cricket presented evidence that it offers unlimited services on all of its features, including local services and long distance services, at thirty-five dollars (\$35.00) a month, and the Lifeline discount would bring that price down to twenty-five dollars (\$25.00) a month. The OUCC did an average Lifeline consumer base analysis and came to the conclusion that the price was competitive, and did not dispute the affordability of Petitioner’s rates. Accordingly, based on the record, we find that the designation of Cricket as an ETC would serve the public interest by ensuring the availability of telecommunications services at just, reasonable and affordable rates.

vii. Advantage & Disadvantages of the Offering. The record reflects that Petitioner’s Lifeline service offering has unique advantages. Cricket’s Lifeline offerings have the benefit of typical prepaid wireless Lifeline plans in that they do not require a contract or credit check, avoiding a potential barrier to obtaining service and the potential for the Lifeline customer to accrue early termination fees they cannot afford. Cricket’s Lifeline plans provide unlimited monthly minutes, so customers will not be faced with higher per minute rates once their free allotment of minutes has been used, as is common with many prepaid wireless Lifeline providers. Accordingly, we find that Cricket has satisfied this criterion of our public interest inquiry.

viii. Commitment to Provide Service upon Reasonable Request. Cricket provided evidence that to the extent that it does not currently have wireless coverage within a portion of its proposed ETC service area, it will consider requests for service consistent with its universal service obligations and, over time, will expand its coverage to serve consumers throughout its ETC service area. We find that Cricket’s commitments satisfy the requirements of 47 C.F.R. § 54.405(a). Accordingly, we find that Cricket has demonstrated its willingness and ability to provide service throughout its requested service area.

ix. Additional Public Interest Analysis. ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute appropriately to public interest funds from which its network and its customers benefit. Cricket has testified to its willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Indiana Code ch. 8-1-6, the InTRAC fee pursuant to Indiana Code § 8-1-2.8, and the Indiana Universal Service Fund pursuant to the Commission’s Order in *Commission Investigation of Universal Service Reform*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004). Based on the foregoing public interest analysis, we conclude that designating Cricket as an ETC will promote the public interest and further the goals of the Act.

6. Regulatory Oversight. This Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See e.g., NPCR, Inc. d/b/a Nextel Partners*, Cause No. 41052 ETC 43, 2004 Ind. PUC LEXIS 87, at *84 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. 47 U.S.C. § 254(e). In order for this Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to file an informational tariff with the Commission and ETC applicants must track their customers who receive the Lifeline benefit. *See* 40785 Order. The record reflects that Cricket maintains a Lifeline database, and Cricket has demonstrated its intention to comply with the Commission's Lifeline informational tariff filing requirement. Cricket must also comply with USF tracking requirements this Commission previously established to ensure that funds received from the Universal Service Administrative Company for Indiana are devoted to furthering universal service goals within Cricket's designated service area. Accordingly, we find that Cricket's terms and conditions of service should be incorporated into its Lifeline informational tariff for Indiana and filed with the Commission's Communications Division for review prior to Cricket making its universal service offering available to eligible consumers in Indiana.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Cricket committed in testimony to require each customer to self-certify under penalty of perjury that he or she is the only member of a household receiving the Lifeline discount and does not receive the Lifeline discount for any other phone. Cricket indicated it will require Lifeline customers to provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income. Cricket will abide by the applicable regulations of the FCC and the Commission regarding certification and verification of customer eligibility.

7. Prospective ETC Reporting Requirements. Finally, we find that Cricket shall be required to meet the prospective reporting requirements consistent with new federal rules in 47 C.F.R. § 54.422 which include reporting: (1) the ETC holding company and operating names, any affiliate relationships, and branding as well as universal service identifiers; (2) information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; (3) detailed information on any outages in the prior calendar year; (4) number of complaints per 1000 handsets; (5) certification of compliance with applicable service quality standards; and (6) certification that the carrier is able to function in emergency situations.

Cricket's compliance filings shall be filed under this Cause at the same time it files its annual report pursuant to 47 C.F.R. § 54.422, unless otherwise directed by the Commission.

8. Conditions on Cricket's Designation as an ETC. In accordance with the Commission's findings above, Cricket shall be subject to the following conditions:

- (a) Consistent with 47 C.F.R. § 54.407, Cricket shall not receive universal service support for a subscriber to lifeline service until the subscriber activates the service. Cricket provides customers a thirty day grace period to pay on the customer's prepaid, unlimited talk plan. If the customer has not paid within the grace period Cricket shall disconnect the Customer's Lifeline account, and Cricket will no longer report the customer on FCC Form 497.
- (b) Cricket shall offer eligible Lifeline customers a \$10.00 discount off of their various calling packages consistent with Exhibit C of the Amended Petition. Prior to providing Lifeline service in Indiana, Cricket shall file a tariff of their proposed offering consistent with the Commission's findings herein and notify the Commission in the form of a new tariff if the discount or any terms, or conditions change.
- (c) Cricket shall provide its Lifeline customers with 911 and E-911 access regardless of activation status as of the date it provides Lifeline services in Indiana.
- (d) Any handset that Cricket sells must be E-911-compliant, and Cricket has so certified.
- (e) Cricket shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. §§ 54.401(a)(1) and 54.405 and abide by the FCC's 2011 *Duplicative Program Payments Order*¹¹, which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.
- (f) Cricket shall provide the Commission with a copy of its annual Lifeline certification results that it files with the USAC, in accordance with the *Lifeline Reform Order*, and any future federal order.
- (g) On a quarterly basis Cricket shall provide the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month. In these quarterly reports, Cricket shall also report the number of deactivated Lifeline customers for each month in the previous quarter. Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Cricket will continue to make such quarterly filings until otherwise instructed by the Commission.
- (h) To safeguard against misuse of the Lifeline service plan, Cricket shall deal directly with the customer and require each customer to self-certify under

¹¹ Lifeline and Link Up Reform and Modernization, 26 FCC Rcd 9022, 9027-9028 (2011).

penalty of perjury that he or she is the only member of a household receiving the Lifeline discount and that he or she does not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.

- (i) Cricket shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer self-certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.
- (j) Cricket shall contribute to the InTRAC Fund on a monthly basis an amount equal to the Commission-approved InTRAC monthly surcharge (currently \$0.03) multiplied by the number of active Cricket accounts during each month, consistent with the Commission's Order in Cause No. 39880 and Indiana Code ch. 8-1-2.8.
- (k) Cricket shall pay applicable fees, such as the public utility fee, pursuant to Indiana Code ch. 8-1-6; the InTRAC fee, pursuant to Indiana Code ch. 8-1-2.8; the IUSF fee, pursuant to the Commission's Order in Cause No. 42144; the wireless emergency enhanced 911 fee, pursuant to Indiana Code § 36-8-16.5-30.5; and any other applicable fees.
- (l) Cricket shall adhere to its FCC Compliance Plan which was previously submitted with this Commission and entered into the record at the Evidentiary Hearing as Petitioner's Exhibit 2. Cricket also submitted into evidence Petitioner's Exhibit 3, which included the FCC Order approving Cricket's Compliance Plan.

We therefore find, based on the evidence presented, that Cricket has met all of the ETC eligibility requirements and that the public interest supports granting ETC status to Cricket for the limited purpose of participation in the Lifeline program. We find that making Cricket's Lifeline service available to eligible customers will increase customer choice and will not adversely affect the USF. Cricket has demonstrated that it has the ability to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, Cricket's compliance with this Order and its eligibility for ETC designation. We further find that Cricket should be subject to the prospective reporting requirements and conditions set forth herein.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Cricket's application for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Cricket's evidence, shall be and hereby is granted.

2. Cricket's request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Cricket's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: OCT 17 2012

I hereby certify that the above is a true and correct copy of the Order as approved.



Brenda A. Howe
Secretary to the Commission