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FILED/ACCEPTED

JUN 30 2009

Federal Communications Commission  
Office of the Secretary

June 30, 2009

VIA HAND DELIVERY

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, NE  
Suite 110  
Washington, DC 20002

Re: *Consumer Cellular, Inc., Petition for Forbearance*, CC Docket No. 96-45

Dear Ms. Dortch:

Please find enclosed one original and four copies of Consumer Cellular, Inc.'s Petition for Forbearance. Additionally, I have included an additional copy that I would like to be stamped and returned with the courier. Please contact me at 202-257-8435 with any questions. Thank you in advance for your kind assistance.

Sincerely,



Jonathan D. Lee

No. of Copies rec'd 0+4  
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**ORIGINAL**

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

**FILED/ACCEPTED**

**JUN 9 0 2009**

Federal Communications Commission  
Office of the Secretary

In the Matter of )

Federal-State Joint Board on Universal Service )

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CC Docket No. 96-45

**PETITION FOR FORBEARANCE OF  
CONSUMER CELLULAR, INC.  
PURSUANT TO 47 U.S.C. §160(e)**

**CONSUMER CELLULAR, INC.**

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*Its Attorney*

June 30, 2009

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## SUMMARY

Consumer Cellular, Inc. (“Consumer Cellular” or “CCI”), a reseller of commercial mobile radio services (“CMRS”), files the present petition for forbearance to request that the Commission forbear from applying the requirement in Section 214(e)(1)(A) that in order to be able to offer services supported by the Federal Universal Service support mechanisms, a common carrier designated an eligible telecommunications carrier (“ETC”) must offer the services over its own facilities or a combination of its own facilities and the facilities of another carrier. Consumer Cellular provides CMRS using the wholesale services and network of AT&T. Furthermore, CCI has developed an expertise in providing superior services to America’s senior citizens, and is the designated wireless provider for the membership of AARP. Consumer Cellular will be filing subsequent petitions to be designated an ETC, but, in the present petition, is simply seeking forbearance from the own-facilities requirement of Section 214(e)(1)(A), and the Commission’s regulations implementing that statutory provision.

Section 10 of the Act requires the Commission to forbear from applying any statutory provision or regulation if the FCC determines that the elimination of enforcement of the provision will benefit the public by satisfying three criteria. First, the Commission must determine that enforcement of the provision is not necessary to ensure that “charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier . . . are just and reasonable and are not unjustly or unreasonably discriminatory.” Second, the FCC must find that enforcement of the own-facilities provision of the Act is not necessary for the protection of consumers. Third, the Commission must determine that forbearing from enforcing the own-facilities requirement is in the public interest, and, as part of that determination, the FCC

must also find that forbearing from enforcing the own-facilities requirement will promote competition.

The FCC has twice found that, in the case of pure CMRS resellers (like CCI), the requirements of Section 10 have been met and, with some conditions, the Commission has found that it is required to forbear from enforcing the requirements of Section 214(e)(1)(A). Consumer Cellular, like the previous wireless resellers that have been granted forbearance, will demonstrate that, in conjunction with the conditions the FCC has placed on similar petitions, a grant of CCI's forbearance petition meets all of the requirements of Section 10 of the Act.

As a wireless reseller, there are no concerns that requiring provision of services over a carrier's own facilities is necessary to ensure that consumers are not harmed by the reseller's participation in the Lifeline program to support low-income consumers. To the contrary, the nature of resale, combined with the public safety protections and the public fiduciary protections (preventing double recovery) of the conditions the FCC has placed on other forbearance grants, ensures that forbearance from enforcing the own-facilities requirement of Section 214(e)(1)(A) of the Act will promote the public interest and the goals of the Lifeline low-income support mechanism.

Thus, a grant of Consumer Cellular's petition for forbearance will promote the public interest, because the provision in question is not necessary to ensure that consumers are treated fairly, or that competition in the market for telecommunications services to low-income consumers is promoted. Indeed, extending forbearance to CCI will promote the goals of the low-income support mechanism by empowering a company that specializes in providing wireless service to a segment of the population more likely to be Lifeline-eligible: America's senior citizens.

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

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<b>Federal-State Joint Board on Universal Service</b>	)	
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**CONSUMER CELLULAR, INC.  
PETITION FOR FORBEARANCE PURSUANT TO 47 U.S.C. §160(c)**

Consumer Cellular, Inc. (“Consumer Cellular” or “CCI”) is a wireless reseller, headquartered in Portland, OR.<sup>1</sup> CCI offers service to customers throughout the AT&T Wireless fifty-state, plus District of Columbia, service area.<sup>2</sup> Pursuant to Section 10 of the Communications Act of 1934 (“the Act”), as amended,<sup>3</sup> Consumer Cellular is petitioning the

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<sup>1</sup> [www.consumercellular.com](http://www.consumercellular.com)

<sup>2</sup> Consumer Cellular provides service (i.e., originates and terminates customer calls) in all geographic areas covered by the AT&T Wireless network, including U.S. territories Puerto Rico and the U.S. Virgin Islands. The company, however, only markets to customers in the fifty-states and the District of Columbia covered by the AT&T Wireless network.

<sup>3</sup> 47 U.S.C. § 160.

FCC to forbear from applying the provision in Section 214(e)(1)(A) of the Act<sup>4</sup> that requires a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer service in whole, or in part, over its own facilities in order to be eligible to collect universal service support, pursuant to Section 254 (c) of the Act.<sup>5</sup> Similarly, CCI requests that the Commission forbear from applying any of its rules implementing Section 214(e)(1)(A).<sup>6</sup>

Consumer Cellular requests forbearance from the facilities-based provisions of Section 214(e)(1)(A) of the Act in order to be able to collect universal service support under the Lifeline program, which is designed to ensure that all Americans—including the poorest consumers—can afford access to telecommunications services. CCI will demonstrate that it satisfies the requirements of Section 10(a) of the Act, and merits the same forbearance the Commission has granted the similarly-situated TracFone<sup>7</sup> and Virgin Mobile<sup>8</sup> to participate in the Universal Service Fund’s Lifeline Program.

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<sup>4</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>5</sup> 47 U.S.C. § 254(c). Consumer Cellular understands that it must be designated an ETC by the FCC or the relevant state prior to being able to seek reimbursement from the Lifeline program. The purpose of this Forbearance Petition is to obtain forbearance from the statutory and regulatory barriers preventing pure resellers from seeking reimbursement from the Universal Service Fund in states where Consumer Cellular will subsequently seek ETC certification.

<sup>6</sup> See, e.g., 47 C.F.R. §§ 54.201(d)(1) and 201(i).

<sup>7</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (“*TracFone Forbearance Order*”).

<sup>8</sup> *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (“*Virgin Mobile Forbearance Order*”).

## I. INTRODUCTION

Consumer Cellular is a reseller, or mobile virtual network operator (“MVNO”), offering commercial mobile wireless service (“CMRS”) throughout the domestic United States AT&T Wireless service territory (the fifty states plus the District of Columbia). Founded in 1995, Consumer Cellular’s current subscribership is over 330,000 lines. Most of the company’s growth has occurred in just the past few years as it embarked on a program of national expansion and, today, the size of its customer base is increasing at a faster rate than ever. While still small in comparison with other national MVNOs such as TracFone and Virgin Mobile, Consumer Cellular is a substantial and profitable firm that is characterized by demonstrated integrity, especially with regard to serving an historically underserved segment of the population: America’s elderly.

CCI is the exclusive provider of wireless services to the members of AARP, the largest membership organization representing people over 50.<sup>9</sup> As the exclusive provider to AARP members, Consumer Cellular is held to rigorous service quality standards. Consumer Cellular has offers specifically targeted to casual users, a market segment which includes large numbers 50+ individuals, and its customer service representatives are specially trained to work with less technologically-sophisticated consumers. Importantly, Consumer Cellular files performance reports with AARP on a monthly basis to help ensure that its services and service quality are adequately meeting the needs of AARP members. While CCI does not confine its service offerings to America’s senior citizens, its focus on this large market segment is directly relevant

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<sup>9</sup> See, [www.aarp.org](http://www.aarp.org) and, more specifically, [http://products.aarp.org/discounts/home/consumer\\_cellular/?intcmp=BBI\\_HOMEPAGE\\_06010](http://products.aarp.org/discounts/home/consumer_cellular/?intcmp=BBI_HOMEPAGE_06010)

to its request for forbearance in order to be allowed to participate in the Lifeline program.

According to the most recent census data, approximately 1 in 5 Americans over the age of 65 live below the income threshold for Lifeline eligibility.<sup>10</sup>

To be clear, though, Consumer Cellular's service is purchased by many customers that are below age 50, and most of CCI's customers are not Lifeline eligible. Similarly, but for the facilities-based requirement of Section 214(e)(1)(A), CCI meets the other eligibility requirement of Section 214(e)(1)(B), in that CCI "advertises the availability of its services using media of general distribution."<sup>11</sup> Indeed, many are familiar with Consumer Cellular's services from its cable television ads, featuring its national spokeswoman, well-known actress Meredith Baxter.

Consumer Cellular offers a postpaid service that allows consumers to choose from a variety of rate plans. However, unlike virtually all other postpaid carriers, it does not require customers to sign long-term contracts or raise the threat of early termination fees.<sup>12</sup> The company also provides a wide choice of handsets, including a free-phone option.<sup>13</sup> Consumer Cellular can provide all of the supported services required by the Commission's rules, including emergency service and toll limitation for low income customers.<sup>14</sup>

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<sup>10</sup> See, [http://www.census.gov/hhes/www/macro/032008/pov/new01\\_135\\_01.htm](http://www.census.gov/hhes/www/macro/032008/pov/new01_135_01.htm) which shows that 19% of Americans over 65 living at or below 135% of the poverty line. For Americans over age 75, the number is 22%.

<sup>11</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>12</sup> The no-contract feature and the absence of early termination fees is an important reason AARP teamed with Consumer Cellular. AARP has opposed long-term service contracts and early termination penalties in the wireless industry.

<sup>13</sup> All subscribers who purchase a new handset from Consumer Cellular must pay an activation fee, currently set at \$35.

<sup>14</sup> 47 C.F.R. §54.101(a)(1)-(a)(9).

A significant difference between the services offered by TracFone and Virgin Mobile and those offered by Consumer Cellular is that TracFone and Virgin Mobile offer pre-paid services (customers purchase minutes—usually from a retail point of sale—prior to use) while Consumer Cellular offers postpaid service (customers are billed after the close of the monthly billing cycle for services used during the billing cycle). This distinction, at least in the way the service is provided by Consumer Cellular, is worth some attention because it offers additional consumer-friendly features that are not found in pre-paid plans. First, CCI customers do not need to be concerned about running out of airtime in mid-conversation. If they exceed the allotted minutes in their rate plan, they can continue using their mobile phone without any service interruption, purchasing minutes—as needed—at the agreed-upon rate for their calling plan. They will be charged for the additional minutes in their next monthly bill.

Second, and this is a very important, pro-consumer, feature of Consumer Cellular service: customers always can call or look online to find out how many minutes they have used. This in itself is not unusual but, with Consumer Cellular's postpaid service, customers also can change their rate plan at any time prior to the close of the monthly billing cycle. Thus, when customers recognize that they are using more minutes than normal in a particular month, they can choose a different rate plan. In other words, customers always have the ability—right up to the end of the billing cycle—to choose the cheapest available plan for their monthly usage. Needless to say, this is a very powerful, pro-consumer, tool, which ensures that the customers always can be in the best plan for their usage patterns even when customers unexpectedly use an abnormally high volume of airtime minutes.

The extent to which we can provide these features as part of our Lifeline offerings remains to be determined. Nevertheless, we wanted to bring them to the Commission's attention to illustrate CCI's pro-consumer approach to business.

## II. COMPLIANCE WITH FCC FORBEARANCE FILING RULES

On June 29, 2009, the FCC released new rules governing the filing of Forbearance Petitions pursuant to Section 10 of the Act.<sup>15</sup> While the new rules are not, strictly speaking, effective immediately, Consumer Cellular is aware that the Commission's rule changes are impending, and is happy to comply with the new rules (as they apply to the present petition). Indeed, the order explaining the New Forbearance Rules indicates that simple, non-complex, Forbearance Petitions that clearly meet the statutory forbearance criteria—Petitions such as the present Petition being filed here by Consumer Cellular—should be able to be granted within six months of their filing.<sup>16</sup>

In the present Petition, CCI has clearly met all relevant new rules. Proposed new rules Section 1.55 (a) and (b) essentially require the Petitioner to establish a clear and convincing case, supported by facts, argument, and precedent, upon filing.<sup>17</sup> Additionally, proposed new rule Section 1.55(c) requires that the Petitioner disclose any similar requests for relief that the Petitioner has filed, or has previously supported. The proposed rule goes on to explain that “[a]lternatively, the petition must declare that the petitioner has not, in a pending proceeding,

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<sup>15</sup> *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, WC Docket No. 07-267, (rel. June 29, 2009). New Rules at Appendix B. (“*New Forbearance Petition Rules*”)

<sup>16</sup> *Id.* at ¶ 31.

<sup>17</sup> *Id.* at Appendix B.

requested or otherwise taken a position on the relief sought.”<sup>18</sup> To be clear, Consumer Cellular, has not previously requested, supported, or opposed the relief sought in this Petition in any other Commission proceeding.

Finally, the Commission’s proposed new rule 1.55(e) requires future Petitioners to 1) provide a short explanation of the relief sought, 2) a full statement of the Petitioner’s *prima facie* case for relief, and 3) include Appendices that list: the scope of relief sought, and any evidence, market analyses, declarations, or other data upon which the Petitioner intends to rely in order to demonstrate that a grant of forbearance is justified under Section 10 of the Act. In the present case, Consumer Cellular has satisfied all of the Commission’s new and existing requirements within the four corners of this petition. The only remaining requirement for CCI to comply with the Commission’s new requirements is Consumer Cellular’s inclusion of an Appendix A, pursuant to proposed new rule 1.55(e)(3)(A), which requires future petitioners to include an Appendix that lists the scope of relief sought as required in § 1.55(a).

### **III. RELEVANT STATUTES AND RULES**

Consumer Cellular is seeking forbearance from the statutory provisions, and the rules of the Commission, that prevent it from receiving universal service support under the Lifeline program, the purpose of which is to provide support to low income consumers of telephone service. The Commission’s Lifeline program offers low-income consumers monthly support of

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<sup>18</sup> *New Forbearance Petition Rules* at Appendix B.

up to \$10.00 off the cost of telephone service.<sup>19</sup> Customers in tribal lands are eligible for up to \$25.00 in monthly support for telephone service under the Lifeline program.<sup>20</sup>

As explained earlier, the Act limits participation in the high cost or low income reimbursement programs provided for by Section 254 to carriers designated as ETCs by either the state commission, or the FCC.<sup>21</sup> The Act further requires that ETCs must also offer and advertise the services supported by the USF mechanism throughout the relevant service area.<sup>22</sup> Finally, the Act requires that only carriers providing service over their own facilities, or a combination of their own facilities and resale of another carrier's facilities, can receive reimbursement under the Commission's high cost or low income reimbursement mechanisms.<sup>23</sup>

The Commission had previously declined to allow pure resellers to collect universal service subsidies under the assumption that the underlying wholesale carrier would be a wireline carrier. In situations where the wholesale carrier is an incumbent LEC, the reseller would get the benefit of the subsidy through the resale discount provided for by Section 251(c)(4). In its recent grants of forbearance in the TracFone and Virgin Mobile orders, however, the Commission recognized that licensed CMRS carriers are not subject to the Section 251(c)(4) resale requirement, so the traditional concerns about "double recovery" of Lifeline subsidies by resellers are not present. The Commission also concluded that its previous assessment did not

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<sup>19</sup> 47 C.F.R. § 54.401(a)(2).

<sup>20</sup> 47 C.F.R. § 54.405(a)(4)

<sup>21</sup> 47 U.S.C. § 214(e).

<sup>22</sup> 47 U.S.C. § 214(e)(1)(B).

<sup>23</sup> 47 U.S.C. § 214(e)(1)(A).

contemplate the current high levels of wireless substitution and the trend toward higher levels of wireless substitution.<sup>24</sup>

#### IV. THE STATUTORY FORBEARANCE STANDARD

The Commission is required to forbear from applying any regulation or provision of the Act with respect to any service in any geographic area where the Commission determines that:

- 1) The regulation or provision is not necessary to ensure that the market performance for the relevant service remains just, reasonable, and not unfairly discriminatory;
- 2) Enforcement of the regulation or provision is not necessary for the protection of consumers; and
- 3) Forbearance from applying the statutory or regulatory provision is consistent with the public interest.<sup>25</sup>

The FCC has interpreted this statutory standard in two petitions that are nearly identical to the present petition and found that, with appropriate conditions—conditions which CCI is prepared to accept—these standards have been satisfied. The public interest will be best served if Consumer Cellular, like TracFone and Virgin Mobile, receives the same forbearance from the statutory provisions and FCC regulations that prevent it from being able to better serve low income consumers.

Consumer Cellular wishes to make perfectly clear that its request in this petition is not materially different from the forbearance requests the Commission has previously granted in its *TracFone* and *Virgin Mobile Orders*. Moreover, Consumer Cellular is prepared to, upon grant of this petition, submit a compliance plan to the Commission explaining how it will comply with the same conditions that have qualified the forbearance grants to TracFone and Virgin Mobile.

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<sup>24</sup> See, e.g., *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 at 3384-3385, ¶ 7.

<sup>25</sup> 47 U.S.C. § 160(a).

To summarize, the conditions imposed by the Commission in its recent order granting the Virgin Mobile forbearance petition required Virgin Mobile to:

- (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;
- (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;
- (c) comply with conditions (a) and (b) as of the date it provides Lifeline service;
- (d) obtain a certification from each PSAP where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP's service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;
- (e) require its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and
- (f) establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.<sup>26</sup>

#### **V. CONSUMER CELLULAR SATISFIES THE REQUIREMENTS OF SECTION 10**

Consumer Cellular, as a petitioner and a service provider to the Lifeline-eligible community, is a well-qualified carrier and petitioner. Accordingly, Consumer Cellular's instant request compares favorably with the petitions of TracFone and Virgin Mobile, and, therefore, meets all of the requirements of Section 10 that require the Commission to forbear from applying the facilities requirement of Section 214(e)(1)(A). In other words, the application and enforcement of Section 214(e)(1)(A), is not necessary to ensure that Consumer Cellular

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<sup>26</sup> *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 at 3387. ¶ 12.

continues to provide services at fair prices, and on just, reasonable, and fair terms. Moreover, consumers will not be harmed in any way, and the public interest will be promoted, through a Commission grant of this Forbearance Petition.<sup>27</sup> Indeed, *because* the Commission has found that low income consumers would benefit from grants of the TracFone and Virgin Mobile petitions, consumers, writ large, will further benefit from a grant of CCI's petition because CCI focuses on a specific segment of the low-income population that has historically not been targeted by other service providers, and provides a unique consumer benefit in the form of a no-contract, postpaid wireless service.

*Consumer Cellular Satisfies Section 10(a)(1): Application, and/or enforcement of Section 214(e)(1)(A) is not necessary to ensure that the prices and terms in the market for wireless service remain just, reasonable, and not unfairly discriminatory.* The Commission has previously found, in both the *TracFone* and *Virgin Mobile Forbearance Orders* that “the facilities requirement [of Section 214(e)(1)(A)] is not necessary to ensure that [the pure wireless reseller’s] charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only.”<sup>28</sup> Additionally, Consumer Cellular’s underlying wholesale carrier, AT&T Wireless, is not subject to the Section 251(c)(4) resale requirement, so the traditional concerns about “double recovery” of Lifeline subsidies by resellers are not present. The Commission has also explained recently that there is even further assurance that Section 10(a)(1) is satisfied in the present case, because a “reseller, is

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<sup>27</sup> See, 47 U.S.C. §§ (a)(1)-(a)(3).

<sup>28</sup> See, e.g., *Virgin Mobile Forbearance Order* at 3389, ¶ 18 (internal citations to the *TracFone Order* omitted).

by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.”<sup>29</sup>

*Consumer Cellular Satisfies Section 10(a)(2): Application/Enforcement of Section 214(e)(1)(A) Is Not Necessary for the Protection of Consumers.* The Commission has determined that the facilities requirement is not necessary to protect consumers.<sup>30</sup> In fact, a forbearance grant, which will allow Consumer Cellular to participate in the Lifeline program once it is designated an ETC, will actually increase the number of carriers in any given market eligible to serve Lifeline-eligible consumers. Consumers not only have access to at least the incumbent LEC, but, in many cases one or more wireless providers—including wireless resellers TracFone and Virgin Mobile. Finally, consumers, are protected from any arguable public safety concerns (access to emergency services), and from concerns that increasing participation in the Lifeline program will *artificially* inflate the size of the Fund, by the conditions that the FCC has placed on its forbearance grants in both the *TracFone* and *Virgin Mobile Forbearance Orders*.<sup>31</sup> Thus, given the nature of the resale business, and the additional conditions required in both previous *Forbearance Orders*, and CCI’s willingness to abide by these same conditions, there seems to be no question that Consumer Cellular’s request for forbearance meets the requirements of Section 10(a)(2) of the Act.<sup>32</sup>

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<sup>29</sup> *Virgin Mobile Forbearance Order* at 3389, ¶ 18 (*internal citations omitted*).

<sup>30</sup> *Id.* at 3390, ¶ 21.

<sup>31</sup> *Id.* at 3390-3393, ¶¶ 21-28. See also, *TracFone Forbearance Order*, 20 FCC Rcd at 15104, ¶ 19.

<sup>32</sup> 47 U.S.C. § 160(a)(2).

*Consumer Cellular Satisfies Section 10(a)(3): Forbearance from the Applying the Facilities Requirement Is Consistent with the Public Interest.* The Commission has concluded in both the *TracFone* and *Virgin Mobile Forbearance Orders* that it is consistent with the public interest for the FCC to forbear from applying the facilities requirement to wireless resellers seeking to qualify for the universal service Lifeline program. One of the requirements the FCC must consider in order to determine that the requirements of Section 10(a)(3) have been satisfied is that the Commission must weigh the competitive effect of granting forbearance, as required by Section 10(b).<sup>33</sup> Section 10(b) requires the Commission, in weighing the public interest effects of a forbearance grant “shall consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.

As noted in the discussion of Section 10(a)(2), the public interest analysis under Sections 10(a)(3) and 10(b) is pretty straightforward in the case of Consumer Cellular’s present petition. If Consumer Cellular’s petition is granted, Lifeline-eligible consumers in the wireless service territories served by CCI will have one more carrier that has an incentive to aggressively compete for their business. Thus, it is not surprising that, in its most recent analysis of the requirements of Section 10(a)(3) in a similar petition, the FCC concluded, “we find that requiring Virgin Mobile, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.”<sup>34</sup>

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<sup>33</sup> 47 U.S.C. § 160(b).

<sup>34</sup> *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3381 at 3393, ¶ 29.

There is yet another reason for the FCC to look favorably on CCI's petition under Section 10(a)(3). As noted previously, because Consumer Cellular's business focus *complements* the business strategies of most other telecommunications carriers in the market, including the wireless resellers for which the Commission has already granted forbearance from the facilities requirement. Grant of Consumer Cellular's petition will allow the FCC to ensure that more Lifeline-eligible Americans get the assistance that the Act was intended to provide. Consumer Cellular previously explained that consumers in its target market have a higher rate of Lifeline-eligibility than the average American. While this is true, recent facts seem to indicate that Consumer Cellular's target market customers could be even more at risk in the present harsh economic environment, than working-age Americans.

Workers that are closer to retirement age have suffered more in the last year and a half than younger workers, and these employees are less able to make up 401K losses quickly. According to the Employee Benefit Research Institute ("EBRI"), even prior to the current economic crisis the amount of debt of elderly Americans, as a percentage of income, has increased dramatically in the twelve years between 1992 and 2004.<sup>35</sup> The EBRI has also determined that, while the performance of all retirement plans has suffered over the past year, the effects of this downturn have been most pronounced with respect to Americans closer to retirement, older Americans, and workers who are most tenured at their employers.<sup>36</sup> Additionally, new retirees have a greater amount of assets tied up in their own 401K plans, on which they must rely for future income.

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<sup>35</sup> [http://www.ebri.org/pdf/notespdf/EBRI\\_Notes\\_09-20061.pdf](http://www.ebri.org/pdf/notespdf/EBRI_Notes_09-20061.pdf) at p. 4.

<sup>36</sup> <http://www.ebri.org/pdf/may%205,%202009%20update%20full%20universe.pdf>

\* \* \*

Consumer Cellular specializes in serving a market segment with a significant number of Americans who are more likely to be at risk of losing connectivity. By empowering the Petitioner, CCI, with the ability to participate in the programs designed to help low income consumers, the FCC will unequivocally promote the public interest in the most common sense way possible, at the most important time possible. Thus, for the reasons described above, Consumer Cellular requests that the Commission grant this forbearance petition with minimal delay.

Respectfully submitted,

**CONSUMER CELLULAR, INC.**

  
Jonathan D. Lee

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(202) 257-8435

*Its Attorney*

June 30, 2009

## **APPENDIX A**

### **SCOPE OF RELIEF REQUESTED**

Consumer Cellular is requesting that the FCC forbear from applying the provision in Section 214(e)(1)(A) of the Act that requires a common carrier designated as an eligible telecommunications carrier to offer service in whole, or in part, over its own facilities in order to be eligible to collect universal service support, pursuant to Section 254 (c) of the Act. Similarly, CCI requests that the Commission forbear from applying any of its rules implementing Section 214(e)(1)(A).

Consumer Cellular requests forbearance from the facilities-based provisions of Section 214(e)(1)(A) of the Act in order to be able to collect universal service support under the Lifeline program, which is designed to ensure that low-income Americans can afford access to telecommunications services. CCI is seeking the same forbearance the Commission has granted the similarly-situated TracFone<sup>37</sup> and Virgin Mobile<sup>38</sup> to participate in the Universal Service Fund's Lifeline Program.

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<sup>37</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005).

<sup>38</sup> *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009).