

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Federal-State Joint Board on Universal Service)
)
Petition for Limited Designation as an Eligible)
Telecommunications Carrier in the States of)
Connecticut, New York, North Carolina,)
Tennessee, and the Commonwealth of Virginia)

WC Docket No. 09-197

**PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE STATES OF CONNECTICUT, NEW YORK, NORTH CAROLINA,
TENNESSEE, AND THE COMMONWEALTH OF VIRGINIA**

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SUMMARY

Consumer Cellular, Inc. (“Consumer Cellular” or “CCI”) files the instant Petition seeking limited designation as an Eligible Telecommunications Carrier (“ETC”), for purposes of Section 214(e)(1) of the Communications Act (“the Act”) in order to better serve low-income consumers in the States of Connecticut, New York, North Carolina, Tennessee, and the Commonwealth of Virginia (collectively, the “Subject States”). Consumer Cellular provides commercial mobile wireless service (“CMRS”) to its customers using the physical, wireless infrastructure network of AT&T. Carriers like Consumer Cellular are commonly called mobile virtual network operators (or “MVNOs”). In this Petition, Consumer Cellular seeks ETC designation for the limited purpose of being able to participate in the Lifeline Program, which provides support to qualifying low-income consumers of telecommunications service.

While normally the Communications Act charges State Commissions with the responsibility of designating carriers as ETCs for purposes of being able to receive support under the Universal Service Fund (“USF”), in instances where the State Commissions lack the authority to confer ETC status, the FCC can perform ETC designations pursuant to Section 214(e)(6) of the Act. Consumer Cellular has provided an affirmative statement by each of the Subject States confirming that they lack the authority to designate Consumer Cellular as an ETC (See, Exhibits 1-5). Consumer Cellular, therefore, asks the Commission to perform this designation.

Consumer Cellular meets all statutory and other Commission requirements in order to be designated an ETC, for the limited purposes it seeks, under Section 214(e)(1) of the Act, with the one exception that Consumer Cellular does not provide service in any part over its own facilities. Therefore, in a prior filing, consistent with Commission precedent, Consumer Cellular asked the

FCC to forbear from applying the facilities requirement of Section 214(e)(1)(A) in order to allow CCI to provide more alternatives to low-income consumers in its service territories. If Consumer Cellular's Forbearance Petition is granted, as have similar Petitions by other MVNOs, there is no legal barrier to the Commission granting the instant Petition for Limited ETC Designation in the Subject States.

Consumer Cellular not only provides all of the requisite services to support ETC designation in the Subject States, but the public interest is best served by the Commission granting CCI's request for ETC designation. Consumer Cellular has a unique wireless service tailored to low-income consumers, and a service that provides special benefits to a frequently-overlooked subsection of America's low-income consumers: the elderly.

Consumer Cellular, if granted ETC designation in the Subject States, could provide direct, postpaid service to low-income customers. Consumer Cellular's postpaid service means that low-income consumers have the maximum amount of flexibility in choosing a wireless service targeted directly to them. The consumer does not have to leave their home, or residence, in order to obtain mobile wireless service or to purchase additional minutes beyond those covered under the basic plan.

It is no secret that the elderly could benefit the most from increased wireless penetration. Numerous studies have confirmed that the "security blanket" benefits of wireless services—being able to reach assistance, or simply mitigate loneliness—are most valued by older consumers; yet these consumers consistently have the lowest numbers of wireless penetration. Similarly, as Consumer Cellular explained in its Forbearance Petition, the elderly are, by age demographic, the most likely segment of Americans to be in need of low-income assistance, and

current economic conditions have only exacerbated that need—as retirement plans have suffered, and continue to suffer, under the weight of the recent financial crisis.

Consumer Cellular has phones especially designed for senior citizens and a skilled customer service team, specifically trained to work with (and educate) consumers who may not be accustomed to using mobile wireless devices. Moreover, as explained above, Consumer Cellular will not only provide basic wireless plans to low-income consumers, allowing these customers to purchase mobile wireless service in the same way they are used to purchasing other utility services—from the comfort of their own home—Consumer Cellular will also give consumers the flexibility to obtain additional minutes at the consumer’s discretion. In other words, Consumer Cellular will *offer* “toll limitation” to its low-income customers, but will not impose toll limitation, and will, instead, provide customers with the flexibility to add minutes—only at the customer’s choosing—in a budget-friendly manner.

Given that Consumer Cellular meets the Commission’s requirements for ETC designation, and that a grant of its Petition for Limited ETC Designation in the Subject States will bring public interest benefits to low-income consumers in CCI’s service territories within the Subject States, the Commission should move quickly to grant the instant Petition.

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Consumer Cellular, Inc. (“Consumer Cellular” or “CCI”) filed a Petition for Forbearance on June 30th of this year¹, asking the Federal Communications Commission (“FCC” or “Commission”) to forbear, pursuant to Section 10 of the Communications Act of 1934² as amended by the Telecommunications Act of 1996 (“the Act”), from applying the provision in Section 214(e)(1)(A) of the Act³ 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

¹ *Petition of Consumer Cellular, 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, filed June 30, 2009. [“CCI Forbearance Petition” or “Forbearance Petition”]

² 47 U.S.C. §160.

³ 47 U.S.C. § 214(e)(1)(A).

order to be eligible to collect universal service support, pursuant to Section 254 (c) of the Act.⁴ Similarly, CCI requested that the Commission forbear from applying any of its rules implementing Section 214(e)(1)(A).⁵

Consumer Cellular is seeking 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, in its June Forbearance Petition, demonstrated that it satisfied the requirements of Section 10(a) of the Act, and merits the same forbearance the Commission has granted the similarly-situated TracFone⁶ and Virgin Mobile⁷ to participate in the Universal Service Fund’s Lifeline Program.

In its Forbearance Petition, Consumer Cellular explained that it understood that it would have to seek designation as an Eligible Telecommunications Carrier (“ETC”) in order to benefit from any grant of forbearance from the facilities requirement of Section 254 of the Act.⁸ Consumer Cellular, consistent with its expectation that the Commission will follow its precedent, wishes to begin bringing the unique benefits of its mobile wireless service to America’s low-income consumers, particularly America’s senior citizen community. Thus, CCI is filing the

⁴ 47 U.S.C. § 254(c).

⁵ See, e.g., 47 C.F.R. §§ 54.201(d)(1) and 201(i).

⁶ *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*”).

⁷ *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 Order*”).

⁸ CCI Forbearance Petition, p.2 n.2.

instant Petition seeking limited designation as an ETC, in order to participate in the Lifeline Program, for the states of Connecticut, New York, North Carolina, Tennessee, and the Commonwealth of Virginia (the “Subject States”).

I. BACKGROUND

A. Consumer Cellular

As explained in its Forbearance Petition, Consumer Cellular is a Mobile Virtual Network Operator (“MVNO”) that provides commercial mobile radio service (“CMRS”) using the mobile infrastructure and service network of AT&T. Consumer Cellular provides affordable mobile phone service, on a postpaid basis, to all consumers without requiring a contract. As described in its Forbearance Petition, Consumer Cellular has been in business and providing service to consumers for almost 15 years.⁹ While Consumer Cellular provides its service indiscriminately to all customers, it specializes in serving America’s senior citizens, and has been recognized for providing superlative, and affordable, service to this often overlooked, but growing, segment of the population.¹⁰ Indeed, Consumer Cellular is proud of the fact that it has been selected by AARP, America’s largest membership organization representing people over age 50, as the exclusive wireless provider to AARP members.¹¹

⁹ CCI Forbearance Petition at 3.

¹⁰ See, e.g., <http://cellphonesforseniorcitizens.com/2009/03/consumer-cellular-launches-cell-phone.html> (applauding Consumer Cellular’s “vision” for the senior market). See also, http://cellphonesforseniorcitizens.com/2009_10_01_archive.html (recognizing Consumer Cellular’s addition of two new mobile phones designed for seniors to its product line, as well as the advantages of CCI’s service plans for seniors).

¹¹ See, www.aarp.org and, more specifically, http://products.aarp.org/discounts/home/consumer_cellular/?intcmp=BB1_HOMEPAGE_060109

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 to its request for ETC designation in the Subject States in order to be able to participate in the Lifeline program in the event its Forbearance Petition is granted. 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.¹² Moreover, according to a recent [June 29, 2009] study on aging by the Pew Research Center, the gap in mobile wireless use widens as consumers grow older.¹³ Yet, as others, such as the Seniors Coalition, have noted, senior citizens could receive significant benefits from the "cell phone security blanket effect", but are among the lowest adopters of mobile technology.¹⁴

¹² See, 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%.

¹³ See, "Growing Old in America: Expectations vs. Reality", Pew Social Trends, rel. June 29, 2009, p. 10. Available at <http://pewsocialtrends.org/assets/pdf/Getting-Old-in-America.pdf>

¹⁴ See, <http://www.411onwireless.org/PDF/072308%20TSC%20Sullivan%20senior%20cell%20news%20release%20FINAL2.pdf> [Note that the paper referenced, http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf, relied on a TracFone study, and recommends that seniors purchase "pre-paid" wireless phones. As Consumer Cellular will demonstrate, there may be more reason to believe that post-paid wireless plans are even more helpful to seniors with less mobility, due to the ability to add minutes or change calling plans without leaving home.]

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.”¹⁵ Indeed, many are familiar with Consumer Cellular’s services from its advertisements in AARP national publications as well as nationwide cable television ads featuring the 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 nor raise the threat of early termination fees.¹⁶ The company also provides a wide choice of handsets, including a free-phone option.¹⁷ 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.¹⁸

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

¹⁵ 47 U.S.C. § 214(e)(1)(B).

¹⁶ 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.

¹⁷ All subscribers who purchase a new handset from Consumer Cellular must pay an activation fee, currently set at \$35.

¹⁸ 47 C.F.R. §54.101(a)(1)-(a)(9).

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.

Another valuable pro-consumer feature of Consumer Cellular service is that 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 usage in any given month. Moreover, all of these benefits, including the initial purchase of the phone, can be accessed without customers leaving their home in order to visit a retail point of sale. Needless to say, the advantages of Consumer Cellular's postpaid service constitute very powerful, pro-consumer tools, which ensure that customers always can be on the best plan for their usage patterns even when customers unexpectedly use an abnormally high – or low – volume of airtime minutes.

Pursuant to Section 214(e)(6) of the Act, and Section 54.201 of the Commission's Rules, Consumer Cellular is seeking designation as an ETC in the Subject States, over which the

Commission has jurisdiction to designate ETC status because the Subject State regulators have explicitly declined, or lack the authority, to designate wireless carriers as ETCs.¹⁹

Consumer Cellular will demonstrate that it meets all of the Commission’s requirements to be designated an ETC in the Subject States. As noted previously, Consumer Cellular is prepared to offer all services required of ETCs in order to participate in the universal service program throughout its designated service territories in the Subject States. Additionally, Commission grant of the instant Petition will be consistent with Commission precedent in conferring ETC status on MVNOs TracFone and Virgin Mobile in the Subject States in 2008 (TracFone)²⁰ and earlier in 2009 (Virgin Mobile)²¹. Moreover, the addition of Consumer Cellular as a participant in the Lifeline Program will offer an additional choice to lower income consumers—especially elderly consumers—in the Subject States.

B. The Lifeline Program

Since the adoption of the Communications Act of 1934, the United States has been committed to the principle that all Americans, regardless of location, “including low-income consumers . . . should have access to telecommunications and information services . . . at rates

¹⁹ See 47 U.S.C. § 214(e)(6).

²⁰ *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, North Carolina, New Hampshire, New York, North Carolina, Tennessee, and Washington, DC, and the Commonwealths of Massachusetts, Pennsylvania, and Virginia*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008). [“*TracFone ETC Designation Order*”]

²¹ *Virgin Mobile Order*. [The *Virgin Mobile Order*, released on March 5, 2009, not only granted forbearance from the facilities requirement for Universal Service Fund participation, but also designated Virgin Mobile as an ETC for the limited purpose of participating in the Lifeline Fund in most of the same states for which Consumer Cellular is seeking limited ETC designation.]

that are reasonably comparable to rates charged for similar services in urban areas.”²² Moreover, the universal service statute requires that “[q]uality services should be available at just, reasonable, and affordable rates.”²³

The Lifeline program is designed to ensure that low-income consumers receive support that will provide them the service guaranteed by the Act.²⁴ The Lifeline program provides consumers with discounts off the monthly costs of telephone service, with greater amounts available for service provided to eligible customers on Tribal Lands.²⁵ All eligible recipients of Lifeline service support must provide a specified set of services.²⁶

The Commission has, in recent orders, thoroughly described its many efforts to increase participation in the Lifeline program, which historically has been severely under-utilized.²⁷ Not only has the Commission concluded “that requiring . . . wireless reseller[s], 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,”²⁸ but the FCC has also determined that, subject to compliance with the FCC’s conditions

²² 47 U.S.C. § 254(b)(3).

²³ 47 U.S.C. § 254(b)(1).

²⁴ The Lifeline program is defined in 47 C.F.R. §§ 54.401-410.

²⁵ 47 C.F.R. §§ 54.400 and 54.401.

²⁶ 47 C.F.R. § 54.101(a)(1)-(9).

²⁷ *Virgin Mobile Order* at ¶ 30.

²⁸ *Id.* at ¶ 29.

on 911/E911 compliance, “the advantages of designating [a wireless reseller] as a limited ETC in the designated service areas outweigh any potential disadvantages.”²⁹

II. THE COMMISSION HAS THE AUTHORITY TO PERFORM THE ETC DESIGNATIONS

The Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support.”³⁰ The primary responsibility for designating carriers as ETCs lies with state regulatory commissions. However, in the event that a state commission lacks jurisdiction to perform a designation under Section 214, the FCC may perform that designation.³¹ A carrier seeking ETC designation by the FCC must provide the FCC with “an affirmative statement” from the state regulatory commission that it lacks authority to perform the requested ETC designation.³² The Commission clarified that “an ‘affirmative statement’ of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations”³³

The Subject State Commissions have each provided “affirmative statement[s]” upon which the FCC has relied upon, or can rely upon, to determine that the Subject States lack jurisdiction to perform ETC designations over providers of mobile wireless service.

²⁹ *Virgin Mobile Order* at ¶ 39 (*internal citation omitted*).

³⁰ 47 U.S.C. § 254(e).

³¹ 47 U.S.C. § 254(e)(6).

³² See, *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 ¶ 113 (2000).

³³ *Id.*

a) The Connecticut Department of Public Utility Control (“DPUC”) has recently affirmatively stated, that because the Connecticut DPUC “does not regulate or license mobile carrier services’ rates and charges”, the DPUC lacks jurisdiction for purposes of designating ETC status. See Exhibit 1.

b) The New York Public Service Commission also lacks jurisdiction under its authorizing statute to designate CMRS providers as ETCs. An affirmative statement to this effect is provided as Exhibit 2.

c) The North Carolina Utilities Commission has made an affirmative statement in an Order, stating that it “lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC.” A copy of this Order is attached as Exhibit 3.

d) The Tennessee Regulatory Authority has concluded that its empowering statute prevents it from exercising “jurisdiction over CMRS providers” in order to perform ETC designations. A copy of this Order is attached as Exhibit 4.

e) The Virginia Corporation Commission has determined that “§ 214(e)(6) of the Act is applicable” to wireless ETC petitions, that the Virginia Commission “has not asserted jurisdiction over CMRS carriers,” and that CMRS carriers seeking ETC designation “should apply to the Federal Communications Commission.” A copy of this Order is attached as Exhibit 5.

As noted, these affirmative statements are attached to the present Petition as Exhibits 1-5. Thus, Consumer Cellular asks the Commission to designate Consumer Cellular as “a common

carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”³⁴

III. CONSUMER CELLULAR SEEKS LIMITED ETC DESIGNATION TO PARTICIPATE IN THE LIFELINE PROGRAM IN ITS SERVICE AREAS OF THE SUBJECT STATES

Consumer Cellular requests limited ETC designation for its service territory—that is to say the service territory covered by AT&T’s wireless network—in the Subject States of Connecticut, New York, North Carolina, Tennessee, and the Commonwealth of Virginia. To be clear, the ETC designation sought by Consumer Cellular is geographically limited to the service territories in which AT&T provides wireless service on a facilities basis, and CCI’s request is limited to participation in the Commission’s Lifeline program. Importantly, while Consumer Cellular seeks limited ETC designation in some territories served by both non-rural and rural LECs, CCI does not seek designation to participate in the High Cost support program, and does not seek designation in any Tribal Lands. Thus, as the Commission has noted previously, “[i]n analyzing the public interest factors in [the case of a wireless reseller seeking limited ETC designation to participate in the Lifeline program], there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural.”³⁵

Consumer Cellular’s request for limited ETC designation to participate in the Lifeline program is consistent with the Commission’s prior actions granting TracFone and Virgin Mobile ETC designation in the exact same jurisdictions in either 2008³⁶ or almost all of the currently-

³⁴ 47 U.S.C. § 214(e)(6).

³⁵ *Virgin Mobile Order*, 24 FCC Rcd 3381, 3386 ¶ 11, n. 40 (*internal citations omitted*).

³⁶ *TracFone ETC Designation Order* (all Subject States designated limited ETC (Lifeline only) status by the Commission in April 2008).

requested jurisdictions in 2009.³⁷ Just as TracFone and Virgin Mobile demonstrated, Consumer Cellular will show that, as a similarly-situated wireless reseller, it meets all eligibility requirements for designation as an ETC. Moreover, given that Consumer Cellular's entry into the Lifeline service market will provide new types of offerings to underserved, low-income consumers, Consumer Cellular meets, or exceeds, the public interest benefits to low-income consumers on which the Commission relied in granting the TracFone and Virgin Mobile Petitions, including increased consumer choice, high quality service offerings, and mobile access to emergency services on wireless devices.³⁸

IV. CONSUMER CELLULAR MEETS THE REQUIREMENTS FOR ETC DESIGNATION

Applicants for ETC designation must be: 1) common carriers;³⁹ 2) offering “the services that are supported by Federal universal service support mechanisms under section 254(c)” using its own facilities or a combination of its facilities and the resold facilities of another carrier;⁴⁰ and 3) advertise the availability of the supported services and the applicable charges “using media of general distribution.”⁴¹ Assuming Consumer Cellular's Forbearance Petition is granted by the Commission (allowing Consumer Cellular to provide the specific services supported by the

³⁷ *Virgin Mobile Order* (all Subject States, but Connecticut, were given limited ETC designation by the Commission in March 2009). TracFone, in the state of Connecticut, was designated an ETC by the Commission in the *TracFone ETC Designation Order* in April 2008.

³⁸ *TracFone ETC Designation Order* at ¶ 15, *Virgin Mobile Order* at ¶ 38.

³⁹ 47 U.S.C. § 214(e)(1).

⁴⁰ 47 U.S.C. § 214(e)(1)(A).

⁴¹ 47 U.S.C. § 214(e)(1)(B).

universal support mechanisms under Section 254(c) using resold wireless services), Consumer Cellular satisfies all legal requirements for ETC designation by the Commission.

A. Consumer Cellular Is a Common Carrier

Resellers of mobile wireless services are considered common carriers under the Act.⁴²

B. Consumer Cellular Will Provide the Supported Services Through Resale

As noted from the outset of this collective ETC Petition, six months ago, Consumer Cellular filed a Petition for Forbearance from the own-facilities requirement of Section 214(e)(1)(A).⁴³ Consumer Cellular has explained in its Forbearance Petition, and in this Petition, that it resells mobile service to its customers utilizing the infrastructure of the AT&T wireless network. Nonetheless, AT&T's wireless network infrastructure supports all of the services required under Section 254(c), and, using this network, Consumer Cellular can provide all required supported services in the Subject States.

C. Consumer Cellular Offers All of the Required Services and Functionalities

Consumer Cellular explained in its Forbearance Petition that it can provide all services required under the statute and the Commission's rules using the underlying AT&T wireless mobile infrastructure. Section 54.101 of the Commission's rules designates nine specific services that must be provided by recipients of universal service funding. In addition, the Commission has required that wireless resellers comply with additional conditions that ensure consumers will have access, where possible, to E911 service. Consumer Cellular, through its use of the AT&T wireless network and its own operations support systems, will be able to satisfy all

⁴² 47 U.S.C. § 332(c)(1)(A) ["A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, shall be treated as a *common carrier* for purposes of this Act. . . ."] (emphasis added)

⁴³ See n. 1, *supra*.

requirements imposed by the Commission, either through rule or conditions imposed on other wireless resellers that have received ETC designation. Accordingly, Consumer Cellular asks that the Commission expeditiously grant its Forbearance Petition and the instant consolidated ETC Petition seeking ETC designation for the Subject States.

1. Voice Grade Access to the Public Switched Telephone Network

Consumer Cellular provides “Voice grade access to the public switched network” to its customers using the facilities of the AT&T network. Consumer Cellular provides its customers, as required under Commission rules, “a functionality that enables a user of telecommunications services to transmit voice communications . . . and to receive voice communications”⁴⁴ Additionally, bandwidth for this voice-grade access is provided at a minimum of between 300 and 3,000 Hertz.⁴⁵

2. Local Usage

“Local usage’ means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users.”⁴⁶ The FCC has interpreted its rule as requiring carriers to offer customers rate plans offering varying amounts of local usage.⁴⁷ Consumer Cellular, as noted earlier, offers customers rate plans offering varying amounts of local usage, with almost all plans including a set number of minutes for a flat fee. Indeed,

⁴⁴ 47 C.F.R. 54.101(a)(1).

⁴⁵ *Id.*

⁴⁶ 47 C.F.R. 54.101(a)(2).

⁴⁷ See, *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 52 ¶ 10 (2000).

Consumer Cellular has been recognized by third parties for its varying rate and usage plans designed for elderly Americans.⁴⁸

3. Dual Tone Multi-Frequency Signaling, or Its Functional Equivalent

Dual Tone Multi-Frequency Signaling (“DTMF”) is a method of facilitating and shortening call set-up time.⁴⁹ All of Consumer Cellular’s handsets are DTMF-capable.

4. Single-Party Service or Its Functional Equivalent

In the case of cellular service, “single party service” simply means a dedicated transmission path for the duration of a user’s transmission.⁵⁰ Consumer Cellular satisfies this requirement by offering a dedicated transmission path for the duration of each of its customer’s calls.

5. Access to Emergency Services

Consumer Cellular, in its Forbearance Petition, agreed to abide by all conditions placed on TracFone and Virgin Mobile, regarding providing consumers access to 911 and E911 services, in both the *TracFone* and *Virgin Mobile Orders*.⁵¹ In fact, all of Consumer Cellular’s current handsets are emergency service-compatible. Specifically, though, Consumer Cellular will: (1) provide its customers with access to 911 or E911 service, regardless of whether the consumer has any minutes remaining on their plan; (2) ensure that all of its Lifeline consumers have E911 compliant handsets, including replacing any non-conforming handsets in use by

⁴⁸ See, n. 10, *supra*.

⁴⁹ 47 C.F.R. 54.101(a)(3).

⁵⁰ *Id.* at 54.101(a)(4).

⁵¹ *Virgin Mobile Order* at 3390-3393, ¶¶ 21-28. See also, *TracFone Forbearance Order*, 20 FCC Rcd at 15104, ¶ 19.

Lifeline customers, and (3) obtain certification from each Public Safety Answering Point (“PSAP”) where Consumer Cellular provides Lifeline service confirming that CCI provides its customers with 911 and E911 access.

Alternatively, consistent with the Commission’s recent modification of the TracFone conditions, Consumer Cellular will self-certify compliance if a PSAP has not provided a certification of compliance that it provides 911 and E911 service (or affirmatively determined that CCI is non-compliant) within 90 days of Consumer Cellular requesting certification from the PSAP.⁵² Consumer Cellular, it should also be noted, has a long history of supporting emergency services in the states. Consumer Cellular will continue to support emergency services through its longstanding support of state universal service funds, and payment into emergency service funds.

6. Access to Operator Services

Consumer Cellular provides all its customers with access to operator services, and will continue to provide operator services to Lifeline customers in areas where it is designated an ETC.

7. Access to Interexchange Services

Consumer Cellular provides all customers with access to interexchange services.

8. Access to Directory Assistance

Consumer Cellular provides all customers with access to directory assistance service by dialing “411” from their wireless handsets.

⁵² *Federal-State Joint Board on Universal Service et al.*, CC Docket 96-45, Order, 24 FCC Rcd 2375 (2009).

9. Toll Limitation for Qualifying Low-Income Customers

If the Commission grants Consumer Cellular's Forbearance Petition, and the present Petition for ETC Designation in the Subject States, Consumer Cellular is prepared to offer toll limitation to its Lifeline customers. This requirement is the only universal service supported service that is unique to Consumer Cellular's Petition (vs. the previous Petitions granted for *pre-paid* wireless resellers, where the Commission has found that the very nature of the service—*pre-paid*—is an effective toll limitation). The importance of toll limitation for low-income customers is that such customers can control their bills in advance.

While Consumer Cellular does not charge for "toll" services, except certain international services (which can be blocked), Consumer Cellular does charge for airtime. In the normal course of business a "regular" Consumer Cellular postpaid customer is free to use as many minutes as they would like in the course of a month and be billed for this airtime after the close of the monthly billing cycle. Nonetheless, in order to give low-income consumers the ability to control and limit their monthly bills, Consumer Cellular will provide service in a manner that will allow qualifying low-income customers to control their monthly bill in advance.

Consumer Cellular intends to offer Lifeline-eligible customers at least two different rate plans: "standard" and "flexible". The standard plan will provide customers, at no cost to them, with a fixed number of airtime minutes they can use at anytime during the month. They also will have a choice of handsets, ranging from a free entry-level phone to more feature-rich devices, such as one of its "senior phones," which customers may purchase prior to starting service. With the standard plan (and all CCI plans) customers may pro-actively track their usage by calling the CCI toll-free customer service number or by visiting the CCI website. Regardless of whether they use these valuable tools, CCI will notify customers via voice and text messages

in the event they approach their monthly airtime limit. At that point, customers will have the option to purchase additional minutes, in advance, via credit or debit card, by calling CCI customer service or going to the CCI website. If a customer exhausts the allotted airtime, and does not buy additional minutes, the service, with the exception of 911 and E911 emergency services, will be suspended until the following month. The standard plan will be offered to customers free of charge (aside from any additional minutes, and one of the non-entry level handsets, they may purchase). Consumer Cellular will recoup its costs from the Lifeline subsidies provided by the Universal Service Fund.

The “flexible” rate plan will be more in line with Consumer Cellular’s typical retail plans in that it will provide customers with (1) a preset amount of airtime minutes for a flat monthly access fee, (2) the ability to use additional minutes without having to pay in advance, and (3) a choice of handsets. In addition, there will be an activation fee to initiate service and each time a customer purchases a new handset. Once again, customers will be able to monitor their usage by calling CCI customer service or by visiting the CCI website. And CCI will notify customers when they approach their airtime limit. Unlike the standard plan, however, if customers exceed their allotted minutes within a reasonable limit, they can continue using their phone and be charged for the additional airtime on their next monthly bill.

Customers opting for the flexible rate plan will pay the activation fee, the first month’s access fee, and any additional equipment charges – minus the Lifeline subsidy – when they start service. From that point forward, they will be billed the monthly access fee in advance (less the Lifeline subsidy), and in arrears for all additional airtime charges. In order for Lifeline-eligible customers to qualify for the flexible rate plan, and to minimize CCI’s exposure, they must be approved for credit under CCI’s normal credit approval process or provide a credit or debit card

at sign-up. In the unfortunate event they fail to pay for services within a certain period of time beyond the normal invoice due date, and to ensure they do not lose telephone service, CCI will automatically transfer them to the standard Lifeline rate plan. Thus, Consumer Cellular meets the requirement of “offering” toll limitation to its customers, while still providing flexible, budget-friendly options for low-income consumers who may be on fixed incomes.

D. Advertising of Supported Services

Consumer Cellular currently advertises its services through a wide range of nationwide channels, including TV, print, direct mail and the Internet. It also utilizes its partnerships with large affinity organizations such as AARP and AAA to reach a national audience. Indeed, with only slight changes to its present overall marketing plan, CCI will meet the requirements imposed by statute⁵³ and FCC rules⁵⁴ to broadly advertise the availability and rates for the services to be supported by the Commission’s grant of this Petition

V. ETC DESIGNATION OF CONSUMER CELLULAR WILL PROMOTE THE PUBLIC INTEREST

Consumer Cellular, in both this Petition⁵⁵ and its Forbearance Petition⁵⁶, has demonstrated that approval of its Forbearance Petition and this Petition for Limited Designation as an ETC in the Subject States will serve the public interest by allowing a new and unique competitor into a market segment that encompasses a significant, and likely growing, percentage of lower-income Americans that are not targeted by any of the previous wireless resellers for

⁵³ 47 U.S.C. § 214(e)(1)(B).

⁵⁴ 47 C.F.R. § 54.201(d)(2).

⁵⁵ See, pp. 3-8, *supra*.

⁵⁶ See, CCI Forbearance Petition, pp. 3-5, and 13-14.

which the Commission has granted forbearance from the facilities requirement and limited ETC designation.

Additionally, limited designation of Consumer Cellular as an ETC in the Subject States would have no material impact on the Universal Service Fund, much less an adverse impact on the Fund. In the most recent USAC Annual Report, for calendar year 2008, the USAC data shows that the Low-Income Fund disbursements have been relatively steady since 2006, at about \$800 million per year.⁵⁷ Moreover, the Low-Income Fund, along with the Rural Healthcare Fund, are the only two (of four) funds with less than a billion dollars in disbursements. Limited ETC designation of Consumer Cellular in the Subject States will have no adverse effects on the size of the Fund, as a whole, and will benefit consumers most in need.

Consumer Cellular has shown that America's elderly are more likely to qualify for the Lifeline program than many other demographic groups, that our senior citizens lag the majority of the population in mobile phone adoption, and yet might realize even greater benefits in terms of safety, attachment, and security than other Americans through access to mobile phones. Not only does Consumer Cellular specialize in helping older Americans understand and embrace mobile technology, but Consumer Cellular's postpaid service is easier to use for a segment of the population that might not be able to get to a retail store in order to obtain a mobile phone, or to add minutes to their cellular plan. Furthermore, Consumer Cellular's postpaid service should further assure the Commission of Consumer Cellular's ability to prevent fraud through direct contact with its own customers, so that the Commission does not have to order Consumer Cellular to establish a direct relationship with its own customers, as the Commission did with

⁵⁷ See, USAC 2008 Annual Report at 4. Available at <http://www.usac.org/res/documents/about/pdf/usac-annual-report-2008.pdf>

pre-paid services in the *Virgin Mobile Order*.⁵⁸ It is, therefore, beyond question that Commission approval of Consumer Cellular's request for a limited ETC designation in the Subject States would benefit the public interest.

VI. ANTI-DRUG ABUSE CERTIFICATION

Consumer Cellular certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

* * *

As Consumer Cellular has demonstrated above, grant of this Petition providing Consumer Cellular with limited ETC designation to participate in the Lifeline program is consistent with the Act, Commission rules, and the public interest. For these reasons, Consumer Cellular respectfully requests that the FCC designate it as an ETC in the Subject States.

Respectfully submitted,

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⁵⁸ *Virgin Mobile Order*, 24 FCC Rcd 3381, 3392 at ¶26 (2009).