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August 3, 2010

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: CAL Communications, Inc. - Petition for Forbearance WC Docket No. 09-197

Dear Ms. Dortch:

Please find enclosed one (1) original and four (4) copies of CAL Communications, Inc.'s Petition for Forbearance, plus an additional copy of the Petition's first page. Please file-stamp the first page and return it to me in the enclosed self-addressed stamped envelope.

Should you have any questions, please contact me at (847) 537-2425 with any questions. Thank you for your assistance in this matter.

Sincerely

A handwritten signature in black ink, appearing to read "C. Lopez", written over a horizontal line.

Carlos A. Lopez, President
Cal Communications, Inc

No. of Copies rec'd 0+3
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**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
Federal-State Joint Board on Universal Service)
Petition of CAL Communications, Incorporated,)
for Forbearance Pursuant to 47)
U.S.C. § 160 from the Own Facilities)
Requirement for Eligible Telecommunications)
Carrier Status)

WC Docket No. 09-197

**PETITION FOR FORBEARANCE OF
CAL COMMUNICATIONS, INC.**

Carlos A. Lopez
CAL Communications, Inc.
1572 Barclay Blvd.
Buffalo Grove, IL 60089

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SUMMARY

CAL Communications, Inc., ("CAL") a reseller of commercial mobile radio services ("CMRS"), seeks forbearance from the requirement of Section 214(e)(1)(A) of the Communications Act of 1934, as amended. (the "Act") that an eligible telecommunications carrier ("ETC") must offer service over its own facilities or a combination of its own facilities and resale of another carrier's services. CAL requests forbearance from the facilities-based requirements under Section 214(e)(1)(A) for ETC designation to receive Lifeline and Link-Up support, consistent with prior grants to similarly situated wireless mobile virtual network operators ("MVNOs"). CAL is concurrently applying for ETC designation solely to receive support under the Low Income program.

CAL request meets all three of the requirements in Section 10.

First, forbearance is mandated because enforcement of the facilities requirement is not necessary to ensure that CAL's rates are just, reasonable and non-discriminatory. CAL will compete against numerous other wireless carriers, prepaid and postpaid providers, and other wireless companies that resell wireless services. This competition ensures that CAL will offer consumers high quality services at competitive rates that are just, reasonable and non-discriminatory.

Second, enforcement of the facilities-based requirement for CAL is not necessary to protect consumers. Indeed, grant of the requested forbearance actually will benefit consumers, especially low-income consumers, by offering them alternatives for discounted wireless telecommunications service. Forbearance will further one of the primary goals of the Act by providing low-income consumers with expanded access to telecommunications services. Grant of forbearance will not unduly burden the USF or otherwise reduce the funding available to other ETCs, since CAL is seeking forbearance to allow designation as an ETC solely for

participation in the Lifeline/Linkup program.

Third, forbearance is in the public interest since it will permit CAL to provide discounted telecommunications service to qualifying low-income customers who, after all, are the intended beneficiaries of USF support. Many low-income consumers are unable to fully benefit from the myriad of choices in today's market because of an inability to qualify for long term contracts. CAL's pre-paid offerings will be perfectly suited to provide these consumers with reliable, simple, and affordable wireless services. Grant of forbearance, therefore, will enable CAL to expand the availability of affordable telecommunications services to these consumers, expanding choice and lowering prices.

Finally, CAL's request for forbearance is consistent with prior Commission precedent which granted Tracfone Wireless, Inc. ("TracFone"), and Virgin Mobile USA, L.P. ("Virgin Mobile"), resellers of CMRS services, with forbearance from section 214(e)(1)(A) facilities requirement. In its 2005 decision granting forbearance to TracFone, the Commission determined that the facilities based requirement impedes greater utilization of the USF's low-income program by wireless resellers. The Commission further reasoned that the increased availability of prepaid wireless services would significantly benefit low-income consumers who are especially concerned about high usage charge and long-term contracts. For similar reasons grant of forbearance to CAL from enforcement of section 214(e)(1)(A) will benefit consumers, especially low-income consumers.

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In the Matter of)	
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Federal-State Joint board on Universal Service)	WC Docket No. 09-197
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Petition of CAL Communications, Incorporated, for Forbearance Pursuant to 47 U.S.C. § 160(c) from the Own Facilities Requirement for Eligible Telecommunications Carrier Status)))))	

PETITION FOR FORBEARANCE

CAL Communications, Inc. ("CAL"), pursuant to Section 10 of the Communications Act of 1934, as amended ("Act"),¹ hereby petitions the Federal Communications Commission ("FCC" or "Commission") to forbear from enforcement of sections 214(e)(1)(A) of the Act requiring a common carrier designated as an eligible telecommunications carrier ("ETC") to offer services supported by universal service fund ("USF") over its own facilities or a combination of its own facilities and the resale of another carrier's services,² in order to be eligible to collect ("USF") support, pursuant to Section 254(c) of the Act.³ CAL's request for forbearance satisfies the requirements of Section 10(a) of the Act and is consistent with recent Commission decisions granting TracFone Wireless, Inc. ("TracFone") and Virgin Mobile USA L.P. ("Virgin Mobile")- both also wireless resellers- forbearance from the Own Facilities requirements solely to

¹ See 47 U.S.C. § 151 *et seq.*

² See 47 U.S.C. § 214(e)(1)(A).

³ See 47 U.S.C. § 254(c). CAL Communications, Inc. 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 CAL Communications, Inc. will subsequently seek ETC certification.

participate in the USF's Low Income Program.⁴ As discussed below, grant of forbearance will permit CAL to offer discounted telecommunications that will benefit low-income consumers and advance the Commission's goal of increasing participation in its Low-Income support programs.

I. BACKGROUND

A. CAL Overview

CAL will provide prepaid wireless telecommunications services to consumers by using the Verizon Wireless, AT&T Wireless and Sprint Nextel networks on a wholesale basis to offer nationwide service. Verizon Wireless, AT&T Wireless and Sprint Nextel (Sprint/Verizon) are nationwide carriers that provide wholesale capacity on their wireless network(s) to wireless resellers like CAL. Pursuant to agreements, CAL will obtain from Sprint/Verizon & AT&T network infrastructure and wireless transmission facilities to allow CAL to operate as a Mobile Virtual Network Operator ("MVNO"), as both TracFone and Virgin Mobile operate. As an MVNO, CAL will purchase wireless service from Sprint/Verizon on a wholesale basis for calling and text messaging, package those services into CAL's service plans and pricing, and bundle the wireless service with CAL's handset selection, marketing materials, web interface, and customer service to produce a complete wireless service offering to sell to end-users.

Wireless telecommunications service has evolved from a luxury to an essential component of daily life, offering users the ability to access emergency services on wireless devices and a reliable means of contacting potential employers or social service agencies. By marketing and expanding the availability of wireless services to consumers

⁴ *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 FCCRed 15095 (2005); *Petition of Virgin Mobile USA, L.P. for Forbearance from 47 C.F.R. § 54.201 (i)*, CC Docket No. 96-45, Order, 24 FCCRed 3381 (2009) (collectively, the "Forbearance Orders" or individually, the "TracFone Forbearance Order," or "Virgin Mobile Forbearance Order," as applicable).

otherwise unable to afford them, and to those who continue to be ignored by traditional carriers, CAL will effectively expanded access to wireless services. This dovetails perfectly with Congress' intent when creating the universal service program.

CAL will offer consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets and high-quality customer service. Given its pricing and marketing strategy and the demographics of other, similar MVNOs' customers, CAL anticipates that many of its customers will be from lower-income backgrounds and will not previously have enjoyed access to wireless service because of economic constraints, poor credit history, or sporadic employment. CAL will not conduct credit checks or require customers to enter into long-term service contracts as a prerequisite to obtaining wireless service. CAL will allow customers to choose a prepaid plan in which they are charged only for the minutes they use. CAL intends to be a price leader in the prepaid marketplace by offering consumers exceptional value, and including highly competitive amounts of voice usage at all price points.

Low-income consumers will further benefit from CAL's service because of CAL's unique distribution platform that will allow customers to purchase both phones and refill minutes at small, local stores in neighborhoods where many Lifeline-eligible customers reside. CAL has existing relationships with over 500 such neighborhood retailers. This innovative distribution model is more practical and convenient for existing and potential Lifeline customers than other mechanisms, because it allows customers to obtain phones, service, and minutes without the expense and trouble of traveling to retail locations outside their neighborhoods or to having access to a computer to go online. CAL's distribution arrangement will therefore advance the Commission's goals of increasing awareness of and participation in the Lifeline program.

B. Lifeline Link-Up Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, particularly for low-income consumers. Section 254(b) sets forth the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications service at affordable and reasonably comparable rates.⁵ The Low-Income program was designed to assist low income individuals obtain quality telecommunications services through the Lifeline and Link-Up programs.⁶ Lifeline support helps defray the monthly costs of telecommunications services for lower-income consumers by providing them with discounts off the monthly cost of telephone service, with additional discounts available for individuals living on tribal lands.⁷ Link-Up provides qualifying low-income consumers with discounts for initial activation costs.⁸

While generally praising the Low-Income program's success, the Commission has noted that "there is more that we can do to make telephone service affordable for more low-income households," and has specifically targeted the low Lifeline participation rate as one area for improvement⁹. Commission concerns regarding the underutilization of the Lifeline program have existed since its inception.¹⁰ According to most recent estimates issued by the

⁵ See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether "consumers in all regions of the Nation, including low-income consumer and those in rural, insular, and high cost areas . . . have access to telecommunications [services] . . ." 47 U.S.C. § 254(b)(3) (emphasis added).

⁶ 47 C.F.R. §§ 54.401 and 54.411

⁷ 47 C.F.R. §§ 54.400 and 54.401

⁸ 47 C.F.R. §§ 54.411(a)(1)

⁹ See *Lifeline and Link-Up: Report and Order and Further Notice of Proposed Rulemaking*, 19 FCCRed 8302, 8305 (2004) ("*Lifeline Order*"). According to the Commission's own statistics, only one-third of households eligible for Lifeline assistance actually participated in the program just a few years ago. *Id.*

¹⁰ See *Federal-State Joint Board on Universal Service*, CC Docket 96-45, Report and Order 12 FCCRed 8776, 8972 (1997) (subsequent history omitted) ("*Universal Service First Report and Order*").

USAC in 2007, only six (6) states had more than 50 percent of eligible low-income households subscribe to the program while almost half the states had a participation rate of less than 20 percent.¹¹ To increase awareness of the program, the commission has expanded the qualifying criteria and adopted broader outreach guidelines, requiring carriers to better advertise the availability of Lifeline services. Through these actions, the Commission has sought to increase Lifeline participation because “improve[d] participation in the Lifeline program...would increase telephone subscribership and/or make rates more affordable for low-income households.”¹²

C. Forbearance Standard

Section 10(a) of the Act provides that the Commission shall forbear from applying any regulation or provision of the Act to any telecommunications carrier if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.¹³

Forbearance is mandated when all three factors are satisfied.¹⁴

D. TracFone and Virgin Mobile Petitions for Forbearance

The Commission previously has granted two petitions submitted by wireless resellers seeking

¹¹ Information available at <http://www.usac.org/fi/about/participation-rate-information.aspx> (last visited March 13, 2010).

¹² See *Lifeline Order*, 19 FCCRcd at 83-12 ¶13.

¹³ 47 U.S.C. § 160(a).

¹⁴ *Id.* (the commission “shall forbear”).

forbearance from the own facilities requirement in Section 214(e)(1)(A) of the Act.¹⁵ The Commission granted TracFone's request for forbearance from the facilities-based requirement in 2005 and Virgin Mobile's request in 2009. Like CAL, TracFone and Virgin Mobile are MYNOs that provide nationwide prepaid wireless services. The commission considered the statutory goals of universal service in the context of low-income consumers¹⁶ and the statutory purpose behind the own facilities requirement as it relates to carriers qualifying for federal low-income universal service support.¹⁷ After careful examination of the regulatory goals of universal service as applied to low-income consumers, the Commission concluded that each company satisfied the three requirements necessary for a grant of forbearance from the own facilities requirement.

Though the Commission had concluded in 1997 that pure resellers could not be designated as ETCs since these entities purchase from facilities-based providers minutes and services at a price that already reflects the universal service support payment¹⁸ the Commission found in the *Forbearance Orders* that these concerns did not apply where a pure wireless reseller was receiving Low-Income support only¹⁸. The Commission further found that forbearing from the own facilities requirement for these MVNOs would advance the Commission's goal of increasing participation in the Low-Income Program.¹⁹

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.²⁰ While the new rules are not, strictly speaking, effective

¹⁵ See *forbearance Orders*.

¹⁶ 47 U.S.C. § 254(b)(3)

¹⁷ 47 U.S.C. § 214(e).

¹⁸ *Universal Service First Report and Order*, 12 FCCRed at 8866 ¶ 161 and 8875 ¶ 178. See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCCRed 87, 172-73 ¶¶ 160-161 (1996).

¹⁹ See e.g. *Virgin Mobile Forbearance Order*, 24 FCCRed at 3389 ¶ 18.

²⁰ *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*")

immediately, CAL 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 CAL-should be able to be granted within six months of their filing²¹

In the present Petition, CAL 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.²² 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 "alternatively, the petition must declare that the petitioner has not, in a pending proceeding, requested or otherwise taken a position on the relief sought."²³ To be clear, CAL, 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, CAL has satisfied all of the Commission's new and existing requirements within the four corners of this petition. The only remaining requirement for CAL to comply with the Commission's new requirements is CAL's inclusion of an Appendix A,

²¹ *Id.* at ¶ 31.

²² *Id.* at Appendix B.

²³ *New Forbearance Petition Rules* at Appendix B

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. DISCUSSION

A. Enforcement of Section 214(e)(1)(A) Is Not Necessary to Ensure that CAL's Rates Are Just and Reasonable and Non-Discriminatory

Section 10(a)(1) of the Act directs the Commission to determine whether enforcement of the facilities-based requirements of Section 214(e) for a wireless reseller is necessary to ensure that the "charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory."²⁴ Given the extremely competitive state of the wireless industry,²⁵ enforcement of Section 214(e)(1)(A) is unnecessary to ensure that CAL's rates are just and reasonable. The commission concluded in the 2005 *TracFone Forbearance Order* that the vigorous competition in the wireless market would "ensure that [TracFone's] rates are just and reasonable and not unjustly or unreasonably discriminatory."²⁶ and again in the 2009 *Virgin Mobile Forbearance Order* that "Virgin Mobile, as a reseller, is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory."²⁷ The commission noted in the *Forbearance Orders* that competition spurs innovation among carriers in their offerings, expanding the choice of available products for eligible consumers.²⁸

CAL will compete against numerous other wireless carriers including prepaid and

²⁴ 47 U.S.C. § 160(a)(1).

²⁵ See generally *Thirteenth Annual CMRS Competition Report*, 24 FCC Red at 6185 (WTB 2008).

²⁶ *TracFone Forbearance Order*, 20 FCC Red at 15101 ¶ 14.

²⁷ See, e.g. *Virgin Mobile Forbearance Order*, 24 FCC Red at 3389 ¶ 19.

²⁸ *TracFone Forbearance Order*, 20 FCC Red at 15101 ¶ 13; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3389 ¶ 19.

postpaid providers, nationwide carriers, facilities-based providers, and MVNOs that resell wireless services. Wireless companies continually differentiate their services and rates from the many other wireless providers with whom they compete in an effort to gain market share. As a relatively new and small wireless company lacking market power, CAL is attempting to penetrate the market by offering competitive rates and superior customer service with no credit check or long-term contract. Since customers may switch to other wireless providers at any time, CAL is, by definition, subject to competition in the diverse wireless marketplace, which effectively precludes it from raising its rates to an unreasonable or discriminatory level. Thus, consistent with its findings in the *Forbearance Orders*, the commission should find that the existence of this robust competition will ensure that enforcement of Section 214(e)(1)(A) is unnecessary to ensure that CAL provides its services at rates that are just and reasonable and not discriminatory.

B. Enforcement of Section 214(e)(1)(A) Is Not Necessary to Protect Consumers.

Section 10(e)(1)(A) of the Act requires a finding that application of the facilities based requirement to CAL is not necessary to protect consumers. CAL's request for forbearance must be examined in light of the Act's primary goal of providing affordable and comparable Telecommunications services to all consumers-particularly low-income consumers. Given this context, along with the Commissions prior findings in the *Forbearance Orders*, granting forbearance to CAL actually would benefit consumers, especially low-income consumers eligible to participate in the Low-Income program. The Commission also noted in the *Virgin Mobile Forbearance Order* that the prepaid feature may be an attractive alternative for consumers who need the mobility, security, and convenience of a wireless phone but who are

concerned about usage charges or long term contracts.²⁹ Forbearance will also promote competition and increase the pressure on other carriers to target low-income consumers with services offerings tailored to their needs greatly benefiting this underserved market segment. Consumers will similarly benefit from the grant of CAL's petition, with the added benefit of the choice of an additional competitor for their Lifeline service, which may provide pricing, features, or retail outlets to make Lifeline even more accessible to more eligible consumers.

CAL's request will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. In response to opponents' comments and concerns about the funding available to other ETCs, the Commission that granting TracFone and Virgin Mobile ETC designation for Lifeline-only services would not "significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carrier's contribution obligations."³⁰

The Commission has recognized the potential growth of the USF associated with High-cost support distributed to competitive ETCs³¹. However, like TracFone and Virgin Mobile, CAL will only seek eligibility for the Low Income program, not the High-Cost program. In 2007, support from the Low Income program accounted for only 11.8 percent of the distribution of the total universal service fund, whereas High-Cost support accounted for 61.06

²⁹ *Virgin Mobile Forbearance Order*, 24 FCC Red at 33901 ¶ 21.

³⁰ *Tracfone Forbearance Order*, 20 FCC Red at 15101 ¶ 17; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3391-92 ¶ 24.

³¹ *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as and Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC docket no. 96-45, Memorandum Opinion and Order, 19 FCC Red 1563, 1577 ¶ 31 (2004); *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as and Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC docket no. 96-45, Memorandum Opinion and Order, 19 FCC Red 6422, 6433-4 ¶ 25 (2004); *High-Cost Universal Service Support: Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, 23 FCC Red 8834, 8837-38 ¶¶ 6-7 (2008).

percent.³² Thus, the Commission concluded that "any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers."³³

If CAL is ultimately granted ETC designation to receive funding under the Low Income program, USF costs or expenditures will not increase in any meaningful way, and instead many low-income customers who do not currently participate in the Lifeline and Link-Up programs will benefit. Moreover, granting CAL's Forbearance Petition will not have any effect on the number of persons eligible for Lifeline and Link-Up support

Finally, CAL will comply with all the conditions imposed upon TracFone and Virgin Mobile to ensure the protection of consumers and the integrity of the fund. Specifically, subject to any subsequent FCC modifications to the conditions listed below, CAL will: (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 services; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where CAL will provide Lifeline service confirming that CAL provides its customers with 911 and E911 access (or self-certify compliance if, within 90 days of CAL request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that CAL does not provide its customers with access to 911 and E911 service within the PSAP's service area;³⁴ (e) require its customers to self-certify at the time of

³² *Trends in Telephone Service*, Wireline Competition Bureau, Federal Communications Commission, Table 19.1 and Chart 19.1 (Aug. 2008). As of March 2007, the average monthly federal support per non-tribal Lifeline customer was \$8.57. *Id.* at Table 19.7. See 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25.00 per month in Lifeline support. 47 C.F.R. § 4.403(a)(4).

³³ *Virgin Mobile Forbearance Order*, 24 FCC Red at 3391-92 ¶ 24

³⁴ *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.* CC Docket No. 06-45, Order, 24 FCC Red 3375 (2009).

service activation that they are the head of household and receive Lifeline-supported service only from CAL and verify annually thereafter through use of a statistically valid sample that its customers remain the head of household and are not receiving other Lifeline service;³⁵ and (f) establish safeguards to prevent its customers from receiving multiple CAL Lifeline subsidies at the same address.³⁶

C. Forbearance Is in the Public Interest

Finally, Section 10(a)(3) requires the Commission to determine whether enforcement of the own facilities requirement for a wireless reseller that seeks ETC designation for Lifeline/Link-Up support is in the public interest.³⁷ As was previously stated, Section 254(b) of the Act provides for competitive rates and higher-quality telecommunications services for all consumers and encourages the rapid deployment of new telecommunications services regardless of geographic location or income.

The Commission stated in the *Forbearance Orders* that the statutory goal of providing access to affordable telecommunications services to low-income consumers outweighs the requirement that a reseller maintains its own facilities, where the wireless reseller will be eligible for Lifeline support only.³⁸ Thus, the Commission should also find that requiring CAL, as a wireless reseller, to own facilities does not further the statutory goals of the Low Income

³⁵CAL's proposal to use a statistically valid sample of customers for annual re-confirmation that customers are head of household and not receiving other Lifeline service is consistent with TracFone's recent request to modify its forbearance condition. See *Comment Sought on TracFone Request for Modification of Condition Adopted in Commission Order Granting TracFone Forbearance from Eligible Telecommunications Carrier Requirements*, CC Docket No. 96-45, Public Notice, DA 09-1272 (rel. June 5, 2009). CAL concurs with TracFone that individual annual verification would be exceedingly burdensome. In the event that the Commission denies TracFone's modification request, however, CAL will accede to the terms of TracFone's original condition requiring individual annual re-certification.

³⁶*TracFone Forbearance Order*, 20 FCC Red at 150981[6; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3386-871[12.

³⁷47 U.S.C. § 160.

³⁸*TracFone Forbearance Order*, 20 FCC Red at 15104-51[23; *Virgin Mobile Forbearance Order*, 24 FCC Red at 33931 [29.

program, which is to provide support to qualifying low-income consumers, regardless of where they live.

The Lifeline/Link-Up program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.³⁹ Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.⁴⁰ According to the most recent estimates issued by the USAC in 2007, only six (6) states had more than 50 percent of eligible low-income households subscribe to the program, while almost half the states had a participation rate of less than 20 percent.⁴¹ As noted in the *Forbearance Orders*, the Commission expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.⁴² In granting forbearance to Virgin Mobile, the Commission stated: "We believe even more can be done to further expand participation by those subscribers that qualify and thus further the statutory goal of Section 254(b)."⁴³

The Commission concluded that enforcing the own facilities requirement would impede[] greater utilization of Lifeline-supported services provided by a pure wireless reseller⁴⁴. CAL, like TracFone and Virgin Mobile, offers consumers a variety of prepaid wireless services that would be beneficial to low-income consumers "who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts."⁴⁵ CAL will offer all of the same benefits, plus added advantages to low-income

³⁹ 47 C.F.R. §§ 54.401 and 54.411.

⁴⁰ *Lifeline Order*, 19 FCC Red at 83051 ¶ 1 and Appendix K at Table I.B.

⁴¹ Information available at <http://www.usac.org/lif/about/participation-rate-information.aspx> (last visited March 13, 2010).

⁴² *Trajan Forbearance Order*, 20 FCC Red at 15105 ¶ 24; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3393 ¶ 30.

⁴³ *Virgin Mobile Forbearance Order*, 24 FCC Red at 3393 ¶ 30.

⁴⁴ *TracFone Forbearance Order*, 20 FCC Red at 15100 ¶ 9; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3391-2 ¶ 30.

⁴⁵ *TracFone Forbearance Order*, 20 FCC Red at 15101 ¶ 15; *Virgin Mobile Forbearance Order*, 24 FCC Red at 3390 ¶ 21.

consumers from its pricing plans and special attention to customer service. Granting CAL forbearance from the Section 214(e)(1)(A) own facilities requirement will further the Commission's goal of expanding the availability of affordable telecommunications services to these consumers and utilization of the Low Income support program, and also promoting competition among providers of telecommunications services, leading to lower prices and increased choices for low-income consumers.

IV. REQUEST FOR EXPEDITED TREATMENT

CAL respectfully requests that the Commission expedite its processing of this Petition for forbearance. Although there has been an increase in the number of households with telephone service, the Commission has noted that more improvements are needed to further expand the participation rate in the Low-Income program.⁴⁶ The Commission has highlighted that the participation rate in this program has been low since Inception.⁴⁷ In an effort to increase participation in the Low-Income program, the Commission has expanded the qualifying criteria several times and adopted broader outreach guidelines to raise awareness of the programs among low-income consumers so that more low-income households will benefit by obtaining telecommunications service at an affordable rate.⁴⁸ Even though Virgin Mobile was recently granted ETC designation to provide Lifeline program, the Commission nevertheless emphasized that "more can be done to further expand participation by those subscribers that qualify [.]"⁴⁹ If granted limited ETC designation, CAL intends to provide wireless services to low-income consumers who stand to benefit from the Low-Income program, and expedited treatment will allow it to do so sooner.

⁴⁶*Virgin Mobile Forbearance Order*, 24 FCC Red at 3391-21 ¶ 24.

⁴⁷*Virgin Mobile Forbearance Order*, 24 FCC Red at 3393 ¶ 30. *Universal Service First Report and Order* 12 FCC Red at 8878-51 ¶ 449.

⁴⁸*Lifeline Order*, 19 FCC Red at 8305 ¶ 1 and Appendix K at Table LB.

⁴⁹*Virgin Mobile Forbearance Order*, 24 FCC Red at 3393 ¶ 30.

Expedited treatment also is justified given that CAL is similarly situated to TracFone and Virgin Mobile, and the Commission already determined that they satisfied the forbearance conditions. Reaching the same conclusion about CAL thus should require minimal Commission resources.

Moreover, the recent economic downturn indicates that more and more eligible consumers will significantly benefit from the Lifeline and Link-Up programs once they become aware of this program⁵⁰ The U.S. Department of Labor recently reported that unemployment has soared above 15% in some areas.⁵¹ Many consumers will be unable to pay for, and therefore will lose, their current phone services, and may not get the benefit of any telecommunication service without the option of a wireless carrier that can offer an affordable, cost-effective plan at a discounted rate. We therefore urge the Commission to act promptly so that CAL may immediately reach out to these consumers who will benefit under the Lifeline program

⁵⁰ See, e.g., "Prepaid Wireless Service Could Spurn Price War," Marguerite Keardon, CNN (May 6, 2009), available at <http://www.cnn.com/2009/TECH/05/06/prepaid.wireless/index.html> ("The prepaid cell phone market has finally hit the U.S. in a big way as economically strapped consumers flock to inexpensive pay-as-you-go services.")

⁵¹ United States Department of Labor, Metropolitan Area Employment and Unemployment Summary (June 30, 2009), available at <http://www.bls.gov/news.release/metro.nr0.html>

V. CONCLUSION

As discussed above, CAL's request for forbearance satisfies the requirements of section 10(a) of the Act since it seeks forbearance from the facilities requirements for ETC designation only for purposes of participation in the USF's Lifeline and Link-Up programs. By receiving forbearance of the facilities requirement, CAL can offer discounted and affordable telecommunications services to low-income customers. Moreover, prompt Commission action will ensure that CAL expeditiously deploys its Lifeline and Link-Up services to the many low-income consumers that currently lack access to comparable and affordable telecommunications services.

WHEREFORE, for all of the foregoing reasons, CAL respectfully requests that the Commission forbear from applying section 214(e)(1)(A) to its request for designation as an ETC.

Respectfully submitted

CAL Communications, Inc.



Carlos A. Lopez
CAL Communications, Inc.
1572 Barclay Blvd.
Buffalo Grove, IL 60089

APPENDIX A

SCOPE OF RELIEF REQUESTED

CAL Communications, Inc. 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, CAL requests that the Commission to forbear from applying any of its rules implementing Section 214(e)(1)(A).

CAL 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 and Link-Up program, which is designed to ensure that low-income Americans can afford access to telecommunications services. CAL is seeking the same forbearance the Commission has granted the similarly situated TracFone⁵² and Virgin Mobile⁵³ to participate in the Universal Service Fund's Lifeline and Link-Up program.

⁵² *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 Red 15095 (2005).

⁵³ *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 Red 3381 (2009).