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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Head Start Petition for Forbearance	)	
	)	
Consumer Cellular Petition for Forbearance	)	
	)	
Midwestern Telecommunications Inc. Petition for Forbearance	)	
	)	
Line Up, LLC Petition for Forbearance	)	

ORDER

Adopted: July 28, 2010 **Released: July 30, 2010**

By the Commission:

I. INTRODUCTION

1. In this order, we grant petitions for forbearance filed by Head Start Telecom, Inc. (Head Start), Consumer Cellular, Inc. (Consumer Cellular), and Line Up, LLC (Line Up).[1] These three wireless resale providers requested that the Commission forbear from the requirement that carriers designated as eligible telecommunications carriers (ETCs) for purposes of federal universal service support provide services, at least in part, over their own facilities. We also grant in part and deny in part one additional petition for forbearance, filed by Midwestern Telecommunications Inc. (Midwestern), another wireless reseller. The order grants Midwestern the same relief as Head Start, Consumer Cellular and Line Up, but denies Midwestern's request to extend forbearance to Link Up. As a result, Head Start, Consumer Cellular, Midwestern, and Line Up may seek ETC designation to offer discounted service to qualified low-income consumers through the universal service Lifeline program. These carriers will be subject to

[1] Head Start Telecom, Inc. Petition for Forbearance, CC Docket No. 96-45 (filed May 15, 2009) (Head Start Petition); Petition for Forbearance by Consumer Cellular, Inc. pursuant to 47 U.S.C. § 160(c), CC Docket No. 96-45 (filed June 30, 2009) (Consumer Cellular Petition); Petition of Midwestern Telecommunications, 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 (filed Mar. 16, 2010) (Midwestern Petition); Petition for Forbearance of Line Up, LLC Pursuant to 47 U.S.C. § 160(c), WC Docket No. 09-197 (filed May 27, 2010) (Line Up Petition). The Wireline Competition Bureau extended the statutory deadline to act on Head Start's request to August 13, 2010. *See Federal-State Joint Board on Universal Service; Head Start Petition for Forbearance*, CC Docket No. 96-45, Order, 25 FCC Rcd 4621 (Wireline Comp. Bur. 2010). The Wireline Competition Bureau extended the statutory deadline to act on Consumer Cellular's request to September 28, 2010. *See Federal-State Joint Board on Universal Service; Consumer Cellular Petition for Forbearance*, CC Docket No. 96-45, Order, DA 10-1014 (Wireline Comp. Bur. rel. June 4, 2010).

the same conditions that the Commission previously applied to wireless resellers TracFone Wireless, Inc. (TracFone), Virgin Mobile USA, L.P. (Virgin Mobile), and i-wireless Telecom, LLC (i-wireless) in granting similar requests. The conditions will help to ensure that, if the four carriers are granted ETC designation for the purpose of providing Lifeline service, their low-income consumers have access to 911 and enhanced 911 services and will help to protect the universal service fund against waste, fraud, and abuse. However, we deny Midwestern's petition for forbearance for the purpose of participating in the Link Up program because the company has not demonstrated that granting its request satisfies the three-prong statutory test for forbearance.[2]

II. BACKGROUND

2. Congress directed the Commission to establish the universal service fund to help ensure that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation, "including low-income consumers."[3] The Commission's Lifeline program furthers this goal by reducing the price of monthly telephone service for low-income consumers, and the Commission's Link Up program furthers this goal by reducing the customary connection charge for commencing telephone service at a low-income consumer's principal place of residence.[4]

3. The Communications Act of 1934, as amended (the Act), provides that only an entity designated as an eligible telecommunications carrier shall be eligible for universal service high-cost and low-income support.[5] To become an ETC, a common carrier must offer the services supported by the federal universal service support mechanisms "either using its own facilities or a combination of its own facilities and resale of another carrier's services" to each customer in its designated service area.[6] Carriers designated as ETCs generally must participate in the Lifeline and Link Up programs and are reimbursed for the revenues foregone through their participation in these programs.[7]

4. The Commission has granted three petitions for forbearance from the facilities requirement for ETC designation in section 214(e) of the Act. In 2005, the Commission forbore from applying the facilities requirement to TracFone, a wireless reseller, insofar as TracFone sought ETC

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[2] 47 U.S.C. § 160(a); *see also Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, FCC 10-117 (rel. June 23, 2010) (*i-wireless Forbearance Order*).

[3] 47 U.S.C. § 254(b)(1), (3).

[4] Through the Lifeline program, low-income consumers may receive discounts of up to $13.50 off the monthly cost of telephone service, with the federal program reimbursing the ETC up to $10 each month. 47 C.F.R. § 54.401(a)(2). In tribal areas, the federal program reimburses ETCs up to an additional $25 each month. 47 C.F.R. § 54.405(a)(4). Through the Link Up program, low-income consumers may receive discounts of up to $30 off the connection charge. 47 C.F.R. § 54.411(a)(1). In tribal areas, low-income consumers may receive discounts of up to an additional $70 off the connection charge. 47 C.F.R. § 54.411(a)(3).

[5] 47 U.S.C. § 254(e). A carrier need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A) and (B)(ii); *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114–15, para. 19 (1999) (*Fourteenth Order on Reconsideration*).

[6] 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d)(1). Because a carrier need not be an ETC to participate in the schools and libraries or rural health care universal service programs, a carrier need not offer service over its own facilities to receive support from those programs. *See supra* note 5.

[7] *See* 47 C.F.R. § 54.407(b)–(c). ETCs designated for the limited purpose of participating in the Lifeline program, in contrast, may only receive Lifeline support.

designation only for the purpose of receiving Lifeline support.[8] In 2009 and 2010 the Commission forbore from applying the facilities requirement to Virgin Mobile and i-wireless respectively, two other wireless resellers.[9] Similar to the relief granted to TracFone, the Commission forbore from applying the facilities requirement to Virgin Mobile and i-wireless, insofar as those carriers sought ETC designation only for the purpose of receiving Lifeline support.[10] In each of these cases, the Commission conditioned forbearance on the each of the carriers meeting certain obligations upon being designated as an ETC that are tailored to the concerns arising from the carrier's lack of facilities and proposed service offering.[11]

5. *Forbearance Petitions Addressed in This Order.* Like TracFone, Virgin Mobile, and i-wireless, the petitioners here are non-facilities-based commercial mobile radio service (CMRS) providers (i.e., wireless resellers) that provide wireless telecommunications services.[12] On May 15, 2009, Head

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[8] *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*).

[9] *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance Order*); *i-wireless Forbearance Order*, FCC 10-117. The Commission denied i-wireless's request to extend forbearance to include support for Link Up. *See id.* at 8–9, para. 21.

[10] *See Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3381, para. 1; *i-wireless Forbearance Order*, FCC 10-117, at 1, para. 1.

[11] Specifically, each carrier must: (1) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of minutes; (2) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service; (3) comply with conditions (1) and (2) as of the date it provides Lifeline service; (4) obtain a certification from each public-safety answering point (PSAP) where the carrier provides Lifeline service confirming that the carrier provides its customers with 911 and E911 access or self-certify that it does so if certain conditions are met; (5) require each customer to self-certify at time of service activation and annually thereafter that he or she is the head of household and receives Lifeline-supported service only from that carrier; (6) establish safeguards to prevent its customers from receiving multiple Lifeline subsidies from that carrier at the same address; (7) deal directly with the customer to certify and verify the customer's Lifeline eligibility; and (8) submit to the Wireline Competition Bureau a compliance plan outlining the measures the carrier will take to implement these conditions. *See Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3386–87, 3392, paras. 12, 26; *TracFone Forbearance Order*, 20 FCC Rcd at 15098–99, 15104, paras. 6, 19; *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Designation as an Eligible Telecommunications Carrier in the State of Connecticut; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts; Petition for Designation as an Eligible Telecommunications Carrier in the State of Alabama; Petition for Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Designation as an Eligible Telecommunications Carrier in the State of Tennessee; Petition for Designation as an Eligible Telecommunications Carrier in the State of Delaware for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the State of New Hampshire for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania for the Limited Purpose of Offering Lifeline Service to Qualified Households; Petition for Designation as an Eligible Telecommunications Carrier in the District of Columbia for the Limited Purpose of Offering Lifeline Service to Qualified Households*, CC Docket No. 96-45, Order, 24 FCC Rcd 3375 (2009) (*TracFone Forbearance Modification Order*).

[12] We do not consider here whether forbearance should extend to any of these carriers' wireline telecommunications services nor whether any of these carriers offer wireless services that would not require forbearance. *See, e.g.*, Letter from John T. Nakahata, Counsel, Midwestern Telecommunications, Inc., to Marlene H. Dortch, Secretary, (continued . . .)

Start petitioned for forbearance for the purpose of becoming a Lifeline-only ETC.[13] Consumer Cellular followed suit on June 30, 2009.[14] On March 16, 2010, Midwestern filed a petition requesting that the Commission forbear from applying the facilities requirement so that it could become an ETC for the purpose of participating in the Lifeline and Link Up programs.[15] And on May 27, 2010, Line Up filed a petition seeking forbearance so that it could be designated a Lifeline-only ETC.[16] Each carrier states that its request for forbearance satisfies the statutory requirements and is in the public interest.[17] Further, each carrier agrees to abide by the conditions imposed on TracFone and Virgin Mobile as part of the Commission's decisions granting those carriers' requests to forbear from the ETC facilities requirement to allow them to receive Lifeline support only.[18]

III. DISCUSSION

6. The Act requires the Commission to forbear from applying any requirement of the Act or of our regulations to a telecommunications carrier if and only if the Commission determines that: (1) enforcement of the requirement is not necessary to ensure that the 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; (2) enforcement of the requirement is not necessary for

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FCC, WC Docket No. 09-197, at 1 (filed June 28, 2010) (arguing that Midwestern meets the facilities requirement in some states but "may wish to provide [wireless] services as a pure reseller" in the future).

[13] Head Start Petition at 1–2. On June 5, 2009, the Bureau issued a public notice seeking comment on Head Start's petition. *Comment Sought on Head Start Telecom, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 7685 (Wireline Comp. Bur. 2009). The National Association of State Utility Consumer Advocates (NASUCA) and the National Emergency Number Association (NENA) filed comments on the petition. NASUCA, Head Start, and the Pennsylvania Public Utility Commission (Pennsylvania Commission) filed reply comments.

[14] *See* Consumer Cellular Petition at 3–6. On July 21, 2009, the Bureau issued a public notice seeking comment on Consumer Cellular's petition. *Comment Sought on Consumer Cellular, Inc. Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, CC Docket No. 96-45, Public Notice, 24 FCC Rcd 9217 (Wireline Comp. Bur. 2009). NASUCA filed comments and NENA and Consumer Cellular filed reply comments on the petition.

[15] *See* Midwestern Petition at 2, 6–11. On March 30, 2010, the Bureau issued a public notice seeking comment on Midwestern's petition. *Comment Sought on Midwestern Telecommunications Inc. Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 2880 (Wireline Comp. Bur. 2010). No comments were filed on the petition. Midwestern filed reply comments. Although Midwestern requested to withdraw its petition for forbearance, it later rescinded that request. *Compare* Letter from Ikechuku Chinwah, Midwestern Telecommunications, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed June 14, 2010), *with* Letter from John T. Nakahata, Counsel, Midwestern Telecommunications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed June 28, 2010).

[16] *See* Line Up Petition at 6–7. On June 7, 2010, the Bureau issued a public notice seeking comment on Line Up's petition. *Comment Sought on Line Up, LLC Petition for Forbearance from Eligible Telecommunications Carrier Facilities Requirement*, WC Docket No. 09-197, Public Notice, DA 10-1040 (Wireline Comp. Bur. rel. June 7, 2010). NASUCA and NENA filed comments on the petition.

[17] *See* Head Start Petition at 8–13; Consumer Cellular Petition at 9–15; Midwestern Petition at 6–13; Line Up Petition at 11–16. We interpret these petitions to request forbearance not only from the statutory facilities requirement, 47 U.S.C. § 214(e)(1)(A), but also from our parallel regulatory requirements, 47 C.F.R. § 54.201(d)(1), (i); *see also* Line Up Petition at 7 (explicitly stating that request). We have previously read these requirements to have the same scope and purpose as the statutory provision. *See Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3386–87 n.41.

[18] Head Start Petition at 11; Consumer Cellular Petition at 9; Midwestern Petition at 10, 13; Line Up Petition at 12; *TracFone Forbearance Order*, 20 FCC Rcd at 15098–99, 15104, paras. 6, 19; *Virgin Mobile Forbearance Order*, 24 FCC Rcd 3386–87, 3392, paras. 12, 26.

the protection of consumers; and (3) forbearance from applying the requirement is consistent with the public interest.[19] As in the TracFone, Virgin Mobile, and i-wireless forbearance orders, we examine the facilities requirement from which Head Start, Consumer Cellular, Midwestern, and Line Up seek forbearance in light of the statutory goal of providing low-income consumers with access to telecommunications services and in light of the specific programs in which these petitioners seek to participate. Because our prior orders have laid the path for examining forbearance requests in the context of the Lifeline program, we first evaluate the petitions in that context. We then turn to the issue of whether Midwestern has demonstrated that the statutory requirements for forbearance are met in the context of the Link Up program.

A. Forbearance for Lifeline

7. In this section, we evaluate whether the petitioners have met the three-prong statutory test for forbearance to receive Lifeline support. For the reasons provided below, we conditionally grant the requests of Head Start, Consumer Cellular, Midwestern, and Line Up for forbearance from the facilities requirement of section 214(e) for the purpose of seeking ETC designation to provide Lifeline support only.

8. *Just and Reasonable.* As an initial matter, we note that a provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal.[20] Section 10(a)(1) of the Act requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.[21]

9. As the Commission found in the TracFone, Virgin Mobile, and i-wireless forbearance orders, we conclude that the section 214(e) facilities requirement is not necessary to ensure that these carriers' charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where they are providing Lifeline service only.[22] As resellers, Head Start, Consumer Cellular, Midwestern, and Line Up face existing or potential competition, which ensures that their rates are just and reasonable and not unjustly or unreasonably discriminatory. We expect that, if these four companies are granted limited ETC status, their Lifeline offerings will compete, at a minimum, with the Lifeline offerings of the incumbent wireline carriers in given geographic areas, and potentially, depending on the states in which Head Start, Consumer Cellular, Midwestern, and Line Up seek ETC designation, with the offerings of TracFone, Virgin Mobile, and i-wireless.[23] We also expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. For these reasons, we find that the first prong of section 10(a) is met. In the limited context of Lifeline support, the facilities requirement is not necessary to ensure that these carriers' charges, practices, and classifications are just and reasonable.

10. *Consumer Protection.* Section 10(a)(2) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. As in the cases of TracFone, Virgin Mobile, and i-wireless, we find that imposing the facilities requirement on Head Start, Consumer

[19] 47 U.S.C. § 160(a)–(b). In making the public interest determination, section 10(b) requires the Commission to consider whether forbearance will promote competitive market conditions.

[20] *See CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

[21] 47 U.S.C. § 160(a)(1); 47 U.S.C. § 214(e).

[22] *See TracFone Forbearance Order*, 20 FCC Rcd at 15100, para. 12; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 20; *i-wireless Forbearance Order*, FCC 10-117, at 4, para. 9.

[23] *See* 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

Cellular, Midwestern, and Line Up is not necessary for the protection of consumers so long as each carrier complies with the obligations described below. Specifically, we conclude that forbearance from this provision will benefit consumers. Indeed, if Head Start, Consumer Cellular, Midwestern, and Line Up are ultimately granted limited ETC status, they would be offering Lifeline-eligible consumers an additional choice of providers for accessing telecommunications services. The prepaid feature of some of these carriers' service offerings 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.

11. Given the importance of public safety and in light of the fact that a Lifeline ETC is generally a low-income customer's only connection to the public switched telephone network, however, we condition this grant of forbearance on these carriers' compliance with certain obligations upon being designated as an ETC, consistent with the public safety obligations previously imposed on TracFone, Virgin Mobile, and i-wireless.[24] Specifically, our forbearance is conditioned on each of the four carriers:

(1) providing its Lifeline customers with 911 and E911 access regardless of activation status and availability of minutes;

(2) providing its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, noncompliant handsets of existing customers who obtain Lifeline-supported service;

(3) complying with conditions (1) and (2) as of the date it provides Lifeline service; and

(4) obtaining a certification from each PSAP where the carrier seeks to provide Lifeline service confirming that the carrier provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met.

12. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.[25] The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.[26] As we have held previously, we believe these obligations are necessary to ensure that the Lifeline customers of these wireless resellers have meaningful access to emergency services.[27]

13. Consistent with the obligations we have placed on TracFone, Virgin Mobile, and i-wireless, these obligations apply in any state in which Head Start, Consumer Cellular, Midwestern, or Line Up becomes an ETC and plans to serve any customers without using their own facilities. Additionally, Head Start, Consumer Cellular, Midwestern, and Line Up must furnish to the Commission upon request copies of all certifications required by the fourth obligation.[28] Furthermore, if any of these carriers seeks to use the self-certification option, it may do so only after complying with the following

[24] *See TracFone Forbearance Order*, 20 FCC Rcd at 15101–02, paras. 15–16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390–91, paras. 21–23; *i-wireless Forbearance Order*, FCC 10-117, at 5, para. 11.

[25] *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

[26] *Id.*

[27] *See TracFone Forbearance Order*, 20 FCC Rcd at 15101–02, paras. 15–16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390–91, para. 21–23; *i-wireless Forbearance Order*, FCC 10-117, at 5, para. 12.

[28] *See, e.g.*, *Virgin Mobile ETC Designation Order*, 24 FCC Rcd at 3390, para. 22.

procedures. *First*, the carrier must request certification from the PSAP and notify the PSAP that the carrier may self-certify compliance if the PSAP has neither provided certification nor made an affirmative finding that the carrier does not provide its customers with access to 911 and E911 service within the PSAP's service area within 90 days of the request (the evaluation period). The evaluation period commences upon such notification and is tolled whenever a PSAP reasonably requests information or equipment to evaluate the carrier's request until the carrier responds with that information or equipment.[29] If a PSAP determines that the carrier will not offer its Lifeline customers appropriate access to emergency services or has concerns regarding the carrier's ability and if the PSAP notifies the carrier of its concerns during the evaluation period, the evaluation period is extended by an additional 90 days and the carrier may not self-certify compliance until it has addressed the PSAP's concerns.[30] *Second*, before self-certifying, the carrier must obtain from its underlying carrier in that area certification that the underlying carrier routes emergency calls from the carrier's customers to the PSAP in the same manner that it routes emergency calls from its own customers.[31] *Third*, the carrier must provide the PSAP with a copy of the relevant self-certification at the time it is effective.[32] *Fourth*, if a PSAP finds that one of these carriers does not provide its customers with 911 and E911 access after the carrier has self-certified that it does, the carrier must notify the Commission of this finding upon receiving notice and must explain how it plans to meet the PSAP's concerns and provide Lifeline customers with appropriate 911 and E911 access.[33]

14. Accordingly, we find that, subject to the 911 and E911 conditions and the self-certification and other conditions set out above, and consistent with the Commission's grant of forbearance to TracFone, Virgin Mobile, and i-wireless, the facilities requirement is not necessary for consumer protection with respect to Head Start, Consumer Cellular, Midwestern, or Line Up's receipt of Lifeline support only. We therefore conclude that the second element of section 10(a) is satisfied.

15. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is in the public interest. In evaluating whether forbearance is in the public interest, we follow the path we laid out in the TracFone, Virgin Mobile, and i-wireless forbearance orders. We note first that the Commission's traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high-cost fund does not apply in the low-income context.[34] We also note that Lifeline support is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers and is directly reflected in the price that the low-income customer pays.[35] Requiring a Lifeline provider to own the facilities it uses to offer service does not necessarily further the statutory goal of the low-income program.[36] In accordance with our forbearance grants to TracFone, Virgin Mobile, and i-wireless, we find that the public interest is served by forbearing from the

[29] *Id.* at 3391, para. 22.

[30] *Id.* at 3390 n.67.

[31] *Id.* at 3391, para. 22. Like other certifications, the carrier is required to retain these underlying carrier certifications and provide them to the Commission upon request.

[32] *Id.*

[33] *Id.*

[34] *See TracFone Forbearance Order*, 20 FCC Rcd at 15100–01, para. 12; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3389, para. 18; *i-wireless Forbearance Order*, FCC 10-117, at 6, para. 15.

[35] 47 C.F.R. §§ 54.401, 54.504.

[36] *See TracFone Forbearance Order*, 20 FCC Rcd at 15104–05, para. 23; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, FCC 10-117, at 6, para. 15.

appropriate to leave those assessments to whichever commissions will rule on Head Start, Consumer Cellular, Midwestern, and Line Up's petitions for designation as ETCs. A state commission is generally in a better position to assess whether a particular offering will benefit that state's low-income consumers and to determine whether it is necessary to condition ETC designation on compliance with state-level 911 and E911 obligations.[42] We therefore encourage parties arguing for additional obligations to redirect their arguments to ETC designation proceedings rather than this proceeding.

19. Similarly, we are not persuaded by comments regarding the impact on the size of the universal service fund and the associated contribution obligation if we grant the forbearance petitions.[43] Granting forbearance here would allow Head Start, Consumer Cellular, Midwestern, and Line Up to compete with TracFone, Virgin Mobile, i-wireless, and other ETCs for the existing pool of low-income customers, and the size of that pool is determined by Lifeline program eligibility requirements, not by the number of providers competing for those customers. The additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest. A new entrant should incent existing wireless reseller ETCs to offer better service and terms to their customers, which provides additional evidence that forbearance in the context of the Lifeline program outweighs the potential costs.[44]

20. In conclusion, we find that conditionally granting forbearance to Head Start, Consumer Cellular, Midwestern, and Line Up for purposes of seeking ETC designation to participate in the Lifeline program will further the statutory goal of providing low-income subscribers access to telecommunications and emergency services, while protecting the universal service fund against waste, fraud, and abuse.[45] To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, parties may file appropriate petitions with the Commission and we have the option of reconsidering this forbearance ruling.[46]

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applied to Line Up); NENA Reply to Head Start Petition 1–2 (arguing that carriers seeking forbearance should commit to complying with state-level 911 and E911 obligations as a condition of forbearance); NENA Reply to Consumer Cellular Petition 1–2 (same); NENA Comments to Line Up Petition at 1 (same); NASUCA Reply to Head Start Petition at 2 (agreeing with NENA). *But see* Head Start Reply at 2–3 (arguing against conditions that go beyond what was imposed on TracFone and Virgin Mobile); Consumer Cellular Comments at 3–5 (same).

[42] Of course, if a state commission does not have jurisdiction to designate a carrier as a limited-purpose ETC, we will consider that carrier's application as well as whether any additional obligations are necessary for that particular designation to be in the public interest. *See* 47 U.S.C. § 214(e)(6).

[43] *See* Pennsylvania Commission Reply at 5–6.

[44] For example, Virgin Mobile (the second wireless reseller to receive forbearance) has recently increased the number of minutes it offers to low-income consumers through its Lifeline product to attract more customers. *Compare, e.g.*, Pennsylvania Commission Reply, CC Docket No. 96-45, at 6 n.16 (filed July 20, 2009) (noting that Virgin Mobile planned to offer 120 free prepaid minutes to Lifeline customers), *with* Virgin Mobile Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Alabama, WC Docket No. 09-197, at 8 (filed Jan. 15, 2010) (noting that Virgin Mobile plans to offer 200 free prepaid minutes to its Lifeline customers).

[45] Each of the carriers has committed to complying with all the obligations imposed on TracFone and Virgin Mobile as conditions of forbearance. *See* Head Start Petition at 11; Consumer Cellular Petition at 12; Midwestern Petition at 10 & n.31; Line Up Petition at 12. Although each carrier uses slightly different language to characterize the nature of these obligations (e.g., no carrier spells out all of the terms of the fourth obligation), we will interpret and apply these obligations to all wireless resellers that request and receive forbearance from the facilities requirement imposed by section 214(a) in order to participate in the Lifeline program in a uniform manner and do so consistent with our holdings in the TracFone, Virgin Mobile, and i-wireless forbearance orders.

[46] *See Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508–09, para. 26 & n.85 (2004); *see also Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance*
(continued . . .)

B. Forbearance for Link Up

21. We decline to grant the request of Midwestern for forbearance from the facilities requirement for the purpose of seeking ETC designation to receive Link Up support.[47] Petitioners seeking forbearance bear the burden of proof and must show that each of the statutory elements of forbearance is met.[48] Midwestern has not done so in the context of the Link Up program. Specifically, Midwestern does not address in its petition the differences between the Lifeline and Link Up programs, nor does the company explain how the obligations conditional to Lifeline participation would apply in the context of Link Up.[49] Moreover, Midwestern does not explain how the public interest would be served by forbearing from the facilities requirement in this context. General references to the statutory goal of ensuring that low-income consumers have access to telecommunications services do not suffice to replace a particularized argument regarding the facts and policy surrounding the facilities requirement and the Link Up program.[50] We thus reach the same conclusion as we did when i-wireless previously sought similar forbearance[51]—Midwestern has failed to meet its burden to show that forbearing from the facilities requirement in the context of the Link Up program is in the public interest and its request is denied.[52]

IV. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petition for forbearance filed by Head Start Telecom, Inc. IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

23. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petition for forbearance filed by Consumer Cellular, Inc. IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

24. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petition for forbearance filed by Midwestern Telecommunications Inc. IS GRANTED IN PART

(continued from previous page)
Services, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223–24, para. 19 & n.66 (2004); *Cellnet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6th Cir. 1998).

[47] *See* Midwestern Petition at 6–13; *cf. i-wireless Forbearance Order*, FCC 10-117, at 8–9, para. 21.

[48] *See, e.g., Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance under Section 10 of the Communications Act of 1934, As Amended*, WC Docket No. 07-267, Report and Order, 24 FCC Rcd 9543, 9554–55, para. 20 (2009) ("We now state explicitly that the burden of proof is on forbearance petitioners at the outset and throughout the proceeding."); *Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Denver, Minneapolis-St. Paul, Phoenix, and Seattle Metropolitan Statistical Areas*, WC Docket No. 07-97, Memorandum Opinion and Order, 23 FCC Rcd 11729, 11750, 11754–58, paras. 28, 36, 39 (2008) (noting that Qwest had failed to meet its burden of persuasion regarding sufficiency of market share).

[49] *See* Midwestern Petition at 6–13 (discussing Link Up only in the context of its discussion of Lifeline).

[50] *See Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19879–80, para. 55 (1998) ("MariTEL's request cannot be granted because it is too vague, both as to the specific provisions from which we should forbear from enforcing, and as to why forbearance would be in the public interest.").

[51] *See i-wireless Forbearance Order*, FCC 10-117, at 8–9, para. 21.

[52] Because we find that Midwestern has not met its burden of proof on the third statutory element, we do not examine whether it did so on the first or second elements.

to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order and otherwise DENIED.

25. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, the petition for forbearance filed by Line Up, LLC IS GRANTED to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

26. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 214, 254, we forbear from applying section 54.201(d)(1) of the Commission's rules, 47 C.F.R. § 54.201(d)(1), to Head Start Telecom, Inc., Consumer Cellular, Inc., Midwestern Telecommunications Inc., and Line Up, LLC to the extent discussed herein and conditioned on fulfillment of the obligations set forth in this order.

27. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary