

receive all or almost all of their calls on wireless telephones.<sup>7</sup> Wireline is a “legacy” service – it’s not going away entirely any time soon, but it is shrinking, not growing, as it is displaced by wireless service throughout the population.

It’s not surprising that customers prefer wireless to landline by such a large margin. Wireless service by its very nature is portable, and it has allowed Americans to adapt to a new era of ubiquitous and constant connectivity, something that was never possible with landline service. Wireless service also engenders more excitement than wireline service ever could, with new technology – both more robust handsets and associated features implemented in hardware, as well as new network capabilities – expanding the possibilities of communication and related economic productivity year after year. Even the lowest-priced wireless handsets offer features that landline phones don’t, such as text messages, built-in phonebooks, and mobile voicemail. The cost of wireless service has also decreased dramatically, making it easily affordable for the majority of Americans.<sup>8</sup> At the same time, consumer satisfaction with wireless offerings has reached higher levels.<sup>9</sup> The wireless industry’s dramatic rise is not a fluke; it is the result of millions of Americans—especially those on limited budgets—making the rational decision to choose a mobile, technologically advanced product over the increasingly antiquated and wall-bound Twentieth Century telephone system.

### **Wireless Provides Special Advantages for Low Income Americans**

Congress took specific steps to ensure that low income Americans aren’t left out of the wireless revolution. Like other wireless customers, low income Americans enjoy the better

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<sup>7</sup> *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics

<sup>8</sup> CTIA, Semi-annual wireless industry survey, *available at* <http://www.ctia.org/advocacy/research/index.cfm/AID/10316>

<sup>9</sup> CTIA, *The Wireless Industry Facts: An Independent Review*, *available at* [http://files.ctia.org/pdf/082010\\_Independent\\_Assessment\\_of\\_Wireless\\_Industry.pdf](http://files.ctia.org/pdf/082010_Independent_Assessment_of_Wireless_Industry.pdf)

handsets and added features that come with wireless service. But wireless also provides critical benefits for low income Americans that improve their security, mobility, and economic welfare in ways that are particularly important to them in light of the economic and at times social challenges they face. Numerous studies have demonstrated that wireless phones help low income Americans in profound ways, and that they recognize it.

First, wireless phones provide and enhance physical, personal security. Survey respondents prefer wireless to landline for emergency uses by more than three to one, and forty-eight percent of Americans have already used a wireless phone in an emergency.<sup>10</sup> Wireless phones have been called a “lifeline” for the homeless, who use them to call for help and to report assaults.<sup>11</sup> Studies have called wireless phone service “essential” to low income Americans, largely because it provides a constant connection with family, friends, and others who can offer support and protection when needed.<sup>12</sup>

Second, low income Americans benefit, even more than other wireless customers, from the mobility of their phones. Low income customers often spend less time during the day at a fixed location like a home or a desk. If unemployed, a wireless service is more useful than a landline service, as discussed below. But employed Americans with lower incomes will more likely be in jobs that do not come with an office phone available to them. This is particularly true for the homeless. For homeless Americans, wireless service is the only realistic means of

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<sup>10</sup> Amy Farnsworth, *A cellphone plan to bridge digital divide: Firms and feds offer free connections to customers shut out by high costs*, Christian Science Monitor, July 2, 2009; Sullivan, N.P. *Cell phones provide significant economic gains for low-income American households: A review of literature and data from two new surveys* at 15; available at [http://www.newmilleniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://www.newmilleniumresearch.org/archive/Sullivan_Report_032608.pdf) (“Sullivan Report”)

<sup>11</sup> Petula Dvorak, *D.C. Homeless People Use Cellphones, Blogs and E-mail to Stay on Top of Things*, Washington Post, March 23, 2009.

<sup>12</sup> Janice A. Hauge, et al., *Whose call is it? Targeting universal service programs to low-income households’ telecommunications preferences*, 33 *Telecomm. Pol’y* 129, 130 (2009), available at [http://warrington.ufl.edu/purc/purcdocs/papers/0805\\_Hauge\\_Whose\\_Call\\_is.pdf](http://warrington.ufl.edu/purc/purcdocs/papers/0805_Hauge_Whose_Call_is.pdf)

voice communication, especially as payphones disappear.<sup>13</sup> Advocates report that wireless phones are crucial for the homeless, who use them to stay in touch with their families, arrange appointments for medical care, and pay bills.<sup>14</sup>

Wireless service is also very important in helping low income Americans get and keep jobs. Unless they have a wireless phone and accessible voicemail, low income job applicants are at a serious disadvantage during the process of seeking and setting up job interviews, as well as making and receiving the follow-up calls that are an integral part of actually getting hired. A mobile phone allows prospective employees to respond immediately to potential employers and, once hired, allows them to stay in contact with their employers and to better manage their schedules. In this respect, inbound use of wireless phones – the ability to receive calls – is just as critical as the ability to call others. Once they are employed, low income Americans use their wireless phones to contact employers and co-workers. In this regard, most wireless customers use their phones for work-related calls, and it would be difficult to imagine navigating the responsibilities and assignments of the work world without a mobile telephone.<sup>15</sup>

Another way wireless is useful to low income Americans is as a tool for obtaining the most effective access to other social services for which they are targeted. A wireless service allows low income families to have reliable communication with government or medical offices, since they will not have to sit near a wired phone – which may not be an option in any case – and since, if they do miss a call, there is typically Caller ID and voice mail available to facilitate the exchange of information and any necessary call-backs.

Prepaid billing is perhaps the most important aspect of wireless service for low income Americans. As the observers have noted, the flat fees attached to most contractual postpaid

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<sup>13</sup> Kevin Graham, *Wireless a Lifeline for Homeless*, St. Petersburg Times, April 9, 2007.

<sup>14</sup> *Id.*

<sup>15</sup> Sullivan Report at 22.

plans are disproportionately onerous on low income customers.<sup>16</sup> By contrast, prepaid wireless service costs only as much as a customer can afford. The low income customer does not have to commit to pay for more service than she will likely use, and does not have to worry about bill shock if the unduly-large monthly commitment becomes too onerous. With pre-paid, the financial burden is both precise and fair. This is a crucial benefit to families who must count every dollar each month. The FCC itself has noted that the “prepaid feature, which essentially functions as a toll control feature, may be an attractive feature to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.”<sup>17</sup> With prepaid, low income customers can purchase only as many minutes as they need for their phone.

#### **Prepaid Wireless—Bridging the Communications Divide**

The advantages of wireless service are not lost on low income Americans. Quite the contrary: low income customers are migrating quickly to wireless, and their rate of switching to wireless only – that is, “cutting the cord” – is higher than that of the rest of the population.<sup>18</sup> When asked, low income families confirm that if they can only have one phone, they want it to be wireless.<sup>19</sup> They also want it to be prepaid. In the last few years, the increase in prepaid subscribership has been particularly high in low income households, which makes sense. Studies

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<sup>16</sup> Reply Comments of the Minority Media and Telecommunications Council, *In the Matter of Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket Nos. 09-157, 09-51, FCC 09-66 (rel. Aug., 27, 2009).

<sup>17</sup> *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia*, CC Docket No. 96-45, FCC 08-100, Released April 11, 2008.

<sup>18</sup> Hauge at 141; *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, July–December 2009*, by Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics.

<sup>19</sup> Hauge at 136.

have shown that low income customers choose prepaid in higher numbers than any other group.<sup>20</sup>

The success of prepaid wireless among this segment of the population is borne out by a recent study that found that the penetration of prepaid service in low income Floridian households has doubled over the past three years.<sup>21</sup> The prepaid wireless industry is also growing quickly as a whole: two out of three new wireless subscribers choose prepaid.<sup>22</sup> As the FCC predicted, the ability to control costs is the big reason that prepaid wireless has been so successful among low income purchasers.<sup>23</sup> Being able to decide how much or how little to spend on phone service from month to month allows low income families to manage their costs and phone usage in accordance with family budget. By pre-paying, they can control the cost of critical wireless service on a highly granular level, down to the dollar and the minute.<sup>24</sup>

Crucially, minority populations are of particular interest in any policy discussion concerning prepaid wireless and the digital divide. First, minorities have a higher wireless penetration rate than the overall population.<sup>25</sup> Additionally, the Low Income program is of particular relevance in combating the communications divide in minority populations because they suffer from higher poverty rates. For example, the poverty rate for Latinos in was 23.2 percent and 24.7 percent for African-Americans in 2008, compared to the overall poverty rate of

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<sup>20</sup> *Id.* at 138.

<sup>21</sup> *Id.* at 137.

<sup>22</sup> Marguerite Reardon, *Prepaid wireless outpaces contract service*, CNET News, April 5, 2010, available at [http://news.cnet.com/8301-30686\\_3-20001793-266.html](http://news.cnet.com/8301-30686_3-20001793-266.html)

<sup>23</sup> Hauge at 139.

<sup>24</sup> As the National Consumers League has written, “[p]repaid wireless service is a good option for low-income consumers because there are no long-term contracts, no credit checks, and no early termination penalties or late payment fees. With prepaid service, people pay only for the service that they can afford.” Comments to the Federal Communications Commission from the National Consumers League *In the matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, WC Docket 03-109, September 17, 2004.

<sup>25</sup> Hauge at 135.

13.2 percent.<sup>26</sup> Prepaid wireless is crucial to narrowing the communications divide due to its unique mix of affordability and ease of use allows it to achieve high penetration in minority communities.

### **Prepaid Wireless as Low Income Eligible Telecommunication Carriers (“ETCs”)**

The overwhelming success of prepaid wireless among low income households has rejuvenated the Lifeline and Link Up programs. Unlike the High Cost program, Lifeline and Link Up payments are directly tied to the exact number of qualifying low income customers that an ETC serves.<sup>27</sup> Thus, while growth in the High Cost program might well be a basis for concern – if costs are so high, and growing, perhaps there is an underlying inefficiency in how the service is providing – growth in the Low Income program means that more and more of the population the program is trying to reach, is actually being reached. This is a success, not a problem. And, where states have approved prepaid wireless providers as eligible telecommunications carriers (ETCs), participation rates in these programs have jumped. Texas saw an immediate 10% increase in Lifeline participation when it began approving wireless ETCs.<sup>28</sup> In Florida, the combination of automatic enrollment and the approval of SafeLink, a prepaid wireless phone provider, to be a Lifeline ETC, led to a increased participation rate of 236% in a single year.<sup>29</sup>

Still, overall participation in the Lifeline and Link Up programs is still far from what it should be if the program’s goals – all Americans, including low income Americans, having

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<sup>26</sup> U.S. Census Bureau, *Summary of the Current Population Survey (CPS), 2009 Annual Social and Economic Supplement (ASEC)*, available at <http://www.census.gov/hhes/www/poverty/about/overview/index.html>

<sup>27</sup> The High Cost program provides subsidies based on the total amount of cost a carrier incurs (incumbent eligible telecommunications carriers (ETCs)) or total volume of customers (competitive ETCs).

<sup>28</sup> Memorandum from Edward Randolph, Director of the Office of Governmental Affairs, to the California Public Utilities Commission on AB 2213 (Fuentes) – Moore Universal Telephone Service Act as Amended (May 26, 2010). available at <http://docs.cpuc.ca.gov/PUBLISHED/REPORT/118920.htm>

<sup>29</sup> Florida Public Service Commission news release, *Florida's lifeline enrollment increases dramatically*, December 28, 2009. available at <http://www.psc.state.fl.us/home/news/index.aspx?id=615>

access to modern, effective, affordable communications – are going to be met. Unfortunately, only 32% percent of eligible households took part last year.<sup>30</sup> The FCC has attributed this low success rate in part to state restrictions on wireless ETCs, of which it urges reconsideration.<sup>31</sup> Certainly, new outreach efforts should be encouraged.

### **Best Practices in the Prepaid Wireless Industry**

As the prepaid wireless industry grows in size, its business practices are also evolving. Already, there are a recognizable set of best practices that many companies follow in order to offer the most attractive packages to consumers and to maintain the advantages of prepaid for low income Americans. First, many ETCs offer a reasonable number of minutes upon activation of the phone, and additional minutes can be purchased affordably. Nexus Communications' ("Nexus"), like most prepaid wireless ETCs, offers additional prepaid cards, whose minutes rollover into the next month if not used, at stores such as Walmart, CVS/Pharmacy, Rent A Center and Giant Eagle.<sup>32</sup> Second, Nexus and other wireless ETCs waive the balance of their activation fees not covered by Link Up, and also provide free wireless handsets, thereby eliminating any cost barrier to obtaining service. Third, as mentioned before, Nexus and Tracfone (in most markets) provide sixty eight free minutes of service with basic service packages, and unused minutes roll over from month to month for as long as the Lifeline subscriber remains enrolled in the lifeline program. Just recently, Tracfone announced that it is adding additional packages for Lifeline subscribers to choose from, including one plan that provides Lifeline subscribers with up to two hundred fifty free minutes every month.

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<sup>30</sup> USAC Lifeline Participation Rate Study (2009), *available at* <http://www.usac.org/li/about/participation-rate-information.aspx>

<sup>31</sup> National Broadband Plan, Chapter 9, at 172.

<sup>32</sup> Details of Nexus' service offerings are available at <https://www.reachoutmobile.com/index.php/site/page/C3/>

Fourth, as active and responsible participants in the government's Low Income programs, prepaid wireless ETCs support the creation of a national certification and verification database. In addition, prepaid wireless ETCs are helping to eliminate fraud, waste, and abuse from the Low Income program by de-enrolling Lifeline subscribers who do not use the handset for 60 days. This ensures that ETCs will not inadvertently seek USF reimbursements for subscribers who are no longer using their services. Only subscribers who actually use their wireless service will continue to participate in the Lifeline program, and wireless ETCs will only receive Low Income support for those subscribers who remain enrolled in the Lifeline program.

### **The Challenges that Remain**

The rapid growth of prepaid wireless within the Lifeline program has not been without critics. Some have charged that prepaid wireless ETCs have not demonstrated a commitment to consumer value in the services they offer through Lifeline and Link Up, and that the number of minutes offered monthly is too low.<sup>33</sup> Others have noted that the non-contractual nature of the prepaid model makes it difficult to verify that customers remain eligible for government support.<sup>34</sup>

It's certainly true that prepaid wireless ETCs don't operate like traditional landline ILECs when offering Lifeline services. But over the last few years, low income Americans have announced clearly, in every way possible, that they prefer limited minutes on a wireless phone to unlimited local minutes on a landline phone. Given all the advantages of wireless noted above,

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<sup>33</sup> Comments of the Advocates for Basic Legal Equality, et al. *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Lifeline and Link-Up Eligibility, Verification, and Outreach Issues Referred to Joint Board*, Public Notice, FCC 10J-2, CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), seeking comment on *In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up, Order*, FCC 10-72, CC Docket 96-45 and WC Docket 03-109 (FCC rel. May 4, 2010).

<sup>34</sup> Comments of the National Association of National Association of State Utility Advocates *In the Matter of Federal-State Joint Board on Universal Service Seeks Comment on Lifeline and Link-Up Eligibility, Verification, and Outreach Issues Referred to Joint Board*, Public Notice, FCC 10J-2, CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), seeking comment on *In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up, Order*, FCC 10-72, CC Docket 96-45 and WC Docket 03-109 (FCC rel. May 4, 2010).

this is hardly surprising. The old landline model is simply not useful to most Americans in today's economic and social environment. Likewise, it is true that making sure prepaid wireless customers can be certified and verified through the Low Income system has required some innovative solutions, and may require further adjustments to guard against waste, fraud, and abuse. But this innovation is happening, will continue to happen, and is indicative of the prepaid wireless industry's ability to expand the boundaries of service and the traditional definitions of telephone networks. Fundamentally, the problems identified by critics, mismatching of service offerings to need, and a potential for waste while more effective verification methods are put in place, are simply growing pains. Any new entrant into established programs like Lifeline and Link Up will face these kinds of challenges. But these challenges are far preferable to the problems that would face a wireline-only Lifeline program: quickly decreasing participation and growing irrelevance to the needs of those Americans it is supposed to help. Prepaid wireless has already solved the problems that would otherwise endanger the very existence of the Low Income programs, and it is one of the best tools to combat the communications divide.

### **Solutions**

None of the challenges facing prepaid wireless ETCs is intractable. By following the best practices outlined above, companies like Safelink Wireless, Nexus, and Assurance Wireless already give their customers great value in prepaid wireless phones, and subscription numbers show that low income consumers recognize this value. Many ETCs are also offering new types of packages to Lifeline subscribers, including ones with up to two hundred fifty free minutes ever month, as part of their efforts to respond to the suggestions of consumer groups. The wide availability of prepaid cards and the increasing competition among providers are also making it easier for customers to find the best choice among phones. State public service commissions can

provide another easy way to increase competition among wireless ETCs. Many states, through their implementation of the Lifeline and Link Up programs, already publish the names of qualifying ETCs that customers may choose among.<sup>35</sup> State public service commissions could take the next step of publishing the terms of various prepaid plans, which would point out which ETCs' plans offer the best value for state residents. This centralized information repository, combined with the natural competition in a fast-growing industry, would do much to eliminate or reduce cost concerns.

Prepaid wireless ETCs are also playing an active role in the push to reform the eligibility and verification systems that the Lifeline and Link Up programs use to prevent fraud and abuse. A nationally-maintained eligibility database, which wireless ETCs have urged the FCC to implement soon, would resolve any issues associated with subscribers attempting to obtain Lifeline service from more than one carrier simultaneously or when a subscriber is not qualified for the Lifeline program.<sup>36</sup>

## **Conclusion**

Low Income Americans were among the first to recognize how well prepaid wireless meets their needs by providing security, mobility, and cost control that was not being offered by traditional landline services. Their response has been swift and clear, and the rate at which low income customers abandon landlines in order to make the move to prepaid wireless is increasing. The FCC and many state governments have recognized the trend, and are adapting the Lifeline

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<sup>35</sup> See, e.g., Illinois (<http://www.icc.illinois.gov/utility/list.aspx?type=prepaid>), California (<http://www.cpuc.ca.gov/PUC/Telco/Public+Programs/lifelinedetails.htm>)

<sup>36</sup> See, e.g. Comments of Leap Wireless International, Inc. and Cricket Communications, Inc.; Comments of Nexus Communications, Inc.; Comments of PR Wireless, Inc.; Comments of TracFone Wireless; CC Docket 96-45 and WC Docket 03-109 (FCC rel. June 15, 2010), *seeking comment on In Re Federal-State Joint Board on Universal Service, Lifeline and Link Up*, Order, FCC 10-72, CC Docket 96-45 and EC Docket 03-109 (FCC rel. May 4, 2010).

and Link Up programs so that they can help more low income Americans get jobs and stay employed, better manage their budgets, and care for their families. This constitutes no less than a revolution in the usefulness and desirability of Lifeline and Link Up service for low income Americans

# **EXHIBIT 4**

## **Affirmative Statements of State Commissions**



**STATE OF ALABAMA**  
ALABAMA PUBLIC SERVICE COMMISSION  
P.O. BOX 304260  
MONTGOMERY, ALABAMA 36130-4260

JIM SULLIVAN, PRESIDENT  
JAN COOK, ASSOCIATE COMMISSIONER  
SUSAN D. PARKER, Ph.D., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.  
SECRETARY

**ALTEL COMMUNICATIONS, INC.,**  
**Applicant**

**APPLICATION: For designation as an  
eligible telecommunications carrier in  
the State of Alabama.**

**DOCKET 30263**

**ORDER DENYING ALTEL'S PETITION FOR RECONSIDERATION**

**BY THE COMMISSION:**

**I. INTRODUCTION AND BACKGROUND**

Pursuant to order entered in this cause on January 9, 2007, the Commission determined as a threshold matter that it lacked the jurisdiction necessary to act on the October 12, 2006 Application of Alltel Communications, Inc. ("Alltel") for designation as an eligible telecommunications carrier ("ETC") for certain specified areas of Alabama. Alltel sought ETC designation for the rural telephone company study areas in Alabama located partially in the territory where Alltel is a licensed provider of cellular mobile radio service ("CMRS").<sup>1</sup> Alltel further sought to redefine the study areas of the affected rural telephone companies in Alabama in its October 12, 2006 Petition.

The January 9, 2007 Order concluding that the Commission lacked jurisdiction to act on Alltel's Application for ETC status was based on a number of considerations. In particular, the Commission noted that on March 12, 2002, an order was issued in Docket U-4400 wherein the Commission determined that it did not have jurisdiction over CMRS providers and, therefore, lacked jurisdiction to designate CMRS providers as ETCs pursuant to §214(e) of the Act. The Commission observed that its finding in that regard was based on an earlier conclusion reached

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<sup>1</sup> Alltel's request was made pursuant to §214(e)(2) of the Communications Act of 1934, as amended (the "Act").

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by the Commission in an Order entered on March 2, 2000 in Docket 26414 wherein the Commission determined that the provisions of Code §§40-21-120(1)(a) and (2) dictate that the Commission has no authority to regulate CMRS providers and other providers of Commercial Mobile Service ("CMS").

The Commission further noted in its January 9, 2007 Order that Congress expressly enacted §214(e)(6) of the Act to provide carriers like Alltel who are not subject to a particular state's jurisdiction an identifiable means of being designated as an ETC in such states. The Commission also determined that, contrary to the arguments of Alltel, the Alabama Legislature's 2005 passage of the Communications Reform Act<sup>2</sup> and §37-2A-7 thereof did not authorize the Commission to assume jurisdiction over CMRS providers for the purposes of administering federal Universal Service requirements in Alabama. The Commission accordingly advised Alltel to submit its application for ETC designation to the FCC pursuant to §214(e)(6) of the Act.

On or about February 13, 2007, Alltel filed a Petition for Reconsideration in this cause urging the Commission to revisit the conclusions reached in its January 9, 2007 Order and to thereafter grant the application of Alltel for designation as an ETC in Alabama. As in its original petition, Alltel again asserted in its Petition for Reconsideration that Code §37-2A-7 requires the Commission to exercise jurisdiction over Alltel's application. Alltel further asserted that the Commission's reliance on its previous orders in Dockets 26414 and U-4400 was misplaced given the change in law brought about by the enactment of Code §37-2A-7.

Alltel additionally noted that staff from the Florida Public Service Commission had recently opined to the Florida Public Service Commissioners that a newly enacted provision in Florida law very similar to Alabama Code §37-2A-7 authorized the Florida Commission to

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<sup>2</sup> See Code of Alabama 1975 §37-2A-1-11, as amended (the "CRA").

exercise jurisdiction over CMRS providers for Universal Service purposes.<sup>3</sup> Just as in Alabama, Alltel noted that the Florida Commission did not have jurisdiction over CMRS providers for such purposes prior to the enactment of the cited Florida statute. On or about April 26, 2007, Alltel provided as supplemental authority an April 3, 2007 Order of the Florida Public Service Commission adopting the foregoing logic of the Florida staff and finding that the Florida Commission could indeed exercise jurisdiction over wireless carrier ETC matters based on the language of the cited Florida statute.<sup>4</sup>

**II. FINDINGS AND CONCLUSIONS ON RECONSIDERATION**

We have again reviewed the arguments of Alltel regarding the jurisdiction of the Commission over CMS providers for purposes of administering federal Universal Service requirements. We herein reaffirm our previous determination that no provision of Alabama law, including Code §37-2A-7, provides the Commission with jurisdiction over CMRS providers or any other provider of CMS with respect to Universal Service matters. Although §37-2A-7 does provide the Commission with broad jurisdiction over telecommunications carriers for purposes of administering federal Universal Service requirements, a closer review of the definitions and scope of the CRA reveals that providers of CMRS service such as Alltel and providers of other commercial mobile services do not meet the CRA's definition of a telecommunications carrier and are thus excluded from the coverage of the CRA.

In particular, §37-2A-5 of the CRA provides that only incumbent local exchange carriers, local exchange carriers and interexchange carriers may elect to be regulated under the CRA. The definitional provisions of the CRA found at §37-2A-2 thereof further specify that for purposes of the CRA, telecommunications carriers shall be treated as subject to the CRA only to the extent that they are engaged in the provision of "telecommunications service." The

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<sup>3</sup> See Florida Statutes at §384.001.

<sup>4</sup> In Re: *Petition of Alltel Communications Inc. for Designation as an Eligible Telecommunications Provider*, Docket No. 060582-TP, Order No. PSC-07-0288-PAA-TP (Florida Public Service Comm'n, April 3, 2007).

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definition of "telecommunications service" is set forth in §37-2A-2(19) which expressly excludes providers of commercial mobile service under §332(c) of the Federal Communications Act of 1934 from said definition. Providers of commercial mobile service like Alltel are accordingly excluded by definition from the coverage of the CRA including §37-2A-7 thereof. As such, the Commission's prior determination regarding its lack of jurisdiction to designate CMS providers as ETCs was not affected by the CRA.<sup>5</sup>

We further note that the action recently taken by the Florida Public Service Commission with respect to Alltel's application for ETC status in that state is unpersuasive. Unlike the Florida statute cited by Alltel and relied upon by the Florida Commission to assume jurisdiction over Alltel's application for ETC designation in Florida, the Alabama statutes do not provide an express or implied exemption to the Alabama Legislature's prior statutory determination in Code §§40-21-120(1)(a) and (2) that wireless carriers like Alltel are exempt from the jurisdiction of the Commission.

Based on the foregoing, we again emphasize that Alltel has requested relief that this Commission cannot jurisdictionally provide. Alltel's Motion for Reconsideration is accordingly denied and Alltel is again advised to seek ETC designation before the FCC pursuant to §214(e)(6) of the Act.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That, for the foregoing reasons, the Petition of Alltel Communications, Inc. for Reconsideration is hereby denied.

IT IS FURTHER ORDERED BY THE COMMISSION, That jurisdiction in this cause is hereby retained for the issuance of any further order or orders as this Commission may find just and reasonable in the premises.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

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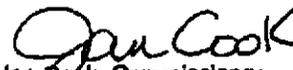
<sup>5</sup> See §37-2A-11(b)(1) and (2).

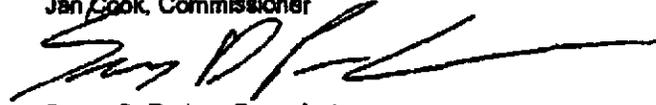
DOCKET 30263 - #5

DONE at Montgomery, Alabama, this *23<sup>rd</sup>* day of May, 2007.

ALABAMA PUBLIC SERVICE COMMISSION

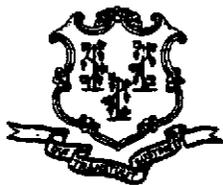
  
Jim Sullivan, President

  
Jan Cook, Commissioner

  
Susan D. Parker, Commissioner

ATTEST: A True Copy

  
Walter L. Thomas, Jr., Secretary



# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC UTILITY CONTROL

August 10, 2010  
In reply, please refer to:  
UR:PAP

Lance J.M. Steinhart, Esquire  
1720 Windward Concourse  
Suite 115  
Atlanta, Georgia 30005

Re: Request for Letter Clarifying Jurisdiction Over Wireless CETC Petitions

Dear Mr. Steinhart:

The Department of Public Utility Control (Department) acknowledges receipt of your July 23, 2010 letter filed on behalf of i-wireless, LLC (i-wireless) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, i-wireless seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the Federal Communications Commission for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, i-wireless is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietro  
Executive Secretary



**STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904  
September 28, 2007

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

Debra McGuire Mercer, Esquire  
Greenberg Traurig, LLP  
800 Connecticut Avenue NW  
Suite 500  
Washington, DC 20006

RE: TracFone Wireless, Inc.

Dear Ms. Mercer:

In your letter dated September 25, 2007, you asked for a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate a common carrier as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You noted that such a statement would allow TracFone Wireless, Inc. to seek ETC designation from the Federal Communications Commission ("FCC"), which, if granted, would make TracFone Wireless, Inc. eligible to receive universal service support in Delaware in accordance with 47 U.S.C. § 254.

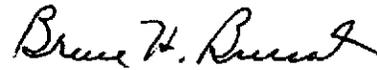
Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers, including TracFone Wireless, Inc. 26 Del. C. § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 Del. C. § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service").

In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000) at paras. 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

Debra McGuire Mercer, Esq  
September 28, 2007  
Page 2

For these reasons, I hereby confirm that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as TracFone Wireless, Inc., as an ETC.

Sincerely,

A handwritten signature in cursive script that reads "Bruce H. Burcat".

Bruce H. Burcat  
Executive Director



**Public Service Commission of the District of Columbia**  
1333 H Street, N.W., 2nd Floor, West Tower  
Washington, D.C. 20005  
(202) 626-5100  
www.dcpsc.org

July 28, 2010

Mr. Lance J.M. Steinhart  
Counsel for i-wireless, LLC  
Lance J.M. Steinhart, PC  
1720 Windward Concourse, Suite 115  
Alpharetta, GA 30005

Dear Mr. Steinhart:

Thank you for your July 23, 2010 letter stating i-wireless LLC's ("i-wireless") intent to be designated as an eligible telecommunications carrier in the District of Columbia. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Public Service Commission of the District of Columbia ("Commission") does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate i-wireless as an eligible telecommunications carrier.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact me at 202-626-5140 or rbeverly@psc.dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Beverly".

Richard A. Beverly  
General Counsel

Enclosure



LEXSTAT D.C. CODE 34-2006

LEXIS DISTRICT OF COLUMBIA CODE ANNOTATED

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\*\*\* CURRENT THROUGH DECEMBER 28, 2010 AND THROUGH D.C. ACT 18-676 \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH NOVEMBER 18, 2010 \*\*\*

DIVISION V. LOCAL BUSINESS AFFAIRS

TITLE 34. PUBLIC UTILITIES

SUBTITLE V. TELECOMMUNICATIONS

CHAPTER 20. TELECOMMUNICATIONS COMPETITION

**GO TO DISTRICT OF COLUMBIA CODE ARCHIVE DIRECTORY**

*D.C. Code § 34-2006 (2011)*

§ 34-2006. Exemptions [Formerly § 43-1456]

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

D.C. Code § 34-2006

**HISTORY:** 1981 Ed., § 43-1456; Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.

**NOTES: EFFECT OF AMENDMENTS.** --D.C. Law 17-165 added (c).

**LEGISLATIVE HISTORY OF LAW 11-154.** --See note to § 34-2001.

**LEGISLATIVE HISTORY OF LAW 17-165.** --See note to § 34-2001.

**LexisNexis 50 State Surveys, Legislation & Regulations**

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July 28, 2010

Lance J.M. Steinhart, P.C.  
1720 Windward Course  
Suite 115  
Alpharetta, GA 30005

RE: i-wireless, LLC ETC designation

Dear Mr. Steinhart:

This is in response to your letter to the Commission, received on July 27, 2010, concerning the above referenced telecommunications carrier. You requested a statement from the Commission that i-wireless is not subject to the jurisdiction of the Commission, inasmuch as this will affect how i-wireless proceeds with efforts to become designated as an Eligible Telecommunications Carrier (ETC) for purposes of receiving universal service support pursuant to the Telecommunications Act.

Your attention is directed to a published order of the Commission, *RCC Minnesota Inc*, 88 NH PUC 611 (2003 (Order No. 24,245)). In that order, the Commission acknowledged that it lacks state-law authority to regulate wireless carriers, *id.* at 615, citing Section 362:6 of the New Hampshire Revised Statutes Annotated, and therefore the Commission concluded that it also lacks jurisdiction to consider a request for ETC designation from the carrier. As a user of cellular spectrum to provide commercial mobile radio service, i-wireless may rely on the *RCC Minnesota* decision for the proposition that the Federal Communications Commission, rather than the New Hampshire Public Utilities Commission, is the appropriate agency to consider i-wireless' bid for ETC status.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra A. Howland".

Debra A. Howland  
Executive Director

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

www.dps.state.ny.us

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*General Counsel*

JACLYN A. BRILLING  
*Secretary*

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstated under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

*Maurleen J. McCauley*  
Maurleen J. McCauley  
Assistant Counsel

A handwritten signature in black ink that reads 'Maurleen J. McCauley'.