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April 29, 2011

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Cricket Communications, Inc., Notice of Ex Parte Communication,
WC Docket Nos. 09-197, 11-42, 03-109 & CC Docket No. 96-45**

Dear Ms. Dortch:

On April 28, 2011, Tim Ostrowski, Russell Merbeth, and Julie Buechler of Cricket Communications, Inc. (“Cricket”) and the undersigned met with Zac Katz, Legal Advisor to Chairman Genachowski, and Carol Matthey, Trent Harkrader, and Kim Scardino of the Wireline Competition Bureau, to discuss Cricket’s petition for designation as a Lifeline-only eligible telecommunications carrier (“ETC”) in New York, North Carolina, Tennessee, Virginia, and the District of Columbia, as well as Cricket’s related forbearance petition. Cricket also discussed its views in connection with the pending Notice of Proposed Rulemaking regarding the administration of Lifeline and Link Up support and measures to combat waste, fraud, and abuse.

First, Cricket urged the Commission to grant the pending ETC petition and forbearance petition to enable Cricket to provide Lifeline service to additional low-income consumers in the five states at issue in the federal petition as well as in states where Cricket has ETC petitions pending or anticipates seeking designation in the near future. As reflected in the attached slide presentation and sample application form, we explained Cricket’s responsible approach to verifying eligibility for Lifeline discounts and otherwise ensuring compliance with the Commission’s rules and policies. We also clarified that, because Cricket no longer charges any service activation fee, it hereby withdraws its request to become eligible to receive Link Up support. We further noted that, because Lifeline customers may purchase any service plan available from Cricket (including its various bundles that include voice and data services), granting the petitions will serve the public interest by enhancing low-income consumers’ access not only to mobile telecommunications services but also to broadband Internet access.

Second, we briefly discussed the letter filed last week by the “California Rural ILECs” (“California RLECs”) in opposition to Cricket’s forbearance petition,¹ and we now take this opportunity to supplement the record by explaining further why that untimely opposition fails to provide any legitimate basis for denying the requested relief.

As an initial matter, the California RLECs filed their letter more than *eight months* after the Commission’s deadline for filing such objections.² They fail utterly to establish any good cause for their failure to meet that deadline. While the California RLECs state that they would have opposed the petition earlier if they had known about it sooner,³ that excuse is legally irrelevant,⁴ and misleading in any event. Contrary to the California RLECs’ suggestion that they only recently became aware of the petition, they received actual notice of Cricket’s forbearance petition through Cricket’s ETC application submissions before the California Public Utilities Commission last November, and they inexplicably chose to remain silent until now.⁵ The Commission should not entertain the California RLECs’ unjustifiably late objection at the eleventh hour, as doing so would “unreasonably burden the resources of stakeholders and the Commission,”⁶ as well as Cricket’s right to timely relief.

In any event, the California RLECs fail to provide any valid substantive basis for denying the requested forbearance relief. Cricket’s petition seeks forbearance from enforcement of Section 214(e)(5) of the Communications Act, as amended (the “Act”), and Section 54.207 of the Commission’s rules.⁷ Applying these sections of the Act and the Commission’s rules would require Cricket to endure the needlessly burdensome and time-consuming process of redefining Cricket’s “service area” any time Cricket seeks to offer Lifeline in a rural ILEC’s study area, by

¹ See Letter from Patrick M. Rosvall to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 09-197 (Apr. 20, 2011) (“California RLECs Letter”).

² Comments and reply comments were due on July 25, 2010 and August 10, 2010, respectively. See Public Notice: Comment Sought on Cricket Communication Inc.’s Petition for Forbearance from Eligible Telecommunications Carrier Service Area Requirement, WC Docket No. 09-197, DA 10-11793 (Jun. 25, 2010).

³ California RLECs Letter at 2.

⁴ As a matter of administrative law, the Commission’s publication of its June 25, 2010 Public Notice gave the California RLECs constructive notice of Cricket’s petition and the associated comment deadlines. See, e.g., *John Jason Bennett*, 20 FCC Rcd 17193 (2005).

⁵ Cricket’s petition was discussed in comments filed with the CPUC by Cricket on November 4, 2010, and again on December 2, 2010 in the CPUC Resolution designating Cricket as an ETC in California. See CPUC Resolution T-17266 (Dec. 2, 2010).

⁶ *Petition to Establish Procedural Requirements to Govern Proceedings for Forbearance Under Section 10 of the Communications Act of 1934, as Amended*, Report and Order, 24 FCC Rcd 9543, at ¶ 13 (2009) (adopting strict procedural requirements for forbearance petitions in light of statutory deadlines).

⁷ 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207.

carving out any portions of those study areas outside of Cricket's licensed coverage area. And Cricket would have to repeat that process in each state for which it seeks designation as an ETC. Cricket's petition demonstrates that the requested forbearance is appropriate and, indeed, required under Section 10 of the Act because: (i) enforcement is not necessary to ensure that Cricket's rates, terms and conditions are just, reasonable, and non-discriminatory; (ii) enforcement is not necessary to protect consumers (to the contrary, forbearance would benefit consumers by expanding service options and promoting competition); and (iii) forbearance is consistent with the public interest (as it would expedite Cricket's ability to provide discounted service to the public).

The California RLECs apparently concede that Cricket has satisfied the first prong of the forbearance standard,⁸ and do not dispute Cricket's claim that the requested forbearance would promote competition and expand consumer choice. The California RLECs also appear to acknowledge that because Cricket is seeking Lifeline-only ETC designations, the requested forbearance would not give rise to the "cream-skimming" concerns that arise in the high-cost context and that underlie Section 214(e)(5) of the Act and Section 54.207 of the Commission's rules.⁹ Yet, the California RLECs nevertheless seek to repackage the cream-skimming argument by asserting that "permitting designation of ETCs in only a portion of rural service territories can have a detrimental impact on rural ILECs and their customers"¹⁰ More specifically, the California RLECs claim that the requested forbearance would result in their loss of customers, reducing their revenues and threatening their ability to serve customers in high-cost areas.¹¹

This argument is fatally flawed on several levels. First, the only "harm" identified by the California RLECs is competition—*i.e.*, that low-income consumers might prefer the high-quality mobile service provided by Cricket to the legacy wireline offering provided by the California RLECs. What the California RLECs characterize as "harm"—enhanced consumer choice and incentives for all providers to operate more efficiently—actually consists of *benefits* that go to the heart of the regulatory framework established by the Act and the Commission's implementing rules.¹² Moreover, this supposed "harm" does not extend from service area redefinition, but rather from the *designation* of additional ETCs. Consequently, this "harm" would not be avoided by denying the requested forbearance. To the contrary, Cricket obviously would capture *more* customers and cause *greater* revenue loss if it were to compete with the

⁸ See California RLECs Letter at 2.

⁹ *Id.* (noting that "'Lifeline only' requests may not implicate 'creamskimming' in the same way as requests for full ETC designation").

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² See 47 U.S.C. § 160(b) (directing the Commission to consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.").

California RLECs throughout the entirety of their study areas as would be required in the absence of service-area redefinitions.

Even if the asserted “harm” did turn on the manner in which competitive ETC service areas are defined, competitive ETCs have no incentive or ability to target low-income consumers in low-cost areas, as the Commission has found in dismissing cream-skimming concerns in prior Lifeline-related proceedings.¹³ Notably, Lifeline consumers typically are an ILEC’s *least* profitable customers (because low-income consumers generally are less able to purchase bundled services or other high-revenue offerings). For this reason, rural ILECs often complain that, because new entrants are not *compelled* to provide Lifeline service, they are able to focus solely on “high value” customers and leave the incumbent saddled with the less lucrative, low-income segment.¹⁴ Yet here, Cricket is doing the opposite by expressly focusing its business plan on value-oriented customers. Nonetheless, the California RLECs would have this Commission believe that Cricket would gain some type of unfair advantage by obtaining the opportunity to serve low-income customers in rural areas—a position that not only conflicts with the Commission’s cream-skimming precedent but defies common sense.

Moreover, grant of the requested forbearance would not preclude states from considering or addressing the potential for any purported “harm” to RLECs. While the California RLECs assert that the requested forbearance would deprive states of the ability to consider public interest factors in designating competitive ETCs,¹⁵ that is simply not true. In fact, states would retain the *obligation* under Section 214(e)(3) to find that designating an additional ETC in a rural area

¹³ See, e.g., *Virgin Mobile USA, L.P.*, Order, 24 FCC Rcd 3381, at ¶ 38 n.101 (2009) (“In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.”)

¹⁴ See, e.g., *State of Maine Public Utilities Commission Investigation Pursuant to 47 U.S.C. § 251(f)(1) Regarding CRC Communications of Maine’s Request of Lincolnville Telephone Company, Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company*, Brief of Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company and Oxford West Telephone Company, Docket Nos. 2009-41 through 44, at 27-28 (filed Apr. 30, 2010) (asserting that because a new entrant “does not offer Lifeline rates” it can engage in a strategy of cream skimming by “attract[ing] customers whose revenues to the rural carriers are higher than average”); *State of Maine Public Utilities Commission Investigation Pursuant to 47 U.S.C. § 251(f)(1) Regarding CRC Communications of Maine’s Request of UniTel, Inc., Lincolnville Telephone Company, Tidewater Telecom, Inc., Oxford Telephone Company, and Oxford West Telephone Company*, Initial Brief of the Public Advocate, Docket Nos. 2009-40 through 44, at 11-12 (filed Apr. 30, 2010) (claiming that a new entrant’s business model “is fairly characterized as ‘cherry picking’” because it does not plan to provide Lifeline benefits to low-income customers).

¹⁵ California RLECs Letter at 3.

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would serve the public interest, and they could consider competitive dynamics and the impact of designation on rural ILECs as part of this analysis.¹⁶

Finally, the ex parte presentation summarized the arguments Cricket made in its recent comments in support of Lifeline reform. We stressed that prepaid wireless services consisting of limited allowances of minutes, offered at no charge to the consumer, both subvert the purposes of the Lifeline program and foster waste, fraud, and abuse. We recommended that the Commission require a minimum charge to consumers and/or an unlimited number of minutes so that consumers have continuous access to the PSTN and providers receive discounts only when customers are actually connected to the network. We also expressed support for the Commission's efforts to eliminate duplicative support, noting that requiring customers to pay a fee for service would eliminate incentives for customers to sign up for multiple "free" services. We further stated Cricket's willingness to participate in an industry forum or task force devoted to addressing this pressing problem.

* * *

For the reasons set forth above, Cricket urges the Commission to grant both of Cricket's pending petitions on an expedited basis. Please contact the undersigned if you have any questions about these issues.

Respectfully,

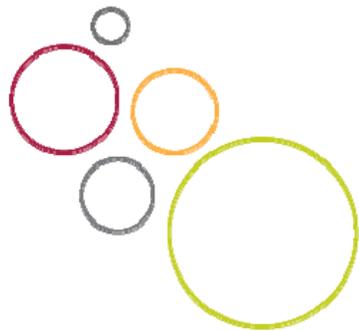
/s/ Matthew A. Brill

Matthew A. Brill
Counsel to Cricket Communications, Inc.

Attachments

cc: Zac Katz
Carol Matthey
Trent Harkrader
Kim Scardino

¹⁶ 47 U.S.C. § 214(e)(3) ("Upon request *and consistent with the public interest, convenience, and necessity*, the State commission *may*, in the case of an area served by a rural telephone company . . . designate more than one common carrier as an [ETC] Before designating an additional [ETC] for an area served by a rural telephone company, the State commission *shall find that the designation is in the public interest.*") (emphasis added).

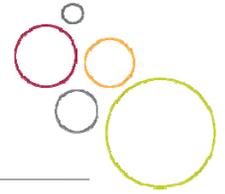


Cricket Communications

How Cricket Does Lifeline Right

April 2011

cricket



Cricket Background

- Parent Company - Leap Wireless International, Inc. (NASDAQ: LEAP)
- Founded in 1998
- Headquartered in San Diego, CA
- Markets in 35 states; 95.3 million CPOPs; Nationwide Coverage
- Over 5.8 million customers
- 7th Largest Wireless Provider in US

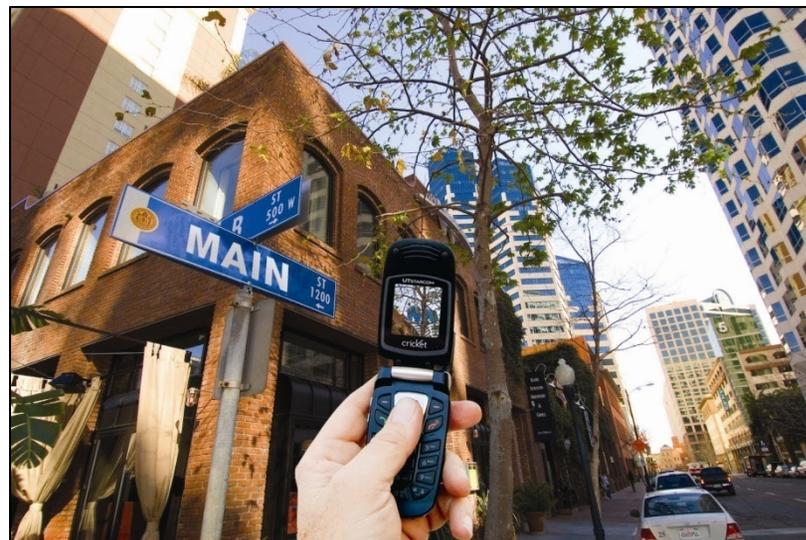




Consumer Focused Business Model

cricket[®]

- Unlimited, Flat-Rate Mobile Voice and Data Services
- No Long-Term Service Contracts
- No Early Termination Fees
- No Credit Checks
- Underserved Customer Demographics
- Simple, Easy-to-Understand Pricing & Predictable Bills





Who is Cricket?

~60% From Ethnic Groups*

~50% Younger Than 35*

~80% Earn Less Than \$50,000/yr*

>90% Use Cricket as Primary Phone

>70% Use Cricket as Only Phone**

~1,500 minutes/month average**

~40 text messages per day**



Communication Services for an Underserved Customer

*Industry Average: 25% from Ethnic Groups, 45% younger than 35, 40% of US households have an income under \$50K

**Industry Average: 25% mobile as only phone, 600 minutes/month and 15 text messages each day

Source: Cricket CSAT Survey March 2010, Cricket customer database, Yankee Group, Nielson

cricket

Cricket Lifeline Product



- Cricket Offering
 - Qualified customers will receive a monthly discount of \$13.50 / \$10.00* off of any Cricket rate plan depending on the state in which they reside
 - Cricket Lifeline offering clearly indicates that it is supported by Lifeline. Our product name is "Cricket Lifeline Credit"
 - Cricket Lifeline offering is only available on our pay-in-advance product
- Unlimited Cricket Rate Plans
 - All rate plans include unlimited local and long distance calling with nationwide coverage
 - Lowest rate plan - \$35 includes: Unlimited Local, Long Distance, Text Messaging, Voice Mail, Caller ID and Caller ID Blocking.
 - Most popular plan - \$45 includes the above plus: Call Waiting, 3-Way Calling, Unlimited Picture & Video Text Messaging, Unlimited International Text Messaging, Unlimited Directory Assistance and Mobile Web coverage (allows subscriber access to the internet)
 - Cricket also offers consumers affordable phone options

KEEPS YOU **CONNECTED**
KEEPS YOU **ON BUDGET**

cricket
lifeline credit

See if you're eligible for a
\$13.50
monthly credit toward
your wireless bill.

Millions of Americans already
benefit from this program.
You could too.

SEE STORE FOR A
REQUEST FORM
TODAY

© 2010 Cricket Communications, Inc.

* \$12.30 discount in Missouri due to lower subscriber line charge

What Cricket Does Right

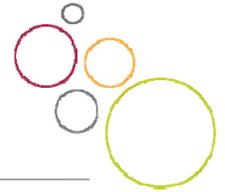


FCC Concern	Cricket	Traditional Pre-Pay
Product Name Reference Lifeline (Cricket Lifeline Credit)	Y	N
Customer Pays for Service	Y	N
Unlimited Number of Minutes	Y	N
Requests Reimbursement Only for Days Customer Was Active	Y	N

Cricket Lifeline Credit

- Lifeline credit is a discount of up to \$13.50 off of customer's regular bill
- Unlimited local, long distance with texting and other features
- Many safeguards against fraud, waste and abuse built into our procedures for certifying and verifying lifeline customers

Cricket Lifeline – Internal Procedures



- Cricket has established tight internal procedures to prevent against fraud, waste and abuse of government resources
- Cricket customers must self-certify in their Lifeline application* and annually follow the federal verification procedures.
- Customers receive detailed warnings and must expressly acknowledge and certify under penalty of perjury that they:
 - Will be required to verify continued eligibility
 - Will notify Cricket immediately if they cease to participate in the eligible programs
 - Understand Lifeline is available only for one residential phone line per household (either wireline or wireless but not both).
- Additionally, Cricket performs monthly reconciliation between our Lifeline database and our billing system. One of the steps performed is to check for duplicate addresses.
- As soon as a customer disconnects from Cricket service we remove him/her from Lifeline and discontinue requesting low income reimbursement.

*Some states have their own customer Lifeline certification processes which Cricket follows, eliminating the need for Cricket's own self-certification process.

Cricket Lifeline Presence



- Applications Approved:

- Oregon – Launched March 2010
- Missouri – Launched June 2010
- Maryland – Launched June 2010
- South Carolina – Launched expanded area August 2010
- Illinois (Chicago area only) – Launched December 2010
- California – Launched March 25, 2011

- Applications Pending:

- FCC – District of Columbia, New York, North Carolina, Virginia and Tennessee
- Pennsylvania
- Arizona
- Colorado
- Illinois (southern IL)
- Ohio (estimated filing May 2011)



Conclusion

- The Commission should promptly grant Cricket's pending forbearance petition to enable Cricket to serve Lifeline subscribers in additional states, while avoiding unnecessary boundary-modification proceedings.
- The Commission also should grant Cricket's request for designation as a Lifeline-only ETC in NY, NC, VA, TN, and DC to help address the needs of underserved low-income consumers in those states.
- The Commission should pursue reforms of Lifeline as proposed in the NPRM, as set forth in Cricket's comments.

Cricket Lifeline Credit – Maryland

You may qualify for a \$13.50 credit on your monthly wireless bill if you receive low income benefits under certain programs. **You must have or sign-up for Cricket Wireless service to receive this credit.** The Cricket Lifeline Credit is only available for Cricket Wireless service; it is not available for Cricket Broadband or Cricket PAYGo service.

If you receive benefits from one or more of the programs listed below and are a resident of Maryland, complete and sign this application. **You must also provide documentation verifying participation in at least of the programs listed below.** This documentation may include a benefit card or a letter from the federal or state agency that administers the qualifying program. Bring this application and your documentation to a Cricket Corporate-Owned Store or Exclusive Cricket Dealer. To locate the store nearest you, visit mycricket.com/locations.

1. APPLICANT INFORMATION *(please print – applicant's name must match the name on the phone bill).*

Last Name _____
First Name _____
Middle Name _____
Street Address* _____
City, State, Zip _____

2. QUALIFYING PROGRAMS *(check all that apply)*

- EUSP** (Electric Universal Service Program)
 Food Stamps (Supplemental Nutrition Assistance Program)
 SSI (Supplemental Security Income, not including Security Retirement benefits)
 MEAP (Maryland Energy Assistance Program)
 Medicaid Medical Assistance
 TANF (Temporary Assistance for Needy Families)
 TCA (Temporary Cash Assistance)
 Public Assistance to Adults
 TDAP (Temporary Disability Assistance Program)

* PO Box numbers cannot be accepted

Please acknowledge your agreement by initialing every line below and signing the application:

- I understand that completion of this application does not constitute immediate approval for the Cricket Lifeline Credit. It may take up to 60 days for the credit to appear on my account.
- I authorize Cricket Communications to access any records required to verify my statements herein and to confirm my eligibility for the Cricket Lifeline Credit. I also authorize Cricket Communications to release any records required for the administration of the Cricket Lifeline Credit program.
- I understand that I may be required to verify my continued eligibility for the Cricket Lifeline Credit at any time and that failure to do so will result in termination of the Cricket Lifeline Credit benefits.
- I agree to notify Cricket Communications immediately if I cease to participate in the programs I listed above.
- I understand that Lifeline assistance is only available for one residential phone line per household (either wireline or wireless but not both). I understand that I must notify Cricket Communications if I add Lifeline on another phone line, so that Cricket may discontinue my Cricket Lifeline Credit.

By signing below, I certify under penalty of perjury that the information contained in this application is true and correct.

Applicant Signature _____
Date of Signature _____
Social Security Number _____
(social security number used to apply for the qualifying program)

STORE USE ONLY (all fields must be completed prior to submission):

MDN _____
Account Number _____
New Customer Yes No
Date of Activation _____
Current Rate Plan *(Cricket Wireless ONLY)* _____
Social Security Number Provided Yes No (REQUIRED)
Verification of State/Federal Picture ID Yes No (REQUIRED)
Type of Identification Provided _____
Type of Supporting Documentation Attached _____
Cricket Representative Name _____
Store Number/CID Login _____
Date Application Submitted to Cricket _____