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## SUMMARY

Airvoice Wireless, LLC (“AVW”) is seeking forbearance from Section 214(e)(1)(A) of the Communications Act of 1934, as amended (“Act”), and Sections 54.201(d)(1) and 54.201(i) of the Commission’s rules, which requires a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer services supported by the universal service fund (“USF”) over its own facilities or a combination of its own facilities and the resale of another carrier’s services. AVW requests forbearance from the Section 214(e)(1)(A) facilities requirements since it is a reseller of commercial mobile radio services (“CMRS”) and will soon apply for designation as an ETC in various states solely for purpose of participation in the USF’s Lifeline program.

AVW’s Petition for Forbearance prima facie satisfies the Commission’s forbearance standard since enforcement of section 214(e)(1)(A) is not necessary to ensure that AVW’s rates are just and reasonable and non-discriminatory. In the robustly competitive wireless market, AVW will compete against other carriers, including prepaid and postpaid providers, to offer customers the lowest priced and highest quality services. This competition ensures that AVW offers its customers just, reasonable, and non-discriminatory rates and terms.

Second, enforcement of the facilities requirement is not necessary to protect consumers. In this case, forbearance will provide significant benefits to consumers, especially low-income consumers, by increasing their alternatives for affordable telecommunications services. Grant of petition will not unduly burden the USF or otherwise reduce the funding available to other ETCs, since AVW is seeking forbearance to allow designation as an ETC solely for participation in the Lifeline program.

Forbearance also is in the public interest since it will permit AVW to provide discounted telecommunications services to qualifying low-income customers—the intended beneficiaries of USF support. Many low-income consumers have yet to benefit from competition in the telecommunications industry because of financial constraints, poor credit history, or intermittent employment. AVW’s service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. Grant of forbearance, therefore, will enable AVW to expand the availability of affordable telecommunications services to these consumers, enhancing choice and lowering prices.

Finally, AVW’s request for forbearance is consistent with prior Commission precedent that granted Tracfone Wireless, Inc. (“Tracfone”), Virgin Mobile USA, L.P. (“Virgin Mobile”), and i-wireless, LLC (“i-wireless”), resellers of CMRS services, with forbearance from the facilities requirement. In its 2009 decision granting forbearance to Virgin Mobile, the Commission determined that the statutory goal of providing telecommunications services to low-income consumers outweighs the requirement that Virgin Mobile own facilities. As the Commission noted, with only about one-third of Lifeline eligible households actually subscribing, granting the Virgin Mobile petition serves the public interest as it should expand participation of qualifying consumers. For similar reasons, grant of forbearance to AVW will benefit low-income consumers. In addition, AVW will abide by the conditions imposed on Tracfone, Virgin Mobile and i-wireless as part of the Commission’s decisions granting those forbearance requests.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

	)	
	)	
In the Matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 09-197
Universal Service	)	
	)	
PETITION FOR FORBEARANCE	)	
	)	

**PETITION FOR FORBEARANCE**

**I. INTRODUCTION**

Airvoice Wireless, LLC (“AVW”), pursuant to Section 10 of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to forbear from enforcement of Section 214(e)(1)(A) of the Act, and Sections 54.201(d)(1) and 54.201(i) of the Commission’s rules,<sup>2</sup> requiring a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer services supported by the universal service fund (“USF”) over its own facilities or a combination of its own facilities and the resale of another carrier’s services.<sup>3</sup> Specifically, AVW seeks forbearance with respect to the states in which AVW will seek designation as an ETC from the relevant state commission. AVW has not, in a pending proceeding, requested or otherwise taken a position on the relief sought herein.

AVW’s request for forbearance satisfies the requirements of Section 10(a) of the Act and accords with Commission precedent since it seeks forbearance from the requirements of Section

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<sup>1</sup> See 47 U.S.C. § 151 et seq.

<sup>2</sup> See 47 C.F.R. §§ 54.201(d)(1), (i).

<sup>3</sup> See 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.201(d)(1), (i).

214(e)(1)(A) only for purposes of participation in the USF's Lifeline program. As discussed below, grant of forbearance will enable AVW to provide discounted telecommunications services to its low-income customers. Prompt Commission action also will ensure that AVW expeditiously deploys its services to the many low-income consumers that currently lack access to affordable telecommunications services.

## II. BACKGROUND

### A. AVW Overview

AVW provides prepaid wireless telecommunications services to consumers by reselling the services of AT&T, which provides wholesale capacity to wireless resellers. AT&T provides AVW with the network infrastructure and wireless transmission facilities, allowing AVW to operate as a Mobile Virtual Network Operator (MVNO). As an MVNO, AVW purchases wireless services from the underlying carrier on a wholesale basis for calling and text messaging, and resell those services to customers using its own brand. AVW manages and markets all aspects of the customer experience, including pricing, the AVW website, customer service, distribution, handset selection, service offerings, entertainment applications and all logos and marketing materials. AVW offers customers different rate options, including standard pay-per-minute services as well as monthly unlimited services.

AVW has offered prepaid wireless service by reselling AT&T's service since 1999. AVW provides prepaid wireless service to customers from lower income backgrounds that do not have the ability or desire to enter into a wireless contract due to economic constraints or poor credit history. AVW does not require a customer to provide credit history in order to activate service. By lifting such restrictions, AVW can offer service to the low income user who may not otherwise have access to wireless service.

AVW realizes that although the company already appeals to the wireless subscriber from a low income background, there is still a large amount of the population without access to wireless services due to financial limitations. AVW ownership acknowledges the growing demand for prepaid wireless services from the low income customer base that requires access to always available wireless service at an extremely reasonable and affordable price. As a result, AVW looks to expand its service and offer another prepaid wireless service option to Lifeline eligible consumers. By receiving ETC designation and offering a Lifeline rate plan, AVW will provide another option for Lifeline consumers while enhancing competition in the prepaid wireless service market. Following approval of this Petition, AVW will apply for ETC designation in a number of states.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act 75 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, especially for low-income consumers. Section 254(b) designates the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications services at comparable and affordable rates.<sup>4</sup> The Lifeline program is one of several USF support mechanisms that furthers the goals contained in Section 254. Lifeline support is designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with significant discounts for service.

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<sup>4</sup> 47 U.S.C. § 254. Section 254(b)(3) requires the Commission to determine whether “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas ... have access to telecommunications [services] ....” [emphasis added] 47 U.S.C. § 254(b)(3).

The Commission has credited this program for gradually increasing telephone penetration rates, especially among low-income consumers. Despite the steady rise in penetration rates, however, the FCC has noted that “there is more that we can do to make telephone service affordable for more low-income households” and has targeted the low Lifeline participation rate as one area for improvement.<sup>5</sup> Indeed, Commission concerns regarding the underutilization of this program have existed since its inception.<sup>6</sup> In a recent order, the Commission stated that only about one-third of eligible participants receive Lifeline support.<sup>7</sup>

The Act provides that only an ETC shall be eligible to receive funding from the USF, including the Lifeline program. Section 214(e)(1)(A) of the Act provides that a carrier designated as an ETC shall offer the services supported by the USF by using either its own facilities or a combination of its own facilities and the resale of another carrier’s services.<sup>8</sup> In its 1997 Order implementing section 254, the Commission determined that it would be inappropriate to designate pure resellers as ETCs since these entities “receive the benefit of universal service support by purchasing wholesale services at a price that already includes the universal service support payment” obtained by the underlying facilities-based provider.<sup>9</sup> The Commission concluded, therefore, that denial of ETC designation for pure resellers was proper since it would prevent double recovery of universal service support payments “because [pure resellers] would

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<sup>5</sup> See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 (2004) (“*Lifeline/Link-Up Order*”). According to the Commission’s own statistics, only one-third of households eligible for assistance actually participated in the Lifeline/Link-Up program just a few years ago. See *id.*

<sup>6</sup> See *Federal-Slate Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8972 (1997) (“*1997 Order*”).

<sup>7</sup> See *In the Matter of Virgin Mobile USA, L.P. Petition from Forbearance*, Order, CC Docket 96-45 (released March 5, 2009) at para. 30 (“*Virgin Mobile Order*”).

<sup>8</sup> See 47 U.S.C. § 214(e)(1)(A)

<sup>9</sup> *1997 Order* at 8866.

recover the support incorporated into the wholesale price of the resold service in addition to receiving universal service support directly from the federal universal service mechanisms.”<sup>10</sup>

C. Forbearance Standard

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

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and,
- (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>11</sup>

In making the public interest determination required by section 10(a)(3) above, the Commission must consider “whether forbearance ... will promote competitive market conditions.”<sup>12</sup> Any determination by the Commission that forbearance will promote competition among providers of telecommunications services may be the basis for a Commission finding that forbearance is in the public interest. Forbearance is warranted only when all three factors of the analysis are satisfied.<sup>13</sup>

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<sup>10</sup> *Id.* at 8876.

<sup>11</sup> 47 U.S.C. § 160(a).

<sup>12</sup> “47 U.S.C. § 160(b).

<sup>13</sup> AVW notes that it has not filed any similar requests with the Commission, and has not, in a pending proceeding, requested or otherwise taken a position on the relief sought.

D. Tracfone, Virgin Mobile, and i-wireless Petitions for Forbearance

The Commission has granted forbearance petitions filed by Tracfone, Virgin Mobile, and i-wireless from the section 214(e)(1)(A) facilities-based requirement.<sup>14</sup> Like AVW, Tracfone, Virgin Mobile, and i-wireless are MVNOs that provide prepaid wireless services. In approving the Tracfone, Virgin Mobile, and i-wireless requests for forbearance, the Commission concluded that the companies had satisfied the three requirements of section 10(a) and that the facilities requirement of section 214(e)(1)(A) was impeding greater utilization of Lifeline supported services provided by a pure wireless reseller.<sup>15</sup>

With respect to the first prong of the section 10(a) analysis, the Commission decided that enforcement of the facilities-based requirement was not necessary to ensure that Tracfone's, Virgin Mobile's, and i-wireless' charges, practices, and classifications remained just, reasonable and non-discriminatory. In making this determination, the Commission judged its prior concerns regarding double recovery of universal service support by pure resellers inapplicable to wireless resellers providing only low-income services because they do not purchase supported services for pass through to their customers. Since support is distributed on a per-customer basis, and directly reflected in the price a customer pays, the Commission maintained that the underlying carrier would not receive any support for that customer to pass on to the reseller.<sup>16</sup>

The Commission also determined that Tracfone's, Virgin Mobile's, and i-wireless' forbearance requests satisfied the second and third components of the section 10(a) analysis

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<sup>14</sup> See *In the Matter of Federal-State Joint Board on Universal Service, Petition of Tracfone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Red 15095 (2005) ("Tracfone Order"); *Virgin Mobile Order*; *In the Matter of 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)*, Order, CC Docket 96-45 (released June 25, 2010) ("i-wireless Order").

<sup>15</sup> Tracfone Order at 15100; Virgin Mobile Order at para. 29; i-wireless Order at para. 15.

<sup>16</sup> Tracfone Order at 15100; Virgin Mobile Order at para. 18.

since enforcement of the facilities requirement was not necessary for the protection of consumers and was not consistent with the public interest. The Commission decided that forbearance from the facilities requirement actually would benefit consumers since a grant of forbearance would provide eligible consumers a choice of providers and further the Act's goals of advancing the deployment of telecommunications services to low-income customers.<sup>17</sup> Of particular importance, the Commission concluded that granting Tracfone's and Virgin Mobile's requests would serve the public interest by raising awareness of the USF's low-income program and expanding the participation of qualifying consumers.

Finally, the Commission conditioned the Tracfone, Virgin Mobile, and i-wireless decisions on a number of conditions, all of which AVW agrees to comply with.<sup>18</sup> Specifically, in the *TracFone Order*, the Commission required TracFone to: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establish safeguards to prevent its customers from receiving

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<sup>17</sup> See Tracfone Order at 15104-15105; Virgin Mobile Order at para. 30; i-wireless Order at para. 15.

<sup>18</sup> See Tracfone Order at 15098-15099; Virgin Mobile Order at para. 3.

multiple TracFone Lifeline subsidies at the same address.<sup>19</sup> AVW will also self-certify full compliance with any applicable 911/E911 obligations, including obligations relating to the provision and support of 911 and E911 service.

### III. ANALYSIS

#### A. AVW's Petition for Forbearance Satisfies the Commission's Waiver Standard and is in the Public Interest

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

Section 10(a)(1) of the Act directs the Commission first to determine whether enforcement of the specific regulation at issue “is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory.”<sup>20</sup> Given the extremely competitive state of the wireless industry, enforcement of section 214(e)(1)(A) is unnecessary to ensure that AVW's rates are just and reasonable. In the *Virgin Mobile Order*, the Commission concluded that the vigorous competition in the wireless market would ensure Virgin Mobile's rates are just and reasonable and not unjustly or unreasonably discriminatory.<sup>21</sup> Indeed, AVW will compete against numerous other wireless carriers, including prepaid and postpaid providers and resellers and facilities-based providers alike.<sup>22</sup> As it did in the *Virgin Mobile Order*, the Commission

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<sup>19</sup> TracFone Order at 15098-99. Recently, the Commission modified condition (d) to allow TracFone to self-certify compliance if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area. *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, FCC 09-16 (rel. Mar. 5, 2009). AVW requests that the modified condition be applied to it, as well.

<sup>20</sup> See 47 U.S.C. § 160(a)(1).

<sup>21</sup> See *Virgin Mobile Order* at para. 19.

<sup>22</sup> See Marguerite Reardon, *Prepaid Wireless Service Could Spur Price War*, posted at <http://edition.cnn.com/2009/TECH/05/06/prepaid.wireless/index.html>, on May 6, 2009.

should find that the existence of this robust competition ensures that enforcement of section 214(e)(1)(A) is unnecessary to ensure that AVW provides its services at rates that are just and reasonable and not discriminatory.

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

Application of Section 214(e)(1)(A)'s facilities-based requirement to AVW is not necessary to protect consumers. AVW's request for forbearance must be examined in light of the Act's goals of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, granting forbearance to AVW actually would benefit consumers, especially its many low-income consumers eligible for Lifeline services. AVW's participation in the Lifeline program would increase opportunities for the company to serve these customers with appealing and affordable service offerings. Forbearance also will promote competition and increase the pressures on other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this much ignored consumer segment. As the Commission found in the *Tracfone Order*, forbearance for AVW to participate in the low-income program would greatly benefit low-income consumers since it would offer eligible consumers “a choice of providers not available to such consumers today for accessing telecommunications services.”<sup>23</sup>

AVW's request also will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of the low income support programs with respect to overall USF expenditures is well documented. According to the Joint-Board's most

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<sup>23</sup> Tracfone Order at 15101.

recent monitoring report, Lifeline/Link-Up funding totaled approximately \$819 million in 2008 (it was \$823 million in 2007) while high-cost program expenditures amounted to more than \$4.5 billion—five times the amount of Lifeline/Link-Up funding.<sup>24</sup> Although many parties have raised concerns over the growth in the USF’s high-cost program, the Lifeline/Link-Up program has triggered no similar outcry. Furthermore, as the Commission noted in the *i-wireless Order*, the size of the pool of low-income customers is “determined by the Lifeline program eligibility requirements, not by the number of providers competing for those customers.”<sup>25</sup> Indeed, each new, previously unserved customer added by AVW adds to the total value of the network for all users—which is precisely the goal of the Lifeline program.

Addressing funding concerns in the *Virgin Mobile Order*, the Commission concluded that grant of forbearance to Virgin Mobile would not significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers’ [USF] contribution obligations.<sup>26</sup> The Commission should likewise find that grant of forbearance to AVW to receive Lifeline funding will not increase costs or overall USF expenditures in any meaningful way, and instead will benefit the many low-income customers who do not currently participate in the Lifeline program and may not have phone service at all.

### 3 Forbearance Is in the Public Interest

The final forbearance factor set out in section 10(a)(3) directs the Commission to determine whether enforcement of the section 214(e)(1)(A) facilities requirement “is not in the public interest.” One of the principal goals of the Act, as amended by the Telecommunications

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<sup>24</sup> See *Federal-State Universal Service Joint Board Releases Monitoring Report*, CC Docket 98-202, (released December 31, 2009).

<sup>25</sup> *i-wireless Order* at para. 19.

<sup>26</sup> *Virgin Mobile Order* at para. 24.

Act of 1996 is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.<sup>27</sup> There is no question that forbearance will further the public interest by providing consumers, especially low-income Lifeline consumers, with lower prices and higher quality services. Many low-income customers have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history, or intermittent employment, these consumers often lack the countless choices available to most consumers. Granting AVW forbearance from the section 214(e)(1)(A) facilities requirement, therefore, will enable it to expand the availability of affordable telecommunications services to these consumers leading to lower prices and increased choice. Moreover, as noted above, imposing on AVW the same conditions that were imposed on Tracfone, Virgin Mobile, and i-wireless will further ensure that the public interest in the universal availability of communications services, including emergency services, is well served.

That forbearance will promote competitive market conditions in the wireless market also is unquestioned. AVW will provide additional competition for those customers most often ignored by larger carriers. Failure by the Commission to forbear, however, could potentially harm low-income consumers by precluding the further deployment of innovative wireless services. Believing that more can be done to further expand participation to those subscribers that qualify for Lifeline, the Commission granted Virgin Mobile’s forbearance request because it should expand participation of qualifying consumers.<sup>28</sup>

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<sup>27</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

<sup>28</sup> Virgin Mobile Order at para. 30.

ETC designation will enable AVW to offer services to low income customers to ensure that they are able to afford uninterrupted wireless service. Providing AVW with the authority necessary to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

#### IV. CONCLUSION

As discussed above, AVW's request for forbearance prima facie satisfies the requirements of section 10(a) of the Act since it seeks forbearance from the requirements of section 214(e)(1)(A) only for purposes of participation in the USF Lifeline program. Grant of forbearance (with the conditions stated forth herein) will enable AVW to advance the deployment of discounted telecommunications services to low-income customers. Prompt Commission action also will ensure that AVW expeditiously deploys its Lifeline services to the many low-income consumers that currently lack access to affordable wireless services.

WHEREFORE, for all of the foregoing reasons, AVW respectfully requests that the Commission forbear from applying Section 214(e)(1)(A) of the Act, and Sections 54.201(d)(1) and 54.201(i) of the Commission's rules, to its request for designation as an ETC.

Respectfully submitted,

AIRVOICE WIRELESS, LLC



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*Its Attorney*

September 13, 2011

## APPENDIX A

### SCOPE OF RELIEF SOUGHT

Airvoice Wireless, LLC (“AVW”) is seeking forbearance from Section 214(e)(1)(A) of the Communications Act of 1934, as amended (“Act”), and Sections 54.201(d)(1) and 54.201(i) of the Commission’s rules, which requires a common carrier designated as an eligible telecommunications carrier (“ETC”) to offer services supported by the universal service fund (“USF”) over its own facilities or a combination of its own facilities and the resale of another carrier’s services. AVW requests forbearance from the Section 214(e)(1)(A) facilities requirements since it is a reseller of commercial mobile radio services (“CMRS”) and will soon apply for designation as an ETC in various states solely for purpose of participation in the USF’s Lifeline program.

AVW hereby provides the following information in accordance with Sections 1.54(a) and (e) of the Commission’s rules, 47 C.F.R. §§ 1.54(a), (e):

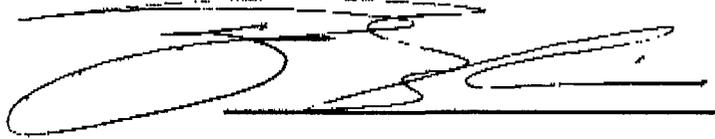
1. AVW petitions the Commission to forbear from enforcement of Section 214(e)(1)(A) of the Act, as amended, 47 U.S.C. § 214(e)(1)(A), and Sections 54.201(d)(1) and 54.201(i) of the Commission’s rules, 47 C.F.R. §§ 54.201(d)(1), (i).
2. AVW seeks forbearance only on its own behalf.
3. AVW seeks forbearance with respect to its provision of commercial mobile radio services (“CMRS”).
4. AVW seeks forbearance with respect to those states in which AVW will seek designation as an ETC from the relevant state commission.

All supporting data upon which AVW intends to rely is included in the preceding pages. AVW is not relying on any separate market analysis. Therefore, AVW is not attaching a separate appendix with supporting data.

APPENDIX B

VERIFICATION

I have read the foregoing Petition for Forbearance and the facts stated therein, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read "JIM BAHRI", is written over a horizontal line. The signature is stylized with a large loop on the left side.

Name: JIM BAHRI

Title: MEMBER- MANAGER

Date: 09-12-2011