

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CRICKET)	
COMMUNICATIONS, INC FOR DESIGNATION)	CASE NO.
AS AN ELIGIBLE TELECOMMUNICATIONS)	2011-00382
CARRIER IN THE COMMONWEALTH OF)	
KENTUCKY)	

O R D E R

On September 21, 2011, Cricket Communications, Inc. ("Cricket"), a Commercial Mobile Radio Service ("CMRS") provider, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC"). Cricket plans to receive both federal universal service support and Kentucky universal service support.¹ Cricket seeks ETC designation only for the purposes of participation in the Lifeline and Link-Up Programs. Cricket does not seek high-cost support.

The petition states that: (1) Cricket meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Cricket requests designation throughout each of the licensed service areas within its service coverage;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Cricket seeks to be designated as an ETC

¹ Cricket requests ETC designation throughout its licensed service area. Petition at 2.

² Id. at 3-6.

³ Id. at 2-3.

in non-rural wirecenters;⁴ and (4) designation of Cricket as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

The Company's Lifeline service offering will provide customers with the same features and functionalities enjoyed by all other Cricket customers. Cricket's Lifeline service customers will receive a Lifeline credit on their monthly bill. In addition to voice services, Lifeline customers also will have access to a variety of other standard features at no additional charge, including voice mail, caller I.D., and call waiting services. Cricket includes unlimited nationwide text in its plans.⁶

Cricket will allow customers to sign up for wireless service by visiting a Cricket corporate-owned store or an exclusive Cricket dealer, completing an application and showing a government-issued photo I.D. The application can be obtained in stores or via Cricket's website.⁷

Cricket has stated in its petition that it will submit to the Commission the Kentucky USF fee and Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer, although not billed directly to the customers because the customers do not receive bills.⁸ Cricket also states that it will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services

⁴ Id. at 3.

⁵ Id. at 11-12.

⁶ Exhibit C to Petition.

⁷ Exhibit D to Petition at 1.

⁸ Petition at 10.

Board.⁹ Cricket states it will not be providing toll limitation services since its calling plans do not distinguish between local and toll calls, since all plans include unlimited local and long distance.¹⁰

No party has requested a hearing in this matter and the Commission finds that this matter is now ripe for a decision.

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for

⁹ Id.

¹⁰ Id. at 7.

support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefore [sic] using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), the petitioner must identify its study area; or, if the petitioner is not a rural telephone company, it must include a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Cricket has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. Cricket certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a). Cricket has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline service to qualifying low-income consumers.

OFFERING THE SUPPORTED SERVICES USING A CARRIER’S OWN FACILITIES

Consistent with the requirements of the 1996 Act, 47 U.S.C. § 214(e)(6) and Sections 54.101 through 54.207 of the FCC Rules, Cricket, in its provision of wireless services, will rely on a combination of resold wireless services and Company-owned facilities, thus allowing Cricket to meet the FCC’s test that requires an ETC to provide services, at least in part, through a “combination of its own facilities and resale of another carrier’s services.” Cricket will primarily use its own network infrastructure,

including the same antennae, cell sites, towers, trunking, mobile switching and interconnection facilities used to serve its existing customers.

Cricket has interconnection agreements with local exchange carriers in Kentucky. Through these interconnection agreements, Cricket is able to offer its customers the ability to make and receive calls on the public switched telephone network with a minimum bandwidth of 300 to 3000 Hertz. Cricket has shown it is able to offer all of the services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC Rules, throughout its service area.

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”¹¹ The Commission finds that Cricket has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services.

¹¹ See, e.g., 47 C.F.R. §§ 51.307–51.318, which outline the requirements for carrier access to and use of unbundled network elements.

ADVERTISING SUPPORTED SERVICES

Cricket has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(b) to advertise the availability of the supported services and the charges therefor using media of general distribution. In its petition, Cricket states that it will advertise its services through some combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet, in accordance with 47 C.F.R. § 54.201(d)(2). Cricket states it already maintains a highly visible retail presence within its Kentucky service territory and will use the various marketing strategies to advertise and explain the Lifeline program, in a manner reasonably designed to reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d).

RURAL AND NON-RURAL STUDY AREAS

The Federal Communications Commission ("FCC") has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).¹²

Rural Study Areas

In considering whether designation of Cricket as an ETC in areas served by rural telephone companies will serve the public interest, the Commission must consider whether the benefits of an additional ETC in such study areas outweigh any potential harm. The Commission must weigh the benefits of increased competitive choice, the

¹² See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame.

Cricket has specifically tailored its wireless service plans to share the benefits of wireless telecommunications with underserved customers who have been left behind by other providers. Cricket offers unlimited voice service at affordable rates starting as low as \$35.00 per month and unlimited broadband starting at \$45.00 per month, without the typical conditions attached (such as credit checks, long-term commitments, and early termination fees) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. Cricket fulfills a critical role in the marketplace by ensuring that many Americans who cannot qualify for, or afford, the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications, including wireless broadband. Cricket's flat-rate, unlimited service model is ideal for many consumers on a limited budget; other carriers often impose hefty overage charges if consumers exceed their usage limit. Many consumers cannot even qualify for service from other providers because of creditworthiness concerns or the inability to commit to a long-term contract.¹³

Public Interest Analysis

In determining whether the public interest is served, the burden of proof is upon the ETC applicant.¹⁴ Cricket asserts that granting ETC designation to Cricket will reach

¹³ Petition at 11.

¹⁴ See Highland Cellular Order, 19 FCC Rcd at 6431, para. 20; Virginia Cellular Order, 19 FCC Rcd at 1574-75, para. 26.

the market segment that has previously not participated in the Lifeline program. Designating Cricket as an ETC will improve its ability to serve these customers, and thus will serve the public interest. Naturally, increased competition among ETCs will inevitably lead to increased awareness of the availability of affordable Lifeline services.¹⁵

Designated Service Areas

The Commission finds that Cricket should be certified as an ETC in the requested service areas served by rural and non-rural telephone companies in the Appendix. For purposes of federal universal service obligations, a rural telephone company's study area is presumed to be its service area unless and until the FCC and state commission cooperatively establish a different service area definition for such company after considering the Federal-State Joint Board on Universal Service's ("Joint Board") service area recommendations.¹⁶ Therefore, if a state commission proposes to define a rural telephone company study area as something less than the company's entire service area, the state commission must consider and make findings with respect to each of the three Joint Board factors.

Cricket is only requesting low income support and in the case of the rural telephone company, Cricket is proposing to serve the entire service area. Therefore, the Commission finds that the study areas of the affected rural telephone companies do not have to be redefined to match the licensed service area of the applicant.

¹⁵ Petition at 12.

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

Designated Service Areas

The Commission finds that Cricket should be certified as an ETC in the requested service areas served by rural and non-rural telephone companies that correspond to its licensed service areas throughout the state. Attached as an Appendix are the wirecenters in which Cricket shall be designated as an ETC for Lifeline.

ANNUAL CERTIFICATION AND VERIFICATION

Each year Cricket will require each Lifeline subscriber to recertify their head of household status, certify that only one Lifeline discount is received at that household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually at the end of August and in accordance with Kentucky Public Service Commission Administrative Case No. 360.¹⁷ The Commission finds that Cricket's plan to meet the annual certification and verification requirements is in accordance with the Commission's requirements.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Cricket is designated as an ETC for the purpose of offering Lifeline and Link-up service only in the licensed service areas throughout the state as depicted in the Appendix.
2. During the current certification period, Cricket shall be eligible to receive Federal Universal Service Fund Support for Lifeline.

¹⁷ Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues (Ky. PSC May 24, 2007).

3. Cricket shall offer low-income universal support services to consumers in its service area.

4. Cricket shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

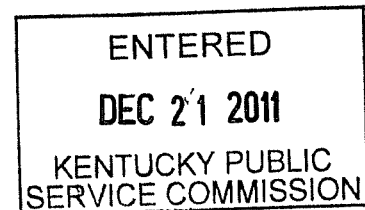
5. Pursuant to 47 C.F.R. § 54.201(i), Cricket shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

6. Cricket shall advertise the availability of and charges for these services using media of general distribution.

7. Cricket shall comply with the Commission's annual certification process for Lifeline customers in accordance with the requirements of Administrative Case No. 360.

8. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
 COMMISSION IN CASE NO. 2011-00382 DATED **DEC 21 2011**

Cricket Communications, Inc.'s Designated Service Area

Cincinnati Bell Telephone Company – SAC 265061

ALXNKYAL	BURLKYMA	CRTDKYCT	CVTNKYCN	FLRNKYFL
FTTHKYFT	GLCOKYGC	INDPKYIN	LKPKKYLP	UNINKYAC
WLTNKYWL	WLTWKYWT	WRWKYWR		

Windstream Kentucky West, LLC - SAC 260402

MTWSKYXA	SHPKYXA	ZNTNKYXA		
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Windstream Kentucky East, LLC – SAC 269690

BEREKYXA	LXTNKYUK	LXTNKYXA	LXTNKYXB	LXTNKYXC
LXTNKYXD	LXTNKYXE	LXTNKYXF	LXTNKYXG	MDWKYXA
NCVLKYXA	PNLCKYXE	VRSLKYXA	WLMRKYXA	

BellSouth Telecommunications, LLC dba AT&T Kentucky – SAC 265182

BGDDKYXA	BLSPKYMA	CMBGKYMA	COTNKYMA	CRTNKYMA
EMNKNYES	FNVLKYMA	FORDKYMA	FRFTKYES	FRFTKYMA
GHNTKYMA	GRACKYMA	GRTWKYMA	GTHRKYMA	HPVLKYMA
KKVLKYMA	LBJTKYMA	LFYTKYMA	LGRNKYES	LSVLKY26
LSVLKYAN	LSVLKYAP	LSVLKYBE	LSVLKYBR	LSVLKYCW
LSVLKYFC	LSVLKYHA	LSVLKYJT	LSVLKYOA	LSVLKYSH
LSVLKYSL	LSVLKYSM	LSVLKYTS	LSVLKYVS	LSVLKYWE
OKGVKYES	PARSKYMA	PMBRKYMA	RCMDKYMA	SDVLKYMA
SHVLKYMA	SLPHKYMA	SSVLKYMA	STGRKYMA	TRENKYMA
WACOKYMA	WDDYKYMA	WNCHKYMA	WSPNKYMA	

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