

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Staff's Investigation into the)
Practices and Procedures of Companies)
Offering Low Income (Lifeline) or Disabled) **File No. TO-2012-0364**
Universal Service Fund Discounts in the)
State of Missouri)

**COMMENTS OF CRICKET COMMUNICATIONS, INC. CONCERNING
PROPOSED RULE CHANGES**

Cricket Communications, Inc.¹ ("Cricket") respectfully submits the following comments and suggestions to the Missouri Public Service Commission and Staff regarding the draft, proposed rule changes to 4 CSR 240-31 that were discussed in a workshop with Staff and industry representatives on August 29, 2012:

4 CSR 240-31.020 (9) – Customer Application Form:

A. Generic Form Requirement

(1) It is unreasonable and unnecessary to require every Lifeline ETC provider to use a single, uniform and bureaucratic customer application form as a matter of generic rule (which has the force of law).

(2) MoPSC Staff consistently recites that it discovered unnamed ETC providers using "must" instead of "shall," and vice versa, on company-specific forms as a reason such forms should not be permitted. **The answer to that problem is enforcement activity by the Commission to require those misstatements to be corrected, *not* for every company to be required to use a "generic form."**

¹ Cricket Communications, Inc. has ETC status from the Missouri Public Service Commission for low-income ETC services (not high-cost fund) pursuant to the Commission's Order of March 10, 2010 in MoPSC File No. TA-2010-0229.

(3) Even if the current requirement of the Missouri Universal Service Board is that a generic form is to be used, ***the rule should make it clear that the Board has discretion to grant exceptions to that requirement.*** The Board should have the authority under the rule to approve a generic form, and/or company-specific forms, at its discretion. Such discretion would permit the Board to continue its current policy, but would also permit it to *change* that policy if persuaded to do so in the future.

(4) **The reasons that a number of ETC providers want to use their own company-specific customer-application forms include the following:**

(a) Companies such as Cricket Communications provide service, including Lifeline ETC service, in multiple states. **Having to use different forms in different states imposes an unreasonable administrative burden** on Cricket as an ETC provider. Of the 35 states in which Cricket offers wireless service, Cricket currently offers Lifeline service in 21 states and that number continues to grow.

(b) **Each company has its own business needs and information processing systems. These customer application forms are used to initiate and maintain actual wireless telecommunications service for customers and establish billing of those customers, not just to ensure regulatory compliance.** The form has to be one that can be incorporated into the company's service ordering, service and billing systems.

(c) **Wireless telecommunications is a highly competitive business.** It is important to providers to be able to market their services in the way they deem most effective competitively, including using forms that they believe are customer-friendly and non-bureaucratic in appearance and which “work” with their information processing systems.

(d) **Cricket’s company-specific form is market-tested and has been built based on input from actual customers and Cricket customer representatives who have to gather the required information from Lifeline customers and enter it into its system and transmit it, as appropriate, to the USAC, the FCC, the MoPSC, etc.** In other words, the Cricket form has been built from the ground-up, rather than from the top-down as in the case of the Missouri generic form.

(e) **Cricket believes that its form is more “user-friendly”** in that it is easier on the eye, provides more space for pertinent information to be entered clearly and legibly, and phrases certain key provisions in a manner more likely to be understood by actual Lifeline customers than the generic form.

(f) **It is becoming more and more difficult to have to use state-specific, generic forms as more companies have compliance plans approved by the Federal Communications Commission (FCC).** The FCC Order approving Cricket’s Compliance Plan specifically stated: “Accordingly, Cricket is eligible to seek ETC designation without conforming its service area to that of the underlying rural telephone company for Lifeline-only support provided that it fulfills the commitments in its Compliance Plan *in each state* where it is

designated to provide Lifeline service.” (Page 1 of February 7, 2012 FCC Order, WC Docket No. 09-197, *emphasis added*).

(g) Thus, **carriers such as Cricket Communications are being caught in the middle of regulatory cross-fire.** Multi-state companies are having to devote considerable time and resources to trying to ensure that they are in compliance with the divergent requirements of federal and state regulatory authorities.

(5) It is difficult to understand why an individual state, such as Missouri, finds it necessary to require a different form than was approved by the FCC concerning a **Lifeline program that *only affects federal monies administered by the federal Universal Service Board.***

(6) In fact, the FCC’s own rules support a flexible customer application form, not a state-prescribed generic form. 47 C.F.R. Section 54.410(d)

(7) Wisconsin also adopted a generic Lifeline customer-application form, but permits Lifeline ETC providers to use their own, company-specific forms instead of the generic form as long as they include each substantive element of the generic form.

(8) According to our notes of the July 17 Missouri USB meeting, Staff’s informal survey indicated that 9 of the 28 states that responded require a generic customer application form be used, rather than company-specific forms. While that indicates that Missouri is not alone in that regard at the moment, it also shows that **2/3 of the responding states allow company-specific forms to be used.**

B. Addenda to the Generic Form

(1) The proposed rule provides that:

If a company wants to provide additional information for the applicant, such as that information which is interpreted by the company as required by an FCC compliance order, then a company may be permitted to attach an additional sheet(s) to the form.

(2) Additional information *required* by the FCC in its approval of a Compliance Plan is not information the company has simply decided, for its own reasons, that it *wants* to provide, but *is information it must provide by order of the FCC*. The tone of this proposed language is objectionable and does not reflect the facts of the regulatory worlds in which ETC providers must operate.

(3) Cricket's FCC Compliance Plan requires unique information to be included on the customer application form, specifically, the names of other alternative ETC providers in the area. **Having to provide that information on a separate Addendum to the generic form is not reasonable because it makes that information appear to have greater importance than it should, and because that Addendum must *also* and *separately* be signed and attested by the customer.** This inherently makes Cricket's Missouri customer form more burdensome than those of competitors who are not required to have an addendum because of FCC requirements.

4 CSR 240-31.120 (3) (D) 3. – De-enrollment for Failure to Recertify – “Temporary Address” Information

A. Cricket appreciates the fact that this language has been revised since the August 29 workshop, but it is still problematic. Rather than requiring “an

existing subscriber residing at a temporary address” to verify his or her temporary address every 90 days or be de-enrolled, the draft rule now requires de-enrollment of “a subscriber who relies on a temporary address and fails to respond to the ETC’s address re-certification attempts pursuant to 47 CFR 54.410(g).”

B. As originally proposed by the FCC, 47 CFR §54.410 (g) provided that: “An eligible telecommunications carrier must recertify every 90 days, the residential address of each of its subscribers who have provided a temporary address as part of the subscriber’s initial certification or re-certification of eligibility” However, the federal Office of Management and Budget (OMB) denied the FCC’s request for approval of that rule. The FCC can modify and resubmit it at a later date. The FCC has recently submitted certain other rules that were rejected, but have not included this one. FCC Staff has indicated that they would resubmit the temporary address rule, but no timetable for that has been established. Therefore this rule is currently not in effect at the FCC level.

C. “Temporary Address” is not defined in the rule. It is not clear to Cricket what the purpose is for the use of this term, nor why de-enrollment of a Lifeline customer for failure “to respond to the ETC’s address re-certification attempts pursuant to 47 CFR 54.410(g)” should be any different than de-enrollment of any other Lifeline customer for failure to re-certify the customer’s continued eligibility, and one-per-household re-certification, which are already provided for in the draft rules in Sections 31.120 (3) (D) 1 and 2.

D. At the end of the day, the Missouri rules should reflect what the FCC rules are for the Lifeline program. Currently, the FCC rules do not speak to “temporary addresses.”

4 CSR 240-31.130 Eligible Telecommunications Carrier Requirements

A. Subsection (4) Annual Filing Requirements for ETCs

1. Generally, Cricket Communications urges the Commission to limit annual filing requirements to information that the Commission and Staff know will be actively used and useful to the regulatory process.

2. The compilation of this annual filing requirement information will command the devotion of scarce resources of each ETC at a cost to the ETC. (See discussion of Fiscal Note, below.)

3. If each annual filing package is not going to be reviewed by the Commission Staff as a matter of course, but is just as likely to be filed away unreviewed, these requirements should be modified.

4. Staff can, and does, require information to be submitted by ETCs in response to Data Requests and as part of its audit process, as it has during the past year or more. This is generally a more efficient method of gathering information that Staff decides it needs to address specific issues and concerns, than a rigid set of annual reporting requirements in the Commission’s rules.

5. Specifically, Cricket has no objection to the annual officer's affidavit as described in proposed Section 31.130 (3) (A) 1, nor to providing copies of reports submitted to the FCC as per Section 31.130 (3) (A) 2 and 3.

6. Cricket appreciates Staff's limitation of audit summaries to those that are "USF- or ETC-related" (Section 31.130 (3) (A) 5.) and understands Staff's desire for such information. Cricket also does not object to the requirement of submitting a list of any proceedings alleging an ETC is violating universal service fund requirements. (Section 31.130 (3) (A) 6.)

7. Cricket does have a concern about Section 31.130 (3) (A) 4, which requires each wireless ETC to provide information including the following:

- a. Total Lifeline subscribership quantities;
- b. New Lifeline subscribers activated;
- c. Existing Lifeline subscribers de-enrolled, per category: (i) for non-usage; (ii) for failing to re-certify; and (iii) for other reasons.

8. This information may be kept by each ETC in different formats and is not necessarily easily obtainable on a monthly basis. In addition, each provider's process timing will be different.

9. Thus, **the rule should provide flexibility, or the opportunity for waivers or extensions, for the filing of this information, for good cause shown.**

10. Providing annual summaries of total Lifeline subscribers, activations and de-enrollments (categorized by reason for same) would be reasonably

achievable. Providing that information on a month-by-month basis will be more expensive to achieve.

11. In addition, as stated above, each company's process timing will be different. Cricket reconciles its Lifeline customers to its overall customer base. Cricket is not a "Lifeline-Only" wireless company (such as TracFone is). According to its latest figures, Lifeline customers represent less than 7% of Cricket's total wireless customer base. Cricket is currently reconciling May 2012 customer numbers. Although it is anticipated that the reconciliation process will become more current by the end of 2012, it may not be possible, on April 1 of each year, to provide April through March data in response to Subsection (3) (A)

4. The rule should instead provide that the company will provide the most recent available, 12-month data. This could be accomplished with language such as the following:

4. For ~~each month within the last twelve months~~ the latest twelve months available, the company's Missouri Lifeline and Disabled subscribership quantities:

...

B. New Lifeline and Disabled subscribers activated during the ~~month~~ year;

C. Existing Lifeline and Disabled subscribers de-enrolled during the ~~month~~ year from the Lifeline or Disabled program based on the following criteria: ...

12. To ensure adequate flexibility, as discussed in Paragraph 9 above, a **new Section 8 should be added to the proposed rule (4 CSR 240-31.130 (3) (A) 8): "For good cause shown, the commission may waive, or extend the filing date for, specific items required in these annual filing requirements."**

Fiscal Note:

The rule requires each low-income ETC provider to make an annual filing with the Commission, which is not required under the existing rule. Both internal company resources and outside consulting and legal costs will be required in order to develop these annual filings and need to be reflected in the fiscal note. Based on Cricket's experiences with responding to the Staff audit of low-income ETC providers, Cricket believes that compliance with these proposed rules would increase its cost by \$1,800 per year. That is based on 8 hours of in-house company costs at \$75.00 per hour (\$600.00) and \$1,200.00 of outside consulting and legal costs (6 hours at \$200 per hour). Thus, a cost of \$1,800 per company would more accurately reflect the new or additional costs caused by the rule revisions.

Cricket Communications, Inc. deeply appreciates the Commission's consideration of these comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov and on the General Counsel's office at gencounsel@psc.mo.gov this 14th day of September 2012.

/s/ William D. Steinmeier

William D. Steinmeier