

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

In the Matter of an Investigatory and Repository)
File to Review Requirements of Eligible) **File No. TW-2012-0012**
Telecommunications Carriers, *et al.*)

**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 presented to the Commission before its October 3, 2012 Agenda meeting.

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) **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.**

(9) The Staff review process of company-specific customer application forms should be less difficult than the process Staff currently goes through to

verify the completeness and accuracy of ETC applications. **A check-list of necessary elements should be developed, such as Staff currently uses for ETC applications**, and used to review proposed company-specific forms to ensure that each element is included and stated accurately.

(10) **Cricket commends to the Commissioners a review of the Comments concerning this issue that were filed on September 14 in File No. TO-2012-0364 on behalf of MTIA, TracFone, T-Mobile and Virgin Mobile (Assurance Wireless), which substantially agree with Cricket Communications on the issue of the generic vs. company-specific customer application forms.**

B. Addenda to the Generic Form

(1) The proposed rule, in 4 CSR 240-31.020 (9), provides that:

(9) ... 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. ... (*Emphases added.*)

(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 condescending 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. There is no reason Cricket would *want* to

provide information about competitors to prospective customers other than an FCC compliance order *requiring* it to do so. **Having to provide that information on a separate Addendum to the generic form is not reasonable because: (1) it makes that information appear to have greater importance than it should, and (2) 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 the forms of competitors who are not required to have an addendum because of FCC requirements.

(4) A company-specific customer application form can include all information required by the Missouri Universal Service Fund board and the FCC within a single document that can be signed and attested once by the customer. This would obviate the necessity of some companies having to add "addenda" to the generic form.

C. Related Section – 240.130 (3) (A) 1. C.

As part of the annual filing requirements for ETCs (discussed more fully below), this proposed section would require the officer's affidavit to certify that the company "is using a Lifeline and/or Disabled application form approved by the Missouri USF board." This provision would *not* need to be changed, even if the Commission changes 4 CSR 240-31.020 (9), as urged above, to permit company-specific application forms, since a board-approved, company-specific form would be "a Lifeline ... application form approved by the Missouri USF board."

4 CSR 240-31.120 Lifeline Program and Disabled Program – Wording Error

at (3) (C) – Currently reads: “A subscriber’s participation in the Lifeline or Disabled programs shall be denied or discontinued if it is discovered the subscriber *has submits or has submitted* incorrect, false or fraudulent information to the carrier.” (*Emphasis added.*) It would appear that the words “has submits or” are extraneous and grammatically incorrect, and should be deleted.

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 was revised after the August 29 workshop, and again following the Comments filed in File No. TO-2012-0364 on September 14. The latest draft implements this specific de-enrollment provision only after it has been included by the FCC in its own rules.

B. However, it is still the case that “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” regarding a temporary address 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 same section of the draft rules. These issues were previously raised by Cricket (Comments of September 14, 2012) but are not reflected in Staff’s summary of comments.

C. Under the federal rules, customers are required to notify carriers within 30 days of a move. This requirement does not have a carve-out for temporary addresses. Thus, the temporary address provision would appear to be unnecessary.

4 CSR 240-31.130 Eligible Telecommunications Carrier Requirements

A. Subsection (4) Annual Filing Requirements for ETCs

1. Cricket Communications appreciates the latest changes made by Staff to Section 31.130 (3) (A) 4 regarding the annual tallies of Lifeline subscribers, new activations and de-enrollments. The new draft provides greater flexibility to the Lifeline provider in gathering and reporting this information, while still providing the Commission with the information it believes it needs to monitor the Lifeline program.

2. Cricket would observe that only companies offering “free” service will have de-enrollments due to non-usage of the service under 4.C.i.. Since all Cricket subscribers pay a monthly fee for service, the de-enrollment requirement for lack of use for 60 days, under the FCC rules, does not apply. This would be true for wireline carriers, as well.

3. 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.) 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 un-reviewed, these additional costs shall have been incurred for no purpose.

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 that may arise, than a rigid set of annual reporting requirements in the Commission's rules.

5. Cricket Communications urges the Commission to require Staff to review these annual filing requirements annually to determine whether all of the information provided by ETC providers in those filings has proven to be actively used and useful to the regulatory process, or whether changes to those requirements should be proposed.

6. **Waivers:** To ensure adequate flexibility, 4 CSR 240-31.130 (4) (D) should be expanded to provide for waivers or variances of the entire chapter 31. It now reads: "The commission may grant a waiver of or variance from any provision of 4 CSR 240-31.010 **through 4 CSR 240-31.110** for good cause, upon request or upon its own motion. A party wishing to obtain a waiver or variance shall file an application with the commission setting out the reason for its request." (**Emphasis added.**) This should be changed to provide for a good

cause waiver of or variance from any provision of 4 CSR 240-31.010 **through 31.130** (instead of only through 31.110).

Fiscal Note:

The proposed rule requires each low-income ETC provider to make an annual filing with the Commission, which is not required under the existing rule. The proposed rule also requires each low-income ETC provider to use a Missouri-mandated, generic customer application form instead of the form the provider already uses in other jurisdictions. Both of these requirements of the proposed rules would add costs to the ETC provider.

The latest Staff fiscal note reflects costs for the annual filing requirements that are consistent with those suggested by Cricket Communications for in-house costs of complying with the annual filing requirements. (8 hours of in-house company costs at \$75.00 per hour (\$600.00), per year.)

However, Staff inexplicably announces, in its latest fiscal note, that: “A company will not need legal and outside consulting services in order to comply with 4 CSR 240-31.130(3).” No study or survey is cited for this authoritative conclusion. Saying so, even with underlines, does not make it so.

In point of fact, any time rules and regulations, with the force of law, require actions and activities by carriers, Cricket (and, we believe, most other ETC providers) will feel the need to consult with outside regulatory consultants and legal counsel to ensure full regulatory compliance in order to avoid the risk of potential statutory fines and penalties, or possible revocation of ETC authority, for violation of those rules. Most competitive

telecommunications carriers are not staffed with the same number of in-house regulatory and legal personnel as is typical of Incumbent Local Exchange Carriers (ILECs).

Thus, outside consulting and legal costs *will* be required in order to develop these annual filings and should be reflected in the fiscal note, if the purpose of that fiscal note is to honestly portray the potential private economic costs of compliance with the proposed rules.

Based on Cricket's experiences with responding to the Staff audit of low-income ETC providers in 2011, 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). At present, however, only the in-house costs are reflected in Staff's draft fiscal note.

In addition, conformance to the Missouri generic Lifeline customer-application form has already cost Cricket several thousand dollars of in-house and outside legal and consulting services. This does not include the costs of active participation in the Commission's proceedings concerning these proposed rules.

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 16th day of October 2012.

/s/ William D. Steinmeier

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