

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-4453/NUSF-80
of Cricket Communications, Inc.,)
San Diego, California, for) GRANTED
designation as an eligible)
telecommunications carrier in)
the State of Nebraska.)
Entered: August 7, 2012

APPEARANCES:

For the Applicant:
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For the Commission:
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BY THE COMMISSION:

On March 15, 2012, an application was filed by Cricket Communications, Inc. (Cricket or Applicant), of San Diego, California, seeking designation as an Eligible Telecommunications Carrier (ETC) so it may receive available support from the federal and Nebraska universal service funds for the Lifeline and Nebraska Telephone Assistance Programs. Notice of this application was published in the Daily Record, Omaha, Nebraska, on March 21, 2012. No one protested the application or filed a Petition seeking Formal Intervention.

A hearing on the application was held on July 9, 2012, in the Commission Hearing Room, Lincoln, Nebraska, and by video conference to San Diego, California. Appearances at the hearing are indicated above. Cricket presented one witness in support of its application.

Summary of Testimony and Evidence

Cricket is a Delaware corporation authorized to do business in the State of Nebraska. Cricket holds a license granted by the Federal Communications Commission (FCC) to offer Commercial Mobile Radio Service (CMRS) in the following counties: Cass, Dodge, Douglas, Lancaster, Sarpy, Saunders and Washington. Cricket seeks ETC designation in the non-rural and rural

telephone company service areas identified in Exhibits A and B to the Company's Application. Cricket's requested service areas are set forth in the attached **Appendix A** to this Order.

In her testimony, Ms. Julie Buechler, Manager of Government Programs, described how Cricket satisfies each of the applicable federal and state prerequisites for designation as a competitive ETC for Lifeline/NTAP services throughout the Company's requested service areas in Nebraska. Cricket is not seeking eligibility for high-cost support from the state or federal universal service funds.

Cricket's application and witness testimony state that Cricket provides digital wireless service on a common carrier basis, offering customers unlimited calling at flat rates without requiring a fixed-term contract. Cricket is a facilities-based carrier and plans to provide service through its own facilities or a combination of its own facilities and the resale of another carrier's service. In addition, Cricket states it provides the nine services or functionalities supported by the federal universal service support mechanisms ("Supported Services"). The Application and testimony further state that Cricket will offer and advertise the availability of, and charges for, the nine Supported Services throughout its requested ETC service areas using media of general distribution.

Ms. Buechler testified that Cricket has approximately 6.2 million customers. Cricket has been granted ETC designations in 34 states. The FCC recently approved Cricket's designation in New York, Virginia and the District of Columbia. Cricket has been providing service in Nebraska since 2001. Cricket owns or leases approximately 82 cell sites in Nebraska. Cricket's coverage in Nebraska is currently at about one million consumers.

Ms. Buechler further testified Cricket remits all applicable taxes and fees. Cricket offers voice service starting at \$35.00 per month without contracts or early termination fees.

In support of the public interest requirement, Ms. Buechler testified Cricket fulfills a critical role in the marketplace by ensuring that Americans who cannot qualify or otherwise afford wireless service can enjoy the benefits of its wireless service. She further states that Cricket's flat rate unlimited service model is ideal for many consumers on a limited budget. Cricket's Lifeline program would include a \$13.50 discount off the current available rate plans. Of the \$13.50, \$9.25 will be support from the federal fund and \$3.50 will be support from the Nebraska Universal Service Fund. Cricket will absorb 75 cents for each Lifeline subscriber.

O P I N I O N A N D F I N D I N G S

Section 214(e) of the Telecommunications Act of 1996 (the Act) initially set forth the standards and processes for a state commission to grant carriers the designation of eligible telecommunications carrier. The three general requirements listed in Section 214(e) are that: (1) the carrier must be a common carrier; (2) the carrier must offer the "services" that are supported by the federal fund; and (3) the carrier must advertise the availability of those services. In addition, the carrier must fulfill these criteria throughout the service area for which the designation is received.

The "services" supported by the federal fund as provided by 47 C.F.R. § 54.101(a) are as follows:

- a. Voice-grade access to the public switched telephone network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or its functional equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service;
- h. Access to directory assistance;
- i. Toll limitation for qualifying low-income consumers.

Federal law also requires that before designating a competitive ETC in a rural telephone company service area the Commission finds that the designation is in the public interest. 47 U.S.C. § 214(e)(2). The FCC offered additional guidance on the public interest question through its decisions in *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, *Memorandum Opinion and Order*, FCC 03-338 (rel. Jan 22, 2004) ("Virginia Cellular"); *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, *Memorandum Opinion and Order*, FCC 04-37 (rel. April 12, 2004) ("Highland Cellular"); and *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46 (rel. March 17, 2005) ("March 2005 Order").

To implement the forgoing federal requirements and FCC guidance, the Commission has adopted regulations governing the

application process and ETC designation requirements in the State of Nebraska ("ETC designation rules"). The Commission's ETC designation rules are found at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.01-009.02C. The Commission's annual reporting rules are codified at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.03-009.04B.

Common Carrier

Upon review of the Application and testimony presented, the Commission finds that Cricket is a common carrier for purposes of ETC designation. The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. 47 U.S.C. § 153(10). The FCC's Rules also specifically provide that CMRS is a common carrier service. 47 C.F.R. § 54.20.9(a).

Supported Services

We further find that Cricket has demonstrated the ability and commitment to provide the Supported Services listed above using its own network facilities or a combination of its own facilities and the resale of another carrier's services. Cricket's Application states it will make service available to consumers primarily through its own network infrastructure, which includes the same antenna, cell sites, towers, trunking, mobile switching, and interconnection facilities it employs to serve its existing subscribers. Ms. Buechler's testimony similarly provided that Cricket is currently offering the Supported Services to its Nebraska subscribers.

Voice Grade Access

Cricket stated its subscribers will receive voice grade access. Cricket's customers will be able to make and receive calls on the public switched telephone network with a minimum bandwidth of 300 to 3000 Hertz.

Local Usage

Cricket provided evidence of its local usage plans and provided rates and plan comparisons to the LEC. Cricket currently offers flat-rate wireless service. We find that the Applicant offers comparable local usage plans as the incumbent LEC.

DMTF Signaling

Dual tone multi-frequency (DMTF) signaling is a method of signaling that facilitates the transportation of call set-up and call detail information. Cricket uses out-of-band digital signaling and in-band multi-frequency signaling that is the functional equivalent to DTMF. We find Cricket meets the DMTF signaling requirement by providing a functional equivalent that has been authorized by the FCC.

Single-Party Service or its Functional Equivalent

Cricket demonstrated it meets the "single-party service" requirement with respect to each of its service offerings.

Access to Emergency Services

The Applicant provided evidence of its ability to remain functional during emergency situations. Cricket demonstrated that it was capable of delivering automatic numbering information (ANI) and automatic location information (ALI) over its existing network, and otherwise satisfies applicable Nebraska and federal E-911 requirements. Further, Cricket stated it pays all applicable E-911 fees in a timely manner. Cricket further provided it will continue to work with local public safety answering points (PSAPs) within its ETC service areas to make 911 and E-911 service available to its customers.

Access to Operator Services

Cricket demonstrated that it met this requirement by providing all of its subscribers with access to operator services. With respect to billing questions, Cricket subscribers may dial "611". With respect to call completion, Cricket subscribers may dial "411."

Access to Interexchange Service

Cricket provided evidence that it meets this requirement by providing all of its subscribers with the ability to make and receive interexchange or toll calls through Cricket's network. Cricket acknowledged that the FCC may require the Applicant to provide equal access to long distance carriers if no other ETC is providing access in the designated areas.

Directory Assistance

Cricket provided evidence that it meets this requirement by providing access to directory assistance to customers dialing "411."

Toll Limitation

Cricket's calling plans do not distinguish between local and toll calls at the point of dialing. Cricket cannot offer toll limitation without blocking all service to a customer. Since all plans include unlimited local and long distance, toll blocking is unnecessary. However, if Cricket ever changes the structure of its service plans to distinguish between local and toll calls, Cricket committed to meeting the toll limitation requirement by providing toll blocking.

In sum, we find Cricket provided evidence that it will fulfill the requirements of 47 C.F.R. § 54.101(a) and confirmed that it will provide all of the above-referenced services. Further, Cricket demonstrated it would offer the above-mentioned supported services via its own facilities in combination with resale of another carrier's services.

Advertising

We find that Cricket has provided sufficient evidence of its commitments to advertise the availability of and charges for the Supported Services using media of general distribution. The Application provided that Cricket will advertise through a combination of media channels such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.

Designated Service Areas

We find that Cricket has properly identified the service areas in which it is requesting ETC designation. Cricket seeks to be designated as an ETC throughout each of the non-rural and rural telephone company service areas identified in Exhibits A and B to its Application for the purpose of receiving Lifeline/NTAP support only.

Provision of Service to Requesting Customers

Pursuant to Section 009.02A5 of the Commission's ETC designation rules, an applicant must demonstrate its commitment to provide service throughout its designated service area to

customers who make a reasonable request for service. Cricket provided if a request is made by a potential customer within Cricket's existing network coverage Cricket will provide service immediately using its standard equipment. If a potential customer requests service within Cricket's designated ETC service area but outside its existing network coverage, Cricket will follow the six-step process specified in Section 009.02A5b. We find Cricket has sufficiently demonstrated its commitment to provide service throughout its designated service area to customers making a reasonable request for service.

Ability to Function During Emergencies

Pursuant to Section 009.02A7 of the Commission's ETC designation rules, applicants must demonstrate an ability to remain functional during emergency situations. Although this requirement applies to carriers seeking high-cost support which Cricket is not, Cricket demonstrated it satisfies this requirement. Cricket maintains a reasonable amount of back-up power to ensure the functionality of its service without an external power source, it able to re-route traffic and is capable of managing traffic spikes resulting from emergency situations.

Public Interest

In the case of an applicant seeking designation in an area served by a rural telephone company, the applicant must demonstrate that the designation would be consistent with the public interest, convenience and necessity. Public interest considerations may include the benefits of increased consumer choice and the unique advantages of the applicant's service offering. In support of this requirement, Cricket stated that its designation will serve the public interest and the needs of low-income consumers. Further, Cricket states it has specifically tailored its wireless service plans to the needs of underserved customers by offering unlimited voice service at affordable rates starting as low as \$35 per month and broadband at \$40 per month. Cricket has adopted the CTIA Consumer Code for Wireless Service and has committed to using its best efforts to resolve complaints received by the Commission. In addition, Cricket confirmed its intention of meeting consumer protection and service quality standards by committing to comply with all applicable Nebraska statutes and rules and regulations and paying all applicable federal, state, and local regulatory fees, including universal service and E-911 surcharges. Based on the particular facts before us, we find Cricket's business plan provides a unique advantage to low-income consumers that would serve the public interest. We conclude Cricket demonstrated

that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the FCC's March 17, 2005 Report and Order, and applicable federal law for the designation of eligible telecommunications carriers in the proposed geographic area.

Lifeline Certification and Verification Requirements

The Commission utilizes a coordinated enrollment process to initially enroll and certify Lifeline/NTAP subscriber eligibility. The Commission maintains an agreement with the Nebraska Department of Health and Human Services (NDHHS) to determine whether a subscriber participates in a number of qualifying programs. In addition, all ETCs are required to utilize the Commission's NTAP Application form for the enrollment of potential subscribers. At the hearing, Cricket committed to comply with the Commission's requirements relative to Lifeline/NTAP certification and verification. Cricket will also be required, on a monthly basis, to provide the Commission with a list of all subscribers added or removed and a full report of all Lifeline/NTAP subscribers twice annually. Cricket committed to following these requirements.

Continuing Jurisdiction

Finally, the Commission has jurisdiction and authority to ensure that Cricket continues to meet the ETC criteria set forth in Section 214(e) of the Act and the Commission's rules and regulations. Nothing prevents the Commission from, on its own motion, modifying, suspending, or revoking Cricket's ETC designation if it at any time fails to meet the obligations of the Act, applicable federal rules, Commission rules and regulations, or if it fails to provide the supported services within a reasonable time frame.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of Cricket Communications, Inc. to be designated as an Eligible Telecommunications Carrier for the limited purpose of receiving low-income program (Lifeline/NTAP) universal service support shall be, and is hereby, granted.

IT IS FURTHER ORDERED that Cricket Communications, Inc. shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Cricket Communications, Inc. is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving low-income program (Lifeline/NTAP) universal service support in the wire centers identified in **Appendix A** to this Order.

IT IS FINALLY ORDERED that Cricket Communications, Inc. shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Appendix A

CLLI	State	OCN	Incumbent	OCNCat	Exchange
ARTNNEH	NE	ARLINGTON TELEPHONE CO.	ARLINGTON TELEPHONE CO	ILEC	ARLINGTON
ASLDNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	ASHLAND
BGTNNECO	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
BNNTNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	BENNET
CDBLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	CEDAR BLUFFS
DAVYNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	DAVEY
DNTNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	DENTON
EAGLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	EAGLE
ELKHNNW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
FRMTNENW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	FREMONT
FTCLNEXH	NE	BLAIR TELEPHONE CO.	BLAIR TELEPHONE CO.	ILEC	FORT CALHOUN
GNWDNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	GREENWOOD
GRETNNW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
KNRDNEXH	NE	BLAIR TELEPHONE CO.	BLAIR TELEPHONE CO.	ILEC	KENNARD
LNCLNEXA	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	LINCOLN
LNCLNEXB	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	LINCOLN
LNCLNEXD	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	LINCOLN
LNCLNEXS	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	LINCOLN
LSVLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	LOUISVILLE
MEADNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	MEAD
MCLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	MALCOLM
MRDCNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	MURDOCK
MRTLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	MARTELL
OMAHNE78	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNE84	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNE90	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEBE	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNECE	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEFO	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEFW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEHA	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEIZ	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
OMAHNEOS	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
PLTSNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	PLATTSMOUTH
RYMNNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	RAYMOND
SPFDNENW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
VLLYNENW	NE	QWEST CORPORATION	CENTURYLINK	RBOC	OMAHA
WVRLNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	WAVERLY
YUTNEXL	NE	WINDSTREAM NEBRASKA, INC.	WINDSTREAM COMMUNICATIONS	ILEC	YUTAN

IT IS FURTHER ORDERED that Cricket Communications, Inc. shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FURTHER ORDERED that Cricket Communications, Inc. is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving low-income program (Lifeline/NTAP) universal service support in the wire centers identified in **Appendix A** to this Order.

IT IS FINALLY ORDERED that Cricket Communications, Inc. shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Anne Boyle
Gerald L. Vay

Chairman

ATTEST:

Executive Director

//s// Rod Johnson