

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Telecommunications Carriers Eligible for Support ) WC Docket No. 09-197
Lifeline and Link Up Reform ) WC Docket No. 11-42
Virgin Mobile USA, L.P. )
Petition for Forbearance )
Cox Communications, Inc. )
Petition for Forbearance )
Time Warner Cable, Inc. )
Petition for Forbearance )
i-wireless, LLC )
Petition for Forbearance )
Q Link Wireless, LLC )
Petition for Forbearance )
Global Connection Inc. of America )
Petition for Forbearance )

MEMORANDUM OPINION AND ORDER

Adopted: April 8, 2013

Released: April 15, 2013

By the Commission: Commissioner McDowell not participating.

I. INTRODUCTION

1. In this Order, pursuant to section 10 of the Communications Act of 1934, as amended (the Act), we grant limited forbearance from the requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules that the service area of an eligible telecommunications carrier (ETC) conform to the service area of any rural telephone company serving the same area.1 In particular, this

1 47 U.S.C. §§ 160, 214(e)(5); 47 C.F.R. § 54.207(b); see Lifeline and Link Up Reform and Modernization et al., WC Docket Nos. 11-42 and 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2864, para. 309 (2011) (Lifeline and Link Up NPRM). Upon the effective date of this Order, we grant forbearance from the service area conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules with respect to all carriers seeking to provide Lifeline-only service, including, but not limited to, those carriers with petitions for forbearance from the service area conformance requirement of the Act pending with the Commission: Virgin Mobile USA, L.P. (Virgin Mobile), Cox Communications, Inc. (Cox), Time Warner Cable, Inc. (TWC), i-wireless, LLC (i-wireless), Q Link Wireless, LLC (Q Link) and Global Connection Inc. of America (Global Connection). See Petition for Forbearance of Virgin Mobile USA, L.P., WC Docket No. 09-197 (filed Jan. 13, 2012) (Virgin Mobile Petition); Petition for Forbearance of Cox Communications, Inc., WC Docket No. 09-197

(continued...)

grant of forbearance applies to any ETC that has been designated by a state or the Commission, as well as pending and future requests by telecommunications carriers that seek limited designation, as an ETC to participate only in the Lifeline program (Lifeline-only ETC).<sup>2</sup>

2. We conclude that forbearance furthers the Act's and Commission's goals of ensuring the availability of voice service to low-income consumers.<sup>3</sup> Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that rates remain just and reasonable or to protect consumers.<sup>4</sup> We emphasize that the forbearance granted herein is limited to a carrier's designation as a Lifeline-only ETC.<sup>5</sup> If any carrier petitions to become an ETC to receive high-cost support, this forbearance order is inapplicable and such carrier must satisfy all of the statutory requirements applicable to ETCs under the Act.

## II. BACKGROUND

3. Congress directed the Commission to establish a universal service fund to help ensure that "[q]uality services [are] available at just, reasonable, and affordable rates" for consumers throughout the nation, "including low-income consumers."<sup>6</sup> The Commission's Lifeline program furthers this goal by reducing the price of monthly telephone service for low-income consumers.<sup>7</sup> Section 254(e) of the Act provides that only an entity designated as an ETC shall be eligible for universal service high-cost and

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(filed Aug. 14, 2012) (Cox Petition); Time Warner Cable, Inc. Petition for Forbearance, WC Docket No. 09-197 (filed Nov. 13, 2012) (TWC Petition); i-wireless, LLC Petition for Forbearance, WC Docket No. 09-197 (filed Dec. 10, 2012) (i-wireless Petition); Q Link Wireless, LLC Petition for Forbearance, WC Docket No. 09-197 (filed Dec. 21, 2012) (Q Link Petition); Global Connection Inc. of America Petition for Forbearance, WC Docket No. 09-197 (filed Jan. 31, 2013) (Global Connection Petition). Virgin Mobile, i-wireless, Q Link and Global Connection seek forbearance with respect to those areas previously approved by the Commission, those areas where each carrier has been previously approved by several states for Lifeline ETC status, those areas where each carrier has a petition for Lifeline ETC status pending, and any remaining states where each carrier has not yet filed for Lifeline ETC status. *See* Virgin Mobile Petition at 1; i-wireless Petition at 1-2; Q Link Petition at 1; Global Connection Petition at 1-2. Cox and TWC seek forbearance with respect to those areas in which each company has pending ETC petitions or will seek designation as an ETC from this Commission or the relevant state commission in the future. *See* Cox Petition at 1; TWC Petition at 1.

<sup>2</sup> We do not disturb the decision of any state commission or prior ETC designation via this grant of forbearance. A carrier may petition the appropriate designating entity to adjust its service areas in accordance with this grant of forbearance. If the designating authority defined the carrier's service area as smaller than the rural telephone company's service area in its original ETC designation, then the carrier need not redefine or seek to amend its service area definition, and the carrier may rely on the instant forbearance.

<sup>3</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6671-72, paras. 27-30 (2012) (*Lifeline Reform Order*).

<sup>4</sup> *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b).

<sup>5</sup> Petitioners did not seek relief, nor do we grant forbearance, from the service area conformance requirement for carriers seeking to offer Link Up.

<sup>6</sup> 47 U.S.C. § 254(b)(3).

<sup>7</sup> Through the Lifeline program, low-income consumers may receive discounts off the monthly cost of telephone service, with the federal program reimbursing the ETC up to \$9.25 per subscriber each month. 47 C.F.R. § 54.403(a)(1). In Tribal areas, the federal program reimburses ETCs up to \$25 per subscriber each month. 47 C.F.R. § 54.403(a)(2).

low-income support.<sup>8</sup> Once designated as an ETC, a carrier must offer and advertise the services supported by the federal universal service support mechanisms throughout its designated service area.<sup>9</sup>

4. The Act and the Commission's rules define the term "service area" and how each ETC's is established. An ETC's "service area" is a geographic area within which an ETC has universal service obligations and may receive universal service support.<sup>10</sup> Although a carrier seeking to become an ETC usually requests designation in a specific service area, it is the state commission (or the FCC in some instances) designating that carrier—not the ETC itself—that establishes an ETC's service area.<sup>11</sup> When a competitive ETC seeks to serve an area already served by a rural telephone company,<sup>12</sup> section 214(e)(5) of the Act imposes an additional requirement that the competitive ETC's service area must conform to the rural telephone company's service area.<sup>13</sup> Accordingly, if a commission seeks to designate a competitive ETC for an area that differs from a rural telephone company's existing service area, that rural carrier's service area must first be redefined under the process set forth in section 214 of the Act.<sup>14</sup>

5. The Act defines the service area of each rural telephone company to be that "company's 'study area' unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."<sup>15</sup> The Commission has interpreted this language to mean that "neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers."<sup>16</sup> In reviewing a potential redefinition of a rural service area in evaluating a request for ETC designation, the Commission and the states have traditionally taken into account the three factors recommended by the Federal-State Joint Board on Universal Service: creamskimming, the Act's special treatment of rural telephone companies, and the administrative burdens of redefinition.<sup>17</sup> The Joint Board identified these factors in the context of a carrier seeking ETC designation to receive both low-income and high-cost support, in particular, under the identical support rule. The Commission's rules set forth the procedures for considering redefinition

<sup>8</sup> 47 U.S.C. § 254(e). An entity need not be an ETC to participate in the schools and libraries or rural health care universal service programs. 47 U.S.C. § 254(h)(1)(A), (B)(ii); *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114–15, para. 19 (1999).

<sup>9</sup> 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

<sup>10</sup> *See* 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(a).

<sup>11</sup> *See id.*

<sup>12</sup> *See* 47 U.S.C. § 153(44) (defining "rural telephone company").

<sup>13</sup> *See* 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

<sup>14</sup> 47 U.S.C. § 214(e)(5); *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 No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582, para. 41 (2004) ("In order to designate [a competitive carrier] as an ETC in a service area that is smaller than the affected rural telephone company [service] areas, we must redefine the service areas of the rural telephone companies in accordance with section 214(e)(5) of the Act"). *See also 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 No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6439, paras. 37–38 (2004) (*Highland Cellular Order*) (same).

<sup>15</sup> 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(b).

<sup>16</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8880, para. 187.

<sup>17</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 179–80, paras. 172–74 (Federal-State Joint Board 1996) (*1996 Recommended Decision*); *see also Highland Cellular Order*, 19 FCC Rcd at 6426, para. 9. A carrier "cream-skims" when it serves only those consumers that are least expensive to serve. *See Universal Service First Report and Order*, 12 FCC Rcd at 8881–82, para. 189.

petitions and allow either the state commission or this Commission to propose to redefine a rural telephone company's service area.<sup>18</sup> A proposed redefinition, however, does not take effect until this Commission and the appropriate state commission agree upon a new definition.<sup>19</sup>

6. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether it should forbear from the Act's redefinition process for low-income ETCs.<sup>20</sup> The Commission has issued two rulemaking orders in response to that NPRM but has not reached that issue. In determining whether to grant blanket forbearance (*i.e.*, forbearance for a class of carriers), the Commission also asked whether it should adopt rules codifying any conditions it would impose on a grant of forbearance in order to protect the public interest.<sup>21</sup> Section 10 of the Act requires that the Commission forbear from applying any regulation of any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied.<sup>22</sup>

7. Previously, the Commission granted conditional forbearance from the application of the definition of "service area" in section 214(e)(5) of the Act and section 54.207 of the Commission's rules to Cricket Communications, Inc. (Cricket) and NTCH, Inc. (NTCH), and subsequently designated each as limited ETCs eligible to receive only Lifeline support.<sup>23</sup> In the *Cricket and NTCH Forbearance Order*, the Commission conditioned forbearance on carriers meeting several obligations related to preventing waste, fraud, and abuse of universal service funding, and submitting compliance plans detailing how each carrier plans to implement such obligations.<sup>24</sup>

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<sup>18</sup> See 47 C.F.R. § 54.207(c), (d).

<sup>19</sup> See 47 C.F.R. § 54.207(c)(3), (d)(2).

<sup>20</sup> *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2864, para. 309 ("Should the Commission consider forbearing from this process for a class of carriers, and if so, what rules and conditions would be necessary to protect the public interest?"). No comments were received on the issue of forbearance from the redefinition requirement in this proceeding. We note that the Commission has also forbore from applying the service area redefinition process to conditional ETC designations for the limited purpose of participating in the Mobility Fund Phase I auction. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Second Report and Order, 27 FCC Rcd 7856 (2012).

<sup>21</sup> See *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2864, para. 309.

<sup>22</sup> Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation 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.

47 U.S.C. § 160(a).

<sup>23</sup> *Telecommunications Carriers Eligible for Universal Service Support; NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b); Cricket Communications, Inc. Petition for Forbearance*, WC Docket No. 09-197, Order, 26 FCC Rcd 13723 (2011) (*Cricket and NTCH Forbearance Order*).

<sup>24</sup> See *id.* at 13730-32, paras. 15-17. Cricket and NTCH are not eligible for either Link Up support or high-cost support. See *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 27 FCC Rcd 6263, 6272, para. 33 (Wireline Comp. Bur. 2012) (re. Cricket); *Telecommunications Carriers Eligible for Universal Service Support et al.*, WC Docket No. 09-197, Order, 27 FCC Rcd 9495, 9504, para. 32 (Wireline Comp. Bur. 2012) (re. NTCH).

### III. DISCUSSION

8. We conclude that forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest for carriers seeking designation, or already designated, as Lifeline-only ETCs.<sup>25</sup> For the reasons explained below, we find that all three prongs of section 10(a) are satisfied. As a result, if a commission designates a carrier as a limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. Because forbearance would apply only to designations for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services as it relates to the Commission's Lifeline program.<sup>26</sup>

9. Given that designating authorities may have already designated carriers as Lifeline-only ETCs in partial rural service areas without seeking redefinition, the Commission will not enforce the conformance requirement for those previously granted ETC designations. Such ETCs need not amend their service area and may rely on this forbearance to continue serving partial rural service areas. If the designating authority required Lifeline-only ETCs to follow the conformance requirement in its designation, the ETCs must abide by its designation order. We emphasize, however, that if any carrier seeks designation to be an ETC to receive high-cost support in part of a service area served by a rural telephone company, we do not forbear from the redefinition process that is required by the Act.

10. *Just and Reasonable.* Section 10(a)(1) of the Act requires that we consider whether enforcement of the provisions from which forbearance is sought is necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with the carriers or services at issue are just and reasonable and not unjustly or unreasonably discriminatory.<sup>27</sup> We conclude that compliance with the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is not necessary to ensure that a Lifeline-only carrier's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only.<sup>28</sup> Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-subscriber basis and is directly reflected in the price that the eligible subscriber pays.<sup>29</sup> As discussed below, we find that the factors traditionally taken into account by the Commission and the states when reviewing a potential redefinition of a rural service area pursuant to section 214(e)(5) of the Act do not apply in the context of conditionally designating ETCs in areas eligible for Lifeline support.<sup>30</sup> Furthermore, forbearance from the service area conformance requirement would not prevent the Commission from enforcing sections 201 or 202 of the Act, which require all carriers to charge just, reasonable, and non-discriminatory rates.<sup>31</sup> The Lifeline offerings of carriers subject to this forbearance will compete, at a minimum, with the Lifeline offerings of the incumbent

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<sup>25</sup> See 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207. See also *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13727-30, paras. 10-14.

<sup>26</sup> 47 U.S.C. § 254(b)(3).

<sup>27</sup> 47 U.S.C. § 160(a)(1).

<sup>28</sup> A provision or regulation is "necessary" if there is a strong connection between the requirement and regulatory goal. See *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

<sup>29</sup> 47 C.F.R. §§ 54.401, 54.403, 54.407.

<sup>30</sup> See *infra* paras. 11-13 (finding that service area conformance in these limited circumstances is not essential to protect the ability of rural telephone companies to continue to provide service nor will forbearance harm competitive market conditions).

<sup>31</sup> See 47 U.S.C. §§ 201, 202.

wireline carrier, as well as other wireline and wireless providers, in any given geographic area.<sup>32</sup> We also expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.<sup>33</sup> The resulting competition is likely to help ensure just, reasonable, and nondiscriminatory offerings of services. For these reasons, we find that the first prong of section 10(a) is met.

11. *Consumer Protection.* Section 10(a)(2) requires that we consider whether applying the conformance requirement to a voice service provider that has previously received designation, or will seek a Lifeline-only ETC designation through a pending designation request or at some time in the future, is necessary for the protection of consumers. Carriers designated as Lifeline-only ETCs offer Lifeline-eligible consumers an additional choice of providers for discounted telecommunications services. Forbearance from the conformance requirement for Lifeline-only support may provide additional competitive choices to many low-income consumers who cannot afford non-discounted offerings.<sup>34</sup> Moreover, there is no evidence that forbearance from the conformance requirement for the limited purpose of being a Lifeline-only ETC would harm consumers currently served by the rural telephone companies in the relevant service areas. Finally, every ETC, including any carrier receiving Lifeline-only support, must certify that it will satisfy applicable consumer protection and service quality standards in its service area.<sup>35</sup> For these reasons, we find that the second prong of section 10(a) is met.

12. *Public Interest.* Section 10(a)(3) requires that we consider whether forbearing from the conformance requirement to carriers that have previously received designation, have pending designation requests or will seek ETC designation for Lifeline support only in the future is in the public interest. We find that forbearance from the service area conformance requirement in these limited circumstances will promote competitive market conditions for the Lifeline program.<sup>36</sup> Requiring carriers to conform their service areas to those of the rural carriers in the states they seek to participate only in the Lifeline program could result in numerous redefinition proceedings, which could delay their entry into those markets, make it more difficult to market to potential Lifeline consumers on a statewide basis, and deprive low-income consumers in areas where the incumbent wireline provider is a rural telephone company of an additional choice of service provider.<sup>37</sup> For example, carriers state that the redefinition process for Lifeline-only offerings may take years to resolve and, as such, wastes resources of both carriers and regulators.<sup>38</sup>

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<sup>32</sup> See 47 C.F.R. § 54.405(a)–(c) (requiring ETCs to offer and publicize the availability of Lifeline services).

<sup>33</sup> See, e.g., *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)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15101, para. 13 (2005); *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Designation as an Eligible Telecommunications Carrier in the State of Pennsylvania; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381, 3389, para. 19 (2009); *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)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784, 8787, para. 9 (2010); *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13728, para. 10.

<sup>34</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13728, para. 11.

<sup>35</sup> 47 C.F.R. §§ 54.202(a)(3), 54.422(b)(3) (requiring federally designated Lifeline-only ETCs to certify they comply with applicable consumer protection rules).

<sup>36</sup> See 47 U.S.C. §§ 160(b), 254(b). See also *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13728, para. 11.

<sup>37</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13729, para. 12.

<sup>38</sup> Cox Petition at 4; *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13729, para. 12.

Additionally, to avoid disruption of service to low-income consumers served by existing Lifeline-only ETCs that were previously designated by state designating authorities or the Commission that defined carriers' service areas as part of a rural service area in its original ETC designation, those ETCs need not amend their service areas and may rely on this forbearance to continue serving partial rural service areas.<sup>39</sup> We find that applying the conformance requirement to Lifeline-only ETCs would not be in the public interest when balanced against the benefits of maintaining or introducing a competitive alternative Lifeline provider to low-income consumers.<sup>40</sup>

13. We disagree with assertions that granting forbearance from the conformance requirement for Lifeline-only ETC designation will have a detrimental effect on rural telephone companies.<sup>41</sup> In response to the Cox Petition, the Atlas Telephone Company expresses concerns that granting forbearance from the conformance requirement and redefinition process could cause a rural telephone company to suffer the same adverse effects from losing customers to other Lifeline providers, as observed under traditional cream-skimming analysis, specifically arguing that as a rural telephone company's low-income consumers migrate to other Lifeline providers, the number of lines served by the rural telephone company declines, causing its cost per line to increase.<sup>42</sup> As the Commission previously explained, the amount of Lifeline support is not tied to the cost of serving an area.<sup>43</sup> Rather, Lifeline support is a fixed, per-line amount nationwide, and ETCs are required to pass through the Lifeline support they receive to the benefit of their subscribers.<sup>44</sup> Any cream-skimming concerns in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. Cream-skimming is not a public-interest consideration in the Lifeline context, whether the competing carrier is offering wireline or wireless service.<sup>45</sup> We find that the Act contains safeguards to address any concerns raised by Atlas or any other rural telephone company that questions whether the designation of a carrier as a Lifeline-only ETC is in the public interest. The Act already requires designating commissions to affirmatively determine that designating a carrier as an ETC within a rural service area is in the public interest and that determination is not affected by this grant of forbearance.<sup>46</sup> As a result, any concerns raised by a rural telephone company will be evaluated by the designating authority when considering designating a limited, Lifeline-only ETC.

14. We also disagree with the argument that granting forbearance from the conformance requirement will eliminate the role of states in ETC designations and redefinition.<sup>47</sup> Forbearance in these limited circumstances merely removes the conformance requirement for previously designated ETCs receiving Lifeline-only support and carriers with pending or future ETC designation requests for Lifeline-

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<sup>39</sup> See Virgin Mobile Petition at 6; i-wireless Petition at 7-8; Q Link Petition at 7.

<sup>40</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13729, para. 12.

<sup>41</sup> See generally Comments of Atlas Telephone Company et al., WC Docket 09-197 (filed Sept. 26, 2012) (Atlas Comments).

<sup>42</sup> See *id.* at 9; see also Reply Comments of the South Carolina Telephone Coalition, WC Docket 09-197 (filed Jan. 14, 2013) (South Carolina Coalition Comments) (claiming that TWC's Petition will increase the likelihood of cream-skimming in rural telephone areas).

<sup>43</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13729, para. 13.

<sup>44</sup> See 47 C.F.R. §§ 54.401, 54.407, 54.504; see also *supra* n.17 (explaining how a carrier "cream skims" when it serves only those consumers that are least expensive to serve).

<sup>45</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13729, para. 13; see also TWC Reply Comments, WC Docket No. 09-197, at 12-13 (filed January 14, 2013) (TWC Reply Comments) (rebutting the Telecommunications Association of Maine Comments by stating that nothing about the *Cricket and NTCH Forbearance Order* turned on whether the Lifeline-only ETC was offering wireline or wireless services).

<sup>46</sup> See 47 U.S.C. § 214(e)(2).

<sup>47</sup> See Atlas Comments at 1-8.

only support, so that states, which have jurisdiction over most ETCs, may now designate Lifeline-only ETCs in a portion of a rural service area without requiring redefinition of that rural service area. State commissions are still required to consider the public interest, convenience and necessity of designating carriers as a competitive ETC in a rural area already served by a rural telephone company.<sup>48</sup> Our decision here to grant forbearance for Lifeline-only designations does not disturb the roles of state commissions and this Commission in the ETC designation process or in the redefinition process in other circumstances when redefinition is required.<sup>49</sup>

15. For pending and future Lifeline-only designation requests, carriers' service area will no longer be required to conform to the service area of the rural telephone companies serving the same area. The Commission recognizes all of the important issues raised by commenters in determining whether a particular carrier has met the requirements to become an ETC for the limited purpose of receiving Lifeline support, all of which will be addressed by the designating authority when a carrier submits an application requesting designation.<sup>50</sup> Designating authorities will continue to make an independent assessment as to whether designating a carrier as an ETC within a rural service area is in the public interest.<sup>51</sup>

16. Our decision here to forbear from the service area conformance requirement does not affect the findings of any prior ETC designation. Virgin Mobile, i-wireless, Q Link and Global Connection seek forbearance with respect to those areas previously designated by state designating agencies and the Commission.<sup>52</sup> For previously designated Lifeline-only ETCs serving partial rural areas, the designating authorities have already determined that designating such carriers as ETCs is in the public interest. Any carrier that has already been designated as an ETC must comply with the obligations of their ETC designation orders.

17. The Commission has made clear its commitment to improve accountability for providers receiving universal service support in its continued effort to fight waste, fraud, and abuse.<sup>53</sup> In the Commission's prior grant of forbearance from the service area conformance requirement, it conditioned forbearance on the carriers submitting, and having the Wireline Competition Bureau approve, a plan to comply with several obligations imposed in that order before it could begin providing service in accordance with its grant of forbearance.<sup>54</sup> The Commission has since adopted numerous conditions in

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<sup>48</sup> 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

<sup>49</sup> The redefinition process is still required for ETCs to receive federal universal service high-cost support and nothing in this Order alters the redefinition process for ETCs seeking federal universal service high-cost support.

<sup>50</sup> See TWC Reply Comments at 4-6 (rebutting New York State Telecommunications Association, Inc. (NYSTA) Comments regarding the timing of the forbearance request by explaining how grant of this forbearance still preserves the role of state commissions' authority in designating ETCs). Some commenters have also raised concerns with TWC's forbearance petition for future designation requests because they claim it is unclear whether TWC's services will be classified as "telecommunications services," whether its Lifeline rates are just and reasonable, and whether TWC is required to hold out all subsidiaries that will become ETCs at some point in the future, which are issues that will be addressed by the designating authority. See, e.g., National Telecommunications Cooperative Association Comments, WC Docket No. 09-197, at 2-4 (filed Jan. 14, 2013); South Carolina Coalition Comments at 2-4; Comments of NYSTA, WC Docket No. 09-197, at 3-8 (filed Dec. 31, 2012). But whether TWC qualifies as a Lifeline-only ETC will be determined by the designating commission, and need not be decided here. All that is before us is the question of whether to forbear from applying the conformance requirement to Lifeline-only ETCs. Because section 10 expressly applies to telecommunications carriers, see 47 U.S.C. § 160(a), and ETCs are by definition telecommunications carriers, see 47 U.S.C. § 214(e)(1); § 153(51), we may and do conclude that section 10's forbearance shall apply to a subset of ETCs, *i.e.*, Lifeline-only ETCs.

<sup>51</sup> See 47 U.S.C. § 214(e)(1), (2).

<sup>52</sup> See Virgin Mobile Petition at 1; i-wireless Petition at 1-2; Q Link Petition at 1; Global Connection Petition at 1-2.

<sup>53</sup> *Lifeline Reform Order*, 27 FCC Rcd at 6659-60, paras. 2-3.

<sup>54</sup> See *Cricket and NTCH Forbearance Order*, 26 FCC Rcd at 13730-32, paras. 15-17.

the *Lifeline Reform Order* to reduce waste, fraud and abuse in the Lifeline program, and thus, eliminated the need to impose additional conditions in the context of forbearance from the service area conformance requirement.<sup>55</sup> Although carriers may now be designated a Lifeline-only ETC by either a state commission or this Commission in partial rural service areas, no carrier seeking to avail itself of this limited forbearance grant may be designated in a part of a rural service area to receive federal high-cost support without first seeking redefinition of the underlying rural telephone company's study area.

18. For the reasons stated herein, we find that the statutory requirements for forbearance pursuant to section 10 of the Act are met and that granting blanket forbearance from the conformance requirement for Lifeline-only ETC designations will further the statutory goals of providing low-income subscribers access to telecommunications and emergency services and promoting more competitive options for low-income consumers while protecting the universal service fund against waste, fraud, and abuse. We also note that state commissions and this Commission are still required to make an independent assessment as to whether granting a carrier ETC designation is in the public interest before including any part of a rural service area in such carrier's service area.<sup>56</sup> Furthermore, forbearance from the conformance requirement stated herein does not apply if any carrier seeks ETC designation to receive high-cost support; in that instance, such carrier must conform its service area to that of the rural telephone company or else seek redefinition of the service area pursuant to section 54.207 of the Commission's rules.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act

19. The Memorandum Opinion and Order does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.<sup>57</sup>

##### B. Final Regulatory Flexibility Act Certification

20. The Regulatory Flexibility Act ("RFA")<sup>58</sup> requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."<sup>59</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>60</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>61</sup> A small business

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<sup>55</sup> We note that carriers seeking to avail themselves of the blanket forbearance from the facilities requirement must continue to file a compliance plan with, and have it approved by, the Wireline Competition Bureau before a state or the Commission may act on an ETC designation petition. *Lifeline Reform Order*, 27 FCC Red at 6816-17, paras. 379-80.

<sup>56</sup> 47 U.S.C. § 214(e)(2), (e)(6).

<sup>57</sup> Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

<sup>58</sup> *See* 5 U.S.C. § 601 *et seq.* The RFA has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, Title II, 110 Stat. 857.

<sup>59</sup> 5 U.S.C. § 605(b).

<sup>60</sup> 5 U.S.C. § 601(6).

<sup>61</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity

(continued...)

concern is one which (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>62</sup>

21. We hereby certify that the forbearance decision in this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities. In this Memorandum Opinion and Order, the Commission eases the regulatory compliance burden on Lifeline-only ETCs by forbearing from the requirement that the service area of a Lifeline-only ETC conform to the service area of any rural telephone company serving the same area. This Memorandum Opinion and Order does not modify any of our reporting requirements. The Commission will send a copy of this Memorandum Opinion and Order, including this certification, to the Chief Counsel for Advocacy of the SBA.<sup>63</sup> In addition, the Memorandum Opinion and Order (or a summary thereof) and certification will be published in the Federal Register.<sup>64</sup>

### C. Congressional Review Act

22. The Commission will send a copy of this Memorandum Opinion and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>65</sup>

## V. ORDERING CLAUSES

23. IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 201, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 201, 214, 254, we FORBEAR from applying the conformance requirement of section 214(e)(5) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(5), and section 54.207(b) of the Commission's rules, 47 C.F.R. § 54.207(b), to the extent discussed herein.

24. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 4(i), 4(j), 10, 201, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 160, 201, 214, 254, the petitions for forbearance filed by VIRGIN MOBILE USA, L.P., COX COMMUNICATIONS, INC., TIME WARNER CABLE, INC., I-WIRELESS, LLC, Q LINK WIRELESS, LLC and GLOBAL CONNECTION INC. OF AMERICA ARE GRANTED to the extent discussed herein, effective upon release.

25. IT IS FURTHER ORDERED that, except as provided in paragraph 24 above, this Order SHALL BE EFFECTIVE 30 days after publication in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>62</sup> Small Business Act, 15 U.S.C. § 632.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *See* 5 U.S.C. § 801(a)(1)(A).

**APPENDIX A****List of Commenters**

*Comment Sought on Cox Communications, Inc.'s Petition For Forbearance From Eligible Telecommunications Carrier Service Area Requirement, WC Docket No. 09-197, Public Notice, 27 FCC Rcd 10246 (Wireline Comp. Bur. 2012)*

**Commenter**

Atlas Telephone Company, Et Al.

**Abbreviation**

Atlas Telephone

**Reply Commenter**

Cox Communications, Inc.

Cox

**APPENDIX B****List of Commenters**

*Comment Sought on Time Warner Cable, Inc.'s Petition For Forbearance From Eligible Telecommunications Carrier Service Area Requirement, WC Docket No. 09-197, Public Notice, 27 FCC Rcd 14915 (Wireline Comp. Bur. 2012)*

**Commenter**

New York State Telecommunications Association, Inc.  
Telecommunications Association of Maine

**Abbreviation**

NYSTA  
TAM

**Reply Commenter**

National Telecommunications Cooperative Association  
South Carolina Telephone Coalition  
Telecommunications Association of Maine  
Time Warner Cable, Inc.

**Abbreviation**

NTCA  
South Carolina Coalition  
TAM  
TWC