



**RE NOT BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking Regarding
Revisions to the California High Cost
Fund B Program.

Rulemaking 09-06-019
(Filed June 18, 2009)

**REPLY COMMENTS OF CRICKET COMMUNICATIONS, INC. (U-3076-C)
ON PROPOSED DECISION ADOPTING
BASIC TELEPHONE SERVICE REVISIONS**

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), Cricket Communications, Inc. (“Cricket”) replies to certain comments submitted on the Proposed Decision of Commissioner Peevey issued on November 15, 2011 in the above referenced proceeding (“PD”).

I. INTRODUCTION

Cricket is a prepaid and pay-in-advance wireless provider that offers customers unlimited voice and broadband plans at simple, flat rates, without a long-term contract. As a result, Cricket’s service offerings are accessible to a segment of consumers that have traditionally been underserved by the national wireless carriers. For example Cricket’s customers generally have lower income levels and are more ethnically diverse than the national wireless carriers’ customers. Significantly as well approximately three quarters of Cricket’s customer base has “cut the cord” and does not have a landline phone.

In December 2010, the Commission approved Cricket’s request for designation as an eligible telecommunications carrier (“ETC”) for the purpose of offering *federal* Lifeline and Link-up services to qualifying end-user customers.¹ The resolution approving Cricket’s request for designation as an ETC found that it was in the public interest, noting several advantages including “telephone mobility.”² The

¹ Resolution T-17266 (Dec. 7, 2010).

² *Id.*, at 9.

Commission also found that Cricket complied with all but three of the twenty-two elements of basic service set forth in General Order 153.³

II. THE PROPOSED BASIC SERVICE DEFINITION IS NOT TECHNOLOGY NEUTRAL AND IS PREMISED ON INCORRECT FINDINGS ABOUT THE NATURE OF WIRELESS SERVICE AND WHAT CUSTOMERS VALUE

Although the stated goal of the PD is to adopt a definition that is technology neutral, as a number of commenters point out, the definition that the PD proposes to adopt falls far short of meeting that goal, including most notably with respect to the elements which require certification of residential signal quality and landline comparable E911 requirements. There are three key problems with the basic service definition proposed by the PD.

First the proposed basic service definition is premised on the following finding which is clearly incorrect: “wireless service —without wireline at least as a backup-- is still not adequate today to fully meet most consumers’ basic calling needs.”⁴ As AT&T correctly points out, 26.6% of Americans have jettisoned their wireline phone to rely on a wireless phone;⁵ this figure, as noted above, is approximately three-quarters for Cricket. Moreover a growing percentage of those customers who retain wireline phones “*make and receive* all or almost all calls on their wireless phones.”⁶ Perhaps most significantly the Commission has itself recognized in an order adopted just last month that the percentage of customers subscribing to *wireless only* is now substantially greater than the percentage of customer subscribing to *landline only*.⁷ Thus it is clear that not only is wireless service adequate to meet customers basic service needs, but that if customers have to choose one or the other, more customers choose wireless only over landline only. The Commission has also found that although there are downsides to wireless service, customers – even customers who are sufficiently economically disadvantaged that they qualify for Lifeline service, should make that choice. For example, in approving Cricket’s ETC application, the Commission first found that there were a number of advantages to Cricket’s wireless offering, the Commission then noted:

The disadvantages of the wireless service include the potential that the

³ The Commission granted Cricket waivers for three of General Order 153’s requirements: (i) customer choice of flat rate local service or measured rate local service; (ii) free provision of one directory listing per year, and (iii) free white pages telephone directory. *See id.*, at 9-10 and Attachment 2.

⁴ PD at 14.

⁵ AT&T Comments at 3 (footnote omitted).

⁶ Verizon Comments at 5 (footnotes omitted) (emphasis in original).

⁷ CTIA Comments at 4, citing Order Instituting Rulemaking into a review of the California High Cost Fund -A Program, R.11-11-007 (Nov. 10, 2011) at 15 (“The percentage of people who only subscribed to landline service dropped from 23.8% in 2007 to 14.9% in 2009, while those with only a wireless telephone increased from 13.6% to 24.5% in the same period.”) (further citations omitted).

handset is removed from the home and poor reception due to weather terrain and service coverage. CD believes that *customers can exercise judgment in determining whether the wireless service meets their needs given their separate circumstances and location.*⁸

Second, the addition of the non-technology neutral requirements will discourage and may even prevent wireless carriers from being eligible to receive state universal LifeLine funding. As Verizon notes, the inclusion of the requirements for a clear signal in at least one room of the subscriber's residence, the same location accuracy and reliability as wireline 911/E911 service, and several others are unnecessary and "will frustrate the Commission's goal of encouraging and promoting competitive neutrality for all technologies, including alternative technologies. It will be virtually impossible for any carrier to provide the showing required for every single subscriber in high cost areas."⁹ Similarly CTIA notes that wireless carriers are bound to offer E911 service in accordance with state and federal law and thus "are not free to change certain of their E911 practices."¹⁰ As a result, the inclusion of these elements would effectively preclude wireless carrier participation in state universal service programs.¹¹

Third, the adoption of such a non-technology neutral definition would be in direct contravention of the Commission's prior decisions and legislative mandate. In this regard, the Commission has already decided that non-traditional carriers, including wireless carriers, can participate in the universal service program on a voluntary basis (*see* Decision ["D"] 10-11-033) and has designated a number of wireless carriers, including Cricket, ETCs eligible to receive universal service funding.¹² In addition the Public Utilities Code requires that the B fund be administered in a competitively neutral manner.¹³

III. THE BASIC SERVICE DEFINITION MUST BE REVISED TO TRULY BE TECHNOLOGY NEUTRAL AND TO FACILITATE WIRELESS PARTICIPATION.

There are two ways that the Commission can address these issues. First, the Commission could, as suggested by a number of commenters adopt the FCC definition.¹⁴ The FCC definition has a number of benefits to recommend it including the facts that it is "[r]easonable, [t]echnologically-[n]eutral and can be readily implemented"¹⁵ and "is a readily viable definition recently adopted on a robust record."¹⁶

⁸ Resolution T-17266 at 9.

⁹ Verizon Comments at 6.

¹⁰ CTIA Comments at 7.

¹¹ Although it is clear that this is the goal that some commenters are trying to accomplish (*see e.g.*, Comments of Small LECs and Surewest), Cricket does not believe it is or should be the Commission's intent.

¹² *See e.g.* Resolution No T-17266.

¹³ PU Code section 739.3(c) *See also* PU Code section 709(c) which encourages "the development and deployment of new technologies" as an element of the state's telecommunications policy.

¹⁴ *See e.g.* Verizon Comments at 4-6; and Cox Comments at 2-5.

¹⁵ Cox Comments at 2.

As Verizon notes: “Such a definition will facilitate technologically neutral competition, remove barriers to wireless and VoIP providers seeking COLR status in high cost areas, and permit all carriers, including ILECs, to provide basic service over any available network architecture.”¹⁷

The only reasons that the PD offered for not adopting the FCC definition are that it is not as detailed and omits key California-jurisdictional basic service requirements.¹⁸ However, the Commission has already interpreted certain of these elements in other contexts (*e.g.*, the local usage requirement)¹⁹ which could be used to inform the interpretation of the revised basic service definition. Moreover, as Cox notes, to the extent that the Commission wished to include certain California specific elements “it may provide that it finds it reasonable, lawful and appropriate” and, Cricket would add, technology neutral.²⁰

Alternatively the Commission must, at a minimum, revise the definition to eliminate the elements of the definition that are clearly not technology neutral and are inconsistent with D.10-11-033 – particularly the requirements for wireless carriers to certify residential signal quality and to provide “landline comparable” E911 services. The inclusion of these requirements is premised on the incorrect assumption that wireline service is superior to and is preferred by customers. As CTIA notes with regard to the signal quality certification requirements:

In short, this requirement is premised on the assumption that customers’ primary basic service need is to have phone service which allows them to make/receive voice calls in their residence at all times. While that may be true for certain customers, it certainly cannot be said to be true for all customers. Basic service for certain customers may mean the ability to make calls while being mobile. The bottom line is that if basic service is to truly be technologically neutral it cannot be wedded to concepts embedded in landline service.²¹

The requirement that wireless carriers offer 911 service comparable to landline is even more glaringly *not* technology neutral and ignores the compelling evidence that one of the key reasons subscribers purchase mobile phones is to have access to 911 while they are mobile.²² Moreover the inclusion of

¹⁶ Verizon Comments at 3.

¹⁷ *Id.*, at 9.

¹⁸ PD at 16.

¹⁹ Cox Comments at 4.

²⁰ *Id.*, at 3.

²¹ CTIA Comments at 5.

²² *See id.*, at 6-7.

these two elements would, as discussed above, effectively prevent wireless carriers from participating in state universal service in contravention of D.10-11-033 and legislative mandates.²³

Both of the above options (FCC definition or modification to eliminate non-technology neutral requirements) are supported by the record and would result in a single definition that would apply to all technologies offering basic service supported by the various public policy programs, which is something that number of commenters representing a wide spectrum of interests advocate.²⁴ These approaches also have the benefit of adopting a comprehensive basic service definition *now*, as opposed to delaying the adoption of a LifeLine basic service definition to future proceedings.

If, however, the Commission adopts the currently proposed basic service definition it must limit its application and expressly clarify that it does not apply to providers of LifeLine service.²⁵ The Commission should also promptly move forward with Phase 2 of the LifeLine docket, R.11-03-013.

Respectfully submitted,

/s/

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²³ AT&T Comments at 4.

²⁴ See e.g., AT&T Comments at 4; Small LECs Comments at 2; TURN Comments at 2.

²⁵ See CTIA Comments at 7-8; Nexus Comments at 2-4.