

**PROPOSED DECISION**Agenda ID #11921 (Rev. 1)  
2/28/2012 Item 29Decision **PROPOSED DECISION OF ALJ DUDA** (Mailed 2/15/2013)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**Application for Rehearing of Resolution  
T-17266.Application 11-01-003  
(Filed January 5, 2011)**ORDER MODIFYING DECISION 11-12-022****1. Summary**

In this decision, we modify Decision (D.) 11-12-022 in response to a petition for modification filed on October 18, 2012, by Cricket Communications, Inc. (Cricket) D.11-12-022 granted a limited rehearing of Resolution T-17266 in order to revise our application of federal law in granting limited eligible telecommunications carrier (ETC) status to Cricket Communications, Inc. In D.11-12-022, we inadvertently revised the effective date of Cricket's Lifeline-only ETC designation for its entire service territory from the original effective date of December 2, 2010, to the date that Cricket obtained approval of its compliance plan pursuant to the Federal Communications Commission's recent Order granting Cricket's petition for forbearance of the geographic service area requirement.<sup>1</sup> However, Cricket's petition for modification explains that the

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<sup>1</sup> See, In the Matter of Telecommunications Carriers Eligible for Universal Service Support Cricket Communications, Inc.'s Petition for Forbearance, WC Docket No. 09-197, Order (rel. September 16, 2011). Cricket obtained approval of its compliance plan filing on February 7, 2012.

effective date should only have been revised as to Cricket's Lifeline-only ETC designation inside the rural local exchange carrier (LEC) service areas. We agree and accordingly grant Cricket's petition for modification of D.11-12-022 in order to clarify that the decision only intended to affect the designation date of Cricket's Lifeline-only status inside the rural LEC territories. The effective date of Cricket's Lifeline-only ETC designation outside rural LEC service areas should have remained December 2, 2010.

## **2. Procedural Background**

On March 3, 2010, Cricket Communication, Inc. (Cricket or Applicant) filed a Tier III Advice Letter 2 (AL 2) requesting limited eligible telecommunications carrier (ETC) status for the purpose of offering federal LifeLine and Link-up services to qualifying end-user customers. ETC status is a federal designation given to a common carrier that is eligible to receive federal support for providing services to low-income consumers and/or those in high-cost areas of a state.<sup>2</sup> Cricket requested only federal LifeLine and Link-up support for low-income customers; it did not request federal Universal Service high-cost support or support for an offering of California's LifeLine Services.

While the advice letter was under consideration, Cricket filed a petition for forbearance with the Federal Communications Commission (FCC) on June 21, 2010, seeking forbearance from the federal statutory geographic service requirements for ETC designation in a rural local exchange carrier (LEC) service area.<sup>3</sup>

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<sup>2</sup> 54 C.F.R. § 54.201; 54 C.F.R. § 54.101.

<sup>3</sup> Cricket Communications Inc. Petition for Forbearance, WC Docket No. 09-197 (filed June 21, 2010) (Cricket Forbearance Petition).

On December 2, 2010, the Commission adopted Resolution T-17266 designating Cricket as an ETC throughout its service territory. Although a previous draft resolution excluded the Small LECs' service areas from Cricket's ETC designation, the final resolution contained no such restriction. The Commission stated that it reconsidered the restriction on Cricket's ability to offer service in the Small LEC territories, and found such a restriction neither reasonable nor in the public interest.<sup>4</sup> The Resolution also declared that Cricket's Forbearance Petition before the FCC was "moot."<sup>5</sup>

The Small LECs<sup>6</sup> filed a timely application for rehearing of Resolution T-17266 on January 5, 2011. Among other things, the application alleged that the resolution violated federal law by designating Cricket as an ETC in rural LEC territories where Cricket does not serve the entire service area. The Small LECs simultaneously filed a motion for a stay of resolution T-17266.

On September 16, 2011, the FCC issued an order conditionally granting Cricket's petition for forbearance.<sup>7</sup> The FCC imposed a number of obligations upon Cricket designed to improve accountability and protect against waste, fraud, and abuse, and required Cricket to submit a compliance plan outlining the

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<sup>4</sup> Res. T-17266 at 11.

<sup>5</sup> Res. T-17266 at 20.

<sup>6</sup> The Small LECs include Calaveras, Cal-Ore, Ducor, Foresthill, Happy Valley, Hornitos, Kerman, Pinnacles, Ponderosa, Sierra, Siskiyou, Volcano, and Winterhaven telephone companies. However, Cricket's wireless footprint only covers portions of Kerman, Hornitos, Sierra, Ponderosa, and Ducor telephone companies.

<sup>7</sup> In the Matter of Telecommunications Carriers Eligible for Universal Service Support Cricket Communications, Inc.'s Petition for Forbearance, WC Docket No. 09-197, Order (rel. September 16, 2011).

measures it will take to implement the obligations.<sup>8</sup> Specifically, the FCC stated that Cricket may not be designated an ETC by a state commission in a part of a rural service area or receive federal LifeLine support for these areas until the FCC's Wireline Competition Bureau approves the compliance plan.<sup>9</sup>

On December 1, 2011, this Commission voted out Decision (D.) 11-12-022 (or "rehearing order"), granting a limited rehearing of Resolution T-17266 in order to revise our application of federal law in granting limited ETC status to Cricket Communications, Inc. While we still granted Cricket limited ETC status, we revised the effective date of that designation to the date that Cricket's compliance plan was approved pursuant to the FCC's Order. Although the application for rehearing concerned Cricket's ETC designation inside the rural LEC service areas, the rehearing order adopted broad language that revised the effective date of Cricket's ETC designation throughout all of Cricket's territory, both rural and non-rural.

Cricket filed the instant petition for modification of D.11-12-022 on October 18, 2012.<sup>10</sup> The Small LECs filed a response to Cricket's petition for modification on November 19, 2012. The Small LECs do not oppose Cricket's

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<sup>8</sup> *Id.* at para. 15.

<sup>9</sup> *Id.* at para. 17.

<sup>10</sup> Pursuant to Rule 16.4(d) of the Commission's Rules of Practice and Procedure, a petition for modification must be filed and served within one year of the effective date of the decision proposed to be modified, or if more than one year has elapsed the petition must explain why the petition could not have been presented within one year. Cricket attached a declaration of Suzanne K. Toller to its petition, apparently in an attempt to explain why the petition was not presented until now. However, D.11-12-022 was voted out December 1, 2011, and Cricket's petition for modification was timely filed under our rules.

request insofar as it is limited to clarifying that D.11-12-022 only affected Cricket's Lifeline-only ETC status inside the Small LEC territories.

### **3. Discussion**

Cricket correctly points out in its petition that its Lifeline-only ETC status in the non-rural parts of Cricket's territory was never at issue in the application for rehearing of Res. T-17266. Similarly, Cricket's ETC status in non-rural service areas was not at issue in the FCC docket wherein Cricket petitioned the FCC for forbearance from the requirement in 47 U.S.C. § 214(e)(2) that an ETC serve the entirety of a rural carrier's service territory, or seek "redefinition" of the rural carrier's service territory, where the carrier seeks low-income only ETC status. Although the discussion in our decision on rehearing reflects these circumstances, there is some language in the rehearing order which is broader than necessary to address the legal question of Cricket's Lifeline-only ETC status inside the Small LEC territories. This language inadvertently revised the effective date of Cricket's Lifeline-only ETC designation throughout its entire service territory, rather than just inside the rural LEC service areas. We accordingly modify D.11-12-022 to clarify that only the effective date of Cricket's limited ETC designation inside the rural LEC territories was revised. The effective date of Cricket's Lifeline-only ETC status inside the rural LEC service territories coincides with the date that the FCC approved Cricket's compliance plan, or February 7, 2012. The effective date of Cricket's Lifeline-only ETC designation in its service territory outside the rural LEC service areas should have remained December 2, 2010.

Although Cricket raises some other concerns with D.11-12-022, it emphasizes that its petition for modification is "narrowly tailored" to request only a revision of the effective date of Cricket's Lifeline-only ETC status in

non-rural service areas. The other matters raised by Cricket's petition are not related to this narrowly tailored relief requested in Cricket's petition.<sup>11</sup> We accordingly do not consider any other matters raised in Cricket's petition for modification and do not revisit any other conclusions or findings made in D.11-12-022.

#### **4. Conclusion**

In accordance with the discussion above, we grant Cricket's petition for modification insofar as it seeks to modify D.11-12-022 in order to clarify the effective date of its limited Lifeline-only ETC designation outside the rural LEC service areas. The effective date of Cricket's Lifeline-only ETC designation outside rural LEC territories is December 2, 2010. The effective date of Cricket's Lifeline-only ETC designation inside rural LEC service areas is February 7, 2012, coinciding with the date that the FCC approved Cricket's compliance plan.

#### **5. Assignment of Proceeding**

Commissioner Catherine J.K. Sandoval is the assigned Commissioner and Dorothy Duda is the assigned Administrative Law Judge (ALJ) in this proceeding.

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<sup>11</sup> Cricket also filed a concurrent Motion for Leave to File Under Seal Confidential Material (Declaration of Julie Buechler) to Petition of Cricket Communications, Inc. for Modification of D.11-12-022, and attached the declaration of Julie Buechler to its petition. However, the declaration offers evidence about conduct not at issue here and is not relevant to the narrowly tailored request presented in the petition for modification. As we see no relevance to the declaration and did not rely on it in making our determination here, we deny the motion and strike the declaration from the record.

**6. Comments on Proposed Decision**

The proposed decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under rule 14.3 of the Commission's Rules of Practice and Procedure. The applicant agreed to a shortened comment period of five days. Comments were filed by the Small LECs in support of the proposed decision.

**Findings of Fact**

1. D.11-12-022 inadvertently revised the effective date of Cricket's Lifeline-only ETC designation throughout its entire service territory, rather than just inside the rural LEC service areas.
2. The effective date of Cricket's Lifeline-only ETC designation outside rural LEC territories is December 2, 2010.
3. The effective date of Cricket's Lifeline-only ETC designation inside rural LEC service areas is February 7, 2012, coinciding with the date that the FCC approved Cricket's compliance plan.

**Conclusions of Law**

1. D.11-12-022 should be modified to clarify that only the effective date of Cricket's limited ETC designation inside the rural LEC territories was revised.
2. The effective date of Cricket's Lifeline-only ETC designation in its service territory outside the rural LEC service areas should have remained December 2, 2010.

**O R D E R**

Therefore, **IT IS ORDERED** that:

1. Cricket Communications, Inc.'s (Cricket) petition for modification of Decision 11-12-022 is granted insofar as it seeks to clarify the effective date of its limited Lifeline-only eligible telecommunications carrier (ETC) designation outside rural local exchange carrier (LEC) service areas. The effective date of Cricket's Lifeline-only ETC designation outside rural LEC territories is December 2, 2010. The effective date of Cricket's Lifeline-only ETC designation inside rural LEC service areas is February 7, 2012, coinciding with the date that the Federal Communications Commission (FCC) approved Cricket's compliance plan pursuant to FCC order.

2. Decision 11-12-022 shall be modified as follows:

a. On page 1, the second sentence of the first full paragraph shall be deleted and replaced with:

Although we still grant Cricket limited ETC status throughout its territory, the effective date of that designation inside the Small LEC service areas will be the date that Cricket compliance plan is approved pursuant to the Federal Communications Commission's (FCC) recent Order granting Cricket's Petition for Forbearance of the geographic service area requirement.

b. The third and fourth sentences of the first full paragraph on page 7 shall be deleted and replaced with:

However, to the extent the Resolution declares Cricket's Petition for Forbearance moot, and to the extent it designates Cricket an ETC in the Small LEC service areas prior to the date the FCC approves Cricket's compliance plan, the Resolution is in conflict with the FCC's order. Cricket's designation as an ETC in the Small LEC service areas may still stand, it just cannot be effective until the FCC approves Cricket's compliance plan.



- c. The third sentence in the last full paragraph on page 12 (IV. Conclusion) shall be deleted and replaced with:

Although we still grant Cricket limited ETC status in the Small LEC service areas, we modify the effective date of Cricket's ETC designation in the Small LEC service areas to coincide with the date that the FCC approves Cricket's compliance plan in accordance with the FCC's order.

- d. The last two sentences in Ordering Paragraph Number 1(a) shall be deleted and replaced with:

Cricket's request to be designated as a Lifeline-only ETC in the Small LEC service areas is granted, effective as of the date the FCC's Wireline Competition Bureau approves Cricket's compliance plan.

- e. Ordering Paragraph 1(e) shall be deleted and replaced with:

The following new Ordering Paragraph Number 7 is added:

Cricket Communications Inc.'s eligible telecommunications carrier (ETC) designation in the Small local exchange carrier (LEC) service areas shall be contingent upon and effective as of the date the Federal Communications Commission's Wireline Competition Bureau approves Cricket's compliance plan pursuant to the FCC's Order in In the Matter of Telecommunications Carriers Eligible for Universal Service Support Cricket Communications, Inc.'s Petition for Forbearance, WC Docket No. 09-197, Order (rel. September 16, 2011).

3. The motion of Cricket Communications, Inc. for leave to file under seal confidential material (Declaration of Julie Buechler) to petition of Cricket Communications, Inc. for modification of Decision 11-12-022 is denied and the Declaration of Julie Buechler is stricken from the record.

4. Application 11-01-003 is closed.

This Order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.