



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**[WC Docket Nos. 09-197; 11-42; FCC 13-44]**

Telecommunications Carriers Eligible for Support; Lifeline and Link Up Reform and Several Petitions for Forbearance

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this order, the Federal Communications Commission (Commission) grants limited forbearance from the requirement 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. In particular, this 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). The Commission concludes that forbearance furthers the Act's and Commission's goals of ensuring the availability of voice service to low-income consumers.

**DATES:** Effective **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, except paragraph 19 which is effective upon release of the Memorandum Opinion and Order.

**FOR FURTHER INFORMATION CONTACT:** Alexander Minard, Wireline Competition Bureau, (202) 418-0428 or TTY: (202) 418-0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order (Order) in WC Docket Nos. 09-197;11-42; FCC 13-44, released on April 15, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554. Or at the following Internet address: [http://transition.fcc.gov/Daily\\_Releases/Daily\\_Business/2013/db0415/FCC-13-44A1.pdf](http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0415/FCC-13-44A1.pdf).

## **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 § 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. In particular, this 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).

2. We conclude that forbearance furthers the Act's and Commission's goals of ensuring the availability of voice service to low-income consumers. Moreover, we find that application of the conformance requirements set forth in section 214(e)(5) of the Act and § 54.207(b) of the Commission's rules is not necessary to ensure that rates remain just and reasonable or to protect consumers. We emphasize that the forbearance granted herein is limited to a carrier's designation as a Lifeline-only ETC. 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. DISCUSSION**

3. We conclude that forbearing from the conformance requirement of section 214(e)(5) of the Act and § 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. 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.

4. 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.

5. 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. We conclude that compliance with the conformance requirement of section 214(e)(5) of the Act and § 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. 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. 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. 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. The Lifeline offerings of carriers subject to this forbearance will compete, at a minimum, with the Lifeline offerings of the incumbent wireline

carrier, as well as other wireline and wireless providers, in any given geographic area. We also expect that this competition will spur innovation among carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. 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.

6. 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. 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. For these reasons, we find that the second prong of section 10(a) is met.

7. 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. 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. 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. 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. 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.

8. 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. 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 creamskimming 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. As the Commission previously explained, the amount of Lifeline support is not tied to the cost of serving an area. 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. Any creamskimming concerns in an area of a rural telephone company are not relevant in considering the designation of a Lifeline-only ETC. Creamskimming is not a public-interest consideration in the Lifeline context, whether the competing carrier is offering wireline or wireless service. 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. 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.

9. We also disagree with the argument that granting forbearance from the conformance requirement will eliminate the role of states in ETC designations and redefinition. 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-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. 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.

10. 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. 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.

11. 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. 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.

12. 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. 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. The Commission has since adopted numerous conditions in the Lifeline Reform Order, 77 FR 12952, March 2, 2012, 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. 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.

13. 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. 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 § 54.207 of the Commission's rules.

### **III. PROCEDURAL MATTERS**

#### **A. Paperwork Reduction Act**

14. 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.

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

15. The Regulatory Flexibility Act (“RFA”) 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. The RFA generally defines “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business 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).

16. 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. In addition, the Memorandum Opinion and Order (or a summary thereof) and certification will be published in the Federal Register.



**C. Congressional Review Act**

17. 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.

**IV. ORDERING CLAUSES**

18. 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 § 54.207(b) of the Commission's rules, 47 CFR 54.207(b), to the extent discussed herein.

19. 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.

20. IT IS FURTHER ORDERED that, except as provided in paragraph 19 above, this Order SHALL BE EFFECTIVE **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,  
Secretary.

[FR Doc. 2013-10851 Filed 05/07/2013 at 8:45 am; Publication Date: 05/08/2013]