

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., 20554**

In the Matter of)	
)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	CC Docket 96-45
Virgin Mobile USA, L.P. Petitions for)	
Forbearance and for Designation as an)	
Eligible Telecommunications Carrier in the)	
States of New York, Pennsylvania and)	
Virginia.)	

**REPLY COMMENTS
OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
REGARDING
PETITION FOR FORBEARANCE AND
PETITIONS FOR ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS**

The National Association of State Utility Consumer Advocates (“NASUCA”) submits these brief reply comments on the four Petitions filed by Virgin Mobile USA, L.P. (“Virgin Mobile”) regarding its interest in being named an eligible telecommunications carrier (“ETC”) in order to receive federal universal support for Lifeline customers. Virgin Mobile filed a petition for forbearance regarding Virgin Mobile’s ability to be designated an ETC as a reseller of wireless services (“Forbearance Petition”).¹ The other three Virgin Mobile petitions requested designation as an ETC in the States of New York and Virginia and the Commonwealth of Pennsylvania, respectively.

¹ 47 U.S.C. 214(e)(1)(A) requires that ETCs offer services, at least in part, over their own facilities.

NASUCA, together with the Public Utility Law Project of New York (“PULP”), filed comments on the Virgin Mobile petitions, combining those with comments on petitions by TracFone Wireless, Inc. (“TracFone”) to be designated as an ETC in the States of Delaware and New Hampshire, also for the purpose of receiving Lifeline support. Virgin Mobile’s and TracFone’s petitions are based on the Federal Communications Commission’s (“FCC’s” or “Commission’s”) grant of forbearance to TracFone, also a reseller of wireless service, in 2005.²

Only three other comments were filed. The United States Telecom Association (“USTelecom”) addressed both Virgin Mobile’s and TracFone’s petitions. The other two comments focused on Virgin Mobile’s petitions: the Pennsylvania Public Utility Commission (“PaPUC”), addressed the forbearance petition and the ETC petition for Pennsylvania; the St. Regis Mohawk Tribe (“SRMT”), addressed only the ETC petition for the State of New York.³

USTelecom is incorrect in requesting the Commission to defer action on the TracFone and Virgin Mobile petitions.⁴ The benefits to low-income customers from allowing low-income consumers access to discounted wireless service should not be delayed. On the other hand, NASUCA agrees with USTelecom that when the Commission approves the Virgin Mobile petitions, the FCC should impose on Virgin

² *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 USC §214(e)(1)(A) and 47 CFR. §54.201(i)*, CC Docket No. 96-45, Order, FCC 05-165, 20 FCC Rcd 15095 (2005) (“*TracFone Order*”). TracFone also has pending petitions for ETC designation for Alabama, Connecticut, Massachusetts, North Carolina and Tennessee (all filed November 9, 2004) and for Florida and Virginia (filed July 21, 2004).

³ SRMT’s principal argument is that Virgin Mobile has failed, in its petition, to show recognition of SRMT’s status under federal law. NASUCA takes no position on the merits of that argument, but urges the Commission not to deny Virgin Mobile’s entire petition because of these faults, provided the conditions detailed in the NASUCA/PULP comments are met. The Commission should consider granting Virgin Mobile’s petition for New York excluding SRMT territory until those faults are corrected.

⁴ USTelecom Comments at 2.

Mobile the same conditions that were imposed on TracFone.⁵ In addition, as discussed by NASUCA, both carriers should be required to offer the Lifeline discount on all their calling plans, not just ones specifically selected for Lifeline customers.⁶

USTelecom asserts that deferring judgment is appropriate because “[t]he Act does not generally allow ETCs the ability to pick and choose which of the supported universal services they will offer.”⁷ That is true, but the Telecom Act also does not generally allow resellers to be ETCs. That is the whole point of the forbearance petition.⁸

In addition, the fact that “the Commission has before it several proposals for broader universal service reform addressing the critical need to stabilize and modernize the fund” should not deter the Commission from acting on these petitions, as USTelecom argues.⁹ The focus of those proposals is the high-cost portion of the universal service fund, including the eligibility of wireless carriers for high-cost funding. Here both Virgin Mobile and TracFone have disclaimed any interest in high-cost funding, agreeing to limit their request to low-income support specifically for Lifeline.

The PaPUC opposes the Virgin Mobile petitions.¹⁰ NASUCA agrees with the PaPUC that the petitions are lacking in explanation of how Lifeline eligibility will be determined and reverified for these prepaid transactions, including what eligibility

⁵ NASUCA/PULP Comments at 2-4.

⁶ Id. at 5-6. Likewise, if Virgin Mobile is eventually permitted ETC status within SRMT territory, it should be required to offer the Enhanced Lifeline program for tribal areas. SRMT Comments at 7.

⁷ USTelecom Comments at 2.

⁸ As the Commission knows, NASUCA has expressed concerns about the forbearance process. Given that the Commission has already granted TracFone’s petition with conditions, it does not seem reasonable not to grant Virgin Mobile’s request subject to the same conditions.

⁹ USTelecom Comments at 2.

¹⁰ PaPUC Comments at [1].

criteria it will apply.¹¹ NASUCA notes that Virgin Mobile has committed to advertise its prepaid wireless service with the Lifeline discount to consumers and also engage in outreach to state and local social service agencies.¹² NASUCA submits that Virgin Mobile should mirror the state's Lifeline eligibility criteria – which are already known to the customers and state and local social service agencies.¹³

Based on the foregoing, NASUCA continues to support granting the Virgin Mobile and TracFone petitions with the conditions described in the NASUCA/PULP comments. Granting the petitions will assist low-income consumers with their communications needs, in furtherance of the universal service goals of the Telecom Act, while ensuring that resellers can only access low-income universal service support.

Respectfully submitted,

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¹¹ Id. at [4].

¹² See e.g. Virgin Mobile's Petition for Designation as an ETC in the Commonwealth of Pennsylvania, at 12.

¹³ The reasons cited by the PaPUC for denying the petitions do not appear compelling, especially in light of the TracFone precedent. The PaPUC asserts that the universal service fund is "supported largely by an assessment limited to wireline carrier revenues generated on a Minute of Use (MOU) basis...." PaPUC Comments at [4]. Yet more and more universal service funding comes from other sources, such as the subscriber line charge and wireline, wireless and voice over Internet protocol services billed on a bundled or flat-rate basis. See *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, et al., Report and Order, FCC 06-94, 21 FCC Rcd 7578 (2006), ¶¶ 3, 9-10, 23, 29, 51, 53.