

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

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In the Matter of)

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Federal-State Joint Board on)

Universal Service)

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Virgin Mobile USA, L.P.)

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Petition for Limited Designation as an)

Eligible Telecommunications Carrier)

in the Commonwealth of Massachusetts)

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CC Docket No. 96-45

**PETITION FOR LIMITED DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE COMMONWEALTH OF MASSACHUSETTS**

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SUMMARY

Virgin Mobile USA, L.P. (“Virgin Mobile”) is seeking limited designation as an Eligible Telecommunications Carrier (“ETC”) in the Commonwealth of Massachusetts, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), solely for purposes of offering services supported by the Universal Service Fund’s (“USF”) Lifeline program.

Virgin Mobile is a Mobile Virtual Network Operator that purchases wireless network services on a wholesale basis from Sprint Nextel, which provides the nationwide wireless backbone and infrastructure for Virgin Mobile’s service. While the Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”), the Federal Communications Commission (“Commission”) may perform ETC designations for entities not subject to the jurisdiction of a state PUC pursuant to section 214(e)(6) of the Act. The Massachusetts Department of Telecommunications and Cable, formerly the Department of Public Utilities, has provided an affirmative statement that it does not exercise jurisdiction over wireless providers for purposes of ETC designation. Accordingly, pursuant to section 214(e)(6), the Commission has the necessary authority to designate Virgin Mobile as an ETC in the Commonwealth of Massachusetts.

Virgin Mobile meets all of the necessary requirements under section 214(e)(1) for the limited ETC designation requested herein. Through its arrangement with Sprint Nextel, Virgin Mobile has the ability to offer all of the services and functionalities supported by the USF and set forth in section 54.101(a) of the Commission’s rules. Virgin Mobile understands that section 214(e)(1)(A) of the Act requires an ETC to offer USF-supported services over its own facilities or a combination of its own facilities and the resale of another carrier’s services. Virgin Mobile has sought forbearance from enforcement of this facilities requirement to permits its designation

as an ETC. Virgin Mobile respectfully requests that the Commission promptly approve the instant request for limited ETC designation, along with its Petition for Forbearance, to enable Virgin Mobile to rapidly provide Lifeline services to qualifying Massachusetts customers.

Designation of Virgin Mobile as an ETC in Massachusetts would promote the public interest since it would provide qualifying Massachusetts customers with lower prices and higher quality wireless services. Many low-income customers in Massachusetts have yet to reap the benefits from the intensely competitive wireless market because of financial constraints, poor credit history, or intermittent employment. Virgin Mobile's prepaid service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. As an ETC, Virgin Mobile would be able to provide discounted and affordable services to these consumers—many of whom are among the intended beneficiaries of USF support.

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**PETITION FOR LIMITED DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE COMMONWEALTH OF MASSACHUSETTS**

I. INTRODUCTION

Virgin Mobile USA, L.P. (“Virgin Mobile”), by undersigned counsel and pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and section 54.201 of the regulations of the Federal Communications Commission (“FCC” or “Commission”), hereby petitions the Commission for limited designation as an eligible telecommunications carrier (“ETC”) in the Commonwealth of Massachusetts. Virgin Mobile seeks ETC designation in Massachusetts only for purposes of participation in the Universal Service Fund’s (“USF”) Lifeline program, and does not request designation to offer supported services in high-cost areas.

Since the Massachusetts Department of Telecommunications and Cable (“Department”), formerly known as the Department of Public Utilities, lacks jurisdiction to consider Virgin Mobile’s request for designation as an ETC, the Commission, under section 214(e)(6) of the Act,

has the necessary jurisdictional authority to consider and grant the instant request.¹ As more fully described below, Virgin Mobile satisfies the requirements for designation as an ETC in Massachusetts and has the ability to offer all of the services and functionalities supported by the USF throughout its designated Massachusetts service area. Grant of Virgin Mobile's request, therefore, will promote the public interest by providing Massachusetts customers with lower prices and higher quality wireless services.

II. BACKGROUND

A. Company Overview

Virgin Mobile was established as a joint venture between Sprint Nextel and Sir Richard Branson's Virgin Group. Sprint Nextel provides the nationwide wireless backbone for Virgin Mobile's service, including all network infrastructure and wireless transmission facilities. Virgin Mobile purchases wireless network services on a wholesale basis at a price based on Sprint Nextel's cost of providing these services plus a specified margin. As a Mobile Virtual Network Operator ("MVNO"), the company manages and markets all aspects of the customer experience, including pricing, handset selection, service offers, entertainment applications and marketing materials. Virgin Mobile's simple and straightforward pay-as-you-go, or prepaid, pricing, along with its differentiated service offerings and high-quality customer service, have redefined the prepaid wireless marketplace and brought significant competition to the overall wireless industry. Virgin Mobile's value proposition enables customers to select among an array of flexible service plans that allow them to pay for minutes as they use them or purchase monthly buckets of minutes in advance. The company also offers text and multimedia messaging and an

¹ See 47 U.S.C. § 214(e)(6).

array of mobile entertainment and information services, including music, games and graphics on all handsets

Unlike many carriers, Virgin Mobile does not impose credit checks or long-term service contracts as a prerequisite to obtaining service. Many customers are from lower-income backgrounds and did not previously have access to an affordable and high-quality wireless service because of financial constraints or poor credit. Virgin Mobile estimates that approximately one-third of its present customers are new to wireless services and 35 percent have an annual household income below \$35,000. Many of these customers also use Virgin Mobile's services sparingly, with a substantial percentage spending less than \$10 per month. Without question, prepaid wireless offerings have become an essential service option for lower-income customers, providing them with value for their money, access to emergency services on wireless devices and a reliable means of contact for prospective employers or social service agencies.² By marketing and expanding the availability of appealing wireless services to consumers otherwise unable to afford them, and those previously ignored by traditional carriers, Virgin Mobile has effectively expanded access to wireless services.

B. Lifeline Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, especially for low-income consumers. Section 254(b) designates the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission

² A survey of Virgin Mobile customer usage patterns indicated that state and city welfare agencies are among the most frequently contacted by customers.

to ensure that all consumers, including low-income consumers, have access to telecommunications services at comparable and affordable rates.³ The Lifeline program is one of several USF support mechanisms that furthers the goals contained in section 254. Lifeline support is designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with significant discounts for service.

The Commission has credited the Lifeline program for gradually increasing telephone penetration rates, especially among low-income consumers. Despite the steady rise in penetration rates, however, the FCC has noted that “there is more that we can do to make telephone service affordable for more low-income households” and targeted the low Lifeline participation rate as one area for improvement.⁴ Commission concerns regarding the underutilization of the Lifeline program have existed since its inception.⁵ To increase awareness of the program, the Commission has expanded the qualifying criteria and adopted broader outreach guidelines, requiring carriers to better advertise the availability of Lifeline services. Through these actions, the Commission has sought to increase Lifeline participation because “improve[d] participation in the Lifeline program ... would increase telephone subscribership and/or make rates more affordable for low-income households.”⁶

³ See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas ... have access to telecommunications [services]” [*emphasis added*] 47 U.S.C. § 254(b)(3).

⁴ See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 (2004) (“*Lifeline Order*”). According to the Commission’s own statistics, only one-third of households eligible for Lifeline assistance actually participated in the program just a few years ago. See *id.*

⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8972 (1997).

⁶ See *Lifeline Order* at 8312.

III. THE MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE HAS PROVIDED AN AFFIRMATIVE STATEMENT THAT IT DOES NOT REGULATE CMRS CARRIERS FOR ETC DESIGNATION PURPOSES

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support.”⁷ The Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”). Pursuant to section 214(e)(6), however, the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission.”⁸ The Commission has established that a carrier must demonstrate that it “is not subject to the jurisdiction of a state commission” before it may consider an application for ETC designation.⁹ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.¹⁰

The Department has affirmatively declined to exercise jurisdiction over CMRS providers. In an August 5, 1994 Order, the Department, formerly known as the Department of Public Utilities, stated that it would no longer regulate the rates or “other terms and conditions” of CMRS providers after August 10, 1994.¹¹ The Order, enclosed as Exhibit 1, meets the Commission’s requirements for an “affirmative statement” from a state PUC that it lacks the

⁷ 47 U.S.C. § 254(e).

⁸ See 47 U.S.C. § 214(e)(6).

⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 29947, 29948 (1997).

¹⁰ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 (2000).

¹¹ See Exhibit 1.

necessary jurisdiction over CMRS providers to perform ETC designations. Accordingly, Virgin Mobile requests that the Commission exercise its authority under section 214(e)(6) and determine that Virgin Mobile is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹²

IV. VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS MASSACHUSETTS SERVICE AREA FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. Virgin Mobile Requests ETC Designation in its Existing Service Area

As a non-rural carrier, Virgin Mobile is required to describe the areas for which it requests ETC designation. The company requests ETC designation for its entire Massachusetts service area, which encompasses nearly every postal zip code in the Commonwealth.¹³ Virgin Mobile understands that its service area overlaps with several Massachusetts rural carriers’ service areas, but maintains that the public interest factors described below justify its designation in these service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline program. Virgin Mobile’s authorized service area encompasses the service areas of the following non-rural telephone companies: Verizon New England, Inc.

Virgin Mobile’s authorized service area encompasses the service areas of the following rural telephone companies:

Grandby Telephone and Telegraph Co. of MA

Richmond Telephone Company

Sentinel Tree Telephone Company, Inc.

Taconic Telephone Corporation

¹² 47 U.S.C. § 214(e)(6).

¹³ Virgin Mobile’s request for ETC designation does not encompass any federally-recognized tribally-owned lands.

B. Virgin Mobile's Limited ETC Designation Request Only Seeks Authority to Participate in the Lifeline Program

Virgin Mobile requests ETC designation in Massachusetts for the sole purpose of participating in the Lifeline program. Virgin Mobile will not seek to provide supported services in high-cost areas. The instant request to participate in the Lifeline program is consistent with the Commission's requirements for ETC designation. Limited designation of Virgin Mobile as an ETC would promote the goals of universal service by offering the many benefits of USF-supported services to low-income customers in the Commonwealth of Massachusetts. The Lifeline services provided by Virgin Mobile will contain many features specifically designed for qualifying low-income customers, who currently lack appealing and affordable options for wireless services. Indeed, Virgin Mobile's Lifeline plans will provide affordable and convenient wireless services to qualifying Massachusetts customers, many of whom are otherwise unable to subscribe to wireless services.

C. The Limited Designation Request is Consistent with Recent Precedent

The instant request for designation to participate in the Lifeline program is consistent with the Commission's recent decision conditionally designating TracFone Wireless as an ETC in several states.¹⁴ In its decision, the Commission determined that TracFone's request satisfied all of the necessary eligibility requirements and that designation would serve the public interest.¹⁵ The Commission specifically noted in the *TracFone ETC Order* that designation of

¹⁴ See *In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, Order, FCC 08-100 (rel. April 11, 2008) ("TracFone ETC Order").

¹⁵ The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. See *Petition of TracFone* (cont'd)

prepaid wireless providers as ETCs will provide a variety of benefits to low-income consumers, including increased consumer choice, high-quality service offerings and access to emergency services on wireless devices.¹⁶

Virgin Mobile requests that the Commission expeditiously process its pending ETC applications so that it can quickly join TracFone in providing qualifying lower-income customers with affordable USF-supported wireless services. Designation of prepaid wireless providers such as TracFone and Virgin Mobile as ETCs is a significant step towards ensuring that all customers, especially low-income customers, share in the many benefits associated with access to affordable wireless telecommunications services. In a deteriorating economy, many existing wireless customers have to forego wireless services because they can no longer afford them. Designation of ETC status to prepaid wireless carriers like TracFone and Virgin Mobile should help to close the widening gap for wireless services and provide low-income customers with the significant advantages associated with access to wireless services. As noted in a recent study sponsored by the Massachusetts Institute of Technology's Legatum Center for Development and Entrepreneurship and the New Millennium Research Council, low-income customers receive significant economic and social benefits from wireless services, including enhanced productivity, increased economic opportunity, and broader access to emergency and safety services.¹⁷

(cont'd from previous page)

Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), Order, 20 FCC Rcd 15095 (2005).

¹⁶ See *TracFone ETC Order* at ¶ 15.

¹⁷ See *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, Nicholas P. Sullivan (April 2008).

V. VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and section 54.201(d) of the Commission’s rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier’s services. Applicants also must commit to advertise the availability and rates of such services.¹⁸ As detailed below, Virgin Mobile satisfies each of the above-listed requirements.

A. Virgin Mobile is a Common Carrier

Section 153(10) of the Act defines a common carrier as any entity “engaged as a common carrier for hire, in interstate or foreign communications by wire or radio”¹⁹ The Commission has determined on numerous occasions that resellers of mobile wireless services shall be treated as common carriers for regulatory purposes. As a reseller of wireless communications services, therefore, Virgin Mobile is a common carrier eligible for designation as an ETC.

B. Virgin Mobile Will Provide the Supported Services Through Resale

As described above, Virgin Mobile purchases wireless network services on a wholesale basis from Sprint Nextel. Virgin Mobile has pending a Petition for Forbearance from application of section 214(e)(1)(A) of the Act that requires ETCs to offer USF-supported services either using their own facilities or a combination of their own facilities and the resale of another carrier’s services (“Petition”).²⁰ As Virgin Mobile notes in its Petition, forbearance from the facilities requirement would enable Virgin Mobile to advance the deployment of discounted

¹⁸ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

¹⁹ 47 U.S.C. § 153(10).

²⁰ See 47 U.S.C. § 214(e)(1)(A).

telecommunications services, greatly benefiting its low-income customers. The company requests that the Commission expeditiously approve the Petition to ensure that Virgin Mobile can rapidly deploy discounted telecommunications services to qualifying Massachusetts consumers.

C. Virgin Mobile Offers All of the Required Services and Functionalities

Through its wholesale arrangement with Sprint Nextel, Virgin Mobile is able to provide all of the services and functionalities supported by the universal service program under section 54.101 of the Commission's regulations in the Commonwealth of Massachusetts. Virgin Mobile, moreover, will make these services and functionalities available to any qualifying Massachusetts customer.

1. Voice Grade Access to the Public Switched Telephone Network.

Virgin Mobile provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale network services from Sprint Nextel. Virgin Mobile also offers its customers services at bandwidth rates between 300 and 3,000 MHz as required by the Commission's regulations.²¹

2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.²²

²¹ See 47 U.S.C. § 54.101(a)(1).

²² See e.g., *Farmers Cellular, Inc.*, 18 FCC Rcd 3848, 3852 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd 9589, 9593 (2002); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 52 (2000).

Virgin Mobile offers a variety of rate plans that provide its customers with local usage capabilities included within the flat per minute or per monthly rate. Virgin Mobile also commits to complying with any minimum local usage requirements adopted by the FCC in the future.

3. Dual Tone Multi-Frequency Signaling or its Functional Equivalent

Virgin Mobile provides dual tone multi-frequency (“DTMF”) signaling to expedite the transmission of call set up and call detail information throughout its network. All wireless handsets offered for sale by the company are DTMF-capable.

4. Single-Party Service or its Functional Equivalent

“Single-party service” means that only one party will be served by a subscriber loop or access line during a telephone transmission. Virgin Mobile provides single party service to its customers for the duration of each telephone call, and does not provide multi-party (or “party-line”) services.

5. Access to Emergency Services

Virgin Mobile provides nationwide access to 911 emergency services for all of its customers. Virgin Mobile also complies with the Commission’s regulations governing the deployment and availability of enhanced 911 compatible handsets.

6. Access to Operator Services

Virgin Mobile provides all of its customers with access to operator services.

7. Access to Interexchange Services

Virgin Mobile’s service provides its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile’s service with no additional charges as minutes are not billed separately for local or domestic long distance services.

8. Access to Directory Assistance

All Virgin Mobile customers are able to dial “411” to reach directory assistance services from their wireless handsets.

9. Toll Limitation for Qualifying Low-Income Consumers

Toll limitation allows customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. As described above, Virgin Mobile provides its wireless service on a prepaid, or pay-as-you-go, basis. Virgin Mobile’s service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. The nature of Virgin Mobile’s service, therefore, mitigates any concerns that low-income customers will incur significant charges for long distance calls resulting in disconnection of their service.

D. Advertising of Supported Services

Virgin Mobile will broadly advertise the availability and rates for the services described above using media of general distribution as required by section 54.201(d)(2) of the Commission’s regulations.²³ The company currently advertises the availability of its services through newspapers, magazines, radio, the Internet and billboards. Virgin Mobile’s third-party retail partners also heavily promote its services. These advertising campaigns have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to this neglected consumer segment.

²³ See 47 C.F.R. § 54.201.

Virgin Mobile will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout Massachusetts. Virgin Mobile intends to distribute brochures and posters at various state and local social service agencies to inform customers of the availability of its Lifeline services. In addition, Virgin Mobile may market its Lifeline services through its Re*Generation pro-social program, which is a program that connects at-risk youth with young people who want to make a difference through partnerships with innovative not-for-profit organizations. The company also will heavily promote these offerings to its existing customers—many of whom may otherwise qualify for Lifeline—through email and text messages.

VI. DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

A. Goals of the Communications Act

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.²⁴ There is no question that limited designation of Virgin Mobile as an ETC in Massachusetts will promote the public interest by providing low-income Massachusetts consumers with more affordable and higher quality wireless services. Many lower-income consumers have yet to reap the full benefits of the intensely competitive wireless marketplace. Whether because of financial constraints, poor credit or intermittent employment, these consumers often lack the countless choices available to most consumers. Designating Virgin Mobile as an ETC in Massachusetts, therefore, will enable

²⁴ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

it to expand the availability of affordable telecommunications services to qualifying Massachusetts consumers, leading to lower prices and increased choice.²⁵

The instant request for limited ETC designation must be examined in light of the Act's goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating Virgin Mobile as an ETC would significantly benefit low-income Massachusetts consumers eligible for Lifeline services—many of whom are the intended beneficiaries of universal service. The company's participation in the Lifeline program also undoubtedly would increase opportunities for the company to serve Massachusetts customers with appealing and affordable service offerings.

Designation of Virgin Mobile as an ETC also would promote competition and spur other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this neglected consumer segment. Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to eligible Massachusetts Lifeline customers, helping to redefine the wireless experience for many low-income Massachusetts consumers. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor service plans with terms and features that appeal to lower-income customers.

Finally, while Virgin Mobile has experienced success in deploying wireless services to low-income consumers, internal company analysis suggests that many low-income customers still intermittently discontinue service because of economic constraints. ETC designation in Massachusetts would enable Virgin Mobile to offer appealing and affordable service offerings to

²⁵ See *IXC Forbearance Order*, 11 FCC Rcd at 20760.

low-income Massachusetts customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Providing Virgin Mobile with the authority necessary to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

B. Impact on the Universal Service Fund

Virgin Mobile's request for designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. According to the Joint-Board's most recent monitoring report, Lifeline funding totaled approximately \$775 million in 2006 while high-cost program expenditures amounted to approximately \$4.1 billion—more than five times the amount of Lifeline funding.²⁶ Although many parties have raised concerns over the growth in the USF's high-cost program, the Lifeline program has triggered no similar outcry. Virgin Mobile understands the concerns over growth in high-cost expenditures and has participated in the Commission's proceedings addressing these issues.²⁷ Limited designation of Virgin Mobile as an ETC in Massachusetts, however, raises no similar concerns and any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income Massachusetts consumers.

²⁶ See *Universal Service Monitoring Report*, CC Docket 98-202, Tables 2.2 and 3.1 (filed January 25, 2008).

²⁷ See *Virgin Mobile ex parte*, CC Docket 96-45 (filed March 4, 2005).

VII. ANTI-DRUG ABUSE CERTIFICATION

Virgin Mobile certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.²⁸

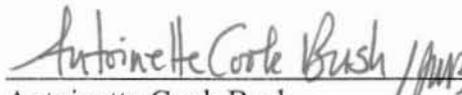
VIII. CONCLUSION

As discussed above, designation of Virgin Mobile as an ETC in the Commonwealth of Massachusetts accords with the requirements of section 214(e)(6) of the Act and is in the public interest.

WHEREFORE, for all of the foregoing reasons, Virgin Mobile respectfully requests that the Commission designate Virgin Mobile as an ETC in the Commonwealth of Massachusetts.

Respectfully submitted,

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²⁸ See Exhibit 2.

EXHIBIT 1

**AFFIRMATIVE STATEMENT OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

August 5, 1994

D.P.U. 94-73

Investigation by the Department of Public Utilities upon its own motion on Regulation of Commercial Mobile Radio Services.

I. INTRODUCTION

On April 22, 1994, the Department of Public Utilities ("Department") voted to open an investigation on its own motion into the regulation of commercial mobile radio services ("CMRS"), also known as radio common carrier ("RCC") services. The investigation was docketed as D.P.U. 94-73.

On August 10, 1993, the Omnibus Budget Reconciliation Act ("Budget Act") was signed into law by the President.¹ The Budget Act amends the Communications Act of 1934 by preempting state and local entry and rate regulation of both commercial and private mobile radio services as of August 10, 1994.² However, states may regulate other terms and conditions of CMRS. Also, the Federal Communications Commission ("FCC") shall allow states to continue CMRS rate regulation if the state can demonstrate that:

(1) market forces in the state are inadequate to protect the public from unjust and unreasonable wireless service rates or from rates that are unjustly or unreasonably discriminatory; or

(2) such market conditions exist and such service is a

¹ Omnibus Budget Reconciliation Act of 1993, Public Law No. 103-66, Title VI, §§ 6002(b)(2)(A), 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

² G.L. c. 159, §§ 12, 12A-12D, provides the Department jurisdiction over RCC service in Massachusetts. The statute requires that RCCs obtain a certificate of public convenience and necessity from the Department prior to offering service in Massachusetts and grants the Department jurisdiction over RCC rates. G.L. c. 159, §§ 12B, 12C. Specifically, G.L. c. 159 §§ 12B-12D will be preempted by Section 332 of the Communications Act, as revised by the Budget Act, which governs the regulation of all "mobile services," as defined by Section 3(a) of the Communications Act.

replacement for land-line telephone exchange service for a substantial portion of the telephone land-line exchange service within such state.

The Department opened this investigation to determine whether to petition the FCC for authority to continue rate regulation of RCCs after August 10, 1994. The Department also sought comments on the regulation of other terms and conditions of RCC service in Massachusetts, such as liability of the company, use of service, and consumer protection issues, and the repeal of 220 C.M.R. §§ 35.00 et. seq., which provides procedural rules for the Department's regulation of radio common carrier service.

The Department allowed interested parties to submit written comments on these issues by May 12, 1994. The Department also held a public hearing at the Department's offices on May 17, 1994. The Department allowed until June 30, 1994, for the filing of any additional written comments, and until July 20, 1994, for the filing of reply comments.

Pursuant to the Department's request for written comments, MCI Telecommunications Corporation ("MCI"), Southwestern Bell Mobile Systems, Inc. d/b/a Cellular One ("Cellular One"), NYNEX Mobile Communications Company ("NYNEX Mobile"), Bell Atlantic Mobile Systems ("BAMS"), SNET Mobility, Inc. ("SNET Mobility"), MobileMedia Communications, Inc. ("MobileMedia"), GTE Mobilnet Incorporated ("GTE Mobilnet"), Tri-State Radio Co. ("Tri-State"), Arch Connecticut Valley, Inc. ("Arch"), Paging Network Inc. ("PageNet"), Berkshire Communicators ("Berkshire"); QuickCall

Corporation ("QuickCall"), and MobileComm of the Northeast, Inc. ("MobileComm") filed comments. On June 15, 1994, and June 30, 1994, Cellular One and NYNEX Mobile, respectively, filed additional comments in reply to MCI's initial comments.

II. POSITIONS OF THE PARTIES

a. MCI

MCI argues that the Department should petition the FCC for authority to continue rate regulation of CMRS in Massachusetts in order to maintain the status quo and to protect subscribers in a market characterized by very limited competition (MCI Comments at 4). MCI argues that the Department should use this docket to establish the general dominant/nondominant regulatory structure for the CMRS industry in Massachusetts (id. at 2-3).

MCI also maintains that regulatory oversight of "other terms and conditions" of CMRS providers is "extremely important" in order to create MCI's proposed new regulatory structure for the CMRS industry (id. at 5). MCI argues that the Department should require that terms and conditions of the intrastate interconnection and access offerings of dominant CMRS providers be fair and reasonable, and do not unreasonably discriminate against any customer, including competing providers of CMRS (id. at 6).

MCI argues that the Department should extend "co-carrier" status to CMRS providers and should adopt principles of "mutual

compensation" (id. at 7).³

b. Cellular One

Cellular One asserts that "fierce" competition in the telecommunications market protects the public from unjust and unreasonable wireless service rates and from rates that are unjustly or unreasonably discriminatory (Cellular One Comments at 1). Cellular One argues that with new wireless technology and the introduction of competitors in the marketplace on a regular basis, existing cellular providers are prevented from allowing their prices to become unjust, unreasonable or unduly discriminatory (id. at 2).

In addition, Cellular One asserts that wireless technology is used by less than ten percent of the Massachusetts population, and, therefore, cellular service cannot be considered a substitute for landline exchange service (id.).

Cellular One argues that MCI's proposals are beyond the scope of this proceeding and do not reflect existing conditions in the increasingly competitive wireless marketplace in Massachusetts (Cellular One Reply Comments at 1). Cellular One argues that the Department should deny MCI's proposals (id.).

Cellular One also argues that because MCI's proposals are

³ MCI indicates that "co-carrier" status is a classification used by the California Public Utilities Commission to represent certain requirements for interconnection and mutual compensation (MCI Comments, Attachment B, at 5-6). MCI defines mutual compensation as "recovery by CMRS providers of the reasonable cost of terminating calls originating on local exchange carrier networks, and vice versa" (id. at 7).

beyond the scope of the legal notice for this proceeding, the Department cannot consider them without the publication of a new and expanded notice and the opportunity for all interested parties to comment (id. at 2).

c. NYNEX Mobile

NYNEX Mobile asserts that the Department should not petition the FCC and should forbear from regulation of mobile services (NYNEX Mobile Comments at 20). NYNEX Mobile argues that the mobile marketplace is vigorously competitive and that mobile communications is not a replacement for telephone landline exchange service within the state (id. at 3). Also, NYNEX Mobile contends that the Department should repeal 220 C.M.R. Section 35 (id. at 16).

NYNEX Mobile estimates that its service penetration rate in its region is 1.77 percent and that the penetration rate for landline telephone exchange service in the NYNEX region exceeds 94 percent (id.). Therefore, according to NYNEX Mobile, it cannot be argued that cellular services have replaced basic telephone service for a substantial portion of the Massachusetts population (id. at 4).

NYNEX Mobile argues that: (1) its terms and conditions are disclosed in full on each customer's service order forms; (2) service representatives and sales channels are trained to address customer issues; and (3) customers regularly see notices in customer newsletters and bill inserts (id. at 17). NYNEX Mobile argues that customers who are dissatisfied with their current

provider may take their business elsewhere, and customers are thus protected by a competitive marketplace, which is "the most powerful and effective mechanism controlling service terms and conditions" (id. at 17-18).

NYNEX Mobile also argues that the Department should reject MCI's recommendation for the Department to file a petition with the FCC to continue the regulation of wireless service (NYNEX Mobile Reply Comments at 4). NYNEX Mobile points out that MCI was the only commenter to request the Department to petition the FCC for continued rate regulation of CMRS (id. at 1).

NYNEX Mobile also asserts that MCI inappropriately seeks to convert this docket into a broad-ranging proceeding (id. at 2). NYNEX Mobile notes that the interstate interconnection and compensation issues raised by MCI are under consideration in pending FCC proceedings, and that any intrastate interconnection and compensation issues would be more appropriately handled in another proceeding (id. at 3).

d. BAMS

BAMS urges the Department not to petition the FCC to continue regulation of rates beyond August 10, 1994 (BAMS Comments at 18). BAMS states that the market conditions in Massachusetts do not support continued rate regulation and make it impossible to meet the statutory tests for continued regulation (id. at 3). According to BAMS, market forces are adequate to protect the public and cellular service is not a replacement for landline telephone service (id. at 15).

BAMS states that the cellular radio service penetration rate nationally is about four percent while the landline service penetration rate is about 95 percent (id.). BAMS further asserts that neither the price nor the capacity of cellular radio service suggests that cellular will become a substitute for landline service for a substantial portion of the Commonwealth's population in the foreseeable future (id.).

BAMS also argues that the existing level of competition at the wholesale and retail levels for cellular service in Massachusetts does not support rate regulation for consumer protection purposes (id. at 16). BAMS further states it is not in the best interest of a cellular radio service operator to engage in unjust, unreasonable or discriminatory practices or to charge unjust or unreasonable rates in such a competitive environment (id.).

e. SNET Mobility

SNET Mobility argues that its Springfield market for cellular services is competitive, and bases its argument on the existence of suitable substitutes including paging, specialized mobile radio services, and mobile data services (SNET Mobility Comments at 5). SNET Mobility argues that this competitiveness will increase in the next year as the FCC proceeds to license new forms of mobile services, such as Personal Communications Services and mobile satellite services (id. at 9).

SNET Mobility maintains that the introduction of new sources of competition will intensify competitive forces in the mobile

services market, forcing providers to provide additional network services and enhance price competition (id. at 17). SNET Mobility argues, accordingly, that current market conditions are adequate in mobile services to protect subscribers and to protect end users from unjust and unreasonable rates (id.).

f. MobileMedia

MobileMedia asserts there is no longer a need for the regulation of rates of paging service or "other terms and conditions" of paging services (id. at 3). According to MobileMedia, competitive market forces created by the large number of providers ensures public protection from discriminatory or unreasonable rates or unreasonable conditions of service (id.). In view of these market conditions, MobileMedia urges the Department to repeal its regulation of radio utilities and not petition the FCC to continue regulation of paging service rates (id. at 5-6).

MobileMedia argues that price competition in the paging industry should be distinguished from competition in the cellular industry, because while the FCC has allocated portions of radio spectrum to two cellular facilities-based carriers, no such limitation exists in the paging industry (id. at 4). Consequently, according to MobileMedia, there are significantly more paging companies than cellular providers, and thus more price competition (id.).

Regarding the regulation of "other terms and conditions" of paging services, MobileMedia asserts that competition makes

regulation of services and billing practices unnecessary (id. at 5).

MobileMedia also supports the repeal of regulations regarding certification of radio utilities set forth at 220 C.M.R. § 35.00 (id.).

g. GTE Mobilnet

GTE Mobilnet argues that: (1) the cellular marketplace is currently competitive and competition will increase in the near future; and (2) cellular service is discretionary in the sense that it is not a necessity (GTE Mobilnet Comments at 1.) GTE Mobilnet argues that these two factors obviate the need for the Department to petition the FCC to continue the regulation of rates of CMRS after August 10, 1994 (id.).

GTE Mobilnet argues that competition manifests in two ways: (1) direct competition provided at the wholesale and retail levels through other service providers; and (2) through alternative service providers such as paging, pay phones, and Specialized Mobile Radio Services (id. at 3).

GTE Mobilnet asserts that market forces in Massachusetts adequately protect the public from unjust and unreasonable wireless service rates and from rates that are unjustly or unreasonably discriminatory (id. at 9). Also, GTE Mobilnet states that the Department has no need to regulate other "terms and conditions" of cellular service because market forces act as a regulator (id.).

h. Tri-State

Tri-State argues that with respect to paging CMRS, the extremely competitive nature of the paging industry both nationwide and in Massachusetts makes unnecessary any regulation by the Department (Tri-State Comments at 5). Tri-State further asserts that regulation, whether consisting of regulation of rates or "terms and conditions," will inhibit competition between paging service providers and will deprive the public of substantial benefits that result from "aggressive competition" (id. at 4).

Tri-State maintains that the regulation of "other terms and conditions" of CMRS, including company liability, use of services and consumer protection issues, is not necessary given the extremely competitive state of the paging industry in Massachusetts (id. at 8).

Tri-State emphasizes that its comments relate to the paging CMRS industry and not the two-way mobile CMRS industry (id. at 9). Tri-State argues that this distinction is critical because conditions in the cellular market may warrant a petition by the Department for regulation of rates, the imposition of new regulations regarding company liability, the use of services, or consumer protection issues (id. at 10). Tri-State asserts that findings regarding the two-way marketplace should not affect Tri-State's assertion that the competitive status of the paging CMRS market renders continued regulation by the Department "unnecessary and counterproductive" (id.).

i. Arch

Arch asserts that market forces in Massachusetts provide fair and reasonable service rates to the public for commercial mobile radio services (Arch Comments at 1). Arch argues that the Department should repeal 220 C.M.R. § 35.00, because, after federal preemption of entry regulation, no legal basis remains for the regulation of the extension of mobile radio utility systems, or transfers of certificated facilities (id. at 3).

j. PageNet

PageNet argues that the Department cannot meet the required burden of proof to establish the need for continued regulation of paging service in Massachusetts (PageNet Comments at 1).

PageNet maintains that the paging market in Massachusetts is highly competitive and that market conditions adequately protect the public from unjust and unreasonable discriminatory rates (id. at 4). PageNet also asserts that paging is not a replacement for landline telephone service, but rather an enhancement or complement (id.).

k. Berkshire

Berkshire states that it does not see any advantage for the Department to continue regulation of RCCs after August 10, 1994, unless the Department can regulate other currently unregulated services as well (Berkshire Communicators Comments at 1).

l. QuickCall

QuickCall states that a competitive market without regulation provides "a lower cost of doing business, better

service to our customers, and better flexibility in meeting customer needs in the market place" (QuickCall Comments at 1). Further, QuickCall asserts that its costs are significantly higher in regulated markets, such as Massachusetts and California (id.).

m. MobileComm

MobileComm asserts that the Massachusetts marketplace is strongly competitive for paging services and that market forces are extremely effective in keeping prices at a competitive level (id. at 1). Accordingly, MobileComm argues that rate regulation at the state level is no longer necessary (id. at 2).

Regarding the regulation of "other terms and conditions," MobileComm argues that competitive market forces provide an adequate balance between customers and providers in reaching an agreement on terms of service (id.).

III. ANALYSIS AND FINDINGS

a. Rate Regulation

In order to successfully petition the FCC for the authority to continue RCC rate regulation, the Department would have to demonstrate that:

- (1) market forces in the state are inadequate to protect the public from unjust and unreasonable wireless service rates or from rates that are unjustly or unreasonably discriminatory; or
- (2) such market conditions exist and such service is a replacement for land-line telephone exchange service for a substantial portion of the telephone land-line exchange service within such state.

In 1984, the Department determined that the wireless service

market in Massachusetts was competitive (see Cellular Resellers, D.P.U. 84-250, at 6 (1984)). We note that most commenters cited an increase in the number of RCCs in Massachusetts and a corresponding reduction in rates as indications that competition in the Massachusetts wireless market has increased since that time to the benefit of consumers.⁴ Based on the comments received in this docket, the Department finds that the wireless market in Massachusetts remains competitive.

Accordingly, we find that market forces in the state are adequate to protect the public from unjust and unreasonable wireless service rates or from rates that are unjustly or unreasonably discriminatory. Also, we find that wireless service in Massachusetts is not a replacement for land-line telephone exchange service for a substantial portion of the telephone land-line exchange service within the Commonwealth. Therefore, the Department shall not petition the FCC for authority to continue rate regulation of RCCs in Massachusetts.⁵

⁴ MCI was the only commenter to recommend that the Department petition the FCC. MCI argued that the market is characterized by "very limited competition." MCI also recommended that the Department use this docket to establish a dominant/nondominant regulatory framework for wireless service in Massachusetts. We find that establishment of a regulatory framework for RCC regulation in Massachusetts is beyond the limited scope of this investigation, and, furthermore, that our findings herein render MCI's request moot.

⁵ If the Department determines later that market conditions in Massachusetts are such that it desires to reinstate rate regulation, it will petition the FCC at that time, pursuant to Section 332(c)(3)(a) of the Budget Act.

b. Regulation of Other Terms and Conditions

As of August 10, 1994, the Department will no longer regulate the rates of RCCs in Massachusetts (see section III.a, above) and will no longer regulate the entry of RCCs into the market.⁶ We have found that market forces in the state are adequate to protect the public from unjust and unreasonable wireless service rates; these market forces also make it unnecessary for the Department to regulate other terms and conditions of RCC service in Massachusetts. Therefore, as of August 10, 1994, the Department will not regulate other terms and conditions of RCC service in Massachusetts.

RCC tariffs that are currently on file with the Department primarily list rates and other terms and conditions. Because the Department will no longer regulate RCC rates and other terms and conditions, it is not necessary for the Department to maintain RCC tariffs, as of August 10, 1994.

c. Repeal of 220 C.M.R. §§ 35.00 et. seq.

220 C.M.R. §§ 35.00 et. seq., provides procedural rules for the Department's regulation of RCC rates and market entry. Given that the Department will no longer regulate RCC rates and market entry as of August 10, 1994, we find that 220 C.M.R. §§ 35.00 et.

⁶ The Department considers the requirement that a carrier obtain a certificate of public convenience and necessity ("certificate") to be a form of market entry regulation. Similarly, regulatory approval of a transfer of a certificate is a form of entry regulation. Therefore, because the Department is preempted from entry regulation as of August 10, 1994, RCCs need no longer file applications for a certificate or for approval of certificate transfers.

seq. should be repealed.⁷

IV. ORDER

Accordingly, after due notice, hearing, and consideration,
it is

ORDERED: That the Department will not petition the Federal Communications Commission for authority to continue rate regulation of radio common carriers in Massachusetts after August 10, 1994; and it is

FURTHER ORDERED: That the Department will not regulate other terms and conditions of radio common carrier service after August 10, 1994; and it is

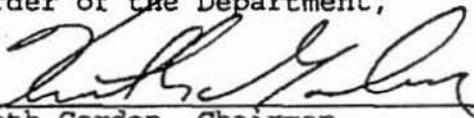
FURTHER ORDERED: That the Department will not maintain tariffs for radio common carriers after August 10, 1994; and it is

808,465,572
803,147,499

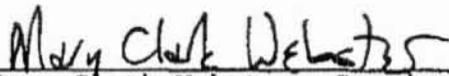
⁷ 220 C.M.R. § 35.01, "Authority," provides "these rules are issued pursuant to M.G.L. c. 159, § 12B, authorizing the Department to issue rules and regulations governing the issuance of certificates for the construction, operation, and extension of mobile radio utility systems by radio utilities."

FURTHER ORDERED: That 220 C.M.R. §§ 35.00 et. seq. be and hereby is repealed.

By Order of the Department,



Kenneth Gordon, Chairman



Mary Clark Webster, Commissioner

A true copy
Attest:

MARY L. COTTRELL
Secretary

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971)

EXHIBIT 2
CERTIFICATION

Declaration of Virgin Mobile USA, L.P.

I, Peter Lurie, do hereby declare under penalty of perjury as follows:

1. I am the General Counsel and Co-Founder of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059.

2. I have read Virgin Mobile's Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Massachusetts and confirm the information contained therein to be true and correct to the best of my knowledge.

2. To the best of my knowledge, the Petitioner referred to in the foregoing Petition, including all officers, directors, or persons holding five percent or more of the outstanding stock or shares (voting or non-voting) are not subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on April 25, 2008



Peter Lurie
General Counsel and Co-Founder

Subscribed and sworn before me
This 25th day of April 2008.



Notary Public

PURVI BHAGAT
Notary Public - State of New Jersey
No. 2302431
Qualified in Middlesex County
My Commission Expires: July 2, 2008