

**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	WC Docket No. 09-197
Virgin Mobile USA, L.P.)	
)	
Petition for Limited Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Alabama)	
)	
)	

REPLY COMMENTS

Virgin Mobile USA (“Virgin Mobile” or the “Company”), a wholly owned subsidiary of Sprint Nextel Corporation (“Sprint Nextel”), by undersigned counsel, hereby responds to the Public Notice released January 28, 2010 seeking comment on the Company’s petition for limited designation as an eligible telecommunications carrier (“ETC”) in the State of Alabama (“Petition”).¹

The limited comments received in response to the Commission’s *Public Notice* confirm that Virgin Mobile satisfies the requirements for designation as an ETC in the State of Alabama, and that grant of ETC status to the Company would further the public interest by expanding the availability of prepaid wireless Lifeline services to eligible Alabama customers. Many lower-income customers in Alabama have yet to benefit from the intensely competitive wireless market

¹ See *Comment Sought on Petition of Virgin Mobile for Limited Designation as an Eligible Telecommunications Carrier in Alabama*, DA 10-147 (rel. Jan. 28, 2010) (“*Public Notice*”).

because of financial constraints, poor credit history or intermittent employment—particularly in this period of protracted economic dislocation. Virgin Mobile’s Lifeline service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. Once designated as an ETC, Virgin Mobile will provide discounted and affordable services to these consumers—many of whom are among the intended beneficiaries of universal service fund (“USF”) support. Finally, because Virgin Mobile operates as a facilities-based wireless carrier, the Company respectfully submits that no rationale exists to justify imposition of conditions that the Commission otherwise applies only to ETC designation requests involving resellers of wireless services. Accordingly, Virgin Mobile requests that the Commission expeditiously approve the instant request to enable the Company to quickly launch Lifeline services to eligible Alabama customers.

I. OVERVIEW

A. Virgin Mobile Seeks ETC Designation for Purposes of Participating in the Lifeline Program

As noted in its Petition, Virgin Mobile seeks ETC designation in Alabama only for purposes of participating in the USF’s Lifeline program. Virgin Mobile’s Lifeline services will provide affordable and convenient wireless services to qualifying Alabama customers, many of whom are otherwise unable to afford wireless services, without any charge for 200 minutes each month, as well as voicemail, caller identification and call waiting. Without question, prepaid wireless Lifeline services have become essential for lower-income customers, providing them with significant value, access to emergency services on wireless devices and a reliable means of contact for prospective employers or social service agencies.

Despite recent improvements, consumer participation in the Lifeline program in Alabama remains relatively low, and many Alabama customers remain unable to afford wireless services.

Whether because of financial constraints, poor credit history or intermittent employment, these consumers often lack the broad array of choices for wireless services available to most consumers. Indeed, it is an unfortunate consequence of the current economic climate that many lower-income customers are unable to afford wireless services. Virgin Mobile strongly believes that these customers' inability to pay even a small monthly fee should not preclude them from accessing a service that has become essential for upward economic mobility and increased personal security. Grant of ETC designation would enable Virgin Mobile to provide these customers with wireless services, further advancing the availability of affordable telecommunications services across the state.

B. The Commission Has the Authority to Perform the Requested ETC Designation

Virgin Mobile's Petition provided clear and unrefuted evidence that the Commission has the requisite authority to designate it as an ETC in Alabama. While section 254(e) of the Communications Act of 1934, as amended ("Act"), reserves the authority to designate entities as ETCs to state public utility commissions ("PUCs"), the Commission may designate as an ETC any entity that is not subject to the jurisdiction of a state commission.² Consistent with the Commission's requirements, Virgin Mobile's Petition included an "affirmative statement" that the Alabama public service commission lacks jurisdiction to perform the requested ETC designation.³ No party challenged the authority of the affirmative statement provided by the Company. Accordingly, Virgin Mobile requests that the Commission conclude that it is "a common carrier providing telephone exchange service and exchange access that is not subject to

² 47 U.S.C. § 214(e)(6).

³ See *Petition* at Exhibit 2.

the jurisdiction of a State commission” and quickly designate it as an ETC in the State of Alabama.⁴

C. Virgin Mobile Satisfies the Requirements for ETC Designation

Virgin Mobile’s satisfaction of the specific statutory and regulatory requirements necessary for ETC designation in Alabama also went unchallenged. Indeed, it is undeniable that the Company is a common carrier that is capable of, and currently provides, the supported services over an existing network infrastructure in Alabama. Virgin Mobile’s request for ETC designation complies with all aspects of the section 214(e)(1) requirements because the Company provides all of the services and functionalities supported by the universal service program throughout its service territory in the State of Alabama. These services include, but are not limited to, voice grade access to the public switched telephone network and access to emergency services, operator services and interexchange services. Virgin Mobile will also advertise the availability and rates for its Lifeline services as required by the Commission’s regulations. The Company’s existing Lifeline advertising campaigns have been highly effective in reaching eligible lower-income customers and promoting the availability of Lifeline services to this much ignored consumer segment. Once designated as an ETC in Alabama, Virgin Mobile will utilize these advertising campaigns to promote the availability of its Lifeline offerings to qualifying customers throughout the state.

⁴ 47 U.S.C. § 214(e)(6).

D. Applicability of *Forbearance Order* Conditions

Prior to the November 24, 2009 acquisition of Virgin Mobile by Sprint Nextel, Virgin Mobile operated as a mobile virtual network operator that did not own any network facilities. Based on Virgin Mobile's pre-merger status, the Commission's March 5, 2009 grant of ETC designation to the Company for the states of New York, North Carolina, Tennessee and Virginia was approved in connection with the Company's request for forbearance from the facilities-based requirement contained in section 214(e)(1)(A) of the Act.⁵ Because Virgin Mobile was a reseller at the time of the *Forbearance Order*, the Commission imposed a variety of conditions on its grant of forbearance and ETC designation, including Virgin Mobile's compliance with certain requirements aimed at enhancing Lifeline customers' access to public safety services and preventing misuse of the Company's Lifeline offering. Included among these conditions was a requirement that the Company, as a non-facilities based carrier, obtain a certification from each public safety answering point ("PSAP") whose territory overlaps with Virgin Mobile's designated service area, confirming that the Company provides its customers with 911 and emergency 911 ("E911") service or if, within 90 days of a request for certification, a PSAP has neither provided the certification nor affirmatively determined that Virgin Mobile does not provide its customers with access to 911 and E911, self-certify that it meets the 911 and E911 requirements. Virgin Mobile voluntarily committed to complying with these conditions for the

⁵ See *Federal-State Joint Board on Universal Service; In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, FCC 09-18 (rel. March 5, 2009) ("*Forbearance Order*").

four states approved in connection with the Company's forbearance request. The Commission approved the Company's plan to comply with these conditions for these states.⁶

In its Petition, Virgin Mobile submitted that the foregoing conditions are inapplicable to the Company's request for ETC designation in Alabama and future requests for ETC designation by the Company in light of its recent acquisition by Sprint Nextel, which closed on November 24, 2009. Because the Company no longer operates as a reseller of telecommunications services, the rationale underlying imposition of the conditions no longer exists. The Commission, itself, noted in the *Forbearance Order* that the conditions related to emergency services, including the PSAP certification requirement, applied only to wireless resellers—not facilities-based providers.⁷

In its comments supporting Virgin Mobile's request for ETC designation in Alabama, TracFone Wireless, Inc. ("TracFone") objects to Virgin Mobile's position that the conditions imposed in connection with its forbearance request and ETC designation in the initial four states do not apply to the instant request. Even though Virgin Mobile operates as a facilities-based provider of wireless services, TracFone concludes that "[a]bsent forbearance, Virgin Mobile could not be designated as an ETC either by the Commission, pursuant to Section 214(e)(6) of the Communications Act, or by any state commission pursuant to Section 214(e)(2)." TracFone offers no justification or rationale for this conclusion.

As a matter of statutory construction and regulatory policy, Virgin Mobile respectfully submits that the Commission summarily reject TracFone's attempts to impose conditions on

⁶ See *Federal-State Joint Board on Universal Service; In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, DA 09-2344 (rel. Oct. 29, 2009).

⁷ See *Forbearance Order* at ¶¶ 22, 27.

ETC designation requests by facilities-based carriers that are wholly inapplicable to their operations. At its core, TracFone's submission requests that the Commission ignore one central, uncontroverted fact: as a wholly owned subsidiary of Sprint Nextel, Virgin Mobile no longer operates as a reseller of wireless services. As such, there is no expectation for the Company to abide by conditions that the Commission specifically stated would apply to any "prepaid wireless reseller" that seeks ETC designation for purposes of providing Lifeline services.⁸ Virgin Mobile's provision of Lifeline services over an owned and operated wireless network resolves any prior concerns regarding eligible consumers' access to and use of 911 and E911 services. TracFone did not challenge Virgin Mobile's status as a facilities-based carrier or its ability to provide the supported services over an existing infrastructure in Alabama, but it requests that the Commission impose unjustifiable conditions to an ETC designation request of a facilities-based carrier. Indeed, TracFone would have the Commission stand on its head the original rationale for imposing the conditions.

Virgin Mobile's ability to provide Lifeline-supported services over an existing, owned network infrastructure in Alabama eliminates any rational basis for the Commission to impose these conditions in connection with the instant request.⁹ Virgin Mobile is no more subject to these conditions for the instant request than the other facilities-based wireless carriers that have recently sought similar limited ETC designation from the Commission for the purposes of

⁸ *Forbearance Order* at ¶ 27.

⁹ While the former conditions do not apply to the instant request, Virgin Mobile acknowledges that the ETC designations it received from the Commission for the states of New York, North Carolina, Tennessee and Virginia were specifically conditioned on the Company's compliance with the conditions imposed on it in the *Forbearance Order*, including the conditions related to PSAP certification and E911 compliance. For this reason, Virgin Mobile recognizes that the initial four ETC designations remain subject to these conditions and the Company continues to comply with these conditions in these states.

