



August 13, 2010

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

**Re: Ex Parte Communication
WC Docket No. 09-197**

Dear Ms. Dortch:

Yesterday, Elaine Divelbliss and I of Sprint Nextel Corp., and John Beahn of Skadden, Arps, Slate, Meagher & Flom LLP, outside counsel for Virgin Mobile USA, LP (a wholly owned subsidiary of Sprint), met with Irene Flannery, Lisa Gelb, Elizabeth McCarthy, and Jamie Susskind of the Wireline Competition Bureau to discuss Virgin Mobile's pending requests for limited designation as an Eligible Telecommunications Carrier (ETC) in Alabama, Connecticut, Delaware, New Hampshire and Washington, DC. We urged the Commission to approve these requests promptly, and to designate Virgin Mobile as a facilities-based service provider. The attached presentation was used during this meeting.

Also attached are ETC designation orders issued by the public utility commissions of Louisiana, New Jersey, Texas, Michigan, Florida and Maryland. These orders designate Virgin Mobile as a facilities-based provider of Lifeline services.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets. If you have any questions, please feel free to contact me at (703) 433-4503.

Sincerely,

/s/ Norina Moy

Norina Moy
Director, Government Affairs

Cc: Irene Flannery
Lisa Gelb
Elizabeth McCarthy
Jamie Susskind



Federal Communications Commission

August 12, 2010

OVERVIEW

- Rapid approval of Virgin Mobile USA's pending requests for limited designation as an eligible telecommunications carrier (ETC) would enable the Company to bring the benefits of prepaid wireless Lifeline services to additional customers as soon as possible.
- Expeditious grant of the Company's request to modify the terms of its compliance plan would streamline and simplify the Lifeline enrollment process for legitimate, eligible customers in several states where the Company is presently offering Lifeline services -- without changing our stringent review and verification procedures.
- Continued delay in granting these requests is harming lower-income customers and hindering competition for wireless Lifeline services.





VIRGIN MOBILE LIFELINE OFFERING

- Minutes: 200 anytime minutes.
 - \$0.10/additional minute.
 - \$0.10/text message.
- Price: Free to eligible customers.
- Taxes and Fees: None. (No additional charges for activation.)
- Extras: Free voice mail, caller I.D. and call waiting.
- Handset: Free (E911 compatible).
- Long-Term Contract: None.
- This is the most attractive wireless offer in the market.



LIFELINE STATUS

- Virgin Mobile's Lifeline services are currently available in Florida, Louisiana, Maryland, Michigan, New Jersey, New York, North Carolina, Tennessee, Texas and Virginia.
- The Company's launch of Lifeline services in these states has been a tremendous success.
- Virgin Mobile's prepaid wireless Lifeline services have become essential for lower-income customers in these states, providing them with significant value, access to emergency services and a reliable means of contact for prospective employers or social service agencies.
- Many lower-income customers would not otherwise access wireless services without Virgin Mobile's Lifeline offering.

ETC APPLICATIONS

- Virgin Mobile has requests for limited ETC designation pending with the Commission for the states of Alabama, Connecticut, Delaware, New Hampshire and Washington D.C.
- Expeditious approval of these requests would expand the availability of prepaid wireless Lifeline services and increase competition for Lifeline services in these states.
- Virgin Mobile's petitions unquestionably demonstrated the Company's satisfaction of the requirements for ETC status:
 - As the Commission previously determined, the Company provides all of the services and functionalities supported by the universal service program throughout its designated service territory in each of the requested states, including voice grade access to the PSTN, DTMF signaling, emergency services and access to operator and interexchange services.



ETC APPLICATIONS (cont'd)

- Virgin Mobile's ETC petitions also demonstrated that the Company is a common carrier that currently provides the supported services over an existing and owned network infrastructure in the requested states.
- As noted in its requests, Virgin Mobile was acquired by Sprint in November 2009 and is now a wholly owned subsidiary of Sprint.
- As such, Virgin Mobile has beneficial use of Sprint's wireless facilities and is appropriately classified as a facilities-based carrier for purposes of section 214(e)(1)(A) of the Communications Act.
- Virgin Mobile's facilities-based status has been confirmed by the PUCs of the states of Florida, Louisiana, Maryland, Michigan, New Jersey and Texas, each of which has determined that the Company is a facilities-based carrier and provides the supported services over its own facilities under section 214(e)(1)(A).

ETC APPLICATIONS (cont'd)

- While Virgin Mobile does not hold absolute, direct legal title to the communications facilities necessary to provide its services, the Commission does not impose such a requirement for purposes of section 214(e)(1)(A).
 - In determining that the use of unbundled network elements satisfied the facilities-based requirement, the Commission concluded that the term “own facilities” in section 214(e)(1) includes property which a carrier “considers its own” or to which it “does not hold absolute title.” (*In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 159 (1997))
 - The Commission also determined that the language “its own facilities” is not the same as facilities “owned by” the carrier and that ownership, for purposes of section 214(e)(1)(A), extends to “others enjoying the beneficial use” of the property.

ETC APPLICATIONS (cont'd)

- Virgin Mobile is not a reseller of wireless services.
 - The Commission has, on numerous occasions, defined “resellers” as entities that “purchase airtime from facilities-based providers and resell service to the public for profit.”
 - Thus, to be considered a “reseller” under Commission precedent, Virgin Mobile would have to purchase wholesale network capacity from its affiliates and resell it to its own customers.
- Since its acquisition by Sprint, Virgin Mobile no longer purchases network capacity from any entity and makes no payments for the use of any network or transmission services.
- Sprint currently treats all revenue generated by customers of Virgin Mobile-branded services as revenue generated from its Wireless segment for purposes of its USAC and SEC filings—just as it does for any other Sprint operating subsidiary.



ETC APPLICATIONS (cont'd)

- Virgin Mobile's Lifeline customers enjoy the same 911 and E911 service as any other Sprint wireless customer using Sprint's existing 911 and E911 facilities and PSAP relationships.
- All 911 emergency calls made by customers of Virgin Mobile-branded services are handled in the same fashion as calls made by any other Sprint customer.
 - Emergency 911 calls originating from Virgin Mobile-branded services are received by Sprint Corporate Security, which maintains responsibility for routing it to the appropriate PSAP, just as with any other 911 call made by any other Sprint customer.
- Sprint Corporate Security also handles any inbound PSAP inquiry regarding customers of Virgin Mobile-branded services—just as it does for customers receiving service from any other Sprint-branded service.



REQUEST TO MODIFY COMPLIANCE PLAN

- On October 29, 2009, the Commission approved Virgin Mobile's plan detailing the procedures it would undertake to satisfy the conditions imposed on its initial grant of ETC designation.
- Included among these conditions was a requirement that the Company certify customers' initial eligibility for receipt of Lifeline services.
- As described in the compliance plan, Lifeline applicants currently contact a toll-free number to complete an enrollment form, which is then mailed to the customer for signature and certification under penalty of perjury.
- Virgin Mobile's request to modify its compliance plan seeks to simplify the methods by which eligible customers enroll in the Company's Lifeline service. *The review and verification procedures will remain unchanged.*



REQUEST TO MODIFY COMPLIANCE PLAN (cont'd)

- Virgin Mobile has requested authority to implement two additional methods of enrollment:
- Online enrollment. Applicants will complete an enrollment form “online,” electronically signing the form and certifying under penalty of perjury as to their initial eligibility.
 - This method of enrollment already has been approved by the Commission and emulates the activities of other Lifeline providers
- IVR enrollment. Applicants will complete, sign and certify an enrollment form through an IVR telephone-based system that will record and save applicants’ penalty of perjury certification as a section of the application (the penalties of perjury will be provided to the customer prior to the customer’s voice certification).
 - This method of enrollment is consistent with the FCC’s rules governing use of a voice response unit for telecommunications services orders.



REQUEST TO MODIFY COMPLIANCE PLAN (cont'd)

- Each method of enrollment fully complies with the requirements set forth in the Commission's grant of ETC designation to the Company, including those governing customer certification.
- Under each enrollment method, applications will continue to be carefully reviewed and verified by Virgin Mobile.
- Implementation of these enrollment procedures will increase the opportunities for Virgin Mobile to serve lower-income customers by accelerating and simplifying the customer enrollment process, without compromising the review and verification process.
- By providing additional methods for customers to activate their prepaid Lifeline accounts, Virgin Mobile seeks to broaden the availability of Lifeline services to lower-income customers.

CONCLUSION

- Rapid grant of the Company's pending ETC designation petitions will bridge the affordability gap to wireless services for many lower-income customers and hasten competition for Lifeline services in additional states.
- Expeditious approval of the additional enrollment methods would streamline and simplify the Lifeline application process for legitimate eligible customers in certain states where the Company is presently offering Lifeline services, without compromising the review and verification process in any way.

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER S-31282

VIRGIN MOBILE USA, L.P.
EX PARTE

Docket Number S-31282 In re: Virgin Mobile USA, L.P., ex parte. In re: Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Louisiana by Virgin Mobile USA, L.P.

(Decided at the Open Session dated June 23, 2010)

Overview

Virgin Mobile USA, L.P. ("Virgin Mobile" or "the Company") filed an application with this Commission seeking designation as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (the "Act"),¹ in those areas served by the non-rural ILEC, i.e. AT&T, in Louisiana, and in areas served by rural telephone companies for the sole purpose of providing Lifeline service to qualifying Louisiana customers. Virgin Mobile specified in its petition that it is applying for ETC designation "only for purposes of participation in the Universal Service Fund's ("USF") Lifeline program" and that its "request does not seek ETC designation to offer services supported by the high-cost program."

The Act provides that state commissions, upon request and consistent with the public interest, convenience, and necessity, may in an area served by a rural telecommunications carrier, and shall in all other areas, designate more than one common carrier as an ETC for a service area designated by the state commission if the carrier meets the requirements of the Act.

Applicable Law

The Louisiana Public Service Commission ("Commission") exercises jurisdiction over public utilities in Louisiana pursuant to Article IV, Section 21(B) of the Louisiana Constitution, which states:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

The Commission is given broad power to regulate telephone utilities and may adopt all

¹ 47 U.S.C. § 214(e) (2).

reasonable and just rules, regulations, and orders affecting or connected with the service or operation of such business.

Pursuant to the Act, state commissions are given the authority to designate those common carriers that meet the service requirements found in 47 C.F.R. § 54.101 as "Eligible Telecommunications Carriers" ("ETCs") entitling them to universal service support in accordance with 47 U.S.C. § 254.

The service requirements enumerated in 47 C.F.R. § 54.101 are as follows:

- 1) Voice grade access to the public switched network;
- 2) Local usage;
- 3) Dual tone multi-frequency signaling or its functional equivalent;
- 4) Single-party service or its functional equivalent;
- 5) Access to emergency services;
- 6) Access to operator services;
- 7) Access to interexchange service;
- 8) Access to directory assistance; and
- 9) Toll limitation for qualifying low-income consumers.

Under 47 U.S.C. § 254 (c), a common carrier seeking ETC status must offer all of the above services and must advertise the availability of such services using media of general distribution.² Section 214(e)(1) of the Act further provides that an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's services. Accordingly, pursuant to 47 C.F.R. § 54.201(i), state commissions generally cannot designate as an ETC a carrier that offers services supported by federal universal service support mechanisms exclusively through resale of another carrier's service.

To ensure compliance with the public interest requirement codified at Section 214(e)(2) of the Act, the Commission issued General Order R-27841, which established a list of thirteen public interest criteria that are to be applied on a case specific basis in connection with all requests for ETC designation in areas served by rural telephone carriers:

1. Benefits of increased competitive choice resulting from the designation.

² 47 U.S.C. § 254 (1)

2. Impact of multiple designations on the Universal Service Fund. Specifically, the Commission, upon the petition of any rural ILEC, shall determine if any changes by the FCC in the rules affecting how rural ILECs received Federal USF support causes a material negative impact on the rural ILECs level of Federal USF support. The Commission shall render a decision on any petition filed by a rural ILEC regarding its finding within 90 days. In the event the Commission finds the change has had an actual material negative impact and that decertifying a wireless ETC will mitigate such reduction in funding, the competitive ETC certification shall be considered to no longer be in the public interest by the LPSC and shall be immediately revoked by the LPSC, to the extent that revoking such certification will mitigate such reduction. Nothing herein shall impact a competitive ETC's certification in non-rural areas, if any.
3. Unique advantages and disadvantages of the competitive service offering.
4. Commitment to quality of service by the competitive provider.
5. Submission of records and documentation, on a quarterly basis, declaring the carriers plans for use of universal service funding received as a result of this Commission's designation, including updates as to the progress of said projects.
6. For wireless carriers, compliance with the CTIA Consumer Code for Wireless Services and submission of the number of consumer complaints per 1000 mobile headsets to the LPSC on a quarterly basis.
7. Information regarding the number of requests for service in the designated area that go unfulfilled and adoption of a process setting forth specific steps that will be considered if a request for service is received from a customer within the designated ETC service area, but outside the existing signal coverage area.
8. Compliance with all existing and future state and federal 911 and E-911 mandates.
9. Compliance with Section 401B of the LPSC's Regulations for Competition in the Local Telecommunications Market. For all areas serviced by a wireless ETC in which the carrier received federal USF funds, the wireless ETC shall file retail rates with the LPSC's regulations prior to implementing any such retail rates. As a condition of receiving ETC status, each wireless carrier agrees that the LPSC shall have the authority to reject any retail rate found by the LPSC to be artificially low or below the wireless ETC's costs of providing service, without considering federal USF funding. Additionally, the wireless ETC shall not offer any promotion in the rural service area that it does not offer in the remainder of its service area. Lifeline and Linkup offerings will not be subject to this provision.
10. Compliance with Section 302(A) of the LPSC's Regulations for Competition in the Local Telecommunications Market. (Annual Report Filings).
11. Compliance with Sections 301A-C and 401 of the Commission's TSP Billing Order.

12. Compliance with any additional requirements established by the Commission in Docket R-27733.

13. Conduction of a rural cream-skimming analysis.

Background and Procedural History

The Commission has previously designated ETC status to the following carriers serving non-rural service areas: Sprint Corporation,³ Alltel Communications Wireless, Inc.,⁴ Cox Communications,⁵ LBH, LLC,⁶ VCI Company,⁷ Nexus Communications,⁸ ABC Telecom,⁹ Image Access,¹⁰ BLC Management,¹¹ dPi,¹² Everycall Communications, Inc.,¹³ Tennessee Telephone Services, L.L.C.,¹⁴ Triarch Marketing d/b/a Triarch Communications,¹⁵ Fast Phones, Inc.,¹⁶ TracFone Wireless,¹⁷ and Affordable Phone Services, Inc.¹⁸

Formerly a prepaid reseller of commercial mobile radio service (“CMRS”) obtained from Sprint Nextel Corporation (“Sprint”), Virgin Mobile became a wholly owned subsidiary of Sprint on November 24, 2009 pursuant to approval by the Federal Communications Commission (“FCC”).¹⁹ Prior to the merger of Sprint and Virgin Mobile, the FCC decided to forbear from applying to Virgin Mobile the facilities-based requirement of Section 214(e)(1) of the Act, provided that the Company complied with the following conditions:

(a) That the Company provide Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;

(b) That the Company provide Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;

(c) That the Company comply with conditions (a) and (b) as of the date Virgin Mobile provides Lifeline service;

³ LPSC Order No. U-28009.

⁴ LPSC Special Order No. 27-2006.

⁵ LPSC Order No. U-26437.

⁶ LPSC Special Order No. 43-2006.

⁷ LPSC Special Order No. 3-2007.

⁸ LPSC Order No. S-30699.

⁹ LPSC Order No. S-30601.

¹⁰ LPSC Order No. S-30637.

¹¹ LPSC Order No. S-30589.

¹² LPSC Order No. S-30502.

¹³ LPSC Order No. S-30891.

¹⁴ LPSC Order No. S-30982.

¹⁵ LPSC Order No. S-31003.

¹⁶ LPSC Order No. S-31090.

¹⁷ LPSC Order No. S-31097.

¹⁸ LPSC Order No. S-31222.

¹⁹ See *International Authorizations Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

(d) That the Company obtain a certification from each Public Safety Answering Point (“PSAP”) where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile’s request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP’s service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;

(e) That the Company require its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and

(f) That the Company establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.²⁰

On February 18, 2010 Virgin Mobile filed this request for designation as an ETC carrier within the territory of AT&T, a non-rural carrier, *and* in areas served by rural telephone companies for the sole purpose of providing Lifeline service to qualifying Louisiana customers. Notice of the request was published in the Commission’s Official Bulletin dated March 5, 2010, with an intervention period of twenty-five (25) days. On March 30, 2010 the Small Company Committee of the Louisiana Telecommunications Association (“SCC”), on behalf of itself and each of its members,²¹ filed notice of intervention pursuant to Rule 10 of this Commission’s Rules of Practice and Procedure. This matter was thereafter converted from an “S” docket to a “U” docket.

A status conference was conducted before Administrative Law Judge Michelle Finnegan on May 4, 2010, at which time Virgin Mobile announced that it would submit an amendment to its original Petition stipulating to the five commitments contained in the Commission’s Order No. S-31097 designating TracFone Wireless as a limited ETC for the sole purpose of obtaining federal low-income/Lifeline universal service support. Specifically, Virgin Mobile agreed to stipulate to the following conditions:

²⁰ 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, at 7 (rel. March 5, 2009) (“Virgin Mobile Forbearance Order”).

²¹ The members of the SCC that participated in this docket were: Cameron Telephone Company, LLC; Campti-Pleasant Hill Telephone Co., Inc.; CenturyTel of Chatham, LLC; CenturyTel of Central Louisiana, LLC; CenturyTel of East Louisiana, LLC; CenturyTel of Evangeline, LLC; CenturyTel of North Louisiana, LLC; CenturyTel of Northwest Louisiana, Inc.; CenturyTel of Ringgold, LLC; CenturyTel of Southeast Louisiana, Inc.; CenturyTel of Southwest Louisiana, LLC; Delcambre Telephone Co., LLC; East Ascension Telephone Co., LLC; Elizabeth Telephone Company, LLC; Kaplan Telephone Co., Inc.; Lafourche Telephone Co., Inc.; Northeast Louisiana Telephone Co., Inc.; Reserve Telephone Co., Inc.; and Star Telephone Co., Inc.

- 1) Virgin Mobile's ETC designation shall be limited to and for the sole purpose of obtaining federal Lifeline universal service support;
- 2) Virgin Mobile shall be ineligible to receive federal high cost universal service support;
- 3) If the Commission designates Virgin Mobile as an ETC, such designation shall have no effect on the definition of rural LEC study areas;
- 4) If the Commission designates Virgin Mobile as an ETC, such designation will have no ability to affect the designation of rural LEC study areas on a going forward basis; and
- 5) Virgin Mobile will comply with the requirements of the Commission's General Order No. R-27841, including the reporting requirements established therein.

On May 14, 2010, Virgin Mobile submitted an Amendment to Petition and Stipulation, stipulating to the above-listed commitments in addition to the previous commitments, limitations and requests included in the Company's original Petition.

On May 21, 2010, the SCC submitted a Non-Opposition to Virgin Mobile's Amended Petition and Stipulation, in which the SCC requested that the instant matter be reverted to Staff Level for conclusion. Because no disputed issue remained between Staff, Virgin Mobile or the SCC, Staff and the Company filed a Motion to Revert to Staff Level Proceeding on May 25, 2010. On June 7, 2010 Administrative Law Judge Finnegan issued a Ruling on Motion to Revert to Staff Level Proceeding, granting the parties' Motion and reverting the instant matter to an uncontested Staff level proceeding that would thereafter be classified as an "S" docket.

As set forth in the application, Virgin Mobile is a wholly owned subsidiary of Sprint, and offers all of the supported services required by the act through Sprint's facilities. Additionally, Virgin Mobile will advertise the availability of these services and the charges for those services through media of general distribution as required by FCC Rules. Furthermore, Virgin Mobile will comply with the public interest requirements established by the Commission in General Order No. R-27841, including the reporting requirements.

Staff's Recommendation and Commission Consideration

After reviewing Virgin Mobile's application, Staff was of the opinion that the request should be granted and that Virgin Mobile should be designated as a limited ETC for the sole purpose of obtaining federal low income/Lifeline universal service fund support, subject to the

conditions enumerated in its May 14, 2010 Amendment to Petition and Stipulation. Staff noted that Virgin Mobile specifically requested ETC status only for the purpose of receiving low-income universal support, i.e. Lifeline. Staff noted that Virgin Mobile seeks designation as an ETC both in areas served by AT&T, a non-rural carrier, and in areas served by rural telephone companies. The Commission's General Order No. R-27841 establishes public interest requirements that are mandatory for common carriers seeking designation as ETCs in high cost rural service areas. Although Virgin Mobile is seeking only low-income/Lifeline support and is not seeking high cost universal service support, the Company expressed its non-opposition to complying with the public interest requirements of General Order No. R-27841.

Staff also observed that that the FCC imposed the conditions of the *Virgin Mobile Forbearance Order* upon the Company at a time when Virgin Mobile was a pure reseller of CMRS services, and that Virgin Mobile is now a wholly-owned subsidiary of Sprint that will be offering services through Sprint's existing Louisiana network infrastructure. Accordingly, Staff recommended that the Company should not be subject to the PSAP certification requirement imposed by the FCC in order to be certified as a limited ETC in the state of Louisiana.

Furthermore, in its Report and Order released March 17, 2005, FCC Docket No. 96-45, the FCC instructed states to conduct a public interest analysis regardless of whether the area sought is rural or non-rural. In its review, Staff concluded that the designation of Virgin Mobile as an ETC would be in the public interest, as the request is very similar to those previously granted by the Commission, particularly those involving CLECs. However, because Staff recommended that Virgin Mobile be designated as a limited ETC for the sole purpose of receiving low income/Lifeline support only, Staff recommended that Virgin Mobile's designation as an ETC have no effect on the definition of Rural LEC federal study areas, and should furthermore have no ability to affect such study areas.²²

Finally, as Lifeline funds are designed only to lower the costs of telecommunications services on an eligible per-customer basis, the designation of Virgin Mobile as an ETC will have no impact on the size of the universal service fund.

Accordingly, Staff recommended that Virgin Mobile be designated as a limited ETC for the sole purpose of obtaining federal low income/Lifeline universal service fund support, subject

²² Staff's analysis, recommendations and conclusions were limited to the facts of this docket and were based and conditioned on the fact that Virgin Mobile is not seeking and does not qualify for any federal High Cost USF support.

to the following conditions previously stipulated to by the Company in its May 14, 2010

Amendment to Petition and Stipulation:

- 1) That Virgin Mobile's designation be limited to Lifeline universal service support;
- 2) That Virgin Mobile be ineligible to receive federal high cost universal service support;
- 3) That Virgin Mobile's designation as an ETC will have no effect on the definition of rural LEC study areas;
- 4) That Virgin Mobile's designation as an ETC will have no ability to affect the designation of rural LEC study areas on a going forward basis; and
- 5) That Virgin Mobile be required to comply with the requirements of the Commission's General Order no. R-27841, including the reporting requirements established therein.

Staff's Recommendation was considered by the Commission at its June 23, 2010 Business and Executive Session. On motion of Commissioner Skrmetta, seconded by Commissioner Holloway, and unanimously adopted, the Commission voted to accept the Staff Recommendation and grant the request for designation as a limited ETC.

IT IS THEREFORE ORDERED THAT:

1. Virgin Mobile USA, L.P. is hereby designated as a limited ETC for the sole purpose of obtaining federal low-income/Lifeline universal service support, and said designation is limited to Lifeline universal service support only.
2. Virgin Mobile USA, L.P. shall be ineligible to receive federal high cost universal service support.
3. Virgin Mobile USA, L.P.'s designation as a limited ETC shall have no effect on the definition of rural LEC study areas.
4. Virgin Mobile USA, L.P.'s designation as a limited ETC shall have no ability to affect the designation of rural LEC study areas on a going forward basis.
5. Virgin Mobile USA, L.P. is required to comply with the requirements of the Commission's General Order No. R-27841, including the reporting requirements established therein.
6. This Order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

July 12, 2010

/s/ LAMBERT C. BOISSIERE, III
**DISTRICT III
CHAIRMAN LAMBERT C. BOISSIERE, III**

/s/ JAMES M. FIELD
**DISTRICT II
VICE CHAIRMAN JAMES M. FIELD**

/s/ FOSTER L. CAMPBELL
**DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL**

/s/ ERIC F. SKRMETTA
**DISTRICT I
COMMISSIONER ERIC F. SKRMETTA**


EVE KAHAO GONZALEZ
SECRETARY

/s/ CLYDE C. HOLLOWAY
**DISTRICT IV
COMMISSIONER CLYDE C. HOLLOWAY**



Agenda Date: 08/04/10
Agenda Item: 4B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF VIRGIN MOBILE USA, LP)
PETITION FOR LIMITED DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS CARRIER)

ORDER OF APPROVAL

DOCKET NO. TO10020093

Peter Lurie, Esq., for Virgin Mobile USA, L.P.

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition dated January 29, 2010, Virgin Mobile USA, LP ("Virgin Mobile" or "Company"), a wholly-owned subsidiary of Sprint-Nextel Corporation ("Sprint Nextel"), petitioned the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval to be designated as an Eligible Telecommunications Carrier ("ETC") solely to provide Lifeline service to qualified New Jersey consumers, pursuant to Section 214(e)(2) of the Communications Act, as amended by the Telecommunications Act of 1996. The Company will not seek approval for funding from the High Cost portion of the federal Universal Service Fund, nor for Link-Up funds, which are used to offset the initial installation of telephone service. Designation as an ETC would permit Virgin Mobile to receive universal service support for these services. Virgin Mobile requests the ETC designation for the entire State of New Jersey.

The Federal Communications Commission previously designated Virgin Mobile as an ETC for purposes of offering Lifeline service in the states of New York, North Carolina, Tennessee and Virginia.¹ In approving the Company's requests, the FCC determined that Virgin Mobile would "offer Lifeline-eligible consumers a choice of providers for accessing telecommunications services not available to such consumers today" and "expand participation of qualifying consumers" in the Lifeline program—a longstanding goal.² The FCC concluded that limited designation of Virgin Mobile as an ETC was in the public interest. Virgin Mobile has also been designated an ETC in the State of Michigan.³

¹ I/M/O 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, Pennsylvania, Virginia North Carolina and Tennessee Order, 24 F.C.C.R. 3381 (rel. March 5, 2009) ("Forbearance Order").

² Forbearance Order, 24 F.C.C.R. at 3390, 3393.

³ I/M/O of the Application of Virgin Mobile USA, L.P. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214 (e) of the Telecommunications Act of 1996, Case U-15966, Opinion and Order (Dec. 1, 2009).

Section 214(e)(2) of the federal Telecommunications Act of 1996 authorizes state commissions to designate ETC status for federal universal service purposes. A telecommunications carrier may be designated as an ETC provided that the carrier demonstrates a commitment to: (a) offer the services that are supported by federal universal support mechanisms, and (b) advertise the availability of such services.

Virgin Mobile attests that it "[o]ffers the services that are supported by federal universal support mechanisms" using its own facilities, pursuant to the requirements of 47 C.F.R. § 54.201(d)(1). Virgin Mobile asserts that it will provide Lifeline-eligible customers 200 minutes of free monthly service. Additionally, Lifeline-eligible customers will be permitted to purchase additional usage cards at a rate of \$0.10 per minute. Text messaging is available at \$0.10 per message but is charged separately through prepaid purchases. Virgin Mobile's plan does not allow rollover minutes.

In addition, Virgin Mobile will provide Lifeline customers an Enhanced 911 ("E911") compatible handset at no cost. Virgin Mobile also asserts that its customers will always be able to contact 911 or E911 from their wireless handset, regardless of whether they have depleted their free Lifeline minutes or additional airtime.

Furthermore, Virgin Mobile asserts that it meets all the requirements for designation as an ETC. 47 C.F.R. § 54.101(a) requires the following services and functionality be provided: (1) Voice grade access to the public switched telephone network; (2) Local usage; (3) Dual tone multi-frequency signaling or its functional equivalent; (4) Single-party service or its functional equivalent; (5) Access to 911 or E911 emergency service (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualified low-income customers.

By letter dated May 27, 2010, , Advocates for Universal Access ("AUA"), an organization from Seattle, Washington,, filed a letter petition requesting intervention status and submitting comments on Virgin Mobile's petition. The group writes that while it supports Virgin Mobile's petition, it is concerned that Virgin Mobile's proposal ignores conditions of the FCC Forbearance Order. Specifically, AUA argues that Virgin Mobile should be ordered to adhere to the conditions in the Forbearance Order in order to ensure access to emergency services. AUA also seeks clarification on the cost of text messages and how they are paid and whether 800-numbers, customer service and/or information calls are charged against a customer's minutes.

By letter dated June 14, 2010, Virgin Mobile responded to the AUA stating that contrary to AUA's assertions, Virgin Mobile is a facilities-based provider, and as a wholly-owned subsidiary of Sprint Corporation, Virgin Mobile has beneficial use of Sprint's facilities and no resale agreement is in place. Therefore, Virgin Mobile argues, the Board has clear authority to grant the Company's request without the conditions previously applied to resale carriers. In addition, Virgin Mobile states that its customers have the same access to E911/911 services as any other Sprint customer, i.e., there are no additional steps required to determine the name or billing address on an account.

Lastly, Virgin Mobile argues that it has one of the most attractive Lifeline offerings in the market. Customers may purchase additional minutes when they exceed the free 200 minutes at a cost of \$0.10/minute and text messaging is available at a rate of \$0.10/text message on a prepaid basis. These additional minutes and text messages must be purchased in advance, so customers cannot inadvertently incur costs that they are unable to pay.

On July 8, 2010, Staff received an informal electronic message from the National Consumer Research Alliance ("NCRA") requesting that the Board direct Virgin Mobile to make texting part

of the free monthly allowance of minutes, allow unused minutes to roll over every month and make all Virgin Mobile to Virgin Mobile calls free.

DISCUSSION

To qualify as an ETC, a carrier must provide nine services identified in 47 C.F.R. § 54.101. The Board FINDS that the services Virgin Mobile states that it will provide to Lifeline-eligible customers satisfy the requirements of 47 U.S.C. Section 214(e) and 47 C.F.R. § 54.101. The services required to be provided under the law and those to be provided by Virgin Mobile are:

- 1) Voice grade access to the public switched network – Voice grade access enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz. Virgin Mobile states that it complies with this requirement by enabling customers to transmit voice communications, including signaling to the network that a caller wishes to place a call, and enabling customers to receive voice communications, including receiving a signal indicating there is an incoming call;
- 2) Local usage – Local usage means an amount of minutes of use of exchange service, provided free of charge to end users. Under Virgin Mobile's proposal, customers can send and receive local calls wherever Virgin Mobile provides service. Virgin Mobile includes local usage in its calling plan;
- 3) Dual tone multi-frequency signaling or its functional equivalent – Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, which shortens call set-up time. According to Virgin Mobile, all handsets provided by Virgin Mobile are DTMF capable;
- 4) Single-party service – Single-party service permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission. Virgin Mobile provides customers with single-party access for the duration of every call, and it does not provide "multi-party" or "party-line" services;
- 5) Access to emergency services – Access to emergency services includes access to services, such as 911 or E911 provided by local governments or other public safety organizations. 911 or E911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911", to call emergency services through a PSAP operated by the local government. E911 is defined as a 911 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 services to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems;
- 6) Access to operator services – Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call. Virgin Mobile contends that its customers have access to operator services;

Therefore, the Board FINDS that Virgin Mobile has met all statutory and regulatory requirements for designation as an ETC. The Board also concludes that it has the authority to grant ETC status to wireless carriers. Section 214(e)(2) provides that a state commission shall designate as an ETC a carrier that meets the requirements of 47 U.S.C. §214(e)(1).

The Board HEREBY APPROVES the petition and ORDERS that Virgin Mobile be designated an ETC and approved to offer Lifeline service.

The request for ETC designation to offer Lifeline service is HEREBY APPROVED, subject to:

- Certification from each PSAP where Virgin Mobile provides Lifeline service, or from the state Office of Emergency Telecommunications Services on behalf of each PSAP in New Jersey, confirming that Virgin Mobile provides its customers with access to basic and E911 regardless of activation status and the availability of prepaid minutes. These certifications must be filed with the Board in this proceeding. Service shall not be provided to any Lifeline customer in an area where such certification has not been granted or received;
- Certification that the handsets to be provided to Virgin Mobile customers are E911 compliant;
- Each of Virgin Mobile's Lifeline customers in New Jersey will receive 200 minutes of airtime each month for all months in which the customer is enrolled in the program and any unused minutes will not roll over to the following month;
- Eligibility for participation in Virgin Mobile's Lifeline program will be based upon customer enrollment in one of the eight qualifying New Jersey public assistance programs. The eight qualifying programs are: Medicaid; Food Stamp Program; General Assistance ("GA"); Supplemental Security Income ("SSI"); Home Energy Assistance Program ("HEAP"); Lifeline Utility Credit/Tenants Lifeline Assistance; Pharmaceutical Assistance to the Aged and Disabled ("PAAD"); and Temporary Assistance to Needy Families/Work First New Jersey ("TANF/WFNJ"). Additionally those persons 65 or older whose household incomes are at or below 150% of the federal poverty level are also eligible.⁴ The eligibility requirements are subject to modification by the Board, and applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs;
- Self-certification of Virgin Mobile's customers under penalty of perjury that they meet the eligibility requirements prior to service being activated and also annual certification that the customer is the head of household and is only receiving a Lifeline discount from Virgin Mobile and from no other carrier;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address;

⁴ See I/M/O Petition by Warwick Valley Telephone Company for Approval to Provide Lifeline Services, BPU Docket No. TT97080605 (November 18, 1997); and I/M/O Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, BPU Docket No. TO01020095 (August 19, 2003), Attachment A.

- Virgin Mobile must deal directly with its customers to certify and verify Lifeline eligibility;
- Virgin Mobile shall ensure that 100% of federal universal service funds flow through directly to Lifeline customers. The Board reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes;
- Virgin Mobile's ETC designation may, at any time, be suspended or revoked by order of the Board;
- Virgin Mobile shall make all service offerings, including Lifeline, available on its Web site;
- Virgin Mobile shall file, within 30 days of approval of its ETC application, its terms and conditions of service, applicable to qualifying low-income customers. Further, Virgin Mobile shall have the ongoing obligation to notify the Board of any future changes to its rates, terms or conditions;
- Virgin Mobile shall file, within 30 days of approval of its ETC application, proposed language to be used in all advertising of Lifeline service and on its Web site. The language should include information directing customers to the Board's Telecommunications Division for complaints regarding any service issues. The Staff shall have the right to review and make changes to any proposed language;
- Virgin Mobile shall file the following information on August 31, 2011 (and updated information every August 31 thereafter), unless otherwise ordered by the Board:
 1. Virgin Mobile shall report all instances in which it receives customer complaints. Virgin Mobile shall be required to provide the nature and number of customer complaints, and their resolution annually on August 31, 2011, and updated every August 31 thereafter.
 2. Actual total federal funds received in 2010, and estimated total funds to be received in 2011.
- Virgin Mobile must reach satisfactory resolution of complaints filed with the Board's Telecommunications Division on a timely basis.
- Virgin Mobile must provide its customers with access to live customer assistance operators.

Based upon the above conditions, the Board HEREBY DESIGNATES Virgin Mobile as an ETC solely to provide Lifeline service to all qualifying customers who request such service in New Jersey.

Virgin Mobile shall not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas.

This ETC Designation is issued on the representation that the statements contained in the Petitioner's application are true, and the undertakings therein contained shall be adhered to and be enforceable unless a specific waiver is granted by the Board pursuant to the authority contained in N.J.S.A. 48:1-1 et seq.

DATED: 8/4/10

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT

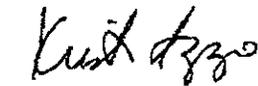

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

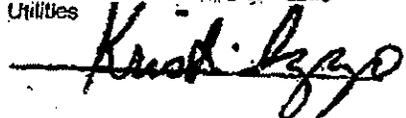

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**VIRGIN MOBILE USA, LP. DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN NEW JERSEY**

BPU DOCKET NO. TO10020093

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DOCKET NO. 38056

APPLICATION OF VIRGIN MOBILE §
USA, L.P. FOR DESIGNATION AS AN §
ELIGIBLE TELECOMMUNICATIONS §
CARRIER IN THE STATE OF TEXAS §
FOR THE LIMITED PURPOSE OF §
OFFERING LIFELINE SERVICES §

PUBLIC UTILITY COMMISSION
OF TEXAS

RECEIVED
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ORDER NO. 6
NOTICE OF APPROVAL FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Procedural History

On March 15, 2010, Virgin Mobile USA, L.P. (Virgin Mobile or the Company) filed an application for limited designation as an eligible telecommunications carrier (ETC) throughout the State of Texas pursuant to 47 U.S.C. § 214(e) and P.U.C. SUBST. R. 26.418. Virgin Mobile seeks ETC designation only for the limited purpose of participation in the Universal Service Fund's (USF) Lifeline program as a prepaid wireless carrier. Virgin Mobile is not seeking authority to offer services in high-cost areas under the Federal Universal Service Fund (FUSF) or the Texas Universal Service Fund (TUSF).

Virgin Mobile is seeking limited ETC designation in all wire centers of the non-rural incumbent local exchange carriers AT&T Texas and Verizon as identified in Exhibit 2 of the original application and Exhibit 5 of the supplemental application. Virgin Mobile is a facilities-based commercial mobile radio service (CMRS) provider and is a wholly owned subsidiary of Sprint Nextel Corporation.

On March 16, 2010, the Commission issued Order No. 1 in this proceeding which established a procedural schedule, including deadlines for comment, motions to intervene, and publication of notice in the *Texas Register*. Notice was published in the *Texas Register* on March 26, 2010. The Applicant provided a copy of the application to the Office of Public Utility Counsel at the time of filing. Pursuant to P.U.C. SUBST. R. 26.418(g)(2)(A)(i), the effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.

On March 29 and April 2, 2010, Virgin Mobile filed supplements to the application. Order No. 4 issued on April 22, 2010, abated this docket. On May 6, 2010, the Applicant filed a request to unabate this proceeding. On May 13, 2010, Commission Staff filed its final recommendation requesting administrative approval of the application of Virgin Mobile for ETC status for the limited purpose of providing Lifeline service based on the following:

Designation as Eligible Telecommunications Carrier

To qualify for ETC status, a carrier must meet the following criteria:¹

1. The carrier must be a common carrier, as that term is defined by the Federal Telecommunications Act of 1996 (FTA), Section 3(10).
2. The carrier must offer the following services² using its own facilities or a combination of its own facilities and the resale of another carrier's services:³
 - (a) voice grade access to the public switched network;
 - (b) local usage;
 - (c) dual tone multi frequency signaling or its functional equivalent;
 - (d) single party service or its equivalent;
 - (e) access to 911 or enhanced 911;
 - (f) access to operator services;
 - (g) access to interexchange service;
 - (h) access to directory assistance; and;
 - (i) toll limitation for qualifying low income customers.
3. The carrier must advertise the availability of the above services and charges for the services in a media of general distribution.⁴
4. The carrier must provide Lifeline and Link Up support, and may not collect a deposit from a customer receiving such support if the customer also elects toll blocking.⁵
5. Pursuant to 47 C.F.R. 54.201(c), prior to designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

¹ 47 C.F.R. § 54.201(b)-(d).

² 47 C.F.R. § 54.101.

³ 47 C.F.R. § 54.201.

⁴ 47 C.F.R. § 54.201.

⁵ 47 C.F.R. § 54.405.

Virgin Mobile meets all of the requirements to be designated as an ETC. As a wholly owned subsidiary of Sprint Nextel, Virgin Mobile will provide the above referenced services throughout the entire proposed study area using its own facilities. Virgin Mobile will serve the public interest by providing Texas consumers, especially low-income consumers, with affordable and comparable telecommunications services.

Ordering Paragraph

In accordance with Commission Staff's recommendation and for all the reasons stated therein, pursuant to the FTA § 214(e)(2) and P.U.C. SUBST. R. 26.418, Virgin Mobile's application for limited ETC designation, as supplemented, is **APPROVED**.

SIGNED AT AUSTIN, TEXAS the 18th day of May 2010.

PUBLIC UTILITY COMMISSION OF TEXAS



ANDREW KANG
ADMINISTRATIVE LAW JUDGE

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of)	
VIRGIN MOBILE USA, L.P. , for designation)	
as an eligible telecommunications carrier)	Case No. U-15966
pursuant to Section 214(e)(2) of the)	
Telecommunications Act of 1996.)	
_____)	

At the March 18, 2010 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Greg R. White, Commissioner

ORDER

On April 29, 2009, Virgin Mobile USA, L.P. (Virgin Mobile), filed an application under Section 214(e)(2) of the federal Telecommunications Act of 1996 (FTA), 47 USC § 214(e)(2), for designation as an eligible telecommunications carrier (ETC) for purposes of universal service fund (USF) support. Virgin Mobile filed amended applications on July 21, 2009, August 3, 2009, and September 25, 2009. On December 9, 2009, the Commission issued an order approving the ETC application for Lifeline support, upon completion of conditions.

On February 16, 2010, Virgin Mobile filed an application to amend or replace the existing ETC designation, to correct and expand the service area of its Lifeline service and to enable Virgin Mobile's ETC designation to reflect its acquisition by Sprint Nextel Corporation (Sprint Nextel),

as a facilities-based wireless carrier. Virgin Mobile filed an amended application on March 1, 2010.

After reviewing Virgin Mobile's application, the Commission finds that Virgin Mobile satisfies the requirements for designation as a facilities-based ETC. 47 USC 214(e)(1)(A). The Commission also finds that Virgin Mobile's request to expand its Lifeline service to the additional rate centers found in the amended Exhibit 4 submitted March 1, 2010, should be granted because the Commission is persuaded that ETC designation for Virgin Mobile promotes the availability of universal service and is in the public interest. Thus, the application filed by Virgin Mobile for ETC designation for purposes of receiving Low Income USF support for Lifeline is granted. With the change in ETC designation from a wireless reseller to a facilities-based carrier, all of the conditions listed on page 4 of the December 1, 2009 Commission order are dismissed.

Virgin Mobile, under this designation, will comply with enhanced service requirements, as required by the FCC's Report and Order (FCC 05-46), CC Docket 96-45, and the Commission's October 18, 2005 order in Case No. U-14530. This ETC designation will be for the remainder of 2010. Virgin Mobile will need to reapply for this designation for 2011, and annually thereafter.

Moreover, the Commission concludes, as it did in its November 20, 2001 order in Case No. U-13145, that it need not solicit comment on the application, which would only further delay the action on this application.

THEREFORE, IT IS ORDERED that the application filed by Virgin Mobile USA, L.P., for designation as an eligible telecommunications carrier for purposes of Lifeline universal service fund support is granted.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Greg R. White, Commissioner

By its action of March 18, 2010.

Mary Jo Kunkle, Executive Secretary