

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

<b>IN THE MATTER OF THE APPLICATION</b> <b>OF VIRGIN MOBILE USA, L.P. FOR</b> <b>LIMITED DESIGNATION AS AN ELIGIBLE</b> <b>TELECOMMUNICATIONS CARRIER</b>	) ) ) ) ) )	<b>CASE NO. VMU-T-11-01</b>  <b>ORDER NO. 32645</b>
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On February 3, 2011, Virgin Mobile USA, L.P. (Virgin Mobile or Company) filed an Application requesting limited designation as an eligible telecommunications carrier (ETC) in Idaho. Virgin Mobile, a wholly owned subsidiary of Sprint Nextel Corporation, requests ETC designation as a facilities-based carrier only for the purpose of participating in the federal Lifeline program. The Company will provide prepaid wireless service to its Lifeline customers and seeks ETC designation for its entire service area in Idaho. The Company requests ETC designation pursuant to 47 U.S.C. § 214(e) and this Commission’s ETC requirements outlined in Order No. 29841 (referred to in the Application as “ETC Checklist”).

On August 15, 2012, the Commission issued a Notice of Application and Notice of Modified Procedure establishing a written comment period. Written comments were submitted only by Commission Staff.

### THE APPLICATION

The Federal Communications Commission (FCC) approved Sprint Nextel’s acquisition of Virgin Mobile on September 11, 2006. In 2009, the FCC designated Virgin Mobile an ETC for purpose of offering Lifeline services in four states as a reseller of telecommunications services, and in 2010, the FCC designated the Company an ETC in several states as a facilities-based carrier. The FCC determined that Virgin Mobile “no longer needs forbearance” from the Section 214 facilities-based requirement and lifted certain forbearance conditions associated with the Company’s prior status as a reseller. Application at 3. Later, ten states designated Virgin Mobile as a facilities-based ETC without reliance on the 2009 Forbearance Order. *Id.* at 4. Accordingly, Virgin Mobile requests designation as a facilities-based ETC in its Idaho service area for participation in the Lifeline Program. *Id.*

#### *Virgin Mobile’s Lifeline Service Offerings*

Virgin Mobile will make its basic prepaid wireless plan available free of charge to its Lifeline customers. The basic plan will provide eligible customers with 250 anytime prepaid

minutes per month at no charge with additional service prices at \$0.10/minute and \$0.10/text message. *Id.* at 6. Customers will have the option of purchasing blocks of additional services, but Lifeline customers will not be obligated to purchase additional services. Customers may select any option on a month-to-month basis, and service offerings include all applicable taxes and fees. *Id.* Each service plan includes voice-mail, caller identification, call waiting services, and access to the Virgin Mobile Assurance customer care service at no additional charge. In addition, customers will receive uninterrupted access to 911 emergency centers and Virgin Mobile's customer care service center regardless of whether any minutes remain on the account.

New customers may elect to receive a free Assurance Wireless-branded handset with E911 functionality, thus ensuring that Lifeline-eligible customers will not incur any upfront costs for access to the Company's Lifeline services. Current Virgin Mobile customers will be able to use their existing handsets to receive prepaid Lifeline services, or they may elect to receive a free Assurance Wireless handset.

#### ***The Federal Lifeline and Link Up Reform and Modernization Order***

On February 6, 2012, the FCC released a Report and Order (Order) that comprehensively reforms the low-income program of the Universal Service Fund (USF). The Order substantially strengthens protections against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and limits the growth of the program in order to constrain the burden on all who contribute to the USF. *See Lifeline and Link Up Reform and Modernization et al*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at ¶¶ 361-38, Appendix A (rel. Feb. 6, 2012) (*Lifeline Reform Order*). The Order establishes rigid requirements for ETCs to obtain customer certifications to prevent duplication of Lifeline benefits.

Virgin Mobile plans to guard against potential fraudulent use of Lifeline service by obtaining appropriate information, and by using an enrollment form that includes a certification section that each applicant must sign under penalty of perjury, verifying that the applicant receives Lifeline-supported service only from Virgin Mobile. *Id.* at 8. In addition, to ensure that USF funds are received only for customers who actively use their Lifeline services, the Company will implement a non-usage policy in Idaho. *Id.* The Company's certification and non-usage policy meets the new requirements set forth in the FCC's *Lifeline Reform Order*.

Staff reviewed Virgin Mobile's Application along with the Company's Facilities Order approved by the FCC (released on December 29, 2010), and reviewed the Company's fulfillment of the federal Telecommunications Act of the 1996 ("The Act") and of Commission Order No. 29841. In addition, Staff reviewed Virgin Mobile's request for forbearance from the requirement that the service area of a Lifeline-only ETC conform to the service area of the rural telephone company serving the same area.

***Public Interest Considerations***

In other limited ETC designation cases, the Commission considered the carrier's contribution to the Idaho Telephone Service Assistance Program (ITSAP) fund and to the Idaho Emergency Communications Act (IECA) fund and determined that it was in the public interest to require an ETC to contribute to these funds. *See* Case No. TFW-T-09-01, Order No. 32301 at 9. Staff reviewed the 2011 ITSAP Annual Report and verified that Virgin Mobile remitted ITSAP funds for the entire year. In addition, as of September 26, 2011, the Idaho E911 Program Coordinator confirmed that the Company remitted 911 funds to 15 Idaho Counties.

In a cream skimming discussion, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is the applicant's commitment to provide universal service throughout the rural areas or, if not, whether the potential for cream skimming exists. Where Virgin Mobile will not receive high-cost support, however, a cream skimming analysis is moot.

In the Application, the Company acknowledges that its service area overlaps with many rural carriers in Idaho, but maintains that the public interest factors justify its designation in these carriers' service areas, "because it only seeks ETC designation for purposes of participating in the Lifeline program as a prepaid wireless carrier." Application at 5. Virgin Mobile asserts that it will "provide affordable and convenient wireless services to qualifying Idaho customers, many of whom are otherwise unable to afford wireless services." *Id.* Lifeline support is provided on a customer-specific basis, and only after a carrier begins to serve an eligible customer does the carrier receive Lifeline support for that customer. Accordingly, Virgin Mobile asserts that the Lifeline program ensures that USF support only funds the carrier that actually "wins" the customer's service. *Id.* at 4-5. Virgin Mobile asserts its designation as an ETC "will further the public interest by providing Idaho consumers, especially low income consumers, with lower prices and higher quality services." *Id.* at 17. On this record, the

Commission finds the Company's request for limited ETC designation eliminates the need to require Virgin Mobile to serve the entire service areas of the rural carriers.

***Network Improvement Plan***

In the Commission's ETC Designation Order, a two-year network improvement and progress report normally is required of ETCs receiving high-cost support. See Commission Order No. 29841 at 18. However, the Commission previously concluded that a two-year network improvement plan is not applicable to Lifeline-only ETCs. See CRI-T-11-01, Order No. 32501.

***Ability to Remain Functional in Emergencies***

The Company states that as a wholly owned subsidiary of Sprint Nextel, Virgin Mobile is able to remain functional in emergency situations as required by Section 54.202(a)(2) of the FCC's regulations and Order No. 29841, Item B.2. The underlying network carrier, Sprint Nextel, has established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. Sprint Nextel's network is monitored 24X7 by its networking monitoring centers. "Local switching offices staffed by trained technicians and management coordinate with these larger operation centers to ensure that Sprint Nextel's networks are properly maintained and perform at expected levels." Application at 15.

Sprint Nextel also has reasonable back-up power to ensure functionality without an external power source and can re-route traffic around damaged facilities and manage traffic spikes resulting from emergency situations. "Each cell site in the Sprint network is equipped with two hours of battery back-up power. Many cell sites in the Sprint network provide overlapping coverage for neighboring areas, and such design redundancy ensures that coverage continues in the event of damage to a particular facility." *Id.* Staff determined the fault-tolerant network described in the Application provides adequate support to demonstrate the Company's ability to remain functional in an emergency.

***Other ETC Designation Requirements***

Additional specific requirements for ETC designation identified in Appendix 1 of Order No. 20841 are discussed in this section.

1. Common Carrier Status. Virgin Mobile Communications, Inc. is a commercial mobile radio services carrier that provides "mobile service" as defined in 47 U.S.C. §§ 153(10). Application at 11.

2. Provide Universal Services. Virgin Mobile offers the federally-designated services. *Id.* at 11-14

3. Advertising. Virgin Mobile will advertise the availability and rates for its services described in the Application through media of general distribution in conformance with the FCC's regulations and Order No. 29841, Item A.3. *Id.* at 16.

4. Commitment and Ability to Provide Supported Services. The Company states that it is seeking ETC designation in Idaho only in areas where it currently offers service and for Lifeline only customers. Virgin Mobile states that it is committed to providing service to all customers in its service territory who make a reasonable request for service and to maintaining its network to maximize service generally.

5. A commitment to Consumer Protection and Service. Virgin Mobile states it has complied with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service since its inception and as an ETC will annually certify its compliance with the consumer code. The Company notes that it has received numerous awards for its high-quality customer service, including the prestigious J.D. Power award for providing "An Outstanding Customer Service Experience" under J.D. Power's Certified Call Center Program. Application at 19.

6. Description of the Local Usage Plan. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage, a condition satisfied by Virgin Mobile. *Id.* at 12.

7. Tribal Notification. The Company will provide Tribal notifications.

The Commission has reviewed the Application of Virgin Mobile for designation as a Lifeline-only ETC, and finds the Application demonstrates the Company's commitment to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its service territory; it has addressed all of the public interest questions that accompany an ETC Application; and will provide multiple pricing plans which will increase customer choice for low-income service. Accordingly, the Commission approves Virgin Mobile's Application for ETC designation to enable it to participate in the federal Lifeline program.

**ORDER**

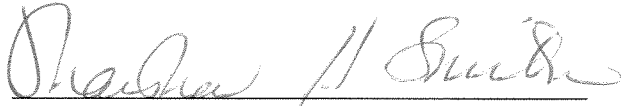
IT IS HEREBY ORDERED that Virgin Mobile USA L.P.'s Application for ETC designation to enable it to participate in the federal Lifeline program is approved.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

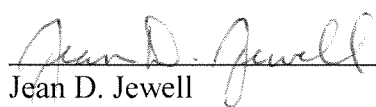
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19<sup>th</sup> day of September 2012.

  
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PAUL KJELLANDER, PRESIDENT

  
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MACK A. REDFORD, COMMISSIONER

  
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MARSHA H. SMITH, COMMISSIONER

ATTEST:

  
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Jean D. Jewell  
Commission Secretary

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