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Attorney for the Commission Staff

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE APPLICATION OF )**  
**VIRGIN MOBILE USA, L.P. FOR LIMITED )** **CASE NO. VMU-T-11-01**  
**DESIGNATION AS AN ELIGIBLE )**  
**TELECOMMUNICATIONS CARRIER. )** **COMMENTS OF THE**  
**)** **COMMISSION STAFF**  
**)**

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The Staff of the Idaho Public Utilities Commission, by and through its Attorney of record, Weldon B. Stutzman, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32616 on August 15, 2012, submits the following comments.

**BACKGROUND**

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” or “limited ETC”) in Idaho. Virgin Mobile, a wholly owned subsidiary of Sprint Nextel Corporation, is seeking ETC designation as a facilities-based carrier only for the purpose of participating in the federal Lifeline program. The Company intends to provide prepaid wireless service to its lifeline customers and seeks ETC designation for its entire service area in Idaho. Application at Summary. 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.")

### **The Application**

The Federal Communications Commission ("FCC") approved Sprint Nextel's acquisition of Virgin Mobile on September 11, 2006. Virgin Mobile is a Delaware Limited Partnership with its principal place of business in Warren, New Jersey. *Id.* at Exh. 1. Virgin Mobile seeks ETC designation under the trade name "Assurance Wireless Brought to You By Virgin Mobile" for the purposes of participation in the Universal Service Fund's (USF) Lifeline program and not for designation to offer services supported by the high-cost program. *Id.* at 1.

In the Application, Virgin Mobile explains that in 2009, the FCC designated Virgin Mobile as an ETC for purposes of offering Lifeline services in the states of New York, North Carolina, Tennessee and Virginia as a reseller of telecommunications services. Then, on December 29, 2010, the FCC designated the Company as an ETC in the states of Alabama, Connecticut, Delaware, New Hampshire and Washington D.C. as a facilities-based carrier for purposes of Section 214 of the Act in light of its acquisition by Sprint Nextel. 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. *Id.* at 3. Later, the states of Florida, Indiana, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Texas, Washington and West Virginia 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's prepaid wireless offering will be available free of charge to its Lifeline customers. Under the basic plan, eligible customers will receive 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. Under Option 1, the customer may purchase 250 additional monthly minutes for \$5.00, providing a total of 500 voice minutes. Under Option 2, the customer may purchase an additional 750 monthly minutes for \$20.00 providing a total of 1,000 voice minutes and 1,000 monthly text messages.

The Lifeline customer will not be obligated to purchase these additional offerings under either Options 1 or 2 nor will the customer be obligated to add money to their accounts. Customers may select any option on a month-to-month basis without subscribing to a long-term contract or incurring activation charges or connection fees. *Id.* 7. These service offerings include all applicable taxes and fees, and customers may use their monthly minutes to place statewide or nationwide calls. *Id.* Each service plan also includes voicemail, caller identification, call waiting services, and access to the Virgin Mobile Assurance customer care service at no additional charge. *Id.* 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. *Id.*

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 customer 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 free handset provided to Lifeline customers is sold separately by the Company to its non-Lifeline customers for \$9.99 and marketed as the Kyocera Jax. *Id.* at 8.

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

On February 6, 2012, the FCC released a Report and Order ("Order") to comprehensively reform the low-income program of the Universal Service Fund ("USF"). The Order substantially strengthens protection against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.<sup>1</sup> The Order establishes rigid requirements for ETCs to obtain customer certifications to prevent duplication of lifeline benefits.

Virgin Mobile outlines how it will guard against potential fraudulent use of Lifeline service by obtaining a variety of information, and by use of an enrollment form that includes an applicant certification section that each applicant must attest and sign under penalty of perjury that the applicant receives Lifeline-supported service only from Virgin Mobile. *Id.* at 8. In

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<sup>1</sup> See *Lifeline and Link Up Reform and Modernization et al*, WC Dkt no. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at paras. 361-38, Appendix A (rel. Feb. 6, 2012). (*Lifeline Reform Order*)

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 ANALYSIS**

Staff has reviewed Virgin Mobile's Application along with the Company's Facilities Order approved by the FCC (released on December 29, 2010). Staff has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of the 1996 ("The Act") and of Commission Order No. 29841. In addition, Staff has 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.

### **Other Public Interest Considerations**

When applying the public interest test in an Application for ETC designation, Staff believes there are two considerations that merit discussion.

1. Contribution to Idaho Programs. As in the more recent TracFone (pre-paid wireless service provider) ETC Application, 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. With respect to the Company's remittance of funds to the ITSAP program, 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 E-9-1-1 Program Coordinator confirmed that the Company remitted 911 funds to 15 Idaho Counties: Ada, Blaine, Bonner, Bonneville, Bannock, Canyon, Elmore, Gooding, Jerome, Latah, Lincoln, Nez Perce, Payette, Twin Falls, and Washington. Staff believes Virgin Mobiles meets this public interest test.

2. Cream Skimming analysis. In this public interest 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. In this Application, Staff

believes that the Company's exclusion of high-cost support in its Application makes this cream skimming analysis 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." *Id.* 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 has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. Therefore, Virgin Mobile argues 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.

Staff believes 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 Idaho ETC Designation Order, the two-year network improvement and progress report is required of all ETCs receiving high-cost support. See Commission Order No. 29841 at 18. However, as with the Cricket Communications, Inc.'s ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs and granted Cricket's ETC designation. See CRI-T-11-01, Order No. 32501.

In the *Lifeline Reform Order*, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM*, the FCC included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an ETC by the Commission to submit a five-year plan describing its proposed network improvements and upgrades. However, as Lifeline-only ETCs are not receiving funds to improve or extend its networks, the FCC stated

that it saw little purpose in requiring such plans as part of the ETC designation process.<sup>2</sup> Virgin Mobile states that it seeks only low-income support as a limited ETC designation, thus the requirement to provide a network improvement plan does not apply to this Application. Therefore, as with Cricket Communications, Inc.'s ETC Application, Staff believes Virgin Mobile is exempt from Idaho's two-year network improvement plan requirement.

### **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." *Id.* at 15.

Sprint Nextel also has reasonable back-up power to ensure functionality without an external power source and can reroute 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.* Based on this information, Staff believes 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 requirements for ETC designation are detailed in Appendix 1 of Order No. 20841 and are discussed in more detail below.

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). *Id.* at 11.

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<sup>2</sup> See *Lifeline and Link up Reform and Modernization et al*, WC Dkt no. 11-42 *et al.* Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

2. Provide the 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. The 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. The Company submits that this item is more appropriate to carrier requests for ETC designation for high-cost purposes and Staff agrees. *Id.* at 16.

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. *Id.* at 19.

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

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

Staff believes Virgin Mobile meets the aforementioned ETC designation requirements where applicable for a Lifeline only ETC designation.

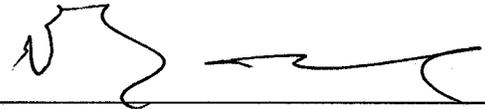
## **STAFF RECOMMENDATION**

Staff has reviewed the Application of Virgin Mobile for designation as a Lifeline-only ETC. Staff believes that 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.

Staff believes Virgin Mobile's Application for designation as an ETC is in the public interest and should be approved.

Respectfully submitted this 5<sup>th</sup> day of September 2012.



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Weldon B. Stutzman  
Deputy Attorney General

Technical Staff: Grace Seaman

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5<sup>TH</sup> DAY OF SEPTEMBER 2012, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. VMU-T-11-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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