Dorothy Menasco

From: sheila@advocatesua.com
Sent: Monday, May 03, 2010 2:09 PM
To: Filings@psc.state.fl.us
Subject: 090245-TP - Comments
Attachments: AUA Florida Comments - FINAL.pdf

Please file the attached document. Information below.
Thank you,
Sheila Stickel

1) The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:
Sheila Stickel
Advocates for Universal Access
P.O. Box 21914
Seattle, WA 98111
(800) 760-9446
sheila@advocatesua.com

2) The docket number and title if filed in an existing docket:
Docket No. 090245-TP - Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P.

3) The name of the party on whose behalf the document is filed:
Advocates for Universal Access

4) The total number of pages in each attached document:
23 pages

5) A brief but complete description of each attached document:
Letter, Pages 1-4
Exhibit 1-Corporate Information, Pages 5-8
Exhibit 2-Cited Articles, Pages 9-13
Exhibit 3-AUA Filing Before the FCC, 4/30/2010, Docket 09-197, Pages 14-23

Advocates for Universal Access

P.O. Box 21914 • Seattle, WA 98111 • (800) 760-9446

May 3, 2010

Nancy Argenziano, Chairman
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 090245-TP, Staff Recommendation
May 4, 2010 Public Service Commission Meeting

Dear Madam Chair:

Advocates for Universal Access ("AUA") is a wireless industry watchdog formed around the principle that every American should have access to an emergency mobile phone and a plan they understand. AUA was surprised to have found the recent staff recommendation of the Florida Public Service Commission ("PSC") to grant Virgin Mobile, L.P's ("Virgin Mobile") purported "Amended Application for ETC Designation", and files this request for reconsideration and demand for a public comment period.

Background

The PSC staff memorandum recommending approval of Virgin Mobile's petition was surprising and unwarranted both because the most recent docket update shows that Virgin Mobile's application was "Withdrawn" on April 2, 2010, and because no Notice or Opportunity for Comment was presented to the general public. While the PSC memorandum states that Virgin Mobile's petition was "withdrawn" and then "amended", this is contradicted by both the docket, and by common sense. First, a petition cannot be "amended" after it is withdrawn: a new application must be filed in its place. Secondly, because the docket showed the "withdrawal" as following the "amendment", the public was led to believe that there was no application at all – it appeared to have been withdrawn. Likewise, no Public Notice was published seeking public comments. Each of these procedural errors suppressed Public Comment.

Additionally, the PSC's memorandum recommending approval is pre-mature, because it was released prior to the end of the traditional 30-day comment period in which comments would typically be received from the public. Today, May 3, 2010 is the 30th calendar day following the submission of the "amended" petition.[1] Surely, the PSC should not be making recommendations prior to the consideration of public input. We also fail to see how staff could make a recommendation without presenting follow-up questions to Virgin Mobile based upon public comments.

[1] As this is the 30th Calendar day, at a minimum, this letter should be considered by staff before any recommendation is forwarded to the full PSC for consideration and action. As will be explained below, we also assert that a period of time should also be provided for other interested parties to comment, as they may have been lulled into believing that Virgin Mobile's Petition had actually been withdrawn.

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[1] As this is the 30th Calendar day, at a minimum, this letter should be considered by staff before any recommendation is forwarded to the full PSC for consideration and action. As will be explained below, we also assert that a period of time should also be provided for other interested parties to comment, as they may have been lulled into believing that Virgin Mobile's Petition had actually been withdrawn.

Demand for Public Notice & Comment Period

Public input here is of vital importance, and for the following reasons, we request that the PSC withdraw the staff recommendation and allow for a 30-day comment period, and a 30-day response period prior to any recommendation. In support thereof, the following should be of great importance to the PSC:

- The PSC does not have the legal authority to overturn a Forbearance Condition imposed by the Federal Communication Commission ("FCC").
- The question of whether Virgin Mobile is a "facilities-based carrier" is a question of federal law and is currently pending before the FCC (Docket 09-197). At a minimum, The PSC should defer consideration of this application until after the FCC makes a decision with respect to Virgin Mobile's status and the applicability of the Forbearance Order before making its own decision.

Virgin Mobile is Not a "Facilities-Based Carrier"

Of critical importance, Virgin Mobile has neither explained how its corporate structure fits within the legal definition of a "facilities-based carrier" (which it even failed to define in its petition), nor has Virgin Mobile explained how its corporate structure alleviates the safety concerns of the FCC, which were addressed in the initial Forbearance Order Conditions agreed to by Virgin Mobile (which it no seeks to abandon in its "Amended" petition). In particular, Virgin Mobile has not explained any real-world reasons why it should not be required to seek PSAP certifications of 9-1-1 and E-9-1-1 compliance, which is a maximum 90-days process. Said another way, just because Virgin Mobile has been acquired by a "facilities based carrier" does not mean that it is a facilities based carrier, particularly since it has maintained its own, legally separate corporate form.

While Virgin Mobile claims that its acquisition by Sprint-Nextel somehow transformed the company into a "facilities-based carrier", it has submitted no evidence that Virgin Mobile owns any facilities, or possesses any FCC facilities or spectrum licenses.[2] Moreover, Virgin Mobile is not an integrated brand or division of Sprint-Nextel. Instead, Virgin Mobile, L.P. is an independent corporate entity registered in Delaware.[3]

Thus, it would seem that Virgin Mobile remains a Mobile Virtual Network Operator that is simply owned by Sprint-Nextel and could be sold or divested at any time. Virgin Mobile's filings indicate that Sprint-Nextel has always held an ownership interest in Virgin-Mobile. In fact, Virgin Mobile has stated that it was founded as a Joint Venture between Virgin and Sprint-Nextel. Sprint-Nextel thus owned a large portion of Virgin Mobile at the time the Forbearance conditions were imposed, and it was acknowledged at that time that Virgin Mobile was <u>not</u> a "facilities-based carrier".

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[2] The term facilities-based carrier means an "entity that owns communications transmission facilities is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934." See: e.g. 18 USC 1829. **<u>Virgin Mobile has not explained how it meets any of these elements.</u>**

[3] See: Delaware Corporate Registration of Virgin Mobile LP, Attached.

In our organization's filings to the FCC (which are attached hereto and those comments are incorporated by reference), we simply asked that Virgin Mobile be required to explain what has changed since November to warrant its requested classification change, and to explain what of substance has happened to make Virgin Mobile customers safer, so as justify removal of the Forbearance conditions. Virgin Mobile continues to evade these questions, hiding behind general assertions that are not backed by either substantive legal analysis or practical application. By comparison, in calls with investors, Sprint-Nextel is more forthcoming about its stake in Virgin Mobile and has stated as recently as two days ago, on April 28, 2010, that the integration of Virgin Mobile is *ongoing*.[4] Interestingly, in that article, Dan Schulman, the head of Sprint's prepaid business, said the integration of Virgin Mobile USA is "proceeding better than expected" and that Sprint had cut one-third of the workforce of its "combined Boost Mobile and Virgin Mobile operations". Interestingly, Boost Mobile is, and always has been considered to be an MVNO, not a "facilities-based carrier". Thus, Sprint-Nextel's own public statements that the companies are "combining" seem to contradict its filings before the FCC and the Florida PSC that Virgin Mobile is a "facilities-based carrier".[5]

Glaringly, it is apparent that a customer of Virgin Mobile is still not a customer of Sprint-Nextel. Sprint-Nextel has submitted no evidence that its customers are integrated; in fact, it is not clear whether Florida privacy laws and communications regulations would permit the sharing of consumer information between Sprint-Nextel and Virgin Mobile which are separate entities. <u>This privacy concern should be addressed by the PSC</u>.

Conclusion & Requested Relief

The separation of the entities continues to pose challenges for 9-1-1 access, which were addressed in the Forbearance Conditions. Namely, if a Virgin Mobile customers calls 9-1-1, the ANI/ALI display does not identify the caller as a Virgin Mobile customer, because Virgin Mobile is a virtual operator and does not own its own facilities. Instead, the caller would appear to be a Sprint-Nextel customer. In gathering caller information, a 9-1-1 Center must connect first to Sprint-Nextel, the facility owner, and is then referred to an exigent circumstances hotline for Virgin Mobile, the virtual network operator. Given the importance of Lifeline, and the potential for error in this extra step, it is important that 9-1-1 Centers (PSAPs) be given an opportunity to certify that Virgin Mobile is 9-1-1 and E-9-1-1 compliant. This is particularly so given that, across the marketplace, free Lifeline program phones are often older or less advanced models (without GPS chips), that may or may not be E-9-1-1 Phase 2 compliant. E-9-1-1 compliance is a crucial element of the PSAP certification requirement.

Finally, even if the PSC determines that Virgin Mobile meets the definition of a "facilities based carrier", it should determine whether alternative "Forbearance" conditions are warranted. For example, the PSC should ask that Sprint receive certification from PSAP / 9-1-1 Coordinators that its towers are E-9-1-1 compliant and that Virgin Mobile customers can connect

[4] See: Sprint narrows subscriber gap in Q1, but loss widens, Phil Goldstein, Fierce Wireless, April 28, 2010, attached.
[5] See: Sprint Nextel buys Virgin Mobile USA MVNO, James Middleton, Telecoms.com, July 29, 2009, attached.

and be properly identified. A 90-day approval for such a process is a small price to pay to assure safety for society's most vulnerable.

The FCC has reasonably imposed a 90-day certification window to encourage expedited certifications. Virgin Mobile could have chosen to pursue an expedited approval in Florida, but it chose to withdraw its application instead. Now, the PSC should take the side of public safety absent further explanation by Virgin Mobile addressing with specificity the safety concerns that led to the Forbearance Order in the first place.

We ask that the PSC withdraw its memorandum of support, impose a comment and answer period, and proceed only after the ongoing FCC consideration of these very same questions.

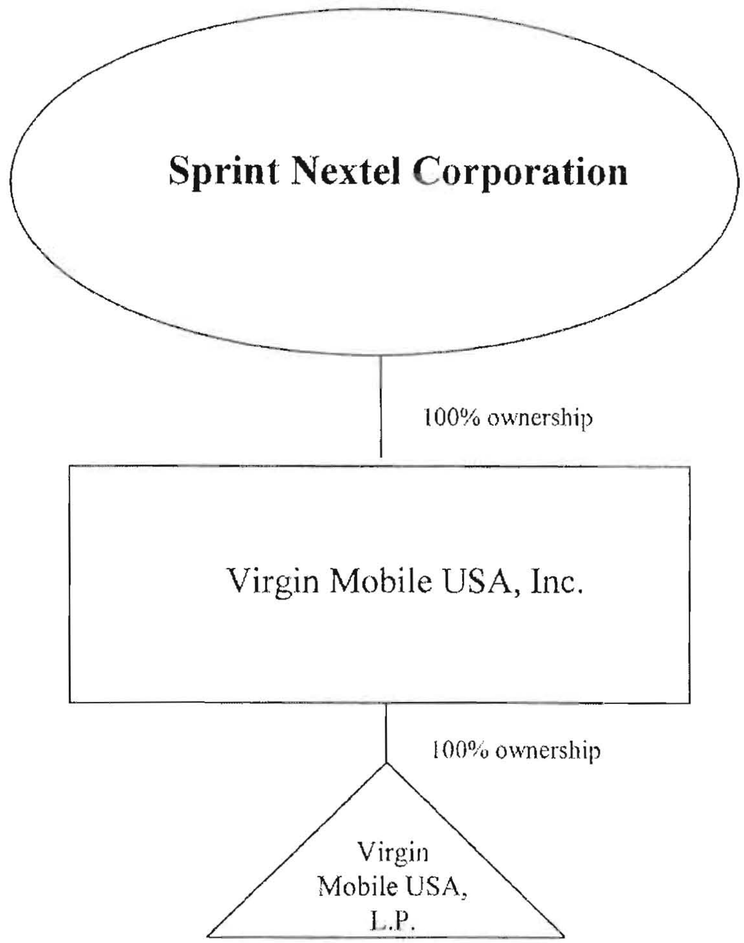
Sincerely,

Sheila Stickel, Executive Director

Advocates for Universal Access
P.O. Box 21914 • Seattle, WA 98111 • (800) 760-9446

Exhibit 1:

Corporate Information


Sprint Nextel Corporation
100% ownership
Virgin Mobile USA, Inc.
100% ownership
Virgin
Mobile USA,
L.P.

Department of State: Division of Corporations

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**4333571**	Incorporation Date / Formation Date:	**04/11/2007** (mm/dd/yyyy)
Entity Name:	**VIRGIN MOBILE USA, INC.**		
Entity Kind:	**CORPORATION**	Entity Type:	**GENERAL**
Residency:	**DOMESTIC**	State:	**DE**

REGISTERED AGENT INFORMATION

Name:	**CORPORATION SERVICE COMPANY**		
Address:	**2711 CENTERVILLE ROAD SUITE 400**		
City:	**WILMINGTON**	County:	**NEW CASTLE**
State:	**DE**	Postal Code:	**19808**
Phone:	**(302)636-5401**		

Additional Information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

Would you like ○ Status ○ Status,Tax & History Information Submit

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To contact a Delaware Online Agent click here.

JOHN DICKINSON PLANTATION | PHOTO BY JEFFREY BOYER

Department of State: Division of Corporations

Frequently Asked Questions View Search Results

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**3442933**	Incorporation Date / Formation Date:	**10/04/2001** (mm/dd/yyyy)
Entity Name:	**VIRGIN MOBILE USA, L.P.**		
Entity Kind:	**LIMITED LIABILITY COMPANY (LLC)**	Entity Type:	**GENERAL**
Residency:	**DOMESTIC**	State:	**DE**

REGISTERED AGENT INFORMATION

Name:	**CORPORATION SERVICE COMPANY**		
Address:	**2711 CENTERVILLE ROAD SUITE 400**		
City:	**WILMINGTON**	County:	**NEW CASTLE**
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Would you like ○ Status ○ Status,Tax & History Information [Submit]

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Exhibit 2

Cited Articles

April 30, 2010

telecoms.com

Sprint buys out Virgin's US MVNO business

July 29, 2009 Written by James Middleton

US mobile virtual network operator Virgin Mobile USA is to be acquired by hosting partner Sprint Nextel for around $483m.

Virgin Mobile USA piggybacks on the Sprint network, targeting the US prepaid consumer sector, and has amassed more than five million customers.

Sprint said the addition of the Virgin Mobile brand complements its own Boost Mobile MVNO business, which is also focused on the prepaid market. Boost had over three million subscribers as of June 30, and the company said that both brands will continue to exist, serving existing and prospective customers.

Sprint buys out Virgin's US MVNO business

Under the deal Sprint, which already owns 13.1 per cent of Virgin Mobile USA, will buy out Virgin's own 28.3 per cent stake, SK Telecom's 15.3 per cent and the publicly held 43.3 per cent stake. In addition, Sprint will retire all of Virgin Mobile USA's outstanding debt, which is expected to be no more than $205m on September 30, 2009.

Virgin will continue to license the Virgin brand from to Sprint for $12.7m through to the end of 2021.

Sprint's prepaid business will now be led by Dan Schulman, currently Virgin Mobile USA's chief executive officer, who will report directly to Dan Hesse, Sprint Nextel president and chief executive officer. Matt Carter will continue to lead Boost Mobile and will report to Schulman.

Tags; MVNO, Sprint, US, Virgin, Americas, Networks, News & Analysis, Operator

Published on FierceWireless (http://www.fiercewireless.com)

Sprint narrows subscriber gap in Q1, but loss widens

By Phil Goldstein
Created Apr 28 2010 - 8:44am

Sprint Nextel (NYSE: S [1]) continued to lose wireless subscribers in the first quarter and reported a wider net loss, but the company made progress toward overall subscriber growth. The nation's No. 3 carrier noted that it had its best year-over-year postpaid subscriber results in five years.

"I never said Sprint's turnaround would be quick or would be easy," Sprint CEO Dan Hesse said, noting the company has been gathering momentum since he took the reins in late 2007.

Sprint's stock fell 2.2 percent to $4 per share in pre-market trading.

Here's a breakdown of some of Sprint's key metrics:

Subscribers: Sprint lost a total of 75,000 net wireless subscribers in the quarter, compared with a net subscriber loss of 182,00 in the year-ago quarter. Still, the carrier continued to bleed postpaid subscribers, losing 578,000 in the quarter. However, that was 670,00 fewer postpaid subscriber than it lost in the first quarter of 2009. The carrier's postpaid losses were offset by 348,000 net prepaid customer additions. Sprint also added 155,000 wholesale and affiliate subscribers as a result of renewed subscriber growth in its MVNO business. The company had a total subscriber base of 48.1 million at the end of the quarter.

In an interview with *FierceWireless*, Hesse said postpaid growth will slow, and that the drops in postpaid additions at AT&T Mobility (NYSE: T) [2] and Verizon Wireless (NYSE: VZ [3]) were due to both the improvements Sprint has made and the increasing popularity of prepaid. Nonetheless, Hesse said Sprint will continue to work to get back to postpaid growth, first on its CDMA network. "The iDEN piece has been the lion's share of the postpaid subscriber losses for some time," he said. "You have to take the two separately. There's no question it makes it harder."

Financials: Sprint's total revenue was $8.09 billion, down 1.5 percent from $8.2 billion in the year-ago period. Sprint's wireless service revenues clocked in at $6.4 billion for the quarter, up by less than 1 percent from the year-ago quarter and up around 3 percent compared with the fourth quarter of 2009. The company said the increases were due primarily to its acquisition of Virgin Mobile and the success of its Boost Mobile monthly unlimited plan.

ARPU: Wireless postpaid average revenue per user was around $55 for the quarter, down year-over-year from $56, but flat sequentially. Prepaid ARPU came in at $27, compared with $31 in the year-ago period and in the fourth quarter of 2009. Sprint said the declines were due to the inclusion of Virgin Mobile and Assurance Wireless customers who have lower ARPU on average than those of Boost Mobile customers.

Churn: Postpaid churn in the quarter was 2.15 percent, down from 2.25 percent in the year-ago period and up from 2.11 percent in the fourth quarter of 2009. Postpaid churn, excluding the effect of deactivations of Helio customers, was 2.12 percent, Sprint said. Prepaid churn was 5.74 percent, compared with 6.86 percent in the year-ago period and 5.56 percent in the fourth quarter of 2009.

Clearwire/4G: During the company's call with analysts, Hesse talked up both the Overdrive 4G mobile hotspot and the company's forthcoming smartphone, the HTC Evo, which will run on Clearwire's (NASDAQ: CLWR [4]) mobile WiMAX network. Hesse told *FierceWireless* that Sprint will launch more 3G/4G phones this year as well. He said the company is not currently disclosing how many 4G customers it is signing up. However, he noted that because of Sprint's majority stake in Clearwire and the nature of its contract, it has a "founder's preference discount" that gives it a wholesale pricing advantage over other carriers and MSOs, such as Comcast and Time Warner Cable, that are also Clearwire wholesale partners. Interestingly, Hesse described prepaid mobile WiMAX service as a "possibility," but said no decisions have been made.

Hesse also said Sprint is considering tiered data pricing. "We'll announce any changes to pricing when we're ready to do that," he said. "But it's clearly something worth thinking about and analyzing."

Prepaid: Sprint said in the next few weeks it will launch and implement its multi-brand prepaid strategy. Dan Schulman, the head of Sprint's prepaid business, said the integration of Virgin Mobile USA is proceeding better than expected, and that Sprint had cut one-third of the workforce of its combined Boost Mobile and Virgin Mobile operations. He said Sprint will re-launch the Virgin brand in May as well as another brand focused on pay-as-you-go subscribers. "We think the multi-brand strategy allows us to go after more of the prepaid market opportunity," Hesse told *FierceWireless*. "And as Dan indicated, rather than having one brand and one blunt instrument where you have to continue to focus on price, it allows you to create unique value propositions for different segments of the market."

iDEN: Hesse said Sprint remains committed to its iDEN network, but that it is continually looking at technologies as the market evolves. "We will continually look at what's the best utilization of our spectrum assets and what are the best technologies available to provide the applications that our customers want," he said. "We're thinking long term in terms of an evolution plan." He emphasized that no decisions have been made, and also pointed to a number of recent iDEN device launches, including the Android-powered Motorola i1.

For more:
- see this *FierceWireless* Q1 earnings page [5]
- see this release [6]

Related Articles:
Sprint to show signs of a subscriber turnaround in Q1 [7]
Key Sprint investor sees subscriber turnaround next year [8]
Sprint points to potential revenue turnaround [9]
S&P cuts Sprint's credit rating, citing postpaid worries [10]
Sprint slows rate of subscriber losses in Q4 [11]

Source URL:

http://www.fiercewireless.com/story/sprint-narrows-subscriber-gap-q1-loss-widens/2010-04-28

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[1] http://www.fiercewireless.com/tags/Sprint
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[6] http://www.fiercemobilecontent.com/press-releases/sprint-nextel-reports-first-quarter-2010-results
[7] http://www.fiercewireless.com/story/sprint-expected-show-signs-subscriber-turnaround-q1/2010-04-27
[8] http://www.fiercewireless.com/story/key-sprint-investor-sees-subscriber-turnaround-next-year/2010-04-01
[9] http://www.fiercewireless.com/story/sprint-points-potential-revenue-turnaround/2010-03-09
[10] http://www.fiercewireless.com/story/s-p-cuts-sprints-credit-rating-citing-postpaid-worries/2010-03-05
[11] http://www.fiercewireless.com/story/sprint-slows-rate-subscriber-losses-q4/2010-02-10

Exhibit 3

AUA Filing Before the Federal Communications Commission

April 30, 2010, Docket 09-197

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.	)	
Public Comment for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia	)	

Supplemental Information Submitted by Advocates for Universal Access, LLC

Advocates for Universal Access, LLC ("AUA") respectfully requests the opportunity to present supplemental information and/or comments concerning the above titled application for Eligible Telecommunication Carrier ("ETC") designation status by Virgin Mobile USA, L.P. ("Virgin Mobile") in the states of Alabama[1], Connecticut, New Hampshire, Delaware and the District of Columbia (FCC Docket 09-197, Public Notice No. DA 10-345).[2]

Virgin Mobile's Comments Do Not Address Key Concerns

In its reply filing of April 15, 2010, Virgin Mobile stated that "(N)one of the limited comments filed in response to the Commission's *Public Notice* raised any issues that Virgin Mobile has not thoroughly addressed in its prior filings in this proceeding…". However, this is plainly wrong, as Virgin Mobile has not answered *any* of the questions submitted by AUA. Of critical importance, Virgin Mobile has neither explained how its corporate structure fits within the legal definition of a "facilities-based carrier" (which it even failed to define in its petition),

[1] Public Notice DA 10-345 references the Virgin Mobile filings for Connecticut, Delaware, New Hampshire and the District of Columbia. Additionally, Virgin Mobile's presentation to the FCC on March 22, 2010, made part of the public docket, requests inclusion of Alabama for expedited PSAP approval. The comments herein are relevant to Virgin Mobile's request for Alabama, and we request consideration of these comments for that ETC designation request as well.
[2] This filing is intended to supplement our prior comments submitted March 29, 2010.

nor has Virgin Mobile explained how its corporate structure alleviates the safety concerns of the FCC, which were addressed in the initial Forbearance Order Conditions agreed to by Virgin Mobile. In particular, Virgin Mobile has not explained any real-world reasons why it should not be required to seek PSAP certifications of 9-1-1 and E-9-1-1 compliance. Said another way, just because Virgin Mobile has been acquired by a "facilities based carrier" does not mean that it is a facilities based carrier, particularly since it has maintained its own, legally separate, corporate form.

While Virgin Mobile claims that its acquisition by Sprint-Nextel somehow transformed the company into a "facilities-based carrier", it has submitted no evidence that Virgin Mobile owns any facilities, or possesses any FCC facilities or spectrum licenses.[3] Moreover, Virgin Mobile is not an integrated brand or division of Sprint-Nextel. Instead, Virgin Mobile, L.P. is an independent corporate entity registered in Delaware.[4]

Thus, it would seem that Virgin Mobile remains a Mobile Virtual Network Operator that is simply owned by Sprint-Nextel and could be sold or divested at any time. Virgin Mobile's filings indicate that Sprint-Nextel has always held an ownership interest in Virgin- Mobile. In fact, the company has stated that it was founded as a Joint Venture between Virgin and Sprint-Nextel. Sprint-Nextel thus owned a large portion of Virgin Mobile at the time the Forbearance conditions were imposed, and it was acknowledged at that time that Virgin Mobile was <u>not</u> a "facilities-based carrier".

In our prior filing, we simply asked that Virgin Mobile be required to explain what has changed since November to warrant its requested classification change, and to explain what of substance has happened to make Virgin Mobile customers safer, so as justify removal of the Forbearance conditions. Virgin Mobile continues to evade these questions, hiding behind general assertions that are not backed by either substantive legal analysis or practical application. By comparison, in calls with investors, Sprint-Nextel is more forthcoming about its stake in Virgin Mobile and has stated as recently as two days ago, on April 28, 2010, that the integration

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[3] The term facilities-based carrier means an "entity that owns communications transmission facilities is responsible for the operation and maintenance of those facilities, and holds an operating license issued by the Federal Communications Commission under the authority of title III of the Communications Act of 1934." See: e.g. 18 USC 1829. **<u>Virgin Mobile has not explained how it meets any of these elements.</u>**

[4] See: Delaware Corporate Registration of Virgin Mobile LP, Attached.

of Virgin Mobile is *ongoing*.[5] Interestingly, in that article, Dan Schulman, the head of Sprint's prepaid business, said the integration of Virgin Mobile USA is "proceeding better than expected" and that Sprint had cut one-third of the workforce of its "combined Boost Mobile and Virgin Mobile operations". Interestingly, Boost Mobile is, and always has been considered to be an MVNO, not a "facilities-based carrier". Thus, Sprint-Nextel's own public statements seem to contradict its filings before the FCC and its assertion that Virgin Mobile is a "facilities-based carrier".[6]

At this time, it is apparent that a customer of Virgin Mobile is still not a customer of Sprint-Nextel. Sprint-Nextel has submitted no evidence that its customers are integrated; in fact, it is not clear whether state privacy laws and communications regulations would permit the sharing of consumer information between Sprint-Nextel and Virgin Mobile which are separate entities. This situation continues to pose challenges for 9-1-1 access, which were addressed in the Forbearance Conditions. Namely, if a Virgin Mobile customers calls 9-1-1, the ANI/ALI display does not identify the caller as a Virgin Mobile customer, because Virgin Mobile is a virtual operator and does not own its own facilities. Instead, the caller would appear to be a Sprint-Nextel customer. In gathering caller information, a 9-1-1 Center must connect first to Sprint-Nextel, the facility owner, and is then referred to an exigent circumstances hotline for Virgin Mobile, the virtual network operator. Given the importance of Lifeline, and the potential for error in this extra step, it is important that 9-1-1 Centers (PSAPs) be given an opportunity to certify that Virgin Mobile is 9-1-1 and E-9-1-1 compliant. This is particularly so given that free Lifeline program phones are often older and less advanced models (without GPS chips), that may or may not be E-9-1-1 compliant. E-9-1-1 compliance is another crucial element of the PSAP certification requirement.

The FCC has reasonably imposed a 90-day certification window to encourage expedited certifications. The FCC should err on the side of public safety without further explanation of Virgin Mobile addressing with specificity the safety concerns that led to the Forbearance Order in the first place. A simple 90-day certification is a small price to pay to ensure public safety. We thus re-assert our prior questions and ask that the FCC order Virgin Mobile to explain with

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[5] See: Sprint narrows subscriber gap in Q1, but loss widens, Phil Goldstein, Fierce Wireless, April 28, 2010, attached.
[6] See: Sprint Nextel buys Virgin Mobile USA MVNO, James Middleton, Telecoms.com, July 29, 2009, attached.

specificity how it meets the legal definition of a "facilities-based carrier" and provide evidence that the concerns underlying the Forbearance Order conditions have been mitigated.

Respectfully Submitted this 30th day of April, 2010, by:

Sheila Stickel, President & Executive Director
Advocates for Universal Access, LLC
P.O. Box 21914
Seattle, WA 98111
(206) 282-5544

Exhibit 4

AUA Filing Before the Federal Communications Commission

April 14, 2010, Docket 09-197

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.	)
Public Comment for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia	)

Comments of Advocates for Universal Access, LLC

Advocates for Universal Access, LLC ("AUA") respectfully requests the opportunity to present comments concerning the revised Virgin Mobile Compliance Plan. In short, we applaud Virgin Mobile for what it terms as "the most attractive offering" in the Lifeline marketplace, and we seek a few minor clarifications to ensure that the customer receives benefits that are clear and easy to understand. As such, we respectfully request clarification on the following questions prior to the FCC approval of this plan[1]:

I. IVR

1. In its compliance plan, Virgin Mobile proposes voice-verification in place of written affidavits. Said another way, Virgin Mobile seeks to amend the current IVR process which pre-qualifies customers over the telephone and then sends them written applications/affidavits by mail, to be sent and sign back. Rather, it intends to "orally" certify that the individual on the phone is (1) the head of the household, (2) Is not enrolled with another Lifeline company, (3) is eligible to

[1] Some of these questions are similar to questions previously submitted concerning Virgin Mobile's revised Petition for ETC designation and removal of forbearance conditions. These questions are in addition to, not in lieu of, previously submitted questions.

participate in the Lifeline program . A ccordingly, we ask the Virgin Mobile clarify:

a. What new process has Virgin Mobile created to ensure against fraud?
b. How can Virgin Mobile confirm a pe rson is who they say they are, without a s ignature in writing or at leas t a m inimum an electronic signature accepting written terms of service?
c. How can Vi rgin Mobile ensure that a person is not "double dipping" by registering with multiple providers?
d. Is a "verbal" authentication legally enforceable?
e. What does Virgin M obiles p lan f or post-I VR enrollment? Does the customer receive terms and conditions?
f. If terms and conditions will b e sent, in what font and font size will thes e be prin ted in (will they be easy to read?) and in which lan guages would this document be in?
g. Will Virgin Mobile pr ovide the FCC with its stand ard term s and conditions for review prior to approval?

II. Pricing, Billing and Features Air Time Charges

1. Virgin Mobile has stated it will offer 200 Minutes, with additional features such as text messaging ($.15 per message) and additional minutes ($.10 per minute) available for purchase. For clarification purposes, we seek clarification on the following:
   a. How are text messages billed?Are these included in the Lifeline Offering or must they be purchased separately?
   b. Are text messages offset against the 200 minutes or do they represent a separate fee category?
   c. Is a credit card or Virgin Mobile phone card needed to use this text messaging feature?
2. Will Virgin Mobile:
   a. Confirm that the remaining of the 200 minutes per month will roll over to the next month?

   b. Does Virgin pro-rate minutes the first month of service or award the full amount? If pro-rated, does the Lifeline Program pay a pro-rated fee?
   c. Can Virgin Mobile confirm that customers will receive at least 200 minutes per month for the life of their participation in the program? If the terms may change, how much notice will be followed and how will customers be informed?
3. In its presentation, Virgin Mobile claims that customer service calls from its handsets will be "free" to its customers. We seek clarification as to the following:
   a. Does "free" mean that calls will not deduct minutes (as opposed to deducting minutes provided by Lifeline which are also "free" to the customer).
   b. How does a customer reach customer service? Are the following free to the customer?
      i. 6-1-1.or similar customer service number; and/or
      ii. Virgin Mobile's advertised 800 Lifeline customer service number, dialed from the handset; and/or
      iii. Are there any other codes or numbers a customer must know to receive free customer service from the handset? If yes, how will this be conveyed to the customer?
4. Which of the following commonly provided services are included in the 200 minutes per month, and which require the usage of minutes?
   a. 4-1-1 (information).
   b. Toll Free Numbers (800, 888, etc.)
   c. Voice Mail.
5. Under what terms may customers cancel service?
   a. Is there any fee for the handset?

How is termination reported to the USF?

III. Conclusion:

In conclusion, we wish to note that we are not opposed to the concepts set forth by Virgin Mobile, and that we applaud the offering. We ask these questions in light of general practices in the pre-paid wi reless industry, to ensure clar ity and tangible benefits for consumers. The innovations proposed, such as IVR registration, appear to present significant efficiencies if they are implemented in a manner that ensures user confirmation and comprehension. Furthermore, the prospect of customers receiving 200 minutes monthly appears to be a great benefit, particularly if it is clearly explained to customers, and easy to understand. These questions are intended to ensure the best possible program for consumers and ensure there are no hidden fees, or costs that may not be readily apparent.

We respectfully request that the FCC seek clarification as to these issues.

Respectfully Submitted this 14th day of April, 2010, by:

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