

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** May 6, 2010 ~~April 23, 2010~~

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Analysis (Beard, Casey) *CSB PK*  
Office of the General Counsel (Tan) *ATW RLT*

**RE:** Docket No. 090245-TP – Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P.

**AGENDA:** 05/18/10 ~~05/04/10~~ – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Argenziano

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RAD\WP\090245.RCM.05-18-10.DOC

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### Case Background

On March 13, 2007, the Florida Public Service Commission (FPSC or Commission) addressed the issue of whether or not the FPSC has jurisdiction to designate commercial mobile radio service (CMRS) providers as eligible telecommunications carriers (ETCs)<sup>1</sup>. By Order No. PSC-07-0288-PAA-TP, issued April 3, 2007, in Docket Nos. 060581-TP and 060582-TP, the FPSC found that with the enactment of Section 364.011, Florida Statutes (F.S.), the Florida Legislature granted the FPSC limited authority over CMRS providers for those matters specifically authorized by federal law. Therefore, pursuant to Section 214(e)(2) of the

<sup>1</sup> ETC designation allows companies to receive high-cost and low-income monies from the Federal Universal Service Fund.

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FPSC-COMMISSION CLERK

Telecommunications Act of 1996 (the Act), which authorizes states to designate ETC carriers, the FPSC has jurisdiction over CMRS providers for the purpose of considering ETC petitions.

By Order 09-18, released March 5, 2009, the Federal Communications Commission (FCC) designated Virgin Mobile as a limited ETC in New York, North Carolina, Tennessee, and Virginia for the purpose of receiving only Lifeline support from the USF. Virgin Mobile has pending ETC designation petitions at the FCC for Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia. Virgin Mobile also has pending state applications for ETC status in California and Texas.

On April 29, 2009, Virgin Mobile USA, L.P. (Virgin Mobile) filed a petition with the FPSC for limited designation as an ETC to receive universal service Lifeline support in the State of Florida. Virgin Mobile was not seeking high-cost funds from the Universal Service Fund (USF). On April 1, 2010, that petition was withdrawn and an amended petition was filed.

Virgin Mobile is a wireless pre-paid telephone service provider. In 2002, Virgin Mobile was established as a joint venture between Sprint-Nextel and the Virgin Group. Virgin Mobile was established to focus on the pay-as-you-go or prepaid market. Sprint-Nextel serves as the backbone for Virgin Mobile's service, including the network infrastructure and wireless transmission facilities. In November 2009, Sprint-Nextel completed its acquisition as the new owner of Virgin Mobile.

As a result of the acquisition, Virgin Mobile attests that it is a wholly owned subsidiary of Sprint-Nextel. Virgin Mobile has acknowledged to staff that Virgin Mobile operates as a facilities-based carrier and no longer resells services in the State of Florida. Prior to the November 2009 acquisition, Virgin Mobile filed a petition with the FCC seeking forbearance from the facilities-based requirements in Section 214(e)(1)(A), which requires that a carrier be at least, in part, facilities-based to be eligible for designation as an ETC. By Order 09-18, issued March 5, 2009, in Docket 96-45, the FCC granted Virgin Mobile forbearance from the facilities-based requirement. Virgin Mobile attests that since it is no longer a reseller, the forbearance is no longer applicable.

Similar proceedings have taken place in Michigan, where the Michigan PSC stated in a March 18, 2010 Order that, "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). . . . 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." A Virgin Mobile ETC designation petition in Michigan was approved by the Michigan PSC on December 1, 2009.

On April 14, 2010, the Maryland Public Service Commission (MPSC) reviewed Virgin Mobile's petition for designation as an ETC at its scheduled Administrative Meeting. At that meeting, the MSPC granted Virgin Mobile designation as an ETC following a 30-day comment period.

On April 19, 2010, TracFone Wireless Inc., (TracFone) and Capital Area Community Services, Inc. (CACS) filed a joint petition for Leave to Intervene and Joint Petition for rehearing in Michigan regarding the recent decision by Michigan to grant Virgin Mobile ETC designation. TracFone and CACS are not questioning the designation of Virgin Mobile as an ETC, but are questioning the criteria Virgin Mobile has to comply with now that it is a wholly owned subsidiary instead of a reseller.

On May 3, 2010, TracFone filed “Comments in Opposition to Virgin Mobile’s Amended Eligible Telecommunications Carrier Petition,” Advocates for Universal Access (AUA)<sup>2</sup> filed a “request for reconsideration and demand for a public comment period,” and Virgin Mobile filed responses to TracFone’s “Comments in Opposition.” On May 5, 2010, Virgin Mobile filed a “Response to Advocates for Universal Access Comments.” The comments and responses are addressed within this recommendation.

The Commission has jurisdiction pursuant to Section 214(e)(2) of the Act, Sections 364.10(2) and 364.11, F.S., to address a petition by a CMRS provider seeking designation as an ETC.

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<sup>2</sup> Advocates for Universal Access asserts it 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.” It was incorporated in the State of Washington on March 26, 2010, and is a “for profit” corporation, but not registered in Florida.

### **Discussion of Issues**

**Issue 1:** Should Virgin Mobile be granted limited ETC status in Florida for the purpose of offering Lifeline discounts to qualifying consumers in Florida?

**Recommendation:** Yes. Staff recommends that Virgin Mobile be granted limited ETC designation status in the AT&T, Verizon, and CenturyLink wire centers listed in Attachment B of this recommendation for the sole purpose of offering Lifeline discounts to qualifying consumers in Florida. Granting of ETC designation should be contingent on Virgin Mobile providing the following:

- E911 compliant handsets should be provided to Virgin Mobile's new Lifeline customers and Virgin Mobile should replace any non-compliant handsets for its existing customers who are approved as Lifeline customers at no charge;
- Each Lifeline customer shall receive 200 free anytime minutes each month;
- Self-certification of Virgin Mobile Lifeline customers under penalty of perjury once service has been activated. In addition to the FPSC's annual Lifeline verification eligibility requirement, annual certification verifying that the head of household is only receiving Lifeline discounts from Virgin Mobile;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Virgin Mobile Lifeline at each residential address;
- Virgin Mobile should deal directly with its customers who do not utilize the Lifeline Automatic Enrollment function, to certify and verify Lifeline eligibility; and
- Submission of a quarterly report showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, and voluntarily being deactivated.

(Beard, Casey)

**Staff Analysis:** Under FCC rules, state commissions have primary responsibility to designate providers as ETCs.<sup>3</sup> Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal USF. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support."<sup>4</sup> According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout a designated service area.

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<sup>3</sup> 47 U.S.C. Section 214(e)(2), 47 CFR Section 54.201(b).

<sup>4</sup> 47 U.S.C. Section 254(e)(2).

### ETC Certification Requirements

The Code of Federal Regulations (CFR) addresses a state commission's responsibilities related to an ETC designation:<sup>5</sup>

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before 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.

To qualify as an ETC, a carrier must provide the nine services identified in 47 CFR 54.101 throughout the service area for which designation is received either using its own facilities or a combination of its own facilities and resale of another carrier's facilities. The services are:

- (1) Voice grade access to the public switched network Voice grade access is defined as a functionality that 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;
- (2) Local Usage Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users;
- (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, thus shortening call set-up time;
- (4) Single-party service or its functional equivalent Single-party service is telecommunications service that 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;
- (5) Access to emergency services Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations;

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<sup>5</sup> 47 CFR Section 54.201(c)

- (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;
- (7) Access to interexchange service Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network;
- (8) Access to directory assistance Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and
- (9) Toll limitation for qualifying low-income consumers Toll limitation or blocking restricts all direct-dial toll access.

In addition to providing the above services, 47 CFR 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

#### Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC. In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) a commitment and ability to provide the supported services throughout the designated area;
- 2) the ability to remain functional in emergency situations;
- 3) ability to satisfy consumer protection and service quality standards;
- 4) provision of local usage comparable to that offered by the incumbent LEC; and
- 5) an acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

The FCC encouraged states to also adopt these criteria, and the FPSC has done so in Docket No. 010977-TL, by Order No. PSC-05-0824-FOF-TL, issued August 15, 2005.

Staff has reviewed Virgin Mobile's petition for designation as an ETC in Florida, as well as additional documents filed with the FPSC and with the FCC. Staff has verified that Virgin Mobile has complied with the above requirements to be eligible as an ETC in Florida and Virgin Mobile has demonstrated its ability to provide the nine services identified in 47 CFR 54.101 using resale services.

Facilities Requirement – Forbearance Petition

Only an ETC can be eligible to receive high-cost or low-income universal service support.<sup>6</sup> To be eligible for ETC designation, a carrier must meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another carrier’s service.<sup>7</sup>

On December 5, 2007, Virgin Mobile filed a petition<sup>8</sup> with the FCC requesting forbearance from the facilities requirement since it was, at that time, a pure reseller of wireless services. On March 5, 2009, the FCC conditionally granted Virgin Mobile’s request to forbear from the facilities requirement in New York, Virginia, North Carolina, and Tennessee.<sup>9</sup> In the same order, the FCC conditionally granted Virgin Mobile’s petitions for limited designation as an ETC eligible only to receive universal service Lifeline support in those four states.

Due to the Pennsylvania Public Utility Commission’s assertion of jurisdiction over wireless ETC designations, the FCC dismissed without prejudice Virgin Mobile’s petition for designation as an ETC in Pennsylvania. When a state asserts jurisdiction over wireless ETC designations, it is up to that state to decide whether or not the FCC facilities forbearance and ETC applicant compliance plan should be applicable in their state. In TracFone’s FCC ETC designation order, the FCC acknowledged that the FPSC now has jurisdiction to consider CMRS applications for ETC designation and dismissed without prejudice the petition filed by TracFone seeking designation as an ETC in Florida.<sup>10</sup> The FCC suggested that “Should the Florida Public Service Commission consider granting a petition by TracFone for designation as a limited ETC in Florida, we would encourage it to require TracFone to adhere to the compliance plan we approve herein.” The FPSC considered the FCC’s suggestion and chose to follow the same compliance plan which included the requirement of PSAP certification by TracFone.<sup>11</sup>

Virgin Mobile was purchased by Sprint-Nextel in November 2009, and is now a wholly owned subsidiary of Sprint-Nextel. Virgin Mobile no longer purchases wholesale services from Sprint-Nextel. Virgin Mobile’s revenues are now reported as Sprint-Nextel revenues on the Sprint-Nextel Securities and Exchange Commission 10-K filing, and on form 499 at the Universal Service Administrative Company.<sup>12</sup> Staff believes Virgin Mobile is now a facilities-

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<sup>6</sup> 47 U.S.C. § 254(e).

<sup>7</sup> 47 CFR §54.201(d)

<sup>8</sup> Virgin Mobile USA, L.P. Petition for Forbearance, CC Docket No. 96-45 (filed Dec. 5, 2007).

<sup>9</sup> In the Matter of Virgin Mobile USA L.P. Petition for Forbearance from 47 U.S.C. §214(e)(1)(A), CC Docket No. 96-45, FCC 09-18, ¶ 35, Released March 5, 2009.

<sup>10</sup> In the Matter of Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in New York, Florida, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania and the District of Columbia, CC Docket No. 96-45, FCC 08-100, Released April 11, 2008.

<sup>11</sup> In re: Application for designation as an eligible telecommunications carrier (ETC) by TracFone Wireless, Inc. for limited purpose of offering lifeline service to qualified households, Docket No. 070586-TP, Order No. PSC-08-0418-PAA-TP, issued June 23, 2008.

<sup>12</sup> All intrastate, interstate and international providers of telecommunications within the United States, with very limited exceptions, must file the FCC Form 499-A Telecommunications Reporting Worksheet. The Form 499-A is used to “true up” universal service billings. The data from the form is also shared with the administrators of the

based wireless provider and forbearance from the facilities requirement is unnecessary in this docket.

Comments Received

TracFone

On May 3, 2010, TracFone filed “Comments in Opposition to Virgin Mobile’s Amended Eligible Telecommunications Carrier Petition.” In its comments, TracFone asserts the following:

- Virgin Mobile’s Status as a Wholly-Owned Subsidiary of Sprint Nextel Does Not Transform it into a Facilities-Based Carrier.
- The Staff’s Memorandum Would Deny Florida Lifeline Consumers the Benefits of the Public Safety Safeguards Imposed by the FCC to Ensure that Low Income Households Have Access to 911 and Enhanced 911 Service.
- The Commission Lacks Authority to Determine that the FCC’s Virgin Mobile Forbearance Order is No Longer Applicable.

TracFone requests that the Commission find that Virgin Mobile is not a facilities-based wireless carrier. TracFone also requests that if the Commission does designate Virgin Mobile as an ETC, it should find that Virgin Mobile remains subject to the conditions in the FCC’s Virgin Mobile Forbearance Order, including the Public Safety Answering Point (PSAP) certification condition.

Advocates for Universal Access (AUA)

Also on May 3, 2010, AUA filed a “request for reconsideration and demand for a public comment period,” asserting that “Virgin Mobile is not a facilities-based provider.” AUA argues that “no Notice or Opportunity for Comment was presented to the general public,” and “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 by the public.” AUA requests that the FPSC withdraw the staff recommendation and allow a 30-day comment period, and a 30-day response period prior to any recommendation.

On April 30, 2010, AUA also sent an e-mail (See Attachment D) to Florida County PSAP coordinators and other Florida E-911 persons stating:

The PSC is trying to take away your ability to oversee this local public safety function without your comments or input. And, the PSC could do this despite a Federal Communications Commission (FCC) order requiring Virgin Mobile to obtain PSAP Certifications. Tell the PSC that YOU oversee this vital public safety function, and not THEM. Tell the PSC to reconsider this issue because Virgin Mobile should obtain PSAP Certifications for Lifeline. Call the Florida PSC and tell them: Virgin Mobile is not a facilities-based carrier.

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Telecommunications Relay Service (TRS), the Local Number Portability fund (LNP), the North American Numbering Plan Administrator fund (NANPA), and the FCC for assessment of other fees and obligations.



Virgin Mobile Response to TracFone’s “Comments in Opposition”

On May 3, 2010, Virgin Mobile filed responses to TracFone’s “Comments in Opposition.” Virgin Mobile states that it is now, and has been, a facilities-based wireless provider since it was purchased by Sprint-Nextel in November 24, 2009. Virgin Mobile claims that “Virgin Mobile’s Lifeline offer is more attractive to consumers and competitively superior to TracFone’s SafeLink offer.” Virgin Mobile asserts that TracFone’s filing “is an attempt to forestall this potent competition, thereby effectively depriving lower-income Florida residents of competition and a more attractive wireless service.”

Virgin Mobile believes “The Commission should reject TracFone’s legally erroneous and procedurally defective arguments and instead designate Virgin Mobile as a facilities-based ETC and further the Commission’s important work of assuring the availability of high-quality, low-cost telecommunications services to all Florida consumers.” Virgin Mobile provided a signed Affidavit confirming that Virgin Mobile operates as a facilities-based carrier in the State of Florida under the FCC’s interpretation of the requirements of Section 214(e)(1)(A) of the Communications Act of 1934, as amended. (See Attachment C).

Virgin Mobile Response to Advocates for Universal Access Comments

On May 5, 2010, Virgin Mobile filed a “Response to Advocates for Universal Access Comments.” Virgin Mobile states that AUA’s claim that it should be given “the traditional 30-day comment period” is misplaced, and that AUA cites no statute or rule requiring any such comment period. Virgin Mobile states that AUA’s allegations of “challenges” for 911 access by Virgin Mobile customers are completely baseless. Virgin Mobile explains that when a Virgin Mobile customer calls 9-1-1, the call is received by Sprint Corporate Security, which maintains responsibility for routing to the appropriate PSAP, just as with any other 9-1-1 call made on Sprint’s network. There is no handoff to any “exigent circumstances hotline for Virgin Mobile,” as fabricated by AUA. Thus, there is no useful purpose for a separate certification of 9-1-1 and E-9-1-1 compliance: the process is identical to that for 9-1-1 calls made by Sprint customers.

Staff Analysis of Comments and Responses

Neither TracFone or AUA are parties or have requested “Interested Party” status in this docket. Staff reviewed each filing made by TracFone, AUA, and Virgin Mobile, reviewed the FCC definitions of wireless reseller and facilities-based provider, and reviewed Sprint-Nextel’s Securities and Exchange Commission 10-K filing. Staff sent data requests to Virgin Mobile on May 19, 2009, September 16, 2009, January 6, 2010, and March 8, 2010, to obtain additional information on Virgin Mobile’s filing. In addition, staff conducted a noticed conference call with Virgin Mobile on April 26, 2010, to discuss Virgin Mobile’s position that it is now a facilities-based provider.

AUA appears to be misinformed as to the Commission’s Proposed Agency Action (PAA) process and ability of affected persons to participate in it. Virgin Mobile’s ETC petition was originally filed on April 29, 2009, with an Amended Petition filed April 2, 2010, after Sprint-Nextel purchased Virgin Mobile. AUA had the opportunity to file comments in this docket at

anytime over this twelve-month period. AUA will have the opportunity to attend the Commission’s agenda conference to address the Commission when staff’s recommendation is being considered. Once a Commission decision is made and a PAA Order is issued, persons whose interests are substantially affected and disagree with the Commission decision may file a petition for formal hearing pursuant to Rule 25-22.029, Florida Administrative Code, during the 21-day protest period.

AUA’s e-mail to the PSAP Coordinators failed to mention that Sprint-Nextel purchased Virgin Mobile in November 2009, and is now a wholly owned subsidiary of Sprint-Nextel and no longer a wireless reseller required to obtain PSAP certification. Staff unsuccessfully attempted to contact AUA to determine if it would like to be an interested party or become an intervener in this docket. Staff left voicemails and sent e-mails but received no replies. Apparently, AUA uses an executive voice mail service and the only physical address found was that of a mailbox rental store in Seattle. The President & Executive Director of AUA is the Principal of “The Advocacy Group,” a public affairs and lobbying group in Seattle.<sup>13</sup>

Staff discussed PSAP certification with the Florida Statewide 911 Coordinator, explaining that Virgin Mobile was bought by Sprint-Nextel and is now a wholly owned subsidiary of Sprint-Nextel using only its network. The Florida 911 Coordinator stated that he does not see any issue regarding Virgin Mobile 911 service in Florida. The 911 Coordinator explained that Sprint-Nextel is Phase II compliant<sup>14</sup> in all counties where they serve in Florida.

Staff concurs with Virgin Mobile’s responses to TracFone and AUA’s comments. Staff believes that Virgin Mobile has been, and is now, a facilities-based provider in the State of Florida and should be treated as such in its ETC designation petition. Staff questions the reasons behind TracFone’s comments. While TracFone offers 68 minutes of free airtime each month to Lifeline-eligible consumers, Virgin Mobile will be offering 200 minutes of free airtime each month to Lifeline subscribers.

#### Public Interest Determinations

Under Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Sections 214 or 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the

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<sup>13</sup> [http://advocacygroup.net/who\\_we\\_are.php](http://advocacygroup.net/who_we_are.php)

<sup>14</sup> Phase II 911 service provides the capability to receive the call back number and the location information (latitude and longitude) provided for the cellular caller from the service provider.

deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.<sup>15</sup> The FPSC has determined that before designating a carrier as an ETC, it should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.<sup>16</sup>

Virgin Mobile states that approval of its ETC petition would be in the public interest by allowing Virgin Mobile to provide low-income Florida consumers with more affordable and higher quality wireless services. Many lower-income consumers have not yet reaped the full benefits of the intensely competitive wireless marketplace. Whether because of financial constraints, poor credit, or intermittent employment, these consumers often lack the countless choices available to most consumers. Virgin Mobile believes that designating it as an ETC would enable it to expand the availability of affordable telecommunications services to qualifying Florida consumers, which would lead to lower prices and increased consumer choice. According to Virgin Mobile, designating it as an ETC would further the fundamental goals of universal service policy by broadening the availability of telecommunications services to low-income Florida consumers, who are the intended beneficiaries of universal service.

#### Virgin Mobile Lifeline Offering

Prior to commencement of service, Virgin Mobile will require applicants to attest and sign under penalty of perjury that they meet the relevant eligibility criteria and that they are head of their household and will be receiving Lifeline-supported service only from Virgin Mobile. Virgin Mobile's Lifeline offering includes the following:

- Lifeline-eligible customers will receive a free handset once they are approved for service in Florida;
- Existing Virgin Mobile customers will be permitted to avail themselves of the free handset offer or continue to use their current handset once approved for Lifeline service;
- Customers will not be required to enter into a long-term service contract;
- Customers will automatically receive 200 anytime minutes each month at no charge (minutes do not rollover if not used);
- Additional minutes can be purchased through prepaid cards wherever Virgin Mobile products and services for \$0.20 per minute and \$0.10 per minute text; and,

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<sup>15</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005, Released: March 17, 2005.

<sup>16</sup> In re: Petition for designation as eligible telecommunications carrier (ETC) by Easy Telephone, Inc., Docket No. 090337-TX, PSC-10-0125-PAA-TX, issued March 2, 2010, p.4; In re: Application for designation as eligible telecommunications carrier (ETC) by Express Phone Service, Inc., Docket No. 080169-TX, PSC-08-0836-PAA-TX, issued December 24, 2008, p.4.

- Voice mail, caller ID, and call waiting will be included.

Virgin Mobile has acknowledged the requirements of the Florida Lifeline program, and it has agreed to adhere to the program which provides qualified customers a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state Lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. Virgin Mobile indicates that it will provide the \$3.50 credit to qualified clients, advertise the availability of Lifeline, and begin offering these services as soon as possible after meeting any requirements implemented by the FPSC.

Virgin Mobile has also indicated that its accounts with the FCC and the Universal Service Administrative Company (USAC) are current, and it is not aware of any outstanding complaints or violations with either entity. As part of the petition process, Virgin Mobile has agreed to abide by any applicable Florida Statutes, Florida Administrative rules, and FPSC Orders pertaining to the Lifeline program, and commits to use federal universal service support only for the provision of services for which the support is intended.

#### Lifeline Advertising

Virgin Mobile will advertise the availability and rates for the services described above in its Florida service areas using media of general distribution as required by Section 214(e)(1)(B) of the Act.<sup>17</sup> Virgin Mobile will target locations where consumers receive benefits that make them eligible for Lifeline services, including various state and local social service agencies, to inform customers of the availability of its Lifeline services. Virgin Mobile will coordinate its efforts with public and private assistance agencies to ensure the availability of Lifeline services reaches the broadest audience possible. Virgin Mobile also will develop outreach efforts for non-English speakers, and increase awareness of the Lifeline program at existing third-party retail outlets through distribution of brochures. In addition, Virgin Mobile may market its Lifeline services through its Re\*Generation pro-social program, which is a program that connects at-risk youth with young people who want to make a difference through partnerships with innovative not-for-profit organizations. Finally, Virgin Mobile will promote its Lifeline offerings to its existing customers, many of whom will qualify for Lifeline, through emails and text messaging campaigns.

#### Transitional Lifeline

To comply with the requirement of Transitional Lifeline,<sup>18</sup> Virgin Mobile stated that it will comply with the requirement of providing a 30 percent monthly discount to customers no longer qualifying for Lifeline for a period of 12 months. Because of the pay-as-you-go nature of

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<sup>17</sup> See 47 U.S.C. Section 214(e)(1)(B)

<sup>18</sup> Transitional Lifeline requires that each local exchange telecommunications company shall offer discounted residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline. A Lifeline subscriber who requests such service shall receive the discounted price for a period of one year after the date the subscriber ceases to be qualified for Lifeline. In no event, shall this preclude the offering of any other discounted services which comply with Sections 364.08, 364.09, and 364.10 F.S., per 364.105 F.S.

its offering, Virgin Mobile will provide one of two options for transitional Lifeline customers: (a) a 30 percent discount on its standard \$0.20 per minute rate or (b) a 30 percent discount on the 200-minute plan at a rate of \$10 per month. In both options (a) and (b) the transition would be for a period of one year on the customer's handset.

### Conclusion

Virgin Mobile states it is able to provide all services and functionalities supported by the universal service program, detailed in CFR Section 54.101(a). Virgin Mobile understands all ETC requirements of the FCC and the FPSC and has agreed to abide by all applicable Florida Statutes, Florida Administrative Rules, and FPSC Orders (See Attachment A certification). Virgin Mobile also understands that the FPSC has the authority to both grant and revoke ETC designation if Virgin Mobile is non-compliant.

Based on staff's review, along with Virgin Mobile's commitment to abide by both state and federal rules and procedures, staff believes that Virgin Mobile's petition to be designated as an ETC is in the public interest and should be approved. If Virgin Mobile should decide in the future to seek High Cost universal service funds, it should be required to file a petition and make a showing that it would be in the public interest to grant such a request. Upon a decision by the Commission, staff will continue the necessary oversight to ensure that Virgin Mobile, along with all other ETCs in Florida, are upholding these principles and attaining the goals and objectives of both the state and federal universal service programs.

Based on the above, staff recommends that Virgin Mobile be granted limited ETC designation status in the AT&T, Verizon, and CenturyLink wire centers listed in Attachment B of this recommendation, for the sole purpose of offering Lifeline discounts to qualifying consumers in Florida. Granting of ETC designation should be contingent on Virgin Mobile providing the following:

- E911 compliant handsets should be provided to Virgin Mobile's new customers and Virgin Mobile should replace any non-compliant handsets for its existing customers who are approved as Lifeline customers at no charge;
- Each Lifeline customer shall receive 200 free anytime minutes each month;
- Self-certification of Virgin Mobile Lifeline customers under penalty of perjury once service has been activated. In addition to the FPSC's annual Lifeline verification eligibility requirement, annual certification verifying that the head of household is only receiving Lifeline discounts from Virgin Mobile;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Virgin Mobile Lifeline at each residential address;
- Virgin Mobile should deal directly with its customers who do not utilize the Lifeline Automatic Enrollment function, to certify and verify Lifeline eligibility; and

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- Submission of a quarterly report showing the number of customers who have been deactivated for not having any activity on their phone in a 60-day period, not passing annual verification, and voluntarily being deactivated.

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Date: May 6, 2010 ~~April 23, 2010~~

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Tan)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.

**APPLICANT CERTIFICATION**

State of New Jersey  
County of Somerset

My name is Peter Lurie, I am employed by Virgin Mobile USA, L.P., located at 10 Independence Blvd., Warren, NJ, as its Senior Vice President - Legal. I am an officer of the Company and am authorized to provide the following certifications on behalf of the Company. This certification is being given to support the Eligible Telecommunications Carrier petition filed by my Company with the Florida Public Service Commission (PSC).

Company hereby certifies the following:

1. Company will follow all applicable Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers, and the Florida Link-Up and Lifeline Program.
2. Company will follow all applicable FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service.
3. Company agrees that the Florida PSC may revoke a carrier's ETC status for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC status.
4. Company understands that if its petition for ETC status is approved, it will be for limited ETC status to provide Lifeline service only, and the Company will be eligible only to receive low-income support from the Universal Service Fund.
5. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers.
6. Company agrees that upon request, it will submit to the PSC a copy of Form 497 forms filed with USAC to:  
  
Florida Public Service Commission  
Division of Regulatory Analysis, Market Practices Section  
2540 Shumard Oak Drive  
Tallahassee, Florida 32399-0850
7. Company understands that in accordance with the Florida Lifeline program, eligible customers will receive a \$13.50 monthly discount on their phone bill, \$3.50 of which is



provided by the ETC, and \$10.00 of which is reimbursable from the Federal Universal Service Fund.

**I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.**



March 9, 2010

\_\_\_\_\_  
Signature  
Peter Lurie

**Business Address:**  
10 Independence Blvd.  
Warren, NJ 07059

ABDLFLXA  
ALCHFLXA  
ALFAFLXA  
ALFRFLXA  
ALSPFLXA  
ALTRFLXA  
ALVAFLXA  
ANMRFLXA  
APPKFLXA  
ARCDFLXA  
ARCHFLMA  
ASTRFLXA  
AVPKFLXA  
BAKRFLXA  
BARTFLXA  
BAYUFLXA  
BBPKFLXA  
BCGRFLXA  
BCRTFLBT  
BCRTFLMA  
BCRTFLSA  
BGPIFLMA  
BHPKFLXA  
BKVLFLJF  
BLDWFLMA  
BLGLFLMA  
BLTWFLXA  
BLVWFLXA  
BNFYFLXA  
BNNLFLMA  
BNSPFLXA  
BORAFLXA  
BRBAFLXA  
BRFRFLXA  
BRJTFLXA  
BRKRFLXA  
BRNDFLXA  
BRSNFLMA  
BRTNFLXX  
BSHNFLXA  
BVHLFLXA  
BWLGFLEXA  
BYBHFLMA  
GENVFLMA  
GLBRFLMC  
GLDLFLXA

BYSHFLXA  
CCBHFLAF  
CCBHFLMA  
CDKYFLMA  
CFLDFLMA  
CFVLFLXA  
CHLKFLXA  
CHPLFLJA  
CHSWFLXA  
CHTHFLXA  
CITRFLXA  
CLHNFLXA  
CLMTFLXA  
CLTNFLXA  
CLWRFLXA  
CNSDFLXA  
CNTMFLLE  
COCOFLMA  
COCOFLME  
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CPCRFLXB  
CPHZFLXA  
CRCYFLXA  
CRRVFLXA  
CRVWFLXA  
CRWDFLXA  
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CSLBFLXA  
CTDLFLXA  
CYGRFLXA  
CYLKFLXA  
CYLKFLXB  
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DBRYFLMA  
DDCYFLXA  
DELDFLMA  
DESTFLXA  
DFSPFLXA  
DLBHFLKP  
DLBHFLMA  
DLSPFLMA  
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DNLNFLWM  
JCBHFLMA  
JCBHFLSP  
JCVLFLAR

DRBHFLMA  
DUNDFLXA  
DWPKFLXA  
DYBHFLFN  
DYBHFLMA  
DYBHFLQB  
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DYBHFLPO  
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EGLLFLIH  
ENWDFLXA  
EORNFLMA  
ESTSFLXA  
EVRGFLXA  
FHSDFLXA  
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FRSTFLXA  
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GCVLFLMA  
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LNLKFLXA

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HOWYFLXA  
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INRKFLXX  
INTRFLXA  
INTWFLXA  
INVRFLXA  
IONAFLXA  
ISLMFLMA  
JAY FLMA  
JCBHFLAB  
MLTNFLRA  
MNDRFLAV  
MNDRFLLO  
MNDRFLW

JCVLFLBW  
JCVLFLCL  
JCVLFLFC  
JCVLFLIA  
JCVLFLJT  
JCVLFLLF  
JCVLFLNO  
JCVLFLOW  
JCVLFLRV  
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JCVLFLSM  
JCVLFLWC  
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JSPRFLXA  
KGLKFLXA  
KNVFLFLXA  
KSSMFLXA  
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KSSMFLXD  
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KYLRFLLS  
KYLRFLMA  
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KYWSFLMA  
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LDLKFLXA  
LEE FLXA  
LGBKFLXA  
LHACFLXA  
LKALFLXA  
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LKWFLFLXA  
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ORLDFLCL  
ORLDFLMA

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LYHNFLOH  
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MIAMFLAL  
MIAMFLAP  
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PTCYFLXA  
PTSJFLXA

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MRDCFLXA  
MRHNFLXA  
MRNNFLXA  
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MXVLFLMA  
MYCYFLXA  
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NWBYFLMA  
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OCALFLXC  
OCALFLXJ  
OCNFFLXA  
OKCBFLXA  
OKHLFLMA  
OKLWFLXA  
OLDSFLXA  
OLTWFLLN  
ORCYFLXA  
STRKFLXA  
STRTFLMA  
SVSPFLXA  
TAFBFLXA  
TAMPFLXE

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ORLDFLSA  
ORPKFLMA  
ORPKFLRW  
ORSPFLXA  
OSPRFLXA  
OVIDFLCA  
PACEFLPV  
PAHKFLMA  
PANCFLXA  
PCBHFLNT  
PKCYFLXA  
PLCSFLMA  
PLMTFLXA  
PLSLFLXA  
PLTKFLMA  
PMBHFLCS  
PMBHFLFE  
PMBHFLMA  
PMBHFLNP  
PMBHFLTA  
PMPKFLMA  
PNCRFLXA  
PNCYFLCA  
PNCYFLMA  
PNGRFLXA  
PNISFLXA  
PNLNFLXA  
PNLSFLXA  
PNSCFLBL  
PNSCFLFP  
PNSCFLHC  
PNSCFLPB  
PNSCFLWA  
PNVDFLMA  
POINFLXA  
PRRNFLMA  
PRRYFLXA  
PRSHFLXA  
PRSNFLFD  
WNGRFLXA  
WNHNFLXC  
WNPKFLXA  
WPBHFLHH  
WPBHFLLE

PTSLFLMA  
PTSLFLSO  
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RSKNFLXA  
RYHLFLXA  
SARKFLXA  
SBNGFLXA  
SBSTFLFE  
SBSTFLMA  
SCPKFLXA  
SEKYFLXA  
SGBEFLXA  
SGBHFLXA  
SGKYFLMA  
SHLMFLXA  
SKWYFLXA  
SLHLFLXA  
SLSPFLXA  
SMNLFLXA  
SNANFLXA  
SNDSFLXA  
SNFRFLMA  
SNISFLXA  
SNRSFLXA  
SNSNFLXA  
SNSPFLXA  
SPBGFLXA  
SPBGFLXS  
SPCPFLXA  
SPRGFLXA  
SRSTFLXA  
SSDSFLXA  
SSPRFLXA  
STAGFLBS  
STAGFLMA  
STAGFLSH  
STAGFLWG  
STCDFLXA  
STGRFLXA  
STMKFLXA  
SVSSFLXA  
SWTHFLXA  
SYHSFLCC

TAMPFLXX	WPBHFLRB
THNTFLXA	WPBHFLRP
TLCHFLXA	WSSDFLXA
TLHSFLXA	WSTVFLXA
TLHSFLXB	WWSPFLHI
TLHSFLXC	WWSPFLSH
TLHSFLXD	YBCTFLXA
TLHSFLXE	YNFNFLMA
TLHSFLXF	YNTWFLMA
TLHSFLXG	YULEFLMA
TLHSFLXH	ZLSPFLXA
TMTRFLXA	ZPHYFLXA
TRENFLMA	
TRSPFLXA	
TTVLFLMA	
TVRSFLXA	
UMTLFLXA	
UNVRFLXA	
VENCFLXA	
VENCFLXS	
VERNFLMA	
VLPRFLXA	
VLPRFLXB	
VRBHFLBE	
VRBHFLMA	
WALDFLXA	
WCHLFLXA	
WELKFLMA	
WHSPFLXA	
WIMMFLXA	
WLBFLXA	
WLCHFLXA	
WLCRFLXA	
WLHLFLXA	
WLSTFLXA	
WLWDFLXA	
WNDRFLXA	
WPBHFLAN	
WPBHFLGA	
WPBHFLGR	

**AFFIDAVIT**

I, Peter Lurie, do hereby declare under penalty of perjury as follows:

1. I am the Senior Vice President of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059. I submit this affidavit in connection with the Florida Public Service Commission's review of the Amended Petition of Virgin Mobile USA, L.P. for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Services.

2. I certify that, as a wholly owned subsidiary of Sprint Nextel Corporation ("Sprint"), Virgin Mobile no longer resells the wireless services of Sprint, any of its operating subsidiaries or any other carrier.

3. I further confirm that Virgin Mobile operates as a facilities-based carrier in the State of Florida under the Federal Communications Commission's interpretation of the requirements of Section 214(e)(1)(A) of the Communications Act of 1934, as amended.

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on May 3, 2010



Peter Lurie  
Senior Vice President

Subscribed and sworn before me  
This 3<sup>rd</sup> day of March 2010.

  
Notary Public

RILLAN BUTLER  
NOTARY PUBLIC, State of New York  
No. 01806149088  
Qualified in Kings County  
Commission Expires July 3, 2010

Docket No. 090245-TP  
Date: May 6, 2010 April 23, 2010

Attachment D

**From:** sheila@advocatesua.com [mailto:sheila@advocatesua.com]  
**Sent:** Friday, April 30, 2010 10:34 AM  
**To:** sheila@advocatesua.com  
**Subject:** URGENT PSC ALERT for all 9-1-1 County Coordinators

**URGENT ALERT**

To All Florida 9-1-1 County Coordinators:

The Florida Public Service Commission (PSC) may approve Virgin Mobile to provide Lifeline Services in Florida WITHOUT your PSAP certification, approval or drive testing! **The hearing is scheduled for this Tuesday, May 4th.**

I'm writing to you from Advocates for Universal Access. We are a wireless industry watchdog organization with particular concerns in the areas of emergency access and consumer pricing. We have been watching different wireless resellers entering the Lifeline market (these are federally funded programs providing discount or free phone service for low-income families). Every other pre-paid wireless company has been required to get PSAP approval, and Virgin Mobile should, too. This case at the Florida PSC got our attention and we wanted the 9-1-1 community in Florida to be aware of it.

The PSC is trying to take away your ability to oversee this local public safety function without your comments or input. And, the PSC could do this despite a Federal Communications Commission (FCC) order requiring Virgin Mobile to obtain PSAP Certifications.

Tell the PSC that YOU oversee this vital public safety function, and not THEM. Tell the PSC to reconsider this issue because Virgin Mobile should obtain PSAP Certifications for Lifeline.

Call the Florida PSC and tell them: Virgin Mobile is not a facilities-based carrier. When a Virgin Mobile customer calls 9-1-1, the call displays on the network it is riding on - usually Sprint. Reference case number 090245-TP. Contact PSC Executive Director Timothy J. Devlin at (850) 413-6068 or comment online at [www.floridaPSC.com](http://www.floridaPSC.com) and click "Contact Us" to fill out a comment form.

- You must act quickly, because a hearing is scheduled on this matter May 4th, 2010.

- Thank you,  
Sheila Stickel

Advocates for Universal Access

AUA: Everyone deserves an emergency phone and a plan they understand.