COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE

Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission's Order Reforming the Lifeline Program	D.T.C. 13-4

COMMENTS OF VIRGIN MOBILE USA, L.P.

On April 1, 2013, the Department of Telecommunications and Cable (the "Department") issued an Order, on its own motion, opening the above captioned docket. The Department seeks comments on certain issues relevant to the Lifeline program in Massachusetts. Virgin Mobile USA, L.P. ("Virgin Mobile") was designated by the Department to provide wireless Lifeline service in Massachusetts as an Eligible Telecommunications Carriers ("ETC"),[1] and therefore has an interest in the instant proceeding.

Virgin Mobile urges the Department to avoid imposing burdensome regulatory requirements. Under the current regulatory approach, numerous carriers have entered the market to compete to provide Lifeline services. These carriers have introduced different service plans and products and offer competitive choices to customers that would otherwise have few or none. The Department should observe the development of this nascent competitive market and impose regulations only in such instances where the competitive forces within the market are not themselves effective at preventing a market failure. Since competition within this market, and indeed the very market itself, is still in an embryonic stage, it is advisable for the Department to

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[1] *See In the Matter of the Application of Virgin Mobile USA, L.P.'s Petition for Limited Designation as an Eligible Telecommunications Carrier*, D.T.C. 10-11, Order Approving Petition (Sept. 9, 2011) ("Virgin Mobile Order").

first observe the market and its development before imposing any regulations that could hinder the development of this competitive market. Furthermore, the Department's goal should be limited to identifying and correcting market failures, and even then only through regulations that are narrowly tailored to a permissible purpose.

The Department has proposed two separate outage reporting requirements. The first proposal is for ETCs to submit as an annual report the outage information indicated in 47 C.F.R. §54.422(b). The second proposal is for ETCs to submit to the Department unique outage reports defined by the Department. Virgin Mobile does not oppose the Department's first proposal regarding submission of an annual outage report that parallels the report defined at 47 C.F.R. § 54.422(b). Nevertheless, because 47 C.F.R. §54.422(c) indicates that reports required under Section 54.422 "must also be filed with the relevant state commissions," Virgin Mobile suggests the Department consider simply requiring that it be provided a copy of the FCC mandated annual report required under Section 54.422(b). The Department should avoid creating, or appearing to create, a separate reporting requirement than the one specified in the federal rule. To the extent that the Department seeks to receive the outage report specified in the federal rules, however, the Department must afford those reports confidentiality protection equivalent to that which is available under the Federal Communications Commission's ("FCC") rules.

Regarding the Department's second proposal for outage reporting, Virgin Mobile opposes the Department's suggestion for a number of reasons. First, the Department has not expressed any rational or jurisdictional basis for its purported requirement. The Department indicates that it seeks outage reporting within one business day as an extension of its authority, under 47 U.S.C. § 254(f), to advance universal service and to prevent waste, fraud and abuse. This justification is inapposite. Section 254 indicates that a state may adopt regulations that are not inconsistent with the FCC's rules. The FCC's rules impose an annual outage reporting obligation for ETCs, while the Department seeks to impose a one business day reporting obligation. These obligations are inconsistent.

Furthermore, the Department's authority under Section 254(f) is to "preserve and advance universal service." As applied to the Department's suggested reporting, there are no universal service goals addressed by the proposed reporting. To the extent that Virgin Mobile provides Lifeline service over the same network that is used to provide service to all of Sprint Nextel Corporation's[2] wireless subsidiaries' customers, it cannot be said that the suggested outage report furthers universal service. It does not. Because service to all of Sprint's wireless subsidiaries' customers is provided on the same network, any outage would impact all classes of customers equally. Therefore, universal service concerns are not implicated.

The suggested one business day reporting timeframe is inappropriate for other reasons as well. For instance, such an obligation would be highly burdensome and not at all tailored to the Department's role in ETC oversight. While it is possible the Department may generally have an interest in gauging the level of service an ETC provides to its Lifeline customers, a reporting requirement seeking submission of outage information within one business day, and a continuing obligation to provide periodic updates on service restoration, is entirely unrelated to the advancement of universal service or the Department's authority under Section 254 of the Act.

It must also be noted that the information the Department seeks, information similar to that collected by the FCC under 47 C.F.R. § 4.1 *et seq.*,[3] is not made available to the states under

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[2] Virgin Mobile is a wholly owned subsidiary of Sprint Nextel Corporation ("Sprint").
[3] In support of its proposed rules, the Department cited to the FCC's rules under 47 C.F.R. § 4.1 *et seq*.

the FCC's current processes.[4] Under the FCC's current processes, outage information is shared with state Emergency Operation Center ("EOC") personnel in an aggregated format at the EOC only, but such information does not include the information sought by the Department. The information shared at the EOC is shared by federal Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) personnel directly and is obtained through the Disaster Information Reporting System (DIRS). DIRS information is provided voluntarily by carriers with high confidentiality expectations and shared by DHS/FEMA personnel with strict confidentiality requirements. Accordingly, the Department's suggested reporting contradicts not only to the FCC's single, annual outage report requirement, but is also contrary to other outage data reporting rules and processes, and fails to address the confidentiality requirements and expectations of both the carriers and federal agencies.

The Department invited comments on whether it should: (1) expand eligibility requirements to include additional qualifying programs such as the Women, Infants, and Children (WIC) program and appropriate income based Veterans Services programs; and/or (2) extend the qualifying income amount from an annual household income level of 135% or below of the Federal Poverty Guidelines ("FPG") to 150% or below of the FPG. Virgin Mobile supports an expansion of the eligibility criteria in these limited instances. Adding WIC participants, veterans and additional low-income households to the eligibility criteria undoubtedly would advance the goal of ensuring universal availability of phone service to low-income consumers.

[4] It also bears noting that while the Department cites to Section 4.1 *et seq.* in support of its proposed reporting requirement, the data the Department seeks is not the same as that required to be reported under the federal rules, and it may not be possible to provide the data the Department seeks in the format or timeframe the Department suggests.

Virgin Mobile supports expanding Lifeline eligibility criteria to include participants in the WIC program. It is difficult to conceive of a population more in need of staying connected with social services, health care providers and family than pregnant women and women with infants and young children. Virgin Mobile's Assurance Wireless Lifeline brand currently partners with organizations that provide health care and other support services to pregnant women and new mothers, and would welcome the opportunity to partner with WIC clinics to conduct outreach and provide Lifeline service to this population.

Some number of WIC participants may qualify under other Lifeline-qualifying programs.[5] However, many Lifeline participants could qualify under multiple programs, a fact that should not result in the reduction of eligible programs. Instead, expanding the eligibility criteria to include WIC should be with the goal of including low-income women and children who may not otherwise qualify for Lifeline and educating an additional segment of the low-income population about the availability of Lifeline service. Where an infant or child provided the basis for eligibility, under the amended Lifeline rules, the Lifeline benefit could clearly attach to the household instead of the "head of household," as under the old rules.

Virgin Mobile also supports the inclusion in the Lifeline program of income-based Veterans' Services programs. Lifeline can provide an invaluable tool for veterans who are attempting to get back on their feet after serving our Country. As with WIC participants, veterans may qualify for Lifeline based on income or under other programs. Permitting veterans to qualify based on participation in certain Veterans Service programs would allow Lifeline providers to more easily identify and serve Lifeline eligible veterans. For instance, Lifeline

[5] *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., Rep. & Order & Further Notice of Proposed Rulemaking, FCC 12-11, at ¶ 484 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*").

providers could engage in more direct outreach to veterans, educating these men and women on the availability of Lifeline service and their potential eligibility. Significantly, Lifeline providers are now able serve veterans who are homeless or at risk of becoming homeless and living in group housing situations. Under the revised Lifeline rules, the group nature of a veteran's residence no longer poses a barrier to Lifeline enrollment.

Virgin Mobile also supports raising the threshold income for Lifeline eligibility to 150 percent of the FPG rather than 135 percent to make service available to a greater proportion of low-income households. The success of the Lifeline program is supported by the statistics, which demonstrate that affordability and adoption are inextricably linked. Between 1997 and 2011, the Lifeline subsidy amount increased from $3.50 to $10. From 1984 to 2011, the gap in telephone penetration rates between low-income and non-low-income households narrowed from 12% to 4%. According to the FCC, "states that provide higher monthly Lifeline subsidies per household exhibited greater growth in phone subscribership from 1997 to the present."[6]

At 135 percent, the FPG for a family of four is $31,794. At 150 percent, the FPG for a family of four is $35,325.[7] In the Lifeline Reform Order, the FCC declined to adjust the threshold from 135% to 150%, citing a mixed record on the proposal.[8] Instead, the FCC indicated that it "should evaluate the impact of the other changes we adopt today before taking steps that could increase program demand."[9] The reforms have had a dramatic impact on program savings. Reform measures adopted last year resulted in $214 million in savings in

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[6] *Lifeline Reform Order*, ¶ 484.
[7] 2013 Federal Poverty Guidelines published by USAC, *available at* http://www.lifelinesupport.org/_res/documents/li/pdf/handouts/Income_Requirements.pdf.
[8] *Lifeline Reform Order*, ¶ 68.
[9] *Id.*

2012.[10] The annual certification requirement alone is estimated to yield an additional $400 million in program savings in 2013.[11] In light of these savings, an increase to 150 percent of the FPG would make Lifeline available to additional households in economic distress and also bring the Lifeline income threshold into line with other federal programs such as LIHEAP.

Respectfully submitted,

Virgin Mobile USA, L.P.

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[10] FCC Press Release, Feb. 12, 2013.
[11] FCC Public Notice, DA 13-872, Apr. 25, 2013.