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September 15, 2014

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Re: DTC 13-4; Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission's Order Reforming the Lifeline Program

Dear Secretary Williams:

On behalf of Virgin Mobile USA, L.P. ("Virgin Mobile"), a wholly owned subsidiary of Sprint Corporation, enclosed please find an original and ten (10) copies of Virgin Mobile's Comments in the above referenced matter. Virgin Mobile has electronically filed its comments with the Department as well. Thank you for your attention to this matter. If you have any questions concerning this request, please do not hesitate to contact the undersigned at (703) 592-7618.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Benjamin J. Aron", written over a printed name.

Benjamin J. Aron

Enclosures
CC: service list via email only (hard copy upon request)

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND 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

VIRGIN MOBILE USA, L.P.'S FURTHER COMMENTS

On August 1, 2014, the Department of Telecommunications and Cable (the "Department") issued an Order Implementing Requirements and Further Request for Comments ("Further Request") in the above captioned docket. Therein the Department sought comments on certain issues relevant to its administration of 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 herein comments on certain issues identified by the Department. While Virgin Mobile declines to comment on all issues identified by the Department, it reserves the right to address in reply comments matters addressed by other participants.

*Commission-Based Compensation.*² The Department proposes to regulate the commission-based model of compensation, including eliminating it altogether. Virgin Mobile does not believe that there is anything inherently wrong with the commission-based compensation model that would warrant its regulation or elimination. Enrollment efforts by carriers should be reviewed holistically during the ETC application process and thereafter if such

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").

² Further Request at p. 23.

review is warranted. In fact, the structure of ETC enrollment processes differ, and compensation of employees and agents may differ at different points in the process. For instance, Virgin Mobile compensates agents who collect applications using a commission-based model, but does not permit these agents to render eligibility determinations. To the extent that a carrier's enrollment process, including but not limited to the compensation associated therewith, provides questionable incentives that may result in fraud waste and abuse, DTC should act to address the issue with that ETC.

*Requiring Minimum Level of Non-Lifeline Subscribership.*³ Virgin Mobile believes that it is appropriate for the Department to ensure that carriers possess the technical and financial qualifications required for ETC designation. Both the Telecommunications Act⁴, at Section 214(e)(1), and the FCC's rules⁵ quantify requirements for certification as an ETC. Regarding imposition of further ETC qualification not contained in either the Telecommunications Act or the FCC's rules, Virgin Mobile urges the Department to proceed cautiously. Virgin Mobile suggests that the Department should focus on whether carriers meet the technical and financial requirements for ETC designation or are otherwise committed to, and are, providing adequate service.

As a subsidiary of Sprint Corporation ("Sprint"), Virgin Mobile certainly would satisfy the non-Lifeline customer base requirements on which the Department seeks comment.⁶ Nevertheless, Virgin Mobile urges the Department to consider whether the proposed requirement is narrowly tailored to combat waste, fraud and abuse, or ensure quality of service. Virgin

³ Further Request at p. 23.

⁴ Telecommunications Act of 1996, Pub L No 104-104, 110 Stat 56 (1996) (the "Act").

⁵ See 47 C.F.R. § 54.201(d).

⁶ It is possible that Virgin Mobile itself would satisfy the threshold described by the Department, but since collectively the Sprint companies satisfy undoubtedly the proposed criteria, Virgin Mobile has not more finitely analyzed application of the subscribership threshold.

Mobile is aware of the no information in the record indicating a relationship between the proposed threshold and programmatic abuse. Devoid of such information or evidence, Virgin Mobile suggests that focusing on already codified technical and financial qualifications may prove a more appropriate approach.

*Requiring Subscriber De-Enrollment Without Verification.*⁷ Subscribers should be allowed to de-enroll from Lifeline upon request and without being required to provide a reason. This is a practice to which Virgin Mobile already conforms. Imposition of a requirement that ETCs permit cancellation of accounts without any account verification is inadvisable in the extreme, however. Without the ability to require account verification prior to cancellation, cancellations could easily be accomplished by persons other than the account holder. Removal of the ability to require account verification sharply elevates the potential for malfeasance, and carriers would be prevented by Department rules or policy from safeguarding accounts. Account verification also tends to reduce the possibility of errors.

*State Database Verification Requirement.*⁸ Virgin Mobile believes that the ability to verify applicant eligibility through a state database can be beneficial. However, whatever advantages there may be can quickly be outweighed by costs associated with development and ongoing administration of such database. It is in this regard that Virgin Mobile qualifies its support. In Virgin Mobile's experience, there is little to no additional advantage between a simplistic verification system involving merely an excel spreadsheet produced at regular intervals and an online interface accessed by ETCs for applicant verification.

To the extent the Commonwealth intends to develop a verification database, Virgin Mobile stresses to the Department that development and operational costs must be kept to a

⁷ Further Request at p. 24.

⁸ Further Request at p. 24 - 25.

minimum. Current ETCs are prejudiced relative to later-arriving ETCs regarding development costs. Furthermore, development costs shared pro rata among current ETCs can be rendered prejudicial by shifting market share. Virgin Mobile is mindful that access to a state database for verification can be beneficial, but Virgin Mobile urges the Department to recognize that that benefit is insufficient to justify high development and operation costs. And to the extent that complex database solutions offer no inherent, tangible advantage over simple solutions, a simple, cost-effective approach should be pursued.

Regardless of the type of solution implemented, requiring all customer enrollments to be verified in a state database would undoubtedly result in eligible applicants being denied benefits to which they are entitled. Not all eligibility is based on information available to the state. For instance, a person that is newly arrived in the Commonwealth may not yet appear in a state database, but may qualify based on other valid factors. Applicants may also seek to qualify based on household income rather than state-administered program participation. Any approach that could result in eligible applications being potentially rejected must be avoided.

*Requiring Additional ETC Reporting.*⁹ The Department's predominant oversight role in the Lifeline program is to prevent waste, fraud and abuse. To the extent the Department can use periodic reports in furtherance of its mission, such reports may have merit. On the other hand, gathering information that does not directly and tangibly further the Department's ability to prevent waste, fraud and abuse, or any other legitimate Department purpose, should be avoided. For instance, while program rules require subscriber accounts with zero activity to be cancelled, it is unclear how a monthly usage report helps combat waste, fraud and abuse. Since there are no volume-of-use rules other than those regarding zero-usage accounts, it is not clear what benefit the proposed volume usage reporting would provide. The Department also seeks comment on

⁹ Further Request at p. 25.

monthly reports of customer churn and denied applications. As with volume-usage reporting, Virgin Mobile sees no obvious link between the suggested reports and furtherance of the Department's mission. Even if a legitimate Department purpose was identified, the Department must consider whether burdening carriers with onerous reporting is justified.

*Defining "Complaint."*¹⁰ The Department's interest in tracking customer complaints is more obvious than those categories of potential reports discussed above. What constitutes a complaint, however, is a matter the Department must be careful in defining. The Department must avoid an overbroad interpretation that will result in artificially elevated complaint totals. Should the Department seek to categorize "complaints" it must do so in a manner that excludes issues outside the carriers' control, issues caused by or under the control of the customer, and issues regarding matters of customer preference/choice. For instance, applicants that fail to provide adequate documentation in support of applications may complain about the process, a processing delay caused by the national duplicates database may lead to a "complaint," and a lost phone may lead to a "complaint" about an inability to use account minutes. Similarly, customers may complain that they do not like the free of charge phone provided by their carrier. None of these instances should count as a "complaint" in any definition the Department develops. It is immaterial whether the carrier can ultimately solve the customer's issue, the true question is whether the issue is one for which the carrier was solely or primarily responsible.

*Annual Meetings with Department.*¹¹ Virgin Mobile has been receptive to all inquiries from the Department and is happy to meet with the Department to discuss such issues as may need to be addressed. Implementing an annual meeting requirement does not appear to offer any tangible benefit, however. Virgin Mobile and the Department staff are familiar with each other

¹⁰ Further Request at p. 26.

¹¹ Further Request at p. 26.

and have worked together in the past to resolve promptly any and all issues that have arisen. Since communication between Virgin Mobile and the Department does not appear to be an issue, Virgin Mobile does not perceive a need for an annual meeting. Unless such a requirement is applied specifically and directly to ETCs with which the Department has had communications issues, then it would serve no obvious purpose relative to combatting waste, fraud and abuse or improving customer service. Virgin Mobile suggests that the Department continue to communicate directly with carriers and to hold meetings as and when necessary.

*Additional Annual Recertification Requirements.*¹² Virgin Mobile cannot support imposition of additional annual recertification requirements and does not believe that any evidence supports the need for imposition of such a requirement. The existing process employed by Virgin Mobile already involves multiple contacts with customers, so Virgin Mobile does not take issue with the Department's consideration of requiring multiple attempts to contact customers for recertification. On the other hand, requiring that one of those attempts involve a voice-call is inappropriate. There is no evidence indicating that a voice call is any more likely to result in a customer engaging in the recertification process than attempts through other media. Unlike other media, however, a voice-call requirement would be expensive to implement. Virgin Mobile believes customers are at least equally likely to ignore a call from an unknown number, or a voicemail message, as they are to ignore text messages, emails or direct mail notices.

The suggestion to require utilization of USAC for recertification is one that Virgin Mobile opposes. The question of whether to use an outside contractor for recertification is a business decision that companies make after balancing the availability of internal/external resources, the relative expense of internal/ external resources, and the likely efficacy of internal/external resources. It would be inappropriate for the Department to prevent companies

¹² Further Request at pgs. 26 – 27.

from making prudent business decisions regarding the recertification process without record evidence to support such a requirement. The record offers no support for a conclusion that the use of USAC, or any other external resource, would improve the success rate of the recertification process.

The Department indicates that the percentage of non-response to recertification was consistent for the two years analyzed. It would behoove the Department to review statistics available for USAC-conducted recertification and determine whether non-response percentages in USAC-conducted recertification are any different than those observed by the Department in Massachusetts and whether such difference is attributable to any particular factors. Perhaps if the Department is able to identify a deficiency in the recertification process in general, or a carrier's process in specific, it might wish to order remedial action; but until there is evidence that the percentages achieved by carriers conducting their own recertifications in Massachusetts are significantly lower than the percentages resulting from USAC conducted recertification elsewhere, it would be highly imprudent and unjustified for the Department to require ETCs to utilize USAC's services for recertification. It might also be useful to review national information to determine whether the response percentages in Massachusetts track or diverge from national averages or averages for states with similar geographic and economic make-up.

As to the Department's inquiry whether it should require ETCs to verify, as part of the annual recertification process, with the National Lifeline Accountability Database ("NLAD") that each subscriber's household is receiving only one Lifeline discount, Virgin Mobile is opposed to the suggestion. The NLAD already prevents new enrollments at the same address. Pre-NLAD enrollments have been put through the in-depth validation process by USAC to detect and resolve duplicates. There is no benefit to be gained by reviewing existing enrollments with NLAD as part of recertification. Such a step not would help to avoid waste, fraud and abuse. It would, however,

increase the labor and steps involved in the recertification process and potentially delay the process by including an external process beyond the ETC's direct control.

The Department also suggested that it might consider requiring documentation to support annual recertification rather than relying on the individual attestation approach approved by the FCC. As the Department is well aware, eligible applicants often have difficulty providing documentation to support their initial applications. In the case of annual certification, customers would have a limited 30-day window during which to produce supporting documentation or be de-enrolled. Any limited benefit of an annual documentation requirement would be outweighed by eligible customers being decertified for failure to provide documentation, administrative issues (missed deadlines, illegible copied materials, etc.) and other problems. Virgin Mobile leaves it to the Department to contemplate the extent to which the suggested approach would help to prevent waste, fraud and abuse, but Virgin Mobile notes for the Department that whatever the extent of such benefit, it would undoubtedly come at the expense of eligible customers being decertified annually. It is worth noting that the FCC, at the time it imposed a documentation requirement for establishing initial eligibility, explicitly rejected an annual documentation requirement.

*Reasonable Application Processing Timeframe.*¹³ Virgin Mobile does not believe there is a "one-size-fits-all" timeframe for application processing. The Department is well aware that delays in processing applications arise through any number of avenues – many or most of which are outside the ETCs' control. Presentation of inadequate supporting documentation is not a matter within the control of an ETC, but it is a common obstacle to processing applications. Illegible handwriting, garbled fax transmissions, inaccurate data and other common issues confronted by ETCs are also not within their control, but are commonly encountered in processing applications.

¹³ Further Request at p. 27.

Also problematic are the potential unintended consequences arising from imposition of any “reasonable timeframe” requirement. For instance, imposition of such a standard would provide carriers with an incentive to deny applications for which they do not have adequate information sufficiently far in advance of the Department developed “reasonable timeframe.” By denying incomplete applications in advance of the reasonable timeframe carriers would ensure that they are processing applications within a “reasonable timeframe.” Surely the Department does not desire incomplete applications to be denied merely to satisfy a Department imposed timeline, but that is one seemingly inevitable outcome. Alternatively, ETCs might rush their application processing in order to comply with the timeline, and that might result in unwarranted approvals.¹⁴ While Virgin Mobile understands and supports the Department’s goal of ensuring that eligible applicants receive timely consideration, the number of factors that come into play makes the imposition of a finite reasonable timeframe requirement inadvisable.

*Retroactive Benefit Requirement.*¹⁵ It would be inappropriate and unworkable to make Lifeline benefits retroactive to the date an application is received. Requiring ETCs to offer a benefit retroactive to the date an application was received penalizes ETCs for factors within the control of the applicant, not the ETC. Under the suggested approach, an applicant that for weeks ignores a notification that further documentation is required to complete the application would receive the same benefit as an applicant that responds immediately and submits the required documentation.

Furthermore, while the Department seeks comment on making the benefit “retroactive” to the date of application receipt, that is impossible. As the Department is undoubtedly aware, the effective date for federal Lifeline benefits is the date after an application is approved and on

¹⁴ Virgin Mobile is confident that its processes preclude this outcome, but it cannot speak for other providers. The incentive, however, would remain.

¹⁵ Further Request at p. 27.

which the customer activates his/her account. This is not a matter subject to the control of an ETC or the Department. The benefit effective date is controlled by the FCC. Accordingly, it is simply not possible to make the federal Lifeline benefit start on the date an application is received.¹⁶ Virgin Mobile also posits that a retroactive benefit requirement likely would constitute impermissible rate-making on the part of the Department.

*Requiring Department Contact Information to be Listed on Denials.*¹⁷ Presently, the Department's contact information appears on the Assurance Wireless application for Massachusetts and in the Assurance Wireless terms and conditions of service. Unlike the applications forms, Assurance Wireless denial letters are not state specific. To include the Department's contact information in additional documentation would impose on the business the substantial additional cost of developing a Massachusetts-specific denial letter and separate handling process. Virgin Mobile opposes this requirement as duplicative of other efforts implemented by the Company and unnecessarily burdensome. Assurance Wireless includes its own toll-free number on the denial letter should the applicant have questions concerning the decision rendered.

*Foreign Language Lifeline Material Requirement.*¹⁸ Virgin Mobile opposes any requirement to provide Lifeline materials in languages other than Spanish. Such a requirement would increase ETCs' administrative expenses and there is no apparent, reasonable means of limiting the number of languages into which carriers might be required to translate materials. Selection of the languages into which translation is required could lead to divisive debates and allegations of preferential treatment of certain populations. Furthermore, it is difficult to see how

¹⁶ If the Department is considering a Massachusetts specific requirement that forces carriers to extend benefits to applicants without receipt of federal subsidies, Virgin Mobile strongly opposes such a requirement.

¹⁷ Further Request at p. 28.

¹⁸ Further Request at p. 28.

the Department would reasonably devise or gauge objective, measurable thresholds for translation into new languages. Obviously more is needed than anecdotal information, but determining with particularity the numbers of eligible applicants within a given population/language pool that cannot read English might prove impossible. While the goal of making the Lifeline program broadly accessible is laudable, this particular means of accomplishing that goal is unduly burdensome, potentially divisive and likely unworkable.

*Customer Care Calls Not to be Decrementing.*¹⁹ Virgin Mobile does not decrement calls to customer care against monthly minutes and has no objection to a requirement in this regard. Virgin Mobile agrees that it is reasonable for customers to expect that when experiencing problems with their account they will be able to resolve such problems with their carrier without impacting their monthly minute allotment.

*Prohibition Against Decrementing Calls to 8XX Numbers.*²⁰ As with the Department's inquiry into retroactive benefits, it is likely that a prohibition against decrementing minutes for calls to toll-free numbers infringes on the prohibition against wireless rate-making. Leaving aside this legal question, the Department's suggestion regarding toll free numbers ignores the common framework of today's calling plans. In an era where consumer toll charges are largely anachronistic – having been rendered irrelevant by the buckets of all-distance minutes that typify today's consumer calling plans, including Virgin Mobile's Lifeline plan – a customer cannot have a reasonable expectation that a *toll-free* call is equivalent to a *minutes-free* call. Furthermore, while such calls do not involve toll charges, intercarrier compensation charges may still apply, so any prohibition against decrementing for such calls may have financial impacts

¹⁹ Further Request at pgs. 28 - 29.

²⁰ Further Request at p. 29.

beyond the minutes associated with Lifeline customer accounts. Virgin Mobile strongly opposes any prohibition or limitation against decrementing minutes for calls to 8XX numbers.

*Requiring Notice to Customers Regarding Changes to Lifeline Plan.*²¹ Virgin Mobile has no objection to requiring customer notice of material adverse changes to Lifeline plans. Virgin Mobile has in the past changed its Lifeline plans, but in each instance these changes increased the benefits Virgin Mobile offers to its Lifeline customers. Virgin Mobile agrees with the Department that customers should be notified of any material adverse change to their Lifeline plan. The Department should be careful, however, of imposing invasive notice regulation regarding improvements to customer plans in order to avoid any chilling effect that might delay or prevent additional or improved benefits being offered.

Virgin Mobile appreciates the opportunity to provide these comments for the Department's consideration, and it looks forward to participating in the Department's development of appropriate Lifeline practices, policies and procedures.

Respectfully submitted,
Virgin Mobile USA, L.P.
By its Attorneys



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²¹ Further Request at p. 29.