ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF VIRGIN MOBILE USA, L.C. PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	)	**CAUSE NO. 41052 ETC 55**
	)	**APPROVED:** NOV 10 2010

BY THE COMMISSION:
Larry S. Landis, Commissioner
David E. Veleta, Administrative Law Judge

On February 4, 2010, Virgin Mobile USA, L.P. ("Petitioner," or "Virgin Mobile") filed its Verified Petition for Limited Designation as an Eligible Telecommunications Carrier ("Petition") with the Indiana Utility Regulatory Commission ("Commission"). In its Petition, Virgin Mobile requested that the Commission designate it as an Eligible Telecommunications Carrier ("ETC") as defined by §214(e)(1) of the Federal Communications Act of 1934, as amended ("Act") for purposes of offering prepaid wireless services supported by the Federal Universal Service Fund's ("USF") Lifeline program. Petitioner does not seek authority to provide services supported by the USF's high-cost program.

On April 5, 2010, Petitioner filed its direct testimony and exhibits. On May 24, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled its direct testimony of Senior Analyst Ronald L. Keen. On June 11, 2010, Petitioner prefiled its rebuttal testimony. On June 16 and July 9, 2010, the Commission issued Docket Entries requiring Virgin Mobile to respond to certain questions and provide certain information. Virgin Mobile filed its responses on July 6 and August 11, 2010.

On September 22, 2010, pursuant to notice duly published according to law, an evidentiary hearing was convened at 9:30 a.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Virgin Mobile and the OUCC appeared and participated. No members of the general public were present or sought to testify at the hearing. The testimony and exhibits of the parties were admitted into evidence and the witnesses were made available for cross-examination.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Act, 47 U.S.C. § 151 *et seq.* and applicable Federal Communications Commission ("FCC") Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with Commission orders of generic

application in Cause Nos. 40785, 41052 and 42067. The Commission therefore has jurisdiction over the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a communications service provider which offers commercial mobile radio service and wireless broadband service pursuant to the authority granted by the Commission in its March 31, 2010 Order in Cause No. 43854. Petitioner is also a telecommunications carrier as defined by 47 U.S.C. § 153(44).

3. **Requirements for ETC Designation.** By our Order issued on November 5, 1997 in Cause No. 40785, the Commission adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the nine (9) universal services or functionalities set out in 47 C.F.R. § 54.101(a)(1)-(a)(9). In addition to offering these nine universal services, to be eligible for designation as an ETC applicants are required by 47 C.F.R. §§ 54.405 and 54.411 to offer qualifying low-income customers "Lifeline" and "Link-Up" programs. The Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's "Lifeline" program as a prepaid wireless carrier. If the Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Petitioner as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the nine supported services and the Lifeline program using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana are also required to file proposed Lifeline tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released new ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. Federal-State Joint Board on Universal Service, 20 F.C.C.R. 6371 ¶42-43 (March 17, 2005) ("2005 FCC ETC Order"). The 2005 FCC ETC Order also required applicants for ETC designation to: (1) provide a five-year plan demonstrating how high-cost universal support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate their ability to remain functional in emergency situations; (3) demonstrate that they will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier ("ILEC") in areas for which they seek designation; and (5) acknowledge that they may be required to provide equal access if all other ETCs in the designated service area relinquish their designations. The Commission adopted the FCC's new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47.

4. **Evidence Presented.**

(a) **Petitioner's Evidence.** Petitioner, as a wholly owned subsidiary of Sprint Nextel Corporation ("Sprint Nextel"), provides nationwide prepaid wireless services. As a result, Virgin Mobile has beneficial use of Sprint's wireless facilities and thus operates as a facilities-based carrier in the State of Indiana like other Sprint Nextel subsidiaries operating in the state. Virgin Mobile commenced wireless service in Indiana in 2002. Virgin Mobile provides facilities-based wireless services in Indiana and therefore the Company intends to launch Lifeline services as soon as possible should the Commission approve its Petition. Virgin Mobile presented the testimony of Elaine Divelbliss, Senior Counsel for Virgin Mobile, at the September 22, 2010 Evidentiary Hearing.

Ms. Divelbliss explained that many lower-income customers in Indiana have yet to reap the full benefits of the wireless market. She testified that because of financial constraints, poor credit history or intermittent employment, these consumers may lack the choices available to most consumers. She stated that Virgin Mobile's Lifeline services will expand the availability of affordable telecommunications services to qualifying customers, leading to lower prices and increased choice in Indiana. Ms. Divelbliss explained that Virgin Mobile has branded its prepaid Lifeline service "Assurance Wireless Brought To You By Virgin Mobile." She stated that under the current plan, eligible customers will receive 200 anytime prepaid minutes per month at no charge, with additional service priced at $0.10/minute and $0.10/text message.

In addition to free voice services, prepaid Lifeline customers also will have access to a variety of other standard features at no additional charge, including voice mail, caller I.D. and call waiting services. She explained that Lifeline customers will not be required to pay for handsets. She added that Virgin Mobile's Lifeline service plan includes all applicable taxes and fees. The Company also does not assess charges for activation or connection of the service. This means that Lifeline-eligible customers in Indiana will not incur any upfront costs for access to the Company's Lifeline services.

Ms. Divelbliss explained how customers will sign up for service. She noted that Virgin Mobile has been designated an ETC for the limited purpose of offering Lifeline service in 11 states. She also explained that Virgin Mobile is a wholly owned subsidiary of Sprint Nextel and is thus able to provide Lifeline-supported services over an existing, owned and operated network infrastructure. She explained that since the Company no longer operates as a reseller of telecommunications, there is no need to impose certain conditions on the grant of ETC designation. She asserted that a condition requiring Virgin Mobile to obtain certifications from public service answering points ("PSAPs") regarding its ability to provide enhanced 911 ("E911") functionality is unnecessary.

Ms. Divelbliss asserted how Virgin Mobile remains functional in emergency situations. She also discussed how Virgin Mobile will advertise the availability of its Lifeline services using a variety of media in conformance with the regulations of this Commission and the FCC. Ms. Divelbliss explained that Virgin Mobile's designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other carriers. Ms. Divelbliss testified that Virgin Mobile will comply with the Lifeline certification and verification requirements.

Ms. Divelbliss testified that internal Virgin Mobile analysis confirms that many low-income customers still discontinue service because of economic constraints, especially during this period of economic dislocation. In her view, ETC designation in Indiana would enable Virgin Mobile to offer appealing and affordable service offerings to these customers to ensure

Virgin Mobile to offer appealing and affordable service offerings to these customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Ms. Divelbliss discussed the benefits that lower-income customers receive from access to wireless service, and provided a study to support these benefits with her testimony. Finally, Ms. Divelbliss also discussed the competitive benefits associated with designating Virgin Mobile as an ETC in Indiana.

(b) **OUCC's Evidence.** The OUCC presented direct testimony from its Senior Analyst, Ronald L. Keen. Mr. Keen testified that he reviewed the Petition, Petitioner's responses to data requests issued by the OUCC and Commission Orders from other ETC proceedings. Mr. Keen presented a detailed analysis of the federal and state requirements regarding the designation of ETCs and explained how Virgin Mobile met those requirements. Mr. Keen noted that Virgin Mobile has become the prepaid component of the Sprint Nextel family of wireless service providers. He testified that because Sprint Nextel is a designated ETC, it has already demonstrated to the Commission's satisfaction that it is able to meet the relevant requirements.

Mr. Keen discussed Virgin Mobile's submissions in other states and presented a public interest analysis. Mr. Keen noted that network improvements made by Virgin Mobile's parent company (which is already an ETC) will directly benefit Virgin Mobile's customers. Mr. Keen also noted that Virgin Mobile states that it complies with the Cellular Telecommunications Industry Association Consumer Code ("CTIA Code") and annually re-certifies that it will remain in compliance with the CTIA Code. Based on his analysis, Mr. Keen recommended that the Commission approve Virgin Mobile's request for ETC designation and that the Commission require Virgin Mobile through its parent company, Sprint Nextel, to accommodate reasonable requests for service as required by the 2005 FCC ETC Order.

5. **Commission Findings.** Based on the evidence in the record, we have determined that Petitioner meets the eligibility criteria for ETC designation as contained in Section 214(e)(1), as set out more fully below.

(a) **Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that Virgin Mobile is a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

(b) **Services Required to be Offered by an ETC.** The evidence confirms that upon designation as an ETC in Indiana, Virgin Mobile will provide all of the functionalities required of an ETC in 47 C.F.R. §54.101(a) as follows:

(i) Voice-grade access to the public switched telephone network. The FCC has concluded that voice grade service means the ability to make and receive phone calls within a specified bandwidth and frequency range. 47 U.S.C. § 54.101(a)(1). We find that Petitioner meets this requirement. No evidence was presented that Petitioner's customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Petitioner satisfies this requirement.

(ii) Local usage. ETCs must include local usage beyond providing simple access to the public switched telephone network as part of a universal service offering. An applicant for ETC designation must demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory. 47 C.F.R. § 54.202(a)(4). In analyzing whether an ETC applicant's plan is comparable to the underlying ILECs, the FCC reviews all aspects of the plan on a case-by-case basis, including the nature of the supported service, the size of the local calling area, the inclusion of additional services (*e.g.*, caller I.D.) and the amount of local usage. *See* 2005 FCC ETC Order, ¶33. As the record demonstrates, Virgin Mobile will offer users the ability to send and receive local phone calls wherever the Company offers service. Mr. Keen noted that Virgin Mobile intends to offer Lifeline customers "access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services and E911 capabilities." Petitioner's offering will be comparable to the underlying ILEC plans, and therefore satisfies this requirement.

(iii) Dual-Tone, Multi-Frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. As noted by Mr. Keen, the FCC permits Commercial Mobile Radio Service ("CMRS") carriers to provide signaling which is a functional equivalent to DTMF to satisfy this requirement. Petitioner's evidence shows that the telephone handset to be provided free-of-charge to eligible Lifeline customers is DTMF-capable as required by 47 C.F.R. § 54.101(a)(3). Accordingly, the record reflects that Petitioner satisfies this requirement.

(iv) Single-party service or its functional equivalent. Petitioner provides the functional equivalent of single-party service to its wireless customers for the duration of each telephone call, and does not provide multi-party (or "party-line") services. Accordingly, the record reflects that Petitioner satisfies this requirement.

(v) Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Mr. Keen testified that Petitioner provides nationwide access to 911 emergency services for all of its customers by virtue of its use of the Nationwide Sprint PSC Network. Because Sprint Nextel is a designated ETC, it has already demonstrated to the Commission's satisfaction that it is able to meet this requirement. Thus, we find Petitioner has satisfied this requirement.

(vi) Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Petitioner meets this requirement by providing all of its customers with access to operator services. Thus, we find Petitioner has satisfied this requirement.

(vii) Access to directory assistance. Petitioner meets the requirement of access to directory assistance by providing customers with the ability to dial "411" to reach directory assistance.

(viii) Access to interexchange service. Petitioner meets the requirement of access to interexchange service by providing all of its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Petitioner's service with no additional charges because minutes for local or long distance services are not billed separately at different rates.

(ix) Toll limitation for qualifying low-income consumers. Toll limitation allows customers to either block the completion of outgoing long distance calls or specify a certain amount of toll usage to prevent them from incurring significant long distance charges and risking disconnection. Petitioner provides its wireless service on a prepaid, or pay-as-you-go, basis. Moreover, Petitioner's service is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. The FCC determined in its previous grant of ETC designation that the nature of Petitioner's service mitigates concerns that low-income customers will incur significant charges for long distance calls, risking disconnection of their service. *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Limited Eligible Telecommunications Carrier Designation in New York, Pennsylvania, Virginia, North Carolina, and Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 at ¶34 (2009) ("Virgin Mobile Forbearance Order"). Mr. Keen testified that since Virgin Mobile offers only prepaid cellular service, the limitation requirement is satisfied by virtue of the fact that service will automatically end when the prepaid bank of minutes runs out – regardless of whether prepaid minutes were used on local or long-distance calls. Accordingly, we find Petitioner's service satisfies this requirement.

(c) Lifeline Service Offering Requirements. In its Petition, direct testimony, and late-filed exhibit, Petitioner provided a description of its proposed prepaid Lifeline offering. According to the Petition, the service will provide customers with the same features and functionalities enjoyed by all other Virgin Mobile prepaid customers with one notable exception: prepaid Lifeline service will be made available free of charge to the customer. Petitioner also provided a copy of its proposed Lifeline service terms and conditions as an exhibit to its response to the Commission's June 16, 2010 Docket Entry. *See* Petitioner's Exhibit 3. The evidence shows that Petitioner agrees to comply with all applicable Lifeline requirements after its request for ETC designation is granted.

(d) Functionality in Emergency Situations. FCC regulations require that applicants for ETC designation demonstrate their ability to remain functional in emergency situations. 47 C.F.R. § 54.209(a)(2). Ms. Divelbliss explained that as a wholly owned subsidiary of Sprint Nextel, Virgin Mobile is able to remain functional in emergency situations as required by the requirements of the FCC and this Commission. She explained that Sprint Nextel has established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. She added that Sprint Nextel has reasonable amounts of back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Based on the foregoing, we find that Petitioner satisfactorily meets this requirement.

(e) **Advertising Requirements.** Virgin Mobile showed that it will advertise the availability and costs of its Lifeline and USF supported service offering using media of general distribution, including newspapers, magazines, radio, the Internet, billboards and television, in conformance with the regulations of the FCC. Virgin Mobile indicated that it will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout the State of Indiana. In addition, Virgin Mobile may market its Lifeline services through its RE*Generation pro-social initiative, 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. The evidence of record indicates that the Petitioner will comply with all applicable advertising requirements.

(f) **Petitioner's Designated ETC Service Areas.** The FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). Virgin Mobile provides its services exclusively over the Nationwide Sprint PCS Network and does not provide service in territories not covered by the network. Petitioner provided a list of the wire centers in which it is requesting ETC designation as well as a map of Petitioner's proposed designated service area in response to the Commission's June 16 Docket Entry. Virgin Mobile requests to be designated as an ETC in the coverage area for the Nationwide Sprint PCS Network in Indiana.

(g) **Public Interest Considerations.** As noted above, the designation of Virgin Mobile as an ETC requires a public interest analysis. 2005 FCC ETC Order, ¶¶42 and 43. In the absence of statutory strictures for evaluating the public interest, the FCC has recommended that ETC designations 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 telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas." 2005 FCC ETC Order, ¶40.

(i) Use of ETC funding. Petitioner has indicated that it will not use funds from the federal Lifeline program to provide free handsets to Lifeline customers. *See* Petitioner's Exhibit 3 at 2. We find that this is consistent with current FCC regulations on the use of such funds. *See In re Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, 18 FCC Rcd 10958 at ¶18 (2003).

(ii) Impact on the Universal Service Fund. We have previously recognized that the FCC has undertaken various steps to address the explosive growth in high-cost universal support disbursements. *Perry-Spencer Communications, Inc.*, Cause No. 41052 ETC 53 at 10 (IURC 7/24/08). Notably, however, Virgin Mobile is not seeking access to funding from the federal USF to provide service to high-cost areas. As Ms. Divelbliss explained, Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, the Lifeline program ensures that universal service fund support only funds the carrier that serves the customer.

However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. OUCC's Exhibit 1 at 30. While it is in the public interest that lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unnecessary growth of the fund and increased USF surcharges for all Indiana telecommunications customers. We are concerned that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. Therefore, we find that it is in the public interest to impose extra safeguards on Virgin Mobile.

To ensure that Virgin Mobile's Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on Virgin Mobile's adoption of a policy terminating service to inactive customers. Specifically, if a customer does not make a voice call or send a text message at least once during any 90-day period, Virgin Mobile will notify the customer that the customer is no longer eligible for Lifeline service. The customer must make a voice call or send a text message at least once during the 30-day period following such notification in order to have eligibility restored. At the end of the applicable 30-day period following notification of ineligibility, if the customer has not utilized the service, the customer will no longer receive a monthly allocation of free minutes and Virgin Mobile will no longer report the customer on FCC Form 497. Provided these requirements are satisfied, we find that Virgin Mobile's designation should not have an excessive impact on the universal service fund.

We note that Petitioner also mitigated concerns regarding fraud and misapplication of the program by evidence indicating Virgin Mobile has a robust IT infrastructure to determine what accounts are open and what accounts are closed. Petitioner's Exhibit C and TR at 26. The Petitioner is able to track Lifeline customers for both the Sprint post-paid and Virgin Mobile prepaid entities. TR at 9. Virgin mobile is also able to report revenues when required by Indiana law for customers purchasing their services, either directly or through third parties. Petitioner's Exhibit C. Virgin Mobile's testimony also provides assurances that the company will take seriously the conditions to prevent misuse of the Lifeline program and indicates that they have the technical ability to do so.

(iii) Consumer Protection. The FCC found that an ETC applicant must make a specific commitment to objective measures to protect consumers. *See* 2005 *FCC ETC* Order. Virgin Mobile states in its petition that it complies with the CTIA Code and has done so since that CTIA Code's inception and will continue to comply with the CTIA Code once designated as an ETC. Petitioner's Exhibit 3. A review and analysis conducted by the OUCC indicates that Virgin Mobile meets all requirements of the CTIA Code. OUCC's Exhibit 1 at 82.

(iv) Creamskimming. The FCC identified creamskimming as an appropriate factor to consider in "areas where an ETC applicant seeks designation below the study area level of a rural company." *See* 47 CRF 54.202(c). That analysis is unnecessary in this case, as Virgin Mobile seeks ETC designation to serve entire rural ILEC study areas in this proceeding. *See* 2005 FCC ETC Order. In addition, the FCC has concluded that applicants seeking ETC designation solely for Lifeline purposes need not perform a creamskimming analysis. *See Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A) Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York, North Carolina, Tennessee and Virginia*, Order, 24 FCC Rcd 3381, fn. 101 (2009).

(v) Increased customer choice. Currently in Indiana all incumbent local exchange carriers are required to provide the Lifeline discount to eligible customers. Non-ILEC Lifeline providers include one wireless provider and three competitive local exchange carriers. None of the current Lifeline providers offer the prepaid model of telecommunications service or specialize in serving the low-income segment of the population. The record reflects that the Petitioner's prepaid plans without annual contracts bring increased consumer choice to the Lifeline eligible customers in Indiana. Ms. Divelbliss also testified that Virgin Mobile's Lifeline plans will provide affordable and convenient wireless services to qualifying customers who may not otherwise be able to afford wireless services. Unlike other carriers that currently offer Lifeline service in Indiana, Virgin Mobile does not impose credit checks or long-term service contracts as prerequisites to obtaining service. Based on the record, we find that Petitioner's designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

(vi) Affordable rates. We must also consider whether designation as an ETC will "ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]" 2005 FCC ETC Order, ¶40. Petitioner presented evidence that under the current plan, eligible customers will receive 200 anytime prepaid minutes per month at no charge with additional service priced at $0.10/minute and $0.10/text message. In addition, customers may elect to receive an Assurance Wireless-branded handset free of charge. Ms. Divelbliss added that Virgin Mobile's Lifeline service plan includes all applicable taxes and fees, and that the company does not assess charges for activation or connection of the service.

As a result, Lifeline customers will receive free service (so long as they do not exceed their 200 voice minute allotment) with no additional charges for taxes or activation. In a late filed exhibit, dated October 29, 2010, Virgin Mobile increased its core offer and added two additional options for Lifeline customers who have higher minute use per month. The core offer increased to 250 minutes of free talk time. A $5.00 package increases the amount of minutes to 500 per month and a $20.00 Talk and Text package increases the minutes to 1000 and adds 1000 text messages. While Lifeline customers will need to continue to understand their individual calling patterns and weigh the best value between traditional and prepaid Lifeline plans, we are persuaded that Virgin Mobile's plans will provide affordable alternatives for many of Indiana's Lifeline eligible customers. The OUCC did not dispute the affordability of Petitioner's rates. Accordingly, we find that the designation of Virgin Mobile as an ETC would serve the public interest by ensuring the availability of quality telecommunications services at just, reasonable and affordable rates.

(vii) Advantage & Disadvantages of the Offering. The record reflects that Petitioner's service offering is comparable and may even exceed ILEC Lifeline and local service plans in some respects. We concur with the FCC's assessment of the benefits associated with Petitioner's offering:

> Virgin Mobile's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice and mobility. In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline eligible consumers who are concerned about usage charges or long-term contracts.

Virgin Mobile Forbearance Order, ¶38. Accordingly, we find that Virgin Mobile has satisfied this criterion of our public interest inquiry.

(viii) Facilities-Ownership. Virgin Mobile provides service over the Nationwide Sprint PCS Network and only seeks ETC designation for those wire centers representing the existing coverage area for the Sprint PCS network in Indiana. Virgin Mobile has beneficial use of Sprint's wireless facilities, even though absolute, direct legal title to Virgin Mobile's wireless communications facilities lies with its parent and sibling corporate enterprises that are part of the Sprint family. The FCC has concluded that, for universal service purposes, the term "own facilities" in Section 214(e)(1)(A) of the Communications Act refers to property which a carrier "considers its own" or for which it "enjoy[s] the beneficial use."[1] The FCC has reasoned that the concept of "own facilities" therefore includes facilities for which a carrier "does not hold absolute title." The FCC has also explained that the concept of ownership under Section 214(e) is flexible and includes, in addition to property to which a carrier holds direct legal title, "property that a carrier considers its own," and that ownership extends to "others enjoying the beneficial use of property." Thus, we find that Petitioner meets the facilities-ownership criterion of our public interest inquiry.

(ix) Deployment of, or improvement to, Indiana Network Facilities. The record reflects that Virgin Mobile is a prepaid brand of the Sprint Nextel family of wireless services. The record also reflects that Petitioner's parent, Sprint Nextel, is constantly upgrading and expanding its Indiana network and infrastructure, directly benefiting Indiana consumers. Accordingly, we find that Virgin Mobile's designation as an ETC will bring benefits to Indiana's telecommunications infrastructure.

(x) Commitment to Provide Service Upon Reasonable Request. Pursuant to 47 C.F.R. § 54.202(a)(1)(i), an ETC applicant must commit to provide service upon reasonable request throughout its designated service area. The OUCC recommended that the Commission require Virgin Mobile and Sprint Nextel to work collaboratively to accommodate all requests for service in accordance with the 2005 FCC ETC Order. We note that as an ETC solely for purposes of participating in the Lifeline program, Virgin Mobile will only be able to

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1 *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 159 (1997) ("*Universal Service First Report and Order*").

provide Lifeline services to those low-income customers that qualify for service. We also note that Virgin Mobile has not requested access to high-cost funding. Petitioner has agreed to abide by the obligations imposed on Sprint Nextel as a condition to its 2007 ETC designation. We find that it is reasonable for Virgin Mobile through its parent company Sprint Nextel to accommodate requests for service as required by the 2005 FCC ETC Order. If the potential customer is within Sprint Nextel's designated service area and its existing network coverage, Virgin Mobile will provide service on a timely basis. If the potential customer is within Sprint Nextel's designated service area but outside its existing network coverage, Virgin Mobile through Sprint Nextel will provide service within a reasonable period of time if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;
(b) Deploying a roof-mounted antenna or other equipment;
(c) Adjusting the nearest cell tower;
(d) Adjusting network or customer facilities;
(e) Reselling services from another carrier's facilities to provide service; or
(f) Employing, leasing or constructing an additional cell site, cell extender, repeater or other similar equipment.

See Re Designation of Eligible Telecommunications Carriers, Cause No. 41052 ETC 47 (IURC 3/7/2007) at 10-11. Accordingly, we find Petitioner has demonstrated its willingness and ability to provide service throughout its requested service area.

(xi) Additional Public Interest Analysis. ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is of the utmost importance that the provider be in compliance regarding its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoidance of such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect a public subsidy, yet not contribute its fair share to public interest funds from which its network and its customers benefit. We are administratively aware that Virgin Mobile appears to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to IC 8-1-6 and the Indiana Universal Service Fund pursuant to the Commission's March 17, 2004 Order in Cause No. 42144. However, Virgin Mobile indicated that it does not contribute to the Indiana Telecommunications Relay Access Corporation ("InTrac") fee pursuant to IC 8-1-2.8 due to the nature of the surcharge collection method imposed by state statute. *See* Petitioner's Exhibit C. We note that the administrator of the InTrac fund has not submitted a Complaint to the Commission, therefore we make no finding concerning whether Virgin Mobile has violated any statute. However, we find that it is in the public interest that Virgin Mobile submit a compliance plan to address InTrac contributions on a prospective basis until such a time as the Administrator of the InTrac fund or state law addresses this issue on a comprehensive basis.

Based on the foregoing public interest analysis, we conclude that designating Virgin Mobile as an ETC will promote the public interest and further the goals of the Act.

6. **Regulatory Oversight.** This Commission has previously recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See e.g., Re Nextel*, Cause No 41052 ETC 43 (IURC 3/17/2004), at 28-30; *Re Cinergy Metronet*, Cause No. 41052 ETC 50 (IURC 1/31/2007) at 26. Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. 47 C.F.R. §§ 54.313. In order for this Commission to satisfy its ETC certification requirements to the FCC, this Commission requires ETC applicants to file a tariff with the Commission and track their USF expenditures. *See Re Universal Service Investigation*, Cause No. 40785 (IURC 11/5/1997).

The record reflects Petitioner intends to comply with the Commission's Lifeline tariff filing requirement and has provided the Commission with its terms and conditions of service. *Id.* Petitioner also confirmed that it is familiar with and agrees to comply with USF tracking requirements this Commission previously established to ensure that funds received from Universal Service Administrative Company ("USAC") for Indiana are devoted to furthering universal service goals within Petitioner's designated service area. Accordingly, we find that Petitioner's terms and conditions of service should be incorporated into Petitioner's Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Petitioner making its universal service offering available to eligible consumers in Indiana.

7. **Prospective ETC Reporting Requirements.** Finally, we find that Petitioner should be required to meet the prospective reporting requirements established by the 2005 FCC ETC Order to the extent applicable given Petitioner's limited designation as an ETC for Lifeline services only. To this end, Petitioner shall submit the following information on an annual basis:

(a) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities that it owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users served in a designated service area, or that potentially affects a 911 special facility (as defined in subsection (e) of Section 4.5 of the Outage Reporting Order. *See* In the Matter of New Part 4 in Commission's Rules Concerning Disruptions to Communications Services, ET Docket 04-35, Released August 14, 2004). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected. As noted above, Petitioner has beneficial use of Sprint's wireless facilities. Sprint is designated as an ETC in Indiana and is also subject to this reporting requirement. In order to avoid duplicative reporting, we find that Petitioner may join in the report filed by Sprint Nextel for this or other reporting requirements provided that any such report clearly indicate the participating entities.

(b) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(c) The number of complaints per 1,000 handsets or lines;

(d) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(e) Certification that the ETC is able to function in emergency situations;

(f) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(g) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

2005 FCC ETC Order at ¶69 (footnotes omitted); 47 C.F.R. § 54.209.

Virgin Mobile's compliance filings should be filed under this Cause, due on August 15th of each year beginning in 2011, unless otherwise directed by the Commission.

8. Conditions on Virgin Mobile's Designation as an Eligible Telecommunications Carrier. In accordance with the Commission's findings above, Virgin Mobile shall be subject to the following conditions:

(a) Virgin Mobile shall deactivate an Assurance Wireless account if the customer has no usage for ninety (90) consecutive days. No fewer than eight business days before deactivation, Virgin Mobile shall send the customer a written notice by mail about the potential deactivation and ways to avoid unwanted deactivation. The customer shall have a thirty (30) day grace period from the deactivation date to reactivate the Assurance Wireless account and restore the minutes accrued during the 90 day non-usage period and the 30 day grace period.

(b) Virgin Mobile shall offer Lifeline eligible customers a minimum of 250 free minutes per month and charge a maximum of 10 cents for each additional minute and each text message. Virgin Mobile shall file a tariff of their proposed offering, including the two additional packages offered in the late filed exhibit, dated October 29, 2010, and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes changes.

(c) Virgin Mobile shall provide the Commission with a copy of its annual Lifeline Verification survey results that it files with the USAC by August 31 of each year.

(d) On a quarterly basis Virgin Mobile shall provide the number of Lifeline customers that it enrolls each month. Virgin Mobile shall also report the number of deactivated Lifeline customers each month and the reasons for deactivation (e.g., no usage for 90 consecutive days, annual verification unsuccessful or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. Virgin Mobile will continue to make such quarterly filings until otherwise instructed by the Commission.

(e) To safeguard against misuse of the Lifeline service plan, Virgin Mobile shall deal directly with the customer and require each customer to self certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.

(f) Virgin mobile shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer self-certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be

(g) required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.

(h) In the event the ILAP becomes law, Virgin Mobile shall seek IURC approval of their new Lifeline offering subject to the additional Indiana discount.

(i) Virgin Mobile shall submit a plan indicating how they will contribute to the InTrac fund for dual party relay services for speech and hearing impaired individuals going forward on equitable basis.

(j) Virgin Mobile shall continue to pay applicable fees, such as the public utility fee pursuant to IC 8-1-6, the IUSF fee pursuant to the Commission's Final Order in Cause 42144, the wireless emergency enhanced 911 fee pursuant to IC 36-8-16.5-30.5 and any other applicable fees.

(k) Virgin Mobile shall submit a compliance plan indicating how they will implement the above conditions.

We therefore find, based on the evidence presented, that Virgin Mobile has met all of the ETC eligibility requirements and that the public interest supports granting ETC status for the purpose of participation in the Lifeline program to Virgin Mobile at this time. We find that Virgin Mobile offers a quality service with unique advantages. We further find that making this prepaid service available to eligible customers will increase customer choice and will not adversely affect the USF. Virgin Mobile has demonstrated that it has the ability through the Sprint Nextel network to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, Virgin Mobil's compliance with this Order and its eligibility for ETC designation. Accordingly, we find that Virgin Mobile's Petition should be granted. We further find that Virgin Mobile should be subject to the prospective reporting requirements and conditions set forth herein.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Virgin Mobile USA, L.P.'s application for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Petitioner's evidence, shall be and hereby is granted.

2. Virgin Mobile USA, L.P.'s request for authority to apply for or receive universal service funds pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Petitioner's continued compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: NOV 1 0 2010

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission