

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER S-31282

VIRGIN MOBILE USA, L.P.
EX PARTE

Docket Number S-31282 In re: Virgin Mobile USA, L.P., ex parte. In re: Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Louisiana by Virgin Mobile USA, L.P.

(Decided at the Open Session dated June 23, 2010)

Overview

Virgin Mobile USA, L.P. ("Virgin Mobile" or "the Company") filed an application with this Commission seeking designation as an Eligible Telecommunications Carrier ("ETC") pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (the "Act"),¹ in those areas served by the non-rural ILEC, i.e. AT&T, in Louisiana, *and* in areas served by rural telephone companies for the sole purpose of providing Lifeline service to qualifying Louisiana customers. Virgin Mobile specified in its petition that it is applying for ETC designation "only for purposes of participation in the Universal Service Fund's ("USF") Lifeline program" and that its "request does not seek ETC designation to offer services supported by the high-cost program."

The Act provides that state commissions, upon request and consistent with the public interest, convenience, and necessity, may in an area served by a rural telecommunications carrier, and shall in all other areas, designate more than one common carrier as an ETC for a service area designated by the state commission if the carrier meets the requirements of the Act.

Applicable Law

The Louisiana Public Service Commission ("Commission") exercises jurisdiction over public utilities in Louisiana pursuant to Article IV, Section 21(B) of the Louisiana Constitution, which states:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

The Commission is given broad power to regulate telephone utilities and may adopt all

¹ 47 U.S.C. § 214(e) (2).

reasonable and just rules, regulations, and orders affecting or connected with the service or operation of such business.

Pursuant to the Act, state commissions are given the authority to designate those common carriers that meet the service requirements found in 47 C.F.R. § 54.101 as "Eligible Telecommunications Carriers" ("ETCs") entitling them to universal service support in accordance with 47 U.S.C. § 254.

The service requirements enumerated in 47 C.F.R. § 54.101 are as follows:

- 1) Voice grade access to the public switched network;
- 2) Local usage;
- 3) Dual tone multi-frequency signaling or its functional equivalent;
- 4) Single-party service or its functional equivalent;
- 5) Access to emergency services;
- 6) Access to operator services;
- 7) Access to interexchange service;
- 8) Access to directory assistance; and
- 9) Toll limitation for qualifying low-income consumers.

Under 47 U.S.C. § 254 (c), a common carrier seeking ETC status must offer all of the above services and must advertise the availability of such services using media of general distribution.² Section 214(e)(1) of the Act further provides that an ETC must offer service using its own facilities or a combination of its own facilities and resale of another carrier's services. Accordingly, pursuant to 47 C.F.R. § 54.201(i), state commissions generally cannot designate as an ETC a carrier that offers services supported by federal universal service support mechanisms exclusively through resale of another carrier's service.

To ensure compliance with the public interest requirement codified at Section 214(e)(2) of the Act, the Commission issued General Order R-27841, which established a list of thirteen public interest criteria that are to be applied on a case specific basis in connection with all requests for ETC designation in areas served by rural telephone carriers:

1. Benefits of increased competitive choice resulting from the designation.

² 47 U.S.C. § 254 (1)

2. Impact of multiple designations on the Universal Service Fund. Specifically, the Commission, upon the petition of any rural ILEC, shall determine if any changes by the FCC in the rules affecting how rural ILECs received Federal USF support causes a material negative impact on the rural ILECs level of Federal USF support. The Commission shall render a decision on any petition filed by a rural ILEC regarding its finding within 90 days. In the event the Commission finds the change has had an actual material negative impact and that decertifying a wireless ETC will mitigate such reduction in funding, the competitive ETC certification shall be considered to no longer be in the public interest by the LPSC and shall be immediately revoked by the LPSC, to the extent that revoking such certification will mitigate such reduction. Nothing herein shall impact a competitive ETC's certification in non-rural areas, if any.
3. Unique advantages and disadvantages of the competitive service offering.
4. Commitment to quality of service by the competitive provider.
5. Submission of records and documentation, on a quarterly basis, declaring the carriers plans for use of universal service funding received as a result of this Commission's designation, including updates as to the progress of said projects.
6. For wireless carriers, compliance with the CTIA Consumer Code for Wireless Services and submission of the number of consumer complaints per 1000 mobile headsets to the LPSC on a quarterly basis.
7. Information regarding the number of requests for service in the designated area that go unfulfilled and adoption of a process setting forth specific steps that will be considered if a request for service is received from a customer within the designated ETC service area, but outside the existing signal coverage area.
8. Compliance with all existing and future state and federal 911 and E-911 mandates.
9. Compliance with Section 401B of the LPSC's Regulations for Competition in the Local Telecommunications Market. For all areas serviced by a wireless ETC in which the carrier received federal USF funds, the wireless ETC shall file retail rates with the LPSC's regulations prior to implementing any such retail rates. As a condition of receiving ETC status, each wireless carrier agrees that the LPSC shall have the authority to reject any retail rate found by the LPSC to be artificially low or below the wireless ETC's costs of providing service, without considering federal USF funding. Additionally, the wireless ETC shall not offer any promotion in the rural service area that it does not offer in the remainder of its service area. Lifeline and Linkup offerings will not be subject to this provision.
10. Compliance with Section 302(A) of the LPSC's Regulations for Competition in the Local Telecommunications Market. (Annual Report Filings).
11. Compliance with Sections 301A-C and 401 of the Commission's TSP Billing Order.

12. Compliance with any additional requirements established by the Commission in Docket R-27733.

13. Conduction of a rural cream-skimming analysis.

Background and Procedural History

The Commission has previously designated ETC status to the following carriers serving non-rural service areas: Sprint Corporation,³ Alltel Communications Wireless, Inc.,⁴ Cox Communications,⁵ LBH, LLC,⁶ VCI Company,⁷ Nexus Communications,⁸ ABC Telecom,⁹ Image Access,¹⁰ BLC Management,¹¹ dPi,¹² Everycall Communications, Inc.,¹³ Tennessee Telephone Services, L.L.C.,¹⁴ Triarch Marketing d/b/a Triarch Communications,¹⁵ Fast Phones, Inc.,¹⁶ TracFone Wireless,¹⁷ and Affordable Phone Services, Inc.¹⁸

Formerly a prepaid reseller of commercial mobile radio service ("CMRS") obtained from Sprint Nextel Corporation ("Sprint"), Virgin Mobile became a wholly owned subsidiary of Sprint on November 24, 2009 pursuant to approval by the Federal Communications Commission ("FCC").¹⁹ Prior to the merger of Sprint and Virgin Mobile, the FCC decided to forbear from applying to Virgin Mobile the facilities-based requirement of Section 214(e)(1) of the Act, provided that the Company complied with the following conditions:

(a) That the Company provide Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes;

(b) That the Company provide Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;

(c) That the Company comply with conditions (a) and (b) as of the date Virgin Mobile provides Lifeline service;

³ LPSC Order No. U-28009.

⁴ LPSC Special Order No. 27-2006.

⁵ LPSC Order No. U-26437.

⁶ LPSC Special Order No. 43-2006.

⁷ LPSC Special Order No. 3-2007.

⁸ LPSC Order No. S-30699.

⁹ LPSC Order No. S-30601.

¹⁰ LPSC Order No. S-30637.

¹¹ LPSC Order No. S-30589.

¹² LPSC Order No. S-30502.

¹³ LPSC Order No. S-30891.

¹⁴ LPSC Order No. S-30982.

¹⁵ LPSC Order No. S-31003.

¹⁶ LPSC Order No. S-31090.

¹⁷ LPSC Order No. S-31097.

¹⁸ LPSC Order No. S-31222.

¹⁹ See *International Authorizations Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

(d) That the Company obtain a certification from each Public Safety Answering Point ("PSAP") where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP's service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements;

(e) That the Company require its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and

(f) That the Company establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.²⁰

On February 18, 2010 Virgin Mobile filed this request for designation as an ETC carrier within the territory of AT&T, a non-rural carrier, *and* in areas served by rural telephone companies for the sole purpose of providing Lifeline service to qualifying Louisiana customers. Notice of the request was published in the Commission's Official Bulletin dated March 5, 2010, with an intervention period of twenty-five (25) days. On March 30, 2010 the Small Company Committee of the Louisiana Telecommunications Association ("SCC"), on behalf of itself and each of its members,²¹ filed notice of intervention pursuant to Rule 10 of this Commission's Rules of Practice and Procedure. This matter was thereafter converted from an "S" docket to a "U" docket.

A status conference was conducted before Administrative Law Judge Michelle Finnegan on May 4, 2010, at which time Virgin Mobile announced that it would submit an amendment to its original Petition stipulating to the five commitments contained in the Commission's Order No. S-31097 designating TracFone Wireless as a limited ETC for the sole purpose of obtaining federal low-income/Lifeline universal service support. Specifically, Virgin Mobile agreed to stipulate to the following conditions:

²⁰ See *Federal-State Joint Board on Universal Service; In the Matter of 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 States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, FCC 09-18, at 7 (rel. March 5, 2009) ("Virgin Mobile Forbearance Order").

²¹ The members of the SCC that participated in this docket were: Cameron Telephone Company, LLC; Campti-Pleasant Hill Telephone Co., Inc.; CenturyTel of Chatham, LLC; CenturyTel of Central Louisiana, LLC; CenturyTel of East Louisiana, LLC; CenturyTel of Evangeline, LLC; CenturyTel of North Louisiana, LLC; CenturyTel of Northwest Louisiana, Inc.; CenturyTel of Ringgold, LLC; CenturyTel of Southeast Louisiana, Inc.; CenturyTel of Southwest Louisiana, LLC; Delcambre Telephone Co., LLC; East Ascension Telephone Co., LLC; Elizabeth Telephone Company, LLC; Kaplan Telephone Co., Inc.; Lafourche Telephone Co., Inc.; Northeast Louisiana Telephone Co., Inc.; Reserve Telephone Co., Inc.; and Star Telephone Co., Inc.

- 1) Virgin Mobile's ETC designation shall be limited to and for the sole purpose of obtaining federal Lifeline universal service support;
- 2) Virgin Mobile shall be ineligible to receive federal high cost universal service support;
- 3) If the Commission designates Virgin Mobile as an ETC, such designation shall have no effect on the definition of rural LEC study areas;
- 4) If the Commission designates Virgin Mobile as an ETC, such designation will have no ability to affect the designation of rural LEC study areas on a going forward basis; and
- 5) Virgin Mobile will comply with the requirements of the Commission's General Order No. R-27841, including the reporting requirements established therein.

On May 14, 2010, Virgin Mobile submitted an Amendment to Petition and Stipulation, stipulating to the above-listed commitments in addition to the previous commitments, limitations and requests included in the Company's original Petition.

On May 21, 2010, the SCC submitted a Non-Opposition to Virgin Mobile's Amended Petition and Stipulation, in which the SCC requested that the instant matter be reverted to Staff Level for conclusion. Because no disputed issue remained between Staff, Virgin Mobile or the SCC, Staff and the Company filed a Motion to Revert to Staff Level Proceeding on May 25, 2010. On June 7, 2010 Administrative Law Judge Finnegan issued a Ruling on Motion to Revert to Staff Level Proceeding, granting the parties' Motion and reverting the instant matter to an uncontested Staff level proceeding that would thereafter be classified as an "S" docket.

As set forth in the application, Virgin Mobile is a wholly owned subsidiary of Sprint, and offers all of the supported services required by the act through Sprint's facilities. Additionally, Virgin Mobile will advertise the availability of these services and the charges for those services through media of general distribution as required by FCC Rules. Furthermore, Virgin Mobile will comply with the public interest requirements established by the Commission in General Order No. R-27841, including the reporting requirements.

Staff's Recommendation and Commission Consideration

After reviewing Virgin Mobile's application, Staff was of the opinion that the request should be granted and that Virgin Mobile should be designated as a limited ETC for the sole purpose of obtaining federal low income/Lifeline universal service fund support, subject to the

conditions enumerated in its May 14, 2010 Amendment to Petition and Stipulation. Staff noted that Virgin Mobile specifically requested ETC status only for the purpose of receiving low-income universal support, i.e. Lifeline. Staff noted that Virgin Mobile seeks designation as an ETC both in areas served by AT&T, a non-rural carrier, and in areas served by rural telephone companies. The Commission's General Order No. R-27841 establishes public interest requirements that are mandatory for common carriers seeking designation as ETCs in high cost rural service areas. Although Virgin Mobile is seeking only low-income/Lifeline support and is not seeking high cost universal service support, the Company expressed its non-opposition to complying with the public interest requirements of General Order No. R-27841.

Staff also observed that that the FCC imposed the conditions of the *Virgin Mobile Forbearance Order* upon the Company at a time when Virgin Mobile was a pure reseller of CMRS services, and that Virgin Mobile is now a wholly-owned subsidiary of Sprint that will be offering services through Sprint's existing Louisiana network infrastructure. Accordingly, Staff recommended that the Company should not be subject to the PSAP certification requirement imposed by the FCC in order to be certified as a limited ETC in the state of Louisiana.

Furthermore, in its Report and Order released March 17, 2005, FCC Docket No. 96-45, the FCC instructed states to conduct a public interest analysis regardless of whether the area sought is rural or non-rural. In its review, Staff concluded that the designation of Virgin Mobile as an ETC would be in the public interest, as the request is very similar to those previously granted by the Commission, particularly those involving CLECs. However, because Staff recommended that Virgin Mobile be designated as a limited ETC for the sole purpose of receiving low income/Lifeline support only, Staff recommended that Virgin Mobile's designation as an ETC have no effect on the definition of Rural LEC federal study areas, and should furthermore have no ability to affect such study areas.²²

Finally, as Lifeline funds are designed only to lower the costs of telecommunications services on an eligible per-customer basis, the designation of Virgin Mobile as an ETC will have no impact on the size of the universal service fund.

Accordingly, Staff recommended that Virgin Mobile be designated as a limited ETC for the sole purpose of obtaining federal low income/Lifeline universal service fund support, subject

²² Staff's analysis, recommendations and conclusions were limited to the facts of this docket and were based and conditioned on the fact that Virgin Mobile is not seeking and does not qualify for any federal High Cost USF support.

to the following conditions previously stipulated to by the Company in its May 14, 2010

Amendment to Petition and Stipulation:

- 1) That Virgin Mobile's designation be limited to Lifeline universal service support;
- 2) That Virgin Mobile be ineligible to receive federal high cost universal service support;
- 3) That Virgin Mobile's designation as an ETC will have no effect on the definition of rural LEC study areas;
- 4) That Virgin Mobile's designation as an ETC will have no ability to affect the designation of rural LEC study areas on a going forward basis; and
- 5) That Virgin Mobile be required to comply with the requirements of the Commission's General Order no. R-27841, including the reporting requirements established therein.

Staff's Recommendation was considered by the Commission at its June 23, 2010 Business and Executive Session. On motion of Commissioner Skrmetta, seconded by Commissioner Holloway, and unanimously adopted, the Commission voted to accept the Staff Recommendation and grant the request for designation as a limited ETC.

IT IS THEREFORE ORDERED THAT:

1. Virgin Mobile USA, L.P. is hereby designated as a limited ETC for the sole purpose of obtaining federal low-income/Lifeline universal service support, and said designation is limited to Lifeline universal service support only.
2. Virgin Mobile USA, L.P. shall be ineligible to receive federal high cost universal service support.
3. Virgin Mobile USA, L.P.'s designation as a limited ETC shall have no effect on the definition of rural LEC study areas.
4. Virgin Mobile USA, L.P.'s designation as a limited ETC shall have no ability to affect the designation of rural LEC study areas on a going forward basis.
5. Virgin Mobile USA, L.P. is required to comply with the requirements of the Commission's General Order No. R-27841, including the reporting requirements established therein.
6. This Order shall be effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

July 12, 2010

/s/ LAMBERT C. BOISSIERE, III
DISTRICT III
CHAIRMAN LAMBERT C. BOISSIERE, III

/s/ JAMES M. FIELD
DISTRICT II
VICE CHAIRMAN JAMES M. FIELD

/s/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/s/ ERIC F. SKRMETTA
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