



Agenda Date: 08/04/10
Agenda Item: 4B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF VIRGIN MOBILE USA, LP)
PETITION FOR LIMITED DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS CARRIER)

ORDER OF APPROVAL

DOCKET NO. TO10020093

Peter Lurie, Esq., for Virgin Mobile USA, L.P.

(SERVICE LIST ATTACHED)

BY THE BOARD:

By petition dated January 29, 2010, Virgin Mobile USA, LP ("Virgin Mobile" or "Company"), a wholly-owned subsidiary of Sprint-Nextel Corporation ("Sprint Nextel"), petitioned the New Jersey Board of Public Utilities ("Board" or "BPU") seeking approval to be designated as an Eligible Telecommunications Carrier ("ETC") solely to provide Lifeline service to qualified New Jersey consumers, pursuant to Section 214(e)(2) of the Communications Act, as amended by the Telecommunications Act of 1996. The Company will not seek approval for funding from the High Cost portion of the federal Universal Service Fund, nor for Link-Up funds, which are used to offset the initial installation of telephone service. Designation as an ETC would permit Virgin Mobile to receive universal service support for these services. Virgin Mobile requests the ETC designation for the entire State of New Jersey.

The Federal Communications Commission previously designated Virgin Mobile as an ETC for purposes of offering Lifeline service in the states of New York, North Carolina, Tennessee and Virginia.¹ In approving the Company's requests, the FCC determined that Virgin Mobile would "offer Lifeline-eligible consumers a choice of providers for accessing telecommunications services not available to such consumers today" and "expand participation of qualifying consumers" in the Lifeline program—a longstanding goal.² The FCC concluded that limited designation of Virgin Mobile as an ETC was in the public interest. Virgin Mobile has also been designated an ETC in the State of Michigan.³

¹ I/M/O 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, Pennsylvania, Virginia North Carolina and Tennessee Order, 24 F.C.C.R. 3381 (rel. March 5, 2009) ("Forbearance Order").

² Forbearance Order, 24 F.C.C.R. at 3390, 3393.

³ I/M/O of the Application of Virgin Mobile USA, L.P. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214 (e) of the Telecommunications Act of 1996, Case U-15966, Opinion and Order (Dec. 1, 2009).

Section 214(e)(2) of the federal Telecommunications Act of 1996 authorizes state commissions to designate ETC status for federal universal service purposes. A telecommunications carrier may be designated as an ETC provided that the carrier demonstrates a commitment to: (a) offer the services that are supported by federal universal support mechanisms, and (b) advertise the availability of such services.

Virgin Mobile attests that it "[o]ffers the services that are supported by federal universal support mechanisms" using its own facilities, pursuant to the requirements of 47 C.F.R. § 54.201(d)(1). Virgin Mobile asserts that it will provide Lifeline-eligible customers 200 minutes of free monthly service. Additionally, Lifeline-eligible customers will be permitted to purchase additional usage cards at a rate of \$0.10 per minute. Text messaging is available at \$0.10 per message but is charged separately through prepaid purchases. Virgin Mobile's plan does not allow rollover minutes.

In addition, Virgin Mobile will provide Lifeline customers an Enhanced 911 ("E911") compatible handset at no cost. Virgin Mobile also asserts that its customers will always be able to contact 911 or E911 from their wireless handset, regardless of whether they have depleted their free Lifeline minutes or additional airtime.

Furthermore, Virgin Mobile asserts that it meets all the requirements for designation as an ETC. 47 C.F.R. § 54.101(a) requires the following services and functionality be provided: (1) Voice grade access to the public switched telephone 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 911 or E911 emergency service (6) Access to operator services; (7) Access to interexchange service; (8) Access to directory assistance; and (9) Toll limitation for qualified low-income customers.

By letter dated May 27, 2010, , Advocates for Universal Access ("AUA"), an organization from Seattle, Washington,, filed a letter petition requesting intervention status and submitting comments on Virgin Mobile's petition. The group writes that while it supports Virgin Mobile's petition, it is concerned that Virgin Mobile's proposal ignores conditions of the FCC Forbearance Order. Specifically, AUA argues that Virgin Mobile should be ordered to adhere to the conditions in the Forbearance Order in order to ensure access to emergency services. AUA also seeks clarification on the cost of text messages and how they are paid and whether 800-numbers, customer service and/or information calls are charged against a customer's minutes.

By letter dated June 14, 2010, Virgin Mobile responded to the AUA stating that contrary to AUA's assertions, Virgin Mobile is a facilities-based provider, and as a wholly-owned subsidiary of Sprint Corporation, Virgin Mobile has beneficial use of Sprint's facilities and no resale agreement is in place. Therefore, Virgin Mobile argues, the Board has clear authority to grant the Company's request without the conditions previously applied to resale carriers. In addition, Virgin Mobile states that its customers have the same access to E911/911 services as any other Sprint customer, i.e., there are no additional steps required to determine the name or billing address on an account.

Lastly, Virgin Mobile argues that it has one of the most attractive Lifeline offerings in the market. Customers may purchase additional minutes when they exceed the free 200 minutes at a cost of \$0.10/minute and text messaging is available at a rate of \$0.10/text message on a prepaid basis. These additional minutes and text messages must be purchased in advance, so customers cannot inadvertently incur costs that they are unable to pay.

On July 8, 2010, Staff received an informal electronic message from the National Consumer Research Alliance ("NCRA") requesting that the Board direct Virgin Mobile to make texting part

of the free monthly allowance of minutes, allow unused minutes to roll over every month and make all Virgin Mobile to Virgin Mobile calls free.

DISCUSSION

To qualify as an ETC, a carrier must provide nine services identified in 47 C.F.R. § 54.101. The Board **FINDS** that the services Virgin Mobile states that it will provide to Lifeline-eligible customers satisfy the requirements of 47 U.S.C. Section 214(e) and 47 C.F.R. § 54.101. The services required to be provided under the law and those to be provided by Virgin Mobile are:

- 1) **Voice grade access to the public switched network** – Voice grade access enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz. Virgin Mobile states that it complies with this requirement by enabling customers to transmit voice communications, including signaling to the network that a caller wishes to place a call, and enabling customers to receive voice communications, including receiving a signal indicating there is an incoming call;
- 2) **Local usage** – Local usage means an amount of minutes of use of exchange service, provided free of charge to end users. Under Virgin Mobile's proposal, customers can send and receive local calls wherever Virgin Mobile provides service. Virgin Mobile includes local usage in its calling plan;
- 3) **Dual tone multi-frequency signaling or its functional equivalent** – Dual tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, which shortens call set-up time. According to Virgin Mobile, all handsets provided by Virgin Mobile are DTMF capable;
- 4) **Single-party service** – Single-party service permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission. Virgin Mobile provides customers with single-party access for the duration of every call, and it does not provide "multi-party" or "party-line" services;
- 5) **Access to emergency services** – Access to emergency services includes access to services, such as 911 or E911 provided by local governments or other public safety organizations. 911 or E911 is defined as a service that permits a telecommunications user, by dialing the three-digit code "911", to call emergency services through a PSAP operated by the local government. E911 is defined as a 911 service that includes the ability to provide automatic numbering information ("ANI"), which enables the PSAP to call back if the call is disconnected, and automatic location information ("ALI"), which permits emergency service providers to identify the geographic location of the calling party. Access to emergency services includes access to 911 and E911 services to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems;
- 6) **Access to operator services** – Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call. Virgin Mobile contends that its customers have access to operator services;

- 7) Access to interexchange service – Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network. Virgin Mobile states that its customers are able to complete toll calls and are not charged separately for interexchange calls. Long distance calling is included in Virgin Mobile's service, with no additional charge to the customer;
- 8) Access to directory assistance – Access to directory assistance is a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings. Virgin Mobile states that all customers are able to reach directory assistance services from their handsets; and
- 9) Toll limitation for qualifying low-income consumers – Toll limitation or blocking restricts all direct dial toll access. There will be no toll limitation because Virgin Mobile provides a fixed number of minutes per month service, which means that there will be no disconnect for non-payment.

The Board has reviewed Virgin Mobile's petition for designation as an ETC in New Jersey, as well as additional documents filed with this Board and with the FCC. The Board is satisfied that Virgin Mobile has complied with the above requirements to be eligible as an ETC in New Jersey and Virgin Mobile has demonstrated its ability to provide the nine services identified in 47 C.F.R. § 54.101.

Virgin Mobile has provided an initial plan outlining their media advertising in order to advertise the offered Lifeline service, as required in 47 U.S.C. § 214(e)(1). Virgin Mobile will use retail outlets and other methods for Lifeline advertising and for customers to purchase its prepaid cards. The Company states that it will advertise the availability and rates for the services described above using media of general distribution in conformance with the regulations of the FCC. The Company advertises the availability of its services through newspapers, magazines, radio, the Internet, billboards and television. Virgin Mobile's third-party retail partners also heavily promote its services. According to the Company, these advertising campaigns have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to this consumer segment.

As a safeguard to prevent more than one Lifeline supported service per household, customers will not be able to receive Lifeline certification through a retail provider. Customers will have to contact Virgin Mobile directly to self-certify for Lifeline. Customers must self-certify, under penalty of perjury, that they qualify for Lifeline service either by being a participant of one of New Jersey's eligible programs, or because they are within the relevant threshold of income level.

The Board is satisfied that Virgin Mobile's petition for designation as an ETC for the limited purpose of Lifeline support eligibility should be approved subject to several conditions, as described below. These conditions, combined with Virgin Mobile's commitment to provide Lifeline service in New Jersey in accordance with its E911 obligations, convinces the Board that this optional service will be of value to eligible New Jersey customers.

In addition, the Board is satisfied that the issues raised by AUA and NCRA have been properly addressed by the recommended conditions and/or are competitive issues that will be addressed by the marketplace. Moreover, the Board FINDS that the conditions contained in this Order are necessary to ensure that customers of Virgin Mobile's Lifeline service have reliable access to 911 and E911 emergency services.

Therefore, the Board FINDS that Virgin Mobile has met all statutory and regulatory requirements for designation as an ETC. The Board also concludes that it has the authority to grant ETC status to wireless carriers. Section 214(e)(2) provides that a state commission shall designate as an ETC a carrier that meets the requirements of 47 U.S.C. §214(e)(1).

The Board HEREBY APPROVES the petition and ORDERS that Virgin Mobile be designated an ETC and approved to offer Lifeline service.

The request for ETC designation to offer Lifeline service is HEREBY APPROVED, subject to:

- Certification from each PSAP where Virgin Mobile provides Lifeline service, or from the state Office of Emergency Telecommunications Services on behalf of each PSAP in New Jersey, confirming that Virgin Mobile provides its customers with access to basic and E911 regardless of activation status and the availability of prepaid minutes. These certifications must be filed with the Board in this proceeding. Service shall not be provided to any Lifeline customer in an area where such certification has not been granted or received;
- Certification that the handsets to be provided to Virgin Mobile customers are E911 compliant;
- Each of Virgin Mobile's Lifeline customers in New Jersey will receive 200 minutes of airtime each month for all months in which the customer is enrolled in the program and any unused minutes will not roll over to the following month;
- Eligibility for participation in Virgin Mobile's Lifeline program will be based upon customer enrollment in one of the eight qualifying New Jersey public assistance programs. The eight qualifying programs are: Medicaid; Food Stamp Program; General Assistance ("GA"); Supplemental Security Income ("SSI"); Home Energy Assistance Program ("HEAP"); Lifeline Utility Credit/Tenants Lifeline Assistance; Pharmaceutical Assistance to the Aged and Disabled ("PAAD"); and Temporary Assistance to Needy Families/Work First New Jersey ("TANF/WFNJ"). Additionally those persons 65 or older whose household incomes are at or below 150% of the federal poverty level are also eligible.⁴ The eligibility requirements are subject to modification by the Board, and applicants will be required to self-certify under penalty of perjury that they are enrolled in one of those qualifying public assistance programs;
- Self-certification of Virgin Mobile's customers under penalty of perjury that they meet the eligibility requirements prior to service being activated and also annual certification that the customer is the head of household and is only receiving a Lifeline discount from Virgin Mobile and from no other carrier;
- Tracking of Lifeline customer's primary residential address and certification that there is only one customer receiving Lifeline at each residential address;

⁴ See I/M/O Petition by Warwick Valley Telephone Company for Approval to Provide Lifeline Services, BPU Docket No. TT97080605 (November 18, 1997); and I/M/O Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, BPU Docket No. TO01020095 (August 19, 2003), Attachment A.

- Virgin Mobile must deal directly with its customers to certify and verify Lifeline eligibility;
- Virgin Mobile shall ensure that 100% of federal universal service funds flow through directly to Lifeline customers. The Board reserves the right to conduct audits as needed to determine that the funds are used for permitted purposes;
- Virgin Mobile's ETC designation may, at any time, be suspended or revoked by order of the Board;
- Virgin Mobile shall make all service offerings, including Lifeline, available on its Web site;
- Virgin Mobile shall file, within 30 days of approval of its ETC application, its terms and conditions of service, applicable to qualifying low-income customers. Further, Virgin Mobile shall have the ongoing obligation to notify the Board of any future changes to its rates, terms or conditions;
- Virgin Mobile shall file, within 30 days of approval of its ETC application, proposed language to be used in all advertising of Lifeline service and on its Web site. The language should include information directing customers to the Board's Telecommunications Division for complaints regarding any service issues. The Staff shall have the right to review and make changes to any proposed language;
- Virgin Mobile shall file the following information on August 31, 2011 (and updated information every August 31 thereafter), unless otherwise ordered by the Board:
 1. Virgin Mobile shall report all instances in which it receives customer complaints. Virgin Mobile shall be required to provide the nature and number of customer complaints, and their resolution annually on August 31, 2011, and updated every August 31 thereafter.
 2. Actual total federal funds received in 2010, and estimated total funds to be received in 2011.
- Virgin Mobile must reach satisfactory resolution of complaints filed with the Board's Telecommunications Division on a timely basis.
- Virgin Mobile must provide its customers with access to live customer assistance operators.

Based upon the above conditions, the Board HEREBY DESIGNATES Virgin Mobile as an ETC solely to provide Lifeline service to all qualifying customers who request such service in New Jersey.

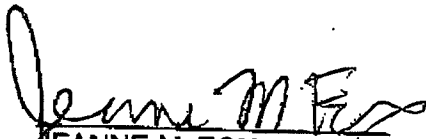
Virgin Mobile shall not seek access to funds from the federal Universal Service Fund for the purpose of providing service to high cost areas.

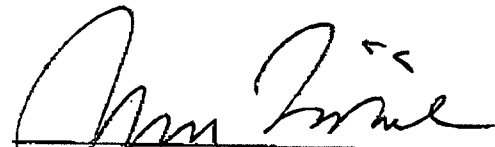
This ETC Designation is issued on the representation that the statements contained in the Petitioner's application are true, and the undertakings therein contained shall be adhered to and be enforceable unless a specific waiver is granted by the Board pursuant to the authority contained in N.J.S.A. 48:1-1 et seq.

DATED: 8/4/10

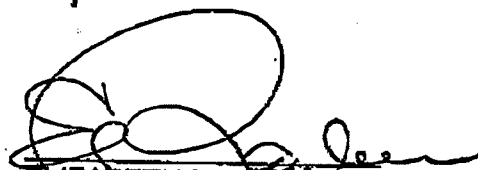
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COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

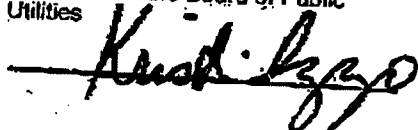

NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**VIRGIN MOBILE USA, LP. DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN NEW JERSEY**

BPU DOCKET NO. TO10020093

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