

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 16, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman, Jr.
Wayne E. Gardner
Robert F. Powelson, Dissenting Statement

Re: Petition of Virgin Mobile USA, L.P. for Limited P-2010-2155915
Designation as an Eligible Telecommunications
Carrier for the Purpose of Offering Lifeline Service

BY THE COMMISSION:

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 Pennsylvania Public Utility Commission (PUC or Commission) seeking approval to be designated as a facilities-based¹ Eligible Telecommunications Carrier (ETC) throughout the Commonwealth² for the limited purpose of providing Lifeline service to qualified low income consumers, pursuant to section 214(e)(2) of the Communications Act of 1934, as amended.³ On October 18, 2010, Virgin Mobile filed a supplement to its original petition, which incorporates and restates the original petition.

¹ As discussed below, we refrain from determining whether Virgin Mobile qualifies as a facilities-based carrier.

² Virgin Mobile's request for ETC designation extends over its authorized service area for all rural and non-rural telecommunications carriers in the Commonwealth. (*Petition of Virgin Mobile* at pp 6-7, Exhibit 2)

³ The Company seeks approval for lifeline service as a prepaid wireless plan known as *Assurance Wireless*, and will not seek approval for funding from the High Cost portion of federal Universal Service Fund, nor for Link-Up funds, which are used to offset the initial installation of telephone service.

Designation as an ETC for provision of Lifeline service would permit Virgin Mobile to participate in the federal Universal Service Fund's (USF) Lifeline program in order to receive universal service support for these services.⁴ Based upon Virgin Mobile's petition, as supplemented and in consideration of comments by interested parties, we conclude that Virgin Mobile shall be designated as an ETC in the Commonwealth for the limited purpose of offering Lifeline services and subject to the conditions stated by this order and applicable annual recertification requirements.

ETC Designation for purposes of provision of Lifeline by a prepaid wireless carrier presents a case of first impression to this Commission which raises special and important concerns for not only the continued viability of the federal USF mechanism, but also the implications for Pennsylvania citizens as net contributors to that fund and for the public safety of our citizens in the provision of operational capacity and access services for 911 calls during emergency situations. Finally, as with any subsidy program, we recognize the special need to guard against potential fraud and abuse for prepaid wireless accounts drawing support subsidies from the federal USF lifeline (or Low Income) program. Wireless carriers' adherence to Pennsylvania's eligibility verification and reporting requirements will assure uniformity among Lifeline services offered by different ETCs, safeguard the integrity of the federal USF Lifeline funds from fraud and abuse, and provide consumer protection for low income consumers.

BACKGROUND

On August 2, 2010, the Commission entered its order adopting the *Final Policy Statement on Commonwealth of Pennsylvania Guidelines for Designation and Annual Recertification as an Eligible Telecommunications Carrier (ETC) for Purposes of*

⁴ The federal USF Lifeline program's aim is to encourage universal provision of telecommunication services by offering low income Pennsylvania consumers more choices for affordable telecommunications service. Carriers designated as ETCs are eligible to receive a certain dollar amount from the USF in support of the offering.

Federal Universal Service Support(ETC Guidelines) at Docket No. M-2010-2164741 (*ETC Guidelines Order*), which codifies the guidelines at 52 Pa. Code § 69.2501. By Secretarial Letter dated September 10, 2010, the Commission notified all carriers and interested parties on pending ETC petitions, including Virgin Mobile, of the newly adopted ETC guidelines and invited carriers to supplement their petitions, consistent with the guidelines.

The *ETC Guidelines* became effective upon publication in the Pennsylvania Bulletin on October 2, 2010. 40 Pa.B. 5586 (2010). On that same date, the Commission notified all interested parties of its intent to proceed reviewing pending ETC petitions, pursuant to the *ETC Guidelines*, and invited comment on the petitions. 40 Pa. B. 5662.

Comments on Virgin Mobile's petition were received from the Office of Consumer Advocate (OCA),⁵ outlining specific concerns for quality of service and preservation of consumer protections for low income subscribers. Specifically, OCA supports Virgin Mobile's petition subject to the same reporting and verification requirements imposed upon all ETCs to ensure consistent treatment and protection of Pennsylvania consumers, as well as protecting the USF from potential fraud and abuse.⁶

OCA comments regarding Virgin Mobile's Lifeline offering and supplemental petition, urged this Commission to ensure certain consumer protections were in place as a condition to the grant of Virgin Mobile's designation, including: (1) a requirement that calls to Virgin Mobile's customer service did not count against plan minutes, and communication from Virgin Mobile to customers does not count against plan usage (OCA comments, pp. 4 and 15); (2) a requirement that Virgin Mobile annually provide the Commission with copies of all advertisement/customer notices (OCA comments, p. 5); (3) a requirement that Virgin Mobile comply with the Commonwealth's Lifeline

⁵ Comments of OCA filed, October 12, 2010.

⁶ *Id.* at pp. 4 – 10.

eligibility verification requirements set forth in Commission's *Lifeline Order* in addition to the obligation for annual filings under the *Tracking Report Order* (OCA comments, p. 5, 9-10); (4) require compliance with annual reporting requirements in 47 C.F.R. section 54.209, (OCA Comments, p. 6); (5) Compliance with 66 Pa.C.S. § 3019 (f)(1)-(6), (OCA comments, p. 8); (6) requirement for increased service offering (OCA Comments , pp. 11-14); (7) requirement to deactivate Lifeline account after 60 days nonuse, with 30-day grace period (OCA comments, p. 17).

We note that Virgin Mobile's supplemental petition and amended Lifeline offering served to address the bulk of consumer protection concerns raised by OCA. Virgin Mobile's supplemental petition included: (1) an express statement that calls to Virgin Mobile's customer service did not count against plan minutes, and communication from Virgin Mobile to customers does not count against plan usage (Supplement to the Petition, p. 3); (2) an express agreement that Virgin Mobile comply with the Commonwealth's Lifeline eligibility verification requirements set forth in Commission's *Lifeline Order* in addition to the obligation for annual filings under the *Tracking Report Order* (Supplement to the Petition, p. 20.); (3) an express agreement that Virgin Mobile will comply with annual reporting requirements in 47 C.F.R. § 54.209, (Supplement to the Petition, p. 18.); (4) an express agreement to comply with 66 Pa.C.S. § 3019 (f)(1)-(6), (Supplement to the Petition, p. 18-19); (5) an amended increased service offering for lifeline which consists of (Supplement to the Petition, p. 3); (6) and express agreement to deactivate any Lifeline account after 60 days nonuse, with 30-day grace period (*See*, Assurance Wireless terms of Service, www.assurancewireless.com)⁷).

⁷ The Assurance Wireless Terms of Service include a description of the policy on termination for non-usage. (*See*: <http://www.assurancewireless.com/Public/TermsOfServiceRider.aspx#tos6a>). The description of the policy states in relevant part “: if you do not make a voice call or send a text message at least once during any 60-day period..., Assurance Wireless will notify you that you are no longer eligible for Assurance Wireless service. ...[Y]ou 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 your eligibility restored.” Virgin Mobile agrees that as a condition of ETC designation in Pennsylvania, the Company shall include Pennsylvania on the list of states requiring the 60 day notice for termination for non-usage, with a 30-day period during which a customer may notify Virgin Mobile of the wish to retain the account.

With respect to OCA's comments (p. 5), suggesting a requirement that Virgin Mobile annually provide the Commission with copies of all advertisements and consumer notices for review, we agree that such a requirement is warranted. As a condition of ETC designation we shall require that Virgin Mobile annually provide the Commission's BCS with copies of the advertisement and consumer notices it expressly agrees to provide DPW. *See*, Supplement to the Petition at p. 20.

With respect to OCA's comments (p. 15), suggesting additional lifeline eligibility verification requirements, we find that the concerns raised should be adequately addressed by the requirements in this order that Virgin Mobile comply with the Pennsylvania-specific conditions imposed by this Order, as well as those imposed under the FCC's *Forbearance Order*, including that; (1) customers self-certify that they are the head of household and receive lifeline support only from Virgin Mobile; (2) Virgin Mobile establish safeguards to prevent its customers from receiving multiple Lifeline subsidies from Virgin Mobile and Sprint Nextel at the same address; and (3) Virgin Mobile provide express agreement to conform with our *Lifeline Order*'s Lifeline eligibility verification requirements. We note that the federal requirements are in addition to the Pennsylvania-specific requirements.

At this time there is no data to suggest Pennsylvania's existing Lifeline eligibility verification requirements are deficient.⁸ As discussed more thoroughly below, although our *Lifeline Order* specifically rejected customer self-certification as a means for verifying eligibility for lifeline, we shall require Virgin Mobile's continued obligation to

⁸ This Commission may, at a future date, initiate an investigation to determine whether Pennsylvania's existing Lifeline eligibility verification requirements operate to sufficiently prevent fraud and abuse.

require Lifeline Applicants to attest that they are head of household, and not currently receiving a lifeline subsidy, to prevent duplicate subsidies from the same household (*e.g.*, what is commonly called as “double dipping”).

We note that the *FCC’s Forbearance Order* requires Virgin Mobile to track the primary residence as a means to avoid double dipping.⁹ Virgin Mobile’s duty will continue so long as the duties imposed under the *FCC’s Forbearance Order* are in effect, and if lifted by the FCC, shall continue until Virgin Mobile petitions this Commission to lift those obligations.

With respect to OCA’s comment that Virgin Mobile should be required to deal directly with the customer, to preclude the use of a third party administrator, we are not persuaded that this measure is necessary. As discussed more thoroughly below, Virgin Mobile’s consumer verification is currently accomplished via a third party administrator, Solix, Inc. Based upon the procedures currently in place by Solix, Inc., we are satisfied that the eligibility verification requirements will be adequately performed. The use of a third party administrator in no way relieves Virgin Mobile of the duty to prevent fraud and abuse, and any failure of Solix, Inc., to comply with the eligibility verification requirements imposed by this order, will be imputed to Virgin Mobile and will be grounds for revocation of the ETC designation. Although to date this Commission has not separately imposed the duty to deal directly with the customer as a means of lifeline eligibility verification, we may impose such a measure or additional requirements at a

⁹ Self-certification is used in this manner to establish the applicant as head of household, not currently receiving Lifeline support to avoid multiple subsidies from one residence. However, provision of Lifeline to low income consumers who reside in group homes or shelters presents a special problem when using a home address to preclude multiple subsidies at that address. As residents of a group home or shelter, multiple consumers may be eligible for Lifeline. Consumers in such a situation should not be precluded based upon a shared address at the group home or shelter. The FCC has been asked to clarify the verification requirements in such circumstances. *See, In the Matter of the Federal-State Joint Board, TracFone Wireless inc., Petition for Modification of the “One-Per-Household” Rule*, WC Docket 96-45, NASUCA Comments (filed Nov. 20, 2009). Until the FCC addresses this issue, we expect that Virgin Mobile will implement verification procedures which will not unreasonably exclude consumers who occupy a shared address due to living in group homes or shelters. *See also In re Federal-State Joint Board on Universal Service Lifeline and Link-Up*, (FCC Released November 4, 2010), CC Docket No. 96-45, WC Docket No. 03-109, *Recommended Decision*, FCC 101-3, ¶¶ 12-14 at 5-6.

future point if any indication of fraud or abuse of the Lifeline program arises due to the use of a third party administrator, or otherwise.

Comments received from the Honorable Brendan F. Boyle, Pennsylvania House of Representatives,¹⁰ the Honorable Tim Briggs, Pennsylvania House of Representatives,¹¹ and the Honorable John P. Sabatina, Jr., Pennsylvania House of Representatives,¹² commended the petition of Virgin Mobile and its potential for positive impact upon the underserved low income consumers in the Commonwealth, while urging special consideration for impact upon those low income consumers by Virgin Mobile's lifeline service offering which charges a per-use fee for text messages and does not allow for rollover of unused minutes. The State Representatives also raised the issue of the relative number of minutes offered by Virgin Mobile's plan, and expressed concern that unused minutes which did not rollover, deprived the consumer of the use of minutes, while Virgin Mobile is fully compensated by the federal USF for those minutes, with no corresponding return of USF funds for unused minutes.

With respect to the concern that text messages are not included in Virgin Mobile's Lifeline offering, we note that text messaging is not a USF supported service. It would be inappropriate to require a non-supported service as a part of the Lifeline offering. However, Virgin Mobile's amended Lifeline offering, outlined below, includes a new option for consumers to purchase text messaging and additional minutes at reasonable rates. For example, a consumer may purchase 750 additional monthly voice minutes and 1,000 text messages for \$20. We are satisfied that Virgin Mobile's amended offering reflects a balance of legitimate business concerns, with consideration for the actual usage practices of consumers, which adequately addresses the legitimate concerns expressed by the members of the Pennsylvania legislature.

¹⁰ Comments of the Honorable Brendan F. Boyle filed September 21, 2010.

¹¹ Comments of the Honorable Tim Briggs filed September 10, 2010

¹² Comments of the Honorable John P. Sabatina, Jr., filed August 26, 2010.

The State Representatives also raise a legitimate concern that unused minutes neither rollover for the benefit of the consumer, nor result in a rebate to the federal USF Fund. Virgin Mobile's position is that once minutes are delivered to the phone, the federal USF Lifeline subsidy is exhausted, and is not based on usage of minutes. Because the lifeline subsidy bears no relation to the minutes downloaded, we agree. If in the future the FCC concludes that federal USF lifeline subsidy is based upon minute usage, we will consider adoption of that rule. At this time however, we conclude that preservation of the federal USF Lifeline funds is sufficiently addressed by a policy for termination of the lifeline account for nonuse after 60 days, with a 30 day notice period. In this way, the use of federal USF support for an inactive account is limited to three months, while customers who wish to have the account for safety/emergency purposes, will be entitled to retain the account.

Additional comments were submitted by Sheila Stickel, President and Executive Director, Advocates for Universal Access, LLC (AUA),¹³ and TracFone Wireless, Inc., (TracFone).¹⁴ Although these comments were filed improperly, comments submitted but not filed properly during the requested public comment period, have been reviewed and considered by the Commission.

TracFone's comments asked that this Commission impose certain obligations for termination of service for non-usage in the Virgin Mobile's lifeline plan. Specifically, TracFone argued that Virgin Mobile should be required to terminate Lifeline accounts after 60 days of non-usage, with a 30-day notice period, to ensure that Virgin Mobile would not be able to seek federal USF Lifeline support for non-used accounts. Those

¹³ Comments/Petition to Intervene filed June 3, 2010. By Secretarial Letter dated September 29, 2010, the Secretary of the Commission rejected the AUA's petition to intervene for failure to comply with the Commission's rules of Administrative Practice and Procedure at Title 52 of the Pennsylvania Code. AUA was invited to re-file its submission in accordance with procedural rules, or as public comment. Although AUA did not re-file its submission, the Commission has reviewed AUA's June 3, 2010 Petition and has considered it as AUA's public comments.

¹⁴ Comments of TracFone, filed October 22, 2010, were out of time, but were still reviewed.

suggested provisions have already been satisfied by Virgin Mobile's supplemental petition and amended lifeline offering which meets both of those proposed conditions.

TracFone is a prepaid wireless carrier which sought and was granted ETC designation by the FCC, rather than this Commission. TracFone requested that this Commission impose non-usage provisions similar to those imposed upon TracFone in order that a similarly situated prepaid wireless carrier would be subject to similar non-usage provisions. We note that, unlike Virgin Mobile, TracFone operates in Pennsylvania under a FCC-granted ETC designation and has not, to date, agreed to comply with the Pennsylvania-specific requirements set forth in this order, and to which Virgin Mobile voluntarily agrees to be bound for the protection of the consumers in Pennsylvania as a condition of receiving ETC designation by this Commission.

On that basis, Virgin Mobile and other carriers, which agree to comply with Pennsylvania-specific requirements and which seek and obtain ETC designation by this Commission should enjoy the benefits of Pennsylvania-specific implementation, including the right to seek modification of ETC designation obligations by petitioning this Commission, inclusion on the Commission's official list of Pennsylvania-designated ETCs, and the ability for the Commission's Bureau of Consumer Services to resolve consumer issues related to the provision of Lifeline Service.

With respect to all the filed comments, we note that we are not required to consider expressly or at great length each and every comment raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any comment or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

Finally, on September 29, 2010, representatives from the Commission's Bureau of Consumer Services and Law Bureau engaged in a teleconference with Virgin Mobile, to

seek clarification of on Virgin Mobile's filing including the amendments to Virgin Mobile's Lifeline offering, the current status of FCC proceeding involving Virgin Mobile, the current status of Virgin Mobile's ETC petitions pending in other states, Virgin Mobile's use of Solix, Inc., as a third party administrator, and the extent of Virgin Mobile's willingness to comply with Pennsylvania-specific requirements on ETC designation.¹⁵

DISCUSSION

As a preliminary matter, we note that Virgin Mobile's alleged status as a facilities-based carrier, by virtue of being a wholly-owned subsidiary of Sprint-Nextel, is of consequence to the standards required for testing 911 capabilities in emergency situations. While we shall grant Virgin Mobile's request for ETC designation and conclude that the Company satisfies the relevant federal and Pennsylvania standards, as discussed below, our grant is conditional on Virgin Mobile continuing to satisfy the 911 testing standards required by the FCC for Virgin Mobile as non-facilities-based carrier in *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)*, Order, FCC 09-189 (rel. March 5, 2009) (*FCC Forbearance Order*).

We note that Virgin Mobile has made a strong case that its 911 capabilities are more than adequate to address any network outages or emergency situations, as discussed under the section addressing the requirement of functionality in emergency situations requirements, however, because of our paramount concern for the public safety for the citizens of this Commonwealth and potential consumers of the Virgin Mobile Lifeline offering who would rely on the wireless carrier in emergency situations, we refrain from lifting the FCC's additional requirements including the requirement for 911 capability

¹⁵ Virgin Mobile teleconference, September 29, 2010. Formal interrogatories were neither requested nor filed. Subsequent electronic communication provided details on Virgin Mobile's amended Lifeline offering, Solix, Inc.'s duties as third party administrator and notice of additional state ETC designations for Virgin Mobile.

testing imposed on Virgin Mobile as a non-facilities based wireless carriers.¹⁶ Should the FCC, at a future point, lift the additional requirements, including the PSAP certification requirement, Virgin Mobile may immediately petition this Commission to similarly lift the additional requirements. However, those requirements shall remain in place for purposes of ETC designation, unless and until lifted by order of this Commission.

We now turn to the substance of Virgin Mobile's Pennsylvania petition.¹⁷ As described in its petition, Virgin Mobile's Lifeline service offering consists of a plan for prepaid 250 anytime voice minutes per month at no charge with additional service priced at \$0.10/voice minutes and \$0.10 text messages.¹⁸ In addition, Lifeline customers may purchase prepaid packages of voice minutes at a rate of \$5 for 250 minutes.¹⁹ Lifeline customers will receive a wireless handset free of charge. The handsets will be covered by a twelve-month warranty for any defect, damage, loss or theft, under which the Company will replace the handset free of charge with a new or refurbished handset. The Company will be responsible for all warranty-related shipping charges. In addition, Lifeline customers will have access to a variety of standard features at no additional charge, including voicemail, caller I.D., and call waiting services. To ensure uninterrupted

¹⁶ The FCC's grant of forbearance of the facilities requirement for Virgin Mobile as a wireless carrier was conditioned upon Virgin Mobile's compliance with certain conditions including, requiring that Virgin Mobile obtain a certification from each Public Safety Answering Point (PSAP) whose territory overlaps with Virgin Mobile's Lifeline service area, confirming that the Company provides its customers with 911 and E911 service, or within 90 days of a request for certification, a PSAP has neither provided the certification nor affirmatively determined that Virgin Mobile does not provide the required access, self-certifying that Virgin Mobile meets the 911 and E911 requirements. *See, Virgin Mobile Petition* at p. 4.

¹⁷ As of the date of this order, Virgin Mobile has been approved as an ETC in fourteen states: Florida, Indiana, Louisiana, Maryland, Michigan, Mississippi, New Jersey, New York, North Carolina, Tennessee, Texas, Virginia, Washington and West Virginia.

¹⁸ Virgin Mobile recently increased the amount of free minutes that eligible Lifeline customers receives to 250 minutes, up from the 200 minutes noted in the Company's petition. Since filing the petition, the Company has also lowered the rate for purchase of individual text messages from \$0.15 to \$0.10. (*See, Virgin Mobile Supplemental Petition*, p. 3, fn.2).

¹⁹ This package option was rolled out following the Company's supplemental filing. As a result of these offers, customers seeking additional voice minutes beyond the standard 250 free minutes now have three options: 1) Purchase individual voice minutes at \$0.10/minute, 2) Purchase 250 additional monthly voice minutes for \$5, or 3) Purchase 750 additional monthly voice minutes and 1,000 text messages for \$20. Aside from these new offerings, Virgin Mobile has made no modifications to the terms and conditions of its Lifeline service offerings. A description of these offerings is available on the Assurance Wireless website:

<http://www.assurancewireless.com/Public/MorePrograms.aspx>

access to 911 emergency services, Lifeline customers will have access to 911 emergency services regardless of whether they have any remaining minutes on the prepaid account. Minutes used for calls to 911 emergency services and Virgin Mobile/Assurance Wireless customer care are not deducted from the customers' plan minutes. All communication from Virgin Mobile to a lifeline account will not be charged as usage against the account. Lifeline accounts which remain inactive for 60 days will be notified via email, text and/or voice mail that if the account remains inactive it will be canceled in 30 days. Finally, Virgin Mobile's lifeline customers will receive free service, so long as they do not exceed the 250 minutes of voice service per month, since no other taxes or fees are charged to the account.²⁰

Consideration of Virgin Mobile's Petition for ETC designation will be this Commission's first review of such a request pursuant to our newly adopted *Guidelines on ETC Designation and Annual Recertification (Guidelines)*. As we stated in the order adopting the Guidelines, they are intended as a starting point for review of a request for ETC designation, expressing our intent to adopt the federal standards as our minimum requirements. *ETC Guidelines Order* at p. 4. This Commission reserves the right to review any designation and recertification on a case-by-case basis and grant or deny designation and recertification after balancing the weight of the circumstances particular to each application.

I. Virgin Mobile Satisfies The Federal Requirements For Designation As An ETC

A. Virgin Mobile Satisfies the Requirements of 47 U.S.C. § 214(e)

Section 214(e)(1) of the Act provides that applicants for ETC designation must be common carriers that will offer all of the services supported by the universal service fund

²⁰ Supplement to the Petition, p. 3.

either using their own facilities²¹ or a combination of their own facilities and the resale of another carrier's services. Applicants also must commit to advertise the availability and rates of such services.

Section 153(10) of the Act defines a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio”²² The FCC has determined on numerous occasions that providers of mobile wireless services shall be treated as common carriers for regulatory purposes. As a provider of wireless telecommunications services, therefore, Virgin Mobile is a common carrier eligible for designation as an ETC. As a wholly-owned subsidiary of Sprint Nextel, Virgin Mobile will provide the supported services over an existing and owned wireless network in Pennsylvania in accordance with the section 214(e)(1) requirements. Finally, as set forth in the original Petition, Virgin Mobile extensively advertises the availability of its services and charges using a variety of media of general distribution.²³

B. Virgin Mobile Satisfies the Requirements of the FCC's Rules and Orders Governing ETC Designations

The FCC's rules governing ETC designations evolved from its May 8, 1997 Report and Order (*Universal Service Order*) in CC Docket No. 96-45²⁴ and its March 17, 2005 Report and Order in the same proceeding (*ETC Order*).²⁵ Those rules and requirements are codified at 47 C.F.R. §§ 54.101, 54.201-203 and 54.205-209. As set forth, Virgin Mobile satisfies all of the requirements of the *Universal Service Order*, the *ETC Order*, and the FCC's regulations codifying the requirements of those Orders.

²¹ As previously noted, the issue of whether Virgin Mobile qualifies as a facilities based carrier is not addressed in this order, however, by the FCC's conditional grant of forbearance to Virgin Mobile from the duty to be facility based in the *FCC Forbearance Order* we find that the facilities-based standard is satisfied.

²² 47 U.S.C. § 153(10).

²³ *Virgin Mobile Petition* at p. 15.

²⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 877 (1997).

²⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*FCC ETC Order*).

1. 47 C.F.R. § 54.101

Virgin Mobile attests to currently providing all of the services and functionalities supported by the universal service program as set forth in section 54.101(a)(1)-(9) of the FCC's regulations throughout its service territory in the Commonwealth of Pennsylvania.

a. 47 C.F.R. § 54.101(a)(1) - Voice Grade Access to the Public Switched Telephone Network

Virgin Mobile provides voice grade access to the public switched telephone network (PSTN) and offers its customer's services for connection to the PSTN at band width rates between 300 and 3,000 MHz as required by the FCC's regulations.²⁶

b. 47 C.F.R. § 54.101(a)(2) - Local Usage

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC's regulations do not require ETCs to offer a specific amount of local usage or mandate that ETCs provide a minimum number of free local calls or minutes. Instead, an applicant for ETC designation must demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the incumbent local exchange carrier (ILEC) in the relevant service territory.²⁷ In analyzing whether an ETC applicant's plan is comparable to the underlying ILEC's plan, 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., etc.) and the amount of local usage.²⁸ The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.²⁹

²⁶ See 47 U.S.C. § 54.101(a)(1).

²⁷ 47 C.F.R. § 54.202(a)(4).

²⁸ See *FCC ETC Order* at 6385.

²⁹ See *e.g.*, *Farmers Cellular, Inc.* 18 FCC Rcd 3848, 3852 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd 9589,9593 (2002); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 52 (2000).

Virgin Mobile’s proposed Lifeline offering as described complies with the local usage requirements established by the FCC. Virgin Mobile’s offering is sufficiently comparable to the underlying ILEC plans and in some respects exceeds them. Contrary to the ILEC plans, Virgin Mobile will offer customers a certain amount of service free of charge. Indeed, Virgin Mobile will provide its Lifeline customers with approximately 250 anytime voice minutes per month at no charge. As compared to the ILEC plans, which contain designated local calling areas, Virgin Mobile customers can use these free minutes to place calls statewide (or even nationwide) because Virgin Mobile does not constrict customers’ use by imposing a local calling area requirements. In addition to free voice services, Virgin Mobile will provide Lifeline customers with access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services and enhanced 911 (E911) capabilities. Most important, Virgin Mobile’s Lifeline services will provide low income Pennsylvania residents with the convenience and security offered by wireless services without interruption—even if their financial position deteriorates.

c. 47 C.F.R. § 54.101(a)(3) - DTMF Signaling or its Functional Equivalent

Virgin Mobile certifies to provide dual tone multi-frequency (DTMF) signaling to expedite the transmission of call set up and call detail information throughout its network. All wireless handsets provided by the Company are DTMF-capable.

d. 47 C.F.R. § 54.101(a)(4) Single - Party Service or its Functional Equivalent

“Single-party service” means that only one party will be serviced by a subscriber loop or access line during a telephone transmission. Virgin Mobile certifies to provide 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.

e. 47 C.F.R. § 54.101(a)(5) - Access to Emergency Services

Virgin Mobile certifies to provide nationwide access to 911 emergency services for all of its customers. Virgin Mobile also complies with the FCC's regulations governing the deployment and availability of E911 compatible handsets.

f. 47 C.F.R. § 54.101(a)(6) - Access to Operator Services

Virgin Mobile certifies to provide all of its customers with access to operator services.

g. 47 C.F.R. § 54.101(a)(7) - Access to Interexchange Services

Virgin Mobile certifies its service provides customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile's service with no additional charges because minutes for local and domestic long distance services are not billed separately at different rates.

h. 47 C.F.R. § 54.101(a)(8) - Access to Directory Assistance

Virgin Mobile certifies that all its customers are able to dial "411" to reach directory assistance services from their wireless handsets.

i. 47 C.F.R. § 54.101(a)(9) - Toll Limitation

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. As described above, Virgin Mobile certifies to provide its wireless service on a prepaid, or pay-as-you-go, basis. Virgin Mobile'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

Virgin Mobile's service mitigates concerns that low income customers will incur significant charges for long distance calls, risking disconnection of their service.³⁰

2. 47 C.F.R. § 54.201

A carrier is eligible under 47 C.F.R. § 54.201 so long as it offers the services set forth in section 54.101, either through its own facilities or a combination of its own facilities and the resale of another carrier's services, and advertises the availability of the federal universal support services using media of general distribution. As set forth in the original Petition, Virgin Mobile certifies it is a wholly-owned subsidiary of Sprint Nextel, and accordingly, Virgin Mobile is capable of, and currently provides, the supported services over its own existing network infrastructure in Pennsylvania.³¹ Furthermore, Virgin Mobile avers it will advertise the availability of its Lifeline services using media of general distribution. 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. Virgin Mobile asserts 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.

Virgin Mobile agrees to supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout the Commonwealth of Pennsylvania. Virgin Mobile intends to distribute brochures and posters at various Commonwealth and local social service agencies to inform customers of the availability of its Lifeline services. The Company

³⁰ See *In re Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York; Virginia; North Carolina; Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381, 3392 (2009) ("VMU ETC Designation Order").

³¹ While we are strongly persuaded that as a wholly-owned subsidiary, with completely integrated use of the Sprint Nextel infrastructure in Pennsylvania, Virgin Mobile appears qualified as a facilities based carrier for ETC purposes, we refrain from so finding, based upon the standing FCC order on Forbearance. We will revisit the issue upon petition by Virgin Mobile, when and if the FCC issues a new order on the issue.

also intends to promote these offerings to its existing customers—many of whom may otherwise qualify for Lifeline.

As a condition of its grant of designation, Virgin Mobile agrees to annually provide the Commission’s Bureau of Consumer Services copies of all advertising, promotional, and general lifeline program-related customer notices and communications.

3. 47 C.F.R. § 54.202

Virgin Mobile also meets the additional requirements for ETC designation set forth in 47 C.F.R. § 54.202, as discussed below.

a. 47 C.F.R § 54.202(a)(1) - Service to All Customers on a Timely Basis Upon Reasonable Request

Virgin Mobile certifies it is committed to providing services throughout its proposed designated service area to all customers making a reasonable request for services, as required by 47 C.F.R. § 54.202(a)(1)(i). Virgin Mobile commits to providing service on a timely basis to requesting customers within its service area where its network already passes the potential customer’s premises, as required by 47 C.F.R. § 54.202(a)(1)(i)(A). Virgin Mobile agrees to implement one or more of the measures listed in section 54.202(a)(1)(ii)(B) according to the terms of the FCC’s order adopting the requirements for potential customers who reside within the Company’s existing service territory, but who are unable to access the Company’s network.

The “five-year plan” requirement set forth in 47 C.F.R. § 54.202(a)(1)(ii) is not applicable to Virgin Mobile’s Petition for ETC designation. As set forth on pg. 1 of Virgin Mobile’s original ETC Petition, Virgin Mobile seeks ETC designation in Pennsylvania only for purposes of participation in the federal USF’s Lifeline program. The Company does not seek ETC designation to offer services supported by the federal

high-cost program. The “five-year plan” requirement set forth in 47 C.F.R. § 54.202(a)(1)(ii) is meant to “demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support.”³² Because Virgin Mobile will not offer services supported by the federal high-cost program, the “five-year plan” requirements do not apply to the instant request.

b. 47 C.F.R. § 54.202(a)(2) - Functionality in Emergency Situations

As previously noted, by this order we impose the same functionality testing standards imposed upon Virgin Mobile by the *FCC Forbearance Order*, including PSAP certification requirements. While Virgin Mobile avers that, as wholly-owned subsidiary of Sprint Nextel, Virgin Mobile is able to remain functional in emergency situations as required by 47 C.F.R. § 54.202(a)(2), we refrain from finding that Virgin Mobile qualifies as a facilities-based carrier, which satisfies the 911 capability standards.

However, we also note that Virgin Mobile makes a strong showing that Sprint Nextel has established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. These programs, policies and teams ensure the timely and effective deployment of Sprint Nextel’s products and services to allow the public and private sectors to function in emergency situations. Sprint’s network is monitored 24 hours a day, 7 days a week, 365 days a year by its network monitoring centers. Local switching offices staffed by trained technicians and management coordinate with these larger operation centers, to ensure that Sprint’s networks are properly maintained and network performance is at expected levels.

In addition, Virgin Mobile certifies that Sprint 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

³² *FCC ETC Order* at 6381.

resulting from emergency situations. Each cell site in the Sprint network is equipped with battery back-up power. The Company states it is also capable of rerouting traffic around damaged facilities. For example, many cell sites in the Sprint network provide overlapping coverage for neighboring areas, and such design redundancy ensures that coverage continues in the event of damage to a particular facility. In the event of a major failure of a cell site, neighboring sites could be adjusted to provide coverage to a wide service area. These practices appear to significantly reduce the chance that emergencies, fiber cuts or equipment failure will result in a loss of service.

However, for the time being we refrain from concluding that Virgin Mobile is a facilities-based carrier by virtue of its status as a wholly-owned subsidiary of Sprint Nextel. For the purposes of functionality in emergency situations, as a condition of granting ETC designation, we require the same standards imposed upon Virgin Mobile by the *FCC Forbearance Order*.

c. 47 C.F.R. § 54.202(a)(3) - Customer Service and Service Quality Standards

Virgin Mobile certifies that it will satisfy applicable consumer protection and service quality standards, as required by 47 C.F.R. § 54.202(a)(3). In providing Lifeline services in the states where it is currently designated as an ETC, Virgin Mobile asserts it has demonstrated its ability to satisfy applicable consumer protection and service quality standards. Virgin Mobile's Lifeline customers will receive the same high-quality wireless services provided to all Company customers.

Virgin Mobile emphasizes that customer service is an essential pillar for its marketplace success. As evidence of its commitment to high-quality service, Virgin Mobile has complied with the CTIA-The Wireless Association Consumer Code for Wireless Service (Consumer Code) since its inception and will continue to comply with the Consumer Code once designated as an ETC. Virgin Mobile annually certifies its

compliance with the Consumer Code, and the FCC has recognized the value of such compliance.³³ In prior years, the Company has also received numerous awards for its high-quality customer service, including the prestigious J.D. Power award for providing “An Outstanding Customer Service Experience” under J.D. Power’s Certified Call Center Program.

d. 47 C.F.R. § 54.202(a)(4) - Comparability to Incumbent LEC Service Plan

As discussed above, Virgin Mobile offers a local usage plan comparable to those offered by the incumbent LECs in the service areas for which it seeks designation, as required by 47 C.F.R. § 54.202(a)(4). Virgin Mobile’s proposed Lifeline offering complies with the local usage requirements established by the FCC. Contrary to the ILEC plans, Virgin Mobile will offer customers a certain amount of service free of charge. As discussed above, Virgin Mobile will provide its Lifeline customers with 250 anytime voice minutes per month at no charge. As compared to the ILEC plans, which contain designated local calling areas, Virgin Mobile customers can use free minutes to place calls statewide (and even nationwide) because Virgin Mobile does not impose a local calling area requirement. In addition to free voice services, Virgin Mobile will provide Lifeline customers with access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services and “E911” capabilities. Most important, Virgin Mobile’s Lifeline service will provide low income Pennsylvania residents with the convenience and security offered by wireless services without interruption—even if their financial position deteriorates.

³³ See *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1576-77, wherein the FCC endorsed the Consumer Code by considering adherence to the Consumer Code as a factor in the demonstration of a wireless carrier’s qualifications to be an eligible telecommunications carrier.

e. 47 C.F.R. § 54.202(a)(5) - Equal Access to LD Carriers

Virgin Mobile certifies its acknowledgement that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area, as required by 47 C.F.R. § 54.202(a)(5).

f. 47 C.F.R. § 54.202(c) - Public Interest Standard

Virgin Mobile’s designation as an ETC is in the public interest, as required by 47 C.F.R. § 54.202(c). The FCC previously designated Virgin Mobile as an ETC for purposes of offering Lifeline services in the states of New York, North Carolina, Tennessee and Virginia. 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.³⁴ In light of these significant benefits, the FCC concluded that limited designation of Virgin Mobile as an ETC was in the public interest.³⁵ We agree.

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996 (TA-96), is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.³⁶ Designation of Virgin Mobile as an ETC in Pennsylvania will further the public interest by providing Commonwealth consumers, especially low income consumers, with alternative prices and mobile communication services, which certain studies allege to be a vital economic resource for low income consumers that potentially can lead to improved wage levels and personal safety for economically disadvantaged

³⁴ VMU ETC Designation *Order* at ¶¶ 21, 30.

³⁵ See VMU ETC Designation *Order* at ¶ 29.

³⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

segments of Pennsylvania's residents. Designating Virgin Mobile as an ETC in Pennsylvania, therefore, will enable it to expand the availability of affordable mobile telecommunications services to qualifying Pennsylvania consumers, potentially leading to lower prices and increased choice.

It should be noted that Virgin Mobile is not seeking designation below the study area level of a rural telephone company, and therefore, there is no need for the Commission to conduct a "cream-skimming" analysis under 47 C.F.R. § 54.202(c). Furthermore, ETC designation to serve any tribal lands is inapplicable in Pennsylvania, making 47 C.F.R. § 54.202(d) inapplicable to Virgin Mobile's Petition. Finally, Virgin Mobile's Petition does not seek ETC designation to offer services supported by the federal high-cost program, so 47 C.F.R. § 54.202(e) is not applicable to Virgin Mobile's Petition.

4. 47 C.F.R. § 54.203

Because Virgin Mobile's Petition does not involve service to an unserved area, 47 C.F.R. § 54.203 is not applicable.

5. 47 C.F.R. § 54.205

If at some point in the future Virgin Mobile seeks to relinquish its ETC designation, Virgin Mobile agrees to comply with the requirements of 47 C.F.R. § 54.205.

6. 47 C.F.R. § 54.207

Virgin Mobile is not proposing to define a service area served by a rural telephone company to be other than such company's study area. As a result, 47 C.F.R. § 54.207 is not applicable to the Company's pending request.

7. 47 C.F.R. § 54.209

Virgin Mobile certifies that it will comply with the annual reporting requirements contained in 47 C.F.R. § 54.209 to the extent applicable. To this end, Virgin Mobile shall submit to the Commission's Bureau of Consumer Services a report of the following information on an annual basis, by August 31st of each year:

- 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 facility. 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.
- b) The number of requests for service from potential customers within its serve 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 Services;
- 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 areas.

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

8. 47 C.F.R. § 54.410

Virgin Mobile agrees it will certify and verify consumer eligibility to participate in the Lifeline program in accordance with applicable FCC and Commission rules.

II. Virgin Mobile Satisfies The Pennsylvania-Specific Requirements For ETC Designation

In addition to the minimum federal standards, through our *ETC Guidelines*, all potential petitioners are on notice that all ETCs should be prepared to comply with Pennsylvania law and Commission orders which govern Pennsylvania's Lifeline and Link-up programs, where applicable. 52 Pa. Code § 69.2501(b). The Commission has established Lifeline and Link-up eligibility criteria, as well as procedures for certification and verification of a consumer's initial and continuing eligibility. *In Re: Lifeline and Link-up Programs*, Docket No. M-0051871, (May 23, 2005) (*Lifeline and Link-up Order*). ETCs are further ordered to report to the Commission annual changes in Pennsylvania Lifeline and Link-up enrollment. *See Section 3015(f) Review Regarding Lifeline Tracking Report, Accident report, and Services Outage Report*, 100 Pa. P.U.C. 553 (Dec. 30, 2005) (*Tracking Report Order*).

A. Section 3019(f) Requirements

Section 3019(f) of the Pennsylvania Public Utility Code (66 Pa.C.S. § 3019(f)) sets forth the minimum requirements for ETCs which seek low income support from Lifeline and Link-up America Programs. Section 3019(f) includes the following requirements for ETCs:

- (1) All eligible telecommunications carriers certificated to provide local exchange telecommunications service shall provide lifeline service to all eligible telecommunications customers who subscribe to such service.

(2) All eligible telecommunications customers who subscribe to lifeline service shall be permitted to subscribe to any number of other eligible telecommunications carrier telecommunications services at the tariffed rates for such services.

(3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.

(4) Eligible telecommunications carriers shall inform existing customers of the availability of lifeline services twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the lifeline service subscription requirements.

(5) Eligible telecommunications carriers shall provide the department of public welfare with lifeline service descriptions and subscription forms, contact telephone numbers, and a listing of the geographic area or areas they serve, for use by the department of public welfare in providing the notifications required by this paragraph.

(6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new lifeline service discount that is not fully subsidized by the federal universal service fund.

Virgin Mobile certifies that it will comply with each of the requirements in Section 3019(f). Virgin Mobile will provide its prepaid lifeline service to all eligible telecommunications customers who wish to subscribe to such service and who reside within Virgin Mobile's service area. The Company will also agree to permit eligible customers to subscribe to any number of its other telecommunications services at the standard rates for such services. Virgin Mobile will establish protocols so that, whenever a prospective customer in Pennsylvania seeks to subscribe to Virgin Mobile's service, Virgin Mobile will explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts to determine whether the customer qualifies for such

service and, if so, whether the customer wishes to subscribe to the service. Furthermore, Virgin Mobile will inform existing customers of the availability of Lifeline service twice annually by text or email message, in compliance with section 3019(f)(4). Finally, Virgin Mobile will provide the Commonwealth's Department of Public Welfare (DPW) and the Commission's BCS with its Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas it serves for use by the DPW in providing the notification under section 3019(f)(5).

B. Other Pennsylvania Requirements

Virgin Mobile also commits to: (1) abide by the applicable requirements set forth in the Commission's *Lifeline and Link-Up Order*³⁷; (2) abide by the applicable requirements set forth in the Commission's *Tracking Report Order*³⁸; and 3) having consumer Lifeline related complaints, excluding rates and entry issues, which are unresolved by Virgin Mobile's customer service be handled by the Commission's Bureau of Consumer Services (BCS).

1. Compliance with *Lifeline and Link-Up Order* eligibility certification and verification

Compliance with all of the provisions of Our *Lifeline and Link-Up Order* is a condition of Virgin Mobile's ETC designation. In particular, the Lifeline eligibility verification requirements set forth in that order are essential for prevention of fraud and abuse. All ETCs designated by this Commission are required to take the necessary steps to ensure that Lifeline subsidies paid by the USF to the carrier are remitted only for eligible low income consumers.

These requirements include procedures for certification and verification of a customer's initial and continued eligibility for Lifeline services, including obligations

³⁷ *In Re: Lifeline and Link-Up Programs*, at Docket No. M-00051871 (Amended Order entered January 29, 2008).

³⁸ *See In Re Section 3015(f) Review Regarding Lifeline Tracking Report, Accident Report and Service Outage Report*, 100 Pa. P.U.C. 553 (Dec. 30, 2005) ("*Tracking Report Order*").

that an ETC must attempt to certify a customer's program-based eligibility by referencing DPW's database, or other means such as written documentation of eligibility and participation in one of the eligible programs. In addition, the ETC must verify the continued eligibility of a statistically valid sample of its customers by first cross checking DPW's database of eligible customers.

Our Lifeline and Link-Up Order specifically found that:

[T]he companies ought to use the DPW's database first to establish if there is acceptable social assistance program participation. If the household qualifies, then no further investigation or verification need be done. The household qualifies based on program participation or income verification. If the household does not appear to be enrolled in one of the approved social assistance programs, then 135% FPG [Federal Poverty Income Guidelines] income or less may be verified through either copies of written state or federal income tax returns for the prior year, or the carrier may contact [the Pennsylvania Department of Revenue (DOR)] . . . and pay the nominal fee to have the customer's household's income verified. We agree . . . *that self-certification without some form of reasonable independent verification is suspect for fraudulent abuse and will not be acceptable in Pennsylvania as a means for qualifying for our Lifeline . . . programs.*

Lifeline and Link-Up Order at p. 10. (*emphasis added*).

As we indicated, an ETC designee must independently certify an applicant's eligibility for Lifeline service through a variety of ways. Independent ETC designee certification of an applicant's eligibility for Lifeline service is accomplished through DPW in those instances where the applicant seeks support based on participation in a qualified low income program that is administered by DPW. Independent certification of an applicant's income eligibility is accomplished by an ETC designee through examination of an applicant's submitted tax returns or other acceptable documentation of income³⁹ or through the DOR in those instances where the applicant seeks support based solely on income without supporting documentation.

³⁹ Acceptable forms of documentation of income include but are not limited to: most recent federal tax returns; most recent state tax returns; most recent W-2 Form; Property tax/Rent Rebate Form; Social Security Benefit Form or 1099 Form; Support Order; 3 months current pay stubs.

Of necessity, if eligibility is based on income only, the applicant must provide an acceptable form of documentation of income, proving eligible income levels to the ETC designee, or the ETC Designee may independently verify eligible income levels through the Pennsylvania DOR. While an ETC designee may propose for the Commission's consideration more effective ways to comply with our mandate that a carrier independently verify an applicant's eligibility, we reiterate that at no time may an applicant's eligibility and verification be based solely upon customer self-certification.

By our *Lifeline and Linkup Order* we also required eligibility be confirmed annually, and required:

“That LECs offering Lifeline . . . services are directed to recertify their Lifeline... customers at least annually in accordance with FCC procedures established at 47 C.F.R. § 54.410 (relating to certification and verification of consumer qualifications for Lifeline)” *Id.* at p. 27.

Thus, with respect to Lifeline eligibility verification, Virgin Mobile, through its third party administrator, Solix, Inc.,⁴⁰ must comply with all of the verification provisions of our *Lifeline and Link-Up Order*. Any failure of Solix, Inc., to comply with the

⁴⁰ With respect to its agreement with Solix as third party administrator, Virgin Mobile avers:

Virgin Mobile has acquired extensive experience with implementing a document review and collection process to confirm applicant eligibility, through its third party administrator Solix, Inc., (Solix).

Virgin Mobile's Lifeline application provides a concise set of instructions that direct the applicant to submit supporting documentation by mail or fax. In the section of the application in which the applicant indicates the basis for eligibility, there is an additional instruction to submit documentation of participation in the program indicated or as proof of income.

Once the applicant returns the completed application with the requested documentation, the Solix application reviewer compares the information and documentation supplied by the applicant with state specific eligibility criteria and renders an eligibility decision. If the applicant does not meet the eligibility requirements, a denial letter is sent. If the information and documentation submitted was insufficient to render a decision, a “soft” denial letter will be sent requesting additional information.

For Pennsylvania applications, Virgin Mobile, with the assistance of Solix, is committed to working with the Department of Public Welfare to establish a system for verifying the eligibility of Assurance Wireless applicants using information maintained or accessible by DPW.

eligibility verification and certification will be imputed to Virgin Mobile and will constitute grounds for revocation of the ETC designation.

2. Compliance with the *Tracking Report Order*

As a condition of ETC designation, ETCs are required to report to the Commission annual changes in Lifeline enrollment, per this Commission's *Tracking Report Order*. Virgin Mobile will fully comply with the Commission's annual Lifeline Tracking Report requirement.

Further, in order to ensure the Pennsylvania Lifeline program advances the Commonwealth's universal service policy, Virgin Mobile and prospectively all prepaid wireless ETCs designated by this Commission shall be required to provide to the Commission's Bureau of Consumer Services with a copy of its annual Lifeline Verification Survey results that it files with the Universal Service Administrative Company (USAC) by August 31 of each year, as well as the FCC Form 497, Lifeline and Link Up Worksheet (detailing USF support per subscribers), filed with USAC quarterly the third Monday of April, July, October and January. Prepaid wireless carriers offering Lifeline present unique compliance and monitoring concerns. The additional forms will assist BCS in its duties to monitor Lifeline Program effectiveness in Pennsylvania.⁴¹

3. Consumer lifeline-related complaints processed by BCS

As a final condition of designation, Virgin Mobile agrees to work with the Commission's Bureau of Consumer Services (BCS) to resolve informal complaints, and to submit to Commission jurisdiction on formal complaints filed with BCS by Virgin Mobile Lifeline customers, on Lifeline related issues. BCS will not address matters

⁴¹ These reporting requirements are consistent with both the Pennsylvania and federal statutory mandates governing this Commission's jurisdiction and continuous oversight over ETC designations for both wireless and landline telecommunications carriers.

related to rates and entry. Specifically, BCS will address Lifeline-related issues which pertain to the consumers rights under the plan, including: (1) eligibility disputes; (2) program offering issues; and (3) limited equipment-related issues.

Virgin Mobile will provide notice to consumers of their right to contact BCS and the PUC's contact information, if complaints brought to Virgin Mobile's customer service division are not resolved.

Adherence to these Pennsylvania-specific requirements applicable to ETCs designated by the Commission will assure uniformity among Lifeline services offered by different ETCs, will provide consumer protection for low income consumers and will enable BCS to monitor Lifeline Program effectiveness in Pennsylvania.

4. Change in Corporate Control and Renewed ETC Designation

In the event of a change in corporate control, Virgin Mobile will have to petition this Commission for a renewal of its ETC designation status.⁴² Corporate changes of control may also be accompanied with changes in ETC status of a particular telecommunications entity with reference to the various and evolving support mechanisms of the federal USF. In this respect, this Commission is lawfully entitled to timely re-examine any such changes and ascertain whether a particular telecommunications entity should continue to be availed of its previously granted ETC status designation or whether such status and/or applicable conditions should be altered.

⁴² Although a wireless carrier does not need to apply to this Commission for approval of changes in its corporate control, the meaning of the term "change in corporate control" that may necessitate a renewed ETC designation petition to this Commission can be found at the Commission's related Statement of Policy at 52 Pa. Code § 69.901. Additional guidance on the meaning of the same term can be found at our Transfer of Control regulations for Telecommunications Public Utilities at 52 Pa. Code § 63.321 *et seq.* .

CONCLUSION

As discussed above, Virgin Mobile certifies it will satisfy all of the requirements for limited ETC designation as required by the Commission's *ETC Guidelines*. Designation of Virgin Mobile as an ETC in the Commonwealth of Pennsylvania is in accord with section 214 of the Act, the FCC's regulations and orders related to ETC designation, section 3019(f) of the Public Utility Code, and the Commission's orders on ETC designation. In consideration of the Virgin Mobile Petition for ETC designation, as initially filed and supplemented and the comments thereto, we conclude that designation of Virgin Mobile as an ETC in the Commonwealth of Pennsylvania is in the public interest, and **THEREFORE**,

IT IS ORDERED:

1. The Petition of Virgin Mobile USA, L.P., for Limited Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service in the Commonwealth of Pennsylvania at P-2010-2155915 is granted, subject to the terms and conditions set forth in this order.
2. That the failure of Virgin Mobile USA, L.P. to comply with any of the provisions of this Opinion and Order may result in revocation of the ETC designation for purposes of Universal Service Fund Lifeline support.
3. That Virgin Mobile USA, L.P., shall petition this Commission for any future change to the basic Lifeline service offering described herein which represents a limitation or reduction of Lifeline services/equipment provided free of charge, and shall provide notice to this Commission of any addition, change or new offering which is in addition to the basic Lifeline offering.

4. That the Secretary shall serve a copy of this Opinion and Order on all parties which filed comments, on the Office of Consumer Advocate, and the Office of Small Business Advocate.

5. That any Virgin Mobile USA, L.P. shall petition this Commission, cross-referencing this docket number to lift any duty or obligation imposed by the order of the Federal Communications Commission, *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)*, Order, FCC 09-18 9 rel. March 5 2009).

6. That the ETC proceeding at this docket be marked closed.

BY THE COMMISSION



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 16, 2010

ORDER ENTERED: December 22, 2010