

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & CABLE

In the Matter of Virgin Mobile USA, L.P.'s
Petition for Limited Designation as an
Eligible Telecommunications Carrier

D.T.C. 10-11

VIRGIN MOBILE'S POSTHEARING BRIEF

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I. INTRODUCTION

Virgin Mobile USA, L.P. (“Virgin Mobile” or the “Company”), a wholly owned subsidiary of Sprint Nextel Corporation (“Sprint Nextel”), seeks designation as an Eligible Telecommunications Carrier (“ETC”) in the Commonwealth of Massachusetts, pursuant to section 214(e)(2) of the Communications Act of 1934, as amended (“Act”), for purposes of offering prepaid wireless services, supported by the Universal Service Fund’s (“USF”) Lifeline program. Virgin Mobile will offer Lifeline service under the trade name “Assurance Wireless Brought to You by Virgin Mobile.” Virgin Mobile has affirmatively established that it meets all of the requirements for ETC designation under section 214(e)(1) of the Act. Designation of Virgin Mobile to provide Lifeline service in Massachusetts will promote the public interest by providing qualifying Massachusetts customers with lower prices and higher quality wireless services. For many low-income residents of Massachusetts wireless service remains unattainable because of financial constraints, poor credit history or unemployment. Virgin Mobile’s prepaid Lifeline service offerings are ideally suited to provide these customers with reliable wireless services on Sprint Nextel’s national network. As an ETC, Virgin Mobile would be able to provide affordable, and even free, services to qualifying consumers, and by doing so would provide assistance to the intended beneficiaries of USF support. Having established that it satisfies the requirements for designation as an ETC, and since such designation would advance the public interest, Virgin Mobile respectfully requests that the Commission expeditiously approve Virgin Mobile’s petition for ETC designation.

II. BACKGROUND

A. Procedural History

On October 18, 2010, Virgin Mobile filed its Petition for Limited Designation as an Eligible Telecommunications Carrier (“ETC Petition”) with the Department of Telecommunications and Cable (“Department” or “DTC”). On November 8, 2010, the Department issued an Order of Notice and a Notice of Public Hearing. Virgin Mobile timely published the Department’s Notice of Public Hearing as required by the Department’s Order of Notice, and proof of such publication was filed with the Department on December 16, 2010. The Department held a public hearing and technical conference on December 16, 2010. At the technical conference a procedural schedule was established by Hearing Officer Kalun Lee (“Hearing Officer Lee”).

The Department propounded its First Set of Information Requests to Virgin Mobile on January 21, 2011. Virgin Mobile timely served its responses on February 4, 2011. No further Information Requests were propounded upon Virgin Mobile. Virgin Mobile supplemented its responses to the Department’s First Set of Information Requests on March 14, 2011. On March 16, 2011, Hearing Officer Lee presided over a hearing attended by Sprint and Department staff. Sprint presented Ms. Elaine Divelbliss as its witness, and Ms. Divelbliss was examined by the Department. During the hearing nine Record Requests were issued.¹ Sprint timely responded to all Record Requests on March 23, 2011.

¹ See Hearing Transcript (“Tr.”) at pgs. 17, 19, 24, 32, 55, 56, 66, 67, and 69.

B. Virgin Mobile's Previous ETC Designations

Virgin Mobile was originally designated as an ETC for the purposes of offering Lifeline services by the Federal Communications Commission ("FCC"). That designation authorized Virgin Mobile as an ETC in the states of New York, North Carolina, Tennessee and Virginia.² In the *Order*, the FCC determined that approving Virgin Mobile to offer Lifeline service would benefit consumers by broadening the number of providers from which they could obtain telecommunications services and would further the goal of expanding participation in the Lifeline program.³ The FCC concluded that limited designation of Virgin Mobile as an ETC was in the public interest.

At the time of its designation by the FCC, Virgin Mobile operated as a mobile virtual network operator that did not own any network facilities. In recognition of this fact, Virgin Mobile also sought forbearance from enforcement of the section 214(e)(1)(A) facilities-based requirements for ETC designation. This forbearance request was granted, but was conditioned on Virgin Mobile's compliance with certain requirements targeted to enhance Lifeline customers' access to public safety services and preventing misuse of the Company's Lifeline offering.⁴ In October 2009, the FCC approved Virgin Mobile's proposed plan to address each of the imposed conditions for the first four states in which it received ETC designation.⁵

² See *Federal-State Joint Department 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 (rel. March 5, 2009) ("Order") (a copy of the Order is attached to Virgin Mobile's response to DTC 1-1).

³ Order at ¶¶ 21, 30.

⁴ See Order at ¶ 12.

⁵ See *Federal-State Joint Department 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, DA 09-2344 (rel. Oct. 29, 2009) ("October 2009 Order").

In November 2009, Virgin Mobile was acquired by Sprint Nextel. Subsequent to its acquisition, Virgin Mobile has been designated a facilities-based ETC in the states of Arkansas, Florida, Georgia, Indiana, Iowa, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Pennsylvania, South Carolina, Texas, Washington and West Virginia.⁶

These designations were made without reliance on the FCC's *Order*.

III. VIRGIN MOBILE HAS ESTABLISHED THAT IT SATISFIES ALL REQUIREMENTS FOR DESIGNATION AS AN ETC

Applicants for ETC designations, as required by Section 214(e)(1) of the Act, must establish that they are common carriers, will offer all of the services supported by the USF, and must commit to advertise the availability of and rates for their services.⁷ As described below, and as established on the record to date, Virgin Mobile satisfies all relevant requirements.

A. Virgin Mobile Is a Common Carrier

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 ...”⁸ It is well established that the providers of mobile wireless services are common carriers. Therefore, Virgin Mobile, as a provider of mobile wireless services, is a common carrier eligible for designation as an ETC.⁹

B. Virgin Mobile Will Provide the Supported Services

As described above, Virgin Mobile is a wholly owned subsidiary of Sprint Nextel. As a consequence of Sprint Nextel's ownership of Virgin Mobile, Sprint Nextel's

⁶ With the exception of the Georgia, copies of these state commission orders were submitted to the Department as part of Virgin Mobile's response to DTC 1-1. At the time of the hearing, no Order had yet issued from the Georgia Commission (*see* Tr. p. 17:13-14).

⁷ *See* 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d).

⁸ 47 U.S.C. § 153(10).

⁹ *See* ETC Petition at p. 13, Exhibit 1.

network is considered to be “owned” by Virgin Mobile for the purposes of satisfying the “own facilities” requirement of Section 214(e) of the Act.¹⁰ Accordingly, Virgin Mobile already provides the supported services over its existing network infrastructure in Massachusetts. Virgin Mobile’s request for ETC designation complies with Section 214(e)(1) of the Act because it provides all of the services and functionalities supported by the universal service program as set forth in Section 54.101 of the FCC’s regulations throughout its Massachusetts service territory. Moreover, Virgin Mobile will make these services and functionalities available on a timely basis to qualifying Massachusetts customers in its service area.¹¹

Virgin Mobile will furnish the supported services while satisfying all applicable consumer protection standards and maintaining exceptional service quality.¹² Virgin Mobile has produced for the Department proprietary evidence that its network service quality and reliability is exemplary.¹³ Additionally, Virgin Mobile has indicated that it will abide by relevant and applicable portions of the Department’s rules and practices regarding providing telephone service to residential customers.¹⁴ Accordingly, the Department can be assured that not only will Virgin Mobile provide the supported services, but that Virgin Mobile’s Lifeline customers will receive exceptional service quality over Sprint’s nationwide network, and that Virgin Mobile is committed to affording all applicable consumer protections to its Lifeline customers.

¹⁰ See discussion *infra* Section IV.

¹¹ Tr. p. 51:16 – 52:5; see also ETC Petition at 13, and Exhibit 1.

¹² See Tr. pgs. 66:5 – 68:13.

¹³ See Virgin Mobile’s Proprietary Response to DTC Record Request No. 8.

¹⁴ See Tr. pgs. 68:5-13, 72:23 – 73:2, and 73:6-8.

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 customers services at bandwidth rates between 300 and 3,000 MHz as required by the FCC’s regulations.¹⁵

2. Local Usage

An ETC must provide local calling services to its customers as part of the voice grade access to the PSTN requirement. There is no rule, however, requiring a specific amount of local usage or mandating that ETCs provide a minimum number of free local calls or minutes. An applicant for ETC designation is required to demonstrate that it offers a local usage plan that is “comparable” to the plan offered by the ILEC in the relevant service territory.¹⁶ The FCC has indicated that review of local usage plans must examine all aspects of the individual plan. Such review must consider 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.¹⁷ The amount of local usage that has been deemed to satisfy the local usage requirements has varied.¹⁸

Virgin Mobile’s proposed Lifeline offering fully complies with the local usage requirements established by the FCC. Not only will Virgin Mobile’s Lifeline plan be comparable to the underlying ILECs’ plans, but it also will exceed them in several

¹⁵ See 47 U.S.C. § 54.101(a)(1). See also ETC Petition at p. 13, Exhibit 1.

¹⁶ 47 C.F.R. § 54.202(a)(4).

¹⁷ See *Federal-State Joint Department on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385 (2005).

¹⁸ 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).

respects.¹⁹ In contrast to the ILECs' plans, Virgin Mobile will offer its Assurance Wireless Lifeline customers 250 anytime minutes per month at no charge.²⁰ Unlike relatively small ILEC local calling areas, Virgin Mobile Lifeline customers can place calls statewide (or even nationwide) because Virgin Mobile does not constrict customers' use by imposing a local calling area requirement.²¹ A Virgin Mobile Lifeline customer enjoys the equivalent of a nationwide local calling area in stark contrast to ILECs' Lifeline plans. Virgin Mobile's Lifeline customers will also have access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services, and E911 capabilities.²² Those additional features are not included in ILEC Lifeline plans.²³ It goes without saying that unlike an ILEC Lifeline plan that is tied to a landline phone, Virgin Mobile's Lifeline plan has the immeasurable benefit of mobility as a key feature.

3. DTMF Signaling or its Functional Equivalent

Virgin Mobile provides dual tone multi-frequency ("DTMF") signaling to expedite the transmission of call set up and call detail information throughout its network. All wireless handsets offered for sale by the Virgin Mobile are DTMF-capable.²⁴

4. Single-Party Service or its Functional Equivalent

Virgin Mobile provides the wireless functional equivalent of single-party service to its customers for the duration of each telephone call, and does not provide multi-party (or "party-line") services.²⁵

¹⁹ See generally Tr. pgs. 9-13.

²⁰ See Tr. p. 9:13-17. See also Sample Assurance Wireless Approval Letter (attached to Sprint's Response to DTC Record Request 1.). The term "anytime minutes" refers to minutes that are available to a customer without restriction as to the time of day when such minutes can be used.

²¹ See Tr. p. 10:6-14.

²² See Tr. p. 10:15-20.

²³ See *Id.*

²⁴ See ETC Petition at p. 15 and Exhibit 1.

5. Access to Emergency Services

Virgin Mobile provides nationwide access to 911 emergency services for all of its customers and complies with the FCC's regulations governing E911 compatible handset deployment and availability.²⁶

6. Access to Operator Services

Virgin Mobile provides all of its customers with access to operator services.²⁷

7. Access to Interexchange Services

Virgin Mobile's Assurance Wireless service provides customers with 250 minutes of any-distance telephony.²⁸ Minutes for local or domestic long distance services are not billed separately or at different rates.

8. Access to Directory Assistance

All Virgin Mobile customers are able to dial "411" to reach directory assistance services from their wireless handsets.²⁹

9. Toll Limitation

The Term "toll limitation" generally refers to the ability of customers to either block the completion of outgoing long distance calls or to specify a toll usage limit. Toll limitations traditionally were intended to prevent customers from incurring significant long distance charges. As described above, Virgin Mobile's service is not offered on a

²⁵ Traditionally, "single-party service" refers to the dedication of a subscriber loop, or access line, for a single call. No subscriber loops or access lines are used wireless telephony, however.

²⁶ See Tr. pgs. 12:8-12, and 38:10 – 41:17.

²⁷ See Tr. p. 40:3-21.

²⁸ See Tr. p. 10:2-14.

²⁹ See Sample Assurance Wireless Approval Letter (attached to Sprint's Response to DTC Record Request No. 1.).

distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. International calling does involve additional “toll” expenses, but customers also must specifically authorize access for international services, for which additional charges apply. The FCC determined in its grants of ETC designation to Virgin Mobile that the pre-paid nature of Virgin Mobile’s service mitigates concerns that low-income customers will incur significant “toll” charges and thereby risk disconnection.³⁰

C. Functionality in Emergency Situations

As a wholly owned subsidiary of Sprint Nextel, Virgin Mobile is able to remain functional in emergency situations as required by Section 54.202(a)(2) of the FCC’s regulations.³¹ Drawing from its experiences with emergency situations ranging from natural disasters to black-outs, Sprint Nextel has established and honed a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations.³² Sprint Nextel’s programs, policies and teams ensure timely and effective deployment of assets to enable public and private sectors to function in emergency situations.³³ Sprint Nextel’s network is monitored continually through its network monitoring centers. Local personnel coordinate with regional and/or national operations centers, to ensure that Sprint Nextel’s networks are properly maintained and perform at or above expected levels.

³⁰ See *October 2009 Order* at ¶ 34; See *Federal-State Joint Board on Universal Service; In the Matter of Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New Hampshire and Washington D.C.*, Order, DA 10-2433, at fn. 33 (rel. Dec. 29, 2010) (“2010 Order”)(attached to Virgin Mobile’s Response to DTC 1-1); see also Tr. p. 60:4-14.

³¹ See 47 C.F.R. § 54.202(a)(2).

³² See Tr. pgs. 61:13 – 62:16; see also Sprint Proprietary response to DTC Record Request No. 7.

³³ *Id.*

In addition, Sprint Nextel has reasonable amounts of back-up power to ensure functionality without an external power source,³⁴ and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations.³⁵ Each cell site in the Sprint Nextel network is equipped with two hours of back-up power.³⁶ The company also is capable of rerouting traffic around damaged facilities. Sprint Nextel's network incorporates a degree of overlapping coverage for sites, and such design redundancy enables continuous coverage despite damage to a particular facility. Such practices significantly reduce instances of loss of service.

D. Advertising of Supported Services

Virgin Mobile will advertise the availability of its Assurance Wireless services using media of general distribution in conformance with the FCC's regulations.³⁷ Virgin Mobile advertises its Assurance Wireless product through a variety of media, including television, newspapers, and direct mail.³⁸ 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.

E. Equal Access to LD Carriers

Virgin Mobile acknowledges that the Department 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).

³⁴ See Tr. p. 60:15-21.

³⁵ See Tr. pgs. 61:21 – 65:24

³⁶ See Tr. p. 60:15-21.

³⁷ See 47 C.F.R. § 54.201.

³⁸ See Tr. pgs. 56:19 – 59:20; see also Virgin Mobiles response to DTC 1-6, Exhibit 3.

F. Service Territory

In its ETC Petition, Virgin Mobile indicated that it is seeking designation for its entire Massachusetts service territory.³⁹ Contained in the ETC Petition was a list of the wire centers that encompass Virgin Mobile's Massachusetts service territory.⁴⁰

Additionally, Virgin Mobile provided a map of its service territory.⁴¹ Thus, Virgin Mobile has properly defined the service area for which it seeks designation.

IV. APPLICABILITY OF FORBEARANCE CONDITIONS

In its *2010 Order* granting Virgin Mobile ETC designation, the FCC determined that Virgin Mobile is a facilities-based carrier.⁴² The FCC stated,

We also find that Virgin Mobile, a wholly owned affiliate of Sprint Nextel, "owns" Sprint Nextel's facilities for the purposes of the facilities requirement in Section 214(e) of the Act ... With Sprint Nextel's acquisition of Virgin Mobile, the wholesaler-reseller relationship changed such that Virgin Mobile now enjoys "beneficial use of Sprint's wireless facilities without arm's length transactions or purchase of service from Sprint. Based on these facts, we find that Virgin Mobile has its "own facilities" for the purposes of the section 214(e)(1) facilities requirement.

We disagree with the comments suggesting that Virgin Mobile cannot treat its parent's facilities as its own because the two are distinct legal entities or because Virgin Mobile has a distinct brand and customer base from Sprint. The Commission has previously rejected a formalistic definition of what constitutes a carrier's "own facilities" under section 24(e) in favor of a more flexible approach that meets the goals of universal service.⁴³

Recognizing that Virgin Mobile, following its acquisition by Sprint Nextel, qualified as a facilities-based carrier, the FCC explicitly rescinded the forbearance

³⁹ ETC Petition at 5.

⁴⁰ ETC Petition at Exhibit 2.

⁴¹ Virgin Mobile Response to DTC 1-5, Exhibit 2; *see also* Tr. 53:11 – 54:1.

⁴² *See 2010 Order*.

⁴³ *2010 Order* at ¶¶ 15-16.

condition that required Virgin Mobile, as with other wireless resellers, to seek certification from each public safety answering point (“PSAP”) confirming that customers have access to 911 and enhanced 911 (“E911”) service – a condition not required of facilities-based carriers.⁴⁴ As the FCC recognized in its *2010 Order*, requiring Virgin Mobile to obtain certifications regarding its 911/E911 capabilities is unnecessary given that Virgin Mobile provides the same 911 and E911 services to its customers as any other Sprint Nextel wireless customer receives using Sprint Nextel’s existing 911 and E911 facilities and PSAP relationships. Indeed, all 911 emergency calls made by Virgin Mobile customers are handled in the same fashion as calls made by any other Sprint Nextel customer.⁴⁵ When a Virgin Mobile customer calls 911, the call is received by Sprint Nextel Corporate Security, which maintains responsibility for routing to the appropriate PSAP, just as with any other 911 call made by a Sprint Nextel customer.⁴⁶ If a PSAP were required to directly contact the company because of a disconnection, the call would be handled by Sprint Nextel Corporate Security, which has access to all Virgin Mobile customer information—just as it does for all other Sprint Nextel operating subsidiaries.

The Department should also consider that unnecessarily requiring Virgin Mobile to obtain certification from each PSAP confirming that customers have access to 911 and enhanced 911 (“E911”) service would saddle Virgin Mobile with an obligation not imposed on other facilities-based carriers.⁴⁷ This would place Virgin Mobile at a

⁴⁴ *2010 Order* at ¶ 15 (“Accordingly, we find that Virgin Mobile no longer needs forbearance and need not comply with the obligations imposed as conditions of forbearance from the Act’s facilities requirements ...”).

⁴⁵ *See* Tr. p. 38:16-24.

⁴⁶ *Id.*

⁴⁷ Tr. p. 74:17-24.

competitive disadvantage relative to similarly situated carriers with whom it will compete for Lifeline customers.⁴⁸ Beyond being burdened by additional requirements not imposed on other similarly situated carriers, such a burden would also delay service to customers,⁴⁹ inconvenience PSAPs,⁵⁰ and cause confusion among eligible customers regarding whether service is currently available.⁵¹

V. DESIGNATION OF VIRGIN MOBILE AS AN ETC IS IN THE PUBLIC INTEREST

Telecommunications Act of 1996 seeks “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.⁵² This goal will undoubtedly be furthered by designation of Virgin Mobile as an ETC in Massachusetts. Such designation will provide low-income consumers with lower prices and higher quality services. Lower-income customers are underserved in the competitive wireless market. These customers often lack the vibrant wireless telephony choices available to most consumers. Designating Virgin Mobile as an ETC in Massachusetts will expand the availability of affordable telecommunications services to qualifying Massachusetts customers, and is consistent with the public interest, convenience and necessity.

Examined in light of the Act’s goals of providing low-income consumers with access to telecommunications services, it is clear that designating Virgin Mobile as an ETC will benefit Massachusetts consumers eligible for Lifeline services. Designating

⁴⁸ *Id.*

⁴⁹ Tr. p. 74:12-16.

⁵⁰ Tr. p. 74:9-10.

⁵¹ Tr. p. 74:11-16. Since two potential customer that live near each other might not be served by the same PSAP, the date on which Virgin Mobile’s Lifeline service becomes available to those two customers could differ. This can be extremely confusing to customers.

⁵² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

Virgin Mobile as an ETC in Massachusetts will expand the number of appealing and affordable service offerings available to qualifying customers. The FCC has recognized the value that Virgin Mobile brings as an ETC and stated that its Lifeline service offerings bring “increased consumer choice, high-quality service offerings and mobility.”⁵³

Another fundamental benefit of designating Virgin Mobile as an ETC is to increase competition for the provision of Lifeline services, and thereby increase pressure on carriers to target low-income consumers with service offerings tailored to their needs. Increasing competition in the Lifeline market will greatly benefit this much ignored consumer segment, and represents significant progress towards ensuring that Lifeline eligible customers share in the many benefits associated with access to wireless services.

Although Virgin Mobile has been successful in deploying wireless services to low-income consumers nationwide, analysis suggests that many low-income customers still intermittently discontinue service because of economic constraints. Designating Virgin Mobile as an ETC in Massachusetts will enable Virgin Mobile to ensure that low-income Massachusetts customers are able to afford wireless services on a consistent and uninterrupted basis. Authorizing Virgin Mobile to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

VI. CONCLUSION

As established on the record developed in this docket, Virgin Mobile satisfies all the conditions required for designation as an ETC in Massachusetts. Virgin Mobile stands ready to provide services to qualifying customers shortly after receipt of its

⁵³ See 2010 Order at ¶ 19.

designation. Virgin Mobile's entry into the market for Lifeline services will increase competitive choice for Lifeline customers, make available high-quality, low-cost service on Sprint Nextel's nationwide network, and therefore is decidedly in the public interest. For all of those reasons stated herein and in its ETC Petition, Virgin Mobile respectfully requests the Department expeditiously designate Virgin Mobile as an ETC in Massachusetts exclusively for the purpose of participating in the Lifeline program.

Respectfully submitted,



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