

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

FINAL

9/21/2010

Entered: August 31, 2010

CASE NO. 10-0246-C-PC

VIRGIN MOBILE USA, L.P.

Petition for consent and approval for limited  
designation as an eligible telecommunications carrier.

**RECOMMENDED DECISION**

On February 24, 2010, Virgin Mobile USA, L.P. (Virgin Mobile), a public telephone utility, Warren, New Jersey, filed a petition with the Public Service Commission, pursuant to Section 214(e)(2) of the *Telecommunications Act of 1934*, as amended (*Act*), seeking designation as an eligible telecommunications carrier (ETC) solely for the purposes of offering prepaid wireless telecommunications services supported by the Universal Service Fund (USF) Lifeline program. Virgin Mobile asserted that it meets all of the qualifications necessary to be designated as an ETC under *Act* §214(e)(1) to offer services supported by the Lifeline program.

On March 25, 2010, Staff Attorney Chris Howard filed the Initial Joint Staff Memorandum, attaching the March 22, 2010 Utilities Division Initial Recommendation from Utilities Analyst David Kennedy, indicating that, once it had completed its investigation, Commission Staff would submit a substantive recommendation. Virgin Mobile became a wholly owned subsidiary of Sprint Nextel Corporation (Sprint Nextel) on November 24, 2009, after Sprint Nextel obtained approval of the acquisition from the Federal Communications Commission (FCC), effective September 1, 2009, and obtained approval for the acquisition from the Commission in Case No. 09-1563-C-PC by Order entered on October 28, 2009. The FCC designated Virgin Mobile as an ETC for the limited purpose of providing service under the Lifeline program in the states of New York, North Carolina, Tennessee and Virginia, with the FCC granting forbearance from the facilities-based requirement. Virgin Mobile anticipates that, in West Virginia, eligible customers qualifying under the Lifeline program will receive 200 free anytime minutes each month, including components such as voice mail, caller ID and call waiting. In addition to the 200 free minutes, eligible customers will be able to obtain additional calling time at \$0.10 per minute for voice services and \$0.15 per minute for text messaging services. Staff detailed the specific requirements that Virgin Mobile must meet before the Commission can designate it as an ETC.

By the Commission Referral Order entered on April 7, 2010, the Commission referred this case to the Division of Administrative Law Judges (ALJ Division) for decision on or before September 22, 2010.

On April 26, 2010, Virgin Mobile filed responses to data requests from Staff.

On May 24, 2010, Staff Attorney Howard submitted the Final Joint Staff Memorandum, attaching the May 19, 2010 Utilities Division Final Recommendation from Mr. Kennedy. Staff opined that Virgin Mobile had failed to provide the Commission with sufficient information required by the *Act* so that the Commission could designate Virgin Mobile with ETC status. Unless Virgin Mobile provides all of the information and documentation required, Staff recommended that the Commission deny the petition. The *Act*, as amended in 1996, provides that only designated ETCs are eligible to receive funds from the USF. In order to be designated as an ETC, a carrier must be a common carrier as determined by federal law; offer services using its own facilities or a combination of its own facilities and resale, throughout the designated service area; advertise the availability of its service offering using media of general distribution; and provide universal service obligations throughout a designated geographic area. In addition, the *Act* mandates that ETCs must also provide nine specific support services, i.e., voice grade access to the public switched telephone network; local usage; dual-tone multi-frequency (DTMF) signal or its functional equivalent; single party service or its functional equivalent; access to emergency services; access to operator services; access to interexchange services; access to directory assistance; and toll limitation for qualifying low-income customers. Staff concedes that Virgin Mobile has satisfied the common carrier requirement. As a wholly owned subsidiary of Sprint Nextel, Virgin Mobile no longer operates as a reseller, but, instead, operates as a facilities-based carrier for purposes of §214(e)(1)(A) of the *Act*. Virgin Mobile has asserted that it will advertise the availability and rates in conformance with the FCC requirements. Virgin Mobile would provide the universal service obligations throughout a designated geographic area, which is its entire service territory in West Virginia and which covers the service territories of two non-rural telephone companies, i.e., Citizens Telecommunications Company of West Virginia and Verizon West Virginia Inc., and three rural telephone companies, i.e., Armstrong Telephone Company, Hardy Telecommunications, Inc., and West Side Telephone Company. Virgin Mobile provides voice grade access to the public switched telephone network (PSTN) and offers its customers service at bandwidth rates between 300 and 3,000 MHZ as required by the FCC. As part of providing voice grade access, an applicant 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. Virgin Mobile's offering not only is comparable to the services provided by the ILECs, but will exceed them in several respects, i.e., while the ILECs offer no free minutes, Virgin Mobile proposes to offer 200 anytime free minutes per month. Also, contrary to the ILECs' offering of service only to a small geographical area, Virgin Mobile plans to allow its customers to use these free minutes to make calls to any area in the United States. Virgin Mobile will provide the functional equivalent of the requirement for the DTMF signal, single party service, access to emergency services, access to operator services, access to interexchange services (at no extra charge), access to directory assistance and toll limitation for qualifying low-income customers. Staff opined that Virgin Mobile's application does not address a proposed certification process or the criteria for customer

eligibility, relying only on statements by its customers that they meet eligibility requirements for the Lifeline service. Staff recommended denial of the petition until this issue was addressed.

On June 11, 2010, Virgin Mobile responded to Commission Staff's final recommendations contained in Staff's May 24, 2010 filing. Virgin Mobile asserted that applicants for the Lifeline services are allowed to self-certify under penalty of perjury and that Virgin Mobile will use a form similar to the one used by the West Virginia Department of Health and Human Resources (DHHR). Currently, Virgin Mobile offers one application method, which includes completing the registration form that certifies that the customer is eligible for the Lifeline program and that authorizes the DHHR to release to Virgin Mobile any information necessary to confirm customer eligibility for the Lifeline program. This signed form must be returned to Virgin Mobile before the customer can participate in the Lifeline program. Based on its experience and feedback from its customers in seven other states, Virgin Mobile is developing two additional application methods in order to streamline the application process and make the Lifeline service more readily available to eligible customers, which Virgin Mobile anticipates will become available in late summer 2010. One of these methods utilizes a secure online application process that obtains the same information as the written form and requires an electronic signature that is provided under penalty of perjury. The other method is to contact Virgin Mobile through a toll-free telephone number and provide that same information under penalty of perjury. Virgin Mobile plans to clearly inform the customers of the penalties of perjury prior to accepting either of these methods of self-certification. Virgin Mobile believes that the June 11, 2010 filing clarifies any questions which Staff may have had about its filing and requested that the Commission grant it the requested ETC status.

On June 17, 2010, Advocates for Universal Access, LLC (AUA), submitted a filing that questioned whether Virgin Mobile was providing all of the services that would actually assist low-income customers to have greater access to mobile services, and requested that the Commission grant it intervenor status.

On June 28, 2010, Virgin Mobile filed a document stating its opposition to AUA's petition to intervene, indicating that AUA was not a legal entity authorized to transact business in West Virginia and was not represented by legal counsel. AUA is a Seattle-based entity claiming to be a consumer advocacy group without substantiating this claim. Virgin Mobile also asserted that AUA had failed to state a sufficient legal interest in the proceeding by failing to identify any specific group or class of customers it purports to represent in West Virginia or any other state. AUA has not disclosed its ownership, funding, membership, governing authorities or its working relationship with other parties in the industry. Virgin Mobile indicated that AUA merely has stated some concerns in hopes of delaying the petition and that AUA has tried this unsuccessfully in other jurisdictions. Virgin Mobile also asserted that AUA would not measurably or constructively add to the scope of the case, i.e., Staff's review of the application is extensive and exhaustive of all requirements of law. Virgin Mobile believes that AUA's participation in the proceeding will cause only confusion and delay. Virgin Mobile again requested that the Commission grant the application, since it has met all of the requirements for designation as an ETC for the limited purposes of participating in the USF to enhance Virgin Mobile's ability to provide the Lifeline program in West Virginia.

By the Procedural Order issued on July 27, 2010, in light of the additional information filed by Virgin Mobile, the Administrative Law Judge (ALJ) required Commission Staff to file a final substantive recommendation by August 6, 2010. The ALJ indicated that, absent good cause shown by Commission Staff, the ALJ would enter a recommended decision granting Virgin Mobile the requested ETC status.

On July 29, 2010, West Virginia Health Right, Inc. (WVHR), who indicated that it is an advocate for the impoverished uninsured, submitted a letter expressing its interest in the proceeding, indicating that the Commission should consider the fact that, in other states, Virgin Mobile charged a fee in advance for text messaging; did not roll over to the next month any unused minutes of the 200 free minutes; and the price which Virgin Mobile proposed to charge for text messaging is unclear.

On August 4, 2010, Dollar Energy Fund, West Virginia Utility Assistance Program (WVUAP), submitted a letter of concern about Virgin Mobile's proposal, mirroring those concerns of WVHR.

On August 5, 2010, Staff Attorney Howard submitted the Further Joint Staff Memorandum, attaching the August 4, 2010 Utilities Division Further Final Recommendation prepared by Mr. Kennedy. Staff believes that Virgin Mobile has now addressed its concerns as well as those of AUA. Staff noted that the Commission has granted ETC status to two other prepaid wireless service providers, each of which have a slightly different offering of services, including the Lifeline service. Staff believes that, if the Commission grants the petition and confers ETC status on Virgin Mobile, the public will be protected by the fact that three prepaid wireless service providers who provide the Lifeline service would be available. Staff opined that the forbearance from the facilities-based requirement previously granted by the FCC imposed additional requirements on Virgin Mobile. Staff opined that, since Virgin Mobile subsequently has become a wholly owned subsidiary of Sprint Nextel, imposition of the FCC's additional requirements attached to the forbearance from the facilities-based requirement would not be necessary. Staff recommended that the Commission grant the petition and confer ETC status on Virgin Mobile for the purpose of offering prepaid wireless Lifeline service supported by the USF to low-income households in West Virginia. Staff cautioned that the approval should be limited to participating in the Lifeline program and not for the Linkup high-cost program. Staff understands that Lifeline service under the brand name Assurance Wireless in West Virginia (Assurance Wireless) will be provided by Virgin Mobile. Staff indicated that its recommendation is predicated upon Virgin Mobile offering the following:

1. Eligible customers will not be charged an activation or connection fee and are not required to make a cash deposit in order to commence service;
2. Eligible customers qualifying under the Lifeline program will be able to use their existing handsets or elect to receive a free Assurance Wireless branded handset with E911 capability;

3. Eligible customers qualifying under the Lifeline program will receive 200 free minutes each month. Unused free minutes do not roll over to the next month, and expire at the end of the 30-day service cycle;
4. Eligible customers qualifying under the Lifeline program will receive free voice mail, caller ID and Call Waiting features which will remain in effect after the 200 free minutes have been consumed; and
5. Eligible customers qualifying under the Lifeline program will be able to obtain additional prepaid calling time at the rate of \$0.10 per minute for voice and at the rate of \$0.10 per minute for text messaging services. Purchased minutes do not expire at the end of the 30-day service cycle and remain available until used or the customer account is terminated.

Staff indicated that it did not recommend approval of the request for "the authority to modify the parameters of the offering as market conditions develop," since such authority is too vague and broad to warrant inclusion as part of granting ETC status. Also, Staff opined that petitions to intervene by advocates should be denied, since the advocates cannot show a legal interest in the matter, as required by Rule 12.6.a. of the Commission's *Rules of Practice and Procedure (Procedural Rules)*. Since the only issue is whether the Commission is prohibited from ruling on this matter in accordance with the FCC forbearance order, the petition should be granted as discussed above, since the Commission has jurisdiction to either grant or reject a petition for ETC status under Section 241(e) of the *Act*.

On August 6, 2010, The Salvation Army (TSA) submitted a letter expressing its interest in the proceeding, indicating that the Commission should consider the fact that Virgin Mobile seeks to charge a fee in advance for text messaging services.

Also on August 6, 2010, West Virginia Community Action Partnerships, Inc. (WVCAP), submitted a letter of concern mirroring the concerns of WVUAP and WVHR.

Also on August 6, 2010, Tyler Mountain/Cross Lanes Community Services (TM/CLCS) submitted a letter voicing its concern that Virgin Mobile would be charging for text messaging services in advance without rolling over those minutes to the next month.

On August 10, 2010, Daymark, Inc., submitted a letter mirroring the concerns of WVCAP, WVUAP and WVHR.

Also on August 10, 2010, Virgin Mobile submitted a letter responding to Commission Staff's final substantive recommendation filed on August 5, 2010. Virgin Mobile pointed out an inconsistency in Staff's recommendation, showing a rate for text messaging of \$0.15 per minute at one location in the document and a rate of \$0.10 per minute at another location. Virgin Mobile clarified that its proposed rate for text messaging is \$0.10 per text message.

## **DISCUSSION**

Having considered all of the above, since no dispute remains to be resolved in this proceeding, as evidenced by the responses to Staff's final recommendation and the lack of a reply from Staff to the response filed by Virgin Mobile, the ALJ will consider the parties to have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing.

The ALJ holds that, since Staff recommended that the Commission grant the petition and confer ETC status on Virgin Mobile for the purpose of offering prepaid wireless Lifeline service supported by the USF to low-income households in West Virginia, and not for the Linkup high-cost program, he will grant ETC status to Virgin Mobile as recommended by Staff. It is not reasonable to approve the request for "the authority to modify the parameters of the offering as market conditions develop," since such authority is too vague and broad to warrant inclusion as part of granting ETC status. Also, the ALJ holds that the petitions to intervene filed by the advocates should be denied, since the advocates cannot show a legal interest in the matter, as required by *Procedural Rule* 12.6.a. Since the only issue is whether the Commission is prohibited from ruling on this matter in accordance with the FCC forbearance order, the petition should be granted as discussed above, since the Commission has jurisdiction to either grant or reject a petition for ETC status under Section 241(e) of the *Act*.

## **FINDINGS OF FACT**

1. Virgin Mobile filed a petition with the Commission, pursuant to Section 214(e)(2) of the *Act*, as amended, seeking ETC designation solely for the purposes of offering prepaid wireless telecommunications services supported by the USF Lifeline program. Virgin Mobile asserted that it meets all of the qualifications necessary to be designated as an ETC under *Act* §214(e)(1) to offer services supported by the Lifeline program. (See, February 24, 2010 petition).
2. Commission Staff initially expressed concern that Virgin Mobile's application did not address a proposed certification process or the criteria for customer eligibility, relying only on statements by its customers that they meet the eligibility requirements for the Lifeline service. Staff believed that all other requirements for ETC designation had been met by Virgin Mobile. (See, May 24, 2010 filing).
3. Virgin Mobile asserted that applicants for the Lifeline services are allowed to self-certify under penalty of perjury and that Virgin Mobile will use a form similar to the one used by the DHHR. Currently, Virgin Mobile offers one application method, which includes completing the registration form that certifies that the customer is eligible for the Lifeline program and that authorizes the DHHR to release to Virgin Mobile any information necessary to confirm customer eligibility for the Lifeline program. This signed form must be returned to Virgin Mobile before the customer can participate in the Lifeline program. Based on its experience and feedback from its customers in seven other states, Virgin Mobile is developing two additional application methods in

order to streamline the application process and make the Lifeline service more readily available to eligible customers, which Virgin Mobile anticipates will become available in late summer 2010. One of these methods utilizes a secure online application process that obtains the same information as the written form and requires an electronic signature that is provided under penalty of perjury. The other method is to contact Virgin Mobile through a toll-free telephone number and provide that same information under penalty of perjury. Virgin Mobile plans to clearly inform the customers of the penalties of perjury prior to accepting either of these methods of self-certification. (See, June 11, 2010 filing).

4. AUA, WVHR, WVUAP, TSA, WVCAP, TM/CLCS and Daymark, Inc., questioned whether Virgin Mobile was providing all of the services that would actually assist low-income customers to have greater access to mobile services; questioned Virgin Mobile's proposal to charge a fee in advance for text messaging; complained that the 200 free minutes did not roll over to the next month; and asserted that the price which Virgin Mobile proposed to charge for text messaging is unclear, and AUA requested that the Commission grant it intervenor status. (See, June 29, July 29, and August 4, 6 and 10, 2010 filings).

5. Virgin Mobile has now addressed Staff's concerns as well as those of AUA. Staff noted that the Commission has granted ETC status to two other prepaid wireless service providers, each of which have a slightly different offering of services, including the Lifeline service. Staff believes that, if the Commission grants the petition and confers ETC status on Virgin Mobile, the public will be protected by the fact that three prepaid wireless service providers who provide the Lifeline service would be available. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

6. In its further recommendation, Staff recommended that the Commission grant the petition and confer ETC status on Virgin Mobile for the purpose of offering prepaid wireless Lifeline service to low income households in West Virginia supported by the USF. The approval should be limited to participating in the Lifeline program and not for the Linkup high-cost program. Virgin Mobile will provide the Lifeline service under the brand name Assurance Wireless. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

7. Staff's approval recommendation is predicated upon Virgin Mobile offering the following:

- (a) Eligible customers will not be charged an activation or connection fee and are not required to make a cash deposit in order to commence service;
- (b) Eligible customers qualifying under the Lifeline program will be able to use their existing handsets or elect to receive a free Assurance Wireless branded handset with E911 capability;

- (c) Eligible customers qualifying under the Lifeline program will receive 200 free minutes each month. Unused free minutes do not roll over to the next month, and expire at the end of the 30-day service cycle;
- (d) Eligible customers qualifying under the Lifeline program will receive free voice mail, caller ID and Call Waiting features which will remain in effect after the 200 free minutes have been consumed; and
- (e) Eligible customers qualifying under the Lifeline program will be able to obtain additional prepaid calling time at the rate of \$0.10 per minute for voice and at the rate of \$0.10 per minute for text messaging services. Purchased minutes do not expire at the end of the 30-day service cycle and remain available until used or the customer account is terminated.

(See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

8. Staff did not recommend approval of Virgin Mobile's request for "the authority to modify the parameters of the offering as market conditions develop," since such authority is too vague and broad to warrant inclusion as part of granting ETC status. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

9. Staff opined that petitions to intervene by advocates should be denied, since the advocates cannot show a legal interest in the matter, as required by *Procedural Rule* 12.6.a. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

10. Staff opined that the only issue is whether the Commission is prohibited from ruling on this matter in accordance with the FCC forbearance order. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

11. Staff recommended that the petition should be granted as discussed above, since the Commission has jurisdiction to either grant or reject a petition for ETC status under Section 241(e) of the *Act*. (See, Further Joint Staff Memorandum, with attachment, filed on August 5, 2010).

12. Virgin Mobile submitted a letter responding to Commission Staff's August 5, 2010 final substantive recommendation, pointing out an inconsistency in Staff's recommendation, i.e., showing a rate for text messaging of \$0.15 per minute at one location in the document and a rate of \$0.10 per minute at another location. Virgin Mobile clarified that its proposed rate for text messaging is \$0.10 per text message. (See, August 10, 2010 filing).

### **CONCLUSIONS OF LAW**

1. Since Staff recommended that the Commission grant the petition and confer ETC status on Virgin Mobile for the purpose of offering prepaid wireless Lifeline service supported by the USF



to low-income households in West Virginia and not for the Linkup high-cost program, predicated upon Virgin Mobile offering the following:

- (a) Eligible customers will not be charged an activation or connection fee and are not required to make a cash deposit in order to commence service;
- (b) Eligible customers qualifying under the Lifeline program will be able to use their existing handsets or elect to receive a free Assurance Wireless branded handset with E911 capability;
- (c) Eligible customers qualifying under the Lifeline program will receive 200 free minutes each month. Unused free minutes do not roll over to the next month, and expire at the end of the 30-day service cycle;
- (d) Eligible customers qualifying under the Lifeline program will receive free voice mail, caller ID and Call Waiting features which will remain in effect after the 200 free minutes have been consumed; and
- (e) Eligible customers qualifying under the Lifeline program will be able to obtain additional prepaid calling time at the rate of \$0.10 per minute for voice and at the rate of \$0.10 per minute for text messaging services. Purchased minutes do not expire at the end of the 30-day service cycle and remain available until used or the customer account is terminated;

it is reasonable to grant ETC status to Virgin Mobile as recommended by Staff.

2. It is not reasonable to approve the request for "the authority to modify the parameters of the offering as market conditions develop."

3. While it is reasonable to consider the concerns voiced by the various advocacy organizations, it is not reasonable to grant Intervenor status to any of those advocacy organizations, since they have not demonstrated a legal interest in the petition.

4. Since the only issue is whether the Commission is prohibited from ruling on this matter in accordance with the FCC forbearance order, it is reasonable to grant the petition as discussed above, since the Commission has jurisdiction to either grant or reject a petition for ETC status under Section 241(e) of the *Act*.

### **ORDER**

IT IS, THEREFORE, ORDERED that the petition filed with the Commission on February 24, 2010, by Virgin Mobile USA, L.P., pursuant to Section 214(e)(2) of the *Telecommunications Act of 1934*, as amended, seeking designation as an eligible telecommunications carrier solely for the

purposes of offering prepaid wireless telecommunications services supported by the Universal Service Fund Lifeline program, be, and hereby is, granted.

IT IS FURTHER ORDERED that Virgin Mobile make provision for the following:

- (a) Eligible customers will not be charged an activation or connection fee and are not required to make a cash deposit in order to commence service;
- (b) Eligible customers qualifying under the Lifeline program will be able to use their existing handsets or elect to receive a free Assurance Wireless branded handset with E911 capability;
- (c) Eligible customers qualifying under the Lifeline program will receive 200 free minutes each month. Unused free minutes do not roll over to the next month, and expire at the end of the 30-day service cycle;
- (d) Eligible customers qualifying under the Lifeline program will receive free voice mail, caller ID and Call Waiting features which will remain in effect after the 200 free minutes have been consumed; and
- (e) Eligible customers qualifying under the Lifeline program will be able to obtain additional prepaid calling time at the rate of \$0.10 per minute for voice and at the rate of \$0.10 per minute for text messaging services. Purchased minutes do not expire at the end of the 30-day service cycle and remain available until used or the customer account is terminated.

IT IS FURTHER ORDERED that the petition to intervene filed by Advocates for Universal Access, on June 17, 2010, be, and hereby is, denied.

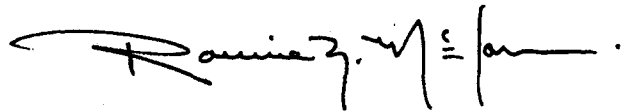
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this order upon the Commission by hand delivery; by electronic service upon all parties of record who have filed an e-service agreement with the Commission; and by United States Certified Mail, return receipt requested, upon all parties of record who have not filed an e-service agreement with the Commission.

Leave hereby is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this Recommended Decision is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this Recommended Decision shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's recommended decision by filing an appropriate petition in writing with the Executive Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's recommended decision the order of the Commission sooner than five (5) days after approval of such waiver by the Commission.



**Ronnie Z. McCann**  
Deputy Chief Administrative Law Judge

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