

Revised Memo Reflecting Revision of Attachment 1, only.

Agenda Date: November 10, 2010
Item Number: A1

Docket: UT-100203
Company Name: Virgin Mobile USA, L.P.

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Recommendation

Grant the exemption from Washington Administrative Code 480-123-030(1)(d), which requires the filing of an investment plan for high cost funds, and designate Virgin Mobile USA, L.P. as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tier One to Tier Three) from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2.

I. Background

On February 1, 2010, Virgin Mobile USA, L.P. (Virgin Mobile or company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214 (e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. Virgin Mobile seeks ETC designation in Washington for the purpose of providing its pre-paid Lifeline service to qualified low-income households. It will only seek the Lifeline portion (Tier One to Tier Three) of low-income support from the federal Universal Service Fund, which subsidizes eligible low-income households' monthly charges for basic telephone services. Virgin Mobile does not seek the Link-Up support, which subsidizes the non-recurring connection fee for basic telephone services. Virgin Mobile seeks ETC designation only for service areas where its parent company, Sprint Nextel Corporation (Sprint Nextel), has facility coverage (Attachment 1). Virgin Mobile does not seek to participate in the state Lifeline program, Washington Telephone Assistance Program (WTAP).

Virgin Mobile filed two supplements to its original petition on August 12, 2010 and November 1, 2010, respectively. The two supplements clarify details of the company's Lifeline offering. In the second supplement, the company also informs the commission that it revised the Lifeline rate plan to increase the customer benefits and offer two more pre-paid options for Lifeline customers to purchase additional minutes.

Virgin Mobile's ETC petition received one written comment. On October 25, 2010, TracFone Wireless, Inc. (TracFone) filed a letter, advising the commission that all wireless ETCs similar to TracFone should be subject to the same requirements as those that have been imposed on TracFone. Specially, TracFone emphasizes the importance of non-usage requirements and procedures by which TracFone de-enrolls a Lifeline customer if the customer has no usage over 60 consecutive days. It encourages the commission to require all ETCs that provide free minutes of airtime to comply with the same non-usage procedure.

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Fund.¹ By rule, WAC 480-123-040, the commission has the authority to approve petitions from carriers requesting ETC designation. The commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.²

II. Discussion

Virgin Mobile and its Lifeline Offering

Virgin Mobile was a joint venture between Sprint Nextel Corporation (Sprint Nextel) and Virgin Group. On November 24, 2009, Virgin Mobile became a wholly owned subsidiary of Sprint Nextel. The Virgin Mobile brand offers prepaid wireless services using the Sprint Nextel wireless network nationwide. Virgin Mobile was designated by the Federal Communications Commission (FCC) as an ETC to receive federal Lifeline support in New York, North Carolina, Tennessee and Virginia.³ It has also obtained Lifeline-only ETC designation from state commissions in Florida, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Texas and West Virginia.

In the initial petition, Virgin Mobile proposes to offer its prepaid Lifeline service under the brand name "Assurance Wireless Brought To You By Virgin Mobile."⁴ The company will provide a free cell phone handset⁵ and 200 anytime prepaid minutes each month at no charge to eligible Lifeline customers. In addition to free voice services, customers will have access to standard features at no additional charges including voice mail, caller ID and call waiting.

On August 12, 2010, Virgin Mobile filed the first supplement to its petition. The supplement clarifies several details of its Lifeline offering, including the rate of \$0.10 for each additional minute and \$0.10 for each additional text message, E911-compatible handsets, free 911 calls and free customer service calls, and the Lifeline customer enrollment procedure. The company also reaffirms that it is able to remain functional in emergency situations.

On November 1, 2010, Virgin Mobile filed another supplement to its petition. It informs the commission that it revised the Lifeline plan to offer eligible customers 250 free voice minutes each month and commits to offer no less than 250 free voice minutes each month until the commission recertifies its ETC designation. Virgin Mobile will also provide two more pre-paid

¹ 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.201(d).

² UT-093012, *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund (UTC TracFone Proceeding)*, Order 03 (Dated June 24, 2010), ¶78.

³ *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 (released March 5, 2009) (FCC Forbearance Order on Virgin Mobile).

⁴ The official website for Virgin Mobile's Wireless Lifeline program is <http://www.assurancewireless.com/>.

⁵ Current Virgin Mobile customers will be able to use their existing handsets to receive prepaid Lifeline services or may choose to receive a free Assurance Wireless handset.

options by which a Lifeline customer can purchase blocks of additional services. The first option offers a block of 250 additional voice minutes for \$5; the second option offers a block of 750 additional minutes and 1000 text messages for \$20.⁶ In the same supplement, the company states that it will implement an annual verification procedure consistent with the FCC's forbearance requirement. It also clarifies that it does not offer a tribal Lifeline plan different from its standard Lifeline plan at this time and will not seek Tier Four Lifeline support from the federal Universal Service Fund.⁷

Federal ETC Requirements

Staff reviewed Virgin Mobile's petition and finds it qualifies for ETC designation if the designation is accompanied with proposed conditions specified in Attachment 2. As specified in 47 U.S.C. § 214(e)(2), state commissions may designate additional carriers as ETCs if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (A) offer the services that are supported by federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using media of general distribution.⁸

Virgin Mobile demonstrates in its petition and supplements that it is capable of delivering telecommunications services supported by the federal Universal Service Fund and that it will advertise the services via media of general distribution. Virgin Mobile's Lifeline plan will positively benefit low-income consumers in Washington. Staff recommends additional conditions to ensure the company will provide Lifeline services in a manner consistent with the public interest. The proposed conditions are also consistent with the ETC designation conditions the commission imposed on TracFone.⁹

Washington State ETC Requirements and Exemption from the Requirement of an Investment Plan

Virgin Mobile's petition meets all but one requirement specified in WAC 480-123-030. WAC 480-123-030(1)(d) requires all ETC applicants to provide a substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers. The company seeks exemption from this requirement because it is intended to be relevant to ETCs that receive high cost funds. Virgin Mobile only seeks Lifeline support. The company is expected to pass the

⁶ The blocks of minutes purchased under these two options will expire at the end of the customer's 30-day service cycle.

⁷ Residents of tribal lands will be able to enroll in Virgin Mobile's standard Lifeline program. Virgin Mobile will seek approval from the commission prior to commencing an enhanced Lifeline plan for tribal customers and seeking Tier Four Lifeline support for tribal customers.

⁸ 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.201(d).

⁹ UT-093012, *UTC TracFone Proceeding*, Order 03 (Dated June 24, 2010) and Order 05 (Dated October 13, 2010).

Lifeline credits to Lifeline customers and expand Lifeline enrollment, but the company will not be expected to use the support to invest in facilities. Therefore, staff recommends the commission grant Virgin Mobile's request to be exempted from WAC 480-123-030(1)(d).

FCC Forbearance Conditions on Virgin Mobile's ETC Designation

In 2007, Virgin Mobile petitioned the FCC to forbear from the requirement that a carrier designated as an ETC must provide services, at least in part, over its own facilities. The FCC granted Virgin Mobile forbearance from the own-facility requirement under section 214(e)(1)(A) of the Act because the company only seeks low-income support, which is customer-specific, and that there is no concern of the company and its wholesale provider claiming the support for the same customers. The FCC granted the forbearance conditioned upon the same set of requirements as it imposed on TracFone. Those conditions include providing 911 and enhanced 911(E911) regardless of activation status and availability of prepaid minutes; providing E911-compliant handsets; obtaining a certification from each Public Safety Answering Point on 911 capability; requiring customers to self-certify on their eligibility; and establishing safeguard to prevent more than Lifeline account at the same address.¹⁰

Virgin Mobile states that when it petitioned for the forbearance and ETC designation from the FCC, it was a Mobile Virtual Network Operator who did not have its own facilities. At the time, it was purchasing Sprint Nextel's network capacity under a wholesale contract. However, since being acquired by Sprint Nextel in November 2009, it has become a wholly owned and fully integrated subsidiary of Sprint Nextel. It has the beneficial use of Sprint Nextel affiliates' property and is under direct operational and financial management from Sprint. Based on the company's current status as a facility-based wireless carrier, it does not require forbearance from the own-facility requirement in Section 214(e)(1)(A) of the Act. Thus, the FCC's forbearance conditions should no longer be applied.

Staff agrees with Virgin Mobile's position that it is now a facility-based wireless carrier, just like other Sprint Nextel subsidiaries. The FCC forbearance conditions, which were imposed to mitigate the non-facility deficiency prior to the merger between Sprint Nextel and Virgin Mobile, should not apply in this case. However, staff considers that the substance of the FCC forbearance conditions still has great relevance to public interest, regardless whether the company has its own facilities or not. After examining the company's petition and its supplemental information, staff finds that Virgin Mobile has, in essence, met all the forbearance conditions:

- Virgin Mobile's Lifeline customers will be able to have access to 911 and E911 service regardless of activation status and availability of prepaid minutes.¹¹
- All the handsets Virgin Mobile provides to Lifeline customers will be E911-compliant.¹² The company will replace, at no additional charge to the Lifeline customer, any noncompliant handsets.¹³
- Virgin Mobile obtained a certification letter from the E911 Program Office of the Washington Military Department Emergency Management Division. The letter confirms

¹⁰ *FCC Forbearance Order on Virgin Mobile*, pp.6-7, ¶12.

¹¹ UT-100203 Virgin Mobile Supplement to Petition filed on August 12, 2010, p.3.

¹² UT-100203 Virgin Mobile Initial Petition filed on February 1, 2010, p.11.

¹³ UT-100203 Virgin Mobile Supplement to Petition filed on August 12, 2010, p.2.

that Virgin Mobile has wireless location capability in providing its customers with access to E911.¹⁴

- Virgin Mobile will implement customer verification procedures by which it will require its customers to self-certify prior to enrollment that they are the head of household and receive Lifeline-supported service only from Virgin Mobile.¹⁵ Annually thereafter, Virgin Mobile will notify each Lifeline customer prior to the service anniversary date, requiring them to confirm the continued eligibility by self-certification. Any customers who do not confirm their eligibility within 30 days of receipt of the verification notice will be removed from the Lifeline program.¹⁶
- Virgin Mobile will track addresses of its Lifeline customers to prevent customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.¹⁷

Based on the above facts, the commission no longer needs to explicitly impose the FCC forbearance conditions in the designation order because all the conditions are already fulfilled.

Washington State Conditions on Virgin Mobile's ETC Designation

Virgin Mobile's proposed pre-paid Lifeline plan is very similar to TracFone's. Therefore, staff recommends the commission impose the same set of conditions in the TracFone proceeding, as modified, on Virgin Mobile's ETC designation.¹⁸ Staff notes that these conditions were proposed on TracFone's ETC designation not just because of TracFone's status as a wireless reseller. Rather, they intend to address staff's concerns on various aspects of public interest, especially with regard to pre-paid offering. The main concern is that prepaid wireless Lifeline programs offer a monthly allotment of minutes at no cost to customers, which may lead to potential fraud, waste and abuse of the federal Universal Service Fund. Without relevant conditions, the existing federal certification and verification procedures on pre-paid wireless Lifeline customers' eligibility may not be sufficient to ensure the integrity of the federal Lifeline program. Other public interest considerations are reflected on conditions with regard to collaboration with the state E911 administrator, procedures dealing with potential cessation of business, number conservation and general rule compliance. Therefore, the same set of conditions should also be imposed on Virgin Mobile's ETC designation because the rationale underlying each condition is applicable in this proceeding.¹⁹

Without repeating each TracFone ETC designation condition, staff highlights the following key conditions:

- The designation is for an interim period of one year. Before the end of one year after the effective date of the designation, Virgin Mobile may seek to renew its designation. Virgin Mobile's designation for the interim period shall continue until the commission's decision to the designation.

¹⁴ UT-100203 Virgin Mobile Further Supplement to Petition filed on November 1, 2010, Exhibit 1.

¹⁵ UT-100203 Virgin Mobile Supplement to Petition filed on August 12, 2010, pp.3-4.

¹⁶ UT-100203 Virgin Mobile Further Supplement to Petition filed on November 1, 2010, p.4.

¹⁷ UT-100203 Virgin Mobile Supplement to Petition filed on August 12, 2010, p.4.

¹⁸ UT-093012, *UTC TracFone Proceeding*, Modified Settlement Agreement (Dated October 26, 2010).

¹⁹ For detailed discussion of conditions on TracFone's ETC designation, see UT-093012, *UTC TracFone Proceeding*, Staff Memo for the November 25, 2009 Open Meeting, UTC TracFone Orders 03 and Order 05.

- The company must file with the commission any future changes to its rates, terms, or conditions at least one day prior to the effective date of the change.
- The company must offer a minimum of 250 minutes during the interim designation period.
- The company must deactivate a Lifeline account if the customer has no usage for 60 consecutive days. No fewer than eight business days before deactivation, the company should send the customer a written notice. The customer shall have a 30 day grace period from the deactivation date to reactivate the Lifeline account. When a customer reactivates the Lifeline account, the company should deposit one month allotment of free minutes to the customer's account for the 30 day grace period.
- The company should provide free customer care service and not decrement the airtime of customer care calls from a customer's balance of minutes.
- The company should use the list of WTAP-eligible public assistance programs as specified in WAC 388-273-0020 (1) as well as the federal income-based eligibility criteria. By March 31 of each year, the company shall file with the commission its complete customer records of the prior calendar year. The customer records are subject to review of the commission and the Department of Social and Health Services (DSHS). The records must have all the necessary information and be in an electronic format required by DSHS. After the commission and DSHS notify Virgin Mobile of the results of the review, Virgin Mobile must take appropriate measures to either correct the customer records or stop providing services to ineligible customers and report the resolutions to the agencies within 60 days of the notice.
- The company shall cooperate with the commission and the DSHS to work out a procedure to verify Virgin Mobile Lifeline customers' eligibility. Currently, TracFone is in the process of obtaining an agreement with the DSHS to access the state database of all WTAP-eligible public assistance recipients. It will enable TracFone to verify Lifeline applicants' program-based eligibility before they enroll in the program.²⁰ Virgin Mobile should take the same approach to reduce fraudulent enrollment in the federal Lifeline program.

Impact on the Universal Service Fund

FCC states in its forbearance order that it does not "expect designating Virgin Mobile as a Lifeline ETC will significantly burden the Universal Service Fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations...Any increase in the size of the fund would be minimal and is outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers."²¹

Staff considers Virgin Mobile's Lifeline plan is a valuable addition to the currently available wireless Lifeline plans. Like TracFone's pre-paid offer, it especially meets the needs of some Lifeline customers who value mobility of phone services and have relatively low usage. The

²⁰ Customers who participate in a Lifeline program based on income-based criterion are required to present documentations of their household income prior to enrollment. Lifeline providers should follow the income certification and verification requirements in 47 C.F.R. § 54.410 and other applicable instructions from the FCC and the Universal Service Administrative Company.

²¹ *FCC Forbearance Order on Virgin Mobile*, pp.11-12, ¶24.

participation rate in the Lifeline program is still low. Designating Virgin Mobile as an ETC will facilitate the competition in the market segment that serves low-income population and benefit the families in need.

III. Conclusion

Based on the above analysis, Staff considers that Virgin Mobile's petition, along with its commitments to recommended conditions, meets the federal and Washington state statutory requirements on ETC designation. Staff recommends the commission issue an order granting the exemption from Washington Administrative Code 480-123-030 (1)(d) and designating Virgin Mobile Wireless, Inc., as an Eligible Telecommunications Carrier for the limited purpose of receiving Lifeline support (Tier One to Tier Three) of the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2.

Attachments - 2