

**BEFORE THE UTILITIES AND TRANSPORTATION COMMISSION  
OF THE STATE OF WASHINGTON**

Investigation of Recent Developments in )  
Federal Low Income Support Policy ) Docket No. UT-120052  
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**COMMENTS OF VIRGIN MOBILE USA, L.P.**

**1. Should all wireless ETCs be required to use Department of Social Health Service (DSHS)’s Beneficiary Verification System (BVS)?**

For the purpose of verifying eligibility, all wireless ETCs should be treated similarly. A requirement that all wireless ETCs undertake the same eligibility verification process ensures consistency and reliability in eligibility determinations and minimizes the potential for consumer confusion. It also ensures that less scrupulous consumers will not seek out service from ETCs that are not required to use the BVS, to the detriment of wireless ETCs that do not use the BVS. The Commission should recognize, however, that not all qualifying criteria will necessarily appear in this database and that documentation may be required from individuals proving their eligibility through low-income status as is contemplated by the FCC. In addition, for programs included in the National Eligibility Database, ETCs should be permitted to query the national database when it is operational.

**2. Is it feasible for the DSHS to provide access to BVS to all ETCs?**

On this point, Virgin Mobile respectfully defers to the DSHS.

**3. Should there be a mechanism to ensure that all ETCs check their customers’ eligibility either by using BVS or by checking proof documentation from customers before enrollment? For example, should all wireless ETCs be required to certify annually that they verify all their Lifeline customers’ eligibility before enrolling customers?**

The revised FCC Lifeline rules implement a certification requirement to ensure that all ETCs properly verify customer eligibility. Specifically, Section 54.416(a)(1) provides in relevant part that “[a]n officer of each telecommunications carrier must certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services.” 47 C.F.R. § 54.416(a)(1). Section 54.416(a)(1) further provides, “In instances where an eligible telecommunications carrier confirms consumer eligibility by relying on income or eligibility databases . . . the representative must attest annually as to

what specific data sources the eligible telecommunications carrier used to confirm eligibility.” *Id.*

In light of this annual certification requirement, to be made under penalty of perjury and submitted to USAC, Virgin Mobile respectfully submits that annual certification to UTC on the same point is unnecessary and would impose a duplicative requirement on Washington ETCs.

**4. Should UTC, DSHS and all ETCs come up with an interim solution for duplicate Lifeline claims before the national database is fully implemented?**

Prior to the implementation of the National Accountability Database by early 2013 at the latest, Virgin Mobile respectfully submits that the UTC should rely upon the in-depth data validation process designed and implemented by the FCC and USAC for the identification and resolution of duplicate Lifeline claims in Washington. The IDV process is designed to identify and resolve the vast majority of duplicate Lifeline claims. Washington has been selected as a state for review in Phase IV of the IDV process, which is currently underway. Virgin Mobile is a participating carrier in the IDV process for Washington, along with several other of the largest Lifeline providers in the State. Virgin Mobile and the other participating carriers will provide their Lifeline customer lists to USAC for comparison and will work with a third-party vendor to resolve the duplicates identified in a well- designed, coordinated outreach process that will take place over the next couple months. With the vast majority of duplicate Lifeline claims resolved through the IDV process, the UTC may dedicate resources elsewhere.

**5. If so, what’s the best mechanism?**

As indicated in response to Question 4, Virgin Mobile respectfully submits that the UTC need not implement an ad hoc duplicate mechanism at this time.

**a. Should duplicate check be conducted before or after a customer’s enrollment?**

The duplicate check should be conducted before a customer’s enrollment where information is available that would permit an ETC to do so. At the time of enrollment, a carrier invests in the customer both in establishing an account and possibly providing a free handset. Carriers should not be required to make the upfront investment in a new customer and conduct a duplicate check that may result in immediate de-enrollment. Until the National Accountability Database is operational, Virgin Mobile has voluntarily agreed to participate in the federal IDV process, which identifies duplicate Lifeline claims for customers already enrolled.

**b. Should the ETCs collectively select a third-party administrator to conduct the duplicate check?**

As indicated in response to Question 4 above, the UTC may rely on the federal IDV process, in connection with which ETCs have collectively selected (and paid for) a third-party administrator.

**c. How can we ensure a third-party administrator's independence and accountability?**

A third-party administrator's independence and accountability could be determined with participation by all interested parties in the selection process.

**d. Will the DSHS be better suited to conduct the duplicate check?**

If the DSHS maintains information on Lifeline enrollment in an accessible database, Virgin Mobile respectfully submits that the DSHS would be better suited to conduct the duplicate check, or should at least provide ETCs with access to the database in place of an ad hoc duplicate check process.

**e. What should be done once duplication is detected?**

As indicated in response to subpart "a" above, if the State determines to implement its own interim duplicate check process, the duplicate check should be conducted before a customer is enrolled. Thus, once a duplicate is detected, the checking carrier should decline to enroll the applicant.

**f. Who should pay to support the implementation of the interim solution?**

If a database exists that would permit carriers to check an applicant's Lifeline status prior to enrolling the customer, the cost of the check should be minimal and effectively shared by the carrier and the State. Virgin Mobile respectfully submits that carriers participating in the IDV process in Washington as part of Phase IV of the federal process should not be required to support an interim state solution prior to the launch of the National Accountability Database in early 2013.

**6. Currently, Eligible Telecommunications Carriers (ETCs) in Washington follow three different sets of customer qualification criteria based on whether they offer landline, prepaid wireless or postpaid wireless Lifeline service plans. Should the Commission unify customer qualification criteria for all customers? What are the pros and cons for a uniform set of customer qualification criteria?**

Virgin Mobile respectfully submits that all ETCs should be subject to a uniform set of customer qualification criteria on a technology neutral basis. Customer qualifications are not unique to a particular customer and establish the customer's eligibility for Lifeline, entirely

independent of the nature of Lifeline service (landline, postpaid wireless or prepaid wireless) a customer desires.

**7. By Commission’s ETC designation orders, all prepaid wireless ETCs are required to maintain direct contact with their Lifeline customers. What constitutes “direct contact” with consumers? What’s the role of commission-based agents who market Lifeline products for ETCs? Should those agents’ role be limited to advertising, distributing and collecting Lifeline application forms (not dispatching cell phones)?**

In the Lifeline Reform Order, the FCC declined to adopt a requirement that “carriers themselves, rather than their agents or representatives,” review documentation of eligibility, concluding instead that “ETCs may permit agents or representatives to review documentation of consumer program eligibility for Lifeline.” Reform Order ¶ 110. As the FCC further observed, “the ETC remains liable for ensuring the agent or representative’s compliance with the Lifeline program rules.” Similarly, ETCs are responsible for their agents’ or contractors’ behavior to the extent appropriate under the applicable principles of agency law.

**8. Should there be sanctions on inappropriate marketing behaviors? To what extent should the ETCs be held responsible for their agents or contractors’ inappropriate marketing behaviors?**

As a general matter, ETCs should be responsible for their overall marketing strategy and practices. ETCs should be held responsible for their agents’ or contractors’ behavior to the extent appropriate under the applicable principles of agency law. Virgin Mobile respectfully submits that illegal or otherwise improper marketing practices by an ETC, as determined by the Office of the Attorney General, Consumer Protection Division, could serve as grounds for revocation of the ETC designation. Questionable marketing practices could subject an ETC to heightened monitoring by the Consumer Protection Division.

**9. Should the Commission set parameters for ETCs’ Lifeline outreach and marketing behaviors? For example, is it appropriate to distribute cell phones at a carrier-sponsored event? Is it appropriate to solicit customers inside or in close proximity of social service agencies?**

Virgin Mobile respectfully submits that ETCs’ Lifeline outreach and marketing practices should not be subject to parameters set by the Commission. Generally speaking, the legitimacy and propriety of a certain marketing practice may depend on how it is executed by a particular ETC. Instead of setting parameters targeted at certain practices, the Commission could make available to the Office of the Attorney General, Consumer Protection Division, the list of ETCs providing Lifeline service in Washington state should a Lifeline marketing practice provide cause for concern. The Commission could go one step further and identify potential practices that may warrant monitoring by the Consumer Protection Division. The Consumer Protection Division is well positioned to engage in ongoing monitoring of ETC marketing practices as those practices change and evolve. As indicated in response to Question 8 above, Virgin Mobile respectfully submits that ETC marketing practices determined to be illegal or otherwise improper could serve as grounds for revocation of the ETC designation.

**10. Many recent ETC petitioners are small companies focused solely on provision of Lifeline services. Should companies' financial strength be a concern in staff's evaluation of ETC applications? If so, what standards should apply?**

Virgin Mobile respectfully submits that a company's ability to remain a going concern should be a factor in staff's evaluation of ETC applications for several reasons. First, Lifeline customers rely on their telecommunications service provider as an actual Lifeline and should be able to depend on the availability of service. Second, the revised FCC Lifeline rules require all Lifeline applicants to engage in a robust application process that requires the applicant to complete a detailed certification form and provide proof of eligibility for Lifeline. A Lifeline customer should not be required to engage in that process more than once nor risk a gap in service due to an ETC's inability to continue providing service, particularly where staff had an opportunity during the ETC application process to test the ETC's ability to remain a going concern. Third, as part of the new Lifeline rules, the FCC requires ETCs to provide annual certifications on certain matters and submit to audits to minimize waste, fraud and abuse. To ensure the meaningfulness of those requirements directed at ETCs, ETCs must provide Lifeline service on a relatively long-term basis. Companies applying for ETC status that are successfully operating in other states and have done so for a reasonable period of time do not require a robust examination of their financial strength as new entrants based on their successful operating history.

Dated this 21<sup>st</sup> day of February 2012 in San Francisco, California.

Respectfully submitted,

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