

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: December 6, 2016

REGULAR _____ CONSENT X EFFECTIVE DATE _____ Upon Approval

DATE: November 28, 2016

TO: Public Utility Commission

FROM: Kay Marinos *KM by BAC*

THROUGH: Jason Eisdorfer *E* and Bryan Conway *BAC*

SUBJECT: VIRGIN MOBILE USA, L.P. (ASSURANCE WIRELESS):
(Docket No. UM 1522) Petition to Relinquish ETC and ETP Designations.

STAFF RECOMMENDATION:

Staff recommends that the Commission grant the request of Virgin Mobile USA, L.P. (Virgin Mobile) to relinquish its Eligible Telecommunications Carrier (ETC) and Eligible Telecommunications Provider (ETP) designations, subject to the conditions set forth in this memo.

DISCUSSION:

Issue

Whether the Commission should permit Virgin Mobile to relinquish its ETC and ETP designations, thereby enabling the company to cease offering Lifeline and OTAP services in Oregon.

Applicable Law and Orders

Section 214(e)(2) of the federal Communications Act of 1934, as amended, gives state commissions primary responsibility for designating ETCs to receive federal universal service support for high-cost and low-income (Lifeline) purposes. General ETC and Lifeline requirements are reflected in FCC regulations, 47 CFR Part 54. Specific federal requirements for ETC relinquishment are set forth in both 47 USC 214(e)(4) and 47 CFR 54.205(a) and are similar in each case. Federal law and rules require an ETC to provide advance notice of relinquishment to the state commission that granted its ETC designation. After receiving such notice, the state commission shall permit an ETC

to relinquish its designation if there will be at least one ETC remaining in the area and all customers of the relinquishing carrier can obtain service from the remaining ETC(s). If this condition cannot be met, the state commission shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining ETC(s).

There are no Oregon-specific requirements for ETC relinquishment beyond the federal requirements, nor are there any specific rules regarding requirements for ETP relinquishment. However, because ETP status requires active federal ETC status, relinquishment of ETC designation effectively terminates ETP designation as well.

The Commission designated Virgin Mobile as an ETC and an ETP for the limited purpose of offering federal and Oregon Lifeline services in Docket No. UM 1522, Order No. 12-015 entered January 23, 2012 (Designation Order), subject to conditions of operation set forth in the order.

Analysis

On November 18, 2016, Virgin Mobile submitted a Petition to Relinquish Eligible Telecommunications Carrier and Eligible Telecommunications Provider Designations Pursuant to 47 U.S.C. § 214(e)(4) (Petition). The Petition explains that the relinquishment is related to an agreement between Sprint and i-wireless in which Sprint (which already holds an ownership interest in Virgin Mobile) will acquire an indirect 70 percent ownership interest in i-wireless. As part of the agreement, Virgin Mobile's Lifeline customers (served under the Assurance Wireless brand) will be transferred to i-wireless to be served under that company's Lifeline brand, Access Wireless. Virgin Mobile's non-Lifeline customers will not be transferred as part of the agreement as only the Lifeline brands of the two companies are being consolidated. The Assurance Wireless brand for which Virgin Mobile received ETC/ETP designation will be eliminated, and Virgin Mobile will no longer offer Lifeline-supported services.

The transaction will affect both companies on a nationwide basis, not just in Oregon. The closing of the transaction at the national level is dependent upon one final regulatory approval, i.e., FCC approval of i-wireless' amended compliance plan. Although expectations are that the FCC will approve the plan very soon, a specific date for approval is not known at this time. Therefore, Virgin Mobile requests an effective date for relinquishment that is conditional upon the FCC plan approval, the related closing of the transaction, and the completion of the migration of customer accounts to i-wireless. Virgin Mobile is requesting permission for relinquishment at this time so that it can obtain permission to establish a date to refuse new customer requests for Assurance Wireless service, as well as proceed with a customer notification and migration plan that satisfies any potential Commission concerns.

As noted above, there are federal requirements for ETC relinquishment, but no additional specific state requirements. Virgin Mobile demonstrates in its Petition that it meets the basic federal requirements for ETC relinquishment. The filing provides the required advance notice of relinquishment to the Commission. In each wire center of Virgin Mobile's designated service area, there will remain at least one ETC, i.e., an incumbent local exchange carrier (ILEC).

Additionally, Virgin Mobile's Lifeline customers will have the opportunity to be transferred to i-wireless for Lifeline service.¹ On October 31 of this year, i-wireless filed to expand its designated service area to include the same areas as Virgin Mobile in order to make sure that all Virgin Mobile Lifeline customers can be transferred to i-wireless Lifeline service. The Commission approved the expansion in Order No. 16-426. Other wireless ETCs such as US Cellular, AT&T Mobility and Boomerang also offer Lifeline services in some parts of Virgin Mobile's designated service area as well.

Virgin Mobile's Lifeline customers' benefits will not be reduced as a result of the transfer. In fact, when transferred to i-wireless for Lifeline service, the Virgin Mobile Lifeline beneficiaries will receive more free minutes than under the Virgin Mobile plans. Effective December 2, Virgin Mobile Lifeline customers will receive 500 voice minutes and unlimited texts each month at no charge. i-wireless Lifeline customers will receive 750 voice minutes per month as well as unlimited text and 50 MB data at no charge. As both companies use the same Sprint network, no coverage problems or handset compatibility issues are expected to arise.

Staff had several discussions with the two companies regarding the planned migration of customers. The companies will attempt to make the transition as seamless as possible for the customers. Virgin Mobile sent notices to its Lifeline customers via text in September that contained a link to information on the internet regarding the planned transaction. The notices also included a toll-free number to access information about the transaction and the planned transfer of customers to i-wireless.

To date, Virgin Mobile has worked in good faith with Staff and CUB. Staff anticipates that cooperative discussions will continue regarding customer-impacting aspects of the transition related to customer notification, customer service communications with prospective applicants and customer migration scheduling. Additionally, Staff proposes the following three conditions based on information in the Petition:

¹ The Commission designated i-wireless as an ETC/ETP for the purposes of offering Lifeline in Order No. 15-300, issued September 29, 2015. Commission Staff has recently approved the company's operational readiness to actually begin offering Lifeline services here in Oregon.

1. Virgin Mobile will continue to take applications from new Lifeline customers until five days after Sprint's transaction with i-wireless closes.
2. Virgin Mobile will provide two notifications to the Commission prior to the relinquishment effective date. The first notification, to be filed within five business days after closing of the transaction, will contain a status update that addresses planned dates for critical steps, including customer notifications, in the customer migration process. The second notification to the Commission will confirm that the Assurance Wireless customer base has been successfully transferred to i-wireless and that Virgin Mobile no longer has any Lifeline customers. This notice will be filed within five business days of the final customer migration.
3. Relinquishment will become effective on the date the second notification identified in condition number 2 is filed with the Commission.

Conclusion

Virgin Mobile's Petition should be granted because it meets the federal requirements for ETC relinquishment, and ETP relinquishment must necessarily follow. However, the approval should be subject to the conditions specified above in order to minimize customer impacts and address the uncertainty surrounding the actual timing of key events.

PROPOSED COMMISSION MOTION:

Approve Virgin Mobile's request to relinquish its ETC and ETP designations subject to conditions identified in this memo.