

**BEFORE THE PUBLIC UTILITY COMMISSION**

**OF OREGON**

**UM 1522**

In the Matter of

VIRGIN MOBILE USA, L.P.,

Petition for Limited Designation as an  
Eligible Telecommunications Carrier

**FIRST AMENDED APPLICATION FOR DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER AND ELIGIBLE TELECOMMUNICATIONS  
PROVIDER AND REQUEST FOR WAIVERS OF CERTAIN RSPF RULES**

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## EXECUTIVE SUMMARY

Virgin Mobile USA, L.P. (“Virgin Mobile” or the “Company”), a wholly-owned subsidiary of Sprint Nextel Corporation (“Sprint Nextel”) submitted a Petition for Limited Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Oregon on February 1, 2011, pursuant to § 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. On April 8, 2011 Virgin Mobile submitted an Application to provide services as an Eligible Telecommunications Provider (“ETP”) pursuant to the Oregon Telephone Assistance Program (“OTAP”).

Since the foregoing filings, Virgin Mobile has conferred with representatives of the Staff of the Commission and the Citizens’ Utility Board (“CUB”) about its requests. As a result, Virgin Mobile hereby files this amendment to its previous filings. As discussed herein, Virgin Mobile meets all of the necessary requirements for ETC designation under § 214(e)(1) of the Act to offer services supported by the Lifeline program. In addition, Virgin Mobile’s proposed services satisfy the Commission’s ETC requirements<sup>1</sup> and ETP requirements,<sup>2</sup> with five exceptions. Virgin Mobile requests a waiver for these requirements for good cause, as explained herein.

### I. INTRODUCTION

Virgin Mobile USA, pursuant to § 214(e)(2) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), and the requirements of the Oregon Public Utility Commission (“Commission”),<sup>3</sup> hereby amends its February 1, 2011 Petition for Designation as an Eligible Telecommunications Carrier in the State of Oregon and re-files its Eligible

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<sup>1</sup> These are set forth in Appendix A to Order No. 06-292 in UM 1217 (“*ETC Checklist*”).

<sup>2</sup> OAR Chapter 860, Division 033; Residential Service Protection Fund (the “*RSPF Rules*”).

<sup>3</sup> *ETC Checklist* and *RSPF Rules*.

Telecommunications Provider Application to provide Oregon Telephone Assistance Program Services. This ETP Application is Exhibit A.

Virgin Mobile seeks ETC designation in Oregon only for purposes of participation in the USF Lifeline program. The instant request does not seek ETC designation to offer services supported by the high-cost program. Virgin Mobile seeks ETP designation in order to receive ETC designation in Oregon. As more fully described below, Virgin Mobile satisfies the requirements for designation as an ETC and ETP in the State of Oregon, except where noted, for which a waiver is sought. Expedient approval of Virgin Mobile's request, moreover, would advance the public interest because it would enable the Company to commence offering much needed Lifeline services to low-income Oregon residents as soon as possible. Accordingly, the company respectfully requests that the Commission promptly approve this amended application.

## **II. BACKGROUND**

### **A. Overview of Company ETC Designations.**

Virgin Mobile was established as a joint venture between Sprint Nextel Corporation ("Sprint Nextel") and Sir Richard Branson's Virgin Group to offer prepaid wireless services using the Virgin Mobile brand and the Nationwide Sprint Network. On November 24, 2009, Virgin Mobile became a wholly-owned subsidiary of Sprint Nextel upon completion of the companies' previously announced transaction. The Federal Communications Commission ("FCC") approved Sprint Nextel's acquisition of Virgin Mobile effective September 11, 2009.<sup>4</sup>

In March 2009, the FCC designated Virgin Mobile as an ETC for purposes of offering Lifeline services in the states of New York, North Carolina, Tennessee and Virginia<sup>5</sup> because, at that time, Virgin Mobile operated as a mobile virtual network operator that did not own any

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<sup>4</sup> See *International Authorizations Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

<sup>5</sup> See *Federal-State Joint Board 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) ("2009 Order"). (Exhibit B).

network facilities. The *2009 Order* also conditionally granted the Company's request for forbearance from enforcement from the § 214(e)(1)(A) facilities-based requirement for ETC designation. Based on Virgin Mobile's status as a reseller, the FCC conditioned its grant of forbearance, as well as its grant of ETC designation, on Virgin Mobile's compliance with certain obligations.

By Order dated December 29, 2010, the FCC designated Virgin Mobile as an ETC in Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia.<sup>6</sup> In the *2010 Order*, the FCC determined that Virgin Mobile now operates as a facilities-based carrier for purposes of § 214 of the Act in light of its acquisition by Sprint. The FCC concluded that Virgin Mobile "no longer needs forbearance" from the § 214 facilities-based requirement and lifted certain forbearance conditions associated with Virgin Mobile's prior status as a reseller.<sup>7</sup>

In addition to the nine states in which the FCC granted ETC status to Virgin Mobile, Virgin Mobile has been designated as a facilities-based ETC by regulatory authorities in twenty-two states.<sup>8</sup>

**B. The Commission Has the Authority to Perform ETC Designations.**

Section 214(e)(2) of the Act provides state public utility commissions with the "primary responsibility" for the designation of ETCs. Pursuant to this authority, the Commission has participated in determining whether to grant ETC status to an applying carrier, including any requesting wireless carrier. Under the Act, a state public utility commission with jurisdictional authority over ETC designations must designate a common carrier as an ETC if the carrier satisfies the requirements of § 214(e)(1). Virgin Mobile currently meets all of the requirements

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<sup>6</sup> 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 (rel. Dec. 29, 2010)* ("2010 Order"). (Exhibit C).

<sup>7</sup> See *Id.*, at ¶ 15.

<sup>8</sup> Virgin Mobile has been designated an ETC by state regulatory authorities in AR, CA, FL, GA, IA, IN, KY, LA, MA, MD, ME, MI, MS, NJ, OH, PA, RI, SC, TX, UT, WA and WV.

of § 214 of the Act and the *ETC Checklist*, warranting its designation as an ETC by the Commission. These requirements will be demonstrated below.

**III. VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC.**

**A. Virgin Mobile is a Common Carrier: Item 1.1, *ETC Checklist*.**

Section 214(e)(1) of the Act and Item 1.1 of the *ETC Checklist* requires that applicants for ETC designation be common carriers that will offer all of the services supported by the USF, either using their own facilities or a combination of their own facilities and the resale of another carrier's services. Section 153(1) of 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 ..." The FCC has determined on numerous occasions that providers of mobile wireless services shall be treated as common carriers for regulatory purposes. As a provider of wireless telecommunications services, therefore, Virgin Mobile is a common carrier as required by Item 1.1 of the *ETC Checklist* and is eligible for designation as an ETC. As a wholly-owned subsidiary of Sprint, Virgin Mobile has beneficial use of the Sprint network and, thus, provides services using its own facilities.

**B. Description of Virgin Mobile's Services and Authorized Services: Item 1.2, *ETC Checklist*.**

Virgin Mobile currently offers two facilities-based, prepaid wireless service offerings in Oregon, "Beyond Talk" and "payLo," each with several plan choices, which are described in Exhibit D. If this Application is approved, Virgin Mobile will offer its prepaid Lifeline service, branded Assurance Wireless Brought to You By Virgin Mobile ("Assurance Wireless"), in Oregon. Because Virgin Mobile is a wireless carrier, it is not required to obtain a certificate of public convenience and necessity from the Commission.

Virgin Mobile may and does provide its prepaid wireless services throughout Oregon wherever Sprint has the facilities to provide CDMA wireless service, pursuant to authorization from the FCC.

**C. Commitment and Ability to Provide All Supported Services: Item 2.1, *ETC Checklist*.**

Virgin Mobile's request for ETC designation complies with § 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 § 54.101 of the FCC's regulations and Item 2.1 of the *ETC Checklist* throughout its service territory in the State of Oregon. The Company, moreover, commits to making these services and functionalities available to any qualifying Oregon customer as required by Item 2.1 of the *ETC Checklist*.

**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 of between 300 and 3,000 MHz as required by the FCC's regulations.<sup>9</sup>

**2. Local Usage.**

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. Virgin Mobile's basic Assurance Wireless Plan provides 250 minutes of usage for free that can be used locally or nationwide and provides two other options to purchase more voice minutes as described in Section II.D. Minutes are not charged separately at different rates for local or long-distance services.

**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 all detail information throughout its network. All wireless handsets offered for sale by the Company are DTMF-capable.

**4. Single-Party Service or its Functional Equivalent.**

"Single-party service" means that only one party will be served by a subscriber loop or access line during a telephone transmission. Virgin Mobile provides the functional equivalent of

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<sup>9</sup> See 47 C.F.R. § 54.101(a)(1).



single-party service to its wireless customers for the duration of each telephone call, and does not provide multi-party (or “party-line”) services.

**5. Access to Emergency Services.**

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

To ensure that customers receive uninterrupted access to 911 emergency and customer care services, Lifeline customers will be able to access 911 emergency and customer care services regardless of whether they have any remaining minutes in their account. In addition, minutes used for calls placed to 911 emergency services and Assurance Wireless customer care are not deducted from a customer’s account.

**6. Access to Operator Services.**

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

**7. Access to Interexchange Services.**

Virgin Mobile’s service provides its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile’s service with no additional charges because minutes for local or domestic long-distance services are not billed separately 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 at a charge of \$1.75 per call plus airtime.

**9. Toll Limitation.**

Toll limitation allows customers to either block the completion of outgoing long-distance calls or specify a certain amount of toll usage to prevent them from incurring significant long-distance charges and risking disconnection. As described above, Virgin Mobile provides its wireless service on a prepaid basis. As a result, a customer may incur charges for services beyond the free 250 nationwide minutes only if the customer elects to add funds to his or her

account. Moreover, Virgin Mobile's domestic service is not offered on a distance-sensitive basis, and minutes are not charged separately for local or domestic long-distance services. International services may be purchased only if the customer has placed funds in his or her account and only until those funds are exhausted. In no circumstance is there a risk of disconnection due to billing-related issues. The FCC determined in its grants of ETC designation to the Company that the nature of Virgin Mobile's service mitigates concerns that low-income customers will incur significant charges for long-distance calls, risking disconnection of their service.<sup>10</sup>

**D. Description of Virgin Mobile's Lifeline Service Offering: Item 2.3, ETC Checklist.<sup>11</sup>**

Virgin Mobile requests ETC designation in Oregon for the sole purpose of providing prepaid wireless Lifeline service through its Assurance Wireless brand.<sup>12</sup> Assurance Wireless will provide customers with the same features and functionalities enjoyed by all other Virgin Mobile prepaid customers with two notable exceptions: Under the basic plan, eligible Lifeline customers will receive 250 anytime prepaid minutes per month at no charge and all Lifeline customers receive a free phone.

Virgin Mobile also offers two plan options to Lifeline Customers who wish to purchase blocks of additional services. Lifeline customers can add \$5 to their account to purchase an additional 250 monthly voice minutes, providing them with a total of 500 voice minutes in a month (250 free minutes plus 250 additional minutes) or Lifeline customers can add \$20 to their account to purchase an additional 750 voice minutes, providing them with a total of 1,000 voice minutes (250 free minutes plus 750 additional minutes). Customers choosing this second option will also receive 1,000 monthly text messages. Finally, customers with money in their accounts

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<sup>10</sup> See 2009 Order at ¶ 34; 2010 Order at Fn.33.

<sup>11</sup> Because Virgin Mobile can offer currently all supported services its need not address *ETC Checklist* Item 2.2.

<sup>12</sup> A more detailed description of this service offering is available on the Assurance Wireless website: <http://www.assurancewireless.com/Public/MorePrograms.aspx> which is included as Exhibit E hereto.

who do not select either of the foregoing options can purchase additional minutes or text messages priced at \$0.10/minute and \$0.10/text message.

Customers may also purchase a Messaging Pack or Data Pack to augment the three voice-based plans discussed above at the following additional prices:

<b>Messaging Pack</b>	<b>Data Pack</b>
\$2.00 for 30 messages	\$5.00 for 5 MB
\$5.00 for 200 messages	\$10.00 for 20 MB
\$10.00 for 1,000 messages	\$20.00 for 50 MB
\$20.00 for unlimited messages	

Customers are not obligated to purchase these additional offerings or add money to their accounts, and all eligible customers will receive 250 free monthly minutes. Consistent with current practice, unused minutes, text messages or data do not carry forward from month-to-month.

Eligible customers can select any one of the Assurance Wireless plans on a month-to-month basis without subscribing to a long-term contract or incurring activation charges or connection fees. In the event that a customer selecting either the \$5/500 minute or \$20/1000 minute plan does not have sufficient funds in the Lifeline account at the time the minutes are to be deposited in a particular month, the customer would default to the free 250-minute plan for that month. Consistent with the current offerings, the rates for service under all plans include all applicable taxes and fees, and customers can use their monthly minutes to place calls statewide (or even nationwide) because none of the plans imposes a local calling area requirement.<sup>13</sup> Finally, each service plan also includes voicemail, caller I.D., and call waiting services and access to E911 and customer care at no additional charge.

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<sup>13</sup> Customers may incur state sales tax and fees at the point of purchase should the customer choose to “top-up,” or add funds to their account.

Virgin Mobile expects that the Company's Lifeline plan may change as the wireless market evolves. Virgin Mobile will submit all material revisions to the terms of its Lifeline service offering to Commission Staff and to CUB at least thirty (30) calendar days before implementing such revisions. Virgin Mobile agrees to discuss any concerns that Commission Staff or CUB may have with respect to any such revisions and to work in good faith to address such concerns.

**E. Virgin Mobile's Assurance Wireless Offers a Local Usage Plan that is Comparable to, and Exceeds, the Basic Local Service Offerings of the ILEC: Item 2.4, ETC Checklist.**

In Order No. 06-292 (pp. 5-6) the Commission said that it would analyze ETC local service offerings on a case-by-case basis and wanted at least one affordable basic local service offering to be made available for low-income customers. The Commission noted that it had found that while wireless carriers may not provide unlimited local calling for a flat rate, other benefits of the wireless service offset that fact for a finding of comparable service. Virgin Mobile provides significant benefits through its Lifeline service to warrant a finding of comparable service.

At this time, neither the FCC's nor the Commission's regulations require ETCs to offer a specific amount of local usage to provide a minimum number of free local calls or minutes. Instead, an applicant for ETC designation must demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory.<sup>14</sup> In analyzing whether an ETC applicant's plan is comparable to the underlying ILEC's plan, the FCC has indicated that it reviews all aspects of the plan on a case-by-case basis, including 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.<sup>15</sup> The FCC has determined that a carrier satisfies

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<sup>14</sup> 47 C.F.R. § 54.202(a)(4).

<sup>15</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385 (2005).

the local usage requirements when it offers rate plans containing varying amounts of local usage.<sup>16</sup>

Virgin Mobile's proposed Lifeline offering fully complies with the local usage requirements established by the FCC and this Commission.<sup>17</sup> Not only will Virgin Mobile's offering be comparable to the underlying ILEC plans, but it also will exceed them in several respects. Virgin Mobile will provide its Lifeline customers with 250 anytime minutes per month at no charge. In contrast to the ILEC plans, which contain relatively small local calling areas, Virgin Mobile customers can use these free minutes to place calls statewide, or even nationwide, because Virgin Mobile does not constrict customers' use by imposing a local calling area requirement. In addition to free voice services, Virgin Mobile will provide Lifeline customers with access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services, E911 capabilities and access to customer care. Virgin Mobile's Lifeline service will provide low-income Oregon residents with the convenience and security offered by wireless services without interruption, even if their financial position deteriorates.

A free basic plan is clearly affordable and provides customers with the ability to communicate not just locally, but across the country for more than four hours a month. In addition, Virgin Mobile provides two other affordable Lifeline service options for higher usage customers.

In addition to offering the convenience, security and mobility offered by wireless services, Virgin Mobile's Lifeline offerings are also free of the many limitations and restrictions that currently apply to services offered by other carriers. The rates for service under all Virgin Mobile plans include all applicable taxes and fees. Each service plan also includes voicemail, caller I.D. and call waiting services at no additional charge. Virgin Mobile also does not assess

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<sup>16</sup> 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).

<sup>17</sup> See *ETC Checklist*, Item 2.4.

additional charges for activation or connection of Lifeline service. As a result, Lifeline customers will receive free service with no additional charges for taxes or activation.

In sum, Virgin Mobile's Lifeline service provides a local usage plan that is more than comparable to those offered by the ILECs in its proposed service area.

**F. Equal Access to LD Carriers: Item 2.5 , ETC Checklist.**

Virgin Mobile certifies its acknowledgement that the Commission 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).

**G. Virgin Mobile's Requested Service Area: Item 3, ETC Checklist.**

Exhibit F hereto as required by Item 3.1.1 is a "Map showing applicant's licensed service area boundaries and its requested designated service area boundaries overlaid on the boundaries of all ILEC wire centers it proposes to include in its designated service area." Exhibit G hereto as required by Item 3.1.2 is a list of wire centers that comprise Virgin Mobile's proposed designated service area. Virgin Mobile is not requesting designation on any Tribal Lands, as it does not propose to offer Tribal Lifeline at this time. Therefore, the wire centers listed in Exhibit G exclude Tribal Land areas for designation purposes.

Virgin Mobile's coverage area does not precisely correspond with each ILEC's wire center because it is a wireless carrier. Exhibit G lists those wire centers in which Virgin Mobile provides substantial, if not total, coverage.

**H. Commitment to Provide Service: Item 3.2, ETC Checklist**

Virgin Mobile commits to offering the supported services throughout its proposed service area, with the caveat stated above that its service coverage area does not precisely correspond to the wire centers that define its service area. Virgin Mobile commits to the requirements of 47 C.F.R. § 54.202(a)(1)(i), including the six-step process to be used when a consumer requests service within the designated service area, but outside existing network coverage.

**I. Virgin Mobile Facilities Used to Offer Supported Services: Item 4.1, ETC Checklist**

As the FCC noted in its recent decision, Virgin Mobile is a facilities-based carrier for purposes of § 214(e)(1) of the Act, even though absolute, direct legal title to the facilities utilized by Virgin Mobile lies with its parent and sibling corporate enterprises that are part of the Sprint family.<sup>18</sup> Consistent with its prior decisions, the FCC rejected a formulative interpretation of the term “own facilities” in § 214(e)(1) and adopted a more flexible approach.<sup>19</sup> In these prior decisions, the Commission determined that § 214(e)(1) concept of “own facilities,” includes facilities for which a carrier has beneficial use and over which it “does not hold absolute title” and that any contrary interpretation would frustrate the goals of the Act and lead to absurd results.<sup>20</sup>

**J. Coverage Map/Signal Strength: Item 4.2, ETC Checklist**

Exhibit F hereto provides the coverage map required by Item 4.2 of the *ETC Checklist*. The entire CDMA Coverage Area depicted thereon has signal strength of at least -98 dbm. Virgin Mobile does not seek designation in areas with weaker signal strength and does not maintain maps depicting areas of weaker signal strength.

**K. Relevant Resale/Interconnection Agreements: Item 4.3, ETC Checklist**

Virgin Mobile will only use the Nationwide Sprint Wireless network to provide its Assurance Wireless service. Virgin Mobile has no resale or other network-related agreements with other carriers.

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<sup>18</sup> 2010 Order at ¶¶ 15-16.

<sup>19</sup> *Id.*

<sup>20</sup> *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 159-161 (1997).

**L. Commitment to Use Support Funds Only for Intended Purposes: Items 5.1-5.3, ETC Checklist**

Because Virgin Mobile seeks ETC designation only for purposes of receiving federal low-income support and not high-cost support at this time, it is exempt from Items 5.1-5.3 and their subparts of the *ETC Checklist*.

**M. Commitment to Advertise Supported Services: Item 6, ETC Checklist**

Virgin Mobile will advertise the availability and rates for the supported services using media of general distribution throughout its service area. The Company advertises the availability of its Lifeline services through newspapers, magazines, radio, the Internet, and direct mail. These advertising campaigns, which will reflect Oregon-specific eligibility requirements, have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to Lifeline eligible customers.

In addition, Virgin Mobile will submit all proposed marketing and advertising material, including, but not limited to, television and radio advertisements, for Staff review at least twenty-one (21) calendar days in advance of publishing or releasing the advertisement. The Company will discuss any concerns Staff may have with respect to any such advertising materials and to work in good faith to address such concerns.

**N. Commitment to Offer and Advertise Lifeline, Link Up and OTAP Services: Item 7, ETC Checklist**

**1. Commitment to Offer OTAP Services.**

The Oregon requirements for ETC designation were established by the Commission in the *ETC Checklist*. Item 7 of that checklist requires a carrier seeking ETC designation to offer Lifeline and OTAP services. In order to offer Lifeline and OTAP services in Oregon, an ETC must also receive designation as an ETP. Virgin Mobile has resubmitted its application for ETP designation in this docket in conjunction with this First Amended Application. (Exhibit A.)

ETP requirements are found in the RSPF Rules, OAR 860-033-0001 *et seq.* OAR 860-033-0005(3) requires an ETP to meet all of the requirements in these Commission rules. Virgin Mobile cannot meet some of these requirements as discussed herein, and it asks the Commission



to grant a waiver of them.<sup>21</sup> These waivers are necessitated by the nature of Virgin Mobile's business and its Assurance Wireless offering. The Commission is authorized to grant the requested waivers, for good cause shown, per Order No. 11-346, entered September 8, 2011, in AR 554.

The first rule for which a waiver is required is **OAR 860-033-0006(3)(a)**, which would require Virgin Mobile to collect the Residential Service Protection Fund ("RSPF") surcharge from its customers. Virgin Mobile cannot collect surcharges from its customers because it is a prepaid carrier that does not issue invoices and its Assurance Wireless plan requires no financial contribution from a customer to receive Lifeline service. Virgin Mobile instead proposes to remit the RSPF surcharge applicable to its Oregon customers from Virgin Mobile funds, in lieu of collecting from its customers. Thus, waiver of this requirement would have no financial impact upon the RSPF and would allow Virgin Mobile to offer a Lifeline product that is in the public interest as discussed in Section II.Q.

The second waiver is for **OAR 860-033-0006(3)(b)** which would require Virgin Mobile to identify the RSPF surcharge on each customer's bill. Because the Assurance Wireless is a prepaid service offering, Virgin Mobile issues no bills to its Lifeline customers, rendering compliance impossible as a practical matter. Good cause exists for waiver of this disclosure rule, particularly in conjunction with a waiver of **OAR 860-033-0006(3)(a)**, as a result of which the Company, not the customer, would pay the RSPF surcharge.

Because it does not issue customer bills, Virgin Mobile also requests waiver of **OAR 860-033-0030(6)**, which requires the name of an OTAP applicant to appear on the billing statement. Virgin Mobile understands that the parties stipulated in the TracFone docket, UM 1437, that the Commission would modify the application process to require only that the name of the applicant appear on the customer account. Virgin Mobile requests this modification as well.

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<sup>21</sup> A list of the rules for which a waiver is requested is Exhibit I.

Virgin Mobile understands, and agrees, that Commission Staff will perform the eligibility verification functions. Virgin Mobile will comply with Oregon Administrative Rule (OAR) 860-033-0030 pertaining to Lifeline eligibility. The Commission has a dedicated team of staff who respond to public inquiries via inbound and outbound phone support in which the Commission staff explains Lifeline rules, eligibility criteria, the application and program processes, policies and procedures as well as available benefits. To qualify for Lifeline service in Oregon, Virgin Mobile understands that an individual must receive benefits from the federal supplemental nutrition assistance program or participate in another Commission approved, low-income public assistances program which eligibility requirements do not exceed 135 percent of the federal poverty level. Applicants must submit to the Commission a completed application for Lifeline and the Commission must certify each applicant's initial eligibility. In addition, the Commission verifies an individual's continuing eligibility based on monthly or quarterly recertification by the Commission. A secure, automated electronic data interface with the Department of Human Services is used to accomplish this task. A report of all Lifeline customers approved by Commission staff for the week is generated by the Commission's Information Systems department and electronically sent to the Lifeline customer's respective ETP to commence Lifeline service the following week.

Virgin Mobile will also comply with the OTAP reporting requirements outlined in OAR 860-033-0046. The Staff and Virgin Mobile have agreed that the Company may consolidate the Active OTAP Customer Report (OAR 860-033-0046(2)) and the Order Activity Report (OAR 860-033-0046(3)).<sup>22</sup> The Company will submit this consolidated report as required (either monthly or quarterly) in an electronic format that will contain customers' names, addresses, phone numbers and Commission-assigned OTAP identification numbers and it will identify any changes to the foregoing information. This report will identify Lifeline customers who have been de-enrolled from Lifeline for non-usage after attempts to contact them during the 30-day

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<sup>22</sup> This agreement with Staff modifies Virgin Mobile's statement of agreements Part II.(7) of its OTAP Application.

grace period have been unsuccessful. Virgin Mobile's Non-Usage and Fraud Protection Policy is Exhibit H attached hereto.

With respect to the No Match Report required by OAR 860-033-0046(4), when the Commission notifies Virgin Mobile of customers who meet eligibility criteria, Virgin Mobile agrees to report to the OTAP manager weekly the customers' names, addresses, Virgin Mobile assigned phone numbers and Commission assigned OTAP identification numbers in an electronic format accessible by the Commission. The report will list any discrepancy, pursuant to OAR 860-033-0046(4), that prevents a customer from receiving Lifeline service (e.g., undeliverable shipment of handset, etc.). Virgin Mobile may ask the Staff to revisit this requirement after one year to determine if a less-frequent report is warranted, which the Staff agreed to do in the TracFone Stipulation in Docket UM 1437.

Virgin Mobile also will provide to Staff a copy of what the Company submits on a regular basis to the Universal Service Administrative Company (Form 497) to obtain reimbursement from the federal USF. This report will be submitted on a confidential basis and will contain a Lifeline customer count as of a certain date.

Virgin Mobile will make available adequate personnel for daily communications with Staff regarding Lifeline questions and concerns and Lifeline reporting issues and for raising issues to appropriate levels of authority above the customer service representative level for resolution, including, but not limited to, issues related to loss prevention. The personnel made available will have the authority to deactivate a customer's phone. The company will provide designated personnel's contact information, including but not limited to, e-mail addresses and telephone numbers to Staff.

Virgin Mobile also requests the Commission to waive **OAR 860-033-0035(1)(c)**, which provides that the monthly OTAP benefit include the State of Oregon support of \$3.50 if required. In addition, Virgin Mobile declines compensation, currently \$3.80, from the RSPF for enrolling new Lifeline customers and for the benefit costs incurred as a consequence of participating in the OTAP pursuant to OAR 860-033-0045. As previously stated, Virgin Mobile will not request

OTAP support from the State of Oregon at this time, but will request support only from the federal USF. Virgin Mobile's customers will receive the same value as the OTAP support because Virgin Mobile will provide customers with an additional \$3.50 in support from its own fund and will receive Tier III support (\$1.75 per month) from the federal fund. Therefore, good cause exists to waive the technical requirements of **OAR 860-033-0035(1)(c)** because Oregon Lifeline customers will in effect "receive" the OTAP benefit and the actual RSPF fund will not be impacted.

The final rule for which waiver is sought is **OAR 860-033-0010**, which would require Virgin Mobile to "offer OTAP reduced rates or discounts with all service offerings that include basic telephone service." Virgin Mobile cannot offer a state-specific discount on its non-Lifeline offerings for legal and technical reasons set forth below. First, it is by no means clear that services other than voice or bundled offerings are eligible for Lifeline support. Virgin Mobile developed its Assurance Wireless service offering as its Lifeline-specific product. In developing its Lifeline service, Virgin Mobile relied on existing regulations and guidance from the FCC that the Lifeline discount is currently intended to support voice service. *See* 47 C.F.R. §§ 54.401 and 54.101(a)(1)-(a)(9). Based thereon, Assurance Wireless designed prepaid offers intended to deliver high value for voice service and ensure continuity of service to Lifeline customers and constructed a complex information technology platform to support those offers. The FCC is considering expansion of, but has not yet expanded, the services covered by Lifeline support,<sup>23</sup> and it has not affirmatively determined that Lifeline discounts can apply to bundled voice and data offerings like Virgin Mobile's "Beyond Talk" and "payLo" Plans.<sup>24</sup> The Assurance Wireless Plan corresponds more closely with the service originally intended for Lifeline support, namely, domestic voice service.

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<sup>23</sup> *See Connecting America: The National Broadband Plan* at 172-173 (Ref.Mar. 16, 2010).

<sup>24</sup> In a recent *Notice of Proposed Rulemaking and Link-Up Reform and Modernization* (WC Docket No. 11-42, rel. Mar. 4, 2011), the FCC states: "As noted above, our rules provide for Lifeline discounts on "basic, local service," but do not address whether such discounts may be applied to bundled offerings that include basic local voice service" (¶ 255).

Second, Lifeline customers would not be denied competitive choice. Assurance Wireless offers Lifeline customers the choice of three different prepaid service plans depending on anticipated usage level:

- 250 free anytime minutes each month.
- 500 anytime minutes for \$5 (comprised of 250 free minutes plus 250 additional minutes).
- 1000 anytime minutes and 1000 text messages for \$20 (comprised of 250 free minutes plus 750 additional minutes and 1000 text messages).

Assurance Wireless customers who select the \$5 or \$20 plans will receive 250 free voice minutes each month even if they cannot or do not pay the upgraded monthly plan charge, ensuring essential continuity of service for Lifeline customers. With each Assurance Wireless plan, additional voice minutes are available for 10 cents/minute and text messages are available for 10 cents/text, the best a la carte rates available to Virgin Mobile customers for these services. Customers would have the opportunity to purchase the same types of services included in the “Beyond Talk” and “payLo” plans, including messaging services (Messaging Packs) and data services (Data Packs), to supplement the Assurance Wireless offers at their option and as needed or desired. For instance, as discussed in Section III.D., and as illustrated on Exhibit J, Lifeline customers have multiple options to purchase additional services within the Assurance Wireless plans.

Furthermore, Virgin Mobile’s non-Lifeline offerings impose financial requirements on cash-constrained Lifeline customers that the Assurance Wireless offerings were designed to avoid. “Beyond Talk” and “payLo” customers must buy a phone at retail, whereas Assurance Wireless customers receive a free handset. In addition, “Beyond Talk” and “payLo” customers must maintain money in their account at the beginning of each service cycle or lose service. Only Assurance Wireless plans provide a guaranteed free 250 minute per month of service regardless of the Assurance Wireless plan selected by the customer. For instance, if a customer elects the \$20 plan but in a cash-constrained month, the customer cannot deposit \$20 into the Assurance Wireless account, the customer will receive 250 free minutes that month. Customers

on Virgin Mobile non-Lifeline plans must have the funds available in their account to purchase their selected plan, or else service is discontinued at the beginning of the service cycle pursuant to the terms of service. Assurance Wireless plans are uniquely designed to ensure necessary continuity of service to an economically disadvantaged population that cannot afford to be disconnected in the worst of times. Third, the cost to the business of significantly expanding and reconfiguring its Information Technology (“IT”) platform to support Beyond Talk and payLo plans for Oregon Lifeline customers would be prohibitive. In order to offer the currently advertised Beyond Talk and payLo plans to Lifeline customers, these offers would need to be replicated on the Assurance Wireless IT platform.<sup>25</sup> The technical costs associated with replication would approach \$1 million. Personnel costs would likewise approach \$1 million. These estimates represent the immediate costs associated with the replication of only the plans currently advertised on the Virgin Mobile website. Virgin Mobile changes, or refreshes, its offers at least once a year. In order to continue to offer Lifeline customers the choice of all plans available to Virgin Mobile non-Lifeline customers going forward, Assurance Wireless would continue to incur the basic IT costs set forth above on at least an annual basis, and perhaps more frequently, depending on how often Virgin Mobile plans were refreshed. As more offers are added to the platform, Assurance Wireless would incur ongoing technical and personnel costs to maintain the expanding platform.

In addition, Virgin Mobile has customers grandfathered in more than 50 different “expired” plans that are no longer available to new customers. The one-time technical cost of adding all grandfathered Virgin Mobile plans to the Assurance Wireless IT platform would be approximately \$7.5 million with another \$1.5 million in personnel costs. The ongoing costs of maintaining these plans would be substantial.

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<sup>25</sup> It should be noted that Virgin Mobile *Beyond Talk* plans are not properly classified as “calling plans.” As indicated in response to Staff’s DR 13, the *Beyond Talk* plans are more like data plans, with unlimited data components for a flat fee. Two of the three *Beyond Talk* plans cap calling minutes, and all three exceed the monthly charge of the highest usage Assurance Wireless plan.

In addition to the IT costs associated with making available current, future and previously available Virgin Mobile plans to Lifeline customers, the business would incur a number of substantial related costs. Unlike the Virgin Mobile non-Lifeline business, Assurance Wireless is a highly regulated enterprise that is required to closely monitor each customer's activity and ongoing Lifeline eligibility. Customer Base Management would incur substantial costs to track customer activity across a number of service plans to ensure that customers remained active and eligible for Lifeline service and were meeting the terms of the plans in which they were enrolled. Customer Care would be required to expand its training and educational efforts for representatives to manage the various plans, and to upgrade and maintain the Care IT platform on an ongoing basis to keep its personnel apprised of the available offers and their terms of service. At the same time, the entire Assurance Wireless IT budget would be consumed by offer updates and maintenance, effectively foreclosing the opportunity for non-essential IT upgrades to improve service, better track customer eligibility, and so on. Virtually every aspect of the business would incur additional costs in connection with a requirement to offer plans beyond the three Assurance Wireless plans. These are but a few examples of additional areas in which the business would incur additional costs.

Virgin Mobile has determined that the cost of offering Assurance Wireless in Oregon if it were required to modify all of its IT systems and operations to offer and support a Lifeline discount on all plans available to Virgin Mobile customers would exceed the potential benefit of serving Oregon Lifeline customers. Therefore, under a cost-benefit analysis, Virgin Mobile would withdraw its ETC and ETP Applications from Oregon if a waiver of OAR 860-033-0010 is not granted.

If the Commission engaged in a similar cost-benefit analysis, it is clear that the benefits of adding another competitive, attractive Lifeline offering for Oregon low-income customers far outweighs any cost to those customers due to any alleged restriction on their competitive choice. First, if the purpose of the "all-service" provision in OAR 860-033-0010 is to promote customer choice for Lifeline customers, it would make no sense to remove a customer choice by denying a

waiver to Virgin Mobile, which then would decline to offer Assurance Wireless in Oregon. Second, Assurance Wireless customers would have an array of choices for no-cost or low-cost voice services and the purchase of additional services, such as messaging and data. Third, Virgin Mobile's experience with customer choice in other states has shown that voice service is the primary choice among Lifeline customers. Indeed, less than 10% of those customers opt for a plan other than the free basic plan, which is unsurprising given that Assurance Wireless customers have an average annual income of around \$11,000. Therefore, declining to provide a discount on Virgin Mobile's non-Lifeline offers will really have little, if any, impact on customer choice that could not be addressed through the available purchase options associated with Assurance Wireless.

In sum, good cause exists to waive OAR 860-033-0010 for Virgin Mobile. If it is not waived, Oregon Lifeline customers will not have access to Assurance Wireless offerings and will be deprived of an attractive, cost-effective wireless service which enhances universal telecommunications service.

**2. Identification and Description of Specific Lifeline Services: Item 7.2, ETC Checklist.**

Virgin Mobile described its Assurance Wireless plans in Section III.D., above.

**3. Advertising to Low-Income Population: Item 7.3, ETC Checklist.**

Virgin Mobile has described its advertising plan in Section II.M., above.

**O. Ability to Remain Functional in Emergencies: Items 8.1-8.2, ETC Checklist.**

As a wholly-owned subsidiary of Sprint, Virgin Mobile is able to remain functional in emergency situations and has attained full E911 deployment as required by 47 C.F.R. § 54.202(a)(1) of the FCC's regulations and Items 8.1-8.2 of the *ETC Checklist*. Sprint has established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. These programs, policies and teams ensure the timely and effective deployment of Sprint's products and services to allow the public and private sectors to function in emergency situations. Indeed, Sprint's network is monitored 24 hours a day, 7



days a week, 365 days a year by its network monitoring centers. Local switching offices staffed by trained technicians and management coordinate with these larger operation centers to ensure that Sprint's networks are properly maintained and network performance is at expected levels.

In addition, Sprint has reasonable amounts of backup power to ensure functionality without an external power source, and has implemented reasonable practices to re-route traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Each cell site in the Sprint network is equipped with two to four hours of battery back-up power. The Company also is capable of re-routing traffic around damaged facilities. Many cell sites in the Sprint network provide overlapping coverage for neighboring areas, and such design redundancy ensures that coverage continues in the event of damage to a particular facility. In the event of a major failure of a cell site, neighboring sites could be adjusted to provide coverage to a wider service area. These practices significantly reduce the change that emergencies, fiber cuts or equipment failure will result in a loss of service.

Because Virgin Mobile is a facilities-based carrier,<sup>26</sup> it provides the same 911 and E911 services to its customers as any other Sprint wireless customer receives using Sprint'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 customer. When a Virgin Mobile customer calls 911, the call is received by Sprint Corporate Security, which maintains responsibility for routing to the appropriate PSAP, just as with any other 911 call made by a Sprint customer. If a PSAP were required to directly contact the company because of a disconnection, the call would be handled by Sprint Corporate Security, which has access to all Virgin Mobile customer information – just as it does for all other Sprint operating

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<sup>26</sup> In recognizing Virgin Mobile as a facilities-based carrier, the FCC explicitly rescinded the forbearance condition that required Virgin Mobile, like other wireless resellers granted forbearance, 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. 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 wireless customer receives using Sprint's existing 911 and E911 facilities and PSAP relationships.

subsidiaries. In sum, Virgin Mobile's relationship to Sprint means that its access to E911 is fully deployed and in compliance with all applicable E911 rules.

**P. Commitment to Meet Service Quality and Consumer Protection Standards: Items 9.1 and 9.2, ETC Checklist**

Virgin Mobile has complied with the CTIA-The Wireless Association® Consumer Code for Wireless Service ("Customer Code") since its inception and will continue to comply with the Consumer Code once designated as an ETC.<sup>27</sup> It also commits to working with the Commission to resolve complaints received by the PUC and will designate a contact person to work with the Commission's Consumer Services Division for this purpose.<sup>28</sup>

Virgin Mobile's Lifeline customers will receive the same high-quality wireless services provided to all Company customers. Virgin Mobile has emphasized customer service as an essential pillar for its marketplace success since service launch. Indeed, the Company's success proves that wireless carriers can provide lower-income customers with the same features, functionalities and services demanded by higher-income consumers. This intense focus on customer service has been rewarded and customers have responded accordingly. Virgin Mobile annually certifies its compliance with the Consumer Code, and the Commission and the FCC recognize the value of such compliance.<sup>29</sup> In prior years, the Company has also received numerous awards for its high-quality customer service, including the prestigious J.D. Power award for providing "An Outstanding Customer Service Experience" under J.D. Power's Certified Call Center Program.

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<sup>27</sup> Virgin Mobile's compliance with the Consumer Code also satisfies its obligations under the FCC's regulations. See 47 C.F.R. § 54.202(a)(3).

<sup>28</sup> Per ETC Checklist Item 9.2, Kristin Jacobson will serve as the contact person for resolution of any customer complaints received by the Commission.

<sup>29</sup> See ETC Checklist Item 9; see also *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1576-77, wherein the FCC endorsed the Consumer Code by considering adherence to the Consumer Code as a factor in the demonstration of a wireless carrier's qualifications to be an eligible telecommunications carrier.

Virgin Mobile's designated contact person as described in Section II will work with the Commission to resolve customer complaints.

**Q. Designation of Virgin Mobile as an ETC Would Promote the Public Interest: Item 10, ETC Checklist**

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is "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<sup>30</sup> (emphasis supplied). This policy goal of universal service is to ensure that consumers – especially low-income consumers – receive affordable and comparable telecommunications services. Designating Virgin Mobile as an ETC would satisfy this goal and would benefit Oregon consumers, especially its many low-income consumers eligible for Lifeline services, who would have access to new, appealing and affordable service offerings. Indeed, the FCC has determined that Virgin Mobile's Lifeline service offerings provide a variety of benefits to Lifeline-eligible customers, including "increased consumer choice, high-quality service offerings and mobility."<sup>31</sup>

**1. Consumer Choices Will be Increased: Item 10.1.1, ETC Checklist**

Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the Oregon Lifeline market, helping to provide a new wireless experience for many low-income consumers in the state. Designation of Virgin Mobile as an ETC would provide Oregon consumers with three new Lifeline offers, from a free 250 minute basic plan to a \$20/1000 minute + 1000 text plan, all with no service contract or long-term obligation.<sup>32</sup> It would add another provider to the growing universe of wireless Lifeline providers in Oregon.

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<sup>30</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

<sup>31</sup> See 2010 Order at ¶ 19.

<sup>32</sup> As explained in Section II. N.1, Virgin Mobile's inability to offer Lifeline discounts for "Beyond Talk" and "payLo" will have little, if any, impact upon customer choice for services supported by the Universal Service Fund. Denying Virgin Mobile's Application and waiver request herein would not serve the public interest because it would result in fewer competitive Lifeline offerings

Furthermore, designation of Virgin Mobile as an ETC would also promote competition and increase the pressure on other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this much ignored consumer segment. Other Lifeline carriers would have the incentive to improve their existing service offerings and tailor service plans to contain service terms and features appealing to lower-income customers. This competition would represent a significant step towards ensuring that all low-income customers share in the many benefits associated with access to wireless services, which a study found to be a vital economic resource for low-income consumers that lead to improved wage levels and personal safety.<sup>33</sup>

**2. Virgin Mobile's Lifeline Offering Provides Unique Advantages:  
Item 10.1.2, ETC Checklist**

There is no question that designation of Virgin Mobile as an ETC in Oregon will further the public interest by providing Oregon consumers, especially low-income consumers, with lower prices and higher quality services. Many lower-income customers in Oregon have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history or intermittent employment, these consumers often lack the countless choices available to most consumers. The Assurance Wireless plan removes many traditional financial impediments to wireless service access with the following features:

- 250 free minutes of calling time each month;
- Free calls to 911 and Customer Care;
- No out-of-pocket payment by the customer, unless the customer chooses to exceed the 250 free monthly minutes by adding funds to their account for more voice minutes for other services;
- A free handset;
- No service contract and no length of service commitment;
- No credit check as a requirement for service;

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<sup>33</sup> See Sullivan, A Review of Literature and Data from Two New Surveys, April 2008.

- No monthly bill or unexpected charges; and
- No activation charge or other fees.

Even if the free 250 monthly allotment is exhausted, the customer can purchase more minutes by going to the Virgin Mobile website or purchasing a top-up card at many retail vendors. If the customer elects to not purchase more minutes, calls to E911 and Customer Care will still be connected. In sum, the Virgin Mobile Lifeline program offers a number of advantages over Lifeline plans offered by other ETCs.

**R. Virgin Mobile Satisfies Any Other Public Interest Criteria Determined by the Commission: Item 10.1.3, ETC Checklist.**

**1. Virgin Mobile is a Facilities-Based Provider that will Contribute to the RSPF and 911 System.**

Virgin Mobile's Lifeline program has advantages over the TracFone wireless Lifeline offering, also being considered by the Commission. For example, Virgin Mobile is a facilities-based provider whereas TracFone resells wireless services of other providers. In addition, Virgin Mobile has committed to contributing to the RSPF and to remit the 911 tax to the 911 system in Oregon without the conditions TracFone included in the Stipulation before the Commission in UM 1437. If the Commission approves this Stipulation as in the public interest, then Virgin Mobile's more advantageous program also should be in the public interest. Designating Virgin Mobile as an ETC in Oregon will enable it to expand the availability of affordable telecommunications services to qualifying Oregon customers, and is consistent with the public interest.

**2. Virgin Mobile Provides Handset Options.**

New Lifeline customers may elect to receive a free Assurance Wireless-branded handset with E911 functionality. Current Virgin Mobile customers are able to use their existing handsets to receive prepaid Lifeline services (with certain exceptions), or may elect to receive a free Assurance Wireless handset. The handset provided free of charge to Lifeline customers is sold separately by the Company to its non-Lifeline customers for \$9.99 and marketed as the Kyocera Jax. By providing a wireless handset free of charge, Virgin Mobile can ensure that Lifeline-

eligible customers in Oregon will not incur upfront costs for access to the Company's Lifeline services. Virgin Mobile will provide one other free phone per year to replace handsets that are reported as lost or stolen.

**3. Virgin Mobile's Assurance Wireless Plan Will Not Burden the Federal USF**

Virgin Mobile's designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other carriers. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. According to the most recent monitoring report released by the Federal-State Joint Board on Universal Service, funding for Low-Income programs represented approximately 14% of total USF expenditures in 2009.<sup>34</sup> The FCC concluded that designation of Virgin Mobile as an ETC would request only in a "minimal" increase in the size of the *USF*, which would be "outweighed by the benefit of increasing eligible participation in the Lifeline program."<sup>35</sup>

The nature by which Lifeline support is provided to wireless carriers also obviates any concerns that multiple ETC designations in Oregon would have a negative impact on the USF. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, moreover, the Lifeline program ensures that USF support only funds the carrier that actually "wins" the customer's service.

**4. Assurance Wireless Customers Will Receive Full Lifeline Benefits From Service Activation.**

The Lifeline customer's service cycle begins when the customer programs the handset pursuant to activation directions. Virgin Mobile claims support for a Lifeline customer only at the time the customer's service cycle begins.

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<sup>34</sup> (December 2010), pp. 1-36, chart 1.1; <http://transition.fcc.gov/wcb/iatd/monitor.html>.

<sup>35</sup> 2009 Order ¶ 24.

**5. Virgin Mobile Will Offer Customer Service Support to Its Lifeline Customers.**

Virgin Mobile products and services are available at over 140,000 retail partner locations nationwide, including Best Buy, Radio Shack, Target and Wal-Mart stores. A Virgin Mobile Lifeline customer may purchase Virgin Mobile Top-Up cards at these locations to add money to his/her account to purchase additional service if the customer elects to do so. Virgin Mobile does not operate standalone Virgin Mobile retail outlets. Virgin Mobile Lifeline customers can apply for service and receive support by contacting Assurance Wireless Customer Care using a dedicated toll-free number or through the Assurance Wireless website at [www.assurancewireless.com](http://www.assurancewireless.com). Should a Lifeline customer wish to purchase a Virgin Mobile handset for use with Lifeline service, he or she may do so at a retail location described above. If a customer experiences a handset malfunction, the customer should contact Assurance Wireless Customer Care at 1-888-321-5880 to arrange for a replacement device. All calls to Customer Care are free of charge and minutes used for this purpose are not deducted from the customer's account. The replacement device will be shipped directly to the customer with a postage-paid pouch in which the customer should return the malfunctioning handset.<sup>36</sup>

**6. Virgin Mobile Protects Against Fraud.**

Virgin Mobile is committed to protecting against fraud, waste and abuse. Virgin Mobile tracks each applicant's primary residential address and cross-checks this information against internal databases to ensure that no more than one resident of the household receives Virgin Mobile Lifeline service. Virgin Mobile will work with the Commission to ensure compliance with state efforts to minimize fraud, waste and abuse. To ensure that USF funds are received only for customers who actively use their Lifeline services, Virgin Mobile will implement a "60-day non-usage policy" in Oregon. That policy is described further in Exhibit H.

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<sup>36</sup> The Kyocera Jax (Kyocera S3100), available free of charge to Assurance Wireless customers, is hearing aid compatible and has received a HAC performance rating of M3. On a case-by-case basis, Assurance Wireless will attempt to accommodate a customer's specific handset needs by making an alternative model available.

**Q. No Cream-Skimming Analysis is Required: Item 10.2, ETC Checklist.**

The FCC has determined that no cream-skimming analysis is required for its Lifeline service territory in FCC Order 09-18, Docket No. 96-45 (March 5, 2009), page 16 fn. 101:

“In addition, we need not perform a cream-skimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.”

Virgin Mobile recognizes that Commission Staff believes that a cream-skimming analysis is required when the service area for requested ETC designation includes service areas from rural ILECs that have not been redefined. Virgin Mobile’s requested service area includes several wire centers in the Pioneer Telephone Co. and Citizens/Frontier Telephone Company for which a cream-skimming analysis would be required. Virgin Mobile agrees to delete these service areas from its requested service area at this time so no cream-skimming analysis is required. It reserves the right to ask the Commission to include them in its designated service areas once the FCC clarifies state Commission obligations regarding a cream-skimming analysis.

**IV. ANTI-DRUG ABUSE CERTIFICATION**

Virgin Mobile certifies that no party to this Petition is subject to denial of federal benefits including FCC benefits, pursuant to § 5301 of the Anti-Drug Abuse Act of 1988.

**V. ANNUAL RECERTIFICATION REQUIREMENTS**

Virgin Mobile commits to providing the certifications and affidavits listed in the Annual Recertification Requirements in the *ETC Checklist*. In addition, Virgin Mobile shall satisfy the reporting requirements listed in the Annual Recertification Requirements as follows:

2.1.1 Report on the number of unfilled service requests: Virgin Mobile can commit to reporting on the number of unfilled service requests.

4.1 Report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year. Virgin Mobile can commit to reporting on the number of customers in the Lifeline program during December of the previous calendar year, although not by ILEC study area at the current time. Virgin Mobile can commit to reporting by ILEC study area beginning first quarter 2012.



6.2.1 Trouble Report. Virgin Mobile will provide an annual report of troubles per 100 handsets experienced by its Lifeline customers within the designated service areas showing:

- a) No service;
- b) Network busy;
- c) Interruption of service.

Virgin Mobile cannot provide the foregoing information broken down by wireless switch. As previously stated, Virgin Mobile uses the Sprint CDMA network to handle its calls. Sprint has four wireless switches in Oregon and any data collected from that network is aggregated for all Sprint customers, including Lifeline and non-Lifeline Virgin Mobile customers. Virgin Mobile and Sprint have no technical means to separate out Assurance Wireless data by switch for trouble reports.

The fourth category of data requested in 6.2.1 calls for customer reports of poor reception. Virgin Mobile will provide to Staff, on an annual basis, the number of customer complaints of poor signal strength that the Company documents as reported to Assurance Wireless Customer Care.

Special Reports. Virgin Mobile will provide Staff and CUB with the supplemental reporting information it has requested pursuant to the form, which is Exhibit K hereto.

Confidentiality. Virgin Mobile reserves the right to submit any of the reports (or sections thereof) that it has agreed to submit to the Commission on a confidential basis pursuant to OAR 860-001-0070.

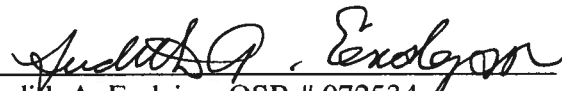
## VI. CONCLUSION

ETC designation in Oregon would enable Virgin Mobile to offer appealing and affordable service offerings to low-income Oregon customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Without question, prepaid wireless services have become essential for lower-income customers, providing them with value for their money, access to emergency services on wireless devices, and are reliable means of contact for prospective employers, social service agencies or dependents. Providing Virgin

Mobile with the authority necessary to offer Lifeline services to those most in need of staying connected in a challenging economic environment undoubtedly promotes the public interest.

Dated: October 25, 2011.

Respectfully submitted,



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elaine.divelbliss@sprint.com

Counsel for Virgin Mobile USA, L.P.

## CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2011, I served the foregoing First Amended Application of Virgin Mobile USA, L.P., upon the parties in this proceeding by electronic mail as follows:

<b>W</b>	<b>CITIZENS' UTILITY BOARD OF OREGON</b>	
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<b>W</b>	<b>OREGON DEPARTMENT OF JUSTICE</b>	
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<b>W</b>	<b>OREGON OFFICE OF EMERGENCY MANAGEMENT</b>	
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<b>W</b>	<b>PUBLIC UTILITY COMMISSION OF OREGON</b>	
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	KAY MARINOS	PO BOX 2148 SALEM OR 97308-2148 kay.marininos@state.or.us
<b>W</b>	<b>PUC STAFF--DEPARTMENT OF JUSTICE</b>	
	PAUL GRAHAM ASSISTANT ATTORNEY GENERAL	BUSINESS ACTIVITIES SECTION 1162 COURT ST NE SALEM OR 97301-4096 paul.graham@state.or.us
<b>W</b>	<b>SPRINT NEXTEL</b>	
	KRISTIN L JACOBSON	201 MISSION ST STE 1500 SAN FRANCISCO CA 94105 kristin.l.jacobson@sprint.com

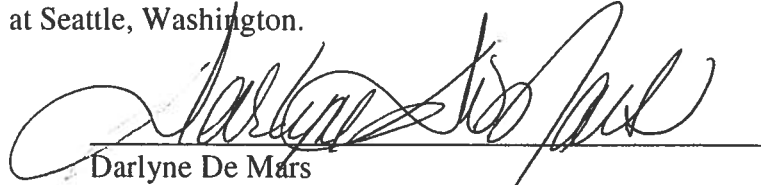
**W**

**VIRGIN MOBILE USA LLC**

ELAINE DIVELBLISS

10 INDEPENDENCE BLVD  
WARREN NJ 07059  
elaine.divelbliss@virginmobileusa.com

Executed on October 25, 2011 at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Darlyne De Mars", is written over a horizontal line.

Darlyne De Mars  
Legal Assistant to Judith A. Endejan  
Counsel for Virgin Mobile USA, L.P.

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1522**

In the Matter of

VIRGIN MOBILE USA, L.P.,

Petition for Limited Designation as an  
Eligible Telecommunications Carrier

**INDEX OF EXHIBITS  
TO FIRST AMENDED APPLICATION OF VIRGIN MOBILE USA, L.P.**

<b>Exhibit</b>	<b>Description</b>
A	ETP Application
B	FCC 2009 Order
C	FCC 2010 Order
D	Description of "BeyondTalk" and "payLo"
E	Description of "Assurance Wireless"
F	Map of Requested Service Area Boundaries
G	Wire Center List
H	Non-Usage and Fraud Protection Policy
I	Oregon Admin Rules for Which Virgin Mobile Seeks a Waiver
J	Plan Comparison
K	04/08/08 Special Report for Commission

**Oregon Telephone Assistance Program (OTAP) Application  
for Eligible Telecommunications Provider (ETP) to provide OTAP Services**

**Part I. Application Information and Service Plan**

1. Contact information pertaining to your designated staff who would be handling OTAP communications:

**Name:** Kristin L. Jacobson, Counsel  
Regulatory Affairs West Region

**Address:** Sprint Nextel, 201 Mission Street, Suite 1500

**City:** San Francisco      **State:** CA      **Zip:** 94105

**Phone number:** (415) 278-5314      **Fax:** (415) 278-5303

**E-Mail:** [Kristin.L.Jacobson@sprint.com](mailto:Kristin.L.Jacobson@sprint.com)

2. The number of residential, business and tribal basic service customers served by the applicant as of December 31, of the most recent calendar year.

**Part II. Conditions to Provide OTAP Services to Qualifying Oregonians**

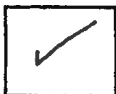
These conditions apply in addition to the general conditions of certification. Violating these conditions, or misrepresenting information provided to PUC in the course of administering the OTAP programs may result in cancellation of your authority to provide OTAP Services and/or an order requiring you to refund with interest and penalties of any OTAP support distributed under false information.

1. The applicant agrees to offer reduced residential rates with all service offerings that include basic telephone or cellular service to eligible low-income customers pursuant to the Oregon Telephone Assistance program (OTAP).
2. The applicant understands that only PUC may approve OTAP benefits for the consumer and provide benefits to OTAP consumers after PUC has notified the applicant of their eligibility. A telecommunication provider who grants OTAP benefits to ineligible customers will have the total amount of the OTAP benefits that were given to those customers deducted from the monthly or quarterly OTAP reimbursement invoices that the telecommunications provider submits to the Commission.
3. The applicant agrees that they will ensure the consumer will see their OTAP credit within 30 days from the date that the applicant has been notified of the consumer's eligibility status, and to remove consumers within 30 days after they no longer qualify for OTAP benefits.

consumer's eligibility status, and to remove consumers within 30 days after they no longer qualify for OTAP benefits.

4. The applicant agrees that they will submit reports for reimbursement quarterly (if they have less than 1,000 OTAP consumers) or monthly (if they have more than 1,000 OTAP consumers). Reports are expected to be submitted even if there are zero consumers.
5. An OTAP recipient is required to be the named subscriber to the local telecommunication service in order for that household to qualify for OTAP benefits. PUC may waive this requirement if it determines that good cause exists. Applicant agrees to comply with reimbursing OTAP consumers who are not named subscribers at the Commission's request.
6. The applicant agrees to apply Commission assigned OTAP identification numbers to its OTAP customers' accounts.
7. Based upon accounting procedures approved by the Commission, the applicant agrees to maintain accounting records so that costs associated with OTAP can be separately identified. Records must be provided to the Commission upon request.
  - a. **Active OTAP Customer Report:** The applicant agrees to submit an Active OTAP Customer Report listing the names of all customers with the Commission assigned identification number receiving the OTAP benefits. Applicants with 1,000 or more OTAP customers must submit the report monthly to the Commission Applicants with fewer than 1,000 OTAP customers must submit the report quarterly to the Commission.
  - b. **Order Activity Report:** The applicant agrees to submit an Order Activity Report listing the names of all OTAP customers with the Commission assigned identification number whose service was disconnected. The applicant is aware that the Commission may require additional information such as a listing of all OTAP customers whose telephone numbers or addresses have changed.
  - c. **No Match Report:** The applicant agrees to notify the Commission of any discrepancy that prevents a customer from receiving the OTAP benefit after the Commission has notified the applicant of customers who meet eligibility criteria on a weekly basis.
8. The applicant agrees to ensure that confidential information (including phone number, addresses, contact information, etc.) of OTAP recipients is protected (OAR 860-033-0010). The applicant agrees to maintain a written policy to ensure that the applicant's staff does not breach the confidentiality of OTAP consumers, and to do background checks on employees who have access to customer records.

9. The applicant agrees to have in place database encryption and firewall technologies to protect customer service information stored electronically.



APPLICANT UNDERSTANDS ALL OF THE ABOVE CONDITIONS AND AGREES TO ABIDE BY ALL APPLICABLE COMMISSION RULES, STATE LAW AND THE CONDITIONS OF CERTIFICATION. PLEASE INITIAL BOX AT LEFT.

Judith A. Enderjón  
Signature of person authorized to represent applicant  
on behalf

Outside Counsel  
Title  
Virgin mobile

Kristen Jacobsen,  
Printed Name

10/25/11  
Date

Counsel Regulatory Affairs  
West Region, Sprint Nextel



Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
Virgin Mobile USA, L.P. Petition for	)	
Forbearance from 47 U.S.C. § 214(e)(1)(A)	)	CC Docket No. 96-45
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of New	)	
York	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Pennsylvania	)	
Petition for Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Virginia	)	
Petition for Limited Designation as an Eligible	)	
Telecommunications Carrier in the State of North	)	
Carolina	)	
Petition for Limited Designation as an Eligible	)	
Telecommunications Carrier in the State of	)	
Tennessee	)	

**ORDER**

Adopted: March 4, 2009

Released: March 5, 2009

By the Commission:

**I. INTRODUCTION**

1. In this order, we conditionally grant a petition filed by Virgin Mobile USA, L.P. (Virgin Mobile) pursuant to section 10 of the Communications Act of 1934, as amended (the Act), requesting that the Commission forbear from the requirement that a carrier designated as an eligible telecommunications carrier (ETC) for purposes of federal universal service support provide services, at least in part, over its own facilities.<sup>1</sup> Subject to the conditions that we describe below, we grant Virgin Mobile forbearance from the facilities requirement for ETC designation for Lifeline support only.

2. We also conditionally grant the petitions of Virgin Mobile for limited designation as an ETC eligible only to receive universal service Lifeline support in its licensed service areas in New York,

<sup>1</sup> Virgin Mobile USA, L.P. Petition for Forbearance, CC Docket No. 96-45 (filed Dec. 5, 2007) (Forbearance Petition). On December 5, 2008, pursuant to section 10(e) of the Act, the Wireline Competition Bureau extended until March 5, 2009 the date on which the Forbearance Petition shall be deemed granted in the absence of a Commission decision that the petition fails to meet the standard for forbearance under section 10(a) of the Act *Virgin Mobile USA, L.P. Petition for Forbearance*, CC Docket No. 96-45, Order, DA 08-2670 (Wireline Comp. Bur., rel. Dec. 5, 2008); 47 U.S.C. § 214(e).

Virginia, North Carolina, and Tennessee, pursuant to section 214(e)(6) of the Act.<sup>2</sup> Due to the Pennsylvania Public Utility Commission's assertion of jurisdiction over wireless ETC designations, we dismiss without prejudice Virgin Mobile's petition for designation as an ETC in Pennsylvania.<sup>3</sup> Having conditionally granted Virgin Mobile's petition for forbearance from the facilities requirement of section 214(e)(1), we now conclude that Virgin Mobile has satisfied the remaining eligibility requirements of section 214(e)(1) and the Commission's rules to be designated as an ETC eligible only for Lifeline support.<sup>4</sup> Virgin Mobile's ETC designations will not take effect until the Wireline Competition Bureau has approved Virgin Mobile's plan for complying with the conditions outlined in this order.<sup>5</sup>

## II. BACKGROUND

### A. Procedural History

3. Virgin Mobile is a non-facilities-based commercial mobile radio service (CMRS) provider (i.e., a pure wireless reseller) that provides prepaid wireless telecommunications services.<sup>6</sup> On December 5, 2007, Virgin Mobile filed a petition seeking forbearance from section 214(e) of the Act, which requires that an ETC offer service using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>7</sup> Virgin Mobile states that its request for forbearance satisfies the statutory requirements and is in the public interest.<sup>8</sup> Further, Virgin Mobile agrees to abide by the

<sup>2</sup> Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed Dec. 5, 2007) (New York ETC Petition); Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia, CC Docket No. 96-45 (filed Dec. 5, 2007) (Virginia ETC Petition); Virgin Mobile USA, L.P. Petition for Limited Designation as an Eligible Telecommunications Carrier in North Carolina, CC Docket No. 96-45 (filed Apr. 29, 2008) (North Carolina Petition); Virgin Mobile USA, L.P. Petition for Limited Designation as an Eligible Telecommunications Carrier in Tennessee, CC Docket No. 96-45 (filed Apr. 29, 2008) (Tennessee Petition). In its petitions filed in December 2007, Virgin Mobile requested eligibility for participation in the Lifeline and Link-Up programs; it later limited its request in its ETC petitions to eligibility for Lifeline support only. Virgin Mobile USA, L.P. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the State of New York, CC Docket No. 96-45 (filed May 7, 2008); Virgin Mobile USA, L.P. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, CC Docket No. 96-45 (filed May 7, 2008). Virgin Mobile does not seek eligibility for high-cost support.

<sup>3</sup> Virgin Mobile USA, L.P. Petition for Designation as an Eligible Telecommunications Carrier in the State of Pennsylvania, CC Docket No. 96-45 (filed Dec. 5, 2007) (Pennsylvania ETC Petition). Virgin Mobile later amended its request for ETC designation in Pennsylvania to limit its eligibility for federal universal service support to the Lifeline program only. Virgin Mobile USA, L.P. Amendment to Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania, CC Docket No. 96-45 (filed May 7, 2008). See *infra* para. 33 (discussing jurisdiction of the Pennsylvania Public Utility Commission).

<sup>4</sup> Lifeline is the universal service low income program that provides discounts to qualified low-income consumers on their monthly telephone bills. See 47 C.F.R. §§ 54.401-54.409.

<sup>5</sup> See *infra* para. 44.

<sup>6</sup> Forbearance Petition at 2.

<sup>7</sup> See Forbearance Petition. On December 13, 2007, the Bureau issued a public notice seeking comment on Virgin Mobile's Forbearance Petition. *Comment Sought on Virgin Mobile's Petitions for Forbearance and Designation as an Eligible Telecommunications Carrier in the State of New York and Commonwealths of Pennsylvania and Virginia*, CC Docket No. 96-45, Public Notice, 22 FCC Rcd 21538 (Wireline Comp. Bur. 2007) (*Virgin Mobile Forbearance and ETC Public Notice*). Comments on the Forbearance Petition were filed by the National Association of State Utility Consumer Advocates and the Public Utility Law Project of New York, Inc. (NASUCA/PULP), the Pennsylvania Public Utility Commission, and the United States Telecom Association (USTelecom). Reply comments were filed by NASUCA and Virgin Mobile.

<sup>8</sup> Forbearance Petition at 8-13.

conditions imposed on TracFone Wireless, Inc. (TracFone) as part of the Commission's decision granting TracFone's request to forbear from the ETC facilities requirement for Lifeline support only.<sup>9</sup> Specifically, in the *TracFone Forbearance Order*, the Commission required TracFone to: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each Public Safety Answering Point (PSAP) where TracFone provides Lifeline service confirming that TracFone provides its customers with 911 and E911 access; (e) require its customers to self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from TracFone; and (f) establish safeguards to prevent its customers from receiving multiple TracFone Lifeline subsidies at the same address.<sup>10</sup> Recently, the Commission modified condition (d) to allow TracFone to self-certify compliance if, within 90 days of TracFone's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service within the PSAP's service area.<sup>11</sup>

4. Contemporaneously with the Forbearance Petition, Virgin Mobile filed petitions seeking limited ETC designation in New York, Pennsylvania and Virginia, and on April 29, 2008, Virgin Mobile filed petitions seeking limited ETC designation in North Carolina and Tennessee.<sup>12</sup>

#### B. Applicable Statutes and Rules

5. The Act provides that only an ETC shall be eligible for universal service high-cost and low-income support.<sup>13</sup> Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.<sup>14</sup> Section 214(e)(6) directs the Commission, upon request, to designate

<sup>9</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15098-9, para. 5 (2005) (*TracFone Forbearance Order*); Letter from Peter Lurie, Virgin Mobile, to Marlene H. Dortch, FCC, CC Docket No. 96-45, at 2 (filed July 10, 2008) (July 10 *Ex Parte* Letter); Letter from John M. Beahn, Counsel for Virgin Mobile, to Marlene H. Dortch, FCC, CC Docket No. 96-45, Attach at 6 (filed Oct. 24, 2008) (October 24 *Ex Parte* Letter).

<sup>10</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15098-99, para. 5.

<sup>11</sup> *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc.*, CC Docket No. 96-45, Order, FCC 09-16 (rel. Mar. 5, 2009) (*TracFone PSAP Certification Modification Order*).

<sup>12</sup> See *supra* note 2. The Wireline Competition Bureau sought comments on the five Virgin Mobile ETC designation petitions. *Virgin Mobile Forbearance and ETC Public Notice*, 22 FCC Rcd at 21538; *Comment Sought on Petitions Filed by Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier in North Carolina and Tennessee*, CC Docket No. 96-45, Public Notice, 23 FCC Rcd 8297 (Wireline Comp. Bur. 2008). Comments on Virgin Mobile's ETC petitions were filed by the St. Regis Mohawk Tribe and TracFone.

<sup>13</sup> 47 U.S.C. § 254(e). A carrier need not be an ETC to participate in the schools and libraries or rural health care universal service programs 47 U.S.C. § 254(h)(1)(A) and (B)(ii). See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9015, para. 449 (1997) (*Universal Service First Report and Order*) (subsequent history omitted) (concluding that any telecommunications carrier, not just ETCs, may receive universal service support for providing supported services to schools and libraries); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-46, Fourteenth Order on Reconsideration, 14 FCC Rcd 20106, 20114-5, para. 19 (1999) (*Fourteenth Order on Reconsideration*) (finding that although only ETCs may receive universal service support, a non-ETC that provides supported services to eligible rural health care providers may offset the value of the discount provided against its universal service contribution obligation and, to the extent such discount exceeds its contribution obligation, receive a refund).

<sup>14</sup> 47 U.S.C. § 214(e)(2); see *Promoting Deployment and Subscriberhip in Unserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-43, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>15</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>16</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>17</sup> Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.<sup>18</sup> To be eligible for ETC designation, a carrier must also meet certain statutory requirements including offering service over its own facilities or a combination of its own facilities and resale of another carrier's service.<sup>19</sup>

6. The low-income support mechanism of the universal service fund consists of the Lifeline and Link-Up programs.<sup>20</sup> Collectively, the Lifeline and Link-Up programs are designed to reduce the monthly cost of telecommunications service and the cost of initial connection, respectively, for qualifying consumers. Lifeline provides low-income consumers with discounts of up to \$10.00 off the monthly cost of telephone service.<sup>21</sup> Link-Up provides low-income consumers with discounts of up to \$30.00 off the initial costs of installing telephone service.<sup>22</sup> Recognizing the unique needs and characteristics of tribal communities, enhanced Lifeline and Link-Up provide qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly costs of telephone service and up to \$70.00 more off the initial costs of installing telephone service.<sup>23</sup> Virgin Mobile seeks eligibility to receive support only for the Lifeline portion of the low-income program.<sup>24</sup>

7. The Commission had in the past declined to extend ETC status to pure resellers. In the *Universal Service First Report and Order*, the Commission found that the plain language of the statute requires that a carrier seeking ETC designation must own facilities, at least in part, thus precluding a carrier that offers services solely through resale from being designated as eligible.<sup>25</sup> The Commission

<sup>15</sup> 47 U.S.C. § 214(e)(6).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> 47 U.S.C. § 214(e)(1); *see also* 47 C.F.R. § 54.201(d).

<sup>19</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>20</sup> 47 C.F.R. §§ 54.401, 54.411.

<sup>21</sup> *See* 47 C.F.R. § 54.401(a)(2).

<sup>22</sup> *See* 47 C.F.R. § 54.411(a)(1).

<sup>23</sup> *See* 47 C.F.R. §§ 54.405(a)(4), 54.411(a)(3). Under the Commission's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support, which provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (All fifty states have approved this reduction.) Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline/Link-Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than \$1. *See* 47 C.F.R. § 54.403.

<sup>24</sup> *See supra* note 2.

<sup>25</sup> *Universal Service First Report and Order* 12 FCC Rcd at 8875, para. 178 (adopting the Federal-State Joint Board on Universal Service's analysis and conclusion); *see Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 172-73, paras. 160-161 (Fed-State Jt. Bd. 1996).

reasoned, without distinguishing among the various universal service support programs, that it was appropriate to deny pure resellers universal service support because pure resellers could receive the benefit by purchasing wholesale services at a price that reflects the universal service support received by the incumbent provider.<sup>26</sup> Also in the *Universal Service First Report and Order*, the Commission found that although resellers were not eligible to receive universal support directly, they were not precluded from offering Lifeline services.<sup>27</sup> Resellers could offer Lifeline services by purchasing services at wholesale rates pursuant to section 251(c)(4) that reflect the customer-specific Lifeline support amount received by the incumbent local exchange carrier (LEC) and then passing these discounts through to qualifying low-income customers.<sup>28</sup> The Commission, in so finding, considered only that the underlying carrier was an incumbent LEC, subject to price-regulated resale obligations. Further, the Commission declined to forbear from the facilities requirement, finding that the statutory criteria had not been met.<sup>29</sup> Making no finding with respect to the first two prongs, the Commission concluded that forbearance was not in the public interest because allowing pure resellers to receive universal service support would result in double recovery by the resellers.<sup>30</sup> In making this finding, the Commission again did not distinguish among the various universal service support programs. Specifically, it did not consider whether providing only Lifeline support directly to a pure wireless reseller would result in double recovery.

8. In the 2005 *TracFone Forbearance Order*, however, the Commission determined that providing only Lifeline support directly to a pure wireless reseller did not result in double recovery.<sup>31</sup> Specifically, the Commission found that because low-income support distribution is customer-specific and because TracFone's wholesale providers are not subject to section 251(c)(4) resale obligations, providing Lifeline support directly to TracFone would not result in double recovery.<sup>32</sup>

### C. Commission Requirements for ETC Designations

9. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is not subject to the jurisdiction of a state commission; (2) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(e) of the Act; (3) a certification that the petitioner offers or intends to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services;" (4) a description of how the petitioner "advertise[s] the availability of the [supported] services and the charges therefore using media of general distribution;" and (5) if the petitioner meets the definition of a "rural telephone company" under section 3(37) of the Act, the identity of its study area, or, if the petitioner is not a "rural telephone company," a detailed description of the geographic service area for which it requests an ETC designation from the Commission.<sup>33</sup>

<sup>26</sup> *Universal Service First Report and Order*, 12 FCC Red at 8866, para. 161 and 8875, para. 178.

<sup>27</sup> *Id.* at 8972, para. 370.

<sup>28</sup> *Id.* The Commission noted that it would reassess this approach in the future if the Lifeline program appeared to be under-utilized. *Id.*

<sup>29</sup> *Id.* at 8875-76, para. 179.

<sup>30</sup> *Id.*

<sup>31</sup> *TracFone Forbearance Order*, 20 FCC Red at 15100, para. 12.

<sup>32</sup> *Id.* at 15100-01, para. 12; 47 U.S.C. § 251(c)(4).

<sup>33</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Red 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

10. In the *ETC Designation Order*, the Commission adopted additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Act.<sup>34</sup> Specifically, consistent with the recommendation of the Federal-State Joint Board on Universal Service, the Commission found that an ETC applicant must demonstrate: (1) a commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>35</sup> In addition, ETCs designated by the Commission pursuant to section 214(e)(6) of the Act must file annual reports with the Commission.<sup>36</sup>

11. Prior to designating an ETC pursuant to section 214(e)(6) of the Act, the Commission determines whether such designation is in the public interest.<sup>37</sup> In the *ETC Designation Order*, the Commission adopted one set of criteria for evaluating the public interest for ETC designations for both rural and non-rural areas.<sup>38</sup> Specifically, in determining the public interest, the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering are considered.<sup>39</sup> As the Commission noted in the *ETC Designation Order*, however, the same factors may be analyzed differently or may warrant a different outcome depending on the specifics of the proposed service area and whether it is rural or non-rural.<sup>40</sup>

### III. DISCUSSION

#### A. Forbearance Petition

12. For the reasons provided below, we conditionally grant Virgin Mobile's request for forbearance from section 214(e) of the Act for the purpose of considering its requests for limited ETC designation eligible for Lifeline support only.<sup>41</sup> This forbearance grant is conditioned on Virgin Mobile

<sup>34</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371 (2005) (*ETC Designation Order*); see also *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46 (2004) (*Virginia Cellular Order*); *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6438, paras. 1, 33 (2004) (*Highland Cellular Order*).

<sup>35</sup> See *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)); 47 C.F.R. § 54.202.

<sup>36</sup> 47 C.F.R. § 54.209.

<sup>37</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c). See *ETC Designation Order*, 20 FCC Rcd at 6388-96, paras. 40-57; *Virginia Cellular Order*, 19 FCC Rcd at 1575, para. 27; *Highland Cellular Order*, 19 FCC Rcd at 6431-32, para. 21. The Commission places the burden on the ETC applicant to demonstrate that the public interest is served. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44.

<sup>38</sup> *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43.

<sup>39</sup> 47 C.F.R. § 54.202(c).

<sup>40</sup> *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. In analyzing the public interest factors in this instance, there is no rural/non-rural distinction because Lifeline support, unlike high-cost support, is not determined based on whether the service area is rural or non-rural. See 47 C.F.R. § 54.403.

<sup>41</sup> In addition, and on our own motion, we forbear from section 54.201(d)(1) of the Commission's rules. 47 C.F.R. § 54.201(d)(1). This section mirrors section 214(e) of the Act and requires that ETCs be facility-based, at least in part.

complying with the following conditions: (a) provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes; (b) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (c) comply with conditions (a) and (b) as of the date it provides Lifeline service; (d) obtain a certification from each PSAP where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or if, within 90 days of Virgin Mobile's request for certification, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP's service area, Virgin Mobile may self-certify that it meets the basic and E911 requirements; (e) require its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and (f) establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address.<sup>43</sup> Finally, as explained below, within thirty days of the release of this order, we require Virgin Mobile to file with the Commission a plan outlining the measures it will take to implement these conditions.

13. Section 10 of the Act requires that the Commission forbear from applying any regulation or any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied.<sup>43</sup> Specifically, section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.<sup>44</sup>

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For the reasons discussed below regarding our conditional grant of Virgin Mobile's forbearance request, we find that forbearance from section 54.201(d)(1) is warranted.

<sup>43</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15098-99. Commenters have raised concerns about the administrative costs, complexities, and burdens of granting Virgin Mobile's Forbearance Petition and its associated ETC designation petitions. See USTelecom Comments at 2; PA PUC Comments at 2. We find that granting Virgin Mobile this conditional forbearance will serve to further the statutory goal of providing telecommunications access to low-income subscribers while establishing the necessary safeguards to protect the universal service fund and the functioning of the low-income support mechanism. To the extent, however, that our predictive judgment proves incorrect and these conditions prove to be inadequate safeguards, the parties can file appropriate petitions with the Commission and the Commission has the option of reconsidering this forbearance ruling. See *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496, 21508-9, para. 26 n.85 (2004); see also *Petition of SBC Communications Inc. for Forbearance from Structural Separations Requirements of Section 272 of the Communications Act of 1934, As Amended, and Request for Relief to Provide International Directory Assistance Services*, CC Docket No. 97-172, Memorandum Opinion and Order, 19 FCC Rcd 5211, 5223-24, para. 19 n.66 (2004); *Celinet Communications, Inc. v. FCC*, 149 F.3d 429, 442 (6<sup>th</sup> Cir. 1998). Additionally, we expect that the conditions we impose here will be incorporated into any grant of the ETC designation petitions and any violation of such conditions may result in loss of ETC status.

<sup>43</sup> 47 U.S.C. § 160(a).

<sup>44</sup> *Id.*

14. In addition, when considering the public interest prong under section 10(a)(3) of the Act, the Commission must consider “whether forbearance ... will promote competitive market conditions.”<sup>45</sup> If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may be the basis for a Commission finding that forbearance is in the public interest.<sup>46</sup> Forbearance is warranted, however, only if all three prongs of the test are satisfied. For the reasons explained below, we find that Virgin Mobile satisfies all three prongs.

15. As in the *TracFone Forbearance Order*, in analyzing Virgin Mobile’s Forbearance Petition we must consider the statutory goals of two related but different provisions of the Act.<sup>47</sup> We first examine the statutory goals of universal service in section 254 of the Act specifically in the context of “low-income consumers.”<sup>48</sup> We then consider the statutory purpose underpinning the facilities requirement in section 214(e) of the Act as it relates to carriers qualifying for federal low-income universal service support.<sup>49</sup> After careful examination of the regulatory goals of universal service as applied to low-income consumers, we determine that a facilities requirement for ETC designation is not necessary to ensure that a pure wireless reseller’s charges, practices, classifications or regulations are just and reasonable when that carrier seeks such status solely for the purpose of providing Lifeline-supported services. Indeed, for the reasons provided below, we find that the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller.

16. Universal service has been a fundamental goal of federal telecommunications regulation since the passage of the Communications Act of 1934.<sup>50</sup> Congress renewed its concern for low-income consumers in the Telecommunications Act of 1996 when it established the principles that guide the advancement and preservation of universal service.<sup>51</sup> Specifically, the Act directs the Commission to consider whether “consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, ... have access to telecommunications [services] ... at rates that are reasonably comparable to rates charged ... in urban areas.”<sup>52</sup> We therefore examine the facilities requirement from which Virgin Mobile seeks forbearance in light of the statute’s goal of providing low-income consumers with access to telecommunications services.

17. **Just and Reasonable:** As an initial matter, we note that a provision or regulation is “necessary” if there is a strong connection between the requirement and regulatory goal.<sup>53</sup> Section 10(a)(1) of the Act requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is necessary to ensure that the charges, practices, classifications or regulations are just and reasonable and not unjustly or unreasonably discriminatory.<sup>54</sup>

<sup>45</sup> 47 U.S.C. § 160(b).

<sup>46</sup> *Id.*

<sup>47</sup> *TracFone Forbearance Order*, 20 FCC Rcd at 15099-100, para. 6.

<sup>48</sup> 47 U.S.C. § 254(b)(3).

<sup>49</sup> 47 U.S.C. § 214(e).

<sup>50</sup> 47 U.S.C. § 151 (“to make available, so far as possible, to all the people of the United States ... a rapid, efficient, Nation-wide, and world-wide wire and communication service with adequate facilities at reasonable rates”) (emphasis added).

<sup>51</sup> 47 U.S.C. § 254(b); see *Universal Service First Report and Order*, 12 FCC Rcd at 8789, para. 21 and 8793, para. 27.

<sup>52</sup> 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>53</sup> See *CTIA v. FCC*, 330 F.3d 502, 512 (D.C. Cir. 2003).

<sup>54</sup> 47 U.S.C. § 160(a)(1); 47 U.S.C. § 214(e).



18. As the Commission found in the *TracFone Forbearance Order*, the facilities requirement is not necessary to ensure that Virgin Mobile's charges, practices, and classifications are just and reasonable and not unjustly or unreasonably discriminatory where it is providing Lifeline service only. As discussed above, in the *Universal Service First Report and Order* the Commission declined to extend ETC status to pure resellers because it was concerned about double recovery of universal service support.<sup>55</sup> In making this decision, however, the Commission considered the issue in the context of wireline resellers and without differentiating among the types of universal service support and the basis of distribution. Lifeline support, designed to reduce the monthly cost of telecommunications services for eligible consumers, is distributed on a per-customer basis and is directly reflected in the price that the eligible customer pays.<sup>56</sup> Because it is customer-specific, a carrier who loses a Lifeline customer to a reseller would no longer receive the Lifeline support to pass through to that customer. The issue of double-recovery about which the Commission was concerned in the *Universal Service First Report and Order* was applicable only when the underlying wholesale provider was an incumbent LEC subject to regulated resale rates under section 251(c)(4).<sup>57</sup> In that case, the Commission was concerned that a reseller would receive both the benefit of the statutorily-mandated lower resale rates as well as receiving the universal service subsidy for serving the Lifeline customer.<sup>58</sup> That, however, is not the case before us. Because Virgin Mobile's CMRS wholesale provider, Sprint Nextel, is not subject to section 251(c)(4) resale obligations, the resold services do not reflect a reduction in price due to Lifeline support.<sup>59</sup> Therefore, we find that allowing Virgin Mobile to receive Lifeline support directly from the fund would not result in double recovery to Virgin Mobile and that the concern raised by the Commission in the *Universal Service First Report and Order* does not apply here.

19. As in the *TracFone Forbearance Order*, we find that Virgin Mobile, as a reseller, is by definition subject to competition and that this competition ensures that its rates are just and reasonable and not unjustly or unreasonably discriminatory.<sup>60</sup> We note that Virgin Mobile's Lifeline offering will compete with at least one other Lifeline offering, whether from the underlying CMRS provider, if this provider is an ETC, or from the incumbent wireline carrier.<sup>61</sup> We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers. We note that Virgin Mobile purchases wireless network services on a wholesale basis from Sprint Nextel and manages and markets the entire customer relationship.<sup>62</sup>

20. For the reasons provided above, we find that the requirements of the first prong of section 10(a) are met. Where, as here, the wireless reseller is forgoing all universal service support but Lifeline, which is customer-specific and is designed to make telecommunication service affordable to eligible consumers, the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund. By limiting Virgin Mobile's eligibility to Lifeline support, the facilities requirement is not necessary to ensure that Virgin Mobile's charges, practices, and classifications are just and reasonable.

<sup>55</sup> See *supra* para. 7; *Universal Service First Report and Order*, 12 FCC Red at 8861, 8873, 8875, paras. 151-152, 174, and 178.

<sup>56</sup> 47 C.F.R. §§ 54.401, 54.504.

<sup>57</sup> See *Universal Service First Report and Order*, 12 FCC Red at 8876, para. 179; 47 C.F.R. § 251(c)(4).

<sup>58</sup> See *Universal Service First Report and Order*, 12 FCC Red at 8876, para. 179.

<sup>59</sup> Virgin Mobile Reply Comments at 5.

<sup>60</sup> Forbearance Petition at 8; Virgin Mobile Reply Comments at 3.

<sup>61</sup> See 47 C.F.R. § 54.405(a) (requiring ETCs to offer Lifeline service).

<sup>62</sup> Forbearance Petition at 2. Virgin Mobile states that its customers pay in advance for its service without credit checks or long-term service contracts. *Id.*

21. **Consumer Protection.** Section 10(a)(2) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation only for Lifeline support is necessary for the protection of consumers. We find that imposing a facilities requirement on a pure wireless reseller is not necessary for the protection of consumers subject to the conditions described below. Specifically, we conclude that forbearance from this provision will actually benefit consumers. Indeed, if Virgin Mobile is ultimately granted limited ETC status, it would be offering Lifeline-eligible consumers a choice of providers for accessing telecommunications services not available to such consumers today. The prepaid feature may be an attractive alternative for such consumers who need the mobility, security, and convenience of a wireless phone but who are concerned about usage charges or long-term contracts. We also note that Virgin Mobile states that its handsets are capable of transmitting enhanced 911 information to the appropriate PSAP.<sup>63</sup>

22. Given the importance of public safety, we condition this grant of forbearance on Virgin Mobile's compliance with the E911 requirements applicable to wireless resellers, as modified below, for all Lifeline customers.<sup>64</sup> In light of the condition discussed below, that Virgin Mobile ensure its customers receive only one Lifeline-supported service, we find it essential that Virgin Mobile's Lifeline-supported service be capable of providing emergency access. Given the possibility that this Lifeline-supported service will be the customers' only means of accessing emergency personnel, we require that Virgin Mobile provide its Lifeline customers with access to basic and E911 service immediately upon activation of service.<sup>65</sup> To demonstrate compliance with this condition, Virgin Mobile must obtain a certification from each PSAP where it provides Lifeline service confirming that Virgin Mobile provides its customers with access to basic and E911 service. Virgin Mobile must furnish copies of the PSAP certifications to the Commission upon request.<sup>66</sup> To ensure that the benefits of Lifeline service are made available to Virgin Mobile's customers in a timely manner, however, we allow Virgin Mobile to self-certify compliance with the 911 and E911 availability condition if, within 90 days of Virgin Mobile's request, a PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service within the PSAP's service area.<sup>67</sup> In making a request for certification, Virgin Mobile must notify the PSAP that Virgin Mobile has the option to self-certify within 90 days of the request if the PSAP has not provided the certification and the PSAP has not made an affirmative finding that Virgin Mobile does not provide its customers with access to 911 and E911 service. Virgin Mobile may not self-certify compliance until 90 days after it has provided a PSAP with notification of the 90-day self-certification period adopted in this

<sup>63</sup> Virgin Mobile Reply Comments at 8 (handsets compliant with 47 C.F.R. § 20.18(h)).

<sup>64</sup> In their jointly-filed comments NASUCA and PULP raise concerns about Virgin Mobile's ability to provide adequate 911 service if the TracFone conditions are not also imposed on Virgin Mobile. If the TracFone conditions are imposed on Virgin Mobile, NASUCA/PULP support grant of the Forbearance Petition. See NASUCA/PULP Comments at 4; NASUCA Reply Comments at 3.

<sup>65</sup> Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate PSAP. 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.*

<sup>66</sup> We recognize that, as a practical matter, if Virgin Mobile's underlying facilities-based licensee has not deployed the facilities necessary to deliver E911 information to the appropriate PSAP, Virgin Mobile will not be able to offer Lifeline-supported service to customers residing in that area.

<sup>67</sup> If a PSAP has conducted testing and notified Virgin Mobile within the 90-day period of concerns regarding the ability of Virgin Mobile customers to access 911 and E911 services, Virgin Mobile may not self-certify compliance until it has addressed the PSAP's concerns (for example, issues with Virgin Mobile's underlying wireless provider concerning access to 911 and E911 services), such that the PSAP can provide the required certification. In this circumstance, Virgin Mobile may self-certify 180 days after requesting certification from the PSAP if the PSAP does not approve or deny the certification within that period.

order. Virgin Mobile also may not make such a self-certification until it has provided a PSAP with all of the information and/or equipment requested by the PSAP in analyzing Virgin Mobile's ability to provide 911 and E911 service to its customers. If Virgin Mobile makes such a self-certification, Virgin Mobile must obtain from each of its underlying carriers that provide service to Virgin Mobile in the area served by that PSAP certification that the carriers route 911 and E911 calls from Virgin Mobile customers to the PSAP in the same manner that they route 911 and E911 calls from their own customers. Virgin Mobile is required to retain such underlying carrier certifications and provide them to the Commission upon request. Virgin Mobile must provide PSAPs with copies of any self-certifications at the time they are filed. If after Virgin Mobile makes a self-certification a PSAP finds that Virgin Mobile does not provide its customers with 911 and E911 access, upon receiving notice of this finding Virgin Mobile must immediately notify the Commission of this finding and explain how it plans to come into compliance with this condition.

23. As an additional condition, Virgin Mobile must provide only E911-compliant handsets to its Lifeline customers, and must replace any non-compliant handset of an existing customer that obtains Lifeline-supported service with an E911-compliant handset, at no charge to the customer. The Commission has an obligation to promote "safety of life and property" and to "encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure" for public safety.<sup>68</sup> The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.<sup>69</sup> We believe that these conditions are necessary to ensure that Virgin Mobile's Lifeline customers have meaningful access to emergency services. We reiterate that, with the possibility that the Lifeline service will be the customer's only access to emergency services and given the potential gravity of harm if such Lifeline customers cannot obtain such access, we believe that these conditions will further the protection of such Lifeline customers.

24. We are not persuaded by comments regarding the impact on the size of the universal service fund and the associated contribution obligation if we grant the Forbearance Petition.<sup>70</sup> Because section 10(a)(2) requires that we consider the welfare of all "consumers," we must consider the effect a grant of this petition will have on consumers who will likely shoulder the effects of any increased contribution obligation since carriers are permitted to recover their contribution obligations from customers.<sup>71</sup> If Virgin Mobile is able to obtain ETC designation for Lifeline-only services, we do not expect this to significantly burden the universal service fund and thus negatively affect consumers through increased pass-through charges of the carriers' contribution obligations. The Commission has recognized the potential growth of the fund associated with high-cost support distributed to competitive ETCs.<sup>72</sup> Virgin Mobile, however, would not be eligible for high-cost support. In 2007, low-income

<sup>68</sup> *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorizations*, WT Docket No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

<sup>69</sup> *Id.*

<sup>70</sup> See, e.g., PA PUC Comments at 4.

<sup>71</sup> See 47 C.F.R. § 54.712.

<sup>72</sup> See *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1577, para. 31 (2004), see also *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6433-4, para. 25 (2004); *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No.

support accounted for only 11.8 percent of the distribution of the total universal service fund; whereas, high-cost support accounted for 61.06 percent.<sup>73</sup> 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. Significantly, granting Virgin Mobile's Forbearance Petition will not have any effect on the number of persons eligible for Lifeline support.

25. We further safeguard the fund by imposing additional conditions on this grant of forbearance. Specifically, as a further condition of this grant of forbearance and in addition to all other required certifications under the program, we require that Virgin Mobile require its Lifeline customers to self-certify under penalty of perjury upon service activation and then annually thereafter that they are the head of household and only receive Lifeline-supported service from Virgin Mobile.<sup>74</sup> The penalties for perjury must be clearly stated on the certification form. Additionally, to further strengthen this requirement, we require that Virgin Mobile track its Lifeline customer's primary residential address and prohibit more than one supported Virgin Mobile service at each residential address.<sup>75</sup> We are confident that these conditions will eliminate concerns regarding Virgin Mobile's customers receiving more than one Lifeline subsidy per household.

26. Some commenters expressed concerns about Virgin Mobile distributing its service through retail outlets.<sup>76</sup> The PA FUC argues that Virgin Mobile will not have the requisite control over the retailer's employees to ensure compliance with Lifeline rules and certifications.<sup>77</sup> We recognize this possibility and thus, as required in the *TracFone Forbearance Order*, we also require that Virgin Mobile distribute its Lifeline service directly to its Lifeline customers. Specifically, while customers may purchase handsets at Virgin Mobile's retail outlets, we require that Virgin Mobile deal directly with the customer to certify and verify the customer's Lifeline eligibility. Virgin Mobile commits to implementing procedures that are analogous to the procedures discussed in the *TracFone Forbearance Order*.<sup>78</sup> Thus, Virgin Mobile must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.

27. In light of the conditions we have outlined here, we believe that appropriate safeguards are in place to deter waste, fraud, and abuse. We strive to balance our objective of increasing participation in the low-income program with our objective of preventing and deterring waste, fraud, and abuse. We find that we have struck the appropriate balance here. We are also mindful of the fact that other prepaid pure wireless carriers may similarly seek eligibility for Lifeline-only support. Given the

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96-45, Order, 23 FCC Rcd 8834, 8837-38, paras. 6-7 (2008).

<sup>73</sup> *Trends in Telephone Service*, Wireline Competition Bureau, Federal Communications Commission, Table 19.1 and Chart 19.1 (Aug. 2008). As of March 2007, the average monthly federal support per non-tribal Lifeline customer was \$8.57. *Id.* at Table 19.7. See 47 C.F.R. § 54.403. Tribal customers are eligible for up to an additional \$25 per month in Lifeline support. 47 C.F.R. § 54.403(a)(4).

<sup>74</sup> To monitor compliance, we require that Virgin Mobile maintain the self-certifications and provide such documentation to the Commission upon request.

<sup>75</sup> Virgin Mobile has agreed to meet this and all of the conditions required of TracFones in the *TracFone Forbearance Order*. See July 10 *Ex Parte* Letter at 2; October 24 *Ex Parte* Letter, Attach at 9. These conditions are in addition to, and do not supplant, the certification and verification eligibility already required by our rules for federal default states and any similar state rules for the non-federal default states. See, e.g., 47 C.F.R. § 54.410 (requiring initial certification and annual verification of eligibility).

<sup>76</sup> See NASUCA Reply Comments at 2; PA FUC Comments at 5.

<sup>77</sup> PA FUC Comments at 5.

<sup>78</sup> Virgin Mobile Reply Comments at 9. The Commission rejected the point of sales procedure that would allow the prospective Lifeline customers to submit qualifying information to the retail vendor in the *TracFone Forbearance Order*. *TracFone Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

safeguards we put in place aimed at ensuring that only eligible consumers receive such support and that they receive such support only once, we do not believe that similar requests will have a detrimental impact on the fund. We note that to the extent any similarly situated prepaid wireless reseller seeks forbearance from these requirements for the purpose of providing only Lifeline support, it will be expected to comply with all the conditions we imposed upon TracFone, which Virgin Mobile has agreed to do.<sup>79</sup>

28. Accordingly, we find that, subject to the 911 and E911 conditions and the self-certification and address limitation conditions set out above, the ETC facilities-based requirement is not necessary for consumer protection. We thus conclude that the second prong of section 10(a) is satisfied.

29. **Public Interest.** Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for a pure wireless reseller that seeks ETC designation for Lifeline support only is in the public interest. In this instance, based on the record before us, we find that the statutory goal of providing telecommunications access to low-income consumers outweighs the requirement that Virgin Mobile own facilities, where Virgin Mobile, should it be designated an ETC, will be eligible only for Lifeline support. Thus, we find that requiring Virgin Mobile, as a wireless reseller, to own facilities does not necessarily further the statutory goals of the low-income program, which is to provide support to qualifying low-income consumers throughout the nation, regardless of where they live.

30. The Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying low-income consumers.<sup>80</sup> Presently only about one-third of households eligible for low-income assistance actually subscribe to the program.<sup>81</sup> As noted in the *TracFone Forbearance Order*, we expanded eligibility criteria and outreach guidelines for federal default states in an effort to increase participation.<sup>82</sup> In 2005, the Commission launched a joint initiative with the National Association of Regulatory Utility Commissioners to raise awareness of our Lifeline and Link-Up programs among low-income consumers.<sup>83</sup> We believe even more can be done to further expand participation by those subscribers that qualify and thus further the statutory goal of section 254(b). Therefore, consistent with the Commission's assertion in the *Universal Service First Report and Order* concerning under-utilization of the program, we conclude it is appropriate to consider the relief requested with the goal of expanding eligible participation in the program.<sup>84</sup> With only about one-third of Lifeline-eligible households actually subscribing, we believe that granting Virgin Mobile's Forbearance Petition serves the public interest in that it should expand participation of qualifying consumers. Accordingly, we conclude that forbearing from the facilities requirement for Lifeline support only, subject to the conditions set forth above, satisfies the requirements of section 10(a)(3).

31. Further, we reject USTelecom's argument that the Act does not allow carriers to pick and choose the type of universal service support that they will receive.<sup>85</sup> Consistent with the *TracFone*

<sup>79</sup> July 10 *Ex Parte* Letter at 2; October 24 *Ex Parte* Letter. Certain commenters advocate for the imposition of the TracFone conditions. See NASUCA/PULP Comments at 5; USTelecom Comments at 1-2; NASUCA Reply Comments at 1-2.

<sup>80</sup> 47 C.F.R. § 54.401. See Virgin Mobile Reply Comments at 6-7.

<sup>81</sup> *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Red 8302, 8305, para. 1 and Appendix K at Table 1 B (2004).

<sup>82</sup> *Id.* at 8305, para. 1.

<sup>83</sup> FCC and NARUC Launch "Lifeline Across America" to Raise Awareness of Lifeline and Link-Up Programs, News Release (July 26, 2005).

<sup>84</sup> *Universal Service First Report and Order*, 12 FCC Red at 8972, para. 370.

<sup>85</sup> USTelecom Comments at 2.

*Forbearance Order*, we find it appropriate to exercise our forbearance authority under section 10(a)(1) of the Act to separate low-income support from high-cost for Virgin Mobile because the forbearance test is satisfied and grant of forbearance will benefit low-income consumers. USTelecom also states that the Forbearance Petition should be addressed in a broader docket that focuses on stabilizing and modernizing the universal service fund. Again, we disagree with this assertion. As discussed above, Lifeline support has been underutilized, and Virgin Mobile will not receive any high-cost support, which has been the primary source of concern in the growth of the universal service fund.<sup>84</sup>

## B. ETC Designation

### 1. Commission Authority to Perform the ETC Designation

32. Virgin Mobile has demonstrated that, except for the Pennsylvania Public Utility Commission, the relevant state commissions lack authority to perform the requested limited ETC designations, and the Commission has authority to consider Virgin Mobile's petitions under section 214(e)(6) of the Act. Each petition includes an affirmative statement from the relevant state commission providing that ETC designation should be sought from the Commission.<sup>87</sup> Accordingly, we find the relevant state commissions lack jurisdiction to designate Virgin Mobile as an ETC and that this Commission therefore has authority to perform the requested limited ETC designations under section 214(e)(6).<sup>88</sup>

33. On February 26, 2009, the Pennsylvania Public Utility Commission announced that, effective as of that date, it will exercise jurisdiction to designate wireless carriers as ETCs pursuant to section 214(e)(2) of the Act.<sup>89</sup> In light of this development, and because section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations, we dismiss without prejudice the petition filed by Virgin Mobile seeking designation as an ETC in Pennsylvania. Virgin Mobile may re-file its petition with the Pennsylvania Public Utility Commission.

### 2. Analysis of the Eligibility Requirements

34. Offering the Services Designated for Support. Virgin Mobile has demonstrated, through the required certifications and related filings, that it now offers or will offer upon designation as a limited ETC the services supported by the Lifeline program.<sup>90</sup> We disagree with NASUCA/PULP who argue that Virgin Mobile cannot offer toll limitation service.<sup>91</sup> As discussed above, we find that the prepaid nature of Virgin Mobile's service offering works as an effective toll control.<sup>92</sup>

<sup>84</sup> See NASUCA Reply Comments at 2; Virgin Mobile Reply Comments at 4.

<sup>87</sup> New York Petition at 5-6 and Exh.1; Virginia Petition at 5-6 and Exh.1; North Carolina Petition at 5-6 and Exh.1; Tennessee Petition at 5-6 and Exh.1.

<sup>88</sup> 47 U.S.C. § 214(e)(6).

<sup>89</sup> See Letter from Joseph K. Witmer, Assistant Counsel, Pennsylvania Public Utility Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-45 (filed Feb. 26, 2009) (attaching February 26, 2009 Pennsylvania Commission decision); 47 U.S.C. § 214(e)(2).

<sup>90</sup> 47 C.F.R. §§ 54.410(a), 54.101(a)(1)-(a)(9); see New York Petition at 9-11; Virginia Petition at 9-11; North Carolina Petition at 10-12; Tennessee Petition at 10-12.

<sup>91</sup> See NASUCA/PULP Comments at 5 and n.14.

<sup>92</sup> See *supra* para. 21; see also *TracFone ETC Order*, 23 FCC Rcd at 6212, para. 15.

35. Offering the Supported Services Using a Carrier's Own Facilities. As discussed above, we conditionally grant Virgin Mobile forbearance from the facilities requirement for purposes of this limited ETC designation, permitting Virgin Mobile to offer the supported services via resale only.<sup>93</sup>

36. Advertising the Supported Services. Virgin Mobile has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the related charges "using media of general distribution."<sup>94</sup> Virgin Mobile has also stated that, in compliance with the Commission's Lifeline rules, it will advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for those services.<sup>95</sup>

37. Additional Eligibility Requirements. Virgin Mobile satisfies the applicable eligibility requirements set forth in the *ETC Designation Order*, described above.<sup>96</sup>

### 3. Public Interest Analysis

38. We find that Virgin Mobile's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice,<sup>97</sup> high-quality service offerings,<sup>98</sup> and mobility.<sup>99</sup> In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.

39. As in the *TracFone ETC Order*, we condition Virgin Mobile's ETC designation for Lifeline support in New York, Virginia, North Carolina and Tennessee on Virgin Mobile's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service.<sup>100</sup> Subject to this condition, we find, on balance, that the

<sup>93</sup> See *supra* para. 12.

<sup>94</sup> 47 U.S.C. § 214(e)(1)(B); see New York Petition at 12; Virginia Petition at 11; North Carolina Petition at 13; Tennessee Petition at 13.

<sup>95</sup> 47 C.F.R. § 54.405(b); see New York Petition at 12; Virginia Petition at 11; North Carolina Petition at 13; Tennessee Petition at 13.

<sup>96</sup> See *supra* para. 10; *ETC Designation Order*, 20 FCC Rcd at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209. For example, Virgin Mobile has committed to provide high-quality service, as demonstrated by committing to comply with the Consumer Code for Wireless Service of the Cellular Telecommunications Industry Association (CTIA), and to serve the designated areas within a reasonable time. Letter from Peter Lurie, Virgin Mobile USA L.P., to Marlene H. Dortch, Federal Communications Commission, CC Docket No. 96-45, at 1-2 (filed Feb. 11, 2009) (February 11 *Ex Parte* Letter). Because Virgin Mobile is a pure reseller eligible for Lifeline support only, we do not require Virgin Mobile to demonstrate that it satisfies the network build-out and improvement requirements in section 54.202(a)(1)(ii) or to provide a certification that it acknowledges that the Commission 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 pursuant to section 54.202(a)(5). 47 C.F.R. §§ 54.202(a)(1)(ii) and (a)(5).

<sup>97</sup> See New York Petition at 14; Virginia Petition at 13; North Carolina Petition at 15; Tennessee Petition at 15.

<sup>98</sup> For example, Virgin Mobile committed that it will comply with the Consumer Code for Wireless Service of the CTIA February 11 *Ex Parte* Letter at 2.

<sup>99</sup> See, e.g., New York Amendment at 4-5; Virginia Amendment at 4-5. As noted in the *PSC Alabama Order*, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other locations. *PSC Alabama ETC Designation Order*, 20 FCC Rcd at 6861, para. 25. Moreover, the availability of a wireless universal service offering also provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. *Id.*

<sup>100</sup> See *TracFone ETC Order*, 23 FCC Rcd at 6206, 6213, para. 16. See NASUCA/PULP Comments at 4 (concerns about Virgin Mobile's 911 capabilities are assuaged by imposing TracFone conditions).

advantages of designating Virgin Mobile as a limited ETC in the designated service areas outweigh any potential disadvantages.<sup>101</sup>

#### 4. Designated Service Areas

40. Based on the foregoing, we hereby designate Virgin Mobile as a limited ETC, eligible only for Lifeline support, in its licensed service areas in New York, Virginia, North Carolina, and Tennessee.<sup>102</sup> In designating Virgin Mobile as a limited ETC, we clarify that Virgin Mobile's designated service areas do not encompass federally-recognized tribally-owned lands.<sup>103</sup>

#### 5. Regulatory Oversight and Compliance Plan

41. Under section 254(e) of the Act, Virgin Mobile is required to use the specific universal service support it receives "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>104</sup> An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>105</sup> Lifeline assistance shall be made available to qualifying low-income consumers after Virgin Mobile's compliance plan has been approved by the Wireline Competition Bureau as discussed below,<sup>106</sup> and the Universal Service Administrative Company (USAC) confirms that Virgin Mobile's Lifeline service offering satisfies the criteria in our rules and complies with the conditions imposed in this order.<sup>107</sup> In addition, Virgin Mobile must report certain information to the Commission and to USAC pursuant to section 54.209 of the Commission's rules.<sup>108</sup>

42. We find that reliance on Virgin Mobile's commitments to meet these requirements is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas*

<sup>101</sup> As discussed above, we find that any effect on the universal service fund would be minimal, limited to the Lifeline program, and outweighed by the benefit of increasing eligible participation in the Lifeline program. See *supra* para. 23. See also *TracFone Forbearance Order*, 20 FCC Rcd 15103-04, para. 17. In addition, we need not perform a creamskimming analysis because Virgin Mobile is seeking eligibility for Lifeline support only.

<sup>102</sup> Under this limited ETC designation, Virgin Mobile will not be eligible for support for Link Up or toll-limitation service under the low-income program, nor will it be eligible for high-cost support, or for schools and libraries and rural health care support as an ETC. Non-ETCs, however, may participate in certain aspects of the schools and libraries or rural health care programs. See *supra* n.10. See also *TracFone Forbearance Order*, 20 FCC Rcd at 15097, para. 3 & n.12.

<sup>103</sup> Virgin Mobile states that it does not request ETC designation for tribal lands. See February 11 *Ex Parte* Letter at n.4.

<sup>104</sup> 47 U.S.C. § 254(e). Because Virgin Mobile is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under §§ 54.313 and 54.314 of our rules. See 47 C.F.R. §§ 54.313, 54.314.

<sup>105</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

<sup>106</sup> See *infra* para. 44.

<sup>107</sup> See 47 C.F.R. § 54.401(d). As noted above, we find that Virgin Mobile's service offering meets the criteria for service and functionality contained in our rules. See *supra* III(B)(2).

<sup>108</sup> See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs), *ETC Designation Order*, 20 FCC Rcd at 6400-6402, paras. 68-69; see also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC's designated service areas). As noted above, as a pure reseller eligible for Lifeline support only, we do not require Virgin Mobile to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. See *supra* n. 33.



*Office of Public Utility Counsel v. FCC.*<sup>109</sup> These requirements will further the Commission's goal of ensuring that Virgin Mobile satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service areas.

43. Finally, we note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support an ETC receives is being used for the purpose for which it was intended.<sup>110</sup> Virgin Mobile will be required to provide such records and documentation to the Commission and USAC upon request. If Virgin Mobile fails to fulfill the requirements of the Act, our rules, or the terms of this order after it begins receiving universal service Lifeline support, the Commission may revoke its limited ETC designation.<sup>111</sup> The Commission may also assess forfeitures for violations of its rules and orders.<sup>112</sup>

44. Within thirty days of the release of this order, we require that Virgin Mobile file with the Commission a plan outlining the measures it will take to implement the conditions in this order. This plan will be placed on public notice and comments will be sought on the plan. Virgin Mobile's ETC designations granted in this order will not be effective until the Wireline Competition Bureau has approved the compliance plan.

#### IV. ANTI-DRUG ABUSE ACT CERTIFICATION

45. Under section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued under section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>113</sup> Virgin Mobile has provided certifications consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>114</sup> We find that Virgin Mobile has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>115</sup>

<sup>109</sup> In *TOPUC*, the Fifth Circuit held that nothing in section 214(e)(2) of the Act prohibits states from imposing additional eligibility conditions on ETCs as part of their designation process. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 417-18 (5<sup>th</sup> Cir. 1999) (*TOPUC*). Consistent with this holding, we find that nothing in section 214(e)(6) prohibits the Commission from imposing additional conditions on ETCs when such designations fall under our jurisdiction.

<sup>110</sup> 47 U.S.C. §§ 220, 403.

<sup>111</sup> See *Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e); see also *TracFone Forbearance Order*, 20 FCC Rcd at 15099, para. 6, n.25.

<sup>112</sup> See 47 U.S.C. § 503(b).

<sup>113</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)-(b). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of the petitioner; and (3) If the application is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C. F. R. § 1.2002(b). See *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>114</sup> See New York Petition at 15 and Exh. 2; Virginia Petition at 15 and Exh. 2; North Carolina Petition at 16 and Exh. 2; Tennessee Petition at 16 and Exh. 2.

<sup>115</sup> 47 C.F.R. §§ 1.2001-2003.

**V. ORDERING CLAUSES**

46. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i), 10, 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 160, 214, and 254, the petition for forbearance filed by Virgin Mobile USA, L.P. on December 5, 2007, **IS GRANTED** subject to the conditions set forth above and, on our own motion, we forbear from enforcing section 54.201(1)(d) of the Commission's rules, 47 C.F.R. § 54.201(1)(d), as discussed above.

47. **IT IS FURTHER ORDERED** that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), Virgin Mobile USA, L.P. **IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER** eligible only for Lifeline support in its licensed service areas in New York, Virginia, North Carolina, and Tennessee to the extent described in this order and subject to the conditions set forth herein, effective upon approval by the Wireline Competition Bureau of Virgin Mobile's compliance plan.

48. **IT IS FURTHER ORDERED** that, pursuant to section 214(e) of the Communications Act, 47 U.S.C. § 214(e), Virgin Mobile USA, L.P.'s petition for eligible telecommunications carrier designation in the commonwealth of Pennsylvania **IS DISMISSED WITHOUT PREJUDICE** to the extent described herein.

49. **IT IS FURTHER ORDERED** that Virgin Mobile USA, L.P. **SHALL SUBMIT** a compliance plan within 30 days of the release date of this order.

50. **IT IS FURTHER ORDERED** that Virgin Mobile USA, L.P. **SHALL SUBMIT** additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2009, as part of its annual reporting requirements.

51. **IT IS FURTHER ORDERED** that, pursuant to sections 1.103(a) and 1.4(b)(2) of the Commission's rules, 47 C.F.R. §§ 1.103(a) and 1.4(b)(2), this order **SHALL BE** effective upon release.

**FEDERAL COMMUNICATIONS COMMISSION**

**Marlene H. Dortch**  
Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Telecommunications Carriers Eligible for ) WC Docket No. 09-197
Universal Service Support )
Virgin Mobile USA, L.P. Petition for Designation )
as an Eligible Telecommunications Carrier )
in the State of Alabama )
Virgin Mobile USA, L.P. Petition for Designation )
as an Eligible Telecommunications Carrier )
in the State of Connecticut )
Virgin Mobile USA, L.P. Petition for Designation )
as an Eligible Telecommunications Carrier )
in the District of Columbia )
Virgin Mobile USA, L.P. Petition for Designation )
as an Eligible Telecommunications Carrier )
in the State of Delaware )
Virgin Mobile USA, L.P. Petition for Designation )
as an Eligible Telecommunications Carrier )
in the State of New Hampshire )

ORDER

Adopted: December 29, 2010

Released: December 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This order addresses five petitions filed by Virgin Mobile USA, L.P. (Virgin Mobile) pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act), and section 54.202 of the Commission's rules. Virgin Mobile seeks designation as an eligible telecommunications carrier (ETC) for the limited purpose of receiving federal universal service Lifeline support in its licensed service areas in Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia. As

1 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202; see Petition of Virgin Mobile USA, L.P. for ETC Designation in the State of Alabama, WC Docket No. 09-197 (filed Jan. 15, 2010) (Virgin Mobile Alabama Petition); Petition of Virgin Mobile USA, L.P. for ETC Designation in the State of Connecticut, WC Docket No. 09-197 (filed Feb. 17, 2010) (Virgin Mobile Connecticut Petition); Petition of Virgin Mobile USA, L.P. for ETC Designation in the State of Delaware, WC Docket No. 09-197 (filed Feb. 17, 2010) (Virgin Mobile Delaware Petition); Petition of Virgin Mobile USA, L.P. for ETC Designation in the District of Columbia, WC Docket No. 09-197 (filed Feb. 17, 2010) (Virgin Mobile DC Petition); Petition of Virgin Mobile USA, L.P. for ETC Designation in the State of New Hampshire, WC Docket No. 09-197 (filed Feb. 17, 2010) (Virgin Mobile New Hampshire Petition) (collectively, Virgin Mobile ETC Petitions).

discussed more fully below, we conditionally grant Virgin Mobile's petitions for limited designation as an ETC. In so doing, we find that while Virgin Mobile meets the eligibility requirements of section 214(e)(6) of the Act and the Commission's rules to be designated as an ETC, the public interest requires that Virgin Mobile comply with specific conditions, including fulfillment of certain voluntary commitments, designed to promote public safety among Lifeline customers and safeguard against waste, fraud, and abuse in the Lifeline program.<sup>2</sup>

## II. BACKGROUND

### A. The Act

2. Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."<sup>3</sup> Pursuant to section 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout its designated service area.<sup>4</sup>

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs in their states.<sup>5</sup> Section 214(e)(6) directs the Commission, upon request, to designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>6</sup> Under section 214(e)(6), the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, so long as the requesting carrier meets the requirements of section 214(e)(1).<sup>7</sup> Before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.<sup>8</sup> The Wireline Competition Bureau (Bureau) has delegated authority to consider ETC designation requests.<sup>9</sup>

### B. Commission Requirements for ETC Designation

4. An ETC petition must contain the following: (1) a certification and brief statement of supporting facts demonstrating that the petitioner is "not subject to the jurisdiction of a state commission"; (2) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Act; (3) a certification that the petitioner offers the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services"; (4) a description of how the petitioner "advertise[s] the availability of the [supported] services and the charges therefor using media of general distribution"; and (5) if the petitioner

<sup>2</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202.

<sup>3</sup> 47 U.S.C. § 254(e).

<sup>4</sup> 47 U.S.C. § 214(e)(1)(A), (B).

<sup>5</sup> 47 U.S.C. § 214(e)(2).

<sup>6</sup> 47 U.S.C. § 214(e)(6).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (*Section 214(e)(6) Public Notice*).

is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.<sup>10</sup>

5. In addition, an ETC applicant must demonstrate: (1) a commitment and ability to provide service, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent local exchange carrier (LEC); and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.<sup>11</sup>

6. Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.<sup>12</sup> In determining the public interest, the Commission considers the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>13</sup> As the Commission noted in the *ETC Designation Order*, the same factors may warrant a different outcome depending on the specifics of the proposed service area and whether it is served by a rural or a non-rural telephone company.<sup>14</sup> In particular, the Commission limits its creamskimming analysis to designations in areas served by rural telephone companies.<sup>15</sup>

### C. Federal Universal Service Lifeline Support

7. The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. Lifeline provides low-income consumers with

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<sup>10</sup> *Id.*

<sup>11</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6380, para. 20 (2005) (*ETC Designation Order*) (citing *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 19 FCC Rcd 4259, 4261, para. 5 (Fed-State Jt. Bd. 2004)). These requirements are mandatory for all ETCs designated by the Commission. See 47 C.F.R. § 54.202(a), (b).

<sup>12</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(c); see also *ETC Designation Order*, 20 FCC Rcd at 6388-96, paras. 40-57; *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1575, para. 27 (2005) (*Virginia Cellular Order*); *Federal-State Joint Board on Universal Service; Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6431-32, para. 21 (2004) (*Highland Cellular Order*). The Commission places the burden on the ETC applicant to demonstrate that designation will serve the public interest. *ETC Designation Order*, 20 FCC Rcd at 6390, para. 44. The Commission adopted a single set of criteria for evaluating the public interest for ETC designations for areas served by both rural and non-rural carriers. *Id.* at 6389-90, paras. 42-43; see also *Virginia Cellular Order*, 19 FCC Rcd at 1564, 1565, 1575-76, 1584-85, paras. 1, 4, 27, 28, 46; *Highland Cellular Order*, 19 FCC Rcd at 6422, 6439-40, paras. 1, 33.

<sup>13</sup> 47 C.F.R. § 54.202(c).

<sup>14</sup> *ETC Designation Order*, 20 FCC Rcd at 6390, para. 43. Section 3 of the Act defines the term "rural telephone company." See 47 U.S.C. § 153(37).

<sup>15</sup> *ETC Designation Order*, 20 FCC Rcd at 6389-90, paras. 42-43. The term "creamskimming" refers to an entity offering service only to those customers who are the least expensive to serve. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8881-82, para. 189 (1997) (subsequent history omitted) (*Universal Service First Report and Order*). If an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission conducts a creamskimming analysis to compare the population density of the wire centers in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. *ETC Designation Order*, 20 FCC Rcd at 6392-95, paras. 48-53.

discounts of up to \$10.00 off of the monthly cost of telephone service.<sup>16</sup> Enhanced Lifeline provides qualifying low-income individuals living on tribal lands with up to \$25.00 in additional discounts off the monthly cost of telephone service.<sup>17</sup>

#### D. Virgin Mobile Petitions

8. Virgin Mobile is a commercial mobile radio service (CMRS) provider of prepaid wireless telecommunications services. In 2009, the Commission designated Virgin Mobile as a limited ETC, eligible to receive only universal service Lifeline support in its licensed service areas in New York, Virginia, North Carolina, and Tennessee.<sup>18</sup> The Commission conditioned Virgin Mobile's limited ETC designation for Lifeline support on Virgin Mobile's certification that it comply with any applicable 911 and enhanced 911 (E911) obligations, including obligations relating to the provision and support of 911 and E911 services.<sup>19</sup>

9. Because Virgin Mobile was a non-facilities-based CMRS provider, the Commission also conditionally granted Virgin Mobile's request for forbearance from the statutory requirement that an ETC serve its customers using its own facilities.<sup>20</sup> Among other things, the Commission conditionally granted Virgin Mobile's forbearance request on its agreement to obtain a certification from each Public Safety Answering Point (PSAP) where Virgin Mobile provides Lifeline service confirming that Virgin Mobile provides its customers with 911 and E911 access or, under certain conditions, self-certifying that it provides such access.<sup>21</sup> The Commission also required Virgin Mobile to file a compliance plan, outlining the measures that it would take to implement each condition.<sup>22</sup> The Bureau approved Virgin Mobile's compliance plan on October 29, 2009.<sup>23</sup>

10. Virgin Mobile filed the instant petitions seeking designation as an ETC, eligible to receive universal service Lifeline support for its entire service area in Alabama, Connecticut, Delaware,

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<sup>16</sup> See 47 C.F.R. § 54.401(a); see also FCC, Lifeline Across America, [http://www.lifeline.gov/lifeline\\_Consumers.html](http://www.lifeline.gov/lifeline_Consumers.html) (last visited Dec. 15, 2010).

<sup>17</sup> See 47 C.F.R. § 54.405(a)(4).

<sup>18</sup> See *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*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009) (*Virgin Mobile Forbearance/ETC Order*).

<sup>19</sup> *Id.* at 3395, para. 39.

<sup>20</sup> *Id.* at 3386, para. 12.

<sup>21</sup> *Id.* at 3390-91, para. 22. The Commission also required Virgin Mobile to: (1) provide its Lifeline customers with 911 and E911 access regardless of activation status and availability of prepaid minutes; (2) provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service; (3) comply with conditions (1) and (2) as of the date it provides Lifeline service; (4) require its customers to self-certify at time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; (5) establish safeguards to prevent its customers from receiving multiple Virgin Mobile Lifeline subsidies at the same address; and (6) deal directly with customers to certify and verify the customer's Lifeline eligibility. See *id.* at 3386-87, 3390-93, paras. 12, 21-28.

<sup>22</sup> *Id.* at 3387, 3397, paras. 12, 23.

<sup>23</sup> See *Federal-State Joint Board on Universal Service; Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, CC Docket No. 96-45, Order, 24 FCC Rcd 13413 (2009) (*Virgin Mobile Compliance Plan Order*).

New Hampshire, and the District of Columbia.<sup>24</sup> Virgin Mobile states that it will offer Lifeline customers prepaid Lifeline services free of charge.<sup>25</sup> In its petitions, Virgin Mobile maintains that it satisfies all the statutory and regulatory requirements for designation as a limited ETC in these areas. On November 24, 2009, Virgin Mobile became a wholly owned subsidiary of Sprint Nextel Corporation (Sprint Nextel), a facilities-based wireless provider.<sup>26</sup> Virgin Mobile asserts that, with this acquisition, it is no longer a reseller of telecommunications services and therefore does not need forbearance from the facilities requirement. Virgin Mobile also asserts that as a facilities-based provider, it should not be required to obtain certification from each PSAP where it provides Lifeline service.<sup>27</sup>

11. On December 14, 2010, Virgin Mobile filed a letter in which it voluntarily commits to implement procedures to combat the potential for waste, fraud, and abuse with respect to its provision of Lifeline services throughout the United States. Specifically, Virgin Mobile commits to implementing a non-usage policy (i.e., a policy for discontinuance of service in the event of non-usage), to work with state commissions to combat duplicative support for households that receive Lifeline service from more than one ETC, and to work with the Commission to develop industry-wide procedures that effectively curtail waste, fraud, and abuse.<sup>28</sup> Virgin Mobile requests that the Commission incorporate these procedures into the compliance plan previously approved by the Bureau and agrees to be bound by its commitments in all states where it provides Lifeline services.<sup>29</sup>

### III. DISCUSSION

#### A. Commission Authority to Perform the ETC Designation

12. Virgin Mobile provided an “affirmative statement” from the Public Service Commission of the District of Columbia (DC Commission) and each of the relevant state commissions providing that each commission lacks jurisdiction to perform the requested ETC designation and that the Commission

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<sup>24</sup> See Virgin Mobile Alabama Petition; Virgin Mobile Connecticut Petition; Virgin Mobile Delaware Petition; Virgin Mobile DC Petition; Virgin Mobile New Hampshire Petition. The Bureau released public notices seeking comment on each of Virgin Mobile ETC Petitions. *Comment Sought on Petition of Virgin Mobile for Limited Designation as an Eligible Telecommunications Carrier in Alabama*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 965 (Wireline Comp. Bur. 2010); *Comment Sought on Petition of Virgin Mobile for Limited Designation as an Eligible Telecommunications Carrier in Connecticut, Delaware, New Hampshire, and the District of Columbia*, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 1981 (Wireline Comp. Bur. 2010). A list of commenters is provided in Appendix A of this order.

<sup>25</sup> Virgin Mobile states that through its branded prepaid Lifeline service, “Assurance Wireless Brought to You by Virgin Mobile,” it will offer free voice services and a variety of other standard features such as voicemail and call waiting services. Virgin Mobile indicates that new customers may elect to receive a free Assurance Wireless-branded handset with E911 functionality. See Virgin Mobile Alabama Petition at 8; Virgin Mobile Connecticut Petition at 8; Virgin Mobile Delaware Petition at 7–8; Virgin Mobile DC Petition at 7–8; Virgin Mobile New Hampshire Petition at 8; see also *Virgin Mobile Compliance Plan Order*, 24 FCC Rcd at 13418, para. 11 & n.33 (reminding Virgin Mobile that all Lifeline customers must have E911-compliant handsets if Virgin Mobile is to be eligible to receive support).

<sup>26</sup> Virgin Mobile Alabama Petition at 2 n.2; Virgin Mobile Connecticut Petition at 2 n.2; Virgin Mobile Delaware Petition at 2 n.2; Virgin Mobile DC Petition at 2 n.2; Virgin Mobile New Hampshire Petition at 2 n.2.

<sup>27</sup> Virgin Mobile Alabama Petition at 9; Virgin Mobile Connecticut Petition at 9; Virgin Mobile Delaware Petition at 8–9; Virgin Mobile DC Petition at 8–9; Virgin Mobile New Hampshire Petition at 9.

<sup>28</sup> Virgin Mobile December 14 *Ex Parte* Letter at 2–3.

<sup>29</sup> *Id.* at 1–2.

has authority to consider Virgin Mobile's petition under section 214(e)(6) of the Act.<sup>30</sup> Virgin Mobile therefore has demonstrated that it is not subject to the jurisdiction of the Alabama Public Service Commission (Alabama Commission), Connecticut Department of Public Utility Control (Connecticut Commission), Delaware Public Service Commission (Delaware Commission), New Hampshire Public Utilities Commission (New Hampshire Commission), or the DC Commission. Accordingly, we find that the commissions lack jurisdiction to designate Virgin Mobile as an ETC and this Commission has authority to perform the requested ETC designations.<sup>31</sup>

#### B. Analysis of Eligibility Requirements

13. *Offering the Services Designated for Support.* Virgin Mobile has demonstrated through its filing and certifications that it now offers or will offer upon designation as a limited ETC, the services supported by the Lifeline program.<sup>32</sup> Virgin Mobile states that it now provides the services and functionalities enumerated in section 54.101(a) of the Commission's rules throughout its licensed service areas.<sup>33</sup>

14. With respect to providing access to emergency services, Virgin Mobile states that it provides nationwide access to 911 emergency services for all of its customers.<sup>34</sup> Virgin Mobile also states that it complies with the Commission's regulations governing the deployment and availability of E911 compatible handsets.<sup>35</sup> Given the nature of Virgin Mobile's service offering, as well as the possibility that Virgin Mobile's Lifeline supported service will be the customer's only means of accessing emergency personnel, we require Virgin Mobile (1) to provide its Lifeline customers with 911 and E911 access regardless of activation status and availability of prepaid minutes and (2) to provide E911-compliant handsets to all of its Lifeline customers, and to replace, at no charge to the customer, any non-compliant handset of an existing customer that obtains Lifeline-supported services with an E911-compliant handset, consistent with prior determinations by the Commission.<sup>36</sup> We find that continuing to require Virgin Mobile to comply with these additional requirements promotes public safety among Lifeline customers.

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<sup>30</sup> Virgin Mobile Alabama Petition at 5-6, Exh. 1; Virgin Mobile Connecticut Petition at 5-6, Exh. 1; Virgin Mobile Delaware Petition at 5-6, Exh. 1; Virgin Mobile DC Petition at 5-6, Exh. 1; Virgin Mobile New Hampshire Petition at 5-6, Exh. 1.

<sup>31</sup> 47 U.S.C. § 214(c)(6).

<sup>32</sup> See Virgin Mobile Alabama Petition at 12-14; Virgin Mobile Connecticut Petition at 10-13; Virgin Mobile Delaware Petition at 10-12; Virgin Mobile DC Petition at 10-12; Virgin Mobile New Hampshire Petition at 10-13.

<sup>33</sup> Specifically, Virgin Mobile certifies that it provides voice grade access to the public switched telephone network, local usage, dual-tone multi-frequency (DTMF) signaling, access to 911 emergency services, the functional equivalent of single-party service, access to operator services, access to interexchange services, and access to directory assistance for qualifying low-income customers. See Virgin Mobile Alabama Petition at 11; Virgin Mobile Connecticut Petition at 10; Virgin Mobile Delaware Petition at 10; Virgin Mobile DC Petition at 10; Virgin Mobile New Hampshire Petition at 10. The Commission previously found that the prepaid nature of Virgin Mobile's Lifeline offering essentially functions as a toll control feature, which is required under the Act and the Commission's rules. See *Virgin Mobile Forbearance/ETC Order*, 24 FCC Rcd at 3394, para. 34. Virgin Mobile also states that it commits to complying with (1) any minimum local usage requires adopted by the Commission; and (2) the Commission's regulations governing the deployment and availability of E911 compatible handsets. See Virgin Mobile Alabama Petition at 10-13; Virgin Mobile Connecticut Petition at 10-13; Virgin Mobile Delaware Petition at 10-12; Virgin Mobile DC Petition at 10-12; Virgin Mobile New Hampshire Petition at 10-13.

<sup>34</sup> Virgin Mobile Alabama Petition at 12; Virgin Mobile Connecticut Petition at 12; Virgin Mobile Delaware Petition at 11; Virgin Mobile DC Petition at 11; Virgin Mobile New Hampshire Petition at 12.

<sup>35</sup> *Id.*

<sup>36</sup> See *Virgin Mobile Forbearance/ETC Order*, 24 FCC Rcd at 3391, para. 23.



15. *Offering the Supported Services Using a Carrier's Own Facilities.* We also find that Virgin Mobile, a wholly owned affiliate of Sprint Nextel, "owns" Sprint Nextel's facilities for purposes of the facilities requirement in section 214(e) of the Act. Prior to Sprint Nextel's acquisition of Virgin Mobile, Sprint Nextel provided the nationwide wireless backbone, including all network infrastructure and wireless transmission facilities for Virgin Mobile's service.<sup>37</sup> Virgin Mobile purchased wireless network services on a wholesale basis from Sprint Nextel. 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.<sup>38</sup> Based on these facts, we find that Virgin Mobile has its "own facilities" for the purposes of the section 214(e)(1) facilities requirement. 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 requirement, except as otherwise specified herein, before receiving universal service support. Instead, as with other facilities-based carriers, Virgin Mobile must offer the supported services using its own facilities or a combination of its own facilities and the resale of another carrier's services.<sup>39</sup>

16. We disagree with 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.<sup>40</sup> The Commission has previously rejected a formalistic definition of what constitutes a carrier's "own facilities" under section 214(e) in favor of a more flexible approach that meets the goals of universal service.<sup>41</sup> We also disagree with the suggestions of some that the definitions of "facilities-based carrier" or "reseller" found elsewhere in federal law must apply here.<sup>42</sup> As the Commission noted in the *Universal Service First Report and Order*, the section 214(e) facilities requirement must be construed in light of the goals of the Act.<sup>43</sup> Thus, while we may look to the definitions used in other contexts, those definitions do not bind or constrict our interpretation.

17. *Advertising Supported Services.* Virgin Mobile has committed to advertise the availability of the supported services using media of general distribution.<sup>44</sup> In addition, Virgin Mobile has

<sup>37</sup> See Virgin Mobile USA L.P. Petition for Forbearance, CC Docket No. 96-45 (filed Dec. 5, 2007).

<sup>38</sup> Letter from Antoinette Cook Bush, Counsel, Virgin Mobile USA, L.P., to Marlene H. Dortch, Secretary, FCC, at 2 & 3 n.7 (June 9, 2009) (Virgin Mobile June 9 *Ex Parte* Letter). The Commission previously concluded that entities "enjoying the beneficial use of property" may consider that property their "own." See *Universal Service First Report and Order*, 12 FCC Rcd at 8865, para. 158.

<sup>39</sup> Our decision here does not modify the previously established conditions for Virgin Mobile's limited ETC designation in New York, North Carolina, Tennessee, and Virginia. Virgin Mobile is obligated to comply with all the conditions in the *Virgin Mobile Forbearance/ETC Order* in those states. See Virgin Mobile Reply at 7 n.9 (acknowledging continuing conditions). We also emphasize that our decision here does not limit the Commission's ability in the future to condition ETC designation of a prepaid wireless service provider on compliance with obligations designed to protect the public interest.

<sup>40</sup> See AUA Comments at 4-5.

<sup>41</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8865-66, paras. 158-61.

<sup>42</sup> See Supplemental information submitted by Sheila Stickel, President and Executive Director, Advocates for Universal Access, LLC, at 2 n.3 (filed Apr. 30, 2010) (citing a definition of "facilities-based carrier" found in 18 U.S.C. § 1829); Virgin Mobile June 9 *Ex Parte* Letter at 3 (citing a definition of "reseller" found in a Commission report).

<sup>43</sup> See *Universal Service First Report and Order*, 12 FCC Rcd at 8866, para. 161.

<sup>44</sup> Virgin Mobile Alabama Petition at 5-6, Exh. 1; Virgin Mobile Connecticut Petition 14; Virgin Mobile New Hampshire Petition at 14; Virgin Mobile Delaware Petition at 14; Virgin Mobile DC Petition at 14.

committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.<sup>45</sup>

18. *Additional Eligibility Requirements.* Virgin Mobile also satisfies the eligibility requirements set forth in the *ETC Designation Order*, described above, or must make such showings in its first annual reports under section 54.209 of the Commission's rules.<sup>46</sup>

### C. Public Interest Analysis

19. We find that Virgin Mobile's universal service offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice, high-quality service offerings, and mobility. In addition, Virgin Mobile's prepaid feature may be attractive to Lifeline-eligible consumers who might otherwise be reluctant to subscribe to telephone service because of concerns about usage charges and long-term contracts. We note that we do not need to perform a creamskimming analysis because Virgin Mobile is eligible for Lifeline support only.<sup>47</sup>

20. Consistent with previous findings of the Commission and the goals of promoting the public interest and safeguarding the Lifeline fund, we condition Virgin Mobile's limited ETC designation in Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia on Virgin Mobile: (a) requiring each customer to self-certify at time of service activation and annually thereafter that he or she is the head of household and receives Lifeline-supported service only from that carrier; (b) establishing safeguards to prevent its customers from receiving multiple Lifeline subsidies from that carrier at the same address; (c) dealing directly with the customer to certify and verify the customer's Lifeline eligibility; (d) certifying that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision, and support, of 911 and E911 service for each state in which we designate it as a limited ETC.<sup>48</sup>

21. The Commission has recognized that the potential for more than one Lifeline-supported service per eligible consumer is an industry-wide problem.<sup>49</sup> To help alleviate this concern as it relates to Virgin Mobile customers, Virgin Mobile must require its Lifeline customers to self-certify under penalty of perjury upon service activation, and then annually thereafter, that they are the head of household and only receive Lifeline-supported services from Virgin Mobile. Virgin Mobile must ensure that the penalty for perjury is clearly stated on the certification form. Virgin Mobile must also track its Lifeline customer's primary residential address and prohibit more than one supported Virgin Mobile service at each residential address. Additionally, Virgin Mobile must maintain the self-certification and provide the documentation to the Commission upon request.

22. In order to ensure that Virgin Mobile complies with the conditions and requirements herein, Virgin Mobile must distribute its Lifeline service directly to its Lifeline customers. Customers may purchase handsets at Virgin Mobile's retail stores, but Virgin Mobile must deal directly with the

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<sup>45</sup> *Id.*

<sup>46</sup> See *supra* para. 5; *ETC Designation Order*, 23 FCC Rcd at 6380, para. 20; 47 C.F.R. §§ 54.202(a), 54.209; see Virgin Mobile ETC Petitions.

<sup>47</sup> *Federal-State Joint Board on Universal Service; TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206, 6213 n.47 (2008) (*TracFone ETC Designation Order*).

<sup>48</sup> See *Virgin Mobile Forbearance/ETC Order*, 24 FCC Rcd at 3392, 3395, paras. 25-26, 39.

<sup>49</sup> See *id.* at 3392, para. 25; *TracFone Forbearance Order*, 20 FCC Rcd at 15103, para. 18; see also *infra* para. 24.

customer to certify and verify the customer's Lifeline eligibility. When establishing initial and continued eligibility, Virgin Mobile must have direct contact with the Lifeline customer.<sup>50</sup>

23. We also find that requiring Virgin Mobile to comply with state-level 911 and E911 requirements as a condition to its limited ETC designation serves the public interest.<sup>51</sup> We therefore condition Virgin Mobile's designations as an ETC eligible for Lifeline support in each state on its certification that it is in full compliance with any applicable 911 and E911 obligations, including obligations relating to the provision and support of 911 and E911 services.

24. As previously noted, Virgin Mobile has voluntarily committed to implementing certain procedures to guard against waste, fraud, and abuse of its Lifeline service. In support of efforts to combat duplicative support in the Lifeline program, Virgin Mobile has voluntarily committed to providing state commissions with data that will enable the states to track whether some consumers are enrolled in more than one Lifeline program. Specifically, Virgin Mobile agrees (a) to "make available state-specific customer data, including name and address, to each state PUC where it operates for the purpose of permitting the PUC to determine whether an existing Assurance Wireless Lifeline customer receives Lifeline service from another carrier," (b) to "promptly investigate any notification that it receives from a state PUC that one of its customers already receives Lifeline service from another carrier," and (c) to "immediately deactivate the customer's Lifeline service and Virgin Mobile will no longer report that customer on USAC Form 497" if Virgin Mobile's "investigation conclude[s] that the customer receives Lifeline services from another carrier in violation of the Commission's regulations."<sup>52</sup> To guard against waste in the Lifeline program, Virgin Mobile also voluntarily commits to implementing a non-usage policy in all states where it provides Lifeline service. Virgin Mobile's non-usage policy would require Virgin Mobile to identify customers that have not used its Lifeline service for 60 days and not seek support for such customers if they do not actively use the Lifeline service during a 30-day grace period.<sup>53</sup> Virgin Mobile promises to comply with these commitments within 30 days of the effective date of this order.<sup>54</sup>

25. We find it appropriate and in the public interest to accept Virgin Mobile's voluntary commitments, as described above, and condition Virgin Mobile designation as a limited ETC in Alabama, Connecticut, Delaware, New Hampshire, and the District of Columbia, as well as its continued ETC

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<sup>50</sup> Direct contact may include telephone, fax, Internet, in-person consultation or otherwise, but may not include "point of sale procedures" that allow the Lifeline customers to submit qualifying information to the retail vendor. See *Virgin Mobile Forbearance/ETC Order*, 24 FCC Rcd at 3392, para. 26; *TracFone Forbearance Order*, 20 FCC Rcd at 15104, para. 19.

<sup>51</sup> See *Virgin Mobile Forbearance/ETC Order*, 24 FCC Rcd at 3395, para. 39; *TracFone ETC Designation Order*, 23 FCC Rcd at 15104, para. 16.

<sup>52</sup> *Virgin Mobile December 14 Ex Parte Letter* at 2.

<sup>53</sup> See *id.* ("Virgin Mobile will implement a 60-day inactivity policy in all states where it provides Lifeline services, unless directed otherwise by a state public utility commission ('PUC'). Under this policy, if no usage appears on a Virgin Mobile Lifeline customer's account during any continuous 60-day period, Virgin Mobile will promptly notify the customer that the customer is no longer eligible for Virgin Mobile Lifeline service subject to a 30-day grace period. During the 30-day grace period, the customer's account will remain active, but Virgin Mobile will engage in outreach efforts to determine whether the customer desires to remain on Virgin Mobile's Lifeline service. If the customer's account does not show any customer-specific activity during the grace period (such as making or receiving a voice call, receiving or sending a text message, downloading data or adding money to the account), Virgin Mobile will deactivate Lifeline services for that customer. In addition, the Company will not seek to recover a federal Universal Service Fund subsidy for the free minutes provided to the customer during the grace period or thereafter report that customer on its USAC Form 497.").

<sup>54</sup> *Id.*

designation in New York, North Carolina, Tennessee, and Virginia, on the company's fulfillment of these commitments.

26. In sum, subject to the above stated conditions, we find that designating Virgin Mobile as an ETC eligible only to receive Lifeline support is in the public interest.

**D. Designated Service Areas**

27. Based on the foregoing, we designate Virgin Mobile as a limited ETC, eligible only for Lifeline support, in its licensed service area in Alabama, Connecticut, Delaware, the District of Columbia, and New Hampshire as provided in Appendices B and C of this order.

**E. Regulatory Oversight**

28. Under section 254(e) of the Act, Virgin Mobile is required to use the specific universal service support it receives "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>55</sup> An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>56</sup> Lifeline assistance shall be made available to qualifying low-income consumers after the Universal Service Administrative Company (USAC) confirms that Virgin Mobile complies with the conditions imposed in this order.<sup>57</sup>

29. Virgin Mobile must meet and continue to meet each of the criteria required by the *ETC Designation Order*, and must submit information detailing how it has satisfied the criteria annually. These records and documentation must be filed with the Commission and USAC on October 1 of each year.<sup>58</sup> Virgin Mobile has also committed to providing applicable consumer protection and service quality standards.<sup>59</sup> In addition, Virgin Mobile must report certain information to the Commission and to USAC pursuant to section 54.209 of the Commission's rules.<sup>60</sup>

30. We find that reliance on Virgin Mobile's commitments to meet these requirements is reasonable and consistent with the public interest and the Act. We conclude that these additional reporting requirements will further the Commission's goal of ensuring that Virgin Mobile satisfies its obligation under section 214(e) of the Act to provide the services supported by the Lifeline program throughout its designated service area.<sup>61</sup>

<sup>55</sup> 47 U.S.C. § 254(e). Because Virgin Mobile is not eligible to receive high-cost support, we do not require it to provide high-cost certifications under sections 54.313 and 54.314 of our rules. See 47 C.F.R. §§ 54.313, 54.314.

<sup>56</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, para. 26.

<sup>57</sup> See 47 C.F.R. § 54.401(d). As noted above, we find that Virgin Mobile's service offering meets the criteria for service and functionality contained in our rules. See *supra* paras. 13-14.

<sup>58</sup> See *ETC Designation Order*, 20 FCC Rcd at 6401-02, paras. 68-69.

<sup>59</sup> See Virgin Mobile Alabama Petition at 15-16; Virgin Mobile Connecticut Petition at 15-17; Virgin Mobile Delaware Petition at 15-17; Virgin Mobile DC Petition at 15-17; Virgin Mobile New Hampshire Petition at 16-17.

<sup>60</sup> See 47 C.F.R. § 54.209(a) (specifying the information to be included in the annual reports submitted by ETCs); *ETC Designation Order*, 20 FCC Rcd at 6400-02, paras. 68-69; see also *Virginia Cellular Order*, 19 FCC Rcd at 1584, para. 46 & n.140 (anticipating that annual submissions will encompass only the ETC's designated service areas). Because Virgin Mobile will only be eligible for Lifeline support, we do not require Virgin Mobile to report on network build-out and improvements or to certify that it acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. See 47 C.F.R. § 54.209(a)(1), (8).

<sup>61</sup> 47 U.S.C. § 214(e).

31. As previously noted, Virgin Mobile has an approved compliance plan that currently governs Virgin Mobile provision of Lifeline service in other states.<sup>62</sup> In providing Lifeline services pursuant to the conditional ETC designations granted herein, Virgin Mobile must comply with the measures described in its existing compliance plan, as they relate to the conditions imposed herein and modified to reflect the additional voluntary commitments described in this order.<sup>63</sup>

32. We note that the Commission may institute an inquiry on its own motion to examine Virgin Mobile's records and documentation to ensure that the universal service support it receives is being used for the purpose for which it was intended.<sup>64</sup> Virgin Mobile is required to provide such records and documentation to the Commission and USAC upon request. We further emphasize that, if Virgin Mobile fails to fulfill the requirements of the Act, the Commission's rules, or the terms of this order after it begins receiving universal service support, the Commission may exercise its authority to revoke Virgin Mobile's ETC designation.<sup>65</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>66</sup>

#### IV. ANTI-DRUG ABUSE ACT CERTIFICATION

33. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits.<sup>67</sup> Virgin Mobile has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.<sup>68</sup> We find that Virgin Mobile's certification satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001–1.2003 of the Commission's rules.

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<sup>62</sup> See *supra* para. 9; see also Virgin Mobile USA, L.P. Compliance Plan, CC Docket No. 96-45 (filed Apr. 3, 2009); *Virgin Mobile Compliance Plan Order*, 24 FCC Rcd at 13413, para. 1 (approving that plan).

<sup>63</sup> We note that by accepting Virgin Mobile's voluntary commitments to implement a non-usage requirement in all states and to work with states to combat duplicative Lifeline service, we incorporate into the existing compliance plan Virgin Mobile's explanation of how it will comply with those commitments. See Virgin Mobile December 14 *Ex Parte* Letter at 1–2 (requesting the Commission to incorporate its description of how it will fulfill its voluntary commitments into its compliance plan as necessary). As such, Virgin Mobile may continue to receive support in New York, North Carolina, Tennessee, and Virginia so long as it complies with these commitments in those states within 30 days of the release of this order.

<sup>64</sup> 47 U.S.C. §§ 220, 403.

<sup>65</sup> See *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); see also 47 U.S.C. § 254(c).

<sup>66</sup> See 47 U.S.C. § 503(b).

<sup>67</sup> 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a). Section 1.2002(b) provides that a "party to the application" shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b); see *Section 214(e)(6) Public Notice*, 12 FCC Rcd at 22949.

<sup>68</sup> See Virgin Mobile Alabama Petition at 17, Exh. 2; Virgin Mobile Connecticut Petition at 18, Exh. 2; Virgin Mobile Delaware Petition at 17, Exh. 2; Virgin Mobile DC Petition at 18, Exh. 2; Virgin Mobile New Hampshire Petition at 18, Exh. 2.

**V. ORDERING CLAUSES**

34. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6), and pursuant to authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), Virgin Mobile USA, L.P. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER eligible only for Lifeline support for portions of its licensed service areas in Alabama, Connecticut, the District of Columbia, Delaware, and New Hampshire, to the extent described in this order and subject to the conditions set forth herein.

35. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, 47 U.S.C. § 214(e)(6), and pursuant to authority delegated in sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 54.722(a), Virgin Mobile USA, L.P.'s designation as an eligible telecommunications carrier eligible only for Lifeline support in New York, North Carolina, Tennessee, and Virginia IS CONDITIONED on its implementation of the voluntary commitments in those states as described herein.

36. IT IS FURTHER ORDERED that Virgin Mobile USA, L.P. SHALL SUBMIT additional information pursuant to section 54.209 of the Commission's rules, 47 C.F.R. § 54.209, no later than October 1, 2011, as part of its annual reporting requirements.

37. IT IS FURTHER ORDERED that a copy of this order SHALL BE TRANSMITTED by the Wireline Competition Bureau to the Alabama Public Service Commission, Connecticut Department of Public Utility Control Delaware Public Service Commission, Public Service Commission of the District of Columbia, New Hampshire Public Utilities Commission, and the Universal Service Administrative Company.

38. IT IS FURTHER ORDERED that pursuant to section 1.102 of the Commission's rules, 47 C.F.R. § 1.102, this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

## APPENDIX A

## List of Commenters

***Comment Sought on Petition of Virgin Mobile for Limited Designation as an Eligible Telecommunications Carrier in Alabama, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 965 (Wireline Comp. Bur. 2010)***

**Commenter**

National Consumers League  
National Emergency Number Association  
TracFone Wireless, Inc.

**Abbreviation**

NCL/Grange  
NENA  
TracFone

**Reply Commenter**

Virgin Mobile USA, L.P.

**Abbreviation**

Virgin Mobile

***Comment Sought on Petition of Virgin Mobile for Limited Designation as an Eligible Telecommunications Carrier in Connecticut, Delaware, New Hampshire, and the District of Columbia, WC Docket No. 09-197, Public Notice, 25 FCC Rcd 1981 (Wireline Comp. Bur. 2010)***

**Commenter**

Advocates for Universal Access, LLC  
TracFone Wireless, Inc.

**Abbreviation**

AUA  
TracFone

**Reply Commenter**

Virgin Mobile USA, L.P.

**Abbreviation**

Virgin Mobile

**APPENDIX B**

**Non-Rural Telephone Company Study Areas for Inclusion in Virgin Mobile's ETC Service Area**

**Alabama**

BellSouth Telecommunications, Inc.  
CenturyTel of Alabama, LLC (d/b/a CenturyLink)

**Connecticut**

AT&T Connecticut  
Verizon Connecticut

**District of Columbia**

Verizon Washington, D.C., Inc.

**Delaware**

Verizon Delaware Inc.

**New Hampshire**

FairPoint Communications, Inc.



**APPENDIX C****Rural Telephone Company Study Areas for Inclusion in Virgin Mobile's ETC Service Area****Alabama**

Alltel Alabama, Inc.  
Ardmore Telephone Co.  
Blountsville Telephone Co. (Otelco)  
Brindlee Mountain Telephone Co. (Otelco)  
Butler Telephone Co.  
Castleberry Telephone Co.  
Farmers Telephone Coop.  
Frontier Communications of Lamar County, LLC  
Frontier Communications of Alabama, LLC  
Frontier Communications of the South, LLC  
Graceba Total Communications, Inc.  
GTC, Inc.  
Gulf Telephone Co.  
Hayneville Telephone Co.  
Hopper Telecommunications Company, Inc. (Otelco)  
Interstate Telephone Co.  
Millry Telephone Co.  
Mon-Cre Telephone Co.  
National Telephone Co. of Alabama  
New Hope Telephone Cooperative  
Oakman Telephone Co.  
Otelco Telephone, LLC  
Peoples Telephone Co.  
Pine Belt Telephone Co.  
Ragland Telephone Co.  
Roanoke Telephone Co.  
Union Springs Telephone Co.  
Valley Telephone Company, LLC

**Connecticut**

Woodbury Telephone Company

**New Hampshire**

Bretton Woods Telephone Co.  
Dixville Telephone Co.  
Dunbarton Telephone Co.  
Granite State Telephone Inc.  
Hollis Telephone Co. d/b/a TDS Telecom  
Kearsarge Telephone Co. d/b/a TDS Telecom  
Merrimack County Telephone Co d/b/a TDS Telecom  
Northland Telephone Co. Union Telephone Co. Verizon  
Wilton Telephone Co. d/b/a TDS Telecom

### Beyond Talk Service Offering

<b>Plan</b>	<b>Web, Data Messaging &amp; e-mail</b>	<b>Anytime Minutes</b>
\$35 mo.	Unlimited	300 min.
\$45 mo.	Unlimited	1200 min.
\$55 mo.	Unlimited	Unlimited

Must purchase phone.

- [Offer Change & Data Speed Announcement](#)
- [Jobs](#)
- [Legal Info](#)

## **Corporate Communications/Media Relations**

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#### **ews Releases**

### **Virgin Mobile New Beyond Talk Plans Offer Unlimited Data Plan With No Contract**

### **Android Devices and Unlimited Data are Best Value at \$35/Month <sup>1</sup> —No Caps or Overage on Data Usage— Also Unlimited Data, Messaging and Voice at \$55**

WARREN, N.J.-July 13, 2011 -Changes to pricing and data usage costs are a familiar topic in the wireless industry these days, and customers are beginning to understand that the dramatic increase of smartphone usage and mobile internet access, now and in the future, means many carriers are making adjustments to their plans.

According to Nielsen's May 2011 survey of mobile consumers in the United States, 38 percent now own smartphones. Of those consumers, 38 percent own an Android™-powered device. Further, 55 percent of those who purchased a new handset in the past three months reported buying a smartphone, up from 34 percent just a year ago.<sup>2</sup>

Virgin Mobile successfully repositioned itself last year with its [Beyond Talk](#) plans, catering to the growing number of savvy connectors who want unlimited data. With the brand moving from inexpensive pay-as-you-go and feature phones to a more smartphone-focused lineup, Virgin Mobile will change the current Beyond Talk pricing plans effective July 20.

#### **New Beyond Talk Plans**

New Virgin Mobile plans lower the monthly price of unlimited data, text and voice to only \$55 and offer the still unbeatable<sup>3</sup> value of unlimited data and 300 voice minutes at \$35 per month on smartphones without a contract.

Effective July 20, the Virgin Mobile new Beyond Talk plans will be:

Existing Beyond Talk Rate/Month	New Beyond Talk Rate/Month	Messaging/Data	Anytime Minutes	Existing Blackberry Bolt-On	New Blackberry Bolt-On
\$25	\$35	Unlimited	300	\$10	\$0
\$40	\$45	Unlimited	1200	\$10	\$0
\$60	\$55	Unlimited	Unlimited	\$10	\$0

Existing Beyond Talk Virgin Mobile customers as of July 19 can keep their current plan pricing as long as they don't let their account expire, and they can upgrade to new devices without incurring additional costs.

"Smartphone adoption has grown significantly with mobile data traffic increasing to match," said David Trimble, vice president for Virgin Mobile USA. "Adjusting these rates ensures that our Beyond Talk customers can continue to enjoy the best value overall in the market for Android devices with unlimited data and messaging. In fact, I challenge you to find a better monthly unlimited data plan for Android devices than the Beyond Talk at \$35.

"And offering unlimited data, messaging *and* voice usage for only \$55 – \$5 per month less than the current plan – combined with our impressive smartphone line up is also a great option for customers looking for totally unlimited connectivity."

#### Data Speeds

Last week, Verizon pulled its unlimited data plan; T-Mobile and AT&T have also moved away from unlimited data usage. At this time, only Sprint, which owns Virgin Mobile USA, has truly unlimited postpaid mobile data plans in place.

Beginning in October 2011, Virgin Mobile will also move to reduce data speeds when a customer's data usage exceeds 2.5GB in a month but still provide unlimited 3G access without a contract, usage cap, overage or activation fees. Based on current usage patterns, fewer than 3 percent of Virgin Mobile USA customers use more than 2.5GB of data usage per month. After reaching this level, this minority of customers may experience slower page loads, file downloads and streaming media. When a customer's next month begins, the data usage meter starts back at zero with unlimited 3G speeds.

According to Roger Entner, analyst and founder at Recon Analytics, "The unrelenting data tsunami is challenging all carriers. So that every subscriber receives their fair share of affordable bandwidth, new policies are being introduced such as speed throttling for the heaviest users. Such policies help to ensure that a small minority does not prevent the vast majority from enjoying the wireless internet in the palm of their hand."

"We are all facing the same situation and this is the best way for Virgin Mobile to maintain the best network experience as data usage explodes," said Trimble. "Our no-contract and postpaid competitors like Cricket, MetroPCS and T-Mobile have either implemented more stringent constraints and/or don't disclose slower speeds and data caps. We believe this

adjustment – with no hard cap or overage charges for more usage – gives the most value to the largest group of consumers. It's important to Sprint and the Virgin brand that we be as up-front as possible with our customers.”

For more information about the new Beyond Talk plans, please visit [our website Media Room](#). Virgin Mobile also said the [Motorola Triumph™](#) will be available for sale as of July 20.

#### **ABOUT VIRGIN MOBILE USA**

Virgin Mobile USA, one of Sprint's prepaid brands, offers millions of customers control, flexibility and connectivity through Virgin Mobile's Beyond Talk™ plans for mobile phone service and prepaid Broadband2Go high-speed Web access. Virgin Mobile branded devices are available at more than 40,000 retail stores, including Best Buy, Radio Shack, Target and Walmart. Top-Up cards are available at approximately 150,000 locations nationwide and can be used for Broadband2Go services. Purchase and experience Virgin Mobile on the Web and at Facebook, Twitter, You Tube and [www.virginmobileusa.com](http://www.virginmobileusa.com).

<sup>1</sup> Comparison based only on competitor pricing of monthly web and data plans for Android™-powered phones. Voice offers and limited time offers excluded.

<sup>2</sup> [http://blog.nielsen.com/nielsenwire/online\\_mobile/in-us-smartphones-now-majority-of-new-cellphone-purchases/](http://blog.nielsen.com/nielsenwire/online_mobile/in-us-smartphones-now-majority-of-new-cellphone-purchases/)

**Media Contact:**

**Virgin Mobile USA**

**Jayne Wallace, 908-660-0400**

**[jayne.wallace@sprint.com](mailto:jayne.wallace@sprint.com)**

**payLo Service Offering**

<b>Plan</b>	<b>Price</b>	<b>Minutes</b>	<b>Messages</b>	<b>Web Access</b>	<b>Expiration</b>
Talk & Text	\$30	1500	1500	30 MB	1 mo.
Talk	\$20	400	15¢ each	\$1.50 MB	1 mo.
Basic Rate	\$20	20¢ min.	15¢ each	\$1.50 MB	90 days

Must purchase phone.

- Offer Change & Data Speed Announcement
- Jobs
- Legal Info

## Corporate Communications/Media Relations

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### PayLo Fact Sheet

#### Overview:

PayLo is a pay as you go service from Virgin Mobile that offers affordable alternatives to long-term wireless contracts for cell phone users seeking more basic service. Visit [www.virginmobileusa.com](http://www.virginmobileusa.com) for further details.

#### Plans:

**\$30/1,500-minutes expires in one month/also includes:**

- 500 messages (text, picture messages, e-mail and IM)

- 10MB Web access

**\$20/400-minute/expires in one month Basic Rate 20-cents per minute/expires in 90 days**

- Additional minutes are 20 cents each
- Basic text rate: 15 cents each
- Data Rate: \$1.50/MB
- Picture Messaging Rate: 25 cents each

**Ideal for:**

- People who are budget conscious and voice communicators looking for a simple monthly pay by the minute plan
- No frills customer looking for the best value in a voice plan
- Those seeking basic and affordable handsets without all the bells and whistles

**Top-Up Cards:**

Top-Up cards available in the following denominations:

- \$20 Top-up card
- \$10 Top-up card = for mobile data services

**Distribution:**

Virgin Mobile branded handsets are available at more than 40,000 retail stores, including Target, Walmart, Best Buy and RadioShack. Top-Up cards are available at approximately 150,000 locations nationwide. Purchase and experience Virgin Mobile on the Web and at Facebook, Twitter, You Tube and [www.virginmobileusa.com](http://www.virginmobileusa.com).

**Easy to Use:**

- Keep track of minutes from the handset. Check for free up to five times a day
- Easily manage account online at [www.virginmobileusa.com](http://www.virginmobileusa.com)
- Add money with cash, PayPal, credit or debit cards

**Handsets:**

LG 101: \$19.99



F





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 [HOW TO QUALIFY](#)   
 [CHECK AVAILABILITY](#)   
 [FAQS](#)   
 [CHECK STATUS](#)   
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**ACTIVATE**

## Assurance Wireless Lifeline Program

### How Our Lifeline Phone Program Works

- 1 **250 FREE Voice Minutes** added automatically, you do nothing.
- 2 **Add money** if you decide to choose the \$5 or \$20 offer and to pay for any services not included, like additional minutes, texting or international calls.
- 3 **Buy Virgin Mobile Top-Up cards** from thousands of stores across the country. Or use credit, debit or PayPal.

All customers get



**FREE Phone + 250 FREE Voice Minutes**  
Added To Your Phone Each Month

**Need more talk?**

Add \$5/Month to get:  
**500 Total Voice Minutes**  
 Added to Your Phone Each Month  
*(250 Free Minutes + 250 Minutes for \$5)*

**Need even more talk + text?**

Add \$20/Month to get:  
**1,000 Total Voice Minutes + 1,000 Texts**  
 Added To Your Phone Each Month  
*(250 FREE Minutes + 750 Minutes + 1000 Texts for \$20)*

### Access to Other Offerings

If you decide to add money to your account with a Virgin Mobile Top-Up card or a credit/debit card, you can also take advantage of the following Virgin Mobile offerings:

- \_ Additional minutes at 10¢ each
- \_ 10¢ text messages
- \_ Messaging Packs as low as \$5 for 200 messages
- \_ 411 service at \$1.75 per call + standard airtime charges
- \_ International calling at great rates to over 200 countries
- \_ And so much more

Pricing for domestic calls and messaging only. All domestic text prices are to send and receive.

Minimum Top-Up of \$10 may be required. See Terms of Service for details.

### HOW TO APPLY

**By Phone**

Call 1-888-898-4888 to request an application

**By Mail or Fax**

Print out [an application](#)

### PROGRAM BENEFITS

- A Free Phone And 250 FREE Voice Minutes Added Automatically
- No Annual Contract (no bills, activation fees, or surcharges)
- Nationwide Sprint Network Coverage
- Voicemail Account, Call Waiting, and Caller ID included
- 911 Access
- Calls to Customer Care are FREE

**Virgin Mobile offers dual tone multi-frequency and single line service with access to operator services and directory assistance.**

Service within nationwide coverage area reaching more than 278 million people. Assurance Wireless is not available in all areas. Visit [virginmobileusa.com](http://virginmobileusa.com) for a detailed map and to check if service is available in your area.

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## Cell Phone Program FAQs

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**What is Assurance Wireless?**

Assurance Wireless offers eligible customers a FREE wireless phone and 250 FREE minutes of nationwide wireless

Exhibit E to First Amended Application of Virgin Mobile, p. 3

voice service each month. The 250 FREE minutes each month are for local and domestic Long-Distance calling. There are no bills, long-term contracts and activation fees for Assurance Wireless customers.

Assurance Wireless is brought to you by Virgin Mobile USA and is a Lifeline Assistance program supported by the Universal Service Fund. Lifeline Assistance is only available on one phone line per household. Assurance Wireless is available in limited geographic areas and is subject to the Assurance Wireless Terms of Service.

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**Is Assurance Wireless service nationwide?**

Yes. Service within the nationwide coverage area reaches more than 278 million people and is provided on the Nationwide Sprint@Network. Coverage is not available everywhere.. Visit [virginmobileusa.com](http://virginmobileusa.com) for a detailed map and to check if service is available in your area.

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**In what states is Assurance Wireless offered?**

Assurance Wireless is currently available in Alabama, Arkansas, Connecticut, District of Columbia, Delaware, Florida, Georgia, Iowa, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and West Virginia. If you do not live in one of these states, please check back with us in the future. We will continue to expand to additional states over time.

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**How would I qualify for Assurance Wireless?**

Although eligibility varies by state, you may qualify for Assurance Wireless if you participate in Medicaid, Food Stamps/SNAP, Social Security Income (SSI), or other government programs. You may also qualify if your total household income meets government guidelines in your state. Click [How To Qualify](#) to see eligibility criteria for your state.

Click on the [Check Availability](#) tab to see if Assurance Wireless is offered in your area.

Depending on the state in which you live, you may be asked to provide proof of government program participation.

If you are applying based on income eligibility, you will need to provide a copy of last year's State or Federal income tax return or 3 consecutive months' worth of your most current pay stubs, Social Security benefits statement, Veterans Administration benefits statement, Retirement/Pension benefits statement, divorce decree or child support document, or Unemployment/Workers Compensation benefits statement.

Please remember to send copies of these documents (not originals) since they will NOT be returned.

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**Do any restrictions apply?**

Yes, only a few restrictions apply:

Assurance Wireless is only available to individuals who participate in a qualifying government program or are income eligible

Only one wireless or landline Lifeline account is allowed per household

The address you provide for your phone service must be your place of residence

Your phone service must be in the name of the qualified customer **and is non-transferable**

Assurance Wireless participation is subject to the Assurance Wireless Terms of Service found on [www.assurancewireless.com](http://www.assurancewireless.com)

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**How can I apply for Assurance Wireless?**

Call us at 1-888-898-4888 and an advisor will be happy to assist you in the application process. Or, you can print an application online. [Click Application](#).

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**How much does Assurance Wireless cost?**

Assurance Wireless is FREE to eligible customers. Assurance Wireless offers a FREE phone and 250 FREE minutes of wireless voice service to eligible customers each month. There are no bills, long-term contracts or activation fees for Assurance Wireless customers.

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**What if I need more than 250 FREE voice minutes?**

If you need more minutes, you have 3 options:

- **\$5 Talk** – Add \$5 each month to get 500 total voice minutes (250 FREE minutes + 250 minutes)
- **\$20 Talk & Text** – Add \$20 each month to get 1000 total voice minutes and 1000 text messages (250 FREE minutes + 750 minutes + 1000 texts)
- Additional voice minutes for 10¢ each

Assurance Wireless is FREE to eligible customers. Assurance Wireless offers a FREE phone and 250 FREE minutes of wireless voice service to eligible customers each month. There are no bills, long-term contracts or, activation fees for Assurance Wireless customers.

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**What if I need to access additional services like texting or international calling?**

Yes. You may add money to your account with a credit/debit card, PayPal, or a Virgin Mobile Top-Up card to take advantage of the following service offerings:

- Text messages for 10¢ each
- Messaging Packs as low as \$5 for 200 text messages
- 411 service at \$1.75 per call + standard airtime charges
- International calling at great rates to over 200 countries
- Mobile Web, ringtones, games, graphics, and more

Pricing for domestic calls and messaging only. All domestic text prices are to send and receive.

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**How do I add money to my account if I need more than 250 FREE minutes a month?**

You can buy a Virgin Mobile Top-Up card from thousands of stores across the country or use credit, debit, or PayPal. Add money to your account to choose either the \$5 Talk or \$20 Talk & Text offer or to pay for services not included like additional minutes, text messaging, or International calls.

From the Web:

[Click](#) to add money to your account.

Once you add money, log into your account and select 'Log in'. Enter your Assurance Wireless phone number and account PIN. This will take you to the 'My Account' page.

If you want to choose either the \$5 Talk or \$20 Talk & Text offer, select 'Change Offers'. These offers can be added in the middle of a month or at the start of your next month of service.

If you do not choose either offer, you still have the option to use more than the 250 FREE minutes you receive each month. You will be charged 10¢ for every minute you use after you've used up your 250 FREE minutes – as long as you have money in your account.

From my Phone:

Purchase a Virgin Mobile Top-Up card.

Hit the 'Up' arrow on your phone keypad. From the 'My Account' page, hit the button to 'Top-Up Now'.

Access your account by hitting the 'Up' arrow. Your current offer and the minutes you have used this month will be displayed on the screen. Hit the 'Down' arrow until you can see the 'Buy More Minutes' section. You will see two offers:

- \$5 for 500 minutes
- \$20 for 1000 minutes/1000 texts

Move your arrow over the offer you want (the link will turn yellow) and hit the 'Select' button. These offers can be added in the middle of a month or at the start of your next month of service.

If you choose not to select either offer, you still have the option to use more than the 250 FREE minutes each month. You will be charged 10¢ for every minute you use after you've used up 250 FREE minutes – as long as you have money in your account.

Minimum Top-Up of \$10 may be required. See Terms of Service for details.

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**How long can I have Assurance Wireless?**

1) When you sign your Assurance Wireless application, you are confirming that you qualify for Assurance Wireless service based on government program participation or income eligibility. You are also confirming that you are the head of household and that your household receives only one lifeline discount (wireless or landline).

1a) If you live in Texas, be sure to make at least one call every 90 days to continue receiving your free minutes each month.

1b) If you live in Florida, be sure to make at least one call every 60 days to continue receiving your free minutes each month.

2) Remember to inform us immediately upon learning that you no longer qualify for Assurance Wireless, and we will discontinue your Assurance Wireless service. If you would like, at that time we would be happy to switch you to a Virgin Mobile plan that works for you.

3) We will contact you annually to verify that you still qualify for Assurance Wireless. If during this process you do not respond by the response date, or we learn that you no longer qualify, we will discontinue your Assurance Wireless service.

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**What is Annual Certification?**

Each year, Federal and/or State regulatory authorities require that customers certify their eligibility for Lifeline Assistance programs at the time of the customer's service anniversary date

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**What do I need to do to certify for the Lifeline Assistance program from Assurance Wireless?**

In order to continue receiving your Lifeline service from Assurance Wireless, you must certify that you still qualify for Assurance Wireless based on participation in certain public assistance programs such as Medicaid, Food Stamps/SNAP, and Supplemental Security Income (SSI). You may also continue to qualify if your total household income is at or below applicable Federal Poverty Guideline thresholds based on family size. Please click [How To Qualify](#) to see eligibility criteria for your state.

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**How can I certify for the Lifeline Assistance program from Assurance Wireless?**

We have several ways for you to certify- choose the one that's easiest for you:

- Use your Assurance Wireless phone to call our automated phone line at 1-888-321-5880 and follow the prompts.
- Visit [www.assurancewireless.com](http://www.assurancewireless.com) and click on Annual Certification.
- Complete, sign and mail the annual reminder form using the postage- paid envelope included with the form. If you prefer, you can fax the annual reminder form to 1-877-732-3018.

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**When/How do I participate in the Annual Certification process?**

Assurance Wireless will send you friendly reminders prior to your service anniversary date. Certifications must be signed and received prior to your service anniversary date.

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**When will I receive my minutes each month?**

Upon application approval and receipt of your Assurance Wireless phone, you will need to follow the directions included in the Quick Start Guide ("Activate Your Phone & Start Talking"). Once your phone is activated, you will receive your first 250 voice minutes. You will continue to receive 250 FREE minutes every month until you no longer qualify for the program. If you purchased the \$5 offer, you will receive 500 total voice minutes every month as long as you have a cash balance of \$5 in your account when your new month starts. If you purchased the \$20 offer, you will receive 1000 total voice minutes and 1000 text messages every month as long as you have a cash balance of \$20 in your account when your new month starts. If you don't have sufficient cash balance for your selected offer, you will still receive the 250 FREE voice minutes each month as long as you remain eligible.

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**What should I do if I do not receive my minutes in a particular month?**

Please call 1-888-321-5880 and an advisor will be happy to assist you. (JAX User Manual) or (Marbl User Manual).

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**How can I find more information about my Assurance Wireless phone?**

To find more information about your Assurance Wireless phone, visit <http://www.virginmobileusa.com/resources/phones/prepaid/manual/kyocera-aw-jax.pdf> (JAX User Manual) or <http://www.virginmobileusa.com/resources/phones/prepaid/manual/kyocera-marbl.pdf> (Marbl User Manual).

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**How do I activate my Assurance Wireless phone?**

Before you start using your Assurance Wireless phone, you will need to perform a few simple steps to set it up on the network:

1. Insert the battery. Turn your phone on by pressing and holding the red power button (or End key). You should see a screen that says "Hi! To get started, press Activate now". Select 'Activate' by pressing the right option key. (The right option key is the key with a thick white line under the word 'Activate' on the right side of the screen.)
2. The next screen will say "Hold on while we connect to the network..."
3. Once your phone connects to the network, the screen will say: "Welcome to Assurance Wireless – Please enter your 10-digit Account PIN to continue". Click the left option key to enter your Account PIN. Once you've entered your 10-digit Account PIN, press the left option key to select 'Done'. Then press the 'Down' arrow to scroll down and select the word 'Submit' on the screen (the 'Down' arrow is the bottom part of the circular button in the middle of the phone.) Once you've selected 'Submit', press the left option key to continue. You can find your Account PIN at the top of your Assurance Wireless approval letter which you received in the mail.
4. Once you enter the correct Account PIN, the screen will say "Activating your phone now...this should only take a second or two."
5. You will see a confirmation screen which will display your new Assurance Wireless phone number. Write the number down so you don't forget it. The phone will need to restart to complete activation. Hit 'Select' by pressing the left option key to restart the phone.
6. Once the phone restarts, you will see a message letting you know that you can start using your new phone!

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**What should I do if I lose my Assurance Wireless phone?**

Don't panic. Take another look around and try to find your phone.

If you still can't locate your phone, let us know right away and we'll suspend service. That way, once your service is suspended, no one can use your remaining balance. We can help you get a replacement phone. We usually can have it to you in just a few days, and we'll transfer any remaining balance in your account to your replacement phone.

Call us at 1-888-321-5880 to suspend your account.

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**What should I do if my Assurance Wireless phone breaks within the first year?**

Your Assurance Wireless phone comes with a one-year warranty from the original equipment manufacturer. If you experience an equipment malfunction, call us at 1-888-321-5880 and we will arrange for a replacement mobile phone.

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**Can I use a Virgin Mobile PayLo phone with an Assurance Wireless account?**

Selected Virgin Mobile phones other than the primary handset, the Assurance Wireless Jax by Kyocera, may be used with an Assurance Wireless account. However, for the best customer experience, we encourage you to use the handset sent to you by Assurance Wireless. From time to time, a different model phone may be provided to new Assurance Wireless customers due to availability.

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**Can I use any Virgin Mobile phone with my Assurance Wireless account?**

Selected Virgin Mobile phones may be used with an Assurance Wireless account excluding the Party Animal, Super Model, Blackberry® and Android™ models. However, for the best customer experience we encourage you to use the handset sent to you by Assurance Wireless.

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**Can I use a Blackberry with an Assurance Wireless account?**

No, the Blackberry data platform cannot be used with an Assurance Wireless account.

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**Can I use an Android™ -powered phone with an Assurance Wireless account?**

No, an Android™ -powered phone cannot be used with an Assurance Wireless account.

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**Why did I get a different phone than the one pictured on the Assurance Wireless website?**

Free Assurance phones are dependent upon availability, and models shipped could vary.

Free Assurance Wireless phones cannot be traded for another model.

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**Do new customers get a choice of phones on Assurance Wireless?**

We are offering new customers in Georgia, Indiana and Michigan a choice of phones for a limited time while supplies last : the Assurance Wireless Jax by Kyocera for FREE or an Assurance Wireless Loft full-keyboard phone by Kyocera for \$29.99 (excluding taxes) More details can be found at this link: [www.assurancewireless.com/loft](http://www.assurancewireless.com/loft) .

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**How do I choose my phone?**

If you are applying for Assurance Wireless service in Georgia, Indiana or Michigan, be sure to check the box on the application to specify if you would like the free Assurance Wireless Jax or the \$29.99 Assurance Wireless Loft. We will send a free Assurance Wireless Jax if you don't make a selection. If you pick the Assurance Wireless Loft DO NOT send any money. You will need a Debit or Credit card to purchase the Loft. We will send you instructions on how to order your new phone in the mail. The free Jax is the only phone being offered in other states at this time.

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**How do I order my phone?**

If you are applying for Assurance Wireless service in Georgia, Indiana or Michigan, and you picked the \$29.99 Assurance Wireless Loft on your application, you will receive a letter telling you how to order the phone. The letter will provide you with an account number and your account PIN.

Upon receipt of eligibility confirmation, you must successfully order and pay \$29.99 for the Loft within 14 days of acceptance, or you will be sent the free Assurance Wireless Jax or other available model. \$29.99 Payment for the Assurance Wireless /loft must be made either online at [www.assurancewireless.com/loft](http://www.assurancewireless.com/loft) or at Customer Care 1-888-321-5880. Acceptable Methods of Payment: Debit Card, Credit Card, or PayPal.

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**What features are available for AW phones?**

<b>Assurance Wireless Jax</b>	<b>Assurance Wireless Loft</b>
<b>FREE!</b>	<b>Only \$29.99 (excludes taxes) for New Customers</b>
Simple-to-use Talk & Text Phone	Full-Keyboard For Faster texting
Thin Design	1.3 MP Camera
Full Color Screen	Large Screen For Improved Mobile Web Experience
Mobile Web	Hands-free Bluetooth®

We are offering new customers in Georgia, Indiana and Michigan a choice of phones for a limited time while supplies last : the Assurance Wireless Jax by Kyocera for FREE or an Assurance Wireless Loft full-keyboard phone by Kyocera for \$29.99 (excluding taxes) More details can be found at this link: [www.assurancewireless.com/loft](http://www.assurancewireless.com/loft) .

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**If I am an existing Assurance Wireless customer, can I switch phones?**

If you are a current Assurance Wireless customer and live in Georgia, Indiana or Michigan, you can log into your account at [www.assurancewireless.com](http://www.assurancewireless.com) and order an Assurance Wireless Loft as an upgrade phone for \$88.99(excluding taxes, shipping and handling). I thought Assurance Wireless offers a free phone? Assurance Wireless offers a free phone to everyone who is approved for service. The Assurance Wireless Jax is currently being offered as the current free phone. From time to time, a different model phone may be provided to new Assurance Wireless customers due to availability.

We are offering new customers in Georgia, Indiana and Michigan a choice of phones for a limited time while supplies last : the Assurance Wireless Jax by Kyocera for FREE or an Assurance Wireless Loft full-keyboard phone by Kyocera for



\$29.99 (excluding taxes) More details can be found at this link: [www.assurancewireless.com/loft](http://www.assurancewireless.com/loft).

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**Android is a trademark of Google, Inc.**

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Service within nationwide coverage area reaching more than 278 million people. Assurance Wireless is not available in all areas. Visit [virginmobileusa.com](http://virginmobileusa.com) for a detailed map and to check if service is available in your area.

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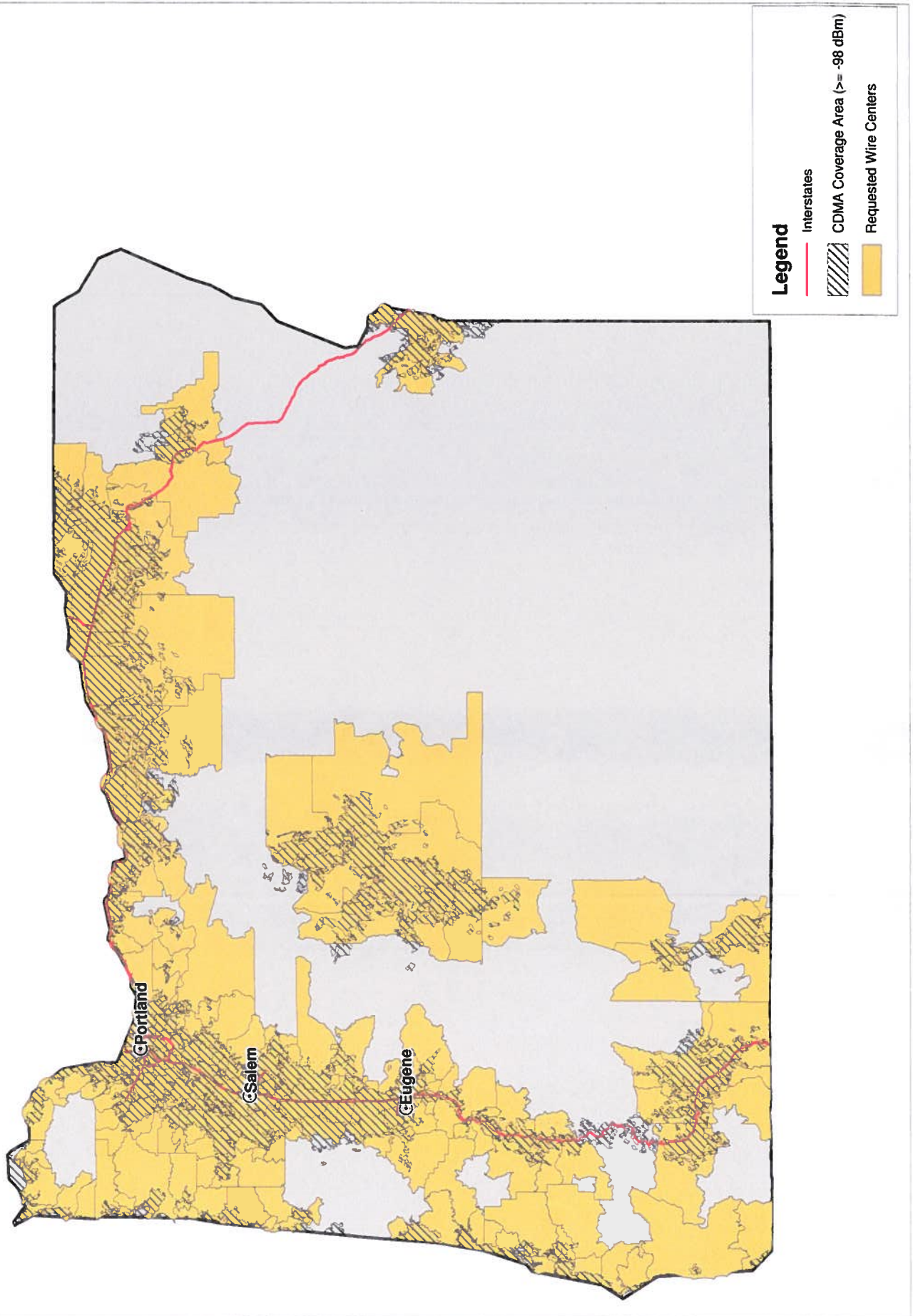


Exhibit F to First Amended Application of Virgin Mobile, p. 10/25

VIRGIN MOBILE USA, L.P.  
 PROPOSED WIRE CENTER LIST  
 (Requested designation excludes tribal lands)

<u>WCCode</u>	<u>I L E C NAME</u>	<u>WIRE CENTER NAME</u>
BVCKORXA	BEAVER CREEK COOPERATIVE TELEPHONE CO.	BEAVER CREEK
CNBYORXA	CANBY TELEPHONE ASSOCIATION	CANBY
NEDYORXA	CANBY TELEPHONE ASSOCIATION	NEEDY
CRBTORXC	CASCADE UTILITIES, INC.	CORBETT
EGCKORXX	CASCADE UTILITIES, INC.	EAGLE CREEK
ESCDORXX	CASCADE UTILITIES, INC.	ESTACADA
RPBKORXX	CASCADE UTILITIES, INC.	RIPPLEBROOK
SCBGORXA	CASCADE UTILITIES, INC.	SCOTTSBURG
BDMNORXA	CENTURYTEL OF EASTERN OREGON	BOARDMAN
CHLQORXA	CENTURYTEL OF EASTERN OREGON	CHILOQUIN
DRANORXA	CENTURYTEL OF EASTERN OREGON	DRAIN
ECHOORXA	CENTURYTEL OF EASTERN OREGON	ECHO
FTKLORXX	CENTURYTEL OF EASTERN OREGON	FT KLAMATH
GLCHORXA	CENTURYTEL OF EASTERN OREGON	GILCHRIST
GVC MORXA	CENTURYTEL OF EASTERN OREGON	GOVERNMENT CAMP
HPNRORXA	CENTURYTEL OF EASTERN OREGON	HEPPNER
IONEORXA	CENTURYTEL OF EASTERN OREGON	IONE
LXTNORXA	CENTURYTEL OF EASTERN OREGON	LEXINGTON
MRRLORXA	CENTURYTEL OF EASTERN OREGON	MERRILL
PLRKORXX	CENTURYTEL OF EASTERN OREGON	PILOT ROCK
RCPNORXA	CENTURYTEL OF EASTERN OREGON	ROCKY POINT
SHDDORXA	CENTURYTEL OF EASTERN OREGON	SHEDD
AURRORXA	CENTURYTEL OF OREGON, INC.	AURORA
BWVLORXX	CENTURYTEL OF OREGON, INC.	BROWNSVILLE
CHBUORXA	CENTURYTEL OF OREGON, INC.	CHARBONNEAU
CRWLORXA	CENTURYTEL OF OREGON, INC.	CRESWELL
DPBYORXX	CENTURYTEL OF OREGON, INC.	DEPOE BAY
GLNNORXA	CENTURYTEL OF OREGON, INC.	GLENEDEN BEACH
KNPPORXA	CENTURYTEL OF OREGON, INC.	KNAPPA
LBNNORXB	CENTURYTEL OF OREGON, INC.	LEBANON
SCPPORXA	CENTURYTEL OF OREGON, INC.	SCAPPOOSE
SWTHORXX	CENTURYTEL OF OREGON, INC.	SWEET HOME
YNCLORXA	CENTURYTEL OF OREGON, INC.	YONCALLA
RDLDRORXX	CLEAR CREEK MUTUAL TELEPHONE CO.	REDLAND
COTNORXA	COLTON TELEPHONE CO.	COLTON
ALOHARXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	ALOHA
AMTYORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	AMITY
AMVLORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	AUMSVILLE
BKNGORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	BROOKINGS
BNDNORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	BANDON
BNKSORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	BANKS
BVTNORXB	FRONTIER COMMUNICATIONS NORTHWEST, INC.	BEAVERTON
CLTSORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	CLATSKANIE
COVEORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	COVE
CQLLORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	COQUILLE
CSBYORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	COOS BAY
DYTNORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	DAYTON

EMPRORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	EMPIRE
FRGVORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	FOREST GROVE
GDISORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	GRAND ISLAND
GLBHORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	GOLD BEACH
GRHMORXB	FRONTIER COMMUNICATIONS NORTHWEST, INC.	GRESHAM
GSTNORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	GASTON
HDLTORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	HOOD LAND
HLBOORXB	FRONTIER COMMUNICATIONS NORTHWEST, INC.	HILLSBORO
LAGRORXB	FRONTIER COMMUNICATIONS NORTHWEST, INC.	LA GRANDE
LKSDORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	LAKESIDE
LNGLORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	LANGLOIS
MMVLORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	MCMINNVILLE
MRPHORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	MURPHY
MYPNORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	MYRTLE POINT
NBNDORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	NORTH BEND
NWBRORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	NEWBERG
ORNTORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	ORIENT
PTORORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	PORT ORFORD
RDPTORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	REEDSPORT
SCHLORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SCHOLLS
SHWDORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SHERWOOD
SLTNORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SILVERTON
SMRWORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SOMERSET WEST
SNDYORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SANDY
SNSDORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	SUNNYSIDE
STFRORXX	FRONTIER COMMUNICATIONS NORTHWEST, INC.	STAFFORD
TGRDORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	TIGARD
TGRDORXC	FRONTIER COMMUNICATIONS NORTHWEST, INC.	BULL MOUNTAIN
TRNRORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	TURNER
TULTORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	TUALATIN
UNINORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	UNION
VYVWORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	VALLEY VIEW
WIVLORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	WILSONVILLE
YMHORXA	FRONTIER COMMUNICATIONS NORTHWEST, INC.	YAMHILL
GRVSORXX	GERVAIS TELEPHONE CO. DBA DATAVISION COM	GERVAIS
HELXORXA	HELIX TELEPHONE CO.	HELIX
MCHMORXB	HELIX TELEPHONE CO.	MEACHAM
CNDNORXB	HOME TELEPHONE CO. OR	CONDON
MLLORXA	MOLALLA TELEPHONE CO.	MOLALLA
MNTRORXA	MONITOR COOPERATIVE TELEPHONE CO.	MONITOR
MONRORXB	MONROE TELEPHONE CO.	MONROE
MTANORXA	MT. ANGEL TELEPHONE CO.	MT ANGEL
NHLMORXA	NEHALEM TELECOMMS, INC. DBA NEHALEM TEL	NEHALEM
DUFUORXA	NORTH - STATE TELEPHONE CO	DUFUR
LYNSORXA	PEOPLES TEL CO	LYONS
ADAROR21	QWEST CORPORATION	ADAIR
ALBYOR63	QWEST CORPORATION	ALBANY
ASLDOR	QWEST CORPORATION	ASHLAND
ASTROR64	QWEST CORPORATION	ASTORIA
ATHNOR56	QWEST CORPORATION	ATHENA-WESTON
BENDOR24	QWEST CORPORATION	BEND
BLBTOR01	QWEST CORPORATION	BLACK BUTTE

BURLOR62 QWEST CORPORATION  
CLVROR01 QWEST CORPORATION  
CNBHOR64 QWEST CORPORATION  
CNPNOR29 QWEST CORPORATION  
CRVSOR QWEST CORPORATION  
CTGVOR53 QWEST CORPORATION  
DLLSOR58 QWEST CORPORATION  
EUGNOR28 QWEST CORPORATION  
EUGNOR53 QWEST CORPORATION  
FLCYOR58 QWEST CORPORATION  
FLRNOR53 QWEST CORPORATION  
GLHLOR55 QWEST CORPORATION  
GRPSOR29 QWEST CORPORATION  
HMTNOR56 QWEST CORPORATION  
INDPOR58 QWEST CORPORATION  
JCVLOR56 QWEST CORPORATION  
JFSNOR63 QWEST CORPORATION  
JNCYOR51 QWEST CORPORATION  
KLFLOR54 QWEST CORPORATION  
LAPIOR52 QWEST CORPORATION  
LKOSOR62 QWEST CORPORATION  
LWLLOR53 QWEST CORPORATION  
MDFDOR33 QWEST CORPORATION  
MDRSOR52 QWEST CORPORATION  
MLTNOR56 QWEST CORPORATION  
MLWKOR17 QWEST CORPORATION  
NPLNOR62 QWEST CORPORATION  
NWPTOR35 QWEST CORPORATION  
NYSSORXC QWEST CORPORATION  
ONTRORXC QWEST CORPORATION  
ORCYOR18 QWEST CORPORATION  
ORSLORXC QWEST CORPORATION  
PHNXOR55 QWEST CORPORATION  
PNTNOR QWEST CORPORATION  
PRVLOR53 QWEST CORPORATION  
PTLDOR02 QWEST CORPORATION  
PTLDOR08 QWEST CORPORATION  
PTLDOR11 QWEST CORPORATION  
PTLDOR12 QWEST CORPORATION  
PTLDOR13 QWEST CORPORATION  
PTLDOR14 QWEST CORPORATION  
PTLDOR17 QWEST CORPORATION  
PTLDOR18 QWEST CORPORATION  
PTLDOR69 QWEST CORPORATION  
RANROR01 QWEST CORPORATION  
RDMDOR01 QWEST CORPORATION  
RGRVOR55 QWEST CORPORATION  
RSBGOR57 QWEST CORPORATION  
SALMOR58 QWEST CORPORATION  
SALMOR59 QWEST CORPORATION  
SESDOR64 QWEST CORPORATION  
SLTZOR66 QWEST CORPORATION

BURLINGTON  
CULVER  
CANNON BEACH  
CENTRAL POINT  
CORVALLIS  
COTTAGE GROVE  
DALLAS  
EUGENE-RIVER ROAD  
EUGENE-10TH AVENUE  
FALLS CITY  
FLORENCE  
GOLD HILL  
GRANTS PASS  
HERMISTON  
INDEPENDENCE  
JACKSONVILLE  
JEFFERSON  
JUNCTION CITY  
KLAMATH FALLS  
LAPINE  
LAKE OSWEGO  
LOWELL  
MEDFORD  
MADRAS  
MILTON-FREEWATER  
MILWAUKIE  
NORTH PLAINS  
NEWPORT  
NYSSA  
ONTARIO  
OREGON CITY  
OREGON SLOPE  
PHOENIX  
PENDLETON  
PRINEVILLE  
PORTLAND - CYPRESS  
PORTLAND - HAROLD  
PORTLAND - ALPINE  
PORTLAND - ATLANTIC  
PORTLAND - BELMONT  
PORTLAND - BUTLER  
PORTLAND - CHERRY  
PORTLAND - PROSPECT  
PORTLAND - CAPITOL  
RAINIER  
REDMOND  
ROGUE RIVER  
ROSEBURG  
SALEM  
KEIZER  
SEASIDE  
SILETZ

SPFDOR01	QWEST CORPORATION	SPRINGFIELD
SPRVOR02	QWEST CORPORATION	SPRING RIVER
SSTROR01	QWEST CORPORATION	SISTERS
STFDOR56	QWEST CORPORATION	STANFIELD
STHNOR40	QWEST CORPORATION	SAINT HELENS
STHROR58	QWEST CORPORATION	SUTHERLIN
TOLDOR66	QWEST CORPORATION	TOLEDO
UMTLOR57	QWEST CORPORATION	UMATILLA
VALEORXC	QWEST CORPORATION	VALE
VENTOR54	QWEST CORPORATION	VENETA
WDBNOR59	QWEST CORPORATION	WOODBURN
WLWLWA	QWEST CORPORATION	WALLA WALLA (OREGON PORTION)
WNTNOR57	QWEST CORPORATION	WINSTON
WRTNOR64	QWEST CORPORATION	WARRENTON
WSPTOR64	QWEST CORPORATION	WESTPORT
HLSYORXB	ROOME TELECOMMUNICATIONS, INC.	HALSEY
SCIOORXA	SCIO MUTUAL TELEPHONE ASSOCIATION	SCIO
STPLORXX	ST PAUL COOPERATIVE TELEPHONE ASSOCIATIO	ST PAUL
STTNORXA	STAYTON COOPERATIVE	STAYTON
ARTNORXA	UNITED TELEPHONE - NORTHWEST	ARLINGTON
BEVRORXA	UNITED TELEPHONE - NORTHWEST	BEAVER
BYCYORXA	UNITED TELEPHONE - NORTHWEST	BAY CITY
CODLORXA	UNITED TELEPHONE - NORTHWEST	CLOVERDALE
CRTOORXA	UNITED TELEPHONE - NORTHWEST	CARLTON
CSLCORXA	UNITED TELEPHONE - NORTHWEST	CASCADE LOCKS
GRBLORXA	UNITED TELEPHONE - NORTHWEST	GARIBALDI
GRRNORXA	UNITED TELEPHONE - NORTHWEST	GRANDE RONDE
HDRVORXA	UNITED TELEPHONE - NORTHWEST	HOOD RIVER
LNCYORXX	UNITED TELEPHONE - NORTHWEST	LINCOLN CITY
MOROORXA	UNITED TELEPHONE - NORTHWEST	MORO
MOSRORXX	UNITED TELEPHONE - NORTHWEST	MOSIER
ODLLORXX	UNITED TELEPHONE - NORTHWEST	ODELL
PCCYORXX	UNITED TELEPHONE - NORTHWEST	PACIFIC CITY
RKWYORXA	UNITED TELEPHONE - NORTHWEST	ROCKAWAY
RUFSORXA	UNITED TELEPHONE - NORTHWEST	RUFUS
SHCVORXX	UNITED TELEPHONE - NORTHWEST	SHADY COVE
SHRDOR	UNITED TELEPHONE - NORTHWEST	SHERIDAN
THDLOR	UNITED TELEPHONE - NORTHWEST	THE DALLES
TLMKORXA	UNITED TELEPHONE - NORTHWEST	TILLAMOOK
WASCORXA	UNITED TELEPHONE - NORTHWEST	WASCO
WLMNORXB	UNITED TELEPHONE - NORTHWEST	WILLAMINA
WHCYOR	UNITED TELEPHONE - NORTHWEST	WHITE CITY

### **Virgin Mobile's Non-Usage and Fraud Protection Policy.**

As protection against fraudulent use of the Company's Lifeline services, Virgin Mobile tracks each applicant's primary residential address and cross-checks this information against internal databases to confirm that a Virgin Mobile Lifeline account has not already been activated for that address or individual. If a name or address submitted by a Lifeline applicant is associated with a customer who already receives Virgin Mobile Lifeline service, or if the address provided is not a valid U.S. Postal address, Virgin Mobile will review the application to ascertain whether the customer is attempting to activate multiple Virgin Mobile Lifeline accounts and, if so, deny the application. If Virgin Mobile identifies customers who attempt to activate multiple Virgin Mobile Lifeline accounts, it will notify Commission staff through the No Match Report as defined in OAR 860-033-0046.<sup>1</sup>

To ensure that USF funds are received only for customers who actively use their Lifeline services, Virgin Mobile will implement an inactivity policy in Oregon. Under this policy, if a customer does not make a voice call or send a text message or otherwise demonstrate activity at least once during any continuous 60-day period, Virgin Mobile will promptly notify the customer that the customer is no longer eligible for Lifeline service subject to a 30-day grace period. During the 30-day grace period, the customer's account will remain active, and Virgin Mobile will engage in outreach efforts to determine whether the customer desires to remain on its Lifeline service. If the customer's account does not show any customer-specific activity during the grace period (such as making or receiving a voice call, receiving or sending a text message,

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<sup>1</sup> It is important to note that Virgin Mobile does not have access to the customer lists of other ETCs and, thus, cannot cross-match its customer list against another ETC's list.

downloading data or adding money to the account), Virgin Mobile will deactivate Lifeline services for that customer. In addition, Virgin Mobile will not recover a federal USF subsidy for the free minutes provided to the customer during the grace period or thereafter report that customer on its USAC Form 497.



**Exhibit I**

**Oregon Administrative Rules (OAR) for which Virgin Mobile Seeks a Waiver**

OAR 860-033-0006(3)(a) requires collection of Residential Service Protection Fund ("RSPF") surcharge from customers.

OAR 860-033-0006(3)(b) requires identification of RSPF surcharge on customer's bill.

OAR 860-033-0010: OTAP Applicability – Requirement to apply OTAP reduced rates or discounts with "all service offerings that include basic telephone service."

OAR 860-033-0030(6): OTAP Eligibility – Requirement that the name of the applicant appear on a billing statement.

OAR 860-033-0035(1) and (2): OTAP Benefits – Provision of the monthly State of Oregon #3.50 OTAP Benefit and Support.

Plan	Lifeline Eligible	Price	Minutes	Messages*	Web Access*	Phone Purchase Required	911 Coverage	Voicemail Caller ID Call Waiting
Assurance Wireless	Yes	Free \$5 \$20	250 500 1000	Purchase Option Purchase Option 1000	Purchase Option	No	Yes	Yes
payLo	No	\$30 \$20 \$20	1500 400 20¢ min (100 min)	1500 15¢ each (133 messages) 15¢ each (133 messages)	30 MB \$1.50 MB \$1.50 MB	Yes – prices range from \$9.99 to \$69.99	Yes	Yes
Beyond Talk	No	\$35 \$45 \$55	300 1200 Unlimited	Unlimited Unlimited Unlimited	Unlimited	Yes – prices range from \$89.99 to \$299.99	Yes	Yes

**Common Features**

- No bills, long-term contracts or activation fees
- International calling subject to separate rates
- Additional minutes, messages can be purchased separately through top-up cards

\*Customers may also purchase an additional Messaging Pack or Data Pack to augment the three voice-based plans at the following additional prices:

Messaging Pack	Data Pack
\$2.00 for 30 messages	\$5.00 for 5 MB
\$5.00 for 200 messages	\$10.00 for 20 MB
\$10.00 for 1,000 messages	\$20.00 for 50 MB
\$20.00 for unlimited messages	

Plan	Lifeline Eligible	Price	Minutes	Messages*	Web Access*	Phone Purchase Required	911 Coverage	Voicemail Caller ID Call Waiting
Assurance Wireless	Yes	Free \$5 \$20	250 500 1000	Purchase Option Purchase Option 1000	Purchase Option	No	Yes	Yes
payLo	No	\$30 \$20 \$20	1500 400 20¢ min (100 min)	1500 15¢ each (133 messages) 15¢ each (133 messages)	30 MB \$1.50 MB \$1.50 MB	Yes – prices range from \$9.99 to \$69.99	Yes	Yes
Beyond Talk	No	\$35 \$45 \$55	300 1200 Unlimited	Unlimited Unlimited Unlimited	Unlimited	Yes – prices range from \$89.99 to \$299.99	Yes	Yes

**Common Features**

- No bills, long-term contracts or activation fees
- International calling subject to separate rates
- Additional minutes, messages can be purchased separately through top-up cards

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Messaging Pack	Data Pack
\$2.00 for 30 messages	\$5.00 for 5 MB
\$5.00 for 200 messages	\$10.00 for 20 MB
\$10.00 for 1,000 messages	\$20.00 for 50 MB
\$20.00 for unlimited messages	

**EXHIBIT K**  
**QUARTERLY REPORT – OREGON LIFELINE CUSTOMERS**  
**Due by end of first month following end of quarter**

		<b>Month 1</b>	<b>Month 2</b>	<b>Month 3</b>
	<b>Non-Usage Report:</b>			
	<b>No. of Subscribers</b>			
<b>1</b>	<b>De-enrolled for 60-days non-usage</b>			
<b>2</b>	<b>Re-enrolled within 30-day grace period</b>			
<b>3</b>	<b>Deactivated due to end of 30-day grace period</b>			
<b>4</b>	<b>Re-enrolled after 30-day grace period ended</b>			
	<b>USAC Information:</b>			
<b>5</b>	<b>Reimbursable lines reported</b>			
<b>6</b>	<b>Reimbursement received</b>			
	<b>Handsets (free handsets only):</b>			
<b>7</b>	<b>No. of handsets reported lost/stolen</b>			
	<b>No. of lost/stolen handsets replaced</b>			
<b>8</b>	<b>No. of customers reporting they did not receive free handset</b>			
	<b>No. of replacement handsets sent</b>			
<b>9</b>	<b>No. of defective handsets reported</b>			
	<b>No. of replacement handsets sent</b>			
<b>10</b>	<b>Intentionally left blank</b>			
<b>11</b>	<b>Intentionally left blank</b>			
<b>12</b>	<b>Intentionally left blank</b>			
<b>13</b>	<b>Intentionally left blank</b>			

		Month 1	Month 2	Month 3
14	No. of requests to port number in			
	No. of requests denied			
15	No. of requests to retain current number (pre-Lifeline number)			
	No. of requests denied			
16	No. of requests to port number out			
	No. of requests denied			
17	Intentionally left blank			
	<b>Customer Service Complaints/Problems*</b>			
18	Intentionally left blank			
19	Intentionally left blank			
20	Intentionally left blank			
21	Intentionally left blank			
22	Intentionally left blank			
23	Problems relating to first month's free minutes or use			
24	Problems relating to subsequent month's free minutes or use			
25	Intentionally left blank			
26	Problems relating to add-on options			
27	<b>Total Number of Oregon Customer Calls from:</b>			
	Current Lifeline customers			
	Others inquiring about Lifeline discount on non-Lifeline plans			
28	<b>Customer Service Center: Average no. of minutes to reach representative</b>			

\* For each service call (complaint or problem) received from Oregon Lifeline customers included in items 18-25, report the following: a) customer's name and phone number , b) date of call, c) description of complaint or problem, and d) explanation of disposition of complaint/problem and date.

**QUARTERLY REPORT – OREGON LIFELINE CUSTOMERS**  
**Due by end of first month following end of quarter**

**Usage Characteristics Report – Complete for each of three months in quarter**

		Basic Free 250 Min. Plan	\$5 Plan	\$20 Plan
1	No. of total active subscribers			
2	No. of subscribers that depleted all free minutes by month's end			
3	No. of subscribers that depleted all free minutes within first 15 days of the month			
4	Intentionally left blank			
5	Intentionally left blank			
6	Intentionally left blank			
7	Intentionally left blank			
8	Number of customers who purchased web add-ons			