

**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

ORDER

DISPOSITION: STIPULATION ADOPTED; PETITION GRANTED WITH  
CONDITIONS; PARTIAL RULES WAIVER GRANTED

**I. SUMMARY**

In this order, we grant the Petition and First Amended Application of Virgin Mobile USA, L.P., for limited designation as an Eligible Telecommunications Carrier, and designation as an Eligible Telecommunications Provider, enabling it to receive federal Universal Service Fund Support.

**II. BACKGROUND**

The Telecommunications Act of 1996 (the Act) has, among its goals, the promotion of quality services at just, reasonable and affordable rates; access to advanced telecommunications and information services and access to services in rural areas comparable to services in urban areas. Integral to the Act is a national policy that every household have, at a minimum, the equivalent of single-line, basic voice-grade, telephone service, often referred to as "Lifeline" service. To that end, it provides for the establishment of a federal Universal Service Fund (USF) which provides financial support to designated providers of telecommunications services. A carrier that meets the standards necessary to receive federal USF support is designated an eligible telecommunications carrier (ETC).

An ETC that is an incumbent local exchange carrier (ILEC) receives USF support based on the cost of providing supported services. A competitive ETC (CETC) only receives USF support for customers it serves in areas where USF support is distributed to ILEC ETCs. A CETC can offer services using either its own facilities or a combination of its own facilities and resale of another carrier's services, but only gets support for services

provided over its own facilities. The amount of support per customer for a CETC mirrors the amount provided to an ILEC ETC for the same customer line.

In Order No. 06-292 (docket UM 1217, entered June 13, 2006), we established guidelines for carriers seeking certification as ETCs in Oregon. An item “checklist” was affixed to Order No. 06-292 at Appendix A. The checklist consists of two parts: the “Initial Designation—Application Requirements” and the “Annual Recertification Requirements.”

In order to offer Lifeline and Oregon Telephone Assistance Program (OTAP) services in Oregon, an ETC must also be designated an Eligible Telecommunications Provider (ETP). Once a carrier has been certified as an ETP, it can receive payments from the Residential Service Protection Fund (RSPF) for providing certain classes of customers with telecommunications services. The checklist requirements for ETC designation are set out in detail and addressed below in the discussion of specific aspects of this proceeding. Among those requirements, a carrier seeking ETP designation must also commit to offer and advertise services targeted to low-income populations. These services are Lifeline, LinkUp, and OTAP services.<sup>1</sup>

### III. PROCEDURAL HISTORY

On February 1, 2011, Virgin Mobile USA, L.P., (Virgin Mobile or Petitioner) petitioned the Commission for Limited Designation as an ETC, and an ETP for participation in the OTAP program. Virgin Mobile also requested waivers of certain sections of OAR chapter 860, division 033. The Citizens’ Utility Board of Oregon (CUB) and Oregon Office of Emergency Management (OEM) joined as parties to this proceeding. On October 25, 2011, Virgin Mobile filed a First Amended Application, and a redacted supplement on November 22, 2011.

According to the First Amended Application, Virgin Mobile is a wholly-owned subsidiary of Sprint Nextel Corporation and provides prepaid wireless services using the Virgin Mobile brand and the Nationwide Sprint Network. The Federal Communications Commission (FCC) has designated Virgin Mobile as an ETC in eight states and the District of Columbia and Virgin Mobile has been designated as a facilities-based ETC by regulatory authorities in 22 other states.

### IV. STIPULATION

On December 14, 2010, Virgin Mobile made two filings to formalize the parties’ resolution of all issues in this case. First, Virgin Mobile filed a new Exhibit 1 to its First Amended Application to address concerns raised by the parties and to clarify the scope of

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<sup>1</sup> See generally OAR 860-033-0001, *et seq.* for a discussion of the RSPF and its application to the provision of the named services by ETCs and the compensation and support programs related thereto. ETCs who offer those services are known as Eligible Telecommunications Providers or ETPs. OAR 860-033-0010 through 860-033-0046 set forth the Commission rules with respect to OTAP. The Link-Up America program rules are set forth in OAR 860-033-0050 through 860-33-0055.

its application. Second, Virgin Mobile filed a stipulation on behalf of all parties supporting the Commission's approval of the amended application under certain terms, conditions, and waivers. The stipulation is attached as Appendix A and incorporated by reference.<sup>2</sup> The Stipulation was accompanied and supported by Joint Testimony of the parties.

A major change between the original application and the First Amended Application relates to the scope of supported services Virgin Mobile is to offer. The parties agree that Virgin Mobile seeks limited designation as an ETC in Oregon to offer prepaid wireless services supported by the federal USF Lifeline Program and not from the federal high-cost or Link Up portions of the fund. The parties agree that Virgin Mobile meets all ETP requirements except for those portions where waivers are requested. Virgin Mobile is not requesting support from the RSFP at this time, but reserves the right to seek RSFP support through a revised ETP application at a later date. Virgin Mobile will therefore provide customers with an additional \$3.50 in support from its own funds and will receive Tier III matching support (\$1.75 per customer per month) from the Federal USF, enabling a maximum total of \$13.50 of support per customer per month.

Under the stipulation, the parties have agreed that the Commission should waive OAR 860-033-0035(1)(c), which provides that the monthly OTAP benefit includes the State of Oregon support of \$3.50, if required. Virgin Mobile plans to offer service only in those areas where it has adequate coverage and will exclude areas served by Citizens/Frontier Telephone Company and Pioneer Telephone Cooperative as well as any Tribal Lands. Virgin Mobile's Exhibit G to its First Amended Application provides a list of wire centers that defines the proposed designated service area.

## V. DISCUSSION

As noted above, the Act provides for the designation of carriers eligible to receive federal USF support. *See* 47 U.S.C. §214(e). A carrier that meets the standards necessary to receive federal USF support is designated an ETC. *See* 47 C.F.R. §201. Because an ETC can only receive support for services provided over its own facilities, Virgin Mobile must prove that it provides services over its own facilities. The amount of support per customer for Virgin Mobile can be no greater than the amount provided to an ILEC ETC for the same customer line.

Although Oregon's requirements generally mirror those of the FCC, Virgin Mobile must also prove that it complies with each item on the Order No. 06-292 "checklist," or demonstrate that any waiver given for non-compliance with any checklist item serves the public interest. In order to be designated an ETP, Virgin Mobile must also demonstrate its compliance with the relevant sections of OAR 860-033-0001 *et seq.*

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<sup>2</sup> The Stipulation is by and among Virgin Mobile, Commission Staff, CUB, and the Office of Emergency Management. Testimony of the joint parties in support of the Stipulation was also filed the same date.

## VI. FINDINGS OF FACT

### A. Checklist Items in Compliance with Commission Rules

Based on the uncontroverted testimony of the parties, we find that Virgin Mobile has met its burden of proof and, without the waiver of any portion of the Commission's rules, is in compliance with each of the following sections of the Order No. 06-292 Appendix A ETC criteria checklist as described below:

#### 1. *Initial Certification*

Item 1.1: Common Carrier. As a wholly-owned subsidiary of Sprint, a facilities-based mobile wireless common carrier, Virgin Mobile has beneficial use of the Sprint network and thus complies with the definition set forth in Section 153(1) of the Act.

Item 1.2: Service Description. Pursuant to FCC authorization, Virgin Mobile provides prepaid wireless services throughout the state wherever Sprint has CDMA facilities; it offers two services, each with several plan choices. Upon receiving our approval, Virgin Mobile will offer a prepaid Lifeline service. Petitioner is a wireless carrier and is not required to have a certificate of public convenience and necessity issued by the Commission.

Item 2.1: Commitment and Ability to Provide all Supported Services. Petitioner meets the requirements of Section 214(e)(1) of the Act because it provides all of universal service supported services and functionalities required by FCC rules and regulations, 47 U.S.C. § 54.101: Voice Grade Access to the Public Switched Telephone Network (PSTN), Local Usage, Dial tone Multi-Frequency signaling, Single Party Service, 9-1-1, Operator Services, Interexchange Services and Directory Assistance Access, and Toll Limitation (blocking of outgoing toll calls).<sup>3</sup>

Item 2.3: Lifeline Service Offering Description. Virgin Mobile is seeking ETC designation solely to provide prepaid wireless Lifeline service under its Assurance Wireless brand. The service will provide customers with the same features as other Virgin Mobile prepaid plans except that:

- (a) 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.

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<sup>3</sup> FCC Order 11-161, which became effective Dec 29, 2011, slightly modified the definition of supported services in 47 U.S.C. § 54.101. FCC Order 11-189 subsequently modified that definition by deleting the word "including." Virgin Mobile's proposed service offerings meet the revised definition in 47 U.S.C. § 54.101.

- (b) Lifeline customers who wish to purchase blocks of additional services may do so under two options.
  - 1. 250 additional minutes for five dollars/mo.
  - 2. 750 additional minutes for twenty dollars/mo.Customers who do not elect an option are charged \$0.10/minute and \$0.10/text message.
- (c) Customers may also choose \$2, \$5, \$10, and \$20 messaging and data packages. Unused minutes and messages do not “roll over” to the following month.
- (d) The Assurance Wireless plans do not require long-term contracts or charge for activation or connection.

Like Virgin Mobile’s other plans, all applicable taxes and fees are included and no calling area restrictions are imposed. The plans include caller I.D., voicemail, call waiting, and E911 at no additional charge. Any future changes will be disclosed to the Staff and CUB at least 30 days prior to implementation. Virgin Mobile represents that it will discuss and address any Staff or CUB concerns in good faith.

Item 2.4: Comparability to ILEC Local Service Offerings. The FCC requires a case-by-case comparability review, including the nature of the supported service, the size of the local calling area, the inclusion of additional services, and the amount of local usage.<sup>4</sup> As described above, the plans offered by Virgin Mobile meet or exceed ILEC Lifeline offerings in several areas and are comparable to ILEC Lifeline offerings. The free basic plan voice service offering, which excludes taxes and connection fees and includes access to other features and provides in excess of four hours per month of local and long distance calling, we find to be affordable *per se*.

Item 2.5: Equal Access to LD Carriers. Virgin Mobile certifies that, if ordered by the Commission, it will provide equal access to long distance carriers.

Item 3.1.: Service Area Identification. Virgin Mobile has provided the requisite map of the designated service area boundaries overlaid on the boundaries of ILEC wire centers. Virgin Mobile has not requested designation for any service offerings on Tribal Lands and, thus, those wire centers are excluded. A list of wire centers where Virgin Mobile requests designation has also been provided.

Item 3.2: Commitment to Provide Service. Virgin Mobile has committed to offering the supported services throughout its proposed service area.

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<sup>4</sup> See *In re Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385(2005).

Item 4.1: Use of "Own Facilities." Virgin Mobile is part of the common enterprise of Sprint Corporation and, pursuant to prior FCC interpretation,<sup>5</sup> complies with Section 214(e)(1) of the Act.

Item 4.2: Coverage Map/Signal Strength. Virgin Mobile has supplied the requisite map noting the signal strength of its proposed coverage area as Exhibit F to its First Amended Application.

Item 4.3: Resale or Interconnection Agreements. Virgin Mobile has resale agreements only with its affiliate, Nationwide Sprint Wireless.

Items 5.1-5.3: Use of Funds for Intended Purposes. Virgin Mobile is limiting its request for ETC designation solely for the purpose of receiving low-income support and not high-cost support and is therefore exempt from these checklist provisions.

Item 6: Advertising Commitment. Virgin Mobile will advertise the availability and rates for Lifeline services via newspapers, magazines, radio, the Internet and direct mail and will reflect Oregon-specific eligibility requirements. All advertising materials will be provided to Staff for review at least 21 days in advance of publication or release. Virgin Mobile commits that it will work with Staff in good faith to resolve any issues.

Item 7.2: Identification and Description of Specific Lifeline Services. The Assurance Wireless plans are described above under Item 2.3 and meet the requirements of Item 7.2.

Item 7.3: Advertising to Low-Income Population. The advertising plans described above under Item 6 meet the requirements of Item 7.3.

Items 8.1-8.2: Ability to Remain Functional in Emergencies. As a wholly-owned subsidiary of Sprint, Virgin Mobile is facilities-based and able to remain functional in emergency situations. It relies on Sprint's established internal programs, policies and employee teams which analyze, assess and respond to emergency situations on a 24 hour/365 day network monitoring schedule. 9-1-1 emergency calls made by Virgin Mobile customers are handled in the same fashion as calls made by other Sprint customers. Upon reviewing the description of the Sprint emergency systems set forth in the amended application, we find that Virgin Mobile complies with the requirements of 47 C.F.R. §54.202(a)(2) and Items 8.1-8.2 of the checklist.

Items 9.1-9.2: Commitment to Meet Service Quality and Consumer Protection Standards. Virgin Mobile commits to continuing to comply with its trade association's Consumer Code for Wireless Service when designated as an ETC and commits to working with Staff to resolve consumer complaints. Lifeline, and OTAP customers will receive the same customer service, features and functionalities as higher income consumers and Virgin Mobile will have a designated contact person for PUC consumer complaints.

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<sup>5</sup> *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, par. 159-161 (1997).

Item 10: Public Interest Standard. Virgin Mobile asserts that one of the principle goals of the Act is providing lower prices and higher quality services to consumers and rapidly deploying new communications services to all citizens, regardless of geographic location or income. The FCC has determined that Virgin Mobile's Lifeline Service offerings meet these standards. Since Virgin Mobile will help satisfy this goal in Oregon if designated as an ETC, the Application meets this standard.

Item 10.1.1: Increase in Consumer Choices. Designating Virgin Mobile as an ETC will provide Oregon consumers with three new Lifeline options, with no long-term contracts and will increase the number of providers offering services to low income consumers. We find that Virgin Mobile satisfies this checklist item because an increase in competition will provide more choices and will act as a stimulus to other providers to improve the quality and lower the cost of service to low income customers.

Item 10.1.2: Unique Advantages or Disadvantages. Virgin Mobile asserts that its new service will provide lower-income customers a new opportunity to take advantage of the benefits of a competitive wireless market without the common impediments of financial constraints or poor credit history. These customers will be able to have the Lifeline basic service described above in response to Item 2.3 and will be able to purchase additional minutes on a Virgin Mobile website or at a retail vendor. Even if the customer does not purchase additional minutes, E911 and Customer Care connections will still be available. Virgin Mobile's First Amended Application satisfies this checklist item.

Item 10.1.3: Other Criteria Determined by the Commission. (1) As a facilities-based provider, Virgin Mobile has committed to contributing to the RSPF and to unconditionally remitting the 9-1-1 tax to support the 9-1-1 system in Oregon. (2) New Lifeline customers may also receive a free Assurance Wireless-branded handset, ensuring the availability of Lifeline service without upfront costs in excess of the lifeline service rate. Virgin will also supply one free handset per year to replace lost or stolen sets. (3) Virgin Mobile asserts that being designated as an ETC solely for Lifeline purposes will not unduly burden the federal USF and would have only minimal impact, outweighed by the benefit of increasing eligible participation in the Lifeline program. (4) The customer will receive the full benefit from Lifeline service because the company will not claim support for a Lifeline customer until the customer's service cycle begins. (5) The company will have numerous retail partner locations where customers will be able to purchase cards providing additional minutes of service, as well as receiving assistance and customer support at the Assurance Wireless' website and Customer Care telephone number. Service will include arrangement for shipping of replacement handsets where the customer's handset has malfunctioned. The customer will be given a free return package for the defective handset and their account will not be charged. (6) Virgin Mobile has instituted a fraud prevention program to ensure that USF funds are received only for customers who actively use their Lifeline Services and will work with the Commission to ensure compliance and minimize fraud, waste, and abuse.

Item 10.2: Cream-skimming Analysis. No such analysis is required by the FCC for Virgin Mobile's Lifeline Service.<sup>6</sup>

## 2. *Annual Recertification*

Virgin Mobile commits to providing the certifications and affidavits listed in the Annual Recertification Requirements section of the ETC checklist. In addition, Virgin Mobile commits to submit designated reports in satisfaction of the Annual Recertification List Requirements. We find that the Annual Recertification Requirements have all been satisfied, with particular attention to specific representations by Virgin Mobile, as discussed below:

Item 1: Supported service offerings. This item is a commitment to identify and describe each offering and provide a status reports on provision of supported services not available at designation. Virgin Mobile has agreed to provide all certifications and affidavits listed in the checklist and we find it has complied with this item.

Item 2: Provision of supported services throughout the designated service area. Virgin Mobile has committed to report on the number of unfilled service requests and we find it has complied with this item.

Item 3: Advertisement of supported services throughout the service area. Virgin Mobile commits to providing the reports, certifications and affidavits in this section of the ETC checklist. We find that this representation satisfies the requirement for the demonstration that supported service offerings (excluding low-income offerings) were advertised during the past calendar year throughout all geographic areas where it is a designated ETC in accordance with the means set forth in subsection 3.1.

Item 4.1: Report on the number of customers in the Lifeline program, by ILEC study area, during December of the previous calendar year. Although Virgin Mobile was not able to commit to reporting on the number of customers in the Lifeline program during December of the previous calendar year at the time it filed its First Amended Application, "Virgin Mobile can commit to reporting by ILEC study area beginning first quarter 2012." We find this representation satisfies this section of the checklist.

Item 5: Ability to remain functional in emergencies. This section requires wireless ETCs to provide annual outage reports consistent with federal definitions. The Company has committed to providing designated reports in satisfaction of the Annual Recertification List Requirements. We find that it has complied with this item.

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<sup>6</sup> See FCC Order 09-18, Docket No. 96-45), p. 16, fn.101 (Mar 5, 2009). Virgin Mobile has consulted with Staff regarding the requested ETC designated service areas and has deleted those service areas where Staff believes such an analysis would be required. The remaining service area's lack of need for a cream-skimming analysis has not been challenged by any party. Virgin Mobile may seek to revisit the service area issue at a later time in order to expand its service area coverage into the areas in question, once the FCC has clarified state commission obligations regarding cream-skimming analyses.

### 3. *Checklist Items Requiring a Waiver of the Checklist Requirements*

Initial Certification Checklist Items 7 and 7.1: Combine to require a Statement of Commitment to offer and advertise all three low-income services—Lifeline, Link Up and OTAP services—in order to receive an ETP designation. Virgin Mobile proposes to offer Lifeline and OTAP services.. In order to offer OTAP services, Virgin Mobile requires a waiver of the Commission’s rules discussed below.

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

- (1) No service;
- (2) Network busy; and
- (3) Interruption of service.

The Company notes, however that it cannot provide the above information broken down by wireless switch, as it uses the Sprint network to handle its calls and the data from the four wireless Sprint switches in Oregon 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 requested data, Poor Reception, will be reported on an annual basis and will include the number of customer complaints of poor signal strength that the Company documents as reported to Assurance Wireless’ Customer Care center. Virgin Mobile has also committed to provide Staff and CUB with supplemental reporting information on a form attached to the Company’s First Amended Application as Exhibit K. The parties have agreed that the Company has the right to submit the reports to the Commission on a confidential basis pursuant to OAR 860-001-0070.

We find that Virgin Mobile has provided good cause for noncompliance with these checklist items and we waive those requirements with respect to its application.

### 4. *Checklist Items Requiring a Waiver of the Commission’s Rules*

ETP designation requires compliance with OAR 860-033-0001 through 860-033-0100. The parties to the stipulation seek a waiver for relief from five sections of Division 033 of Commission rules. In support of that request, the parties assert that the Commission is authorized to grant the requested waivers for good cause shown.<sup>7</sup> We find that good cause exists for granting the requested waivers of the checklist Items 7 and 7.1 and for the named Division 033 rules for the reasons set forth for each rule below: OAR 860-033-0006(3)(a) requires the ETP to collect the RSFP surcharge from its customers. The Company’s Assurance Wireless plan is a prepaid service that does not

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<sup>7</sup> *In the Matter of a Rulemaking to Update Waiver Provisions of the Commission’s Administrative Rules*, Docket AR 554, Order No. 11-346 (Sept 8, 2011). The revised waiver provision adopted and relevant in this case, OAR 860-033-0001(2), appears at Appendix A, p. 28 of Order No. 11-346.

issue invoices to its customers and requires no financial contribution from a customer to receive Lifeline service. Instead Virgin Mobile will remit the RSFP surcharge applicable to its Oregon customer from Virgin Mobile funds in lieu of collecting from its customers.<sup>8</sup> Virgin Mobile will be remitting the exact same amount to the RSPF as if it had collected the funds from customers. Consequently, we find that good cause for a waiver has been shown, as there would be no adverse financial impact on the RSPF by Virgin Mobile's offering of Lifeline service.

OAR 860-033-0006(3)(b) requires the identification of the RSPF surcharges on each customer's bill. As noted above, Virgin Mobile's Assurance Wireless service plan is prepaid and the company does not send invoices to its customers. Thus, when viewed in conjunction with the waiver of subsection (a), discussed above, good cause has also been shown for a waiver of this rule and there will be no adverse impact upon the public interest from granting the waiver request.

OAR 860-033-0030(6) requires the name of an OTAP applicant to appear on the *billing statement*. Under the Assurance Wireless plan, Virgin Mobile does not issue billing statements. The parties have stipulated that they adopt a provision of the stipulation in the *TracFone* docket<sup>9</sup> that the Commission would modify the application process to require only that the name of the applicant appear on the *customer's account*, rather than the billing statement. Virgin Mobile has agreed that the Commission Staff will perform the eligibility verification functions. Virgin Mobile will comply with the provisions of OAR 860-033-0030 pertaining to eligibility to receive Lifeline services and the parties have agreed that the Commission will be responsible for responding to public inquiries via inbound and outbound phone support, explaining Lifeline rules, eligibility criteria, the application and program processes, policies and procedures, as well as available benefits.<sup>10</sup>

Virgin Mobile will also comply with the OTAP reporting requirements outlined in OAR 860-033-0046, and the stipulating parties agree that Virgin Mobile may consolidate the Active OTAP Customer Report, subsection (2), and the Order Activity Report subsection (3). The company will submit the consolidated report as required in an electronic format that will provide customers' names, addresses, telephone numbers and Commission-assigned OTAP identification numbers, as well as indicate any changes. The report will identify Lifeline customers who have been de-enrolled for non-usage after attempts to contact them have been unsuccessful. We find the parties' proposal for addressing the intentions of this section is reasonable. Having shown good cause, we find a waiver of OAR 860-033-0030(6) is in the public interest.

OAR 860-033-0035(1)(c) provides that the ETC receive a monthly support payment of \$3.50 per customer. Virgin Mobile has agreed to decline compensation from the RSFP

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<sup>8</sup> First Amended Application at 15.

<sup>9</sup> *In the Matter of TracFone Wireless Application for Designation as an Eligible Telecommunications Carrier*, Docket No. UM 1437.

<sup>10</sup> The Company's and the Commission Staff's commitments regarding customer enrollment and eligibility requirements are described in the First Amended Application at 16 and agreed upon in the stipulation, p. 5, paragraph 18.

for enrolling Lifeline customers and for the benefit costs incurred as a consequence of participating in OTAP pursuant to OAR 860-033-0045 and will only seek federal USF support. Customers will receive the same value as the OTAP support because the company 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 USF. We find that good cause has been shown for a waiver of OAR 860-033-0035(1)(c) because Oregon Lifeline customers will in effect “receive” the OTAP benefit and the actual RSPF will not be adversely affected.

OAR 860-033-0045(1) provides that a provider of Lifeline services may receive a one-time payment of \$3.80 per customer from the RSPF for enrolling new Lifeline customers. Virgin Mobile has declined to receive these funds from the RSPF and has requested a waiver of the rule if the Commission deems such a waiver is necessary. In order to preclude any question as to whether the RSPF might incur a liability to an ETP in the absence of a legally-adequate statement of refusal to accept funds, we find that a waiver of the rule in this instance is a necessary precaution. Good cause having been shown by the parties, a waiver of OAR 860-033-0045(1) should be granted.

OAR 860-033-0010 requires an ETC to “offer OTAP reduced rates or discounts with *all* service offerings that include basic telephone service.” (Emphasis added). According to Virgin Mobile, it cannot offer a state-specific discount on its non-Lifeline offerings for legal and technical reasons. First, it is not clear that services other than voice or bundled offerings are eligible for Lifeline support, and the Company developed its Assurance Wireless service offering as a Lifeline-specific product. The Assurance Wireless plan offering is Lifeline-specific, designed as a prepaid, high-value voice product and has constructed a complex information technology platform to support it. The FCC is considering expansion of services covered by Lifeline support, but has yet to commit to a path that would apply Lifeline discounts to bundled voice and data offerings such as Virgin Mobile’s “Beyond Talk” and “payLo” plans. Assurance Wireless service is most closely akin to Lifeline Support, i.e. domestic voice service. Second, the parties to the stipulation agree that the Company cannot offer Lifeline services on these other Virgin Mobile services for legal and technical reasons. We adopt the parties’ stipulation testimony in this regard and find that the Company has shown good cause for granting a waiver of OAR 860-033-0010.

## VII. CONCLUSIONS OF LAW

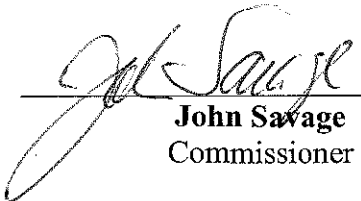
Virgin Mobile and the parties to the stipulation have demonstrated by the facts and representations in this proceeding, that granting the Company’s First Amended Application, adopting the stipulation, and waiving the above-cited rules is in the public interest and will further our goals of providing essential telecommunications services to the public on a fair and equitable basis at just and reasonable rates.

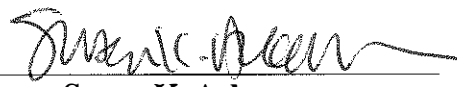
**VIII. ORDER**


IT IS ORDERED that:

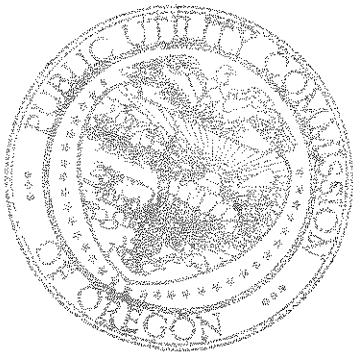
1. The Stipulation by and among Virgin Mobile USA, L.P., the Staff of the Public Utility Commission of Oregon, the Citizens' Utility Board of Oregon, and the Oregon Office of Emergency Management, attached to this order as Appendix A is adopted.
2. The Virgin Mobile USA, L.P.,'s Petition for Limited Designation as an Eligible Telecommunications Carrier and as an Eligible Telecommunications Provider is granted subject to the conditions set forth in this Order.
3. The Public Utility Commission of Oregon's rules are waived to the extent set forth in this Order.

Made, entered, and effective JAN 23 2012.

  
**John Savage**  
Commissioner

  
**Susan K. Ackerman**  
Commissioner

  
**Stephen M. Bloom**  
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

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Docket No. UM 1522

**STIPULATION**

This Stipulation is entered into for the purpose of resolving all issues in this proceeding by and among the parties as set forth below.

**PARTIES**

1. The parties to this Stipulation (the "Stipulation") are Virgin Mobile USA, L.P. ("Virgin Mobile"), Staff of the Public Utility Commission of Oregon ("Staff"), Citizens' Utility Board of Oregon ("CUB"), and the Oregon Office of Emergency Management ("OEM"), representing all of the parties to the proceeding (together, the "Parties" and individually, a "Party").

**BACKGROUND**

2. On February 1, 2011 Virgin Mobile filed its Petition for Limited Designation as an Eligible Telecommunications Carrier ("ETC") with the Public Utility Commission of Oregon (the "Commission"). On October 25, 2011 Virgin Mobile filed a First Amended Application ("Amended Application") for Designation as an ETC and Eligible Telecommunications Provider ("ETP") for participation in the Commission's Oregon Telephone Assistance Program ("OTAP").<sup>1</sup> This filing also requested waivers of certain Residential Service Protection Fund

<sup>1</sup> This filing was entitled "First Amended Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider and Request for Waivers of Certain RSPF Rules."

Oregon Administrative Rules ("RSPF OARs"). On March 11, 2011, Administrative Law Judge Allan J. Arlow issued a Prehearing Conference Memorandum establishing a schedule. On April 8, 2011 Virgin Mobile filed direct testimony and exhibits in support of its initial Petition. On June 17, 2011 Judge Arlow granted Staff's unopposed motion and suspended the schedule in this proceeding to allow the Parties to work with Virgin Mobile. Thereafter, the Parties filed status reports with Judge Arlow on September 15 and October 14, 2011. The Parties then worked with Virgin Mobile to resolve all unresolved issues. Virgin Mobile then drafted its Amended Application.

3. The Commission opened this docket to consider Virgin Mobile's ETC Application. CUB intervened as of right, and the Commission granted OEM permission to intervene as a party, in this docket.

4. Staff, CUB and OEM have reviewed Virgin Mobile's ETC Application, First Amended Application, ETP Application, the pre-filed testimony and exhibits of Virgin Mobile and additional information provided by Virgin Mobile in response to data requests issued by Staff and CUB.

5. The Parties held workshops/settlement conferences on April 14, June 15 and August 8, 2011 to address outstanding issues. The settlement conferences were open to all Parties to this docket. All outstanding issues were resolved and were addressed in the Amended Application. No Party opposes the Amended Application and the Parties are therefore entering into this Stipulation.

#### **AGREEMENT AND CONDITIONS**

6. The Parties agree that Virgin Mobile's designation as an ETC and ETP in Oregon (under the Amended Application) with application of the following terms, conditions, and certain waivers, is in the public interest.

7. The Parties agree that Virgin Mobile meets all initial designation and annual recertification requirements established in Order No. 06-292 for ETC status, except as specified herein. Virgin Mobile's ETC designation will be only for purposes of participation in the

Lifeline Program of the federal Universal Service Low-income Fund. Virgin Mobile will not be designated to receive support from the High-cost Fund, or from the Link Up portion of the federal Universal Service Low-income Fund.

8. The Parties agree that Virgin Mobile meets all ETP requirements specified in the RSPF OARs, with the exception of those for which waivers are requested herein.

9. The Parties agree that approval of Virgin Mobile's Amended Application is in the public interest subject to the additional requirements specified herein. By virtue of executing this Stipulation, Virgin Mobile agrees to abide by and perform all terms of this Stipulation with respect to Lifeline customers in Oregon.

10. Virgin Mobile's ETC and ETP designated service area will be comprised of the wire centers listed in Exhibit G of its Amended Application. Virgin Mobile represents that it has substantial if not complete coverage throughout each of these wire centers and is able to provide service to any requesting customers residing in these areas subject to 47 C.F.R. § 54.202(a)(1)(i).

11. Virgin Mobile does not request designation as an ETC or ETP on Tribal lands in Oregon. Any Tribal lands that lie within the areas of the wire centers listed in Exhibit G of its Amended Application are excluded from Virgin Mobile's designated service area.

1. **ETC Requirements**

12. Virgin Mobile has submitted to the Commission an accurate map identifying Virgin Mobile's ETC and ETP designated service area, which is consistent with the wire centers listed in Exhibit G of the Amended Application and complies with initial designation requirement 3.1.1 in Appendix A of Order No. 06-292. Virgin Mobile provides its prepaid wireless services throughout Oregon wherever its parent Sprint Nextel Corporation ("Sprint Nextel") has the facilities to provide CDMA wireless service. Sprint Nextel is authorized to provide wireless service throughout the whole state of Oregon by the FCC.

13. Virgin Mobile will meet all requirements of Order 06-292, except that Virgin Mobile cannot provide trouble reports required by Appendix A Recertification Requirement 6.2.1, which requires that the requested reports be broken down by wireless switch. Any network information from Sprint Nextel's four Oregon switches is aggregated for all Sprint Nextel customers and Virgin Mobile's Assurance Wireless. Furthermore, trouble report data cannot be separated out by switch. The Parties agree that Virgin Mobile may provide trouble reports from Sprint Nextel's four Oregon switches combined to meet this recertification requirement.

14. Sprint will provide to the Commission its annual outage report consistent with definitions and details in 47 C.F.R. § 54.209(a)(2) as required by Appendix A Recertification Requirement 5.2.1., on behalf of Virgin Mobile.

**2. ETP Requirements**

15. Virgin Mobile will meet all RSPF OARs related to ETP designation requirements with the exception of those for which the Parties have agreed to support waiver requests. The specific rules or rule subsections, the Parties agree the Commission should waive are those included in Exhibit I of the Amended Application. This Exhibit I has been revised to delete one rule (OAR 860-33-0035(2)) and to add one rule (OAR 860-033-0045(1)) and to reflect revisions to OAR 860-033-0006 made by Order 11-357, entered on September 20, 2011 in AR 557. The revised Exhibit I is attached to this Stipulation. The reasons supporting the request for waivers are set forth in the Amended Application and the Joint Testimony supporting this Stipulation. It is the Parties' position that the Commission is authorized to grant the waivers requested herein, for good cause shown, per Order No. 11-346, entered September 8, 2011 in AR 554.

16. Virgin Mobile's Lifeline services will be offered under the brand name "Assurance Wireless". Virgin Mobile agrees that it will pass through to its Lifeline customers as free wireless telephone service all funds received from the federal universal service fund in addition to \$3.50 per customer per month that Virgin Mobile provides. Virgin Mobile will

provide \$3.50 per Lifeline customer per month from its own funds to obtain Tier III matching support from the federal Universal Service Low-income Fund.

17. Virgin Mobile will remit the RSPF surcharge to the Commission for each of its Oregon customers on behalf of those customers but reserves the right to cease making the RSPF surcharge remittance should the law change to no longer require such remittance.

18. Each applicant for Lifeline service from Virgin Mobile will complete and submit the OTAP application to the Commission. Staff will revise the OTAP application so that it (1) allows for the applicant's name to be on the phone account, rather than the phone bill in cases where no bill is rendered and (2) does not require that the applicant currently have telephone service from its desired ETC, at the time of the application. Staff will perform the eligibility verification functions and report the results to Virgin Mobile in a reasonable period of time as is expected by the other ETPs.

19. The Assurance Wireless customer's service cycle begins when the customer programs the handset pursuant to activation directions and Virgin Mobile will request Lifeline support for that customer only at the time the customer's service cycle begins.

20. Virgin Mobile will implement in Oregon its "60-Day Non-Usage Policy" currently implemented by it in every state in which Virgin Mobile provides Lifeline-supported service as an ETC and as acknowledged by the FCC. The current policy is set forth in Exhibit H of the Amended Application.

21. Virgin Mobile will offer its Assurance Wireless Lifeline service of 250 voice minutes per month to eligible customers in Oregon at no charge to the customer. In addition, Virgin Mobile will offer its Lifeline customers two plan options for the purchase of 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 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.

22. 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.

23. New Lifeline customers may elect to receive a free Assurance Wireless-branded handset with immediate E911 functionality. Current Virgin Mobile prepaid wireless customers may be able to use their existing handsets to receive free 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 up-front 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.

24. Virgin Mobile will give Staff at least 60 calendar days advance notice before it begins offering Lifeline services in Oregon. Virgin Mobile will notify Staff of all of its Oregon marketing campaigns at least twenty-one (21) calendar days in advance. In addition, Virgin Mobile will submit all proposed marketing and advertising material, including but not limited to

television and radio Public Service Announcements, for Staff review at least twenty-one (21) calendar days in advance of publishing or releasing the advertisement. Virgin Mobile agrees to discuss any concerns Staff may have with respect to any such advertising materials and to work in good faith to address such concerns. Virgin Mobile further agrees that its advertising will reflect Oregon-specific eligibility requirements.

25. Virgin Mobile will submit all material revisions to the terms of its service offerings to Lifeline customers to Staff and to CUB for review at least thirty (30) calendar days before implementing such revisions. Virgin Mobile agrees to discuss any concerns Staff or CUB may have with respect to any such revisions and to work in good faith to address such concerns.

26. The Parties agree that good cause exists for a waiver of the requirement in OAR 860-033-0010 that Virgin Mobile "offer OTAP reduced rates or discounts with all service offerings that include basic telephone service." Virgin Mobile explained the legal and technical reasons why it cannot meet this requirement in its Amended Application (pp.18-24). Further, the Parties agree that it would be in the public interest to authorize Virgin Mobile to offer another competitive free wireless offering to Lifeline customers, which would not be available without the grant of a rule waiver, particularly when this new competitive free wireless offering (Assurance Wireless) will provide customers with additional options to meet their voice and data needs.

27. Virgin Mobile agrees to pay the 9-1-1 tax on behalf of its customers but reserves the right to discontinue such payment should the law change to no longer require such payment.

28. Virgin Mobile will insure that it makes available adequate personnel for daily communications with Staff regarding Lifeline questions and concerns and Lifeline reporting issues. Virgin Mobile will also make available adequate personnel 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. Virgin Mobile will provide designated

personnel's contact information including but not limited to e-mail addresses and telephone numbers to the RSPF Staff.

29. Virgin Mobile agrees that its Lifeline customers will be able to make customer service calls by dialing "611" without deducting any of their allotted free minutes (also referred to as "airtime").

30. When the Oregon Commission Staff notifies Virgin Mobile of customers who meet eligibility criteria, Virgin Mobile agrees to report to RSPF Staff, 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 activated handset, etc.). The parties agree to revisit this requirement after one year to determine if a less-frequent report is warranted.

31. Staff and Virgin Mobile agree that Virgin Mobile may consolidate the Active OTAP Customer Report (OAR 860-033-0046(2)) and the Order Activity Report (OAR 860-033-0046(3)). In the consolidated report, Virgin Mobile agrees to report all customers receiving Lifeline in a given month and to include all customers' names, addresses, phone numbers and Commission-assigned OTAP identification numbers. Virgin Mobile agrees to identify on the report customers whose addresses or phone numbers have changed in Virgin Mobile's records and customers whose Lifeline service has been deactivated.

### 3. Special Reports

32. Virgin Mobile agrees to provide as quarterly reports to Staff and to CUB, the Oregon-specific reports included in Exhibit K to the Amended Application.

33. Virgin Mobile agrees to provide Staff a copy of Oregon-specific monthly Lifeline Worksheets (Form 497) that it submits to the Universal Service Administrative Company ("USAC") from which it claims or seeks low-income reimbursement or support. Such reports shall be submitted monthly to the RSPF Staff. In conjunction with Form 497, Virgin Mobile agrees to report the customers' names, addresses, phone numbers and Commission-assigned

OTAP identification numbers for which it requests claims of low-income support from the federal Universal Service Fund to the RSPF Staff in an electronic format accessible by the Commission.

34. Information that Virgin Mobile is required to submit to the Commission, Staff, or CUB under the terms of this Stipulation, may be submitted as confidential pursuant to OAR 860-001-0070 and the Parties agree to treat such information pursuant to the terms of the Protective Order in this docket. The Parties agree that such information may be submitted to Staff, CUB and other Parties electronically, as required in the Stipulation. Notwithstanding this condition, nothing prohibits Staff from sharing such information with the FCC and USAC, upon request of those entities or as reasonably required for the performance of Staff's, FCC's or USAC's duties.

#### GENERAL TERMS

35. The Parties agree to support Commission approval of Virgin Mobile's request for initial ETC and ETP designations, consistent with the terms and conditions specified in this Stipulation. The Parties will encourage the Commission to issue an order approving Virgin Mobile's Amended Application and the Stipulation as soon as possible. This Stipulation will be offered into the record of this proceeding as evidence pursuant to OAR 860-001-0350(7). The Parties agree to support this Stipulation throughout this proceeding and any appeal, and to provide either witnesses to sponsor testimony or legal representatives to support this Stipulation. The Parties will recommend the Commission issue an order adopting the terms and conditions specified in this Stipulation and approving Virgin Mobile's Amended Application and this Stipulation.

36. The Parties have negotiated this Stipulation as an integrated document. If the Commission rejects all or any material part of this Stipulation or imposes additional material conditions in approving the Stipulation and the Amended Application, any Party disadvantaged by such action shall have the right to request a hearing and opportunity to submit additional testimony, and/or in accordance with OAR 860-001-0720, seek reconsideration or appeal of the

Commission's order. However, prior to taking any such actions, the Party must engage in good-faith negotiation with the other Parties to this Stipulation.

37. The Parties agree that this Stipulation represents compromises in the positions of the Parties. As such, conduct, statements and documents disclosed in the negotiation of this Stipulation shall not be admissible as evidence in this or any other proceeding, unless independently discoverable or offered for the purposes allowed under ORS 40.190. By entering into this Stipulation, no Party shall be deemed to have approved, admitted, or consented to the facts, principles, methods, or theories employed by any other Party in arriving at the terms of this Stipulation, other than those specifically identified in the body of this Stipulation. No Party shall be deemed to have agreed that any provision of this Stipulation is appropriate for resolving issues in any other proceeding, except as expressly identified in the Stipulation.

38. This Stipulation may be executed in counterparts and each signed counterpart shall constitute an original document.

This Stipulation is entered into by each Party as of the date(s) entered below:

Virgin Mobile USA, L.P.

By: Judith A. Endejan  
 Its: outside counsel  
 Dated: 12/14/11

Staff of the Public Utility Commission  
 of Oregon

By:  
 Its:  
 Dated:

Citizens' Utility Board of Oregon

By: G.C. McCracken  
 Its: General Counsel  
 Dated: 12-8-11

Commission's order. However, prior to taking any such actions, the Party must engage in good-faith negotiation with the other Parties to this Stipulation.

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Virgin Mobile USA, L.P.

\_\_\_\_\_  
By:  
Its:  
Dated:

Staff of the Public Utility Commission  
of Oregon

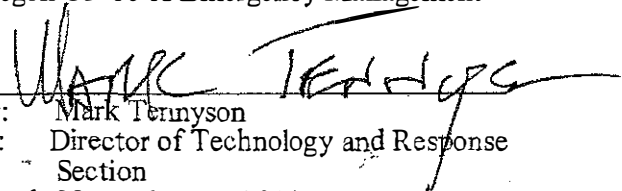
Paul A. Graham  
By: PAUL A. GRAHAM  
Its: Counsel  
Dated: 12/14/11

Citizens' Utility Board of Oregon

\_\_\_\_\_  
By:  
Its:  
Dated:

ORDER NO. 12 015

Oregon Office of Emergency Management

  
By: Mark Ternyson  
Its: Director of Technology and Response  
Section  
Dated: November 14, 2011.