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May 20, 2011

Luly E. Massaro, Clerk  
Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

Re: Application for Limited Designation as an Eligible Telecommunications Carrier by  
Virgin Mobile USA, L.P.

Dear Luly:

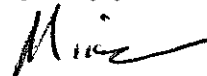
This office represents Virgin Mobile USA, L.P. (Virgin Mobile).

Enclosed for filing on behalf of Virgin Mobile is an application for limited designation as an eligible telecommunications carrier. An original and nine copies are enclosed.

I have also sent a copy to Leo Wold at the Attorney General's office.

If you need any further information, please do not hesitate to contact me.

Very truly yours,



Michael R. McElroy

MRMc:tmg

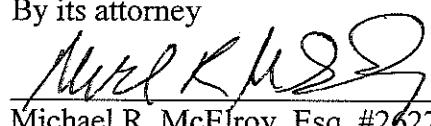
cc: Benjamin J. Aron, Esq.  
Leo Wold, Esq.

**Before the  
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

_____ )	
In the Matter of )	
Virgin Mobile USA, L.P. )	Docket No. _____
Petition for Limited Designation as an )	
Eligible Telecommunications Carrier )	
_____ )	

**APPLICATION FOR LIMITED DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

Dated: 5/20/11

Virgin Mobile, USA, L.P.  
By its attorney  
  
\_\_\_\_\_  
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## SUMMARY

Virgin Mobile USA, L.P. (“Virgin Mobile” or the “Company”), a wholly owned subsidiary of Sprint Nextel Corporation (“Sprint Nextel”), is seeking designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Rhode Island and Providence Plantations (“Rhode Island”), pursuant to Section 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. As discussed herein, Virgin Mobile meets all of the necessary requirements for ETC designation under Section 214(e)(1) of the Act to offer services supported by the Lifeline program. Designation of the Company would promote the public interest because it would provide qualifying Rhode Island customers with lower prices and higher quality wireless services. Many low-income customers in Rhode Island have yet to benefit from the intensely competitive wireless market because of financial constraints, poor credit history or intermittent employment, and many existing customers lose access to wireless services when their financial position deteriorates as a consequence of losing a job, a medical condition or any other adverse event—all unfortunately too common during a challenging economic period. Virgin Mobile’s prepaid Lifeline service offerings are ideally suited to provide these customers with reliable wireless services. As an ETC, Virgin Mobile would be able to provide affordable, and even free, services to these consumers—many of whom are among the intended beneficiaries of USF support.

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**APPLICATION FOR LIMITED DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER**

I. INTRODUCTION

Virgin Mobile USA, L.P. (“Virgin Mobile” or the “Company”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), Section 1.9 of the State of Rhode Island and Providence Plantations Public Service Commission’s (“Commission”) Rules of Practice and Procedure,<sup>1</sup> and the Commission’s ETC Rules,<sup>2</sup> hereby submits this Application for Limited Designation as an Eligible Telecommunications Carrier (“Application”) to the Commission for designation as an eligible telecommunications carrier (“ETC”) in the State of Rhode Island. Virgin Mobile seeks ETC designation in Rhode Island only for purposes of participation in the Universal Service Fund’s (“USF”) Lifeline program. The instant request does not seek ETC designation to offer

<sup>1</sup> Rules of Practice and Procedure, effective May 1, 1998.

<sup>2</sup> Rules and Regulations Governing the Certification and Verification Procedures for Telecommunications Carriers Eligible to Receive Payments from the Federal Universal Service Fund and Verification Processes for Compliance with Providing Lifeline and Linkup Service, effective February 4, 2010, (“Commission’s ETC Rules”).

services supported by the high-cost program. As more fully described below, Virgin Mobile satisfies the requirements for designation as an ETC in the State of Rhode Island. Rapid approval of Virgin Mobile's request, moreover, would advance the public interest because it would enable the Company to commence much needed Lifeline services to lower-income Rhode Island residents as soon as possible. Accordingly, the Company respectfully requests that the Commission expeditiously approve the instant petition.

## II. BACKGROUND

### A. Company Overview

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>3</sup>

Unlike many wireless carriers, Virgin Mobile does not impose credit checks or long-term service contracts as a prerequisite to obtaining service. Many customers are from lower-income backgrounds and did not previously enjoy access to an attractive, comprehensive and high-quality wireless service because of financial constraints or poor credit history. Virgin Mobile estimates that approximately one-third of its present customers are new to wireless services and 35 percent have an annual household income below \$35,000. Many of these customers also use Virgin Mobile's services sparingly, with a substantial percentage spending less than \$10 per

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<sup>3</sup> See *International Authorizations Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

month. By marketing and expanding the availability of appealing wireless services to consumers otherwise unable to afford them, and those previously ignored by traditional carriers, Virgin Mobile has effectively expanded access to wireless services. Unfortunately, during this challenging economic period, many existing customers have to forgo access to wireless services entirely when their financial position deteriorates, making it more difficult for prospective employers and dependent family members to reach them and losing wireless access to emergency services.

B. Previous ETC Designations

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>4</sup> Because, at that time, Virgin Mobile operated as a mobile virtual network operator that did not own any network facilities, the *2009 Order* also conditionally granted the Company's request for forbearance from enforcement of the Section 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 the states of Alabama, Connecticut, Delaware, New Hampshire and Washington D.C.<sup>5</sup> In the *2010 Order*, the FCC determined that Virgin Mobile now operates as a facilities-based carrier for

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<sup>4</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").

<sup>5</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").

purposes of Section 214 of the Act in light of its acquisition by Sprint Nextel. As discussed more fully below in Section III.C., the FCC concluded that Virgin Mobile “no longer needs forbearance” from the Section 214 facilities-based requirement and lifted certain forbearance conditions associated with Virgin Mobile’s prior status as a reseller.<sup>6</sup>

Moreover, the public utility commissions of the states of Arkansas, Florida, Georgia, Indiana, Iowa, Louisiana, Maryland, Michigan, Mississippi, New Jersey, Pennsylvania, South Carolina, Texas, Washington and West Virginia have also designated Virgin Mobile as a facilities-based ETC without reliance on the *2009 Order*.

C. The Commission Has the Authority to Perform ETC Designations

The Commission has the requisite authority to perform the limited ETC designation requested herein. Section 214(e)(2) of the Act provides state public utility commissions with the “primary responsibility” for the designation of ETCs.<sup>7</sup> Pursuant to this authority, the Commission has historically participated in determining whether to grant ETC status to an applying carrier, including any requesting wireless carrier.<sup>8</sup> 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 Section 214(e)(1). By offering all of the services supported by the federal USF and advertising the availability of such services, Virgin Mobile currently meets all of the requirements of Section 214 of the Act, and the Commission’s ETC Rules, warranting its designation as an ETC by the Commission.

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<sup>6</sup> See *id.* at ¶ 15.

<sup>7</sup> 47 U.S.C. § 214(e)(2).

<sup>8</sup> See *In re: Petition of Tracfone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Rhode Island for the Limited Purpose of Offering Lifeline Services to Qualified Households*, Docket No. 4153, Order No. 20134 issued on September 14, 2010.



III. VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS RHODE ISLAND SERVICE AREA FOR PARTICIPATION IN THE LIFELINE PROGRAM

A. Virgin Mobile Requests ETC Designation for its Entire Service Territory

As a non-rural carrier, Virgin Mobile is required to describe the areas within which it requests ETC designation. The Company requests ETC designation for its entire service area in Rhode Island.<sup>9</sup> Virgin Mobile understands that its service area overlaps with rural service areas in Rhode Island, but maintains that the public interest factors described below justify its designation in these service areas, especially because it only seeks ETC designation for purposes of participating in the Lifeline program.

B. Virgin Mobile Requests ETC Designation for Participation in the Lifeline Program

Virgin Mobile requests ETC designation in Rhode Island for the sole purpose of participating in the Lifeline program as a prepaid wireless carrier.<sup>10</sup> Virgin Mobile will not seek to provide services supported by the USF's high-cost program. As more fully described below, the instant request to participate in the Lifeline program promotes the goals of universal service and offers many benefits to low-income customers in the State of Rhode Island. The Lifeline services provided by Virgin Mobile will contain many features specifically designed for qualifying customers. Indeed, Virgin Mobile's Lifeline plans will provide affordable and convenient wireless services to qualifying Rhode Island customers, many of whom are otherwise unable to afford wireless services.

Virgin Mobile's designation as an ETC solely for Lifeline purposes also would not unduly burden the USF or otherwise reduce the amount of funding available to other carriers.

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<sup>9</sup> A list of the wire centers for which Virgin Mobile requests ETC designation is attached hereto as Exhibit 2.

<sup>10</sup> Virgin Mobile does not seek designation for Linkup or for USF High Cost support. To the extent a waiver is required, Virgin Mobile hereby requests a waiver from any and all requirements under either or both programs.

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, Lifeline funding represented approximately 14% of total USF expenditures in 2009.<sup>11</sup> The FCC, itself, concluded that designation of Virgin Mobile as an ETC would result only in a “minimal” increase in USF funding.<sup>12</sup>

The nature by which Lifeline support is provided to wireless carriers also obviates any concerns that multiple ETC designations in Rhode Island 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.

C. Description of Prepaid Lifeline Offering

Virgin Mobile has branded its prepaid Lifeline service “Assurance Wireless Brought To You By Virgin Mobile.” The service will provide customers with the same features and functionalities enjoyed by all other Virgin Mobile prepaid customers, with one notable exception: prepaid Lifeline services are available free of charge. Under the basic plan, eligible customers will receive 250 anytime prepaid minutes per month at no charge with additional service priced at \$0.10/minute and \$0.10/text message.<sup>13</sup> Virgin Mobile also offers two additional methods by which Lifeline customers, entirely at their option, can purchase blocks of

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<sup>11</sup> See *Universal Service Monitoring Report*, CC Docket 98-202, Chart 1.1 (filed Dec. 30, 2010).

<sup>12</sup> See *2009 Order* at ¶ 24.

<sup>13</sup> Virgin Mobile expects that the Company’s Lifeline plan may change as the wireless market evolves. As such, the Company requests that the Commission’s grant of ETC designation provide it with the requisite authority to modify the parameters of the offering as marketplace conditions develop.

additional services.<sup>14</sup> Under the first option, Lifeline customers can add \$5 to their account to purchase an additional 250 monthly minutes, providing them with a total of 500 voice minutes in a month (250 free minutes plus 250 additional minutes). Under the second option, 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. There is no obligation that customers purchase these additional offerings or add money to their accounts, and all eligible customers will continue to receive 250 free monthly minutes.<sup>15</sup>

Eligible customers can select any option 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 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>16</sup> Finally, each service plan also includes voicemail, caller I.D. and call waiting services at no additional charge.

To ensure that customers receive uninterrupted access to 911 emergency and customer care services, Lifeline customers will be able access 911 emergency and customer care services

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<sup>14</sup> A description of these service offerings is available on the Assurance Wireless website: <http://www.assurancewireless.com/Public/MorePrograms.aspx>.

<sup>15</sup> Consistent with current practice, minutes and text messages do not carry forward from month-to-month. Customers can still purchase individual voice minutes and text messages for \$0.10.

<sup>16</sup> Customers may incur state sales tax and fees at the point of purchase should the customer choose to top-up their account.

regardless of whether they have any remaining minutes in their account. In addition, minutes used for calls placed to 911 emergency services and Virgin Mobile/Assurance Wireless customer care are not decremented from a customer's account. As a result, Lifeline customers will receive free service so long as they do not elect to exceed 250 minutes of voice service per month with no additional charges for taxes or activation.

New customers may elect to receive a free Assurance Wireless-branded handset with E911 functionality. Current Virgin Mobile customers will be able to use their existing handsets to receive prepaid Lifeline services, 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 Rhode Island will not incur any upfront costs for access to the Company's Lifeline services.

To guard against potential fraudulent use of Lifeline service, applicants for Lifeline service must provide a variety of information, including their name, residential address and relevant eligibility criteria. The enrollment form includes an applicant certification section where each applicant must attest and sign under penalty of perjury that the applicant receives Lifeline-supported service only from Virgin Mobile. The applicant must submit the signed enrollment form and all supporting documentation as required by federal or state guidelines to the Company prior to commencement of Lifeline service. As an additional 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.<sup>17</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 Rhode Island. 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 would 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, 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.

D. Applicability of Forbearance Conditions

In light of the FCC's recent decision to designate Virgin Mobile as a facilities-based ETC and lift the requirements associated with its prior grant of forbearance, Virgin Mobile respectfully submits that the Commission similarly designate it as a facilities-based ETC. As the

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<sup>17</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.

FCC noted in its recent decision, Virgin Mobile is a facilities-based carrier for purposes of Section 214(e)(1) of the Act, even though absolute, direct legal title to Virgin Mobile’s wireless communications facilities 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 formalistic interpretation of the term “own facilities” in Section 214(e)(1) and adopted a more flexible approach.<sup>19</sup> In these prior decisions, the Commission determined that the Section 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>

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. 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,

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<sup>18</sup> See *2010 Order* at ¶ 15-16.

<sup>19</sup> See *id.*

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

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 subsidiaries. Virgin Mobile respectfully submits that it be subject to the same requirements as any other facilities-based wireless ETC in Rhode Island with respect to 911 and E911 issues.

IV. VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act 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. Applicants must also commit to advertise the availability and rates of such services.<sup>21</sup> As detailed below, Virgin Mobile satisfies each of the above-listed requirements, and the requirements of the Commission's ETC Rules.<sup>22</sup>

A. Virgin Mobile is a Common Carrier

Section 153(10) 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 ...”<sup>23</sup> 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

<sup>21</sup> See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d).

<sup>22</sup> Virgin Mobile will also comply with Sections IV, V and VI of the Commission's ETC Rules.

<sup>23</sup> 47 U.S.C. § 153(10).

telecommunications services, therefore, Virgin Mobile is a common carrier eligible for designation as an ETC.

B. Virgin Mobile Will Provide the Supported Services

As described above, Virgin Mobile is a wholly owned subsidiary of Sprint Nextel. Accordingly, Virgin Mobile is capable of, and currently provides, the supported services over an existing network infrastructure in Rhode Island. Virgin Mobile's request for ETC designation complies with Section 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 Section 54.101 of the FCC's regulations throughout its service territory in the State of Rhode Island. The Company, moreover, will make these services and functionalities available to any qualifying Rhode Island customer in the Company's service area.

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 between 300 and 3,000 MHz as required by the FCC's regulations.<sup>24</sup>

2. Local Usage

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. Neither the FCC's nor the Commission's ETC Rules require ETCs to offer a specific amount of local usage or mandate that ETCs 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

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<sup>24</sup> See 47 U.S.C. § 54.101(a)(1); see also Commission's ETC Rules at Sec. II.A.2.



territory.<sup>25</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>26</sup> The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.<sup>27</sup>

Virgin Mobile's proposed Lifeline offering fully complies with the local usage requirements established by the FCC. Not only will Virgin Mobile's offering be comparable to the underlying ILEC plans, but it also will exceed them in several respects. Contrary to the ILECs' plans, Virgin Mobile will offer customers a certain amount of service free of charge. As discussed above, Virgin Mobile will provide its Lifeline customers with 250 anytime minutes per month at no charge. Contrary 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 and E911 capabilities. Most important, Virgin Mobile's Lifeline service will provide low-income Rhode Island residents with the convenience and security offered by wireless services without interruption—even if their financial position deteriorates.

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<sup>25</sup> 47 C.F.R. § 54.202(a)(4).

<sup>26</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, 6385 (2005).

<sup>27</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).

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 call detail information throughout its network.<sup>28</sup> 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 single-party service to its wireless customers for the duration of each telephone call, and does not provide multi-party (or “party-line”) services.<sup>29</sup>

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.<sup>30</sup>

6. Access to Operator Services

Virgin Mobile provides all of its customers with access to operator services.<sup>31</sup>

7. Access to Interexchange Services

Virgin Mobile’s service provides its customers with the ability to make interexchange, or long distance, telephone calls.<sup>32</sup> Domestic long distance capabilities are included in Virgin

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<sup>28</sup> See Commission’s ETC Rules at Sec. II.A.3.

<sup>29</sup> See *Id.* at Sec. II.A.1.

<sup>30</sup> See *Id.* at Sec. II.A.4.

<sup>31</sup> See *Id.* at Sec. II.A.5.

<sup>32</sup> See *Id.* at Sec. II.A.6.

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.<sup>33</sup>

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, or "pay-as-you-go," basis. Virgin Mobile's service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. 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>34</sup>

C. Functionality in Emergency Situations

As a wholly owned subsidiary of Sprint Nextel, Virgin Mobile is able to remain functional in emergency situations as required by Section 54.202(a)(2) of the FCC's

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<sup>33</sup> See *Id.* at Sec. II.A.7.

<sup>34</sup> See 2009 Order at ¶ 34; 2010 Order at fn. 33. See also Commission's ETC Rules at II.A.8.

regulations.<sup>35</sup> Sprint Nextel 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 Nextel's products and services to allow the public and private sectors to function in emergency situations. Indeed, Sprint Nextel'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 back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Each cell site in the Sprint network is equipped with two hours of battery back-up power. The company also is capable of rerouting 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 chance that emergencies, fiber cuts or equipment failure will result in a loss of service.

D. Advertising of Supported Services

Virgin Mobile will advertise the availability and rates for the services described above using media of general distribution in conformance with the FCC's regulations.<sup>36</sup> The Company

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<sup>35</sup> See 47 C.F.R. § 54.202(a)(2).

<sup>36</sup> See 47 C.F.R. § 54.201.

advertises the availability of its Lifeline services through newspapers, radio, the Internet, and television. These advertising campaigns have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to this consumer segment. In addition, Virgin Mobile has established partnerships with social services organizations to inform clients of those organizations of the availability of its Lifeline service.

E. Equal Access to LD Carriers

Virgin Mobile 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, as required by 47 C.F.R. § 54.202(a)(5).

F. Filing of FCC Form 497

In conformity with Section VI.G. of the Commission's ETC Rules, Virgin Mobile hereby notifies the Commission that it files FCC Form 497 with the Universal Service Administrative Company monthly.

V. DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

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>37</sup> There is no question that designation of Virgin Mobile as an ETC in Rhode Island will further the public interest by providing Rhode Island consumers, especially low-income consumers, with lower prices and higher quality

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<sup>37</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

services. Many lower-income customers in Rhode Island 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. Designating Virgin Mobile as an ETC in Rhode Island, therefore, will enable it to expand the availability of affordable telecommunications services to qualifying Rhode Island customers, and is consistent with the public interest, convenience and necessity.

The instant request for ETC designation must be examined in light of the Act's goals of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating Virgin Mobile as an ETC would benefit Rhode Island consumers, especially its many low-income consumers eligible for Lifeline services. The Company's participation in the Lifeline program also undoubtedly would increase opportunities for it to serve Rhode Island with 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>38</sup>

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. Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the Rhode Island Lifeline market, helping to redefine the wireless experience for many low-income consumers in

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<sup>38</sup> See 2010 Order at ¶ 19.

the state. Other carriers, therefore, will 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 leads to improved wage levels and personal safety.<sup>39</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 is testament to the principle 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. As evidence of its commitment to high-quality service, Virgin Mobile has complied with the CTIA-The Wireless Association® Consumer Code for Wireless Service ("Consumer Code") since its inception and will continue to comply with the Consumer Code once designated as an ETC.<sup>40</sup> Virgin Mobile annually certifies its compliance with the Consumer Code, and the Commission and the FCC recognize the value of such compliance.<sup>41</sup> In prior years, the Company has also received numerous awards for its high-quality customer service, including the prestigious J.D.

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<sup>39</sup> See Sullivan, "A Review of Literature and Data from Two New Surveys," April 2008 (available at [http://www.newmillenniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf) - last checked April 25, 2011).

<sup>40</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>41</sup> 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.

Power award for providing “An Outstanding Customer Service Experience” under J.D. Power’s Certified Call Center Program.

While Virgin Mobile has experienced success in deploying wireless services to low-income consumers, internal Company analysis suggests that many low-income customers still intermittently discontinue service because of economic constraints. ETC designation in Rhode Island would enable Virgin Mobile to offer appealing and affordable service offerings to low-income Rhode Island 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 a reliable means of contact for prospective employers, social service agencies or dependents.<sup>42</sup> Providing Virgin Mobile with the authority necessary to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

#### VI. 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 Section 5301 of the Anti-Drug Abuse Act of 1988.

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<sup>42</sup> Indeed, a recent aggregate survey of Virgin Mobile customer usage patterns indicated that state and city welfare agencies are among the most frequently contacted by customers.



VII. CONCLUSION


As discussed above, designation of Virgin Mobile as an ETC in the State of Rhode Island accords with the requirements of Section 214(e)(2) of the Act, and with the Commission's ETC's Rules, and is in the public interest.

WHEREFORE, for all of the foregoing reasons, Virgin Mobile respectfully requests that the Commission designate Virgin Mobile as an ETC in the State of Rhode Island solely for purpose of participating in the Lifeline program.

Respectfully submitted,

VIRGIN MOBILE USA, L.P.

By its attorney,



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Providence, RI 02940-6721

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Fax: (401) 421-5696

Michael@McElroyLawOffice.com

*Counsel to Virgin Mobile USA, L.P.*

Dated: 5/20/11

EXHIBIT 1  
CERTIFICATION

**Declaration of Virgin Mobile USA, L.P.**

I, Elaine Divelbliss, do hereby declare under penalty of perjury as follows:

1. I am Senior Counsel for Sprint Nextel Corporation, parent of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059.

2. I have read Virgin Mobile's Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Rhode Island and confirm the information contained therein to be true and correct to the best of my knowledge.

3. To the best of my knowledge, Virgin Mobile, including all officers, directors, or persons holding five percent or more of the outstanding stock or shares (voting or non-voting) of the Company, are not subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

4. I certify that Virgin Mobile is an authorized telecommunications carrier under the laws of the State of Rhode Island.

5. I certify that Virgin Mobile provides all federally-required and state-required services throughout its service area, and so advertises them in media of general circulation.

6. I certify that I have reviewed and am familiar with both the federal and Rhode Island's ETC rules and that Virgin Mobile offers Lifeline services that comply with the Federal and State requirements.

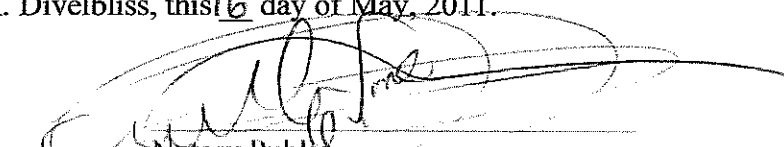
7. I certify that the company can provide the required services.

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed May 16, 2011

  
\_\_\_\_\_  
Elaine M. Divelbliss  
Senior Counsel

Sworn to and subscribed before me by Elaine M. Divelbliss, this 16 day of May, 2011.

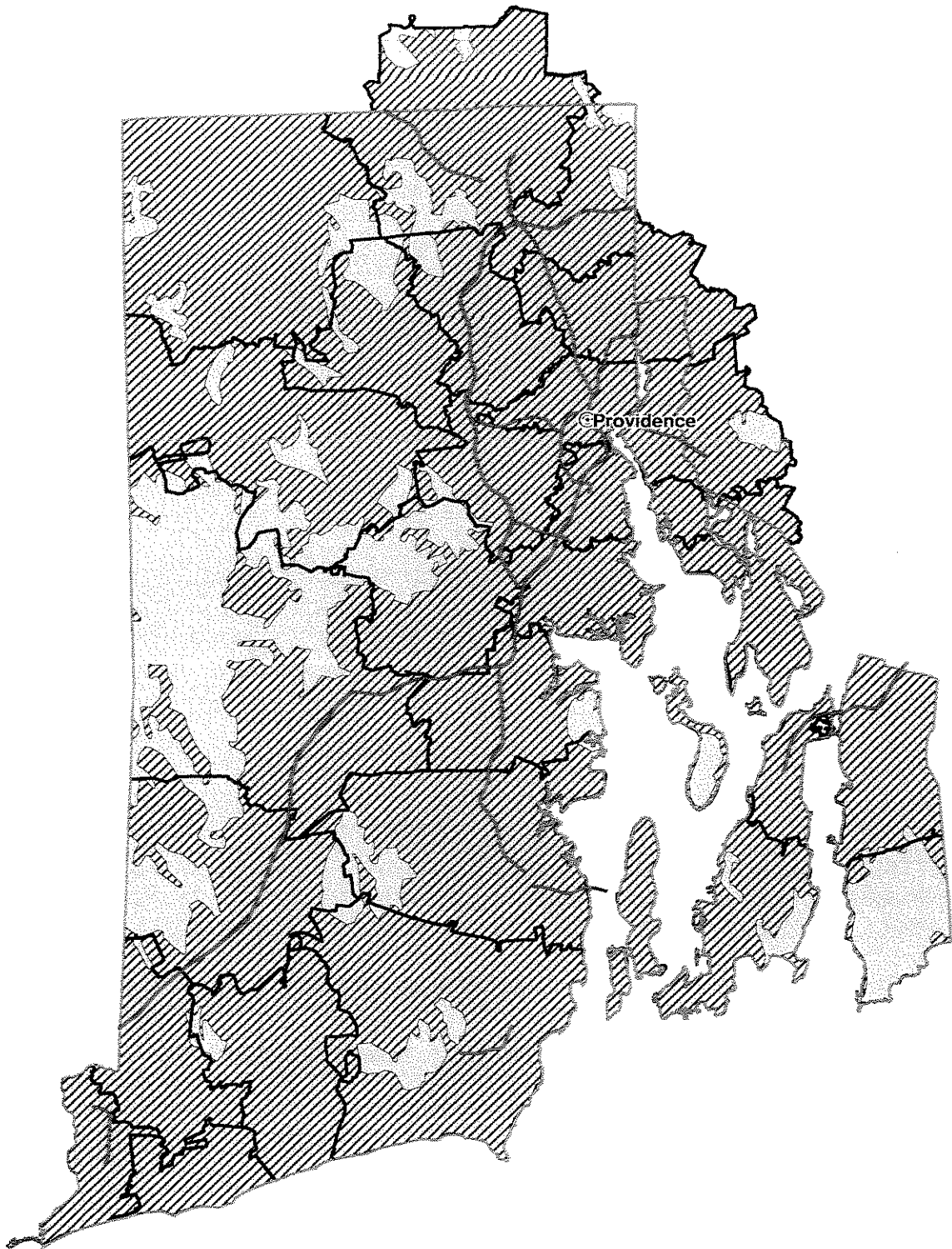
  
\_\_\_\_\_  
Notary Public

My comm. expires: 11/15/2014





CARLOS A. FORDE  
NOTARY PUBLIC, STATE OF NEW YORK  
QUALIFIED IN KINGS COUNTY  
REG. #01F04925001  
MY COMM. EXP. NOV. 15, 2014

**EXHIBIT 2**  
**WIRE CENTERS**

WCCode	Company_Name	XChange
ASTNRAN	VERIZON NEW ENGLAND INC.	PAWTUCKET
ASWYRIYB	VERIZON NEW ENGLAND INC.	WESTERLY
BLISRIOT	VERIZON NEW ENGLAND INC.	BLOCK ISLAND
CNTNRIPH	VERIZON NEW ENGLAND INC.	PROVIDENCE
CNTYRIST	VERIZON NEW ENGLAND INC.	COVENTRY
CRLNRIMA	VERIZON NEW ENGLAND INC.	CAROLINA
EGRNRICH	VERIZON NEW ENGLAND INC.	GREENWICH
EPRVRINB	VERIZON NEW ENGLAND INC.	PROVIDENCE
GLCSRIWG	VERIZON NEW ENGLAND INC.	CENTREDALE
HPVYRIMA	VERIZON NEW ENGLAND INC.	HOPE VALLEY
JMTWRINA	VERIZON NEW ENGLAND INC.	JAMESTOWN
LTCMRIWE	VERIZON NEW ENGLAND INC.	LITTLE COMPTON
NKTWRIPH	VERIZON NEW ENGLAND INC.	NORTH KINGSTOWN
NPRVRIMS	VERIZON NEW ENGLAND INC.	CENTREDALE
NRGNRIMA	VERIZON NEW ENGLAND INC.	NARRAGANSETT
NWPTRIBU	VERIZON NEW ENGLAND INC.	NEWPORT
PRVDRIBR	VERIZON NEW ENGLAND INC.	PROVIDENCE
PRVDRIWA	NEW CINGULAR WIRELESS PCS, LLC - MA	NARRAGANSETT
PSCGRIPA	VERIZON NEW ENGLAND INC.	PASCOAG
PTMORIEM	VERIZON NEW ENGLAND INC.	PORTSMOUTH
PWTCRIHI	VERIZON NEW ENGLAND INC.	PAWTUCKET
RVSDRISO	VERIZON NEW ENGLAND INC.	PROVIDENCE
SCTTRISI	VERIZON NEW ENGLAND INC.	SCITUATE
TVTNRHA	VERIZON NEW ENGLAND INC.	TIVERTON
WKPGRWA	VERIZON NEW ENGLAND INC.	WESTERLY
WNSCRICL	VERIZON NEW ENGLAND INC.	WOONSOCKET
WRLYRIMA	VERIZON NEW ENGLAND INC.	WESTERLY
WRRNRIEV	VERIZON NEW ENGLAND INC.	WARREN
WRWKRIWS	VERIZON NEW ENGLAND INC.	WARWICK
WWWKRIMA	VERIZON NEW ENGLAND INC.	WEST WARWICK



**Legend**

-  Interstates
-  RI State Boundary
-  CDMA Coverage Area
-  Intersecting Exchanges



**EXHIBIT 3**  
**2010 ORDER**

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

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
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.<sup>1</sup> 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

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<sup>1</sup> 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 Red 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(e)(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

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<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. I; 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(e).

<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

## EXHIBIT 4

### Rule 1.9 Application Requirements Statements and Information

Legal Name of Applicant: Virgin Mobile USA, L.P.  
State of Organization: Delaware  
Principal Place of Business: Warren, NJ  
States Wherein Authorized to do Business: All 50 states in the United States of America  
Correspondence Directed to:

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