



STOLL · KEENON · OGDEN
PLLC

2000 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE, KY 40202-2828
MAIN: (502) 333-6000
FAX: (502) 333-6099
www.skofirm.com

DOUGLAS F. BRENT
DIRECT DIAL: 502-568-5734
DIRECT FAX: 502-333-6099
douglas.brent@skofirm.com

February 9, 2011

Jeffrey DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40601

RECEIVED
FEB 11 2011
PUBLIC SERVICE
COMMISSION

**RE: Case No. 2010-00524--The Petition of Virgin Mobile USA, L.P. for Designation
as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky**

Dear Mr. DeRouen:

On behalf of Virgin Mobile USA (“Virgin Mobile” or the “Company”), we filed the referenced petition for eligible telecommunications carrier (“ETC”) status on December 29, 2010. Section II. B. of the petition discusses a March 5, 2009 Order of the Federal Communications Commission (“FCC”) that granted Virgin Mobile’s request for forbearance from the facilities-based requirements set forth in Section 214(e)(1)(A) of the Communications Act of 1934, as amended (“Act”).¹ However, as Section III. D. of the petition explains, Sprint Nextel Corporation (“Sprint”) acquired Virgin Mobile after that forbearance order was issued, making certain requirements set forth in the Order inapplicable to the Company’s operations.

The petition further explains that as a wholly owned subsidiary of Sprint, Virgin Mobile has beneficial use of Sprint’s wireless facilities and is a facilities-based carrier for purposes of Section 214(e)(1) of the Act. The petition notes that several state commissions have agreed and have determined that Virgin Mobile operates as a facilities-based provider and will provide the supported services over its own facilities pursuant to Section 214(e)(1)(A) of the Act.² Those state decisions were included in Exhibit 3 to the petition.

¹ 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, 24 FCC Rcd 3381 (rel. March 5, 2009)(“Order”).

² Petition at p. 12, n. 20.

Jeffrey DeRouen
February 9, 2011
Page 2

Coincidentally, on the same day we filed the petition, the FCC designated the Virgin Mobile as an ETC in the states of Alabama, Connecticut, Delaware, New Hampshire and in Washington D.C.³ The FCC's recent designation order also confirmed that Virgin Mobile enjoys beneficial use of Sprint's wireless facilities as a result of its acquisition and "owns" Sprint's facilities for purposes of the facilities requirement in section 214(e) of the Act.⁴ Consequently, 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.⁵ Obviously, the FCC's decision to designate Virgin Mobile as a facilities-based ETC without the need for forbearance supports Virgin Mobile's petition and may inform the Commission's consideration in this matter. Accordingly, this letter is to supplement Exhibit 3 to the petition to include a copy of the FCC's decision.

I have included an extra copy of this letter to be stamped as FILED and returned to our office in the enclosed, self addressed, postage paid envelope.

Sincerely yours,



Douglas F. Brent

cc: Allyson Honaker, Legal Division

DFB: jms
Enclosure

³ 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 ETC Order").

⁴ See *id.* at para. 15 (December 29, 2010). In light of this FCC decision and the Commission's requirements applicable to facilities-based providers of mobile services Virgin Mobile registered as a utility on January 12, 2011. Virgin Mobile has been assigned Utility ID No. 4105700.

⁵ See *id.*

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

In the Matter of
Telecommunications Carriers Eligible for
Universal Service Support
Virgin Mobile USA, L.P. Petition for Designation
as an Eligible Telecommunications Carrier
in the State of Alabama
Virgin Mobile USA, L.P. Petition for Designation
as an Eligible Telecommunications Carrier
in the State of Connecticut
Virgin Mobile USA, L.P. Petition for Designation
as an Eligible Telecommunications Carrier
in the District of Columbia
Virgin Mobile USA, L.P. Petition for Designation
as an Eligible Telecommunications Carrier
in the State of Delaware
Virgin Mobile USA, L.P. Petition for Designation
as an Eligible Telecommunications Carrier
in the State of New Hampshire

ORDER

Adopted: December 29, 2010

Released: December 29, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

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

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

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

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."³ 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.⁴

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for designating ETCs in their states.⁵ 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."⁶ 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).⁷ 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.⁸ The Wireline Competition Bureau (Bureau) has delegated authority to consider ETC designation requests.⁹

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

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

³ 47 U.S.C. § 254(e).

⁴ 47 U.S.C. § 214(e)(1)(A), (B).

⁵ 47 U.S.C. § 214(e)(2).

⁶ 47 U.S.C. § 214(e)(6).

⁷ *Id.*

⁸ *Id.*

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

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

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.¹¹

6. Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.¹² 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.¹³ 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.¹⁴ In particular, the Commission limits its creamskimming analysis to designations in areas served by rural telephone companies.¹⁵

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

¹⁰ *Id.*

¹¹ 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).

¹² 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.

¹³ 47 C.F.R. § 54.202(c).

¹⁴ *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).

¹⁵ *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.¹⁶ 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.¹⁷

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.¹⁸ 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.¹⁹

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.²⁰ 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.²¹ The Commission also required Virgin Mobile to file a compliance plan, outlining the measures that it would take to implement each condition.²² The Bureau approved Virgin Mobile's compliance plan on October 29, 2009.²³

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,

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

¹⁷ See 47 C.F.R. § 54.405(a)(4).

¹⁸ 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*).

¹⁹ *Id.* at 3395, para. 39.

²⁰ *Id.* at 3386, para. 12.

²¹ *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.

²² *Id.* at 3387, 3397, paras. 12, 23.

²³ 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.²⁴ Virgin Mobile states that it will offer Lifeline customers prepaid Lifeline services free of charge.²⁵ 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.²⁶ 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.²⁷

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.²⁸ 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.²⁹

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

²⁴ 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.

²⁵ 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).

²⁶ 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.

²⁷ 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.

²⁸ Virgin Mobile December 14 *Ex Parte* Letter at 2–3.

²⁹ *Id.* at 1–2.

has authority to consider Virgin Mobile's petition under section 214(e)(6) of the Act.³⁰ 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.³¹

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.³² 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.³³

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.³⁴ Virgin Mobile also states that it complies with the Commission's regulations governing the deployment and availability of E911 compatible handsets.³⁵ 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.³⁶ We find that continuing to require Virgin Mobile to comply with these additional requirements promotes public safety among Lifeline customers.

³⁰ 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.

³¹ 47 U.S.C. § 214(e)(6).

³² 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.

³³ 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.

³⁴ 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.

³⁵ *Id.*

³⁶ 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.³⁷ 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.³⁸ 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.³⁹

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.⁴⁰ 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.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ In addition, Virgin Mobile has

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

³⁸ 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.

³⁹ 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.

⁴⁰ See AUA Comments at 4–5.

⁴¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 8865–66, paras. 158–61.

⁴² 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).

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

⁴⁴ Virgin Mobile Alabama Petition at 5–6, Exh. 1; Virgin Mobile Connecticut Petition 14; Virgin Mobile New Hampshire Petition at 14; Virgin Mobile Delaware Petition at 14; Virgin Mobile DC Petition at 14.

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

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.⁴⁶

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.⁴⁷

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.⁴⁸

21. The Commission has recognized that the potential for more than one Lifeline-supported service per eligible consumer is an industry-wide problem.⁴⁹ 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

⁴⁵ *Id.*

⁴⁶ 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.

⁴⁷ *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*).

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

⁴⁹ 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.⁵⁰

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.⁵¹ 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."⁵² 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.⁵³ Virgin Mobile promises to comply with these commitments within 30 days of the effective date of this order.⁵⁴

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

⁵⁰ 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.

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

⁵² Virgin Mobile December 14 *Ex Parte* Letter at 2.

⁵³ 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.").

⁵⁴ *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."⁵⁵ 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.⁵⁶ 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.⁵⁷

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.⁵⁸ Virgin Mobile has also committed to providing applicable consumer protection and service quality standards.⁵⁹ In addition, Virgin Mobile must report certain information to the Commission and to USAC pursuant to section 54.209 of the Commission's rules.⁶⁰

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.⁶¹

⁵⁵ 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.

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

⁵⁷ 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.

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

⁵⁹ 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.

⁶⁰ 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).

⁶¹ 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.⁶² 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.⁶³

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.⁶⁴ 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.⁶⁵ The Commission also may assess forfeitures for violations of Commission rules and orders.⁶⁶

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.⁶⁷ Virgin Mobile has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁶⁸ 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.

⁶² 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).

⁶³ 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.

⁶⁴ 47 U.S.C. §§ 220, 403.

⁶⁵ 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).

⁶⁶ See 47 U.S.C. § 503(b).

⁶⁷ 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.

⁶⁸ 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.
Milry 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