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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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	)	<b>Docket No. 10-2521-01</b>
In the Matter of Virgin Mobile USA, L.P.	)	
Petition for Limited Designation as an	)	<b>Reply Brief of</b>
Eligible Telecommunications Carrier	)	<b>Virgin Mobile USA, L.P.</b>
	)	

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I. Introduction

In this proceeding, Virgin Mobile USA, L.P. (“Virgin Mobile”), a wholly owned subsidiary of Sprint Nextel Corporation, seeks designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Utah, pursuant to Section 214(e) of the Communications Act, as amended (“Act”), for the limited purpose of offering prepaid wireless services supported by the federal Universal Service Fund’s (“USF”) Lifeline program.

On April 7, 2011, Virgin Mobile, the Division of Public Utilities (“Division”), and the Utah Rural Telecom Association (“URTA”), filed post-hearing briefs with the Commission. This brief is in reply to the post-hearing briefs of the Division and URTA.

II. Virgin Mobile Satisfies the Requirements of Section 214(e)

The Division recommends approval of Virgin Mobile’s petition, having concluded that it has demonstrated, pursuant to Section 214(e)(1) of the Act, that it is classified as a common

carrier, that it will offer throughout its service area all of the services required for universal service support, and that it will advertise the availability of its services and charges using media of general distribution.<sup>1</sup> The Division also concluded that Virgin Mobile meets the public interest requirements of Section 214(e)(2), provided it continues to pay into the state USF, and it follows the same procedures as other telecommunications companies for customer eligibility verification established by the Commission in Docket No. 10-2528-01.<sup>2</sup> It is the Division's position that a company's payments to the state USF should be sufficient to cover the costs of that company's Lifeline verifications. Virgin Mobile testified it will continue to pay into the state USF if designated as an ETC.

Virgin Mobile agrees with the Division's conclusions, that Virgin Mobile meets the requirements of Section 214(e), and that its designation as an ETC offering Lifeline service to eligible Utah customers is in the public interest, provided it follows the procedures established by the Commission for verifying a customer's eligibility for the Lifeline program. Virgin Mobile is committed to working with the Commission to establish a system for verifying the eligibility of Lifeline applicants and implementing procedures that comply with Utah law.

### III. Virgin Mobile Meets the Public Interest Standard in Section 214(e)(2)

URTA, in its brief, argues that Section 214(e)(2) creates a higher public interest standard for designating an ETC in rural areas served by a rural telephone company. URTA puts forward a self-formulated, self-serving public interest test comprised of three prongs: (1) that an ETC

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<sup>1</sup> See 47 U.S.C. § 214(e)(1); see Brief of the Division at p. 2-3 (Division reviewed Virgin Mobile's testimony and sample marketing materials used in other markets and determined that they satisfy the requirements).

<sup>2</sup> See Brief of the Division at p. 4-5 (Division cites Docket No. 10-2528-01, *Resolution of Certain Issues Related to the Designation of a Common Carrier as an Eligible Telecommunications Carrier*, in which the Commission is establishing verification procedures to help ensure only one individual per household receives Lifeline). See Testimony of Elaine Divelbliss, Tr. at p. 15, lines 3-4; p. 18, line 16 to p. 21, line 9 (describing Virgin Mobile's payments to state USF and voluntary efforts to combat waste, fraud, and abuse with Lifeline services).

contribute to all public interest programs; (2) that an ETC not negatively affect universal service; and (3) that a second ETC serve the same service area as the rural telephone company.<sup>3</sup>

Under Section 214(e)(2), the Commission must determine that an ETC designation is consistent with the public interest, convenience and necessity. Although Congress did not establish specific criteria for the public interest test in Section 214, the Federal Communications Commission (“FCC”), developed a public interest analysis for instances where it has jurisdiction over an ETC applicant. The FCC, in determining the public interest, “considers the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant’s service offering.”<sup>4</sup> For example, the FCC could consider the benefits of increased choice of service offerings in rural areas, such as prepaid services, and the particular advantages of mobility assisting consumers in rural areas who drive significant distances to work, school, and other locations, the possibility that customers will be subject to fewer toll charges, and the potential for customers to obtain premium services, such as voice mail, call waiting, and caller I.D. The FCC could also consider any disadvantages, such as poor coverage.

In its testimony and its post-hearing brief, Virgin Mobile has described a variety of public benefits of its Assurance Wireless branded Lifeline program. Designation of Virgin Mobile to provide Lifeline service in Utah would provide qualifying Utah customers with the advantages of its high quality wireless services and substantial value proposition for low-income consumers.<sup>5</sup>

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<sup>3</sup> Brief of URTA at p. 3.

<sup>4</sup> See *In the Matter of Virgin Mobile USA, L.P. Petitions for Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, District of Columbia, Delaware and New Hampshire*, Order, 25 FCC Rcd 17797, 17799 (Wireline Comp. Bur. 2010) (“*VMU 2010 Order*”). The FCC adopted one set of criteria to be considered in evaluating the public interest for ETC designations in both rural and non-rural areas. As part of the analysis, the FCC could compare the population density of wire centers in which the ETC applicant seeks designation. Note that there is no need to perform this analysis here because Virgin Mobile is eligible for Lifeline support only. *Id.* at 17804.

<sup>5</sup> This is consistent with a goal of the Communications Act, as amended by the Telecommunications Act of 1996, “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. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

Virgin Mobile will offer its Lifeline customers a free Assurance Wireless branded E911-compliant handset, 250 free minutes per month, the ability to call nationwide, the benefit of mobility, and access to a variety of other features at no additional charge, including voice mail, call waiting, caller I.D., and E911 capabilities.<sup>6</sup> Calls to 911 and customer service are free of charge and without using minutes. The FCC, after conducting a recent public interest analysis of Virgin Mobile ETC petitions, concluded:

We find that Virgin Mobile's universal service Lifeline offering will provide a variety of benefits to Lifeline-eligible consumers including increased consumer choice, high-quality service offerings, and mobility. In addition, the prepaid feature, which essentially functions as a toll control feature, may be an attractive alternative to Lifeline-eligible consumers who are concerned about usage charges or long-term contracts.<sup>7</sup>

Virgin Mobile has demonstrated that authorizing it to offer its high-quality wireless Lifeline services over the Sprint Nationwide Network will provide the fundamental benefits of increasing competition and expanding participation in the Lifeline program in Utah. Because Virgin Mobile is seeking ETC designation in areas served by rural telephone companies, the Commission must find that the designation is in the public interest under Section 214(e)(2) with respect to those areas. Virgin Mobile has met its burden of demonstrating that designation will serve the public interest.

In reply to URITA, the first proposed prong in URITA's public interest test, that ETCs as a condition to designation contribute to all public interest programs, is inconsistent with the Commission's recent order in the TracFone case, in which the Commission concluded that an ETC must submit state USF surcharges as a condition of its ETC status. However, the Commission lacks jurisdiction to determine whether ETCs are subject to the other public interest

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<sup>6</sup> Customers may purchase additional minutes at favorable rates. Brief of Virgin Mobile at n. 17.

<sup>7</sup> *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, 3395 (2009) ("VMU 2009 Order"); see *VMU 2010 Order* at 17804.

program surcharges.<sup>8</sup> With regard to URTA's second proposed prong, the FCC has previously considered the impact of granting new companies ETC status on the universal service fund in several recent cases and rejected arguments concerning a potential negative impact, holding instead that the additional choice and service options of another wireless service for low-income consumers is a significant benefit and is in the public interest.<sup>9</sup> The Western Wireless case cited in URTA's brief as precedent for the Commission granting Virgin Mobile's petition only in the non-rural areas can be distinguished.<sup>10</sup> In that case, the Commission held that designation of Western Wireless as an ETC in rural areas would not be in the public interest, in the absence of offsetting public benefits, because of the increased burdens on the state USF. Virgin Mobile is not requesting support from the state USF, and it has established an overwhelming list of public benefits. Moreover, Virgin Mobile is seeking only low-cost support, not high-cost support to build out its network; Virgin Mobile already offers service in the rural areas at issue. As to URTA's third proposed prong, cherry picking concerns are usually associated with requests for high-cost ETC designations, and Virgin Mobile is seeking Lifeline support only.<sup>11</sup>

By its petition, Virgin Mobile seeks to offer an additional Lifeline alternative to Utah customers within its existing coverage areas, including rural customers who stand to benefit greatly from an additional wireless Lifeline option. It is difficult to conceive of how an additional Lifeline option in rural areas, conferring public benefit, could be detrimental to the public interest.

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<sup>8</sup> See *Petition of TracFone Wireless, Inc.*, Docket No. 09-2511-01, Order on Reconsideration (Mar. 9, 2011).

<sup>9</sup> See *Federal-State Joint Board on Universal Service; In the Matter of i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, Order, 25 FCC Rcd 8784, 8791 (2010); *VMU 2009 Order* at p. 3394; *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095, 15102-03 (2005) (considering impact of ETC designations on federal USF).

<sup>10</sup> *WWC Holding Co., Inc. v. Public Service Commission of Utah*, 44 P.3d 714, 2002 UT 23.

<sup>11</sup> See *VMU 2010 Order* at p. 17804. The concern with cherry picking is that a carrier would receive ETC designation in a rural telephone company's service territory, and only build out to the more populous areas in that territory, which would negate the goal of the high-cost designation.

IV. Conclusion

Virgin Mobile satisfies all of the conditions required for designation as an ETC in Utah for the purpose of offering prepaid wireless services supported by the federal USF Lifeline program and it respectfully requests that the Commission expeditiously grant its petition.

Respectfully submitted,

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Dated: April 14, 2011

CERTIFICATE OF SERVICE

I certify that on April 14, 2011, I caused to be served Virgin Mobile USA, L.P.'s Reply Brief upon the following persons via electronic mail to the e-mail addresses listed below, and via hand delivery as indicated:

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