

PATRICIA E. SCHMID (#4908)  
Assistant Attorney General  
MARK L. SHURTLEFF (#4666)  
Attorney General of Utah  
Counsel for the DIVISION OF PUBLIC UTILITIES  
160 E 300 S, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, UT 84114-0857  
Telephone (801) 366-0380

---

**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

---

**In the Matter of Virgin Mobile USA, LP  
Petition for Limited Designation as an  
Eligible Telecommunications Carrier**

**Brief of the Division of Public Utilities**

**Docket No. 10-2521-01**

---

The following is the brief of the Division of Public Utilities (Division) in response to Virgin Mobile USA, L.P.'s (Virgin Mobile) Petition for Limited Designation as an Eligible Telecommunications Carrier in Utah (Petition).

**INTRODUCTION AND SUMMARY**

Virgin Mobile is seeking designation as an Eligible Telecommunications Carrier (ETC) in the State of Utah, 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. Virgin Mobile seeks ETC status in all areas of Utah where its underlying carriers offer service. This not only includes Qwest exchanges, but also the exchanges of many rural LECs in the state. Virgin Mobile is only requesting ETC status in order to provide Lifeline service to qualifying customers. Virgin Mobile is not requesting any direct Utah USF support. The entire Lifeline support will come from the federal government's Universal Service Fund.

It is the Division's position that Virgin Mobile meets all of the requirements contained in Section 214(e), Chapter 47 of the United States Code. Therefore, the Division recommends that the Commission approve the Petition with the condition that, in verifying potential customers' eligibility for the subsidy, Virgin Mobile be required to follow the same procedures as any other telecommunications company.

#### VIRGIN MOBILE MEETS THE REQUIREMENTS OF 47 USC SECTION 214(e)(1)

In order to obtain designation by the Commission as an ETC, Virgin Mobile must meet the requirements of 47 USC Section 214(e)(1). That Section provides:

(1) Eligible telecommunications carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received.

(A) offer the services that are supported by Federal universal service support mechanism under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

It is the Division's position that Virgin Mobile meets the requirements of Paragraph 1 of Section 214(e). First, because Virgin Mobile has access to Sprint's network, it is classified as a common carrier. Second, Virgin Mobile would be offering throughout the designated service area all of the services required for Federal USF support, including:

- Voice grade access to the public switched network.
- Local usage.

- Dual tone multi-frequency (DTMF) signaling or its functional equivalent.
- Single-party service or its functional equivalent.
- Access to 911 and E911 emergency service.
- Access to operator services.
- Access to interexchange service.
- Access to directory assistance.
- Toll limitation for qualified low-income customers.

Third, Virgin Mobile has adequately demonstrated that it would advertise those services.

On pages 16-17 of Virgin Mobile witness Ms. Diveilbliss' direct testimony, she outlines the methods Virgin Mobile uses to advertise its service to qualifying customers. Ms.

Diveilbliss indicates:

Virgin Mobile will advertise its Lifeline services using a variety of media in conformance with the regulations of the Commission and the FCC. These means will include television, brochures, in-person events, direct mail, newspapers and the Internet. [In other jurisdiction], these marketing efforts have been highly successful in reaching eligible low-income customers and promoting the availability of Lifeline services.

The Division reviewed the sample marketing materials that have been used by Virgin Mobile in other markets and is satisfied that Virgin Mobile will “advertise the availability of their services and the charges” using media of general distribution as required by Section 214(e)1(B) of the Act.

**VIRGIN MOBILE ALSO MEETS THE “PUBLIC INTEREST” REQUIREMENTS OF 47 USC SECTION 214(e)(2)**

In order to obtain designation by the Commission as an ETC, Virgin Mobile must also meet the requirements of 47 USC Section 214(e)(2). That Section provides:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case

of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

It is the Division's position that, as long as Virgin Mobile uses a Commission-approved method of customer eligibility verification and continues to pay into Utah's USF, Virgin Mobile meets the public interest standard contained in Paragraph 2 of Section 214(e). One of the primary concerns of the Division with the Petition is the potential for fraud. Because of the transient nature of Virgin Mobile's service and the fact that there is no economic cost to users of the service, qualified Lifeline customers may find ways to exploit the system and obtain multiple Lifeline supported phones at the same address. Thus, the Commission should require Virgin Mobile to utilize the Department of Community and Culture's (DCC) knowledge and databases (or whichever provider of verification services is established through Docket No. 10-2508-01) to ensure as accurately as possible that only one individual per household is receiving the Lifeline subsidy.

The Division also recognizes that with the additional verification requirement recommended, increased costs will be placed on DCC or any entity contracted to do the verification. Historically, the Commission has allowed those costs of verification to be paid by state USF funds. The Division believes that if a telecommunications company pays the applicable fees for its intrastate retail rates into the state USF fund, this should be sufficient to cover the costs of Lifeline verifications for that company. Virgin Mobile has indicated that it will continue to pay into the Utah USF, stating, "Virgin Mobile does

intend to recommence payments to the Utah USF after the credit is exhausted.” (Virgin Mobile’s Response to Office of Consumer Services’ Third Set of Data Requests). As a telecommunications carrier paying into the state USF fund, Virgin Mobile would be similar to all other telecommunications carriers where the cost of verification would be covered by funds from the USF. Currently all costs for verification come from charges paid into the state USF by telecommunication companies on their intrastate retail rates. The Division believes treating Virgin Mobile the same as other companies like Qwest, or rural ILECs that pay into the USF fund, is sufficient to cover the costs of verification. Conversely, if Virgin Mobile does not feel USF payments are applicable to its company, then paying the costs that will be developed in Docket No. 10-2528-01 would be appropriate.

#### CONCLUSION

The Division recommends that the Commission grant the ETC designation of Virgin Mobile for the limited purpose of providing Lifeline service to qualified customers with the condition that the Commission should require Virgin Mobile to follow the same procedures as any other telecommunications corporation to verify potential customer’s eligibility for the subsidy.

Respectfully submitted this \_\_\_\_\_ day of April, 2011.

---

Patricia E. Schmid  
Attorney for the Division  
of Public Utilities

## CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Brief of the Division of Public Utilities was sent by electronic mail, to the following on April \_\_\_\_, 2011.

### DIVISION OF PUBLIC UTILITIES

Patricia Schmid      [pschmid@utah.gov](mailto:pschmid@utah.gov)  
Chris Parker        [chrisparker@utah.gov](mailto:chrisparker@utah.gov)  
William Duncan     [wduncan@utah.gov](mailto:wduncan@utah.gov)  
Casey Coleman      [ccoleman@utah.gov](mailto:ccoleman@utah.gov)

### OFFICE OF CONSUMER SERVICES

Michele Beck        [mbeck@utah.gov](mailto:mbeck@utah.gov)  
Paul Proctor         [pproctor@utah.gov](mailto:pproctor@utah.gov)  
Cheryl Murray      [cmurray@utah.gov](mailto:cmurray@utah.gov)  
Eric Orton            [eorton@utah.gov](mailto:eorton@utah.gov)

### UTAH RURAL TELEPHONE ASSOCIATION

Stephen Mecham     [sfmecham@cnmlaw.com](mailto:sfmecham@cnmlaw.com)

### SALT LAKE COMMUNITY ACTION PROGRAM

Sonya Martinez     [smartinez@slcap.org](mailto:smartinez@slcap.org)

### VIRGIN MOBILE

John M. Beahn       [john.beahn@skadden.com](mailto:john.beahn@skadden.com)  
Elaine Divelbliss   [elaine.divelbliss@virginmobileusa.com](mailto:elaine.divelbliss@virginmobileusa.com)

### TRACFONE WIRELESS

Mitchell Brecher    [brecherm@gtlaw.com](mailto:brecherm@gtlaw.com)  
Gary Dodge          [gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com)

### ADVOCATES FOR UNIVERSAL ACCESS

Sheila Stickel      [Sheila@advocatesua.com](mailto:Sheila@advocatesua.com)

---