

Sharon M. Bertelsen (#9759)  
BALLARD SPAHR LLP  
201 South Main Street, Suite 800  
Salt Lake City, Utah 84111-2221  
Telephone: (801) 531-3000  
Facsimile: (801) 531-3001

John M. Beahn  
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP  
1440 New York Avenue, N.W.  
Washington, D.C. 20005-2111  
Telephone: (202) 371-7000  
Facsimile: (202) 393-5760

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>Post-Hearing Brief of</b>
Eligible Telecommunications Carrier	)	<b>Virgin Mobile USA, L.P.</b>
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I. INTRODUCTION

Virgin Mobile USA, L.P. (“Virgin Mobile”), a wholly owned subsidiary of Sprint Nextel Corporation (“Sprint Nextel”), seeks designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Utah, pursuant to Section 214(e)(1) of the Communications Act of 1934, as amended (“Act”), for the limited purpose of offering prepaid wireless services supported by the federal Universal Service Fund’s (“USF”) Lifeline program, under the trade name “Assurance Wireless Brought to You by Virgin Mobile.” Virgin Mobile has affirmatively established through testimony and other evidence that it satisfies all of the federal and state requirements for ETC designation, and that designation of Virgin Mobile to provide Lifeline service in Utah would promote the public interest by providing qualifying Utah customers with lower prices and higher quality wireless services. For many low-income residents of Utah, wireless service remains unattainable because of financial constraints, and Virgin Mobile’s

prepaid Lifeline service is ideally suited to provide these consumers with reliable wireless services. As an ETC, Virgin Mobile would provide affordable, and even free, services to qualifying consumers, the intended beneficiaries of USF support. Having established that it satisfies the requirements for designation as an ETC, and since such designation would advance the public interest, Virgin Mobile respectfully requests that the Utah Public Service Commission (the “Commission”) expeditiously approve Virgin Mobile’s petition for ETC designation.

## II. BACKGROUND

### A. Procedural Background

On April 12, 2010, Virgin Mobile filed its Petition for Limited Designation as an ETC with the Commission. The Division of Public Utilities (“Division”), the Office of Consumer Services (“OCS”), and other interested parties, including the Utah Rural Telecom Association (“URTA”), Salt Lake Community Action Program (“SLCAP”), Advocates for Universal Access, and TracFone Wireless, Inc., have participated in this proceeding by offering testimony or comments. On March 8, 2011, Hearing Officer David R. Clark presided over a hearing (“Hearing”) attended by Virgin Mobile, the Division, OCS, URTA, and SLCAP. Virgin Mobile presented Ms. Elaine M. Divelbliss as its witness, and during the Hearing, she was examined by representatives of the other parties. At the end of the Hearing, Mr. Clark provided each of the parties an opportunity to file a post-hearing brief. This brief describes Virgin Mobile’s qualifications for designation as an ETC and supports grant of its petition.

### B. Virgin Mobile’s Previous ETC Designations

Virgin Mobile has been designated as an ETC for purposes of offering Lifeline services in twenty-four (24) states. The service has been exceptionally well received by low-income residents, demonstrating a clear demand for prepaid wireless Lifeline.

Virgin Mobile was originally designated as an ETC for the purposes of offering Lifeline services by the Federal Communications Commission (“FCC”) in March 2009. That designation authorized Virgin Mobile as an ETC in the states of New York, North Carolina, Tennessee and Virginia.<sup>1</sup> The FCC determined that approving Virgin Mobile as an ETC to offer Lifeline service was in the public interest, finding that Virgin Mobile would offer Lifeline-eligible consumers a choice of providers for accessing wireless telecommunications services and would further the goal of expanding participation in the Lifeline program.<sup>2</sup>

At the time the FCC originally designated Virgin Mobile as an ETC, prior to its acquisition by Sprint Nextel, Virgin Mobile was operating as a mobile virtual network operator that did not own any network facilities. In recognition of this fact, Virgin Mobile also sought forbearance from enforcement of the Section 214(e)(1)(A) facilities-based requirements for ETC designation. The FCC granted Virgin Mobile’s request and conditioned the grant on Virgin Mobile’s compliance with certain requirements aimed at enhancing Lifeline customers’ access to public safety services and preventing misuse of the Lifeline offering.<sup>3</sup> In October 2009, the FCC approved Virgin Mobile’s proposed plan to implement each of the imposed conditions for the first four states in which it received ETC designation.<sup>4</sup>

In November 2009, Virgin Mobile was acquired by Sprint Nextel. In December 2010, the FCC designated Virgin Mobile as an ETC in the states of Alabama, Connecticut, District of

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<sup>1</sup> See Exhibit 1, Direct Testimony of Elaine Divelbliss at p. 9, lines 3-5; *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. Mar. 5, 2009) (“Order”).

<sup>2</sup> *Id.* at ¶¶ 21, 30.

<sup>3</sup> *Id.* at ¶ 12.

<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, Tennessee and Virginia*, Order, DA 09-2344 (rel. Oct. 29, 2009) (“October 2009 Order”).

Columbia, Delaware and New Hampshire, and held that subsequent to the acquisition by Sprint Nextel, Virgin Mobile is considered a facilities-based carrier.<sup>5</sup>

Virgin Mobile has received ETC designations from state public utility commissions in the following states: Michigan, Louisiana, West Virginia, Texas, Maryland, Florida, New Jersey,<sup>6</sup> Indiana, Mississippi, Washington, Pennsylvania, South Carolina, Iowa, Arkansas<sup>7</sup> and Georgia.<sup>8</sup> These designations were made without reliance on the FCC's *Order*.

### III. VIRGIN MOBILE SATISFIES ALL REQUIREMENTS FOR ETC DESIGNATION

Section 214(e)(1) of the Act sets forth the requirements for ETC designation. Specifically, applicants for ETC designation must be common carriers that will offer all of the services supported by federal universal service support mechanisms, using their own facilities or a combination of their own facilities and the resale of other carriers' services.<sup>9</sup> Applicants must also commit to advertise the availability and rates of such services using media of general distribution.<sup>10</sup> Section 214(e)(2) of the Act provides that State commissions shall have authority to designate as ETCs common carriers that meet the requirements of Section 214(e)(1). Virgin Mobile has demonstrated that it satisfies each of the above requirements.

#### A. Virgin Mobile is a Common Carrier

The Act defines a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio . . . ."<sup>11</sup> It is well established that

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<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, District of Columbia, Delaware and New Hampshire*, Order, DA 10-2433 (rel. Dec. 29, 2010) ("2010 Order").

<sup>6</sup> See Exhibit 1, Direct Testimony of Elaine Divelbliss, and attached state commission decisions.

<sup>7</sup> See Testimony of Elaine Divelbliss on behalf of Virgin Mobile on March 8, 2011, Tr. at p. 9, lines 14-17.

<sup>8</sup> See *Petition of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier*, Order, Georgia Public Service Commission Docket No. 31297 (Mar. 17, 2011), granted after the Hearing.

<sup>9</sup> See 47 U.S.C. § 214(e)(1)(A).

<sup>10</sup> See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d).

<sup>11</sup> See 47 U.S.C. § 153(10).

providers of mobile wireless services are common carriers. Since Virgin Mobile is a provider of wireless telecommunications services, it is a common carrier eligible for designation as an ETC.

B. Virgin Mobile Will Provide the Supported Services

As a wholly owned subsidiary of Sprint Nextel, Virgin Mobile is capable of providing all of the services and functionalities supported by the universal service program over an existing network infrastructure throughout its service territory in Utah.<sup>12</sup> Specifically, Virgin Mobile provides all of the following services and functionalities as set forth in Section 54.101:

(1) Voice Grade Access to the Public Switched Network. Virgin Mobile demonstrated that it provides voice grade access to the public switched network and offers its services at the minimum bandwidth for voice grade access as required by the FCC's regulations.<sup>13</sup>

(2) Local Usage. An applicant for ETC designation is required to demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the incumbent local exchange carrier ("ILEC") in the relevant service territory.<sup>14</sup> The FCC has indicated that review of local usage plans must examine all aspects of the individual plan, 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>15</sup> The amount of local usage that has been deemed to satisfy the local usage requirement has varied.<sup>16</sup> Virgin Mobile's proposed Lifeline offering fully complies with the local usage requirements established by the FCC. Not only will Virgin Mobile's Lifeline plan be comparable to the underlying ILECs' plans, but the advantages of its service offering will exceed the ILECs' plans in several respects.

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<sup>12</sup> See 47 C.F.R. § 54.101.

<sup>13</sup> See Virgin Mobile ETC Petition at p. 10, citing 47 C.F.R. § 54.101(a)(1).

<sup>14</sup> See 47 C.F.R. § 54.202(a)(4).

<sup>15</sup> See *Federal-State Joint Board on Universal Service*, Report and Order, 20 FCC Rcd 6371, ¶¶ 32-34 (2005).

<sup>16</sup> See, *e.g.*, *Petitions for Designation as an Eligible Telecommunications Carrier: Farmers Cellular Telephone, Inc.*, 18 FCC Rcd 3848, 3852 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd 9589 (2002); *Western Wireless Corp.*, 16 FCC Rcd 48, 52 (2000).

Virgin Mobile will offer its Lifeline customers a free Assurance Wireless branded E911-compliant handset of the same type available to Virgin Mobile non-Lifeline customers and 250 free minutes per month. Unlike relatively small ILEC local calling areas, Virgin Mobile Lifeline customers can place calls nationwide because it does not constrict customers' use by imposing a local calling area requirement. Virgin Mobile Lifeline customers will also have access to a variety of other features at no additional charge, including voice mail, call waiting, caller I.D., and E911 capabilities, and customers may purchase additional minutes at favorable rates.<sup>17</sup> Unlike an ILEC Lifeline plan that is tied to a landline phone, Virgin Mobile's Lifeline plan has the immeasurable benefit of mobility as a key feature.

(3) Dual Tone Multi-Frequency Signaling or its Functional Equivalent. Virgin Mobile provides DTMF signaling to expedite the transmission of call set up and call detail information throughout its network and its wireless handsets offered for sale are DTMF-capable.<sup>18</sup>

(4) Single-Party Service or its Functional Equivalent. Virgin Mobile provides the wireless functional equivalent of single-party service to customers for the duration of each call.<sup>19</sup>

(5) Access to emergency services. Virgin Mobile provides nationwide access to 911 emergency services for all of its customers and complies with the FCC's regulations governing E911 compatible handset deployment and availability.<sup>20</sup>

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<sup>17</sup> See Testimony of Elaine Divelbliss, Tr. at p. 12, line 8 to p. 13, line 14. Additional minutes may be purchased for \$0.10 per minute, and text messages for \$0.10 per text. Customers may also choose from two higher-usage offers: for \$5, receive an additional 250 minutes each month, for a total of 500 minutes, or for \$20, receive an additional 750 minutes each month and 1,000 text messages, for a total of 1,000 voice minutes and 1,000 text messages. Calls to 911 and customer service have always been free of charge and without using minutes.

<sup>18</sup> See ETC Petition at p. 11.

<sup>19</sup> See ETC Petition at p. 12. Only one party is served by a subscriber loop or access line during a single call.

<sup>20</sup> See ETC Petition at p. 12. Virgin Mobile will remain functional in emergency situations, relying on Sprint Nextel's established internal programs, policies and teams to analyze and respond to emergencies, as required by 47 C.F.R. § 54.202(a)(2). The network is monitored continually, it incorporates a degree of redundancy, and it has reasonable back-up power to significantly reduce instances of loss of service.

(6) Access to operator services. Virgin Mobile provides all of its customers with access to operator services.

(7) Access to interexchange services. Virgin Mobile's Assurance Wireless service provides customers with 250 minutes of any-distance telephony. Minutes for local or domestic long distance services are not billed separately or 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.

(9) Toll limitation. Virgin Mobile's minutes are not charged separately for local or domestic long distance services. Although international calling does involve additional "toll" expenses, customers must authorize access for such services, for which additional charges apply. The FCC determined that the pre-paid nature of Virgin Mobile's service mitigates concerns that low-income customers will incur significant "toll" charges and thereby risk disconnection.<sup>21</sup>

Based upon the record in this proceeding, Virgin Mobile has demonstrated, as it has for the other jurisdictions, that it will make these services and functionalities available on a timely basis to qualifying Utah consumers in its service area, satisfy applicable consumer protection standards, and maintain exceptional service quality over Sprint Nextel's nationwide network.<sup>22</sup>

### C. Advertising of Supported Services

Virgin Mobile has demonstrated that it will advertise the availability of its Assurance Wireless services described above using media of general distribution sufficient to meet the advertising requirements.<sup>23</sup> This will include advertising through newspapers, radio, television, direct mail, and the Internet. In this proceeding, Virgin Mobile provided descriptions and

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<sup>21</sup> See *Order* at ¶ 34; *2010 Order* at n. 33. "Toll limitation" refers to the ability of customers to block outgoing long distance calls or specify a toll usage limit, to prevent significant long distance charges.

<sup>22</sup> See, e.g., Testimony of Elaine Divelbliss, Tr. at p. 15, lines 18-25 (launching service on a timely basis); Tr. at p. 91, lines 18-22 (protecting consumer privacy); and ETC Petition at p. 16 (complying with Consumer Code).

<sup>23</sup> See 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201. See ETC Petition at p. 14.

samples of advertising to promote the availability of its Lifeline offerings to qualifying customers throughout Utah. In response to requests from interested parties, Virgin Mobile is committed to working cooperatively with them to develop Utah-specific information materials to explain eligibility requirements and service offerings to consumers.

D. Service Territory, State USF Contributions, 911 and Other Surcharges

Virgin Mobile is seeking designation for its entire Utah service territory, as defined in its Petition which includes a list of wire centers for which it seeks designation.<sup>24</sup> Because Virgin Mobile is applying for ETC designation in areas served by rural telephone companies, the Commission must make a public interest determination under Section 214(e)(2) of the Act. As part of that analysis, interested parties at the Hearing raised the issue of whether the Commission should require all ETCs to collect and remit certain public interest surcharges as a condition of granting them ETC status. On March 9, 2011, the Commission issued a decision which held that an ETC must submit appropriate state USF surcharges as a condition of its ETC status. However, the Commission held that it lacks jurisdiction to determine whether ETCs are subject to the 911 surcharge, poison control surcharge, and other public interest program surcharges.<sup>25</sup>

Although Virgin Mobile is not seeking distribution from the state USF, Virgin Mobile has been contributing to the state USF pursuant to Utah Code Ann. § 54-8b-15, and will continue to do so in a manner approved by the Commission.<sup>26</sup> If Virgin Mobile determines that it wishes to receive state USF for Lifeline services in the future, it will file a new application requesting

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<sup>24</sup> See ETC Petition at p. 5 and Exhibit 2.

<sup>25</sup> See *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 09-2511-01, Order on Reconsideration (Mar. 9, 2011).

<sup>26</sup> See ETC Petition at p. 6; Testimony of Elaine Divelbliss, Tr. at p. 14, line 21 to p. 15, line 17. Virgin Mobile has been contributing to the state USF based upon revenues of prepaid wireless services and due to prior overpayments, it has been given a credit. Once the credit is exhausted, Virgin Mobile intends to recommence payments to the state USF. See *Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket No. 09-2511-01, Order on Reconsideration (Mar. 9, 2011).



Commission authority to receive such support. Virgin Mobile currently submits the E911 fees, and does not submit the poison control surcharge or other public interest program surcharges.<sup>27</sup>

E. Eligibility for Lifeline Service

Utah Administrative Code Rules R746-341-3 and 4 govern the requirements for initial and continuing eligibility for Lifeline service, the process and the cost to be determined by the Commission in Docket No. 10-2528-01, *Resolution of Certain Issues Related to the Designation of a Common Carrier as an Eligible Telecommunications Carrier*. Virgin Mobile is committed to working cooperatively with the Commission to establish a system for verifying eligibility of Lifeline applicants and implementing procedures that fully comply with Utah law.<sup>28</sup>

IV. DESIGNATION OF VIRGIN MOBILE AS AN ETC IS IN THE PUBLIC INTEREST

The Communications Act, as amended by the Telecommunications Act of 1996, seeks “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>29</sup> Designation of Virgin Mobile as an ETC in Utah will further this goal by providing Lifeline-eligible consumers with the advantages of Virgin Mobile’s high quality telecommunications services at lower prices.<sup>30</sup> According to the FCC, Virgin Mobile’s Lifeline service provides “a variety of benefits to Lifeline-eligible consumers including increased consumer choice, high-quality service offerings, and mobility.”<sup>31</sup>

Lower-income consumers are underserved in the competitive wireless market, and often lack the vibrant wireless telephony choices available to most consumers. Increasing competition

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<sup>27</sup> See Testimony of Elaine Divelbliss, Tr. at p. 15, lines 5-7; p. 23, lines 10-22.

<sup>28</sup> See Testimony of Elaine Divelbliss, Tr. at p. 17, lines 4-19.

<sup>29</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

<sup>30</sup> As evidence of its commitment to high-quality service, it has complied with the CTIA Consumer Code for Wireless Service since its inception and will continue to comply once designated. See Petition at p. 16. Compliance with this Consumer Code also satisfies its obligations under 47 C.F.R. § 54.202(a)(3).

<sup>31</sup> Order at ¶ 38; see also 2010 Order at ¶ 19.

in the Lifeline market increases pressure on carriers to provide service offerings tailored to the needs of consumers, and represents significant progress towards ensuring that Lifeline eligible consumers are able to share in the benefits associated with access to wireless services. Studies suggest that many low-income consumers intermittently discontinue service because of economic constraints. Virgin Mobile, if authorized to offer discounted Lifeline services in Utah, will help to ensure that low-income consumers are able to afford wireless services on a consistent and uninterrupted basis. Designating Virgin Mobile as an ETC in Utah will expand the availability of affordable services and expand participation of qualifying consumers in the Lifeline program, and is consistent with the public interest, convenience and necessity.

V. CONCLUSION

As established on the record developed in this Docket, Virgin Mobile satisfies the federal and state requirements for designation as an ETC in Utah for the limited purpose of offering prepaid wireless services supported by the federal USF Lifeline program. Virgin Mobile stands ready to provide services to qualifying customers shortly after receipt of its designation. Its entry into the market for Lifeline services will increase competitive choice for Lifeline customers, make available high-quality, low-cost service on Sprint Nextel's nationwide network, and therefore is decidedly in the public interest. For all of the reasons stated herein and in its ETC Petition, Virgin Mobile respectfully requests that the Commission expeditiously designate Virgin Mobile as an ETC in Utah exclusively for the purpose of participating in the Lifeline program.

Respectfully submitted,

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Sharon M. Bertelsen  
John M. Beahn  
Counsel to Virgin Mobile USA, L.P.

Dated: April 7, 2011

CERTIFICATE OF SERVICE

I certify that on April 7, 2011, I caused to be served Virgin Mobile USA, L.P.'s Post-Hearing Brief upon the following persons via electronic mail to the e-mail addresses listed below, and via hand delivery as indicated:

Via Hand Delivery:

Julie P. Orchard  
Utah Public Service Commission  
Heber M. Wells Building, 4th Floor  
160 East 300 South  
Salt Lake City, UT 84111

Via Hand Delivery:

Patricia E. Schmid  
Assistant Attorney General  
Heber M. Wells Building, 5<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

Via Hand Delivery:

William Duncan  
Casey J. Coleman  
Utah Division of Public Utilities  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

TracFone Wireless:

Mitchell F. Brecher    brecherm@gtlaw.com  
Gary A. Dodge        gdodge@hjdllaw.com

Via Hand Delivery:

Paul H. Proctor  
Assistant Attorney General  
Heber M. Wells Building, 5<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

Via Hand Delivery:

Michele Beck  
Cheryl Murray  
Office of Consumer Services  
Heber M. Wells Building, 4<sup>th</sup> Floor  
160 East 300 South  
Salt Lake City, UT 84111

Salt Lake Community Action Program:

Sonya L. Martinez    smartinez@slcap.org  
Betsy Wolf            bwolf@slcap.org

Utah Rural Telecom Association:

Stephen Mecham    sfmecham@cnmlaw.com

Advocates for Universal Access, LLC:

Sheila Stickel    sheila@advocatesua.com

/s/ Sharon M. Bertelsen