



P-2010-2155915

June 3, 2010

Secretary
Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265

Dear Sir or Madam:

I represent Americans for Universal Access (AUA). We have been made aware of a petition of Virgin Mobile to be considered as an Eligible Telecommunications Carrier in the State of California. Unfortunately, we are unable to find the petition on the California Public Utilities Commission Website. Virgin Mobile has referenced Docket number U-4327 in a similar filing in another state. We would like an opportunity to participate in this petition and any hearings that may arise from this application. Please find the attached petition to intervene and our public comments pertaining to Virgin Mobile's petition. We would also like to request to be made aware of any actions to be taken in this matter and deadlines for filing of comments.

Thank you,

Sheila Stickel
Executive Director

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Before the Pennsylvania Public Utility Commission

In the Matter of)
)
Virgin Mobile USA, L.P.)
)
Public Comment for Limited Designation)
as an Eligible Telecommunications Carrier)
For the Limited Purpose of Offering)
Lifeline Service)
)

Docket No. P20102155915

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Advocates for Universal Access, Petition to Intervene and Public Comments:

Introduction

Advocates for Universal Access (AUA) is a consumer advocacy group focused on wireless carriers that provide emergency telephone access through Lifeline plans. We believe every Lifeline user should have reliable emergency access and a plan they understand. AUA is in the process of registering as a 501(c)(4) corporation which is organized for the purpose of promoting social welfare. AUA has been following Virgin Mobile's applications before the FCC and a number of state public utility commissions seeking to ignore conditions of the FCC Forbearance Order, which allowed Virgin Mobile to seek ETC status in the first place. Virgin Mobile's basis for seeking a de facto rescission is its claim that it is now a facilities-based carrier, and as such, would not require a Forbearance Order to petition for ETC status. However, this is dubious. At the time of the Forbearance Order, Virgin Mobile concurred with the FCC that it was a Virtual Mobile Network Operator, and was *ineligible* to participate in Lifeline without an FCC Order granting Forbearance from certain conditions for Lifeline participation. Thus, we petition this body seeking either: (1) That the conditions be affirmed; or (2) This petition be deferred until the FCC can review Sprint's claims, and either affirm or modify its order.

As will be explained below, we are supportive of Virgin Mobile's goal of increasing customer access to wireless services. Study after study shows that increased mobile access means low-income families have increased living standards, wages and access to services. However, AUA does have several safety and consumer related concerns with the specific petition submitted to the Pennsylvania PUC, including: (1) whether a state PUC may remove conditions of an FCC Forbearance Order, or whether the FCC retains jurisdiction over its

conditions; (2) a request for clarification concerning safety procedures; and (3) comments concerning plan details as presented to the PUC.

We respectfully ask that the PUC consider these questions and seek clarification from Virgin Mobile.

FCC Supremacy

Although § 214(e)(2) of the Federal Act “gives state commissions the primary responsibility for performing ETC designations,” Forbearance Order at ¶ 5, the Public Utility Commission has jurisdiction over this application only pursuant to the Forbearance Order granting authority for Virgin Mobile to seek ETC status. However, the FCC has not yet concluded that Sprint-Nextel’s acquisition of Virgin Mobile has turned Virgin Mobile into a facilities-based carrier, and the FCC has not lifted the requirements it imposed upon Virgin Mobile in the Forbearance Order. Because the Forbearance Order initially permitted the Commission to grant ETC status to Virgin Mobile, this Commission is prohibited from excusing Virgin Mobile from adhering to the Forbearance Order requirements until the FCC modifies or removes such requirements.

Virgin Mobile’s request that the FCC do so is still pending before the FCC (Docket 09-197). The FCC is currently considering four petitions filed by Virgin Mobile seeking to be granted ETC designation in the District of Columbia,¹ New Hampshire,² Delaware,³ and Connecticut.⁴ In those petitions, Virgin Mobile argues that it is now a facilities-based carrier as a result of the Sprint-Nextel acquisition, and that the PSAP certification requirement from the Forbearance Order should no longer apply to Virgin Mobile. In ruling on these four petitions, the FCC will likely determine whether Virgin Mobile provides services using its own facilities.⁵ Until the FCC addresses the issue as to whether the Forbearance Order requirements continue to apply to Virgin Mobile, whether it be in response to the above four petitions or otherwise, the Commission must continue to require Virgin Mobile to adhere to the requirements imposed upon Virgin Mobile in the FCC’s Forbearance Order and in the Commission’s 2009 Order.

Safety Concerns

¹ District of Columbia petition available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020387461>.

² New Hampshire petition available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020387459>.

³ Delaware petition available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020387458>.

⁴ Connecticut petition available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020387457>.

⁵ Virgin Mobile’s petitions do not address any of the FCC’s forbearance requirements other than the certification requirement.

Traditionally, 9-1-1 service has been more challenging for pre-paid customers than “contract” (post-paid) customers because there is often little customer information available to the answering PSAP. This is because pre-paid service is without a contract, thus there is generally less information collected about a customer, and that which is collected often relies on web-based self-registration. This can create a problem if a customer is disconnected from 9-1-1. As we understand it, the PSAP will generally try to call the person back based upon their phone number. However, if the customer does not answer (which could happen for any number of reasons in an emergency situation) the 9-1-1 operator will often have to call the carrier to obtain more information, such as a caller’s address. With many pre-paid carriers, this would mean that the 9-1-1 center would call the “facilities-based carrier” – in this case Sprint-Nextel, because the call would have been routed to the 9-1-1 center by Sprint Security, not Virgin Mobile/Assurance Wireless, the pre-paid carrier. That is to say, the PSAP/9-1-1 center will see the caller as a Sprint customer, not a Virgin Mobile/Assurance Wireless customer.

If Sprint Security has a completely integrated customer database, this would not appear to create any safety challenges. However, if Sprint Security is not integrated into Virgin Mobile/Assurance Wireless’ database, it is our understanding Sprint Security would have to refer the 9-1-1 office to Virgin Mobile to get additional customer information. In our view, this “extra step” was one of the concerns of the FCC in its forbearance order.

We ask that the PUC confirm how such emergency circumstances are followed and assert that the FCC Forbearance Order should be followed unless it is modified by the FCC. Virgin Mobile has stated in a recent filing in Florida that there is no “second step,” however; they have not directly stated Sprint Security has access to Virgin Mobile’s customer information, nor have they proven the functionality with drive testing.

Consumer Concerns

In our view, “pay as you go” wireless plans are often confusing, and can quickly become quite expensive compared to traditional plans. On the whole, it appears that Virgin Mobile is offering a public service that will expand Lifeline to more customers. Study after study shows that a mobile phone increases the earning power of low-income families by making available more opportunities for work and increasing lines of communication for access to services.

We have filed a few concerns with the FCC that we hope the PUC will consider addressing. Specifically:

- Do Virgin Mobile/Assurance Wireless minutes roll-over? If not, does the Lifeline Program receive reimbursement for unused minutes?
- We would appreciate final clarification on the cost of text messages (10 cents or 15 cents each?) and how they are paid for. Are they billed separately or deducted from the 200 minutes? We recommend that text messages should be deducted from minutes, and customers should not be required to purchase additional packages.
- The Assurance Wireless web site offers packages of text messages as low as 2.5 cents per message. Why isn't this rate standard for these low-income users, particularly since the Assurance Wireless brand is dedicated to low-income Lifeline users?
- What is the cost of additional minutes? The Assurance Wireless web site states that minutes are \$.10 per minute. This seems expensive. For example, customers receive 200 minutes for a \$10 payment from the Universal Service Fund. Why can't Virgin Mobile offer the same \$.05 per minute rate that is paid for the first block of minutes?
- Are 800-numbers, customer service and/or information calls charged against the customer's minutes? If fees are imposed, how are these collected, and what are the rates?
- Does Virgin Mobile need to come back to the PUC if it seeks to impose price increases or decrease minutes?
- Does the customer phone include a warranty? What happens if a phone breaks or is lost?

Conclusion

Thank you for your consideration of these thoughts. We would be pleased to answer any questions and are available at the contact information included in this letter. Please keep us apprised of any hearing dates or filing deadlines in this matter.

Respectfully submitted this 2nd day of June, 2010, by:

/s/ _____
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