

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWINA. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

October 12, 2010

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

Re: Virgin Mobile USA, L.P.
Petition for Limited Designation as an Eligible
Telecommunications Carrier
Docket No. P-2010-2155915

Dear Secretary Chiavetta:

Enclosed for filing please find the Office of Consumer Advocate's Comments, in the above-captioned proceeding.

Copies have been served in accordance with the enclosed Certificate of Service.

Sincerely yours,

A handwritten signature in black ink that reads "Barrett C. Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. #61138

Enclosure

cc: Certificate of Service
Elizabeth Lion Januzzi/Law Bureau
Lenora Best/BCS

*134517

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN THE MATTER OF	:	
	:	
VIRGIN MOBILE USA, L.P.	:	Docket No. P-2010-2155915
	:	
PETITION FOR LIMITED DESIGNATION	:	
AS AN ELIGIBLE TELECOMMUNICATIONS	:	
CARRIER	:	

**COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE**

On January 29, 2010, Virgin Mobile USA, L.P. (Virgin Mobile) filed a petition with the Pennsylvania Public Utility Commission (PUC or Commission) requesting designation as an Eligible Telecommunications Carrier (ETC) throughout the Commonwealth pursuant to Section 214(e)(2) of the Communications Act of 1934 only to participate in the federal Universal Service Fund's Lifeline program.¹ Virgin Mobile states that it is a facilities-based, wireless carrier, offering service in Pennsylvania through an affiliate's network. The PUC published notice of Virgin Mobile's Petition for Designation as an ETC in the Pennsylvania Bulletin on October 2, 2010, opening Virgin Mobile's Petition for comment.²

The OCA supports designation of additional common carriers, whether wireline or wireless, to offer low income Pennsylvania consumers more choices for affordable telecommunications service with Lifeline and Link-Up support from the federal Universal

¹ 47 U.S.C. § 214(e)(2).
² 40 Pa.B. 5662 (2010).

Service Fund. Such universal service support should benefit eligible consumers by allowing them to obtain and keep local calling service, and provide access to E911, long distance and other services.

On August 2, 2010, the Commission entered its “Final Policy Statement on Commonwealth of Pennsylvania’s Guidelines for Designation as an Eligible Telecommunications Carrier (ETC) for Purposes of Federal Universal Service Support.” (Final Policy Statement Order). The Commission gave Virgin Mobile and other carriers with pending ETC petitions notice of the Final Policy Statement Order by Secretarial Letter. The Commission published the Final Policy Statement Order, which codifies the Commission’s Guidelines at 52 Pa. Code § 69.2501, in the Pennsylvania Bulletin on October 2, 2010. 40 Pa.B. 5586 (2010). Through the Guidelines, the Commission has identified the baseline information, based on federal and Pennsylvania criteria, which carriers requesting designation as an ETC should provide to facilitate the Commission’s review of petitions to be an ETC.

The OCA submits that Virgin Mobile’s request for designation as an ETC to offer Lifeline assistance to eligible Pennsylvania consumers presents several questions of first impression. To date, the Commission has not designated any ETCs to provide only Lifeline service. Additionally, the Commission has not yet ruled on any petitions for ETC designation to offer Lifeline filed by wireless carriers, facilities-based or otherwise. Finally, the OCA notes that the Commission has not approved any petition for ETC designation to offer Lifeline service filed by a wireline or wireless carrier that offers service on a prepaid basis.

The OCA submits that the Commission’s Guidelines provide a sound starting point for review of the merits of Virgin Mobile’s Petition for limited ETC designation. The OCA notes that Virgin Mobile has not acknowledged or addressed how it will comply with

Section 3019(f) of the Public Utility Code and other Pennsylvania Lifeline requirements.

However, the OCA supports designation of Virgin Mobile as an ETC to offer Lifeline service, subject to certain conditions.

I. COMMENTS

A. Introduction

The OCA supports designation of additional Pennsylvania telecommunications carriers as Eligible Telecommunications Carriers (ETCs) to allow low income consumers more choice of telephone service made affordable with Lifeline and Link-Up support from the federal Universal Service Fund. At present, Pennsylvania consumers may have a choice between the wireline Lifeline service from the incumbent local exchange carrier (ILEC) and maybe a competitive local exchange carrier (CLEC)³ or wireless Lifeline from Sprint Nextel,⁴ TracFone,⁵ or NEP Cellcorp (in limited areas). The OCA recognizes that consumers who are eligible for Lifeline may have a preference between wireline and wireless, postpaid or prepaid or annual contract, or stand-alone voice service or voice service purchased with other features.

Alternatively, a deposit requirement or poor wireless coverage may, as a practical matter, reduce a Lifeline consumer's options for telephone service from some ETCs. The OCA supports designation of additional Pennsylvania ETCs to offer Lifeline and Link-Up, to promote the ability of low income consumers to obtain and continue to receive affordable telephone service.

Nonetheless, since the federal Universal Service Fund, including Lifeline and

³ From 1999 to 2005, the Commission required all local exchange carriers, even if not designated as an ETC, to offer Lifeline and Link-Up service. See Re NextLink Pennsylvania, Inc., 93 Pa.P.U.C. 172 (1999)(Global Order)[subsequent appellate history omitted]; see In re: Lifeline and Link-Up Programs, Docket No. M-00051871, Final Opinion and Order (Pa. PUC May 23, 2005)(In re: Lifeline and Link-Up). Since 2005, several large CLECs stopped offering Lifeline and Link-Up.

⁴ See NPCR, Inc. d/b/a Nextel Partners, 19 FCC Rcd 16530 (2004).

⁵ In the Matter of the Federal-State Joint Board: TracFone Wireless, Inc., CC Docket No. 96-45, 23 FCC Rcd 2606, (rel. Apr. 11, 2008).

Link-Up support, is funded by other consumers in Pennsylvania and other states, the OCA agrees with the Commission that petitions for ETC designation should be subject to a thorough review. See Final Policy Statement Order, 40 Pa.B. 5662. Accordingly, designation as an ETC to offer Lifeline and Link-Up must be in the public interest. Id.; see also 47 C.F.R. § 54.202(c).

Through the Guidelines, the Commission has given clear notice that ETCs should be prepared to comply with Pennsylvania law and Commission orders which govern Pennsylvania's Lifeline and Link-Up program. Guidelines, 52 Pa. Code § 69.2501(b). Section 3019(f) of the Public Utility Code requires Pennsylvania ETCs to give notice of the availability of Lifeline and Link-Up to customers and assist the Department of Public Welfare (DPW) in giving notice to new public assistance recipients. 66 Pa.C.S. § 3019(f). The Commission has established Lifeline and Link-Up eligibility criteria, as well as procedures for certification and verification of a consumer's initial and continuing eligibility. In Re: Lifeline and Link-Up Programs, Docket No. M-00051871, Final Opinion and Order (Pa. PUC May 23, 2005)(In Re: Lifeline and Link-Up). ETCs are required to report to the Commission annual changes in Pennsylvania Lifeline and Link-Up enrollment. Re Section 3015(f) Review Regarding Lifeline Tracking Report, Accident Report and Service Outage Report, 100 Pa.P.U.C. 553 (Dec. 30, 2005)(Tracking Report Order).

To further protect the public interest and assure that Pennsylvania's Lifeline and Link-Up programs advance the Commonwealth's universal service policy, the Commission should impose additional conditions on the ETCs designated to offer Lifeline as described below. Certain conditions are directed at assuring that the wireless Lifeline service provides reasonable value and is not diminished, for example, by calls to the ETC's customer service department. Other conditions should include additional certification and verification requirements, a

commitment to comply with other federal and state laws or risk revocation of the ETC designation, a process to address consumer complaints regarding the ETC's Lifeline service whether received by the Commission or Office of Attorney General, and providing the Commission, at least annually, with samples of advertising, marketing materials and Lifeline applications.

The OCA recommends that the Commission grant Virgin Mobile's Petition as in the public interest, subject to a number of conditions including adoption of Pennsylvania's Lifeline eligibility, certification, and verification standards. The OCA notes that Virgin Mobile proposes to offer a prepaid wireless Lifeline service which will include 200 anytime minutes a month paid with Lifeline support and the ability to purchase additional minutes for voice and texting. In addition to compliance with Section 3019(f) and the relevant Commission orders regarding Lifeline and Link-Up service, Virgin Mobile should agree to additional conditions discussed below, as a condition of grant of ETC designation to offer Lifeline and Link-Up service. Should the Commission designate Virgin Mobile as an ETC to offer Lifeline, Virgin Mobile will have an ongoing obligation to provide those services in a reasonable manner or risk loss of its ETC designation. The recommended conditions are intended to safeguard the federal USF and assure that Pennsylvania's Lifeline program promotes universal service.

B. Virgin Mobile's Petition Does Not Address The FCC's Section 54.209 Reporting Requirements.

Through the Guidelines, the PUC has committed to review petitions for ETC designation pursuant to specific federal law, FCC Orders, and federal regulations including the FCC's regulations governing ETC designations set forth at 47 C.F.R. §§ 54.101, 54.201-203, and 54.205-54.209. Guidelines, 52 Pa. Code § 69.2501(a). In its Petition, Virgin Mobile does generally address the FCC's requirements. For example, Virgin Mobile explains why it should

be considered a facilities-based provider of wireless service, due to its acquisition by Sprint Nextel. Petition at 9. Virgin Mobile briefly describes how it offers each of the services and functionalities which ETCs are required to offer and support, pursuant to Section 54.101(a)(1)-(9), including voice grade access to the public switched network, local usage, access to 911 and E911, and describes its prepaid service as offering a functional equivalent to toll limitation service. Petition at 10-14. Additionally, Virgin Mobile addresses how it will provide service to customers upon reasonable request, remain functional in emergency situations, provide quality of service and protect consumer privacy. Petition at 14-15. Virgin Mobile also commits to advertise the availability of Lifeline and other supported services. Petition at 15-16.

As noted by Virgin Mobile, the FCC has already evaluated Virgin Mobile's qualifications to be designated as an ETC pursuant to the FCC's ETC Designation standards. The FCC has designated Virgin Mobile to offer Lifeline service in several states, subject to certain conditions. Petition at 3-5.

The OCA submits that, with one exception, Virgin Mobile has addressed the FCC standards for designation as an ETC which the Commission has adopted for Pennsylvania. Virgin Mobile's Petition, however, does not address the FCC's Section 54.209 reporting requirements, which address outages, handset complaints, and annual certification that the ETC remains able to function in emergency situations, that the ETC is complying with quality of service and consumer protection standards, that the ETC is offering local service usage comparable to that of the ILEC, and similar requirements. 47 C.F.R. § 54.209. The FCC requires these annual reports as a condition of the ETC's continued receipt of universal service support. The OCA expects that Virgin Mobile is capable of meeting this reporting requirement and sharing this information with the Commission as well as the FCC.

C. Virgin Mobile Must Commit To Comply With Important Pennsylvania Standards Contained in Chapter 30 of the Pennsylvania Public Utility Code and Relevant Commission Orders.

1. Introduction

In the Final Policy Statement Order, the Commission gave notice that:

petitions for ETC designation should specifically address each provision of 47 C.F.R. § 54.201-209, any other applicable federal standards and all Pennsylvania-specific standards. Petitioners should explain how each federal and Pennsylvania provision is satisfied including why a particular provision is inapplicable under the circumstances.

Final Policy Statement Order, 40 Pa.B. 5662 (emphasis added). Although Virgin Mobile acknowledges the Commission's authority to rule on Virgin Mobile's Petition, the OCA notes that Virgin Mobile has not otherwise addressed Pennsylvania's policy of support for universal service as set forth in Section 3011 and Lifeline service as addressed by Section 3019(f). As to certification and verification of Lifeline eligibility, Virgin Mobile identifies additional conditions which the FCC has imposed. Petition at 4. However, Virgin Mobile does not discuss Pennsylvania's certification and verification standards, as described in the PUC's Final Order in In Re: Lifeline and Link-Up Programs, Docket No. M-00051871 (Pa. PUC May 23, 2005). Virgin Mobile also omits discussion of the PUC's annual Lifeline Tracking Report requirements. See Tracking Report Order, supra.

The OCA submits that Virgin Mobile should remedy these omissions by committing, as a condition of designation as an ETC to offer Lifeline and Link-Up, to comply with these important Pennsylvania standards.

2. Compliance With Section 3019(f) Of The Public Utility Code Is Necessary To Promote Universal Service In Pennsylvania.

Section 3019(f) of the Public Utility Code imposes important obligations on ETCs to promote universal service in Pennsylvania. Section 3019(f) is comprised of six subparts. 66 Pa.C.S. § 3019(f)(1)-(6). Subpart (1) requires the ETC to provide Lifeline service to all eligible local exchange customers. Subpart (2) requires the ETC to allow Lifeline customers to subscribe to other ETC services at tariffed rates. Subpart (3) requires the ETC to advise prospective customers of the availability of Lifeline, to make reasonable effort to determine if the customer qualifies, and to determine whether the customer wants to receive Lifeline service. Subpart (4) requires the ETC to provide notice of the availability of Lifeline twice annually through bill inserts which includes information about eligibility, benefits, and contact information. Subpart (5) describes Pennsylvania's automatic notification process through which DPW provides Pennsylvanians newly approved for public assistance with news of the client's eligibility for Lifeline and Link-Up plus information about how to contact ETCs that offer Lifeline and Link-Up in the client's county. Subpart (6) requires ETCs to assist DPW by providing "with Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas they service." Subpart (6) restricts the Commission's authority, such that "[n]o eligible telecommunications carrier shall be required to provide after the effective date of this section any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund."

The OCA submits that Virgin Mobile must comply with each of the provisions of Section 3019(f)(1) to (6). Of these provisions, Section 3019(f)(3), (4), and (5) advance the Commonwealth's goal of promoting notice of the availability of Lifeline and Link-Up. As an ETC, Virgin Mobile will be obligated to provide notice to prospective new customers and existing Virgin Mobile customers of the availability of Lifeline. Additionally, Virgin Mobile

will be required to provide the Department of Public Welfare with information about Virgin Mobile's Lifeline service offerings, including applications and contact information. The OCA submits the automatic notice process set forth in Section 3019(f) provides an important service by informing new DPW clients that they are eligible for Lifeline and Link-Up and provide information about the choice of Lifeline and Link-Up providers and services.

3. Virgin Mobile Should Follow Pennsylvania's Eligibility Criteria and Certification and Verification Standards

The OCA notes that Virgin Mobile's Petition does not identify what eligibility criteria it will apply to check Pennsylvania consumers' eligibility for Lifeline. Nor does the Virgin Mobile Petition address certification and verification standards, except for the additional standards which the FCC imposed through the FCC Forbearance Order.

The OCA submits that Virgin Mobile's Petition is not sufficient. The Commission has determined that Pennsylvania is a non-default state and so has "some flexibility pursuant to Section 54.409(a) of the FCC's Lifeline regulations to establish eligibility criteria..." Lifeline and Link-Up Programs at 18; accord Final Policy Statement Order at 10. As a condition of designation as a Lifeline only ETC, Virgin Mobile should also commit to follow the Commission's standards as set forth in the In Re: Lifeline and Link-Up Order.

First, the OCA submits that Virgin Mobile's adoption of Pennsylvania's Lifeline eligibility criteria will assure uniformity among Lifeline services offered by different ETCs.

Second, as to certification and verification, OCA submits that the process whereby ETCs first attempt to certify a consumer's program-based eligibility by checking DPW's database provides benefits to the Lifeline applicant and safeguards the USF. Similarly, a check of DPW's database provides an easy first step when an ETC conducts an annual check to

verify the continued eligibility of Lifeline subscribers, based on a statistically valid sample. Only if the ETC cannot verify the consumer's continued eligibility through the DPW database would it be necessary for the ETC to contact the consumer directly by mail. The OCA submits that Pennsylvania's verification process reduces the possibility that some consumers who continue to be eligible for Lifeline would lose Lifeline.

The OCA submits that any designation of Virgin Mobile as an ETC to offer Lifeline should be conditioned on Virgin Mobile's adoption and compliance with these Pennsylvania standards, as set forth in the Commission's In re: Lifeline and Link-Up Order. See Guidelines, 52 Pa.Code § 69.2501(b).

4. Virgin Mobile Should File An Annual Lifeline Tracking Report, As A Condition of Designation as an ETC

The OCA submits that Virgin Mobile must comply with the Commission's annual Lifeline Tracking Report requirement as a condition of designation as an ETC authorized to offer Lifeline and Link-Up. See Tracking Report Order. The OCA notes that the Commission has routinely made public such information and relied upon such data to evaluate the success of Pennsylvania's Lifeline and Link-Up programs.

5. The Omissions In Virgin Mobile's Petition May Be Addressed By Designation Of Virgin Mobile As A Lifeline ETC Subject To Certain Clarifications And Conditions.

In the case of Cordia Communications, the Commission dismissed without prejudice Cordia's petition for designation as an ETC to offer Lifeline and Link-Up due to Cordia's failure to acknowledge and address Section 3019(f) of the Public Utility Code and certain FCC standards for ETC petitions. Petition of Cordia Communications Corp., for

Designation as an Eligible Telecommunications Carrier, Docket No. P-2008-2014444, Opinion and Order at 4 (Pa.PUC June 7, 2010)(Cordia). In this case, the OCA submits that the Commission should designate Virgin Mobile as an ETC designation to offer Lifeline subject to specific conditions, including compliance with Section 3019(f)(1) to (6), Pennsylvania Lifeline eligibility standards, Pennsylvania certification and verification practices, Lifeline and Link-Up reporting requirements, as well as additional conditions described below.

D. Virgin Mobile's Lifeline Service Plan Is in the Public Interest, Subject to Certain Conditions and Protections

1. Virgin Mobile's Lifeline Service Plan May Meet the Comparable Usage Standard

Virgin Mobile proposes to provide Lifeline customers with a free handset with E911 functionality or, if an existing Virgin Mobile customer, the customer may use their own handset. Petition at 8. Virgin Mobile will offer Lifeline customers “approximately 200” “anytime minutes per month at no charge with additional service priced at \$0.20/minute and \$0.10/text message.” Id. at 8, 12. Virgin Mobile notes competitive forces may push Virgin Mobile to change the parameters of its Lifeline plan. Id. at 8, fn. 12. Virgin Mobile's Lifeline service will “provide customers with the same features and functionalities enjoyed by other Virgin Mobile customers.” Id. Virgin Mobile will also offer Lifeline customers “other features at no cost, including voice mail, caller ID, call waiting services and enhanced 911 (“E911”) capabilities. Id. According to Virgin Mobile, its Lifeline service satisfies the FCC's requirement that an ETC provide local usage which is comparable to the local usage plan offered by the ILEC. Id. at 11-12. In support, Virgin Mobile cites to the free minutes which may used for local and long distance calling, free features, and E911 access. Id. at 12.

As the OCA has noted above, Virgin Mobile's Petition presents questions of first impression before the PUC. The question of whether Virgin Mobile's prepaid wireless Lifeline service provides sufficient local usage and is otherwise in the public interest is one such novel question. ETCs must commit to provide the functionalities and services supported by the federal universal service fund, including local usage. Section 54.101(a)(2) of the FCC's universal service regulations defines "local usage" as "an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users." 47 C.F.R. § 54.101(a)(2). In order to be designated as an ETC by the FCC, an applicant must also "demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC [local exchange carrier] in the service area for which it requests designation." 47 C.F.R. § 54.202(a)(4). Through the Guidelines, the PUC has adopted these standards as requirements which ETCs must satisfy for designation as an ETC by the PUC. The challenge is that the FCC has not prescribed a number of minutes of local usage. As to evaluating the comparability of local usage plans, the FCC has opted to review ETC applicant's proposed plans on a case-by-case basis. In re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order ¶ 33 (rel. March 17, 2005) (ETC Designation Order). The FCC has acknowledged that states have certain flexibility. As the FCC explained in the ETC Designation Order:

although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.

Id. ¶ 34.

In June 2010, the Minnesota Public Utility Commission addressed a similar concern regarding TracFone's offer of 67 minutes with Lifeline support. In the Matter of a Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier

(ETC) for the Limited Purpose of Offering Lifeline Service to Qualified Households, Docket No. P-6823/M-09-802, Order Granting Conditional One Year Designation and Opening Investigation (MN PUC, June 9, 2010)(TracFone Minnesota Order). The Minnesota Commission considered it unlikely that the 67 minutes per month or a 2.23 minutes usage allowance per day would meet the needs of low income households and found that the costs of additional minutes may be onerous. Id. The Minnesota Commission did grant TracFone ETC designation, but subject to the condition that TracFone:

modify its service offering to include the highest-value local usage plan it offers in any other jurisdiction. The highest-value plan would consist of the highest number of free minutes offered anywhere and supplementary minutes at the ten-cent level, the lowest it offers anywhere. This modified local usage plan would be comparable in value to - although clearly different in form from - the unlimited local usage plans offered by the incumbent LECs.

Id. at 8.⁶

Before granting ETC status the Commission should determine that Virgin Mobile's Lifeline service offers local usage which is comparable to that of the incumbent and is in the public interest. Virgin Mobile has not addressed the local calling service offered by each Pennsylvania ILEC. However, Virgin Mobile's Lifeline plan roughly approximates those of TracFone's newer, wireless SafeLink calling plans, which are currently available to eligible Pennsylvania consumers. Since August 2010, TracFone has offered Pennsylvania Lifeline eligible consumers a choice of several SafeLink plans, including Lifeline minutes ranging from 125 to 250 per month.⁷ The OCA notes that Virgin Mobile has not stated whether the 200

⁶ TracFone's subsequent decision to offer Lifeline consumers nationwide a choice of three Lifeline service plans mooted the Minnesota condition.

⁷ See PR Newswire Press Release, "SafeLink Wireless® Raises Lifeline Offering - Up to 250 Minutes of Free Talk Time for Pennsylvania's Eligible Low-Income Families," (Aug. 16, 2010). The Press Release states:

In addition to the free wireless cell phone customers receive at TracFone's expense, beginning August 16th, participants of the SafeLink Wireless program will have the choice of the following plans:

minutes would rollover for future use or expire at the end of the month. Allowing minutes to roll over would preserve the value of Lifeline support for the benefit of the consumer and better support universal service. Also, Virgin Mobile's proposed \$0.20 per minute charge for additional minutes is higher than the \$0.10 per minute charge which the Minnesota Commission found reasonable.

Overall, however, the OCA supports grant of Virgin Mobile's petition based on its proposed Lifeline plan and commitment to stay attuned to the market and make changes, presumably to offer consumers more value for the Lifeline support.

2. Virgin Mobile Should Add Specific Protections to Its Lifeline Service Plan to Protect the Availability of Minutes for Voice Calling

Virgin Mobile states that Lifeline customers will have access to texting and all other services available to other Virgin Mobile customers. The OCA supports providing Lifeline consumers with the same broad choice of services and functionalities as are available to other customers. However, the OCA submits that the first priority is to provide Lifeline consumers with affordable local calling service, which may in turn allow the Lifeline consumer to access and purchase other services, whether long distance or advanced services. Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 (1997) (1997 USF Order), ¶¶ 60, 61; see 47 U.S.C. § 254(b)(3). Indeed, the first two services which ETCs must offer and support are voice grade service and local usage service. See 47

-
- New 250 free monthly non-carryover minutes, one text per each minute and a free cellular handset.
 - New 125 free monthly carryover minutes, one text per each minute and a free cellular handset.
 - Original 68 free monthly carryover minutes, 3 texts per each minute, International Long Distance to over 100 destinations and a free cellular handset.

See http://www.bizjournals.com/cincinnati/prnewswire/press_releases/national/Pennsylvania/2010/08/16/CL51001.

C.F.R. § 54.101(a)(1), (2). To the extent that Virgin Mobile's Lifeline service includes texting and data access, the OCA submits that consumers should be clearly informed of the costs of each service and whether texting or data access can be blocked to preserve minutes for voice calling.

Additionally, the OCA recommends that communications from Virgin Mobile to its Lifeline consumers, whether by voice or text, should not count against the Lifeline consumer's available minutes. For example, a text notice that the consumer needs to verify the consumer's continued eligibility for Lifeline should not diminish the number of minutes available. Similarly, the OCA recommends that Virgin Mobile provide Lifeline consumers with the ability to access Virgin Mobile customer service without charges to the Lifeline consumer's available minutes.⁸

E. The Commission Should Impose Additional Certification and Verification Conditions to Safeguard the USF, Based on Virgin Mobile's Prepaid Wireless Lifeline Service.

The OCA submits that the Commission should follow the FCC's lead and require new ETCs which offer prepaid wireless Lifeline service to comply with additional certification and verification requirements. The OCA recommends that such ETCs:

- (1) require its customers 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 Nexus;
- (2) establish safeguards to prevent its customers from receiving multiple Lifeline subsidies from Nexus at the same address; and
- (3) deal directly with the customer to certify and verify the customer's Lifeline eligibility.

⁸ In Washington state, TracFone has modified its Lifeline service so that "airtime minutes are not deducted for customer service calls from a customer's handset by dialing 611." Use of the dialing code allows consumers to reach TracFone customer service In the Matter of Petition of TracFone Wireless, Inc., Docket UT-093012, Order 03, Final Order Granting Settlement ¶¶ 37, 40 (WUTC June 24, 2010)(TracFone Washington ETC Order).

The FCC crafted these conditions “to safeguard against waste, fraud, and abuse in the Lifeline program.” See, TracFone ETC Designation Order, ¶¶ 20, 21; see also, In the Matter of Telecommunications Carriers Eligible for Lifeline Support, WC Docket No. 09-197, Order ¶¶ 16, 17 (rel. July 30, 2010). The OCA notes that Virgin Mobile has identified items (1) and (2) among the five conditions which the FCC imposed on Virgin Mobile as part of the Forbearance Order. Petition at 5-6. Given that Virgin Mobile has only asked the Commission to not apply one of the other Forbearance Order conditions based on changed circumstances, the OCA expects that Virgin Mobile will implement these additional certification and verification requirements when offering service in Pennsylvania. The Florida Public Service Commission granted Virgin Mobile designation as an ETC to offer prepaid wireless service subject to these same conditions. See, Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P., Docket No. 090245-TP, Order No. PSC-10-0323-PAA-TP (Fl. P.S.C. May 19, 2010)(Virgin Mobile Florida Order), Consummating Order No. PSC-10-0444-CO-TP (July 12, 2010).

With regard to the second requirement that Virgin Mobile establish safeguards to prevent customers from receiving multiple Lifeline subsidies at the same address, the OCA notes that the FCC has been asked to clarify how ETCs may provide Lifeline service to consumers who may live in a group home or shelter and still assure that only one Lifeline service is provided by household. See In the Matter of the Federal-State Joint Board, TracFone Wireless, Inc. Petition for Modification of the “One-Per-Household” Rule, WC Docket 96-45, NASUCA Comments (filed Nov. 20, 2009). The advent of prepaid wireless Lifeline service has opened new possibilities for these consumers. Through NASUCA, the OCA has encouraged the FCC to clarify this issue so that more Lifeline eligible consumers in these situations may obtain Lifeline

service. The OCA expects that Virgin Mobile will comply with this second requirement in a way that safeguards the federal USF – without unduly excluding eligible Lifeline consumers who may lack a private address.

As to the third requirement, the OCA notes the purpose is to assure that ETCs do not use retailers, for example, to determine a consumer’s eligibility for Lifeline. This requirement should apply to Virgin Mobile, as a condition of ETC designation.

Another condition which the Commission should impose to safeguard the USF is a requirement that Virgin Mobile deactivate Lifeline service to handsets which have not had activity for 60 days. For example, in Washington state, TracFone has agreed that it

will deactivate a SafeLink Wireless account if the customer has not used it for 60 consecutive days. At least eight business days prior to deactivation, the Company will send the customer a written notice of the potential deactivation. Customers will have a 30-day grace period to reactivate the account....
This policy shall be explicitly stated in the Company’s Lifeline service agreements.

TracFone Washington ETC Order, ¶ 40. Virgin Mobile is subject to a similar requirement in Florida. See Virgin Mobile Florida Order (Virgin Mobile required to report “the number of customers who have been deactivated for not having any activity on their phone in a 60-day period”).

F. Virgin Mobile Should Comply With Public Safety, Consumer Protection, and Additional Obligations.

The OCA notes that the Lifeline and Link-Up service provides an important public safety role, providing households with access to government services, health care providers, and 911/E911 access. As a provider of Lifeline and Link-Up service with federal USF support, the OCA submits that an ETC is obligated to promote federal and Pennsylvania universal service goals. To fulfill those goals, the OCA submits that an ETC – even if not

otherwise a public utility certificated by the Commission – must comply with other federal and state laws, including all steps to assure that Lifeline service customers have access to 911/E911 service.⁹ The Commission should inform Virgin Mobile and other future ETCs that any such non-compliance may provide cause for revocation of the ETC designation.

Given that Virgin Mobile is not a public utility, the OCA would recommend that the Commission give notice to the Office of Attorney General that any consumer complaints received regarding the quality of Virgin Mobile’s prepaid wireless Lifeline service are of interest and relevant to the Commission’s authority. Additionally, Virgin Mobile should provide the Commission with the name and contact information for the Virgin Mobile employee in charge of resolving consumer complaints.

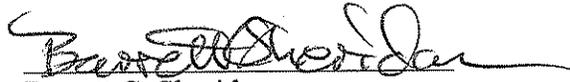
The Commission should also require Virgin Mobile to provide, at least annually, samples of advertising, marketing materials, and applications. Virgin Mobile is required by federal and state law to advertise and promote the availability of Lifeline and Link-Up service. 47 C.F.R. §§ 54.405(b), 54.411(d); 66 Pa.C.S. § 3019(f).

⁹ Virgin Mobile notes that it “has remitted E911 monthly fees in Pennsylvania since enactment of legislation in 2004 that specifically extended E911 fees to prepaid wireless service.” Petition at 4, fn. 5.

II. CONCLUSION

The Office of Consumer Advocate supports designation of Virgin Mobile USA, L.P.. as an Eligible Telecommunications Carrier for the purpose of offering Lifeline service with federal universal service support, but such designation must be subject to the Virgin Mobile's acceptance of the conditions identified in these Comments.

Respectfully Submitted,



Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATED: October 12, 2010
00134628.docx

CERTIFICATE OF SERVICE

Re: Virgin Mobile USA, L.P. Petition for Limited Designation as an Eligible
Telecommunications Carrier
Docket No. P-2010-2155915

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 12th day of October, 2010.

SERVICE BY INTER-OFFICE MAIL

Office of Trial Staff
Pa. Public Utility commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Ethan M. Schultz, Esq.
Skadden Arps Slate Meagher &
Flom LLP
1440 New York Ave., NW
Washington, DC 20005-2111

Office of Small Business Advocate
300 North Second Street
Suite 1102 Commerce Bldg.
Harrisburg, PA 17101

John P. Sabatina, Jr.
House of Representatives
8100 Castor Ave.
Philadelphia, PA 19152

Tony J. Payton, Jr.
House of Representatives
308 Irvis Office Bldg.
P.O. Box 202179
Harrisburg, PA 17120

Sheila Stickel, Executive Dir.
Advocates for Universal Access
P.O. Box 21914
Seattle, WA 98111



Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. #61138
Email: bsheridan@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
134533