

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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August 26, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of Telrite Corporation d/b/a Life
Wireless for Designation as an Eligible
Telecommunications Carrier in the
Commonwealth of Pennsylvania for the
Limited Purpose of Offering Lifeline and
Link-Up Services to Qualified Households
Docket No. P-2011-2234287

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Barrett Sheridan".

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

Enclosure

cc: Certificate of Service
Elizabeth A. Lion Januzzi, Law Bureau

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|--|---|---------------------------|
| Petition of Telrite Corporation d/b/a Life | : | |
| Wireless for Designation as an Eligible | : | |
| Telecommunications Carrier in the | : | Docket No. P-2011-2234287 |
| Commonwealth of Pennsylvania for | : | |
| the Limited Purpose of Offering | : | |
| Lifeline and Link-Up Services to | : | |
| Qualified Households | : | |

COMMENTS OF THE
OFFICE OF CONSUMER ADVOCATE

On April 4, 2011, Telrite Corporation d/b/a Life Wireless (Telrite) filed a Petition with the Pennsylvania Public Utility Commission (PUC or Commission) requesting limited designation as an Eligible Telecommunications Carrier (ETC) in Telrite's service area in Pennsylvania pursuant to Section 214(e) of the Communications Act.¹ According to Telrite, its service area overlaps with the service territories of Verizon North Inc, Verizon Pennsylvania Inc. and Frontier Communications of Pennsylvania, LLC. Petition at 2. Telrite proposes to offer prepaid wireless service in Pennsylvania, relying on a combination of leased facilities and resale of another wireless carrier's services. *Id.* at 5-6, 9, 13. Telrite requests designation as an ETC to offer Lifeline and Link-Up service with federal universal service support (USF). The Commission published notice of Telrite's Petition in the Pennsylvania Bulletin on August 6, 2011, opening Telrite's Petition for comment.² The OCA supports Telrite's request for ETC designation, subject to the clarification and conditions set forth below.

¹ 47 U.S.C. § 214(e).

² 41 Pa.B. 4276 (2011).

The OCA generally 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 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. The OCA recognizes that consumers who are eligible for Lifeline may have a preference between wireline and wireless, postpaid or prepaid, annual contract, 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. Designation of additional Pennsylvania ETCs to offer Lifeline and Link-Up may promote the ability of low income consumers to obtain and continue to receive affordable telephone service.

Since the federal Universal Service Fund, including Lifeline and 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.³ Designation of additional, qualified carriers to offer voice service with universal service support is a means to the end, not a goal in itself. As the FCC recently noted, Lifeline and Link-Up universal service was designed to provide carriers with reimbursement for revenues foregone by

³ See, Final Policy Statement on Commonwealth of Pennsylvania's Guidelines for Designation as an Eligible Telecommunications Carrier (ETC) for Purposes of Federal Universal Service Support , Docket No. M-2010-2164741, Order (Aug. 2, 2010), 40 Pa.B. 5662 (Oct. 2, 2010)(ETC Guidelines Order). The Commission's ETC Guidelines are codified at 52 Pa. Code § 69.2501 (ETC Guidelines).

providing discounted service, not “to provide a profit for service providers.”⁴ Accordingly, designation as an ETC to offer Lifeline must be in the public interest.⁵

Through the ETC Guidelines, the Commission has identified the baseline information, incorporating federal and Pennsylvania criteria, which carriers requesting designation as an ETC should provide to facilitate the Commission’s review of such petitions. As part of its grant of Lifeline ETC designation to Virgin Mobile USA, L.P., the Commission imposed conditions to protect consumers and the integrity of the federal universal service fund.⁶

The OCA submits that the Commission’s ETC Guidelines provide a sound starting point for review of Telrite’s Petition for limited ETC designation to offer wireless service with Lifeline and Link-Up support. As the Commission recognized in the Virgin Mobile Order, other conditions may also be appropriate to protect consumers, the federal universal service fund and assure that grant of designation is in the public interest. The OCA has reviewed Telrite’s Petition against both the Commission’s ETC Guidelines and conditions which apply to other, similarly situated wireless ETCs. Based on Telrite’s Petition and informal discovery, Telrite’s Petition meets some of the minimum federal standards and reflects a commitment to follow Pennsylvania’s specific criteria regarding eligibility, certification and verification – subject to some needed clarification, as discussed below. Further, Telrite has committed to some, but not all of, the conditions which the Commission imposed in the Virgin Mobile Order, including cooperating with the Bureau of Consumer Services to resolve Lifeline and Link-Up related consumer complaints and, providing the Commission with copies of certain

⁴ In the Matter of Lifeline and Link-Up Reform and Modernization, WC Docket No. 11-42, Notice of Proposed Rulemaking ¶ 14, 2011 FCC Lexis 987 (rel. Mar. 4, 2011)(Lifeline and Link-Up Reform NPRM).

⁵ ETC Guidelines Order; see also 47 C.F.R. § 54.202(c).

⁶ Re: Petition of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service, Docket No. P-2010-2155915, Order (Dec. 22, 2010)(Virgin Mobile Order), amended in part, Opinion and Order (Feb. 14, 2011)(Virgin Mobile Partial Rescission Order).

reports filed by Telrite with the Universal Service Administrative Company. Petition at 27; see Virgin Mobile Order at 30.

The OCA comments will be limited to review of additional information necessary and certain issues which still require clarification by Telrite before approval may be granted:

- 1) Telrite's Lifeline service offering described in its Petition is limited to 68 minutes of free wireless calling, a level which may not suffice to meet the comparable local usage and public interest standard.
- 2) Telrite's proposed customer connection charge with Link-Up support merits review, in light of proposed federal regulatory reforms.
- 3) Telrite should modify its operations, so that Lifeline customers are not charged minutes of calling to contact Telrite's customer service or receive communications from Telrite.
- 4) Telrite plans to deploy "internal resources rather than [rely] on a contracted, outside services provider" for Lifeline certification, verification and annual recertification. Petition at 14. If Telrite's plans have changed, Telrite should update its filing. The OCA has recommended that ETCs deal directly with their Lifeline and Link-Up customers with regard to certification of initial eligibility, verification and annual recertification.
- 5) The Commission should accept Telrite's commitment to work with the Bureau of Consumer Services to resolve Telrite customer complaints related to Lifeline and Link-Up. See Petition at 27. However, the Commission should clarify that this condition of ETC designation takes precedence over any conflicting term in Telrite's Terms and Conditions of Service, which require binding arbitration for resolution of disputes. See Petition Exh. A, pp. 1, 8-9.
- 6) There are additional conditions which apply to other ETCs for the protection of consumers and the federal USF which the Commission should impose on Telrite.

Subject to Telrite's clarification of certain issues, and acceptance of all conditions, the OCA submits that designation of Telrite as an ETC eligible to offer telecommunications service with Lifeline and Link-Up support would be in the public interest.

I. COMMENTS

A. Introduction

The OCA supports designation of additional Pennsylvania telecommunications carriers as 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, consumers in the Verizon North, Verizon Pennsylvania and Frontier of Pennsylvania service areas have a choice of wireline service with Lifeline support from the incumbent local exchange carriers (ILECs), Lifeline 135 from a few competitive local exchange carriers (CLECs),⁷ or possibly wireless from Sprint Nextel,⁸ TracFone,⁹ and Virgin Mobile.¹⁰ Both TracFone and Virgin Mobile offer voice service on a prepaid basis with Lifeline support, without any customer connection charge.

Through the ETC 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.¹¹ 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

⁷ 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.

⁸ See NPCR, Inc. d/b/a Nextel Partners, 19 FCC Rcd 16530 (2004).

⁹ 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).

¹⁰ Virgin Mobile Order.

¹¹ ETC Guidelines, 52 Pa. Code § 69.2501(b).

assistance recipients.¹² 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.¹³ ETCs are required to report to the Commission annual changes in Pennsylvania Lifeline and Link-Up enrollment.¹⁴ As the Commission identified in the Virgin Mobile Order, additional conditions may apply to assure that designation is in the public interest.¹⁵

B. More Information and Conditions Should Apply, Before Telrite Can Meet The Federal Criteria for ETC Designation

Through the ETC Guidelines, the Commission 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 54.205-54.209.¹⁶ Telrite's Petition addresses the FCC's ETC designation requirements. For example, Telrite describes the company-owned facilities which Telrite proposes to combine with resale of other wireless carriers' facilities, as support for designation as an ETC under Section 214(e)(6) of the Communications Act. Petition at 9. Telrite 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 toll limitation service.¹⁷ Id. at 10-15. Additionally, Telrite addresses how it will provide service to customers upon reasonable request,

¹² 66 Pa.C.S. § 3019(f).

¹³ In Re: Lifeline and Link-Up.

¹⁴ 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).

¹⁵ Virgin Mobile Order at 2, 30-33.

¹⁶ ETC Guidelines, 52 Pa. Code § 69.2501(a).

¹⁷ Telrite notes that its prepaid wireless service obviates the need for separate toll limitation service, since Telrite offers any distance calling. Petition at 13.

remain functional in emergency situations, and provide quality of service and protect consumer privacy. Id. Telrite also commits to advertise the availability of Lifeline and Link-Up and to report some information required by the FCC annually. Id. at 14, 16.

1. Telrite Should Commit to Improve Its Proposed Lifeline Service

As filed, the OCA submits that Telrite’s proposed Lifeline service offering may not meet the federal requirement that Telrite offer a local usage plan which is comparable to the service offered by the incumbent local exchange carrier and otherwise in the public interest.¹⁸ Telrite’s Petition describes a single Lifeline plan, comprised of “sixty-eight (68) minutes of free anytime local and long distance minutes each month” with certain additional features at no charge. Petition at 6-7. Telrite does not indicate whether unused Lifeline minutes would rollover or expire at the end of the month. In its Petition, Telrite states that designation as an ETC is in the public interest to increase competition and allow Pennsylvania consumers “access to a free wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.” Id. at 19.

The OCA submits that a single Lifeline offering with a limited number of minutes of local calling paid for with Lifeline support raises questions as to whether it meets the FCC criteria, under either the comparable local usage or public interest standard.¹⁹ Sixty-eight minutes a month of free wireless service may not allow the Lifeline consumer to engage in the

¹⁸ 47 C.F.R. § 54.101(a)(2); ETC Guidelines, 52 Pa.Code § 69.2501(a)(4).

¹⁹ 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). 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 flexibility to make their own determinations. Id. ¶ 34.

activities which Telrite suggests are important. Additionally, the cost to the federal USF of supporting 68 minutes of calling would appear excessive on a per minute basis. Through informal discovery, the OCA has learned that Telrite expects to offer Lifeline service with federal USF Tier One, Two, and Three support of up to \$13.50.²⁰ Telrite has also told the OCA that additional airtime minutes may be purchased at 100 minutes for \$10, 250 minutes for \$25, and other increments or a customer may purchase calling as a block of days. The OCA notes that, based on the maximum Lifeline support of \$13.50, a Lifeline offering of 68 minutes would equate to a cost of nearly 20 cents per minute, with a portion of those high cost minutes contributed by the carrier. Yet Telrite customers could spend \$10 or \$20 to purchase a larger number of minutes at an average cost of 10 cents per minute.

In the Virgin Mobile Order, the Commission noted that the FCC has adopted a case-by-case approach to evaluating whether an ETC petitioner's Lifeline service meets the comparable local usage requirement.²¹ The Commission approved Virgin Mobile's proposed "plan for prepaid 250 anytime voice minutes per month at no charge with additional service priced at \$0.10/voice minutes and \$0.10 text messages."²² The Commission determined that Virgin Mobile's proposal "complies with the local usage requirements established by the FCC."²³

The OCA agrees with Telrite that a variety of ETCs offering Lifeline may lead to better value and quality of service for Lifeline customers. Consistent with that position, the OCA submits that Telrite should propose a choice of new, improved Lifeline service plans which

²⁰ 47 C.F.R. § 54.403(a)(1), (2), and (3). Since Tier 3 support requires a state match, Telrite has told the OCA informally that it would supply the \$3.50 to qualify for the federal \$1.75 match.

²¹ Virgin Mobile Order at 14.

²² Id. at 11, 14-15.

²³ Id., at 15

offer more free minutes with Lifeline support to be competitive with Virgin Mobile and TracFone and better advance the goals of universal service. As filed, the OCA submits that the Lifeline calling plan proposed by Telrite may not satisfy the standard for meeting the comparable local usage and public interest standards as set in the Virgin Mobile Order.

2. Telrite's Request For Link-Up Support Presents A Novel Question

Telrite has proposed to use Link-Up support to reduce "its activation charge by \$30.00."²⁴ Petition at 8. Telrite notes that it will screen Link-Up applicants to ascertain that a Telrite customer obtains Link-Up support from Telrite only once at the same address.²⁵ *Id.* The OCA notes that Telrite Petition does not indicate whether it has or expects to have non-Lifeline and Link-Up customers who would be subject to Telrite's activation charge. Nor does Telrite explain whether it will allow Link-Up consumers to defer payment of the balance of the activation fee for up to a year without interest charges.²⁶ If Telrite intends to request Link-Up reimbursement for interest not collected, the OCA submits that Telrite should clarify this position and identify the expected amount or reimbursement, per Link-Up customer.²⁷

The OCA notes that the Commission has not, at this time, ruled on a request by a prepaid wireless carrier to be eligible to reduce its service connection fee with Link-Up support. Virgin Mobile, for example, does not impose such a charge. In theory, if provided with sufficient information, consumers should be able to determine whether Lifeline service with an

²⁴ Link-Up support may reduce "the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a customer's principal place of residence. The reduction shall be half of the customary charge or \$30.00, whichever is less." 47 C.F.R. § 54.411(a)(1).

²⁵ Section 54.411(c) provides that consumers may receive Link-Up support "for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link-Up assistance was previously provided." 47 C.F.R. § 54.411(c).

²⁶ Link-Up support is comprised of both the reduction in the connection charge and the offering of deferred payment of the customer's portion of the ETC's customary connection charge. See 47 C.F.R. § 54.411(a)(1), (2).

²⁷ See 47 C.F.R. § 54.413(a), (b).

initial connection charge or activation fee offers advantages compared to Lifeline service offered without connection fees. The OCA notes that the FCC is examining the Link-Up support mechanism as part of its effort to modernize and reform the Low Income support program. As part of the pending proposed rulemaking, the FCC is considering refinement of the concept of “customary charges,” specifically whether to reduce the amount of Link-Up support in light of the role of automation in establishing service connections, and other steps to avoid waste and abuse.²⁸

The OCA submits that additional information may be needed to assist in determining whether Telrite’s activation charge qualifies for Link-Up support as a customary charge. The OCA notes that Telrite has committed to comply with Link-Up eligibility requirements, as well as screening to avoid duplicate Link-Up support to the same customer at the same address. While Telrite may qualify for designation as an ETC to offer Link-Up assistance, the OCA notes that the availability and value of Link-Up may change as the result of FCC reform and revision of federal regulations.

C. Communications Between Telrite And Telrite’s Lifeline And Link-Up Customers Should Not Cost The Consumer

According to Telrite, it “provides access to operator services for billing questions by dialing ‘611.’” Petition at 12. Telrite’s Terms and Conditions states that “Airtime minutes are deducted for all incoming and outgoing calls, including call waiting calls, calls to toll free numbers, 411, 611, *Customer Care*, and to access Customer’s voice mail.” *Id.*, Exh. A, p. 5 (emphasis added). The OCA is concerned by Telrite’s proposal to charge Lifeline customers for calls to and calls from Telrite related to billing questions or other customer care issues. The

²⁸ Lifeline and Link-Up Reform NPRM, ¶¶ 71-79. The FCC has proposed to redefine “‘customary charge for commencing telecommunications service’ as the ordinary initiation charge that an ETC routinely imposes on all customers within a state.” See also, Public Notice: Further Inquiry Into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding, WC Docket No. 11-042, et al (rel. Aug. 5, 2011).

OCA submits that calls between Telrite and Lifeline customers should be presumed to be a cost of the provision of universal service and not chargeable to the Lifeline customer.

In its Petition, Telrite has committed to specific certification, verification and outreach activities which may result in communications to and from Telrite and its Lifeline customers. Petition at 14-15, 24-25. The OCA submits that these commitments and tasks would be an integral part of Telrite's provision of universal service, as the tasks are intended to safeguard the federal USF from waste and abuse. The OCA submits that some communications between Telrite and Telrite's Lifeline consumers are an unavoidable part of Telrite's fulfillment of these obligations. For example, Telrite may need to send a text or voice message notice to alert the Lifeline customer of the need to contact Telrite to avoid discontinuance of Lifeline support under Telrite's 60-day non-usage policy. *Id.*, Exh. A, at 5. These costs should be presumed to part of the administrative costs associated with Telrite's obligations as an ETC and the provisioning of Lifeline service, rather than costs recoverable from Lifeline consumers.

The OCA submits that charges for calls to customer service or any calls from Telrite to the Lifeline customer should not diminish the consumer's store of available minutes, whether paid for by the federal USF or the consumer. The fundamental premise of universal service is to promote the ability of more consumers to contact one another – not to support calls between the consumer and the ETC provisioning Lifeline service. The PUC granted Virgin Mobile designation as an ETC to offer Lifeline based in part on Virgin Mobile's "express statement that calls to Virgin Mobile's customer service did not count against plan minutes, and communication from Virgin Mobile to customers does not count against plan usage."²⁹ The OCA recommends that Telrite commit to allow Lifeline customers to make and receive calls between the customer and Telrite at no charge under any Lifeline calling plan.

²⁹ Virgin Mobile Order at 4.

D. Telrite Should Update Its Petition, If Telrite's Plans For Conducting Certification, Verification, and Outreach Have Changed

In its Petition, Telrite states its intent “at this time to meet the Lifeline certification, verification, and annual recertification through deployment of internal resources rather than reliance on a contracted, outside services provider.” Petition at 14. In its Petition, Telrite commits to comply with the federal requirements and make Lifeline and Link-Up available to eligible consumers and obtain a signed certificate as proof of the customer’s eligibility. Petition at 15. Telrite also acknowledges and commits to comply with Pennsylvania’s more specific certification and verification procedures, including use of the Department of Public Welfare data base to confirm customer eligibility, rather than rely on self-certification. Id. at 25-26. Telrite has addressed and committed to follow Pennsylvania specific requirements, as directed by the Commission’s ETC Guidelines. Telrite also commits to comply with federal and state requirements regarding outreach. Id. at 14-15, 24-25.

The OCA submits that if Telrite’s plans to meet the Lifeline certification, verification, and annual recertification obligations of an ETC change, that Telrite should inform the Commission. The OCA also recommends that Telrite provide more information regarding how it will engage in outreach. The OCA has recommended that ETCs have direct contact with Lifeline and Link-Up applicants for the purpose of determining eligibility and subsequent verification of continued eligibility. In the Virgin Mobile Order, the Commission did approve Virgin Mobile’s plan to use a third party administrator, Solix, Inc., based on consideration of Solix’ specific procedures.³⁰ However, the Commission cautioned that:

The use of a third party administrator in no way relieves Virgin Mobile of the duty to prevent fraud and abuse, and any failure of Solix, Inc., to comply with the eligibility verification requirements

³⁰ Virgin Mobile Order at 6.

imposed by this order, will be imputed to Virgin Mobile and will be grounds for revocation of the ETC designation.³¹

The Commission left open the possibility of imposing additional requirements such as a duty to deal directly with the customer, to address any indications of fraud or abuse of the Lifeline program.³² The OCA submits that more information from Telrite about its plans may help assure that the integrity of Pennsylvania's Lifeline and Link-Up program is preserved.

E. The Commission's Authority To Assist Lifeline and Link-Up Customers In the Resolution Of Complaints Should Take Priority Over Telrite's Binding Arbitration Requirement

In its ETC Petition, Telrite "agrees to work with the BCS [Bureau of Consumer Services] to resolve informal complaints and to submit to Commission jurisdiction on formal complaints filed with BCS by the Telrite Lifeline customers, on Lifeline related issues other than related to rates and entry." Petition at 27. Additionally, Telrite agreed "to provide notice to consumers of their right to contact BCS and the Commission's contact information, if complaints brought to Telrite's customer service division are not resolved." *Id.* The OCA submits that Telrite's commitment is an important protection for Pennsylvania consumers. The OCA recommends that the Commission accept Telrite's commitment, subject to one clarification. Telrite's Terms and Conditions include the requirement that consumers submit to binding arbitration to resolve disputes with Telrite. Petition, Exh. A, pp. 1, 8-9. The OCA submits that the process for providing Pennsylvania Lifeline consumers served by Telrite with access to the Bureau of Consumer Services to resolve certain disputes must take priority over any conflicting provisions of Telrite's Terms and Conditions.

³¹ *Id.*

³² *Id.*

F. Grant Of ETC Designation Should Be Conditioned On Telrite's Compliance With Certain Additional Conditions To Protect Consumers And The Federal Universal Service Fund

In the Virgin Mobile Order, the Commission noted that “[p]repaid wireless carriers offering Lifeline present unique compliance and monitoring concerns.”³³ The Commission accepted certain commitments by Virgin Mobile to protect consumers and the federal USF and imposed others. Telrite has committed to some, such as providing the Commission with additional reports and cooperating with BCS for complaint resolution. However, the OCA submits that there are other conditions which should also apply to Telrite, and other similar prospective ETCs, as described below.

1. Changes In Lifeline Service

Telrite should be required to petition the Commission prior to making any future change to Telrite's Lifeline service offering(s) which would represent a limitation or reduction of the Lifeline services/equipment provided free of charge. The Commission has already imposed this condition on Virgin Mobile to protect against diminishment in the value of Lifeline service provided in exchange for Lifeline support from the federal universal service fund.³⁴ The OCA recommends that the Commission clarify that a diminishment in value may occur if the amount of Lifeline support increases, without a corresponding increase in the amount of wireless Lifeline service (for example more minutes of calling) purchased with federal Lifeline support. The OCA notes that there are proposals before the Federal Communications Commission which recommend increasing the maximum subscriber line charges (SLCs) charged by incumbent local

³³ Virgin Mobile Order at 30.

³⁴ Re: Petition of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service, Docket No. P-2010-2155915, Order (Dec. 22, 2010)(Virgin Mobile Order), amended in part, Opinion and Order at 32, Ordering ¶ 3 (Feb. 14, 2011)(Virgin Mobile Partial Rescission Order).

exchange carriers (ILEC). The amount of Lifeline support available to competitive ETCs is tied in part to the level of the ILEC's SLC.³⁵ So an increase in the SLC may provide a competitive ETC with more Lifeline support. The receipt of additional Lifeline support without a change in the amount of Lifeline service provided free of charge may qualify as a diminishment in value. The OCA recommends that the Commission impose on Telrite the same condition as the Commission imposed on Virgin Mobile plus this clarification.

2. Change In Corporate Control

The Commission imposed on Virgin Mobile the obligation "to petition this Commission for a renewal of its ETC designation status" in the event of a change of corporate control.³⁶ The Commission explained that such a petition will allow it to "timely re-examine any such changes and ascertain whether a particular telecommunications entity should continue to be availed of its previously granted ETC status designation or whether such status and/or applicable conditions should be altered."³⁷ The OCA submits that grant to Telrite of designation as an ETC should include the same condition.³⁸

3. Copies of Advertising and Outreach Materials

The OCA submits that Telrite's commitment to provide the Commission with advertising and outreach materials should be clarified. In the Virgin Mobile Order, the Commission agreed with OCA that "a requirement that Virgin Mobile annually provide the Commission with copies of all advertisements and consumer notices for review... is

³⁵ See 47 C.F.R. § 54.403(a).

³⁶ Virgin Mobile Order at 31.

³⁷ Id.

³⁸ Since Telrite holds a Pennsylvania certificate of public convenience to offer interexchange service, Telrite is already subject to the Commission's jurisdiction over change of corporate control. The obligation to petition for review of Telrite's ETC designation would be a new obligation.

warranted.”³⁹ The Commission directed that “[a]s a condition of its grant of designation, Virgin Mobile agrees to annually provide the Commission’s Bureau of Consumer Services copies of all advertising, promotional and general lifeline program-related notices and communications.” *Id.* at 18. In its Petition, Telrite commits to provide the Commission’s BCS with copies of Lifeline information and subscription forms, as provided to DPW offices. Petition at 25. The Commission should require Telrite to annually provide the same advertising and consumer notices to the Commission’s BCS for review, consistent with the Virgin Mobile Order.

4. Lifeline Verification

The OCA submits that Telrite should be required to annually verify that its Lifeline customers are the head of household and only receive Lifeline service from Telrite. TracFone and Virgin Mobile are subject to this condition.⁴⁰ The OCA submits that prepaid wireless ETCs such as Telrite should be subject to this additional verification requirement, subject to future change based on the FCC’s Lifeline and Link-Up modernization and reform rulemaking and related Commission action.

³⁹ Virgin Mobile Order at 5.

⁴⁰ See, e.g. 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).

II. CONCLUSION

The Office of Consumer Advocate supports designation of Telrite Corporation d/b/a Life Wireless as an Eligible Telecommunications Carrier for the purpose of offering Lifeline and Link-Up service with federal universal service support, but such designation must be subject to Telrite's improvement of its Lifeline service plan, clarification of information presented in Telrite's Petition, and acceptance of the conditions identified in these Comments.

Respectfully Submitted,



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DATED: August 26, 2011
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CERTIFICATE OF SERVICE

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the Limited Purpose of Offering :
Lifeline and Link-Up Services to :
Qualified Households :

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

Dated this 26th day of August 2011.

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