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BEFORE THE ARIZONA CORPORATION COMMISSION

1 BOB STUMP  
2 Chairman  
3 GARY PIERCE  
4 Commissioner  
5 BRENDA BURNS  
6 Commissioner  
7 BOB BURNS  
8 Commissioner  
9 SUSAN BITTER SMITH  
10 Commissioner  
11  
12  
13

Arizona Corporation Commission

DOCKETED

FEB - 6 2013

DOCKETED BY  
NR

8 IN THE MATTER OF THE APPLICATION )  
9 OF VIRGIN MOBILE USA, L.P.'S )  
10 BRANDED "ASSURANCE WIRELESS )  
11 BROUGHT TO YOU BY VIRGIN MOBILE" )  
12 FOR DESIGNATION AS A WIRELESS )  
13 ELIGIBLE TELECOMMUNICATIONS )  
14 CARRIER IN THE STATE OF ARIZONA )  
15 (LOW INCOME ONLY). )

DOCKET NO. T-20827A-11-0461

DECISION NO. 73644

ORDER

14 Open Meeting  
15 January 30-31, 2013  
16 Phoenix, Arizona

16 BY THE COMMISSION:

17 FINDINGS OF FACT

18 1. On December 21, 2011, Virgin Mobile USA, L.P. ("Virgin Mobile") filed a petition  
19 requesting designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section  
20 214 (e)(2) of the Communication Act of 1934, as amended, (the "Act") and 47 C.F.R. §§54.101  
21 and 201 of the rules of the Federal Communications Commission ("FCC"). In its Application,  
22 Virgin Mobile requests that the Arizona Corporation Commission ("ACC" or "Commission")  
23 designate it as a wireless ETC in the wire centers listed in Exhibit 1 of the Application for the  
24 purpose of receiving federal Universal Service Fund ("FUSF") support for low-income customers  
25 only (i.e., Lifeline<sup>1</sup>). Virgin Mobile is not requesting high cost support.

26 ...

28 <sup>1</sup> Federal Lifeline Assistance provides discounts on basic monthly service at the primary residence for qualified telephone subscribers. The federal support amount provided to the ETC is \$9.25.

1           2.     On March 9, 2012, the Arizona Local Exchange Carriers Association (“ALECA”)  
2 filed a motion to intervene.

3           3.     On March 30, 2012, a Procedural Order granted ALECA’s request for intervention  
4 in this proceeding.

5           4.     On November 1, 2012, a Stipulation between ALECA and Virgin Mobile was filed  
6 in the docket.

7 **BACKGROUND**

8           5.     Virgin Mobile was established as a joint venture between Sprint Nextel Corporation  
9 (“Sprint”) and Virgin Group to offer prepaid wireless services using the Virgin Mobile brand and  
10 the Nationwide Sprint Network.<sup>2</sup> Virgin Mobile has been providing prepaid wireless services in  
11 Arizona since July 2002.<sup>3</sup> On November 24, 2009, Virgin Mobile became a wholly owned  
12 subsidiary of Sprint upon completion of the companies’ previously announced transaction. The  
13 Federal Communications Commission (“FCC”) approved Sprint’s acquisition of Virgin Mobile  
14 effective September 11, 2009.<sup>4</sup> Virgin Mobile has its principal offices at 10 Independence Blvd.,  
15 Warren, NJ 07059.

16           6.     Virgin Mobile currently serves approximately nine million (9,000,000) wireless  
17 customers,<sup>5</sup> of which approximately four million (4,000,000) are Lifeline customers. Virgin  
18 Mobile has been granted ETC designation to provide wireless Lifeline services in thirty-five (35)  
19 jurisdictions<sup>6</sup> and currently has applications pending to provide wireless Lifeline services in three  
20 (3) jurisdictions<sup>7</sup>, excluding Arizona. For its proposed designated service area in Arizona, Virgin  
21 Mobile provided a list of wire centers in which it intends to provide service and identified the  
22 incumbent local exchange carriers (“ILECs”) serving each wire center in Exhibit 1 of the

23  
24 <sup>2</sup> The FCC authorized the Company to provide international resold telecommunications services in 2001. See FCC File No. ITC-214-20020422-00194.

25 <sup>3</sup> Response to Staff Data Request STF 1.3.

26 <sup>4</sup> See *International Authorizations Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

27 <sup>5</sup> Response to Staff Data Request STF 2.1.

28 <sup>6</sup> Response to Staff Data Request STF 1.4: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Indiana, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin.

<sup>7</sup> Response to Staff Data Request STF 1.5: Idaho, Minnesota, Missouri and New Mexico.

1 Application. Both non-rural and rural ILECs provide wireline service within the proposed  
2 designated service area.

3 **REQUIREMENTS FOR DESIGNATION AS AN ETC AND VIRGIN MOBILE'S**  
4 **COMPLIANCE WITH THE REQUIREMENTS**

5 7. Designation as an ETC makes a carrier eligible to receive federal universal service  
6 funds. The requirements for designation of ETCs are specified by federal law in 47 U.S.C. §  
7 214(e)(1), which states:

8 "A common carrier designated as an eligible telecommunications carrier under paragraph  
9 (2) or (3) shall be eligible to receive universal service support in accordance with section  
10 254 and shall throughout the service area for which the designation is received: (A) offer  
11 the services that are supported by Federal universal service support mechanisms under  
12 section 254(c), either using its own facilities or a combination of its own facilities and  
13 resale of another carrier's services (including the services offered by another eligible  
14 telecommunications carrier); and (B) advertise the availability of such services and the  
15 corresponding charges using media of general distribution."

16 8. Prior to Virgin Mobile becoming a wholly owned subsidiary of Sprint Nextel in  
17 November, 2010, Virgin Mobile purchased wireless network services on a wholesale basis from  
18 Sprint Nextel and had received forbearance from the FCC<sup>8</sup> from the carrier owned facilities  
19 requirement as outlined in section 214(e)(1) above. After the acquisition was completed, in FCC  
20 Order DA 10-2433,<sup>9</sup> the FCC found that Virgin Mobile, as wholly owned affiliate of Sprint Nextel,  
21 "owns" Sprint Nextel's facilities for purposes of the facilities requirement in section 214(e) of the  
22 Act. With Sprint Nextel's acquisition of Virgin Mobile, the wholesaler-reseller relationship  
23 changed such that Virgin Mobile now has beneficial use of Sprint's wireless facilities without  
24

25 <sup>8</sup> See Federal-State Joint Board on Universal Service; In the Matter of Virgin Mobile USA, L.P. Petition for  
26 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. March 5,  
2009) ("2009 Order").

27 <sup>9</sup> See Federal-State Joint Board on Universal Service; In the Matter of Virgin Mobile USA, L.P. Petitions for  
28 Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New  
Hampshire and Washington D.C., Order, DA 10-2433 (rel. Dec. 29, 2010) ("2010 Order") (See Application, Exhibit  
2).

1 arm's length transactions or purchase of service from Sprint.<sup>10</sup> Thus, the FCC found that Virgin  
 2 Mobile has its "own facilities" for the purposes of meeting the section 214(e)(1) facilities  
 3 requirement.

4 9. In order to be designated as an ETC, a carrier must offer Lifeline service to  
 5 all qualifying low-income customers within its service area. Lifeline service provides basic  
 6 telephone service, typically by passing on discounts to monthly telecommunications charges. As a  
 7 wireless reseller of prepaid wireless service, Virgin Mobile is proposing to offer qualified  
 8 customers a free handset and under the basic plan, eligible customers will receive 250 anytime  
 9 prepaid voice minutes and 250 text messages per month at no charge with additional service priced  
 10 at \$0.10/voice minute and \$0.10/text message. Lifeline customers also have the option of  
 11 purchasing blocks of additional voice minutes and text messages<sup>11</sup> but are not obligated to  
 12 purchase the additional services voice minutes and text messages. Lifeline customers may select  
 13 any option on a month-to-month basis and service offerings include all applicable taxes and fees.<sup>12</sup>

14 **A. OFFERING THE SERVICES DESIGNATED FOR SUPPORT**

15 10. On December 23, 2011, the FCC adopted and released an Order on Reconsideration  
 16 in which the FCC modified, on its own motion, the definition of "voice telephony", as adopted in  
 17 the *USF/ICC Transformation Order*.<sup>13</sup> In that Order, the FCC reduced its former list of nine

18 ...

19 ...

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 21 <sup>10</sup> Letter from Antoinette Cook Bush, Counsel, Virgin Mobile USA, L.P., to Marlene H. Dortch, Secretary, FCC, at 2  
 22 & 3 n.7 (June 9, 2009) (Virgin Mobile June 9 *Ex Parte* Letter). The Commission previously concluded that entities  
 23 "enjoying the beneficial use of property" may consider that property their "own." See *Universal Service First Report*  
 24 *and Order*, 12 FCC Rcd at 8865, para. 158.

25 <sup>11</sup> Options include: add \$5 to a Lifeline account to purchase an additional 250 monthly minutes, providing them with a  
 26 total of 500 voice minutes in a month (250 free minutes plus 250 additional minutes) or add \$20 to a Lifeline account  
 27 to purchase an additional 750 voice minutes, providing them with a total of 1,000 voice minutes (250 free minutes plus  
 28 750 additional minutes).

<sup>12</sup> Minutes and text messages do not carry forward from month-to-month. Customers may incur state sales tax and fees  
 at the point of purchase should the customer choose to add minutes to their account.

<sup>13</sup> See *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and*  
*Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified*  
*Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal*  
*Service Reform-Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket  
 No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Order on  
 Reconsideration, FCC 11-189 (rel. Dec. 23, 2011) (*USF/ICC Transformation Order on Reconsideration*) at para. 3.

1 supported services to four supported services and amended 47 C.F.R. § 54.101 to specify the  
2 “voice telephony services” supported by federal universal service support mechanisms.<sup>14</sup>

3 11. 47 C.F.R. § 54.101, sets forth the services that a carrier must offer in order to  
4 receive Federal universal service fund support. The services and Virgin Mobile’s response to the  
5 provision of each service are as follows:

6 (a) Voice grade access to the Public Switched Network. “Voice grade access to the  
7 Public Switched Network” is defined as a functionality that enables a user of  
8 telecommunications services to transmit voice communications, including signaling the  
9 network that the caller wishes to place a call, and receive voice communications,  
10 including receiving a signal indicating there is an incoming call. For purposes of this  
11 Part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz.  
Virgin Mobile states<sup>15</sup> it provides dual tone multi-frequency (“DTMF”) signaling to  
expedite the transmission of call set up and call detail information throughout its  
network. All wireless handsets offered for sale by Virgin Mobile are DTMF-capable.

12 (b) Local usage. “Local usage” means minutes of use for local exchange service,  
13 prescribed by the Federal Communications Commission, provided free of charge to end  
14 users. Virgin Mobile states<sup>16</sup> it will provide Lifeline customers with minutes of use for  
local service at no additional charge to customers.

15 (c) Access to emergency services. “Access to emergency services” includes access to  
16 services, such as 911 and enhanced 911, provided by local governments or other public  
17 safety organizations. 911 is defined as a service that permits a telecommunications  
18 user, by dialing the three-digit code “911”, to call emergency services through a Public  
19 Safety Access Point (“PSAP”) operated by the local government. “Enhanced 911” is  
20 defined as 911 service that includes the ability to provide automatic numbering  
21 information (“ANI”), which enables the PSAP to call back if the call is disconnected,  
22 and automatic location identification (“ALI”), which permits emergency service  
23 providers to identify the geographic location of the calling party. “Access to emergency  
24 services” includes access to 911 and enhanced 911 services to the extent the local  
25 government in an eligible carrier’s service area has implemented 911 or enhanced 911  
systems. Virgin Mobile states<sup>17</sup> it provides nationwide access to 911 emergency  
services for all of its customers. Virgin Mobile also complies with the FCC’s  
regulations governing the deployment and availability of E911 compatible handsets.

26 (d) Toll Limitation for Qualifying Low-Income Consumers. “Toll limitation denotes  
27 either toll blocking or toll control for eligible telecommunications carriers that are  
28 incapable of providing both services. For eligible telecommunications carriers that are

14 *Id.* at para. 78; *see also id.* App. A at 536 (revising section 54.101(a) of the Commission’s rules); *see* 76 FR 73830, 73870 (Nov. 29, 2011) (revising 47 C.F.R. § 54.101(a) with an effective date of December 29, 2011).

15 Application, Page 18, lines 18-20.

16 Application, Page 18, Lines 8-11.

17 Application, Page 19, Lines 1-3.

1 capable of providing both services, 'toll limitation' denotes toll blocking and toll  
2 control."<sup>18</sup> In the *Lifeline Reform Order* the FCC relieved ETCs of the obligation to  
3 offer toll limitation services if their Lifeline offering does not distinguish in the pricing  
4 of toll and non-toll calls.<sup>19</sup> Virgin Mobile's wireless calling plans do not distinguish  
5 between non-toll (i.e. local) and toll. Virgin Mobile's prepaid plans include a specific  
6 number of minutes that cannot be exceeded. Therefore, customers cannot incur any  
7 charges for excessive toll calling or be disconnected for non-payment.

8 12. In its application, Virgin Mobile states it is a common carrier and will offer all of  
9 the supported services using its own facilities in the proposed ETC designated service area to all  
10 subscribers taking service under its Lifeline plan. Based on the above information and  
11 explanations, Staff believes that Virgin Mobile meets this ETC designation criteria.

#### 12 **B. ADVERTISING OF SUPPORTED SERVICES**

13 13. 47 U.S.C. § 214(e)(1)(B) requires a common carrier designated as an eligible  
14 telecommunications carrier to advertise the availability of such services and the corresponding  
15 charges using media of general distribution. Virgin Mobile states<sup>20</sup> that it will advertise the  
16 availability and rates for the services described above using media of general distribution in  
17 conformance with the FCC's regulations.<sup>21</sup> Virgin Mobile currently advertises the availability of  
18 its non-Lifeline services through newspapers, magazines, radio, the Internet, billboards and  
19 television and will supplement these methods of communication to specifically advertise and  
20 promote the availability of its Lifeline offerings to qualifying customers throughout the State of  
21 Arizona. Advertisements will be both English and Spanish.<sup>22</sup> Virgin Mobile submitted examples  
22 of prior relevant advertisements to Staff.

23 14. Based on the information above and Virgin Mobile's advertising materials provided  
24 to Staff, Staff concludes that Virgin Mobile will advertise the availability of its supported services  
25 and the corresponding charges using media of general distribution as required by 47 U.S.C. §  
26 214(e)(1)(B). Staff believes that Virgin Mobile meets this ETC designation criteria.

27 <sup>18</sup> 47 C.F.R. § 54.400(d).

28 <sup>19</sup> *Lifeline Reform Order*, ¶238.

<sup>20</sup> Application, Page 21, Lines 1-11.

<sup>21</sup> See 47 C.F.R. § 54.201.

<sup>22</sup> Response to Staff Data Request STF 1.39.

1           **C.     ADDITIONAL ETC REQUIREMENTS**

2           15.    In addition to the requirements listed above, the FCC adopted, in the Lifeline  
3 Reform Order, comprehensive reforms to the low-income program to revise and modernize the  
4 Lifeline service requirements and implement measures to address fraud, waste, and abuse within  
5 the system. Below are the additional requirements and Virgin Mobile's response to each  
6 requirement.

7                   **C.1    A Commitment and Ability to Provide Supported Services**

8           16.    In 47 C.F.R. § 54.202(a)(1)(i) and (ii), the FCC required the applicant to:

9                   (i) Certify that it will comply with the service requirements applicable to the  
10 support that it receives; and

11                   (ii) Submit a five-year plan that describes with specificity proposed improvements  
12 or upgrades to the applicant's network throughout its proposed service area. Each  
13 applicant shall estimate the area and population that will be served as a result of the  
14 improvements. Except, a common carrier seeking designation as an eligible  
15 telecommunications carrier in order to provide supported services only under  
16 subpart E of this part does not need to submit such a five-year plan.<sup>23</sup>

17           17.    Virgin Mobile states<sup>24</sup> it will provide all of the services and functionalities  
18 supported by the universal service program throughout its service territory in the State of Arizona.  
19 Virgin Mobile states that it will make these Lifeline services and functionalities available in a  
20 timely manner to any qualifying Arizona customer in the Company's service area. The  
21 requirement directing submissions of a formal network improvement plan under 47 C.F.R. §  
22 54.202(a)(1)(ii) does not apply to Virgin Mobile because it is seeking only to provide supported  
23 services under subpart E of this part, i.e. Lifeline only.

24           18.    Based on the above information, Staff believes that Virgin Mobile meets this ETC  
25 designation criteria.

26           ...

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28 <sup>23</sup> Lifeline Reform Order, ¶ 386.

<sup>24</sup> Application, Page 16, Lines 14-23.

1                   **C.2    Remain Functional in Emergency Situations**

2           19.    In 47 C.F.R. § 54.202(a)(2), the FCC outlines the requirement that an ETC applicant  
3 demonstrate its ability to remain functional in emergency situations. Specifically, “an applicant  
4 must demonstrate that it has a reasonable amount of back-up power to ensure functionality without  
5 an external power source, is able to reroute traffic around damaged facilities, and is capable of  
6 managing traffic spikes resulting from emergency situations.”<sup>25</sup>

7           20.    To demonstrate its ability to remain functional in emergency situations, Virgin  
8 Mobile states<sup>26</sup> that as a wholly owned subsidiary of Sprint Nextel, it is able to remain functional  
9 in emergency situations as required by 47 C.F.R. § 54.202(a)(2). Sprint Nextel has established a  
10 variety of internal programs, policies and teams dedicated to analyzing, assessing and responding  
11 to emergency situations and Sprint Nextel’s network is monitored 24 hours a day, 7 days a week,  
12 365 days a year by its network monitoring centers. In addition, Sprint Nextel has reasonable  
13 amounts of back-up power to ensure functionality without an external power source, and has  
14 implemented reasonable practices to reroute traffic around damaged facilities and manage traffic  
15 spikes resulting from emergency situations. Each cell site in the Sprint network is equipped with  
16 two hours of battery back-up power. Sprint Nextel is also capable of rerouting traffic around  
17 damaged facilities. Many cell sites in the Sprint Nextel network provide overlapping coverage for  
18 neighboring areas, and such design redundancy ensures that coverage continues in the event of  
19 damage to a particular facility. In the event of a major failure of a cell site, neighboring sites could  
20 be adjusted to provide coverage to a wider service area. These practices significantly reduce the  
21 chance that emergencies, fiber cuts or equipment failure will result in a loss of service.

22           21.    Based on the above information, Staff concludes that Virgin Mobile has  
23 demonstrated its ability to remain functional in emergency situations by maintaining a reasonable  
24 amount of back-up power. Staff believes that Virgin Mobile meets this ETC designation criteria.

25    ...

26 \_\_\_\_\_  
27 <sup>25</sup> *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 05-46* (rel. March  
28 17, 2005) (“*ETC Minimum Requirements Report and Order*”), ¶ 25.

<sup>26</sup> Application, Page 20, Lines 2-23.

### 1 C.3 Satisfy Consumer Protection and Service Quality Standards

2 22. In 47 C.F.R. § 54.202(a)(3), the FCC requires an ETC applicant to demonstrate its  
3 commitment to meeting consumer protection and service quality standards in its application...<sup>27</sup>

4 The sufficiency of other commitments will be considered on a case-by-case basis.

5 23. To demonstrate its ability to satisfy consumer protection and service quality  
6 standards, Virgin Mobile states<sup>28</sup> it has provided high quality wireless service in Arizona for  
7 several years, is committed to continuing to deliver quality wireless service to its customers and to  
8 meeting its consumer protection obligations. To demonstrate its commitment to high service  
9 quality, Virgin Mobile states<sup>29</sup> it has complied with the Cellular Telecommunications and Internet  
10 Association's ("CTIA") Consumer Code for Wireless Service since its inception and will continue  
11 to comply with the Consumer Code as an ETC.

12 24. Based on the above information, Staff believes that Virgin Mobile meets this ETC  
13 designation criteria.

### 14 C.4 Lifeline-Only ETC Applicants – Financial and Technical Capability

15 25. In 47 C.F.R. § 54.202(a)(4), the FCC requires a Lifeline-only ETC applicant to  
16 demonstrate that it is financially and technically capable of providing the Lifeline service in  
17 compliance with subpart E of this part. In the *Lifeline Reform Order*<sup>30</sup> the FCC provides guidance  
18 on specific information to be considered when determining if an applicant meets this requirement:

19 "...Among the relevant considerations for such a showing would be whether the applicant  
20 previously offered services to non-Lifeline customers, how long its has been in business,  
21 whether the applicant intends to rely exclusively on USF distributions to operate, whether  
22 the applicant receives or will receive revenue from other sources, and whether it has been  
23 subject to enforcement action or ETC revocation proceedings in any state."

24 ...

25 ...

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26 <sup>27</sup> ETC Minimum Requirements Report and Order, ¶ 28.

27 <sup>28</sup> Application, Page 21, Lines 16-19.

28 <sup>29</sup> Application, Page 23, Lines 18-20.

<sup>30</sup> See *Lifeline Reform Order*, ¶388.

1           26. To demonstrate that Sprint, as the parent company for Virgin Mobile, is financially  
2 and technically capable of providing Lifeline service, Virgin Mobile states<sup>31</sup> that Sprint's wireless  
3 segment generates revenues from the sale of wireless services, the sale of wireless devices and  
4 accessories and the sale of wholesale and other services. Sprint's retail market comprises those  
5 subscribers to whom Sprint directly provides wireless services, whether those services are provide  
6 on a postpaid or prepaid basis. Sprint is also a provider of wholesale wireless services and  
7 affiliates relationships and other arrangements through which wireless services are sold by Sprint  
8 to other companies that resell those services to subscribers. Thus, Virgin Mobile states Sprint will  
9 not need to rely exclusively on USF support to provide wireless Lifeline services. As noted on  
10 page 2 above, Virgin Mobile currently has been granted ETC designation to provide wireless  
11 Lifeline services in thirty-five (35) jurisdictions and currently has applications pending to provide  
12 wireless Lifeline services in three (3) jurisdictions. Further, Virgin Mobile has not been subject to  
13 any enforcement action at the FCC or in any state and that no ETC designations held by Virgin  
14 Mobile have been rescinded, revoked or terminated by the FCC or by any state since Sprint's  
15 acquisition of Virgin Mobile in November 2009.

16           27. Having reviewed Virgin Mobile's financial statements and based on the above  
17 information, Staff believes that Virgin Mobile meets this ETC designation criteria.

18           28. Virgin Mobile is currently in litigation<sup>32</sup> with the Arizona Department of Revenue  
19 ("ADOR") regarding the applicability of Arizona Emergency Telecommunications Services  
20 Revolving Fund ("AETSRF") as required in A.R.S. R42-5252(A) and 42-5253(A) (the E911  
21 Assessment) to Virgin Mobile's prepaid wireless services. At this time, Virgin Mobile has filed a  
22 Motion for Reconsideration of the Court of Appeals' August 2, 2012 decision that upheld a tax  
23 court ruling and determined that Virgin Mobile USA L.P. is liable for E911 assessment on its  
24 prepaid wireless phone services under state statute.<sup>33</sup>

25 . . .

26 \_\_\_\_\_  
27 <sup>31</sup> Response to Staff Data Request STF 2.3(a).

28 <sup>32</sup> *Virgin Mobile USA, LP (fka Virgin Mobile USA, LLC) v. Arizona Department of Revenue*, CA TX 11-0005, Arizona Tax Court Cause, No. TX2009-000238, Opinion (App. 2012).

<sup>33</sup> Response to Staff Data Request STF 2.4(a).

1                   **C.5 Lifeline-Only ETC Applicants – Terms and Conditions of Lifeline**  
2                   **Service Plans**

3           29. In 47 C.F.R. § 54.202(a)(5), the FCC requires an ETC applicant to submit  
4 information describing the terms and conditions of any voice telephony service plans offered to  
5 Lifeline subscribers, including details on the number of minutes provided as part of the plan,  
6 additional charges, if any, for toll calls, and rates for each such plan. To the extent the ETC offers  
7 plans to Lifeline subscribers that are generally available to the public, it may provide summary  
8 information regarding such plans, such as a link to a public Web site outlining the terms and  
9 conditions of such plans.

10          30. Virgin Mobile provided Staff with its informational tariff<sup>34</sup> in which it describes the  
11 calling plans for Lifeline subscribers, including the number of free minutes in each calling plan,  
12 along with the terms and conditions of Lifeline service as provided by Virgin Mobile. Based on  
13 the information contained in Virgin Mobile's informational tariff, Staff believes that Virgin  
14 Mobile meets this ETC designation criteria.

15                   **D. STEPS TO LIMIT FRAUD, WASTE AND ABUSE OF THE FUSF**

16          31. In the *Lifeline Reform Order* the FCC adopted various new measures and revised or  
17 eliminated other existing measures in order to limit fraud, waste and abuse of the Federal  
18 Universal Service Fund ("FUSF"). These measures include establishing uniform eligibility criteria  
19 to qualify for Lifeline services, clarifying the restriction of one Lifeline telephone allowed per  
20 household, initial certification and annual re-certification of consumer eligibility, establishing a  
21 national lifeline accountability database to ensure and enforce the one-per-household requirement,  
22 total elimination of toll limitation support for wireless carriers and a tapered elimination of toll  
23 limitation support for landline ETCs, elimination of the Link Up subsidy except on federally-  
24 recognized tribal lands and establishing additional provisions for Universal Service Administrative  
25 Company ("USAC") audits.

26 ...

27

28 <sup>34</sup> Response to Staff Data Request STF 1.54.

1           32. In response to the FCC's various new measures and revised or eliminated other  
2 existing measures in order to limit fraud, waste and abuse FUSF, Virgin Mobile states<sup>35</sup> that a  
3 number of practices adopted in FCC 12-11 have been practiced and in place for some time.  
4 Examples are the 60-day non-usage policy, annual certification of the entire Lifeline customer  
5 base, support based on actual customer counts, and robust marketing disclosure. Virgin Mobile  
6 will revise its Lifeline application form to collect additional customer information and  
7 certifications, implement uniform federal eligibility criteria, implement new customers eligibility  
8 verification procedures, enroll Lifeline eligible customers residing at temporary addresses, and  
9 enroll separate economic units at the same address where proper documentation is provided.  
10 Virgin Mobile will verify the eligibility of its entire Lifeline customer base as of June 1, 2012, and  
11 revise its annual verification form to reflect new information gathering and certification  
12 requirements. Finally, Virgin Mobile will comply with reporting and audit requirements set forth  
13 in the *Lifeline Reform Order*.

14           **E. PUBLIC INTEREST DETERMINATION**

15           33. Under Section 214 of the Act, the FCC and state commissions must determine that  
16 an ETC designation is consistent with the public interest, convenience and necessity for rural  
17 areas. They also must consider whether an ETC designation serves the public interest consistent  
18 with Section 254 of the Act. Congress did not establish specific criteria to be applied under the  
19 public interest tests in Sections 214 or 254. The public interest benefits of a particular ETC  
20 designation must be analyzed in a manner that is consistent with the purposes of the Act itself,  
21 including the fundamental goals of preserving and advancing universal service; ensuring the  
22 availability of quality telecommunications services at just, reasonable, and affordable rates; and  
23 promoting the deployment of advanced telecommunications and information services to all regions  
24 of the nation, including rural and high-cost areas.<sup>36</sup> Accordingly, before designating a carrier as an  
25 ETC, the Commission must make an affirmative determination that such designation is in the  
26 ...

27 \_\_\_\_\_  
28 <sup>35</sup> Response to Staff Data Request STF 1.58.

<sup>36</sup> *ETC Minimum Requirements Report and Order*, ¶ 40.

1 public interest, regardless of whether the applicant seeks designation in an area served by a rural or  
2 non-rural carrier.

3 34. Virgin Mobile states that designating it as a wireless ETC would promote the public  
4 interest because it would provide qualifying Arizona customers with lower prices and higher  
5 quality wireless services, and serve the needs of low-income customers in Arizona by increasing  
6 customer choice in the areas it serves. The public interest benefits associated with Virgin Mobile's  
7 wireless service include larger local calling areas (as compared to traditional wireline carriers), the  
8 convenience and personal security afforded by mobile telephone service, the opportunity for  
9 customers to receive a high-value wireless plan and emergency services in accordance with FCC  
10 Rules. Additionally, ETC status will promote universal service by allowing Virgin Mobile to offer  
11 wireless service to many low-income customers who may not be able to otherwise have service.  
12 Virgin Mobile's Lifeline calling plans are designed to provide service to Lifeline consumers who,  
13 due to credit or deposit requirements, may not be able to obtain telephone service from more  
14 traditional wireline and wireless service providers.

15 **F. DESIGNATED SERVICE AREA**

16 35. The Commission must establish a geographic area for the purpose of determining  
17 universal service obligations and support mechanisms for each designated ETC. *See* 47 U.S.C. §  
18 214(e)(2); 47 C.F.R. § 54.201(b). Virgin Mobile requests that the Commission designate it as an  
19 ETC for the service area consisting of each of the wire centers listed in Exhibit 1 of the  
20 Application, which includes area served by non-rural and rural ILEC, excluding tribal lands.  
21 Virgin Mobile explains<sup>37</sup> that because wire centers are not intended to denote wireless coverage,  
22 there are a number of wire centers that are not fully covered in Virgin Mobile's proposed  
23 designated service area. On Exhibit 1 of Virgin Mobile's application, wire center coverage is  
24 indicated as "partial" or "full". The wire center and the coverage area information is provided in  
25 Attachment 1.

26 ...

27  
28 <sup>37</sup> Response to STF 1.12(a).

1           **G.   REPORTING   REQUIREMENT   FOR   PREPAID   WIRELESS**  
2                   **DEACTIVATIONS**

3           36.   Staff recommends that Virgin Mobile be required to provide a quarterly report to the  
4 ACC, to be filed in docket control as a Compliance item, summarizing the total number of  
5 customers with periods of inactivity greater than 60 days, but did not cancel service with Virgin  
6 Mobile, are no longer qualified for Lifeline service or who voluntarily deactivate service during  
7 that quarter. The purpose of this report is to monitor the number of deactivated customers so that  
8 Virgin Mobile does not continue to receive Lifeline reimbursement per handset for these  
9 customers every month from the USAC. In compiling the data for these reports, Virgin Mobile  
10 must comply with 47 C.F.R. §54.405(e)(3), in which the FCC outlines the deenrollment policy for  
11 non-usage and 47 C.F.R. §54.407(c), in which the FCC defines activities that constitute usage.  
12 The quarterly report must also include the total number of Lifeline customers and, as separate  
13 items, the number of customers who voluntarily relinquish their Virgin Mobile provided Lifeline  
14 service, the number of customers who do not annually recertify their eligibility for Lifeline  
15 services and the number of customers deactivated for 60 days of inactivity.

16 **INTERVENOR**

17           **1.   Arizona Local Exchange Carriers Association**

18           37.   The Arizona Local Exchange Carriers Association is an association of telephone  
19 companies and member-owned cooperatives providing local exchange telecommunications  
20 services to customers in rural, high cost areas of Arizona. All of ALECA's members are "rural  
21 telephone companies" as defined by the Communications Act of 1934, as amended (the "Act") 47  
22 U.S.C. § 153(37). In its Motion to Intervene, ALECA states, "Each ALECA member, including its  
23 Tribally-owned members, receives support from the Federal Universal Service Fund ("FUSF") in  
24 the form of High Cost Support. Each member also provides discounted Lifeline telephone service  
25 and receives compensation for the discounts from the FUSF." ALECA states it is concerned that  
26 Virgin Mobile's offering may unfairly duplicate the similar offerings of its member companies,  
27 cause the FUSF requirements to grow to the point where its member companies' FUSF  
28

1 compensation is endangered, and undermine public support for the FCC's universal service  
2 programs.

3 **2. Joint Stipulation**

4 38. On November 1, 2012, ALECA and Virgin Mobile filed a Stipulation in the docket.  
5 In the Stipulation, to address the potential concerns expressed by ALECA, Virgin Mobile agreed  
6 not to provide Lifeline service to eligible residents residing on Federally-recognized Tribal Lands  
7 in Arizona. In addition, Virgin Mobile agreed that its Lifeline enrollment application for Arizona  
8 will require an applicant to provide a street address and include a provision that requires an  
9 applicant to self-certify under penalty of perjury that they do not reside on Federally-recognized  
10 Tribal Lands.

11 **STAFF RECOMMENDATIONS**

12 39. Staff recommends Virgin Mobile's Application for designation as an ETC be  
13 granted subject to the following conditions:

- 14 a. Virgin Mobile shall file a tariff, in this docket, setting forth the rates, terms and  
15 conditions for its Lifeline service within thirty (30) days of a Commission Order in  
16 this matter;
- 17 b. Virgin Mobile shall notify the Commission of any future changes to its rates, terms  
18 and/or conditions regarding its Lifeline offerings and file such changes in its tariff  
19 and amend its tariff in compliance with A.R.S. § 40-367;
- 20 c. Virgin Mobile shall make available Lifeline services to qualifying low-income  
21 applicants in its ETC service area no later than ninety (90) days after a Commission  
22 decision in this matter and shall concurrently notify the Commission, by making a  
23 filing in Docket Control, in this docket, of the commencement date for such  
24 services;
- 25 d. Virgin Mobile shall apprise the Commission of any customer complaints that may  
26 arise from its ETC service offerings by making a filing in Docket Control in this  
27 docket;
- 28 e. Virgin Mobile shall provide a regulatory contact to the Commission by making a  
filing in Docket Control in this docket;
- f. In the event that Virgin Mobile requests to relinquish its ETC status and no longer  
provides Lifeline services, it must provide notice to both the Commission and its  
customers. Such notice(s) shall be in accordance with A.A.C. R14-2-1107;

- 1 g. Virgin Mobile shall submit in Docket Control an annual report by April 15th of each  
2 year, beginning April 15, 2014, that contains its total number of Lifeline  
3 subscribers, total amount of Federal USF support received and an affidavit stating  
4 that the Lifeline discounts or the equivalent are equal to the amount of total Federal  
5 USF support per line. The annual filing shall be submitted as a compliance item in  
6 this docket;
- 7 h. Virgin Mobile shall submit in Docket Control, as a compliance item in this docket, a  
8 quarterly report detailing the total number of Lifeline customers, the total number of  
9 customers removed from the customer base due to 60-day inactivity, the number of  
10 customers removed from the customer base due to annual verification and the total  
11 number of customers who voluntarily relinquished Lifeline service. In compiling  
12 the data for these reports, Virgin Mobile must comply with 47 C.F.R. §54.405(e)(3),  
13 in which the FCC outlines the deenrollment policy for non-usage and 47 C.F.R.  
14 §54.407(c), in which the FCC defines activities that constitute usage. The quarterly  
15 report should be submitted as a compliance item in this docket on the 15<sup>th</sup> of the  
16 month following the end of each calendar quarter, beginning July 15, 2013, or with  
17 the first complete quarter following the offering of prepaid Lifeline calling plans,  
18 whichever is earlier;
- 19 i. In the event of a transfer of control<sup>38</sup> that involves Virgin Mobile, a new ETC  
20 petition shall be filed with the Commission. This will ensure ETCs undergoing  
21 reorganization remain financially viable and able to provide the supported services  
22 throughout the designated service areas as originally approved by the Commission;  
23 and
- 24 j. Virgin Mobile shall not expand its Lifeline service beyond the designated service  
25 area specified in this application without acquiring ETC designation from the  
26 Commission to serve the additional area.

#### 18 CONCLUSIONS OF LAW

- 19 1. Virgin Mobile USA, LP is a telecommunications company as defined in A.R.S. §  
20 40-201(46) and is a “telecommunications carrier” as defined in 47 U.S.C. § 153(51).
- 21 2. The Commission has jurisdiction over the subject matter of the application.
- 22 3. Under 47 U.S.C. § 214(e)(1), a common carrier that is designated as an Eligible  
23 Telecommunications Carrier must, throughout its designated service area, offer the services that

24 \_\_\_\_\_

25 <sup>38</sup> On November 27, 2012, Sprint filed an application/notice of intent with the Commission on behalf of itself and its  
26 Arizona affiliates, including Virgin Mobile, SOFTBANK CORP. (“Softbank”) and Starburst II, Inc. (“Starburst II”), in  
27 Docket Nos. T-02432B-12-0474 and T-20827A-12-0474. In this filing, Sprint seeks a Limited Waiver of the  
28 Commission’s Affiliated Interest rule or submits a Notice of Intent in relation to a transaction in which Softbank,  
through its newly formed affiliate Starburst II, will invest \$20.1 billion in Sprint and indirectly acquire approximately  
70 percent of the shares of Sprint. This transaction is at the parent holding company level only. Staff does not  
recommend that Virgin Mobile be required to file a new ETC petition, contingent upon the disposition of the dockets  
listed in this footnote.

1 are supported by the Federal Universal Service Support mechanisms either by using its own  
2 facilities or a combination of its own facilities and resale of another carrier's services. The carrier  
3 must also advertise the availability of such services and the rates for the services using media of  
4 general distribution.

5       4. Under 47 U.S.C. § 214(e)(2), the Commission must establish the geographic area  
6 for the purposes of determining universal service obligations and support mechanisms. Virgin  
7 Mobile's application applies to the designated service area consisting of the wire centers listed in  
8 Attachment 1, excluding Federally-Recognized Tribal Lands located within the state of Arizona.

9       5. Virgin Mobile meets the requirements for ETC designation under 47 U.S.C. § 214  
10 and C.F.R. § 54.201 *et seq.*, subject to Virgin Mobile's compliance with the conditions set forth in  
11 Finding of Fact No. 39 herein.

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ORDER

IT IS THEREFORE ORDERED that the application of Virgin Mobile USA, LP for designation as an Eligible Telecommunications Carrier pursuant to U.S.C. § 214(e)(1) for the purpose of receiving federal universal service support in Arizona, for the service area set forth in Attachment 1 attached hereto and incorporated herein by reference, be and hereby is approved, subject to Virgin Mobile USA, LP's compliance with the conditions set forth in Finding of Fact No. 39 above.

IT IS FURTHER ORDERED that if Virgin Mobile USA, LP does not comply with the requirements of Finding of Fact No. 39, its designation as an ETC may be revoked after due process.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

**BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

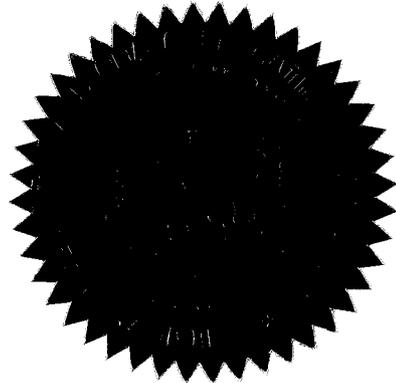
  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this 6<sup>th</sup> day of February, 2013.

  
JODI JERICH  
EXECUTIVE DIRECTOR

DISSENT: \_\_\_\_\_

DISSENT: \_\_\_\_\_

SMO:LLM:sms\MAS

1 SERVICE LIST FOR: VIRGIN MOBILE USA, LP  
2 DOCKET NO. T-20827A-11-0461

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# ATTACHMENT 1

Entire wire center coverage

<u>Company Name</u>	<u>CLLI</u>
QWEST CORPORATION	CHNDAZMA
QWEST CORPORATION	CHNDAZSO
QWEST CORPORATION	CHNDAZWE
QWEST CORPORATION	CLDGAZMA
QWEST CORPORATION	CTWDAZSO
QWEST CORPORATION	DRVYAZNO
QWEST CORPORATION	GDYRAZCW
QWEST CORPORATION	GLDLAZMA
QWEST CORPORATION	HGLYAZMA
QWEST CORPORATION	LTPKAZMA
QWEST CORPORATION	MESAAZGI
QWEST CORPORATION	MESAAZMA
QWEST CORPORATION	PHNXAZBW
QWEST CORPORATION	PHNXAZCA
QWEST CORPORATION	PHNXAZEA
QWEST CORPORATION	PHNXAZGR
QWEST CORPORATION	PHNXAZLV
QWEST CORPORATION	PHNXAZMA
QWEST CORPORATION	PHNXAZMR
QWEST CORPORATION	PHNXAZMY
QWEST CORPORATION	PHNXAZNE
QWEST CORPORATION	PHNXAZNO
QWEST CORPORATION	PHNXAZNW
QWEST CORPORATION	PHNXAZPP
QWEST CORPORATION	PHNXAZPR
QWEST CORPORATION	PHNXAZSE
QWEST CORPORATION	PHNXAZSY
QWEST CORPORATION	PHNXAZWE
QWEST CORPORATION	SCDLAZSH
QWEST CORPORATION	SCDLAZTH
QWEST CORPORATION	TCSNAZCA
QWEST CORPORATION	TCSNAZCO
QWEST CORPORATION	TCSNAZCR
QWEST CORPORATION	TCSNAZEA
QWEST CORPORATION	TCSNAZFW
QWEST CORPORATION	TCSNAZMA
QWEST CORPORATION	TCSNAZRN
QWEST CORPORATION	TCSNAZSE
QWEST CORPORATION	TCSNAZSO
QWEST CORPORATION	TCSNAZTV
QWEST CORPORATION	TCSNAZWE
QWEST CORPORATION	TEMPAZMA

## VIRGIN MOBILE USA, LP - COVERED WIRE CENTERS

QWEST CORPORATION  
QWEST CORPORATION

TEMPAZMC  
TLSNAZMA

Partial wire center coverageCompany Name

ACCIPITER COMMUNICATIONS INC

ARIZONA TELEPHONE CO.

CITIZENS TELECOM CO OF WHT MTNS INC.

CITIZENS UTILITIES RURAL DBA FRONTIER UT RURAL

COPPER VALLEY TELEPHONE, INC.

COPPER VALLEY TELEPHONE, INC.

FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC - AZ

FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC - AZ

FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC - AZ

FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC - CA

FRONTIER COMMUNICATIONS OF THE SOUTHWEST INC - CA

MIDVALE TELEPHONE EXCHANGE, INC.

QWEST CORPORATION

QWEST CORPORATION

QWEST CORPORATION

QWEST CORPORATION

QWEST CORPORATION

CLLI

PEORAZFS

BLRGAZXC

DTLDAZ01

HRVYAZXC

MMLKAZXC

RSVTAZXC

SASBAZXC

TNBSAZXC

CIBCAZXC

HLBKAZXC

SNWFAZXC

STJHAZXB

BLCYAZXC

BLCYAZXE

CSRKAZXC

DLSPAZXC

GLVYAZXC

KGMNAZXC

KGMNAZXE

LHCYAZXC

MHVYAZXC

TXTNAZAB

YUCCAZXC

DNCNAZXC

ELFRAZXC

BOUSAZXC

CIBLAZXC

EHRNAZXF

PRDMAZXC

PSTNAZXC

CSELAZXC

DEWYAZ01

ELOYAZ05

SCDMAZ89

YONGAZXC

AGFIAZSR

ASFKAZMA

AZCYAZ03

BCKYAZMA

BISBAZMA



## VIRGIN MOBILE USA, LP - COVERED WIRE CENTERS

QWEST CORPORATION	PRSCAZMA
QWEST CORPORATION	PRVYAZPP
QWEST CORPORATION	PTGNAZEL
QWEST CORPORATION	PTGNAZMA
QWEST CORPORATION	PYSNAZMA
QWEST CORPORATION	SCDLAZMA
QWEST CORPORATION	SEDNAZMA
QWEST CORPORATION	SEDNAZSO
QWEST CORPORATION	SFFRAZMA
QWEST CORPORATION	SMTNAZMA
QWEST CORPORATION	SNMNAZMA
QWEST CORPORATION	SPRAZMA
QWEST CORPORATION	SPRSAZEA
QWEST CORPORATION	SPRSAZMA
QWEST CORPORATION	SPRSAZWE
QWEST CORPORATION	SRVSAZMA
QWEST CORPORATION	SRVSAZNO
QWEST CORPORATION	SRVSAZSO
QWEST CORPORATION	STFDAZMA
QWEST CORPORATION	TCSNAZML
QWEST CORPORATION	TCSNAZNO
QWEST CORPORATION	TCSNAZSW
QWEST CORPORATION	TMBSAZMA
QWEST CORPORATION	TNCKAZMA
QWEST CORPORATION	TUBCAZMA
QWEST CORPORATION	VAILAZNO
QWEST CORPORATION	VAILAZSO
QWEST CORPORATION	WCBGAZMA
QWEST CORPORATION	WHTKAZMA
QWEST CORPORATION	WHTLAZMA
QWEST CORPORATION	WLCXAZMA
QWEST CORPORATION	WLMSAZMA
QWEST CORPORATION	WLTNAZMA
QWEST CORPORATION	WNBGAZ01
QWEST CORPORATION	WNSLAZMA
QWEST CORPORATION	YUMAAZFT
QWEST CORPORATION	YUMAAZMA
QWEST CORPORATION	YUMAAZSE
RIO VIRGIN TELEPHONE CO., INC.	BVDMAZ01
SOUTH CENTRAL UTAH TELEPHONE ASSOCIATION, INC.	CLCYAZAA
SOUTHWESTERN TELEPHONE CO.	QRTZAZXC
SOUTHWESTERN TELEPHONE CO.	SALMAZXC
TABLE TOP TELEPHONE CO., INC.	AGULAZXC
TABLE TOP TELEPHONE CO., INC.	PRSCAZFW
TABLE TOP TELEPHONE CO., INC.	SGMNAZXC

VIRGIN MOBILE USA, LP - COVERED WIRE CENTERS

TABLE TOP TELEPHONE CO., INC.  
VALLEY TELEPHONE COOPERATIVE, INC.

SNDRAZXC  
BONTAZXC  
BOWIAZXC  
PERCAZXC  
PRTLAZXC  
SNSMAZXC