**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division**
**Carrier Oversight and Programs Branch**

**RESOLUTION T-17284**
**February 24, 2011**

# R E S O L U T I O N

RESOLUTION T-17284. This Resolution grants the request of Virgin Mobile USA, LLC dba Virgin Mobile USA L.P. (U-4327-C) for limited eligible telecommunications carrier status within California. The request is reasonable given Virgin Mobile USA LLC has met the requirements for eligible telecommunications carrier designation and General Order 153 Lifeline requirements.

## SUMMARY

By this Resolution, the Commission approves the request of Virgin Mobile USA LLC (U-4327-C) [hereafter Virgin] for limited eligible telecommunications carrier (ETC) designation in California, for the purpose of offering Federal-only LifeLine services statewide to qualifying end-user customers. The Commission finds that Virgin complies with the federal ETC requirements and the Commission's ETC requirements in Commission Resolution T-17002.

## BACKGROUND

Eligible Telecommunications Carrier (ETC) is a federal designation[1] given to a common carrier that is eligible to receive federal support for providing services that are supported by the federal universal support mechanism[2] to low-income consumers and/or those in high cost areas of a state.

[1] C.F.R § 54.201
[2] C.F.R § 54.101

To be designated an ETC, an applicant must meet the following five generally established ETC requirements:

1) commitment to, and ability to provide service in its proposed service area;
2) ability to remain functional in emergencies;
3) commitment to satisfying consumer protection and service quality standards;
4) an offering of local usage comparable to that offered by the incumbent LEC; and
5) ability to offer equal access if all other ETCs in the area relinquish their ETC designations.[3]

The FCC encourages state Commissions to apply these requirements to all ETC applicants over which they have jurisdiction. Additionally, the FCC and state commissions must determine that an ETC designation is in the public interest. Factors to be included in the public interest analysis are the following: 1) increased consumer choice, 2) advantages and disadvantages of particular service offerings, and 3) potential for cream-skimming in rural service areas. [4]

To be eligible for universal service subsidies, an ETC must offer the services the FCC reimburses through the federal universal service support mechanisms under 47 U.S.C. § 254(c). The ETC can accomplish this either by using its own facilities or through combining its own facilities with resale of another carrier's services. The ETC must advertise the availability of such services and the charges for these services using media of general distribution.[5]

The primary responsibility for designating a carrier as an ETC rests with state commissions for those carriers over which they have jurisdiction[6]. In cases where a state does not have jurisdiction over a carrier, the Federal Communications Commission (FCC) conducts the ETC designation process.[7]

To discharge its obligation to evaluate ETC designation requests, the California Public Utilities Commission (hereafter referred to as the Commission or CPUC) issued Resolution T-17002 in May 2006 that contains comprehensive procedures, guidelines, and reporting requirements that are consistent with, yet broader than federal rules[8] for

[3] FCC 05-46 §IV. ETC Designation Process ¶20
[4] FCC 05-46 § IV.B
[5] 47 U.S.C. § 214(e)(1)
[6] 47 U.S.C § 214(e)(2).
[7] 47 U.S.C. § 214(e)(6).
[8] Resolution T - 17002, pg. 2 ,"CPUC finds that additional mandatory requirements for ETC designation and ETC eligibility reasonable as it provides a means to monitor and

ETC designation requests. Resolution T-17002 reflects the ETC designation requirements found in FCC 97-157[9] and portions of FCC 05-46[10], which are contained in Appendices A & B of the resolution, and are included as Attachment 1 to this resolution.

In addition to reviewing ETC designation requests for compliance with the federal and CPUC ETC requirements, the Communications Division (CD) staff reviews the requests for compliance with CPUC Lifeline rules contained in General Order (G.O.) 153 and Decision (D.) 10-11-033, and other state regulatory requirements for telephone corporations operating in California, including but not limited to paying CPUC User Fees, Public Purpose Program surcharges, and submitting required reports.

G.O. 153 implements the Moore Universal Telephone Service Act, and contains California LifeLine service requirements for wireline carriers offering basic residential telephone service in California, including twenty-two elements of LifeLine service that carriers must provide. A list of the LifeLine service elements is included in Attachment 2 to this resolution. CD staff has applied the provisions of G.O. 153 in its evaluation of Virgin's ETC designation request. CD recommends that, until the Commission adopts California LifeLine rules for wireless service providers in Phase II of R. 06-05-028, Virgin's federal LifeLine offerings must comply with G.O. 153. Once the CPUC adopts rules for the offering of wireless LifeLine in California, wireless ETCs, including Virgin, must comply with those rules.

On November 19, 2010, the Commission adopted D. 10-11-033, which made changes to the California LifeLine program. The decision allows customers living in Small LEC service areas to choose alternative/non-traditional providers, such as wireless and VoIP, for California LifeLine service[11]

All telephone corporations operating in California are required to possess a certificate of public convenience and necessity (CPCN) for wireline carriers, or a wireless identification number (WIN) for all commercial mobile radiotelephone services (CMRS) providers[12]. Both of these classes of carriers are required to pay CPUC user fees[13] and

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ensure that any funds given to California ETCs are used to achieve the goals of universal service."

9 FCC 97-157, adopted May 7, 1997, established the definition of services to be supported by the federal USF support mechanism and a timetable for implementation. It also adopted the statutory criteria in 47 U.S.C. §214(e) as the rules to govern which carriers are eligible to receive federal USF support.

10 FCC 05-46, Docket No. 96-45, adopted February 25, 2005, addressed the minimum requirements for a telecommunications carrier to be designated an ETC.

11 See D. 10-11-033, mimeo, at 72

12 See D. 94-10-031.

submit surcharge[14] amounts assessed on customers' intrastate telecommunications services to support the CPUC's universal service programs. CD reviews each ETC applicant for compliance with these regulatory requirements as part of the determination as to whether it is in the public interest to approve an ETC designation request.

## SUBJECT OF ADVICE LETTER/FILING

On April 29, 2009 Virgin filed its Tier III Advice Letter 1, requesting limited ETC status for the purpose of offering Federal LifeLine services to qualifying California customers. Virgin is not seeking federal Universal Service high-cost support or California state Universal Service support. In this advice letter, Virgin originally proposed to offer Federal LifeLine customers a phone costing $15.00. If the customer purchased the phone, the customer would pay no one-time activation fee and no recurring service charge for up to 120 anytime minutes per month. If the customer exceeds the 120 LifeLine minute cap, the additional minutes would cost $.020 each and $0.10 per text message[15].

On June 23, 2009, in response to the Small LEC's protest of Advice Letter (AL) 1, Virgin filed supplement 1A to its advice letter, which narrowed the designated area of Virgin's request to exclude the service territories of the Small LECs, provided service area maps, and committed to abiding by the certification and verification requirements found in G.O. 153.

On March 18, 2010 Virgin filed supplement 1B to its advice letter to notify the Commission that it is now a facilities-based provider of wireless service in California as a result of its acquisition by Sprint Nextel, and that it intends to launch a new service plan that offers offer Federal LifeLine customers 500 minutes per month for $5.00 (with a free handset to the LifeLine customer under this plan). AL 1B also revised the original 120-minute plan in AL 1 with 200 minutes at no charge. Both plans would offer Caller ID, Call Waiting, and voicemail, and nationwide long distance at no extra charge, with all taxes included in the price for the $5/500 plan and waived for the 200-minute plan. In AL 1B, Virgin proposed to price additional call minutes for both plans at $0.10 per minute and text messages would cost $0.15, rather than $0.10 each. Virgin stated that its remittance of public purpose program surcharges and the CPUC User Fee is current.

On August 23, 2010, Virgin filed supplement 1C to provide additional information demonstrating that it satisfies applicable ETC designation requirements regarding

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[13] See P.U. Code § 432.

[14] See D. 96-10-066 (8)(g).

[15] See Virgin AL 1, at 7

offering federal universal service fund supported services, the ability to remain functional in emergency situations, meeting consumer protection and service quality standards, and to provide equal access to long distance carriers if all other ETCs relinquish their designation within Virgin's ETC designated territory.

On November 4, 2010 Virgin filed supplement 1D to increase its free 200 minute plan to 250 minutes, and to allow a customer to purchase 750 additional minutes for an additional $20 per month, for a combined total of 1,000 minutes for voice and text messages ($20/1,000). Virgin also reduced the price of individual text messages from $0.15 proposed to $0.10. [16]

The following summarizes proposed Virgin's Federal LifeLine offerings:

(1) 500 anytime minutes for $5.00 per month (which includes all taxes)[17]

- Free Nationwide long distance, Caller I.D., free voicemail, and free Call Waiting;
- No activation charge;
- Each additional minute would cost $0.10 per minute;
- Each text message would cost $0.10[18] per text;
- A free handset to Lifeline eligible customers.

(2) 1,000 anytime minutes for $20.00 per month ( 250 minutes for free with the purchase of 750 minutes for $20.00, taxes included)[19]

- Free Nationwide long distance, Caller I.D., free voicemail, and free Call Waiting.
- 1,000 text messages
- No activation charge
- Each additional minute would cost $0.10 per minute.
- Each text costs $0.10 per text.
- A free handset to Lifeline eligible customers.

(3) 250 anytime minutes for free.

- Free Nationwide long distance, Caller I.D., free voicemail, and free Call Waiting.
- No activation charge
- Each additional minute would cost $0.10 per minute.
- Each text costs $0.10 per text.
- A free handset to Lifeline eligible customers.

[16] See Virgin AL 1D, at 2
[17] See Virgin AL 1B, at 3
[18] See Virgin AL 1D, at 2
[19] See Virgin AL 1D, at 2

Virgin is a Delaware based limited liability company (LLC) with principal offices at 10 Independence Blvd., Warren New Jersey. Virgin is a facilities-based wireless service provider[20], to which the Commission issued a registration, number WIN U-4327-C, on April 16, 2002. A copy of this authorization is included in this resolution as Attachment 3. Requirements for providing service in California include, but are not limited to, payment of surcharges and fees. Failure to comply with the requirements as identified in Virgin's April 16, 2002 wireless identification authorization may result in revocation of the WIN[21]

**NOTICE/PROTEST**

Virgin filed its Advice Letter for ETC status on April 29, 2009, and the filing was published in the Commission's Daily Calendar on May 1, 2009.

On May 14, 2009, the Small LECs requested a 10-day extension of time, until May 28, 2009, to file a protest to Virgin's AL. The request was granted on May 19, 2009.

On May 28, 2009, the Small LECs filed a Protest pursuant to G.O. 96-B § 7.4.2(2), [22] recommending that the CPUC reject Virgin's advice letter, or alternatively reject the advice letter subject to re-filing a revised version that would exclude the Small LECs' service territories from the areas in which Virgin proposes to offer federal Lifeline service. The Small LECs claim that even if Virgin resubmits the ETC advice letter to exclude offering Federal LifeLine service in the Small LEC service areas, the CPUC still should hold the request in abeyance at least until the CPUC more fully considers the implications of providing LifeLine funding to wireless providers in proceeding R.06-05-028 (Universal Service reform).

The Small LECs assert that Virgin has not complied with federal ETC requirements to offer service throughout a rural LEC's service area[23] and to demonstrate that it is in the public interest to grant Virgin ETC designation in rural areas [24]. The Small LECs allege

[20] *See* Virgin AL 1B, at 3

[21] See requirement #14, April 16, 2002 letter addressed to Virgin Mobile USA, LLC issuing Wireless Identification Number U-4327-C (Attachment 1).

[22] G.O. 96-B § 7.4.2 in general provides Grounds for Protest of advice letters. Subsection (2) states the "The relief requested in the advice letter would violate statute or Commission order, or is not authorized by statute or Commission order on which the utility relies."

[23] 47 U.S.C. § 214(e)(1)(A) requires that an ETC offer USF supported service throughout the Small LECs service areas, or alternatively have the service area redefined pursuant to 47 U.S.C. §214(e)(5) and Title 47 §54.207(c) CFR.

[24] 47 U.S.C. § 214(e)(2).

that granting Virgin ETC designation in Small LEC territories places these carriers at a competitive disadvantage. Additionally, the Small LECs assert that Virgin does not expressly state that it will abide by G.O. 153, and has asked for a waiver from the requirement to provide service area maps. The Small LECs submit that these maps are necessary to understand the areas that Virgin intends to serve and whether these areas are in Small LEC areas and subject to the FCC's requirements for small rural LECs.

The Small LECs also argue that the CPUC should not grant Virgin ETC designation prior to the CPUC's completion of the Universal Service reform proceeding, because it is unclear in what terms and conditions the CPUC will adopt for the offering of wireless LifeLine services in California. As a consequence, the Small LECs argue, customer confusion will result from having two LifeLine programs available in the state.

## DISCUSSION

### I. Did Virgin Comply With Federal ETC Eligibility Requirements?

CD concludes that Virgin has complied with Federal requirements for ETC's.[25] Virgin is now a facilities-based provider since being acquired by Sprint Nextel on November 24, 2009, and will offer services that are supported by the USF. Virgin also will advertise the availability of its Federal LifeLine services through general advertising media that it uses for its non-Lifeline service. The advertisements will include a combination of general media, social service/government agencies, and third-party retail outlets through brochure distribution.

CD also concludes that Virgin has complied with other FCC ETC eligibility requirements[26], because it (1) has committed to provide the supported services, as previously discussed; (2) has demonstrated the ability to remain functional in an emergency situation through internal programs and policies, and teams dedicated to analyzing, assessing and responding to emergency situations; (3) has committed to satisfy consumer protection and service quality standards, and complies with the CTIA Consumer Code for Wireless Service; (4) offers a local usage plan comparable to that provided by the ILEC; and (5) acknowledges that it may be required to provide equal access to long distance carriers if all other ETCs in the service area relinquish their ETC status.

[25] 47 U.S.C. §§ 214 (e)(1) and 254(c)
[26] FCC 05-46 ¶¶ 20 - 68 addresses Federal ETC eligibility requirements.

Comparable Local Usage Analysis

Neither the CPUC nor the FCC has adopted minimum local usage standards or quantity of minutes to measure comparability. However, the FCC encourages state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbents in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC and does not prevent states from determining what the minimum number of local usage minutes should be for an applicant to be awarded ETC status.[27]

No specific federal or state policies or standards for comparable local usage for wireless carriers exist. Consequently, CD used CPUC General Order (G.O.) 153 call allowance rules and Decision (D.)10-11-033 pricing rules for Measured Rate (MR) Lifeline service as a baseline in evaluating Virgin's request regarding the comparable local usage requirement. The Commission adopted the use of G.O. 153 for evaluating wireless carriers' requests for ETC designation in Resolution T-17266, Ordering Paragraph 3.

Under G.O. 153, MR wireline Lifeline customers are given a call allowance of 60 untimed outgoing calls. Calls in excess of the call allowance are priced at $.08 per call.[28] D.10-11-033 adopted a price range for MR Lifeline service with a floor of $2.50 and a cap of $3.66 per month[29]. Virgin has three plans that it proposes to offer to Lifeline customers, as identified on page 5. These plans are similar to wireline MR service, providing a base level of usage for a set fee with additional charges for usage in excess of the base amount.

In evaluating wireless LifeLine plans that have similar characteristics to wireline MR service, CD deemed it appropriate to determine how many wireless MOU a wireless MR Lifeline customer should receive, and at what cost, based on G.O. 153 MR criteria and wireless industry average length of call data, and D.10-11-033 LifeLine measured rate service rates.

For its analysis, CD used wireless MOU, average bill, and average revenue per MOU data for the six-month period ending December 31, 2008 from Table 19 of the FCC's 14th Mobile Wireless Competition Report to Congress (14th Report) and data for the same period from the Cellular Telecommunications Industry Association's (CTIA) Semi-Annual Wireless Industry Survey[30]. CD used the 2008 data because the FCC data ended at that period, even though the CTIA data went through the six-month period ending June 30, 2010. See Attachment 5 for summaries of the FCC and CTIA data used by CD.

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27 FCC 05-46, ¶ 34

28 G.O. 153 §8.5.1

29 D.10-11-033, pg.56, *mimeo*

30 http://files.ctia.org/pdf/CTIA__Survey_Midyear_2010_Graphics.pdf

In order to evaluate Virgin's offerings on a consistent and comparable basis with G.O. 153 MR lifeline service requirements, CD converted the G.O. 153 MR per call allowance to the minute of use (MOU) unit of measure that Virgin's plans are based on by using CTIA average call length data.

CD estimated the average number of MOU per month that a typical wireless customer would reasonably be expected to use for purposes of estimating what each of Virgin's plans could cost an average Lifeline customer. CD estimated that a Lifeline customer with average monthly voice usage would use an average of 769 voice MOU per month for local calls. To arrive at this estimate, CD used data from the 14$^{th}$ Report, dividing the average local monthly bill (excluding data) by the average revenue for voice minute ($38.45/$0.05 = 769 MOU). See Attachment 6 for pricing details.

CD further estimated that a wireless lifeline customer should get 146 wireless voice MOU's per month, and calculated this amount by multiplying the average call length from the CTIA study, by the G.O. 153 call allowance (2.43 minutes*60 untimed calls = 146 MOU). Using these estimates, CD determined that a typical wireless Lifeline customer will use 623 MOU in excess of the estimate of the G.O. 153 MR calculated MOU monthly call allowance (769 average monthly voice MOU – 146 calculated MOU call allowance = 623 excess MOU). CD calculated the cost of each excess MOU to be $.033 ($.08 per call in excess of allowance/2.43 average minutes per call).

CD therefore, estimates that a wireless Lifeline plan that is consistent with G.O. 153 MR service requirements and D.10-11-033 MR pricing policies would cost a Lifeline customer between $23.07 [$2.50 allowance + ($.033*623 excess MOU)] and $24.23 [$3.66 allowance + ($.033*623 excess MOU)] per month for 769 local voice only MOU.

To determine if Virgin's Lifeline plans are comparable to CPUC local usage requirements for MR service, CD compared each of Virgin's proposed plans priced using 769 monthly average local voice MOUs to the cost of MR LifeLine plans based on G.O. 153 and D.10-11-033 requirements with 769 average monthly MOUs. CD concludes that only Virgin's 1,000 minutes for $20.00 plan is comparable to G.O. 153/D.10-11-033 MR requirements when converted to MOU's, and using 769 wireless average monthly local voice MOU. The table below shows a comparison of each plan.

| Estimated Cost of Virgin Mobile's Plans Compared to G.O. 153 Measured Rate Calculated Costs for 769 MOU | | | | | |
|---|---|---|---|---|---|
| | **Virgin 250 Minute Plan** | **Virgin – 500 Minute Plan** | **Virgin – 1,000 Minute Plan** | **AT&T Estimate per G.O. 153** | **Verizon Estimate G.O. 153** |
| LifeLine Plan Cost to Customer | $51.90 | $31.90 | $20.00 | $23.07 to $24.23 | $23.07 to $24.23 |
| Caller ID, Call Waiting, Long Distance, Voicemail and Tax Cost | $0 | $0 | $0 | $17.06 to $17.09*** | $31.47 to $31.50 |
| Total Cost to LifeLine Customer for 769** MOU | $ 51.90 | $ 31.90 | $ 20.00 | $ 40.12 to $41.32* | $ 54.53 to $55.73* |
| * Price range reflects $2.50 LifeLine floor and $3.66 cap established in D. 10-11-033.<br>** 769 MOU reflects calculated average local wireless usage based upon FCC and CTIA Data.<br>*** CD could not find an AT&T package that contained all the elements Virgin Mobile has included in its packages. Neither AT&T or Verizon packages include Call Waiting. | | | | | |

Because Virgin's plans include free nationwide long distance, caller I.D., voice mail, and Call Waiting in addition to local calling, CD believes that for comparison purposes it is appropriate to consider what a Lifeline customer would pay under G.O. 153 for MR service with these additional features. CD used the cost of ILEC packages that include the additional features contained in Virgin's plans to calculate the cost of G.O. 153/D.10-11-033 based MR service and compared the results to the calculated cost of Virgin's plans using the 769 average local voice MOU.

CD finds that only one of Virgin Mobile's three plans ($20.00/1,000 minutes) is comparable to the cost of ILEC measured rate LifeLine plans. However, when the cost of the additional features is factored into the analysis, CD considers the cost all three of Virgin's LifeLine plans comparable to the ILEC plans with the additional features. Virgin's most expensive plan for 769 MOUs, its 250 free anytime minutes Lifeline plan, is $2.63 lower than the lowest Verizon's LifeLine offering, when the advanced features are considered.

**II. Is Granting ETC Status to Virgin in the Public Interest?**

The Small LECs allege that Virgin has not demonstrated that granting it ETC status is in the public interest. However Virgin states, "…[t]here is no question that limited designation of Virgin Mobile as an ETC in California would promote the public interest by providing low-income California consumers with more affordable and higher quality wireless services."[31]

CD believes that Virgin Mobile meets the FCC's three criterion for being in the public interest. Virgin Mobile will increase consumer choice by providing wireless LifeLine service to areas that do not currently have wireless options. The advantages of Virgin Mobile's offering outweigh the disadvantages. The advantages to Virgin's offering 1,000 anytime minutes for $20.00 including (1) Caller ID, Call Waiting, and free voicemail; (2) receipt of a free handset; (3) expanded local calling area; (4) no credit check, deposit, or contract; (5) no customer bills or termination fees; and (6) telephone mobility.

The disadvantages of the wireless service include the potential that the handset is removed from the home and poor mobile reception resulting from weather conditions, terrain, or gaps in service coverage. CD believes that customers can exercise judgment in determining whether the Virgin wireless service meets their needs given customer-specific circumstances and location.

There is no possibility of cream-skimming in rural areas because Virgin Mobile is not requesting Federal High Cost funding.

In addition to the three FCC established public interest criteria, CD considered what the total cost of each of Virgin Mobile's plans is to LifeLine customers that have average MOU per month. CD does not consider it to be in the public interest to recommend a plan that costs the LifeLine customer more than an off-the-shelf retail priced wireless plan. Attachment 8 compares the three Virgin proposed Lifeline offerings to the off-the-shelf wireless offerings of Virgin's PayLo, AT&T wireless, Verizon Wireless, Sprint, Metro PCS. CD concludes that only Virgin's $20.00 for 1,000 minute plan meets CD's additional public interest.

Both Virgin Mobile's 250 free anytime minutes plan and its 500 minutes for $5.00 plans are more expensive to the LifeLine customer than Virgin's own PayLo 1500 minutes plan for $30.00 (see Attachment 8).

The LifeLine customer subscribing to Virgin's 250 minutes free plan, would pay $51.90 for 769 minutes, whereas a LifeLine customer would only pay $30.00 for Virgin's PayLo

[31] See Virgin AL 1, at 20

service, and save $ 21.90. Virgin's $5.00 for 500 minute plan costs nearly $2.00 ($1.90) more than Virgin's non-LifeLine PayLo plan. It is for this reason, CD believes the offering of these two plans would not be in the public interest, and does not recommend that these plans be approved by the Commission.

Virgin's 1,000 minutes for $20.00 plan offers the LifeLine customer significant cost savings over the off-the-shelf retail offerings available (see attachment 8). CD finds that this plan is in the public interest and recommends that the Commission approve it.

Based on consideration of the comments by the Small LECs, and CD's analysis, the Commission rejects the Small LEC's claim that Virgin did not demonstrate that its designation as an ETC would be in the public interest.

## III. Did Virgin Comply With State Requirements?

### Resolution T-17002 ETC Designation Compliance

CD believes that Virgin has met thirteen of the fourteen ETC requirements found in Resolution T-17002. Attachment 4 to this resolution provides an evaluation of Virgin's request for compliance with Commission rules. Two of the elements, local usage requirement and public interest determination, are also part of the Federal Eligibility requirements and were previously discussed in that section of this resolution.
Virgin did not provide a list of geographic service areas, .shp files for the service area maps provided and shade the map to identify the location of cell sites, now that Virgin is a facilities based carrier. As a result, CD recommends that Virgin be required to provide the Communications Division Director a list of geographic service areas and a compact disc with computer readable .shp files for the service area maps provided previously, and to include on the maps the location of cell sites, as required by Resolution T-17002, five business-days prior to offering lifeline service to customers.

### G.O. 153 Basic Elements of Service Compliance

CD finds that Virgin's offering does not meet four of the twenty-two elements of basic service set forth in G.O. 153[32] (see Attachment 2 for a complete list):

- Ability to receive free incoming calls
- Customer choice of flat rate local service or measured rate local service
- Free provision of one directory listing per year

[32] *See* G.O. 153, Service Elements of Life, at 32

- Free white pages telephone directory

While none of Virgin's plans provide LifeLine customers with free incoming calls as required under the California Service Elements of LifeLine, CD's method of approximating the number of MOUs that a wireless LifeLine customer should receive takes into consideration that the MOUs reflect outgoing as well as incoming calls. As a result, CD does not believe that the lack of free incoming calls should preclude Virgin from receiving ETC status in California, and recommends that the CPUC should also authorize a deviation from this G.O. 153 requirement for Virgin for the $20.00/1,000 minute plan that CD believes is in the public interest to approve. Through issuance of this resolution, the CPUC is authorizing this deviation.

Virgin does not give customers a choice of flat-rate local or measured rate local service. "Flat rate" local service allows a customer unlimited calling within the customer's 12-mile local calling area for a fixed price.[33] "Measured rate" local service includes a call allowance and then a per-call charge for calls beyond the allowance but still within the local calling area. [34] The Virgin offering provides only the measured rate option.

CD believes that Virgin's lack of a flat-rate local calling option should not be cause to deny it ETC status. No federal or California rule mandates that *wireless* carriers offer both a measured and flat-rate service. Additionally, the CPUC does not regulate commercial mobile radiotelephone services (CMRS/wireless) rates or market entry[35]. Therefore wireless carriers may choose either a measured or flat-rate service business model. Consequently, until the CPUC develops wireless LifeLine rules that would apply to all wireless carriers offering LifeLine service, the Commission may authorize Virgin to deviate from this particular G.O. 153 requirement. Through issuance of this resolution, the Commission is authorizing the deviation.

Virgin's plans do not include one free directory listing per year or a free white pages directory. Presently, no publicly available listing of wireless telephone numbers exists and wireless carriers do not offer white pages telephone directories. Therefore, CD does not believe that these two requirements can reasonably be applied to Virgin, and recommends that the CPUC should also authorize a deviation from these G.O. 153 requirements for Virgin. Through issuance of this resolution, the CPUC is authorizing the deviations.

Finally, Virgin's 250 Free Minutes Anytime offering, and its 1,000 minutes for $20.00 offering, contain free components. This does not comply with the Commission's LifeLine policy that LifeLine customers be invested in the purchase of phone service to understand there is a cost associated with it. CPUC D.10-11-033 (*mimeo*, p. 65) adopted

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[33] *See* G.O. 153, at, 3

[34] *See* G.O. 153, at 5

[35] *See* 47 U.S.C. 332 (c)(3)(A) *See also* D. 95–10-032, *mimeo* at 17.

a floor of \$2.50 and \$3.66 ceiling for California LifeLine Measured Rate plans. As a result, CD does not believe that these elements of Virgin's offerings should be approved as part of Virgin's ETC designation.

While Virgin does not meet the four G.O. 153 requirements identified above, and there is a free component of its LifeLine offering that will have to be removed, CD has concluded that Virgin's 1,000 minutes for \$20.00 offering overall would provide a public benefit. For the reasons cited above, CD does not believe that Virgin's failure to meet four of the (22) G.O. 153 basic service elements should be grounds for denying it ETC status for the purpose of offering Federal LifeLine.

CD also believes that G.O. 153 § 4.2 LifeLine enrollment procedures provide a reasonable means for wireless carriers, including Virgin, to determine if a prospective LifeLine customer is eligible for LifeLine service. Therefore, until the Commission establishes rules for wireless ETC applicants in California, CD recommends that G.O. 153 LifeLine certification and verification rules continue to be used in evaluating wireless carrier ETC designation requests.

Based upon CD's analysis, the Commission agrees that Virgin has met the California ETC designation requirements for offering Federal LifeLine service.

## IV. Has Virgin Complied with Federal ETC Requirements Regarding Offering Service Throughout a Rural LECs Service Area, and Will the Small LECs be Placed at a Competitive Disadvantage?

The Small LECs assert that Virgin has not complied with federal ETC requirements regarding offering service throughout a rural LEC's service area. Virgin responded by submitting AL 1A, which revised its proposed service area to be limited to those portions of the state served by carriers subject to the Commission's Uniform Regulatory Framework[36], but did not respond to the allegation that the Small LECs would be at a competitive disadvantage if the CPUC designates Virgin as a limited ETC in California.

While Virgin has amended its ETC designation request to limit its service area to the areas served by the URF carriers, excluded Small LEC areas, and provided the required maps, CD believes the exclusion of Small LEC territory is no longer necessary in light of CPUC D. 10-11-033 issued on November 19, 2010. In that decision, the Commission placed no geographic restrictions on the service offerings of wireless LifeLine providers[37]. As such, Virgin should be allowed to offer LifeLine supported service to qualifying California customers as it originally requested[38]

[36] See Virgin AL 1A, at 3
[37] See D. 10-11-33, mimeo at 72
[38] See Virgin AL 1, at 3

Additionally, CD does not find the Small LECs argument of competitive disadvantage resulting from designating Virgin an ETC to be persuasive. In D.10-11-033, the Commission found that the rate-of-return carriers' overall financial results would not differ if wireless carriers receive LifeLine support for customers living in the rate-of-return carriers' service territory[39].

Based upon CD's review of the comments by the Small LECs and CD's analysis, the Commission approves Virgin's request to provide Federal LifeLine throughout California, and rejects the Small LECs' allegation Virgin's designation as an ETC places them at a competitive disadvantage.

## V. <u>Did Virgin Demonstrate Compliance with G.O. 153 Certification and Verification Requirements?</u>

The Small LECs allege that Virgin has not committed to comply with G.O. 153 certification and verification requirements. Virgin responded in its AL 1A that it will abide by the requirements of G.O. 153, including those governing customer certification and verification, to the extent the Commission applies these requirements to wireless carriers[40].

G.O. 153 requires that a verification form be sent annually to California LifeLine customers to determine continued program eligibility[41]. In California, certification and verification are accomplished through a third-party administrator or certification agent[42], currently Solix. CD recommends that Virgin be required to comply with G.O. 153 requirements, including the third-party certification and verification process, and that Virgin not be allowed to provide Federal LifeLine service to a California customer until the third-party verification process for that customer has been completed and is operational.

Based on CD's analysis, the Commission adopts CD's recommendation that Virgin be required to comply with requirements in G.O. 153 pertaining to the third-party verification agent.

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[39] See D. 10-11-33, mimeo at 72
[40] See AL 1A, at 3
[41] G.O. 153, §§ 4.4, 4.5
[42] G.O. 153, § 4.2.1

## VI. Would Virgin's ETC Designation in Advance of Concluding the Commission's Review of the Telecommunications Public Policy Programs (R. 06-05-028) Result in Customer Confusion?

The Small LECs argue that the CPUC should not grant Virgin ETC designation, prior to completion of the CPUC's Rulemaking (R. 06-05-028) regarding Universal Service reform. The Small LECs further assert that it is unclear what form wireless LifeLine offerings will take in California; accordingly, they argue, customer confusion will result from having two LifeLine programs in the state. Virgin did not respond to this assertion.

Commission order D. 10-11-033, issued on November 19, 2011 in R. 06-05-028, allows LifeLine customers to choose alternative LifeLine providers, thus rendering this Small LEC request moot.

CD believes that Virgin can provide sufficient disclosure to customers to minimize confusion. CD recommends that Virgin be required to clearly label its LifeLine service as being offered under the Federal program to ensure no confusion between the two programs. CD also recommends that Virgin submit its LifeLine marketing materials to CD for review for clarity prior to their publication.

## VII. Summary of CD Recommendations

CD recommends that Virgin's limited ETC designation request be approved with the following conditions until such time that the Commission adopts specific LifeLine rules for wireless carriers:

- Virgin Mobile's Free 250 Anytime Minutes plan should not be approved because it does not comply with D. 10-11-033's measured rate price requirement;

- Neither Virgin Mobile's Free 250 Anytime Minutes LifeLine plan nor its 500 minutes for $5.00 LifeLine plan, should be approved because these plans could cost a wireless LifeLine customer with average MOU per month more than Virgin's own PayLo retail plan;

- Virgin Mobile's 1,000 minutes for $20.00 plan should be approved for LifeLine purposes;

- Virgin must comply with G.O. 153, including verification and certification processes, and not be allowed to begin to offer lifeline service to customers until the verification and certification process has been put into place with the 3rd party administrator and is operational. Virgin should be required to inform the

Communications Division Director within five business-days of when these processes are put into place and are operational;

- As required by Resolution T-17002, five business-days prior to offering lifeline service to customers Virgin must provide to the Communications Division Director a list of geographic service areas, a compact disc with computer readable .shp files for the service area maps provided previously, and must include on the maps the location of cell sites.

- Virgin must clearly label its LifeLine offering as Federal LifeLine to minimize customer confusion between State and Federal LifeLine programs, and must provide copies of marketing materials, prior to publication, to CD staff for review of message clarity.

CD recommends that G.O. 153 be used as a guideline and part of evaluating wireless carrier ETC designation requests until such time that the Commission adopts wireless LifeLine rules for California.

## COMMENTS

Public Utilities Code Section 311(g)(1) requires that the Commission (1) serve a draft resolution on all parties, and (2) make that draft resolution available for public review and comment for a period of 30 days or more, prior to a vote of the Commission on the resolution. On January 25, 2011, the Commission distributed a draft of this resolution for comments to the Virgin Service List, utilities and other interested parties.

## FINDINGS

1. On April 29, 2009, Virgin Mobile USA LLC (U-4327-C) filed Advice Letter 1 requesting limited eligible telecommunications carrier (ETC) status to offer only Federal LifeLine services to qualifying California customers.

2. Virgin is a facilities-based wireless carrier in California, registered on April 16, 2002 operating as Virgin Mobile USA L.P. Virgin is a Delaware Limited Liability Company with principal offices at 10 Independence Blvd., Warren New Jersey. Virgin is required to pay CPUC user fees and public purpose program surcharges as a condition of its wireless carrier designation in California.

3. On May 28, 2009 the Small LECs, filed Late Protest against Advice Letter 1.

4. Virgin supplemented Advice Letter 1 on June 23, 2009 with Advice Letter 1A, limiting its ETC designation request to the service areas of the URF ILECs, and provided service area maps.

5. On March 18, 2010 Virgin filed Advice Letter 1B, modifying/expanding its LifeLine offering and declaring it was now a facilities-based wireless carrier.

6. On August 23, 2010 Virgin filed Advice Letter 1C, specifically committing to the requirements of Resolution T-17002.

7. On November 4, Virgin filed Advice Letter 1D, modifying/expanding its LifeLine offering.

8. Virgin has met the requirements for ETC status found in Resolution T-17002 except for providing a list of geographic service areas, .shp files for the service area maps provided, and a map identifying the location of cell sites now that Virgin is a facilities based carrier.

9. Virgin will provide USF supported services through a combination of its own facilities and the resale of another carrier's service.

10. Virgin has committed to provide the services supported by the USF.

11. Virgin has demonstrated the ability to remain functional in an emergency situation.

12. Virgin has committed to satisfy consumer protection and service quality standards.

13. Virgin acknowledges that it may be required to provide equal access to long distance carriers if all other ETCs in the service area relinquish their ETC status.

14. It is in the public interest to designate Virgin as an ETC to offer Federal LifeLine in California.

15. Virgin has not met four of the G.O. 153 elements of basic telephone services, regarding free incoming calls to customers, customer choice of flat or measured rate service, one free directory listing per year, and a free white-pages telephone directory.

16. Virgin is authorized a waiver from the G.O.153 requirements that it offer free incoming calls to customers, flat rate service, offer one free directory listing per year, and provide a free white pages directory.

17. Virgin's 1,000 minutes for $20.00 plan is comparable to the local usage plans of the ILECs that operate in the areas Virgin requests ETC designation in.

18. Virgin's 1,000 minutes for $20.00 plan is in the public interest, and should be approved.

19. Virgin's 250 Free Anytime minutes and its 500 minutes for $5.00 LifeLine plans are more expensive than its off-the-shelf retail PayLo 1500 minutes plan, therefore is not in the public interest

20. The free component of Virgin's 250 Free Anytime Minutes plan and the 1,000 minutes for $20.00 plans do not comply with D. 10-11-033's pricing policies for measured rate service and should not be approved.

21. Virgin should clearly label its LifeLine offering as Federal LifeLine to minimize customer confusion between State and Federal LifeLine programs, and to provide copies of marketing materials to CD staff for review of message clarity prior to publication.

22. Virgin's ETC designation is contingent upon Virgin complying with Commission rules, including continuing to pay public purpose surcharges and PUC user fees.

23. Virgin should comply with G.O. 153's certification and verification with Solix to establish customer's LifeLine eligibility, and not be allowed to begin to offer lifeline service to customers until the verification and certification process has been put into place with the 3rd party administrator and is operational. Virgin should be required to inform the Communications Division Director within five business-days of when these processes are put into place and are operational.

24. It is reasonable to use Commission rules and policies for California LifeLine service, including D. 10-11-033 and G.O. 153 for evaluating ETC designation requests, including Federal LifeLine offerings by wireless carriers until the Commission adopts specific rules for wireless LifeLine offerings.

**THEREFORE, IT IS ORDERED** that:

1. Virgin Mobile USA LLC's request for limited eligible telecommunications carrier status for purposes of providing Federal LifeLine service statewide to qualifying California customers is granted.

2. Virgin Mobile USA LLC may only offer the 1,000 minutes for $20.00 LifeLine plan to Federal LifeLine customers in California.

3. Virgin Mobile USA LLC's 250 free anytime minutes and 500 minutes for $5.00 Federal LifeLine plans are not in the public interest, nor do they comply with D. 10-11-033, and are not approved for California Federal LifeLine customers.

4. Virgin Mobile USA LLC must comply with Commission rules, including the payment of public purpose program surcharges and PUC user fees. Failure to do so may result in revocation of ETC designation in California.

5. Until the Commission adopts specific rules for wireless LifeLine offerings, G.O. 153 shall continue to be used in evaluating ETC designation requests by wireless carriers, including Federal LifeLine certification and verification. Once the Commission adopts wireless specific LifeLine rules, Virgin will be required to comply with those rules.

6. Virgin Mobile USA LLC must comply with General Order 153 certification and verification with the third-party administrator (Solix) to establish customer's LifeLine eligibility.

7. Virgin Mobile USA LLC is granted a waiver from having to offer free incoming calls, flat rate service, offer one directory listing per year, and provide a free white pages directory.

8. Virgin Mobile USA LLC must clearly label its offering Federal LifeLine, and provide copies of marketing materials to CD staff for review of clarity prior to publication.

9. Virgin Mobile USA LLC must provide the Communications Division Director a list of geographic service areas, a compact disc with computer readable .shp files for the service area maps provided previously, and include on the maps the location of cell sites, as required by Resolution T-17002 five business-days prior to offering lifeline service to customers.

*This resolution is effective today.*

*I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on ________________, the following Commissioners voting favorably thereon:*

________________________________

*PAUL CLANON*
*Executive Director*

# Resolution T-17002

# Appendix A

# Comprehensive Procedures and Guidelines For Eligible Telecommunications Carrier Designation

Each telecommunications carrier seeking eligible telecommunications carrier designation must file an advice letter with the Commission with the following information:

**Section I – Compliance with FCC 97-157**

A) The service areas for which the carrier is requesting ETC designation including a List of Geographic Service Areas and a map in .shp format showing the proposed service area. For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial mobile radio service or similar service.

B) An itemized list of the designated services to be provided, i.e.

- ✓ Single party service;
- ✓ Voice grade access to the public switched network;
- ✓ Local usage;
- ✓ Dual tone multi-frequency signaling or its functional equivalent;
- ✓ Access to emergency services;
- ✓ Access to operator services;
- ✓ Access to interexchange services;
- ✓ Access to directory assistance; and
- ✓ Toll limitation for qualifying low-income consumers.

C) A list of any services which the carrier proposes not to provide and for which the carrier is seeking an extension of time.

D) An indication of whether the carrier plans to apply for a waiver of the requirement that an ETC not disconnect lifeline for non-payment of toll.

E) A description of the carrier's advertising plan, indicating the advertising media to be used, and an explanation of how its plan meets the advertising requirement in section 214(e) of the Telecommunications Act.

F) If necessary, implement tariff changes via the advice letter filing process. This provision would not apply to carriers that are not required to maintain tariffs.

G) If applicable, request additional time to perform network upgrades to provide single-party service, access to E911 service, and/or toll limitation to low income customers.

**Section II – Compliance with FCC 05-46**

A) Commitment to Provide Service

An ETC applicant must demonstrate that it has the commitment and ability to provide supported services throughout the designated area by providing services to all requesting customers within its designated service area. Each applicant shall certify that it will:

1. provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and
2. provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:
   a. modifying or replacing the requesting customer's equipment;
   b. deploying a roof-mounted antenna or other equipment;
   c. adjusting the nearest cell tower;
   d. adjusting network or customer facilities;
   e. reselling services from another carrier's facilities to provide service; or
   f. employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

If the carrier determines that it cannot serve the customer using one or more of these methods, then the carrier must report the unfulfilled request within 30 days after making such determination.

B) Submission of Two-Year Service Quality Improvement Plan

In submitting a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation, an ETC must submit a two-year plan describing its proposed improvements or upgrades to the ETC's network on a wire center-by-wire center basis throughout its designated service area. The two-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not otherwise be made without such support. This must include:

1) a description of any plan for investment to be made or expenses to be incurred which will improve or permit the offering of services that are the subject of reporting requirements in FCC Form 477 (the form and instructions may be accessed at: http://www.fcc.gov/formpage.html#477);

2) a description of investments made and expenses paid with support from the high-cost fund;
3) the projected start date and projected completion date for each improvement and the estimated amount of investment for each project;
4) the specific geographic areas where the improvements will be made;
5) the ETC's projected operating expense requirements for the current and following year;
6) a certification that the investments made and expenses paid will be incurred to maintain and provide telecommunication services to any customer requesting service in ETC's service area;
7) a description of any capital improvements planned including whether the funds for the improvements are from operating expenses, grants, or loaned funds from the Rural Utilities Service or some other government or private institution; and
8) a description of the benefits to consumers that resulted from the investments and expenses reported pursuant to this requirement.

Carriers should provide this information for each wire center in each service area for which they expect to receive universal service support. Service quality improvements in the two-year plan do not necessarily require additional construction of network facilities.

C) Ability to Remain Functional

In order to be designated as an ETC, the carrier must demonstrate that it has back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

D) Consumer Protection

The carrier seeking ETC designation should demonstrate its commitment to meet consumer protection and service quality standards in its application. Thus, an ETC applicant should report information on consumer complaints per 1,000 handsets or lines on an annual basis. Likewise, a carrier should commit to serve the entire service area and provide two-year network improvement plans addressing each wire center for which it expects to receive support.

E) Local Usage

The carrier should be able to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the carrier seeks designation.

F) Equal Access

The carrier should be able to provide equal access if all other ETCs in the service area relinquish their designations pursuant to section 214 (e) (4) of the ACT.

G) Public Interest Determination

The carrier should be able to show that the carrier's designation as an ETC is consistent with the public interest, convenience and necessity. Therefore, the ETC applicant should demonstrate: that the designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming.

# Appendix B

## Comprehensive Reporting Requirements For Eligible Telecommunications Carriers Eligible for Federal High-Cost Support

Each telecommunications carrier eligible for federal universal service high-cost support must file an advice letter with the Commission with the following information:

**Section I – Compliance with FCC 03-249**

A. Carrier Information:

1. Name of the carrier;
2. The carrier's Study Area Code;
3. Carrier type as designated by the FCC such as rural ILEC, non-rural ILEC, competitive ETC serving lines in the rural and/or non-rural service areas;
4. The applicable Code of Federal Regulations (CFR) section(s) for which the federal universal service high-cost support is provided;
5. The current basic residential rate excluding Extended Area Service in the area they serve; and
6. A statement, under oath, that the federal universal service high-cost support provided to the carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

B. Basic Residential Service Rate:

All ETCs, whether, rural or non-rural, are required to include in their current basic residential service rates excluding Extended Area Service (EAS) in the areas they serve.

C. Filing Dates:

1. On or before September 15 if eligible for the federal universal service high-cost support for the first, second, third and fourth quarters of succeeding year.
2. On or before December 15 if eligible for the federal universal service high-cost support for the second, third and fourth quarters of the succeeding year.
3. On or before March 15 if eligible for the federal universal service high-cost support for the third and fourth quarters of that year.
4. On or before June 15 if eligible for the federal universal service support for the fourth quarter of that year.

**Section II – Compliance with FCC 05-46**

A. A two-year service quality improvement plan, including, as appropriate, maps detailing progress towards meeting its prior two-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why network improvement targets, if any, have not been met. If a designated ETC has submitted a five-year plan in a GRC application that has been approved by the Commission and is still in effect, the carrier may refer to its GRC filing and submit a progress report on the plan covered by the GRC.

B. Detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future. If an ETC has submitted a Major Service Interruptions report in accordance with CPUC Memorandum dated October 5, 1977, the ETC need not submit the same report. However, in their self-certification letter, the ETC should cite the date(s) of submission of the report; and

C. Information on the number of unfulfilled requests for service from potential customers for the past year and the number of complaints per 1,000 handsets or lines. If an ETC has submitted the Held Primary Service Order and Customer Trouble Reports in accordance with Sections 3.1 and 3.3 of G. O. 133-B, the ETC need not submit the same reports. However, in their self-certification letter, the ETC should cite the date(s) of submission of the reports.

**Virgin's Compliance with the Service Elements of LifeLine**
**Source: Virgin's Advice Letters 1 – 1D**
**December 10, 2010**

| | **Service Element of LifeLine** | **In Compliance** | **Comments** |
|---|---|---|---|
| 1) | Access to single party local exchange service that is substantially equivalent to single party local exchange service. | Yes | |
| | | | |
| 2) | Access to all interexchange carriers offering service in the LifeLine customer's local exchange. | Yes | |
| | | | |
| 3) | Ability to place calls | Yes | |
| | | | |
| 4) | Ability to receive free incoming calls | No | Virgin does not provide this. |
| | | | |
| 5) | Free touch-tone dialing | Yes | |
| | | | |
| 6) | Free unlimited access to 911/E-911 | Yes | |
| | | | |
| 7) | Access to local directory assistance (DA). Each utility shall offer its LifeLine customers the same number of free DA calls that it provides to its non-LifeLine customers. | Yes | |
| | | | |
| 8) | Access to foreign Numbering Plan Areas. | Yes | |
| | | | |
| 9) | LifeLine rates and charges. | Yes | |
| | | | |
| 10) | Customer choice of flat-rate local service or measured-rate local service. The 17 smaller LECs identified in D. 96-10-066 do not have to offer LifeLine customers the choice unless they offer the choice to their non-LifeLine customers. | No | Virgin offers a measured- rate to all customers. |
| | | | |
| 11) | Free provision of one directory listing per year as provided for in D. 96-02-072. | No | No Publicly available wireless listings of telephone numbers are available. |

**Virgin's Compliance with the Service Elements of LifeLine**
**Source: Virgin's Advice Letters 1 – 1D**
**December 10, 2010**

| | Service Element of LifeLine | In Compliance | Comments |
|---|---|---|---|
| 12) | Free white pages telephone directory | No | Wireless carriers do not provide this resource. |
| | | | |
| 13) | Access to operator service. | Yes | |
| | | | |
| 14) | Voice grade connection to the public switched telephone network. | Yes | |
| | | | |
| 15) | Free Access to 800 or 800-like toll-free services. | Yes | There is no additional charge for 800 access; however usage minutes are deducted. |
| | | | |
| 16) | Access to telephone relay services as provided for in PU Code § 2881 et seq. | Yes | Hearing impaired service. |
| | | | |
| 17) | Toll free access to customer service for information about LifeLine, service activation, service termination, service repair, and bill inquires. | Yes | |
| | | | |
| 18) | Toll free access to customer service representatives fluent in the language (English and non-English) the LifeLine service was originally sold in. | Yes | |
| | | | |
| 19) | Free access to toll blocking service. | N/A | Virgin service provides uniform pricing for local and long distance calls. |
| | | | |
| 20) | Free access to toll control service, but only if (i) the utility is capable of offering toll-control service, and (ii) the LifeLine customer has no unpaid bill for toll service. | N/A | Virgin service provides uniform pricing for local and long distance calls. |

**Virgin's Compliance with the Service Elements of LifeLine**
**Source: Virgin's Advice Letters 1 – 1D**
**December 10, 2010**

| | Service Element of LifeLine | In Compliance | Comments |
|---|---|---|---|
| 21) | Access to two residential telephone lines if a low income household with a disabled person requires both lines to access LifeLine | Yes | |
| 22) | Free access to the California Relay Service via 711 abbreviated dialing code. | Yes | |
| | | | |

STATE OF CALIFORNIA

GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
FRANCISCO, CA 94102-3298

April 16, 2002

Virgin Mobile USA, LLC
Attn: Helen E. Disenhaus, Counsel
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Re: Wireless Identification Number (U-4327-C) Virgin Mobile USA, LLC d/b/a Virgin Moblie USA or Virgin Mobile.

Dear Ms. Disenhaus:

This is to notify you that the information provided to the Telecommunications Division in a letter received April 11, 2002, meets the information filing requirements for Wireless Registration Identification (WRI) in Decision 94-10-031 as modified by Decision 94-12-042. Your corporate identification number is U-4327-C. Virgin Mobile USA, LLC may begin to resell wireless service to the public in California.

In all respects except authorization for market entry and rates, the authority of the Commission to regulate terms and conditions of newly registered wireless carriers shall apply to the same extent as those holding certificates of CPCN prior to August 10, 1994. Specifically this includes, but is not limited to the following requirements:

1. The corporate identification number assigned to applicant is U-4327-C, which should be included in the caption of all original filings with this Commission and in the titles of other pleadings filed in existing cases.

2. Applicant shall notify the Director of the Telecommunications Division in writing of the date service is first rendered to the public as authorized herein, within five days after service begins.

3. Applicant shall be granted a waiver of P.U. Code sections 816-830 and 851-855, consistent with Decisions 85-07-081 and 85-11-044.

4. Applicant shall comply with General Order 159-A and D. 96-05-035, as they pertain to cell citing or to a Mobile Telephone Switching Office.

5. Applicant is subject to the current 1.45% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Pub. Util. Code Section 879; Resolution T-16435, July 1, 2001).

6. Applicant is subject to the user fee provided in Pub. Util. Code Sections 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800).

7. Applicant is subject to the current 0.481% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code Section 2881; D.98-12-073 and Resolution T-16504, March 27, 2001).

8. Applicant is subject to the current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code Section 739.30; D.96-10-066, pp.3-4, App. B, Rule 1.C; set by Resolution T-16589 at 0.300% effective January 1, 2002).

9. Applicant is subject to the current 1.47% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16585, October 10, 2001).

10. Applicant is subject to the current 0.300% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D,96-10-066, p. 88, App. B, Rule 8.G; set by Resolution T-16584, October 10, 2001).

11. All surcharges shall be shown as a single item on a customer's bill.

12. The corporate identity number and authority to render cellular service will expire if not exercised within 12 months after the date of this letter.

13. Within 60 days of the issuance of a Wireless registration Identification number, applicant shall comply with PU Code Section 708, Employee Identification Cards, and notify, in writing that compliance has been met, to the Chief of the Telecommunications Division.

14. If applicant fails to remit the fees discussed above, then the Telecommunications Division shall prepare a Commission resolution that revokes the applicant's Wireless Identification Number for Commission approval.

15. Applicant is subject to the jurisdiction of the Commission for the resolution of customer complaints. Prior to initiating service, applicant shall provide the Commission Consumer Service Division with the designated contact person(s) for purpose of resolving consumer complaints and the corresponding telephone number. This information shall be updated if the name or telephone number changes or at least annually.

16. Applicant shall notify the Telecommunications Division in writing of any changes to the information it submitted for wireless registration within 30 days. Such information does not have to be served on competitors, cities and counties.

Sincerely,

Richard J. Fel for JML

Jack Leutza, Director
Telecommunications Division

**California ETC Requirements**
**Resolution T-17002**
**Virgin Mobile USA, LLC (U-4327)**
**Each carrier seeking ETC status must file an Advice Letter containing the following information**

**Section I – Compliance with FCC 97-157**

| Requirement | In Compliance | Comments |
|---|---|---|
| A) Provide the service areas for which the carrier is requesting ETC designation, including a list of Geographic Service Areas and a map in .shp format showing the proposed service area. For wireless petitioners, the map should identify the location of cell sites and shade the area where the carrier provides commercial mobile radio service or similar service | No | Virgin is facilities based, and did not provide this element. |
| | | |
| B) Provide an itemized list of the designated services to be provided, i.e. single party service, voice grade access to the PSTN, etc. | Yes | |
| | | |
| C) Provide a list of any services which the carrier proposes not to provide and for which the carrier is seeking an extension of time. | Yes | |
| | | |
| D) Provide an indication of whether the carrier plans to apply to apply for a waiver of the requirement that an ETC not disconnect lifeline for non-payment of toll. | Yes | |
| | | |
| E) Provide a description of the carrier's advertising plan, including the advertising media to be used, and an explanation of how its plan meets the advertising requirement in section 214(e) of the Telecommunications Act. | Yes | |
| | | |
| F) If necessary, implement tariff changes via the advice letter filing process. This provision would not apply to carriers that are not required to maintain tariffs. | N/A | Wireless carriers do not have tariffs. |
| | | |
| G) If applicable, request additional time to perform network upgraded to provide single party service, access to E911 service and/or toll limitation to low-income customers. | Yes | |

**California ETC Requirements**
**Resolution T-17002**
**Virgin Mobile USA, LLC (U-4327)**

**Each carrier seeking ETC status must file an Advice Letter containing the following information**

**Section II – Compliance with FCC 05-46**

| Requirement | In Compliance | Comments |
|---|---|---|
| A) A commitment to provide Service: The ETC applicant must demonstrate that it has the commitment and ability to provide supported services throughout the designated area by providing services to all requesting customers within its designated service area. | Yes | |
| | | |
| B) The ETC must submit a 2 year Service Quality Improvement Plan. | N/A | Virgin is not requesting High-Cost support. |
| | | |
| C)Ability to Remain Functional: The ETC applicant must demonstrate the ability to remain functional in an emergency situation. | Yes | |
| | | |
| D) Consumer Protection: The ETC applicant should demonstrate its commitment to consumer protection and service quality standards. | Yes | |
| | | |
| E) Local Usage: The ETC applicant should show that it offers a local usage plan comparable to the plan offered by the incumbent local exchange carrier in the area it seeks to offer service in. | Yes for (1) out of the (3) plans | The $20.00/1,000 minute plan meets this requirement. |
| | No for (2) out of the (3) plans | The $0.00/250 minute plan and the $5.00/500 minutes plan do not meet this requirement. |
| | | |
| F) Equal Access: The ETC applicant should be able to provide equal access if all other ETCs in the territory relinquish their designation. | Yes. | |
| | | |
| G) Public Interest Determination: The ETC applicant should be able to show its designation will increase consumer choices, the advantages and disadvantages of its service offerings, and the absence of creamskimming. | Yes | |
| | | |

**Table 19 (extract)**

**Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services**

**FCC 14th Report May 20, 2010**

| Year | Average Local Monthly Bill | Minutes of Use Per Month | Average Local Monthly Bill (excluding Data Revenues) | Average Revenue Per Voice Minute |
|---|---|---|---|---|
| 1993 | $61.49 | 140 | $61.49 | $0.44 |
| 1994 | $56.21 | 119 | $56.21 | $0.47 |
| 1995 | $51.00 | 119 | $51.00 | $0.43 |
| 1996 | $47.70 | 125 | $47.70 | $0.38 |
| 1997 | $42.78 | 117 | $42.78 | $0.37 |
| 1998 | $39.43 | 136 | $39.43 | $0.29 |
| 1999 | $41.24 | 185 | $41.16 | $0.22 |
| 2000 | $45.27 | 255 | $45.09 | $0.18 |
| 2001 | $47.37 | 380 | $46.94 | $0.12 |
| 2002 | $48.40 | 427 | $47.82 | $0.11 |
| 2003 | $49.91 | 507 | $48.66 | $0.10 |
| 2004 | $50.64 | 584 | $48.21 | $0.08 |
| 2005 | $49.98 | 708 | $45.83 | $0.06 |
| 2006 | $50.56 | 714 | $43.73 | $0.06 |
| 2007 | $49.79 | 769 | $40.88 | $0.05 |
| 2008 | $50.07 | 708 | $38.45 | $0.05 |

**Calculated Voice Minutes ($38.45/$0.05) = 769**

| CTIA Semi-Annual Wireless Industry Survey Results (extract) -June 1993 To June 2008 | | |
|---|---|---|
| | | |
| **6-Month Period Ending:** | **AVG. LOCAL MONTHLY BILL** | **Average Local Call Length in Minutes** |
| **Jun-93** | $67.31 | 2.38 |
| **Jun-94** | $58.65 | 2.36 |
| **Jun-95** | $52.45 | 2.27 |
| **Jun-96** | $48.84 | 2.24 |
| **Jun-97** | $43.86 | 2.25 |
| **Jun-98** | $39.88 | 2.34 |
| **Jun-99** | $40.24 | 2.4 |
| **Jun-00** | $45.15 | 2.48 |
| **Jun-01** | $45.56 | 2.62 |
| **Jun-02** | $47.42 | 2.6 |
| **Jun-03** | $49.46 | 2.63 |
| **Jun-04** | $49.49 | 3.06 |
| **Jun-05** | $49.52 | 3.04 |
| **Jun-06** | $49.30 | 2.94 |
| **Jun-07** | $49.94 | 3.13 |
| **Jun-08** | $48.54 | 2.43 |
| | | |
| **Average Local Call Length of 2.43 minutes is utilized for calculations, given that it is contemporaneous with the FCC 14th Report's Minutes of Use Data.** | | |

**Table I**

| Conversion of Measured Rate Call Allowance to Wireless MOUs | | | |
|---|---|---|---|
| FCC Average Local Voice MOU | | | 769 |
| G.O. 153 Call Allowance | | 60 untimed calls | |
| CTIA Average Call Duration | | X 2.43 Minutes | |
| G.O. 153 Call Allowance in MOU | | | <146> |
| MOU in Excess of G.O. 153 Allowance | | | 623 |
| | | | |
| | | | |

**Table II**

| Pricing of Converted MOUs per G.O. 153 & D. 10-11-033 | | | |
|---|---|---|---|
| **D. 10-11-033 Measured Rate Price** Call Allowance Range for first 146 MOU (60 calls allowance) | | $ 2.50 | $ 3.66 |
| Price of 623 MOU in Excess of 146 MOU allowance | $0.033 ($.08 per call/2.43 average call duration) | $20.57 | $20.57 |
| Total G.O. 153/D. 10-11-033 Cost for 769 MOU | | $ 23.07 | $ 24.23 |
| | | | |
| | | | |

## Comparable Local Usage Analysis

**Comparison of Virgin Mobile Proposed LifeLine Plans to ILEC LifeLine Measured Rate Plans**

(Assuming Average Wireless MOU)

| | Virgin 250 | Virgin - 500 | Virgin - 1,000 | ATT (Minimum) | ATT (Maximum) | Verizon | Verizon |
|---|---|---|---|---|---|---|---|
| **Average Normal Usage (calculated)** | 769 | 769 | 769 | 769 | 769 | 769 | 769 |
| **GO 153 Allowance or Plan Allowance** | 250 | 500 | 1000 | 146 | 146 | 146 | 146 |
| **Use in Excess of G.O. 153 or Plan Allowance** | 519 | 269 | 0 | 623 | 623 | 623 | 623 |
| **Cost per Minute of Excess MOUs** | 0.1 | 0.1 | 0.1 | 0.033 | 0.033 | 0.033 | 0.033 |
| **Total Cost of Excess Minutes** | $51.90 | $26.90 | $0.00 | $20.57 | $20.57 | $20.57 | $20.57 |
| **Decision 10-11-033 LifeLine Measured Rate Cost** | $0.00 | $5.00 | $20.00 | $2.50 | $3.66 | $2.50 | $3.66 |
| **Total G.O. 153 Cost to Customer** | $51.90 | $31.90 | $20.00 | $23.07 | $24.23 | $23.07 | $24.23 |
| **Caller ID** | Included | Included | Included | $9.99 | $9.99 | $7.95 | $7.95 |
| **Long Distance** | Included | Included | Included | 6.99* | 6.99* | $15.99 | $15.99 |
| **Voicemail** | Included | Included | Included | Not Available | Not Available | $7.45 | $7.45 |
| **Federal Excise Tax** | $0.00 | $0.00 | $0.00 | $0.08 | $0.11 | $0.08 | $0.11 |
| **Total Additional Costs** | $0.00 | $0.00 | $0.00 | $17.06 | $17.09 | $31.47 | $31.50 |
| **Total Cost to LifeLine Customer** | $51.90 | $31.90 | $20.00 | $40.12 | $41.32 | $54.53 | $55.73 |

*** AT&T One Rate Nationwide 5¢ Advantage Plan**

## Comparison of Virgin Mobile LifeLine Plans to Off-The-Shelf Retail Wireless Plans

| | Virgin 250 | Virgin 500 | Virgin 1000 | Virgin Mobile - PayLo: 1500 Minutes | metroPCS $40.00 | Nexus *dba* Reach Out Wireless Simple Plan | ATT -Go Phone $60.00 Unlimited Talk & Text | Sprint Talk | Verizon - Talk |
|---|---|---|---|---|---|---|---|---|---|
| **Average MOU*** | 769 | 769 | 769 | 769 | 769 | 769 | 769 | 769 | 769 |
| **Basic Plan Minutes** | 250 | 500 | 1000 | ***1500*** | Unlimited | ***1000*** | ***Unlimited*** | 450 | 450 |
| **Average Excess MOUs** | 519 | 269 | 0 | 0 | 0 | 0 | 0 | 319 | 319 |
| **Cost per Minute in Excess of Allowance** | $0.10 | $0.10 | $0.10 | $0.10 | $0.00 | $0.00 | $0.00 | $0.45 | $0.45 |
| **Cost of Excess Minutes** | $51.90 | $26.90 | $0.00 | $0.00 | 0 | $0.00 | $0.00 | $143.55 | $143.55 |
| **Caller ID** | Included | Included | Included | Included | Included | Included | Included | Included | Included |
| **Long Distance** | Included | Included | Included | Included | Included | Included | Included | Included | Included |
| **Voicemail** | Included | Included | Included | Included | Included | Included | Included | Included | Included |
| **Plan Price** | | $5.00 | $20.00 | $30.00 | $40.00 | $52.95 | $60.00 | $39.99 | $44.99 |
| | | | | | | | | | |
| **Cost to Customer with Average Usage** | **$51.90** | **$31.90** | **$20.00** | **$30.00** | **$40.00** | **$52.95** | **$60.00** | **$183.54** | **$188.54** |

* See Attachment 5 for Calculation