

**Before the
Federal Communications Commission
Washington, D.C., 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	
)	
Virgin Mobile USA, L.P. Petitions for)	CC Docket 96-45
Forbearance and for Designation as an)	
Eligible Telecommunications Carrier in)	
the States of New York, Pennsylvania)	
and Virginia)	
)	
TracFone Wireless, Inc. Petitions for)	
Designation as an Eligible)	
Telecommunications Carrier in the States)	
of Delaware and New Hampshire.)	

**INITIAL COMMENTS
OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
AND
THE PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.
REGARDING
PETITION FOR FORBEARANCE AND
PETITIONS FOR ELIGIBLE TELECOMMUNICATIONS CARRIER STATUS**

On December 5, 2007, Virgin Mobile USA, L.P. (“Virgin Mobile”) submitted four Petitions to the Federal Communications Commission (“FCC” or “Commission”) regarding its interest in being named an eligible telecommunications carrier (“ETC”) in order to receive federal universal support for Lifeline customers. The first, entitled “Petition for Forbearance of Virgin Mobile USA, L.P.,” addressed issues regarding Virgin Mobile’s ability to be designated an ETC as a reseller of wireless services

(“Forbearance Petition”).¹ The other three Petitions requested designation as an ETC in the States of New York, Pennsylvania and Virginia, respectively.

On November 28, 2007, TracFone Wireless, Inc. (“TracFone”) filed petitions to be designated as an ETC in the States of Delaware and New Hampshire, also for the purpose of receiving Lifeline support.² TracFone, like Virgin Mobile, is a reseller of wireless service. TracFone’s current ETC petitions are based on the FCC’s grant of forbearance in 2005.³

The Federal Communications Commission (“FCC” or “Commission”) has requested public comment on these petitions.⁴ The National Association of State Utility Consumer Advocates (“NASUCA”)⁵ and the Public Utility Law Project of New York,

¹ 47 U.S.C. 214(e)(1)(A) requires that ETCs offer services, at least in part, over their own facilities.

² TracFone also filed a petition for Pennsylvania on December 11, 2007. The FCC has not put the TracFone Pennsylvania petition out for public comment.

³ *In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless, Inc. for Forbearance from 47 USC §214(e)(1)(A) and 47 CFR. §54.201(i)*, CC Docket No. 96-45, Order, FCC 05-165, 20 FCC Rcd 15095 (2005) (“*TracFone Order*”). TracFone also has pending petitions for ETC designation for Alabama, Connecticut, Massachusetts, North Carolina and Tennessee (all filed November 9, 2004) and for Florida and Virginia (filed July 21, 2004).

⁴ DA 07-4982 (TracFone); DA 07-4983 (Virgin Mobile).

⁵ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

Inc. (“PULP”)⁶ jointly submit these initial comments regarding both Virgin Mobile’s Forbearance Petition and the Virgin Mobile and TracFone ETC Petitions.⁷

First, with regard to the Forbearance Petition, NASUCA and PULP are concerned with Virgin Mobile, or any wireless reseller, being deemed an ETC in any state, including New York, without adequate assurances of appropriate consumer protections.

Specifically, as a reseller of Sprint Nextel’s service:⁸

- (1) There are inherent limitations in Virgin Mobile’s coverage area. Not only is Virgin Mobile’s service area limited to that of its underlying carrier, Sprint Nextel, the underlying carrier does not boast ubiquitous coverage throughout New York.⁹

⁶ PULP represents residential low income and rural consumers in the State of New York seeking to advance universal service, affordability, and consumer protection in utility, telecommunications and energy-related matters.

⁷ These petitions are submitted to the FCC based on the presumption that the state commissions in these states either do not have or have relinquished jurisdiction over such ETC designations. NASUCA has not investigated the correctness of this presumption; obviously, if a state has such jurisdiction the petition is properly directed to the state commission.

⁸ In its Petitions, Virgin Mobile states that it is a pure reseller of Sprint Nextel services. *See*: Virgin Mobile’s *ETC Petition*, dated December 5, 2007, at p. 2.

⁹ In fact, Sprint’s official web page includes the following disclaimer: “Our coverage maps provide high level estimates of our coverage areas when using your device outdoors under optimal conditions. Coverage isn’t available everywhere. Estimating wireless coverage and signal strength is not an exact science. There are gaps in coverage within our estimated coverage areas that, along with other factors both within and beyond our control (network problems, software, signal strength, your wireless device, structures, buildings, weather, geography, topography, etc.), will result in dropped and blocked connections, slower data speeds, or otherwise impact the quality of services.” *See*: <http://support.sprint.com/sprinthelp/help.html?helpID=301>.

- (2) Virgin Mobile offers minimal, non-guaranteed access to E-911.¹⁰
- (3) Virgin Mobile states that it is unable to offer toll limitation.¹¹

These are undoubtedly serious concerns which may create customer confusion (and dissatisfaction), especially when compared to the more ubiquitous and E-911-capable Lifeline offerings by local exchange carriers. Those capabilities should be key to ETC designation. NASUCA and PULP would not oppose the FCC granting Virgin Mobile's Forbearance and ETC Petitions, however, provided the company complies with the Telecom Act §214(e)¹² and FCC Rule §54.101¹³ requirements placed on all ETCs, and all of the conditions placed on TracFone in the *TracFone Order*.

Specifically, Virgin Mobile would need to certify:

- (1) That Virgin Mobile is a common carrier;
- (2) That Virgin Mobile will offer all of the ETC-required services and functionalities, including:
 - (a) Voice grade access to the public switched network
 - (b) Local usage

¹⁰ The Sprint official web page states that "local Public Safety Answering Points (PSAPs) and emergency services are sometimes unable to effectively respond to wireless 911 calls. In these areas, when wireless phone users call 911, the dispatcher does not automatically receive callback phone number or caller's location, making it difficult to route call to nearest emergency responder. . . . What you should do is not assume that your location can be identified when you make a wireless 911 emergency call. Remember the following to help get information to 911 dispatchers quickly: When an emergency occurs, dial 911. You will be connected to nearest PSAP. If your phone searches for a signal, or if there is no signal, it is unlikely the call will reach a call center. In this case, find the nearest landline phone and call from there. Because wireless 911 calls do not automatically provide emergency personnel with your name, phone number, or location, furnish all necessary information, including: Your name and wireless phone number, including area code; Exact location of the emergency, such as the address, cross streets, mileposts, or nearby landmarks; Nature of the emergency; Whether police, fire, or medical assistance is needed." *See*: http://search.sprint.com/inquirapp/ui.jsp?ui_mode=answer&prior_transaction_id=1449200&iq_action=5&answer_id=16777219&highlight_info=6292512,13,23&turl=http%3A%2F%2Fsupport%2Esprint%2Ecom%2Fdoc%2Fsp4006%2Exml%3Fid16%3D911#__highlight.

¹¹ *See*: Virgin Mobile's *ETC Petition*, dated December 5, 2007, at pp. 11-12.

¹² 47 USC §214(e).

¹³ 47 CFR §54.101 *et seq.*

- (c) Dual tone multi-frequency signaling (or its functional equivalent)
 - (d) Single party service (or its functional equivalent)
 - (e) Access to emergency services
 - (f) Access to operator services
 - (g) Access to interexchange services
 - (h) Access to directory assistance
 - (i) Toll limitation;¹⁴ and
- (3) That Virgin Mobile will advertise the supported services.¹⁵

The additional conditions which were placed on TracFone would state that Virgin Mobile:

- (1) Will be eligible only for Lifeline support. As a limited ETC, Virgin Mobile would not be eligible to receive support for other supported services under the low income program nor would it be able to receive support for services supported by the other universal support mechanisms;
- (2) Will need to provide its Lifeline customers with 911 and E-911 access regardless of activation status and availability of prepaid minutes;
- (3) Will need to provide its Lifeline customers with E-911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service;
- (4) Must comply with these conditions as of the date it provides Lifeline service;
- (5) Must obtain a certification from each Public Safety Answering Point (“PSAP”) where it provides Lifeline service, confirming that Virgin Mobile complies with the E-911 conditions discussed in (2), above;
- (6) Must require that its customers self-certify at the time of service activation and annually thereafter that they are the head of household and receive Lifeline-supported service only from Virgin Mobile; and

¹⁴ As stated, Virgin Mobile admitted in its ETC Petition that it is incapable of meeting this ETC requirement. *See*: fn. 1.

¹⁵ All of these requirements are outlined in 47 CFR §54.101 *et seq.*

- (7) Must establish safeguards to prevent its customers from receiving the reduced Lifeline rate for more than one telephone at the same residential address.¹⁶

It should be noted that when TracFone petitioned the Commission for ETC status it specifically noted that it was not seeking eligibility for Link-Up support.¹⁷ However, Virgin Mobile's Petitions refer to Lifeline and Link-Up together, as if they are the same program, yet provides no details whatsoever as to Link-Up.¹⁸ While Virgin Mobile's underlying carrier, Sprint Nextel, does advertise a Link-Up service on its web page which provides a 50 percent discount on activation,¹⁹ Virgin Mobile is silent on the issue in its Petitions.²⁰ NASUCA and PULP believe that in the absence of answers from Virgin Mobile regarding costs for service or the applicability of an activation fee on Lifeline customers, it should follow TracFone's lead and neither seek nor be eligible for Link-Up support.

Finally, with regard to Virgin Mobile's and TracFone's ETC applications, in order for Virgin Mobile and TracFone to be compensated from the federal USF, the Commission must ensure that the rates charged Lifeline customers for service reflect the Lifeline discount. First, the carrier cannot be permitted to receive a double recovery via

¹⁶ TracFone Order, at pp. 4-5.

¹⁷ See: *Reply Comments of TracFone Wireless, Inc.*, In the Matter of Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Petitions Concerning Eligible Telecommunications Carrier Designations and the Lifeline and Link-Up Universal Service Support Mechanism, CC Docket No. 96-45, WC Docket No. 03-109, Submitted October 4, 2004, at p. 4.

¹⁸ Specifically, Virgin Mobile includes the phrase "Lifeline/Link-Up program" 17 times in its ETC Petition, but does not mention even once how it intends to provide Link-Up service.

¹⁹ See, e.g., http://www.nextel.com/en/services/calling/universal_lifeline_program.shtml.

²⁰ On Virgin Mobile's web page, they state that they do not charge an activation fee. If that will remain true for Lifeline customers, then Link-Up service and any reimbursement from the federal USF for Link-Up is inappropriate. See: <http://web.virginmobileusa.com/help/account/management/activation#is-there-activation-fee> ("Is there an activation fee? Nope. With Virgin Mobile, there is no activation fee. In fact, when you activate a new phone, we add \$2.50 in bonus airtime to your account to get you started.").

non-discounted Lifeline customer rates combined with reimbursement from the USF. Second, although TracFone identifies two specific discounted low-income plans that it will offer Lifeline customers,²¹ NASUCA's position is that the Lifeline discount should not be limited to any specific wireless program.²² Lifeline customers should be able to apply the discount to the wireless calling plan of their choice, not the plan selected for them by the carrier. On the other hand, Virgin Mobile does not identify any specific calling plan to which it will apply the Lifeline discount.²³ Virgin Mobile should not be allowed to limit customers' choice of plans.

Accordingly, if all of these above-stated protections are required by the FCC and are met by Virgin Mobile and TracFone upon ETC designation, NASUCA and PULP will not object to the granting of Virgin Mobile's forbearance petition and the New York ETC petition, and NASUCA will not object to the granting of the other ETC petitions for Virgin Mobile and for TracFone. Otherwise, the Petitions should be denied.

Respectfully submitted,

Charles A. Acquard, Executive Director
National Association of
State Utility Consumer Advocates
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
301-589-6313
301-589-6380 (FAX)

Gerald A. Norlander, Executive Director
Louis Manuta, Staff Attorney
Public Utility Law Project of New York, Inc.

²¹ See, e.g., TracFone Pennsylvania Petition at 20.

²² See *In the Matter of SPRINT SPECTRUM, L.P. Petition for Declaratory Ruling*, WC Docket Nos. 03-109, 07-138, Comments of the National Association of State Utility Consumer Advocates in Opposition to Sprint Nextel's Petition to Preempt the Kansas Corporation Commission's October 2, 2006 Order (August 9, 2007).

²³ See, e.g., Virgin Mobile Virginia Petition at [i-ii].

194 Washington Avenue, Suite 420
Albany, New York 12210
518-449-3375
518-449-1769 (FAX)

January 14, 2008