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Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

STAFF REPORT AND RECOMMENDATION
Utility Division

TO: Chairman Mark Sievers
Commissioner Ward Loyd
Commissioner Thomas E. Wright

FROM: Hal Baumhardt

DATE: August 29, 2011

DATE SUBMITTED TO LEGAL: 8/29/11

DATE SUBMITTED TO COMMISSIONERS: 9/09/11

RE: Docket No. 10-VMBZ-657-ETC

In the Matter of Virgin Mobile USA, L.P. Petition for Limited Designation as an Eligible Telecommunications Carrier.

BACKGROUND:

On April 12, 2010, Virgin Mobile USA, L.P. (Virgin Mobile) filed an Application requesting designation as an Eligible Telecommunications Carrier (ETC) for the purpose of receiving low-income Federal Universal Service Fund (FUSF) support within the state of Kansas. Virgin Mobile's Application indicates it is not seeking to receive high-cost support, only Lifeline support. In this initial Application, Virgin Mobile requests ETC designation in specific exchanges that are served by Blue Valley Tele-communications (Blue Valley), Sunflower/Bluestem Telephone Company (Bluestem), Craw-Kan Telephone Cooperative (Craw-Kan), Embarq Missouri d/b/a CenturyLink (CenturyLink)¹, Golden Belt Telephone Association (Golden Belt), Haviland Telephone Company (Haviland), Home Telephone Company (Home), J.B.N. Telephone Company (J.B.N.), KanOkla Telephone Association (KanOkla), LaHarpe Telephone Company (LaHarpe), Madison Telephone (Madison), MoKan Dial (Mo-Kan), Moundridge Telephone Company (Moundridge), Peoples Telecommunications (Peoples), S&A Telephone Company (S & A), Southern Kansas Telephone (Southern Kansas), Totah Communications (Totah), Tri-County Telephone Association (Tri-County), Twin Valley Telephone (Twin Valley), United Telephone Company of Kansas (CenturyLink-Eastern), United Telephone of Eastern Kansas (now known as CenturyLink), Wamego Telephone Company

¹ On July 1, 2009, CenturyTel, Inc. and Embarq Corporation completed its merger. On September 17, 2009, the United Telephone Companies filed a Notification of Fictitious Name Change notifying the Commission that the fictitious d/b/a names have changed from "Embarq" to "CenturyLink."

(Wamego), Wheat State Telephone (Wheat State), Wilson Telephone Company (Wilson), Zenda Telephone Company (Zenda), and specific Southwestern Bell Telephone Company d/b/a AT&T Kansas (AT&T Kansas) wire centers.

Virgin Mobile was established as a joint venture between Sprint Nextel Corporation (Sprint/Nextel) and Sir Richard Branson's Virgin Group to offer prepaid wireless services using the Virgin Mobile brand and the nationwide Sprint network². President for Sprint's Prepaid Group is Dan Schulman, former Chief Executive Officer Virgin Mobile, and its Senior Vice President and General Counsel is Peter Lurie. Virgin Mobile is headquartered in Warren, New Jersey.

The Federal Communications Commission (FCC) issued an Order on May 1, 2008, in which it placed an interim cap on high-cost FUSF support.³ Staff notes that Virgin Mobile's Application is for Lifeline support only, therefore, the FCC's May 1, 2008, Order will not affect this Application.

On November 4, 2010, Virgin Mobile amended its Petition to include local counsel. No other changes were made to the Petition.

ANALYSIS:

Virgin Mobile is a foreign limited partnership organized under the laws of the state of Delaware. Virgin Mobile is authorized to conduct business as a foreign limited partnership in the state of Kansas. Virgin Mobile is properly registered with the Kansas Secretary of State's Office and its status is "*active and in good standing*".

Federal ETC Requirements

A common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with section 254 of the Communications Act of 1934, as amended (Communications Act or Federal Act) and shall, throughout the service area for which the designation is received – (A) offer the services that are supported by federal universal service support mechanisms under section 254(c) of the Federal Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and (B) advertise the availability of such service and the charges therefore using media of general distribution.⁴

Federal law, 47 U.S.C. § 214 (e)(2), states that "Upon request and consistent with the public interest, convenience, and necessity, the State commission *shall*, in the case of an area served by a rural telephone company, and *may*, in the case of all other areas, designate more than one

² On November 24, 2009, Virgin Mobile became a wholly-owned subsidiary of Sprint Nextel upon completion of the companies' previously announced transaction. The FCC approved Sprint Nextel's acquisition of Virgin Mobile effective September 11, 2009. See *International Authorization Granted*, Public Notice, DA 09-2071 (rel. Sept. 17, 2009).

³ *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order, Released May 1, 2008.

⁴ 47 U.S.C. § 254.

common carrier as an eligible telecommunications carrier for a service area designated by the State commission", (emphasis added).

The Commission must evaluate Virgin Mobile's ability to meet the criteria set out in 47 U.S.C. § Section 214(e)(2). Virgin Mobile requests ETC designation in several non-rural service areas, therefore, the Commission is not *required* to make a public interest determination with regard to the AT&T Kansas service area, but Staff will provide a public interest recommendation nonetheless.

Service or Functionalities

47 C.F.R. § 54.101(a) identifies the services or functionalities that shall be supported by federal universal service support mechanisms. The Applicant must provide all of the following services that are designated for federal support: (1) voice-grade access to the public switched network; (2) local usage; (3) Dual-Tone Multi-Frequency (DTMF); (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.

In its Application, Virgin Mobile provided the following explanation of how it meets the aforementioned federal criteria for being designated an ETC.

Voice-grade access to the public switched network – *Virgin Mobile provides voice grade access to the public switched telephone network ("PSTN") and offers its customers services at bandwidth rates between 300 and 3,000 MHz as required by FCC's regulations.*

Local usage – *Virgin Mobile's proposed Lifeline offering fully complies with the local usage requirements established by the Commission and the FCC. Not only will Virgin Mobile's offering be comparable to the underlying [incumbent local exchange company (ILEC)] plans, but it also will exceed them in several respects. Contrary to the ILEC plans, Virgin Mobile will offer customers a certain amount of service free of charge. Virgin Mobile will provide its Lifeline customers with approximately 200 anytime minutes per month at no charge. Contrary to the ILEC plans, which contains relatively small local calling areas, Virgin Mobile customers can use these free minutes to place calls statewide (or even nationwide) because Virgin Mobile does not constrict customers' use by imposing a local calling area requirement. In addition to free voice services, Virgin Mobile will provide Lifeline customers with access to a variety of other features at no cost, including voice mail, caller ID, call waiting services and enhanced 911 ("E911") capabilities. Most important, Virgin Mobile's Lifeline service will provide low-income Kansas residents with the convenience and security offered by wireless services without interruption – even if their financial position deteriorates.*

Dual-tone multi-frequency (DTMF) – *Virgin Mobile 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 the Company are DTMF-capable.*

Single party service or its functional equivalent – *Virgin Mobile provides the functional equivalent of single-party service to its wireless customers for the duration of each telephone call and does not provide multi-party (or “party-line”) services.*

Access to emergency services – *Virgin Mobile 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.*

Access to operator services – *Virgin Mobile provides all of its customers with access to operator services.*

Access to interexchange service – *Virgin Mobile’s service provides its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile’s service with no additional charges because minutes for local or domestic long distance services are not billed separately at different rates.*

Access to directory assistance – *All Virgin Mobile customers are able to dial “411” to reach directory assistance services from their wireless handsets.*

Toll limitation for qualifying low-income consumers – *Toll limitation allows customers to either block the completion of outgoing long distance calls or specify a certain amount of toll usage to prevent them from incurring significant long distance charges and risking disconnection. Virgin Mobile provides its wireless service on a prepaid, or pay-as-you-go, basis. Virgin Mobile’s service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. The FCC determined in its previous grant of ETC designation that the nature of Virgin Mobile’s service mitigates concerns that low-income customers will incur significant charges for long distance calls, risking disconnection of their service.⁵*

Virgin Mobile has branded its prepaid Lifeline service “Assurance Wireless Brought to You by Virgin Mobile.” The service will provide customers with the same features and functionalities enjoyed by all other Virgin Mobile prepaid customers, with one notable exception: prepaid Lifeline services will be free of charge. Under the current plan, eligible customers will receive 250 anytime prepaid minutes⁶ per month at no charge with additional service priced at \$0.10/minute and \$0.15/text message. In addition to free voice services, prepaid Lifeline customers also will have access to a variety of other standard features at no additional charge including voice mail, Caller ID and Call Waiting services. New customers may elect to receive a free Assurance Wireless-branded handset with E911 functionality. Current Virgin Mobile customers will be able to use their existing handsets to receive prepaid Lifeline services or may elect to receive a free Assurance Wireless handset.

⁵ See Petition of Virgin Mobile for Forbearance from 47 U.S.C. § 214(e)(1)(A) Order (rel. Mar 5, 2009), at ¶ 34.

⁶ Virgin Mobile advised Staff in response to DR 10, that effective October 20, 2010, Virgin Mobile increased the free monthly minutes from 200 free minutes to 250 free minutes where it deploys Lifeline services.

The Commission determined in its October 2, 2006 Order in Docket No. 06-GIMT-446-GIT [446 Docket] ("October 2nd Order") that it would follow the FCC's guidance and evaluate local usage by considering the comparability of a Competitive Eligible Telecommunications Carrier's (CETC's) offering on a case-by-case basis "by evaluating the total service package, including the local calling scope, included features and usage that might otherwise be considered long distance." The Commission further stated that it would consider whether an ETC Applicant offers unlimited calling to government, social service, health facilities, educational institutions and emergency numbers when considering comparability.¶¶7-8.

AT&T Kansas' monthly rate for a residential access line ranges from \$15.70 to \$16.70 in the requested AT&T Kansas exchanges. The local calling scope is the exchange, but local calls are unlimited.

The monthly rate for a residential access line ranges from \$11.40 to \$15.59 in the Sunflower/Bluestem exchanges. The monthly rate for a residential access line ranges from \$16.25 to \$16.75 in the Blue Valley exchanges. The monthly rate for a residential access line in Craw-Kan is \$16.86. The monthly rate for a residential access line in Golden Belt is \$17.50. The monthly rate for a residential access line in Haviland is \$15.75. The monthly rate for a residential access line in Home is \$16.75. The monthly rate for a residential access line in MoKan is \$12.10. The monthly rate for a residential access line in Totah is \$16.65. The monthly rate for a residential access line in the Cunningham, J.B.N., KanOkla, LaHarpe, Madison, Moundridge, Peoples, S & A, Southern Kansas, Tri-County, Twin Valley, Wamego, Wheat State, Wilson and Zenda is \$16.25.

Staff does not believe the local usage that will be offered in Virgin Mobile's Lifeline Offerings is clearly comparable, but rather, Staff believes in this case local usage comparability would depend on the usage pattern of the particular customer. A customer that completes calls primarily within their exchange may not find the amount of local usage offered by Virgin Mobile to be comparable to the offering of the incumbent. However, a customer that completes calls outside of their exchange may find that the local usage is comparable. When one considers the calling scope, usage that might otherwise be considered long distance and mobility, a consumer may find Virgin Mobile's plans comparable to the incumbent's service offering.

Staff is satisfied that Virgin Mobile has demonstrated an ability to provide the services or functionalities supported by the federal universal service support systems in the requested service areas.

Lifeline Calling Plan Rule

In the Commission's October 2nd Order, the Commission determined that, among other things, ETCs must apply the Lifeline discount to the service plan a qualifying Lifeline customer chooses. The Commission specifically ordered the following:

ETCs are required to allow Lifeline customers to choose a calling plan and to apply the Lifeline discount to the plan selected by the

customers. Any ETC that does not allow customer selection at this time must do so within 180 days of the date of this Order.⁷

Sprint Spectrum, L.P. (Sprint) and Alltel Kansas Limited Partnership (Alltel) filed Petitions for Reconsideration of the Commission's October 2nd Order, raising this issue. On November 20, 2006, the Commission issued its Order Addressing Petitions for Reconsideration. In denying reconsideration, the Commission stated the following:

The Commission will not reconsider its Order directing ETCs to allow Lifeline customers to select which plan to apply the Lifeline discount. The Commission believes it is in the public interest to ensure that Lifeline customers are not limited to one plan. The Commission notes that other carriers participating in this docket do provide a choice of plans to Lifeline customers. Finally, even if Sprint and Alltel's interpretation of 47 C.F.R. § 54.403(b) has merit, neither have provided the Commission with authority stating that this Commission cannot expand the application of the Lifeline discount to plans other than the lowest cost plan provided by an ETC. Likewise, Sprint and Alltel have not demonstrated that they are harmed in any way by giving their low-income customers more choice among the services they are offering as ETCs.⁸

On June 8, 2007, Sprint filed its Petition for Declaratory Ruling with the FCC.⁹ Sprint's Petition requests a ruling from the FCC finding that the October 2, 2006, decision by the Commission in Docket No. 06-GIMT-446-GIT violates 47 U.S.C. § 254(f), 47 U.S.C. § 332(c)(3)(A), and 47 C.F.R. § 54.403(b). On July 10, 2007, the FCC released a Public Notice establishing a pleading cycle for comments on Sprint's Petition. Comments and Reply Comments were filed in August 2007.

Sprint argued that 47 C.F.R. § 54.403(b) requires support to be applied only to the lowest cost tariffed plan, or in the case of a carrier without tariffed rates, to the lowest-cost generally available plan.

In its Comments filed with the FCC on August 9, 2007, the Commission argued that the Commission's Lifeline Rule does not violate federal rules or statutes, is a proper exercise of its authority to establish ETC criteria, and is consistent with the goals of providing universal service.

⁷ In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT, Order Adopting Requirements for Designations of Eligible Telecommunications Carrier, October 2, 2006, (446 Order), ¶ 77e.

⁸ Docket No. 06-GIMT-446-GIT, Order Addressing Petitions for Reconsideration, November 20, 2006, ¶ 47.

⁹ Petition of Sprint Spectrum L.P. for a Declaratory Ruling that the Kansas Corporation Commission's October 2, 2006 Order in Docket 06-GIMT-446-GIT, violates federal law, WC Docket Now. 03-109 and 07-138, filed June 8, 2007 (Sprint Petition).

The Commission argued that it:

reads the rule as requiring Lifeline support to be applied to the lowest tariffed or otherwise generally available rate plan. This less limited view of the rule is not only consistent with the language of the rule, but also with the FCC's Lifeline policies. The FCC has allowed carriers to apply the Lifeline discount to plans other than their lowest-cost plan. In the Lifeline and Link-Up Order, the FCC refused to adopt rules that would prohibit carriers from offering vertical services, such as Call Waiting and Caller ID, to qualifying Lifeline customers. The FCC stated that restricting a customer's ability to purchase vertical services could act to limit the number of qualifying customers that enroll in the Lifeline program. If the intent of Section 54.403(b) is to restrict Lifeline customers to only the lowest-cost plan, the FCC would not have allowed carriers to market services beyond those available in such plans.

The KCC's Lifeline Rule follows the FCC's rationale by increasing the likelihood that qualifying customers will enroll in Lifeline by providing more choice than only the lowest-cost plan. Sprint's interpretation of the rule would limit a Lifeline customer to a basic plan with a limited number of minutes. Under Sprint's interpretation, the limiting factor is cost. Therefore a carrier is required to only make available the lowest-cost plan, regardless of how limited that basic service plan is. Application of Sprint's narrow interpretation of 54.403(b) would discourage enrollment in the Lifeline program, contrary to the FCC's Lifeline policies.¹⁰

The Commission further argued that:

states have authority to develop Lifeline Rules that are consistent with the requirement to provide access and some level of local usage. The KCC's Lifeline Rule is consistent with these requirements. States have authority to adopt regulations relating to universal service, including Lifeline in addition to those promulgated by the FCC, as long as those regulations are not inconsistent with the FCC's rules. 47 U.S.C. § 254(f). The FCC has recently interpreted its rules to permit states to determine the level of "local usage" carriers must provide in order to qualify for universal service support. The FCC adopted a list of basic services that carriers must provide to be designated ETCs, but declined to impose any specific local usage threshold. Instead, the FCC required competitive ETCs like Sprint, to provide a usage plan comparable to the incumbent wireline carrier's plan. In order to meet this comparability requirement, a range of options are available to carriers such as calling plans with varying minutes of

¹⁰ In the Matter of Sprint Spectrum, L.P. Petition for Declaratory Ruling, et al., Comments of the Corporation Commission of the State of Kansas, Docket Nos. 03-109, 07-138, filed August 9, 2007, ¶¶ 9-10.

use, or even unlimited local minutes bundled with long distance minutes. It follows from this discussion that State Commissions not only have discretion to require wireless ETCs to provide Lifeline subscribers with access to calling plans that are comparable to wireline local service offerings, but have an obligation to do so. Therefore, states should have discretion to allow Lifeline subscribers to choose plans with varying minutes of use, particularly when the lowest-cost plan might not provide a qualifying customer with the level of local usage comparable to a wireline carrier. The KCC's Lifeline Rule, allowing a choice of plans, will allow qualifying customers to avoid service interruption or costly overage charges, which occur when their level of local usage exceeds the minutes provided in the basic plan.¹¹

Sprint's Petition remains pending before the FCC.

On February 11, 2011, Virgin Mobile filed a Motion for Waiver (Motion) of the Commission's Lifeline Calling Plan Rule. In its Motion, Virgin Mobile states that it is committed to offering its Lifeline customers a range of service options consistent with the Commission's Lifeline Calling Plan Rule. To ensure that Lifeline customers have a variety of service plans, Virgin Mobile offers three Assurance Wireless service plans from which to select. In contrast to the concerns raised in the 446 Docket, Virgin Mobile states these service plans offer greater value than non-Lifeline plans otherwise available to Kansas customers by Virgin Mobile. The Company crafted these service plans based on its experience in providing Lifeline services and designed them to meet the specific needs of Lifeline customers, providing customers with value they would not otherwise receive through Virgin Mobile's non-Lifeline service offerings.

Virgin Mobile's Assurance Wireless plans for Lifeline customers are as follows:

- 1) 250 anytime voice minutes each month for no charge, with additional service priced at \$.10 per minute and \$.10 per text message;
- 2) 500 anytime voice minutes each month for \$5; and,
- 3) 1,000 anytime voice minutes and 1,000 text messages each month for \$20.

Virgin Mobile further states that its Assurance Wireless plans include all applicable taxes and fees and do not assess additional charges for activation or connection of the service. Thus, Lifeline customers choosing the \$5 or \$20 plans will pay only \$5 or \$20 per month with no additional charges for taxes or activation. The Assurance Wireless service also includes voice mail, Caller ID, and Call Waiting services. Finally, Assurance Wireless customers will receive a wireless handset free of charge upon service activation. The handset is sold separately to non-Lifeline customers for \$9.99.

Virgin Mobile submits that its Assurance Wireless Lifeline plans satisfy the Commission's goals of the Lifeline Calling Plan Rule. The Assurance Wireless plans provide customers a variety of Lifeline plans from which to choose and the plans contain a wide variety of service options and features to ensure that Lifeline customers can select the plan that suits their calling patterns best.

¹¹ Id. at ¶ 11.

By providing customers with the ability to purchase additional minutes, these plans further ensure that qualifying customers can avoid service interruption or costly overage charges. Moreover, the Assurance Wireless plans provide compelling value and services to lower-income customers. Customers will also receive a free wireless handset and certain essential features, including voicemail, Caller ID, and Call Waiting services. The Company further states that were the Commission to require it to make other service plans available to Lifeline customers, the Company would be forced to expend significant funds to upgrade its IT platform, funds that could be better spent on marketing and providing Lifeline service to Kansans.

In response to Staff's Request for Information (RFI) 6.1, Virgin Mobile indicated that in addition to its Lifeline calling plans, it also offers three traditional calling plans under the Beyond Talk brand that are available to all of its non-Lifeline customers in Kansas. Each of Virgin Mobile's Beyond Talk plans includes unlimited text, email, data, voice mail, Caller ID, Call Waiting services and web access. Virgin Mobile's Beyond Talk plans are as follows:

- \$25 per month, includes 300 anytime minutes;
- \$40 per month, includes 1,200 anytime minutes; and,
- \$60 per month, includes unlimited anytime minutes in those areas served.

Even after subtracting the Lifeline discount, a Lifeline customer would expend more per month if it subscribed to a Beyond Talk calling plan than if it subscribed to an Assurance Wireless calling plan. With the exception of the \$60 unlimited calling plan, a Lifeline customer would also receive less calling minutes per month. A heavy-user Lifeline customer may find more value in the \$60 unlimited calling plan, but would be required to expend significantly more in monthly fees, taxes, activation, and in the initial price of the handset.

On April 11, 2011, Staff submitted RFI 13 requesting that Virgin Mobile list all calling plans offered to non-Lifeline Kansas customers. In response to Staff's RFI 13, Virgin Mobile addressed the Beyond Talk plans discussed above and three additional calling plans called payLo by Virgin Mobile (payLo). The three payLo plans offer the customer one option to pay by the minute and two options to pay by the month service plans, with some service options only available with certain phones. Virgin Mobile's payLo plans are as follows:

- 1) The Basic Rate service is a pay by the minute for voice service. The rate is 20 cents for each minute used;
- 2) \$20 per month for 400 anytime minutes; and,
- 3) \$30 per month for 1500 anytime minutes, 500 domestic text messages, picture messages, IM or email messages, unlimited access to Downloads (Virgin XL), and 10 megabytes of data for access to the mobile Internet from their Virgin Mobile or payLo phone. The 1500 Minute Plan does not include international text or picture messaging.

Staff believes the Basic Rate Service plan for a Lifeline customer is not a viable option to Virgin Mobile's Assurance Wireless plans given that a customer would pay by the minute for voice service, nullifying any benefits Virgin Mobile's Assurance Wireless plans offer for voice minutes each month at no charge. Virgin Mobile's second payLo Service plan which is offered at a retail rate of \$20 per month would cost the Lifeline customer more in monthly fees and taxes even after subtracting the Lifeline discount, and the customer would be receiving fewer monthly

minutes (400 minutes each month for payLo Plan versus 500 minutes each month for the Assurance Plan). With regard to Virgin Mobile's third payLo Service plan, after subtracting the Lifeline discount a Lifeline customer's expenditures would be slightly higher (due to additional taxes and fees that are included in the price of the Assurance Wireless plans) per month than if it subscribed to the 1000 anytime minutes Assurance Wireless Plan. However, a Lifeline customer would be receiving 500 additional anytime minutes in addition to features not available with the Assurance Wireless plans. A heavy-user Lifeline customer may find more value in the payLo 1500 anytime minutes calling plan, but would incur additional expense, lose the flexibility of not having a contract obligation, and would not receive a free handset that is included with the Assurance Wireless plans.

Virgin Mobile further indicates in its response to RFI 13 that the cost to the business of significantly expanding and reconfiguring its IT platform to support its Beyond Talk and payLo plans for Lifeline customers would be "prohibitive". Virgin Mobile indicates it would be forced to withdraw its Application if the Commission declines to grant its request for a waiver of the Lifeline Calling Plan Rule.

On June 15, 2011, Staff submitted RFI 14 in response to Virgin Mobile's response to Staff's RFI 13. Staff requested further detail to Virgin Mobile's response of "prohibitive" to reconfigure its IT platform to support Beyond Talk and payLo plans for Lifeline customers. In response to Staff's RFI 14, the Company states in order to offer the currently advertised Virgin Mobile Beyond Talk and payLo plans to Assurance Wireless customers, these offers would need to be replicated on the Assurance Wireless IT platform. The technical costs associated with replication would approach \$1 million. Personnel costs would likewise approach \$1 million. These estimates represent the immediate costs associated with the replication of only the plans currently advertised on the Virgin Mobile website about which Staff has inquired. Virgin Mobile changes, or refreshes, its offers at least once a year. In order to continue to offer Assurance Wireless customers the choice of all plans available to Virgin Mobile non-Lifeline customers going forward, Assurance Wireless would continue to incur the basic IT cost set forth above on at least an annual basis, and perhaps more frequently, depending on how often Virgin Mobile plans were refreshed. Virgin Mobile has customers enrolled in more than 50 different plans. The one-time technical cost of adding all grandfathered Virgin Mobile plans to the Assurance Wireless IT platform would be approximately \$7.5 million with another \$1.5 million in personnel costs. Currently, less than 10% of Assurance Wireless customers choose one of the higher usage offers over the free 250 minute offer. Based on existing offer choice, Virgin Mobile would have no reason to expect that a sizable number of customers would select a Beyond Talk plan or a payLo plan.

Staff recognizes that Virgin Mobile's Assurance Wireless plans address the Commission's concerns raised in conjunction with the Lifeline Calling Plan Rule and provides Lifeline customers with options and additional features. It is possible that few, if any, Lifeline customers would benefit if Virgin Mobile is required to apply the Lifeline discount to its Beyond Talk calling plans or its payLo monthly plans. In addition, the associated costs may not outweigh the possible benefits to a few customers. Nonetheless, Staff still has concerns about limiting the Lifeline customers to three calling plans.

Thus, Staff recommends the Commission grant conditional approval of Virgin Mobile's Motion for Waiver. Staff recommends the Commission require Virgin Mobile to provide the Commission with periodic reports containing the number of complaints and inquiries it receives from Lifeline customers requesting the ability to subscribe to one of Virgin Mobile's non-Lifeline calling plans in Kansas. Staff recommends the periodic reports be filed on a quarterly basis for the first year following the Commission's Order regarding this request. Staff suggests the Commission reevaluate the Petition after reviewing the filed reports.

Types of Facilities Used to Provide Service

Virgin Mobile was acquired by Sprint in November 2009 and is now a wholly-owned subsidiary of Sprint Nextel¹². Accordingly, Virgin Mobile is capable of, and currently provides, the supported services over an existing network infrastructure in Kansas. As such, Virgin Mobile has beneficial use of Sprint's wireless facilities and is appropriately classified as a facilities-based carrier for purposes of Section 214(e)(1) of the Communications Act.¹³ In response to Staff's RFI 8, Virgin Mobile stated it provides its "*wireless services, including its Lifeline services, exclusively over the Sprint PCS network*".

Staff deems Virgin Mobile eligible to be designated an ETC for FUSF low-income support, when using its own wireless facilities.

Service Areas

Section 214(e)(5) of the Federal Act defines "service area" as:

The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), established a different definition of service area for such company.

"Service areas" or "operating areas" are defined in K.S.A. 66-1,187(k), and provides that:

- (1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission; and
- (2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

¹² On November 24, 2009, Sprint Nextel Corporation and Virgin Mobile USA, Inc. announced that the Companies completed their merger transaction.

¹³ The public utility commissions of the states of Florida, Louisiana, Maryland, Michigan and Texas, have each determined that Virgin Mobile operates as a facilities-based provider and will provide the supported services over its own facilities pursuant to section 214(e)(A) of the Communications Act.

AT&T Kansas is considered a non-rural telephone company for both federal and state support purposes and CenturyLink is considered a non-rural telephone company for state support purposes. Therefore, the wire center/exchange is the designated service area for CenturyLink for state support purposes only. The wire center/exchange is the designated service area for both federal and state support purposes for AT&T Kansas.

CenturyLink is considered a rural telephone company for federal support purposes. Blue Valley, Sunflower/Bluestem, Craw-Kan, Golden Belt, Haviland, Home, J.B.N., KanOkla, LaHarpe, Madison, MoKan, Moundridge, Peoples, S&A, Southern Kansas, Totah, Tri-County, Twin Valley, Wamego, Wheat State, Wilson and Zenda are considered rural telephone companies for both state and federal support purposes. Thus, the service area is the study area unless the Commission redefines the service area and the FCC concurs.

Virgin Mobile requests ETC designation throughout the entire study areas of LaHarpe, MoKan, Moundridge, Peoples, S & A, Embark-Missouri d/b/a CenturyLink, Wheat State, Wamego and Zenda; therefore, there is no need to redefine those study areas. However, Virgin Mobile's licensed service areas overlap a number of other rural carriers in Kansas which encompass Sunflower/Bluestem, Blue Valley, Craw-Kan, Golden Belt, Haviland, Home, J.B.N., KanOkla, Madison, Southern Kansas, Tri-County, Totah, Twin Valley, CenturyLink-United of Kansas, CenturyLink-Eastern and Wilson that require redefinition. Each of the requests will be discussed further below.

AT&T Kansas is a non-rural carrier for both federal and state support purposes, therefore, Virgin Mobile is required to provide service throughout each exchange. Virgin Mobile has requested ETC designation for the following AT&T Kansas exchanges: Abilene, Andale, Arkansas City, Atchison, Belleville, Burns, Canton, Chanute, Chapman, Cheney, Chetopa, Concordia, Cottonwood Falls, Desoto, Douglass, El Dorado, Emporia, Erie, Eudora, Eureka, Fort Scott, Garden Plain, Greensburg, Gypsum, Halstead, Hartford, Humboldt, Hutchinson, Iola, Kansas City metro exchanges, Kingman, Kinsley, Lawrence, Leavenworth, Leon, Lindsborg, Manhattan, Marquette, McPherson, Minneapolis, Mount Hope, Newton, Nickerson, Ottawa, Paola, Parsons, Pittsburg, Pratt, Salina, Scandia, Seneca, Solomon, St. Paul, and all wire centers in the Topeka and Wichita metro exchanges.

Staff believes Virgin Mobile is licensed to provide service to the requested exchanges and will provide the supported services. Consequently, Staff believes Virgin Mobile is eligible to be granted ETC designation in the requested AT&T Kansas exchanges, if the Commission deems it is in the public interest.

LaHarpe, MoKan, Moundridge, Peoples, S & A, Embark-Missouri d/b/a CenturyLink, Wheat State, Wamego and Zenda

Virgin Mobile requests ETC designation throughout the entire study areas served by the aforementioned companies. Staff believes Virgin Mobile is licensed to provide service throughout the study areas served by these aforementioned companies, therefore, Staff believes Virgin Mobile is eligible to be designated as an ETC in these companies' study areas, if the Commission determines it is in the public interest.

Redefinition of Rural Local Exchange Carrier Service Areas

Nine of the requested rural telephone company service areas have previously been redefined: CenturyLink-Eastern, CenturyLink-United, Haviland, Golden Belt, Home, Tri-County, Twin Valley, Sunflower/Bluestem and Wheat State. The Commission previously redefined the Sunflower/Bluestem, and CenturyLink-United service areas to the wire center level in Docket No. 04-RCCT-338-ETC, and the FCC concurred with this Commission's decision on May 23, 2005 (by taking no action on the matter). The Commission approved the redefinition of the CenturyLink United-Eastern service area to the exchange in Docket No. 04-HBCT-1107-ETC, and the FCC concurred with this Commission's decision on March 7, 2005 (by taking no action on the matter). The Commission approved the redefinition of the Home Telephone service area to the exchange in Docket No. 08-NTWZ-1076-ETC, and the FCC concurred with this Commission's decision on March 16, 2009 (by taking no action on the matter). The Commission approved the redefinition of the Golden Belt, Tri-County, Twin Valley, and Wheat State's service area to the exchange level in Docket No. 09-NECZ-747-ETC. On July 22, 2011, NE Colorado Cellular d/b/a Viaero Wireless (Viaero) filed a Petition with the FCC requesting redefinition to the wire center for the aforementioned service areas approved by the Kansas Corporation Commission (KCC).¹⁴ Unless other action is taken, the Petition for redefinition will be approved in 90 days or October 24, 2011.

The Commission will still need to consider whether it is in the public interest to grant Virgin Mobile's request in the redefined areas and also consider redefining the Rural Local Exchange Carrier (RLEC) areas that have not previously been redefined.

If the Commission determines it is in the public interest to redefine the service areas of the rural telephone companies that have not been previously redefined, the requesting carrier must file a Petition with the FCC. Pursuant to Section 54.207(c), the Petition shall contain:

- (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's ruling or other reasons for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definitions of a service area served by a rural telephone company.

The Federal-State Joint Board (Joint Board) recommended, in its November 8, 1996, *Recommended Decision*, that the FCC retain the current study areas of rural telephone companies as the service areas for such companies. The Joint Board further expressed the following concerns regarding the redefinition of rural telephone company service areas: (1) minimizing the potential for cream skimming; (2) recognizing that the 1996 Act places rural telephone companies on a different competitive footing from other Local Exchange Carriers (LECs); and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level.

¹⁴ See Petition for Commission Agreement in Redefining Certain Service Areas of Rural Incumbent Telephone Companies in the State of Kansas modifying S&T and Twin Valley exchanges, Released: July 25, 2011, WC Docket No. 09-197.

To address cream skimming concerns, the FCC, in its Virginia Cellular Order¹⁵, conducted a population density analysis to determine whether it is in the public interest to permit the applicant to be designed as an ETC in the redefined service area based upon whether it will be providing service to a mix of high-cost and low-cost customers. That is, the FCC would not find it to be in the public interest to designate that applicant as an ETC in a redefined service area if it would only be able to serve a low-cost wire center. To address the Joint Board's first concern about cream skimming, Staff conducted a similar cream skimming analysis, which will be discussed further in the public interest section.

With regard to considering the rural carrier's status under the Telecommunications Act of 1996, Staff believes that if the Commission determines it is in the public interest to grant this Application, then any concerns regarding a rural carrier's special status should be alleviated. Staff will evaluate the public interest systematically in the public interest section.

Finally, with regard to the Joint Board's third concern, which is to consider the administrative burden an RLEC would confront by calculating its costs on any basis other than its entire study area. Staff refers to an FCC Order regarding RCC Alabama. The FCC stated in the RCC Alabama Order:

Third, we find that redefining the rural telephone company service areas by wire center boundary will not require the rural telephone companies to determine their costs on a basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire incumbent rural telephone company's study area. Our decision to redefine the service areas does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis. Therefore, we find that the concern of the Joint Board that redefining rural service areas would impose additional administrative burdens on rural telephone companies is not at issue here.¹⁶

In addition, this Commission's *Rural* USF Order established three paths from which RLECs could choose to disaggregate federal universal service support and allowed each RLEC to choose its path. Path One allows a RLEC to elect no disaggregation of support, while Path Three allows disaggregation of support to no more than two zones per wire center.¹⁷ The Commission opened Docket No. 02-RTCT-366-MIS to receive RLEC certification plans pursuant to Path One and

¹⁵ See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004, ("Virginia Cellular Order"), FCC Docket No. DA 03-338.

¹⁶ See *In the Matter of Federal State Joint Board on Universal Service: RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Released: November 27, 2002, Para. 41, ("RCC Alabama Order"), FCC Docket No. DA 05-2673.

¹⁷ See *In the Matter of Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, released: May 23, 2001, ("Rural USF Order").

Path Three. Blue Valley, Craw-Kan, CenturyLink, Golden Belt, Haviland, Home, KanOkla, LaHarpe, MoKan, Moundridge, Peoples, S & A, Southern Kansas, Sunflower/Bluestem, Totah, Tri-County, Twin Valley, Wamego, Wheat State, Wilson and Zenda elected Path One, which is no disaggregation of support, however, per the Rural USF Order, “a carrier has the option to change to a different path and alter its existing disaggregation plan if a competitor is granted eligible telecommunications carrier status below the study area level.”¹⁸ Therefore, the aforementioned carriers could elect to disaggregate their support, if they so choose and if the Commission grants such request.

J.B.N. and Madison initially elected Path Three, which disaggregated their universal service support to no more than two zones per wire center. J.B.N.’s and Madison’s support continues to be disaggregated pursuant to its Path Three election.

Staff believes the manner in which a RLEC calculates its costs would not be affected, unless the carrier elects to make such change. Therefore, Staff is not concerned with the Joint Board’s third issue.

Advertising

Eligibility for federal universal service support is addressed by Section 214(e) of the Federal Act. Section 214(e)(1) of the Federal Act states as follows:

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS – A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and (B) *advertise the availability of such services and the charges therefore using media of general distribution* (emphasis added).

Regarding its advertising, Virgin Mobile currently does and will continue to advertise the availability of services supported by the universal service mechanisms throughout its serving area. The methods of advertising used may include newspaper, direct mail, bill inserts, telephone directory advertising and local sign-up events. Virgin Mobile will use the media to advertise its universal service offerings and will comply with any advertising requirements adopted by the Commission or the FCC.

Staff notes that the Commission required CETCs to develop “meaningful language so that consumers will understand what they can expect from an ETC” and provide it to Staff to review within 90 days from the date of the October 2nd Order ¶12. In addition, the Commission determined that all CETCs shall include contact information for the Commission’s Office of

¹⁸ Id at ¶ 153.

Public Affairs and Consumer Protection in its advertisements to make sure that customers know where to turn with questions and complaints.

Staff sent RFI 1 to clarify the advertising verbiage Virgin Mobile intends to use for its wireless customers.

In response to Staff's RFI 1, Virgin Mobile indicated that it "*will include the language identified in all of its advertising in Kansas to ensure its customers are made aware of the contact information for the KCC and the hearing and speech impaired*", as referenced below:

As a designed telecommunications carrier eligible to receive universal service support, Virgin Mobile is proud to offer the Lifeline and Link-Up programs in the state of Kansas. We will provide discounts off service activation and on basic monthly service for residential customers who qualify for income-assisted programs. To determine if you qualify for Kansas Lifeline service, customers may call (888) 898-4888. For unresolved questions or complaints, you may contact the Kansas Corporation Commission, Office of Public Affairs and Consumer Protection, at KCC – Consumer Protection, 1500 SW Arrowhead Road, Topeka, KS 66604 or toll-free 1.800.662.0027 or in Topeka 785.271.3140. Hearing or speech impaired TDD Kansas Relay Center 1.800.766.3777.

Staff is satisfied that Virgin Mobile will meet the advertising requirement.

Public Interest

The FCC, in its Virginia Cellular Order¹⁹, made new findings regarding determination of the public interest. While the FCC's decision is not binding on this Commission, the Commission found in its Alltel and RCC Minnesota Orders²⁰ that examination of the additional factors enumerated in the FCC's Order is reasonable.

In response to Staff's RFI 2, Virgin Mobile provided the following explanation of how it meets the guidelines that the FCC suggested for evaluation in the Virginia Cellular Order:

- **Benefits of Increased Competitive Choice** – *There is no question that designation of Virgin Mobile as an ETC in Kansas will further the public interest by providing Kansas consumers, especially low-income consumers, with lower prices and higher quality services. Many low-income customers in Kansas have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history or intermittent employment, these consumers often lack the countless choices available to most consumers. Designating Virgin Mobile as an ETC in Kansas, therefore, will enable it to expand the availability of affordable telecommunications*

¹⁹See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004, ("Virginia Cellular Order"), FCC Docket No. DA 03-338.

²⁰See *In the Matter of Federal State Joint Board on Universal Service: RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, Released: November 27, 2002, Para. 41, ("RCC Alabama Order"), FCC Docket No. DA 05-2673.

services to qualifying Kansas customers, leading to lower prices and increased choice. Indeed, in its grant of ETC designation to Virgin Mobile, the FCC determined that Virgin Mobile would “offer Lifeline-eligible consumers a choice of providers for accessing telecommunications services not available to such consumers today” and “expand participation of qualifying consumers” in the Lifeline program – a longstanding FCC goal.²¹

Designation of Virgin Mobile as an ETC would also increase the pressure on other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this much ignored consumer segment. Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the Kansas Lifeline market, helping to redefine the wireless experience for many low-income consumers in the state. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor service plans to contain service terms and features appealing to lower-income customers. This competition would represent a significant step towards ensuring that all low-income customers share in the many benefits associated with access to wireless services.

- **Competitive ETC’s Ability to Provide the Support Services Throughout the Designated Service Area Within a Reasonable Time Frame** – *Because Virgin Mobile provides the services over its own facilities in Kansas, the Company can commit to launching Lifeline services shortly after its designation as an ETC by the Commission. In other states where it has been designated as an ETC, Virgin Mobile usually commences Lifeline services within several weeks of its designation.*
- **Impact of Multiple Designations on the Universal Service Fund** – *Virgin Mobile’s designation as an ETC solely for Lifeline purposes would not unduly burden the USF or otherwise reduce the amount of funding available to other carriers. The secondary role of Lifeline support with respect to overall USF expenditures is well documented. According to the most recent monitoring report released by the Federal-State Joint Board on Universal Service, Lifeline funding represented approximately 10% of total USF expenditures in 2008.²² The FCC, itself, concluded that designation of Virgin Mobile as an ETC would result only in a “minimal” increase in USF funding.²³*

The nature by which Lifeline support is provided to wireless carriers also obviates any concerns that multiple ETC designations in Kansas would have a negative impact on the USF. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, moreover, the Lifeline program ensures that USF support only funds the carrier that actually

²¹ See Federal-State Joint Board on Universal Service; *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order at ¶¶ 21, 30, FCC 09-18 (rel. March 5, 2009) (“FCC ETC Designation Order”).

²² See *Universal Service Monitoring Report*, CC Docket 98-202, Table 2.2 (filed Jan. 13, 2010).

²³ See FCC ETC Designation Order at ¶ 24.

"wins" the customer's service. This program feature eliminates the potential for duplicative funding, a problem that has plagued the high-cost system.

- **Unique Advantages and Disadvantages of the Competitor's Service Offering –** *Unlike many other wireless service offers available in the market today, the Lifeline services provided by Virgin Mobile will contain many features specifically designated for low-income customers. In addition to offering 250 minutes of free voice services, prepaid Lifeline customers will have access to a variety of other standard features at no additional charge, including voice mail, caller ID, and call waiting services.²⁴ Virgin Mobile's Lifeline service plan also does not assess charges for activation or connection of the service. In addition, Virgin Mobile does not pass through applicable taxes or other governmental fees to Lifeline customers. Lifeline customers also are not required to make a cash deposit to begin or continue to receive service from Virgin Mobile. As discussed in the Company's petition, Lifeline-eligible customers will receive a free handset from Virgin Mobile once they are approved for service in Kansas. Based on these factors, Lifeline-eligible customers in Kansas will not incur any upfront costs, charges or other fees for access to the Company's Lifeline services. With these considerations in mind, Virgin Mobile submits that its Lifeline service plan is superior to nearly every other wireless plan available to customers.*
- **Commitments Made Regarding High-quality Telecommunications Services by Company –** *Virgin Mobile's Lifeline customers will receive the same high-quality wireless services provided to all Company customers. Virgin Mobile has emphasized customer service as an essential pillar for its marketplace success since service launch. This intense focus on customer service has been rewarded and customers have responded accordingly. Over 75 percent of Virgin Mobile's customers indicate that they would recommend the service to a friend. As evidence of its commitment to high-quality service, Virgin Mobile has complied with the CTIA-The Wireless Association® Consumer Code for Wireless Service ("Customer Code") since its inception and will continue to comply with the Consumer Code once designated as an ETC. Virgin Mobile annually certifies its compliance with the Customer Code, and both the Commission and the FCC have recognized the value of such compliance.²⁵*

In addition to Virgin Mobile's responses, the Company also stated in response to Staff's RFI 7.1 that:

The company expects to enroll approximately 10% of the nearly 250,000 Kansas residents who are eligible for Lifeline support. Assuming that the Company receives \$10/customer in monthly FUSF support, Virgin Mobile preliminary projections and/or forecasting have indicated that it will receive approximately \$3 million in annual FUSF support.

²⁴ At the time the Application was filed, Virgin Mobile Assurance Wireless' offered only one plan with 200 minutes per month. Since that time, Virgin Mobile has changed its service offerings to include more minutes and plans for customers to choose from.

²⁵ See *Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1576-77, wherein the FCC endorsed the Consumer Code by considering adherence to the Consumer Code as a factor in the demonstration of a wireless carrier's qualifications to be an eligible telecommunications carrier.

In response to Staff's RFI 3.2, Virgin Mobile stated that as part of the enrollment process, Virgin Mobile tracks Applicants' primary residential addresses and cross checks this information against internal databases to confirm that a Virgin Mobile Lifeline account has not already been activated for that address or individual. If a name or address submitted by a Lifeline applicant is associated with a customer who already receives Virgin Mobile's Lifeline service, or if the address provided is not a valid U.S. postal address, Virgin Mobile will review the Application to ascertain whether the customer is attempting to activate multiple Virgin Mobile Lifeline accounts and, if so, deny the Application. Virgin Mobile also requires applicants to certify under penalty of perjury that they are head of their household and receive Lifeline supported service only from Virgin Mobile.

No public interest evaluation is *required* for the AT&T Kansas wire centers. Nevertheless, the Commission determined in its ALLTEL Order in Docket No. 04-ALKT-283-ETC that:

In prior cases, the Commission has interpreted the use of the word '*shall*' as leaving the Commission no discretion in designating an ETC in non-rural areas if all supported services were offered and advertised throughout the service area. However, AT&T Kansas suggests that the FCC has modified its interpretation of this language. In the Virginia Cellular proceeding, the FCC stated:

[T]he Bureau previously has found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. [*citing In the Matter of Federal-State Joint Board on Universal Service Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia, CC Docket No. 96-45, Memorandum Opinion and Order (January 22, 2004, ¶27).*]

Further, the FCC concluded that because Virginia Cellular had met the more rigorous public interest analysis for the rural study areas, it had also shown its commitment satisfies the public interest requirements for non-rural areas. Below, the Commission addresses the public interest analysis regarding ALLTEL's designation as an ETC in rural areas. As will be detailed below, the Commission finds it is in the public interest to designate ALLTEL as an additional ETC in rural service areas so long as ALLTEL agrees to the additional requirements imposed by this Order. Thus, the Commission finds that ALLTEL has met all the requirements set out in the Federal Act to be designated as an ETC and it is in the public interest to designate ALLTEL as an ETC in the non-rural service areas, as delineated by this Commission, so long as ALLTEL agrees to the additional requirements imposed by this Order.²⁶

²⁶ See *In the Matter of the Application of ALLTEL Kansas Limited Partnership for Designation as an Eligible Telecommunications Carrier Pursuant to Section 47 U.S.C. § 214(e)(2) of the Communications Act of 1934*, Docket No. 04-ALKT-283-ETC, September 24, 2004, Order, ¶28 ("ALLTEL Order").

The Commission determined in its October 2nd Order that an ETC Applicant shall demonstrate that it has sufficient back-up power to remain functional without external power in emergency situations, is able to reroute traffic around damaged facilities, and can manage emergency traffic spikes. In Virgin Mobile's Application, the Company, as a wholly-owned subsidiary of Sprint Nextel, has a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. These programs and teams ensure timely and effective deployment of products and services to allow the public and private sectors to function in emergency situations. This is accomplished with the network being monitored 24 hours a day, 7 days a week, and 365 days a year. In addition, the Company has back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and to manage traffic spikes resulting from emergency situations. Each cell site is equipped with battery back-up power. In addition, many cell sites in the network provide overlapping coverage, and such design redundancy ensures that coverage continues in the event of damage to a particular facility. In the event of a major cell site failure, other cell sites could be adjusted to provide coverage to a wider service area. These practices significantly reduce the chance that emergencies, fiber cuts or equipment failure will result in a loss of service.

Also, in the October 2nd Order, the Commission requires all competitive ETCs to file two-year Service Quality Improvement Plans demonstrating progress, including maps and, if targets were not met, an explanation of why on an annual basis beginning in August 2007. Because Virgin Mobile seeks ETC designation solely for the purpose of reimbursement for the provision of subsidized Lifeline and Link-Up services, Virgin Mobile, in its Application, requests a waiver of this requirement. Staff does not have any concerns with Virgin Mobile's request to not file the two-year Service Quality Improvement Plans since Virgin Mobile is requesting low-income support only.

Virgin Mobile's customers receive an Assurance Wireless phone with 250 free minutes initially and they can buy additional voice minutes as needed. It is a pay-as-you-go service; as a result, Virgin Mobile does not charge monthly rates or fees or send its customers monthly invoices. Virgin Mobile's business model is an innovative prepaid plan without contracts and is advertised as a convenient approach to provide universal service to low-income consumers.

Customers may elect to purchase 250 additional minutes for \$5.00 or 750 additional minutes for \$20 per month. Virgin Mobile's optional higher usage offerings will provide Kansas Lifeline customers other voice minute options that will allow Kansas Lifeline customers to further tailor their usage plan to meet their telecommunications needs.

Nevertheless, while Virgin Mobile's business is rather appealing in many aspects, it could also prove challenging in ensuring low-income support is administered appropriately. The lack of a monthly charge and associated bill for Virgin Mobile's service, while convenient for customers and the Company, creates a potential problem if a customer loses or abandons a Virgin Mobile phone without notifying Virgin Mobile. With no monthly bill, service would not be terminated for non-payment as would happen with more traditional telephone business models and payment structures. This could result in continuing Lifeline reimbursements being paid to Virgin Mobile while there is not actually a customer receiving the benefit of the low-income support.

In regard to the aforementioned situation, Staff sent RFI 9 and RFI 12.1 to Virgin Mobile to ensure Lifeline credits will not be paid to “inactive” customers. As in other states such as Wisconsin, Ohio, Nevada, Washington, and Florida, Staff requested Virgin Mobile to adopt a comparable plan to assist in ensuring that Lifeline support is not supporting handsets that are no longer active; thus preventing waste of an already stretched fund.

In response to Staff’s RFI 9, Virgin Mobile stated if a customer does not make a voice call or send a text message at least once during any 90-day period, Assurance Wireless will notify the customer that the customer is no longer eligible for Assurance Wireless service. However, Staff had concerns with Virgin Mobile’s response to RFI 9, because Virgin Mobile’s plan deviated from what numerous other states, previously mentioned, have adopted as a 60-day standard for inactivity. Therefore, Staff sent a follow-up RFI 12.1 asking Virgin Mobile if it is willing to comply with the 60-day standard.

In response to Staff’s RFI 12.1, Virgin Mobile stated that the Company will comply with the 60-day standard for inactivity.²⁷ Virgin Mobile further stated that if a customer does not make a voice call or send a text message, Assurance Wireless will notify the customer that the customer is no longer eligible for Assurance Wireless services. The customer must make a voice call or send a text message at least once during the 30-day period following such notification in order to have eligibility restored. At the end of the applicable 30-day period following notification of ineligibility, if the customer has not utilized the service, the customer will no longer receive a monthly allocation of free minutes and Assurance Wireless will no longer report the customer on USAC Form 497.

After reviewing Virgin Mobile’s Application and its responses to Staff RFI’s, Staff believes that Virgin Mobile has demonstrated that it is in the public interest to designate it as an ETC in the requested exchanges served by AT&T Kansas, and the entire study areas served by LaHarpe, MoKan, Moundridge, Peoples, S & A, CenturyLink, Wheat State, Wamego, and Zenda.

As discussed earlier, the Commission has previously redefined the study areas of CenturyLink-Eastern, CenturyLink-United, Haviland, Golden Belt, Home, Tri-County, Twin Valley, Sunflower/Bluestem, and Wheat State, however, the Commission will still need to review the Application with respect to those areas to determine whether it is in the public interest to approve such request. Staff’s public interest analysis with regard to each rural carrier’s service area is discussed below.

In addition, as discussed previously, Staff conducted a population density analysis to consider the Joint Board’s first concern about redefining below the study area level, and also to determine whether it is in the public interest to permit the Applicant to be designated an ETC in the redefined service area. The analysis is based upon whether the carrier will be providing service to a mix of high-cost and low-cost customers, whether the LEC could be harmed by such redefinition, and whether it is in the overall public interest to do so. Similar to the FCC’s

²⁷ Virgin Mobile filed an Ex Parte under FCC WC Docket No. 09-197 on December 14, 2010, reaffirming its commitment to the 60-day inactivity policy in all states where it provides Lifeline Services.

population density analysis in the Virginia Cellular Order²⁸, Staff does not find it to be in the public interest to redefine a service area if the Applicant is requesting to serve only low-cost wire centers.

CenturyLink

As mentioned before, CenturyLink is a rural telephone company for federal support purposes and a non-rural telephone company for state support purposes. CenturyLink has three separate study areas in Kansas: Eastern, Southeast, and United. Virgin Mobile is requesting ETC designation for exchanges within all three study areas. As Staff previously mentioned, Virgin Mobile requests ETC designation throughout the entire study area for Embarq Missouri d/ba/ CenturyLink.

Virgin Mobile requests ETC designation in the following exchanges in the CenturyLink-Eastern study area: Alta Vista, Arlington, Belle Plaine, Blue Mound, Bucyrus, Buffalo, Centropolis, Circleville, Conway, Cunningham, Delia, Denison, Easton, Edgerton, Emmett, Fontana, Gardner, Harveyville, Hesston, Hoyt, Inman, Lancaster, Lane, Lebo, Linwood, Mapleton, Mayetta, McLouth, Meriden, Michigan Valley, Mound City, Murdock, Neosho Falls, Nortonville, Osage City, Overbrook, Oxford, Ozawkie, Perry, Piqua, Preston, Pretty Prairie, Princeton, Richmond, Rossville, Silver Lake, Spring Hill, St. Mary's, Thayer, Walton, Wellsville, Winchester, and Windom. The Commission previously redefined the CenturyLink-Eastern service area to the wire center level in Docket No. 04-HBCT-1107-ETC, and the FCC concurred with this Commission's decision on March 7, 2005 (by taking no action on the matter).

Virgin Mobile requests ETC designation for the following exchanges in the CenturyLink-United study area: Alma, Altamont, Baldwin City, Buhler, Burlingame, Burrton, Eskridge, Haven, Holton, Junction City, Kincaid, Lyndon, Melvern, Moran, Morrill, Mound Valley, Osawatimie, Oskaloosa, Oswego, Pomona, Quenemo, Troy, Valley Falls, Wathena, Waverly, and White Cloud. The Commission previously redefined the CenturyLink-United service area to the wire center in Docket No. 04-RCCT-338-ETC, and the FCC concurred with this Commission's decision on May 23, 2005 (by taking no action on the matter).

Even though CenturyLink's United and Eastern study areas have previously been redefined in Docket Nos. 04-RCCT-338-ETC and 04-HBCT-1107-ETC, respectively, and the FCC concurred with this Commission's decision on May 23, 2005, and March 7, 2005, respectively (by taking no action on the matter), the Commission will still need to determine whether it is in the public interest to approve such request. Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire centers.

The average population density per square mile for the CenturyLink-Eastern study area wire centers that Virgin Mobile proposes to serve is 28.57, compared to 24.31 for the wire centers that

²⁸ See *In the Matter of Federal State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Released: January 22, 2004, ("Virginia Cellular Order"), FCC Docket No. DA 03-338.

Virgin Mobile is not proposing to serve. The average population density per square mile for the entire CenturyLink-Eastern study area is 27.17. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers and is planning on offering this service in some of the lowest density wire centers in the CenturyLink study area. Second, the Commission has already redefined the CenturyLink-Eastern service area to the wire center and determined that it is in the public interest for H&B Cable, USCOC of Nebraska/Kansas, Nex-Tech Wireless, WestLink Communications, Lifeconnex Telecom and Wildflower Telecommunications to provide service in portions of the CenturyLink-Eastern service areas. Third, all three of the CenturyLink service areas are already at the wire center level for KUSF purposes, and Staff does not believe this has placed CenturyLink at an undue disadvantage. Therefore, Staff believes it is improbable that allowing Virgin Mobile to provide service below the study area level will place CenturyLink at an unfair disadvantage in this instance.

The average population density per square mile for the CenturyLink-United study area wire centers that Virgin Mobile proposes to serve is 34.27, compared to 25.93 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire CenturyLink-United study area is 31.79. Although the wire centers Virgin Mobile proposes to serve has a higher population density than the area it does not propose to serve, Staff is not concerned for the following reasons. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers and is planning on offering this service in some of the lowest density wire centers in the CenturyLink-United study area. The Commission and the FCC have already redefined the CenturyLink-United service area to the wire center and determined that it is in the public interest for H&B Cable Service, USCOC of Nebraska/Kansas, Wildflower Telecommunications, Nex-Tech Wireless, WestLink Communication, Tennessee Telephone Services, dPi Teleconnect and Lifeconnex Telecom to provide service in portions of the CenturyLink-United service area. Lastly, all three of CenturyLink service areas are already at the wire center level for KUSF purposes, and Staff does not believe either has placed CenturyLink at an undue disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to approve Virgin Mobile's request to be designated an ETC in the requested wire centers in the CenturyLink-United and CenturyLink-Eastern study areas.

Sunflower/Bluestem

Sunflower and Bluestem Telephone Company, Inc. ("Bluestem") are wholly-owned by the parent company of FairPoint Communications, Inc. d/b/a FairPoint Communications, therefore, the Sunflower study area also includes the wire centers served by Bluestem. Virgin Mobile is requesting ETC designation in the following exchange: Saffordville.

Even though the Sunflower/Bluestem study area has previously been redefined in Docket No. 04-RCCT-388-ETC, and the FCC concurred with this Commission's decision on May 23, 2005

(by taking no action on the matter), the Commission will still need to determine whether it is in the public interest to approve such request.

Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire center. The average population density per square mile for the Sunflower/Bluestem wire center that Virgin Mobile proposes to serve is 4.57, compared to 4.37 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Sunflower/Bluestem study area is 4.39. Although the area that Virgin Mobile proposes to serve has a slightly higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Sunflower/Bluestem at an undue disadvantage. The Commission has already redefined the Sunflower/Bluestem service area to the wire center and determined it is in the public interest for United Wireless, Nex-Tech Wireless and WestLink Communications to provide service in portions of the Sunflower/Bluestem service area, and Staff does not believe this has placed Sunflower/Bluestem at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Blue Valley Telephone Company

Virgin Mobile is requesting ETC designation in the following Blue Valley exchange: Summerfield. The Blue Valley service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were previously discussed.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested Blue Valley wire center. The average population density per square mile for the Blue Valley exchange that Virgin Mobile proposes to serve is 19.64, compared to 14.72 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Blue Valley study area is 15.13. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Blue Valley at an undue disadvantage. The Commission has already determined it is in the public interest for Alltel Kansas, LP and USCOC of Nebraska/Kansas to provide service in portions of the Blue Valley service area, and Staff does not believe this has placed Blue Valley at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Blue Valley exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Blue Valley service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Blue Valley exchange.

Craw-Kan Telephone Cooperative.

Virgin Mobile is requesting ETC designation in the following Craw-Kan exchanges: Colony, Farlington, Galesburg, Hallowell, Mulberry, Pleasanton and Uniontown. The Craw-Kan service areas have not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were previously discussed.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested Craw-Kan wire centers. The average population density per square mile for the Craw-Kan exchanges that Virgin Mobile proposes to serve is 23.53, compared to 25.28 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Craw-Kan study area is 24.87. Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Moreover, Staff does not have any cream skimming concerns with regard to the Craw-Kan service area, as Virgin Mobile is not proposing to serve only highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Virgin Mobile to provide service below the study area level will place Craw-Kan at an unfair disadvantage.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Craw-Kan exchanges. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Craw-Kan service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Craw-Kan exchanges. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Golden Belt

Virgin Mobile is requesting ETC designation in the following Golden Belt exchange: Lewis. The Golden Belt service area has been requested for redefinition in Docket No. 09-NECZ-747-ETC. As previously mentioned, on July 22, 2011, NE Colorado Cellular d/b/a Viaero Wireless (Viaero) filed a Petition with the FCC requesting redefinition to the wire center for the aforementioned service areas approved by the Kansas Corporation Commission (KCC).²⁹ Unless other action is taken, the Petition will be approved in 90 days or October 24, 2011. However, the

²⁹ See Petition for Commission Agreement in Redefining Certain Service Areas of Rural Incumbent Telephone Companies in the State of Kansas modifying S&T and Twin Valley exchanges, Released: July 25, 2011, WC Docket No. 09-197.

Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested Golden Belt wire center. The average population density per square mile for the Golden Belt exchange that Virgin Mobile proposes to serve is 6.09, compared to 6.10 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Golden Belt study area is 6.10. Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Moreover, Staff does not have any cream skimming concerns with regard to the Golden Belt service area, as Staff believes that it is unlikely that allowing Virgin Mobile to provide service below the study area level will place Golden Belt at an unfair disadvantage.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Golden Belt exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Golden Belt service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Golden Belt exchange. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Home

Virgin Mobile is requesting ETC designation in the following Home exchanges: Assaria and Galva.

Even though the Home study area has previously been redefined in Docket No. 08-NTWZ-1076-ETC, and the FCC concurred with this Commission's decision on March 16, 2009 (by taking no action on the matter), the Commission will still need to determine whether it is in the public interest to approve such request.

Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire centers. The average population density per square mile for the Home exchanges that Virgin Mobile proposes to serve is 22.67, compared to 17.34 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Home study area is 19.47. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Home at an undue disadvantage. The Commission has already determined it is in the public interest for Alltel Kansas, LP, USCOC of Nebraska/Kansas, Big River Telephone, Nex-Tech Wireless and WestLink Communications to provide service in portions of the Home service area, and Staff does not believe this has placed

Home at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Haviland

Virgin Mobile is requesting ETC designation in the following Haviland exchange: Conway Springs.

Even though the Haviland study area has previously been redefined in Docket No. 04-RCCT-388-ETC, and the FCC concurred with this Commission's decision on May 23, 2005 (by taking no action on the matter), the Commission will still need to determine whether it is in the public interest to approve such request.

Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire center. The average population density per square mile for the Haviland exchange that Virgin Mobile proposes to serve is 21.09, compared to 7.66 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Haviland study area is 8.78. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Haviland at an undue disadvantage. The Commission has already redefined the Haviland service area to the wire center and determined it is in the public interest for Cellular Network Partnership d/b/a Pioneer Cellular and WestLink Communications to provide service in portions of the Haviland service area, and Staff does not believe this has placed Haviland at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

J.B.N.

Virgin Mobile is requesting ETC designation in the following J.B.N exchanges: Agenda, Cuba, Havensville, and Soldier. The J.B.N service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested J.B.N wire centers. The average population density per square mile for the J.B.N. exchanges that Virgin Mobile proposes to serve is 15.55, compared to 10.86 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire J.B.N. study area is 12.11. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer

only Lifeline service to low-income consumers. Staff does not have any cream skimming concerns with regard to the J.B.N. service area, as Virgin Mobile is not proposing to serve only highest-density, lowest-cost wire centers, and Staff believes that it is unlikely that allowing Virgin Mobile to provide service below the study area level will place J.B.N. at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested J.B.N. exchanges. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the J.B.N. service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested J.B.N. exchanges.

KanOkla

Virgin Mobile is requesting ETC designation in the following KanOkla exchange: Mayfield. The KanOkla service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested KanOkla wire center. The average population density per square mile for the KanOkla exchange that Virgin Mobile proposes to serve is 10.79, compared to 9.84 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire KanOkla study area is 9.94. Although the area that Virgin Mobile proposes to serve has a slightly higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place KanOkla at an undue disadvantage. The Commission has already determined it is in the public interest for Cellular Network Partnership d/b/a Pioneer Cellular to provide service in the entire KanOkla service area, and Staff does not believe this has placed KanOkla at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested KanOkla exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the KanOkla service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested KanOkla exchange.

Madison

Virgin Mobile is requesting ETC designation in the following Madison exchange: Madison. The Madison service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire center. The average population density per square mile for the exchange that Virgin Mobile proposes to serve is 11.78, compared to 5.87 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Madison study area is 8.83. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Madison at an undue disadvantage. The Commission has already determined it is in the public interest for USCOC Nebraska/Kansas and Alltel Kansas to provide service in the entire Madison service area, and Staff does not believe this has placed Madison at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Madison exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Madison service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Madison exchange.

Southern Kansas

Virgin Mobile is requesting ETC designation in the following Southern Kansas exchange: Clearwater and Elk Falls. The Southern Kansas service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire centers. The average population density per square mile for the exchanges that Virgin Mobile proposes to serve is 40.54, compared to 9.60 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Southern Kansas study area is 14.23. Although the area that Virgin Mobile proposes to serve has a higher population density per square mile than the area it is not proposing to serve, Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Southern Kansas at an undue disadvantage. The

Commission has already determined it is in the public interest for Cellular Network Partnership d/b/a Pioneer Cellular to provide service in the entire Southern Kansas service area, and Staff does not believe this has placed Southern Kansas at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Southern Kansas exchanges. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Southern Kansas service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Southern Kansas exchange.

Tri-County

Virgin Mobile is requesting ETC designation in the following Tri-County exchange: White City. The Tri-County service area has been requested for redefinition in Docket No. 09-NECZ-747-ETC. As previously mentioned, on July 22, 2011, NE Colorado Cellular d/b/a Viaero Wireless (Viaero) filed a Petition with the FCC requesting redefinition to the wire center for the aforementioned service areas approved by the Kansas Corporation Commission (KCC).³⁰ Unless other action is taken, the Petition will be approved in 90 days or October 24, 2011. Therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire center. The average population density per square mile for the exchange that Virgin Mobile proposes to serve is 8.43, compared to 12.58 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Tri-County study area is 12.26. Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Tri-County at an undue disadvantage. The Commission has already determined it is in the public interest for USCOC of Nebraska/Kansas, Alltel Kansas and Big River Telephone Company to provide service in portions of the Tri-County service area, and Staff does not believe this has placed Tri-County on at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Tri-County exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Tri-County service area to the exchange level.

³⁰ See Petition for Commission Agreement in Redefining Certain Service Areas of Rural Incumbent Telephone Companies in the State of Kansas modifying S&T and Twin Valley exchanges, Released: July 25, 2011, WC Docket No. 09-197.

Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Tri-County exchange.

Totalh

Virgin Mobile is requesting ETC designation in the following Totalh exchange: Elgin. The Totalh service area has not previously been redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine if cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested wire center. The average population density per square mile for the exchange that Virgin Mobile proposes to serve is 7.12, compared to 15.13 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Totalh study area is 13.80. Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area will place Totalh at an undue disadvantage. The Commission has already determined it is in the public interest for Alltel Kansas to provide service in the entire Totalh service area, and Staff does not believe this has placed Totalh at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Totalh exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Totalh service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Totalh exchange.

Twin Valley

Virgin Mobile is requesting ETC designation in the following Twin Valley exchanges: Bennington, Beverly, Clyde, and Leonardville. The Twin Valley service area has been requested for redefinition in Docket No. 09-NECZ-747-ETC. As previously mentioned, on July 22, 2011, NE Colorado Cellular d/b/a Viaero Wireless (Viaero) filed a Petition with the FCC requesting redefinition to the wire center for the aforementioned service areas approved by the Kansas Corporation Commission (KCC).³¹ Unless other action is taken, the Petition will be approved in 90 days or October 24, 2011. Therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering

³¹ See Petition for Commission Agreement in Redefining Certain Service Areas of Rural Incumbent Telephone Companies in the State of Kansas modifying S&T and Twin Valley exchanges, Released: July 25, 2011, WC Docket No. 09-197.

whether it is in the public interest to designate Virgin Mobile as an ETC in the requested exchanges. The average population density per square mile for the exchanges that Virgin Mobile proposes to serve is 17.72, compared to 13.93 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Twin Valley study area is 14.69. Although the population density per square mile of the area Virgin Mobile proposes to serve is slightly higher than the area it is not proposing to serve, Staff does not have cream skimming concerns. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Virgin Mobile is not proposing the highest-density, lowest-cost exchanges; instead, Virgin Mobile will be providing service to a mix of high-cost and low-cost customers. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area level will place Twin Valley at an unfair disadvantage. The Commission has already determined it is in the public interest for USCOC Nebraska/Kansas, Big River Telephone Company and Alltel Kansas to provide service in portions of the Twin Valley service areas, and Staff does not believe this has placed Twin Valley at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Twin Valley exchanges. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Twin Valley service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Twin Valley exchanges.

Wilson

Virgin Mobile is requesting ETC designation in the following Wilson exchange: Denmark. The Wilson service area has not been previously redefined, therefore, the Commission will need to evaluate the three concerns identified by the Federal-State Joint Board. The Joint Board's second and third concerns were discussed previously.

With regard to the Joint Board's concern about cream skimming, Staff conducted a population density analysis in order to determine whether cream skimming is an issue when considering whether it is in the public interest to designate Virgin Mobile as an ETC in the requested exchange. The average population density per square mile for the exchange that Virgin Mobile proposes to serve is 2.62, compared to 6.33 for the wire centers that Virgin Mobile is not proposing to serve. The average population density per square mile for the entire Wilson study area is 5.80. Staff is not concerned about cream skimming in this instance. Foremost, Virgin Mobile is proposing to offer only Lifeline service to low-income consumers. Virgin Mobile is not proposing the highest-density, lowest-cost exchange. Staff believes it is unlikely that allowing Virgin Mobile to provide service below the study area level will place Wilson at an unfair disadvantage. The Commission has already determined it is in the public interest for USCOC Nebraska/Kansas, NexTech Wireless and Alltel Kansas to provide service in portions of the Wilson service areas, and Staff does not believe this has placed Wilson at an unfair disadvantage. Moreover, Staff does not believe cream skimming is an issue since Virgin Mobile is not requesting high-cost support, only Lifeline support which is the same regardless of whether the customer resides in a high-density area or a low-density area.

Staff believes it is in the public interest to grant Virgin Mobile's request to be designated an ETC in the requested Wilson exchange. Staff further recommends the Commission approve Virgin Mobile's request for redefinition of the Wilson service area to the exchange level. Staff notes Virgin Mobile will need to file a Petition with and receive concurrence from the FCC prior to receiving any FUSF low-income support for the requested Wilson exchange.

RECOMMENDATION:

Staff recommends approval of Virgin Mobile's request for designation as an ETC for FUSF low-income purposes in the following AT&T exchanges: Abilene, Andale, Arkansas City, Atchison, Belleville, Burns, Canton, Chanute, Chapman, Cheney, Chetopa, Concordia, Cottonwood Falls, Desoto, Douglas, El Dorado, Emporia, Erie, Eudora, Eureka, Fort Scott, Garden Plain, Greensburg, Gypsum, Halstead, Hartford, Humboldt, Hutchinson, Iola, Kansas City metro exchanges, Kingman, Kinsley, Lawrence, Leavenworth, Leon, Lindsborg, Manhattan, Marquette, McPherson, Minneapolis, Mount Hope, Newton, Nickerson, Ottawa, Paola, Parsons, Pittsburg, Pratt, Salina, Scandia, Seneca, Solomon, St. Paul, Topeka and Wichita metro exchanges.

Staff further recommends approval of Virgin Mobile's request for ETC designation for FUSF low-income purposes in the LaHarpe, MoKan, Moundridge, Peoples, S&A, Embark-Missouri d/b/a CenturyLink, Wheat State, Wamego and Zenda's entire study area.

Staff recommends approval of Virgin Mobile's request for redefinition of the service areas to the exchange level for the following LECs: Blue Valley, Craw-Kan, J.B.N., KanOkla, Madison, Southern Kansas, Totah, and Wilson for ETC designation for the purpose of FUSF low-income support. Staff notes that should the Commission approve the request for redefinition of the aforementioned rural service areas to the exchange level, Virgin Mobile will need to seek and receive concurrence from the FCC prior to receiving any FUSF low-income support for such areas.

Staff further recommends approval of Virgin Mobile's request to be designated an ETC in specific exchanges in the already redefined service areas of Golden Belt, Home, Haviland, Tri-County and Twin Valley.³²

Virgin Mobile should be advised that support received must be used for its intended purpose each year and the company must comply with other certification requirements developed by the Commission in Docket No. 05-GIMT-112-GIT and in any future proceedings. Additionally, Virgin Mobile should be reminded that any future decisions made by the Commission resulting from the October 2nd Order, and any future decisions made by the Commission regarding additional ETC requirements, may impact the Company and the Company may be required to follow these to continue to receive support.

³² Viaero filed its Petition with the FCC to redefine the service areas of Golden Belt, Tri-County and Twin Valley rural telephone companies on July 22, 2011. If Viaero's petition receives FCC approval, then redefinition of these service areas by Virgin Mobile becomes unnecessary.

Staff further recommends when utilizing its own facilities, Virgin Mobile will be eligible to receive Lifeline support. For those lines served through resale arrangements, Virgin Mobile will not be eligible to receive support.

Staff also recommends that the Commission conditionally approve Virgin Mobile's Motion for Waiver of the Lifeline Calling Plan Rule. Staff recommends the Commission require Virgin Mobile to provide the Commission with quarterly reports containing the number of complaints and inquiries it receives from Lifeline customers requesting the ability to subscribe to one of Virgin Mobile's non-Lifeline calling plans in Kansas. Staff suggests the Commission reevaluate the Waiver Petition in one year, after reviewing the filed reports.

Lastly, Staff recommends the Commission require Virgin Mobile to adhere to its 60-day plan to ensure that Lifeline support is not paid to Virgin Mobile for customers that are no longer using their Virgin Mobile Wireless device and not receiving the benefit of the Lifeline support.

CERTIFICATE OF SERVICE

10-VMBZ-657-ETC

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing of Staff Report and Recommendation was placed in the United States mail, postage prepaid, or hand-delivered this 9th day of September, 2011, to the following:

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