

**BEFORE THE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

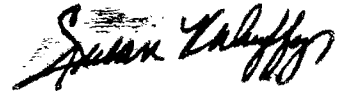
FEB 11 2011

In the Matter of)

Virgin Mobile USA, L.P.)

Petition for Limited Designation as an)
Eligible Telecommunications Carrier)
_____)

Docket No. 10-VMBZ-657-ETC



MOTION FOR WAIVER

COMES NOW Virgin Mobile USA, L.P. (“Virgin Mobile” or the “Company”), pursuant to KAN. ADMIN. REG. § 82-1-202, and moves this Commission to the extent necessary for an order waiving certain requirements related to the Company’s pending request for limited designation as an eligible telecommunications carrier (“ETC”) in the State of Kansas (“Petition”), which it filed with the Corporation Commission of the State of Kansas (“Commission”) on April 12, 2010. Virgin Mobile respectfully requests that the Commission swiftly grant the instant Motion and the pending ETC designation request to enable the Company to commence much needed Lifeline services to lower-income Kansas residents as soon as possible.

I. DISCUSSION

1. Virgin Mobile is seeking ETC designation in Kansas for the sole purpose of participating in the federal Universal Service Fund’s (“USF”) Lifeline program as a prepaid wireless carrier under the brand “Assurance Wireless Brought To You By Virgin Mobile.” Through the Assurance Wireless offering, Virgin Mobile currently provides Lifeline customers with three options for service. Under the basic plan, Assurance Wireless customers receive 250

anytime prepaid minutes per month at no charge with additional service priced at \$0.10/minute and \$0.10/text message. Virgin Mobile has also recently implemented additional plans to allow Assurance Wireless Lifeline customers, entirely at their option, to obtain additional minutes and services at discounted rates.¹ Under the first new plan, Lifeline customers can add \$5 to their account to purchase an additional 250 monthly minutes, providing them with a total of 500 voice minutes in a month (250 free minutes plus 250 additional minutes). Under the second plan, Lifeline customers can add \$20 to their account to purchase an additional 750 voice minutes, providing them with a total of 1,000 voice minutes (250 free minutes plus 750 additional minutes). Customers choosing this second option will also receive 1,000 monthly text messages. There is no obligation that customers purchase these additional offerings or add money to their accounts, and all eligible customers will continue to receive 250 free monthly minutes.

2. In addition to providing a set amount of monthly minutes free of charge, the Assurance Wireless Lifeline service plans include all applicable taxes and fees and do not assess additional charges for activation or connection of the service. As a result, customers choosing the \$5 or \$20 plans will pay only \$5 or \$20 per month with no additional charges for taxes or activation, and customers opting for the 250-minute plan will receive free service with no additional charges for taxes or activation.² The Assurance Wireless Lifeline service will also include voicemail, caller I.D. and call waiting services free of charge. As the Commission is well aware, these features have become essential services in today's telecommunications marketplace, including for lower-income customers. These features often are not included in

¹ A description of these service offerings is available on the Assurance Wireless website: <http://www.assurancewireless.com/Public/MorePrograms.aspx>.

² Customers may incur state sales tax and fees at the point of purchase should the customer choose to top-up their account.

other ETC's Lifeline plans, subjecting lower-income customers to additional charges—charges not subject to the Lifeline discount. Finally, Assurance Wireless Lifeline customers will receive a wireless handset free of charge upon service activation. This handset is sold separately by Virgin Mobile to its non-Lifeline customers for \$9.99 and marketed as the Kyocera Jax.

3. In Docket No. 06-GIMT-446-GIT ("446 Docket"), the Commission adopted various requirements for designation of ETCs in Kansas.³ Among the requirements adopted by the Commission was a prohibition against requiring Lifeline customers to select the lowest-cost plan offered by the ETC. As the Commission noted, "limiting Lifeline customers to the lowest-cost plan that an ETC has available is contrary to the goals for universal service."⁴ The Commission clarified the requirement in a subsequent Order Addressing Petitions for Reconsideration in the 446 Docket wherein it asserted that "it is [in] the public interest to ensure that Lifeline customers are not limited to one plan."⁵ Finally, in defending the requirement before the Federal Communications Commission ("FCC"), the Commission provided its reasoning in adopting the requirement by noting that "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."⁶

³ See *In re: General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, Order Adopting Requirements for Designation of Eligible Telecommunications Carriers, Docket No. 06-GIMT-446-GIT (Oct. 10, 2006) ("446 Docket Order").

⁴ See *id.* at ¶ 66.

⁵ See *In re: General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers*, Order Addressing Petitions for Reconsideration, Docket No. 06-GIMT-446-GIT at ¶ 47 (Nov. 20, 2006).

⁶ See *In the Matter of Sprint Spectrum, L.P. Petition for Declaratory Ruling*, WC Docket No. 07-138, Comments of the Corporation Commission of the State of Kansas at p.7-8 (filed August 9, 2007).

4. Virgin Mobile is committed to offering its Lifeline customers a range of service options consistent with the 446 Docket. To ensure that Lifeline customers have a variety of service plans, Assurance Wireless currently offers three service plans from which to select. In contrast to the concerns raised in the 446 Docket, 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.

5. With this background in mind, Virgin Mobile respectfully submits that its Assurance Wireless Lifeline offering satisfies the goals of the 446 Docket requirements. Consistent with the 446 Docket requirements, Assurance Wireless offers customers a variety of Lifeline plans from which to choose.⁷ These service 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” in accordance with the Commission's requirements.⁸ 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. Contrary to the concerns expressed by the Commission in the 446 Docket, moreover, the Assurance Wireless Lifeline offering provides compelling value and services to lower-income customers. As noted above, the Assurance Wireless Lifeline service plans include all applicable taxes and fees and do not assess additional charges for activation or connection of the service, ensuring that customers will not be subject to

⁷ See 446 Docket Order at ¶ 66 (wherein the Commission noted that that “universal service programs, including Lifeline, should support customer choice”).

⁸ See *id.* at ¶ 65.

plans containing excessive charges or fees. Customers will also receive a wireless handset and certain essential features, including voicemail, caller I.D. and call waiting services, free of charge.

6. To the extent that the Commission interprets the 446 Docket requirements to require Virgin Mobile to make other service plans available to Lifeline customers, the Company respectfully submits that good cause exists for waiver of the requirement. While Virgin Mobile offers other service plans in Kansas, including its “Beyond Talk” plans that are designed primarily for heavy data and text message users, these plans are not accessible to non-Lifeline customers for several reasons. First, the \$5 and \$20 Assurance Wireless Lifeline plans described above provide better value for heavy users of voice services than the Beyond Talk plans. In addition, the handset provided free of charge to Assurance Wireless Lifeline customers is not currently marketed for use with Virgin Mobile’s Beyond Talk service plans. Requiring Virgin Mobile to make all of its service plans available to Lifeline customers could potentially require Lifeline customers to incur charges related to purchasing one of Virgin Mobile’s non-Lifeline handsets (which can range between \$50 - \$200) in order to make use of a Beyond Talk plan. Finally, Virgin Mobile’s information technology (“IT”) platform is not currently configured to apply the Lifeline discount to its non-Lifeline plans. Were the Commission to require Virgin Mobile 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 would be better spent on marketing and providing Lifeline service to Kansan customers.

II. CONCLUSION

WHEREFORE, Virgin Mobile respectfully requests that the Commission grant the instant Motion for Waiver and promptly designate Virgin Mobile as an ETC in the State of Kansas solely for purposes of participating in the Lifeline program.

Respectfully submitted,

VIRGIN MOBILE USA, L.P.

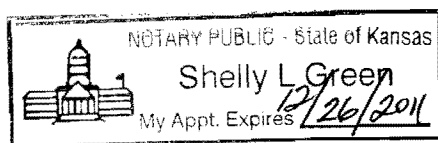

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VERIFICATION

I, Diane C. Browning, being of lawful age duly sworn, state that I have read the above and foregoing Motion and verify the statements contained herein to be true and correct to the best of my knowledge and belief.

Subscribed and sworn to before me this 11th day of February, 2011.




Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2011, a true and correct copy of the foregoing has been served on the parties set forth below, via US Mail:

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February 11, 2011

STATE CORPORATION COMMISSION

FEB 11 2011

Ms. Susan Duffy
Executive Director
Kansas Corporation Commission
1500 SW Arrowhead Road
Topeka, Kansas 66604-4027

**Re: In the Matter of Virgin Mobile USA, L.P. Petition for Limited
Designation as an eligible Telecommunications Carrier
Docket No.: 10-VMPZ-657-ETC**

Dear Ms. Duffy:

Enclosed please find the original and seven (7) copies of Sprint's Motion for Waiver in the above-referenced docket, which was fax filed today.

If you have any questions or comments, please contact me at 913-315-9284. Thank you for your assistance.

Very truly yours,

Diane C. Browning

Enclosure