DIRECT TESTIMONY

OF

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POLICY DIVISION

ILLINOIS COMMERCE COMMISSION

VIRGIN MOBILE USA, L.P.

APPLICATION FOR LIMITED DESIGNATION AS A WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER

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Contents

I. Introduction and Summary

Q. Please state your name and business address.

A. My name is James Zolnierek and my business address is 527 East Capitol Avenue, Springfield, Illinois 62701.

Q. By whom are you employed and in what capacity?

A. I am employed by the Illinois Commerce Commission ("Commission" or "ICC") as the Director of the Policy Division within the Public Utility Bureau.

Q. Please describe your education background.

A. I earned my Doctor of Philosophy degree in economics from Michigan State University in 1996. Prior to joining the Illinois Commerce Commission I was employed by the Federal Communications Commission ("FCC") as an Industry Economist in the Common Carrier Bureau, Industry Analysis Division.

Q. What is the purpose of your testimony?

A. Virgin Mobile USA, L.P. ("Virgin Mobile" or "Company") filed a petition with the Commission on July 23, 2014 seeking designation as a wireless eligible telecommunications carrier ("ETC") for the purpose of receiving federal universal service fund ("USF") support and Lifeline support ("Petition"). My testimony addresses the appropriate requirements with which the Company should comply to be designated as a wireless ETC. My testimony also evaluates whether the Company satisfies all appropriate regulatory requirements. Finally, my testimony also presents recommendations to the Commission concerning the Company's wireless ETC petition.

Q. Please summarize the recommendations you are making in this testimony.

A. Subject to the conditions I describe below, I recommend the Commission should designate Virgin Mobile as a wireless ETC for the limited purpose of receiving federal universal service Lifeline support.

II. Standards and Requirements for ETC Designation

A. Federal Statutory Requirements for ETC Designation

Q. Please describe the statutory framework governing Commission designation of ETCs in Illinois.

A. Pursuant to the Federal Telecommunications Act of 1996 ("1996 Act"), and in particular §214(e)(2) (47 U.S.C. §214(e)(2)), state commissions are assigned the task of designating common carriers subject to their jurisdiction as eligible to receive federal USF support. Supported services are defined in §54.101(a) of the Rules of the Federal Communications Commission (FCC) (47 C.F.R. §54.101(a)) as voice telephony services that:

> provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

ETCs are required by Section 54.101(b) of the FCC's rules (47 C.F.R. §54.101(b)) to offer voice telephony service in order to receive federal USF support.

Sections 214(e)(1) and 214(e)(2) of the 1996 Act (47 U.S.C. §214(e)(1) and 47 U.S.C. §214(e)(2)) include statutory requirements that carriers must meet in order to be designated as ETCs and statutory requirements state commissions must follow in designating carriers as ETCs. In particular, §214(e)(1) and §214(e)(2) of the 1996 Act state:

> 214(e) PROVISION OF UNIVERSAL SERVICE.--
>
> (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 there for using media of general distribution.
>
> (2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS.-- A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. <u>Upon request and consistent with the public interest, convenience, and necessity</u>, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier

> meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. (Emphasis added)

These provisions make clear that satisfying the requirements of Section 214(e)(1) is a necessary condition, but not by itself a sufficient condition, for ETC designation. Carriers must further meet requirements prescribed by the FCC for ETC designation under Section 214(e)(2) and all additional requirements the Commission deems appropriate and reasonable to ensure that an ETC designation is consistent with the public interest, convenience, and necessity.[1]

Q. Please describe the statutory requirements for defining an ETC's service area.

A. Section 214(e)(5) of the 1996 Act provides for how a service area should be determined for the purpose of ETC designation:

> 214(e)(5) SERVICE AREA DEFINED.--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 Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

For an area served by a non-rural carrier, a service area is the geographic area established by the Commission. For an area served by a rural telephone company,

[1] *In the Matter of Federal-State Joint Bd. On Universal Service, Highland Cellular, Inc.*, 2004 WL 770088 (F.C.C. 04-37), ¶21 (Apr. 12, 2004) ("Highland Cellular ETC Order").

a service area is the rural telephone company's study area, unless redefined by the FCC and the Commission.

Recently, the FCC found that the rural study area conformance requirement is unnecessary for Lifeline-only ETCs and granted forbearance for carriers seeking Lifeline-only ETC designation from this requirement:

> We conclude that forbearing from the conformance requirement of section 214(e)(5) of the Act and section 54.207(b) of the Commission's rules is appropriate and in the public interest for carriers seeking designation, or already designated, as Lifeline-only ETCs. For the reasons explained below, we find that all three prongs of section 10(a) are satisfied. As a result, if a commission designates a carrier as a limited, Lifeline-only ETC in part of a rural service area, that designation will not require redefinition of the rural telephone company's service area. Because forbearance would apply only to designations for the purpose of becoming a limited ETC to participate in the Commission's Lifeline program, we examine the conformance requirement in light of the statutory goal of providing low-income consumers with access to telecommunications services as it relates to the Commission's Lifeline program.[2]

Through this forbearance, the FCC eliminated the distinction between rural and non-rural areas for the purpose of defining service areas for Lifeline-only ETCs. A carrier seeking Lifeline-only ETC designation in part of a rural telephone company's study area is no longer required to seek redefinition of the rural telephone company's service area. This forbearance, however, does not apply to

[2] *In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform, Virgin Mobile USA , L.P. Petition for Forbearance, Cox Communications, Inc. Petition for Forbearance, Time Warner Cable, Inc. Petition for Forbearance, i-wireless, LLC, Petition for Forbearance, Q Link Wireless, LLC Petition for Forbearance, Global Connection Inc. of America Petition for Forbearance*, 2013 WL 1641178 (F.C.C. 13-44), ¶8 (Apr. 15, 2013) ("Virgin Mobile *et al.* Forbearance Order").

carriers seeking designation for the purpose of receiving federal high cost universal service support.[3]

B. FCC Requirements for ETC Designation

Q. What types of requirements does the FCC impose upon carriers seeking ETC designation?

A. In cases where carriers seeking ETC designation are not subject to the jurisdiction of state commissions, the FCC is assigned by Section 214(e)(6) of the 1996 Act (47 U.S.C. §214(e)(6)) the task to perform ETC designation.[4] There are two general types of requirements that the FCC imposes upon carriers seeking ETC designation: (1) requirements imposed on carriers seeking designation from the FCC when the FCC is performing the ETC designation; and (2) requirements imposed on all carriers seeking designation (whether from the FCC or a state commission).

The FCC's requirements for its own evaluations are contained in Section 54.202 of the FCC rules (47 C.F.R. §54.202) as well as its ETC Orders.[5] The requirements of Section 54.202 of the FCC rules and determinations that the FCC makes under Section 214(e)(6) are not binding on state commissions.

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[3] *Id.* at ¶9.

[4] 47 U.S.C. §214(e)(6).

[5] *See*, *e.g.*, *In the Matter of Federal-State Joint Bd. On Universal Service*, 2005 WL 646635 (F.C.C. 05-46), ¶28 (Apr. 21, 2005) ("ETC Order"); *and In the Matter of Lifeline and Link Up Reform and Modernization*, 2012 WL 387742 (FCC 12-11), ¶390 (Feb. 2012) ("Lifeline Reform Order").

In addition to the requirements that the FCC has established for its own ETC designation under Section 214(e)(6), the FCC has prescribed requirements that all designated ETCs must meet and that all state commissions must follow when designating ETCs.[6] These requirements are binding on state commissions.

Q. What guidance has the FCC provided to States with respect to ETC designations made pursuant to Section 214(e)(2) of the 1996 Act?

A. While similarly required to make the public interest determination for ETC designation, state commissions are not subject to the public interest standards of Section 54.202(b) of the FCC rules or any specific requirements contained in it. Instead, state commissions must make the public interest determination pursuant to Section 54.201(c) of the FCC rules (47 C.F.R. §54.201(c)) and Section 214(e)(2) of the 1996 Act. While the eligibility requirements of Section 54.202(a)-(b) are not binding upon state commissions, the FCC has encouraged them to apply those requirements to state ETC designation, as follows:

> We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis [as are imposed by FCC Rules].[7]

Thus, in carrying out its responsibility of granting ETC designation for carriers not subject to the jurisdiction of state commissions, the FCC imposes public

[6] *See*, *e.g.*, Lifeline Reform Order at ¶¶387 - 388.
[7] ETC Order, at ¶¶19-20.

interest requirements through its Section 54.202 rules and related orders, which it recommends but does not require state commissions to follow.[8]

Q. What guidelines has the FCC provided for evaluating a Lifeline ETC applicant's financial and technical capability?

A. The FCC prescribed a framework for the Commission to perform financial and technical capability analyses under Section 54.201(h) of the FCC rules:

> Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state. [9]

The FCC referred to the considerations enumerated above as among the relevant considerations, rather than the relevant considerations, to be included in the financial and technical capability analyses. So, the Commission may introduce additional considerations that it deems appropriate and reasonable for its Illinois financial and technical capability determination.

Q. What guidance has the FCC provided regarding the burden of proof that designation of an ETC is in the public interest?

A. In the ETC Order, the FCC concluded the following concerning an ETC applicant's burden of proof:

> In determining whether an ETC has satisfied these criteria [the factors weighed in analyzing the public interest ramifications], the

[8] ETC Order, at ¶58.
[9] Lifeline Reform Order, at ¶388.

> Commission [FCC] places the burden of proof upon the ETC applicant. (Illustration added)[10]

Q. What guidance has the FCC provided regarding multiple ETC designations in an area?

A. Significantly, in its 2005 ETC Order, the FCC observed that differential criteria may be appropriate depending on the number of designated ETCs in an area, stating that:

> If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.[11]

C. ICC Requirements for Wireless Lifeline ETC Designation in Illinois

Q. What conditions has the Commission generally imposed upon Lifeline ETCs?

A. The Commission has rules that apply to ETCs in Illinois, including those in Part 736 (Consumer Protection and Service Quality Standards) (83 Ill. Adm. Code 736.100, et seq.) and those in Part 757 (Telephone Assistance Programs) (83 Ill. Adm. Code 757.100, et seq.). In addition to the requirements imposed upon ETCs by the Commission rules, the Commission has imposed upon ETCs, as conditions of ETC designation, requirements that ensure that ETC designation is consistent with the statutory requirements for ETC designation including that the designation is consistent with the public interest, convenience, and necessity. These requirements have been imposed on a case-by-case basis.

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[10] ETC Order, at ¶44.
[11] *Id*. at ¶55.

D. Recommended Requirements for ETC Designation in Illinois

Q. Should the Company bear the burden of proof in this proceeding?

A. Yes. While I am not an attorney, it is my understanding that the general procedural rule is that a petitioning party bears the burden of proof. Beyond that rule, in ETC cases it is the Company that possesses, and sometimes alone possesses, the information necessary to make designation determinations. Consequently, placing the burden of proof on the Company to demonstrate that its designation as an ETC is consistent with the public interest, convenience, and necessity, from a purely practicable view, is the only way to ensure that all ETC requirements, including concrete public interest benefits, are met. Further, placing the burden of proof on the Company, is consistent, as explained above, with the manner in which the FCC has conducted its own ETC designations pursuant to §214(e)(6).

Q. Should the Commission impose the same standards on Virgin Mobile that is has imposed on ETCs in the past?

A. No. As an initial matter, the FCC recently changed its rules. Thus, the Commission is now, for example, required to perform a financial and technical capability analyses under Section 54.201(h) that it was not previously required to perform. This intervening change of law, therefore, dictates that the Commission should make ETC designations using different standards than it has in the past.

Additionally, over time, the FCC and state commissions (including this Commission) have increasingly become aware of the potential for waste, fraud, and abuse in the federal low-income program.[12] Experience has shown that verifying ongoing compliance by ETCs can be difficult. Thus, to strengthen protections against waste, fraud, and abuse, it is imperative that the Commission subject ETC applicants to a rigorous upfront vetting process to ensure that the applicants have the willingness and capability to provide quality service in compliance with laws, rules, and FCC/ICC requirements before granting such designation. The Commission should not, when faced with the potential for waste, fraud, and abuse, decline to examine an aspect of a company's application or decline to impose a requirement of a company as a condition of eligibility simply because circumstances did not dictate that it do so in the past.

Finally, ETC designation should be assessed based upon the benefits that designation of an ETC provides consumers in Illinois. If a low income consumer in Illinois has several prepaid wireless options and a new prepaid wireless ETC does not provide any new and/or better service options or provide lower-priced service, the customer may be no better off than without the options offered by the new prepaid wireless ETC; this is particularly true if the new entrant increases the potential for waste, fraud, and abuse in the program or unnecessarily places burdens on the fund. Thus, the Commission should perform assessments based

[12] *See*, *e.g.*, *ICC on Its Own Motion*, Order Docket No. 12-0021 (Jan. 10, 2012); and *Telecommunications Division Staff Report*, Dec. 29, 2011, ICC Docket No. 12-0021 (filed Jan. 10, 2012).

upon the circumstances presented by the carrier seeking ETC designation, which can change with each additional entrant.

Q. Does your testimony above imply that there should be no uniformity in evaluation of ETC petitions?

A. No. While the Commission should evaluate each additional entrant based upon the circumstances relevant to the designation, the Commission should strive for uniformity in assessments where such uniformity does not subvert statutory ETC designation requirements. Below I recommend evaluation criteria that are, in my opinion, and based upon current circumstances in Illinois, consistent with statutory ETC designation requirements.

Q. What service area information should the Commission require of carriers seeking ETC designation?

A. In Docket No. 97-0507, the Commission determined that the service area or minimum geographic area that Ameritech Illinois, a non-rural carrier, must serve to be designated as an ETC is an exchange.[13] I recommend the Commission make a similar finding in this proceeding and find that the service area or minimum geographic area that a carrier must serve to be designated as an ETC is an exchange. While the Commission has, in the past, relied upon both exchange-based and non-exchange-based ETC service area definitions, there are advantages to defining ETC service areas in terms of exchanges as opposed to alternative definitions such as wire centers and ZIP codes, which render exchange-based

[13] *Illinois Bell Telephone Co. (Ameritech Illinois)*, ICC Order Docket No. 97-0507 (Dec. 17, 1997).

definitions most reasonable and appropriate. Exchanges constitute telecommunications industry standard geographic units that all carriers, not just ILECs, rely upon; for example, telephone number blocks are assigned to carriers of all types (ILEC, CLEC, wireless, etc.) by exchange. More importantly, the Commission retains control over exchange boundaries, in particular, over proposed changes to exchange boundaries.[14] An ILEC wire center, in contrast, is an area defined by the reach of an ILEC carrier's switch; it is both ILEC (and, notably, not Virgin Mobile) specific and subject to change without Commission notice or approval based upon the carrier's operating needs. Similarly, ZIP codes are assigned by the United States Postal Service ("USPS"); ZIP codes and thus ZIP code area boundaries are subject to changes based upon USPS' operating needs, needless to say, without notice to or approval by this Commission.[15] In short, both wire center boundaries and ZIP code area boundaries change over time and do so without notice to or approval by this Commission. As a result, defining an ETC's service area in terms of exchanges, as opposed to alternative definitions such as wire centers and ZIP codes, offers the Commission not only greater certainty as to the actual geographical area included within the ETC's service area, but also gives the Commission control over any proposed change to such ETC service area.

[14] 83 Ill. Adm. Code 732.711.
[15] http://about.usps.com/publications/pub100/pub100_029.htm.

Identifying a service area in terms of exchanges will allow the Commission to assess that the service area is defined in compliance with Section 214(e)(5) of the 1996 Act. The Commission should, therefore, require the carriers to provide the Commission a list of exchanges that the carrier proposes to include within its ETC service area.

Q. How should the carrier demonstrate that it will, throughout the service area for which the designation is received, offer the supported services?

A. The Commission should require the carrier to provide the Commission evidence that it can provide service, using its own facilities, to all portions of the exchanges it proposes to include in its ETC service area. If a carrier is a reseller, then it should provide evidence that it has contracted with its underlying provider or providers in a manner that allows it to provide service in all portions of the identified exchanges in its ETC service area.

Q. How should a carrier demonstrate that it will provide supported services over its own facilities, in whole or in part, throughout the requested ETC service areas?

A. As identified above, one of the statutory requirements for ETC designation is that carriers seeking designation must provide supported services over their own facilities, in whole or in part, throughout the requested ETC service areas. Thus, the carrier should produce coverage information with respect to facilities that it owns and information on how it will, in conjunction with its own facilities, use other services, in part, to provide service.

Q. How should a reseller demonstrate that it will provide supported services throughout the requested ETC service areas?

A. Finding that the use of their own facilities is unnecessary for Lifeline ETCs, the FCC granted blanket forbearance from the facilities requirement for carriers seeking designation as ETCs for the sole purpose of providing Lifeline service (i.e., the carrier is not seeking any high-cost USF support). The FCC conditioned this grant of forbearance on the carriers' compliance with certain 9-1-1 requirements and the FCC's own approval of blanket forbearance-related compliance plans.[16] Thus, as an alternative to proving that it will provide service, in whole or in part, using its own facilities, the carrier must provide evidence that it has an approved FCC compliance plan as required to exercise the FCC's grant of forbearance from the facilities based requirements of the statute with respect to its prospective ETC operations in Illinois.

Additionally, a reseller carrier should produce information on the wholesale services that it will resell that shows where the carrier is capable of providing resold service.

Q. How should the carrier demonstrate that it will, throughout the service area for which the designation is received, advertise the supported services?

A. The Commission should require the carriers to supply information demonstrating the material and other forms of advertising it will rely upon and use throughout the service area for which designation is sought.

[16] Lifeline Reform Order, at ¶368.

Q. What FCC requirements, established for its own ETC designation under Section 214(e)(6), should the Commission impose under Section 214(e)(2)?

A. The FCC required that a carrier seeking designation as a Lifeline ETC from the FCC under Section 214(e)(6) must, in its application: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer protection and service quality standards; and (4) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.[17]

In addition, the FCC required that ETCs it designated pursuant to Section 214(e)(6) meet the reporting requirements of Section 54.422(b) regarding the carriers' ability to remain functional in an emergency situation and maintain service quality.[18] These reporting requirements were established in the 2005 ETC Order for ETCs that the FCC designated pursuant to Section 214(e)(6) and revised in the recent Lifeline Reform Order.[19] The FCC also requires carriers it designates to file annual reports showing the number of subscribers de-enrolled for non-usage and annual outage and general quality of service information.[20]

[17] *See* 47 C.F.R. § 54.202(a).
[18] *See,* 47 C.F.R §54.422(b); *see also* ETC Order, at ¶69; *and* Lifeline Reform Order, at ¶389.
[19] *See*, ETC Order; *and* Lifeline Reform Order.
[20] 47 C.F.R. § 54.405(e)(3); 47 C.F.R. § 54.422(b).

These FCC requirements prescribed for ETC designation under Section 214(e)(6) should be included among those used by the Commission in evaluating ETC applications. Therefore, I recommend the Commission impose them here.

Q. Please identify requirements that the FCC mandates state commissions impose when designating carriers as Lifeline ETCs.

A. Pursuant to Section 54.403(a)(1) of the FCC rules, ETCs providing Lifeline service must "… pass through the full amount of support to the qualifying low-income consumer… ." The Commission should require the Company to demonstrate that its Lifeline service rate represents a dollar-for dollar-reduction from its comparable non-Lifeline rate and that it represents a pass-through of the full amount of support to the qualifying low-income consumer.

Q. Does the FCC require state commissions to impose a financial and technical capability requirement on carriers seeking designation?

A. Yes. The FCC requires state commissions to impose a financial and technical capability requirement on carriers seeking designation as Lifeline ETCs:

> [W]e amend Sections 54.201 and 54.202 of our rules, which govern ETC designations by states and this Commission, respectively, to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.[21]

State commissions are explicitly prohibited from granting such designation until the applicants have made such showings:

[21] Lifeline Reform Order, at ¶387; *see also* 47 CFR §54.201(h) and §54.202(a)(4).

> A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.[22]

A carrier seeking designation as a Lifeline ETC in Illinois must demonstrate to this Commission under Section 54.201(h) of the FCC rules (47 C.F.R. §54.201(h)) that it possesses the necessary financial and technical capability to provide service for which it seeks designation in compliance with applicable laws, rules and FCC/ICC requirements.

Notably, in the ETC Order, the FCC declined to adopt such an explicit requirement for ETC designation and decided that other existing rules would be sufficient to ensure the carrier's financial and technical capability.[23] Recently, however, the FCC has changed its stance.

In establishing the new financial and technical capability requirement in the Lifeline Reform Order, the FCC cited the growth in the number of ETCs as well as the Indiana Commission's observation that "companies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program."[24] The FCC also referred to T-Mobile's assertion that "Lifeline ETC

[22] 47 CFR §54.201(h).
[23] ETC Order, ¶¶37-39; *and* Lifeline Reform Order, at ¶¶387-388.
[24] Lifeline Reform Order, at ¶387, fn. 1010; *and Indiana Commission Comments* (WC Docket 11-42, Apr. 21, 2011), at 15-16. The Indiana Commission opined that states "should be delegated

applicants should be required to make showings of financial and technical capability to provide the supported services (including consideration of whether the carrier offers services in addition to Lifeline service) in order to be designated as Lifeline ETCs" to ensure that Lifeline service is provided by carriers with sufficient incentives to comply with all applicable rules.[25] Thus, the financial and technical capability requirement was intended to strengthen protections against waste, fraud, and abuse by creating a barrier to certification of carriers that have not made a sufficient business case and are therefore more likely to commit waste, fraud and abuse of the federal low-income program.

Q. What criteria should the Commission use to evaluate financial capabilities when designating carriers as Lifeline ETCs?

A. The Commission should evaluate the company's financial statements. In addition, the Company must demonstrate that it has experience legitimately and profitably providing service. Optimally, because market conditions, regulations, and other factors differ across states, the Companies application should be evaluated based upon its service record in Illinois. I recommend that the Company demonstrate a record based upon no less than 6 months of providing Illinois non-Lifeline service of the same type that it plans to provide to Lifeline customers. If the Company has no service record in Illinois, then the Company may rely on its own record of comparable services outside of Illinois. Again, I

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the tools to designate carriers that have demonstrated regulatory compliance and investment in the state" (Indiana Commission Comments at 15).

[25] Lifeline Reform Order, at ¶388, fn. 1013; *and T-Mobile ex parte letter*, (WC Docket 11-42, Jan. 23, 2012).

recommend that the Company should demonstrate a record based upon no less than 6 months of service. In demonstrating such experience, the Company should provide evidence that it has a business case to serve such markets (that does not rely critically on Lifeline subsidies) and, thus, that it is less inclined to risk being cited for non-compliance with the rules governing the program.

Similarly, to provide evidence that the Company has a business case to serve such markets (that does not rely critically on Lifeline subsidies), in states where the Company provides Lifeline service, the Company should demonstrate that the fraction of non-Lifeline wireless to total (both Lifeline and non-Lifeline) wireless customers has not fallen below 20% in each state each month in the period beginning six months prior to submission of the ETC petition.

If the Company's record of service is insufficient (e.g., no prior record of service, no history of non-lifeline service, etc.), the Commission should not designate the carrier as an ETC until such time as it demonstrates an ability to serve the Illinois market (without relying critically on Lifeline subsidies). In this case, the Commission should determine that the Company cannot begin to provide Lifeline service in Illinois until such time as it has established a six-month record of providing non-Lifeline service in Illinois, has supplemented the record in this proceeding to reflect this service period, and has received specific approval from the Commission to commence Lifeline service.

For providers with only a limited track record of service provision, the Commission should also ensure that, going forward, the ETC does not revert to a business plan that relies primarily on Lifeline service. In order to provide such assurance, I recommend the Commission require the carrier to provide the same service it provides to Lifeline customers to non-Lifeline customers in Illinois. If the fraction of non-Lifeline wireless to total (both Lifeline and non-Lifeline) wireless customers in Illinois falls below 20% for any three consecutive months, the Commission should require the Company to cease enrolling new customers in its wireless Lifeline program and to not resume enrolling new customers in its wireless Lifeline program until such time as it seeks and obtains approval from the Commission to resume offering wireless Lifeline service to new customers.

Consistent with the FCC guidance cited above, these criteria and requirements will provide some assurance that the Company will have the financial wherewithal to provide wireless service in Illinois without relying critically on Lifeline receipts and will, therefore, be less inclined to risk engaging in waste, fraud, or abuse of the Lifeline program as a means of remaining solvent.

Q. What criteria should the Commission use to evaluate technical capabilities when designating carriers as Lifeline ETCs?

A. The Commission should review the experience and backgrounds of its personnel. In addition, the Company should not have or had any enforcement actions or ETC revocation proceedings against it in any states and have been subject to action as a result. If the carrier did have enforcement actions or ETC revocation proceedings against it, and has been subject to action, it should produce documentation associated with the enforcement action and/or revocation proceeding showing that it has remedied any compliance failings and that it has operated in a compliant manner for at least 6 months prior to the submission of its ETC application. Similarly, the Company should demonstrate that is has the ability to comply with all applicable laws, rules and FCC/ICC requirements.

Q. Please provide an example of a compliance issue the Commission should examine.

A. A Company should demonstrate that it will comply with wireless E9-1-1 surcharges obligations by showing how much it has and/or expects to contribute per customer per month in E9-1-1 surcharges for its Lifeline customers. There are two statutes in Illinois governing wireless carriers' E9-1-1 surcharge obligations: the Wireless Emergency Telephone Safety Act[26] ("WETSA") and the Prepaid Wireless 9-1-1 Surcharge Act[27] ("PW9SA"). Section 17 of the WETSA requires each wireless carrier to impose and remit a wireless E9-1-1 surcharge:

> [E]ach wireless carrier shall impose a monthly wireless carrier surcharge per CMRS connection that either has a telephone number within an area code assigned to Illinois by the North American Numbering Plan Administrator or has a billing address in this State. … … Beginning on January 1, 2008 (the effective date of Public Act 95-698), the monthly surcharge imposed under this Section shall be $0.73 per CMRS connection. The wireless carrier that provides wireless service to the subscriber shall collect the surcharge from the subscriber.[28]

[26] 50 ILCS 751.
[27] 50 ILCS 753.
[28] 50 ILCS 751/17. It should be noted that this is the surcharge assessed outside the City of Chicago. See 50 ILCS 751/45(b). The surcharge currently assessed within the City of Chicago is

The WETSA assigns the Commission the task of administering the collection of wireless E9-1-1surcharge remitted by wireless telecommunications carriers pursuant to the WETSA. Carriers providing wireless telecommunications service on a subscription basis pay $0.73, per subscriber, per month.[29]

The PW9SA is enacted to ensure that the funding for the wireless emergency system is maintained with equitable contribution from customers of prepaid wireless telecommunications services, not solely relying on contributions from customers of wireless telecommunications service on subscription plans.[30] The PW9SA imposes on sellers of prepaid wireless telecommunications service, as the term is used in the PW9SA, the duty to collect wireless E9-1-1 surcharges from buyers of such service at the point of sale. The PW9SA assigns the Illinois Department of Revenue ("IDOR") the task of administering the collection of E9-1-1 surcharge remitted by sellers of prepaid wireless telecommunications service, as the term is used in the PW9SA. The prepaid wireless E9-1-1 surcharge amount is 7% of the retail transaction, if the point of sale is in Chicago, and 1.5% of the retail transaction, if the point of sale is elsewhere in Illinois.[31]

The importance of the wireless E9-1-1 system to the preservation of public safety and health cannot be overstated, and thus funding of the system is crucial. From a public policy prospective, all carriers that provide E9-1-1-capable wireless service

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indexed to the highest wireline surcharge assessed in the state, equal to $3.90. See 50 ILCS 751/17; Chicago Munic. Code 3-64-30.

[29] 50 ILCS 751/17.

[30] 50 ILCS 753/5.

[31] *See* http://tax.illinois.gov/QuestionsAndAnswers/821.htm.

have the obligation to pay their respective shares of the costs of funding the wireless E9-1-1 system. A carrier that does not pay, or does not pay the full and correct amounts of, wireless E9-1-1 surcharges, increases its profitability at the expense of the Illinois wireless E9-1-1 system and the public safety and health.

Q. What additional requirements does the FCC mandate state commissions impose when designating carriers as Lifeline ETCs?

A. To further strengthen protections against waste, fraud and abuse against the federal low income program, the FCC requires all (FCC -- as well as state-designated) ETCs to comply with: the National Lifeline Accountability Database procedures enumerated in Section54.404(b) for detection and prevention of duplicative support, marketing and disclosure requirements and de-enrollment requirements of Section 54.405, subscriber eligibility determination/certification and annual recertification requirements of Section 54.410, annual carrier certification requirements of §54.416, record keeping requirements of Section 54.417, the audit requirements of Section 54.420, and carrier annual reporting requirements of Section 54.422(a).

Q. Please describe the Commission rules governing wireless Lifeline ETCs.

A. Wireless telecommunications carriers must provide service in Illinois in accordance with applicable Commission rules (as well as applicable laws and FCC rules). Specifically, wireless Lifeline ETCs must comply with the requirements of Part 736 (Consumer Protection and Service Quality Standards).

83 Ill. Adm. Code 736.100, et seq. Part 736 of the Commission rules establishes the service quality and customer protection standards that all wireless ETCs must comply with, including compliance with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

ETCs must also comply with requirements of Part 757 (Telephone Assistance Programs) of the Commission rules. Il. Adm. Code 757.10, et seq. Part 757 requires ETCs to, among other things, regularly report to the Commission information on the number of Lifeline customers served.

Q. Are there any other criteria the Commission should consider or requirements a carrier should comply with in order for its ETC designation to be consistent with the public interest, convenience, and necessity?

A. Yes. As explained above, Section 214(e)(2) of the 1996 Act requires that, before designating a carrier as an ETC, the Commission must find such designation consistent with the public interest, convenience, and necessity. The 1996 Act did not define these terms.[32] Nor did the FCC prescribe specific criteria to be applied to the public interest analyses under Section 214(e)(2). The Commission, however, has broad discretion to determine specific factors to be considered in performing public interest analyses of ETC designation under Section 214(e)(2), consistent with federal and state laws. As the FCC has stated:

> We believe that Section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC

[32] *See In the Matter of Federal-State Joint Bd. On Universal Service, Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc. Designations as Eligible Telecommunications Carriers in the Commonwealth of Virginia*, 2012 WL 5915529 (FCC 12-141), ¶5 (Nov. 26, 2012)).

> cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with federal and other state law. (Illustration added)[33]

The Commission's public interest analysis of ETC designation should consider the benefits and costs resulting from an additional designation. The benefits resulting from the designation are the benefits that are currently unavailable to consumers in the marketplace but will become available upon the designation.

Designating an additional wireless Lifeline ETC is not without cost implications. Unless it is reasonably certain that the additional wireless Lifeline ETC will not, inadvertently or purposefully, commit waste, fraud and abuse, the additional designation will increase the overall likelihood of waste, fraud, and abuse of the federal low income program in Illinois. In addition, the Commission resources required to ensure and verify compliance will increase with each additional designation. The federal low-income program is funded by consumers and businesses. As the FCC has observed, unconstrained growth of the program will "jeopardize universal service by increasing the contribution burden on American consumers and businesses, thereby discouraging adoption and use of communications services."[34] Further, the federal low-income program has

[33] *See* ETC Order, at ¶61.

[34] *See In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Bd. on Universal Service Notice of Proposed Rulemaking*, 2011 WL 773475 (FCC 11-32), ¶142 (March 4, 2011) ("Lifeline/Linkup NPRM").

expanded considerably since 2000.[35] Not surprisingly, strengthening protections and constraining the size of the program to ensure it remains viable are among the primary objectives of the FCC's recent effort to comprehensively reform the federal low-income program.[36] For these reasons, the Commission should not designate a carrier as a wireless Lifeline ETC unless the carrier has made the showing that the designation will produce significant benefits that are currently unavailable to consumers in the marketplace but will become available upon its designation.

A showing that a Lifeline offering represents a meaningful increase in consumer choice and thus results in the benefits of increased consumer choice necessarily entails showings that:

- The wireless Lifeline offering is substantively distinct or differentiated (from consumers' perspective) from Lifeline offerings currently available to consumers in the marketplace, including Lifeline offerings of traditional as well as non-traditional ETCs; and
- There is a reasonable expectation of nontrivial demand for the wireless Lifeline offering in Illinois.

Q. Please explain why it is important to subject a wireless Lifeline applicant to a rigorous vetting process in Illinois.

A. Lifeline ETC designation grants a carrier access to the federal low-income subsidy intended for eligible consumers. The Commission, as the entity assigned the task of determining a carrier's fitness for ETC designation, is the designated

[35] *See* Lifeline/Linkup NPRM, at ¶3 and ¶143: the funding size of the federal low-income program has grown significantly in recent years, from an inflation-adjusted $667 million in 2000 to $1.3 billion in 2010 and to a projected amount of $1.5 billion in 2011.
[36] *See* Lifeline/Linkup NPRM, at ¶1.

"gate-keeper" in Illinois, entrusted with the responsibility to control and oversee such access. To protect consumers (low-income as well as non-low-income consumers) and guard against waste, fraud, and abuse of the federal low-income program, the Commission has the obligation to ensure that a carrier has the willingness and capability to provide quality service in compliance with applicable laws, rules and FCC/ICC requirements; and further, to ensure that the designation of the carrier as a Lifeline ETC is consistent with the public interest, convenience, and necessity.

Q. What additional reporting requirements should the Commission impose upon a wireless carrier designated as a wireless ETC in Illinois in order to ensure the carrier complies with its ETC obligations and that designation is and remains consistent with the public interest, convenience, and necessity?

A. The Commission should require the carrier to submit, on a quarterly basis and within 30 days after the end of each calendar quarter, a Wireless Customer Report providing by month:

- The number of wireless customers;
- The number of wireless non-Lifeline customers;
- The number of wireless Lifeline customers; and
- The wireless non-Lifeline fraction of total wireless customers.

The Commission should also require the carrier to submit, on a quarterly basis and within 30 days after the end of each calendar quarter, the following information:

- For any wireless carrier remitting wireless E9-1-1 surcharge pursuant to the Wireless Emergency Telephone Safety Act (WETSA), the total dollar value of wireless E9-1-1 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to WETSA; and

- For any wireless carrier remitting wireless E9-1-1 surcharge pursuant to the Prepaid Wireless 9-1-1 Surcharge (PW9SA), the total dollar value of wireless E9-1-1 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to PW9SA.

III. <u>Virgin Mobile's Application for Wireless Lifeline ETC Designation</u>

A. General Information Concerning Virgin Mobile

Q. Please provide a brief description of Virgin Mobile.

A. Virgin Mobile was certified by the Commission to provide prepaid commercial mobile radio service in Illinois in 2012.[37] Virgin Mobile is a wholly-owned subsidiary of Sprint Corporation ("Sprint").[38]

Q. What type of ETC designation is the Company seeking in this proceeding?

A. The Company requests the Commission to "designate the Company as a prepaid wireless ETC provider in Illinois for the sole purpose of receiving federal universal service Lifeline support … ."[39] The Company "does not seek ETC status for the purpose of receiving support from any other federal or state universal service funds, nor does it seek to offer services in high-cost areas."[40]

Q. Has Virgin Mobile identified how it intends to provide service in Illinois?

[37] *Virgin Mobile USA, L.P.*, Order ICC Docket No. 12-0027 (Feb. 16, 2012).
[38] Petition at 2.
[39] *Id.* at 1.
[40] *Id.*

A. Yes, Virgin Mobile states that it offers service using the network of its parent company, Sprint.[41] Virgin Mobile states that the FCC has found that Virgin Mobil owns Sprint Nextel facilities for purposes of the facilities requirement of Section 214(e) of the Act.[42]

B. Virgin Mobile's ETC Service Area

Q. Has Virgin Mobile appropriately identified its proposed service area?

A. Yes. Virgin Mobile provided both a list of wire centers which could define its proposed ETC service area or, in the alternative, a list of exchanges that would define its ETC service area.[43] As explained above, it is my recommendation that the Commission define Virgin Mobile's service area based upon exchanges.

C. Virgin Mobile's Ability to Offer Supported Services Throughout its ETC Service Area

Q. Is Virgin Mobile able to offer supported services throughout its ETC service area?

A. Virgin Mobile states that the FCC has found that Virgin Mobil owns Sprint Nextel facilities for purposes of the facilities requirement of Section 214(e) of the Act.[44] Additionally, Virgin Mobile asserts that it has the ability to use these facilities to provide supported services throughout its proposed ETC designation

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[41] *Id.* at 10.
[42] *Id.* at 11.
[43] *Id.* at 8, Exs. B-1 and B-2.
[44] *Id.* at 11.

area.[45] Virgin Mobile also states, with respect to areas within the ETC designated area that are outside the Sprint Nextel coverage area:

> … if the potential customer is within the Company's designated service area, but outside its existing network coverage, Virgin Mobile is committed to provide services, within a reasonable time and at a reasonable cost, to accommodate any potential customer's request for Lifeline service in the proposed service area where signal strength is weak or absent.[46]

Thus, it is my understanding that Virgin Mobile will provide supported services throughout its proposed ETC designation area.

D. Virgin Mobile's Ability to Advertise the Availability of Supported Services Throughout its ETC Service Area

Q. Is Virgin Mobile able to advertise the availability of supported services throughout its ETC service area?

A. Yes. Virgin Mobile commits to advertising the availability and rates for its Lifeline services in media of general distribution, including newspapers, radio, and television, through direct mail and shared mail campaigns, and through brochures and posters distributed at various state and local social service agencies.[47]

E. Virgin Mobile's Ability to Meet the Requirements the FCC Imposes Under Section 214(e)(6) of the 1996 Act

Q. Does Virgin Mobile meet the service quality requirements the FCC imposes under Section 214(e)(6) of the 1996 Act?

[45] *Id.* at 11.
[46] *Id.* at 16.
[47] *Id.* at 13.

A. As noted above, the FCC requires ETCs to satisfy applicable consumer protection and service quality standards. For wireless carriers, these standards include compliance with Code Part 736 (Consumer Protection and Service Quality Standards). 83 Ill. Adm. Code 736.100, et seq. While Virgin Mobile commits to comply with these rules, it commits to do so "to the extent that such rules are applicable to the Company as a prepaid wireless provider."[48] These rules "apply to all wireless eligible telecommunication carriers ("WETC") offering or providing either competitive or noncompetitive telecommunications services as defined in Sections 13-209 and 13-210 of the Illinois Public Utilities Act."[49] There is no exemption in these rules for wireless carriers that provide prepaid service. Virgin Mobile has requested waivers of the requirements in Sections 736.115, 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.685, and 736.690.[50] I do not oppose granting of these waivers, but note that the Commission voted on October 7, 2014 to approve revisions to the rules which would result in the repeal of Sections 736.115, 736.610, 736.620, 736.630, 736.640, 736.650, 736.660, 736.685, and 736.690. With respect to all effective requirements in Part 736, Virgin Mobile should fully comply.

F. Virgin Mobile's Ability to Meet Mandatory FCC Requirements

Q. Does Virgin Mobile meet the mandatory requirements the FCC imposes upon ETCs?

[48] Petition at 14.
[49] 83 Il. Adm. Code 736.100.
[50] Petition at 14.

A. Virgin Mobile has shown, in response to a data request from Staff, that it will pass through the full amount of support to which Lifeline customers are entitled.[51]

Q. Has Virgin Mobile demonstrated that it has the technical capability to provide telecommunications services in Illinois?

A. Yes. Most significantly, Virgin Mobile has provided evidence showing that it has provided prepaid wireless telecommunications services to hundreds of thousands of customers in Illinois for multiple years.

Q. Has Virgin Mobile demonstrated that it has the financial capability to provide telecommunications services in Illinois?

A. Yes. As noted above, Virgin Mobile has provided evidence showing that it has provided prepaid wireless telecommunications services to hundreds of thousands of customers in Illinois for multiple years.[52] During this time, Virgin Mobile was not a designated ETC in Illinois. Furthermore, in other states where Virgin mobile is an ETC, it is not critically dependent on its Lifeline Revenues. ***Begin Conf XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXX End Conf***[53] Therefore, this evidence is consistent with the notion that Virgin Mobile can provide prepaid wireless telecommunications without relying critically upon Lifeline subsidies.

Furthermore, Virgin Mobile provided to Staff copies of the publicly available 10-

[51] *See* Attachment A at 2.
[52] See attached ICC Staff Attachment A at 3-5.
[53] See attached ICC Staff Attachment A at 6-12.

Q for the quarter ended June 30, 2014 and 10-K for the year ended December 31, 2013 for its parent company Sprint Corporation.[54] This financial information is consistent with its assertion that it is financially able to offer supported services throughout its ETC service area.

I. Compliance with Wireless E911 Surcharge Obligations

Q. Has Virgin Mobile provided any indication of whether under the wireless E9-1-1 statute it remits and will remit wireless E9-1-1 surcharge?

A. Yes. Virgin Mobile provided to Staff evidence that it has remitted wireless E911 surcharges for its non-Lifeline customers.[55] With respect to its prospective Lifeline customers, however, Virgin Mobile states:

> Based upon current E-911 regulatory fee requirements in effect on August 1, 2014 and assuming Lifeline users receive only the Virgin Mobile primary Lifeline service package in Illinois, Virgin Mobile would not remit E-911 fees to the Illinois Department of Revenue because the uses of the services do not meet the statutory definition of "consumers" nor do the reimbursements meet the definition of "retail transactions". However, if these users buy additional wireless telecommunications services from Virgin Mobile, they would be "consumers" under the statutes with respect to those purchases and Virgin Mobile would remit E-911 fees in connection with those additional purchases.[56]

As this passage indicates, Virgin Mobile will not remit wireless E911 surcharge for its Lifeline customers pursuant to the PW9SA.

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[54] See http://www.sec.gov/cgi-bin/browse-edgar?company=Sprint+Corp&owner=exclude&action=getcompany.

[55] *See* attached ICC Staff Attachment A at 13.

[56] *See* attached ICC Staff Attachment A at 14.

As I indicated above, one cannot overstate the importance of the wireless E9-1-1 system and thus the funding of the system. Virgin Mobile's determination not to remit wireless E9-1-1 surcharges for its Lifeline customers pursuant to PW9SA will directly impact funding of the wireless E9-1-1 system. For this reason, Virgin Mobile should take steps to ensure that its choice not to contribute is compliant with PW9SA. In particular, Virgin Mobile should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue regarding whether it is required to remit surcharges pursuant to PW9SA with respect to its Lifeline customers subscribing to Virgin Mobile's primary Lifeline service package. Virgin Mobile should report any guidance/clarification received in response to this request, within this docket, within 5 days of receipt of such guidance/clarification. Virgin Mobile should comply with any such guidance/clarification.

J. Consistency with the Public Interest, Convenience, and Necessity

Q. Are there any other factors that the Commission should consider when it makes a determination as to whether designating Virgin Mobile as a wireless ETC is consistent with the Public Interest, Convenience, and Necessity?

A. Yes. Virgin Mobile has provided evidence that its proposed Illinois Lifeline plan is differentiated from the Lifeline plans of other Illinois Lifeline providers. This differentiation is not directly related to supported voice service, but rather to the amount of texts provided with its plan.[57] I further note that while Virgin Mobile's proposed Lifeline plan is, with respect to voice minutes, comparable to those

[57] *See* attached ICC Staff Attachment A at 15.

offered by other Illinois ETCs, there are other wireless Lifeline offers from Illinois providers that provide for more voice minutes in their plans.[58] Thus, Virgin Mobile has not established that its offering, considered solely according to its terms, represents a substantively distinct or different Lifeline offering for Illinois consumers. Nevertheless, Virgin Mobile has established itself as a provider of non-Lifeline prepaid wireless services in Illinois. This significantly reduces concerns that Virgin Mobile will critically rely on Lifeline service revenues and that it will face incentives to engage in waste, fraud, or abuse of the Lifeline program. It also suggests that designating Virgin Mobile as an ETC will provide customers the option to take Lifeline service from a proven wireless provider. For this reason, adding Virgin Mobile's offering to the choices that Illinois customers have is consistent with public interest, convenience, and necessity.

IV. Summary of Findings and Recommendation

Q. Please summarize your findings and recommendation concerning Virgin Mobile's wireless ETC application.

A. The Commission should designate Virgin Mobile as a wireless ETC for the limited purpose of receiving federal universal service Lifeline support. The Commission should make such designation subject to the following conditions.

1. Virgin Mobile should comply with all applicable federal and state statutes and rules affecting Lifeline ETC status and obligations;

[58] For example, the Illinois ETC PlatinumTel Communications, LLC, which markets under the name Care Wireless, offers 300 minutes each month it its free plan. See https://www.carewireless.com/.

2. Virgin Mobile should comply with all commitments made in its Petition;

3. Virgin Mobile should comply with the commitments included in its FCC approved compliance plan;

4. Virgin Mobile should, within 30 days of designation, request guidance/clarification from the Illinois Department of Revenue regarding whether it is required to remit surcharges pursuant to PW9SA with respect to its Lifeline customers subscribing to Virgin Mobile's primary Lifeline service package. Virgin Mobile should report any guidance/clarification received in response to this request, within this docket, within 5 days of receipt of such guidance/clarification. Virgin Mobile should comply with any such guidance/clarification.

5. Virgin Mobile's designated ETC service area should include those exchanges identified in Exhibit B-2 to Virgin Mobile's Petition;

6. Virgin Mobile should report, within this docket, all denials of Lifeline service requests from eligible customers in its designated ETC service area within thirty (30) days of such denial of service. The report should include the date of the denial of Lifeline service and the reason for the denial;

7. Virgin Mobile should report, within this docket, any changes in rates for its Lifeline offerings in Illinois. The report should include a description of the rate change;

8. Virgin Mobile should file, as reports within this docket on the dates it files such reports with the FCC, copies of any and all annual reports showing the number of subscribers de-enrolled for non-usage that it files with the FCC pursuant 47 C.F.R. § 54.405(e)(3);

9. Virgin Mobile should file, as reports within this docket on the dates it files such reports with the FCC, copies of any and all annual outage and general quality of service information that it files with the FCC pursuant 47 C.F.R. § 54.422(b);

10. Virgin Mobile should file, as reports within this docket on the dates its files such reports with the FCC, a copy of any and all audit reports filed with the FCC pursuant to 47 C.F.R. § 54.420(b);

11. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month:

a. the number of Illinois wireless customers;

b. the number of Illinois wireless non-Lifeline customers;

c. the number of Illinois wireless Lifeline customers;

d. the Illinois wireless non-Lifeline fraction.

12. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to WETSA; and

13. Virgin Mobile should report, within this docket, on a quarterly basis and within 30 days after the end of each calendar quarter, by month, the total dollar value of wireless E911 surcharges with respect to its Lifeline customers remitted for the quarter pursuant to PW9SA.

These conditions and reporting requirements will provide some assurance, and provide information to assist the Commission in verifying, that Virgin Mobile will continue to offer Lifeline services in a manner that is consistent with the public interest, necessity, and convenience.

Q. Does this conclude your testimony?

A. Yes.

ICC STAFF EXHIBIT 1.0, ATTACHMENT A

VIRGIN MOBILE USA, L.P.

APPLICATION FOR LIMITED DESIGNATION AS A WIRELESS ELIGIBLE TELECOMMUNICATIONS CARRIER

ICC DOCKET NO. 14-0475

PUBLIC VERSION

October 8, 2014

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.02 The Petition at pages 5-6 states "...the Lifeline service rate represents a pass-through of the full amount of Lifeline support to the qualifying Lifeline customer." Please provide any and all evidence, based upon a comparison of Virgin Mobile's non-Lifeline service rates in Illinois, upon which Virgin Mobile bases the assertion that its proposed Lifeline service rate represents a pass- through of the full amount of Lifeline support to qualifying Lifeline customers.

Response:

Virgin Mobile's base offer for new Lifeline customers as of June 18, 2014, is 250 minutes and unlimited text messages each month. Virgin Mobile's base plan for existing Lifeline customers is 250 minutes and 250 text messages each month; all Lifeline customers will be migrated to the 250 minute/unlimited text message plan by first quarter 2015. Virgin Mobile provides the base offer free of charge to the customer, applying the full amount of federal Lifeline support, currently set at $9.25. Virgin Mobile Lifeline customers, at their option, may purchase an additional 250 minutes for $5 (a total of 500 minutes and unlimited text messages for which Virgin Mobile receives $14.25) or unlimited minutes and data for $30 (for unlimited service for which Virgin Mobile receives $39.25).

Virgin Mobile offers three service plan offerings to non-Lifeline customers, each of which offers varying levels of service at different price points: Virgin Mobile Custom, payLo by Virgin Mobile, and Virgin Mobile Beyond Talk. Virgin Mobile Custom, available exclusively at Walmart, provides 250 minutes and 250 text messages for $19.46. Existing Virgin Mobile Lifeline customers receive the same amount of service for the federal support amount of $9.25. payLo by Virgin Mobile, Virgin Mobile's value brand, offers three service plans: $20 for 400 minutes, $30 for 1500 minutes and 1500 text messages and $40 for unlimited minutes and text messaging. By way of comparison, for $14.25 ($9.25 support amount plus $5 paid by the customer), a Virgin Mobile Lifeline customer receives 500 minutes and unlimited text messaging. For $39.25 ($9.25 support amount plus $30 paid by the customer), a Virgin Mobile Lifeline customer receives unlimited minutes, text messages and data. Virgin Mobile Beyond Talk currently offers three service plans targeted at heavy data users: $35 for unlimited data, unlimited texting and 300 minutes; $45 for unlimited data, unlimited texting and 1200 minutes; and $55 for unlimited data, texting and minutes. By way of comparison, for $39.25 ($9.25 support amount plus $30 paid by the customer), a Virgin Mobile Lifeline customer receives unlimited minutes, text messages and data.

Name: Elaine Divelbliss
Title: Senior Counsel
Number: 908-660-0358

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.03 The Petition at page 12 states "...Virgin Mobile serves more than 8 million subscribers, including hundreds of thousands of non-Lifeline wireless subscribers in Illinois." Please provide the number of Illinois non-Lifeline wireless subscribers served by Virgin Mobile Illinois in each month between and including February 2012 and July 2014.

Response: Please see Virgin Mobile's CONFIDENTIAL Attachment JZ 1.03.

Name: John Patuto
Title: Manager Finance
Number: 908-660-0336

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of Virgin Mobile USA, L.P. Application for Limited Designation as an Eligible Telecommunications Carrier.	Docket No. 14 – 0475

CONFIDENTIAL ATTACHMENT JZ 1.03

Confidential Information Redacted

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.10 For each state in which Virgin Mobile offers wireless Lifeline service, provide the number of wireless Lifeline subscribers in July 2014.

Response: Please see Virgin Mobile's CONFIDENTIAL Attachment JZ 1.10.

Name: Andy Lancaster
Title: Manager – Regulatory Reporting
Number: 913-762-6107

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of Virgin Mobile USA, L.P. Application for Limited Designation as an Eligible Telecommunications Carrier.	Docket No. 14 – 0475

CONFIDENTIAL ATTACHMENT JZ 1.10

Confidential Information Redacted

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.11 For each state in which Virgin Mobile offers wireless Lifeline service, provide the number of wireless non-Lifeline subscribers in July 2014.

Response: Please see Virgin Mobile's CONFIDENTIAL Attachment JZ 1.11.

Name: John Patuto
Title: Manager Finance
Number: 908-660-0336

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

In the Matter of Virgin Mobile USA, L.P. Application for Limited Designation as an Eligible Telecommunications Carrier.	Docket No. 14 – 0475

CONFIDENTIAL ATTACHMENT JZ 1.11

Confidential Information Redacted

Confidential Information Redacted

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.05 The Petition at page 16 states "The Company also will timely pay all applicable federal, state, and local regulatory fees, including universal service and E-911 fees. Please provide the dollar amount of fees submitted by Virgin Mobile to the Illinois Department of Revenue for E-911 in each month between and including February 2012 and July 2014.

Response: As of 1/1/12, the E-911 fees were included in the point of sale transaction and are reported on line 21 of the sales tax return. Below are the amounts reported and remitted:

2/12	$57,731
3/12	$62,602
4/12	$59,188
5/12	$59,086
6/12	$58,725
7/12	$59,497
8/12	$61,874
9/12	$61,918
10/12	$64,521
11/12	$65,679
12/12	$68,394
1/13	$70,611
2/13	$72,354
3/13	$76,550
4/13	$71,284
5/13	$79,325
6/13	$73,593
7/13	$71,519
8/13	$77,258
9/13	$75,647
10/13	$79,68[illegible]
11/13	$78,873
12/13	$83,418
1/14	$84,803
2/14	$81,690
3/14	$89,847
4/14	$84,051
5/14	$87,270
6/14	$79,755
7/14	$83,962

Name: Laura Veit
Title: Manager Tax Accounting
Number: 913-315-5770

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

JZ 1.06 Please provide the amount of E-911 fees per wireless Lifeline customer per month that Virgin Mobile will, based upon current E-911 regulatory fee requirements in effect on August 1, 2014 and assuming Lifeline customers subscribe only to the Virgin Mobile primary Lifeline service package in Illinois, submit to the Illinois Department of Revenue for E-911.

Response: Based upon current E-911 regulatory fee requirements in effect on August 1, 2014 and assuming Lifeline users receive only the Virgin Mobile primary Lifeline service package in Illinois, Virgin Mobile would not remit E-911 fees to the Illinois Department of Revenue because the uses of the services do not meet the statutory definition of "consumers" nor do the reimbursements meet the definition of "retail transactions". However, if these users buy additional wireless telecommunications services from Virgin Mobile, they would be "consumers" under the statutes with respect to those purchases and Virgin Mobile would remit E-911 fees in connection with those additional purchases.

Name: Tony Whalen
Title: Director Tax
Number: 913-315-5791

VIRGIN MOBILE USA, L.P.'s RESPONSE TO STAFF'S FIRST SET OF DATA REQUESTS

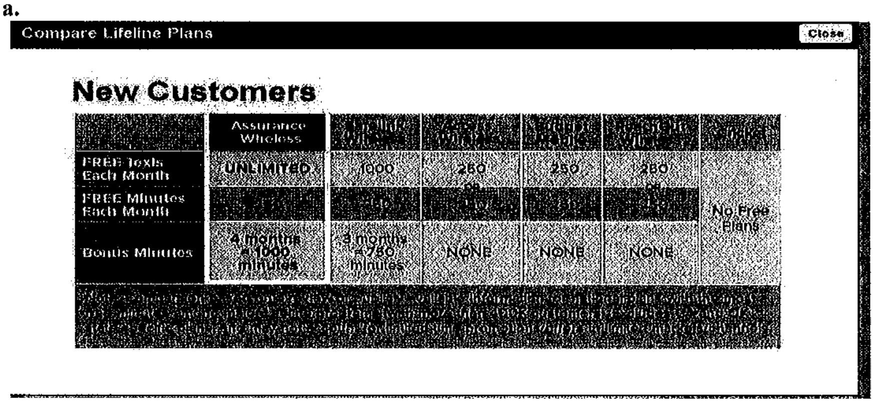
JZ 1.01 The Petition at page 2, footnote 2, states "[t]he 'Best Offer' claim is based upon published price plans for national offers as of June 2, 2014 of major Lifeline carriers with more than 400,000 customers (excludes offers in California and Oklahoma)."

a. Please provide the published price plans for the carriers referenced in this passage as of June 2, 2014.

b. Please explain why offers in California and Oklahoma were excluded from this comparison.

Response:

a.



b. Offers in California and Oklahoma are excluded from the comparison because other provider's plans and the competitive environment are different in those two states. In California, certain carriers receive state funds in addition to federal funds for Lifeline customers. Budget Mobile's California plan is 1000 Minutes and Unlimited Texts. In Oklahoma, Budget Mobile offers unlimited minutes and unlimited texts. Virgin Mobile does not offer Lifeline service in Oklahoma.

Name: Robin Wolkoff
Title: Senor Brand and Advertising Manager
Number: 908-660-0355