

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

**In the Matter of Staff’s Investigation into)
the Practices and Procedures of)
Companies Offering Low Income) File No. TO-2012-0364
(Lifeline) or Disabled Universal Service)
Fund Discounts in the State of Missouri)**

**COMMENTS OF VIRGIN MOBILE USA, L.P. D/B/A ASSURANCE WIRELESS
BROUGHT TO YOU BY VIRGIN MOBILE**

Virgin Mobile USA, L.P. D/B/A Assurance Wireless Brought To You By Virgin Mobile (“Virgin Mobile”) submits the following comments in response to Staff’s latest version of the proposed rulemaking for Title 4, Division 240, Chapter 31 of the Missouri Code of State Regulations (“Chapter 31 Rulemaking” or “Proposed Rules”). Staff requested feedback regarding concerns and fiscal impacts of the Proposed Rules. Virgin Mobile comments as follows:

Board Approved Form

Proposed Rules: 4 CSR 240-31.020(9); 4 CSR 240-31.120(3)(A); 4 CSR 240-31.130(D)(7)

Several of the Proposed Rules address the form that eligible telecommunications carriers (“ETCs”) use to enroll end-users in the Lifeline programs and require ETCs to utilize a board-approved form. Virgin Mobile submits that utilization of a state-specific form increases its costs and causes a fiscal impact in a number of ways. Virgin Mobile currently offers Lifeline service in 34 states, and in every one of those states uses a brand-specific enrollment form rather than a state standard form. A state-mandated form adds cost and expense as the forms cannot be processed by Virgin Mobile in the same manner. Virgin Mobile electronically scans every Lifeline application it receives, and a third party processor verifies that the applicant meets the

Lifeline eligibility criteria. The brand-specific form is designed to work with the third-party processor's software, enabling information from the hard copy form to be electronically viewed, sorted, managed and retrieved, including in cases where there are inquiries from the applicant or the state. A Missouri specific Lifeline form will require the third party processor to manually review Missouri applications, requiring substantial extra time and expense to verify Lifeline eligibility, thereby delaying the delivery of Lifeline service to Missouri applicants. In addition, Missouri applicants and the state would lose the benefit of ease of access to information concerning Missouri applicants. Virgin Mobile has also engaged in market research to design an application form that optimizes the applicant experience and reduces consumer confusion. Virgin Mobile Lifeline Customer Care representatives are quite familiar with the form and able to assist customers through the application process. Virgin Mobile Care representatives would be unable to provide that same level of support to Missouri consumers using the Missouri-specific application. To implement a Missouri-specific application form, Virgin Mobile estimates a fiscal impact of approximately \$10,000 in up-front investment and approximately \$80 per 1000 applications received. Accordingly, Virgin Mobile requests that the Proposed Rules allow carrier specific forms as long as the form provides the information required and conforms to FCC Rule 47 C.F.R. §54.410(d).

If Missouri-specific forms are required, then non-substantive information should be permitted to be added to the Missouri form without adding extra pages. Proposed Rule 31.020(9) states that if a company wants to add additional information to the form then a company may be permitted to attach an additional sheet(s) to the form. Attaching additional sheets adds to the Lifeline form printing and mailing costs or changes marketing approaches, causing fiscal impacts. Virgin Mobile uses a bar code on its standard Lifeline application form

to allow its third party processor to track the form as it goes through its systems electronically. The bar code helps prevent errors caused by manual handling of the forms, reduces costs, and enables Virgin Mobile to efficiently respond to applicant or commission inquiries concerning application status. If a Missouri-specific form is required Virgin Mobile asks that bar codes or other non-substantive tracking devices be allowed to be placed on to the form without requiring usage of extra pages that add to printing and mailing costs.

Disclosure Requirements

Proposed Rules 4 CSR 240-31.130(1)(C)(3); 4 CSR 240-31.130(1)(D)(1); 4 CSR 240-31.130(2)(H)(1)

The Proposed Rules seek disclosures that are too broad and set up potential compliance issues for Lifeline Applicants that are affiliated with large corporations. The Proposed Rules seek Lifeline applicants to disclose legal actions related to state or federal universal service funds or “any matter involving fraud, deceit, perjury, stealing or the omission or misstatement of material fact in connection with a commercial action”¹ and include notices of investigation, filing of complaints and civil lawsuits.² Proposed Rule 4 CSR 240-31.130(2)(H)(1) also requires approved ETCs to notify Telecommunications Staff of any allegation of violations of state or federal universal service requirements or any allegation of fraud, tax evasion or the commitment of a felony by the ETC or person. Virgin Mobile understands and agrees that the Commission should be aware of any actions related to state or federal universal service funds. The other required disclosures are virtually impossible to comply with for a Lifeline Applicant or Lifeline ETC affiliated with large companies that are subject to hundreds of matters of litigation annually.

¹ 4 CSR 240-31.130(1)(C)(3).

² Id.

Anybody with enough money to pay a filing fee can file a lawsuit that under these Proposed Rules would need to be disclosed. And the requirement in the Proposed Rule to provide copies of complaints, pleadings and responses³ would not only cause expense and administrative issues for the Applicant, but would also potentially inundate the Commission with documents and impose a financial impact on the Commission. To address these issues, Virgin Mobile proposes that the disclosures in both 4 CSR 240-31.130(1)(C)(3) and 31.130(2)(H)(1) be limited to only matters involving state or federal universal service funds.

Proposed Rule 4 CSR240-31.130(1)(D)(1) seeks a description of the safeguards an applicant has in place to ensure that no USF funds are diverted to use for attorneys fees, back taxes, recissions, penalties, judgments or settlements. The FCC rules allow for federal Lifeline support in the amount of \$9.25 per month to an ETC providing Lifeline service to a qualifying low-income customer if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income customer.⁴ Other than making the certification required by the FCC Rule and passing along the full amount received from USAC to qualifying customers in the form of a discount or credit or the equivalent service in the case of wireless carriers providing a certain amount of minutes for no charge, Virgin Mobile is unclear as to what might be required by the Proposed Rule. USAC provides funds to Virgin Mobile and Virgin Mobile uses those funds to provide service to qualifying low-income customers. As such, it is unclear how compliance with the Proposed Rule can be demonstrated. The separate accounting requirements in the Proposed Rule are unworkable for a multi-product firm. The certification in the FCC rules and as proposed below will ensure that the USAC revenues are applied directly to

³4 CSR 240-31.130(1)(C)(3) “Such details include, but are not limited to, copies of complaints or other such pleadings and the filed responses thereto, ...”

⁴ 47 CFR § 54.403(a)(1).

qualifying Lifeline customers. Virgin Mobile suggests the current rule language be deleted and the rule read: “1. A certification by the ETC that it uses the USF funds for the purposes described in FCC Rule 47 CFR §54.403.”

Jurisdiction

Proposed Rule 4 CSR 240-31.130(2)(B)

Proposed Rule 4 CSR 240-31.130(2)(B) states that “an application for ETC designation shall be deemed to be acceptance of commission jurisdiction over any issues related to ETC status and USF funding and acceptance of all commission rules pertaining to universal service.” Virgin Mobile understands the need for the acceptance of Commission jurisdiction for ETC designation and annual certification but asserts that the Proposed Rule should be narrowly tailored to avoid any potential conflicts with state statute which exempts wireless services from Commission jurisdiction.⁵ Many wireless providers are ETCs or are applying to be ETCs. The Proposed Rule’s broad language stating “any issues related to ETC status and USF funding” potentially expands the Commission’s jurisdiction beyond what is required for designation and annual certification. To avoid any potential confusion and conflict regarding Commission jurisdiction over wireless providers Virgin Mobile suggests the following redline: “an application for ETC designation shall be deemed to be acceptance of commission jurisdiction over any issues ~~related to ETC status and USF funding and acceptance of all~~ contained in the Commission rules pertaining to universal service in Chapter 31.”

Brand Name

Proposed Rule 4 CSR 240-31.130(2)(F)

The Proposed Rule states that the ETC shall solely conduct business using the name or

⁵ RSMo. 386.020(53)(c) and 386.250.

“DBA” under which the Commission granted designation and prohibits the use of other brand names. Rather than an explicit prohibition on the use of additional brand names, Virgin Mobile suggests that the Proposed Rule allow different brand names to be used 14 days after the filing of the new brand name with the Commission in the case under which the ETC received designation. Notice and filing to the Commission allows the Commission to correspond new brand names with the ETC designee and provides the ETCs with flexibility to market their services as necessary. The corresponding FCC rule follows this logic by allowing ETCs to submit in their annual reports company names and any branding but does not prohibit the use of alternate names or brands. See, 47 CFR § 54.422(a).

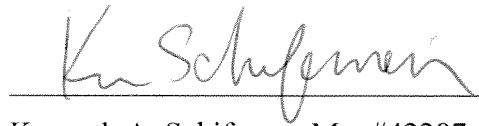
Confidential Annual Reporting of Customer Counts

Proposed Rule 4 CSR 240-31.130(3)(A)(4)

Proposed Rule 4 CSR 240-31.130(3)(A)(4) requires each ETC to report for each month within the last twelve months the total number of Lifeline and disabled customers, the number of new Lifeline and disabled customers, and the numbers of subscribers de-enrolled and the reasons for de-enrollment. Virgin Mobile protects customer count information by state as competitively sensitive and would file those documents on a confidential basis. Virgin Mobile requests that the Rule recognize the ability to file such information confidentially.

WHEREFORE, Virgin Mobile requests the Proposed Rules be modified as set forth above and reserves its rights to make further comments throughout the rulemaking process.

Respectfully submitted on September 14, 2012.

A handwritten signature in black ink, reading "Ken Schiffman", written over a horizontal line.

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VIRGIN MOBILE USA, L.P.

STATE OF KANSAS)
)
COUNTY OF JOHNSON) SS:


VERIFICATION

Kenneth A. Schiffman, being first duly sworn, deposes and states that he is Senior Counsel and Director for Virgin Mobile USA, L.P., that he has read the **COMMENTS OF VIRGIN MOBILE USA, L.P. D/B/A ASSURANCE WIRELESS BROUGHT TO YOU BY VIRGIN MOBILE** and has knowledge of the contents thereof, and that the information therein contained are true to the best of his knowledge, information and belief.



Kenneth A. Schiffman

Subscribed and sworn to before me on this 14th day of September, 2012.



Notary Public

My Commission Expires: 09/12/16

Seal:



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of September, 2012, a copy of the above and foregoing was served via US mail, facsimile or electronically mailed to the following:

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