

**Dorothy Menasco**

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**Sent:** Monday, May 03, 2010 4:55 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 090245-TP - Response  
**Attachments:** Virgin Mobile Response to TracFone Comments.pdf

## Electronic Filing

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- b. Docket No. 090245-TP – In re: Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P.
- c. Document being filed on behalf of Virgin Mobile USA, L.P.
- d. There are 18 pages.
- e. The document attached for electronic filing is Virgin Mobile USA, L.P.'s Response to TracFone Wireless, Inc.'s "Comments in Opposition" to Virgin Mobile USA, L.P.'s Amended Eligible Telecommunications Carrier Petition"

(See attached file: Virgin Mobile Response to TracFone Comments)

Thank you for your assistance in this matter.

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DOCUMENT NUMBER-DATE

03663 MAY-3 2010

5/3/2010

FPSC-COMMISSION CLERK

**Before the  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for limited designation as )	DOCKET NO. 090245-TP
eligible telecommunications carrier (ETC) )	
by Virgin Mobile USA, L.P. )	FILED: May 3, 2010
_____ )	

**VIRGIN MOBILE USA, L.P.'S RESPONSE TO  
TRACFONE WIRELESS, INC.'S "COMMENTS IN OPPOSITION"  
TO VIRGIN MOBILE USA, L.P.'S AMENDED ELIGIBLE  
TELECOMMUNICATIONS CARRIER PETITION**

May 3, 2010

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FPSC-COMMISSION CLERK

## SUMMARY

TracFone Wireless, Inc.'s ("TracFone") recent "Comments in Opposition" represent an unauthorized attempt to delay the advent of competition for wireless services provided to lower-income Florida customers. While TracFone's submission suffers from a variety of procedural infirmities, the most important deficiency results from its misstatements of the substantive laws governing this proceeding. Contrary to TracFone's assertions:

- This Commission has clear authority to determine Virgin Mobile's ETC status in Florida;
- Virgin Mobile is a facilities-based carrier as a matter of fact and under FCC precedent. That Virgin Mobile does not hold direct legal title to the facilities it uses has no bearing on Virgin Mobile's status as a facilities-based carrier. Virgin Mobile has beneficial use of all Sprint transmission and network facilities and, consequently, is a facilities-based carrier under section 214(e) of the Communications Act of 1934;
- Virgin Mobile is not a "reseller" under telecommunications law because it does not purchase wholesale capacity from Sprint, or any other entity; and,
- Assurance Wireless by Virgin Mobile customers enjoy the same 911 and enhanced 911 ("E911") service as any other Sprint wireless customer using Sprint's existing 911 and E911 facilities and Public Safety Answering Point relationships.

Against this backdrop, TracFone's submission can only be viewed as a desperate attempt to preclude Virgin Mobile's Assurance Wireless service from offering a more attractive, lower-priced wireless service to lower-income Florida residents—one that includes 200 free minutes each month at no cost to the customer rather than the mere 68 minutes that TracFone's Safelink product offers. Virgin Mobile respectfully requests, therefore, that the Commission promptly designate Virgin Mobile as an ETC to enable it to launch much needed Lifeline services as soon as possible.

**Before the  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for limited designation as )	DOCKET NO. 090245-TP
eligible telecommunications carrier (ETC) )	
by Virgin Mobile USA, L.P. )	FILED: May 3, 2010
_____ )	

**VIRGIN MOBILE USA, L.P.’S RESPONSE TO  
TRACFONE WIRELESS, INC.’S “COMMENTS IN OPPOSITION”  
TO VIRGIN MOBILE USA, L.P.’S AMENDED ELIGIBLE  
TELECOMMUNICATIONS CARRIER PETITION**

Virgin Mobile USA, L.P. (“Virgin Mobile”) hereby responds to the unauthorized filing by TracFone Wireless, Inc. (“TracFone”), a non-party competitor whose sole motive is to delay these proceedings and thereby serve its own competitive interests, which are wholly incompatible with and, in fact, diametrically opposed to the public interest. Virgin Mobile supports its response with the information set forth below.

**I. BACKGROUND**

Virgin Mobile filed a request with the Commission for designation as an Eligible Telecommunications Carrier (“ETC”) for the limited purpose of offering prepaid wireless service supported by the Universal Service Fund’s Lifeline program in the state of Florida on April 29, 2009—more than one year ago. At that time, Virgin Mobile was a reseller of the network services of Sprint Nextel Corporation (“Sprint”). On November 24, 2009, Virgin Mobile became a wholly-owned and fully integrated subsidiary of Sprint. Subsequently, on April 1, 2010, Virgin Mobile submitted an amended petition, seeking ETC designation as a facilities-based carrier, which is the appropriate designation in light of the merger and Virgin Mobile’s resulting status as a facilities-based carrier. Sprint is “a holding company with its operations primarily

conducted by its subsidiaries.”<sup>1</sup> Sprint has two business segments, Wireless and Wireline. Sprint offers postpaid wireless services to subscribers under the Sprint brand, and prepaid wireless services under the Boost Mobile, Virgin Mobile and Assurance Wireless by Virgin Mobile brands.

Virgin Mobile, through its Assurance Wireless by Virgin Mobile brand, will offer a Lifeline package of 200 free minutes monthly. In its amended petition, Virgin Mobile stated that it would fully comply with all requirements to provide 911 and enhanced 911 (“E911”) service to Lifeline customers immediately upon commencement of service and would offer E911 compliant handsets at no charge to Lifeline customers. Indeed, contrary to the unsubstantiated assertions of Advocates of Universal Access, another non-party to this proceeding, Assurance Wireless by Virgin Mobile customers enjoy the same 911 and E911 service as any other Sprint wireless customer using Sprint’s existing 911 and E911 facilities and Public Safety Answering Point (“PSAP”) relationships.

TracFone is a wireless reseller and an ETC that is not a party to this proceeding and that has no interest that could serve as the basis for standing to intervene. TracFone would not have attempted to assert itself improperly into this proceeding were it not for its “Safelink” mobile Lifeline package. Under its Safelink brand, TracFone provides low-income consumers with 68 minutes of airtime per month, using the same universal service fund subsidy for which Virgin Mobile will provide 200 free minutes monthly. Virgin Mobile has determined that low-income consumers use approximately 150 minutes each month to communicate with prospective employers, social service agencies, family, and friends; more than double the usage that

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<sup>1</sup> Sprint Nextel Corporation, Annual Report (Form 10-K), at 1 (Feb. 26, 2010), <http://www.sec.gov/Archives/edgar/data/101830/000119312510042491/d10k.htm> (“*Sprint 2009 Annual Report*”).

TracFone provides, making Virgin Mobile's Lifeline offer more attractive to consumers and competitively superior to TracFone's Safelink offer. Given these considerations, it is not a great leap to assume that the primary impetus behind TracFone's unauthorized comments is an attempt to forestall this potent competition, thereby effectively depriving lower-income Florida residents of competition and a more attractive wireless service.

## **II. TRACFONE MISCONSTRUES THE SUBSTANTIVE LAW GOVERNING UNIVERSAL SERVICE**

### **A. The Commission Has Clear Authority to Determine Virgin Mobile's ETC Status in Florida**

In its attempt to delay the advent of competition, TracFone conflates two mutually exclusive provisions of section 214(e) of the Communications Act of 1934 ("Communications Act"): section 214(e)(2), which governs state designations of ETC status, and section 214(e)(6), which governs FCC determinations of ETC status. TracFone then asserts that this Commission "does not have authority" to remove the FCC's forbearance conditions and that the FCC's forbearance order "remains binding on this Commission."<sup>2</sup>

This Commission has determined that it has authority to designate wireless carriers as ETCs pursuant to section 214(e)(2) because it is specifically authorized to do so by federal law.<sup>3</sup> Under section 214(e)(2), this Commission has the jurisdiction and authority to designate Virgin Mobile as an ETC and any action it undertakes in that regard is wholly consistent with the Communications Act and the regulations of the FCC. Indeed, the FCC has made clear that the

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<sup>2</sup> TracFone Comments in Opposition to Virgin Mobile's Amended ETC Petition ("TracFone Comments"), at 10.

<sup>3</sup> See *Notice of Proposed Agency Action Order Finding Authority To Consider Applications by CMRS Providers for ETC Designation*; Docket Nos. 060581-TP and 060582-TP; Order No PSC 07-0288-PAA-TP, Issued April 3, 2007, p. 3 ("We find that after the enactment of Section 364.011, Florida Statutes... we now have jurisdiction to consider CMRS applications for ETC designation. Although Section 364.011, Florida Statutes, clearly excludes CMRS providers from our jurisdiction, the legislature provided an exception to our lack of authority in matters specifically authorized by federal law.")

grant of authority to states under section 214(e)(2) “demonstrates Congress’s intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity....”<sup>4</sup> While the FCC has asserted jurisdiction over interpretations of the statutory language in order “to set out a federal interpretation of the ‘own facilities’ language in section 214,”<sup>5</sup> the FCC clearly did not intend to usurp the states’ jurisdiction under section 214(e) to designate ETCs. Thus, while the Commission is bound by the FCC’s *interpretation* of the term “own facilities,” which, as indicated below, requires a finding that Virgin Mobile is a facilities-based carrier, the Commission is not bound to blindly mimic the *outcome* of the FCC’s prior ETC designations of Virgin Mobile in other states under section 214(e)(6), which were made in connection with its grant of forbearance. Those FCC designations were made under an entirely different set of facts and circumstances, namely that Virgin Mobile had not yet been acquired by Sprint and, therefore, was a reseller and not a facilities-based provider at the time of those designations.

**B. Virgin Mobile Is a Facilities-Based Carrier Under FCC Precedent; TracFone Ignores the Law and Common Industry Practices**

TracFone essentially argues that Virgin Mobile should not be considered a facilities-based carrier because, even though it is a wholly-owned subsidiary of Sprint Nextel, Virgin Mobile remains a separate legal entity and does not hold legal title to the Sprint facilities over which it provides service. This is a misleading line of reasoning that would lead to absurd results: that virtually no single communications entity would be considered a facilities-based carrier. TracFone’s assertions contravene not only established FCC precedent, but also the common business practices of the telecommunications industry. Tellingly, TracFone fails to cite

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<sup>4</sup> *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, ¶ 61 (2005).

<sup>5</sup> *Id.*

to any FCC or Commission precedent in attempting to make its case. The Commission should not entertain TracFone's baseless effort to overturn decades of communications law and policy.

**1. The FCC Has Made Clear That Facilities-Based Carriers Do Not Need to Hold Direct Legal Title to Facilities**

TracFone, citing not to telecommunications law, but to the U.S. criminal code, asserts that Virgin Mobile does not meet the definition of a facilities-based carrier because it does not "own" Sprint's network facilities.<sup>6</sup> FCC precedent clearly provides that holding legal title to facilities has no bearing on whether a service provider qualifies as a facilities-based carrier. Section 214(e) of the Communications Act requires that a carrier provide services supported by the universal service fund, either "using its own facilities or a combination of its own facilities and the resale of another carrier's services."<sup>7</sup> The FCC has made it clear that, for universal service purposes, the term "own facilities" refers to property which a carrier "considers its own" or for which it "enjoy[s] the beneficial use." The concept of "own facilities" therefore includes facilities for which a carrier "does not hold absolute title."<sup>8</sup>

For example, in concluding that a provider's use of unbundled network elements qualified as the carrier's "own" facilities for the purposes of section 214(e), the FCC noted that the statutory language "its own facilities" was not the same as facilities "owned by" the carrier and that this was a salient distinction.<sup>9</sup> The FCC explained that the concept of ownership is flexible and includes, in addition to property to which a carrier holds direct legal title, "property

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<sup>6</sup> TracFone Comments at 7.

<sup>7</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>8</sup> *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, ¶ 159 (1997) ("Universal Service First Report and Order").

<sup>9</sup> *Id.*

that a carrier considers its own,”<sup>10</sup> and that ownership extends to “others enjoying the beneficial use of property.”<sup>11</sup> The FCC added that “our interpretation of the term ‘own facilities’ is consistent with the goals of universal service and that any contrary interpretation would frustrate the goals of the [Communications] Act and lead to absurd results.”<sup>12</sup>

Accordingly, even though direct legal title to Virgin Mobile’s wireless communications facilities may lie with its parent and sibling corporate enterprises that are part of the Sprint family, Virgin Mobile has the beneficial use of its affiliates’ property and is appropriately classified as a facilities-based carrier.

## **2. TracFone Disregards Decades of Industry Practice**

TracFone’s argument that a carrier must hold direct legal title to its facilities in order to obtain facilities-based ETC designation also belies widespread practices in the telecommunications and wireless industries. Sprint is “a holding company with its operations primarily conducted by its subsidiaries.”<sup>13</sup> Sprint’s ownership of facilities is disaggregated in a series of wholly-owned entities that own spectrum, facilities, and equipment. Hundreds of carriers in the United States would be unable to qualify as facilities-based carriers were the Commission to require them to hold absolute, direct legal title to all of the facilities used to provide services to end user customers.

As with all Sprint subsidiaries, Virgin Mobile not only enjoys beneficial use of the company’s network facilities, but also is under direct Sprint management. Dan Schulman,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* ¶ 158.

<sup>12</sup> *Id.* ¶ 161.

<sup>13</sup> *See Sprint 2009 Annual Report* at 1.

Sprint's President of Prepaid, oversees the prepaid products and services using the Boost Mobile, Virgin Mobile and Assurance Wireless brands. Mr. Schulman reports directly to Dan Hesse, CEO of Sprint. Sprint United Management Company ("Sprint United"), another wholly-owned subsidiary of Sprint, employs essentially all Sprint employees, including the approximately 500 employees focused on the prepaid Boost Mobile, Virgin Mobile and Assurance Wireless brands, and essentially all Sprint employees have the same medical and benefits options, including healthcare providers.

Importantly, financial decisions for the Virgin Mobile brand are made by Sprint. Sprint provides the funds for Virgin Mobile's operating budget and recycles Virgin Mobile's profits back into Sprint. Sprint United controls Virgin Mobile's cash; makes payments related to Virgin Mobile products and services; and enters into new agreements related to prepaid brands and services. Nextel Systems, Inc., another wholly-owned Sprint subsidiary, makes purchases related to Virgin Mobile products and services, such as handsets, as it does for other Sprint subsidiaries.

In addition, Sprint does not track Virgin Mobile's financial performance separately from the other prepaid brands. Prior to the merger with Virgin Mobile, Sprint treated revenue and customers from Virgin Mobile as wholesale contributions.<sup>14</sup> In its most recent 10-K filing, however, Sprint accounted for all customers and revenue from Virgin Mobile-branded services as prepaid customers and revenue of Sprint.<sup>15</sup> Moreover, Sprint accounted for Virgin Mobile's revenue in its most recent tax filings before the IRS and later this year will submit USF filings that will include Virgin Mobile's revenue.

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<sup>14</sup> See Sprint Nextel Corporation, Annual Report (Form 10-K), at 34-37 (Feb. 27, 2009), <http://www.sec.gov/Archives/edgar/data/101830/000119312510042491/d10k.htm>.

<sup>15</sup> *Sprint 2009 Annual Report*, at 34-37.

In short, Virgin Mobile is one among dozens of wholly-owned subsidiaries of Sprint. It is the entity that is responsible for the terms of service offered under the Virgin Mobile and Assurance Wireless brands; it does not have independent employees or cash accounts. The fact that Virgin Mobile remains a separate legal entity is irrelevant to the issues under review here, and TracFone has cited no authority that would prevent the Commission from designating Virgin Mobile as a facilities-based ETC.

**C. Virgin Mobile Is not a “Reseller” Under FCC Rules and Regulations**

TracFone seems to think that simply calling Virgin Mobile a reseller makes it so. Its submission is devoid of any factual or legal support for that assertion. The FCC defines “resellers” as entities that “purchase airtime from facilities-based providers and resell service to the public for profit.”<sup>16</sup> Thus, to be considered a “reseller” under telecommunications law, Virgin Mobile would have to “purchase” wholesale network capacity from Sprint and “resell” it to its own customers. As Virgin Mobile has informed the Commission, and as represented in the Affidavit attached as Exhibit 1, since its acquisition by Sprint, Virgin Mobile no longer

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<sup>16</sup> *In re Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Thirteenth Report, 24 FCC Rcd 6185, ¶ 17 (2009); see also *In re Federal-State Joint Board on Universal Service*, 12 FCC Rcd 18400, 18507 (1997) (defining a reseller as “a telecommunications service provider that 1) incorporates the purchased telecommunications services into its own offerings and 2) can reasonably be expected to contribute to support universal service based on revenues from those offerings”); *In re Implementation of the Net 911 Improvement Act of 2008*, 2008 WL 4659843, ¶ 18 (2008) (defining resellers as entities “engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households”); *In re Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd 15817, ¶ 51 (2007) (defining “CMRS resale” as the “purchase of CMRS service provided by a facilities-based CMRS carrier in order to provide resold service within the same geographic market as the facilities-based CMRS provider”); *Mobile Telecommunications Sourcing Act*, Pub. L. No. 106-252, 114 Stat. 626 (2000) (codified at 4 U.S.C. §§ 116 – 126) (a “reseller” is “a provider who purchases telecommunications service from another telecommunications service provider and then resells, uses as a component of, or integrates the purchased services into a mobile telecommunications service . . .”).

purchases network capacity from Sprint Nextel or any other entity.<sup>17</sup> Virgin Mobile also makes no payments for the use of any network or transmission services.<sup>18</sup>

Prior to Virgin Mobile becoming a wholly-owned subsidiary of Sprint in November 2009, Sprint properly accounted for Virgin Mobile's revenue as resale or wholesale revenue, and its customers as wholesale customers. Once the transaction closed, however, Sprint ceased to distinguish between the revenue generated from Virgin Mobile operations and the revenue generated by customers using its other prepaid wireless branded service, Boost Mobile; Sprint now treats all revenue from wireless operations as contributions from its Wireless segment. Given that Virgin Mobile is not a reseller as defined by telecommunications law, it must be considered a facilities-based carrier.<sup>19</sup>

As TracFone details in its Comments, resellers, such as TracFone, are required to obtain certifications from PSAPs confirming that the reseller provides its customers with 911 and E911 service.<sup>20</sup> Facilities-based carriers, however, offer these services through the use of their own equipment and relationships with PSAPs, rather than through a contract with another carrier and are not required to obtain these certifications. TracFone's filing is focused on the mechanics of those certifications; even TracFone does not attempt to disparage the quality or availability of emergency services delivered through Sprint's network.

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<sup>17</sup> See Exhibit 1.

<sup>18</sup> Moreover, a hallmark of the reseller relationship is the reseller's ultimate responsibility for payment to the underlying carrier of all charges associated with the services provided to its own customers. That is clearly not the situation here, where Virgin Mobile does not purchase service from Sprint and consequently is not "on the hook" for any commitments. See, e.g., *In re MCI Telecommunications Corp. v. AT&T*, 7 FCC Rcd 5096 (1992).

<sup>19</sup> *In re Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. §214(E)(1)(A)*, Order, 24 FCC Rcd 3381, ¶ 7 (Mar. 5, 2009).

<sup>20</sup> TracFone Comments at 3.

### III. TRACFONE'S "COMMENTS IN OPPOSITION"

In addition to its substantive infirmities, TracFone's submission also suffers from a variety of procedural defects. As the Commission's docket plainly shows, TracFone is not a party to this proceeding. TracFone's submission identifies no rule or statute that would authorize the filing of "Comments in Opposition" by a non-party. No rule within the entire Uniform Rules of Procedure in Chapter 28-106, Florida Administrative Code, or the Commission's own procedural rules, authorizes such a filing. In order to submit comments, TracFone must have filed a proper petition to intervene – the pleading by which a non-party seeks to attain party status and thereby gain the right to participate in a pending proceeding, including the right to file pleadings, motions, and similar documents.

Rule 25-22.039 of the Florida Administrative Code, sets forth the requirements for non-parties to seek intervention.<sup>21</sup> TracFone does not, and cannot, identify any constitutional or statutory right, or Commission rule that would entitle it to participate in this proceeding. TracFone does not, and cannot, allege that its substantial interests are subject to determination or will be affected through this proceeding. The absence of a single allegation that would support TracFone's standing to participate as a party in this proceeding confirms that TracFone's submission must be viewed as illegitimate.<sup>22</sup> Finally, as the Commission has concluded, alleged competitive injuries are insufficient to accord standing.<sup>23</sup>

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<sup>21</sup> See FLA. ADMIN. CODE r. 25-22.039, which requires persons who have a "substantial interest" in a proceeding to "include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding."

<sup>22</sup> See *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So.2d 478, 482 (Fla 2d DCA 1981) (concluding that "before one can be considered to have a substantial interest in the outcome of a proceeding, he must show (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect.").

<sup>23</sup> *AmeriSteel Corp. v. Clark*, 691 So.2d 473, 478 (Fla. 1997).

Here, the TracFone “Comments in Opposition” filing does not identify any alleged injury that TracFone will sustain, much less attempt to articulate how any alleged injury to TracFone is of a type or nature which this proceeding is designed to protect. Instead, TracFone purports to address the “public interest,” “public safety,” and the interests of customers. As discussed above, TracFone’s purported concerns are completely without merit: Virgin Mobile is a facilities-based carrier and not a reseller. TracFone’s sole interest is as a competitor, but its competitive, economic interests are not the type to be protected in this proceeding. Indeed, TracFone’s interest in thwarting or delaying competition is antithetical to the public interest considerations in this proceeding, which focus on expanding the availability of affordable telecommunications services, instead of restricting competition.<sup>24</sup>

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<sup>24</sup> The Commission has applied the *Agrico* test to reject standing based on alleged competitive injury, where, as in this proceeding, the economic, competitive interests are not within the “zone of interest” of the regulatory scheme at issue. *See, e.g., In Re: Compliance Investigation of Southeastern Services, Inc.*, Docket No. 050363-TP; Order No. PSC-05-1027-FOF-TP; 2005 Fla. PUC Lexis 658, 05 FPSC 10:220 (FPSC, October 20, 2005) (allegations of injury to competitor’s status, rights and obligations, impaired ability to compete, and resulting impacts on customers were insufficient to meet either prong of *Agrico* test for standing); *accord In Re: Review of the Retail Rates of Florida Power & Light Company*, Docket No. 001148-EI; Order No. PSC-02-0324-PCO-EI; 2002 Fla. PUC Lexis 179, 02 FPSC 3:129 (Order Denying Petition to Intervene, March 13, 2002) (allegations in petition to intervene that result of proceeding would be to unfairly and improperly undercut competitors’ natural gas service rates were nothing more than speculation of impact on competitive position, insufficient to confer standing under either prong of *Agrico* test; regulatory proceeding was designed to protect the utility’s customers, not its competitors).

#### IV. CONCLUSION

The purpose of universal service funding is to provide access to advanced telecommunications and information services at affordable prices to all consumers, including those with low incomes and those who live in high-cost areas.<sup>25</sup> Virgin Mobile wishes to fulfill the goals of universal service through its offering of 200 free airtime minutes per month for Lifeline customers. Nonetheless, based on its fear of competition from Virgin Mobile's Assurance Wireless service, which more than doubles the airtime that TracFone's Safelink product offers to lower income Florida residents, TracFone is attempting to undermine the benefits of these offerings to low-income consumers. Virgin Mobile, as a wholly-owned subsidiary of Sprint Nextel with the ability to utilize Sprint's Florida mobile network and its existing 911 and E911 facilities and PSAP relationships is fully qualified to offer this lifeline service. The Commission should reject TracFone's legally erroneous and procedurally defective arguments and instead designate Virgin Mobile as a facilities-based ETC and further the Commission's important work of assuring the availability of high-quality, low-cost telecommunications services to all Florida consumers.

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<sup>25</sup> 47 U.S.C. § 254(b).

**Respectfully submitted,**

s/ Susan F. Clark

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**EXHIBIT 1**

**AFFIDAVIT**

AFFIDAVIT

I, Peter Lurie, do hereby declare under penalty of perjury as follows:

1. I am the Senior Vice President of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059. I submit this affidavit in connection with the Florida Public Service Commission's review of the Amended Petition of Virgin Mobile USA, L.P. for Designation as an Eligible Telecommunications Carrier for the Limited Purpose of Offering Lifeline Services.

2. I certify that, as a wholly owned subsidiary of Sprint Nextel Corporation ("Sprint"), Virgin Mobile no longer resells the wireless services of Sprint, any of its operating subsidiaries or any other carrier.

3. I further confirm that Virgin Mobile operates as a facilities-based carrier in the State of Florida under the Federal Communications Commission's interpretation of the requirements of Section 214(e)(1)(A) of the Communications Act of 1934, as amended.

4. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

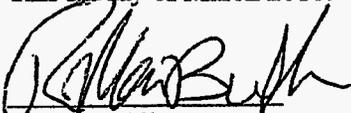
Executed on May 3, 2010



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Peter Lurie  
Senior Vice President

Subscribed and sworn before me  
This 3<sup>rd</sup> day of March 2010.



Notary Public

**RILLAN BUTLER**  
NOTARY PUBLIC, State of New York  
No. 01BU6149066  
Qualified in Kings County  
Commission Expires July 3, 2010

**CERTIFICATE OF SERVICE**

This is to certify that copies of the foregoing Response has been furnished by U.S. Mail or electronically to the parties listed below this 3<sup>rd</sup> day of May, 2010.

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