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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of Virgin Mobile USA, L.P. Petition for Limited Designation as an Eligible Telecommunications Carrier	Docket No. 10-2521-01 UTAH OFFICE OF CONSUMER SERVICES' REPLY TO VIRGIN MOBILE'S COMBINED RESPONSE TO MOTIONS TO COMPEL AND FOR SANCTIONS
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In reply to Virgin Mobile's Combined Response the Utah Office of Consumer Services renews its Motion for Sanctions. In data requests and in its motions, the Office requested that Virgin Mobile provide a complete and unedited copy of its contract with Solix, Inc. to act as Virgin Mobile's Lifeline administrator.¹ The most that Virgin Mobile offered was first, an absolute refusal

¹ Virgin Mobile speciously suggests that the Office did not confer or attempt to confer with Virgin Mobile. When Virgin Mobile first refused to provide information because it is confidential and then acknowledges the Office is entitled to receive confidential information, but it will not in any event provide the information, the Office had no other choice but to appeal to the Commission. Virgin Mobile's January 20, 2011 Response to

to provide the contract and second, an offer “to respond to certain questions regarding the terms of the contract provided that the Office of Consumer Services agrees to treat any such responses as confidential information not subject to disclosure.” Virgin Mobile Response to Office Data Request 4.6. From subsequent discussions between the Office and its attorney, with Virgin Mobile’s local counsel, who entered an appearance on January 20, 2011, the Office understood the information would be provided in private conversations involving only the Office and the requested scope of confidentiality included not using such information at the hearing. Virgin Mobile insisted that its responses would be “not subject to disclosure.” Combined Response page 2.

Only in its Combined Response, served upon the Office’s attorney at 6:17 PM January 24, 2011, does Virgin Mobile offer to provide in the form of evidence a description of Solix’s role in the processes of determining eligibility, verifying eligibility and re-certifying eligibility. However, the contract itself will remain withheld and unavailable.

Virgin Mobile bases its refusal to provide the contract on the grounds that it has agreed not to. Virgin Mobile does not assert a privilege, the work-product exception, an unreasonable burden or the absence of any protective order. In fact, Virgin Mobile acknowledges that the Office is entitled to receive confidential

Motion to Compel certainly demonstrates the Office’s efforts to resolve this discovery dispute.

information. Virgin Mobile's position is the contract will not be provided in any form and the Office and all parties shall be given only the information Virgin Mobile's counsel are willing to provide.²

As the Office stated in its Motion for Sanctions, it is fundamentally unfair and a violation of the Commission's procedural rules to permit Virgin Mobile to refuse to provide to the Office documents and information that it has placed at issue and has offered as evidence. The Solix contract is independently relevant and is independently relevant not just in this docket. The Commission and parties in the i-wireless petition for ETC designation, Docket No. 10-2526-01, wherein Solix is the third party Lifeline administrator³, were informed that Solix will not permit the disclosure of its contract with i-wireless regardless of a protective order.⁴

It is now plain that Virgin Mobile has and will continue to assert that the terms of its contract with Solix prevail over the Utah Rules of Civil Procedure and the Commission's administrative rules. To require the Office and other parties to

² Because Virgin Mobile's only witness Ms. Divelbliss is now appearing also as Virgin Mobile's attorney for the purpose of limiting access to matters about which she has testified in pre-filed testimony, the Commission should carefully consider the proscription in Utah R. Prof. Conduct 3.7.

³ Direct Testimony of Patrick McDonough Page 11.

⁴ Because the discovery dispute in this docket is now an issue in the i-wireless docket, copies of this and other pleadings are being provided to i-wireless' counsel.

go forward on January 26, 2011 under these circumstances is a violation of the due process to which all parties are entitled.

Dated this 25th day of January 2011.

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CERTIFICATE OF SERVICE

This is to certify that true and correct copies of the foregoing Utah Office of Consumer Services' Motion for Sanctions were served upon the following by electronic mail on January 21, 2011:

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