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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' MOTION TO COMPEL
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The Utah Office of Consumer Services moves for an order compelling Virgin Mobile USA to provide the Office with a complete and unedited copy of Virgin Mobile's contract with Solix, Inc. Twice, the Office has requested the contract and twice Virgin Mobile has refused. In a November 15, 2010 response to Office Data Request 2.3, the company stated: "The terms of the Virgin Mobile's contract with Solix are confidential. Accordingly, Virgin Mobile is unable to provide a copy for OCS's review." Office Data Request 4.6 referred to Utah Admin. Code R 746-100-16 (A) (1) (c), to which the company responded:

Virgin Mobile understands that the Office of Consumer Services is entitled to receive confidential information. However, the terms of Virgin Mobile's contract with Solix prohibit the Company from disclosing the contract to third parties. Accordingly, Virgin Mobile is unable to provide the contract itself to the Office of Consumer Services. Notwithstanding Virgin Mobile's legal inability to provide the Solix contract, the Company is willing 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's offer to answer questions is hollow because first, discovery is closed and second, without the contract one cannot craft cross-examination that conforms to the Commission's practice and procedure. Further, Virgin Mobile has not requested additional protective measures, as it is the company's burden to do. It may not simply refuse to supply the requested contract.¹

The evidence in Docket No. 09-2511-01, Petition of TracFone Wireless, Inc., and the TracFone September 13, 2010 Report and Order and December 1, 2010 Amended Report and Order demonstrate the importance to the Commission, Office and the Division of Public Utilities of knowing and understanding how an eligible telecommunications carrier (ETC) will comply with Utah law pertaining to Lifeline eligibility, initial and continuing. The TracFone Amended Report and Order and the pending Notice of Agency Action in Docket No. 10-2528-01, make plain the significance to the Commission of the terms and conditions of third party contracts by which an ETC intends to comply with Utah law and the Commission's orders.

¹ Because Virgin Mobile acknowledges that the Office is entitled to receive the contract but refuses to supply it, the Office requests that the Commission consider an alternative order that prohibits Virgin Mobile USA from offering for admission into evidence any testimony, exhibit, or evidence in other form, that describes, refers to, or is based upon, the Solix contract and further, to strike from Virgin Mobile's pre-filed testimony and exhibits, any reference to Solix, Inc.

In this docket, Virgin Mobile has placed at issue the terms and conditions of its Solix contract. For example, in rebuttal testimony page 4 line 20, Virgin Mobile states, “In conjunction with Solix, virgin Mobile has designed a recertification process that it believes will effectively confirm the continued eligibility of its Lifeline customers.” An evidence-based decision in this docket will result only if the Office and Division can examine the contract and thus provide through its own witnesses, an analysis of Virgin Mobile’s application.

Dated this 14th 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 to Compel were served upon the following by electronic mail on January 14, 2011:

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