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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of Virgin Mobile USA, L.P.	)	Docket No. 10-2521-01
Petition for Limited Designation as an	)	
Eligible Telecommunications Carrier	)	<b>Virgin Mobile USA, L.P.’s Combined</b>
	)	<b>Response to Motion to Compel and</b>
	)	<b>Motion for Sanctions</b>
	)	

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Virgin Mobile USA, L.P. (“Virgin Mobile”) hereby responds to the Motion to Compel filed January 18, 2011, and the Motion for Sanctions filed January 24, 2011, by the Utah Office of Consumer Services (“OCS”). In the Motion to Compel, OCS moves the Public Service Commission (the “Commission”) to compel Virgin Mobile to provide OCS with a complete and unedited copy of Virgin Mobile’s contract with Solix, Inc. In the Motion for Sanctions, OCS moves for an order sanctioning Virgin Mobile for failure to provide OCS with a complete and

unedited copy of Virgin Mobile's contract with Solix, Inc. OCS requests that the Commission: (1) stay all proceedings in this docket; (2) order Virgin Mobile to provide a complete and unedited copy of the contract with Solix, Inc. on or before February 4, 2011; (3) permit the parties other than Virgin Mobile to conduct discovery concerning Virgin Mobile's contract with Solix, Inc. and the Lifeline administration services that it will provide in the event that Virgin Mobile is granted eligible telecommunications carrier ("ETC") status; (4) reschedule, upon notification by the parties that they have concluded discovery, the filing of direct and rebuttal testimony and a hearing; and (5) reserve to the parties the right to file for additional sanctions in the event that they contend Virgin Mobile has not complied with the Commission's order.

OCS first requested that Virgin Mobile provide a copy of the contract with Solix, Inc. in its second set of data requests, which were served on Virgin Mobile on October 11, 2010. Virgin Mobile, in its response to the second set of data requests, informed OCS that the contract with Solix is confidential and, therefore, that Virgin Mobile was unable to provide a copy to OCS for its review. OCS, in its fourth set of data requests, which were served on Virgin Mobile on December 12, 2010, again requested that Virgin Mobile provide a copy of the Solix contract. In its responses to these data requests, Virgin Mobile noted that the terms of the Solix contract prohibited Virgin Mobile from providing a copy of the Solix contract for review. Notwithstanding Virgin Mobile's legal inability to provide the Solix contract, Virgin Mobile offered to respond to questions from OCS regarding the terms of the contract provided that OCS agreed to treat any such responses as confidential information not subject to disclosure. OCS has never responded to this offer from Virgin Mobile to answer questions regarding the Solix contract. Virgin Mobile most recently offered to make its witness (Elaine Divelbliss, Senior Counsel) available to OCS in advance of the January 26 hearing to answer OCS's questions

about the agreement and the Virgin Mobile/Solix relationship so that it might prepare for cross-examination.

Pursuant to Rule 37(a)(2)(B) of the Utah Rules of Civil Procedure, the discovering party in its motion to compel “must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action.” Virgin Mobile has offered to respond to questions from OCS regarding the contents of the Solix contract. OCS failed to confer with Virgin Mobile prior to filing its Motion to Compel Virgin Mobile to provide OCS with a complete and unedited copy of Virgin Mobile’s contract with Solix, Inc. For this reason alone, the Motions should be denied.

In addition to Virgin Mobile’s legal inability to provide the Solix contract, the contract contains highly confidential and commercially and competitively-sensitive information, including specific security measures designed to protect customer information, trade secrets, and pricing information. Virgin Mobile is concerned about privacy issues and about disclosure of such commercially sensitive information, particularly in this proceeding where TracFone Wireless, Inc., Virgin Mobile’s primary competitor in the prepaid wireless Lifeline market, is a party, and Advocates for Universal Access, a for-profit advocacy group associated with a Washington, DC-based lobbying firm, has also intervened. It is worth noting that a number of the more than 20 other states in which Virgin Mobile has received ETC designation requested the Solix agreement but, after conferring in good faith with Virgin Mobile, agreed to obtain the information sought through means other than disclosure of the agreement itself, in whole or in part, such as through data requests or testimony.

It is Virgin Mobile's understanding that OCS seeks the agreement in order to understand the role of Solix in the administration of Virgin Mobile's Lifeline program. To this end -- and in the absence of data requests through which this information could have been sought during discovery -- Virgin Mobile proposes to file a motion for entry of a protective order governing confidential and competitively-sensitive information and thereafter submit a supplement to its Responsive Testimony which further clarifies Virgin Mobile's process for determining eligibility and its process for verification of continuing eligibility (annual certification) of Lifeline customers and addresses OCS's concerns with regard to verification of eligibility and continuing eligibility of Lifeline customers. With OCS's interest in mind, this Responsive Testimony will set forth Solix's role in these processes and describe generally activities provided for in the agreement.

Should the Hearing Officer determine that a delay in the hearing is appropriate, Virgin Mobile respectfully requests that the hearing be rescheduled for the earliest possible date.

Respectfully submitted this 24<sup>th</sup> day of January, 2011.

/s/ Sharon M. Bertelsen  
Sharon M. Bertelsen

## CERTIFICATE OF SERVICE

I certify that on January 24, 2011, I caused to be served Virgin Mobile USA, L.P.'s Combined Response to Motion to Compel and Motion for Sanctions in Docket No. 10-2521-01 by electronic mail on the following:

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/s/ Sharon M. Bertelsen