

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. 911-028
of Virgin Mobile USA, LLC,)
seeking a refund from the) ORDER APPROVING STIPULATION
Wireless Enhanced 911 Fund.) AND REFUND
)
) Entered: February 27, 2007

BY THE COMMISSION:

On October 20, 2006, Virgin Mobile filed an application with the Commission requesting a refund of enhanced wireless 911 surcharges it claimed to have erroneously paid into the Enhanced Wireless 911 Services Fund (Fund) in the amount of \$65,080 during the period of June 2002 to June 2006.

In its application, Virgin Mobile claimed these amounts were paid on its prepaid wireless service which was not required to remit under the Enhanced Wireless 911 Services Act, Neb. Rev. Stat. § 86-442, et. seq. (Cum. Supp. 2006) ("the Act").

According to Commission remittance records, Virgin Mobile had paid \$60,993 to the Fund from its prepaid services. Virgin Mobile reviewed its records and amended its request for refund to reflect the amounts actually remitted to the Commission. According to Virgin Mobile, these amounts were not collected from users of their prepaid services.

The Nebraska Telecommunications Infrastructure and Public Safety Department (Department) and Virgin Mobile entered into a stipulation for purposes of avoiding the necessity and expense of a hearing and to permit a refund to be made to Virgin Mobile, fully resolving the above-captioned matter. The Department and Virgin Mobile jointly seek an order authorizing refund of \$60,993.00 from the Fund to Virgin Mobile and closing this matter without necessity of hearing.

O P I N I O N A N D F I N D I N G S

Prior to the passage of LB 1222 [2006], § 86-457 stated,

"Each wireless carrier who has a subscriber with a billing address in Nebraska shall collect a surcharge of not more than fifty cents per month per access line. The wireless carrier shall add the surcharge to each subscriber's billing statement. The wireless

carrier is not liable for any surcharge not paid by a subscriber and is not obligated to take legal action to collect the surcharge. The surcharge shall appear as a separate line-item charge on the subscriber's billing statement and shall be labeled as 'Enhanced Wireless 911 Surcharge' or a reasonable abbreviation of such phrase. The commission may take any legal action as it deems necessary to collect unpaid surcharges in its own name, as a real party in interest, or by assigning such debt for collection to a third party."

The language of the Act references "subscribers" and "monthly billing statements". Due to the nature of many prepaid services, no monthly billing statements are issued. Although, the Commission does not believe that it was the legislature's intent to do so, it appears that prior to LB 1222 [2006], the Act did not capture prepaid wireless carriers that did not have subscribers or issue monthly billing statements.

Clearly the users of the prepaid service have had access to 911 services. Furthermore, the providers of prepaid wireless services have been able to market and profit from the fact that the users of their services are able to reach 911 in an emergency. Equity would suggest that the users and providers of prepaid wireless services support the 911 system as others have. However, based upon the technical language of the Act, prepaid wireless carriers were not required to collect and remit the enhanced wireless 911 surcharge.

The language of LB 1222 has now remedied the language of the Act and prepaid carriers will be required to remit effective July 1, 2007.

The Commission finds that the stipulation be approved and that a refund of \$60,993.00 from the Fund be paid to Virgin Mobile.

Any future requests for refunds from prepaid carriers will be addressed on a case-by-case basis.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission the stipulation be approved and that a refund of \$60,993.00 from the Fund be paid to Virgin Mobile.

MADE AND ENTERED at Lincoln, Nebraska this 27th day of January, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director