

March 14, 2011

[REDACTED]

**RE: CCTS File Number 81525**

On February 14, 2011, we issued a Recommendation regarding the above complaint. Although she provided a response, [REDACTED] did not indicate whether she accepted or rejected the Recommendation. Therefore, in accordance with Section 11.3 of our Procedural Code ("Code"), she is deemed to have accepted it.

Virgin has indicated that it has rejected our Recommendation. As such, I am required to issue a Decision under Section 11 of the Code.

**Our Recommendation**

The heart of [REDACTED] dispute is that Virgin failed to provide her with the plan which she agreed to receive. Virgin, however, states that the plan it provided to her was indeed the one which she agreed to receive. In our Recommendation, we indicated that it was Virgin's obligation to demonstrate that [REDACTED] subscribed to the plan that it actually applied to her account. Virgin failed to provide compelling evidence to demonstrate which plan [REDACTED] agreed to receive.

We noted that the plan as described by [REDACTED] did not appear on Virgin's website. Nonetheless, and in the absence of any evidence to the contrary submitted by Virgin, we felt that it was likely that [REDACTED] believed that she had agreed to receive the plan as she outlined it.

As the plan that she outlined appeared not to be a plan that Virgin actually offers, we did not recommend that [REDACTED] be allowed to receive service under that plan but rather that she be allowed to cease her relationship with Virgin without any economic consequence. As such, we recommended that Virgin refund the cost of her phone. The full details are set out in the Recommendation.

**[REDACTED] Response**

In her response, [REDACTED] explained that she has recently terminated her service with Virgin Mobile due to her dissatisfaction with Virgin's customer service. She did not indicate whether she accepted or

rejected the recommendation. As mentioned, she is consequently deemed to have accepted the Recommendation.

### **Virgin's Response to the Recommendation**

Virgin has rejected our Recommendation. Under Section 11 of the Code, the party objecting to the recommendation is required to explain why he or she considers it to be unacceptable or inappropriate.

Its reasons for rejecting the Recommendation are as follows.

- [REDACTED] claim that she was to be provided with the rate plan as she describes it is false. Virgin's advertising related to her plan does not state that it includes what she alleges was supposed to be included with the plan. Virgin claims that it provided her with the plan that she agreed to receive.
- Virgin explains that [REDACTED] has had the plan and related device since May 2010 and that it does not believe that [REDACTED] believed that the plan included what she alleges it to include. It states that additionally, it does not feel that it should be held liable for its customers' *beliefs*. It states that a belief cannot be proven or substantiated.
- Lastly, Virgin points to CCTS' inability to find a rate plan as described by [REDACTED] on its website, saying that this demonstrates that the alleged plan does not exist.

### **Our Analysis**

Our standard of review, as described in section 4.1 of our Procedural Code, is to determine if Virgin reasonably performed its obligations toward [REDACTED] under the applicable contract or terms of service. [REDACTED] complaint is that she did not receive the rate plan that she consented to receive when subscribing to Virgin's service. As such, Virgin has the onus to demonstrate to CCTS the specifics of the plan to which [REDACTED] agreed. It has failed to do so.

We understand Virgin's comment that a belief cannot be proven or substantiated. We wish to clarify that [REDACTED] belief did not form the basis of our Recommendation. She described the plan that she thought she had agreed to. Virgin said that such a plan does not exist, but provided no evidence as to the specifics of the plan to which she did consent. Virgin ought to have been able to provide a document identifying the plan signed by [REDACTED] or at least a call note setting out the specifics (if [REDACTED] subscribed by phone). It provided no evidence of the agreement between it and [REDACTED] other than a bald denial of her allegations. Unlike her "belief", consent to an agreement that outlines a plan's provisions, can be substantiated yet Virgin failed to provide us with any evidence to demonstrate what [REDACTED] had actually agreed to receive. Thus we are unable to conclude that it fulfilled its obligations by delivering the plan it was required to deliver.

### **Our Decision**

In our Recommendation, we outlined that [REDACTED] made an allegation that Virgin failed to provide the plan to which she subscribed, that it is Virgin's responsibility to demonstrate that it reasonably performed its obligations toward [REDACTED] and, that it failed to do so. We recommended that [REDACTED]

██████████ therefore be allowed to cease her relationship with Virgin without any economic consequence. As such, Virgin was to refund to ██████████ the cost of her phone.

Further to section 11.5 of our Procedural Code, the Commissioner shall, in formulating a Decision, consider whether there is substantial doubt as to the correctness of the Recommendation.

We fully reviewed and considered all documentation that Virgin provided to us. It has not provided us with any new information or documentation to demonstrate that it provided ██████████ with the plan that she agreed to receive and as such, has not raised any substantial doubt as to the correctness of our Recommendation. Therefore, we see no basis upon which to change our Recommendation.

Further to Section 11.7 and 11.8 of our Procedural Code, ██████████ may accept or reject this Decision within 20 days of receipt. Should ██████████ decide to reject this Decision, she may pursue this complaint through any other forum and Virgin shall be fully released from the Decision. Should ██████████ accept this Decision, Virgin is required to refund to ██████████ the cost of the phone by way of a cheque.

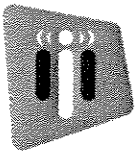
A copy of the CCTS Procedural Code has been attached for ease of reference.

Sincerely,

*Original signed by Howard Maker*

Howard Maker  
Commissioner

Attachments    1. CCTS Recommendation  
                  2. CCTS Procedural Code



February 14, 2011

CCTS #81525 - [REDACTED]

**Subject: Results of our Investigation of your Complaint against Virgin**

**Complaint Details**

- [REDACTED] states that she subscribed to a prepaid rate plan with Virgin for \$20/month;
- She explains that when she agreed to the service, she was advised that the plan allows her to:
  - send/receive text messages at \$0.10/message; and
  - make voice calls at \$0.35/minute;
  - she also states that she was advised that the cost of the usage incurred on the phone would be subtracted from her prepaid balance – and that her prepaid balance is comprised of her monthly \$20 payments;
- [REDACTED] indicates that after a recent conversation with Virgin, she has been advised that her \$20/month rate plan provides her with something completely different than what she agreed to, namely;
  - unlimited text messaging;
  - and a base rate of \$0.10/min for voice calls – which will be withdrawn from her funds when the usage is incurred;
  - however, she states that Virgin advised her that the \$20/month payment is not applied to her prepaid balance – the \$20/month is simply the cost of her rate plan (the unlimited text messages and calls at a discounted rate of \$0.10/min);
  - she states that she was advised that in order to make calls, she needs to add additional funds in order to maintain a positive pre-paid balance in which funds can be withdrawn;
- As a resolution, [REDACTED] wants Virgin to provide her with the plan she claims agreeing to initially – she states that if that isn't possible she wants the cost of the phone(\$90) refunded;

**Virgin's Response**

- Virgin states that when [REDACTED] subscribed to the plan, she chose a \$20/month rate plan that includes:
  - unlimited text messaging;
  - and a base rate of \$0.10/min for voice calls;
- Virgin confirms that in order to make calls the customer must maintain a positive prepaid balance;
- Virgin did not comment on if her monthly \$20 payment is applied to her available funds balance;
- Virgin also did not comment on [REDACTED] request to have the plan changed to what she claims to have initially agreed;

**Analysis**

We have fully examined [REDACTED] complaint as well as Virgin's response to the complaint. We note the following pertinent details:

- [REDACTED] made an allegation that Virgin failed to provide the plan to which she subscribed;
- It is Virgin's responsibility to demonstrate that it reasonably performed its obligations toward [REDACTED]
- Although it provided a response, Virgin did not provide any supporting documentation to substantiate its claim that [REDACTED] chose the plan that is currently on her account, nor did it comment on her requested resolution;
- However, after a review of Virgin's available plans on its website, we were able to find the plan as described by Virgin; we were unable to locate the plan described by [REDACTED]. In light of any evidence to the contrary, we feel that it is likely that [REDACTED] believed that the \$20/month charge would be used in order to make calls;

#### Conclusion

- In light of the above, we recommend that [REDACTED] be allowed to cease her relationship with Virgin without any economic consequence; therefore, we recommend that Virgin refund the cost of the phone;
- Attached is a copy of the CCTS Procedural Code which contains important information with respect to the recommendations made by CCTS, including information about acceptance of recommendations by a complainant and a telecommunications service provider. In particular, we refer [REDACTED] and Virgin to sections 10 and 11.