

Diamond Williams090245-TP

From: Pam Keillor [pkeillor@radeylaw.com]
Sent: Friday, June 11, 2010 4:39 PM
To: Filings@psc.state.fl.us
Cc: Catherine Beard; Curtis Williams; Kevin Cox; Mitchell Brecher; Lee Eng Tan
Subject: Electronic Filing - Virgin Mobile's Motion to Dismiss
Attachments: 2010-06-11 Virgin Mobile Motion to Dismiss.pdf

Electronic Filing

- a. Person responsible for this electronic filing:

Susan F. Clark
 Radey Thomas Yon & Clark, P.A.
 301 South Bronough Street, Suite 200
 Tallahassee, Florida 32301
 (850) 425-6654
sclark@radeylaw.com

- b. Docket No. 090245-TP – In re: Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P.
- c. Document being filed on behalf of Virgin Mobile USA, L.P.
- d. There are 16 pages.
- e. The document attached for electronic filing is Virgin Mobile USA, L.P.'s Motion to Dismiss with Prejudice Organize Now's, Lloyd Moore's and Gracie Fowler's Petition for Formal Proceeding

(See attached file: 2010-06-11 Virgin Mobile Motion to Dismiss)

Thank you for your assistance in this matter.

Pam L. Keillor
 Assistant to Susan F. Clark and Travis L. Miller
 Radey Thomas Yon & Clark, P.A.
 Post Office Box 10967 (32302)
 301 South Bronough Street, Suite 200
 Tallahassee, Florida 32301
 (850) 425-6654 Main
 (850) 425-6663 Direct
 (850) 425-6694 Fax
 Email: pkeillor@radeylaw.com

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**Before the
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for limited designation as) DOCKET NO. 090245-TP
eligible telecommunications carrier (ETC))
by Virgin Mobile USA, L.P.) FILED: June 11, 2010
_____)

**VIRGIN MOBILE USA, L.P.'S MOTION TO DISMISS WITH PREJUDICE
ORGANIZE NOW'S, LLOYD MOORE'S AND GRACIE FOWLER'S
PETITION FOR FORMAL PROCEEDING**

Virgin Mobile USA, L.P. ("Virgin Mobile") hereby moves, pursuant to Rule 28-106.204, Florida Administrative Code, to dismiss the petition for formal proceeding filed on June 9, 2010 ("Petition"), by Organize Now, Lloyd Moore, and Gracie Fowler (collectively referred to as "Organize Now"). Because it conclusively appears from the face of the Petition that the defects cannot be cured, the dismissal should be with prejudice.

I. INTRODUCTION

Organize Now (apparently formerly known as Florida ACORN¹) claims to serve the interests of low- and moderate-income families. Ironically, its Petition seeks to delay the introduction of Virgin Mobile's Assurance Lifeline service, which will provide a new source of high quality free mobile telephone services to the very population that Organize Now claims to represent. It is clear that Organize Now has little understanding of telecommunications law or the regulations governing the federal Universal Service Fund ("USF"). While it makes wild, inaccurate, and unsubstantiated accusations regarding the terms of Virgin Mobile's offering – which are far better than those of other providers – it completely fails to state any claim for which the Commission can provide relief. Furthermore, Organize Now and the individual

¹ See <http://www.factservices.org/DLs/2009Grantees.pdf>.

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petitioners lack standing to protest the proposed Commission action. Accordingly, the Commission should dismiss the Petition with prejudice.

II. STANDARD OF REVIEW

A motion to dismiss in an administrative adjudicatory proceeding before the Florida Public Service Commission (the “Commission”) tests the sufficiency of a petition.² In *Sprint-Florida/LTD Holding*, the Commission granted a motion to dismiss an administrative petition similar to the one at issue here, which sought some personal relief from proposed agency action. In that context, the Commission described the petitioner’s pleading obligation, and the function of a motion to dismiss directed to such a petition, as follows:

In short, the Rule [28-106.201(2), Fla. Admin. Code] requires the petitioner to state how the proposed agency action hurts it, why this matters, and what the agency should do about it. Returning now to the motion to dismiss before the Commission, its basic function is therefore to test the sufficiency of the petition with respect to (1) substantial injury, (2) statutory right, and (3) requested relief.³

The Commission then recited the applicable standard: “In determining the sufficiency of the petition, we confine our consideration to the petition and the grounds asserted in the motion to dismiss. Moreover, we construe all material facts and allegations in the light most favorable to [the petitioner] in determining whether the petition is sufficient.”⁴

² *In re: Joint application for approval of transfer of control of Sprint-Florida, Inc., holder of ILEC Certificate No. 22, and Sprint Payphone Services, Inc., holder of PATS Certificate No. 3822, from Sprint Nextel Corporation to LTD Holding Company, and for acknowledgement of transfer of control of Sprint Long Distance, Inc., holder of IXC Registration NO. TK001, from Sprint Nextel Corporation to LTD Holding Company*, Docket No. 050551-TP; Order No. PSC-06-0033-FOF-TP; 2006 Fla. PUC LEXIS 24, *2, 06 FPSC 1:105 (January 10, 2005) (“*Sprint-Florida/LTD Holding*”); cf. *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993) (function of motion to dismiss in civil cases is to test sufficiency of complaint).

³ 2006 Fla. PUC LEXIS 24 at *3.

⁴ 2006 Fla. PUC LEXIS 24 at *4 (citations omitted).

III. ORGANIZE NOW'S PETITION SHOULD BE DISMISSED BECAUSE IT DOES NOT ALLEGE A SINGLE VALID LEGAL CLAIM FOR RELIEF.

In section IV of this motion, Virgin Mobile points out that Organize Now fails to establish the requisite injury to demonstrate standing to challenge the proposed agency action. Beyond this serious deficiency, the Petition must be dismissed as facially insufficient. Indeed, even if all of Organize Now's allegations were true – and they are most definitely not – the Petition does not state any valid claim relevant to the Commission's designation of ETC status for Virgin Mobile.

A. Text Messaging is Not a Service Supported by the Universal Service Fund.

Organize Now claims that Virgin Mobile's failure to include a free text messaging service in its Lifeline package somehow harms consumers. This allegation substitutes opinion for fact, demonstrating Organize Now's fundamental misunderstanding of the laws and regulations governing the federal USF. Virgin Mobile's Assurance Wireless service fulfills the requirements of Lifeline telecommunications service for qualifying low-income consumers pursuant to Section 254 of the Communications Act of 1934, as amended ("Communications Act"),⁵ and the rules of the Federal Communications Commission ("FCC") enacted thereunder.⁶ Section 254 defines universal service as an evolving level of telecommunications services that the FCC must establish taking into account advances in telecommunications and information technologies.⁷ The FCC has enumerated nine specific services that must be part of a qualifying Lifeline package: voice grade access to the public switched network, local usage, dual-tone

⁵ 47 U.S.C. § 254.

⁶ 47 C.F.R. § 54.1 *et. seq.*

⁷ 47 U.S.C. § 254(c)(1).

multi-frequency signaling, single-party service, access to emergency services, access to operator services, access to interexchange service, access to directory assistance, and toll limitation for qualifying consumers.⁸ Text messaging is noticeably absent from this list. The Commission has adopted these enumerated services in its determination that Virgin Mobile qualifies as an ETC in Florida.⁹

The FCC, in conjunction with the Federal-State Joint Board on Universal Service, regularly considers whether any services should be added to or removed from the definition of services supported by the USF.¹⁰ Text messaging service has never been specifically added to the list of enumerated services. Section 254 states that a carrier that receives federal universal service support “shall use that support *only* for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”¹¹ Thus, while an ETC may offer text messaging services in connection with a subsidized Lifeline package, USF funds cannot be used to specifically support text messaging as a stand-alone service. The concept that “texting should be offered as part of any basic [Lifeline] package” is clearly only the opinion or desire of Organize Now and is not supported by the Communications Act, the FCC, or the Federal-State Joint Board on Universal Service. Accordingly, Organize Now does not allege a viable claim regarding the absence of free text messaging in a Lifeline package.

⁸ 47 C.F.R. § 54.401(a)(3), referring to 47 C.F.R. § 54.101(a)(1)-(a)(9).

⁹ PAA Order, p. 4.

¹⁰ See, e.g., *Federal-State Joint Board on Universal Service*, 17 FCC Rcd 14095 (2002).

¹¹ 47 U.S.C. § 254(e) (emphasis added).

B. Because Text Messaging is Not an Enumerated Service, Virgin Mobile's Pricing for Text Service is Irrelevant to ETC Designation.

The provision of text messaging services is irrelevant to an ETC designation because text messaging is not an enumerated Lifeline service. Organize Now's complaints about Virgin Mobile's pricing for its optional text messaging service fail to state a claim upon which relief may be granted. Even if the allegations were true – which they are not – they are not a basis upon which ETC status can be denied.¹²

C. "Roll-Over" Minutes are a Pricing Term and Irrelevant to Virgin Mobile's ETC Designation.

The Commission awarded ETC designation to Virgin Mobile based on the value of its monthly 200 free anytime minutes that do not "roll-over" into subsequent months if unused.¹³ The roll-over feature is a pricing term that varies among wireless carriers: for instance, AT&T offers roll-over minutes; Verizon Wireless does not. Organize Now does not allege that Virgin Mobile will not be offering the minutes that it promised or that its service package in any way violates the Order. It essentially states its opinion that roll-over minutes serve the public purpose intended by the Communications Act. There is no requirement in the Communications Act, the FCC's rules, or the rules of the Commission that wireless carriers designated as ETCs offer roll-over minutes as part of their Lifeline service offering.

¹² Virgin Mobile offers its Assurance Wireless Lifeline customers the option of text messaging outside of the subsidized universal service package. Contrary to Organize Now's assertions, Virgin Mobile offers packages of text services to Lifeline customers for the same rates that it offers to customers of its basic mobile phone service: \$5 for 200 messages, \$10 for 1,000 messages, and \$20 for an unlimited number of messages per month. The rate for individual text messages is 50% lower for Lifeline customers: 10 cents per message, as opposed to 15 cents for non-Lifeline customers. See Virgin Mobile "Basic Talk and Text Plans" at <http://www.virginmobileusa.com/cell-phone-plans/basic-talk-and-text-plans.html>. Organize Now's assertions to the contrary are unsupported and clearly mistaken.

¹³ PAA Order, p. 11.

Accordingly, voicing a preference for an optional, completely legal pricing term does not state a valid claim for relief or any justification for withholding an ETC designation.¹⁴

D. There Is No Cost to Assurance Customers for the First 200 Minutes.

Organize Now does not state a valid claim of misleading pricing. There is no cost to an Assurance Wireless Lifeline customer for the first 200 minutes of use in a month. Additional minutes are 10 cents each. Nothing could be clearer. Organize Now's claim that Virgin Mobile's correct statement of its valid pricing methodology is "potentially misleading" is itself misleading and does not constitute a valid claim for relief.

There is absolutely no support in the Petition or in the record for Organize Now's statement that consumers will pay "double, triple or more when they purchase additional minutes." Indeed, Assurance Lifeline customers pay 10 cents per minute when they purchase additional minutes outside of a package: half the rate charged to Virgin Mobile's non-Lifeline subscribers. Again, regardless of the economic terms, Organize Now essentially alleges that Virgin Mobile provides customers with its actual pricing terms. The Petition's failure to state a claim is facially obvious.

¹⁴ In determining the elements of its Assurance Lifeline package, Virgin Mobile conducted research which determined that the average low-income consumer would use about 150 minutes per month. The 200-minute package was designed to provide ample minutes to satisfy the basic needs of eligible consumers. In fact, in states where the service is currently provided, only 2% of Virgin Mobile's Assurance Lifeline consumers actually purchase minutes beyond the free 200. Another Lifeline provider in Florida offers a package of only 68 minutes per month that do rollover. The availability of Virgin Mobile's Lifeline package will provide consumers with a competitive option to choose the pricing methodology and service offering that best suits their needs. Thus, the pricing term that Organize Now cites as a problem is actually a choice provided to consumers and in no way constitutes a valid claim with regard to ETC designation.

E. Virgin Mobile's "Free" Claim Is True.

The law is clear that where a claim is literally true on its face, and not demonstrated by the challenger to be misleading, an advertiser is permitted to make the claim.¹⁵ With respect to the use of the term "free" in advertising, the Federal Trade Commission – which has nationwide jurisdiction and responsibility to regulate truth in advertising and consumer communications – has recognized in decades-old, comprehensive regulations that "free" simply means to consumers that they are "paying nothing for that article."¹⁶ Thus, so long as service or product can be obtained by consumers without charge to them, an advertiser may promote the service or product as "free."¹⁷

Here, there is no question that Virgin Mobile's "free" claims are entirely and completely truthful. Consumers who are eligible for the Lifeline Program receive a handset at no charge to them, as well as 200 free minutes each month for nationwide calling, free voicemail, free call waiting, and free caller ID. Nor do they pay for activation or connection of the service.

That Assurance Wireless customers may choose to add additional features for a fee (such as text messaging or additional minutes) does not in any way alter the fact that the goods and services advertised as "free" are unconditionally free; indeed, no customer is required

¹⁵ See *Johnson & Johnson Vision Care, Inc. v. 1-800-Contacts, Inc.*, 299 F.3d 1242, 1247 (11th Cir. 2002).

¹⁶ 16 C.F.R. § 251.1(b) (1971).

¹⁷ See, e.g., *eHarmony.com (www.eHarmony.com)*, Case # 4485, NAD Case Reports (04/20/06) (finding claim that a personality profile was "yours Free!" was proper where customer was not required to pay anything or incur any obligation to obtain the profile); *Individual, Inc. (Newspage Information Services)*, Case # 3272, NAD Case Reports (02/01/96) ("free" claim in ad permitted where advertiser offered no-cost, two-week trial for access to a news subscription, which was not tied to any additional purchasing requirements). The National Advertising Division of the Council of Better Business Bureaus, Inc. (the "NAD") is a well-respected industry-sponsored alternative dispute resolution forum for advertising challenges. The NAD issues opinions on the truthfulness and accuracy of advertisements, in response to challenges raised by competitors or investigations initiated by the NAD itself. Policies and procedures for the NAD are established by the National Advertising Review Council. See www.nadreview.org. The NAD is sponsored by the national Better Business Bureau. See www.bbb.org/us/us/national-advertising-division/.

to add any features or make any purchases in order to obtain or use the free handset or free monthly minutes.¹⁸ Assurance Wireless customers must affirmatively choose to add additional services; they cannot inadvertently run up an unexpected bill. Florida law also recognizes that goods or services may be advertised as “free” if offered at no cost, provided that conditions or further obligations, if any, are also disclosed.¹⁹ Here, Virgin Mobile’s promotional materials could not be any clearer about what is free (*e.g.*, “200 free minutes,” “a free Assurance Wireless phone”) and what services customers may choose to add for a cost.²⁰

Petitioners’ contention that Virgin Mobile cannot advertise that aspects of its Lifeline Program are “free” because the government is subsidizing them is patently absurd. Petitioners cite no authority – nor are we aware of any – requiring an advertiser to disclose how a “free” offer is funded or who is funding it. Whether Virgin Mobile or another entity is paying for the handsets and 200 minutes each month does not change the only fact that matters to consumers – these items are provided to consumers at no charge to them.²¹

¹⁸ In addition, Virgin Mobile does not pass through applicable taxes or other governmental fees to such customers. Accordingly, Lifeline-eligible customers will not incur any upfront costs, charges or other fees to commence the Virgin Mobile’s Lifeline services.

¹⁹ See § 817.415, Fla. Stat. (2010). See also *AT&T (AT&T True World Savings)*, Case # 3290 NAD Case Reports (04/01/96) (finding that “week worth of free calls” claim properly substantiated where AT&T disclosed that a \$3 monthly charge was the condition necessary to receive the free service, and disclosed such condition in proximity to the free offer); *Match.com, LLP (www.Match.com)*, Case # 4730, NAD Case Reports (09/21/07) (finding offer to try service for “free” substantiated where Match.com clearly disclosed the limitations of a “free” membership, *e.g.*, that only subscribing members could view certain website content and use certain save features).

²⁰ See, *e.g.*, <http://www.assurancewireless.com/Public/MorePrograms.aspx> (disclosing explicitly those items provided at no cost to consumers, as well as the services that can be obtained for a charge, such as text messaging and additional calling minutes, along with the price of each additional service).

²¹ Furthermore, consumers certainly understand that someone or some entity is bearing the cost of the “free” items. Additionally, Virgin Mobile states that Assurance Wireless is a government-subsidized service in its marketing materials.

F. Organize Now Misconstrues the FCC’s Forbearance Order.

Section 214(e)(2) of the Communications Act provides state public utility commissions with the “primary responsibility” to make ETC designations.²² Section 214(e)(6) provides the FCC with the authority to make such designations for carriers that are not subject to the jurisdiction of a state commission.²³ In March, 2009, the FCC issued a “Forbearance Order” in connection with Virgin Mobile’s request for ETC designation in four states where the respective public utility commissions do not exercise jurisdiction over the issue.²⁴ Organize Now alleges that the Commission failed to give proper consideration to the FCC Forbearance Order. However, the Commission clearly has jurisdiction over Virgin Mobile’s ETC petition under Section 214(e)(2) of the Communications Act. Thus, there is no statutory requirement that the Commission give *any* consideration to the FCC Forbearance Order and Organize Now once more fails to state a claim upon which the Commission may grant relief.²⁵

G. The “Disputed Facts” Alleged by Organize Now do not State a Valid Claim for Relief.

Paragraph 22 of the Petition summarizes the “disputed issues of material fact” sought to be litigated, predicated solely on the six invalid claims discussed above. These alleged disputes provide no independent claim for relief, but instead, must fall along with the theories on which they depend, for the reasons set forth above.

²² 47 U.S.C. § 214(e)(2).

²³ 47 U.S.C. § 214(e)(6).

²⁴ *In re Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Designation as an Eligible Telecommunications Carrier in the States of New York, North Carolina, Pennsylvania, Tennessee and Virginia*, Order, 24 FCC Rcd 3381 (2009) (“Forbearance Order”).

²⁵ Furthermore, the Commission determined that because Virgin Mobile is now a facilities-based carrier, the forbearance that was granted in the FCC Forbearance Order is unnecessary. PAA Order, p. 6.

IV. THE PETITIONERS HAVE NOT ALLEGED AND CANNOT ALLEGE THAT THEIR SUBSTANTIAL INTERESTS WILL BE ADVERSELY AFFECTED BY THE PROPOSED AGENCY ACTION THEY SEEK TO CHALLENGE OR DELAY.

The Commission has made clear that when a petitioner files a protest to a proposed agency action, he has the burden to demonstrate that he does, in fact, have standing to participate in the case.²⁶

In order to demonstrate entitlement to a formal administrative proceeding to challenge proposed agency action, the petitioner must meet the two-prong standing test set forth in *Agrico Chemical Company v. Department of Environmental Regulation*, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The petitioner must show that (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and (2) this substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury. The "injury in fact" must be both real and immediate and not speculative or conjectural.²⁷

Further, the test for associational standing was established in *Florida Home Builders v. Dept. of Labor and Employment Security*, 412 So. 2d 351 (Fla. 1982),

²⁶ *In re: Joint application for approval of indirect transfer of control of telecommunications facilities resulting from agreement and plan of merger between AT&T Inc. (parent company of AT&T Communications of the Southern States, LLC, CLEC Cert. No. 4037, IXC Registration No. TJ615, and PATS Cert. No. 8019; TCG South Florida, IXC Registration No. TI327 and CLEC Cert. No. 3519; SBC Long Distance, LLC, CLEC Cert. No. 8452, and IXC Registration No. TI684; and SNET America, Inc., IXC Registration No. TI389) and BellSouth Corporation (parent company of BellSouth Telecommunications, Inc., ILEC Cert. No. 8 and CLEC Cert. No. 4455); and BellSouth Long Distance, Inc. (CLEC Cert. No. 5261 and IXC Registration No. TI554), Docket No. 060308-TP; Order No. PSC-06-0711-FOF-TP; 2006 Fla. PUC LEXIS 504, *2; 06 FPSC 8:294 (FPSC August 24, 2006).*

²⁷ *Ameristeel Corporation v. Clark*, 691 So. 2d 473 (Fla. 1997) (Commission did not abuse its discretion in denying electric utility customer standing in proceeding on territorial agreement between utility and city electric authority, where alleged injury not of sufficient immediacy to entitle customer to a 120.57 hearing); *International Jai-Alai Players Assn. v. Florida Pari-Mutuel Commission*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990). *See also Village Park Mobile Home Assn., Inc. v. State Dept. of Business Regulation*, 506 So. 2d 426, 434 (Fla. 1st DCA 1987), *rev. den.*, 513 So. 2d 1063 (Fla. 1987) (speculation on the possible occurrence of injurious events is too remote).

and *Farmworker Rights Organization, Inc. v. Dept. of Health and Rehabilitative Services*, 417 So. 2d 753 (Fla. 1st DCA 1982), which is also based on the basic standing principles established in *Agrico*. Associational standing requires a demonstration of the following: (1) a substantial number of an association's members will or may be substantially affected by the Commission's proposed agency action; (2) the subject matter of the proceeding is within the association's scope of interest and activity; and (3) the relief requested is of a type appropriate for the association to receive on behalf of its members. *Id.*

The allegations attempting to show that the petitioners' substantial interests will be adversely affected by the proposed agency action they seek to challenge are plainly deficient when judged by these standards.

A. Petitioner Organize Now fails the test for associational standing.

The first prong of the associational standing test, as stated above, is whether a substantial number of the association's members will be substantially affected by the agency action sought to be challenged. This prong of the associational standing test addresses whether the proportion of allegedly substantially affected members to the total number of the association's members is substantial. In other words, how many total members are there and would a substantial number of that total be substantially affected? Without satisfying this test, an association has failed to demonstrate that it is the appropriate party to be taking action purportedly on behalf of its members.

Organize Now evades the required allegation that a substantial number of its members would be substantially affected, alleging only that its "members include a substantial number of Florida residents who may be substantially affected ..., including a substantial number of members ... who are eligible for Lifeline service, who desire wireless services under

the Lifeline Program, who are in the areas covered by Virgin Mobile’s proposed service, and who would immediately benefit[.]” The inadequacy of these allegations to demonstrate that any members would be substantially affected is discussed below in the context of the individual petitioners, who allege the same inadequate predicate in an effort to demonstrate they will or may be substantially affected.

The Petition also fails under the second prong of the associational standing test. Petitioner Organize Now describes itself as “an organization dedicated to serving the interests of low and moderate income families by developing community leaders to help its members to take action on issues affecting their communities.”²⁸ None of the issues this organization seeks to raise have anything to do with its stated purpose of developing community leaders to help its members to take action on issues affecting their communities.

B. The Individual Petitioners fail the two-prong *Agrico* test for standing.

The two individual petitioners allege they will “suffer injury in fact” based solely on their claim that unless the terms of Virgin Mobile’s proposed service are changed, “the Individual Petitioners will not subscribe for the Virgin Mobile service or will subscribe for the service and pay unnecessary expenses and/or receive insufficient benefits.” Petition, p. 10-11, ¶24. Petitioners nowhere allege, because they could not allege, that there is no other Lifeline service available in their area. Hence, their allegations amount to nothing more than that they will not choose Virgin Mobile’s service because they can get a better deal from another Lifeline service, or that they will choose Virgin Mobile’s service because its terms are better than the

²⁸ Petition at p. 2, ¶2 (emphasis added).

existing competition albeit that the terms could be changed to benefit petitioners even more (as would always be the case). Either way, these allegations demonstrate absolutely no injury in fact.

The individual petitioners also vaguely allege injury in fact from “safety-related certification concerns as outlined in the disputed issues and deficiencies described above.” Petition, p. 10, ¶24. But all that is “described above” is a general allegation that the conditions imposed by the FCC’s Forbearance Order on Virgin Mobile when it was a reseller and not a facilities-based provider “relate predominantly to safety concerns[.]” Petition, p. 9, ¶21. There are no allegations of any actual safety concern, much less any allegation that these petitioners will or may suffer an injury in fact that is of sufficient immediacy to meet the *Agrico* standard.

Moreover, petitioners’ claimed desire for better benefits in the specific areas outlined in the Petition is not within the zone of interests sought to be protected by this proceeding. Petitioners seek more attractive terms for additional features, not the basic service that is the focal point of the Lifeline Program, and the focal point of the Commission’s public interest determination. Even if it could be said that a claimed desire for better benefits somehow equates to an injury in fact, such injury in fact would not be within the zone of interest of this proceeding.

So too, the Organize Now allegations, purporting to show that some unknown proportion of its members may be substantially affected, only serve to demonstrate conclusively that Organize Now lacks standing. Organize Now only alleges that there are “a substantial number of members that are Florida residents who are eligible for Lifeline service, who desire wireless services under the Lifeline Program, who are in the areas covered by Virgin Mobile’s proposed service, and who would immediately benefit[.]” Petition, p. 11, ¶26. As made clear in *Friends of the Everglades v. Board of Trustees of the Internal Improvement Trust Fund*, 595 So.

2d 186, 188 (Fla. 1st DCA 1992), "[t]o meet the requirements for standing under the APA, an association must demonstrate that a substantial number of its members would have standing." Organize Now's allegations fail to show that a single member would suffer any injury or fact, or that the asserted interests in better benefits would fall within the zone of interest sought to be protected in this proceeding.

The Petitioners do not and cannot dispute that the availability of Virgin Mobile's Lifeline package will benefit consumers by providing an alternative option so that individuals can choose the pricing methodology and service offering that best suits their needs. If these Petitioners prefer a different option, then that is their choice, but it is not a substantial injury entitling them to an administrative hearing.

V. CONCLUSION

Organize Now has not stated a single cause of action that can be grounds for relief. Additionally, Organize Now lacks the standing to protest the Commission's proposed action because it cannot demonstrate that either the organization or its members, or the individual petitioners, will suffer any injury as a result of the Commission's designation of Virgin Mobile as an ETC. Accordingly, the Commission should dismiss the Petition with prejudice.

Respectfully submitted,

s/ Susan F. Clark

Susan F. Clark, Florida Bar No. 179580
Elizabeth McArthur, Florida Bar No. 354491
RADEY THOMAS YON & CLARK, P.A.
301 S. Bronough Street, Suite 200
Tallahassee, Florida 32399
(850) 425-6654 Telephone
(850) 425-6694 Facsimile
sclark@radeylaw.com
emcarthur@radeylaw.com

Peter Lurie
Elaine Divelbliss
Virgin Mobile USA, L.P.
10 Independence Blvd.
Warren, NJ 07059
(908) 607-4017 Telephone
(908) 607-4078 Facsimile
plurie@virginmobileusa.com
elaine.divelbliss@virginmobileusa.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been furnished by U.S. Mail or electronically to the parties listed below this 11th day of June, 2010.

Theresa Tan
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
LTan@psc.state.fl.us

Gracie Fowler
2125 Stanley Street
Orlando, FL 32803

Catherine Beard
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
CBeard@psc.state.fl.us

D. Bruce May/Kevin W. Cox
Holland & Knight LLP
P.O. Drawer 810
Tallahassee, FL 32302
kevin.cox@hklaw.com

Curtis Williams
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
cjwillia@psc.state.fl.us

Lloyd Moore
P.O. Box 618607
Orlando, FL 32861

Mitchell F. Brecher
Greenberg Traurig, LLP
2101 L Street N.W., Suite 1000
Washington, D.C. 20037
brecherm@gtlaw.com

Organize Now
231 East Colonial Drive
Orlando, FL 32801

Sheila Stickel
Advocates for Universal Access
P.O. Box 21914
Seattle, WA 98111

s/ Susan F. Clark
Susan F. Clark