

## COMMENT LETTER TO THE SEC

October 2, 2008

VIA E-MAIL ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

United States Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

### **RE: Amendment to emergency order pursuant to section 12(k)(2) of the Securities and Exchange Act of 1934 taking temporary action to respond to market developments**

On October 1, 2008, the Staff of the Securities and Exchange Commission (the “Staff”) amended its Emergency Order, pursuant to Section 12(k)(2) of the Exchange Act, prohibiting certain short sales of securities. Virgin Mobile USA, Inc. (the “Company”) is filing this comment to address the provision of the amendment requiring institutional investment managers fitting certain criteria to report information concerning daily short sales of securities, noting in particular the Staff’s indication in its order dated October 2, 2008 (Release No. 58724) that it has decided to keep all Form SH filings under the emergency order confidential, in part to prevent imitative short selling.

The Company believes that fair and open disclosure of such filings on Form SH should be mandated, similar to those requirements relating to the fair disclosure for share ownership. This is particularly relevant when the filings in question address sales of securities of those companies whose shares have been affected by active short selling. The Company’s own example may be illustrative of the potential effects of such activity: in the most recently reportable short interest period, the Company’s Class A common shares had a short interest ratio of 21.1. Approximately 3.1 million shares, or 6%, of the shares outstanding, and 11% of the public float, as of this date were short sales, despite the fact that the share price is currently trading approximately 80% below last year’s value. Compare these figures to the following short interest ratios for the same period among other wireless providers:

America Movil 1.46  
AT&T 1.26  
LEAP Wireless 8.78  
MetroPCS 11.6  
Sprint/Nextel 2.59  
Verizon Wireless 2.0

The Company’s consistently high short interest has resulted in large and unexplained fluctuations in the price of its Class A common shares and overall equity value. Such large fluctuations cause shareholders and other stakeholders to unnecessarily place the company’s fundamentals in question and also discourage many new prospective investors

from becoming involved with the company. We believe short interest in Company shares has contributed to the 80% + decline in equity value since the Company began trading publicly one year ago.

The Company believes that fair and open disclosure of these filings on Form SH should be mandated in relation to short sales of the securities of all companies, and in particular those whose shares have experienced excessive downward pressure driven by excess short selling. Fair disclosure of such transactions would enable companies such as Virgin Mobile USA, Inc. to effectively provide clear information about significant fluctuations in stock price to its shareholders and to the general public. As with requirements relating to the disclosure of share ownership, the disclosure of short positions will allow public companies to understand investors' approach to company business results and strategies, and more effectively respond to the strategic and structural concerns of their shareholders and the marketplace in general.

Respectfully submitted,

Virgin Mobile USA, Inc.