

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

<p>FEDERAL TRADE COMMISSION,</p> <p>Plaintiff,</p> <p>v.</p> <p>AT&T MOBILITY, LLC, a limited liability corporation,</p> <p>Defendant.</p>	<p>Case No. _____</p> <p>COMPLAINT FOR PERMANENT INJUNCTION AND OTHER EQUITABLE RELIEF</p>
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Plaintiff, the Federal Trade Commission (“FTC”), for its Complaint alleges:

1. The FTC brings this action under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), to obtain temporary, preliminary, and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant’s acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), in connection with charging consumers for third-party monthly subscriptions that the consumers never authorized.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a) and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), and (d), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. §§ 53(b) and 56(a)(2)(A).

DEFENDANT

6. Defendant AT&T Mobility, LLC (“AT&T” or “Defendant”) is a Delaware corporation with its principal place of business in Atlanta, Georgia. Defendant is a mobile phone carrier and transacts or has transacted business in this

district and throughout the United States. Until at least January 2014, Defendant also has charged consumers for other services offered and provided by third-party merchants unrelated to its common carriage mobile telephone services.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

AT&T’S BUSINESS ACTIVITIES

Overview

8. In addition to charging for phone services offered by Defendant, Defendant charges many consumers for other services offered by third-party merchants. Until at least January 2014, these purported services have included monthly subscriptions for content such as ringtones, wallpaper, and text messages providing horoscopes, flirting tips, celebrity gossip, and other similar information. Defendant typically has charged consumers \$9.99 per month for such subscriptions (“Third-Party Subscriptions”).

9. In numerous instances, Defendant has charged consumers for Third-Party Subscriptions that the consumers did not order or authorize, a practice known as cramming. Defendant has continued to charge consumers for Third-Party

Subscriptions even after large numbers of consumers complained about unauthorized charges and the refund rate for the subscriptions were high – in some cases as high as 40%. Further, Defendant has continued to charge consumers for Third-Party Subscriptions even after industry auditor alerts, law enforcement and other legal actions, and news articles indicated that the third-party merchants were not obtaining valid authorization from consumers for the charges.

10. Defendant has retained a portion of each charge paid by consumers for Third-Party Subscriptions, typically as high as 35% of the charge, and up to 40% of the charge if a subscription has high refund rates. In 2012, Defendant earned \$108 million from charges for Third-Party Subscriptions, and in 2013, \$161 million for such charges, many of which were unauthorized. AT&T's practices have caused consumers millions of dollars of injury.

**Defendant's Billing of Consumers
For Third-Party Subscriptions**

11. In television and other advertisements, and during its sales process, Defendant markets its telephone and data services to consumers. Defendant's sales representatives often discuss these services only, and not purported third-party services, with consumers. Defendant's contracts make clear and prominent

representations about the services it provides; information about third-party services is buried in lengthy terms and conditions of its service contract.

12. Defendant has not obtained authorization from consumers before charging them for Third-Party Subscriptions. Instead, the third-party merchants or billing intermediaries purportedly have obtained authorization. In many cases, however, these third parties have failed to obtain valid authorization from consumers.

13. Defendant’s phone bills include charges for its own services and third-party services. Defendant has not conspicuously disclosed the third-party charges to consumers.

14. Consumers may view their bill online or receive a hard copy of the bill from Defendant. In both instances, the first page of Defendant’s bills has contained a summary of charges.

Online Bill Summary:

Prior Activity	
Previous Balance	\$228.22
Payment - 08/19 - Thank You!	-\$228.22
Adjustments	\$0.00
Balance	\$0.00
New Charges	\$228.22
Total Amount Due Amount Due in Full by Sep 20, 2012	\$228.22
This total does not reflect account activity after your billing cycle end date August 25, 2012.	

Hard Copy Bill Summary:

Bill-At-A-Glance	
Previous Balance	\$79.37
Payment - 05/08 - Thank You!	\$79.37CR
Adjustments	\$0.00
Balance	\$0.00
New Charges	\$79.37
Total Amount Due	\$79.37
Amount Due in Full by	Jun 08, 2012

15. The third-party charges are not broken out separately in the summary, but have been lumped together under the generic descriptor “New Charges,” which may include both third-party charges and other charges, such as for phone service. The “New Charges” line item in the summary is included in the “Total Amount Due” that Defendant represents is “Due in Full by” a specific date. Many consumers believe they are obligated to pay Defendant for all charges appearing on their phone bills.

16. In many instances until at least March 2013, the online bill has also not provided disclosures in other parts of the bill. A section titled “Monthly

Charges” has included charges for a consumer’s phone service, texting, and data plan, and a line item for “AT&T Monthly Subscriptions:”

Monthly Charges - May 26 thru Jun 25

FamilyTalk Nation 700 with Rollover	\$9.99
Family Messaging Unlimited with Mobile to Any Mobile Calling	\$0.00
Data Unlimited for iPhone	\$30.00
<i>Get help and manage your purchases several ways:</i>	
<i>- Go to att.com/directbill</i>	
<i>- To speak with a service representative, dial 611 from your mobile phone, or 1 800-331-0500 from any phone.</i>	
<i>To stop a subscription, text STOP to the Short Code using the mobile phone associated with those charges. If a Short Code is not listed go to att.com/directbill.</i>	
AT&T Monthly Subscriptions	\$19.98

Despite the name, the category “AT&T Monthly Subscriptions” includes third-party charges.

17. Similarly, further into the hard copy bill, a section titled “Monthly Charges” includes charges for a consumer’s phone service, texting, and data plan, and a line item for “AT&T Monthly Subscriptions.” Again, despite its name, “AT&T Monthly Subscriptions” includes monthly subscriptions provided by third parties:

Monthly Charges - Feb 14 thru Mar 13

1. Nation 450 with Rollover	39.99
2. International Long Distance - Standard	0.00
3. Data Unlimited for iPhone on 4G-LTE with VVM	30.00
4. Messaging 200	5.00
5. National Account Discount	6.48CR

Get help and manage your purchases several ways:

- Go to att.com/directbill

- To speak with a service representative, dial 611 from your mobile phone, or 1 800-331-0500 from any phone.

To stop a subscription, text STOP to the Short Code using the mobile phone associated with those charges. If a Short Code is not listed go to att.com/directbill.

AT&T Monthly Subscriptions

<u>Date</u>	<u>Cost</u>	<u>Tax</u>	
6. 01/28 Multiple Types: CellZumConciergeInfo Short Code: 82511 ID: 38120 Provider: Cellzum Contact: 1-800-331-0500 Renew Date: 02/27/2013	9.99	0.00	9.99
Total AT&T Monthly Subscriptions			9.99

Total Monthly Charges 78.50

18. Even if consumers have noticed that their bills are unusually high, and have been able to find and decipher the information AT&T has provided on the bills about the increased charges, they still would have had to figure out that these charges are for third-party services, not for AT&T services, despite representations to the contrary. To prevent future third-party charges, consumers then would have needed to identify the unwanted text messages on their phones, to have made the connection between the text messages and charges, and to have texted stop in

response to the short code. This action would not have reversed any charges that AT&T had already placed on the consumers' bills in the current month or prior months.

19. In some instances, beginning in March 2013, Defendant has sent text messages to consumers regarding subscriptions. In many instances, these messages did not mention charges at all. In numerous instances, consumers receiving these text messages thought they were spam and ignored the messages. Even if consumers noticed and opened the text messages, they would still have to take action to stop the charges from appearing on their bills.

**Despite Complaints About Third-Party
Subscriptions, Defendant Has Refused To Provide Refunds
And Has Continued To Charge For Subscriptions**

20. Some consumers who have become aware of unauthorized charges have complained to Defendant that they did not authorize the charges. In 2011 alone, AT&T received over 1.3 million calls to its customer service department regarding third-party subscription charges. In February 2012, an AT&T employee wrote in an e-mail that the top 2012 AT&T Objective was to "Clean Up the core [Third-Party Subscription] Business – Cramming /Spamming has increased to a new level that cannot be tolerated from an AT&T or industry perspective." Notwithstanding these concerns of increased cramming, Defendant has not taken

sufficient steps to determine whether consumers actually authorized the charges for Third-Party Subscriptions purportedly offered by problematic third-party merchants. For example, when consumers have complained that they did not authorize the charges that appeared on their bills, AT&T has not asked the third-party merchants to provide confirmation demonstrating that the consumers had authorized the charges.

21. Furthermore, when consumers have sought refunds for unauthorized charges from Defendant, Defendant frequently has refused to provide them. In some instances, Defendant has told consumers that there is nothing it can do about the unauthorized charges.

22. In other instances, Defendant's customer service representatives have instructed consumers to seek a refund directly from the third-party merchant. At times, however, Defendant's representatives have failed to provide accurate contact information for the third-party merchant.

23. In yet other instances, Defendant has asserted that consumers authorized the charge, despite the fact that Defendant has not had records of the purported authorization and the fact that AT&T has acknowledged in its internal communications that third party authorizations are "often unreliable." AT&T went so far as to inform consumers who called to complain about unauthorized charges

that the consumers had authorized the charges by not responding to text messages sent by the third-party merchants.

24. In other instances, Defendant has refused to grant a full refund, but has granted a partial refund. AT&T's policy prior to October 2011 was to offer a one-time refund of up to three months for those consumers who contacted Defendant's customer care center to complain about unauthorized third-party charges; in October 2011, AT&T notified its third-party merchants that it was changing its refund policy to "help lower refunds," and AT&T's customer service representatives would be "blocked" from offering more than a one-time two month refund. In numerous instances, AT&T has charged consumers for at least a year for third-party subscription services yet only offered a two month refund. Further, if a consumer previously had complained about an unauthorized third-party charge, AT&T instructed its customer care representatives not to offer any refund.

25. Even after receiving complaints that consumers did not authorize particular subscriptions, Defendant often has continued to charge other consumers for such subscriptions.

**Defendant Has Charged Consumers For
Third-Party Subscriptions With High Refund Rates**

26. When Defendant has provided refunds, it has tracked the dollar amount of refunds for each Third-Party Subscription. It then has compared the dollar amount of refunds issued in a calendar month to the revenue charged that month for each subscription. That ratio, given in percentage terms, is the “refund rate.” Defendant has charged consumers for subscriptions with refund rates as high as 40% in a single month.

27. Even high refund rates likely understate the number of consumers who have been crammed. Only those consumers who have successfully identified an unauthorized charge even have attempted to dispute it. Further, consumers who have been on pre-paid plans have not received monthly bills and have therefore received no information, even inadequate information, about the charges. Thus, the refund rate has not included all consumers who did not authorize the charges.

28. The refund rate also likely understates the number of consumers who have been crammed because only refunds granted by Defendant have been counted towards the refund rate. As explained above, Defendant has restricted refunds to only two months to “help lower refunds,” even when Defendant has charged a consumer for a particular third-party subscription for over a year. Moreover,

AT&T's refund rates have not included consumers who obtained a refund directly from a third-party merchant.

29. From at least 2010, Defendant has monitored the refund rates of each subscription on its network. Defendant has acknowledged that, "[i]n AT&T Mobility's experience, customer refund rates are a good indication of a problem with [Third-Party Subscription] service." Nonetheless, Defendant has continued to charge consumers for unauthorized subscriptions with high refund rates.

30. Defendant purportedly has had policies in place to monitor subscriptions with high refund rates, but these policies have been ineffective in preventing unauthorized charges. This is in part because Defendant has not followed the policies, and in part because the policies themselves allow for a high level of unauthorized charges. According to Defendant's policies, the company did not need to suspend or terminate subscriptions unless the subscriptions' refund rates exceeded a certain percentage. The threshold percentage, which changed over time, was above 18% for the majority of the time period at issue, but at times was as high as 25%. Accordingly, Defendant continued billing for commercial third-party subscriptions even though these subscriptions had an *average* refund rate of 15.1% on its network in 2012, while, by comparison, in the credit card industry, the average chargeback rate on charges billed to credit cards has been

around 0.2%, and a chargeback rate of 1% for any one merchant has been flagged for further investigation by credit card companies.

31. AT&T kept its refund rate thresholds for suspension and termination high—despite having numerous indicia that its consumers had not authorized the third-party subscriptions for which they were being charged—and continued to profit from third-party subscriptions. Indeed, AT&T set the refund rate threshold for suspension or termination after calculating the impact a lower cut off would have on its revenue. Based on 2011 data, AT&T calculated that its third-party subscription revenue would have decreased by as much as 60% had the company terminated subscriptions with 9% refund rates.

Defendant's Ineffective "Three Strikes" Policy

32. Until December 2011, Defendant employed a policy whereby a subscription receiving "three strikes" purportedly would be terminated from Defendant's network. Subscriptions purportedly received one strike, resulting in a suspension of the subscription, when they had a refund rate in excess of 25% (2010), 20% (as of January 2011), or 18% (as of June 2011). Subscriptions also have purportedly received strikes if an auditor has alerted Defendant that the subscription is violating certain policies, or if the subscription has been found to be spamming consumers or engaging in deceptive marketing, yet Defendant's policy

was discretionary and did not automatically mandate a strike or suspension even after an auditor alert.

33. After a suspension was over, Defendant gave a subscription a 90 day (or greater) grace period to normalize its refund rate. A subscription could have a refund rate well in excess of the refund rate threshold and would not receive another strike or be suspended unless the excessive refund rate continued after the grace period ended.

34. Further, even if a subscription was “suspended,” Defendant continued to bill consumers who purportedly had previously signed up for the subscription; it simply refrained from billing purported new subscribers.

35. Even when Defendant terminated a subscription from its network, only the subscription has been terminated, not the merchant who had created the terminated subscription. In numerous instances, a merchant who had one subscription terminated has continued to charge new and existing subscribers for other subscriptions and Defendant took no steps to ensure that consumers actually authorized the services that the merchant has alleged they signed up for.

36. In addition to allowing high refund rates and continued billing of consumers, the policy was meaningless because Defendant did not always abide by

it – it continued to bill consumers for subscriptions receiving more than three strikes.

Defendant's Revised Policies Fail to Prevent Unauthorized Billing

37. Beginning in January 2012, AT&T changed its third-party subscription monitoring policy. During this time, refund rates in excess of 18% or 15% (as of April 2013) purportedly were subject to suspension, but that designation did not necessarily result in any action by Defendant. In late 2012, Defendant revised its policy again purportedly to require termination of content providers, and their affiliates, with refund rates in excess of 22%; however, in at least some instances, Defendant did not follow this policy, and continued billing consumers for subscriptions with refund rates in excess of 22%. Further, Defendant's policy did not call for suspension of content providers with high refund rates, and instead permitted Defendant to determine on a case-by-case basis whether a subscription should be suspended. As with its "three strikes" policy, even if it actually had suspended a subscription, Defendant would continue to bill purported existing subscribers.

38. Notwithstanding these policy changes, Defendant continued to charge consumers for third-party subscriptions with high refund rates. For example,

Defendant continued to charge for numerous subscriptions produced by third-party merchant Wise Media, LLC, although a number of Wise Media's subscriptions had refund rates in excess of 40%. Only after reports about the company's cramming practices became public in April 2012 did Defendant terminate Wise Media from its network. Even then, it failed to provide full refunds for consumers it had charged for Wise Media subscriptions.

39. Additionally, Defendant has charged consumers for purported subscriptions offered by Jesta Digital, LLC, even though consumers sought refunds from Defendant in high numbers, exceeding 25% in some months. In August 2013, the FTC sued Jesta for its cramming practices.

**Defendant Has Charged Consumers For
Third-Party Subscriptions That Were The Subject Of Industry Auditor
Alerts, And Lawsuits Detailing Deceptive Practices**

40. Defendant has received audits and "alerts" from industry auditors. The auditors' alerts have provided examples of deceptive marketing by third-party merchants to obtain consumers' phone numbers and purportedly enroll them in a monthly subscription. Defendant has continued to charge consumers for the recurring Third-Party Subscriptions offered by those merchants identified by the auditors, including the very subscriptions the alerts have identified as failing to obtain valid authorization from the consumers.

41. For example, one alert circulated in March 2011 highlighted a Facebook application that claimed it allowed users to see who looks at their Facebook profiles most frequently for free. The application required users to complete a short “survey” that included entering their mobile phone number. The application never revealed who looked at the users’ Facebook profiles, but users were charged for a Third-Party Subscription despite the application’s claim of being free. After receiving this alert in March 2011, Defendant continued to charge consumers for this subscription until at least February 2012 and other subscriptions purportedly offered by the same third-party merchant until at least August 2012.

42. Defendant has also charged consumers for Third-Party Subscriptions offered by Tatto Inc. and its related entities. In 2009, the Washington Attorney General entered into a consent decree with Tatto for cramming practices. Defendant continued to charge consumers for Third-Party Subscriptions offered by Tatto and its related entities until at least August 2012. Further, Defendant suspended Tatto-related subscriptions and campaigns at least eight times between February 2011 and June 2012 due to excessive refund rates or noncompliant marketing, yet continued charging existing subscribers during each suspension and failed to terminate the company despite these issues.

43. Likewise, Defendant has charged consumers for purported subscriptions offered by Eye Level Holdings, LLC, d/b/a Jawa and its related corporate entities (collectively, “Jawa”) despite lawsuits against the company. In March 2011, the Texas Attorney General sued Jawa for deceptive practices in marketing Third-Party Subscriptions. In March 2011, another mobile carrier also sued Jawa and its principals for deceptive practices. Defendant continued to charge consumers for Jawa’s subscriptions for more than one year after these lawsuits.

VIOLATIONS OF THE FTC ACT

44. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.” Misrepresentations or deceptive omissions of material fact constitute deceptive acts or practices prohibited by Section 5(a) of the FTC Act. Here, Defendant has represented that the charges appearing on Defendant’s phone bills were for Defendant’s services authorized by the consumer, even when the charges were unauthorized charges for Third-Party Subscriptions. Those misrepresentations are material and have caused harm to consumers.

45. Acts or practices are unfair under Section 5 of the FTC Act if they cause substantial injury to consumers that consumers cannot reasonably avoid

themselves and that is not outweighed by countervailing benefits to consumers or competition. 15 U.S.C. § 45(n). Here, Defendant has engaged in the widespread practice of charging consumers for recurring Third-Party Subscriptions without consumers' authorization for the charges, causing harm to consumers that they cannot reasonably avoid, without any remotely countervailing benefit to consumers or competition.

COUNT I

Deceptive Acts and Practices in Violation of Section 5 of the FTC Act

46. In numerous instances, throughout its course of conduct described in Paragraphs 8-43 of this Complaint, Defendant has represented, directly or indirectly, expressly or by implication, that charges appearing on consumers' phone bills are for Defendant's services authorized by consumers.

47. In truth and in fact, in numerous instances in which Defendant has made the representations set forth in Paragraph 46 of this Complaint, the charges appearing on consumers' phone bills included Third-Party Subscriptions that the consumers had not authorized. These representations are material to consumers.

48. Defendant's representations as set forth in Paragraph 46 of this Complaint are likely to mislead reasonable consumers and constitute deceptive acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

COUNT II

Unfair Billing Practices in Violation of Section 5 of the FTC Act

49. In numerous instances, Defendant has charged consumers for Third-Party Subscriptions for which consumers have not provided express, informed consent.

50. Defendant's actions as described in Paragraph 49 have caused or are likely to cause substantial injury to consumers that consumers cannot reasonably avoid themselves and that is not outweighed by countervailing benefits to consumers or competition.

51. Defendant's practices as set forth in Paragraph 49 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a) and (n).

CONSUMER INJURY

52. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of their unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT’S POWER TO GRANT RELIEF

53. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and other such relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

Wherefore, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, § 53(b), and the Court’s own equitable powers, requests that the Court:

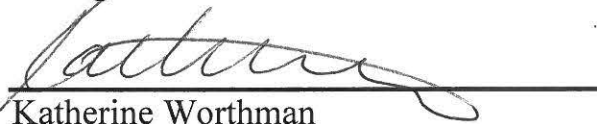
- A. Enter such preliminary and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, a temporary and preliminary injunction, an evidence preservation order, and expedited discovery;
- B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including, but not limited to, rescission and reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies;

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Dated: 10/7/14

Respectfully submitted,
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