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28 FEDERAL TRADE COMMISSION

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AT&T MOBILITY LLC, a limited liability
company,

Defendant.

Case No. 14-CV-04785-EMC

[PROPOSED]

STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT

1 Plaintiff, the Federal Trade Commission ("Commission" or "FTC"), filed its Complaint
2 for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of
3 the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and
4 Defendant stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary
5 Judgment ("Order") to resolve all matters in dispute in this action between them.

6 THEREFORE, IT IS ORDERED as follows:

7 **FINDINGS**

- 8 1. This Court finds that it has jurisdiction over this matter.
- 9 2. The Complaint charges that Defendant participated in deceptive and unfair acts or
10 practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, in connection with the
11 marketing of wireless broadband internet access service for smartphones.
- 12 3. Defendant neither admits nor denies any of the claims or allegations in the Complaint,
13 except as specifically stated in this Order. Only for purposes of this Order, Defendant admits
14 the facts necessary to establish jurisdiction.
- 15 4. Defendant waives any claim that it may have under the Equal Access to Justice Act, 28
16 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and
17 agrees to bear its own costs and attorney fees.
- 18 5. Defendant and the Commission waive all rights to appeal or otherwise challenge or
19 contest the validity of this Order.
- 20 6. The FTC and Defendant acknowledge and agree that this is a compromise settlement of
21 disputed issues. It is specifically agreed and acknowledged that this Order is not intended to be,
22 nor shall it be, construed as evidence of liability with respect to the allegations set forth in the
23 Complaint with respect to any claims or demands by any third parties.

24 **DEFINITIONS**

25 For purposes of this Order, the following definitions apply:

- 26 A. "Clear(ly) and Conspicuous(ly)" means that a required disclosure is difficult to miss
27 (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the
28 following ways:

1 1. The disclosure must be made through the same means, whether audio, visual, or
2 both, through which the representation triggering the disclosure is made.

3 2. A visual disclosure, by its size, contrast, location, the length of time it
4 appears, and other characteristics, must stand out from any accompanying text or other visual
5 elements so that it is easily noticed, read, and understood.

6 3. An audible disclosure, including by telephone or streaming video, must be
7 delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and
8 understand it.

9 4. In any communication using an interactive electronic medium, such as the
10 Internet or software, the disclosure must be unavoidable.

11 5. The disclosure must use diction and syntax understandable to ordinary
12 consumers and must appear in each language in which the representation that requires the
13 disclosure appears.

14 6. The disclosure must comply with these requirements in each medium through
15 which it is received, including all electronic devices and face-to-face communications.

16 7. The disclosure must not be contradicted or mitigated by, or inconsistent with,
17 anything else in the communication.

18 8. When the representation or sales practice targets a specific audience, such as
19 children, the elderly, or the terminally ill, "ordinary consumers" includes reasonable members
20 of that group.

21 B. "Close Proximity" means on the same print page, webpage, online service page, or other
22 electronic page, and proximate to the triggering representation, and not accessed or displayed
23 through hyperlinks, pop-ups, interstitials, or other means.

24 C. "Data Throttling" or "Throttling" means intentionally reducing a mobile data customer's
25 data throughput speed.

26 D. "Defendant" means AT&T Mobility LLC.

27 E. "Eligible Consumer" means any consumer that has or had an account for which at least
28 one device subscribed to an Unlimited Mobile Data Plan that, prior to June 1, 2015, was subject

1 one or more times to Data Throttling by Defendant at a maximum data throughput of 128 kbps,
2 256 kbps, or 512 kbps.

3 F. "Material Restriction" means a reduction on the amount or speed of data that is likely to
4 affect a consumer's purchase or use of the advertised product or service.

5 G. "Mobile Data Plan" means a contract with Defendant for the provision of internet access
6 service to mobile devices such as smartphones.

7 H. "Space-Constrained Advertisement" means any communication (including, but not
8 limited to, Internet search results and banner ads) that has space, format, size, or technological
9 restrictions ("Space Constraint") that limit Defendant from being able to make the disclosures
10 required by Section I.A of this Order. Defendant bears the burden of showing that there is a
11 Space Constraint to make a required disclosure that is Clear and Conspicuous and in Close
12 Proximity to the triggering term.

13 I. "Unlimited Mobile Data Plan" means a Mobile Data Plan that did not set forth a
14 numerical limit on the quantity of data allowed in a billing cycle when the customer subscribed
15 to or renewed the plan.

16 ORDER

17 I. PROHIBITION AGAINST DECEPTIVE ADVERTISING 18 OF MOBILE DATA PLANS

19 IT IS ORDERED that Defendant, Defendant's officers, agents, employees, and
20 attorneys, and all other persons in active concert or participation with any of them, who receive
21 actual notice of this Order, whether acting directly or indirectly, in connection with the
22 advertising or sale of any Mobile Data Plan, are permanently restrained and enjoined from,
23 expressly or by implication:

24 A. Making any representation about the amount or speed of mobile data, including that the
25 mobile data is unlimited, without disclosing, Clearly and Conspicuously and in Close Proximity
26 to the representation, all Material Restrictions imposed by Defendant. For purposes of this
27 Order.

1 B. Defendant is ordered to pay this judgment by depositing \$60,000,000 into an interest-
2 bearing account ("the Settlement Fund") within 7 days after entry of this Order and submit
3 proof to the Commission within 10 days after entry of this Order that this account has been
4 established and the funds deposited. Except as expressly provided in Section III.C.6 of this
5 Order, funds deposited into this account shall be used solely for the purpose of compensating
6 consumers as set forth in Section III of this Order.

7 i. Commencing 7 days after Defendant begins issuing bill credits or checks
8 pursuant to Sections III.B and III.C of this Order, Defendant may withdraw from
9 the Settlement Fund the dollar value of the bill credits or checks issued during
10 the previous 7 days. On a weekly basis, Defendant may continue to withdraw
11 from the Settlement Fund the dollar value of the bill credits or checks issued
12 during the previous 7 days until Defendant has fully complied with its redress
13 obligations under Sections III.B and III.C of this Order.

14 C. The facts alleged in the Complaint will be taken as true without further proof in any
15 subsequent civil litigation by or on behalf of the Commission, including in a proceeding to
16 enforce its rights to any payment or monetary judgment pursuant to this Order, such as a
17 nondischargeability complaint in any bankruptcy case.

18 D. The facts alleged in the Complaint establish all elements necessary to sustain an action
19 by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
20 § 523(a)(2)(A), and this Order shall have collateral estoppel effect for such purposes.

21 E. Defendant acknowledges that its Taxpayer Identifying Number (Employer Identification
22 Number), which Defendant must submit to the Commission, may be used for collecting and
23 reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C.
24 § 7701.

25 III. REDRESS PROCEDURES AND COORDINATION

26 IT IS FURTHER ORDERED that:

27 A. Within 30 days after entry of this Order, Defendant must identify each Eligible
28 Consumer.

Redress to Current Customers

B. Defendant must compensate Eligible Consumers who, as of the date of entry of this Order, have an AT&T Mobility Mobile Data Plan account ("Current Customers") as follows:

1. Compensation must be made through a bill credit on the Current Customers' accounts within 90 days after entry of this Order.
2. Compensation must be made without requiring Current Customers to file any claim seeking compensation or taking any other action.
3. Defendant must compensate Current Customers who first experienced Data Throttling at a maximum data throughput of 128 kbps with a pro rata share of \$7,500,000 of the Settlement Fund, including any interest accrued as of 7 days prior to the start of Defendant's crediting Current Customers' accounts.
4. Defendant must compensate Current Customers who first experienced Data Throttling at a maximum data throughput of 256 kbps or 512 kbps with a pro rata share of \$29,700,000 of the Settlement Fund, including any interest accrued as of 7 days prior to the start of Defendant's crediting Current Customers' accounts.
5. Defendant must notify Current Customers of the bill credit, including by the following means:
 - a. Defendant must provide a text message notification as set forth in Exhibit A.1 of this Order to all Current Customers. Defendant must send the text message to such consumers on or within 10 days preceding the date on which the bill credit is made. The text message notification must be provided at Defendant's expense and at no charge to consumers.
 - b. For all Current Customers who receive a hard-copy bill, Defendant must include a bill insert notice as set forth in Exhibit A.2 of this Order. The bill insert must be a different color paper than the bill itself. The bill insert must be included with the same bill in which the bill credit is made.
 - c. Defendant also must include a notice as set forth in Exhibit A.3 of this Order on www.att.com for viewing by consumers on Defendant's

1 website. The notice must be either listed first under "Alerts" or above the
2 fold, both of which will be on the first landing page after consumers log
3 in to their online account. The notice must be posted on the website on or
4 within 10 days preceding the date that Defendant first begins to credit
5 consumer accounts and must continue to be posted until Defendant has
6 credited all accounts, and then until the next billing cycle.

7 d. Defendant must further provide a notice, as set forth in Exhibit A.3 of this
8 Order, on the MyATT application. The notice must appear when the
9 consumer clicks the "Alert" button or above the fold on the first page of
10 the application after the log in. The notice must be displayed on the
11 application on or within 10 days preceding the date Defendant first begins
12 to credit consumer accounts and must continue to be displayed until
13 Defendant has credited all accounts, and then until the next billing cycle.

14 6. Defendant must provide redress to each Eligible Consumer for whom Defendant
15 is not able to compensate through a bill credit using the procedures set forth in
16 Section III.C.

17 **Redress to Former Customers**

18 C. Defendant must provide prompt redress to all Eligible Consumers who do not have an
19 AT&T Mobility Mobile Data Plan account as of the date of Entry of this Order ("Former
20 Customers") as follows:

- 21 1. Defendant must pay Former Customers who first experienced Data Throttling at
22 a maximum data throughput of 128 kbps a pro rata share of \$6,300,000 of the
23 Settlement Fund, including any interest accrued as of 7 days prior to the start of
24 Defendant's payments to Former Customers.
- 25 2. Defendant must pay Former Customers who first experienced Data Throttling at
26 a maximum data throughput of 256 kbps or 512 kbps a pro rata share of
27 \$16,500,000 of the Settlement Fund, including any interest accrued as of 7 days
28 prior to the start of Defendant's payments to Former Customers.

- 1 3. Payment must be made without requiring Former Customers to file any claim
2 seeking compensation or taking any other action.
- 3 4. Defendant must provide redress by sending a check by first-class mail, postage
4 prepaid, address correction service requested with forwarding and return postage
5 guaranteed, to the Former Customer's current or last known address. Prior to
6 mailing the checks, Defendant must update each address through the Postal
7 Service's National Change of Address database. Defendant must send these
8 redress checks within 90 days of entry of this Order.
- 9 5. All redress payments made pursuant to Section III.C.4 of this Order either
10 become money received by Former Customers within 90 days of Defendant's
11 mailing of the checks, through the deposit or cashing of such redress checks, or
12 Defendant must return the money to the Settlement Fund. The redress checks
13 issued pursuant to Section III.C.4 of this Order must state that the checks expire
14 90 days after the date of the check.
- 15 6. Defendant must identify Former Customers whose redress checks were not
16 cashed or deposited within 90 days after Defendant mailed the checks pursuant
17 to Section III.C.4 of this Order. Defendant must conduct an address trace for
18 each Former Customer so identified. Defendant may use Settlement Fund
19 moneys to cover reasonable costs incurred to conduct the address trace.
- 20 7. For each Former Customer whose address is updated or confirmed by the address
21 trace, pursuant to Section III.C.6 of this Order, Defendant must provide redress
22 by sending a new check by first class mail, postage prepaid, address correction
23 service requested with forwarding and return postage guaranteed, to the Former
24 Customer's new or confirmed address.
- 25 8. Defendant must include an explanation of refund, as set forth in Exhibit B of this
26 Order, in the envelope with each refund check issued pursuant to Section III.C.4
27 and III.C.7 of this Order.
- 28

1 9. All redress money distributed under this Section III.C either becomes money
2 received by Former Customers within 120 days after Defendant has sent all
3 redress checks to Eligible Consumers pursuant to Section III.C.7 of this Order, or
4 Defendant must return the money to the Settlement Fund. The redress checks
5 issued pursuant to Section III.C.7 of this Order must state that the checks expire
6 120 days after the date of the check.

7 D. Commencing at the time Defendant first begins providing consumer redress pursuant to
8 Sections III.B and III.C of this Order and continuing until 120 days after Defendant has sent all
9 redress checks to Eligible Consumers pursuant to Section III.C.7, Defendant must maintain a
10 telephone number and email address that Eligible Consumers can use to report any problems or
11 to ask any questions concerning the redress program set forth in Sections III.B and III.C of this
12 Order.

13 Other Provisions

14 E. Any funds remaining in the Settlement Fund that are not received by consumers, through
15 the deposit or cashing of redress checks, 120 days after Defendant completes its redress
16 obligations under Section III.C.7 of this Order must be remitted to the Commission within 10
17 days.

18 F. All money paid to the Commission pursuant to this Order may be deposited into a fund
19 administered by the Commission or its designee to be used for equitable relief, including
20 consumer redress and any attendant expenses for the administration of any redress fund. If a
21 representative of the Commission decides that direct redress to consumers is wholly or partially
22 impracticable or money remains after redress is completed, the Commission may apply any
23 remaining money for such other equitable relief (including consumer information remedies) as
24 it determines to be reasonably related to Defendant's practices alleged in the Complaint. Any
25 money not used for such equitable relief is to be deposited to the U.S. Treasury as
26 disgorgement. Defendant has no right to challenge any actions the Commission or its
27 representatives may take pursuant to this Subsection.

1 G. All payments to the Commission under this Order must be made by electronic fund
2 transfer in accordance with instructions provided by a representative of the Commission.

3 H. Defendant relinquishes dominion and all legal and equitable right, title, and interest in
4 all assets transferred to the Commission pursuant to this Order and may not seek the return of
5 any assets.

6 **Redress Reporting**

7 I. Unless otherwise directed by a representative of the Commission in writing, Defendant
8 must submit a report of the redress program quarterly and at the conclusion of the program.
9 Defendant must describe in detail whether and how the program is in compliance with Section
10 III of the Order and, for each month of the program, summarize the redress program to date, as
11 follows:

- 12 1. For all redress to Current and Former Customers of Defendant pursuant to
13 Sections III.B and III.C of this Order, the report summary must include: (i) the
14 number and dollar amount of bill credits issued to consumers each month of the
15 program; (ii) the number and dollar amount of checks mailed each month of the
16 program; and (iii) the number and dollar amount of checks negotiated each
17 month of the program.
- 18 2. If a representative of the Commission requests additional information regarding
19 the redress program, including any of the underlying data, Defendant must
20 submit such information to the extent allowed by the Electronic Communications
21 Privacy Act, 18 U.S.C. § 2702(e)(3), and the Communication Act of 1934, as
22 amended, 47 U.S.C. § 222(d)(2), within 10 days of the request.
- 23 3. Consistent with the Electronic Communications Privacy Act, 18 U.S.C. §§
24 2702(a) and 2703, and the Communication Act of 1934, 47 U.S.C. § 222,
25 Defendant shall not share with any representative of the FTC any personally
26 identifiable information that could permit the information shared to be associated
27 with a specific subscriber or customer of Defendant. Defendant, however, shall
28 share with a representative of the FTC information in aggregate form.

1 Commission.

2 B. For 10 years after entry of this Order, Defendant must submit a compliance notice,
3 sworn under penalty of perjury, within 14 days of any change in the following: (a) any
4 designated point of contact; or (b) the structure of Defendant or any entity that Defendant has
5 any ownership interest in or controls directly or indirectly that may affect compliance
6 obligations arising under this Order, including: creation, merger, sale, or dissolution of the
7 entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this
8 Order.

9 C. For 10 years after entry of this Order, Defendant must submit to the Commission notice
10 of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or
11 against Defendant within 14 days of its filing.

12 D. Any submission to the Commission required by this Order to be sworn under penalty of
13 perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: "I
14 declare under penalty of perjury under the laws of the United States of America that the
15 foregoing is true and correct. Executed on: " and supplying the date, signatory's full
16 name, title (if applicable), and signature.

17 E. Unless otherwise directed by a Commission representative in writing, all submissions to
18 the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by
19 overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau
20 of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW,
21 Washington, DC 20580. The subject line must begin: FTC v. AT&T Mobility LLC (X150009).

22 VI. RECORDKEEPING

23 IT IS FURTHER ORDERED that Defendant must create certain records for 10 years
24 after entry of the Order, and retain each such record for 5 years *provided, however*, that with
25 respect to Section VLD, Defendant must create such records for 5 years and retain each such
26 record for 3 years. Specifically, Defendant must create and retain the following records:

27 A. Accounting records showing the revenues from the sale of all goods or services related
28 to the subject matter of this Order;

1 B. Personnel records showing, for each person providing services related to the subject
2 matter of this Order, whether as an employee or otherwise, that person's name; addresses;
3 telephone numbers; job title or position; dates of service; and (if applicable) the reason for
4 termination;

5 C. All records necessary to demonstrate full compliance with each provision of this Order,
6 including all submissions to the Commission;

7 D. A representative copy of each materially different advertisement or marketing material
8 for the sale of Mobile Data Plans; and

9 E. Written, sworn, and verified certification prepared and signed annually by a corporate
10 manager or officer, and retained pursuant to Section VI.C, certifying that, for the previous year,
11 Defendant has retained advertisements pursuant to Section VI.D that are representative of each
12 materially different advertisement or marketing material for the sale of Mobile Data Plans.
13 Such certification must be based on the personal knowledge of the corporate manager, officer,
14 or subject matter experts upon whom the corporate manager or officer reasonably relies in
15 making the certification.

16 VII. COMPLIANCE MONITORING

17 IT IS FURTHER ORDERED that, for the purpose of monitoring Defendant's
18 compliance with this Order, including any failure to transfer any assets as required by this
19 Order:

20 A. Within 14 days of receipt of a written request from a representative of the Commission,
21 Defendant must: submit additional compliance reports or other requested information, which
22 must be sworn under penalty of perjury; appear for depositions; and produce documents for
23 inspection and copying. The Commission is also authorized to obtain discovery, without further
24 leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29,
25 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

26 B. For matters concerning this Order, the Commission is authorized to communicate
27 directly with Defendant. Defendant must permit representatives of the Commission to interview
28 any employee or other person affiliated with Defendant who has agreed to such an interview.

1 The person interviewed may have counsel present.

2 C. The Commission may use all other lawful means, including posing, through its
3 representatives, as consumers, suppliers, or other individuals or entities, to Defendant or any
4 individual or entity affiliated with Defendant, without the necessity of identification or prior
5 notice. Nothing in this Order limits the Commission's lawful use of compulsory process,
6 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

7 **VIII. RETENTION OF JURISDICTION**

8 IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for
9 purposes of construction, modification, and enforcement of this Order.


10
11 PURSUANT TO STIPULATION, IT IS SO ORDERED

12 This 3rd day of December, 2019



13
14 HONORABLE EDWARD M. CHEN
15 UNITED STATES DISTRICT JUDGE
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1 STIPULATED AND AGREED:
2 FOR PLAINTIFF FEDERAL TRADE COMMISSION

3
4  _____

Date: 11/5/2019

5 EVAN ROSE
6 MATTHEW D. GOLD
7 LAURA FREMONT
8 KERRY O'BRIEN
9 LIN W. KAHN
10 EMILY COPE BURTON
11 COLIN HECTOR
12 MARICELA SEGURA
13 D. EMILY WU
14 MICHAEL J. DAVIS

11 Counsel for Plaintiff
12 FEDERAL TRADE COMMISSION

13
14 FOR DEFENDANT AT&T MOBILITY LLC

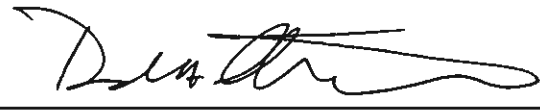
15
16  _____

Date: 8/23/2019

17 WILLIAM A. RYAN
18 Senior Vice President and Assistant General Counsel
19 AT&T Entertainment Group
20 AT&T Services, Inc.
21 2260 E. Imperial Highway
22 El Segundo, CA 90245

21 Counsel for Defendant AT&T Mobility LLC

22 DEFENDANT AT&T MOBILITY LLC

23  _____

Date: 8/23/2019

25 By: DAVID CHRISTOPHER
26 President, AT&T Mobility and Entertainment
27 AT&T Services, Inc.
28 2260 E. Imperial Highway
El Segundo, CA 90245

Exhibit A

Exhibit A: Notices to Current Customers

1. Text message

You will get a credit on your next bill as part of a settlement between AT&T and the Federal Trade Commission. For more information, you can contact us at [phone # and email address].

2. Bill insert

You Have a Credit on Your Bill

AT&T and the Federal Trade Commission settled a lawsuit alleging that AT&T reduced the data speed on unlimited data plans without telling customers. As part of the settlement, we are giving customers money back. We've applied a credit to this month's bill.

3. Website and mobile app

You Will Get a Credit on Your Next Bill

AT&T and the Federal Trade Commission settled a lawsuit alleging that AT&T reduced the data speed on unlimited data plans without telling customers. As part of the settlement, we are giving customers money back. You will get a credit on your next bill.

Exhibit B

Exhibit B: Notice to Former Customers

1. First-Class Letter

[Date]

Dear Current or Former AT&T Customer:

AT&T and the Federal Trade Commission settled a lawsuit alleging that AT&T reduced the data speed on unlimited data plans without telling customers. As part of the settlement, we are giving former customers money back. Our records show that you qualify for a refund. The enclosed check is your refund.

If you have questions about the refund program, contact us at [email address] or call [phone number].