

The Honorable James L. Robart

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendant.

Case No. 2:14-cv-00967-JLR

**STIPULATED [PROPOSED] ORDER
FOR PERMANENT INJUNCTION
AND MONETARY JUDGMENT**

***Note on Motion Calendar: December 19,
2014***

Plaintiff, the Federal Trade Commission (“FTC”), filed its Complaint for Permanent Injunction and Other Equitable Relief in this matter, pursuant to Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b). The FTC and Defendant, T-Mobile USA, Inc. (“T-Mobile”), stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”), without trial or final adjudication of any issue of fact or law, in order to resolve all matters in dispute in this law enforcement action by the FTC.

THEREFORE, IT IS ORDERED as follows:

FINDINGS

1. There being no objection, the Court finds that it has jurisdiction over this matter.

1 2. The Complaint charges that T-Mobile participated in deceptive and unfair acts or
2 practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, by including unauthorized
3 third-party charges on the telephone bills of its mobile phone customers.

4 3. T-Mobile waives all jurisdictional defenses or objections related to either the FTC
5 Act or the Communications Act of 1934, 47 U.S.C. §§ 151, et seq., solely for purposes of entry,
6 construction, modification, and enforcement of this Order. T-Mobile does not admit or consent
7 to the FTC's jurisdiction for any other purposes or proceedings.

8 4. The parties, by and through their counsel, have agreed that entry of this Order
9 fully and finally resolves all issues between them arising from or related to PSMS or claims of
10 Unauthorized Third-Party Charges for all time periods up to the date of entry of this Order and
11 precludes further litigation between the FTC and T-Mobile on the resolved issues except for
12 purposes of enforcing or collecting on this Order.

13 5. T-Mobile waives any claim that it may have under the Equal Access to Justice
14 Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order,
15 and agrees to bear its own costs and attorney's fees.

16 6. T-Mobile and the FTC waive all rights to appeal or otherwise challenge or contest
17 the validity of this Order.

18 7. The FTC and T-Mobile acknowledge and agree that this is a compromise
19 settlement of disputed issues and T-Mobile neither admits nor denies the truth or falsity of any
20 claims or allegations made in the Complaint. Accordingly, this Order shall not be deemed or
21 construed in any other proceeding as: (a) an admission of the truth or falsity of any claims or
22 allegations heretofore made or any potential claims except as specifically stated in this Order;
23 (b) an admission by T-Mobile that it has violated or breached any law, statute, regulation, term,
24 provision, covenant, or obligation of any agreement; or (c) an acknowledgement or admission by
25 any of the parties of any duty, obligation, fault, or liability whatsoever to any other party or to
26

1 any third party. This Order shall not be used as evidence or precedent in any action or
2 proceeding, except an action or proceeding to enforce or collect on this Order.

3 **DEFINITIONS**

4 For the purpose of this Order, the following definitions apply:

5 1. "Account Holder" means any individual or entity who is or was responsible for
6 paying all charges associated with all lines on that individual's or entity's mobile phone account
7 with T-Mobile.

8 2. "Bill" means a Consumer's mobile telephone bill or prepaid mobile account, as
9 applicable.

10 3. "Block" means a restriction placed on a Consumer's account that prevents one or
11 more lines from being used to purchase Third-Party Products and from being billed for Third-
12 Party Charges on a Consumer's Bill.

13 4. A statement is "Clear and Conspicuous" if it is disclosed in such size, color,
14 contrast, location, duration, and/or audibility that it is readily noticeable, readable,
15 understandable, and/or capable of being heard. A statement may not contradict or be
16 inconsistent with any other information with which it is presented. If a statement materially
17 modifies, explains, or clarifies other information with which it is presented, then the statement
18 must be presented in proximity to the information it modifies, explains, or clarifies, in a manner
19 that is readily noticeable, readable, and understandable, and not obscured in any manner. In
20 addition:

21 a. An audio disclosure must be delivered in a volume and cadence sufficient
22 for a consumer to hear and comprehend it;

23 b. A television or internet disclosure must be of a type size, location, and
24 shade and remain on the screen for a duration sufficient for a consumer to read and
25 comprehend it based on the medium being used; and
26

1 c. Disclosures in a print advertisement or promotional material, including,
2 but without limitation, a point of sale display or brochure materials directed to
3 consumers, must appear in a type size, contrast, and location sufficient for a consumer to
4 read and comprehend them.

5 5. "Collectible Consumer Debt" means the amount owed to T-Mobile by a
6 Consumer whose accounts are not paid-in-full that T-Mobile owns and may legally take legal
7 action to collect.

8 6. "Commercial PSMS" means the use of PSMS to bill for Products.

9 7. "Consumer" means a T-Mobile current or former customer, subscriber, or
10 purchaser of Products for which Third-Party Charges are or were placed on the Consumer's Bill
11 from T-Mobile, whether that person is responsible for paying the Bill or has a device that is
12 billed to a shared account. "Consumer" does not include any business entity or any state,
13 federal, local, or other governmental entity, if (1) the business entity or government, and not the
14 employees or individuals working for or with that business entity or government, is solely liable
15 to T-Mobile for payment of all charges billed on that account, and (2) the ability to process
16 Third-Party Charges through that account is not available unless the business entity or
17 government affirmatively requests that certain or all mobile devices be provided the ability to
18 authorize placement of such Third-Party Charges. Nothing in this definition of "Consumer," or
19 in any other provision of this Order, shall be read or construed to require T-Mobile (a) to share
20 customer proprietary network information ("CPNI") with any person not legally entitled to
21 receive CPNI; (b) to share customer information in such a way that it would violate any
22 applicable law or T-Mobile's privacy policy or any other applicable privacy policy, provided that
23 such policies do not impose any unnecessary or unreasonable burdens on Account Holders
24 seeking information regarding their mobile phone accounts or seeking refunds; or (c) to grant
25 more than one refund for any single Unauthorized Third-Party Charge.
26

1 8. “Consumer Redress Period” means the twelve month period of time beginning on
2 July 1, 2014.

3 9. “Effective Date” means the date this Stipulated Order for Permanent Injunction
4 and Monetary Judgment is approved and entered by the Court.

5 10. “Express Informed Consent” means an affirmative act or statement that is made
6 by a Consumer, giving unambiguous assent to be charged for the purchase of a Third-Party
7 Product after receiving a Clear and Conspicuous disclosure of material facts.

8 11. “Participating States” means the following states and commonwealths: Alabama,
9 Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia,
10 Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland,
11 Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New
12 Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio,
13 Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee,
14 Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming, as well
15 as the District of Columbia.

16 12. “Premium Short Messaging Service” or “PSMS” means a service that distributes
17 paid content to a Consumer using the Short Message Service (“SMS”) and Multimedia
18 Messaging Service (“MMS”) communication protocols via messages that are routed using a
19 Short Code, resulting in a Third-Party Charge.

20 13. “Product” means content and/or services that can be used on a mobile device for
21 which charges are placed on the Consumer’s Bill by T-Mobile. “Product” excludes contributions
22 to charities, candidates for public office, political action committees, campaign committees,
23 campaigns involving a ballot measure, or other similar contributions. “Product” also excludes
24 co-branded and white label products where content and services are sold jointly and
25 cooperatively by T-Mobile and another entity, where the content and/or services is placed on the
26 subscriber’s bill as a T-Mobile charge, and T-Mobile is responsible for accepting complaints,

1 processing refunds, and other communications with the consumer regarding the charge.

2 “Product” also excludes handset insurance and extended warranty offerings, and collect calling
3 services.

4 14. “Short Code” means a common code leased from the CTIA Common Short Code
5 Administration that is comprised of a set of numbers, usually 4 to 6 digits, to and from which
6 text messages can be sent and received using a mobile telephone.

7 15. “Third Party” means an entity or entities, other than T-Mobile, that provides a
8 Product to Consumers for which billing is made through T-Mobile’s Bills.

9 16. “Third-Party Charge” means a charge for a Third-Party Product placed on a
10 Consumer’s Bill.

11 17. “Third-Party Product” means a Product provided by a Third Party.

12 18. “T-Mobile” means T-Mobile USA, Inc., and its successors and assigns.

13 19. “Unauthorized Third-Party Charge” means a Third-Party Charge placed on a
14 Consumer’s Bill without the Consumer’s Express Informed Consent.

15 **ORDER**

16 **I. EXPRESS INFORMED CONSENT**

17 IT IS ORDERED that T-Mobile and its officers, agents, servants, and employees, and all
18 others in active concert or participation with any of them, who receive actual notice of this
19 Order, whether acting directly or indirectly, shall:

20 A. Begin developing and implementing a system, which shall be fully implemented
21 by T-Mobile no later than March 1, 2015, to obtain Express Informed Consent before a
22 Consumer is billed for any Third-Party Charge. The Consumer’s Express Informed Consent may
23 be provided to T-Mobile or to another person or entity obligated to T-Mobile to obtain such
24 consent. T-Mobile or other person or entity shall retain sufficient information to allow such
25 consent to be verified. If Express Informed Consent is not directly collected by T-Mobile, T-
26 Mobile shall implement reasonable policies and practices to confirm Express Informed Consent

1 will be appropriately collected and documented by the person or entity obligated to do so, and
 2 shall monitor and enforce those policies and practices to confirm Express Informed Consent is
 3 appropriately collected and documented, and where Express Informed Consent has not been
 4 appropriately collected and documented, shall require remedial action (which may include, for
 5 example, suspension, proactive credits, or retraining) or cease billing for such charges. While
 6 the system described by this Paragraph is being developed and implemented, T-Mobile shall take
 7 reasonable steps to obtain Express Informed Consent before a Consumer is billed for any Third-
 8 Party Charge. *Provided, however,* for purposes of this Section, for charges incurred through
 9 operating system storefronts, such reasonable policies and practices may, for example, consist of
 10 T-Mobile or its agents making a statistically valid random sample of purchases to demonstrate
 11 whether the storefront is collecting Express Informed Consent consistent with this Order; and

12 B. Beginning no later than April 1, 2015, implement a system whereby the
 13 Consumer (and, for multiline accounts, the Account Holder, if designated) will be sent a
 14 purchase confirmation, separate from the Bill, of every Third-Party Charge, including recurring
 15 charges, that will appear on his or her Bill. Any such purchase confirmation shall be sent within
 16 a reasonable period of time following the time a Third-Party Product is purchased or the
 17 recurrence of a Third-Party Charge, and shall identify Blocking options that T-Mobile makes
 18 available to Consumers and/or provide access to such information. For multiline accounts, T-
 19 Mobile may provide the Account Holder the option to elect not to receive such purchase
 20 confirmations.

21 II. REQUIRED DISCLOSURES

22 IT IS FURTHER ORDERED that T-Mobile shall, beginning no later than April 1, 2015,
 23 provide a Clear and Conspicuous disclosure about Third-Party Charges and Blocking options in
 24 informational material provided at or near the time of subscribing to service, to the extent Third-
 25 Party Charges are offered and available with the service, and which is provided in a context
 26 separate from the actual subscriber agreement documents. Such disclosure shall include or

1 provide access to a description of Third-Party Charges, how Third-Party Charges appear on
2 Bills, and options available to Consumers to Block Third-Party Charges. Consumers shall not
3 incur any data or text charges for receiving or accessing the information discussed in this
4 Section.

5 **III. REFUND PRACTICES**

6 IT IS FURTHER ORDERED that T-Mobile shall:

7 A. For at least 6 years from the Effective Date, conduct a training program with its
8 customer service representatives, at least annually, to administer the requirements of this Order.
9 To the extent that T-Mobile no longer permits Third-Party Charges on Consumers' Bills, T-
10 Mobile will conduct one training program within three months of such cessation and will have
11 no further obligation to conduct training programs under this Section so long as T-Mobile does
12 not permit Third-Party Charges on Consumers' Bills; and

13 B. After a consumer disputes a Third-Party Charge within three months of the last
14 charge for a particular Product:

15 1. Provide the Consumer with access to a customer service representative
16 who has access to the Consumer's account information for at least the prior 12 months.
17 For Newly Acquired Entities as defined in Section IV, if such information is not
18 available, T-Mobile shall have 12 months to come into compliance with respect to such
19 entities, and, while coming into compliance, respond to the Consumer's inquiry within 10
20 days using any available information;

21 2. For current customers, offer the Consumer the opportunity to Block future
22 Third-Party Charges;

23 3. Commence and complete an investigation that is reasonably calculated to
24 determine whether the Consumer gave Express Informed Consent to the disputed
25 charge(s), including charges for the same Product that were billed more than three
26 months before the consumer dispute. T-Mobile shall inform the Consumer that, during

1 the investigation, the Consumer is not obligated to pay the disputed charge(s), and that
2 nonpayment of such charge(s) will not result in interest accrual or phone service
3 termination or deduction of pre-paid minutes.

4 a) If T-Mobile reasonably concludes after the investigation that the
5 Consumer gave Express, Informed Consent to the disputed charge(s), T-Mobile
6 shall promptly provide the Consumer with the basis for its conclusion, including
7 providing the Consumer with any documentary or other evidence considered, and
8 the name and contact information of the Third Party that initiated the Third-Party
9 Charge.

10 b) If T-Mobile reasonably concludes after the investigation that the
11 Consumer did not give Express Informed Consent to the disputed charge(s), T-
12 Mobile shall promptly provide the Consumer with a full refund or credit of the
13 disputed charge(s), as long as the Consumer makes the claim within three months
14 of being billed for the last charge for the particular Product at issue.

15 *Provided, however,* that T-Mobile shall not be required to conduct such an
16 investigation if it promptly refunds the Consumer the full amount of the disputed
17 charge(s).

18 4. Be prohibited from requiring the Consumer to first contact the Third Party
19 in order to receive a refund or credit of any claimed Unauthorized Third-Party Charge,
20 although this Subsection does not prohibit asking the Consumer if he or she has contacted
21 the Third Party and/or if the Consumer has already received a credit or refund from the
22 Third Party for some or all of the claimed Unauthorized Third-Party Charge.

23 **IV. NEWLY ACQUIRED ENTITIES**

24 For entities T-Mobile acquires in the future (“Newly Acquired Entities”), except as
25 provided in Section III.B., T-Mobile shall have a reasonable period of time, which in no event
26 shall exceed 6 months, in which to bring said entities into compliance with this Order. During the

1 6 month period, T-Mobile shall take reasonable steps to obtain Express Informed Consent before
2 a Consumer is billed for any Third-Party Charge.

3 **V. CONSUMER REDRESS**

4 IT IS FURTHER ORDERED that T-Mobile shall provide full refunds to Consumers who
5 have been charged by T-Mobile for unauthorized Commercial PSMS charges from June 1, 2010
6 through the Effective Date of this Order. T-Mobile will provide full refunds as follows:

7 A. T-Mobile shall provide prompt refunds to Consumers for the full amount of any
8 unauthorized Commercial PSMS charge that has not already been fully refunded according to T-
9 Mobile's billing records. T-Mobile shall refund no less than \$90 million (the "PSMS Charges
10 Refund Amount") for unauthorized Commercial PSMS charges during the Consumer Redress
11 Period, to be monitored by the FTC. T-Mobile may include in the PSMS Charges Refund
12 Amount any refunds granted by T-Mobile (a) since June 10, 2014, or (b) as a result of claims
13 made within the Consumer Redress Period, even if T-Mobile pays the refunds outside the
14 Consumer Redress Period. If T-Mobile refunds less than \$90 million, after applying the credits
15 specified in Sections V.C and V.D, it shall remit the balance to the FTC, so the FTC can make
16 additional redress, disgorgement, or consumer informational remedies pursuant to Section V.E.
17 For purposes of this Section V, a refund under Section V.B.3.a must be provided within 60 days
18 of receiving a complete and valid claim form for a refund of an unauthorized Commercial PSMS
19 charge.

20 B. To effectuate Section V.A of this Order:

21 1. During the Consumer Redress Period, T-Mobile shall provide notice of the
22 right to obtain refunds for unauthorized Commercial PSMS charges to Consumers who
23 have been charged for a Commercial PSMS charge that has not already been fully
24 refunded according to T-Mobile's billing records. For current customers, T-Mobile shall
25 provide notice using the medium that it uses to bill the Consumers in two consecutive
26 billing cycles during the Consumer Redress Period. *Provided, however,* that if the notice

1 accompanies a Consumer's Bill, the notice shall be on a different color of paper than the
2 Consumer's Bill. For former customers, T-Mobile shall provide the notice within the
3 Consumer Redress Period by sending it via first-class mail to the Consumer's last known
4 address and provide a second notice by email to the Consumer's last known email
5 address. Prior to mailing notices, T-Mobile shall update the addresses via the Postal
6 Service's National Change of Address database. The notices shall provide the link to an
7 online form that Consumers can use to apply for refunds; *provided, however*, that at the
8 request of a Consumer, a hard copy form must be provided without cost to the Consumer;

9 2. T-Mobile shall promptly provide, upon request by a Consumer, the total
10 amount of Commercial PSMS charges charged to the Consumer that have not been fully
11 refunded by T-Mobile or a Third Party, the dates of such charges, and the Third Party
12 initiating such charges;

13 3. Upon a Consumer's affirmation that the Consumer was charged for
14 unauthorized Commercial PSMS charges, T-Mobile shall provide prompt refunds to the
15 Consumer for the unauthorized Commercial PSMS charges as follows:

16 a) For Consumers with active accounts, T-Mobile shall provide
17 prompt refunds by a credit to the Consumer's mobile account; *provided, however*,
18 that T-Mobile shall Clearly and Conspicuously disclose to Consumers that in the
19 event they close their account with T-Mobile prior to T-Mobile issuing a credit,
20 they will receive a prompt refund by check. For Consumers with inactive
21 accounts that are paid in full, T-Mobile shall provide prompt refunds by check.
22 The determination of whether a Consumer's mobile account is active or inactive
23 shall be made at the time the refund is issued;

24 b) For Consumers whose inactive accounts are not paid in full, T-
25 Mobile shall have the option to pay by check or to promptly reduce the
26 outstanding balance of the account by the total amount of unauthorized

1 Commercial PSMS charges as identified by the Consumer that have not been fully
2 refunded according to T-Mobile's billing records, provided that any such balance
3 constitutes Collectible Consumer Debt. Any reduction to an outstanding balance
4 pursuant to this subparagraph shall be counted towards the amount of permissible
5 credits against the remaining balance in Section V.D. If the total amount of
6 unauthorized Commercial PSMS charges identified by the Consumer on the claim
7 form exceeds the outstanding balance of the Consumer's account, T-Mobile shall
8 promptly provide the Consumer a check in the amount of the excess.

9 4. T-Mobile shall ensure that Consumers obtain refunds of unauthorized
10 Commercial PSMS charges through a single claim form. Although T-Mobile may list
11 each Commercial PSMS charge separately on the claim form, Consumers must be
12 allowed to challenge all Commercial PSMS charges at once, such as by marking a single
13 box. T-Mobile shall not require Consumers to submit any documentation other than a
14 complete and valid claim form (though T-Mobile may give Consumers the option to
15 submit documentation to support claims for unauthorized Commercial PSMS charges not
16 reflected on reports provided to the Consumer pursuant to Section V.B.2), waive any
17 rights, or impose any unnecessary or unreasonable burdens on Consumers seeking
18 refunds. *Provided, however*, for any unauthorized Commercial PSMS charges that T-
19 Mobile fully refunds to, or credits against the debt of, a Consumer, the Consumer's claim
20 against T-Mobile with respect to the fully refunded charges will be deemed satisfied.

21 5. Within 30 days of the Effective Date, T-Mobile shall notify all Consumers
22 that it has identified as having visited T-Mobile's redress website before August 31,
23 2014, but failed to submit a claim form, and for whom T-Mobile captured contact
24 information during the Consumer's visit to the website, that improvements have been
25 made to the claims process and notifying the Consumers of their right to obtain full
26

1 refunds for unauthorized Commercial PSMS charges that have not already been fully
2 refunded according to T-Mobile's billing records.

3 C. If after the expiration of the Consumer Redress Period, T-Mobile has failed to
4 refund the full PSMS Charges Refund Amount pursuant to Sections V.A and V.B, T-Mobile may
5 apply towards the PSMS Charges Refund Amount up to \$22.5 million of any fees, costs,
6 penalties, or other payments to any other federal, state, or local government entity that, within 12
7 months of the Effective Date, are paid by T-Mobile as a result of any agreement or order related
8 to unauthorized Commercial PSMS charges with such federal, state, or local government entity,
9 or as the result of a court order related to unauthorized Commercial PSMS charges.

10 D. If, after applying any fees, costs, penalties, or other payments pursuant to Section
11 V.C, the PSMS Charges Refund Amount is not reached, T-Mobile may, at its discretion, apply as
12 credit towards the balance within 90 days of the end of the Consumer Redress Period (a) any
13 refunds granted to Consumers who were charged a Commercial PSMS charge for a good or
14 service offered by a Third Party that has been the subject of a federal or state law enforcement
15 action and for which a full refund has not yet been provided according to T-Mobile's billing
16 records; and/or (b) any reductions in outstanding balances of inactive accounts of Consumers up
17 to a total of \$37.5 million, provided that any such balance constitutes Collectible Consumer Debt
18 and any such reduction shall not exceed the total amount of Commercial PSMS charges charged
19 to a Consumer's account that have not been fully refunded according to T-Mobile's billing
20 records. Any outstanding balance on the PSMS Charges Refund Amount after application of the
21 credits in this Subparagraph shall be remitted to the FTC within 105 days of the end of the
22 Consumer Redress Period and shall not constitute a penalty.

23 E. All money paid to the FTC pursuant to this Order shall be deposited into a fund
24 administered by the FTC or its designee to be used for equitable relief, including consumer
25 redress and any attendant expenses for the administration of any redress fund. If the FTC, in
26 consultation with the executive committee of the Attorneys General of the Participating States

1 and the Federal Communications Commission, determines further redress is no longer
2 practicable, the FTC may apply all remaining funds for such other equitable relief (including
3 consumer information remedies) as it determines to be reasonably related to T-Mobile's practices
4 alleged in the Complaint. Any funds not used for redress or other equitable relief such as
5 consumer information remedies, shall be deposited to the U.S. Treasury as disgorgement as
6 equitable relief, or transferred to the Attorneys General of the Participating States to be used for
7 proper purposes as set forth in their assurances of voluntary compliance, consent decrees, and
8 court orders with T-Mobile.

9 1. If the FTC determines to use the fund referenced in Section V.E for further
10 consumer redress, it shall engage a settlement administrator (the "Settlement
11 Administrator"), which shall not be a governmental entity, to administer this redress
12 program.

13 2. T-Mobile agrees to deliver to the Settlement Administrator the records
14 specified in Section V.E.3 below, in the format reasonably requested by the FTC or the
15 Settlement Administrator, no later than 90 days after the date the FTC or Settlement
16 Administrator provides T-Mobile with the necessary information regarding how the data
17 needs to be formatted and delivered. Should the Settlement Administrator or the FTC
18 request additional Consumer information necessary to effectuate redress and this
19 information is readily available to T-Mobile at no material expense, T-Mobile agrees to
20 provide the information to the Settlement Administrator within 60 days of any subsequent
21 written request from a representative of the FTC, or from the Settlement Administrator.
22 To the extent T-Mobile cannot deliver the information in the format requested due to
23 technological reasons, the parties will work together to develop a format upon which the
24 information can be delivered.

25 3. For the purposes of effecting this Order and to protect Consumers from
26 fraud in accordance with 47 U.S.C. § 222(d), T-Mobile agrees to provide the Settlement

1 Administrator the records used by the company that administered T-Mobile's refund
2 program under this Section V, which includes records for each Consumer whom T-
3 Mobile billed for Commercial PSMS charges from June 1, 2010 through the cessation of
4 billing for Commercial PSMS charges. T-Mobile represents this information included
5 the following, to the extent reasonably available: First Name; Middle Name; Last Name;
6 Alias-Surname; postal address records; e-mail address; all telephone numbers; mobile
7 Billing Account Number ("BAN"); a designation indicating whether the Consumer is a
8 current or former customer as of the date the information was collected; a list of all
9 unrefunded Commercial PSMS charges charged to each Consumer's mobile phone
10 account, including the month and year of the charges, the amounts charged, and the Third
11 Party responsible for each Commercial PSMS charge; and records of refunds provided
12 through the redress program described in this Section V. T-Mobile agrees the Settlement
13 Administrator shall instruct T-Mobile to submit the information to it in a secure,
14 encrypted format, and T-Mobile agrees to submit the information in a secure, encrypted
15 format.

16 4. The FTC may engage a third-party independent auditor ("Auditor"), which
17 shall not be a governmental entity, to review and report on the Settlement Administrator's
18 performance of its duties under this Order. The Settlement Administrator shall allow for
19 an independent review of the Settlement Administrator's work. The cost of the review by
20 the Auditor shall be paid out of the fund referenced in this Section V.E established to
21 administer redress. T-Mobile agrees to provide all the records described in Section V.E.3
22 to the Auditor. Upon the Auditor's request, the Settlement Administrator may share any
23 Consumer information with the Auditor.

24 5. In accordance with the Electronic Communications Privacy Act, 18 U.S.C.
25 § 2702(c)(6), neither the Settlement Administrator nor the Auditor shall share with any
26 representative of the FTC, or any other governmental entity, the information provided by

1 T-Mobile unless Consumers' personally identifiable information, such as name, address,
2 telephone, e-mail address, or other unique identifier that could permit the information
3 shared to be associated with the relevant subscriber or customer of T-Mobile, is redacted.
4 At any time during the redress program, the Settlement Administrator also may share
5 with a representative of the FTC the information provided by T-Mobile in aggregate
6 form. Aggregate form includes, *inter alia*, the total number of Consumers, by state,
7 potentially entitled to redress and the amount of such potential redress, the total number
8 of Consumers, by state, who have received redress and the amount of such redress, and
9 the total amount of redress by state. Aggregate form must not include any information
10 that includes Consumers' personally identifiable information. The Settlement
11 Administrator shall at no time be an agent of the FTC, or any other governmental entity,
12 for purposes of the possession, custody, or control of such information.

13 6. The Settlement Administrator and Auditor shall operate in accordance
14 with, and shall be deemed for purposes of carrying out this Order to be subject to, the
15 information security, data breach notification and confidentiality standards and
16 requirements of the FTC's Standards for Safeguarding Customer Information Rule, 16
17 C.F.R. Part 314, the FTC's Disposal of Consumer Report Information and Records Rule,
18 16 C.F.R. Part 682, the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809 and §§ 6821-
19 6827, and the Telecommunications Act, 47 U.S.C. § 222, and 47 C.F.R. §§ 64.2010-
20 2011. The Settlement Administrator and Auditor shall destroy all records associated with
21 the redress program following notification by a representative of the FTC and shall
22 certify to T-Mobile that all such records have been destroyed.

23 F. If T-Mobile has reported to any consumer reporting agency an outstanding
24 balance of a Consumer's inactive account, T-Mobile shall furnish correct account information to
25 that consumer reporting agency or cease reporting the account within 30 days of any reduction in
26 the outstanding balance of the account pursuant to Sections V.B.3.b or V.D of this Order.

1 G. Within 120 days of the end of the Consumer Redress Period, T-Mobile shall
2 provide the FTC with records sufficient to show the notification provided by T-Mobile to
3 Account Holders of the right to full refunds of unauthorized Commercial PSMS charges, the
4 refunds requested and paid to Account Holders during the Consumer Redress Period, any
5 payments to federal, state, or local government entities that T-Mobile applied to the PSMS
6 Charges Refund Amount pursuant to Section V.C, that all outstanding balances of inactive
7 accounts that were reduced pursuant to Sections V.B.3.b or V.D constituted Collectible
8 Consumer Debt, that any notifications required by Section V.F have been made, and any refund
9 requests that were denied due to a prior full refund or any other reason. All such records, to the
10 extent they pertain to any customer or subscriber of T-Mobile and are protected by the Electronic
11 Communications Privacy Act, 18 U.S.C. § 2703, shall be produced in a manner and form in
12 which Consumers' personally identifiable information, such as name, address, telephone, e-mail
13 address, or other unique identifier that could permit the information shared to be associated with
14 the relevant subscriber or customer of T-Mobile, is redacted.

15 H. T-Mobile relinquishes dominion and all legal and equitable right, title, and
16 interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

17 I. The facts alleged in the Complaint will be taken as true, without further proof,
18 only in the event of a non-dischargeability complaint in any bankruptcy case.

19 J. The facts alleged in the Complaint establish all elements necessary to sustain an
20 action by the FTC pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C.
21 § 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

22 K. T-Mobile acknowledges that its Taxpayer Identification Numbers, which T-
23 Mobile must submit to the FTC, may be used for collecting and reporting on any delinquent
24 amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

1 **VI. ORDER ACKNOWLEDGMENTS**

2 IT IS FURTHER ORDERED that T-Mobile obtain acknowledgments of receipt of this
3 Order:

4 A. T-Mobile, within 7 days of entry of this Order, must submit to the FTC an
5 acknowledgment of receipt of this Order.

6 B. Within 7 days of entry of this Order, T-Mobile must deliver a copy of this Order
7 to all officers and directors of T-Mobile.

8 **VII. COMPLIANCE REPORTING**

9 IT IS FURTHER ORDERED that T-Mobile make timely submissions to the FTC:

10 A. One year after entry of this Order, T-Mobile must submit a compliance report. T-
11 Mobile must: (i) identify the primary physical, postal, and email address and telephone number
12 of designated points of contact, which representatives of the FTC may use to communicate with
13 T-Mobile, and will update this information as necessary; and (ii) provide a certification from a
14 senior corporate manager with the requisite corporate and organizational authority that T-Mobile
15 has established and implemented the requirements of this Order and is not aware of any material
16 noncompliance that has not been (a) corrected or (b) disclosed to the FTC. The certification will
17 be based on the personal knowledge of the senior corporate manager or the personal knowledge
18 of T-Mobile subject matter experts upon whom the senior corporate manager reasonably relies in
19 making the certification.

20 B. For a period of one year after April 1, 2015, and upon request for five years
21 thereafter, T-Mobile shall provide a report to the FTC every 3 months (“Quarterly Reports”)
22 documenting its compliance with the requirements of Section III.B (and its subsections). This
23 documentation shall include:

- 24 1. The total number of Consumer claims for Unauthorized Third-Party
25 Charges for which T-Mobile has demonstrated that the purchasers provided Express
26 Informed Consent;

1 2. All refunds/credits provided, in dollars, pursuant to Section III.B.3, above;

2 3. For the refunds/credits identified in the foregoing Subsections 1 and 2, the
3 Third-Party Product, the Third Party, and the entity responsible to T-Mobile for ensuring
4 Express Informed Consent from the Consumer if different than T-Mobile; and

5 4. To the extent permitted by any applicable law, a description of any
6 remedial action taken by T-Mobile against Third Parties for Unauthorized Third-Party
7 Charges, including, but not limited to, any actions taken to limit or terminate a Third
8 Party's ability to place Third-Party Charges on a Consumer's Bill. The description of
9 any remedial action provided under this subsection shall include: (i) the name and
10 contact information of such Third Party, (ii) a description of the Product in connection
11 with which the remedial action was taken, (iii) an indication of whether the Product was
12 suspended or terminated (and if the Product was suspended, T-Mobile shall include the
13 date or conditions for reinstatement), and (iv) the reason for the remedial action.

14 C. Information in Quarterly Reports shall be presented on a national basis and
15 provided electronically in a format to be agreed to by the parties. Quarterly Reports shall be
16 provided within 30 days of the end of each calendar quarter.

17 D. To the extent T-Mobile believes that Quarterly Reports submitted pursuant to this
18 Section constitute confidential commercial and financial information that is proprietary and
19 sensitive, T-Mobile may produce such Quarterly Reports pursuant to confidentiality provisions
20 in 16 C.F.R. §§ 2.33 and 4.9(c) and mark them as confidential.

21 E. T-Mobile must submit to the FTC notice of the filing of any bankruptcy petition,
22 insolvency proceeding, or similar proceeding by or against T-Mobile within 14 days of its filing.

23 F. Unless otherwise directed by an FTC representative in writing, all submissions to
24 the FTC pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier
25 (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer
26

1 Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

2 The subject line must begin: FTC v. T-Mobile USA, Inc. (X140053).

3 G. T-Mobile's submission of reports to the FTC as required by this Order, and its
4 adherence to other aspects of this Order, shall not under any circumstances be taken as any
5 admission of the FTC's jurisdiction over T-Mobile for any other purpose, in any other context or
6 under any other set of facts.

7 **VIII. RECORDKEEPING**

8 IT IS FURTHER ORDERED that T-Mobile must create and retain the following records:

9 A. No later than March 1, 2015, T-Mobile shall implement a process to track (i) all
10 Consumer claims that a Third-Party Charge was unauthorized for which T-Mobile demonstrated
11 that purchaser provided Express Informed Consent, and (ii) refunds/credits provided pursuant to
12 Section III.B.3.

13 B. No later than March 1, 2015, T-Mobile shall implement systems that allow it to
14 maintain the information described in Section VIII.A. Each record created pursuant to this
15 Section shall be maintained for a period of 6 years from the date of its creation. T-Mobile's
16 obligation to maintain records for 6 years from the date of their creation shall continue for 20
17 years after entry of the Order.

18 C. For 20 years after the entry of this Order, T-Mobile must create accounting
19 records showing the revenues associated with all Third- Party Charges and retain such records
20 for 5 years from the date of their creation. If such records are requested by the FTC those
21 records may be produced by T-Mobile pursuant to the confidentiality provisions in 16 C.F.R. §§
22 2.33 and 4.9(c) and marked by T-Mobile as confidential

23 **IX. COMPLIANCE MONITORING**

24 IT IS FURTHER ORDERED that, for the purpose of monitoring T-Mobile's compliance
25 with this Order:

1 A. The FTC is authorized to obtain discovery, without further leave of court, using
2 any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including
3 telephonic depositions), 31, 33, 34, 36, 45, and 69.

4 B. Nothing in this Order limits the FTC's lawful use of compulsory process,
5 pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1. T-Mobile may assert any
6 and all defenses, rights, or privileges available to it.

7 **X. 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 SO ORDERED this day of , 201__.

12
13 _____
14 UNITED STATES DISTRICT JUDGE

15 **SO STIPULATED AND AGREED:**

16 **FOR PLAINTIFF:**

17 **FEDERAL TRADE COMMISSION**

18 

Date: 12-18-14

19 BRIAN S. SHULL
20 JANE M. RICCI
21 Federal Trade Commission
22 600 Pennsylvania Avenue N.W., CC-10232
23 Washington, DC 20580
24 bshull@ftc.gov, jricci@ftc.gov
25 P: (202) 326-3720, (202) 326-2269
26 F: (202) 326-3239
COUNSEL FOR FEDERAL TRADE COMMISSION

STIPULATED ORDER FOR PERMANENT
INJUNCTION AND MONETARY JUDGMENT
Case No. 2:14-cv-00967-JLR

Federal Trade Commission
600 Pennsylvania Avenue N.W.
Washington, DC 20580
(202) 326-3720

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FOR T-MOBILE USA, INC.:

Steven P. Caplow Date: 12/17/14

STEPHEN M. RUMMAGE
STEVEN P. CAPLOW
Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
steverummage@dwt.com
P: (206) 757-8136
F: (206) 757-7136
COUNSEL FOR T-MOBILE USA, INC.

David A. Miller Date: 12/17/14

DAVID A. MILLER
Executive Vice President and Chief Legal Officer
T-MOBILE USA, INC.