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Case No. 140C00304 13
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ALAN GLOVER
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DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA, OFFICE OF THE ATTORNEY
GENERAL, ex. rel. CATHERINE CORTEZ MASTO,
Attorney General,

Plaintiff,

v.

T-Mobile USA, Inc.,

Defendant.

ASSURANCE OF DISCONTINUANCE AND ORDER

This ASSURANCE OF DISCONTINUANCE is entered into and by The State Of Nevada, by and through Attorney General Catherine Cortez Masto, and her Senior Deputy John R. McGlamery, and T-Mobile USA, Inc.

1. Catherine Cortez Masto is the duly elected Attorney General of the State of Nevada. In her capacity as Attorney General, she is authorized to bring actions in the name of the STATE OF NEVADA to enforce the provisions of the Nevada Deceptive Trade Practices Act, NRS 598.093 to 598.0999.

2. T-Mobile USA, Inc., hereinafter referred to as "T-Mobile USA, Inc.," is a corporation formed under the laws of the State of Delaware doing business as "T-Mobile USA, Inc.," T-Mobile USA, Inc.'S principal place of business is located at 12920 SE 38th Street, Bellevue, Washington 98006. T-Mobile USA, Inc. is a leading provider of mobile telephone services.

3. Pursuant to NRS 598.0995, the Attorney General may accept an assurance of

1 discontinuance with respect to any method, act, or practice deemed to be a deceptive trade
2 practice from any person who is engaged or is about to engage in the method, act, or practice.
3 The assurance of discontinuance must be in writing and must be filed with and subject to the
4 approval of the district court in the county in which the alleged violator resides, has his principal
5 place of business or the district court in any county where any deceptive trade practice has
6 occurred, or is about to occur, or the district court agreed to by the parties. An assurance of
7 discontinuance is not an admission of violation for any purpose but is subject to the terms,
8 limitations and conditions of NRS 598.0995.

9 I.

10 BACKGROUND

11 4. Nevada alleges that T-Mobile USA, Inc. has violated one or more of the following
12 provisions of NRS Chapter 598 as follows:

- 13 a. The Attorneys General allege that the practice of placing charges on Consumers'
14 mobile telephone bills that have not been authorized by Consumers, known as
15 "cramming," is a major national problem.
- 16 b. The Attorneys General allege that Consumers who have been "crammed" often
17 complain about charges, typically about \$9.99 per month, for "premium" text
18 message subscription services such as horoscopes, trivia, and sports scores that
19 they have never heard of or requested.
- 20 c. The Attorneys General allege that cramming occurs when T-Mobile USA, Inc.
21 places charges on Consumers' mobile telephone bills for Third-Party Products
22 without Consumers' knowledge and/or authorization.
- 23 d. The Attorneys General allege that many Consumers are unaware that their
24 mobile telephones can be used to make payments for Third-Party Products, and
25 that Consumers often pay Unauthorized Third-Party Charges without the
26 knowledge that the charges have been placed on their mobile telephone bills.

27 5. T-Mobile USA, Inc. believes that it has fully and voluntarily cooperated with the
28 Attorneys General in their inquiries regarding the placement of Unauthorized Third-Party

1 Charges on mobile telephone bills. Although T-Mobile USA, Inc. denies any liability based
2 upon the allegations above, in order to resolve this dispute, T-Mobile USA, Inc. has agreed to
3 the terms of this Assurance.

4 **II.**
5 **DEFINITIONS**

- 6 6. The following definitions shall apply for purposes of this Assurance:
- 7 a. "Account Holder" means any individual or entity who is or was responsible for
8 paying all charges associated with all lines on that individual's or entity's mobile
9 phone account with T-Mobile USA, Inc..
 - 10 b. "Attorneys General" means the Attorneys General, or their designees, of the
11 Participating States.
 - 12 c. "Bill" means a Consumer's mobile telephone bill or prepaid mobile account, as
13 applicable.
 - 14 d. "Block" means a restriction placed on a Consumer's account that prevents one or
15 more lines from being used to purchase Third-Party Products and from being
16 billed for Third-Party Charges on the Consumer's Bill.
 - 17 e. A statement is "Clear and Conspicuous" if it is disclosed in such size, color,
18 contrast, location, duration, and/or audibility that it is readily noticeable, readable,
19 understandable, and/or capable of being heard. A statement may not contradict
20 or be inconsistent with any other information with which it is presented. If a
21 statement materially modifies, explains, or clarifies other information with which it
22 is presented, then the statement must be presented in proximity to the
23 information it modifies, explains, or clarifies, in a manner that is readily
24 noticeable, readable, and understandable, and not obscured in any manner. In
25 addition:
 - 26 i. An audio disclosure must be delivered in a volume and cadence
27 sufficient for a Consumer to hear and comprehend it;
 - 28 ii. A television or Internet disclosure must be of a type size, location, and

1 shade, and remain on the screen for a duration sufficient for a Consumer
2 to read and comprehend it based on the medium being used; and
3 iii. A disclosure in a print advertisement or promotional material, including,
4 but without limitation, a point of sale display or brochure materials directed
5 to Consumers, must appear in a type size, contrast, and location sufficient
6 for a Consumer to read and comprehend it.

- 7 f. "Commercial PSMS" means the use of PSMS to bill for Products.
- 8 g. "Consumer" means a current or former subscriber or purchaser of Products for
9 which Third-Party Charges are or were placed on the Consumer's Bill, whether
10 that person is the individual responsible for paying the Bill or has a device that is
11 billed to a shared account, and is a resident of one of the Participating States.
12 "Consumer" does not include any business entity or any state, federal, local, or
13 other governmental entity, if (1) the business entity or government entity, and not
14 the employees or individuals working for or with that business entity or
15 government entity, is solely liable to T-Mobile USA, Inc. for payment of all
16 charges billed on that account, and (2) the ability to process Third-Party Charges
17 through that account is not available unless the business entity or government
18 entity affirmatively requests that certain or all mobile devices be provided the
19 ability to authorize placement of such Third-Party Charges.
- 20 h. "Effective Date" means the date that the Stipulated Order for Permanent
21 Injunction and Monetary Judgment in the case captioned Federal Trade
22 Commission v. T-Mobile USA, Inc., (Case No. 2:14-cv-00967-JLR) ("FTC
23 Stipulated Order") is entered by the District Court for the Western District of
24 Washington. Provided, however, this agreement is binding upon execution.
- 25 i. "Express Informed Consent" means an affirmative act or statement giving
26 unambiguous assent to be charged for the purchase of a Third-Party Product that
27 is made by a Consumer after receiving a Clear and Conspicuous disclosure of
28 material facts.

- 1 j. "Participating States" means the following states and commonwealths: Alabama,
2 Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida,
3 Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana,
4 Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri,
5 Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New
6 York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania,
7 Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont,
8 Virginia, Washington, West Virginia, Wisconsin, and Wyoming, as well as the
9 District of Columbia.
- 10 k. "Premium Short Messaging Service," or "PSMS," means a service that distributes
11 paid content to a Consumer using the Short Message Service and Multimedia
12 Messaging Service communication protocols via messages that are routed using
13 a Short Code, resulting in a Third-Party Charge.
- 14 l. "Product" means content and/or services that can be used on a mobile device for
15 which charges are placed on the Consumer's Bill. "Product" excludes
16 contributions to charities, candidates for public office, political action committees,
17 campaign committees, campaigns involving a ballot measure, or other similar
18 contributions. "Product" also excludes co-branded and white label products
19 where content and services are sold jointly and cooperatively by T-Mobile USA,
20 Inc. and another entity, where the content and/or services are placed on the
21 Consumer's Bill as a T-Mobile USA, Inc. charge, and T-Mobile USA, Inc. is
22 responsible for accepting complaints, processing refunds, and other
23 communications with the Consumer regarding the charge. "Product" also
24 excludes handset insurance, extended warranty offerings, and collect-calling
25 services.
- 26 m. "Short Code" means a common code leased from the CTIA Common Short Code
27 Administration that is composed of a set of numbers, usually 4 to 6 digits, to and
28 from which text messages can be sent and received using a mobile telephone.

- 1 n. "Third Party" means an entity or entities, other than T-Mobile USA, Inc., that
2 provides a Product to Consumers for which billing is made through T-Mobile
3 USA, Inc.'s Bills.
4 o. "Third-Party Charge" means a charge for the purchase of a Third-Party Product
5 placed on a Consumer's Bill.
6 p. "Third-Party Product" means a Product provided by a Third Party.
7 q. "Unauthorized Third-Party Charge" means a Third-Party Charge placed on a
8 Consumer's Bill without the Consumer's Express Informed Consent.

9 III.

10 APPLICATION

11 7. The provisions of this Assurance shall apply to T-Mobile USA, Inc. and its officers,
12 employees, agents, successors, assignees, merged or acquired entities, wholly owned
13 subsidiaries, and all other persons or entities acting in concert or participation with T-Mobile
14 USA, Inc.'s placement of Third-Party Charges in the Participating States.

15 IV.

16 ASSURANCE TERMS

17 8. Commercial PSMS: T-Mobile USA, Inc. shall not make available to Consumers the
18 option to purchase Products through Commercial PSMS and shall not bill charges for
19 Commercial PSMS.

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

1 obligated to do so, and shall monitor and enforce those policies and practices to confirm
2 Express Informed Consent is appropriately collected and documented, and where Express
3 Informed Consent has not been appropriately collected and documented, shall require remedial
4 action (which may include, for example, suspension, proactive credits, or retraining) or cease
5 placing such charges on Consumers' Bills. While the system described by this Paragraph is
6 being developed and implemented, T-Mobile USA, Inc. shall take reasonable steps to obtain
7 Express Informed Consent before a Consumer is billed for any Third-Party Charge.

8 10. Purchase Confirmation for Third-Party Charges: Beginning no later than April 1, 2015, T-
9 Mobile USA, Inc. shall implement a system whereby the Consumer (and, for multiline accounts,
10 the Account Holder, if designated) will be sent a purchase confirmation separate from the Bill of
11 every Third-Party Charge, including recurring charges, that will appear on his or her Bill. Any
12 such purchase confirmation shall be sent within a reasonable time following the purchase of a
13 Third-Party Product or the recurrence of a Third-Party Charge, and shall identify Blocking
14 options that T-Mobile USA, Inc. makes available to Consumers and/or provide access to such
15 information. For multiline accounts, T-Mobile USA, Inc. may provide the Account Holder the
16 option to elect not to receive such purchase confirmations for purchases made on other lines.

17 11. Information on Blocking: Beginning no later than April 1, 2015, T-Mobile USA, Inc. shall
18 provide a Clear and Conspicuous disclosure about Third-Party Charges and Blocking options
19 in informational material provided at or near the time of subscribing to service to the extent
20 Third-Party Charges are offered and available with the service, and which is provided in a
21 context separate from the actual subscriber agreement document. Such disclosure shall
22 include or provide access to a description of Third-Party Charges, how Third-Party Charges
23 appear on Bills, and options available to Consumers to Block Third-Party Charges. Consumers
24 shall not incur any data or text charges for receiving or accessing the information discussed in
25 this Paragraph.

26 12. Billing Information and Format: Beginning no later than April 1, 2015:

- 27 a. Except for pre-paid mobile accounts, all Third-Party Charges shall be presented
28 in a dedicated section of the Consumer's Bill (or in a dedicated section for each

1 mobile line on the account, if the Bill sets forth charges by each line) and shall be
2 set forth in such a manner as to distinguish the Third-Party Charges contained
3 therein from T-Mobile USA, Inc.'s service, usage, and other charges. This section
4 of the Consumer's Bill shall contain a heading that Clearly and Conspicuously
5 identifies that the charges are for Third-Party Products.

- 6 b. The Third-Party Charge billing section required by this Paragraph 14 shall include
7 a Clear and Conspicuous disclosure of a Consumer's ability to Block Third-Party
8 Charges, including contact and/or access information that Consumers may use to
9 initiate such Blocking. If T-Mobile USA, Inc. includes a Third-Party Charge billing
10 section for each mobile line on the account, the T-Mobile USA, Inc. shall have the
11 option to include the disclosure of a Consumer's ability to Block Third-Party
12 Charges in only the first Third-Party Charge billing section that appears on the
13 Bill, rather than in all Third-Party Charge billing sections.

14 13. Consumer Contacts: When a Consumer contacts T-Mobile USA, Inc. with regard to a
15 Third-Party Charge incurred after the Effective Date, or a Block, T-Mobile USA, Inc. shall:

- 16 a. Provide the Consumer with access to a customer service representative who
17 shall have access to the Consumer's account information for at least the prior
18 twelve (12) months;
- 19 b. Beginning no later than thirty (30) days after the Effective Date, for any Consumer
20 who claims that he or she did not authorize a Third-Party Charge incurred after
21 the Effective Date, either (1) provide the Consumer a full refund or credit of any
22 and all disputed Third-Party Charges not previously credited or refunded to the
23 Consumer, or (2) deny a refund if:
- 24 i. T-Mobile USA, Inc. has information demonstrating that the Consumer
25 provided Express Informed Consent to the Third-Party Charge, offers to
26 provide such information to the Consumer, and, upon request, provides
27 such information to the Consumer; or
- 28 ii. The last disputed Third-Party Charge for the particular Product at issue

1 (either a single charge or a recurring charge) was incurred more than three
2 (3) months prior to when the Consumer contacted T-Mobile USA, Inc. and
3 T-Mobile USA, Inc. is in compliance with Paragraph 12 with respect to the
4 charge;

5 c. If the Consumer claims that he or she did not authorize a Third-Party Charge, and
6 the Consumer is a current customer of T-Mobile USA, Inc., offer the Consumer
7 the opportunity to Block future Third-Party Charges;

8 d. If the Consumer is not satisfied with the relief obtained under the process
9 contained in subparagraph (b) of this Paragraph 15:

10 i. Offer the Consumer the opportunity to receive a full refund if the Consumer
11 submits his or her request in writing via U.S. Mail, email, or web-based
12 form affirming that he or she did not authorize such charge, and provide
13 such refund, unless T-Mobile USA, Inc. can demonstrate fraud or
14 misrepresentation in connection with the claim.

15 ii. This subparagraph (d) shall expire four (4) years from the Effective Date.

16 e. Beginning no later than thirty (30) days after the Effective Date, not require the
17 Consumer to first contact the Third Party in order to receive a refund/credit of any
18 claimed Unauthorized Third-Party Charge, although this subparagraph does not
19 prohibit asking the Consumer if he or she has contacted the Third Party and/or
20 has already received a credit or refund from the Third Party for some or all of the
21 claimed Unauthorized Third-Party Charge; and

22 f. Beginning no later than April 1, 2015, in the event a Consumer disputes a Third-
23 Party Charge as Unauthorized, until such time as the provisions of subparagraph
24 15.b.i or ii are satisfied, not:

25 i. Require the Consumer to pay the disputed Third-Party Charge, including
26 any related late charge or penalty;

27 ii. Send the disputed Third-Party Charge to collection;

28 iii. Make any adverse credit report based on non-payment of the disputed

1 Third-Party Charge; and/or

- 2 iv. Suspend, cancel, or take any action that may adversely affect the
3 Consumer's mobile telephone service or functionality for any reason
4 related to non-payment of the disputed Third-Party Charge. The remedies
5 in this subparagraph 15(f) are inapplicable to Consumer complaints
6 involving dissatisfaction with purchases where the Consumer does not
7 dispute that Consumer authorized the purchase.

8 14. Training: For six (6) years after the Effective Date, T-Mobile USA, Inc. shall conduct a
9 training program with its customer service representatives, at least annually, to administer the
10 requirements of this Assurance. To the extent that T-Mobile USA, Inc. no longer permits Third-
11 Party Charges on Consumers' Bills, T-Mobile USA, Inc. shall conduct one training program
12 within three (3) months of such cessation and shall have no further obligation to conduct
13 training programs under this Paragraph so long as T-Mobile USA, Inc. does not permit Third-
14 Party Charges on Consumers' Bills.

15 15. Cooperation with Attorney General: T-Mobile USA, Inc. shall designate a contact to
16 whom the Attorney General may provide information regarding any concerns about
17 Unauthorized Third-Party Charges, and from whom the Attorney General may request
18 information and assistance in investigations. The information and assistance shall include
19 information regarding the identity of Third Parties placing charges on T-Mobile USA, Inc.'s Bill,
20 revenue from such Third Parties, refunds provided relating to such Third Parties, any audits
21 conducted of such Third Parties (to the extent not protected by attorney-client privilege or
22 attorney work product), and any applications or other information provided by Third Parties, to
23 the extent that T-Mobile USA, Inc. has access to such information. Consistent with T-Mobile
24 USA, Inc.'s legal obligations to safeguard the confidential or proprietary information of
25 Consumers and Third Parties, T-Mobile USA, Inc. shall provide such information within a
26 reasonable period and shall cooperate in good faith with such requests, including investigating
27 any reports of Unauthorized Third-Party Charges T-Mobile USA, Inc. receives from the
28 Attorney General.

1 16. Information Maintained by T-Mobile USA, Inc.: Beginning no later than April 1, 2015, T-
2 Mobile USA, Inc. shall implement systems that allow it to maintain and report the refund/credit
3 information created pursuant to subparagraphs 15(b) and (d). T-Mobile USA, Inc. shall
4 maintain such records for at least four (4) years from the date of their creation. T-Mobile USA,
5 Inc.'s obligation to maintain records for four (4) years from the date of their creation shall
6 continue after T-Mobile USA, Inc.'s obligation to provide the Quarterly Reports described in
7 Paragraph 19 expires.

8 17. Information Sharing with Attorneys General:

9 a. From April 1, 2015, T-Mobile USA, Inc. shall, for at least four (4) years, provide a
10 report to the Office of the Vermont Attorney General every three (3) months
11 ("Quarterly Reports") documenting its compliance with the requirements of
12 Paragraph 15. Without limiting T-Mobile USA, Inc.'s obligations under Paragraph
13 15, the quarterly reports shall include the following:

- 14 i. The total number of Consumer claims for unauthorized Third-Party
15 Charges for which T-Mobile USA, Inc. has demonstrated that the
16 purchaser provided Express Informed Consent or for which T-Mobile USA,
17 Inc. has demonstrated that the claim was untimely under subparagraph
18 15(b)(ii);
- 19 ii. All refunds/credits provided, in dollars, due to T-Mobile USA, Inc.'s inability
20 to provide proof of Express Informed Consent in response to such a claim
21 by Consumers;
- 22 iii. All other refunds/credits provided, in dollars;
- 23 iv. For the claims and refunds/credits identified under subparagraphs 19(a)(i),
24 (ii), and (iii), above, the Third-Party Product, the Third Party, and the entity
25 responsible for ensuring Express Informed Consent from the Consumer, if
26 different than T-Mobile USA, Inc.; and
- 27 v. A description of any remedial action taken by T-Mobile USA, Inc. against
28 Third Parties for Unauthorized Third-Party Charges, including, but not

1 limited to, any actions taken to limit or terminate a Third Party's ability to
2 place Third-Party Charges on a Consumer's Bill. The description of any
3 remedial action provided under this subparagraph shall include: (a) the
4 name and contact information of such Third Party, (b) a description of the
5 Product in connection with which the remedial action was taken, (c) an
6 indication of whether the Product was suspended or terminated (and if the
7 Product was suspended, T-Mobile USA, Inc. shall include the date or
8 conditions for reinstatement), and (d) the reason for the remedial action.

- 9 b. Information in Quarterly Reports shall be presented on a national basis and
10 provided electronically in a format to be agreed to by the parties. Quarterly
11 Reports shall be provided within thirty (30) days of the end of each calendar
12 quarter.

13 **V.**

14 **MONETARY PAYMENT**

15 18. T-Mobile USA, Inc. shall pay Eighteen Million Dollars (\$18,000,000.00) to the
16 Participating States. For purposes of this Assurance, T-Mobile USA, Inc. shall pay
17 \$227,660.11 to the State of Nevada. Payment shall be made no later than thirty (30) days after
18 the Effective Date. Said payment shall be used by the Nevada Attorney General for purposes
19 that may include attorneys' fees, and other costs of investigation and litigation, or to be placed
20 in, or applied to, any consumer protection law enforcement fund, including future consumer
21 protection or privacy enforcement, consumer education, litigation or local consumer aid fund,
22 used to defray the costs of the inquiry leading hereto, or for other uses permitted by state law,
23 at the sole discretion of the Nevada Attorney General.

24 19. Within one hundred and twenty (120) days of the conclusion of the Consumer redress
25 period described in Section V of the FTC Stipulated Order resolving the concurrent FTC
26 investigation regarding Unauthorized Third-Party Charges, T-Mobile USA, Inc. shall provide the
27 Attorneys General with a list containing the following information for each of the Participating
28 States: (a) the number of claims submitted to the Consumer redress program by Consumers

1 residing in the Participating State; (b) number of claims submitted to the Consumer redress
2 program by Consumers residing in the Participating State for which T-Mobile USA, Inc. made
3 payment; and (c) the total amount paid to Consumers residing in the Participating State
4 pursuant to the Consumer redress program.

5 20. The Participating States and T-Mobile USA, Inc. recognize that, in addition to the
6 payment provided under Paragraph 20, T-Mobile USA, Inc. has agreed to pay Four Million,
7 Five-Hundred Thousand Dollars (\$4,500,000.00) to the Federal Communications Commission
8 ("FCC") to resolve the concurrent FCC investigation regarding Unauthorized Third-Party
9 Charges.

10 21. The Participating States and T-Mobile USA, Inc. recognize that T-Mobile USA, Inc. has
11 agreed to the Consumer redress program contained in Section V of the FTC Stipulated Order,
12 which sets forth a detailed process for Consumer redress. This Assurance does not alter,
13 amend, replace, or expand the Consumer redress program set forth in Section V of the FTC
14 Stipulated Order. As more fully set forth in the FTC Stipulated Order, T-Mobile USA, Inc. shall
15 make payments, credits, and debt forgiveness to the Participating States, FTC, FCC, and
16 Consumers in an aggregate amount of no less than Ninety Million Dollars (\$90,000,000.00).

17 **VI.**

18 **RELEASE**

19 22. Effective upon full payment of the amount due under Paragraph 20, the Attorney
20 General releases and discharges T-Mobile USA, Inc. and its officers, employees, agents,
21 successors, assignees, affiliates, merged or acquired entities, parent or controlling entities, and
22 subsidiaries from any and all claims, suits, demands, damages, restitution, penalties, fines,
23 actions, and other causes of action that the Attorney General could have brought under
24 Chapter 598 of the Nevada Revised Statutes, both known and unknown, arising directly or
25 indirectly out of or related to billing, charging, disclosures, policies, practices, actions, or
26 omissions related to PSMS or Unauthorized Third-Party Charges that were incurred prior to the
27 Effective Date. In the case of affiliates, acquired entities, or subsidiaries, this release only
28 covers conduct occurring during the time such entities are or were affiliates or subsidiaries of

1 T-Mobile USA, Inc.. Nothing contained in this Paragraph shall be construed to limit the ability
2 of the Attorney General to enforce the obligations that T-Mobile USA, Inc. and its officers,
3 agents, servants, and employees acting on its behalf, have under this Assurance.

4 23. Nothing in this Assurance shall be construed to create, waive, or limit any private right of
5 action.

6 24. Notwithstanding any term of this Assurance, any and all of the following forms of liability
7 are specifically reserved and excluded from the release in Paragraph 25 as to any entity or
8 person, including T-Mobile USA, Inc.:

- 9 a. Any criminal liability that any person or entity, including T-Mobile USA, Inc., has
10 or may have to the State of Nevada;
- 11 b. Any civil or administrative liability that any person or entity, including T-Mobile
12 USA, Inc., has or may have to the State of Nevada under any statute, regulation,
13 or rule not expressly covered by the release in Paragraph 25 above, including but
14 not limited to, any and all of the following claims:
- 15 i. State or federal antitrust violations;
- 16 ii. State or federal securities violations; and
- 17 iii. State or federal tax claims.

18 **VII.**

19 **GENERAL PROVISIONS**

20 25. The parties understand and agree that this is a compromise settlement of disputed
21 issues and that the consideration for this Assurance shall not be deemed or construed as: (a)
22 an admission of the truth or falsity of any claims or allegations heretofore made or any potential
23 claims; (b) an admission by T-Mobile USA, Inc. that it has violated or breached any law,
24 statute, regulation, term, provision, covenant, or obligation of any agreement; or (c) an
25 acknowledgement or admission by any of the parties of any duty, obligation, fault, or liability
26 whatsoever to any other party or to any third party. This Assurance does not constitute a
27 finding of law or fact, or any evidence supporting any such finding, by any court or agency that
28 T-Mobile USA, Inc. has engaged in any act or practice declared unlawful by any laws, rules, or

1 regulations of any state. T-Mobile USA, Inc. denies any liability or violation of law and enters
2 into this Assurance without any admission of liability. It is the intent of the parties that this
3 Assurance shall not be used as evidence in any action or proceeding, except an action to
4 enforce this Assurance.

5 26. Unless otherwise specifically provided, all actions required pursuant to this Assurance
6 shall commence as of the Effective Date. In the event that T-Mobile USA, Inc. acquires any
7 new entity, T-Mobile USA, Inc. shall take immediate steps to cease billing charges for all
8 Commercial PSMS. With respect to such entities, T-Mobile USA, Inc. shall provide the
9 Consumer with access to a customer service representative who shall have access to the
10 Consumer's account information related to Third-Party Charges for at least the prior twelve (12)
11 months. If such information is not available, T-Mobile USA, Inc. shall have twelve (12) months
12 to come into compliance with Paragraph 15(a) with respect to such entities and, while coming
13 into compliance, respond to the Consumer's inquiry within ten (10) days using any available
14 information. As to all other requirements contained in this Assurance, T-Mobile USA, Inc. shall
15 have a reasonable period of time, which in no event shall exceed six (6) months, in which to
16 bring said entity into compliance with this Assurance and during that period, T-Mobile USA, Inc.
17 shall take reasonable steps to obtain Express Informed Consent before a Consumer is billed
18 for any Third-Party Charge.

19 27. Nothing in this Assurance limits T-Mobile USA, Inc.'s right, at its sole discretion, to
20 provide refunds or credits to Consumers in addition to what is required in this Assurance.

21 28. Nothing in any provision of this Assurance shall be read or construed to require T-Mobile
22 USA, Inc. (a) to share customer proprietary network information ("CPNI") with any person not
23 legally entitled to receive CPNI; (b) to share customer information in such a way that it would
24 violate any applicable law or privacy policy; or (c) to grant more than one full refund for any
25 single Unauthorized Third-Party Charge. T-Mobile USA, Inc. shall not amend its privacy policy
26 to excuse its compliance with the reporting, tracking, or other provisions of this Assurance
27 related to the sharing of customer information unless required by law.

28 29. T-Mobile USA, Inc. understands that the Attorney General may file and seek court

1 approval of this Assurance. Should such an approval be obtained, the court shall retain
2 jurisdiction over this Assurance for the purpose of enabling the parties to apply to the court at
3 any time for orders and directions as may be necessary or appropriate to enforce compliance
4 with or to punish violations of this Assurance. Neither party will object on the basis of
5 jurisdiction to enforcement of this Assurance under this Paragraph.

6 30. As consideration for the relief agreed to herein, if the Attorney General of a Participating
7 State determines that T-Mobile USA, Inc. has failed to comply with any of the terms of this
8 Assurance, and if in the Attorney General's sole discretion the failure to comply does not
9 threaten the health or safety of the citizens of the Participating State and/or does not create an
10 emergency requiring immediate action, the Attorney General will notify T-Mobile USA, Inc. in
11 writing of such failure to comply and T-Mobile USA, Inc. shall then have ten (10) business days
12 from receipt of such written notice to provide a good-faith written response to the Attorney
13 General's determination. The response shall include an affidavit containing, at a minimum,
14 either:

- 15 a. A statement explaining why T-Mobile USA, Inc. believes it is in full compliance
16 with the Assurance; or
- 17 b. A detailed explanation of how the alleged violation(s) occurred; and (i) a
18 statement that the alleged breach has been addressed and how; or (ii) a
19 statement that the alleged breach cannot be reasonably addressed within ten
20 (10) business days from receipt of the notice, but (1) T-Mobile USA, Inc. has
21 begun to take corrective action to address the alleged breach; (2) T-Mobile USA,
22 Inc. is pursuing such corrective action with reasonable and due diligence; and (3)
23 T-Mobile USA, Inc. has provided the Attorney General with a detailed and
24 reasonable timetable for addressing the alleged breach.

25 31. Nothing herein shall prevent the Attorney General from agreeing in writing to provide T-
26 Mobile USA, Inc. with additional time beyond the ten (10) business day period to respond to the
27 notice provided under Paragraph 33.

28 32. Nothing herein shall be construed to exonerate any contempt or failure to comply with

1 any provision of this Assurance after the date of its entry, to compromise the authority of the
2 Attorney General to initiate a proceeding for any contempt or other sanctions for failure to
3 comply, or to compromise the authority of a court to punish as contempt any violation of this
4 Assurance. Further, nothing in this Paragraph shall be construed to limit the authority of the
5 Attorney General to protect the interests of the Participating State or the people of the
6 Participating State.

7 33. The Participating States represent that they will seek enforcement of the provisions of
8 this Assurance with due regard to fairness.

9 34. T-Mobile USA, Inc. shall designate one or more employees to act as the primary contact
10 for the Attorney General for purposes of assisting the Attorney General in investigations. The
11 contact employee(s) designated by T-Mobile USA, Inc. pursuant to this Paragraph shall be
12 capable of receiving and processing subpoenas, statutory investigative demands, or other legal
13 process requesting information pertaining to the placement of Third-Party Charges on
14 Consumers' Bills. T-Mobile USA, Inc. shall provide the Attorney General with the name(s),
15 address(es), telephone number(s), facsimile number(s) and electronic mail address(es) of each
16 such employee.

17 35. This Assurance is intended to supplement, and does not supplant or in any way restrict,
18 the Attorney General's subpoena power and/or investigative authority pursuant to applicable
19 law.

20 36. This Assurance does not supplant or in any way restrict the Attorney General's powers
21 to investigate the prevalence of Unauthorized Third-Party Charges or the extent to which this
22 Assurance has affected the prevalence of Unauthorized Third-Party Charges in his/her
23 jurisdiction.

24 37. This Assurance does not supplant or in any way restrict T-Mobile USA, Inc.'s legal rights
25 and ability to demand formal legal process to protect its Consumers' privacy rights and/or to
26 protect T-Mobile USA, Inc. from potential liability for disclosing or sharing such information
27 without legal process.

28 38. The only persons with rights under this Assurance are the parties to the Assurance,

1 namely T-Mobile USA, Inc. and the Attorney General. No third party (including third parties
2 that meet the definition in 8(n)) is entitled to claim rights under this Assurance and no provision
3 of this Assurance is enforceable by any person or entity not a party to the Assurance. The
4 agreement in this Assurance has no third-party beneficiaries.

5 39. This Assurance represents the full and complete terms of the settlement entered into by
6 the parties hereto.

7 40. All parties participated in the drafting of this Assurance.

8 41. This Assurance may be executed in counterparts, and a facsimile or .pdf signature shall
9 be deemed to be, and shall have the same force and effect as, an original signature.

10 42. T-Mobile USA, Inc. waives any further notice of submission to and filing with the Court
11 and that all notices under this Assurance shall be provided to the following address via first-
12 class or electronic mail:

13
14 John McGlamery
15 Senior Deputy Attorney General
16 100 North Carson Street
17 Carson City, NV 89701
(775) 684-1169
jmcglamery@ag.nv.gov
For the Attorney General

18 David A. Miller
19 General Counsel
20 T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006
For T-Mobile USA, Inc.

21 43. Any failure by any party to this Assurance to insist upon the strict performance by any
22 other party of any of the provisions of this Assurance shall not be deemed a waiver of any of
23 the provisions of this Assurance, and such party, notwithstanding such failure, shall have the
24 right thereafter to insist upon the specific performance of any and all of the provisions of this
25 Assurance.

26 44. If any clause, provision, or paragraph of this Assurance shall, for any reason, be held
27 illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect
28 any other clause, provision, or paragraph of this Assurance and this Assurance shall be

1 construed and enforced as if such illegal, invalid, or unenforceable clause, provision, or
2 paragraph had not been contained herein.

3 45. Nothing in this Assurance shall be construed as relieving T-Mobile USA, Inc. of the
4 obligation to comply with all local, state, and federal laws, regulations, or rules, nor shall any of
5 the provisions of this Assurance be deemed to be permission to engage in any acts or
6 practices prohibited by such laws, regulations, or rules.

7 46. The parties understand that this Assurance shall not be construed as an approval of or
8 sanction by the Attorney General of T-Mobile USA, Inc.'s business practices, nor shall T-Mobile
9 USA, Inc. represent the decree as such an approval or sanction. The parties further
10 understand that any failure by the Attorney General to take any action in response to any
11 information submitted pursuant to the Assurance shall not be construed as an approval or
12 sanction, of any representations, acts or practices indicated by such information, nor shall it
13 preclude action thereon at a later date.

14 47. T-Mobile USA, Inc. shall not participate, directly or indirectly, in any activity or form a
15 separate entity or corporation for the purpose of engaging in acts or practices in whole or in
16 part in Nevada that are prohibited by this Assurance or for any other purpose that would
17 otherwise circumvent any term of this Assurance. T-Mobile USA, Inc. shall not cause,
18 knowingly permit, or encourage any other persons or entities acting on its behalf to engage in
19 practices from which T-Mobile USA, Inc. is prohibited by this Assurance.

20 48. If the Attorney General determines that T-Mobile USA, Inc. made any material
21 misrepresentation or omission relevant to the resolution of this investigation, the Attorney
22 General retains the right to seek modification of this Assurance.

23 49. In the event that any statute or regulation pertaining to the subject matter of this
24 Assurance is modified, enacted, promulgated, or interpreted by the federal government or any
25 federal agency, such as the FCC, such that T-Mobile USA, Inc. cannot comply with both the
26 statute or regulation and any provision of this Assurance, T-Mobile USA, Inc. may comply with
27 such statute or regulation, and such action shall constitute compliance with the counterpart
28 provision of this Assurance. T-Mobile USA, Inc. shall provide advance written notice to the

1 Attorney General of Vermont of the inconsistent provision of the statute or regulation with which
2 T-Mobile USA, Inc. intends to comply under this Paragraph, and of the counterpart provision of
3 this Assurance that conflicts with the statute or regulation.

4 50. In the event that any statute or regulation pertaining to the subject matter of this
5 Assurance is modified, enacted, promulgated, or interpreted by a Participating State, such that
6 the statute or regulation is in conflict with any provision of this Assurance, and such that T-
7 Mobile USA, Inc. cannot comply with both the statute or regulation and the provision of this
8 Assurance, T-Mobile USA, Inc. may comply with such statute or regulation in the Participating
9 State, and such action shall constitute compliance with the counterpart provision of this
10 Assurance. T-Mobile USA, Inc. shall provide advance written notice to both the Attorney
11 General of Vermont and the Attorney General of the Participating State, of the inconsistent
12 provision of the statute or regulation with which T-Mobile USA, Inc. intends to comply under
13 this Paragraph, and of the counterpart provision of this Assurance that is in conflict with the
14 statute or regulation.

15 51. To seek a modification of this Assurance for any reason other than that provided for in
16 Paragraphs 52 or 53 of this Assurance, T-Mobile USA, Inc. shall send a written request for
17 modification to the Attorney General of Vermont on behalf of the Participating States. The
18 Participating States shall give such petition reasonable consideration and shall respond to T-
19 Mobile USA, Inc. within thirty (30) days of receiving such request. At the conclusion of this
20 thirty (30) day period, T-Mobile USA, Inc. reserves all rights to pursue any legal or equitable
21 remedies that may be available to it.

22 52. To the extent that any of the provisions contained herein permit implementation beyond
23 the Effective Date, the parties have agreed to the delayed implementation of such provisions
24 based on T-Mobile USA, Inc.'s representation that it is currently unable to meet the
25 requirements of such provisions and that it needs the additional specified time to develop the
26 necessary technical capabilities to come into compliance with the requirements of such
27 provisions. T-Mobile USA, Inc. agrees to make good-faith and reasonable efforts to come into
28 compliance with any such provisions prior to the implementation dates set by such provisions

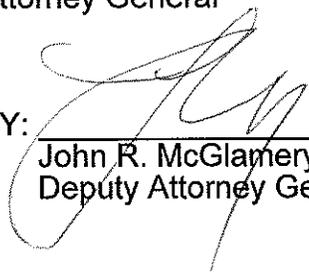
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to the extent commercially practicable.

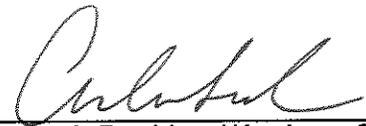
53. T-Mobile USA, Inc. shall pay all court costs associated with the filing of this Assurance, should the Attorney General be required to file and seek court approval of this Assurance.

IT IS SO STIPULATED AND AGREED.

CATHERINE CORTEZ MASTO
Attorney General

DATED: Dec 18, 2014 BY: 
John R. McGlamery
Deputy Attorney General

T-Mobile USA, Inc.

DATED: Dec. 17, 2014 BY: 
Laura J. Buckland/Andrew Sacks
Vice President, Legal Affairs