

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-09-TC-458
)	Account No. 201132170001
Verizon Wireless)	FRN 0019212406
Data Usage Charges)	
)	
)	

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Cellco Partnership d/b/a Verizon Wireless, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's Investigation into potential violations of Section 201(b) of the Communications Act of 1934, as amended (the "Act"), and Section 64.2401 of the Commission's Rules.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Consumer Commitments and Business Initiatives" means the obligations that Verizon Wireless has agreed to undertake to address customer billing issues as set forth at paragraph 8 of this Consent Decree.
 - (f) "Customer Service Employees" means Verizon Wireless employees or contractors whose primary job responsibility involves responding to customer inquiries and complaints, whether via calls to Verizon Wireless's customer care toll-free phone number, or via the Internet, and their supervisors.

- (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (h) “Investigation” means the inquiry undertaken by the Enforcement Bureau regarding the Company’s compliance with Section 201(b) of the Act, 47 U.S.C. § 201(b), and Section 64.2401 of the Rules, 47 C.F.R. § 64.2401, in connection with the Verizon Wireless \$1.99 per megabyte (“MB”) data usage charge to Paygo Customers (as defined below), in File No. EB-09-TC-458.
- (i) “Parties” means Verizon Wireless and the Bureau, each of which is a “Party.”
- (j) “Paygo Customers” means those Verizon Wireless customers who are billed for all of their data usage at a rate of \$1.99 per MB on a pay-as-you-go basis.
- (k) “Verizon Wireless” or “Company” means Cellco Partnership d/b/a Verizon Wireless and its predecessors-in-interest and successors-in-interest.
- (l) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. In response to consumer complaints and press reports that some Verizon Wireless customers had observed unexpected data charges on their bills, the Enforcement Bureau initiated an Investigation into the potential overcharges. Specifically, on January 14, 2010, the Bureau issued a Letter of Inquiry (“LOI”) to Verizon Wireless seeking detailed information about Verizon Wireless’s \$1.99 per MB data usage charge for certain customers. The Bureau sought to assess whether violations of Section 201(b) of the Act, which prohibits common carriers from engaging in unjust and unreasonable practices, or of the Commission’s truth-in-billing rules, had occurred. The Bureau’s Investigation followed an initial letter by the Commission’s Wireless Telecommunications Bureau and Consumer and Governmental Affairs Bureau seeking information about Verizon Wireless Mobile Web charges.

3. Verizon Wireless responded to the Bureau’s January LOI on March 1, 2010, and supplemented its response on March 15, April 9, April 23, and September 10, 2010. To clarify the record further, the Bureau issued a second LOI to Verizon Wireless on July 1, 2010. Verizon Wireless responded to the second LOI on August 2, 2010, supplementing its responses on August 27, September 1, 22, and 30, and October 1, 2010. On September 30, 2010, Verizon Wireless reported that it had concluded a comprehensive, internal investigation concerning the data charges and was able to make representations regarding the scale and scope of the underlying problems.

4. The Bureau and the Company entered into several tolling agreements to extend the statute of limitations for taking enforcement action for potential violations of the Act and Rules under investigation and to enable the Parties to engage in negotiations regarding a potential resolution of the Investigation through a consent decree. Verizon Wireless and the Bureau agree that this Consent Decree constitutes a settlement of the Investigation. This Consent Decree does not constitute either an adjudication on the merits, or a factual or legal finding or determination regarding any compliance or noncompliance with, or applicability of, the Act or the Rules.

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In this regard, Verizon Wireless represents that: (i) the Company conducted a comprehensive, good-faith, internal investigation into whether Paygo Customers had been incorrectly billed for data usage; (ii) based on the internal investigation, the Company has concluded that the majority of the erroneous charges involved data exchanges caused by third-party software built into certain customers' phones, while other charges resulted from, *inter alia*, customers accessing certain web links that should not have incurred charges, devices that incurred charges for attempts to access data when there was insufficient network coverage to complete the transfer, and unwanted third-party data transfers affecting customers with content filters; (iii) based on the internal investigation, the Company has further determined that a total of approximately 15 million Paygo Customers were, or may have been, erroneously billed for data usage from November 2007 to the Effective Date; and (iv) based on the internal investigation, including a review of billing records and other relevant data, the Company estimates that the total amount of the refunds and credits that should be paid to those Paygo Customers is approximately \$52.8 million. In consideration for the termination of the Investigation, Verizon Wireless agrees to the terms, conditions, and procedures contained herein. The Bureau agrees that absent new material evidence that the Company's representations contained herein are inaccurate, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion or refer to the Commission, any new proceeding, formal or informal, or to take on its own motion or refer to the Commission, any action against Verizon Wireless concerning the matters that were the subject of the Investigation or with respect to Verizon Wireless's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Consumer Commitments and Business Initiatives.** Verizon Wireless agrees that it has taken, or shall take, reasonable, affirmative steps to cease applying the mistaken data charges identified in the Company's internal investigation. The Company further agrees that it has implemented, or shall implement, the following actions as required below, which are designed to ensure prompt refunds to certain Paygo Customers, as set forth at paragraph 8(b) below, enhanced training of Verizon Wireless employees regarding data charges, and changes to its business practices. The provisions of this paragraph 8 shall remain in effect for two (2) years from the Effective Date.

- (a) **Immediate Actions.** No later than ten (10) business days after the Effective Date, Verizon Wireless shall have implemented or shall begin implementing the following actions:

- i. providing new customer service materials, including scripts, to assist Customer Service Employees in responding to questions from customers regarding the Credit/Refund Plan, as set forth below in paragraph 8(b). Customer Service Employees shall be provided information regarding, among other things, (1) the manner in which the credits or refunds will be made, (2) how credits will be reflected on customer bills, (3) the availability of new popup windows in certain systems to remind Customer Service Employees about the Credit/Refund Plan, and (4) the timing of the Credit/Refund Plan.
 - ii. establishing for certain categories of Paygo Customers a monthly data usage allowance of no less than 50 kilobytes, below which no per MB data charges apply, for at least ninety (90) days after the Effective Date.
 - iii. posting information in an easily-accessible location on its website for customers explaining the Credit/Refund Plan and how Paygo Customers can manage their data usage, including the availability of data blocks.
- (b) Customer Credit/Refund Plan. Verizon Wireless shall make a good faith effort to refund incorrect \$1.99 per MB charges to Affected Customers. Within forty-five (45) days after the Effective Date, Verizon Wireless shall provide credits or refunds to those existing and former Paygo Customers it has identified pursuant to its internal investigation (as described in paragraph 7 above) who were, or may have been, incorrectly billed \$1.99 per MB for data usage from November 2007 through the Effective Date and who have not previously received a credit or refund for all such overcharges (“Affected Customers”), pursuant to paragraph 8(b)(i). Verizon Wireless shall also provide additional credits or refunds pursuant to paragraph 8(b)(ii), separate and apart from the estimate provided in paragraph 7. If Verizon Wireless becomes aware of additional categories of Paygo Customers who were mistakenly charged a \$1.99 per MB fee, it shall provide refunds or credits to those customers.
- i. *Issuance of Credits/Refunds to Affected Customers*. Verizon Wireless shall distribute to the approximately 15 million Affected Customers credits or refunds totaling approximately \$52.8 million as described in this paragraph 8(b)(i). Verizon Wireless shall (1) provide to Affected Customers a credit on the bill issued to them during the October or November bill cycle, or a refund in the form of a check, and (2) provide to former Affected Customers a refund in the form of a check. The bills on which Affected Customers receive credits, or refund notices, shall include a statement that explains that the credit is being issued because the customer may have been mistakenly billed for data usage.
 - ii. *Customer-Initiated Data Charges Review*. Should any Paygo Customer contact Verizon Wireless after the Company has completed the credit/refund process described in this paragraph 8 asserting that he or she should have received a credit or refund under paragraph 8(b)(i) but did not, Verizon Wireless shall promptly initiate a review of the customer’s past data usage and charges to determine whether he or she is entitled to a reimbursement, and if so, Verizon Wireless shall issue a credit or refund. Verizon Wireless shall seek in good faith to resolve

such requests within thirty (30) days after the Company has the necessary information, either from its own databases or from the customer. If a customer is dissatisfied with the resolution of his or her request, the request shall be promptly escalated to the Data Charge Task Force discussed in paragraph 8(e) below.

iii. *Credit/Refund Reporting.* Within three (3) months after the Effective Date, Verizon Wireless shall provide to the Bureau a report on the specific amount actually reimbursed and/or credited pursuant to this paragraph 8(b), and the number of customers who received such credits and/or reimbursements (“Initial Reimbursement Report”). Within six (6) months after the Effective Date, Verizon Wireless shall provide a Final Reimbursement Report that shall identify the specific amount of any additional credits and/or reimbursements provided and the number of customers who received such credits and/or reimbursements based on Verizon Wireless’s actions as set forth above.

(c) Revised Customer Service Training Materials. Within sixty (60) days after the Effective Date, Verizon Wireless shall develop for all Customer Service Employees additional training materials relating to data charges for Paygo Customers. At a minimum, these materials shall:

- i. include detailed information about (1) the circumstances under which a Paygo Customer may incur a \$1.99 per MB data usage charge; (2) whether the charge is imposed for application downloads; (3) whether the charge is imposed for browsing or other data usage; (4) how Customer Service Employees can access information to answer questions from Paygo Customers about the basis for data usage charges, including the date, time, and amount of data used, if that information is sufficiently recent to be available in the billing system; (5) how credits should be given or checks issued to Paygo Customers who question their data usage charges when a review of the customer’s charges shows that a credit should be applied; (6) how such information will be made available for Spanish-speaking Paygo Customers; and (7) the availability of the online bill tutorial created pursuant to paragraph 8(g) below;
- ii. instruct Customer Service Employees to escalate complaints or questions when the Customer Service Employee lacks access to the data required to address the question or complaint;
- iii. instruct Customer Service Employee supervisors who regularly monitor calls to Customer Service Employees and track the issues raised in those calls, to include in their monthly tracking reports any issues relating to complaints about per MB data charges from Paygo Customers and communicate all such issues to the Data Charge Task Force to be established under paragraph 8(e) below;
- iv. instruct Customer Service Employees to offer data blocks as an option to Paygo Customers who ask how to avoid or reduce per MB data usage charges, and instruct Customer Service Employees that they are not discouraged from suggesting data blocks when appropriate.

- (d) Training of Customer Service Employees. Within ninety (90) days after the Effective Date, Verizon Wireless shall train all Customer Service Employees on the range of data usage options, including data blocks, and on resolving Paygo Customer complaints related to data usage. The training shall include, at a minimum, the information specified in the customer service training materials described in paragraph 8(c). Such training shall be provided to each new Customer Service Employee prior to the date that he or she first takes calls from customers or otherwise responds to customers' inquiries or questions by him or herself. Verizon Wireless shall provide additional training as warranted to address per MB data charge issues identified by the Data Charge Task Force. In addition, Verizon Wireless shall provide a communication to all managers of Company-owned stores that contains the information set forth in the training materials developed under paragraph 8(c), as modified for store operations. Managers shall be directed to communicate such information to customer-facing store employees.
- (e) Data Charge Task Force. Within thirty (30) days after the Effective Date, Verizon Wireless shall establish a Data Charge Task Force ("Task Force") and specify a Task Force leader who will report directly to the Staff Vice President of Customer Service Operations. The Task Force's responsibilities shall include: (i) reviewing customer appeals of refund denials as described in paragraph 8(b); (ii) addressing issues regarding complaints from Paygo Customers brought to their attention as set forth in paragraph 8(c); and (iii) ensuring Customer Service Employees are notified of any widespread or systemic billing errors relating to per MB data usage charges. The Task Force shall include an appropriate number of employees who are fluent in Spanish. All complaints referred to Verizon Wireless through the Federal Communications Commission, any state public utilities commission, any state Attorney General's office, or the Better Business Bureau in which a Paygo Customer disputes a per MB data usage charge shall be sent to the Task Force, which shall be responsible for ensuring that the complaint is addressed in writing as promptly as possible and in any event within thirty (30) days of receipt by the Company. Verizon Wireless shall file a Complaint Response Report with the Bureau every six (6) months after the Effective Date, for a period of two (2) years, which discloses and describes each complaint referred to the Task Force and its disposition, explaining the reasons for any denials.
- (f) Plain-Language Explanation of Data Charges and Data Tracking Tools. Within ninety (90) days after the Effective Date, for existing Paygo Customers, and on an ongoing basis for new Paygo Customers, Verizon Wireless shall begin providing a plain-language description of: (i) the circumstances under which a Paygo Customer may incur a \$1.99 per MB charge for data usage; (ii) whether the charge is imposed for application downloads; (iii) whether the charge is imposed for browsing or other data usage; (iv) how customers may get additional information about the basis for data usage charges (*e.g.*, by phone or online); (v) the free tools that are available both online and on the wireless device for tracking data usage (*e.g.*, the MyVerizon usage meter that provides the amount of data usage incurred during a bill cycle, and the #DATA feature that provides data usage information to customers directly on their devices); and (vi) the availability and location of an online bill tutorial created pursuant to paragraph 8(g) below. This communication shall be provided as follows:

(1) *Existing Customers*: in a written bill insert for Paygo Customers receiving paper bills, and either an online bill message or a separate mailing to Paygo Customers who receive online bills. The process of sending written bill inserts to existing Paygo Customers receiving paper bills shall be completed within one hundred and twenty (120) days after the Effective Date.

(2) *New Customers*: in the welcome letter to new Paygo Customers who receive paper welcome letters, or as part of the online welcome notice to new Paygo Customers who receive welcome letters online or via e-mail.

(3) *Spanish-speaking Customers*: Verizon Wireless shall provide any bill insert, online message, welcome message, or other communication in Spanish to all customers who have elected to receive their bills in Spanish, or who request a bill in Spanish.

- (g) Online Bill Tutorial. Within sixty (60) days after the Effective Date, Verizon Wireless shall include in an easily-identifiable location on its website an online video tutorial explaining in detail the types of charges that may be reflected on customer bills and how customers can obtain additional information about such charges and their bills. A Spanish-language version of the tutorial shall be available for Spanish-speaking customers. The communications described in paragraph 8(f) shall reference the availability of an online bill tutorial and explain where customers can find the tutorial on Verizon Wireless's website.

9. **Compliance Reports**. Verizon Wireless shall submit Compliance Reports to the Bureau within three (3), six (6), twelve (12), eighteen (18), and twenty-four (24) months after the Effective Date. The Company also shall disclose any failure to comply with the terms and conditions of this Consent Decree within fifteen (15) business days after discovery of such failure to comply.

- (a) Each Compliance Report shall describe the Company's actions to comply with the terms of the Consent Decree and shall include a compliance certificate from an officer, as an agent of the Company, stating that the officer has personal knowledge that the Company has complied with each term of the Consent Decree, including the Consumer Commitments and Business Initiatives, at all times since the Effective Date. If the officer is not able to so certify, he or she shall explain fully the reasons therefor.
- (b) All Compliance Reports and other disclosures required by this Consent Decree shall be in writing and shall be directed to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554. The certification must comply with Section 1.16 of the Rules¹ and must be substantially in the form set forth therein.

10. **Voluntary Contribution**. Verizon Wireless agrees to make a voluntary contribution to the U.S. Treasury in the amount of twenty-five million dollars (\$25,000,000). The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission within five (5) days after the Adopting Order becomes a final order. The payments must include the

¹ 47 C.F.R. § 1.16.

Account Number and FRN Number referenced in the caption of the Adopting Order. Payment by check or money order may be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank - Government Lockbox 979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. Verizon Wireless shall also send electronic notification on the date said payment is made to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission.

11. **Waivers.** Verizon Wireless waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an order adopting the Consent Decree without change, addition, modification, or deletion. Verizon Wireless shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or Consent Decree, neither Verizon Wireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Verizon Wireless shall waive any statutory right to a trial de novo. Verizon Wireless hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

12. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rules or orders adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Verizon Wireless does not expressly consent), this Consent Decree shall be amended in a manner consistent with the future Rules or orders.

13. **Successors and Assigns.** Verizon Wireless agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties to the Investigation.

15. **Modifications.** This Consent Decree cannot be modified or amended without the advance written consent of both Parties.

16. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act against Verizon Wireless or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating evidence of noncompliance by Verizon Wireless of the Act or the Rules.

19. **Invalidity**. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

20. **Counterparts**. This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission

Date

John T. Scott, III
Vice President – Deputy General Counsel
Verizon Wireless

Date