

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)

T-Mobile USA, Inc.)

File No.: EB-IHD-15-00018093

Acct. No.: 201632080012

FRN: 0004121760

ORDER

Adopted: October 19, 2016

Released: October 19, 2016

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether T-Mobile USA, Inc. (T-Mobile) provided accurate and sufficient disclosures regarding the de-prioritization policy it applies to T-Mobile and MetroPCS “unlimited” data plan (UDP) customers, as required by the Open Internet Transparency Rule.¹ In today’s world, broadband Internet access services continue to revolutionize the way consumers live, work, and play. However, in order for consumers to choose and use the Internet service that best fits their needs, they must not be subjected to the caprice of undisclosed restrictions that mislead them or contradict representations from providers about their broadband Internet access service. The Transparency Rule requires that consumers receive accurate information that is sufficient for them to make informed choices about the purchase and use of broadband Internet access service. Putting this important information in the hands of consumers is critical to a well-functioning, thriving, and competitive broadband ecosystem. Further, the growing importance of smartphones and mobile data services in consumers’ lives makes the Commission’s responsibility to ensure that mobile broadband providers abide by their obligations to offer clear and truthful information to the public all the more critical.²

2. In March 2015, the Bureau opened an investigation into, among other things, T-Mobile’s practice of de-prioritizing its T-Mobile and MetroPCS UDP customers during times of network “contention.”³ The Bureau’s investigation confirmed that during “contention,” T-Mobile employs a “Top

¹ 47 CFR § 8.3 (2015).

² See, e.g., Pew Research Center Home Broadband 2015, by John Horrigan and Maeve Duggan, (Dec. 21, 2015) available at <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (finding that “smartphones have rapidly become a staple for many Americans” and that 68% of Americans now have a smartphone, an increase from 55% two years ago). The 2015 Open Internet Order provides that consumers increasingly rely on mobile broadband Internet access service (BIAS) for internet access especially among certain demographic groups, including low income and rural consumers, and communities of color. See *Protecting and Promoting the Open Internet*, GN Docket No. 14-29, Report and Order on Remand, Declaratory Ruling and Order, 30 FCC Rcd 5601, 5636-37, para. 90 (2015) (2015 Open Internet Order).

³ See Letter from Jeffrey J. Gee, Acting Chief, Investigations and Hearings Division, Enforcement Bureau, FCC, to Steve Sharkey, T-Mobile US, Inc. (Mar. 16, 2015). “Contention,” according to T-Mobile, occurs “when all customers of a given sector of a ...cell site (each typically has three sectors) are demanding more radio resources than the sector can provide at that instant.” See T-Mobile Initial LOI Response at 12. According to T-Mobile, network “contention” differs from congestion because congestion occurs when “contention” reaches an extreme (continued....)

3 Percent Policy,” that de-prioritizes the data usage of customers on T-Mobile and MetroPCS UDPs who have exceeded a certain threshold of data usage.⁴ T-Mobile referred to such UDP customers as “heavy data users.” When the Top 3 Percent Policy is applied, a network algorithm controls the heavy data users’ network access including, most notably, the speed of their data throughput.

3. Further, T-Mobile’s public disclosures about the de-prioritization policy prior to June 2015 were not sufficient to fully inform consumers about limitations imposed on the UDPs, because they did not identify the data usage threshold that would trigger application of the policy, did not explain how the policy could impact a de-prioritized customer’s ability to use their service, or discuss the data throughput speed reduction a de-prioritized customer could experience.

4. During the period of this investigation, the Commission received hundreds of complaints from subscribers to T-Mobile and MetroPCS UDPs who were unhappy with the de-prioritization policy. These customers complained that they were not receiving “unlimited” data as had been sold to them,⁵ that their data throughput speeds after de-prioritization caused their data service to be “unusable” for many hours each day,⁶ that the de-prioritization policy led to them consuming “half” of the data they wanted to use,⁷ or that they had gone to too much trouble changing plans from another carrier to switch again, even though they felt misled by T-Mobile.⁸ In April 2015, a T-Mobile UDP customer complained of feeling “stuck” with T-Mobile because they were still on a payment plan for their T-Mobile phone, despite “paying \$300 a month” for 4 lines of “unlimited data,” yet feeling that T-Mobile wasn’t providing the service it advertised.⁹ One de-prioritized customer stated that the applications he likes to use to watch movies “are now unusable” due to the slow speeds he experiences after being de-prioritized.¹⁰

5. To settle this matter, T-Mobile has committed to the following:

- T-Mobile will update its disclosures for T-Mobile and MetroPCS plans regarding the de-prioritization policy, including disclosures on the T-Mobile “Open Internet” webpage, the MetroPCS “Network Disclosure” webpage, and the Terms and Conditions provided to customers purchasing UDPs under either the T-Mobile or MetroPCS brands;
- In all sale, advertising and marketing materials for UDPs for T-Mobile and MetroPCS brands, T-Mobile will clearly and conspicuously disclose material restrictions on the amount and speed of data. Alternatively, T-Mobile will (1) cease using the term “unlimited” to label UDPs subject to congestion management techniques that may result

(Continued from previous page) _____

level, such that “all new customers accessing that sector will fail at the same rate and Internet access for the current users will begin failing.” *Id.*

⁴ According to T-Mobile’s website, application of the Top 3% Policy is based on a customer’s cumulative data usage in a billing cycle.

⁵ See, e.g., Complaint No. 15-C-00254361 (Apr. 23, 2015); Complaint No. 15-C-00426516 (Jul. 25, 2015); Complaint No. 15-C-00548461 (Sept. 24, 2015).

⁶ See, e.g., *Complaint No. 15-C-00492635 (Aug. 26, 2015) (Customer complaining that their data was slowed to “unusable” after 21GB and providing eight speed tests at various times of day to support their complaint); Complaint No. 15-C-00462772 (Aug. 11, 2015) (UDP customer complains for being slowed after using 21GB of data, experiences 200 Kbps downstream and 13 Mbps upstream for every speed test run at the end of the billing cycle; Complaint No. 15-C-00915270 (Apr. 15, 2016) (UDP customer complains of speeds as low as 56 Kbps when de-prioritized, stating that “it can take as much as 10 minutes to load a simple web page and Google.com will not load at all.”)*.

⁷ See, e.g., Complaint No. 15-C-00255641 (Apr. 24, 2015).

⁸ See, e.g., Complaint No. 15-C-00259941 (Apr. 27, 2015).

⁹ Complaint No. 15-C-00259073 (Apr. 27, 2015).

¹⁰ Complaint No. 15-C-00505426 (Sept. 2, 2015).

in consumers experiencing data at speeds below those advertised for the plan, or (2) eliminate subscribers of UDPs from the pool of T-Mobile customers subject to prioritization policies, or (3) change its network algorithms or change the minimum expected speeds disclosed for UDPs such that the application of the prioritization policy does not deprive UDP subscribers of the network resource allocations sufficient to achieve the minimum speed expected for the plan;

- T-Mobile will not misrepresent the performance or central characteristics of any unlimited data plan;
- T-Mobile will provide direct and individual notification to customers when their data usage is nearing the threshold necessary to trigger a de-prioritization policy;
- T-Mobile will spend at least \$35,500,000 to make certain consumer benefits available to current T-Mobile and MetroPCS unlimited data plan customers. These customers will receive a discount of 20% off, up to \$20, of the regular price of any in-stock accessory. In addition, unlimited data plan customers who also subscribe to a Mobile Internet data line, known as a Simple Choice MINT plan under the T-Mobile brand, or a Tablet plan under the MetroPCS brand, will automatically receive a free upgrade of 4GB of additional data;
- T-Mobile will also spend at least \$5 million dollars plus any unredeemed funds from the consumer benefit program, to address the homework gap in low-income school districts. T-Mobile will work with eligible public schools to purchase devices that students may take home and use for school work, and provide mobile broadband to those devices at no cost to the students or their families. T-Mobile will implement the program in October 2017, and enroll 5,000 students per quarter, for a total of at least 80,000 students during the program's four year term, provided that funds are available; and
- T-Mobile will pay a \$7,500,000 civil penalty.

6. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding T-Mobile's compliance with Section 8.3 of the Commission's rules.¹¹

7. In the absence of material new evidence relating to this matter, we do not set for hearing the question of T-Mobile's basic qualifications to hold or obtain any Commission license or authorization.¹²

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act¹³ and the authority delegated by Sections 0.111 and 0.311 of the Rules,¹⁴ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

9. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

¹¹ 47 CFR § 8.3.

¹² See 47 CFR § 1.93(b).

¹³ 47 U.S.C. § 154(i).

¹⁴ 47 CFR §§ 0.111, 0.311.

10. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jamie Gorelick, Esq, Wilmer Cutler Pickering Hale and Dorr LLP, 1875 Pennsylvania Avenue, NW, Washington, DC 2006, and David H. Solomon, Esq., Wilkinson, Barker, Knauer LLP, 1800 M Street, NW, Suite 800N, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

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

In the Matter of)	
)	File No.: EB-IHD-15-00018093
T-Mobile USA, Inc.)	Acct. No.: 201632080012
)	FRN: 0004121760

CONSENT DECREE

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission or FCC) and T-Mobile USA, Inc. (T-Mobile), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation concerning whether T-Mobile violated Section 8.3 of the Commission’s rules (Rules), the Open Internet Transparency Rule (Transparency Rule or Rule).¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.²
 - (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) “Clear and Conspicuous” means a statement is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, understandable, and, with respect to audio, capable of being heard. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, then the statement must be presented in proximity to the information it modifies, explains, or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:
 - i. An audio disclosure must be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it;
 - ii. A text message, television, or Internet disclosure must be of a type size, location, and shade and remain on the screen for a duration sufficient for a consumer to read and comprehend it based on the medium being used; and
 - iii. Disclosures in a print advertisement or promotional material, including, but without limitation, a point of sale display or brochure materials directed to consumers, must appear in a type size, contrast, and location sufficient for a consumer to read and comprehend them.

¹ 47 CFR § 8.3. T-Mobile USA, Inc. is a wholly owned subsidiary of T-Mobile US, Inc., the recipient of the Bureau’s LOI.

² 47 U.S.C. § 151 *et seq.*

- (e) “Close Proximity To” means on the same print page, web page, online service page, or other electronic page, and very near to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in Close Proximity To.
- (f) “Commission” and “FCC” mean the Federal Communications Commission and all of its Bureaus and Offices.
- (g) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which T-Mobile is subject by virtue of its business activities, including but not limited to the Open Internet Rules.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at Paragraph 16.
- (i) “Covered Employee” means employees and agents of T-Mobile who, as a substantial part of their regular responsibilities, are responsible for performing, supervising, overseeing, or managing the performance of duties that relate to T-Mobile’s responsibilities under this Consent Decree.
- (j) “Customer Representative” means any sales or customer service representative or other employee or agent, including third parties, who, as a substantial part of their regular responsibilities, deals with customer inquiries for the T-Mobile and MetroPCS brands.
- (k) “Eligible Customers” means T-Mobile and MetroPCS-branded customers subscribed to UDPs as of 30 days prior to the date that T-Mobile begins sending notices pursuant to subparagraph 16(e)(i)(c).
- (l) “Effective Date” means the date by which the Bureau and T-Mobile have signed this Consent Decree.
- (m) “Investigation” means the investigation commenced by the Bureau in EB-IHD-15-00018093 with the LOI regarding whether T-Mobile violated the Transparency Rule with respect to, among other things, its Top 3 Percent Policy disclosures.
- (n) “LOI” means the Letter of Inquiry issued by the Bureau to T-Mobile US, Inc. on March 16, 2015, concerning, among other things, the Company’s disclosures to T-Mobile and MetroPCS unlimited high speed Mobile Data Plan customers who were subject to the Top 3 Percent Policy during times and in places experiencing network congestion.
- (o) “Mobile Data” means wireless broadband Internet access service using licensed spectrum delivered to phones or other devices.
- (p) “Mobile Data Plans” means consumer plans sold to the general public for T-Mobile- and MetroPCS-branded Mobile Data service.
- (q) “Open Internet Rules” means, collectively, the Rules in sections 47 CFR Part 8, and the related published and promulgated orders and decisions of the Commission.
- (r) “Operating Procedures” means the standard internal operating procedures and compliance policies established by T-Mobile to implement the Compliance Plan set forth in Paragraph 16.
- (s) “Parties” means T-Mobile and the Bureau, each of which is a “Party.”

- (t) “Prioritization Policy” means the Top 3 Percent Policy and any other similar congestion management technique that, during times and in places of network contention or congestion, prioritizes the network resource allocation of some customers over other customers based on prior data usage.
- (u) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (v) “T-Mobile” or “Company” means T-Mobile USA, Inc. and its United States affiliates, subsidiaries, and successors-in-interest with respect to the T-Mobile and MetroPCS brands.
- (w) “Transparency Rule” means Section 8.3 of the Commission’s rules.³
- (x) “Top 3 Percent Policy” means prioritizing the data usage of T-Mobile and MetroPCS customers who, based on recent historical averages, use more data in a billing cycle than 97 percent of all customers, below the data usage of those other customers, during times and in places of network contention.
- (y) “Unlimited Data Plan” or “UDP” means a T-Mobile-branded or MetroPCS-branded Mobile Data Plan marketed and sold as “unlimited” without other quantifications. Mobile Data Plans that have a set amount of high speed data, such as 4 GB, followed by a speed reduction thereafter, or Mobile Data Plans that have unlimited data at a fixed speed below 4G speeds (e.g., an unlimited 3G plan or a plan with unlimited data at 3Mbps) are not considered UDPs. The T-Mobile “ONE” and T-Mobile “ONE Plus” plans are considered UDPs for purposes of this Consent Decree.⁴

II. BACKGROUND

3. The Commission adopted the Transparency Rule in the *2010 Open Internet Order*.⁵ The Rule requires that providers of broadband Internet access shall “publicly disclose accurate information regarding the network management practices, performance, and commercial term” of its service, “sufficient for consumers to make informed choices regarding use of such services and for content, application, service, and device providers to develop, market, and maintain Internet offerings.”⁶ The Transparency Rule applies to every provider of broadband Internet access service (BIAS) in the United States, including mobile BIAS providers like T-Mobile.⁷

4. In describing the requirements of the Rule, the Commission stated that “the best approach is to allow flexibility in implementation of the Transparency Rule, while providing guidance regarding effective disclosure models. We expect that effective disclosures will likely include some or all of the following types of information, timely and prominently disclosed in plain language: (i) network practices,

³ 47 CFR § 8.3.

⁴ Though the Parties have agreed that the “T-Mobile ONE” and the “T-Mobile ONE Plus” plans, launched September 1, 2016, are UDPs for the prospective relief in the Compliance Plan at Paragraph 16, this Investigation had effectively concluded by the time these plans were announced. With respect to these plans and for restrictions and limitations on the use of Mobile data for tethering applications, the FCC reserves any and all claims, other than the ones that are the subject of the Investigation and this Consent Decree.

⁵ *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Report and Order, 25 FCC Rcd 17905 (2010) (*2010 Open Internet Order or Order*), *aff’d in part, vacated and remanded in part sub nom. Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014) (affirming the Transparency Rule).

⁶ 47 CFR § 8.3.

⁷ *Id.*

including descriptions of congestion management practices; (ii) performance characteristics, such as expected and actual access speed and latency; and (iii) commercial terms, such as monthly prices, usage-based fees, and fees for early termination or additional network services.”⁸ With regard to the disclosure of network congestion management practices, the Commission identified: “As applicable, descriptions of congestion management practices; types of traffic subject to practices; purposes served by practices; practices’ effects on end users’ experience; criteria used in practices, such as indicators of congestion that trigger a practice, and the typical frequency of congestion; usage limits and the consequences of exceeding them; and references to engineering standards, where appropriate.”⁹ Broadband providers “must, at a minimum,” prominently display or provide links to these disclosures “on a publicly available, easily accessible website that is available to current and prospective end users”¹⁰

5. Subsequently, in the *2015 Open Internet Order*, released March 12, 2015 and effective June 12, 2015, the Commission, quoting the 2014 Transparency Rule Enforcement Advisory issued by the Bureau, further stated that the Transparency Rule “prevents a broadband Internet access provider from making assertions about its service that contain errors, are inconsistent with the provider’s disclosure statement, or are misleading or deceptive.”¹¹ The Commission further said that the Transparency Rule “can achieve its purpose of sufficiently informing consumers only if advertisements and other public statements that broadband Internet access providers make about their services are accurate and consistent with any official public disclosure that providers post on their websites or make available in stores or over the phone.”¹² The Commission also stated: “Thus, ‘a provider making an inaccurate assertion about its service performance in an advertisement, where the description is most likely seen by consumers, could not defend itself against a Transparency Rule violation by pointing to an ‘accurate’ official disclosure in some other public place.’”¹³ The Commission said that “allowing such defenses would undermine the core purpose of the Transparency Rule.”¹⁴

6. On March 16, 2015, the Bureau sent a Letter of Inquiry (LOI) to T-Mobile seeking information about, among other things, the disclosures T-Mobile made to its T-Mobile and MetroPCS-branded customers who were subject to de-prioritization policies during times and in places experiencing network “contention.”¹⁵ The Company responded to the LOI on April 15, 2015. The Company responded to a number of formal and informal follow-up inquiries.

7. The Bureau’s investigation confirmed that, under the Top 3 Percent Policy, during times that the network is experiencing “contention,” T-Mobile de-prioritizes the data usage of UDP heavy user T-Mobile and MetroPCS-branded customers below that of other customers. When the Top 3 Percent Policy is applied, a network algorithm directs the “heavy data users” network experience, most notably,

⁸ *2010 Open Internet Order*, 25 FCC Red at 17938-39, para. 56.

⁹ *Id.* at 17939-40, para. 57.

¹⁰ *Id.* at 17938-39, para. 56.

¹¹ *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, para. 160 (rel. Mar. 12, 2015) (*2015 Open Internet Order*) (discussing 2010 Transparency Rule and quoting the 2014 Transparency Rule Enforcement Advisory).

¹² *Id.* (quoting 2014 Transparency Rule Enforcement Advisory).

¹³ *Id.* (quoting 2014 Transparency Rule Enforcement Advisory).

¹⁴ *Id.*

¹⁵ The Company uses the term “contention” in the context of network management of its broadband Internet access services. “Contention,” according to T-Mobile, occurs “when all customers of a given sector of a . . . cell site (each typically has three sectors) are demanding more radio resources than the sector can provide at that instant.” According to T-Mobile, network “contention” differs from congestion because congestion occurs when “contention” reaches an extreme level, such that “all new customers accessing that sector will fail at the same rate and Internet access for the current users will begin failing.” *See* T-Mobile Initial LOI Response at 11-12.

the speed of their data throughput. While all customers accessing the network at a “contended” cell sector will experience some reduction of network performance, all other factors being equal, the record shows that a customer subject to the Top 3 Percent Policy may be allocated substantially fewer network resources than a customer who is not. For the de-prioritized customer, this may mean even further reduced speed and quality of service during times and at places of network contention.

8. The Commission said in the *AT&T Transparency Rule NAL* that the “imposition of set data thresholds and significant speed reductions is antithetical to the term ‘unlimited.’”¹⁶ The AT&T policy for 4G consumers at issue in the *AT&T Transparency Rule NAL* had a set data threshold and a significant, pre-determined speed reduction after the threshold was reached independent of congestion.¹⁷ Unlike the A&T policy, the T-Mobile policy at issue in this Investigation did not have a pre-determined speed reduction, and the actual amount of the speed reduction, if any, would vary based on many factors, and only occurred in times and places where the network experienced congestion. The Bureau believes that for some consumers the speed reduction would have been significant; T-Mobile disagrees.

9. The Bureau further believes that T-Mobile’s older disclosures about the Top 3 Percent Policy were lacking. From August 2014 until June 12, 2015, T-Mobile’s disclosures did not inform consumers of the specific data usage threshold that would trigger the “heavy data user” flag under the Top 3 Percent Policy. Further, the disclosures did not explain how the application of the Top 3 Percent Policy could potentially impact a customer’s ability to use data services, nor did they discuss the data throughput speed reduction a customer could experience under the Policy. The disclosures also gave no indication about what kinds of data services and applications could be impaired by the reduced resources.

10. The Company’s disclosures about its Top 3 Percent Policy were significantly improved beginning in June 2015. The revised disclosures include language that provides consumers with more information about when the policy is triggered and how de-prioritized customers can expect their use to be affected. For instance, the June 2015 disclosures began indicating the data usage threshold necessary to trigger the Top 3 Percent Policy, e.g., 25 GB, rather than telling customers that it would be triggered when the customer used “more data than what 97% of other customers use” based on historical use. This clear data usage marker allows customers to monitor and anticipate if and when they may be subject to de-prioritization. Further, beginning in June 2015, the online disclosures for the Top 3 Percent Policy state that customers “will have their data usage deprioritized”; this definitive language differs from the pre-June 2015 disclosures, which stated that customers “might in some case have their data usage prioritized.” Finally, the June 2015 disclosures state that affected customers “will likely see significant reductions in data speeds, especially if they are engaged in data-intensive activities.” Prior to June 2015, the disclosures lacked such a detailed indication of the effects of the de-prioritization policy on customer usage, only stating that the data throughput of flagged data users would be de-prioritized below other customers during network contention. Combined, these modifications increase consumers’ knowledge about the operation and effect of the policy, allowing them to make more informed choices in selecting and using their UDP.

III. TERMS OF AGREEMENT

11. **Adopting Order.** The parties agree that the provisions of this Consent Decree shall be subject to final approval by incorporation of such provisions by reference in the Adopting Order.

12. **Jurisdiction.** For the purposes of this Consent Decree, T-Mobile agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

¹⁶ *AT&T Mobility, LLC*, 30 FCC Rcd 6613, 6619, para. 19 (2014) (*AT&T Transparency Rule NAL*).

¹⁷ *Id.*

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

14. **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 as to the Top 3 Percent Policy. In consideration for the termination of the Investigation as to the Top 3 Percent Policy, T-Mobile agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation as to the Top 3 Percent Policy through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against T-Mobile concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation as to the Top 3 Percent Policy through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of T-Mobile's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁸

15. **Compliance Officer.** Within thirty (30) days after the Effective Date, T-Mobile shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that T-Mobile complies with the terms and conditions of the Compliance Plan and the other provisions of this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Open Internet Rules prior to assuming his/her duties.

16. **Compliance Plan.** For the purpose of settling the matters set forth herein, T-Mobile agrees that it shall, no later than sixty (60) days after the Effective Date, develop and implement Operating Procedures designed to ensure future compliance with the terms and conditions of this Consent Decree. Pursuant to these Operating Procedures, T-Mobile will implement, at a minimum, the following:

- (a) **Disclosures about T-Mobile's Prioritization Policy.** T-Mobile shall, no later than ninety (90) days after the Effective Date, revise its public disclosures identified in (i) below regarding its Prioritization Policy in the following manner:
 - i. **Disclosures to be updated.** The disclosure requirements that follow shall be made on (1) the T-Mobile "Open Internet" web page, (2) the MetroPCS "Network Disclosure" web page, and (3) the Terms and Conditions accessible by customers purchasing UDPs under either the T-Mobile or MetroPCS brands as available on the T-Mobile and MetroPCS web pages.
 - ii. **Minimum information required.** At a minimum, to the extent they do not already do so, such disclosures shall provide the following additional information about the Prioritization Policy and how they may affect the Company's Mobile Data Plan offerings:
 - a. The purpose of the policy, which users or plans may be affected, the triggers that activate the use of the practice, the types of traffic that are subject to the practice, and the practice's likely effects on the customers' experience; and

¹⁸ See 47 CFR § 1.93(b).

- b. That the Prioritization Policy may occasionally result in speeds below disclosed 4G LTE speeds under certain circumstances, if it is not otherwise covered in other disclosures.
 - iii. At the time of publication, T-Mobile shall provide a copy of its updated disclosures to the Bureau.
- (b) **Direct and Individual Notification.** T-Mobile shall, no later than sixty (60) days from the Effective Date, implement a process to make direct and individual notifications to customers who are likely to exceed the threshold and experience reduced speeds due to the Prioritization Policy when their data usage is nearing the threshold necessary to trigger the Prioritization Policy. The notification (including appropriate links) shall provide the customer with sufficient information and time to consider adjusting his/her usage to avoid the application of the Prioritization Policy. All notifications will be made either at the Billing Account Number level, i.e., to the account holder, or to individual lines.
- (c) **Consumer Broadband Label.** No later than ninety (90) days from the Effective Date, for all consumer Mobile Data Plans sold to the general public under its T-Mobile and MetroPCS brands, T-Mobile shall use the Commission's "Consumer Broadband Label"¹⁹ in conjunction with its online Open Internet disclosures on the T-Mobile "Open Internet" web page and the MetroPCS "Network Disclosure" web page.
- (d) **Mobile Data Plan Disclosures and Use of the Term "Unlimited"**
- i. No later than thirty (30) days after the Effective Date, T-Mobile shall ensure that the Company's sales, advertising, and marketing materials regarding any Unlimited Data Plan comply with the following:
 - a. The materials shall not make any representation that the amount of Mobile Data is unlimited without disclosing, Clearly and Conspicuously and in Close Proximity To, all material restrictions (including, but not limited to, any Prioritization Policy) on the amount and speed of the Mobile Data, except only as provided in (1) below.
 - (1) In situations where short form space-constrained digital or space-constrained electronic advertising includes a representation that the amount of Mobile Data is unlimited, and it would be ineffective or impractical to include a Clear and Conspicuous disclosure about any material restriction on the amount and speed of Mobile Data due to the size of the advertising, the advertising shall link directly ("one-click") to a digital page that includes a Clear and Conspicuous disclosure about the restriction(s) in Close Proximity To the triggering representation.²⁰

¹⁹ See Public Notice, "Consumer and Governmental Affairs, Wireline Competition, and Wireless Telecommunications Bureaus Approve Open Internet Broadband Consumer Labels," 31 FCC Rcd 3358 (CGB/WCB/WTB 2016).

²⁰ The Parties anticipate that this exception will be rarely used.

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- b. The materials shall not misrepresent the performance or central characteristics of any Unlimited Data Plan.
 - ii. In the alternative to compliance with subparagraph (i)(a) above, T-Mobile may choose to implement one of the following options:
 - a. cease using the term “unlimited” to label UDPs that are subject to congestion management techniques that, independent of other factors, may result in consumers experiencing data throughput at speeds below those advertised for the UDPs; or
 - b. eliminate subscribers of UDPs from the pool of T-Mobile customers subject to any Prioritization Policy; or
 - c. change its network resource allocation algorithms and/or change the minimum expected speed disclosed by the Company for a UDP plan such that UDP customers flagged for de-prioritization under any Prioritization Policy are not allocated fewer resources than is necessary to achieve the minimum expected speed disclosed by the Company for that plan.
 - (e) **Consumer Benefits and Investment in Youth Program.** T-Mobile shall fund the benefits and program described below.
 - i. Accessory and Mobile Internet Offers
 - a. T-Mobile will provide the following Consumer Benefits to Eligible Customers:
 - 1. **Accessory Discount.** T-Mobile shall provide each Eligible Customer a redemption code for 20% off, up to \$20, of the regular price for any single in-stock accessory, redeemable at T-Mobile-owned and operated retail stores and third-party owned retail stores to the extent such stores sell T-Mobile products and services exclusively and are 100% T-Mobile branded. As an alternative to setting up such a program for in-stock accessory discounts, T-Mobile may set up instead a program for online accessory discounts, either for T-Mobile-branded customers, MetroPCS-branded customers, or both.
 - (i.) This Discount is not combinable with other promotional offers.
 - (ii.) T-Mobile shall provide the redemption code to Eligible Customers with no further steps or requirement to prove eligibility.
 - (iii.) For purposes of this subparagraph, an “accessory” is a product that does not and cannot include a SIM card, i.e., is not connectable to T-Mobile’s or another wireless network, and “in-stock” means an accessory that is available at any of the stores covered by this subparagraph. For purposes of this Accessory Offer, if an in-stock accessory is out of

stock at a particular covered location, T-Mobile will ship it to the customer at no charge.

- (iv.) This Offer is effective upon delivery of the notice set forth in subparagraph 16(e)(i)(c) and must be redeemed within 90 days of receiving that Notice.

2. Mobile Internet Data. Eligible Customers also subscribed to a Simple Choice Mobile Internet (MINT) data line (T-Mobile brand) or Tablet Line (MetroPCS brand), or who within 90 days after the Notice set forth in subparagraph 16(e)(i)(c), subscribe to a Simple Choice MINT or Tablet Line, will, beginning no later than 90 days of the Notice, or of such subscription, as applicable, receive an automatic upgrade of 4GB of additional data, which is a one-month, one-tier upgrade valued at \$15 for T-Mobile customers and a two-month, one tier upgrade valued at \$20 for MetroPCS customers (MINT/Tablet Offer). With respect to T-Mobile-branded customers, this data will be eligible for “Data Stash,” which will, subject to the terms of Data Stash, extend the customers’ ability to use the data for one year from provision of the data. Data will be automatically put into each user’s account with no further action required by the consumer. T-Mobile will notify each customer receiving this benefit when the additional data is added to their account.
- b. Offers Cumulative. The above Accessory and MINT/Tablet Offers are cumulative and both available for each Unlimited 4G LTE line subscribed to by an Eligible Customer, e.g., a consumer with two Unlimited 4G LTE Mobile Data Plans can benefit from both Offers two times, one for each line. Only one coupon may be used for each accessory purchase.
- c. Notice. T-Mobile will, by December 15, 2016, notify all Eligible Customers of these Offers by either email or text message (with appropriate links), including in Spanish for customers who have requested that communications with them be in Spanish. All notifications will be made either at the Billing Account Number level, i.e., to the account holder, or to individual lines. This notice will advise Eligible Customers of the availability of MINT and Tablet Lines, and provide a direct link to the web page required in subparagraph 16(d) below.
- d. Web page. Simultaneously with the Commission’s public announcement of this Consent Decree, the Company will create and maintain a web page for the T-Mobile brand and the MetroPCS brand that will each: provide a clear and plain-English description of the applicable Accessory and Mobile Internet Offers, explain when the benefits will be available, who will be eligible, and how and when more information will be available. Each webpage will also provide a direct link to the web page where the MINT or Tablet Lines can be purchased. Once the Notice in subparagraph 16(e)(i)(c) is delivered, each web page will provide additional details on how to claim a benefit. The Bureau

will advise the Company of the release date at least 48 hours in advance for purposes of this paragraph.

- ii. Investment in Youth Program
 - a. Investment in Youth Program. Within 240 days of the Effective Date, T-Mobile will complete the design of an “Investment in Youth” Program (Program), whereby T-Mobile will provide free devices and free or discounted wireless service to select public schools or public school systems over a four-year period, with implementation to begin no later than October 1, 2017.
 1. T-Mobile will provide the Bureau with a confidential summary description of this Program no more than 30 days after completion of the design. The Bureau will provide comments to T-Mobile within 30 days of receiving the description.
 2. In the alternative, T-Mobile can nominate one or more not-for-profit organizations that can administer the distribution of Investment in Youth funds, either in cash or in in-kind devices and services, in accordance with the principles outlined in subparagraph 16(e)(ii)(b), below. Notice of the nomination must be given to the Bureau, which has a right, within thirty (30) days, to object to the organization nominated, in which case T-Mobile will nominate another organization subject to the Bureau’s right to object.
 - b. Principles. The Program must adhere to the following four principles: (1) the goal of the program must be to “bridge the homework gap;”²¹ (2) the student and the family of the student must not be required to pay any money for the device and the wireless service; (3) no public school or public school system can participate in the program without a commitment to train relevant teachers and administrators in how best to utilize the devices and the wireless service; and (4) only schools with a student population of 40% or greater enrolled in the free and reduced lunch program, and where T-Mobile has 4G LTE coverage over at least 80% of the school’s geographic enrollment zone, are eligible to participate in the program (Eligible Schools).
 - c. Program Implementation. The Program shall be implemented no later than October 1, 2017. If T-Mobile elects to provide free devices and free or discounted service to public schools or school systems, implementation shall include providing these benefits to no fewer than 5,000 students at Eligible Schools it has selected. To the extent sufficient funds are available after completion of the Accessory and Mobile Internet Offers, T-Mobile will add to the Program a target of at least 5,000 students at Eligible Schools on a quarterly basis thereafter, for a total of at least 80,000 participating students over a forty-eight (48) month period. At a minimum, the Program shall provide the following:

²¹ For purposes of this document, the “homework gap” is defined as the digital divide between broadband Internet connectivity at school and at home.

1. Free wireless devices and related equipment, that includes, for tablets, the ability to access WiFi service, ranging in value from \$80 to \$200, to be selected by the participating school or school district;
 2. Wireless data service with an amount of high speed data equal to two gigabytes (2GB) per month at the fastest speed offered on the T-Mobile network, followed by reduced speeds for the remainder of the billing cycle, at a price per device per month to the school or school district of ten dollars (\$10). As the Company's Mobile Data Plans change over the course of the Program, the Company will modify as appropriate the amount of high speed data and the price to keep pace with technology improvements and competitive pricing and to maintain a comparable discount;
 3. Filters that comply with the Children's Internet Protection Act; and
 4. Reasonable and appropriate training and technical assistance to the participating schools and/or school districts free of charge.
- d. Waiver of wireless data service charge. A minimum of 20% of Program funds shall be applied to pay for the wireless data service charges for schools or school districts that request a waiver of such charges. T-Mobile will evaluate the waiver applications and award the waivers to the neediest applicants, in its sole discretion.
- e. Duration. All students receiving a benefit through the Program may remain with the program beyond the forty-eight (48) month period, as long as they are enrolled in the participating school or school district and the school permits them to continue to use the device provided under the Program.
- f. Rollover Funds. Pursuant to subparagraph 16(e)(iii)(c), any rollover funds from the Consumer Benefit shall be spent in accordance with the Principles as set forth above.
- iii. Financial Commitment for Consumer Benefit and Investment in Youth Program. T-Mobile's investment in the Accessory Offer, MINT/Tablet Offer, and Investment in Youth programs, in aggregate, shall be at least \$40.5 million, divided in the following manner:
- a. T-Mobile's investment in the Accessory Offer, as measured by the dollar value of redeemed discounts, and the MINT/Tablet Offer, as measured by the retail value of the free data, in the aggregate is expected to be no more than \$35.5 million; and
 - b. T-Mobile's investment in the "Investment in Youth" Program shall be at least \$5 million, measured by the 1) retail cost of the devices provided to the students and 2) the value of the free wireless data service described in subparagraph 16(e)(ii)(d) at the rate charged to the schools without a waiver. The value of the discounted wireless data

- service described in subparagraph 16(e)(ii)(c)(2) and any administrative expenses incurred by T-Mobile in the development, implementation, and operation of the Program shall not count toward T-Mobile's Investment in Youth financial commitment.
- c. To the extent that T-Mobile's investment in the Accessory Offer and the MINT/Tablet Offer is below \$35.5 million, the remaining amount shall be included in the Investment in Youth Program.
- d. To the extent that T-Mobile's investment in the Investment in Youth Program is below the amount allocated to that program under subparagraph 16(e)(iii), or, provided that funds are available, 20,000 eligible students have not been enrolled in the Program during the first twenty-four (24) months during which the Program is open for enrollment, T-Mobile will (a) promptly notify the Bureau, and (b) provide a proposal, including an assessment of how to make the program more competitive so it will result in greater participation by Eligible Schools, for spending any Program funds that would have been spent had the Program enrollment targets been met. The Bureau will have thirty (30) days to provide comment on the proposal. Within sixty (60) days after receiving comments from the Bureau, T-Mobile will modify the Program as appropriate and/or, in order to meet the required allocated amount, make a charitable contribution in cash to a not-for-profit organization that can administer the distribution of these Investment in Youth Funds consistent with the principles contained in subparagraph 16(e)(ii)(b). Notice of the selection must be given to the Bureau, who has a right, within thirty (30) days, to object to the organization selected, in which case T-Mobile will propose another organization subject to the Bureau's right to object. In addition, and provided that funds are available, if 30,000 eligible students have not enrolled in the Program during the first thirty-six (36) months that it is open for enrollment, the waiver percentage under subparagraph 16(e)(ii)(d) will increase to 50%.
- (f) **Training.** T-Mobile shall establish and implement Training Programs for the purposes outlined below.
- i. **Prioritization Policy Training Program.** For as long as the Prioritization Policies remain in effect, for all Customer Representatives, a Training Program covering the Company's Prioritization Policy and related disclosures, shall be established, to sufficiently explain the policies to customers and potential customers, including the effect of the Prioritization Policy on the customers' experience. All Customer Representatives shall be trained pursuant to the Prioritization Policy Training Program within ninety (90) calendar days after the Effective Date, and any T-Mobile employee who becomes a Customer Representative at any time after the initial Prioritization Training Program shall be trained within thirty (30) days after the date such person becomes a Customer Representative. T-Mobile shall repeat this training on an annual basis, and shall periodically review and revise the Prioritization Policy Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness. T-Mobile shall also instruct third parties who employ Customer Representatives to conduct the same Training Program.

- a. As part of its evaluation of the effectiveness of the Prioritization Policy Training Program, T-Mobile shall conduct regular random spot checks of its Customer Representatives who are employees to ensure that they are adequately and accurately answering questions about the Prioritization Policy, and instruct third parties that employ Customer Representatives to do likewise.
- ii. **Compliance Training Program.** For all Covered Employees, a Compliance Training Program about T-Mobile's responsibilities under this Consent Decree shall be established. As part of the Compliance Training Program, these Covered Employees shall be advised of T-Mobile's obligation to report any noncompliance with this Consent Decree under Paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer or his designees. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) days after the Effective Date, and, any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) days after the date such person becomes a Covered Employee. T-Mobile shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness. T-Mobile shall also instruct third parties who employ Covered Employees to conduct the same Training Program.

17. **Reporting Noncompliance.** T-Mobile shall report any material noncompliance with the terms and conditions of this Consent Decree (including the Compliance Plan) within fifteen (15) days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (1) each instance of such noncompliance; (2) the steps that T-Mobile has taken or will take to remedy such noncompliance; (3) the schedule on which such remedial actions will be taken; and (4) the steps that T-Mobile has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov.

18. **Compliance Reports.** T-Mobile shall file compliance reports with the Commission one hundred twenty (120) calendar days after the Effective Date, and on a semi-annual basis each one hundred eighty days (180) thereafter until this Consent Decree has terminated, detailing the steps taken by T-Mobile to implement this Consent Decree and identify problems encountered during implementation.

- (a) Each Compliance Report shall include a detailed description of T-Mobile's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and should also include the following information:
 - i. A redline version showing any revisions to the T-Mobile or MetroPCS disclosures in subparagraph 16(a) relating to the Prioritization Policies and a redlined version showing any revisions to the T-Mobile or MetroPCS Consumer Broadband Label;
 - ii. A detailed description of the implementation of the Investment in Youth Program, the amount allocated to the Program, the number of students and schools that received the benefit, the value and purpose of the benefit disbursed by T-Mobile, the number of schools that applied for a waiver and the number of and basis for granted waivers, any changes to the amount or price of high speed data pursuant to subparagraph 16(e)(ii)(c)(2), and a

description of how the benefits disbursed advanced the principles of the Investment in Youth Program;

- iii. For Compliance Reports submitted to the Commission during calendar year 2017, a detailed description of the notifications to the Eligible Customers relating to the Consumer Benefits, the number of Eligible Customers exercising the Accessory Offer and receiving benefits relating to a MINT/Tablet line, and the value of each of these benefits; and
- iv. Within sixty (60) days of the conclusion of the forty-eight (48) month period of the Investment in Youth program, a report summarizing the program, lessons learned, and other information regarding the best ways to bridge the “Homework Gap.”

In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of T-Mobile, stating, on the basis of personal knowledge, that (i) T-Mobile has implemented the Compliance Plan, and (ii) he/she is not aware of any instances of material noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in Paragraph 17 of this Consent Decree.

- (b) The Compliance Officer’s certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.²²
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of T-Mobile, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of material noncompliance; (ii) the steps that T-Mobile has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that T-Mobile or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Room 4-C330, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in Paragraphs 15 through 18 of this Consent Decree shall expire forty-eight (48) months after the Effective Date, except that the Investment in Youth Program shall continue consistent with the provisions contained in subparagraphs 16(e)(ii) and (iii) and subparagraph 18(a)(iv) shall continue until the final report referenced in such subparagraph is submitted.

20. **Civil Penalty.** T-Mobile will pay a civil penalty to the United States Treasury in the amount of seven million five hundred thousand dollars (\$7,500,000). Payment shall be made within thirty (30) days of the Effective Date. T-Mobile acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each of the Installment Payments individually and collectively shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²³ Upon an Event of Default (as

²² 47 CFR § 1.16.

²³ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

defined below), all procedures for collection as permitted by law may, at the Commission's discretion, be initiated.

21. T-Mobile shall send electronic notification of payment to Jeffrey Gee at Jeffrey.Gee@fcc.gov on the dates said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁴ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If T-Mobile has questions regarding payment procedures, it may contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

22. **Event of Default.** T-Mobile agrees that an Event of Default shall occur upon the failure by T-Mobile to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

23. **Interest, Charges for Collection, and Acceleration of Maturity Date.** If an Event of Default occurs under this Consent Decree, the then-unpaid amount of the civil penalty shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the civil penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by T-Mobile.

24. **Waivers.** As of the Effective Date, T-Mobile 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. T-Mobile shall retain the right to challenge Commission interpretation of this Consent Decree or any terms contained herein. If any Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither T-Mobile nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and T-Mobile shall waive any statutory right to a trial *de novo*. T-Mobile hereby

²⁴ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁵ relating to the matters addressed in this Consent Decree.

25. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

26. **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.

27. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which T-Mobile does not expressly consent) that provision will be superseded by such Rule or Commission Order.

28. **Successors and Assigns.** T-Mobile agrees that the provisions of this Consent Decree shall apply to T-Mobile and be binding on its officers, employees, agents, successors, assigns, merged or acquired entities, wholly owned subsidiaries, and all other persons or entities acting in concert or participation with any of them, who receive actual notice of this Consent Decree.

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

30. **Modifications.** To the extent circumstances change, T-Mobile may request modification of this Consent Decree. This Consent Decree cannot be modified without the advance written consent of all Parties.

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

32. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

²⁵ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

33. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

David A. Miller
Executive Vice President, General Counsel and Secretary
T-Mobile USA, Inc.

Date