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February 23, 2010

Joel Gurin
Chief, Consumer and Governmental Affairs Bureau
Ruth Milkman
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: January 26, 2010 Letter on T-Mobile's Early Termination Fee Policy; CG Docket No. 09-158

Dear Mr. Gurin and Ms. Milkman:

This letter responds to your January 26, 2010 letter seeking information regarding T-Mobile USA, Inc.'s ("T-Mobile") early termination fee ("ETF") policies and disclosures.[1]

In the highly competitive wireless industry, customers demand value, choice, and innovative technology solutions to serve their needs. T-Mobile is proud of the role it plays in this dynamic marketplace, offering consumers choices and a range of unique and high-value products and services. We encourage consumers to make informed decisions by exploring resources such as BillShrink.com and T-Mobile's Personal Coverage Check, and we strive to ensure that customers have readily available information about our wireless products and services, including pricing and rate plans, throughout the sales and service processes. As such, we welcome the opportunity to provide the Commission with additional information concerning our pricing and rate plans, including ETF policies and customer disclosures.

As you acknowledge in your letter, T-Mobile provides consumers with unique service offerings. These offerings are a reflection of the dynamic and competitive wireless marketplace and the ever-increasing choices that benefit consumers and their differing needs. Among the four major carriers, T-Mobile has been at the forefront of

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[1] *See* Letter from Joel Gurin, Chief, Consumer and Governmental Affairs Bureau, and Ruth Milkman, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Thomas J. Sugrue, Vice President, Government Affairs, DA 10-135 (January 26, 2010).

offering customers innovative and high-value rate plans. T-Mobile places strong emphasis on providing its customers with service choices, and with disclosures that enable them to choose the products, services, features, payment options, and rate plans that best meet their needs. Indeed, in a recent survey conducted by Zagat, T-Mobile was ranked first among the national wireless carriers for billing clarity and accuracy.[2] T-Mobile also was ranked highest for value and quality of global wireless service plans in the survey, again reflecting our continuing efforts to innovate and provide a wide variety of choices for consumers.[3]

For new customers activating service, T-Mobile currently offers three general categories of rate plans: (1) "Even More" plans (which involve lower upfront prices for the handset, along with two-year contracts and an ETF); (2) "Even More Plus" plans (which involve higher upfront prices for the handset along with month-to-month contracts and no ETF); and (3) Prepaid plans (which involve payment for service in advance without a service contract, and no ETF).[4] Within these categories of plans, moreover, T-Mobile has a number of specific offerings, such as voice, data, email, and texting (and combinations thereof) with a wide variety of individual and family plans and features. Accordingly, one customer could choose a data-only plan under a two-year contract, while another might opt for a month-to-month plan that offers unlimited voice, SMS, and data for the entire family. T-Mobile also has FlexPay accounts that provide for payment in advance and spend control options for Even More and Even More Plus plans, again to meet customers' varying needs. Such a wide selection of choices – choices for handsets, services, features, pricing, and payment – provide enormous benefits to consumers in this very competitive industry.

Google's Nexus One Offering

T-Mobile has recently partnered with Google to launch the Nexus One handset using a novel sales distribution model for the wireless industry. The Nexus One – which uses Android open platform software – is sold only on the Google website; the handset is not available at T-Mobile retail stores or through T-Mobile's usual distribution channels. Google, together with the handset manufacturer HTC, developed and manufactured this device and they are handling all customer technical and sales support for the device. Before turning to your specific numbered questions, T-Mobile will first respond to your question about the Nexus One offer with T-Mobile service – specifically, Google's equipment recovery fee ("ERF") and T-Mobile's ETF with respect to those customers who choose to enter into a two-year service contract with T-Mobile, and who terminate early in the contract term. Specifically, you ask the following:

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[2] Zagat Wireless Carriers Survey (January 13, 2010), *available at* http://www.zagat.com/promo.aspx?pn=191.

[3] *Id.*

[4] Unless otherwise indicated, and in light of the January 26 Letter's focus on current practices, this letter addresses T-Mobile's offerings, rates, and disclosures with respect to new customers activating service.

Please let us know your rationale(s) for these combined fees, and whether you have coordinated or will coordinate on these fees and on the disclosure of their combined effect.

Response: Customers who wish to purchase a Nexus One handset from Google have several options available to them. First, customers who choose to purchase a $179 discounted Nexus One handset from Google can do so by activating T-Mobile service through Google under one of T-Mobile's Even More "Talk + Text + Web" rate plans, which include a two-year service agreement. A $200 ETF is a standard term of these agreements. (*See* Response to Question 7 for a detailed description of the ETF.) Second, a customer may also purchase a Nexus One handset at Google's full retail price ($529) and can activate service with T-Mobile on one of T-Mobile's rate plans that do not include a term commitment or an ETF; specifically, an Even More Plus Plan. Lastly, customers also have the option of purchasing Google Nexus One phones at full retail price without T-Mobile service, and can use the phone on other compatible carrier networks.

Typically, T-Mobile's ETF covers only a portion of the revenues lost when customers terminate their long-term contracts before the term has ended. As you are aware, wireless carriers incur significant expenses to attract customers, and to activate and provide services to them. Carriers recover these costs and earn profits for their business through revenues agreed to under the customer's service contract. T-Mobile's ETF is not directly tied to specific equipment subsidies (or to any other specific cost element), but rather is designed to recover at least a portion of the expected revenues under the customer's service agreement. This is the case with all T-Mobile service agreements that include an ETF, including service agreements entered into in connection with the purchase of the Nexus One phone.

As to Google's ERF, T-Mobile believes Google is in a better position to discuss the rationale and basis for this separate charge and will leave it to Google to respond to the Commission directly regarding its fee. Before the launch of the Nexus One, Google (not T-Mobile) determined the amount of Google's ERF and, as noted above, T-Mobile (not Google) is responsible for setting its own ETF for all T-Mobile two-year service agreements. T-Mobile does not receive any portion of the ERF charged or collected by Google. T-Mobile did provide Google with T-Mobile's terms and conditions, which include T-Mobile's ETF, for disclosure on Google's web site as part of the online Nexus One purchase process.

Since the launch of the Nexus One device, T-Mobile and Google have worked together to enhance the T-Mobile service offer to consumers. To that end, Google has lowered its ERF from $350 to $150. Customers who choose to purchase a discounted Nexus One and activate service under a two-year T-Mobile service agreement, but who terminate that agreement during the first 120 days (and after the initial trial period) will pay the reduced $150 ERF, as well as T-Mobile's standard $200 ETF. After 120 days, customers remain subject to T-Mobile's ETF. The companies also have made changes to

further enhance disclosures regarding the ERF and T-Mobile's terms and conditions, including the ETF, as part of the Google sales process.

General ETF Policy Questions

1. Do your ETFs apply to all service plans or only some? If so, which ones?

Response: As noted above, T-Mobile currently offers three general categories of rate plans: (1) two-year Even More rate plans; (2) month-to-month Even More Plus rate plans; and (3) Prepaid Plans. As also discussed above, within these categories of plans, T-Mobile has a number of specific offerings, such as voice, data, email, and texting (and combinations thereof) with a wide variety of individual and family plans and features. The ETF is a standard term in T-Mobile's two-year Even More service agreements. T-Mobile customers have several rate plan options that do not include an ETF or a two-year contract commitment – specifically, the Even More Plus plans and Prepaid plans.

T-Mobile takes seriously its commitment to inform consumers about the terms and conditions of their service agreements with T-Mobile, including but not limited to the return policy, pricing for the features and services they have purchased, and any ETF. T-Mobile's terms and conditions, including its ETF, are incorporated into T-Mobile's service agreements, T-Mobile's own website and online purchase path, and in various store materials, as well as throughout our customer care organization. T-Mobile representatives are trained to highlight key terms and conditions – including the ETF, where applicable – during the sales process.

Examples of T-Mobile's ETF disclosures in various formats are attached. *See* Exhibits A (T-Mobile Terms and Conditions (T-Mobile.com)); Exhibit B (T-Mobile Terms and Conditions (iDealer internet sites)); Exhibit C (T-Mobile Service Agreements); Exhibit D (T-Mobile Electronic Device Display); Exhibit E (T-Mobile.com Online Purchase Path Screen Prints); Exhibit F (T-Mobile In-Store Collateral for Service and Rate Plan); Exhibit G (T-Mobile Customer Care Upgrade with Contract Extension Transaction Script); Exhibit H (T-Mobile Telesales Sales Script); Exhibit J (T-Mobile Newspaper Advertising).

2. What is the amount of the ETF for each service plan where ETFs apply? If there are different ETFs for different plans, what is the rationale for those differences?

Response: T-Mobile's current ETF is $200, with the fee declining during the contract term. T-Mobile does not charge a different ETF amount based on the type or level of rate or service plan to which an ETF applies. We believe that a single ETF policy that applies to all of the Even More rate plans is better for our customers because it

is clear and understandable to customers. Having a single ETF policy is also easier for T-Mobile to implement and administer throughout its business and sales channels.[5]

See disclosure examples cited in Response to Question 1.

3. How much of a discount on handset purchase is given in return for a consumer accepting an ETF? Does the amount of the discount differ by device, and if so, how?

Response: T-Mobile's ETF is designed to recover at least a portion of the expected revenues under the customer's service agreement. While the amount of the discount on any particular handset may vary, as stated above, T-Mobile's ETF is not directly tied to specific equipment subsidies (or to any other specific cost element).

See disclosure examples cited in Response to Question 1.

4. Does the ETF itself vary by device *(e.g.,* higher ETFs for advanced devices)? If higher ETFs apply to a certain class of devices, exactly how is that class defined?

Response: As stated above, T-Mobile has a single ETF structure that applies to all Even More rate plans with two-year term commitments; the ETF does not vary by device.

See disclosure examples cited in Response to Question 1.

5. Is it possible for consumers to buy a handset from you at full price to avoid an ETF? If this is possible, can consumers buy unsubsidized handsets online, as well as at brick-and-mortar stores?

Response: T-Mobile provides customers with a number of handset and rate plan options that do not include an ETF. Customers can buy any handset offered by T-Mobile at full retail price, activate service with a month-to-month Even More Plus plan or a Prepaid plan, and thus avoid an ETF. Customers can also bring most network-compatible handsets to T-Mobile and activate service on any Even More Plus rate plan, again with no applicable ETF. These options are generally available to customers in T-Mobile retail stores, online at T-Mobile.com, and through our third-party dealers. In addition, customers signing up for Even More Plus plans at T-Mobile retail stores have the option of financing the purchase price of a retail-priced phone, interest-free, over a 20-month period, under T-Mobile's Equipment Installment Plan. (These plans have no applicable

[5] The amount of the ETF for older two-year rate plans is also $200, although customers who enrolled in a two-year plan before June 28, 2008 and who have not since extended or upgraded their plans, are not subject to the declining ETF. These contracts will all expire during the next few months – on or before June 27, 2010.

ETF, although the full price of the handset becomes due if the customer terminates service after the initial trial period but before the 20th month.)

See disclosure examples cited in Response to Question 1.

6. Do monthly service rates and terms differ: (1) between customers who assume a term commitment and accept an ETF, and those who don't, and (2) between customers who purchase an unsubsidized device (either from your company or a third party), and those who purchase a subsidized device? If so, how do they differ, and what is the rationale for the difference? Can customers easily determine the impacts of their decisions and their rates and terms?

Response: Within its three general categories of rate plans, T-Mobile offers a wide range of rate plan options, including a variety of features and services (such as included minutes, text messaging and Internet/data service, and payment and spend control features) designed to suit the varying needs of our customers. In addition, as with other carriers, from time to time, T-Mobile makes certain promotional offers to customers that could impact any comparison of the service rates and terms between different rate plans.

The monthly recurring charges for customers under the Even More rate plans (which have a lower up-front equipment cost, a two-year service agreement requirement, and an ETF) are higher than those offered under the Even More Plus rate plans (which can have a higher up-front equipment cost, are month-to-month agreements, and have no ETF). Prepaid plans differ from traditional post-paid rate plans – for example, although Prepaid customers have access to a wide variety of handsets, they pay in advance for usage (e.g., minutes and/or texts and data) rather than after the fact.

T-Mobile provides a wide variety of options to customers because we recognize that different customers have different preferences and needs. Some customers prefer to take advantage of special promotions and discounted handsets in exchange for longer term contracts, while others prefer month-to-month contracts – even if they pay more for handsets and cannot take advantage of special promotions. Still others prefer Prepaid rate plans, which provide flexibility regarding the amount of wireless service that is purchased and used in any given month and help ensure that customers do not spend more on services than they planned. Also, in the highly competitive wireless industry, these offerings are dynamic – often changing in response to what other carriers offer and what consumers are demanding. T-Mobile is proud of its innovation and leadership, by which it provides consumers with an attractive range of products and services at great value.

T-Mobile provides customers with clear information about its many available rate plan options. This information includes specifics regarding the various pricing plans and features that could impact customer decision making. T-Mobile believes that this information helps customers determine the impacts of their decisions and their rates and

terms. Examples of T-Mobile's disclosures in this regard are attached. *See* Exhibit F (T-Mobile In-Store Collateral for Service and Rate Plans); Exhibit I (Price Cards).

7. Are ETFs prorated so that the customer's liability decreases over time? If so, what is the exact schedule by which they are prorated?

Response: As stated above, the ETF applies after the initial trial period, and then declines during the term of a customer's two-year contract. Specifically, the ETF amount is $200 if the customer terminates the contract with more than 180 days remaining under the contract term; $100 if the customer terminates the contract with 91-180 days remaining on the contract term; $50 if the customer terminates the contract with 31-91 days remaining on the contract term; and the lesser of $50 or the customer's monthly recurring charges (including any applicable taxes and fees) if the customer terminates in the last 30 days of the contract term.

Examples of T-Mobile's disclosures are attached. *See* Exhibits A and B (described in Response to Question 1).

8. If a customer renews his or her contract without buying a new handset, does his or her monthly service fee change in any way?

Response: T-Mobile customers who are not buying a new handset do not ordinarily renew their contracts. On occasion, some of these customers may renew their contracts in order to take advantage of an opportunity to choose special discounts or promotions, which could result in lower monthly service fees and/or a better service plan. T-Mobile does not automatically extend contracts for customers at the expiration of their contract term. Instead, customers can continue to take service on a month-to-month basis at the same rate unless or until they choose to enter into a new contract. And, no ETF applies unless the customer chooses to sign up for a new service plan that includes an ETF.

9. How long is the trial period during which consumers can cancel their service without an ETF penalty? If they cancel, can they return the handset? If they return it, will they receive a full refund, no refund, or a refund minus a restocking and/or refurbishing fee?

Response: For service plans subject to an ETF, T-Mobile offers customers a 14-day trial period, during which time customers can cancel service for any reason without paying the ETF.[6] For customers in California, the trial period is 30 days; and for non-California customers who activate service online or over the phone, the trial period is 20 days. Customers returning phones in these circumstances are entitled to a refund on a handset purchased along with their activation (with the exception of a very small number of "limited edition" devices), subject to a restocking fee so long as the phone is returned in a "like new" condition and with the original packaging.

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[6] There are some circumstances – for accessories and devices purchased without service activation or upgrade contract extension – where the return period is 30 days.

Examples of T-Mobile's disclosures are attached. *See* Exhibits A, B, C, E, and H (described in Response to Question 1) and Exhibit K (T-Mobile Return Policy, which is included in all device packages, is summarized on customer receipts, is posted in retail locations, and is available on T-Mobile.com).

10. When do consumers receive their first bill under your service plans? How does the trial period relate, if at all, to receipt of the first bill?

Response: Customers generally receive their first bill within 18-22 days of service activation. The trial period is not related to the customer's receipt of his or her first bill under our service plans.

11. Are there consumer fees or charges in addition to ETFs if consumers buy handsets and/or service plans from online phone dealers, such as Amazon, LetsTalk, and Simplexity (d/b/a Wirefly), or from a service provider, if a customer does not complete the contract term? If so, what are they, and what are their levels, terms, and conditions? Do the fees or charges affect the ETFs and if so, how?

Response: T-Mobile does not receive any portion of fees charged or collected by its third party dealers for early cancellation, and such fees do not affect T-Mobile's ETF. Similar to Google's ERF (discussed above), for early contract terminations after the initial return period has expired, we understand that Amazon charges an equipment recovery fee of $250; Simplexity (Wirefly) charges $200 (standard) and $300 (smartphones); and LetsTalk charges $250.[7] These companies are in a better position to provide any additional information regarding the levels, terms, and conditions of their fees, as well as their associated disclosure practices.

See also Response to Question 9.

12. Press reports and public statements from wireless companies have attributed ETFs to several different factors. What is the rationale for your ETF(s), and how specifically do the structure and level of those ETF(s) relate to that rationale?

Response: As discussed above, T-Mobile offers various rate plan options to meet customers' varying needs, including the Even More two-year service plans, which

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[7] *See* http://www.amazon.com/gp/feature.html/ref=amb_link_3778962_26?ie=UTF8&docId=508597&pf_rd_m=ATVPDKIKX0DER&pf_rd_s=left-2&pf_rd_r=117YE7Y5F23STGTCPGQS&pf_rd_t=101&pf_rd_p=507044631&pf_rd_i=301185; http://www.wirefly.com/about/purchaseterms/?referringdomain=wirefly&refcode1=&refcode2=&agent=&eid=&zipcode; http://www.letstalk.com/about/terms-and-conditions.htm.

include T-Mobile's standard ETF. To date, T-Mobile has found that that charging a set ETF amount for all plans that have an ETF is clear and understandable to customers and is also easier for T-Mobile to implement and administer throughout its business and sales channels.

The T-Mobile ETF is central to the Company's rates and rate structures for its two-year service plans. T-Mobile's rate plans comprise a variety of elements, and the fee is set to recover a portion of the lost revenues that result from early contract terminations. T-Mobile's ETF is not directly tied to specific equipment subsidies (or to any other specific cost element), but rather is designed to recover at least a portion of the expected revenues under the customer's service agreement. This rate structure permits T-Mobile to offer some of the best values in rate plans and pricing in the wireless industry.

Historically, ETFs have been a standard practice in the wireless industry and they have helped facilitate the provision of low-cost and innovative services and products valued by millions of customers. The Commission has made clear that ETFs are lawful.[8] Service plan agreements with ETFs are only part of the story, however, and are only one of the many choices available for consumers. T-Mobile is proud of its leadership in this area and will continue to work to ensure that its customers are satisfied and have meaningful information to make informed choices about its products and services.

Please contact the undersigned if you have any additional questions regarding this matter. Thank you for the opportunity to respond to your questions.

Sincerely,

Thomas J. Sugrue
Vice President, Government Affairs
T-Mobile USA, Inc.

[8] *Ryder Communications, Inc. v. AT&T*, 18 FCC Rcd 13603, 13617 (2003); *Telephone Number Portability*, 18 FCC Rcd 20971, 20976 (2003).