

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	File No.: EB-TCD-12-00000117 ¹
AT&T Inc.)	Acct. No.: 201332170002
)	
)	FRN: 0003766532

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and AT&T Inc., by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Sections 201 and 202(a) of the Communications Act of 1934, as amended,² and Section 64.2401 of the Commission's rules.³

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) "AT&T" or "Company" means AT&T Inc., and each of its subsidiaries, predecessors, or successors in interest.
 - (d) "AT&T Methods and Procedures" means the written instructions CCRs must follow to perform required tasks in the scope of their employment.
 - (e) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (f) "CCRs" or "Customer Care Representatives" means all employees or agents of AT&T, and their respective supervisors, who are tasked with performing customer service duties, answering subscriber inquiries, or making changes to subscriber accounts as part of the requirements of their employment.

¹ This case was formerly assigned the file number EB-11-TC-042. In January 2011, pending Telecommunications Consumers Division cases received new, electronically assigned file numbers.

² 47 U.S.C. §§ 201, 202(a).

³ 47 C.F.R. § 64.2401.

- (g) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
- (h) “Communications Laws” means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which AT&T is subject by virtue of its business activities.
- (i) “Compliance Plan” means the compliance obligations, programs, and procedures described in this Consent Decree at paragraph 12.
- (j) “Data Block” means the mechanism(s) used by AT&T to prevent a subscriber’s Smartphone from accessing data via AT&T’s wireless network.
- (k) “Eligible Grandfathered Device” means the Smartphone device the subscriber was using (i.e., that was associated with the subscriber’s account) on October 31, 2009, or one of the exact same model (or if unavailable, the closest substitute) that the subscriber received to replace a lost or broken device pursuant to the terms of an insurance policy or warranty.
- (l) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (m) “Grandfather Code” means the code that AT&T has associated with a Grandfathered Subscriber’s account to prevent AT&T’s systems from attaching a Monthly Data Plan to the account.
- (n) “Grandfathering Policy” means the policy by which AT&T has allowed Grandfathered Subscribers to transfer and receive data via AT&T’s wireless network on their Smartphone devices on a per-use basis (i.e., according to a Pay-Per-Use Data Plan), or to employ a Data Block, rather than having to purchase a Monthly Data Plan.
- (o) “Grandfathered Subscriber” means a subscriber who used (i.e., had associated with his or her account) a Smartphone device with a Pay-Per-Use Data Plan or a Data Block on AT&T’s network, prior to November 1, 2009.
- (p) “Investigation” means the investigation commenced by the Bureau’s March 28, 2011, LOI in FCC File No. EB-11-TC-042 (later redesignated as FCC File No. EB-TCD-12-00000117) pertaining to possible violations of Sections 201 and 202(a) of the Act, and Section 64.2401 of the Commission’s Rules, by AT&T in adding Monthly Data Plans to the accounts of certain Grandfathered Subscribers.
- (q) “LOI” means Letter of Inquiry.
- (r) “Monthly Data Plan” means a Smartphone service plan for the transmission and receipt of data via AT&T’s wireless network under which a subscriber pays in advance and on a monthly basis for unlimited data usage or a specified allotment of data usage.
- (s) “Parties” means AT&T and the Bureau, each of which is a “Party.”

- (t) “Pay-Per-Use Data Plan” means a service plan for the transmission and receipt of data via AT&T’s wireless network, under which a subscriber is billed on a per-use basis, as opposed to on a monthly or other set, periodic basis.
- (u) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (v) “Smartphone” means a device that integrates wireless telephone functions with those of a computer that is capable of accessing additional functions (such as e-mail, AT&T and third-party applications, an Internet browser, etc.), as well as any other device that AT&T has in the past characterized, described, or otherwise held out to the public—or at present characterizes, describes, or otherwise holds out to the public—as a “Smartphone.”

II. BACKGROUND

2. Until the fall of 2009, AT&T allowed subscribers using Smartphones to purchase wireless telephone service without a Monthly Data Plan, with the exception of subscribers using the Apple iPhone 3G device.⁴ In the fall of 2009, AT&T began requiring all new Smartphone subscribers to purchase a Monthly Data Plan as a condition of receiving wireless voice service from the Company.⁵

3. In implementing the new policy, AT&T also established a Grandfathering Policy under which certain Smartphone subscribers (those eligible for grandfathering) were not required to obtain a Monthly Data Plan. Under AT&T’s Grandfathering Policy, if a Grandfathered Subscriber upgraded an old Smartphone to a new or different model, AT&T would require the subscriber to purchase a Monthly Data Plan for the new device.⁶ Similarly, if a Grandfathered Subscriber requested to add a Monthly Data Plan at any time after the Grandfathering Policy went into effect, the subscriber would lose “grandfathered” status and would not be permitted to use a Smartphone without a Monthly Data Plan at a later time.⁷ If, however, pursuant to the terms of an insurance policy or warranty, a Grandfathered Subscriber switched a Smartphone for one of the exact same model (or if unavailable, the closest substitute) to replace a lost or broken handset, or if the Grandfathered Subscriber relocated from one AT&T service area to another, AT&T allowed the subscriber to retain grandfathered status and continue receiving voice service with a Pay-Per-Use Data Plan or a Data Block.⁸ The Company added the

⁴ See Letter from Davida Grant, General Attorney, AT&T, Inc., to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 17 (May 12, 2011) (on file in EB-11-TC-042) (AT&T First Response).

⁵ *Id.* at 17–18.

⁶ See *id.* at 22–23; see also AT&T Archived Website, Smartphone Devices and Data Plans, http://web.archive.org/web/20100520051322/http://www.wireless.att.com/learn/articles-resources/smartphone-data-plans.jsp?locale=en_US (archived AT&T website frequently asked questions noting, “Activations and device upgrades going forward require a smartphone data plan.”).

⁷ See AT&T First Response at 22.

⁸ See *id.* at 23, 25 (indicating that subscribers replacing a broken handset with one of the same model pursuant to AT&T’s warranty plan were not required to purchase a Monthly Data Plan, and providing a general description of instances in which AT&T added Monthly Data Plans to the accounts of Grandfathered Subscribers who relocated, or who exchanged devices via insurance or warranty).

Grandfather Code to the accounts of Grandfathered Subscribers, which served to identify them as Smartphone accounts that were not required to have a Monthly Data Plan.⁹

4. AT&T began requiring all Smartphone subscribers (other than Grandfathered Subscribers) to subscribe to a Monthly Data Plan on September 6, 2009.¹⁰ The Company subsequently began mechanized enforcement of its Monthly Data Plan requirements on November 1, 2009.¹¹ As part of the Company's mechanized enforcement process, AT&T added a Monthly Data Plan to the accounts of Smartphone subscribers whose accounts did not bear the Grandfather Code and who transmitted and/or received billable data on AT&T's wireless network if those subscribers did not already have a Monthly Data Plan.¹² Shortly after AT&T began mechanized enforcement of its Monthly Data Plan requirements, the FCC began receiving complaints from AT&T subscribers about AT&T's addition of Monthly Data Plans to their accounts. Some of the complaining subscribers alleged that they were, or otherwise appeared to be, Grandfathered Subscribers who should not have been subject to AT&T's mandatory Monthly Data Plan requirement.¹³

5. On March 28, 2011, the Bureau launched an investigation in FCC File No. EB-11-TC-042 (later re-designated as FCC File No. EB-TCD-12-00000117) by issuing an LOI to AT&T. AT&T provided an initial response on May 12, 2011. AT&T supplemented its response by providing additional responsive documents on May 17, 2011. On May 19, 2011, the Bureau sent additional questions for clarification, and AT&T provided supplemental answers and documents on June 13, 2011. AT&T further supplemented its June 13, 2011, response with additional answers to the Bureau's May 19 questions for clarification on June 27, 2011. The Bureau issued a second LOI to AT&T on August 12, 2011. AT&T responded to the second LOI on October 3, 2011. The Bureau issued a third LOI to AT&T on November 29, 2011. AT&T responded to the third LOI on December 13, 2011. The Bureau issued a fourth LOI to AT&T on December 20, 2011. AT&T responded to the fourth LOI on January 19, 2012.

III. TERMS OF AGREEMENT

6. **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.

7. **Jurisdiction.** For purposes of this Consent Decree, including any subsequent enforcement of its terms, AT&T agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. Upon release, 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

⁹ See Letter from Davida Grant, General Attorney, AT&T, Inc., to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 32 (Oct. 3, 2011) (on file in EB-11-TC-042) (describing the use and purpose of the Grandfather Code); Letter from Davida Grant, General Attorney, AT&T, Inc., to Richard A. Hindman, Chief, Telecommunications Consumers Division, FCC Enforcement Bureau at 3-5 (June 13, 2011) (on file in EB-11-TC-042) (same).

¹⁰ See AT&T First Response at 17.

¹¹ See *id.* at 19.

¹² See *id.*

¹³ See FCC Complaint No. 11-C00281714 (Feb. 16, 2011); FCC Complaint No. 10-C00190242 (Jan. 22, 2010).

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.

9. **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 consideration for the termination of the Investigation, AT&T agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau shall 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 any new proceeding, formal or informal, or take any action on its own motion against AT&T concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it shall 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 any proceeding, formal or informal, or take any action on its own motion against AT&T with respect to AT&T's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

10. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, AT&T shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as the Compliance Officer who discharges the duties set forth below. The person designated as the Compliance Officer hereunder shall be responsible for developing, implementing, and administering the compliance procedures, detailed below, that AT&T must implement to ensure compliance with the terms and conditions of this Consent Decree. The Compliance Officer shall have the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree prior to assuming his or her duties.

11. **Process for Identifying Affected Grandfathered Subscribers.**

- (a) To identify those subscribers who may have lost their Grandfather Code as a result of a warranty/insurance exchange or CCR errors, AT&T shall take the following steps:
 - i. AT&T shall query its relevant database(s) to identify current subscribers who had the Grandfather Code on their telephone line(s) as of October 31, 2009, but who no longer have the code on their line(s).
 - ii. From the list of subscribers generated by the query described in the previous paragraph (paragraph (a)(i)), AT&T shall remove subscribers who either (A) were not on a Pay-Per-Use Data Plan and did not have a Data Block as of October 31, 2009; (B) upgraded their device(s) after October 31, 2009; or (C) otherwise changed devices (when the change was not associated with a warranty/insurance replacement) after October 31, 2009.
- (b) To identify those subscribers who may have lost their Grandfather Code when they relocated their service to a new market, AT&T shall take the following steps:
 - i. AT&T shall query its relevant database(s) to identify subscribers who had the Grandfather Code on their line(s) as of October 31, 2009.
 - ii. From the list of subscribers generated by the query described in the previous paragraph (paragraph (b)(i)), AT&T shall remove subscribers

who fall into one of the three categories set forth in paragraph (a)(ii)(A) through (C), above.

- iii. Using the list generated by taking the steps set forth in the preceding two paragraphs (paragraphs (b)(i) and (ii)), AT&T shall generate two additional lists: a list of subscriber accounts that were canceled due to relocation (List 1), and a separate list of subscriber accounts that AT&T activated due to a subscriber's relocation (List 2).
- iv. AT&T shall compare the billing name and identifying information on the subscriber accounts in List 1 with that of the subscriber accounts in List 2 to identify subscriber accounts that AT&T activated due to a subscriber's relocation and that previously had a Grandfather Code.
- v. If the comparison described in the preceding paragraph (paragraph (b)(iv)) shows that the Grandfather Code is not on any line on the new account(s) (i.e., the account(s) included in List 2), AT&T shall assume the omission of the Grandfather Code was an error and include the Grandfathered Subscriber in question on a third list (List 3).
- vi. For each Grandfathered Subscriber identified on List 3, AT&T shall attempt to mechanically or manually match the device from the subscriber's List 1 account to the device on the subscriber's List 2 account. Where a match can be made, AT&T shall revise List 2 to leave the "matching" line and remove all other lines.

12. **Compliance Plan.** For purposes of settling the matters set forth herein, and based on the facts and circumstances presented in this case, AT&T agrees that it shall, within sixty (60) calendar days after the Effective Date, develop, implement, and maintain during the term of this Consent Decree (as specified in Paragraph 18, below) a Compliance Plan designed to ensure compliance with the Communications Laws and with the terms and conditions of this Consent Decree.¹⁴ As part of the Compliance Plan, AT&T agrees to implement within sixty (60) calendar days after the Effective Date the compliance procedures described below:

- (a) **Re-Grandfathering Subscribers.** Using the mechanized process described in paragraph 11, above, AT&T shall identify the affected account(s) of all current subscribers who either (1) had the Grandfather Code removed when they obtained a replacement Smartphone device through a warranty or insurance program, (2) had the Grandfather Code removed when they relocated their service to a new market, or (3) had the Grandfather Code removed in error (i.e., under circumstances inconsistent with AT&T's Grandfathering Policy) for any other reason by a CCR or other AT&T employee or agent. Using the list of subscribers thus identified, AT&T shall then restore the Grandfather Code to the accounts of the identified subscribers who are still using a Eligible Grandfathered Device (i.e., have a Eligible Grandfathered Device associated with their

¹⁴ AT&T represents that it has organizational structures, plans and procedures in place that are intended to ensure compliance with the Communications Laws. See *In The Matter of AT&T*, Order, 26 FCC Rcd 3332, 3336-37, para. 8 (Enf. Bur. 2011). This Consent Decree does not require new organizational structures, plans or procedures except as necessary to implement paragraphs 10 through 16 of this Consent Decree.

account(s)), and who still either have a Pay-Per-Use Data Plan or employ a Data Block, and who (in either instance) have not had a Monthly Data Plan attached to their account(s).

- (b) **Grandfathered Subscriber Notification.** Using the mechanized process described in paragraph 11, above, AT&T shall identify all current subscribers who either (1) had the Grandfather Code removed when they obtained a replacement Smartphone device through a warranty or insurance program, (2) had the Grandfather Code removed when they relocated their service to a new market, or (3) had the Grandfather Code removed in error (i.e., under circumstances inconsistent with AT&T's Grandfathering Policy) for any other reason by a CCR or other AT&T employee or agent. Using the list of subscribers thus identified, AT&T shall then send a notification to all of the identified subscribers who: (1) are still using a Eligible Grandfathered Device (i.e., have a Eligible Grandfathered Device associated with their account(s)), and (2) who had a Monthly Data Plan attached to their account(s), which is still on their account.
- i. The notification shall advise the subscribers described in the preceding paragraph (paragraph (b)) to contact AT&T if the subscribers exchanged a device under warranty or insurance plan, relocated, or for any other reason had a Monthly Data Plan attached to their account that they believe AT&T may have added in error.
 - ii. The notification shall appear clearly and conspicuously on a wireless bill of each subscriber described above in paragraph (b).
 - iii. Within thirty (30) calendar days after the Effective Date, AT&T shall provide to the Commission the text of the notification.
 - iv. AT&T agrees that if, after it has been contacted by a Grandfathered Subscriber, AT&T determines that a Monthly Data Plan was added to the Grandfathered Subscriber's account(s) in error (i.e., under circumstances inconsistent with AT&T's Grandfathering Policy), AT&T shall offer that Grandfathered Subscriber the option to remove the Monthly Data Plan that was added. AT&T shall also offer the Grandfathered Subscriber the additional option to receive a refund for, at a minimum, the difference between the charges assessed for the Monthly Data Plan that was added to the Grandfathered Subscriber's account in error where such charges exceeded the charges that would have been assessed under the Subscriber's Pay Per Use Data Plan. Grandfathered Subscribers shall have the ability to choose either of the remedial options offered—i.e., a refund or the removal of the Monthly Data Plan—or both. In cases in which AT&T removes the Monthly Data Plan previously added, it shall ensure that the Grandfather Code is restored to the Grandfathered Subscriber's account and that the account is restored to its prior status, either the applicable Pay-Per-Use Data Plan or Data Block.
- (c) **Addition to AT&T Methods and Procedures Materials.** Within sixty (60) calendar days of the Effective Date, AT&T shall compose and add to the AT&T Methods and Procedures documentation information that explains the Grandfathering Policy and how CCRs should address subscriber inquiries that AT&T receives pursuant to this Consent Decree. Within thirty (30) calendar

days of the Effective Date, AT&T shall provide to the Commission a complete draft of the information described in the previous sentence. The AT&T Methods and Procedures shall at a minimum

- i. Describe the Grandfathering Policy;
- ii. Instruct CCRs to determine whether the inquiring subscriber is subject to the Grandfathering Policy and, if so, whether AT&T attached a Monthly Data Plan to the subscriber's account in contravention of the Grandfathering Policy; and
- iii. If the Grandfathering Policy applies and AT&T attached a Monthly Data Plan to the subscriber's account in contravention of the Grandfathering Policy, instruct CCRs to take the following steps:
 1. Offer the inquiring subscriber the option to remove the Monthly Data Plan that AT&T attached;
 2. Offer to refund, at a minimum, the difference between the charges assessed for the Monthly Data Plan that AT&T added to the Grandfathered Subscriber's account in contravention of the Grandfathering Policy and the charges that would have been assessed under the Grandfathered Subscriber's Pay-Per-Use Data Plan (or in the case of a Grandfathered Subscriber who previously had a Data Block, the charges that would have been assessed under the existing Pay-Per-Use Data Plan at the time the Grandfathered Subscriber had a Data Block);
 3. Make clear to the inquiring subscriber that the subscriber may elect either or both of the remedial options described above in paragraphs (c)(iii)(1) and (2); and
 4. In cases in which the subscriber opts to have AT&T remove the Monthly Data Plan previously added, restore the Grandfather Code to the subscriber's account and ensure that the account is restored to its prior status—i.e., with the applicable Pay-Per-Use Data Plan or Data Block.

(d) **Customer Care Training/Awareness Program**. Prior to sending the notification described in paragraph (b) and its subparts, above, AT&T shall take steps to alert and educate its CCRs about AT&T's policies applicable to Grandfathered Subscribers. Specifically, within sixty (60) calendar days of the Effective Date, AT&T shall take the following steps:

- i. Alert CCRs about the Grandfathered Subscriber notification described in paragraph (b) and its subparts, above.
- ii. Review AT&T's policies applicable to Grandfathered Subscribers with all CCRs no more than one (1) week immediately preceding the distribution of the notification described in paragraph (b) and its subparts, above, and in at least one (1) team meeting each month for the following three (3) months.

- iii. In each of the meetings described in the immediately preceding paragraph (paragraph (d)(ii)), direct AT&T's CCRs to the appropriate AT&T Methods and Procedures applicable to Grandfathered Subscribers.

13. **Maintenance of Subscriber Records.** AT&T agrees to maintain in its records a list of all subscribers, including the subscriber name and account number, to whose accounts it restores the Grandfather Code pursuant to paragraph 12(a), above, and a separate list of all subscribers to whom it provides the notification required under paragraph 12(b), above. AT&T agrees that upon receiving a written request from the Bureau for AT&T to produce one or both of the above-described lists, it shall furnish the lists (or list) to the Commission within thirty (30) calendar days of the date of the Bureau's request. Together with the lists (or list), AT&T shall provide the contact information of record (including mailing address(es), e-mail address(es), and telephone number(s)) for each subscriber name on the lists (or list) provided.

14. **Reporting Noncompliance.** AT&T shall report any noncompliance with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance, (ii) the steps that the Company has taken or shall take to remedy such noncompliance, (iii) the schedule on which such remedial actions shall be taken, and (iv) the steps that the Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Room 4-C224, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Kristi Thompson at kristi.thompson@fcc.gov and Johnny Drake at johnny.drake@fcc.gov.

15. **Compliance Reports.** AT&T shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of AT&T's efforts during the relevant period to implement and administer the obligations detailed in this Consent Decree.
- (b) Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of AT&T, stating that the Compliance Officer, as an agent of and on behalf of AT&T, has personal knowledge that the Company (i) has established and implemented the procedures detailed in this Consent Decree; (ii) has utilized such procedures since their implementation; and (iii) is not aware of any instances of noncompliance with such procedures, including the reporting obligations set forth in paragraph 14 of this Consent Decree.
- (c) 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 in Section 1.16 of the Rules.¹⁵
- (d) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of AT&T, shall provide the Commission with a

¹⁵ 47 C.F.R. § 1.16.

detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps the Company has taken or shall take to remedy such noncompliance, including the schedule on which proposed remedial actions shall be taken; and (iii) the steps the Company has taken or shall take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action shall be taken.

- (e) All Compliance Reports and other communications required under the terms of the Compliance Plan shall be submitted to Richard A. Hindman, Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, Room 4-C224, 445 12th Street, SW, Washington, DC 20554, with a copy submitted electronically to Kristi Thompson at kristi.thompson@fcc.gov and Johnny Drake at johnny.drake@fcc.gov.

16. **Retention of Grandfathering Policy; Customer Information.** AT&T shall retain (i.e., keep in effect) its Grandfathering Policy. In addition, within sixty (60) calendar days of the Effective Date, AT&T shall post the Grandfathering Policy on its website under Wireless Support>Plans & Services>AT&T Data Plans. The Grandfathering Policy, as posted, shall advise the public (a) that subscribers who had a Smartphone on or before October 31, 2009, and had a Pay-Per-Use Data Plan or a Data Block, are not required to purchase a Monthly Data Plan as long as they continue to use the same Smartphone; (b) that for purposes of the Grandfathering Policy, a subscriber continues to use the “same” Smartphone even if he or she exchanges a defective device for a new device of the same make and model (or, if unavailable, the closest available substitute) pursuant to a warranty or insurance program; and (c) that subscribers covered by the Grandfathering Policy who move or relocate to a new service area are not required to purchase a Monthly Data Plan as long as they retain the same device. AT&T shall maintain the Grandfathering Policy on its website.

17. **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 AT&T for alleged violations of the Communications Laws, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission’s adjudication of any such complaints shall 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 new evidence of noncompliance by AT&T with the Communications Laws.

18. **Termination Date.** Unless stated otherwise, the requirements of paragraphs 10 through 16 of this Consent Decree shall expire twenty-four (24) months after the Effective Date.

19. **Voluntary Contribution.** AT&T agrees that it shall make a voluntary contribution to the United States Treasury in the amount of seven hundred thousand dollars (\$700,000.00) within thirty (30) calendar days after the Effective Date. AT&T shall also send electronic notification of payment to Johnny Drake at Johnny.Drake@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁶ When completing the FCC Form 159, enter the Account Number in block

¹⁶ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- 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 the 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 the 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 you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Waivers.** AT&T 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 Adopting Order as defined herein. AT&T shall retain the right to challenge Commission interpretation of the 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 Adopting Order, AT&T and the Commission shall not contest the validity of the Consent Decree or of the Adopting Order, and AT&T shall waive any statutory right to a trial *de novo*. AT&T hereby agrees to waive any claims it may 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.

21. **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.

22. **Subsequent Rule or Order.** The Parties agree that if any provision of the 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 AT&T does not expressly consent), that provision shall be superseded by such Rule or Commission order.

23. **Successors and Assigns.** AT&T agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

24. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

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

26. **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.

27. **Authorized Representative.** The individual signing this Consent Decree on behalf of AT&T represents and warrants that he is authorized by AT&T to execute this Consent Decree and to bind AT&T to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

28. **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

Date

Gary L. Phillips
General Attorney & Associate General Counsel
AT&T Services, Inc.

Date