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16 Attorneys for Plaintiff

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19

20 PATRICK HENDRICKS, on behalf of himself  
 21 and all others similarly situated,

22 Plaintiff,

23 v.  
 24

25 AT&T MOBILITY LLC,  
 26

27 Defendant.  
 28

Case No. C11-00409 CRB

**DECLARATION OF SCOTT A.  
 BURSOR IN OPPOSITION TO AT&T  
 MOBILITY LLC'S MOTION TO  
 COMPEL ARBITRATION AND TO  
 STAY CASE**

Date: September 23, 2011  
 Time: 10:00 a.m.  
 Courtroom 8

Hon. Charles R. Breyer

1 I, Scott A. Bursor, declare:

2 1. I am an attorney at law licensed to practice in the State of California, I am a member  
3 of the bar of this Court, and I am a partner in Bursor & Fisher, P.A., co-counsel of record for  
4 Plaintiff Patrick Hendricks. I have personal knowledge of the facts set forth in this declaration,  
5 and, if called as a witness, could and would competently testify thereto under oath.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of a July 25, 2011 letter from  
7 AT&T's Associate General Counsel, Neal S. Berinhout, to American Arbitration Association  
8 (AAA) Intake Coordinator Courtney Horton, AAA General Counsel Eric Tuchmann, and me.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of a July 26, 2011 letter from  
10 me to Mr. Tuchmann, Ms. Horton, and Mr. Berinhout.

11 4. Attached hereto as **Exhibit 3** is a true and correct copy of a July 26, 2001 letter from  
12 me to Mr. Berinhout.

13 5. Attached hereto as **Exhibit 4** is a true and correct copy of a July 27, 2011 letter from  
14 AAA Director of Case Filing Services, Tara Parvey, to Mr. Berinhout and me.

15 6. Attached hereto as **Exhibit 5** is a true and correct copy of a July 28, 2001 letter from  
16 Mr. Berinhout to Ms. Parvey, Ms. Horton, Mr. Tuchman, and me.

17 7. Attached hereto as **Exhibit 6** is a true and correct copy of a July 28, 2011 letter from  
18 me to Ms. Parvey, Mr. Berinhout, and AT&T's General Counsel.

19 8. Attached hereto as **Exhibit 7** is a true and correct copy of an August 1, 2011 letter  
20 from me to Ms. Parvey, Ms. Horton, Mr. Tuchmann and Mr. Berinhout.

21 9. Attached hereto as **Exhibit 8** is a true and correct copy of an August 2, 2011 letter  
22 from Mr. Berinhout to Ms. Parvey and Ms. Horton urging AAA to refuse to administer 26 demands  
23 for arbitration filed by AT&T customers.

24 10. Attached hereto as **Exhibit 9** is a true and correct copy of a second August 2, 2011  
25 letter from Mr. Berinhout to Ms. Parvey, Ms. Horton, and me, stating that AT&T will not pay or  
26 reimburse any of the filing fees for 26 arbitration demands filed by AT&T customers.

1 11. Attached hereto as **Exhibit 10** is a true and correct copy of an August 2, 2011 letter  
2 from me to Ms. Parvey and Ms. Horton.

3 12. Attached hereto as **Exhibit 11** is a true and correct copy of the invoices for  
4 arbitrator compensation in *Brown v. Cellco Partnership d/b/a Verizon Wireless*, AAA Case No. 11  
5 494 01274 05, which were used to estimate the likely cost of arbitrator compensation for Mr.  
6 Hendricks' claims.

7 13. Attached hereto as **Exhibit 12** is a true and correct copy of AAA's Administrative  
8 Fees Waiver/Deferral/Hardship Provisions obtained from AAA's website, [www.adr.org](http://www.adr.org), on  
9 August 5, 2011.

10 14. Attached hereto as **Exhibit 13** is a true and correct copy of The 2011 HHS Poverty  
11 Guidelines obtained from the website <http://aspe.hhs.gov/poverty/11poverty.shtml> on  
12 August 5, 2011.

13 15. Attached hereto as **Exhibit 14** is a true and correct copy of an excerpt from AT&T's  
14 Petition for Writ of Certiorari in *AT&T Mobility LLC v. Concepcion*, Supreme Court Docket  
15 No. 09-983, dated January 25, 2010.

16 **The Real Costs To Arbitrate Mr. Hendricks' Claims**

17 16. Mr. Hendricks alleges that AT&T's bills systematically overstate data usage, which  
18 caused him to incur a \$15 charge for excess data usage on his November 2010 bill. *See* 1st Am.  
19 Complaint ¶¶ 10-12 (Docket No. 34). He seeks to recover that \$15, and an injunction requiring  
20 AT&T to "cease the improper billing of data usage." *See id.* ¶¶ 46(b), 53(b), 58(b) and 70. It  
21 would cost Mr. Hendricks approximately \$290,504.11, exclusive of attorneys' fees, to pursue those  
22 claims in an individual arbitration administered by the American Arbitration Association ("AAA").  
23 Those costs are broken down as follows:

**Expenses To Pursue Individual Arbitration Of Claims Asserted In Hendricks v. AT&T  
(Excluding Attorneys' Fees & Expenses)**

Expense Category	Amount	Hendricks' Share	Hendricks' Expense	Reference
AAA Filing Fee	\$3,350.00	100.00%	\$3,350.00	¶¶ 18-23
AAA "Final Fee"	\$1,250.00	100.00%	\$1,250.00	¶ 23
Arbitrator Compensation	\$303,450.00	50.00%	\$151,725.00	¶¶ 38-41
Expert Expense For Pre-Suit Investigation	\$74,179.11	100.00%	\$74,179.11	¶¶ 45-46
Expert Fees For Additional Analysis And Testimony	\$60,000.00	100.00%	\$60,000.00	¶¶ 50-51
<b>Total</b>			<b>\$290,504.11</b>	

17. In addition to the foregoing expenses, an individual arbitration of Mr. Hendricks' claims would involve attorneys' fees of approximately \$1.1 million, plus an additional \$40,000 in attorneys' expenses. *See* ¶¶ 52-54, below.

**AAA Filing And Administrative Fees For Mr. Hendricks' Claims Would Be At Least \$4,600**

18. AT&T's Terms and Conditions represent that AAA's filing fee "currently is \$125 for claims under \$10,000." That is misleading. In reality, AAA's filing fee for this case would be \$3,350, and AAA would charge an additional administrative fee of \$1,250 before the first hearing, for a total of \$4,600.

19. The arbitration would be governed by AAA's Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes. *See* AT&T Terms of Service at 17 (Manchada Decl. Exh. 1, Docket No. 35-6). AAA's Supplementary Procedure C-8 states: "[a]dministrative fees and arbitrator compensation deposits are due from the claimant at the time a case is filed." Wieman Decl. Exh. 1, at 6 (Docket No. 35-7). The \$125 fee applies only "[i]f the consumer's claim or counterclaim does not exceed \$10,000." *Id.* at 6-7. "[I]f the consumer's

1 claim or counterclaim is non-monetary, then the consumer must pay an Administrative Fee in  
2 accordance with the Commercial Fee Schedule.” *Id.* at 7.

3 20. In practice, AAA applies the Commercial Fee Schedule whenever a consumer seeks  
4 injunctive relief, even if the consumer seeks no monetary recovery at all. I recently learned this the  
5 hard way. Within the past 30 days I personally filed 26 arbitration demands on behalf of individual  
6 AT&T customers, each seeking injunctive relief against a proposed merger under the Clayton Act:

- 7 (1) *Leslie Bernardi and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 74 516 00404  
8 11
- 9 (2) *Daniel Lea and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00418 11
- 10 (3) *Helen Luciano and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 13 516 018851  
11 11
- 12 (4) *Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. [Not Yet  
13 Assigned]
- 14 (5) *Mark Newman and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00419  
15 11
- 16 (6) *Jared Pope and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 19 516 00054 11
- 17 (7) *Michael Princi and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 11 516 01204  
18 11
- 19 (8) *Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. [Not Yet  
20 Assigned]
- 21 (9) *Alexis Ubiera and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 18 516 00829  
22 11
- 23 (10) *Laura Barrett and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 74 516 00412  
24 11
- 25 (11) *Leaf O’Neal and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 19 516 00055 11
- 26 (12) *Shane Bushman and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516  
27 00422 11
- 28 (13) *Linda Haensel and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00423  
11
- (14) *Shari Kostoff and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00424  
11
- (15) *Joan Gibbons and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00430  
11

- 1 (16) *Alexis Justak and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516 00433  
2 11
- 3 (17) *Bryan Rodriguez and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 19 516  
4 00056 11
- 5 (18) *Juan Monteverde and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 13 516  
6 01878 11
- 7 (19) *Richard Gonnello and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 13 516  
8 01879 11
- 9 (20) *Javier Hidalgo and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 13 516 01880  
10 11
- 11 (21) *Emily Komlossy and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 32 516  
12 00435 11
- 13 (22) *Beth Keller and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 18 516 00854 11
- 14 (23) *Chris Marlborough and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 13 516  
15 516 01884 11
- 16 (24) *Sandra Smith and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 14 516 01097  
17 11
- 18 (25) *Lara Fisher and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 16 516 00441 11
- 19 (26) *Richard Colisimo and AT&T, Inc. and AT&T Mobility LLC*, AAA Case No. 18 516  
20 00895 11

21 None of these individual claimants sought monetary relief in excess of \$10,000. Indeed, none  
22 sought any monetary relief at all.

23 21. Each of these 26 cases was filed together with payment of the \$125 fee referenced  
24 in the AT&T arbitration agreement. On July 27, 2011, AAA refused to administer the cases on the  
25 ground that the correct filing fee had not been paid, and demanded an additional \$3,225 from each  
26 claimant. AAA's July 27, 2011 letter, attached as **Exhibit 4**, stated:

27 This will acknowledge receipt on July 21, 22, 25, and 27, 2011 of the  
28 above referenced Demands for Arbitration. ...

Please note that based on our review of the Demands for Arbitration and supporting documentation for the above-captioned matters, the AAA's administrative filing requirements have not yet been met. Specifically, although the Claimant submitted a payment in the amount of \$125 along with the demand for arbitration, the relief requested constitutes non-monetary relief. Under the Association's Supplementary Procedures for Consumer-Related Disputes ('Consumer Procedures') and the Commercial Arbitration Rules ('Commercial Rules'), when the claim is not for a monetary amount,

1            a minimum filing fee of \$3,350 is required. Therefore, there is an  
2            outstanding balance of \$3,225.00 for each claim. As a result, the  
3            AAA will not commence administration of the arbitration at this  
4            time.

5            Accordingly, we ask that you remit the balance of the fee. ...

6            **Exhibit 4**, at 2 (underlining added).

7            22.     Mr. Hendricks also seeks non-monetary relief. *See* 1st Am. Complaint ¶¶ 46(b),  
8            53(b) and 58(b) (seeking injunctive relief requiring AT&T to “[i]mmediately cease the improper  
9            billing of data usage”) (Docket No. 34); *id.* ¶ 70 (seeking an order “permanently enjoining AT&T  
10           from continuing to engage in the billing practices described herein”). Just as it did in the 26  
11           referenced cases, AAA would characterize these as claims for “non-monetary relief” which would  
12           trigger the application of the Commercial Fee Schedule.

13           23.     AAA’s Commercial Fee Schedule is included in AAA’s Commercial Arbitration  
14           Rules. Weiman Decl. Exh. 2, at 24 (Docket No. 35-7). Under that schedule, the filing fee for a  
15           consumer’s non-monetary claim is \$3,350. This is the filing fee AAA applied in the 26 cases  
16           referenced above. And if Mr. Hendricks filed an individual demand for arbitration of the claims in  
17           his complaint, AAA would impose that same fee a 27th time. AAA would also bill Mr. Hendricks  
18           a “Final Fee” of \$1,250, “payable in advance at the time that the first hearing is scheduled.” *Id.*

19           24.     The fee schedules accompanying the Commercial Arbitration Rules also state: “The  
20           AAA reserves the right to assess additional administrative fees for services performed by the AAA  
21           beyond those provided for in these Rules which may be required by the parties’ agreement or  
22           stipulation.” Weiman Decl. Exh. 2, at 23 (Docket No. 35-7).

23           **AAA Rules Would Require Mr. Hendricks To Bear Expenses For His Own Witnesses, Plus**  
24           **Half Of The Arbitrators’ Fees**

25           25.     Mr. Hendricks’ individual arbitration case would be subject to AAA’s Commercial  
26           Rule R-50, which states:

27           R-50. Expenses

28           The expenses of witnesses for either side shall be paid by the party  
                 producing such witnesses. All other expenses of the arbitration,  
                 including required travel and other expenses of the arbitrator, AAA

1 representatives, and any witness and the cost of any proof produced  
2 at the direct request of the arbitrator, shall be borne equally by the  
3 parties, unless they agree otherwise or unless the arbitrator in the  
award assesses such expenses or any part thereof against any  
specified party or parties.

4 Weiman Decl. Exh. 2, at 18 (Docket No. 35-7).

5 26. Mr. Hendricks' individual arbitration case would be subject to AAA's Commercial  
6 Rule R-52, which states:

7 R-52. Deposits

8 The AAA may require the parties to deposit in advance of any  
9 hearings such sums of money as it deems necessary to cover the  
10 expense of arbitration, including the arbitrator's fee, if any, and shall  
render an accounting to the parties and return any unexpended  
balance at the conclusion of the case.

11 Weiman Decl. Exh. 2, at 18 (Docket No. 35-7).

12 27. Mr. Hendricks' individual arbitration case would be subject to AAA's Commercial  
13 Rule R-54, which states:

14 R-54. Suspension for Nonpayment

15 If arbitrator compensation or administrative charges have not been  
16 paid in full, the AAA may so inform the parties in order that one of  
17 them may advance the required payment. If such payments are not  
made, the arbitrator may order the suspension or termination of the  
proceedings. If no arbitrator has yet been appointed, the AAA may  
suspend the proceedings.

18 Weiman Decl. Exh. 2, at 18 (Docket No. 35-7).

19 **Within The Past 30 Days, AT&T Has Exploited Two Giant Loopholes In The Arbitration**  
20 **Agreement To Avoid Paying AAA Fees In 26 Cases**

21 28. AT&T's motion describes "cost-free arbitration" under an agreement that purports  
22 to require AT&T to pay "all filing, administration, and arbitrator fees" for consumer claims of  
23 \$75,000 or less, unless the arbitrator determines the claim is "frivolous or brought for an improper  
24 purpose." AT&T Mem. at 4:4-7 (Docket No. 35). And even for frivolous claims, AT&T states  
25 that AAA rules "cap the customer's arbitration costs at \$125 for claims of \$10,000 or less."

26 *Id.* at 4:24-26. The pertinent provisions of the arbitration agreement state:

27 After AT&T receives notice at the Notice Address that you have  
28 commenced arbitration, it will promptly reimburse you for your



1 payment of the filing fee, unless your claim is for greater than  
2 \$75,000. (The filing fee currently is \$125 for claims under \$10,000  
3 but is subject to change by the arbitration provider. If you are unable  
4 to pay this fee, AT&T will pay it directly upon receiving a written  
5 request at the Notice Address.) The arbitration will be governed by  
6 the Commercial Arbitration Rules and the Supplementary Procedures  
7 for Consumer Related Disputes (collectively, 'AAA Rules') of the  
8 American Arbitration Association ('AAA'), as modified by this  
9 Agreement, and will be administered by the AAA.

10 ...

11 Except as otherwise provided for herein, AT&T will pay all AAA  
12 filing, administration, and arbitrator fees for any arbitration initiated  
13 in accordance with the notice requirements above. If however, the  
14 arbitrator finds that either the substance of your claim or the relief  
15 sought in the Demand is frivolous or brought for an improper  
16 purpose (as measured by the standards set forth in Federal Rule of  
17 Civil Procedure 11(b)), then the payment of all such fees will be  
18 governed by the AAA Rules. In such case, you agree to reimburse  
19 AT&T for all monies previously disbursed by it that are otherwise  
20 your obligation to pay under the AAA Rules. In addition, if you  
21 initiate an arbitration in which you seek more than \$75,000 in  
22 damages, the payment of these fees will be governed by the AAA  
23 rules.”

24 AT&T Terms of Service at 17 (Manchada Decl. Exh. 1, Docket No. 35-6).

25 29. At first blush, it would appear that arbitration might be “cost free” under these  
26 terms. But in reality, the terms providing for “cost-free arbitration” are largely illusory. They  
27 come with two giant loopholes. And AT&T has exploited those loopholes 26 times to avoid  
28 paying arbitration filing fees.

29 30. The first giant loophole is that AT&T can avoid paying arbitration fees by alleging  
30 the customer has breached the agreement, and that such breach excuses AT&T’s obligation to pay  
31 the costs of arbitration. AT&T made this exact argument in each of the 26 cases referenced above.  
32 The August 2, 2011 letter from AT&T’s Associate General Counsel, Neal S. Berinhout, to AAA  
33 administrative staff and me, **Exhibit 9**, states that each of the 26 claimants “materially breached”  
34 their contracts with AT&T – merely by filing their arbitration demands. *Id.* at 3. It continues:  
35 “Accordingly, as a matter of law, that breach excuses AT&T from any obligation to pay the costs  
36 of arbitration.” *Id.* at 3.

37 31. AT&T could make the same argument a 27th time in this case. AT&T could argue  
38 Mr. Hendricks breached the agreement to arbitrate by filing this action in court. *See, e.g.,* AT&T

1 Mem. at 6:3-4 (“Despite having agreed to arbitrate all disputes against AT&T, Hendricks filed this  
2 suit ....”) (Docket No. 35). Or that Mr. Hendricks breached by “seek[ing] to represent a putative  
3 nationwide class,” *id.* at 6:6-7, while the agreement prohibits class actions. Or that Mr. Hendricks  
4 breached by seeking “declaratory and injunctive relief,” *id.* at 6:10, that goes beyond the relief  
5 authorized under the parties’ agreement. That is exactly the “material breach” Mr. Berinhout  
6 asserted as a pretense to avoid paying AAA filing fees in the 26 recent cases. *See Exhibit 9*,  
7 August 2, 2011 Berinhout letter at 2 (“[T]hese demands seek injunctive relief that is far more broad  
8 and sweeping than the limited, individualized injunctive relief authorized by our arbitration  
9 agreement.”). By simply asserting this argument, despite its lack of merit, AT&T forces the  
10 customer to advance filing fees and other costs, and prevents them from being recouped unless and  
11 until an arbitrator is appointed and orders AT&T to pay them.

12 32. The second giant loophole is that AT&T’s obligation to pay arbitral costs “applies  
13 unless your claim is for greater than \$75,000.” AT&T Terms of Service at 17 (Manchada Decl.  
14 Exh. 1, Docket No. 35-6). At first blush that seems like a tiny loophole, since customers are  
15 unlikely to have claims against AT&T for such a large amount. But the reality is that AT&T has  
16 invoked this limitation 26 times in the past month in cases where the customer has not sought any  
17 monetary relief at all. AT&T asserts that if a customer seeks injunctive relief that might have a  
18 “monetary impact” on AT&T (or other parties) that exceeds \$75,000, then the exclusion applies  
19 and the payment of costs is governed by AAA default rules. *See Exhibit 9*, Aug. 2, 2011  
20 Berinhout letter at 3 (“Each Demand for Arbitration makes a claim for injunctive relief with a  
21 monetary impact far in excess of \$75,000. Indeed, the Claimants’ requested injunctions against the  
22 merger between AT&T and T-Mobile USA, Inc. would cost AT&T billions of dollars. ...  
23 Moreover, the value to AT&T’s competitors of blocking the merger would be many billions of  
24 dollars more.”).

25 33. Again, AT&T’s argument is meritless. The precise language of the exclusion  
26 applies only “if you initiate an arbitration in which you seek more than \$75,000 in damages,”  
27 AT&T Terms of Service at 17, and plainly would not apply where the claimant seeks no damages  
28

1 at all. Nevertheless, despite the lack of merit, AT&T has asserted this argument 26 times in the  
2 past 30 days. See **Exhibit 9**, Aug. 2, 2011 Berinhout letter at 3 (“The request for reimbursement  
3 [of AAA filing fees] is improper ... [because] these claims for injunctive relief are for greater than  
4 \$75,000 in value.”). AT&T could assert the same argument a 27th time here, since Mr. Hendricks  
5 seeks injunctive relief that would force AT&T to modify its billing system to eliminate the  
6 systematic overcharges identified in the complaint. See 1st Am. Complaint ¶¶ 46(b), 53(b), and  
7 58(b) (seeking injunctive relief requiring AT&T to “[i]mmediately cease the improper billing of  
8 data usage”) (Docket No. 34); *id.* ¶ 70 (seeking an order “permanently enjoining AT&T from  
9 continuing to engage in the billing practices described herein”). Although the value of this relief to  
10 Mr. Hendricks may only be tens of dollars, the monetary impact to AT&T would be millions of  
11 dollars. So AT&T could make the same meritless argument again, which would force Mr.  
12 Hendricks to advance AAA fees of \$4,600.

13 34. Because of these two giant loopholes, a customer who wishes to arbitrate on an  
14 individual basis is forced to advance thousands of dollars in AAA filing fees and arbitrator  
15 compensation before getting access to a decisionmaker with authority to resolve a dispute over  
16 AT&T’s obligation to pay those fees. For Mr. Hendricks, he would be forced to advance at least  
17 \$4,600 in AAA fees before he could even get a hearing on his claim to recover the \$15 AT&T  
18 overcharged him. And he would then have to arbitrate a completely new claim to get that \$4,600  
19 back.

### 20 **Catch-22**

21 35. AT&T’s arbitration agreement requires AT&T to pay the AAA filing fees upon the  
22 request of the customer. See AT&T Terms of Service at 16 (“If you are unable to pay this fee,  
23 AT&T will pay it directly upon receiving a written request at the notice address.”). But when  
24 AT&T refuses, it creates a Catch-22 that makes it impossible for customers to exercise their right  
25 to have an arbitrator enforce that contractual obligation. This scenario is playing out right now in  
26 two of the cases referenced above, *Astrid Mendoza v. AT&T, Inc. and AT&T Mobility LLC*, AAA  
27 Case No. [not yet assigned], and *Deborah L. Schroeder v. AT&T, Inc. and AT&T Mobility LLC*,

1 AAA Case No. [not yet assigned]. Both Mendoza and Schroeder filed arbitrations with AAA  
2 together with notices that they were unable to pay the \$3,350 filing fee, and requested that AT&T  
3 pay that fee in accordance with the terms of the parties' agreement. My July 28, 2011 letter to  
4 AAA's Director of Case Filing Services and to AT&T's General Counsel, attached as **Exhibit 6**,  
5 requested that AAA administer the Mendoza and Schroeder cases, and that AT&T pay the filing  
6 fees. *See id.* at 2 ("Mr. Berinhout, ... please make sure that AT&T promptly pays the filing fees  
7 for (1) Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC, and (2) Deborah L. Schroeder  
8 and AT&T, Inc. and AT&T Mobility LLC. It is imperative that AT&T pay these fees at once ... to  
9 avoid further delays in the administration of these arbitration demands, which would fundamentally  
10 deprive these AT&T customers of their contractual rights to a speedy, efficient, and consumer-  
11 friendly dispute resolution process.").

12 36. AT&T refused to pay the filing fees for the Mendoza and Schroeder cases. *See*  
13 **Exhibit 9**, Aug. 2, 2011 Berinhout letter at 3 n.5 (asserting that claimants are "responsible for the  
14 \$3,350 filing fee, as well as half of the arbitrator's compensation," which AT&T refuses to  
15 reimburse).

16 37. On August 5, 2011, I contacted the Tara Parvey, AAA's Director of Case Filing  
17 Services, to request that AAA appoint an arbitrator in the Mendoza and Schroeder cases to resolve  
18 the dispute over AT&T's obligation to pay the filing fees for those cases under the terms of the  
19 parties' agreement. Ms. Parvey informed me that AAA would not take a position on which party  
20 was obligated to pay the fees under the agreement, and would not appoint an arbitrator in either the  
21 Mendoza or Schroeder cases until the fees were paid. And in fact AAA has not done either of  
22 those things.

### 23 **Arbitrator Compensation**

24 38. Under Commercial Rule R-50, Mr. Hendricks also would be responsible for  
25 one-half of the arbitrator's compensation. *See also* **Exhibit 9**, Aug. 2, 2011 Berinhout letter at 3  
26 n.5 (asserting that claimants are "responsible for the \$3,350 filing fee, as well as half of the  
27 arbitrator's compensation," which AT&T refuses to reimburse). Arbitrator compensation is not  
28

1 included in the Commercial Fee Schedule, or in the \$4,600 in AAA administrative fees. *See*  
2 Weiman Decl. Exh. 2, at 23 (“Arbitrator compensation is not included in this schedule.”) (Docket  
3 No. 35-7). The exact cost depends on the arbitrator’s hourly rate and the number of hours the  
4 arbitrator works on the case. These figures cannot be forecast with precision. They can, however,  
5 be estimated based on experience in similar cases.

6 39. The most analogous case for estimating the cost of arbitrator compensation is *Brown*  
7 *v. Cellco Partnership d/b/a Verizon Wireless*, AAA Case No. 11 494 01274 05 (hereafter,  
8 “*Brown*”). I was lead counsel for the claimants in *Brown*, who asserted claims challenging Verizon  
9 Wireless’s early termination fees as unlawful contractual penalties. *Brown* was filed in June 2005  
10 and was settled in June 2008. *Brown* is comparable to Mr. Hendricks’ case because both involve  
11 disputes over the legality of charges billed by a wireless carrier, and both involve issues requiring  
12 expert testimony. Since *Brown* was a class arbitration, it had more complex procedural issues than  
13 I would anticipate here. But the factual evidence concerning early termination fees in *Brown* was  
14 relatively straightforward. Mr. Hendricks’ case is more technically complex, involving issues  
15 related to the metering of data traffic across a wireless network. I would expect an arbitrator would  
16 be required to spend roughly the same amount of time on Mr. Hendricks’ case as was required in  
17 *Brown*.

18 40. AAA appointed Eugene I. Farber as the arbitrator in *Brown*. Mr. Farber’s services  
19 were billed at \$350 an hour. Arbitrator compensation accrues not only for in-hearing time, but also  
20 for “study” time. These hourly charges can become quite hefty when time must be expended on  
21 discovery disputes, motion practice, and scheduling conferences. Unlike federal judges, AAA  
22 arbitrators do not have the benefit of law clerks to assist with research, preparation for hearings,  
23 and drafting of opinions and orders. Thus Mr. Farber, like most AAA arbitrators, did this work  
24 himself. True and correct copies of Arbitrator Farber’s billing invoices are attached hereto as  
25 **Exhibit 11**. From September 30, 2005 through August 22, 2007, Arbitrator Farber billed \$101,150  
26 for 289 hours of work on *Brown*. I would expect an arbitrator would bill about the same amount on  
27  
28

1 Mr. Hendricks' case. This estimate is conservative because hourly rates have certainly increased in  
2 the past six years.

3 41. AT&T would likely request that AAA designate Mr. Hendricks' case as "large and  
4 complex," and appoint a panel of three arbitrators instead of just one. AT&T made a similar  
5 demand in the 26 cases referenced above. *See Exhibit 5*, at 2 n.3 ("[I]n each case appointment of a  
6 panel of three arbitrators may be required because the Demands involve claims that are  
7 self-evidently large and complex."). Thus the arbitrator compensation from the *Brown* case would  
8 likely be tripled, to \$303,450. Under Commercial Rule R-50, Mr. Hendricks would be responsible  
9 for one-half that amount, or \$151,725. Under Rules R-52 and R-54, AAA may, and likely would,  
10 require Mr. Hendricks to make an advance deposit of some portion of the arbitrator compensation  
11 before he could even get a hearing.

12 **Mr. Hendricks Does Not Qualify For AAA's Fee Waiver Program**

13 42. AAA policies and California law provide that a California consumer is entitled to a  
14 waiver of all administrative fees and costs, exclusive of arbitrator fees, if the consumer's gross  
15 monthly income is less than 300% of Federal Poverty Guidelines. *See* AAA Administrative Fee  
16 Waivers and Pro Bono Rules attached as **Exhibit 12**.

17 43. The 2011 poverty guidelines for a single individual is an annual gross income of  
18 less than \$10,830. *See* 2011 Federal Poverty Guidelines attached as **Exhibit 13**.

19 44. Mr. Hendricks' annual gross income exceeds 300% of the federal poverty  
20 guidelines. *See* Hendricks Decl. ¶ 1.

21 **Expert Expense For Pre-Suit Investigation**

22 45. Mr. Hendricks' alleges that "AT&T bills systematically overstate web server traffic  
23 by 7% to 14%, and in some instances by over 300%." 1st Am. Complaint ¶ 1 (Docket No. 34).  
24 Mr. Hendricks also alleges that AT&T "bills for phantom data traffic when there is no actual data  
25 usage initiated by the customer," *id.* ¶ 2, and that "AT&T's billing system does not accurately  
26 record the time and date on which data usage occurs, which often causes charges to be posted to  
27 the wrong billing cycle ... and causes overcharges," *id.* ¶ 3. These facts could not be discovered by  
28

1 Mr. Hendricks on his own, or by any AT&T customer in the normal course. These facts were  
2 discovered and substantiated by a two-month study by an independent consulting firm. The  
3 methodology of that study is described at length in the Declaration of Colin B. Weir, submitted  
4 herewith.

5 46. Mr. Weir is an expert in telecommunications and economics who conducted the  
6 two-month study. *See* Weir Decl. ¶ 1. According to Mr. Weir, AT&T’s billing system for data  
7 usage is not transparent. It is more akin to “a black box,” which is “opaque to outsiders” making it  
8 impossible for an individual customer to directly verify the accuracy of data charges on a phone  
9 bill. Weir Decl. ¶ 3. Testing the accuracy of AT&T’s billing system requires the creation of a  
10 “parallel metering system.” *Id.* Mr. Weir created such a system on an “‘in-house’ testing web  
11 server configured to host test files and record data usage.” *Id.* ¶ 5. He “configured the server to  
12 provide very detailed log information on every file served,” including “the details of each data  
13 transaction measured in terms of the raw file size, the amount of data transmitted as recorded by  
14 the webserver, and the amount of data transmitted as recorded by the packet capture.” *Id.* ¶¶ 7, 52.  
15 These server logs were then compared to the data usage reported on AT&T’s bills. *Id.* “[E]ach of  
16 these measurements was necessary to substantiate the systematic overbilling on AT&T’s network.”  
17 *Id.* ¶ 52. This work was done prior to the initial filing of Mr. Hendricks’ complaint, at a cost of  
18 \$74,179.11.

19 47. My law firm’s presuit investigation also included correspondence with at least 344  
20 AT&T customers regarding the overbilling described in the complaint and review of thousands of  
21 pages of bills, contracts, and cellphone data plans.

22 48. Without the Weir study and the extensive presuit investigation done by my law firm,  
23 none of the claims asserted in this case could be brought in any forum, whether in court or  
24 arbitration, on an individual or class basis. No individual consumer could have detected the  
25 overbilling in the ordinary course, and given the relatively small amounts at stake for an individual  
26 consumer, no one would have an economically rational reason to expend the resources necessary to  
27 do the testing and investigation necessary to bring these claims.

1           49.     It would have been impossible for Mr. Hendricks to commence an individual  
2 arbitration on these claims without doing a similar investigation in advance of filing. And if he  
3 was unwilling or unable to incur this expense, he never would have discovered the basis for these  
4 claims. Nor would he have been able to file an individual arbitration, or any type of action, to  
5 assert these claims. My law firm, together with Thornton, Davis & Fein, P.A., advanced the costs  
6 for Mr. Weir’s tests. We did so only because we expected they could be recouped in a class action.

7     **Expert Fees For Additional Analysis And Testimony In Arbitration**

8           50.     Mr. Hendricks will have to present expert testimony to substantiate his claims that  
9 AT&T is systematically overbilling him. This will involve complex technical issues related to the  
10 metering of data traffic across a wireless network. Both sides will have to present written expert  
11 testimony, will likely have to make their experts available for deposition, and to testify live at an  
12 arbitration hearing. Each of these things was required in the *Brown* arbitration.

13           51.     Mr. Weir reports that his firm billed \$58,763.68 for similar work in the *Brown*  
14 arbitration during a five-month period from December 2006 through April 2007. Weir Decl.  
15 ¶¶ 55-56. He estimates that “any individual claimant could expect to spend no less than ... the  
16 nearly \$60,000 spent in the *Brown* case to prepare for arbitration,” and “would likely spend  
17 substantially more to see the case all the way to completion of arbitration.” *Id.* ¶ 57. Mr.  
18 Hendricks would be required to bear these expenses. *See* Commercial Rule R-50 (“The expenses  
19 of witnesses for either side shall be paid by the party producing such witnesses.”). My firm will  
20 advance these costs in a class action. No one would advance them to arbitrate an individual claim  
21 where the likely recovery is \$15.

22     **Attorneys’ Fees And Expenses**

23           52.     Mr. Hendricks would also incur attorneys’ fees and expenses to pursue his  
24 individual arbitration. It is difficult to forecast such fees with precision, but it is possible to  
25 estimate them based on prior experience. For the reasons discussed above, the most analogous  
26 case is the *Brown* arbitration. I would expect attorneys would be required to spend roughly the  
27  
28



1 same level of effort to competently present Mr. Hendricks' individual case as was required in  
2 *Brown*.

3 53. The table below shows the lodestar fee and expenses claimants' counsel reported in  
4 *Brown*, and which were approved by a court during the settlement approval process:

5  
6 ***Brown v. Cellco Partnership d/b/a Verizon Wireless***  
***AAA Case No. 11 494 01274 05***

7

<u>Firm</u>	<u>Lodestar Fee</u>	<u>Expenses</u>
8 Law Offices of Scott A. Bursor	\$416,859.25	\$74,887.39
9 Faruqi & Faruqi LLP	\$127,767.50	\$7,725.75
10 Gilman & Pastor LLP	\$119,616.00	\$4,220.30
Mager & Goldstein LLP	\$51,903.17	\$3,477.36
11 Lite DePalma Greenberg LLC	\$79,005.00	\$194.73
Freed & Weiss LLC	\$294,161.91	\$9,236.09
<b>Total</b>	<b>\$1,089,312.83</b>	<b>\$99,741.62</b>

12

13 The expense figure, however, includes \$58,736.68 billed by Mr. Weir's firm for expert work. To  
14 avoid double-counting, the total expense figure should be reduced by that amount, to \$41,004.94.

15 54. Based on my experience, I would expect the prosecution of Mr. Hendricks' claims  
16 in arbitration would require attorneys' fees of approximately \$1.1 million, plus an additional  
17 \$40,000 in attorneys' expenses. My firm will do this work, and advance these costs, on a  
18 contingent-fee basis in a class action. No one would do so in an individual arbitration where the  
19 likely recovery is \$15.

20 I declare under penalty of perjury that the foregoing is true and correct, and that this  
21 declaration was executed at New York, New York this 8th day of August, 2011.

22  
23 

24  
25 \_\_\_\_\_  
Scott A. Bursor

# EXHIBIT 1

Dear Ms. Horton:

I am writing on behalf of AT&T Mobility LLC regarding the following 14 Demands for Arbitration that Bursor & Fisher, P.A. submitted to the American Arbitration Association (“AAA”) on July 21 and 22, 2011:

*Barrett v. AT&T, Inc., et al.; Bernardi v. AT&T, Inc., et al.; Lea v. AT&T, Inc., et al.; Luciano v. AT&T, Inc., et al.; Mendoza v. AT&T, Inc., et al.; Newman v. AT&T, Inc., et al.; O’Neal v. AT&T, Inc., et al.; Pope v. AT&T, Inc., et al.; Princi v. AT&T, Inc., et al.; Shroeder v. AT&T, Inc., et al.; Ubiera v. AT&T, Inc., et al.; Kostoff v. AT&T, Inc., et al.; Bushman v. AT&T, Inc., et al.; and Haensel v. AT&T, Inc., et al.*

This letter also applies to any additional Demands for Arbitration, of the same nature, that Bursor & Fisher might submit.

As you may be aware, these Demands request that an arbitrator be appointed by the AAA to issue a broad injunction against a proposed merger between AT&T Mobility and T-Mobile. Notwithstanding the express language of the governing AT&T arbitration clause that permits injunctive relief “only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim,” these Demands seek an injunction that would affect more than a hundred and twenty million customers of the two companies, and millions of other persons throughout the United States. Within the next three days, I will send you a more detailed letter to explain why the Demands filed by the Bursor firm violate the AAA’s rules and policies as well as the Claimants’ arbitration agreements. In the meantime, we respectfully request that the AAA defer taking further steps with respect to these arbitration Demands so that you will have time to consider whether it is proper for the Demands to proceed. At a minimum, we ask that you wait to receive my follow-up letter before initiating the process of selecting an arbitrator or arbitrators for these various Demands.

Thank you for your courtesy and attention to this matter.

Sincerely,

Neal S. Berinhout

Associate General Counsel

AT&T Mobility LLC

cc: Scott Bursor

Eric Tuchmann, General Counsel, AAA

# EXHIBIT 2



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10<sup>TH</sup> FLOOR  
NEW YORK, NY 10017-6531  
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SCOTT A. BURSOR  
Tel: 212.989.9113  
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[scott@bursor.com](mailto:scott@bursor.com)

July 26, 2011

**By email only**

Eric Tuchmann,  
American Arbitration Association  
General Counsel  
[TuchmannE@adr.org](mailto:TuchmannE@adr.org)

Courtney Horton  
American Arbitration Association  
Intake Coordinator  
[casefiling@adr.org](mailto:casefiling@adr.org)

Re: Demands for Arbitration Challenging AT&T's Takeover of T-Mobile

Dear Mr. Tuchman and Ms. Horton:

Mr. Berinhout's letter of yesterday is an improper attempt to influence the AAA to administer this case in a manner inconsistent with AAA's own rules and to usurp the authority of the arbitrator to decide the issues in each of these individual cases.

It is improper for Mr. Berinhout to address legal arguments to AAA's Intake Coordinator and General Counsel. AAA is supposed to be a neutral administrator of arbitrations. If there are disputes about the application of AAA rules, or about the authority of an arbitrator to grant a particular type of relief, only the arbitrator, or in some instances, a court, can decide those matters. AAA administrative personnel cannot. Nor can AAA's general counsel. Section 2.2(3) of the parties' agreement provides that "All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide." AT&T Wireless Customer Agreement § 2.2(3) (Attachment 1). *See also* AAA Commercial Arbitration Rule R-53 ("The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties."). Neither the parties' agreement, nor any AAA rule, permits the Intake Coordinator, the General Counsel, or any other AAA personnel, to decide the matters raised in Mr. Berinhout's letter.

On the merits, Mr. Berinhout's assertion that demands for injunctive relief against AT&T's takeover of T-Mobile are beyond the authority of an arbitrator are simply wrong. Section 2.1 of the parties' agreement provides that "Arbitrators can award the same damages and relief that a court can award." There is no doubt that a court can enjoin a merger under the Clayton Antitrust Act – thus an arbitrator can grant that same relief. In any event, that is an issue

for the arbitrator to decide in each individual case, in accordance with Rule R-53 and other applicable authorities. Mr. Berinhout and AT&T will have the opportunity to address their arguments to the arbitrator appointed in each individual case. They should not be attempting to prejudice AAA toward their position by addressing substantive arguments to the administrative staff.

I would also call your attention to the decision by Judge Lungstrum concerning exactly this type of undue influence over AAA administrative staff. *In re Universal Service Fund Tel. Billing Practices Litig.*, 2005 WL 1274381 (D. Kan. May 27, 2005) (Attachment 2). In that case, AAA caved to pressure from counsel for AT&T and violated its own rules concerning the administration of a customer's claim against AT&T. Judge Lungstrum found that "counsel for AT&T used AT&T's economic power to successfully persuade the AAA to prematurely bend its own rules." *Id.* at \*5.

I would urge the Association to try to remain impartial, and to follow its own rules without "bending" them in this case.

Mr. Berinhout's "request that the AAA defer taking further steps with respect to these arbitration Demands so that you will have time to consider whether it is proper for the Demands to proceed" is outrageous. AAA has no authority to consider any such thing. Each claimant we represent has filed an arbitration demand that complies with the parties' agreement and all applicable AAA rules. At this point, AAA's responsibility is to confirm notice of filing in each case, *see* Commercial Arbitration Rule R-4(a)(iii), and to begin the process of appointing an arbitrator in each case following the procedures specified in Commercial Arbitration Rule R-11 and Wireless Industry Arbitration Rule R-13. Respectfully, it is not your job to decide the merits of Mr. Berinhout's arguments. Your job is to appoint the arbitrator in each individual case so that the arbitrator can make those decisions.

If you have any questions about AAA's responsibilities under the parties' agreement or under the applicable AAA rules, I would urge you to contact me directly. My team and I will be watching closely to make sure that the undue influence AT&T has exerted over AAA previously, and is attempting to exert again, does not interfere with the neutral and prompt administration of these cases.

Very truly yours,



Scott A. Bursor

Copies by email only:

Neal S. Berinhout  
Associate General Counsel  
AT&T Mobility LLC  
[nb2520@att.com](mailto:nb2520@att.com)

Attachment 1: AT&T Wireless Customer Agreement

Attachment 2: *In re Universal Service Fund Tel. Billing Practices Litig.*,  
2005 WL 1274381 (D. Kan. May 27, 2005)



# **EXHIBIT 1**

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## Wireless Customer Agreement

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# WIRELESS CUSTOMER AGREEMENT ("Agreement")

"AT&T" or "we," "us" or "our" refers to AT&T Mobility LLC, acting on behalf of its FCC-licensed affiliates doing business as AT&T. "You" or "your" refers to the person or entity that is the customer of record.

**PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION, INCLUDING OUR USE OF YOUR LOCATION INFORMATION (SEE SECTION 3.6). THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

This Agreement, including the AT&T Privacy Policy Located at [att.com/privacy](http://att.com/privacy), terms of service for wireless products, features, applications, and services ("Services") not otherwise described herein that are posted on applicable AT&T websites or devices, and any documents expressly referred to herein or therein, make up the complete agreement between you and AT&T and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement.

## 1.0 TERM COMMITMENT, CHARGES, BILLING AND PAYMENT

### 1.1 What Is The Term Of My Service?

[Print this section](#) | [Print this page](#)

Your Agreement begins on the day we activate your Services and continues through the Term of Service specified on your Customer Service Summary ("Service Commitment"). AT THE END OF YOUR SERVICE COMMITMENT, THIS AGREEMENT WILL AUTOMATICALLY RENEW ON A MONTH-TO-MONTH BASIS.

[See related links](#) | [See all legal](#)

## 1.2 What Happens If My Service Is Cancelled Or Terminated Before The End Of My Agreement? Is There A Cancellation/Early Termination Fee?

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If you terminate your Agreement within three (3) days of accepting the Agreement, you will be entitled to a refund of your activation fee, if any, but you must return the Equipment purchased in connection with your Agreement.

You may terminate this Agreement, for any reason and without incurring the Early Termination Fee, within thirty (30) days of accepting your Agreement, PROVIDED, you will remain responsible for any Services fees and charges incurred. If you purchase Equipment directly from AT&T in connection with your Agreement, but you terminate within 30 days and fail to return the Equipment to AT&T, you will be subject to an Equipment Fee in the maximum amount of the difference between the no-commitment price of the Equipment and the amount you actually paid for the Equipment. AT&T may charge you a restocking fee for any returned Equipment. Some dealers impose additional fees. iPhone returns are subject to a 10% restocking fee, except where prohibited.

You have received certain benefits from us in exchange for any Service Commitment greater than one month. If we terminate your Services for nonpayment or other default before the end of your Service Commitment, or if you terminate your Services for any reason other than (a) in accordance with the cancellation policy; or (b) pursuant to a change of terms, conditions or rates as set forth below, you agree to pay us with respect to each device identifier or telephone number assigned to you, in addition to all other amounts owed, an Early Termination Fee in the amount specified below ("Early Termination Fee"). If your Service Commitment includes the purchase of certain specified Equipment on or after June 1, 2010, the Early Termination Fee will be \$325 minus \$10 for each full month of your Service Commitment that you complete. (For a complete list of the specified Equipment, check [att.com/equipmentETF](http://att.com/equipmentETF)). Otherwise your Early Termination Fee will be \$150 minus \$4 for each full month of your Service Commitment that you complete. The Early Termination Fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the Service Commitment on which your rate plan is based.

Either party may terminate this Agreement at any time after your Service Commitment ends with thirty (30) days notice to the other party. We may terminate this Agreement at any time without notice if we cease to provide Services in your area. We may interrupt or terminate your Services without notice:

1. for any conduct that we believe violates this Agreement,
2. if you behave in an abusive, derogatory, or similarly unreasonable manner with any of our representatives,
3. if we discover that you are underage,
4. if you fail to make all required payments when due,
5. if we have reasonable cause to believe that your Equipment is being used for an unlawful purpose or in a way that (i) is harmful to, interferes with, or may adversely affect our Services or the network of any other provider, (ii) interferes with the use or enjoyment of Services received by others, (iii) infringes intellectual property rights, (iv) results in the publication of threatening or offensive material, or (v) constitutes spam or other abusive messaging or calling, a security risk, or a violation of privacy,
6. if you provided inaccurate credit information, or
7. we believe your credit has deteriorated and you refuse to pay any requested advance payment or deposit.

If you sign a new Agreement before the end of your original Agreement, but terminate the new Agreement within 30 days as allowed above, the new Agreement will terminate and you agree to be bound to the terms and conditions of your original Agreement, including any remaining Service Commitment.

[See related links](#) | [See all legal](#)

## 1.3 Can AT&T Change My Terms And Rates?

[Print this section](#) | [Print this page](#)

We may change any terms, conditions, rates, fees, expenses, or charges regarding your Services at any time. We will provide you with notice of material changes (other than changes to governmental fees, proportional charges for governmental mandates, roaming rates or administrative charges) either in your monthly bill or separately. You understand and agree that State and Federal Universal Service Fees and other governmentally imposed fees, whether or not assessed directly upon you, may be increased based upon the government's or our calculations.

IF WE INCREASE THE PRICE OF ANY OF THE SERVICES TO WHICH YOU SUBSCRIBE, BEYOND THE LIMITS SET FORTH IN YOUR CUSTOMER SERVICE SUMMARY, OR IF WE MATERIALLY DECREASE THE GEOGRAPHICAL AREA IN WHICH YOUR AIRTIME RATE APPLIES (OTHER THAN A TEMPORARY DECREASE FOR REPAIRS OR MAINTENANCE), WE'LL DISCLOSE THE CHANGE AT LEAST ONE BILLING CYCLE IN ADVANCE (EITHER THROUGH A NOTICE WITH YOUR BILL, A TEXT MESSAGE TO YOUR DEVICE, OR OTHERWISE), AND YOU MAY TERMINATE THIS AGREEMENT WITHOUT PAYING AN EARLY TERMINATION FEE OR RETURNING OR PAYING FOR ANY PROMOTIONAL ITEMS, PROVIDED YOUR NOTICE OF TERMINATION IS DELIVERED TO US WITHIN THIRTY (30) DAYS AFTER THE FIRST BILL REFLECTING THE CHANGE.

If you lose your eligibility for a particular rate plan, we may change your rate plan to one for which you qualify.

[See related links](#) | [See all legal](#)

## 1.4 What Charges Am I Responsible For? How Much Time Do I Have To Dispute My Bill?

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You are responsible for paying all charges for or resulting from Services provided under this Agreement, including any activation fee that may apply to each voice or data line. You will receive monthly bills that are due in full.

IF YOU DISPUTE ANY CHARGES ON YOUR BILL, YOU MUST NOTIFY US IN WRITING AT AT&T BILL DISPUTE, 1025 LENOX PARK, ATLANTA, GA 30319 WITHIN 100 DAYS OF THE DATE OF THE BILL OR YOU'LL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL AND TO PARTICIPATE IN ANY LEGAL ACTION RAISING SUCH DISPUTE.

Charges include, without limitation, airtime, roaming, recurring monthly service, activation, administrative, and late payment charges; regulatory cost recovery and other surcharges; optional feature charges; toll, collect call and directory assistance charges; restoral and reactivation charges; any other charges or calls billed to your phone number; and applicable taxes and governmental fees, whether assessed directly upon you or upon AT&T.

To determine your primary place of use ("PPU") and which jurisdiction's taxes and assessments to collect, you're required to provide us with your residential or business street address. If you don't provide us with such address, or if it falls outside our licensed Services area, we may reasonably designate a PPU within the licensed Services area for you. You must live and have a mailing address within AT&T's owned network coverage area.

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## 1.5 How Does AT&T Calculate My Bill?

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Usage and monthly fees will be billed as specified in your customer service summary or rate plan information online. If the Equipment you order is shipped to you, your Services may be activated before you take delivery of the Equipment so that you can use it promptly upon receipt. Thus, you may be charged for Services while your Equipment is still in transit. If, upon receiving your first bill, you have been charged for Services while your Equipment was in transit, you may contact Customer Care 1-800-331-0500 to request a credit. Except as provided below, monthly Services and certain other charges are billed one month in advance, and there is no proration of such charges if Service is terminated on other than the last day of your billing cycle. Monthly Service and certain other

charges are billed in arrears if you're a former customer of AT&T Wireless and maintain uninterrupted Service on select AT&T rate plans, however, if you elect to receive your bills for your Services combined with your wireline phone bill (where available) you will be billed in advance as provided above. You agree to pay for all services used with your Device.

AIRTIME AND OTHER MEASURED USAGE ("CHARGEABLE TIME") IS BILLED IN FULL-MINUTE INCREMENTS, AND ACTUAL AIRTIME AND USAGE ARE ROUNDED UP TO THE NEXT FULL-MINUTE INCREMENT AT THE END OF EACH CALL FOR BILLING PURPOSES. AT&T CHARGES A FULL MINUTE OF AIRTIME USAGE FOR EVERY FRACTION OF THE LAST MINUTE OF AIRTIME USED ON EACH WIRELESS CALL. UNLESS OTHERWISE PROVIDED IN YOUR PLAN, MINUTES WILL BE DEPLETED ACCORDING TO USAGE IN THE FOLLOWING ORDER: NIGHT AND WEEKEND MINUTES, MOBILE TO MOBILE MINUTES, ANYTIME MINUTES AND ROLLOVER, EXCEPT THAT MINUTES THAT ARE PART OF BOTH A LIMITED PACKAGE AND AN UNLIMITED PACKAGE WILL NOT BE DEPLETED FROM THE LIMITED PACKAGE. Chargeable Time begins for outgoing calls when you press SEND (or similar key) and for incoming calls when a signal connection from the caller is established with our facilities. Chargeable Time ends after you press END (or similar key), but not until your wireless telephone's signal of call disconnect is received by our facilities and the call disconnect signal has been confirmed.

All outgoing calls for which we receive answer supervision or which have at least 30 seconds of Chargeable Time, including ring time, shall incur a minimum of one minute airtime charge. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment. Chargeable Time may include time for us to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time. Chargeable Time may also occur from other uses of our facilities, including by way of example, voicemail deposits and retrievals, and call transfers. Calls that begin in one rate period and end in another rate period may be billed in their entirety at the rates for the period in which the call began.

DATA TRANSPORT IS CALCULATED IN FULL-KILOBYTE INCREMENTS, AND ACTUAL TRANSPORT IS ROUNDED UP TO THE NEXT FULL-KILOBYTE INCREMENT AT THE END OF EACH DATA SESSION FOR BILLING PURPOSES. AT&T CALCULATES A FULL KILOBYTE OF DATA TRANSPORT FOR EVERY FRACTION OF THE LAST KILOBYTE OF DATA TRANSPORT USED ON EACH DATA SESSION. TRANSPORT IS BILLED EITHER BY THE KILOBYTE ("KB") OR MEGABYTE ("MB"). IF BILLED BY MB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED AND ROUNDED UP TO NEXT FULL MB INCREMENT TO DETERMINE BILLING. IF BILLED BY KB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED TO DETERMINE BILLING. NETWORK OVERHEAD, SOFTWARE UPDATE REQUESTS, EMAIL NOTIFICATIONS, AND RESEND REQUESTS CAUSED BY NETWORK ERRORS CAN INCREASE MEASURED KILOBYTES. DATA TRANSPORT OCCURS WHENEVER YOUR DEVICE IS CONNECTED TO OUR NETWORK AND IS ENGAGED IN ANY DATA TRANSMISSION, INCLUDING BUT NOT LIMITED TO: (i) SENDING OR RECEIVING EMAIL, DOCUMENTS, OR OTHER CONTENT, (ii) ACCESSING WEBSITES, OR (iii) DOWNLOADING AND USING APPLICATIONS. SOME APPLICATIONS, CONTENT, PROGRAMS, AND SOFTWARE THAT YOU DOWNLOAD OR THAT COMES PRE-LOADED ON YOUR DEVICE AUTOMATICALLY AND REGULARLY SEND AND RECEIVE DATA TRANSMISSIONS IN ORDER TO FUNCTION PROPERLY, WITHOUT YOU AFFIRMATIVELY INITIATING THE REQUEST AND WITHOUT YOUR KNOWLEDGE. FOR EXAMPLE, APPLICATIONS THAT PROVIDE REAL-TIME INFORMATION AND LOCATION-BASED APPLICATIONS CONNECT TO OUR NETWORK, AND SEND AND RECEIVE UPDATED INFORMATION SO THAT IT IS AVAILABLE TO YOU WHEN YOU WANT TO ACCESS IT. YOU WILL BE BILLED FOR ALL DATA TRANSPORT AND USAGE WHEN YOUR DEVICE IS CONNECTED TO OUR NETWORK, INCLUDING THAT WHICH YOU AFFIRMATIVELY INITIATE OR THAT WHICH RUNS AUTOMATICALLY IN THE BACKGROUND WITHOUT YOUR KNOWLEDGE, AND WHETHER SUCCESSFUL OR NOT.

If you select a rate plan that includes a predetermined allotment of Services (for example, a predetermined amount of airtime, megabytes or messages), unless otherwise specifically provided as a part of such rate plan, any unused allotment of Services from one billing cycle will not carry over to any other billing cycle. We may bill you in a format as we determine from time to time. Additional charges may apply for additional copies of your bill, or for detailed information about your usage of Services.

**Delayed Billing:** Billing of usage for calls, messages, data or other Services (such as usage when roaming on other carriers' networks, including internationally) may occasionally be delayed. Such usage charges may appear in a later billing cycle, will be deducted from Anytime monthly minutes or other Services allotments for the month when the usage is actually billed, and may result in additional charges for that month. Those minutes will be applied against your Anytime monthly minutes in the month in which the calls appear on your bill. You also remain responsible for paying your monthly Service fee if your Service is suspended for nonpayment. We may require payment by money order, cashier's check, or a similarly secure form of payment at our discretion.

[See related links](#) | [See all legal](#)

## 1.6 Are Advance Payments And/Or Deposits Required?

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We may require you to make deposits or advance payments for Services, which we may offset against any unpaid balance on your account. Interest won't be paid on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that the initial payment was inadequate. Based on your creditworthiness as we determine it, we may establish a credit limit and restrict Services or features. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend Services until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. If you have more than one account with us, you must keep all accounts in good standing to maintain Services. If one account is past due or over its limit, all accounts in your name are subject to interruption or termination and all other available collection remedies.

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## 1.7 What if I fail to pay my AT&T Bill when it is due?

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Late payment charges are based on the state to which the area code of the wireless telephone number assigned to you is assigned by the North American Numbering Plan Administration (for area code assignments see [nationalnanpa.com/area\\_code\\_maps](http://nationalnanpa.com/area_code_maps)). You agree that for amounts not paid by the due date, AT&T may charge, as a part of its rates and charges, and you agree to pay, a late payment fee of \$5 in CT, D.C., DE, IL, KS, MA, MD, ME, MI, MO, NH, NJ, NY, OH, OK, PA, RI, VA, VT, WI, WV; the late payment charge is 1.5% of the balance carried forward to the next bill in all other states. **In the event you fail to pay billed charges when due and it becomes necessary for AT&T to refer your account(s) to a third party for collection, AT&T will charge a collection fee at the maximum percentage permitted by applicable law, but not to exceed 18% to cover the internal collection-related costs AT&T has incurred on such account(s) through and including the date on which AT&T refer(s) the account(s) to such third party.**

You expressly authorize, and specifically consent to allowing, AT&T and/or its outside collection agencies, outside counsel, or other agents to contact you in connection with any and all matters relating to unpaid past due charges billed by AT&T to you. You agree that, for attempts to collect unpaid past due charges, such contact may be made to any mailing address, telephone number, cellular phone number, e-mail address, or any other electronic address that you have provided, or may in the future provide, to AT&T. You agree and acknowledge that any e-mail address or any other electronic address that you provide to AT&T is your private address and is not accessible to unauthorized third parties. For attempts to collect unpaid charges, you agree that in addition to individual persons attempting to communicate directly with you, any type of contact described above may be made using, among other methods, pre-recorded or artificial voice messages delivered by an automatic telephone dialing system, pre-set e-mail messages delivered by an automatic e-mailing system, or any other pre-set electronic messages delivered by any other automatic electronic messaging system.

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## 1.8 What Happens If My Check Bounces?

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We'll charge you up to \$30 (depending on applicable law) for any check or other instrument (including credit card charge backs) returned unpaid for any reason.

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### 1.9 Are There Business or Government Benefits?

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You may receive or be eligible for certain rate plans, discounts, features, promotions, and other benefits ("Benefits") through a business or government customer's agreement with us ("Business Agreement"). All such Benefits are provided to you solely as a result of the corresponding Business Agreement, and may be modified or terminated without notice.

If a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with it or its authorized agents. If you're on a rate plan and/or receive certain Benefits tied to a Business Agreement with us, but you're liable for your own charges, then you authorize us to share enough account information with it or its authorized agents to verify your continuing eligibility for those Benefits.

You may receive Benefits because of your agreement to have the charges for your Services, billed ("Joint Billing") by a wireline company affiliated with AT&T ("Affiliate") or because you subscribe to certain services provided by an Affiliate. If you cancel Joint Billing or the Affiliate service your rates will be adjusted without notice to a rate plan for which you qualify.

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### 1.10 Who Can Access My Account and for What Purpose?

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You authorize us to provide information about and to make changes to your account, including adding new Services, upon the direction of any person able to provide information we deem sufficient to identify you. You consent to the use by us or our authorized agents of regular mail, predictive or autodialing equipment, email, text messaging, facsimile or other reasonable means to contact you to advise you about our Services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information.

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## 2.0 HOW DO I RESOLVE DISPUTES WITH AT&T?

### 2.1 Dispute Resolution By Binding Arbitration

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**PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

Summary:

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 1-800-331-0500. **In the unlikely event that AT&T's customer service department is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** For any non-frivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

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### 2.2 Arbitration Agreement

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(1) AT&T and you agree to arbitrate **all disputes and claims** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: Office for Dispute Resolution, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled. You may download or copy a form Notice and a form to initiate arbitration at [att.com/arbitration-forms](http://att.com/arbitration-forms).

(3) After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$125 for claims under \$10,000 but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [adr.org](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at



[att.com/arbitration-information](#).) The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

(5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

(6) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(7) Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

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### 3.0 TERMS RELATING TO YOUR DEVICE AND CONTENT

#### 3.1 My Device

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You are responsible for all phones and other devices containing a SIM assigned to your account ("Devices"). Your Device must be compatible with, and not interfere with, our Services and must comply with all applicable laws, rules, and regulations. We may periodically program your Device remotely with system settings for roaming service, to direct your Device to use network services most appropriate for your typical usage, and other features that cannot be changed manually.

Devices purchased for use on AT&T's system are designed for use exclusively on AT&T's system ("Equipment"). You agree that you won't make any modifications to the Equipment or programming to enable the Equipment to operate on any other system. AT&T may, at its sole and absolute discretion, modify the programming to enable the operation of the Equipment on other systems.

If you bought a phone from AT&T, your phone may have been programmed with a SIM lock which will prevent the phone from operating with other compatible wireless telephone carriers' services. If you wish to use the SIM-locked phone with the service of another wireless telephone carrier, you must enter a numeric Unlock Code to unlock the phone. AT&T will provide the Unlock Code upon request to eligible current and former customers, provided that (1) the customer has completed a minimum of 90 days of active service with AT&T, is in good standing with AT&T and is current in his or her payments at the time of the request; (2) if applicable, any period of exclusivity associated with AT&T's sale of the handset has expired; and (3) AT&T has such code or can reasonably obtain it from the manufacturer. For phones sold with a Prepaid Plan, AT&T will provide the Unlock Code upon request to eligible current and former customers who provide a detailed receipt or other proof of purchase of the phone. iPhone and certain other devices are not eligible to be unlocked. For further details on eligibility requirements and for assistance on obtaining the Unlock Code for your handset, please call 1-800-331-0500 or visit an AT&T company store.

You are solely responsible for complying with U.S. Export Control laws and regulations and the import laws and regulations of foreign countries when traveling internationally with your Equipment.

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#### 3.2 Where and How Does AT&T Service Work?

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AT&T does not guarantee availability of wireless network. Services may be subject to certain Device and compatibility/limitations including memory, storage, network availability, coverage, accessibility and data conversion limitations. Services (including without limitation, eligibility requirements, plans, pricing, features and/or service areas) are subject to change without notice.

When outside AT&T's coverage area, access will be limited to information and applications previously downloaded to or resident on your device. Coverage areas vary between AT&T network technologies. See coverage map(s), available at store or from your sales representative, for details or the coverage map at [www.att.com/coverage-viewer](#).

Actual network speeds depend upon device characteristics, network, network availability and coverage levels, tasks, file characteristics, applications and other factors. Performance may be impacted by transmission limitations, terrain, in-building/in-vehicle use and capacity constraints.

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### 3.3 What Information, Content, And Applications Are Provided By Third Parties?

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Certain information, applications, or other content is provided by independently owned and operated content providers or service providers who are subject to change at any time without notice.

AT&T IS NOT A PUBLISHER OF THIRD-PARTY INFORMATION, APPLICATIONS, OR OTHER CONTENT AND IS NOT RESPONSIBLE FOR ANY OPINIONS, ADVICE, STATEMENTS, OR OTHER INFORMATION, SERVICES OR GOODS PROVIDED BY THIRD PARTIES.

Third-party content or service providers may impose additional charges. Policies regarding intellectual property, privacy and other policies or terms of use may differ among AT&T's content or service providers and you are bound by such policies or terms when you visit their respective sites or use their services. It is your responsibility to read the rules or service agreements of each content provider or service provider.

Any information you involuntarily or voluntarily provide to third parties is governed by their policies or terms. The accuracy, appropriateness, content, completeness, timeliness, usefulness, security, safety, merchantability, fitness for a particular purpose, transmission or correct sequencing of any application, information or downloaded data is not guaranteed or warranted by AT&T or any content providers or other third party. Delays or omissions may occur. Neither AT&T nor its content providers, service providers or other third parties shall be liable to you for any loss or injury arising out of or caused, in whole or in part, by your use of any information, application or content, or any information, application, or other content acquired through the Service.

You acknowledge that every business or personal decision, to some degree or another, represents an assumption of risk, and that neither AT&T nor its content and service providers or suppliers, in providing information, applications or other content or services, or access to information, applications, or other content underwrites, can underwrite, or assumes your risk in any manner whatsoever.

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### 3.4 How Can I Get Mobile Content?

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You understand that Devices can be used to acquire or purchase goods, content, and services (including subscription plans) like ring tones, graphics, games, applications and news alerts from AT&T or other companies ("Content"). You understand that you are responsible for all authorized charges associated with such Content from any Device assigned to your account, that these charges will appear on your bill (including charges on behalf of other companies), and that such purchases can be restricted by using parental controls available from an AT&T salesperson, or by calling AT&T.

You have full-time access to your Content purchase transaction history on our website. You may contest charges and seek refunds for purchases with which you are not satisfied. AT&T reserves the right to restrict Content purchases or terminate the account of anyone who seeks refunds on improper grounds or otherwise abuses this Service.

Actual Content may vary based on the Device capabilities. Content may be delivered in multiple messages. Content charges are incurred at the stated one-time download rate or subscription rate, plus a per kilobyte or per megabyte default pay per use charge for the Content transport when delivered, unless you have a data plan and such charges appear separately on your bill. You will be charged each time you download Content. Data Service charges apply.

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### 3.5 Am I Responsible If Someone Makes A Purchase With My Device?

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Except as otherwise provided in this Agreement, if your Device is used by others to make Content purchases, you are responsible for all such purchases. If this occurs, you are giving those other users your authority to:

1. make Content purchases from those Devices, and to incur charges for those Content purchases that will appear on your bill;
2. give consent required for that Content, including the consent to use that user's location information to deliver customized information to that user's Device; or
3. make any representation required for that content, including a representation of the user's age, if requested.

Usage by others can be restricted by use of parental controls or similar features. Visit [att.com/smartlimits](http://att.com/smartlimits) to learn more.

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### 3.6 Can I Use Location-Based Services With My Device?

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AT&T collects information about the approximate location of your Device in relation to our cell towers and the Global Positioning System (GPS). We use that information, as well as other usage and performance information also obtained from our network and your Device, to provide you with wireless voice and data services, and to maintain and improve our network and the quality of your wireless experience. We may also use location information to create aggregate data from which your personally identifiable information has been removed or obscured. Such aggregate data may be used for a variety of purposes such as scientific and marketing research and services such as vehicle traffic volume monitoring. It is your responsibility to notify users on your account that we may collect and use location information from Devices.

Your Device is also capable of using optional Content at your request or the request of a user on your account, offered by AT&T or third parties that make use of a Device's location information ("Location-Based Services"). Please review the terms and conditions and the associated privacy policy for each Location-Based Service to learn how the location information will be used and protected. For more information on Location-Based Services, please visit [att.com/privacy](http://att.com/privacy).

Our directory assistance service (411) may use the location of a Device to deliver relevant customized 411 information based upon the user's request for a listing or other 411 service. By using this directory assistance service, the user is consenting to our use of that user's location information for such purpose. This location information may be disclosed to a third party to perform the directory assistance service and for no other purpose. Such location information will be retained only as long as is necessary to provide the relevant customized 411 information and will be discarded after such use. Please see our privacy policy at [att.com/privacy](http://att.com/privacy) for additional details.

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### 3.7 What If My Device Is Lost Or Stolen?

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If your wireless Device is lost or stolen, you must contact us immediately to report the Device lost or stolen. You're not liable for charges you did not authorize, but the fact that a call was placed from your Device is evidence that the call was authorized. (California Customers see section "What Terms Apply Only To Specific States?" below). Once you report to us that the Device is lost or stolen, you will not be responsible for subsequent charges incurred by that Device.

You can report your Device as lost or stolen and suspend Services without a charge by contacting us at the phone number listed on your bill or at



[wireless.att.com](http://wireless.att.com). If there are charges on your bill for calls made after the Device was lost or stolen, but before you reported it to us, notify us of the disputed charges and we will investigate. You may submit documents, statements and other information to show any charges were not authorized. You may be asked to provide information and you may submit information to support your claim. We will advise you of the result of our investigation within 30 days. While your phone is suspended you will remain responsible for complying with all other obligations under this Agreement, including, but not limited to, your monthly fee. We both have a duty to act in good faith in a reasonable and responsible manner including in connection with the loss or theft of your Device.

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## 4.0 TERMS RELATING TO THE USE AND LIMITATIONS OF SERVICE

### 4.1 What Are The Limitations On Service And Liability?

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Unless prohibited by law, the following limitations of liability apply. Service may be interrupted, delayed, or otherwise limited for a variety of reasons, including environmental conditions, unavailability of radio frequency channels, system capacity, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, equipment modifications and repairs, and problems with the facilities of interconnecting carriers. We may block access to certain categories of numbers (e.g., 976, 900, and international destinations) at our sole discretion.

Additional hardware, software, subscription, credit or debit card, Internet access from your compatible PC and/or special network connection may be required and you are solely responsible for arranging for or obtaining all such requirements. Some solutions may require third party products and/or services, which are subject to any applicable third party terms and conditions and may require separate purchase from and/or agreement with the third party provider. AT&T is not responsible for any consequential damages caused in any way by the preceding hardware, software or other items/requirements for which you are responsible.

Not all plans or Services are available for purchase or use in all sales channels, in all areas or with all devices. AT&T is not responsible for loss or disclosure of any sensitive information you transmit. AT&T's wireless services are not equivalent to wireline Internet. AT&T is not responsible for nonproprietary services or their effects on devices.

We may, but do not have the obligation to, refuse to transmit any information through the Services and may screen and delete information prior to delivery of that information to you. There are gaps in service within the Services areas shown on coverage maps, which, by their nature, are only approximations of actual coverage.

WE DO NOT GUARANTEE YOU UNINTERRUPTED SERVICE OR COVERAGE. WE CANNOT ASSURE YOU THAT IF YOU PLACE A 911 CALL YOU WILL BE FOUND. AIRTIME AND OTHER SERVICE CHARGES APPLY TO ALL CALLS, INCLUDING INVOLUNTARILY TERMINATED CALLS. AT&T MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, ACCURACY, SECURITY, OR PERFORMANCE REGARDING ANY SERVICES, SOFTWARE OR GOODS, AND IN NO EVENT SHALL AT&T BE LIABLE, WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE, for any:

- a. act or omission of a third party;
- b. mistakes, omissions, interruptions, errors, failures to transmit, delays, or defects in the Services or Software provided by or through us;
- c. damage or injury caused by the use of Services, Software, or Device, including use in a vehicle;
- d. claims against you by third parties;
- e. damage or injury caused by a suspension or termination of Services or Software by AT&T; or
- f. damage or injury caused by failure or delay in connecting a call to 911 or any other emergency service.

Notwithstanding the foregoing, if your Service is interrupted for 24 or more continuous hours by a cause within our control, we will issue you, upon request, a credit equal to a pro-rata adjustment of the monthly Service fee for the time period your Service was unavailable, not to exceed the monthly Service fee. Our liability to you for Service failures is limited solely to the credit set forth above.

Unless prohibited by law, AT&T isn't liable for any indirect, special, punitive, incidental or consequential losses or damages you or any third party may suffer by use of, or inability to use, Services, Software, or Devices provided by or through AT&T, including loss of business or goodwill, revenue or profits, or claims of personal injuries.

To the full extent allowed by law, you hereby release, indemnify, and hold AT&T and its officers, directors, employees and agents harmless from and against any and all claims of any person or entity for damages of any nature arising in any way from or relating to, directly or indirectly, service provided by AT&T or any person's use thereof (including, but not limited to, vehicular damage and personal injury), INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE ALLEGED NEGLIGENCE OF AT&T, or any violation by you of this Agreement. This obligation shall survive termination of your Service with AT&T. AT&T is not liable to you for changes in operation, equipment, or technology that cause your Device or Software to be rendered obsolete or require modification.

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### 4.2 How Can I Use My AT&T Service?

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All use of AT&T's wireless network and Services is governed by AT&T's Acceptable Use Policy, which can be found at [at.com/AcceptableUsePolicy](http://at.com/AcceptableUsePolicy), as determined solely by AT&T. AT&T can revise its Acceptable Use Policy at any time without notice by updating this posting.

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### 4.3 Who Is Responsible For Security?

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AT&T DOES NOT GUARANTEE SECURITY. Data encryption is available with some, but not all, Services sold by AT&T. If you use your device to access company email or information, it is your responsibility to ensure your use complies with your company's internal IT and security procedures.

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### 4.4 How Can I Use the Software?

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The software, interfaces, documentation, data, and content provided for your Equipment as may be updated, downloaded, or replaced by feature enhancements, software updates, system restore software or data generated or provided subsequently by AT&T (hereinafter "Software") is licensed, not sold, to you by AT&T and/or its licensors/suppliers for use only on your Equipment. Your use of the Software shall comply with its intended purposes as determined by

us, all applicable laws, and AT&T's Acceptable Use Policy at [att.com/AcceptableUsePolicy](http://att.com/AcceptableUsePolicy).

You are not permitted to use the Software in any manner not authorized by this License. You may not (and you agree not to enable others to) copy, decompile, reverse engineer, disassemble, reproduce, attempt to derive the source code of, decrypt, modify, defeat protective mechanisms, combine with other software, or create derivative works of the Software or any portion thereof. You may not rent, lease, lend, sell, redistribute, transfer or sublicense the Software or any portion thereof. You agree the Software contains proprietary content and information owned by AT&T and/or its licensors/suppliers.

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## 4.5 How Can I Use Another Carrier's Network (Off-Net Usage)?

### 4.5.1 Voice

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If your use of minutes (including unlimited Services) on other carrier networks ("off-net voice usage") during any two consecutive months exceed your off-net voice usage allowance, AT&T may, at its option, terminate your Services, deny your continued use of other carriers' coverage or change your plan to one imposing usage charges for off-net voice usage. Your off-net voice usage allowance is equal to the lesser of 750 minutes or 40% of the Anytime Minutes included with your plan.

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### 4.5.2 Data

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If your use of the Data Services on other carriers' wireless networks ("offnet data usage") during any month exceeds your offnet data usage allowance, AT&T may at its option terminate your access to Data Services, deny your continued use of other carriers' coverage, or change your plan to one imposing usage charges for offnet data usage. Your offnet data usage allowance is equal to the lesser of 24 megabytes or 20% of the kilobytes included with your plan. You may be required to use a Device programmed with AT&T's preferred roaming database.

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### 4.5.3 Messaging

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If you use messaging services (including unlimited Services) on other carrier networks ("off-net messaging usage") during any two consecutive months exceed your off-net messaging usage allowance, AT&T may, at its option, terminate your messaging service, deny your continued use of other carriers' coverage or change your plan to one imposing usage charges for off-net messaging usage. Your off-net messaging usage allowance is equal to the lesser of 3,000 messages or 50% of the messages included with your plan.

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### 4.5.4 Notice

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AT&T will provide notice that it intends to take any of the above actions, and you may terminate this Agreement.

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## 4.6 How Do I Get Service Outside AT&T's Wireless Network (Roaming)?

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Roaming charges for wireless data or voice Services may be charged with some plans when outside AT&T's wireless network. Services originated or received while outside your plan's included coverage area are subject to roaming charges Use of Services when roaming is dependent upon roaming carrier's support of applicable network technology and functionality. Display on your device will not indicate whether you will incur roaming charges. Check with roaming carriers individually for support and coverage details.

Billing for domestic and international roaming usage may be delayed up to three billing cycles due to reporting between carriers. Substantial charges may be incurred if your phone is taken out of the U.S. even if no Services are intentionally used.

### 4.6.1 International Services

Certain eligibility restrictions apply which may be based on service tenure, payment history and/or credit. Rates are subject to change. For countries, rates and additional details, see [att.com/global](http://att.com/global).

#### 4.6.1.1 International Roaming:

Compatible Device required. Your plan may include the capability to make and receive calls while roaming internationally. AT&T, in its sole discretion, may block your ability to use your Device while roaming internationally until eligibility criteria are met. International roaming rates, which vary by country, apply for all calls placed or received while outside the United States, Puerto Rico and U.S.V.I. Please consult [att.com/global](http://att.com/global) or call 866-246-4852 for a list of currently available countries and carriers. All countries may not be available for roaming. All carriers within available countries may not be available on certain plans or packages. Availability, quality of coverage and services while roaming are not guaranteed. When roaming internationally, you will be charged international roaming airtime rates including when incoming calls are routed to voicemail, even if no message is left. Taxes are additional. If you want to block the ability to make and receive calls or use data functions while roaming internationally, you may request that by calling 1-916-843-4685 (at no charge from your wireless phone).

#### 4.6.1.2 International Data:

Many Devices, including iPhone transmit and receive data messages without user intervention and can generate unexpected charges when powered "on" outside the United States, Puerto Rico and USVI. AT&T may send "alerts" via SMS or email, to notify you of data usage. These are courtesy alerts. There is no guarantee you will receive them. They are not a guarantee of a particular bill limit. Receipt of Visual Voicemail messages are charged at international data pay-per-use rates unless customer has an international data plan, in which case receipt of Visual Voicemail messages decrement Kilobytes included in such plan.

#### 4.6.1.3 Data Global Add-Ons and Global Messaging Plans:

Require that domestic data or messaging capability be in place. Rates apply only for usage within "roam zone" comprised of select carriers. Within the roam zone, overage rate applies if you exceed the MBs allotted for any Data Global Add-On Plan or the messages allotted for any Global Messaging

Package. International roaming pay-per-use rates apply in countries outside the roam zone. See [att.com/dataconnectglobal](http://att.com/dataconnectglobal) for current roam zone list. If you enroll after the beginning date of your billing cycle, the monthly charge and the data/message allotment included will be correspondingly reduced per day.

#### 4.6.1.4 Data Connect Global/North America Plans:

Do not include capability to place a voice call and require a 1 year agreement. For specific terms regarding international data plans, see Section 6.11.2 of the Wireless Customer Agreement.

#### 4.6.1.5 International Long Distance:

International rates apply for calls made and messages sent from the U.S., Puerto Rico and U.S.V.I. to another country. Calling or messaging to some countries may not be available. Calls to wireless numbers and numbers for special services, such as Premium Rated Services, may cost more than calls to wireline numbers. If a customer calls an overseas wireline number and the call is forwarded to a wireless number, the customer will be charged for a call terminated to a wireless number. International Long Distance calling rates are charged per minute and apply throughout the same footprint in which the customer's airtime package minutes apply.

#### 4.6.1.6 International Long Distance Text, Picture & Video Messaging:

Additional charges apply for premium messages and content. Messages over 300 KBs are billed an additional 50¢/message. For a complete list of countries, please visit [att.com/text2world](http://att.com/text2world)

#### 4.6.1.7 Cruise Ship Roaming:

Cruise ship roaming rates apply for calls placed or data used while on the ship.

#### 4.6.1.8 International Miscellaneous Export Restrictions:

You are solely responsible for complying with U.S. Export Control laws and regulations, and the import laws and regulations of foreign countries when traveling internationally with your Device.

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## 5.0 WHAT VOICE SERVICES DOES AT&T OFFER?

### 5.1 What Are The General Terms That Apply To All AT&T Voice Rate Plans?

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You may obtain usage information by calling customer service or using one of our automated systems. **Pricing/Taxes/No Proration:** Prices do not include taxes, directory assistance, roaming, Universal Service Fees, and other surcharges. Final month's charges are not prorated. **Activation Fees:** Activation Fee may apply for each new line. **Nights and Weekends:** Nights are 9:00 p.m. to 6:00 a.m. Weekends are 9:00 p.m. Friday to 6:00 a.m. Monday (based on time of day at the cell site or switch providing your Service). Included long distance calls can be made from the 50 United States, Puerto Rico and U.S. Virgin Islands to the 50 United States, Puerto Rico, U.S. Virgin Islands, Guam and Northern Mariana Islands. Roaming charges do not apply when roaming within the Services area of land-based networks of the 50 United States, Puerto Rico and U.S. Virgin Islands. Additional charges apply to Services used outside the land borders of the U.S., Puerto Rico and U.S. Virgin Islands.

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### 5.2 Voicemail

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Unless you subscribe to an Unlimited Voice Plan or are an upstate New York customer subscribing to Enhanced Voicemail, airtime charges apply to calls to your voicemail service, including calls where the caller does not leave a message, because the call has been completed, calls to listen to, send, reply to, or forward messages, or to perform other activities with your voicemail service, including calls forwarded from other phones to your voicemail service. You are solely responsible for establishing and maintaining security passwords to protect against unauthorized use of your voicemail service. For information as to the number of voicemail messages you can store, when voicemail messages will be deleted, and other voicemail features, see [att.com/wirelessvoicemail](http://att.com/wirelessvoicemail). We reserve the right to change the number of voicemails you can store, the length you can store voicemail messages, when we delete voicemail messages, and other voicemail features without notice. We may deactivate your voicemail service if you do not initialize it within a reasonable period after activation. We will reactivate the service upon your request. See [att.com/global](http://att.com/global) for information about using voicemail internationally.

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### 5.3 Voicemail-To-Text (VMTT)

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AT&T is not responsible, nor liable for: 1) errors in the conversion of or its inability to transcribe voicemail messages to text/email; 2) lost or misdirected messages; or, 3) content that is unlawful, harmful, threatening, abusive, obscene, tortious, or otherwise objectionable.

We do not filter, edit or control voice, text, or email messages, or guarantee the security of messages. We can interrupt, restrict or terminate VMTT without notice, if your use of VMTT adversely impacts AT&T's network, for example that could occur from abnormal calling patterns or an unusually large number of repeated calls and messages; or if your use is otherwise abusive, fraudulent, or does not comply with the law.

You are solely responsible for and will comply with all applicable laws as to the content of any text messages or emails you receive from VMTT that you forward or include in a reply to any other person. You authorize AT&T or a third party working on AT&T's behalf to listen to, and transcribe all or part of a voicemail message and to convert such voicemail message into text/email, and to use voicemail messages and transcriptions to enhance, train and improve AT&T's speech recognition and transcription services, software and equipment.

Charges for VMTT include the conversion of the voicemail message and the text message sent to your wireless device. Additional charges, however, may apply to receiving email on your wireless device from VMTT, as well as, replying to or forwarding VMTT messages via SMS (text) or email, depending on your plan.

SMS (text messaging) blocking is incompatible with VMTT. (If you do not have a texting plan on your handset, we add a texting pay per use feature when you add VMTT with text delivery.) If you are traveling outside the U.S. coverage area, you will incur international data charges for emails received from VMTT, as well as, charges for emails you respond to or forward from VMTT, unless you have an international data plan and the usage falls within the plan's usage limits.

Transcription times cannot be guaranteed. Customers purchasing email delivery are responsible for providing a correct email address and updating the email address when changes to the email account are made.

If you choose SMS (text) delivery, VMTT only converts the first 480 characters of a voicemail message into text and you will receive up to three text messages of a transcribed message. The transcription, therefore, may not include the entire voicemail message with SMS delivery. Adding VMTT will create a new voicemail box and all messages and greetings will be deleted from your current voicemail box.

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#### 5.4 Unlimited Voice Services

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Unlimited voice Services are provided primarily for live dialog between two individuals. If your use of unlimited voice Services for conference calling or call forwarding exceeds 750 minutes per month, AT&T may, at its option, terminate your Service or change your plan to one with no unlimited usage components.

Unlimited voice Services may not be used for monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which don't consist of uninterrupted live dialog between two individuals. If AT&T finds that you're using an unlimited voice Service offering for other than live dialog between two individuals, AT&T may, at its option terminate your Service or change your plan to one with no unlimited usage components. AT&T will provide notice that it intends to take any of the above actions, and you may terminate the agreement.

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#### 5.5 Caller ID

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Your caller identification information (such as your name and phone number) may be displayed on the Device or bill of the person receiving your call; technical limitations may, in some circumstances, prevent you from blocking the transmission of caller identification information. Contact customer service for information on blocking the display of your name and number. Caller ID blocking is not available when using Data Services, and your wireless number is transmitted to Internet sites you visit.

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#### 5.6 Rollover Minutes

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If applicable to your plan, Rollover Minutes accumulate and expire through 12 rolling bill periods. Bill Period 1 (activation) unused Anytime Minutes will not carry over. Bill Period 2 unused Anytime Minutes will begin to carry over. Rollover Minutes accumulated starting with Bill Period 2 will expire each bill period as they reach a 12-bill-period age. Rollover Minutes will also expire immediately upon default or if customer changes to a non-Rollover plan. If you change plans (including the formation of a FamilyTalk plan), or if an existing subscriber joins your existing FamilyTalk plan, any accumulated Rollover Minutes in excess of your new plan or the primary FamilyTalk line's included Anytime Minutes will expire. Rollover Minutes are not redeemable for cash or credit and are not transferable. If you change to non-AT&T Unity plans with Rollover Minutes (including the formation of a FamilyTalk plan) any accumulated Rollover Minutes in excess of your new non-AT&T Unity plan or the primary non-AT&T Unity FamilyTalk line's included Anytime Minutes will expire.

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#### 5.7 Mobile To Mobile Minutes

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If applicable to your plan, Mobile to Mobile Minutes may be used when directly dialing or receiving calls from any other AT&T wireless phone number from within your calling area. Mobile to Mobile Minutes may not be used for interconnection to other networks. Calls to AT&T voicemail and return calls from voicemail are not included.

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#### 5.8 Family Talk Plan

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If applicable to your plan, FamilyTalk may require up to a two-year Service Commitment for each line. FamilyTalk plans include only package minutes included with the primary number, and minutes are shared by the additional lines. The rate shown for additional minutes applies to all minutes in excess of the Anytime Minutes. FamilyTalk requires two lines. If the rate plan for the primary number is changed to an ineligible plan or the primary number is disconnected, one of the existing additional lines shall become the primary number on the rate plan previously subscribed to by the former primary number; if only one line remains, it shall be converted to the closest single line rate.

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#### 5.9 A-List

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A-List is available only with select Nation, FamilyTalk and Unity plans. Nation Plan and Individual Subscribers can place/receive calls to/from up to 5 (and FamilyTalk subscribers can place/receive calls to/from up to 10) wireline or wireless telephone numbers without being charged for airtime minutes. All qualifying lines on a FamilyTalk account share the same 10 A-List numbers. Only standard domestic wireline or wireless numbers may be added and A-List is only for domestic calls. Directory assistance, 900 numbers, chat lines, pay per call numbers, customer's own wireless or Voice Mail access numbers, numbers for call routing services and call forwarding services from multiple phones, and machine to machine numbers are not eligible. Depending on the PBX system, a private telephone system often serving businesses, AT&T may not be able to determine if your selected PBX A-List number is calling/receiving calls from your wireless number and airtime charges could apply. Forwarded calls will be billed based on the originating number, not the call forwarding number, and airtime charges may apply. Only voice calling is eligible. A-List number selections may only be managed online via MyWireless Account. Selected telephone numbers do not become active until 24 hours after added. AT&T reserves the right to block any A-List number and to reduce the amount of telephone numbers that can be used for A-List without notice. A-List is not eligible on Save/Promotional Plans.

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#### 5.10 AT&T Viva Mexico ("Mexico Plan") & AT&T Nation/FamilyTalk With Canada ("Canada Plan")

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Certain eligibility requirements apply. Anytime Minutes and Night and Weekend Minutes between Mexico and your U.S. wireless coverage area if you subscribe to the Mexico Plan, or Canada and your U.S. wireless coverage area if you subscribe to the Canada Plan, will be treated for billing purposes as calls to and from your U.S. wireless coverage area.

Calls made from or received in Mexico and Canada cannot exceed your monthly off-net usage allowance (the lesser of 750 min./mo. or 40% of your Anytime Minutes/mo.) in any two consecutive months. Calls made from or received in Mexico and Canada will not qualify as Mobile to Mobile Minutes. Special rates apply for data usage in Mexico and Canada. International long distance text, instant, picture and video messaging rates apply to messaging from the U.S. to Mexico and Canada and international roaming rates apply when such messages are sent from Mexico and Canada.

International Roaming charges apply when using voice and data Services outside Mexico and your U.S. wireless coverage area if you subscribe to the Mexico

Plan, and Canada and your U.S. wireless coverage area, if you subscribe to the Canada Plan. International long distance charges apply when calling to areas outside Mexico and your U.S. wireless coverage area if you subscribe to the Mexico Plan, and Canada and your U.S. wireless coverage area if you subscribe to the Canada Plan.

Anytime Minutes are primarily for live dialog between two people. You may not use your Services other than as intended by AT&T and applicable law. Plans are for individual, non-commercial use only and are not for resale. Unlimited Microcell Calling feature cannot be used on accounts with Viva Mexico and Nation Canada calling plans.

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## 5.11 AT&T Unity And AT&T Unity-FamilyTalk Plans Requirements

### 5.11.1 Eligibility Requirements:

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AT&T local and wireless combined bill required. For residential customers, qualifying AT&T local plan from AT&T required. For business customers, qualifying AT&T local service plan required. Specific AT&T Services that qualify vary by location; see [att.com](#) or call 1-800-288-2020. Certain business accounts are not eligible for Unity plans. Discounts on any other combined-bill wireless plans will be lost if an AT&T Unity plan is added to your combined bill. If an existing wireless plan is upgraded to an AT&T Unity plan, all discounts and promotions will be lost when subscribing to that plan.

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### 5.11.2 AT&T Unity Minutes:

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AT&T Unity Calling Minutes may be used when directly dialing or receiving calls from any other eligible AT&T wireline or wireless phone number from within your calling area. Calls to AT&T voicemail and return calls from voicemail not included. AT&T Unity Minutes are not included when checking usage for the current billing period.

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## 5.12 VoiceDial Services

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Regular airtime charges apply. Mobile to Mobile Minutes do not apply. Calls to 911, 411, 611, 711 and international dialing cannot be completed with VoiceDial Services. Caller ID cannot be blocked. Caller ID will be delivered on calls, even if you have permanently blocked your name and number. For complete terms and conditions, see [att.com/voicedial](#).

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## 5.13 AT&T Messaging Unlimited with Mobile to Any Mobile Calling Feature

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Available only with select Nation and FamilyTalk plans and can be discontinued at anytime. Messaging Unlimited Plan required. Mobile to Any Mobile minutes only apply when you directly dial another U.S. mobile number or directly receive a call from another U.S. mobile phone number from within your calling area in the U.S., Puerto Rico, or U.S.V.I. Mobile to Any Mobile is not available with the AT&T Viva Mexico or AT&T Nation/FamilyTalk with Canada plans. Calls made through Voice Connect, calls to directory assistance, and calls to voicemail and return calls from voicemail are not included. Also calls made to and calls received from mobile toll-free numbers, mobile chat lines, mobile directory assistance, calling applications, numbers for call routing and call forwarding services, and machine to machine numbers are not included. Calls to and from wireline numbers that a customer ports and uses as a wireless number will not be treated as a call from a mobile number or a call received from a mobile number, until after the number is ported and included in the wireless number database we use.

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## 6.0 WHAT DATA AND MESSAGING SERVICES DOES AT&T OFFER?

### 6.1 What Are The General Terms That Apply To All Data And Messaging Plans?

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AT&T provides wireless data and messaging Services, including but not limited to, features that may be used with Data Services and wireless content and applications ("Data Services"). The absolute capacity of the wireless data network is limited; consequently, Data Services may only be used for prescribed purposes. Pricing and data allowances for Data Services are device dependent and based on the transmit and receive capacity of each device.

**On Data Services with a monthly megabyte (MB) or gigabyte (GB) data allowance, once you exceed your monthly data allowance you will be automatically charged for overage as specified in the applicable rate plan. All data allowances, including overages, must be used in the billing period in which the allowance is provided. Unused data allowances will not roll over to subsequent billing periods.**

AT&T data plans are designed for use with only one of the following distinct device types: (1) Smartphones, (2) basic and Quick Messaging phones, (3) tablets, and (4) LaptopConnect cards, and (5) stand-alone Mobile Hotspot devices. A data plan designated for one type of device may not be used with another type of device. For example, a data plan designated for use with a basic phone or a Smartphone may not be used with a LaptopConnect card, tablet, or stand-alone Mobile Hotspot device, by tethering devices together, by SIM card transfer, or any other means. A data tethering plan, however, may be purchased for an additional fee to enable tethering on a compatible device. An Activation Fee may apply for each data line.

Consumer data plans do not allow access to corporate email, company intranet sites, and other business applications. Access to corporate email, company intranet sites, and/or other business applications requires an applicable Enterprise Data plan. Enterprise Email requires an eligible data plan and Device. Terms may vary depending on selected Enterprise Email solution.

AT&T RESERVES THE RIGHT TO TERMINATE YOUR DATA SERVICES WITH OR WITHOUT CAUSE, INCLUDING WITHOUT LIMITATION, UPON EXPIRATION OR TERMINATION OF YOUR WIRELESS CUSTOMER AGREEMENT.

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### 6.2 What Are The Intended Purposes Of The Wireless Data Service?

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Except as may otherwise be specifically permitted or prohibited for select data plans, data sessions may be conducted only for the following purposes: (i) Internet browsing; (ii) email; and (iii) intranet access (including access to corporate intranets, email, and individual productivity applications like customer relationship management, sales force, and field service automation). **While most common uses for Internet browsing, email and intranet access are**



permitted by your data plan, there are certain uses that cause extreme network capacity issues and interference with the network and are therefore prohibited. Examples of prohibited uses include, without limitation, the following: (i) server devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections or peer-to-peer (P2P) file sharing; (ii) as a substitute or backup for private lines, wireline s or full-time or dedicated data connections; (iii) "auto-responders," "cancel-bots," or similar automated or manual routines which generate excessive amounts of net traffic, or which disrupt net user groups or email use by others; (iv) "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email); (v) any activity that adversely affects the ability of other people or systems to use either AT&T's wireless services or other parties' Internet-based resources, including "denial of service" (DoS) attacks against another network host or individual user; (vi) accessing, or attempting to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of AT&T's wireless network or another entity's network or systems; (vii) software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle or any "keep alive" functions, unless they adhere to AT&T's data retry requirements, which may be changed from time to time. This means, by way of example only, that checking email, surfing the Internet, downloading legally acquired songs, and/or visiting corporate intranets is permitted, but downloading movies using P2P file sharing services, redirecting television signals for viewing on Personal Computers, web broadcasting, and/or for the operation of servers, telemetry devices and/or Supervisory Control and Data Acquisition devices is prohibited. Furthermore, plans (unless specifically designated for tethering usage) cannot be used for any applications that tether the device (through use of, including without limitation, connection kits, other phone/smartphone to computer accessories, BLUETOOTH® or any other wireless technology) to Personal Computers (including without limitation, laptops), or other equipment for any purpose. Accordingly, AT&T reserves the right to (i) deny, disconnect, modify and/or terminate Service, without notice, to anyone it believes is using the Service in any manner prohibited or whose usage adversely impacts its wireless network or service levels or hinders access to its wireless network, including without limitation, after a significant period of inactivity or after sessions of excessive usage and (ii) otherwise protect its wireless network from harm, compromised capacity or degradation in performance, which may impact legitimate data flows. You may not send solicitations to AT&T's wireless subscribers without their consent. You may not use the Services other than as intended by AT&T and applicable law. Plans are for individual, non-commercial use only and are not for resale. AT&T may, but is not required to, monitor your compliance, or the compliance of other subscribers, with AT&T's terms, conditions, or policies.

[See related links](#) | [See all legal](#)

### 6.3 What Are The Voice And Data Plan Requirements?

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A voice plan is required on all voice-capable Devices, unless specifically noted otherwise in the terms governing your plan.

An eligible tiered pricing data plan is required for certain Devices, including iPhones and other designated Smartphones. Eligible voice and tiered pricing data plans cover voice and data usage in the U.S. and do not cover International voice and data usage and charges. If it is determined that you are using a voice-capable Device without a voice plan, or that you are using an iPhone or designated Smartphone without an eligible voice and tiered data plan, AT&T reserves the right to switch you to the required plan or plans and bill you the appropriate monthly fees. In the case of the tiered data plan, you will be placed on the data plan which provides you with the greatest monthly data usage allowance. If you determine that you do not require that much data usage in a month, you may request a lower data tier at a lower monthly recurring fee.

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### 6.4 How Does AT&T Calculate My Data Usage/Billing?

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Data sent and received includes, but is not limited to downloads, email, application usage, overhead and software update checks. Unless designated for International or Canada use, prices and included use apply to access and use on AT&T's wireless network and the wireless networks of other companies with which AT&T has a contractual relationship within the United States and its territories (Puerto Rico and the U.S. Virgin Islands), excluding areas within the Gulf of Mexico.

Usage on networks not owned by AT&T is limited as provided in your data plan. Charges will be based on the location of the site receiving and transmitting service and not the location of the subscriber. Mobile Broadband and 4G access requires a compatible device.

Data Service charges paid in advance for monthly or annual Data Services are nonrefundable. Some Data Services may require an additional monthly subscription fee and/or be subject to additional charges and restrictions. Prices do not include taxes, directory assistance, roaming, universal services fees or other surcharges.

In order to assess your usage during an applicable billing period, you may obtain approximate usage information by calling customer service or using one of our automated systems.

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### 6.5 Text, Instant Messaging And Picture/Video Messaging

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If you do not enroll in a monthly recurring plan for messaging, data, or Video Share, you may have access to messaging, data, and video share services and be charged on a pay-per-use basis if you use those services.

Messages are limited to 160 characters per message. Premium text and picture/video messages are charged at their stated rates. Standard rates apply to all incoming messages when in the U.S. Different, non-standard per message charges apply to international messages sent from the U.S.

Text, Instant, Picture, and Video messages are charged when sent or received, whether read or unread, solicited or unsolicited. AT&T does not guarantee delivery of messages. Text, Instant, Picture, and Video messages, including downloaded content, not delivered within 3 days will be deleted. AT&T reserves the right to change this delivery period as needed without notification.

You are charged for each part of messages that are delivered to you in multiple parts. Picture/Video Messaging, data plan, and Text Messaging may need to be provisioned on an account in order to use Picture/Video Messaging. Some elements of Picture/Video messages may not be accessible, viewable, or heard due to limitations on certain wireless phones, PCs, or e-mail.

AT&T reserves the right to change the Picture/Video message size limit at any time without notification. Picture/Video Messaging pricing is for domestic messages only. When a single message is sent to multiple recipients, the sender is charged for one message for each recipient and each recipient is charged for the message received.

Text message notifications may be sent to non-Picture/Video Messaging subscribers if they subscribe to Text Messaging. You may receive unsolicited messages from third parties as a result of visiting Internet sites, and a per-message charge may apply whether the message is read or unread, solicited or unsolicited.

You agree you will not use our messaging services to send messages that contain advertising or a commercial solicitation to any person or entity without their

consent. You will have the burden of proving consent with clear and convincing evidence if a person or entity complains you did not obtain their consent. Consent cannot be evidenced by third party lists you purchased or obtained. You further agree you will not use our messaging service to send messages that: (a) are bulk messages (b) are automatically generated; (c) can disrupt AT&T's network; (d) harass or threaten another person (e) interfere with another customer's use or enjoyment of AT&T's Services; (f) generate significant or serious customer complaints, (g) that falsify or mask the sender/originator of the message; or (h) violate any law or regulation. AT&T reserves the right, but is not obligated, to deny, disconnect, suspend, modify and/or terminate your messaging service or messaging services with any associated account(s), or to deny, disconnect, suspend, modify and/or terminate the account(s), without notice, as to anyone using messaging services in any manner that is prohibited. Our failure to take any action in the event of a violation shall not be construed as a waiver of the right to enforce such terms, conditions, or policies. Advertising and commercial solicitations do not include messaging that: (a) facilitates, completes, or confirms a commercial transaction where the recipient of such message has previously agreed to enter into with the sender of such message; or (b) provides account information, service or product information, warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient of such message.

[See related links](#) | [See all legal](#)

## 6.6 AT&T My Media CLUB

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Your enrollment gives you the option to receive text messages each week on music trivia, news and more. Every 30 days your subscription will be automatically renewed and new credits added to your account which can be used to buy ringtones and graphics through the MEDIA Mall. Music, Voice, Sound Effect Tones, polyphonic ringtones & graphics are 1 credit. Unused credits expire at the end of each 30 day period. The 30 day period is not necessarily equivalent to a calendar month end or the billing cycle. You may terminate your subscription at any time by texting the word "STOP" to 7225. Any remaining credits will be available for the remainder of your subscription billing cycle. Savings claim based on price of Music Tones. Ringtone and graphics provided by independent providers.

[See related links](#) | [See all legal](#)

## 6.7 Mobile Email

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Requires e-mail account with compatible internet service provider and a downloaded or preloaded e-mail application for the wireless device. Access and use of Mobile Email is billed by total volume of data sent and received (in kilobytes) in accordance with your data plan. E-mail attachments can not be sent, downloaded, read, or forwarded on the mobile device. Only a paper clip icon appears indicating an attachment. You must view attachments from your PC. Upgrades to the application may be required in order to continue to use the Service. Wireless data usage charges will apply for downloading the application and any upgrades.

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## 6.8 Mobile Video

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Compatible Phone and eligible data plan required. Service not available outside AT&T's Mobile Broadband and 4G coverage areas. Premium content is charged at stated monthly subscription rates or at stated pay per view rates. Content rotates and is subject to withdrawal. Mobile Video is for individual use, not for resale, commercial purposes or public broadcast. Content can only be displayed on the device screen. No content may be captured, downloaded, forwarded, duplicated, stored, or transmitted. The content owner reserves and owns all content rights. All trademarks, service marks, logos, and copyrights not owned by AT&T are the property of their owners. Some Mobile Video content is intended for mature audiences and may be inappropriate for younger viewers. Parental guidance suggested. Use Parental Controls to restrict access to mature content. Content may be provided by independent providers, and AT&T is not responsible for their content. Providers may collect certain information from your use for tracking and managing content usage.

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## 6.9 AT&T Wi-Fi Services

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**AT&T Wi-Fi service use with a Wi-Fi capable wireless device is subject to the Terms of Services & Acceptable Use Policy ("Terms") found at [att.com/attwifitosaup](http://att.com/attwifitosaup). Your use represents your agreement to those Terms, incorporated herein by reference.** AT&T Wi-Fi Basic service is available at no additional charge to wireless customers with select Wi-Fi capable devices and a qualified data rate plan. Other restrictions may apply.

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## 6.10 DataConnect Plans

### 6.10.1 What Are the General Terms that Apply to All DataConnect Plans?

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A voice plan is not required with DataConnect plans.

We may, at our discretion, suspend your account if we believe your data usage is excessive, unusual or is better suited to another rate plan. If you are on a data plan that does not include a monthly MB/GB allowance and additional data usage rates, you agree that AT&T has the right to impose additional charges if you use more than 5 GB in a month; provided that, prior to the imposition of any additional charges, AT&T shall provide you with notice and you shall have the right to terminate your Data Service.

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### 6.10.2 Data Global Add-On/DataConnect Global Plans/DataConnect North America Plans

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Available countries, coverage and participating international carriers included in the "Select International Roam Zone" and "Select Canada/Mexico Roam Zone" vary from our generally available Canada/international wireless data roam zones and may not be as extensive. The Select International Roam Zone is restricted to select international wireless carrier(s). Select Canada/Mexico Roam Zone is restricted to select wireless carrier(s) and coverage areas within Canada and Mexico. See [att.com/dataconnectglobal](http://att.com/dataconnectglobal) for a current list of participating carriers and eligible roam zones. With respect to the countries included in the Select International Roam Zone, you will be restricted from accessing Data Service through any non-participating Canada/international wireless carriers that may otherwise be included in our generally available Canada and international wireless data roam zones. With the DataConnect North America Plan, you will be restricted from accessing Data Service through any non-participating Canada/Mexico wireless carriers that may otherwise be included in our generally available Canada and international wireless data roam zones.

DATA GLOBAL ADD-ON- May only be used with eligible Equipment. Domestic data usage not included. Qualified domestic wireless data plan required. If combined with a wireless voice plan that includes international voice roaming, your international wireless voice roaming in countries included in the Global

Data Add-On's Select International Roam Zone will be limited to the participating Canada/international wireless carriers and you will be restricted from voice roaming through any non-participating Canada/international wireless carriers that may otherwise be included in our generally available Canada and international voice roam zones.

DATACONNECT GLOBAL/NORTH AMERICA PLANS - Requires minimum one-year Service Commitment and you must remain on the plan, for a minimum one-year term. Voice access is restricted and prohibited.

[See related links](#) | [See all legal](#)

### 6.10.3 Pooled DataConnect Plans

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Pooled Data Connect Plans ("Pooled Plans") available only to customers with a qualified AT&T Business Agreement for wireless Services and their respective Corporate Responsibility Users ("CRUs"). Consolidated billing is required. WIN Advantage® may also be required. Within a single Foundation Account (FAN), Customer's CRUs on an eligible Pooled Plan aggregate or "pool" their included wireless data usage ("Included Usage"), creating a "Pool".

To pool together, each CRU in the Pool must subscribe to a Pooled Plan that has the same amount of Included Usage and the same Additional Kilobyte charge ("Similar Pooled Plan"). Every billing cycle, each CRU first uses his or her Included Usage. If a CRU does not use all his or her Included Usage it creates an underage in the amount of unused kilobytes ("Under Usage"). If a CRU uses more than his or her Included Usage it creates an overage with respect to kilobytes of data usage ("Over Usage"). The Pool's Under Usage kilobytes and Over Usage kilobytes are then aggregated respectively and compared. If the aggregate Under Usage kilobytes exceed the aggregate Over Usage kilobytes, then no CRU in the Pool pays Additional Kilobyte charges. If the aggregate Over Usage kilobytes exceeds the aggregate Under Usage kilobytes, then the ratio of Under Usage kilobytes to Over Usage kilobytes is applied to the data usage of each CRU in the Pool with Overage Usage, resulting in a monetary credit against the corresponding Additional Kilobyte charges.

For example, if a Pool has 900 Under Usage kilobytes and 1000 Over Usage kilobytes (90%), then each CRU with Over Usage will receive a credit equal to 90% of his or her Additional Kilobyte charges. CRUs changing price points or migrating to Pooled Plans during a bill cycle may result in one-time prorations or other minor impacts to the credit calculation. Credits will only appear on WIN Advantage®. Customer may have more than one Pool within a FAN provided that Customer may only have one Pool for Similar Pooled Plans within a FAN; however, an individual CRU can only be in one Pool at a time.

AT&T reserves the right to limit the number of CRUs in a Pool due to business needs and system limitations. CRUs on Pooled Plans and CRUs participating in a legacy Pooled Data Connect plan pool created prior to February 17, 2006 ("Legacy Pool") cannot be in the same Pool but can be within the same FAN. End users on non-pooling AT&T plans may be included in the same FAN as CRUs on Pooled Plans; however these non-pooling end users will not receive the pooling benefits or contribute Included Usage to a Pool.

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## 6.11 AT&T DataPlusSM/AT&T DataProSM Plans

### 6.11.1 AT&T Data Plans With Tethering

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Tethering is a wireless or wired method in which your AT&T mobile device is used as a modem or router to provide a Internet Access connection to other devices, such as laptops, netbooks, tablets, smartphones, other phones, USB modems, network routers, mobile hotspots, media players, gaming consoles, and other data-capable devices. AT&T data plans with tethering enabled may be used for tethering your AT&T Mobile device to other devices. If you are on a data plan that does not include a monthly megabyte allowance and additional data usage rates, you agree that AT&T has the right to impose additional charges if you use more than 5 GB in a month; prior to the imposition of any additional charges, AT&T shall provide you with notice and you shall have the right to terminate your Service (early termination charges may apply).

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### 6.11.2 Blackberry Personal

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Supports personal email access to up to 10 Internet email accounts. Users storing more than 1,000 emails or email older than 30 days, may have some emails automatically deleted. May not be used to access corporate email such as BlackBerry Enterprise Server.

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### 6.11.3 Blackberry Connect; Blackberry Enterprise; Blackberry International

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Supports BlackBerry Enterprise Server™ for corporate access (valid Client Access License required), and personal email access to up to 10 Internet email accounts as per BlackBerry Personal. BlackBerry International requires a minimum one-year agreement.

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## 6.12 GOOD Plan

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Requires compatible Good Server and, as to each end user, a compatible Good Client Access License (CAL) for use with a qualifying AT&T data plan. Solution includes software, products and related services provided by Good Technology, Inc. ("Good"), which are subject to applicable Good terms and conditions. Good is solely responsible for all statements regarding, and technical support for, its software, products and services.

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## 6.13 Microsoft Direct Push

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Requires compatible Microsoft Exchange Server and, as to each end user, a compatible device, a Direct Push enabled email account, and a qualifying AT&T Data Plan. Plans include end user customer support from AT&T for compatible devices. AT&T does not sell, supply, install or otherwise support Microsoft software, products or services (including without limitation, Exchange and Direct Push).

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## 7.0 ARE THERE OTHER TERMS AND CONDITIONS THAT APPLY TO FEATURES AND APPLICATIONS?

### ARE THERE OTHER TERMS AND CONDITIONS THAT APPLY TO FEATURES AND APPLICATIONS? [Print this section](#) | [Print this page](#)

Terms and conditions for certain features and applications are provided on the Device at the time of feature/application activation or first use. Certain features/applications will not be available in all areas at all times.

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## 8.0 WHAT IS AT&T ROADSIDE ASSISTANCE & OPTIONAL WIRELESS PHONE INSURANCE?

### 8.1 AT&T Roadside Assistance [Print this section](#) | [Print this page](#)

AT&T Roadside Assistance ("RA") is an optional feature that costs \$2.99/month per enrolled phone and is automatically billed to the wireless account. Customers may cancel at any time. New RA customers get the first 30 days for free. To cancel RA without incurring charges, contact AT&T by dialing 611 from your wireless phone within the first 30 days. RA covers up to four events per year with a maximum benefit of \$50/event. Towing services are for mechanical problems only. RA service is provided by Asurion Roadside Assistance Services, LLC, a licensed motor club. Refer to the RA Welcome Kit for complete terms and conditions [wireless.att.com/learn/en\\_US/pdf/roadside\\_assistance.pdf](http://wireless.att.com/learn/en_US/pdf/roadside_assistance.pdf).

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### 8.2 Optional Wireless Phone Insurance [Print this section](#) | [Print this page](#)

Customers have 30 days from the date of activation or upgrade to enroll. See a Wireless Phone Insurance brochure for complete terms and conditions of coverage, available at participating AT&T retail locations or by visiting [att.com/wirelessphoneinsurance](http://att.com/wirelessphoneinsurance). Key terms include: Premium: \$4.99/month. Non-refundable Deductible: from \$50-\$125/ per claim. Limits: 2 claims per 12 months, maximum replacement value of \$1500/ per claim. Replacements may be refurbished or of a different model. Cancel at any time for a prorated refund of the monthly charge. Wireless Phone Insurance is underwritten by Continental Casualty Company, a CNA company (CNA) and administered by Asurion Protection Services, LLC (Asurion Protection Services Insurance Agency, LLC CA Lic.#OD63161). Eligibility varies by device. Terms and Conditions are subject to change.

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## 9.0 WHAT OTHER TERMS AND CONDITIONS APPLY TO MY WIRELESS SERVICE?

### 9.1 Intellectual Property [Print this section](#) | [Print this page](#)

You must respect the intellectual property rights of AT&T, our third-party content providers, and any other owner of intellectual property whose protected property may appear on any website and/or dialogue box controlled by AT&T or accessed through the AT&T's websites. Except for material in the public domain, all material displayed in association with the Service is copyrighted or trademarked. Except for personal, non-commercial use, trademarked and copyrighted material may not be copied, downloaded, redistributed, modified or otherwise exploited, in whole or in part, without the permission of the owner. The RIM and BlackBerry families of related marks, images and symbols are the exclusive properties and trademarks or registered trademarks of Research In Motion Limited - used by permission. Good, the Good logo and GoodLink are trademarks of Good Technology, Inc., in the United States and/or other countries. Good Technology, Inc., and its products and services are not related to, sponsored by or affiliated with Research In Motion Limited. All other marks contained herein are the property of their respective owners.

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### 9.2 Severability [Print this section](#) | [Print this page](#)

If any provision of this Agreement is found to be unenforceable by a court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.

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### 9.3 Assignment; Governing Law; English Language

#### 9.3.1 Assignment [Print this section](#) | [Print this page](#)

AT&T may assign this Agreement, but you may not assign this Agreement without our prior written consent.

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#### 9.3.2 Governing Law [Print this section](#) | [Print this page](#)

The law of the state of your billing address shall govern this Agreement except to the extent that such law is preempted by or inconsistent with applicable federal law. In the event of a dispute between us, the law of the state of your billing address at the time the dispute is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable federal law.

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#### 9.3.3 English Language [Print this section](#) | [Print this page](#)

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

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#### 9.4 Lifeline Services

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As part of a federal government program, AT&T offers discounted wireless service to qualified low-income residents in selected states. For questions or to apply for Lifeline service, call 1-800-377-9450. Puerto Rico customers should contact 1-787-405-5463. For tips on how to protect against fraud, please visit the CPUC's website at, [CalPhoneInfo.com](http://CalPhoneInfo.com).

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#### 9.5 Trial Services

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Trial Services are subject to the terms and conditions of this Agreement; may have limited availability; and may be withdrawn at any time.

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### 10.0 WHAT TERMS APPLY ONLY TO SPECIFIC STATES?

#### 10.1 California: What If There Are Unauthorized Charges Billed To My Device?

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You are not liable for charges you did not authorize, but the fact that a call was placed from your Device is evidence that the call was authorized. You may submit documents, statements and other information to show any charges were not authorized. Unauthorized charges may include calls made to or from your phone or other Device after it was lost or stolen.

If you notify us of any charges on your bill you claim are unauthorized, we will investigate. We will advise you of the result of our investigation within 30 days. If you do not agree with the outcome, you may file a complaint with the California Public Utilities Commission and you may have other legal rights. While an investigation is underway, you do not have to pay any charges you dispute or associated late charges, and we will not send the disputed amount to collection or file an adverse credit report about it.

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#### 10.2 Connecticut: Questions About Your Service

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If you have any questions or concerns about your AT&T Service, please call Customer Care at 1-800-331-0500, dial 611 from your wireless phone, or visit [att.com/wireless](http://att.com/wireless). If you have questions about the Unlimited Local or Unlimited Long Distance Service, please call 1-800-288-2020 or visit [att.com](http://att.com). If you are a Connecticut customer and we cannot resolve your issue, you have the option of contacting the Department of Public Utility Control (DPUC). Online: [state.ct.us/dpuc](http://state.ct.us/dpuc); Phone: 1-866-381-2355; Mail: Connecticut DPUC, 10 Franklin Square, New Britain, CT 06051.

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#### 10.3 Puerto Rico

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If you are a Puerto Rico customer and we cannot resolve your issue, you may notify the Telecommunications Regulatory Board of Puerto Rico of your grievance. Mail: 500 Ave Roberto H. Todd, (Parada 18), San Juan, Puerto Rico 00907-3941; Phone: 1-787-756-0804 or 1-866-578-5500; Online: [rtpr.gobierno.pr](http://rtpr.gobierno.pr), in addition to using binding arbitration or small claims court to resolve your dispute.

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## **EXHIBIT 2**

370 F.Supp.2d 1135, 2005-2 Trade Cases P 75,008  
(Cite as: 370 F.Supp.2d 1135)

■

United States District Court,  
D. Kansas.  
In re: UNIVERSAL SERVICE FUND TELEPHONE  
BILLING PRACTICES LITIGATION  
This Order Relates to All Cases

No. 02-MD-1468-JWL.  
May 27, 2005.

**Background:** Customers sued long distance telephone services providers, claiming providers unlawfully charged customers sums greater than those required to pass through to customers charges imposed upon providers to finance Universal Service Fund (USF) for subsidizing telecommunications services for low income customers. The District Court, Lungstrum, J., 300 F.Supp.2d 1107, granted in part providers' motion to compel arbitration. Customer moved for relief from order compelling arbitration or, in alternative, for limited discovery.

**Holding:** The District Court, Lungstrum, J., held that it was not authorized to interfere with arbitration proceeding after compelling arbitration and staying claim.

Motion denied.

West Headnotes

[1] T 184

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement,  
and Contest  
25Tk184 k. Jurisdiction and Powers of  
Court. Most Cited Cases  
(Formerly 33k23.8 Arbitration)

Under Federal Arbitration Act, district court was not authorized to interfere with arbitration proceeding after compelling arbitration and staying claim, and thus plaintiff's motion for relief from arbitrator's de-

cision regarding whether dispute should be arbitrated under supplementary rules for class arbitration was denied, even though plaintiff claimed that defendant threatened arbitrator destroying impartiality; claim had to wait until court reviewed arbitral award. 9 U.S.C.A. § 1 et seq.

[2] T 184

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement,  
and Contest  
25Tk184 k. Jurisdiction and Powers of  
Court. Most Cited Cases  
(Formerly 33k23.8 Arbitration)

**Federal Courts 170B** 198

170B Federal Courts  
170BIII Federal Question Jurisdiction  
170BIII(C) Cases Arising Under Laws of the  
United States  
170Bk198 k. Arbitration. Most Cited Cases

Nothing in the Federal Arbitration Act grants or ousts the district court's jurisdiction over arbitrable claims. 9 U.S.C.A. § 1 et seq.

[3] T 184

25T Alternative Dispute Resolution  
25TII Arbitration  
25TII(D) Performance, Breach, Enforcement,  
and Contest  
25Tk184 k. Jurisdiction and Powers of  
Court. Most Cited Cases  
(Formerly 33k23.8 Arbitration)

The court may not interfere with an ongoing arbitration proceeding. 9 U.S.C.A. § 1 et seq.

[4] T 184

25T Alternative Dispute Resolution  
25TII Arbitration

370 F.Supp.2d 1135, 2005-2 Trade Cases P 75,008  
(Cite as: 370 F.Supp.2d 1135)

25TII(D) Performance, Breach, Enforcement,  
and Contest

25Tk184 k. Jurisdiction and Powers of  
Court. Most Cited Cases

(Formerly 33k23.8 Arbitration)

Allowing court to interfere in an arbitration proceeding would frustrate the Federal Arbitration Act's purpose to ensure that the arbitration procedure, when selected by the parties to a contract, is speedy and not subject to delay and obstruction in the courts. 9 U.S.C.A. § 1 et seq.

\*1136 Isaac L. Diel, Law Offices of Isaac L. Diel, Bonner Springs, KS, Jennifer F. Connolly, The Wexler Firm, Chicago, IL, Marc R. Stanley, Stanley Mandel & Iola, Dallas, TX, for Plaintiffs.

Christopher J. Leopold, Seattle, WA, Julie E. Grimaldi, Sprint, Mark D. Hinderks, Stinson Morrison Hecker LLP Overland Park, KS, Mark M. Iba, Stinson Morrison Hecker LLP, Lynn S. McCreary, Bryan Cave LLP, Kansas City, MO, Mark B. Blocker, Sidley Austin Brown & Wood, LLP, Chicago, IL, David P. Murray, Willkie Farr & Gallagher, Fred Campbell, Michael Nilsson, Patrick O'Donnell, Harris, Wiltshire & Grannis, LLP, Patricia C. Howard, Washington, DC, for Defendants.

#### MEMORANDUM AND ORDER

LUNGSTRUM, District Judge.

This multidistrict litigation consists of numerous putative class action lawsuits arising from the practices of defendants AT & T Corporation and Sprint Communications Company, L.P. and non-parties MCI WORLDCOM Network Services, Inc. and MCI WorldCom Communications, Inc. (collectively MCI) of charging their customers to recoup their contributions to the federal Universal Service Fund (USF) program. Plaintiffs are customers or former customers of defendants and MCI who allege that defendants and MCI engaged in an illegal scheme of conspiring to overcharge them for USF-fund surcharges, thereby creating a secret profit center. On December 1, 2003, the court entered a Memorandum and Order in this case that, in relevant part, compelled arbitration of plaintiff Thomas F. Cummings' claims in this case. *See generally In re Universal Serv. Fund Tel. Billing Practices Litig.*, 300 F.Supp.2d 1107, 1129-37 (D.Kan.2003). This matter is presently before the court on plaintiff Cummings' motion for relief from

the court's order compelling arbitration or, in the alternative, for limited discovery (doc. 393). For the reasons explained below, this motion is denied.

#### BACKGROUND

According to the allegations in plaintiffs' Second Consolidated and Amended Class Action Complaint (the complaint), plaintiff Cummings was at all relevant times a non-California AT & T residential customer. He was originally intended to serve as a named plaintiff representing all non-California\*1137 AT & T residential customers if the court had not compelled arbitration of his claims and, additionally, certified such a class. The court, however, did neither of those things. Instead, the court compelled arbitration of plaintiffs' Cummings' claims against defendants, thus rendering the class certification issue moot with respect to his claims. In the court's order compelling arbitration, the court noted that the arbitration provision "by its plain terms bans class actions as well as arbitration on a class-wide basis" and the court stated that it would "enforce the parties' arbitration agreement precisely as it is written." *Id.* at 1137-38.

Nearly ten months after the court's order, on October 25, 2004, plaintiff Cummings filed a demand for arbitration with the American Arbitration Association (the AAA). Notwithstanding the court's order compelling arbitration of plaintiff Cummings' claims on a non-class basis, plaintiff Cummings' arbitration demand sought class-wide arbitration of all non-California AT & T residential customers' claims. Subsequently, AT & T and plaintiff Cummings submitted letters to the AAA regarding whether the arbitration should proceed under the AAA's Supplementary Rules for Class Arbitration. On December 29, 2004, after consideration of the parties' positions on this issue, a case manager with the AAA advised the parties as follows:

[I]n the absence of an agreement by the parties or a clarification from the court, the Association will proceed with administration pursuant to ... the Supplementary Rules for Class Arbitrations, pursuant to the request made on the Demand for Arbitration dated October 25, 2004. *The parties may wish to raise this issue, upon appointment of the arbitrator.*

(Emphasis added.)

370 F.Supp.2d 1135, 2005-2 Trade Cases P 75,008  
(Cite as: 370 F.Supp.2d 1135)

On March 7, 2005, counsel for AT & T sent a letter to the AAA's chief executive officer. This letter is at the heart of the current motion. In the letter, counsel for AT & T asked the AAA's CEO to overrule the AAA's staff decision to administer plaintiff Cummings' arbitration demand under the Supplementary Rules for Class Arbitration. The letter argued that doing so was contrary to the AAA's Policy on Class Arbitrations. The letter reasoned that one of AAA's chief competitors, JAMS, had recently adopted a policy of disregarding contractual provisions that expressly prohibit class actions and that, "[a]s a result of the JAMS policy, it appears that ADR users are changing their clauses to delete JAMS as the chosen forum." By comparison, counsel for AT & T stated that, according to his knowledge, "the AAA has not seen an exodus of ADR users similar to that experienced by JAMS, because the [AAA's] Class Arbitration Policy makes it clear that the AAA will respect a class action prohibition unless a court rules otherwise." The letter concluded that if the AAA is not going to follow its own policy then "it should withdraw that policy and issue a clear and accurate statement as to its real policy, so that ADR users can make an informed decision whether to include the AAA in their clauses."

On March 15, 2005, plaintiff Cummings filed the current motion in which he characterizes the letter as threatening the AAA with a mass exodus of ADR users if the AAA did not reverse its position regarding whether plaintiff Cummings' arbitration would be administered on a class basis. The letter further implicitly threatened the AAA with the loss of AT & T's future business. Plaintiff Cummings argues that this threat was improperly geared toward economic considerations, not the merits of the issue. Consequently, this destroyed the AAA's impartiality and the court will ultimately be unable to enforce\*1138 the arbitration award because it was procured by undue means.

On March 18, 2005, which was only eleven days after AT & T sent the letter to the AAA's CEO, the AAA sent the parties another letter reversing the AAA's prior position. The letter explained that the AAA had reviewed this court's order compelling arbitration which stated that the court was enforcing "the parties' arbitration agreement precisely as it is written." Thus, "contrary to the [AAA]'s prior understanding, it does not appear that Mr. Cummings' class claims have been directed to arbitration by the Court."

## ANALYSIS

[1] For the reasons explained below, the court does not condone the manner in which counsel for AT & T handled this matter. Nonetheless, having compelled arbitration and stayed plaintiff Cummings' claims, the court is not authorized by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (FAA), to interfere with the ongoing arbitration proceeding. Plaintiff Cummings' arguments that AT & T's threat destroyed the impartiality of the AAA and will result in an arbitration award procured by undue means must wait until this court reviews the arbitral award. Accordingly, plaintiff Cummings' motion is denied.

[2] As a threshold matter, the court rejects AT & T's argument that this court does not have jurisdiction to consider plaintiff Cummings' interlocutory arguments. The complaint invoked this court's diversity, federal question, and supplemental jurisdiction. The circumstances that gave rise to that jurisdiction are unchanged because the court did not dismiss plaintiff Cummings' claims when it compelled arbitration. Nothing in the Federal Arbitration Act grants or ousts the district court's jurisdiction over arbitrable claims. *Meyer v. Dans un Jardin, S.A.*, 816 F.2d 533, 538-39 (10th Cir.1987); see also *LaPrade v. Kidder Peabody & Co.*, 146 F.3d 899, 900 (D.C.Cir.1998) (district court's jurisdiction derived from the original diversity suit, not the FAA). The FAA simply directs the court to "stay the trial of the action until such arbitration has been had." 9 U.S.C. § 3. Thus, the court retains continuing jurisdiction over plaintiff Cummings' claims against AT & T.

[3][4] Nonetheless, with that being said, the FAA does not authorize the court to interfere with ongoing arbitration proceedings by making interlocutory rulings concerning the arbitration. Under the FAA, the court's role is limited to determining, first, the issue of whether arbitration should be compelled. *Id.* §§ 3-4. If so, then the court may next confirm, vacate, or modify the award. *Id.* § 9-11. The court may not, however, interfere with the ongoing arbitration proceeding. See *LaPrade*, 146 F.3d at 903 (the FAA contemplates that courts should not interfere with arbitrations by making interlocutory rulings); *Smith, Barney, Harris Upham & Co. v. Robinson*, 12 F.3d 515, 520-21 (5th Cir.1994) (as long as a valid arbitration agreement exists and the specific dispute falls within the substance and scope of that agreement, the court may not interfere with the

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arbitration proceedings); *Miller v. Aaacon Auto Transport, Inc.*, 545 F.2d 1019, 1020-21 (5th Cir.1977) (per curiam) (once the court is satisfied that the dispute is referable to arbitration, the court must allow the arbitration to proceed in accordance with the terms of the parties' agreement). This principle is grounded in the notion that allowing such interference would frustrate the FAA's purpose to ensure "that the arbitration procedure, when selected by the parties to a contract, [is] speedy and not subject to delay and obstruction in the courts." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, 87 S.Ct. 1801, 18 L.Ed.2d \*1139 1270 (1967); see also *Moses H. Cone Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983) (stating that the purpose of the FAA is to "move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible").

This does not mean that upon entering the order compelling arbitration the court must entirely refrain from acting again until the arbitration award is finalized. The court may enforce its order compelling arbitration by, for example, imposing sanctions against a party who contradicts the court's order compelling arbitration, see generally *LaPrade*, 146 F.3d at 899 (district court did not abuse its discretion by imposing sanctions against a party who was ordered to arbitrate the dispute because that party clearly contradicted the order by going to state court to seek an order staying the arbitration without informing the state court about the federal district court's order compelling arbitration), or revoking the order if the party who sought to compel arbitration is "in default in proceeding with such arbitration," 9 U.S.C. § 3; see also *Miller*, 545 F.2d at 1020-21 (noting the court may vacate a stay pending arbitration if the defendant hinders the progress of arbitration). The court may also make sure that its original order compelling arbitration was correct by, for example, reconsidering the ruling to ensure that it was not "improvidently granted." *Miller*, 545 F.2d at 1020. An order compelling arbitration, however, cannot have been improvidently granted based upon the manner in which the arbitral forum is handling the dispute because those types of issues arise after the court has already determined the threshold issue of arbitrability. The FAA requires the court to address the propriety of the manner in which the arbitral forum handles the dispute by virtue of judicial review of the arbitral award. See, e.g., 9 U.S.C. § 10 (authorizing the district court to vacate an arbitration award that was procured by corruption, fraud, or un-

due means; where there was evident partiality or corruption in the arbitrator; where the arbitrator was guilty of misconduct or misbehavior, or where the arbitrator exceeded his or her powers); see generally, e.g., *Gulf Guar. Life Ins. Co. v. Connecticut Gen.*, 304 F.3d 476 (5th Cir.2002) (holding the district court committed reversible error by striking a particular individual from serving as an arbitrator; evaluation of arbitrator bias must wait until after the award); *Vestax Securities Corp. v. Desmond*, 919 F.Supp. 1061, 1076 (E.D.Mich.1995) (court would not grant interlocutory relief based on an allegation of institutional bias and misconduct by the arbitral forum).

In this case, then, the court is unpersuaded that it has any authority under the FAA to grant plaintiff Cummings the type of interlocutory relief that he seeks by interfering with the AAA's decision regarding whether the dispute should be arbitrated under the AAA's Supplementary Rules for Class Arbitration. Plaintiff Cummings' arguments that AT & T's threat destroyed the impartiality of the AAA and will result in an arbitration award procured by undue means must wait until this court reviews the arbitral award. The cases cited by plaintiff Cummings do not persuade the court otherwise. The only one of those cases that even arguably involved interference with an ongoing arbitration is *Metropolitan Property & Casualty Insurance Co. v. J.C. Penney Casualty Insurance Co.*, 780 F.Supp. 885 (D.Conn.1991). That case, however, involved a vastly different procedural posture in which the district court was evaluating its diversity jurisdiction on removal and, in doing so, determined whether an allegedly partial arbitrator was more than a nominal party whose in-state presence defeated jurisdiction. In evaluating the \*1140 issue of whether the court should interfere with an ongoing arbitration proceeding by disqualifying the arbitrator, the district court touched upon some of the issues presented in this case. The court finds the reasoning of the case to be unpersuasive for numerous reasons, many of which are perhaps attributable to the particular procedural posture of that case. In any event, suffice it to say that the court is not bound by the district court's holding in that case and, more importantly, is unwilling to adopt that reasoning because it would require the court to go beyond the plain language of the FAA and also to disregard appellate-level case law, discussed previously, to the contrary.

Although the court is without power to interfere

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with the ongoing arbitration proceeding at this time, the court does wish to observe briefly that it flatly rejects AT & T's argument that its conduct before the AAA was entirely appropriate. It appears to the court that the AAA's staff's original decision was consistent with the AAA's Policy on Class Arbitrations. That policy states, in relevant part, that the AAA will administer demands for class arbitration pursuant to its class arbitration rules if the underlying agreement is silent with respect to class claims, but that the AAA will not accept for administration "demands for class arbitration where the underlying agreement prohibits class claims ... unless an order of a court directs the parties to the underlying dispute to submit their dispute to an arbitrator or to the Association." Policy on Class Arbitrations, ¶ 2 (emphasis added). This policy plainly states that the AAA will accept a demand for arbitration, even if the underlying contract prohibits class arbitration, if there is a court order compelling arbitration of the dispute. The policy does not explicitly state that the party seeking to compel arbitration also needs to obtain a court order that the prohibition on class actions is unenforceable.

It also appears to the court that the AAA's staff's decision was consistent with the AAA's Supplementary Rules for Class Arbitration, which contemplate that the arbitrator will decide the issue of the enforceability of a class action prohibition such as the one contained in AT & T's contract with plaintiff Cummings. As a threshold matter, the Supplementary Rules for Class Arbitration apply "where a party submits a dispute to arbitration on behalf of or against a class or purported class" and also "whenever a court refers a matter pleaded as a class action to the AAA for administration." Supplementary Rules for Class Arbitrations § 1(a) (effective October 8, 2003). In this case, plaintiff Cummings submitted his dispute to arbitration on behalf of a purported class and the original matter in this court was pleaded as a class action. Thus, it appears that the AAA's staff was again following these rules when it advised the parties that the matter would be administered under the class arbitration rules. The Supplementary Rules for Class Arbitration provide that the arbitrator will then decide whether the arbitration will proceed on behalf of a class. *Id.* § 3 (requiring the arbitrator to "determine as a threshold matter ... whether the applicable arbitration clause permits the arbitration to proceed on behalf of or against a class"). Thus, the fact that the AAA's staff made a preliminary determination to administer the action under the Supplementary Rules for Class Ar-

bitrations did not mean that the dispute would necessarily proceed through arbitration as a class proceeding. Rather, the enforceability of the prohibition on class actions was to be determined by the arbitrator. Notably consistent with this policy was the AAA's staff's December 29, 2004, letter to the parties which pointed out to the parties that they could raise this issue again upon appointment of the arbitrator.

\*1141 Moreover, it appears highly likely that the arbitrator would have enforced the prohibition on class arbitration if the arbitrator had been given the opportunity to do so. As the court ruled previously, the underlying contract clearly prohibits class-wide arbitration. Furthermore, the Supplementary Rules for Class Arbitration provide that whenever a court has resolved a matter that would otherwise be decided by an arbitrator, "the arbitrator shall follow the order of the court." *Id.* § 1(c). AT & T, however, did not allow the AAA the opportunity to follow its own rules and allow the arbitrator to resolve this issue. The court is not opining on plaintiff Cummings' undue means argument. As explained previously, the court cannot resolve that issue until this court is confronted with an arbitration award to review. The court observes, however, that the appearance has been created that counsel for AT & T used AT & T's economic power to successfully persuade the AAA to prematurely bend its own rules. The court can certainly understand that such tactics may legitimately have aroused suspicions by plaintiff Cummings.

Lastly, because the court has concluded that the FAA does not give this court the power to interfere with the arbitration proceedings, discovery on this issue is likewise unwarranted.

**IT IS THEREFORE ORDERED BY THE COURT** that plaintiff Cummings' motion for relief from order compelling arbitration or, in the alternative, for limited discovery (doc. 393) is denied.

**IT IS FURTHER ORDERED** that AT & T's motion for leave to cite additional authority (doc. 444) is denied as moot. The court notes that in resolving plaintiff Cummings' motion the court did not consider the information contained in AT & T's motion for leave to cite additional authority.

D.Kan.,2005.

In re Universal Service Fund Telephone Billing Prac-



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**(Cite as: 370 F.Supp.2d 1135)**

tices Litigation  
370 F.Supp.2d 1135, 2005-2 Trade Cases P 75,008

END OF DOCUMENT

# EXHIBIT 3



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July 26, 2011

**By email only**

Neal S. Berinhout  
Associate General Counsel  
AT&T Mobility LLC  
[nb2520@att.com](mailto:nb2520@att.com)

Re: Demands for Arbitration Challenging AT&T's Takeover of T-Mobile

Dear Mr. Berinhout:

Your letter of yesterday was an improper attempt to influence the AAA to administer these cases in a manner inconsistent with AAA's own rules, and to usurp the authority of the arbitrator to decide the issues in this dispute in each individual case. Your attempt to corrupt the arbitration process, and to solicit bias and partiality from AAA rather than neutrality, threatens to undermine the integrity of these arbitration proceedings. Please refrain from any further actions of this sort, which are fundamentally inconsistent with the parties' agreement to arbitrate.

We are familiar with AT&T's tactics of attempting to intimidate AAA administrators. *See, e.g., In re Universal Service Fund Tel. Billing Practices Litig.*, 2005 WL 1274381, at \*5 (D. Kan. May 27, 2005) (“[C]ounsel for AT&T used AT&T’s economic power to successfully persuade the AAA to prematurely bend its own rules.”). We are also familiar with your personal history of unethical conduct in disputes with AT&T customers involving arbitration. *See, e.g., Trujillo v. Apple Computer, Inc.*, 578 F.Supp.2d 979, 989 (N.D. Ill. 2008) (attached) (detailing Mr. Berinhout’s submission of false declarations, misrepresentations and numerous instances of perjury in connection with AT&T’s motion to compel arbitration against a customer, which the court described as “vexatious[]” and “bad faith” conduct). As Judge Kennelly commented, “[o]ne has the right to expect better ... from Berinhout, a lawyer.” *Id.* at 988.

Your letter of yesterday was improper. I want to urge you in the strongest terms to refrain from the type of unethical conduct that AT&T, and you personally, have previously committed. Please refrain from further improper communications with AAA, and from any further attempts to corrupt the arbitration process.

Very truly yours,

A handwritten signature in blue ink that reads 'Scott A. Bursor'. The signature is written in a cursive, flowing style.

Scott A. Bursor

Copies by email only:

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Attachment 1:            *Trujillo v. Apple Computer, Inc.*,  
578 F.Supp.2d 979, 989 (N.D. Ill. 2008)

# **EXHIBIT 1**

578 F.Supp.2d 979  
 (Cite as: 578 F.Supp.2d 979)

■

United States District Court,  
 N.D. Illinois,  
 Eastern Division.  
 Jose TRUJILLO, on behalf of himself and all others  
 similarly situated, Plaintiff,  
 v.  
 APPLE COMPUTER, INC. and AT & T Mobility  
 LLC, Defendants.

No. 07 C 4946.  
 Sept. 22, 2008.

**Background:** Purchaser of a mobile phone sued the phone's seller and the exclusive provider of wireless service for the phone, asserting claims of fraud, breach of contract, breach of implied warranty, unjust enrichment, and violation of the Illinois Consumer Fraud Act regarding the limited life of the phone's battery and what was required to replace it. Seller removed the action from state court, and the service provider moved to compel arbitration.

**Holding:** The District Court, Matthew F. Kennelly, J., held that arbitration agreement was unenforceable due to procedural unconscionability.

Motion denied.

West Headnotes

**[1] Alternative Dispute Resolution 25T 134(6)**

25T Alternative Dispute Resolution  
 25TII Arbitration  
   25TII(B) Agreements to Arbitrate  
     25Tk131 Requisites and Validity  
     25Tk134 Validity  
       25Tk134(6) k. Unconscionability.  
 Most Cited Cases

Under Illinois law, an arbitration requirement of an agreement between the buyer of a mobile phone and the exclusive provider of wireless service for the phone was unenforceable, due to procedural uncon-

scionability, where the agreement was not available to the buyer before or when he purchased the phone; no paper copy of any documents explaining or referencing the terms of service, including in particular the arbitration requirement, were available at the store where the buyer purchased the phone, the only version of the terms of service that he would have seen had he known to search online was out of date, and in any event there was no evidence of how he would have known that the service terms were available on the Internet. 9 U.S.C.A. § 2.

**[2] Alternative Dispute Resolution 25T 112**

25T Alternative Dispute Resolution  
 25TII Arbitration  
   25TII(A) Nature and Form of Proceeding  
     25Tk112 k. Contractual or Consensual Basis. Most Cited Cases

Party cannot be compelled to arbitrate a dispute that he has not agreed to arbitrate.

**[3] Alternative Dispute Resolution 25T 210**

25T Alternative Dispute Resolution  
 25TII Arbitration  
   25TII(D) Performance, Breach, Enforcement, and Contest  
     25Tk204 Remedies and Proceedings for Enforcement in General  
     25Tk210 k. Evidence. Most Cited Cases

Under the Federal Arbitration Act, the party resisting arbitration bears the burden of showing that the claim at issue is unsuitable for arbitration. 9 U.S.C.A. § 2.

**[4] Alternative Dispute Resolution 25T 134(3)**

25T Alternative Dispute Resolution  
 25TII Arbitration  
   25TII(B) Agreements to Arbitrate  
     25Tk131 Requisites and Validity  
     25Tk134 Validity  
       25Tk134(3) k. Validity of Assent.  
 Most Cited Cases

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### Alternative Dispute Resolution 25T 134(6)

25T Alternative Dispute Resolution  
 25TII Arbitration  
 25TII(B) Agreements to Arbitrate  
 25Tk131 Requisites and Validity  
 25Tk134 Validity  
 25Tk134(6) k. Unconscionability.  
 Most Cited Cases

### Federal Courts 170B 403

170B Federal Courts  
 170BVI State Laws as Rules of Decision  
 170BVI(C) Application to Particular Matters  
 170Bk403 k. Arbitration. Most Cited Cases

Under the Federal Arbitration Act, when a party challenges the validity of an agreement to arbitrate, a court applies the relevant state law principles that govern the formation of contracts; general state-law contract defenses such as fraud, duress, or unconscionability may operate to invalidate arbitration agreements, allowing a party to avoid having to arbitrate his dispute. 9 U.S.C.A. § 2.

### [5] Contracts 95 1

95 Contracts  
 95I Requisites and Validity  
 95I(A) Nature and Essentials in General  
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

Unconscionability under Illinois law has both procedural and substantive facets; a finding of unconscionability may be based on either procedural or substantive unconscionability, or a combination of both.

### [6] Contracts 95 1

95 Contracts  
 95I Requisites and Validity  
 95I(A) Nature and Essentials in General  
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

Under Illinois law, procedural unconscionability exists when a contract provision is so difficult to locate, read, or understand that a party cannot fairly be said to have been aware he was agreeing to it.

### [7] Contracts 95 1

95 Contracts  
 95I Requisites and Validity  
 95I(A) Nature and Essentials in General  
 95k1 k. Nature and Grounds of Contractual Obligation. Most Cited Cases

Under Illinois law, procedural unconscionability analysis takes into account the relative bargaining power of the parties to the agreement and inquires whether there has been some impropriety during the process of forming the contract depriving a party of a meaningful choice.

### [8] States 360 18.3

360 States  
 360I Political Status and Relations  
 360I(B) Federal Supremacy; Preemption  
 360k18.3 k. Preemption in General. Most Cited Cases

Federal law may preempt state law in one of three ways: expressly, impliedly through the doctrine of conflict preemption, or through the doctrine of field preemption. U.S.C.A. Const. Art. 6, cl. 2.

**\*980** James R. Rowe, The Law Firm of Rowe & Associates, Larry D. Drury, Larry D. Drury, Ltd., Chicago, IL, for Plaintiff.

Johanna W. Roberts, Penelope A. Prevolos, Morrison & Foerster LLP, San Francisco, CA, Patrick Thomas Stanton, Dykema Gossett, PLLC, Chicago, IL, for Defendants.

#### **MEMORANDUM OPINION AND ORDER**

MATTHEW F. KENNELLY, District Judge:

Jose Trujillo has sued AT & T Mobility LLC (ATTM)<sup>FN1</sup> and Apple Computer, Inc. (Apple). His lawsuit concerns an iPhone that he purchased at an Apple retail store in Oak Brook, Illinois in early July 2007 and then gave to Dawn Trujillo as a gift.

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(Cite as: 578 F.Supp.2d 979)

FN1. In his original complaint filed in state court, Trujillo named AT & T Inc. as a defendant. In his amended complaint, filed after Apple removed the case to federal court, Trujillo substituted AT & T Mobility LLC. The Court made an inquiry regarding AT & T Mobility's citizenship and has determined, based on the results of that inquiry, that the minimal-diversity requirement of the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), is met and that no grounds for abstention under that statute exist.

ATTM is the exclusive provider of wireless service for the iPhone. A person who signs up with ATTM for iPhone service must do so for a minimum of two years. The iPhone's battery, however, may not last that long; even though it is rechargeable, it must be replaced after about 300 charges. To replace the battery, the iPhone user must send the device to Apple, incurring a \$79 service fee plus shipping charges and an additional fee for the use of a loaner iPhone in the interim. The only alternative for the user is to cancel his service with ATTM before the end of the two year term, which results in a significant early termination fee.

Trujillo contends that in marketing and promoting the iPhone before it was launched for sale, both Apple and ATTM hid information about the limited life of the \*981 battery and what is required to replace it, thus misleading consumers about the true cost of the iPhone. He has sued both companies for fraud, breach of contract, breach of implied warranty, unjust enrichment, and violation of the Illinois Consumer Fraud Act.

ATTM has moved to compel arbitration; it argues that pursuant to its service contract with Trujillo, his claims against ATTM must be submitted to arbitration on an individual basis. The Court denies ATTM's motion. The agreement that ATTM contends requires arbitration of Trujillo's claims was not available to Trujillo before or when he purchased the iPhone—a factor that, under Illinois law, is critical to enforceability.

## Facts

### 1. Outline of Trujillo's claims

The iPhone is a combined wireless telephone and internet access device, manufactured by Apple. Both

Apple and ATTM (known until January 2007 as Cingular Wireless) sold the iPhone at their respective retail stores at the relevant time. ATTM is the sole licensed provider of wireless service for the iPhone. When a prospective iPhone user contracts for service with ATTM, he must sign up for a minimum of two years.

Trujillo's lawsuit concerns the durability of the iPhone's battery. After recharging the battery about 300 times, a user must send his iPhone to Apple for battery replacement. This typically occurs, Trujillo alleges, inside of two years after purchase. When the user send in the device for battery replacement, he incurs a \$79 service fee plus shipping charges and an additional fee for the use of a loaner iPhone in the interim.

Trujillo alleges that given ATTM's two year minimum service term, the charges connected with battery replacement amount to “a de facto annual maintenance and/or service charge” worth nearly one-fifth of the iPhone's purchase price. Am. Compl. ¶ 22. He alleges that in marketing and promoting the iPhone, both Apple and ATTM hid information about the iPhone battery's limited life and the details of Apple's battery replacement program until after the device was launched for sale to the public. This, Trujillo alleges, misled consumers about the “true nature of the iPhone and its actual expense.” Am. Compl. ¶ 31. Trujillo asserts claims of common law fraud, breach of contract, implied warranty, and unjust enrichment, and violation of the Illinois Consumer Fraud Act.

The facts relevant to ATTM's motion to compel arbitration have emerged slowly. After the Court questioned the foundation for certain of ATTM's contentions, ATTM submitted supplemental materials. Those materials revealed that ATTM's initial factual submission had been false in several material respects. The Court will lay out these circumstances in some detail as it reviews the relevant facts.

### 2. Trujillo's purchase of an iPhone

As noted at the outset of this decision, Trujillo's claims concern an iPhone that he purchased. *See* Am. Compl. ¶ 8. Trujillo purchased an iPhone from an Apple retail store in Oak Brook, Illinois on July 2, 2007. He paid \$533.93-\$499.00 plus sales tax of \$34.93. The sales receipt from the Apple store, which



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Trujillo provided as part of a supplement to his response to ATTM's motion to compel arbitration, stated that he could return the iPhone by July 16, 2007 but would be charged a "\$49.90 fee if opened," i.e., if the box in which the device was sold had already been opened. Pl. Suppl. Resp. to Def. Mot. to Compel Arb., Ex. B.

It appears Trujillo bought the iPhone as a gift for Dawn Trujillo, a non-party to this \*982 lawsuit. Their exact relationship has not been addressed but is of no consequence to the current dispute. ATTM's records show that Dawn Trujillo later activated that iPhone on her pre-existing account with ATTM.

### 3. Availability of ATTM service terms to Trujillo in connection with his iPhone purchase

In its opening and reply briefs, ATTM argued that before Trujillo bought the iPhone, he had access, by two separate means, to ATTM's terms of service, which contains the arbitration provision that serves as the basis for its motion to compel Trujillo to arbitrate his claims. ATTM also argued that Trujillo had the opportunity to read the terms of service in full when he initiated service for the iPhone with ATTM. Thus, ATTM argued, Trujillo could not contend that ATTM's service agreement, including its arbitration requirement, was hidden or that he was unaware of it.

To support its argument, ATTM submitted with its opening brief an affidavit from an ATTM in-house attorney named Neal Berinhout. Berinhout swore that he had personal knowledge of the facts stated in his affidavit. Berinhout Affid. ¶ 2. In his affidavit, Berinhout stated that ATTM's records reflected that Trujillo had purchased an iPhone at a retail store on an unspecified date and then activated wireless service online on July 5, 2007. *Id.* ¶ 7.

Berinhout stated that in the course of purchasing an iPhone from a retail store, "customers also receive an iPhone rate plan and a separate document summarizing the activation process, available rate plans, and the return policy." *Id.* ¶ 8. Berinhout included copies of these documents with his affidavit. The document concerning the iPhone activation process states that wireless service for the device can be obtained only from ATTM and that a two-year service agreement is required. *Id.*, Ex. B. This same document also states that one activates the device online, via the Internet. *Id.* It also states, in bold print, that "**You can return**

**your iPhone within 14 days for a full refund, but there is a 10% restocking fee if the box has been opened."** *Id.* The other document, identifying the rate plan, states that "[a]n early termination fee of \$175 applies if service is terminated before the end of the contract term," which as noted earlier is two years. *Id.*, Ex. A. It states that this fee will be waived "[i]f [the] phone is returned within 14 days in like-new condition with all components" and that the "activation fee" of \$36 would be refunded if the phone is returned within three days. *Id.* The rate plan states, however, that "[a]ll other charges apply" and that "[s]ome dealers impose additional fees." *Id.* The documents make no reference to the requirement of arbitration.

In his affidavit, Berinhout stated that "[t]he ATTM Terms of Service booklet, which contains the terms and conditions of wireless service"-including the arbitration provision at issue in this case-is "available in the store and online by going to <http://www.wireless.att.com> and clicking on 'Wireless Service Agreement' at the bottom of the web page." *Id.* ¶ 9. Berinhout included with his affidavit a copy of the terms of service that he said were in effect "at the time that Mr. Trujillo purchased his iPhone...." *Id.* ¶ 9 & Ex. C.

In his response to ATTM's motion, Trujillo raised no issue regarding the accuracy of Berinhout's affidavit. In reviewing the briefs, however, the Court became concerned about the evidentiary foundation for Berinhout's statements regarding Trujillo's claimed access to the ATTM terms of service before or when he purchased the iPhone. Those statements bore directly on the issue of procedural unconscionability,\*983 a centerpiece of Trujillo's attempt to avoid arbitration. The Court entered an order in which it said that it "[could not] imagine how [ Berinhout,] an in-house lawyer from AT & T Mobility [,] possibly could have personal knowledge regarding whether a copy of [the] agreement was available in any given Apple store at a particular point in time" or even whether Apple had a habit or practice of keeping such documents in its stores. *Trujillo v. Apple Computer, Inc.*, No. 07 C 4946, 2008 WL 2787711, at \*3 (N.D.Ill. Apr. 18, 2008). The Court's order also addressed other issues, including the accessibility and availability of the purported online version of ATTM's terms of service-which ATTM contended Trujillo could have found and examined before or contemporaneously with his iPhone purchase. The Court di-

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rected the parties to file supplemental submissions.

ATTM's supplemental submission filed pursuant to the Court's order established that Berinhout, contrary to his sworn statement, lacked personal knowledge regarding the availability of the terms of service to Trujillo before he bought the iPhone at issue in this case. ATTM's supplemental submission also established the falsity of Berinhout's earlier sworn statements that the terms of service booklet with the relevant arbitration provision was available in the store where Trujillo bought the iPhone and was also available online.

With its supplemental submission, ATTM submitted a new affidavit from Berinhout. In that affidavit, Berinhout stated that contrary to his earlier sworn statement, he had "since been informed that the Apple store in Oak Brook, Illinois where plaintiff Jose Trujillo purchased his iPhone does not keep ATTM's Terms of Service Booklet in stock." Berinhout 2d Suppl. Affid. ¶ 3. Berinhout thereby conceded that his initial affidavit was false in two significant respects. First, Trujillo did not, in fact, have access to a paper copy of the agreement before or when he bought the iPhone. Second, contrary to Berinhout's earlier sworn statement, he actually had lacked personal knowledge of what was and was not available at retail stores-in particular at Apple retail stores.

ATTM also included in its supplemental submission a footnote (!) in which it stated, contrary to the clear import of Berinhout's initial affidavit, that a person who searched online for its terms of service as of July 2007 would not have found the version of those terms of service upon which ATTM premised its motion to compel arbitration. *See* ATTM 2d Suppl. Brief (filed May 5, 2008) at 2 n. 2, citing Harry Bennett Affid. ¶ 6. This statement established the falsity of Berinhout's sworn statement that the agreement with the relevant arbitration provision had been available online. ATTM attempted to dismiss this as inconsequential, on the ground that the obsolete terms of service that a searcher could have found still "would have placed the prospective consumer on notice" of an arbitration requirement. *Id.* It is abundantly clear from ATTM's supplemental submissions, however, that contrary to its earlier statements to the Court, Trujillo had no access-none-to the purported contract upon which the obligation to arbitrate the dispute in this case is claimed to rest, either before or at the time he

purchased the iPhone from the Apple store.

With its supplemental submission, ATTM also provided an affidavit from Harry Bennett, who is responsible for overseeing the business group that maintains ATTM's website. Bennett gave no indication that the web site contained any information that would direct a visitor to the terms of service. Rather, he stated that to find the terms of service on the \*984 website, one would have to use the "search" tool and type in an appropriate query, such as "terms of service," "agreement," or "conditions." Harry Bennett Affid. ¶ 6. Even then, as noted above, a visitor would have found terms of service that were already obsolete. Bennett's affidavit suggested that yet another statement in Berinhout's initial affidavit was false-namely his contention that as of the date Trujillo purchased his iPhone, ATTM's terms of service were readily available via a single click on a link clearly marked on the company's website.

#### **4. Dawn Trujillo's purchase of an iPhone and its activation by Jose Trujillo**

Due to Berinhout's apparent 180-degree turn from the sworn statements in his original affidavit, the Court (at a hearing on May 8, 2008) directed ATTM to file additional papers explaining why Berinhout's story had changed. In response, ATTM made a further supplemental submission in which it contended that in making his first affidavit, Berinhout assumed Trujillo had bought his phone at an ATTM store because the company's records reflected that he received service on an iPhone purchase at an ATTM store. ATTM gave no real explanation for how it or Berinhout had managed, up until that point, to miss the fact that Trujillo had specifically stated in his complaint that he had purchased the iPhone *from an Apple retail store* and that the purchase receipt he had submitted in opposition to the motion to compel arbitration was *from an Apple store*.

ATTM stated in its new submission that it had investigated further and determined that the Apple store receipt that Trujillo had submitted "actually corresponds to an iPhone that was activated by ... Dawn Marie Trujillo." ATTM 3d Suppl. Brief at 3. It now appears, based on the more complete and accurate factual record currently before the Court, that Trujillo gave the iPhone that he purchased from the Apple store to Dawn Trujillo as a gift. Dawn Trujillo then activated service for that iPhone online, via her

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preexisting ATTM account. Diane Bonina, another ATTM in-house attorney, states in an affidavit attached to one of ATTM's supplemental submissions that Dawn Trujillo has been an ATTM customer since November 2005 and that with her December 2006 bill she received a copy of the terms of service that include the arbitration provision at issue in this case. Bonina Affid. ¶¶ 16, 21-22. (Dawn Trujillo is not, however, a plaintiff in this case.)

It appears that around the same time that Trujillo gave the iPhone he had purchased to Dawn Trujillo, she purchased an iPhone from an ATTM store and gave it to Trujillo as a gift. It further appears that Trujillo then activated service for that iPhone online, in the process opening a new ATTM account for himself. With its new submission, ATTM submitted an affidavit from Ramoncito Balce, the manager of an ATTM store in Elmhurst, Illinois. Balce states that ATTM records reflect that Dawn Trujillo came to the store on June 29, 2007, the first day iPhones were offered for sale, "in order to purchase an iPhone to use in connection with her preexisting ATTM account." Balce Affid. ¶ 3. The store had already sold all of its iPhones, so (according to records Balce reviewed) a cashier at the store arranged to have a phone shipped to Dawn Trujillo at her home. She paid for the device at the store that same day. *Id.*

According to Balce, ATTM records reflect that about one week later, Jose Trujillo activated the iPhone that Dawn Trujillo had purchased, *id.* ¶ 4-which, the Court notes, is *not* the phone upon which Trujillo bases his claim in this case. Balce says that the company's records reflect \*985 that on July 5, 2007, an employee at the Elmhurst ATTM store created a tentative account number for Trujillo and ran a credit check on him, a step required when a new customer wishes to avoid paying a deposit before commencing service. *Id.* ¶¶ 6-7. According to Balce, "[i]t is store policy not to run a credit check for a customer unless the customer is present in the store." *Id.* ¶ 8. Balce says that the iPhone that Dawn Trujillo purchased was activated later on July 5, via an online transaction. *Id.* ¶ 9. About fifteen minutes after the activation, ATTM personnel were asked to change the phone number assigned to the iPhone. *Id.* ¶ 10. It is a reasonable inference from Balce's affidavit that Jose Trujillo went to the Elmhurst ATTM store on July 5, 2007 to have a credit check done so he could initiate service on the iPhone that Dawn Trujillo had given him. The Court

also assumes for purposes of discussion that Trujillo activated that iPhone online himself; ATTM so argues, and Trujillo does not argue otherwise.

Balce says that the ATTM store he manages "keeps in stock whatever version of ATTM's Terms of Service booklet that is then in effect" and that "[c]opies of that booklet are available for customers to review and take with them." Balce Affid. ¶ 2. Neither Balce nor ATTM, however, provided the Court with any information about what Balce meant by "available"-specifically, *how* the terms of service were available at the store, or whether and how the booklet's availability was called to the attention of a customer who, like Trujillo, comes in to have a credit check done in order to set up service.

#### **5. More regarding availability of ATTM service terms to Trujillo**

ATTM's additional supplemental submission contained yet another affidavit from Berinhout, who attempted to explain his earlier errors (as discussed above). In that affidavit, Berinhout conceded still more inaccuracies in his earlier submissions. As noted earlier, Berinhout's second supplemental affidavit (filed on May 5, 2008) included a sworn statement that contrary to his original sworn affidavit, he had "since been informed that the Apple store in Oak Brook, Illinois where plaintiff Jose Trujillo purchased his iPhone does not keep ATTM's Terms of Service booklet in stock." Berinhout 2d Suppl. Affid. ¶ 3. This statement suggested that the unavailability of the ATTM terms of service had simply been an oversight on the part of the Oak Brook Apple store. In his third supplemental affidavit (filed on May 19, 2008), however, Berinhout made it clear that there was more to it than that: "I have subsequently learned that there is not a joint Apple/ATTM policy requiring that ATTM's terms of service be available in Apple retail stores.... Thus, contrary to my original understanding, a customer who purchases an iPhone from an Apple retail store does not obtain ATTM's terms of service in the store." Berinhout 3d Suppl. Affid. ¶ 11. In short, no one-not just Trujillo-who purchases an iPhone at an Apple store had access to the terms of service at that store.

In this same affidavit, Berinhout conceded two more significant inaccuracies in his original affidavit. First, he stated that in light of the fact that Trujillo purchased his iPhone in an Apple store, he ( Ber-

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inhout) actually had no clue whether Trujillo would have received the ATTM rate plan and activation process documents referenced earlier. *Id.* ¶ 12. Second, Berinhout stated, in effect, that the statement in his first affidavit that the terms of service were available on ATTM's web site via a single click on a box entitled "Wireless Service Agreement" was literally true but nonetheless misleading: true because it actually described the state of affairs as of the date of the affidavit (October 2007), \*986 but misleading because that *was not* the state of affairs in July 2007, the relevant time for purposes of the present motion. Rather, that one-click reference was not added to ATTM's web site until September 2007. *Id.* Thus the aforementioned statement in Berinhout's first affidavit, included for the obvious purpose of convincing the Court of the ease of accessing the terms of service online, in fact amounted to misdirection.

#### 6. Trujillo's activation of the iPhone he received as a gift

As noted earlier, it appears that Trujillo performed the online transaction necessary to activate service on the iPhone that Dawn Trujillo gave him as a gift-which, the Court again notes, is not the iPhone on whose purchase Trujillo bases his claims in this case. To complete the online activation process, the customer must click on a box stating that "I have read and agree to the AT & T Service Agreement." The text of that agreement is contained in a window immediately above the box. The agreement is relatively lengthy, and only a small portion of it can be viewed in the window at any one time. To view the entire agreement, the customer must scroll down through the agreement. The portion viewable when the agreement first appears contains a paragraph stating the following:<sup>FN2</sup>

FN2. The Court has adjusted the size of the typeface in the text above so that the text of the quoted portion of the agreement includes the same number of words per line as the opening portion of the agreement, a screen shot of which ATTM provided to the Court. ATTM has not advised the Court regarding the actual size of the typeface, and in any event what a particular customer sees likely would depend on the size of his computer screen and the nature of his default settings.

PLEASE READ THIS SOFTWARE LICENSE

AGREEMENT ("LICENSE") CAREFULLY BEFORE USING YOUR IPHONE, BY USING YOUR IPHONE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT USE THE IPHONE. IF YOU DO NOT AGREE TO THE TERMS OF THE LICENSE, YOU MAY RETURN THE IPHONE TO THE PLACE WHERE YOU OBTAINED IT FOR A REFUND.

Berinhout 1st Affid., Ex. 4. A bit further on, assuming the customer scrolls down through the agreement, it states that "[b]y checking 'I have read and agree to the service agreement', you will be bound to the following for the two-year term of the agreement: 1) the Terms of Service, including the binding arbitration clause...." *Id.*

Contained in the agreement-about two-thirds of the way through, as best as the Court can determine from what ATTM has provided-the arbitration provision appears. It begins with a heading that reads, in bold print, "**DISPUTE RESOLUTION BY BINDING ARBITRATION.**" *Id.* In a summary of the provision, the agreement states that if ATTM is unable to resolve a dispute to the customer's satisfaction, "we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction" and that "[a]ny arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted." *Id.* These terms are repeated in more detail in the full text of the arbitration provision, which also contains other terms relating to expenses, cost-shifting, and the like. *Id.* The agreement also states that ATTM and the customer "agree to arbitrate **all disputes and claims between us.**" *Id.* (emphasis in original).

\*987 No ATTM affiant directly states that Trujillo, or for that matter anyone, checked the box stating that "I have read and agree to the AT & T Service Agreement." But as suggested above, one reasonably may infer that someone checked that box-Berinhout stated that if a customer does not check the box, he may not activate his iPhone, Berinhout 1st Affid. ¶ 10-and that it was Trujillo who did so when the phone that Dawn Trujillo had given him was activated.

#### Discussion

As noted earlier, Trujillo has asserted, against both ATTM and Apple, claims under the Illinois

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Consumer Fraud Act and for fraud, breach of contract, breach of implied warranty, and unjust enrichment. His complaint states that his claims concern the iPhone that he purchased from the Apple retail store—the one that he gave as a gift to Dawn Trujillo.

After Apple removed the case to federal court, ATTM moved to compel Trujillo to arbitrate his claims against ATTM and to dismiss those claims. (Apple has moved separately for summary judgment; the Court will address that motion in a separate order.) ATTM seeks to require Trujillo to arbitrate his claims as an individual and not on behalf of a class, or to seek relief in small claims court, pursuant to the terms of the ATTM service agreement and the Federal Arbitration Act, 9 U.S.C. § 4.

Before reaching the merits of ATTM's motion to compel arbitration, the Court pauses to discuss further the disturbing events that caused the process of briefing and deciding the motion to be so elongated.

### 1. The Berinhout affidavits

It is abundantly clear that Berinhout's initial affidavit was false in several material respects. To catalog the misrepresentations:

-Berinhout falsely stated under oath that he had “personal knowledge” of the facts in his first affidavit, including what documents customers who purchase iPhones receive, what documents are available in retail stores, and the online availability of the terms of service at issue in this case. Via his later explanations of other misstatements, Berinhout has made it clear that the information he said he knew personally was, in fact, second- or third-hand information.

-Berinhout stated under oath that an ATTM rate plan and activation directions were provided to a customer purchasing an iPhone at a retail store. Now he says he has no idea whether this was so.

-Berinhout swore, without qualification, that ATTM's terms of service were available to iPhone purchasers at retail stores. Now he says that he actually has no idea whether the terms of service were available at the store where Trujillo purchased his iPhone. He also now says that there was no understanding between ATTM and Apple that the latter would have ATTM's service terms available at Ap-

ple stores.

-Berinhout said under oath that the agreement with the arbitration provision on which ATTM premises its motion \*988 to compel was available online at the time of Trujillo's purchase. He now admits that this agreement was not available.

-Berinhout stated under oath that when Trujillo purchased his iPhone, the ATTM terms of service were available online in a quick and easy manner, via a clearly marked one-click reference on the company's website. This, too, was untrue; in fact, the terms of service could be found only by performing a search using proper search terminology.

These statements were critical to ATTM's motion to compel arbitration. A key thrust of Trujillo's opposition to arbitration was that the arbitration agreement was hidden from him prior to or at the time of his purchase of the iPhone. To anticipate this contention, and later in response to it, ATTM attempted to convince the Court that Trujillo had ready access to the agreement in several different ways. Had the Court simply relied on Berinhout's affidavit—as he and ATTM obviously intended—it would have decided the motion to compel arbitration based on false premises.

One might be tempted to chalk this up to a simple lack of foundation for Berinhout's original statements—in other words, to mere lack of direct knowledge. That would be bad enough, but there is more to it than that. Berinhout affirmatively misrepresented to the Court that the information in his affidavit was based on his personal knowledge. In fact, it was—as Berinhout no doubt knew at the time—based on second- and third-hand information. Berinhout may have had some direct knowledge about ATTM policy, but the aforementioned statements involved how things actually happened in the field. The distinction between policy and execution had to have been obvious to Berinhout as a lawyer making statements under oath to a court. And it ought to have been equally obvious to the lawyers representing ATTM in this case.

Berinhout's explanation for why he—as opposed to someone who *actually* had personal knowledge—submitted the initial affidavit is just as troubling. Berinhout states that

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[i]n order to limit the costs and business disruptions that take place when ATTM responds to challenges to the arbitration agreements between ATTM and its customers, I decided to assume principal responsibility for attesting to various aspects of the formation and substance of these agreements. Accordingly, I served as the primary declarant in support of ATTM's motion to compel arbitration in this case.

Berinhout 3d Suppl. Affid. ¶ 5. Though this statement may explain Berinhout's role from a business standpoint, it displays a shocking disregard of the requirements of the rules of evidence. There is no such thing as a "primary declarant" entitled to present as personal knowledge information communicated to him by others-no matter what "costs" or "disruptions" are involved. *See* Fed.R.Evid. 602; *cf.* Fed.R.Civ.P. 56(e) (requiring personal knowledge of facts stated in affidavit submitted in connection with summary judgment motion). When an affiant-in particular, a lawyer-swears under oath that he has personal knowledge of the facts he cites, that tells the Court that he has first-hand information, not information collected by others behind the curtain and then communicated by the declarant.

One has the right to expect better, both from Berinhout, a lawyer acting as a witness\*989 before a court, and from the lawyers who presented his sworn statements to this Court. In the Court's view, the conduct of ATTM (including its counsel) provides a sufficient basis for serious consideration of the imposition of a sanction, under Federal Rule of Civil Procedure 11(b)(3) and 11(c) and/or the Court's inherent authority to sanction litigation conduct that is done vexatiously or in bad faith. *See generally Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-46, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991); *Greviskes v. Universities Research Ass'n, Inc.*, 417 F.3d 752, 758 (7th Cir.2005). Such a sanction, were the Court to impose one, could be monetary, to compensate Trujillo and his counsel for the extra work to which they were put due to ATTM's actions, or non-monetary, for example striking ATTM's arbitration defense. The Court will consider these matters in due course. For the time being, however-and even though striking the arbitration defense is a possible sanction-the Court will go on to consider the merits of that defense based on the record as it now appears.

## 2. Availability of contract terms to Trujillo

[1] What, then, did Trujillo see or have access to before or when he purchased the iPhone? Based on the record now before the Court, at the time he purchased from the Apple store the iPhone that he gave to Dawn Trujillo, Trujillo did not see and did not have access to a paper copy of any documents explaining or referencing ATTM's terms of service, including in particular the arbitration requirement. It has been established beyond peradventure that no such documents were available at the Apple store where Trujillo made the iPhone purchase that forms the basis of his claims in this case.

ATTM also relies on the claimed availability of its terms of service online, that is, via the Internet. This contention has been undermined by the revelation of Berinhout's misstatements-assuming the argument had merit to begin with, a point the Court need not determine definitively. As noted earlier, the only version of the terms of service that Trujillo would have seen had he known to search online on or about the date that he purchased the iPhone was an out-of-date version. But just as importantly for present purposes, ATTM has offered no evidence-none-regarding how Trujillo would have known, before or when he purchased the iPhone, that the service terms were available on the Internet, let alone how to find them. ATTM has submitted no evidence suggesting that customers in Apple stores (or, for that matter, in ATTM stores) are advised by signs, placards, customer representatives, or in any other way that the company's terms of service can be examined online. Indeed, ATTM submitted no such evidence even after the Court, in its April 18, 2008 order, specifically called into question the availability of the terms of service online. *See Trujillo*, 2008 WL 2787711, at \*5 ("[O]n the present record, the proposition that Trujillo actually could have found the agreement on-line is nothing more than supposition. That proposition assumes, without support in the record as it now stands, that someone in Trujillo's position (or perhaps the standard is that of a reasonable consumer) would have been able to figure out how to find it.").

One might suggest that given the ubiquity of computers and access to the Internet, someone in Trujillo's position could have figured out on his own where to look online and what to look for. Putting aside the sufficiency of that proposition from a legal standpoint to establish access to ATTM's service

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terms, it utterly fails as a matter of evidence. Specifically, ATTM has offered no evidence that assists in bridging the gap from the theoretical availability of the obsolete version of the terms \*990 of service online (along with millions of other websites and documents) to a finding that Trujillo actually had access to it: it has offered no evidence that he was aware of the online version, that he was advised of it, or that, as a reasonable consumer, he should have known of it. As the Court stated in its prior ruling, “[c]ourts typically do not rely on facts that are in the air, or that can be figured out by the deciding judge, when those facts have not been presented to the court by the parties as evidence that each side has had the opportunity to address.” *Id.* at \*5. The only *evidence* before the Court is contained in one of ATTM's supplemental submissions, via the affidavit of Harry Bennett. And it appears from Bennett's affidavit that the terms of service were not easily accessible on ATTM's website, even if one knew to look there in the first place. Rather, one would have had to perform a search using proper terminology. In any event, ATTM has offered no evidence, and no legal authority, that the theoretical availability, via a proper search on the Internet, of an obsolete version of an agreement counts for anything in determining enforceability of a related but different agreement to arbitrate.

For these reasons, the Court finds that ATTM has failed to show that the terms of the contract at issue were known or available to Trujillo before he purchased the iPhone at the Apple store. And ATTM has offered no evidence that Trujillo had any involvement in Dawn Trujillo's activation of service on that iPhone or that he had ever seen her terms of service in connection with her prior dealings with ATTM.

Trujillo did go to an ATTM store, it appears, on July 5, 2007 to have a credit check done so he could activate service on the iPhone Dawn Trujillo had given him as a gift. To the extent ATTM suggests that Trujillo had access to the terms of service at the ATTM store that day, however, the Court rejects the argument. Though store manager Balce says the terms of service booklet was “available” at the store, as noted earlier this does not suffice to show that Trujillo got it or even that it was available *to him*. For all the Court knows based on the current record, the terms of service were behind a counter somewhere. Despite the several opportunities that ATTM had to supplement its evidentiary showing, it has offered no evidence that

the store's practice was to bring the document to the attention of persons who, like Trujillo, came to the store to have a credit check done.

Trujillo did, however, have access to ATTM's terms of service, including the arbitration requirement, when he activated service on the iPhone that Dawn Trujillo gave him as a gift. It is noteworthy, however, that this was several days after he had purchased and, presumably, had given to Dawn Trujillo the iPhone on whose purchase Trujillo bases his claims in this case.

### 3. Arbitrability of Trujillo's claims

As noted earlier, Trujillo clearly states, in his amended complaint and in his briefing on the motion to compel arbitration, that his claim is based on the iPhone that he purchased, not on the one that he received as a gift from Dawn Trujillo. Though Trujillo gave that iPhone away as a gift, ATTM does not suggest that this prevents him from having standing to sue or from asserting a viable legal claim. Indeed, there is no reason to believe that this state of affairs would have such an effect on Trujillo's suit. The Court does not see why a person who, due to a merchant's deception, purchases as a gift for someone else an item that turns out to be something other than what it was represented to be should be any less able to sue for fraud \*991 than a person who makes such a purchase for himself. This state of affairs might affect Trujillo's damages and/or his ability to represent others in a class action, but ATTM makes no contention that it prevents him from suing altogether.

[2] The fact that Trujillo's suit is based on the iPhone he purchased and gave as a gift does, however, have significant implications with regard to ATTM's motion to compel arbitration. Indeed, were it not for the fortuity that Trujillo later received a different iPhone as a gift and then signed up for service with ATTM, ATTM would not even have a straight-faced argument in favor of arbitration. Trujillo entered into no agreement with AT & T in connection with his purchase of the iPhone at issue in this case. Indeed, as the Court has found, he lacked access to ATTM's terms of service prior to, at the time of, or in connection with that purchase, and there is no evidence that he had any idea that ATTM required arbitration of disputes. A party cannot be compelled to arbitrate a dispute that he has not agreed to arbitrate. *See, e.g., Int'l Bhd. of Elec. Workers, Local 21 v. Ill. Bell Tel. Co.*, 491 F.3d 685, 687 (7th Cir.2007) (citing *AT & T*

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*Techs., Inc. v. Comm'c'ns Workers of Am.*, 475 U.S. 643, 648, 106 S.Ct. 1415, 89 L.Ed.2d 648 (1986)). For this reason, if Trujillo had not received an iPhone as a gift and contracted for service with ATTM, there would be no basis to compel arbitration of his claims.

Trujillo did, however, enter into an agreement with ATTM to arbitrate disputes, albeit in connection with his activation of service on a different iPhone from the one whose purchase is the basis of his claims in this lawsuit. He does not argue that this agreement does not apply to his claims regarding his purchase of the iPhone for Dawn Trujillo. Rather, he argues that the ATTM agreement cannot be enforced because it is unconscionable.

[3][4] Under the Federal Arbitration Act, arbitration clauses “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. The party resisting arbitration bears the burden of showing that the claim at issue is unsuitable for arbitration. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 91, 121 S.Ct. 513, 148 L.Ed.2d 373 (2000). When that party challenges the validity of the agreement to arbitrate, a court applies the relevant state law principles that govern the formation of contracts. *First Options of Chi. v. Kaplan*, 514 U.S. 938, 944, 115 S.Ct. 1920, 131 L.Ed.2d 985 (1995). General state-law contract defenses such as fraud, duress, or unconscionability may operate to invalidate arbitration agreements, allowing a party to avoid having to arbitrate his dispute. *Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 687, 116 S.Ct. 1652, 134 L.Ed.2d 902 (1996).

Trujillo asserts that ATTM “has not learned from its mistakes,” Pl. Resp. at 2—a reference to a ruling by the Illinois Supreme Court that held the class-arbitration waiver contained in an earlier version of the service agreement to be unconscionable under Illinois law. See *Kinkel v. Cingular Wireless LLC*, 223 Ill.2d 1, 306 Ill.Dec. 157, 857 N.E.2d 250 (2006). ATTM counters that the arbitration provision contained in the service agreement Trujillo accepted is strongly “pro-consumer” and has more than corrected for the shortcomings the court in *Kinkel* found in the earlier version (although it still contains a class-arbitration waiver). ATTM also argues that section 2 the FAA, 9 U.S.C. § 2, would expressly preempt Illinois law if its arbitration clause were held uncon-

scionable under that law. It further argues that the doctrine of conflict preemption leads to this same result.

#### \*992 a. Unconscionability

[5][6][7] Unconscionability under Illinois law has both procedural and substantive facets; “[a] finding of unconscionability may be based on either procedural or substantive unconscionability, or a combination of both.” *Kinkel*, 223 Ill.2d at 22, 306 Ill.Dec. 157, 857 N.E.2d at 263 (citing *Razor v. Hyundai Motor Am.*, 222 Ill.2d 75, 99, 305 Ill.Dec. 15, 854 N.E.2d 607, 622 (2006)). Procedural unconscionability exists when a contract provision is so difficult to locate, read, or understand that a party “cannot fairly be said to have been aware he was agreeing to it.” *Id.* (quoting *Razor*, 222 Ill.2d at 100, 305 Ill.Dec. 15, 854 N.E.2d at 622). Procedural unconscionability analysis takes into account the relative bargaining power of the parties to the agreement and inquires whether there has been “some impropriety during the process of forming the contract depriving a party of a meaningful choice.” *Id.* at 23, 306 Ill.Dec. 157, 857 N.E.2d at 264 (quoting *Frank's Maintenance*, 86 Ill.App.3d at 989, 42 Ill.Dec. 25, 408 N.E.2d at 410).

Trujillo contends that procedural unconscionability pervaded the process by which he signed up for ATTM's service. He contends that he had no access to ATTM's service agreement until after the iPhone purchase upon which he bases his claims in this case. Trujillo also contends that ATTM's status as the only licensed provider of wireless service for the iPhone deprived him of real choice. Finally, he contends that the arbitration clause was “crammed into a small print online text box that is so small one can only see a few lines ... at a time” and was thus “concealed” in a maze of fine print. Pl. Resp. at 14. Therefore, Trujillo asserts, even if he technically had access to the arbitration clause, this should not preclude a finding of procedural unconscionability because ATTM's use of the text box shows that “a merchant offering a take-it-or-leave-it contract ... has many ways to hide onerous terms without entirely denying the consumer any access to the provision.” *Id.* at 15.

The Court has found that Trujillo did not have access to the ATTM service agreement prior to or at the time he purchased the iPhone from the Apple store. Rather, the first time that Trujillo saw or reasonably could be considered to have access to the



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ATTM agreement was when he signed up for service after he received as a gift a different iPhone, the one that Dawn Trujillo had purchased. Though a straight-faced argument could be made that this contract does not bind Trujillo to arbitrate disputes arising from his purchase of a completely different iPhone, as noted earlier Trujillo does not make that argument. His belated access to the agreement does, however, directly impact the unconscionability analysis.

Under Illinois law, the unavailability of the ATTM service agreement to Trujillo before he purchased the iPhone is a critical factor in determining the issue of procedural unconscionability. *See Razor*, 222 Ill.2d at 100-01, 305 Ill.Dec. 15, 854 N.E.2d at 623. In *Razor*, the Illinois Supreme Court concluded that a warranty containing a disclaimer of consequential damages had not been “made available to the plaintiff at or before the time she signed the sale contract for an automobile, because it was contained in an owner’s manual in the automobile’s glove compartment, where it was unavailable to the consumer until after she took delivery.” *Id.* Though the court acknowledged that the waiver was in understandable language and was easy to read—a contention likewise made by ATTM in the present case—these facts “simply do[ ] not matter,” the court said, “if the consumer did not have the opportunity to *see* the language before entering into the contract to purchase the car.” *Id.* \*993 at 101, 305 Ill.Dec. 15, 854 N.E.2d at 623 (emphasis in original). The waiver was ineffective, the court said, because it was not “provided to the purchaser at or before the time that the purchase occurs.” *Id.* at 103, 305 Ill.Dec. 15, 854 N.E.2d at 624.

As in *Razor*, other circumstances in the present case buttress the conclusion that the circumstances rendered the arbitration requirement and class action waiver procedurally unconscionable. Trujillo presumably could have declined to click on the “agreement” box when he went online to activate service on the iPhone that Dawn Trujillo had given him. By then, however, he had already purchased the iPhone that he gave Dawn as a gift and upon whose purchase he bases his claims in this case. By the time Trujillo first saw or had access to ATTM’s service agreement, he could do nothing to unwind the earlier purchase. Based on the information that Trujillo had, it appeared that he would have received something less than 100 cents on the dollar if Dawn’s iPhone had been returned: the sales receipt said that only ninety percent

of the purchase price would be returned. Though ATTM has now, after the fact, offered evidence that Apple had a practice of waiving the ten percent restocking fee, based on the record before the Court, that practice was nowhere disclosed to Trujillo or, for that matter, to any other purchaser or prospective purchaser.

In *Bess v. DirecTV, Inc.*, 381 Ill.App.3d 229, 319 Ill.Dec. 217, 885 N.E.2d 488 (2008), the Illinois Appellate Court considered a situation in which it appeared the agreement governing the terms for television service the plaintiff purchased was not provided to her until after she activated the service. The court ruled that this was insufficient to render the agreement procedurally unconscionable. It noted that although the plaintiff did not receive the agreement until after she ordered the service, it provided that it was not binding until after she read it and continued to receive the service, and it advised her that if she did not accept the agreement, her service would be cancelled immediately and she would not be charged a fee. *Id.* at 239, 319 Ill.Dec. 217, 885 N.E.2d at 496-97.

The same is not true here. As the Court has noted, by the time Trujillo first saw or had access to the ATTM agreement, he had already purchased, from a completely separate entity (Apple), the iPhone at issue in this case. Unlike in *Bess*, a fee of at least ten percent of the device’s purchase price would have been incurred—at least as far as Trujillo knew—had that iPhone been returned. Indeed, it is possible that a higher fee would have been incurred depending on the condition of the iPhone at the time of its return. And based on the rate plan document that ATTM itself submitted, it is likewise possible that the ATTM activation fee that Dawn Trujillo had incurred would have been lost, depending on when the iPhone was actually returned.

In short, the situation in the present case is nothing like *Bess*, in which the plaintiff, had she chosen not to accept the belatedly-produced agreement, would have incurred no expense.

ATTM cites, as did the court in *Bess*, the Seventh Circuit’s decision in *Hill v. Gateway 2000, Inc.*, 105 F.3d 1147, 1149 (7th Cir.1997). In *Hill*, the court addressed the enforceability of an arbitration agreement that was inside a box containing a computer that the plaintiffs had purchased via telephone. Though the court did not discuss the issue of unconscionability in

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so many works, it found the agreement enforceable despite the fact that the plaintiffs had not seen it before or when they purchased the product.

*Hill* does not control the present case. As in *Bess*, the agreement in *Hill* made it \*994 clear that the customer could return the product without penalty (as best as this Court can determine from *Hill* ) if he did not accept the agreement's terms. The same is not true in Trujillo's case.<sup>FN3</sup> The court in *Hill* also stated that "because the Hills knew before they ordered the computer that the carton would include *some* important terms, and then did not seek to discover these in advance," it was beside the point whether they would have suffered a financial penalty had they declined to accept the agreement. *Id.* (emphasis in original). The court went on to state that the plaintiffs could have asked the vendor to send a copy of any agreement before deciding whether to buy it or could have consulted public sources, including the vendor's website, "that may contain this information." *Id.* But because the plaintiffs kept the computer, the court said, they accepted the terms of the agreement.

FN3. The ATTM terms of service that Trujillo evidently had the opportunity to review when he signed up for service stated that if he did not agree, he could return the iPhone for a refund. But the receipt from the Apple store for the iPhone he purchased—the device whose purchase is at issue in this case—said this would be less than a full refund, as the Court has noted.

As the Court stated in its April 18, 2008 ruling, it is bound to follow the Seventh Circuit's determination of what Illinois law is, unless there is an intervening and contrary decision from the state's highest court. *See Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1029 (7th Cir.2004). *Razor* is such a decision. As the Court has noted, the dispositive factor in that case was the unavailability of the agreement to the consumer until after she had purchased the product. Although it was presumably just as true in *Razor* as in *Hill* that the consumer could have asked in advance for a copy of any applicable agreement, or could have checked a website, the Illinois Supreme Court did not hint that this was at all significant as a matter of Illinois unconscionability law. Given this significant intervening decision from Illinois' highest court, this Court must rely on *Razor*, to the extent it is contrary to

*Hill*, in determining what Illinois law holds in this context.

One other factor leads the Court to consider *Razor*, rather than *Hill*, to be controlling in this case. There is no evidence that Trujillo actually could have gotten the agreement upon which ATTM relies in advance of his purchase of the iPhone from the Apple store. Berinhout, in his most recent affidavit, states that ATTM actually had no understanding with Apple to make ATTM's terms of service available in Apple stores, and ATTM has provided no evidence from anyone with actual knowledge of Apple's practices that the agreement was, in fact available there. In addition, ATTM's own evidence—at least its belatedly-submitted evidence—establishes that the agreement upon which it relies was not available online. And though an earlier, similar agreement might have been findable somewhere within ATTM's website, ATTM has offered no evidence reflecting that Trujillo would have had a clue it was there or, if so aware, could have found it. The Court has a hard time believing that the theoretical availability, under a proverbial rock, of an obsolete version of an agreement not actually shown to the consumer can render it enforceable as a matter of Illinois law—and in fact no case, including *Hill*, so holds.

ATTM suggests that a holding that the unavailability of its agreement renders it unenforceable against Trujillo will produce severe consequences and make it unfairly hard for it and other mass-marketers to do business. Not so. It would have been relatively simple for ATTM to make its \*995 terms of service *actually* available in Apple stores, given the companies' exclusive arrangement regarding the iPhone—indeed, Berinhout initially thought, albeit incorrectly, that such an understanding existed between the two companies. Or it could have provided the agreement as an insert within the iPhone's package, which under *Hill* and *Bess* likely would have made it enforceable, at least so long as the consumer suffered no financial penalty if he chose not to accept the agreement. Or ATTM and Apple could have made, and disclosed to consumers, a policy of returning the entirety of the iPhone's purchase price to the consumer should he choose not to accept ATTM's terms. In short, the parade of supposed horrors cited by ATTM—a relatively short parade to begin with—cannot affect the outcome of the present motion.

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For these reasons, the Court concludes that Trujillo has established, in the particular circumstances of his case, the procedural unconscionability-and thus the unenforceability-of ATTM's arbitration requirement. In view of the Court's conclusion on the claim of procedural unconscionability, it need not address Trujillo's claim of substantive unconscionability. Though, as ATTM argues, a "degree" of procedural unconscionability "may not be sufficient to render [an agreement] unenforceable," *Wigginton v. Dell*, 382 Ill.App.3d 1189, 321 Ill.Dec. 819, 890 N.E.2d 541, 547 (2008), this is a case in which the finding of procedural unconscionability concerns such a basic matter-the unavailability of the agreement to the consumer at the relevant time-that it is enough under *Razor* to render the agreement unenforceable, particularly in view of the financial penalty that Trujillo would have suffered had he declined to agree to ATTM's terms once he saw them.

#### **b. Preemption**

[8] Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, federal law may preempt state law in one of three ways: "expressly, impliedly through the doctrine of conflict preemption, or through the doctrine of field (also known as complete) preemption." *McMullen v. Medtronic, Inc.*, 421 F.3d 482, 487 (7th Cir.2005) (quoting *Boomer v. AT & T Corp.*, 309 F.3d 404, 417 (7th Cir.2002)). ATTM argues that the doctrines of express and conflict (or implied) preemption operate in this case to shield its arbitration clause from a finding of unconscionability under Illinois law.

ATTM's argument, however, focuses entirely on the claim of substantive unconscionability. *See* ATTM Mem. at 11-15; ATTM Reply at 13-15 (both focusing on substantive unconscionability generally and the particulars of the class action waiver in particular). Because the Court has not denied ATTM's motion to compel arbitration on that basis, and because the Court has relied not on any doctrine of Illinois law that targets arbitration agreements for special treatment but rather on a rule that applies to contracts generally, ATTM's preemption argument is effectively moot.

#### **Conclusion**

For the reasons stated above, the Court denies defendant AT & T Mobility LLC's motion to compel arbitration and dismiss action [docket no. 36]. The case is set for a status hearing on September 29, 2008 at 9:30 a.m. to address further the sanctions issue

discussed earlier in this decision.

N.D.Ill.,2008.  
 Trujillo v. Apple Computer, Inc.  
 578 F.Supp.2d 979

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# EXHIBIT 4



American Arbitration Association  
*Dispute Resolution Services Worldwide*

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July 27, 2011

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Re: Leslie Bernardi and AT&T, Inc. and AT&T Mobility, LLC  
Daniel Lea and AT&T, Inc. and AT&T Mobility, LLC  
Helen Luciano and AT&T, Inc. and AT&T Mobility, LLC  
Astrid Mendoza and AT&T, Inc. and AT&T Mobility, LLC  
Mark Newman and AT&T, Inc. and AT&T Mobility, LLC  
Jared Pope and AT&T, Inc. and AT&T Mobility, LLC  
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Linda Haensel and AT&T, Inc. and AT&T Mobility, LLC  
Shari Kostoff and AT&T, Inc. and AT&T Mobility, LLC  
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Alexis Justak and AT&T, Inc. and AT&T Mobility, LLC  
Bryan Rodriguez and AT&T, Inc. and AT&T Mobility, LLC  
Juan Monteverde and AT&T, Inc. and AT&T Mobility, LLC  
Richard Gonnello and AT&T, Inc. and AT&T Mobility, LLC  
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Sandra Smith and AT&T, Inc. and AT&T Mobility, LLC  
Lara Fisher and AT&T, Inc. and AT&T Mobility, LLC  
Richard Colisimo and AT&T, Inc. and AT&T Mobility, LLC

Dear Parties:

This will acknowledge receipt on July 21, 22, 25, and 27, 2011 of the above-referenced Demands for Arbitration. We understand that copies were sent to Respondent. This will also acknowledge receipt of a letter dated July 25, 2011 from counsel for Respondent, Neal S. Berinhout, Esq., and two letters dated July 26, 2011 from counsel for the Claimant, Scott A. Bursor, Esq., each of which were sent to opposing counsel.

Please note that based on our review of the Demands for arbitration and supporting documentation for the above-captioned matters, the AAA's administrative filing requirements have not yet been met. Specifically, although the Claimant submitted a payment in the amount of \$125 along with the demand for arbitration, the relief requested constitutes non-monetary relief. Under the Association's Supplementary Procedures for Consumer-Related Disputes ("Consumer Procedures") and the Commercial Arbitration Rules ("Commercial Rules"), when the claim is not for a monetary amount, a minimum filing fee of \$3,350.00 is required. Therefore, there is an outstanding balance of \$3,225.00 for each claim. As a result, the AAA will not commence administration of the arbitration at this time.

Accordingly, we ask that you remit the balance of the fee. Once that fee has been paid so that all filing requirements have been met, you will be notified by a case manager that the AAA will proceed with the administration of the arbitration, and the AAA will provide you with appropriate response dates for answering statements or counterclaims.

In addition, we note that the statement of claim requests application of the AAA Wireless Industry Arbitration Rules. However, the Wireless Customer Agreement submitted with the demands provides that the "arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes." Unless the parties agree otherwise, the dispute will be administered according to the terms of the parties' agreement and pursuant to the designated Rules and Procedures.

If you have any questions, please contact the undersigned, and please ensure that any response or additional communications related to this matter are copied to the opposing party.

Sincerely,

/s/ Tara Parvey

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# EXHIBIT 5



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July 28, 2011

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casefiling@adr.org  
American Arbitration Association  
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Voorhees, NJ 08043

Dear Ms. Parvey and Ms. Horton:

I am writing regarding the following 26 Demands for Arbitration that Bursor & Fisher, P.A. submitted to the American Arbitration Association ("AAA") on July 21, 22, 25, and 27 2011:

*Barrett v. AT&T, Inc., et al.; Bernardi v. AT&T, Inc., et al.; Lea v. AT&T, Inc., et al.; Luciano v. AT&T, Inc., et al.; Mendoza v. AT&T, Inc., et al.; Newman v. AT&T, Inc., et al.; O'Neal v. AT&T, Inc., et al.; Pope v. AT&T, Inc., et al.; Princi v. AT&T, Inc., et al.; Shroeder v. AT&T, Inc., et al.; Ubiera v. AT&T, Inc., et al.; Kostoff v. AT&T, Inc., et al.; Bushman v. AT&T, Inc., et al.; Haensel v. AT&T, Inc., et al.; Gibbons v. AT&T, Inc., et al.; Justak v. AT&T, Inc., et al.; Fisher v. AT&T, Inc., et al.; Komlossy v. AT&T, Inc., et al.; Smith v. AT&T, Inc., et al.; Marlborough v. AT&T, Inc., et al.; Keller v. AT&T, Inc., et al.; Monteverde v. AT&T, Inc., et al.; Hidalgo v. AT&T, Inc., et al.; Gonnello v. AT&T, Inc., et al.; Rodriguez v. AT&T, Inc., et al; and Colosimo v. AT&T, Inc. et al.*<sup>1</sup>

**As described in more detail below, the AAA should not administer these Demands because they violate AT&T Mobility's arbitration clause, the AAA's rules, and seek to obstruct the federal and state review of the proposed AT&T Mobility LLC and T-Mobile USA, Inc. merger.**<sup>2</sup> These demands each request that the arbitrators either (1) enjoin the \$39 billion merger between AT&T Mobility LLC and T-Mobile USA, Inc. or (2) impose a series of detailed, and extremely burdensome, restrictions on that merger. These demands for arbitration and claims for relief are wholly unjustified on the merits, violate the parties' arbitration clause and the governing AAA rules, and constitute an abuse of the arbitration process for the following reasons:

- The Demands constitute **requests for class-wide injunctive relief** in violation of the parties' arbitration agreements.
- The Demands **violate the AAA's Class Arbitration Policy**, and therefore are **not subject to AAA administration**.

<sup>1</sup> This letter also applies to any additional Demands for Arbitration of the same nature that Bursor & Fisher might submit.

<sup>2</sup> This is true even if the defect that Ms. Parvey identified in her letter of July 27 were remedied.



- The Demands would **obstruct federal and state regulatory review** of the proposed merger.<sup>3</sup>

Accordingly, the AAA should refuse to administer these Demands for Arbitration.

1. **The Demands have been filed in violation of AT&T Mobility's arbitration provision.**

AT&T Mobility's arbitration clause has a very clear limitation on the scope of injunctive relief that a customer may pursue in arbitration. The provision (attached as Exhibit A to this letter) specifies:

The arbitrator may award injunctive relief **only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim.** YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and **may not otherwise preside over any form of a representative or class proceeding.** (Emphasis added.)

Therefore, a customer may seek injunctive relief under AT&T Mobility's arbitration clause "only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim." The clause thus expressly precludes all forms of class and representative actions, including actions seeking class-wide or representative injunctive relief—*i.e.*, an injunction whose effect would extend beyond the individual initiating the arbitration.

The Demands violate this fundamental limitation. Indeed, it is difficult to imagine a more flagrant violation of this restriction on the scope of injunctive relief: the Demands call for extraordinarily broad, all-encompassing relief that is the equivalent of a remedy on behalf of well over 120 million class members. It is clear on the face of these virtually-identical 228-page Demands that they seek the broadest possible relief for all current AT&T Mobility and T-Mobile customers, all potential customers of those companies, competing telecommunications companies, and the general public. In each Demand, the Claimant alleges that he or she is an AT&T Mobility subscriber and asks that an arbitrator enter an injunction under the federal Clayton Antitrust Act prohibiting the proposed merger between AT&T Mobility and T-Mobile. See, *e.g.*, *Ubiera Demand for Arbitration* ¶ 334.

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<sup>3</sup> Although the Demands should not be accepted for administration, if they were so accepted, in each case appointment of a panel of three arbitrators may be required because the Demands involve claims that are self-evidently large and complex. See AAA, Commercial Arbitration Rules and Mediation Procedures § L-2.

The Claimants alternatively request injunctions imposing a laundry list of conditions on the merger that would affect all of AT&T Mobility's and T-Mobile's current and future customers, as well as a wide swath of the telecommunications industry, including:

- requiring the divestiture of spectrum licenses, network infrastructure, subscribers, money, and technology (*id.* ¶¶ 340, 370-78);
- ordering the combined entity to offer customers rate plan “packages” that are “similar to those now offered by T-Mobile” (*id.* ¶ 340);
- forcing the combined entity to allow competitors to access its facilities and lease data roaming bandwidth at rates set by the arbitrator (*id.* ¶¶ 341-43, 352-54);
- barring the combined entity from contracting for exclusivity with cell phone suppliers, preventing any compatible device from connecting to its network, or financing the implementation of 4G LTE services or equipment with available government subsidies (*id.* ¶¶ 344-51, 383-84);
- requiring the combined entity to extend all existing interconnection and special access agreements with other carriers and to forbear from retiring any existing copper facilities for five years (*id.* ¶¶ 359-68);
- forbidding it from bundling certain wireline and wireless products or from increasing prices for transit services for five years (*id.* ¶¶ 355-58, 369);
- ordering it to publish all roaming agreements with competitors and “turn [them] over” to the Federal Communications Commission (“FCC”) to set rates (*id.* ¶¶ 379-82); and
- requiring it to provide unbundled wholesale DSL service to competitors at set rates (*id.* ¶¶ 385-86).

Clearly, without question, this is not injunctive relief “only in favor of the individual party seeking relief . . . necessary to provide relief warranted by that party’s individual claim.” Rather, the Claimants are seeking to pursue a de facto class or representative action with class-wide relief. For example, the fact that they seek to have the arbitrator order the FCC to set certain rates—notwithstanding that the FCC is not (and could not be) a party to these proceedings—is proof positive that each Demand does not seek relief limited to the individual claimant but instead relief that would extend to every member of an extremely large class comprised of the nearly 120 million customers of the two companies, potential customers, the combined entities’ competitors, and the general public. The breadth of the claim for relief is further demonstrated by the fact that a number of the injunctions that each Demand seeks pertain to AT&T services—such as DSL and wireline service—that the Claimants do not even allege that they themselves use.

The Demands therefore clearly violate AT&T Mobility’s arbitration provision, which expressly prohibits an arbitrator from ordering relief that would extend beyond the claimant and affect a group or class of customers, and bars arbitrators from presiding over “any form of a representative or class proceeding.”

The Claimants cannot circumvent the fundamental limitations of this provision simply by omitting the terms “class” or “representative” from their Demands. The substance of the claims,

not the labels attached by the Claimants, is determinative. These Demands plainly qualify as class proceedings by virtue of the type of relief that the Claimants seek—relief that would extend broadly to all current and future AT&T Mobility and T-Mobile customers and the general public. Indeed, if the Claimants were successful in their request, that injunction would preclude tens of millions of other affected parties who support the merger from realizing the transaction’s benefits. That situation, where the effect of injunctive relief is not limited to the parties before the tribunal but instead reaches an entire class of individuals and businesses—here, a class in the hundreds of millions—is a hallmark of a class or other form of representative action.

Such a far reaching injunction is clearly impermissible under the Claimants’ arbitration agreements. The clause limits the injunctive relief that may be pursued in arbitration. For example, if an individual customer alleged that AT&T had raised the rates charged for his service without providing him with the notice required by our Wireless Customer Agreement, he could seek an injunction requiring that the company cease charging *him* the higher rates without providing the required notice. But he could not seek an injunction mandating that the company roll back its rates with respect to its **entire hundred-million customer base**—that would be class-wide relief prohibited by AT&T Mobility’s arbitration clause. Similarly, a claimant who alleges that AT&T Mobility does not provide him with the service he requires might seek an injunction requiring the company to release him from *his* contractual commitments to AT&T Mobility. But he could not seek an injunction requiring that AT&T Mobility permit *all* of its customers to terminate their contracts. The same is true here. These Claimants cannot pursue an injunction to preclude the merger from going forward based on cookie-cutter Demands all alleging the same alleged “harms” resulting from the proposed merger. That kind of all-encompassing, class-wide claim—one that that would extend broadly to all AT&T Mobility and T-Mobile customers as well as millions of other individuals and companies—cannot be arbitrated.

Moreover, the scale and nature of the issues implicated by the Claimants’ Demands reflect that these Demands seek to initiate proceedings equivalent to class actions. The Claimants seek to replicate in each of these arbitration proceedings the detailed assessments of the AT&T Mobility/T-Mobile merger now being conducted by the FCC and the U.S. Department of Justice Antitrust Division. AT&T alone has submitted more than five million pages of material and thirteen substantial affidavits to these regulators—and numerous other interested parties have made voluminous submissions as well. These facts confirm the broad impact on hundreds of millions of people and entities of the relief sought by the Claimants—the same relief sought by parties opposing the merger in the ongoing regulatory proceedings. That class-wide relief is at the opposite end of the spectrum from the very limited injunctive relief “only in favor of the individual” claimant that is authorized by the arbitration agreement.

Because these Demands seek to arbitrate claims for relief that are barred by the parties’ arbitration agreements, the AAA should refuse to administer them.<sup>4</sup>

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<sup>4</sup> The Claimants cite language from the summary of AT&T Mobility’s arbitration provision stating the general proposition that “[a]rbitrators can award the same relief and damages that a court can award.” *Ubiera Demand for Arbitration* ¶ 26. But although they partially quote the very next sentence of the summary—which states that “[a]ny arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted”—they fail to recognize its import. That sentence plainly references the language we have cited above from Paragraph 2.2(6) of the arbitration agreement, which expressly precludes

**2. The Demands violate the AAA's policy on class arbitrations.**

The Demands also should be rejected for administration—before an arbitrator is appointed—because they violate the AAA's policy on class arbitrations.

The AAA policy provides that the AAA “**is not currently accepting for administration** demands for class arbitration where the underlying agreement prohibits class claims, consolidation or joinder, unless an order of a court directs the parties to the underlying dispute to submit any aspect of their dispute involving class claims, consolidation, joinder or the enforceability of such provisions, to an arbitrator or to the Association.” AAA Policy on Class Arbitrations, at <http://www.adr.org/Classarbitrationpolicy> (emphasis added). In other words, when a class arbitration is filed with the AAA, the AAA refuses to docket it unless either the arbitration agreement itself or a court order authorizes the AAA to do so.

These Demands directly violate this policy.

- First, the plain text of the parties' arbitration agreement prohibits class or representative claims, as described above.
- Second, there is no “order of a court” that “directs” AT&T Mobility and any of the Claimants “to submit any aspect of their dispute involving class claims \* \* \* to an arbitrator or to the [AAA].” AAA Policy on Class Arbitrations, at <http://www.adr.org/Classarbitrationpolicy>.
- Third, as discussed above, the Demands seek class-wide relief, requesting an injunction whose effect would not be limited to the Claimants themselves, but instead would impact over 120 million AT&T Mobility and T-Mobile customers, future customers of those companies, industry competitors, government regulators, and the general public. The AAA's policy requires it to determine whether or not a particular Demand constitutes a “demand[] for class arbitration”—so that the AAA may decide whether a demand may be “accepted for administration”—and there can be no question that the nature of the relief sought by the Claimants places their Demands squarely within the class arbitration category.

These Demands thus fail to comply with the AAA's Class Arbitration policy. Under the AAA's own policy, therefore, the AAA cannot “accept[]” them “for administration.” *Id.* The AAA therefore should refuse to docket these Demands or accept them for administration.<sup>5</sup>

**3. The Demands ask for a AAA tribunal to short-circuit regulatory review of the proposed merger between AT&T Mobility and T-Mobile USA, Inc.**

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an arbitrator from awarding broad injunctive relief, and instead states that “[t]he arbitrator may award declaratory or injunctive relief **only** in favor of the individual party seeking relief and **only to the extent necessary** to provide relief warranted by that party's individual claim.” Ex. A (emphasis added). Any inference the Claimants might try to draw from the prefatory language they quote from the summary of the arbitration agreement unquestionably is dispelled by the specific limitations on the arbitrator's authority contained in Paragraph 2.2(6) of the provision.

<sup>5</sup> Because the docketing of these Demands would conflict with the AAA's Class Arbitration Policy, we have sent a copy of this letter to the AAA's General Counsel.

The FCC, the U.S. Department of Justice, and certain state regulators are currently reviewing the merger. Under AT&T Mobility's arbitration clause, the Claimants here can bring all of their challenges to the merger to the attention of the FCC and DOJ. Instead, however, Claimants have attempted to pursue these arbitrations and have the AAA duplicate these ongoing regulatory proceedings—a motivation made apparent by the fact that the Demands have been cobbled together—in some places, copied wholesale—from submissions to the FCC by opponents of the merger. In fact, all but one of the exhibits to each Demand are declarations of Sprint Nextel employees and economists that Sprint Nextel submitted to the FCC. A key difference, of course, is that the more than 10,000 interested parties that have provided submissions to the FCC—both in support of and opposing the merger—would not be parties to the proposed arbitration proceeding.

It is patently clear that these Demands are being brought in an effort to disrupt the orderly regulatory process by having the arbitrators in any one of these actions enter an order either enjoining the merger or imposing conditions. As explained above, that kind of sweeping injunctive relief both would vastly exceed the arbitrators' contractual authority and would be contrary to the AAA's policy on class arbitration. Moreover, if arbitrators were to issue such an unlawful injunction, it would have the effect of preempting these regulatory reviews established by Congress and, even more importantly, ignoring the views of the thousands of parties participating in the regulatory processes, including individual citizens, issue advocacy organizations, business organizations, and labor unions. These Demands that the AAA administer multiple proceedings in order to trump federal regulatory proceedings, based on warmed-over submissions by other parties, including competitors, to those federal regulators, finds no support whatsoever in the parties' agreements to arbitrate their own disputes on an individual basis.

\* \* \* \*

In short, for the reasons we have discussed, the AAA should refuse to administer these Demands. The Claimants would remain free, of course, to file new Demands that seek the types of individual relief actually authorized by AT&T's arbitration provision, accompanied by the applicable filing fee. They also remain free to challenge the merger by participating in the ongoing government regulatory review process.

Mr. Bursor asserts in his July 26, 2011 letter that it is improper for AT&T to bring these deficiencies in these Demands to the AAA's attention instead of waiting until arbitrators are appointed in each case. He is mistaken. It is the AAA's policy to refuse to administer arbitrations that violate these requirements; it would therefore be a deviation from those rules to appoint arbitrators to decide these issues. Moreover, the AAA has every right to know that it is being asked to administer arbitrations that would disrupt state and federal regulatory proceedings.

No rule—AAA or otherwise—forbids a party from alerting the administrative staff of a tribunal to a claimant's failure to comply with administrative requirements, such as, in this instance, the payment of filing fees and the AAA's Class Arbitration policy. AT&T has not communicated ex parte, but rather has provided Mr. Bursor with a copy of the correspondence

simultaneously with its submission to the AAA. Mr. Bursor is, of course, free to try to explain to the AAA why he believes the Demands comply with the AAA's rules.<sup>6</sup>

Thank you for your courtesy and attention to this matter.

Sincerely,

Neal S. Berinhout  
Associate General Counsel  
AT&T Mobility LLC

cc: Scott Bursor  
Eric Tuchmann, General Counsel, AAA

---

<sup>6</sup> In his letter, Mr. Bursor suggests that a court criticized AT&T for contacting AAA staff regarding a Demand that violated the AAA's Class Arbitration policy. The case is inapposite here. In *In re Universal Service Fund*, 370 F. Supp. 2d 1135 (D. Kan. 2005), the court noted that both parties "submitted letters to the AAA regarding whether the arbitration should proceed under the AAA's Supplementary Rules for Class Arbitration." *Id.* at 1137. The court did not question the propriety of those submissions to the AAA Case Manager, who initially decided to refer the issue to the arbitrator but subsequently decided that the arbitrations had been submitted in violation of an earlier version of the AAA's Class Arbitration policy. *See id.* at 1137-38. Accordingly, there is nothing improper about AT&T's submission of correspondence to the AAA's Director of Case Filing Services and Intake Coordinator (as Case Managers have not yet been selected).

Mr. Bursor points to a passage in the court's opinion stating that AT&T Corporation (a wireline provider that at the time was a separate and distinct entity from AT&T Mobility's predecessor) allegedly "threatened the AAA with the loss of AT&T's future business." 370 F. Supp. 2d at 1137-38. Whatever may have happened in that case, no such threat has been made here. To the contrary, AT&T's designation of the AAA as the administrator of arbitrations under AT&T Mobility's arbitration provision does not depend in any way on the AAA's decision regarding the propriety of administering these Demands.

In addition to Mr. Bursor's unfounded and unconstructive attacks on AT&T's integrity, he levels personal attacks on me. His embrace of distortion and false innuendo is unfortunate but also irrelevant, and warrants no further response.



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## 2.1 Dispute Resolution By Binding Arbitration

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### PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.

#### Summary:

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 1-800-331-0500. **In the unlikely event that AT&T's customer service department is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** For any non-frivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

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## 2.2 Arbitration Agreement

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(1) AT&T and you agree to arbitrate **all disputes and claims** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action.**

This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: Office for Dispute Resolution, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled. You may download or copy a form Notice and a form to initiate arbitration at [att.com/arbitration-forms](http://att.com/arbitration-forms).

(3) After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$125 for claims under \$10,000 but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [adr.org](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at [att.com/arbitration-information](http://att.com/arbitration-information).) The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.



(5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

(6) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(7) Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

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# EXHIBIT 6



369 LEXINGTON AVENUE  
10<sup>TH</sup> FLOOR  
NEW YORK, NY 10017-6531  
[www.bursor.com](http://www.bursor.com)

SCOTT A. BURSOR  
Tel: 212.989.9113  
Fax: 212.989.9163  
[scott@bursor.com](mailto:scott@bursor.com)

July 28, 2011

**By Federal Express and Email**

Tara Parvey  
Director of Case Filing Services  
American Arbitration Association  
1101 Laurel Oak Road, Suite 100  
Voorhees, NJ 08043  
856-679-4602  
[ParveyT@adr.org](mailto:ParveyT@adr.org)

General Counsel, AT&T  
1025 Lenox Park Blvd.  
Atlanta, GA 30319  
[nb2520@att.com](mailto:nb2520@att.com)

Re: Leslie Bernardi and AT&T, Inc. and AT&T Mobility LLC  
Daniel Lea and AT&T, Inc. and AT&T Mobility LLC  
Helen Luciano and AT&T, Inc. and AT&T Mobility LLC  
Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC  
Mark Newman and AT&T, Inc. and AT&T Mobility LLC  
Jared Pope and AT&T, Inc. and AT&T Mobility LLC  
Michael Princi and AT&T, Inc. and AT&T Mobility LLC  
Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC  
Alexis Ubiera and AT&T, Inc. and AT&T Mobility LLC  
Laura Barrett and AT&T, Inc. and AT&T Mobility LLC  
Leaf O'Neal and AT&T, Inc. and AT&T Mobility LLC  
Shane Bushman and AT&T, Inc. and AT&T Mobility LLC  
Linda Haensel and AT&T, Inc. and AT&T Mobility LLC  
Shari Kostoff and AT&T, Inc. and AT&T Mobility LLC  
Joan Gibbons and AT&T, Inc. and AT&T Mobility LLC  
Alexis Justak and AT&T, Inc. and AT&T Mobility LLC  
Bryan Rodriguez and AT&T, Inc. and AT&T Mobility LLC  
Juan Monteverde and AT&T, Inc. and AT&T Mobility LLC  
Richard Gonnello and AT&T, Inc. and AT&T Mobility LLC  
Javier Hidalgo and AT&T, Inc. and AT&T Mobility LLC  
Emily Komlossy and AT&T, Inc. and AT&T Mobility LLC  
Beth Keller and AT&T, Inc. and AT&T Mobility LLC  
Chris Marlborough and AT&T, Inc. and AT&T Mobility LLC  
Sandra Smith and AT&T, Inc. and AT&T Mobility LLC  
Richard Colisimo and AT&T, Inc. and AT&T Mobility LLC

Dear Ms. Parvey:

Pursuant to your letter of yesterday demanding a \$3,350 filing fee from the claimants as a condition for AAA to commence administration of these actions, enclosed is a check for \$77,050.00 for the filing fees for 23 of these 25 actions.

The claimants in two of the actions, (1) Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC, and (2) Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC, are unable to pay the \$3,350 filing fee. However, under the parties' agreement, attached, AT&T is responsible for all costs of the arbitration, including this filing fee. Specifically, § 2.2(3) of the agreement states:

Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above.

These arbitrations were initiated in compliance with the notice requirements specified in the agreement, as all claimants have provided the respondents with the Notice of Dispute by certified mail, as specified in § 2.2(2) of the parties' agreement, at least 30 days prior to filing their demand for arbitration. The parties' agreement also states that if the claimant is unable to pay the filing fee, "AT&T will pay it upon receiving a written request at the Notice Address. This letter constitutes such a written request, and is directed to the notice address for AT&T's General Counsel, set forth above.

Please proceed with the administration of these 25 actions forthwith.

Mr. Berinhout, please "promptly reimburse" the filing fees referenced above by sending payment of the filing fee as required under Section 2.2(3) of the Wireless Customer Agreement, in the amount of \$77,050.00, to Bursor & Fisher, P.A. Also, please make sure that AT&T promptly pays the filing fees for (1) Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC, and (2) Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC. It is imperative that AT&T pay these fees at once, as required by § 2.2(3), to avoid further delays in the administration of these arbitration demands, which would fundamentally deprive these AT&T customers of their contractual rights to a speedy, efficient, and consumer-friendly dispute resolution process.

Very truly yours,



Scott A. Bursor

Attachment 1: AT&T Wireless Customer Agreement  
Attachment 2: Copy of Check for Filing Fees (\$77,050)

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## Wireless Customer Agreement

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# **WIRELESS CUSTOMER AGREEMENT ("Agreement")**

"AT&T" or "we," "us" or "our" refers to AT&T Mobility LLC, acting on behalf of its FCC-licensed affiliates doing business as AT&T. "You" or "your" refers to the person or entity that is the customer of record.

**PLEASE READ THIS AGREEMENT CAREFULLY TO ENSURE THAT YOU UNDERSTAND EACH PROVISION, INCLUDING OUR USE OF YOUR LOCATION INFORMATION (SEE SECTION 3.6). THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.**

This Agreement, including the AT&T Privacy Policy Located at [att.com/privacy](http://att.com/privacy), terms of service for wireless products, features, applications, and services ("Services") not otherwise described herein that are posted on applicable AT&T websites or devices, and any documents expressly referred to herein or therein, make up the complete agreement between you and AT&T and supersede any and all prior agreements and understandings relating to the subject matter of this Agreement.

## **1.0 TERM COMMITMENT, CHARGES, BILLING AND PAYMENT**

### **1.1 What Is The Term Of My Service?**

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Your Agreement begins on the day we activate your Services and continues through the Term of Service specified on your Customer Service Summary ("Service Commitment"). AT THE END OF YOUR SERVICE COMMITMENT, THIS AGREEMENT WILL AUTOMATICALLY RENEW ON A MONTH-TO-MONTH BASIS.

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## 1.2 What Happens If My Service Is Cancelled Or Terminated Before The End Of My Agreement? Is There A Cancellation/Early Termination Fee?

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If you terminate your Agreement within three (3) days of accepting the Agreement, you will be entitled to a refund of your activation fee, if any, but you must return the Equipment purchased in connection with your Agreement.

You may terminate this Agreement, for any reason and without incurring the Early Termination Fee, within thirty (30) days of accepting your Agreement, PROVIDED, you will remain responsible for any Services fees and charges incurred. If you purchase Equipment directly from AT&T in connection with your Agreement, but you terminate within 30 days and fail to return the Equipment to AT&T, you will be subject to an Equipment Fee in the maximum amount of the difference between the no-commitment price of the Equipment and the amount you actually paid for the Equipment. AT&T may charge you a restocking fee for any returned Equipment. Some dealers impose additional fees. iPhone returns are subject to a 10% restocking fee, except where prohibited.

You have received certain benefits from us in exchange for any Service Commitment greater than one month. If we terminate your Services for nonpayment or other default before the end of your Service Commitment, or if you terminate your Services for any reason other than (a) in accordance with the cancellation policy; or (b) pursuant to a change of terms, conditions or rates as set forth below, you agree to pay us with respect to each device identifier or telephone number assigned to you, in addition to all other amounts owed, an Early Termination Fee in the amount specified below ("Early Termination Fee"). If your Service Commitment includes the purchase of certain specified Equipment on or after June 1, 2010, the Early Termination Fee will be \$325 minus \$10 for each full month of your Service Commitment that you complete. (For a complete list of the specified Equipment, check [att.com/equipmentETF](http://att.com/equipmentETF)). Otherwise your Early Termination Fee will be \$150 minus \$4 for each full month of your Service Commitment that you complete. The Early Termination Fee is not a penalty, but rather a charge to compensate us for your failure to satisfy the Service Commitment on which your rate plan is based.

Either party may terminate this Agreement at any time after your Service Commitment ends with thirty (30) days notice to the other party. We may terminate this Agreement at any time without notice if we cease to provide Services in your area. We may interrupt or terminate your Services without notice:

1. for any conduct that we believe violates this Agreement,
2. if you behave in an abusive, derogatory, or similarly unreasonable manner with any of our representatives,
3. if we discover that you are underage,
4. if you fail to make all required payments when due,
5. if we have reasonable cause to believe that your Equipment is being used for an unlawful purpose or in a way that (i) is harmful to, interferes with, or may adversely affect our Services or the network of any other provider, (ii) interferes with the use or enjoyment of Services received by others, (iii) infringes intellectual property rights, (iv) results in the publication of threatening or offensive material, or (v) constitutes spam or other abusive messaging or calling, a security risk, or a violation of privacy,
6. if you provided inaccurate credit information, or
7. we believe your credit has deteriorated and you refuse to pay any requested advance payment or deposit.

If you sign a new Agreement before the end of your original Agreement, but terminate the new Agreement within 30 days as allowed above, the new Agreement will terminate and you agree to be bound to the terms and conditions of your original Agreement, including any remaining Service Commitment.

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## 1.3 Can AT&T Change My Terms And Rates?

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We may change any terms, conditions, rates, fees, expenses, or charges regarding your Services at any time. We will provide you with notice of material changes (other than changes to governmental fees, proportional charges for governmental mandates, roaming rates or administrative charges) either in your monthly bill or separately. You understand and agree that State and Federal Universal Service Fees and other governmentally imposed fees, whether or not assessed directly upon you, may be increased based upon the government's or our calculations.

IF WE INCREASE THE PRICE OF ANY OF THE SERVICES TO WHICH YOU SUBSCRIBE, BEYOND THE LIMITS SET FORTH IN YOUR CUSTOMER SERVICE SUMMARY, OR IF WE MATERIALLY DECREASE THE GEOGRAPHICAL AREA IN WHICH YOUR AIRTIME RATE APPLIES (OTHER THAN A TEMPORARY DECREASE FOR REPAIRS OR MAINTENANCE), WE'LL DISCLOSE THE CHANGE AT LEAST ONE BILLING CYCLE IN ADVANCE (EITHER THROUGH A NOTICE WITH YOUR BILL, A TEXT MESSAGE TO YOUR DEVICE, OR OTHERWISE), AND YOU MAY TERMINATE THIS AGREEMENT WITHOUT PAYING AN EARLY TERMINATION FEE OR RETURNING OR PAYING FOR ANY PROMOTIONAL ITEMS, PROVIDED YOUR NOTICE OF TERMINATION IS DELIVERED TO US WITHIN THIRTY (30) DAYS AFTER THE FIRST BILL REFLECTING THE CHANGE.

If you lose your eligibility for a particular rate plan, we may change your rate plan to one for which you qualify.

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## 1.4 What Charges Am I Responsible For? How Much Time Do I Have To Dispute My Bill?

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You are responsible for paying all charges for or resulting from Services provided under this Agreement, including any activation fee that may apply to each voice or data line. You will receive monthly bills that are due in full.

IF YOU DISPUTE ANY CHARGES ON YOUR BILL, YOU MUST NOTIFY US IN WRITING AT AT&T BILL DISPUTE, 1025 LENOX PARK, ATLANTA, GA 30319 WITHIN 100 DAYS OF THE DATE OF THE BILL OR YOU'LL HAVE WAIVED YOUR RIGHT TO DISPUTE THE BILL AND TO PARTICIPATE IN ANY LEGAL ACTION RAISING SUCH DISPUTE.

Charges include, without limitation, airtime, roaming, recurring monthly service, activation, administrative, and late payment charges; regulatory cost recovery and other surcharges; optional feature charges; toll, collect call and directory assistance charges; restoral and reactivation charges; any other charges or calls billed to your phone number; and applicable taxes and governmental fees, whether assessed directly upon you or upon AT&T.

To determine your primary place of use ("PPU") and which jurisdiction's taxes and assessments to collect, you're required to provide us with your residential or business street address. If you don't provide us with such address, or if it falls outside our licensed Services area, we may reasonably designate a PPU within the licensed Services area for you. You must live and have a mailing address within AT&T's owned network coverage area.

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## 1.5 How Does AT&T Calculate My Bill?

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Usage and monthly fees will be billed as specified in your customer service summary or rate plan information online. If the Equipment you order is shipped to you, your Services may be activated before you take delivery of the Equipment so that you can use it promptly upon receipt. Thus, you may be charged for Services while your Equipment is still in transit. If, upon receiving your first bill, you have been charged for Services while your Equipment was in transit, you may contact Customer Care 1-800-331-0500 to request a credit. Except as provided below, monthly Services and certain other charges are billed one month in advance, and there is no proration of such charges if Service is terminated on other than the last day of your billing cycle. Monthly Service and certain other



charges are billed in arrears if you're a former customer of AT&T Wireless and maintain uninterrupted Service on select AT&T rate plans, however, if you elect to receive your bills for your Services combined with your wireline phone bill (where available) you will be billed in advance as provided above. You agree to pay for all services used with your Device.

AIRTIME AND OTHER MEASURED USAGE ("CHARGEABLE TIME") IS BILLED IN FULL-MINUTE INCREMENTS, AND ACTUAL AIRTIME AND USAGE ARE ROUNDED UP TO THE NEXT FULL-MINUTE INCREMENT AT THE END OF EACH CALL FOR BILLING PURPOSES. AT&T CHARGES A FULL MINUTE OF AIRTIME USAGE FOR EVERY FRACTION OF THE LAST MINUTE OF AIRTIME USED ON EACH WIRELESS CALL. UNLESS OTHERWISE PROVIDED IN YOUR PLAN, MINUTES WILL BE DEPLETED ACCORDING TO USAGE IN THE FOLLOWING ORDER: NIGHT AND WEEKEND MINUTES, MOBILE TO MOBILE MINUTES, ANYTIME MINUTES AND ROLLOVER, EXCEPT THAT MINUTES THAT ARE PART OF BOTH A LIMITED PACKAGE AND AN UNLIMITED PACKAGE WILL NOT BE DEPLETED FROM THE LIMITED PACKAGE. Chargeable Time begins for outgoing calls when you press SEND (or similar key) and for incoming calls when a signal connection from the caller is established with our facilities. Chargeable Time ends after you press END (or similar key), but not until your wireless telephone's signal of call disconnect is received by our facilities and the call disconnect signal has been confirmed.

All outgoing calls for which we receive answer supervision or which have at least 30 seconds of Chargeable Time, including ring time, shall incur a minimum of one minute airtime charge. Answer supervision is generally received when a call is answered; however, answer supervision may also be generated by voicemail systems, private branch exchanges, and interexchange switching equipment. Chargeable Time may include time for us to recognize that only one party has disconnected from the call, time to clear the channels in use, and ring time. Chargeable Time may also occur from other uses of our facilities, including by way of example, voicemail deposits and retrievals, and call transfers. Calls that begin in one rate period and end in another rate period may be billed in their entirety at the rates for the period in which the call began.

DATA TRANSPORT IS CALCULATED IN FULL-KILOBYTE INCREMENTS, AND ACTUAL TRANSPORT IS ROUNDED UP TO THE NEXT FULL-KILOBYTE INCREMENT AT THE END OF EACH DATA SESSION FOR BILLING PURPOSES. AT&T CALCULATES A FULL KILOBYTE OF DATA TRANSPORT FOR EVERY FRACTION OF THE LAST KILOBYTE OF DATA TRANSPORT USED ON EACH DATA SESSION. TRANSPORT IS BILLED EITHER BY THE KILOBYTE ("KB") OR MEGABYTE ("MB"). IF BILLED BY MB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED AND ROUNDED UP TO NEXT FULL MB INCREMENT TO DETERMINE BILLING. IF BILLED BY KB, THE FULL KBs CALCULATED FOR EACH DATA SESSION DURING THE BILLING PERIOD ARE TOTALED TO DETERMINE BILLING. NETWORK OVERHEAD, SOFTWARE UPDATE REQUESTS, EMAIL NOTIFICATIONS, AND RESEND REQUESTS CAUSED BY NETWORK ERRORS CAN INCREASE MEASURED KILOBYTES. DATA TRANSPORT OCCURS WHENEVER YOUR DEVICE IS CONNECTED TO OUR NETWORK AND IS ENGAGED IN ANY DATA TRANSMISSION, INCLUDING BUT NOT LIMITED TO: (i) SENDING OR RECEIVING EMAIL, DOCUMENTS, OR OTHER CONTENT, (ii) ACCESSING WEBSITES, OR (iii) DOWNLOADING AND USING APPLICATIONS. SOME APPLICATIONS, CONTENT, PROGRAMS, AND SOFTWARE THAT YOU DOWNLOAD OR THAT COMES PRE-LOADED ON YOUR DEVICE AUTOMATICALLY AND REGULARLY SEND AND RECEIVE DATA TRANSMISSIONS IN ORDER TO FUNCTION PROPERLY, WITHOUT YOU AFFIRMATIVELY INITIATING THE REQUEST AND WITHOUT YOUR KNOWLEDGE. FOR EXAMPLE, APPLICATIONS THAT PROVIDE REAL-TIME INFORMATION AND LOCATION-BASED APPLICATIONS CONNECT TO OUR NETWORK, AND SEND AND RECEIVE UPDATED INFORMATION SO THAT IT IS AVAILABLE TO YOU WHEN YOU WANT TO ACCESS IT. YOU WILL BE BILLED FOR ALL DATA TRANSPORT AND USAGE WHEN YOUR DEVICE IS CONNECTED TO OUR NETWORK, INCLUDING THAT WHICH YOU AFFIRMATIVELY INITIATE OR THAT WHICH RUNS AUTOMATICALLY IN THE BACKGROUND WITHOUT YOUR KNOWLEDGE, AND WHETHER SUCCESSFUL OR NOT.

If you select a rate plan that includes a predetermined allotment of Services (for example, a predetermined amount of airtime, megabytes or messages), unless otherwise specifically provided as a part of such rate plan, any unused allotment of Services from one billing cycle will not carry over to any other billing cycle. We may bill you in a format as we determine from time to time. Additional charges may apply for additional copies of your bill, or for detailed information about your usage of Services.

**Delayed Billing:** Billing of usage for calls, messages, data or other Services (such as usage when roaming on other carriers' networks, including internationally) may occasionally be delayed. Such usage charges may appear in a later billing cycle, will be deducted from Anytime monthly minutes or other Services allotments for the month when the usage is actually billed, and may result in additional charges for that month. Those minutes will be applied against your Anytime monthly minutes in the month in which the calls appear on your bill. You also remain responsible for paying your monthly Service fee if your Service is suspended for nonpayment. We may require payment by money order, cashier's check, or a similarly secure form of payment at our discretion.

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## 1.6 Are Advance Payments And/Or Deposits Required?

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We may require you to make deposits or advance payments for Services, which we may offset against any unpaid balance on your account. Interest won't be paid on advance payments or deposits unless required by law. We may require additional advance payments or deposits if we determine that the initial payment was inadequate. Based on your creditworthiness as we determine it, we may establish a credit limit and restrict Services or features. If your account balance goes beyond the limit we set for you, we may immediately interrupt or suspend Services until your balance is brought below the limit. Any charges you incur in excess of your limit become immediately due. If you have more than one account with us, you must keep all accounts in good standing to maintain Services. If one account is past due or over its limit, all accounts in your name are subject to interruption or termination and all other available collection remedies.

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## 1.7 What if I fail to pay my AT&T Bill when it is due?

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Late payment charges are based on the state to which the area code of the wireless telephone number assigned to you is assigned by the North American Numbering Plan Administration (for area code assignments see [nationalnanpa.com/area\\_code\\_maps](http://nationalnanpa.com/area_code_maps)). You agree that for amounts not paid by the due date, AT&T may charge, as a part of its rates and charges, and you agree to pay, a late payment fee of \$5 in CT, D.C., DE, IL, KS, MA, MD, ME, MI, MO, NH, NJ, NY, OH, OK, PA, RI, VA, VT, WI, WV; the late payment charge is 1.5% of the balance carried forward to the next bill in all other states. **In the event you fail to pay billed charges when due and it becomes necessary for AT&T to refer your account(s) to a third party for collection, AT&T will charge a collection fee at the maximum percentage permitted by applicable law, but not to exceed 18% to cover the internal collection-related costs AT&T has incurred on such account(s) through and including the date on which AT&T refer(s) the account(s) to such third party.**

You expressly authorize, and specifically consent to allowing, AT&T and/or its outside collection agencies, outside counsel, or other agents to contact you in connection with any and all matters relating to unpaid past due charges billed by AT&T to you. You agree that, for attempts to collect unpaid past due charges, such contact may be made to any mailing address, telephone number, cellular phone number, e-mail address, or any other electronic address that you have provided, or may in the future provide, to AT&T. You agree and acknowledge that any e-mail address or any other electronic address that you provide to AT&T is your private address and is not accessible to unauthorized third parties. For attempts to collect unpaid charges, you agree that in addition to individual persons attempting to communicate directly with you, any type of contact described above may be made using, among other methods, pre-recorded or artificial voice messages delivered by an automatic telephone dialing system, pre-set e-mail messages delivered by an automatic e-mailing system, or any other pre-set electronic messages delivered by any other automatic electronic messaging system.

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## 1.8 What Happens If My Check Bounces?

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We'll charge you up to \$30 (depending on applicable law) for any check or other instrument (including credit card charge backs) returned unpaid for any reason.

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### 1.9 Are There Business or Government Benefits?

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You may receive or be eligible for certain rate plans, discounts, features, promotions, and other benefits ("Benefits") through a business or government customer's agreement with us ("Business Agreement"). All such Benefits are provided to you solely as a result of the corresponding Business Agreement, and may be modified or terminated without notice.

If a business or government entity pays your charges or is otherwise liable for the charges, you authorize us to share your account information with it or its authorized agents. If you're on a rate plan and/or receive certain Benefits tied to a Business Agreement with us, but you're liable for your own charges, then you authorize us to share enough account information with it or its authorized agents to verify your continuing eligibility for those Benefits.

You may receive Benefits because of your agreement to have the charges for your Services, billed ("Joint Billing") by a wireline company affiliated with AT&T ("Affiliate") or because you subscribe to certain services provided by an Affiliate. If you cancel Joint Billing or the Affiliate service your rates will be adjusted without notice to a rate plan for which you qualify.

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### 1.10 Who Can Access My Account and for What Purpose?

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You authorize us to provide information about and to make changes to your account, including adding new Services, upon the direction of any person able to provide information we deem sufficient to identify you. You consent to the use by us or our authorized agents of regular mail, predictive or autodialing equipment, email, text messaging, facsimile or other reasonable means to contact you to advise you about our Services or other matters we believe may be of interest to you. In any event, we reserve the right to contact you by any means regarding customer service-related notifications, or other such information.

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## 2.0 HOW DO I RESOLVE DISPUTES WITH AT&T?

### 2.1 Dispute Resolution By Binding Arbitration

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**PLEASE READ THIS CAREFULLY. IT AFFECTS YOUR RIGHTS.**

Summary:

Most customer concerns can be resolved quickly and to the customer's satisfaction by calling our customer service department at 1-800-331-0500. **In the unlikely event that AT&T's customer service department is unable to resolve a complaint you may have to your satisfaction (or if AT&T has not been able to resolve a dispute it has with you after attempting to do so informally), we each agree to resolve those disputes through binding arbitration or small claims court instead of in courts of general jurisdiction.** Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and class actions are not permitted.** For any non-frivolous claim that does not exceed \$75,000, AT&T will pay all costs of the arbitration. Moreover, in arbitration you are entitled to recover attorneys' fees from AT&T to at least the same extent as you would be in court.

In addition, under certain circumstances (as explained below), AT&T will pay you more than the amount of the arbitrator's award and will pay your attorney (if any) twice his or her reasonable attorneys' fees if the arbitrator awards you an amount that is greater than what AT&T has offered you to settle the dispute.

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### 2.2 Arbitration Agreement

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(1) AT&T and you agree to arbitrate **all disputes and claims** between us. This agreement to arbitrate is intended to be broadly interpreted. It includes, but is not limited to:

- claims arising out of or relating to any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory;
- claims that arose before this or any prior Agreement (including, but not limited to, claims relating to advertising);
- claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and
- claims that may arise after the termination of this Agreement.

References to "AT&T," "you," and "us" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors, and assigns, as well as all authorized or unauthorized users or beneficiaries of services or Devices under this or prior Agreements between us. Notwithstanding the foregoing, either party may bring an individual action in small claims court. This arbitration agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, including, for example, the Federal Communications Commission. Such agencies can, if the law allows, seek relief against us on your behalf. **You agree that, by entering into this Agreement, you and AT&T are each waiving the right to a trial by jury or to participate in a class action.** This Agreement evidences a transaction in interstate commerce, and thus the Federal Arbitration Act governs the interpretation and enforcement of this provision. This arbitration provision shall survive termination of this Agreement.

2) A party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to AT&T should be addressed to: Office for Dispute Resolution, AT&T, 1025 Lenox Park Blvd., Atlanta, GA 30319 ("Notice Address"). The Notice must (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). If AT&T and you do not reach an agreement to resolve the claim within 30 days after the Notice is received, you or AT&T may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by AT&T or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or AT&T is entitled. You may download or copy a form Notice and a form to initiate arbitration at [att.com/arbitration-forms](http://att.com/arbitration-forms).

(3) After AT&T receives notice at the Notice Address that you have commenced arbitration, it will promptly reimburse you for your payment of the filing fee, unless your claim is for greater than \$75,000. (The filing fee currently is \$125 for claims under \$10,000 but is subject to change by the arbitration provider. If you are unable to pay this fee, AT&T will pay it directly upon receiving a written request at the Notice Address.) The arbitration will be governed by the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules are available online at [adr.org](http://adr.org), by calling the AAA at 1-800-778-7879, or by writing to the Notice Address. (You may obtain information that is designed for non-lawyers about the arbitration process at

[att.com/arbitration-information](#).) The arbitrator is bound by the terms of this Agreement. All issues are for the arbitrator to decide, except that issues relating to the scope and enforceability of the arbitration provision are for the court to decide. Unless AT&T and you agree otherwise, any arbitration hearings will take place in the county (or parish) of your billing address. If your claim is for \$10,000 or less, we agree that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. Except as otherwise provided for herein, AT&T will pay all AAA filing, administration, and arbitrator fees for any arbitration initiated in accordance with the notice requirements above. If, however, the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all such fees will be governed by the AAA Rules. In such case, you agree to reimburse AT&T for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. In addition, if you initiate an arbitration in which you seek more than \$75,000 in damages, the payment of these fees will be governed by the AAA rules.

4) If, after finding in your favor in any respect on the merits of your claim, the arbitrator issues you an award that is greater than the value of AT&T's last written settlement offer made before an arbitrator was selected, then AT&T will:

- pay you the amount of the award or \$10,000 ("the alternative payment"), whichever is greater; and
- pay your attorney, if any, twice the amount of attorneys' fees, and reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration ("the attorney premium").

If AT&T did not make a written offer to settle the dispute before an arbitrator was selected, you and your attorney will be entitled to receive the alternative payment and the attorney premium, respectively, if the arbitrator awards you any relief on the merits. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees, expenses, and the alternative payment and the attorney premium at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

(5) The right to attorneys' fees and expenses discussed in paragraph (4) supplements any right to attorneys' fees and expenses you may have under applicable law. Thus, if you would be entitled to a larger amount under the applicable law, this provision does not preclude the arbitrator from awarding you that amount. However, you may not recover duplicative awards of attorneys' fees or costs. Although under some laws AT&T may have a right to an award of attorneys' fees and expenses if it prevails in an arbitration, AT&T agrees that it will not seek such an award.

(6) The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. If this specific provision is found to be unenforceable, then the entirety of this arbitration provision shall be null and void.

(7) Notwithstanding any provision in this Agreement to the contrary, we agree that if AT&T makes any future change to this arbitration provision (other than a change to the Notice Address) during your Service Commitment, you may reject any such change by sending us written notice within 30 days of the change to the Arbitration Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this provision.

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### 3.0 TERMS RELATING TO YOUR DEVICE AND CONTENT

#### 3.1 My Device

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You are responsible for all phones and other devices containing a SIM assigned to your account ("Devices"). Your Device must be compatible with, and not interfere with, our Services and must comply with all applicable laws, rules, and regulations. We may periodically program your Device remotely with system settings for roaming service, to direct your Device to use network services most appropriate for your typical usage, and other features that cannot be changed manually.

Devices purchased for use on AT&T's system are designed for use exclusively on AT&T's system ("Equipment"). You agree that you won't make any modifications to the Equipment or programming to enable the Equipment to operate on any other system. AT&T may, at its sole and absolute discretion, modify the programming to enable the operation of the Equipment on other systems.

If you bought a phone from AT&T, your phone may have been programmed with a SIM lock which will prevent the phone from operating with other compatible wireless telephone carriers' services. If you wish to use the SIM-locked phone with the service of another wireless telephone carrier, you must enter a numeric Unlock Code to unlock the phone. AT&T will provide the Unlock Code upon request to eligible current and former customers, provided that (1) the customer has completed a minimum of 90 days of active service with AT&T, is in good standing with AT&T and is current in his or her payments at the time of the request; (2) if applicable, any period of exclusivity associated with AT&T's sale of the handset has expired; and (3) AT&T has such code or can reasonably obtain it from the manufacturer. For phones sold with a Prepaid Plan, AT&T will provide the Unlock Code upon request to eligible current and former customers who provide a detailed receipt or other proof of purchase of the phone. iPhone and certain other devices are not eligible to be unlocked. For further details on eligibility requirements and for assistance on obtaining the Unlock Code for your handset, please call 1-800-331-0500 or visit an AT&T company store.

You are solely responsible for complying with U.S. Export Control laws and regulations and the import laws and regulations of foreign countries when traveling internationally with your Equipment.

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#### 3.2 Where and How Does AT&T Service Work?

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AT&T does not guarantee availability of wireless network. Services may be subject to certain Device and compatibility/limitations including memory, storage, network availability, coverage, accessibility and data conversion limitations. Services (including without limitation, eligibility requirements, plans, pricing, features and/or service areas) are subject to change without notice.

When outside AT&T's coverage area, access will be limited to information and applications previously downloaded to or resident on your device. Coverage areas vary between AT&T network technologies. See coverage map(s), available at store or from your sales representative, for details or the coverage map at [www.att.com/coverage-viewer](#).

Actual network speeds depend upon device characteristics, network, network availability and coverage levels, tasks, file characteristics, applications and other factors. Performance may be impacted by transmission limitations, terrain, in-building/in-vehicle use and capacity constraints.

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### 3.3 What Information, Content, And Applications Are Provided By Third Parties?

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Certain information, applications, or other content is provided by independently owned and operated content providers or service providers who are subject to change at any time without notice.

AT&T IS NOT A PUBLISHER OF THIRD-PARTY INFORMATION, APPLICATIONS, OR OTHER CONTENT AND IS NOT RESPONSIBLE FOR ANY OPINIONS, ADVICE, STATEMENTS, OR OTHER INFORMATION, SERVICES OR GOODS PROVIDED BY THIRD PARTIES.

Third-party content or service providers may impose additional charges. Policies regarding intellectual property, privacy and other policies or terms of use may differ among AT&T's content or service providers and you are bound by such policies or terms when you visit their respective sites or use their services. It is your responsibility to read the rules or service agreements of each content provider or service provider.

Any information you involuntarily or voluntarily provide to third parties is governed by their policies or terms. The accuracy, appropriateness, content, completeness, timeliness, usefulness, security, safety, merchantability, fitness for a particular purpose, transmission or correct sequencing of any application, information or downloaded data is not guaranteed or warranted by AT&T or any content providers or other third party. Delays or omissions may occur. Neither AT&T nor its content providers, service providers or other third parties shall be liable to you for any loss or injury arising out of or caused, in whole or in part, by your use of any information, application or content, or any information, application, or other content acquired through the Service.

You acknowledge that every business or personal decision, to some degree or another, represents an assumption of risk, and that neither AT&T nor its content and service providers or suppliers, in providing information, applications or other content or services, or access to information, applications, or other content underwrites, can underwrite, or assumes your risk in any manner whatsoever.

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### 3.4 How Can I Get Mobile Content?

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You understand that Devices can be used to acquire or purchase goods, content, and services (including subscription plans) like ring tones, graphics, games, applications and news alerts from AT&T or other companies ("Content"). You understand that you are responsible for all authorized charges associated with such Content from any Device assigned to your account, that these charges will appear on your bill (including charges on behalf of other companies), and that such purchases can be restricted by using parental controls available from an AT&T salesperson, or by calling AT&T.

You have full-time access to your Content purchase transaction history on our website. You may contest charges and seek refunds for purchases with which you are not satisfied. AT&T reserves the right to restrict Content purchases or terminate the account of anyone who seeks refunds on improper grounds or otherwise abuses this Service.

Actual Content may vary based on the Device capabilities. Content may be delivered in multiple messages. Content charges are incurred at the stated one-time download rate or subscription rate, plus a per kilobyte or per megabyte default pay per use charge for the Content transport when delivered, unless you have a data plan and such charges appear separately on your bill. You will be charged each time you download Content. Data Service charges apply.

[See related links](#) | [See all legal](#)

### 3.5 Am I Responsible If Someone Makes A Purchase With My Device?

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Except as otherwise provided in this Agreement, if your Device is used by others to make Content purchases, you are responsible for all such purchases. If this occurs, you are giving those other users your authority to:

1. make Content purchases from those Devices, and to incur charges for those Content purchases that will appear on your bill;
2. give consent required for that Content, including the consent to use that user's location information to deliver customized information to that user's Device; or
3. make any representation required for that content, including a representation of the user's age, if requested.

Usage by others can be restricted by use of parental controls or similar features. Visit [att.com/smartlimits](http://att.com/smartlimits) to learn more.

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### 3.6 Can I Use Location-Based Services With My Device?

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AT&T collects information about the approximate location of your Device in relation to our cell towers and the Global Positioning System (GPS). We use that information, as well as other usage and performance information also obtained from our network and your Device, to provide you with wireless voice and data services, and to maintain and improve our network and the quality of your wireless experience. We may also use location information to create aggregate data from which your personally identifiable information has been removed or obscured. Such aggregate data may be used for a variety of purposes such as scientific and marketing research and services such as vehicle traffic volume monitoring. It is your responsibility to notify users on your account that we may collect and use location information from Devices.

Your Device is also capable of using optional Content at your request or the request of a user on your account, offered by AT&T or third parties that make use of a Device's location information ("Location-Based Services"). Please review the terms and conditions and the associated privacy policy for each Location-Based Service to learn how the location information will be used and protected. For more information on Location-Based Services, please visit [att.com/privacy](http://att.com/privacy).

Our directory assistance service (411) may use the location of a Device to deliver relevant customized 411 information based upon the user's request for a listing or other 411 service. By using this directory assistance service, the user is consenting to our use of that user's location information for such purpose. This location information may be disclosed to a third party to perform the directory assistance service and for no other purpose. Such location information will be retained only as long as is necessary to provide the relevant customized 411 information and will be discarded after such use. Please see our privacy policy at [att.com/privacy](http://att.com/privacy) for additional details.

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### 3.7 What If My Device Is Lost Or Stolen?

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If your wireless Device is lost or stolen, you must contact us immediately to report the Device lost or stolen. You're not liable for charges you did not authorize, but the fact that a call was placed from your Device is evidence that the call was authorized. (California Customers see section "What Terms Apply Only To Specific States?" below). Once you report to us that the Device is lost or stolen, you will not be responsible for subsequent charges incurred by that Device.

You can report your Device as lost or stolen and suspend Services without a charge by contacting us at the phone number listed on your bill or at

[wireless.att.com](#). If there are charges on your bill for calls made after the Device was lost or stolen, but before you reported it to us, notify us of the disputed charges and we will investigate. You may submit documents, statements and other information to show any charges were not authorized. You may be asked to provide information and you may submit information to support your claim. We will advise you of the result of our investigation within 30 days. While your phone is suspended you will remain responsible for complying with all other obligations under this Agreement, including, but not limited to, your monthly fee. We both have a duty to act in good faith in a reasonable and responsible manner including in connection with the loss or theft of your Device.

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## 4.0 TERMS RELATING TO THE USE AND LIMITATIONS OF SERVICE

### 4.1 What Are The Limitations On Service And Liability?

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Unless prohibited by law, the following limitations of liability apply. Service may be interrupted, delayed, or otherwise limited for a variety of reasons, including environmental conditions, unavailability of radio frequency channels, system capacity, priority access by National Security and Emergency Preparedness personnel in the event of a disaster or emergency, coordination with other systems, equipment modifications and repairs, and problems with the facilities of interconnecting carriers. We may block access to certain categories of numbers (e.g., 976, 900, and international destinations) at our sole discretion.

Additional hardware, software, subscription, credit or debit card, Internet access from your compatible PC and/or special network connection may be required and you are solely responsible for arranging for or obtaining all such requirements. Some solutions may require third party products and/or services, which are subject to any applicable third party terms and conditions and may require separate purchase from and/or agreement with the third party provider. AT&T is not responsible for any consequential damages caused in any way by the preceding hardware, software or other items/requirements for which you are responsible.

Not all plans or Services are available for purchase or use in all sales channels, in all areas or with all devices. AT&T is not responsible for loss or disclosure of any sensitive information you transmit. AT&T's wireless services are not equivalent to wireline Internet. AT&T is not responsible for nonproprietary services or their effects on devices.

We may, but do not have the obligation to, refuse to transmit any information through the Services and may screen and delete information prior to delivery of that information to you. There are gaps in service within the Services areas shown on coverage maps, which, by their nature, are only approximations of actual coverage.

WE DO NOT GUARANTEE YOU UNINTERRUPTED SERVICE OR COVERAGE. WE CANNOT ASSURE YOU THAT IF YOU PLACE A 911 CALL YOU WILL BE FOUND. AIRTIME AND OTHER SERVICE CHARGES APPLY TO ALL CALLS, INCLUDING INVOLUNTARILY TERMINATED CALLS. AT&T MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, ACCURACY, SECURITY, OR PERFORMANCE REGARDING ANY SERVICES, SOFTWARE OR GOODS, AND IN NO EVENT SHALL AT&T BE LIABLE, WHETHER OR NOT DUE TO ITS OWN NEGLIGENCE, for any:

- a. act or omission of a third party;
- b. mistakes, omissions, interruptions, errors, failures to transmit, delays, or defects in the Services or Software provided by or through us;
- c. damage or injury caused by the use of Services, Software, or Device, including use in a vehicle;
- d. claims against you by third parties;
- e. damage or injury caused by a suspension or termination of Services or Software by AT&T; or
- f. damage or injury caused by failure or delay in connecting a call to 911 or any other emergency service.

Notwithstanding the foregoing, if your Service is interrupted for 24 or more continuous hours by a cause within our control, we will issue you, upon request, a credit equal to a pro-rata adjustment of the monthly Service fee for the time period your Service was unavailable, not to exceed the monthly Service fee. Our liability to you for Service failures is limited solely to the credit set forth above.

Unless prohibited by law, AT&T isn't liable for any indirect, special, punitive, incidental or consequential losses or damages you or any third party may suffer by use of, or inability to use, Services, Software, or Devices provided by or through AT&T, including loss of business or goodwill, revenue or profits, or claims of personal injuries.

To the full extent allowed by law, you hereby release, indemnify, and hold AT&T and its officers, directors, employees and agents harmless from and against any and all claims of any person or entity for damages of any nature arising in any way from or relating to, directly or indirectly, service provided by AT&T or any person's use thereof (including, but not limited to, vehicular damage and personal injury), INCLUDING CLAIMS ARISING IN WHOLE OR IN PART FROM THE ALLEGED NEGLIGENCE OF AT&T, or any violation by you of this Agreement. This obligation shall survive termination of your Service with AT&T. AT&T is not liable to you for changes in operation, equipment, or technology that cause your Device or Software to be rendered obsolete or require modification.

SOME STATES, INCLUDING THE STATE OF KANSAS, DON'T ALLOW DISCLAIMERS OF IMPLIED WARRANTIES OR LIMITS ON REMEDIES FOR BREACH. THEREFORE, THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY HAVE OTHER RIGHTS WHICH VARY FROM STATE TO STATE.

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### 4.2 How Can I Use My AT&T Service?

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All use of AT&T's wireless network and Services is governed by AT&T's Acceptable Use Policy, which can be found at [at.com/AcceptableUsePolicy](#), as determined solely by AT&T. AT&T can revise its Acceptable Use Policy at any time without notice by updating this posting.

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### 4.3 Who Is Responsible For Security?

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AT&T DOES NOT GUARANTEE SECURITY. Data encryption is available with some, but not all, Services sold by AT&T. If you use your device to access company email or information, it is your responsibility to ensure your use complies with your company's internal IT and security procedures.

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### 4.4 How Can I Use the Software?

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The software, interfaces, documentation, data, and content provided for your Equipment as may be updated, downloaded, or replaced by feature enhancements, software updates, system restore software or data generated or provided subsequently by AT&T (hereinafter "Software") is licensed, not sold, to you by AT&T and/or its licensors/suppliers for use only on your Equipment. Your use of the Software shall comply with its intended purposes as determined by

us, all applicable laws, and AT&T's Acceptable Use Policy at [att.com/AcceptableUsePolicy](http://att.com/AcceptableUsePolicy).

You are not permitted to use the Software in any manner not authorized by this License. You may not (and you agree not to enable others to) copy, decompile, reverse engineer, disassemble, reproduce, attempt to derive the source code of, decrypt, modify, defeat protective mechanisms, combine with other software, or create derivative works of the Software or any portion thereof. You may not rent, lease, lend, sell, redistribute, transfer or sublicense the Software or any portion thereof. You agree the Software contains proprietary content and information owned by AT&T and/or its licensors/suppliers.

AT&T and its licensors/suppliers reserve the right to change, suspend, terminate, remove, impose limits on the use or access to, or disable access to, the Software at any time without notice and will have no liability for doing so. You acknowledge AT&T's Software licensors/suppliers are intended third party beneficiaries of this license, including the indemnification, limitation of liability, disclaimer of warranty provisions found in this Agreement.

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## 4.5 How Can I Use Another Carrier's Network (Off-Net Usage)?

### 4.5.1 Voice

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If your use of minutes (including unlimited Services) on other carrier networks ("off-net voice usage") during any two consecutive months exceed your off-net voice usage allowance, AT&T may, at its option, terminate your Services, deny your continued use of other carriers' coverage or change your plan to one imposing usage charges for off-net voice usage. Your off-net voice usage allowance is equal to the lesser of 750 minutes or 40% of the Anytime Minutes included with your plan.

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### 4.5.2 Data

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If your use of the Data Services on other carriers' wireless networks ("offnet data usage") during any month exceeds your offnet data usage allowance, AT&T may at its option terminate your access to Data Services, deny your continued use of other carriers' coverage, or change your plan to one imposing usage charges for offnet data usage. Your offnet data usage allowance is equal to the lesser of 24 megabytes or 20% of the kilobytes included with your plan. You may be required to use a Device programmed with AT&T's preferred roaming database.

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### 4.5.3 Messaging

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If you use messaging services (including unlimited Services) on other carrier networks ("off-net messaging usage") during any two consecutive months exceed your off-net messaging usage allowance, AT&T may, at its option, terminate your messaging service, deny your continued use of other carriers' coverage or change your plan to one imposing usage charges for off-net messaging usage. Your off-net messaging usage allowance is equal to the lesser of 3,000 messages or 50% of the messages included with your plan.

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### 4.5.4 Notice

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AT&T will provide notice that it intends to take any of the above actions, and you may terminate this Agreement.

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## 4.6 How Do I Get Service Outside AT&T's Wireless Network (Roaming)?

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Roaming charges for wireless data or voice Services may be charged with some plans when outside AT&T's wireless network. Services originated or received while outside your plan's included coverage area are subject to roaming charges Use of Services when roaming is dependent upon roaming carrier's support of applicable network technology and functionality. Display on your device will not indicate whether you will incur roaming charges. Check with roaming carriers individually for support and coverage details.

Billing for domestic and international roaming usage may be delayed up to three billing cycles due to reporting between carriers. Substantial charges may be incurred if your phone is taken out of the U.S. even if no Services are intentionally used.

### 4.6.1 International Services

Certain eligibility restrictions apply which may be based on service tenure, payment history and/or credit. Rates are subject to change. For countries, rates and additional details, see [att.com/global](http://att.com/global).

#### 4.6.1.1 International Roaming:

Compatible Device required. Your plan may include the capability to make and receive calls while roaming internationally. AT&T, in its sole discretion, may block your ability to use your Device while roaming internationally until eligibility criteria are met. International roaming rates, which vary by country, apply for all calls placed or received while outside the United States, Puerto Rico and U.S.V.I. Please consult [att.com/global](http://att.com/global) or call 866-246-4852 for a list of currently available countries and carriers. All countries may not be available for roaming. All carriers within available countries may not be available on certain plans or packages. Availability, quality of coverage and services while roaming are not guaranteed. When roaming internationally, you will be charged international roaming airtime rates including when incoming calls are routed to voicemail, even if no message is left. Taxes are additional. If you want to block the ability to make and receive calls or use data functions while roaming internationally, you may request that by calling 1-916-843-4685 (at no charge from your wireless phone).

#### 4.6.1.2 International Data:

Many Devices, including iPhone transmit and receive data messages without user intervention and can generate unexpected charges when powered "on" outside the United States, Puerto Rico and USVI. AT&T may send "alerts" via SMS or email, to notify you of data usage. These are courtesy alerts. There is no guarantee you will receive them. They are not a guarantee of a particular bill limit. Receipt of Visual Voicemail messages are charged at international data pay-per-use rates unless customer has an international data plan, in which case receipt of Visual Voicemail messages decrement Kilobytes included in such plan.

#### 4.6.1.3 Data Global Add-Ons and Global Messaging Plans:

Require that domestic data or messaging capability be in place. Rates apply only for usage within "roam zone" comprised of select carriers. Within the roam zone, overage rate applies if you exceed the MBs allotted for any Data Global Add-On Plan or the messages allotted for any Global Messaging



Package. International roaming pay-per-use rates apply in countries outside the roam zone. See [att.com/dataconnectglobal](http://att.com/dataconnectglobal) for current roam zone list. If you enroll after the beginning date of your billing cycle, the monthly charge and the data/message allotment included will be correspondingly reduced per day.

#### 4.6.1.4 Data Connect Global/North America Plans:

Do not include capability to place a voice call and require a 1 year agreement. For specific terms regarding international data plans, see Section 6.11.2 of the Wireless Customer Agreement.

#### 4.6.1.5 International Long Distance:

International rates apply for calls made and messages sent from the U.S., Puerto Rico and U.S.V.I. to another country. Calling or messaging to some countries may not be available. Calls to wireless numbers and numbers for special services, such as Premium Rated Services, may cost more than calls to wireline numbers. If a customer calls an overseas wireline number and the call is forwarded to a wireless number, the customer will be charged for a call terminated to a wireless number. International Long Distance calling rates are charged per minute and apply throughout the same footprint in which the customer's airtime package minutes apply.

#### 4.6.1.6 International Long Distance Text, Picture & Video Messaging:

Additional charges apply for premium messages and content. Messages over 300 KBs are billed an additional 50¢/message. For a complete list of countries, please visit [att.com/text2world](http://att.com/text2world)

#### 4.6.1.7 Cruise Ship Roaming:

Cruise ship roaming rates apply for calls placed or data used while on the ship.

#### 4.6.1.8 International Miscellaneous Export Restrictions:

You are solely responsible for complying with U.S. Export Control laws and regulations, and the import laws and regulations of foreign countries when traveling internationally with your Device.

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## 5.0 WHAT VOICE SERVICES DOES AT&T OFFER?

### 5.1 What Are The General Terms That Apply To All AT&T Voice Rate Plans?

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You may obtain usage information by calling customer service or using one of our automated systems. **Pricing/Taxes/No Proration:** Prices do not include taxes, directory assistance, roaming, Universal Service Fees, and other surcharges. Final month's charges are not prorated. **Activation Fees:** Activation Fee may apply for each new line. **Nights and Weekends:** Nights are 9:00 p.m. to 6:00 a.m. Weekends are 9:00 p.m. Friday to 6:00 a.m. Monday (based on time of day at the cell site or switch providing your Service). Included long distance calls can be made from the 50 United States, Puerto Rico and U.S. Virgin Islands to the 50 United States, Puerto Rico, U.S. Virgin Islands, Guam and Northern Mariana Islands. Roaming charges do not apply when roaming within the Services area of land-based networks of the 50 United States, Puerto Rico and U.S. Virgin Islands. Additional charges apply to Services used outside the land borders of the U.S., Puerto Rico and U.S. Virgin Islands.

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### 5.2 Voicemail

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Unless you subscribe to an Unlimited Voice Plan or are an upstate New York customer subscribing to Enhanced Voicemail, airtime charges apply to calls to your voicemail service, including calls where the caller does not leave a message, because the call has been completed, calls to listen to, send, reply to, or forward messages, or to perform other activities with your voicemail service, including calls forwarded from other phones to your voicemail service. You are solely responsible for establishing and maintaining security passwords to protect against unauthorized use of your voicemail service. For information as to the number of voicemail messages you can store, when voicemail messages will be deleted, and other voicemail features, see [att.com/wirelessvoicemail](http://att.com/wirelessvoicemail). We reserve the right to change the number of voicemails you can store, the length you can store voicemail messages, when we delete voicemail messages, and other voicemail features without notice. We may deactivate your voicemail service if you do not initialize it within a reasonable period after activation. We will reactivate the service upon your request. See [att.com/global](http://att.com/global) for information about using voicemail internationally.

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### 5.3 Voicemail-To-Text (VMTT)

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AT&T is not responsible, nor liable for: 1) errors in the conversion of or its inability to transcribe voicemail messages to text/email; 2) lost or misdirected messages; or, 3) content that is unlawful, harmful, threatening, abusive, obscene, tortious, or otherwise objectionable.

We do not filter, edit or control voice, text, or email messages, or guarantee the security of messages. We can interrupt, restrict or terminate VMTT without notice, if your use of VMTT adversely impacts AT&T's network, for example that could occur from abnormal calling patterns or an unusually large number of repeated calls and messages; or if your use is otherwise abusive, fraudulent, or does not comply with the law.

You are solely responsible for and will comply with all applicable laws as to the content of any text messages or emails you receive from VMTT that you forward or include in a reply to any other person. You authorize AT&T or a third party working on AT&T's behalf to listen to, and transcribe all or part of a voicemail message and to convert such voicemail message into text/email, and to use voicemail messages and transcriptions to enhance, train and improve AT&T's speech recognition and transcription services, software and equipment.

Charges for VMTT include the conversion of the voicemail message and the text message sent to your wireless device. Additional charges, however, may apply to receiving email on your wireless device from VMTT, as well as, replying to or forwarding VMTT messages via SMS (text) or email, depending on your plan.

SMS (text messaging) blocking is incompatible with VMTT. (If you do not have a texting plan on your handset, we add a texting pay per use feature when you add VMTT with text delivery.) If you are traveling outside the U.S. coverage area, you will incur international data charges for emails received from VMTT, as well as, charges for emails you respond to or forward from VMTT, unless you have an international data plan and the usage falls within the plan's usage limits.

Transcription times cannot be guaranteed. Customers purchasing email delivery are responsible for providing a correct email address and updating the email address when changes to the email account are made.

If you choose SMS (text) delivery, VMTT only converts the first 480 characters of a voicemail message into text and you will receive up to three text messages of a transcribed message. The transcription, therefore, may not include the entire voicemail message with SMS delivery. Adding VMTT will create a new voicemail box and all messages and greetings will be deleted from your current voicemail box.

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#### 5.4 Unlimited Voice Services

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Unlimited voice Services are provided primarily for live dialog between two individuals. If your use of unlimited voice Services for conference calling or call forwarding exceeds 750 minutes per month, AT&T may, at its option, terminate your Service or change your plan to one with no unlimited usage components.

Unlimited voice Services may not be used for monitoring services, data transmissions, transmission of broadcasts, transmission of recorded material, or other connections which don't consist of uninterrupted live dialog between two individuals. If AT&T finds that you're using an unlimited voice Service offering for other than live dialog between two individuals, AT&T may, at its option terminate your Service or change your plan to one with no unlimited usage components. AT&T will provide notice that it intends to take any of the above actions, and you may terminate the agreement.

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#### 5.5 Caller ID

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Your caller identification information (such as your name and phone number) may be displayed on the Device or bill of the person receiving your call; technical limitations may, in some circumstances, prevent you from blocking the transmission of caller identification information. Contact customer service for information on blocking the display of your name and number. Caller ID blocking is not available when using Data Services, and your wireless number is transmitted to Internet sites you visit.

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#### 5.6 Rollover Minutes

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If applicable to your plan, Rollover Minutes accumulate and expire through 12 rolling bill periods. Bill Period 1 (activation) unused Anytime Minutes will not carry over. Bill Period 2 unused Anytime Minutes will begin to carry over. Rollover Minutes accumulated starting with Bill Period 2 will expire each bill period as they reach a 12-bill-period age. Rollover Minutes will also expire immediately upon default or if customer changes to a non-Rollover plan. If you change plans (including the formation of a FamilyTalk plan), or if an existing subscriber joins your existing FamilyTalk plan, any accumulated Rollover Minutes in excess of your new plan or the primary FamilyTalk line's included Anytime Minutes will expire. Rollover Minutes are not redeemable for cash or credit and are not transferable. If you change to non-AT&T Unity plans with Rollover Minutes (including the formation of a FamilyTalk plan) any accumulated Rollover Minutes in excess of your new non-AT&T Unity plan or the primary non-AT&T Unity FamilyTalk line's included Anytime Minutes will expire.

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#### 5.7 Mobile To Mobile Minutes

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If applicable to your plan, Mobile to Mobile Minutes may be used when directly dialing or receiving calls from any other AT&T wireless phone number from within your calling area. Mobile to Mobile Minutes may not be used for interconnection to other networks. Calls to AT&T voicemail and return calls from voicemail are not included.

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#### 5.8 Family Talk Plan

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If applicable to your plan, FamilyTalk may require up to a two-year Service Commitment for each line. FamilyTalk plans include only package minutes included with the primary number, and minutes are shared by the additional lines. The rate shown for additional minutes applies to all minutes in excess of the Anytime Minutes. FamilyTalk requires two lines. If the rate plan for the primary number is changed to an ineligible plan or the primary number is disconnected, one of the existing additional lines shall become the primary number on the rate plan previously subscribed to by the former primary number; if only one line remains, it shall be converted to the closest single line rate.

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#### 5.9 A-List

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A-List is available only with select Nation, FamilyTalk and Unity plans. Nation Plan and Individual Subscribers can place/receive calls to/from up to 5 (and FamilyTalk subscribers can place/receive calls to/from up to 10) wireline or wireless telephone numbers without being charged for airtime minutes. All qualifying lines on a FamilyTalk account share the same 10 A-List numbers. Only standard domestic wireline or wireless numbers may be added and A-List is only for domestic calls. Directory assistance, 900 numbers, chat lines, pay per call numbers, customer's own wireless or Voice Mail access numbers, numbers for call routing services and call forwarding services from multiple phones, and machine to machine numbers are not eligible. Depending on the PBX system, a private telephone system often serving businesses, AT&T may not be able to determine if your selected PBX A-List number is calling/receiving calls from your wireless number and airtime charges could apply. Forwarded calls will be billed based on the originating number, not the call forwarding number, and airtime charges may apply. Only voice calling is eligible. A-List number selections may only be managed online via MyWireless Account. Selected telephone numbers do not become active until 24 hours after added. AT&T reserves the right to block any A-List number and to reduce the amount of telephone numbers that can be used for A-List without notice. A-List is not eligible on Save/Promotional Plans.

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#### 5.10 AT&T Viva Mexico ("Mexico Plan") & AT&T Nation/FamilyTalk With Canada ("Canada Plan")

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Certain eligibility requirements apply. Anytime Minutes and Night and Weekend Minutes between Mexico and your U.S. wireless coverage area if you subscribe to the Mexico Plan, or Canada and your U.S. wireless coverage area if you subscribe to the Canada Plan, will be treated for billing purposes as calls to and from your U.S. wireless coverage area.

Calls made from or received in Mexico and Canada cannot exceed your monthly off-net usage allowance (the lesser of 750 min./mo. or 40% of your Anytime Minutes/mo.) in any two consecutive months. Calls made from or received in Mexico and Canada will not qualify as Mobile to Mobile Minutes. Special rates apply for data usage in Mexico and Canada. International long distance text, instant, picture and video messaging rates apply to messaging from the U.S. to Mexico and Canada and international roaming rates apply when such messages are sent from Mexico and Canada.

International Roaming charges apply when using voice and data Services outside Mexico and your U.S. wireless coverage area if you subscribe to the Mexico

Plan, and Canada and your U.S. wireless coverage area, if you subscribe to the Canada Plan. International long distance charges apply when calling to areas outside Mexico and your U.S. wireless coverage area if you subscribe to the Mexico Plan, and Canada and your U.S. wireless coverage area if you subscribe to the Canada Plan.

Anytime Minutes are primarily for live dialog between two people. You may not use your Services other than as intended by AT&T and applicable law. Plans are for individual, non-commercial use only and are not for resale. Unlimited Microcell Calling feature cannot be used on accounts with Viva Mexico and Nation Canada calling plans.

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## 5.11 AT&T Unity And AT&T Unity-FamilyTalk Plans Requirements

### 5.11.1 Eligibility Requirements:

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AT&T local and wireless combined bill required. For residential customers, qualifying AT&T local plan from AT&T required. For business customers, qualifying AT&T local service plan required. Specific AT&T Services that qualify vary by location; see [att.com](#) or call 1-800-288-2020. Certain business accounts are not eligible for Unity plans. Discounts on any other combined-bill wireless plans will be lost if an AT&T Unity plan is added to your combined bill. If an existing wireless plan is upgraded to an AT&T Unity plan, all discounts and promotions will be lost when subscribing to that plan.

[See related links](#) | [See all legal](#)

### 5.11.2 AT&T Unity Minutes:

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AT&T Unity Calling Minutes may be used when directly dialing or receiving calls from any other eligible AT&T wireline or wireless phone number from within your calling area. Calls to AT&T voicemail and return calls from voicemail not included. AT&T Unity Minutes are not included when checking usage for the current billing period.

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## 5.12 VoiceDial Services

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Regular airtime charges apply. Mobile to Mobile Minutes do not apply. Calls to 911, 411, 611, 711 and international dialing cannot be completed with VoiceDial Services. Caller ID cannot be blocked. Caller ID will be delivered on calls, even if you have permanently blocked your name and number. For complete terms and conditions, see [att.com/voicedial](#).

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## 5.13 AT&T Messaging Unlimited with Mobile to Any Mobile Calling Feature

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Available only with select Nation and FamilyTalk plans and can be discontinued at anytime. Messaging Unlimited Plan required. Mobile to Any Mobile minutes only apply when you directly dial another U.S. mobile number or directly receive a call from another U.S. mobile phone number from within your calling area in the U.S., Puerto Rico, or U.S.V.I. Mobile to Any Mobile is not available with the AT&T Viva Mexico or AT&T Nation/FamilyTalk with Canada plans. Calls made through Voice Connect, calls to directory assistance, and calls to voicemail and return calls from voicemail are not included. Also calls made to and calls received from mobile toll-free numbers, mobile chat lines, mobile directory assistance, calling applications, numbers for call routing and call forwarding services, and machine to machine numbers are not included. Calls to and from wireline numbers that a customer ports and uses as a wireless number will not be treated as a call from a mobile number or a call received from a mobile number, until after the number is ported and included in the wireless number database we use.

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## 6.0 WHAT DATA AND MESSAGING SERVICES DOES AT&T OFFER?

### 6.1 What Are The General Terms That Apply To All Data And Messaging Plans?

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AT&T provides wireless data and messaging Services, including but not limited to, features that may be used with Data Services and wireless content and applications ("Data Services"). The absolute capacity of the wireless data network is limited; consequently, Data Services may only be used for prescribed purposes. Pricing and data allowances for Data Services are device dependent and based on the transmit and receive capacity of each device.

**On Data Services with a monthly megabyte (MB) or gigabyte (GB) data allowance, once you exceed your monthly data allowance you will be automatically charged for overage as specified in the applicable rate plan. All data allowances, including overages, must be used in the billing period in which the allowance is provided. Unused data allowances will not roll over to subsequent billing periods.**

AT&T data plans are designed for use with only one of the following distinct device types: (1) Smartphones, (2) basic and Quick Messaging phones, (3) tablets, and (4) LaptopConnect cards, and (5) stand-alone Mobile Hotspot devices. A data plan designated for one type of device may not be used with another type of device. For example, a data plan designated for use with a basic phone or a Smartphone may not be used with a LaptopConnect card, tablet, or stand-alone Mobile Hotspot device, by tethering devices together, by SIM card transfer, or any other means. A data tethering plan, however, may be purchased for an additional fee to enable tethering on a compatible device. An Activation Fee may apply for each data line.

Consumer data plans do not allow access to corporate email, company intranet sites, and other business applications. Access to corporate email, company intranet sites, and/or other business applications requires an applicable Enterprise Data plan. Enterprise Email requires an eligible data plan and Device. Terms may vary depending on selected Enterprise Email solution.

AT&T RESERVES THE RIGHT TO TERMINATE YOUR DATA SERVICES WITH OR WITHOUT CAUSE, INCLUDING WITHOUT LIMITATION, UPON EXPIRATION OR TERMINATION OF YOUR WIRELESS CUSTOMER AGREEMENT.

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### 6.2 What Are The Intended Purposes Of The Wireless Data Service?

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Except as may otherwise be specifically permitted or prohibited for select data plans, data sessions may be conducted only for the following purposes: (i) Internet browsing; (ii) email; and (iii) intranet access (including access to corporate intranets, email, and individual productivity applications like customer relationship management, sales force, and field service automation). **While most common uses for Internet browsing, email and intranet access are**



permitted by your data plan, there are certain uses that cause extreme network capacity issues and interference with the network and are therefore prohibited. Examples of prohibited uses include, without limitation, the following: (i) server devices or host computer applications, including, but not limited to, Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections or peer-to-peer (P2P) file sharing; (ii) as a substitute or backup for private lines, wireline s or full-time or dedicated data connections; (iii) "auto-responders," "cancel-bots," or similar automated or manual routines which generate excessive amounts of net traffic, or which disrupt net user groups or email use by others; (iv) "spam" or unsolicited commercial or bulk email (or activities that have the effect of facilitating unsolicited commercial email or unsolicited bulk email); (v) any activity that adversely affects the ability of other people or systems to use either AT&T's wireless services or other parties' Internet-based resources, including "denial of service" (DoS) attacks against another network host or individual user; (vi) accessing, or attempting to access without authority, the accounts of others, or to penetrate, or attempt to penetrate, security measures of AT&T's wireless network or another entity's network or systems; (vii) software or other devices that maintain continuous active Internet connections when a computer's connection would otherwise be idle or any "keep alive" functions, unless they adhere to AT&T's data retry requirements, which may be changed from time to time. This means, by way of example only, that checking email, surfing the Internet, downloading legally acquired songs, and/or visiting corporate intranets is permitted, but downloading movies using P2P file sharing services, redirecting television signals for viewing on Personal Computers, web broadcasting, and/or for the operation of servers, telemetry devices and/or Supervisory Control and Data Acquisition devices is prohibited. Furthermore, plans (unless specifically designated for tethering usage) cannot be used for any applications that tether the device (through use of, including without limitation, connection kits, other phone/smartphone to computer accessories, BLUETOOTH® or any other wireless technology) to Personal Computers (including without limitation, laptops), or other equipment for any purpose. Accordingly, AT&T reserves the right to (i) deny, disconnect, modify and/or terminate Service, without notice, to anyone it believes is using the Service in any manner prohibited or whose usage adversely impacts its wireless network or service levels or hinders access to its wireless network, including without limitation, after a significant period of inactivity or after sessions of excessive usage and (ii) otherwise protect its wireless network from harm, compromised capacity or degradation in performance, which may impact legitimate data flows. You may not send solicitations to AT&T's wireless subscribers without their consent. You may not use the Services other than as intended by AT&T and applicable law. Plans are for individual, non-commercial use only and are not for resale. AT&T may, but is not required to, monitor your compliance, or the compliance of other subscribers, with AT&T's terms, conditions, or policies.

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### 6.3 What Are The Voice And Data Plan Requirements?

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A voice plan is required on all voice-capable Devices, unless specifically noted otherwise in the terms governing your plan.

An eligible tiered pricing data plan is required for certain Devices, including iPhones and other designated Smartphones. Eligible voice and tiered pricing data plans cover voice and data usage in the U.S. and do not cover International voice and data usage and charges. If it is determined that you are using a voice-capable Device without a voice plan, or that you are using an iPhone or designated Smartphone without an eligible voice and tiered data plan, AT&T reserves the right to switch you to the required plan or plans and bill you the appropriate monthly fees. In the case of the tiered data plan, you will be placed on the data plan which provides you with the greatest monthly data usage allowance. If you determine that you do not require that much data usage in a month, you may request a lower data tier at a lower monthly recurring fee.

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### 6.4 How Does AT&T Calculate My Data Usage/Billing?

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Data sent and received includes, but is not limited to downloads, email, application usage, overhead and software update checks. Unless designated for International or Canada use, prices and included use apply to access and use on AT&T's wireless network and the wireless networks of other companies with which AT&T has a contractual relationship within the United States and its territories (Puerto Rico and the U.S. Virgin Islands), excluding areas within the Gulf of Mexico.

Usage on networks not owned by AT&T is limited as provided in your data plan. Charges will be based on the location of the site receiving and transmitting service and not the location of the subscriber. Mobile Broadband and 4G access requires a compatible device.

Data Service charges paid in advance for monthly or annual Data Services are nonrefundable. Some Data Services may require an additional monthly subscription fee and/or be subject to additional charges and restrictions. Prices do not include taxes, directory assistance, roaming, universal services fees or other surcharges.

In order to assess your usage during an applicable billing period, you may obtain approximate usage information by calling customer service or using one of our automated systems.

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### 6.5 Text, Instant Messaging And Picture/Video Messaging

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If you do not enroll in a monthly recurring plan for messaging, data, or Video Share, you may have access to messaging, data, and video share services and be charged on a pay-per-use basis if you use those services.

Messages are limited to 160 characters per message. Premium text and picture/video messages are charged at their stated rates. Standard rates apply to all incoming messages when in the U.S. Different, non-standard per message charges apply to international messages sent from the U.S.

Text, Instant, Picture, and Video messages are charged when sent or received, whether read or unread, solicited or unsolicited. AT&T does not guarantee delivery of messages. Text, Instant, Picture, and Video messages, including downloaded content, not delivered within 3 days will be deleted. AT&T reserves the right to change this delivery period as needed without notification.

You are charged for each part of messages that are delivered to you in multiple parts. Picture/Video Messaging, data plan, and Text Messaging may need to be provisioned on an account in order to use Picture/Video Messaging. Some elements of Picture/Video messages may not be accessible, viewable, or heard due to limitations on certain wireless phones, PCs, or e-mail.

AT&T reserves the right to change the Picture/Video message size limit at any time without notification. Picture/Video Messaging pricing is for domestic messages only. When a single message is sent to multiple recipients, the sender is charged for one message for each recipient and each recipient is charged for the message received.

Text message notifications may be sent to non-Picture/Video Messaging subscribers if they subscribe to Text Messaging. You may receive unsolicited messages from third parties as a result of visiting Internet sites, and a per-message charge may apply whether the message is read or unread, solicited or unsolicited.

You agree you will not use our messaging services to send messages that contain advertising or a commercial solicitation to any person or entity without their

consent. You will have the burden of proving consent with clear and convincing evidence if a person or entity complains you did not obtain their consent. Consent cannot be evidenced by third party lists you purchased or obtained. You further agree you will not use our messaging service to send messages that: (a) are bulk messages (b) are automatically generated; (c) can disrupt AT&T's network; (d) harass or threaten another person (e) interfere with another customer's use or enjoyment of AT&T's Services; (f) generate significant or serious customer complaints, (g) that falsify or mask the sender/originator of the message; or (h) violate any law or regulation. AT&T reserves the right, but is not obligated, to deny, disconnect, suspend, modify and/or terminate your messaging service or messaging services with any associated account(s), or to deny, disconnect, suspend, modify and/or terminate the account(s), without notice, as to anyone using messaging services in any manner that is prohibited. Our failure to take any action in the event of a violation shall not be construed as a waiver of the right to enforce such terms, conditions, or policies. Advertising and commercial solicitations do not include messaging that: (a) facilitates, completes, or confirms a commercial transaction where the recipient of such message has previously agreed to enter into with the sender of such message; or (b) provides account information, service or product information, warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient of such message.

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## 6.6 AT&T My Media CLUB

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Your enrollment gives you the option to receive text messages each week on music trivia, news and more. Every 30 days your subscription will be automatically renewed and new credits added to your account which can be used to buy ringtones and graphics through the MEDIA Mall. Music, Voice, Sound Effect Tones, polyphonic ringtones & graphics are 1 credit. Unused credits expire at the end of each 30 day period. The 30 day period is not necessarily equivalent to a calendar month end or the billing cycle. You may terminate your subscription at any time by texting the word "STOP" to 7225. Any remaining credits will be available for the remainder of your subscription billing cycle. Savings claim based on price of Music Tones. Ringtone and graphics provided by independent providers.

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## 6.7 Mobile Email

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Requires e-mail account with compatible internet service provider and a downloaded or preloaded e-mail application for the wireless device. Access and use of Mobile Email is billed by total volume of data sent and received (in kilobytes) in accordance with your data plan. E-mail attachments can not be sent, downloaded, read, or forwarded on the mobile device. Only a paper clip icon appears indicating an attachment. You must view attachments from your PC. Upgrades to the application may be required in order to continue to use the Service. Wireless data usage charges will apply for downloading the application and any upgrades.

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## 6.8 Mobile Video

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Compatible Phone and eligible data plan required. Service not available outside AT&T's Mobile Broadband and 4G coverage areas. Premium content is charged at stated monthly subscription rates or at stated pay per view rates. Content rotates and is subject to withdrawal. Mobile Video is for individual use, not for resale, commercial purposes or public broadcast. Content can only be displayed on the device screen. No content may be captured, downloaded, forwarded, duplicated, stored, or transmitted. The content owner reserves and owns all content rights. All trademarks, service marks, logos, and copyrights not owned by AT&T are the property of their owners. Some Mobile Video content is intended for mature audiences and may be inappropriate for younger viewers. Parental guidance suggested. Use Parental Controls to restrict access to mature content. Content may be provided by independent providers, and AT&T is not responsible for their content. Providers may collect certain information from your use for tracking and managing content usage.

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## 6.9 AT&T Wi-Fi Services

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**AT&T Wi-Fi service use with a Wi-Fi capable wireless device is subject to the Terms of Services & Acceptable Use Policy ("Terms") found at [att.com/attwifitosaup](http://att.com/attwifitosaup). Your use represents your agreement to those Terms, incorporated herein by reference.** AT&T Wi-Fi Basic service is available at no additional charge to wireless customers with select Wi-Fi capable devices and a qualified data rate plan. Other restrictions may apply.

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## 6.10 DataConnect Plans

### 6.10.1 What Are the General Terms that Apply to All DataConnect Plans?

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A voice plan is not required with DataConnect plans.

We may, at our discretion, suspend your account if we believe your data usage is excessive, unusual or is better suited to another rate plan. If you are on a data plan that does not include a monthly MB/GB allowance and additional data usage rates, you agree that AT&T has the right to impose additional charges if you use more than 5 GB in a month; provided that, prior to the imposition of any additional charges, AT&T shall provide you with notice and you shall have the right to terminate your Data Service.

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### 6.10.2 Data Global Add-On/DataConnect Global Plans/DataConnect North America Plans

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Available countries, coverage and participating international carriers included in the "Select International Roam Zone" and "Select Canada/Mexico Roam Zone" vary from our generally available Canada/international wireless data roam zones and may not be as extensive. The Select International Roam Zone is restricted to select international wireless carrier(s). Select Canada/Mexico Roam Zone is restricted to select wireless carrier(s) and coverage areas within Canada and Mexico. See [att.com/dataconnectglobal](http://att.com/dataconnectglobal) for a current list of participating carriers and eligible roam zones. With respect to the countries included in the Select International Roam Zone, you will be restricted from accessing Data Service through any non-participating Canada/international wireless carriers that may otherwise be included in our generally available Canada and international wireless data roam zones. With the DataConnect North America Plan, you will be restricted from accessing Data Service through any non-participating Canada/Mexico wireless carriers that may otherwise be included in our generally available Canada and international wireless data roam zones.

DATA GLOBAL ADD-ON- May only be used with eligible Equipment. Domestic data usage not included. Qualified domestic wireless data plan required. If combined with a wireless voice plan that includes international voice roaming, your international wireless voice roaming in countries included in the Global

Data Add-On's Select International Roam Zone will be limited to the participating Canada/international wireless carriers and you will be restricted from voice roaming through any non-participating Canada/international wireless carriers that may otherwise be included in our generally available Canada and international voice roam zones.

DATACONNECT GLOBAL/NORTH AMERICA PLANS - Requires minimum one-year Service Commitment and you must remain on the plan, for a minimum one-year term. Voice access is restricted and prohibited.

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### 6.10.3 Pooled DataConnect Plans

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Pooled Data Connect Plans ("Pooled Plans") available only to customers with a qualified AT&T Business Agreement for wireless Services and their respective Corporate Responsibility Users ("CRUs"). Consolidated billing is required. WIN Advantage® may also be required. Within a single Foundation Account (FAN), Customer's CRUs on an eligible Pooled Plan aggregate or "pool" their included wireless data usage ("Included Usage"), creating a "Pool".

To pool together, each CRU in the Pool must subscribe to a Pooled Plan that has the same amount of Included Usage and the same Additional Kilobyte charge ("Similar Pooled Plan"). Every billing cycle, each CRU first uses his or her Included Usage. If a CRU does not use all his or her Included Usage it creates an underage in the amount of unused kilobytes ("Under Usage"). If a CRU uses more than his or her Included Usage it creates an overage with respect to kilobytes of data usage ("Over Usage"). The Pool's Under Usage kilobytes and Over Usage kilobytes are then aggregated respectively and compared. If the aggregate Under Usage kilobytes exceed the aggregate Over Usage kilobytes, then no CRU in the Pool pays Additional Kilobyte charges. If the aggregate Over Usage kilobytes exceeds the aggregate Under Usage kilobytes, then the ratio of Under Usage kilobytes to Over Usage kilobytes is applied to the data usage of each CRU in the Pool with Overage Usage, resulting in a monetary credit against the corresponding Additional Kilobyte charges.

For example, if a Pool has 900 Under Usage kilobytes and 1000 Over Usage kilobytes (90%), then each CRU with Over Usage will receive a credit equal to 90% of his or her Additional Kilobyte charges. CRUs changing price points or migrating to Pooled Plans during a bill cycle may result in one-time prorations or other minor impacts to the credit calculation. Credits will only appear on WIN Advantage®. Customer may have more than one Pool within a FAN provided that Customer may only have one Pool for Similar Pooled Plans within a FAN; however, an individual CRU can only be in one Pool at a time.

AT&T reserves the right to limit the number of CRUs in a Pool due to business needs and system limitations. CRUs on Pooled Plans and CRUs participating in a legacy Pooled Data Connect plan pool created prior to February 17, 2006 ("Legacy Pool") cannot be in the same Pool but can be within the same FAN. End users on non-pooling AT&T plans may be included in the same FAN as CRUs on Pooled Plans; however these non-pooling end users will not receive the pooling benefits or contribute Included Usage to a Pool.

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## 6.11 AT&T DataPlusSM/AT&T DataProSM Plans

### 6.11.1 AT&T Data Plans With Tethering

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Tethering is a wireless or wired method in which your AT&T mobile device is used as a modem or router to provide a Internet Access connection to other devices, such as laptops, netbooks, tablets, smartphones, other phones, USB modems, network routers, mobile hotspots, media players, gaming consoles, and other data-capable devices. AT&T data plans with tethering enabled may be used for tethering your AT&T Mobile device to other devices. If you are on a data plan that does not include a monthly megabyte allowance and additional data usage rates, you agree that AT&T has the right to impose additional charges if you use more than 5 GB in a month; prior to the imposition of any additional charges, AT&T shall provide you with notice and you shall have the right to terminate your Service (early termination charges may apply).

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### 6.11.2 Blackberry Personal

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Supports personal email access to up to 10 Internet email accounts. Users storing more than 1,000 emails or email older than 30 days, may have some emails automatically deleted. May not be used to access corporate email such as BlackBerry Enterprise Server.

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### 6.11.3 Blackberry Connect; Blackberry Enterprise; Blackberry International

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Supports BlackBerry Enterprise Server™ for corporate access (valid Client Access License required), and personal email access to up to 10 Internet email accounts as per BlackBerry Personal. BlackBerry International requires a minimum one-year agreement.

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## 6.12 GOOD Plan

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Requires compatible Good Server and, as to each end user, a compatible Good Client Access License (CAL) for use with a qualifying AT&T data plan. Solution includes software, products and related services provided by Good Technology, Inc. ("Good"), which are subject to applicable Good terms and conditions. Good is solely responsible for all statements regarding, and technical support for, its software, products and services.

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## 6.13 Microsoft Direct Push

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Requires compatible Microsoft Exchange Server and, as to each end user, a compatible device, a Direct Push enabled email account, and a qualifying AT&T Data Plan. Plans include end user customer support from AT&T for compatible devices. AT&T does not sell, supply, install or otherwise support Microsoft software, products or services (including without limitation, Exchange and Direct Push).

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## 7.0 ARE THERE OTHER TERMS AND CONDITIONS THAT APPLY TO FEATURES AND APPLICATIONS?

### ARE THERE OTHER TERMS AND CONDITIONS THAT APPLY TO FEATURES AND APPLICATIONS? [Print this section](#) | [Print this page](#)

Terms and conditions for certain features and applications are provided on the Device at the time of feature/application activation or first use. Certain features/applications will not be available in all areas at all times.

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## 8.0 WHAT IS AT&T ROADSIDE ASSISTANCE & OPTIONAL WIRELESS PHONE INSURANCE?

### 8.1 AT&T Roadside Assistance [Print this section](#) | [Print this page](#)

AT&T Roadside Assistance ("RA") is an optional feature that costs \$2.99/month per enrolled phone and is automatically billed to the wireless account. Customers may cancel at any time. New RA customers get the first 30 days for free. To cancel RA without incurring charges, contact AT&T by dialing 611 from your wireless phone within the first 30 days. RA covers up to four events per year with a maximum benefit of \$50/event. Towing services are for mechanical problems only. RA service is provided by Asurion Roadside Assistance Services, LLC, a licensed motor club. Refer to the RA Welcome Kit for complete terms and conditions [wireless.att.com/learn/en\\_US/pdf/roadside\\_assistance.pdf](http://wireless.att.com/learn/en_US/pdf/roadside_assistance.pdf).

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### 8.2 Optional Wireless Phone Insurance [Print this section](#) | [Print this page](#)

Customers have 30 days from the date of activation or upgrade to enroll. See a Wireless Phone Insurance brochure for complete terms and conditions of coverage, available at participating AT&T retail locations or by visiting [att.com/wirelessphoneinsurance](http://att.com/wirelessphoneinsurance). Key terms include: Premium: \$4.99/month. Non-refundable Deductible: from \$50-\$125/ per claim. Limits: 2 claims per 12 months, maximum replacement value of \$1500/ per claim. Replacements may be refurbished or of a different model. Cancel at any time for a prorated refund of the monthly charge. Wireless Phone Insurance is underwritten by Continental Casualty Company, a CNA company (CNA) and administered by Asurion Protection Services, LLC (Asurion Protection Services Insurance Agency, LLC CA Lic.#OD63161). Eligibility varies by device. Terms and Conditions are subject to change.

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## 9.0 WHAT OTHER TERMS AND CONDITIONS APPLY TO MY WIRELESS SERVICE?

### 9.1 Intellectual Property [Print this section](#) | [Print this page](#)

You must respect the intellectual property rights of AT&T, our third-party content providers, and any other owner of intellectual property whose protected property may appear on any website and/or dialogue box controlled by AT&T or accessed through the AT&T's websites. Except for material in the public domain, all material displayed in association with the Service is copyrighted or trademarked. Except for personal, non-commercial use, trademarked and copyrighted material may not be copied, downloaded, redistributed, modified or otherwise exploited, in whole or in part, without the permission of the owner. The RIM and BlackBerry families of related marks, images and symbols are the exclusive properties and trademarks or registered trademarks of Research In Motion Limited - used by permission. Good, the Good logo and GoodLink are trademarks of Good Technology, Inc., in the United States and/or other countries. Good Technology, Inc., and its products and services are not related to, sponsored by or affiliated with Research In Motion Limited. All other marks contained herein are the property of their respective owners.

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### 9.2 Severability [Print this section](#) | [Print this page](#)

If any provision of this Agreement is found to be unenforceable by a court or agency of competent jurisdiction, the remaining provisions will remain in full force and effect. The foregoing does not apply to the prohibition against class or representative actions that is part of the arbitration clause; if that prohibition is found to be unenforceable, the arbitration clause (but only the arbitration clause) shall be null and void.

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### 9.3 Assignment; Governing Law; English Language

#### 9.3.1 Assignment [Print this section](#) | [Print this page](#)

AT&T may assign this Agreement, but you may not assign this Agreement without our prior written consent.

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#### 9.3.2 Governing Law [Print this section](#) | [Print this page](#)

The law of the state of your billing address shall govern this Agreement except to the extent that such law is preempted by or inconsistent with applicable federal law. In the event of a dispute between us, the law of the state of your billing address at the time the dispute is commenced, whether in litigation or arbitration, shall govern except to the extent that such law is preempted by or inconsistent with applicable federal law.

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#### 9.3.3 English Language [Print this section](#) | [Print this page](#)

The original version of this Agreement is in the English language. Any discrepancy or conflicts between the English version and any other language version will be resolved with reference to and by interpreting the English version.

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#### 9.4 Lifeline Services

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As part of a federal government program, AT&T offers discounted wireless service to qualified low-income residents in selected states. For questions or to apply for Lifeline service, call 1-800-377-9450. Puerto Rico customers should contact 1-787-405-5463. For tips on how to protect against fraud, please visit the CPUC's website at, [CalPhoneInfo.com](http://CalPhoneInfo.com).

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#### 9.5 Trial Services

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Trial Services are subject to the terms and conditions of this Agreement; may have limited availability; and may be withdrawn at any time.

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### 10.0 WHAT TERMS APPLY ONLY TO SPECIFIC STATES?

#### 10.1 California: What If There Are Unauthorized Charges Billed To My Device?

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You are not liable for charges you did not authorize, but the fact that a call was placed from your Device is evidence that the call was authorized. You may submit documents, statements and other information to show any charges were not authorized. Unauthorized charges may include calls made to or from your phone or other Device after it was lost or stolen.

If you notify us of any charges on your bill you claim are unauthorized, we will investigate. We will advise you of the result of our investigation within 30 days. If you do not agree with the outcome, you may file a complaint with the California Public Utilities Commission and you may have other legal rights. While an investigation is underway, you do not have to pay any charges you dispute or associated late charges, and we will not send the disputed amount to collection or file an adverse credit report about it.

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#### 10.2 Connecticut: Questions About Your Service

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If you have any questions or concerns about your AT&T Service, please call Customer Care at 1-800-331-0500, dial 611 from your wireless phone, or visit [att.com/wireless](http://att.com/wireless). If you have questions about the Unlimited Local or Unlimited Long Distance Service, please call 1-800-288-2020 or visit [att.com](http://att.com). If you are a Connecticut customer and we cannot resolve your issue, you have the option of contacting the Department of Public Utility Control (DPUC). Online: [state.ct.us/dpuc](http://state.ct.us/dpuc); Phone: 1-866-381-2355; Mail: Connecticut DPUC, 10 Franklin Square, New Britain, CT 06051.

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#### 10.3 Puerto Rico

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1088

**BURSOR & FISHER P.A.**  
OPERATING NY/FL  
369 LEXINGTON AVE FL 10  
NEW YORK, NEW YORK 10017

1-8-210

DATE July 28, 2011

PAY TO THE ORDER OF American Arbitration Association

\$ 77,050.00

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MP

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NEW YORK, NY 10023

Scott A. Bursor

FOR Filing Fees for 23 Arb. Demands v. AT&T

⑆00001088⑆ ⑆0210000089⑆ 9987277091⑆

# EXHIBIT 7



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August 1, 2011

**By Email Only**

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856-679-4602

Re: Leslie Bernardi and AT&T, Inc. and AT&T Mobility LLC  
Daniel Lea and AT&T, Inc. and AT&T Mobility LLC  
Helen Luciano and AT&T, Inc. and AT&T Mobility LLC  
Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC  
Mark Newman and AT&T, Inc. and AT&T Mobility LLC  
Jared Pope and AT&T, Inc. and AT&T Mobility LLC  
Michael Princi and AT&T, Inc. and AT&T Mobility LLC  
Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC  
Alexis Ubiera and AT&T, Inc. and AT&T Mobility LLC  
Laura Barrett and AT&T, Inc. and AT&T Mobility LLC  
Leaf O'Neal and AT&T, Inc. and AT&T Mobility LLC  
Shane Bushman and AT&T, Inc. and AT&T Mobility LLC  
Linda Haensel and AT&T, Inc. and AT&T Mobility LLC  
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Javier Hidalgo and AT&T, Inc. and AT&T Mobility LLC  
Emily Komlossy and AT&T, Inc. and AT&T Mobility LLC  
Beth Keller and AT&T, Inc. and AT&T Mobility LLC  
Chris Marlborough and AT&T, Inc. and AT&T Mobility LLC  
Sandra Smith and AT&T, Inc. and AT&T Mobility LLC  
Richard Colisimo and AT&T, Inc. and AT&T Mobility LLC



Dear Ms. Parvey and Ms. Horton:

I have Mr. Berinhout's letter of July 28, 2011. That letter does not cite a single statute, case, or AAA rule. Mr. Berinhout's arguments are so lacking in merit they are completely frivolous.

*First*, Mr. Berinhout argues that AAA should not administer arbitration demands seeking to enjoin a merger under the Clayton Antitrust Act because those types of claims are too large and complex for an arbitral tribunal to handle. The Supreme Court rejected that argument more than 25 years ago when it upheld the arbitrability of antitrust claims. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633-34 (1985) (“[T]he factor of potential complexity alone does not persuade us that an arbitral tribunal could not properly handle an antitrust matter.”).

*Second*, Mr. Berinhout argues the arbitration demands should be rejected because they request “class-wide injunctive relief in violation of the parties’ arbitration agreements.” 7/28/11 Berinhout letter at 1. That argument is false. Each demand is submitted on behalf of an individual. None seeks classwide relief. And the relief sought, which would enjoin AT&T’s takeover of T-Mobile, or alternatively require divestitures or other conditions to the proposed merger, is available to individuals under the Clayton Act. *See, e.g., Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 112 (1986) (“[T]he legislative history of § 16 [of the Clayton Act] is consistent with the view that § 16 affords private plaintiffs injunctive relief.”); *Cia. Petrolera Caribe, Inc. v. Arco Caribbean, Inc.*, 754 F.2d 404, 427 (1<sup>st</sup> Cir. 1985) (“[C]ourts have indicated, correctly, that divestiture is available in a private suit challenging unlawful mergers.”); *Federal Trade Commission v. International Paper Company*, 241 F.2d 372, 373 (2d Cir. 1956) (“Individuals may also have injunctive relief against threatened loss or damage by a violation of the anti-trust laws under the same conditions and principles as govern the granting of injunctions by courts of equity, that is to say, district courts.”) (underlining added). Each of these demands seeks injunctive relief available under the antitrust laws to individual private plaintiffs. None seeks class certification. None asserts any claim, or seeks any relief, on behalf of any class. Indeed, each claimant specifically invokes the class action waiver, as well as the provision of the parties’ agreement stating “the arbitrator may not consolidate more than one person’s claims, and may not otherwise preside over any form of a representative or class proceeding.” *See, e.g., Barrett Demand for Arbitration* ¶ 26, quoting Wireless Customer Agreement § 2.2(6). Each claimant insists these arbitrations be conducted as specified in § 2.2(6) of the parties’ agreement – with no class actions, and no consolidation of any kind. Each demand must be administered as a separate individual case. And it is the arbitrator in each case that must decide, according to Commercial Arbitration Rule R-53, whether the arbitral tribunal has the authority to grant the injunctive relief sought. *See also Cia. Petrolera Caribe, Inc.*, 754 F.2d at 430 (“A range of injunctive relief is possible and, like all equitable remedies, the relief ordered is highly dependent upon the proof adduced at trial.”).

*Third*, Mr. Berinhout argues the arbitration of these claims “would obstruct federal and state regulatory review of the proposed merger.” 7/28/11 Berinhout letter at 2. That argument is wrong. The antitrust laws were designed to permit public and private enforcement actions to proceed in parallel. *See, e.g., Thomas D. Morgan, Modern Antitrust Law And Its Origins* at 753 (West 1994) (“Mergers are subject to challenge from four directions – the Justice Department,

the Federal Trade Commission, private parties, and state Attorneys General.”). These arbitration demands do not seek to obstruct any state or federal regulatory review – they will proceed in parallel without interference, exactly as intended by the antitrust laws. *See, e.g., Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 131 (1969) (“Section 16 [of the Clayton Act] should be construed and applied with ... the knowledge that the remedy it affords, like other equitable remedies, is flexible and capable of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.”).

Finally, I want to voice again our strong objection to the continuing campaign by Mr. Berinhout and AT&T to corrupt the AAA arbitration process and to usurp the authority of the arbitrator to decide each of these cases on the merits. Mr. Berinhout’s letter-writing campaign is improper and unethical for all of the reasons set forth in my letter of July 26, which remains unrebutted. In past disputes related to the arbitration of claims asserted by AT&T customers, Mr. Berinhout has committed perjury, as determined by a federal court in *Trujillo v. Apple Computer, Inc.*, 578 F.Supp.2d 979, 989 (N.D. Ill. 2008) (detailing Mr. Berinhout’s submission of false declarations, misrepresentations and numerous instances of perjury in connection with AT&T’s motion to compel arbitration against a customer, which the court described as “vexatious[]” and “bad faith” conduct). And Mr. Berinhout’s employer, AT&T, has attempted to intimidate AAA administrators to prevent the fair administration of arbitration claims. *See, e.g., In re Universal Service Fund Tel. Billing Practices Litig.*, 2005 WL 1274381, at \*5 (D. Kan. May 27, 2005) (“[C]ounsel for AT&T used AT&T’s economic power to successfully persuade the AAA to prematurely bend its own rules.”). Mr. Berinhout has no response to these facts other than to describe them as “false innuendo.” 7/28/11 Berinhout letter at 7 n.6. On the contrary, the details of these sordid episodes are taken verbatim from published decisions by federal courts. They are neither false, nor innuendo. They are the findings of two federal judges.

Again I want to repeat, in the strongest terms, that neither Mr. Berinhout nor AT&T should be addressing these arguments to AAA administrators or general counsel who have no authority to consider the merits of these cases. Your job is to administer neutrally, and to appoint arbitrators to decide the merits of each individual case. We are watching closely to make sure that happens without further delay.

Very truly yours,



Scott A. Bursor

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# EXHIBIT 8



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Re: *Barrett v. AT&T, Inc., et al.*; *Bernardi v. AT&T, Inc., et al.*; *Lea v. AT&T, Inc., et al.*; *Luciano v. AT&T, Inc., et al.*; *Mendoza v. AT&T, Inc., et al.*; *Newman v. AT&T, Inc., et al.*; *O'Neal v. AT&T, Inc., et al.*; *Pope v. AT&T, Inc., et al.*; *Princi v. AT&T, Inc., et al.*; *Shroeder v. AT&T, Inc., et al.*; *Ubiera v. AT&T, Inc., et al.*; *Kostoff v. AT&T, Inc., et al.*; *Bushman v. AT&T, Inc., et al.*; *Haensel v. AT&T, Inc., et al.*; *Gibbons v. AT&T, Inc., et al.*; *Justak v. AT&T, Inc., et al.*; *Fisher v. AT&T, Inc., et al.*; *Komlossy v. AT&T, Inc., et al.*; *Smith v. AT&T, Inc., et al.*; *Marlborough v. AT&T, Inc., et al.*; *Keller v. AT&T, Inc., et al.*; *Monteverde v. AT&T, Inc., et al.*; *Hidalgo v. AT&T, Inc., et al.*; *Gonnello v. AT&T, Inc., et al.*; *Rodriguez v. AT&T, Inc., et al.*; and *Colosimo v. AT&T, Inc. et al.*<sup>1</sup>

Dear Ms. Parvey and Ms. Horton:

I am writing to respond to Mr. Bursor's August 1, 2011 letter, which is long on threats and false statements but very short on substance about the AAA's Class Arbitration Policy and AT&T's arbitration agreement, both of which require the AAA to refuse to initiate arbitration proceedings based on the above-referenced Demands.

1. Mr. Bursor falsely states (at page 2) that my July 28, 2011 letter failed to cite any AAA rule requiring a decision by the AAA prior to the commencement of these arbitrations. To the contrary, my letter expressly cited and discussed (at pages 1 and 5) the AAA's Class Arbitration Policy. Under that policy, when the parties' arbitration agreement "prohibits class claims" and no "order of a court" compels arbitration involving class claims to proceed, the AAA "is not currently accepting for administration demands for class arbitration." AAA Policy on Class Arbitrations, <http://www.adr.org/Classarbitrationpolicy>.

The commentary explains that "[i]t has been the practice of the [AAA] since its Supplementary Rules for Class Arbitrations were first enacted to require a party seeking to bring a class arbitration under an agreement that on its face prohibits class actions *to first seek court guidance* as to whether a class arbitration may be brought under such an agreement." *Id.* (emphasis added). Accordingly, "*until a court decides that it is*

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<sup>1</sup> This letter also applies to any additional Demands for Arbitration of the same nature that Bursor & Fisher might submit.

*appropriate to do so,”* the AAA will neither “*commence administration* of a case nor . . . *refer* such a matter *to an arbitrator.*” *Id.* (emphases added).

There is no dispute that AT&T’s arbitration agreement does not permit “class arbitration and class actions,” and expressly provides that “the arbitrator . . . may not . . . preside over any form of a representative or class proceeding.” The issue here is whether these Demands are for injunctive relief **only** in favor of the individual Claimants and **only** to the extent necessary to provide individual relief to the Claimants, or for injunctive relief in favor of a class of individuals – the Claimants – who are opposed to and want to bar the AT&T/T-Mobile merger. If the AAA staff determines that these Demands essentially seek class arbitration, then the AAA policy dictates that these Demands are **not** eligible for administration. If, however, the AAA staff is in doubt as to whether these Demands seek class arbitration prohibited by our arbitration agreement, then the AAA policy requires that these Claimants first seek court guidance as to whether the proposed arbitration is permitted under the agreement.

Mr. Bursor’s repeated assertions that it is improper for a party to explain to the AAA how the rule applies in this particular case are baseless, especially because he also is freely able to explain his position to the AAA. Because the AAA staff must determine whether to administer a particular arbitration, there is no reason why the staff should not be informed by the parties’ views (to the extent the parties wish to provide them) before making that determination.<sup>1</sup>

2. Mr. Bursor insists that, because the Claimants’ Demands do not use the term “class arbitration” and because the relief sought would be available to an individual in court, the Demands are permitted under the arbitration agreement and the AAA policy does not apply. That is wrong.

To begin with, the relief sought by the Demands plainly is forbidden by the arbitration agreement, which bars both “class” and “representative” actions and further explains this limitation by permitting injunctive relief “only in favor of the individual party seeking relief” and “to the extent necessary” to provide relief to that individual party. Ex. A ¶ 6. Mr. Bursor simply ignores this limitation, instead arguing that, as a general matter, antitrust claims are arbitrable—which we do not dispute—and that individuals could sue in court for the public injunctions his clients seek. But that does not answer whether the Claimants’ Demands are precluded by this express element of the arbitration agreement’s prohibition of class actions—and for the reasons discussed in my earlier letter (at pages 2-4), they plainly are. Rather than seeking injunctive relief tailored for a single Claimant alone, these Demands request the broadest possible injunction, affecting not only the 120 million

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<sup>1</sup> Mr. Bursor again cites to *In re Universal Service Fund Telephone Billing Practices Litigation*, 370 F. Supp. 2d 1135 (D. Kan. 2005). But as we previously explained, the court did not question the propriety of the parties’ letters to the AAA’s staff on how the then-current version of the AAA’s Class Arbitration policy should be applied. *See id.* at 1137.

customers of AT&T Mobility and T-Mobile but the general public at large. It is hard to imagine a request for injunctive relief more clearly prohibited by the restriction in the arbitration agreement.

For the very same reasons, administration of these Demands is barred by the AAA's Class Arbitration policy. Certainly the fact that the demands do not use the term "class action" and are brought in the names of individuals is not dispositive. Courts have routinely rejected such a formalistic approach in determining whether a claim qualifies as a class action in similar contexts, instead recognizing that plaintiffs cannot disguise the true nature of a claim merely by avoiding certain "magic words" and asserting that the dispute is not a class action when in fact it seeks relief that would affect the rights of a class. The fact that the relief in theory could be obtained by a single plaintiff, in court, also is not dispositive.<sup>2</sup>

Two recent U.S. Supreme Court decisions—*Stolt-Nielsen, S.A. v. Animalfeeds Int'l Corp.*, 130 S. Ct. 1758 (2010), and *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011)—demonstrate that the Demands at issue here constitute requests for class arbitration within the meaning of the AAA's policy. As the Court explained in *Stolt-Nielsen*, there are several "fundamental" differences between class arbitration and traditional, individual arbitration. 130 S. Ct. at 1776. First, the arbitrator "no longer resolves a single dispute between the parties to a single agreement, but instead resolves many disputes between hundreds and thousands of parties." *Id.* Second, "[t]he arbitrator's award no longer purports to bind just the parties to a single arbitration agreement, but adjudicates the rights of absent parties as well." *Id.* Third, the "stakes" of class arbitration "are comparable to those of class-action litigation, even though the scope of judicial review is much more limited." *Id.* (internal citation omitted). And in *Concepcion* the Supreme Court added that, unlike individual arbitration, class arbitration "requires procedural formality" in order to assure "the protection of absent parties." 131 S. Ct. at 1750-51.

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<sup>2</sup> See, e.g., *W. Va. ex rel. McGraw v. Comcast Corp.*, 705 F. Supp. 2d 441, 452-53 (E.D. Pa. 2010) (Class Action Fairness Act's "'application should not be confined solely to lawsuits that are labeled 'class actions' by the named plaintiff,'" rather, "'lawsuits that resemble a purported class action should be considered a class action'") (quoting S. Rep. No. 109-14, at 35, 2005 USCCAN 3) (emphasis added by court)); *Nev. v. Bank of Am. Corp.*, 2011 WL 2633641, \*3-\*5 (D. Nev. July 5, 2011) (deceptive trade practices action filed by state was removable under Class Action Fairness Act, though not styled as class action); *Int'l Union, United Auto., Aerospace & Agric. Implement Workers v. Acme Precision Prods., Inc.*, 515 F. Supp. 537, 540 (E.D. Mich. 1981) (purportedly "individual" dispute brought by union over retirement benefits "is, in effect then, a class action by the retired employees"); see also *Illuminating Co. v. Utility Workers Union of Am., Local 270*, 440 F.3d 809, 817 (6th Cir. 2006) (requiring "the Union to obtain the consent of the retirees before taking the grievance to arbitration," in retirement benefits dispute, in part because otherwise defendant "could be faced with numerous retirees' claims and lawsuits").

The Demands here possess every single one of those characteristics of class arbitration. First, although each Demand nominally is brought by an individual consumer, the arbitrators would not be asked merely to award relief limited to the individual Claimants, but rather to resolve the competing interests of over 120 million current AT&T Mobility and T-Mobile customers and countless other potential customers. Second, for the same reason, any arbitral award in these proceedings would “adjudicate[] the rights” of many “absent parties”—the most notable feature of class actions. The relief sought by the Claimants would, if granted, preclude this huge class of individuals and businesses from obtaining the benefits of the merger. Third, the stakes of these arbitrations would not merely be “comparable to those of class-action litigation,” but far outstrip the stakes of virtually every class action ever filed: The Demands place a \$39 billion merger in jeopardy and seek to duplicate ongoing regulatory proceedings in which AT&T alone has submitted five million pages of documents and other parties have submitted over 10,000 additional filings. Finally, because of the industry-wide—and in fact global—implications of the proceedings, the arbitrators will be forced to develop procedures to protect the interests of all of the affected consumers, businesses, and state and federal regulators.

Indeed, Mr. Bursor’s recent public statements made in connection with his efforts to recruit clients underscore the class and representative nature of his clients’ claims and the relief they seek. He unabashedly describes a strategy of filing thousands of Demands, explaining that all that is needed is a victory in one arbitration to “stop this merger.”<sup>3</sup> In other words, if one prevails, all prevail. That is the hallmark of a class or representative action.

The history of the AAA policy confirms that its reference to “class actions” should be interpreted to encompass the Demands here. As the AAA is aware, the potential for class arbitrations “arose” as a “new area of service” for the AAA “when the Supreme Court in *Green Tree Financial Corporation v. Bazzle* held that it was for an arbitrator, not a court, to decide whether an arbitration agreement permits or precludes class actions where the arbitration agreement itself is silent on that issue.” AAA, *2005 President’s Letter & Financial Statements* 3, at <http://www.adr.org/sp.asp?id=28771>. In the wake of *Bazzle*, “considerable controversy arose in the legal and ADR communities over class action arbitrations and, in particular, about the inclusion of class action waivers in arbitration clauses.” *Id.* at 4. In response, when confronted with a situation where “a party [sought] to bring a class arbitration under an agreement that on its face prohibits class arbitrations,” the

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<sup>3</sup> See, e.g., <http://www.fightthemerger.com/rights/> (“We have already started the process of initiating dozens of arbitrations on behalf of our clients, any one of which could stop this merger. We have a team in place with the resources to bring thousands more.”); Law Firm Strikes Back at AT&T Over Merger, Reuters, July 27, 2011, at <http://www.reuters.com/article/2011/07/27/att-merger-arbitration-idUSN1E76Q23820110727> (reporting that Mr. Bursor has recruited 750 AT&T Mobility customers to file arbitration proceedings).

AAA would “first seek court guidance as to whether a class arbitration may be brought under such an agreement.” *Id.* The AAA would not “commence administration of [such] a case, nor \* \* \* refer such a matter to an arbitrator until a court decides that it is appropriate to do so.” *Id.* In adhering to this “established policy of deferring to the courts on the issue of whether [class action] waivers are enforceable in a particular case” (*id.*), the AAA recognized the foundational point that “[t]he ‘principal purpose’ of the [Federal Arbitration Act] is to ‘ensur[e] that private arbitration agreements are enforced according to their terms’” (*Concepcion*, 131 S. Ct. at 1748 (quoting *Volt Info Scis., Inc. v. Board of Trs. of Leland Stanford Junior Univ.*, 489 U. S. 468, 479 (1989))), while “tak[ing] no position as to whether [class-action waiver] clauses are or should be enforceable.” *2005 President’s Letter* at 4.

The touchstone for the AAA’s determination under the Class Arbitration Policy is thus whether the claim in question is precluded by the provision of the governing arbitration agreement that addresses this post-*Bazzele* concern—the arbitrability of claims seeking relief impacting persons other than the individual who filed the demand for arbitration. The policy is designed to ensure that any such claims are arbitrated only when the parties clearly have agreed to that result or a court has ordered it. That is why, under the Class Arbitration Policy, the AAA consistently has “first [sought] court guidance” as to whether such claims may proceed in arbitration when the parties have agreed otherwise.

The case for requiring the Claimants here “to first seek court guidance” is even stronger than when the AAA adopted this policy. The commentary explains that the reason that the AAA “will not seek to make decisions concerning class action agreements” is that “courts appear to have reserved” those issues—the law of which is “unsettled”—“for themselves.” Here, not only does the law reserve the issue to the courts, but the arbitration agreement does as well, specifying that “issues relating to the scope and enforceability of the arbitration provision are for the court to decide.” Ex. A.

3. Mr. Bursor asserts that administration of his Demands would not obstruct the ongoing regulatory review of the merger, insisting that courts routinely entertain private antitrust litigation during the pendency of that review process. Again, he is wrong.

The U.S. Court of Appeals for the Seventh Circuit has explained that any private litigation seeking to enjoin a merger is premature “until all required state and federal approvals have been obtained—for the agencies might insist on changes that would substantially alter the merger’s competitive effects.” *S. Austin Coalition Community Council v. SBC Commc’ns Inc.*, 191 F.3d 842, 843 (7th Cir. 1999). Moreover, “[a]ntitrust litigation can be very costly; an expensive challenge to a moving target is worse than pointless.” *Id.* at 845. Certainly no “court should try to beat the FCC to the punch.” *Id.* at 844; *see also, e.g., Jewel Cos. v. Pay Less Drug Stores N.W., Inc.*, 510 F. Supp. 1006 (N.D. Cal. 1981) (fiduciary-duty claim predicated on potential antitrust violations “was not ripe for adjudication at the injunction stage because any alleged antitrust violation would be purely hypothetical until the merger actually took place”).



For the same reasons, the AAA should reject attempts by the Claimants to use the arbitration process to leapfrog the pending review of the merger by the FCC and Department of Justice—especially because permitting the arbitrations to proceed would have the effect of shutting out the views of thousands of interested individuals and businesses who are participating actively in the regulatory process but would be barred from the arbitrations.

4. Finally, Mr. Bursor resorts to impugning my integrity and accusing me and AT&T of trying to “corrupt” the AAA. These gratuitous assertions are clearly aimed at diverting the AAA from focusing on the merits of the issue that its rule requires it to decide.<sup>4</sup>

Equally beside the point are Mr. Bursor’s portentous statements that the AAA’s “job is to administer neutrally” and that “[w]e are watching closely[.]” The AAA has a longstanding and well-deserved reputation for neutral and impartial administration of arbitrations. It should not allow Mr. Bursor’s attempts at intimidation to deter it from fully and fairly applying its own Class Arbitration Policy, which explicitly requires an administrative determination *before* an arbitrator may be appointed and, in the circumstances here, plainly requires the AAA to conclude that it may not initiate arbitrations based on these Demands.

Thank you for your courtesy and attention to this matter.

Sincerely,

Neal S. Berinhout  
Associate General Counsel  
AT&T Mobility LLC

cc: Scott Bursor  
Eric Tuchmann, General Counsel, AAA

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<sup>4</sup> For the record, and to avoid the distraction he seeks to create, Mr. Bursor’s attacks on me are not just false, but slanderous. In *Trujillo v. Apple Computer, Inc.*, 578 F. Supp. 2d 979 (N.D. Ill. 2008), a court determined that I had erred in describing the process by which certain customers contracted for wireless service. But the court most certainly did not—as Mr. Bursor asserts—find that I had committed perjury. To the contrary, the court was informed of the errors as soon as I became aware of them (*see id.* at 985-86). In a later hearing, the court stated: “I’m certainly not in any position to say, nor did I suggest, or at least I wasn’t intending to suggest, that anybody had engaged in some sort of a \* \* \* deliberate effort to conceal something or hide something or misrepresent something.” *Trujillo*, 9/29/08 Hr’g Tr., at 12:3-7.

# EXHIBIT 9



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Re: *Barrett v. AT&T, Inc., et al.*; *Bernardi v. AT&T, Inc., et al.*; *Lea v. AT&T, Inc., et al.*; *Luciano v. AT&T, Inc., et al.*; *Mendoza v. AT&T, Inc., et al.*; *Newman v. AT&T, Inc., et al.*; *O'Neal v. AT&T, Inc., et al.*; *Pope v. AT&T, Inc., et al.*; *Princi v. AT&T, Inc., et al.*; *Shroeder v. AT&T, Inc., et al.*; *Ubiera v. AT&T, Inc., et al.*; *Kostoff v. AT&T, Inc., et al.*; *Bushman v. AT&T, Inc., et al.*; *Haensel v. AT&T, Inc., et al.*; *Gibbons v. AT&T, Inc., et al.*; *Justak v. AT&T, Inc., et al.*; *Fisher v. AT&T, Inc., et al.*; *Komlossy v. AT&T, Inc., et al.*; *Smith v. AT&T, Inc., et al.*; *Marlborough v. AT&T, Inc., et al.*; *Keller v. AT&T, Inc., et al.*; *Monteverde v. AT&T, Inc., et al.*; *Hidalgo v. AT&T, Inc., et al.*; *Gonnello v. AT&T, Inc., et al.*; *Rodriguez v. AT&T, Inc., et al.*; and *Colosimo v. AT&T, Inc. et al.*<sup>1</sup>

Dear Ms. Parvey, Ms. Horton, and Mr. Bursor:

I am writing in response to Mr. Bursor's July 28, 2011 letter demanding that AT&T Mobility LLC ("AT&T"): (1) reimburse him for the \$3,350 filing fee for 23 of the above-mentioned arbitration demands that he has apparently paid on behalf of his clients, and (2) pay that fee directly on behalf of the Claimants in *Mendoza* and *Shroeder*.<sup>2</sup> As you know, we have set forth in separate correspondence our substantive arguments explaining why the AAA should not accept these claims for administration. Hence, this letter is only addressing Mr. Bursor's assertion that AT&T must cover his share of the AAA fees.

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<sup>1</sup> This letter also applies to any additional Demands for Arbitration of the same nature that Bursor & Fisher might submit.

<sup>2</sup> We note that Mr. Bursor's letter does not discuss the arbitration demand in *Lara Fisher v. AT&T, Inc., et al.*

AT&T stands by its commitment in its arbitration agreement to pay all AAA filing, administration, and arbitrator fees for any consumer arbitration involving non-frivolous claims, “unless your claim is for greater than \$75,000” a limitation expressly stated in our customer service contract. The claims at issue here do not qualify for that treatment and, therefore, the request for reimbursement of fees is improper. Moreover, the claims Mr. Bursor’s firm have filed are a material breach of the arbitration agreement. That material breach relieves AT&T of any obligation to (i) cover the fees that the law firm has advanced, or may advance in the future with respect to these claims or (ii) pay costs directly in the event that one of Mr. Bursor’s clients requests it to do so.

AT&T’s arbitration agreement is very clear insofar as the declaratory or injunctive relief that is available to Claimants. It specifically provides as follows:

“The arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party’s individual claim. **YOU AND AT&T AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING.** Further, unless both you and AT&T agree otherwise, the arbitrator may not consolidate more than one person’s claims and may not otherwise preside over any form of a representative or class proceeding.” Ex. A ¶ 6.

As explained in my letter of July 28, 2011, these Demands seek injunctive relief that is far more broad and sweeping than the limited, individualized injunctive relief authorized by our arbitration agreement—*i.e.*, an injunction “**only** in favor of the individual party seeking relief and **only** to the extent necessary to provide relief warranted by that party’s individual claim.” (Emphasis added.) Indeed, the Claimants’ requested injunctive relief barring the merger between AT&T and T-Mobile USA, Inc. is so broad that it would, if granted, affect not only a class of over 120 million AT&T Mobility and T-Mobile customers but also the public in general.<sup>3</sup> Since these Demands violate the parties’ arbitration agreements in terms of the injunctive relief

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<sup>3</sup> Mr. Bursor’s recent public statements underscore the class and representative nature of his clients’ claims and the relief they seek, explaining that as long as one of his clients prevail, they all will win. That is the hallmark of a class or representative action. *See, e.g.*, <http://www.fightthemerger.com/rights/> (“We have already started the process of initiating dozens of arbitrations on behalf of our clients, **any one of which could stop this merger.** We have a team in place with the resources to bring thousands more.”).

requested, Claimants have materially breached their contracts with AT&T. Accordingly, as a matter of law, that breach excuses AT&T from any obligation to pay the costs of arbitration.<sup>4</sup>

The request for reimbursement by the Bursor firm is improper for another reason. AT&T's arbitration provision provides that AT&T "will promptly reimburse . . . payment of the filing fee, ***unless your claim is for greater than \$75,000.***" Ex. A ¶ 3 (Emphasis added). Each Demand for Arbitration makes a claim for injunctive relief with a monetary impact far in excess of \$75,000. Indeed, the Claimants' requested injunctions against the merger between AT&T and T-Mobile USA, Inc. would cost AT&T billions of dollars. Under the merger agreement, if the \$39 billion merger between AT&T and T-Mobile USA, Inc. were to fail, AT&T would be required to pay T-Mobile a breakup fee of \$6 billion. *See, e.g., AT&T, T-Mobile Breakup Fee Is \$6 Billion*, Reuters, May 12, 2011, at <http://www.reuters.com/article/2011/05/12/us-mobileusa-att-breakupfee-idUSTRE74B5H220110512> . Moreover, under the Claimants' theory, these Demands for Arbitration would confer "benefits" far in excess of \$75,000 on a gigantic class of individuals and businesses affected by the relief. For example, the Claimants erroneously contend that the proposed merger will injure competition, allegedly leading to (among other things) higher prices for wireless services for customers of the combined entity. If the Claimants were correct (and, again, they are not), an increase in the price of wireless service by just one half of one cent per customer per month would result in increased revenue of at least \$600,000 per month, given that AT&T Mobility and T-Mobile have over 120 million customers. Thus, an arbitration award barring the merger under Claimants' theory would save the class of AT&T and T-Mobile customers at least this amount. Moreover, the value to AT&T's competitors of blocking the merger would be many billions of dollars more. Thus, there simply can be no doubt that these claims for injunctive relief are for greater than \$75,000 in value.<sup>5</sup>

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<sup>4</sup> *See, e.g., Nolan v. Ho*, 577 A.2d 143, 146 (N.J. 1990) ("When there is a breach of a material term of an agreement, the non-breaching party is relieved of its obligations under the agreement."); *Ward v. Am. Mut. Liab. Ins. Co.*, 443 N.E.2d 1342, 1343 (Mass. 1983) ("It is well established that a material breach by one party excuses the other party from further performance under the contract."); *G.W. Anderson Constr. Co. v. Mars Sales*, 210 Cal. Rptr. 409, 415 (Ct. App. 1985) (plaintiff's "failure to perform . . . operates as the nonoccurrence of a condition which would suspend defendant's duty (to pay . . .) until the plaintiff can and does perform"); Restatement (Second) of Contracts § 237 (1981) ("[I]t is a condition of each party's remaining duties to render performances to be exchanged under an exchange of promises that there be no uncured material failure by the other party to render any such performance due at an earlier time.").

<sup>5</sup> Because AT&T has not agreed to pay arbitration costs for claims in excess of \$75,000, the payment of those costs is governed by the AAA's default rules. And under the applicable rules, the claimant is responsible for the \$3,350 filing fee, as well as half of the arbitrator's compensation. *See* AAA, Consumer-Related Disputes Supplementary Procedures § C-8.

In short, these Demands seek relief that both has a benefit “greater than \$75,000” and constitutes a “form of a representative or class proceeding” that violates the parties’ arbitration agreements. By the express terms of the parties’ arbitration agreements, claims “greater than \$75,000” relieve AT&T from the obligation to pay the filing fees. And, since the Claimants have materially breached the arbitration agreement by seeking injunctive relief benefiting a class rather than an individual, as a matter of law that breach likewise excuses AT&T from any obligation to pay the costs of arbitration.

As the AAA knows, AT&T has consistently met its obligations under its arbitration agreement to pay all AAA filing, administration, and arbitrator fees for any and all consumer arbitrations that comply with the arbitration agreement. It is the unique, abusive and improper nature of the Demands filed by this firm in direct violation of the parties’ agreement that remove these Demands from that standard practice.

If any of the Claimants chooses to withdraw his or her entirely improper Demand and re-file one (after complying with the Notice process) that complies with the arbitration agreement—i.e., one that does not seek relief that is expressly unavailable under the agreement—and has a value of \$75,000 or less, AT&T will promptly reimburse that claimant for the filing fee for that subsequent Demand or pay it directly, if the claimant cannot do so himself or herself.

As noted above, this letter is intended only to address Mr. Bursor’s request that AT&T cover the arbitration fees for these Demands. Our other correspondence sets forth the substantive reasons why the AAA should not proceed to administer these claims. Thank you for your courtesy and attention to this matter.

Sincerely,

Neal S. Berinhout  
Associate General Counsel  
AT&T Mobility LLC

cc: Eric Tuchmann, General Counsel, AAA

# EXHIBIT 10



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10<sup>TH</sup> FLOOR  
NEW YORK, NY 10017-6531  
[www.bursor.com](http://www.bursor.com)

SCOTT A. BURSOR  
Tel: 212.989.9113  
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[scott@bursor.com](mailto:scott@bursor.com)

August 2, 2011

**By Email Only**

Tara Parvey, Director of Case Filing Services

[ParveyT@adr.org](mailto:ParveyT@adr.org)

Courtney Horton, Intake Coordinator

[casefiling@adr.org](mailto:casefiling@adr.org)

American Arbitration Association

1101 Laurel Oak Road, Suite 100

Voorhees, NJ 08043

856-679-4602

Re: Leslie Bernardi and AT&T, Inc. and AT&T Mobility LLC  
Daniel Lea and AT&T, Inc. and AT&T Mobility LLC  
Helen Luciano and AT&T, Inc. and AT&T Mobility LLC  
Astrid Mendoza and AT&T, Inc. and AT&T Mobility LLC  
Mark Newman and AT&T, Inc. and AT&T Mobility LLC  
Jared Pope and AT&T, Inc. and AT&T Mobility LLC  
Michael Princi and AT&T, Inc. and AT&T Mobility LLC  
Deborah L. Shroeder and AT&T, Inc. and AT&T Mobility LLC  
Alexis Ubiera and AT&T, Inc. and AT&T Mobility LLC  
Laura Barrett and AT&T, Inc. and AT&T Mobility LLC  
Leaf O'Neal and AT&T, Inc. and AT&T Mobility LLC  
Shane Bushman and AT&T, Inc. and AT&T Mobility LLC  
Linda Haensel and AT&T, Inc. and AT&T Mobility LLC  
Shari Kostoff and AT&T, Inc. and AT&T Mobility LLC  
Joan Gibbons and AT&T, Inc. and AT&T Mobility LLC  
Alexis Justak and AT&T, Inc. and AT&T Mobility LLC  
Bryan Rodriguez and AT&T, Inc. and AT&T Mobility LLC  
Juan Monteverde and AT&T, Inc. and AT&T Mobility LLC  
Richard Gonnello and AT&T, Inc. and AT&T Mobility LLC  
Javier Hidalgo and AT&T, Inc. and AT&T Mobility LLC  
Emily Komlossy and AT&T, Inc. and AT&T Mobility LLC  
Beth Keller and AT&T, Inc. and AT&T Mobility LLC  
Chris Marlborough and AT&T, Inc. and AT&T Mobility LLC  
Sandra Smith and AT&T, Inc. and AT&T Mobility LLC  
Lara Fisher and AT&T, Inc. and AT&T Mobility LLC<sup>1</sup>  
Richard Colisimo and AT&T, Inc. and AT&T Mobility LLC

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<sup>1</sup> Lara Fisher and AT&T, Inc. and AT&T Mobility LLC was filed on July 25, 2011, but reference to this case was inadvertently omitted from my prior correspondence.



Dear Ms. Parvey and Ms. Horton:

This will respond to Mr. Berinhout's letter of today's date, which again urges AAA to refuse to administer these arbitrations. Given the extent of correspondence, it is perhaps most useful to recap eight points AT&T does not dispute:

1. AT&T does not dispute the validity or enforceability of its own arbitration agreements.
2. AT&T does not dispute that the claims are within the scope of the parties' agreement to arbitrate, which provides for the arbitration of "all disputes and claims between us." Wireless Customer Agreement § 2.2(1) (underlining added).
3. AT&T does not dispute that the parties' agreement provides for arbitration to be administered by AAA under the Commercial Arbitration Rules and Supplementary Procedures For Consumer Related Disputes.
4. AT&T does not dispute that each claimant has complied with §2.2(2) of the parties' agreement by sending, by certified mail, a written notice of dispute 30 days prior to commencing an arbitration proceeding.
5. AT&T does not dispute that each claimant has complied with all AAA administrative filing requirements.
6. AT&T does not dispute that antitrust claims, such as those asserted here, are arbitrable. *See* Mr. Berinhout's 8/2/11 letter at 2 ("as a general matter, antitrust claims are arbitrable – which we do not dispute").
7. AT&T does not dispute that "individuals could sue in court for the public injunctions [Mr. Bursor's] clients seek." *Id.* (underlining added).
8. AT&T does not dispute that the parties' agreement provides "Arbitrators can award the same damages and relief that a court can award." Wireless Customer Agreement § 2.1.

So, to sum up, AT&T does not dispute that each demand asserts arbitrable claims on behalf of an individual, seeking injunctive relief that would be available to an individual party in court.

Nevertheless, Mr. Berinhout urges AAA to apply a "Policy On Class Arbitration" under which the association refuses to administer "demands for class arbitration" where the parties' agreement prohibits class claims and no order of a court compels arbitration involving class claims. 8/2/11 Berinhout letter at 1. But that policy has no application here, since my clients have not filed any "demands for class arbitration." Each demand is asserted only on behalf of an individual claimant, and seeks injunctive relief that AT&T concedes is available to individuals suing in court. *See* Undisputed Point 7, above. None seeks to certify a class. None seeks to bind

absent class members. None invokes AAA's Supplementary Rules For Class Arbitrations. None has any of the characteristics of a class action.<sup>2</sup> There is no basis under the law, or under any AAA rule or precedent, to apply the "Policy On Class Arbitration" to any of these cases.

Mr. Berinhout's letters highlight that the real dispute concerns the jurisdiction of the arbitrator in each case to award the relief sought. Mr. Berinhout argues broad injunctive relief is prohibited by §2.2(6) of the parties' agreement, which states "The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim." See 8/2/11 Berinhout letter at 2. We read that provision as permitting the arbitrator to award any relief that would be available to an individual party in a court case. See Undisputed Point 7, above ("AT&T does not dispute that individuals could sue in court for the public injunctions [Mr. Bursor's] clients seek."). Furthermore, if there is any ambiguity in the agreement arising from § 2.2(6), and § 2.1, which provides that "[a]rbitrators can award the same damages and relief that a court can award," that ambiguity would be construed against AT&T. See, e.g., Restatement (Second) of Contracts § 206 ("In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words or from whom a writing otherwise proceeds."); *Pasteur Health Plan, Inc. v. Salazar*, 658 So.2d 543, 545 (Fla. 3d DCA 1995) ("any ambiguities and omissions should be construed in favor of [the non-drafting party]"), *rev. denied* 666 So.2d 901 (Fla. 1996); *Gostinelli v. Stein*, 794 N.Y.S.2d 759, 762 (4<sup>th</sup> Dept. 2005) ("any ambiguity ... must be construed against the drafter").

AT&T's argument about the limits imposed on an arbitrator's authority to grant injunctive relief is exceedingly weak on the merits. But the crucial point here – and this is dispositive – is that this is not an administrative matter. This is a disputed legal issue that the parties' agreement, and AAA rules, expressly commit to the determination of the arbitrator in each individual case. AAA Commercial Arbitration Rule R-7(a) provides that "[t]he arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement." Rule R-7(c) provides that objections "to the jurisdiction of the arbitrator or to the arbitrability of a claim" may be ruled on by the arbitrator "as a preliminary matter or as part of the final award." And Rule R-53 provides "[t]he arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties." No AAA rule or policy permits administrative personnel to determine the authority or jurisdiction of an arbitrator.

Mr. Berinhout also argues that actions by private parties to enjoin a merger must await government review and the actual consummation of the merger. See Berinhout letter at 5. That is certainly wrong. To rebut that argument, one need look no further than the text of Section 16 of the Clayton Act, 15 U.S.C. § 26, which permits private parties to seek "injunctive relief

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<sup>2</sup> Mr. Berinhout seeks to characterize as "class actions" any case with "claims seeking relief impacting persons other than the individual who filed the demand for arbitration." 8/2/11 Berinhout letter at 6. That definition is vague, amorphous, and incorrect. A class action is a case where absent parties would be bound by the judgment. See, e.g., Supplementary Rules for Class Arbitrations, Rule 6(b)(6) (referencing "the binding effect of a class judgment on class members"). Absent parties would not be bound by any ruling in these individual cases.

against threatened conduct.” Indeed, the cases granting private parties injunctive relief against proposed mergers, prior to consummation, are too numerous to cite. *See, e.g., Zenith v. Hazeltine Research, Inc.*, 395 U.S. 100, 130 (noting that Section 16 of the Clayton Act “authorizes injunctive relief upon the demonstration of ‘threatened’ injury”). Because it is often difficult to unscramble eggs, the Clayton Act provides for injunctive relief to prevent the cracking of the egg in the first place.

In any event, Mr. Berinhout’s argument concerning the remedies available under the Clayton Act, and whether they must await the consummation of the merger, are not administrative matters. This, again, is a disputed legal issue that goes to the heart of the parties’ dispute. It is an issue expressly committed to the arbitrator in each individual case, not to AAA administrative personnel.

In sum, despite the lengthy correspondence from Mr. Berinhout, there is no reason to reverse Ms. Parvey’s prior determination that AAA “will proceed with the administration” of these cases. *See* 7/27/11 Parvey letter at 2 (“[W]e ask that you remit the balance of the fee. Once that fee has been paid so that all filing requirements have been met, you will be notified by a case manager that the AAA will proceed with the administration of the arbitration[s], and the AAA will provide you with appropriate response dates for answering statements or counterclaims.”).

We look forward to the prompt administration of these cases.

Very truly yours,



Scott A. Bursor

Eric Tuchmann, Esq., [TuchmannE@adr.org](mailto:TuchmannE@adr.org)  
Neal S. Berinhout, [nb2520@att.com](mailto:nb2520@att.com)

# EXHIBIT 11



American Arbitration Association  
*Dispute Resolution Services Worldwide*

*Northeast Case Management Center*  
Catherine Shanks  
Vice President  
Christopher Fracassa, Yvonne L. Baglini  
Assistant Vice Presidents

September 27, 2007

950 Warren Avenue, East Providence, RI 02914  
telephone: 866-293-4053 facsimile: 401-435-6529  
internet: <http://www.adr.org/>

Via First Class Mail

Scott A. Bursor, Esq.  
Law Offices of Scott A. Bursor  
500 Seventh Avenue, 10th Floor  
New York, NY 10018

Re: 11 494 01274 05  
Patricia Brown, on an individual basis, and also  
on a classwide basis on behalf of others similarly  
situated  
and  
Cellco Partnership d/b/a Verizon Wireless

Mr. Bursor:

Pursuant to your request, attached you will find copies of Mr. Farber's invoice received to date.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Tanya Srabian".

Tanya Srabian  
Case Manager  
401 431 4813  
[Srabiant@adr.org](mailto:Srabiant@adr.org)

*Supervisor Information: Heather Santo, 401 431 4702, [SantoH@adr.org](mailto:SantoH@adr.org)*

Encl.

# FARBER, PAPPALARDO & CARBONARI

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SAMUEL FAGIN

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

September 30, 2005

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Katharine Flanagan  
Supervisor

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$5,775.00

Entered *KLT*  
10/7/2005

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Katharine Flanagan - Supervisor

July 26, 2005 - 1 3/4 hrs. - Review pleadings and conflicts lists

July 27, 2005 - 1/2 hr. - Complete review and disclosures

August 30, 2005 - 1 3/4 hrs. - Review pleadings, file, check rules; prepare for preliminary conference

August 31, 2005 - 1 hr. - Pre-hearing conference

September 1, 2005 - 1 hr. - Draft procedural order

September 16, 2005 - 1/2 hr. - Review letters and stip. re: clause construction award; check file, re: status

September 21, 2005 - 2 1/4 hrs. - Review documents on allocation of fees: check rules and begin review of caselaw

September 22, 2005 - 2 1/2 hrs. - Review submissions, re: fees; outline opinion and order; review wireless, consumer rules

September 23, 2005 - 2 3/4 hrs. - Work on opinion and order, re: arbitration and filing fees

September 26, 2005 - 2 1/2 hrs. - Complete draft opinion and order, re: fees

16 1/2 hrs. at \$350.00 per hour = \$5,775.00

# FARBER, PAPPALARDO & CARBONARI

ATTORNEYS AT LAW  
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WILLIAM L. CARBONARI

HINDA KELLER FARBER\*\*  
SAMUEL FAGIN

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

November 11, 2005

REPLY TO WHITE PLAINS OFFICE

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$5,950.00



American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Katharine Flanagan - Supervisor

October 3, 2005 - 1 1/2 hrs - Brief review of motion for stay

November 1, 2005 - 3 3/4 hrs. - Begin review of stay motion

November 2, 2005 - 5 3/4 hrs. - Continue review of extensive papers on motion for stay

November 7, 2005 - 2 3/4 hrs. - Review consolidation motion and some of cases; letter requesting further information

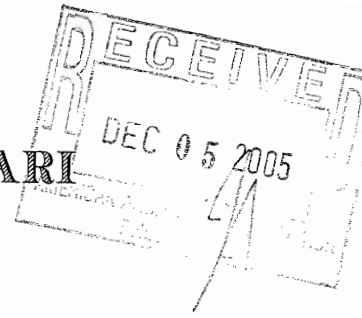
November 10, 2005 - 3 1/4 hrs. - Further preparation; conference call with counsel; draft procedural order

17 hrs. at \$350.00 per hour = \$5,950.00

Entered 11/14/2005 (DG)

# FARBER, PAPPALARDO & CARBONARI

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200 EAST POST ROAD  
WHITE PLAINS, NEW YORK 10601  
TEL. (914) 761-9400 (212) 752-3396  
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EUGENE I. FARBER  
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WILLIAM L. CARBONARI  
HINDA KELLER FARBER\*\*  
SAMUEL FAGIN

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

December 1, 2005

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$ 7,612.50

Balance due pursuant to statement of  
11/11/05:

\$ 3,325.00

Total due:

\$10,937.50

Entered 12/5/05 (DG)

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

November 18, 2005 - 2 1/4 hr. - Review of briefs, re: motion for stay

November 20, 2005 - 4 3/4 hrs. - Review of briefs and exhibits, re: motion for stay

November 21, 2005 - 3 1/4 hr. - Review motion for consolidation and some exhibits and supplemental stay brief

November 22, 2005 - 5 1/2 hrs. - Complete preparation for argument; lengthy argument in lengthy conference call; draft procedural order

November 23, 2005 - 3 3/4 hrs. - Complete procedural order; further review of some exhibits and cases; outline points for decisions

November 28, 2005 - 2 1/4 hrs. - Further work on motion; complete procedural order

21 3/4 hrs. at \$350.00 per hour = \$7,612.50

**FARBER, PAPPALARDO & CARBONARI**

ATTORNEYS AT LAW  
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KRISTEN L. HOLT

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

March 20, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$14,700.00

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

February 15, 2006 - 1 1/4 hr. - Review letters to prepare for conference call; review notes, re: prior submissions and propose agenda

February 16, 2006 - 3 1/2 hrs. - Review submissions, re: decision of Arb. Matthews and read submissions, re: use of federal court discovery and lengthy exhibits

March 3, 2006 - 2 1/2 hrs. - Begin review of notes, exhibits and submissions

March 6, 2006 - 3 1/4 hrs. - Further review of submissions; letters and begin review of certain caselaw

March 7, 2006 - 3 1/2 hrs. - Review caselaw and submissions on consolidation; begin outline of decision and deliberation

March 8, 2006 - 6 1/4 hrs. - Further review of cases and initial draft of consolidation order; obtain and review other information, re: Zobrist case

March 9, 2006 - 4 hrs. - Review caselaw, re: doctrines of privacy jurisdiction and priority; review sections of Hobbs Act and FCCA; review notes and submission, re: stay motions

March 10, 2006 - 3 3/4 hrs. - Further work on motions for consolidation, for stay and discovery issues

March 13, 2006 - 4 1/4 hrs. - Further review of caselaw on stay motion and outline decision

March 14, 2006 - 3 1/4 hrs. - Complete review of cases, re: stay and draft decision

March 17, 2006 - 4 3/4 hrs. - Review cases of doctrine of priority and re: "reasonableness" Section 201 of FCCA; complete draft of order; review decisions of Illinois and California courts, re: stay issues

March 20, 2006 - 1 3/4 hrs. - Complete order on 3 motions

42 hrs. at \$350.00 per hour = \$14,700.00

Entered 3/22/06 (DG)

# FARBER, PAPPALARDO & CARBONARI

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200 EAST POST ROAD  
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HINDA KELLER FARBER\*\*  
SAMUEL FAGIN\*\*  
KRISTEN L. HOLT

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

May 11, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$6,912.50

Balance due pursuant to statement of  
3/20/06:

\$ 700.00

Total Due:

\$7,612.50

Entered 5/15/06 (DB)

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

March 27, 2006 - 3/4 hrs. - Review California court decision on stay motion

March 31, 2006 - 4 3/4 hrs. - Further review of submissions; preparation and outline; conference call with counsel; draft procedural order; review 2 new court decisions

March 30, 2006 - 1 3/4 hrs. - Begin review of submissions to prepare for conference call

April 7, 2006 - 1 1/4 hr. - Review letter and attachments from Respondents

April 17, 2006 - 3/4 hrs. - Review Claimant's letter and attachments, re: stay

April 18, 2006 - 3/4 hr. - Review letter and attachments from Verizon attorneys

May 5, 2006 - 2 3/4 hrs. - Begin review of submissions, re: lead counsel

May 8, 2006 - 2 1/4 hrs. - Complete review of submissions and exhibits

May 9, 2006 - 1 1/2 hrs. - Preparation for conference call; review exhibits

May 10, 2006 - 2 1/2 hrs. - Lengthy conference call and draft procedural order

May 11, 2006 - 3/4 hr. - Review letter from respondent and complete draft of procedural order

19 3/4 hrs. at \$350.00 per hour = \$6,912.50

# FARBER, PAPPALARDO & CARBONARI

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200 EAST POST ROAD  
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HINDA KELLER FARBER\*\*

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

June 26, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$8,575.00



## American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

May 12, 2006 - 1/4 hr. - Conference call with attorneys and notes, re: deposition time

June 8, 2006 - 2 1/2 hrs. - Begin review of lead counsel documents

June 11, 2006 - 2 3/4 hrs. - Review additional submissions on motion to appoint lead counsel

June 21, 2006 - 3 1/4 hrs. - Begin review of motion to dismiss handset lock claims

June 23, 2006 - 3 3/4 hrs. - Further review of submissions on handset lock claims

June 25, 2006 - 5 3/4 hrs. - Complete review of briefs, exhibits, pleadings in other cases, decisions and orders of other tribunals

June 26, 2006 - 6 1/4 hrs. - Final preparation and hearing at AAA; draft memo, re: argument; draft letter/order

24 1/2 hrs. at \$350.00 per hour = \$8,575.00

Entered 6/27/06 (DG)

# FARBER, PAPPALARDO & CARBONARI

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REPLY TO WHITE PLAINS OFFICE

September 5, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$8,137.50

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

August 17, 2006 - 1 1/4 hrs. - Review additional submission and letter to confidentiality stipulation

August 28, 2006 - 3 1/4 hrs. - Additional work on motion to dismiss

August 29, 2006 - 3 1/4 hrs. - Review notes, transcript and cases on motion to dismiss

August 30, 2006 - 1 1/2 hrs. - Begin draft order on motion and outline

August 31, 2006 - 4 1/4 hrs. - Review transcript and cases and outline order

September 1, 2006 - 6 1/2 hrs. - Draft order; complete review of cases, transcript and submissions

September 5, 2006 - 3 1/4 hrs. - Complete order on motion to dismiss

23 1/4 hrs. at \$350.00 per hour = \$8,137.50

Entered 9/12/06 (DG)

FARBER, PAPPALARDO & CARBONARI <sup>14</sup> 2006

ATTORNEYS AT LAW  
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HINDA KELLER FARBER\*\*

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

October 10, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$1,837.50

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

September 22, 2006 - 1 3/4 hrs. - Check file, re: status; review letters to Strigl deposition; review transcript; preparation for conference call

September 25, 2006 - 2 1/2 hrs. - Further preparation and telephone call, re: Strigl deposition and order, re: same

October 8, 2006 - 1 hr. - Review letter and exhibits, re: deposition rulings

5 1/4 hrs. at \$350.00 per hour = \$1,837.50

*Entered  
10/17/06 (dg)*

# FARBER, PAPPALARDO & CARBONARI

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NOV 20 2006

EUGENE I. FARBER  
JOHN A. PAPPALARDO\*  
WILLIAM L. CARBONARI  
HINDA KELLER FARBER\*\*

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

November 17, 2006

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Danielle Gorini  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$2,625.00

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

October 9, 2006 - 1/4 hr. - Letter, re: answering papers

October 17, 2006 - 3 3/4 hrs. - Review letters, transcript, re: deposition privilege issues;  
2 conference calls with attorneys

November 8, 2006 - 1 3/4 hr. - Review submission with Verizon attorneys

November 13, 2006 - 1/2 hr. - Review letters, re: certification briefs; check file

November 15, 2006 - 1 1/4 hrs. - Review more letters; telephone conference call and  
draft procedural order

7 1/2 hrs. at \$350.00 per hour = \$2,625.00

*entered 11/21/06 dg*

# FARBER, PAPPALARDO & CARBONARI

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KAREN M. JANSEN, ESQ.

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

January 26, 2007

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Tanya Srabian  
Case Manager

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$16,800.00  
Entered  
1/29/07



## American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

January 3, 2007 - 3/4 hrs. - Check file to prepare for conference call

January 4, 2007 - 1/2 hr. - Conference call to prepare for hearings

January 11, 2007 - 1 hr. - Preparation and conference call and draft order

January 17, 2007 - 2 3/4 hrs. - Read moving papers on motion for class certification

January 19, 2007 - 3 3/4 hrs. - Further review in preparation for hearing

January 20, 2007 - 5 1/2 hrs. - Review same caselaw; further review of briefs

January 21, 2007 - 6 1/2 hrs. - Further review of submissions and exhibits and relevant caselaw

January 23, 2007 - 6 3/4 hrs. - Further preparation for hearings

January 24, 2007 - 8 3/4 hrs. - Hearing number 1 on class certification and review of additional documents provided at hearing

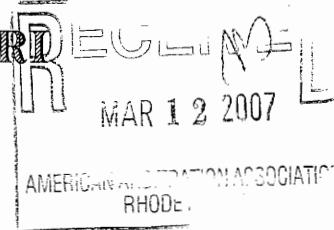
January 25, 2007 - 8 1/2 hrs. - Hearing number 2, re: class certification; review notes and outline memo

January 26, 2007 - 3 1/4 hrs. - Draft procedural order; draft memo, re: status; review certain exhibits

48 hrs. at \$350.00 per hour = \$16,800.00

# FARBER, PAPPALARDO & CARBONARI

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ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

March 7, 2007

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & Ct.

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Tanya Srabian  
Case Manager

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

Balance due pursuant to invoice of 1/26/07:

Total Due:

\$1,575.00

\$6,525.00

\$8,100.00

A large, handwritten signature in black ink, appearing to read "Tanya Srabian". The signature is written over the monetary amounts on the right side of the page.

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

February 25, 2007 - ½ hr. - Begin review motion for stay

February 26, 2007 - 2 ¾ hrs. - Complete review of stay motion and exhibits

February 28, 2007 - 1 ¼ hrs. - Preparation and conference call, re: settlement

4 ½ hours at \$350.00 per hour = \$1,575.00

# FARBER, PAPPALARDO & CARBONARI

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HINDA KELLER FARBER\*\*  
KAREN M. JANSEN

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

April 2, 2007

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & CT

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Tanya Srabian  
Case Manager

FOR ARBITRATION SERVICES RENDERED  
to date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

Balance due pursuant to invoices of 1/26/07 and  
3/7/07:

Total Due:

Entered  
\$12,337.50  
\$ 8,100.00  
\$20,437.50  
4/4/07

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

March 9, 2007 - 1/4 hr. - Brief conference call with attorneys

March 20, 2007 - 2 3/4 hrs. - Begin review of supplemental submissions, re: class certification

March 21, 2007 - 3 1/4 hrs. - Further review of supplemental submissions

March 22, 2007 - 2 1/2 hrs. - Further review of submissions

March 23, 2007 - 3 1/2 hrs. - Continue review of submissions

March 24, 2007 - 2 1/2 hrs. - Continue review of briefs and exhibits

March 25, 2007 - 3 3/4 hrs. - Continue review of briefs and affidavits

March 27, 2007 - 2 1/4 hrs. - Further review to prepare for hearing

March 28, 2007 - 5 1/4 hrs. - Further preparation for hearing

March 29, 2007 - 9 1/4 hrs. - Final preparation and hearing at Kirkland & Ellis; outline memo of proceedings

35 1/4 hours at \$350.00 per hour = \$12,337.50

# FARBER, PAPPALARDO & CARBONARI

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FAX (914) 761-0747

AUG 27 2007  
5

EUGENE I. FARBER  
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WILLIAM L. CARBONARI  
HINDA KELLER FARBER\*\*  
KAREN M. JANSEN

145 EAGLE ROCK AVENUE  
ROSELAND, NEW JERSEY 07068

REPLY TO WHITE PLAINS OFFICE

August 22, 2007

REFER TO FILE NO.

\*Admitted to NY & NJ  
\*\*Admitted to NY & CT

American Arbitration Association  
950 Warren Avenue  
East Providence, Rhode Island 02914

Attn: Ms. Tanya Srabian  
Case Manager

---

FOR ARBITRATION SERVICES RENDERED to  
date in connection with arbitration captioned  
Patricia Brown and Cello Partnership d/b/a  
Verizon Wireless, case no. 11 494 01274 05  
pursuant to the annexed time sheets:

\$4,987.50

entered  
JAS  
8/30/07

American Arbitration Association

Re: Patricia Brown and Cello Partnership  
d/b/a Verizon Wireless - Case No. 11 494 01274 05  
Danielle Gorini - Case Manager

June 27, 2007 - 2 3/4 hrs. - Begin review of documents, re: award

June 29, 2007 - 2 3/4 hrs. - Further review of documents, re: award

July 27, 2007 - 2 1/4 hrs. - Review prior procedural order; gather documents, re: class certification award

August 9, 2007 - 2 3/4 hrs. - Further work on exhibits and transcript

August 10, 2007 - 3 3/4 hrs. - Work on briefs and exhibits

14 1/4 hours at \$350.00 per hour = \$4,987.50

# EXHIBIT 12





**American Arbitration Association**

*Dispute Resolution Services Worldwide*

## Administrative Fee Waivers and Pro Bono ARBITRATORS AAA Administrative Fees Waiver/Deferral/Hardship Provisions

In cases where an AAA administrative fee applies, parties are eligible for consideration for a waiver or deferral of the administration fee if their annual gross income falls below 200% <sup>(1)</sup> of the federal poverty guidelines.

To view the federal poverty guidelines, [click here](#).

Additional information, such as past income, assets (both liquid and non-liquid amounts) and income prospects may be considered in determining need as well. A signed affidavit of hardship will also be required.

Since every hardship request is unique and involves many variables, the AAA reserves the right to deny or grant any request based on the information given by the requesting party.

(1) California Consumers: Pursuant to section 1284.3 of the California Code of Civil Procedures, consumers with a gross monthly income of less than 300% of the federal poverty guidelines (Federal Guidelines multiplied by 3), are entitled to a waiver of all fees and costs, exclusive of arbitrator fees. This law applies to all consumer arbitration agreements subject to the California Arbitration Act, and to all consumer arbitrations conducted in California. If you believe that you meet these requirements, you must submit to the AAA a declaration under oath (see *Affidavit for Waiver of Fees, which can be found under the forms section of the website*) regarding your monthly income and the number of persons in your household. Please contact the Western Case Management Center at 1-877-528-0879, if you have any questions regarding the waiver of administrative fees.

### Pro Bono Service by Arbitrator

A number of arbitrators on the AAA panel have volunteered to serve pro bono for one hearing day on cases where an individual might otherwise be financially unable to pursue his or her rights in the arbitral forum.

The AAA will attempt to appoint a pro bono arbitrator to serve for a one day hearing on a case where the AAA has granted a waiver or deferral hardship provision (in accordance with the *AAA's Administrative Fees Waiver/Deferral/Hardship Provisions*) and where the inability of one party to pay the arbitrator may prevent the case from going forward.

Even if no waiver or deferral of administrative fees has been granted or requested, a party may make a request for a pro bono or reduced rate arbitrator at the time of the filing of the case or at any time up to the point that an arbitrator is appointed. However, prior to appointment every effort is made to have the non-indigent party agree to pay the arbitrators fees. While we cannot guarantee the appointment of a pro bono or reduced rate arbitrator, we will make every effort to accommodate the request.

This request should be made to the Case Manager.

### Questions

For more information, please contact the AAA's Customer Service Department at 1-800-778-7879.

- [AAA MISSION & PRINCIPLES](#)
- [PRIVACY POLICY](#)
- [TERMS OF USE](#)
- [TECHNICAL RECOMMENDATIONS](#)

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# EXHIBIT 13

## The 2011 HHS Poverty Guidelines

### One Version of the [U.S.] Federal Poverty Measure

[ [Federal Register Notice, January 20, 2011](#) — Full text ]  
 [ [Prior Poverty Guidelines and Federal Register References Since 1982](#) ]  
 [ [Frequently Asked Questions \(FAQs\)](#) ]  
 [ [Further Resources on Poverty Measurement, Poverty Lines, and Their History](#) ]  
 [ [Computations for the 2011 Poverty Guidelines](#) ]

There are two slightly different versions of the federal poverty measure:

- The poverty thresholds, and
- The poverty guidelines.

The **poverty thresholds** are the original version of the federal poverty measure. They are updated each year by the **Census Bureau** (although they were [originally developed by Mollie Orshansky](#) of the Social Security Administration). The thresholds are used mainly for **statistical** purposes — for instance, preparing estimates of the number of Americans in poverty each year. (In other words, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.) [Poverty thresholds since 1973 \(and for selected earlier years\)](#) and [weighted average poverty thresholds since 1959](#) are available on the Census Bureau's Web site. For an example of how the Census Bureau applies the thresholds to a family's income to determine its poverty status, see ["How the Census Bureau Measures Poverty"](#) on the Census Bureau's web site.

The **poverty guidelines** are the other version of the federal poverty measure. They are issued each year in the *Federal Register* by the **Department of Health and Human Services (HHS)**. The guidelines are a simplification of the poverty thresholds for use for **administrative** purposes — for instance, determining financial eligibility for certain federal programs. The [Federal Register notice of the 2011 poverty guidelines](#) is available.

The poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.

Key differences between poverty thresholds and poverty guidelines are outlined in a table under [Frequently Asked Questions \(FAQs\)](#). See also the [discussion of this topic](#) on the Institute for Research on Poverty's web site.

**NOTE:** The poverty guideline figures below are **NOT** the figures the Census Bureau uses to calculate the number of poor persons. The figures that the Census Bureau uses are the [poverty thresholds](#).

Persons in Family	48 Contiguous States and D.C.	Alaska	Hawaii
1	\$10,890	\$13,600	\$12,540
2	14,710	18,380	16,930
3	18,530	23,160	21,320
4	22,350	27,940	25,710
5	26,170	32,720	30,100
6	29,990	37,500	34,490
7	33,810	42,280	38,880
8	37,630	47,060	43,270
For each additional person, add	3,820	4,780	4,390

**SOURCE:** *Federal Register*, Vol. 76, No. 13, January 20, 2011, pp. 3637-3638

The separate poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966-1970 period. Note that the poverty thresholds — the original version of the poverty measure — have never had separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. In cases in which a Federal program using the poverty guidelines serves any of those jurisdictions, the Federal office which administers the program is responsible for deciding whether to use the contiguous-states-and-D.C. guidelines for those jurisdictions or to follow some other procedure.

The poverty guidelines apply to both aged and non-aged units. The guidelines have never had an aged/non-aged distinction; only the Census Bureau (statistical) poverty thresholds have separate figures for aged and non-aged one-person and two-person units.

Programs using the guidelines (or percentage multiples of the guidelines — for instance, 125 percent or 185 percent of the guidelines) in determining eligibility include Head Start, the Food Stamp Program, the National School Lunch Program, the Low-Income Home Energy Assistance Program, and the Children's Health Insurance Program. Note that in general, cash public assistance programs (Temporary Assistance for Needy Families and Supplemental Security Income) do NOT use the poverty guidelines in determining eligibility. The Earned Income Tax Credit program also does NOT use the poverty guidelines to determine eligibility. For a more detailed list of programs that do and don't use the guidelines, see the [Frequently Asked Questions \(FAQs\)](#).

The poverty guidelines (unlike the poverty thresholds) are designated by the year in which they are issued. For instance, the guidelines issued in January 2011 are designated the 2011 poverty guidelines. However, the 2011 HHS poverty guidelines only reflect price changes through calendar year 2010; accordingly, they are approximately equal to the Census Bureau poverty thresholds for calendar year 2010. (The 2010 thresholds are expected to be issued in final form in September 2011; a preliminary version of the 2010 thresholds is now available from the Census Bureau.)

The [computations for the 2011 poverty guidelines](#) are available.

The poverty guidelines may be formally referenced as "the poverty guidelines updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902 (2)."

Go to [Further Resources on Poverty Measurement, Poverty Lines, and Their History](#)

Go to [Frequently Asked Questions \(FAQs\)](#)

Return to the main [Poverty Guidelines, Research, and Measurement](#) page.

Last Revised: 01/21/11

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[The White House](#) | [USA.gov](#) | [FBI.gov](#)

U.S. Department of Health & Human Services – 200 Independence Avenue, S.W. – Washington, D.C. 20201

# EXHIBIT 14

No. 09-

09-893

JAN 25 2010

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In the Supreme Court of the United States

OFFICE OF THE CLERK

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AT&T MOBILITY LLC,

*Petitioner,*

v.

VINCENT AND LIZA CONCEPCION,

*Respondents.*

---

**On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

---

**PETITION FOR A WRIT OF CERTIORARI**

---

DONALD M. FALK  
*Mayer Brown LLP  
Two Palo Alto Square  
3000 El Camino Real,  
Suite 300  
Palo Alto, CA 94306  
(650) 331-2000*

NEAL BERINHOUT  
*AT&T Mobility LLC  
1025 Lenox Park  
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(404) 986-1427*

KENNETH S. GELLER  
*Counsel of Record*  
ANDREW J. PINCUS  
EVAN M. TAGER  
ARCHIS A. PARASHARAMI  
KEVIN RANLETT  
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Washington, DC 20006  
(202) 263-3000  
kgeller@mayerbrown.com*

*Counsel for Petitioner*

**QUESTION PRESENTED**

Whether the Federal Arbitration Act preempts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures—here, class-wide arbitration—when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims.