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THE HONORABLE _____

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

T-MOBILE USA, INC., a Delaware
Corporation,

Plaintiff,

v.

LYCAMOBILE USA, INC., a Delaware
Corporation

Defendants.

No. _____

COMPLAINT

Plaintiff T-Mobile USA, Inc. (“T-Mobile”), in and for its complaint, alleges as follows:

PARTIES

1. T-Mobile is a Delaware corporation with its principal place of business in Bellevue, Washington. T-Mobile provides wireless voice, messaging, and data services directly to end users as well as through mobile virtual network operators (“MVNOs”), which enter into contracts with wireless service providers like T-Mobile in order to purchase and distribute wireless services to their customers using T-Mobile’s wireless systems.

1 2. Defendant Lycamobile USA, Inc. (“Lycamobile”) is an MVNO that
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3 purchased and purchases wireless services from T-Mobile to distribute those services to
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5 Lycamobile’s subscribers using T-Mobile’s wireless systems. The contract governing this
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7 business relationship is a Wholesale Supply Agreement, dated February 8, 2012, which has
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9 been amended multiple times. The effective date of the most recent amendment to the
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11 Wholesale Supply Agreement, the Eighth Amendment, is April 21, 2022. (“Agreement”
12
13 below refers to the Wholesale Supply Agreement, as amended.) Lycamobile is incorporated
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15 in Delaware and has its principal place of business Newark, New Jersey.
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17 **JURISDICTION AND VENUE**

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19 3. This Court has jurisdiction over this action, pursuant to RCW 2.08.010,
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21 because the amount in controversy exceeds \$300.
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23 4. Personal jurisdiction exists over Lycamobile, and venue is proper in this
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25 Court, because Lycamobile consented to exclusive jurisdiction and venue in King County,
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27 Washington in section 15.1 of the Agreement for any “actions, claims, or proceedings
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29 arising out of or in connection with the Agreement.”
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31 5. Venue is also proper under RCW 4.12.025(1), because Lycamobile transacts
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33 business in King County and specifically transacted business in King County at the time this
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35 dispute arose.
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37 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

38 39 **A. Relevant Terms of the Wholesale Supply Agreement**

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41 6. Invoices. Under the Agreement, T-Mobile bills Lycamobile monthly for
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43 wireless services, including voice, data, and SMS (i.e., text) services. Schedule B of the
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45 Agreement defines the pricing and minimum payment schedule. The Agreement requires
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1 T-Mobile to send Lycamobile a summary invoice after the end of each Billing Cycle.

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3 Agreement § 8.4(a).

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5 7. The Agreement requires Lycamobile to notify T-Mobile of any disputed
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7 invoice amounts within 15 days after receipt of the invoice, and the Agreement requires both
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9 parties to “work in good faith to expeditiously resolve any dispute.” Agreement § 8.4(b).

10
11 8. Each month, Lycamobile’s Charges for a Billing Cycle are calculated based
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13 on, for example, Monthly Recurring Charge (“MRC”) fees contingent on the number of
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15 Lycamobile subscribers, one-time charges, and service usage charges (e.g., subscribers’
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17 usage of more data than included in their monthly plan). Agreement Sch. B (“Pricing and
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19 Minimum Payment Schedule”).

20
21 9. Lycamobile is also subject to a Minimum Purchase Guarantee (“MPG”) for
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23 each Billing Year and a corresponding Monthly Minimum Payment Commitment
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25 (“MMPC”). Agreement Sch. B §§ 2.1–2.2.

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27 10. Advance Service Payment. The Agreement includes several provisions to
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29 protect T-Mobile’s interest in being timely and fully paid. For example, by the end of each
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31 calendar month, “Lycamobile must pay to T-Mobile an amount equal to the higher of: 1) the
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33 prior Billing Cycle’s invoice amount or 2) the MMPC set forth in Schedule B.” Agreement
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35 § 7(b). This prepayment obligation is referred to as the “Advance Service Payment” or
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37 “ASP.” In addition, if “any calendar month’s invoice amounts exceed the then current
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39 Advance Service Payment made by Lycamobile,” then Lycamobile must pay any
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41 outstanding amounts “by the earlier of (a) five (5) Business Days after receiving an
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43 applicable invoice from T-Mobile, or (b) the due date of the next Advance Service
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45 Payment.” Agreement § 7(b).

1 11. Deposit. T-Mobile also holds a Deposit made by Lycamobile “to secure
2 payment obligations of Lycamobile owed to T-Mobile for the Term of this Agreement.”
3 Agreement § 7(a). Under that provision, “[i]f Lycamobile fails to pay any sum owed to
4 T-Mobile, T-Mobile may draw, on a partial or complete basis, such amounts necessary from
5 the Deposit to satisfy all or part of the past due balances. In such cases, Lycamobile agrees
6 to replenish the Deposit to the previous amount (before the draw) within ten (10) days of
7 T-Mobile’s draw.” Agreement § 7(a).
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15 12. Increased Deposit. If the amount of “the Deposit is less than Lycamobile’s
16 invoice run rate for the prior 45 days,” then once every three-month period, “T-Mobile shall
17 be entitled to request Lycamobile to increase the Deposit to an amount equal to
18 Lycamobile’s invoice run rate for the prior 45 days.” Agreement § 7(a)(i). “Upon receipt of
19 a written request for a Deposit increase under this section 7, Lycamobile will increase the
20 Deposit by the notified amount within three (3) days of such notice.” Agreement § 7(a)(i).
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25 13. The ASP, Deposit, and other security provisions in the Agreement are
26 intended to protect T-Mobile’s financial interests, in part because historically Lycamobile
27 has frequently failed to make timely payments. For example, the Second Amendment to the
28 Agreement acknowledges that “Lycamobile has failed to pay when due certain amounts
29 owing under the Agreement . . . and has requested that T-Mobile extend the payment due
30 dates for those amounts.” Recital to Second Amendment.
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35 14. Termination for Cause. The Agreement provides that, “Upon the occurrence
36 of any of the events of breach specified in section 9.2(a), the non-breaching Party may, upon
37 notice to the breaching Party, terminate this Agreement or the impacted Service Schedule, in
38 its discretion, and pursue any other right or remedy under this Agreement.” Agreement
39 § 9.8. Among other events, section 9.2(a) includes “material breach, nonperformance, or
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1 noncompliance by the Party obligated to perform or comply with any material provision,
2 condition, or covenant in this Agreement.” Agreement § 9.2(a)(i).
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5 15. Liquidated Damages. The parties also agreed that T-Mobile would be entitled
6 to liquidated damages if the Agreement is terminated prior to the end of the Term.
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8 Specifically, the Agreement states: “In the event that the Agreement terminates prior to the
9 end of the Term for any reason (other than due to T-Mobile material breach [of specified
10 provisions]) . . . Lycamobile shall be obliged to fulfill the remaining balance of all MPG
11 obligations for the Term, as set forth in Schedule B.” Agreement § 9.6.
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16 16. Washington law governs this dispute. Agreement § 15.13.
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19 **B. Usage Data Provided and Made Available to Lycamobile**
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21 17. T-Mobile regularly provides and/or makes available to Lycamobile vast
22 amounts of data and robust reports substantiating T-Mobile’s calculations of Lycamobile’s
23 Charges.
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26 18. At the most granular level, T-Mobile provides Lycamobile with Call Detail
27 Records (CDRs) every fifteen minutes and monthly. These CDRs include an entry with
28 relevant data for each event associated with each Lycamobile subscriber. For example, a
29 CDR identifies the amount of data used to send or receive each email or text, and the
30 duration, phone number, and location of each phone call placed or received.
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33 19. T-Mobile also provides Lycamobile additional reports, such as monthly
34 summaries that aggregate daily usage data. Lycamobile can also download additional
35 reports, including Invoice Report Summaries showing usage broken down by Lycamobile
36 plan. The Invoice Report is more detailed. For *each* Lycamobile subscriber, it shows
37 monthly data usage (broken down by categories, such as type of cellular network).
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1 20. T-Mobile’s monthly invoices include aggregate data on service usage charges
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3 for hundreds of “Unique Feature IDs” (e.g., international roaming charges by country).
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5 **C. Discovery of a Discrepancy That Resulted in Underreporting of Data Usage**
6 **by Lycamobile Subscribers**
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8 21. On or around June 30, 2021, T-Mobile reallocated an unused block of
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10 approximately four million international mobile subscriber identity (“IMSI”) numbers. An
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12 IMSI is a unique identifier assigned to a mobile subscriber.
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14 22. A significant portion of this block of IMSIs was assigned to Lycamobile, but
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16 inadvertently was not allocated to the third-party entity that provides billing services for
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18 T-Mobile with respect to Lycamobile.
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20 23. As a result, even though over time an increasing number of Lycamobile
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22 subscribers had one of these IMSIs assigned to them, these subscribers’ data usage was not
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24 captured in T-Mobile’s billing records. While this discrepancy was in effect, therefore,
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26 T-Mobile’s invoices underreported Lycamobile’s service usage charges.
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28 24. After the discrepancy started and over time, the standard reports made
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30 available to Lycamobile reflected an increasing number of Lycamobile subscribers with no
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32 activity (i.e., no data usage). For example, the Invoice Reports noted above show monthly
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34 data usage for each subscriber, and review of those reports would reflect that trend.
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36 25. Lycamobile is a sophisticated party that had the information and incentive to
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38 track data-usage metrics and verify the accuracy of its subscribers’ service usage reflected in
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40 T-Mobile’s Charges. Lycamobile could have and should have learned, and upon information
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42 and belief did know, that the invoices were underreporting data usage by Lycamobile
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44 subscribers.
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1 26. In July and August 2022, T-Mobile learned of and investigated the potential
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3 discrepancy associated with the range of IMSIs. On or about August 31, 2022, all IMSIs
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5 assigned to Lycamobile were properly allocated to Lycamobile and subsequent invoices
6
7 accurately reflected Lycamobile’s data usage.
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9 **D. Lycamobile Refuses to Fully Pay Invoices Beginning in September 2022**

10 27. T-Mobile’s invoice dated September 21, 2022 (“September Invoice”) covered
11
12 the period August 21 through September 20, 2022. Thus, part of the Billing Period properly
13
14 reflected data usage after correction of the IMSI discrepancy.
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16 28. Lycamobile, however, refused to pay the invoiced amount as the ASP, as
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18 required under section 7(b) of the Agreement. Instead, Lycamobile paid the MMPC, which
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20 was substantially less than the full invoiced amount, and provided notice on October 4 that it
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22 was “disput[ing]” the September Invoice, claiming that Lycamobile “does not have
23
24 confidence in the usage data.” Specifically, Lycamobile informed T-Mobile that, due to this
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26 “dispute,” “Lycamobile will pay the MMPC as the ASP for the October Billing Period, and
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28 for subsequent billing periods.”
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30 29. On October 27, 2022, T-Mobile exercised its rights under section 7(a)(i) of
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32 the Agreement, demanding that Lycamobile fund an Increased Deposit reflecting
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34 Lycamobile’s 45-day invoice run rate. Lycamobile has failed to pay T-Mobile the required
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36 amount to fund the Increased Deposit.
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38 30. Lycamobile provided notice on November 1 that it was disputing the invoice
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40 dated October 21, 2022 (“October Invoice”), which covered the period September 21
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42 through October 20, 2022. With the same purported justification claimed in the
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44 September Invoice, Lycamobile paid the MMPC as the ASP, even though the MMPC was
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1 substantially less than the actual charges due. Lycamobile again notified T-Mobile that it
2 would do the same “for subsequent billing periods.”
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5 31. On November 2, 2022, T-Mobile sent a “Notification of Event of Default,”
6 citing Lycamobile’s failure to pay amounts due. Lycamobile failed to cure the defaults.
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9 32. T-Mobile also sent Lycamobile a “Notification of Event of Default” on
10 November 21, 2022, based on Lycamobile’s ongoing and uncured Events of Default for
11 failure to make the required ASP payment and fund the Increased Deposit. The Notification
12 also informed Lycamobile that (1) “on November 10, 2022, T-Mobile exercised its rights
13 under the terms of [section 7(a) of] the Agreement to apply the Deposit balance to the
14 outstanding November ASP obligation,” and (2) Lycamobile now owes additional amounts
15 in order to replenish the Deposit, as required by the Agreement.
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19 33. On November 29, 2022, Lycamobile once again refused to pay the ASP
20 amount due, notifying T-Mobile that (1) Lycamobile disputed the November 21, 2022
21 invoice (“November Invoice”) (covering October 21 through November 20, 2022) (2) for
22 the same purported reason identified in the September Invoice and October Invoice, and
23 (3) Lycamobile would pay the MMPC as the ASP instead of the actual charges—which
24 were substantially higher than the MMPC—for the November billing period and
25 “subsequent billing periods.”
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29 34. Lycamobile’s failures to (1) timely pay the proper ASP for the September
30 Invoice, October Invoice, and November Invoice, (2) replenish the Deposit, and (3) fund the
31 Increased Deposit constitute uncured Events of Default.
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1 **E. Lycamobile’s Bad Faith**

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3 35. Lycamobile’s efforts to dispute the September, October, and November
4 Invoices—and its statements indicating that it intends to dispute subsequent invoices under
5 the Agreement—have been made in bad faith.
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9 36. Lycamobile is a sophisticated party with the technical capabilities to
10 understand and review T-Mobile’s robust usage reports. Given the information and reports
11 available to Lycamobile, it could have and should have learned, and upon information and
12 belief did know, that the prior invoices were underreporting the amount of data usage by
13 Lycamobile subscribers.
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18 37. Although Lycamobile has repeatedly claimed that it “does not have
19 confidence” in the usage data provided by T-Mobile, that allegation is pretextual.
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21 Lycamobile has sufficient information available to it to review and evaluate T-Mobile’s
22 Invoices and reported usage data. But beyond asserting its purported lack of confidence in
23 the usage data, Lycamobile has not provided T-Mobile with any specific grounds to dispute
24 the accuracy of T-Mobile’s reporting, nor has Lycamobile identified any specific invoiced
25 amounts that it contends are incorrect.
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32 38. Indeed, when Lycamobile notified T-Mobile that it was disputing the
33 September Invoice, it also advised T-Mobile that it would dispute future invoices and pay
34 only the MMPC for subsequent billing periods. In other words, Lycamobile had already
35 determined that it would pay only the MMPC for future billing periods before receiving any
36 usage data for those periods, indicating that the reliability of T-Mobile’s usage data is not
37 actually relevant to Lycamobile’s refusal to pay invoiced amounts.
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44 39. In response to Lycamobile’s alleged lack of confidence in T-Mobile’s
45 reporting, T-Mobile has repeatedly informed Lycamobile of the cause of the discrepancy in
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1 data usage reporting. T-Mobile also offered to arrange a discussion between Lycamobile and
2 a T-Mobile subject matter expert who could explain the reporting and answer any of
3 Lycamobile's questions. Lycamobile refused that offer.
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6 40. Lycamobile has also repeatedly tried to stall by making substantial and
7 irrelevant requests for information.
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10 41. In sum, instead of acting in good faith, Lycamobile has used the now-
11 corrected reporting discrepancy as a pretext to make MMPC payments rather than pay the
12 amounts owed and to try to renegotiate the terms of the Agreement.
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17 **FIRST CAUSE OF ACTION**
18 **BREACH OF CONTRACT**
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20 42. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the
21 allegations in paragraphs 1–41 above.
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23 43. The Agreement constitutes a valid and enforceable contract.
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25 44. T-Mobile has at all times complied with its contractual obligations.
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27 45. As described above, Lycamobile materially breached the Agreement by
28 failing to pay current amounts owed under T-Mobile Invoices, repudiating its obligation to
29 pay amounts above the MMPC for future billing periods, failing to work with T-Mobile in
30 good faith to expeditiously resolve any purported disputes over invoiced amounts, and
31 failing to replenish the Deposit and fund the Increased Deposit.
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34 46. T-Mobile has suffered damages and will continue to suffer additional
35 damages as a result of these breaches, in an amount to be proven at trial.
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**SECOND CAUSE OF ACTION
DECLARATORY RELIEF**

47. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1–46 above.

48. Pursuant to the Uniform Declaratory Judgments Act, RCW ch. 7.24, this Court has power to declare rights, status, and other legal relations between T-Mobile and Lycamobile and to determine questions pertaining to the construction and validity of the Agreement.

49. A justiciable controversy exists between T-Mobile and Lycamobile regarding T-Mobile’s right to terminate the Agreement and invoke the termination remedies provisions in the Agreement in response to Lycamobile’s actions described above.

50. T-Mobile seeks a declaration that, as a result of Lycamobile’s breaches of the Agreement described above, T-Mobile is entitled to terminate the Agreement and invoke the termination remedies provisions in the Agreement. The Court’s judgment or decree on this issue will terminate the uncertainty or controversy that gave rise to this cause of action.

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**THIRD CAUSE OF ACTION
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

51. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1–50 above.

52. Under Washington law, “[t]here is in every contract an implied duty of good faith and fair dealing” that “obligates the parties to cooperate with each other so that each may obtain the full benefit of performance.” *Badgett v. Sec. State Bank*, 116 Wn.2d 563, 569 (1991).

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53. Based on the actions described above, Lycamobile breached its duty of good faith and fair dealing.

54. T-Mobile suffered damages as a result of the breach of the duty of good faith and fair dealing, in an amount to be proven at trial.

**FOURTH CAUSE OF ACTION
UNJUST ENRICHMENT / BREACH OF QUASI CONTRACT**

55. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations in paragraphs 1–54 above.

56. T-Mobile conferred a benefit to Lycamobile by providing wireless services, including voice services, data services, and SMS services.

57. T-Mobile incurred substantial costs providing these services to Lycamobile and its subscribers.

58. Accordingly, in the alternative, if the court concludes that the Agreement was invalid or otherwise enforceable, then T-Mobile is entitled to restitution for the value of the benefit conferred to prevent Lycamobile’s unjust enrichment.

PRAYER FOR RELIEF

WHEREFORE, T-Mobile prays for the following relief:

A. For judgment in favor of T-Mobile and against Lycamobile for damages or, in the alternative, recovery of unjust enrichment, in an amount to be proven at trial;

B. An award of specific performance directing Lycamobile to replenish the Deposit and fund the Increased Deposit on the terms agreed to in section 7(a) of the Agreement;

1 C. A declaration that T-Mobile is entitled to terminate the Agreement as a result
2 of Lycamobile's breaches of the Agreement and to invoke the termination remedies
3 provisions in the Agreement;
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6 D. An award of prejudgment interest at the maximum rate allowed by law;
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8 E. An award to T-Mobile of its reasonable costs and attorneys' fees under
9 section 15.13 of the Agreement; and
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11 F. Such other relief in favor of T-Mobile and against Lycamobile as the Court
12 may deem just and proper.
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15 DATED this 16th day of December, 2022.
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