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KING COUNTY
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CASE #: 22-2-20756-6 SEA

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

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

Plaintiff,

v.

LYCAMOBILE USA INC., a Delaware Corporation,

Defendant.

No. 22-2-20756-6 SEA

**LYCAMOBILE USA INC.'S ANSWER
AND COUNTERCLAIM FOR
DAMAGES AND EQUITABLE
RELIEF**

LYCAMOBILE USA INC.'S ANSWER TO T-MOBILE'S COMPLAINT

Defendant and Counterclaim Plaintiff Lycamobile USA Inc.¹ ("Lycamobile"), by its counsel, for its Answer and Affirmative Defenses to the Complaint of T-Mobile USA, Inc. ("T-Mobile") and Counterclaim in the above captioned matter, states as follows:

1. Admits the allegations in paragraph 1.
2. Admits the allegations in paragraph 2.
3. Admits the allegations in paragraph 3.
4. Admits the allegations in paragraph 4.
5. Admits the allegations in paragraph 5.
6. In response to the allegations in paragraph 6, Lycamobile states that the

Agreement speaks for itself and Lycamobile is not required to respond. To the degree any

¹ The name of the defendant is Lycamobile USA Inc., not Lycamobile USA, Inc. as alleged in T-Mobile's Complaint.

1 response is necessary, Lycamobile denies the allegations and all inference therefrom.

2 7. In response to the allegations in paragraph 7, Lycamobile states that the
3 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
4 response is necessary, Lycamobile denies the allegations and all inference therefrom.
5 Lycamobile states in further response that T-Mobile has refused to work in good faith to
6 expeditiously resolve any dispute in that T-Mobile has refused Lycamobile's repeated requests
7 for in-person meetings to discuss renegotiation of the commercial terms of the Agreement,
8 except that it finally responded January 13, 2023 with an offer for a limited 60 minute video
9 call, which only lasted 20 minutes. T-Mobile has undertaken to renegotiate the Agreement,
10 which was entered into based on erroneous information and does not allow Lycamobile to
11 compete with T-Mobile's MVNO division and other MVNOs, but the offers have been entirely
12 unreasonable.

13 8. In response to the allegations in paragraph 8, Lycamobile states that the
14 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
15 response is necessary, Lycamobile denies the allegations and all inference therefrom.
16 Lycamobile states in further response that the Charges for a Billing Cycle charged to
17 Lycamobile are calculated solely by T-Mobile with no right of audit or explanation.

18 9. In response to the allegations in paragraph 9, Lycamobile states that the
19 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
20 response is necessary, Lycamobile denies the allegations and all inference therefrom.

21 10. In response to the allegations in paragraph 10, Lycamobile states that the
22 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
23 response is necessary, Lycamobile denies the allegations and all inference therefrom.

24 11. In response to the allegations in paragraph 11, Lycamobile states that the
25 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
26 response is necessary, Lycamobile denies the allegations and all inference therefrom.
27 Lycamobile states in further response that Article 8.4(b) of the Agreement requires the parties

1 to work in good faith to expeditiously resolve any dispute. Pursuant to this requirement,
2 Lycamobile has repeatedly tried to engage with T-Mobile (in October 2022, November 2022,
3 and December 2022), to attempt to resolve disputes over the T-Mobile's invoices (which are
4 secured by a deposit from Lycamobile). T-Mobile's response was to file this action and seek
5 termination of the Agreement.

6 12. In response to the allegations in paragraph 12, Lycamobile states that the
7 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
8 response is necessary, Lycamobile denies the allegations and all inference therefrom.
9 Lycamobile states in further response that T-Mobile has not made any request for an increased
10 deposit and T-Mobile has refused to provide any accounting regarding the funds it has drawn
11 from Lycamobile's deposit.

12 13. In response to the allegations in paragraph 13, Lycamobile states that the
13 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
14 response is necessary, Lycamobile denies the allegations and all inference therefrom.
15 Lycamobile states in further response that the allegations in paragraph 13 refer to a superseded
16 Agreement from 2015, and T-Mobile fails to acknowledge its obligations to provide services
17 pursuant to the operative Agreement provisions.

18 14. In response to the allegations in paragraph 14, Lycamobile states that the
19 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
20 response is necessary, Lycamobile denies the allegations and all inference therefrom.
21 Lycamobile states in further response that T-Mobile's allegations fail to acknowledge Section
22 9.2(a) of the Agreement, which allows Lycamobile to cure any default.

23 15. In response to the allegations in paragraph 15, Lycamobile states that the
24 Agreement speaks for itself and Lycamobile is not required to respond. To the degree any
25 response is necessary, Lycamobile denies the allegations and all inference therefrom.

26 16. In response to the allegations in paragraph 16, admits that Washington law
27 applies to this action except to the extent that federal law may apply.

1 17. In response to the allegations in paragraph 17, Lycamobile denies T-Mobile's
2 allegations, and states in further response that T-Mobile has admitted that for a period of
3 approximately 16 months, information T-Mobile provided to Lycamobile regarding
4 Lycamobile's usage was inaccurate. T-Mobile has failed to provide any detailed information
5 regarding T-Mobile's errors, and has refused to provide any accounting or explanation of the
6 increased data figures that give rise to T-Mobile's increased charges, providing only limited
7 data in a monthly invoice T-Mobile calls a "manual invoice" purporting to support T-Mobile's
8 calculations of the amounts it is charging to Lycamobile.

9 18. In response to the allegations in paragraph 18, Lycamobile admits that T-Mobile
10 provides and/or makes available to Lycamobile data and reports purporting to support T-
11 Mobile's calculations of the amounts it is charging to Lycamobile. Lycamobile states in further
12 response to paragraph 18 that T-Mobile has admitted that for a period of approximately 16
13 months, this information was inaccurate, and Lycamobile denies the accuracy or enforceability
14 of T-Mobile's information.

15 19. In response to the allegations in paragraph 19, Lycamobile admits that T-Mobile
16 provides and/or makes available to Lycamobile data and reports purporting to support T-
17 Mobile's calculations of the amounts it is charging to Lycamobile. Lycamobile states in further
18 response to paragraph 19 that T-Mobile has admitted that for a period of approximately 16
19 months, this information was inaccurate, and Lycamobile denies the accuracy or enforceability
20 of T-Mobile's information.

21 20. In response to the allegations in paragraph 20, Lycamobile admits that T-Mobile
22 provides and/or makes available to Lycamobile data and reports purporting to support T-
23 Mobile's calculations of the amounts it is charging to Lycamobile. Lycamobile states in further
24 response to paragraph 20 that T-Mobile has admitted that for a period of approximately 16
25 months, this information was inaccurate, and Lycamobile denies the accuracy or enforceability
26 of T-Mobile's information.

27 21. States that it is without information sufficient to form a belief as to the truth or

1 falsity of the allegations in paragraph 21, and therefore denies them.

2 22. States that it is without information sufficient to form a belief as to the truth or
3 falsity of the allegations in paragraph 22, and therefore denies them.

4 23. States that it is without information sufficient to form a belief as to the truth or
5 falsity of the allegations in paragraph 23, and therefore denies them.

6 24. States that it is without information sufficient to form a belief as to the truth or
7 falsity of the allegations in paragraph 24, and therefore denies them.

8 25. In response to paragraph 25, Lycamobile admits that the contract was negotiated
9 but states in further response that T-Mobile is contractually obliged to have complete
10 responsibility for providing data supporting its billings pursuant to Section 8.3 of the
11 Agreement, which provides that T-Mobile will calculate the volume of Service used by End
12 Users in accordance with the data collected by T-Mobile's systems and the procedures set forth
13 in Section 8, Schedule B of the Agreement. Lycamobile states in further response that
14 Lycamobile on July 11, 2022 discovered and promptly notified T-Mobile that there were
15 inaccuracies in records of call services (known as "call detail records" or CDRs) that T-Mobile
16 provided to Lycamobile.

17 26. Denies the allegations in paragraph 26, stating in further response that it was
18 Lycamobile and not T-Mobile that discovered T-Mobile's negligence in failing to include the
19 correct range of IMSIs in Lycamobile's billings or the information made available to
20 Lycamobile, and that T-Mobile bears the burden to prove that its substantially increased charges
21 are supported by the usage of Lycamobile's customers and the accuracy of the information T-
22 Mobile provided when the parties negotiated the financial terms of the Eighth Amendment.

23 27. States that it is without information sufficient to form a belief as to the truth or
24 falsity of the allegations in paragraph 27, and therefore denies them.

25 28. In response to paragraph 28, Lycamobile admits that Lycamobile timely disputed
26 the September Invoice for reasons stated in Lycamobile's communication to T-Mobile, which
27 speaks for itself, and that Lycamobile paid the MMPC, the full amount claimed by T-Mobile

1 that was not disputed, and denies that the September Invoice amount was due and any remaining
2 allegations in paragraph 28, whether express or implied.

3 29. In response to paragraph 29, Lycamobile admits that T-Mobile purported to
4 exercise its rights under Section 7(a)(i) of the Agreement, demanding that Lycamobile fund an
5 Increased Deposit, and denies that the Agreement required Lycamobile to fund any Increased
6 Deposit.

7 30. In response to paragraph 30, Lycamobile admits that Lycamobile timely disputed
8 the October Invoice for reasons stated in Lycamobile 's communication to T-Mobile, which
9 speaks for itself, and that Lycamobile paid the MMPC, the full amount claimed by T-Mobile
10 that was not disputed, and denies that the October Invoice amount was due and any remaining
11 allegations in paragraph 30, whether express or implied.

12 31. In response to paragraph 31, Lycamobile admits that on November 2, 2022, T-
13 Mobile sent a "Notification of Event of Default," citing Lycamobile's alleged failure to pay
14 amounts due, and denies that Lycamobile was or is in default or was obligated to cure any
15 default alleged by T-Mobile and any remaining allegations contained therein whether express
16 or implied.

17 32. In response to paragraph 32, Lycamobile admits that T-Mobile sent a
18 "Notification of Default" on November 21, 2022, informing Lycamobile that, 11 days prior to
19 the notice, on November 10, 2022, T-Mobile had drawn from Lycamobile's security deposit
20 and demanded that Lycamobile replenish the amounts taken by T-Mobile. Lycamobile states
21 in further response that by drawing from the deposit sums that Lycamobile disputes it owes, T-
22 Mobile breached the Agreement and its allegations fail to acknowledge the Agreement prohibits
23 T-Mobile from paying itself any disputed amount from the deposit and requires the parties to
24 work in good faith to expeditiously resolve any dispute.

25 33. In response to paragraph 33, Lycamobile admits that Lycamobile timely
26 disputed the November Invoice for reasons stated in Lycamobile's communication to T-Mobile,
27 which speaks for itself, and that Lycamobile paid the MMPC, the full amount claimed by T-

1 Mobile that was not disputed, and denies that the November Invoice amount was due and any
2 remaining allegations in paragraph 33, whether express or implied.

3 34. Denies the allegations in paragraph 34.

4 35. Denies the allegations in paragraph 35.

5 36. Admits that Lycamobile has state of the art telecommunications systems
6 required of an MVNO, but lacks the information, systems, manpower, accounting and other
7 capabilities of a mobile network operator such as T-Mobile, and denies the remaining
8 allegations in paragraph 36.

9 37. Denies the allegations in paragraph 37.

10 38. Denies the allegations in paragraph 38.

11 39. Denies the allegations in paragraph 39.

12 40. Denies the allegations in paragraph 40, and states in further response that
13 Lycamobile has attempted to engage T-Mobile in good faith discussions to resolve any dispute,
14 including negotiating new financial terms based on corrected data.

15 41. Denies the allegations in paragraph 41.

16 42. In response to paragraph 42, Lycamobile realleges and incorporates the
17 responses to T-Mobile's allegations in paragraphs 1-41.

18 43. In response to paragraph 43, Lycamobile admits that the Agreement constitutes
19 a valid and enforceable contract, except that the financial terms were negotiated based on
20 inaccurate information provided by T-Mobile and must be renegotiated or reformed and, to the
21 extent it is alleged herein, that the Agreement violates Washington unfair competition laws.

22 44. Denies the allegations in paragraph 44.

23 45. Denies the allegations in paragraph 45.

24 46. Denies the allegations in paragraph 46.

25 47. In response to paragraph 47, Lycamobile realleges and incorporates the
26 responses to T-Mobile's allegations in paragraphs 1-46.

27 48. Admits the allegations in paragraph 48, except that Lycamobile denies that T-

1 Mobile is entitled to the declaratory relief it seeks.

2 49. In response to paragraph 49, Lycamobile admits that a justiciable controversy
3 exists between T-Mobile and Lycamobile, and denies that T-Mobile has any right to terminate
4 the Agreement and invoke any termination remedies provisions in the Agreement.

5 50. Denies the allegations in paragraph 50.

6 51. In response to paragraph 51, Lycamobile realleges and incorporates the
7 responses to T-Mobile's allegations in paragraphs 1-50.

8 52. Admits the allegations in paragraph 52.

9 53. Denies the allegations in paragraph 53.

10 54. Denies the allegations in paragraph 54.

11 55. In response to paragraph 55, Lycamobile realleges and incorporates the
12 responses to T-Mobile's allegations in paragraphs 1-54.

13 56. Denies the allegations in paragraph 56.

14 57. Denies the allegations in paragraph 57.

15 58. Denies the allegations in paragraph 58.

16 59. Denies that T-Mobile is entitled to any relief claimed in the "PRAYER FOR
17 RELIEF."

18 **LYCAMOBILE'S AFFIRMATIVE DEFENSES**

19 60. T-Mobile's requested relief is barred by waiver, estoppel, laches, T-Mobile's
20 failure to mitigate damages, and/or the limitations period of 90 days in the Agreement, Section
21 8.4(b).

22 61. Lycamobile has not breached the Agreement because Lycamobile will deposit
23 into this Court's registry all disputed sums to satisfy any judgment that may be entered against
24 Lycamobile.

25 62. As additional affirmative defenses, Lycamobile hereby incorporates its
26 Counterclaim allegations against T-Mobile.

27 63. WHEREFORE, Lycamobile requests judgment in its favor.

1 **LYCAMOBILE’S COUNTERCLAIMS AGAINST T-MOBILE**

2 Pursuant to Washington Rule of Civil Procedure 13(a) and 13(b), Lycamobile alleges
3 the following Counterclaims against T-Mobile.

4 **I. PARTIES**

5 1. Counterclaim plaintiff Lycamobile is a Delaware corporation with its principal
6 place of business in Newark, New Jersey.

7 2. Lycamobile is a mobile virtual network operator (MVNO) that operates
8 throughout the United States, including Washington. As an MVNO, Lycamobile provides pre-
9 paid wireless telecommunications and broadband services—voice, data, and text—to consumers.

10 3. Lycamobile and its affiliates operate in 23 countries, including the United States
11 and have more than 15 million pre-paid customers worldwide.

12 4. A significant portion of Lycamobile consumers are underserved populations who
13 lack the means or credit standing to enter into contracts for mobile phone services. They include
14 international immigrants and refugees.

15 5. As an MVNO, Lycamobile does not own the wireless network infrastructure
16 required to provides services to its customers. An MVNO such as Lycamobile must enter into
17 a contract with a mobile network operator (MNO) such as T-Mobile to purchase network
18 services in bulk at wholesale rates, which it then sells to consumers at retail prices.

19 6. Lycamobile specializes in providing services to the segment of the market that
20 has limited ability to pay for mobile phone services that is therefore underserved. Lycamobile
21 can only serve this population if it is able to achieve volume discounted rates from the relevant
22 network provider. Without Lycamobile, many of these consumers would not have access to
23 mobile services. Lycamobile has succeeded in building up a substantial base of these
24 underserved customers notwithstanding T-Mobile’s use of its market power to, pursuant to the
25 Fifth Amendment of the Agreement, restrict and manipulate Lycamobile’s efforts to offer low-
26 cost services to its customers and imposing exclusive dealing provisions on Lycamobile.

1 14. The parties agreed under the Eighth Amendment that Lycamobile expected to only
2 pay the monthly invoices at the Minimum Monthly Payment Commitment (MMPC) set forth in
3 the Eighth Amendment. Lycamobile used the MMPC as the monthly payment it expected to make
4 to T-Mobile in modeling its expected cash flows as it executed the planned growth of its customer
5 base. Based on the financial terms that Lycamobile agreed to with T-Mobile, Lycamobile's
6 financial modeling showed that Lycamobile relied on an expected amount of charges from T-
7 Mobile per month. Relying on this, Lycamobile planned to grow its customers and resulting
8 revenues in order to generate sufficient profits to pay for increased usage and eventual charges
9 over the MMPC once the credits were exhausted.

10 15. On or about July 11, 2022, Lycamobile notified T-Mobile that there were
11 inaccuracies in CDRs that T-Mobile provided to Lycamobile. Lycamobile made repeated follow-
12 ups almost every day, but T-Mobile failed to take any corrective action.

13 16. T-Mobile did not respond until August 2, 2022, and notified Lycamobile's agent
14 that there were lines for Lycamobile customers for which data was missing from T-Mobile's
15 invoices.

16 17. An international mobile subscriber identity (IMSI) is a number that uniquely
17 identifies every user of a cellular network. T-Mobile admitted that it had erroneously misallocated
18 international mobile subscriber identities outside the IMSI range associated with Lycamobile.

19 18. T-Mobile admitted that this misallocation of IMSIs occurred as a result of "human
20 error" by T-Mobile on July 1, 2021. T-Mobile has provided no explanation for how the error
21 occurred notwithstanding numerous requests from Lycamobile. The misallocation therefore had
22 been occurring for more than a year before Lycamobile discovered and reported the problem to T-
23 Mobile.

24 19. The incorrect data was used as the factual basis while the parties negotiated the
25 Eighth Amendment. Thus, T-Mobile provided incorrect data for at least nine months before the
26 parties executed the Eighth Amendment and while the parties were negotiating a new deal.

1 Lycamobile agreed to the rates in the Eighth Amendment based on false information it received
2 from T-Mobile.

3 20. T-Mobile continued to provide erroneous data for four months after the Eighth
4 Amendment became effective.

5 21. The Eighth Amendment rates were determined based on a tiered pricing structure
6 that provided volume discounts for increasing amounts of usage by Lycamobile. Because T-
7 Mobile told Lycamobile that Lycamobile's customers were consuming less data than was true,
8 Lycamobile agreed to higher tiered rates than it would have had T-Mobile provided the correct
9 data.

10 22. Had Lycamobile received accurate data and known the rates T-Mobile would
11 charge, Lycamobile would have negotiated different terms.

12 23. The erroneous data that T-Mobile provided to Lycamobile caused Lycamobile to
13 conclude that it could grow its usage substantially without exceeding the MMPC. As a result,
14 Lycamobile reduced its retail prices in order to attract additional customers, promoted SIM card
15 deals charging \$5.00 (discounted from \$19.00) for 30-day, 2 GB high speed data allowance,
16 \$10.00 (discounted from \$33.00) for 30-day, 12 GB, and \$30.00 for 30-day, 17 GB allowance.
17 Lycamobile opened over 60 new sales offices and increased its United States employees from
18 about 50 to over 400, all over the country. This substantially increased Lycamobile's cost structure
19 and financial commitments.

20 24. Based on the erroneous data that T-Mobile provided, Lycamobile concluded that
21 its payments to T-Mobile would not increase while Lycamobile increased its customers. And, as
22 a result of Lycamobile's growth initiatives, Lycamobile increased its customer base significantly.
23 As a result of the excessive charges, Lycamobile has now changed its customer offers and reduced
24 its marketing, which is resulting in a month-by-month decrease in its overall customer numbers.

25 25. On or about September 1, 2022, T-Mobile began to reallocate the missing IMSIs
26 to Lycamobile. This caused an immediate spike in total data usage attributed to Lycamobile's
27

1 customers. In the first week of September 2022, Lycamobile repeatedly notified T-Mobile
2 regarding this spike in data usage.

3 26. T-Mobile then issued invoices in September, October, and November demanding
4 payment in amounts substantially greater than the MMPC for those billing periods. Lycamobile's
5 monthly invoices increased significantly per month. This was the first time T-Mobile billed
6 Lycamobile above the MMPC.

7 27. Lycamobile timely disputed the September, October, and November invoices
8 pursuant to Section 8.4(b) of the Agreement because the rates in the Eighth Amendment were
9 based on inaccurate information about Lycamobile customers' consumption.

10 28. Lycamobile paid the undisputed amount, the MMPC, but withheld the additional
11 disputed amounts T-Mobile was demanding.

12 29. Pursuant to the Agreement, Lycamobile is required to maintain a security
13 deposit with T-Mobile.

14 30. On November 10, 2022, T-Mobile began, without advance notice, depleting
15 Lycamobile's security deposit.

16 31. T-Mobile's depletion of Lycamobile's security deposit has reduced it
17 significantly.

18 32. Pursuant to the Eighth Amendment, T-Mobile is entitled to draw on the Deposit
19 only "if [Lycamobile] fails to pay any sum owed to T-Mobile for the Term of this Agreement."

20 33. If there is an ongoing, good faith dispute between the parties regarding the amount
21 due from Lycamobile, Lycamobile is not required to pay the disputed amount. The Agreement
22 provides: "If there is a dispute over any Invoice, Lycamobile will nevertheless promptly remit to
23 T-Mobile the undisputed portion of the Invoice."

24 34. T-Mobile's depletion of Lycamobile's deposit breached the Agreement.

25 35. T-Mobile may not restrict Lycamobile's access to services under the Agreement
26 or draw on Lycamobile's deposit unless an "Event of Default" under the Agreement occurs.
27 Lycamobile has not committed an Event of Default under the Agreement.

1 36. The Agreement specifically permits Lycamobile to withhold disputed amounts.

2 37. Lycamobile has repeatedly demanded that T-Mobile reinstate Lycamobile's
3 deposit and disclose how much T-Mobile has taken. T-Mobile has refused to replenish the deposit
4 or provide any accounting or explanation for the status of the deposit.

5 38. The Agreement requires that, in the event of a dispute concerning an invoice, the
6 parties must "work together in good faith to expeditiously resolve" such dispute.

7 39. T-Mobile has breached the Agreement by refusing to work with Lycamobile in
8 good faith to resolve this dispute.

9 40. In November, December, and January, Lycamobile repeatedly requested in-person
10 meetings with T-Mobile to attempt to resolve this dispute as required by the Agreement.
11 Lycamobile officers offered to fly out from London, UK to Seattle to meet with T-Mobile
12 personnel. T-Mobile refused this offer and demanded that Lycamobile correspond with T-Mobile
13 through T-Mobile's lawyers.

14 41. T-Mobile continues to refuse to participate in an in-person meeting and only
15 obliged Lycamobile with a 20-minute call with legal counsel present.

16 42. In an effort to work with T-Mobile to resolve their dispute, Lycamobile has
17 requested information from T-Mobile, including the following:

- 18 • How and when the alleged under-reporting of data usage was first suspected and then
19 confirmed by T-Mobile;
- 20 • When T-Mobile commenced its "ongoing efforts to ensure accurate tracking and reporting
21 of Lycamobile's use of T-Mobile's network" described in T-Mobile's October 26 Letter;
- 22 • Why T-Mobile took until September 2022 to allegedly rectify the reporting issues when
23 Lycamobile made T-Mobile aware of inaccuracies in the CDRs in July 2022;
- 24 • Whether the "ongoing efforts" relate to tracking and reporting for other T-Mobile
25 wholesale customers' use of T-Mobile's network (for similar services as those purchased
26 by Lycamobile);
- 27 • Whether the foregoing "ongoing efforts" are continuing;
- The time period over which the alleged under-reporting occurred (pre- and post-Eighth
Amendment);

- 1
- 2
- Support for T-Mobile’s position that the usage data is now accurate as of the September 27, 2022 invoice;
 - 3
 - 4
 - Steps T-Mobile has taken or will be taking to prevent any future issues with respect to usage reporting; and
 - 5
 - 6
 - Whether the alleged under-reporting was limited to Lycamobile’s usage of T-Mobile’s services or whether other wholesale or other customers were also impacted.

7 43. Lycamobile has informed T-Mobile that it requires this information to:

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- Satisfy itself that T-Mobile has not changed the methodology by which it calculates charges for services in a manner that materially alters the commercial terms of the Parties’ Agreement, which changes would be prohibited by the Agreement;
- Determine whether T-Mobile, at a minimum, failed to disclose to Lycamobile information available to T-Mobile prior to execution of the Eighth Amendment and through July 2022 concerning the alleged under-reporting;
- Verify and demonstrate that the records that Lycamobile started receiving in September (which indicated an exceptionally huge hike in amount of data usage – as compared to the data for the prior twelve months) do not include end users of other wholesale customers of T-Mobile;
- Confirm that T-Mobile is accurately tracking and tabulating present usage; and
- Ensure that any reporting that Lycamobile must make to governmental authorities regarding its customers’ data usage is accurate.

18 44. T-Mobile has failed to produce the requested information.

19 45. T-Mobile has threatened to terminate the Agreement and its services.

20 46. T-Mobile has threatened to terminate Lycamobile’s service if Lycamobile does not
21 replenish the deposit and agree to pay the full amount of T-Mobile’s invoices. But, the Agreement
22 does not require Lycamobile to replenish the deposit or pay the invoices.

23 47. T-Mobile will breach the Agreement if it impairs the services that it owes to
24 Lycamobile.

25 48. Lycamobile is in full compliance with the Agreement.

26 49. The fact that Lycamobile has not paid the disputed amounts is not a breach of the
27 Agreement.

1 50. As a result of T-Mobile's wrongdoing, Lycamobile has suffered substantial
2 financial loss.

3 51. Lycamobile entered into the Eighth Amendment in reliance on false data provided
4 by T-Mobile. The false data caused T-Mobile to charge Lycamobile for data usage at the higher
5 tiered levels, which makes T-Mobile's service uneconomical for Lycamobile based on T-Mobile's
6 inflated demands.

7 52. Had Lycamobile known that its customers were actually using more services than
8 T-Mobile represented during the negotiations, it was in both Lycamobile and T-Mobile's interest
9 to agree to lower rates to enable Lycamobile to grow its business and encourage more customers
10 onto the T-Mobile network.

11 53. The information T-Mobile gave Lycamobile caused Lycamobile to reasonably
12 believe that the MMPC was the amount it would have to pay T-Mobile while Lycamobile grew its
13 customer base. Lycamobile based its economic modeling and the prices it offered its customers
14 on this premise.

15 54. Lycamobile reasonably expected that once the customer base grew to the point that
16 Lycamobile's payments surpassed the MMPC, Lycamobile would be earning sufficient profit to
17 pay the increased amounts. Lycamobile relied on the false information from T-Mobile to lower
18 its prices to customers and to expand its operations to grow its customers. Now Lycamobile has
19 had to reduce its customer promotions, change its customer plans and scale back its growth plans,
20 which has substantially injured Lycamobile.

21 55. In the event that T-Mobile follows through on its threat to restrict or terminate its
22 services to Lycamobile, Lycamobile will suffer irreparable harm because it will no longer be able
23 to service its customers.

24 56. T-Mobile's threatened actions would injure hundreds of thousands of consumers
25 who are Lycamobile's customers. Many of these consumers are underserved and would have no
26 alternative telecommunications service.

1 57. T-Mobile has also injured Lycamobile by making “take it or leave it” demands
2 that Lycamobile accept T-Mobile as its exclusive supplier. In addition to impeding
3 Lycamobile’s ability to seek the most competitive prices from suppliers, this requirement has
4 cost Lycamobile substantial resources because it has had to migrate all of its customer base
5 exclusively to T-Mobile. Were T-Mobile to terminate its network services to Lycamobile, it
6 would decimate Lycamobile’s ability to service its United States customers.

7 58. T-Mobile has deliberately discriminated against Lycamobile relative to T-
8 Mobile’s own affiliate MVNO, Metro, and Lycamobile’s other competitors, while undertaking
9 acquisition of Lycamobile’s competitors, in the following ways:

- 10 a. T-Mobile has injured Lycamobile by refusing to expeditiously move Lycamobile
11 onto its new platform for enhanced services.
- 12 b. T-Mobile has injured Lycamobile and consumers by delaying projects by more
13 than a year, including implementing 5G, 5G SA, and Multi IMSI SIMs for 5G.
- 14 c. T-Mobile has injured Lycamobile and consumers with unplanned outages more
15 than 2 to 4 times a month over the last year. These outages have damaged
16 Lycamobile’s ability to onboard new customers and caused retailers to refuse to
17 promote Lycamobile products. These outages did not affect other MVNO
18 providers, including Lycamobile’s competitors, who had already been migrated
19 onto T-Mobile’s enhanced platform.
- 20 d. T-Mobile has injured Lycamobile and consumers by failing to provide wholesale
21 technical support or support of key service impacting tickets.
- 22 e. T-Mobile has injured Lycamobile and consumers and breached the Agreement
23 Section 4.3 by discriminating against Lycamobile by providing competitors with
24 better rates and services, which has prevented Lycamobile from competing
25 effectively for customers.
- 26 f. T-Mobile has injured Lycamobile and consumers by refusing to allow
27 Lycamobile to offer roaming services in Mexico.

1 g. T-Mobile has injured Lycamobile and consumers by failing to enable
2 Lycamobile to offer 5G in Apple products.

3 h. T-Mobile has injured Lycamobile and consumers by refusing to allow
4 Lycamobile to offer wifi calling.

5 i. T-Mobile has injured Lycamobile and consumers by delaying implementation of
6 E-SIM (a digital sim card) for Lycamobile's customers.

7 59. T-Mobile has also used its market power to impose unfair and oppressive
8 restrictions on Lycamobile's business activities by requiring Lycamobile to enter into an
9 exclusive dealing arrangement with T-Mobile.

10 60. Lycamobile is trapped on the T-Mobile platform because it cannot migrate to a
11 T-Mobile competitor's platform as this would be costly and take up to one year to effect.

12 61. T-Mobile, which has mandated that it be Lycamobile's exclusive supplier, has
13 also through the Fifth Amendment to the Agreement and other provisions, used its market
14 power to impose unfair and oppressive restrictions on Lycamobile's business activities by
15 restricting the products that Lycamobile is allowed to sell to end users.

16 62. T-Mobile has also used its market power to impose unfair and oppressive
17 restrictions on Lycamobile's business activities by prohibiting Lycamobile from offering \$10
18 plans and by setting pricing penalties for plans offered below \$19.

19 63. The current T-Mobile is the product of a merger between T-Mobile and Sprint
20 Communications Company L.P. that created an entity that regulators called "New T-Mobile."

21 64. Following the Sprint/T-Mobile merger, there are only three nationwide mobile
22 network operators that provide services to MVNOs like Lycamobile: T-Mobile, Verizon, and
23 AT&T. According to T-Mobile's website, "T-Mobile Wholesale is the market leader with the
24 largest number of MVNOs and MVNO subscribers, representing a 59% market share."

25 65. T-Mobile started to dominate the market for wholesale services to MVNOs after
26 it acquired Sprint in 2020. Prior to that acquisition, T-Mobile did not do much business with
27 MVNOs, while Sprint had over 100 MVNO contracts.

1 66. MNOs including T-Mobile compete directly with MVNOs for wireless
2 customers. In addition to directly competing for wireless customers with MVNOs through their
3 own brands, MNOs also have secondary pre-paid brands that compete with MVNOs, including
4 Lycamobile. For example, AT&T operates Cricket Wireless, which offers prepaid wireless
5 services. T-Mobile operates Metro by T-Mobile. Prior to the Sprint/T-Mobile merger, T-
6 Mobile had more than 35% of the prepaid U.S. mobile wireless services market.

7 67. T-Mobile is attempting additional acquisitions of Lycamobile competitors. T-
8 Mobile is negotiating the acquisition of Mint Mobile, an MVNO competitor of Lycamobile. *See*,
9 *e.g.*, [T-Mobile Rumored to Be Buying Ryan Reynolds' Mint Mobile - CNET, which T-Mobile](#)
10 [has not denied.](#)

11 68. The T-Mobile/ Sprint merger was subject to intense regulatory scrutiny due to
12 concerns about how the merger might increase both wholesale and retail wireless service prices,
13 and limit consumer choice. The agencies evaluating the transactions were particularly concerned
14 that prices might go up for lower-income customers, such as the type of customers Lycamobile
15 serves.

16 69. In trying to gain regulatory approval for the Sprint/T-Mobile merger and in
17 defending against challenges to the merger, T-Mobile repeatedly represented that it would not
18 harm the ability of MVNOs to compete with MNOs. In fact, T-Mobile represented that it would
19 provide better services and pricing to MVNOs as a result of the merger. *See, e.g.* Federal
20 Communications Commission (“FCC”) Memorandum Opinion and Order, Declaratory Ruling,
21 and Order of Proposed Modification FCC 19-103A1 at ¶ 286 (noting that Applicants represented
22 that “the proposed transaction will enable New T-Mobile to offer higher quality wholesale
23 services at lower prices to MVNOs ... due to New T-Mobile’s increased network capacity,
24 lower operational costs, and broader geographic coverage than either of the two standalone
25 companies”; that post-merger “New T-Mobile would not be able to raise its wholesale prices in
26 the short term”; and that the “additional network capacity and lower per unit costs [] will create
27 an incentive for the combined company to lower wholesale prices to MVNOs.”).

1 70. T-Mobile's conduct against Lycamobile is contrary to representations and
2 commitments it made to government regulators as it was seeking approval of its merger with
3 Sprint.

4 71. T-Mobile made the following representations to regulators on April 16, 2020:

5 The massive new capacity made possible by the Transaction is only profitable to
6 New T-Mobile if it can sell it. This gives New T-Mobile compelling incentives to
7 fill that capacity and grow by lowering prices to attract new customers, including
8 new wireless customers from AT&T and Verizon; **new wholesale customers by
9 offering a better value proposition to MVNOs**; and new enterprise customers
for whom AT&T and Verizon have up to now otherwise been the only meaningful
options.

10 *In the Matter of the Joint Application of Sprint Commc'ns Co. L.P. (U5112) & T-Mobile USA, Inc.,*
11 *A Delaware Corp., for Approval of Transfer of Control of Sprint Commc'ns Co. L.P. Pursuant to*
12 *California Pub. Utilities Code Section 854(a). & Related Matter., No. 18-07-011, 2020 WL*
13 *2487298, at *12 (Apr. 16, 2020) (emphasis added).*

14 72. T-Mobile represented to regulators that "the Merger is pro-competitive for retail
15 customers applies equally to MVNOs and enterprise customers, all of whom represent opportunity
16 for New T-Mobile to leverage its increased capacity and lowered marginal costs. In other words,
17 New T-Mobile would be indifferent to who purchases its enhanced capacity and for what purpose,
18 so long as someone purchases it; and for that reason, New T-Mobile will be incentivized to offer
19 aggressive price and service options to customers of all types." *Id.*

20 73. T-Mobile represented to regulators that "the need to sell enhanced capacity will
21 create pro-competitive results no matter how AT&T and Verizon respond to new offerings from
22 New T-Mobile" because "price reductions by New T-Mobile" would either cause AT&T and
23 Verizon to lower prices, or "New T-Mobile will lure away customers and those customers will
24 enjoy the lower prices." Thus, "all customers benefit from the market-wide price reduction." *Id.*

25 74. T-Mobile represented to Congress that it would honor existing contracts and not
26 raise rates on MVNOs. When asked during a Congressional hearing whether New T-Mobile
27 would continue to offer wholesale agreements "in line with those currently made by Sprint or

1 T-Mobile,” Mr. Legere responded affirmatively that “[w]e will honor those,” and stated that
2 “with the supply and capacity that the New T-Mobile will have that wholesale rates are only
3 going to get better.” *Protecting Consumers and Competition: An Examination of the T-Mobile*
4 *and Sprint Merger*, Hearing of the House Committee on Energy and Commerce Subcommittee
5 on Communications and Technology, 116th Cong. at 120-121 (Feb. 13, 2019) (Transcript Serial
6 No. 116-5).

7 75. T-Mobile’s actions with respect to Lycamobile violate its representations to
8 regulators.

9 76. The Consent Decree between the United States and T-Mobile and Sprint prohibits
10 T-Mobile from changing the terms of their existing MVNO Agreements in a way that adversely
11 affects the MVNOs: “Divesting Defendants [Sprint and T-Mobile] shall abide by all terms of their
12 existing MVNO agreements. Divesting Defendants shall agree to extend existing MVNO
13 agreements on their existing terms (other than any ‘most favored nation’ provisions) until the
14 expiration of this Final Judgment unless the Divesting Defendants demonstrate to the Monitoring
15 Trustee that doing so will result in a material adverse effect, other than as a result of competition,
16 on the Divesting Defendants’ ongoing business.” *United States v. Deutsche Telekom AG*, No. 19-
17 CV-2232, 2020 WL 2481785, at *10 (D.D.C. Apr. 1, 2020), *supplemented*, No. CV 19-2232
18 (TJK), 2020 WL 1873555 (D.D.C. Apr. 14, 2020).

19 77. T-Mobile’s actions with respect to Lycamobile violate the spirit and letter of its
20 Consent Decree with the United States.

21 78. The Federal Communications Act requires T-Mobile to impose only “just and
22 reasonable” terms of service, and it may not discriminate among its customers. 47 U.S.C. § 201(b)
23 (“All charges, practices, classifications, and regulations for and in connection with such
24 communication service [provided by a common carrier], shall be just and reasonable, and any such
25 charge, practice, classification, or regulation that is unjust or unreasonable is declared to be
26 unlawful.”); see also 47 U.S.C. § 202(a) (“It shall be unlawful for any common carrier to make
27 any unjust or unreasonable discrimination in charges, practices, classifications, regulations,

1 facilities, or services for or in connection with like communication service, directly or indirectly,
2 by any means or device, or to make or give any undue or unreasonable preference or advantage to
3 any particular person, class of persons, or locality, or to subject any particular person, class of
4 persons, or locality to any undue or unreasonable prejudice or disadvantage.”).

5 79. These are only examples of the plethora of obligations T-Mobile undertook as a
6 condition to government approval of its merger with Sprint, and that T-Mobile has breached with
7 its unfair, deceptive, and discriminatory treatment of Lycamobile.

8 80. Since the merger, T-Mobile has acted anticompetitively in ways that harm
9 consumers, contradicting its prior representations to regulators and the terms of consent decree
10 with the Department of Justice. For example, as part of the consent decree, T-Mobile sold
11 Boost Mobile to DISH and committed to provide continuing access to its CDMA network to
12 DISH wireless customers (both on Boost Mobile and other services operated by DISH) for a
13 period of time. In 2021, T-Mobile announced it planned to shut down the CDMA network
14 much earlier than originally anticipated. If carried out, the termination might have left DISH
15 wireless customers without wireless network services until DISH could negotiate an alternative
16 supply agreement. DISH complained to the Department of Justice, and the agency intervened,
17 resulting in the parties reaching a compromise that did not lead to the disruption of service and
18 provided better rates to DISH.

19 81. T-Mobile’s anticompetitive actions with respect to Lycamobile will lead to
20 higher costs for customers.

21 82. This lawsuit is a smokescreen for T-Mobile’s desire to hamper Lycamobile’s
22 ability to compete with T-Mobile by raising the fees Lycamobile must pay, which will lead to
23 higher consumer prices, and failing that, to remove Lycamobile from the market, depriving
24 underserved consumers of a lower cost alternative.

1 **CLAIMS FOR RELIEF**
2 **COUNT I**
3 **Breach of Contract**

4 83. Lycamobile restates and realleges the paragraphs above, as if fully restated
5 herein.

6 84. T-Mobile has materially breached the Agreement.

7 85. T-Mobile's breach has caused damages to Lycamobile, which damages are
8 continuing.

9 86. The amount of the damages to date caused by T-Mobile's breach exceed
10 \$75,000.00 and are continuing.

11 **COUNT II**
12 **Violation of the Washington Consumer Protection Act**

13 87. Lycamobile restates and realleges the paragraphs above, as if fully restated
14 herein.

15 88. T-Mobile engaged in trade or commerce as defined in RCW 19.86.010.

16 89. T-Mobile has engaged in unfair and deceptive act or practices under RCW
17 19.86.020.

18 90. The CPA prohibits discrimination between different purchasers of similar
19 commodities where there is unequal bargaining power between a seller and purchasers. The
20 purpose of the law is to remedy harm to competition caused by powerful sellers such as large
21 MNOs like T-Mobile in the relevant market.

22 91. The relevant geographic market is the United States.

23 92. The relevant product market is the market for the wholesale provision of network
24 services to MVNOs by MNOs ("MVNO services market"). The MVNO services market
25 includes the wholesale services provided by the three nationwide MNOs: T-Mobile, Verizon,
26 and AT&T. T-Mobile's conduct has violated this prohibition.

27 93. The CPA prohibits attempted monopolization.

1 94. T-Mobile's conduct has violated the CPA's prohibition against attempted
2 monopolization. T-Mobile's specific intent is to achieve monopoly power in the MVNO
3 services market; T-Mobile has engaged in predatory or anticompetitive conduct directed to
4 accomplishing this purpose; and there is a dangerous probability that T-Mobile's attempt at
5 monopolization of the MVNO market will succeed.

6 95. T-Mobile's unfair or deceptive acts or practices impact the public interest.

7 96. Lycamobile has suffered injury in their business or property.

8 97. T-Mobile's unfair or deceptive act or practice is or will be the proximate cause
9 of injuries suffered by Lycamobile and its customers, in the form of loss of services or increased
10 prices.

11 98. T-Mobile has engaged in unfair and deceptive conduct in trade or commerce
12 adversely affecting Lycamobile and its customers.

13 99. T-Mobile's violations of the Consumer Protection Act, RCW 19.86, et seq.,
14 entitle Lycamobile to compensatory damages and the exemplary damages set forth in the
15 Consumer Protection Act, RCW 19.86.090 for each and every violation, and attorneys' fees
16 and costs.

17 **COUNT III**
18 **Violation of the Washington Consumer Protection Act**

19 100. Lycamobile restates and realleges the paragraphs above, as if fully restated
20 herein.

21 101. T-Mobile engaged in trade or commerce as defined in RCW 19.86.010.

22 102. The CPA prohibits sellers with unequal bargaining power from imposing
23 contract terms that are unfair or oppressive or imposing contract terms that are the product of
24 unfair or deceptive conduct or acting in disregard of contract terms intended to protect
25 customers.

26 103. T-Mobile's conduct has violated these prohibitions.
27

1 104. The following conduct, among other, constitutes unfair and deceptive act or
2 practices under RCW 19.86.020:

- 3 a. T-Mobile's misrepresentations of Lycamobile customer usage, leading to the
4 negotiation of the Eighth Amendment in a way that leads to excessive costs for
5 Lycamobile that will be passed on to consumers;
- 6 b. T-Mobile's erroneous interpretation of the Agreement as allowing it to terminate
7 Lycamobile despite the fact that the dispute arises from T-Mobile's own
8 admitted mistakes;
- 9 c. T-Mobile's erroneous interpretation of the Agreement as allowing it to deplete
10 Lycamobile's security deposit;
- 11 d. T-Mobile's unwillingness to resolve the dispute in good faith; and
- 12 e. T-Mobile's threats to terminate Lycamobile's customers access to its network.

13 105. T-Mobile's unfair or deceptive acts or practices impact the public interest.

14 106. Lycamobile has suffered injury in their business or property.

15 107. T-Mobile's unfair or deceptive acts or practices are the proximate cause of
16 injuries suffered by Lycamobile and its customers.

17 108. T-Mobile has engaged in unfair and deceptive conduct in trade or commerce
18 adversely affecting Lycamobile and/or its customers.

19 109. T-Mobile's violations of the Consumer Protection Act, RCW 19.86, et seq.,
20 entitle Lycamobile to compensatory damages and the exemplary damages set forth in the
21 Consumer Protection Act, RCW 19.86.090 for each and every violation, and attorneys' fees
22 and costs.

23 110. Furthermore, to the extent that T-Mobile's wrongful interpretation of the
24 Agreement would constitute a violation of RCW 19.86.030 in the form of a contract that would
25 unlawfully restrain trade, Lycamobile is entitled to treble damages pursuant to RCW 19.86.090
26 for its injuries suffered as a result of its refusal to accede to that interpretation.

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COUNT IV
Breach of the Covenant of Good Faith and Fair Dealing

111. Lycamobile restates and realleges the paragraphs above, as if fully restated herein.

112. T-Mobile owes to Lycamobile a duty of good faith and fair dealing that is implied in every contract. That duty continues during the pendency of the Agreement and this litigation.

113. T-Mobile's duty of good faith and fair dealing precludes it from, among other things, taking any action that is unreasonable.

114. T-Mobile's conduct as described above has been unreasonable and in violation of its duty of good faith and fair dealing. Because of its failure to comply with its duty of good faith and fair dealing, T-Mobile is liable to Lycamobile for bad faith damages.

115. As a direct and proximate result of T-Mobile's breach of the covenant of good faith and fair dealing, Lycamobile has suffered, and continues to suffer, damages in an amount to be proven at trial.

COUNT V
Negligent Misrepresentation

116. Lycamobile restates and realleges the paragraphs above, as if fully restated herein.

117. T-Mobile supplied information to Lycamobile that was false, and that Lycamobile relied upon in negotiating the Eighth Amendment.

118. T-Mobile knew or should have known that the information it supplied to Lycamobile would guide Lycamobile in negotiation of the Eighth Amendment.

119. T-Mobile was negligent in obtaining or communicating the false information,

120. Lycamobile relied on the false information.

121. Lycamobile's reliance was reasonable.

122. The false information proximately caused Lycamobile damages.

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on January 20, 2023, I served a copy of the foregoing document LYCAMOBILE USA INC.'S ANSWER AND COUNTERCLAIM FOR DAMAGES AND EQUITABLE RELIEF via:

PERKINS COIE LLP Susan D. Fahringer, WSBA No. 21567 SFahringer@perkinscoie.com Jeffrey M. Hanson, WSBA No. 34871 JHanson@perkinscoie.com Dane A. Westermeyer, WSBA No. 49934 DWestermeyer@perkinscoie.com 1201 Third Avenue, Suite 4900 Seattle, WA 98101-3099 Telephone: 206.359.8000 Facsimile: 206.359.9000 Attorneys for Plaintiff T-Mobile USA, Inc.	<input checked="" type="checkbox"/> by CM/ECF <input checked="" type="checkbox"/> by Electronic Mail <input type="checkbox"/> by Facsimile Transmission <input checked="" type="checkbox"/> by First Class Mail <input type="checkbox"/> by Hand Delivery <input type="checkbox"/> by Overnight Delivery
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DATED this 20th day of January 2023.

KILPATRICK TOWNSEND & STOCKTON
LLP

By/s/ Gwendolyn C. Payton
Gwendolyn C. Payton, WSBA #26752
Counsel for Defendant Lycamobile USA Inc.