

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
T-Mobile USA, Inc.)	File No. EB-02-TS-012
)	NAL/Acct. No. 200332100006
)	FRN 0006-9459-50

ORDER

Adopted: July 14, 2003

Released: July 17, 2003

By the Commission:

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by T-Mobile USA, Inc. (“T-Mobile”) of the enhanced 911 (“E911”) Phase II provisions of Section 20.18 of the Commission’s Rules (“Rules”)¹ with respect to its Global System for Mobile Communications (“GSM”) network and the Commission Order granting T-Mobile a waiver of the E911 Phase II rules for its GSM network.²

2. The Commission and T-Mobile have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether T-Mobile possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended,³ that the attached Consent Decree **IS ADOPTED**.

6. T-Mobile shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100006 and FRN 0006-9459-50.

¹ 47 C.F.R. § 20.18.

² *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order*, 15 FCC Red 17442 (2000).

³ 47 U.S.C. §§ 154(i) and 154(j).

7. **IT IS FURTHER ORDERED** that the Commission investigation into the matter described herein is terminated.

8. **IT IS FURTHER ORDERED** that the Secretary **SHALL SIGN** the Consent Decree on behalf of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dorch
Secretary

CONSENT DECREE

The Federal Communications Commission (“FCC”) and T-Mobile USA, Inc (“T-Mobile”) hereby enter into a Consent Decree resolving possible violations by T-Mobile of the E911 Phase II provisions of Section 20.18 of the Commission’s Rules, 47 C.F.R. § 20.18, and the waiver granted to VoiceStream Wireless Corporation⁴ in *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) (“*VoiceStream Waiver Order*”).

Statement of Facts

1. In September 2000, the Commission granted T-Mobile a temporary, conditional waiver of the E911 Phase II rules to implement a hybrid network and handset-based technology called Enhanced Observed Time Difference of Arrival (“E-OTD”) across its Global System for Mobile Communications (“GSM”) network.⁵ On December 21, 2001, T-Mobile filed a request for modification of its waiver, proposing a new deployment schedule for its GSM network.⁶ Subsequently, on February 28, 2002, T-Mobile amended its modification request.⁷ On December 13, 2002, the Wireless Telecommunications Bureau issued an *Order* dismissing T-Mobile’s request for limited modification of the waiver and referring issues regarding T-Mobile’s compliance with the E911 Phase II rules on its GSM network to the Enforcement Bureau.⁸ On March 21, 2003, T-Mobile submitted a letter notifying the Commission that it had decided to implement a network-based Phase II solution in lieu of E-OTD.⁹

Terms of Settlement

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “FCC” or “Commission” means the Federal Communications Commission.

⁴ T-Mobile is the successor to VoiceStream Wireless Corporation. For convenience, we will refer to the carrier as T-Mobile throughout this document.

⁵ *VoiceStream Waiver Order*, 15 FCC Rcd at 17463. T-Mobile also proposed to implement a network software solution (“NSS”) that would make use of existing network capabilities to provide immediate location information for all 911 calls on the network. The Commission conditioned the waiver on T-Mobile’s deployment of NSS capability on its network. *Id.*

⁶ VoiceStream Wireless Corporation Request for Limited Modification of E911 Phase II Implementation Plan, CC Docket No. 94-102 (filed December 21, 2001).

⁷ VoiceStream Wireless Corporation Amended Request for Limited Modification of E911 Phase II Implementation Plan, CC Docket No. 94-102 (filed February 28, 2002)

⁸ *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, T-Mobile USA, Inc. Amended Request for Limited Modification of E911 Phase II Implementation Plan*, Order, CC Docket No. 94-102, 17 FCC Rcd 24908 (Wireless Telecom. Bur. 2002).

⁹ Letter from Robert A. Calaff, Senior Corporate Counsel, Governmental and Industry Affairs, T-Mobile USA, Inc., to John B. Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, and David H. Solomon, Chief, Enforcement Bureau, Federal Communications Commission, filed March 21, 2003.

- (b) "Parties" means T-Mobile USA, Inc. and the Federal Communications Commission.
- (c) "T-Mobile" means T-Mobile USA, Inc., Powertel, Inc., their subsidiaries, and any successors or assigns.
- (d) "Adopting Order" means an order of the FCC adopting this Consent Decree.
- (e) "Effective Date" means the date on which the FCC releases the Adopting Order.
- (f) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (g) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (h) "Valid PSAP Request" means a Public Safety Answering Point ("PSAP") request for Phase I or Phase II service as defined in the Commission's rules governing E911 and any orders of the Commission interpreting such rules.
- (i) "Deploy" means installation at a cell site of all hardware and base release software necessary to provide Phase II service.

3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the FCC by incorporation of such provisions by reference in an Adopting Order.

4. The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of any term of this Consent Decree shall constitute a violation of a Commission order entitling the FCC to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission order.

5. T-Mobile agrees that the FCC has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between T-Mobile and the FCC regarding any possible violations of the E911 Phase II rules and the *VoiceStream Waiver Order*. In consideration for termination by the Commission of its investigation into whether T-Mobile has violated the E911 Phase II rules and the *VoiceStream Waiver Order*, and in accordance with the terms of this Consent Decree, T-Mobile agrees to the terms set forth herein.

7. In express reliance on the covenants and representations in this Consent Decree, the FCC agrees to terminate its investigation into whether T-Mobile has violated the E911 Phase II rules and the *VoiceStream Waiver Order*.

8. T-Mobile agrees to comply with the E911 Phase II rules modified as follows:

(a) First, T-Mobile agrees:

- (1) To deploy a compliant Phase II technology at a minimum of 1,000 cell sites for its network by nine months after the release of the Adopting Order.¹⁰ In

¹⁰ T-Mobile currently plans to employ a network-based location technology that has not yet been fully validated on T-Mobile's network, but which T-Mobile currently expects will meet the Phase II accuracy requirements and for which T-Mobile expects full validation by December 31, 2003. T-Mobile must report to the Commission the results

meeting this benchmark, T-Mobile must give priority to markets with pending valid PSAP requests first.

(2) To deploy a compliant Phase II technology at a minimum of 2,000 cell sites for its network by ten months after the release of the Adopting Order. In meeting this benchmark, T-Mobile must give priority to markets with pending valid PSAP requests first.

(3) To deploy a compliant Phase II technology at a minimum of 4,000 cell sites for its network and to provide Phase II service at 2,000 of these sites by 13 months after the release of the Adopting Order. In meeting this benchmark, T-Mobile must give priority to markets with pending valid PSAP requests first.

(4) To deploy a compliant Phase II technology at a minimum of 6,000 cell sites for its network by 16 months after the release of the Adopting Order. In meeting this benchmark, T-Mobile must give priority to markets with pending valid PSAP requests first.

(5) To deploy a compliant Phase II technology at a minimum of 8,000 cell sites for its network by 19 months from the release of the Adopting Order, if necessary to meet a valid PSAP request pending more than six months as of that date. In meeting this benchmark, T-Mobile must give priority to markets with pending valid PSAP requests first.

(6) For any valid PSAP requests for Phase II service received by T-Mobile on or before April 30, 2003, T-Mobile must provide a compliant Phase II service to 100% of those PSAPs' coverage areas or population by 22 months after the release of the Adopting Order.

(7) For any valid PSAP requests received after April 30, 2003, but on or before February 28, 2004, T-Mobile must provide a compliant Phase II service to 50% of those PSAPs' coverage areas or population by no later than 19 months after the release of the Adopting Order, and to 100% of those PSAPs' coverage areas or population by no later than 22 months after the release of the Adopting Order.

(8) For valid PSAP requests received after February 28, 2004, T-Mobile must provide a compliant Phase II service to 50% of those PSAPs' coverage areas or population within six months of receipt of such request and covering 100% of those PSAPs' coverage areas or population within 15 months of receipt of a valid PSAP request.

(9) Until T-Mobile delivers TDOA location information to a PSAP that, as of the Effective Date, is receiving and utilizing Network Safety Solution ("NSS")

of its validation tests within 30 days of completion pursuant to the reporting requirement of paragraph 10(d). To the extent this network-based location technology does not comply with the Commission's Phase II accuracy requirements, T-Mobile must request approval from the Commission to employ an alternative location technology that does comply with those requirements. *See infra* paragraph 10(d).

location information, T-Mobile will continue to support the delivery of such NSS information, unless the PSAP agrees to terminate the delivery of such information.

(10) T-Mobile will enter into an agreement with each PSAP currently receiving and utilizing E-OTD location information as to the dates, respectively, by which provision of E-OTD location information will be terminated and provision of TDOA location information will be initiated.

(b) Second, T-Mobile agrees that its classification of a PSAP request as invalid will not insulate it from enforcement action if the Commission determines that the request was valid.

(c) Third, T-Mobile states that it is relying on vendor representations in agreeing to the deployment schedule set forth herein and for its belief that a network-based solution will satisfy the Commission's accuracy requirements.¹¹

(d) Fourth, in any market where T-Mobile has received a Valid PSAP Request and has not yet deployed its network-based solution, when 100 percent of new digital GSM handsets being activated by T-Mobile are location capable, T-Mobile may satisfy that request using a Phase II compliant handset-based technology to provide Phase II E911 service instead of its network-based technology.

(e) Fifth, T-Mobile agrees that in the event it fails to comply with any of the benchmarks set forth in paragraph 8(a)(1) through (5), it will make a voluntary contribution to the United States Treasury in the amount of \$450,000 for the first missed benchmark, \$900,000 for the second missed benchmark and \$1,800,000 for the third missed benchmark and any subsequently missed benchmarks. Any such voluntary contribution will be made within thirty (30) days of the missed benchmark or within five business days of a Commission decision denying a request to modify the benchmark date, whichever is later, by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100006, as well as T-Mobile's FCC Registration Number ("FRN") 0006-9459-50.

(f) Sixth, T-Mobile must file Quarterly Reports, on its progress and compliance with the terms and conditions of the Consent Decree and the wireless E911 rules, as set forth in paragraphs 9-11, *infra*.¹²

¹¹ As required by Section 20.18(h)(1) of the Commission's Rules T-Mobile's network-based technology for delivering E911 Phase II location information must meet the following standard for location accuracy: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls. T-Mobile will derive its network-wide location accuracy measurements by selecting the 67 percent and 95 percent accuracy numbers from test data weighted in accordance with OET Bulletin No. 71, Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems, Apr. 12, 2000. T-Mobile's location accuracy testing should be consistent with the guidelines in OET Bulletin No. 71, which states that accuracy testing may be based on the coverage areas of local PSAPs that request Phase II deployment or the wireless carrier's entire advertised coverage area within a metropolitan area.

¹² These requirements are in lieu of the Semiannual Report requirements set forth in the *VoiceStream Waiver Order*.

(g) Seventh, with its August 1, 2003 Quarterly Report, T-Mobile must submit a Phase II rollout plan describing how it will prioritize valid PSAP requests and deploy Phase II service in its network.

9. To assist in monitoring and enforcing each of the conditions imposed on T-Mobile, T-Mobile must file Quarterly Reports with the Chief of the Enforcement Bureau and the Chief of the Wireless Telecommunications Bureau regarding its network.

10. Specifically, the Quarterly Reports must include the following information:

(a) The Report must include information on all pending Phase I and Phase II requests in T-Mobile's network, including the name of the PSAP, the date the request was received by the carrier, whether or not T-Mobile considers it valid, and its status. To the extent any valid PSAP request for Phase II service in T-Mobile's network received after February 28, 2004, has been pending for more than six months and Phase II service has not been implemented in accordance with Section 20.18(f), T-Mobile must identify the specific reasons underlying the failure to provide the requested service, the steps T-Mobile has taken to resolve the problems, and the anticipated date of full completion of the work necessary to deliver the requested information to the PSAP in question. If T-Mobile believes there are questions concerning a PSAP's compliance with the conditions necessary for a valid Phase I or II request, such as its readiness to receive and utilize Phase I or Phase II information, it should identify specifically whether the request is tolled pursuant to § 20.18(j)(3) of the Rules or is the subject of a certification filed pursuant to § 20.18(j)(4) of the Rules. If the request is not tolled or the subject of a certification, T-Mobile should identify the question and the efforts it has undertaken, including the communications it has had with the PSAP, to resolve the question. T-Mobile agrees to serve this report on the Association of Public-Safety Communications Officials-International, Inc., the National Emergency Number Association, and the National Association of State Nine One One Administrators.¹³ In addition, the Commission will post this information on its website.¹⁴ The Parties agree that the Wireless Telecommunications Bureau may require any additional steps necessary to ensure PSAP access to this information.

(b) Each Quarterly Report also must contain statements regarding whether T-Mobile has met each deployment benchmark falling due in the period immediately preceding the Quarterly Report, and, if not, the reasons for its failure to comply. Each Quarterly Report must contain:

(1) a statement of whether T-Mobile's network-based technology for delivering E911 Phase II location information meets the Commission's network-based accuracy requirements of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls;

(2) for the benchmark set forth in paragraph 8(a)(1), a statement of whether T-Mobile has deployed a Phase II compliant technology at a minimum of 1,000 cell

¹³ T-Mobile should serve the Executive Director of each organization as well as its counsel, to the extent such counsel has been identified in the record in response to T-Mobile's request for relief.

¹⁴ See <www.fcc.gov/e911>.

sites, giving priority to markets with pending valid PSAP requests, and identifying the 1,000 cell sites;¹⁵

(3) for the benchmark set forth in paragraph 8(a)(2), a statement of whether T-Mobile has deployed a Phase II compliant technology at a minimum of 2,000 cell sites, giving priority to markets with pending valid PSAP requests, and identifying the 2,000 cell sites;

(4) for the benchmarks set forth in paragraph 8(a)(3), a statement of (i) whether T-Mobile has deployed a Phase II compliant technology at a minimum of 4,000 cell sites, giving priority to markets with pending valid PSAP requests, and identifying the 4,000 cell sites, and (ii) whether T-Mobile is providing Phase II service at 2,000 of these sites, and identifying the 2,000 cell sites;

(5) for benchmark set forth in paragraph 8(a)(4), a statement of whether T-Mobile has deployed a Phase II compliant technology at a minimum of 6,000 cell sites;

(6) for the benchmark in paragraph 8(a)(5), a statement of whether T-Mobile has deployed a compliant Phase II technology at a minimum of 8,000 cell sites;

(7) for any valid PSAP request for Phase II service on its network received by T-Mobile on or before April 30, 2003, a statement of whether T-Mobile has provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population within 22 months after the release of the Adopting Order;

(8) for any valid PSAP requests for Phase II service on its network received by T-Mobile after April 30, 2003, but on or before February 28, 2004, statements of whether: (i) T-Mobile has provided its Phase II compliant solution to 50% of those PSAPs' coverage areas or population within 19 months after the release of the Adopting Order; and (ii) T-Mobile has provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population within 22 months after the release of the Adopting Order;

(9) for any valid PSAP request received after February 28, 2004, a statement of whether T-Mobile is providing a compliant Phase II service to 50% of those PSAPs' coverage areas or population within six months of receipt of the request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of the request; and

(10) a statement of whether T-Mobile is providing NSS location information to PSAPs for all deployments that were receiving and utilizing such information as

¹⁵ In the Quarterly Reports, where T-Mobile is required to identify specific cell sites where it has either deployed a Phase II compliant technology or where it is providing Phase II service, it may do so by identifying the PSAP served by the cell sites, and the number of cell sites associated with each PSAP. For example, it could report that Phase II technology has been deployed to County A PSAP, covering 300 cell sites; Locality B PSAP, covering 600 cell sites, and Municipality C PSAP, covering 100 cell sites, for a total of 1,000 cell sites.

of the Effective Date, and that are not yet receiving TDOA location information, and whether T-Mobile has reached an agreement with any PSAP that was receiving E-OTD location information as of the Effective Date, as to the dates, respectively, for termination of the provision of such E-OTD location information and the transition to the provision of TDOA location information.

(c) T-Mobile must support each Quarterly Report with an affidavit, from an officer or director of T-Mobile, attesting to the truth and accuracy of the report.¹⁶

(d) In addition to the requirements of paragraph 10(b), T-Mobile must notify the Commission of the results of its validation tests of its network-based location technology within 30 days of completion. Further, to the extent T-Mobile anticipates that it will fail to satisfy any one of the conditions herein, it also must advise the Commission of the problem within 30 days. Seeking relief from that condition will not, in and of itself, insulate T-Mobile from possible enforcement in cases where T-Mobile has violated a condition of this Consent Decree. T-Mobile agrees that the Commission will not entertain requests for additional relief that seek changes in the conditions of this Consent Decree absent extraordinary circumstances.

(e) T-Mobile must also file a supplemental report within 15 days after the 22 month benchmarks set forth in paragraph 8(a)(6) and 8(a)(7), containing statements of whether (i) for any valid PSAP request for Phase II service on its network received by T-Mobile on or before April 30, 2003, T-Mobile has provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population within 22 months after the release of the Adopting Order; and (ii) for any valid PSAP requests for Phase II service on its network received by T-Mobile after April 30, 2003, but on or before February 28, 2004, T-Mobile has provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population within 22 months after the release of the Adopting Order.

(f) To the extent T-Mobile cannot provide the information required under this paragraph in its next Quarterly Report following the respective benchmark, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information. Such request must be filed as early as possible before the Quarterly Report filing date, but generally no later than 10 business days prior to the Quarterly Report filing date. The request must specify the reasons for the request.

(g) T-Mobile's Quarterly Reports are due February 1, May 1, August 1 and November 1 of each year, beginning August 1, 2003 and continuing through February 1, 2006. To the extent that T-Mobile cannot provide any of the information required in its final report, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information in accordance with the procedures set forth above.

11. The Parties agree that the Chiefs of the Wireless Telecommunications Bureau and the Enforcement Bureau may require T-Mobile to provide additional information in its Quarterly Reports, in order to evaluate T-Mobile's compliance with the terms and conditions of the Consent Decree, and its progress in deploying Phase II E911 services.

12. To the extent unexpected problems arise affecting T-Mobile's ability to perform any of

¹⁶ See 47 CFR § 1.16.

the requirements set forth in paragraph 8(a) in the period between reports, T-Mobile agrees to notify the Commission through a supplementary filing to be filed within 30 days of T-Mobile's discovery of the problem. This supplemental filing must include specific details regarding the problems T-Mobile has encountered affecting its ability to comply with the benchmark requirements.

13. For the benchmark specified in paragraph 8(a)(3), T-Mobile must demonstrate compliance by filing, prior to the benchmark date, a statement (i) whether T-Mobile has deployed a Phase II compliant technology at 4,000 cell sites, giving priority to fulfilling pending PSAP requests, and identifying the 4,000 cell sites, and (ii) whether T-Mobile is providing Phase II service at 2,000 of these sites, and identifying the 2,000 cell sites.

14. In the event that T-Mobile cannot meet the benchmarks specified in paragraphs 8(a)(3), (6), (7), and (8) for the provision of Phase II service because PSAPs served by certain of the cell sites at which the Phase II compliant technology has been deployed are subject to modified deployment schedules pursuant to 47 C.F.R. § 20.18(j)(5), or are not capable of receiving and utilizing the Phase II information, it must file, before the benchmark date, a notification of its intention to file certifications with respect to these PSAPs that comply with requirements set forth in *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, *Order on Reconsideration*, 17 FCC Rcd 24282 (2002). Such certifications and a list of any PSAPs subject to modified deployment schedules must be filed within 30 days after the benchmark date.

15. As of the effective date hereof, this Consent Decree shall supersede the *VoiceStream Waiver Order* and the requirements contained therein and such Order and requirements shall be of no force or effect.

16. T-Mobile agrees that it is required to comply with each individual condition of this Consent Decree, including the reporting requirements set forth above and the terms of the accompanying Compliance Plan. Each specific condition and Quarterly Report is a separate condition of the Consent Decree as approved. In addition, T-Mobile remains subject to all other requirements of the Commission's wireless E911 rules apart from those specifically modified in this Consent Decree, and ultimately responsible for providing timely, compliant Phase II service to the input to the Selective Router. To the extent that T-Mobile fails to satisfy any condition or Commission rule, in the absence of Commission alteration or waiver of the condition or rule, it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures. At that time an assertion that a vendor, manufacturer or other entity was unable to supply compliant products will not excuse noncompliance, and that the Commission will consider its enforcement actions accordingly. However, T-Mobile's "concrete and timely" actions taken with a vendor, manufacturer or other entity may be considered as possible mitigation factors in such an enforcement context. To the extent that the Commission, in response to petitions for reconsideration pending in *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Nextel Communications, Inc.*, 16 FCC Rcd 18277 (2001), *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC*, 16 FCC Rcd 18305 (2001), *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless*, 16 FCC Rcd 18364 (2001), *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, *Order on*

Reconsideration, 17 FCC Rcd 24282 (2002), or in connection with any court order on review of those proceedings, imposes a standard regarding compliance and enforcement action that is different than set forth in this Consent Decree, that subsequent standard shall apply.

17. T-Mobile agrees to make a voluntary contribution to the United States Treasury in the amount of One Million One Hundred Thousand Dollars (\$1,100,000) within thirty (30) days after the Effective Date. T-Mobile will make this contribution without further protest or recourse by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100006 and T-Mobile's FRN 0006-9459-50. The FCC agrees that it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against T-Mobile for the possible past violations of the E911 Phase II rules and the *VoiceStream Waiver Order*. The FCC also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the effective date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against T-Mobile with respect to its basic qualifications, including the character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the FCC from instituting new investigations or enforcement proceedings against T-Mobile pursuant to Sections 4(i), 403 and 503 of the Act, 47 U.S.C. §§ 4(i), 403 and 503, in the event of any alleged future misconduct, for violation of this Consent Decree, or for violation of the E911 Phase II rules consistent with the provisions of this Consent Decree.

18. Nothing in this Consent Decree shall prevent the FCC from adjudicating complaints filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, against T-Mobile or its subsidiaries for alleged violations of Section 20.18 of the Rules as modified by this Consent Decree, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the FCC's adjudication of that complaint will be based solely on the record developed in that proceeding.

19. T-Mobile waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

20. If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither T-Mobile nor the FCC shall contest the validity of the Consent Decree or Adopting Order. T-Mobile retains the right to challenge the FCC's interpretation of the Consent Decree or any terms contained therein

21. T-Mobile agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

22. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

23. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act and the Rules, including Section 20.18 of the Rules or the *VoiceStream Waiver Order*. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, T-Mobile does not admit or deny any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.

24. The Parties agree that any provision of the Consent Decree that would require T-Mobile to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order. In this regard, the Parties agree that any Commission rule or order that is more stringent than any provision of the Consent Decree supersedes such provision of the Consent Decree.

25. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For T-Mobile USA, Inc.

Marlene H. Dortch
Secretary

David A. Miller
General Counsel

Date

Date