

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Jaenelle Wheeler,)
)
 Complainant,)
)
 v.)
)
 T-Mobile West Corporation, (U-3056-C),)
)
 Defendant.)
 _____)

ECP
C.10-11-003
(Filed November 4, 2010)



FILED
12-07-10
04:59 PM

**ANSWER OF T-MOBILE WEST CORPORATION, (U-3056-C), TO COMPLAINT
CASE NO. (C.) 10-04-021**

Defendant T-Mobile West Corporation, dba T-Mobile (U-3056-C) (“T-Mobile”), hereby answers the above-referenced complaint filed by Jaenelle Wheeler (“Complainant”) as follows:

I. INTRODUCTION AND FACTUAL BACKGROUND

Complainant is seeking a refund from T-Mobile for a handset restocking fee and other miscellaneous charges for her T-Mobile account number 317118239. However, as outlined below, T-Mobile records indicate that Complainant (a) was properly assessed a restocking fee for failing to return a “non-working” handset (that was subsequently used on the T-Mobile network by another user who was apparently known to the Complainant) and (b) continued to use the replacement handset provided by T-Mobile in exchange for the “non-working” handset noted above. As such, the restocking fee is a valid charge and the complaint against T-Mobile should be dismissed with prejudice.

In addition, with the filing of this Answer, and as a further courtesy to Complainant, T-Mobile is crediting the balance of the restocking fee to Complainant's account and thus the Complaint is moot.

1. HANDSET EXCHANGE AND RESTOCKING FEE

On December 27, 2009, the Complainant contacted T-Mobile and reported that her handset was not working. After basic troubleshooting apparently failed to remedy the issue, T-Mobile agreed to process an advanced exchange for the "non-working" handset on December 27, 2009. The advanced exchange process involved T-Mobile sending the Complainant a replacement handset via United Parcel Service ("UPS") along with instructions for how to return the non-working handset using the same packaging. When the advanced exchange was processed, the Complainant received a verbal disclosure outlining the advanced exchange terms, including the need for the non-working handset to be returned to T-Mobile in order to avoid a restocking fee. Included in the box with the replacement handset were detailed instructions for returning the non-working handset, a reminder about the restocking fee and a prepaid UPS shipping label. A copy of the instructions are included as Exhibit 1. Our records indicate that Complainant received and began using the replacement handset on the T-Mobile network effective as of January 4, 2010 but has failed to return the "non-working" handset.

When the handset was not returned within the seven days provided, T-Mobile began contacting the Complainant to prompt the return of the non-working handset. Several automated messages were left before assessing a restocking fee of \$365.00 plus applicable taxes of \$35.59 on January 30, 2010 for failure to return the "non-working" handset. These charges were reflected on the February 7, 2010 billing statement.

2. ACCOUNT SUSPENSION AND SERVICE RESTORATION

The Complainant asserts that T-Mobile confirmed receipt of the non-working device through a phone call to T-Mobile Customer Care on February 25, 2010. T-Mobile's records do not indicate that there was a call to T-Mobile Customer Care on February 25, 2010 or at any other time in which T-Mobile confirmed receipt of the non-working handset. Indeed, as discussed below, T-Mobile's records do not indicate that it has yet received the "non-working" handset from Complainant.

The Complainant's account was suspended for non-payment on April 1, 2010 and during a subsequent conversation with our Financial Care department on April 8, 2010, the Complainant indicated that the non-working handset had been returned. As a courtesy, T-Mobile provided a goodwill credit of \$190.00 towards the outstanding restocking fee and the Complainant made corresponding payments of \$214.35 (i.e., \$198.00 + \$16.35) to bring the account current and have services restored. T-Mobile's records do not indicate that the Complainant received confirmation that T-Mobile received the non-working handset in exchange for this payment as no such confirmation would have been possible given that T-Mobile did not receive, and has never received, the handset.

3. INVESTIGATION OF "NON-WORKING" HANDSET AND REPLACEMENT HANDSET

T-Mobile received informal complaints from the Complainant via your office (CPUC File No. 96726 dated April 5, 2010 and August 2, 2010, as well as an undated request for additional information in June 2010 regarding the restocking fee, which was assessed for the non-working handset. T-Mobile reviewed and investigated the issues raised by the Complainant, and our responses to these matters are attached as Exhibit 2. The prepaid UPS shipping label that was included with the replacement handset and received by the

Complainant on December 27, 2009 included a tracking number. The UPS tracking number, 1ZW0729X8959386333, was researched and records indicated that the label has not been scanned by UPS and has not been used. Furthermore, there is no record of the device being received or processed by T-Mobile.

As part of the investigation, T-Mobile reviewed our billing records for the Complainant's account. Each time a call is made or received on the T-Mobile network specific information about the handset and user is captured and retained by the system for billing purposes. The information captured by T-Mobile includes a customer's System Identifying Module ("SIM") card serial number and the handset's International Mobile Equipment Identifier ("IMEI") serial number each of which is unique to both the user and the specific handset. The unique serial numbers for a customer are found printed on the SIM card while the unique numbers IMEI number for a handset are located on the back of the handset.

T-Mobile records confirm that the Complainant was still using the replacement handset sent in December 2009, with an IMEI number of 358279015797135, for mobile number 310-218-8003. The handset which was reported as non-working, with an IMEI number of 351680030840910, was also being used by the Complainant, or a person apparently known to the Complainant (Daniel Wheeler) for mobile number 310-218-8004. (The "8004" number originated service on the Complainant's account but was subsequently been transferred to a separate account for Daniel Wheeler.) T-Mobile records indicate that the non-working handset (IMEI 351680030840910), the handset which the Complainant claims was returned to T-Mobile in February 2010, was in use on the T-Mobile network on both the Complainant and Mr. Wheeler's accounts through September 8, 2010. The "non-working" handset still remains in use

on the T-Mobile network today (on what appears to be an unaffiliated account) and still has not been returned to T-Mobile.

4. WAIVER OF BALANCE OF RESTOCKING FEE

With the filing of T-Mobile's Answer, the Complainant's account will be credited \$223.00 as set forth in her complaint despite the fact that the "non-working" handset was never returned and despite the fact that T-Mobile's records indicate that the Complainant paid only \$210.59 towards the restocking fee (i.e., \$365.00 restocking fee + \$35.59 taxes - \$190 goodwill credit [premised on the promised return of the "non-working" handset by Complainant]).

II. ANSWER TO MATERIAL ALLEGATIONS OF THE COMPLAINT

In response to the allegations in the complaint, T-Mobile incorporates all of the information contained in the Introduction and Factual Background noted above and otherwise denies each and every material allegation as set forth in the Complaint.

III. PROCEDURAL MATTERS

T-Mobile does not object to the adjudicatory categorization of this case. T-Mobile's representative for the case is Susan Lipper and her contact information appears below:

Susan Lipper, Senior Manager of Government Affairs
1755 Creekside Oaks Drive, Suite #190
Sacramento, CA 95833
Tele: 916.996.5354
Susan.Lipper@T-Mobile.com

T-Mobile does not feel a hearing is necessary or warranted.

IV. AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state facts sufficient to state a cause of action under Pub. Util. Code Section 1702 or Article 4 of the Commission's Rules of Practice and Procedure.

SECOND AFFIRMATIVE DEFENSE

At all times alleged in the Complaint, T-Mobile acted in accordance with its statutory, contractual and other regulatory obligations with respect to Complainant.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

The Complaint fails to state claims upon which relief can be granted.

FIFTH AFFIRMATIVE DEFENSE

The Complaint should be dismissed for mootness.

WHEREFORE, T-Mobile requests that the Commission dismiss the Complaint with prejudice and deny any relief sought by the Complainant.

DATED: December 7, 2010

Respectfully submitted,



Tami Shwonek
Paralegal, Supervisor
T-Mobile USA, Inc.
12920 SE 38th Street
Bellevue, WA 98006

VERIFICATION

I, Tami Shwonek, am employed as Paralegal, Supervisor, of T-Mobile West Corporation dba T-Mobile, and although I am not an officer of the Company, I am authorized to make this verification on its behalf. I have read the statements in the foregoing document and they are true of my own knowledge, except as to matters which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 7th day of December 2010, at Bellevue, Washington.



Tami Shwonek

CERTIFICATE OF SERVICE

I, Tami Shwonek, the undersigned, hereby declare that on December 7, 2010, I caused a copy of the foregoing:

ANSWER OF T-MOBILE WEST CORPORATION (U-3056-C)

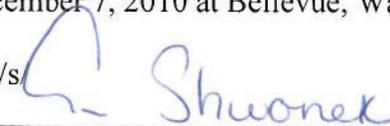
in proceeding **CASE NO. (C.) 10-11-003**, to be served as follows:

- [X] Via U.S. Mail to the Assigned Commissioner:
Timothy Simon
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

- [X] Via U.S. Mail and e-mail to the Administrative Law Judge
Robert A. Barnett
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298
Robert.barnett@cpuc.ca.gov

- [X] Via U.S. Mail to the Complainant for C.10-04-021
Jaenelle Wheeler
4733 Torrance Blvd. Apt. 706
Torrance, CA 90503

This declaration was executed on December 7, 2010 at Bellevue, Washington.

/s/  Shwonek

Tami Shwonek
Supervisor, Paralegal
T-Mobile USA, Inc.
425-383-5551

Stop!

Read these instructions carefully.

You will be **charged a fee*** if you do not return your previous device **within 7 days** of delivery of its replacement.

T-Mobile

This offer is valid for T-Mobile users who activate the service. This offer may vary by state. If you have a working device, you may be eligible for a free replacement. If you do not have a working device, you may be eligible for a replacement fee. For more information, visit t-mobile.com. © 2014 T-Mobile USA, L.P. All rights reserved. T-Mobile is a registered trademark of T-Mobile USA, L.P. All other trademarks are the property of their respective owners.



You will need **all** of the items in this box. **Don't throw any of them away!**

Exhibit 1

Set Up Your Replacement Device

Remove the battery, battery cover, SIM card* and any custom accessories from your previous device (such as a memory card, stylus, or a faceplate or antenna purchased separately).

Install the SIM card*, battery, battery cover and accessories on your replacement device. Charge your replacement device fully.

*Typically, the SIM card is located under or near the battery. The contents of your Phone Book can be stored on your SIM card and transferred to your replacement device. Consult your owner's manual for more information.

PICTURES

If you have pictures on your previous device that you would like to move to your replacement device, upload them to MyAlbum.com. For instructions on how to do this, visit: www.T-Mobile.com/mytmobile

PERSONALIZED RINGTONES, WALLPAPER, ETC.

Your replacement device will not come pre-loaded with downloadable items you may have purchased. Call Customer Care to discuss options for recovering these downloads.

Return Your Previous Device to T-Mobile

1. After removing all of the accessories from your previous device, place it in the box that your replacement device came in.

Wrap it securely with the packing foam that came with your replacement device to avoid damage during shipping.

Secure the box opening with the provided tamper-proof seal.

Write down the UPS tracking number from the pre-paid return label. You can use this number to track your return shipment.

2. Peel the backing from the pre-paid return label and place it over the existing address label on the top of the box.

Don't remove or cover any other labels on the box.

3. Deposit the box into any UPS drop location.



Important Do's and Don'ts

In some cases, you will receive a padded mailing pouch with your replacement device. If you did, discard the box and place the mailing label on the front of the pouch to return your previous phone.

DO use the enclosed mailing label to return your previous device to T-Mobile—**no additional shipping charges via UPS.**

If you do not use a different shipping method, you assume responsibility for all associated costs and the return of your phone to T-Mobile.

DO visit www.T-Mobile.com/mytmobile for answers to your questions about handsets, service, features or billing.

DON'T return more than one phone per box or pouch.

DON'T enclose payments (cash, checks or money orders) or other additional correspondence with your previous device.

Useful Information

T-Mobile Customer Care:

Contact with any inquiries regarding T-Mobile service, features or billing:

www.T-Mobile.com/mytmobile
or 1-800-937-8997

Find a UPS drop location:

www.ups.com/dropoff
or 1-800-742-5877

Track your return shipment:

www.ups.com/WebTracking/reference
Enter your 10-digit mobile number as the reference number, in this format:
XXX-XXX-XXXX



Configura tu Equipo de Reemplazo

Quita la batería, la cubierta de la batería, la tarjeta SIM* y cualquier otro accesorio adicional de tu otro teléfono (como la tarjeta de memoria, el stylus, la tapa o la antena que hayas comprado por separado).

Instala la tarjeta SIM*, la batería, la cubierta de la batería y los accesorios en tu equipo de reemplazo. Carga tu equipo de reemplazo por completo.

*Por lo general, la tarjeta SIM está ubicada debajo o cerca de la batería. La información de tu Agenda Telefónica puede almacenarse en tu tarjeta SIM y ser transferida a tu equipo de reemplazo. Para obtener más información, consulta el instructivo del propietario.

FOTOS

Si tienes fotos en tu otro equipo que te gustaría pasar a tu equipo de reemplazo, cópialas en MyAlbum.com. Para obtener las instrucciones de cómo hacerlo, visita: www.T-Mobile.com/mytmobile

TONOS DE TIMBRE, PAPEL TAPIZ Y OTRAS OPCIONES PERSONALIZADAS

Tu equipo de reemplazo no viene precargado con las opciones que hayas comprado y descargado para tu otro equipo. Llama a Atención al Cliente si deseas recuperar dichas descargas.

Devuelve tu Otro Equipo a T-Mobile

1. Después de quitar todos los accesorios de tu otro equipo, ponlo en la caja donde venía tu equipo de reemplazo.

Envuélvelo bien con el material de empaque que venía con tu equipo de reemplazo para evitar que se dañe durante el envío.

Sella la hendidura de la caja con la cinta de seguridad provista.

Escribe el número de seguimiento de UPS que se encuentra en la etiqueta de devolución precargada. Puedes usar ese número para darle seguimiento al envío de la devolución.

2. Desprende la parte trasera de la etiqueta de devolución precargada y colócala sobre la etiqueta de la dirección de la caja. No quites o cubras ninguna de las otras etiquetas de la caja.

3. Deposita la caja en cualquier lugar de envíos de UPS.



Lo que puedes y no puedes hacer

En algunas ocasiones, se incluye una bolsa acolchada de envío con tu equipo de reemplazo. Si la recibiste, tira la caja y coloca la etiqueta de la dirección directamente en la parte delantera de la bolsa para devolver tu otro equipo.

PUEDES usar la etiqueta de la dirección provista para devolver tu otro equipo a T-Mobile. **No hay cargos adicionales de envío a través de UPS.**

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PUEDES visitar www.T-Mobile.com/mytmobile para obtener respuestas a tus dudas relacionadas con teléfonos, funciones, servicio o facturación.

NO PUEDES devolver más de un teléfono por caja o por bolsa.

NO PUEDES incluir pagos (efectivo, cheques o giros postales) ni cualquier otro tipo de correspondencia con tu otro equipo.

Información Útil

Atención al Cliente de T-Mobile:

Comunicate con nosotros si tienes preguntas acerca de los servicios, las funciones o la facturación de T-Mobile:

www.T-Mobile.com/mytmobile
o 1-800-937-8997

Para encontrar un lugar de envíos de UPS:

www.ups.com/dropoff
o 1-800-742-5877

Para darle seguimiento a tu envío de devolución:

www.ups.com/WebTracking/reference
Ingresa los 10 dígitos de tu número de teléfono móvil como número de referencia, en el siguiente formato: XXX-XXX-XXXX



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April 29, 2010

FILED ELECTRONICALLY

Consumers Affairs Branch
Communication and Public Information Division
California Public Utilities Commission
320 W. 4th St. Suite 500
Los Angeles, CA 90013

Re: Jaenelle Wheeler
T-Mobile Account Holder: Jaenelle Hawthorne
File No. 96726
T-Mobile Account No. 317118239

To Whom It May Concern:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your letter dated April 5, 2010, regarding the above-referenced account.

On December 27, 2009, a handset replacement was ordered for Ms. Wheeler's defective handset and was shipped to her on December 27, 2009. Please be advised that in each replacement handset box, a set of instructions are provided to inform the customer how to return their defective equipment and to avoid being charged a restocking fee. Our records do not indicate that we received her defective handset, as such; Ms. Wheeler was charged \$400.59 for the handset restocking fee and applicable taxes.

T-Mobile records indicate that the serial number that is unique to the handset and is located on the back of the phone (International Mobile Equipment Identifier or IMEI). Our records show the IMEI of the device Ms. Wheeler was sent and the defective IMEI are still in use by T-Mobile customers that she is aware of and has made calls to and from the handset with the IMEI numbers.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or at 877-290-6323 extension 341-8036.

Very truly yours,

T-MOBILE USA, INC.

Jason Moten
Executive Customer Relations

cc: Jaenelle Wheeler
4733 Torrance Blvd. Apt. 706
Torrance, CA 90503

T-Mobile USA, Inc.
PO Box 37380
Albuquerque, NM 87176

Exhibit 2



June 21, 2010

FILED ELECTRONICALLY

Consumers Affairs Branch
Communication and Public Information Division
California Public Utilities Commission
505 Van Ness Avenue, Room 2003
San Francisco, CA 94102

Re: Jaenelle Wheeler
T-Mobile Account Holder: Jaenelle Hawthorne
File No. 96726
T-Mobile Account No. 317118239

To Whom It May Concern:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your letter requesting additional information regarding the above-referenced account.

In her correspondence with your office Ms. Wheeler disputes collection activity being taken on her account while she disputed the restocking fee she was charged on an exchange completed December 27, 2009. Please note that on April 29, 2010 we responded to your agency regarding the disputed restocking fee. At that time, we advised that the alleged non-working handset was still being used on Ms. Wheeler's account and as such, the restocking fee assessed for not returning the non-working handset was valid and owed.

In addition, pursuant to T-Mobile's Terms and Conditions of Service a customer agrees to pay their bill in a timely manner or their account may be subject to late fees and/or suspension of service. This includes paying any disputed amounts. In the event that T-Mobile reverses disputed charges after they are paid, the ensuing credit balance may be refunded to the customer.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

California Public Utilities Commission
June 18, 2010
Page 2 of 2

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or at 877-290-6323 extension 341-8036.

Very truly yours,

T-MOBILE USA, INC.

Jason Moten
Executive Customer Relations

cc: Jaenelle Wheeler
4733 Torrance Blvd. Apt. 706
Torrance, CA 90503



August 25, 2010

FILED ELECTRONICALLY

Consumers Affairs Branch
Communication and Public Information Division
California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102

Re: Jaenelle Wheeler
T-Mobile Account Holder: Jaenelle Hawthorne
File No. 96726
T-Mobile Account No. 317118239

To Whom It May Concern:

T-Mobile USA, Inc. ("T-Mobile") is in receipt of your letter dated August 2, 2010, regarding the above-referenced account.

On December 27, 2009, a handset replacement was ordered for Ms. Wheeler's non-working handset and it was shipped to her on December 27, 2009. Please be advised that in each replacement handset box, a set of instructions are provided to inform the customer how to return their non-working equipment and to avoid being charged a restocking fee. In addition to the instructions, also included in the box is a pre-paid UPS mailing label. The mailing label in Ms. Wheeler's box was assigned tracking number 1ZW0729X8959386333. Our records do not indicate that we received her non-working handset, as such; Ms. Wheeler was charged \$400.59 for the handset restocking fee and applicable taxes. Furthermore, we have verified that the UPS mailing label has not been used. Finally we have no record of a February 2010 phone call with Customer Care during which Ms. Wheeler was advised that her handset had been received by T-Mobile.

At T-Mobile we bill customers based upon information obtained directly from the customer's System Identifying Module ("SIM") card, which is located inside the phone. The SIM card is unique to the customer and when a call is made or received the SIM card goes through an authentication process with the wireless network. Once the authentication process is completed, the SIM card information is registered in the network and utilized for billing purposes. To further authenticate a call T-Mobile also records the serial number that is unique to the handset and is located on the back of the phone (International Mobile Equipment Identifier or IMEI).

While Ms. Wheeler is not utilizing both handsets on her account, we have discovered that Ms. Wheeler was using one handset, the replacement sent in December 2009, with IMEI number 358279015797135 and that she knows the person using the second handset, the non-working one for which the exchange was processed, which has IMEI number 351680030840910. This handset is being used by mobile number 310-218-8004 which, along with Ms. Wheeler's mobile number, is in use on the T-Mobile network.

T-Mobile USA, Inc.
PO Box 37380
Albuquerque, NM 87176

At this time, T-Mobile respectfully declines to issue any refunds or credits to the account. Currently, there is a zero balance. We regret any inconvenience to Ms. Wheeler.

Based upon the foregoing, we respectfully request that this complaint against T-Mobile be closed.

Thank you for bringing this matter to our attention. If you have any questions, please do not hesitate to contact me at the address listed below or at 877-290-6323 extension 341-8036.

Very truly yours,

T-MOBILE USA, INC.

Jason Moten
Executive Customer Relations

cc: Jaenelle Wheeler
4733 Torrance Blvd. Apt. 706
Torrance, CA 90503