AMERICAN ARBITRATION ASSOCIATION

PAUL ARMBRUSTER,	)	
	)	
Claimant,	)	
	)	
vs.	)	Arbitration Case No. 01-16-0003-4446
	)	
T-MOBILE USA, INC.	)	**ANSWER TO THE**
	)	**ARBITRATION DEMAND**
Respondent.	)	
	)	

T-MOBILE USA, INC.'S RESPONSE TO
PAUL ARMBRUSTER'S DEMAND FOR ARBITRATION

Respondent T-Mobile USA, Inc. ("T-Mobile") hereby denies the allegations set forth in Claimant Paul Armbruster's Demand and further denies any liability to Claimant as follows:

Claimant asserts a claim against T-Mobile for violation of the Federal Telephone Consumer Protection Act ("TCPA"). Claimant premises his claim on marketing text messages sent to Claimant's T-Mobile cell phone.

Claimant's TCPA claim against T-Mobile fails because Claimant cannot establish the elements of a TCPA claim with respect to the text messages at issue. As an initial matter, Claimant expressly consented to receiving many of the messages at issue from T-Mobile. Claimant accepted T-Mobile's Terms and Conditions and expressly consented to receive these messages:

> 16. ***Notices and Customer Communications.** You expressly consent to be contacted, by T-Mobile or anyone calling on its behalf, *for any and all purposes*, at any telephone number, or physical or electronic address where you may be reached, including any wireless telephone number. You agree that T-Mobile may contact you in any way, including, pre-recorded or artificial voice or text

> messages delivered by an automatic telephone dialing system, or e-mail messages delivered by an automatic e-mailing system.

(Terms and Conditions ¶ 16) (emphasis added). Claimant's prior express consent to receive the calls on which he bases his TCPA claim is a complete defense to his claim.

More importantly, T-Mobile did not need consent to send the type of informational messages at issue in this case. Specifically, the FCC has specifically and expressly exempted from TCPA liability customer service calls and messages sent by a wireless carrier to its customers for which the customer is not charged. *See* 7 FCC Rcd. 8752, 8775 (1992); 47 U.S.C.A. § 227(b)(2)(C) (permitting the FCC to promulgate an exemption for calls for which the cellular called party is not charged); *O'Connor v. Diversified Consultants, Inc*., No. 4:11CV 1722 RWS, 2013 WL 2319342, at *4 (E.D. Mo. May 28, 2013). As the FCC has previously explained:

> neither [the] TCPA nor the legislative history indicates that Congress intended to impede communications between radio common carriers and their customers regarding the delivery of customer services by barring calls to cellular subscribers for which the subscriber is not called [sic]. Accordingly, cellular carriers need not obtain additional consent from their cellular subscribers prior to initiating autodialer and artificial and prerecorded message calls for which the cellular subscriber is not charged.

FCC Rcd. 8752, 8775 (1992). The FCC reiterated the wireless carrier exemption in 2012:

> While the Commission adopts rules to protect consumers from unwanted telemarketing robocalls, it leaves undisturbed the regulatory framework for certain categories of calls. Specifically, consistent with section 227(b)(2)(C) of the Act and its implementing rules and orders, the Commission does not require prior written consent for calls

> made to a wireless customer by his or her wireless carrier if the customer is not charged.

77 FR 34233-01 at ¶ 10 (2012). In response to a commenters request for clarification that the wireless carrier exemption applies to calls and texts intended to inform customers about new products, the FCC stated:

> . . . the Commission addressed this issue in the 1992 TCPA Order . . . by concluding that Congress did not intend to prohibit autodialed or prerecorded message calls by a wireless carrier to its customer when the customer is not charged. The Commission based its conclusion on the fact that neither the TCPA nor its legislative history indicates that Congress intended to impede communications between common carriers and their customers regarding the delivery of customer services by barring calls to wireless consumers for which the consumer is not charged. Nothing in the record or the Commission's analysis of consumer complaints provides it a reason to alter its finding.

Id. T-Mobile sent the text messages while Claimant was an active customer, and Claimant was not charged for the messages. Therefore, T-Mobile was not required to obtain and does not need consent to send the messages. The text messages at issue fall squarely within the exemption and therefore do not violate the TCPA.

T-Mobile therefore requests that an Award be entered in T-Mobile's favor with respect to Claimant's Arbitration Demand. T-Mobile also requests a hearing in this

matter in accordance with AAA's Consumer-Related Disputes Supplementary Procedures C-5 and C-6.

This 6th day of September, 2016.

/s/Derin Dickerson
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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing **T-MOBILE USA, INC.'S RESPONSE TO PAUL ARMBRUSTER'S DEMAND FOR ARBITRATION** upon Claimant and AAA via email to the following addresses:

Claimant: 13thplaceconsulting@gmail.com
AAA: ProSeMADR@adr.org

This 6th day of September, 2016.

/s/ Lisa Garcia
LISA GARCIA