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***Via Email***

Joel Gurin
Chief, Consumer and Governmental Affairs Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Ruth Milkman
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Letter of Inquiry, DA 10-133

Dear Mr. Gurin and Ms. Milkman:

Google hereby responds to the Commission's letter of January 26, 2010 (LOI), regarding the equipment recovery fees (ERFs) charged to consumers who have purchased a Google Nexus One handset and also opted to enter into – and then prematurely terminated – a two-year contract with T-Mobile for wireless service. Below please find your original questions in bold and Google’s responses.

Introduction

One of Google's primary goals in building and releasing the Android platform has been to maximize openness and consumer choice. This dedication to openness is evidenced by all aspects of the Android strategy. First, openness is literally built into the Android operating system (OS) – the OS incorporates the open source Linux kernel and Google has released the entire platform under permissive open source licenses that allow manufacturers to build Android phones in any manner and configuration they choose. Second, the development framework for Android applications is completely open, allowing independent developers to access the entire platform and build powerful applications and distribute them without intervention from Google. Third, while Google provides the Android Market as one avenue of application distribution, third party developers are free to distribute their applications through other application stores, or even through their own websites if they choose. No one is locked into using the Google distribution channel, and users can obtain and run applications from any source they choose.

By introducing the Nexus One, the first wireless handset through our direct-to-consumer online channel, we are seeking to bring these values of openness and consumer choice to the wireless handset market as well. Consumers who would like to buy the Nexus One always have the option of buying an unlocked device through our online Webstore for $529. This device can be used on almost any compatible GSM network in the world and is not tied to any specific mobile operator. Additionally, in order to offer consumers more choice, we partnered with T-Mobile to make available a discounted (but still unlocked) Nexus One device with T-Mobile service. New T-Mobile subscribers choosing this option can buy the device for the discounted price of $179 while existing T-Mobile subscribers can upgrade their service plan and pay a price of $279 for the device. Customers purchasing a Nexus One from the Webstore currently are offered one service plan by T-Mobile – the T-Mobile Even More Individual 500 Plan.

Google is planning to widen the range of operators and plans available to consumers interested in purchasing a Nexus One, thus providing more choice and benefit to users. We have announced that we will launch a CDMA version of the Nexus One with Verizon Wireless service in the United States and will soon offer the GSM version of the Nexus One in Europe in partnership with Vodafone. Google also is actively working to add more operator partners in the U.S. and internationally in the near future, and we will preserve the option of allowing consumers to buy a fully-unlocked version of the device without operator service wherever technologically possible. Simply put, empowering consumers to pair a mobile device such as the Nexus One – and additional devices in the future – with the users' choice of operator and service options is a new model for selling mobile devices in the United States, one that we believe will maximize consumer benefits. Indeed, the FCC's LOI "welcomes new choices for consumers" provided by the Nexus One.

We have tried to be as transparent and straightforward as possible with consumers about the terms and conditions associated with purchasing a Nexus One, both with and without a T-Mobile service plan.[1] Nevertheless, some concerns and confusion have been raised about the possibility of two separate fees assessed in conjunction with early termination of a T-Mobile service contract. As a preliminary matter, we would note that Google is not a wireless network operator, does not enter into contracts for mobile service plans with customers, and does not charge an "early termination fee" (ETF) to consumers based on contractual terms in a mobile service plan related to early cancellation. With respect to the Nexus One, any ETF flowing from mobile service plan contractual terms would be charged by T-Mobile, not Google, and we are therefore not in a position to answer the FCC's questions related to the T-Mobile fee.

[1] Information about ERFs is included in the Terms of Sale that govern the purchase of the Nexus One device, as well as on the confirmation page before the user makes a purchase.

Rather, Nexus One buyers who choose to purchase a mobile service plan from T-Mobile along with an unlocked phone from Google's Webstore may in some circumstances be charged an ERF related to the discount provided on the device at the time of purchase. Specifically, customers who purchase an unlocked phone with a new T-Mobile service plan receive a discounted device price of $179 (a discount of $350 from the full price). Prior to February 4, 2010, if that customer then canceled their T-Mobile service within 120 days[2] of activation, he or she would have incurred an ERF of $350 (the exact amount of the discount they received at the time of purchase). Likewise, an existing T-Mobile subscriber that chose to upgrade their mobile service plan at the time he or she purchased a Nexus One from the Webstore would have received a price of $279 for the device and would have incurred an ERF of $250 in the event of cancellation within the 120-day period.[3]

The business rationale for the existence and amount of the ERF in each situation, for new or existing T-Mobile subscribers, is straightforward. The contract between Google and T-Mobile governing the offering of T-Mobile service plans on the Webstore provides that T-Mobile pays Google a commission for each new T-Mobile subscriber and each existing T-Mobile subscriber that upgrades her or his service plan through the Webstore. Google's business philosophy is to pass along the entire amount of any commission to the customer, in the form of a discount on the device retail price. However, where a subscriber cancels her or his service agreement with T-Mobile within a 120-day period, T-Mobile seeks full repayment of the commission from Google. To be made whole, Google consequently seeks repayment of the commission from the customer.

In response to concerns raised regarding fees, we have been working with T-Mobile to improve consumers' overall Nexus One experience by reducing the ERF charged to customers who terminate their mobile service plans for subsidized Nexus One handsets within the first 120 days. Starting on February 4, 2010, new T-Mobile subscribers who canceled their service plans within the first 120 days would be assessed an ERF of $150, instead of the original $350 fee. Likewise, an existing subscriber who cancels his or her mobile service within this time period would be charged an ERF of $50. (Because we had not yet processed any ERFs related to cancellation of a Nexus One purchaser's mobile service contract with T-Mobile, no consumers have been, or will be, charged the original ERF amount.) We succeeded in making these reductions in the ERF, while preserving the discount amounts presented to customers at the time of purchase, by amending the terms of our contract with T-Mobile.

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[2] There is no ERF charged if the customer cancels T-Mobile service within 14 days (30 days in California) of purchase. In the rest of this response, we will refer to the "14 day" period during which no ERF is charged, but it should be understood that this period is actually 30 days for customers in California.

[3] Again, the ERF was exactly equal to the amount of discount received on the device at the time of purchase.

Thus, our business philosophy remains the same: we do not intend to, nor do we in fact, generate profits from commissions paid by wireless operator partners. Instead, these commission amounts are passed along in their entirety to the customer at the time of purchase. ERFs serve the function of recovering monetary amounts for which Google is liable to a mobile operator in the event of an early cancellation of the service plan by that mobile operator's customer.

It is important to note that our discussions with T-Mobile to modify the ERF associated with the Nexus One predated the FCC's issuance of LOIs to the four major nationwide wireless carriers and Google. In the weeks prior to the issuance of the LOI, we shared with FCC staff considerable details about the contract and our subsequent discussions with T-Mobile, and provided full and complete answers to every question that was raised. In our view, the five LOIs are either too broad – by including an entity like Google that is not a wireless carrier – or too narrow – by excluding other online retailers of wireless handsets. Although Google is not a wireless carrier, nonetheless we respectfully provide these answers to the FCC's written questions.

**1. Do your ETFs apply to all service plans or only some? If so, which ones?**

*As explained above, Google does not charge an ETF to, and has no mobile service plan arrangements with, any customers.*

**2. What is the amount of the ETF for each service plan where ETFs apply? If there are different ETFs for different plans, what is the rationale for those differences?**

*See response to Question #1 above. Google does not operate a wireless network and, therefore, does not offer any service plans. Customers purchasing a Nexus One from the Google Webstore can opt to sign up for or upgrade to another T-Mobile service plan -- the T-Mobile Even More Individual 500 Plan.*

**3. How much of a discount on handset purchase is given in return for a consumer accepting an ETF? Does the amount of the discount differ by device, and if so, how?**

*Google offers only one device – the Nexus One – through the Google Webstore at this time. The full price of an unlocked Nexus One device without an operator service plan is $529. A new T-Mobile subscriber who opts to purchase the unlocked device with the Even More Individual 500 Plan from T-Mobile receives a discount of $350 for a final device price of $179. An existing T-Mobile subscriber who opts to upgrade to the T-Mobile service plan available through the Webstore receives a discount of $250 for a final price of $279 for the unlocked device.*

**4. Does the ETF itself vary by device (e.g., higher ETFs for advanced devices)? If higher ETFs apply to a certain class of devices, exactly how is that class defined?**

*Google only sells a single, unlocked wireless device – the Nexus One.*

**5. Is it possible for consumers to buy a handset from you at full price to avoid an ETF? If this is possible, can consumers buy unsubsidized handsets online, as well as at brick-and-mortar stores?**

*Yes, a consumer can buy the Nexus One device unlocked and without the T-Mobile service plan for a price of $529 from the Google Webstore. In fact, the majority of our customers to date have chosen to buy the device at this price. Google does not offer the Nexus One through brick-and-mortar stores; Google only makes the device available for purchase through the Google Webstore.*

**6. Do monthly service rates and terms differ: (1) between customers who assume a term commitment and accept an ETF, and those who don't, and (2) between customers who purchase an unsubsidized device (either from your company or a third party), and those who purchase a subsidized device? If so, how do they differ, and what is the rationale for the difference? Can customers easily determine the impacts of their decisions and their rates and terms?**

*Google is not a wireless network operator and does not offer any monthly service plans. Thus, this question is inapplicable to Google.*

**7. Are ETFs prorated so that the customer's liability decreases over time? If so, what is the exact schedule by which they are prorated?**

*Google does not charge ETFs. The ERF associated with the Nexus One is not prorated. However, the ERF is charged only if the customer cancels service between the 14th and 120th days after activation of her or his T-Mobile service plan. If the customer cancels that service plan after 120 days, no ERF is charged.*

**8. If a customer renews his or her contract without buying a new handset, does his or her monthly service fee change in any way?**

*Google is not a wireless network operator and does not offer any monthly service plans. Thus, this question is inapplicable to Google.*

**9. How long is the trial period during which consumers can cancel their service without an ETF penalty? If they cancel, can they return the handset? If they return it, will they receive a full refund, no refund, or a refund minus a restocking and/or refurbishing fee?**

*Google is not a wireless network operator, does not offer any service plan, and does not charge an ETF. As explained above, the trial period during which consumers can cancel their T-Mobile service and not incur an early recovery fee is 14 days. A customer may return her or his handset during this trial period and receive a refund of the purchase price of the device, minus a $45 restocking fee.*

**10. When do consumers receive their first bill under your service plans? How does the trial period relate, if at all, to receipt of the first bill?**

*Google is not a wireless network operator and does not offer any monthly service plans. Thus, this question is inapplicable to Google.*

**11. Are there consumer fees or charges in addition to ETFs if consumers buy handsets and/or service plans from online phone dealers, such as Amazon, LetsTalk, and Simplexity (d/b/a Wirefly), or from a service provider, if a customer does not complete the contract term? If so, what are they, and what are their levels, terms, and conditions? Do the fees or charges affect the ETFs and if so, how?**

*Google is not a wireless network operator and does not offer any monthly service plans. Thus, this question is inapplicable to Google. We note that other online retailers of wireless handsets sold with mobile operator plans also charge equipment recovery fees.*

**12. Press reports and public statements from wireless companies have attributed ETFs to several different factors. What is the rationale for your ETF(s), and how specifically do the structure and level of those ETF(s) relate to that rationale?**

*As noted above, Google does not charge an ETF. Rather, an ERF (the rationale for which is discussed above) is charged in the event a customer cancels her or his T-Mobile service plan between the 14th and 120th days after activation. Since February 4, 2010, the ERF is $150 for new T-Mobile subscribers who cancel within this period and $50 for existing T-Mobile subscribers who likewise cancel within the 120-day period.*

Please feel free to contact the undersigned should you have any further questions regarding this matter.

Respectfully submitted,

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Washington Telecom and Media Counsel
Google Inc.