





**A RESOLUTION**

**BY THE PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

**A RESOLUTION AUTHORIZING THE SETTLEMENT OF ALL CLAIMS AGAINST THE CITY OF ATLANTA IN THE CASE OF T-MOBILE SOUTH, LLC v CITY OF ATLANTA, ET AL, CIVIL ACTION FILE NO. 2009-CV-176543, PENDING IN FULTON COUNTY SUPERIOR COURT, IN THE FORM OF A CREDIT TO THE PLAINTIFF IN THE AMOUNT OF TWO HUNDRED-TWENTY THOUSAND FIVE HUNDRED AND SEVEN DOLLARS AND EIGHTY-EIGHT CENTS (\$220,507.88); AUTHORIZING SAID PAYMENT TO MADE IN THE FORM OF A CREDIT TO THE E911 ACCOUNT OF T-MOBILE SOUTH, LLC FEIN #20-3945483 WITH THE CITY OF ATLANTA; AUTHORIZING THE CHIEF FINANCIAL OFFICER TO DISTRIBUTE THE SETTLEMENT AMOUNT AS A CREDIT AGAINST MONTHLY PAYMENTS THE PLAINTIFF MAKES TO THE CITY OF ATLANTA FOR E911 FEES; AND FOR OTHER PURPOSES.**

**WHEREAS**, O.C.G.A. § 46-5-133(a) authorizes municipalities to charge a \$1.50 fee for 911 for telephone services; and

**WHEREAS**, T-Mobile Mobile South, LLC (“T-Mobile”) sought to recoup monies paid incorrectly to the City for 911 service fees for prepaid wireless subscribers and;

**WHEREAS**, T-Mobile South LLC v City of Atlanta, is a case wherein Plaintiff alleges that the state legislation during the period of June 2003 through May 2005 (the “Refund Period”) did not include “prepaid customers” as being considered telephone subscribers who were required to pay the 911 service fee to municipalities; and

**WHEREAS**, Plaintiff simultaneously sued Fulton County for the same allegations set forth in the herein cause of action in Civil Action File Number 2008CV158265 in a case entitled T-Mobile South LLC, v Fulton County, Georgia on October 9, 2008, which, like the City of Atlanta, is authorized to impose and collect 9-1-1 charges.

**WHEREAS**, By order dated September 17, 2009, the Fulton County Superior Court found for the Plaintiff and required Fulton County to pay T-Mobile a refund in the amount of \$101,618.66 plus 7% in interest; and



**WHEREAS**, this settlement seeks payment of the principal amount paid by Plaintiff during the Refund Period plus 3.5% interest to be tendered as credits to the Plaintiff from the City of Atlanta for 911 fees Plaintiff currently pays to the City and,

**WHEREAS**, the City Attorney has reviewed the facts and applicable law related hereto and has determined that the City's potential financial exposure in defending Plaintiff's claims is in excess of the settlement amount. Further, parties have negotiated a Settlement Agreement (Attached hereto as "Exhibit A") acceptable to both parties; and

**WHEREAS**, the City Attorney considers it to be in the best interest of the City to provide a credit against the amounts paid by the Plaintiff up the amount of \$220,507.88 representing repayment of the amount paid to the city plus interest of 3.5% to settle all claims against the City of Atlanta.

**THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA hereby resolves as follows:**

Section 1. The City Attorney is hereby authorized to settle and execute all documents in the case of **T-Mobile South LLC v City of Atlanta** in the amount of \$220,507.88.

Section 2. That a Settlement Agreement substantially in the form attached hereto as Exhibit A is authorized to be executed by the proper parties.

Section 3. The Chief Financial Officer is authorized to provide a credit against the amounts paid by the plaintiff for monthly 911 fees up the amount of \$220,507.88 representing repayment of the amount paid to the city plus interest of 3.5% to settle all claims against the City of Atlanta **Civil Action File # 2009-CV-176543**. Such shall be in full consideration of the dismissal of all claims against the City of Atlanta and its current and former officers and employees.

A true copy,



Deputy Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

JAN 17, 2012  
JAN 26, 2012



## EXHIBIT A

### CLOSING AGREEMENT

IN THIS CLOSING AGREEMENT, dated as of December \_\_\_, 2011, it is hereby agreed by and between PLAINTIFF T-MOBILE SOUTH LLC (d/b/a T-MOBILE USA), as successor-in-interest to POWERTEL ATLANTA, INC., (“Plaintiff T-Mobile”) and DEFENDANTS CITY OF ATLANTA, GEORGIA; and CARLA SMITH, KWANZA HALL, IVORY LEE YOUNG, CLETA WINSLOW, NATALYN ARCHIBONG, ANNE FAUVER, HOWARD SHOOK, CLAIR MULLER, FELICIA A. MOORE, CLARENCE T. MARTIN, JIM MADDOX, JOYCE M. SHEPERD, CAESAR C. MITCHELL, MARY NORWOOD, and H. LAMAR WILLIS, in their Official Capacities as ATLANTA CITY COUNCIL MEMBERS, and LISA BORDERS, in her Official Capacity as ATLANTA CITY COUNCIL PRESIDENT, (collectively, “Defendant City of Atlanta” and, together with Plaintiff T-Mobile, the “Parties”) as follows:

WHEREAS, a dispute exists between the Parties, the subject matter of which includes, without limitation, all claims asserted in the action styled T-Mobile South LLC v. City of Atlanta, et al., Civil Action file No. 2009-CV-176543 currently pending in the Fulton County Superior Court (the “Action”); and

WHEREAS, DEFENDANTS deny any wrongdoing or culpability related to the allegations set forth in said Action; and

WHEREAS, the Parties desire to settle, compromise and resolve their disputes, including without limitation all claims that have been or could have been asserted in the Action; and



WHEREAS, to avoid the uncertainty and expense of further litigation, the Parties have reached agreement on a settlement of the Action; and

WHEREAS, the Parties have each received the advice of counsel in the preparation, drafting and execution of this Closing Agreement, which was negotiated at arm's length;

NOW, THEREFORE, in consideration of and in reliance upon the recitals, mutual promises, mutual covenants, understandings and obligations, and other good and valuable consideration set forth herein and intending to be legally bound thereby, the Parties agree as follows:

1. The Defendant City of Atlanta will refund to Plaintiff T-Mobile a total of One Hundred Eighty-Seven Thousand Six Hundred Sixty-Five and 88/100 Dollars (\$187,665.88) in 9-1-1 charges that were paid in error to Defendant City of Atlanta by Plaintiff T-Mobile and which are the subject of the Action.

2. Defendant City of Atlanta will pay to Plaintiff T-Mobile interest at the rate of 3.5% and computed from the date that T-Mobile filed the refund claim that is the subject of the Action, October 16, 2006, through the date of payment of the interest, and said interest will be at least Thirty-Two Thousand Eight Hundred Forty-Two and 00/100 Dollars (\$32,842.00).

3. The payment of the refund in the amount of One Hundred Eighty-Seven Thousand Six Hundred Sixty-Five and 88/100 Dollars (\$187,665.88), together with the payment of interest of 3.5%, which amount shall be at least Thirty-Two Thousand Eight Hundred Forty-Two and 00/100 Dollars (\$32,842.00), will comprise the "Settlement Amount."

4. Plaintiff T-Mobile agrees to accept the Settlement Amount as full and final settlement of the Action.



5. Defendant City of Atlanta will pay the Settlement Amount in the form of a credit to the E911 account of T-Mobile South, LLC FEIN 20-3945483 with Defendant City of Atlanta (the "T-Mobile E911 Account").

6. Defendant City of Atlanta shall apply the Settlement Amount as a credit to all amounts owed by Plaintiff T-Mobile on the T-Mobile E911 Account beginning with the first amount owed on the T-Mobile E911 Account within thirty (30) days of the date on which this Closing Agreement is signed by Plaintiff T-Mobile.

7. As an amount comes due on the T-Mobile South E911 Account, the liability shall be paid from the Settlement Amount credit, until the Settlement Amount credit is exhausted.

8. Within ten (10) business days after receiving the final application of the Settlement Amount credit to T-Mobile South LLC E911 Account, Plaintiff T-Mobile shall file with the Superior Court of Fulton County a dismissal of the Action. T-Mobile will provide a copy of said dismissal, which should be filed with prejudice and without costs to either party, to the City of Atlanta, through its attorney of record in the Action.

9. Each Party to this Closing Agreement agrees that it shall bear the costs of its own attorney's fees and other expenses and costs of litigation related to this matter.

10. Except for the obligations imposed by this Agreement, each Party on behalf of itself and each of its agents, representatives, attorneys, administrators, successors, and assigns, do hereby release, remise, discharge and forever acquit the other and each of their present and former agents, officers, employees, attorneys, successors and assigns from any and all actions, causes of action, suits, debts, claims and demands whatsoever, arising out of or relating to the claims and defenses set forth in the Action, which have been asserted or which could have been



asserted therein, including but not limited to any claims for attorney's fees or costs incurred in connection with the Action.

11. The Parties acknowledge that the release granted herein is a general release of all claims that each has or might have arisen from the Action, and further expressly waive and assume the risk of any and all claims or causes of action for damages or other relief that exist as of this date but which Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, which, if known, would have materially affected the decision to enter into this Agreement.

12. The Parties recognize that this Agreement effects the settlement of claims which are denied and contested, and nothing contained in this Agreement shall constitute or be construed as an admission of the validity of any claim or allegation, asserted or unasserted, or as an admission of any liability by or on behalf of any Party. The Parties expressly deny all such liability.

13. Plaintiff T-Mobile and Defendant City of Atlanta agree that this Closing Agreement shall be binding on Plaintiff T-Mobile and Defendant City of Atlanta and on their administrators, successors, heirs and assigns, if any, and fully, completely and definitively resolves all issues arising from the Action for the years contained therein.

14. The terms of this Closing Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

15. This Closing Agreement sets forth the full and final terms of the agreement between Plaintiff T-Mobile and Defendant City of Atlanta, the Parties to this Closing Agreement. Neither this Closing Agreement nor any provision contained in this Closing



Agreement may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the Parties.

16. Any and all notices, demands, requests and responses permitted or required to be given under this Closing Agreement shall be in writing, signed by or on behalf of the Party giving the same, and shall be deemed to have been properly given and shall be effective upon being personally delivered, or five (5) business days after being deposited in the United States mail, postage prepaid, certified with return receipt requested, addressed in each case as follows:

To T-Mobile

Richard C. Litwin  
The Litwin Law Firm, P.C.  
1742 Mt. Vernon Road  
Suite 300  
Atlanta, Georgia 30338

T-Mobile 12920 SE 38<sup>th</sup> Street  
Bellevue, Washington 98006  
Attention: Tax Department

To City of Atlanta

City of Atlanta Law Dept.  
Attn: Telecom Atty c/o Martin Clarke  
68 Mitchell Street, Suite 4100  
Atlanta, GA 30303

City of Atlanta  
Attn: Gary Donaldson  
Attn: Dept of Revenue  
55 Trinity Avenue, Suite 1350  
Atlanta, GA 30303

17. The undersigned representatives of the Parties to this Closing Agreement each acknowledge that he/she is authorized to execute this Closing Agreement on behalf of each entity designated under his or her signature. Said representatives further acknowledge and represent



that the Parties to this Closing Agreement are represented and advised by counsel with regard to this Closing Agreement; that the Parties to this Closing Agreement have fully read this Closing Agreement; that the Parties to this Closing Agreement are entering into this Closing Agreement voluntarily and without promise or benefit other than as set out in this Closing Agreement.

18. This Closing Agreement may be executed in counterparts, each of which shall be deemed an original and, together, shall constitute one and the same Closing Agreement.

**SIGNATURES ON THE FOLLOWING TWO PAGES**

ACCEPTED AND AGREED TO BY:

THE CITY OF ATLANTA, GEORGIA

By: \_\_\_\_\_

City Attorney



ACCEPTED AND AGREED TO BY:

T-MOBILE SOUTH LLC, (d/b/a T-MOBILE  
USA), as successor-in-interest to POWERTEL  
ATLANTA, INC.

By: \_\_\_\_\_

Lauren Venezia

Senior Vice President,

Deputy General Counsel

And Assistant Secretary



ACCEPTED AND AGREED TO BY:

T-MOBILE SOUTH LLC, (d/b/a T-MOBILE  
USA), as successor-in-interest to POWERTEL  
ATLANTA, INC.

By: \_\_\_\_\_

Lauren Venezia

Senior Vice President,

Deputy General Counsel

And Assistant Secretary



<b>ITEMS ADOPTED ON CONSENT</b>	<b>ITEMS ADOPTED ON CONSENT</b>	<b>01-17-12 ITEMS ADVERSED ON CONSENT</b>
1. 11-O-1805 2. 11-O-1806 3. 11-O-1807 4. 11-O-1808 5. 11-O-1809 6. 11-O-1810 7. 11-O-1509 8. 12-O-0076 9. 11-O-1813 10. 11-O-1820 11. 12-O-0071 12. 12-O-0078 13. 12-R-0011 14. 11-R-1627 15. 11-R-1716 16. 11-R-1812 17. 12-R-0014 18. 12-R-0015 19. 12-R-0072 20. 12-R-0073 21. 12-R-0074 22. 12-R-0075 23. 12-R-0050 24. 12-R-0051 25. 12-R-0052 26. 12-R-0053 27. 12-R-0056 28. 12-R-0063 29. 12-R-0064 30. 12-R-0066 31. 12-R-0068 32. 12-R-0018 33. 12-R-0019 34. 12-R-0020 35. 12-R-0021	36. 12-R-0022 37. 12-R-0023 38. 12-R-0024 39. 12-R-0025 40. 12-R-0026 41. 12-R-0027 42. 12-R-0028 43. 12-R-0029 44. 12-R-0030 45. 12-R-0031 46. 12-R-0032 47. 12-R-0033 48. 12-R-0034 49. 12-R-0035 50. 12-R-0036 51. 12-R-0037 52. 12-R-0038 53. 12-R-0039 54. 12-R-0040 55. 12-R-0041	56. 12-R-0042 57. 12-R-0043 58. 12-R-0044 59. 12-R-0045