**ILLINOIS INDEPENDENT TAX TRIBUNAL**

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| **T-MOBILE USA, INC.,** | ) | |
| | ) | |
| **Petitioner,** | ) | |
| **v.** | ) | **14-TT-91** |
| | ) | |
| **ILLINOIS DEPARTMENT OF REVENUE,** | ) | |
| | ) | |
| **Respondent.** | ) | |

**Proof of Service**

I, Jennifer Kieffer, an attorney for the Department of Revenue, state that I have this **4th day of December, 2014**, served the foregoing Answer to Petitioner's First Amended Petition upon the counsel of record for Petitioner, by email to:

Marilyn A. Wethekam,
Breen M. Schiller
Christopher T. Lutz
Horwood Marcus & Berk Chartered
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/s/ Jennifer Kieffer

Jennifer Kieffer
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**ILLINOIS INDEPENDENT TAX TRIBUNAL**
**CHICAGO, ILLLINOIS**

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| **T-MOBILE USA, INC.,** | ) | |
| **Petitioner,** | ) | |
| **v.** | ) | **14-TT-91** |
| | ) | |
| **ILLINOIS DEPARTMENT OF REVENUE,** | ) | |
| **Respondent.** | ) | |

## ANSWER TO PETITIONER'S FIRST AMENDED PETITION

**NOW COMES** Respondent, the Illinois Department of Revenue of the State of Illinois (the "Department"), through its attorney, Lisa Madigan, Attorney General of and for the State of Illinois, and for its Answer to T-Mobile USA, Inc's., ("Petitioner") First Amended Petition respectfully pleads as follows:

1. For the tax years ending 2009 – 2010 ("Years in issue"), Petitioner, a Delaware corporation, was a wholly owned subsidiary of Deutsche Telekom AG, a German company. During the Audit Period Deutsche Telekom AG indirectly owned 100% of the Petitioner through foreign holding companies. Petitioner's principal business address is 12920 SE 38th Str., Bellevue, WA, 98006-1350.

**ANSWER:** The information contained in Paragraph 1 is required by Illinois Independent Tax Tribunal Regulation ("Rule") 310(a) (1) (A) (86 Ill. Adm. Code §5000.310) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2). To the extent an answer is required, Department admits the factual allegations contained in Paragraph 1.

2. Petitioner is represented by Marilyn A. Wethekam, Breen M. Schiller, and Christopher T. Lutz of Horwood Marcus & Berk Chartered, located to 500 West Madison St., Suite 3700, Chicago, Illinois 60661, who can be reached at 312-606-3240 or mwetheka@hmblaw.com; 312-606-3220 or bschiller@hmblaw.com; and clutz@hmblaw.com or 312-606-3222, respectively.

**ANSWER:** The information contained in Paragraph 2 is required by Rule 310(a) (1) (B) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b) (2).

3. Petitioner's FEIN is 91-1983600.

**ANSWER:** The information contained in Paragraph 3 is required by Rule 310(a) (1) (C) and is not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). To the extent an answer is required, Department admits the factual allegations in Paragraph 3.

4. Petitioner provides wireless voice, messaging, and data services in the United States.

**ANSWER:** Department admits the factual allegations in Paragraph 4.

5. The Department is an agency of the Executive Department of the State Government and is tasked with the enforcement and administration of Illinois tax laws. 20 ILCS 5/5-15.

**ANSWER:** Department admits that the Department is an agency of the State of Illinois and that the Department is responsible for enforcing the Illinois Income Tax Act (35 ILCS 5/101 et seq.), which is relevant to the legal claims raised in Taxpayer's Petition. The term "tax laws" is vague and therefore the Department denies all other allegations contained in Paragraph 5 and demands strict proof thereof.

## NOTICES

6. On March 31, 2014, the Department issued two Notices of Deficiency ("Notices") for tax, penalties, and interest totaling $4,638,710.05 for the Years in Issue. The Notices are attached hereto as Exhibits A and B respectively. Unless otherwise stated, the following paragraphs relate to the Years in Issue.

**ANSWER**: The Notices of Deficiency speak for themselves. Department admits Exhibits A and B of Taxpayer's Petition contain copies of Notices issued by the Department to Taxpayer. Department admits it issued a Notice of Deficiency to Taxpayer for the year ending December 2009 with a total deficiency in the amount of $4,032,412.40. Department admits it issued a Notice of Deficiency to Taxpayer for the year ending December 2010 with a total deficiency in the amount of $606,297.75. Department denies the remaining factual allegations in Paragraph 6.

## JURISDICTION

7. Petitioner brings this action pursuant to the Illinois Independent Tax Tribunal Act ("Tribunal Act"), 35 ILCS 1010/1-1 to 35 ILCS 1010-1-100 and the Illinois Income Tax Act ("Income Tax Act"), 35 ILCS 5/101 et. Seq.

**ANSWER:** Department admits the factual allegations in Paragraph 7.

8. This Tribunal has jurisdiction over this matter pursuant to Section 1-45 and 1-50 of the Tribunal Act because Petitioner timely filed this petition within 60 days of the Notices.

**ANSWER:** Department admits the factual allegations in Paragraph 8.

## BACKGROUND

9. Petitioner is engaged in the business of providing wireless voice, messaging, and data services in the United States, Puerto Rico, and the U.S. Virgin Islands through various subsidiaries.

**ANSWER:** Upon information and belief, Department admits the factual allegations in Paragraph 9.

10. Petitioner is the United States wireless operation that is a part of the Deutsche Telekom telecommunications group ("DT Group"). The ultimate parent of the DT Group is Deutsche Telekom AG ("DT Parent"). Deutsche Telekom AG is also the parent company of Deutsche Telekom International Finance B.V., a Netherlands financing company ("DTIF").

**ANSWER:** Upon information and belief, Department admits Deutsche Telekom AG is the parent company of Petitioner and Deutsche Telekom International Finance B.V. DT Group is not defined. Therefore, the Department denies the remaining factual allegations in Paragraph 10.

11. For the Years in issue, petitioner made interest and royalty payments to DT Parent and interest payments to DTIF.

**ANSWER:** Department admits that Petitioner claimed interest payments and intangible expense payments to Deutsche Telekom AG and interest payments to Deutsch Tele. Int'l Fin. BV on Petitioner's 2009 and 2010 Illinois income tax returns.

12. On audit, the Department disallowed the expense deductions, contending that Petitioner failed to provide proof that tax was paid by DT Parent and DTIF.

**ANSWER:** The Department objects to Paragraph 12 in that it is vague and the phrase "disallowed the expense deductions" is ambiguous. Department admits that Department's auditor included interest payments and intangible expense payments made by Petitioner to related parties in Petitioners Addition Modification (Schedule 80/20) on Line 6 of Form IL-1120 for tax years 2009 and 2010. Department denies the remaining factual allegations in Paragraph 12.

13. During the audit, the Department indicated that it required Petitioner to provide copies of the German and Dutch tax returns (translated into English) showing that tax was paid on the interest and royalty income.

**ANSWER:** Department admits that the Auditor requested that Petitioner provide English versions/copies of tax returns showing that tax was paid on the interest payments and intangible expense payments for which Petitioner claimed an exemption from the addition modification on Schedule 80/20 for tax years 2009 and 2010.

14. Petitioner provided the Department a number of documents proving that its Parent paid tax on its net income in Germany, including a Declaration on Registration of Taxpayers issued by the Federal Central Tax Office in Bonn, Germany for the Years in Issue 2009 and 2010.

**ANSWER**: The Department objects to Paragraph 14 in that it is vague and the phrase "number of documents" is ambiguous. The Department admits that Petitioner provided the Department one (1) document titled "Declaration on Registration of Taxpayers for the Years 2009 & 2010" however, the Department denies said document is sufficient proof that Petitioner's Parent paid tax on its net income in Germany and denies the remaining factual allegations contained in Paragraph 14.

15. On March 31, 2014, the Department issued to Petitioner the Notices based on, among other things, the disallowance of the expense deductions.

**ANSWER:** Department admits the factual allegations contained in Paragraph 15.

## COUNT I

16. Petitioner realleges and incorporates by this reference the allegations made in paragraphs 1 through 15, inclusive, hereinabove.

**ANSWER:** Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 15 as if fully set forth herein.

17. The Illinois Income Tax Act requires an add-back for Illinois purposes of interest and intangible expenses paid to a foreign company which would be included in the Illinois combined unitary group, if not for the fact that the company conducts eighty-percent (80%) of its business activity outside the United States ("80/20 Add-Back Rule"). 35 ILCS §§5/203(b)(2)(E-12) and (E-13).

**ANSWER:** Paragraph 17 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12) and (E-13) referred to in Paragraph 17 and states that such law speaks for itself.

18. In Illinois, a "unitary business group" is defined as a "group of persons related by common ownership whose business activities are integrated with, dependent upon, and contribute to each other." 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700.

**ANSWER:** Paragraph 18 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700 referred to in Paragraph 18 and states that such law speaks for itself.

19. Common ownership, while necessary to the existence of a unitary business group, is not sufficient in itself to establish the existence of a unitary business group.

**ANSWER:** Paragraph 19 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits

the existence, force and effect of 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700 referred to in Paragraph 19 and states that such law speaks for itself.

20. Whereas according to Illinois law, "no group of persons can be a unitary business group unless they are functionally integrated through the exercise of strong centralized management." 86 Ill. Admin. Code §100.9700(g).

**ANSWER:** Paragraph 20 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700 referred to in Paragraph 20 and states that such law speaks for itself.

21. It is this exercise of strong centralized management that is the primary indicator of mutual dependency, mutual contribution and mutual integration between persons that is necessary to constitute them members of the same unitary business group. *Id.*

**ANSWER:** Paragraph 21 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700 referred to in Paragraph 21 and states that such law speaks for itself.

22. The exercise of strong centralized management will be deemed to exist where authority over such matters as purchasing, financing, tax compliance, produce line, personnel, marketing and capital investment is not left to each member. *Id.*

**ANSWER:** Paragraph 22 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS §5/1501(a)(27); 86 Ill. Admin. Code §100.9700 referred to in Paragraph 22 and states that such law speaks for itself.

23. Here, although petitioner, DT parent and DTIF are indirectly related by ownership, they are not functionally integrated through the exercise of strong centralized management.

**ANSWER:** Department denies the allegations in Paragraph 23 and demands strict proof thereof.

24. Each company operates separate and distinct businesses which are not dependent upon each other.

**ANSWER:** Department denies the allegations in Paragraph 24 and demands strict proof thereof.

25. Petitioner does not share management of operational resources such as purchasing, financing, tax compliance, or personnel, with either DT Parent or DTIF.

ANSWER: Department denies Paragraph 25 and demands strict proof thereof.

26. Petitioner has its own management, structure, and systems located within the United States that is separate and distinct from those of both DT Parent and DTIF.

**ANSWER:** Department denies the allegations in Paragraph 26 and demands strict proof thereof.

27. Petitioner operates independently of and without direction from either DT parent or DTIF.

**ANSWER:** Department denies the allegations in Paragraph 27 and demands strict proof thereof.

28. As such, neither DT Parent nor DTIF are unitary with Petitioner and properly includible in Petitioner's Illinois unitary combined group.

**ANSWER:** Department denies the allegations in Paragraph 28 and demands strict proof thereof.

29. Accordingly, Petitioner is not subject to the 80/20 Add-Back Rule because it is not unitary with either DT Parent or DTIF.

**ANSWER:** Department denies the allegations in Paragraph 29 and demands strict proof thereof.

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order:

a. Denying each prayer for relief in Petitioner's Petition;
b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
c. Entering judgment in favor of the Department and against the Petitioner, and;
d. Granting any further relief this Tribunal deems just and appropriate.

## COUNT II

30. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 29, inclusive, hereinabove.

**ANSWER:** Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 29 as if fully set forth herein.

31. Illinois law requires that taxable income include, in addition to base income reported on a taxpayer's federal return, an amount equal to the amount otherwise allowed as a deduction in computing base income for interest paid, accrued, or incurred, directly or indirectly under certain circumstances. 35 ILCS 5/203(b)(2)(E-12).

**ANSWER:** Paragraph 31 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits

the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12) referred to in Paragraph 31 and states that such law speaks for itself.

32. However, this addition modification shall not apply in instances where an item of interest is paid, accrued or incurred, directly or indirectly, to a person who is subject in a foreign country or state, other than a state which requires mandatory unitary reporting, to a tax on or measured by net income with respect to such interest. 35 ILCS 5/203(b)(2)(E-12)(i).

**ANSWER:** Paragraph 32 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12) referred to in Paragraph 32 and states that such law speaks for itself.

33. Although the Department did not refer to the statute in its Explanation of Adjustments, 35 ILCS5/203(b)(2)(E-13) provides for an identical addition modification and exception to the modification in the case of royalty expenses.

**ANSWER:** Paragraph 33 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-13) referred to in Paragraph 33 and states that such law speaks for itself.

34. In order for a domestic subsidiary to deduct interest and royalty expenses from its Illinois taxable income, it need only demonstrate that the income-recipient entity is subject to a foreign tax on or measured by net income with respect to such interest and royalty income.

**ANSWER:** Paragraph 34 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

35. DT parent was subject to tax measured by net income in Germany.

**ANSWER:** Department denies the factual allegations in Paragraph 35 and demands strict proof thereof.

36. Petitioner is not required to prove anything other than the fact that its parent was subject to tax measured by net income with respect to income earned in the foreign jurisdiction.

**ANSWER:** Paragraph 36 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Additionally, the term “subject to tax” is vague and ambiguous.

37. Petitioner provided documentation proving that DT Parent was subject to such a tax, including a Declaration on Registration of Taxpayers issued by the Federal Central Tax Office in Bonn, Germany for the Years in Issue 2009 and 2010.

**ANSWER:** The Department admits that Petitioner provided the Department one (1) document pursuant to the Auditor’s request, titled “Declaration on Registration of

Taxpayers for the Years 2009 & 2010," but the Department denies said document is sufficient proof that Petitioner's Parent is subject to a tax and denies the remaining factual allegations contained in Paragraph 37 and demands strict proof thereof.

38. DTIF was subject to tax measured by net income in the Netherlands.

**ANSWER:** Department denies the factual allegations in Paragraph 38 and demands strict proof thereof.

39. DTIF complied with its income tax filing obligation in the Netherlands.

**ANSWER:** Department denies the factual allegations in Paragraph 39 and demands strict proof thereof.

40. Petitioner is not required to prove anything other than the fact that DTIF was subject to tax measured by net income with respect to income earned in the foreign jurisdiction.

**ANSWER:** Paragraph 40 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2).

41. Because DT Parent was subject to tax on its income, including its interest and royalty income, in Germany; and DTIF was subject to tax on its interest income in the Netherlands, the Department's addition modification to Petitioner's base income for the Years in Issue was in error.

**ANSWER:** Department denies the factual allegations in Paragraph 41 and demands strict proof thereof.

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order:

a. Denying each prayer for relief in Petitioner's Petition;
b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
c. Granting judgment in favor of the Department and against the Petitioner, and;
d. Granting any further relief this Tribunal deems just and appropriate.

## COUNT III

42. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 41, inclusive, hereinabove.

**ANSWER:** Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 41 as if fully set forth herein.

43. If a taxpayer can establish, based on clear and convincing evidence, that the interest paid relates to a contract or agreement entered into at arm's length rates and terms and the principal purpose for the payment is not federal or Illinois tax avoidance, the interest payments should not be added back to it Illinois taxable income. 35 ILCS 5/203(b)(2(E-12)(iii).

**ANSWER:** Department admits the existence, force and effect of 35 ILCS 5/203(b)(2)(E-12)(iii) referred to in Paragraph 43 and states that such statute speaks for itself.

44. Petitioner engaged a third party to perform a transfer pricing study with respect to its interest payments to DT Parent and DTIF during the Years at Issue ("2009-10 Study").

**ANSWER:** Department is without sufficient information or knowledge as to whether Petitioner engaged a third party to perform a 2009-10 Study for the Years at Issue and therefore, denies the allegation contained in paragraph 44 of Count III of the First Amended Petition.

45. The transfer pricing study concluded that all payments made to DT Parent and DTIF were made at arm's-length rates and terms.

**ANSWER:** Department is without sufficient information or knowledge as to whether the transfer pricing study concluded that all payments made to DT Parent and DTIF were made at arm's-length rates and terms and therefore, denies the allegation(s) contained in paragraph 45 of Count III of the First Amended Petition.

46. The Internal Revenue Service (IRS) is currently auditing Petitioner for tax years ending December 31, 2011 and December 31, 2012.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS is auditing Petitioner for tax years ending December 31, 2011 and December 31, 2012 and therefore, denies the allegation(s) contained in paragraph 46 of Count III of the First Amended Petition and further states that an IRS audit is irrelevant for purposes of this matter.

47. As part of its audit, the IRS has reviewed Petitioner's transfer pricing study for the tax years ending December 31, 2011 and December 31, 2012 ("2011-12 Study") (Collectively with the 2009-10 Study referred to herein as the "Studies").

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS reviewed Petitioner's transfer pricing study for tax years ending December 31, 2011 and December 31, 2012 (2011-12 Study") (Collectively with the 2009-10 Study referred to herein as the "Studies") and therefore denies the allegation(s) contained in paragraph 47 and further states that an IRS audit is irrelevant for purposes of this matter.

48. The IRS has made no adjustments to the interest payments Petitioner made to DT Parent and DTIF.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS made adjustments to the interest payments Petitioner made to DT Parent and DTIF and therefore denies the allegation(s) contained in paragraph 48 and further states that an IRS audit is irrelevant for purposes of this matter.

49. Petitioner's debt for the tax years ending December 31, 2011 and December 31, 2012 was the same as Petitioner's debt in both 2009 and 2010.

**ANSWER:** Department objects to Paragraph 49 in that it is vague, ambiguous and irrelevant as to the phrase "debt" because Petitioner fails to identify the debt. Department denies the allegations in paragraph 49 and demands strict proof thereof.

50. Both the 2009-10 and 2011-12 Studies included a review of Petitioner's outstanding debt and royalty payments for those years.

**ANSWER:** Department is without sufficient information or knowledge as to whether the 2009-10 and 2011-12 Studies included a review of Petitioner's outstanding debt and royalty payments for those years and therefore denies the allegation(s) contained in paragraph 50.

51. The IRS reviewed the 2011-12 Study, and confirmed that the payments were made at arm's length and proposed no changes.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS reviewed the alleged 2011-12 Study, and confirmed that the payments were made at arm's length and proposed no changes and therefore denies the allegation(s) contained in paragraph 51.

52. Petitioner made the interest payments to DT parent and DTIF at arm's length rate and terms.

**ANSWER:** Department denies the allegations in Paragraph 52 and demands strict proof thereof**.**

53. Petitioner made the interest payments to DT Parent and DTIF for legitimate business purposes, not the avoidance of tax.

**ANSWER:** Department denies the allegations in Paragraph 53 and demands strict proof thereof.

54. Petitioner's interest payments made to DT Parent and DTIF should not be added to Petitioner's taxable income pursuant to 35 ILCS 5/203(b)(2)(E-12)(iii).

**ANSWER:** Department denies the allegations in Paragraph 54 and demands strict proof thereof .

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order:

a. Denying each prayer for relief in Petitioner's Petition;
b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
c. Ordering judgment in favor of the Department and against the Petitioner, and;

d. Granting any further relief this Tribunal deems just and appropriate.

**COUNT IV**

55. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 54, inclusive, hereinabove.

**ANSWER:** Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 54 as if fully set forth herein.

56. If a taxpayer can establish, based on clear and convincing evidence, that adding back royalty payments to its taxable income in unreasonable, the royalty payments should not be added back to its Illinois taxable income. 35 ILCS 5/203(b)(2)(E-12)(iii).

**ANSWER:** Department admits the existence, force and effect of 35 ILCS 5/203(b)(2(E-12)(iii) referred to in Paragraph 56 and states that such statute speaks for itself.

57. Petitioner engaged a third party to perform a transfer pricing study with respect to its royalty payments to DT Parent.

**ANSWER:** Department is without sufficient information or knowledge as to whether Petitioner engaged a third party to perform transfer pricing study with respect to its royalty payment to DT Parent and, therefore, denies the allegation contained in paragraph 57 of Count IV of the First Amended Petition.

58. The transfer pricing study concluded that all royalty payments made to DT parent were made at arm's-length rates and terms.

**ANSWER:** Department is without sufficient information or knowledge as to whether the transfer pricing study concluded that all royalty payments made to DT Parent and DTIF were made at arm's-length rates and terms and therefore, denies the allegation(s) contained in paragraph 58 of Count IV of the First Amended Petition.

59. The Internal Revenue Service (IRS) is currently auditing Petitioner for tax years ending December 31, 2011 and December 31, 2012.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS is auditing Petitioner for tax years ending December 31, 2011 and December 31, 2012 and therefore, denies the allegation(s) contained in paragraph 59 of Count IV of the First Amended Petition and further states that an IRS audit is irrelevant for purposes of this matter.

60. As part of its audit, the IRS has reviewed Petitioner's transfer pricing study for the 2011-12 Study.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS reviewed Petitioner's transfer pricing study for 2011-12 Study and therefore denies the allegation(s) contained in paragraph 60 and further states that an IRS audit is irrelevant for purposes of this matter.

61. Both the 2009-10 and 2011-12 Studies included a review of Petitioner's outstanding debt and royalty payments for those years.

**ANSWER:** Department is without sufficient information or knowledge as to whether the 2009-10 and 2011-12 Studies included a review of Petitioner's outstanding debt and royalty payments for those years and therefore denies the allegation(s) contained in paragraph 61.

62. The IRS has made no adjustments to the royalty payments Petitioner made to DT Parent and DTIF.

**ANSWER:** Department is without sufficient information or knowledge as to whether the IRS made adjustments to the royalty payments Petitioner made to DT Parent and DTIF and therefore denies the allegation(s) contained in paragraph 62 and further states that an IRS audit is irrelevant for purposes of this matter.

63. Petitioner made the royalty payments to DT parent and DTIF at arm's length rate and terms.

**ANSWER:** Department denies the allegations in Paragraph 63 and demands strict proof thereof**.**

64. Petitioner made the royalty payments to DT Parent and DTIF for legitimate business purposes, not the avoidance of tax.

**ANSWER:** Department denies the allegations in Paragraph 64 and demands strict proof thereof.

65. Adding back the royalty payments is unreasonable because these payments constitute legitimate business expenses paid by Petitioner.

**ANSWER:** Department denies the allegations in Paragraph 65 and demands strict proof thereof.

66. Petitioner's royalty payments made to DT Parent and DTIF should not be added to Petitioner's taxable income pursuant to 35 ILCS 5/203(b)(2)(E-13)(iii).

**ANSWER:** Department denies the allegations in Paragraph 66 and demands strict proof thereof.

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order:

a. Denying each prayer for relief in Petitioner's Petition;
b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
c. Ordering judgment in favor of the Department and against the Petitioner, and;
d. Granting any further relief this Tribunal deems just and appropriate.

## COUNT V

67. Petitioner realleges and reincorporates the allegations in paragraphs 1 through 66 inclusive, hereinabove.

**ANSWER:** Department restates and incorporates its Answers to the allegations in Paragraphs 1 through 66 as if fully set forth herein.

68. For the Years in Issue, the Department assessed penalties in an amount totaling $714,071.39.

**ANSWER:** Department admits that the Uniform Penalty and Interest Act (35 ILCS 735/3-1 et seq.) requires the assessment of penalties and interest for failure to timely file returns and failure to timely pay tax due. The Notices of Deficiency speak for themselves.

69. Illinois law provides that penalties do not apply if a taxpayer shows that its failure to pay tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

**ANSWER:** Paragraph 69 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 35 ILCS 735/3-8 referred to in Paragraph 69 and states that such statute speaks for itself.

70. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine its property tax liability and to pay its proper tax liability in a timely fashion. 86 Ill. Admin. Code §700.400(b).

**ANSWER:** Paragraph 70 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits the existence, force and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 70 and states that such regulation speaks for itself.

71. A taxpayer will be considered to have made a good faith effort to determine and pay its proper tax liability if it exercised ordinary business care and prudence in doing so. 86 Ill. Admin. Code §700.400(b).

**ANSWER:** Paragraph 71 contains a legal conclusion, not a material allegation of fact, and therefore does not require an answer pursuant to Rule 310(b)(2). Department admits

the existence, force and effect of 86 Ill. Admin. Code §700.400(b) referred to in Paragraph 71 and states that such regulation speaks for itself.

72. Petitioner, relying on the United States Constitution, Illinois statutes and case law, reasonably concluded that it should not add back its interest and royalty expenses paid to DT Parent; or its interest expenses paid to DTIF, since both entities were subject to tax measured by net income in a foreign jurisdiction.

**ANSWER:** Department denies the factual allegations in Paragraph 72 and demands strict proof thereof.

73. Petitioner's decision to deduct the expenses from its base income is supported by reasonable cause.

**ANSWER:** Department denies the factual allegations in Paragraph 73 and demands strict proof thereof.

74. The Department's determination that Petitioner owes penalties on late payment of tax is not supported by fact or law.

**ANSWER:** Department denies the factual allegations in Paragraph 74 and demands strict proof thereof.

**WHEREFORE,** Department prays that the Illinois Independent Tax Tribunal enter an Order:

a. Denying each prayer for relief in Petitioner's Petition;
b. Finding the March 31, 2014, Notices of Deficiency are correct as issued;
c. Ordering judgment in favor of the Department and against the Petitioner, and;
d. Granting any further relief this Tribunal deems just and appropriate.

Respectfully Submitted,

LISA MADIGAN
Attorney General
State of Illinois

By: _____
Special Assistant Attorney General

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**ILLINOIS INDEPENDENT TAX TRIBUNAL**
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| **ILLINOIS DEPARTMENT OF REVENUE,** | ) | |
| **Respondent.** | ) | |

**AFFIDAVIT OF MICHAEL STENSON**
**PURSUANT TO TRIBUNAL RULE 5000.310(b)(3)**

STATE OF ILLINOIS

COUNTY OF COOK

Under penalties as provided by Section 1-109 of the Code of Civil Procedure, 735 ILCS §5/1-109, I, MICHAEL STENSON, being first duly sworn on oath, depose, and state as follows:

1. I am currently employed by the Illinois Department of Revenue.
2. My current title is Revenue Auditor III.
3. I reviewed the audit of T-Mobile U.S.A., Inc. for the tax years ending January 2009 and January 2010.
4. I lack the personal knowledge required to either admit or deny the allegations alleged in Taxpayer's Petition paragraphs 44, 45, 46, 47, 48, 50, 51, 57, 58, 59, 60, 61, and 62.
5. I am an adult resident of the State of Illinois and can truthfully and competently testify as to the matters contained herein based upon my own personal knowledge.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Michael Stenson

Date: 12/2/14

Michael Stenson
Revenue Auditor III
Illinois Department of Revenue