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Case No. 2022-1078-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE SEMINOLE TRIBE OF FLORIDA, derivatively on behalf of Florida RSA No. 2B (Indian River) Limited Partnership,	)	
Plaintiff,	)	
v.	)	
AT&T, INC.; AT&T CORPORATION; NEW CINGULAR WIRELESS PCS, LLC; AT&T MOBILITY CORPORATION; AT&T MOBILITY LLC; and AT&T MOBILITY II LLC	)	C.A. No.
Defendants,	)	
and	)	
FLORIDA RSA NO. 2B (INDIAN RIVER) LIMITED PARTNERSHIP,	)	
Nominal Defendant.	)	

VERIFIED DERIVATIVE COMPLAINT

Plaintiff The Seminole Tribe of Florida ("Plaintiff" or "Seminole Tribe"), derivatively on behalf of Florida RSA No. 2B (Indian River) Limited Partnership (the "Partnership"), bring the following Verified Derivative Complaint (the "Complaint") against the Partnership's General Partner, New Cingular Wireless PCS, LLC ("NCW"), and certain of its controllers and affiliates (collectively, and as

defined below, "AT&T") for damages necessary to remedy their breaches of fiduciary duty, their aiding and abetting breaches of fiduciary duty, and/or NCW's breaches of the Partnership Agreement (as defined below), and the other AT&T defendants' tortious inference with that agreement. Plaintiff also seeks an order appointing a receiver for the Partnership. In support of its claims, Plaintiff alleges the following based on (i) information publicly revealed in the litigation in this Court styled *In Re Cellular Telephone Partnership Litigation;* (ii) the investigation of Plaintiff's counsel; and (iii) information and belief.

INTRODUCTION

1. Plaintiff, derivatively on behalf of the Partnership, seeks to hold AT&T accountable for its unlawful scheme to leverage its position of control over the Partnership and thereby to generate for itself hundreds of millions of dollars in ill-gotten profits. The Partnership is one of many similarly situated cellular partnerships. Each of these cellular partnerships (including the Partnership) held or currently holds an FCC license to operate a cellular telephone system in a defined geographic area. AT&T managed, operated and accounted for each of these cellular partnerships (including the Partnership) in the same way. And each of these cellular partnerships (including the Partnership) is a victim of AT&T's breaches of fiduciary duty, self-dealing, and disloyal exploitation of partnership property.

2. AT&T is the world's largest telecommunications company and the world's second largest provider of mobile wireless services. AT&T boasts a unified unitary nationwide cellular network and aspires to connect to its network literally "everything that has electricity going through it."[1]

3. AT&T did not create this network all by itself. Rather, AT&T owes a significant portion of its past, present, and future success to cellular partnerships (including the Partnership) to which the Federal Communications Commission ("FCC") awarded valuable electromagnetic spectrum licenses when the cellular industry was in its infancy. For years, AT&T has controlled many such partnerships ("Cellular Partnerships"), including the Partnership; has caused those Cellular Partnerships to engage an AT&T affiliate to manage, operate, and account for the Cellular Partnerships' assets; and has integrated those assets as indivisible parts of its unified unitary nationwide network. AT&T has benefited from its association with the Cellular Partnerships (including the Partnership) in at least two ways:

[1] *See*, *e.g.*, C. Ziegler, "The Engadget Mobile Interview: Glenn Lurie, President of Emerging Devices for AT&T Mobility," (Apr. 6, 2009), available athttps://www.engadget.com/2009-04-06-the-engadget-mobile-interview-glenn-lurie-president-of-emergin.html. *See also* the 2012 Wireless Technology Forum address by Glenn Lurie, President – Emerging Enterprises and Partnerships, AT&T Mobility, at 1:40-3:34, *available at* https://www.youtube.com/watch?v=lXUItzr9cwQ; *and* "Enabling Everything with Wireless," interview with Glenn Lurie, *available at*, https://www.youtube.com/watch?v=09nGe0TZWn4.

a. Ubiquity: without the Cellular Partnerships (including the Partnership) AT&T would have big holes in its nationwide network and would be unable to offer or fulfill nationwide service contracts; and

b. Data: without the Cellular Partnerships (including the Partnership) AT&T would not be able to monetize partnership subscriber information or to use that information to drive its Virtuous Cycle of Investment and Innovation (*see infra*).

4. AT&T monetized the Cellular Partnerships' assets in both its traditional and its non-traditional business activities. AT&T, however, used its management control to deprive the Cellular Partnerships (including the Partnership) of their fair share of revenues from these business activities. This suppression of partnership revenue benefited AT&T in at least two ways: first, AT&T kept 100% of every dollar it wrongfully failed to pay the Cellular Partnerships (including the Partnership); and second, AT&T artificially suppressed the value of the Cellular Partnerships, which enabled it to liquidate certain Cellular Partnerships and cash out minority partners at unfairly low prices for their interests. AT&T's conduct was, and continues to be, a breach of fiduciary duty (and a breach of contract/tortious interference with contract, and, in the alternative to certain defendants' fiduciary breaches, aiding and abetting

a breach of fiduciary duty), and a cause of unjust enrichment, as well as a justification for an accounting and the appointment of a receiver.

5. This pattern of self-dealing was a function of two constants. First, AT&T unilaterally limited its definition of the Cellular Partnerships' operative reality (including the Partnership's operative reality) to "just the things you do with handsets."[2] Second, AT&T comingled and used the Cellular Partnerships' assets in creating, marketing, and implementing its ever-expanding, non-traditional business activities (*e.g.*, the Internet of Things, or IoT). In so doing, AT&T treated the Cellular Partnerships' assets (including the Partnership's assets) as though they were its own without compensation or recognition of the Cellular Partnerships' distinct ownership interest in any non-traditional business that used those assets. As a result, AT&T implemented procedures that accounted for traditional subscriber-related revenue but did not adapt those procedures to account for the Cellular Partnerships' share of AT&T's rapidly evolving non-traditional business revenue.

6. AT&T created its accounting paradigm for the Cellular Partnerships in the 1980s and never revised it to accommodate changes in cellular regulation, technology, or the wireless business. As early as 2003, AT&T had actual knowledge that it was accounting for Cellular Partnership revenue and expense using a

[2] *See In re Cellular Telephone P'ship Litig.*, Trial Tr. 392:19-393:13 (Testimony of Eric Wages).

methodology that was divorced from the realities of the cellular marketplace. In response to this insight, AT&T identified the deficiencies in its partnership accounting paradigm; acknowledged the Cellular Partnerships' right to participate proportionately in all network-related revenue streams; and formulated a method and formula for fairly calculating and allocating to the Cellular Partnerships all such revenue and expense. AT&T, however, never implemented this methodology and never resolved any of the accounting deficiencies that it had previously identified. This failure lies at the heart of the Plaintiff's claim: AT&T knew its allocation of revenue and expense to the Partnership was unfair; it knew how to fix that unfairness; and it chose not to do so.

7. The claim stated herein extends to every AT&T business activity that directly or indirectly monetizes the unified unitary nationwide network. It includes, without limitation, AT&T's monetization of Partnership information and its use of such information in its targeted advertising and Big Data activities; AT&T's execution of nationwide contracts for non-traditional business activities; AT&T's geolocation-based services, content-based services, value-added services; and AT&T's creation of intellectual property. In addition, the Partnership's claim extends to every business activity the expenses of which were allocated to and paid by the Partnership. This includes, without limitation, any asset acquired by AT&T the cost of which (whether principal or interest) was paid in whole or in part by the

Partnership. In short, Plaintiff claims on behalf of the Partnership that the Partnership has both a derivative revenue interest and direct ownership interest in every AT&T business activity that used Partnership assets.

8. As a result of AT&T's self-dealing, breaches of fiduciary duty, and exploitation of Partnership property, AT&T obtained unjust windfalls for itself, damaged the Partnership, and failed to remit to the Partnership its fair share of the profits generated from Partnership assets. This wrongdoing is continuing. Accordingly, Plaintiff brings this action derivatively on behalf of the Partnership to recover the value that AT&T has unlawfully taken from it and to stop the conduct from continuing into the future. Plaintiff also seeks the appointment of a receiver over the Partnership.

PARTIES

9. Plaintiff is, and has been at all relevant times, a limited partner in the Partnership. It currently owns a twenty-eight-point five percent (28.50%) interest in the Partnership. Seminole Tribe is a federally-recognized and federally-protected Indian Tribe, exercising powers of self-governance under a tribal constitution and by-laws approved by the United States Secretary of the Interior, pursuant to the Indian Re-Organization Act of 1934, 25 U.S.C. § 512, with its headquarters located in Hollywood, Florida.

10. Nominal Defendant, the Partnership, is a Delaware general partnership headquartered in Georgia. Its governing document is the Agreement Establishing Florida RSA No. 2B (Indian River) Limited Partnership, dated as of June 1, 1990 (with amendments, the "Partnership Agreement"). The Partnership owns the wireless cellular system, including all its spectrum, network hardware, software, and subscribers, in the Florida RSA 2B area ("FRSA2B").

11. Defendant AT&T Inc., a Delaware corporation, is a publicly traded, multinational, telecommunications holding company headquartered in Dallas, Texas.

12. Defendant AT&T Corporation ("AT&T Corp."), is a subsidiary of AT&T Inc. that provides *inter alia* voice, video, data, and Internet telecommunications and professional services to businesses, consumers, and government agencies. AT&T Corp. is a Delaware corporation headquartered in Dallas, Texas.

13. Defendant AT&T Mobility Corporation ("Mobility Corporation") is a Delaware corporation with its principal place of business in Brookhaven, Georgia. Mobility Corporation is the sole manager of AT&T Mobility LLC, AT&T Mobility II LLC, and NCW. Mobility Corporation is an indirect subsidiary of AT&T Inc.

14. Defendant AT&T Mobility LLC ("Mobility") is an indirect wholly owned subsidiary of AT&T Inc. and provides wireless services in the United States. Mobility is a Delaware limited liability company headquartered in Atlanta, Georgia.

Mobility is managed by Mobility Corporation. Mobility owns approximately 92.865% of the common units of Mobility II.

15. Defendant AT&T Mobility II LLC ("Mobility II") is an indirect subsidiary of AT&T Inc. and is the primary holding company for AT&T's wireless business. Mobility II is a Delaware limited liability company with its principal place of business in Atlanta, Georgia. Mobility II is managed by Mobility Corporation.

16. Defendant NCW is a Delaware limited liability company. NCW has been the general partner of the Partnership (as that term is used in the Partnership Agreement, "General Partner") since approximately December 31, 2004, when BellSouth Mobility LLC ("BellSouth Mobility") merged into NCW, and NCW succeeded to all of BellSouth Mobility's liabilities and assets, including its interest in the Partnership. (Hereinafter, "AT&T" refers to AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, Mobility II, and NCW, together). NCW is wholly owned by Mobility II and managed by Mobility Corporation.

FACTUAL BACKGROUND

A. AT&T Built Its Nationwide Network and Wireless Business by Gaining Control of the Licenses Held by the Partnership and Similarly Situated Cellular Partnerships

17. A cellular telephone uses the electromagnetic spectrum to (in part) wirelessly send and receive analogue and digital communications. The operation of a cellular telephone system requires exclusive access to discrete radio frequencies for

its customer traffic. Under Federal law, the entire electromagnetic spectrum is publicly owned, and the FCC has legal authority to allocate this scarce resource.

18. In 1981, when the FCC set aside 40 MHz of spectrum for cellular licensing, the FCC divided the U.S. into 734 geographic markets called Cellular Market Areas ("CMAs") and divided the 40 MHz of spectrum into two, 20 MHz channel blocks referred to as channel block A and channel block B. The FCC made a single license for the A-block and a single license for the B-block available in each market.

19. A-block licenses in CMAs 1 through 30 were issued by comparative hearings. Comparative hearings provided parties with competing applications a quasi-judicial forum to argue why they should be awarded a spectrum license over another party.

20. After awarding licenses for the first 30 CMAs by comparative hearings, the FCC adopted rules, in 1984 and 1986, to issue the remaining A-block licenses through lotteries. In 1986, the Commission also allocated an additional 5 MHz of spectrum for each channel block, raising the total amount of spectrum per block to the current total of 25 MHz. By 1991, the FCC had issued almost all licenses in the remaining CMAs.

21. The FCC awarded the remaining A-block licenses via lottery. Participation in these lotteries was limited to individuals and small businesses that

were not wireline carriers. This limitation encouraged and allowed a diverse group of entrepreneurial citizens to participate in ownership and development of the cellular telephone market.

22. Initially, the FCC forbade lottery participants from owning a direct or indirect interest in more than one application per lottery. Subsequently, to promote lottery participation and diversify A-block license ownership, the FCC authorized lottery participants to form lottery pools and thereby increase their chances of winning at least a portion of an A-block license. The FCC regulations governing such pools (termed "settlement associations") stipulated that (i) any settlement association participant that won a lottery had to receive at least a majority interest (*i.e.*, 50.01%) in the license awarded; and (ii) no non-winner settlement association participant could own more than a .9999% interest in the license awarded.

23. The settlement association agreements typically provided that, in the event one of the settlement association participants won the lottery, a business entity ("Operating Entity") would be created using the form of a document attached to the agreement. The agreement typically provided that the winning member would contribute the A-block license as his/her initial capital contribution and receive at least a majority interest in the Operating Entity, while the remaining association members would contribute the initial start-up capital and receive their proportionate shares in the Operating Entity (up to .9999% per minority member). Any ownership

interest in the Operating Entity that was not allocated to the minority members because of the initial .9999% cap was automatically allocated to the majority member.

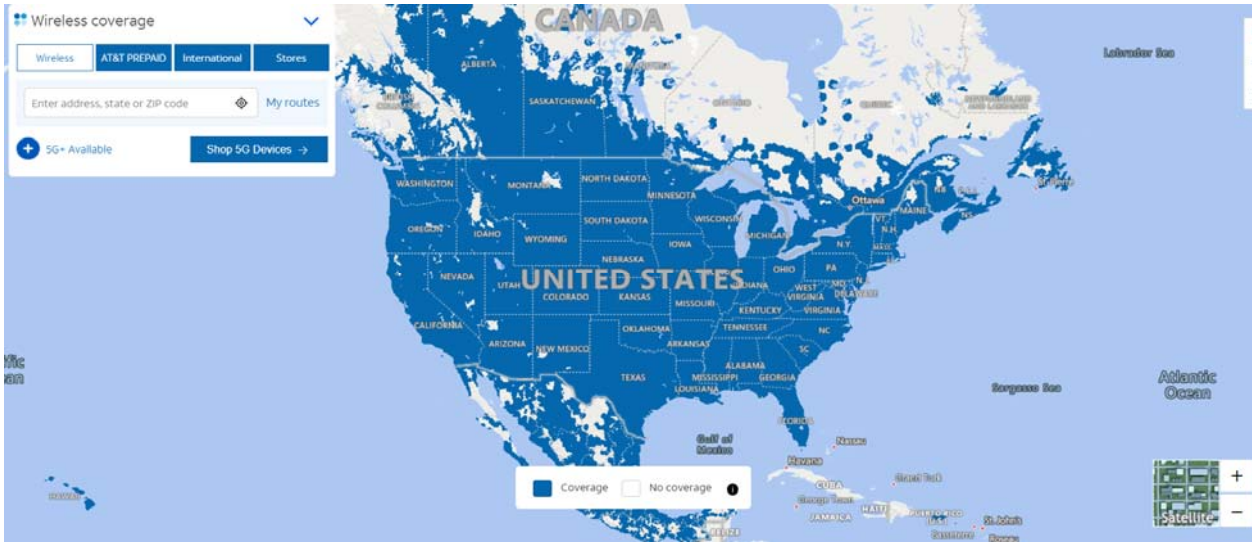
24. The FCC awarded the B-block of spectrum to the local wireline carrier that was at the time providing landline telephone service in the CMA. In those instances in which more than one carrier was providing local wireline service, the FCC typically issued a single B-block license to an Operating Entity jointly owned by those carriers.

25. Acting together with NCW's predecessor, Seminole Tribe formed the Partnership. The Partnership is the rightful owner and holder of the B-block license to operate a cellular telephone company in FRSA2B.

26. Both A-block and B-block Operating Entities commonly took the form of a partnership. Often, a larger entity such as AT&T (or its predecessors in interest) would purchase a majority or substantial minority interest in an Operating Entity and subsequently purchase other interests to obtain or enhance control.

27. Through repeated purchases of interests in Operating Entities, AT&T gained control of numerous Cellular Partnerships throughout the nation and formed a nationwide network that AT&T now touts as being "The Best Network." AT&T advertises that the "AT&T Wireless network covers 97% of Americans (based on licensed and roaming areas). Get the best coverage at home or while traveling with

nationwide GSM technology that enables you to have true voice quality and unparalleled global roaming capabilities":



See https://www.att.com/maps/wireless-coverage.html.

28. AT&T includes FRSA2B, that is, the geographic area in which the Partnership is licensed to provide wireless services, in its coverage map. Thus, AT&T is marketing use of the Partnership's license and access to the Partnership's CMA as part of marketing its unified unitary nationwide network. Indeed, it makes sense for AT&T to include FRSA2B in its marketing because, in fact, the Partnership's spectrum, geography, and users are an integral part of AT&T's unified unitary nationwide network.

29. AT&T has acknowledged under oath that whenever a subscriber uses any part of the AT&T network, they use every part of the AT&T network. This is

the reality of how AT&T's supercomputers handle the flow of data over a unified unitary nationwide network.

30. Moreover, AT&T has always expected that its integrated network would carry a great variety of data, not just telephone calls. All the way back in 1993, AT&T ran a series of now-legendary commercials known as the "You Will" campaign. Tom Selleck provided the voiceover for the spots: "Have you ever opened doors with the sound of your voice? Carried your medical history in your wallet? Or attended a meeting in your bare feet? You will."

31. By 2008, this vision was becoming more of a reality. AT&T began developing, "a host of new applications – from social networking to navigation to location-based solutions" that relied on wireless connectivity.[3]

32. These emerging uses relied on the unified unitary nationwide network but did not need a cellphone (or a telephone number) to connect. By spring of 2009, AT&T announced that it was working with major corporate partners to develop new applications for a variety of "consumer electronics devices, including game machines, electronic book readers and video and still cameras," all of which would transmit data without a cell phone.[4] Later that year, AT&T proclaimed that it would

[3] *In re Cellular Telephone Partnership Litig.*, 2021 WL 4438046, at *29 (Del. Ch. Sept. 28, 2021) (quotation omitted) (hereinafter, the "2021 Decision").

[4] *In re Cellular Telephone Partnership Litig.*, 2022 WL 698112, at *9 (Del. Ch. Mar. 9, 2022) (hereinafter, the "2022 Decision").

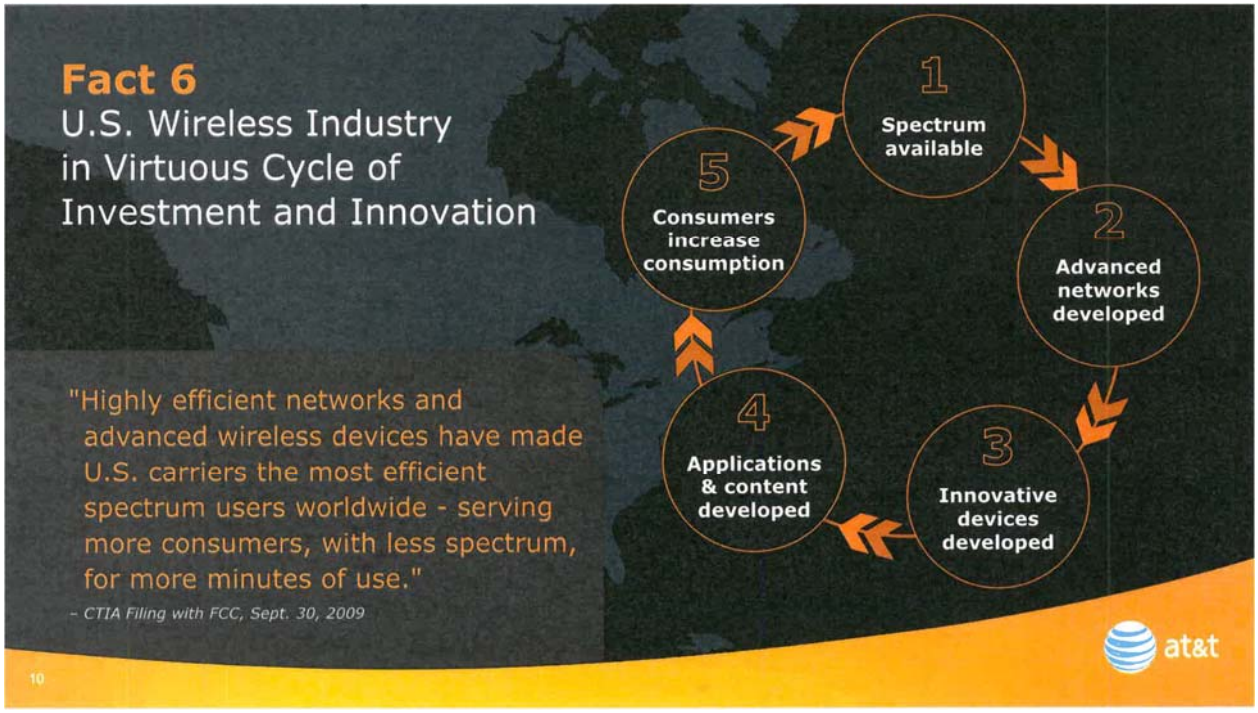
"capitalize on the demand for data by embed[ding] wireless access into anything that isn't a smart phone, netbook or PC."[5]

33. User contracts for many of these devices were executed on a national basis with the user (*e.g.*, UPS or FedEx) or the manufacturer (*e.g.*, Amazon or General Motors). Thus, AT&T committed the Partnership to provide service to the device and required that the Partnership build out its network to fulfill this commitment. Nevertheless, AT&T did not share the net revenue from these contracts with the Partnership. Instead, AT&T paid the Partnership on the same fee-for-service basis that it paid a competitor when an AT&T device pinged on that competitor's network, if at all.

34. In addition to usage-based revenue, the unified unitary nationwide network enabled AT&T to provide value-added services. For example, AT&T executed nationwide contracts with long-haul trucking companies that enabled real-time geolocation monitoring of the driver, the truck, and all cargo – and when the truck crossed a state border AT&T automatically filed the requisite tax forms. AT&T did not share the net revenue from these or any other value-added services with the Partnership. Instead, AT&T used the Partnership as a service provider and paid it on a fee-for-service basis only.

[5] *Id.* at *10

35. Further, AT&T used the information created by users of the unified unitary nationwide network (including by users of the Partnership's network) to create new technologies (both patented and unpatented) and to (among other things) facilitate targeted advertising. The user-created information (including Partnership user-created information) is commingled and retained by AT&T. It is processed, synthesized, analyzed, and studied. AT&T uses this information as an integral part of its Virtuous Cycle of Investment and Innovation.[6]



Thus, AT&T uses the Partnership's spectrum, the Partnership's network, the Partnership's users, and the Partnership's user information to develop new business

[6] *See In re Cellular Telephone Partnership Litig.*, JX 2562, slide 6; *see also* the 2016 CTIA Keynote Address by AT&T Mobility CEO Ralph de la Vega available at https://www.youtube.com/watch?v=Gz_QxY0ZWQ8 (beginning at 3:30).

activities. As a result of AT&T's conduct, the Partnership is a co-owner with AT&T of all business activities created because of the Virtuous Cycle and/or AT&T's use of Partnership assets.

B. AT&T's Use of NPA-NXX as a Proxy to Compensate the Partnership and Similar Cellular Partnership's for Revenue, Including System-Wide Revenues is Outmoded and Outdated

36. When the wireless industry began in the 1980s, each cellular carrier was assigned blocks of 10,000 ten-digit telephone numbers from the North American Numbering Plan and issued those telephone numbers one at a time to customers who (at the time of initial sign-up) identified the carrier's service territory as their intended "Principal Place of Use" ("PPU"). Every device that used a cellular carrier's network had a ten-digit telephone number and every cellular carrier used those ten-digit telephone numbers (referred to in the industry as "NPA-NXX") to identify and differentiate between its subscribers and any non-subscribers who used its local network while in its CMA (the industry term for which is "roaming"). If the telephone number using the local network was an NPA-NXX that the local carrier had issued, then the user was a local carrier subscriber; if the NPA-NXX was not one the local carrier had issued, then the user was a non-subscriber temporarily roaming on the local carrier's network.

37. Prior to 2003 this NPA-NXX based system for identifying and differentiating subscribers worked effectively for two principal reasons. First, if

subscribers wanted to change cellular carriers (*e.g.,* from AT&T to Verizon) they had to surrender their existing NPA-NXX (*e.g.*, back to AT&T) and get a new NPA-NXX (*e.g.,* from Verizon). Second, if subscribers wanted to relocate to a new PPU (*e.g.*, from New York City to Los Angeles), the cost of keeping their New York City NPA-NXX and permanently roaming in Los Angeles was so high that the subscriber was financially compelled to surrender their New York City NPA-NXX and get a new Los Angeles NPA-NXX. Thus, operational and economic factors combined to assure that each cellular carrier could rely upon NPA-NXX to identify and account for every device that used its cellular assets.

38. Since every cellular telephone in use prior to 2003 had an NPA-NXX and since the manager/operator could trace every NPA-NXX to *either* a subscriber who actively used that Cellular Partnership's assets on a continuing contractual basis *or* to a non-subscriber who made incidental use of the Cellular Partnership's assets through roaming, AT&T adopted NPA-NXX as the foundational metric to account for revenue and expense attributable to Cellular Partnership assets since the beginning of billing in the cellular telephone market. AT&T used NPA-NXX to assign (i) monthly recurrent revenue (attributable to that Cellular Partnership's subscribers); and (ii) outcollect roaming revenue (attributable to non-subscriber roamers). In addition, AT&T used NPA-NXX (i) to assign incollect roaming expense (attributable to that Cellular Partnership's subscribers roaming on non-

partnership spectrum); and (ii) to calculate that Cellular Partnership's percentage share of AT&T's expenses allocable to the operation of the nationwide network.

C. AT&T Recognized That Changes in Regulation, Technology, and Business Necessitated Movement Away from NPA-NXX to Fairly Compensate the Cellular Partnerships

39. Since 2003, changes in cellular regulation, wireless technology, and wireless business activities, such as those described above, have rendered the NPA-NXX accounting paradigm unreliable as a methodology to allocate revenue and expense from the operation of AT&T's integrated nationwide wireless business to the Partnership and other similarly situated Cellular Partnerships, and have detached AT&T's calculation of revenue and expense from the manner in which its integrated national cellular network actually functions. Yet, AT&T has continued to use the outdated NPA-NXX paradigm in connection with the Partnership and other AT&T Cellular Partnerships. Three major developments decoupled the NPA-NXX accounting metric from the operational reality of the Partnership's business activity.

40. First, in 1996 Congress mandated that every cellular carrier implement a process that allowed subscribers to transfer their ten-digit telephone numbers to a competing carrier.[7] Under the law, carriers were required to make this service available on or before November 24, 2003. This transfer process (known colloquially as "cell phone number portability") allowed a user to keep a

[7] *See* Pub. L. No. 104-104, 110 Stat. 56 (1996).

Partnership-issued NPA-NXX *even though* the user had ceased to be a Partnership subscriber. In addition, it allowed a user to become a Partnership subscriber *even though* the user never received a Partnership-issued NPA-NXX. Consequently, cell phone number portability significantly degraded the utility of NPA-NXX as a meaningful metric to determine use of Partnership assets.

41. Second, during the same period AT&T began offering national rate plans; *that is*, wireless service agreements that permitted subscribers to use their wireless devices anywhere in the United States without incurring a retail roaming charge. In so doing, AT&T eliminated any financial incentive for a Partnership subscriber to surrender his/her Partnership-issued NPA-NXX if the subscriber chose to relocate to a new PPU. This further reduced the reliability of NPA-NXX as an accounting metric for identifying Partnership revenue and expense. In addition, AT&T eliminated the roaming charges that a subscriber had to pay for using their phone outside their home network *but* did not eliminate the roaming charges that the subscriber's home network had to pay the network in which the subscriber roamed. As a result, AT&T imposed on the Partnership an obligation to pay incollect roaming expense to other AT&T-operated local carriers but prevented the Partnership from collecting from the Partnership subscriber the corresponding roaming revenue to cover that expense.

42. Third, in June of 2007 Apple launched the iPhone exclusively on the AT&T network. This handheld computer revolutionized the wireless industry and turned the cell phone into a flexible platform for an infinite number of mobilized applications. In combination with digitization of the network and highspeed mobile broadband internet access, the iPhone and its progeny created vast new non-traditional business opportunities: emerging devices, connected devices, the Internet of Things, Machine to Machine (known as "M2M"), geolocation services, Big Data, targeted advertising, and more. As discussed above, these non-traditional business activities did not rely upon or require an NPA-NXX. Thus, these newer, non-traditional business activities made direct and indirect use of Partnership assets, including its spectrum license; however, the NPA-NXX based accounting system AT&T's partnership accounting group continued to use failed to capture, on behalf of the Partnership, any of the net revenues these non-traditional activities generated.

43. Thus, by 2003, the NPA-NXX accounting system had become an unreliable and irrational basis for allocation of revenue and expense among the Cellular Partnerships that comprised AT&T's integrated, unified unitary national network. Indeed, as established during the Court of Chancery trial described below, the NPA-NXX system had become so unreliable that AT&T could not determine:

a. the number of AT&T subscribers who resided in any specific Cellular Partnership's service area but used another cellular Partnership's NPA-NXX number;

b. the number of AT&T subscribers who resided outside any specific Cellular Partnership's service area and used an NPA-NXX number assigned to that Cellular Partnership;

c. the number of AT&T subscribers who moved to any specific Cellular Partnership's service area, changed their billing address and primary place of use to an address in that Cellular Partnership's service area, yet continued to use another Cellular Partnership's NPA-NXX number; and/or

d. the percentage of AT&T subscribers nationwide who resided in AT&T service areas different from the ones that issued their NPA-NXX numbers.

44. AT&T has nonetheless persisted in using its irrational NPA-NXX based accounting system in connection with its Cellular Partnerships, including the Partnership. It uses the NPA-NXX based definition of 'subscriber' as the sole metric to allocate revenue and expense to the Partnership *even though it knows* there is no longer a reliable nexus between a subscriber's NPA-NXX and the CMA where the subscriber uses his/her wireless device. It charges intra-company roaming fees *even*

though it knows it has eliminated the corresponding consumer revenue to pay such fees. It also fails to pay the Partnership its proportionate share of net revenue derived from non-traditional business activities that directly or indirectly use the unified unitary nationwide network *even though it knows* it uses the Partnership's assets as an essential part of the network**.** AT&T benefits by shortchanging the Partnership and other Cellular Partnerships: it directly receives all the revenues that should have been allocated to the Partnership.

D. AT&T Devises a Method Based on Traffic to Compensate the Partnership and Other Cellular Partnership's for Use of their Wireless Assets that it Deemed Fair But Chose Not to Employ the Method it Developed

45. AT&T's decision to continue using its outmoded NPA-NXX based accounting system was and is both knowing and intentional. As early as 2005, AT&T recognized that "changing technological and market conditions" necessitated a new accounting paradigm. This new paradigm — evidenced by contracts that AT&T alone drafted and required *at least* nine Cellular Partnerships to execute — recognizes that (i) the Partnership, and other Cellular Partnerships like it, have a right to share proportionately in all revenues that AT&T derived from every business activity that directly or indirectly monetized the unified unitary nationwide network; and (ii) NPA-NXX and roaming charges are not fair metrics for allocating revenue and expense.

46. In 2005, Cingular (a predecessor in interest of AT&T) purchased AT&T Wireless ("ATTW").[8] At the time of that purchase, ATTW owned a majority interest in at least nine Cellular Partnerships. As a part of the ATTW purchase, Cingular caused each of these entities to enter into new agreements with a Cingular affiliate for the management and operation of their wireless assets. These agreements, each of which is entitled "Management and Network Sharing Agreement" ("MNSA"), were executed in October 2005 but made effective as of January 1, 2003. Thus, the agreements became effective at approximately the same time that NPA-NXX ceased to be an accurate and effective proxy for identifying persons who made principal use of a Cellular Partnership's assets.

47. A copy of the MNSA executed by and between Salem Cellular Partnership and New Cingular Wireless Services of Nevada, Inc., is attached hereto as Exhibit 1 and incorporated herein by reference. This contract, which was drafted in its entirety by AT&T acting alone, acknowledges and addresses the specific accounting-related issues about which the Partnership now complains.

48. First, AT&T admitted, in adopting the MNSA, that developments in the wireless industry necessitated a change of its operative reality and NPA-NXX based accounting system. In its fifth and final WHEREAS clause, the MNSA states that

[8] Following completion of its purchase of AT&T Wireless, Cingular changed its name to AT&T.

the parties desire to replace the prior management agreement in order "to adapt to changing market and technological conditions."[9] The MNSA anticipates that these conditions will continue to change and, therefore, grants the Manager power to amend the allocation methodologies.[10] However, the MNSA specifies that all such amendments must be fair,[11] must be in writing,[12] and must be no less favorable to the Owner (*i.e.*, the Cellular Partnership counterparty to AT&T in the MNSA) than the allocation method used in prior periods.[13]

49. Second, AT&T explicitly recognized, in its drafting of the MNSA, that the AT&T network and the Cellular Partnerships (including the Partnership) are operated as indivisible parts of a unified unitary nationwide network. Specifically, the MNSA says, "Manager and its Affiliates (including Owner) . . . operate as a single nationwide network."[14] In the MNSA, AT&T further concedes that the

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[9] *See* attached Ex. 1, p. 1. As noted above, it is changes in market and technological conditions that rendered AT&T's NPA-NXX based accounting system grossly inadequate and unfair. All capitalized terms not otherwise defined have the meaning set forth in the MNSA.

[10] *Id.* at p. 8-9, ¶ VI(A) and (B).

[11] *Id.* at p. 8, ¶ VI(A).

[12] *Id*. at p. 12, ¶ X(H).

[13] *Id.* at p. 13, Ex. A.

[14] *Id*. at p. 4 (definition of "Shared Network"). The Cellular Partnerships would be "Affiliates" as that term is defined in the MNSA. *See id*. at p. 1 (definition of "Affiliate"). Accordingly, AT&T explicitly admits through the MNSA that the Partnership's and all other Cellular Partner's cellular networks are operated as an indivisible part of AT&T's "single nationwide network."

Manager and the Owner are in the exact same business: *i.e.*, the definitions "Manager's Business" and "Owner's Business" are word-for-word identical.[15] In sum, the MNSA affirms that AT&T and the Cellular Partnerships (including the Partnership) operate as a single, nationwide network in order to accomplish a unified business objective.

50. Third, AT&T, through the MNSA, acknowledged that Cellular Partnership "subscribers" include *both* users of traditional devices (that have an NPA-NXX) *and* users of non-traditional devices (that do not have an NPA-NXX, such as Kindles and automobiles equipped with On-Star services). According to the MNSA, a "Subscriber" is "a user of wireless communications services, acquired and maintained by Owner or Manager and its Affiliates pursuant to an ongoing agreement for wireless communications services."[16] Under this definition, Cellular Partnership subscribers (such as the Partnership's subscribers) are not limited to those subscribers who have a Cellular Partnership-issued NPA-NXX. Instead, this definition provides that Cellular Partnerships' subscribers, such as the Partnership's subscribers, include every traditional and non-traditional user of network wireless

[15] *Id*. at p. 2 (definition of "Manager's Business") and p. 3 (definition of "Owner's Business").

[16] *Id*. at p. 4 (definition of "Subscriber"). AT&T has acknowledged that this is the first and only written definition of "subscriber" for use in connection with allocating Cellular Partnership revenue and expense. *See In re Cellular Telephone Partnership Litig.*, Trial Tr. 373:14-375:23 (Testimony of Eric Wages).

communications services who has an ongoing agreement for wireless communications services with *either* AT&T *or* a Cellular Partnership. Thus, through the MNSA's definition of "subscriber" AT&T repudiated NPA-NXX as a metric for allocating revenue and expense to the cellular partnerships (including the Partnership).

51. Fourth, in the MNSA, AT&T admitted the financial imbalance created by AT&T's decision to cancel subscriber roaming charges but not cancel intra-carrier roaming charges. Specifically, the MNSA eliminated this problem by providing "that Subscribers of Owner's Business shall be entitled to Roam in Manager's Area, and Subscribers of Manager's Business shall have the right to Roam on Owner's System, *without any direct charges*."[17] Thus, from the subscriber's perspective, the network became *in fact* indivisible, unified unitary, and national.

52. Finally, AT&T further conceded, again as evidenced by the MNSA, that a fair methodology for calculating a Cellular Partnership's share of direct and indirect network-related revenue and expense could be formulated to replace the out-of-date and unreliable NPA-NXX accounting paradigm. The MNSA's fair methodology involves the application of three main principles: (i) an all-inclusive definition of "Shared Revenue"; (ii) a formula for computing the Cellular

[17] Ex. 1 at p. 7, ¶ V(F) (emphasis added).

Partnership's proportionate share of revenue and expense based on objectively verifiable data; and (iii) a pre-agreed premium on revenue and discount on expenses.

a. The MNSA defines "Shared Revenue" as "the aggregate revenue generated by Subscribers of Owner's Business and Manager's Business utilizing Owner's System and Manager's System, and any other applicable revenues generated by utilization of the Entire Network, excluding Outcollect Roaming Revenues."[18] Thus, the pool of revenue in which the partnerships are entitled to share is (i) 100% of the revenue generated by 100% of the Subscribers; and (ii) 100% of any other revenues generated by utilization of the Entire Network (excluding inter-carrier Outcollect Roaming Revenue).[19]

[18] *Id*. at p. 4 (definition of "Shared Revenues"). The MNSA eliminated *intra*-carrier Outcollect Roaming Revenues and *intra*-carrier Incollect Roaming Expense. *See id*. at p. 7, ¶ V(F). However, the MNSA did not (and could not) eliminate *inter*-carrier Outcollect Roaming Revenues or *inter*-carrier Incollect Roaming Expense. Inter-carrier Outcollect Roaming Revenue is generated when a non-AT&T subscriber roams on the AT&T network (*e.g*., a T-Mobile subscriber roams on the AT&T network). Conversely, inter-carrier Incollect Roaming Expense is generated when an AT&T subscriber roams on a non-AT&T network (*e.g*., an AT&T subscriber roams on the T-Mobile network). Thus, "Shared Revenue" includes 100% of the revenue generated from utilization of the network *except for* revenue received from third-party carriers when their non-AT&T subscribers roam on the AT&T network.

[19] The MNSA defines "Entire Network" as "collectively, the Owner's System, the Manager's System, and the Shared Network." *See id*. at p. 1 (definition of "Entire Network"). Thus, by definition, the MNSA permits Cellular Partnerships that have

b. The MNSA allocates Shared Revenue proportionately between Owner and Manager ***based on units of traffic***.[20] *To wit*, the total units of traffic on Owner's System (not including inter-carrier Outcollect Roaming Traffic) is divided by the total units of traffic on the Manager's System (not including inter-carrier Outcollect Roaming Traffic).[21] The quotient of this calculation (a percentage) is then multiplied against the total Shared Revenue to calculate Owner's share of Shared Revenue.[22]

c. The MNSA applies a 25% premium to Owner's share of Shared Revenue and a 10% discount to Owner's share of Sales & Marketing Expenses. Specifically, the MNSA provides, "Manager may apply a premium to certain revenues and/or a

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the MNSA to share in revenues generated by Cellular Partnerships that do not have the MNSA.

[20] The MNSA defines "Unit of Traffic" as "a measure of a type of Traffic, for example, voice currently is measured by MOU, and data currently is measured by kilobyte. Manager shall determine the appropriate measure of Traffic for future services based on industry standards." *Id.* at p. 5 (definition of "Unit of Traffic").

[21] *Id.* at p. 13, Ex. A.

[22] *Id*. The MNSA methodology also uses this percentile to calculate Owner's share of Subscriber Bad Debt Expenses, Pass-Through Tax Expenses, and Incollect Roaming Charges. Sales & Marketing Expenses and Handset Equipment Margin for New Subscribers are allocated based on Gross Subscriber Additions. General and Administrative Expenses and Handset Equipment Margin for Existing Subscribers are allocated based on Ending Subscribers.

discount to certain expenses to ensure that the allocation method set forth below is no less favorable to the Owner than the allocation method used in prior periods. Initially, Manager will apply a premium of 25% to Owner's share of Shared Revenues and a discount of 10% to Owner's share of Sales and Marketing Expenses."[23]

53. In short, the MNSA allocation methodology represents AT&T's best (and only) effort to address the operative reality that changes in market and technological conditions had rendered its operative reality of the Cellular Partnerships (including the Partnership) obsolete and degraded the NPA-NXX accounting paradigm to the point of uselessness. Adoption of the MNSA is an explicit acknowledgement that an NPA-NXX based system for allocation of revenue and expense among Cellular Partnerships is flawed and that unfunded Incollect Roaming expenses are inherently unfair. It is also an explicit acknowledgment that all Cellular Partnerships (including the Partnership) are entitled to share in the traditional and nontraditional revenues generated directly or indirectly by the entire network. It is further an acknowledgement that mere proportionality is insufficient

[23] *Id*. The MNSA permits the Manager to amend the allocation methodologies (including applications of premiums and discounts) but requires that "any new methodology fairly accounts for the revenues and expenses of Owner's Business." *See id*. at p. 8, ¶ VI(A).

to achieve fairness given AT&T's control and that such proportionality must be augmented by a premium on revenues and a discount on marketing and sales expenses.

54. Yet, AT&T never used this system or any traffic-based metrics to allocate revenues and expenses among the Cellular Partnerships, including the Partnership — not even for the Cellular Partnerships it caused to enter the MNSAs. Instead, AT&T continued to use the NPA-NXX accounting model, which it knew to be outdated and unfair to the Cellular Partnerships, to improperly keep hundreds of millions of dollars for itself.

55. Thus, by 2005 AT&T had actual knowledge that both the operative reality it used to define the Cellular Partnerships' business and the NPA-NXX accounting paradigm it used to allocate revenue and expense to the Cellular Partnerships had been ineffectual and unfair since at least 2003. Notwithstanding this knowledge and its fiduciary duty, AT&T did not disclose these material facts to the Partnership or Plaintiff. Instead, it (i) continued to affirmatively represent that its concept of operative reality and its NPA-NXX accounting paradigm were a fair and reasonable basis upon which to allocate revenue and expense to the Partnership; and (ii) continued to make allocations to the Partnership based on this inaccurate operative reality and flawed accounting paradigm. In addition, AT&T did not disclose (i) that it had concluded that changes in regulation, technology, and business

had rendered both its operative reality and its NPA-NXX based allocation methodology obsolete; and (ii) that, based on this conclusion, it had adopted a different operative reality and a different allocation methodology for at least nine other similarly situated Cellular Partnerships. Plaintiff did not become aware of this malfeasance until after issuance of the Court of Chancery opinions described in the following paragraphs.

E. Litigation Reveals How AT&T Used its Control to Benefit Itself at the Expense of Cellular Partnerships, Including the Partnership

56. In 2010 and 2011, litigation was initiated in the Delaware Court of Chancery ("Chancery Court") between, on the one hand, a number of former minority partners in thirteen different AT&T-controlled Cellular Partnerships that AT&T had liquidated, including Salem Cellular Telephone Company ("Salem"), and, on the other hand, AT&T affiliates that had operated and controlled those Cellular Partnerships. The minority partners asserted breach of fiduciary duty and breach of contract claims.[24] After more than a decade of discovery and a five-day

[24] The principal claims in that action arose from freeze-out transactions AT&T forced upon the partnerships. The two opinions focused on the claims relating to Salem; the Chancery Court reserved decision with respect to the other partnerships, intending that the two Salem opinions would provide guidance for the resolution of the other cases.

bench trial in 2020, the Chancery Court issued two opinions making lengthy findings of fact,[25] many of which are salient here.

57. A central finding resulting from this trial was that AT&T acknowledged that the MNSA became necessary "because the business has changed dramatically over the last nine years;"[26] yet, AT&T systematically failed to apply the MNSA accounting methodology. The Chancery Court found, "[d]espite implementing the [MNSA] Management Agreement," AT&T's accountants in its "Partnership Accounting Group," who determined how to assign or allocate revenue and expense among all the Cellular Partnerships, "simply developed its own internal allocation methodologies without considering the [MNSA]."[27]

58. The Chancery Court found AT&T relied on the NPA-NXX methodology and, thereby unilaterally imposed an improperly narrow view of what constituted the business of each of the subject Cellular Partnerships. That is, AT&T viewed each partnership's business as being limited to "'wireless activity,' meaning activity involving 'cellular phones, voice, data, SMS text, those things [consumers] do with … phones.'"[28] Rather, the Chancery Court correctly found that the

[25] The 2021 Decision and the 2022 Decision. *See supra*, n. 3 and 4.

[26] 2021 Decision, at *11; *see also id.* (MNSA was the state of the art).

[27] *Id*. at *19.

[28] *In re Cellular Telephone Partnership Litig.,* JX2404.

Partnership and AT&T "were in precisely the same business: the business of operating and benefitting from the Entire Network" and AT&T should have compensated the minority partners accordingly.[29] AT&T's decision to use an NPA-NXX metric shut Salem out of many valuable revenue streams that were dependent on the Salem partnership's assets but not captured through such methodology.

59. AT&T's admissions during the Chancery Court trial further established that AT&T effectively controlled and operated the Partnership, and all other similarly situated Cellular Partnerships, as part of AT&T's unified unitary nationwide network. One of the Chancery Court's principal findings was, "[f]or purposes of running its own business, AT&T managed [Salem's] assets with its own assets as an integrated part of a single nationwide network."[30]

60. Specifically, AT&T's Eric Wages, AT&T's former director of partnership accounting and director of finance, partnership relations — who was essentially in charge of how AT&T managed all its various Cellular Partnerships (including the Partnership) — testified at the Chancery Court trial that (i) AT&T controls many entities that own cellular licenses — such as the Partnership; and (ii) that AT&T operates and manages each such entity in the same manner that it

[29] 2020 Decision, at *51.

[30] 2021 Decision, at *20.

operated Salem.[31] Thus, AT&T has effectively admitted that it has operated the Partnership in the same manner as it operated the Salem partnership, which necessarily includes the admissions that the Partnership was an integral part of AT&T's nationwide network and that AT&T used its control to monetize the Partnership's wireless (and others) assets, but AT&T made no attempt to comply with the MNSA methodology for allocating revenue and expense to the Partnership — a methodology it developed because it knew that its concept of operative reality and its NPA-NXX accounting paradigm had become detached from reality.

61. In addition, in the litigation AT&T revealed that, during the period 2005 through June 30, 2013, AT&T Corp. received $3,388,586,254 in gross consideration from monetization of partnership information to government entities.[32] According to AT&T, "The revenues and operating margins of AT&T Corp. were not allocated to AT&T Mobility companies, including Partnerships; accordingly, the revenue and operating margins herein were not so allocated."[33] The partnership information at issue in the trial exhibit quoted in the sentence above (JX2416) necessarily included

[31] *In re Cellular Telephone Partnership Litig.*, Trial Tr. 211:4-12 (Testimony of Eric Wages) ("[AT&T] operates those [other currently existing] LLCs and partnerships in the same manner that it operated the LLCs and partnerships that brought us to this Court").

[32] *See In re Cellular Telephone Partnership Litig.*, JX2416; s*ee also id.* Trial Tr. 468:24-481:6 (Objection and Ruling of the Court).

[33] *In re Cellular Telephone Partnership Litig.,* JX2416, p.2.

inter alia the Partnership's information. Thus, AT&T Corp. monetized the Partnership's assets but did not share any of the proceeds therefrom with the Partnership.

F. AT&T Uses its Control to Deny the Partnership its Proportionate Share of Revenues That AT&T Derived Using the Partnership's Property in a Manner the Delaware Court of Chancery In Other Litigation Has Already Found Wrongful

62. The Partnership Agreement makes clear that NCW (and its affiliated predecessors), as General Partner, control the Partnership. *See generally* Partnership Agreement, § 8.2 ("General Partner shall manage . . . the Partnership"); *id.* at 4.1 ("The General Partner on behalf of the Partnership shall be responsible for . . . operating and maintaining the Cellular Service system.").

63. The Partnership Agreement defined the Partnership's business broadly, as "to fund, establish, and provide Cellular Service in the RSA." Partnership Agreement, § 1.3. "Cellular Service," in turn, was defined broadly and includes all services authorized by the FCC under Part 22 of its cellular rules, "plus any other services authorized under other parts of the FCC Rules employed in support of or in conjunction with Part 22 . . .." *Id*. at § 2.6. Moreover, the MNSA, which AT&T itself deployed in other AT&T Cellular Partnerships that AT&T has admitted should be managed and accounted for in the same way as the Partnership, also broadly defined those businesses (and therefore, the Partnership's business) as being "the

business of providing wireless communication services . . . *and all the activities associated therewith . . .*."[34]

64. At some point after becoming the General Partner of the Partnership, NCW either caused the Partnership to appoint Mobility as the manager and operator of the Partnership's assets or, absent corporate formalities, simply delegated to Mobility all responsibility for managing and operating the Partnership's assets.

65. NCW, Mobility, and the other AT&T entities that control NCW and the Partnership (such as AT&T Inc., Mobility Corporation, and Mobility II) have a duty of loyalty most sensitive to the Partnership and Plaintiff. They cannot use their managerial control to the detriment of the Partnership and cannot use Partnership assets for their own benefit. Indeed, the Partnership Agreement specifically requires NCW to act in the best interests of the Partnership and abide by the Partnership Agreement. Partnership Agreement, § 8.1; *id*. at 7.3(a) ("the General Partner shall not have the authority . . . [t]o do any act in contravention of this Agreement).

66. Section 7.1 of the Partnership Agreement further prohibited NCW from entering into contracts and agreements on the Partnership's behalf with the General Partner or its Affiliates unless the "prices, terms and conditions of any such contract or agreement are no less favorable than offered to others by the General Partner or Affiliate." Section 7.1(a) further required that the General Partner provide the

[34] 2021 Decision, at *12-13.

limited partners advance notice of such transactions between the Partnership and the Partners or their Affiliates, and that the transactions be documented.

67. As mentioned above and below, AT&T operates and monetizes a fully integrated unified unitary national network that includes the Partnership's assets. AT&T monetized the Partnership's portion of this unified network in a variety of ways, sometimes keeping all revenues for itself and other times not paying for the use of such assets fairly. This conduct not only constituted, and continues to constitute, a breach of AT&T's fiduciary duty but also constitutes a breach of the Partnership Agreement.

68. For example, consistent with AT&T's proclamation in 2009 that it would embed "wireless access into anything that isn't a smart phone, netbook or PC,"[35] AT&T derives revenue from non-traditional activities that include connected devices (now commonly referred to as IoT) that do not rely on a handset cellular phone. Sometimes these connected devices involve commercial network agreements pursuant to which AT&T carries data over its network. Indeed, AT&T entered into a variety of such agreements with companies spanning from Amazon (for use with its Kindle) to General Motors (for use with its On-Star products). As AT&T has already admitted, and as is evidenced by the Other Shared Revenues portion of the MNSA, these contracts fully commit the Partnership to provide the

[35] 2022 Decision, at *10.

contracted-for non-traditional services and fully obligate the Partnership to build-out its network to meet this commitment. Thus, contracts for non-traditional service use the Partnership's assets (*e.g.*, ubiquity, network, subscribers, data) but AT&T's outdated operative reality concept and deficient NPA-NXX based accounting paradigm do not capture on behalf of the Partnership any of the revenues derived therefrom. As a result, AT&T has grossly under paid the Partnership for the use of its assets in connection with non-traditional revenue streams. As the MNSA effectively admits, AT&T recognized that it could and should have compensated the Partnership for these non-traditional revenue streams using the proportionate traffic metrics, with a revenue premium and expense discount, that AT&T developed and expressed as fair in the MNSA. AT&T's self-serving use of its erroneous operative reality and defective NPA-NXX methodology constituted, and continues to constitute, a breach of fiduciary duty and a breach of the Partnership Agreement.

69. By way of further example, AT&T explicitly recognized, again in the MNSA, that an NPA-NXX based accounting system is inherently flawed for allocating Incollect Roaming. Again, such allocations could and should have been made on the basis of traffic plus premium, as AT&T itself recognized as fair in the MNSA.

70. AT&T also conducts other businesses using the Partnership's assets the revenues of which are not captured by AT&T's obsolete operative reality and NPA-

NXX based accounting paradigm. For example, AT&T harvests data from the Partnership's subscribers. Geolocation aggregator contracts represent one such avenue for AT&T to monetize this Partnership-based and Partnership-owned data.[36] AT&T has entered into a variety of such contracts with third parties, such as Loc-Aid Technologies (aka LocationSmart) and Zumingo Corporation, which in turn aggregate this data and resell it. Indeed, as AT&T has already admitted, geolocation data is customer information,[37] customer information is owned by partnerships (including the Partnership),[38] and AT&T does not own a customer's data.[39] Thus, AT&T has used the Partnership's customers and wireless assets to create an ever-growing stream of new revenues and profits not captured by the NPA-NXX accounting paradigm.

71. Geolocation data collection has been, and continues to be, an increasingly important part of AT&T's business strategy. Wages, however, admitted during his testimony at the Chancery Court trial that AT&T only shares revenue from geolocation-based services and contracts with Cellular Partnerships, like the Partnership, based on whether a device pinged a cell tower within a

[36] "Geolocation" data is location information collected when a cell phone pings a cell tower.

[37] *In re Cellular Telephone Partnership Litig.,* Trial Tr. 319:15-17.

[38] *Id.* at 318:11-13.

[39] *Id.* at 323:11-23.

partnership's geographic footprint. The allocated revenue from pings, however, are a fraction of a penny and do not capture the full value of the data or the related value-added service. In breach of its fiduciary and contractual duties, AT&T has not shared any profits from such services or contracts with the Partnership.[40]

72. AT&T has also sold handset insurance to the Partnership's customers using the Partnership's facilities, employees, and subscriber information without fairly allocating the benefits of this program to the Partnership.[41] Handset insurance is yet another example of a non-traffic-based revenue stream that AT&T did not fairly allocate to the Partnership in breach of its fiduciary and contractual duties.

DEMAND FUTILITY

73. Plaintiff is and has been partners in the Partnership since 1990, and thus was a partner at the time of the wrongs alleged herein.

74. Plaintiff has not made demand upon NCW to bring the claims asserted herein on behalf of the Partnership, but any such demand would be futile. NCW faces a substantial likelihood of liability and stood on both sides of the challenged misconduct, as described above. NCW has engaged, and continues to engage, in pervasive breaches of its fiduciary duty of loyalty by engaging in unfair self-dealing,

[40] *See, e.g.*, *id.* at 319-345.

[41] *See, e.g.*, 2021 Decision, at *68 (finding no dispute that the [Salem] Partnership's subscribers were assets of that partnership, and that AT&T used this asset for its own benefit).

acting in bad faith, and misusing Partnership property for the benefit of AT&T and to the detriment of the Partnership. NCW also has breached, and is breaching, the Partnership Agreement. NCW, which is sole General Partner of the Partnership, cannot reasonably be expected to sue itself. Each of the other Defendants share common ownership and control with NCW as affiliates of AT&T, and NCW would not sue them given this dominion and control. Accordingly, Plaintiff sues derivatively on behalf of the Partnership to recover (for the period January 1, 2003 to present) the delta between (i) the Partnership's proportionate share of net revenues derived directly or indirectly from monetization of the network calculated in accordance with the MNSA; and (ii) the amounts actually paid to the Partnership based on AT&T's obsolete operative reality and unreliable NPA-NXX based accounting paradigm. In addition, Plaintiff sues derivatively on behalf of the Partnership to recover (for the period January 1, 2003 to present) the Partnership's proportionate ownership and revenue interest in all assets, both tangible and intangible, the cost of whose creation or acquisition was borne in whole or in part by the Partnership.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
Breach of Fiduciary Duty of Loyalty – NCW

75. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

76. NCW is the General Partner of the Partnership and was the Partnership's General Partner throughout the relevant time period. As such, NCW owed, and continues to owe, a fiduciary duty of loyalty to the Partnership.

77. NCW breached, and is breaching, its fiduciary duty of loyalty by engaging in self-dealing transactions for the benefit of AT&T that were, and are, not entirely fair to the Partnership. Specifically, NCW used, and continues to use, Partnership assets to generate revenue for AT&T. In so doing, the Partnership was denied, and continues to be denied, both a fair process and price for AT&T's use of its assets.

78. NCW further breached, and is breaching, its fiduciary duty of loyalty by acting in bad faith. NCW subjectively acted, and continues to act, for a purpose other than the best interests of the Partnership by using Partnership assets to benefit AT&T (without ensuring that all revenues and assets created using Partnership assets were allocated and transferred to the Partnership) and by charging expenses to the Partnership for activities that did not benefit the Partnership, but instead only benefitted AT&T.

79. Plaintiff has no adequate remedy at law.

SECOND CAUSE OF ACTION
Breach of Fiduciary Duty of Care – NCW

80. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

81. NCW is the General Partner of the Partnership and was the Partnership's General Partner throughout the relevant time period. As such, NCW owed, and continues to owe, a fiduciary duty of care to the Partnership. In order to fulfill its fiduciary role, NCW had a duty to monitor any delegation of administrative authority and ensure that its delegee acted consistent with the Partnership Agreement, as well as that delegee's assumed fiduciary duties to the Partnership.

82. NCW delegated its responsibility for Partnership operations to Mobility, which was conflicted with respect to allocation of revenue/expense as described herein. Mobility did not allocate those revenues or expenses proportionately in accordance with either the operative reality or traffic-based metrics AT&T itself had determined to be fair.

83. NCW failed to ensure that Mobility was managing the Partnership in accord with the best interests of the Partnership and its assumed fiduciary duties to the Partnership. NCW, therefore, breached, and is breaching, its duty of care with respect to its delegation to Mobility.

84. Plaintiff has no adequate remedy at law.

THIRD CAUSE OF ACTION
Breach of Fiduciary Duty – AT&T Inc., Mobility, Mobility Corp, and Mobility II

85. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

86. NCW is the General Partner of the Partnership and was the Partnership's General Partner throughout the relevant time period. As such, NCW owed, and continues to owe, fiduciary duties of loyalty and care to the Partnership. As alleged herein, NCW breached, and continues to breach, its fiduciary duties of loyalty and care to the Partnership.

87. AT&T Inc., Mobility, Mobility Corporation, and Mobility II directly or indirectly controlled and owned NCW and directed NCW in breaching its fiduciary duties to the Partnership and/or directly breached fiduciary duties they owed to the Partnership as controllers. Specifically, Mobility Corporation is the manager of NCW. NCW is wholly owned by Mobility II, which is solely managed by Mobility Corporation. Mobility Corporation is also the sole manager of Mobility, the entity that *de facto* managed AT&T's wireless business (including the Partnership) and that owns approximately 92.865% of the common units of Mobility II. Mobility and Mobility Corporation are both indirectly owned and controlled by AT&T Inc. AT&T Inc., as the ultimate controller of Mobility and Mobility Corporation; Mobility and Mobility Corporation as the ultimate controllers of Mobility II and

NCW; and Mobility II as the sole owner of NCW, all exercised legal or *de facto* control over NCW and, in turn, the Partnership. Accordingly, AT&T Inc., Mobility, Mobility Corporation, and Mobility II each owed, and continue to owe, fiduciary duties to the Partnership.

88. As controllers, AT&T Inc, Mobility, Mobility Corporation, and Mobility II breached, and are breaching, their fiduciary duty of loyalty by engaging in self-dealing transactions that were not, and are not, entirely fair to the Partnership. Moreover, AT&T has charged the Partnership with costs of creating or acquiring additional assets without giving the Partnership its fair share of the ownership of and revenue generated from those assets. The net effect of such self-dealing and AT&T's self-serving accounting practices was that the Partnership did not receive a fair price for use of Partnership assets, did not receive the Partnership's proportionate ownership interest in the assets created or acquired, and did not receive the Partnership's proportionate share of the revenue from those assets.

89. AT&T Inc., Mobility, Mobility Corporation, and Mobility II further breached, and continue to breach, their respective fiduciary duties of loyalty by breaching the duty of good faith. AT&T Inc., Mobility, Mobility Corporation, and Mobility II subjectively acted, and continue to act, for a purpose other than the best interests of the Partnership by using Partnership assets to benefit AT&T (without ensuring that all revenues from Partnership assets were allocated and transferred to

the Partnership) and by charging expenses to the Partnership for activities that did not benefit the Partnership, but instead only benefitted AT&T.

90. Plaintiff has no adequate remedy at law.

FOURTH CAUSE OF ACTION
Aiding and Abetting Breaches of Fiduciary Duty – AT&T Inc., Mobility, Mobility Corporation, and Mobility II

91. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

92. Pleading solely in the alternative to Count III in the event that the Court deems that AT&T Inc., Mobility, Mobility Corporation, and Mobility II did not owe fiduciary duties to the Partnership, such Defendants (the "Defendant Aider and Abettors") aided and abetted (and continue to aid and abet) breaches of fiduciary duty owed and owing by NCW to the Partnership.

93. NCW is the General Partner of the Partnership and was the Partnership's General Partner throughout the relevant time period. As such, NCW owed, and owes, a fiduciary duty of loyalty and care to the Partnership.

94. NCW breached, and is breaching, its fiduciary duty of loyalty by engaging in self-dealing transactions for the benefit of AT&T that were, and are, not entirely fair to the Partnership. In so doing, the Partnership was denied, and continues to be denied, both a fair process and price for AT&T's use of its assets.

95. NCW further breached, and is breaching, its fiduciary duty of loyalty by acting in bad faith. NCW subjectively acted, and continues to act, for a purpose other than the best interests of the Partnership by using Partnership assets to benefit AT&T (without ensuring that all revenues and assets created using Partnership assets were allocated and transferred to the Partnership) and by charging expenses to the Partnership for activities that did not benefit the Partnership, but instead only benefitted AT&T.

96. The Defendant Aider and Abettors knowingly participated, and continue to participate, in NCW's breaches of fiduciary duty. The Defendant Aider and Abettors knew, and continue to be aware, of NCW's breaches of its fiduciary duties to the Partnership because their authorized agents, such as Wages and personnel in AT&T's Partnership Accounting Group, knew that AT&T obtained revenues from Partnership assets that were not shared with the Partnership. The Defendant Aider and Abettors are imputed with the knowledge of Wages and their other agents.

97. The Defendant Aider and Abettors knowingly participated in and/or substantially assisted in NCW's breaches of its fiduciary duties to the Partnership, and continue to do so. First, the Defendant Aider and Abettors induced and knowingly benefitted the breaches by keeping assets and revenues for themselves (and/or other AT&T affiliates) that were derived from improper use of Partnership

assets for their own (or other AT&T affiliates') benefit. Second, the Defendant Aider and Abettors established an integrated, nationwide network and accounting system under the auspices of the Partnership Accounting Group that led to unfair income allocation to the Partnership. Third, the Defendant Aider and Abettors incurred costs to create and acquire other assets that they knew (and directed) would be improperly charged to the Partnership without providing a concomitant benefit to the Partnership. This conduct is continuing.

98. The Partnership suffered, and will continue to suffer, damages in an amount to be proven at trial as a result of the fiduciary duty breaches knowingly facilitated by the Defendant Aider and Abettors. The Partnership suffered damages in the form of losses related to revenues improperly derived from Partnership assets that were diverted and wrongfully withheld by AT&T. The Partnership was further damaged by improper charges for expenses that offset the amounts that AT&T ultimately distributed to the Partnership.

99. Plaintiff has no adequate remedy at law.

FIFTH CAUSE OF ACTION
Unjust Enrichment – AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, and Mobility II

100. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

101. As set forth herein, NCW breached, and continues to breach, its fiduciary duty of loyalty as General Partner of the Partnership by engaging in self-dealing transactions that were not entirely fair to the Partnership, by acting for a purpose other than the best interests of the Partnership, and by misusing Partnership property. AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, and Mobility II benefitted, and are benefitting, from those fiduciary duty breaches, as they received income from use of Partnership assets that rightfully belonged to, should have been allocated to, and should have been paid to the Partnership.

102. The Partnership conferred benefits on AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, and Mobility II because the Partnerships assets were used to generate revenue for them. Moreover, the Partnership suffered harm as a result because the Partnership did not receive assets and revenue that it should have, and thus AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, and Mobility II benefitted at the expense of and to the detriment of the Partnership.

103. It would be unjust to permit AT&T Inc., AT&T Corp., Mobility, Mobility Corporation, and Mobility II to keep the benefits they received as a result of fiduciary duty breaches to the Partnership.

104. Pleading in the alternative to the extent that it is unable to recover the profits and assets unjustly received by AT&T Inc., AT&T Corp., Mobility, Mobility

Corporation, and Mobility II through other claims, Plaintiff is without adequate remedy at law.

SIXTH CAUSE OF ACTION
Breach of Contract – NCW

109. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

110. NCW, as the General Partner of the Partnership, and the Partnership are parties to the Partnership Agreement, which is valid and binding.

111. Section 7.1(a) of the Partnership Agreement authorized NCW to cause the Partnership to enter into agreements and contracts with NCW or its "Affiliates" but only to the extent that the "prices, terms and conditions of any such contract or agreement are no less favorable than offered to others by the General Partner or Affiliate." Additionally, such agreements had to be disclosed in advance to the limited partners and in writing. NCW breached, and is continuing to breach, Section 7.1(a) by causing the Partnership to deal with NCW's affiliates such that the Partnership did not receive compensation in exchange for AT&T's use of Partnership assets on terms that were comparable to those offered to others by AT&T. As noted above, AT&T entered into the MSNA with numerous similarly situated Cellular Partnerships across the country. Section 7.1(a), thus, required that NCW ensure that its affiliates offer the Partnership terms no less favorable than the

MNSA. Yet, the Partnership received, and continues to receive, far less income allocation than it would have received under the rubric set forth in the MNSA.

112. Section 7.3(a) also required that NCW refrain from "any act in contravention of this Agreement" and Section 8.1 required that NWC act in the "best interests of the Partnership" in carrying out its duties. "As a result of NCW's breach of Section 7.5 and for all of the reasons cited above, NCW has breached, and is continuing to breach, Sections 7.3(a) and 8.1 of the Partnership Agreement.

113. Consequently, the Partnership suffered, and continues to suffer, damages in an amount to be proven at trial as a result of NCW's breaches of the Partnership Agreement. The Partnership received less revenue and was charged more in expenses than it otherwise would have but for NCW's breaches.

SEVENTH CAUSE OF ACTION
Tortious Interference with Contract – AT&T Inc., Mobility, Mobility Corporation, and Mobility II

114. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein. Plaintiff asserts this count against AT&T Inc., Mobility, Mobility Corporation, and Mobility II (the "Defendant Tortious Interferers").

115. Through the knowledge of common control persons and managers, the Defendant Tortious Interferers knew about the existence and validity of the Partnership Agreement.

116. As described in Count VI, NCW breached, and continues to breach, the Partnership Agreement.

117. The Defendant Tortious Interferers used, and are using, their control over the Partnership and NCW to cause NCW to breach the Partnership Agreement. Specifically, the Defendant Tortious Interferers established an integrated, nationwide network and accounting system under the auspices of the Partnership Accounting Group. The authorized agents of the Defendant Tortious Interferers, such as Eric Wages and personnel in AT&T's Partnership Accounting Group, knew that AT&T was not applying the fair methodology adopted in the MNSA but retaining revenues rightfully belonging to the Partnership for itself. The Defendant Tortious Interferers are imputed with the knowledge of Wages and their other agents.

118. The Defendant Tortious Interferers over allocated revenues to themselves at the expense of the Partnership. The Defendant Tortious Interferers also benefited by improperly charging expenses to the Partnership without providing a concomitant benefit to the Partnership. Moreover, the Defendant Tortious Interferers knew AT&T's allocation of revenue and expense to the Partnership was unfair; knew how to fix that unfairness; and chose not to do so. Defendant Tortious Interferers' acceptance of these knowingly unjust rewards demonstrates that the interreference was willful, intentional, motivated by a bad faith purpose rather than to achieve permissible financial goals, and without justification.

119. The Partnership has been injured, and continues to be injured, by being deprived of the benefit of its bargain in an amount to be determined at trial. The Partnership received, and continues to receive, less revenue and was charged more in expenses than it otherwise would have but for NCW's breaches.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

a. entering judgment in favor of the Partnership and against NCW for breaching its fiduciary duty;

b. entering judgement in favor of the Partnership and against AT&T Inc., Mobility, Mobility Corporation, and Mobility II for breaching their fiduciary duties (or, in the alternative, against AT&T Corp., AT&T Inc., Mobility, Mobility Corporation, and Mobility II for aiding and abetting breaches of fiduciary duty, and/or unjust enrichment);

c. entering judgment against NCW for NCW's breaches of the Partnership Agreement;

d. entering judgment against AT&T Inc., Mobility, Mobility Corporation, and Mobility II for tortious interference with the Partnership Agreement;

e. awarding compensatory damages to the Partnership against NCW, AT&T Inc., Mobility, Mobility Corporation, and Mobility II, jointly and severally, in an amount to be determined at trial;

f. ordering all Defendants to disgorge any profits received as a result of any breaches of fiduciary duties;

g. ordering and imposing a constructive trust over all property that AT&T Corp., AT&T Inc., Mobility, Mobility Corporation, and Mobility II created or acquired with proceeds traceable to breaches of fiduciary duty and misuse of Partnership property or assets;

h. ordering NCW and any other Defendants deemed fiduciaries of the Partnership to provide an accounting;

i. awarding pre-judgment and post-judgment interest at the maximum rate permitted by law or equity;

j. in light of Defendants' pervasive and willful breaches of fiduciary duty and the substantial harm that such conduct has inflicted on the Partnership, appointing a receiver for the Partnership;

k. awarding reasonable attorney's fees and expenses, together with all costs of court, in connection with this action; and

l. awarding such other and further relief as the Court deems just.

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