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November 3, 2006

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation in WT Docket No. 05-194
In the Matter of Petition of CTIA – The Wireless Association for an
Expedited Declaratory Ruling Concerning Wireless Early Termination
Fees

Dear Ms. Dortch:

Verizon Wireless is filing the attached documents to be associated with the record in this proceeding.

Please contact the undersigned counsel for Verizon Wireless if you have any questions.

Respectfully submitted,

/s/ Nancy J. Victory

Nancy J. Victory

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
AUG 23 2004
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

JOSEPH B. DOYLE, ADMINISTRATOR
FAIR BUSINESS PRACTICES ACT,

COMPLAINANT,

v.

IN THE MATTER OF CINGULAR WIRELESS
LLC

RESPONDENT.

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CIVIL ACTION FILE

NO. 2004CV90083

ASSURANCE OF VOLUNTARY COMPLIANCE

RECEIVED
AUG 25 2004
CINGULAR WIRELESS
LEGAL DEPARTMENT

IN THE MATTER OF)
)
CINGULAR WIRELESS LLC)

ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance¹ (“Assurance”) is entered into by the Attorneys General² (collectively, “Attorneys General”) of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, “Participating States”), and Respondent Cingular Wireless LLC.

2. Cingular Wireless LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 5565 Glenridge Connector, Atlanta, Georgia 30342 (“Carrier”). “Cingular Wireless” is the assumed name by which Carrier does business in the Participating States.

¹ This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

² Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General’s Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General’s Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the “Attorneys General.”

BACKGROUND

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, "Consumer Statutes").³

4. Carrier provides wireless voice and data communications services and is licensed by the

³ Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code §714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA §57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. §75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et seq.* (2003).

Federal Communications Commission (“FCC”) to provide wireless telephone service. Carrier supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

TERMS OF ASSURANCE

A. Definitions

For purposes of this Assurance, the following definitions shall apply:

9. A statement is “clear and conspicuous” if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner.

In addition:

a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;

b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;

c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

10. “Wireless Service” means any basic voice wireless service offered by a commercial mobile radio service provider.

11. “Enhanced Feature” means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and personal

information services.

12. “Consumer” means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.

13. “Sales Transaction” means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, “fixed term” refers to a Wireless Service contract with a term of greater than one month.

14. “Telephone Sales Representative” means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.

15. “Agent” means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.

16. “Affiliate” means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

B. Disclosure of Material Rates and Terms During a Sales Transaction

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.

18. Carrier will implement procedures to provide to Consumers during a Sales Transaction clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the

customer's locale, and disclose the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a Consumer

to accept Carrier's contract terms and conditions. These disclosures shall be in electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A “free to pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:

- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
- b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
- c. The cost of the good or service after the expiration of the free to pay conversion.

C. Coverage

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier's network or networks; and

b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under normal

operating conditions on Carrier's network, factoring in topographical conditions, and subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

D. Cancellation Period for New Wireless Service

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14

days after activation to try out the service. Carrier will not impose any early termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable "bucket" of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the Participating

State until the later of December 31, 2009 or three years from the date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

E. Advertising

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a "free" Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word "free," any material limitation on the word "free," including, if applicable: (a) the price of any Wireless Service device required to be purchased to

obtain the “free” Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the “free” Wireless Service device.

F. Disclosures of Taxes and Surcharges on Consumer Bills

36. On Consumers' bills, Carrier will
- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
 - b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

G. Consumer Inquiries and Complaints

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.
38. Carrier shall respond within a reasonable time and in good faith to all consumer complaints or requests for adjustments received by Carrier with respect to the matters set forth in this

Assurance on an individual basis.

H. Compliance Procedures

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

I. General Provisions

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.⁴

41. All court costs associated with this Assurance and its entry and approval shall be borne by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on

⁴ With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.

any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a complete settlement and release by the Participating States of all civil claims, causes of action, damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys

General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between Carrier and the Attorneys General not stated in writing herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully

advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance with any provisions of this Assurance that can reasonably be completed prior to the end of such period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to

such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.

57. This Assurance shall not be construed against the “drafter” because both Carrier and the Attorneys General participated in the drafting of this Assurance.

58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.

59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.

62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.

63. As consideration for the relief agreed to herein, if the Attorney General of a Participating State determines that Carrier has failed to comply with any of the terms of this Assurance, and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing

of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination.

The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
 - i. A statement that the alleged breach has been cured and how; or
 - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance.

Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the Participating State or the people of the Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

J. Modification of Certain Operational Provisions

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the

Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

CINGULAR WIRELESS LLC

By: Thomas M. Meiss
Thomas M. Meiss
Associate General Counsel

Date: July 7, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

TROY KING
Attorney General of Alabama

By: 
DEANNA L. FULTS
Assistant Attorney General

Date: 6/29/04

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

MIKE BEEBE
ATTORNEY GENERAL OF ARKANSAS

By:



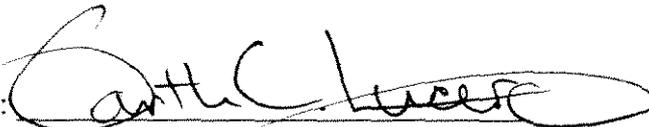
J. Camille Williams
Assistant Attorney General

Date:

6/20/04

In the Matter of Cingular Wireless, LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

KEN SALAZAR
Attorney General of Colorado

By: 

GARTH C. LUCERO
Deputy Attorney General
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
(303) 866-5079

Date: June 25, 2004.

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

M. JANE BRADY
Attorney General of Delaware

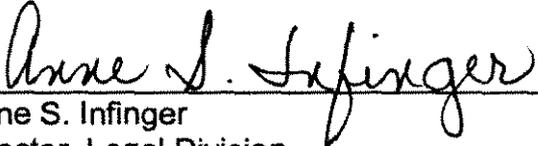
By: 
BARBARA J. GADBOIS
Deputy Attorney General

Date: June 29, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

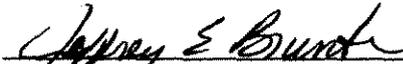
Dated: June 28, 2004

JOSEPH B. DOYLE
Administrator, Governor's Office of Consumer
Affairs


Anne S. Infinger
Director, Legal Division
Governor's Office of Consumer Affairs
2 Martin Luther King, Jr. Drive, Suite 356
Atlanta, GA 30334-4600

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

MARK E. RECKTENWALD
Director, Department of Commerce and Consumer Affairs
State of Hawaii

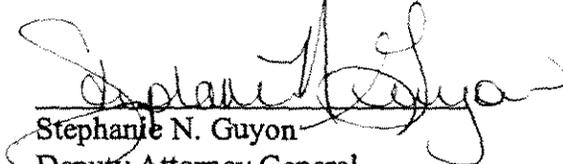
By: 
JEFFREY E. BRUNTON
Staff Attorney, Office of Consumer Protection

Date: June 18, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

LAWRENCE G. WASDEN
Attorney General of Idaho

By:


Stephanie N. Guyon
Deputy Attorney General

Date: 10-7-04

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

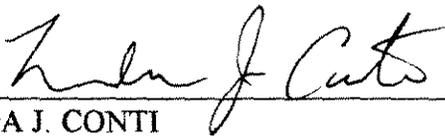
LISA MADIGAN
Attorney General of Illinois

By: *Elizabeth Blackston*
Elizabeth Blackston
Assistant Attorney General

Date: June 22, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

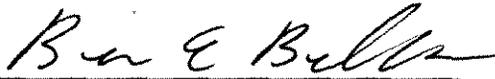
G. STEVEN ROWE
Attorney General of the State of Maine

By: 
LINDA J. CONTI
Assistant Attorney General

Date: June 25, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

THOMAS J. MILLER
Attorney General of Iowa

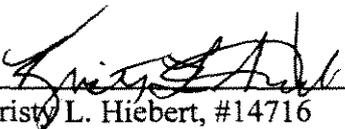
By: 

BENJAMIN E. BELLUS
Assistant Attorney General
Consumer Protection Division
Hoover State Office Building
1305 East Walnut Street
Des Moines, IA 50319

Date: June 24, 2004

In the Matter of Cingular Wireless, LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

STATE OF KANSAS
PHILL KLINE, #13249
Attorney General

By: 

Kristy L. Hiebert, #14716
Assistant Attorney General
Office of the Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
(785) 296-3751

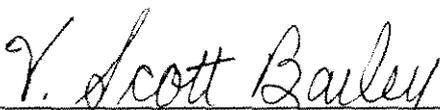
Dated: 6/23/04

In the matter of CINGULAR WIRELESS LLC

Dated: June 25, 2004

J. JOSEPH CURRAN, JR.
Attorney General of the State of Maryland

By:



WILLIAM D. GRUHN
VERNON SCOTT BAILEY
Assistant Attorney General
Consumer Protection Division
Office of the Attorney General
200 St. Paul Place, 16th Floor
Baltimore, MD 21202
410-576-6349

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated: June 25, 2004

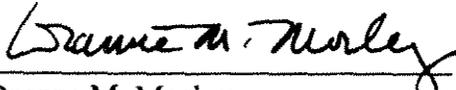
THOMAS F. REILLY
Attorney General
Commonwealth of Massachusetts

By: 
Karlen J. Reed, BBO #635094
Assistant Attorney General
Utilities Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200

By: 
Geoffrey G. Whyte, BBO #641267
Assistant Attorney General
Consumer Protection and Antitrust Division
One Ashburton Place
Boston, MA 02108
(617) 727-2200

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

JIM HOOD
Attorney General of Mississippi

By: 
Deanne M. Mosley
Special Assistant Attorney General

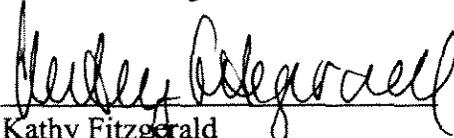
Date: June 24, 2004

In the Matter of: CINGULAR WIRELESS, LLC

MICHAEL A. COX
ATTORNEY GENERAL
State of Michigan

Dated: June 25, 2004

By:



Kathy Fitzgerald
Assistant Attorney General
Consumer Protection Division
P.O. Box 30213
Lansing, MI 48909
Telephone: 517-335-0855

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

CINGULAR WIRELESS LLC

By:

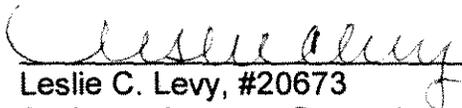


Cort Jensen
Consumer Protection Chief
Special Assistant Attorney General
1219 8th Ave
Helena, MT 59620
(406) 444-5439

Date: June 25, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

BY: JON BRUNING, #20351
Attorney General of Nebraska

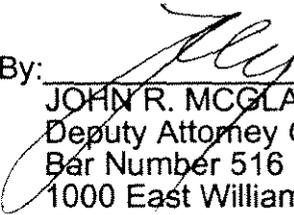
BY: 
Leslie C. Levy, #20673
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-8920
Tel: (402) 471-2682
Fax: (402) 471-2957

Date: June 29, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

DATED this 28th day of June, 2004.

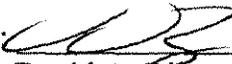
BRIAN SANDOVAL, Attorney General
TIMOTHY D. HAY, Consumer Advocate

By: 

JOHN R. MCGLAMERY
Deputy Attorney General
Bar Number 516
1000 East William Street, Suite 209
Carson City, Nevada 89701
(775) 687-6300 ext. 238

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

PETER W. HEED
Attorney General of New Hampshire

By: 
David A. Rienzo
Assistant Attorney General
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3643

Date: June 24, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By: 

David M. Puteska
Deputy Attorney General

Dated: June 24, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

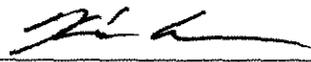
PATRICIA A. MADRID
Attorney General of the State of New Mexico

By: 
Richard B. Word
Assistant Attorney General

Date: 

In the Matter of Cingular Wireless, LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

ROY COOPER
Attorney General of North Carolina

By: 

Kevin L. Anderson
Assistant Attorney General

Date: 6/25/04

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

State of North Dakota
Wayne Stenehjem
Attorney General

BY: Parrell D. Grossman

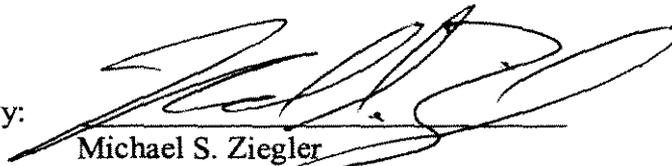
Parrell D. Grossman, ID No. 04684
Assistant Attorney General
Director, Consumer Protection &
Antitrust Div.
Office of Attorney General
4205 State Street
PO Box 1054
Bismarck, ND 58502-1054
(701) 328-5570

Date: June 24, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

Jim Petro
Attorney General of Ohio

By:

A handwritten signature in black ink, appearing to read "Michael S. Ziegler", written over a horizontal line.

Michael S. Ziegler
Assistant Attorney General

Date: June 24, 2004

In The Matter of Assurance of Voluntary Compliance

Cingular Wireless LLC

W.A. DREW EDMONDSON
ATTORNEY GENERAL

A handwritten signature in cursive script that reads "Jane F. Wheeler". The signature is written in black ink and is positioned above a horizontal line.

JANE F. WHEELER, OBA No. 9523
Office of the Attorney General
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, Oklahoma 73105
(405) 521-4274
(405) 522-0085 (fax)

Dated: June 24, 2004

In the Matter of:
Cingular Wireless, LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

APPROVAL BY COURT

APPROVED FOR FILING and SO ORDERED this ___ day of _____, 2004.

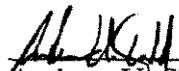
Circuit Court Judge
Marion County, State of Oregon

ACCEPTANCE OF DOJ

Accepted this 23rd day of June, 2004.

HARDY MYERS
Attorney General of Oregon

By:



Andrew D. Shull (OR Bar #02454)
Assistant Attorney General
Oregon Department of Justice
(Appearance In Oregon Only)

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

LAWRENCE E. LONG
Attorney General of South Dakota

By:



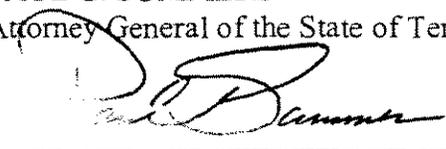
Paul Cremer
Assistant Attorney General

Date: June 18, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

PAUL G. SUMMERS
Attorney General of the State of Tennessee

By:



Paul G. Summers

Date: July 1, 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

By: 
MARY C. CLEMENT
Director
Division of Consumer Affairs
Tennessee Department of Commerce and Insurance
500 James Robertson Parkway, 5th Floor
Nashville, Tennessee 37243

Date: July 7, 2004

**In the Matter of:
Cingular Wireless LLC
Assurance of Voluntary Compliance**

Date: July 7, 2004.

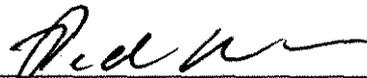
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection and
Public Health Division



PEDRO PEREZ, JR.
Assistant Attorney General
State Bar No. 00788184
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711
512-475-4656
(Fax) 512-473-8301

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

PEGGY A. LAUTENSCHLAGER
Attorney General
State of Wisconsin

By: 
JAMES D. JEFFRIES
Assistant Attorney General
State Bar #1009053

Date: June 24, 2004

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-8901

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

CINGULAR WIRELESS LLC

Dated: June 28, 2004

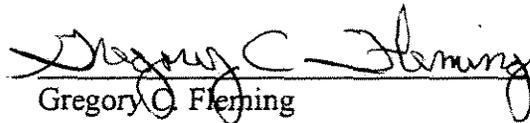
By: Respectfully submitted,

JERRY W. KILGORE
Attorney General of Virginia

JOSEPH R. CARICO
Chief Deputy Attorney General

JUDITH WILLIAMS JAGDMANN
Deputy Attorney General for Civil Litigation

DAVID B. IRVIN
Senior Assistant Attorney General
Chief, Antitrust and Consumer Litigation Section



Gregory C. Fleming
Assistant Attorney General
Antitrust and Consumer Litigation Section
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
804/786-7364
804/786-0122 (Facsimile)

In the matter of Cingular Wireless, LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

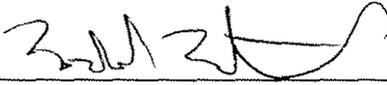
PATRICK C. CRANK
Attorney General of Wyoming

By: Peter Free
PETER FREE
Assistant Attorney General

Date: 24 June 2004

In the Matter of Cingular Wireless LLC
ASSURANCE OF VOLUNTARY COMPLIANCE

Gregory D. Stumbo
Attorney General of the Commonwealth of Kentucky

By: 

Todd E. Leatherman
Director, Consumer Protection Division
1024 Capital Center Drive
Frankfort, Kentucky 40601
(502) 696-5389

Date: 10/25/04

ENTERED this _____ day of _____, 2004.



JUDGE, FRANKLIN CIRCUIT COURT

Steven E. Zipperstein
General Counsel



Verizon Wireless
One Verizon Way
VC43E024
Basking Ridge, NJ 07920-1097

Phone 908 559-7390
Fax 908 559-7397
steven.zipperstein@VerizonWireless.com

September 14, 2006

The Honorable Ted Stevens
The Honorable Daniel Inouye
Committee on Commerce, Science and Transportation
United States Senate
Washington, D.C. 20510

Re: Consumers' Choice and Broadband Deployment Act of 2006

Dear Senators Stevens and Inouye:

We understand that a number of state attorneys general may raise a concern with you about Section 1006 of your bill, which would preserve states' ability to enforce general consumer protection laws against wireless carriers but limit wireless-specific regulation. Acting under those same general consumer protection laws, 33 states entered into an Assurance of Voluntary Compliance ("AVC") in 2004 with our companies. The AVC requires us to follow specific advertising practices, disclose detailed information to our customers when they buy wireless service, and provide them with other protections. A number of attorneys general are concerned that their authority to enforce the AVC or similar agreements would be preempted by the bill.

We wish to make clear to the Committee that we do not read Section 1006 or any other provision of the bill to affect our obligations under the AVC, or the states' ability to enforce the provisions of that agreement. We will remain bound by the AVC and remain committed to complying with its terms. In fact, the AVC is a good example of how the Attorneys General and wireless carriers have worked cooperatively to address issues of concern. Because Section 1006 expressly preserves states' authority by making clear that states will continue to have the power to enforce general consumer protection laws, it preserves the authority of state attorneys general to enforce those laws through agreements like the AVC.

The fact that the bill does not undermine the AVC underscores why the bill serves the public interest. It does not preempt state general consumer protection laws. Instead, it correctly recognizes that the highly competitive wireless industry should not be subjected to state-by-state, monopoly-style utility regulation that does not apply to other competitive businesses. It instead directs the Federal Communications Commission to adopt national wireless consumer rules, correctly finding that only national regulation can provide consistent protections to all consumers in every state.

Many states have already agreed with the bill's approach by enacting legislation that precludes their public utility commissions from imposing utility-style regulation on wireless providers. These states clearly did not believe that doing so would prevent them from protecting consumers through their own general laws and through the efforts of their attorneys general – precisely what the attorneys general accomplished through the AVC. Section 1006 would merely make that approach the national policy.

We would be happy to discuss our views with you at your convenience.

Sincerely,

[signature on first attached page]

Joaquin R. Carbonell III
Executive Vice President
and General Counsel
Cingular Wireless

[signature on second attached page]

Leonard J. Kennedy
General Counsel
Sprint Nextel Corporation



Steven Zipperstein
Vice President – Legal and External
Affairs and General Counsel
Verizon Wireless

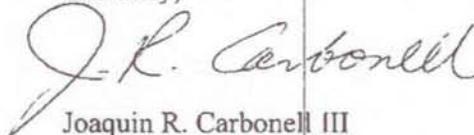
cc: National Association of State Attorneys General

The fact that the bill does not undermine the AVC underscores why the bill serves the public interest. It does not preempt state general consumer protection laws. Instead, it correctly recognizes that the highly competitive wireless industry should not be subjected to state-by-state, monopoly-style utility regulation that does not apply to other competitive businesses. It instead directs the Federal Communications Commission to adopt national wireless consumer rules, correctly finding that only national regulation can provide consistent protections to all consumers in every state.

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We would be happy to discuss our views with you at your convenience.

Sincerely,



Joaquin R. Carbonell III
Executive Vice President
and General Counsel
Cingular Wireless

Leonard J. Kennedy
General Counsel
Sprint Nextel Corporation

Steven Zipperstein
Vice President – Legal and External
Affairs and General Counsel
Verizon Wireless

cc: National Association of State Attorneys General

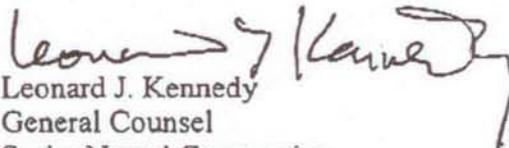
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We would be happy to discuss our views with you at your convenience.

Sincerely,

Joaquin R. Carbonell III
Executive Vice President
and General Counsel
Cingular Wireless


Leonard J. Kennedy
General Counsel
Sprint Nextel Corporation

Steven Zipperstein
Vice President – Legal and External
Affairs and General Counsel
Verizon Wireless

cc: National Association of State Attorneys General

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JARED PECK, individually and on behalf of
all the members of the class of persons
similarly situated,

Plaintiffs,

v.

CINGULAR WIRELESS, LLC, a Delaware
limited liability company, d/b/a Cingular
Wireless, et al.,

Defendants.

No. C06-343Z

ORDER

This matter comes before the Court on Defendant’s Motion to Dismiss Based on Federal Preemption, docket no. 23. The Court, having reviewed the briefs in support of and in opposition to these motions, hereby GRANTS Defendant’s Motion to Dismiss.

BACKGROUND

Plaintiff Jared Peck is an individual who is a customer of Defendant Cingular Wireless, LLC (“Cingular”), a provider of wireless cellular telephone service. (Compl., docket no. 4, at 1-2.) Mr. Peck filed suit in King County Superior Court on February 14, 2006, alleging that Defendant Cingular billed, charged, and collected a business and

1 occupation (B&O) tax surcharge in violation of RCW 82.04.500.¹ (Compl. at 2.) Mr. Peck
2 seeks to represent a class of all current or past Washington state cellular phone customers of
3 Cingular from whom it collected a “State B and O Surcharge” as a line item appearing on
4 the customers’ bills. (Compl. at 2.) Cingular filed to remove this case to federal court on
5 March 13, 2006. (Notice of Removal, docket no. 1.) Mr. Peck did not oppose removal.
6 Cingular now brings this Motion to Dismiss Based on Federal Preemption, docket no. 23.

7 **DISCUSSION**

8 The Federal Communications Act (“FCA”), 47 U.S.C. § 332, prohibits states from
9 regulating the “rates” of commercial mobile telephone service, but reserves to the states
10 regulation of “other terms and conditions” of such service. The relevant section states:

11 [N]o State or local government shall have any authority to
12 regulate the entry of or the rates charged by any commercial
13 mobile service or any private mobile service, except that this
14 paragraph shall not prohibit a State from regulating the other
15 terms and conditions of commercial mobile services. Nothing in
16 this subparagraph shall exempt providers of commercial mobile
17 services (where such services are a substitute for land line
18 telephone exchange service for a substantial portion of the
19 communications within such State) from requirements imposed
20 by a State commission on all providers of telecommunications
21 services necessary to ensure the universal availability of
22 telecommunications service at affordable rates.

23 47 U.S.C. § 332(c)(3)(A). Cingular argues that the Court should dismiss Mr. Peck’s claims
24 because they are a challenge to Cingular’s rates and are preempted by federal law. (Mot. to
25 Dismiss, docket no. 23, at 1.) Mr. Peck argues that his claims do not challenge Cingular’s
26 rates and are not preempted. (Pl.’s Resp. to Mot. to Dismiss, docket no. 43, at 1.) For the
reasons set forth below, the Court concludes that state regulation of line items constitutes
rate regulation and that Mr. Peck’s claims are preempted by § 332.

¹ “It is not the intention of this chapter that the taxes herein levied upon persons engaging in
business be construed as taxes upon the purchasers or customers, but that such taxes shall be
levied upon, and collectible from, the person engaging in the business activities herein
designated and that such taxes shall constitute a part of the operating overhead of such
persons.” RCW 82.04.500 (2006).

1 **A. Section 332 Preempts State Regulation of Line items**

2 In 2005, the Federal Communications Commission (“FCC”) issued a declaratory
 3 ruling² that a state regulation curtailing a wireless carrier’s ability to structure its bills and
 4 isolate charges into separate line items “would have a direct effect on a [wireless] carrier’s
 5 rate structure presented to its end users and, if instituted by a state commission, would be
 6 preempted by [§ 332(c)(3)].” Second Report and Order in re Truth and Billing, 20 F.C.C.R.
 7 6448, para. 31, 6464 (2005) (“Second Report and Order”). However, the Eleventh Circuit
 8 reviewed the Second Report and Order and held that “[b]ecause the regulation of line-item
 9 billing is not rate regulation, the express language of section 332 (c)(3)(A) of the
 10 Communications Act does not preempt state regulations that require or prohibit the use of
 11 line items on cellular wireless bills.” Nat’l Ass’n of State Util. Consumer Advocates v. Fed.
 12 Commc’n Comm’n, 457 F.3d 1238, 1258 (2006) (“NASUCA”).³ Because the interpretation
 13 of rates contained in the Second Report and Order is consistent with other court rulings and
 14 prior FCC usage of the term, this Court affords deference to the FCC interpretation of § 332.
 15 See Chevron U.S.A. v. Natural Res. Def. Council, 467 U.S. 837 (1984).

16 An agency interpretation is entitled to deference if (1) the plain language of the statute
 17 is ambiguous or silent on the precise question at issue, and (2) the agency interpretation is
 18 based on a permissible construction of the statute. Chevron, 467 U.S. at 842-43. “[W]here a
 19 statute’s plain terms admit of two or more reasonable usages, the Commission’s choice of
 20 one of them is entitled to deference.” Nat’l Cable & Telecomm. Ass’n v. Brand X Internet
 21 Servs., 545 U.S. 967, 125 S.Ct. 2688, 2704 (2005) (citing Verizon Commc’n Inc. v. FCC,

22 _____
 23 ² In the Second Report and Order, the FCC “address[ed] a Petition for Declaratory Ruling
 24 filed by [NASUCA] seeking to prohibit telecommunications carriers from imposing any
 25 separate line item or surcharge on a customer’s bill that was not mandated or authorized by
 federal, state, or local law.” Second Report and Order in re Truth and Billing, 20 F.C.C.R.
 6448, para. 1, at 6449 (2005).

26 ³ Mandate has not issued in NASUCA. Petition for rehearing en banc was filed on
 September 14, 2006 and is currently pending. Eleventh Circuit docket no. 05-11682-DD.
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1 535 U.S. 467, 498 (2002). Shortly after Nat'l Cable, the Ninth Circuit applied Chevron to an
2 FCC interpretation of a different section of the FCA, and found that the FCC's interpretation
3 was entitled to deference. See Metrophones Telecomms., Inc. v. Global Crossing
4 Telecomms., Inc., 423 F.3d 1056, 1064-70. The Ninth Circuit held that the FCC's
5 interpretation was entitled to deference because "nothing in the statute clearly preclude[d]
6 the construction offered," id. at 1068, and the FCC's interpretation was "reasonable," id. at
7 1070.

8 The FCC's interpretation of "rates" meets the first prong of the Chevron test because
9 there are at least two reasonable usages of "rates" as it is used in § 332. The common
10 meaning of "rate" permits the FCC's interpretation of "rate" in § 332. Dictionaries define a
11 "rate" as "an amount of a charge or payment . . . having relation to some other amount or
12 basis of calculation," Oxford English Dictionary (2d ed. 1989), and "an amount paid or
13 charged for a good or service," Black's Law Dictionary (8th ed. 2004). The NASUCA court
14 held that "[s]tate regulations of line items regulate the billing practices of cellular wireless
15 providers, not the charges that are imposed on the consumer. The Eleventh Circuit held that
16 because the presentation of line items on a bill is not a 'charge or payment' for service, it is
17 an 'other term or condition' regulable by the states." Id. (emphases added) (citations
18 omitted). However, a line item is one of the charges a wireless customer pays in order to
19 receive service. An ambiguity exists because "rate" could mean only the carrier's base rate,
20 or it could refer to the total amount a customer pays for service.

21 The FCC's interpretation of "rates" meets the second prong of the Chevron test
22 because it is a permissible usage of the term. The FCC concluded that "state regulations
23 requiring or prohibiting the use of line items . . . constitute rate regulation and are preempted
24 under section 332(c)(3)(A)." Id. Specifically, the FCC concluded that "rates charged" in §
25 332(c)(3)(A) includes regulation of line items. 20 F.C.C.R. para. 30, at 6462-63. The FCC
26 found that, although Congress did not define the term "rates charged" in the FCA, rate

1 regulation under § 332(c)(3)(A) includes regulation of “rate levels” and “rate structures,” and
2 that state regulations regarding whether or not certain costs may be recovered by a separate
3 line item “clearly and directly affect” rate structure. *Id.* para. 30–31, at 6463. To illustrate
4 the fact that regulation of line items affects rates, the FCC explained that if states were
5 permitted to regulate whether or not certain costs could be recovered by a line item, a carrier
6 would have to tailor its rates and rate structure state-by-state. *Id.* para. 31, at 6464. Because
7 this is a plausible interpretation of “rates,” this court gives deference to the FCC
8 interpretation. The Eighth Circuit has agreed with the FCC’s interpretation of “rate
9 regulation” under § 332(c)(3)(A) and has held that state action which “has a clear and direct
10 effect on rates” constitutes rate regulation. *Cellco Partnership v. Hatch*, 431 F.3d 1077, 1083
11 (2005).

12 The Second Report and Order is consistent with previous FCC decisions. However,
13 “[a]gency inconsistency is not a basis for declining to analyze the agency’s interpretation
14 under the Chevron framework.” *Nat’l Cable*, 125 S.Ct. at 2699. Furthermore, an agency is
15 allowed to change an interpretation and explain its reasons for the change. *Id.* at 2699-2700.
16 The FCC in its Second Report and Order gives adequate reasoning for its interpretation of
17 “rates.” The FCC noted that, while it had previously recognized that “state regulation of
18 customer billing practices fall within ‘other terms and conditions,’” the FCC had never
19 before addressed the more specific question of “where among section 332(c)(3)(A)’s key
20 terms state regulation prohibiting or requiring line items should fall.” 20 F.C.C.R. at 6464
21 n.90.

22 For the reasons stated above, the Court gives deference to the FCC’s interpretation of
23 § 332 and holds that state regulation of line items is preempted by federal law.

24 **B. Plaintiff’s Claims are Preempted by § 332**

25 Mr. Peck’s claims are based on state law. However, “it is the substance, not merely
26 the form of the state claim or remedy, that determines whether it is preempted under Section

1 332.” In re Wireless Consumers Alliance, Inc., 15 F.C.C.R. 17021, para. 28, at 17037
2 (2000). Mr. Peck claims that Cingular’s “collection” of the state B&O tax as a line item
3 violates Washington law. (Compl. at 3.) Nevertheless, because the collection of the tax
4 directly affects the rate Cingular charges, Mr. Peck’s claims are preempted by §
5 332(c)(3)(A).

6 Mr. Peck argues that his claims are not preempted because another court in this
7 district has previously ruled that claims under the Washington Consumer Protection Act
8 (“CPA”) were not preempted by the FCA. See Order on Plaintiff’s Motion for Remand,
9 Baxter Air v. NOS Commc’ns, Inc., Civ. No. C05-2119P (March 10, 2006). The plaintiff in
10 Baxter Air alleged that the defendant used “a complex and difficult-to-understand ‘call-unit’
11 billing method,” thereby engaging in an “unfair or deceptive business practice” in violation
12 of the CPA. Id. at 1. By contrast, Mr. Peck alleges that Cingular’s “billing and collecting”
13 of the state B&O tax as a line item on his bill violates the CPA. (Compl. at 7.) Mr. Peck
14 does not allege an unfair or deceptive business practice in his Complaint.⁴

15 Similarly, Mr. Peck cites Metrophones for his contention that his claims are not
16 preempted. Pl.’s Resp. at 8. While it is true that some of the claims in Metrophones,
17 including a state law breach of contract claim, were not preempted, the Ninth Circuit did not
18 hold that all breach of contract claims are not preempted. Rather, Metrophones held that the
19 plaintiff’s breach of contract claim was not preempted because it was not inconsistent with
20 the FCA. Metrophones, 423 F.3d at 1076. Mr. Peck’s breach of contract claim is
21 inconsistent with § 332 because it is based on the allegation that Cingular billed, charged,
22 and collected the B&O tax as a line item, an allegation that implicates Cingular’s rates.

24
25 ⁴ While Mr. Peck states in his Response to Defendant’s Motion to Dismiss that he “claims
26 that Cingular engages in an unfair and deceptive practice by not adequately disclosing to
consumers that it passes on its Washington State B&O tax obligations in the form of a line
item,” Pl.’s Resp. at 4, nothing in the Complaint alleges that Cingular failed to disclose rates
or taxes it charges to consumers.

1 CONCLUSION

2 Defendant's Motion to Dismiss, docket no. 23, is GRANTED because Plaintiff Peck's
3 claims are preempted by 47 U.S.C. § 332(c)(3)(A).

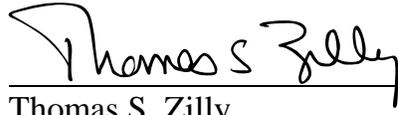
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5 IT IS SO ORDERED.

6 DATED this 24th day of October, 2006.

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Thomas S. Zilly
United States District Judge

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