

IN THE MATTER OF )  
 )  
CINGULAR WIRELESS LLC )

**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. This Assurance of Voluntary Compliance<sup>1</sup> (“Assurance”) is entered into by the Attorneys General<sup>2</sup> (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.

**BACKGROUND**

---

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

<sup>2</sup> 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.”

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”).<sup>3</sup>

4. Carrier provides wireless voice and data communications services and is licensed by the Federal Communications Commission (“FCC”) to provide wireless telephone service. Carrier

---

<sup>3</sup> 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) .

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.<sup>4</sup>

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

---

<sup>4</sup> 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.

costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on 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: \_\_\_\_\_  
(Name)  
(Title)

Date:



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