

**STATE OF FLORIDA
OFFICE OF ATTORNEY GENERAL**

IN THE MATTER OF:

**Verizon Wireless Services LLC
&
Alltel Communications, LLC**

CASE NO. L08-3-1035

CASE NO. L08-3-1034

Respondents.

ASSURANCE OF VOLUNTARY COMPLIANCE

PURSUANT to the provisions of Chapter 501, Part II, Florida Statutes, the OFFICE OF THE ATTORNEY GENERAL (“Attorney General”) has, on behalf of the State of Florida and its citizens, made inquiries into the marketing, advertising, and business practices of certain advertisers, content providers, and aggregators of third-party mobile content, including an inquiry into these practices in the context of third-party billing by wireless service providers, including Cellco Partnership d/b/a Verizon Wireless, a Delaware general partnership, whose principal address is One Verizon Way, Basking Ridge, New Jersey 07920, and Alltel Communications, LLC, a Delaware limited liability company, whose principal address is One Allied Drive, Little Rock, Arkansas 72202 (collectively, “Respondents”).

THE ATTORNEY GENERAL acknowledges that Respondents have fully and voluntarily cooperated with the Attorney General in its inquiries into the third-party wireless content industry, have worked with the Attorney General to create and impose industry-leading disclosure standards for the protection of their consumers, and have worked to aggressively monitor compliance with those standards by aggregators, content providers, and advertisers. The Attorney General recognizes that Verizon Wireless has implemented, on its own

accord, commendable business practices in the third-party wireless content industry intended to benefit consumers. As Respondents have fully cooperated with the Attorney General, this Assurance of Voluntary Compliance (“AVC”) is solely intended to resolve the investigation against Respondents with respect to their third-party mobile content business (the “Investigation”). Respondents have agreed to help effectuate industry-wide consumer protection practices that will further protect consumers in Florida and throughout the nation. By their actions, Respondents have demonstrated their willingness to assist the Attorney General and have also pledged their continued cooperation with the Attorney General’s ongoing inquiries into the third-party wireless content industry.

IT IS AGREED that this Assurance of Voluntary Compliance (“AVC”) does not constitute a finding of law or fact, or any evidence supporting any such finding, by any court or agency that Respondents have engaged in any act or practice declared unlawful by any laws, rules or regulations of the State of Florida or as might apply in Florida. Instead, this AVC reflects the cooperation of Respondents with the State of Florida. Respondents deny any liability or violation of law and enter into this AVC without any admission of liability. The parties intend that this AVC shall not be used as evidence in any action or proceeding.

THE ATTORNEY GENERAL, by the signature of his Deputy affixed hereto, does in this matter accept this AVC in termination of its inquiry into Verizon Wireless and Alltel, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Attorney General by said statute and without any finding of wrongdoing on the part of Respondents. The Attorney General and Respondents hereby agree and stipulate to the following:

JURISDICTION AND VENUE

1. Respondents are wireless voice and data service providers.
2. The State of Florida has jurisdiction over Respondents for the purpose of entering into this AVC and for any enforcement actions arising out of this AVC.
3. Venue for any matter relating to or arising out of this AVC shall lie solely in Leon County, Florida.

DEFINITIONS

4. As used herein:
 - A. “Verizon Wireless” means Cellco Partnership d/b/a Verizon Wireless, a Delaware general partnership, whose principal address is One Verizon Way, Basking Ridge, New Jersey 07920, as well as any and all entities in which Cellco Partnership d/b/a Verizon Wireless has a management or controlling interest and which engage in the marketing and business practices specified herein.
 - B. “Alltel” means Alltel Communications, LLC, a Delaware limited liability company, whose principal address is One Allied Drive, Little Rock, Arkansas 72202, as well as any and all entities in which Alltel has a management or controlling interest and which engage in the marketing and business practices specified herein.
 - C. “Clear and conspicuous” or “clearly and conspicuously” means that a statement, representation, claim or term being conveyed is readily noticeable and understandable to the persons to whom it is directed. To determine whether a statement, representation, claim or term is clear and conspicuous, factors to consider include:

- i. whether it is of sufficient prominence in terms of size, placement, color, contrast, duration of appearance, sound and speed, as to be readily noticeable and reasonably understandable by a person to whom it is directed;
 - ii. whether, in print or electronic media or orally represented, it is located sufficiently near the representations, statements, claims or terms it clarifies, modifies, explains, or to which it otherwise relates;
 - iii. whether it contradicts, or renders confusing or ambiguous, any other statement;
 - iv. whether it is or appears to be inconsistent with any other statement.
- D. “Consumer” means any consumer who is a resident of the State of Florida.
- E. “Mobile Content” refers to certain content, goods, and services purchased from a Third-Party Provider.
- F. “Third-Party Mobile Content” means Mobile Content sold by a Third-Party Provider directly to Respondents’ wireless Consumers and charged to the bill of one of Respondents’ wireless Consumers or which costs or fees are withdrawn from the prepaid account of one of Respondents’ wireless Consumers.
- G. “Third-Party Provider” means entities other than Respondents that advertise, aggregate billing for, offer, and/or sell Third-Party Mobile Content, including Third-Party Mobile Content subscriptions, directly to Respondents’ wireless Consumers.

- H. “Account Holder” means a Consumer who possesses a mobile telephone number that has a Florida area code and corresponds to an account for wireless service with Respondents.
- I. “Initial Representation” means all sponsored links, organic links, email subject lines, banner ads, pop-ups, and any and all other primary impressions created or presented by a Third-Party Provider relating to its advertisement of Third-Party Mobile Content.

COMPLIANCE TERMS

- 5. In connection with any Internet-based purchase of Third-Party Mobile Content subscriptions by an Account Holder, Respondents shall include in their future contracts with Third-Party Providers the following prohibitions for Third-Party Providers to follow, to the extent these prohibitions are not already included in such contracts:
 - A. the use of the terms “free,” “complimentary,” “no charge,” “without charge,” or any other term that reasonably leads a Consumer to believe that he or she may receive something of value, entirely or in part without a requirement of compensation in any form, or that tends to convey the impression to the consuming public that an article of merchandise or service is “free,” unless the Initial Representation clearly and conspicuously states that the free item may be received by a Consumer pursuant to his or her authorization of billing for a paid subscription plan, the price of the plan, and its term. For example, a free ringtone offer requiring a Consumer to subscribe to a monthly subscription plan at a cost of \$9.99 per month shall say, “Free ringtone with paid monthly subscription of \$9.99/month” or words of similar effect.

- i. The Parties acknowledge that Verizon Wireless has met with search engine companies, including Google and Yahoo, and encouraged those companies to enforce their own compliance policies related to the use of the word “free” in the advertisement of third-party mobile content. To that end, Verizon Wireless has provided information to these search engine companies regarding violations of its third-party mobile content policies by third-party providers.
- B. in a manner consistent with Mobile Marketing Association (“MMA”) guidelines, the advertisement or promotion of any Third-Party Mobile Content that is available only through certain wireless carriers, unless the advertisement clearly and conspicuously discloses that the Third-Party Mobile Content is not available through all carriers.
- C. in a manner consistent with the MMA guidelines, the advertisement or promotion of Third-Party Mobile Content that is available only on certain of Respondents’ makes or models of mobile devices unless the advertisement clearly and conspicuously discloses that the Third-Party Mobile Content is not available on all Respondents’ mobile devices.
- D. in a manner consistent with the MMA guidelines, the inclusion in any offer of a term or condition necessary to its acceptance whereby the Consumer agrees to accept advertising or promotional messages delivered electronically to cell phones via text messaging, email or otherwise, that are independent of the current offer, or unconnected to the delivery of the current offer, unless consented to by the Consumer.

E. in a manner consistent with the MMA guidelines, the placement of pre-checked boxes in an offer intended to be used for acceptance of the terms and conditions of the offer.

6. **IT IS FURTHER AGREED** by the parties that Respondents, as a provision in all future contracts entered into with any Third Party Provider shall require that the web-based advertising for third-party content conform to the following minimum standards:

A. the advertising shall contain a minimum of 12 point font size for at least one price and billing period disclosure (in conformity with web standard font size equivalents) and a minimum color contrast value of 125 (see Exhibit A) for this same price and billing period disclosure; and

B. in addition to the above, the advertising shall:

i. as to that price and billing period disclosure in (6.)(A.) above, place this disclosure within 125 pixels above, below, to the left, or to the right of the cell number submit field and P.I.N. submit field on web pages with cell number submit fields and P.I.N. submit fields. The price point must be disclosed in numerical format “0-9” and include dollar sign “\$.” The price and term must not contain any other text. One example of an acceptable price disclosure is, “For \$9.99 per month.”

ii. disclose the alternative wireless content available, if any, in a font no smaller than one-half the font size of the primary offer description. This disclosure must also be no further than 20 pixels from the primary offer description. For example, “Get 10 Ringtones [50 point font size] or a Cool Text Service [minimum of 25 point font size].”

- iii. disclose above the fold, that a user must have the permission of the Account Holder to participate in the offer.
- iv. disclose on the cell submit page and P.I.N. submit page, with a minimum of three lines of text above the fold (if there are three or more lines of terms and conditions), the following terms and conditions:
 - (1) whether other charges may apply,
 - (2) if the offer is for a recurring subscription plan, that the consumer will be charged automatically with no further action on the part of the consumer, the frequency with which the charge will automatically be made to the account in absence of cancellation of the plan, and that the consumer will continue to receive the charges until the consumer cancels the plan,
 - (3) how to cancel the plan,
 - (4) the mechanism for charging the consumer, e.g., “charges shall appear on your cellphone bill” or “payment will be deducted from your prepaid balance on your cellphone account,”
 - (5) pricing disclosure, subscription disclosure, and opt-out instructions in the terms and conditions,
 - (6) notification in the terms and conditions that any charges will be applied to the Consumer’s phone bill or deducted from his or her prepaid balance, and

(7) a link to the full set of terms and conditions, if the full set of terms and conditions is not already provided in the web page.

7. For purposes of the minimum standards contained in Paragraphs 5 and 6, the parties agree to adopt: (a) page fold measurements based on a 1024x768 resolution monitor, (b) the W3C brightness formula, and (c) the definition of “pixel” to mean an Interactive Marketing Unit (“IMU”), as described by the Interactive Advertising Bureau.
8. Notwithstanding the minimum standards contained in Paragraphs 5 and 6, any advertisement that fails to meet any of the above numerical requirements in technical and non-material fashion (e.g., price disclosure is 128 rather than 125 pixels in distance from the cell phone number or P.I.N. submit field) may still contain the clear and conspicuous disclosure to the consumer that is required by law. The Attorney General does not contend that every advertisement that fails to comply with all of the standards contained in Paragraphs 5 and 6 necessarily violates the laws of Florida but does contend that the compliance guidelines contained herein are of great use to consumers and the industry in like measure. The Attorney General does believe that advertisements that comply with Paragraphs 5 and 6 also comply with the laws of Florida. The Attorney General acknowledges that methods of advertising mobile content may change over time, and that new measures to protect consumers may evolve that are not covered by the terms of this AVC. Respondents, at their option, may submit proposals for revised versions of Paragraphs 5 and 6 from time to time. The Attorney General will, in good faith, promptly review each such proposal and, to the extent it is reasonably satisfied that the proposal comports with the laws of Florida and its then-current understanding of existing

industry norms, it will approve the proposal. If the Attorney General rejects any such proposal, it will to the extent practicable suggest modifications to the proposal that will comport with the laws of Florida.

9. The Attorney General shall make good faith efforts to impose the same minimum standards contained in Paragraphs 5 and 6 on all other wireless service providers that have entered into an AVC, or will enter into an AVC, with the Attorney General.
10. The parties acknowledge that the standards contained in Paragraphs 5 and 6, herein, are applicable only to the provision of Mobile Content by Third Party Providers. Specifically, these standards and this AVC do not apply to any other business practice of Respondents.
11. For all new service activations, service renewals, or changes to an existing Wireless Service Agreement, Respondents shall continue to utilize a Wireless Service Agreement and/or customer brochure in Florida that contain disclosures that convey, in substance, the following:

You agree to pay all access, usage and other charges and fees we bill you or that the user of your wireless phone accepted, even if you weren't the user of your wireless phone and didn't authorize its use. Additional features and services such as operator or directory assistance, call dialing, calling card use, Call Forwarding, data calls, automatic call delivery, Voice Mail, Text Messaging and wireless Internet access, may have additional charges.

Users on an account may directly access text and premium message programs and incur charges. If you do not want a user on your account to access such content, or feel that certain material is inappropriate, you may block text messaging. These programs are

sponsored by third parties and identified by unique five- or six-digit numbers (“short codes”). Programs and opt-in requirements vary. Standard messaging charges apply to all messages sent and received via short codes. Some programs also charge additional premium fees (“Premium Programs”), the amount and billing frequency of which will be disclosed at time of opt-in and billed on your Verizon Wireless bill. To opt-in, send a text message to the applicable short code and follow any instructions. To opt out at any time, send the words CANCEL, END, QUIT, STOP or UNSUBSCRIBE to the applicable short code. To get more information, including contact details for the third-party sponsor, send the word HELP to the applicable short code. Some campaigns may be subject to additional terms and conditions. To block Premium Programs you can request a premium message block.

12. Respondents shall notify all existing Account Holders by bill insert, for Account Holders who receive paper bills and electronically for Account Holders who receive electronic bills of the existence of Mobile Content through the following disclosure: “Your wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games and news alerts, from Respondents or other companies (“Mobile Content”). You are responsible for all authorized charges associated with such purchases from any device assigned to your account. Charges for Mobile Content will appear on your bill (including charges on behalf of other companies), and Mobile Content purchases can be restricted by use of parental controls or similar features. Parents should consider using parental controls available from Verizon Wireless. Please visit our website at www.verizonwireless.com or speak with a Verizon Wireless customer representative for further information.” The notification required by this paragraph may

be made in conjunction with and as part of the Refund Program Notice described in Paragraph 16 below.

13. Respondents shall continue to make available to Account Holders monthly wireless service bills that have a separate section that includes Third Party Mobile Content charges to Account Holders and in which these charges are clearly, conspicuously, and separately listed. The monthly wireless service bills shall continue to include a readily accessible phone number that Account Holders can call to dispute such charges.
14. With respect to its billing for Third-Party Mobile Content, Respondents shall continue their practice of resolving billing disputes, including issuing credits and refunds, without referring the customer to a Third-Party Provider for such resolution. Respondents agree that it will continue to cancel or terminate an Account Holder's enrollment in any recurring membership program for Third-Party Mobile Content upon that Account Holder's request via customer care. Also, upon an Account Holder's request, Respondents will implement a block on Third-Party Mobile Content at no charge to the Account Holder. The Attorney General recognizes that prior to the commencement of the investigation resolved by this AVC, Respondents offered its customers the ability to block Third-Party Mobile Content, and to implement parental controls regarding such content, free of charge.
15. For a period of one (1) year following execution of this AVC by all parties, Respondents shall, upon written request by the Attorney General or his designate and with an opportunity to object, reasonably and promptly cooperate with the Attorney General in its inquiries into any Third-Party Providers. Such assistance shall include, but is not limited to, promptly providing the Attorney General with all non-privileged documents requested

