

**STATE OF FLORIDA  
OFFICE OF ATTORNEY GENERAL**

**IN THE MATTER OF:**

**Cingular Wireless LLC**

**CASE NO. L03-3-1219**

**Respondent.**

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**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, opened investigations into the marketing, advertising, and business practices of certain advertisers, content providers, and aggregators of third-party mobile content, including investigations of these practices in the context of third-party billing by wireless service providers, including Cingular Wireless LLC, now known as AT&T Mobility LLC ("Respondent").

Respondent has fully cooperated with the Attorney General, and this Assurance of Voluntary Compliance ("AVC") is solely intended to resolve the investigation against Respondent with respect to Respondent's third-party mobile content business (the "Investigation"). This AVC does not constitute evidence of a finding of law or fact by any court or agency that Respondent has 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. Respondent denies any liability and enters into this AVC without any admission of liability and for the purpose of the resolution of the Investigation only.

The Office of the Attorney General, by the signature of his Deputy affixed hereto, does in this matter accept this AVC in termination of its Investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Office of the Attorney General by said statute and without any finding of wrongdoing on the part of Respondent.

### **JURISDICTION AND VENUE**

1. Respondent is a wireless voice and data service provider.
2. IT IS AGREED by the parties that the State of Florida has jurisdiction over Respondent for the purpose of entering into this AVC and for any enforcement actions arising out of this AVC.
3. IT IS FURTHER AGREED by the parties that 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. "Clear and Conspicuous" means that a statement is made in a manner readily noticeable and understandable to the persons to whom it is directed. To determine whether a statement is clear and conspicuous, factors to consider include:

i) whether it is located sufficiently near any other statement that clarifies, modifies, or explains it;

ii) whether it is located sufficiently near any other statement that it clarifies, modifies, or explains;

iii) whether it contradicts, or renders confusing or ambiguous, any other statement; and

iv) whether it is or appears to be inconsistent with any other statement.

B. "Mobile Content" refers to content, applications, and goods and services purchased using a wireless phone or device.

C. "Third-Party Mobile Content" means Mobile Content sold by a Third-Party Provider directly to Respondent's wireless customers and charged to the bill of one of Respondent's wireless customers or withdrawn from the prepaid account of one of Respondent's wireless customers.

D. "Third-Party Provider" means entities other than Respondent that advertise, aggregate billing for, offer, and/or sell Third-Party Mobile Content directly to Respondent's wireless customers including Third-Party Mobile Content subscriptions.

E. "Account Holder" means a Florida residential subscriber with a post-paid account for wireless service with Respondent.

F. "Initial Representation" means all sponsored links, banner ads, pop-ups, e-mail subject lines, and any and all other primary impressions created or presented by a Third-Party Provider relating to its advertisement of Third-Party Mobile Content.

### **TERMS OF COMPLIANCE**

5. In connection with any Internet-based purchase of Third-Party Mobile Content subscriptions by an Account Holder, Respondent shall include provisions in all of its contracts with Third-Party Providers prohibiting the following:

A. the use of the terms "free," "complimentary," "no charge," "without charge," or any other term that reasonably leads a customer 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 to the customer clearly and conspicuously states that the free item may be received by a customer 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 customer 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.”

B. 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. the advertisement or promotion of Third-Party Mobile Content that is available only on certain makes or models of mobile devices unless the advertisement clearly and conspicuously discloses that the Third-Party Mobile Content is not available on all mobile devices.

D. the inclusion in any offer of a term or condition necessary to its acceptance whereby the customer agrees to accept advertising or promotional messages delivered electronically to cell phones via text messaging, email or otherwise, that are unrelated to the current offer, unless consented to by the customer.

E. the placement of pre-checked boxes in an offer intended to be used for acceptance of a term(s) or condition(s) of the offer.

6. In connection with any Internet-based purchase of Third-Party Mobile Content subscriptions by an Account Holder, Respondent shall include provisions in all of its contracts with Third-Party Providers requiring that Third-Party Providers:

A. clearly and conspicuously disclose the price and billing period of the recurring charge of the Third-Party Mobile Content immediately adjacent to any cell-phone-number-submit field and any PIN-code-submit field, e.g., "\$9.99 per month."

B. clearly and conspicuously disclose on any cell-phone-number-submit web page and any PIN-code-submit web page the following material terms and conditions:

1. the initial and recurring charge for the Third-Party Mobile Content,
2. whether other charges may apply,
3. that the customer's account will be charged automatically with no further action on the part of the customer; the frequency with which the charge will automatically be made to the account in the absence of cancellation of the plan; and that the customer will continue to receive the charges until the customer cancels the plan,
4. how to cancel the plan,
5. the mechanism for charging the customer, e.g., "on your cell phone bill or deducted from your prepaid balance on your cell phone account," and
6. that the purchase must be authorized by the Account Holder.

C. provide an Internet hyperlink to the terms and conditions of the offer on every cell-phone-number-submit page and PIN-code-submit page in the Internet order path.

7. In the event that all or part of the messaging to the customer in connection with the opt-in confirmation and purchase process is controlled by Respondent, the following must be clearly and conspicuously disclosed as part of any Third-Party Mobile Content subscription transaction with an Account Holder:

- A. the price and term of the subscription (e.g. \$9.99/ month);
- B. how to cancel or stop the subscription.

8. For all new service activations, service renewals, or changes to an existing Wireless Service Agreement, Respondent shall utilize a Wireless Service Agreement in Florida that contains the following disclosure:

“Mobile Content

I understand that wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games, and news alerts from AT&T or other companies. I understand that I am responsible for all authorized charges associated with such purchases from any device assigned to my account, that these charges will appear on my bill (including charges on behalf of other companies), and that such purchases can be restricted by using parental controls available from your AT&T salesperson, at [www.wireless.att.com](http://www.wireless.att.com), or by calling AT&T.

9. Respondent 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 AT&T 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 AT&T. Please visit our website at [www.wireless.att.com](http://www.wireless.att.com) or speak with an AT&T customer representative for further information." See attached Exhibit "A."

10. Respondent will provide Account Holders access via its DirectBill Internet portal (or as it is otherwise named) to information concerning Third-Party Mobile Content subscription purchases on their account as well as their ability to seek refunds. Further, Respondent shall provide Account Holders monthly wireless service bills that have a separate section that includes charges on behalf of other companies that provide mobile content to AT&T customers and in which these charges are clearly, conspicuously, and separately listed. The separately listed charges in this section of the monthly bill shall include a readily accessible phone number that Account Holders can call to dispute such charges.

11. With respect to its billing for Third-Party Mobile Content, Respondent shall continue its practice of resolving billing disputes, including issuing credits and refunds, without referring the customer to a Third-Party Provider for such resolution. In addition, with respect to resolving billing disputes, Respondent must:

A. In those instances in which the billing for Third-Party Mobile Content results in a recurring charge, promptly and automatically cancel or terminate the customer's enrollment in any recurring membership program or plan upon request via customer care or using the DirectBill Internet Portal (or as it is otherwise named);

B. When an Account Holder contacts a customer service representative regarding a disputed Third-Party Mobile Content subscription purchase; the customer must be offered Respondent's Purchase Blocker feature free of charge.

### **REPORTS**

12. For a period of one (1) year following the execution of this AVC, Respondent agrees to provide the Office of the Attorney General, through the undersigned Assistant Attorney General, with quarterly reports describing Respondent's resolution of Account Holder complaints related to the matters addressed herein. Respondent shall provide such reports in an agreed format.

13. For a period of two (2) years following execution of this AVC, Respondent shall, upon written request by the Attorney General or his designee to Respondent's legal counsel or its registered agent for service of process, and an opportunity to object, reasonably and promptly cooperate with the Office of the Attorney General in its investigation of any other Third-Party Provider that the Attorney General may desire to investigate. Such cooperation shall include, but is not limited to, promptly providing the Attorney General with all non-privileged documents requested related to such investigation within thirty (30) calendar days of a request for such material, or as otherwise agreed.

### **MONETARY TERMS**

#### **Customer Credits and Refunds**

14. Respondent shall issue credits and refunds to Account Holders for past unauthorized charges for Third-Party Mobile Content subscription purchases ("Refund Program"). Respondent shall provide clear and conspicuous notice of the Refund



Program (“Refund Program Notice”) by bill insert to all Account Holders who receive paper bills, electronically for Account Holders who receive electronic bills, and by electronic mail to former Account Holders for whom Respondent retains an email address and for whom Respondent has permission to send emails. The text of the “Refund Program Notice” shall be as follows:

“This is an important notice regarding the ability of certain AT&T/Cingular customers in Florida to obtain credits or refunds for unauthorized purchases of third-party mobile content subscriptions, such as subscriptions for ring tones, graphics, and games. AT&T, which was formerly known as Cingular, has entered into an agreement with the Florida Attorney General following an investigation into marketing and advertising practices of certain third-party mobile content providers. As part of the agreement, AT&T is offering to provide account holders with credits or refunds for unauthorized mobile content subscription purchases. If AT&T/Cingular has billed your account for the purchase of a third-party mobile content subscription that you did not authorize, you may receive a credit or refund of all amounts paid. Customers may seek refunds even if they are no longer AT&T or Cingular customers. Please see *[Include contact information including Internet address and/or toll-free telephone number]* for more information on the details of the Refund Program and how to make a claim.” See attached Exhibit “B.”

The Refund Program Notice shall be made in conjunction with the notice provided in Paragraph 9 of this AVC. Respondent and the Attorney General agree that the Refund Program shall remain open for six months following the issuance of the Refund Program

Notice. Respondent agrees that for each current and former Account Holder making a claim, Respondent will credit or refund the full amount of the Third-Party Mobile Content subscription amounts paid by the Account Holder, and there shall be no limitation on the total amount credited or refunded to all Account Holders under the Refund Program.

Notwithstanding the foregoing, Respondent is not required to issue credits or refunds in cases of demonstrable customer abuse or fraud. During the six-month period, Respondent will provide monthly reports to the Attorney General showing the amount of credits and refunds issued and detail as to claims denied in connection with the Refund Program.

#### **Settlement Funds**

15. Respondent shall pay to the Attorney General the sum of \$2,500,000 (two million, five hundred thousand dollars) for attorney's fees and costs of this investigation and costs of investigations into related matters, made payable to the Legal Affairs Revolving Trust Fund and sent to Will Haselden, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.2101, Florida Statutes. In addition, Respondent shall contribute the sum of \$500,000 to be used by the Attorney General for consumer education and public awareness regarding safety on the internet, made payable to the State of Florida and sent to Will Haselden, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.207(6), Florida Statutes

#### **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE**

16. In consideration for the fulfillment of the terms of compliance and monetary obligations set forth above, no penalties shall be imposed against Respondent pursuant

to the Attorney General's investigation. If the Attorney General believes that a material breach of the AVC has occurred, the Attorney General shall give written notice to Respondent within twenty (20) days of the alleged material breach. The notice shall describe in detail the claimed material breach. Following notice, Respondent shall have a reasonable opportunity to cure during which time no enforcement action shall be taken. Specifically, Respondent shall have thirty (30) days from the receipt of the notice within which to provide a good faith written response to the Attorney General's determination. The response shall include, at a minimum, either:

- A. A statement explaining why Respondent believes it is in full compliance with the AVC; or
- B. An explanation of how the alleged material breach occurred; and
  - 1. A statement that the alleged breach has been cured and how; or
  - 2. A statement that the alleged breach cannot be reasonably cured within thirty (30) days from receipt of the notice, but (1) Respondent has begun to take corrective action to cure the alleged breach; (2) Respondent is pursuing such corrective action with reasonable and due diligence; and (3) Respondent has provided the Attorney General with a detailed and reasonable timetable for curing the alleged breach.

#### **APPLICATION, ACCEPTANCE, AND OTHER TERMS**

17. Respondent shall be responsible for making the substantive terms and conditions of this Assurance known to Respondent's officers, directors, employees, agents, representatives, independent contractors, successors, and assigns.

18. The terms of this AVC and the relief covered herein are limited to the State of Florida and Respondent's Florida subscribers.

19. Except as otherwise provided herein, Respondent will implement the terms of this AVC within ninety (90) days following the effective date of the AVC. Respondent may, supported by the production of competent, substantial evidence of technological advances in the online advertising of third-party content, or changes to the law, request modification or amendment of this AVC to comport with those technological changes or changes to the law. The Attorney General will consider such a request in good faith and will provide a response to Respondent's request within a reasonable time.

20. Upon receipt of the executed AVC, Will Haselden will sign the AVC and then forward it to the Deputy Attorney General. The Deputy Attorney General has final authority to approve or disapprove of the entry of the AVC. This AVC shall become effective upon its acceptance by the Deputy Attorney General, who may refuse to accept it at his discretion. Upon execution by the Deputy Attorney General, Respondent will, within ten business days, provide the Settlement Funds to Will Haselden in accordance with Paragraph 15 of this AVC.

21. The Attorney General on behalf of the State of Florida and its citizens, hereby releases, acquits, and forever discharges Respondent from any and all actions, causes of action, obligations, liabilities, claims or demand for damages, civil penalties, claims for relief, or demand whatsoever in law or in equity, civil or administrative, which were asserted or maintained, could have been asserted or maintained, or which could in the future be asserted or maintained against Respondent in any civil, enforcement action or administrative action, or proceeding, based upon, arising out of, related to, or connected

with, directly or indirectly, the Investigation and any matters related thereto. It is agreed that the Attorney General will not reopen the Investigation except to the extent it investigates an alleged breach of this AVC. This AVC resolves the pending litigation related to the Investigation, *State of Florida, Department of Legal affairs v. Cingular Wireless LLC*, 06-CA-2810 (Leon Co. Circuit Ct.), on appeal as *Cingular Wireless LLC vs. State, Dept. of Legal Affairs*, 1D07-776 (Fla. 1st DCA). Upon execution of this AVC, the Attorney General shall dismiss its Circuit Court action with prejudice, and the Respondent shall dismiss its appeal.

22. This AVC is not and shall not in any event be construed, deemed to be, and/or used as: (a) an admission or evidence of the validity of any claim that the Attorney General has or could assert against Respondent, or an admission of any alleged wrongdoing or liability by Respondent; and/or (b) an admission or evidence of any fault, fact, act, or omission by Respondent in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary by the Attorney General to consummate or enforce this AVC.

Moreover, by entering into this AVC and agreeing to the terms and conditions provided herein, Respondent does not intend to waive and does not waive any defenses it may have in any other action or proceeding that has been or may be brought against it by any person, entity, and/or agency arising from advertising or promoting content.

23. This AVC, any action taken to reach, effectuate, or further this AVC, and the terms set forth herein, shall not be construed or used as an admission by or against Respondent of any fault, wrongdoing, or liability whatsoever, or as a waiver or limitation of any defenses otherwise available to Respondent. Entering into or carrying out this

AVC, or any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, any admission or concession by either party, or to be a waiver of any applicable defense. However, nothing in this AVC, including this paragraph, shall be construed to limit or to restrict Respondent's right to use this AVC, or payments made hereunder, to assert and maintain the defenses of *res judicata*, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

24. No waiver, modification or amendment to the terms of this AVC shall be valid or binding unless made in writing, signed by the parties and then only to the extent set forth in such written waiver, modification, or amendment.

25. No waiver of any term, provision, or condition of this AVC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver.

26. This AVC constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this AVC may not be altered, amended, or modified in any respect or particular whatsoever except by a writing duly executed by each of the parties hereto.

IN WITNESS WHEREOF, AT&T Mobility LLC has caused this Agreement to be executed by PAUL WEISBECKER as GENERAL ATTORNEY, a duly authorized representative of AT&T Mobility LLC f/k/a Cingular Wireless LLC as a true act and deed, in BEXAR County, Texas, this 28<sup>th</sup> day of FEBRUARY 2008.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity with AT&T Mobility LLC f/k/a Cingular Wireless LLC and that by my signature I am binding said company to this Agreement.

[Signature]  
AT&T Mobility LLC representative

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized to take acknowledgments in the State of Texas, personally appeared Paul Weisbecker, as General Attorney of AT&T mobility LLC, and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 27<sup>th</sup> day of February, 2008.

Sworn to and subscribed before me this 27 day of Feb., 2008.

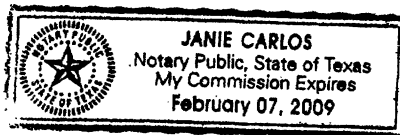
Personally known  or  
Produced Identification  (check one)  
Type of Identification Produced: \_\_\_\_\_

[Signature]

Janie Carlos (print name)

NOTARY PUBLIC

(Print, type or stamp commissioned name of Notary Public)



Accepted this 28 day  
of February, 2008.

Michael A. Palechi

FOR WILLIAM M. HASELDEN  
Assistant Attorney General

Robert A. Hamm

Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 245-0140



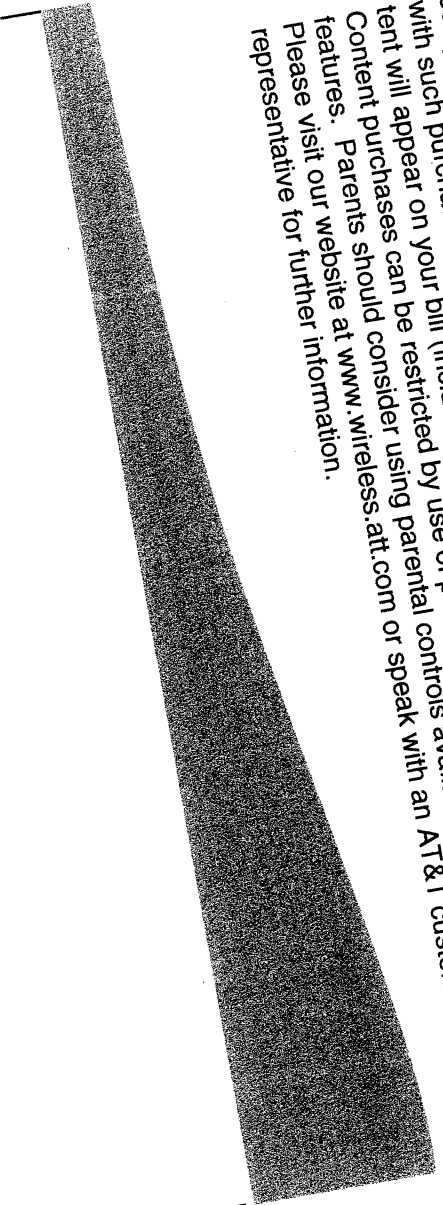


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**Exhibit A**

**Important notice regarding mobile content**

Your wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games and news alerts, from AT&T 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 available from AT&T. Content purchases can be restricted using parental controls available from AT&T. Please visit our website at [www.wireless.att.com](http://www.wireless.att.com) or speak with an AT&T customer representative for further information.



Important information for Florida customers who have  
paid for unauthorized mobile content subscriptions



The new  
**at&t**

This is an important notice regarding the ability of certain AT&T/Cingular customers in Florida to obtain credits or refunds for unauthorized purchases of third-party mobile content subscriptions, such as subscriptions for ring tones, graphics, and games. AT&T, which was formerly known as Cingular, has entered into an agreement with the Florida Attorney General following an investigation into marketing and advertising practices of certain third-party mobile content providers. As part of the agreement, AT&T is offering to provide account holders with credits or refunds for unauthorized mobile content subscription purchases. If AT&T/Cingular has billed your account for the purchase of a third-party mobile content subscription that you did not authorize, you may receive a credit or refund of all amounts paid. Customers may seek refunds even if they are no longer AT&T or Cingular customers. Please see *[include contact information including Internet address and/or toll-free telephone number]* for more information on the details of the Refund Program and how to make a claim.

**Exhibit B**