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17 UNITED STATES DISTRICT COURT
18 WESTERN DISTRICT OF WASHINGTON
19 AT SEATTLE

20 MARYGRACE CONEFF, et al.

21 Plaintiffs,

22 v.

23 AT&T CORP., et al.,

24 Defendants

) Master File No. C06-0944 RSM

) **CONSOLIDATED AMENDED**
) **CLASS ACTION COMPLAINT**

) **DEMAND FOR JURY TRIAL**

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1 Plaintiffs Marygrace Coneff, Christine Aschero, Joanne Aschero, Alex Aschero, Jennie
2 Bragg, Gina Franks, Amy Frerker, Addie Christine Lowry, Jeff Haymes, Harold Melendez,
3 Michelle Johns, Kelly Petersen, Steven Knott, Liesa Krausse, Steven Shulman, and S. Leonard
4 Shulman, on their own behalf and as representatives of a class of similarly situated parties,
5 complain and allege on information and belief as follows:

6 **I. INTRODUCTION**

7 1. Plaintiffs bring this class action to challenge conduct related to Defendant
8 Cingular Wireless LLC's ("Cingular") acquisition of Defendant AT&T Wireless Services, Inc.
9 ("AT&T Wireless") in 2004. Although Cingular publicly represented that the acquisition would
10 be seamless for AT&T Wireless customers, those statements were far from true. In reality, after
11 the acquisition, Cingular deliberately dismantled the AT&T Wireless network so as to diminish
12 and degrade the service provided to AT&T Wireless customers. Cingular did so in an effort to
13 induce AT&T Wireless customers into transferring their AT&T plans to Cingular plans, which
14 are more expensive and less favorable to consumers, and to charge AT&T Wireless customers
15 with various fees and costs in connection with those new plans.

16 2. In July 2006, Cingular began charging a \$4.99 monthly fee to AT&T Wireless
17 subscribers who are on a TDMA/ Analog network just to continue use of that network. The
18 imposition of this mandatory fee illustrates Cingular's strategy to force AT&T Wireless
19 subscribers to either upgrade to a more expensive Cingular plan or to pay an early termination fee
20 to get out of their AT&T service plan.

21 3. AT&T Wireless subscribers have been injured by, and continue to suffer injury as
22 a result of, diminished service in the form of dropped calls and poor, or no reception, in areas
23 where they previously received adequate reception. Additionally, former AT&T customers who
24 have transferred to Cingular phone plans have been injured by the loss of their AT&T Wireless
25 service plans, and the fees and costs associated with establishing new plans.

26 4. Plaintiffs hereby assert claims for breach of contract and breach of implied
27 covenant of good faith and fair dealing, and unjust enrichment/common law restitution. They
28 also assert claims under various States' consumer protection laws.

1 **II. JURISDICTION AND VENUE**

2 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d). This is a class action
3 involving more than 100 class members, a member of the class is a citizen of a state different
4 from Defendants, and the aggregate amount in controversy exceeds \$5,000,000, exclusive of
5 interest and costs.

6 6. Each Defendant has conducted business in this District. During the relevant time
7 period, Defendant AT&T Wireless had its principal place of business within this District, and
8 many of the acts alleged herein occurred in this District. Accordingly, venue in this District is
9 proper under 28 U.S.C. § 1391(c).

10 **III. PARTIES**

11 **A. Plaintiffs**

12 7. Plaintiff MARYGRACE CONEFF is a resident of California. She was an AT&T
13 Wireless subscriber who experienced degraded service as a result of Cingular's dismantling of
14 the AT&T Wireless network. In order to obtain better phone service, Ms. Coneff transferred to
15 Cingular, was charged an \$18 "transfer" or "upgrade" fee, purchased a Cingular phone, and was
16 required to agree to a new service contract with Cingular on terms that were less favorable than
17 her prior contract with AT&T Wireless.

18 8. Plaintiff CHRISTINE ASCHERO is a resident of California. She was an AT&T
19 Wireless subscriber who experienced degraded service as a result of Cingular's dismantling of
20 the AT&T Wireless network. Because of the poor service following Cingular's acquisition of
21 AT&T Wireless, Ms. Aschero was induced to pay an early termination fee to cancel service
22 before the expiration of her contract term.

23 9. Plaintiffs JOANNE ASCHERO and ALEX ASCHERO are residents of
24 California. They are AT&T Wireless subscribers who experienced degraded service as a result
25 of Cingular's dismantling of the AT&T Wireless network. Notwithstanding their degraded
26 service, they have remained AT&T Wireless subscribers under their preexisting AT&T contract
27 terms in order to avoid payment of an early termination fee.

28 ///

1 10. Plaintiff JENNIE BRAGG is a resident of California. She was an AT&T Wireless
2 subscriber who experienced degraded service as a result of Cingular's dismantling of the AT&T
3 Wireless network. In order to obtain better phone service, Ms. Bragg purchased a Cingular
4 phone and agreed to a new service contract with Cingular on less favorable terms which included
5 charges for additional services she did not request.

6 11. Plaintiff GINA FRANKS is a resident of Washington. She was an AT&T
7 Wireless subscriber who experienced degraded serve as a result of Cingular's dismantling of the
8 AT&T Wireless network. In an effort to obtain better phone service, Ms. Franks entered into a
9 new service contract with Cingular on terms less favorable than her previous contract with AT&T
10 Wireless.

11 12. Plaintiff AMY FRERKER is a resident of Washington. She was an AT&T
12 Wireless subscriber who experienced degraded service as a result of Cingular's dismantling of
13 the AT&T Wireless network. She suffered dropped calls, "system busy" signals, and other
14 significant reduction of her telephone service.

15 13. Plaintiff ADDIE CHRISTINE LOWRY is a resident of Florida. She was an
16 AT&T Wireless subscriber with multiple phone lines who experienced degraded service as a
17 result of Cingular's dismantling of the AT&T Wireless network. The service she received was
18 so poor that one of her four phone lines became completely unusable. When Ms. Lowry
19 complained to Defendants about the poor service, she was informed she could either upgrade to a
20 more expensive plan, or pay a termination fee to cancel service. Ms. Lowry chose to wait out the
21 contract for three lines and pay the termination fee to cancel a fourth line that was rendered
22 unusable. Since September 2006, Cingular has been charging Ms. Lowry an extra \$4.99 a month
23 just to remain on the TDMA/Analog network.

24 14. Plaintiff JEFF HAYMES is a resident of Arizona. He was an AT&T Wireless
25 customer for many years and experienced degraded service as a result of Cingular's dismantling
26 of the AT&T Wireless network, including dropped calls, "system busy" signals, and other
27 significant reduction in the quality of his service. In an effort to get better service, Mr. Haymes
28 paid an \$18 to upgrade to a Cingular phone plan on terms less favorable than his previous AT&T

1 Wireless plan.

2 15. Plaintiff HAROLD MELENDEZ is a resident of Arizona. He was an AT&T
3 Wireless customer who experienced degraded service as a result of Cingular's dismantling of the
4 AT&T Wireless network. After complaining to Defendants about the poor service, Mr.
5 Melendez upgraded to a less favorable Cingular service plan and purchased a new phone and
6 SIM card.

7 16. Plaintiff MICHELLE JOHNS is a resident of Virginia. She had been an AT&T
8 Wireless subscriber for several years before Cingular dismantled the AT&T network. Thereafter,
9 Ms. Johns' service became so degraded and unreliable that she had no choice but to purchase a
10 Cingular phone and transfer to a Cingular service plan that is less favorable than the plan she had
11 with AT&T Wireless.

12 17. Plaintiff KELLY PETERSEN is a resident of California. She was an AT&T
13 Wireless subscriber who experienced degraded service as a result of Cingular's dismantling of
14 the AT&T Wireless network, including having dropped calls, "system not available" messages,
15 and other significant reduction in the quality of her wireless service. In an effort to get better
16 service, she was forced to purchase a new phone, pay \$18 for a new SIM card, and upgrade to a
17 Cingular plan on terms that were less favorable than her prior contract with AT&T Wireless.

18 18. Plaintiff STEVEN KNOTT is a resident of Alabama. He was an AT&T Wireless
19 subscriber who experienced degraded service as a result of Cingular's dismantling of the AT&T
20 Wireless network. When Mr. Knott complained about the degraded service to Defendants, he
21 was advised that he should "upgrade" and purchase new phones, or pay an early termination fee
22 of \$175. Mr. Knott upgraded to a Cingular plan that cost almost twice as much as his AT&T
23 plan, was forced to purchase two Cingular phones, and was charged an \$18 upgrade fee.

24 19. Plaintiff LIESA KRAUSSE is a resident of New Jersey. She was an AT&T
25 Wireless subscriber who experienced degraded service as a result of Cingular's dismantling of
26 the AT&T Wireless network. After numerous dropped phone calls, including one during a phone
27 call from her mother reporting a medical emergency, Ms. Krausse complained to Defendants.
28 She was informed that her options were to drive 20 miles to be closer to a network tower, to

1 upgrade to a new phone, or to cancel her AT&T plan and incur an early termination fee. Because
2 Ms. Krausse believed she was not being provided adequate service under her AT&T service plan,
3 she cancelled the contract and asked that the termination fee be waived. Cingular assessed a
4 \$175 early termination fee anyways and sent the fee to collections thereby affecting Ms.
5 Krausse's credit score.

6 20. Plaintiffs STEVEN SHULMAN and S. LEONARD SHULMAN are residents of
7 Washington. They were AT&T Wireless subscribers who experienced degraded service as a
8 result of Cingular's dismantling of the AT&T Wireless network. In particular, they experienced
9 an increase in the number of dropped calls and increased static. In an effort to obtain better
10 service, they upgraded to a more expensive Cingular service plan, purchased a new phone, and
11 paid \$18 for a new SIM card.

12 **B. Defendants**

13 21. Defendant CINGULAR WIRELESS LLC is a Delaware limited liability company
14 with its principal place of business in Atlanta, Georgia. Cingular Wireless LLC was formed in
15 April 2000 as a joint venture between SBC Communications Inc. and Bell South Corporation and
16 provides wireless phone services.

17 22. Defendant CINGULAR WIRELESS CORPORATION is a Delaware corporation
18 with its principal place of business in Atlanta, Georgia. Cingular Wireless Corporation is a
19 holding company for Defendant Cingular Wireless LLC and has no material assets other than
20 Cingular Wireless LLC. Like Cingular Wireless LLC, Cingular Wireless Corporation is jointly
21 controlled by SBC Communications, Inc. and Bell South Corporation. As used herein,
22 "Cingular" refers to Cingular Wireless Corporation and its alter ego, Cingular Wireless LLC.

23 23. Defendant AT&T WIRELESS SERVICES, INC. ("AT&T Wireless") was formed
24 in July 2001 as a Delaware corporation. At all relevant times, AT&T Wireless had its principal
25 place of business in Redmond, Washington. In October 2004, AT&T Wireless was acquired by
26 Cingular and renamed New Cingular Wireless Services, Inc.

27 24. Defendant NEW CINGULAR WIRELESS SERVICES, INC. ("New Cingular") is
28 a New York corporation with its principal place of business in Atlanta, Georgia. New Cingular

1 was formed in October 2004 as the successor-in-interest to Defendant AT&T Wireless. New
2 Cingular is a wholly owned subsidiary of Defendant Cingular Wireless LLC.

3 **C. Agency / Joint Venture**

4 25. At all times herein mentioned, Defendants, and each of them, were agents or joint
5 venturers of each of the other Defendants, and in doing the acts alleged herein were acting within
6 the course and scope of such agency. Each Defendant had actual and/or constructive knowledge
7 of the acts of each of the other Defendants, and ratified, approved, joined in, acquiesced in,
8 and/or authorized the wrongful acts of each co-defendant, and/or retained the benefits of said
9 wrongful acts.

10 **IV. FACTUAL ALLEGATIONS**

11 **A. Cingular's Acquisition of AT&T Wireless**

12 26. At the end of 2003, Cingular was the second largest provider of wireless
13 communications services in the United States in terms of subscribership. Cingular had 24
14 million customers as of December 31, 2003, and reported \$15.5 billion in revenues for 2003.
15 Cingular provided its customers wireless voice and data service over a nationwide wireless
16 network which it maintained. The Cingular network provided extensive coverage throughout the
17 United States. In addition, Cingular entered into network access agreements with other network
18 operators in the United States to provide additional network coverage for Cingular subscribers.

19 27. At the end of 2003, AT&T Wireless was the third largest provider of wireless
20 communications services in the United States based on subscribership. AT&T Wireless had 22
21 million customers as of December 31, 2003, and reported \$16.7 billion in revenues for 2003.
22 AT&T Wireless provided wireless voice and data service over a nationwide wireless network.
23 The network operated and maintained by AT&T Wireless provided extensive coverage
24 throughout the United States. In addition, AT&T Wireless entered into network access
25 agreements with other network operators in the United States to provide additional network
26 coverage for AT&T Wireless subscribers.

27 28. On February 17, 2004, Cingular and AT&T Wireless entered into an agreement
28 whereby Cingular would acquire AT&T Wireless for \$41 billion. Upon completion of the

1 acquisition, AT&T Wireless would be renamed New Cingular Wireless Services, Inc. and would
2 operate as a solely-owned subsidiary of Cingular.

3 29. Cingular's acquisition of AT&T Wireless was completed on October 26, 2004.

4 **B. Cingular's False Representations and False Advertising**

5 30. Cingular publicly represented that its acquisition of AT&T Wireless would result
6 in "increased network and spectrum capacity in areas where Cingular and AT&T Wireless are
7 already providing service," and would "greatly improve service quality and coverage." See
8 Memorandum Opinion & Order, FCC 04-255, ¶29 (Oct. 26, 2004), attached hereto as Exhibit A.

9 31. On October 26, 2004, Cingular issued a press release stating that Cingular would
10 "allow customers of both companies to use the new, combined network without roaming
11 charges," and that "Customers of both companies will continue to enjoy the benefits of their
12 current phones, rate plans and features, without any service interruption." Stan Sigman,
13 Cingular's President and Chief Executive Officer, stated that the company was "working to make
14 this transition as seamless as possible for customers of AT&T Wireless." Sigman assured AT&T
15 Wireless customers that they would be able to "continue using their existing phones and rate
16 plans B, but now have access to the largest digital voice and data network in the country."

17 32. On October 29, 2004, Cingular issued a press release to unveil its new "Raising
18 the Bar" advertising campaign. The press release stated:

19 "Raising the Bar" is more than a tagline, it's about providing the type of
20 service that customers expect from their wireless company . . . The most
21 tangible example of how Cingular is "Raising the Bar" is the newly
22 combined network, the largest digital voice and data network in the United
23 States. Cingular is calling it the "Allover" network. People will quickly
begin to see more bars in more places . . . Our "Raising the Bar" tagline
and "ALLOVER" network branding campaign allows us to clearly
communicate a real improvement in network and service quality.

24 **C. Cingular's Dismantling of the AT&T Wireless Network**

25 33. Contrary to Cingular's assurances that AT&T Wireless customers would have
26 access to a "combined network," Cingular instead implemented a deliberate scheme to dismantle
27 the AT&T Wireless network in order to degrade the service provided to AT&T Wireless
28 customers and induce them to transfer to the Cingular network.

34. As part of its scheme, Cingular ceased maintaining the AT&T Wireless network facilities. According to published reports, Cingular "has been spending next to nothing to maintain the [AT&T Wireless] network, leaving customers who don't upgrade [to the Cingular network] in the lurch." *Why You Still Can't Hear Me Now*, The Wall Street Journal, May 25, 2005, at D1. It has also been reported that "industry analysts believe that Cingular is investing close to nothing" to maintain the AT&T Wireless network. *How Cellular Services Rank On Complaints: Cingular Tops FCC List With Most Gripes Per Customer, Dropped Calls, Billing Errors*, The Wall Street Journal, March 29, 2005, at D1, D5.

35. As part of its scheme, Cingular encouraged AT&T Wireless customers suffering from degraded service to "upgrade" to Cingular. These upgrades, however, require consumers to: (i) pay an \$18 "transfer" fee to Cingular; (ii) purchase a new phone from Cingular; (iii) pay \$18 for the SIM chip which enables the phone to operate; and (iv) enter into a new service contract with Cingular that is usually less favorable to the customer than the customer's existing contract with AT&T Wireless. AT&T Wireless customers who do not agree to such an "upgrade" are left with the choice of fulfilling their contract term with AT&T Wireless despite degraded or non-existent service, or paying an early termination fee of \$175 to cancel service before the expiration of the 12 or 24-month contract term.

D. Cingular's Implementation of a Mandatory \$4.99 Monthly Fee

36. In October of 2004, the Federal Communication Commission approved Cingular's acquisition of AT&T Wireless on the condition that Cingular keep AT&T Wireless' TDMA/Analog system in place until at least February of 2008.

37. Approximately 4.7 million current AT&T Wireless customers rely on the TDMA/Analog network.

38. In July 2006, Defendants included the following statement in its billing statements to Cingular and AT&T Wireless customers:

The rates for your service on Cingular's TDMA/Analog network are increasing. As early as September, a TDMA/Analog network charge of \$4.99 per line will appear on your bill each month. Alternatively, you have the option to upgrade to a handset and rate plan on our new and improved GSM network, the largest voice and data network in America, with the fewest dropped calls of any national wireless carrier.

1 See Exhibit B.

2 39. Cingular also issued a press release stating it would start charging customers with
3 TDMA and Analog cellphones an extra \$4.99 monthly fee as early as September 2006 unless, as
4 the language expresses above, current AT&T customers purchase a new phone and commits to a
5 2-year "upgraded" Cingular service contract on Cingular's GSM network.

6 40. Because most current AT&T Wireless subscribers use phones that operate on the
7 TDMA/Analog network, Cingular is effectively targeting current AT&T Wireless subscribers
8 and using the \$4.99 monthly charge to make it economically disadvantageous to keep their
9 current service. What Cingular has omitted from the \$4.99 fee statement is the fact that they will
10 charge an early termination fee to AT&T subscribers who do not wish to incur the \$4.99 charge,
11 or who do not wish to pay for a new phone and get locked into a 2-year Cingular plan.
12 Cingular's implementation of the mandatory \$4.99 monthly fee is a pretextual tactic to compel
13 current AT&T subscribers to forfeit their existing AT&T calling plans and to purchase new
14 telephones and accessories for a more expensive Cingular plan. This leaves AT&T Wireless
15 subscribers with no meaningful alternative. Similar to its dismantling of the AT&T Wireless
16 network, Cingular's imposition of the \$4.99 monthly charge is designed to wrongfully induce
17 migration to Cingular.

18 **E. No Enforceable Agreement to Arbitrate**

19 41. Defendants have inserted clauses into customer contracts that purport to impose
20 mandatory arbitration and a waiver of the right to participate in class actions. However, these
21 contracts are contracts of adhesion drafted entirely by the Defendants on a take-it-or-leave-it
22 basis in a setting in which disputes between the contracting parties predictably involve small
23 amounts of damages. Plaintiffs had neither the bargaining power, nor the ability, to change the
24 contractual terms. Defendants rely on the mandatory arbitration and class action waiver
25 provisions to shield themselves against consumers' use of the civil justice system to redress
26 Defendants' misconduct. In practice, the waiver virtually immunizes the Defendants from
27 responsibility for their own wrongful conduct. Such waivers are unconscionable under State and
28 Federal law and should not be enforced.

42. The mandatory arbitration provision and, particularly, the class action waiver provision in these contracts have repeatedly been held unenforceable. *See, e.g., Ting v. AT&T Corp.*, 319 F.3d 1126 (9th Cir. 2002), *cert. denied*, 540 U.S. 811 (2003); *Discover Bank v. Superior Court* (Boehr), 36 Cal.4th 148 (2005); *Ball v. Cingular Wireless, LLC*, Case No. 04CC06353, Order Denying Motion of Defendant Cingular Wireless, LLC To Compel Arbitration And Stay Action (Cal. Superior Court Feb. 7, 2005) (Cingular's arbitration clause found unconscionable); *In re Cellphone Termination Fee Cases*, J.C.P. 4332, Order Denying Motions of AT&T and Cingular To Compel Arbitration (Cal. Superior Court Jan. 20, 2004) (holding AT&T's arbitration clause and three different forms of Cingular's arbitration clauses found unconscionable); affirmed by *Parrish v. Cingular Wireless LLC*, 129 Cal. App.4th 601 (2005); *Tamayo v. Brainstorm, USA*, 154 Fed Appx. 564 (9th Cir. 2005) (class action waiver in an arbitration clause contained in Cingular's adhesive contract found unconscionable and not valid under California law).

43. Both AT&T Wireless and Cingular have recently and extensively litigated the enforceability of their purported arbitration clauses, including appeals, petitions for review, and petitions for certiorari to the California Court of Appeals, the California Supreme Court, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

44. Despite suffering defeats in each of these courts, Defendants remain obstinate. As part of a deliberate scheme to delay meritorious litigation, Defendants continue to bring frivolous motions to compel arbitration so that Cingular can continue to benefit and derive millions of dollars in revenue from its wrongful conduct. Such a delay imposes unnecessary and burdensome costs on customers who assert meritorious claims and ultimately discourages customers from pursuing their legal rights. *See, e.g., Ting v. AT&T Corp.*, 319 F.3d 1126 (9th Cir. 2002).

45. Plaintiffs believe that the purported arbitration agreements of AT&T Wireless and Cingular are entirely pretextual. Neither AT&T Wireless nor Cingular has ever used arbitration to resolve its own claims against a customer. Instead, both have resolved millions of claims against customers by assigning them to collection agencies who then pursue a variety of means to

1 resolve them, including filing lawsuits, but not arbitration. Plaintiffs are aware of no customer
2 who has ever been awarded any relief by an arbitrator pursuant to any AT&T Wireless or
3 Cingular arbitration agreement. Moreover, despite the fact that AT&T Wireless included an
4 arbitration clause in its terms and conditions beginning in July 1999, no dispute between AT&T
5 Wireless and a customer has ever been arbitrated.

6 **V. CLASS ACTION ALLEGATIONS**

7 46. Plaintiffs bring this action as a class action for equitable, injunctive and
8 declaratory relief as well as monetary relief pursuant to Rule 23 of the Federal Rules of Civil
9 Procedure on behalf of the following Class and Sub-Class:

10 **The "Class" is defined as all subscribers of AT&T Wireless in the United**
11 **States as of October 26, 2004.**

12 **The "Sub-Class" is defined as all subscribers of AT&T Wireless in the**
13 **United States who have been advised that they will incur an**
14 **additional \$4.99 monthly fee for access to the TDMA/Analog network.**

15 47. Plaintiffs Marygrace Coneff, Christine Aschero, Joanne Aschero, Alex Aschero,
16 Jennie Bragg, Gina Franks, Amy Frerker, Addie Christine Lowry, Jeff Haymes, Harold
17 Melendez, Michelle Johns, Kelly Petersen, Steven Knott, Liesa Krausse, Steven Shulman, and S.
18 Leonard Shulman are members of the Class. Plaintiffs Addie Christine Lowry, Joanne Aschero,
19 and Alex Aschero are also members of the Sub-Class.

20 48. The members of the Class are readily ascertainable but are so numerous that
21 joinder is impracticable. The exact number and names of the members of the Class are presently
22 unknown to Plaintiffs, but can be ascertained readily through appropriate discovery. Plaintiffs
23 believe that there are hundreds of thousands, if not millions, of members of the Class, whose
24 names and addresses can be readily discovered upon examination of the records in the custody
25 and control of Defendants.

26 49. There are questions of law and fact common to the Class. Defendants pursued a
27 common course of conduct toward the class as alleged. This action arises out of a common
28 nucleus of operative facts. Common questions include, but are not limited to, the following:

a. whether Cingular has maintained the AT&T Wireless network since its

- 1 acquisition of AT&T Wireless;
- 2 b. whether Defendants fulfilled their service obligations to Plaintiffs and the
- 3 Class pursuant to the AT&T Wireless Contracts;
- 4 c. whether Defendants charged Plaintiffs and the Class fees in violation of
- 5 the AT&T Wireless Contracts;
- 6 d. whether Defendants misrepresented to Plaintiffs and the Class that they
- 7 would have access to a higher network quality;
- 8 e. whether Defendants intended to induce AT&T Wireless customers to
- 9 migrate to Cingular;
- 10 f. whether Plaintiffs and the Class were wrongfully induced to cancel their
- 11 AT&T Wireless plans thereby incurring termination fees;
- 12 g. whether Plaintiffs and the Class were wrongfully induced to enter into
- 13 service contracts with Cingular thereby incurring the fees and costs
- 14 associated with new service plans; and
- 15 h. whether Defendants violated the Washington Consumer Protection Act,
- 16 RCW 19.86.010, *et seq.*, and similar consumer protection laws of other
- 17 States.

18 50. The claims of the named Plaintiffs are typical of the claims of the Class. Each of
19 the named Plaintiffs suffered from degraded service due to Cingular's dismantling of the AT&T
20 Wireless network, and were harmed thereby.

21 51. Plaintiffs will fairly and adequately represent and protect the interests of the Class,
22 and common issues of law and fact predominate.

23 52. Plaintiffs have retained counsel competent and experienced in prosecuting
24 complex nationwide consumer class actions.

25 53. Notice of this class action can be provided to Class members by techniques and
26 forms similar to those customarily used in consumer class actions, such as direct notice,
27 published notice, Internet notice, a combination thereof, or by other methods suitable to this
28 Class.

54. Class certification is appropriate because Cingular has acted, or refused to act, on grounds generally applicable to the Class, making class-wide equitable, injunctive, declaratory, and monetary relief appropriate. In addition, the prosecution of separate actions by or against individual members of the Class would create a risk of incompatible standards of conduct for Defendants and inconsistent or varying adjudications for all parties. A class action is superior to other available methods for the fair and efficient adjudication of this action.

COUNT I

Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing

55. Plaintiffs incorporate by reference all allegations of all prior paragraphs as though fully set forth herein.

56. This Count I is brought on behalf of the Class and Sub-Class.

57. Each member of the Class entered into a contract with AT&T Wireless under which AT&T agreed to provide wireless service to that Class member ("AT&T Wireless Contracts"). Although the AT&T Wireless Contracts are form contracts that were revised by AT&T Wireless from time to time, each of them is substantially in the form of the AT&T Wireless Terms and Conditions attached hereto as Exhibit C.

58. Every contract, including each of the AT&T Wireless Contracts, imposes upon each party a duty of good faith and fair dealing in its performance and enforcement.

59. The AT&T Wireless Contracts govern the relationship between the subscriber and "the entity licensed to provide service in the area associated with [the subscriber's] assigned telephone, data, and/or messaging number(s)." See Exhibit C. Thus, as a result of Cingular's acquisition of AT&T Wireless, it is a party to the AT&T Wireless Contracts.

60. By dismantling the AT&T Wireless network in order to degrade the service provided, by charging an \$18 fee to "upgrade" or "transfer" to a Cingular plan, and by inducing AT&T Wireless customers to incur additional expenses (new phone, SIM chip, and additional services), Cingular and AT&T Wireless have breached the AT&T Wireless Contracts and have substantially diminished the utility and value of AT&T Wireless plans/phones for the remainder

1 of the contract term.

2 61. By unilaterally assessing AT&T Wireless subscribers an additional \$4.99 monthly
3 fee, Cingular and AT&T Wireless have breached the AT&T Wireless Contracts and have
4 substantially diminished the value of AT&T Wireless plans/phones for the remainder of the
5 contract terms.

6 62. Plaintiffs and the Class have suffered monetary damages in the form of such fees
7 and charges described above.

8 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

9 **COUNT II**

10 **Unjust Enrichment/Common Law Restitution**

11 63. Plaintiffs incorporate by reference all allegations of all prior paragraphs as though
12 fully set forth herein.

13 64. This Count II is brought on behalf of the Class and Sub-Class.

14 65. Through the scheme described above, Defendants have charged Class members
15 fees in violation of their contractual rights, and statutory and common law, including but not
16 limited to the charge of an \$18 "transfer" or "upgrade" fee, and other fees and charges described
17 above.

18 66. By stating its intent to charge AT&T Wireless customers with TDMA /Analog
19 phones an additional \$4.99 per month on top of their contractually agreed monthly rates,
20 Cingular has been unjustly enriched by any amounts paid by AT&T customers to "upgrade" to a
21 new Cingular service plan, purchase new Cingular phones, or pay an early termination fee.

22 67. Defendants have reaped substantial profit from the aggressive marketing and sales
23 of "upgraded" Cingular service plans, as well as the sale of new phones. Ultimately, this resulted
24 in Defendants' wrongful receipt of profits and injury to Plaintiffs and the Class. As a direct and
25 proximate result of Defendants' misconduct as set forth above, Defendants have been unjustly
26 enriched.

27 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

28 ///

COUNT III

**Violations of the Washington Consumer Protection Act and
Similar Consumer Protection Laws in Other States**

68. Plaintiffs incorporate by reference all allegations of all prior paragraphs as though fully set forth herein.

69. This Count III is brought on behalf of the Class and Sub-Class.

70. The Defendants, by their conduct alleged herein, violated the Consumer Protection Act of the State of Washington, RCW 19.86. Specifically, Defendants' conduct constitutes deceptive and unfair acts or practices in the conduct of trade or commerce in violation of RCW 19.86.020. Defendants' acts adversely affected the public interest and are a proximate cause of injury and monetary damages to Plaintiffs and the Class in an amount to be proven at trial. Defendants are liable to Plaintiffs and the Class for damages. In addition to actual damages, Plaintiffs and the Class are entitled to recover treble damages up to \$10,000 per Plaintiff and Class member, costs, and attorneys' fees pursuant to RCW 19.86.090.

71. Similarly, Defendants' conduct as alleged herein violates the unfair and deceptive acts and practices laws of each of the following jurisdictions:

- a. **Alaska:** Defendants' practices were and are in violation of Alaska's Unfair Trade Practices and Consumer Protection Act, Alaska Stat. § 45.50.471, *et seq.*
- b. **Arkansas:** Defendants' practices were and are in violation of Arkansas Code Ann. § 4-88-101, *et seq.*
- c. **California:** Defendants' practices were and are in violation of California's Unfair Competition Law, Business and Professions Code § 17200, *et seq.*, California's False Advertising Act, Cal. Bus. & Prof. Code § 17500, *et seq.*, and the California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*
- d. **Colorado:** Defendants' practices were and are in violation of the Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*

- e. **Connecticut:** Defendants' practices were and are in violation of Connecticut's Gen. Stat. § 42-110a, *et seq.*
- f. **Delaware:** Defendants' practices were and are in violation of Delaware's Consumer Fraud Act, Del. Code Ann. tit. 6, § 2511, *et seq.*; and the Deceptive Trade Practices Act, Del. Code Ann. tit. 6, § 2531, *et seq.*
- g. **District of Columbia:** Defendants' practices were and are in violation of the District of Columbia's Consumer Protection Act, D.C. Code § 28-3901, *et seq.*
- h. **Florida:** Defendants' practices were and are in violation of Florida's Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201, *et seq.*
- i. **Georgia:** Defendants' practices were and are in violation of Georgia's Fair Business Practices Act, Ga. Code Ann. § 10-1-390, *et seq.*
- j. **Hawaii:** Defendants' practices were and are in violation of Hawaii's Unfair Practices Act, Haw. Rev. Stat. § 481-1, *et seq.*
- k. **Idaho:** Defendants' practices were and are in violation of Idaho's Consumer Protection Act, Idaho Code Ann. § 48-601, *et seq.*
- l. **Illinois:** Defendants' practices were and are in violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1; and the Uniform Deceptive Trade Practices Act, 815 Ill. Comp. Stat. 510/1.
- m. **Iowa:** Defendants' practices were and are in violation of Iowa's Consumer Fraud Act, Iowa Code § 714.16
- n. **Kansas:** Defendants' practices were and are in violation Kansas' Unfair Trade and Consumer Protection Act, Kan. Stat. Ann. § 50-101, *et seq.*
- o. **Kentucky:** Defendants' practices were and are in violation of Kentucky's Consumer Protection Act, Ky. Rev. Stat. Ann. § 367.110, *et seq.*
- p. **Maine:** Defendants' practices were and are in violation of Maine's Unfair Trade Practices Act, Me. Rev. Stat. Ann. tit. 5, § 205-A, *et seq.*

- 1 q. **Maryland:** Defendants' practices were and are in violation of Maryland's
2 Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*
- 3 r. **Massachusetts:** Defendants' practices were and are in violation of
4 Massachusetts' Consumer Protection Act, Mass. Gen. Laws ch. 93A, *et*
5 *seq.*
- 6 s. **Minnesota:** Defendants' practices were and are in violation Minnesota's
7 Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, *et seq.*; and the
8 Unlawful Trade Practices Law, Minn. Stat. § 325D.09, *et seq.*
- 9 t. **Missouri:** Defendants' practices were and are in violation of Missouri's
10 Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*
- 11 u. **Montana:** Defendants' practices were and are in violation of the
12 Montana's Unfair Trade Practices and Consumer Protection Act, Mont.
13 Code Ann. § 30-14-101, *et seq.*
- 14 v. **Nebraska:** Defendants' practices were and are in violation of Nebraska's
15 Consumer Protection Act, Neb. Rev. Stat. § 59-1601, *et seq.*; and the
16 Uniform Deceptive Trade Practices Act, § 87-302, *et seq.*
- 17 w. **New Hampshire:** Defendants' practices were and are in violation of New
18 Hampshire's Rev. Stat. Ann. § 358-A:1, *et seq.*
- 19 x. **New Jersey:** Defendants' practices were and are in violation of New
20 Jersey's Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1, *et seq.*
- 21 y. **New Mexico:** Defendants' practices were and are in violation of New
22 Mexico's Unfair Practices Act, N.M. Stat. Ann. § 57-12-3, *et seq.*
- 23 z. **New York:** Defendants' practices were and are in violation of New
24 York's Gen. Bus. Law § 349, *et seq.*
- 25 aa. **North Carolina:** Defendants' practices were and are in violation of North
26 Carolina's Unfair Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1,
27 *et seq.*
- 28 bb. **North Dakota:** Defendants' practices were and are in violation of North

- 1 Dakota's Unlawful Sales or Advertising Practices law, N.D. Cent. Code §
2 51-15-02, *et seq.*
- 3 cc. **Ohio:** Defendants' practices were and are in violation of Ohio's
4 Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01, *et seq.*;
5 and Ohio's Deceptive Sales Practices law, Ohio Rev. Code Ann. §
6 4165.01, *et seq.*
- 7 dd. **Oregon:** Defendants' practices were and are in violation of Oregon's
8 Unlawful Trade Practices law, Or. Rev. Stat. § 646.605, *et seq.*
- 9 ee. **Pennsylvania:** Defendants' practices were and are in violation of
10 Pennsylvania's Unfair Trade Practice and Consumer Protection law, 73 Pa.
11 Stat. Ann. § 201-1, *et seq.*
- 12 ff. **Rhode Island:** Defendants' practices were and are in violation of Rhode
13 Island's Deceptive Trade Practices Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*
- 14 gg. **South Carolina:** Defendants' practices were and are in violation of South
15 Carolina's Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*
- 16 hh. **Tennessee:** Defendants' practices were and are in violation of
17 Tennessee's Consumer Protection Act of 1977, Tenn. Code Ann. §
18 47-18-101, *et seq.*
- 19 ii. **Texas:** Defendants' practices were and are in violation of Texas'
20 Deceptive Trade Practices-Consumer Protection Act, Tex. Bus. & Com.
21 Code Ann. § 17.41, *et seq.*
- 22 jj. **Utah:** Defendants' practices were and are in violation of Utah's Truth in
23 Advertising Law, Utah Code Ann. § 13-11a-1, *et seq.*;
- 24 kk. **Vermont:** Defendants' practices were and are in violation of Vermont's
25 Consumer Fraud law, Vermont Stat. Ann. tit. 9, § 2451, *et seq.*
- 26 ll. **Virginia:** Defendants' practices were and are in violation of Virginia's
27 Consumer Protection Act, Va. Code Ann. § 59.1-198, *et seq.*
- 28 mm. **West Virginia:** Defendants' practices were and are in violation of West

1 Virginia's Consumer Credit Protection Act, W.Va. Code § 46A-1-101, *et*
2 *seq.*

3 72. Defendants violated the aforementioned State consumer protection laws by
4 dismantling the AT&T Wireless network in order to degrade the services provided to AT&T
5 Wireless customers and by charging Class members fees in violation of their contractual rights
6 and statutory and common law, including the \$18 "transfer fee," and other fees and charges
7 described above.

8 73. As a result of these violations, Defendants have been unjustly enriched to the
9 extent that they have collected funds from Plaintiffs and members of the Class, including the \$18
10 "transfer fee," phone charges, SIM chip fees, and higher costing service plans. Further, plaintiffs
11 and the members of the Class have suffered monetary damages in the form of such fees and
12 charges described above.

13 74. As a result of Defendants' violations of the aforementioned States' consumer
14 protection laws, Plaintiffs and the Class are entitled to recover compensatory damages,
15 restitution, punitive and special damages including but not limited to treble damages, reasonable
16 attorneys' fees and costs, and other injunctive or declaratory relief as deemed appropriate.

17 WHEREFORE, Plaintiffs and the Class pray for relief as set forth below.

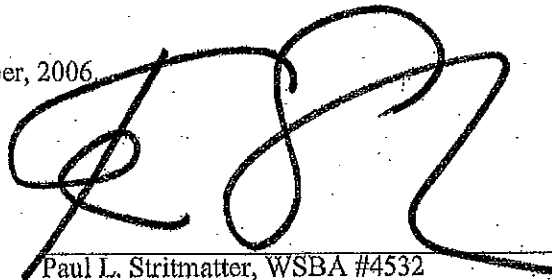
18 **VI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs and the Class pray for relief as follows:

- 20 1. For an Order certifying this action as a class action on behalf of the Class and
21 Sub-Class described above;
- 22 2. For restitution and/or disgorgement of all amounts wrongfully charged to
23 Plaintiffs and members of the Class;
- 24 3. For damages according to proof;
- 25 4. For a judicial declaration that Defendants have breached the AT&T Wireless
26 Contracts and, by reason of such breach, members of the Class may terminate
27 those contracts without incurring a penalty in the form of an early termination fee;
- 28 5. For costs of suit herein incurred;

6. For both pre and post-judgment interest on any amounts awarded;
7. For an award of treble or punitive damages under applicable law;
8. For an award of attorneys' fees as appropriate pursuant to the provisions of the Consumer Protection Act of Washington, and other similar provisions;
9. For declaratory judgment and injunctive relief declaring the mandatory arbitration clauses and class action waiver of rights to participation as unconstitutional, unconscionable and unenforceable and enjoining enforcement thereof;
10. For declaratory judgment and injunctive relief prohibiting Defendants from charging the \$4.99 monthly fee to TDMA/Analog users, declaring said fee to be unenforceable, a violation of the contract, and enjoining enforcement thereof, including any efforts to collect;
11. For corrective advertising to ameliorate consumers' mistaken impressions created by Defendants' prior advertising; and
12. For such other and further relief as the Court may deem proper.

DATED this 15th day of September, 2006.



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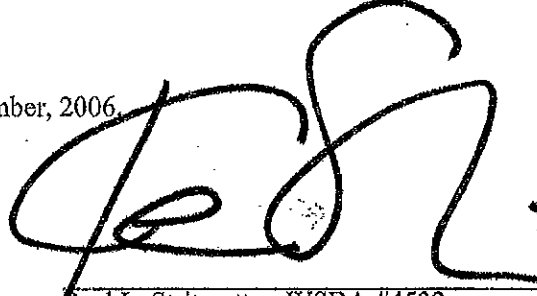
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VII. DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, request a jury trial on the claims so triable.

DATED this 15th day of September, 2006.



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EXHIBIT A

Federal Communications Commission

FCC 04-255

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of)	
)	
Applications of AT&T Wireless Services, Inc. and)	
Cingular Wireless Corporation)	
)	
For Consent to Transfer Control of Licenses and)	WT Docket No. 04-70
Authorizations)	
)	
File Nos. 0001656065, <i>et al.</i>)	
)	
and)	
)	
Applications of Subsidiaries of T-Mobile USA,)	
Inc. and Subsidiaries of Cingular Wireless)	
Corporation)	
)	
For Consent to Assignment and Long-Term <i>De</i>)	WT Docket No. 04-254
<i>Facto</i> Lease of Licenses)	
)	
File Nos. 0001771442, 0001757186, and)	
0001757204)	
)	
and)	
)	
Applications of Triton PCS License Company,)	
LLC, AT&T Wireless PCS, LLC, and Lafayette)	
Communications Company, LLC)	
)	
For Consent to Assignment of Licenses)	WT Docket No. 04-323
)	
File Nos. 0001808915, 0001810164, 0001810683,)	
and 50013CWAA04)	
)	

MEMORANDUM OPINION & ORDER

Adopted: October 22, 2004

Released: October 26, 2004

By the Commission: Chairman Powell and Commissioners Abernathy and Martin issuing separate statements; Commissioners Copps and Adelstein approving in part, dissenting in part, and issuing separate statements.

TABLE OF CONTENTS

	<u>Paragraph</u>
I. INTRODUCTION	1

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28. Upon consummation of the proposed transaction, the merged company will be internally reorganized.¹⁰⁵ This reorganization will be effectuated by post-merger Cingular transferring control of AT&T Wireless, along with its subsidiaries and interests, to Cingular Wireless LLC.¹⁰⁶ A new subsidiary ("Newco"), which will be directly owned by AT&T Wireless and Cingular Wireless LLC, will be created. AT&T Wireless's and Cingular Wireless LLC's operating subsidiaries will be directly held by Newco.¹⁰⁷ The controlling and non-controlling interests that AT&T Wireless holds in other Commission-regulated businesses will remain with AT&T Wireless and will not be contributed to Newco.¹⁰⁸ During this reorganization, Cingular will redeem the non-voting preferred stock given to SBC and BellSouth at the consummation of the transfer of control of AT&T Wireless to Cingular.¹⁰⁹ As a result, post-reorganization, SBC and BellSouth will each hold a 50 percent voting and equity interest in Cingular.¹¹⁰

29. The Applicants assert that approval of the proposed transaction is in the public interest, stating that the increased network and spectrum capacity in areas where Cingular and AT&T Wireless are already providing service will greatly improve service quality and coverage¹¹¹ and allow for the rapid deployment of advanced wireless services, including in rural areas.¹¹² Specifically, the Applicants claim that post-transaction Cingular will require 80 MHz of spectrum to provide a full menu of competitive voice and data services.¹¹³ They also state that the transaction will allow Cingular to expand its facilities-based footprint to 49 of the top 50 markets and 97 of the top 100 metropolitan areas (excluding only Richmond, Norfolk, and Newport News, VA).¹¹⁴ Further, the Applicants estimate that the combined entity's licenses will cover 284 million POPs,¹¹⁵ and its GSM network will cover 250 million POPs.¹¹⁶

¹⁰⁵ See, e.g., Application, File No. 0001874690, Exhibit 1, at 1 (filed Sept. 21, 2004).

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ See *id.*

¹⁰⁹ See *id.*; see also *supra* note 95 and accompanying text.

¹¹⁰ See, e.g., Application, File No. 0001874690, Exhibit 1, at 2.

¹¹¹ Application, Exhibit 1, at 9, 10-15. The Applicants state that this increased capacity is needed in order to ensure service quality (i.e., a reduction in blocked and dropped calls), because both Cingular and AT&T Wireless divide their spectrum in order to operate separate analog, TDMA, and GSM networks. See Application, Exhibit 1, at 11, 12.

¹¹² *Id.* at 9, 15-19. The Applicants claim that the combined spectrum of Cingular and AT&T Wireless is necessary in order to upgrade their systems to permit high-speed data transmissions, because they will have to set aside a minimum of 10 MHz of spectrum, separate from the analog, TDMA, and GSM spectrum, to introduce Universal Mobile Telecommunications Systems ("UMTS") service. See *id.* at 18.

¹¹³ *Id.* at 19. The Applicants further state that in areas where, upon consummation of the proposed transaction, Cingular "would hold an attributable interest in more than 80 MHz throughout a BTA," Cingular will reduce the amount of spectrum it holds "to no more than 80 MHz." *Id.* at 19 n.82; see also Cingular Opposition at 9.

¹¹⁴ Application, Exhibit 1, at 9, 20-22; Cingular 10-K at 2; February 17, 2004 News Release at 1.

¹¹⁵ See October 5 Letter at Attachment A. The Applicants state that "[t]his figure may not accurately reflect the actual total licensed population coverage after consummation of the merger, as this figure is not adjusted for transactions that may occur closely after or may be required as conditions to such consummation, and may not reconcile back to pre-combination numbers due to difference in methods of calculating licensed population coverage between [AT&T Wireless] and [Cingular]." See *id.* at 2-3. The Applicants explain that "[l]icense coverage figures of a carrier vary, depending on (i) the data sources of and methods used to calculate U.S. population, (ii) the estimated propagation characteristics of its network transmitters and the related measurement methodologies and (iii) the counting of proportionate license interests." See *id.* at 1-2.

EXHIBIT B

29

EXHIBIT C

TRAVELING WITH YOUR PHONE

When traveling outside your Home Calling Area, callers simply dial your local wireless number and the call will be delivered wherever there is wireless coverage across most of North America.

In most areas you can place calls the same way you do in your home area. You will be responsible for any applicable roaming and long distance charges. See your calling plan brochure for details.

When traveling outside your Home Calling Area you will have access to your standard features. However, for access to your Digital PCS features you must be within an AT&T Digital PCS service area; please refer to your calling plan brochure for details.

Travelling with Your Wireless Internet-Ready Phone

When traveling outside an AT&T Digital PocketNet® service area, you will not be able to access your wireless Internet-ready phone's DATA MODE. Data messages sent to your phone while outside an AT&T Digital PocketNet service area will remain in the mail inbox on the network. When you return to an AT&T Digital PocketNet service area and you access the DATA MODE on your phone, the phone will alert you of pending e-mail with a beeping alert. However, the maximum size for each individual e-mail message is limited to 2MB, with overall mailbox capacity limited to 50 e-mail messages. Once the 50 e-mail message capacity has been reached, even if e-mail messages have not been opened or read, additional incoming e-mail messages will cause old messages to be deleted to make room for the new messages. All e-mail messages in your Inbox, both read and unread, will be deleted after 90 days. Messages that you wish to save must be moved to your Saved folder.

FOR OUR CUSTOMERS WITH DISABILITIES

AT&T Wireless is committed to making its services and products easier for everyone to access. Wireless phone manufacturers are also working to include access features in their phones, handsets, and accessories so that customers with disabilities can enjoy the benefits of wireless communications. Our sales associates and Customer Care representatives are trained and ready to help you explore some of the features, services, and accessories currently available, so you can select the products that will best meet your wireless communications needs. To learn more about the AT&T Wireless commitment to disabilities, visit our Web site at www.attwireless.com, select **Our Company**, and view the information under **Disability Access** at the right of your screen. Or you can pick up a copy of **For Our Customers with Disabilities** at any AT&T Wireless Store. Our AT&T Wireless Welcome Guide and Features Guide are available in alternate formats including Braille, large print, audio cassette, and diskette. In addition, we can provide your billing in Braille or large print upon request. Simply call Customer Care at 1-800-888-7600 (TTY users dial 1-866-4-AWS-TTY) to order the format you prefer.

TERMS AND CONDITIONS

Get the most out of your wireless service by knowing the parameters of your Agreement with us. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. They govern the relationship between you and AT&T Wireless and explain our respective legal rights concerning all aspects of our relationship, including:

- Billing and charges.
- Starting and ending service.
- Privacy and confidentiality.
- Early termination fees.
- Limitations of liability and warranty.
- Changes to this Agreement.
- Resolution of past or future disputes by arbitration instead of court trial and class actions.

IF YOU: 1) USE THE SERVICE ON THE WIRELESS DEVICE, OR 2) IF YOU ACCEPT A BENEFIT IN EXCHANGE FOR COMMITTING TO NEW TERMS AND CONDITIONS, OR 3) IF YOU PAY US ANY AMOUNT FOR THE SERVICE, THESE TERMS AND CONDITIONS WILL GOVERN OUR RELATIONSHIP. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, DO NOT USE THE SERVICE OR DEVICE AND NOTIFY US IMMEDIATELY TO CANCEL SERVICE.

This is an agreement ("Agreement") for wireless radio telecommunications services and related services and/or features ("Service") between you and the entity named in provide service to the area associated with your assigned telephone data and/or messages transmitted ("Device") that is not a device as AT&T Wireless and/or AT&T Wireless Service. The term "Device" means the wireless receiving and transmitting equipment that we have authorized to be programmed with the number and any accessories.

1. SERVICE

a. **Monthly Cancellation Fee.** The term of this Agreement for each Member depends on the calling or data plan, feature or promotion you select and is described in a separate AT&T Wireless Calling Plan or Rate Plan ("Rate Plan"). In features or promotional materials and/or an AT&T Wireless Welcome Guide (collectively, "Sales Information"), all of which are a part of this Agreement. The term of this Agreement for each Member begins on the date we activate Service for that Member or the date you accept a benefit that extends or renews the term. If you select a Rate Plan, feature or promotion which requires a fixed term of more than one month (such as a one-year rate plan), you agree to purchase service for the full term. After the fixed term expires, or if you are not on a fixed-term plan such as a "monthly" Rate Plan, this Agreement will continue until terminated by either party with advance notice. If required in your Rate Plan, if you select a Rate Plan, feature or promotion with a fixed term, you may terminate this Agreement with respect to any number within 30 days after your activation date of that number. If you terminate service more than 30 days after your activation date, but before the end of your fixed term, or we terminate following your default, you will be in material breach of this Agreement. You agree our damages will be difficult or impossible to determine and agree to pay us, as a reasonable estimate of our damages and in addition to all other amounts owed, a cancellation fee for each number (the actual amount of which is reflected in the Rate Plan or feature or promotional materials), and you may not be eligible for new customer promotions in the future.

b. **Rates.** Your Service rates and other charges and conditions for each Number or Device are described in your Sales Information. If you lose your eligibility for a particular Rate Plan, we may change your Rate Plan upon prior notice to you. If you misrepresent your eligibility for any Rate Plan, you agree to pay us the additional amount you would have been charged under the most favorable Rate Plan for which you are eligible. If you select a Rate Plan that includes a predetermined amount of service (for example, a predetermined amount of airtime or text messages), unused amount of service from one billing cycle will carry over to any other billing cycle.

c. **Availability/Interruption.** Service is normally available to your Device when it is within the operating range of our system and may be available outside of that area in other participating carrier service areas. Service is subject to transmission interruption or interruption caused by weather, your equipment, terrain, obstructions such as trees or buildings, and other conditions. Service may be limited to some areas where coverage is not available or may be temporarily limited or interrupted due to system capacity limitations and system repair or modification or to certain potential fraud interruption may also result from reprogramming of charges by you. We may choose to block calls to certain categories of numbers (e.g. 911, 900 and certain international destinations). If, in our sole discretion, we are experiencing excessive billing, collection or fraud problem with calls to those numbers.

d. **Use of Service/Device/Member.** You agree not to use the Device or Service for any unlawful or abusive purpose or in any way which damages our property or other property, or interferes with or disrupts our system or other operators' system or other users. You will comply with all laws while using the Service and you will not transmit any communication which would violate any laws, court order, or regulation, or would likely be offensive to the recipient. You are responsible for all content you transmit through your Device. Abuse of Service is prohibited without prior written contractual arrangements with us and any required regulatory approvals. You are responsible for ensuring that your Device is compatible with our service and meets federal standards. You are responsible for the purchase and maintenance of any additional hardware or software required to use the Service. You may not install any amplifiers, antennas, repeaters or other devices which modify, disrupt or interfere in any way with the radio frequency licensed to us to provide Service. You have no ownership rights in the Number, any IP address or any e-mail address provisioned by us to be used with any wireless data service, and you agree we may change any such Number, IP address or e-mail address at any time with or without prior notice to you. Your Device may contain pre-installed software necessary to use Service, and the software will prevent the phone from being affiliated with any other carrier's service. By using Service, you agree to abide by the terms and conditions of any applicable software license. Each Service can only have a limited number of active promotions and features.

e. **Unauthorized Usage.** You may not engage in any activity that facilitates the unauthorized use of Service. If your Device, user name or password is stolen or Service is fraudulently used, you must immediately notify us and provide us with such documentation and information as we may request (including affidavits and police reports). Until you notify us, you will remain responsible for all charges. We have the right to interrupt or restrict Service, without notice to you, and you consent to our disclosure of information about you and the Service to law enforcement or other governmental entity. If we suspect fraudulent, illegal or abusive activity, you agree to cooperate with us in any fraud investigation and to use any fraud prevention measures we prescribe. Failure to provide reasonable cooperation will result in your liability for all fraudulent usage.

2. CHARGES/PAYMENTS/DEFAULT

a. **Generally.** You are responsible for paying all charges, including but not limited to airtime, access, transfer, data usage, text messages, roaming, long distance, directory and operator assistance charges, the price of Device and accessories, shipping/handling fees, and any taxes, surcharges, fees, assessments, or recoveries reasonably determined by us to be imposed on you or us as a result of use of the Service or the purchase of goods. You will be billed at domestic airtime or roaming rates for 800, 866, 877, 888, and other "toll free" calls. If you activate Service on behalf of an entity but were unauthorized to do so, you will be personally responsible for all charges to the amount and will be fully bound by this Agreement as though you had activated Service on your own behalf. We reserve the right to deliver some or all of your long distance calls to a long distance provider of our choice. For all incoming and outgoing voice Service, the length of the call will be measured during the time that the call is connected to our system, which is approximately from the time you press "Send" or other key to initiate an outgoing call or approximately when the Device starts ringing for incoming calls until approximately the time you press "End" or other key to terminate the call. Airtime usage on each call is based on actual airtime consumed, with partial minutes being rounded up to the next full minute. If an incoming call has been forwarded to another phone number, you will be charged for the entire time that our switch handles the call. For calls made from or received in your local area you will not be charged for busy or unanswered calls. If you press "End" or "No" within a reasonable time.

b. **Billing and Payment.** We will provide your bill in a format we choose, which may change from time to time. Payment of all charges is due upon receipt of invoice. Billing cycle and dates may change from time to time. When a billing cycle covers less than one or more than a full month, we may make reasonable adjustments and proration. Service may be billed in a subsequent month, due to delayed reporting between carriers; this service will be charged as if used in the month billed. If you have authorized payment by credit card, no additional notice or consent will be required for billing to that credit card or account.

c. **Late Payments/Disputes.** You are of the essence for payment. Therefore, you agree to pay us a late payment fee for amounts unpaid 20 days after the date of the invoice for the amount set forth in your Sales Information. Acceptance of late or partial payments (even if marked "Paid in Full") shall not waive any of our rights to collect the full amount due under this Agreement for any check or electronic payment returned for nonpayment, we will assess an additional fee in an amount set forth in your Sales Information and we may without notice to you, suspend Service and/or terminate this Agreement, in addition to all other remedies available to us. Including disputed amounts must be paid by the due date regardless of the status of any objection. All communications concerning disputed amounts, including any instrument tendered as full satisfaction of the amount owed or stipulating any other conditional action agreement or proposed resolution of any dispute must be (i) in writing, (ii) marked "Billing Dispute" on the envelope of the dispute, (iii) sent to our address contained on the invoice, and (iv) received by us within 60 days after receipt of the invoice. If any of these requirements is not met, you will waive any objection.

d. **Default/Termination.** If you fail to pay any amount owed to us or an affiliate of ours within 20 days after the date of the invoice, or if you have amounts still owing to us or an affiliate of ours from a prior account, or if you breach any representation to us or fail to perform any of the promises you made in this Agreement, or if you are subject to any proceeding under the Bankruptcy Act or similar law, you will be in default and we may, without notice to you, suspend Service and/or terminate this Agreement, in addition to all other remedies available to us. We may require reactivation charges to resume Service after termination or suspension. Upon termination and/or porting the Number to another carrier, you are responsible for paying all amounts and charges owing under this Agreement, including any applicable cancellation fee. Third Party providers and/or discounts may terminate upon termination of this Agreement. You agree to pay all costs including reasonable attorneys fees, collection fees, and court costs we incur in enforcing this Agreement through any appeal.

e. **Deposits/Service Limits/Credit Reports/Return of Balances.** You authorize us to ask consumer reporting agencies or trade references to furnish us with employment and credit information and you consent to our requesting and reporting personal and/or business payment and credit history. If you believe that we have reported inaccurate information about your account to a consumer reporting agency, you may send a written notice describing the specific inaccuracy to the following address: AT&T Wireless, Attn: Credit Investigation Team, P.O. Box 87358, Portland, OR 97207-8735. We may require a deposit or set a service limit to establish or maintain Service. The deposit will be held as a partial guarantee of payment. It cannot be used by you to pay your bill or delay payment. Unless otherwise required by law, deposits may be noted with other funds and will not earn interest. We may require you to increase your deposit at any time to reflect your estimated monthly charges based on actual usage or our reevaluation of your ability to pay. You may request that we overstate your deposit on all billed bills, which may result in a partial or total refund of the deposit to you or credit to your account. If you default on this Agreement or terminate, we may, without notice to you, apply any deposit towards payment of charges due. After approximately 90 days following termination of this Agreement, any remaining deposit or other credit balance in excess of \$10 will be returned without interest to you at your last known address. You agree any amounts under \$10 or amount which are uncollectible will be debited to cover the extra costs of closing your account.

f. **Account Information.** Any person able to provide your name, the last four digits of your social security number, and the Number is authorized by you to receive information about and make changes to your account, including adding new Service. If you are receiving Service on a

business Rate Plan through your employer, you authorize us to share your account information with your employer. You consent to disclosure of any information about you or your service to an emergency services provider if any device programmed with your Number calls an emergency service number such as 911.

g. **CPNI Consent.** Under federal law, you have a right, and we have a duty, to protect the confidentiality of information about the amount, type and destination of your wireless service usage (CPNI). You consent to us sharing your CPNI with AT&T Corp, AT&T Wireless and their affiliates and contractors, to develop or bring to your attention any products and services. This consent survives the termination of your service and is valid until you remove it. To remove this consent at any time, notify us in writing at AT&T Wireless, Attn: CPNI, P.O. Box 97061, Redmond, WA 98071-9761, providing your: (1) name, (2) Service Billing address, (3) Number including area code, and (4) Service account number. Removing consent will not affect your current service or the provisions of paragraph 24, above.

3. CHANGES TO THIS AGREEMENT

We may amend the terms of this Agreement, including the rates information, upon advance notice. If you do not agree to the amendment, you may terminate the Agreement by giving us notice within 30 days of the date we notify you, and you will not be charged any early cancellation fee. If you use the service more than 30 days after we notify you of a change, you agree to that change. You have the option to change your service at any time by modifying it, and you may take advantage of those of our services for which you qualify, provided that you comply with any requirements of the service, including, where applicable, extending the term of this Agreement. Any change will take effect by your next billing cycle. If you transfer to a Rate Plan having a term that is shorter than your previous Rate Plan, you may remain obligated for the term of the previous Rate Plan. If we alert you to suspend your account for a temporary period, we may extend the term of your Agreement by the length of the temporary suspension.

h. **LIMITATIONS.** Some limitations do not alter the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, some of the limitations contained in this section may not apply to you.

a. **Limitation of Liability.** We are not liable for acts or omissions of another service provider, for information provided through your device, equipment failure or modification, or causes beyond our reasonable control. We are not liable for service outages of 24 hours or less from the service limitations or interruptions as described in paragraph 1.2, above. Our liability and the liability of any underlying carrier for any failure or mistake shall in no event exceed our service charges during the affected period. We and any underlying carrier are not liable for any incidental, punitive or consequential damages such as lost profits. We and any underlying carrier are not liable for (i) economic loss or injuries to persons or property arising from use of the service, the device or any equipment used in connection with the device, unless caused by our sole and gross negligence, or (ii) the installation or repair of the device by any parties who are not our employees. We are not liable for any act associated with the exercise of rights under the privacy and/or unauthorized usage provisions of this Agreement. This paragraph shall survive termination of this Agreement.

b. **Indemnification.** You agree to defend, indemnify, and hold us, our affiliates and agents and any other service provider harmless from claims or damages relating to this Agreement or your promises or statements made in it and use of the device or service unless due to our sole and gross negligence. You also agree to pay our reasonable attorney's and expert witness fees and costs incurred in enforcing this Agreement through appeal, except as provided in paragraph 5, below. Use of your device while operating a motor vehicle may be prohibited or restricted by law in some areas. It is your responsibility to conform to all such laws or regulations and you shall indemnify us from claims arising from any such unlawful use. This paragraph shall survive termination of this Agreement.

c. **No Warranties.** We make no express warranty regarding the service or the device and disclaim any implied warranty, including any warranty of merchantability or fitness for a particular purpose. We do not authorize anyone to make any warranty on our behalf and you should not rely on any such statement. We are not the manufacturer of the device and any statement regarding it should not be interpreted as a warranty. This paragraph shall survive termination of this Agreement.

d. **RESOLUTION OF DISPUTES.** PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS RIGHTS THAT YOU MAY OTHERWISE HAVE. IT PROVIDES FOR RESOLUTION OF MOST DISPUTES THROUGH ARBITRATION INSTEAD OF COURT TRIALS AND CLASS ACTION. ARBITRATION IS FINAL AND BINDING AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT. THIS ARBITRATION CLAUSE SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

e. **Binding Arbitration.** This provision is intended to be interpreted broadly to encompass all disputes or claims arising out of or relating to this Agreement or the service or any equipment used in connection with the service (whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory) will be resolved by binding arbitration except that (i) you may take claims to small claims court if they qualify for hearing by such a court or (ii) you or we may choose to pursue claims in court if the claims relate solely to the collection of any debts you owe to us. However, even for those claims that may be taken to court, you and we both waive any claims for punitive damages and any right to pursue claims on a class or representative basis.

b. **Arbitration Procedures.** You must first present any claim or dispute to us by contacting Customer Care to allow us an opportunity to resolve the dispute (see also paragraph 2c above, regarding billing disputes). You may request arbitration if your claim or dispute cannot be resolved within 60 days. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") under the Wireless Industry Arbitration Rules ("WIA Rules"), as modified by this Agreement. The WIA Rules and information about arbitration and fees are available upon request from the AAA (call 1-800-778-7879) or online at www.adr.org. You and we agree that this Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. Unless you and we agree otherwise, any arbitration will take place in the city where our mobile switching center for your Number is located or the largest city in the state where you reside, whichever is closer to your billing address. An arbitrator may not award relief in excess of or contrary to what the Agreement provides, order consolidation or arbitration on a class or representative basis, or award punitive damages or any other damages aside from the prevailing party's actual damages, except that the arbitrator may award us an individual back damage required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. In any arbitration applying the WIA Rules applicable to large/complex cases, the Arbitrator must also apply the Federal Rules of Evidence, and the losing party may have the award reviewed in accordance with the review procedures set forth in the WIA Rules. Any arbitration shall be confidential, and neither you nor we may disclose the existence, content or result of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitrator award may be entered in any court having proper jurisdiction. If any portion of this arbitration clause is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

c. **Costs of Arbitration.** All administrative fees and expenses of an arbitration will be divided equally between you and us, except that for claims of less than \$1,000, you will be obligated to pay \$25 and we will pay all other administrative costs and fees. In all arbitrations, each party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration.

d. **Waiver of Punitive Damages Claims and Class Actions.** By this agreement, both you and we are waiving certain rights to litigate disputes in court. If for any reason this arbitration clause is deemed inapplicable or invalid, you and we both waive, to the fullest extent allowed by law, any claims to receive punitive or exemplary damages and any right to pursue any claims on a class or consolidated basis or in a representative capacity.

6. MISCELLANEOUS

a. **Privacy.** In addition to the practices described in this Agreement, we encourage you to learn more about our general privacy practices by reading our Privacy Policy at www.att.com. We are not liable for any lack of privacy that may be experienced with regard to the service. You authorize our collecting and recording of our communications concerning your account or the service and consent to our use of automatic dialing equipment to contact you. We have the right to intercept and disclose any transmissions over our facilities in order to protect our rights or property. You consent to governmental entities receiving information about and making changes to your service, prior to our routine legal process, in an emergency situation.

b. **Assignment.** We may assign all or part of this Agreement without such assignment being considered a change to the Agreement, and without notice to you. We are then released from all liability. You may not assign this Agreement without our prior written consent.

c. **Notices.** We may send you notices by mail or electronic means, in our sole discretion. Notices to you shall be effective (1) 3 days following the date deposited in the U.S. Mail to your address as kept in our files and/or (2) immediately upon our transmission using an electronic means with an e-mail or text messaging service. You are responsible for notifying us of any changes in your mailing or e-mail address. Written notice to us shall be effective when directed to our Customer Care Department and received by us. Your notice must contain specific information adequate to identify you and your service. Oral and electronic notices shall be deemed effective on the date reflected in our records.

d. **Entire Agreement.** These Terms and Conditions, together with any other documents directly or indirectly made a part of these Terms and Conditions, represent the entire agreement between you and us, which may only be amended as described in this Agreement. This Agreement supersedes any inconsistent or additional promises made to you by any of our representatives, agents or dealers. If any part of this Agreement is found invalid, the balance of the Agreement remains enforceable. Copied, misprinted, scanned or other duplicate or electronic images of this Agreement are admissible for all purposes.

e. **Governing Laws.** This Agreement is subject to applicable federal law, federal or state laws, if any, and the laws of the state associated with the Number. Where our service terms and conditions are regulated by a state agency or the FCC, the regulations are available for your inspection. If there is any inconsistency between this Agreement and those regulations, this Agreement shall be deemed amended as necessary to conform to such regulations.

f. **Capacity.** You represent that you are legally competent to enter into this Agreement, that you are over 18 years old, a citizen or resident of the United States and that you are not aware of any disability that would prevent you from entering into this Agreement.



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Kerri Gettmann

From: ECF@wawd.uscourts.gov
Sent: Friday, September 15, 2006 4:25 PM
To: ECF@wawd.uscourts.gov
Subject: Activity in Case 2:06-cv-00944-RSM Coneff et al v. AT&T Corporation et al "Amended Complaint"

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U.S. District Court

WESTERN DISTRICT OF WASHINGTON

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The following transaction was received from Coluccio, Kevin entered on 9/15/2006 at 4:24 PM PDT and filed on 9/15/2006

Case Name: Coneff et al v. AT&T Corporation et al

Case Number: 2:06-cv-944

Filer: Marygrace A Coneff
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Document Number: 27

Docket Text:

AMENDED COMPLAINT *Consolidated Class Action* against defendant(s) Cingular Wireless Corporation, New Cingular Wireless Services Inc with JURY DEMAND, filed by Michelle Johns, Kelly Petersen, Joanne Aschero, Steven Knott, Liesa Krausse, Alex Aschero, Jennie Bragg, Gina Franks, Amy Frerker, Marygrace A Coneff, Addie Christine Lowry, Christine Aschero. (Attachments: # (1) Exhibit A# (2) Exhibit B# (3) Exhibit C)(Coluccio, Kevin)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1035929271 [Date=9/15/2006] [FileNumber=1782319-0

9/18/2006

] [04db39c41627f3858e4ec0ce3cc09aa01d73246e648492b479908a766578e58253c88d686f28f257a43d6184f449a354c14dabd0bbb4626823af03413900a928]]

Document description:Exhibit A

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1035929271 [Date=9/15/2006] [FileNumber=1782319-1]
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Document description:Exhibit B

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[STAMP dcecfStamp_ID=1035929271 [Date=9/15/2006] [FileNumber=1782319-2]
] [370c9a42161fbf5f2c4e734e259e86e9fc7425e44afdd9358277f667b47f3423a4a9be80dcf2b4119056303f73a40063dc5fd99ffa6b457a488e8cef7c3ab9ad]]

Document description:Exhibit C

Original filename:n/a

Electronic document Stamp:

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] [700cea08ff426b38b55d6703f607332f23a3323c1b4881d12453bb460845ec4571696d8056f4791195697578e7d6854a1f60ac6fff663bdeebf25f8533173d6f]]

2:06-cv-944 Notice will be electronically mailed to:

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