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

In the Matter of	)	
Cingular Wireless LLC	) ) )	File No. EB-02-TS-003 NAL/Acct. No. 200332100003 FRN 0004-9792-33
	ORDER	

Adopted: June 6, 2003 Released: June 12, 2003

By the Commission:

- 1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by Cingular Wireless LLC ("Cingular") of the enhanced 911 ("E911") Phase II provisions of Section 20.18 of the Commission's Rules ("Rules")¹ for its Global System for Mobile Communications ("GSM") network and the Commission Order granting Cingular a waiver of the E911 Phase II rules for its GSM network.²
- 2. The Commission and Cingular have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.
- 3. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether Cingular possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.
- 4. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation into Cingular's possible violations of the E911 Phase II provisions of Section 20.18 of the Rules.
- 5. Accordingly, **IT IS ORDERED**, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended,<sup>3</sup> that the attached Consent Decree **IS ADOPTED**.
- 6. Cingular shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the

<sup>&</sup>lt;sup>1</sup> 47 C.F.R. § 20.18.

<sup>&</sup>lt;sup>2</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, (Request for Waiver by Cingular Wireless LLC), CC Docket No. 94-102, 16 FCC Rcd 18305 (2001).

<sup>&</sup>lt;sup>3</sup> 47 U.S.C. §§ 154(i) and 154(j).

Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100003 and FRN 0004-9792-33.

- 7. **IT IS FURTHER ORDERED** that the Commission investigation into the matter described herein **IS TERMINATED**.
- 8. **IT IS FURTHER ORDERED** that the Secretary **SHALL SIGN** the Consent Decree on behalf of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch Secretary

#### CONSENT DECREE

The Federal Communications Commission ("FCC") and Cingular Wireless LLC ("Cingular") hereby enter into a Consent Decree resolving possible violations by Cingular of the E911 Phase II provisions of Section 20.18 of the Commission's Rules, 47 C.F.R. § 20.18, and the requirements set forth in the Commission order granting Cingular a waiver of the E911 Phase II provisions for its Global System for Mobile Communications ("GSM") network.

#### **Statement of Facts**

1. On October 2, 2001, the Commission adopted an order approving Cingular's plan to deploy a hybrid network and handset-based technology called Enhanced Observed Time Difference of Arrival ("E-OTD") across its planned GSM network and granting Cingular a temporary, conditional waiver of the accuracy requirements for handset-based location technologies to permit implementation of this plan.<sup>4</sup> The *GSM Waiver Order* also referred to the Enforcement Bureau the question of whether Cingular was in compliance with its E911 deployment obligations.<sup>5</sup> On November 13, 2001, Cingular filed a petition for reconsideration of the *GSM Waiver Order*.<sup>6</sup> In its petition for reconsideration, Cingular proposed a revised set of handset deployment benchmarks. On December 13, 2002, the Wireless Telecommunications Bureau issued an *Order* dismissing Cingular's request for additional time in which to meet the handset deployment benchmarks and referring issues regarding Cingular's Phase II compliance in its GSM network to the Enforcement Bureau.<sup>7</sup>

### **Terms of Settlement**

- 2. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) "FCC" or "Commission" means the Federal Communications Commission.
  - (b) "Parties" means Cingular Wireless LLC and the Federal Communications Commission.
  - (c) "Cingular" means Cingular Wireless LLC, its subsidiaries, affiliates, partners, and any successors or assigns that provide wireless service subject to 47 C.F.R. § 20.18.
  - (d) "Adopting Order" means an order of the FCC adopting this Consent Decree.
  - (e) "Effective Date" means the date on which the FCC releases the Adopting Order.
  - (g) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

<sup>&</sup>lt;sup>4</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, (Request for Waiver by Cingular Wireless LLC), CC Docket No. 94-102, 16 FCC Rcd 18305 (2001) ("GSM Waiver Order").

<sup>&</sup>lt;sup>5</sup> GSM Waiver Order at ¶ 23.

<sup>&</sup>lt;sup>6</sup> Cingular Wireless LLC, Petition for Reconsideration, CC Docket No. 94-102, (November 13, 2001).

<sup>&</sup>lt;sup>7</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, (Cingular Wireless LLC's Petition for Reconsideration), CC Docket No. 94-102, 17 FCC Rcd 24910 (2002).

- (h) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
- (i) "Valid PSAP Request" means a Public Safety Answering Point ("PSAP") request for Phase I or Phase II service as defined in the Commission's rules governing E911 and any orders of the Commission interpreting such rules. 8
- (j) "deploy" means installation of all hardware and base release software at a cell site necessary to provide Phase II service.
- 3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the FCC by incorporation of such provisions by reference in an Adopting Order.
- 4. The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of any term of this Consent Decree shall constitute a violation of a Commission order entitling the FCC to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission order.
- 5. Cingular agrees that the FCC has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.
- 6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Cingular and the FCC regarding possible past violations of the E911 Phase II rules for its GSM network and the GSM Waiver Order. In consideration for termination by the Commission of its investigation into whether Cingular has violated the E911 Phase II rules for its GSM network and the GSM Waiver Order, and in accordance with the terms of this Consent Decree, Cingular agrees to the terms set forth herein.
- 7. In express reliance on the covenants and representations in this Consent Decree, the FCC agrees to terminate its investigation into whether Cingular has violated the E911 Phase II rules for its GSM network and the *GSM Waiver Order* without any finding of liability on the part of Cingular.
  - 8. Cingular agrees to comply with the E911 Phase II rules modified as follows:
    - (a) First, Cingular agrees:
      - (1) To deploy a Phase II compliant technology at a minimum of 1,000 cell sites on its GSM network by four months after the release of the Adopting Order. In meeting this benchmark, Cingular must give priority to fulfilling pending PSAP requests first.
      - (2) To deploy a Phase II compliant technology at a minimum of 2,000 cell sites on its GSM network by six months after the release of the Adopting Order. In meeting this benchmark, Cingular must give priority to fulfilling pending PSAP requests first.

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<sup>&</sup>lt;sup>8</sup> See 47 C.F.R. § 20.18(j); Order on Reconsideration, CC Docket No. 94-102, FCC 02-318, at App. B (rel. Nov. 26, 2002), erratum, (rel. Dec. 20, 2002) (amending Section 20.18(j)).

- (3) To deploy a Phase II compliant technology at a minimum of 4,000 cell sites on its GSM network and to provide Phase II service at 2,000 of these sites by nine months after the release of the Adopting Order. In meeting this benchmark, Cingular must give priority to fulfilling pending PSAP requests first.
- (4) To deploy a Phase II compliant technology at a minimum of 6,000 cell sites on its GSM network by 15 months after the release of the Adopting Order, if necessary to meet a Valid PSAP Request pending more than six months as of that date.
- (5) To deploy a Phase II compliant technology at a minimum of 8,000 cell sites on its GSM network by 21 months after the release of the Adopting Order, if necessary to meet a Valid PSAP Request pending more than six months as of that date.
- (6) For any Valid PSAP Requests for Phase II service on its GSM network received by Cingular on or before December 31, 2002, Cingular must provide its Phase II compliant service to 100% of those PSAPs' coverage areas or population by 14 months after the release of the Adopting Order.
- (7) For Valid PSAP Requests received after December 31, 2002, but on or before April 30, 2003, Cingular must provide its Phase II compliant service to 50% of those PSAPs' coverage areas or population by no later than 14 months after the release of the Adopting Order, and to 100% of those PSAPs' coverage areas or population by no later than 21 months after the release of the Adopting Order.
- (8) For Valid PSAP Requests received after April 30, 2003, but on or before November 30, 2003, Cingular must provide its Phase II compliant service to 50% of those PSAPs' coverage areas or population within nine months of receipt of such request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of a PSAP request.
- (9) For Valid PSAP Requests received after November 30, 2003, Cingular must provide its Phase II compliant service to 50% of those PSAPs' coverage areas or population within six months of receipt of such request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of a PSAP request.
- (b) Second, Cingular agrees that its classification of a PSAP request as invalid will not insulate it from enforcement action if the Commission determines that the request was valid.

- (c) Third, Cingular states that it is relying on vendor representations in agreeing to the deployment schedule set forth herein and for its belief that a network-based solution will satisfy the Commission's accuracy requirements.<sup>9</sup>
- (d) Fourth, in any market where Cingular has received a Valid PSAP Request and has not yet deployed its network-based solution, when 100 percent of new digital GSM handsets being activated by Cingular are location capable, Cingular may satisfy that request using a Phase II compliant handset-based technology to provide Phase II E911 service instead of its network-based technology.
- (e) Fifth, Cingular agrees that in the event it fails to comply with any of the benchmarks set forth in paragraph 8(a)(1) through (5), it will make a voluntary contribution to the United States Treasury in the amount of \$337,500 for the first missed benchmark, \$675,000 for the second missed benchmark and \$1,350,000 for the third missed benchmark and any subsequently missed benchmarks. Any such voluntary contribution will be made within thirty (30) days of the missed benchmark or within five business days of a Commission decision denying a request to modify the benchmark date, whichever is later, by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100003, as well as Cingular's FCC Registration Number ("FRN") 0004-9792-33.
- (f) Sixth, Cingular must file Quarterly Reports and a supplemental report, on its progress and compliance with the terms and conditions of the Consent Decree and the wireless E911 rules, as set forth in paragraphs 9-11, *infra*. <sup>10</sup>
- (g) Seventh, with its August 1, 2003 Quarterly Report, Cingular must submit a Phase II rollout plan describing how it will prioritize PSAP requests and deploy Phase II service in its GSM network.
  - 9. To assist in monitoring and enforcing each of the conditions imposed on Cingular,

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<sup>&</sup>lt;sup>9</sup> As required by Section 20.18(h)(1) of the Commission's Rules Cingular's network-based technology for delivering E911 Phase II location information must meet the following standard for location accuracy: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls. If Cingular deploys E-OTD technology in the alternative, see infra para. 8(d), that technology will meet the following standards for location accuracy: initially, 100 meters for 67 percent of calls, 300 meters for 95 percent of calls; after October 1, 2003, 50 meters for 67 percent of calls, 150 meters for 95 percent of calls. Regardless of the technology used, Cingular will derive its network-wide location accuracy measurements by selecting the 67 percent and 95 percent accuracy numbers from test data weighted in accordance with OET Bulletin No. 71, Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems, Apr. 12, 2000. Cingular's location accuracy testing should be consistent with the guidelines in OET Bulletin No. 71, which states that accuracy testing may be based on, among other things, the coverage areas of local PSAPs that request Phase II deployment or the wireless carrier's entire advertised coverage area within a metropolitan area.

<sup>&</sup>lt;sup>10</sup> These requirements are in lieu of the Quarterly Report requirements set forth in the October 12, 2001 *GSM Waiver Order*, but are in addition to the Quarterly Report requirements set forth in the May 9, 2002 *TDMA Consent Decree*. Cingular may, however, combine the information required with respect to its GSM network and its TDMA/AMPS networks into a single Quarterly Report.

Cingular must file Quarterly Reports with the Chief of the Enforcement Bureau and the Chief of the Wireless Telecommunications Bureau regarding its GSM network.<sup>11</sup>

- 10. Specifically, the Quarterly Reports must include the following information:
- The Report must include information on all pending Phase I and Phase II requests in Cingular's GSM network, including the name of the PSAP, the date the request was received by the carrier, whether or not Cingular considers it valid, and its status. To the extent any PSAP request for Phase II service in Cingular's GSM network received after April 30, 2003 has been pending for more than six months, Cingular must identify the specific reasons underlying the failure to provide the requested service, the steps Cingular has taken to resolve the problems, and the anticipated date of full completion of the work necessary to deliver the requested information to the PSAP in question. If Cingular believes there are questions concerning a PSAP's compliance with the conditions necessary for a valid Phase I or II request, such as its readiness to receive and utilize Phase I or Phase II information, it should identify specifically the question and the efforts it has undertaken, including the communications it has had with the PSAP, to resolve the question. Cingular agrees to serve this report on the Association of Public-Safety Communications Officials-International, Inc., the National Emergency Number Association, and the National Association of State Nine One One Administrators.<sup>12</sup> In addition, the Commission will post this information on its website.<sup>13</sup> The Parties agree that the Wireless Telecommunications Bureau may require any additional steps necessary to ensure PSAP access to this information.
- (b) Each Quarterly Report also must contain statements regarding whether Cingular has met each deployment benchmark falling due in the period immediately preceding the Quarterly Report, and, if not, the reasons for its failure to comply. Each Quarterly Report must contain:
  - (1) a statement of whether Cingular's network-based technology for delivering E911 Phase II location information meets the Commission's network-based accuracy requirements of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls;
  - (2) for the benchmark set forth in paragraph 8(a)(1), a statement of whether Cingular has deployed a Phase II compliant technology at 1,000 cell sites, giving priority to fulfilling pending PSAP requests and identifying the 1,000 cell sites;<sup>14</sup>

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<sup>&</sup>lt;sup>11</sup> Each of the conditions imposed on Cingular as described in this Consent Decree pertains only to Cingular's GSM network.

<sup>&</sup>lt;sup>12</sup> Cingular should serve the Executive Director of each organization as well as its counsel, to the extent such counsel has been identified in the record in response to Cingular's request for relief.

<sup>&</sup>lt;sup>13</sup> See <www.fcc.gov/e911>.

<sup>&</sup>lt;sup>14</sup> In the Quarterly Reports, where Cingular is required to identify specific cell sites where it has either deployed a Phase II compliant technology or where it is providing Phase II service, it may do so by identifying the PSAP served by the cell sites, and the number of cell sites associated with each PSAP. For example, it could report that Phase II technology has been deployed to County A PSAP, covering 300 cell sites; Locality B PSAP, covering 600 cell sites, and Municipality C PSAP, covering 100 cell sites, for a total of 1,000 cell sites.

- (3) for the benchmark set forth in paragraph 8(a)(2), a statement of whether Cingular has deployed a Phase II compliant technology at 2,000 cell sites, giving priority to fulfilling pending PSAP requests and identifying the 2,000 cell sites;
- (4) for the benchmarks set forth in paragraph 8(a)(3), a statement of (i) whether Cingular has deployed a Phase II compliant technology at 4,000 cell sites, giving priority to fulfilling pending PSAP requests, and identifying the 4,000 cell sites, and (ii) whether Cingular is providing Phase II service at 2,000 of these sites, and identifying the 2,000 cell sites;
- (5) for the benchmark set forth in paragraph 8(a)(4), a statement of whether Cingular has deployed a compliant Phase II technology at 6,000 cell sites;
- (6) for the benchmark set forth in paragraph 8(a)(5), a statement of whether Cingular has deployed a compliant Phase II technology at 8,000 cell sites;
- (7) for the latter benchmark in paragraph 8(a)(7), a statement of whether, for any Valid PSAP Requests for Phase II service on its GSM network received by Cingular after December 31, 2002, but on or before April 30, 2003, Cingular provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population within 21 months of release of the Adopting Order;
- (8) for any Valid PSAP Request received after April 30, 2003, but on or before November 30, 2003, a statement of whether Cingular has provided its Phase II compliant service to 50% of those PSAPs' coverage areas or population within nine months of receipt of the request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of the request; and
- (9) for any Valid PSAP Request received after November 30, 2003, a statement of whether Cingular has provided its Phase II compliant service to 50% of those PSAPs' coverage areas or population within six months of receipt of the request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of the request.
- (c) Cingular must support each Quarterly Report with an affidavit, from an officer or director of Cingular, attesting to the truth and accuracy of the report.<sup>15</sup>
- (d) To the extent Cingular anticipates that it will fail to satisfy any one of the conditions herein, it must advise the Commission of the problem within 30 days. Seeking relief from that condition will not, in and of itself, insulate Cingular from possible enforcement in cases where Cingular has violated a condition of this Consent Decree. Cingular agrees that the Commission will not entertain requests for additional relief that seek changes in the conditions of this Consent Decree absent extraordinary circumstances.

<sup>&</sup>lt;sup>15</sup> See 47 CFR §1.16.

- (e) Cingular must also file a supplemental report within 15 days after the 14 months after release of the Adopting Order benchmark, containing, for the 14 months after release of the adopting order benchmark, statements of whether (i) for each Valid PSAP Request for Phase II service on its GSM network received by Cingular on or before December 31, 2002, Cingular has provided its Phase II compliant solution to 100% of those PSAPs' coverage areas or population; and (ii) for each Valid PSAP Request for Phase II service on its GSM network received by Cingular after December 31, 2002, but on or before April 30, 2003, Cingular has provided its Phase II compliant solution to 50% of those PSAPs' coverage areas or population.
- (f) To the extent Cingular cannot provide the information required under this paragraph in its next Quarterly Report following the respective benchmark, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information. Such request must be filed as early as possible before the Quarterly Report filing date, but generally no later than 10 business days prior to the Quarterly Report filing date. The request must specify the reasons for the request.
- (g) Cingular's Quarterly Reports are due February 1, May 1, August 1, and November 1 of each year, beginning August 1, 2003 and continuing through February 1, 2006. To the extent that Cingular cannot provide any of the information required in its final report, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information in accordance with the procedures set forth above.
- 11. The Parties agree that the Chiefs of the Wireless Telecommunications Bureau and the Enforcement Bureau may require Cingular to provide additional information in its Quarterly Reports, in order to evaluate Cingular' compliance with the terms and conditions of the Consent Decree, and its progress in deploying Phase I and Phase II E911 services.
- 12. To the extent unexpected problems arise affecting Cingular's ability to perform any of the requirements set forth in paragraph 8(a) in the period between reports, Cingular agrees to notify the Commission through a supplementary filing to be filed within 30 days of Cingular's discovery of the problem. This supplemental filing must include specific details regarding the problems Cingular has encountered affecting its ability to comply with the benchmark requirements.
- 13. For the benchmark specified in paragraph 8(a)(3), Cingular must demonstrate compliance by filing, prior to the benchmark date, a statement (i) whether Cingular has deployed a Phase II compliant technology at 4,000 cell sites, giving priority to fulfilling pending PSAP requests, and identifying the 4,000 cell sites, and (ii) whether Cingular is providing Phase II service at 2,000 of these sites, and identifying the 2,000 cell sites.
- 14. In the event that Cingular cannot meet the benchmarks specified in paragraphs 8(a)(3), (6), (7), (8), (9) for provision of Phase II service, because PSAPs served by certain of the cell sites at which the Phase II compliant technology has been deployed are not capable of receiving and utilizing the Phase II information, it must file, before the benchmark date, a notification of its intention to file certifications with respect to these PSAPs that comply with requirements set forth in *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, 17 FCC Rcd 24282 (2002)("City of Richardson Reconsideration Order"). Within 30 days after the benchmark date, Cingular must file either (1) the

relevant certifications or (2) proposed certifications and PSAP responses.<sup>16</sup> Cingular will be deemed to have satisfied the relevant benchmark if it files a certification (*i.e.*, PSAP does not object to readiness classification) and that certification is not deemed invalid or the Commission ultimately determines that the failure to supply Phase II data was due to PSAP readiness issues.

- 15. As of the effective date hereof, this Consent Decree shall supersede the *GSM Waiver Order* and the requirements contained therein and such Order and requirements shall be of no force or effect.
- 16. Cingular agrees that it is required to comply with each individual condition of this Consent Decree, including the reporting requirements set forth. Each specific condition and Quarterly Report is a separate condition of the Consent Decree as approved. In addition, Cingular remains subject to all other requirements of the Commission's wireless E911 rules apart from those specifically modified in this Consent Decree, and ultimately responsible for providing timely, compliant Phase II service. To the extent that Cingular fails to satisfy any condition or Commission rule, in the absence of Commission alteration of the condition or rule, it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures. At that time an assertion that a vendor, manufacturer or other entity was unable to supply compliant products will not excuse noncompliance. However, Cingular's "concrete and timely" actions taken with a vendor, manufacturer or other entity may be considered as possible mitigation factors in such an enforcement context. To the extent that the Commission, in response to petitions for reconsideration in Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Nextel Communications, Inc., 16 FCC Rcd 18277 (2001), Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC, 16 FCC Rcd 18305 (2001), Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless, 16 FCC Rcd 18364 (2001), Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, CC Docket No. 94-102, 17 FCC Rcd 24282 (2002), or Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas, CC Docket No. 94-102, Order on Reconsideration, FCC 02-318, 68 Fed. Reg. 2914 (2003), or in connection with any court order on review of those proceedings, imposes a standard regarding compliance and enforcement action that is different than set forth in this Consent Decree, that subsequent standard shall apply.
- 17. Cingular agrees to make a voluntary contribution to the United States Treasury in the amount of Six Hundred Seventy Five Thousand Dollars (\$675,000) within thirty (30) days after the Effective Date. Cingular will make this contribution without further protest or recourse by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200332100003 and FRN 0004-9792-33.
- 18. The FCC agrees that it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cingular for possible past violations of the E911

<sup>&</sup>lt;sup>16</sup> City of Richardson Reconsideration Order at para. 16.

Phase II rules and the *GSM Waiver Order* with respect to its GSM network. The FCC also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the effective date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Cingular with respect to its basic qualifications, including the character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the FCC from instituting new investigations or enforcement proceedings against Cingular pursuant to Sections 4(i), 403 and 503 of the Act, 47 U.S.C. §§ 4(i), 403 and 503, in the event of any alleged future misconduct, for violation of this Consent Decree, or for violation of the E911 Phase II rules consistent with the provisions of this Consent Decree.

- 19. Nothing in this Consent Decree shall prevent the FCC from adjudicating complaints filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, against Cingular or its subsidiaries for alleged violations of Section 20.18 of the Rules as modified by this Consent Decree, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the FCC's adjudication of that complaint will be based solely on the record developed in that proceeding.
- 20. Cingular waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.
- 21. If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither Cingular nor the FCC shall contest the validity of the Consent Decree or Adopting Order. Cingular retains the right to challenge the FCC's interpretation of the Consent Decree or any terms contained therein.
- 22. Cingular agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.
- 23. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.
- 24. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act and the Rules, including Section 20.18 of the Rules, or the GSM Waiver Order. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cingular does not admit or deny any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.
- 25. The Parties agree that any provision of the Consent Decree that would require Cingular to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order.

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# **Federal Communications Commission**

26. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For Cingular Wireless LLC

Marlene H. Dortch

Carol L. Tacker

Vice President and Assistant General Counsel,

Officer

Corporate Secretary and Chief Compliance

Date Date