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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

WEB SITE: http://commerce.senate.gov

June 12, 2012

Daniel Hesse
Chief Executive Officer
Sprint Nextel Corporation
6200 Sprint Parkway
Overland Park, Kansas 66251

Dear Mr. Hesse,

Last year, the Senate Committee on Commerce, Science, and Transportation completed a year-long investigation into the practice of "cramming" unauthorized third-party charges on to consumers' wireline telephone bills. This investigation showed that cramming on wireline telephone bills was a problem of epidemic proportions, costing American consumers and businesses billions of dollars in unauthorized third-party charges over the past decade.[1] I am now concerned that cramming on wireless bills has the potential to become a similar problem.

In response to the Committee's investigation of third-party billing through wireline telephone bills, several companies have taken positive steps to eliminate cramming, including a recent decision to stop allowing the placement of most third-party charges on wireline telephone bills. I applauded these efforts because they will greatly curb cramming on wireline telephone bills. However, these positive developments will all be meaningless if cramming simply migrates from wireline telephone bills to wireless bills.

In recent months, consumers have increasingly complained about unauthorized third-party charges appearing on their wireless bills. Many complaints have been related to monthly charges for services that provide information via text message. Consumers have reported being charged $10 a month for "celebrity gossip," horoscopes, sports scores, diet tips, and recycling tips via text message. These so-called "services" are remarkably similar to some of the so-called "services" the Committee uncovered through its investigation of cramming on wireline telephone bills. For example, in that investigation, the Committee found companies that were charging consumers $13 to $19 a month for e-mail accounts, which included weekly e-mail messages with "celebrity gossip" and "fashion tips." Consumers who were charged for these e-mail services, like the consumers now complaining about unauthorized charges for text messages, repeatedly stated that they never enrolled in the services.

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[1] *See* Senate Committee on Commerce, Science, and Transportation, *Staff Report on Unauthorized Charges on Telephone Bills* (July 12, 2011) (available at http://commerce.senate.gov).

Wireless carriers have suggested that cramming cannot happen on wireless bills, in the same manner that it occurred on wireline bills, because there is a "double opt-in" approach, where, in addition to the initial enrollment process, the consumer must respond to a text message confirming that they have enrolled. However, it appears that this double opt-in process is not working properly, as consumers have repeatedly complained that they never sent text messages to opt in to the services.

Consumers have also complained that the opt-out processes for these services are not functioning properly either. Consumers are supposed to be able to opt out of these services by replying with the word "STOP" or "CANCEL" via reply text messages to the text messages they receive. Despite responding with the word "STOP," as directed for opt-out text messages, consumers have complained that charges for the services continued to appear on their monthly wireless bills.

Complicating matters further, wireless consumers often have no way of knowing whether they should reply to text messages related to these services. Unsolicited text messages, known as "spam" text messages, are on the rise and responding to a spam text message can apparently result in additional spam text messages because the spammers learn that the wireless number is being used. Because the text messages that consumers are being charged for are often indistinguishable from spam text messages, wireless consumers are left with a dilemma. Consumers must decide whether to refrain from sending opt-out text messages for the so-called services and risk being charged monthly fees, or respond to them and risk that they are actually spam text messages. This confusion has led to conflicting pieces of advice in press accounts, including the following:

- "What to do if you're not interested? A lot of consumers do nothing, assuming that by ignoring the message, they will avoid the charges. Wrong. Like many SMS services, the cold shoulder translates to 'I want in!' Others on SMS Watch Dog report that they typed 'stop' and still wound up with a HoroscopeGenie subscription."[2]

- "And if you think replying 'STOP' to the message will make it all go away, think again. Any reply to the message will confirm only that the spammer has hit on a working cellphone number … Even if you choose to ignore the texts, they can still show up on your phone bill with charges as high as $9.99 per unwanted text."[3]

- "The worst part was that it was my own fault. As I belatedly realized, a reply of any kind confirms to cellphone spammers that they've reached a working number – which they can then sell to other spammers."[4]

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[2] *What's Your Sign? It Could Be a Cram*, New York Times (Mar. 25, 2012).

[3] *Tech Savvy: How to curb mobile phone spam; Follow these steps to take action against unwanted texts, a modern, insidious annoyance growing at an unacceptable rate*, Los Angeles Times (May 10, 2012).

[4] *Is there any way to stop the scourge of text message spam?* Slate (Apr. 13, 2012).

- "If you are signed up to receive texts from a legitimate company and decide you no longer want them, you can typically unsubscribe by texting 'stop' back to the sender. But to spammers, this is often just a signal that your number is valid."[5]

These conflicting accounts put into question the effectiveness of the protective measures used by wireless carriers to ensure valid authorization.

Despite concerns from state attorneys general, consumer groups, and Congress, wireless carriers continue to assert that cramming on wireless telephone bills is not a substantial problem and that no further action is needed. Wireless carriers have argued that they are taking measures to control cramming on the wireless side and that the voluntary best practices created by the Mobile Marketing Association are sufficient. Yet, cramming on wireless bills continues to be a growing problem. Of all cramming complaints received by the Federal Communications Commission, the percentage of complaints related to wireless bills has nearly doubled, increasing from 16% during the period of 2008 to 2010 to 30% in 2011.[6]

The growing problem of wireless cramming, and the current industry response to this problem, appears alarmingly similar to the response to cramming on wireline telephone bills in the late 1990s. The problem was not resolved, while the industry argued that it was insignificant, and, over the following decade, telephone users lost billions of dollars to unauthorized third-party charges. While I appreciate that there are vast differences between wireline and wireless telephone services, we would be remiss to ignore the lessons that were learned from the failures of third-party billing through wireline bills.

To help the Senate Commerce Committee better understand the magnitude of cramming on wireless bills and what is being done to prevent it, please provide responses to the following requests and questions.

1. Identify each billing aggregator that has had an agreement with Sprint Nextel Corporation (Sprint) to place third-party charges on wireless bills at any time during the last two years.

2. Identify each third-party vendor that has had third-party charges placed on Sprint's customers' wireless phone bills at any point during the last two years. For each such third-party vendor, provide the following information:

   a. All d/b/a's, addresses, and telephone numbers used by the third-party vendor;
   b. The billing descriptors for the third-party vendor and for each of the third-party vendor's products or services, as they appeared on Sprint's customers' bills;
   c. The name and contact information for the officers, directors, or other principals of the third-party vendor;

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[5] *Eluding a Barrage of Spam Text Messages*, New York Times (Apr. 4, 2012).

[6] Federal Communications Commission, *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming")*, CG Docket No. 11-116, Report and Order and Further Notice of Proposed Rulemaking (Apr. 27, 2012).

d. A description of the products or services the third-party vendor was providing to Sprint's customers and the amount the third-party vendor charged Sprint's customers for the products or services on a monthly basis; and

e. The total dollar amount the third-party vendor charged Sprint's customers through third-party charges on Sprint's bills, for each of the last two years.

3. Explain why Sprint places third-party charges on its customers' wireless telephone bills.

4. Does Sprint have a process for vetting potential third-party vendors before permitting them to place charges on customers' wireless telephone bills? If so, please explain this process.

5. Explain Sprint's "double opt-in" process and its "opt-out" process for third-party charges on wireless bills.

6. Identify the steps that Sprint is taking to monitor and control the occurrence of unsolicited text messages.

7. How should consumers respond to unsolicited text messages?

Please provide the requested information by Wednesday, July 11, 2012

The Committee is requesting this information under the authority of Senate Rules XXV and XXVI. An attachment to this letter provides additional information about how to respond to the Committee's request. If you have any questions, please contact Melanie Tiano or Erik Jones with the Committee staff at (202) 224-1300.

Sincerely,

John D. Rockefeller IV
Chairman

Enclosure

cc: Kay Bailey Hutchison
Ranking Member