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## United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

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

ELLEN DONESKI, STAFF DIRECTOR  
DAVID SCHWIETERT, REPUBLICAN STAFF DIRECTOR

June 12, 2013

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

Dear Mr. Hesse,

In 2011, the Senate Committee on Commerce, Science, and Transportation issued a report finding that widespread unauthorized third-party vendor charges on wireline phone bills had likely cost consumers and businesses billions of dollars. Since that time, wireless industry representatives have repeatedly asserted that in the wireless billing context, a two-step consent process known as the “double opt-in” insulates consumers from similar abuses.<sup>1</sup>

As you know, wireless carriers allow third-party vendors to use the wireless phone bill system to charge consumers for their services. There is no question that wireless industry standards state that such vendors must meet double opt-in requirements in order to use the wireless phone bill system as a billing mechanism.<sup>2</sup> It remains unclear, however, whether the industry has established an effective system to ensure that these requirements work in practice. In fact, evidence continues to mount that vendors are finding various ways to penetrate the purported double opt-in shield.

In theory, the double opt-in process involves a sequence of vendor disclosures and consumer confirmations of purchase intent. Specifically, under wireless industry standards, a

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<sup>1</sup> See, e.g., Comments of CTIA – The Wireless Association, *In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges (Cramming)*, Federal Communications Commission, CG Docket No. 11-116, at 2 (June 25, 2012) (arguing that voluntary wireless industry initiatives obviate the need for FCC action and noting that carriers “have adopted the Mobile Marketing Association’s (“MMA”) Consumer Best Practices that *inter alia*, require, wireless consumers to ‘double opt in’ to premium services”); Comments of Michael F. Altschul, Senior Vice President and General Counsel, CTIA: The Wireless Association, Federal Trade Commission, *Mobile Cramming. An FTC Roundtable* (May 8, 2013), available at <http://www.ftc.gov/bcp/workshops/mobilecramming/> (emphasizing that “No premium charge can be placed on a customer’s bill until they have affirmatively opted in at the time they are purchasing or seeking that service”).

<sup>2</sup> See Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging*, Version 7.0, Section 2.5 (Oct. 16, 2012).

Letter to Mr. Hesse  
June 12, 2013

vendor must make “clear and unambiguous” disclosures including information on service description, pricing, billing frequency, and opt-out instructions.<sup>3</sup> The vendor must further obtain from the consumer two separate confirmations of consent to purchase the service, which may occur via web-based, Interactive Voice Response, or handset activity.<sup>4</sup>

The industry standards include samples of acceptable text messages for this double confirmation process. For example, a valid first confirmation step could consist of a consumer responding to a vendor advertisement by texting the vendor a message from the consumer’s wireless phone. A valid second confirmation step could consist of a consumer responding “yes” after receiving a vendor text message response that seeks confirmation of the purchase.<sup>5</sup>

In practice, despite these detailed requirements, consumers have been reporting that third parties are charging them on their wireless bills for services that they never authorized. Following up on such reports, I recently requested data from Sprint and other carriers to better understand the scope of wireless cramming.<sup>6</sup> The responses the Committee received as well as other publicly reported data indicate that leading wireless carriers have been hearing from a substantial number of consumers that unauthorized charges appeared on their wireless phone bills.<sup>7</sup>

Additional recent evidence of cramming includes a report from the Vermont Office of the Attorney General showing that 60% of consumers surveyed believed they had received unauthorized third-party charges on their wireless bills.<sup>8</sup> The Federal Trade Commission (FTC) also brought its first wireless cramming action this April, claiming that the vendor defendants “on numerous instances” had “caused consumers’ telephone accounts to be billed without having previously obtained the consumers’ express informed consent.”<sup>9</sup>

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<sup>3</sup> Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging*, Version 7.0, Section 2.5 (Oct. 16, 2012).

<sup>4</sup> Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging*, Version 7.0, Section 2.5 (Oct. 16, 2012).

<sup>5</sup> Mobile Marketing Association, *U.S. Consumer Best Practices for Messaging*, Version 7.0, Example: Premium Rated Double Opt-In Alert Subscription (CCS—EG—05) (Oct. 16, 2012).

<sup>6</sup> Letter from John D. Rockefeller IV to Daniel R. Hesse, Chief Executive Officer, Sprint Nextel Corporation (Mar. 1, 2013).

<sup>7</sup> Previous correspondence with Sprint has detailed additional evidence of consumer complaints and data collected by state consumer protection entities indicating consumers are receiving unauthorized charges on their wireless bills. See letters from John D. Rockefeller IV to Daniel R. Hesse, Chief Executive Officer, Sprint Nextel Corporation (June 12, 2012, and Mar. 1, 2013).

<sup>8</sup> Center for Rural Studies at the University of Vermont, *Mobile Phone Third-Party Charge Authorization Study* (May 5, 2013).

<sup>9</sup> Complaint for Permanent Injunction and Other Equitable Relief and Exhibits, *Federal Trade Commission v. Wise Media, LLC, et al.*, N.D. Ga. (No. 1:13cv1234) (Apr. 16, 2013).

Letter to Mr. Hesse  
June 12, 2013

State and FTC actions have illuminated with some specificity how vendors have allegedly eluded the disclosure and purchase confirmation rules set forth under wireless industry standards. For example:

- A case brought by the Attorney General of Texas in 2011 claimed that the defendants used deceptive websites to entice consumers to enter their wireless telephone numbers. According to the complaint, once consumers entered a telephone number into the website they were directed to another page where they were instructed to enter a password received through a text message. Once the password was entered, the consumers were enrolled in the service and charges would appear on their monthly wireless phone bill until the consumers affirmatively canceled the subscription. The complaint alleged that neither the website nor the text message that followed clearly disclosed the cost or subscription nature of the service. The complaint further alleged that, to conceal this flawed enrollment process from regulators, carriers, and consumers re-visiting the site, defendants created “dummy” websites that included larger, brighter, and clearer disclosures on the service cost and subscription nature.<sup>10</sup>
- According to the complaint in the recent FTC action, consumers received unsolicited text messages from the third-party vendor and were charged on their wireless bills for the vendors’ services regardless of whether the consumers had ignored the text message or had responded by text message that they did not want the services.<sup>11</sup>

These and other accounts suggesting wireless cramming is occurring should have put the wireless industry on alert regarding the need to vigilantly monitor compliance with the double opt-in requirements.

I appreciate that wireless industry members have refunded charges in many cases where consumers have alleged unauthorized billing on their wireless accounts. However, beyond refunds, consumers deserve assurance that carriers are evaluating and addressing instances where cramming has allegedly occurred.

Accordingly, please respond to the questions below to inform the Committee’s understanding of how wireless carriers have reviewed and followed up on consumer claims that the double opt-in requirements are being foiled. For purposes of these questions, the term “customer authorization records” means the documents containing the actual disclosures and instructions provided to a specific customer by a third-party vendor at both stages of the double opt-in process at which the vendor sought customer consent, in addition to the documents demonstrating the customer’s consent.

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<sup>10</sup> Plaintiff’s Original Verified Petition and Application for Ex Parte Temporary Restraining Order, Temporary Injunction, and Permanent Injunction, *State of Texas v. Eye Level Holdings, et al.*, W.D. Tex (No. 1:2011cv00178) (Mar. 8, 2011). The case settled in 2012.

<sup>11</sup> Complaint for Permanent Injunction and Other Equitable Relief and Exhibits, *Federal Trade Commission v. Wise Media, LLC, et al.*, N.D. Ga. (No. 1:13cv1234) (Apr. 16, 2013).

Letter to Mr. Hesse  
June 12, 2013

1. Explain Sprint's process for verifying that a customer has authorized third-party billing on Sprint's wireless billing platform through the double opt-in process, and provide illustrative customer authorization records.
2. Does Sprint have a system for maintaining customer authorization records for each customer? If so, please describe this system in detail. If Sprint does not keep such records, please indicate what entity maintains these records and explain how Sprint is able to verify individual customer authorizations without these records.
3. Does Sprint have a system under which it accesses and reviews customer authorization records relating to third-party vendors? If so, please describe this system in detail.
4. How many times has Sprint accessed and reviewed customer authorization records upon learning of an allegation of unauthorized third party billing on a customer wireless account? How many of those instances resulted in a penalty to the vendor? How many of those instances resulted in a refund to the consumer? Please describe any other follow-up steps Sprint took as a result of such review.
5. Describe any consumer query, complaint, or refund threshold Sprint uses to identify problematic practices of third-party vendors who charge consumers for services through Sprint's wireless billing system, and any procedures Sprint has in place for addressing situations where vendors exceed such thresholds. In your response, please discuss how any such procedures apply to aggregators who contract with such vendors.
6. Does Sprint have a system for categorizing by subject matter the customer queries, complaints, or requests for refunds Sprint receives regarding wireless bills? If so, please state those categories and the percentage of customer refunds in 2012 associated with each category.
7. Explain any routine auditing processes that Sprint has in place to verify that third-party vendors who charge consumers through Sprint's wireless billing system are obtaining appropriate consumer consent. In your response please state how often these audits are conducted and provide the Committee with documents sufficient to show what materials are received from the third-party vendors to prove a valid consent process occurred.
8. What steps, if any, has Sprint taken to improve its processes to protect consumers from unauthorized charges on their wireless phone bills since Sprint's July 2012 letter outlining wireless cramming mitigation procedures?

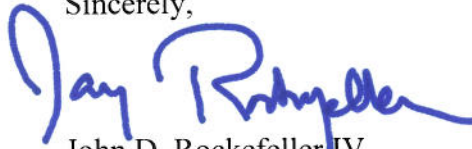
Please provide the requested information by Friday, June 28, 2013.

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

Letter to Mr. Hesse  
June 12, 2013

the Committee's request. If you have any questions, please contact Melanie Tiano with the Committee staff at (202) 224-1300.

Sincerely,



John D. Rockefeller IV  
Chairman

Enclosure

cc: John Thune  
Ranking Member