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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510–6125

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

March 1, 2013

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

Dear Mr. Hesse,

As you know, in 2011, the Senate Committee on Commerce, Science, and Transportation completed a year-long investigation into the practice of "cramming" unauthorized third-party charges onto consumers' wireline telephone bills. The 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]

In response to my staff's findings, several telephone companies took a number of positive steps last year to curtail cramming on wireline telephone bills. The companies deserve credit for making these changes and I applauded them when they were announced. However, these changes came after consumers and businesses lost billions of dollars to cramming on their wireline telephone bills. The harm was too great and lasted too long before effective changes were made.

With millions of American consumers and businesses now using wireless telephones, it is imperative that we learn from the failures of wireline third-party billing and apply those lessons to wireless billing. As of June 2012, approximately thirty-five percent of U.S. homes reported being "wireless-only,"[2] and it has been estimated that this number will be as high as forty-five percent by the end of 2013.[3]

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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).

[2] Blumberg SJ, Luke JV, *Wireless substitution: Early release of estimates from the National Health Interview Survey, January–June 2012*, National Center for Health Statistics (Dec. 2012) (available at http://www.cdc.gov/nchs/nhis.htm).

[3] Brogan, Patrick, *The Transformation of Personal Communications and the Erosion of Traditional Voice Provider Dominance*, US Telecom Research Brief (Jan. 4, 2013) (available at http://www.ustelecom.org/sites/default/files/documents/130104_TPRC_Exec_Summary_Final.pdf).

Last year, I introduced the *Fair Telephone Billing Act of 2012* to put a stop to cramming once and for all. The legislation would have limited third-party charges on wireline telephone bills to telephone-related services, such as collect calls, and it would have directed the Federal Communications Commission (FCC) to develop rules to ensure that wireless consumers are protected from unauthorized third-party charges on their bills. I included the provisions related to wireless telephone bills because we have already seen enough evidence showing that cramming on wireless bills is a significant problem. After learning that billions of dollars were lost to cramming on wireline bills, I decided to do everything I can to avert a multi-billion dollar scam on wireless telephone bills.

I have written to you previously about my concerns related to the growing incidence of cramming on wireless telephone bills. In response, your company sent me a letter explaining in detail the procedures that Sprint has implemented to prevent unauthorized third-party charges from appearing on consumers' wireless bills. Representatives of your company and the industry also met with my staff and assured them that cramming on wireless bills is being addressed.

However, since your representatives provided these assurances last year, evidence of cramming on wireless bills continues to mount. For example, the National Association of State Utility Consumer Advocates (NASUCA) recently filed comments with the FCC, informing them of the findings of a study that showed the percentage of fraudulent third-party charges on wireless bills appeared to be increasing.[4] The review estimated that wireless cramming likely costs consumers millions of dollars a year.[5]

My staff recently obtained data from the California Public Utilities Commission (CPUC), which also raises questions about wireless billing. Wireless carriers are required to provide quarterly reports to the CPUC on the number and dollar value of charges placed on the wireless bills of consumers with California area codes, as well as the number and dollar value of those charges that were refunded to consumers.[6] This data shows that millions of charges, which wireless carriers placed on wireless bills, were later refunded. Between January and September 2012, over 2 million charges, totaling over $19 million, were refunded to wireless consumers with California area codes. These refunds amounted to thirteen percent of all the charges placed on consumers' bills. A refund rate this high suggests that many charges appearing on consumers' wireless bills are unauthorized.

A recent review of consumer complaint websites by my staff suggests a similar pattern. Consumers continue to complain that they are experiencing unauthorized charges on their wireless bills for "services" they did not order and do not use. The types of so-called "services"

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[4] *Ex Parte* Comments of the National Association of State Utility Consumer Advocates, In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), CG Docket No. 11-116 (Jan. 2, 2013).

[5] Citizens Utility Board, *Analysis: Frequency of Cellphone "Cramming" Scam Doubles In Illinois, CUB Concerned Wireless Customers Targeted As Landline Laws Tighten* (Dec. 4, 2012) (available at http://www.citizensutilityboard.org/newsReleases20121204_CellphoneCramming.html).

[6] California Revised General Order 168, Part 4 (available at http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/138818.pdf).

that are appearing on these consumers' wireless bills – including "services" for weekly text messages about horoscopes, fashion tips, and celebrity gossip – are alarmingly similar to the services shown to be fraudulent on wireline telephone bills. These complaints, in addition to the findings cited recently by NASUCA and information provided to the CPUC, call into question the effectiveness of many of the protections that your company and others have put in place to protect consumers from unauthorized third-party charges.[7]

Given the ongoing problems with wireless cramming, I am concerned that your company has not been supportive of my efforts to address it. The debate surrounding cramming on wireless telephone bills is remarkably similar to the discussions about cramming on wireline telephone bills in the late 1990s. At that time, Congress decided not to address the issue because the industry argued that it had the problem under control. We cannot make the same mistake again.

I invite you to work with me to craft sensible legislation to assist your company in its efforts to protect consumers from unauthorized third-party charges. The stakes are too high for Congress to ignore this problem. We cannot allow another multi-billion dollar scam to develop before we take meaningful action.

To help the Committee better understand the scope of wireless cramming, please provide the following information:

1. The wireless billing data your company provided to the California Public Utilities Commission in 2012; and

2. Since July 2012, all documents and communications related to customer complaints or inquiries about third-party charges on your customers' wireless telephone bills.

Please provide the requested information by Friday, March 22, 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 the

[7] For example, a recent news article reported the story of a small business owner who was charged over $300 for a service that he never authorized on a cell phone that he never used. In the article, a company spokesman acknowledged that, despite requiring double opt-in, "that's not to say it's impossible for a customer to get, say, a text message from a third-party that does not follow this process." *Telecom firms can't say how 'crammed' charges were billed to unused phone*, NBC News (Jan. 25, 2013).

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

cc: John Thune
Ranking Member