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***Via U.S. Mail and Electronic Submission***

Chairman Julius Genachowski  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Letter of Public Knowledge and Free Press**  
*Petition of Public Knowledge et al. for Declaratory Ruling Stating that Text Messaging and Short Codes are Title II Services or are Title I Services Subject to Section 202 Nondiscrimination Rules, WT Docket No. 08-7*

Dear Chairman Genachowski:

In a letter dated March 25, 2010, Public Knowledge and Free Press incorrectly allege that “Sprint has refused to permit CRS [Catholic Relief Services] to continue its text to call relief program” and that without Commission Action by March 29, 2010, Sprint will discontinue the short code currently used on its network to support this program.<sup>1</sup> Public Knowledge and Free Press then use these misrepresentations to advance their arguments for additional regulation of text messaging and short codes.

Sprint Nextel (“Sprint”) did not shut down the short code used by Catholic Relief Services nor does it plan to do so. Sprint applauds and supports the efforts of Catholic Relief Services and the many charitable organizations across the country that work to aid those most in need. Sprint has, however, notified its business partners wishing to implement charitable short code giving campaigns on Sprint’s network that they must certify that these charitable campaigns are being conducted by legitimate 501(c)(3) organizations and provide Sprint with sufficient information to respond to customer inquiries. While Free Press and Public Knowledge may object to such consumer protection and customer care activities, Sprint believes these requirements are both beneficial and necessary to protect consumers and Sprint’s business.

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<sup>1</sup> Letter from Harold Feld, Legal Director, Michael Weinberg, Staff Attorney, Public Knowledge and M. Chris Riley, Policy Counsel, Free Press to Julius Genachowski, Chairman, Federal Communications Commission, WT Docket 08-7 (March 25, 2010)(“Free Press Letter”).

## **Background**

In the early 2000s when texting and short code usage exploded, so too did the number of customer complaints. Wireless service providers bore the brunt of these complaints – suffering tremendous spikes in expensive customer care call volumes and issuing millions of dollars in refunds to consumers. In order to reduce these complaints and ensure a more positive short code experience, the carriers and content providers developed a more mature structure which uses the Mobile Marketing Association (“MMA”) U.S. Consumer Best Practices and individual carrier guidelines to ensure adequate consumer disclosure, meaningful assent practices, and validation that codes are being used for legitimate purposes. These changes have helped reduce complaint call volumes and the amount of refunds. Today, consumers and carriers are better protected through a uniform and reliable short code experience.

The use of short codes for “mobile giving” campaigns also has grown exponentially, particularly over the last few months with the recent disasters in Haiti and Chile. For example, mobile giving to the American Red Cross for Hurricane Katrina in 2005 was a little over \$120,000.<sup>2</sup> For the earthquake in Haiti, mobile donations to the Red Cross surpassed \$32 million.<sup>3</sup> This wave of mobile giving is a tremendous success story for both the non-profit charitable organizations and for the short code ecosystem. It demonstrates that the consumer protections in place have given consumers the confidence to use this quick, easy and transparent method to express America’s support for people in disaster-plagued areas of the world.

Nevertheless, the short code ecosystem must remain vigilant in protecting consumers from scams that utilize short codes to capitalize on natural disasters and other moments of consumer generosity. Indeed, Sprint, CTIA, MMA and other entities in the short code ecosystem have begun working towards additional guidelines to safeguard consumers in a “mobile giving” or “charity” environment from deceptive marketing/advertising, poor quality experiences, and fraud.

Sprint’s approach is to ensure that the short codes used for mobile giving are used by content providers that are properly and thoroughly vetted as non-profit charitable organizations. Sprint works with two organizations – the Mobile Giving Foundation and mGive – that have the expertise and experience to perform this vetting function. Mobile Giving Foundation and mGive seek information such as 501(c)(3) certification, state registration as a soliciting charity, donor privacy policy including opt-out instructions, compliance with state/federal laws, *etc.* To effectuate this vetting process, Sprint seeks to transition all content providers that use short codes for mobile giving into “mobile giving agreements” or behind mobile giving partners such as Mobile Giving Foundation or mGive wherein the content provider agrees to provide sufficient information regarding the charities.

Again, the end goal is to provide up-front consumer protections in order to ensure that Sprint customers have a positive, safe and satisfactory mobile giving experience. Such protections not only benefit consumers, but they also benefit the entire mobile giving ecosystem

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<sup>2</sup> <http://www.mobilemarketer.com/cms/news/messaging/3937.html>.

<sup>3</sup> <http://www.redcross.org/portal/site/en/menuitem.94aae335470e233f6cf911df43181aa0/?vgnextoid=43ffe0b8da8b6210VgnVCM10000089f0870aRCRD>

because one or two well-publicized cases of fraud or other malfeasance would likely sour American consumers on mobile giving.

### **What Transpired in This Case**

First, it is necessary to describe the parties involved in setting up this particular short code and the role of each.

- Short codes in the United States are administered by the Common Short Code Administration (“CSCA”) – CTIA. The CSCA is responsible for reviewing applications for short codes, leasing the codes for use, managing with NeuStar a database of available, reserved and registered short codes, and monitoring programs that utilize the short codes.<sup>4</sup> A short code may be specific to one mobile operator or “common” and supported by all major mobile operators.
- As a wireless network service provider, Sprint contracts with aggregators to allow access to Sprint’s customers, use of its network, provide bill-on-behalf services for aggregators and content providers, and deliver content to consumers. Sprint must activate a particular short code on its network in order to allow aggregators and content providers to access Sprint’s network and billing services and connect with Sprint customers to send/receive messages *via* short message service (SMS) or multimedia message service (MMS).
- OpenMarket is one of many short code aggregators that contract with Sprint to aggregate services. Aggregators play an indispensable role in the short code ecosystem as they are responsible to the carrier to ensure that consumers are protected and the content providers are following the established MMA and carrier rules and protocols. They contract with thousands of content providers and require the content providers to follow the appropriate processes of obtaining the short code and working with wireless service providers to activate the code on each provider’s respective network. Aggregators also advise content providers in the development of short code campaigns and contractually ensure that the campaigns are compliant with MMA Best Practices and individual carrier requirements.
- Catholic Relief Services is the content provider. In the short code ecosystem, the content providers develop the short code campaigns, content, and message flows sent to the mobile subscribers.
- Mobile Commons is an application service provider (“ASP”) or sub-aggregator. Based on the declaration filed by Jed Alpert, “Mobile Commons provides a software platform to businesses and nonprofits, which allows them to easily implement mobile applications that integrate text, web, and voice with their overall communication strategy.”<sup>5</sup> In this case, Mobile Commons (the registered lessee of the short code) obtained the short code

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<sup>4</sup> See, <http://www.usshortcodes.com/>

<sup>5</sup> See, Declaration of Jed Alpert attached to *Free Press Letter*.

and allowed Catholic Relief Services and other entities to use the short code for several distinct campaigns.<sup>6</sup>

Sprint has a direct, contractual relationship only with the primary aggregator, OpenMarket. Sprint has no direct or contractual relationship with either Mobile Commons or Catholic Relief Services.<sup>7</sup> According to Mr. Alpert's declaration, Catholic Relief Services hired Mobile Commons to assist with its "text to call" relief campaign. Mobile Commons, as an ASP or sub-aggregator, worked with OpenMarket and did not communicate directly with Sprint.

In January 2010, shortly after the earthquake in Haiti, Sprint discovered a short code (30644) being used on its network for charitable giving that was not established through one of Sprint's mobile giving partners. Sprint also determined the short code had not been designated as a charitable donation code within the Common Short Code Administration's system. Further, according to the program brief on file for this code, its usage case is for alerts, contests, queries, and voting. Our records indicate that the short code was being managed by OpenMarket, one of Sprint's aggregators, that works primarily with *for-profit* entities. In short, from Sprint's perspective, a commercial code was being used to solicit charitable contributions with no validation. Sprint believes it is appropriate to monitor such modification of code use both to reduce calls to customer care and maintain the integrity of mobile giving programs.

Sprint provided this information to OpenMarket and asked OpenMarket to transition this short code to a mobile giving partner or establish a mobile giving agreement and begin this process within 45 to 60 days. Such agreements provide up-front consumer protections that ensure proper vetting of the organizations using short codes. Without such structure and process in place, Sprint is concerned a short code could be used to implement mobile giving scams. *Importantly, however, Sprint requested that OpenMarket keep the specific short code at issue here running because Sprint understood the short code was being used by Catholic Relief Services (a known charity) for Haiti earthquake disaster relief.* Sprint made clear to OpenMarket, however, that aggregators conducting charitable giving campaigns were required to have a mobile giving agreement providing basic confirmation of non-profit/charity status and information that would allow Sprint to respond to customer inquiries.

OpenMarket responded that it was not interested in pursuing a mobile giving agreement. OpenMarket informed Sprint that it did not want to be in the mobile giving business and did not want to undertake the additional responsibility to vet charities. Furthermore, OpenMarket acknowledged it was not authorized to enable the collection of donations for non-profit organizations and sent a client alert to that effect to all their content providers.

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<sup>6</sup> Short codes are either used on a dedicated basis or on a shared basis. Sprint's information indicates that Mobile Commons is using the 30644 on a shared basis to support multiple short code campaigns one of which is the Catholic Relief Services "text to call" donation campaign for Haiti earthquake relief.

<sup>7</sup> This funnel-like ecosystem is borne out of necessity as wireless service providers do not have the bandwidth to contract with and manage thousands of content-providers and their short code campaigns; hence, the aggregators play a pivotal role in the ecosystem as they help both the service providers and the content providers in establishing and managing the use of short codes.

Sprint then instructed OpenMarket to advise its sub-aggregator, Mobile Commons, that it should either enter into a mobile giving agreement directly with Sprint or work with the Mobile Giving Foundation or mGive. As of today, Mobile Commons has not established a mobile giving agreement with Sprint; moreover, OpenMarket has advised Sprint that Mobile Commons does not wish to establish such an agreement. Further, to our knowledge, Mobile Commons has not opted to work with one of Sprint's existing, verified mobile giving partners, Mobile Giving Foundation and mGive, at least not with regard to this "text to call" mobile giving campaign.<sup>8</sup> Sprint has been and remains open to working with Mobile Commons or OpenMarket to make this a verified process. Despite the lack of such an agreement, Sprint has not shutdown access to any mobile giving campaign from Mobile Commons or the Catholic Relief Services.

Again, Sprint notes that the short code is being utilized inconsistently with its intended usage case. According to our information, 30644 was to be used for alerts, contests, queries, and voting – there was no indication that it was being used by a non-profit relief organization seeking donations. Sprint, and other carriers, have agreements in place with aggregators (who in-turn have or should have agreements with content providers) requiring notification when the short code will be used for additional programs or when there are modifications to existing programs. This reasonable practice allows Sprint to stay informed about the short code campaigns being utilized on its network. This information is particularly important to Sprint's customer care organizations that often field questions about short codes from Sprint customers.

Thus, in addition to seeking to transition the short code to a mobile giving agreement, Sprint also notified OpenMarket that it wanted to obtain an updated program brief describing the usage of the short code. OpenMarket contacted Mobile Commons for this purpose. Sprint received a partially completed program brief in response. To date, this program brief has not been completed fully.<sup>9</sup>

### **Commission Action is Unnecessary**

Contrary to the allegations of Free Press and Public Knowledge, Sprint's actions were entirely appropriate. Sprint identified quickly that a short code was being used for a new or changed purpose. Sprint applied heightened scrutiny to this particular short code because it was being misused, based on information on file, while being used for mobile giving. Sprint is wary of such short code usage because it can be misused to the detriment of legitimate charitable organizations and the good work they do. Sprint seeks to apply structure and process *via* a mobile giving agreement through which organizations are vetted to ensure 501(c)(3) compliance and that Sprint has sufficient information to respond to its customers inquiries. Moreover, Sprint notes that its policy and actions are consistent with federal regulation in a similar context.<sup>10</sup>

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<sup>8</sup> Mobile Commons is, however, operating other mobile giving campaigns for Haiti and Chile disaster relief efforts through the Mobile Giving Foundation. Sprint does not know why Mobile Commons is unwilling to transition the code in question to a similar arrangement.

<sup>9</sup> Among other missing information, the step-by-step message flow does not include a privacy disclosure for collection of the customers MDN when submitting keyword CALL.

<sup>10</sup> Any common carrier assigning a telephone number to a provider of interstate pay-per-call services that the carrier knows or reasonably should know is engaged in soliciting charitable contributions shall obtain verification that the entity or individual for whom contributions are solicited has been granted tax exempt status by the Internal

Sprint did nothing to harm or disparage Catholic Relief Services. Sprint never shut down the code and recognized early on that Catholic Relief Services is a legitimate charitable organization and applauds the work they are doing to raise funds for disaster relief in both Haiti and Chile. Ultimately, this situation had to do with the interaction between the two aggregators – OpenMarket and Mobile Commons – and Sprint. Sprint maintains that the most effective means to protect consumers and ensure a positive mobile giving experience is to verify charitable short code programs through a mobile giving agreement. Sprint stands ready to enter into such an agreement with Mobile Commons either directly or through established entities mGive and the Mobile Giving Foundation. While we work through this matter, Sprint will do its part to ensure that the short code used by Catholic Relief Services remains active.<sup>11</sup>

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I hope that the information provided herein addresses any concerns that you may have on this matter. Please let me know if you would like any additional information or if you have any other questions.

Sincerely,

/s/ Charles W. McKee  
Charles W. McKee

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Revenue Service. See, 47 CFR Section 64.1513. While this regulation applies to "common carriers" and Sprint maintains that SMS and short code services are not common carriage, it certainly demonstrates that Sprint's policy is reasonable, prudent and in-line with federal regulation.

<sup>11</sup> While Sprint will take no action to shut down the use of the code, Sprint cannot guarantee that other parties (be it OpenMarket, Mobile Commons, CSCA, or another wireless service provider) will not take action to discontinue the use of 30644 for "text to call" Haiti relief.