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Michael B. Hazzard

Attorney
202.857.6029 DIRECT
202.857.6395 FAX
hazzard.michael@arentfox.com

VIA ECF

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

Re: WT Docket No. 08-7; CC Docket No. 01-92

Dear Ms. Dortch:

By this letter, the Mobile Internet Content Coalition (“MICC”) urges the Commission to grant immediately Public Knowledge’s petition (“Petition”) in the above-referenced docket. Text messages are a form of telephone calls that, as the Commission has noted and the courts have affirmed, fall within the scope of Title II of the Communications Act. The Commission’s inaction in this proceeding has emboldened the wireless carriers, most recently Sprint Nextel Corporation, to place arbitrary and discriminatory restrictions on SMS messages, further holding back the development of the mobile economy.

The undisputed record in this proceeding demonstrates that wireless carriers have repeatedly blocked SMS calls from: (i) organizations to their members, (ii) citizens attempting to make charitable contributions, and (iii) consumers seeking information on lawful products. Building on this pattern of arbitrary and discriminatory practices, Sprint has recently announced rate increases and content restrictions that are completely antithetical to notions of common carriage and which further threaten the ability of consumers communicate with organizations of their choosing.

First, Sprint is raising rates to send or receive text messages that use a short code (a five to six digit telephone numbers) over its network. Indirectly interconnected companies now face higher prices, which are between \$0.0025 and \$0.005 per message – *to or from* the Sprint network. This amounts to an estimated 25% price hike. Only favored companies, like Facebook and Twitter, are offered direct interconnection to avoid these charges. Not only is Sprint’s practice discriminatory, but it is particularly twofaced. For voice calls, Sprint maintains that it should pay no more than \$0.0007 per *minute* for using other carriers’ networks, regardless of

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whether it is directly or indirectly interconnected.¹ Sprint never justifies why it believes it is entitled to charge over a *300 percent premium* for a single SMS message (to or from its network) as compared to a voice minute. No justification exists.

Moreover, by applying the price increase to some companies, but not others, even though the companies are doing the same thing (sending text messages with a short code), Sprint is discriminating among companies and choosing winners and losers in the industry. New companies may be discouraged from entering the text message industry when faced with uncertain pricing and the knowledge that the incumbent companies will price out new entrants. Chairman Genachowski has recognized how important the “*next* Google or Facebook or Twitter” is to the economy and job creation,² yet those new companies may be priced out of the text message market by actions like Sprint’s.

Second, Sprint has also initiated SMS content restrictions that preclude transmitting URLs, multi-media content, coupons, non-related ad content or WAP Push content. Standard rate SMS messages are the most common type of text message and are used by hundreds of companies to share information with wireless subscribers because the wireless subscriber has already set up a consistent payment system for the text message.³ Now, Sprint is dictating the content these text messages can or cannot contain.

Sprint’s content restrictions harm consumers and constitute a violation of Sprint’s obligation to route traffic on a nondiscriminatory basis. Media outlets routinely send SMS messages to subscribers containing headlines and URL links to lengthier stories. Public safety organizations similarly send storm-related warning to citizens containing links to first-responder contact information and disaster-relief services. Health care providers send SMS messages to patients containing links to medical text results. The list goes on. But as with the price increase, Sprint is not placing these same content restrictions on all companies that transmit SMS text messages – Facebook and Twitter are apparently exempt.

¹ See, e.g., *Ex Parte* of Sprint Nextel Corp. in CC Docket Nos. 01-92 et al., (filed March 20, 2011) available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021134882> (last visited March 28, 2011).

² Chairman Genachowski, Remarks as Prepared for Delivery, CTIA Wireless 2011, Orlando, FL, March 22, 2011, available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0322/DOC-305309A1.pdf (last visited March 25, 2011).

³ A standard rate text message only costs a wireless subscriber their standard rate, *i.e.*, either part of the package of messages (*e.g.* 200 text messages for \$5 a month or unlimited messages included in a monthly plan) or on a per-message basis (*e.g.* \$0.20 a message). In contrast, premium messages incur an additional charge to the wireless subscriber beyond the standard rate.

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Finally, companies that send text messages to Sprint's subscribers live in fear that Sprint's content restrictions can be enforced at any time, without warning and without explanation. Sprint and the other wireless carriers perform thousands of audits on a monthly basis, searching for supposed violations of the wireless carrier's guidelines. With Sprint's new content restrictions, Sprint simply has another way to target a company that is sending text messages it doesn't like. The restrictions on "coupons," for example, could be interpreted by Sprint to include almost any text message offering a deal (*i.e.* "Stop by Smith's Grocery for a sale on eggs"). It also creates further uncertainty and business risk for any company wanting to send text messages because Sprint simply has another weapon to claim noncompliance and block text messages for "unapproved" content. As the MICC has detailed before, wireless carriers claim the power to block any text messages based on content regardless of whether their subscriber requested the content.⁴

Not only are we in fear of these rules being enforced but that this is yet another example of a seemingly arbitrary content restrictions and price hikes that can arrive any time and be applied to the party of a carrier's choosing. In the face of this uncertainty content owners and distributors are prevented from investing and innovating in our most widespread and far reaching communications channel. Even if Sprint were to relax or modify these content restrictions and rate increases, the mere thought that they have the authority to impose similar changes by fiat has a chilling effect across the industry, which arbitrarily limits the growth of the mobile economy. Regardless of what Sprint ultimately does, the actions threatened demonstrate the need for Commission action to preserve the free flow of text messages. Sprint has the opportunity to drop the discriminatory price hike and unprecedented content restrictions before consumers suffer.

The MICC urges the Commission to ensure text messages can flow without interference by wireless carriers. The Commission should grant Public Knowledge's petition.

Respectfully submitted,

/s/

Michael B. Hazzard
Counsel to Mobile Internet Content Coalition

⁴ See *e.g.*, *Ex Parte* of the Mobile Internet Content Coalition in WT Docket No. 08-7 (filed September 20, 2010) available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020913149> (last visited March 25, 2011).