

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Empowering Consumers to Prevent and	)	
Detect Billing for Unauthorized Charges	)	CG Docket No. 11-116
("Cramming")	)	
_____	)	

**COMMENTS OF SPRINT NEXTEL CORPORATION**

Sprint Nextel Corporation ("Sprint") submits these comments in response to the Federal Communication Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") in the above referenced docket.<sup>1</sup> The proposed rules seek "to assist consumers in detecting and preventing the placement of unauthorized charges on their telephone bills, an unlawful and fraudulent practice commonly referred to as 'cramming.'"<sup>2</sup> The Commission proposes the imposition of one rule on commercial mobile radio service ("CMRS") providers while asking for comment on a multitude of other issues. Sprint shares the Commission's desire to ensure that purchases invoiced on its bills are valid, authorized charges and is happy to provide the Commission information on the actions Sprint has taken to ensure third-party charges placed on its bill are both authorized and understood by the customer. Ultimately, however, Sprint believes that a fair assessment of current wireless industry practices will demonstrate that no additional regulation is required in this area.

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<sup>1</sup> See, In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), *Notice of Proposed Rulemaking*, CG Docket No. 11-116, FCC 11-106 (July 12, 2011) ("NPRM").

<sup>2</sup> NPRM at ¶ 1.

**I. A RULE REQUIRING CMRS CARRIERS TO PROVIDE FCC CONTACT INFORMATION ON BILLS AND WEBSITES MAY ULTIMATELY RESULT IN DELAYED RESOLUTION OF CUSTOMER COMPLAINTS**

The Commission proposes to adopt a rule that would require CMRS carriers to include – on carrier bills and websites – a clear and conspicuous statement indicating that consumer inquiries and complaints may be submitted to the Commission and provide the Commission’s contact information. The proposed rule requires that this disclosure statement must include the Commission’s telephone number for complaints, website address for filing complaints, and, a direct link on the carrier’s website to the Commission’s webpage for filing such complaints. Sprint does not believe such a regulation is necessary, and it could have the unintended effect of delaying or thwarting resolution of customer concerns.

Sprint has the greatest incentive to ensure that its customers’ questions or concerns are resolved expeditiously. With respect to billing issues in particular, if Sprint does not handle disputes or concerns quickly and satisfactorily, Sprint jeopardizes its customer relationships which could result in customers choosing to leave Sprint for another carrier. Customer churn is poison to a wireless carrier that has invested hundreds if not thousands of dollars to acquire the customer. These customer acquisition costs (including handset subsidies, network and spectrum investment, marketing, advertising and promotion) could be frittered away with poor customer experiences such as delaying resolution of a disputed third-party charge.

As such, Sprint believes that consumers are best served by a quick resolution of billing concerns. Furthermore, Sprint is in the best position to provide an expeditious and satisfactory resolution of billing matters. As the billing entity, Sprint is in the best position to investigate, resolve and apply credits/refunds (as necessary). Sprint can quickly obtain detailed information about a particular charge such as the vendor name, the product purchased, and transaction

history. For this reason, as described in more detail in Section II below, Sprint has made a conscious decision to funnel inquiries related to third-party charges to Sprint for handling. In contrast, the Commission does not have access to this type of information, and it would be dependent on the carrier to investigate the matter and supply the Commission with information to determine whether a disputed charge was authorized or not.

Sprint is concerned that the placement of FCC contact information on the Sprint bill could divert customer inquiries to the Commission and delay significantly resolution of the consumer's billing concern. Sprint believes that the diversion of such inquiries and complaints to the Commission adds another layer to the process, which will slow resolution of the customer's concern. Sprint's experience with FCC complaints is that there are days (if not weeks in some cases) between the time the complaint is sent to the FCC and the time it is forwarded to Sprint for handling. Sprint is then provided thirty (30) days to investigate and respond to the complaint in a formal manner. Compare this process to a customer who may dial \*2 to reach a Sprint customer care representative who can investigate and refund/credit charges in a matter of minutes.

Sprint is further concerned that the time lag in handling these complaints could be exacerbated by a new requirement to provide FCC complaint and contact information on all bills and websites. All telecommunications common carriers will essentially be advertising and promoting the FCC as a *de facto* customer care organization for more than 300 million wireless connections.<sup>3</sup> Given the number of ordinary billing, coverage, and device questions Sprint handles on a daily basis, the Commission could expect the volume of inquiries on day-to-day

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<sup>3</sup> See, CTIA Wireless Quick Facts, available at <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>

operating issues submitted to the FCC to increase substantially. The Commission's staff may find itself inundated with ordinary billing or operational inquiries that could undermine its ability to quickly process and forward complaints to the telecom carriers that can actually resolve the consumer's concern. This not only harms the consumer, but it may also damage the relationship that Sprint has with its subscribers. This is clearly not in the public's best interest.

The Commission also seeks comment on "the timeframe that carriers would need to make such modifications [to telephone bills and websites] to comply with this requirement."<sup>4</sup> For the reasons stated above, Sprint urges the Commission not to adopt this requirement. However, if the Commission believes it is necessary to move forward with its rule, Sprint urges the Commission to provide ample time to implement changes to carrier websites and bills. Sprint would need a minimum of twelve (12) months in which to implement this change. This timeframe is particularly important as it pertains to changes to Sprint's wireless invoice. Such invoice format changes generally require a variety of steps including requirement development, information technology ("IT") scoping and vendor hand-off, IT development, testing, and production. Sprint must also account for IT lock-downs which occur throughout the year.

On a related note, the Commission asks for comment on whether it should require "the carrier generating the telephone bill to clearly and conspicuously provide the contact information for each third-party vendor in association with that entity's charges."<sup>5</sup> For similar reasons discussed above, Sprint believes such a requirement would be a mistake. In most instances, Sprint is in the best position to provide quick resolution should the customer have questions or concerns about a third-party charge. Sprint representatives have access to information about

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<sup>4</sup> NPRM at ¶ 51.

<sup>5</sup> NPRM at ¶ 55.

such charges as well as the ability to process credits and to record customer history to detect excessive or fraudulent activity. Moreover, Sprint has the primary relationship with its subscribers and its reputation and customer satisfaction levels may be negatively impacted by poor customer care interactions provided by third-party merchants or vendors. For these reasons, Sprint has generally chosen not to provide customers with third-party contact information.<sup>6</sup>

## **II. SPRINT'S EXISTING POLICIES AND PRACTICES BUTTRESSED BY INDUSTRY GUIDELINES ARE EFFECTIVE AT CONTROLLING INSTANCES OF CRAMMING AND NO NEW FEDERAL MANDATES ARE NECESSARY**

The Commission seeks comment on a number of additional questions many of which involve whether the Commission should expand its regulation. The ability to bill third-party purchases to a consumer's wireless bill is an easy and convenient means for consumers to pay for small value charges without using credit or disclosing sensitive credit card or bank information to third parties. Sprint respectfully submits that the wireless industry has many highly effective consumer protections in place today and that no regulatory interdiction is necessary and could be counterproductive to this emerging payment system.

Sprint below describes three different ways in which a Sprint subscriber can make payments for purchases via their Sprint invoice. In describing these, Sprint highlights existing consumer protections built into these methods as well as additional protections offered by Sprint.

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<sup>6</sup> Sprint has permitted some of its direct carrier billing merchants to list their contact information on Sprint invoices. In these instances, the merchant has access to Sprint's billing system and can process refunds/credits. Thus, while Sprint is not categorically opposed to listing third-party contact information on its bills, Sprint is opposed to a federal requirement to do so. In short, carriers should continue to have the discretion to make this decision based on the circumstances governing the billing relationship.

### **A. Premium SMS Billed to Sprint Invoice**

The most prevalent way Sprint subscribers may add charges to an invoice is by purchasing Premium SMS services (“PSMS”) such as games, ringtones and screen savers available in both carrier and third-party store fronts. There are numerous consumer protections in place in the premium SMS space – most notably the Mobile Marketing Association (“MMA”) Guidelines and Sprint Standards which are premised on clear and conspicuous disclosure as well as a double opt-in authorization process.<sup>7</sup>

With respect to billing, PSMS charges will appear on a Sprint invoice with a description of the premium SMS service. In most cases, Sprint provides its own contact information (*i.e.*, a toll-free number) rather than contact information for the merchant or content provider. Sprint is generally best equipped to handle these inquiries since it has the most direct contact with the customer and access to billing and customer care platforms. In sum, Sprint is in a better position to ensure the most effective and expeditious response to customer inquiries.

Sprint maintains a consumer-friendly approach to customer disputes of third-party charges. When a customer calls to dispute a charge, the Sprint representative collects basic information about the disputed charge. The Sprint representative will then educate the customer about the charge in question and describe the double opt-in process. Sprint representatives have the ability to provide the date and time of the customer authorization. The Sprint representative also informs customers how they can opt-out in the future (*e.g.*, text “Stop”) and how to block various types of messages, including how to block PSMS/digital media downloads. After educating the customer, the Sprint representative will generally grant a credit, but explain that

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<sup>7</sup> See, MMA’s U.S. Consumer Best Practices, available at [http://mmaglobal.com/Consumer\\_Best%20Practices\\_6.1%20Update-02May2011FINAL\\_MMA.pdf](http://mmaglobal.com/Consumer_Best%20Practices_6.1%20Update-02May2011FINAL_MMA.pdf)

the customer will continue to incur charges and be responsible for charges attributable to the particular PSMS campaign being disputed unless the customer chooses to opt-out of the particular campaign or block the text messages from that short code.

Sprint has a liberal refund policy. Upon receiving an initial dispute, Sprint will grant a credit or refund and automatically opt-out the customer from the disputed short code campaign or subscription. If a customer re-subscribes and disputes the charge a second time, barring extenuating circumstances, Sprint will typically issue a second credit/adjustment. If the customer continues to opt-in to the same program, however, they will be held responsible for the charges, (which is explained to the customer when they receive the first two credits). With respect to the issuance of a credit, if the customer has already paid his or her bill, then Sprint will issue a credit on the next invoice. If the customer has not paid his or her bill, then Sprint will adjust the balance and inform customer of new amount due.

Additionally, Sprint has implemented an innovative approach to better manage the PSMS ecosystem. Recognizing that Sprint does not have direct control over content providers, Sprint created a system of financial incentives and penalties with its messaging aggregators. The incentive system influences aggregators to work with reputable content providers and to ferret out non-compliant campaigns. Sprint's incentive system takes into account compliance with Sprint Standards and MMA best practices as well as refund rates. Aggregators who work with content providers that demonstrate strict compliance with Sprint Standards and MMA Best Practices and/or that have low refund rates are rewarded with a higher revenue share from Sprint. In contrast, aggregators who work with content providers that do not comply with these standards and best practices and/or that have high refund rates are penalized with a lower revenue share. Sprint also reserves the right to terminate aggregators, content providers or

individual short code campaigns should Sprint (or its auditing vendor) find an egregious violation and/or a pattern of violations. Finally, Sprint requires its aggregators to monitor and limit the amount of charges that a Sprint subscriber may purchase via a particular short code.<sup>8</sup>

**B. Sprint Billing for Android Market Purchases**

Sprint, in cooperation with Google, allows its subscribers to bill Android Market purchases to Sprint's wireless invoice. Purchases made via the Android Market fall under Google's Terms of Service.<sup>9</sup> Importantly, Google provides a policy regarding purchases and refunds. A purchase made via the Android Marketplace will result in an email confirmation sent to the user's Gmail email address (a prerequisite to accessing the Android Marketplace). This email provides specific vendor support contact options, the Google refund policy, and the total amount of the transaction. Normally, refunds from within the Android Market application are available within the first 15 minutes of purchase, and any requests for content support and refunds after 15 minutes must be made directly to the vendor identified on the purchase notification email.<sup>10</sup> A purchaser may view the status of a refund request by visiting [www.checkout.google.com](http://www.checkout.google.com) and entering the purchaser's Gmail address and password. The decision to provide a refund or not is specific to the policies of the identified vendor, and based on the terms and services agreed to at time of purchase, the vendor may not provide a refund.

Sprint places a \$50 limit on the total amount of Android Market purchases that customers may place on their Sprint bill per billing cycle. This \$50 limit does account for refunds processed from the Android Market – any refunds processed will be deducted from the total bill.

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<sup>8</sup> In addition, Sprint offers prepaid plans and account spending limit plans to assist subscribers in controlling wireless usage and purchases.

<sup>9</sup> <http://www.google.com/mobile/android/market-tos.html>

<sup>10</sup> This policy is subject to change at the discretion of the vendor.

In addition, Google has protections in place for unauthorized charges. Google provides the following information to consumers who suspect an unauthorized charge:

If you see charges for purchases made through Google Checkout, but you never created an account, please check with members of your household or business to confirm that they haven't placed the order. If you're still unable to recognize the charge, please report the unauthorized purchase within 60 days of the transaction so Google can begin an investigation. . . . Our fraud protection policy covers you against any unauthorized purchases that were made with your Google Account. If we find that an unauthorized purchase was made, we'll make sure you aren't charged for it.<sup>11</sup>

### **C. Direct Carrier Billing Arrangement**

Sprint has also entered into “direct carrier billing” (“DCB”) agreements wherein the DCB partner obtains access to Sprint’s billing application programming interface (“API”). Like the Sprint billed Android Market purchases described above, these DCB arrangements permit a Sprint subscriber to bill purchases to their Sprint monthly invoice.

While each DCB arrangement is unique, each DCB partner must comply with strict validation requirements that incorporate secure call-and-response validation. Typically, the online consumer selects the “pay by mobile” option (among other payment options). The user then enters his or her telephone number. In some cases, the purchaser may also be asked to enter a zip code for additional validation. The purchaser then receives a secure pass code via text message that must be entered to complete the purchase. In addition, Sprint’s “Bill to Account Terms of Use,” as well as the DCB partner’s terms of use, are presented to the customer and the customer must indicate acceptance of said terms to proceed with the purchase.<sup>12</sup> Once the

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<sup>11</sup> See, e.g., Google Checkout Buyer Help, Reporting Abuse, available at <http://checkout.google.com/support/bin/answer.py?answer=42821>

<sup>12</sup> [http://m.sprint.com/mobile/landings/bill\\_to\\_account\\_tou.html](http://m.sprint.com/mobile/landings/bill_to_account_tou.html)

validation occurs, the purchase is complete and the user will receive a confirmation text message or email. Finally, the purchase will be reflected on the customer's monthly invoice with a description of the item purchased.<sup>13</sup>

With respect to billing or purchase disputes, there is a shared commitment between Sprint and its DCB partners to ensure customers concerns are resolved. As discussed, DCB purchases are made subject to the DCB partner's terms of service which typically include purchase dispute provisions. Indeed, some DCB partners provide independent customer care service as well as account management tools. Although Sprint encourages consumers to contact the DCB aggregator, Sprint systems and policies are designed to permit refunds for these purchases. Further, Sprint has system checks in place to prevent double billing (*e.g.*, recognize and automatically remove a second billing where two purchase calls occur with same billing transaction data). Finally, Sprint places limits on the amount that may be billed via these DCB arrangements. For example, Sprint has currently placed a \$25 limit per mobile number, per month for "BilltoMobile" purchases.<sup>14</sup>

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<sup>13</sup> In some instances, Sprint will list the merchant name and telephone number to which the customer may direct inquiries. In these cases, the merchant has the ability to process refunds/credits through Sprint's billing systems.

<sup>14</sup> [http://support.sprint.com/support/article/Use\\_BilltoMobile\\_to\\_charge\\_purchases\\_to\\_your\\_Sprint\\_bill/case-wh164052-20110420-170007](http://support.sprint.com/support/article/Use_BilltoMobile_to_charge_purchases_to_your_Sprint_bill/case-wh164052-20110420-170007)

#### **D. Additional Sprint Protections**

Sprint provides its customer – free of charge – the ability to block third-party purchases (*i.e.*, “block digital media downloads”). This third-party block applies to PSMS, Android and DCB purchases. As stated on Sprint’s website<sup>15</sup>:

##### **With My Sprint Account Controls, you can:**

- Block or allow all settings with one touch, or manage them individually
- Block or allow texts, data usage and picture and video sharing
- Block or allow apps and digital media downloads
- Restrict Web access to sites inappropriate for children
- Restrict or allow users to manage their own wireless settings

Simply sign in to My Sprint, click the My Preferences tab, and select a control under Limits and Permissions.

While customers may place the block using Sprint’s on-line self-service tools, a customer may also call Sprint customer care or make the request via Sprint’s e-chat customer care.

### **III. SPRINT AND WIRELESS INDUSTRY PROTECTIONS ARE PAYING DIVIDENDS AS THE INSTANCES OF WIRELESS CRAMMING ARE NEGLIGIBLE**

The steps taken by Sprint and the wireless industry (as well as those of the various third-party partners in the PSMS and DCB ecosystems) have had a substantial, positive impact in protecting consumers against cramming. These steps, while not completely eliminating consumer inquiry or disputes related to third-party charges appearing on Sprint’s bills, have made these third-party purchases a uniform and consistent consumer experience. Furthermore, consumer inquiries or disputes do not necessarily indicate incidents of cramming or any a violation of Sprint or MMA guidelines. For example, Sprint often finds that a PSMS customer may have performed the double opt-in on a fully compliant MMA campaign, but the customer

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<sup>15</sup> [http://shop.sprint.com/mysprint/services\\_solutions/details.jsp?detId=account\\_controls&catId=service\\_safety\\_control&catName=Safety%20and%20Control&detName=Account%20Controls](http://shop.sprint.com/mysprint/services_solutions/details.jsp?detId=account_controls&catId=service_safety_control&catName=Safety%20and%20Control&detName=Account%20Controls)

may still contact Sprint customer care and receive a refund. With respect to true, unauthorized third-party charges on invoices (*i.e.*, true instances of cramming), Sprint rarely finds instances where the customer did not proactively complete both steps within the double opt-in process. In other words, Sprint typically determines during its investigation that the charge was authorized and legitimate. There will always be challenges in this space as there are thousands upon thousands of PSMS and DCB campaigns available to consumers, but carrier protections, industry guidelines and structure coupled with enforcement have clearly had a positive impact on the ecosystem and consumer experience.

The Commission references complaint data within its NPRM and cites a Federal Trade Commission (“FTC”) report that it had received “over 7,000 complaints in 2010 relating to unauthorized charges on telephone bills.”<sup>16</sup> Focusing on the category of “Unauthorized Charges or Debits,” the report contains the following information<sup>17</sup>:

<b>Product Service</b>	<b>CY – 2008</b>	<b>CY – 2009</b>	<b>CY - 2010</b>
Telephone: Mobile Unauthorized Charges or Debits	0	4	775
Telephone: Unauthorized Charges or Debits	6271	8040	6882

This FTC report and information are noteworthy for a few reasons.

First, it is clear that there is a major disparity in the number of complaints filed against mobile carriers in comparison to the broader category of “Telephone: Unauthorized Charges or

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<sup>16</sup> NPRM at ¶ 23.

<sup>17</sup> See Consumer Sentinel Network Data Book for January-December 2010, Appendix B3, available at <http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2010.pdf>

Debits.” This is consistent with the understanding that cramming is a far less significant issue for mobile consumers than it is for wireline consumers. Sprint believes this demonstrates convincingly that mobile cramming is not a significant issue precisely because the mobile industry has been proactive on this issue and implemented many consumer protections to prevent unauthorized charges from appearing on wireless bills.

Second, while the number appears to spike in 2010, Sprint believes that this number must be put into perspective. There are 327.6 million wireless connections<sup>18</sup> in the United States, so 775 total complaints is the equivalent to .0002365 percent or the equivalent of 1 complaint per every 422,832 wireless subscribers. These numbers and percentages do not make a compelling case for regulatory interdiction.

Third, it is also important to consider that these FTC complaints are “unverified.” In other words, these complaints may allege cramming, but like many of the customer inquiries received by Sprint, the cramming complaint may, in fact, involve an authorized, legitimate charge.

#### **IV. CONCLUSION**

For the foregoing reasons, Sprint recommends the Commission not adopt a rule that would require CMRS carriers to provide FCC contact information on its bills and website. While well intentioned, this rule will likely have the unintended effect of delaying the resolution of consumer concerns and could create an administrative issue for the Commission. The Commission should also refrain from considering additional regulation in this area given the paucity of complaints and a record demonstrating the effective, proactive measures that the

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<sup>18</sup> See, CTIA Wireless Quick Facts, available at <http://www.ctia.org/advocacy/research/index.cfm/aid/10323>

wireless industry and individual carriers have taken to provide consumers with a trusted, reliable experience when making carrier-billed purchases.

Respectfully submitted,

**SPRINT NEXTEL CORPORATION**

*Charles W. McKee*

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Charles W. McKee  
*Vice President, Government Affairs*  
*Federal and State Regulatory*  
Sprint Nextel Corporation  
900 Seventh Street N.W., Suite 700  
Washington, D.C. 20001  
703-433-3786

Scott R. Freiermuth  
*Counsel, Government Affairs*  
*Federal Regulatory*  
Sprint Nextel Corporation  
6450 Sprint Parkway  
Overland Park, KS 66251  
913-315-8521

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