Sprint

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VIA ONLINE SUBMISSION

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: FTC Mobile Cramming Roundtable, Project No. P134803

Sprint Nextel ("Sprint") is a national wireless carrier serving more than 55 million customers. Sprint is widely recognized as a pioneer in deploying innovative technologies and services, such as third-party mobile content programs and services, which have been available on the Sprint network for more than eight years. Currently, consumers can purchase and pay for, *via* their Sprint invoice, either on a one-time or recurring basis, a variety of third-party content, including Premium SMS ("PSMS") products and services such as ring tones, text alerts, games, mobile screen savers, etc.[1] PSMS is also the method by which consumers can text-to-donate for charitable causes such as disaster relief; and, last year, consumers also could use PSMS to text-to-contribute to the Obama and Romney presidential campaigns.

Sprint also offers mobile applications ("apps") from the Google Android Store – Google Play,[2] and provides other content through Direct Carrier Billing ("DCB") aggregators and marketplace developer partners. Third-party mobile services are an important part of Sprint's value proposition to its customers.

Given this context, Sprint is pleased to submit these comments in response to the Federal Trade Commission ("FTC") Staff's request for industry perspectives in support of the Mobile

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1 SMS programs include both Standard Rate and Premium Rate ("PSMS") programs. A subscriber who participates in a Standard Rate program is charged standard messaging fees (either per message, or deducted from a predetermined messaging bundle). A subscriber who participates in a Premium Rate program is charged premium fees to cover the cost of the content or service, in addition to the applicable standard messaging fees.

2 *See* Google's Google Play Android Store, *available at* https://play.google.com/store?hl=en.

Cramming Roundtable on May 8, 2013. Sprint's comments address a number of topics identified by Staff in its March 8 announcement,[3] including information on how third-party charges are placed on a mobile phone bill, the entities involved in this process, and best practice measures that protect consumers from unauthorized third-party charges. In addition, Sprint's comments discuss the continued growth and popularity of third-party mobile content, differences between the landline telephone and wireless industries with respect to third-party billing, and how such differences should inform any additional government regulation or industry initiatives to protect consumers from incurring unauthorized charges on their monthly wireless invoice.

I. FTC Staff's Recommendations and Best Practices for Wireless Carriers Provide a Practical and Effective Roadmap to Prevent Mobile "Cramming"

As an initial point, we note that the FTC uses the term "cramming" to describe the practice in which "third parties plac[e] fraudulent charges onto consumers' mobile carrier bills."[4] This description of cramming implies that a third-party provider is using nefarious means to place fraudulent charges on a customer's invoice without obtaining valid prior authorization by the consumer for the third-party charge. Yet, in Sprint's experience, "drive by" cramming scenarios are extremely unlikely when a consumer makes a routine purchase of a third-party service because of robust safeguards implemented by the wireless carriers and their mobile ecosystem partners, including well-executed purchase paths, which require that consumers confirm their purchases.

Based on Sprint's experience, in most cases, an alleged unauthorized third-party charge more typically arises within the context of one of the following scenarios: (1) the consumer does not recall purchasing the item but later recalls the transaction upon further information provided within the context of a discussion with the carrier; (2) a family member or friend uses the consumer's device to make a mobile content purchase, but fails to inform the consumer; or (3) in more remote cases, the mobile content product or service delivered to the consumer is different than the advertised product.

The FTC Staff's March 2013 report *Paper, Plastic...or Mobile?* (the "mobile payment report") provides a series of practical steps to mitigate the scenarios described above and to ensure that consumers have a positive experience with respect to mobile third-party content and services.[5] The following identifies the relevant best practices and recommendations from the FTC Staff's mobile payment report, and briefly describes how they have proven to be effective from Sprint's perspective.

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3 Press Release, *FTC to Host Mobile Cramming Roundtable May 8*, FTC (Mar. 8, 2013), *available at* http://www.ftc.gov/opa/2013/03/mobilecramming.shtm.

4 *See* FTC Staff Report, *Paper, Plastic...or Mobile? An FTC Workshop on Mobile Payments*, March 2013 at 8, *available at* http://www.ftc.gov/os/2013/03/130306mobilereport.pdf.

5 *See* FTC Staff Report, *Paper, Plastic...or Mobile?* (Mar. 2013) at 7-11, *available at* http://www.ftc.gov/os/2013/03/130306mobilereport.pdf.

A. Aggregators Should Track Customer Authorizations for Third-Party Charges

By way of background, in most cases, mobile carriers including Sprint do not maintain direct relationships with third-party mobile content providers. Rather, carriers maintain contractual relationships with a small number of mobile content aggregators or marketplace operators that, in turn, have their own business relationships with the various content providers offering third-party products and services. These aggregators and marketplace operators compile mobile content from the content providers and then connect to Sprint and other carriers for routing and billing. That is, a Sprint customer can search for, select, and purchase numerous mobile content options, including mobile apps, games, text-based alerts for sports, weather, or news, and digital ring tones or wallpaper, and pay for such digital content on their wireless invoice. The consumer goes through a series of steps to select and then confirm the purchased service before the third-party mobile content provider can deliver the selected service.

Given the way the mobile ecosystem is structured, Sprint has for some time required its aggregator partners to maintain customer authorizations for all third-party mobile content purchases made by consumers, which is consistent with the FTC's recommendation that wireless carriers "contractually requir[e] aggregators. . . to maintain sufficient and accessible records of consumers' authorizations of individual charges."[6]

In addition, these third-party aggregators and marketplace operators are contractually obligated to comply with all applicable laws, rules, and regulations, including applicable consumer protection requirements. Aggregators also must comply with Sprint's internal standards and the Mobile Marketing Association ("MMA") Consumer Best Practices Guideline.[7] These standards and best practices provide the rules that govern nearly all aspects of third-party PSMS content program offers, including clear communication of all material terms and conditions in the advertising of such mobile content prior to purchase, clear pricing disclosures, subscription terms and billing intervals, opt-out, cancellation and refund practices, and the prohibition on using pre-checked boxes to obtain consumer consent.

B. Allow Consumers to Block All Third-Party Charges

In its mobile payments report, FTC Staff stated that "consumers should have the ability to block *all* third-party charges on their mobile accounts."[8] Further, according to FTC Staff, mobile carriers "should clearly and prominently inform their customers that third-party charges may be placed on customers' accounts and explain how to block such charges at the time that accounts are established and when they are renewed."[9] In sum, consumers should be able to choose whether to authorize third-party charges on their wireless phone bill.

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6 FTC Mobile Payments Report (Mar. 2013) at 9.

7 MMA's Best Practices Guideline are available at http://www.mmaglobal.com/bestpractice.

8 FTC Mobile Payments Report (Mar. 2013) at 8.

9 *Id.*

Sprint agrees with FTC Staff's recommendations on this point, which is reflected in the company's practices. For example, Sprint informs its customers that they can make third-party purchases that will be billed to their monthly invoice, as well as how to block such purchases, within the materials that it provides to customers when they initiate service with Sprint. Sprint also provides consumers with self-service account management tools on Sprint.com where they can actively manage a range of account features through a user-friendly interface. Here, customers can update their account PIN, block specific types of content (such as pictures and videos, text messages, data), or block all content features with a single mouse click. In addition, customers can contact a Sprint Customer Care representative by phone or through the Sprint.com live online chat feature to obtain information about third-party charges, including details on specific transactions. The customer can also use these communication channels to get assistance with opting-out of a third-party subscription, or help in blocking all third-party charges.

C. Clearly Disclose Third-Party Charges on the Monthly Phone Bill and Through Recurring Reminders

In its mobile payments report, FTC Staff recommend that, in addition to clearly disclosing to consumers that third-party charges may be placed on a wireless invoice, wireless service providers should "prominently highlight billing descriptions of third-party charges," and "consider notifying consumers of any recurring charges. . .in advance of each such charge and provide the opportunity to cancel the subscription before the charge is imposed."[10] Sprint agrees with FTC Staff that a combination of initial disclosures, clear and prominent billing descriptors, and recurring notices help make consumers aware of and consent on an informed basis to any third-party charges.

As an example of a best practice, all third-party content purchases on the Sprint network require a "double opt-in" process through which customers receive clear notice of the terms and cost of the program, and must take affirmative action to complete a purchase. Once a customer makes a third-party purchase through the Sprint network, Sprint's invoices clearly identify the third-party charge, including the content provider, the program or service, the date of purchase, and the cost of the program. In addition, customers who purchase a recurring PSMS product or service receive monthly renewal reminders at least 24 hours prior to each billing event, and can reply to the reminder to cancel the subscription and opt out of further billing. Sprint also requires the content provider to provide a renewal confirmation once the user is rebilled for his or her subscription. This multi-pronged approach to notice and consent ensures that consumers remain informed of all pending charges and, if desired, can take steps to prevent such charges.

D. Conduct Initial Vetting and Ongoing Monitoring of Third-Party Content Providers

According to FTC Staff, wireless service providers should carefully monitor the conduct of the third-party content providers that offer programs or services through their networks. Specifically, FTC Staff recommends that carriers (1) "conduct meaningful upfront vetting to

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[10] FTC Mobile Payments Report (Mar. 2013) at 8-9.

ensure only legitimate third-party merchants are able to place charges" on the monthly bill; and (2) "affirmatively monitor content providers' marketing campaigns for compliance with industry marketing guidelines."[11] Based on Sprint's experience, a combination of initial vetting and continuous auditing of third-party campaigns plays a useful role in preventing bad actors from placing unauthorized charges on consumers' invoices.

One way to accomplish this is to require content providers to submit an upfront application in order to properly vet the entity seeking to run a PSMS campaign on Sprint's network. Sprint has found that by carefully vetting the application information (such as company name, company contact and financial information, etc.) provided by content providers, it can help to identify and ferret out potential bad actors. In addition to carrier-specific vetting processes, CTIA-The Wireless Association, in its capacity as the Common Short Code Administration ("CSCA"), also vets PSMS short code lessees to provide wireless industry participants with more information about the entities attempting to lease short codes from the CSCA.[12]

After the initial vetting process has been completed, Sprint subjects each content provider to another comprehensive review, which includes the testing of the third-party program or service, including its purchase process, as well as a review of all associated customer-facing disclosures and advertising materials. Content providers that fail this certification testing are not permitted to operate on the Sprint network.

Based on Sprint's experience, the work does not stop once a content provider has been permitted to operate on the Sprint network. For this reason, after the initial vetting and certification processes, Sprint conducts ongoing monitoring and auditing of all approved content providers, which includes an assessment of the message flows delivered to consumers to determine whether the number and type of messages are consistent with the advertised program, and audits of advertising and the associated disclosure of material information.[13] If Sprint or its compliance vendor see indications of noncompliant activity, Sprint will take a number of different immediate actions, which may include suspending or deactivating the third-party program.

E. Employ a Clear and Consistent Refund Policy and Monitor Refund Levels

In its mobile payments report, FTC Staff state that wireless service providers should "establish clear and consistent process[es] for customers to dispute suspicious charges. . . and

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11 FTC Mobile Payments Report (Mar. 2013) at 10-11.

12 Information on the vetting process employed by Sprint and CTIA is *available at* http://www.aegismobile.com/resources/industry-documents/ctia-vetting-faq/.

13 Sprint's review of the disclosures provided to consumers is based in part on the guidance and recommendations generated by the FTC's May 30, 2012 workshop on advertising disclosures in online and mobile media.

obtain reimbursement."[14] In addition, FTC Staff recommends that wireless carriers "monitor refund or chargeback percentages for content providers or other merchants placing the charges."[15]

Sprint agrees that customer trust and satisfaction are dependent upon fair and consistent processes to address customer concerns over third-party charges. Such policies include encouraging customers to contact the carrier directly to discuss the charges. Sprint also supports, in practice, that mobile ecosystem participants maintain an appropriate refund policy, which is consistently applied in the limited instances in which a customer claims that they did not authorize a third-party charge appearing on his or her wireless invoice. Finally, Sprint's supports the FTC's recommendation that ecosystem participants should monitor refunds and customer complaints on a monthly basis. In Sprint's experience, this type of monitoring allows ecosystem participants to determine whether a third-party mobile content provider may be engaging in noncompliant practices, and to identify broader trends that may prompt modifications to required best practices for the space or monitoring of third-party mobile content providers. For example, Sprint tracks the refund levels for each third-party content provider on an individual short code basis and will use this information to determine whether a particular campaign presents an increased risk of suspicious behavior and should be suspended or deactivated.

II. Sprint and Industry Safeguards Are Effectively Preventing Unauthorized Third-Party Charges While Providing Consumers With Access to Popular Third-Party Mobile Content and Services

In its Reply Comment to the FCC regarding unauthorized wireless charges, the FTC described mobile cramming as "a significant problem" that "is likely to continue to grow as cramming schemes expand beyond the landline platform and mobile phone are more commonly used for payments."[16] To support its statement, the Commission noted hundreds of consumer complaints per year (since 2010) that both it and the FCC have received in relation to purportedly unauthorized wireless charges.[17] As context, there currently are more than 321 million wireless subscriber connections in the United States.[18]

Further, the FTC asserted that the number of reported complaints that it has received "undoubtedly reflects a small fraction of crammed charges on wireless bills" because only a small percent of consumers are even aware of the unauthorized charges based on a review of their bills.[19] The FTC, however, based its assertion on cramming complaints relating to landline

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14 FTC Mobile Payments Report (Mar. 2013) at 8.

15 *Id.* at 10.

16 FTC Reply Comments (July 20, 2012) at 1; *see also Supra* n. 7 at 8.

17 *Id.* at 5-6.

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

19 FTC Reply Comments (July 20, 2012) at 6.

phone charges only, rather than wireless phone charges.[20] Indeed, there are significant differences between landline and wireless service providers' billing practices that make such a correlation inappropriate. For example, unlike the clear and conspicuous descriptions of third-party charges (including content provider name, program name, and date of purchase) that appear on Sprint wireless invoices, the third-party charges placed on landline invoices often appeared on the invoice as only a general descriptor such as "service fee," "service charge," "voicemail," "other fees," "calling plan," or other vague terms that left the consumer completely unaware as to the nature of the charge (other than to imply that such charge was related to the consumer's core telephone service).[21]

Moreover, landline service providers did not have in place the comprehensive vetting, certification, and continuous auditing practices employed by the wireless service providers. Unlike in the wireless space, third-party programs have never been an important element of the landline value proposition. The FTC previously noted that "[i]n contrast to landline third-party billing, which has been used almost exclusively by scam artists, the mobile billing platform has been used for some legitimate charitable activity; it also is a potential platform for consumers to fund mobile payments by placing those payments on their wireless bills."[22] Indeed, because of the growing use of third-party billing for charitable purposes and political campaigns, as well as informational content, entertainment, and sports/game purchases, the market for third-party mobile content has been a clear bright spot in the U.S. economy in recent years, and this trend is expected to continue.

As one example, mobile SMS services continue to provide consumers with a critical means of mobile communications and commerce, and they are responsible for driving the recent rapid growth in mobile philanthropy and mobile giving.[23] A 2012 survey by the Pew Research Center found that one in ten U.S. adults have made a charitable contribution using the SMS feature on their mobile phone.[24] As an example, individual donors used a mobile SMS feature to

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20 *Id.* at 6, n. 22.

21 *See* FCC Infographic on Cramming, *available at* http://transition.fcc.gov/cgb/cramminggraphic.jpg; *see also* Remarks by Beth Blackston, Asst. Attorney General, Consumer Fraud Division, Office of the Illinois Attorney General, FTC Public Forum Transcript, *Examining Phone Bill Cramming – A Discussion* (May 11, 2011) at 25, *available at* http://www.ftc.gov/bcp/workshops/cramming/10511phoneworkshop.pdf ("Then we have what I like to call mystery services that show up on people's phone bills and it's a little unclear what the service is. We've seen things like voice online, dial forward, dial flex, plan plus, network one, call advantage, custom call, value plan. And we don't know what those are, and neither do the consumers who were billed for them.").

22 FTC Reply Comments (July 20, 2012) at 12.

23 Chetan Sharma, Report: U.S. Mobile Data Market Update Q3 2012, *available at* http://www.chetansharma.com/usmarketupdateq32012.htm. (In the third quarter of 2012, U.S. cellphone owners, on average, sent 678 text messages per month.)

24 Aaron Smith, Real Time Charitable Giving, Pew Internet & American Life Project (Jan. 12, 2012), *available at* http://pewinternet.org/Reports/2012/MobileGiving/Key-Findings.aspx.

contribute an estimated $43 million to the assistance and reconstruction efforts following the January 2010 Haiti earthquake. Notably, a majority of individuals who contributed to the Haiti relief effort using SMS services stated that they preferred to make charitable contributions by SMS or online web forms over traditional means, such as by mail or landline telephone.[25] Sprint has been especially active in the mobile philanthropy area by providing its customers with mobile giving opportunities in response to emergency events. For example, Sprint customers contributed more than $3.1 million in mobile giving donations to the Haiti relief efforts.

Mobile SMS services also are driving other forms of mobile giving. For example, Payvia, the company that managed mobile contributions for the Republican and Democratic campaigns during the 2012 Presidential election, stated that one in ten campaign donors used either mobile SMS or an in-app method to send monetary contributions to their candidate of choice.[26] Payvia predicts that 50 percent of all donors will rely on mobile giving to support candidates during the 2016 Presidential election cycle.

In addition to consumers' use of SMS services for mobile purchases and billing, consumer purchases of mobile apps *via* smartphones continue to increase. The smartphone market is expected to grow from nearly $19 billion in 2011 to $46 billion by 2016.[27] Currently, there are more than 2.4 million apps available on more than 11 different operating systems from more than 28 independent non-carrier app stores.[28] Further, forty-five percent of American adults owned a smartphone as of August 2012, up from 35 percent in May 2011.[29]

Importantly, the growth in smartphone use and mobile app purchases is having a profound economic impact. Since 2007, the app economy created an estimated 520,000 jobs nationwide, including both highly-skilled technical jobs and non-technical jobs associated with the app industry, including sales positions, marketers, human resources specialists, accountants, and other support functions and services.[30] Thus, any attempt to enact regulations that would unnecessarily restrict or limit the placement of third-party charges on a wireless invoice could have significant negative impacts on future industry growth, and disrupt an increasingly-favored means for consumers to make and pay for purchases.

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25 *Id.*

26 Steve Smith, *The M-Election: Mobility Enhances Donations and Citizen Scrutiny*, MoBlog (Nov. 12, 2012), *available at* http://www.mediapost.com/publications/article/187028/the-m-election-mobility-enhances-donations-and-ci.html#axzz2SFSkI9ew.

27 CTIA Press Release, *App Economy Created 519,000 Jobs Across the U.S.* (Oct. 4, 2012), *available at* http://www.ctia.org/media/press/body.cfm/prid/2212.

28 *Id.*

29 Pew Research Center, http://pewinternet.org/Reports/2012/Smartphone-Update-Sept-2012/Findings.aspx (45% of American adults have smartphones, including 66% of those 18-29, 59% of those 30-49; 34% of those 50-64, and 11% of those 65+).

30 Dr. Michael Mandel and Judith Scherer, *The Geography of the App Economy*, CTIA Report (Sept. 20, 2012), *available at* http://files.ctia.org/pdf/The_Geography_of_the_App_Economy.pdf.

Given the effectiveness of existing industry and individual service provider safeguards, we recommend that FTC Staff continue to take steps that promote ongoing self-regulation, wireless service provider safeguards, and continued consumer education efforts. As an example of the appropriate approach, the practical steps outlined in the FTC Staff's recent mobile payments report are having the intended effect of preventing unauthorized third-party charges on the Sprint network. Thus, a combination of the Staff's recommendations, timely self-regulation, robust internal carrier policies and procedures, and consumer education will continue to provide the optimal approach to prevent unauthorized third-party charges on wireless phone bills.

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The continued growth of third-party mobile content purchases and payments has brought tremendous opportunities for both consumers and businesses. Sprint greatly appreciates the FTC Staff's efforts thus far to offer practical and substantive recommendations that are helping to ensure that wireless consumers are not subject to unauthorized third-party charges. In addition, Sprint is continuing to work independently and with the wireless industry to implement industry best practices and additional protections to ensure that consumers enjoy a consistent, positive, and reliable experience with respect to third-party purchases.

Sprint looks forward to continuing to engage with the FTC Staff on this important issue.

Respectfully submitted,

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