

P R O C E E D I N G S

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WELCOMING REMARKS

MS. GREISMAN: Good morning. Welcome to the Federal Trade Commission Mobile Marketing Town Hall. I am Lois Greisman. I head the Division of Marketing Practices, together with the Division of Advertising Practices headed by Mary Engle here, are your hosts for the event.

Before I have the pleasure of introducing Commissioner Jon Leibowitz, I ask that you listen carefully to some important items, first and foremost regarding safety and security. Please hold on tightly to the name tag that you received when you first came in this morning. You need to wear it when you are in the building and you will also need to hold on tightly to it when you leave the building and show it when you return.

Second, as a Federal agency, we practice certain safety measures. Please take note of where the exits are.

Obviously, you came in through the front door. There is another exit behind me through the pantry in the back, behind you all rather. If we need to evacuate, you will be directed to go diagonally across Massachusetts Avenue. Obviously, people will be directing you along the way. If, for some

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reason, safety indicates that it is better to stay in the building, you also will be directed on where to proceed to.

Third, if you see anything suspicious at all, please report it to one of the guards immediately.

COMMISSIONER LEIBOWITZ: Other than me.

MS. GREISMAN: Other than the Commissioner, yes.

(Laughter.)

MS. GREISMAN: On a courtesy note, please turn off any mobile device that you might have that might ring, buzz, beep or make any other noise calling attention to itself.

As I think everybody knows, this event is webcast and also will be transcribed, so you will always be able to catch something if you miss it or refer others to it.

Now, without further ado, I am honored to introduce Jon Leibowitz, who was sworn in on September 3rd, 2004, as a Commissioner of the Federal Trade Commission, more than a couple of years ago, I might add. Before joining the FTC, he was Vice President for Congressional Affairs for the Motion Picture Association of America, and before holding that position, Commissioner Leibowitz had a long career of public service, serving most recently as the

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Democratic Chief Counsel and Staff Director for the U.S. Senate Antitrust Committee from 1997 to 2000. There he focused on competition policy and telecommunications matters.

Since joining the Federal Trade Commission, Commissioner Leibowitz has been an ardent supporter of the Agency's consumer protection mission and he has had a particular interest in how technological advances affect consumer welfare and enhance confidence in the marketplace.

With that, please welcome Commissioner Leibowitz.

(Applause.)

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OPENING REMARKS

COMMISSIONER LEIBOWITZ: Thank you, Lois, for that kind and entirely undeserved introduction. Let me also thank our terrific and hard-working staff for putting this workshop together.

(Applause.)

COMMISSIONER LEIBOWITZ: And welcome everybody to the FTC's Town Hall meeting, Beyond Voice - Mapping the Mobile Marketplace. This morning, I would like to give some sense of direction about where we are going to next two days, but sometimes it helps to first know where we have been. So, let's start with what is perhaps the world's first mobile telephone unveiled right here in Washington D.C., just a few blocks away.

Can we roll the clip?

(Video clip played.)

COMMISSIONER LEIBOWITZ: We have come a long way from the Get Smart phone to the smartphone. Okay, that was a joke. I know it is early in the morning. You are going to have to laugh if you want me to continue.

(Laughter.)

COMMISSIONER LEIBOWITZ: Today, mobile devices are no longer restricted to secret agents and high-level

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officials. Eighty nine percent of American adults now have a wireless device or a cell phone; 35 percent of tweens ages 8 to 12; and 77 percent of teens age 13 to 17 have a mobile phone. In fact, U.S. mobile penetration rates are now equal to that of Japan and Western Europe according to the FCC.

Today's mobile devices, as all of us know, are not just for talking. Well over half of American adults have used a cell phone or wireless device for at least one non-voice activity, whether that is text messaging or emailing or taking a picture or playing a game. And for teens and tweens, texting and ringtones -- and any parent knows this -- are the most popular features. And today's cell phones and mobile devices are really -- well, they are mobile.

My first cell phone experience was in 1992 with a loaner from my wife's office. It was about the size of a football. I think it had a car battery attached. You had to screw in the antenna. We thought it was really cool. Today, cell phones are literally so small they can fit in the palm of your hand and slip easily into your pocket. Many people will not leave home without them and some people panic when they forget them.

This latest technology is not only useful, it is undeniably cool. Some cell phones when detecting music

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nearby, have the capability to recognize a song, provide the user with the title, the artist, lyrics and even with an option to buy. After all, this is America, so you get that option to buy.

Phones with GPS technology can provide directions and guide you through an unfamiliar neighborhood displaying streets and addresses as well as hotels, restaurants and stores. In Japan, you can use your PDA to take a picture of a quick response or a QR code on an advertisement or product and almost instantly receive a related text message or website link. So, if you photograph a QR code of a movie poster, you get the trailer, you get a list of nearby theaters and show times.

Where is Rick Lane? You like that, don't you?

MR. LANE: I do.

COMMISSIONER LEIBOWITZ: Well, that kind of technology is coming to America soon.

(Laughter.)

COMMISSIONER LEIBOWITZ: In short, these days, cell phones and other mobile devices are always with us, changing the way consumers reach out to each other and to businesses and changing the way businesses reach out to consumers.

The emerging mobile marketplace raises a host of

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opportunities as well as a host of consumer protection challenges. Let me outline just a few.

First, there is sort of what we call the same old disclosure issues in new mobile packages. Do consumers understand what advertisers are selling and how much it costs? Mobile devices, of course, make disclosures even tougher. How can a marketer explain key terms and conditions on a screen the size of a small Post-It? For example, more and more often consumers are invited to text a message to a short code to vote for their favorite TV show contest, to enter a contest, buy a ringtone, receive a joke or just to get more information. Many of these promotions involve premium charges beyond standard text messaging fees or subscription programs with recurring charges.

Now, a lot of companies are doing this right and clearly disclosing the nature of these deals. But at the FTC, we are also receiving a growing number of complaints about inadequate disclosures and unauthorized charges. Simply put, consumers should not be shortchanged by short codes.

Second, mobile advertising itself is an issue. Some folks do not mind a few ads, especially if they get free services or a lower monthly bill in return, but recent surveys have found that most consumers are annoyed, and this should

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not surprise anyone, when ads appear on mobile devices, especially when those ads interfere with use, like an ad appearing while a webpage is loading.

Text Spam is a further aggravation, subjecting consumers to unwanted and sometimes offensive content, and plus, many consumers are charged per text message. It is sort of if every time you got Spam or pop-up on your home computer, you had to pay for the privilege of receiving it.

Text Spam invades your time, your privacy and your wallet. It is not only wrong, it is unacceptable.

Third, the emergence of location-based services in the mobile market creates concerns. GPS technology in cell phones permits your physical location to be tracked in real time. Now, this can be life-saving in an emergency.

It could be a real convenience if you are trying to meet your friends at happy hour or trying to pick up your kids and you need to know where they are, but the sense of big brother or ex-boyfriend knows where you are at any given moment really does raise troubling issues about government access, physical safety and personal privacy.

Location-based technology also permits location-based advertising. And while I can certainly understand the merit of a text message with a coupon for 20 percent off your next double soy, half caff, no whip

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frappuccino, delivered just as you walk into the neighborhood Starbucks, which will be no more than 50 feet away at which Starbucks continues to expand in Washington, imagine walking down a city street or through a mall and being bombarded with messages and ads. Does America really need cell phones with ads flashing like lights in Time Square? Do we want our PDAs turning into digital pocket billboards? Personally, I worry about clutter.

Fourth and finally, all of these issues, as Jeff knows, are of heightened concern when they involve children and teens. Kids are usually more fast and fearless with technology than their parents, quick to click first and ask questions later. A mobile phone that gives them easy access to content and purchasing power makes them easy prey for aggressive marketers. We have already advertisers and content providers set their sights directly on the teen set with entertainment, coupons, social networks and more. Broader marketing efforts and games are also sure to appeal to a young audience.

Like the problems with online behavioral marketing that the Commission is now wrestling with, mobile tracking and targeting of kids is worrisome. We need to consider whether additional protection for kids and children are warranted.

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Having said that, mobile commerce in the United States is just beginning to emerge. As we move forward in this brave new wireless world and the marketplace develops, consumer protections need to develop, too. We have time to get this right, and I am optimistic that we will.

Most responsible marketers are treading cautiously in this new space, and to their credit, wireless carriers are monitoring mobile promotions and services, working to filter text Spam and doing a good job of that and taking action against spammers. Services like Loopt, which enables customers to locate their friends on a cell phone map, seem to be working carefully to ensure that all involved understand the service, affirmatively agree to participate and have the tools to protect their privacy.

Industry associations also have begun to adopt and update self-regulatory guidelines as technology and practices change. For example, the Mobile Marketing Association has consumer best practice guidelines for mobile advertising and services, including marketing to youth under age 13. CTIA, the Wireless Association, just unveiled practices and guidelines for location-based services. These guidelines are a good first step, but they need to go further in ensuring that consumer notice is clear and conspicuous, not buried in website privacy policies and that user consent

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is truly express.

The good news is that most industry efforts recognize that consumer notice, choice and some form of opt in for advertising and services is crucial, crucial in the mobile marketing context, especially when location is involved. And trade association press releases say the right things about the importance of user notice and consent. But companies must also do the right things in implementing and enforcing their principles. They cannot just phone it in.

In an era of broadband and information services, the FTC will be watching and is watching closely. We strongly believe, as many of you know, in self-regulation, but we are also going to police the wireless space. Our agency has a long history of studying new technologies and the consumer protection and competition issues that are embedded within these new technologies, and we have a long history of working cooperatively with our sister agency, the FCC, when consumer protection concerns arise in the telecom context. You can take, for example, our work with them on Do-Not-Call and on Can Spam. So, we have different, but we have complementary roles.

We hope that our forum over the next two days helps all of us, industry, consumers and the FTC, work through these

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complex issues in mobile commerce as with our workshop on behavioral marketing last fall, and as with the Mobile Marketplace itself, we would like this forum to be truly interactive with panelists as well as audience members participating. So, please mute your cell phones, while to paraphrase Maxwell Smart, we lift the cone of silence and let the discussion begin. **(Laughter.)**

COMMISSIONER LEIBOWITZ: Thank you so much.

(Applause.)

COMMISSIONER LEIBOWITZ: I am happy to take a couple of questions if anybody has questions. And if nobody has questions, that is either a very good or a very bad sign, but before they give me the hook, I think I am going to get off here and we will go on with the first panel.

(Applause.)

SESSION 1: THE MOBILE MARKETPLACE - WHAT, HOW AND WHO

MS. YODAIKEN: Hi. Welcome, everybody. Good morning. We are here for the first session which is the

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basics on an Overview of the Mobile Marketplace. With me are two fast-talking New Yorkers who are going to take us through a lot of material very quickly.

We are going to start off with Steve Smith, a media critic who works with Mediapost and Access Intelligence.

In between his introduction and wrap-up, Evan Neufeld is going to give us a lot of data about what is going on out there. So, why don't we start with Steve.

MR. SMITH: Thank you, Ruth. Good morning, everybody. This is going to be a bit of a tag team. I am going to introduce all of this with a little bit of an overview. I am going to tag my partner, Evan Neufeld, who is going to come up and walk us through some of the granular details of how people are using phones now. And then, I will come back and talk more generally about how mobile marketing and mobile content is moving and in what directions.

So, we are here today to discuss how, when and why the wireless phones in our pockets is moving beyond simple person-to-person communications and into what I think is going to be the next big mass media, a truly game-changing transformation that I think we are going to see over the next few years. We will be conducting commerce and accessing information more and more from these small devices.

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Is this a big deal? Yes. It is a very, very big deal. And this is why: As the Commissioner walked us through before, 257 million -- this is the latest figure from the CTIA -- U.S. wireless subscribers in the U.S., with a penetration rate of about 82.4 percent of people. That is up from 55 million in 1997. Now, compare that to the Internet and its growth. Right now, 238 million U.S. internet users, according to the internet world stats, with a penetration rate of 71 percent of U.S. adults. In other words, mobile is outpacing and outgrowing the internet. In fact, one statistic that I saw this morning suggests this is the year that will be a tipping point worldwide where more people will be accessing the web from mobile devices than through PCs, laptops and other devices.

So, including television, mobile phones are the fastest-growing communications medium ever. It has penetrated American consciousness faster than the telegraph, than land line phones, than film, than radio, even TV. For instance, I will give you an example historically. The great penetration of television happened between 1947 -- the 1947 World Series, by the way, was the starting point -- to 1955.

And within those years it reached about a 50 percent penetration. Just in the last ten years we have seen phones go from 55 million to 237 million. It is the fastest; it

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is unprecedented.

Designed principally, though, to convey person to person voice exchanges, the phone is becoming the perfect convergence device. Almost all of the major trends over the last 10 or 20 years in digital media are now moving to cluster around this device, from voice to email to digital imaging, user-generated content, digital music, web browsing, video and TV, instant messaging, web search, even direct mail couponing, and social networking. All of these things, many of which have been digitized over the last decade, are now becoming personal and portable. That becomes part of the power of this. That is why this is so compelling for consumers, but also for commerce.

The phone also represents a different kind of convergence, an industrial convergence, a kind of perfect storm of multiple interests coming together around the cell phone. The first is the carrier's new game. This is a term that you might be seeing a lot of over the next couple of days, ARPU. It means Average Revenue Per User. This is the money that carriers make off of us each month. For those you who are paying your cell phone bills, the average is about \$50 a month. But, in fact, over the last year, that ARPU for carriers went down. It actually went down 1.5 percent.

Voice minutes are now being sold at a very low rate, as many

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of you know from the latest deals that a lot of the carriers are offering. The U.S. market is reaching its penetration. That means that ARPU is actually declining for the carriers. There is no real room for growth when it comes to the voice channel. That means the carriers need to increase data usage, what the carriers charge for mobile web access, ringtones, games, text messaging, everything that we are going to be talking about over the next couple of days.

As an indication of how much non-voice phone use has grown in just the last year, revenue from the data channel, that is all of this beyond voice channel that we are talking about, skyrocketed over 50 percent in the last year. And it now constitutes just under 20 percent of the revenue that carriers make off of us. This is a very, very big deal to them. Many carriers would like to see that data share rise to at least a third of what they make off of all of us.

And then there is also converging on the phone the interests of marketers, particularly advertisers and interactive marketers who need new ways to reach consumers.

In other parts of the media world, mass audiences are fragmenting terribly and very quickly. That classic primetime TV viewer audience is now moving into ever smaller niches across many different platforms, on the web, in game

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consoles and now on to phones.

When marketers look at the cell phone, what they see is the largest media platform of them all. It is so large, in fact, that even a small piece of it, 1 percent of it, amounts to millions of consumers. And we will see in some of the numbers that I will share with you later on this panel, mobile is a place where even hitting very small target markets conceivably can return enormous numbers. This is one of the reasons why marketers are especially interested in the phone. It helps them deal with the problem that they are having.

So, the movement beyond voice on phones is really being driven by a convergence of multiple forces. Consumers have embraced the device like no other medium they have ever embraced before. Marketers want to embrace it because they need to get consumers here. They need to find more targeted ways of collecting, or as we say in the trade, reaggregating those audiences that are fragmenting. The carriers need to encourage this because they need to grow their business through data.

But where are they now? How are we using the phones now? For that I want to turn to Evan, who Evan and his company, M:Metrics, is one of the companies that we in the industry rely on to tell us how people are using their

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phones day to day and how it is changing over time.

MR. NEUFELD: Great to be here. We are now entering the speed reading portion of our program today. I am glad you all have your big coffees. The good news is we are going to take questions, so if I go too quick past something, we will surely have time to catch up on it.

Just a little quick word about where the data I am going to present, as Steve said, to give us a sense of what is happening in the marketplace, comes from. M:Metrics is a consumer-based research company. We survey about 50,000 consumers on a monthly basis. We ask them to fill out a questionnaire that details kind of what they did on mobile devices. This allows us to track both overall growth and give us a snapshot of what is happening in any given month as well as track trends over time. We have been doing this about two years. We also have a meter product that sits on smartphones, but I will get into that better later. So, my own kind of quick overview version of the way to think about what is happening with regards to consumer uptake and adoption of mobile phones.

There are four laws of mobile phone adoption. One of them, and this would be mostly for carriers, is we are entering this era where voice is no longer the killer application. That is what phones were built for, but

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certainly, moving forward, the potential of phones both as a useful consumer platform and a marketing vehicle are all about the things you do other than voice, such as text messaging, browsing the internet, et cetera.

The other kind of interrelated set of issues (that are kind of -- hence the chicken and egg picture here -- are kind of things that need to happen in order for the market to grow, but there is inhibitors for them to happen, and, therefore, the market does not grow fast enough sometimes), is pricing impacts adoption. We have seen a drop in voice charges to all you can eat. We have seen data charges dropping to all you can eat. Until you move to a model where these things are, in essence, kind of subsidized the way they were when the internet began to accrue a certain amount of penetration, it is a real inhibitor for consumers to use text messaging, for example, if they know they are getting charged a penny a time. So, we need to kind of evolve past that model.

Devices impacts use and in all the research we have done, and I will share with you guys, there is a huge impact on the things you do based on the device you have with the, again, chicken and egg there being until you have a good device, be it an iPhone or a smartphone or just a really camera phone, you are not going to do a lot of interesting stuff on it.

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The last thing, and this is something, again, we learned from the internet, is that bandwidth increases consumption. The more through-put you have on the device, 3G in this case is what we are talking about in the States, the more, as a consumer, you are likely to use it.

I know this is a big chart. It has a lot of data, but do not be feared. I'm putting this up mostly because it shows kind of the key activities we track across all the markets we track. France, Germany, Italy, Spain, U.K., U.S. and China now, interestingly. I throw it up there mostly because we are going to stick to the U.S. in this presentation, but I just wanted to give people a sense of scope and scale and varieties by market.

So, again, as Steve mentioned, different ways of measuring the market there, but, again, we are about 226 million subscribers according to our numbers. That is about 82 percent of the audience in the U.S. now have cell phones. Comparable level of penetrations in other European markets. On the left-hand side, this is all stuff we track in terms of, did you ever in a month send a text message, purchase a ringtone, et cetera, et cetera.

One of the thing you talk about when you think about consumer consumption is, well, how is this market like X?

If I had a penny for every time someone asked me, "Well,

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in Japan people watch tons of mobile video on their phones, are we going to see that happen in the States?" I would have a large stack of pennies. But the way it works is it is not exactly a foregone conclusion. Markets are different. So, if you look at text messaging, for example, we're at pretty ubiquitous activity in the States right now, almost 50 percent of people text message on a regular basis. If you compare that to levels of text messaging, say, in European markets where that number is closer to 84 percent, the question is, well, is the U.S. on a trajectory to be like Europe or is the U.S. going to have its own evolution? Is text messaging never going to be as popular in the States as it is in Europe?

Good question. Time will tell. My own personal opinion is that, yes, it is kind of a no-brainer, especially generationally as tweens, et cetera, learn to use text messaging, we will see that grow. But there are certain examples of activities that are probably particular to markets. One of them, for example, is accessing news and information via SMS. This is something that in most parts of the world very few people do, except in Italy where about one in five people actually accesses news and information from this technology. Particular to the Italian market in that case, yes, and again, you can look at other things like

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kind of watch commercial mobile TV or video, and so you get a certain market that is slightly higher.

The big picture here outside of growth in the States and Western Europe, which you have already seen, is overall global growth, growing by 42 percent by 2001. That is going to be mostly driven by additional adoption in the Asian markets.

Let's talk a little bit about demographic cell phone users. The top chart is all cell phone users. Again, I would say this is the mainstream distribution of age and gender relative to overall population. Obviously, you over-index a little bit at the younger ages; under-index it with older ages. One of the most interesting things we do is actually we can benchmark any particular subset activity.

I just shared one of these charts with you.

Information browsing. If you look at the age breakdown and the benchmarking for that, you will see, of course, for the 18 up to in your mid-30s benchmark there, way, way over-indexing in terms of likelihood to actually browse content on your mobile phone.

One important thing when you are looking at trends is to understand how they relate to each other. So, if you look at text messaging in the absence of anything else, it is hard to understand, well, is 20 percent growth good or

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bad? The way we tend to look at them is by trying to kind of connect the dots. So, we think of some things as being fixtures, such as text messaging and email. We all know these are popular applications on phones and ones that consumers will continue to use.

We look at sometimes uptake in services is driven by devices. So, in this country, for example, we see a tremendous growth in the usage of camera phones and taking pictures and videos that is directly tied to the gigantic uptake in the amount of phones that are available to do that in this country. You see nascent activities like watch TV, which shows good growth, in this case, 19 percent year-over-year off of a very, very small base, which I would characterize as nascent. You see kind of these subtle changes.

So, if you look at news and information that you see via a browser, which is actually hard to tell here, 10 percent year-over-year growth, you might think that is actually not that good, that is kind of a little plateauing here. However, if you connect that to the fact that news and information via downloadable applications, which you can do on most phones, except my kind of locked iPhone, you see that it is actually 13 percent. So, if you put those two things together, overall you see a growth trend. I am just

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kind of connecting the dots here.

If we look at the usage of mobile messaging, again, we kind of focused on year-over-year or Q4 '06 to Q4 '07 growth, you will see 37 to 40 percent uptake in services.

Now, in some cases, these are off relatively small bases, 9 percent of the population using IM, 10 to 15 using mobile browsing. But, again, good steady growth even in areas that are highly penetrated, such as text messaging, as I said previously, about 50 percent of people do that on a regular basis.

One of the most interesting things or trends that we are seeing is this evolution of the cell phone into being kind of a more viral medium similar to where the internet is. So, again, driven mostly by the fact that we have seen this huge uptake in the amount of devices that come with a phone and video playback and record capacities. We have just been seeing a ton of sharing of video content, video and picture content.

Now, obviously a lot of this is -- still the best way to send a picture you take on your phone is typically to send that photo directly to another phone. Interestingly, what we are seeing is a lot more of this connecting what you do on the cell phone to the PC. This is a pretty large implication for what marketers, I think, would like to do

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on the cell phone, and it probably begins to open up some interesting privacy issue as we kind of think about connecting different pieces of what we do. The phone kind of adds a digital remote for our digital life, but if you look at the percentage of people who are transferring photos to their PC, again, that is up over 88 percent and people who are uploading photos to the web directly with those PCs, also.

If you look at the overall growth of the marketplace last year, which was about 9.5 percent, this is another thing we looked at is just kind of overall growth of services on a relative basis.

So, ringbacks. Does everyone know what a ringback is? I will just say because I did not know what it was when I first heard it. You know when you call someone and you get like a Rolling Stones song while you are waiting on hold or you are sent to voicemail? That is it. A ringback is simply you have the ability to pick a personalized song that someone can listen to when they are holding.

The interesting thing about ringbacks is that is a type of musical content, short, it is very low fi. It has seen tremendous adoption at the same time where ringtones are maybe kind of a little flattening. But if you then connect those things together, it paints an interesting

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picture of the personalized nature of the cell phone and the degree to which people will spend money to personalize it.

The other thing about the cell phone is -- and you will see this on a couple slides -- a lot of informational usage is very similar to the internet. So, it is immediate, on-the-go type of information is what we tend to want on our cell phones. A lot of people access weather, a lot of search, access sports scores, news, and after that, purchase ringtones and play games.

If you look at overall usage of the mobile web, SMS services, downloadable applications, again, also all growing faster than the marketplace. Strong growth in application usage. This is this trend towards rather than having things browser-based, you actually get a downloadable application that sits on your phone. All these are a part of driving the overall evolution of usage of content on cell phones, and we are seeing good growth there as well.

This is, again, a slide that gets into more detail about this immediate, on-the-go nature of browsing on the mobile phone. These are the types of content categories.

People access through browsing, traffic, restaurants, movies, quotes, maps, sports, weather, all good growth, all not surprising.

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One of the interesting things we have seen is we do have a meter product that sits only on smartphones, a very small percentage of the marketplace, about 6 percent right now. It is not just that more people are doing more stuff on the phone, but they are actually spending more time doing it and generating more page use doing it. If you look at our meter data, we see that the average daily time browsing on smartphones has gone from about 15 minutes to about 22.

And the average daily page use on a smartphone browser increased from 4.6 to about 7.4 percent per session.

Very, very important: unlimited data plans, all you can eat. We have seen a pretty good uptake in these over the past year, about 35 percent increase. That goes to an earlier point about the easier you make it for consumers to use data service, the more they will use them and the more robust of a market we will have.

TV. Again, something that a very small percentage of people do, although if you look at the paper these days, it seems like we are getting ready for another run up the hill at seeing if we can get consumers to adopt mobile TV.

Also has seen very good growth, 79 percent year-over-year across the various ways that you can get TV on your phone.

Not surprisingly, it took a little while to get

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this right, but the model for video consumption on devices is short clips, data snacking, entertainment based. These are the different genres, most popular genres of content.

Mobile music audience is up 36 percent in five months. This, again, is driven by the fact that now the vast majority or a large percentage of cell phones actually come with the ability to play MP3 files. The most interesting thing -- and, again, everyone who has an internet history will remember how important this is -- it is not just the volume of people who are doing it; it is the fact that almost a quarter of them do it on a daily basis. That is what happens. You do not do something, then you do it, then you begin doing it on a regular basis. We are seeing the same pattern on cell phones with regards to a host of activities, from downloading media applications to browsing, different types of traffic.

Again, interesting to my mind is this implicit connection happening between the cell phone and PC in terms of the preferential way of getting music onto your handheld device. Seventy-seven percent transfer from the PC. This is called side loading. It is a silly term. I didn't invent it, but that is what it is called. So, again, showing this more immediate connection happening between the PC and your

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cell phone.

Again, you remember in the beginning I talked about how important it is to have high bandwidth on your devices for data. Well, the good news is we are getting there. 3G, a kind of high through-put standard that we have in the States, is seeing tremendous growth year-over-year. The most interesting thing about 3G is if you look at any activity and benchmark a regular cell phone usage level versus 3G cell phone usage level, there are exponential differences. Someone has a 3G phone, for example, is 1.4X, as likely to do social networking, 1.5X to browse, et cetera.

Smartphones, similar. Although only 6.25 percent of the total U.S. device market at this point, this is also another point where you see just tremendous increase in usage, with 4X, 4X, 4X and 3X for social networking, browsing and music and video.

Where this kind of all ties in, of course, is the iPhone. Everybody always talks about the iPhone. I have an iPhone, Steve has an iPhone, not necessarily a huckster for Apple, per se. To my mind, the iPhone is just an example of a phone that has a really good user interface for browsing.

Some people will say that the great secret of the iPhone is that it has an interface, a UI, that does not suck. That is kind of where the standard is.

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(Laughter.)

MR. NEUFELD: So, I think it is less about the iPhone as it is the devices and the interfaces are catching up with consumers. And when you do that, the usage is tremendous.

Three charts here. One is the market, that is the orangish bar; the greenish bar is smartphone usage; and the teal bar is iPhone usage. Across any activity while you see exponential usage between a regular user and a smartphone user, you see exponential usage on top of that for an iPhone user. My favorite one is 85 percent of iPhone users browse news or information via browser. That is just insanely high.

And that is the type of usage you are going to see when you move to these more advanced devices.

And that is it. We are going to switch over. I will be here for more questions.

MS. YODAIKEN: We will have a little time at the end for questions. There are some mics at the back. You all have question cards in your packet, and if you are watching from the webcast, you can send an email to beyondvoice@ftc.gov.

MR. SMITH: Evan is from Manhattan, I am from northern New Jersey. He talks twice as fast as I do. That is the big cultural difference between us.

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(Laughter.)

MR. SMITH: Over the next couple days, as you listen to the various models and the predictions for the mobile phone and where it is going, over the next couple days, it is important to keep in mind that none of us within the industry really knows exactly how all of us want to use our cell phones. And this is demonstrated just by the very early history we already have in cell phones. The two most important categories of mobile content so far, texting and ringtones, were big surprises to almost everyone.

The text messaging that now half of us use -- by the way, how many of you do text messaging on a regular basis?

I am curious. How many of you were taught by your kids to text message? In media history, this is a remarkable medium is that we were taught by our kids how to do this and then it caught on quickly and the growth curves went up radically after that. But text messaging actually started out back in 1993 when it was first introduced by Vodafone called SMS, short messaging service. It was first conceived as a quick way that the carriers could communicate to users problems on the network or notification of a voice mail.

Very few people at the time, and throughout the nineties, ever thought that this could really be a

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communications medium that people would use, let alone something that people would use to communicate to one another.

After all, the interface is insanely difficult. It is almost designed not to be used. And it only has 140 characters.

But in 1999 in Britain, U.K. teenagers really started embracing this format. It had certain qualities that they loved. You could do it under your desk at school. It was surreptitious. I use it as a back channel to my daughter when she is out on dates. This way, she can tell me that she is okay without having to make that embarrassing call to dad to check in. She can make it look like she is just talking to one of her friends. Less than ten years after the British first embraced this, the estimates are that in 2008, there will be 2.3 trillion text messages exchanged worldwide this year. It is cheap, it is surreptitious, it is private and it is personal. Those were all the qualities that mattered. Not that the interface sucked, not that there was only 140 characters involved, but the qualities that were associated with the platform is what really moved it forward.

Now, far and away, texting is the bedrock of mobile marketing. It is where most of the money is going. It is the entry point for most commercial services into mobile.

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They are putting SMS prompts into TV shows and on packaged goods. What started as a low res back channel between the carrier and the user to notify them of voice mail has now become a mass media platform. Last season on American Idol, 609 million text votes were sent in. Millions of people use SMS just to pick the lucky case on Deal or No Deal.

You will see in the next panel many of these programs require some sort of extra fee paid by the consumer.

It is called premium SMS. Part of that money goes to the TV programs. In fact, some TV programmers now consider the texting money that they get from SMS programs a part of their bottom line. How ironic. The lowest res medium in the world is now helping to finance television.

A country radio station, for instance, down in Atlanta, a very small country radio station put out a text contest that over nine days got two million text votes simply from a small community of country music listeners in Atlanta.

The scale of the platform is that staggering and it is one of the reasons why marketers are really coalescing around it.

SMS text alerts have now become a platform for advertising in the same way that online search ran small text ads. For instance, this is an example from Reuters. Reuters, if you subscribe to their text alerts, will send

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you, along with the alert, a small ad, in this case from Land Rover, that has a link that will link you over to the Land Rover page. It could also have a phone link that will link you directly by phone to a vendor.

And if SMS took everybody by surprise as the platform that nobody expected, ringtones, too, was the other big money maker that nobody really saw coming, especially nobody in the music industry. Ringtones are, of course, those annoying personal anthems that everybody gets. They are the worst value proposition in all of media. They have no business being a success. As I do the math here in this slide, they are by far the most expensive way to get your music. You are paying two and a half times what you would pay for a full length, high fidelity track for one of the crappiest sounding things that you could possibly buy. Ringtones, as Evan said, are in decline in America, but they are being replaced by the ringbacks, which ironically sound even worse and cost even more. Nevertheless, ringtone and ringback sales this year will total about \$700 million and are now a substantial percentage of the record industry. They now have their own chart on Billboard. Ringtones now go gold at selling 500,000 copies.

So, curiously, one of the things that has not taken off in the U.S., however, is downloadable music which has

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taken off substantially in other countries, especially Southeast Asia and Japan. Many phones, probably many of the phones in your pocket, are now capable of downloading full track MP3s the same way you would from iTunes onto your phone, but American consumers have not embraced that aspect of the music industry on phones. Instead, they have embraced the lousy ringtone.

What does this tell us? First of all, the two big successes so far in moving beyond voice on the phone have been counterintuitive. They have not been markets that really seemed to make sense on the face of it, but what interested most early mobile phone users was personalization.

What took everybody by surprise is that people wanted to take this device and use it as a device for self-expression as opposed to media consumption. That becomes an important question down the road for a lot of media companies, for a lot of marketing companies, the degree to which people want to use their phones to consume media and the ways in which they instead want to use their device to express themselves.

The biggest markets growing out of the phones so far -- person-to-person SMS, ringtones and ringbacks, the wallpapers that you use to put images on your phone, and all of those accessories, the bling around phones -- Those have

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been the real big money makers so far.

Yet, all of the major media companies are coming in. The web is coming to the phone. Almost all the web brands, Yahoo!, MySpace, Google, NBC News, Time Magazine, they are all coming here. They all want to see if the old models will work here; the models from the web, the models from TV will work here.

At the same time, we are giving birth to a whole new set of mobile-only brands. Down here on the lower left you will see -- it is very hard to see, but there is a company called My Wave which just aggregates mobile video. They already have 4 million members who come to their site every month. There is another company called MocoSpace which is trying to become the MySpace of mobile.

Last football season on a given Sunday, more people came to the ESPN NFL page on mobile than came to the ESPN's NFL page on the web. Brands like weather.com and ESPN are now pulling in 7 to 11 million users to their mobile websites every month. Both Yahoo! and Google obviously would like us to take our search behaviors and move them there.

So, we are in that very early and experimental stage, and almost all companies believe that the reason they are there is because advertisers will support this. One of the things that mobile users have demonstrated, although they

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have been willing to buy ringtones, although they have been willing to buy wallpapers, is that when it comes to these larger services, news information, weather, stock, social networking, they are not as willing to add to their monthly bill.

And then, finally, let me bring it to an end by where this is headed, which is not the web coming to the phone so much as everything becoming the web. The next stage that we will see are ways in which we use the phone to click on the world. In that centerpiece there, that is a scan code, for instance, for a restaurant, one of the best Italian restaurants in San Francisco. With the correct downloadable application, what you will be able to do is take your cell phone, scan that and it will bring in information from the restaurant and even a direct link to the restaurant. That little device in the upper left from Visa, that will be using your phone as a contactless credit card where you will simply wave the phone in front of the device and pay for whatever you are trying to buy.

In essence, what we are starting to see is not only a move towards mobile, but mobile moving us into a new era of mass media. We are moving away from a last century of push mass media and now more towards a personalized media, where we pull things towards us. That seems to be the

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direction and the importance of mobile media.

Let's use an old system, which is voice communication, to move on to our next section and see if any of you have questions for either of us.

MS. YODAIKEN: So, I would like to go ahead and ask if people want to go up. I would like to ask, first, if there are people who are not panelists who have questions, because I know the panelists will get a chance to talk later.

So, if you have questions, please make your way to the back, or if you have a question card, just hold it up and somebody will come around and get it. And I will just start us with one question just to kind of go into this.

If you could both give me a little bit -- or give everybody a little bit more information about this difference that you are seeing -- and, Evan, you gave us some slides on this, and, Steve, you have also talked about this -- but in terms of what consumers out there really have in their hands right now. You have talked about 3G, you have talked about smartphones, and we have talked about the other kind of phones out there.

MR. NEUFELD: As with all things in the mobile industry, it is a little confusing because we use a lot of terminology. We do not all agree on what it means. From our standpoint, the way to think about the market is there

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is three types of phones. There is the phone my dad has which is my old RAZR I gave him that is about two years old. He uses it for voice mostly. Kind of straightforward. If you were to go get a basic plan or you were to go get a new plan, it is the phone you get thrown in for free, which these days might have a camera in it, but it is fairly straightforward.

Then there is this other category that is commonly called feature phones. These are more expensive phones and they are kind of marketed and sold to consumers based on one or two super core competencies. This could be, for example, that they have a really, really high-end camera, they have a really, really good MP3 player, or in some cases, maybe they even have the ability to do kind of email and text messaging relatively well.

The last category is the one that gets a little more confusing. It is smartphones. What is a smartphone, besides not being a dumb phone, right? A smartphone usually has a series of things going for it. It has a data plan attached to it, it has a full corded keyboard that allows you to enter, it has an operating system on it, and it has the processing power of a computer you would have owned about 10 or 15 years ago. The penetration of those, the market is inverse, so the vast majority of people have fairly direct

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phones. A smaller subset of the market has feature phones, although that number is rising. And a fairly small percentage, about 6.2 percent of our numbers, have what we would define as a smartphone. So, that is kind of the way we lay that out in the relative popularity and penetration list.

Steve, I don't know if you want to add anything to that.

MR. SMITH: Yeah, part of it, also, is that many of us have phones that we have not even discovered yet. Part of the process is also many of us discovering the things that are already there. What percentage do you have of the number of phones that can browse the web?

MR. NEUFELD: (Inaudible.)

MR. SMITH: It is very high, but many people still are not doing it. But in the last five or six months, companies that run mobile websites have been telling me they have seen an enormous spike in traffic not just from iPhones but from all phones.

This habit is moving quickly as people are not only moving to better phones, but they are also starting to discover -- some credit the iPhone with this, the iPhone marketing push with this -- they are actually starting to use their phones in a lot of different ways and discovering

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a lot of these features they never knew that they had.

MS. YODAIKEN: And a related question that comes partially from the audience, but I will make up for handwriting by adding some things in myself. Do we have a little bit more on the demographics -- you have talked about the demographics, but are there demographics in terms of a split in terms of what people are using these for? So, the question here asks about median age for the text messaging.

I know you had some ages in some of your material, but also are there different populations that are using it?

MR. NEUFELD: There is a whole separate presentation I could do, and that would have been a really quick 15 minutes, about demographic breakdowns. Everything indexes slightly different. The general rule of thumb is that a lot of the mobile browsing activities index very high among younger audiences, especially that 17 to 24 group as well as some ethnicity. So, for example, on our server, we track Hispanics, and they over-index tremendously in terms of text messaging and mobile browsing.

MS. YODAIKEN: Over-index meaning there is a very large --

MR. NEUFELD: There is a much greater preponderance for them to actually engage in those activities.

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MS. YODAIKEN: Why don't we take a question from the back? Can you identify yourself and ask your question quickly?

MR. CHAPPELLE: Alan Chappelle. Both you guys seem very bullish on SMS messaging. Yet, you will acknowledge some of the limitations in terms of size. I mean, from a practical perspective, it is really not the best consumer experience, and also I would argue it is probably not the best experience from a marketing standpoint in that you cannot tell who has necessarily opened it unless they have taken some other action. It is really difficult to know your message has actually been delivered.

So, do you see something else coming down the pike that is going to try to supplant this or do you see kind of existing technologies building on the SMS gateway, a la Twitter?

MR. NEUFELD: I mean, my whole thing about SMS is in this country, marketing and advertising people kind of want to just throw the baby out with the bath water. I do not think it is the be-all/end-all, but I think a lot of people use it and there is a very basic model that works there. It does what it does relatively effectively.

I think if you look down the road, I think the rise of MMS, the move towards more premium short codes, as well

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as kind of the evolution of the mobile browsing environment, you are going to have a wider range of options. I am certainly not trying to say that it is going to be all text messaging.

It is just that it is a fairly -- if you look at the amount of money that is being spent on marketing and made on marketing in cell phones right now, we tend to forget that the majority of it comes from text messaging.

MS. YODAIKEN: Jeff, I'm actually going to --

MR. CHESTER: One quick question. I think it is important. It is important to talk about the marketplace, but --

MS. YODAIKEN: Identify yourself.

MR. CHESTER: Jeff Chester, Center for Digital Democracy. I think Steve sort of touched on this. But it is also a medium for democracy. Can you tell us what you know about how people are using mobile devices to contact candidates' websites, create campaign videos, that kind of information, people using it as part of a democratic expression, which it increasingly will be in addition to the traditional commercial uses? Thank you.

MR. SMITH: I think your point is very well taken and the fact that we do not have enough research about that that demonstrates where all the drivers are coming from right now. In fact, I know many anecdotal stories of particularly

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candidates who are using these out in the field. It is the ways in which groups are contacting one another and maintaining contact with one another using SMS messaging to create circles where they notify one another of where they will be. That becomes a very powerful force out there, but there is very little research that is going into it, mainly because the mobile marketers want research of a certain kind.

But we do not necessarily have people doing research into those kind of phenomena.

But you are absolutely right. They are going on all over the place. In fact, talk to anybody in the major campaigns this year and they will tell you that the cell phone, and especially SMS, was one of the key ways, key things they use to help organize people. They were doing it in the caucus rooms.

MS. YODAIKEN: Well, talking about text messaging, I think we are going to end the panel now. Thank you very much to Steve Smith and Evan Neufeld.

(Applause.)

**SESSION 2: MOBILE MESSAGING - UNSOLICITED, PREMIUM AND
INTERACTIVE MESSAGING**

MS. HONE: Good morning, everybody. I am Lisa Hone. I am Assistant Director in the Division of Marketing Practices here at the Federal Trade Commission. I am very excited to be moderating this panel on Text Messaging, Interactive, Premium and Unwanted, Unsolicited Text Messaging.

I have a great group of panelists who have a very diverse experience in this space, and so, I think you will both hear good presentations and good discussion on these relevant issues, and there are a lot of them.

Really you heard from the last speakers what a driver text messaging has been in terms of adoption of mobile

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in this country. And I think you will hear echoed in this panel some of what you heard in the last panel. But this panel will also foreshadow really a lot of what you hear over the next couple of days. Because text messaging is so big and has been adopted in the United States so extensively over the last two years, a lot of issues that we see and are going to see in mobile marketing have already started to crop up when it comes to dealing with text messaging.

So, you will hear a bit about consumers' ability to control devices and applications, about unauthorized charges, about privacy issues, including location-based services and the privacy around those services, and about kids and teens, all of those issues found in text messaging and in the broader mobile marketplace.

In addition to asking each panelist to talk a little bit about their company, industry, agency, where they are coming from in this space, I asked them to keep three big questions in mind. One, what advice do they have to the industry? And, really, we are talking about a lot of different industries interconnected here. Two, what advice do they have for policymakers? And, three, what advice do they have for consumers? So, during the questioning time, I would encourage you to challenge them on these issues as well as others that matter to all of you.

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Thank you for coming, and we will start with Alykhan Govani, who is the head of marketing for MX Telecom, one of the mobile aggregators with experience. MX Telecom works both here in the United States and in Great Britain and other places outside the United States. Aly is the head of business development for MX Telecom, and he is really doing the yeoman's work here. He is going to provide us with the introduction to text messaging and talk a little bit about MX Telecom and other aggregators. Thanks, Aly.

MR. GOVANI:: Good morning, everyone. I talk a bit fast because I am from L.A. and New York, so I apologize in advance.

Just generally, quickly, I know it has probably already been touched once and a lot of repetitive information, so I will kind of go high level and just kind of skip right through it so we do not become repetitive and move to the other panels and give everyone enough time. So, we will leave text messaging out of the agenda right now.

We are going to talk about SMS mobile messaging benefits, which are probably repetitive from the previous panel, how it is used in marketing, talking about short codes and typical things you see in print media today, more of the interactive stuff as well that's happening for convenience or ways to express yourself. We have two examples for you

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guys.

Premium SMS, at a very macro level, once again.

MMS, IVR, and WAP Billing, kind of tell you a little how the value chain really is between content providers, aggregators and the carriers themselves.

MS. HONE: And he will explain the terms as he goes.

MR. GOVANI: Yes. If I say a lot of acronyms, I apologize. I have been in this industry way too long.

SMS, or short messaging service, as most of us know, it is 160 characters. In other countries and in other devices, it can actually be a lot longer than that. In Canada, it is about 135. So, typically, text messaging has been the primary point of communication in terms of mobile sites, whether it is to interact with sweepstakes, voting, alert services, concerts or coupons. There are a lot more things you see today, a lot more interactivity, and a lot more ways to gauge interactions. Typically, even with ringtones or whatever it may be, it is the first touching point someone gets to their hands, whether they are texting or visiting a website, which we will see sample advertisements later on, and you will see that is the driving force that starts before they get into the mobile web or whatever it may be.

Some of the benefits that most of us hear about

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today, it is able to extend marketing beyond traditional media. Typically, you see the print ads and you see everything else. This is just another complementary service to that. It allows people to target specific audiences. We do not have so much demographic data today, but as the market is maturing and as they're talking about M:Metrics, there is a lot more data out today. So, you actually have a specific different audience and ethnic groups or whatever it maybe.

It allows people to actually take action upon seeing an ad. A lot of this stuff that you have seen out there today is print-based, so you text this in and you get a response right away or if you want to find a local pizza place or a local joint, text into Google, which a lot of people do today, and you can find a lot of relevant information.

The biggest thing, also, for marketers themselves with the brands, they are allowed to communicate to the audience in real time. So, if you are thinking about what to have for lunch, Subway sometimes will send you a message saying, hey, here is a coupon, drive into their Subway, or for emergency alert notifications, which you see a lot of them today, telling people there may be a fire or whatever it may be, that also, a lot of times, is being used today

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as well.

The biggest thing, also, what most of the other topics pretty much will be on pre-message, and this just kind of talks about the last part which is providing ways to generate revenues. A lot of -- such as Deal or No Deal and/or ringtones or wallpapers, any other type of horoscope services, those are revenue source models today.

How it is used in marketing, once again, it was kind of talked about. Typically, you will see an ad that says text this to the short code. Most people don't understand short code, but the short code tells these people to make a purchase or drive them to find more information about a product and/or service. That is once again just the starting point before the brand starts to say, hey, would you like to sign up for more or less today? And that is when they really get you about Spam and other things that you might be concerned about.

The biggest thing that we are trying to do in the marketplace, obviously, is to make sure people are opting in. I think the biggest challenge we have today from what traditionally used to be email gateway where there was a phone number at carrier.com, every phone has an email address. Transition that to short code, so it is an opt-in basis. It is actually people saying, hey, I do want to find out more

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relevant information versus, say, sending another message to you. That is typically how most brands and companies have used it today.

The difference, as a lot of the agencies are switching up, is they use it more as interactive mediums.

Talking about Express Yourself, when they used to be called Textopoly, they did this over the New Year's time, if you go to Christmas or express.textopoly.com and you actually text the word "plan" and your plan for New Year's and it will post it onto a website, it can post it onto whatever it may be, whether it is Facebook or whatever it may be. So, they allow you to express yourself to your whole social networking group. So, a lot of those typical brands that people see text the screen are becoming a lot more interactive, so they express themselves as well out there.

Another company called Papa John's is using it as more of convenient way to actually order pizza. So, there is a lot of data. This is people deciding to have their pizza -- just what type of food they want at a certain time. Well, on your way home or whatever, may be you can text in once you register at the Papa John's website and actually order pizza right then and there through your phone. The bill gets charged to the existing credit card online and/or when you get home. So, it is a lot about convenience as well which

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some people forget about.

Most of the people that hear about, besides the marketing side, the premium side of it, right, and people talk about how you generate revenue. So, we talked about the wallpapers, the ringtones, the chat and the horoscopes,

Many of us that are parents and/or not parents and have cousins or teens probably get a lot of these extra charges on their bill, which is driving a lot of the consumer complaints. Us, typically, where we stand as an aggregator, we are almost the first talking point between consumers, because often our name is either recognized by the carriers and/or on the cell phone bill themselves. So, trust me, I have seen a lot of different customer complaints specifically with chat, ringtones, horoscope, and a lot of these different companies are also out there making a lot of money through it. So, I am not going to touch too much on it, because I know there is a whole side of advertising and/or other things to talk about.

We are also moving into, which was kind of touched upon by the Chairman, this multi media messaging or MMS. It happens a lot in Japan; it happens a lot in the UK. The ability to take a picture and either send it to or post it to a website or whatever it may be. That ability is significantly used to generate content or to find out relevant

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information.

So, a lot of companies today are talking about taking a photo, sending it up and posting it on the Facebook application or taking a photo, sending it up and manipulating it so it kind of becomes more personalized. It kind of talks about the personalization to the phone.

So, if you want to have a picture of Kobe Bryant at the Lakers game, you take a picture, you send it, and they will put you right next to Kobe Bryant, again, right to your phone and sell it to you for \$1.99 or whatever it maybe. That user-generated content to manipulate MMS is really the value.

A lot of people, a lot of companies, because of the technical, are seeing outbound multi-media messaging as a real benefit, but what we have learned throughout the U.K. and international experience, it is really the inbound messaging. That will be the big difference and you will see it in the next couple of years. In the next year or two, you will see people shopping at Macy's or whatever it may be, take a picture of the bar code and comparing and contrasting it versus other things out there. So, you can go to Best Buy and say, hey, there is an MP3 player that I like, iPhone or an iPod for that matter, you can take a picture of it, and you can actually compare and contrast it with other

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iPods out there. So, a lot of this type of multi-media messaging is kind of what's going to be rolling out in the next couple of years.

Another kind of medium, which is not too much touched upon but quite a bit out there, is IVR, integrated voice response. What companies use this for, typically, it is for those that do not know -- I should take a step back.

If you have ever called the airlines and it says, thank you, this is United, that is an IVR system. Now, marketers are using this today to actually target different audiences.

McDonald's did a campaign a couple of years ago where they did a text-based campaign where you could text in to enter a sweepstakes, but for a different audience because people do not understand what text this to this means.

They said call a toll-free number. So, that is another way for interaction to actually happen.

Part of this is about also providing more information. As people know and as noted, sometimes texts are very limited in terms of what you can actually do in types of information you receive. So, an IVR system allows you to provide a lot more information to that phone or whatever it may be. And the way it ties into messaging is, in fact, if you wanted to get specific information or even purchase a ringtone, you can actually call a 1-800 number and they

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will charge a premium SMS service to your phone bill. So, you actually get charged on your cell phone bill to receive the content through a voice automated system, and that is becoming a lot more prevalent, because the reality is consumer education does not understand short codes; they do not understand text this to this. So, people are coming and marketers are coming up with different ways to interact and convey their message to the audience.

The next up and coming thing which people may not know so much about, and I apologize, this is a U.K. image because we do not have one for the U.S.A. yet, is WAP billing or also known as Pay For It. We have talked about the adoption of people visiting the WAP or the mobile internet. Well, typically when you buy a ringtone or any other tone today, you text this in, you visit a website and you get a message that says, please reply yes to be charged \$1.99 and then you get the ringtone.

Well, what happens when they click on that WAP URL link to visit the mobile internet to get the ringtone, they then get another charge charged to their phone. So, sometimes they are pulled out of this WAP interaction session, so the experience is not great. What is happening with WAP billing is they are engaging the entire audience in that web session. So, you are not actually going to get a messaging

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on the back end that says you have been charged.

Once you visit the mobile internet, it will take you to another brand new page, which you see in the second page, which is called Pay For It or whatever brand you want.

It tells all the terms and conditions that are supposed to be unified across all the carriers once it gets out here to the U.S., hopefully. Click pay now and then it goes, click yes, the current terms and conditions on the very end.

The biggest benefit of this is you are really going to capture the user experience. You are not going to feel pulled out of the WAP session. It is going to be a lot more unified, hopefully the final release in the U.S. is. So, you are not going to have different terms and conditions.

A lot more regulatory issues will hopefully be identified up front.

It is going to be more -- more, I would say, content providers in the ringtone market are moving to this model definitely. We have recently launched it in the last few weeks in the U.S., and we have already had a tremendous amount of brands that want to talk to us about this as well.

Finally, it is driven by people that want to buy ringtones and engage in that user experience in the mobile internet and not take them out of that market.

Some of the benefits, which we kind of talked about,

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is that you do not need an MO message. An MO is when you text this to this, you only actually send that in. So, people can go to wap.google.com, see an ad, whatever it might be, and then go to that WAP internet site and actually purchase that ringtone and go through the whole consumer experience there.

The second point really is about the consumer experience. You are not going to pull them out of that session.

The third, which is what we have noticed a lot in the U.K., actually internationally, is the fact that there is a lot less customer care issues because we are able to actually, as an aggregator or whatever the content provider, at that time, everything will be streamlined. You are not going to see a different user experience after you go through step one. Step two will have all the terms and conditions as noted in the previous slide. Everything is streamlined, and it will be branded. So, that will be a really big advantage to hopefully protect the consumer at that time.

And the last thing is about branding, of course.

The second page from the last one will always be branding so you will always know who the content provider may be.

The last thing to talk about is nobody really knows all the different players in the value chain, and I think

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it is kind of important for everybody to kind of understand it. So, on one side obviously are the carriers and on the other side is the content providers and their agencies.

Content providers can be a Mozes or whatever it may be or it could be a Papa John's, I mean, whatever type you pick.

Right in the middle, you have an aggregator, which is an Excelecon, Verisign, MBlock, there is quite a few aggregators out there. There is probably just under a dozen, I would say.

And then right above us, on the middle slide right there, is actually application providers. So, potentially, before an agency or a brand even talks to anybody, there are probably two or three different changes in the value before you actually reach the wireless carriers. Ultimately, the aggregators, us, are kind of in the middle of everything, so we kind of see all the new stuff happening and all the customer complaints happening at the same time as well.

I will leave it at that and let Mozes take it away from here about how they kind of fit in with it and the kinds of services that they are doing. Hopefully, that was not too fast and not too slow. But that's it for me.

MS. HONE: Thank you, Aly.

(Applause.)

MS. HONE: We are going to take questions at the

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end, and I am sure there will be lots.

Our next presenter is Dorrian Porter, the Chief Executive Officer and founder of Mozes, Inc. Dorrian is going to do a PowerPoint and also a web-based interactive demonstration. For those of you who are watching on the webcast, you will be able to see the PowerPoint, but not the interactive demonstration.

MR. PORTER: Thank you. Good morning, everyone.

So, Mozes is a company that is really a service provider that allows anyone to come in and create an interactive mobile marketing campaign. By interactive mobile campaign, we are talking about those kinds of text messaging, short code type experiences. I will talk a little bit about kind of what we see our role as and what we are trying to do as a service.

The number one thing I would say I am trying to do as a provider is to make sure I never get a letter from the Office of the Attorney General of Florida and Mr. Schachter over there from Verizon Wireless, unless it is a Christmas card. For us, that is pretty easy because we are based out in Silicon Valley. Our foundation of our company was looking at the market and saying there is no trust in the mobile marketing environment.

So, we actually wanted to build a company that was

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going to imagine a world that was going to be very interactive, where anyone can go and do the short code thing and do the picture messaging thing and have all those great consumer experiences everyone talks about, but do it in a trusted and consistent way. That really is what our service is all about; to allow marketers, on the one hand, to build those interactive services and then have participants participate in those services in a trusted and consistent way.

And really for us what it comes down to is a problem like Visa faced back in the fifties or sixties or MasterCard, the idea that if you are going to go from store to store or event or event and you are going to do a purchase transaction, you would rather get that credit and have that transaction happen on one consistent platform as you walk from store to store than if you were to go in and deal credit with every retailer that wanted to collect money. If you are like us, you believe that there is probably going to be more marketing transactions in the world involving your mobile phone ten years from now than there will be payment transactions. So, our vision is really to be a very widely used and accessible service to support those interactive mobile experiences.

The problems we saw in the market and we see today are some of the ones we are going to be talking about today.

On the consumer side, there is just a lot of hesitancy.

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A lot of times the applications are not very clear, so the experience is not very well known up front. As you get through the process, you often get bombarded with Spam or something bad happens to your friends that you do not want to participate in. So, there is a lot of distrust and complication with all of the marketing programs that are out there.

On the marketing side in that environment, it is very hard to build compelling programs. So, all of a sudden, you want to go and engage the consumer because everyone here on these panels tells you that you should, but you are not sure how to do it, the tools are not really that available, it costs a lot of money to deploy, then the consumers are hesitant to participate. So, the results are not great and everyone says, well, I guess next year is the year of the mobile phone.

So, Mozes is about a two-sided solution. So, really simple, compelling, easy-to-use web-based tools that we work in conjunction with the carriers to kind of approve the campaigns that can go on the Mozes network and then have a trusted and consistent experience for the consumers. It crosses through to text messaging and voice. Mozes is very focused on trying to build services that are accessible by everyone, so that when a marketer wants to run a campaign,

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they do not have to ask people to download an application or stick to one specific carrier.

And then we are also very focused on tying those experiences back to the web so that the real world experiences that you can use with the mobile phone will, as many people have talked about already, translate back into how people will also use that information and consume it back online, either personally or with others. So, just to give you a flavor for Mozes and what we are up to, we are really focused on bands and music at the moment. If you go to Mozes.com, you will see that that is our primary being.

When we talk about creating simple and easy to use tools, we figure that if we can get a band member hung over at 4:00 in the morning building a mobile marketing campaign, that would be a good test to what we could bring to the rest of the market.

And in 2006, when we launched our service, we had about 75,000 participants in mobile campaigns. Last year, we had about 700,000 participants. This year, this week, we will cross about 700,000 participants for 2008. So, we have a lot of bands building these campaigns and asking consumers to participate in them. And what's interesting is a couple of things.

Number one, that consumers are doing it very

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actively. We are U.S.-focused, so these are all U.S.-driven numbers. So, over 1.4 million U.S. people have participated in a mobile marketing campaign. And then about half of those people have opted in to receive ongoing messages. These are standard rate messages. These are not the premium messages.

But they really wanted to connect with the band either via text message or via voice.

And then there is ongoing communication, two-way communication between our fans on the Mozes network and the bands who are the marketers on the network. And, of course, a lot of these experiences are happening out in the real world and back online as well.

So, I am going to click over to the web here and just give you a flavor for one example. I picked everyone's favorite band, new band, FTC.

(Laughter.)

MS. HONE: Which is good because when I looked at the Mozes site yesterday, I was scared for how many bands I had never heard of, and I think it was a reflection on me and my age, not a reflection on the popularity of the band.

MR. PORTER: So, I am a band. I am the FTC Band, a very cool band with a great, awesome logo. I am at a concert and I want my fans to text a screen. So, you know, with a

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very simple kind of projection mechanism be able to get those up on to a screen where everyone can see them. So, you guys can take out your phone right now and if you are at a concert or if you are at the FTC, the panel on mobile marketing, you can text in your comments.

MS. HONE: So you can do that now?

MR. PORTER: Yes. Take out your phone, compose, BlackBerry users compose SMS text to the number 66937 and then type the words at FTC and then followed by your comment.

So, it would be at FTC followed by your comment. So, that is what goes on at concerts all across the country. There will be a concert tonight. You could win a backstage pass with Leanne Rhimes tonight if you are at the right concert in Dallas.

The idea is that this interaction is ongoing and it is big, and it represents just a very, very small slice of how interactive our world is going to be. In fact, I would expect the FTC next year, at its panel, to actually allow running comments to go through the panel, so you can have this ongoing dialogue between this audience and the panelists as it goes on, which happens at a lot of conferences that we go to with our technology.

You will also see that you are going to get opted

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in to -- or if you want, you can reply yes to get opted in to ongoing messages from the great rock band, FTC. So, look at that.

(Laughter.)

MR. PORTER: So, that is what I have to say. I guess I have to finish on kind of notes about advice to policymakers and the industry. Industry and consumers, it is very similar. I think it is really important that the industry embrace long-term value propositions. This interactive world is going to be big. We do not need to rush there with \$9.99 a month ringtones. On the same side, I think policymakers need to recognize how big it will be, and they do not want to limit it at all. And on the consumers, look for those services that are in it for the long haul.

The last thing I will do, if I can get back, is another small feature of Mozes. If you text my name to that same number and then you go log in with your phone number on Mozes.com later, you can actually pick up a copy of these slides, download them to your PC and you will be good to go. So, thank you.

(Applause.)

MS. HONE: Thank you, Dorrian. Now, we are going to switch direction a little bit, and Will Haselden, an Assistant Attorney General from the Office of the Attorney

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General of Florida, has made it up here from Tallahassee to talk to us about his law enforcement experience in the arena of text messaging and primarily premium text messaging.

MR. HASELDEN: Hi, folks. Unlike the rest of the speakers, I'm from a place where we talk slow.

(Laughter.)

MR. HASELDEN: As you know, north Florida is really south Georgia as we say. So, it is even slower than it might otherwise be.

We have been involved in trying to enforce existing advertising law in the SMS sphere, in the SMS business model now for about a year and a half. We have recently settled with several of the players, and that's several of the big players, including AT&T.

MS. HONE: These are sound effects. For those of you on the webcast, there is a siren behind Will.

(Laughter.)

MR. HASELDEN: What we have been looking at specifically is advertising ringtones and text services that especially use the word "free" or its synonyms, pursuant to the sale of these products in a recurring subscription plan.

What I want to show you now, and the people looking at the webcast are not going to see this because about two

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weeks ago I sent in some stuff and I thought it was really sort of banal and I thought it might be more interesting to look at some live ads, some ads that we found in the last couple of days that are running now, that consumers are being presumably billed for these products after looking at these ads. So, let's look at some of these, and I want to talk about them if we can.

This is a ringtone ad that is live right now. This is a landing page, not to belabor this order path, but you reach a landing page through search. For instance, if you Yahoo!'ed free ringtones, you would get a number of sponsored links on both the top and the side of that search page. You might find that a link says get your complimentary ringtones here or hundreds of free ringtones. What we want that language, that initial representation to say is, if there is a purchase required, the price and the term that go with that, with the free item that you are going to get. I did not put those up. You can find those. They are all over the place.

One of the companies, I should say, that we settled with a few months ago, Epic Advertising, used to be Zoogole Ads (phonetic), their stuff is compliant. They are probably suffering as a result competitively, but you will see that they require their publishers to post free ringtones with

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\$9.99 a month subscription, for instance. That is the kind of thing we want to see.

But then, clicking on that link, you are going to come to either a jump page that precedes this that will have, again, more complimentary or free come-ons and then you come to this landing page. This is, as you all know, you get this stuff through a double opt-in. The first opt-in is the insertion of your cell phone number in the cell phone submit field. We are requiring companies to put the price and the term immediately adjacent the cell phone submit field. You see that it is not here. Where the price is is up on top here just below complimentary ringtones. It is little indistinct; that is, the color contrast is not all one might want it to be. But, again, it is nowhere near the mobile phone submit field, and, again, you might have come to this looking for free ringtones and having clicked on a link that says complimentary ringtones.

Here is another one. This is a floor page. This is very popular, I suppose, with teenagers, maybe teenage girls in particular. Again, the price and the term are way up top. The contrast is a little bit better, but in that space where you insert your cell phone number, you do not see any material terms and conditions. You do not see that unless you see the top, and the top -- I have seen these where

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a pop-up obscures that. So, you do not see that. So, you would have to go down and read the terms and conditions very closely to see that you are going to get charged \$9.99 a month or if you are an AT&T customer -- and I am not picking on AT&T -- but you are going to get charged \$19.99 a month.

You heard our last panelist talk about what a big industry this is and it is still a growth industry. There is an awful lot of money in this.

And here is the third one I want to look at. Again, there is a cell phone submit field. This one is a little different. I put it up because this has a check box that you have to check to go forward to a pin code submit field.

You are going to put in your cell phone number, you probably know this, and you are going to get texted by the content provider a PIN code, a four-digit PIN code, that you will put into a PIN code submit field, and then you start getting the product.

This was kind of ingenuous because what is done in the message there, attached to the terms and conditions box, is they spell out instead of as a numerical representation, they write nine dollars and ninety-nine cents per month. I have not written out nine dollars and ninety-nine cents a month since I used to write checks, I guess. We don't, in the era of online banking, very few of

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us do that anymore. So, that is kind of interesting, kind of sneaky one might say.

And, of course, the price is up top. It is not even as big, though, or in as good a contrast as that little saying "It is all about your cell," which I am not sure what that means, but apparently that is more important than the price and the terms.

We have been working with one of the content providers -- rather, one of the publisher networks that I believe is doing this right to try to give some specificity to this. We felt like, as regulators and enforcers, that we were maybe at 30,000 feet. So, when we said, for instance, in our compliance provisions, that pricing and terms had to be immediately adjacent to cell phone and PIN code submit fields, that maybe people needed more specificity than that. So, we have come up with something that we think might help.

And what we are thinking about, in particular, is, practically speaking, there are publisher networks that are dealing with publishers. Publishers is a nice, highfalutin way of saying there are 18-year-old kids in garages that are buying space on Google and putting together these creatives and these account managers, the publisher networks, for instance, as well as review people at the billing aggregators,

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as well as the people at the carriers that are looking at these programs need some more particularized guidance, we think.

So, we put together something that we think actually helps a lot. It is a zone system. There are three zones on the screen that you see that comes up on your page.

The first zone is very simply that near the PIN code or cell phone submit field. We think the price and the term need to be within 125 pixels. That is actually a particular distance, and I will show you those three ads that we looked at before with these zones drawn out. The price and the term need to be a minimum font size, and it must be disclosed in a numerical format.

The second zone is that zone that describes what you are going to get. Complimentary ringtones and other tech services. If you are going to get other tech services, this is a problem if you are an AllTell or a Nextel or some Sprint mobile devices, you cannot get ringtones. You cannot get polyphonic ringtones. So, what you are going to get is a text service. You went looking for a ringtone, it looks like, in fact, that you are going to get a free ringtone. You do not get that. You end up getting text. It may be that you do not want text and you certainly do not want it if you do not know that it is going to cost you what it is going to

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cost you.

So, we are looking at, in that zone, making the offer of text services at least half as big as the ringtone offer, and we will look at some of those that we just looked at that are not compliant.

And then zone three is just a screen. We are looking for an age description. Florida has been very adamant about needing to be 18 or having your parents' permission. We all know that that is a bit of a fiction that we all live with, but we believe marketers need to know that that is something that we are very serious about, and we especially want carriers to understand that we do not believe a minor can authorize this sort of contractual relationship.

So, I wanted to show you as well, this is a color contrast chart. A lot of what you will see in these ads does not jump out at you, especially price. Price is sort of hidden in contrasts that are not very clear.

This is the first one we looked at. The 125 pixel box is that box that surrounds the cell phone submit field.

This one is not compliant because the price is not there.

The other text services -- remember we talked about zone two needs to be half the size of the header text? That is not so. Where the price does appear there is not an

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appropriate color contrast. There is a worldwide web consortium color contrast chart that is out, and we think that that is very -- in fact, everybody uses it. So, this one, in fact, is a 63. We would look for as well 125. So, that price does not even jump out, it is not in the right place, it is not at all clear. This is live. People are being billed for this product right now.

The second one, the floor page, again the price is not within 125 pixels. The contrast there where it is is okay. It is at 160. So, that is the black on the light pink is an appropriate contrast, but it is not anywhere you can find it. Again, this is part of an order path that itself very often begins with the deceptive initial representation that the product is free.

This is the one that we talked about with the written-out price, this is the female animated figure. The price is not within 125 pixels. The light gray on gray is 59. That is nowhere near the color contrast that you would want. Again, it is not written out.

So, this is one that is compliant. I just got this a couple of days ago. This is ThumbPlay, and perhaps they have not been compliant in the past, but they are doing it right now. I thought that this is something that people should look at. The price is within 125 pixels of the cell

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phone submit field. The contrast is appropriate in this ad.

It, in every way, is compliant. You could say, well, I would like some things maybe a little bit better, maybe you would like \$9.99 a month to be a little bigger, but this is okay.

The Florida Attorney General's Office is not going to litigate over this. And that is the key. This is a cell phone submit page for the same provider, and you see that it is also appropriate.

MS. HONE: Thank you, Will.

(Applause.)

MS. HONE: So, as many of you know, the FTC works closely individually and collectively with the offices of the various State Attorneys General, but it is hard to believe that only last month Will did not know anything about text messaging. It was not last month, but really when these new and emerging industries sort of come into being, the industry needs to figure out what they are doing, law enforcement needs to figure out what is going on, policymakers need to figure out what is going on, and I think Will is an incredibly good example of a public servant who, with the support of his office, took the initiative to figure out what was happening to consumers in this space and figure out how consumer protection authorities can address those issues.

We are going to switch areas here, and Leigh

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Schachter, who is a senior litigation counsel at Verizon, is going to talk about unsolicited text messages as opposed to premium text messages and what Verizon and some of the other carriers have been doing to help their subscribers not have to deal with at least voluminous amounts of unsolicited text messages.

MR. SCHACHTER: Hopefully not. Thanks very much.

I appreciate the invitation to present here. I am going to talk about something that no one likes. We talk about other parts of mobile commerce people like, and there are things people like that other people do not. I have never ever met a person who likes Spam. It is sort of an easy topic to speak about.

As the world of text messaging, as we have heard about, has become bigger and bigger, unfortunately the world of Spam has started to merge into text messaging. I would like to describe it as sort of the perfect convergence of traditional Spam that you get on your computer and that we have all sort of gotten used to over the last 10 or 15 years with the telemarketing that you get on your home phone that has been cut down a lot by the efforts of the FTC with the Do-Not-Call List.

It sort combines the worst elements of both because, on the one hand, it comes in text form and so it

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is like traditional Spam and it is similar topics, but it also bombards you on your phone as you may be wherever you are and you get this text message. It is sort of like traditional telemarketing. The Spam that you get is sort of the same Spam that you get on -- that we have all come to know and love on your ISP.

I was just watching I think it was Jay Leno last night making a joke about how some efforts to control Spam and that if it were not for Spam, how would we all know how to refinance our mortgages and enhance our manhood. You see drug sales, VigmaMax (phonetic), those kind of male enhancement drugs, adult websites, timeshares, mortgage refinancing, penny stock pump and dumps. You get a text message that says, just came out of a board meeting and buy some little dinky stock that is selling at five cents a share.

The company knows nothing about it, but presumably they are trying to generate enough buzz about it that a few will go out, buy the shares, the price goes up and you can see this.

Actually, I have seen it because I get these, and you go track the share price and it goes up from 10 cents to 20 cents and then presumably these people sell off and make a killing on what they have brought in, and then the price will go back down to five cents.

The other thing, and I did not put it down here,

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but we have seen an increase in things like phishing scams.

I got one myself a couple of months ago that said your account at Valley National Bank is something, go to this website or call this number to update your account. Presumably, if you go there it is some nefarious person that is there to try to get your personal information, and we talked to the bank and they are obviously not behind it. They put something on their website.

So, we have made -- and I will talk about this more.

I mean, the amount of text message Spam is increasing, I am sure you may have seen it. We, on a typical month in the last six to eight months, prevent 100 to 200 million -- it varies, it goes in waves -- but 100 to 200 million Spam messages a month that we will filter out off the network that do not reach customers. So, people obviously are annoyed when they get them, but they do not realize how much effort that we put in to getting the overwhelming bulk of this stuff to prevent it from ever reaching consumers.

So, how does spam text messaging work? Well, as I said, it is a combination of old fashioned text spamming and telemarketing. For people who do not know, there are a few different ways you can get text messages. One way is the way we have talked about here, which is sort of the short code, which are set up with the carrier that messages can

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be sent through a short code and that we approve the short code, and so there is some way that we can filter and approve what is coming through.

The other way is sort of the way that kids do it or we do it. You take my handset, I will send the short code to your handset, and it goes directly back and forth.

The third way you can do it, and some people do not know, is you can send an email to my phone number or this phone number at vtext.com, Vtext is the email address for Verizon Wireless. So, if you send an email to my phone number at vtext.com, it will be transformed, that email will come to our internet gateway and we will transform it and send a text message to your phone. That is the way the spammers mostly work, obviously, because they are not going to sit and dial on a phone to send spam messages.

The spam business is all in volume. You want to be able to get out a million messages in a few seconds. So, you can generate a lot of messages to either a random, you know, they will find out that the 201-615 MPANXX belongs to Verizon Wireless. They will send out a spam text message to every 201-615 001, 2, 3 and then just send it out to everyone. They can pick random numbers.

They can, over the internet, there are lots of lists of phone numbers being sold. People may post their phone

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number to get something and if you post it in a place with an unscrupulous marketer, it may get out to someone else and they will buy those and those lists can be millions or tens of millions phone numbers and they will just send the spam out to those.

As you know, email you do not get -- the spammer does not advertise who they are. They spoof the header with something that will try to get you to think you want to open it. Spammers typically, especially sophisticated spammers, because we have filtering so if you go to your home computer and try to send a thousand or a million emails to vtext.com from a single IP address, that is going to get triggered by filters. So, what they will do is they have bot-net armies that I have learned about recently where they will take over computers, the hackers or spammers will go out and they can create an army of computers that are unprotected, people who do not have proper virus filtering or other filtering software on their computers. They will take over your home computer and generate messages from that computer.

So, they will send out five -- if your army is a million computers all over the world, it does not mean the U.S., it can be China, Russia, Argentina, wherever. They will get your computer to send out five, so it looks legitimate. So, coming to our network, you see an IP address

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sending out three messages at Vtext, hey, that could be legit.

But if you do that enough times, you can create these armies to send out messages.

They will advertise a website or usually they will say, you know, go to this website, let's say they are selling VigraMax. Those websites are either hosted offshore in some far off country. I have seen them cases where they will send you to a website and actually there is an imbedded page within a legitimate website. It was a company in Hong Kong, it was a real company, they had a real product, I do not remember what it was, and they created sort of embedded in their website a site to sell VigraMax. Especially the sophisticated ones who get through -- the unsophisticated ones are pretty easy to filter, but the sophisticated ones, they have a lot of different methods to both hide themselves and to get their messages through.

Spam harms both customers and the industry. Obviously, people do not like getting it. It is an invasion of privacy. Potentially people could get either charged or they decrement it. If you have bought a bundle of text messages, you are going to lose one message when you get the spam. Some of it is offensive content. If you broadcast it to everyone, you are going to have kids getting advertisements for male enhancement drugs. So, people do

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not like spam, obviously.

But it also affects the carriers, not only in people blaming us because people see a text message coming in, it may come to people who do not text message, so they get this and they think somehow Verizon Wireless or some other carrier is behind this message or they think we sold their number to a marketer or that somehow we are behind these things.

But on a more basic network level sometimes when we get these waves, I mean, we are talking tens or hundreds of millions coming in in a month, they overwhelm the internet gateways we have. We had a situation about, I would say, about six, eight months ago where literally messages were getting delayed -- legitimate messages were being delayed by minutes or hours because the gateways were so clogged with these spam messages. So, it is a problem for everyone.

People will often ask why is it that there is -- is this a rule against it? There are several laws that are out there today that prohibit these kind of text message spams.

I do not want to make this a legal discussion, but I am a lawyer. The Can-Spam Act that is out there which does prohibit unsolicited commercial messages to wireless devices generally, and there is a list of domains, like vtext.com, that are out there you are not supposed to send spam to.

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There is the Computer Fraud and Abuse Act that prohibits -- essentially it was a hacking statute, but it can apply to any disruption of computer networks of more than \$5,000 damage, which if you account for all the damage that spammers cause, clearly can meet that.

The TCPA, which was passed 15, 20 years ago as the prohibition against telemarketing, and one of the prohibitions is you are not allowed to telemarket to cell phones. That is a separate issue that I could give a separate presentation on because I deal with cell phone telemarketing, just pure voice telemarketing. But the same law can apply that if you are sending, using an auto dialer, sending random or sequential messages to vtext.com, which is something that you know is going to wind up being a text message, I would say that violates the TCPA. I know there was a court decision a couple of years ago from Arizona that held the same.

So, I think although you can dispute that, I think it is pretty clear that those kinds of messages would violate the TCPA, as well as traditional state law, computer fraud, trespass that have been used to fight spamming efforts.

So, what do we do to fight spam? One of the things that I talked about is we have a huge amount of effort that goes into filtering. I do not understand and would not talk about sort of the details of it, but there is a lot of people,

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there is a lot of money that when messages come into vtext.com, they pass through a filter to get out of it. More than half, in a typical month, it can sometimes be 70 or 80 percent of text messages sent to vtext.com are spam. So, that is the volume of what we are talking about which is it is a huge effort to filter the spam.

Secondly, working with law enforcement, obviously as we talked about, there are laws against spamming. We work with -- whether it is Attorney General's offices, FBI, the FTC, we are willing, happy and want to work with law enforcement to try to do whatever we can to track down spammers. It is not always easy, but we are willing to cooperate and do everything we can to bring things to law enforcement to try to get them to go after spammers.

And the other thing that we have done, we have been -- I think we were the first to file civil litigation against text message spammers. Again, the causative actions that we will assert are the ones that we talked about in the other page, whether it is a violation of the TCPA, Computer Fraud and Abuse Act, et cetera. There are generally two parts to those lawsuits. One part is -- the most important part, frankly, is an injunctive action, seeking an injunction getting people to stop sending text message spam. We also can seek damages because under some of these statutes, like

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the TCPA, there is a \$500 per call or per message statutory penalty.

I am not sure we could seek that on behalf of customers at large, but if you send a message to a million Verizon Wireless subscribers, chances are you are going to hit at least a few hundred Verizon Wireless employees like me who have a Verizon Wireless phone that I do not pay for, that the company pays for, and certainly, we can seek damages on behalf of those people who they get messages because they are sending them to a Verizon Wireless owned phone. If you multiply that out times 500 or in the case of an intentional one, \$1,500, you can get up to a pretty substantial amount of statutory penalty.

So, what we do, there is generally two kinds of cases. The easy ones are the ones that we can figure out who is behind it. Usually you can figure out who is behind it if they are advertising a website or sometimes they will advertise a timeshare sale and, so, we will submit our timeshare to buy, get a message back and we will sue those folks. Often those folks are the people who bought the market, hired somebody else, that come back to us and say, well, we did not really send this, we hired somebody. And we are like, well, you are responsible for it, but more importantly they will tell us who sent it. So, we can try

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to find the actual individuals.

We also file John Doe suits if we can track IP addresses either associated with a website or associated with a sender and send subpoenas then to ISPs to try to identify those John Does. We have filed eight cases in the last seven years. We have gotten injunctions, we have gotten monetary penalties that we generally, other than covering our attorney's fees, we do not keep the money from the statutory penalties, we usually donate them to various organizations and we have gotten some default judgments because generally what happens, if you sue somebody, either they want to settle right away because they do not want to deal with it because they know they have no real defense, or you file them against individuals -- we have had a number in the State of Florida and elsewhere that we have managed to get at and you get a default judgment against them because they are going to disappear and, unfortunately, it is hard to catch them.

Unfortunately, it has become more difficult to do this over time because spammers have gotten better. They can move offshore, they use bot-net armies. So, the IP address of who is sending the spam is just going to be some innocent person who has no clue who invaded their computer.

So, it has gotten more difficult to do this, but we are continuing our efforts.

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So, just to sum up, what can people do, the question is what can consumers and industry and regulators do? For consumers, you cannot really 100 percent avoid the spam.

There are a few things we offer. One of the things you can do is you can -- in addition to just blocking all text messages, you can set up a block, but we offer a feature that you can block text messages from vtext.com. There are not that many people that get text messages off the internet.

So, if you still want to be able to get text messages from a person's other phone but to not get them over the internet, you can do that.

You can create a nickname. So, rather than getting your messages at 201-615 or at vtext.com, you set up a nickname, Leigh@vtext.com, and get it that way. So, the spammers generally work on just random phone numbers, they do not try names and stuff like that, so you can try to avoid that issue.

Last is a point of caution, which is do not give out your cell phone number to people you do not trust or that are just sort of standard on websites because once you put it out there, it is out there and you do not know who they are going to be selling it to. So, not perfect, but there are ways to avoid it.

For industry and regulators, one of the things that

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we are doing is we are obviously constantly moving our filtering technology to make it better, spending more money, but it is sort of a cat and mouse game because the spammers are getting better, too. We, obviously, would like to work with government agencies to track down and prosecute spammers because, frankly, civil litigation, these people disappear, they hide their assets, they have no assets, it is very difficult.

There was one recent court decision, although I have seen that this is not 100 percent accurate, there was a major spammer who was convicted and sentenced to, I think, eight or nine years in prison in Virginia recently. That was upheld on appeal and now there has been a rehearing on that in the Virginia Court of Appeals in the last couple of weeks, but that kind of thing will hopefully stop it.

And then, lastly, this is the hardest part, international cooperation. A lot of spammers are not in the United States, they are in Russia, they are in China. And I have met with government agencies or the FBI or whomever and they are -- if somebody is in the U.S., they can say we can go after them and, of course, we can also go after them if they are in the U.S. I cannot see somebody in Russia or China or I certainly do not have the resources to hire Hague Convention and find people offshore. It is hard even for

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U.S. government agencies. It has to be an international effort and, hopefully, convincing some of these other countries that this is not good for them, it is not good for us, that they damage the infrastructure of their own countries. So, that is a continuing effort.

It is a continuing fight and, hopefully, slowly but surely, we are succeeding at it, but it is something that we need to continue to do.

(Applause.)

MS. HONE: Thank you. We have covered a pretty broad waterfront in 55 minutes, so we have just a few minutes for questions. A reminder for people watching the webcast, you can email questions to beyondvoice@ftc.gov. People in the audience can either go to the microphones in the back or if you have a comment card, hold it up and one of our paralegals will come get it for you.

Susan, can you identify yourself?

MS. GRANT: Hi, Susan Grant, Consumer Federation of America. This is a question for Bill and Aly, I think.

Bill, who do you sue? There are a lot of players here, maybe you sue them all, maybe you sue particular ones. So, I am interested in that. And, Aly, I am interested in what the contractual arrangements are between the parties in terms of who is responsible for and liable for what.

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MR. HASELDEN: Well, when we first got an understanding of this business model, it is largely affiliate-based marketing. As I say, these affiliates are maybe 19-year-old kids in a garage in Paducah. So, clearly, to make an effect you need to sue the people that your resources can best impact the problem.

So, we initially began looking at the carriers, the carrier is getting the lion's share of the revenue in this. We looked at the aggregators. Down the revenue stream, the billing aggregators are the next people. That is sort of the choke point. They are the ones that are in contract with the carriers and in contract with the content providers.

We also have spoken to and have settled with a couple of ad networks, publisher networks as they're called. Those are the people that actually can, more closely, regulate those affiliates as publishers. So, it is sort of a matter of how do you best use your limited resources. The publishers, the affiliates are the ones that are out there really running roughshod over applicable laws. It is as Leigh described with the spammers. There is no real cost benefit in going after them. You need to deal with the people on the top end, we thought, that are both making the revenue and dealing most closely with the subscribers.

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The carrier bill for this, we felt like the carriers had a vested interest, and they do and they recognize that, in cleaning this up. So, we have been fairly pleased with the carrier response. So, that is the way we look at it.

MS. HONE: Aly, do you want to add anything from the perspective of the choke point?

MR. GOVANI: I guess that kind of touches upon how we really do fit as an aggregator such as MX Telecom, We are a service provider. We came in business because the carriers essentially did not want to have hundreds of different points of content with each brand. So, imagine if Coca-Cola had talked to 12 carriers to get one campaign line. So, we are that one central point of technical pipe essentially.

Ultimately, on our side, yes, we do heavily regulate as much as we can. But the reality is the content buyers are changing their advertisements and changing the data. So, in terms of the liability, all liability on our side is towards the content providers.

As much information as we get, we can monitor such as the initiatives happening right now with the Mobile Marketing Association, CTIA. But if a content provider changes what they initially submit and what we get approved, how do we monitor that? I think that is the big question.

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What is the ongoing monitoring initiative that is going to continue to track that. And I think the carriers, independently of CTI and other bodies out there, they contract each different company to kind of monitor those issues. But for us the liability is on the content providers.

MS. HONE: I have a couple of good questions on the comment cards. So, Leigh, this one is for you. Is the nickname feature specific to or proprietary of Verizon or is that global cell text feature?

MR. SCHACHTER: To be honest, I do not know. I would assume that you can probably do that with other carriers, but I do not know. I know we can, but I would think you can do it. I mean, it seems fairly simply, but I do not know.

MS. HONE: There is a couple of panels on controls, but I think that most carriers in the U.S., you can change your address essentially so it is not your phone number. Did you have a question back there or are you just supporting the law?

UNIDENTIFIED MALE: It actually got answered.

MS. HONE: This is a question card with three questions, but since we only have a limited time, I will pick.

How does Verizon distinguish spam text messages from a legitimate text message that the consumer wants? If you are

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filtering 50, 60, 70 percent of the spam on any given day, of the text messages coming through.

MR. SCHACHTER: The answer is, I do not know and even if I knew, I could not tell you. There are methods and there is very sophisticated filtering. There are companies out there that do this. I mean, they do it not only for Verizon, but for -- AOL does it and every ISP does it as well, which is they try to filter it out. They use different methodologies to look at a message and try to figure is it spam, is it legitimate. I mean, take an easy one, if you see one IP address sending out a million messages, that is spam. No one person would -- that is, by definition, spam. So, that is an easy kind.

But you have reduced that and there are other things, you can look at the text in the message, you can look at the IP address it comes from. Again, I am not the technical guy to understand it, but there are ways to do it. I think it is pretty good. I mean, I think it is pretty good at just getting spam.

MS. HONE: Now, Leanne Rhimes might send a whole lot of text messages to her mob. Is that what it is called?

Does Mozes have a relationship with each carrier so that Verizon, for example, knows you are going get hit by a lot of messages from this short code or this phone number but

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do not worry, everybody opted in?

MR. SCHACHTER: That is one thing, you know, that probably goes through vtext.com and we certainly channel it to come to a short code. So, we know that when you have a short code set up, there are going to be a lot more messages which is why we channel them to short code, so they do not get filtered as spam. But by the same token we know whom we are dealing with. That is a separate issue which is in terms of -- I know there has been a push for opening up the short codes and saying, let anybody send whatever they want to with short code, and that is the risk of it, which is if anybody can get a short code, the spammers will get a short code and then we have lost this control.

So, in that situation, where you want to send out a million messages to people, you got to get a short code that we will approve, we know who it is coming from, who is it going to and we know where it is from, as opposed to if you try to do that on -- you know, just send a million messages to vtext.com, you may very well get cut off as spam because it looks like spam.

MS. HONE: So, we have now run into the break period. Since we do not have coffee or any pastries outside, I want to let you all know we have a break from 11:00 to 11:15.

There is a place you can get coffee and sodas and such right

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around the corner and then there is also Starbucks and Billy Goat Tavern across the street. Make sure to hold on to your name tags so you can get easily back in the building.

Thank you on behalf of this panel and I expect these guys will be around a few minutes if people have questions and have not had an opportunity to get them answered. I think most of them are staying for the day and for part of tomorrow, too. Thank you.

(Applause.)

MS. HONE: For anybody watching on the webcast, Will Haselden's new slides will be up on the archive version of the webcast sometime in the next couple of days.