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NYC DEPARTMENT OF CONSUMER AFFAIRS SUES MAJOR WIRELESS COMPANIES FOR DECEPTIVE CELL PHONE ADVERTISING

City Seeking Fines and Industry Compliance with Consumer Protection Law

New York, N.Y. -- New York City Department of Consumer Affairs (DCA) Acting Commissioner Jonathan Mintz today announced the agency has filed suit in New York Supreme Court against three major wireless companies for pitching cell phones and services in deceptive advertisements that misled consumers. DCA filed suit against Nextel Communications Inc., Sprint Spectrum L.P., and T-Mobile USA Inc. seeking maximum fines and compliance with New York City's landmark Consumer Protection Law.

"You can't promise a great deal in the headline and hide the true costs in the fine print," said DCA Acting Commissioner Jonathan Mintz. "If a cell phone company promises free long distance, consumers should get free long distance - period. Consumers rely on advertising as a shortcut through the often-confusing maze of wireless options and the City's law provides protection to ensure those ads are truthful. While clamoring for competitive consumer attention, these major cell phone companies crossed the clear line between promotional gimmicks and deceptive advertising. It doesn't matter whether the business is selling cars, tax services, or cell phones, everyone has to follow the same rules."

The DCA also pursued claims against AT&T Wireless (since acquired by Cingular Wireless LLC), Cingular Wireless, and Verizon Wireless for deceptive advertising, but those companies settled and agreed to fully comply with the New York City Consumer Protection Law in their marketing.

Mintz noted, "Verizon led the industry in committing to comply with the Consumer Protection Law and settling claims, and we are pleased that others followed."

The DCA intensified monitoring the wireless industry advertisements in the fall of 2003 as part of a joint effort with the New York City Department of Information Technology and Telecommunications (DoITT) to track industry practices and cell phone service citywide. After months of monitoring company ads, and despite numerous discussions with company representatives to correct and clarify the ads, DCA found the companies to be in violation of City law.

According to Consumers Union, information obtained from the Federal Communications Commission shows complaints filed about wireless phone service increased nearly 38% from 2003 to 2004, with cell phone marketing nearing the top of the list, and billing problems receiving the most complaints.

The New York City Consumer Protection Law broadly defines deceptive and unfair trade practices, in part, by requiring the type size used in print ads to be clear and conspicuous to the reader. It prohibits practices that have the capacity, tendency, or effect of deceiving or misleading consumers.

In its lawsuits the DCA charges:

- Nextel deceived consumers by advertising "**ALL INCOMING CALLS ARE FREE**" when in fact, a tiny, multi-line footnote at the bottom of the advertisement indicated "...an additional access charge of either \$.10 per minute multiplied by the number of participants on the call...or a monthly flat fee," would be charged to the consumer if he or she signed up for the advertised calling plan.
- Nextel further deceived consumers by advertising "**PLANS STARTING AT \$10 PER MONTH,**" or "**POWERFUL PHONES STARTING AT \$24.99**" without clearly describing different service plans or products, and without adequately disclosing either the highest price of the advertised plan, or an "average price," as required by law.
- Sprint deceived consumers by advertising "**NATIONWIDE LONG DISTANCE INCLUDED. EVERY MINUTE, EVERY DAY**" when in fact, a tiny, multi-line footnote at the bottom of the advertisement indicated a charge for long distance -- including the phrase "...an additional \$0.25 per minute for long distance."
- Sprint further deceived consumers by advertising that "**instant savings require in-store purchase and activation of a new line...**" when a tiny footnote at the bottom of the advertisement stated "Requires in-store purchase and activation of two new lines of service on eligible plans." **In the same ad, Sprint deceived consumers by advertising a "**FREE**" cell phone offer forcing consumers to look at the fine print footnote to find that in fact, the offer required "...a two-year Sprint PCS Advantage Agreement."
- T-Mobile deceived consumers by advertising "**FREE LONG DISTANCE**" and "**FREE ROAMING**" when in fact, a tiny, multi-line footnote at the bottom of the advertisement indicated "Billing of roaming charges and minutes of use and services may be delayed" and "Call duration may be limited."

The attorneys handling the cases for DCA and the City are Susan Kassapian, DCA Assistant Commissioner for Litigation and Mediation, Nicholas James Fengos, DCA Senior Counsel, and Gabriel Taussig, Chief, New York City Law Department's Administrative Law Division.

The DCA conducts inspections at electronics stores - including cell phone stores - citywide and accepts complaints on cell phone billing disputes and advertising. Fostering a marketplace where consumers are protected and businesses can thrive, DCA licenses more than 60,000 businesses in 55 different categories in New York City. To file a complaint or to request a free copy of the *DCA Consumer Advertising Guide*, call 311 or visit DCA online at www.nyc.gov/consumers.