

1 MELINDA HAAG (CSBN 132612)
United States Attorney

2 ALEX G. TSE (CSBN 152348)
3 Chief, Civil Division

4 STEVEN J. SALTIEL (CSBN 202292)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-6996
8 FAX: (415) 436-6748
9 steven.saltiel@usdoj.gov

Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)	Case No.
)	
14 Plaintiff,)	UNITED STATES' COMPLAINT
)	
15 v.)	JURY TRIAL DEMANDED
)	
16 SPRINT COMMUNICATIONS, INC.,)	
17 formerly known as SPRINT NEXTEL)	
18 CORPORATION; SPRINT PCS,)	
)	
19 Defendants.)	
)	

20
21 For its Complaint, Plaintiff, the United States of America, alleges as follows:

22 **I. NATURE OF ACTION**

23 1. The United States brings this action to recover treble damages and civil penalties under the
24 False Claims Act, 31 U.S.C. §§ 3729-33, and to recover damages and other monetary relief under the
25 common law theories of unjust enrichment and payment by mistake.
26

27 2. The United States bases its claims on Defendants' submission of false claims for
28 reimbursement of expenses they incurred in providing facilities or assistance to federal law enforcement

1 agencies in executing court orders authorizing the interception of a wire, oral, or electronic
2 communication (commonly referred to as a “wiretap”), and orders authorizing the installation of a pen
3 register or trap device. A pen register is a device that records or decodes dialing, routing, addressing or
4 signaling information transmitted by a particular telephone line, but not the contents of a
5 communication. 18 U.S.C. § 3127(3). A trap device is a device or process that captures the incoming
6 impulses which identify the source of a communication, but not its contents. 18 U.S.C. § 3127(4).

8 3. Within the time frames detailed below, Defendants Sprint Communications, Inc. and Sprint
9 PCS (collectively referred to as “Sprint”) knowingly submitted false claims to federal law enforcement
10 agencies, such as the Federal Bureau of Investigation (FBI), Drug Enforcement Agency (DEA), U.S.
11 Marshals Service (USMS), Bureau of Alcohol, Tobacco and Firearms (ATF), Immigration and Customs
12 Enforcement (ICE), and others, by including unallowable costs in their charges for carrying out court
13 orders authorizing wiretaps, pen registers, and trap devices.

15 4. Like other providers of wire or electronic communications, Sprint is authorized by statute to
16 bill law enforcement agencies for the reasonable expenses it incurs in providing facilities or assistance to
17 accomplish a wiretap, pen register, or trap device (referred to herein as “intercept charges”). 18 U.S.C.
18 §§ 2518(4), 3124(c). In 1994, Congress passed the Communications Assistance in Law Enforcement
19 Act, Pub. L. No. 103-414, 108 Stat. 4279 (1994) (“CALEA”), which required telecommunications
20 carriers to ensure that their equipment, facilities, or services were capable of enabling the government,
21 pursuant to a court order, to intercept and deliver communications and call-identifying information. 47
22 U.S.C. § 1002(a). On May 12, 2006, the Federal Communications Commission (FCC) resolved a
23 dispute between law enforcement agencies and telecommunications carriers, and ruled that carriers were
24 prohibited from using their intercept charges to recover the costs of modifying equipment, facilities or
25 services that were incurred to comply with CALEA. *In the Matter of Communications Assistance for*
26 *Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, Second
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28

1 Report and Order and Memorandum Opinion and Order, 21 F.C.C.R. 5360, ¶¶ 69-74 (May 12, 2006)
2 (“*Second Report and Order*”). The FCC ruled that the carriers’ exclusive mechanism for recovering
3 these costs was from the United States Attorney General, under the limitations set forth in section 109 of
4 CALEA. Sprint participated in the FCC rulemaking proceeding.

5
6 5. Despite the FCC’s clear and unambiguous ruling, Sprint knowingly included in its intercept
7 charges the costs of financing modifications to equipment, facilities, and services installed to comply
8 with CALEA. Because Sprint’s invoices for intercept charges did not identify the particular expenses
9 for which it sought reimbursement, federal law enforcement agencies were unable to detect that Sprint
10 was requesting reimbursement of these unallowable costs.

11
12 6. By including the unallowable costs of financing CALEA modifications in their intercept
13 charges, Sprint inflated its charges by approximately 58%. As a result of Sprint’s false claims, the
14 United States paid over \$21 million in unallowable costs from January 1, 2007 to July 31, 2010.

15 **II. JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
17 1331, 1345, 1367(a), and 31 U.S.C. § 3732. The Court may exercise personal jurisdiction over
18 Defendants pursuant to 31 U.S.C. § 3732(a) because Defendants transact business in this District.

19 8. Venue is proper in the Northern District of California under 31 U.S.C. § 3732(a) and 28
20 U.S.C. § 1391(b) and (c) because Defendants transact business in this District.

21 **III. INTRADISTRICT ASSIGNMENT**

22
23 9. This action did not arise in any one county of this District for the purposes of Civil L.R. 3-
24 2(c).

25 **IV. PARTIES**

26 10. The United States brings this action on behalf of all federal law enforcement agencies
27 (“LEAs”), including the FBI, DEA, USMS, ATF, ICE, United States Postal Inspection Service (USPIS),
28

1 Internal Revenue Service (IRS), the Defense Criminal Investigative Service (DCIS), and the United
2 States Secret Service.

3 11. Defendant Sprint Communications, Inc., formerly known as Sprint Nextel Corporation, is a
4 Kansas corporation with its principal place of business in Overland Park, Kansas. Sprint
5 Communications, Inc. is a wholly owned subsidiary of Sprint Corporation. At all times relevant to the
6 complaint, Sprint Communications, Inc. was a communications company offering wireless and wireline
7 communications products and services in all fifty states, Puerto Rico, and the U.S. Virgin Islands.
8

9 12. Defendant Sprint PCS is a joint venture established in 1994 by Sprint Communications, Inc.,
10 TCI, Comcast Corporation, and Cox Communications, Inc. In 1998, Sprint Communications, Inc.
11 assumed 100% ownership and management control of Sprint PCS. At all times relevant to the
12 complaint, Sprint PCS submitted invoices for intercept charges to LEAs.
13

14 **V. THE FALSE CLAIMS ACT**

15 13. The False Claims Act, 31 U.S.C. §§ 3729-33, provides, in pertinent part, that:

16 [A]ny person who—

17 (A) knowingly presents, or causes to be presented, a false or fraudulent claim for
18 payment or approval;

19 is liable to the United States Government for a civil penalty of not less than \$5,000 and
20 not more than \$10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment
21 Act of 1990 (28U.S.C. § 2461 note; Public Law 104-410), plus 3 times the amount of
22 damages which the Government sustains because of the act of that person.

23 31 U.S.C. § 3729(a)(1).

24 14. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the
25 Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461 (notes), and 64 Fed. Reg. 47099, 47103
26 (1999), the False Claims Act civil penalties were adjusted to \$5,500 to \$11,000 per false claim for
27 violations occurring on or after September 29, 1999.

28 15. The False Claims Act defines “knowing” and “knowingly” as follows:

1 [T]he terms “knowing” and “knowingly”—

2 (A) mean that a person, with respect to information—

3 (i) has actual knowledge of the information;

4 (ii) acts in deliberate ignorance of the truth or falsity of the information; or

5 (iii) acts in reckless disregard of the truth or falsity of the information; and

6 (B) require no proof of specific intent to defraud.

7
8 31 U.S.C. § 3729(b)(1).

9 **VI. STATUTORY AND REGULATORY FRAMEWORK FOR INTERCEPT CHARGES**

10 **A. Cost Recovery Pursuant to Intercept Statutes**

11 16. Telecommunications carriers are authorized by statute to recover their “reasonable
12 expenses” in complying with a valid wiretap order. 18 U.S.C. § 2518(4) provides, in pertinent part:

13 An order authorizing the interception of a wire, oral, or electronic communication under
14 this chapter shall, upon request of the applicant, direct that a provider of wire or
15 electronic communication service . . . shall furnish the applicant forthwith all
16 information, facilities, and technical assistance necessary to accomplish the interception
17 unobtrusively and with a minimum of interference with the services that such service
18 provider . . . is according the person whose communications are to be intercepted. Any
19 provider of wire or electronic communication service . . . furnishing . . . such facilities or
20 technical assistance shall be compensated therefor by the applicant for reasonable
21 expenses incurred in providing such facilities or assistance.

22 17. Similarly, with respect to pen registers and trap devices, 18 U.S.C. § 3124(c) provides, in
23 pertinent part, that a “provider of a wire or electronic service . . . who furnished facilities or technical
24 assistance pursuant to this section shall be reasonably compensated for such reasonable expenses
25 incurred in providing such facilities and assistance.”

26 **B. Communications Assistance for Law Enforcement Act**

27 18. In 1994, Congress passed CALEA. Congress described CALEA as an Act “to make clear a
28 telecommunications carrier’s duty to cooperate in the interception of communications for law
enforcement purposes.” The legislative purpose of CALEA was to “preserve the government’s ability,

1 pursuant to court order or other lawful authorization, to intercept communications involving advanced
2 technologies such as digital or wireless transmission modes, or features and services such as call
3 forwarding, speed dialing and conference calling, while protecting the privacy of communications and
4 without impeding the introduction of new technologies, features, and services.” H.R. Rep. No. 103-
5 827(I), 1994 U.S.C.C.A.N. 3489.
6

7 19. Section 103 of CALEA provides, in pertinent part, that:

8 [A] telecommunications carrier shall ensure that its equipment, facilities, or services that
9 provide a customer or subscriber with the ability to originate, terminate, or direct
10 communications are capable of—

11 (1) expeditiously isolating and enabling the government, pursuant to a court order or
12 other lawful authorization, to intercept, to the exclusion of any other communications, all
13 wire and electronic communications carried by the carrier within a service area to or from
14 equipment, facilities, or services of a subscriber of such carrier concurrently with their
15 transmission to or from the subscriber’s equipment, facility, or service, or at such later
16 time as may be acceptable to the government;

17 (2) expeditiously isolating and enabling the government, pursuant to a court order or
18 other lawful authorization, to access call-identifying information that is reasonably
19 available to the carrier—

20 (A) before, during, or immediately after the transmission of a wire or electronic
21 communication (or at such later time as may be acceptable to the government);
22 and

23 (B) in a manner that allows it to be associated with the communication to which
24 it pertains, except that, with regard to information acquired solely pursuant to the
25 authority for pen registers and trap and trace devices (as defined in section 3127
26 of title 18, United States Code), such call-identifying information shall not
27 include any information that may disclose the physical location of the subscriber
28 (except to the extent that the location may be determined from the telephone
number);

(3) delivering intercepted communications and call-identifying information to the
government, pursuant to a court order or other lawful authorization, in a format such that
they may be transmitted by means of equipment, facilities, or services procured by the
government to a location other than the premises of the carrier; and

(4) facilitating authorized communications interceptions and access to call-identifying
information unobtrusively and with a minimum of interference with any subscriber's
telecommunications service and in a manner that protects—

1 (A) the privacy and security of communications and call-identifying information
2 not authorized to be intercepted; and

3 (B) information regarding the government's interception of communications and
4 access to call-identifying information.

5 47 U.S.C. § 1002(a).

6 20. Section 109 of CALEA authorized the U.S. Attorney General, subject to the availability of
7 funds, to “pay telecommunications carriers for all reasonable costs directly associated with the
8 modifications performed by carriers in connection with equipment, facilities, and services installed or
9 deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section
10 103.” 47 U.S.C. § 1008(a). The Attorney General was authorized to pay the reasonable costs of
11 equipment, facilities, or services deployed after January 1, 1995 only upon a determination by the FCC
12 that compliance with Section 103 of CALEA was not “reasonably achievable.” 47 U.S.C. § 1008(b).
13 Pursuant to section 109(e) of CALEA (codified at 47 U.S.C. § 1008(e)), the Attorney General
14 promulgated regulations to effectuate the submission of claims by, and payment to, telecommunications
15 carriers for the reasonable costs of compliance with section 103. These regulations are codified at 28
16 C.F.R. § 100.9 *et seq.* Claims submitted under these regulations were separate and distinct from
17 carriers’ intercept charges, i.e., their claims for the reasonable expenses of providing facilities or
18 assistance in complying with a valid intercept order.
19

20 21. Congress appropriated a total of \$500,000,000 for fiscal years 1995, 1996, 1997, and 1998,
21 to carry out Title I of CALEA. 47 U.S.C. § 1009.
22

23 **C. FCC Second Report and Order**

24 22. In March 2004, the U.S. Department of Justice, the FBI, and the DEA filed a petition for
25 expedited rulemaking with the FCC, requesting that the FCC initiate a proceeding to resolve various
26 outstanding issues relating to the implementation of CALEA. The FCC responded in August 2004 by
27 issuing a Notice of Proposed Rulemaking. *Second Report and Order*, ¶ 4. Many telecommunications
28

1 carriers, including Sprint, participated in this proceeding by submitting comments.

2 23. In September 2005, the FCC issued its *First Report and Order* in the rulemaking
3 proceeding. See *Communications Assistance for Law Enforcement Act and Broadband Access and*
4 *Services, First Report and Order and Further Notice of Proposed Rulemaking*, ET Docket No. 04-295,
5 RM-10865, [20 FCC Rcd 14989 \(2005\)](#). The *First Report and Order* stated: “In the coming months, we
6 will release another order that will address separate questions regarding the assistance capabilities
7 required of the providers covered by today's Order pursuant to section 103 of CALEA. This subsequent
8 order will include other important issues under CALEA, such as compliance extensions and exemptions,
9 *cost recovery*, identification of future services and entities subject to CALEA, and enforcement.” *Id.*,
10 ¶ 3 (emphasis added).

11
12 24. On May 12, 2006, the FCC issued its *Second Report and Order* in the rulemaking
13 proceeding. In its Notice of Proposed Rulemaking, the FCC sought comment on a number of issues
14 related to the recovery of CALEA compliance costs, including the nature of such costs and from which
15 parties the costs could be recovered. The FCC also inquired into CALEA cost recovery pursuant to
16 intercept statutes (e.g., 18 U.S.C. §§ 2518(4), 3124(c)). *Second Report and Order*, ¶ 69.

17
18 25. In its Notice of Proposed Rulemaking, the FCC acknowledged its prior statement in an order
19 suggesting that carriers could recover a portion of their CALEA capital costs through intercept charges
20 imposed on LEAs, and that this statement was made without the benefit of a complete and full record on
21 the issue. In the *Second Report and Order*, the FCC repudiated its prior statement:

22
23 “ . . . because we now conclude that CALEA section 109 provides the *exclusive* mechanism by
24 which carriers may recover from law enforcement capital costs associated with meeting the
25 capability requirements of CALEA section 103, the Commission's prior statement was incorrect
to the extent it suggested that carriers may recover CALEA capital costs through intercept
charges.”

26 *Second Report and Order*, ¶ 71 (emphasis in original).

27 26. The FCC reasoned that, because CALEA makes the government responsible for compliance
28

1 rates contained on Sprint's Electronic Surveillance Fee Schedule. Sprint's fees included an
2 implementation fee charged per intercept and per geographic area (referred to as a "market"), and a daily
3 maintenance fee.

4 30. Sprint determined its fees by calculating its average cost per intercept, using a cost model
5 that purported to divide the company's expenses in executing intercept orders (the numerator or costs)
6 by the average number of intercepts projected over a period of time (the denominator or demand).

7 31. Prior to May 12, 2006, when the FCC issued its *Second Report and Order*, Sprint included
8 in its intercept charges to LEAs the costs of its capital investment in equipment, facilities, and services
9 to comply with section 103 of CALEA.

10 32. In July 2006, after the FCC issued the *Second Report and Order*, Sprint revised its cost
11 model by removing the capitalized costs (i.e., depreciation) of the equipment and upgrades in which it
12 invested in order to comply with section 103 of CALEA.

13 33. Although Sprint removed depreciation on its investment in CALEA equipment and upgrades
14 from the cost model, Sprint continued to include in its charges to LEAs the costs of financing that
15 investment, including: (1) the "cost of debt," the annual interest expense on loans the proceeds of which
16 were used to invest in CALEA equipment; (2) the "cost of equity," the dividend payments or growth in
17 stock value to shareholders from an additional stock offering or drawing on existing equity of the
18 company used to invest in CALEA equipment; and (3) taxes associated with both the "cost of debt" and
19 "cost of equity."

20 34. By including these expenses in its cost model, Sprint violated the FCC's prohibition against
21 using intercept charges to recover from LEAs the costs of making modifications to equipment, facilities,
22 and services in order to comply with section 103 of CALEA, and/or the costs of developing, installing,
23 and deploying CALEA-based intercept solutions in order to comply with section 103 of CALEA.

24 35. Based on the July 2006 cost model, Sprint published a revised Electronic Surveillance Fee
25
26
27
28

1 Schedule with revised fees. Sprint billed LEAs these fees for carrying out intercepts.

2 36. Sprint did not publish or otherwise disclose to LEAs the July 2006 cost model on which the
3 revised fees were based. Sprint did not disclose to LEAs that the costs of financing its investment in
4 CALEA equipment were included in its intercept charges.

5 37. In or about June 2010, Sprint again revised the cost model on which its intercept charges are
6 based. In the June 2010 cost model, Sprint removed the costs of financing its investment in CALEA
7 equipment, including the cost of debt, cost of equity, and associated taxes. Effective August 1, 2010,
8 Sprint lowered its intercept charges based on the June 2010 cost model. As of this date, Sprint has failed
9 or refused to refund the overpayments made by LEAs based on its pre-August 1, 2010 fees, as described
10 below.
11

12 **VIII. FALSE CLAIMS**

13 38. During the period January 1, 2007 to July 31, 2010, pursuant to 18 U.S.C. § 2518(4) and 18
14 U.S.C. § 3124(c), Sprint submitted over 29,000 claims to LEAs for reimbursement of its reasonable
15 expenses in carrying out intercepts, charging fees based on the July 2006 cost model. These claims were
16 false because, as described above, the fees charged to the LEAs included hidden costs that the FCC
17 ruled were unallowable.
18

19 39. Sprint submitted these claims in the form of invoices to LEAs from its Subpoena
20 Compliance Department.
21

22 40. By way of example, from January 1, 2007 to July 31, 2010, Sprint submitted invoices for
23 intercept charges to the following LEAs, for which the LEAs paid the following amounts:

24	FBI	\$10,582,237
25	DEA	\$20,973,813
26	USMS	\$ 3,237,435
27	ATF	\$ 461,781
28		

1 ICE \$ 2,396,342

2 Secret Service \$ 31, 141

3 41. As described above, the payments made by LEAs to Sprint for intercept charges included the
4 costs of financing Sprint's investment in CALEA equipment, including the cost of debt, cost of equity,
5 and associated taxes, in violation of the *Second Report and Order*. By including these unallowable costs
6 in its intercept charges, Sprint inflated its charges by approximately 58%. As a result of Defendants'
7 false claims, the United States paid over \$21 million in unallowable costs from January 1, 2007 to July
8 31, 2010.

10 **IX. TOLLING OF STATUTE OF LIMITATIONS**

11 42. Sprint executed a series of tolling agreements with the United States tolling the running of
12 time under any applicable statute of limitations, by way of laches or other time limitation (whether
13 statutory, contractual or otherwise) for the period of time between February 1, 2012 and the date of
14 filing suit or March 3, 2014, whichever is earlier.

16 **FIRST CAUSE OF ACTION**

17 (False Claims Act: Presentation of False Claims)

18 (31 U.S.C. § 3729(a)(1)(A))

19 43. The United States repeats and realleges the preceding paragraphs as if fully set forth herein.

20 44. Sprint knowingly presented, or caused to be presented, false or fraudulent claims for
21 payment or approval to the United States for reimbursement of its expenses in furnishing facilities and
22 assistance in carrying out intercepts.

24 45. By virtue of the false or fraudulent claims presented or caused to be presented by Sprint, the
25 United States suffered damages and therefore is entitled to treble damages under the False Claims Act,
26 to be determined at trial, plus civil penalties of not less than \$5,500 and up to \$11,000 for each violation.

1 **SECOND CAUSE OF ACTION**

2 (Unjust Enrichment)

3 46. The United States repeats and realleges the preceding paragraphs as if fully set forth herein.

4 47. As a consequence of the acts described above, Sprint was unjustly enriched at the expense of
5 the United States in an amount to be determined which, under the circumstances, in equity and good
6 conscience, should be returned to the United States.

7
8 48. The United States claims the recovery of all monies by which Sprint has been unjustly
9 enriched.

10 **THIRD CAUSE OF ACTION**

11 (Payment by Mistake)

12 49. The United States repeats and realleges the preceding paragraphs as if fully set forth herein.

13 50. Sprint was not entitled to receive payment from LEAs for the annually recurring expenses of
14 financing Sprint's investment in CALEA equipment, including the cost of debt, cost of equity, and
15 associated taxes.

16
17 51. The United States, through the LEAs, paid Sprint for the costs of financing Sprint's
18 investment in CALEA equipment, including the cost of debt, cost of equity, and associated taxes,
19 without knowledge of material facts, and under the mistaken belief that the United States was paying for
20 Sprint's allowable costs in furnishing facilities and assistance in carrying out intercepts. The United
21 States' mistaken belief was material to its decision to pay Sprint for such claims. Accordingly, Sprint is
22 liable to account and pay to the United States the amounts of the payments made in error.

23 **PRAYER FOR RELIEF**

24
25 WHEREFORE, the United States demands and prays that judgment be entered in its favor
26 against Sprint as follows:

27 1. On the First Cause of Action under the False Claims Act, for the amount of the United States'
28

