

TESTIMONY

OF

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EXECUTIVE VICE PRESIDENT AND GENERAL COUNSEL
VERIZON COMMUNICATIONS INC.

BEFORE THE

SUBCOMMITTEE ON ANTITRUST,
COMPETITION POLICY,
AND CONSUMER RIGHTS

COMMITTEE ON THE JUDICIARY

UNITED STATES SENATE

CELL PHONE TEXT MESSAGING RATES INCREASES AND THE STATE OF
COMPETITION IN THE WIRELESS MARKET

JUNE 16, 2009

Good morning, Mr. Chairman and members of the Subcommittee. It is a pleasure for me to appear before you today on behalf of Verizon Wireless at this hearing.

Verizon Wireless Differentiates Its Services From Its Competitors In Many Ways

Verizon Wireless is proud to offer Americans the best service of any wireless carrier. *Consumer Reports* magazine, for the past several years in a row, has given us the highest rating among all the wireless carriers for service quality. In its most recent survey published in January, which included responses from more than 50,000 consumers, Consumer Reports found a “surge in satisfaction” and that “Verizon is a standout cell-phone carrier for most people.” Last month the American Consumer Satisfaction Index issued a press release finding that “[c]ustomer satisfaction with wireless telephone service reache[d] a new all-time high for the third consecutive year.” “Verizon Wireless jump[ed] 3% ... to continue its lead over the industry.” Verizon Wireless and the whole wireless industry continue to move in the right direction.

We’ve invested many billions of dollars to give our customers what they want and demand. Verizon Wireless was the first wireless carrier in the United States to offer 3rd generation, or 3G, services that enabled our customers effectively to use email, the web, video, music and many other services over their wireless devices. We then upgraded to an even faster version of 3G a few years later, ahead of the competition, giving customers

the ability to download a reasonably large .pdf file to their laptop in less than ten seconds. Our competition was forced to respond, all to the benefit of consumers, by accelerating their 3G plans. The result has been an explosion in the number and variety of smart phones and data air cards; in applications for those phones (over 40,000 and counting); and in the use of all types of services demanded by consumers and businesses.

And I'm proud to say Verizon Wireless is leading the technological charge again. We are deploying the first 4th Generation network in the United States based on the 4G technology standard called Long Term Evolution, and one of the first in the world. Long Term Evolution will give our customers peak download speeds of 50-60 Mbps, with an average of 5-12 Mbps. That's ten times the throughput and capacity of 3G. We plan to have the service up and running for customers in 25-30 markets in 2010, with full nationwide deployment soon thereafter. Verizon Wireless' deployment will increase U.S. productivity, investment and jobs, and make us the clear worldwide leader in wireless broadband. Our investment in next generation broadband is also pushing other broadband providers (wireless, wireline, cable, etc.) to redouble their efforts to improve their service offerings as well.

Verizon Wireless prides itself on being the leader within the industry in consumer advocacy. We were the first carrier to embrace local number portability, which allows customers to switch from one carrier to another while keeping your telephone number. We were the first carrier to embrace open devices and applications, which allows customers to bring their own devices to our network. We were the first carrier to provide

a *Worry-Free Guarantee* which allows customers to change their voice and data plans, selecting different minute allowances or text messaging and data use options, at any time during their contract without changing the end date of their contract or signing up for a new contract term. We were the first carrier to allow customers to receive a free phone every two years with our New Every Two program. In November 2006, we replaced the flat early termination fee we charged customers who cancel their service contract early with a declining balance fee that gets smaller every month that the customer stays with us (another first in the industry). When other wireless carriers proposed creating a 411 directory of wireless customers, we fought (and defeated) that proposal in order to protect our customers' privacy from unwanted calls.

The Price of Text Messaging Overall Has Been Falling

The title of today's hearing might lead one to believe that wireless carriers have been increasing text messaging prices, and that text message pricing trends bear on the level of competition in the industry overall. Let me respectfully suggest that since the evidence shows that text messaging prices have been decreasing rapidly, not increasing, text messaging pricing trends show – consistent with all other market evidence - that competition in the wireless industry remains vibrant.

I have included as an appendix to my testimony several charts that show the prices Verizon Wireless charges for text messaging and compare our prices to those of other wireless carriers. I have three summary points to make, relating to the level of our

pricing, the direction of pricing, and the efforts Verizon Wireless makes to ensure customers are on the pricing plan that fits their needs.

1. Price level. The average price paid by our customers is now about 1 cent per text message. Most of our text messaging customers pay less than a penny per message.

2. Price direction. Prices are decreasing. In December 2006, the average price paid by our customers was about 3 cents per message. Since then we have cut the average price by almost two thirds, to about 1 cent per message. As a result of the price cuts, usage has grown six-fold. Generally the structure of our pricing plans has moved away from paying “by the drink” to buckets of messages at much lower prices. If you focus just on post-paid text messages sold individually without a plan: the sub-segment of the text messaging market that caused this stir, then those messages account for less than 1% of the text messages that Verizon Wireless provides.

3. Efforts to educate consumers about their choices. We work very hard to inform customers about the price plans that are the most appropriate for their needs. About 26% of our customers don’t use texting at all; these customers don’t need or want to pay for a monthly bucket of messages. On the other hand, for customers who use text messaging, we work hard to get them on the plan that will minimize their costs. We have an internal program called “High Usage Early” that even in the middle of a billing cycle identifies people whose usage indicates they are not on the right plan, and we contact those people to suggest they opt into a bucket plan that fits their current usage pattern. We have found that customers appreciate our actions since they are much less likely to get an unhappy surprise when the bill comes. The success of this outreach and our

customer education effort is shown in part by the fact that our average *by-the-drink* text message customer is sending and receiving only about 21 texts per month, indicating that most subscribers are finding the best plan for themselves. We well know that if we don't do these types of activities for each of our customers, we may potentially lose them to a competitor and we want to keep our customers and attract more users to our service offerings.

Mr. Chairman, as you know, and members of the Subcommittee, as you may know, Verizon Wireless is a defendant in several private antitrust class action cases that allege that because some of the major wireless carriers raised their post-paid "by-the-drink" price to 20 cents, *there must be a conspiracy among the carriers*. Those claims are absolutely false. As you can see from the charts attached to my testimony, there is wide variation in the carriers' by-the-drink texting prices. If you are a pre-paid customer, then Verizon charges 1 cent, 5 cents, 10 cents or 20 cents per text message, depending on the plan. AT&T's pre-paid customers pay 20 cents per message. Sprint's pre-paid customers pay 10 cents per message or have all text messages included at no extra charge, depending on the plan. T-Mobile's pre-paid customers pay 5 cents on incoming messages and 10 cents on outgoing messages. There also is wide variation in the pricing of bundled text message plans which cover more than 99% of all text messages sent. For example, a customer who buys our lowest-priced package of messages for \$5 per month gets 250 messages. For the same price, AT&T provides 200 messages; Sprint provides 300 messages; T-Mobile provides 400 messages. If you look at the charts attached to my testimony, it's apparent that the differences in pricing outnumber any similarities.

Nor is there any coincidence in the timing of price changes for the narrow category of post-paid “by-the-drink” text messaging. Different carriers changed prices for this product over a period of almost two years. There was no collusion or price-fixing.

Wireless Innovation and Competition Serves Consumers Well

The market evidence shows fierce competition, not collusion, in text messaging and in wireless generally. This isn’t just Verizon Wireless’ own hard-won market experience. The Federal Communications Commission (FCC) concluded this year that “U.S. consumers continue to reap significant benefits – including low prices, new technologies, improved service quality, and choice among providers – from competition in the [wireless] marketplace.” The FCC further noted that “[i]n the mobile telephone sector, we observe independent pricing behavior, in the form of continued experimentation with varying pricing levels and structures, for varying service packages, with various handsets and policies on handset pricing.” Using the most recent information available to it, the FCC observed that the industry’s average revenue per minute fell from 47 cents per minute in 1994 to 6 cents a minute in 2007, or a decline of 67%, while minutes of use has increased many-fold.

The FCC’s findings are confirmed by other sources. A recent study found that the price per minute of service in the U.S. is the lowest among 26 OECD countries, that U.S.

customers have the highest minutes of use per month, and that the U.S. has the most competitive market among those 26 countries.

The wireless industry's massive investments - \$233 billion in its networks through June 2007, according to CTIA – are evidence of fierce competition to offer customers better quality, higher speed data services, and new or improved technologies such as GPS, video, music, picture messaging, and many other services. The benefits flowing from this intense, lightly-regulated competition are many:

More jobs: One study found that in 2006, approximately 3.6 million U.S. jobs were directly or indirectly dependent on the U.S. wireless industry, and that an additional 2-3 million jobs will be created in the next 10 years.

Higher customer satisfaction: During each month in 2008, the rate for complaints from Verizon Wireless's customers to the FCC, state PUCs, or state Attorneys General was about 8 complaints for every 1 million customers – a rate of only 0.0008%.

More Choice: Over 630 different handsets, manufactured by at least 33 companies, are sold in the U.S., and consumers have access to over 40,000 applications sold through numerous application stores.

More Productivity: Businesses from UPS to the utility industry depend on the mobile applications enabled by these massive, competitively-driven investments to make their employees more productive, use less fuel, keep supply chains functioning, and provide real-time customer response.

More of Everything: The industry's massive investments in networks, applications and content have untethered consumers from their homes and offices. A wireless phone is a portal to Facebook, a music device, a television, a camera and much more.

Wireless companies do not need regulation to incent us to protect our customers – we do it on our own. Verizon Wireless has brought more than 20 lawsuits against spammers, telemarketers, pretexters and others who seek to deceive and defraud our customers. Last month, for example, Verizon Wireless filed civil suits against two companies harassing its customers by selling automobile warranties. We also reached a settlement with several other companies which committed to stop illegal spoofing and telemarketing in selling auto warranties, and we donated the settlement proceeds to charity. Verizon Wireless took these actions before the Federal Trade Commission brought its own lawsuits earlier this month against purveyors of these warranties.

Conclusion

An industry with little competition is an industry with glacial innovation, little investment, and increasing prices. That's not the wireless industry. To the contrary, wireless innovation is breathtaking, investment has been massive, and prices have relentlessly decreased overall. The wireless carriers are competing to attract customers by offering a wide variety of options at affordable prices. Verizon in particular continues to differentiate its services based on superior quality and high-speed wireless broadband service. Verizon Wireless, and the industry as a whole, could not have had this success

or made the enormous investments they have without Congress' enactment of Section 332 of the Communications Act, as part of the 1993 Omnibus Budget and Reconciliation Act. This section preempts state *entry and rate* regulation, and its "light-handed" regulatory approach has helped create a vibrant marketplace with ever-expanding options for consumers. The wireless industry is a great success story, and I urge Congress to let it remain one.

I appreciate the opportunity to be here and I look forward to your questions.

Randal S. Milch
Executive Vice President and General Counsel
Verizon Communications



Randal S. Milch is executive vice president and general counsel of Verizon. He leads the company's legal, regulatory and security groups.

From 2006 until being named to his current position in October 2008, Milch served as the senior vice president and general counsel of Verizon Business, responsible for all legal services and external affairs support for the company's global enterprise carrier. Before that, Milch served as the senior vice president and general counsel of Verizon's domestic telecom business. He was appointed to the latter position in 2000, upon the merger of Bell Atlantic and GTE.

Before the merger, Milch was associate general counsel at Bell Atlantic with oversight of state regulatory matters in New York and New England. Milch was responsible for all state legal aspects of gaining long-distance authority in New York, the first such authority for a Bell company in the nation. Milch also supervised the state regulatory litigation, including litigation arising under the Telecommunications Act of 1996, across Bell Atlantic's northern seven states. Previously, Milch served as vice president, general counsel and secretary of Bell Atlantic-Maryland, Inc. He began his telecommunications career as counsel to the Chesapeake and Potomac Telephone Company of Maryland in 1993.

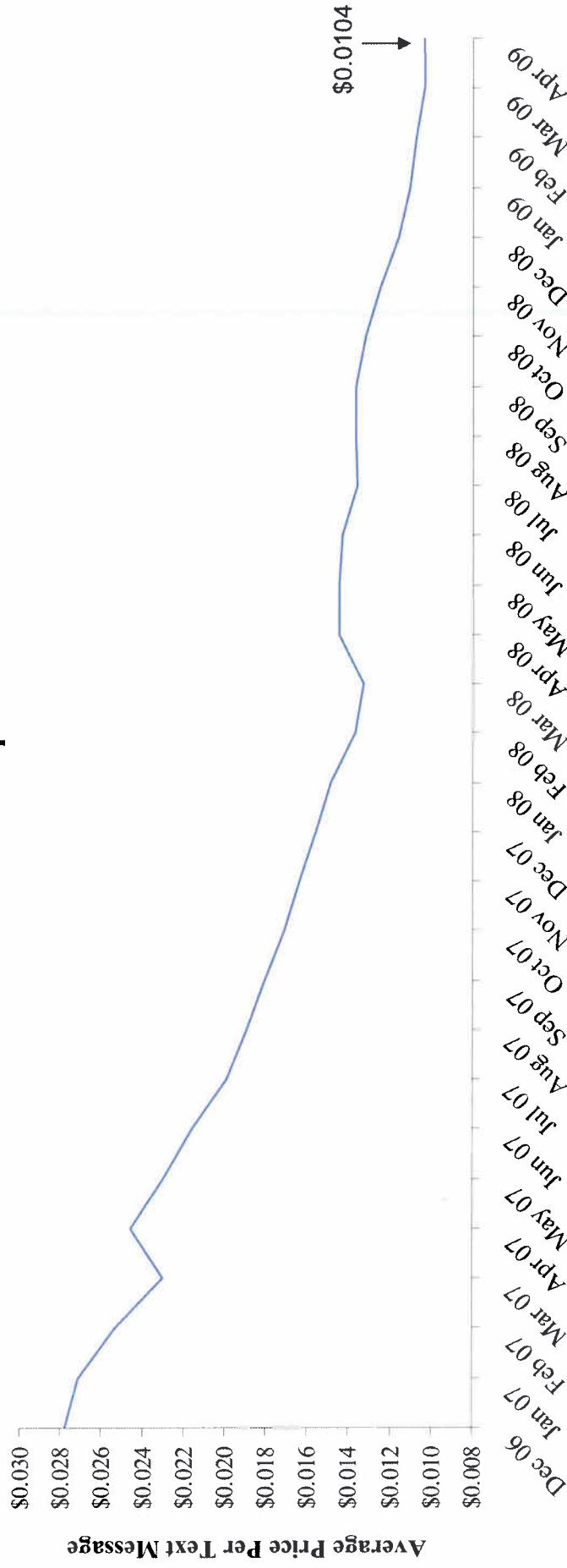
Prior to his role with Bell Atlantic, Milch was a partner in the Washington, D.C., office of Donovan Leisure Newton & Irvine. Milch's practice centered on complex federal litigation and international arbitration. Milch began his legal career as a clerk to Clement F. Haynsworth, Jr., Chief Judge Emeritus of the United States Court of Appeals for the Fourth Circuit.

Milch holds a J.D. from New York University Law School and a B.A. from Yale University.

October 2008

The price of VZW text messages has fallen rapidly.

**VzW Average Price per Text Message
December 2006 - April 2009**



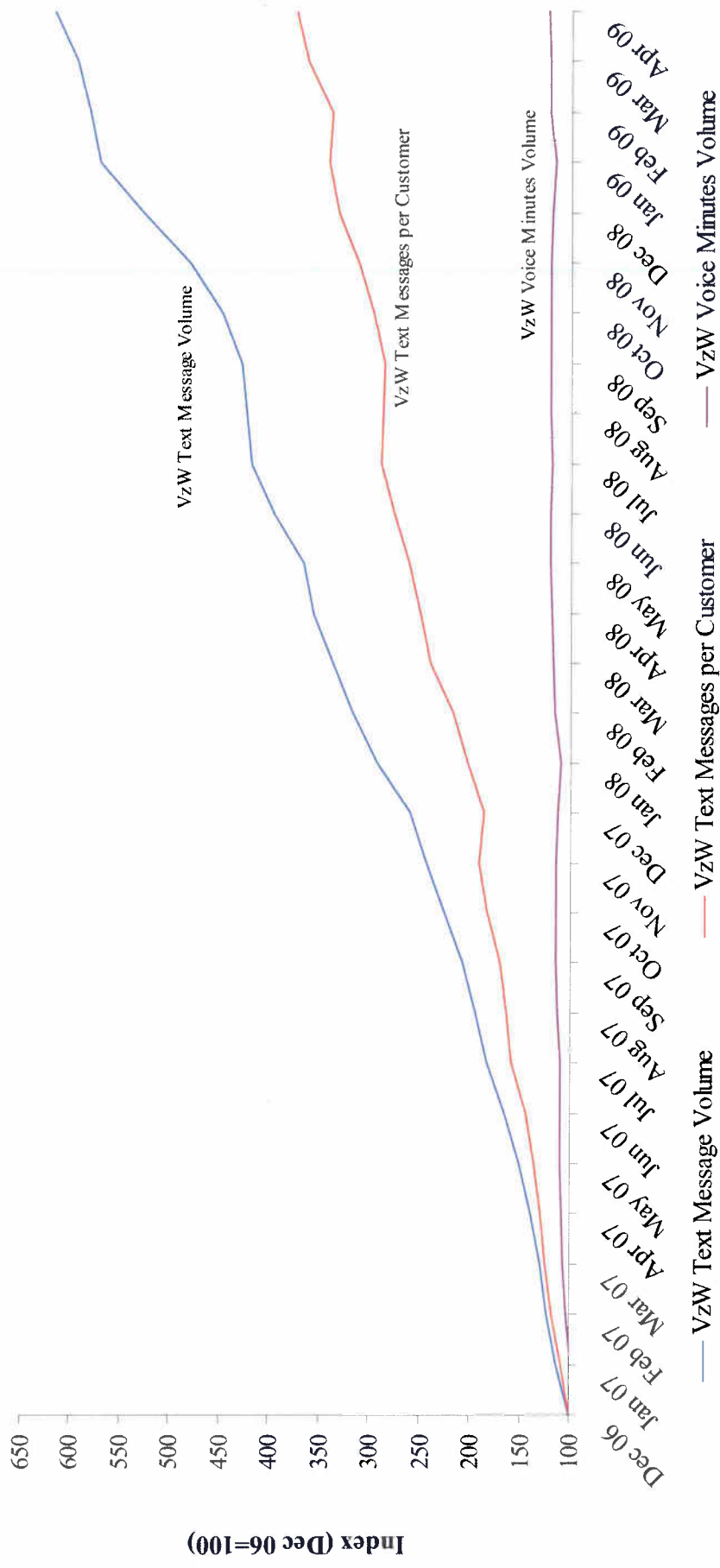
Source: VzW, Bureau of Labor Statistics.

Notes: Revenue used for calculations is based on actual price paid and actual messages used.

Monthly billing cycle calculations are adjusted for a constant 30.5 day month.

The volume of VZW text messages has grown rapidly.

Growth in Text Messages and Voice Minutes December 2006 - April 2009



Source: VZW.

Notes: Monthly billing cycle calculations are adjusted for a constant 30.5 day month.

Verizon Wireless text messaging options

- Unlimited Messaging: \$20 per month (individual)
\$30 per month (family)

- “Bucket” Plans (individual or per-line family):

Messages	\$ / Month	Unlimited “IN”?
250	5	No
500	10	Yes
1500	15	Yes
5000	20	Yes

Overage: \$0.10 per message

- By the drink:

Postpaid Consumer: \$0.20 per text message or instant message
\$0.25 per picture or video message
Prepaid Consumer: \$0.01 - \$0.20 per message
Business: \$0.098 per message (average)

Notes: Based on currently marketed plans only.

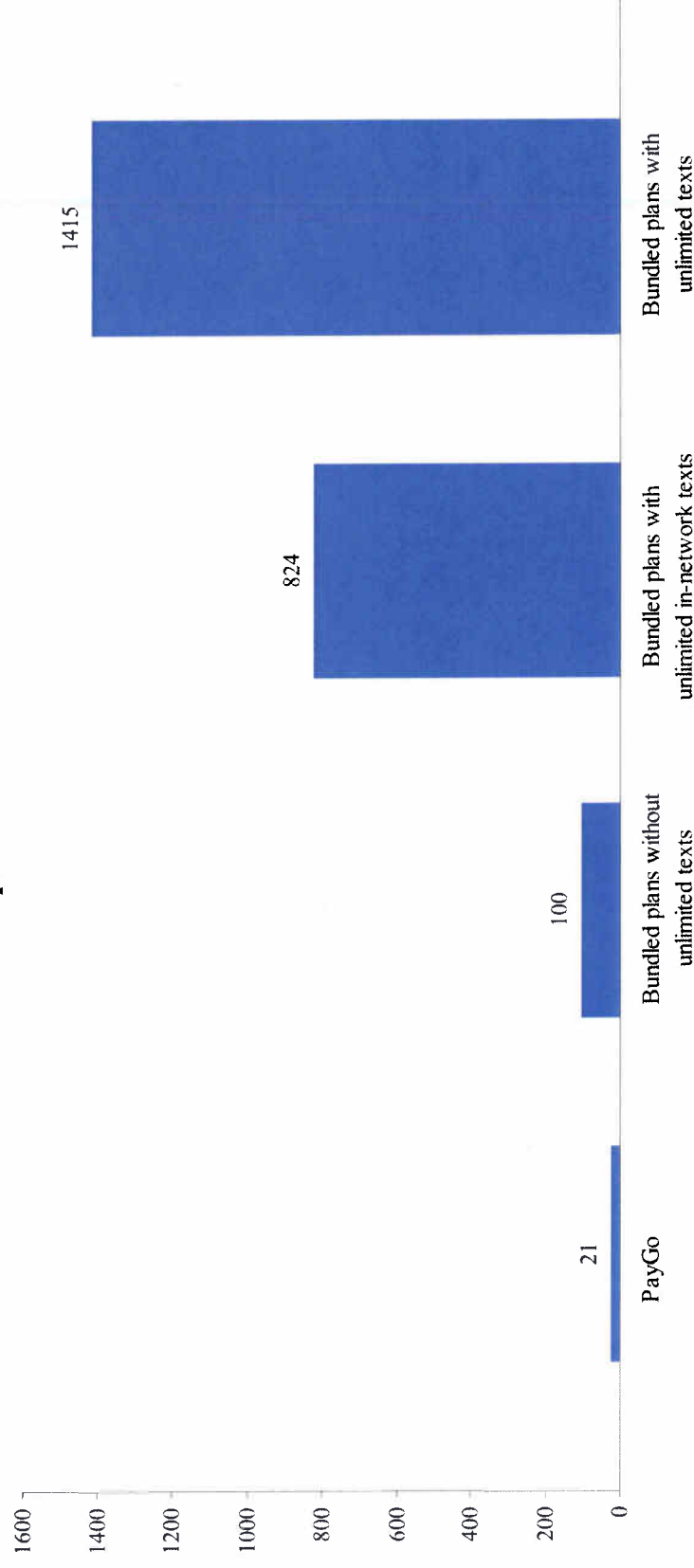
Messages in bucket plans include text, instant messages, picture and video messages.

Prepaid consumer text prices vary depending on daily fee selected by customer. “basic” prepaid involves no daily fee and a \$0.20 per-message fee; “core” prepaid involves \$0.99 daily fee and \$0.10 per-message fee; “plus” prepaid involves \$1.99 daily fee and \$0.05 per-message fee; “unlimited talk” prepaid involves \$3.99 daily fee and \$0.01 per-message fee. Daily fees apply to any day in which a customer uses voice, text, or other data services.

“By-the-drink” customers use text messages infrequently.

- 26% of Verizon Wireless customers do not text at all.
- By the drink consumers average 21 messages per month, while customers on bundle plans average 997 messages per month.

Average Monthly Text Volume
April 2009



Source: VZW.

Note: Figures based on customers subscribing to ten most popular plans in each category, including plans no longer actively marketed by VZW.

Price comparisons – bucket plans.

There are substantial differences across wireless firms in the number of text messages included in bundled plans, and in the prices of “overage” messages.

Monthly Access	Verizon Wireless	AT&T	Sprint	T-Mobile	US Cellular
\$5	250	200	300	300	250
\$10	500 (unlimited in-network)	Not offered	Unlimited	1000	750
\$15	1500 (unlimited in-network)	1500	Not offered	Unlimited	Not offered
\$20	Unlimited	Unlimited	Not offered	Unlimited Family (\$24.95)	Unlimited
	5000 (unlimited in-network)				
\$30	Unlimited Family	Unlimited Family	Unlimited Family	Not offered	Unlimited Family
Overage	\$0.10	\$0.10 (\$5 plan) \$0.05 (\$15 plan)	\$0.20	\$0.20	\$0.25

Notes: Unless otherwise specified, numbers indicate plan limits for within-country SMS text messages, instant messages, picture or video messages.

\$20 Verizon Wireless plan provides unlimited messages if customer is on select or premium voice plan.

Allotments indicated for US Cellular refer to outgoing text messages only (there is no limit on incoming messages), excluding picture and video messages.

Sprint unlimited packages are price differentials between plans with and without unlimited messaging, as an add-on to an existing plan, Sprint unlimited messaging costs \$20.

Price comparisons – “by the drink.”

Prices of pre-paid and post-paid text messaging plans vary widely.

	Verizon				AT&T			Sprint/ Boost Mobile			T-Mobile	US Cellular		
Plan Name														
	Basic	Core	Plus	Unl. Talk	Simple	Unl. Calling	Minute	Daily	Monthly	Pay As You Go	Daily	Plan 1	Plan 2	Plan 1 +
Monthly Access									\$50.00			\$6.00	\$10.00	\$20.95
Daily Access	\$0.00	\$0.99	\$1.99	\$3.99	\$0.00	\$3.00	\$0.00	\$1.00	\$0.00	\$0.00	\$1.00	\$0.00	\$0.00	\$0.00
Voice Rate/Min	\$0.25	\$0.10	\$0.05	\$0.00	\$0.25	\$0.00	\$0.10	\$0.10	UNL	\$0.10-\$0.33	\$0.10	\$0.15	\$0.10	\$0.15
Text Rate (in)	\$0.20	\$0.10	\$0.05	\$0.01	\$0.20	\$0.20	\$0.10	UNL	UNL	\$0.05	\$0.05	UNL	UNL	UNL
Text Rate (out)	\$0.20	\$0.10	\$0.05	\$0.01	\$0.20	\$0.20	\$0.10	UNL	UNL	\$0.10	\$0.10	\$0.25	\$0.25	UNL
PayGo Text/IM														
	Basic	Core	Plus	Unl. Talk	Simple	Unl. Calling	Minute	Daily	Monthly	Pay As You Go	Daily	Plan 1	Plan 2	Plan 1 +
PayGo Text/IM		\$0.20			\$0.20	\$0.20	\$0.10	\$0.20	\$0.03/kb	\$0.20	\$0.20	\$0.25	\$0.25	\$0.25
PayGo Multimedia		\$0.25			\$0.30	\$0.30	\$0.10	\$0.20	\$0.03/kb	\$0.20	\$0.20	\$0.25	\$0.25	\$0.25

Source: VzW.

Notes: For Verizon Wireless, lower PayGo rates generally apply to business and government customers.

Postpaid voice rates refer to daytime weekday minutes, non-roaming, out-of-network.

Sprint postpaid plans are marketed through a wholly-owned subsidiary, Boost Mobile.

Postpaid VzW plans include unlimited in-network messaging.

T-Mobile prepaid voice rate for Pay As You Go plan depends on prepaid amount customer chooses.

Timing of postpaid “by-the-drink” price changes.

The timing of postpaid by-the-drink rate changes varied greatly across firms.

