

Before the
Federal Communications Commission
Washington, D.C. 20554

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| In the Matter of |) | File No.: EB-09-TC-325 |
| |) | Acct. No.: 201132170016 |
| Sprint Nextel Corporation |) | FRN: 0003774593 |
| Compliance with the Commission’s |) | |
| Company-Specific Do-Not-Call Rules |) | |
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CONSENT DECREE

I. INTRODUCTION

1. The Enforcement Bureau of the Federal Communications Commission and Sprint Nextel Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation regarding Sprint Nextel Corporation’s compliance with the Company-Specific Do-Not-Call Rules.

II. DEFINITIONS

- 2. For purposes of this Consent Decree, the following definitions shall apply:
 - a. “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - b. “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - c. “Affiliate,” for purposes of this Consent Decree only, means a person or entity that Sprint (directly or indirectly) controls, either *de facto* or *de jure*, for the purpose of any activity covered by section 64.1200 of the Commission’s rules, 47 C.F.R. § 64.1200, and any successors or assigns serving these entities.
 - d. “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - e. “Commission” or “FCC” means the Federal Communications Commission and all of its bureaus and offices.
 - f. “Company-Specific Do-Not-Call Rules” means the rules set forth at 47 C.F.R. § 64.1200(d).

- g. “Effective Date” means the date on which the Bureau releases the Adopting Order.
- h. “Investigation” means the Bureau’s investigation regarding Sprint’s compliance with section 227 of the Communications Act, 47 U.S.C. § 227, and section 64.1200 of the Commission’s rules, 47 C.F.R. § 64.1200, initiated by a June 11, 2009 letter of inquiry.
- i. “Parties” means Sprint and the Bureau, each of which is a “Party.”
- j. “Rules” means those rules and regulations codified in Title 47 of the Code of Federal Regulations.
- k. “Sprint” or “Company” means Sprint Nextel Corporation, its Affiliates, and its predecessors-in-interest and successors-in-interest.

III. BACKGROUND

3. Pursuant to section 227 of the Act, the Commission has adopted Company-Specific Do-Not-Call Rules. These rules generally prohibit a person or entity from making any call for telemarketing purposes to a residential telephone subscriber unless the person or entity has instituted certain defined minimum standards for maintaining a list of persons who request not to receive calls made by or on behalf of that person or entity. 47 C.F.R. § 64.1200(d).

4. On June 11, 2009, in response to consumer complaints, the Bureau issued a letter of inquiry¹ regarding Sprint’s compliance with section 227 of the Communications Act, 47 U.S.C. § 227, and section 64.1200 of the Commission’s rules, 47 C.F.R. § 64.1200. In its response,² Sprint stated, among other things, that due to an unintentional equipment malfunction one of its servers had failed, for a time, to process requests from consumers who did not wish to be contacted by Sprint. Sprint discovered the malfunction independently and asserts that it corrected the technical problem to prevent future occurrences.

5. On March 11, 2010, the Bureau issued a second letter of inquiry³ to determine whether Sprint’s server failure led to Sprint violating the Commission’s Company-Specific Do-Not-Call Rules. On June 3, 2010, Sprint responded to the Bureau’s second letter of inquiry.⁴ The Parties entered into agreements to toll the applicable statute of limitations in order to give the Parties an opportunity to engage in settlement discussions leading to this Consent Decree.

¹ Letter from Josh Zeldis, Assistant Div. Chief, Telecomm. Consumers Div., EB, FCC, to Edward Palmieri, Deputy Chief Privacy Officer, Sprint Nextel Corporation (June 11, 2009) (on file with EB).

² Letter from Kent Nakamura, Vice President for Policy and Privacy, Sprint Nextel Corp., to Lloyd Collier, Senior Attorney, Telecomm. Consumers Div., EB, FCC (July 31, 2009) (on file with EB).

³ Letter from Josh Zeldis, Assistant Div. Chief, Telecomm. Consumers Div., EB, FCC, to John Roche, Perkins Coie, LLP, (Mar. 11, 2010) (on file with EB).

⁴ Letter from Kent Nakamura, Vice President for Policy and Privacy, Sprint Nextel Corp., to Lloyd Collier, Senior Attorney, Telecomm. Consumers Div., EB, FCC (June 3, 2010) (on file with EB).

IV. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion. Sprint's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order.

7. **Jurisdiction.** Sprint agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Termination of Investigation.** In express reliance on the covenants and representations contained herein, and to avoid expenditure of additional public resources, the Bureau agrees to terminate the Investigation. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, Sprint does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Commission's rules that are the subject of this Consent Decree. In consideration for the termination of said Investigation, and in accordance with the terms of this Consent Decree, Sprint agrees to the terms, conditions, and procedures contained herein. The Bureau agrees that, in the absence of new material evidence related to the Investigation, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, or refer to the Commission, any new proceeding, formal or informal, or take, on its own motion, or refer to the Commission, any action against Sprint, concerning the matters that were the subject of the Investigation, or with respect to Sprint's basic qualifications, including its character qualifications, to be a Commission licensee or hold other Commission authorizations.

10. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to section 208 of the Act against Sprint for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Sprint of the Act, the Rules, or the Adopting Order.

11. **Compliance Plan.** To resolve and terminate the Investigation, and without admitting or denying any violation of the Act or the Commission's rules, Sprint agrees to implement a Compliance Plan, consistent with this Paragraph 11.

- a. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Sprint shall designate a senior corporate manager to service as a Compliance Officer. The Compliance Officer shall be responsible for administering the

Compliance Plan and ensuring compliance with this Consent Decree, and shall be familiar with all legal requirements relating to the Company-Specific Do-Not-Call Rules.

- b. **Validation of Company-Specific Do-Not-Call Opt-out Programs.** Within thirty (30) calendar days after the Effective Date, and periodically and regularly while the Compliance Plan is in effect, Sprint shall review its Company-Specific Do-Not-Call opt-out programs to ensure: (1) that such programs are working accurately, (2) that Sprint employees responsible for managing and overseeing Sprint's opt-out programs are processing requests timely and in compliance with the Company-Specific Do-Not-Call Rules, and (3) that validation testing is completed successfully, as described below. Specifically, Sprint shall:
- i. Ensure its mechanized systems generate appropriate error messages when Company-Specific Do-Not-Call requests are not timely processed;
 - ii. For such mechanized systems, establish and maintain a technical team to oversee the actual processing of opt-out requests and monitor request file size and process completion on a regular basis, including daily monitoring and periodic audits;
 - iii. Conduct a manual review, as needed, to track the receipt and uploading of Company-Specific Do-Not-Call request input files for any Sprint opt-out programs.
- c. **Training.** Sprint shall ensure that, within sixty (60) calendar days of the Effective Date, its employees who are responsible for managing or carrying out Company-Specific Do-Not-Call opt-out programs have received training regarding compliance with the Company-Specific Do-Not-Call Rules. Sprint shall ensure that any new (or reassigned) employee assigned the responsibilities noted in the previous sentence receives Company-Specific Do-Not-Call training within thirty (30) calendar days of starting employment (or the new assignment). The training required by this Paragraph 11(c) shall focus on federal Company-Specific Do-Not-Call opt-out requirements and the terms of this Compliance Plan, and be repeated annually during the term of this Consent Decree.
- d. **Reporting Non-Compliance.** Sprint shall report any non-compliance with this Consent Decree, or the Company-Specific Do-Not-Call Rules, to the Enforcement Bureau within thirty (30) calendar days after the discovery of non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Sprint has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Sprint has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance shall be submitted to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street S.W., Washington, DC 20554, with a copy submitted electronically to Lloyd.Collier@fcc.gov.

- e. **Compliance Report.** The Compliance Officer, as an agent of and on behalf of Sprint, shall file compliance reports ninety (90) calendar days after the Effective Date, one (1) year after the Effective Date, and at the end of the two (2) year term, in compliance with the terms of Paragraph 11(f).
- i. Each compliance report shall include a detailed description of Sprint's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Commission's Company-Specific Do-Not-Call Rules.
 - ii. Each compliance report shall include a certification by the Compliance Officer, as an agent of and on behalf of Sprint, stating that the Compliance Officer has personal knowledge that Sprint (A) has established and implemented the Compliance Plan; (B) has been following all aspects of the Compliance Plan for the entire term of the Consent Decree; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree that have not been disclosed as required by Paragraph 11(d) above. The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification and must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.
 - iii. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Sprint, shall provide the Commission with a detailed explanation of (A) each instance of non-compliance; (B) the steps that Sprint has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (C) the steps that Sprint has taken or will take to prevent recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
 - iv. Such certification must be mailed within fifteen (15) calendar days of the one (1) and the two (2) year anniversary of the Effective Date, and Sprint must mail its certification to the Chief, Telecommunications Consumers Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, and must include the file numbers listed above. Sprint shall also send an electronic copy of its certification to Lloyd.Collier@fcc.gov.
- f. **Duration of Compliance Plan.** Sprint shall implement the Compliance Plan within sixty (60) calendar days of the Effective Date. The term of the Compliance Plan shall expire two (2) years after the Effective Date

12. **Voluntary Contribution.** In consideration for the termination of the Investigation in accordance with the terms of this Consent Decree, Sprint agrees to make a voluntary contribution to the United States Treasury, without further protest or recourse to a trial *de novo*, in the amount of four hundred thousand dollars (\$400,000) within thirty (30) calendar days after the Effective Date. This voluntary payment does not constitute a forfeiture under the Act or the Commission's rules. The payment must be made by check or similar instrument, payable to the Order of the Federal Communications Commission. The payment must include the Account Number and

FRN referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York and account number 27000001. Sprint will also send electronic notification on the date said payment is made to Johnny.Drake@fcc.gov.

13. **Waivers.** Provided the Bureau issues an Adopting Order, Sprint waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Sprint shall retain the right to challenge the Commission's interpretation of the Consent Decree or any terms contained herein, and of the Commission's rules. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order or this Consent Decree, neither Sprint nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and Sprint shall waive any statutory right to a trial *de novo* with respect to the issuance of the Adopting Order and shall consent to a judgment incorporating the terms of this Consent Decree. Sprint hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters contained in this Consent Decree.

14. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

15. **Privileged and Confidential Documents.** By this Consent Decree, Sprint neither waives nor alters its right to assert and seek protection from disclosure of any privileged or otherwise confidential and protected documents and information, or to seek appropriate safeguards of confidentiality for any competitively sensitive or proprietary information.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of this Consent Decree is inconsistent with any subsequent rule or order adopted by the Commission, that provision will be superseded by such Commission rule or order.

17. **Successors and Assigns.** Sprint agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement of the above-described Investigation. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Sprint with the requirements of the Act or the Commission's rules or orders.

19. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in counterparts (including by facsimile or electronic mail), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

22. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

For: Sprint Nextel Corporation

Date Peter N. Sywenki
 Acting Vice President for Policy and Privacy
 Sprint Nextel Corporation

For: Federal Communications Commission

Date P. Michele Ellison
 Chief, Enforcement Bureau